No. 24-1442

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS N. REICHERT; STUART R. BUCK; and KENNETH A. HENRICH, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

v.

KELLOGG COMPANY; KELLOGG COMPANY PENSION PLAN; KELLOGG COMPANY BAKERY, CONFECTIONARY, TOBACCO WORKERS AND GRAIN MILLERS PENSION PLAN; KELLOGG COMPANY ERISA FINANCE COMMITTEE; KELLOGG ERISA ADMINISTRATIVE COMMITTEE; and KELLOGG ADMINISTRATIVE COMMITTEE,

Defendants,

BAKERY, CONFECTIONARY, TOBACCO WORKERS AND GRAIN MILLERS PENSION COMMITTEE; KELLANOVA, f/k/a Kellogg Company; WK KELLOGG COMPANY; THE ADMINISTRATIVE COMMITTEE OF KELLANOVA PENSION PLAN; and JOHN DOE, 1/20,

Defendants - Appellees.

Appeal from the United States District Court
for the Eastern District of Michigan
Case No. 2:23-cv-12343-SJM-CI
The Honorable District Judge Stephen J. Murphy III

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN BENEFITS COUNCIL, AND THE ERISA INDUSTRY COMMITTEE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Fed. R. App. P. 26.1 and 6th Cir. R. 26.1, Amici make the following disclosures:

The Chamber of Commerce of the United States of America is a non-profit corporation, it does not have a parent corporation, no publicly held corporation owns ten percent or more of its stock, and it is not a subsidiary or affiliate of a publicly held corporation.

The American Benefits Council is a non-profit corporation, it does not have a parent corporation, no publicly held corporation owns ten percent or more of its stock, and it is not a subsidiary or affiliate of a publicly held corporation.

The ERISA Industry Committee is a non-profit corporation, it does not have a parent corporation, no publicly held corporation owns ten percent or more of its stock, and it is not a subsidiary or affiliate of a publicly held corporation.

Amici are unaware of any publicly held corporation, not a party to this case, that has a substantial financial interest in the outcome of the case.

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INTEREST OF THE *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 the Employee Retirement Income Security Act of 1974 ("ERISA"). An important function of the Chamber is to represent its members' interests in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly participates as *amicus curiae* in this Court and in other courts on issues that arise under ERISA. *See, e.g.*, *Hughes v. Northwestern Univ.*, 142 S. Ct. 737 (2022); *Smith v. CommonSpirit Health*, 37 F.4th 1160 (6th Cir. 2022).

The American Benefits Council ("Council") is a national non-profit organization dedicated to protecting and fostering privately sponsored employee benefit plans. Collectively, the Council's more than 430 members either directly sponsor or provide services to retirement plans and health and welfare plans covering virtually all Americans who participate in employer-sponsored programs. The Council frequently participates as *amicus curiae* before the Supreme Court and

[1] All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

federal courts of appeals, including this one, in cases with potential to significantly affect the administration and sustainability of employee benefit plans under ERISA. This is such a case.

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. ERIC routinely participates as *amicus curiae* in cases with the potential to affect benefit plan design or administration.[2]

SUMMARY OF THE ARGUMENT

Plaintiffs seek to open the way for a wave of costly and disruptive litigation attacking established practices of U.S. pension plans. They want to rewrite ERISA to require plan administrators to use ill-defined "reasonably current" actuarial assumptions instead of the actuarial assumptions specified in plan documents when complying with ERISA § 1055(d)'s instruction to make the "Survivor Annuities" available to married plan participants and their spouses—that is, qualified joint and survivor annuities and qualified optional survivor annuities—"the actuarial equivalent of a single annuity for the life of the participant." 29 U.S.C. § 1055(d)(1)(B), (2)(A)(ii). That proposed rewriting of § 1055(d) would trample

[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 *Amici*, their members, and their counsel made a monetary contribution to fund the preparation or submission of this brief.

ERISA's central purposes, impose enormous costs on pension plans and their employer sponsors, harm plan participants and their spouses, and foist on the judiciary a complex legislative task reserved for Congress.

Predictable benefit liabilities and flexible discretion over benefit design are core to the framework established by ERISA to encourage employers to adopt benefit plans. *See Conkright v. Frommert*, 559 U.S. 506, 517 (2010); *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). But the unbounded "reasonableness" requirement for actuarial assumptions advanced by Plaintiffs would destroy crucial predictability in applying the terms of pension plans and necessary flexibility in adopting and setting those terms at the outset.

ERISA also aims to avoid an employee benefit system so complex that administrative and litigation costs discourage adoption and continuation of benefit plans. *Conkright*, 559 U.S. at 517. Yet Plaintiffs' "reasonableness" requirement would cause administrative and litigation expenses to explode. Administrators would have to constantly evaluate the "reasonableness" of actuarial assumptions and adjust pension payouts on a case-by-case basis. And, given the amorphous and mutable nature of any "reasonableness" requirement, lawsuits would be easy to file and hard to dismiss, even for plans that tried to use "reasonably current" assumptions. At the same time, pension liabilities too would explode under

Plaintiffs' proposal to apply their "reasonableness" requirement not only prospectively but also retroactively.

The proposed "reasonableness" requirement would also harm many employees, retirees, and their spouses. Different actuarial assumptions advantage or disadvantage different individuals. As a result, the "reasonably current" assumptions proposed by one plan participant could easily make other plan participants worse off. Plus, making pension plans more complex and expensive to administer would only drive sponsors away from offering them, depriving employees, retirees, and their spouses of the financial security of a lifetime pension.

Finally, imposing a "reasonableness" requirement on actuarial equivalence calculations is a task for Congress, not the judiciary. Such a requirement would have far too costly consequences, and would raise far too many complex implementation questions, for a court to insert that requirement into a statute that Congress carefully structured to balance the competing interests of protecting employee benefits and restraining employer costs. Congress is far better positioned, from an institutional capability and political accountability perspective, to decide whether and how actuarial equivalence calculations should be "reasonable."

Amici respectfully ask the Court to reject the "reasonableness" requirement proposed by Plaintiffs and affirm the judgment below.

ARGUMENT

ERISA's plain language and bedrock principles of statutory construction preclude the "reasonableness" requirement that Plaintiffs ask the Court to read into the statutory obligation to make a "qualified joint and survivor annuity" and a "qualified optional survivor annuity" each "the actuarial equivalent of a single annuity for the life of the participant." 29 U.S.C. § 1055(d)(1)(B), (2)(A)(ii); *see also* Defs.' Br. 12-18; *Belknap v. Partners Healthcare Sys., Inc.*, 588 F. Supp. 3d 161, 169-75 (D. Mass. 2022) (adopting argument); *Drummond v. Southern Co. Servs., Inc.*, No. 2:23-cv-174, 2024 WL 4005945, at *5-6 (N.D. Ga. Jul. 30, 2024) (same), *appeal docketed*, No. 24-12773 (11th Cir. Aug. 28, 2024); Order Granting Defs.' Mot. to Dismiss at 5-7, *Covic v. FedEx Corp.*, No. 2:23-cv-02593 (W.D. Tenn. Sept. 18, 2024), ECF No. 66 ("*Covic* Order") (same).

But the statutory text is not the only reason to reject Plaintiffs' arguments. Introducing and enforcing a retroactive and ill-defined "reasonableness" requirement through plan-by-plan litigation runs counter to some of ERISA's most fundamental purposes and would create a host of adverse consequences for pension plans, plan sponsors, and employee and retiree participants. This brief focuses on those additional problems with the proposed "reasonableness" requirement.

I. ERISA's Purposes Support Adherence To Plan Terms On Actuarial Equivalence.

Adhering to plan terms specifying mortality tables, interest rates, and other variables for actuarial equivalence calculations comports with ERISA's goals for benefit plans.

Predictability. ERISA aims to "assur[e] a predictable set of liabilities" for plans and their sponsors to "induc[e] employers to offer benefits." *Conkright*, 559 U.S. at 517. Abiding by the actuarial assumptions stated in plan documents—like the mortality table and interest rate challenged by Plaintiffs here—fosters exactly that kind of predictability. Plan administrators and sponsors can easily calculate the payments due on Survivor Annuities and reliably estimate pension costs to the Plan. Plan participants, too, can obtain reliable assessments of expected payments on Survivor Annuities that can inform pension choices and retirement planning.

All that predictability goes out the window with a litigation-driven "reasonableness" requirement. Before retirement dates, plan administrators trying to satisfy such a requirement would likely adjust their actuarial assumptions on a near-constant basis as mortality tables and interest rates shift. Mortality rates change over time with changes in health habits, lifestyles, health care, and the prevalence of different illness. Anne Case & Angus Deaton, *Mortality and Morbidity in the 21st Century*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 1997, at 397, 398-99, 402-18. And the recent experience with COVID shows that mortality rates can go up just

as easily as they can go down. Jonas Schöley et al., *Life Expectancy Changes Since COVID-19*, 6 NATURE HUMAN BEHAV. 1649, 1650-53 (2022), available at https://www.nature.com/articles/s41562-022-01450-3. As for interest rates, they are even more variable than mortality rates. Since 1980, the U.S. prime rate has fluctuated between 3.25% and 21.5%, and, just in the last five years, it has been as low as 3.25% and as high as 8.5%. Prime Rate History, FEDPRIMERATE.COM, https://www.fedprimerate.com/wall_street_journal_prime_rate_history.htm.

After retirement dates, enterprising plaintiffs' lawyers could file suit alleging that whatever mortality table and interest rate a plan ultimately used is unreasonable in some fashion. Plaintiffs' view that "actuarial equivalence" means "reasonable" for "the participant" (Pls.' Br. 20-21) opens the door to arguments for and against all variety of even "current" mortality tables and interest rates. Mortality rates vary not just by age, but also by geographic location, health history, lifestyle choices, race, gender, and other variables. Case & Deaton, *supra*, at 402-18. A plaintiff therefore could argue for whatever mortality table is most favorable to him or her. Likewise, there are many different "interest rates" at any given time—prime rate, federal funds rate, 30-year U.S. Treasury, and so on. *See, e.g.*, Bd. of Governors of the Fed. Reserve Sys., Selected Interest Rates (Daily) - H.15, https://www.federalreserve.gov/releases/h15/. A plaintiff thus could always argue for a more

"reasonable" rate. And who could know what set of actuarial assumptions a district judge will ultimately deem "reasonable" after years of litigation.

The end result is the opposite of predictability. Expected payouts on Survivor Annuities would be subject to repeated revision before and after participant retirements, making it impossible for plans or participants to reliably predict pension payments. Such chaos is not what ERISA's framers envisioned.

Flexibility. To encourage employers to offer benefits plans, ERISA created a system imbued with flexibility and discretion to set the terms of plans upfront. "Nothing in ERISA requires employers to establish employee benefits plans. Nor does ERISA mandate what kind of benefits employers must provide if they choose to have such a plan." *Lockheed*, 517 U.S. at 887. In other words, "private parties … control the level of benefits." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511-12 (1981); *see also Moore v. Reynolds Metals Co. Ret. Program for Salaried Emps.*, 740 F.2d 454, 456 (6th Cir. 1984) ("courts have no authority to decide which benefits employers must confer upon their employees"); *Belknap*, 588 F. Supp. 3d at 176 (retirement plans "are private arrangements, not part of a government social welfare program"). And Congress viewed such "[f]lexibility" as "essential to achieve the basic objectives of private pension plans because of the variety of factors which structure and mold the plans to individual and collective needs of different workers, industries, and locations." S. Rep. No. 92-634, at 21 (1972).

Allowing actuarial assumptions for Survivor Annuity calculations to be set in plan documents based on plan-specific circumstances and deliberations honors ERISA's call for flexibility. It places discretion over benefits where Congress wanted it: with plan sponsors. Shifting discretion over actuarial assumptions to various federal district judges, as envisioned by Plaintiffs' proposed "reasonableness" requirement, would eliminate employer flexibility. That outcome is antithetical to ERISA's objectives. Indeed, this Court has long recognized that "review of a plan's provisions for reasonableness is improper." *Moore*, 740 F.2d at 456 n.4.

II. Plaintiffs' Amorphous "Reasonableness" Requirement Would Impose Enormous Costs That Would Discourage Employers From Offering Pension Plans.

Adopting Plaintiffs' proposed "reasonableness" requirement for actuarial equivalence determinations for Survivor Annuities would create enormous costs for plan sponsors.

As the Supreme Court has repeatedly recognized, Congress, in enacting ERISA, "sought to create a system that is not so complex that administrative costs, or litigation expenses, unduly discourage employers from offering ERISA plans in the first place." *Conkright*, 559 U.S. at 517 (cleaned up); *see also Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 108 (2013) (similar). Courts therefore have long interpreted and applied ERISA provisions to avoid and minimize

such costs and expenses. *See, e.g.*, *Conkright*, 559 U.S. at 517-21 (relying on prospect of "increased litigation costs" and loss of "efficiency" and "predictability" in rejecting arguments for *ad hoc* exceptions to deference granted plan administrators); *Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 300-01 (2009) (adopting "a straightforward rule of hewing to the directives of the plan documents" for benefit waivers because "the cost of less certain rules would be too plain").

Plaintiffs ask this Court to do the opposite. To start, the proposed "reasonableness" requirement would increase administrative costs massively. Facing such a requirement, administrators would need to constantly re-evaluate actuarial assumptions and make corresponding changes to pension payouts. Doing that work would inevitably require hiring more staff and engaging actuarial and other consultants to identify and assess alternative options for mortality tables, interest rates, and other variables. Legal opinions on reasonableness might also be needed. None of that would be cheap. And it all would need to be done over and over again if, as Plaintiffs assert, the actuarial assumptions must remain "current," whatever that means. Pls.' Br. 17-18.

Furthermore, depending on whether and how ERISA's prohibition on cutting back benefits (29 U.S.C. § 1054(g)) would apply, an administrator might have to maintain and employ multiple sets of past actuarial assumptions for participants

whose pension payments would decrease under more "current" assumptions. And to determine whether any particular set of past assumptions had to be maintained (and for whom), an administrator would need to repeatedly undertake complicated analyses of how different actuarial assumptions would affect pension payments to every single participant and spouse.

A "reasonableness" requirement also would escalate litigation costs. Especially because the "reasonableness" demanded by Plaintiffs is undefined and changing, virtually all defined benefit plans could be subject to suit over their actuarial assumptions. Indeed, enterprising plaintiffs' lawyers are likely to find some way in which virtually any mortality table, interest rate, or other variable is "unreasonable" for one or more participants. They could argue that the mortality table should (or should not) account for geographic location, health history, lifestyle choices, race, and/or gender. Or they could argue that another of the many potentially applicable interest rates should apply.

Litigation over "reasonableness" would not be quick or inexpensive. Uncabined "reasonableness" determinations often defy dismissal because they frequently require costly and time-consuming fact and expert discovery. *See, e.g.*, *Wamer v. Univ. of Toledo*, 27 F.4th 461, 471-72 (6th Cir. 2022) (Title IX "unreasonable investigation" inquiry); *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 623 (6th Cir. 2002) (TILA "reasonable charge" inquiry). And, in ERISA cases, discovery

is entirely asymmetrical and comes at an "ominous" price. *PBGC ex rel. Saint Vincent Catholic Med. Ctr. S Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013).

In terrorem settlements, with generous payments to plaintiffs' lawyers, are the predictable result. *See, e.g.*, Robert Steyer, *Raytheon Settles ERISA Mortality Table Suit for $59.2 Million*, PENSIONS & INVESTMENTS (Feb. 18, 2021, 5:47 PM), https://www.pionline.com/courts/raytheon-settles-erisa-mortality-table-suit-592-million; Kellie Mejdrich, *Citgo Will Increase Pensions $10M To End Mortality Table Suit*, LAW360 (Oct. 3, 2024, 12:56 PM), https://www.law360.com/articles/1886415/print?section=benefits; *PBGC*, 712 F.3d at 719 (the "ominous" prospect of discovery in ERISA cases creates a burden elevating "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'").

And the potential liabilities can be enormous, whether settled or litigated to judgment. Even small differences in mortality tables or interest rates can have massive effects when multiplied across decades of retirement and thousands of retirees and spouses. *See, e.g.*, Compl. R.22, PageID#164-65.

Significantly, the explosion in pension liabilities under Plaintiffs' "reasonableness" requirement would not just be forward-looking. Plaintiffs seek to

impose the requirement retroactively to claim that Defendants should pay additional pension amounts going back to 2017. Compl. R.22, PageID#148-52, 157. And, in other cases, some plaintiffs have argued that there should be no cut-off for retrospective pension increases. *See, e.g.*, *Hamrick v. E.I. du Pont de Nemours & Co.*, No. 23-cv-238, 2024 WL 359240, at *7 (D. Del. Jan. 31, 2024), *R&R adopted*, 2024 WL 2817966 (D. Del. June 3, 2024). Such unexpected, massive, and unavoidable liabilities are precisely why statutes and regulations are presumed to apply only prospectively. *See Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 946 (1997); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). And those liabilities are precisely why this Court should decline Plaintiffs' invitation to judicially amend § 1055(d) to insert their desired retroactive "reasonableness" requirement. *See Belknap*, 588 F. Supp. 3d at 176 (noting concerns about retroactivity of "reasonableness" requirement).

III. Plaintiffs' Amorphous "Reasonableness" Requirement Would Harm Plan Participants.

Adopting Plaintiffs' proposed "reasonableness" requirement also would harm many participants in pension plans (and their spouses).

No set of actuarial assumptions is best for every individual. And, as several courts have observed, the kind of move to "reasonably current" assumptions sought by Plaintiffs would often make many retirees (and their spouses) worse off. *Belknap*, 588 F. Supp. 3d at 176; *Thorne v. U.S. Bancorp*, No. 18-cv-3405, 2021 WL 1977126,

at *2 (D. Minn. May 18, 2021); *Torres v. Am. Airlines, Inc.*, No. 4:18-cv-00983, 2020 WL 3485580, at *9-13 (N.D. Tex. May 22, 2020). Indeed, the harm to retirees and their spouses from lawsuits seeking to impose more "reasonable" actuarial assumptions has led courts to deny class certification in such suits. *Thorne*, 2021 WL 1977126, at *2-3; *Torres*, 2020 WL 3485580, at *9-13.

For instance, use of an older mortality table with a shorter life expectancy—exactly the sort of mortality table Plaintiffs say is "unreasonable" here—increases benefits for individuals who retire after the normal retirement age. *Belknap*, 588 F. Supp. 3d at 176. Replacing that mortality table with a "reasonably current" mortality table would harm those retirees.

Likewise, even when a more "current" mortality table might increase payments on Survivor Annuities, a more "current" interest rate could cut in the opposite direction. As a result, some participants could be worse off on balance, with the mix of winners and losers depending on the relative significance of those mortality-table and interest-rate changes, as well as the ages of the participant and spouse.

Plan participants would suffer from Plaintiffs' "reasonableness" requirement in yet another way. All the administrative, litigation, and pension costs that such a requirement would impose on plans and sponsors would discourage employers from maintaining pension plans. And that incentive to move away from pension plans

would accelerate the long-term trend of employers freezing and terminating defined benefit plans. *See* Congressional Research Serv., *A Visual Depiction of the Shift from Defined Benefit (DB) to Defined Contribution (DC) Pension Plans in the Private Sector* (Dec. 27, 2021), https://crsreports.congress.gov/product/pdf/IF/IF12007. The costs and uncertainty generated by a "reasonableness" requirement could even threaten the financial stability of some pension plans.

Ultimately, more and more members of current and future generations of the U.S. workforce (and their spouses) would be deprived of the certainty of predictable, lifetime income support throughout retirement. *See* PBGC, *A Predictable, Secure Pension for Life* 4-5 (2000), https://www.pbgc.gov/documents/A_Predictable_Secure_Pension_for_Life.pdf.

IV. Actuarial Equivalence Standards Should Be Left To Congress, Not The Courts.

The far-reaching consequences of Plaintiffs' proposed "reasonableness" requirement weigh heavily against imposing that requirement through *ad hoc* litigation against plans and sponsors unlucky enough to be targeted by plaintiffs' lawyers. If a "reasonableness" requirement is to be imposed at all, Congress, not the judiciary, should do so.

As the Supreme Court has "observed repeatedly," "ERISA is a comprehensive and reticulated statute, the product of a decade of congressional study of the Nation's private employee benefit system." *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534

U.S. 204, 209 (2002) (cleaned up). The Supreme Court has "therefore been especially reluctant to tamper with the enforcement scheme embodied in the statute by extending remedies not specifically authorized by its text." *Id.* (cleaned up). Indeed, "ERISA's carefully crafted and detailed enforcement scheme provides strong evidence that Congress did *not* intend to authorize other remedies." *Id.* (cleaned up). And what is true for efforts to expand ERISA remedies is no less true for efforts to expand ERISA liability. *See Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262-63 (1993) (refusing to "adjust the balance" struck between "benefiting employees" and "containing pension costs" by ERISA, "an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests"); *Reich v. Compton*, 57 F.3d 270, 277-78 (3d Cir. 1995) (refusing to expand ERISA liability); *Moran v. Aetna Life Ins. Co.*, 872 F.2d 296, 300 (9th Cir. 1989) (same).

Congress could have, but did not, include a "reasonableness" requirement in § 1055(d). Tellingly, however, Congress did include such a requirement in other ERISA provisions regarding actuarial assumptions. *See* 29 U.S.C. §§ 1085a(c)(3)(A), 1393(a)(1); *Belknap*, 588 F. Supp. 3d at 171. And, in another part of § 1055, it directed the use of specific actuarial factors for calculating lump sum pension payments. 29 U.S.C. § 1055(g).

In these circumstances, it is especially appropriate to leave to Congress judgments about what, if any, "reasonable" assumptions should be used in calculating actuarial equivalence under § 1055(d). After all, as a politically accountable institution with legislative powers, Congress is best situated to evaluate the complex trade-offs and potentially enormous costs involved in setting actuarial equivalence standards for Survivor Annuities. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 197 (1990) ("accommodation" of realities "is not only performed more legitimately by Congress than by courts, but it is performed more intelligently by legislation than by [statutory] interpretation"); *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 635, 646 (1981) ("far-reaching" "policy questions" about the "fairness" of relief are "matter[s] for Congress, not the courts, to resolve").

Congress can undertake comprehensive studies and receive information and viewpoints from all stakeholders, including the federal agencies with expertise, regulatory power, and enforcement authority on the relevant subjects. Congress can then make calibrated judgments, through the legislative process, on the many crucial and highly consequential questions that would arise in operationalizing actuarial equivalence, such as:

- Should there be a "reasonableness" requirement for actuarial assumptions?
- Should any such requirement be open-ended, establish general guidelines, or impose specific assumptions?

- What, if any, guidelines or assumptions should be used in actuarial equivalence calculations?
- How often, if ever, must actuarial assumptions be updated?
- Should any "reasonableness" requirement be applied retroactively?

Put simply, the creation of a "reasonableness" requirement for actuarial equivalence calculations under ERISA § 1055(d) is not an appropriate task for the judiciary. The matter should be left to Congress. *See Belknap*, 588 F. Supp. 3d at 177 ("It is not for this Court to impose a reasonableness standard that Congress chose to omit.").

CONCLUSION

Amici respectfully ask that the Court affirm the judgment below.

October 18, 2024

Respectfully Submitted,

/s/ Joshua D. Yount

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CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 3,743 words excluding the parts of the Brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1).

This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/ Joshua D. Yount
Joshua D. Yount

CERTIFICATE OF SERVICE

I hereby certify that, on October 18, 2024, I caused the foregoing BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN BENEFITS COUNCIL, AND THE ERISA INDUSTRY COMMITTEE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Joshua D. Yount
Joshua D. Yount