No. 26-165

**In the United States Court of Appeals**
**for the Fourth Circuit**

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NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION and the INSURANCE AND FINANCIAL SERVICES COMMITTEE,

*Petitioners*,

v.

JOHN MULLINS and THOMAS SUNDERLIN, individually and as representatives of a class of similarly situated persons, on behalf of the 401(k) Pension Plan,

*Respondents.*

---

On Petition for Permission to Appeal from the
United States District Court for the Eastern District of Virginia
No. 1:25-cv-994 (Hon. Michael S. Nachmanoff)

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# BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE AMERICAN BENEFITS COUNCIL AS AMICI CURIAE IN SUPPORT OF PETITIONERS AND REVERSAL

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

**DISCLOSURE STATEMENT**

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 26-165 Caption: National Rural Electric Cooperative Association v. Mullins

Pursuant to FRAP 26.1 and Local Rule 26.1,

The Chamber of Commerce of the United States of America
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

N/A

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Erik R. Zimmerman Date: May 22, 2026

Counsel for: Chamber of Commerce of the U.S.A.



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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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No. 26-165 Caption: National Rural Electric Cooperative Association v. Mullins

Pursuant to FRAP 26.1 and Local Rule 26.1,

The American Benefits Council
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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Signature: /s/ Erik R. Zimmerman Date: May 22, 2026

Counsel for: American Benefits Council



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## STATEMENT OF IDENTITY AND INTEREST*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the nation's business community—including at the Rule 23(f) stage. *See, e.g.*, *In re Juul Labs, Inc. Antitrust Litig.*, No. 26-1519 (9th Cir. Mar. 19, 2026); *State Farm Mut. Auto. Ins. Co. v. Gulick*, No. 25-602 (10th Cir. May 21, 2025); *Overby v. Anheuser-Busch, LLC*, No. 25-140 (4th Cir. Apr. 17, 2025).

The American Benefits Council is a national non-profit organization dedicated to protecting and fostering privately sponsored

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* No counsel for any party authored this brief in whole or in part. 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.

employee benefit plans. Collectively, the Council's more than 430 members either directly sponsor or provide services to retirement plans and health and welfare plans covering virtually all Americans who participate in employer-sponsored programs. The Council frequently participates as amicus curiae in cases like this one that have the potential for far-reaching effects on employee benefit plan design or administration.

Amici have a strong interest in this case. Their members are often targeted as defendants in ERISA class actions like the one here. As a result, it is imperative to amici that courts scrupulously enforce the requirements of Rule 23, both in ERISA cases and more generally.

## SUMMARY OF ARGUMENT

A class-certification order warrants this Court's review under Rule 23(f) when that order is manifestly erroneous. *See EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014). The class-certification order in this case fits that bill.

As this Court stressed just two months ago, a district court must conduct a "rigorous analysis" before it certifies a class. *Trauernicht v. Genworth Fin., Inc.*, 169 F.4th 459, 472 (4th Cir. 2026). The district

court here applied a rubber stamp. Based on reasoning that was scanty at best, the court certified a class of almost 100,000 members that flunks multiple requirements of Rule 23, including commonality and predominance. If that decision were left intact, it would provide a playbook for improperly certifying class actions in ERISA cases. It would also nullify this Court's unanimous decision in *Trauernicht* before that decision even has the chance to take root.

The practical harms from that outcome would be immense. The erroneous certification of large ERISA class actions, like the one here, creates hydraulic pressure for defendants to settle even meritless claims. Those exorbitant settlement costs injure not only the businesses that pay them, but employees who participate in ERISA plans and who bear the costs of unjustified litigation through higher fees, fewer benefits, and reduced services. *See, e.g.*, American Benefits Council, *The Proliferating Risk of Baseless Retirement Plan Litigation is Harming Plan Participants and Retirement Security*, 4-6 (Oct. 2, 2025), https://bit.ly/49vJpOn. Rule 23(f) review is an essential safety valve for relieving undue settlement pressure and avoiding these harms. This Court should use that device here, grant review, and reverse.

## ARGUMENT

### I. The district court's grant of class certification in this case is manifestly erroneous.

#### A. Supreme Court precedent and this Court's recent decision in *Trauernicht* require a rigorous analysis of class certification.

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Comcast v. Behrend*, 569 U.S. 27, 33 (2013) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). This unusual mechanism creates "important due process concerns [for] both plaintiffs and defendants." *Unger v. Amedisys Inc.*, 401 F.3d 316, 320 (5th Cir. 2005). Because of those constitutional concerns, and because class actions lack the protective norms of individual litigation, a court must conduct a "rigorous analysis" to ensure that Rule 23's requirements are met before it certifies a class. *Comcast*, 569 U.S. at 33 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)).

This appeal centers on two of the Rule 23 requirements that a district court must analyze with rigor: commonality and predominance.

The commonality requirement of Rule 23(a) is demanding. A plaintiff must prove that her case involves a question that is "capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart,* 564 U.S. at 350. To make this showing, a plaintiff cannot merely allege that the class members "have all suffered a violation of the same provision of law." *Id.* Instead, "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Id.* at 349-50 (quoting *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 157 (1982)).

The predominance mandate of Rule 23(b)(3) is more demanding still. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623-24 (1997). A plaintiff must prove that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). To do so, a plaintiff must show that his claims' essential elements "will prevail or fail in unison" based on evidence common to the whole class. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 460 (2013). This requirement serves the essential purpose of limiting certification to cases where class-wide

adjudication will achieve judicial economy while maintaining procedural fairness. *See* Fed. R. Civ. P. 23(b)(3) advisory committee's note to 1966 amendment; *Amchem*, 521 U.S. at 615; *Stafford v. Bojangles Rests., Inc.*, 123 F.4th 671, 679 (4th Cir. 2024).

This Court recently made clear in *Trauernicht* that the above principles apply with full force in ERISA cases. The Court first held that when, as here, an ERISA case involves a defined-contribution plan, claims for monetary damages are too individualized to be certified under Rule 23(b)(1). 169 F.4th at 470-72. The Court then held that these claims are not "inherently" certifiable under other parts of Rule 23 either. *Id.* at 472. Instead, as this Court stressed *five times*, a district court must conduct a "rigorous analysis" of whether ERISA claims satisfy Rule 23. *Id.* at 472-74. The Court also reaffirmed *Wal-Mart*'s holding that, for a class to be certified, this rigorous analysis must show that the class members all "suffered the same injury." *Id.* at 472.

Applying these principles in *Trauernicht*, this Court held that the district court erred in certifying a class. *Id.* at 473-74. The district court abused its discretion by not conducting a rigorous analysis of

commonality. *See id.* at 474. This Court also concluded that the class members did not all have the same injury, as commonality requires. *Id.*

Other courts have likewise underscored the need for an especially rigorous analysis in ERISA cases, like this one, that involve multiple independent employers. *See, e.g.*, *Haley v. Tchrs. Ins. & Annuity Ass'n of Am.*, 54 F.4th 115, 123 (2d Cir. 2022); *Chavez v. Plan Benefit Servs., Inc.*, 957 F.3d 542, 548-49 (5th Cir. 2020). In these cases, plan features such as the services offered and the fees charged can vary widely across the class, and even within a single plan. *See, e.g.*, Pet. 4-5 (describing the variations within the plan here). Those individualized variations can easily defeat commonality and predominance, so a district court must account for them when it analyzes whether Rule 23 is satisfied. *See Haley*, 54 F.4th at 123; *Chavez*, 957 F.3d at 548-49.

### B. The district court did not conduct a rigorous analysis here.

The district court here doubled down on the errors that this Court tried to stamp out in *Trauernicht*. It did so by certifying a class without rigorously analyzing commonality *or* predominance. The court also

failed to account for the commonality- and predominance-destroying variations in the multiple-employer plan in this case.

On commonality, the district court stated from the bench that plaintiffs had met their burden merely by alleging that "excessive fees" had been charged "at the plan level." Pet. App. 28. In the same breath, the court brushed off defendants' evidence that the class members did not share the same injury—and that many were not injured at all—as "an issue of the allocation of damages." *Id.* That lone sentence of reasoning was far from a rigorous analysis. Under *Trauernicht*, the district court needed to closely evaluate the differences in the class members' alleged injuries, not wave them away as questions of allocating damages. *See* 169 F.4th at 472-74.

The court's treatment of predominance was even more deficient. The court did not even *mention* predominance in its oral ruling. *See* Pet. App. 28-29. It then said in its written order that predominance was satisfied, without giving any reason why. *Id.* at 1. The court thus offered *no* analysis of predominance, let alone a rigorous one.

Under *Trauernicht*, this lack of rigorous analysis calls for the district court's decision to be set aside. *See* 169 F.4th at 474. Even if

the Eastern District of Virginia's rocket docket has certain benefits, they cannot come at the expense of the close assessment of class certification that appellate precedent requires.

In addition, under the rigorous analysis that the district court should have performed, commonality and predominance are lacking here.

Starting with commonality, plaintiffs did not satisfy their burden to prove that the class members all suffered the same injury. The alleged injuries in this case are excessive administrative fees. ECF 1 ¶¶ 6-8. But as defendants have shown, the class members' fees varied widely, based on individual investment decisions made at different times and under different conditions. *See* Pet. 16-17. Indeed, many class members paid *less* in fees than the benchmark proposed by plaintiffs' expert. *Id.* Thus, under plaintiffs' own theory, those class members were not injured at all. *Trauernicht* holds that these points defeat commonality. *See* 169 F.4th at 473-74.

The lack of commonality in this case is driven home by the multiple-employer nature of the plan at issue. The plan here served 900 different employers, and those employers were able to tailor the

administrative services they received from the plan to fit their individual needs. *See* Pet. 4-5. Because a fee's alleged excessiveness depends on the services the fee pays for, these variations in the plan's services across the class further defeat any effort to show that the class members all suffered a common injury.

These same points also defeat predominance. For example, because a large segment of the class has no injury, mini-trials would be needed for each of the nearly 100,000 class members to determine which were injured and which were not. Those individualized inquiries would swamp any common questions, destroying predominance. *See, e.g.*, *Mr. Dee's Inc. v. Inmar, Inc.*, 127 F.4th 925, 933 (4th Cir. 2025) (affirming decision that predominance was lacking where almost one-third of the class had not been injured). Moreover, even apart from the differences in the class members' injuries, predominance is absent in this case for other reasons as well. *See* Pet. 20-21.

Despite these points, the district court summarily certified a class of almost 100,000 persons who worked for 900 separate employers. If that approach were replicated in other cases, it would turn *Trauernicht* into a dead letter. There, this Court held that ERISA claims like the

ones here cannot be certified under Rule 23(b)(1). 169 F.4th at 470-72. But that holding would be pointless if a district court could simply certify the same claims, without any additional analysis, under Rule 23(b)(3). Having barred the front door to the certification of improper ERISA class actions, the Court should not allow those same improper class actions to sneak in through the back.

For these reasons, the district court's grant of class certification is manifestly erroneous and warrants this Court's review under Rule 23(f).

## II. The improper certification of ERISA class actions like the one here harms American businesses and their employees.

This Court's review is doubly needed because decisions that trample Rule 23, like the one here, inflict serious harms on the business community and the public—especially in ERISA litigation.

Class actions are expensive to defend. American companies' total spending on class-action defense surged to more than $4.5 billion in 2025, with no end in sight. *See* Carlton Fields, *2026 Carlton Fields Class Action Survey*, 6-7 (2026), https://bit.ly/4dvXHj3. These extraordinary defense costs, combined with massive damages exposure when a class is certified, often compel defendants to settle even

meritless claims. *See, e.g.*, *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978). For these reasons, the Supreme Court has long recognized the "risk of 'in terrorem' settlements that class actions entail." *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 662 (2022) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011)).

This overwhelming pressure to settle even dubious claims was a key motivation for adopting Rule 23(f) itself. As the Advisory Committee observed when that provision was added in 1998, a grant of class certification "may force a defendant to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability." Fed. R. Civ. P. 23(f) advisory committee's note to 1998 amendment. Rule 23(f) gives appellate courts a mechanism to release this undue settlement pressure on defendants when district courts forgo the careful scrutiny that class certification requires.

Rule 23(f)'s release valve is especially important in ERISA cases. The plaintiffs' bar has flooded the federal courts with ERISA class actions in recent years. *See, e.g.*, Jacklyn Wille, *ERISA Class Actions Soar in 2026 as New Legal Theories Emerge*, Bloomberg Law (Apr. 13, 2026), https://bit.ly/49LCXTf; AIG, *Understanding the Rapid Rise in*

*Excessive Fee Claims*, 2, 4 (2021), https://bit.ly/4v1HCJb. The enormous defense costs and damages exposure associated with these lawsuits forced ERISA defendants into settlements that totaled more than $1 billion from 2016 to 2022 alone. *See* Chubb, *Excessive Litigation over Excessive Plan Fees in 2023*, 2 (2023), https://bit.ly/4uVSuIu.

This case exemplifies the extreme settlement pressures that improperly certified ERISA class actions generate. Here, immediately after the district court announced its original ruling to grant class certification of a sprawling class of 100,000 persons from 900 separate employers, the court itself encouraged the parties to consider settlement. *See* Pet. App. 53.

The exorbitant costs of defending and settling wrongly certified ERISA class actions harm the businesses that pay them. But the harms extend to employees as well. ERISA does not require employers to offer benefit plans. *See Conkright v. Frommert*, 559 U.S. 506, 516 (2010). Congress instead tried to *incentivize* employers to offer these plans to their employees by creating a system that limits administrative costs and litigation expenses. *See id.* at 517. The erroneous certification of ERISA class actions does the opposite: By increasing

costs, it incentivizes employers to cut back on the benefits they offer their employees. *See, e.g.*, American Benefits Council, *supra*, at 4-6. That result harms employers and employees alike.

To prevent those widespread harms, this Court should put Rule 23(f) to its intended use, review the decision below, and overturn the district court's improper grant of class certification.

## CONCLUSION

The Court should grant the petition.

Dated: May 22, 2026

Respectfully submitted,

s/ Erik R. Zimmerman

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, I certify that:

1. This brief complies with the type-volume limitation of Rules 5(c)(1) and 29(a)(5) because it contains 2,592 words, excluding the parts of the brief exempted by Rule 32(f).

2. This brief complies with the typeface and type-style requirements of Rules 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: May 22, 2026

/s/ Erik R. Zimmerman
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