

No. 26-267

In the Supreme Court of the United States

THE CAPITAL GROUP COMPANIES, INC., ET AL.,
PETITIONERS

v.

CATHY POVER

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

SUPPLEMENTAL BRIEF FOR PETITIONERS

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SUPPLEMENTAL BRIEF FOR PETITIONERS

Since Capital Group filed its petition for a writ of certiorari on August 19, 2026, the Ninth Circuit below ordered a stay of its mandate pending this Court’s disposition of the petition, and Pover’s counsel filed an appellate brief acknowledging the circuit split raised in the petition. Both developments underscore that the Court should call for a response to the petition and then grant review.

1. On August 20, 2026, the Ninth Circuit stayed its mandate “pending the outcome of the petition for certiorari.” CA9 Doc. 77. That order underscores that the petition raises a certworthy question on the scope of “appropriate relief” under ERISA § 502(a)(2).

As the Chief Justice has explained, to obtain a stay pending the disposition of a petition for a writ of certiorari, a party “must demonstrate,” among other things, that there is “a reasonable probability’ that this Court will grant certiorari” and “a fair prospect’ that the Court will then reverse the decision below.” *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers). Emphasizing that same rule, the Ninth Circuit recently denied a party’s request for a stay of the mandate pending its petition for a writ of certiorari, finding that the party “ha[d] not met the requirements” of showing that it could file “a meritorious petition” that presented a “significant possibility of reversal.” *In re Google Play Store Antitrust Litigation*, 152 F.4th 1078, 1081 (9th Cir. 2025).

Here, in contrast, the Ninth Circuit granted a stay of the mandate pending this Court’s disposition of Capital Group’s cert petition. That stay order shows that the court of appeals determined that there is “a reasonable probability” this Court will grant Capital

Group’s petition and “a significant possibility of reversal.” *Id.* Indeed, while Pover has waived response to Capital Group’s petition, she consented to the stay below, *see* CA9 Docs. 76, 77, acknowledging that the petition presents a certworthy question.

2. On August 26, 2026, a week after Capital Group filed its cert petition, Pover’s counsel also acknowledged the certworthiness of the question presented in a Seventh Circuit brief filed for a § 502(a)(2) defined-contribution-plan plaintiff. *See* Response and Opening Brief of Plaintiff-Appellee-Cross-Appellant Matthew Daly 60-64, *Daly v. West Monroe Partners, Inc.*, No. 26-2190 (7th Cir.) (Doc. 45). That brief specifically agrees with Capital Group that there is a circuit split on this issue. *Compare* Pet. 15-21, *with* CA7 Daly Br. 61-64. The brief acknowledges that the Fourth Circuit held in *Trauernicht v. Genworth Financial Inc.*, 169 F.4th 459, 469 (4th Cir. 2026), that “when section 502(a)(2) claims are brought in the context of a defined contribution plan they are individualized monetary claims.” CA7 Daly Br. 63. The brief also claims that *Trauernicht* is “at odds with decades of ERISA precedent,” *id.* at 60, including the Ninth Circuit’s decision below, *id.* at 64 (citing *Pover v. Capital Group Cos.*, 183 F.4th 1132, 1142 (9th Cir. 2026)), as well as “published opinions from the Second, Third, Sixth, Tenth, and Eleventh Circuits,” *id.* at 63 (citing *Cedeno v. Sasson*, 100 F.4th 386, 404-05 (2d Cir. 2024); *Henry ex rel. BSC Ventures Holdings, Inc. Employee Stock Ownership Plan v. Wilmington Trust NA*, 72 F.4th 499, 507 (3d Cir. 2023); *Parker v. Tenneco, Inc.*, 114 F.4th 786, 798 (6th Cir. 2024); *Harrison v. Envision Management Holding, Inc. Board of Directors*, 59 F.4th 1090, 1106-07 (10th Cir. 2023); *Williams v. Shapiro*, 161 F.4th 1313, 1321-22 (11th

Cir. 2025)). The brief confirms that defined-contribution-plan plaintiffs and defendants alike agree that the Fourth Circuit has split with the other courts of appeals on the question presented.

CONCLUSION

The Ninth Circuit’s stay of its mandate, CA9 Doc. 77, and the brief that Pover’s counsel filed for a defined-contribution-plan plaintiff in *Daly v. West Monroe Partners, Inc.*, No. 26-2190 (7th Cir.) (Doc. 45), underscore that this case raises a certworthy question on the scope of “appropriate relief” under § 502(a)(2). The Court should call for a response and grant Capital Group’s petition for a writ of certiorari.

Respectfully submitted.

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