

No. _____

**In the Supreme Court
of the United States**

MIKE COX, in his official capacity as Attorney General of the
State of Michigan; ROBERT KLEINE, in his official capacity
as Treasurer of the State of Michigan

Petitioners.

v

DAIMLERCHRYSLER CORPORATION;
DAIMLERCHRYSLER – UAW PENSION
AGREEMENT

Respondents,

***On Petition for Writ of Certiorari
to the United States Court of
Appeals for the Sixth Circuit***

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. 29 USC 1056(d)(1) of the Employee Retirement Security Act (ERISA) preempts State laws that result in an alienation of protected pension benefits. Alienation occurs when a right or interest transfers to a third-party, while it is still under plan control, through an arrangement that is enforceable against the pension plan. Where a State court reimbursement order is in place against an inmate's prison account, and Michigan law prohibits inmate ownership of a non-prison account, is there an alienation of plan benefits when the warden notifies the Plan to send the inmate's pension benefits to the prison for deposit into his prison account rather than to an inmate-designated non-prison account?

2. 29 USC 1144(a) preempts State laws that "relate to" or impose a burden on an ERISA-protected plan when the laws have more than a tenuous, remote, or peripheral connection with a core plan activity. Do Michigan laws that restrict inmates to only a prison bank account and prohibit any non-prison accounts, impose a burden on a private pension plan when the plan is required to send an inmate-pensioner's payments to the prison for deposit into the inmate's account?

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OPINIONS AND ORDERS BELOW

The May 23, 2006, opinion of the United States Court of Appeals for the Sixth Circuit is published and is reproduced in the Appendix at 1a.¹

The May 18, 2005 unpublished Amended Declaratory Judgment of the United States District Court, Eastern District of Michigan, Southern Division, is unpublished and is reproduced in the Appendix at 17a.²

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Sixth Circuit entered its Judgment on May 23, 2006. This Court has jurisdiction pursuant to 28 USC 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

29 USC 1056(d)(1) provides:

Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

29 USC 1144(a) provides:

the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan

¹ *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir, 2006).

² *DaimlerChrysler v Cox*, unpublished opinion/order of the United States District Court, dated May 18, 2005 (Docket No. 04-73291).

26 CFR 1.401(a)-13(c)(ii) provides:

(c) Definition of assignment and alienation (1)

In general. For purposes of this section, the terms "assignment" and "alienation" include -

(ii) 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 the plan benefit payment which is, or may become, payable to the participant or beneficiary.

The entire Michigan State Correctional Facility Reimbursement Act³ is reproduced in the Appendix at 25a. Excerpts of specific sections challenged are printed below:

MCL 800.403(3) provides:

Not more than 90% of the value of the assets of the prisoner may be used for purposes of securing costs and reimbursement under this act.

MCL 800.404 provides (in pertinent part):

(1) The circuit court shall have exclusive jurisdiction over all proceedings under this act. The attorney general may file a complaint in the circuit court for the county from which a prisoner was sentenced, stating that the person is or has been a prisoner in a state correctional facility, that there is good cause to believe that the prisoner has assets, and praying that the assets be used to reimburse the state for the expenses incurred or to

³ MCL 800.401, *et seq.*

be incurred, or both, by the state for the costs of care of the person as a prisoner.

* * *

(5) At the hearing on the complaint and order and before entering any order on behalf of the state against the defendant, the court shall take into consideration any legal obligation of the defendant to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the defendant is providing or has in fact provided support.

* * *

(8) The state may recover the expenses incurred or to be incurred, or both, by the state for the cost of care of the prisoner during the entire period or periods the person is a prisoner in a state correctional facility. The state may commence proceedings under this act until the prisoner has been finally discharged on the sentence and is no longer under the jurisdiction of the department.

Michigan Department of Corrections Directive PD 04.02.105 provides (in pertinent part)⁴:

B. Each prisoner in a CFA institution shall have an institutional account. Funds credited to the account shall be available to the prisoner for personal use only as set forth in this policy. No other medium of exchange (e.g., stamps) shall be used by prisoners to pay for goods or services.

⁴ *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir, 2006), Record 29, Exhibit 2, pp 260-272.

* * *

F. Subject to Paragraphs G, H and J, any other funds received shall be credited to the prisoner's account if in the form of a check issued by a bank with guaranteed funds (e.g., cashier check; certified check) or money order, made payable to the prisoner only. Under no circumstances shall cash be accepted.

* * *

U. Prisoners shall not be permitted to purchase or order goods or services on a credit or cash-on-deliver (i.e., C.O.D.) basis. Prisoners shall not possess accounts at financial institutions or use credit cards.

STATEMENT OF THE CASE

The Court of Appeals' decision voids Michigan's historic and traditional police powers restricting an inmate's access to funds and private bank accounts. The decision judicially engrafts a new element onto the ERISA definition of alienation to prohibit an "involuntary" change of address for receiving benefits and results in the Court granting special privileges to inmate-pensioners by allowing them to maintain a private bank account in violation of Michigan law and State court orders.

The Michigan State Correctional Facility Reimbursement Act⁵ (SCFRA) requires inmates to reimburse the State for their confinement costs from their own "assets" which, by definition, includes private and public pensions.⁶ To enforce reimbursement, the State Treasurer files an *in rem* action against an inmate seeking an order to recover up to 90%⁷ of the asset after allocating funds for the inmate's support obligations.⁸ If the asset is pension benefits, the order directs up to a 90% withdrawal of any pension amount that is deposited into the inmate's account.

In addition to securing reimbursement, the final order also enforces Michigan Department of Corrections security restrictions on inmates. These restrictions require inmates to receive all funds and conduct all financial transactions through their prison account, thereby limiting any potentially illegal or fraudulent activities outside the prison.⁹ Thus, if the asset is a pension benefit, the order directs the inmate to notify the pension plan to send his benefits to the prison address where he is currently housed for an automatic deposit into his prison account. If the inmate refuses to send the address change, the prison

⁵ MCL 800.401 *et seq.* SCFRA is reproduced in the Appendix at 25a.

⁶ MCL 800.401a(a).

⁷ MCL 800.403(3).

⁸ MCL 800.404.

⁹ *Michigan Dep't of Corrections Policy Directive*, PD 04.02.105.

warden is ordered to send the pension plan notice of the inmate's legal address.

This enforcement method was pursued in State court SCFRA actions filed against the four inmates who received benefits under Respondents' Plan. In three cases, the inmates refused to comply with the orders, causing the warden to mail a notice of address change to the Plan. In the fourth case, the inmate obeyed the order and notified the Plan of his prison address.

Respondents, DaimlerChrysler and the DaimlerChrysler Corp–UAW Pension Agreement ("Plan") filed a Complaint in the United States District Court, Eastern District of Michigan, Southern Division seeking declaratory relief as to whether four State court orders, along with four court-ordered Notices of Address Change, were enforceable against the Plan¹⁰ or whether they were preempted by ERISA.¹¹

Respondents argue that ERISA's anti-alienation provision bars assignment or alienation of benefits up until the time they are paid to the pensioner,¹² and exempts the Plan from complying with the Michigan Department of Corrections security restrictions. The Plan contends that the inmate must direct where it sends the benefit payments even if the payment is sent to an address and bank account outside the prison.

Respondents also assert that the security restrictions violate ERISA's general preemption provisions prohibiting State laws from impermissibly "relating to" ERISA-protected plans.¹³ They

¹⁰ The four Michigan State Circuit Courts actions are: *State Treasurer v Alvin Jenkins*, #440746, Wayne Circuit Court Case No. 04-409473-CZ; *State Treasurer v Harold Swanson*, #244541, Macomb Circuit Court Case No. 04-573-CZ; *State Treasurer v Gerald Cotter*, #282313, Macomb Circuit Court Case No. 04-435-CZ; and *State Treasurer v Jessy Mathews*, #318067, Wayne Circuit Court Case No. 04-422565.

¹¹ 29 USC 1001 *et seq.*

¹² 29 USC 1056(d)(1).

¹³ 29 USC 1144(a).

contend that the security restrictions place an impermissible burden on the Plan if the Plan must follow Michigan law and State court orders as to where an inmate can receive funds rather than their alleged Plan terms that require the Plan to follow the pensioner's directions. Respondents are mistaken.

Michigan contends that requiring inmates to receive their pension benefits through their prison account does not violate ERISA's anti-alienation provision. This enforcement method does not meet the U. S. Treasury definition of "assignment" and "alienation" which include:¹⁴

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 the plan benefit payment which is, or may become, payable to the participant or beneficiary.

Under a SCFRA action, a pensioner's benefits are never transferred to a third party until after the funds are deposited into the inmate's prison account. Although the State court order affects where the Plan delivers benefits, it is the prison security restrictions that dictate where to send the funds. Once the inmate-pensioner receives his benefit, at the only place where he may legally receive funds for deposit into his only legal financial account, the benefits are no longer under Plan control.

Michigan further contends that the orders and notices do not violate the general ERISA preemption provision because they do not "relate to" (affect or burden) the Respondents' Plan. Respondents presented little argument and only several short paragraphs from their Plan as evidence to support their claim

¹⁴ 26 CFR 1.401(a)-13(c)(ii).

that the Plan provides the exclusive means for notification of beneficiary address changes, and that these methods do not include a mailing from the warden.

Proceedings below:

The District Court acknowledged Michigan's right to enforce its prison security restrictions against an inmate who voluntarily complies with the order and receives his pension benefits at his prison address.¹⁵ But the Court found that an alienation of benefits occurred when the warden notifies the Plan of the inmate's address. The Court therefore voided that aspect of the State court orders and notices. The District Court further ruled that the orders and notices do not violate ERISA's general provision as they do not "relate to" or burden the Plan in any other impermissible manner.¹⁶ The State appealed the anti-alienation portion of the decision to the Sixth Circuit Court.

The Court of Appeals correctly stated that Treasury regulations interpreting the ERISA anti-alienation provision are entitled to deference under *Chevron*.¹⁷ The Court of Appeals also correctly acknowledged the prevailing Circuit precedent from other jurisdictions recognizing that once a pension plan has relinquished control of pension payments by sending the benefit payment to a beneficiary, attachment of those funds by a creditor does not constitute alienation.¹⁸

But, the Court of Appeals then proceeded to engraft an additional element onto the Treasury definition of "assignment" and "alienation" by erroneously concluding that alienation occurs

¹⁵ *DaimlerChrysler v Cox*, unpublished opinion/order of the United States District Court, dated May 18, 2005 (Docket No. 04-73291). Appendix at 17a.

¹⁶ United States District Court, *DaimlerChrysler v Cox*, May 4, 2005, hearing transcript p 22 is reproduced in the Appendix at 23a.

¹⁷ *DaimlerChrysler*, 447 F3d at 973; citing *Chevron USA, Inc v Nat'l Resources Defense Council*, 467 US 837 (1984). Appendix at 11a.

¹⁸ *DaimlerChrysler*, 447 F3d at 976. Appendix at 16a.

when 1) a pensioner does not voluntarily agree to accept receipt of his benefit check at a particular place, regardless of the fact that he actually does receive it; and 2) because prison restrictions and SCFRA orders limit the inmate's access and control over the account funds, the funds are diverted before the inmate actually receives it.¹⁹

As a result, Michigan prisoners are able to use ERISA as a sword against the State's legitimate powers to control its inmate population and to restrict inmate access to funds and financial accounts outside the prison. Private pension plans are free and even encouraged to assist the inmate in violating those restrictions by sending the inmate's payment to illegal accounts. And, most importantly, the Federal Courts granted Michigan's inmate-pensioners special privileges that allow them to maintain private bank accounts in violation of Michigan law and State court orders.

¹⁹ *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

REASONS FOR GRANTING THE PETITION

I. The Court of Appeals held that an ERISA alienation occurs when a pension plan sends a benefit check to an address that is not voluntarily designated by the inmate-pensioner, even though the check is sent to the inmate for deposit into his only legal account. This decision erroneously re-defines the term "alienation" by engrafting a requirement that the pensioner must voluntarily designate where his benefit payment will be sent and ignores precedent by extending ERISA protection to deposited funds. The Court of Appeals decision: (1) squarely conflicts with the Michigan Supreme Court's decision on this very issue; (2) substitutes its definition of "alienation" in place of that of the U.S. Treasury Department's; and (3) is contrary to decisions of this Court and that of other federal Courts of Appeals. Review by this Court is warranted.

A. The decision below has decided an important federal question in a way that conflicts with a Michigan Supreme Court decision on the same important matter. It judicially engrafts a new requirement onto the U.S. Treasury definition of "alienation" by finding that a "transfer" of ERISA-protected benefits occurs when an inmate-pensioner does not voluntarily designate where his benefit payment will be sent.

The heart of this matter is whether a Pension Plan must comply with the Michigan Department of Corrections Directive on security restrictions that prohibit an inmate from maintaining any non-prison financial accounts, when the inmate directs the Plan to send his benefits elsewhere.

The Court of Appeals only invalidated the directive as it applies to inmate-pensioners who refuse to notify their pension plan of their prison address and bank. In these instances, both of the lower Courts voided the portion of the SCFRA order directing

wardens to make the address change notification and directed the Plan to ignore the State court orders and notices and send or deposit the funds as designated by the inmate to an illegal account. The Court of Appeals dismisses the Michigan Supreme Court's decision in *State Treasurer v Abbott*²⁰ as being unpersuasive. Moreover, the Court of Appeals abandons the U.S. Treasury definition of alienation.

The pertinent elements of "assignment" and "alienation" are established through the definition provided by the U.S. Department of Treasury Regulation in CFR 1.401(a)-13(c)(1)(ii)²¹:

(c) Definition of assignment and alienation (1) In general. For purposes of this section, the terms "assignment" and "alienation" include –

(ii) 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 the plan benefit payment which is, or may become, payable to the participant or beneficiary.

This definition plainly requires 1) a transfer to another (i.e., a person or entity other than the beneficiary himself); 2) of a plan payment (i.e., funds that are "*payable*" not funds that have already been paid by the plan); 3) that is enforceable against the plan. None of these elements is present in this case and nothing

²⁰ *State Treasurer v Abbott*, 468 Mich 143; 660 NW2d 714 (2003); *cert den* 540 US 1112 (2004).

²¹ The definition issued by the U.S. Secretary of the Department of Treasury is the proper definition of "assigned" referred to in 1056(d). *General Motors Corp v Buha*, 623 F2d 455 (6th Cir, 1980); *Guidry v Sheet Metal Workers*, 10 F3d 700, 708 (10th Cir, 1993), *reh en banc*, 39 F3d 1078 (10th Cir, 1994), *cert den* 514 US 1063 (1995).

in this definition requires the voluntary participation of the pensioner to receive the benefit at a particular place.

The SCFRA orders require the prisoner to have his pension payment sent directly to himself, at *his own* address, for deposit into *his own* account. The fact that an inmate-pensioner did not *voluntarily* direct a pension payment to *himself* does not alter the reality that the pensioner receives his benefit. Thus, there is no alienation.

The Court of Appeals acknowledged that the SCFRA orders cause inmates to receive their pension benefits for deposit into their own account.²² And the Court concedes the State's authority to enforce address and banking restrictions on prisoners.²³ The Court's apparent concern arises from the fact that these prison security restrictions require the payments to be deposited into an account controlled by the warden.²⁴ But one's right to receive mail at any address and to hold funds in any financial institution is a right that prisoners have lost as a result of their felonious conduct, resulting in their conviction and incarceration.²⁵

The Court of Appeals ignores the Michigan Supreme Court *Abbott* decision, and uses the realities of an inmate's inability to move freely in society to justify the use of ERISA as a sword against the State and its obligations to protect the public. The

²² The District Court's Amended Declaratory Judgment finds that the orders and notices relating to an inmates' obligation to notify the Plan do not create an assignment. Respondents did not appeal and the Court of Appeals ruled that this issue was not properly before it. *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

²³ *DaimlerChrysler*, 447 F3d at 967. Appendix at 16a.

²⁴ *DaimlerChrysler*, 447 F3d at 975. Appendix at 15a-16a.

²⁵ "We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them. The burden, moreover, is not on the State to prove the validity of prison regulations but on the prisoner to disprove it." (citations omitted) *Overton v Bazzetta*, 539 US 126 (2003).

Court's decision restores to inmates' rights that they forfeited when they went to prison and that are denied to the general prison population. In *Abbott*, the Michigan Supreme Court reviewed similar facts and concluded that the State court SCFRA orders and notices did not violate ERISA anti-alienation provisions. The Michigan Court based its decision on the Treasury Department's definition of "assignment" and "alienation," finding that it "plainly contemplates a transfer of the interest to another person, i.e., a person other than the beneficiary himself."²⁶ The Michigan Court held that an assignment does not occur when a pension plan is merely required to send the pension funds to the prisoner himself, at his current address, where the funds are then deposited directly into the prisoner's own account, because neither the warden nor a third party acquires any interest enforceable against the Plan.²⁷

Although the Court of Appeals considered *Abbott*, the Court found the opinion unpersuasive and irrelevant to the question of alienation because²⁸:

(1) the prisoners did not *want* to receive the payments at their institutional addresses; (2) Michigan law strictly *controls a prisoner's bank account and how the funds may be used*; and (3) the state already effectively owned 90% of the payments even before they were received. The fact that the payments were sent to the prisoner's institutional address is therefore a mere formalism that is not dispositive of whether alienation has occurred in the present case [emphasis added].

This reasoning ignores the entire alienation analysis, especially the element requiring a "transfer to another." The

²⁶ *Abbott*, 468 Mich at 150.

²⁷ *Abbott*, 468 Mich at 159.

²⁸ *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

analysis examines only the result: the State's ability to take advantage of its knowledge of where a benefit check will be deposited based upon its ability to restrict inmate access to financial accounts. This enables the State to reach a prisoner's benefit proceeds, after deposit, in a way that other support creditors cannot, with respect to the non-incarcerated debtor.

But, the "wants" of the prisoner, relative to the restrictions he is under while incarcerated, are not rights guaranteed by ERISA. ERISA does not mandate that all pensioners enjoy the opportunity to divert their monthly benefit to any place of their choosing. What is guaranteed by ERISA is that the benefit is ultimately delivered to the pensioner — to the extent *the pensioner* is able to receive it. The prisoner may *want* to direct his benefits elsewhere, but a pension plan cannot send a pensioner's payments to another, with or without the pensioner's permission. The Plan can only deliver the benefit to the pensioner.

The objective of ERISA's anti-alienation provision is "to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them."²⁹ Enforcement of the SCFRA order and notices has the attendant beneficial effect of furthering those purposes. SCFRA's purpose is to ensure that prisoners take responsibility for at least a portion of their own living expenses after the court allows for the prisoner's moral and legal support obligations.³⁰ The combined effect of these laws under Michigan's enforcement mechanism is that, by virtue of the restrictions placed on the inmate, pension benefits are sent to the inmate and deposited into his own account. The deposited funds, having lost ERISA protection, are now available to pay for the inmate's support while he is in prison. Once he is released from prison and regains the legal ability to maintain bank accounts, the

²⁹ *Guidry v Sheet Metal Workers Nat'l Pension Fund*, 493 US 365, 376 (1990).

³⁰ MCL 800.404(5); *State Treasurer v Schuster*, 456 Mich 408, 413; 572 NW2d 628 (1998).

address and banking restrictions cease to apply and the pensioner's stream of income, to a place of his choosing, is restored. There is no "transfer" of the benefit in the enforcement of these Michigan prison regulations.

On the other hand, if Respondents prevail in their argument and inmates are free to usurp Michigan's laws by directing their Plan to send their benefits to third parties or to an illegal account outside the prison, the effect will be the very "*alienation*" that Respondents argue should be prevented. ERISA will be used to assist the Plan in ordering the prisoner to violate prison restrictions. Further, when fund payments are diverted to third parties it erodes the purpose intended by ERISA protection, since that person has the ability to use the funds for his interests alone.

B. The Court of Appeals' decision conflicts with other Circuit precedent by extending ERISA anti-alienation provisions to protect benefits after an inmate-pensioner receives and deposits the benefits into his prison account.

U. S. Department of Treasury Regulations explicitly spell out the elements for an "assignment" and "alienation" to include a transfer of a "plan benefit payment which is, or may become, payable to the participant or beneficiary."³¹ Any transfer of funds to the State is made from the inmate's prison account *after* the funds are paid by the Plan and deposited into the prisoner's account. Neither the Plan nor its administrators are called upon to transfer the benefits to State control for disbursement to the prisoner.

The Court of Appeals mistakenly concluded that the inmate doesn't "receive" his benefit when it arrives at the prison because he didn't "want" to receive it there and because the State "strictly controls a prisoner's bank account and how the funds may be

³¹ 26 CFR 1.401(a)-13(c)(1)(ii).

used. . . ."³² This finding directly conflicts with the Ninth Circuit's decision in *Wright v Riveland* that permitted an automatic deduction from a prisoner's account of deposited ERISA benefits.³³

Wright involved a Washington statute that provided for an automatic thirty-five percent deduction from a prisoner's account of funds received from an outside source. Twenty percent of that amount was applied to the cost of incarceration. The Washington statute was challenged on a number of grounds, including a claim that the ERISA anti-alienation provision bars deductions of benefits even after distribution by a pension plan. The Ninth Circuit concluded that ERISA's prohibition on "alienation" and "assignment" applies: 1) only to arrangements that generate a right enforceable against the plan; and 2) only to benefits while they are under the control of pension plan managers.³⁴ The Court would not extend ERISA protection to benefits after receipt by the pensioner regardless of the controls in place over prison accounts or the automatic deduction feature that applies to the deposited funds.

The SCFRA orders in this case are similar to the controls and the automatic deduction in *Wright*. In both instances the prison account is encumbered and any deposit is subject to that encumbrance. The Court of Appeals in this case recognized that benefits, once received, are not entitled to ERISA protection.³⁵ The Court also recognized that Michigan could secure the inmate's ERISA benefits for reimbursement if the State located

³² *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

³³ *Wright v Riveland*, 219 F3d 905 (9th Cir, 2000).

³⁴ *Wright v Riveland*, 219 F3d at 921.

³⁵ *DaimlerChrysler*, 447 F3d at 974; citing *Cent. States, SE & SW Areas Pension Fund v Howell*, 227 F3d 672, 679 (6th Cir, 2000); *Robbins v DeBuono*, 218 F3d 197, 203 (2nd Cir, 2000); *Guidry v Sheet Metal Workers Nat'l Pension Fund*, 39 F3d 1078, 1082 (10th Cir, 1994)(en banc) *cert den* 514 US 1063 (1995). Appendix at 13a.

and then garnished the inmate's illegal non-prison account.³⁶ But, the conflict between the two decisions arises in that the Ninth Circuit allowed benefits to be deposited into an encumbered account while the Court of Appeals below found that an alienation of pension benefits occurred.

The Court of Appeals below was also mistaken because the benefit reaches the beneficiary at the only place he can physically and legally receive it, and it is deposited, by operation of Michigan's Department of Corrections Directives, into the only account that he is able to legally hold under Michigan law. Once the Plan has disbursed the benefit to the beneficiary, to the extent possible, the Plan has fulfilled its ERISA obligations.³⁷

ERISA case law demonstrates that Congress had no intention of continuing ERISA protection of pension funds beyond their payout. If this Court were to decide that these benefits were exempt merely because of the controls on the prison accounts, then it would also need to determine (without any guidance from ERISA) when the protection ends, how to trace exempt benefit funds that are co-mingled with non-exempt funds, and how much control is too much control over an account to cause deposited non-protected benefits to become deposited protected benefits. To extend ERISA protections would give effect to ERISA far beyond that which would naturally follow from the ordinary meaning of the words used.³⁸

The question has even more significance in the face of Michigan laws that confine and control a prison population that

³⁶ *DaimlerChrysler*, 447 F3d at 976. Appendix at 16a.

³⁷ The District Court agreed. It held that the prisoner can be compelled to notify the Plan of his prison address and that, upon that notification, the benefit funds deposited are subject to garnishment by the warden pursuant to the SCFRA order. *DaimlerChrysler v Cox*, unpublished opinion/order of the United States District Court, dated May 18, 2005 (Docket No. 04-73219). Appendix at 17a.

³⁸ *Cf. In re Prestien*, 427 F Supp 1003, 1006 (SD Fla, 1977) citing *Hathorn v Robinson*, 96 Me 33 (1901).

has forfeited certain rights as a result of their incarceration. ERISA should not be construed to permit an inmate to live at the expense of taxpayers who must pay for his food, clothing, and shelter while he contemporaneously accumulates pension wealth without the restrictions placed on fellow prisoners. After release from prison, the inmate's pension proceeds will no longer be encumbered for his costs of care because he can direct the Plan to send his payments to a non-prison address or account. An inmate should not be able to accumulate his pension benefits while he literally eats on the public dole.

C. The Court of Appeals' decision judicially engrafts a new voluntary requirement onto the Treasury Department definition of **"alienation" by finding that benefits transfer to a third party when a pensioner does not voluntarily designate where he will receive his benefits.**

Respondents conceded and the District Court agreed that when the *inmate* notifies the Plan to send his benefits to his prison address for deposit into his prison account there is no assignment, even though the inmate makes that notice pursuant to the State court order. This aspect of the District Court's Judgment was not appealed and thus, the Sixth Circuit did not disturb the District Court's ruling. The result is that inmates who obeyed the SCFRA orders and sent notice to the Plan voluntarily complied, so there was no ERISA violation. But since these inmates submitted notice pursuant to State court orders, it cannot be said that their compliance was voluntary.

In fact, there is no distinction between the receipt of benefits at the prison when the notice of address change is submitted by an inmate-pensioner pursuant to court order, and receipt of benefits at the prison when the notice is made by a warden pursuant to court order. The important question is whether the inmate receives the benefits.

By asserting a distinction, the Court of Appeals engrafts a new requirement onto the definition of assignment: Delivery of a benefit *to a pensioner's account* is irrelevant if there is a reimbursement order in place over that account at the time of delivery unless the pensioner voluntarily deposited the funds into that account or voluntarily complied with a court order requiring him to have the benefit delivered to that account.³⁹

Although the Treasury's definition of "assignment" and "alienation" bars both voluntary (to protect the pensioner from his own foolishness and profligacy) and involuntary assignments (from the claims of creditors and other third parties such as heirs or legatees),⁴⁰ the term "voluntary" does not apply to ministerial tasks such as where to send benefits; it applies to third party transfers. In this case the State is not a creditor⁴¹ to whom a right or interest enforceable against the plan was transferred, so this Court need not address any broad debtor-creditor relationships.

This Court's holding will apply only in the very narrow circumstances occurring when the inmate-pensioner is required by security restrictions to have only one legal bank account. These restrictions exist and are enforceable against the inmate, for all of the funds belonging to the inmate, regardless of SCFRA.

The Court of Appeals' decision directly attacks the State's right to control its prison population. As a result of their convictions, inmates have lost the right of "voluntary" decision-making in matters concerning, among other things, their place of residence, ability to have access to funds, and choice of financial

³⁹ *DaimlerChrysler*, 447 F3d at 976. Appendix at 15a-16a.

⁴⁰ *Boggs v Boggs*, 89 F3d 1169 (5th Cir, 1996).

⁴¹ "[T]he *state* when considering pension payments according to the reimbursement act, is not a '*creditor*,' nor is the relationship between a prisoner and the state a typical debtor-creditor relationship." *State Treasurer v Schuster*, 456 Mich at 419 (emphasis added) (finding SCFRA controls over the non-alienation language of Michigan's Public School Employees Retirement Act); *State Treasurer v Gardner*, 459 Mich 1; 577 NW2d 73 (1998) (finding SCFRA takes priority over the Federal Consumer Credit Protection Act).

institution. The argument that the State must accommodate these disadvantages by restoring inmate-pensioner privileges that it revoked as a result of incarceration, or by extending the reach of ERISA protection to funds in prison accounts is not supported by ERISA language or the purpose of the statute.

Neither ERISA nor the Plan provides guidance on where an inmate or a participant may live, receive funds, or do his banking – nor should they. But the State laws do govern these things in the unique and limited situation in which the pensioner is an inmate. In order to provide security over that inmate, none of these things has been left to the inmate's choice.

The State does not voluntarily agree to provide an inmate with room and board any more than the typical inmate voluntarily seeks residence in a correctional facility. Both occur only upon conviction and order of a State court rendering a felony sentence for a term of years. It is this unique, if unwilling, relationship between a prisoner and the State that permits control over the inmate's personal account and the funds contained in it.

The fact that inmates have limited rights and abilities is a reality. It is identical to the reality that a mentally incompetent or handicapped person lacks the legal capacity to control his affairs when a State court issues a guardianship order. It is identical to the reality under State law that a person holding a power of attorney maintains the legal capacity to act as another person's attorney-in-fact. It is identical to the State law death certificate certifying the reality that a participant is deceased and benefits should now be paid to the named beneficiary. The Plan should not be permitted to attack the State laws and decisions that serve as the basis for these realities, and in fact they have no fiduciary responsibility to go behind guardianship orders, or powers of attorney, or death certificates, and the State is aware of no reported case where a Plan has attempted to do so. The laws that make an inmate incapable of conducting financial transactions at a place other than the prison should be recognized by the Plan in

the same manner that it recognizes the State laws which allow the creation of a power of attorney or guardianship order.

Scenarios limiting a pensioner's capacity to make voluntary choices about his financial affairs are unique. In the case of inmates, it is based upon their relationship to the State while they are physically incarcerated. It is this unique relationship that explains why a decision permitting the Michigan taxpayers to recover a portion of the funds they spend on an inmate's care need not have a broader effect on the vulnerability of ERISA-protected payments. Federal case law is clear that courts may not create exceptions to ERISA's prohibition on assignment and alienation. But where no alienation or assignment occurs, as in the unique circumstances here, the statutory prohibition does not apply. There is no need to carve out an exception to a statutory prohibition that does not apply.

D. The Court of Appeals erred by holding SCFRA orders and notices are preempted by ERISA's anti-alienation provision and not enforceable against the Plan.

The Court of Appeals below incorrectly concluded that the State court orders requiring the *warden* to send a notice, and the *warden notice* itself, created an assignment because the transfer arrangement was enforceable against the plan. For the reasons stated elsewhere in this Petition, since the SCFRA orders did not *transfer the inmate's benefits* to anyone but himself, there is no *transfer arrangement* enforceable against the Plan that is preempted by ERISA anti-alienation provisions.

For an assignment to occur, a transfer must be *enforceable against the Plan*. An order directing either a prison *warden* or the *inmate* to send notice of an inmate's address to the Plan is not a transfer, nor is it "enforceable against the plan." The Plan is not a party to the SCFRA action, the court order does not force the Plan to control the inmate's benefits on behalf of the State and a

constructive trust is never placed on the benefits while the benefits are held by the Plan. Therefore, there is no assignment.

But even though the orders and notices cannot be enforced against the Plan, they do have an impact insofar as the Plan is expected to acknowledge the address change, whether that notice is received from the prisoner or from the warden, or whether the Plan is generally aware of the restrictions on Michigan inmate's and that a particular beneficiary is incarcerated. This glancing impact – that cannot be construed as an assignment – is what is at the heart of this case. Michigan Department of Corrections' security restrictions and SCFRA orders are not preempted by ERISA's anti-alienation provision.⁴²

II. This Court needs to provide guidance to the important recurring question whether Michigan laws restricting inmates to only a prison bank account impermissibly "relate to" ERISA-protected plans, or whether they impose a permissible burden and fall outside the scope of 29 USC 1144(a) preemption.

A. Where Michigan enforces its Department of Corrections' security restrictions limiting inmates to only a prison bank account through SCFRA orders requiring either the inmate or, upon inmate refusal, the warden to notify the inmate's pension plan to change the inmate-pensioner's address to the prison, the orders and notices do not "relate to" or burden Respondents' Plan.

The District Court below correctly decided that the orders and notices present no administrative burden on the Plan and were not barred under ERISA's general preemption provision.⁴³ Respondents did not appeal this ruling. The Court of Appeals

⁴² *DaimlerChrysler*, 447 F3d at 968-9. Appendix at 2a-3a.

⁴³ United States District Court, *DaimlerChrysler v Cox*, May 4, 2005, Hearing Transcript reproduced in the Appendix at 23a.

declined to address the general preemption provision after finding that the orders and notices were preempted by ERISA's anti-alienation provision.⁴⁴

Throughout this case, Respondents' primary reason for asserting ERISA preemption focused on their alienation argument, with one minor exception. Respondents asserted, without any evidentiary support other than including certain provisions of their Plan, that the State court orders and notices burden them in the administration of their Plan, which they asserted permits only a Participant (or his designated beneficiary) to change the address where Plan benefits may be sent.

It is Michigan's position that enforcement of security restrictions on inmates, whether directed at the inmate by court order or through some means of notification to the Plan, not only does not violate ERISA's anti-alienation provisions, as demonstrated in the argument above, but also is not invalidated by ERISA's pre-emption provision because it does not conflict with any Plan address terms.

To show a conflict between Plan terms and the State court orders and notices Respondents relied on (1) Plan terms ; and (2) the Plan's ERISA-required anti-alienation provision that benefits will not "devolve upon anyone else," as evidence that address changes must be voluntary. The terms are⁴⁵:

An employee or former employee desiring to apply for a pension . . . must make an application in writing The applicant must furnish the information the Board of Administration shall request, including, without limiting the generality of the above . . . the names and addresses of his spouse . . . and the names and addresses of other persons, if

⁴⁴ *DaimlerChrysler*, 447 F3d at 976. Appendix at 16a.

⁴⁵ *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir, 2006), Record 22, pp 107, 108, 119, 306.

any, to communicate with or about him, and other pertinent facts, together with documentary evidence in support of the same

* * *

A pension . . . shall become payable with the employee's consent as of the first day of the month following the date on which an employee in his application for pension elects to retire or following the last day he works, whichever is later, and shall be payable in the month following the date when his application is approved

* * *

If Your Address changes

You should notify Benefit Express at 1-800-409-3300 regarding any address change

* * *

Although it is preferred that participants not share their Passwords (PINs), confidential information will be provided and transactions performed for any caller – even callers who state that they are not the participant – who can authenticate a participant's account with name, Social Security number and Password (PIN).

Michigan contends the Plan terms are insufficient to establish a conflict. The cited terms do not specify the only acceptable methods for determining or changing a pensioner's address, or expressly require that pensioners can only make voluntary address changes. Delivery of a pensioner's benefit checks, either to a pensioner's address or account, is anticipated to change and possibly to change frequently from the pensioner's initial choice. In fact, the Plan itself recognizes that situations arise that may

require an involuntary address change, "if you . . . are unable to care for your affairs, *any payments due may be paid to the person responsible for your care* (such as a relative or a court-appointed guardian)." ⁴⁶ The decisions as to where to send benefits occur well after the complex plan processes occurred and are ministerial decisions rather than core administrative matters.

Respondents' Pension Plan, like all pension plans, covers complex administrative matters. The purpose of ERISA's general preemption clause is to allow plans to operate with uniformity when coordinating complex administrative activities. ⁴⁷ The general preemption section is driven by an understanding that it would be impossible for employers to administer such plans on a national level if states were able to impose their individual regulatory requirements on plan administration. ⁴⁸ Permitting such interference would require a plan to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; and to comply with certain fiduciary standards in some states but not in others. ⁴⁹

This Court has described activities such as determining the eligibility of claimants, calculating benefit levels, monitoring the availability of funds for benefit payments, and maintaining appropriate records in order to comply with reporting requirements as protected administrative functions. ⁵⁰

The Respondents' Plan covers similar complex administrative matters. For example, the timing of pension payments, election requirements for commencing retirement benefits, supplemental allowances, methods for calculating when benefits become payable, and permissible deductions from the pension payment

⁴⁶ *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir, 2006), Record 29, p 315.

⁴⁷ *Fort Halifax Packing Co v Coyne*, 482 US 1, 9 (1990).

⁴⁸ *Fort Halifax*, 482 US at 9.

⁴⁹ *Fort Halifax*, 482 US at 9.

⁵⁰ *Fort Halifax*, 482 US at 10.

amount for insurance and federal income tax withholding, etc. But the provisions quoted by Respondents' Plan, to support their preemption assertion, are not "complex protected administrative plan functions."

The Plan does not enumerate the exclusive methods for changing where benefits are sent. All of the difficult and complex determinations remain under Plan control, including preparing the check, and scheduling it for delivery. Plan recognition of the Michigan security restrictions on inmates, based upon independent knowledge that one of its participants is incarcerated, or because it has been served with a SCFRA notice by the prisoner or the warden in conjunction with a court order against the inmate enforcing these restrictions, presents no greater prospect for conflict in administering the Plan than does the processing of individual pensioner's non-SCFRA prompted address changes. The only matter affected by the orders and notices is merely the place of delivery which the Pensioner can change at any time to any place.

But, the Plan does recognizes and accept address changes from other non-pensioner sources such as a guardianship, conservatorship, power of attorney or even a State certificate of death.⁵¹ This case presents a similar unique situation where, the warden stands in the shoes of the inmate-pensioner, for he only sends the notice on behalf of a recalcitrant prisoner who disobeys a court order.

The Michigan laws at issue in this case only affect where the Plan sends an inmate-pensioner's benefits after receiving notice that the pensioner is incarcerated. The effect is very narrow, and applies in very limited circumstances. This security restriction does not conflict with the Plan administration and this Court should be reluctant to suspend a law that comes as a result of the

⁵¹ *DaimlerChrysler v Cox*, 447 F3d 967 (6th Cir 2006), R29, pp 252, 304, 313, 315.

State's traditional and historic police powers.⁵² "If a State creates no prospect of conflict with a federal statute, there is no warrant for disabling it from attempting to address uniquely local social and economic problems."⁵³

The security restrictions are only one example of many laws that an inmate is subject to once he is confined in prison. Michigan laws do not assign or alienate the inmate's benefit and they apply only after all matters of plan administration are accomplished. At the same time, Michigan's laws have the attendant effect of guaranteeing that the benefit reaches the pensioner and is deposited in his account, forestalling any alienation. ERISA does not preempt enforcement of these laws against the plan when such enforcement has no effect upon the Plan administration.

Because the security restrictions do not conflict with or preclude Plan administration, there is no preemption.

B. This Court has determined that even in cases where the State laws "relate to" ERISA, preemption should not occur if the State law has only a tenuous, remote, or peripheral connection with the covered plans.

ERISA's preemptive scope is not all-encompassing or unlimited⁵⁴ and it does not invalidate State laws whose effect on pension plans is merely tangential.⁵⁵ The plans handle numerous transactions and Congress never meant for a fully insulated legal world⁵⁶ that excludes plans from areas of traditional state regulation unless the law impedes ERISA's purpose and

⁵² *CA Div of Labor v Dillingham Construction*, 519 US 316, 325 (1997).

⁵³ *Fort Halifax*, 482 US at 19.

⁵⁴ *Cf. Egelhoff v Egelhoff*, 532 US 141, 146 (2001).

⁵⁵ *Shaw v Delta Air Lines, Inc*, 463 US 85, 100 n21 (1983).

⁵⁶ *Rebaldo v Cuomo*, 749 F2d 133, 138 (2nd Cir, 1984).

objectives.⁵⁷ This Court recognizes that ERISA "preemption does not occur if the state law has only a tenuous, remote, or peripheral connection with covered plans."⁵⁸

The key for determining whether a State law has a forbidden connection to an ERISA covered plan is to test: 1) whether the law frustrates the objectives of ERISA; and 2) the nature of the effect of the state law on ERISA plans.⁵⁹ In this case, the security restrictions: a) exercise a traditional State authority⁶⁰ to control its prison population and safeguard the public; b) they are neutral and do not affect the relations among the principal ERISA entities but merely affect the inmate in his prison status without regard for his status as a pensioner;⁶¹ c) they do not restrict or dictate the choices of ERISA plans with regard to their benefits, structure, reporting and administration;⁶² d) they do not impair the plan's ability to function simultaneously in a number of States;⁶³ and e) they do not force the plan to follow a choice of rules in an area of a core ERISA concern⁶⁴ because the Plan need only send the pension benefits to the inmate-pensioner at the inmate's address for deposit into the inmates only legal account.

Michigan's security restrictions and its reimbursement laws regulate areas unrelated to ERISA's purpose or objectives and their affect on the Plan is too tenuous and remote to mandate preemption. The Plan need only "recognize" that under Michigan law an inmate is restricted to receiving funds at the prison and negotiating all financial transactions through his one prison bank

⁵⁷ *Assoc Builders v Perry*, 115 F 3d 386, 392 (6th Cir, 1997).

⁵⁸ *NY Conf Blue Cross & Blue Shield Plans v Travelers Ins*, 514 US 645, 661 (1995).

⁵⁹ *Egelhoff*, 532 US at 147 citing *CA Div of Labor v Dillingham Construction*, 519 US at 325.

⁶⁰ *Firestone v Neusser*, 810 F2d 550, 555 (6th Cir, 1987).

⁶¹ *Firestone v Neusser*, 810 F2d at 555.

⁶² *Keystone v Foley*, 37 F3d 945, 955 (3rd Cir, 1994).

⁶³ *Keystone v Foley*, 37 F3d at 955.

⁶⁴ *Egelhoff*, 532 US at 147.

account. Notice of the pensioner's confinement is transmitted to the Plan by either the inmate or by the warden on behalf of the inmate. The warden's notice is sent as result of a State court order that entered after the inmate was provided with notice and a hearing. During this hearing, the inmate had an opportunity to raise any defense to the SCFRA action, including the issue of re-directing his benefits to the prison. The SCFRA order in essence permits the warden to stand in the inmate's shoes when changing the pensioner's address for purposes of receiving pension payments.

This address change is no more cumbersome upon a plan administrator than a request to change a pensioner's mailing address to his vacation home during summer months and then back again. To interfere with the State's legitimate use of its police powers based upon this de minimus effect misses the entire objective and purpose of the ERISA preemption provisions. The result of preemption could produce an absurd result especially in light of the fact that enforcement of the Michigan laws has the attendant results of furthering the anti-alienation provisions of ERISA by ensuring that benefits are visited upon the pensioner, and advancing ERISA's support objectives by seeing the benefit used for the inmate-participant's actual support.

CONCLUSION AND RELIEF SOUGHT

Whether pension recipients voluntarily cause their pension payments to be sent to themselves, or are required to do so as the result of a court order enforcing Michigan laws respecting prison inmates, the result is not an "assignment" or "alienation" since the pensioner in all such instances continues to receive those payments, in full.

ERISA does not regulate whether pension benefit payments received by an inmate at his prison address may be automatically deposited into his institutional prison account as required by regulations already in place to control Michigan's prison population. A pension benefit received and deposited into an

inmate's account is the same as money derived from other sources.

Michigan's security restrictions on inmates and the mechanism for enforcing them and the SCFRA in this case - the orders and notices - are not pre-empted by ERISA because there is no impact on the Respondents' Plan. The Plan has no uniform rules or formula for determining (or restricting) the place to which payments may be mailed or deposited, except to prohibit alienation. But no alienation occurs in this case. Recognition of State laws governing an inmate-participant's address or place of deposit occur in the normal course of administration, so that a change made pursuant to Michigan's SCFRA enforcement mechanism has no (or at most a de-minimus) impact on plan administration.

There is no alienation of benefits under Michigan's SCFRA enforcement procedures. Nor does ERISA otherwise preempt the Corrections Department restrictions or SCFRA.

Therefore, this Court should reverse the Court of Appeals. The Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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