Case No. 25-1520

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

THOMAS E. OVERBY, JR.; AND ABBY GEARHART, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiffs-Appellees,

v.

ANHEUSER-BUSCH, LLC,
Defendant-Appellant.

On Appeal from the Order Granting Class Certification by the U.S. District Court
for the Eastern District of Virginia
Case No. 4:21-cv-00141-AWA-DEM

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has a 10% or greater ownership in the Chamber.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Rules

IDENTITY AND INTEREST OF AMICUS[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber's members are frequently targets of class actions, so the Chamber is familiar with class-action litigation both from the perspective of individual defendants and from a more global perspective. Especially considering the rising costs of class actions, the Chamber and its members have an interest in this case and in ensuring that federal district courts apply Rule 23 with all the rigor that the Rule and precedent demand.

[1] In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus curiae* states that (1) no counsel for any party authored this brief in whole or in part; (2) no party or counsel for any party contributed money that was intended to fund the preparation or submission of this brief; and (3) no person other than the *amicus curiae*, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

CONSENT OF THE PARTIES

In accordance with Federal Rule of Appellate Procedure 29(a)(2), all parties have consented to the Chamber's filing of this amicus brief.

SUMMARY OF ARGUMENT

Class certification is a rigorous process that requires plaintiffs to prove, not merely plead, that the suit meets all of Rule 23's requirements. Here, Plaintiffs failed to do so, and the District Court in turn failed to hold Plaintiffs to their burden under Rule 23.

Rule 23 is designed to safeguard all litigants' interests. Not only does Rule 23 ensure that the class-action device fairly represents class members' (particularly unnamed plaintiffs') claims, it also ensures that class-action defendants will not be prejudiced in the process. The District Court's decision granting class certification here undermines those safeguards and, if allowed to stand, would expand the class device beyond its intended use. This Court should correct the District Court's errors and confirm the standards for class certification in this and other wage-and-hour disputes.

First, this Court should affirm that Plaintiffs were required both to establish a common question—not just allegations of a common violation of law—as well as to prove how such a common question is susceptible to class-wide resolution. Second, this Court should clarify that a straightforward application of *Stafford v. Bojangles' Restaurants, Inc.*, 123 F.4th 671 (4th Cir. 2024), forecloses a finding of predominance where, as here, proving liability would require resolving numerous individualized inquiries. The District Court's decision offends clear precedent from

this Court and impermissibly would transform individual wage-and-hour actions into class actions with serious implications for businesses and the economy more widely. Its decision should be reversed.

ARGUMENT

I. IN GRANTING CLASS CERTIFICATION, THE DISTRICT COURT IMPROPERLY LOWERED THE STANDARD FOR CLASS CERTIFICATION, RISKING UNDUE PREJUDICE TO ANHEUSER-BUSCH AND OTHER CLASS-ACTION DEFENDANTS.

Commonality and predominance are the heart of the Rule 23(b)(3) inquiry—they go to the central question of whether otherwise disparate claims should be grouped together and litigated *en masse*. They require a court to assess rigorously not merely whether the claims look similar but whether they will present common issues that can be resolved through common proof—as opposed to fracturing into many individualized inquiries. Under an appropriate commonality and predominance assessment, the District Court should have denied class certification in this case. This Court's guidance is needed to bring this Circuit's class-action jurisprudence back in line with its sister circuits' and to prevent similarly improper certifications in the future.

A. The District Court misapprehended Plaintiffs' evidentiary burden under Rule 23.

The District Court concluded that "there are common issues that will advance the litigation" and that "there are questions of both law and fact common to the class." JA1760. Its conclusions were wrong. No common question exists. But

even if there were a common question, there is no prospect of achieving class-wide resolution of that question here. The District Court departed from well-established Supreme Court and Fourth Circuit precedent and advanced a standard that, if left uncorrected, would absolve plaintiffs of their burden of showing compliance with Rule 23's requirements through evidence. This Court should expound on the commonality analysis from its prior decisions and confirm that Plaintiffs failed to establish a common question here.

To certify a class under Rule 23, a plaintiff must satisfy a number of requirements, including *proving* (not merely pleading) the existence of "questions of law or fact common to class members." Fed. R. Civ. P. 23(a)(2); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014); *see also G.T. v. Bd. of Educ. of the Cnty. of Kanawha*, 117 F.4th 193, 202 (4th Cir. 2024). To merit class treatment, plaintiffs must do more than prove "that the class members 'have all suffered a violation of the same provision of law.'" *G.T.*, 117 F.4th at 202 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011)). "Plaintiffs must establish that the common contention is one 'capable of classwide resolution' such that 'determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims *in one stroke.*'" *Stafford*, 123 F.4th at 679 (quoting *Wal-Mart*, 564 U.S. at 350) (emphasis added); *see also EQT Prod. Co. v. Adair*, 764

F.3d 347, 360 (4th Cir. 2014) (the common question must be central to the putative class's claims).

Plaintiffs failed to make that showing here. The District Court concluded otherwise, but it did so only through a construction of Rule 23's commonality requirement that conflicts with the Supreme Court's and this Court's precedents. *See Wal-Mart*, 564 U.S. at 350; *Stafford*, 123 F.4th at 679–80. The District Court identified a purported "common issue of law" that it suggested bound the putative class together—i.e., whether Anheuser-Busch's conduct in allegedly failing to compensate for certain pre- and post-work activities "violates Virginia law." But that construction of a common question relies on a "30,000 foot view of commonality" that this Court has rejected. *Stafford*, 123 F.4th at 680 (citation omitted). Indeed, if that formulation of a common question were enough, virtually any claimant could automatically satisfy Rule 23 by alleging practically any violation of any law. The District Court itself was aware of the risk of accepting an overly broad common question. *See* JA1760 ("[I]t is also true that, 'at a sufficiently abstract level of generalization, almost any set of claims can be said to display commonality.'" (quoting *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998))). But in attempting to "seek[] the *appropriate* level of generality through which to view the case" (JA1760 (emphasis in original)), the District Court effectively read the commonality requirement out of Rule 23.

Under the Supreme Court's and this Court's own precedents, the commonality requirement has evidentiary teeth. It requires a plaintiff to demonstrate that the class members "have suffered the same injury," which "does not mean merely that they have all suffered a violation of the same provision of law." *Wal-Mart*, 564 U.S. at 350 (quotation omitted); *see also Ealy v. Pinkerton Gov't Servs.*, 514 F. App'x 299, 304 (4th Cir. 2013) (explaining "not just any common question will do" to satisfy Rule 23's commonality requirement). This Court's decision in *EQT Production Co. v. Adair* is instructive. There, the district court certified plaintiffs' proposed class because it concluded that the implications flowing from a Supreme Court of Virginia decision presented a common question. 764 F.3d at 361. This Court reversed, explaining the district court should not have stopped simply at identifying the interpretation of the Supreme Court of Virginia decision as a common legal issue. *Id.* Instead, the district court should have gone further to resolve the meaning of that decision. To do otherwise "left open, at the time of certification, whether [the legal issue] is an individual or common question." *Id.*

The same is true here. Without identifying how the basic legal question of whether Anheuser-Busch violated Virginia law would be resolved at a class trial, "even if that determination require[d] the court to resolve an important merits issue," *id*. at 361, the District Court improperly "left open" the prospect that resolving that question would require individualized inquiries. That incomplete analysis, if carried

forward here and in later cases, would result in the certification of classes that superficially appear to involve a common question but upon inspection break down into numerous individual answers.

To provide appropriate guidance, this Court should make clear that mere allegations of a violation of law do not satisfy Rule 23. And here, this Court should confirm that "whether Defendant's failure to provide such compensation violates Virginia law," JA1760, is a question that cannot be answered on a common basis and thus cannot provide the basis for Rule 23 commonality. *Broussard v. Meineke Disc. Muffler Shops*, 155 F.3d 331, 340 (4th Cir. 1998) ("The typicality and commonality requirements of the Federal Rules ensure that only those plaintiffs or defendants who can advance the same factual and legal arguments may be grouped together as a class." (citation omitted)).

The District Court also failed to resolve whether the purportedly common issues are "capable of classwide resolution." *Wal-Mart*, 564 U.S. at 350. Plaintiffs were required to show that "the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (citation omitted). Yet the District Court improperly credited Plaintiffs' allegations (not proof) of a common question without acknowledging that Plaintiffs proposed no method to

resolve those questions "in one stroke." *Wal-Mart*, 564 U.S. at 350; *see* JA1759–1761.

Instead of reviewing Anheuser-Busch's evidence of the individual differences across plaintiffs, the Court found sufficient Plaintiffs' allegation that Anheuser-Busch "as a matter of company policy, pattern, or practice compensates employees only for their scheduled shift times, regardless of whether the employees work additional, mandatory time before and after such scheduled shifts." JA1754. But this Court recently explained that "[a]llegations of generalized policies are not usually sufficient for the purposes of class certification." *Stafford*, 123 F.4th at 680. And courts should be "skeptical . . . when plaintiffs or district courts rely on nebulous references to 'systemic failures' or 'systemic deficiencies' to satisfy commonality." *Id.* The District Court's acceptance of Plaintiffs' broad policy-related arguments—without discussing whether class-wide adjudication of such a broad theory of liability would be possible or efficient—was clearly erroneous. *See International Woodworkers of America, etc. v. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1267–68 (4th Cir. 1981) ("We have often emphasized the value of specific findings on the factors enumerated in Rule 23."). This Court should reject that approach to Rule 23.

"[C]ommonality serves to ask whether class-wide proceedings are even possible." *Stafford*, 123 F.4th at 679. They are not where, as here, the questions driving the litigation defy one-for-all-proof.

B. The District Court misapplied Rule 23(b)(3)'s predominance requirement.

This case is teeming with individualized inquiries. As Anheuser-Busch explains, Plaintiffs could not prove Anheuser-Busch's liability without the factfinder's determining whether the putative class members' pre- and post-shift activities actually constituted work, whether Anheuser-Busch knew they were not being compensated for that work, and the appropriate damages award. Opening Br. 28–38. Those issues would require individual mini-trials on each putative class member's claims. Yet the District Court ignored those individualized issues, explaining that although Anheuser-Busch "identifie[d] *numerous differences and distinctions* in the evidence and deposition testimony of proposed class members," it was "not convinced that these differences preclude a finding for Plaintiffs on the issue of predominance." JA1759 (emphasis added). If carried through in other decisions, that approach to predominance would undermine Rule 23's protections by forcing defendants to defend against "classes" destined to devolve into hundreds or thousands of mini-trials. This Court should not endorse such a reconstruction of Rule 23.

This Court's recent decision in *Stafford v. Bojangles' Restaurants, Inc.* addresses the predominance issue head-on and should have resulted in a straightforward denial of Plaintiffs' motion for class certification here. *Stafford* involved a wage-and-hour dispute focused on an employer's policy that "certain tasks be performed prior to clocking in." 123 F.4th at 677. This Court determined that the putative class members' claims would involve numerous individualized inquiries. *Id.* at 680 (identifying individual questions like "[w]hat kind of off-the-clock work did an employee perform? How much time was spent on it?"). Indeed, despite identifying one common question "on the basis that an estimated 80% of the prospective class members . . . conducted off-the-clock pre-shift work while completing tasks" required by the defendant company, this Court criticized the lower court for "ma[king] no effort to distinguish between other alleged off-the-clock activities" and instead "lean[ing] into generalities" regarding a "'common theory of being worked off the clock,' regardless of the specific uncompensated activities they were required to perform." *Id.* (quoting *Stafford v. Bojangles Rests., Inc.*, 2023 U.S. Dist. LEXIS 189357, at *11 (W.D.N.C. Oct. 20, 2023)).

The District Court below committed the same errors. *See* Opening Br. 28–38. It leaned into generalities, finding that Anheuser-Busch engaged in "common conduct" relating to its "alleged policy" of "paying hourly employees only for their scheduled shift times (absent special circumstances), despite requiring additional

pre- and post-shift work." JA1760–1761. *Stafford* requires a different approach—one that acknowledges the realities of the plaintiffs' claims and the evidence needed to sustain them. 123 F.4th at 679–80 (reversing class certification decision because putative class members pre- and post-shift activities raised distinct questions).

Correcting the District Court's decision would not only bring lower courts in line with this Court's precedent but also would reflect the consensus among sister circuits that these types of wage-and-hour disputes inevitably raise individualized questions that defeat predominance. *See, e.g.*, *Scott v. Chipotle Mexican Grill, Inc.*, 954 F.3d 502, 513–14 (2d Cir. 2020) (affirming denial of class certification because plaintiffs' testimony about their primary job responsibilities and work activities varied by plaintiff); *Ferreras v. Am. Airlines, Inc.*, 946 F.3d 178, 186 (3d Cir. 2019) (reversing class-certification decision because "Plaintiffs will have to offer individualized proof to show that they were actually working during the various time periods at issue"); *Babineau v. Fed. Express Corp.*, 576 F.3d 1183, 1191–93 (11th Cir. 2009) (affirming denial of class certification because adjudication of plaintiffs' claims would require individual fact inquiries into plaintiffs' off-shift activities). If allowed to shirk the Rule 23 decisions of this Court and its sister circuits, the District Court's ruling would create new, inconsistent class-action jurisprudence that departs from long-accepted standards. This Court should take this opportunity to ensure

consistent guidance for district courts within this Circuit and in relation to sister circuits.

II. THE DISTRICT COURT'S DECISION UNDERMINES RULE 23'S PURPOSE AND WOULD PLACE SERIOUS BURDENS ON BUSINESSES AND THE ECONOMY.

"Rule 23 seeks a balance between the worthy uses and serious abuses of the class-action device." *Stafford*, 123 F.4th at 678. The District Court's certification order upends that balance and improperly lessens the showing that Plaintiffs must make to satisfy Rule 23. Left unchecked, the District Court's decision will eliminate the basic protections afforded litigants under Rule 23 and profoundly distort class-action practice in this circuit.

As this Court recently explained, "class-action lawsuits can ratchet liability to potentially ruinous levels and force companies to settle or bet the store." *Stafford*, 123 F.4th at 678 (citing *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 743 (2023)). Indeed, this Court aptly described a large, and growing, consequence of class-action litigation—"[t]hey may incentivize litigation with awards of large attorneys' fees." *Id*. This, in turn, creates the "potential for coercion," as the specter of "colossal liability" may force litigants into "what Judge Friendly called 'blackmail settlements.'" *Coinbase*, 599 U.S. at 743 (citing H. Friendly, Federal Jurisdiction: A General View 120 (1973)); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (noting "the risk of 'in terrorem' settlements that class actions

entail"); *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978) ("Certification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense."); *Domonoske v. Bank of Am., N.A.*, No. 5:08-cv-066, 2010 U.S. Dist. LEXIS 7242, at *17–18 (W.D. Va. Jan. 27, 2010) ("Another problem is that class actions create the opportunity for a kind of legalized blackmail: a greedy and unscrupulous plaintiff might use the threat of a large class action, which can be costly to the defendant, to extract a settlement far in excess of the individual claims' actual worth." (quoting *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784–85 (3d Cir. 1995))). This problem is not hypothetical. Nearly all certified class actions are resolved before trial by a settlement. *See* Brian T. Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 J. Empirical Legal Stud. 811, 812 (2010).

As a result, the District Court's decision will have a direct and outsized pecuniary impact on businesses. More than 70% of companies faced class actions in 2024, and labor-and-employment class actions represent the largest subset of class-action matters and spending. *See* Carlton Fields, 2025 Class Action Survey 9, 15 (2025), https://ClassActionSurvey.com ("Nearly 64% of companies report having faced a labor and employment class action (including collective actions) in the last five years."). The cost associated with these actions is astronomical—and

growing. In 2024, firms spent $4.21 billion on class-action-related legal spending; that number is expected to climb to $4.53 billion in 2025. *Id*. at 7. The cost to defend just one of these suits can run into nine figures. *See* Adeola Adele, *Dukes v. Wal-Mart*: Implications for Employment Practices Liability Insurance 1 (July 2011). And these cases can drag on for years. *See* U.S. Chamber Inst. for Legal Reform, Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions 1 (2013) ("Approximately 14 percent of all class action cases remained pending four years after they were filed."). By lowering the burden placed on plaintiffs at class certification—the stage that is "typically a game-changer, often the whole ballgame" for litigants, *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 591 n.2 (3d Cir. 2012)—the District Court's decision swings the balance of labor-and-employment class actions even further against businesses. That is contrary not only to settled precedent but also to the very purposes of Rule 23.

Rigorous enforcement of Rule 23's requirements is essential to ensuring that only meritorious class actions are brought. Doing so will benefit both businesses, who would be relieved of the immense pressure to settle improperly certified class actions, and the consumers and employees who otherwise would absorb the costs associated with litigating these actions through higher prices or lower wages.

CONCLUSION

For all these reasons, this Court should reverse the District Court's order certifying the proposed class and remand for further proceedings.

Dated: July 8, 2025

Respectfully submitted,

/s/ Brian D. Boone

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CERTIFICATE OF COMPLIANCE

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/s/ Brian D. Boone

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July 2025, a true and correct copy of the foregoing Brief was served on all counsel of record in this appeal via CM/ECF.

/s/ Brian D. Boone