No. 24-20551
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FREDERIC A. GUENTHER, WALTON FUJIMOTO, and LESLIE OWEN,
Plaintiffs-Appellees,

v.

BP RETIREMENT ACCUMULATION PLAN and BP CORPORATION NORTH AMERICA, INC.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Texas
No. 4:16-CV-00995

MOTION FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE ERISA INDUSTRY COMMITTEE FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE*

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July 14, 2025

Pursuant to Federal Rules of Appellate Procedure 27 and 29, the Chamber of Commerce of the United States of America (Chamber) and The ERISA Industry Committee (ERIC) respectfully move for leave to file a brief as *amici curiae* in the above-captioned case in support of Defendants-Appellants and reversal. Defendants-Appellants have consented to the filing of this brief. Counsel for Plaintiffs-Appellees informed counsel for *amici* that Plaintiffs do not consent to the filing of this amicus brief. As a result, *amici* move this Court for leave to file.

Amici have an interest in the outcome of this litigation, and believe the proposed *amicus* brief will help the Court in considering the issues presented by this case. *See* Fed. R. App. 29(a)(3); *see Lefebure v. D'Aquilla*, 15 F.4th 670, 676 (5th Cir. 2021) (Ho, J.) ("[W]e would be 'well advised to grant motions for leave to file *amicus* briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted.'") (quoting *Neonatology Assocs., P.A. v. Comm'r of Internal Revenue*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.)); *New Mexico Oncology and Hematology Consultants, Ltd. v. Presbyterian Healthcare Servs.*, 994 F.3d 1166, 1175-76 (10th Cir. 2021) (*amicus* participation appropriate where "*amici* have an interest in th[e] proceeding and brief matters relevant to the disposition of th[e] case"). In support of their motion, *amici* state as follows:

1. The Chamber is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the

interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. Many of the Chamber's members maintain, administer, or provide services to employee-benefit plans governed by ERISA.

2. ERIC is a national nonprofit organization exclusively representing large employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. ERIC's member companies voluntarily provide benefits, through plans governed by ERISA, that cover millions of active and retired workers and their families across the country. With member companies that are leaders in every sector of the economy, ERIC is the voice of large employer plan sponsors on issues affecting their ability to sponsor benefit plans and to lawfully operate under ERISA's protection.

3. An important function of *amici* is to represent their members' interests in matters before the courts, Congress, and the Executive Branch. To that end, *amici* regularly participate in cases before this Court, other courts of appeals, and the U.S. Supreme Court on issues that affect their members—including with respect to ERISA issues that affect plan sponsors and service providers. *See, e.g.*, *Hughes v. Northwestern Univ.*, 142 S. Ct. 737 (2022); *D.L. Markham DDS, MSD Incorporated 401(k) Plan v. Variable Annuity Life Ins. Co.*, 88 F.4th 602 (5th Cir. 2023); *Chamber*

of Commerce of United States of America v. U.S. Dep't of Labor, 885 F.3d 360 (5th Cir. 2018).

4. As in the above cases, a decision in this appeal has the potential to significantly affect *amici*'s members, which include plan sponsors and fiduciaries that benefit from Congress's decision to create, through ERISA, an employee-benefits system that is not "so complex that administrative costs, or litigation expenses," discourage employers from sponsoring benefit plans or individuals from serving as fiduciaries. *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (citation omitted).

5. As *amici*'s proposed brief explains, the district court's erroneous determination that fiduciary-breach claims under 29 U.S.C. § 1132(a)(3) are not subject to ERISA's statutory time bar in 29 U.S.C. § 1113, but rather only an equitable laches defense, threatens to erase the time limit established by Congress for a cause of action that is frequently invoked in ERISA class actions seeking tens of millions of dollars in supposedly "equitable" relief. Endorsing that holding would have a profoundly destabilizing effect on plan sponsors and the decisions they make with respect to employee-benefit plans.

6. Plan sponsors and plan fiduciaries alike, including *amici's* members that maintain, administer, insure, and provide services to ERISA plans, have a strong interest in preventing such a rule, which would subject them to surprise or remote

liabilities and turn what is already an alarming surge of fiduciary-duty suits under ERISA into an overwhelming tidal wave.

7. *Amici's* substantial interest and thorough knowledge of the questions addressed by this appeal are likely to be of assistance to this Court. The proposed *amicus* brief provides context on ERISA's text and structure relevant to the district court's timeliness decision. Further, the *amicus* brief provides context about how the Court's decisions will likely affect all plan sponsors, fiduciaries, and participants—not just those currently before the Court.

For these reasons, *amici* respectfully request that the Court grant them leave to participate as *amici curiae* and accept the proposed *amicus* brief, which accompanies this motion.

Dated: July 14, 2025

Respectfully submitted,

/s/ Jaime A. Santos

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 804 words, not including the items excluded by Federal Rule of Appellate Procedure 32(f), according to the count of Microsoft Word. I further certify that this brief complies with typeface and style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5) and 32(a)(6) because it has been prepared in Microsoft Word using 14-point Times New Roman font.

Dated: July 14, 2025

/s/ Jaime A. Santos
Jaime A. Santos

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Jaime A. Santos
Jaime A. Santos

Dated: July 14, 2025

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BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE ERISA INDUSTRY COMMITTEE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that, in addition to those already listed in the parties' briefs, the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

***Amici*:** Each of the *Amici Curiae* individually certifies that it is a non-profit corporation, that it does not have a parent corporation, and that no publicly held corporation has ten percent or greater ownership.

Counsel for Amici: Jaime A. Santos and William E. Evans of Goodwin Procter LLP. Jordan L. Von Bokern and Mariel A. Brookins of the U.S. Chamber Litigation Center.

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses 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 ERISA.

The ERISA Industry Committee ("ERIC") is a national non-profit business trade association representing approximately 100 of the nation's largest employers in their capacity as sponsors of employee benefit plans for their workers, retirees, and families.

Many of *amici*'s members maintain, administer, and/or provide services to employee-benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), covering virtually all private-sector Americans who participate in employer-sponsored programs. *Amici* regularly participate as *amici curiae* in this Court and in others on issues that affect benefit-plan design or administration. *See, e.g.*, *Cunningham v. Cornell Univ.*, 604 U.S. ___, 145 S. Ct. 1020 (2025); *Hughes*

[1] *See* Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part. No party, no counsel for a party, and no person other than the *amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

v. Nw. Univ., 595 U.S. 170 (2022); *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015 (9th Cir. 2025); *White v. Chevron Corp.*, 752 F. App'x 453 (9th Cir. 2018).

Amici file this brief to provide context regarding ERISA's text and structure relevant to the district court's erroneous determination that fiduciary-breach claims under 29 U.S.C. § 1132(a)(3) are not subject to ERISA's statutory time bar in 29 U.S.C. § 1113, but rather only an equitable laches defense. It also provides context about the adverse impact of the district court's timeliness holding on ERISA plans, participants, and future ERISA litigation.

SUMMARY OF ARGUMENT

Plaintiffs advance a single claim seeking equitable relief under 29 U.S.C. § 1132(a)(3) for purportedly inadequate communications to plan participants in 1989—almost 30 years before this suit was filed in 2016—regarding the conversion of their retirement plan from a final-average-pay formula to a cash-balance formula. According to Plaintiffs, those purportedly inadequate communications from more than three decades ago were violations of ERISA's fiduciary obligations set forth in 29 U.S.C. § 1104(a). The district court refused to subject this statutory claim to ERISA's express time bar on suit, 29 U.S.C. § 1113, or to any other statutory time bar. Instead, it tested timeliness solely by reference to an equitable laches standard, and it held Plaintiffs' claim passed measure under that judge-made doctrine. That was wrong twice over.

First, text and precedent instruct that claims for violations of § 1104(a) (ERISA's fiduciary provisions) seeking equitable relief under § 1132(a)(3) are subject to § 1113's time bar. Section 1113 provides that "[n]o action" brought under "[S]ubchapter" I of ERISA "with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part" can be brought outside the specified time limits. 29 U.S.C. § 1113. By its plain terms, that prohibition applies here: "this part" refers to 29 U.S.C. §§ 1101-1114, and the claim here is for a "fiduciary['s] breach of" § 1104(a). So it is unsurprising that this Court (like many other circuits) has already held that § 1113 applies to § 1132(a)(3) claims seeking equitable relief. *See Radford v. Gen. Dynamics Corp.*, 151 F.3d 396, 399 (5th Cir. 1998) (per curiam). Nothing in the district court's analysis remotely supports ignoring this Court's clear precedent on § 1113's application or that provision's plain text.

Second, the district court's conclusion that laches is the appropriate timeliness defense for a fiduciary-duty claim for equitable relief under § 1132(a)(3) is also wrong. The Supreme Court has repeatedly explained that when Congress has specified a limitations or repose period in a federal statute, courts may not substitute their own equitable judgments on timeliness. *E.g.*, *SCA Hygiene Prods. Aktiebolag* *v. First Quality Baby Prods., LLC*, 580 U.S. 328 (2017). That is precisely the cardinal sin the district court committed here.

It is critical that the Court correct these fundamental errors. Like every statutory time bar, § 1113 is supposed to bring finality to matters governed by ERISA—an interest Congress underscored by drafting § 1113(1) as a statute of repose, so that suits generally cannot be brought more than six years after the alleged violation, even if the plaintiff lacks knowledge of the cause of action. Congress sought to impose meaningful time barriers on ERISA suits as part of the legislative balance struck in the act; the district court's decision would blow a gaping hole in those guardrails.

If affirmed, the district court's decision would not only depart from the rule adopted by this circuit and others, it would have a profoundly destabilizing effect on plan sponsors and the decisions they make with respect to employee-benefit plans. Through ERISA, Congress constructed a reticulated scheme with clear, predictable rules—one that does not subject employers to surprise or remote liabilities—so that employers would be *encouraged* to create employee-benefit plans. Erasing the time bar for a major cause of action under the statute would scramble that scheme. And it would turn what is already an alarming surge of fiduciary-duty suits under ERISA into an overwhelming tidal wave. Employers that sponsor employee-benefit plans (particularly small businesses) would be discouraged from offering plans if doing so puts them at risk of perpetual liability for equitable relief worth millions or billions of dollars. And employers that continue to sponsor plans would have to account for the everlasting gobstopper of liability created by the district court's timeliness holding when making plan-related decisions about how generously to fund retirement and healthcare benefits, and what expenses to pay for rather than requiring participants to do so. This Court should reverse.[2]

ARGUMENT

ERISA expressly provides that absent evidence of fraud or concealment, "[n]o action may be commenced under this [ERISA] subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of" either three years from when the plaintiff has knowledge of the violation or six years from when the violation occurred. 29 U.S.C. § 1113.[3] Under the plain text of the statute and this Court's

[2] That this brief does not address the other issues presented is not an endorsement of the district court's approach to standing, the merits, or class certification. The Chamber focuses its brief on the repose holding because it is not only egregiously wrong, but also would have a profound impact on plans and employers if permitted to stand. If this Court reverses on another ground, the Chamber urges the Court to reach the timeliness issue as an alternative holding, or at minimum share its observations regarding this issue, to provide guidance to lower courts.

[3] Although the district court's decision in this case cites ERISA's section numbers, this Court more typically cites the relevant sections of the U.S. Code, which this brief likewise uses. A helpful ERISA/U.S. Code cross-reference guide can be found, however, at https://benefitslink.com/erisa/cross-reference.html. For ease of reference, the ERISA/U.S. Code provisions most pertinent to this brief are (i) the

precedent, that statutory time bar applies here. The district court's decision to apply laches instead was the product of multiple fundamental errors of law.

I. The district court's refusal to apply ERISA's statutory time bar was wrong as a matter of precedent and text.

A. Fiduciary-duty claims under § 1132(a)(3) of ERISA are governed by § 1113's time bar.

ERISA states categorically that "*[n]o action* may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation of this part" if it is brought "after the earlier" of two potentially applicable limitations periods. 29 U.S.C. § 1113 (emphasis added). "This part" as referenced in § 1113 refers to §§ 1101-1114 (*i.e.*, Title 29, Subtitle B, Subchapter I, part 4 of the U.S. Code), which contains all of the fiduciary responsibilities that are typically targeted in class action lawsuits—including ERISA's fiduciary duties of prudence, loyalty, and diversification found in § 1104, and ERISA's prohibited-transaction provisions found in § 1106. And "this subchapter" as referenced in § 1113 refers to 29 U.S.C. §§ 1021-1193c (*i.e.*, Title 29, Subchapter B, Subchapter I), which includes the private civil enforcement provision under which ERISA class-action plaintiffs commonly sue, § 1132.

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provision setting forth ERISA's fiduciary duties, ERISA § 404, 29 U.S.C. § 1104; (ii) ERISA's equitable-relief provision, ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3); and (iii) ERISA's limitations provision, ERISA § 413, 29 U.S.C. § 1113.

Section 1113's limitations periods are comprehensive, covering the waterfront for measuring timeliness. First, and most importantly here, § 1113 is structured to generally impose a hard-and-fast six-year time limit on suit. "Specifically, under § 1113(1), suit must be filed within six years of 'the date of the last action which constituted a part of the breach or violation'" or, in cases of breach by omission, "'the latest date on which the fiduciary could have cured the breach or violation.'" *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178, 180 (2020) (citation omitted). The Supreme Court has "referred to § 1113(1) as a statute of repose, which effect[s] a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." *Id.* (citation and quotation marks omitted); *see also Radford*, 151 F.3d at 400 (similarly referring to the six-year limit as a "statute of repose").

Second, within that six-year outer limit, § 1113(2) then "*accelerates* the filing deadline" in cases "when the plaintiff gains 'actual knowledge' of the breach." *Intel*, 589 U.S. at 181 (emphasis added). Third, as a backstop, the statute provides "that in the case of fraud or concealment, [an] action may be commenced not later than six years after the date of discovery of [a] breach or violation." 29 U.S.C. § 1113. Congress' belt-and-suspenders approach to the statute leaves no gap to fill on the timeliness question.

Under this Court's precedent, § 1113's comprehensive limitations provision is the yardstick for measuring the timeliness of Plaintiffs' claim. *See Radford*, 151 F.3d at 399. Everyone agrees that Plaintiffs' sole claim for equitable relief was commenced under § 1132(a)(3), and was based on alleged breaches of ERISA's fiduciary duties concerning communications to participants about their retirement plans—the sort of claim recognized by the Supreme Court in *Varity Corp. v. Howe*, 516 U.S. 489 (1996). *See, e.g.*, ROA.24-20551.17103-07. In *Radford*, which involved a *Varity* claim filed seven years after the alleged misrepresentations, this Court affirmed the dismissal of the claim as untimely under § 1113. *Radford*, 151 F.3d at 398-399.

This Court in *Radford* relied on the statutory language to determine that "[t]he plain language of § [1113] indicates that its statute of limitations would apply to a *Varity* claim pursuant to § [1132(a)(3)]." 151 F.3d at 399. The panel began its analysis by observing that "the *Varity* court explained that the fiduciary duties which were violated arose under" § 1104(a), which sets forth a prudent-man standard of care for fiduciaries subject to the statute. *Id.* at 399 (citing *Varity*, 516 U.S. at 506). And, it explained, § 1113 "provides that any action 'commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part' is subject to either the six-year or three-year statute of limitations, whichever is earlier." *Id.* (quoting 29 U.S.C. § 1113). Because "[a]

Varity claim for breach of fiduciary duty arises under § [1104(a)] and § [1132(a)(3)], both within" the "part" and "subchapter" expressly cross-referenced in § 1113, "[t]he plain language of § [1113] of ERISA indicates that its statute of limitations would apply to a *Varity* claim pursuant to § [1132(a)(3)]." *Id.*

That holding is binding precedent here. *E.g.*, *United States v. Reyes*, --- F.4th ----, 2025 WL 1741013, at *2 (5th Cir. June 24, 2025). It is the same conclusion reached by numerous other circuits both before[4] and after[5] *Radford*. And as *Radford* itself explained, its holding follows from a straightforward reading of the statute's "plain language." 151 F.3d at 399.

The district court nevertheless concluded that § 1113 does not apply because § 1132(a)(3) itself "does not include a statute of limitations." ROA.24-20551.17111. That is not how statutory construction works. Courts "do not construe statutory phrases in isolation; [they] read statutes as a whole." *Samantar v. Yousuf*, 560 U.S. 305, 319 (2010) (ellipsis and citation omitted). Here, the plain language of § 1113 mandates that it reaches any "action" alleging a breach of fiduciary duty

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[4] *E.g.*, *Librizzi v. Children's Mem'l Med. Ctr.*, 134 F.3d 1302 (7th Cir.1998).

[5] *E.g.*, *Frommert v. Conkright*, 433 F.3d 254, 272 (2d Cir. 2006); *Cetel v. Kirwan Fin. Grp., Inc.*, 460 F.3d 494, 510-511 (3d Cir. 2006); *Enniss v. Enniss*, 198 F. App'x 594, 596 (9th Cir. 2006); *Million v. Trs. of Cent. States, Se. & Sw. Areas Pension Fund*, 50 F. App'x 196, 199 (6th Cir. 2002).

contained in Subchapter I, subtitle B, part 4 of ERISA. 29 U.S.C. § 1113. That describes Plaintiffs' claim to a T.

The district court also found it significant that § 1132(a)(3) "does not make reference to actions based on any particular sections or Parts of ERISA," and thought this supported declining to apply the statute of limitations. ROA.24-20551.17111. But there was no need for § 1132 to include a cross-reference to ERISA's limitations provision when ERISA's limitations provision already makes clear precisely what types of actions it applied to: it explicitly cross-references *any* "action … commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part." 29 U.S.C. § 1113. As explained above (and addressed in both *Varity* and *Radford*), Plaintiffs' claim is an action "commenced under this subchapter" (pursuant to § 1132(a)(3)) with respect to a fiduciary's breach of duties "under this part" (§ 1104(a)). *See Varity*, 516 U.S. at 506; *Radford*, 151 F.3d at 399. Indeed, the district court *itself* repeatedly homed in on § 1104(a) as the source of the duty giving rise to Plaintiffs' claim for equitable relief under § 1132(a)(3). ROA.24-20551.17103-07. So again, § 1113 applies by its plain terms.

There was thus no basis for the district court's turning a blind eye to ERISA's statutory time bar.

B. The district court's conclusion that the timeliness of a fiduciary-duty claim under § 1132(a)(3) is subject only to a laches defense was wrong.

Rather than apply ERISA's express statutory time-bar, the district court decided that Plaintiffs' claim is subject only to a laches defense. That was an additional error. The Supreme Court has repeatedly explained that "the 'principal application' of laches 'was, and remains, to claims of an equitable cast *for which the Legislature has provided no fixed time limitation.*'" *SCA Hygiene Prods.*, 580 U.S. at 335 (quoting *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 678 (2014)) (emphasis added). In other words, "[l]aches is a gap-filling doctrine, and where there is a statute of limitations, there is no gap to fill." *Id.*

That conclusion "rest[s] on both separation-of-powers principles and the traditional role of laches in equity." *SCA Hygiene Prods.*, 580 U.S. at 334. "Laches provides a shield against untimely claims, and statutes of limitations serve a similar function." *Id.* (citation omitted). And "[t]he enactment of a statute of limitations" by Congress "necessarily reflects a congressional decision that the timeliness of covered claims is better judged on the basis of a generally hard and fast rule rather than the sort of case-specific judicial determination that occurs when a laches defense is asserted." *Id.* at 334-335. "Therefore, applying laches within a limitations period specified by Congress would give judges a legislation-overriding role that is beyond the Judiciary's power," as "courts are not at liberty to jettison Congress' judgment on the timeliness of suit." *Id.* at 335 (citation and quotation marks omitted).

Applying these principles across a number of contexts, the Supreme Court has held that when a federal statute contains an express time bar for suit, laches cannot be invoked to vary or supplant its terms. *Petrella*, 572 U.S. at 667 (claim under Copyright Act); *SCA Hygiene Prods.*, 580 U.S. at 334 (claim under the Patent Act). That rule is absolute when the claim is for damages, but it is hardly less firm in suits requesting equitable relief, at least absent "extraordinary circumstances"—and even then, the only scenario the Supreme Court has contemplated is an application of laches to "*bar* at the very threshold" a claim for equitable relief that otherwise would be timely under the statute of limitations. *Petrella*, 572 U.S. at 667-668 (emphasis added).

The same logic applies to ERISA's statutory time bar for fiduciary claims, and should have precluded the district court's resort to laches here. *Operating Eng'rs Loc. 324 Health Care Plan v. G & W Constr. Co.*, 783 F.3d 1045, 1055 (6th Cir. 2015) (refusing to apply laches to claim under 29 U.S.C. § 1145).

The district court was of a different view. To justify its decision to apply laches rather than the statute of limitations, the district court relied on the notion "that in suits seeking solely equitable relief, statutes of limitations do not apply," quoting this Court's decision *Walker v. Epps*, 550 F.3d 407, 411 (5th Cir. 2008). ROA.24-20551.17111. But *Walker* says nothing of the sort.

In *Walker*, the plaintiffs sued under 42 U.S.C. § 1983, seeking to enjoin Mississippi's lethal-injection protocol as unconstitutional under the Eighth Amendment. 550 F.3d at 409. The district court dismissed the suit as time-barred under the traditional statute of limitations applied to § 1983 claims (the limitations provision for personal-injury claims in Louisiana, the State where suit was brought), and this Court affirmed. *Id*. The plaintiffs asserted that laches should have provided the proper measure for timeliness, and they made the argument the district court quoted—that "in suits seeking solely equitable relief, statutes of limitations do not apply." *Id.* at 411 (citing *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946)). This Court, however, *disagreed* that the principle swept so broadly. Given there was already a clearly established statute-of-limitations regime for *damages* claims under § 1983, the Court made clear that it made no sense to apply a different timeliness rule to requests for equitable relief under the same statute. *Id.* at 412.

That reasoning applies equally here. Plaintiffs cannot dodge ERISA's comprehensive statutory time bar simply by framing their request as one for equitable rather than legal relief—particularly when the supposedly "equitable" relief they sought was simply the payment of money: an award of benefits under the superseded final-average-pay formula if it is greater than the cash-balance formula, *see* ROA.24-20551.17408.

Indeed, that is why the Supreme Court has squarely rejected the notion that laches should be "read into every federal statute of limitations." *Petrella*, 572 U.S. at 681 (quoting *Holmberg*, 327 U.S. at 397). Since "[l]aches[] ... originally served as a guide when no statute of limitations controlled the claim[,] it can scarcely be described as a rule for interpreting a statutory prescription." *Id.* at 681-682. The fact that plaintiffs seek equitable relief under § 1132(a)(3) should not change the conclusion. To be sure, the Supreme Court has held open the possibility that, "in extraordinary circumstances, laches may *bar* at the very threshold" a claim for equitable relief when it is otherwise facially *timely* under the statute of limitations. *Id.* at 667-668 (emphasis added). But neither the district court nor Plaintiffs have any authority for the remarkable proposition that laches could be used to *permit* a claim that is facially *untimely* under the governing statutory time bar, simply because the relief at issue is framed as equitable. This Court should not endorse that counterintuitive and unprecedented result.

* * *

In light of established precedent and clear statutory text, the timeliness question in this case should have been easy to answer. Section 1113 governs, and it bars this claim, which was brought nearly thirty years after the alleged fiduciary breach. The district court's decision to ignore the statutory time bar and apply laches instead, and its use of that judge-made doctrine to greenlight this helplessly belated suit, was insupportable.

II. This case illustrates the importance of applying and rigorously enforcing ERISA's statutory time bar.

Allowing the district court's errors to stand uncorrected would have enormous consequences, both legally and practically. Nullifying the statutory time bar on fiduciary-duty claims under § 1132(a)(3) would subvert the function of § 1113, sow chaos in the statute's highly reticulated enforcement scheme, and dramatically impact employers' plan-related decision-making by driving up the cost and risk of sponsoring plans—precisely the opposite of what Congress intended to accomplish in enacting ERISA.

Begin with the "basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Rotella v. Wood*, 528 U.S. 549, 555 (2000). It would be hard to imagine a worse offense to those principles than this case—a suit brought nearly thirty years after the allegedly inadequate communications. Affirming the district court's analysis here would rob plan sponsors and fiduciaries of the "[p]redictability" that is "a primary goal of statutes of limitations." *Owens v. Okure*, 488 U.S. 235, 240 (1989).

That interest in finality has particular force here, because § 1113 is not just a garden-variety time bar. Recall that the Supreme Court (like this Court) has recognized that § 1113(1)'s six-year limitation on suit acts as a statute of repose. *See* p. 7, *supra*; *Intel*, 589 U.S. at 180; *Radford*, 151 F.3d at 400. While "[s]tatutes of repose," like statutes of limitations, "also encourage plaintiffs to bring actions in a timely manner, and for many of the same reasons," "the rationale" for the former "has a different emphasis": "Statutes of repose effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." *CTS Corp. v. Waldburger*, 573 U.S. 1, 9 (2014) (citation and quotation marks omitted). Repose provisions thus "in essence" serve as "an absolute bar on a defendant's temporal liability." *Id.* at 8 (ellipsis, citation and quotation marks omitted). The district court's decision contravenes Congress's clear choice to place an outer limit on the timeliness of an ERISA suit. And while the statute contains a carveout for "case[s] of fraud or concealment," 29 U.S.C. § 1113, the district court never purported to find that the facts of the case justified the exception's invocation—because it did not apply the statutory provision at all.

The decision's subversion of the ordinary principles of finality is especially dangerous in this statutory context. When Congress enacted ERISA, it "did not require employers to establish benefit plans." *Conkright v. Frommert*, 559 U.S. 506, 516 (2010). Rather, it crafted a statute intended to encourage employers to offer benefit plans while also protecting the benefits promised to employees. *Id.* at 516-517; *see also* H.R. Rep. No. 93-533 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4647. Congress knew that if it adopted a system that imposed undue "administrative costs, or litigation expenses," that would "unduly discourage employers from offering … benefit plans in the first place." *Varity*, 516 U.S. at 497.

ERISA was thus designed to "induc[e] employers to offer benefits by assuring a predictable set of liabilities, under uniform standards of primary conduct and a uniform regime of ultimate remedial orders and awards when a violation has occurred." *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002). To do so, the statute's enforcement provisions, including § 1113's time bar, embody a "'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of [employee-benefit] plans." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 215 (2004) (citation omitted).

Companies have made massive economic investments in reliance on the predictability of the statutory regime. In 2022, for example, employers contributed over $236 billion dollars to ERISA-governed retirement plans. U.S. Dep't of Labor, Private Pension Plan Bulletin Abstract of 2022 Form 5500 Annual Reports 8 (July 8, 2024), https://tinyurl.com/4m6cb64m. Moreover, ERISA governs not just employer-sponsored retirement plans but employer-sponsored healthcare plans, and the hundreds of billions of dollars in employer retirement contributions is eclipsed by the more than *trillion* dollars employers spend on healthcare benefits each year. *See* Allison Bell, *CMS: U.S. Employers to Spend $1.3 Trillion on Health Benefits This Year*, The Hartford (June 13, 2024), https://www.benefitspro.com/2024/06/13/cms-u-s-employers-to-spend-1-3t-on-health-benefits-this-year/; Kaiser Family Foundation, *Employer Health Benefits: 2023 Annual Survey* 88-104 (2023), https://files.kff.org/attachment/Employer-Health-Benefits-Survey-2023-Annual-Survey.pdf. These types of extraordinary commitments will be unsustainable if merely sponsoring retirement and healthcare plans renders companies eternally liable for "equitable" awards (disgorgement, equitable surcharge, etc.) worth millions or billions of dollars based on decades-old conduct.

Finally, the district court's decision threatens to turbocharge an alarming rise in ERISA suits. Over the past several years, "[p]laintiff law firms have flooded the federal courts with cookie-cutter ERISA class action litigation against defined contribution plans and the employees who agree to serve as fiduciaries for their company's retirement plans." Daniel Aronowitz, *Exposing Excessive Fee Litigation Against America's Defined Contribution Plans* 3, Euclid Specialty (Dec. 2020), https://bit.ly/3hNXJaW ("*Excessive Fee Litigation*"). These suits "attack retirement plan investment options that are commonplace and longstanding," "alleg[ing] that defined contribution plan administrative and investment fees are too high, and that *any* investment performance that lags *any* plaintiff-asserted benchmark—a moving target—is actionable negligence that should generate huge indemnity payments and high attorney fees to the firms bringing these lawsuits." *Id*. (emphasis added). The results have already "wreaked havoc on the market for fiduciary liability insurance." Jacklyn Wille, *Spike in 401(k) Lawsuits Scrambles Fiduciary Insurance Market*, Bloomberg Law (Oct. 18, 2021), https://tinyurl.com/46wk8zuv. Because ERISA litigation is becoming so common, fiduciary-liability insurers have been forced "to raise insurance premiums, increase policyholder deductibles, and restrict exposure with reduced insurance limits." *Excessive Fee Litigation* 4.

Although the present case involves a somewhat different fact-pattern, blessing the district court's erasure of the statutory time limit for § 1132(a)(3) fiduciary-duty suits—a remedial provision widely used across all manner of ERISA suits—would ultimately have an exponential effect on this already dangerous trend. If insurance has become almost prohibitively expensive because fiduciaries can be sued for virtually any plan decision *within* § 1113's general six-year window of repose, expanding potential liability *beyond* that timeframe could make ERISA fiduciaries all but uninsurable. At the very least, even if large employers are still able to absorb some of these rising costs, for the many smaller employers who will be unable to "purchase adequate fiduciary liability insurance to protect their plan fiduciaries, the next step [will be] to stop offering retirement plans to their employees." *Excessive*

Fee Litigation 4. The result would be to discourage a wide swath of employers from offering employee-benefit plans, a direct contradiction of Congress's intent in passing ERISA.

CONCLUSION

This Court should reverse the judgment below.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 29(a)(5) because it contains 4,500 words, not including the items excluded by Federal Rule of Appellate Procedure 32(f), according to the count of Microsoft Word. I further certify that this brief complies with typeface and style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in Microsoft Word using 14-point Times New Roman font.

Dated: July 14, 2025

/s/ Jaime A. Santos
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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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Dated: July 14, 2025