No. 24-12773

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

WILLIAM DRUMMOND and RICHARD ODOM, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

v.

SOUTHERN COMPANY SERVICES, INC.; THE SOUTHERN COMPANY PENSION PLAN; and THE BENEFITS ADMINISTRATION COMMITTEE,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia, Gainesville Division
Hon. Steve C. Jones
No. 2:22-CV-00174-SCJ

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE AGREEMENT

Pursuant to Federal Rules of Procedure 26.1 and Eleventh Circuit Rules 26.1-1 *et seq.*, counsel for Plaintiffs-Appellants certify that the CIP filed in the Opening Brief of Plaintiffs-Appellants includes a complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations known to Plaintiffs-Appellants that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

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INTRODUCTION

ERISA requires every married participant to be offered a joint and survivor annuity that is the "actuarial equivalent of a single annuity for the life of the participant." 29 U.S.C. §§ 1055(d)(1)(B), 1055(d)(2)(A)(ii). Odom explained that both the text and purpose of § 1055 make clear that this JSA must be at least equal in value to the single life annuity the participant would have earned if they retired unmarried. By requiring the married participant's default benefit (JSA) to have at least the same present value as the benefit the participant would've received if they were unmarried (SLA), § 1055(d)'s actuarial equivalence requirement ensures that workers will not lose pension benefits on account of their marital status.

Defendants assert that § 1055(d) is satisfied whenever plan sponsors say it is: "Congress left the selection of actuarial assumptions for QJSA conversions and QPSA charges to the sound discretion of the employer sponsoring the plan." Br. 4. Their position means that, as long as Defendants calculate JSA payments using actuarial assumptions written in the plan document, the assumptions can be anything: centuries-old data or random numbers or based on the lifespan of anything from a housefly to a giant tortoise (or Tolkien elf). That outcome is so absurd that it could sound like a mischaracterization, a poorly-constructed strawman to hide from Defendants' real argument. But this is no exaggeration: Defendants are explicit that ERISA lets them write any mortality table and interest rate into the plan.

The district court here is only one of a few outliers to have accepted Defendants' position. More than ten other courts have permitted similar lawsuits to survive dismissal. Opening Br. 2-3. And for good reason: if Defendants are allowed to use even wildly outdated actuarial assumptions to calculate JSA payments, the present value of the JSA will be significantly less than—not equal to—the present value of the SLA the participant would've received if unmarried. In the words of one court: "[I]t cannot possibly be the case that ERISA's actuarial equivalence requirements allow the use of unreasonable mortality assumptions. . . . If this were true, the actuarial equivalence requirement would be rendered meaningless." *Urlaub v. CITGO Petro. Corp.*, No. 21 C 4133, 2022 WL 523129, at *6 (N.D. Ill. Feb. 22, 2022). Congress does not enact meaningless requirements, particularly in a statute designed to protect participants and beneficiaries. *See Boggs v. Boggs*, 520 U.S. 833, 843 (1997). Indeed, ERISA was an explicit response to plans' "lack of . . . adequate safeguards." 29 U.S.C. § 1001(a). Defendants' argument that ERISA lets them alone determine those safeguards turns ERISA on its head.

Defendants have no answer for that point. They cannot identify a single limit on their discretion if the district court's decision is correct. Their primary response is that the assumptions must be written into the plan document. Br. 36-37. But Defendants' whole position is that plan sponsors are free to pick *any* assumptions they want—writing them into the document does not limit that discretion at all. The

upshot is that each plan sponsor defines the "actuarial equivalent of a single annuity for the life of the participant" to mean whatever amount the sponsor wants.

Defendants cannot point to any text that supports this extreme interpretation. Instead, they make much of the fact that § 1055(d) doesn't specify exactly which actuarial assumptions plan sponsors and fiduciaries must use and it doesn't explicitly say the assumptions must be "reasonable." But Congress didn't provide a statutory definition of "actuarial equivalent," either. That's no reason to ignore the words that Congress did use, and those words make clear that Defendants must give Odom a JSA that is at least as valuable as the SLA he would've received if he were unmarried.

All told, while Defendants accuse Odom of rewriting the statute, it is Defendants and the district court who have struck out § 1055(d)'s text. That same disregard of statutory text infects the dismissal of the § 1053 and QPSA claims. Reversal is warranted.

ARGUMENT

I. Defendants offer no reason why § 1055(d)'s text or purpose allows them to use outdated assumptions.

As Odom's opening brief explained, Congress enacted § 1055 "to ensure a stream of income to surviving spouses." *Boggs*, 520 U.S. at 843. And § 1055(d) in particular guarantees that married participants are treated at least as well as their unmarried peers by requiring the JSA to be at least "the actuarial equivalent" of their SLA. 29 U.S.C. § 1055(d). That is, the JSA must have at least the same aggregate

value (present value) as the participant's SLA. And because an SLA is paid over a participant's lifetime, its present value is necessarily determined by current mortality assumptions. This in turn means Defendants must use current actuarial assumptions when calculating *JSAs*, because outdated assumptions will cause the JSA to have a lower present value than the SLA the participant would receive if they were unmarried.

Defendants (and the district court) deny that plan sponsors and fiduciaries are required to use current actuarial assumptions when calculating JSAs. They assert that § 1055(d) does not impose any limits whatsoever on Defendants' discretion to select the assumptions. They say § 1055(d) is satisfied as long as Defendants use the assumptions written in the plan document: "Nothing in this definition—or in ERISA more generally—dictates or qualifies the particular 'set of actuarial assumptions' plans must use in this equation." Br. 22-23; *see id.* at 27 ("the only statutory obligations are that plans record—and consistently apply—the actuarial assumptions used to convert SLAs to QJSAs"), 33 ("[I]t does not appear that 'actuarial equivalence' . . . requires or implies 'reasonable' actuarial assumptions."); *cf.* Br. 49 ("So long as the Plan complies with its stated terms, there is no failure to pay the promised amounts, and there is no forfeiture.").

This position lacks a sound textual or policy basis.

A. Section 1055(d)'s text requires equivalence between the participant's JSA and SLA and thus forecloses the use of outdated assumptions.

1. Defendants' interpretation of § 1055(d) makes it meaningless.

The easiest basis for rejecting Defendants' and the district court's interpretation is that it would make § 1055(d)'s actuarial equivalence requirement "insignificant, if not wholly superfluous." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). As Odom and the Department of Labor explained, using outdated actuarial assumptions to convert SLAs to JSAs makes the aggregate (present) value of the JSA lower than the aggregate (present) value of the SLA that the participant would actually receive upon retirement. Opening Br. 27-33; DOL Br. 11.[1] Odom alleged that his JSA was calculated using assumptions that are even more punitive—*i.e.*, older—than the 1951-GAM, which uses seventy-year-old mortality data, and that his JSA has a lower present value than the present value of his SLA.[2] *Id*. at 15-16

[1] The DOL's "expertise" "give[s] [its] interpretation particular 'power to persuade, if lacking power to control.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024) (citation omitted); *see* DOL Br. 14 n.6.

[2] Defendants claim that Odom's JSA was calculated using a mortality table from 2014. Br. 12. This factual assertion is both procedurally improper and false. Odom's JSA was calculated using a specifically-identified factor, *e.g.*, 0.95, rather than a specified interest rate and mortality table, but Odom alleged that the factor was based on outdated actuarial assumptions that appear even older than the 1951-GAM. Opening Br. 15 (citing Doc. 51 at 9-10, 22, 24-25 (¶¶ 19, 53, 60, 62)). The Court is obligated to accept Odom's allegations, and Defendant's citation of their own correspondence is unavailing. Plaintiffs' allegation of administrative exhaustion (Doc. 51 ¶ 25) is insufficient to incorporate the entire administrative record into the

(citing Doc. 51 at 9-10, 22, 24-25 (¶¶ 19, 53, 60-64, 72-74)).[3] Defendants' position is that they can use whatever assumptions they want (as long as they are written in the plan)—even assumptions that result in a JSA worth a tiny fraction of the SLA. This "would eliminate any protections provided by [§ 1055(d).]" *Masten v. Metro. Life Ins. Co.*, 543 F. Supp. 3d 25, 35 (S.D.N.Y. 2021); *see, e.g.*, *Esden v. Bank of Boston*, 229 F.3d 154, 164 (2d Cir. 2000) ("If plans were free to determine their own assumptions and methodology, they could effectively eviscerate the protections provided by ERISA's requirement of 'actuarial equivalence.'"); *Laurent v. PricewaterhouseCoopers LLP*, 794 F.3d 272, 286 (2d Cir. 2015) ("ERISA did not leave plans free to choose their own methodology for determining the actuarial equivalent of the accrued benefit."). Courts have thus concluded that Defendants' interpretation renders § 1055(d) "meaningless." *Urlaub*, 2022 WL 523129, at *6; *Franklin v. Duke Univ.*, No. 1:23-CV-833, 2024 WL 1740479, at *3 (M.D.N.C. Apr. 23, 2024).

Defendants do not acknowledge any of those cases, and, worse, they entirely fail to engage with that reasoning. While declaring Odom's conclusion "wrong" (Br.

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complaint, and it would be particularly improper to accept an assertion that Odom has consistently disputed. *See* Doc. 56 at n.1 (Odom's administrative appeal letter said his JSA factor does "not resemble" factors based on an RP-2014 mortality table with a 5% interest rate).

[3] District court docket entries are cited by document number and ECF page number. Appellate brief citations refer to internal pagination.

35), Defendants do not identify anything in their interpretation that would limit their actuarial assumptions. *See, e.g.*, Br. 22-23, 27 (expressly *denying* any limit).

First, they note that the same assumptions "must be used consistently throughout the operation." Br. 36. But that still allows Defendants to use "any mortality table" they want when calculating JSAs, including "one from the sixteenth century." *Urlaub*, 2022 WL 523129, at *6. This point is utterly nonresponsive.

Second, Defendants remark that "plan sponsors must include those assumptions in the plan document." Br. 36. This response is equally irrelevant. As Odom explained, a plan sponsor can just as easily include outdated assumptions (as Defendants did here) as accurate ones, and under Defendants' and the district court's view, those outdated assumptions comply with ERISA. Opening Br. 41-42. Plan sponsors would have limitless discretion to use any assumptions they want (as long as they disclose them), and thus § 1055(d) would have no force. Defendants' position boils down to the assertion that plan sponsors should be trusted. But ERISA was enacted expressly because plans were not adequately protecting participants. *See* 29 U.S.C. § 1001(a).

Defendants' amici lay bare their goal of eroding ERISA's safeguards. They want benefits "mediated by the labor market." The ERISA Industry Committee et al. Br. 5. But "ERISA's commands" may not be avoided "by the simple expedient of sharp bargaining." *Gastronomical Workers Union Loc. 610 & Metro. Hotel Ass'n*

Pension Fund v. Dorado Beach Hotel Corp., 617 F.3d 54, 62 (1st Cir. 2010). Moreover, the harm that Congress intended to prevent in § 1055(d) is the unequal treatment between unmarried employees (who receive higher-value SLAs) and married employees who receive JSAs with lower (nonequivalent) values. The "invisible hand" of market bargaining does not stop such discrimination, any more than it stops any other type of discrimination that favors one group of employees over others. That a Plan follows its own terms that harm one class of employees—here, married couples—provides no defense, as § 1055(d) was deliberately designed to prevent precisely that.

Nor does it matter that "[i]f the sponsor deviates from those stated assumptions, participants and beneficiaries may sue." Br. 37. Deviating from the plan document gives rise to a different cause of action to remedy a different wrong, *i.e.*, "to recover benefits due to [the participant] under the terms of his plan." 29 U.S.C. § 1132(a)(1). That is no substitute for an action under § 1132(a)(2) or (a)(3) to enforce violations of ERISA itself, notwithstanding what the plan provides. *See, e.g.*, *Williams v. Rohm & Haas Pension Plan*, 497 F.3d 710, 714 (7th Cir. 2007) ("The Plan cannot avoid that which is dictated by the terms of ERISA.").

Third, Defendants fall back on suggesting that actuarial standards "may act as a practical, if not legal, check" on their assumptions. Br. 37. If Defendants are suggesting that actuaries will prompt plan sponsors to update their assumptions, that

concedes the incoherence of Defendants' position—the only reason actuaries would suggest updating assumptions is because they understand that outdated assumptions cause JSAs to be worth less than SLAs. More importantly, however, Defendants offer no reason to believe that actuaries will tell sponsors to change their plan terms. In all events, Defendants' speculation is plainly no answer for rendering the statute surplusage. There are practical checks on murder, but no one thinks that homicide laws can be repealed.

Fourth, Defendants again look everywhere but § 1055(d) to support their evisceration of that provision. They note that "[p]lan sponsors are further constrained by tax-qualification requirements, which are policed by the Internal Revenue Service." Br. 37. Again, this is a concession—Defendants appear to agree that Internal Revenue Code provisions imposing parallel requirements to those in § 1055 require the use of reasonable actuarial assumptions when calculating JSA payments. As Odom explained, § 1055(d) should be interpreted consistently with §§ 401(a) and 417(b). Opening Br. 34. Regardless, that the IRS can enforce a different statute is again no substitute for a participant's claim under ERISA. Federal (and state) laws often target the same conduct, but those parallel constraints do not mean that the

judiciary can strike one from the books.[4] That is especially true where, as here, the claimants and available remedies are distinct.

Ultimately, if § 1055(d) is satisfied as long as the assumptions used to calculate JSA payments are written in the plan, then it provides no protection at all. Defendants' interpretation "would in practical effect render [§ 1055(d)] entirely superfluous." *TRW Inc. v. Andrews*, 534 U.S. 19, 29 (2001).

2. The plain meaning of § 1055(d) forbids the use of outdated assumptions when calculating JSAs.

Perhaps recognizing they have impermissibly "subtract[ed] words from a statute," Defendants are forced to repeatedly proclaim that Odom is trying to "add" words. Br. 22. Not so. Odom explained that a straightforward understanding of § 1055(d)'s language forbids plan sponsors and fiduciaries from using outdated actuarial assumptions.

Odom explained that the phrase "actuarial equivalent of a single annuity for the life of the participant" demands actuarial equivalence between the JSA and SLA of the real-life participant retiring in present day, not a hypothetical one retiring decades earlier. Opening Br. 26, 30-31. Defendants' affirmative argument does not even try to give meaning to the phrase "life of the participant." *See* Br. 21-27. When Defendants finally try to rebut Odom's interpretation, they declare that this phrase

[4] That a murderer may be deprived of his inheritance under probate law does not mean there are no additional prohibitions as well; so too here.

"says nothing about the actuarial assumptions that must be used to balance that equation." Br. 31. But of course it does. It refers to the life of "*the participant*." The participant's SLA is not some abstract construct; it is, as Defendants acknowledge, the particular monthly payments the plan promised to pay "during the participant's lifetime." Br. 1-2. Its present value necessarily depends on current assumptions. Plans cannot calculate the JSA with any old assumptions they want, because not just any assumptions will result in a JSA that has the same present value as the SLA—the "monthly payment[s] made during the participant's lifetime." Br. 2.

Defendants nevertheless insist that "the participant" cannot actually mean "the participant" because that would supposedly "require plans to conduct individualized assessments of plan participants," leading to "the use of participant-specific assumptions" and "endless legal challenges." Br. 31. But Defendants' parade of horribles depends on them wrongly reading "the life of the participant" in isolation. Section 1055(d) requires "*the actuarial equivalent* of a single annuity for the life of the participant." And there are a range of assumptions that an actuary would find permissible to determine the aggregate (present) value of a participant's SLA. Accordingly, no reasonable actuary in this context would say it is impermissible to use generalized assumptions—as long as they are accurate—about the employee base rather than individualized assessments. Put another way, a plaintiff could not win by claiming that her preferred assumptions merely result in higher benefits than

what the plan used; rather, she must prove that the plan's assumptions are *un*reasonable. Defendants' concerns on this point are overblown.

To that end, Defendants are also mistaken about the term "actuarial equivalence." As Odom explained, the concept of "actuarial equivalence" itself forbids outdated, unreasonable assumptions. Opening Br. 28-30. Actuarial equivalence is a term of art that requires proper actuarial analysis. If a reasonable actuary were asked to calculate the present value of Odom's real-life SLA, the actuary would not select seventy-year-old mortality data to estimate the length of the payment stream.[5]

Defendants' interpretation of "actuarial equivalence" again leaves that term and § 1055(d) with nothing to do. In Defendants' view, all "§ 1055(d) requires [is] mathematical equivalency:" a plan values "a participant's SLA (using interest rate and mortality assumptions for the participant)," then, as long as the plan uses "the *same*" assumptions to calculate the JSA, § 1055(d) is satisfied. Br. 22. But Defendants have no answer for Odom's and the Department of Labor's explanations that the term of art "actuarial equivalence" itself imports reasonableness because actuarial science requires reasonable assumptions. Opening Br. 28-30; DOL Br. 12-

[5] Defendants purport to distinguish Actuarial Standards of Practice as applying "at most" to "the *selection* of actuarial assumptions." Br. 32. But that is exactly the issue here: whether § 1055(d) allows Defendants to select any assumptions they want when calculating the actuarial equivalent of a participant's SLA.

13. Defendants simply declare that Odom's "standard does not exist," citing an out-of-circuit district court decision, *Belknap v. Partners Healthcare Sys., Inc.*, 588 F. Supp. 3d 161, 174-75 (D. Mass. 2022). Br. 33. But *Belknap* was a grant of summary judgment, and the quotation Defendants rely on depended on the plaintiff's experts' concessions about actuarial assumptions. *See Belknap*, 588 F. Supp. 3d at 174-75. Needless to say, that expert testimony is irrelevant here. And the *Belknap* court actually *denied* those defendants' motion to dismiss, concluding: "Surely, Congress intended the 'actuarial equivalence' requirement of § 1054(c)(3) to provide some degree of protection to beneficiaries, and not to permit employers to use any assumptions they chose, no matter how outmoded or inapt." *Belknap v. Partners Healthcare Sys., Inc.*, No. CV 19-11437-FDS, 2020 WL 4506162, at *2 (D. Mass. Aug. 5, 2020). Defendants' "mathematical equivalency" thus improperly minimizes the "actuarial" component.

Moreover, Defendants gloss over what their mathematical equation's "interest rate and mortality assumptions *for the participant*" (Br. 22) must be. They nowhere explain how outdated assumptions can produce the value "of a single annuity for the life of the participant." As the Department of Labor discusses, "determining what a participant would have received as an SLA over their lifetime requires assumptions about mortality. If unreasonable assumptions are made as to the participant's lifespan, then the expected value of the QJSA will not equal the expected value of

what the participant would have received as an SLA over their lifetime (and therefore the former would not be the 'actuarial equivalent' of the latter)." DOL Br. 11 (footnote omitted). And, again, if Defendants are correct that § 1055(d) requires nothing but the same assumptions on both sides of the equation, as long as those assumptions are written down, then random numbers would work just as well. That is not a plausible textual interpretation.

Nor can Defendants explain why § 1055(d) should be construed to require nothing more than what 26 U.S.C. § 401(a)(25) already requires. As Odom explained, where actuarial assumptions are used to calculate benefit amounts like JSA payments, § 401(a)(25) requires the assumptions to be stated in the Plan. Defendants' interpretation of § 1055(d) is entirely coterminous with § 401(a)(25) (and yet inconsistent with the IRC provisions that parallel § 1055). This is not how courts interpret statutes.

Defendants also lack a persuasive response to the Treasury regulation providing that "reasonable actuarial factors" must support actuarial equivalence. Treas. Reg. § 1.401(a)-11(b)(2). They state that the regulation "does not give courts license to step into Congress's shoes." Br. 34. But that response simply assumes their conclusion. Defendants cannot explain why it is sensible to interpret ERISA to authorize something that causes a plan to lose its favorable tax treatment.

Defendants' silence here is particularly jarring given that they also recognize the importance of tax qualification. Br. 9 n.3.

In sum, Defendants and the district court essentially excise § 1055(d) from ERISA, while Odom's interpretation gives the language its natural meaning. The choice between those two options should be an easy one.

3. The *Russello* presumption doesn't help Defendants.

Unable to meaningfully interpret § 1055(d)'s own text, Defendants turn to other provisions of ERISA. Like the district court, Defendants place talismanic importance on the presumption that "'[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" Br. 23 (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). But as Odom explained, this canon is inapplicable here and in any event is only a presumption, which Odom can lay equal claim to.

Defendants' argument fails at the outset because they overstate the similarities between § 1055(d) and the other ERISA provisions they invoke. At a high enough level of abstraction, it may be true that those provisions "involve[] the reduction of future benefit payment liabilities to a present value." Br. 29. But as Odom explained, those provisions use different language in different structures; their design does not remotely resemble § 1055(d)'s simple command. Likewise, the calculations are

mandated for different purposes. *See* Opening Br. 37-39; *Smith v. Rockwell Automation, Inc.*, 438 F. Supp. 3d 912, 917-18 (E.D. Wis. 2020). Defendants' description of the statutes as simply reducing liabilities to present value thus paints too broadly to provide the context necessary to support the *Russello* presumption.

Specifically, Defendants are plainly wrong that § 1055(g) "is—literally—the exact calculation" as § 1055(d). Br. 28. In § 1055(g), Congress was concerned about lump-sum disbursals, and that equation uses a different starting spot than the "single annuity for the life of the participant," instead taking the QJSA or QPSA as a given. Moreover, § 1055(g) does not use either the term "actuarial equivalent" or "life of the participant." Congress instead chose to require a specific mortality table and one of a few interest rate options, rather than afford plan sponsors the limited flexibility of § 1055(d). And those "very different terms" in § 1055(g) were enacted *20 years* after § 1055(d). *Gomez-Perez v. Potter*, 553 U.S. 474, 486 (2008) (rejecting "[n]egative implications" argument when two provisions were enacted seven years apart and thus "not considered or enacted together"); *see* Retirement Protection Act of 1994, Pub. L. No. 103-465, sec. 767(c), 108 Stat. 4809, 5039-40 (1994). Congress demanded specific assumptions for lump-sum calculations to prevent every employee, married or otherwise, from being deprived of pension benefits. Whereas Congress demanded current actuarial assumptions for JSA calculations to ensure that married participants receive the same pension benefits as their unmarried brethren.

Those are different statutory measures for different statutory purposes; the one does not demand identity to the other.

Put all these distinctions together, and it should not be surprising that Congress treated all these provisions differently. *See* DOL Br. 18 (confirming different terminology and functions).

Moreover, distinctions aside, the *Russello* presumption does not justify rendering § 1055(d) "meaningless." *Urlaub*, 2022 WL 523129, at *6; *see Adams v. U.S. Bancorp*, 635 F. Supp. 3d 742, 754 (D. Minn. 2022); *Franklin*, 2024 WL 1740479, at *3. None of Defendants' cases applying the presumption would produce a similar consequence. That is reason enough to reject Defendants' argument.

Defendants' efforts to bolster the presumption get them nowhere. They claim that this canon "carries particular force in the ERISA context." Br. 28. But even a strenuous presumption is still just a presumption, and it is senseless to think that Congress would have preferred gutting § 1055(d)'s protections. Moreover, the case Defendants cite addresses ERISA's *remedies*, not every aspect of the Act. *See Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147 (1985) (expressing "reluctan[ce] to tamper with [ERISA's] enforcement scheme").

Finally, Defendants ignore Odom's argument that the *Russello* presumption militates equally in his favor. *See* Opening Br. 39-40. Congress knew how to make

plan terms controlling when it wanted to. *See, e.g.*, 29 U.S.C. § 1002(23)(A); 29 U.S.C. § 1002(22). Defendants' silence in the face of this argument is telling.

Defendants' featured legal principle is thus at best for them a draw. But only Odom's interpretation preserves each word of § 1055(d). The district court's decision should be reversed.

B. Sound policy supports providing married participants with a default benefit that is at least as valuable as what they would receive if they were unmarried.

Odom also demonstrated that the district court's decision thwarts the purpose of § 1055 as articulated by the Supreme Court, namely, "to ensure a stream of income to surviving spouses." *Boggs*, 520 U.S. at 843. Using outdated assumptions when calculating JSA payments results in JSAs with aggregate values that are less than—not equivalent to—the aggregate values of SLAs. This penalizes married participants or incentivizes them to decline the JSA entirely. As the DOL concludes: "It makes no sense that Congress would authorize the use of interest rates and mortality data that would undermine the entire purpose of joint and survivor annuities." DOL Br. 15.

Defendants do not cite *Boggs* and make no real effort to show how the district court's decision fulfills § 1055's purpose. They merely say that Odom's arguments are "not necessarily" correct. Br. 41. That lukewarm resistance falls flat. Defendants' "[m]ost significant[]" objection is that out-of-date mortality tables might "in some

circumstances" benefit a participant. Br. 41-42. But Defendants do not deny that Congress wanted married participants to be at least as well off as unmarried participants, and Congress would have been focused on the most common circumstances, not the rare exceptions. Defendants' reliance on a once-in-a-generation pandemic (Br. 42-43) shows that their position rests on scenarios that Congress was not legislating against. Unlike Defendants' position, Odom's interpretation ensures that all married participants will receive JSAs that are at least as valuable as their SLAs. *See* DOL Br. 15 (explaining why Defendants' position "makes no sense").

Since Defendants cannot plausibly argue that their position is consistent with *Boggs* and § 1055's purpose, they retreat to broader policy arguments. These too lack merit.

First, Defendants contend that the district court's ruling "fosters predictability" because otherwise plans will have to periodically update their assumptions. Br. 38-39. This point exposes Defendants' core position: They apparently think they can keep the same mortality assumptions forever. If their response is that they will periodically *voluntarily* update their mortality assumptions, then that concession shows that their policy concern is overstated. Moreover, the National Center for Health Statistics' mortality trends that Defendants cite show how gradually mortality changes. And if plans wanted, they could pick the mortality

tables and interest rates from § 1055(g). Regardless, there will be no material "difficult[y] for plans and participants to predict future pension payments." Br. 39.

Second, for similar reasons, Defendants plainly overstate the administrative "complex[ity]" of Odom's view. Br. 39. Neither Odom nor any court adopting his interpretation has suggested that "constant" updates are necessary, and there is no indication that any ERISA provision that requires reasonableness has overwhelmed plans. Br. 39-40. "Reasonableness" is hardly an unusual or draconian requirement. Moreover, plans already must track mortality assumptions and interest rates for other provisions, so they are well aware of the discrepancy between current assumptions and the ones they use to calculate JSA payments.

Multiple courts have adopted Odom's interpretation, but neither Defendants nor their amici offer any examples of the "chaos" their fear-mongering claims would ensue. The Chamber of Commerce Br. 8. The best the Chamber can marshal is more hollow rhetoric, calling two settlements "*[i]n terrorem*." *Id.* at 12-13. These accusations are particularly tone-deaf. A few hundred extra dollars in benefits per month might not seem like much to the Chamber, but that is critical income to the typical retiree like Odom.

Resorting to legislative history, Defendants demand additional "[f]lexibility" in plan design. Br. 41. But ERISA is clear that its requirements limit that flexibility. *See, e.g.*, 29 U.S.C. §§ 1001, 1104(a)(1)(D); *Fifth Third Bancorp v. Dudenhoeffer*,

573 U.S. 409, 424 (2014) ("§ 1104(a)(1)(D) requires fiduciaries to follow plan documents so long as they do not conflict with ERISA"); *Williams*, 497 F.3d at 714 ("The Plan cannot avoid that which is dictated by the terms of ERISA."); *Esden*, 229 F.3d at 164 ("If plans were free to determine their own assumptions and methodology, they could effectively eviscerate the protections provided by ERISA's requirement of 'actuarial equivalence.'"). "Were the rule otherwise, parties could elude ERISA's commands by the simple expedient of sharp bargaining." *Gastronomical Workers*, 617 F.3d at 62. One of ERISA's requirements is, unambiguously, that plans must provide JSAs to married participants. And that annuity must be the equivalent of the participant's SLA.

Finally, on that note, Odom agrees that "'[w]hatever merits these and other policy arguments may have, it is not the province of this Court to rewrite the statute to accommodate them.'" Br. 43 (citation omitted). That principle requires reversal, not affirmance.

At bottom, Odom's suit makes a simple request: that married participants are not deprived of the value of their SLAs. This is not burdensome. ERISA obligates Defendants to provide participants with JSAs that are at least equal in value to their SLAs, and this requires using reasonably current actuarial assumptions, rather than mortality tables based on data from men born in the late 1800s.

II. Odom plausibly alleged an independent violation of § 1053(a) because the Plan defines the "normal retirement benefit" as a single life annuity.

Odom's claim under 29 U.S.C. § 1053(a) should also proceed. Odom's opening brief explained (at 43-46) that he stated a violation of § 1053(a) by "plausibly alleg[ing] that [Defendants'] actuarial assumptions reduced [his] benefits as compared to the Plan's default benefit." *Masten*, 543 F. Supp. 3d at 36. That conclusion follows directly from the statutory text. Section 1053(a) makes nonforfeitable "an employee's right to his normal retirement benefit" once he reaches "normal retirement age." There is no dispute that Odom has secured his right to his normal retirement benefit under the Plan: his SLA. *See* Doc. 53-8 at 42-43 (§§ 4.1-4.2) (plan document). Since he plausibly alleged that Defendants' actuarial assumptions reduced his normal retirement benefit, Defendants violated § 1053. Odom's understanding is confirmed by a Treasury regulation that indisputably applies here and provides: "Certain adjustments to plan benefits such as adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable." Treas. Reg. § 1.411(a)-4(a).

Defendants' response depends on ignoring both § 1053(a)'s reference to the "normal retirement benefit" and their Plan's own definition of that benefit. Defendants assert that "§ 1053(a) applies only where a participant receives a benefit of 'lesser value' than what he was promised in the plan." Br. 45; *see id.* at 47. That is wrong. Section 1053(a) does not lose force whenever *any* type of benefit payment

conforms to *any* terms of the plan. Rather, § 1053(a) applies when the benefit received is less than the *normal retirement benefit* promised in the plan. The provision thus requires a comparison between what the participant received and what the plan defines as the "normal retirement benefit"—because it is that term that § 1053(a) uses. That is why "a reduction in the total value of" the normal benefit results in "forfeiture." *Contilli v. Loc. 705 Int'l Bhd. of Teamsters Pension Fund*, 559 F.3d 720, 722 (7th Cir. 2009). And here, Odom's Plan defined the normal retirement benefit as an SLA. *See* Doc. 53-8 at 42-43 (§§ 4.1-4.2); Opening Br. 44-45. Since Odom plausibly alleged that what he received was of lesser value, he suffered a forfeiture. Defendants cannot escape their obligation to pay Odom the value of his SLA by pointing to other plan terms.

Understanding § 1053(a)'s scope also defeats Defendants' argument that "a benefit that satisfies § 1055(d)'s actuarial equivalence requirement" automatically satisfies § 1053(a). Br. 45. Sections 1053(a) and 1055(d) are separate provisions that provide separate protections. Section 1053(a) implements ERISA's fundamental goal of securing vested benefits: "Congress through ERISA wanted to ensure that if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he actually receives it." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 510 (1981) (cleaned

up). ERISA gives plans freedom to define the normal retirement benefit, but once defined, the participant is entitled to its full amount. *Id.* at 510-11.

Accordingly, even if § 1055(d) blesses the conversion of an SLA to a JSA using any assumptions the plan sponsor wants, § 1053(a) imposes a separate equivalence requirement based on how the sponsor defined the normal retirement benefit. If the sponsor chooses to define the benefit as *only* the SLA—as Odom's plan did here—then § 1053(a) obliges the plan to provide the full value of that benefit. Defendants have no textual basis for overriding § 1053(a)'s core protection.

Alessi does not save Defendants. Br. 48-49. As Odom explained, *Alessi* did not give plan sponsors free rein regarding every benefit calculation. Opening Br. 46-48. Defendants admit that they want this Court to "extend[]" *Alessi*'s reasoning. Br. 48. Their request founders on their same misunderstanding of § 1053(a). *Alessi*'s logic is confined to a plan's setting of the normal retirement benefit because it is that benefit that § 1053(a) makes nonforfeitable. *Alessi*, 451 U.S. at 510-11. Defendants say that their "actuarial assumptions are part of the [participant's] accrued benefit" (Br. 48-49), but they again ignore § 1053(a)'s text and their own plan document. Those assumptions are part of the JSA calculation, but the "normal retirement benefit" is defined to include only the SLA, not the JSA. Opening Br. 13, 45.

Finally, as to the regulation, Defendants accept that Odom has stated a claim under Treas. Reg. § 1.411(a)-4(a). Their only response is that the regulation is

inconsistent with § 1055(d)'s text. Br. 49. But Odom's claim is under § 1053(a), and this regulation controls that provision. Section 1055(d) is beside the point.

III. Plaintiffs plausibly alleged that Defendants' outdated actuarial assumptions caused the QPSA charge to unreasonably exceed the cost of the QPSA.

The district court also erred in dismissing the QPSA charge claim. *See* Opening Br. 48-52. The statute provides: "A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity." 29 U.S.C. § 1055(i). That text, supported by a controlling regulation, is so clear that in the district court the parties agreed about the key legal standard: The QPSA charge must "'reasonably reflect[] the cost of providing the QPSA.'" Doc. 58 at 14-15 (quoting Doc. 56 at 11, 19); *see* Opening Br. 49; Treas. Reg. § 1.401(a)-20, Q&A (21) (2006) ("A charge for the QPSA that reasonably reflects the cost of providing the QPSA will not fail to satisfy [I.R.C.] section 411 even if it reduces the accrued benefit."). And Plaintiffs alleged that the QPSA charge exceeded that cost, including the reason for that excess (outdated actuarial assumptions) and its precise amounts for each Plaintiff. Opening Br. 14, 49, 51.

In response, Defendants all but abandon the district court's reasoning and instead concoct a new legal argument and reiterate a factual argument that the court did not adopt. Reversal is plainly warranted.

On the law, Defendants again read only part of the statute. They highlight that they may "'take into account *in any equitable manner*'" the "'increased costs resulting from'" the QPSA." Br. 50 (emphasis in original) (quoting 29 U.S.C. § 1055(i)). But whatever the "manner," it must account only for "*increased costs*" from the QPSA. That is likely why Defendants agreed below that the charge must reflect the cost of providing the QPSA.

On the facts, Defendants repeat their argument—not adopted by the district court—that Plaintiffs did not plausibly allege that the QPSA "charges exceeded the 'increased costs' associated with providing a QPSA." Br. 50. But as Plaintiffs explained, they alleged that the charges were inflated, why, and by how much. Opening Br. 14, 49, 51. They also alleged that most plans impose no charge. *Id.* at 49; Doc. 51 at 33 (¶ 83). These allegations easily satisfy the plausibility standard.

Defendants introduce another factual wrinkle that they never mentioned below. Now, according to Defendants, Plaintiffs needed to not only plausibly allege that the charges exceeded the cost of providing the QPSA, but also explain why no other cost factors could support the QPSA charge. Br. 51-52. But neither the statutory text nor the plausibility standard requires Plaintiffs to exclude every possible

justification for the charge. *See SmileDirectClub, LLC v. Tippins*, 31 F.4th 1110, 1118 (9th Cir. 2022) (where plaintiff is required to plead an unreasonable restraint on trade, the plaintiff need not exclude the possibility of reasonable (legal) conduct). Rather, as Defendants acknowledged in the district court, Plaintiffs must plausibly allege only that the charge does not reasonably reflect the cost of providing the QPSA. Plaintiffs did so, and not even the district court said otherwise.[6]

As to the district court's reasoning, Defendants cannot bring themselves to truly defend it. First, the court said that Treas. Reg. § 1.401(a)-20 Q&A (21) does not control § 1055(i). Plaintiffs explained why that was error. Opening Br. 50. Instead of addressing Plaintiffs' analysis, Defendants meekly state that the conclusion "is not clear." Br. 52. That does not amount to a defense; it confirms the court's mistake.

Second, the court read the regulation as not requiring QPSA charges to "*reasonably* reflect the cost of providing a QPSA." Doc. 62 at 20 (emphasis in original). Plaintiffs explained how the court misinterpreted the regulation (Opening Br. 50-51), and again Defendants ignore Plaintiffs' analysis. Instead, they merely quote the court's conclusion. Br. 52 n.14. The lack of a substantive response to

[6] Alternatively, if the Court adopts Defendants' new argument, Plaintiffs should be granted leave to amend their complaint.

Plaintiffs' argument—or even an attempt at one—shows that the court got this wrong.

The arguments attacking Plaintiffs' claim are thus so weak that the district court and Defendants cannot even agree. This Court should reject all of them.

CONCLUSION

The Court should reverse the district court's order and remand for further proceedings.

Dated: March 20, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 6,472 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and 11th Cir. R. 32-4.

Undersigned counsel certifies that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionately spaced 14-point Times New Roman typeface using Microsoft Word for Microsoft 365 MSO.

Dated: March 20, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notifications of such filing to all attorneys of record.

Dated: March 20, 2025

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