Nos. 26-360, 26-387

In the Supreme Court of the United States

FEDEX CORPORATION, ET AL., PETITIONERS,

v.

ROBERT A. WATT, ET AL., RESPONDENTS.

BAKERY, CONFECTIONARY, TOBACCO WORKERS AND GRAIN MILLERS PENSION COMMITTEE, ET AL., PETITIONERS,

v.

THOMAS N. REICHERT, ET AL., RESPONDENTS.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN BENEFITS COUNCIL, AND COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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Other Authorities

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TABLE OF AUTHORITIES—continued

Page(s)

Cong. Rsch. Serv., IF12007, *A Visual Depiction of the Shift from Defined Benefit (DB) to Defined Contribution (DC) Pension Plans in the Private Sector* (Dec. 27, 2021) 20

Jonas Schöley et al., *Life Expectancy Changes Since COVID-19* NATURE HUMAN BEHAV. 1649 (2022) 11

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BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN BENEFITS COUNCIL, AND COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business organization.[1] As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. Many of its members maintain, administer, or provide services to employee benefit plans governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.* An important function of the Chamber is to represent the interests of its members before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Benefits Council (Council) is a national non-profit organization dedicated to protecting and fostering privately sponsored employee benefit plans. Collectively, the Council's more than 400 members either directly sponsor or provide services to retirement plans and health and welfare plans covering

[1] Pursuant to Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties received notice of *amici curiae*'s intent to file this brief at least 10 days before its due date.

virtually all Americans who participate in employer-sponsored programs. The Council frequently participates as *amicus curiae* in cases, such as this one, that have the potential for far-reaching effects on employee benefit plan administration and liability.

The Committee on Investment of Employee Benefit Assets (CIEBA) is an organization of 121 chief investment officer fiduciaries that oversee more than $2.6 trillion in retirement plan assets on behalf of approximately 17 million participants. As fiduciaries overseeing a substantial portion of U.S. retirement plan assets, CIEBA and its members have a strong interest in the effective and predictable administration of ERISA. CIEBA frequently appears as *amicus curiae* in cases involving significant ERISA issues affecting plan fiduciaries, sponsors, and participants.

SUMMARY OF ARGUMENT

When a married worker retires under a traditional pension plan, ERISA requires the plan to offer a pension that keeps paying the worker's spouse after the worker dies. Because that pension will likely pay out longer than one measured by only the worker's life, each monthly check is smaller than under such a pension. To guide plans in calculating those smaller payments, Congress required a "joint and survivor" annuity to be the "actuarial equivalent" of a "single annuity for the life of the participant." 29 U.S.C. 1055(d)(1)(B), (2)(A)(ii). Accomplishing that actuarial equivalence, in turn, requires assumptions about how long people will live and what interest rate to use in discounting future payments to present value. But Congress did not dictate or constrain those assumptions, instead leaving the matter to the judgment of plan sponsors and administrators.

The assumptions, however, must be fully disclosed. For decades, the Internal Revenue Code has required any plan seeking favorable tax treatment to write those assumptions into its plan documents. 26 U.S.C. 401(a)(25). ERISA, in turn, requires fiduciaries to follow the plan's terms, 29 U.S.C. 1104(a)(1)(D), and to give participants a copy of the plan on request, 29 U.S.C. 1024(b)(4). Before benefits begin, the plan also must explain in writing how the joint-and-survivor annuity works and what happens if the worker waives it. 29 U.S.C. 1055(c)(3)(A). Participants can thus know exactly how the plan will calculate their benefits. And a worker who dislikes the plan's assumptions is not stuck with them: with the spouse's written consent, the worker may decline the joint-and-survivor annuity and take a single-life annuity instead. 29 U.S.C. 1055(c)(1)(A)(i), (c)(2)(A)(i).

Over a dissent, the Sixth Circuit upended this arrangement. It held that "actuarial equivalent" does more than describe a calculation: the phrase also requires every plan to use "reasonable" assumptions, leaving federal courts to decide after the fact whether a plan's written assumptions measure up. Pet. App. 20a-21a.[2] Section 1055(d), the court said, "prohibits the use of unreasonably outdated mortality tables or other unreasonable, inappropriate actuarial assumptions." *Id.* at 19a. The court so held while acknowledging that Congress "found it necessary to impose a reasonableness requirement in other ERISA provisions, but not § 1055(d)." *Id.* at 26a. And it deemed reasonableness a "question of fact that cannot be conclusively determined on a motion to dismiss." *Id.* at 21a n.7.

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[2] Citations to "Pet. App." refer to the appendix to the petition in *FedEx Corporation* v. *Watt*, No. 26-360.

That decision is wrong, and it matters enormously to employers that sponsor traditional pension plans. Those employers wrote actuarial assumptions into their plans because the Internal Revenue Code required it, and they paid benefits accordingly. Under the Sixth Circuit's rule, employer compliance with the plan terms is no defense: employers now face costly litigation and liability reaching back years for following long-accepted understandings of the actuarial equivalence requirement. The Court should grant review for several reasons.

First, the Sixth Circuit read into ERISA a requirement Congress chose to omit. "Actuarial equivalen[ce]" describes a calculation; two payment streams are actuarially equivalent "when their present values are equal under a given set of actuarial assumptions." *Stephens* v. *U.S. Airways Grp., Inc.*, 644 F.3d 437, 440 (D.C. Cir. 2011). The phrase says nothing about which assumptions to use, and that silence is telling. When Congress wanted to regulate the assumptions themselves, it said so. It required "reasonable" actuarial assumptions for plan funding, 29 U.S.C. 1083(h)(1)(A), 1084(c)(3)(A), and for withdrawal liability, 29 U.S.C. 1393(a)(1). And in the very section at issue, it set a floor for lump-sum payouts using a statutorily specified mortality table and interest rate. 29 U.S.C. 1055(g)(3). Congress did neither in Section 1055(d). This Court does not "usually read into statutes words that aren't there," especially when Congress used the missing term elsewhere. *Romag Fasteners, Inc.* v. *Fossil, Inc.*, 590 U.S. 212, 215 (2020).

Second, the decision strips away the predictability and flexibility ERISA offers employers in exchange for voluntarily providing pensions. ERISA "induc[es] employers to offer benefits by assuring a predictable set

of liabilities." *Conkright* v. *Frommert*, 559 U.S. 506, 517 (2010) (citation omitted). Under the Sixth Circuit's rule, an employer that follows its written assumptions to the letter can still be sued by any participant who thinks them outdated. Because "reasonableness is a range, not a precise prescription," Pet. App. 20a, no plan sponsor can know which assumptions are acceptable—and the answer will turn on which court hears the case, creating the "patchwork of different interpretations of a plan" this Court has sought to avoid. *Conkright*, 559 U.S. at 517. The rule also overrides choices ERISA leaves to plan sponsors, who "control the level of benefits." *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511-512 (1981). Actuarial assumptions are one piece of an overall benefit package, which can be collectively bargained. The decision below hands those choices to whichever judge hears the case.

Third, the resulting uncertainty is expensive. Administrators must continually reassess their assumptions and pay actuaries and lawyers to defend them, because an assumption reasonable today might support a lawsuit tomorrow. Nor can plans simply swap in new assumptions: ERISA's anti-cutback rule bars amendments that reduce accrued benefits, 29 U.S.C. 1054(g), so a plan may have to run old and new assumptions side by side, participant by participant. And because reasonableness supposedly cannot be resolved on a motion to dismiss, nearly every plan becomes a class-action target facing years of fact and expert discovery—a recipe for *in terrorem* settlements, which have reached nine figures in actuarial-equivalence cases. Worse, the liability could be retroactive: respondents seek additional payments reaching back to 2017, under a standard no court had adopted at the time.

Fourth, a reasonableness rule will hurt many of the retirees it purportedly protects. No set of actuarial assumptions is best for everyone; a new mortality table or interest rate would raise some participants' benefits and lower others', depending on their ages, their spouses' ages, when they retire, employer incentives for early or late retirement, and the form of benefit they elect. These suits thus may pit participant against participant—a conflict that has led courts to deny class certification. Meanwhile, added compliance and litigation costs give employers, especially small and mid-sized ones, another reason to freeze or abandon plans that are already in long-term decline. Congress designed ERISA to prevent administrative costs and litigation expenses from "unduly discourag[ing] employers from offering [ERISA] plans in the first place." *Conkright*, 559 U.S. at 517 (citation omitted).

Fifth, whether and how to regulate the assumptions behind joint-and-survivor annuities is a policy question for Congress. Congress has legislated on actuarial assumptions repeatedly, in specific contexts with specific rules, but never for joint-and-survivor annuities, and this Court has been "especially 'reluctant'" to expand ERISA beyond its text. *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 209 (2002). A reasonableness requirement raises hard questions: Reasonable by what measure and for what population, and for what time period? What about the anti-cutback rule and benefits already paid? Congress can hold hearings, consult actuaries and agencies, and set a uniform, prospective rule. Courts decide one case at a time, after the fact, on a record the litigants shape. That is why "the place for reconciling competing and incommensurable policy goals like these is before policymakers." *Romag*, 590 U.S. at 219.

Sixth, the question presented here warrants review now. District courts are in disarray. The question is purely legal and outcome-determinative, arising on motions to dismiss with no factual disputes, and it has been fully ventilated—in a majority opinion and forceful dissent below, see Pet. App. 30a-52a (Nalbandian, J., dissenting), and in the Eleventh Circuit's recent decision in *Drummond* v. *Southern Co. Servs., Inc.*, 177 F.4th 1076 (11th Cir. 2026), *petition for cert. pending*, No. 26-443 (filed Sep. 29, 2026). And the stakes are enormous—the rule announced below threatens essentially every defined benefit plan in the country, which collectively hold nearly $3 trillion in assets.

The Court should thus grant the petitions in Nos. 26-360 and 26-387 and hold the petition in No. 26-443 pending their disposition.

ARGUMENT

I. The Sixth Circuit Rewrote A Statute That Says Nothing About "Reasonableness."

A traditional "defined benefit" pension promises a fixed monthly payment for life. The baseline form of that payment is usually a "single life annuity": a monthly check to the retiree until he dies. ERISA requires plans to give married participants another option—indeed, the default option—called a "qualified joint and survivor annuity." 29 U.S.C. 1055(a)(1), (d). That annuity pays the retiree a smaller monthly amount for life and then pays the surviving spouse between 50% and 100% of that amount for the rest of the spouse's life. 29 U.S.C. 1055(d)(1)(A). Because payments over two lifetimes are likely to last longer than payments over one, each check is smaller than would be issued under a single-life annuity. Pet. App. 4a.

How much smaller? Section 1055(d) answers that question with a single phrase: the joint-and-survivor annuity must be "the actuarial equivalent of a single annuity for the life of the participant." 29 U.S.C. 1055(d)(1)(B).[3] To make that conversion, an actuary needs assumptions about two things: how long the retiree and spouse are likely to live, and what a dollar paid in the future is worth today. Pet. App. 8a.

Petitioners' plans did exactly that. Each plan specifies the mortality tables and interest rates it uses to make the conversion. Pet. App. 8a-10a. Respondents do not allege that the plans departed from those written terms. They allege instead that the mortality tables are outdated. *Id.* at 9a, 11a. The Sixth Circuit held that this allegation states a claim because Section 1055(d) supposedly forbids "unreasonable, inappropriate actuarial assumptions." *Id.* at 19a. If that holding stands, any plan that follows the assumptions written into it can face the same claim. As petitioners explain, the holding cannot be squared with the statute's text, structure, or design. See 26-360 Pet. 11-21; 26-387 Pet. 25-32. "ERISA * * * does not impose a substantive standard beyond actuarial equivalence." *Landel* v. *Olin Corp.*, 2026 WL 785044, at *5 (E.D. Mo. Mar. 20, 2026), *appeal filed*, No. 26-1729 (8th Cir.).

Notably, the federal government itself relies on a decades-old mortality table and fixed interest rate in

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[3] ERISA also requires plans to allow a participant, with spousal consent, to waive the qualified joint-and-survivor annuity and elect a "qualified optional survivor annuity" instead. 29 U.S.C. 1055(c)(1)(A)(ii), (d)(2). That annuity, too, must be "the actuarial equivalent of a single annuity for the life of the participant." 29 U.S.C. 1055(d)(2)(A)(ii). Because Congress used identical language in both provisions, the analysis in this brief applies equally to qualified optional survivor annuities.

administering pension plans. When a participant in an underfunded plan taken over by the Pension Benefit Guaranty Corporation (PBGC) elects a distribution form other than the plan's default form, the agency converts the plan's default benefit using the 1983 Group Annuity Mortality Table and a six-percent interest rate. 29 C.F.R. § 4022.8(c)(7). No provision is made for "reasonableness" adjustments. The decision below thus calls into question the PBGC's own benefit calculations, so the Court should at least call for the views of the Solicitor General. See 26-387 Pet. 33 n.9.

II. The Decision Below Upends ERISA's Promise Of Predictability And Flexibility.

The decision below also damages the structure Congress built. ERISA does not require any employer to offer a pension plan. See, *e.g.*, *Lockheed Corp.* v. *Spink*, 517 U.S. 882, 887 (1996). Congress instead made offering one attractive, chiefly by giving employers two things: predictable liabilities and flexibility in plan design. *Conkright*, 559 U.S. at 517; *Alessi*, 451 U.S. at 511-512. Those are the terms on which employers decide whether a pension promise is worth making. The Sixth Circuit's decision takes away both. As Judge Nalbandian warned, ERISA "represents a delicate balancing of competing interests hashed out by the people's democratically elected representatives," and "we disturb Congress's judgment at our own peril." Pet. App. 50a (Nalbandian, J., dissenting).

A. A Reasonableness Requirement Makes Pension Liabilities Unpredictable.

ERISA seeks to "induc[e] employers to offer benefits" by "assuring a predictable set of liabilities." *Conkright*, 559 U.S. at 517 (citation omitted).

Following a plan's written assumptions delivers exactly that. See *Kennedy* v. *Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 300-301 (2009). Plan sponsors can calculate what they owe and fund it. Participants can read the plan, see how their benefit will be converted, and plan their retirements accordingly. See *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 83 (1995) (ERISA "is built around reliance on the face of written plan documents").

The Sixth Circuit's rule takes that certainty away. Under it, a plan's written assumptions are lawful only if a court later finds them "reasonable," and "reasonableness is a range, not a precise prescription." Pet. App. 20a. The result, as Judge Nalbandian put it, is to "inject a fuzzy reasonableness requirement into upright math." *Id.* at 36a (Nalbandian, J., dissenting). To comply, a plan sponsor would need to know which assumptions fall within the range, and how often it must revisit them. The decision below answers neither question, and neither has a stable answer.

Start with which assumptions to use. Life expectancy differs by occupation, geography, health history, lifestyle, sex, and other factors. Anne Case & Angus Deaton, *Mortality and Morbidity in the 21st Century*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2017, at 397, 402-18 (Case & Deaton). There is thus no single correct mortality table; actuaries select one based on a judgment about which population a plan's retirees most resemble. See Actuarial Standards Bd., *Actuarial Standard of Practice No. 27: Selection of Assumptions for Measuring Pension Obligations* §§ 3.4.1, 3.12 (Dec. 2023), https://perma.cc/ZY6M-EZ3U (directing actuaries to select mortality assumptions given "the characteristics of employees and retirees," using tables drawn from "populations

considered representative of the group at hand"). There is no single correct interest rate either. On any given day, many published rates are available, including the prime rate, the federal funds rate, Treasury yields of various maturities, and corporate bond yields. See Bd. of Governors of the Fed. Reserve Sys., *Selected Interest Rates (Daily)—H.15*, https://perma.cc/F8NU-TP7G. Whatever combination a plan sponsor picks, a plaintiff can point to another that would produce a larger benefit for some participants and call the plan sponsor's choice unreasonable.

The facts behind actuarial assumptions, moreover, keep changing. Mortality rates shift with health habits, medical care, and the prevalence of different diseases. Case & Deaton 398-99. And they do not move in only one direction: during the COVID-19 pandemic, life expectancy fell. Jonas Schöley et al., *Life Expectancy Changes Since COVID-19*, 6 NATURE HUMAN BEHAV. 1649, 1650-53 (2022). Interest rates swing even more. Since 1980, the prime rate, a common benchmark for lending, has ranged from 3.25% to 21.5%. *Prime Rate History*, FedPrimeRate.com, https://perma.cc/Q89S-FCWT. Neither the Sixth Circuit nor ERISA says which of these ever-changing figures a plan should use. As Judge Nalbandian explained, mortality tables "aren't inherently reasonable or unreasonable," and an actuary's "election to use an outdated figure" does not make it "any less of an 'interest rate,' definitionally speaking." *Id.* at 34a (Nalbandian, J., dissenting).

The plan sponsor gets answers to these questions only after the fact, from a court. The decision below treats reasonableness as a "question of fact that cannot be conclusively determined on a motion to dismiss." Pet. App. 21a n.7. A plan sponsor therefore

learns whether its choices were acceptable only after years of discovery and motion practice.

And different courts will give different answers. Courts will inevitably apply different versions of "reasonableness," so identical plan terms could be lawful in one court and unlawful in the next. Because ERISA permits suit wherever "the plan is administered, where the breach took place, or where a defendant resides or may be found," 29 U.S.C. 1132(e)(2), a plan with participants nationwide is exposed to all of those standards at once. This Court has disfavored interpretations of ERISA that would create "a patchwork of different interpretations of a plan" that "covers employees in different jurisdictions." *Conkright*, 559 U.S. at 517. The decision below creates that patchwork.

B. A Reasonableness Requirement Strips Plan Sponsors Of The Flexibility ERISA Guarantees.

Under ERISA, "private parties * * * control the level of benefits." *Alessi*, 451 U.S. at 511-512. Congress made this choice because it viewed "[f]lexibility" as "essential to achieve the basic objectives of private pension plans," given the "variety of factors which structure and mold the plans to individual and collective needs of different workers, industries, and locations." S. Rep. No. 92-634, at 21 (1972).

Choosing actuarial assumptions is part of that bargain. Employers select a mortality table and interest rate as one piece of an overall benefit package. That package may be more generous on one dimension and less on another, and it can be the product of collective bargaining—as was true in one case below, see Pet. App. 61a.

A requirement that actuarial assumptions be "reasonable" takes that judgment away from those who crafted the plan and hands it to whichever judge hears the case. That is antithetical to ERISA's design, in which "[t]he plan * * * is at the center." *US Airways, Inc.* v. *McCutchen*, 569 U.S. 88, 101 (2013). Because "the plain language of the statute doesn't contemplate a reasonableness requirement for a plan's actuarial assumptions," Judge Nalbandian saw "no reason to impose one by judicial fiat." Pet. App. 50a-51a (Nalbandian, J., dissenting).

III. A Free-Floating Reasonableness Standard Will Impose Enormous Costs And Unleash A Wave Of Litigation.

The Sixth Circuit's rule would drive up administrative and litigation costs—a result this Court has repeatedly resisted in ERISA cases. In *Conkright*, the Court refused to create an exception to deferential review because of the "increased litigation costs" it would bring and the "efficiency" and "predictability" it would jettison. 559 U.S. at 518. In *Kennedy*, the Court adopted "a straightforward rule of hewing to the directives of the plan documents" because "the cost of less certain rules would be too plain." 555 U.S. at 300-301.

The decision below ignores that lesson, raising costs in the administrator's office, in the courtroom, and on the plan sponsor's books.

Administrative costs will soar. Under a reasonableness rule, an administrator cannot simply follow the plan. It must keep asking whether the plan's assumptions remain reasonable and be ready to defend those assumptions in court. That means more staff to establish and administer joint-and-survivor

annuities, actuaries to survey competing mortality tables and interest rates, and lawyers to predict whether the plan's choices will survive lawsuits in courts throughout the country. None of that is cheap, and none of it ends. Under the Eleventh Circuit's formulation, the assumptions must be reasonable "at the time the plan calculates a participant's retirement benefit," *Drummond*, 177 F.4th at 1105—that is, every time a participant retires.

Worse, a plan cannot simply swap in new assumptions. ERISA's anti-cutback rule generally forbids amendments that reduce accrued benefits, including through less favorable conversion factors. 29 U.S.C. 1054(g); see *Central Laborers' Pension Fund* v. *Heinz*, 541 U.S. 739, 744 (2004). So when changed assumptions would lower some participants' benefits, the plan may have to keep the old assumptions for those participants and apply new ones to everyone else. The administrator would thus have to repeatedly analyze how competing assumptions affect every participant's and spouse's pension.

Litigation costs will explode. The decision below announces a standard that can be enforced only through expensive, expert-driven litigation. By the court's own account, reasonableness "is a range, not a precise prescription," Pet. App. 20a, and whether a plan's assumptions fall within that range "is a question of fact that cannot be conclusively determined on a motion to dismiss," *id.* at 21a n.7. The Eleventh Circuit likewise declined to define the standard "without the benefit of expert testimony." *Drummond*, 177 F.4th at 1093. It also declined to say how far a plan's assumptions must stray from a "reasonable" alternative before a plaintiff states a claim. *Id.* at 1109 n.38. One district court even treated the question as a battle

of the experts that cannot be resolved at summary judgment. See *Scott* v. *AT&T Inc.*, 790 F. Supp. 3d 781, 789-790 (N.D. Cal. 2025).

Consider what that means in practice. To survive a motion to dismiss, a plaintiff need only allege that some other set of assumptions, characterized as "more reasonable," would have produced a larger benefit. It does not matter whether the difference is $10 a month or 10 cents a year. See 26-360 Pet. 23. Every plan makes assumptions, and some alternative will always produce a bigger number for someone. So nearly every defined benefit plan in the country now faces long, complex litigation that will march straight into discovery.

This Court has recognized why that matters in ERISA cases. The motion to dismiss is the tool courts use to "divide the plausible sheep from the meritless goats." *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014). It lets a court stop a deficient claim before the parties spend significant sums. See *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 558 (2007). Without it, "the threat of discovery expense will push cost-conscious defendants to settle even anemic cases." *Id.* at 559.

ERISA is no exception. This Court has acknowledged "serious concerns" that some ERISA claims "too easily get past the motion-to-dismiss stage." *Cunningham* v. *Cornell Univ.*, 604 U.S. 693, 708 (2025). As three Justices put it, "getting by a motion to dismiss is often the whole ball game because of the cost of discovery." *Id.* at 710 (Alito, J., concurring). Defendants facing those costs "often calculate that it is efficient to settle a case even though they are convinced that they would win if the litigation continued." *Ibid.* ERISA discovery is lopsided against defendants, and its price

is "ominous." *PBGC* v. *Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013).

This is not a hypothetical worry. The *in terrorem* settlements have already begun. AT&T settled an actuarial-equivalence suit for $184 million. Mot. for Preliminary Approval of Settlement 1, *Scott* v. *AT&T Inc.*, No. 3:20-cv-7094 (N.D. Cal. July 9, 2026), ECF No. 259. Raytheon settled for more than $59 million. Mem. in Supp. of Mot. for Final Approval of Class Settlement 1, *Cruz* v. *Raytheon Co.*, No. 1:19-cv-11425 (D. Mass. Apr. 16, 2026), ECF No. 82. And MetLife settled for $23 million. Mem. in Support of Mot. for Final Approval of Class Action Settlement 1, *McAlister* v. *Metropolitan Life Ins. Co.*, No. 1:18-cv-11229 (S.D.N.Y. Sep. 28, 2026), ECF No. 258. More will follow if the Sixth Circuit's rule stands.

The court of appeals brushed these concerns aside, reasoning that courts routinely evaluate reasonableness under ERISA—including in duty-of-prudence litigation—and that such questions fall "well within the wheelhouse of ERISA." Pet. App. 28a. But asking whether a fiduciary acted prudently in carrying out the plan is one thing. Asking whether the plan's own terms satisfy an amorphous "reasonableness" standard is another. Plus, prudence is an express statutory duty, 29 U.S.C. 1104(a)(1)(B), while "reasonableness" in this context is not.

Liability would be retroactive. The Sixth Circuit's rule is not merely prospective. Respondents seek additional pension payments reaching back to 2017. *See* Am. Compl. ¶ 85, *Reichert* v. *Kellogg Co.*, No. 2:23-cv-12343 (E.D. Mich. Dec. 15, 2023), ECF No. 22; Consol. Compl. ¶ 113, *Watt* v. *FedEx Corp.*, No. 2:23-cv-2593 (W.D. Tenn. Nov. 6, 2023), ECF No. 33. Plaintiffs in other cases have sought retroactive increases with

no cut-off date at all. See *Hamrick* v. *E.I. du Pont de Nemours & Co.*, 2024 WL 359240, at *7 (D. Del. Jan. 31, 2024), *R&R adopted*, 2024 WL 2817966 (D. Del. June 3, 2024). Plan sponsors that followed their written terms in good faith now face potential claims for years of back payments under a previously unannounced standard.

The law usually guards against that kind of surprise. "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 265 (1994). For that reason, "the presumption against retroactive legislation is deeply rooted in our jurisprudence." *Ibid.*; see *Hughes Aircraft Co.* v. *United States ex rel. Schumer*, 520 U.S. 939, 946 (1997); *Bowen* v. *Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Courts should be especially reluctant to read a statute to spring sudden, massive liabilities on parties who followed its terms.

IV. The Reasonableness Requirement Would Hurt Many Of The Retirees It Purportedly Protects.

The panel majority framed the decision below as protecting retirees and their spouses. See Pet. App. 27a-28a. In practice, it will leave many of them worse off because higher costs and uncertainty make pensions less attractive to offer.

No set of actuarial assumptions is best for every participant. Changing a plan's mortality table or interest rate will not necessarily benefit all participants. It will raise some participants' benefits and lower others', depending on their ages, their spouses' ages, when they retire, employer incentives for early

or late retirement, and which form of benefit they elect. Courts have repeatedly recognized that the move to "reasonably current" assumptions sought in these cases would leave many retirees (and their spouses) worse off. *Bennett* v. *Ecolab, Inc.*, 2026 WL 810758, at *4 (D. Minn. Mar. 24, 2026); *Belknap* v. *Partners Healthcare Sys., Inc.*, 588 F. Supp. 3d 161, 176 (D. Mass. 2022); *Thorne* v. *U.S. Bancorp*, 2021 WL 1977126, at *2 (D. Minn. May 18, 2021); *Torres* v. *Am. Airlines, Inc.*, 2020 WL 3485580, at *13 (N.D. Tex. May 22, 2020). That conflict has led courts to deny class certification, because the relief sought "would harm some class members [plaintiffs] seek to represent." *Torres*, 2020 WL 3485580, at *9-13; see *Thorne*, 2021 WL 1977126, at *2-3.

An older mortality table with shorter assumed lifespans—exactly the kind of table respondents call unreasonable—*increases* benefits for participants who retire after the normal retirement age. *Belknap*, 588 F. Supp. 3d at 176. Replacing that table with a "current" one would reduce their benefits. Similarly, even where a newer mortality table would raise joint-and-survivor annuity payments, a "current" interest rate may push in the opposite direction. In the Eleventh Circuit case, one of the named plaintiffs withdrew a claim challenging the plan's actuarial assumptions after it became clear that the supposedly "outdated" table helped him. See Br. in Supp. of Defs.' Mot. to Dismiss 8-9, *Drummond* v. *Southern Co. Servs., Inc.*, No. 2:22-cv-174 (N.D. Ga. Sep. 29, 2023), ECF No. 53-1.

These cases thus may pit participant against participant. A participant who sues for assumptions more favorable to him is often asking the court to impose assumptions less favorable to his co-workers. ERISA does not require courts to referee that zero-sum

contest, and nothing in the phrase "actuarial equivalent" suggests that Congress wanted them to.

Higher costs and uncertainty may push employers away from offering pensions at all. Participants will also suffer in a less visible but more far-reaching way. All the administrative, litigation, and liability costs described above fall on the plans and their sponsors. And when the cost of offering a benefit rises, fewer employers may offer it, or may offer it on less generous terms. Congress understood that dynamic, which is why it sought to avoid "a system that is [so] complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place." *Conkright*, 559 U.S. at 517 (citation omitted); see *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 108 (2013). Likewise, a sponsor has less reason to offer a plan when the plan's written actuarial assumptions are subject to judicial revision in after-the-fact litigation. See *Conkright*, 559 U.S. at 517.

As Judge Nalbandian observed, "[t]he most likely result of the majority's decision is even more litigation and higher administrative costs," which "will be passed on and will ultimately injure the continued viability of the plans." Pet. App. 51a (Nalbandian, J., dissenting). "So it's hard to see how this standard will benefit anyone besides the attorneys who litigate these cases." *Ibid.*

The point is not that any one employer will terminate its plan, but that employers make pension decisions at the margin. Defined benefit plans have already been in long-term decline, as employers freeze or terminate traditional plans in favor of defined contribution alternatives. See Cong. Rsch. Serv., IF12007, *A Visual Depiction of the Shift from Defined*

Benefit (DB) to Defined Contribution (DC) Pension Plans in the Private Sector, fig. 1 (Dec. 27, 2021), https://perma.cc/3XAY-E2D2. In 1985, PBGC insured about 112,000 single-employer defined benefit plans. See PBGC, *Pension Insurance Data Tables 2024*, tbl. S-21, https://perma.cc/7UB8-62J4. By 2025, it insured just 22,196, a drop of about 80%. *Ibid.*

The Sixth Circuit's rule could accelerate that trend. For an employer deciding whether to keep its plan open to new hires, keep accruals going, or offer a pension at all, a new, open-ended source of liability weighs on the wrong side of the scale. That concern is especially acute for small or mid-size employers. And every plan frozen or never adopted means fewer workers and spouses with the security of predictable, lifetime retirement income. See PBGC, *A Predictable, Secure Pension for Life: Defined Benefit Pensions* 4-5 (2000), https://perma.cc/4NES-BVR3.

V. Whether And How To Regulate Actuarial Assumptions Is A Question For Congress.

Congress, not the courts, should decide whether to impose a reasonableness requirement on joint-and-survivor annuity assumptions.

This Court has "observed repeatedly" that "ERISA is a 'comprehensive and reticulated statute,' the product of a decade of congressional study of the Nation's private employee benefit system." *Knudson*, 534 U.S. at 209 (citation omitted). The Court has accordingly been "especially 'reluctant to tamper with [the] enforcement scheme' embodied in the statute by extending remedies not specifically authorized by its text." *Ibid.* (citation omitted). The same reluctance applies to efforts to expand ERISA liability. In *Mertens* v. *Hewitt Associates*, the Court refused to "adjust the

balance" Congress struck between "benefiting employees" and "containing pension costs" in "an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests." 508 U.S. 248, 262-263 (1993).

That caution is especially warranted here, because Congress has repeatedly legislated on this subject. As Judge Nalbandian detailed, Congress responded to concerns about "'outdated' mortality tables in plan-funding calculations" by requiring plans to use mortality tables promulgated "at least every 10 years" by the Secretary of the Treasury, and it capped interest-rate assumptions in some calculations "to prevent plans from using unreasonably high interest rates." Pet. App. 51a (Nalbandian, J., dissenting) (citations omitted). In short, "if companies play games with ERISA, Congress can address it, which it's done before." *Id.* at 48a n.7. But Congress has never imposed such requirements for joint-and-survivor annuities.

Congress is also better equipped than courts to answer the hard questions any reasonableness regime would raise. As the Court has explained, accommodating complex practical realities "is not only performed more legitimately by Congress than by courts, but it is performed more intelligently by legislation than by interpretation." *Carden* v. *Arkoma Assocs.*, 494 U.S. 185, 197 (1990); see *Tex. Indus., Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981) (far-reaching policy questions are "matter[s] for Congress, not the courts, to resolve"). Congress can hold hearings, consult the agencies with relevant expertise, and hear from participants, plan sponsors, and actuaries. It can then answer questions like these:

- Should there be a reasonableness requirement for the assumptions used to calculate

joint-and-survivor annuities at all—or should Congress instead prescribe specific tables and rates?

- If there is a reasonableness requirement, must each assumption be reasonable individually, or only all of them in the aggregate?
- By reference to what population must assumptions be reasonable—the plan's own participants, a national table, or something else?
- Whether or how often must assumptions be revised?
- How should a plan handle new assumptions that would reduce some participants' benefits, given the anti-cutback rule?
- Should any new requirement apply retroactively, and if so, how far back?
- What role should the Treasury Department and the Department of Labor play in setting or enforcing any standard?

The Sixth Circuit answered none of these questions, leaving each to be litigated, plan by plan and expert by expert, in district courts nationwide. That is not a judicial task. As one district court put it, "[i]t is not for this Court to impose a reasonableness standard that Congress chose to omit." *Belknap*, 588 F. Supp. 3d at 177. Courts "should leave policy considerations to Congress as the people's elected representatives." Pet. App. 52a (Nalbandian, J., dissenting).

VI. The Court Should Use These Cases To Resolve The Question Now.

These cases are excellent vehicles for deciding the question presented.

First, the lower courts are in disarray. District courts have reached conflicting conclusions on whether Section 1055(d) contains a reasonableness requirement at all, and those recognizing one have described it differently. Compare, *e.g.*, *Berkeley* v. *Intel Corp.*, 2026 WL 948725, at *4 (N.D. Cal. Apr. 8, 2026), *and Landel*, 2026 WL 785044, at *5, *with Scott*, 790 F. Supp. 3d at 789-790.

Second, these cases present the question cleanly. Each arises on a motion to dismiss on a pure question of statutory interpretation. The Sixth Circuit decided only that question and declined to reach any alternative ground. Pet. App. 29a. If petitioners are right that Section 1055(d) contains no unwritten reasonableness requirement, the cases are over.

Third, the stakes are too high to leave the question unresolved. The rule announced below would apply to essentially every defined benefit plan in the country, collectively holding nearly $3 trillion in assets and paying more than $250 billion in benefits each year. See 26-387 Pet. 20 & n.6. Plans, sponsors, and participants need to know what the law requires, and only this Court can tell them.

CONCLUSION

The petitions for writs of certiorari should be granted.

Respectfully submitted.

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