No. 26-1823

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

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

*Plaintiffs-Appellees*,

v.

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

*Defendants-Appellants*.

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

# BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE AMERICAN BENEFITS COUNCIL AS AMICI CURIAE IN SUPPORT OF APPELLANTS 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. 26-1823 Caption: John Mullins v. National Rural Electric Cooperative Association

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: 8/3/2026

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. 26-1823 Caption: John Mullins v. National Rural Electric Cooperative Association

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: 8/3/2026

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 organization. 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. 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 curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Benefits 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 virtually all Americans who participate in employer-sponsored programs. The Council

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* All parties have consented to the filing of this brief. 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.

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.

With this Court's leave, amici filed an earlier brief in this case in support of defendants' Rule 23(f) petition. Amici continue to 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. Amici also have a strong interest in preserving this Court's recent clarification in *Trauernicht v. Genworth Financial, Inc.*, 169 F.4th 459 (4th Cir. 2026), that the demands of Rule 23 apply with full force in ERISA class actions like this one.

## SUMMARY OF ARGUMENT

As this Court stressed only a few months ago, in ERISA cases, a district court must conduct a "rigorous analysis" before it certifies a class. *Trauernicht*, 169 F.4th at 472. The district court here instead 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, predominance, typicality, and adequacy. If the district court's 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 the ink on that decision even dries.

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. To enforce the requirements of Rule 23 and prevent these reverberating harms, the Court should reverse.

## ARGUMENT

### I. The district court's grant of class certification in this case violates Rule 23 and appellate precedent.

#### A. Appellate precedent demands a rigorous analysis of each requirement of Rule 23.

The class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979). This unusual mechanism creates due process concerns for absent class members and defendants alike. *See R.I. Off. of Gen. Treasurer v. Boeing Co.*, No. 25-1492, 2026 WL 2083048, at *2 (4th Cir. July 20, 2026). Absent class members can be forced to surrender control of their claims to other plaintiffs. *See id.* Defendants, in turn, can be sued by "hundreds or thousands of people who are relieved of their normal responsibility to file and prosecute their own case." *Id.* (quoting *Sharp Farms v. Speaks*, 917 F.3d 276, 305 (4th Cir. 2019) (Quattlebaum, J., concurring)). These sprawling proceedings can "ratchet liability to potentially ruinous levels and force companies to settle or bet the store." *Id.* (quoting *Stafford v. Bojangles Rests., Inc.*, 123 F.4th 671, 678 (4th Cir. 2024)).

Because of these due process problems, and because class actions lack the protective norms of individual litigation, a court must conduct a "rigorous analysis" to ensure that all of Rule 23's requirements are met before it certifies a class. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)); *accord Trauernicht*, 169 F.4th at 472; *Boeing*, 2026 WL 2083048, at *10.

This appeal involves multiple requirements of Rule 23 that, under the above decisions, a district court must analyze with rigor.

First, Rule 23(a) imposes the demanding requirement of commonality. To show commonality, a plaintiff must prove that his 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. 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)).

Second, Rule 23(b)(3) imposes the even more demanding requirement of predominance. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623-24 (1997); *Overby v. Anheuser-Busch, LLC*, 178 F.4th 175, 181 (4th Cir. 2026). 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 the essential elements of the class members' claims "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 function 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; *Boeing*, 2026 WL 2083048, at *2.

Third, Rule 23(a) also demands typicality and adequacy. These mandates work together to ensure that the named plaintiffs can properly represent the class. Typicality requires that the named plaintiffs' pursuit of their interests "simultaneously tend to advance the interests of the absent class members." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006). Adequacy likewise demands that the named plaintiffs "possess the same interest and suffer the same injury" as the other members of the class. *Amchem*, 521 U.S. at 625-26 (quoting *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)). In this way, the adequacy requirement enforces the basic due process principle that named plaintiffs must "possess undivided loyalties to absent class members." *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 338 (4th Cir. 1998). Where conflicts of interest within the class defeat the named plaintiffs' ability to represent the class as a whole, typicality and adequacy are lacking. *See, e.g.*, *Deiter*, 436 F.3d at 466-67; *Sharp Farms*, 917 F.3d at 295, 297.

### B. This Court clarified in *Trauernicht* that the rigorous-analysis mandate applies to ERISA cases like this one.

In its recent decision in *Trauernicht*, this Court made clear that the above principles apply with full strength to ERISA cases like the one here.

In *Trauernicht*, this Court faced an approach that had become common in some district courts: treating ERISA claims for alleged breaches of fiduciary duties as "inherently" proper for class certification under Rule 23(b)(1) because these claims allegedly seek plan-wide relief. 169 F.4th at 465, 472. This Court rejected that gambit for ERISA cases that involve defined-contribution plans. *See id.* at 472-74.

As the Court explained, in defined-contribution plans, "plan assets are allocated to individual accounts." *Id.* at 468. Thus, for these plans, any losses from an alleged breach of fiduciary duty are felt within the individual accounts. *Id.* Likewise, any recovery secured through litigation flows "not to the plan generally," but "to the participant's individual retirement account." *Id.* (emphasis omitted).

Based on these points, the Court reached two conclusions about ERISA cases that involve defined-contribution plans.

First, the Court held that claims for monetary damages in these cases are too individualized to be certified under Rule 23(b)(1). *See id.* at 470-72. When absent class members have individualized monetary claims, due process requires that those members be able to opt out of the class and pursue their claims individually. *See id.* at 472. Under Rule 23(b)(1), however, absent class members cannot opt out. *See id.* at

471. As a result, damages claims that involve defined-contribution plans cannot be certified under Rule 23(b)(1). *See id.* at 472.

Second, the Court held that these claims are not "inherently" certifiable under other parts of Rule 23 either. *Id.* Instead, as this Court stressed *five times*, a district court must conduct a "rigorous analysis" of whether ERISA claims that involve defined-contribution plans satisfy the requirements of Rule 23, such as commonality. *Id.* at 472-74. The Court also reaffirmed *Wal-Mart*'s holding that, for commonality to exist, this rigorous analysis must show that the class members all "suffered the same injury." *Id.* at 472.

*Trauernicht*'s rejection of "inherent" commonality reinforces its holding on Rule 23(b)(1). If district courts could take ERISA class actions that this Court held can no longer be certified under Rule 23(b)(1) and treat them as "inherently" certifiable under some other part of Rule 23, such as Rule 23(b)(3), this Court's effort to curb the improper use of Rule 23(b)(1) would be pointless. This Court preempted that evasion of its Rule 23(b)(1) holding by making clear that no matter which part of Rule 23 is at issue, a rigorous analysis is required.

When this Court turned to the specific class at issue in *Trauernicht*, it concluded that the district court had erred by granting certification. *Id.* at 472, 474. The district court first erred by using Rule 23(b)(1) to certify a damages class of participants in a defined-contribution plan. *Id.* at 472. The court also abused its discretion by not conducting a rigorous analysis of commonality. *See id.* at 474. Finally, by forgoing that rigorous analysis, the district court overlooked that the class members did not all have the same injury, as commonality requires. *Id.*

Other courts have likewise underscored the need for a rigorous Rule 23 analysis in ERISA cases. For example, in *Spano v. Boeing Co.*, the Seventh Circuit held that a district court had not sufficiently analyzed whether typicality and adequacy were satisfied for fiduciary-duty claims regarding a defined-contribution plan. *See* 633 F.3d 574, 586-87 (7th Cir. 2011). A close analysis of those requirements was needed, the Seventh Circuit held, even though "the class was complaining about the structure of the plan as a whole." *Id.* at 587. As the court stressed, "It is not enough to say that the named plaintiffs want relief for the plan as a whole, if the class is defined so broadly that some members will actually be harmed by that relief." *Id.*

Likewise, the Ninth Circuit recently vacated a class-certification order in an ERISA case that alleged excessive fees because the district court did not rigorously analyze typicality and adequacy. *See Munoz v. Alorica, Inc.*, No. 25-7359, 2026 WL 2199195, at *1-2 (9th Cir. July 30, 2026) (unpublished). In particular, the district court did not sufficiently address whether the named plaintiffs' theory created an intra-class conflict by threatening to *increase* the fees that some class members paid. *Id.* at *2.

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

The district court in this case violated the above decisions, including *Trauernicht*. It did so by certifying a class without the rigorous analysis that those decisions command.

The district court initially certified a Rule 23(b)(1) class through a single sentence from the bench and a boilerplate order. ECF 95; ECF 97 at 14. This Court then decided *Trauernicht*. Based on that decision, to its credit, the district court vacated its certification of a

Rule 23(b)(1) class. *See* ECF 103; ECF 122 at 25-26. But the court then summarily recertified the same class, without meaningful analysis, under Rule 23(b)(3). *See* ECF 121 at 1.

On commonality, the court stated from the bench that plaintiffs had met their burden merely by alleging that "excessive fees" had been charged "at the plan level." ECF 122 at 26. 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' injuries, not wave them away as questions of allocating damages. *See* 169 F.4th at 472-74.

The court's treatment of predominance was also deficient. The court did not even *mention* predominance in its oral ruling. *See* ECF 122 at 26-27. It then said in its written order that predominance was satisfied, without giving any reason why. ECF 121 at 1. The court thus offered *no* analysis of predominance, let alone a rigorous one.

Nor did the district court rigorously analyze typicality or adequacy. Here as well, the court stated that these requirements were satisfied, but gave no reason why. *See* ECF 121 at 1; ECF 122 at 25-27.

The district court's lack of a rigorous analysis of each of these Rule 23 requirements was itself an abuse of discretion. *See, e.g.*, *Trauernicht*, 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 precedent requires.

The court's lack of rigor is especially problematic because it threatens to nullify this Court's analysis of Rule 23(b)(1) in *Trauernicht*. If other district courts could follow the approach that the court took here—recertifying an improper Rule 23(b)(1) class as a Rule 23(b)(3) class with negligible analysis—this Court's effort to stamp out the erroneous use of Rule 23(b)(1) would be for naught.

### D. Under a rigorous analysis, the class here flunks multiple requirements of Rule 23.

The district court's certification decision is also substantively erroneous. That is because, under the rigorous analysis that precedent demands, the class here fails multiple requirements of Rule 23.

The first of these missing requirements is commonality. To satisfy this requirement, plaintiffs needed to prove that the members of the class all "suffered the same injury." *Trauernicht*, 169 F.4th at 472. Plaintiffs did not meet that burden.

The alleged injuries in this case are excessive administrative fees. ECF 1 ¶¶ 6-8. But the plan used an asset-based fee structure, so each class member's fees depended on the balance of his individual account. As a result, the fees paid—and thus the alleged injuries suffered—varied widely across the class. *See* ECF 93-2 ¶¶ 50, 77-79 & Ex. 12.A. Worse still for plaintiffs, many of the class members paid *less* in fees than the benchmark proposed by plaintiffs' expert. ECF 93-2 ¶ 84. Thus, under plaintiffs' own theory, a substantial part of the class was not injured at all. *See id.*

Standing alone, these points defeat commonality and call for the district court's certification order to be set aside. *See Trauernicht*, 169 F.4th at 473-74. When, as here, "there are members of a class that aren't even injured, they can't share the same injury with the other class members," so commonality is lacking. *Id.* at 474 (quoting *Lab'y*

*Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 332 (2025) (Kavanaugh, J., dissenting from dismissal of writ as improvidently granted)).

Even if more were needed, however, these same points also defeat predominance. For example, because about half of the class has no injury under plaintiffs' own theory, 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, such as the need for individualized analyses under the statute of limitations. *See* Defs.' Br. 46-48.

Finally, the class here does not satisfy typicality or adequacy either. That is because the named plaintiffs have fundamental conflicts of interest with large segments of the class.

For example, the plan's asset-based fee structure creates a conflict between the named plaintiffs and other class members. The named plaintiffs had lower-than-average account balances during the class period. Thus, under the plan's asset-based fee structure, they paid lower-than-average fees. *See* ECF 93-2 ¶ 127. For this reason, the named plaintiffs do not have an interest in challenging that asset-based structure. Class members with higher account balances, in contrast, *do* have an interest in challenging that structure. Those members might want to argue, for example, that the plan should charge a flat fee—an approach that would save them money. *See* Defs.' Br. 51-53.

In this way, the interests of the named plaintiffs conflict with those of other members of the class. This conflict prevents the named plaintiffs from representing the class as a whole, so it defeats typicality and adequacy. *See, e.g.*, *Deiter*, 436 F.3d at 466-67; *Sharp Farms*, 917 F.3d at 295, 297.

This conflict is also so intrinsic to the class that it could not be solved merely by changing the named plaintiffs or by adding more. For example, if any new named plaintiffs had large account balances, their interests would conflict with the interests of class members with small account balances. As a result, the intra-class conflicts in this case make the certification of a class that satisfies Rule 23 impossible.

The district court, however, glossed over this conflict. Instead of carefully analyzing the plan's features and the class members' competing interests, the court treated the class as certifiable merely because this case involves an ERISA plan. *See* ECF 121 at 1; ECF 122 at 26-27. In doing so, the court overlooked that not all ERISA plans are alike, and that Rule 23 demands an individualized assessment of typicality and adequacy in each ERISA class action.

For these reasons, the district court violated Rule 23 and appellate precedent, including this Court's decision in *Trauernicht*, when it certified a class in this case. Under a rigorous analysis, plaintiffs did not meet their burden to prove that the class here satisfies Rule 23. Thus, this Court should reverse the decision below and hold that this case is improper for class treatment.

**E. Plaintiffs' effort to escape *Trauernicht* fails.**

Plaintiffs have tried to defend the district court's decision by arguing that *Trauernicht* does not apply to this case at all. As plaintiffs have pointed out, *Trauernicht* involved claims that a plan's fiduciaries offered underperforming investment options. *See* Pls.' Answer to Pet. for Permission to Appeal at 2, 8, 17-18. As a result, according to plaintiffs, *Trauernicht* applies only to underperformance claims, not to the excessive-fee claims here. *See id.*

That argument fails. This Court's analysis in *Trauernicht* did not depend on whether the claims at issue were for alleged underperformance. The Court instead based its analysis on two points. First, the plan at issue was a defined-contribution plan. *See* 169 F.4th at 468, 470-72. Second, each class member's alleged injury depended on the specifics of the class member's individual account, such as the amount that the class member invested. *See, e.g.*, *id.* at 468, 474.

Both points are true in this case as well. The plan here is a defined-contribution plan. ECF 93-2 ¶ 26. In addition, each class member's alleged injury depends on the specifics of the member's individual account. For example, as discussed above, under the asset-based fee structure of the plan here, each class member's fees depend on the member's individual account balance. *See* ECF 74 at 5; ECF 93-2 ¶¶ 77-79; ECF 109-2; ECF 109-3. Thus, whether each class member suffered an injury—an excessive fee—depends on the member's individual account balance as well. These are the same kinds of "different circumstances" yielding "different injuries" that animated *Trauernicht*'s analysis. 169 F.4th at 474.

For these reasons, plaintiffs cannot sidestep this Court's decision in *Trauernicht*. That decision governs this case and contradicts the district court's decision to certify a class.

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

The district court's erroneous certification of a class is also troubling from a practical standpoint. Decisions that trample Rule 23, like the one here, inflict serious harms on the business community and their employees. That is especially true in ERISA cases.

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)). In other words, the "potentially ruinous" liability threatened by class actions can "force companies to settle or bet the store." *Stafford*, 123 F.4th at 678.

This settlement pressure is especially intense in ERISA litigation. 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. Indeed, discovery alone in ERISA litigation "can cost the plan sponsor many millions of dollars." American Benefits Council, *supra*, at 3. Those costs alone put "enormous pressure on the plan sponsor to settle." *Id.*

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* ECF 97 at 14.

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 *encourage* 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 and multiplying the risks of litigation, it encourages employers to cut back on the benefits they offer their employees. *See, e.g.*, American Benefits Council, *supra*, at 4-6.

For example, in a recent informal survey of sponsors of defined-contribution plans, nearly 89% reported that litigation risk significantly affects the services and investment options they choose to offer. *Id.* at 1-2. Because of the looming threat of litigation, almost 25% of plan sponsors have decided against providing more assistance to participants; more than 43% have decided against offering lifetime-income options; and almost 29% have declined to offer services or investment options simply because other similar plans do not offer them. *See id.* at 4-5. In addition, more than 23% have chosen not to offer certain services because of concerns about lawsuits, like this one, over the resulting fees. *Id.* at 5. In these ways, the threat of erroneously certified class actions and coercive settlements harms employees by curtailing services, options, and innovation.

Coerced settlements in ERISA cases can also harm employees even more directly when, as here, a class suffers from intra-class conflicts. That is because these settlements can force sponsors to change their plans in ways that make many class members worse off. This case exemplifies the problem. If NRECA were forced to settle this case, it might need to change certain features of the plan to avoid facing another similar lawsuit in the future. Because the interests of the class members here diverge in fundamental ways, however, those changes might *hurt* many absent members of the class. *See supra* pp. 15-16. This threat of harm to absent class members illustrates why it is so crucial for district courts to conduct a rigorous analysis of all of Rule 23's requirements, including typicality and adequacy.

To prevent the above harms to employers and employees alike, this Court should reaffirm *Trauernicht*'s holding that the need for a rigorous analysis of class certification applies with full force in ERISA cases like this one and reverse the decision below.

**CONCLUSION**

This Court should reverse the district court's order certifying a class.

Dated: August 3, 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 29(a)(5) and 32(a)(7)(B) because it contains 4,323 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: August 3, 2026

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