No. _____

In The Supreme Court of the United States

ROZALYN RAGAN, personal representative of the Estate of Charles Phillip Ragan, deceased,

Petitioner,

v.

MELISSA RAGAN, a/k/a MELISSA HUDSON,

Respondent.

On Petition for Writ of Certiorari to the Colorado Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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June 15, 2022

QUESTION PRESENTED

In *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, 555 U.S. 285 (2009), this Court held that ERISA foreclosed a claim against a plan administrator seeking to force the administrator to pay out benefits to someone other than the beneficiary named in the plan documents. In the course of that decision, however, this Court expressly declined to decide whether a party "could have brought an action in state or federal court against [the named beneficiary] to obtain the benefits after they were distributed." *Id.* at 300 n.10. Since *Kennedy*, federal and state courts have split over whether ERISA preempts a state-law claim brought to recover proceeds that have already been distributed. In this case, the Colorado court of appeals deepened the split by holding that a post-distribution claim is preempted under ERISA's express-preemption clause.

The question presented is: Whether, after an ERISA plan administrator has fully distributed life insurance plan proceeds, ERISA preempts a claimant's state-law right to those proceeds.

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner Rozalyn Ragan, Personal Representative of the Estate of Charles Phillip Ragan, deceased, was the plaintiff in the Colorado district court and the appellee in the Colorado court of appeals.

Respondent Melissa Ragan was the defendant in the Colorado district court and the appellant in the Colorado court of appeals.

RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *Ragan v. Ragan*, 19CV31274 (Colo. Dist. Ct. Nov. 4, 2019)
- *Ragan v. Ragan*, 494 P.3d 664 (Colo. App. May 27, 2021)
- *Ragan v. Ragan*, No. 21SC520 (Colo. Feb. 14, 2022)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

When Congress enacted ERISA, it included an express statement that the statute preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. 29 U.S.C. § 1144(a). But although this provision is "clearly expansive," this Court has recognized that the term "relate to" "cannot be taken to extend to the furthest stretch of its indeterminacy, or else for all practical purposes pre-emption would never run its course." *Egelhoff v. Egelhoff*, 532 U.S. 141, 146 (2001).[1]

As a result, courts must avoid "the clause's susceptibility to limitless application," *Gobeille v. Liberty Mut. Ins. Co.,* 577 U.S. 312, 320 (2016), by going "beyond the unhelpful text and the frustrating difficulty of its key term," *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995). Instead, to determine whether a particular state law is preempted under ERISA's express preemption clause, this Court has instructed that courts must "look both to the objectives of the ERISA statute . . . [and] to the nature of the effect of the state law on ERISA plans." *Egelhoff*, 532 U.S. at 147.

Acknowledging the "undoubted importance" of the issue, this Court has, on multiple occasions, considered how this preemption framework applies to laws relating to domestic relations. *Boggs v. Boggs*, 520 U.S. 833, 836 (1997); *see also Egelhoff*, 532 U.S. at 143; *Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285 (2009). In these cases, the Court has asked whether a claim would threaten or interfere with an important statutory

[1] Unless otherwise specified, internal quotation marks, citations, and alterations are omitted throughout this brief.

objective embodied in ERISA. And it has explained that a state domestic-relations law (or a similar rule of federal common law) must give way if applying it "might obscure a plan administrator's duty to act in accordance with the documents and instruments" under ERISA. *Id.* at 303.

In *Kennedy*—this Court's last word on the subject—the question came up in the context of a claim that would have required a plan administrator to pay benefits to someone other than the person named as a beneficiary in the plan documents. The Court refused to permit such a claim to proceed because doing so would have undermined the "straightforward rule" that plan administrators must, under ERISA, "hew[] to the directives of the plan documents." *Id.* at 301. But at the same time, the Court explicitly did not "express any view" as to whether a claimant could "have brought an action in state or federal court" against the beneficiary "to obtain benefits *after* they were distributed." *Id.* at 299 n.10 (emphasis added).

Both before and after this Court's decision in *Kennedy*, the lower courts have split over the answer to this question. A majority of courts—including the Third, Fourth, Sixth, and Eleventh Circuits along with at least nine states—have held that ERISA *does not* preempt post-distribution suits seeking the recovery of proceeds that have already been disbursed. *See, e.g.*, *Androchick v. Byrd*, 709 F.3d 296, 299 (4th Cir. 2013); *Est. of Kensinger v. URL Pharma, Inc.*, 674 F.3d 131, 132 (3d Cir. 2012); *Sweebe v. Sweebe*, 712 N.W.2d 708, 712–13 (Mich. 2006). As these courts have explained, post-distribution suits do not implicate the "important ERISA objectives" identified by the Court in *Kennedy*. *Andochick*, 709 F.3d at 299. That is because plan administrators "have no role in any post-distribution proceedings," *id.*, and the suit only

requires that a court "determine the rightful recipient of the plan proceeds," *Kensinger*, 674 F.3d at 136.

On the other side of the split, a minority of courts—the Ninth Circuit, Washington, and Texas—have reached the opposite conclusion, holding that ERISA *does* preempt even post-distribution state-law claims seeking the recovery of already paid benefits. *See Carmona v. Carmona*, 603 F.3d 1041, 1061 (9th Cir. 2010); *Est. of Lundy v. Lundy*, 352 P.3d 209, 214 (Wash. Ct. App. 2015), *cert. denied*, *cert. denied*, 361 P.3d 746 (Wash. 2015); *Barnett v. Barnett*, 67 S.W.3d 107, 108 (Tex. 2001). These courts acknowledge that post-distribution suits do not interfere with ERISA's requirement that plan administrators act in accordance with a plan's written terms. But they have nonetheless foreclosed these suits, reasoning that to permit them would "allow for an end-run around ERISA's rules and Congress's policy objective of providing for certain beneficiaries." *Carmona*, 603 F.3d at 1061.

In the decision below, the Colorado court of appeals sided with the minority view. Adopting the Ninth Circuit's reasoning in *Carmona*, the court held that post-distribution suits are little more than an "end-run around preemption." App. 16a. The court, however, failed to identify any specific statutory objective—beyond the generalized desire to "protect[]" beneficiaries—that would conflict with a post-distribution suit. Instead, it followed this Court's reasoning in *Hillman v. Maretta*, 569 U.S. 483 (2013)—a case involving a different statute, the Federal Employees Group Life Insurance Act—finding it "persuasive on the issue of whether a state statute can sidestep preemption." App. 17a.

This Court should grant review now to resolve this split. Even before the Colorado court of appeals' decision

in this case, the split on the question this Court explicitly left open in *Kennedy* was both mature and pervasive. And the lower courts' disagreement over the answer has resulted in a patchwork of outcome-determinative rules that vary by geographic location and in some states, like California, even by forum—with one rule applying in federal court and a contrary one applying to the same claim in state court. That state of affairs is intolerable for all involved. Finally, this case is an ideal vehicle to resolve that split. The petition presents the question as cleanly as possible. This Court should grant it.

OPINIONS BELOW

The Colorado court of appeals' decision is reported at 494 P.3d 664, and reproduced at App. 1a. The trial court's decision, 19 Civ. 31274 (Colo. Dist. Ct. Nov. 4, 2019), is not reported and reproduced at App. 23a.

JURISDICTION

The court of appeals entered judgment on May 27, 2021, and the Colorado Supreme Court denied a timely petition for certiorari on February 14, 2022. App. 1a, 41a. This Court has jurisdiction under 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

ERISA's preemption clause provides, in relevant part:

> "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title." 29 U.S.C. § 1144(a).

A Colorado statute provides, in relevant part:

"(2) Revocation upon divorce. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate . . . : (a) Revokes any revocable (i) disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument. . . .

(4) Effect of revocation. Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section . . . .

(8) . . . [A] former spouse . . . who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit to the person who is entitled to it under this section. (b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse . . . who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted." Colo. Rev. Stat. §15–11–804.

STATEMENT

A. Statutory background

1. Congress enacted ERISA to "protect . . . the interests of participants in employee benefit plans and their beneficiaries . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries," and "by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. § 1001(b). ERISA achieves these objectives through a variety of integrated provisions, but at issue in this case is ERISA's preemption clause.

ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. *Id.* § 1144(a). Based on this provision, this Court has identified "two categories of state laws" that are preempted by ERISA. *Gobeille,* 577 U.S. at 319–20; *see also Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983). The first includes state laws that have "a reference to ERISA plans." *Gobeille,* 577 U.S. at 319–20. That happens when "a State's law acts immediately and exclusively upon ERISA plan," or "where the existence of ERISA plans is essential to the law's operation." *Id.* The second covers state laws that have an "impermissible 'connection with'" an ERISA plan. *Id.* This has been understood to mean that a state law "governs a central matter of plan administration" or "interferes with nationally uniform plan administration." *Id.*

In determining whether a particular state law is preempted under section 1144(a), courts "must go beyond the unhelpful text and the frustrating difficulty of defining its key term," *Travelers*, 514 U.S. at 656, and "look both to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive,

as well as to the nature of the effect of the state law on ERISA plans." *Egelhoff*, 532 U.S. at 147. That approach "ensure[s] that ERISA's express preemption clause receives the broad scope Congress intended while avoiding the clause's susceptibility to limitless application." *Gobeille,* 577 U.S. at 320; *see Egelhoff,* 532 U.S. at 146 (recognizing that "that the term 'relate to' cannot be taken to extend to the furthest stretch of its indeterminacy,' or else 'for all practical purposes preemption would never run its course'").

2. Applying this framework, this Court has on multiple occasions addressed how ERISA's preemption regime intersects with laws relating to domestic relations. The issue, this Court has explained, is "of undoubted importance" given the "pervasive significance of pension plans in the national economy" and "the congressional mandate for their uniform and comprehensive regulation." *Boggs*, 520 U.S. at 836 (1997).

In *Boggs*, the Court considered whether ERISA preempted a Louisiana state law "allowing a nonparticipant spouse to transfer by testamentary instrument an interest in undistributed pension plan benefits." *Id.* at 833. In common terms, Louisiana's law would have allowed a plan participant's ex-wife to compel certain undistributed retirement benefits to be allocated to her children, without the participant's consent and even if the participant had designated that those benefits be distributed to someone else.

The Court held that ERISA preempted Louisiana's law. One of ERISA's core concerns was "securing national uniformity in the administration of employee benefit plans," and Louisiana's law would "undermine[]" that goal by contradicting ERISA's specific statutorily mandated

set of survivorship and benefit provisions. *Id.* at 842–43. Louisiana's law would, if enforced, also increase the complexity and number of "plan administration responsibilities" that plan fiduciaries would be forced to confront when attempting to determine where proceeds should be distributed. *Id.* at 850–51 (noting that fiduciaries would need to understand "a complex set of requirements varying from State to State"). Allowing "testamentary recipients to acquire a competing interest in undistributed pension benefits," the Court ultimately concluded, "would be inimical to ERISA's purposes." *Id.* at 852.

Four years later, the Court next considered whether ERISA preempted a Washington law providing that the designation of a spouse as a beneficiary is automatically revoked upon divorce. *Egelhoff*, 532 U.S. at 143.

The Court held the state law preempted "to the extent it applies to ERISA plans." *Id.* at 143. That was so, the Court explained, because the state law "implicate[d] an area of core ERISA concern": It bound ERISA "plan administrators to a particular choice of rules for determining beneficiary status," the one "chosen by state law" rather than the one "identified in the plan documents." *Id.* at 147. As in *Boggs*, requiring that plan fiduciaries comply with state-law beneficiary designations when paying plan benefits would "run[] counter" to ERISA's specific statutory command that fiduciaries administer the plan "in accordance with the documents and instruments governing the plan" and make payments to the beneficiary designated in those documents. *Id.* The Court therefore concluded, again as in *Boggs*, that Washington's law "interfere[d] with nationally uniform plan administration" by subjecting plans "to different legal obligations in different states." *Id.* at 148; *see also id.*

at 150 (noting that "differing state regulations affecting an ERISA plan's system for processing claims and paying benefits impose precisely the burden that ERISA preemption was intended to avoid").

Several years after *Egelhoff*, the Court in *Kennedy* considered whether a plan administrator should pay benefits to the beneficiary named in the plan documents or disregard that selection if the beneficiary has waived their right to benefits under the common law. 555 U.S. at 288. The Court held that the "plan administrator properly disregarded the waiver" because it would "conflict with the designation made . . . in accordance with plan documents." *Id.*

In reaching this conclusion, the Court made clear that ERISA's statutory scheme requires that plan administrators "hew[] to the directives of the plan documents." *Id.* at 301. Requiring plan administrators to follow this "uncomplicated rule" vindicated three key virtues: "simple administration, avoiding double liability, and ensuring that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Id.* Were it otherwise, "[p]lan administrators would be forced to examine a multitude of external documents that might purport to affect the dispensation of benefits, and be drawn into litigation over the meaning and enforceability of purported waivers." *Id.* Enforcing a common-law waiver, the Court explained, "would destroy a plan administrator's ability to look at the plan documents . . . to get clear distribution instructions, without going into court." *Id.*

Looking to both *Boggs* and *Egelhoff*, the Court in *Kennedy* identified a key principle unifying all three of these decisions: Both state law and federal common law

must give way if applying it "might obscure a plan administrator's duty to act in accordance with the documents and instruments" under ERISA. *Id.* at 303 (noting that "[w]hat goes for inconsistent state law goes for a federal common law of waiver"). But at the same time, the Court explicitly left open "any questions about a waiver's effect in circumstances in which it is consistent with plan documents" and did not "express any view" as to whether a party could "have brought an action in state or federal court" against the beneficiary "to obtain benefits *after* they were distributed." *Id.* at 299 n.10 (emphasis added).

B. Factual and procedural background

1. After marrying Melissa Ragan in 2012, Charles Ragan took out several life and accidental-death insurance policies through his employer. App. 4a–5a. Charles named Melissa as the beneficiary on all these policies. *Id.* But on December 28, 2016, the couple divorced. *Id.* Less than five months later, Charles died suddenly in a car-bicycle accident. *Id.*

At the time of his death, Charles had not removed Melissa as the beneficiary from his insurance policies. *Id.* However, Colorado, where the couple lived, automatically revokes a former spouse's status as beneficiary upon a divorce. *See* Colo. Rev. Stat. § 15-11-804(2)(a) (revoking upon divorce "any revocable [] disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument"). Nevertheless, because Melissa remained the named beneficiary on the policies, the plan administrator paid Melissa benefits in the amount of approximately $535,000. App. 4a–5a.

2. After the plan administrator distributed the benefits to Melissa, Charles's estate filed suit directly against

Melissa to recover the insurance benefits for his heirs. App 5a–6a. The estate brought a post-distribution claim under Colorado's divorce revocation statute, section 804(8). *Id.*

Following a preliminary Colorado domestic-relations court hearing, Charles's estate filed a complaint in state district court. *Id.* Melissa filed a motion for declaratory relief and a motion to dismiss. App. 6a. She argued that the plan granted her the insurance proceeds, and that ERISA preempted a post-distribution lawsuit against her to recover those proceeds. *Id.* In response, the estate argued that although ERISA required the benefits be distributed to Melissa in the first instance, ERISA did not prevent the estate's claims to recovery of the benefits after they had been disbursed. *Id.* The district court granted Melissa's motions and the estate appealed. *Id.*

3. The Colorado court of appeals affirmed. It held that the estate's post-distribution claims were preempted. It recognized that this Court in *Kennedy* "left open" the question of whether ERISA preempts a post-distribution claim against a beneficiary for benefits that had already been distributed. App. 13a. And it acknowledged that multiple courts, including the Third and Fourth Circuits, had, when confronted with this open question, held that ERISA did not preempt post-distribution claims under state law to recover insurance proceeds because "[a]llowing post-distribution suits to enforce state-law waivers does nothing to interfere with [ERISA's] objectives." *Androchick*, 709 F.3d at 299; *see also Kensinger*, 674 F.3d 131; *Sweebe*, 712 N.W.2d 708.

Reviewing these decisions, the court of appeals narrowly interpreted them as holding only that "ERISA does not preempt post-distribution suits to enforce

express waivers by named beneficiaries of their rights to ERISA plan proceeds." App. 14a. It then refused to apply the same reasoning to a post-distribution claim "based on a state statute that purports to divest a named beneficiary of her right to plan proceeds *by operation of law*." App. 13a.

In the court's view, because ERISA would preempt any claims brought under state law *before* plan proceeds are distributed to the named beneficiary, allowing post-distribution claims would permit section 804(8) to "be used as a statutory end-run around preemption" and would "contravene the dictates of ERISA." App. 16a.

The court of appeals reinforced its conclusion by pointing to "the reasoning" in *Hillman v. Marietta*, 569 U.S. 483 (2013)—a case involving "a different federal law," the Federal Employees' Group Life Insurance Act of 1954 (FEGLIA), 5 U.S.C. §§ 8701–8716. App. 16a. Unlike ERISA, FEGLIA contains a specific statutory "order of precedence" that specifies for how benefits should be paid out and "direct[s] that the proceeds *belong* to the named beneficiary and no other." *Hillman*, 569 U.S. at 493–94. Based on this statutory scheme, this Court in *Hillman* held that a post-distribution state-law claim seeking to recover already distributed proceeds "interferes with Congress' scheme," because it would "direct[] that the proceeds actually 'belong' to someone other than the named beneficiary." *Id.* The court of appeals conceded that "ERISA does not contain a statutory order of precedence," but justified its reliance on *Hillman* because "the protection of beneficiaries is a paramount ERISA objective." App. 19a.

4. The estate then petitioned the Colorado Supreme Court for certiorari, which the court denied. App. 41a.

REASONS FOR GRANTING THE PETITION

I. Federal and state courts have split over the question *Kennedy* left open: Whether ERISA preempts a claimant's post-distribution suit to recover proceeds from a plan beneficiary.

In *Kennedy* this Court explicitly left open the question of whether ERISA preempts state-law claims seeking to recover benefits "after they were distributed." 555 U.S. at 299 n.10. Although it did not reach this question, the Court in *Kennedy* recognized that lower courts had already begun to split on the question. *Compare id.* (noting that two state courts had permitted post-distribution suits, *Sweebe,* 712 N.W.2d at 712–13, and *Pardee v. Pers. Representative for Est. of Pardee,* 112 P. 3d 308, 315–16 (Okla. Ct. Civil. App. 2005), *with Barnett*, 67 S.W.3d at 108 (holding post-distribution suit for benefits was preempted by ERISA). Since *Kennedy*, that split has only deepened—it now extends to include five federal circuits and eight state supreme courts.

A. On one side, four circuits and five state supreme courts have held that ERISA does not preempt post-distribution claims seeking to recover paid benefits. These courts have recognized that post-distribution claims are not preempted because the claims do not interfere with any of ERISA's core statutory objectives or otherwise impair uniform and efficient plan administration.

1. The first post-*Kennedy* court of appeals to address the preemption question was the Third Circuit. In *Kensinger*, the court considered whether the estate of a man who died nine months after a divorce could sue his ex-wife, who was still named as a beneficiary in his pension plan, to recover benefits "*after* the funds have been distributed to her." 674 F.3d at 138. Looking to *Kennedy*,

the Third Circuit explained that this Court had "emphasized two important policy considerations" in support of its holding that pre-distribution claims are preempted. *Id.* at 135. First was "ERISA's well-established policy favoring uniform and efficient plan administration." *Id.* That policy required a "straightforward rule that lets employers establish a uniform administrative scheme," with a single "set of standard procedures to guide processing of claims and disbursements of benefits." *Id.*

Second was the need "to avoid subjecting plan administrators to potential double liability." *Id.* Because "ERISA makes clear that plan administrators must pay benefits in accordance with the documents and instruments governing the plan," allowing a pre-distribution suit "would have placed the administrator in a hopeless bind"—paying the benefits to the estate would have opened the administrator up to a suit by the named beneficiary but "if it honored the plan documents, it could be sued by the estate." *Id.* at 135.

But unlike a pre-distribution suit, the Third Circuit explained, these concerns "are not implicated" in a post-distribution suit. *Id.* at 136. That is because a suit "brought directly against" the named beneficiary "after the benefits have been distributed would in no way complicate [the plan administrator's] administration of the plan." Nor would it "implicat[e]" the concern for "double liability." *Id.* There could be no "litigation-fomenting ambiguities" because a post-distribution suit "would simply require a court to determine the rightful recipient of the plan proceeds" under state law. *Id.*

To reinforce the point, the Third Circuit noted that creditors had long been permitted to "sue named

beneficiaries to recover plan benefits once those benefits have been distributed . . . [because] funds are no longer entitled to ERISA's protections against the creditor's claims once they are paid to the beneficiary." *Id.* at 137. "The same principle," the court explained "is equally applicable here." *Id.* at 138 (citing *Trucking Emps. of N.J. Welfare Fund v. Colville,* 16 F.3d 52, 55 (3d Cir. 1994); *Kickham Hanley P.C. v. Kodak Ret. Income Plan,* 558 F.3d 204, 211 (2d Cir. 2009); *DaimlerChrysler Corp. v. Cox*, 447 F.3d 967, 974 (6th Cir. 2006); *Hoult v. Hoult*, 373 F.3d 47, 54–55 (1st Cir. 2004); *United States v. Jackson*, 229 F.3d 1223, 1225 (9th Cir. 2000); *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 39 F.3d 1078, 1085 (10th Cir. 1994)).

A year later, the Fourth Circuit aligned itself with the Third Circuit. It held that ERISA does not "prohibit[] a state court from ordering [a plan beneficiary] to relinquish" plan proceeds after they have already been distributed. *Andochick*, 709 F.3d at 297. Like the Third Circuit, the Fourth Circuit recognized that the "important ERISA objectives" identified in *Kennedy*—"simple administration," "avoiding double liability for plan administrators," and "ensuring that beneficiaries get what's coming quickly"— were not implicated by "[a]llowing post-distribution suits." *Id.* at 299 (permitting these claims to proceed "does nothing to interfere with any of these objectives"). The Eleventh Circuit, too, has reached the same conclusion. *See Metlife Life & Annuity Co. of Conn. v. Akpele*, 886 F.3d 998, 1007 (11th Cir. 2018) (stating that a party "may sue a plan beneficiary for [an ERISA-governed plan's] benefits, but only after the plan beneficiary has received the benefits").

Even before *Kennedy*, moreover, federal courts of appeal had recognized that post-distribution claims do not interfere with ERISA's objectives and so do not implicate ERISA's preemption clause. In *Central States, Southeast & Southwest Areas Pension Fund v. Howell*, for instance, the Sixth Circuit held that ERISA did not preempt a state-law claim for the proceeds of an ERISA benefit plan that were already distributed in accordance with plan documents. 227 F.3d 672, 678–9 (6th Cir. 2000). The plaintiff there sought to impose a constructive trust under state law on proceeds paid to the named beneficiaries. *Id.* In permitting the suit to proceed, the Sixth Circuit explained "that nothing in the legislative scheme prevented the imposition of a constructive trust *after* the benefits were paid." *Id. Howell* remains law of the circuit. *See, e.g.*, *Teenor v. LeBlanc*, 2019 WL 2074585, at *4 (E.D. Mich. May 10, 2019) (finding *Howell*, which "explicitly held that once the benefits of an ERISA . . . plan have been distributed . . . ERISA does not preempt the imposition of a constructive trust on those benefits," controlling).

2. Before *Kennedy*, a number of state courts, too, held that ERISA does not preempt post-distribution suits. For example, the Michigan Supreme Court rejected an argument that ERISA had anything to say about whether a beneficiary had the "right to retain [plan] proceeds"; rather, the court made clear, the "issue is governed exclusively by Michigan law because the proceeds have been properly distributed under ERISA." *Sweebe*, 712 N.W. 2d at 712–13. The Oklahoma court of appeals likewise held that ERISA does not preempt a post-distribution suit over plan proceeds because "the funds ha[d] been distributed." *Pardee*, 112 P.3d at 313. As a result, "the successful administration of the funds is not a concern." *Id.*

In the years since *Kennedy*, more state courts have followed suit. The Georgia Supreme Court has held that ERISA does not preempt a claim to recover distributed proceeds because the proceeds "were no longer in the control of the plan administrator." *Appleton v. Alcorn*, 728 S.E.2d 549, 552 (Ga. 2012). The same goes for the Supreme Court of Pennsylvania. Specifically "agree[ing]" with the Third Circuit's decision in *Kensinger*, the Pennsylvania Supreme Court noted that "ERISA's focus is on the administration of employee benefit plans, not on the benefits, per se." *In re Est. of Easterday*, 209 A.3d 331, 346 (Pa. 2019), *cert denied*, 140 S. Ct. 535 (2019). Therefore, because the only issue in play involved the benefits and not administration of any plan, the court concluded that "none of the articulated objectives [of ERISA] are implicated when an estate attempts to recover benefits that have already been distributed because at that juncture, the plan administrator is no longer part of the equation." *Id.* And the Alabama Supreme Court, too, has adopted this view. *See Moore v. Moore*, 297 So. 3d 359, 364–66 (Ala. 2019) (following *Kensinger*'s reasoning).

There states are not alone. The New Hampshire Supreme Court has also explicitly held that a "state law action to impose a constructive trust on benefits that have already been paid according to the life insurance policy" is not preempted by ERISA. *In re Est. of Couture*, 89 A.3d 541, 544–47 (N.H. 2014) (noting that post-distribution claims would not impede any ERISA objective). And, just as in *Kensinger*, the court emphasized that, "[i]f a creditor may enforce its rights against a beneficiary once plan proceeds have been distributed, there is no reason why [the plaintiff] in this case should not be able to" as well. *Id.* at 549. Others state's intermediate courts of appeal have reached the same result. *See Martinez-Olson v. Est. of*

Olson, 328 So. 3d 14, 21 (Fla. Dist. Ct. App. 2021) (citing *MetLife* and *Kensinger* and holding post-distribution claim not preempted); *D'Arcy v. Andrews*, 2020 WL 1934001, at *1 (Cal. Ct. App. Apr. 22, 2020) (rejecting ERISA preemption of post-distribution claim because "ERISA is inapplicable to the already distributed proceeds of decedent's insurance policy," and so "is purely a matter of state law."); *In re Marriage of Stine*, 2019 WL 6267429, at *1–2 (Cal. Ct. App. Nov. 22, 2019) (citing *Andochick* and *Kensinger* and holding that ERISA does not preempt post-distribution claim); *In re Marriage of Jody L.*, 2021 WL 320613 (Cal. Ct. App. Feb. 1, 2021) (similar); *Walsh v. Montes*, 388 P.3d 262, 266 (N.M Ct. App. 2016) (recognizing that post distribution claims for ERISA benefits "remains a viable legal theory and a valid claim").

B. On the other side of the split stand one federal circuit and a few states that have disagreed with this view. These courts hold that ERISA's preemption clause is broad enough to cover even post-distribution claims for distributed benefits. They reason that parties should not be allowed to "revive" a preempted pre-distribution state-law claim simply by waiting until the benefits have been distributed, and that permitting post-distribution suits would undermine ERISA's policy of protecting beneficiaries.

1. The Ninth Circuit first adopted this position in *Carmona*, 603 F.3d 1041. Answering the question left open in *Kennedy*, the court held that ERISA preempted post-distribution state-law claims seeking the recovery of policy proceeds. The Ninth Circuit determined that a state-law suit to impose a constructive trust on benefits that had already been distributed would have "allow[ed]

for an end-run around ERISA's rules and Congress's policy objective of providing for certain beneficiaries, thereby greatly weakening, if not entirely abrogating, ERISA's broad preemption provision." *Id.* at 1061. And, to support its conclusion, the Ninth Circuit read *Boggs* as standing for the proposition that "ERISA can preempt state law even after benefits have been disbursed to beneficiaries." *Id.*

The Ninth Circuit has repeatedly followed this reasoning to hold post-distribution claims preempted by ERISA. *See, e.g.*, *Orr v. Orr ex rel. Z.O.*, 542 F. App'x 574, 575 (9th Cir. 2013) (relying on *Carmona* and holding that a post-distribution claim "directly conflicts with ERISA's requirements that plans be administered, and benefits be paid, in accordance with plan documents"); *St. Julian v. St. Julian*, 472 F. App'x 698, 699 (9th Cir. 2012) (citing *Carmona* and holding that permitting a post-distribution claim to proceed would "contravene the dictates of ERISA").

2. Several state courts—including, now, Colorado—have also held that ERISA preempts post-distribution suits. In *Estate of Lundy v. Lundy*, the Washington court of appeals adopted *Carmona*'s reasoning "explicitly disapprov[ing] of state law 'end-runs' around ERISA." 352 P.3d 209, 214 (Wash. Ct. App. 2015), *cert. denied*, 361 P.3d 746 (Wash. 2015). The court there saw *Carmona* as establishing a "clear" rule that state law "'cannot be used to contravene the dictates of ERISA.'" *Id.* at 959 (quoting *Carmona*, 603 F.3d at 1061). And it refused to permit a party to "revive" a state law that would be preempted in a pre-distribution suit "simply by applying it in a postdistribution" setting. *Id.* As a result, it held that "state

law claims to recover postdistribution ERISA benefits" are preempted. *Id.*

The Texas Supreme Court has likewise held that a post-distribution suit to recover proceeds from a beneficiary was preempted by ERISA. *Barnett*, 67 S.W.3d at 108. There, an ERISA participant's ex-wife brought suit to recover certain policy proceeds after they had already been distributed. She argued that ERISA was "not implicated" because the plan had already paid the benefits to the designated beneficiary and her suit was not "against the ERISA plan administrator." *Id.* at 112. In addition, she pointed out that the "purposes of ERISA . . . remain undisturbed because Congress had no interest in what happens to plan benefits once they are paid to a designated beneficiary." *Id.*

The Texas Supreme Court rejected this position. It held that the state-law claim would "govern[] the payment of benefits, a central matter of plan administration" and so was preempted. *Id.* at 116. And it also concluded "that the state law at issue has a prohibited connection with ERISA plans because it interferes with nationally uniform plan administration." *Id.* at 116–17 (stating that "[u]niformity is impossible if plans are subject to different legal obligations in different states").

The Colorado court of appeals deepened this preexisting split when, in this case, it sided with *Carmona* and *Lundy*. As we have explained, the court of appeals explicitly adopted *Carmona*'s reasoning, concluding that post-distribution claims seeking the return of proceeds would "contravene the dictates of ERISA" and so are preempted. App. 16a (quoting *Carmona*, 603 F.3d at 1061).

The upshot: The divide among the federal and state courts on this issue is both long-running and intractable. On one side, five federal circuits and five state supreme courts have all recognized that post-distribution suits do not implicate any of ERISA's statutory objectives or otherwise interfere with uniform and efficient plan administration. On the other, the Ninth Circuit and three states have rejected this view, holding that post-distribution claims are preempted in just the same way that pre-distribution claims are. That intolerable split warrants this Court's review.

II. The question presented is important, and this case presents an ideal vehicle to answer it.

A. A question that has pervasively split both the federal circuits and state courts is undesirable under any circumstances. But here it is truly untenable because the ERISA preemption question is of considerable national importance given "the comprehensive nature of the statute, the centrality of pension and welfare plans in the national economy, and their importance to the financial security of the Nation's work force." *Boggs*, 520 U.S. at 839.

This Court routinely grants certiorari to resolve conflicts under ERISA and this case is no less deserving. If anything, the mature conflict here—it implicates four circuits and at least eight state supreme courts—is even more in need of resolution by this Court than the shallow splits that often prompt a grant of certiorari in ERISA cases. *See, e.g.*, *Rutledge v. Pharm. Care Mgmt. Ass'n*, 141 S. Ct. 474 (2020) (2-1 conflict); *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768 (2018) (1-1 conflict); *Ret. Plans Comm. of IBM v. Jander*, 140 S. Ct. 592 (2018) (2-1 conflict); *Advoc. Health Care Network v. Stapleton*, 137 S.

Ct. 1652 (2017) (2-2 conflict); *Gobeille*, 577 U.S. 85 (1-1 conflict); *Tibble v. Edison Int'l*, 575 U.S. 523 (2015) (2-1 conflict).

Moreover, there are significant costs to allowing this conflict to persist. The Colorado court of appeals itself justified its rule because it believed that allowing claims like these to proceed would interfere with "nationally uniform plan administration" by forcing plans to be "subject to different legal obligations in different states." App. 12a. Needless to say, that policy justification cannot be realized if the majority of courts disagree with the court below. So even if this Court were inclined to endorse the Colorado court of appeals' rule, it would be better to do so now rather than later.

And if the Court were inclined to reject the rule, it would be even more paramount to grant certiorari now. Leaving the decision below in place would mean that there are state laws, embodying fundamental state policies, that would be deprived of the effect they would otherwise have. *See Ex parte Burrus*, 136 U.S. 586, 593–94 (1890) ("The whole subject of the domestic relations . . . belongs to the laws of the states[.]"). And that possibility undoubtedly harms plan participants, who might rely on a state law revoking a listed beneficiary upon divorce, believing that their children will then receive their death benefits without needing to go through the hassle of removing their ex-spouse as their listed ERISA plan beneficiary. Either way, certiorari is warranted.

Review is also warranted because the preemption question here implicates an issue that is independently important and frequently recurring. Over the years, this Court has granted several cases that address the relationship between ERISA and domestic-relations laws.

See Boggs, 520 U.S. 833; *Egelhoff*, 532 U.S. 141; *Kennedy,* 555 U.S. 285. And this Court explicitly left open the question that is now presented here in *Kennedy.* In the years since that decision, the divide on this particular question has only deepened. The time is ripe for this Court's intervention. There is a direct and mature conflict that is only deepening as more circuits and state courts confront the question.

The result is massive uncertainty. Consider, as but one example, the rights of a claimant who lives in California. The Ninth Circuit holds that post-distribution claims are preempted. *See Carmona*, 603 F.3d at 1061; *Orr*, 542 F. App'x at 575; *St. Julian*, 472 F. App'x at 699. But California state courts have rejected that view, allowing them to proceed. *See, e.g.*, *D'Arcy*, 2020 WL 1934001, at *3; *In re Marriage of Stine*, 2019 WL 6267429, at *3; *In re Marriage of Jody L.*, 2021 WL 320613, at *1. As a result, if a Californian claimant's post-distribution claim happens to be in federal court, it will be preempted and she will be denied any right to recovery. If her claim is filed in California state court, by contrast, the opposite will be true—her claim can proceed. That is an intolerable state of affairs, regardless of which rule is correct, and this Court should put an end to it.

B. This case also presents the optimal vehicle in which to do so. The question is purely legal. The opinion below, though incorrect, provides a clear summary of the case law and an explanation of its reasoning declining to follow the weight of authority on the issue. And the answer to the question presented is outcome-determinative—the court's decision on preemption forced the dismissal of the estate's claims. App. 21a.

In addition, this petition gives the Court flexibility to answer the question presented either narrowly or broadly. The Court could lay down a rule that would apply to all post-distribution claims. Or, if it wanted, the Court could simply decide the question presented as applied to state-law claims seeking the recovery of life-insurance benefits—the type of benefits at issue here. As the D.C. Circuit has noted, the question of whether, and how, ERISA's preemption clause applies is more complex for post-distribution suits seeking the recovery of "survivor annuity benefit[s]." *VanderKam v. VanderKam*, 776 F.3d 883, 891–92 (D.C. Cir. 2015) (comparing *Carmona*, a decision involving a claim for survivor annuity benefits, with *Andochick*, a case involving a claim for life insurance and 401(k) proceeds). *But see Orr*, 542 F. App'x 574, and *St. Julian*, 472 F. App'x 698 (applying *Carmona* to hold that ERISA preempts post-distribution claims for life-insurance benefits). Either decision would give much-needed guidance to lower courts and resolve a circuit split on an important question of federal law.

III. The decision below is incorrect.

Finally, this Court should grant certiorari because the decision below is wrong. As this Court has explained, ERISA's preemption clause preempts only those state laws that have "a 'reference to' ERISA plans" or an "impermissible connection with" an ERISA plan. *Gobeille*, 577 U.S. at 319–20. A state law only has a reference to ERISA plans if it "acts immediately and exclusively upon [an] ERISA plan," or "where the existence of ERISA plans is essential to the law's operation." *Id.* And a state law only has an "impermissible connection with" an ERISA plan if it "governs a central matter of plan

administration" or "interferes with nationally uniform plan administration." *Id.*

The Colorado court of appeals failed to adhere to this settled understanding of ERISA's express preemption clause. It made no attempt to explain how the Colorado law at issue "reference[d]" an ERISA plan. Nor could it. The state statute does not mention ERISA at all and does not target ERISA plans, either as a matter of text or structure. *See* Colo. Rev. Stat. § 15-11-804(2)(a) (revoking upon divorce "any revocable [] disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument"). Put another way, the state law operates independently of ERISA and would continue to function without the existence of ERISA plans. *See Cal. Div. of Lab. Standards Enf't v. Dillingham Const., N.A., Inc.*, 519 U.S. 316, 328 (1997) (finding a state law does not "make reference to ERISA plans" where it functions "indifferent to" whether there is "attendant ERISA coverage"); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990) (a statute makes "no reference to" ERISA where it "functions irrespective of, the existence of an ERISA plan"); *Gobeille*, 577 U.S. at 338 (Ginsberg, J. dissenting) (noting that "the parties do not here contest, that [the state law] lacks 'reference to' ERISA plans because the law applies to all health care payers and does not home in on ERISA plans").

The court of appeals also failed to articulate any "impermissible connection" with ERISA. It identified no way in which a post-distribution claim brought under the Colorado statute would directly impact a plan, a plan fiduciary's job, or any "matter of plan administration." *See Gobeille*, 577 U.S. at 320; App. 10a–21a. Nor did the court explain how the Colorado law "interferes with nationally

uniform plan administration." How could it have? In *Kennedy*, this Court made clear that ERISA's statutory scheme mandated uniformity to ensure three key objectives: "simple administration, avoiding double liability, and ensuring that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Kennedy* at 555 U.S. at 301.

None of these objectives are implicated in post-distribution suits against a named beneficiary who has already received certain proceeds. Start with simple administration and avoiding double liability. In *Kennedy*, this Court explained that, to ensure the simple administration of ERISA plans and to avoid the possibility of liability, plan administrators must be allowed to distribute plan benefits to the named beneficiary according to the plan documents. *Id.* at 300. A pre-distribution claim would interfere with that obligation because, if state law would require the benefits be paid to someone else, plan administrators could "be forced to examine a multitude of external documents that might purport to affect the dispensation of benefits" and "drawn into litigation." *Id.* at 301.

But a plan administrator has "no role in any post-distribution proceedings." *Andochick*, 709 F.3d at 299. So an "action brought directly against [the named beneficiary] after the benefits have been distributed would in no way complicate . . . administration of the plan" or "subject [the plan administrator] to litigation-fomenting ambiguities." *Kensinger*, 674 F.3d at 135–36 (explaining that such a suit would not "destroy a plan administrator's ability to get clear instructions, without going to court" or place the administrator in "a hopeless bind"); *see also Andochick*, 709 F.3d at 299 (noting that

"post-distribution suits do not expose the plan administrator to double liability"). Instead, a suit against the named beneficiary would just require a court to determine the rightful recipient of the plan proceeds under state law.

The third objective *Kennedy* identified—that beneficiaries get what's coming to them quickly—is also not implicated here. That concern "refers to the expeditious distribution of funds *from plan administrators*," not to some sort of free-floating rule offering ongoing shelter from liability for plan proceeds that a beneficiary has already received. *Id.*; *see Kensinger*, 674 F.3d at 136. And a post-distribution claim occurs, by definition, *after* a beneficiary has received whatever plan proceeds the plan documents say the beneficiary should receive. So a post-distribution suit only prevents a beneficiary "from *keeping* what he 'quickly' received." *Andochick*, 709 F.3d at 300 (emphasis added).

Cases in a related setting reinforce the point. There is a long "line of federal cases holding that *creditors* can sue named beneficiaries to recover plan benefits" after they have been distributed by the plan administrator. *See Kensinger*, 674 F.3d at 137 (citing list of cases). In these cases, courts—including the Tenth Circuit—have had little difficulty recognizing that, where the "funds at issue . . . are no longer associated with an ERISA plan," a state law "providing an exemption to garnishment is therefore not preempted by ERISA." *Guidry*, 39 F.3d at 1086. As the Third Circuit has sensibly recognized, the "same principle is equally applicable here." *Kensinger*, 674 F.3d at 138 (noting that, "if a creditor can enforce its rights against a beneficiary once pension funds have been

distributed, we see no reason why the Estate should not be able to enforce its" rights in the same manner).

To justify its contrary conclusion, the Colorado court of appeals relied instead on ERISA's generalized objective of "protecting beneficiaries" and a policy concern that prohibiting post-distribution claims was necessary to prevent an "end-run" around ERISA's preemption of pre-distribution claims. App. 16a. But generalized statements of overall statutory objectives has no place in view of the clear policy already embodied by ERISA's carefully balanced preemption regime. *See Rutledge*, 141 S. Ct. at 483 (Thomas, J. concurring) (warning that preemption cannot be based on "generalized notions of congressional purposes" rather than the "law as written"). It is the statute that is the prime repository of federal policy—not some "freewheeling judicial inquiry into whether a state statute is in tension with federal objectives," *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (opinion of Roberts, C.J.).

The court of appeals' decision is particularly indefensible in light of the additional reason it gave to support its holding. The court relied on a different statute, FEGLIA, and this Court's "rationale" in *Hillman*—a case addressing the preemption of certain state-law claims under FEGLIA—to support its pro-preemption conclusion here. But that analogy cannot possibly hold up. *Hillman's* preemption analysis was premised on a specific provision in FEGLIA that establishes a statutory "order of precedence" for benefits to be paid out. 569 U.S. at 493. That specific provision led the Court to conclude that FEGLIA contained a "deliberate" congressional purpose "to ensure that a federal employee's named beneficiary

receives the proceeds." *Id.* at 494. ERISA, by contrast, contains no similar statutory provision and, in turn, contains no similar "deliberate purpose." By disregarding this critical difference and justifying the preemption of state law under ERISA by resort to a different statute, the Colorado court of appeals strayed well beyond the proper approach for analyzing claims of preemption under ERISA. This Court should step in.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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