No. 26A______

IN THE
SUPREME COURT OF THE UNITED STATES

FEDEX CORPORATION; FEDEX CORPORATION EMPLOYEES' PENSION PLAN; RETIREMENT PLAN INVESTMENT BOARD OF FEDEX CORPORATION; JOHN/JANE DOES 1-10,

Applicants,

v.

ROBERT A. WATT; GARY J. FRIESEN; MICHAEL H. MCKENNA; GEOFFREY B. COE; CRAIG A. COVIC

Application For An Extension Of Time Within Which To File A Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

APPLICATION TO THE HONORABLE BRETT M. KAVANAUGH, ASSOCIATE JUSTICE OF THE SUPREME COURT

MICHAEL E. KENNEALLY
Counsel of Record
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

JEREMY P. BLUMENFELD
JARED R. KILLEEN
MORGAN, LEWIS & BOCKIUS LLP
2222 Market Street
Philadelphia, PA 19103

TERRENCE O. REED
FEDERAL EXPRESS CORPORATION
3620 Hacks Cross Road,
Building B, Second Floor
Memphis, TN 38125

MATTHEW A. RUSSELL
MORGAN, LEWIS & BOCKIUS LLP
110 N. Wacker Drive
Chicago, IL 60601

Counsel for Applicants

CORPORATE DISCLOSURE STATEMENT

FedEx Corporation Employees' Pension Plan is an ERISA Benefit Plan administered by FedEx Corporation. The Retirement Plan Investment Board is a board of FedEx Corporation. FedEx Corporation is a publicly traded company that trades under the stock ticker symbol FDX. No publicly held company owns 10% or more of FedEx Corporation's stock.

APPLICATION FOR EXTENSION OF TIME

In accordance with Rules 13.5 and 30.2 of the Rules of this Court, applicants FedEx Corporation, the FedEx Corporation Employees' Pension Plan, the Retirement Plan Investment Board of FedEx Corporation, and John/Jane Does 1-10 respectfully request a 32-day extension, to and including September 14, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case. The court of appeals entered its judgment on March 16, 2026, and denied rehearing en banc on May 15, 2026. Unless extended, the time for filing a petition for a writ of certiorari will expire on August 13, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1). The opinion of the court of appeals, which is reported at 170 F.4th 473, and the order denying rehearing, which is unreported and available at 2026 WL 1642769, are attached. App., *infra*, 1a-36a.

1. The "principal function" of the Employee Retirement Income Security Act of 1974 (ERISA) is to "protect contractually defined benefits." *US Airways, Inc.* v. *McCutchen*, 569 U.S. 88, 100 (2013) (citation omitted). In a defined-benefit ERISA plan, those contractually defined benefits are determined by written plan terms. See, *e.g.*, *Thole* v. *U.S. Bank N.A.*, 590 U.S. 538, 542-543 (2020). ERISA's enforcement scheme is "built around reliance on the face of written plan documents." *Heimeshoff* v. *Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 109 (2013) (citation omitted).

2. Among the required terms in an ERISA defined-benefit plan's written plan document are actuarial assumptions used to determine the amount of each participant's benefits. See 26 U.S.C. 401(a)(25). Often, defined-benefit plan

participants receive their retirement benefit in the form of annuities, which provide a regular stream of payments for life. Annuities come in different forms. A single-life annuity, as the name suggests, provides a stream of fixed payments for the lifetime of the participant. A joint-and-survivor annuity, in contrast, provides a stream of fixed payments for the life of the participant followed by a stream of fixed payments, potentially in a different amount, for the life of a surviving spouse. ERISA requires defined-benefit plans to offer a married retiree's accrued benefit in the form of a qualified joint-and-survivor annuity, 29 U.S.C. 1055(a)(1), which the statute requires to be "the actuarial equivalent of a single annuity for the life of the participant," 29 U.S.C. 1055(d)(1)(B). Because such annuity payments depend on the lifespans of the participants and spouses, calculating the value of an annuity requires the use of various actuarial assumptions including, most relevantly here, "mortality" assumptions about life expectancy. Cf. *Concrete Pipe & Prods. of Cal., Inc.* v. *Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 610 (1993) (identifying various actuarial assumptions used when calculating the value of vested pension benefits).

3. This case asks whether Section 1055(d)'s actuarial-equivalence requirement for joint-and-survivor annuities impliedly requires actuarial "assumptions that reasonably reflect the lives of the applicable benefit recipients." App., *infra*, 12a. A divided panel of the Sixth Circuit held that the answer to that question was "yes." In the majority's view, Section 1055(d) contains an implicit reasonableness requirement—even though the provision "does not expressly mandate that plans use 'reasonable' actuarial assumptions" and even though other ERISA

provisions do expressly mandate the use of "reasonable" actuarial assumptions for purposes other than determining individual benefit amounts. *Id.* at 15a. The majority believed that failing to read an implicit reasonableness requirement into Section 1055(d) would lead to "absurd" results and make Section 1055(d) meaningless by permitting employers to use any mortality assumptions, including ones based on sixteenth-century life expectancy. *Id.* at 16a. According to the majority, support for an implicit reasonableness requirement can be found in certain pre-ERISA publications and state court decisions. *Id.* at 10a-12a.

4. Judge Nalbandian dissented. He objected to the majority's "reli[ance] on a collection of academic sources and state-court caselaw to read into the statue an atextual requirement that the given set of actuarial assumptions be 'reasonable.'" App., *infra*, 21a. No dictionary—from the time of ERISA's enactment or the present day—defines "actuarial equivalent" or related terms to include a reasonableness requirement. *Id.* at 22a-24a. Nor does statutory context support such a requirement. On the contrary, other ERISA provisions show that "[w]hen Congress wants to modify actuarial mathematics to include a reasonableness component, it knows how to do so" by doing so explicitly. *Id.* at 25a. For Judge Nalbandian, the majority's reliance on an "eclectic" collection of non-statutory sources recalled a classic criticism of the misuse of legislative history in statutory interpretation: "the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends." *Id.* at 27a (quoting *Conroy* v. *Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment)).

5. This case presents important issues warranting this Court's review. By creatively construing "actuarial equivalent" to imply an unwritten reasonableness requirement, the Sixth Circuit majority effectively rewrote the statutory text. As a neighboring ERISA provision illustrates, when Congress decided to impose substantive requirements on the actuarial assumptions used to translate one form of pension benefit into an equivalent different form, it did not rely on an amorphous "reasonable" standard but expressly specified which assumptions to use. See 29 U.S.C. 1055(g)(3) (requiring specific actuarial assumptions when translating a stream of annuity payments into its lump-sum present value). For the reasons Judge Nalbandian detailed, the majority's contrary conclusion defies this statutory context, and the majority's assorted non-statutory materials do not support such a result. As the D.C. Circuit has recognized, the definition of "actuarial equivalent" implies the use of some actuarial assumptions, but that definition does not impose substantive constraints on those assumptions. See *Stephens* v. *U.S. Airways Grp., Inc.*, 644 F.3d 437, 440 (2011) ("Two modes of payment are actuarially equivalent when their present values are equal under a given set of actuarial assumptions.").

6. In addition, the Sixth Circuit's decision injects profound uncertainty into the calculation of pension benefits. Under the Sixth Circuit's reasonableness standard, the actuarial assumptions that by law must be written into the plan to promote certainty, see 26 U.S.C. 401(a)(25), must be disregarded whenever an adjudicator can be persuaded that those assumptions are insufficiently reasonable. That conclusion upends ERISA's principal function of protecting contractually

defined benefits and ERISA's aim of encouraging reliance on the face of written plan documents.

7. Counsel for applicants respectfully request a 32-day extension of time to file the petition in this case. Between the order denying applicants' petition for rehearing on May 15, 2026, and the current deadline of August 13, 2026, applicants' counsel have had an exceptionally busy practice with numerous other pressing professional obligations. These include, among others: (1) appellants' reply brief in *Shumway* v. *SpaceX*, No. 25-8160 (9th Cir.), due August 12, 2026; (2) appellees' brief in *Stana* v. *SAS Institute, Inc.*, No. 26-1305 (4th Cir.), filed on July 17, 2026; (3) appellees' brief in *Noel* v. *PepsiCo, Inc.*, No. 26-862 (2d Cir.), filed on July 13, 2026; (4) appellants' reply brief in *Igwenagu* v. *Bimbo Bakeries USA, Inc.*, No. 26-1361 (1st Cir.), filed on July 9, 2026; (5) appellees' brief in *Clouse* v. *Northrop Grumman Corp.*, No. 26-1258 (4th Cir.), filed on July 7, 2026; (6) oral argument in *Holland-Thielen* v. *SpaceX*, No. 25-4811 (9th Cir.), held on June 25, 2026; (7) appellees' brief in *Adams* v. *U.S. Bancorp*, No. 26-1330 (8th Cir.), filed on June 16, 2026; (8) petitioner's opening brief in *Satellite Healthcare, Inc.* v. *NLRB*, No. 26-60077 (5th Cir.), filed on June 10, 2026; (9) oral argument in *Holmes* v. *American HomePatient, Inc.*, No. 24-2875 (3d Cir.), held on June 9, 2026; (10) oral argument in *Barragan* v. *Honeywell International Inc.*, No. 25-2609 (3d Cir.), held on May 27, 2026; and (11) oral argument in *Hutchins* v. *HP Inc.*, No. 25-826 (9th Cir.), held on May 20, 2026.

8. In addition, another party that seeks review of the Sixth Circuit's decision below, in a coordinated appeal, has obtained a 32-day extension of time to

file a petition for a writ of certiorari. See *Bakery, Confectionary, Tobacco Workers & Grain Millers Pension Comm.* v. *Reichert*, No. 26A114 (U.S.). Granting this application would ensure that both petitions are on the same schedule.

9. For all these reasons, applicant respectfully requests that the time to file its petition for a writ of certiorari be extended by 32 days to September 14, 2026.

Respectfully submitted,

s/ Michael E. Kenneally

MICHAEL E. KENNEALLY
Counsel of Record
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000

JEREMY P. BLUMENFELD
JARED R. KILLEEN
MORGAN, LEWIS & BOCKIUS LLP
2222 Market Street
Philadelphia, PA 19103

TERRENCE O. REED
FEDERAL EXPRESS CORPORATION
3620 Hacks Cross Road,
Building B, Second Floor
Memphis, TN 38125

MATTHEW A. RUSSELL
MORGAN, LEWIS & BOCKIUS LLP
110 N. Wacker Drive
Chicago, IL 60601

Counsel for Applicants

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