No. 24-1149

In The

Supreme Court of the United States

T. KIMBERLY WILLIAMS,

Petitioner,

v.

ELTON CORP., ET AL.,

Respondent.

ORIGINAL

FILED
MAY 05 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

T. Kimberly Williams, *pro se*
6871 Statum Road
Preston, MD 21655
410-430-6523
williamskim6@gmail.com

LEGAL PRINTERS LLC • Washington, DC • 202-747-2400 • legalprinters.com

RECEIVED
MAY - 7 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

This petition involves three questions of exceptional importance:

1. Whether the pension plan at issue in this case, designed and operated for over 70 years to provide pensions from a unitary asset pool for the employees of three generations of a family, is a multiple employer plan sponsored by the employers as a whole under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq.

2. Whether ERISA's broad coverage provision, 29 U.S.C. § 1003(a)(1), encompasses a pension plan that was established by an employer for the employees of herself and her descendants, regardless of whether any or all of the employers maintained the plan.

3. Whether, by selecting and reporting to the trustee of the plan which of their employees are eligible to receive pensions under the plan, the employers maintained the plan for purposes of ERISA's coverage provision.

PARTIES TO THE PROCEEDING

Petitioner (Plaintiff-appellee in the court of appeals) is T. Kimberly Williams.

Respondents (plaintiffs-appellees in the court of appeals) are James Mills; Joseph Wright, terminated 03/24/2023; Third Party Appellee Lucy Dunne, representative for Helena duPont Wright (deceased 3/24/2025); Christopher T. duPont; Katherine D. Gahagan; Mary Mills Abel-Smith; Third Party, Michael duPont; Defendant Appellee Elton Corp; Defendant Gregory Fields; Defendant appellee First Republic Trust Company of Delaware LLC; Third party Appellant James B. Wyeth, solely as executor and personal representative of the estate of Phyllis M. Wyeth; Amicus; Pension Rights Center

RELATED PROCEEDINGS

United States District Court (MD) Wright et al v. Elton Corporation et al No. 1:16-cv-00329 (February 4,2016)

Lucy Dunne, et al v. Elton Corp, et al No.1:17-cv-00286 (March 17,2017) (June 28, 2023) United States Court of Appeals (3rd Cir.), No. 23-1499(March 21, 2023)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

FEDERAL RULES

FEDERAL REGULATIONS

MISCELLANEOUS

PETITION FOR WRIT OF CERTIORARI

T. Kimberly Williams respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit Appeals.

OPINIONS BELOW

The decision by the Third Circuit Court of Appeals denying rehearing December 4, 2024. That order is attached at Appendix F at 57a.

JURISDICTION

The petition for rehearing at the Third Circuit was denied on December 4, 2024. An extension of time to file the petition for a writ of certiorari was granted to and including May 3, 2025 on February 28, 2025, in Application No. 24A824. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS[1]

---

[1] The administration of title I was originally placed under the Secretary of Labor. However, many functions were transferred to the Secretary of the Treasury by Reorganization Plan No. 4 of 1978.

As Amended Through P.L. 117-328, Enacted December 29, 2022

SUBTITLE A—GENERAL PROVISIONS

FINDINGS AND DECLARATION OF POLICY

SEC. 2. 1001 (a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and

adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such *plans; that* owing to the inadequacy of current minimum standards,

* * *

Sec. 3 ERISA 8

plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is

therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with

significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

* * *

29 U.S.C. § 1002(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

29 U.S.C. § 1002(9) The term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

§ 1003. Coverage (a) In general Except as provided in subsection (b) or (c) and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained— (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry

or activity affecting commerce; or (3) by both.

STATEMENT OF CASE

This case involves a pension plan that was designed and has operated for over 70 years to provide pensions for the employees of three generations of members of the duPont family. It was established by Mary Chichester duPont prior to the enactment of ERISA for the express purpose of providing such employment-related pensions for the employees of herself and her children and grandchildren, whom the trust revealingly refers to as "Qualified Employers." Over the decades since ERISA's enactment, the Qualified Employers and the plan's trustees expressed concern and sought legal opinions concerning whether they needed to bring the plan into compliance with ERISA. Their concern is unsurprising given the broad sweep and remedial purposes of ERISA, landmark pension legislation designed to cover virtually all private pensions in the United States and to impose a uniform federal scheme aimed at preventing the personal and societal economic disruptions caused by pension failures. This suit arose because the Qualified Employers could not reach a consensus about bringing the plan into ERISA compliance and because, as a direct result of this failure, the trust will be depleted long before providing many employees, including the current pensioners, with the full or, for most, any pension benefits to which they are entitled.

After years of litigation and a four-day bench trial, the district court reaffirmed its previous summary judgment holding that the plan was indeed covered by ERISA because the pension plan was both established by an employer, Mary Chichester duPont, and maintained for their employees by the Qualified Employers as a group, all of whom were engaged in activities affecting commerce.

Taking three related missteps, however, the panel reversed, holding that the trust is not "an employee benefit plan covered by ERISA." Dkt. 120, p. 22.

First, the panel concluded that only Helena duPont Wright, one of the Qualified Employers, was the relevant employer for purposes of determining whether this pension plan was governed by ERISA, despite ERISA's broad definition of "employer" as "*any* person *acting directly* as an employer, or *indirectly in the interest of the employer*, in relation to an employee benefit plan, and *includes a group or association of employers* acting for an employer in such capacity." 29 U.S.C. § 1002(5) (emphasis added). The panel reasoned that Ms. Wright's familial relationship with the other Qualified Employers was not "the sort of bona fide connection to the other relevant duPonts needed to establish or maintain a multiple employer plan under ERISA § 3(5), 29 U.S.C. § 1002(5)." Dkt. 120, pp. 26-27.

Based on this misstep, the panel made a second error, holding that it was not enough that the plan was established by Mary Chichester duPont as an

employer for employees of herself and her descendants because Ms. Williams was never an employee of Ms. Chichester duPont. Dkt. 120, p. 28.

Third, without deciding whether any of the other Qualified Employers maintained the plan, the panel held that Ms. Wright, Ms. Williams' employer, did not. Dkt. 120, pp. 28-31. The court reasoned that the plan's trustees were in charge of the daily operation of the plan and Ms. Wright's only responsibility – to notify one of the trustees when one of her employees became eligible for a pension – was not enough to show that she maintained the trust. *Id.* at 30-31.

As discussed more fully below, this decision is not only in error legally, it is likely to have far broader implications than the rather unusual facts of this case might suggest. These negative consequences are not inevitable but instead flow from the erroneous turns taken by the panel in deciding that this plan is not governed by ERISA for purposes of Petitioner's suit.

The panel's holdings with respect to employer status and coverage are in error and conflict with the statutory language and relevant authority from other Circuits.

a. Under applicable regulations, the pension plan in this case is a multiple employer plan sponsored by the Qualified Employers as a group because all of the assets are available to pay all participants

Under ERISA, groups of employers who are not operating under a collective bargaining agreement may form one of two types of joint pension plans, both of which are considered single-employer pension plans: (1) a "multiple employer plan" or (2) "an aggregate of single-employer plans." *Sara Lee Corp. v. Am. Bakers Ass'n Ret. Plan*, 671 F. Supp. 2d 88, 91–92 (D.D.C. 2009) (citations omitted). These categories can have great importance in determining funding obligations and termination procedures for a defined benefit plan. For these reasons, the Pension Benefit Guaranty Corporation ("PBGC") – a corporation established under Title IV of ERISA to operate a "mandatory Government insurance program that protects the pension benefits of [tens of millions] of private-sector American workers who participate" in defined benefit pension plans, *PBGC v. LTV Corp.*, 496 U.S. 633, 637 (1990) – has defined these terms. Under PBGC regulations, the term "multiple employer plan" with respect to a defined benefit pension is defined to mean a plan "maintained by two or more contributing [employers] . . . under which all plan assets are available to pay benefits to all plan participants and beneficiaries." 29 C.F.R. § 4001.2. Conversely, an "aggregate of single employer plans" is "an association of separate plans in which each employer's

contributions are maintained in separate accounts or otherwise effectively restricted so that the funds of each employer are used only to pay the benefits of that employer's employees." 29 C.F.R. § 2615.2. The Seventh Circuit and a number of other courts have correctly applied these regulations and looked to how the plan was set up and operated with regard to the segregation of assets in determining whether a defined benefit pension plan is a multiple employer plan or an aggregate of single employer plans. *PBGC v. Artra Grp.*, 972 F.2d 771, 773 (7th Cir. 1992); *Sara Lee*, 671 F. Supp. 2d at 91–92.

The panel did not apply this definition of multiple employer plan applicable to defined benefit pension plans. Instead, the panel relied on an inapplicable test from a Third Circuit decision addressing whether an organization formed to market and provide health insurance to the employees of a large number of unrelated employers had created a multiple employer welfare plan under ERISA. *Gruber v. Hubbard*, 159 F.3d 780, 783-84 (3d Cir. 1998). The Court in *Gruber* concluded that the marketing enterprise had not created a multiple employer plan, applying a test derived from case law, legislative history and Department of Labor advisory opinions applicable to employee welfare benefit plans to address the unique problems of distinguishing proprietary insurance schemes from employer-sponsored plans. *Id.* at 786-88 (citing DOL Op. No. 81-7A, 1981 WL 17728, at *2 (E.R.I.S.A. Jan. 12, 1981); DOL Op. No. 96–25A, 1996 WL 634362, at *2–3 (E.R.I.S.A. Oct. 31, 1996) (additional citations omitted)).

The test applied in *Gruber* – which looks to whether there is a "common economic or representation" relationship among the participating employers "unrelated to the provision of benefits" and to the degree of involvement of the employers – is inapplicable in this case involving a defined benefit pension plan. The panel erred in applying this test to conclude that Ms. Wright lacked a "bona fide connection to the other relevant duPonts" because there was "no evidence connecting [Ms.] Wright's status as an *employer* to the other Grandchildren apart from the Trust." Dkt. No. 120, pp. 26-27.

Instead, applying the correct test set forth in PBGC regulations and guidance, as did the Seventh Circuit in *Artra*, the panel should have concluded that the pension plan was a multiple employer plan because as structured and actually operated "all plan assets are available to pay benefits to all plan participants and beneficiaries." *See* 29 C.F.R. § 4001.2; *Sara Lee*, 671 F. Supp. 2d at 98 (noting that "the 'critical factor . . . 'is the availability of all plan assets to pay benefits to any participant or beneficiary,' and that 'the way that the plan is structured and actually operates on an ongoing basis is dispositive'").

b. Under ERISA's broad and disjunctive coverage provision, ERISA covers any employee benefit plan that is established by any employer even if the plan ultimately covers the employees of another employer

The panel next missed the mark in holding that Ms. Chichester duPont did not "establish" the plan in which Ms. Williams participated within the meaning of ERISA Section 4(a)(1). Dkt. 120, p. 28. The court reasoned that "none of the Grandchildren – including Ms. Wright – had a role" in the establishment of the trust in 1947, and Ms. Chichester duPont did not employ the plaintiff, Ms. Williams. *Id.* In other words, the panel's decision on this prong turned on the notion that the employer of the covered employee had to have established the plan. This was error.

"The starting point in statutory interpretation is 'the language [of the statute] itself.'" *United States v. James*, 478 U.S. 597, 604 (1986) (citation omitted). And courts should "assume 'that the legislative purpose is expressed by the ordinary meaning of the words used.'" *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (citation omitted).

ERISA Section 4 makes ERISA applicable to "*any* employee benefit plan" "established or maintained" "by *any* employer engaged in commerce or in *any* industry or activity affecting commerce," 29 U.S.C. § 1003(a)(1) (emphasis added). As numerous courts have recognized, this provision is broad and disjunctive. *See, e.g., District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 127 (1992) ("Section 4 defines the broad scope of ERISA coverage."); *Arnold v. Lucks*, 392 F.3d 512, 519 (2d Cir. 2004) (same); *Jones v. LMR Intern., Inc.*, 457 F.3d 1174, 1178 (11th Cir. 2006) (same); *Solis v. Koresko*, 884 F. Supp. 2d 261, 278 (E.D. Pa. 2012) (noting the statutory

definition of covered plan "uses the disjunctive 'established or maintained' and does not include any requirement that the employer administer or control the plan, fund, or program"), *aff'd, Sec'y U.S. Dept. of Labor v. Koresko*, 646 F. App'x 230 (3d Cir. 2016); *Est. of Duffin v. United Olympic Life Ins. Co.*, 50 F.3d 14, *3 (9th Cir. 1995) (unpublished) ("The statute speaks disjunctively in terms of a plan being 'established or ... maintained.'").

The broad language in ERISA's coverage provision is echoed in ERISA's definition of "pension plan" which encompasses "*any* plan, fund or program, which was *heretofore* or *hereinafter* established *or* maintained by an employer . . . to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program . . . provides retirement income to employees." 29 U.S.C. § 1001(2). And further underscoring the broad scope of the statute, ERISA defines "employer" to mean "any person acting directly as an employer, or indirectly in the interests of an employer is relation to an employee benefit plan, and includes a group or association of employers acting for the employer in such capacity." 29 U.S.C. § 1001(5).

The "gist" of these definitions "is that a plan, fund, or program falls within the ambit of ERISA only if the plan, fund, or program covers ERISA participants because of their employee status in an employment relationship, and an employer or employee organization is the person that establishes or maintains the plan, fund, or program." *Donovan v.*

Dillingham, 688 F.2d 19 1367, 1371 (11th Cir. 1982). In other words, "the 'established or maintained' requirement" is not a high hurdle but is simply "designed to ensure that the plan is part of an employment relationship." *Peckham v. Gem State Mut. of Utah*, 964 F.2d 1043, 1049 (10th Cir. 1992) (citation omitted); *accord, Gaylor v. John Hancock Mut. Life Ins. Co.*, 112 F.3d 460, 464 (10th Cir. 1997); *Anderson v. UNUM Provident Corp.*, 369 F.3d 1257, 1263 (11th Cir. 2004) (quoting *Gaylor*). Moreover, as numerous circuit courts have held, "[t]he lack of employer involvement in ongoing administration does not establish the absence of an ERISA plan." *Solis*, 884 F. Supp. 2d at 278 (citing *Randol v. MidWest Nat'l Life Ins. Co.*, 987 F.2d 1547, 1550 n.5 (11th Cir. 1993)); *Custer v. Pan Am. Life Ins. Co.*, 12 F.3d 410, 417-18 (4th Cir. 1993); *Brundage-Peterson v. Compcare Health Servs. Ins. Corp.*, 877 F.2d 509, 509-10 (7th Cir. 1989)).

The plan at issue here clearly is designed and has operated for decades to provide pensions in the context of an employment relationship. Moreover, as the Ninth Circuit correctly held in *Duffin*, once an employer "had 'established' the plan, it no longer mattered whether it was 'maintaining' it." 50 F.3d at *3. The same is true here.

That ERISA applies to the funded trust established by Ms. Chichester duPont for three generations of her family's employees, regardless of who maintained the plan thereafter, should not be surprising. *See Ed Miniat, Inc. v. Globe Life Ins. Group*, 805 F.2d 732, 739–41 (7th Cir.1986)

(emphasizing an "intention by the employer to provide benefits on a regular and long term basis" as an important factor in determining whether a plan has been established under ERISA). "ERISA's legislative history demonstrates that its drafters were principally concerned with abuses occurring in respect of private pension assets," and designed many of its provisions "[t]o forestall misappropriation and misuse of such funds." *Taggart Corp. v. Life & Health Benefits Admin., Inc.*, 617 F.2d 1208, 1211 (5th Cir. 1980). *See also Massachusetts v. Morash*, 490 U.S. 107, 115 (1989) ("Congress' primary concern was with the mismanagement of funds accumulated to finance employee benefits and the failure to pay employees benefits from accumulated funds."). These concerns are clearly in play with regard to the pension trust at issue in this case, which was funded with stock that eventually became worth many millions of dollars and which has continued to operate and provide pension benefits for at least some of its intended employee recipients to this day, but will be unable to do so for much longer.

c. Employers maintain the plan when they, among other things, provide census data so that their employees can receive pensions even if the trustee runs the day-to-day operations of the plan

In a third misstep, the panel incorrectly found that there was no evidence that Ms. Wright maintained the plan, and therefore concluded that her

employee, the Petitioner, in this case, was not a participant in an ERISA-covered plan.

There are three problems with this holding.

First, because, as explained in Section I(a), the plan qualifies as a multiple employer plan, the Qualified Employers as a group or association of employers under 29 U.S.C. § 1002(5) are the relevant employer. This is doubly true because the term "employer" includes any "person" "acting directly as an employer . . . or indirectly in the interests of the employer in relation to an employee benefit plan." 29 U.S.C. § 1002(5). The panel did not examine whether any or all of this group (acting directly as employers or indirectly for the other employers) maintained the plan. The district court, however, found that they did based on abundant record evidence of their involvement as a group in many of the important decisions about the plan over the years and through the direct involvement of several of them, including Katharine Gahagan and Christopher duPont, as owners of and decisionmakers of the former trustee, Elton Corporation. (Ms. Gahagan and her brothers became co-owners and President and Vice-Presidents of Elton in 1996). In this regard, it is worth noting the term "person" includes a corporation, 29 U.S.C. § 1002(9), and therefore Ms. Gahagan and Mr. duPont cannot hide behind their corporate roles at Elton as somehow removing their activities from the purview of ERISA.

Second, as explained in Section I(b), because the plan was established by an employer, it is not necessary to also consider the exact role of the other Qualified Employers in maintaining the pension plan over the decades to bring it within the broad sweep of ERISA.

Third, the panel erred, both as a factual and legal matter, in concluding that the record evidence showed that Ms. Wright had insufficient involvement with the plan to have maintained it for purposes of ERISA. Specifically, the panel reasoned that "proof that a former employee *received* a pension from the Trust tells us nothing about what Wright supposedly did to support, continue or care for the Trust," and even though the district court found the Grandchildren were responsible to "'notify[] Elton Corp. of employees who *might* be eligible to receive benefits under the [T]rust,'" it was Elton Corporation and later First Republic as trustees that actually made benefits determinations and paid benefits. Dkt. 120, pp. 29-30.

On a more basic level, the panel's decision overlooks that there is nothing unusual about having another fiduciary or service provider run the day-to-day operations of a plan, including by making benefit determinations with limited or no input from the employer. *See, e.g., Abramson v. Aetna Life Co.*, 2023 WL 3199198, 24 at *1 (D.N.J. May 2, 2023) (Aetna was both "claims fiduciary" and "claims administrator" for health care plan). That Ms. Wright and the other Qualified Employers did a poor job with overseeing the plan, including by failing to ensure

proper funding, does not mean that the plan falls outside the broad scope of ERISA, but instead is an indication that the employers of the plan participants failed to meet their duties to their employees with regard to this important benefit. *Donovan*, 688 F.2d at 1372 ("[I]t would be incongruous for persons establishing or maintaining informal or unwritten employee benefit plans, or assuming the responsibility of safeguarding plan assets, to circumvent the Act merely because an administrator or other fiduciary failed to satisfy reporting or fiduciary standards.").

Gregory Fields, secretary of Elton Corp; see 79a stated Elton was a family office that administered trusts of the family members, including the trusts Mary Chichester duPont created under will. He said the process to add an employee to the pension was informal, to demonstrate an employee's final year salary, often a W-2 was sent. In keeping up with ERISA law changes, part of maintaining a pension plan, *See 67a-69a.* the family sought legal opinion on the implications of ERISA to this pension trust. *See 60a-62a* A plan to terminate the pension trust was drafted and circulated to all employee children and grandchildren; qualified employers for signature. Including A. Felix duPont, Jr., Alice duPont Mills, Allaire duPont, Katharine Gahagan, Michael H. duPont, Elaine Jones, Mary Mills Abel-Smith, Phyllis M. Wyeth, James P. Mills, Jr., Helena duPont Wright, Caroline duPont instead of following legal advice the qualified employers took a deliberate administrative role, ignoring legal opinion and did nothing *See*, 70a-71a. Ms. Wright added an employee to the plan in

December of 1989, *See, 77a Allaire duPont, Ms. Wright and Caroline Pricket provided employee census data listing eligible employees for the pension. These employees included Ms. Wright's employee that was added in 2015. It also listed one of Ms. Wright's employees that was not added to the plan. This employee listed as eligible in 1989 despite continued uninterrupted employment with Ms. Wright until December 2017, Ms. Wright chose not to add her to the pension. See 72a Mary* Mills Abel Smith sent her request on February 28,2003 to add her employee that worked for Hickory Tree Farm Inc. horse racing stable to the trust, see 74-76a On February 17, 2004 Ms. Gahagan sent a letter see "As predicted, the Trust's assets have diminished to a point which renders it incapable of meeting the burden of current pension distributions coupled with the forecasted distribution needs of present employees. I trust you share my sense of moral obligation to protect and insure the continued pension payments to our existing pensioners. Their pensions are vitally important to them and something they expect to continue for the remainder of their lives. Their pensions can only be assured by ceasing any future additions to the pension roll."

Appellant attorneys misstated material facts during oral argument when answering Judge Schwartz questions pointed at the commerce prong of ERISA. These questions were provided in the form of a letter to council, four days prior to oral argument outlining the specific areas of ERISA the panel wanted to focus on. *See*, 40a July 5th Letter. Mr. Shelley stated employees that worked for the income producing

stables were not covered by this plan, In fact employees from the income producing stables are receiving pensions from this pension plan.

A letter from Timothy Snyder, *see* 63a-66a states Bohemian Stable horse racing stable provided pensions to their employees through the Mary Chichester pension trust employee, see additionally Mary Mills Abel Smith added her Hickory Tree Farm Inc racing stable see 72a-73a Transcript Mr. Shelley July 9 oral argument see 78a-79a JUDGE SHWARTZ: Did any of the stables make money? MR. SHELLEY: The people who are involved in making money through the stables aren't covered by this plan. So they're not relevant to the plan. The people who are doing the domestic private affairs of our grandchildren, they're the only people covered by this. And so it gets complicated.

JUDGE SHWARTZ: And most importantly for -- at least for my purview, and I'll turn it to my colleagues, is are you incorporating by reference your colleagues' responses to the questions? That's why we allowed him to go extra time to make sure we had a complete answer to all of our questions, to avoid redundancy, if that's possible. MR. KILLIAN: Yep. JUDGE SHWARTZ: You represent a different client; you are completely at your rights to offer -- MR. KILLIAN: Absolute. JUDGE SHWARTZ: -- a different view. But at least as to the questions that we pose, do you have anything that you want to add? MR. KILLIAN: So I would say 90 percent I incorporate.

REASONS FOR GRANTING WRIT

The panel's decision raises issues of exceptional importance under ERISA

Each of the three holdings described above has the potential to disrupt established ERISA law and take pension and other plans outside of the statute's intentionally expansive scope.

Although the factual setting in this case is rather unusual, the issues described above are of exceptional importance. Fed. R. App. P. 35(a), (b). The logic of this decision suggests that any employees of Ms. Chichester duPont who were receiving or entitled to receive pensions under the plan after ERISA's enactment were participants in an ERISA plan. Likewise, if any of the Qualified Employers had great enough involvement in the plan's operations to be found to have "maintained" the plan, their employees would also be participants in a plan covered by ERISA. Thus, for some of the time and for some of the pensioners and employees, the plan in which they participate would be governed by ERISA, which preempts state law, and for other time periods and other pensioners the plan would be governed by state law. In other words, the decision creates disuniformity with regard to the operation of a single trust fund and makes it difficult if not impossible for employees and pensioners to know what law governs their rights under the trust, much less to know where they stand with respect to their pensions. Nor is it clear in this

context how such a plan could be terminated and what responsibilities the PBGC would have.

All of this runs directly contrary to "ERISA's purpose [] to provide a uniform regulatory regime over employee benefit plans," through, among other things, an "integrated enforcement mechanism" and "expansive preemption provisions."

Aetna Health Inc. v. Davila, 542 U.S. 200, 208 (2004). *See also Fort Halifax Packing Co. v. Coyne,* 482 U.S. 1, 11 (1987); *Ingersoll-Rand Co. v. McClendon,* 498 U.S. 133, 142 (1990). And it undermines many of the statute's other expressly stated goals, including ensuring adequate funding of pension benefits, imposing uniform vesting requirements, ensuring adequate disclosure to plan participants so 29 that they know where they stand with respect to their retirement benefits, see 29 U.S.C. § 1001, and ensuring that defined benefit pension plan sponsors participate in a termination insurance system that allows transfer of liabilities to the PBGC only in cases of severe hardship. 29 U.S.C. § 1001b. *See also PBGC v. R.A. Gray & Co.*, 467 U.S. 717, 720 (1984) (one of the "principal purposes" of ERISA "was to ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds have been accumulated in the plans").

But the decision does more than create an unstable and ungovernable system of plans that are both governed and not governed by ERISA even when

they operate under a unitary trust fund and a single administrative scheme. Applying the logic of the decision threatens to remove from ERISA's deliberately expansive purview any employee benefit plan that, because of corporate sales, mergers, or the like, eventually ends up providing benefits for employees who were never employed by the employer that established the plan, especially in not-uncommon situations where the current employer has little involvement in the day-to-day operations of 30 the plan other than providing enrollment or census information to trustees or fiduciaries running the plan.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgement of the United States Court of Appeals for the Third Circuit
Dated this 5th day of May 2024

Respectfully submitted,

T. Kimberly Williams, *pro se*
6871 Statum Road
Preston, MD 21655
410-430-6523
williamskim6@gmail.com