No. 25-498

In the Supreme Court of the United States

WINSTON R. ANDERSON, ET AL., PETITIONERS

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, ET AL.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF FOR THE NATIONAL ASSOCIATION OF MANUFACTURERS AS AMICUS CURIAE SUPPORTING RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

STATUTES

OTHER AUTHORITIES

TABLE OF AUTHORITIES—continued

Page(s)

INTEREST OF AMICUS CURIAE[1]

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.96 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

Many of the NAM's members sponsor retirement plans for their employees subject to the Employee Retirement Income Security Act (ERISA). These plans are a valuable way of helping employees save for retirement. But recent years have seen a huge uptick in ERISA class-action litigation targeting countless employers, including the NAM's members, for conduct that does not violate the statute. Many lawsuits, like this one, challenge specific investments offered as options to plan participants, asserting that the investments generated insufficient returns compared to alternative investments that might have been offered instead.

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[1] In accordance with this Court's Rule 37.6, amicus states that no counsel for a party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Such litigation imposes enormous costs, even when the claims are meritless and ultimately fail. Defending ERISA class-action litigation is very expensive, especially if the case proceeds to discovery. This Court has therefore recognized that a motion to dismiss for failure to state a claim is an "important mechanism for weeding out meritless claims" in the ERISA class-action context. *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014).

The NAM has a strong interest in ensuring that the pleading standards for ERISA imprudence claims track the statutory text as well as background legal principles. Adopting petitioners' view would transform plan fiduciaries' responsibilities and fuel costly litigation. And the ultimate harm from these developments would be felt not just by employers. Employees too would suffer as plans and employers would be forced to devote resources to litigation (and fiduciary insurance) that otherwise could be used to fund employee benefits. The NAM urges the Court to reject petitioners' view and affirm the judgment below.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question in this case is whether a "meaningful benchmark" is required when an ERISA plaintiff asserts claims for breach of the statute's duty of prudence and those claims are "predicated on fund underperformance." Pet. i. Under the statutory text, background principles of trust law, and this Court's precedents, the answer to that question is yes.

Petitioners complain that no language in the statutory text mentions a "meaningful benchmark." But they ignore that the text does not mention investment "underperformance" either. As this Court and courts of appeals have long recognized, the relevant language assesses the quality of the fiduciary's decisionmaking process at the time of the fiduciary's decisions. It does not assess the results of those decisions, let alone impose liability just because the fiduciary's selected investments are outperformed by some other investment. The statute's process-based language reflects background trust-law principles, which this Court has used to define the contours of ERISA's fiduciary duties. Under trust law, fiduciaries are not expected to chase the highest returns possible to the exclusion of other goals. On the contrary, they have a duty to protect trust assets and to guard against the risk of loss.

Because an investment's alleged "underperformance" is not directly relevant to the statutory inquiry, it can be relevant only if it raises a circumstantial inference of a deficient decisionmaking process. But there are ordinarily obvious alternative explanations, besides a flawed decisionmaking process, when a plan investment earns lower returns than some other investment. Plaintiffs, for example, often sue employers who, as in this case, deliberately selected investments to mitigate participants' exposure to market risks. Then, when the market rewards more aggressive equity investors, plaintiffs point to the difference in performance to assert imprudence, even though the difference in performance is obviously explained by a difference in investment strategy. The "meaningful benchmark" principle helps control for

such obvious alternative explanations by ensuring, at a minimum, that the plan investment and comparator do not have different aims, risks, and potential rewards. The meaningful benchmark idea thus fits comfortably within the Rule 12(b)(6) standards that this Court has recognized.

At bottom, petitioners submit that it should be easier to state a plausible claim for imprudence. But that is an argument that should be made to Congress, not this Court. Congress wrote a statute that imposes liability based on the quality of fiduciaries' decisionmaking process. It did not impose liability based on retrospective performance metrics. Nor did it entitle participants to comprehensive information about fiduciaries' decisionmaking process to make it easier to state this type of claim. Under the statute that Congress actually wrote, requiring a meaningful benchmark is a bare-minimum safeguard against the sort of costly suits that Congress understood would deter the formation and funding of employee benefit plans. The Ninth Circuit's judgment properly applies the statutory text and this Court's precedents and should be affirmed.

ARGUMENT

I. ERISA imposes liability for imprudence, not investment "underperformance."

A. The statutory duty at the center of this dispute is ERISA's fiduciary duty of prudence. Fiduciaries who manage and administer ERISA benefit plans must act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a

prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. 1104(a)(1)(B).

Petitioners ask the Court to decide what is required to plead a breach of this duty "for claims predicated on fund underperformance." Pet. i. The statute, however, does not create a cause of action for fund underperformance.

On the contrary, the statutory text focuses on the circumstances at the time of the fiduciary's decision, not the subsequent results. The fiduciary's decisions are judged "under the circumstances then prevailing." 29 U.S.C. 1104(a)(1)(B). This language means that "the appropriate inquiry will necessarily be context specific." *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014).

From ERISA's earliest years, courts have thus recognized that "the test of prudence * * * is one of conduct, and not a test of the result of performance of the investment." *Donovan* v. *Cunningham*, 716 F.2d 1455, 1467 (5th Cir. 1983) (citation omitted). Said another way, "[t]he focus of the inquiry is how the fiduciary acted in his selection of the investment, and not whether his investments succeeded or failed." *Ibid.* (citation omitted). Prudence "is a test of how the fiduciary acted viewed from the perspective of the time of the challenged decision rather than from the vantage point of hindsight." *Roth* v. *Sawyer-Cleator Lumber Co.*, 16 F.3d 915, 918 (8th Cir. 1994) (cleaned up); see also, *e.g.*, *In re Unisys Sav. Plan Litig.*, 74 F.3d 420, 434 (3d Cir. 1996).

Courts continue to follow this key insight today: under the duty of prudence, "[t]he focus is on each administrator's real-time decision-making process, not on whether any one investment performed well in hindsight." *Forman v. TriHealth, Inc.*, 40 F.4th 443, 448 (6th Cir. 2022) (Sutton, C.J.); see also, *e.g.*, *Pizarro* v. *Home Depot, Inc.*, 111 F.4th 1165, 1173 (11th Cir. 2024) (Grant, J.) ("The inquiry centers not on the results of an investment, but on a fiduciary's process for choosing that investment."); *Matousek* v. *Mid-American Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022) (Stras, J.) ("The process is what ultimately matters, not the results.").

Had Congress wanted to directly regulate plan investments, it knew how to do so. A neighboring statutory provision charges fiduciaries with "diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so." 29 U.S.C. 1104(a)(1)(C). This language shows that Congress could have imposed a duty to invest so as to maximize returns. But Congress took a different approach, directing fiduciaries to "minimize the risk of large losses" except in unusual circumstances.

B. Background principles of trust law reinforce these lessons from the plain statutory text. This Court has endorsed looking to the law of trusts when "determining the contours of an ERISA fiduciary's duty." *Tibble* v. *Edison Int'l*, 575 U.S. 523, 528-529 (2015); see also *Cent. States, Se. & Sw. Areas Pension Fund* v. *Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985). Under trust-law principles, investments' "relative rates of return *by themselves* tell us nothing useful

about an administrator's prudence either in buying a security or in keeping it." *Johnson* v. *Parker-Hannifin Corp.*, 122 F.4th 205, 226 (6th Cir. 2024) (Murphy, J., dissenting).

To start, trust law shares ERISA's focus on process, not results. When evaluating a trustee's prudence in investing, trust law uses "standards of conduct rather than of performance or result." Amy Morris Hess, George Gleason Bogert & George Taylor Bogert, *The Law of Trusts and Trustees* § 612 (online ed. 2026). Accordingly, "[w]hether a breach of trust has occurred depends purely on whether the trustee's decisions and actions were prudent, not on the outcomes of those decisions and actions." Austin Wakeman Scott et al., *Scott and Ascher on Trusts* § 17.6 (6th ed. 2025) (Scott).

Because trust-law duties center on process, "[i]nvestment performance" becomes relevant only *after* a breach of trust has been found "and the measure of liability is in issue." Restatement (Third) of Trusts § 77 cmt. a (2007) (Third Restatement). "Countless cases have held that a trustee who has acted prudently in making or retaining investments is not subject to surcharge for investment losses." Scott § 19.1.2. Put simply, "[t]he trustee is not a guarantor of the trust's investment performance." Third Restatement § 90 cmt. b.

The common law also shares ERISA's premise that prudent trustees should invest the trust corpus cautiously to minimize the risk of loss. The trustee's duty to make the trust property productive is counterbalanced by a duty to "preserve the trust property." Restatement (Second) of Trusts § 176 (1959) (Second

Restatement). Historically, a trustee's primary responsibility was "to preserve the trust estate at more or less its current value, while producing a reasonable income, and to avoid most risk." Scott § 19.1.5. Under that view, the trustee's "duty was to preserve, rather than to increase the capital fund." Bogert § 612. And trustees were not supposed to "incur additional investment risk in an effort to increase the value of the principal or to produce additional income." Scott § 19.1.5.

As a matter of state law, that highly risk-averse approach was relaxed starting in the 1990s with the Third Restatement and Uniform Prudent Investor Act. Scott § 19.1.2; see also Bogert § 612. These developments started to compare trustees to a "prudent investor"—a professional—rather than a lay "prudent man" or "prudent person." Scott § 19.1.2. ERISA, of course, predates these common-law developments and "still employs the prudent person rule" through the text of Section 1104(a)(1)(B). Scott § 19.1.5 n.5.

The key takeaway for present purposes is that trust law has never required trustees to take big risks to chase the highest returns. The objective was "reasonable" income, not maximum income. Second Restatement § 227 cmt. e; Third Restatement § 90 cmt. e; Bogert § 612. An example of this principle in action is that "trustees '[o]rdinarily' could 'invest in government securities' even though these securities often underperform equities." *Parker-Hannifin*, 122 F.4th at 228 (Murphy, J., dissenting) (quoting Second Restatement § 227 cmt. f).

Petitioners and their amici disregard these principles. They say hardly anything about the common-

law backdrop for ERISA's duty of prudence, except at the highest level of generality. See Pet. Br. 29-30. But as discussed next, these statutory and trust-law principles are important in applying the usual pleading standards to allegations like petitioners'. ERISA's focus on process, not results, along with its directive to prudently balance risk and potential reward, go a long way toward explaining why a meaningful benchmark is crucial in this type of case.

II. Normal pleading rules support a meaningful benchmark requirement for imprudence claims premised on underperformance.

Petitioners ask this Court to decide whether it is necessary to plead a meaningful benchmark when imprudence claims are predicated on fund underperformance. The complaint attempts to demonstrate underperformance in a comparative manner, by comparing the alleged returns of plan investments and certain alternatives. And at least in that context, pleading a meaningful benchmark is necessary. Without "a sound basis for comparison—a meaningful benchmark"—a plaintiff cannot simply point to supposed underperformance to raise a plausible inference of an imprudent decisionmaking process. *Matousek*, 51 F.4th at 278 (citation omitted). That conclusion follows from settled pleading rules and the nature of the duty of prudence as described above.

A. ERISA imprudence claims are governed by "the pleading standard discussed in *Ashcroft* v. *Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544 (2007)." *Hughes* v. *Nw. Univ.*, 595 U.S. 170, 177 (2022). That standard requires "careful, context-sensitive scrutiny of a complaint's

allegations" and provides an "important mechanism for weeding out meritless claims." *Dudenhoeffer*, 573 U.S. at 425.

At times, petitioners minimize the scrutiny that *Twombly* and *Iqbal* require. They suggest that the only thing courts do when analyzing a pleading is "disregard factual allegations only if they are really 'legal conclusions' masquerading as facts." Pet. Br. 3 (quoting *Iqbal*, 556 U.S. at 678). But disregarding "legal conclusion[s] couched as a factual allegation" was already the norm decades before *Twombly*. *Papasan* v. *Allain*, 478 U.S. 265, 286 (1986). As petitioners concede elsewhere (at 33), *Twombly* and *Iqbal* further require courts to determine whether the well-pleaded facts "plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679.

And this Court has given more guidance than just that. It has held that a complaint will not meet the plausibility test or satisfy the requirements of Rule 8(a)(2) when the well-pleaded facts suggest, at most, a "mere possibility of misconduct." *Iqbal*, 556 U.S. at 679. In many cases there is an "obvious alternative explanation" for the complained-of conduct besides unlawful activity. *Id.* at 682 (quoting *Twombly*, 550 U.S. at 567). Courts must consider those obvious alternative explanations for the defendants' conduct when determining whether the asserted legal violation is a plausible conclusion and not just a bare possibility. *Ibid.*

The Court recently reaffirmed these pleading rules. When a "complaint 'pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of

entitlement to relief.'" *Hikma Pharms. USA Inc.* v. *Amarin Pharma, Inc.*, 146 S. Ct. 1391, 1399 (2026) (quoting *Iqbal*, 556 U.S. at 678). "[T]o nudge a claim 'across the line from conceivable to plausible,' a plaintiff must plead facts that, if true, 'allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged' and to rule out 'obvious alternative explanations' for the defendant's conduct." *Ibid.* (citations and brackets omitted).

B. These settled pleading standards support a meaningful benchmark requirement for imprudence claims premised on a plan investment's lower performance compared to alternative investments. As shown above in Section I, disappointing performance is not actionable in its own right, and fiduciaries must balance risk and potential reward when constructing an investment lineup. Against that substantive-law backdrop, "allegations that one security underperformed another are meaningless" unless the investments have sufficient similarity. *Parker-Hannifin*, 122 F.4th at 231 (Murphy, J., dissenting). Without such similarity, there are "obvious alternative explanations" for the difference in performance, which therefore suggests only a bare "possibility of imprudent conduct." *Smith* v. *CommonSpirit Health*, 37 F.4th 1160, 1167 (6th Cir. 2022) (Sutton, C.J.).

For one thing, it is a mathematical truism that most investments will underperform the very top performers, and half of all investments will underperform the median. But it is hard to believe, even at the pleading stage, "that all securities that fall below the top (which seemingly could cover most securities) or some average (which seemingly could cover half) are

substantively imprudent." *Parker-Hannifin*, 122 F.4th at 230-31 (Murphy, J., dissenting). Nothing in ERISA requires fiduciaries to pick only "the best performing fund." *Meiners* v. *Wells Fargo & Co.*, 898 F.3d 820, 823 (8th Cir. 2018). On the contrary, as the court of appeals noted below, "ERISA 'requires prudence, not prescience.'" Pet. App. 10a (citation omitted). Merely alleging that a plan investment generated lower returns than some alternative is equally consistent with the lawful alternative explanation that the fiduciary was simply not clairvoyant enough to pick the top-performing investment in the market.

Beyond that is another obvious alternative explanation for different investment returns: the fiduciary may simply have prioritized a lawful goal that the top-performing investment did not share. As detailed above, prudent fiduciaries under ERISA and trust law may opt to mitigate investment risk by investing conservatively, even though the tradeoff is a reduced possibly of higher returns. As this Court has emphasized, "the circumstances facing an ERISA fiduciary [can] implicate difficult tradeoffs," so courts reviewing imprudence allegations under *Twombly* and *Iqbal* "must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Hughes*, 595 U.S. at 177.

Courts of appeals have stressed how a meaningful-benchmark requirement helps account for this dynamic. "Different services, investment strategies, and investor preferences invariably lead to a spectrum of options—and in turn a spectrum of reasonable fee structures and performance outcomes." *Forman*, 40 F.4th at 449. And "[j]ust as comparison can be the

thief of happiness in life, so it can be the thief of accuracy when it comes to two funds with separate goals and separate risk profiles." *CommonSpirit*, 37 F.4th at 1167. When a plan investment and comparators have "different aims, different risks, and different potential rewards," using the comparators' performance "as a benchmark for the other would neither be 'sound' nor 'meaningful.'" *Matousek*, 51 F.4th at 282 (citation omitted). Unless the complaint controls for such variables, "an 'obvious alternative explanation' exists for the underperformance: the challenged fund has a lower risk (and so a lower chance of a higher return)." *Parker-Hannifin*, 122 F.4th at 231 (Murphy, J., dissenting) (citation omitted).

C. To understand how this problem arises in practice, consider an example that has become common in ERISA litigation and that is on display in this very case.

Many defined contribution plans allow participants to invest in target date funds or "TDFs." U.S. Dep't of Lab., Emp. Benefits Sec. Admin., *Investor Bulletin: Target Date Retirement Funds* 1 (May 6, 2010), https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/target-date-retirement-funds-2010.pdf. Target date funds automatically change the participant's investment mix or asset allocation over time, normally to ensure that participants who invest more heavily in high-potential-reward assets like equities when they are younger will invest more heavily in safer assets like bonds as they approach retirement. *Ibid.* Plans often use target date funds as their default investment option because of such features. U.S. Dep't of Lab., Emp.

Benefits Sec. Admin., *Target Date Retirement Funds—Tips for ERISA Plan Fiduciaries* 1 (Feb. 2013), https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/target-date-retirement-funds-erisa-plan-fiduciaries-tips.pdf.

Target date funds often hold large amounts of a plan's assets, especially when they are the plan's default investment option. That makes them an attractive target for the plaintiffs' bar. ERISA plaintiffs often allege that performance differences of just a few percentage points generated tens of millions of dollars in damages in the aggregate across the entire plan.

At the same time, despite some high-level similarity, "[t]arget date funds are not all created equal." *Pizarro*, 111 F.4th at 1180. As petitioners' complaint acknowledges, "there are considerable differences among TDFs offered by different providers, even among TDFs with the same target date." J.A. 67 (emphasis omitted). Such differences can include "different investment strategies." *Ibid.* (emphasis omitted). Of course, where target date funds have "different risk-return profiles," they will ordinarily generate different returns. *Pizarro*, 111 F.4th at 1180. "In years when the equity market is hot, a more aggressive target date fund that retains equities longer will appear to outperform a fund that shifts toward more conservative assets like bonds sooner." *Ibid.* Properly viewed however, "that snapshot does not mean it is objectively imprudent to adopt a more conservative strategy—the tables turn when the market is down." *Ibid.*

Despite this commonsense point, ERISA plaintiffs often bring lawsuits premised on conservative target

date funds' underperformance during a bull market relative to more aggressive target date funds that do not share the same conservative approach. For example, the first case to use the phrase "meaningful benchmark" was one in which plaintiffs alleged that a fund offered by Vanguard "performed better than the Wells Fargo TDFs" when "Wells Fargo funds ha[d] a higher allocation of bonds than Vanguard funds." *Meiners*, 898 F.3d at 823 & n.2. Applying the *Twombly* and *Iqbal* pleading standard, the Eighth Circuit properly recognized that "[t]he fact that one fund with a different investment strategy ultimately performed better does not establish anything about whether the Wells Fargo TDFs were an imprudent choice at the outset." *Id.* at 823. Plaintiffs can similarly critique a conservative target date fund's performance during a bull market by comparing it to the average performance of a broad universe of target date funds, including those "with different strategies and risk profiles." *Parker-Hannifin*, 122 F.4th at 232 (Murphy, J., dissenting).

Nothing in ERISA should pressure fiduciaries to abandon a deliberately chosen and reasonable investment strategy or take larger risks just because other investors do. And if a fiduciary prudently decides to adopt a conservative investment strategy, ERISA does not punish the fiduciary for staying the course during a temporary market upswing. "Precipitously selling a well-constructed portfolio in response to disappointing short-term losses, as it happens, is one of the surest ways to frustrate the long-term growth of a retirement plan." *CommonSpirit*, 37 F.4th at 1166.

The "meaningful benchmark" case law reflects the sensible idea that "[c]omparing apples and oranges is not a way to show that one is better or worse than the other." *Davis* v. *Wash. Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020) (Stras, J.). Nor does an apples-and-oranges comparison, made with the benefit of hindsight, show that a fiduciary's decisionmaking falls outside "the range of reasonable judgments a fiduciary may make based on her experience and expertise" within the context of a specific plan and participant population. *Hughes*, 595 U.S. at 177. Requiring a meaningful benchmark for claims premised on underperformance follows naturally from ERISA's substantive standards for prudent decisionmaking and the federal rules' settled standards for pleading a plausible claim.

III. Petitioners threaten the balance that Congress struck in ERISA.

Petitioners and their amici base much of their case on policy arguments about how easy it should be for ERISA plaintiffs to state a plausible claim of imprudence. Petitioners highlight (at 41) ERISA's statement of policy, which refers to "ready access to the Federal courts." 29 U.S.C. 1001(b). And they cite (at 34) lower court decisions observing that plaintiffs may lack "direct evidence" of a breach of fiduciary duty because plaintiffs have limited knowledge of fiduciaries' decisionmaking process. Similarly, petitioners' amici insist that ERISA is a "remedial" statute that should be construed in favor of participants and beneficiaries.

These policy arguments miss the mark in two ways. First, they conflict with this Court's approach to statutory interpretation. And, second, they

disregard this Court's statements about ERISA specifically.

In many cases interpreting many statutes, this Court has declined to skew its interpretation based on general characterizations of statutory purpose. "It is 'quite mistaken to assume,'" as the Court often says, "that any interpretation of a law that does more to advance a statute's putative goal 'must be the law.'" *Luna Perez* v. *Sturgis Pub. Schs.*, 598 U.S. 142, 150 (2023) (quoting *Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017)). "Legislation is, after all, the art of compromise, the limitations expressed in statutory terms often the price of passage." *Stanley* v. *City of Sanford*, 606 U.S. 46, 58 (2025) (quoting *Henson*, 582 U.S. at 89). So courts "must determine *how* Congress chose to pursue its objective." *Advoc. Christ Med. Ctr.* v. *Kennedy*, 605 U.S. 1, 19 (2025).

Characterizing a statute as "remedial" does not change these ground rules. ERISA, like any other statute, should not be presumed to "'pursue[]' its remedial purpose 'at all costs.'" *Encino Motorcars, LLC* v. *Navarro*, 584 U.S. 79, 89 (2018) (interpreting the Fair Labor Standards Act); see also *Stanley*, 606 U.S. at 58 (interpreting the Americans with Disabilities Act); cf. Antonin Scalia & Bryan A. Garner, *Reading Law* 364 (2012) (criticizing the "false notion that remedial statutes should be liberally construed," which "needlessly invites judicial lawmaking").

Indeed, this Court's ERISA cases recognize Congress's multifaceted set of objectives. "Nothing in ERISA requires employers to establish employee benefits plans." *Lockheed Corp.* v. *Spink*, 517 U.S. 882, 887 (1996). Congress instead opted for "inducing

employers to offer benefits by assuring a predictable set of liabilities, under uniform standards of primary conduct." *Rush Prudential HMO, Inc.* v. *Moran*, 536 U.S. 355, 379 (2002). So one of Congress's objectives in crafting ERISA was "not to create a system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering welfare benefit plans in the first place." *Varity Corp.* v. *Howe*, 516 U.S. 489, 497 (1996). This required "a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans.'" *Conkright* v. *Frommert*, 559 U.S. 506, 517 (2010).

Given Congress's effort to strike a balance and avoid undue litigation costs, this Court has stressed the importance of using a motion to dismiss to "divide the plausible sheep from the meritless goats." *Dudenhoeffer*, 573 U.S. at 425. Just last year, the Court unanimously acknowledged "serious concerns" that some ERISA claims may "too easily get past the motion-to-dismiss stage." *Cunningham* v. *Cornell Univ.*, 604 U.S. 693, 708 (2025). In such circumstances, plaintiffs might "subject defendants to costly and time-intensive discovery," which could harm plans by imposing associated costs on their fiduciaries and sponsors. *Ibid.* Three Justices in *Cunningham* wrote separately to stress how in ERISA cases, "getting by a motion to dismiss is often the whole ball game because of the cost of discovery." *Id.* at 710 (Alito, J., concurring). Rather than bear discovery costs, economically rational defendants might prefer to settle ERISA claims that survive dismissal even if the claims could not ultimately prevail on the merits. *Ibid.*

Lower courts have also raised concerns about this dynamic. "[T]he prospect of discovery in a suit claiming breach of fiduciary duty is ominous, potentially exposing the ERISA fiduciary to probing and costly inquiries and document requests about its methods and knowledge at the relevant times." *PBGC ex rel. St. Vincent Cath. Med. Ctrs. Ret. Plan* v. *Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013). Because this discovery burden falls overwhelmingly on the defendant, it "elevates the possibility that 'a plaintiff with a largely groundless claim [will] simply take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value, rather than a reasonably founded hope that the discovery process will reveal relevant evidence.'" *Ibid.* (quoting *Dura Pharms., Inc.* v. *Broudo*, 544 U.S. 336, 347 (2005)).

This expensive litigation can be great for class-action attorneys. They often "get a windfall." *Cunningham*, 604 U.S. at 711 (Alito, J., concurring). But it can be bad for plan participants. See *ibid.* Employers often purchase liability insurance for their fiduciaries. Cf. 29 U.S.C. 1110(b). And fiduciary insurers are likely to increase premiums in response to the ever-growing number of ERISA class actions. Cf. Chubb, ERISA Class Action Trends in 2025 (Feb. 2026) (discussing the record levels of ERISA class-action filings in 2025), https://www.chubb.com/content/dam/chubb-sites/chubb-com/us-en/business-insurance/fiduciary-liability/pdfs/0226_chubb2025fiduciaryinfographic_ada.pdf.

Employers under strain from ERISA litigation may even feel forced to reduce the amount they

contribute to their employee benefit plans. Nothing in ERISA prohibits employers from prospectively reducing their matching contributions. On the contrary, such decisions are "settlor" decisions that are not governed by ERISA's fiduciary duties. See, *e.g.*, *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 444 (1999) ("ERISA's fiduciary duty requirement simply is not implicated where [an employer], acting as the Plan's settlor, makes a decision regarding the form or structure of the Plan such as who is entitled to receive Plan benefits and in what amounts, or how such benefits are calculated.").

In short, there is no cause to lower the pleading standards in ERISA cases based on petitioners' one-sided policy concerns. Any suggestion that Congress should reevaluate the balance it has struck should be directed to Congress, not the courts.

Congress purposefully designed the duty of prudence as a process-based duty. And while it entitled participants to a wide variety of information about their plan and its administration, see, *e.g.*, *Intel Corp. Inv. Pol'y Comm.* v. *Sulyma*, 589 U.S. 178, 182 (2020); 29 U.S.C. 1021-1031, Congress declined to require disclosure of detailed information about the fiduciaries' decisionmaking process. Particularly when ERISA is such a "comprehensive and reticulated statute," *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 251 (1993) (citation omitted), courts should presume that participants' lack of access to information about fiduciary decisionmaking is deliberate. Courts should not adopt rules just to make it easier for plaintiffs who have no "direct evidence of a breach" (Pet. Br. 34) to open the doors of discovery to go fishing for some.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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