Case No. 25-140

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-Respondents,

v.

ANHEUSER-BUSCH, LLC,
Defendant-Petitioner.

On Rule 23(f) Petition Challenging 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-PETITIONER'S RULE 23(F) PETITION

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CERTIFICATE OF INTERESTED PERSONS

To *amicus curiae's* knowledge, there are no interested persons other than those identified in the petition.

/s/ Brian D. Boone

CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America ("Chamber") states that it 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.

/s/ Brian D. Boone

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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), the parties have consented to the Chamber's filing of this amicus brief.

SUMMARY OF ARGUMENT

Plaintiffs allege that they should have been paid for time spent at work outside of their regularly scheduled shifts. Whether their claims have merit turns on whether they were actually working during the times outside their shifts—an inherently individualized inquiry that should have foreclosed class certification. The District Court nonetheless certified the class based on Plaintiffs' allegation that Anheuser-Busch, LLC had a general "policy" requiring employees to work extra time outside their scheduled shifts without compensation. But allegations are allegations, and evidence is evidence. Under Supreme Court and circuit precedent, a plaintiff seeking class certification must prove—not merely allege—that the proposed class satisfies Rule 23.

The District Court's decision warrants immediate appellate review. Left uncorrected, the decision would encourage the transformation of most individual wage-and-hour claims into class actions and would chip away at the rigorous standards for class certification that the Supreme Court has announced and that this Court recently affirmed.

ARGUMENT

I. THE DISTRICT COURT IGNORED BINDING FOURTH CIRCUIT PRECEDENT, WARRANTING IMMEDIATE REVIEW AND REVERSAL.

Labor and employment class actions are the leading subset of class action matters and spending today. *See* Carlton Fields, Class Action Survey 9 (2025),

https://ClassActionSurvey.com. In fact, "[n]early 64% of companies report having faced a labor and employment class action (including collective actions) in the last five years." *Id.* at 15. Those class actions impose *significant* costs on businesses; in 2025, corporate legal spending on class action defense is projected to reach $4.53 billion. *Id.* at 7. Yet despite repeated decisions from other circuits recognizing that off-the-clock cases often defy class certification and this Court's recent admonition that district courts may not "rely[] on a vague and overly general 'policy'" to certify such actions, *Stafford v. Bojangles' Restaurants, Inc.*, 123 F.4th 671, 678 (4th Cir. 2024), the cases keep coming. This Court should review and reverse the decision below to address this expensive and improper use of the class action device.

This Court's decision in *Bojangles* should have led the District Court to deny certification, but the District Court did not even cite the decision. In *Bojangles,* this Court reversed the district court's class-certification decision in a similar wage-and-hour dispute premised on an employer's policy that "mandate[d] that certain tasks be performed prior to clocking in." *Id*. at 677. There, as here, the district court certified a class because it determined "all class members' claims originate from the same alleged policies and practice." *Id*. *Compare id.*, *with* Petitioner's Addendum ("Add.") 8–9 (agreeing with Plaintiffs that "[e]ach class member . . . was subject to identical violative policies and practices"). This Court held that the district court committed legal error by "relying on a vague and overly general 'policy'" without

pointing to "specific documentation or concrete evidence narrowing the broad theoretical policy by which Bojangles allegedly mandated all different forms of off-the-clock work and time-shaving." *Bojangles*, 123 F.4th at 678–80. This Court also understood that numerous individualized inquiries lurked beneath the surface—for instance, "[w]hat kind of off-the-clock work did an employee perform? How much time was spent on it?" *Id*. at 680. Those same issues plague the class here and prevent class certification. The District Court erred in ignoring *Bojangles.*

Other district courts in this Circuit have recognized *Bojangles* as controlling authority in wage-and-hour class actions. *See, e.g.*, *Monroe v. Stake Ctr. Locating, LLC*, No. 2:23-cv-692, 2025 U.S. Dist. LEXIS 58516, at *12–13 (E.D. Va. Mar. 27, 2025) ("The Fourth Circuit's decision in *Stafford v. Bojangles' Restaurants* provides specific guidance for analyzing commonality in class actions alleging off-the-clock, unpaid work."); *Canales v. OPW Fueling Components LLC*, No. 5:22-cv-00459-BO-RJ, 2025 U.S. Dist. LEXIS 55288, at *9 (E.D.N.C. Mar. 25, 2025) ("[*Bojangles*] is uniquely on point to the present matter and is, indeed, controlling."). Those district courts have refused to certify putative classes in wage-and-hour disputes based on generalized corporate policies. *See, e.g.*, *Monroe*, 2025 U.S. Dist. LEXIS 58516, at *11–18; *Canales*, 2025 U.S. Dist. LEXIS 55288, at *8–12; *Speight v. Lab. Source, LLC*, No. 4:21-CV-112-FL, 2025 U.S. Dist. LEXIS 54002, at *29–38 (E.D.N.C.

Mar. 24, 2025). "Identical logic compel[led] an identical conclusion here." *Canales*, 2025 U.S. Dist. LEXIS 55288, at *11.

Bojangles is not an outlier. Multiple sister circuits have reached nearly identical results in similar wage-and-hour disputes. *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).

The District Court failed to ground its decision in any binding Fourth Circuit precedent or other appellate court decisions. Its order is troubling, especially given the high costs of defending these types of class actions and the large volume of labor-and-employment class actions more generally. This Court should grant immediate review and correct the district court's manifest error.

II. THE DISTRICT COURT ERRED IN CERTIFYING THE CLASS, AND ITS REASONING WARRANTS IMMEDIATE REVIEW AND REVERSAL.

Even setting aside *Bojangles*, the District Court's order displays serious deviations from the standards that govern class certification. The District Court's superficial approach to Rule 23 allowed it to overlook thousands of individualized issues in the proposed class. That approach warrants immediate review.

A. The District Court's analysis was anything but rigorous.

"Rule 23 does not set forth a mere pleading standard." *WalMart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). It requires a "party seeking class certification [to] affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Id.* (emphasis in original). The district court also "has an independent obligation to perform a 'rigorous analysis' to ensure that all of the prerequisites have been satisfied." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014) (citing *Dukes*, 564 U.S. at 351). Rule 23 required the District Court to undertake that analysis "even if that determination requires the court to resolve an important merits issue." *Id*. at 361; *see also Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 366–67 (4th Cir. 2004).

The District Court, however, failed to even mention the evidence presented by the parties about the commonality and predominance requirements. *See* Add. 7–

9. Instead, it relied on vague descriptions of Anheuser-Busch's "alleged policy and practice." *Id.* 8. The District Court's failure to rigorously analyze Rule 23's commonality and predominance requirements constitutes manifest error.

B. The District Court misapprehended Rule 23's commonality requirement.

In a single paragraph, the District Court concluded that the Plaintiffs' cases involve a "common nucleus of operative facts" and "common issue of law"—satisfying Rule 23(a)'s commonality requirement. *Id.* 8. That was clear error—for at least two reasons.

First, the District Court relied on an improperly broad construction of the purportedly common questions. "Rule 23 does not allow for [] a 30,000 foot view of commonality." *Bojangles*, 123 F.4th at 680 (citation omitted). Instead, "[c]ommonality requires the 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." *Dukes*, 564 U.S. at 350; *see also Ealy v. Pinkerton Gov't Servs.*, 514 F. App'x 299, 304 (4th Cir. 2013). That the District Court focused on a purported "common issue of law"—"whether Defendant's failure to provide such compensation violates Virginia law" (Add. 8)—confirms that it did not approach commonality in the manner that Rule 23, Supreme Court precedent, and circuit precedent require.

But that was not the District Court's only error. It also identified a purported "common nucleus of operative facts"—that "Defendant did not compensate class members for time spent on mandatory pre- and post-shift tasks" (*id.*)—without considering how that "nucleus" would splinter into thousands of individualized questions. *See* Add. 4 & n.1 (reciting Plaintiffs' allegations that certain employees arrive at different times before or after work and noting that pre- and post-shift work includes several different categories of tasks subject to various policies). The District Court was able to certify the class only by taking a 30,000-foot approach to those issues.

Second, the District Court failed to address a critical aspect of the commonality analysis—whether the purportedly common issue is "of such a nature that it is capable of classwide resolution." *Dukes*, 564 U.S. at 350 (requiring plaintiffs to show that "a classwide proceeding" will "generate common *answers* apt to drive resolution of the litigation"). In other words, to establish commonality, the plaintiffs must 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). Plaintiffs did not make that showing here, and the District Court erred in giving them a pass on that critical issue.

In fact, the evidence from both sides established significant *variations* in pre- and post-shift activity. *See* Petition 7–10; App. 194–203. Those factual variations preclude a common answer to the purportedly common questions that the District Court identified. *See Dukes*, 564 U.S. at 350. "[C]ourts have the obligation to 'examine whether differences between class members impede the discovery of common answers.'" *Bojangles*, 123 F.4th at 680 (citation omitted). The District Court improperly sidestepped that obligation and erred in certifying the class without examining those individualized factual differences.

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

"The need for common issues to predominate is an explicit and indispensable requirement for classes certified under Rule 23(b)(3)." *Mr. Dee's Inc. v. Inmar, Inc.*, 127 F.4th 925, 934 (4th Cir. 2025). "Predominance . . . presents a 'far more demanding' inquiry" than Rule 23(a)'s commonality requirement. *Brown v. Nucor Corp.*, 785 F.3d 895, 923–24 (4th Cir. 2015). "If the commonality requirement cannot be met, then the more stringent predominance requirement obviously cannot be met." *Ferreras*, 946 F.3d at 185. Courts analyzing the predominance requirement must "give careful scrutiny to the relation between common and individual questions in a case." *Tyson Foods*, 577 U.S. at 453.

As with the commonality requirement, the District Court failed to properly analyze whether Plaintiffs' purported common questions predominated over

individual issues. Instead, the District Court summarily concluded "that the overarching issue of Anheuser-Busch's alleged policy and practices with regard to paying hourly employees only for their scheduled shift times . . . is the primary issue to be litigated." Add. 8–9. But "[a]llegations of generalized policies are not usually sufficient for the purposes of class certification" because they "mask a multitude of disparities." *Bojangles,* 123 F.4th at 680. That is the case here: The so-called "overarching issue" is really just hundreds of mini-trials waiting to happen focused on, among other things, whether members of the putative class actually worked outside their scheduled shifts. *See* Pet. 16–17. The District Court engaged in "circular logic" by agreeing that the Plaintiffs' "laundry list of factually diverse claims . . . prove the existence of a uniform company policy." *Bojangles,* 123 F.4th at 680. It did not "give careful scrutiny" to the predominance requirement. *Tyson Foods*, 577 U.S. at 453.

D. The District Court's approach warrants review now.

The rigorous analysis required under Rule 23 is particularly important given the burdens that improperly certified classes impose on the business community and the public. As mentioned, class action defense costs surged to $4.21 billion in 2024 and are projected to increase even more this year. *See* Fields, Class Action Survey, at 7. Defending even one class action can cost a business more than $100 million. *See*, *e.g.*, Adeola Adele, *Dukes v. Wal-Mart*: Implications for Employment Practices

Liability Insurance 1 (July 2011). And those class actions can persist for years as legal fees accrue, with no resolution of class certification—let alone the overall dispute. *See* U.S. Chamber Institute for Legal Reform, Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions 1, 5 (Dec. 2013), http://bit.ly/3rrHd29.

The potential extraordinary exposure opened up by a court's certification of a class also creates immense pressure on defendants to settle even cases that ought to be resolved in their favor on the merits. Judge Friendly aptly termed these "blackmail settlements." Henry J. Friendly, Federal Jurisdiction: A General View 120 (1973). "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." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011). That is doubly true in cases where, because of the volume of individualized issues, the litigation cannot manageably be tried without eliding plaintiffs' burden of proof and denying defendants their right to present individualized defenses.

Given those costs and risks, rigorous enforcement of Rule 23 at the class-certification stage—and immediate appellate review in cases of manifest error—is critical. It ensures that defendants do not face undue settlement pressure from

certification because they cannot meaningfully litigate the issues while preserving their individualized defenses. And it defuses some of the immense pressure to settle improperly certified class actions. That coercion hurts the entire economy because the attorney's fees and costs accrued in defending and settling class actions are ultimately absorbed by consumers and employees through higher prices and lower wages.

CONCLUSION

The Court should grant immediate review and reverse the decision below.

Dated: April 17, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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/s/ Brian D. Boone

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April 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