

No. 26-____

IN THE
Supreme Court of the United States

SOUTHERN COMPANY SERVICES, INC., THE
SOUTHERN COMPANY PENSION PLAN, AND THE
BENEFITS ADMINISTRATION COMMITTEE,
Petitioners,

v.

WILLIAM DRUMMOND, INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY SITUATED, AND RICHARD
ODOM,
Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This petition presents a question also raised in the petitions for a writ of certiorari, filed on September 14, 2026, in *FedEx Corp., et al. v. Watt, et al.*, No. 26-360, and *Bakery, Confectionery, Tobacco Workers and Grain Millers Pension Committee, et al. v. Reichert, et al.*, No. 26-387.

The Employee Retirement Income Security Act of 1974, as amended (ERISA), requires defined-benefit plans to offer a joint-and-survivor annuity option for married participants that is the “actuarial equivalent” of a single-life annuity provided to unmarried participants. 29 U.S.C. § 1055(d). That is, the plan participant must have the option of choosing a plan that pays out benefits for his or her retirement and *also* for the surviving spouse after the participant’s death.

The question presented is whether the statute’s reference to “actuarial equivalence” requires that these two options simply be actuarially equivalent or whether it also demands that the underlying actuarial assumptions used in calculating equivalence be “reasonable,” even though Section 1055(d) does not mention any such constraint.

PARTIES TO THE PROCEEDING

Petitioners Southern Company Services, Inc., The Southern Company Pension Plan, and The Benefits Administration Committee were defendants in the district court and appellees in the court of appeals.

Respondents William Drummond and Richard Odom were plaintiffs in the district court and appellants in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner Southern Company Services, Inc. is a wholly-owned subsidiary of The Southern Company (NYSE: SO). No other publicly-held company owns 10% or more of Southern Company Services, Inc.'s stock. The Southern Company Pension Plan is an ERISA defined benefit plan sponsored by Southern Company Services, Inc. The Benefits Administration Committee is the Plan's named fiduciary and administrator.

STATEMENT OF RELATED PROCEEDINGS

United States District Court (N.D. Ga.):

*Drummond, et al. v. Southern Company Services,
Inc., et al.*, No. 2:22-CV-00174 (July 30, 2024)

United States Court of Appeals (11th Cir.):

*Drummond, et al. v. Southern Company Services,
Inc., et al.*, No. 24-12773 (May 26, 2026), *reh'g
denied* (Aug. 6, 2026)

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The District Court for the Northern District of Georgia's order granting dismissal of Respondents' complaint is available at 2024 WL 4005945 and reproduced at Pet.App.69a–87a. The Eleventh Circuit's opinion reversing the district court's order is reported at 177 F.4th 1076 and reproduced at Pet.App.3a–68a.

JURISDICTION

The Eleventh Circuit issued its opinion on May 26, 2026, Pet.App.3a–68a, and denied panel rehearing on August 6, 2026, Pet.App.1a–2a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The text of 29 U.S.C. § 1055 is reproduced in full at Pet.App.88a–102a. Section 1055(d)(1) provides, in relevant part:

(1) For purposes of this section, the term “qualified joint and survivor annuity” means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

INTRODUCTION

Just a few months ago, in an ERISA case, this Court reemphasized that the judiciary “generally do[es] not read limitations into statutes that do not appear in their text.” *M&K Emp. Sols., LLC v. Trs. of IAM Nat’l Pension Fund*, 608 U.S. 264, 274 (2026) (citing *Romag Fasteners, Inc. v. Fossil Inc.*, 590 U.S. 212, 215 (2020)). This petition presents the question whether the Eleventh Circuit was correct to, in an ERISA case, read a limitation into the statute that does not appear in the text. And it follows on the heels of two other petitions raising precisely the same question, demonstrating the wide salience and importance of the issue. The Court should hold this petition pending disposition of those earlier-in-time petitions.

The issue is a simple matter of textual interpretation. ERISA requires that two benefit options available to a married plan participant—a single-life annuity and a joint-and-survivor annuity—be “actuarial[ly] equivalent.” 29 U.S.C. § 1055(d). In other words, when choosing between them, the value of either should be the same, holding actuarial assumptions like mortality and interest rates constant. Yet the panel below held that, in addition to being *equivalent* (what the text actually requires), plans must also use “actuarial assumptions that are reasonable at the time the plan calculates a participant’s retirement benefit,” Pet.App.59a, a substantive constraint that is nowhere to be found in the relevant text.

The stakes are exceptionally high, as the answer to this question affects pension plans that hold trillions

in assets¹ and has divided judges across the country. Indeed, two petitions already in front of this Court, *see* Pet. for Writ of Certiorari, *FedEx Corp., et al. v. Watt, et al.*, No. 26-360 (filed Sept. 14, 2026) (*FedEx* Petition); Pet. for Writ of Certiorari, *Bakery, Confectionery, Tobacco Workers and Grain Millers Pension Committee, et al. v. Reichert, et al.*, No. 26-387 (filed Sept. 14, 2026) (*Kellogg* Petition), raise precisely this same question. The Sixth Circuit, over Judge Nalbandian’s dissent, relied on a potpourri of purposivism, state court decisions, and inapposite, cherry-picked industry materials to read into § 1055(d) a substantive requirement that simply is not there. The Eleventh Circuit in this case performed a nearly identical maneuver.

The Eleventh Circuit’s decision below begins with a discussion of life in 1789, not the text of ERISA, and the court does not ground its analysis in what § 1055(d) actually says (and doesn’t say). Section 1055 provides that a “qualified joint and survivor annuity” must satisfy two conditions. 29 U.S.C. § 1055(d). First, it must pay to a surviving spouse an amount that is “not less than 50 percent of (and is not greater than 100 percent of)” the annuity paid during the joint

¹ Employee Benefits Sec. Admin., U.S. Dep’t of Labor, *Private Pension Plan Bulletin: Abstract of 2023 Form 5500 Annual Reports* 3 (Jan. 2026), <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf>; Employee Benefits Sec. Admin., U.S. Dep’t of Labor, *Private Pension Plan Bulletin Historical Tables and Graphs 1975-2023*, Tbl. E16, at 21 (Sept. 2025), <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf>.

lives of the participant and the spouse. *Id.* Second, the joint-and-survivor annuity must be “the actuarial equivalent of a single annuity for the life of the participant.” *Id.*

The “actuarial equivalence” requirement is straightforward. The value of an annuity that does *not* survive the participant must be equal to the value of an annuity that *does* survive the participant. Of course, to calculate those values, a plan must make assumptions about what prevailing interest rates would be, how long a given participant’s lifespan is likely to be, and so forth. As with any calculation of present value, there must be assumptions about future events that are mere likelihoods, not guarantees. So “[t]wo modes of payment are actuarially equivalent when their present values are equal under a given set of actuarial assumptions.” *Stephens v. U.S. Airways Grp., Inc.*, 644 F.3d 437, 440 (D.C. Cir. 2011). Put another way, given a particular set of mortality tables and assumptions about interest rates, are these two plans equivalent in present value?

That equivalence is, expressly, all § 1055(d)(1)(B) requires, but the Eleventh Circuit imported a second, atextual requirement. In that court’s view, the actuarial assumptions (i.e., mortality tables and interest rates) must be “reasonable at the time the plan calculates a participant’s retirement benefit.” Pet.App.59a. Yet that requirement is not only missing from the text, similar substantive requirements are *all over ERISA*, yet Congress specifically declined to include such a restraint here. *See, e.g.*, 29 U.S.C. § 1393(a)(1) (providing for “actuarial assumptions and methods which, in the aggregate, are reasonable”); *id.* § 1432(e)(1) (requiring certain actuarial assumptions

for multiemployer plans receiving Special Financial Assistance under the American Rescue Plan Act); *id.* § 1083(h)(1) (governing actuarial assumptions for valuing liabilities); *id.* § 1085a(c)(3)(A) (addressing “reasonable” actuarial assumptions in connection with funding credits). Congress knows how to impose substantive constraints, reasonableness constraints, currentness constraints, and so forth. It specifically chose not to. *See, e.g., Russello v. United States*, 464 U.S. 16, 23 (1983) (the inclusion of a specific term in a statutory scheme implies that Congress intentionally excluded it elsewhere).

Finding no support in the text, the Eleventh Circuit relied on a narrow selection of actuarial sources, Pet.App.26a–31a, IRS regulations that are not at issue, Pet.App.34a–37a, the “overarching protective intent of Section 1055[],” Pet.App.41a, and ERISA’s “overarching purpose of ensuring participants receive their earned benefits,” Pet.App.44a. This sort of purposivism is rarely appropriate but it is especially wrongheaded when interpreting ERISA, which, as this Court has noted on numerous occasions, is a “comprehensive and reticulated statute.” *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002) (citation omitted). “[N]o statute yet known pursues its stated purpose at all costs,” *Stanley v. City of Sanford, Fla.*, 606 U.S. 46, 58 (2025) (citation omitted), and, critically, Congress had *many* purposes in mind when crafting ERISA, *Conkright v. Frommert*, 559 U.S. 506, 516–17 (2010). Courts presuming to modify ERISA’s terms in favor of a particular purpose are not somehow assisting Congress, they are overruling Congress.

At bottom, the Eleventh Circuit’s attenuated rationales for inserting an atextual substantive limitation into § 1055(d) were motivated by a single concern: theoretically, a plan could use any actuarial assumptions, even based on lifespans in 1789. Pet.App.4a–6a, 19a, 25a–26a, 34a, 39a–42a, 44a, 48a. But this concern is misplaced and irrelevant. It is misplaced because it assumes that Congress would not let private parties make decisions regarding the terms and benefits of employment. Private parties do not act in absurd ways just because they can. The terms of the plan are part of the relationship between an employer and employees, and employers would quickly fall behind in the competition for workers if they used absurd terms in their plans. Regardless, even if a particular panel of judges thinks a particular outcome is less than perfect, that should have no effect on the statutory interpretation question. As Judge Nalbandian explained in his Sixth Circuit dissent, “the planes won’t fall from the sky if we give § 1055(d) its most natural reading.” *Reichert v. Kellogg Co.*, 170 F.4th 473, 496 (6th Cir. 2026).

The Eleventh Circuit’s misplaced purposivism raises all the same problems as the Sixth Circuit’s decision in *Reichert*, 170 F.4th 473. There, too, the majority mistakenly looked to cherry-picked industry standards, *id.* at 481–82, relied on inapposite IRS regulations, *id.* at 483, and was concerned that allowing plans to use actuarial assumptions free from judicial supervision would allow plans to use “a mortality table from the sixteenth century,” *id.* at 485. See also *FedEx* Petition at 9; *Kellogg* Petition at 10–11.

Because this petition presents precisely the same important question as presented in the *Kellogg* and *FedEx* petitions, this Court should hold this petition pending the disposition of those petitions. If this Court grants either of those petitions and then corrects the Sixth Circuit decision, this petition, too, should be granted, vacated, and remanded. In the alternative, the Court should simply grant this petition.

STATEMENT OF THE CASE

A. Statutory Background

ERISA is a “comprehensive and reticulated statute,” governing the nation’s employee benefit plans. *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251 (1993) (quotation omitted). It reflects a “careful balancing” between the interests of employee and employer. *Conkright*, 559 U.S. at 517 (quotation omitted). ERISA ensures that employees will “receive the benefits they ha[ve] earned” while still “induc[ing] employers to offer” those benefits in the first place by promising “a predictable set of liabilities, under uniform standards of primary conduct.” *Id.* at 516–17 (quotation omitted).

The most basic requirement of ERISA is that plans must memorialize benefits (as well as the terms on which they are provided) in a written document. *See* 29 U.S.C. § 1102(a)(1), (b)(4). The written terms of a plan are critical, forming the backbone of ERISA’s requirements—namely, a plan must follow what it wrote down. *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 108 (2013).

ERISA also provides for additional, statutory requirements, and one, regarding options for married

plan participants, is at issue here. Section 1055 provides that defined benefit plans (i.e., plans with a fixed *payout* rather than a fixed pay-in) must provide a default option for a married plan participant to use a “qualified joint and survivor” annuity rather than a single-life annuity.

A single-life annuity for an unmarried plan participant provides, as relevant here, a certain payment of benefits each month from retirement until the death of the participant. When the participant dies, the payments simply end. *See Belknap v. Partners Healthcare Sys.*, 588 F. Supp. 3d 161, 165 (D. Mass. 2022).

Section 1055 provides that, by default (though it can be waived, *see* 29 U.S.C. § 1055(c)), a married plan participant will instead receive a joint-and-survivor annuity, meaning that when the participant dies, the surviving spouse will continue to receive benefits. Because this annuity is likely to last *longer* than a single-life annuity (as it lasts for the spouse’s life as well), the benefits paid out must be stretched over a longer period of time.

Section 1055(d) provides two constraints on how plans can structure these joint-and-survivor annuities. First, there is a substantive constraint: once the participant dies, the benefits paid to the surviving spouse must not be “less than 50 percent of” or “greater than 100 percent of” the amount paid during the “joint lives of the participant and spouse.” 29 U.S.C. § 1055(d)(1)(A). In other words, the surviving spouse must receive at least half as much as both spouses together received. Second, the joint-and-survivor annuity must be the “actuarial equivalent of

a single annuity for the life of the participant.” *Id.* § 1055(d)(1)(B).

To ensure “actuarial equivalen[ce],” plans must take the value of a single-life annuity and convert it into a joint-and-survivor annuity of the same value. To do so, plans compare the present value of an annuity paid over the course of one life to the present value of the same annuity paid over the course of two lives. That conversion requires certain assumptions, since calculating the present value of anything that depends on future events is necessarily a projection. Plans must identify mortality rates to estimate the life expectancy of the participant and spouse, and plans must choose interest rates to account for the time value of money (i.e., \$10 today is worth more than \$10 a year from now because it can earn interest in that time). Because monthly payments on a joint-and-survivor annuity extend over two lives rather than one and are, thus, “likely to continue for a longer period of time,” they are “typically” lower than the monthly payments a participant would receive on a single-life annuity. *Shields v. Reader’s Digest Ass’n, Inc.*, 331 F.3d 536, 539 n.2 (6th Cir. 2003).

B. Factual Background and Procedural History

Respondents William Drummond and Richard Odom are participants in The Southern Company Pension Plan, which is sponsored by Southern Company Services, Inc., and administered by its named fiduciary, The Benefits Administration Committee (all Petitioners here). Pet.App.12a. The Plan offers multiple joint-and-survivor options (e.g., a

default based on a 50% survivor payout, but also options for 75% or 100%). Pet.App.70a–71a.

Respondents each retired at age 65 and began receiving benefits under their elected joint-and-survivor annuities. Pet.App.12a–14a. Drummond’s benefit elections are governed by the 2016 Plan documents, which determine the “actuarial equivalent” joint-and-survivor annuity by reference to a 5% interest rate and the “1951 Group Annuity Mortality Table.” Pet.App.14a. Odom’s benefit elections are governed by a table of factors in the 2018 Plan documents based on a 5% interest rate and a 2014 mortality table. *See Drummond, et al. v. Southern Company Services, Inc., et al.*, No. 2:22-CV-00174, ECF 53-10, at 3.

Drummond initially filed suit in 2022, before being joined by Odom and eventually filing the operative, second amended complaint in September 2023. Pet.App.15a. The complaint contains four counts, alleging violations of § 1055(d) (Count One); violations of ERISA’s anti-forfeiture provision in § 1053(a) (Count Two); violations of ERISA’s regulation of qualified preretirement survivor annuity charges (Count Three); and a breach of fiduciary duty claim (Count Four). Pet.App.15a–17a.

As relevant here, only Odom (and his putative class) asserts a claim under § 1055(d), alleging that the plan used “unreasonable” and “outdated” actuarial assumptions. Pet.App.15a–16a. Although Drummond initially asserted such a claim, he abandoned that claim when he learned that the 1951 mortality assumptions resulted in a *higher* benefit payout than if he used “current” mortality tables. *See Drummond,*

No. 2:22-CV-00174, ECF No. 1, ¶¶ 135–145; ECF No. 27, ¶¶ 140–150; ECF No. 51, ¶¶ 35–70; ECF No. 53-7 at 1.

Because § 1055(d) does not *require* the use of any particular actuarial assumptions (current, reasonable, or otherwise), the district court granted Petitioners’ motion to dismiss the complaint. Pet.App.87a. The district court first held that ERISA does not “provide that plans must determine actuarial equivalence using assumptions that are reasonable or using specific interest rates and mortality tables.” Pet.App.82a. Accordingly, the court dismissed the § 1055(d) claim that hinged entirely on that question. Then, because Counts Two and Three depended on whether ERISA imposes a reasonableness requirement for calculating joint-and-survivor annuities, the court dismissed those counts as well. Pet.App.84a–86a. Finally, because Respondents did not plead a statutory violation under ERISA, the district court concluded they could not sustain a breach of fiduciary duty claim and dismissed the final count as well. Pet.App.86a–87a.

On appeal, a panel of the Eleventh Circuit reversed. Pet.App.6a. The court opened by explaining that, “[i]n 1789 we elected George Washington as the first President,” but “life in this country was far from ideal.” Pet.App.4a. Using mortality tables from 1789 “would be hard to justify,” so, in that court’s view, “Section 1055 [of ERISA] requires that plans convert married participants’ single-life annuities to joint-and-survivor annuities using reasonable mortality and interest-rate assumptions.” Pet.App.4a, 20a.

The panel did not locate this requirement in any express text in ERISA. Instead, it surveyed a number of sources to construct an interpretation of “actuarial equivalence” that requires the calculation to use reasonable assumptions. All with a view that to do otherwise would allow plans to use assumptions from the era of George Washington, a possibility the court sought to foreclose.

To start, the court cited a few professional actuarial sources to conclude that § 1055(d) requires the use of reasonable actuarial assumptions. Pet.App.26a–31a. The sources on which the court relied were found in the manner of “looking over the heads of the guests for one’s friends.” *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment). These selected sources do not even define actuarial equivalence—although other sources *do*. See, e.g., Soc’y of Actuaries, Committee on Pensions, *Report on Actuarial Terminology for Pension Plans*, 28 Transactions Soc’y Actuaries 327, 329 (1976) (defining the term without any reference to reasonable assumptions). After artificially cabining its view, the panel took from its chosen sources the *general principle* that actuaries should be reasonable in their work—therefore, “actuarial equivalence” must implicitly include a requirement to use reasonable assumptions. Pet.App.27a–31a. In other words, because actuarial practice guides say that actuaries should be reasonable, the panel decided to import a reasonableness requirement into § 1055(d).

The court also looked to an IRS interpretation of a similar tax code provision. Pet.App.34a–37a. Pointing to *Skidmore* deference, the court explained that the IRS’ non-binding interpretation of a parallel tax code

provision supported the court's interpretation of § 1055(d). Pet.App.37a.

And the panel heavily relied on what it perceived to be the purposes of ERISA. It asserted that its interpretation better aligned with ERISA's policy of protecting the interests of plan participants and beneficiaries. Pet.App.41a–48a. And it believed its interpretation was necessary to protect the interests of spouses in joint-and-survivor annuities. Pet.App.41a–44a. *See also, e.g.*, Pet.App.5a–6a, 18a–19a, 25a–26a, 39a–45a, 55a–58a.

After reversing with respect to Count One (the § 1055(d) claim), the Eleventh Circuit reversed with respect to all other counts as well, noting in several places that its resolution of those counts either directly or indirectly depended on the court's interpretation of § 1055(d). Pet.App.19a, 59a–65a.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit's decision here raises the identical issue as *Reichert v. Kellogg Co.*, 170 F.4th 473 (6th Cir. 2026), a split decision in a consolidated appeal that has already generated two cert petitions. *See FedEx* Petition; *Kellogg* Petition. In that opinion, the Sixth Circuit also imported a “reasonableness” requirement into § 1055(d). This Court should accordingly hold this petition pending the disposition of those earlier-in-time petitions.

Not only did the Sixth Circuit reach an identical conclusion, the majority in the *Kellogg Co.* case used substantially similar (and similarly erroneous) reasoning as the Eleventh Circuit here. The Sixth Circuit relied upon actuarial literature that does not even purport to define “actuarial equivalence.” 170

F.4th at 481. The Sixth Circuit likewise held that the IRS's interpretation of a similar tax code provision supported its holding that actuarial assumptions in Section 1055(d) be reasonable. *Id.* at 483. And the Sixth Circuit relied on ERISA's supposed purpose, worrying that a contrary conclusion would allow for the use of "sixteenth century" mortality tables. *Id.* at 485.

Another similarity between the decisions is they offer no guidance to plan administrators as to the standard they would impose. What type of mortality table to use (e.g., white collar, blue collar, etc.)? How often must a plan update its mortality tables and interest rate assumptions? Yearly? Monthly? Daily? And what is "current" enough to be reasonable? *See also Kellogg* Petition at 22–23. Right now, plan administrators across the country must grapple with these questions, with no textual guidance from the statute, and no certainty until this Court addresses the underlying question.

If the Court grants and rules on either of the petitions arising from the *Kellogg* appeal, it will be dispositive with respect to the identical issue decided by the Eleventh Circuit in this case. In both *Kellogg* and *FedEx*, plaintiffs allege § 1055(d) violations of ERISA premised on the companies' use of supposedly outdated mortality tables to calculate their joint-and-survivor annuities. *See Kellogg Co.*, 170 F.4th at 478–79. If the Court corrects the Sixth Circuit's error, it will necessarily correct the Eleventh Circuit's error.

Of course, beyond *Kellogg*, *FedEx*, and this case, there have been dozens of cases, filed throughout the United States, where plaintiffs assert class action

claims against employers under ERISA and invoke § 1055(d) to allege that plan participants were deprived of annuity benefits due to use of allegedly dated actuarial assumptions. Judges are divided on this pure statutory interpretation question, which affects ERISA-governed plans holding trillions in assets. See *Kellogg* Petition at 18–20.

These claims are also especially difficult to resolve at the pleading stage. The Sixth Circuit itself acknowledged that “[w]hether the mortality assumptions selected by Defendants indeed fail to produce actuarially equivalent benefits is a question of fact that cannot be conclusively determined on a motion to dismiss.” *Reichert*, 170 F.4th at 484 n.7. Thus, it is nearly impossible to dismiss these claims early, creating massive discovery costs. In ERISA cases, “getting by a motion to dismiss is often the whole ball game because of the cost of discovery.” *Cunningham v. Cornell Univ.*, 604 U.S. 693, 708, 710 (2025) (Alito, J., concurring).

This issue warrants the Court’s attention now, and it will heavily weigh on pension plans until resolved. For these reasons and the reasons noted in the *Kellogg* and *FedEx* petitions, the Court should grant this question and put to rest whether courts must import an atextual reasonableness requirement into § 1055(d). The simplest option is to hold this petition and grant one of those earlier-in-time petitions. But if for some reason that cannot be done, the Court should, in the alternative, grant this petition, which presents the issue in a clean vehicle.

CONCLUSION

The Court should hold this petition pending its disposition of *Kellogg* and *FedEx*, and then dispose of this petition consistent with its rulings in those cases. In the alternative, the Court should grant this petition if it declines to grant in *Kellogg* and *FedEx*.

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