No. 17-528

IN THE

Supreme Court of the United States

JENNIFER STRANG,

Petitioner,

v.

FORD MOTOR COMPANY GENERAL RETIREMENT PLAN and FORD MOTOR COMPANY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a plaintiff may pursue a claim under Section 502(a)(3) of ERISA based on the theory that the plan administrator violated its fiduciary duties by failing to make a benefits payment.

RULE 29.6 STATEMENT

Ford Motor Company has no parent corporation, and no publicly held company owns 10% or more of its stock.

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BRIEF IN OPPOSITION

Respondents Ford Motor Company General Retirement Plan and Ford Motor Company (collectively, "Ford") respectfully submit this brief in opposition to the petition for a writ of certiorari filed by Jennifer Strang.

OPINIONS BELOW

The court of appeals' opinion is unpublished but is available at 693 F. App'x 400. Pet. App. 1. The court of appeals' order denying rehearing and rehearing en banc is unreported. Pet. App. 46. The opinion of the district court dismissing petitioner's breach-of-fiduciary-duty claim is unreported but is electronically available at 2015 WL 13541159. Pet. App. 14. The opinion of the district court granting Ford's motion for judgment on the administrative record is published at 194 F. Supp. 3d 625. Pet. App. 24.

JURISDICTION

The court of appeals filed its opinion on May 19, 2017. It denied petitioner's timely petition for rehearing or rehearing en banc on July 7, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Sections 502(a)(1)(B) and 502(a)(3) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1132(a)(1)(B), 1132(a)(3), are reproduced in the petition. *See* Pet. 2–3.

STATEMENT

Petitioner seeks this Court's review of a question that is not actually presented in this case. According to petitioner, the Sixth Circuit "erred in holding . . .

that an ERISA claimant is barred from alleging a claim for breach of fiduciary duty under ERISA section 502(a)(3) whenever that claimant has the opportunity to allege a claim for benefits under ERISA section 502(a)(1)(B)." Pet. i (citations omitted). In reality, the Sixth Circuit held no such thing. Rather than concluding that a plaintiff can *never* bring a fiduciary-breach claim under Section 502(a)(3) when a claim for benefits is available under Section 502(a)(1)(B), as petitioner contends, the Sixth Circuit simply applied its well-established rule that a fiduciary-breach claim under Section 502(a)(3) must be "'based on an injury *separate* and *distinct* from the denial of benefits.'" Pet. App. 11 (quoting *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 372 (6th Cir. 2015) (en banc) (emphases altered)).

The Sixth Circuit's rule that fiduciary-breach claims under Section 502(a)(3) cannot be "based on . . . the denial of benefits" is consistent with the approach of every other circuit that has addressed the issue. No court of appeals permits an ERISA plaintiff to premise a Section 502(a)(3) claim on the theory that the defendant violated its fiduciary duties by failing to pay benefits. The Sixth Circuit's approach is also consistent with this Court's ERISA precedent, which recognizes that Section 502(a)(1)(B) "provides a remedy for breaches of fiduciary duty with respect to . . . the payment of claims" and that Section 502(a)(3) provides "remedies for . . . *other* breaches." *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996) (emphasis added).

These settled legal principles do not require further elucidation from this Court. In fact, the Court recently denied review of the en banc Sixth Circuit decision that the unpublished opinion in this case followed in affirming the dismissal of petitioner's Section

502(a)(3) claim. *See Rochow v. Life Ins. Co. of N. Am.*, 136 S. Ct. 480 (2015). In light of the uniformity among the circuits—which are correctly applying this Court's precedent regarding the interplay between Sections 502(a)(1)(B) and 502(a)(3)—there is no reason to reach a different outcome here.

The petition for a writ of certiorari should be denied.

1. ERISA contains a "carefully crafted and detailed enforcement scheme." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 254 (1993). Section 502(a)(1)(B) of ERISA provides a plaintiff with a cause of action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Section 502(a)(3) authorizes a plaintiff to bring suit "(A) to enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of [ERISA] or the terms of the plan." *Id.* § 1132(a)(3).

"[T]he remedies available under [Section 502(a)] [are] discrete, non-redundant, non-fungible causes of action." *Ponsetti v. GE Pension Plan*, 614 F.3d 684, 696–97 (7th Cir. 2010). In particular, this Court has made clear that Section 502(a)(3) is a "'catchall'" provision that serves as a "safety net," providing "appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy." *Varity Corp.*, 516 U.S. at 512.

2. This case arises from petitioner's attempt to bring duplicative claims for benefits under Sections 502(a)(1)(B) and 502(a)(3) of ERISA.

In 2012, Ford notified participants in its retirement plan of a limited opportunity to cash out their retirement benefits by electing a single lump-sum benefits payment. Pet. App. 2. For administrative reasons, Ford decided to solicit participants' interest in the program through a series of election periods beginning on August 1, 2012. *Id.* at 28. Each eligible participant was permitted to select the lump-sum payment option during a randomly assigned election period by submitting to Ford "a completed and signed election form." *Id.* at 31. Ford informed plan participants that "'[u]nder no circumstances'" would they "'be able to change [their] assigned election period.'" *Id.* at 2.

Petitioner's husband, John Strang, was a retired Ford employee and plan participant who was assigned an election period of December 14, 2012 through March 13, 2013. Pet. App. 3. In the months preceding that period, Mr. Strang and petitioner asked Ford to move up his election period because he was suffering from a terminal illness. *Id.* In accordance with the terms of the plan, Ford denied those requests. *Id.* Mr. Strang responded by sending a letter to Ford in which he expressed a desire to elect a lump-sum distribution but also added that if "'it is determined that making this plan election is NOT in the best interests of my spouse then she shall be empowered to make the election that is in her best interests.'" *Id.* at 3–4.

Unfortunately, Mr. Strang died before his election period opened, which prevented him from opting into the lump-sum program. Pet. App. 4. Petitioner nevertheless claimed that, as a plan beneficiary, she was entitled to a lump-sum payout of her husband's benefits because Mr. Strang had supposedly expressed his preference for the lump-sum option in the letter he

sent to Ford before his death. *Id.* at 3. Ford denied petitioner's claim because Mr. Strang did not submit a lump-sum election form during his assigned election period. *Id.* at 4–5.

3. Petitioner sued Ford to recover the difference between the lump-sum payout she would have received if Mr. Strang had made a valid lump-sum election during his lifetime and the smaller lump-sum payout petitioner subsequently received based on her survivor's share of Mr. Strang's pension. As relevant here, petitioner asserted two ERISA claims. First, she alleged under Section 502(a)(1)(B) that Ford denied her benefits in violation of the terms of the plan by failing to give effect to Mr. Strang's letter purporting to make a premature lump-sum election. Pet. App. 17. Second, she sought relief under Section 502(a)(3) for "breach of fiduciary duty for 'unreasonably refusing to allow John Strang to take a lump sum buyout of his Ford Plan pension.'" *Id.* (quoting Compl. ¶ 63 (alteration omitted)).[1]

The district court granted Ford's motion to dismiss the Section 502(a)(3) claim because "a request for equitable relief under this section may not be made when it would duplicate the relief available under other ERISA sections," Pet. App. 22, which petitioner's claim would do in light of her ability to seek recovery of the "allegedly unpaid lump sum benefits" under Section 502(a)(1)(B). *Id.* at 23. The district court thereafter granted Ford's motion for judgment on the administrative record on the Section

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[1] In a separate count, petitioner sought reformation of the terms of the plan under Section 502(a)(3). Compl. ¶¶ 52–56. The district court dismissed that claim because petitioner had failed to plead the prerequisites to plan reformation; petitioner did not appeal that ruling. *See* Pet. App. 20–21.

502(a)(1)(B) claim because Ford's "disallowance of John Strang's election on the grounds that it was not submitted during his election period is rational in light of the plan's provisions." *Id.* at 40 (internal quotation marks omitted).

4. The Sixth Circuit affirmed in a unanimous, unpublished opinion. The court of appeals concluded that the district court had correctly dismissed the Section 502(a)(3) claim because, under controlling circuit precedent, "'a claimant can pursue a breach-of-fiduciary-duty claim under [Section 502(a)(3)] . . . only where the breach of fiduciary duty claim is based on an injury separate and distinct from the denial of benefits or where the remedy afforded by Congress under [Section 502(a)(1)(B)] is otherwise shown to be inadequate.'" Pet. App. 11 (quoting *Rochow*, 780 F.3d at 372 (alterations altered; emphasis omitted)). "Here," the court continued, "the injury for the breach of fiduciary duty and for the denial of benefits is one and the same" because petitioner "contends that Ford's withholding of the election forms and failure to consider Mr. Strang's letter a proper election were both a breach of fiduciary duty and a denial of benefits." *Id.* at 11–12. Nor had petitioner "shown . . . that the remedy [under Section 502(a)(1)(B)], were she successful, would be inadequate." *Id.* After all, "the remedy sought" under both causes of action was "the same": "the $463,254.78 difference between what [petitioner] received and what she would have received had Mr. Strang's election been effective." *Id.* at 13.

The court also upheld judgment for Ford on the Section 502(a)(1)(B) claim because "Ford's interpretation of the plan to include a fixed period during which the eligible member was required to submit specific

election forms was rational in light of the plan's provisions." Pet. App. 11 (internal quotation marks omitted). In addition, the court concluded that Mr. Strang's letter to Ford regarding the lump-sum benefits option was "not an election at all" because the letter was "equivocal at best" as to whether he intended to elect a lump-sum distribution or instead left the election decision to petitioner's discretion. *Id.* at 9.

REASONS FOR DENYING THE PETITION

Petitioner's request for this Court's review rests on the fiction that the Sixth Circuit held "that an ERISA claimant is barred from alleging a claim for breach of fiduciary duty under ERISA section 502(a)(3) *whenever* that claimant has the opportunity to allege a claim for benefits under ERISA section 502(a)(1)(B)." Pet. i (emphasis added; citations omitted). In reality, the Sixth Circuit held that petitioner's fiduciary-breach claim failed as a matter of law because it was not "based on an injury separate and distinct from the denial of benefits." Pet. App. 11 (internal quotation marks and emphasis omitted). That holding—applying an en banc Sixth Circuit decision that this Court recently declined to review, *see Rochow v. Life Ins. Co. of N. Am.*, 136 S. Ct. 480 (2015)—is consistent with every decision that petitioner identifies as the basis for her purported conflict. Those decisions permitted plaintiffs to pursue fiduciary-breach claims under Section 502(a)(3) because their claims were premised on a theory *other than* the denial of benefits, such as the violation of ERISA's disclosure requirements. *See*, *e.g.*, *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 720 (8th Cir. 2014). Like those decisions, the Sixth Circuit's opinion in this case faithfully applies this Court's instruction that Section 502(a)(3) "provide[s] . . . remed[ies] for . . . breaches of

other sorts" than "with respect to . . . the payment of claims." *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996) (emphasis added).

Moreover, even if this case did present the question that petitioner seeks to raise, it would be a poor vehicle for examining that "narrow" and "isolated" issue. Pet. 1, 3. The Sixth Circuit held that Ford's denial of a lump-sum payout of Mr. Strang's benefits was consistent with the terms of the plan—a holding that petitioner does not challenge in this Court—which means that, even if petitioner could seek to recover those benefits through a fiduciary-breach claim under Section 502(a)(3), her claim would necessarily fail on the same basis as her Section 502(a)(1)(B) claim. There is no reason for this Court to grant review where its decision could not conceivably alter the ultimate outcome of the litigation.

I. PETITIONER'S ALLEGED CIRCUIT SPLIT IS ILLUSORY.

Petitioner's supposed circuit split does not exist. The circuits are in agreement that a plaintiff can plead a claim under ERISA Section 502(a)(3) to remedy a breach of fiduciary duty *other than* a breach attributable to a denial of benefits, which must be pled under ERISA Section 502(a)(1)(B). All of the decisions identified by petitioner—including the Sixth Circuit's decision in this case and the prior opinions that it applied—consistently adhere to that settled dichotomy between Sections 502(a)(1)(B) and 502(a)(3).

A. The Circuits Agree That Plaintiffs May Plead A Section 502(a)(3) Claim To Remedy An Alleged Fiduciary Breach Other Than A Denial Of Benefits.

Petitioner cites opinions from the Second, Eighth, and Ninth Circuits in an effort to manufacture a conflict with the Sixth Circuit's decision. Pet. 6–7, 18–20. Unlike petitioner, however, the plaintiffs in each of those cases alleged a Section 502(a)(3) claim that was based on a fiduciary breach other than a denial of benefits.

In *Silva v. Metropolitan Life Insurance Co.*, for example, the Eighth Circuit held that the plaintiff should be permitted to amend his complaint to add a Section 502(a)(3) claim alleging that a life-insurance plan administrator had breached its fiduciary duties "by failing to provide [the insured] with a summary plan description" and "by collecting insurance policy premiums from" the insured even though he may not have had a valid policy. 762 F.3d at 720, 722. The plaintiff did not allege that the plan administrator had violated Section 502(a)(3) by failing to make a benefits payment; the plaintiff instead challenged the benefits denial in a separate cause of action under Section 502(a)(1)(B) seeking to recover "benefits owed under the Plan." *Id.* at 718. The Eighth Circuit concluded that the plaintiff "present[ed] two alternative—as opposed to duplicative—theories of liability" and was therefore "allowed to plead both." *Id.* at 726.

The Eighth Circuit reached a similar conclusion in *Jones v. Aetna Life Insurance Co.*, 856 F.3d 541 (8th Cir. 2017), where the court reversed dismissal of a Section 502(a)(3) claim that alleged that the defendant breached its fiduciary duty to a plan participant who was denied disability benefits by "failing to obtain

medical records, failing to tell [the plaintiff] where to send evidence of disability, and using claims examiners with conflicts of interest." *Id.* at 544. Because the plaintiff "assert[ed] different theories of liability" for her Section 502(a)(1)(B) and 502(a)(3) claims—only the Section 502(a)(1)(B) claim "assert[ed] that Aetna denied her benefits due under the plan"—the district court had erred by dismissing the Section 502(a)(3) claim as "duplicative." *Id.* at 547.

The Second and Ninth Circuits follow the same approach as the Eighth Circuit regarding the interplay between Sections 502(a)(1)(B) and 502(a)(3). In *New York State Psychiatric Ass'n v. UnitedHealth Group*, 798 F.3d 125 (2d Cir. 2015), the Second Circuit held that the district court had erred when it dismissed a Section 502(a)(3) claim alleging that the defendant had breached its fiduciary duties by applying more restrictive standards to mental-health claims than medical claims in violation of the Mental Health Parity and Addiction Equity Act. *Id.* at 133. The court explained that Section 502(a)(3) claims cannot survive if they are "in effect repackaged claims under § 502(a)(1)(B)," but concluded that dismissal of the plaintiff's Section 502(a)(3) claim was "premature" because it was "not clear at the motion-to-dismiss stage of the litigation that monetary benefits under § 502(a)(1)(B) alone will provide [the plaintiff] a sufficient remedy." *Id.* at 134.

Likewise, in *Moyle v. Liberty Mutual Retirement Benefit Plan*, 823 F.3d 948 (9th Cir. 2016), the Ninth Circuit held that the plaintiffs could pursue a Section 502(a)(3) claim that alleged a "breach of fiduciary duty to disclose" to employees information about whether they would receive benefits credit for their service to

a predecessor company acquired by their current employer. *Id.* at 962. The Ninth Circuit examined other circuits' approaches to the distinction between Sections 502(a)(1)(B) and 502(a)(3), including the Eighth Circuit's decision in *Silva* and the Sixth Circuit's decision in *Rochow v. Life Insurance Co. of North America*, 780 F.3d 364 (6th Cir. 2015) (en banc). *Id.* at 961–62. The court concluded that all of those cases "support [a plaintiff's] ability to seek relief under § [502](a)(3) despite also pursuing a claim under § [502](a)(1)(B)" where the plaintiff "presents § [502](a)(1)(B) and § [502](a)(3) as alternative—rather than duplicative—theories." *Id.* at 961, 962. The plaintiffs in *Moyle* met that requirement because they "s[ought] the payment of benefits under § [502](a)(1)(B), but if that fails, [they] s[ought] an equitable remedy for the breach of fiduciary duty to disclose under § [502](a)(3)." *Id.* at 962.

Thus, every decision on which petitioner relies to establish a purported split with the Sixth Circuit's decision in this case upholds the settled distinction that Section 502(a)(1)(B) provides a remedy for the denial of benefits and Section 502(a)(3) provides an alternative remedy for breaches of other fiduciary obligations.[2]

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[2] The other circuit court decisions that petitioner mentions in passing as supposedly "approv[ing] claims for breach of fiduciary duty in the context of benefit claims," Pet. 6, are also consistent with this dichotomy. None of them permits a plaintiff to allege a fiduciary-breach claim under Section 502(a)(3) based on the denial of benefits. *See McCravy v. Metro. Life Ins. Co.*, 690 F.3d 176, 178 (4th Cir. 2012) (reversing dismissal of Section 502(a)(3) claim where the plaintiff's daughter was not entitled to benefits under the terms of the plan but the insurer accepted premiums); *Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 449–50 (5th Cir.

B. The Sixth Circuit Affirmed Dismissal Of Petitioner's Section 502(a)(3) Claim Because The Claim Alleged A Fiduciary Breach Based On A Denial Of Benefits.

The foregoing decisions permitting Section 502(a)(3) claims to proceed are entirely consistent with the Sixth Circuit's holding that petitioner could not pursue a Section 502(a)(3) claim alleging that Ford breached its fiduciary duties by denying benefits.

Petitioner's complaint alleged that Ford was liable under Section 502(a)(3) because it breached its fiduciary obligations by "'refus[ing] to allow John Strang to take a lump sum buyout of his Ford Plan pension.'" Pet. App. 17 (quoting Compl. ¶ 63 (alteration in original)). In affirming the dismissal of the Section 502(a)(3) claim, the Sixth Circuit explained that a "'claimant can pursue a breach-of-fiduciary-duty claim under [Section 502(a)(3)] . . . only where the breach of fiduciary duty claim is based on an injury separate and distinct from the denial of benefits or where the remedy afforded by Congress under [Section 502(a)(1)(B)] is otherwise shown to be inadequate.'" Pet. App. 11 (quoting *Rochow*, 780 F.3d at 372) (alterations altered; emphasis omitted)). Petitioner's Section 502(a)(3) claim failed, the Sixth Circuit concluded, because "the injury for the breach of fiduciary duty and for the denial of benefits is one and

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2013) (reversing dismissal of Section 502(a)(3) claim where the plaintiff was not eligible for health-insurance benefits under the terms of the plan but the defendant had nevertheless provided benefits for several years); *Kenseth v. Dean Health Plan, Inc.*, 722 F.3d 869, 872 (7th Cir. 2013) (reversing dismissal of Section 502(a)(3) claim where the plaintiff was not eligible for health-insurance benefits under the terms of the plan but was allegedly led to believe that she was eligible by the insurer).

the same" and petitioner had not shown that her injury "would not be adequately remedied under" Section 502(a)(1)(B). *Id.* at 11–12. That outcome is fully compatible with the decisions from the Second, Eighth, and Ninth Circuits invoked by petitioner because, unlike petitioner, the plaintiffs in those cases alleged a breach of fiduciary duty based on a theory *other than* the denial of benefits and were therefore permitted to pursue a Section 502(a)(3) claim. *See*, *e.g.*, *Silva*, 762 F.3d at 726 (failure to provide summary plan description and improper acceptance of premium payments); *N.Y. State Psychiatric Ass'n*, 798 F.3d at 133 (violation of Mental Health Parity and Addiction Equity Act); *Moyle*, 823 F.3d at 962 (failure to disclose plan terms).

The Sixth Circuit applied the same approach in the earlier decisions on which the panel premised its unpublished opinion in this case. In *Rochow*, the en banc Sixth Circuit held that a plaintiff who recovered wrongfully denied disability benefits under Section 502(a)(1)(B) could not also recover under Section 502(a)(3) "based on the claim that the wrongful denial of benefits also constituted a breach of fiduciary duty." 780 F.3d at 371. The court held that "[a]llowing [the plaintiff] to recover . . . under § 502(a)(3), in addition to his recovery under § 502(a)(1)(B), . . . would—absent a showing that the § 502(a)(1)(B) remedy is inadequate—result in an impermissible duplicative recovery." *Id.*

Similarly, in *Wilkins v. Baptist Healthcare System, Inc.*, 150 F.3d 609 (6th Cir. 1998), the Sixth Circuit affirmed dismissal of a Section 502(a)(3) claim alleging that the defendant "breached its fiduciary duty to act solely in [the plaintiff's] interest for the exclusive purpose of providing benefits to him." *Id.* at 615

(internal quotation marks omitted). The court held that "[t]o rule in [the plaintiff's] favor would allow him and other ERISA claimants to simply characterize a denial of benefits as a breach of fiduciary duty, a result which the Supreme Court expressly rejected." *Id.* at 616 (citing *Varity*, 516 U.S. at 515).[3]

* * *

The circuits are in agreement that Section 502(a)(3) cannot be used to remedy alleged fiduciary breaches arising from the denial of benefits—which are actionable under Section 502(a)(1)(B)—and that Section 502(a)(3) is instead available to remedy *other* breaches of fiduciary obligations. The Sixth Circuit's decision affirming the dismissal of petitioner's Section 502(a)(3) claim follows the circuits' uniform approach because that claim is premised on the theory that Ford breached its fiduciary obligations by denying a lump-sum payout of Mr. Strang's benefits. No court of appeals would have reached a different outcome when confronted with petitioner's duplicative Section 502(a)(1)(B) and 502(a)(3) claims.

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[3] In contrast, where the Sixth Circuit has been presented with Section 502(a)(3) claims premised on theories other than the denial of benefits, the court has permitted those claims to proceed despite the availability of Section 502(a)(1)(B) to remedy the benefits denial. *See*, *e.g.*, *Hill v. Blue Cross & Blue Shield of Mich.*, 409 F.3d 710, 718 (6th Cir. 2005) (reversing the dismissal of Section 502(a)(3) claims where the plaintiffs' claims "for breach of fiduciary duty s[ought] plan-wide injunctive relief" to remedy allegedly improper "claims-handling procedures," "not individual-benefit payments").

II. THE DECISION BELOW CORRECTLY APPLIES THIS COURT'S ERISA PRECEDENT.

The Sixth Circuit's dismissal of petitioner's Section 502(a)(3) claim is also consistent with this Court's decisions in *Varity Corp. v. Howe*, 516 U.S. 489 (1996), and *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011), which elucidate the distinctions between Sections 502(a)(1)(b) and 502(a)(3).

In *Varity*, this Court held that the plaintiffs could bring a Section 502(a)(3) claim alleging that the plan "administrator, through trickery, led them to withdraw from the plan and to forfeit their benefits," and could seek "an order that . . . would reinstate each of them as a participant in the employer's ERISA plan." 516 U.S. at 492. The Court reasoned that Section 502(a)(1)(B) "provides a remedy for breaches of fiduciary duty with respect to the interpretation of plan documents and the payment of claims," and that Section 502(a)(3), in contrast, "provide[s] yet other remedies for yet *other* breaches of *other* sorts of fiduciary obligation." *Id.* at 512 (emphases added). Section 502(a)(3) is a "safety net," the Court continued, that "offer[s] appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy." *Id.* The Court concluded that this "'catchall'" cause of action was available to the plaintiffs, who "were no longer members of the [defendant's] plan and, therefore, had no 'benefits due [them] under the terms of [the] plan,'" which foreclosed any possible recovery under Section 502(a)(1)(B). *Id.* at 515 (first alteration added).

Thus, while petitioner is correct that "nothing in *Varity* overrules federal pleading rules permitting litigants to plead claims hypothetically or alternatively," Pet. 22, the decision makes clear that Section

502(a)(3) may not be used to plead a *duplicative* claim seeking a remedy for the same "breaches of fiduciary duty with respect to . . . the payment of claims" that are actionable under Section 502(a)(1)(B). *Varity*, 516 U.S. at 512, 515. Section 502(a)(3) provides a remedy for breaches of "other sorts of fiduciary obligation." *Id.* at 512.

Petitioner's reliance on *Amara* is equally unavailing. Pet. 20–21. The Court held that the plaintiffs in *Amara* did not have a viable Section 502(a)(1)(B) claim because they alleged that CIGNA had misled them about their benefits in documents that summarized the plan and therefore were not seeking "to recover benefits due to [them] under the terms of [the] plan" itself. 29 U.S.C. § 1132(a)(1)(B); *see also Amara*, 563 U.S. at 438 ("we conclude that the summary documents, important as they are, provide communication with beneficiaries *about* the plan, but that their statements do not themselves constitute the *terms* of the plan for purposes of § 502(a)(1)(B)."). With that "obstacle" to the invocation of Section 502(a)(3) removed, the Court went on to note that the plaintiffs might be able to seek equitable relief under Section 502(a)(3) based on the misrepresentations in those summary documents. *Id.* at 438, 442. In recognizing that the lack of a Section 502(a)(1)(B) claim could enable plaintiffs to proceed under Section 502(a)(3), the Court adhered to *Varity*'s holding that Section 502(a)(3) is available where the plaintiffs' injuries are caused "by violations that § 502 does not elsewhere adequately remedy." 516 U.S. at 512.

Unlike in *Varity* and *Amara*, the "safety net" provided by Section 502(a)(3) is unnecessary and unavailable in this case because petitioner alleges that Ford

breached its fiduciary duties by "'unreasonably refus[ing] to allow John Strang to take a lump sum buyout of his Ford Plan pension.'" Pet. App. 17 (quoting Compl. ¶ 63 (alteration in original)). Because Section 502(a)(1)(B) "provides a remedy for" that alleged "breach[ ] of fiduciary duty with respect to . . . the payment of claims"—and petitioner in fact pled a Section 502(a)(1)(B) claim that ultimately failed on the merits—there is "no need for further equitable relief" under Section 502(a)(3). *Varity*, 516 U.S. at 512, 515.

The remedial framework set forth in *Varity* and confirmed in *Amara* therefore compelled the dismissal of petitioner's redundant Section 502(a)(3) claim.

III. THIS CASE IS A POOR VEHICLE FOR ADDRESSING THE QUESTION PRESENTED.

Even if the concededly "narrow" and "isolated" question that petitioner seeks to raise were actually presented here, Pet. 1, 3, this case would nevertheless be a poor vehicle for further defining the scope of Section 502(a)(3) because petitioner's breach-of-fiduciary-duty claim would inevitably fail on the merits.

If this Court reversed the Sixth Circuit's decision upholding the dismissal of petitioner's Section 502(a)(3) claim, Ford would necessarily be entitled to the entry of judgment on remand because the Sixth Circuit has already concluded that Ford's denial of a lump-sum payout of Mr. Strang's benefits "was rational in light of the plan's provisions." Pet. App. 11 (internal quotation marks omitted). In affirming judgment in Ford's favor on petitioner's Section 502(a)(1)(B) claim, the court of appeals explained that Ford's refusal to change Mr. Strang's randomly assigned lump-sum election period "was not arbitrary or capricious" because "there is nothing in the plan that prevents Ford from keeping its structured plan intact

so that it could provide an orderly system for the many other retirees that may have wished to elect their own lump-sum option." *Id.*

Moreover, the Sixth Circuit's reading of Mr. Strang's letter to Ford—which was the sole basis for petitioner's claim that Mr. Strang opted for the lump-sum distribution before he died—also forecloses any possibility that the Section 502(a)(3) claim might succeed on remand. The court determined that, even if Mr. Strang's failure to submit the letter during his designated election period were excused, the letter would still be insufficient to effectuate a lump-sum election because it "contains language that purports to permit his wife to make an election choice if his choice [of a lump-sum distribution] were not in her best interests." Pet. App. 9. That "equivocal" language, the court concluded, was not "in truth really an election at all." *Id.*

The Sixth Circuit's interpretations of the Ford pension plan and Mr. Strang's letter—neither of which petitioner has asked this Court to review—would be fatal to petitioner's Section 502(a)(3) claim on the merits because that claim is premised on the allegation that Ford "'unreasonably refus[ed] to allow John Strang to take a lump sum buyout of his Ford Plan pension.'" Pet. App. 17 (quoting Compl. ¶ 63 (alteration altered)). That allegation is untenable in light of the Sixth Circuit's conclusions that Ford's denial of a lump-sum payout was a "rational" application of the plan's terms and Mr. Strang's letter was "not an election at all." *Id.* at 9, 11 (internal quotation marks omitted).

Granting review in this case would thus result in a wholly academic exercise. There is no reason for this Court to expend its resources resolving a question

that "could not change the result reached below." Stephen M. Shapiro et al., *Supreme Court Practice* 249 (10th ed. 2013).

CONCLUSION

The question that petitioner asks this Court to review is not actually implicated by the Sixth Circuit's decision in this case, and the court of appeals' actual holding is consistent in all respects with the uniform view of other circuits and this Court's precedent regarding the interplay between ERISA Sections 502(a)(1)(B) and 502(a)(3).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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