No. 07-636

In the Supreme Court of the United States

KARI E. KENNEDY, PETITIONER

v.

PLAN ADMINISTRATOR FOR
DUPONT SAVINGS AND INVESTMENT PLAN, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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QUESTION PRESENTED

The Court granted certiorari limited to the following question:

Was the Fifth Circuit correct in concluding that ERISA's Qualified Domestic Relations Order provision, 29 U.S.C. 1056(d)(3)(B)(i), is the only valid way a divorcing spouse can waive her right to receive her ex-husband's pension benefits under ERISA?

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INTEREST OF THE UNITED STATES

This case presents the question whether the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq*., as amended, requires a pension plan administrator to recognize designated beneficiaries' waivers of their rights to receive their ex-spouses' pension benefits when there is no qualified domestic relations order (QDRO), as defined in ERISA, 29 U.S.C. 1056(d)(3), designating an alternate payee. The Secretary of Labor has primary rulemaking and enforcement authority under Title I of ERISA, see 29 U.S.C. 1002(13), 1135, 1136(b), and specific authority to construe ERISA's QDRO provision, 29 U.S.C. 1056(d)(3), which is an exception to ERISA's prohibition

against the assignment or alienation of pension benefits, in consultation with the Secretary of the Treasury, see 29 U.S.C. 1056(d)(3)(N). The Secretary of the Treasury has authority to construe the anti-alienation provision, see Reorg. Plan No. 4 of 1978, § 101(a), 3 C.F.R. 332 (1979), and has promulgated a regulation implementing that provision, 26 C.F.R. 1.401(a)-13(c)(1).

STATEMENT

1. ERISA governs the payment of benefits under employee benefit plans. It requires every plan to be established and maintained pursuant to a written instrument and to have named fiduciaries who have authority to control and manage the operation and administration of the plan. 29 U.S.C. 1102(a)(1). A plan must specify, among other things, the basis on which payments are made to and from the plan. 29 U.S.C. 1102(b)(4). A fiduciary must discharge his or her duties with respect to a plan "for the exclusive purpose" of "providing benefits to participants and their beneficiaries" and defraying reasonable plan expenses. 29 U.S.C. 1104(a)(1)(A). A "participant" is an "employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit." 29 U.S.C. 1002(7). A "beneficiary" is a "person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. 1002(8). In carrying out his or her duties, a plan fiduciary must act in accordance with the documents and instruments governing the plan, insofar as they are consistent with the provisions of ERISA. 29 U.S.C. 1104(a)(1)(D).

If an employee benefit plan is a pension plan as defined in 29 U.S.C. 1002(2), it must further "provide that

benefits provided under the plan may not be assigned or alienated." 29 U.S.C. 1056(d)(1). ERISA provides that the anti-alienation provision "shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except [it] shall not apply if the order is determined to be a qualified domestic relations order." 29 U.S.C. 1056(d)(3)(A). A domestic relations order is a state-law judgment, decree, or order "relat[ing] to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant." 29 U.S.C. 1056(d)(3)(B)(ii). A qualified domestic relations order (QDRO) is a domestic relations order that "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan," and that meets other specified requirements. 29 U.S.C. 1056(d)(3)(B)(i). An "alternate payee" is "any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant." 29 U.S.C. 1056(d)(3)(K). If the plan administrator determines that a domestic relations order is a QDRO, a person who is an alternate payee under the QDRO is "considered * * * a beneficiary under the plan." 29 U.S.C. 1056(d)(3)(G) and (J).

2. During his employment with E.I. DuPont de Nemours & Co. (DuPont), William Kennedy was a participant in a pension plan called the Savings and Investment Plan (SIP). Pet. App. 2, 32. In 1974, he signed a beneficiary-designation form identifying Liv Kennedy, his spouse at the time, as his sole beneficiary under that

plan. In 1980, he signed a beneficiary-designation form to the same effect for another plan that later merged into the SIP. *Id.* at 2, 32-33.

The Kennedys divorced in 1994. Pet. App. 2, 33. The divorce decree awarded to Liv Kennedy a portion of William Kennedy's retirement benefits in another DuPont plan, pursuant to a QDRO. Pet. App. 62. The decree also awarded to William Kennedy, and simultaneously divested Liv Kennedy of, "all right, title, interest, and claim" to, *inter alia*, all rights related to William Kennedy's pension plans, except for the portion awarded to Liv Kennedy. *Id.* at 64-65; see *id.* at 2, 41. The Kennedys, each of whom was represented by counsel, both signed the divorce decree. *Id.* at 75. In 1997, the divorce court issued an amended QDRO to create and recognize Liv Kennedy's interest as an alternate payee in a plan called the DuPont Pension and Retirement Plan. *Id.* at 53-59; see *id.* at 2-3. No QDRO for the SIP was ever submitted. *Id.* at 3. William Kennedy retired from DuPont in 1998 and died in 2001 without having changed the designation of Liv Kennedy as his beneficiary under the SIP, as he was entitled to do under the plan. *Ibid*; J.A. 48.

After William Kennedy died, petitioner Kari Kennedy, the daughter of William Kennedy and Liv Kennedy, qualified as the independent executrix of her father's estate. Pet. App. 3, 33. By letter, she demanded that respondent DuPont plan administrator pay the funds in William Kennedy's account in the SIP to the estate, asserting that Liv Kennedy had waived her rights to those funds. *Ibid.* The plan administrator rejected petitioner's demand. It instead paid the funds in the SIP, which totaled more than $400,000, to Liv Kennedy, as the beneficiary designated by William Kennedy.

Ibid. Petitioner then sued to recover the benefits. *Ibid.*; see 29 U.S.C. 1132(a)(1)(B).

3. The district court granted summary judgment to petitioner. Pet. App. 31-52. The court noted circuit precedent that established that federal common law permits a named ERISA beneficiary to waive his or her entitlement to the proceeds of an ERISA plan furnishing life insurance benefits, "provided that the waiver is explicit, voluntary, and made in good faith." *Id.* at 38 (quoting *Manning* v. *Hayes*, 212 F.3d 866, 874 (5th Cir. 2000), cert. denied, 532 U.S. 941 (2001)). Applying that test, the court concluded that the 1994 divorce decree was an explicit, voluntary, and good-faith waiver by Liv Kennedy of her rights to the proceeds of the SIP. *Id.* at 41-43.

The district court rejected respondents' argument that giving effect to Liv Kennedy's waiver would violate ERISA's anti-alienation provision, concluding that an ex-spouse's waiver does not constitute an assignment or alienation. Pet. App. 43-45. The court also concluded that William Kennedy had no reason to submit a QDRO for the SIP, because a QDRO recognizes the interest of a non-participant spouse in obtaining benefits under the plan, and none of the proceeds of the SIP were subject to division in the divorce. *Id.* at 44. The court accordingly concluded that the DuPont plan administrator had wrongly paid benefits to Liv Kennedy, *id.* at 45, and it ordered respondents instead to pay the benefits to the estate, *id.* at 16.

4. The court of appeals vacated the judgment for petitioner and rendered judgment for respondents. Pet. App. 1-14. The court first concluded that the district court erred in relying on circuit precedent concerning waivers of benefits related to life-insurance plans, not-

ing that, under ERISA, life insurance plans are not "pension plans" but "welfare plans," to which ERISA's anti-alienation provision does not apply. *Id.* at 5-6. The court then considered whether to apply federal common law to recognize an ex-spouse's waiver of benefits in light of the anti-alienation provision. *Id.* at 7. The court concluded that the anti-alienation provision precludes recognition of such a waiver. *Id.* at 7-11.

The court of appeals began by noting that Treasury Department regulations define an "assignment or alienation" as "[a]ny direct *or indirect arrangement* . . . whereby a party acquires from a participant *or beneficiary* a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant *or beneficiary*." Pet. App. 8 (quoting 26 C.F.R. 1.401(a)-13(c)(1)(ii)). The court concluded that "Liv Kennedy's divorce-decree 'waiver' constitutes an 'indirect arrangement', by which the Estate gains an 'interest enforceable against the plan' and, therefore, falls under ERISA's anti-alienation provision." *Id.* at 8-9.

The court of appeals found "significant support" for its conclusion in ERISA's QDRO provision. Pet. App. 9. The court reasoned that the QDRO provision, which "recognizes the right to designate alternate payees under certain circumstances," "suppl[ies] the *sole* exception to the anti-alienation provision" in the marital-dissolution context. *Id.* at 9, 11 (citation omitted). The court concluded:

> When, as here, ERISA provides a specific mechanism—the QDRO—for addressing the elimination of a spouse's interest in plan benefits, but that mechanism is *not* invoked, there is no basis to formulate a federal-common-law rule. Requiring DuPont to rec-

> ognize the waiver in this situation would conflict with ERISA by purporting to determine rights to pension-plan benefits in a manner not authorized by the QDRO provisions, and, therefore, not permitted by the anti-alienation provision.

Id. at 11 (citations omitted).

SUMMARY OF ARGUMENT

The court of appeals reached the correct result for the wrong reasons. ERISA's provision forbidding the assignment or alienation of pension benefits does not preclude a divorcing spouse from waiving her beneficiary interest in a pension plan. Once the divorce takes effect, a participant can generally give effect to the waiver by removing the divorced spouse as a designated beneficiary and/or designating a different beneficiary. But while ERISA's anti-alienation provision does not forbid such a waiver, ERISA does forbid courts from imposing a federal-common-law rule that would require plan administrators to recognize a waiver, even when the participant has not taken the steps necessary to change the designated beneficiary. ERISA thus provides a straightforward method for divorcing spouses to eliminate a spouse's beneficiary interest in the other spouse's pension benefits, but it leaves no room for the type of common-law innovation that would require plan administrators to pay benefits in a manner that varies from the terms of the plan.

A. A plan beneficiary's waiver of rights in a participant's pension benefits does not violate ERISA's rule that pension benefits may not be assigned or alienated, 29 U.S.C. 1056(d)(1). A waiver, without more, is not an assignment or alienation. In trust law, which serves as ERISA's backdrop, a spendthrift provision forbidding

assignment or alienation does not prevent trust beneficiaries from renouncing their interests, provided that they do not attempt to direct who will receive the interests in their place. That understanding is consistent with ERISA's general approach to spousal rights in the pension context, which confers certain beneficiary rights on spouses but permits them to waive those rights in certain circumstances, and confers no statutory rights on ex-spouses, aside from whatever rights they may receive in a QDRO. That conclusion is supported by the regulation interpreting ERISA's anti-alienation provision, which the Treasury Department construes not to preclude plan beneficiaries from waiving their rights to pension plan benefits.

ERISA's QDRO provision, 29 U.S.C. 1056(d)(3)(B), is not a mechanism for a divorcing spouse simply to waive her rights as a beneficiary under her participant spouse's pension plan. The QDRO provision, which creates a general exception to the anti-alienation rule, sets forth the procedures necessary for a domestic relations order to make a permissible assignment of benefits to an "alternate payee." It does not, however, provide a mechanism for a divorcing non-participant spouse merely to renounce her interest in her participant spouse's pension benefits, without identifying an alternate payee as a beneficiary that will receive that interest in her place.

B. It does not follow, however, that merely because ERISA's anti-alienation provision does not forbid waivers, plan administrators must recognize such waivers, even when the participant has not taken the steps necessary to give the waiver effect under the plan. ERISA requires that a plan specify the basis on which payments are made from the plan, and it requires that a plan

be administered in accordance with the documents and instruments of that plan. 29 U.S.C. 1102(b)(4), 1104(a)(1)(D). A plan may provide a mechanism for a designated beneficiary to waive or disclaim benefits, but it need not do so. In the absence of a waiver that complies with terms of the plan, a plan administrator pays benefits only to a person who is designated as a beneficiary by the participant, or who is considered a beneficiary by operation of the statute. A spouse designated as a beneficiary generally remains a beneficiary under the plan unless and until the participant changes the designation. To require a plan administrator to give effect to a designated beneficiary's waiver as a matter of federal common law, when the participant has not changed the designation in accordance with plan terms, would undermine both the statutory rule that plans be administered in accordance with plan documents and the important interests in plan administrability that the rule serves.

ARGUMENT

ERISA provides a straightforward method for divorcing spouses to eliminate a former spouse's beneficiary interest in a participant's pension benefits: The plan participant can simply designate a different beneficiary. It is not necessary to that end for the non-participant spouse formally to renounce her interest. Regardless of the existence of such a waiver, the participant has the power unilaterally to change his beneficiary designation following dissolution of the marriage.

This case arises because the plan participant had designated his spouse as his beneficiary under a pension plan, and either failed to or chose not to change the designation following their divorce, even though the parties

agreed in a divorce decree that the beneficiary spouse would be divested of her rights related to his pension plans. In such a situation, the participant's beneficiary designation controls. That is not because, as the court of appeals held in this case, a divorce-decree waiver is a prohibited assignment or alienation of a beneficiary interest unless it takes the form of a QDRO: Without more, a waiver is not an assignment or alienation, and in any event, a QDRO does not provide a mechanism for simply waiving or renouncing an interest in plan benefits, as opposed to assigning an interest to an alternate payee. Rather, the beneficiary designation controls because ERISA requires plan administrators to administer plans in accordance with plan documents, and to distribute benefits to participants and their designated beneficiaries. ERISA's comprehensive framework leaves no room for crafting a federal-common-law rule that would require plan administrators to disregard those duties in the marital-dissolution context.

I. A DIVORCING SPOUSE'S WAIVER OF HER BENEFICIARY RIGHTS IS NOT BARRED BY ERISA'S ANTI-ALIENATION CLAUSE AND DOES NOT REQUIRE A QUALIFIED DOMESTIC RELATIONS ORDER

A. A Waiver Is Not A Prohibited Assignment Or Alienation

ERISA's anti-alienation provision, 29 U.S.C. 1056(d)(1), requires that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. 1056(d)(1). It is designed to "ensure that the employee's accrued benefits are actually available for retirement purposes," H.R. Rep. No. 779, 93d Cong., 2d Sess. 66 (1974); H.R. Rep. No. 807, 93d Cong., 2d Sess. 68 (1974), and reflects a "considered congressional policy choice * * * to safe-

guard a stream of income for pensioners (and their dependents[)]," *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990); see *Patterson* v. *Shumate*, 504 U.S. 753, 765 (1992).

As relevant here, ERISA's anti-alienation provision expressly applies "to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order," except where "the order is determined to be a qualified domestic relations order." 29 U.S.C. 1056(d)(3)(A). The court of appeals in this case concluded that a QDRO is the only available "mechanism * * * for addressing the elimination of a spouse's interest in plan benefits," and that, absent a QDRO, a non-participant spouse's divorce-decree waiver of her interest constitutes a prohibited assignment or alienation under ERISA. Pet. App. 11. The court was mistaken. A designated beneficiary's waiver of the right to receive pension plan benefits, without more, is not an "assignment" or "alienation."

1. The term "assign" means "[t]o transfer, as to assign property, or some interest therein." *Black's Law Dictionary* 152 (4th rev. ed. 1968) (*Black's*); accord *Webster's New International Dictionary* 166 (2d ed. 1958) (*Webster's Second*) ("[t]o transfer or to make over to another"). Similarly, the term "alienate" means "[t]o convey; to transfer the title to property." *Black's* 96; accord *Webster's Second* 65 (primary definition of "alienate" is "[t]o convey or transfer to another"); see *ibid.* (defining "alienation" as "[a] transfer of ownership or title; a legal conveyance of property to another"). A beneficiary does not "assign" or "alienate" her rights when she waives them, because, without more, a waiver does not *transfer* rights to another person. To be sure,

the effect of a waiver may be that the beneficiary's interest reverts to the participant. But that is not a transfer that amounts to an assignment or alienation. Only a transfer of interest to a *third party* counts. A waiver is, by contrast, a *disclaimer* of rights: that is, "a refusal of benefits on the part of the individual slated to receive them." *McGowan* v. *NJR Serv. Corp.*, 423 F.3d 241, 248 (3d Cir. 2005), cert. denied, 127 S. Ct. 1118 (2007); see *Fox Valley & Vicinity Constr. Workers Pension Fund* v. *Brown*, 897 F.2d 275, 279 (7th Cir. 1990) (en banc) (distinguishing between waiver and assignment or alienation).

The distinction between a waiver and an assignment or alienation is rooted in the common law of trusts, which "serves as ERISA's backdrop," *Beck* v. *Pace Int'l Union*, 127 S. Ct. 2310, 2316 (2007), and thus "offers a starting point" for interpreting the statute, *Harris Trust & Sav. Bank* v. *Salomon Smith Barney, Inc.*, 530 U.S. 238, 250 (2000) (citation omitted). ERISA's prohibition against assignment or alienation is analogous to a trust-law "spendthrift provision." *Boggs* v. *Boggs*, 520 U.S. 833, 852 (1997). In trust law, although the beneficiary of a spendthrift trust—that is, a trust that prohibits assignment or alienation of the beneficiary's interest—may not transfer her interest to another person, she may disclaim it, provided that she has not already accepted her interest in the trust and that she does not attempt to direct who is to receive the interest in her place. See, *e.g.*, Restatement (Third) of Trusts § 58(1) cmt. c at 359 (2003); Restatement (Second) of Trusts § 36, cmt. c at 100 (1959); 3 *Scott & Ascher on Trusts* § 15.2.9, at 933-934 (5th ed. 2007); see also, *e.g.*, *Roseberry* v. *Moncure*, 429 S.E.2d 4, 6 (Va. 1993); *Commerce Trust Co.* v. *Fast*, 396 S.W.2d 683, 687 (Mo. 1965);

Central Nat'l Bank v. *Eells*, 215 N.E.2d 77, 81 (Cuyahoga County, Ohio Prob. Ct. 1965).[1]

The distinction between waivers and assignments or alienations applies in the context of domestic relations orders, as it does elsewhere in ERISA's pension plan provisions. Although Section 1056(d)(3)(A) provides that ERISA's anti-alienation provision "shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order," unless the order is a QDRO, there is no reason to conclude that Congress intended by using the words "creation" and "recognition" to expand the prohibition against "assignment" and "alienation" beyond its ordinary meaning. The QDRO provision itself suggests otherwise; it indicates that Congress was concerned with orders that "create[] or recognize[] the existence of *an alternate payee's right* to, or assigns to *an alternate payee* the right to, receive all or a portion of the benefits payable with respect to a participant under a plan." 29 U.S.C. 1056(d)(3)(B)(i)(I) (emphasis added).

The legislative history of the QDRO provision confirms the point. See S. Rep. No. 575, 98th Cong., 2d Sess. 19 (1984) ("[I]f a domestic relations order requires the distribution of all or a part of a participant's benefits under a qualified plan *to an alternate payee*, then the creation, recognition, or assignment of the alternate payee's right to the benefits is not considered an assign-

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[1] The principle that a plan beneficiary may waive a benefit under the plan without violating the prohibition against assignment or alienation does not mean that a plan participant may waive his benefits, because a waiver by a pension plan participant must also satisfy the nonforfeiture requirements of 29 U.S.C. 1053(a). Those requirements do not apply in the case of a participant's death. 29 U.S.C. 1053(a)(3)(A).

ment or alienation of benefits under the plan if and only if the order is a qualified domestic relations order.") (emphasis added). Congress's concern in enacting the QDRO provision was to make clear that domestic relations orders that create rights in or assign rights to alternate payees, or recognize rights conferred on alternate payees by operation of state law, may result in the division of pension plan benefits in appropriate circumstances. See *id.* at 18-19; cf. *Boggs*, 520 U.S. at 848-850. The creation or recognition of a right in, or assignment of a right to, an alternate payee to receive plan benefits that would otherwise be payable to the participant or another beneficiary is an "assignment" or "alienation" as those terms are commonly understood and as they are understood in trust law. The mere *renunciation* by a non-participant spouse of the right she previously had to receive benefits, without more, is not an assignment or alienation. That is true even where, as here, the renunciation is accompanied by an acknowledgment that the interest effectively reverts to the plan participant. See Pet. App. 64.

2. a. The conclusion that a designated beneficiary's waiver is not a prohibited assignment or alienation is consistent with ERISA's general approach to spousal protections in connection with pension benefits.

In 1984, Congress amended ERISA to give spouses certain statutory rights with respect to a participant's pension. Retirement Equity Act of 1984 (REA), Pub. L. No. 98-397, 98 Stat. 1426. Those rights include a right to receive a survivor's annuity when pension benefits are paid in the form of an annuity. 29 U.S.C. 1055(a), (b)(1)(A) and (B). When the plan is not required to provide an annuity form (as is true of most individual account plans), the participant does not elect to receive the

payment of benefits in the form of a life annuity, and certain other conditions are met, the surviving spouse has a right to the balance of the account on the participant's death. 29 U.S.C. 1055(b)(1)(C); see *Boggs*, 520 U.S. at 843. A participant can waive the survivor form of benefit, or designate a beneficiary other than the spouse to receive the balance of the participant's individual account, but only if the spouse consents in writing and the consent otherwise meets statutory and regulatory requirements. See 29 U.S.C. 1055(b)(1)(C)(i), (c)(2)(A) and (c)(3); 26 C.F.R. 1.401(a)-20, 1.417(a)(3)-1. With respect to a former spouse, however, there is no restriction, in the absence of a QDRO, on the participant's ability to waive the survivor form of the benefit or designate an alternate beneficiary.

Notably, while Congress expressly permitted nonparticipant spouses to consent to a participant spouse's designation of a different beneficiary, as well as to consent to permit the participant spouse to make designations free from any requirement of further spousal consent, and thereby to relinquish their survivor beneficiary rights, 29 U.S.C. 1055(c)(2), it did not find it necessary to provide an exception to the anti-alienation provision in that situation, as it did in the case of a QDRO. To read the anti-alienation provision to prohibit spouses from relinquishing their interests in pension benefits thus would conflict with important elements of the statutory scheme. See, *e.g.*, *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U.S. 355, 370 (1986) (noting "the familiar rule of construction that, where possible, provisions of a statute should be read so as not to create a conflict").

To read the anti-alienation provision to prohibit *a divorcing spouse* from renouncing a beneficiary interest in pension benefits would also be inconsistent with the

statutory scheme. After a marriage has ended, a former spouse is no longer a "spouse" statutorily entitled to be a beneficiary under the joint-and-survivor-annuity and other provisions of 29 U.S.C. 1055. Congress instead protected former spouses by allowing the parties to obtain a QDRO assigning some or all of the plan participant's benefits to the former spouse (or to a child or other dependent). 29 U.S.C. 1056(d)(3); see 29 U.S.C. 1056(d)(3)(J) and (K). But absent a QDRO, a participant who previously had designated the spouse as a beneficiary, or whose spouse was automatically a beneficiary by virtue of Section 1055, is free to change that designation upon dissolution of the marriage, in conformity with the terms of the plan.[2] It would be strange indeed to interpret ERISA's anti-alienation provision to forbid a non-participant ex-spouse from waiving an interest in a participant's pension plan benefits when ERISA permits the participant *unilaterally* to designate a new beneficiary following dissolution of the marriage. Neither the waiver nor the unilateral change in beneficiary triggers the anti-alienation provision.

b. To treat a beneficiary's waiver of benefits as a prohibited assignment or alienation of pension benefits would also affect application of the provisions of the tax code that permit beneficiaries to disclaim interests in property in a trust and thereby render the gift tax inapplicable to the transfer. See 26 U.S.C. 2518; 26 C.F.R.

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[2] A participant may be restricted in changing the designation of a spouse as a beneficiary if the participant receives benefits in the form of a qualified joint-and-survivor annuity and the plan has started making payments to the participant. Similarly, a participant may be limited in the designation of a beneficiary if the participant has remarried. See 26 C.F.R. 1.401(a)-20, Q&A 25(b); 29 C.F.R. 4022.8(d). Neither situation is present here.

1.401(a)(9)-4, Q&A 4 (recognizing Section 2518's application in the pension plan context).[3] Treating a waiver as a prohibited assignment or alienation of benefits could prevent plans from offering this tax-saving opportunity to plan participants and their beneficiaries. In this case, although the SIP explicitly permitted such disclaimers, J.A. 50, petitioner does not argue that Liv Kennedy, who ultimately elected to receive benefits from the plan notwithstanding the divorce decree, made a qualified disclaimer under 26 U.S.C. 2518(b).[4]

3. In concluding that ERISA's anti-alienation provision forbids a divorce-decree waiver of the sort at issue here, the court of appeals relied not on the text of the statute, but on the Treasury Department's regulation implementing the Internal Revenue Code counterpart to ERISA's anti-alienation provision, which sets out one of the requirements for a retirement plan to be tax-qualified. See 26 U.S.C. 401(a)(13). Because the Secretary of the Treasury has authority to construe ERISA's prohibition against assignment or alienation of pension benefits, see p. 2, *supra*, as well as the power to promulgate

[3] Enacted as part of the Tax Reform Act of 1976, Pub. L. No. 94-455, § 2009(b), 90 Stat. 1893, Section 2518 codifies a longstanding rule regarding the effect of disclaimers on federal gift tax. Before Section 2518 was enacted, federal regulations provided that the gift tax would not apply if the intended recipient refused to accept ownership of the property and, *inter alia*, the refusal was effective under local law. See 26 C.F.R. 25-2511(c) (1959); cf. *Jewett* v. *Commissioner*, 455 U.S. 305, 306 (1982). Section 2518 was designed to establish specific and uniform standards for disclaimers for purposes of the federal gift tax. See H.R. Rep. No. 1380, 94th Cong., 2d Sess. 65-68 (1976).

[4] Under 26 U.S.C. 2518(b), a qualified disclaimer is an irrevocable and unqualified refusal by a person to accept an interest in property if, among other things, the person submits the disclaimer in writing and has not accepted the interest or any of its benefits.

regulations for enforcement of the Internal Revenue Code, 26 U.S.C. 7805, the Treasury regulation is the "applicable administrative regulation[]." *Guidry*, 493 U.S. at 371-372; see *Boggs*, 520 U.S. at 851-852. In relevant part, the regulation defines the terms "assignment" and "alienation" to include:

> Any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.

26 C.F.R. 1.401(a)-13(c)(1)(ii). The court of appeals in this case concluded that Liv Kennedy's divorce-decree waiver constituted a prohibited assignment or alienation within the meaning of that regulation because it was "an 'indirect arrangement', by which the Estate [of William Kennedy] gain[ed] an 'interest enforceable against the plan.'" Pet. App. 8-9 (quoting 26 C.F.R. 1.401(a)-13(c)(1)(ii)); accord *McGowan* v. *NJR Serv. Corp.*, 423 F.3d 241, 249 (3d Cir. 2005), cert. denied, 127 S. Ct. 1118 (2007). The court of appeals was mistaken.

It is the Treasury Department's position that no party "acquires from" a beneficiary a "right or interest enforceable against a plan" pursuant to a beneficiary's waiver of rights where the beneficiary does not attempt to direct her interest in pension benefits to another person. That conclusion is consistent with the language and background of the anti-alienation provision, as well as with the Treasury Department's recognition of disclaimers in the pension context.[5]

[5] Specifically, Treasury Department regulations governing minimum distribution requirements under 26 U.S.C. 401(a)(9) provide that "if a

Such a waiver differs from the sort of transfer at issue in *Boggs*, in which the Court relied in part on the Treasury regulation in holding that a deceased non-participant spouse's attempted testamentary transfer of a purported state-law community-property interest in her ex-husband's pension plan to her sons would be a prohibited assignment or alienation. See 520 U.S. at 851-852; cf. Pet. App. 8. The attempted testamentary transfer directed the non-participant spouse's purported interest to specified individuals, and, if effective, would have given those individuals an enforceable right against the plan at the expense of the participant's surviving spouse. *Boggs*, 520 U.S. at 851-852. Without more, however, a waiver, unlike such an attempted testamentary transfer, does not *direct* an interest from the beneficiary to any other individual, such that the individual can be said to "acquire[] from" the beneficiary an interest he or she would not otherwise have had. A waiver simply results in the interest reverting to the participant, with the result that the benefits become payable to the participant or to the person designated as the participant's beneficiary by the participant or under the terms of the

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person disclaims entitlement to [an] employee's benefit, pursuant to a disclaimer that satisfies [26 U.S.C. 2518] * * * [,] thereby allowing other beneficiaries to receive the benefit in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary." 26 C.F.R. 1.401(a)(9)-4, Q&A 4. An Internal Revenue Service General Counsel Memorandum makes plain that such disclaimers are not deemed to violate the tax code's counterpart to ERISA's anti-alienation provision. *IRS General Counsel Memorandum* 39,858, 1991 WL 776304 (Sept. 23, 1991). Although the General Counsel Memorandum has no precedential effect, *ibid.*, it is relevant here because it makes explicit what is already implicit in the Treasury Department's treatment of disclaimers in the pension context.

plan. Even if a waiver inures to the benefit of the participant, the participant is not a "party [who] acquires" a benefit "from a * * * beneficiary" under the regulation. And that is how the agency construes the regulation.

The Treasury Department's reasonable interpretation of its regulation is controlling, and it forecloses the court of appeals' contrary interpretation. See, *e.g.*, *Long Island Care at Home, Ltd.* v. *Coke*, 127 S. Ct. 2339, 2349 (2007); *Auer* v. *Robbins*, 519 U.S. 452, 462 (1997). To the extent that the anti-alienation provision in ERISA itself might be read as ambiguous with respect to the question presented here, the Treasury Department's regulation, correctly interpreted, represents a reasonable interpretation of the statute, and it therefore warrants deference. See, *e.g.*, *Long Island Care at Home*, 127 S. Ct. at 2350-2251; *Boeing Co.* v. *United States*, 537 U.S. 437, 448 (2003) (deferring to Treasury regulation).[6]

B. A QDRO Is Not Required For, And Does Not Provide A Mechanism For, A Bare Waiver Of Rights

Because an ex-spouse's waiver of her status as a designated beneficiary under a participant's pension plan is not a prohibited assignment or alienation, application of the QDRO provision is unnecessary to save such a waiver from invalidity under ERISA's anti-alienation provision. The QDRO provision is, in any event, not an

[6] In an amicus brief filed in *Keen* v. *Weaver*, 121 S.W.3d 721 (Tex. 2003), the Department of Labor stated that application of a federal common-law waiver rule to pension plans would conflict with ERISA's prohibition against assignment or alienation of benefits. The Secretary of Labor has reconsidered that position and now agrees with the Secretary of Treasury, who is responsible for interpreting the anti-alienation provision, that no assignment or alienation occurs if the beneficiary waives her rights, without attempting to direct her interest to another person.

available means of accomplishing a bare waiver of rights.

1. Enacted as part of the 1984 REA amendments to ERISA, the QDRO provision was designed to resolve questions that had arisen concerning whether ERISA's anti-alienation provision barred garnishment of pension plan benefits for purposes of enforcing state domestic relations orders providing for, among other things, alimony and child support payments. See *Mackey* v. *Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 838-839 (1988). In the REA, Congress made clear that certain domestic relations orders, including state-court orders approving property-settlement agreements "relat[ing] to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant," may provide for the assignment of pension plan benefits, provided that they comply with certain requirements. 29 U.S.C. 1056(d)(3)(B)(ii) and (J). A domestic relations order that has been determined to satisfy the requirements for being a "qualified domestic relations order," or QDRO, is exempt from ERISA's general preemption clause, see 29 U.S.C. 1144(b)(7), as well as ERISA's anti-alienation provision, see 29 U.S.C. 1056(d)(3)(A). See *Boggs*, 520 U.S. at 846-847.[7]

Consistent with its purpose, ERISA's QDRO provision provides a mechanism for divorcing spouses to attach an ERISA plan participant's pension benefits to provide for the support of a non-participant former spouse or a child or other dependent. It does not, however, provide a mechanism for a non-participant spouse

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[7] ERISA also provides other exceptions to the anti-alienation rule. See 29 U.S.C. 1056(d)(2) and (4); 26 U.S.C. 401(a)(13). Those exceptions are not relevant in this case.

simply to *renounce* or *disclaim* an interest in a participant's pension plan benefits. By definition, a QDRO "creates or recognizes the existence of an alternate payee's right" to a participant's benefits under a plan, 29 U.S.C. 1056(d)(3)(B)(i)(I). A domestic relations order that incorporates a bare *waiver*, without recognizing or creating a right in an alternate payee, or assigning to an alternate payee a right to "receive all or a portion of the benefits payable with respect to a participant," cannot be a QDRO. *Id.* An "alternate payee" is defined as "any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant." 29 U.S.C. 1056(d)(3)(K). While a "former spouse" may be an "alternate payee" under that definition, a "participant" cannot. Thus, while divorcing spouses may use a QDRO to preserve or confer rights on the non-participant spouse, or a child or other beneficiary, a QDRO cannot result in the beneficiary's bare *waiver* of rights, because such a waiver does not create or recognize any rights in an alternate payee.

II. ALTHOUGH A DESIGNATED BENEFICIARY'S WAIVER OF PENSION BENEFITS IS NOT A PROHIBITED ASSIGNMENT OR ALIENATION, A PLAN ADMINISTRATOR IS NOT REQUIRED TO GIVE EFFECT TO A WAIVER THAT CONFLICTS WITH PLAN DOCUMENTS

Although a divorcing spouse's waiver does not violate ERISA's anti-alienation provision, that does not mean that the plan administrator must recognize the waiver, even if the participant has not taken the steps necessary to ensure that the waiver is given effect under the terms of the plan. Although the court of appeals did not reach

the issue in this case, ERISA requires a plan administrator to distribute benefits to the beneficiary designated by the participant or under the terms of the plan. A waiver that is not given effect consistent with the provisions of the plan documents cannot trump the terms of the plan. Thus, the appropriate mechanism for eliminating the beneficiary interest of an ex-spouse is for the participant to change the beneficiary designation in accordance with plan terms. That process is generally not difficult. But in all events, the entry of a divorce decree purporting to waive the non-participant spouse's interest is neither necessary nor sufficient to accomplish that end.[8]

1. a. ERISA provides that a plan shall "specify the basis on which payments are made to and from the plan," 29 U.S.C. 1102(b)(4), and that the plan administrator must administer the plan "in accordance with the documents and instruments governing the plan," 29 U.S.C. 1104(a)(1)(D). The requirement that plan administrators act in accordance with plan documents serves "[o]ne of the principal goals of ERISA": that of "enabl[ing] employers 'to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of

[8] This Court limited its grant of certiorari to the third question presented in the petition. It thereby declined to grant review of the second question, which asked whether federal common law requires respondents to give effect to Liv Kennedy's waiver, despite the fact that the plan documents—given William Kennedy's 1974 beneficiary designation form, which was never changed following the Kennedys' divorce—identified Liv Kennedy as the beneficiary. 128 S. Ct. 1225 (2008); see Pet. i. For the reasons explained herein, however, consideration of the plan documents is critical in evaluating whether the court of appeals reached the correct result in this case.

benefits.'" *Egelhoff* v. *Egelhoff*, 532 U.S. 141, 148 (2001) (citation omitted).

As this Court has recognized, a plan administrator's obligation to administer the plan in accordance with plan documents includes the obligation to distribute benefits to "beneficiaries." See *Egelhoff*, 532 U.S. at 147. The term "beneficiary" is defined in the statute as a "person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. 1002(8). In *Boggs*, the Court held that ERISA precludes a testamentary transfer of retirement benefits to persons not designated as beneficiaries by the plan participant or under the terms of the plan. 520 U.S. at 848-851; see *id.* at 850 (rejecting the argument that the Court should, "through case law, create a new class of persons for whom plan assets are to be held and administered," because "[t]he statute is not amenable to this sweeping extratextual extension").

Later, in *Egelhoff*, the Court held that ERISA preempted, as applied to ERISA plans, a state law that provided that the designation of a spouse as the beneficiary of a nonprobate asset is revoked automatically upon divorce. The Court explained that applying an automatic revocation rule to plan benefits would undermine both ERISA's explicit command that plans be administered according to plan documents and the statute's aim of "nationally uniform plan administration." *Egelhoff*, 532 U.S. at 143, 148; see *id.* at 146-150. The Court noted that the state law would prevent plan administrators from "mak[ing] payments simply by identifying the beneficiary specified by the plan documents," and would instead require them to "familiarize themselves with state statutes so that they can determine whether the named beneficiary's status has been 'revoked' by opera-

tion of law." *Id.* at 148-149. The Court concluded that such a result "would undermine the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators—burdens ultimately borne by the beneficiaries." *Id.* at 149-150.

b. The foregoing principles are equally applicable in this context: A rule that would require plan administrators to recognize a waiver contained in a state-court divorce decree, even when the participant has not taken the steps necessary to effectuate the waiver, and thus allow the decree to trump the beneficiary designated according to the plan, would conflict with the plan administrator's duties under ERISA and would undermine the principles of plan administrability that underlie the statute.

The detailed standards Congress set out in ERISA's QDRO provision furnish useful guidance in that regard. The QDRO is, of course, a narrow exception to the requirement that the plan administrator make payment determinations strictly by reference to the plan terms. And that narrow exception is accompanied by numerous safeguards that minimize the burden on the plan administrator and that ultimately treat the terms of the QDRO as if they were part of the plan itself. Under the statute, a domestic relations order is a QDRO only if it clearly specifies the name and last known mailing address of the participant and the name and mailing address of each alternate payee covered by the order; the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee or the manner in which the amount or percentage is to be determined; the number of payments or period to which the order applies; and each plan to which the order applies. 29 U.S.C. 1056(d)(3)(C). A QDRO may not require a plan

to provide any type or form of benefit, or any option, not otherwise provided under the plan, or to provide increased benefits on an actuarial basis, or to pay benefits to one alternate payee that a previous QDRO specifies are to be paid to another alternate payee. 29 U.S.C. 1056(d)(3)(D). A plan administrator determines if a domestic relations order is a QDRO. 29 U.S.C. 1056(d)(3)(G). If the plan administrator determines that the order qualifies, the alternate payee identified in the order is considered a beneficiary under the plan. 29 U.S.C. 1056(d)(3)(J).

By setting such detailed requirements for a domestic relations order to be a QDRO, Congress created clear rules for plan administrators to apply to resolve conflicts between plan terms and a domestic relations order. Those detailed requirements are intended to "minimize the burden on the plan and eliminate confusion over what the [domestic relations] court is ordering." H.R. Rep. No. 655, 98th Cong., 2d Sess., Pt. 1, at 39 (1984). And in providing that an alternate payee identified in a QDRO is to be considered a plan beneficiary, Congress was careful to "conform[] entitlements to benefits with participant or beneficiary status." *Boggs*, 520 U.S. at 847. The QDRO provision thus demonstrates a continuing commitment to the principle that a plan administrator must pay benefits, and administer the plan, according to plan documents. See *id.* at 847, 850; *Egelhoff*, 532 U.S. at 147-149.

By contrast, giving dispositive effect to a waiver in a divorce decree would not only require administrators to disregard their duty to distribute benefits to the beneficiary designated under the plan, but would impose substantial administrative burdens without the kind of safeguards that accompany the QDRO. Plan administrators

would be "[f]orc[ed] * * * to examine a multitude of external documents that might purport to affect the dispensation of benefits." *Estate of Altobelli* v. *IBM*, 77 F.3d 78, 82-83 (4th Cir. 1996) (Wilkinson, J., dissenting); see *Krishna* v. *Colgate Palmolive Co.*, 7 F.3d 11, 16 (2d Cir. 1993); *McGowan*, 423 F.3d at 246 (opinion of Van Antwerpen, J.). They would have to decide among the "myriad of tests" courts have developed to determine whether language in a domestic relations order is sufficient to constitute a valid waiver. *Strong* v. *Omaha Constr. Indus. Pension Plan*, 701 N.W.2d 320, 332 (Neb. 2005) (Connolly, J., dissenting).[9] And they would inevi-

[9] The various approaches predictably result in substantially similar language being treated differently. See *Strong*, 701 N.W.2d at 33 (Connolly, J., dissenting) (citing cases). In this case, the parties' divorce decree awarded to William Kennedy his interests, and divested Liv Kennedy of her interests, in "any profit-sharing plan, savings plan, employee thrift plan, employee stock ownership plan, retirement plan, pension plan, or like benefit program existing by reason of [his] past or present or future employment, except for that portion awarded to LIV KENNEDY." Pet. App. 64-65. The district court concluded that this document was a specific waiver. *Id.* at 41-43. Other courts, however, have interpreted similar language differently. Compare *Lyman Lumber Co.* v. *Hill*, 877 F.2d 692, 693-694 (8th Cir. 1989) (divorce decree insufficient where it gave participant "his entire interest in the Plan free of any interest of [the divorcing spouse]" but did not "specifically refer to and modify the beneficiary interest"); *PaineWebber Inc.* v. *East*, 768 A.2d 1029, 1032-1035 (Md. 2001) (divorce decree insufficiently specific); *Tremaine* v. *Tremaine*, 780 A.2d 522, 524 (N.H. 2001) (divorce decree insufficiently specific); and *Estate of Bowden* v. *Aldridge*, 595 A.2d 396, 397-398 & n.4 (D.C. 1991) (separation and property settlement agreement insufficiently specific), with *Ridley* v. *Metropolitan Fed. Bank FSB*, 544 N.W.2d 867, 868 (N.D. 1996) (finding waiver where divorce decree provided that "[e]ach party shall own free of any interest of the other all savings accounts, checking accounts and every other asset of every nature"), and *Estate of Anello* v. *McQueen*, 953 P.2d 1143, 1146-1147 (Utah 1998) (finding waiver).

tably be drawn, as the plan administrator was in this case, see Pet. App. 41-43, into disputes regarding whether language in a divorce decree constitutes a knowing and voluntary waiver. Requiring plan administrators to undertake such a review would create a risk of inconsistent interpretations of identical divorce decrees, thus undermining the interest in nationally uniform plan administration. See *Egelhoff*, 532 U.S. at 148. And it would, critically, "create a risk of litigation and administrative burdens" far weightier than any burden that might be associated with application of the QDRO provision. *McGowan*, 423 F.3d at 247 (opinion of Van Antwerpen, J.). Requiring plan administrators to provide benefits only to persons authorized to receive them under the terms of the plan avoids that result. See, *e.g.*, *McMillan* v. *Parrott*, 913 F.2d 310, 312 (6th Cir. 1990) ("If the designation on file controls, administrators and courts need look no further than the plan documents to determine the beneficiary, thus avoiding expensive litigation."); *Fox Valley*, 897 F.2d at 283 (Easterbrook, J., dissenting) ("Rules requiring payment to named beneficiaries yield simple administration, avoid double liability, and ensure that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules."). And all this potential confusion is eliminated if the participant takes the steps necessary to effectuate the waiver consistent with the terms of the plan.

2. Petitioner's argument (Pet. Br. 25, 47-52) rests on the premise that, in the absence of a provision in ERISA that specifically addresses waivers by a beneficiary, courts may fill the gap by requiring plan administrators to give effect to beneficiary waivers as a matter of federal common law. There is, however, no gap here for the common law to fill. Congress has legislated comprehen-

sively in the area of spousal rights to pension benefits, and it has been careful to provide detailed and specific requirements for plan administrators to follow, as well as to adhere to the principle that plan administrators must pay benefits only to persons who are "participants" or "beneficiaries" within the meaning of ERISA. In accordance with that principle, the plan provides a method for eliminating a designated beneficiary's interest in plan benefits: The participant may file a change of beneficiary form with the plan. Resort to federal common law is therefore inappropriate. As this Court has recognized, "[t]he authority of courts to develop a 'federal common law' under ERISA * * * is not the authority to revise the text of the statute." *Mertens* v. *Hewitt Assoc.*, 508 U.S. 248, 259 (1993) (citation omitted).

ERISA's detailed provisions for the protection of spousal interests in pension benefits demonstrate that Congress intended for plan administrators to adhere to plan documents, even where a non-QDRO divorce decree might provide for an alternative disposition of pension benefits. As the reported cases indicate, most of the controversies that have arisen concerning the effect of waivers have concerned divorce-decree waivers that the waiving party later challenges as invalid; ERISA provides clear rules for plan administrators to apply in such situations, and the participant spouse can avoid any problems simply by changing the beneficiary designation. The result is parallel to the operation of 29 U.S.C. 1055 *during* the marriage. While the non-participant spouse may consent to the participant spouse's waiver of his right to a joint-and-survivor annuity, it ultimately is up to the participant whether to execute such a waiver. See pp. 14-15, *supra*.

As noted above, the SIP did provide for disclaimers that conform to the strict requirements and formalities of 26 U.S.C. 2518. J.A. 50. Thus, had Liv Kennedy disclaimed her interest in the funds in William Kennedy's SIP account following his death, in a manner that complied with Section 2518, presumably the plan administrator would have honored that decision. Plans that do not contain similarly express provisions may nevertheless be interpreted by plan administrators to allow disclaimers.

3. Petitioner argues (Pet. Br. 60-63), like the respondents in *Egelhoff*, that a rule that plan administrators must pay benefits pursuant to the participant's beneficiary designation would mean that a state "slayer" statute could not operate to revoke the beneficiary status of a person who has murdered a plan participant. See *Egelhoff*, 532 U.S. at 152 (not deciding whether ERISA preempts such slayer statutes). As in *Egelhoff*, that question is not presented in this case and there is thus no need for this Court to decide it. *Ibid.* If a slayer exception were to be recognized under ERISA, however, the proper approach would be to interpret that background rule to be implicit in ERISA and the plans governed by it. Direct application of *state* slayer statutes to ERISA plans would be preempted, since they would clearly "relate to" the plans, see 29 U.S.C. 1144(a), although such a law might in some circumstances be saved from preemption as an insurance regulation under 29 U.S.C. 1144(b)(2)(A).

The slayer rule is, however, distinguishable from the federal-common-law waiver rule that petitioner urges. The slayer rule is "well established in the law and has a long historical pedigree predating ERISA." *Egelhoff*, 532 U.S. at 152 (citing *Riggs* v. *Palmer*, 22 N.E. 188

(N.Y. 1889)); see, *e.g.*, *Mutual Life Ins. Co.* v. *Armstrong*, 117 U.S. 591, 600 (1886). As this Court has noted, it is "at least debatable" whether the rule "interfere[s] with the aims of ERISA." *Egelhoff*, 532 U.S. at 152. For the reasons explained above, see pp. 27-28, *supra*, the same cannot be said of the federal-common-law rule that petitioner advocates.

4. Although the court of appeals was incorrect to conclude that Liv Kennedy's waiver of her beneficiary interest was prohibited by ERISA's anti-alienation rule, it was correct to conclude that ERISA leaves no room for courts to require a plan administrator to recognize such a waiver. ERISA requires a plan administrator to administer plans according to their documents and instruments, and to pay benefits to a person who is a beneficiary as defined in the statute. Those provisions are clear, and allow for the result petitioner seeks through the simple expedient of a change of beneficiary by the participant, but they preclude application of the federal-common-law rule that petitioner proposes.

The question whether the divorce-decree waiver in this case overrides William Kennedy's designation of Liv Kennedy as his beneficiary under the SIP was argued before the court of appeals, see Resp. C.A. Br. 35; Resp. C.A. Reply 6-7, and, for the reasons explained above, yields a straightforward answer to the central question in this case. The Court may accordingly affirm on that basis. But because the court of appeals did not explicitly address the question, and in light of the Court's limited grant of certiorari, the Court may decide to permit the court of appeals to address the question in the first instance. The Court may therefore wish to vacate the judgment of the court of appeals and remand for consideration of the question whether Liv Kennedy's divorce-

decree waiver, although not a prohibited assignment or alienation under ERISA, overrides William Kennedy's designation of Liv Kennedy as his beneficiary.

CONCLUSION

The judgment of the court of appeals should be affirmed. In the alternative, the judgment should be vacated, and the case remanded for further proceedings.

Respectfully submitted.

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