

No. 24-40637 (L), No. 24-10890 (C)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

FEDERATION OF AMERICANS FOR CONSUMER CHOICE, INC., ET AL.,
Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF LABOR, ET AL.,
Defendants-Appellants.

AMERICAN COUNCIL OF LIFE INSURERS, ET AL.,
Plaintiffs-Appellees,

FINANCIAL SERVICES INSTITUTE, ET AL.,
Intervenor Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF LABOR, ET AL.,
Defendants-Appellants.

On Appeals from the United States District Courts for the
Eastern District of Texas, No. 6:24-cv-163 (Kernodle, J.) and the
Northern District of Texas, No. 4:24-cv-482 (O'Connor, J.)

**BRIEF OF MEMBERS OF CONGRESS AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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November 19, 2025

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CERTIFICATE OF INTERESTED PERSONS

Counsel certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made so the judges of this court may evaluate possible disqualification or recusal.

1. Rep. Ann Wagner (MO), *Amicus Curiae*
2. Rep. Andy Barr (KY), *Amicus Curiae*
3. Rep. Aaron Bean (FL), *Amicus Curiae*
4. Rep. Earl “Buddy” Carter (GA), *Amicus Curiae*
5. Rep. Byron Donalds (FL), *Amicus Curiae*
6. Rep. Ron Estes (KS), *Amicus Curiae*
7. Rep. Scott Fitzgerald (WI), *Amicus Curiae*
8. Rep. Glenn Grothman (WI), *Amicus Curiae*
9. Rep. Mike Haridopolos (FL), *Amicus Curiae*
10. Rep. Tracey Mann (KS), *Amicus Curiae*
11. Rep. Dan Meuser (PA), *Amicus Curiae*
12. Rep. Andy Ogles (TN), *Amicus Curiae*
13. Rep. John Rose (TN), *Amicus Curiae*

14. Rep. Adrian Smith (NE), *Amicus Curiae*

15. Rep. Marlin Stutzman (IN), *Amicus Curiae*

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Dated: November 19, 2025

/s/ Tiffany H. Bates

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are members of the U.S. House of Representatives (listed below), who are concerned that the Department of Labor’s 2024 fiduciary rule, if allowed to go into effect, will harm millions of Americans saving for retirement. The rule undermines Congress’s recent efforts to enhance retirement security for Americans, and it usurps Congress’s authority to regulate financial professionals under ERISA. *Amici* thus urge the Court to affirm the decisions below.

Amici are:

Rep. Ann Wagner (MO)

Rep. Andy Barr (KY)

Rep. Mike Haridopolos (FL)

Rep. Aaron Bean (FL)

Rep. Tracey Mann (KS)

Rep. Earl “Buddy” Carter (GA)

Rep. Dan Meuser (PA)

Rep. Byron Donalds (FL)

Rep. Andy Ogles (TN)

Rep. Ron Estes (KS)

Rep. John Rose (TN)

Rep. Scott Fitzgerald (WI)

Rep. Adrian Smith (NE)

Rep. Glenn Grothman (WI)

Rep. Marlin Stutzman (IN)

¹ In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), counsel for *amici curiae* certifies that this brief was authored by counsel for *amici curiae* and that no party or counsel for any party funded the preparation or submission of this brief. All parties have consented to the filing of this amicus brief.

INTRODUCTION & SUMMARY OF ARGUMENT

On March 15, 2018, this Court vacated “in its entirety” the Department of Labor’s 2016 rule that attempted “to regulate in an entirely new way” the “hundreds of thousands of financial service providers and insurance companies” involved in the “trillion-dollar markets for ERISA plans and individual retirement accounts” by redefining who counts as a “fiduciary.” *Am. Council of Life Insurers v. United States Dep’t of Lab.*, No. 4:24-CV-00482-O, 2024 WL 3572297, at *2 (N.D. Tex. July 26, 2024); *Chamber of Com. of U.S. v. U.S. Dept. of Labor*, 885 F.3d 360, 363 (5th Cir. 2018). Six years later, in an effort to combat “hidden junk fees,” the Department promulgated a new rule reviving its ill-fated 2016 rule. This “renewed version” once again “expand[ed] ERISA fiduciary status” to include “insurance agents and brokers” that serve American retirement savers. *Am. Council of Life Insurers*, 2024 WL 3572297, at *2-3. But the new fiduciary rule suffers the same flaws as the prior one. It violates the plain text of ERISA, usurps Congress’s authority, and threatens consumers’ access to affordable financial services. To sustain this rule, DOL asks this Court to adopt the same unreasonable interpretation of ERISA it rejected in 2018 and to remove this major policy question from the political process. The district courts correctly declined to do so and stayed the effective date of the rule. This Court should affirm.

Congress is active in regulating the retirement services arena. After this Court struck down the 2016 fiduciary rule, Congress passed two substantive amendments to ERISA. In doing so, Congress declined to adopt DOL’s expanded definition of a

fiduciary. Rather, Congress left in place the existing standards for broker-dealers and investment advisers, while increasing access to retirement vehicles that provide Americans with lifetime income security.

Congress's refusal to adopt DOL's standards is also good public policy. DOL's proposed standards, if adopted, would reduce many consumers' access to the investment professionals they rely on for retirement planning products. By holding broker-dealers to the same weighty standards as investment advisers, the rule will incentivize broker-dealers to leave their markets and obtain advanced certifications as investment advisers—hanging many low- and middle-income Americans out to dry. Such changes would keep Americans saving for retirement from the professional financial guidance they want and need, especially during difficult economic times. Research also shows that DOL's new standards would reduce the accumulated retirement savings of 2.7 million individuals with incomes below \$100,000 by approximately \$140 billion over 10 years. DOL's policy thus harms the retirement professionals and the consumers they serve.

Importantly, DOL's fiduciary rule lacks congressional authorization. With the 2024 fiduciary rule, DOL once again attempts to unilaterally expand the meaning of the term 'fiduciary' to sweep in hundreds of thousands of insurance agents and brokers that serve American retirement savers. *Am. Council of Life Insurers*, 2024 WL 3572297, at *3. When an agency asserts broad authority with great economic and political significance, it must point to clear authorization from Congress to wield such authority. The

Department has not done so—and cannot do so. Only Congress can effectuate such a sweeping change to retirement regulations that will impact millions of Americans’ access to retirement investment advice.

At bottom, this Court should not give DOL the second bite “at the same rotten apple” that it now seeks. *Examining the DOL Fiduciary Rule: Implications for Retirement Savings and Access: Hearing Before the Subcomm. on Cap. Mkts. of the H. Comm. on Fin. Servs.*, 118th Cong. 1 (2024) (statement of Rep. Ann Wagner, Chairman, Subcomm. on Cap. Mkts. of the H. Comm. on Fin. Servs.). The Court should affirm the decisions below.

ARGUMENT

I. DOL’s fiduciary rule undermines Congress’s efforts to enhance retirement security for Americans.

In recent years, Congress has sought to maintain consumers’ access to affordable investment products and to secure guaranteed life income for Americans. Indeed, it has passed two important bipartisan retirement security laws since 2019. But DOL’s new fiduciary rule will undermine those efforts. If allowed to go into effect, the rule will harm the investment industry and consumers alike. One study estimates that the rule will cause the retirement savings of “2.7 million individuals with incomes below \$100,000” to “plummet by \$140 billion over ten years.” *See* Bipartisan Letter from U.S. House of Representatives to Acting Secretary of Labor Julie Su, at 2 (Jan 8, 2024), perma.cc/5ZTS-EBNH. DOL’s continued pursuit of its misguided rule thus will harm the same lower- and middle-income workers that DOL seeks to protect. As a bipartisan group of legislators (including many *amici*) told the Department last year, the rule will

“deprive America’s workers and retirees of much needed professional guidance to navigate the complex world of investing in order to achieve their retirement goals.” *Id.* at

2. The Court should not let the rule go into effect.

A. Over the last five years, Congress has acted to secure guaranteed life income for Americans.

Recognizing that retirement security weighs at the forefront of many Americans’ minds, Congress has responded to retirement planning needs. Since this Court vacated DOL’s 2016 fiduciary rule, Congress has twice amended ERISA, enacting the SECURE Act of 2019 and the SECURE 2.0 Act of 2022. These bipartisan legislative measures removed regulatory barriers to encourage Americans to opt for the lifetime stability that certain investment vehicles, such as annuities, can provide. And they set millions of Americans on the path toward retirement security.

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) was the first major congressional revision to retirement regulations since the Pension Protection Act of 2006. *See* Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. O, 133 Stat. 2534, 3137 (2020). Through the SECURE Act, Congress eased the burden of retirement regulations on small businesses and made saving for retirement more accessible to small business employees and non-traditional workers such as home care workers and long-term, part-time employees. *See* Press Release, H. Comm. on Ways & Means, Neal Praises House Passage of Landmark Retirement Legislation, The SECURE Act (May 23, 2019) (statement of Rep. Richard Neal,

Chairman, H. Comm. on Ways & Means). Congress achieved these goals by, among other things, providing enhanced access to annuities—which guarantee lifetime income—to help American retirees hedge against the growing possibility of outliving their retirement savings.

The SECURE Act addressed annuities in three key sections. First, it permitted employees to transfer their annuities from one retirement plan to another without worrying about surrender charges or fees. *See* 26 U.S.C. §401(a)(38)(A)(i)-(ii). Second, it required retirement plans to offer lifetime income disclosures that would project the potential monthly benefit provided if one’s total accrued benefits were converted to a qualifying annuity. *See* 29 U.S.C. §1025(a)(2)(D). And third, it provided a safe harbor for employers when selecting insurers that provided annuity options as a retirement benefit. *See id.* §1104(e). By allowing annuities “to be part of employer-sponsored long-term financial planning,” Congress gave consumers “added certainty” about their futures. *See* Lewis & Ellis, *Understanding the SECURE Act: How It Could Affect Annuities* 1 (June 2020), perma.cc/NVG4-QYNM.

Congress continued to build on the SECURE Act’s improvement in 2022. *See* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. T, 136 Stat. 4459, 5275 (2022). With SECURE 2.0, Congress further expanded retirement opportunities for a wide swath of Americans. It “expand[ed] coverage, increase[d] retirement savings, and simplif[ied] and clarif[ied] retirement plan rules.” Eric Droblyen, *SECURE ACT 2.0—A Summary of the Major 401(k) Provisions*, Employee Fiduciary (Jan. 17, 2023),

perma.cc/5YMC-ZBW8. And it removed additional regulatory barriers to annuity access. Among other things, SECURE 2.0 removed minimum distribution barriers for life annuities to encourage individuals to elect for life annuities under a defined contribution plan or IRA. *See* 26 U.S.C. §401(a)(9). It permitted the creation of “insurance-dedicated” exchange-traded funds, *see* 26 C.F.R. §§1.817-5(f)(3), 1.817-5(f)(2)(i), and it eliminated a penalty for partial annuitization, *see* 26 C.F.R. §1.401(a)(9)-6.

Through this legislation, Congress has consistently sought to increase access to retirement vehicles that provide Americans with lifetime income security. In early 2024, a bipartisan group of legislators (including many *amici*) objected to DOL’s proposed fiduciary rule, explaining that it would undermine these efforts; and the bipartisan group asked the agency to “focus on implementing” this recent legislation, which “provide[s] clear and appropriate opportunities for DOL to help America’s workers and retirees have opportunities to build their retirement nest eggs and enjoy a financially secure retirement.” Bipartisan Letter, *supra*, at 1. But rather than heed Congress’s request, the Department finalized the fiduciary rule and now defends its implementation. If allowed to go into effect, the rule will stifle the progress Congress has made to give Americans retirement security and will impose “significant, unnecessary, and counterproductive changes to the existing regulatory framework governing the conduct of financial professionals who provide personalized investment advice to retirement savers” under ERISA. *Id.*

B. The fiduciary rule will reduce Americans’ access to investment advice and limit consumer choice.

When Congress enacted the SECURE Act and SECURE 2.0, it declined to expand fiduciary status to insurance agents and brokers. That decision supported the legislation’s twin goals: increasing consumers’ access to investment products and keeping costs low for employers and insurers. As this Court noted in *Chamber of Commerce*, the 2016 rule had devastating market consequences before it was even implemented. Several major companies, including MetLife, AIG, and Merrill Lynch withdrew from multiple segments of the brokerage and retirement investor market. *Chamber of Commerce*, 885 F.3d at 368. Edward Jones and State Farm limited investment products available to retirement investors. *Id.* These companies withdrew from the market, in part, because of the increased compliance costs and fear of liability under the 2016 rule. DOL itself estimated that the rule could impose more than \$31.5 billion in new compliance costs on regulated parties over ten years. *Id.* at 366. Thus, as this Court explained, it was “likely that many financial service providers [would] exit the market for retirement investors rather than accept [a] new regulatory regime.” *Id.*

The 2024 fiduciary rule is remarkably similar to the 2016 rule, which caused significant consumer harm. *See Fed’n of Ams. for Consumer Choice v. United States Dep’t of Lab.*, 742 F. Supp. 3d 677 (E.D. Tex. July 25, 2024). The new rule suffers from many of the same deficiencies that led this Court to vacate the 2016 rule. *See id.*; *Am. Council of Life*

Insurers, 2024 WL 3572297, at *2-*3. And if allowed to go into effect, the 2024 rule will harm millions of Americans.

Recent congressional hearings have documented many of the devastating effects the 2024 rule will have on retirement planning, consumer choice, and savers' ability to receive investment education. On January 10, 2024, the House Subcommittee on Capital Markets held a hearing on the revived fiduciary rule. During the hearing, Bradford P. Campbell, an ERISA attorney and former U.S. Assistant Secretary of Labor for Employee Benefits, testified that the fiduciary rule would create conflicting regulatory regimes regarding consumer access to investment professionals. *See Examining the DOL Fiduciary Rule, supra*, at 2, perma.cc/H6DQ-43AA. He explained that DOL's rule would be "highly disruptive" to scores of businesses that currently provide financial assistance to millions of Americans. *Id.* And the rule would subject many of those businesses to a "new, highly detailed, and very proscriptive Federal regulatory regime" that may "materially conflict" with the requirements of their "'normal' state insurance regulation, state and Federal securities regulations, or state and federal banking regulation." *Id.* Campbell also remarked that, because of the similar 2016 rule, his personal broker-dealer stopped offering investment recommendations for his small account IRA, and resumed only when the 2016 rule was vacated. *Id.* at 3.

A month later, the House Subcommittee on Health, Employment, Labor, and Pensions held a hearing on the fiduciary rule. *See Protecting American Savers and Retirees from DOL's Regulatory Overreach: Hearing Before the Subcomm. on Health, Employment, Lab.,*

and Pensions of the H. Comm. on Higher Educ. and Workforce Dev., 118th Cong. (Feb. 15, 2024), perma.cc/7KEU-PVC9. There, Jason Berkowitz, Chief Legal and Regulatory Affairs Officer at the Insured Retirement Institute, testified that DOL’s proposal was “functionally equivalent” to the vacated 2016 rule. *Id.* at 2. He explained that the rule would prohibit “many common activities that benefit retirement savers” and would especially harm “millions of low- and middle-income retirement savers” by “depriving them of access to the products and services they need to achieve a secure and dignified retirement.” *Id.*

Recent research also confirms the rule’s impending negative effects. For example, an analysis from Quantria Strategies reports that if the vacated 2016 rule was reinstated, it would “reduce the accumulated retirement savings of 2.7 million individuals with incomes below \$100,000 by approximately \$140 billion over 10 years.” Bipartisan Letter, *supra*, at 2, n.6. Additionally, the rule would “increase[] the racial wealth gap by 20 percent,” disproportionately affecting black and hispanic families. *Id.* Another report, from Greenwald Research, found that most “moderate-income savers who are in or near retirement” are concerned “that a fiduciary-only regulation would keep them from the professional financial guidance they want and need, especially during difficult economic times.” *Id.* at 2, n.7. And a 2017 advisory explained that “putting everyone on the same playing field “regarding fiduciary responsibility” would “raise[] the cost of getting advice.” Alan E. Becker, *What the DOL’s Fiduciary Rule Means for Consumers*, Kiplinger (Jan.

2, 2017), perma.cc/2LKH-WMCS. It would force companies to raise minimum payments, only take on high dollar clients, and force advisers out of the workforce. *Id.*

Notably, 93% of independent insurance agents “anticipate rising professional liability insurance premiums.” *Am. Council of Life Insurers*, 2024 WL 3572297, at *6. “Combined with low-account (low-commission) sales becoming more time-intensive and burdensome, agents no longer consider such sales to be economically viable, which will result in lost profits.” *Id.* In fact, some agents “even fear that they will be forced out of business, forced to restructure their business, or even forced into retirement.” *Id.* These problems “threaten the existence of [these agents] businesses.” *Id.* (quoting *Texas v. EPA*, 829 F.3d 405, 434 n.41 (5th Cir. 2016)) (cleaned up). Thus, if even some of these harms occur, the 2024 fiduciary rule will significantly reduce consumers’ access to investment advice and limit consumer choice.

II. The fiduciary rule lacks the clear congressional authorization necessary for a regulation of this magnitude.

With the 2024 fiduciary rule, DOL once again attempts to unilaterally expand the meaning of “fiduciary” to sweep in hundreds of thousands of insurance agents and brokers that serve American retirement savers. *Am. Council of Life Insurers*, 2024 WL 3572297, at *3. But as this Court already held in 2018, “[t]his it cannot do.” *Chamber of Commerce*, 885 F.3d at 373. Only Congress can effectuate a sweeping change to retirement regulations that could impact millions of Americans’ access to retirement

investment advice. But it has not done so. Instead, the definition of fiduciary has remained unchanged since Congress first enacted ERISA in 1974.

More than fifty years ago, Congress imposed fiduciary obligations on certain financial professionals who provide retirement plan advice to Americans. Under ERISA, plan fiduciaries must adhere to traditional common law duties of loyalty and prudence. *See* 29 U.S.C. §§1001(b), 1104. Because these common law duties impose weighty obligations on fiduciaries, Congress limited fiduciary status to certain individuals. As relevant here, Congress imposed fiduciary obligations only on those financial professionals who “render[] investment advice for a fee.” *Id.* 29 U.S.C. §1002(21)(A)(ii). Salespersons, like stockbrokers or insurance agents, are not covered under this provision, because they are compensated for the *purchase* of an investment product. In contrast, investment advisers are compensated for their *advice*. *See Chamber of Commerce*, 885 F.3d at 372-73. When enacting ERISA, “Congress was well aware” of this “distinction.” *Id.* at 372.

Despite this distinction, DOL has once again attempted to extend fiduciary obligations to all brokers and insurance agents under the fiction that these professionals have “‘authority’ or ‘responsibility’ to ‘render investment advice.’” *Id.* at 373. In an effort to prevent “hidden junk fees,” the 2024 rule defines fiduciary as any person making “professional investment recommendations to investors on a regular basis as part of their business” and the “recommendation is made under circumstances that would indicate to a reasonable investor” that the recommendation “is based on review of the retirement investor’s particular needs or individual circumstances, reflects the

application of professional or expert judgment to the retirement investor’s particular needs or individual circumstances, and may be relied upon by the retirement investor as intended to advance the retirement investor’s best interest.” Retirement Security Rule: Definition of an Investment Advice Fiduciary, 89 Fed. Reg. 32,122, 32,141 (Apr. 25, 2024) (to be codified at 29 C.F.R. pt. 2510). Not only does this expansive definition of a fiduciary conflict with ERISA, but it will negatively affect significant numbers of financial professionals and the consumers that they serve.

The fiduciary rule is of such economic and political significance that it must be authorized by clear statutory language. The Supreme Court has invoked the major questions doctrine to rebuke agency actions that circumvent the demands of bicameralism and presentment required by our Constitution. *Biden v. Nebraska*, 600 U.S. 477, 505-07 (2023); *West Virginia v. EPA*, 597 U.S. 697, 724 (2022). *Accord NFIB v. OSHA*, 595 U.S. 109, 120 (2022) (rejecting OSHA’s vaccine mandate as outside the scope of Congress’s delegation to the agency). When an agency asserts broad authority with great economic and political significance, it must point to clear authorization from Congress to wield such authority. *Nebraska*, 600 U.S. at 506; *West Virginia*, 597 U.S. at 723. And the fact that Congress previously chose not to achieve what the agency seeks to achieve through regulation undermines an agency’s claimed authority. *See, e.g., Nebraska*, 600 U.S. at 503 (noting that Congress had considered and rejected legislation that would authorize the agency action). Because DOL’s rule affects hundreds of thousands of businesses with great economic consequences, and because Congress has declined to expand the

definition of fiduciary in recent retirement legislation, the rule cannot survive under the major questions doctrine.

To start, the scope of the fiduciary rule is vast. In the third quarter of 2024, U.S. retirement assets totaled \$42.4 trillion. *See Retirement Assets Total \$42.4 Trillion in Third Quarter 2024*, Inv. Co. Inst. (Dec. 19, 2024) perma.cc/DWH2-XCJZ. And “hundreds of thousands of financial service providers and insurance companies” are involved in retirement market. *Chamber of Commerce*, 885 F.3d at 363. As in 2016, the new fiduciary rule “could cause a large number of financial professionals, who currently serve a broad range of customers, to switch to providing service as investment advisers, rather than as insurance agents or registered representatives of a broker-dealer.” Bipartisan Letter, *supra*, at 1. Such changes would deprive millions of Americans—especially those with low- or middle-class incomes—from accessing the products and services necessary to prepare for retirement. *See* discussion *supra* Section I.B. Indeed, these kinds of moves would “transform the trillion-dollar market for IRA investments, annuities and insurance products” and regulate the “thousands of people and organizations working in that market” in a brand new way. *Chamber of Commerce*, 885 F.3d at 387. Agencies may not “substantially restructure” entire sectors of the American economy by “claim[ing] to discover in a long-extant statute an unheralded power.” *West Virginia*, 597 U.S. at 724 (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). Yet that is what DOL attempts to do here.

DOL’s rule will also impose significant costs on brokerage and insurance companies. Even taking DOL’s estimates at face value, the rule will impose “more than half a billion dollars in compliance costs” in the first year alone, and “another \$2.5 billion” over the next decade. *Am. Council of Life Insurers*, 2024 WL 3572297, at *5. On top of that, “87% of independent insurance agents estimate that the Rule will significantly increase their staffing and operational costs.” *Id.* at *6. These changes are expected to cost each insurer “roughly \$2.5 million per company.” *Id.* Such significant burdens—if ever levied—must be levied by Congress, which can appropriately balance these costs against the government’s interest. *See Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021) (“We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance.” (quotation marks omitted)).

The fact that Congress has authorized the SEC to regulate broker-dealers cuts decisively against the rule. *See Fed’n of Ams. for Consumer Choice v. United States Dep’t of Lab.*, 742 F. Supp. 3d 677, 699 n.9 (E.D. Tex. July 25, 2024). Congress knows how to authorize an agency to alter standards for financial professionals. In the Investment Advisers Act, Congress imposed fiduciary duties on “investment advisers.” *See* 15 U.S.C. §80b-6. And in Dodd-Frank, Congress authorized the SEC to “promulgate enhanced, uniform standards of conduct for broker-dealers and investment advisers who render ‘personalized investment advice about securities to a retail customer.’” *Chamber of Commerce*, 885 F.3d at 385 (quoting Dodd-Frank Wall Street Reform and Consumer

Protection Act, Pub. L. No. 111-203, §913(f)-(g), 124 Stat. 1376, 1827-28 (2010)). The SEC did so in 2019, issuing Regulation Best Interest, which “reforms requirements for broker-dealers when they make investment recommendations to retail customers.” Gary Shorter, Cong. Rsch. Serv., R46115, *Regulation Best Interest (Reg BI): The SEC’s Rule for Broker-Dealers* ii (2020). But Congress has not provided similar authorization to DOL. Indeed, that would make little sense, given that Dodd-Frank already “occup[ies] [that] turf.” *Fed’n of Ams. for Consumer Choice*, 742 F. Supp. 3d at 699, n.9.

ERISA is “an enormously complex and detailed statute.” *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993). And the power to change it belongs to Congress alone. DOL’s policy concerns preexisted ERISA, but Congress still chose to limit which advisers are subject to fiduciary obligation. *Chamber of Commerce*, 885 F.3d at 378-79. DOL’s “perceived ‘need’” to unilaterally regulate the retirement market “does not empower [it] to craft *de facto* statutory amendments or to act beyond its expressly defined authority.” *Id.* at 379.

As the district courts recognized, DOL’s arguments “are nothing more than an attempt to relitigate” this Court’s prior decision. *Am. Council of Life Insurers*, 2024 WL 3572297, at *5. Indeed, the fiduciary rule is “yet another bite at the same rotten apple.” Chairman Wagner Statement, *supra*. This Court should not allow it.

CONCLUSION

For these reasons, the Court should affirm the decisions below.

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CERTIFICATE OF COMPLIANCE

This brief complies with Rule 32(a)(7) because it contains 3,864 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word in 14-point Garamond font.

Dated: November 19, 2025

/s/ Tiffany H. Bates

CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: November 19, 2025

/s/ Tiffany H. Bates