



November 25, 2025

The Honorable Randy Fine
244 Cannon House Office Building
Washington, DC 20515

Dear Representative Fine,

The ESOP Association is proud to endorse H.R. 6084, which includes necessary and common-sense legal reforms that will promote retirement security for employee owners with employee stock ownership plans (ESOPs). The bill would amend the Employee Retirement Income Security Act of 1974 (ERISA) to strengthen the pleading standards for certain plaintiffs' claims, reducing frivolous and nuisance lawsuits on ESOPs, which will help protect employee owners, encourage more businesses to consider employee ownership, and ultimately expand access to the proven retirement security benefits of ESOPs.

It has been the experience of our membership that the goal of most plaintiff suits is to opportunistically leverage existing weak standards as a tool to extract insurance settlements. The number of ERISA lawsuits claiming that ESOP fiduciaries overpaid for company shares in an ESOP transaction is on the rise, despite the increased rigor placed on those transactions in the last two decades. Plaintiffs have filed more than 500 ERISA class actions since 2016, averaging \$5.6 million in settlement value. Yet the average employee recovery is less than \$200.¹ The crucial step in these cases is whether the plaintiff's lawsuit survives the motion to dismiss² which is currently a low standard. Once plaintiffs clear this hurdle, then the parties are forced to proceed to discovery, which can be incredibly time-consuming and costly for a company. Surviving a motion to dismiss, then, creates a tremendous financial incentive for companies, and their insurers, to simply settle the case rather than face time consuming and expensive efforts to defend a case. For many plaintiffs' firms, it seems achieving a settlement – not pursuing the case on behalf of a client – is the goal.³

Under current law ESOPs and service providers are required to prove their innocence to defend against any allegation of impropriety, rather than a plaintiff who is making an allegation proving an ESOP's or service provider's guilt. H.R. 6084 has three important provisions that address these problems. First, the bill changes the standard of proof for adequate consideration, meaning that instead of an accused ESOP proving it paid fairly for the business, the burden of proof will now fall on the plaintiffs to prove the price was unfair. The second provision also changes the current burden of proof to require the plaintiffs to prove that service provider fees were not reasonable and not necessary. Third, the bill ensures that the expensive and time-consuming process of discovery does not occur until a court has decided a claim may

¹ <https://protectretirementplans.org/>

² “Yet under our decision that is all that a plaintiff must plead to survive a motion to dismiss. And, in modern civil litigation, getting by a motion to dismiss is often the whole ball game because of the cost of discovery.” Justice Alito, with whom Justice Thomas and Justice Kavanagh join, in *Cunningham v Cornell*

³ “...the number of excessive plan fee cases that settle has increased six-fold since 2016 and that these cases can ‘cost more to defend than to settle.’ When that happens in a case like this one now before us, the few plan participants named as plaintiffs and their attorneys get a windfall, and a cost that the administrator incurs may be passed on to other plan participants.” Justice Alito, with whom Justice Thomas and Justice Kavanagh join, concurring in *Cunningham v Cornell*

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move forward. Importantly, this legislation does not prevent meritorious lawsuits, nor does it provide any sort of blanket relief for ESOPs or service providers. Instead, the bill restores balance to the current legal framework that heavily favors nuisance plaintiffs at the expense of workers and their retirement savings.

This legislation is especially important in the wake of the Supreme Court's *Cunningham v Cornell University* decision in April of 2025. In that decision, the Supreme Court affirmed that mere status as a "prohibited transaction exemption" (PTE) under ERISA allows a plaintiff's case to move beyond a motion to dismiss and into discovery. ESOPs – by nature – are prohibited transactions with an exemption under ERISA. Therefore, ESOPs find themselves in a "no win" situation: If they establish themselves, necessitating a PTE, that status alone ensures moving beyond a motion to dismiss and into expensive discovery procedures, which triggers the financial incentive to engage in expensive settlement instead of litigation. Congress has had longstanding bipartisan support for ESOPs, yet current law, as recently interpreted by the Supreme Court, puts them under substantial legal jeopardy. The Supreme Court's *Cunningham v. Cornell* decision essentially notes that the law is clear, and acknowledges potential consequences, but this clearly implies that the law can be changed.⁴ H.R. 6084 would help remedy this situation.

Congress should continue its longstanding support for ESOPs and employee ownership. Research consistently shows employee-owned companies exhibit higher productivity and stronger resilience during economic downturns. Employees at these companies enjoy enhanced financial security, with substantially higher retirement savings compared to their peers at non-employee-owned companies. Furthermore, employee-owned companies anchor jobs within local communities, preventing job losses from closures or foreign acquisitions and preserving the legacy of family-owned businesses. This legislation would remove significant existing legal disincentives to the formation of ESOPs and make operating ESOPs less risky, which will, in turn, expand benefits for workers and help employees build wealth, strengthening retirement security without cost to taxpayers.

H.R. 6084 represents needed litigation reform for ESOPs, which directly supports workers and retirees. For these reasons, The ESOP Association enthusiastically endorses H.R. 6084. If you have any questions, please contact Greg Facchiano, Vice President of Government Relations and Public Affairs, at (202) 293-2971, or gfacchiano@esopassociation.org.

Thank you for your leadership and continued support for ESOPs and employee ownership.

Sincerely,



James J. Bonham
President & CEO
The ESOP Association

⁴ "Yet if plaintiffs must plead only that a transaction barred by (section)1106(a)(1)(C)'s plain text occurred, respondents argue, plaintiffs could too easily get past the motion-to-dismiss stage and subject defendants to costly and time-intensive discovery. Such meritless litigation, respondents claim, would harm the administration of plans and force plan fiduciaries and sponsors to bear most of the associated costs. These are serious concerns but they cannot overcome the statutory text and structure. Here, Congress "set the balance" in "creating [an] exemption and writing it in the orthodox format of an affirmative defense," so the Court must "read it the way Congress wrote it." Justice Sotomayor, delivering the opinion of the Court, in *Cunningham v. Cornell*