Record Nos. 26-1825 (L), 26-1883

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

L.N.P., on his own behalf and on behalf of his dependent children P.D.P. and L.D.P., and on behalf of all others similarly situated,

Plaintiff-Appellee,

v.

FRANK BISIGNANO, in his official capacity as Commissioner of the Social Security Administration; THE SOCIAL SECURITY ADMINISTRATION

Defendant-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

# BRIEF FOR AMICUS CURIAE


THOMAS A. KRAUSE
MN Bar No. 0143224
Thomas Krause Disability Law
61 Richmond Drive
Winona, MN 55987
Phone: (507) 703-2021
thomas@tkrausedisabilitylaw.com

LAURA BETH WALLER
NC Bar No. 41677
Waller Appeals
1777 Washington Crossing
Unit 1382
Washington, MO 63090
(919) 901-9011
laurabethwaller@gmail.com

CHARLOTTE W. HALL
NC Bar No. 41290
Arrowood and Hall, PLLC
PO Box 58129
Raleigh, NC 27658
(919) 803-8973
charlotte@arrowoodandhall.com

*Counsels for Amicus Curiae*, THE NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES ("NOSSCR")

TABLE OF CONTENTS

TABLE OF AUTHORITIES……...…4

INTEREST OF AMICUS CURIAE…….……..6

SUMMARY OF ARGUMENTS……..…….…....7

ARGUMENTS……..……..9

I. THE FAMILY MAXIMUM IS BASED ON THE AMOUNT PAYABLE, AND SSA'S CONTRARY READING HARMS CHILDREN……...….9

A. "Entitled" requires a present legal right to the relevant benefit, not the possibility of receiving a different benefit under different circumstances…….…….9

B. SSA's reading harms the children Congress meant to protect……..13

II. THE DISTRICT COURT DREW THE CLASS TOO NARROWLY, AS EACH ANNUAL COLA LETTER IS AN APPEALABLE INITIAL DETERMINATION AND THE FILING OF THIS ACTION TOLLED THE SIXTY-DAY APPEAL PERIOD FOR THE COLA-LETTER RECIPIENTS, WHOSE CLAIMS ARE TIMELY……15

A. Each annual COLA letter is an initial determination of the benefit amount and is therefore subject to administrative and judicial review……..15

B. Because the amount in each COLA letter is the arithmetic output of the challenged family-maximum method, appealing the amount necessarily puts that method in issue…….19

C. Each COLA letter opened a new sixty-day window, and the filing of this action tolled that window for absent class members; their claims are timely……..……20

D. Excluding the COLA-letter recipients falls on children the Act was written to protect, forcing thousands of individual appeals that a single class judgment could resolve……..21

CONCLUSION…….....25

TABLE OF AUTHORITIES

I. CASES

1. *Advocate Christ Medical Center v. Kennedy*, 605 U.S. 1 (2025)…...11
2. *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538 (1974)…..…….8-19, 20
3. *Bauer v. Comm'r of Soc. Sec.*, No. 2:15-cv-721, 2018 WL 1889386 (M.D. Fla. Apr. 20, 2018)……..…...…….….18
4. *Bowen v. City of New York*, 476 U.S. 467 (1986)…..……..9, 20, 23-25
5. *Bubnis v. Apfel*, 150 F.3d 177 (2d Cir. 1998)…….……...18
6. *Califano v. Yamasaki*, 442 U.S. 682 (1979)…….…….……24
7. *City of New York v. Heckler*, 742 F.2d 729 (2d Cir. 1984)…..….20-21
8. *Cunningham v. Harris*, 658 F.2d 239 (4th Cir. 1981)…….14, 21-22
9. *Dorsey v. Bowen*, 828 F.2d 246 (4th Cir. 1987)……..…21
10. *Fitschen v. Kijakazi*, 86 F.4th 797 (7th Cir. 2023)……...….17
11. *Jimenez v. Weinberger*, 417 U.S. 628 (1974)……13-14
12. *Parisi by Cooney v. Chater*, 69 F.3d 614 (1st Cir. 1995)…....…7-12
13. *Pohlmeyer v. Sec'y of Health & Hum. Servs.*, 939 F.2d 318 (6th Cir. 1991)……..……19
14. *Short v. Astrue*, No. 2:09CV119, 2010 WL 5665044 (N.D.W. Va. Sept. 9, 2010)……..18
15. *Steigerwald v. Berryhill*, 357 F. Supp. 3d 653 (N.D. Ohio 2019).…24
16. *Sullivan v. Zebley*, 493 U.S. 521 (1990)…….….22-23
17. *Waldbillig v. Chater,* No. 95-CV-1851, 1997 WL 3252 (N.D.N.Y. Jan. 3, 1997)……...18

II. STATUTES

1. 42 U.S.C. § 402……..……..7, 9-13
2. 42 U.S.C. § 403……...…….7, 9-14
3. 42 U.S.C. § 405……...……..…20, 24

III. REGULATIONS

1. 20 C.F.R. § 404.303……....10
2. 20 C.F.R. § 404.902……...…….……...7, 15-18
3. 20 C.F.R. § 404.903……..…..……16
4. 20 C.F.R. § 404.904……..……..……15

IV. OTHER SOURCES

1. 64 Fed. Reg. 57919, 57919 (Oct. 27, 1999)……..…..…….12
2. 102 Cong. Rec. 15697 (1956)……..……..13
3. POMS GN 03101.050(C)……...……...…….16, 19
4. POMS GN 04030.060……..……..16-17
5. Social Security Advisory Board, Statement on the Supplemental Security Income Program 2021, at 5, https://www.ssa.gov/oact/ssir/SSI21/2021_SSAB_Statement.pdf (last accessed Sept. 17, 2026)……...……..23

## INTEREST OF AMICUS CURIAE

The National Organization of Social Security Claimants' Representatives ("NOSSCR") is a national membership organization comprising more than 2,000 individuals, mostly attorneys, who represent individuals applying for Social Security and Supplemental Security Income ("SSI") benefits.[1] NOSSCR supports the position of Plaintiff/Appellee L.N.P. and the class he represents. That is, NOSSCR supports affirmance on Commissioner Bisignano's appeal (No. 26-1825) and reversal on L.N.P.'s cross-appeal, No. 26-1883.

NOSSCR members include employees of legal services organizations, educational institutions, and other non-profits; employees of for-profit law firms and other businesses; and individuals in private practice.

The mission of NOSSCR is to advocate for improvements in Social Security disability programs and to ensure that Social Security claimants have access to highly qualified representation and receive fair decisions. Critical to

[1] Pursuant to Fed. R. App. P. 29(a)(4)(A), counsel states that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than amicus curiae NOSSCR, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief. Counsel for the government and counsel for the appellee, L.N.P., have consented to the filing of this brief, rendering it permissible under Fed. R. App. P. 29(2).

that mission is advocating for fair and full due process protections for these individuals.

NOSSCR's members encounter the family maximum calculation in cases across the country, and the error at issue here is not confined to this record. By counting a retired parent's primary insurance amount—an amount an early retiree never receives—against the family maximum, SSA systematically reduces the benefits payable to the dependent children the Act was designed to protect. NOSSCR submits the brief to address that recurring error and its consequences for those children. NOSSCR also seeks to efficiently provide these additional benefits to all entitled to them and believes an expanded class definition is the most appropriate means to do so.

## SUMMARY OF ARGUMENTS

Section 403(a) caps the "total monthly benefits to which beneficiaries may be entitled under section 402." SSA counts a benefit the beneficiary never received—the full retirement benefit of a parent who retired early and is instead paid a reduced amount. "Entitled" does not mean that. It means the benefit a beneficiary is eligible to receive.

The First Circuit held as much in *Parisi by Cooney v. Chater*, construing this provision, and the agency's regulation defined "entitled" the same way. 69 F.3d 614, 618 (1st Cir. 1995). The district court read the text

the same way. And last Term, the Supreme Court read "entitled" to mean eligibility for an actual payment. No sequencing provision changes it and SSA committed to this principle when it brought its rules in line with *Parisi*.

The cost falls on children. Since 1939, Congress has set a child's benefit at half the parent's full retirement amount. It did not reduce that benefit when a parent retires early. SSA's reading cuts the child's benefit anyway, based on money the parent never received. It reduces children's benefits based on a choice that was not theirs and that Congress deliberately protected them from. The Act is read to support dependents, not take benefits from them. The judgment should be affirmed.

Every year, SSA sends each beneficiary a cost-of-living-adjustment (COLA) letter stating a new monthly benefit amount. By the agency's own regulation and its own operating manual, that letter is an initial determination of the benefit amount subject to administrative and judicial review. 20 C.F.R. § 404.902(c), (d). Because the amount in the letter is the direct output of the family-maximum computation this case challenges, the right to appeal the amount is the right to challenge the method that produced it. Each COLA letter is a fresh, separately appealable determination that opens a new sixty-day window, not a barred request to reopen a stale award. And because the filing of this class action tolled that window for absent class members under *Am.*

*Pipe & Const. Co. v. Utah*, 414 U.S. 538, 554 (1974), the children who received COLA letters during the class period hold timely claims and belong in the class.

This is a distinct and independent path to expanding the class from the *Bowen v. City of New York*, 476 U.S. 467 (1986), equitable-tolling theory the district court rejected. This path does not depend on proving SSA's policy was secret; it depends only on giving SSA's own regulation and manual their plain effect. Because the district court gave the COLA letters no such effect, it drew the class too narrowly — the precise error the cross-appeal presents.

## I. THE FAMILY MAXIMUM IS BASED ON THE AMOUNT ELIGIBLE TO RECEIVE, AND SSA'S CONTRARY READING HARMS CHILDREN.

### A. "Entitled" requires a present legal right to the relevant benefit, not the possibility of receiving a different benefit under different circumstances.

Section 403(a) reduces, "as necessary," the "total monthly benefits to which beneficiaries *may be entitled* under section 402." 42 U.S.C. § 403(a) (emphasis added). The question is whether a parent's primary insurance amount counts towards that limit when the parent retires early and never receives it. It does not. "Entitled," in this provision, turns on the benefit a beneficiary is presently eligible to receive, not a larger sum the statute makes available only in theory.

The First Circuit held exactly that in *Parisi by Cooney v. Chater*, construing this provision. The family maximum limits "the total monthly benefits to which beneficiaries may be entitled under section 402." 69 F.3d 614, 618 (1st Cir. 1995). "A natural reading of this language suggests the primary object of limitation as 'the total monthly benefits' produced by the operation of section 402 *as a whole*, and not… theoretical entitlements created by one fragment of section 402 considered in artificial isolation from the rest of that same section, and wholly apart from the benefits that ultimately attach." *Id.* at 618.

The court rejected SSA's "pure entitlement" reading as "supported neither by the language of the statute nor by reason." *Id.* at 619. What counts is the benefit that "ultimately attach[es]." *Id.* For an early retiree, that is the reduced benefit he is paid, not the primary insurance amount (PIA) he forgoes and never receives.

*Parisi* anchored that conclusion in the agency's own definition of the operative word. Under SSA's regulations, a person is "entitled" to a benefit only when he "has proven his or her right to benefits for a period of time." *Id.* at 618; 20 C.F.R. § 404.303. An early retiree has not proven a right to the unreduced primary insurance amount. He will never be paid it. Treating it as a benefit to which he is "entitled" contradicts the meaning the agency assigned

to the term. The district court read the provision the same way, as a matter of plain text. Mem. Op. & Order, Doc. 49 at 8-10.

*Advocate Christ Medical Center v. Kennedy* confirms the point. 605 U.S. 1, 9-12 (2025). There, the Supreme Court held that a person is "entitled to" SSI benefits when the person is eligible to receive the relevant cash benefit during the relevant month. The Court tied entitlement to satisfaction of the statutory conditions governing the particular benefit, rather than to the possibility that an individual might qualify for a benefit at some other time. The same principle applies here. An early retiree who has elected reduced benefits is legally eligible during the relevant month for the old-age benefit produced by Section 402 after application of subsection (q), not the unreduced PIA that he might have received under different circumstances. Entitlement does not require the physical receipt of a payment; it requires a present legal right to the benefit. L.N.P. had no legal right to the unreduced PIA for the months at issue because Section 402(q) limited his old-age benefit to the reduced amount.

SSA's contrary argument rests on the sequencing language of Section 402(q)(8), which directs that the early-retirement reduction be applied "after" the family maximum reduction. SSA reads that to require the full primary insurance amount as payable. But *Parisi* already rejected the same sequencing

argument. There, SSA relied on the parallel "after any reduction… under section 403(a)" language in Section 402(k)(3)(A), asserting that a family member's benefit "must be treated (contrary to fact) as if they were fully payable." *Parisi*, 69 F.3d at 619. The court held that there is "nothing in the language of section 402(k)(3)(A) or section 403(a)… that dictates that the family maximum computation cannot take into account the fact that an entitlement that would normally contribute to the family maximum amount has been reduced to zero..." *Id.* Sequencing fixes the order of reductions; it does not convert an unpaid amount to a payable one. The textual mechanics are developed in L.N.P.'s brief, and NOSSCR notes only that no sequencing provision transforms a benefit the early retiree never receives into one that he is "entitled" to.

This reading is not novel to the agency. When SSA adopted *Parisi* nationwide, it committed to an interpretive principle. It would "consider the actual amount of benefits payable under the relevant provisions…, not purely theoretical entitlements," in applying the family maximum. 64 Fed. Reg. 57919, 57919 (Oct. 27, 1999). SSA announced that principle in a dual-entitlement context, but the premise applies here. It is a reading of what "entitled" means under Section 403(a). SSA's position in this case—counting an early retiree's unreduced primary insurance amount it will never pay—is

inconsistent with this principle. The word "entitled" does not change meaning depending on which reduction produced the smaller benefit.

**B. SSA's reading harms the children Congress meant to protect.**

SSA's reading cuts children's benefits and does so for a reason that Congress rejected. Congress sets a child's benefit at half of the parent's full primary insurance amount. 42 U.S.C. § 402(d)(2). There is no mention that the benefit shrinks if a parent retires early. The reduction for early retirement applies to the worker and certain adults, not to children. 42 U.S.C. § 402(q)(1). Even where a worker "chooses to take her benefits at a reduced rate, the payments to her dependents (her children or dependent husband…) will not be reduced." 102 Cong. Rec. 15697 (1956) (extension of remarks of Rep. Daniel A. Reed). Importantly, "[t]hese dependents will receive their benefits at a rate based on the unreduced amount of [the] old-age insurance benefit." 102 Cong. Rec. 15697 (1956) (extension of remarks of Rep. Daniel A. Reed).

SSA's reading runs contrary to the statutory structure Congress chose. By counting the full PIA, SSA cuts children's benefits based on an amount their parent never received. Section 402(q) reduces specified adult benefits for early retirement, but does not subject children's benefits to that reduction. 42 U.S.C. § 402(q)(1).

In *Jimenez v. Weinberger*, 417 U.S. 628, 633-34 (1974), the Supreme Court recognized the child-supporting purpose of the Act, explaining that the "primary purpose of the contested Social Security scheme is to provide support for dependents of a disabled wage earner" and not merely to replace the support a child actually enjoyed beforehand. Although *Jimenez* involved disability benefits rather than early retirement, its recognition of the Act's protection of dependent children reinforces the conclusion dictated here by the statutory text.

The Act is read in favor of the beneficiaries it protects. *See Cunningham v. Harris*, 658 F.2d 239, 243 (4th Cir. 1981). The statute requires the agency to count the benefit the early retiree is entitled to receive, not the full benefit he gave up by retiring early and never received. The text requires this. These principles confirm it. A reading that cuts children's benefits based on money their parent never received is not the better reading of a statute meant to support them.

This Court should affirm the district court's interpretation and application of 42 U.S.C. § 403.

## II. THE DISTRICT COURT DREW THE CLASS TOO NARROWLY, AS EACH ANNUAL COLA LETTER IS AN APPEALABLE INITIAL DETERMINATION AND THE FILING OF THIS ACTION TOLLED THE SIXTY-DAY APPEAL PERIOD FOR THE COLA-LETTER RECIPIENTS, WHOSE CLAIMS ARE TIMELY.

### A. Each annual COLA letter is an initial determination of the benefit amount and is therefore subject to administrative and judicial review.

SSA's regulations define "initial determinations" as the determinations SSA makes that are subject to administrative and judicial review:

> Initial determinations are the determinations we make that are subject to administrative and judicial review. We will base our initial determination on the preponderance of the evidence. We will state the important facts and give the reasons for our conclusions in the initial determination. In the old age, survivors' and disability insurance programs, initial determinations include, but are not limited to, determinations about—
>
> * * *
>
> (c) The amount of your benefit;
> (d) A recomputation of your benefit[. . . .]

20 C.F.R. § 404.902. A COLA letter does exactly what subsections (c) and (d) describe: it states the recipient's new monthly benefit amount and reflects a recomputation of that amount for the coming year. The notice of an initial determination must, by regulation, inform the beneficiary of the right to reconsideration. 20 C.F.R. § 404.904. The COLA letters here did precisely that, advising each recipient: "If you disagree with any of these amounts, you

must file an appeal with us in writing within 60 days from the date you get this letter."

The companion regulation lists the administrative actions "that are not initial determinations and thus are not subject to the administrative review process…[or] to judicial review." 20 C.F.R. § 404.903. That list is detailed and specific — running through more than two dozen ministerial actions, from "[w]ithholding less than the full amount of your monthly benefit to recover an overpayment" to "[t]he assignment of a monthly payment day." *Id.* at § 404.903(e, s). Conspicuously, it contains no entry for automatic cost-of-living adjustments. SSA plainly knew how to designate routine, automatic actions as non-appealable when it wished to; its choice not to exclude COLA letters confirms they remain 20 C.F.R. § 404.902 initial determinations subject to review.

The agency's Program Operations Manual System (POMS) is explicit: a COLA is an initial determination subject to administrative and judicial review, and the claimant may therefore question SSA's calculation. SSA, POMS GN 03101.050(C). The manual elsewhere confirms that the conversion of a benefit rate or COLA constitutes an initial determination to which the rules of administrative finality apply in the same manner as to any other initial determination. POMS GN 04030.060. SSA cannot tell beneficiaries in its

manual that a COLA is an appealable determination through which the claimant may question its calculation and tell this Court that a COLA letter confers no right to challenge that calculation. The district court rejected class-wide tolling precisely because the POMS is publicly available to beneficiaries; that same public POMS tells those beneficiaries that a COLA is an appealable initial determination through which they may question SSA's calculation.

The Seventh Circuit's decision in *Fitschen v. Kijakazi*, 86 F.4th 797 (7th Cir. 2023), is directly on point. There, the parties agreed, and the court noted, that an initial determination is an agency decision subject to administrative or judicial review, giving as examples determinations about "the amount of [his] benefit" and "any recomputation of his benefit." *Id.* at 803 (quoting 20 C.F.R. § 404.902(c, d)). The court treated the claimant's eligibility determinations and his 2002–2006 annual recomputation notices as separate and distinct initial determinations, each independently subject to review. *Id.* Those annual notices were computer-generated form letters, generated automatically when the annual recomputation of benefits produced an increase based on available earnings data. *Id.* at 800. That a benefit-amount notice issues automatically thus does not strip it of its status as a separately

appealable initial determination — an answer to any argument that a COLA adjustment is too automatic to be appealed.

District courts, including within this Circuit, are in accord. *See Short v. Astrue*, No. 2:09CV119, 2010 WL 5665044 (N.D.W. Va. Sept. 9, 2010), *report and recommendation adopted sub nom. Short v. Comm'r of Soc. Sec.*, No. 2:09-CV-119, 2011 WL 318689 (N.D.W. Va. Jan. 28, 2011) (a determination notice was an initial determination under 20 C.F.R. § 404.902, which lists "the amount of your benefit" and "a recomputation of your benefit"); *see also Waldbillig v. Chater,* No. 95-CV-1851, 1997 WL 3252, at *3 (N.D.N.Y. Jan. 3, 1997) ("[t]he amount of benefits is listed as an initial determination" and "that initial determination is subject to the administrative appeal procedures"); *Bauer v. Comm'r of Soc. Sec.*, No. 2:15-cv-721, 2018 WL 1889386, at *4 (M.D. Fla. Apr. 20, 2018) (a claim regarding "the amount of his benefits" and "a recomputation of his benefits" "clearly presents a claim for an initial determination under 20 C.F.R. § 404.902"); *Bubnis v. Chater*, 958 F. Supp. 111, 113 (E.D.N.Y. 1997), *aff'd sub nom. Bubnis v. Apfel*, 150 F.3d 177 (2d Cir. 1998) (SSA's recomputation letter "conveyed to the plaintiff that he had a right to appeal the SSA's determination").

### B. Because the amount in each COLA letter is the arithmetic output of the challenged family-maximum method, appealing the amount necessarily puts that method in issue.

The COLA letter does not state an abstract figure; it states the recipient's benefit amount, and that amount is the arithmetic output of SSA's family-maximum computation — the very computation the district court held unlawful because it deducts the early retiree's full PIA rather than the actual RIB. Each year the method is applied, it produces a fresh, understated amount, and each COLA letter re-states that understated amount as a new determination. To exercise the right the letter itself confers — to appeal any of these amounts — is necessarily to put the underlying computation method in issue. SSA's manual says as much: a COLA is the determination through which the claimant can question SSA's calculation. POMS GN 03101.050(C).

In *Pohlmeyer v. Sec'y of Health & Hum. Servs.*, 939 F.2d 318, 321 (6th Cir. 1991), the Sixth Circuit held that a benefit-amount determination was an initial determination subject to administrative and judicial review and became binding only because the claimant failed to seek reconsideration of that determination within the specified 60 days. That is the pro-claimant premise, not a rebuttal: the amount determination is appealable, and it is foreclosed only when *left unappealed*. A class member who timely appeals (or whose limitations period is tolled, see Section 4) is not in *Pohlmeyer*'s posture at all.

### C. Each COLA letter opened a new sixty-day window, and the filing of this action tolled that window for absent class members; their claims are timely.

Because each COLA letter opened a new sixty-day period, the only remaining question is whether that period was satisfied or tolled for absent class members. It was. Under *Am. Pipe*, the commencement of a class action "suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." 414 U.S. at 554. The filing of the *L.N.P.* class complaint thus tolled the sixty-day appeal period for putative members, including children whose COLA letters issued during the class period, so their claims remain live. This is legal (class-action) tolling; it does not require the "secret policy" showing that governs the *Bowen*, 476 U.S. 467, equitable-tolling theory, and it is unaffected by the district court's rejection of class-wide equitable tolling. By treating May 10, 2024 as a hard floor and excluding COLA-letter recipients, the district court certified a class narrower than the timely claims warranted — the over-narrowing the cross-appeal challenges.

Even if the Court does not reach the class-tolling ground, ordinary tolling principles reinforce the result. The Second Circuit's decision affirmed in *Bowen*, 476 U.S. 467 held the § 405(g) sixty-day requirement not to be jurisdictional and "effectively tolled during the time that SSA's

policy…remained operative but undisclosed," because "[w]here the Government's secretive conduct prevents plaintiffs from knowing of a violation of rights, statutes of limitations have been tolled." *City of New York v. Heckler*, 742 F.2d 729, 738 (2d Cir. 1984). Nothing on the face of a COLA letter discloses that SSA computed the family maximum using the PIA rather than the RIB; the recipient sees only a facially regular benefit amount. That undisclosed method supplies an independent tolling ground for recipients who could not have known their stated amount was wrong.

### D. Excluding the COLA-letter recipients falls on children the Act was written to protect, forcing thousands of individual appeals that a single class judgment could resolve.

The question the cross-appeal presents is not an abstract one about class mechanics. NOSSCR's members are the attorneys and representatives who appear for Social Security and SSI claimants before the agency and in the federal courts, and they see first-hand what an artificially narrowed class does to the people the Social Security Act exists to protect. The Act is a remedial statute, "to be broadly construed and liberally applied in favor of beneficiaries." *Dorsey v. Bowen*, 828 F.2d 246, 248 (4th Cir. 1987). Its beneficiaries "are the beneficiaries of insured wage earners, not recipients of government gratuities," and "when a Social Security Act provision can be reasonably interpreted in favor of one seeking benefits, it should be so

construed." *Cunningham v. Harris*, 658 F.2d 239, 243 (4th Cir. 1981). Those principles bear directly on how broadly the class should be drawn.

The COLA-letter recipients the district court cut out of the class are children whose benefits SSA has understated year after year through the same unlawful family-maximum computation at issue for the named plaintiffs. Excluding them does not make their claims disappear; it forces each child, most of them unrepresented, to discover the error, navigate SSA's multi-level administrative appeal process alone, and do so before a sixty-day clock most never knew was running. For NOSSCR's members, the exclusion multiplies thousands of individual appeals that a single class judgment could resolve; for their clients, it means the difference between recovering the benefits owed and losing them to a procedural bar. That is precisely the systemic harm class treatment exists to prevent.

The size of the correction is a measure of the wrong, not a reason to withhold the remedy. The most striking example is *Sullivan v. Zebley*, 493 U.S. 521 (1990). There, the Supreme Court held that SSA's "listings-only" method for adjudicating children's SSI disability claims, a standard that had governed since the SSI program began in the mid-1970s, was "manifestly contrary to the statute" and exceeded the Secretary's authority, because it denied children the individualized, functional assessment the statutory

"comparable severity" standard requires. *Zebley*, 493 U.S. at 541 (1990). Entire categories of children had been "simply denied benefits, even if their impairments [we]re of 'comparable severity' to ones that would actually … render an adult disabled." *Zebley*, 493 U.S. at 535–36. Affirming the Third Circuit's conclusion that the listings-only scheme was inconsistent with the statute, the Court did not shrink from the scale of the resulting correction. *Id.* at 527, 541. On remand, SSA was required to identify, using its own data systems, and readjudicate the previously denied or terminated claims of a nationwide class of children reaching back to January 1, 1980— a decade of denials — and to pay benefits retroactive to each original denial. All told, some 452,000 children were eligible for a readjudication of their disability claims. Social Security Advisory Board, Statement on the Supplemental Security Income Program 2021, at 5, https://www.ssa.gov/oact/ssir/SSI21/2021_SSAB_Statement.pdf (last accessed Sept. 17, 2026).

The Supreme Court's *Zebley* decision is not an outlier. In *Bowen*, 476 U.S. 467, the Court unanimously affirmed relief for a class of claimants injured by an unlawful SSA policy, upholding both equitable tolling of the sixty-day limit and waiver of exhaustion so that the remedy reached claimants whose deadlines had long since passed; the district court had ordered SSA to

reopen every affected denial and termination and redetermine eligibility. *Bowen*, 476 U.S. 467. In *Califano v. Yamasaki*, 442 U.S. 682 (1979), the Court sustained a nationwide class under § 405(g), holding that "the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class." *Califano*, 442 U.S. at 702. And in *Steigerwald*, the court certified a nationwide class reaching back to 2002 and ordered SSA to perform the omitted benefit recalculations and pay the resulting past-due benefits, rejecting SSA's effort to cabin the period of relief. *Steigerwald v. Comm'r of Soc. Sec.*, 326 F.R.D. 469 (N.D. Ohio 2018); *Steigerwald v. Berryhill*, 357 F. Supp. 3d 653 (N.D. Ohio 2019). The consistent lesson is that a properly defined class is measured by the reach of the unlawful practice, not trimmed to limit the cost of undoing it.

The Supreme Court has rejected claims that relief will draw on the public fisc as a reason to curtail relief. In *Bowen*, 476 U.S. 467, the Secretary argued that equitable relief should be limited to cases in which "the public treasury is not directly affected"; the Court "decline[d] to hold that the doctrine … is so limited," admonishing that a court must not "assume the authority to narrow the waiver that Congress intended," and that "there is no justification for limiting the doctrine to cases that do not involve monetary relief." 476 U.S. at 479. The Court likewise brushed aside SSA's plea of

administrative burden: "we are aware that administrative inconvenience may result from our decision today. But the Secretary had the capability and the duty to prevent the illegal policy." *Id.* at 487. The size of the bill for correcting an unlawful computation reflects the size of SSA's error. If Congress concludes that the cost to the Trust Funds warrants a legislative response, that judgment belongs to Congress.

## CONCLUSION

Section 403(a) counts the benefits a beneficiary is eligible to receive, not an amount the early retiree never receives. Congress set children's benefits at half the worker's PIA and placed them outside the early-retirement reduction. SSA's reading cuts those benefits anyway. The Court should affirm.

Each annual COLA letter is an appealable initial determination of the benefit amount, and the amount it states is the product of the challenged computation. Children who received COLA letters during the class period therefore held timely, appealable claims that the filing of this action tolled. By giving those letters no effect, the district court drew the class too narrowly. This Court should reverse the exclusion of the COLA-letter recipients.

Respectfully submitted, this the 20th day of October, 2026,

THOMAS A. KRAUSE
MN Bar No. 0143224
Thomas Krause Disability Law
61 Richmond Drive
Winona, MN 55987
Phone: (507) 703-2021
thomas@tkrausedisabilitylaw.com

LAURA BETH WALLER
NC Bar No. 41677
Waller Appeals
1777 Washington Crossing
Unit 1382
Washington, MO 63090
(919) 901-9011
laurabethwaller@gmail.com

CHARLOTTE HALL
NC Bar No. 41290
Arrowood and Hall, PLLC
PO Box 58129
Raleigh, NC 27658
(919) 803-8973
charlotte@arrowoodandhall.com

*Counsels for Amicus Curiae*

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-1825 (L), 26-1883 Caption: L.N.P. v. Bisignano

CERTIFICATE OF COMPLIANCE WITH RULES

1. This brief complies with the type-volume limitations of Fed. R. App. P. 28.1(e)(2), 29(a)(5), and 32(a)(7)(B) because:

This brief contains 5,272 words, which is less than half the permissible length of the parties' briefs.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

/s/ Charlotte W. Hall

Attorney for NOSSCR, *Amicus Curiae*

10/20/2026

CERTIFICATE OF SERVICE

I certify that on October 20, 2026, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Charlotte W. Hall
10/20/2026