No. 24-1030

In the Supreme Court of the United States

PARKER-HANNIFIN CORPORATION, ET AL.,
PETITIONERS

v.

MICHAEL D. JOHNSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, requires fiduciaries of an employee-benefit plan to make, monitor, and remove plan investments "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. 1104(a)(1)(B). The question presented is:

Whether pleading an imprudent-investment claim under ERISA, based on how the investment's returns compared to some performance benchmark, requires allegations showing that the benchmark is a sound comparison for that investment.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

INTRODUCTION

The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, requires fiduciaries of qualifying employee-benefit plans to act with the "care, skill, prudence, and diligence * * * that a prudent man acting in a like capacity * * * would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. 1104(a)(1)(B). That standard "requires prudence, not prescience," *DeBruyne* v. *Equitable Life Assurance Soc'y*, 920 F.2d 457, 465 (7th Cir. 1990) (citation omitted), and prudence is evaluated "prospectively, based on the methods the fiduciaries employed, rather than retrospectively, based on the results they achieved," *Anderson* v. *Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1021 (9th Cir. 2025), petition for cert. pending, No. 25-498 (filed Oct. 20, 2025). For a breach-of-fiduciary-duty claim, "[t]he process is what ultimately matters, not the results." *Matousek* v. *MidAmerican Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022). Accordingly, "a fund's underperformance" does not alone constitute a breach of fiduciary duty but serves at most as an inferential "building block for a claim of imprudence" in selecting or retaining investments. *Smith* v. *CommonSpirit Health*, 37 F.4th 1160, 1167 (6th Cir. 2022).

"[T]o create an inference of a 'flawed' process," however, an investment's underperformance must be measured against a "'meaningful benchmark.'" *Davis* v. *Washington Univ. in St. Louis*, 960 F.3d 478, 483-484 (8th Cir. 2020) (citation omitted). After all, the fact that performance varies across investment options provided in an ERISA plan is unremarkable in itself. ERISA fiduciaries have an "obligation to assemble a diverse menu of options" to accommodate the varying objectives of plan participants. *Hughes* v. *Northwestern Univ.*, 595 U.S. 170, 176 (2022). A fiduciary thus "acts wisely, not imprudently, when it offers distinct funds to deal with different objectives for different investors." *CommonSpirit*, 37 F.4th at 1167. And comparisons between funds are not "meaningful" unless those funds "share the same investment 'strategies,' 'risk profiles,' and 'objectives.'" Pet. App. 81a (citation omitted).

In the decision below, the court of appeals gave short shrift to those principles. After noting that some imprudence claims may be established without identifying "a higher-performing fund," Pet. App. 18a, the court concluded that respondents do "in fact plead a meaningful benchmark in this case" by pointing to "the S&P target date fund benchmark"—a market composite with no single risk profile or identifiable set of strategies and objectives. *Id.* at 19a.

As Judge Murphy pointed out in dissent, the majority's reasoning departs from the consensus in other courts of appeals. Pet. App. 54a-56a. In the view of the United States, this Court should grant review and restore uniformity to ERISA pleading standards.

STATEMENT

A. Legal Background

ERISA "protect[s] * * * the interests of participants in employee benefit plans" by "establishing standards of conduct, responsibility, and obligation for fiduciaries" and "providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. 1001(b). The statute subjects plan trustees to certain fiduciary duties derived from the common law of trusts. See *Central States, Se. & Sw. Areas Pension Fund* v. *Central Transp., Inc.*, 472 U.S. 559, 570 (1985). In particular, ERISA requires fiduciaries to act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. 1104(a)(1)(B).

This Court has determined that ERISA's "duty of prudence" includes "a continuing duty to monitor investments and remove imprudent ones." *Tibble* v. *Edison Int'l*, 575 U.S. 523, 530 (2015). A beneficiary may sue a fiduciary on behalf of the plan for an alleged breach of that duty. 29 U.S.C. 1132(a)(2).

Litigation seeking to enforce an ERISA fiduciary's duty of prudence implicates "competing congressional purposes, such as Congress' desire to offer employees enhanced protection for their benefits, on the one hand, and, on the other, its desire not to create a system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering welfare benefit plans in the first place." *Varity Corp.* v. *Howe*, 516 U.S. 489, 497 (1996). This Court has "recognized that ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Conkright* v. *Frommert*, 559 U.S. 506, 517 (2010) (citation omitted). Accordingly, a court resolving a motion to dismiss must "divide the plausible sheep from the meritless goats" by engaging in "careful, context-sensitive scrutiny of a complaint's allegations" of imprudence in light of the usual standards for stating a claim. *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014).

B. The Present Controversy

1. Petitioner Parker-Hannifin Corporation is a manufacturing company that sponsors the Parker-Hannifin Retirement Savings Plan (the Plan), a defined-contribution employee-benefit plan under ERISA. Pet. App. 72a. As relevant here, the Plan offered participation in target date funds (TDFs), which are investment vehicles comprising multiple diversified funds that shift from riskier to safer investments as participants' retirement date draws near. *Id.* at 4a. An actively managed fund requires its portfolio managers to "make[] investment decisions and initiate[] buying and selling of securities" in pursuit of the fund's performance objectives, while a passively managed fund typically relies on index

funds and therefore requires less-frequent intervention. *Smith* v. *CommonSpirit Health*, 37 F.4th 1160, 1163 (6th Cir. 2022) (citation omitted).

In 2013, the Plan's administrators moved its TDF assets from the Fidelity Freedom Funds to the Focus Funds managed by the Northern Trust Corporation. Pet. App. 74a. First offered in 2009, the Focus Funds were composed "primarily of index or passive strategies in the various asset classes utilized." *Ibid.* (citation omitted). The Plan remained invested in the Focus Funds through September 2019. *Ibid.*

2. a. Respondents are five former Parker-Hannifin employees who remain participants in the Plan. Pet. App. 73a. In 2021, they filed this putative class action against petitioners in the United States District Court for the Northern District of Ohio, alleging violations of ERISA related to, *inter alia*, the Plan's inclusion and retention of the Focus Funds. *Id.* at 78a. The operative complaint alleges that petitioners breached their fiduciary duties by (1) imprudently retaining the Focus Funds as an investment option, (2) imprudently selecting and retaining high-fee funds when lower-cost alternatives existed, and (3) failing to monitor their appointed investment agents. D. Ct. Doc. 20, ¶¶ 114-136 (June 11, 2021) (Am. Compl.).

In support of the imprudent-investment claim—the only claim directly at issue in this Court, see Pet. 6-7 & n.1—respondents allege that the Focus Funds "significantly underperformed industry-accepted target date benchmarks." Am. Compl. ¶ 67. Respondents identify the "S&P target date fund benchmark" as "one such benchmark," though they provide no details about the make-up of that composite. *Id.* ¶ 68. They also name three individual TDFs as "prudent alternative" funds that were among "the top performers in the [TDF] market" during the period when the Plan was invested in the worse-performing Focus Funds. *Id.* ¶¶ 70-77.

b. Petitioners moved to dismiss the amended complaint, and the district court granted that motion. Pet. App. 69a-96a.

With respect to respondents' imprudent-investment claim, the district court concluded that they failed "to plead sufficient facts demonstrating that the challenged funds underperformed relative to a 'meaningful benchmark.'" Pet. App. 82a (citation omitted). The court explained that, "for these types of allegations to support a claim, the complaint must contain sufficient 'context,' showing that the challenged funds underperformed relative to their stated goals." *Id.* at 81a (citation omitted). The court then reasoned that, "if the plaintiff chooses to do so through comparator funds, she must show that the challenged funds and the comparator funds share the same investment 'strategies,' 'risk profiles,' and 'objectives.'" *Ibid.* (citation omitted). Absent such commonalities, "side-by-side comparisons 'of how two funds performed in a narrow window of time, with no consideration of their distinct objectives, will not tell a fiduciary which is the more prudent long-term investment option.'" *Id.* at 82a (citations omitted).

The district court then determined that "[n]one of [respondents'] comparators * * * constitute meaningful benchmarks." Pet. App. 82a. The court explained that "the S&P target-date benchmark is not a fund but a statistical data composite created from a 'universe of [TDFs].'" *Ibid.* (citation omitted). The court recognized that "[o]ther courts have found that such an index could never serve as a meaningful benchmark for a real fund with unique investment strategies, goals, and asset allocations." *Ibid.* But even "if it could," respondents' "complaint does not allege that the benchmark represents the Focus Funds' unique investment strategies and long-term objectives." *Id.* at 83a.

The district court also highlighted that "the complaint does not contain any allegations about the Focus Funds' * * * investment strategies—let alone that they are sufficiently similar" to other proposed comparators. Pet. App. 84a-85a. And the court faulted respondents for failing to "respond to [petitioners'] assertion that the Focus Funds had a uniquely conservative investment strategy and asset allocation" compared to other TDFs. *Id.* at 85a. Because respondents have neither established that that strategy was impermissible nor identified any comparators that pursued a similar strategy more successfully, the court held that they have not cleared their threshold burden of alleging a meaningful benchmark. *Id.* at 85a-86a.

3. A divided panel of the court of appeals reversed. Pet. App. 1a-68a.

a. The court of appeals acknowledged that "[t]he duty of prudence is a process-driven obligation" that "focus[es] on the fiduciary's 'real-time decision-making process, not on whether any one investment performed well in hindsight.'" Pet. App. 11a (citation omitted). But, the court held, respondents' imprudence claim relies in substantial part on their allegation "that a prudent fiduciary would have removed the Focus Funds based on its underperformance compared to the S&P target date fund benchmark." *Id.* at 12a. Notwithstanding ERISA's "process-driven" focus, the court reasoned that "the Focus Funds' alleged underperformance could impact [petitioners'] prudence in nonetheless choosing to retain the funds." *Id.* at 15a. And the court concluded that the Funds' alleged "underperformance," when "taken together" with "allegations of high turnover rate," means that respondents have "pleaded facts sufficient to state a claim for imprudent process." *Id.* at 17a, 26a.

In reaching that conclusion, the court of appeals first stated that, while "a plaintiff is permitted to point to a higher-performing fund" to demonstrate imprudence, that will not always be necessary to demonstrate imprudence. Pet. App. 18a. Thus, "[a] meaningful benchmark may sometimes be one part of an imprudence pleading, but it is not required." *Ibid.*

The court of appeals then determined that respondents have "in fact plead[ed] a meaningful benchmark in this case." Pet. App. 19a. Specifically, respondents' complaint includes "the factual allegation that the Focus Funds were 'designed to meet industry-recognized benchmarks'" and thus "[b]y definition, * * * share[d] the same goals, strategies, and risks as the indices they [we]re designed to replicate." *Ibid.* (quoting Am. Compl. ¶ 70). And because respondents further "allege[] that the S&P target date fund benchmark was the relevant 'industry-accepted target date benchmark * * * used by investment professionals,'" *ibid.* (quoting Am. Compl. ¶¶ 67-68), they have, in the court's view, adequately pleaded a meaningful benchmark. Moreover, the court opined that, "[b]ecause tracking an industry-recognized index is the 'investment goal' of a passively managed [TDF] such as the Focus Funds, a relevant market index is *inherently* a meaningful benchmark" for all passively managed funds. *Id.* at 20a (emphasis added).

b. Judge Murphy dissented. Pet. App. 33a-68a. He noted that the "complaint tells us nothing about the Focus Funds' risk profiles or their mix of equity and bond investments" and "nothing about the risk profiles of the benchmark and alternative funds" identified as comparators by respondents. *Id.* at 33a. Accordingly, "other courts would have dismissed [respondents'] claim for failing to show that the alternative options were 'meaningful' comparators to the challenged funds." *Id.* at 34a (citation omitted). And the majority was "break[ing] new ground by holding otherwise." *Ibid.*

In particular, Judge Murphy objected to the majority's "assert[ion] that plaintiffs do not need to plead a meaningful benchmark." Pet. App. 54a. To the extent that the court's opinion "suggest[s] that plaintiffs need not identify such a benchmark when relying on an investment's *relative underperformance*," Judge Murphy faulted the majority for both "depart[ing] from [Sixth Circuit] law and creat[ing] a circuit split." *Ibid.* Although he "agree[d] that [the applicable] pleading test does not require a meaningful benchmark in all cases"—because, for example, "*direct* allegations" of imprudent process may instead "suffice"—Judge Murphy would have adhered to the meaningful-benchmark requirement where, as here, the "complaint tries to make out a case of imprudence based on [an] alternative's superior returns." *Ibid.*

Judge Murphy also disagreed with the majority's conclusion that "the S&P target-date benchmark qualifies as a 'meaningful'" comparator. Pet. App. 54a. He noted that "the complaint pleads no details about this benchmark," such as "its risk profile," "its bond to equity ratio," or whether "it follow[s] a passive or active strategy." *Id.* at 54a-55a. He also pointed out that—contrary to the majority's suggestion that the Focus Funds were "designed * * * to match this benchmark"—"the complaint does not identify any benchmark that the Focus Funds were designed to match or even identify their investments." *Id.* at 55a. Judge Murphy therefore would not have allowed respondents "to rely on an industry benchmark like the S&P target-date benchmark" in the absence of, or as a substitute for, "'specific comparisons' to 'allegedly similar'" investment alternatives. *Id.* at 55a-56a (citation omitted).

DISCUSSION

Plaintiffs pursuing a relative-underperformance theory must identify a meaningful benchmark for comparison. Respondents' conclusory invocation of a market composite index failed to satisfy that requirement. The court of appeals' decision reaching the opposite conclusion is incorrect in two essential respects. First, the panel majority erred to the extent that it suggested that "a meaningful benchmark is not required to plead a facially plausible claim of imprudence" predicated on relative underperformance. Pet. App. 19a. Second, by characterizing a "market index" as "inherently a meaningful benchmark," *id.* at 20a, the court sidestepped the "careful, context-sensitive scrutiny of a complaint's allegations" required in ERISA cases, *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014), and offered plaintiffs an improper shortcut to an inference of imprudent retention whenever a particular investment falls short of general market performance.

The decision below warrants this Court's review. The suggestion that a meaningful benchmark is unnecessary in a relative-underperformance case conflicts with the decisions of every court of appeals to have passed on the same or similar questions. And the conclusion that a plaintiff need only point to a composite index that the subject plan failed to match cannot be reconciled with the pleading standards employed in other circuits. Both errors will have significant consequences for millions of plan participants whose retirement assets are invested in ERISA-governed plans. The petition for a writ of certiorari should be granted.

A. The Court Of Appeals Erred In Two Important Respects

The court of appeals erred in two respects, both of which are fairly encompassed within the question presented. First, the court suggested that a plaintiff need not allege a meaningful benchmark at all to state a facially plausible claim of imprudence based on relative underperformance. Second, the court concluded that a market composite is such a benchmark notwithstanding the absence of any allegations comparing its strategy, objectives, and risk profile to those of the subject funds. Because, as Judge Murphy recognized, those determinations "break new ground," Pet. App. 34a, and "create a circuit split," *id.* at 54a, this Court should grant review.

1. An imprudent-investment claim predicated on relative underperformance must plausibly allege a meaningful benchmark

When allegations of relative underperformance are used to support an inference that a fiduciary imprudently retained an investment, the alleged underperformance must be established in relation to one or more meaningful benchmarks—*i.e.*, "alternative investment options [that] have similar investment strategies, similar investment objectives, [and] similar risk profiles to the plan's funds." *Matney* v. *Barrick Gold*, 80 F.4th 1136, 1148 (10th Cir. 2023). That principle follows from the inferential chain linking retrospective evidence of underperformance to prospective imprudence, which requires a plaintiff to show that a fiduciary acted imprudently, despite the broad range of permissible judgments that a prudent fiduciary may make with respect to strategies, objectives, and risks. Until this case, courts had uniformly required plaintiffs to plead such a meaningful benchmark when predicating their imprudence theory on alternatives available to the fiduciary. The court of appeals' contrary determination warrants review and correction.

a. "Because [courts] evaluate prudence prospectively, based on the methods the fiduciaries employed, rather than retrospectively, based on the results they achieved, it is not enough for a plaintiff simply to allege that the fiduciaries could have obtained better results—whether higher returns, lower risks, or reduced costs—by choosing different investments." *Anderson* v. *Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1021 (9th Cir. 2025), petition for cert. pending, No. 25-498 (filed Oct. 20, 2025). That is so because, when alleging a breach of fiduciary duty, "[t]he process is what ultimately matters, not the results." *Matousek* v. *MidAmerican Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022).

In the "process" of choosing investments, fiduciaries are afforded broad latitude to tailor strategies, objectives, and risks to the varied needs of plan participants. As this Court has recognized, "the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Hughes* v. *Northwestern Univ.*, 595 U.S. 170, 177 (2022). Such a wide berth is consistent with the common law of trusts, under which a trustee must weigh the competing interests of maximizing returns and minimizing risks. Restatement (Second) of Trusts §§ 176, 181 (1959).

A plan's bottom-line performance relative to some other investment is thus relevant only to the extent that it supports "a plausible inference that the [fiduciary's] decision-making process itself was flawed." *Matousek*, 51 F.4th at 280. "The fact that one fund with a different investment strategy ultimately performed better does not establish anything about whether the [fiduciaries' investments] were an imprudent choice at the outset." *Meiners* v. *Wells Fargo & Co.*, 898 F.3d 820, 823 (8th Cir. 2018) (footnote omitted). Rather, because courts must give "due regard" to the "range of reasonable judgments a fiduciary may make" with respect to many "difficult tradeoffs," *Hughes*, 595 U.S. at 177, such an inference is plausible only if the plaintiff identifies an "alternative investment option[]" forgone by the fiduciary that would have achieved superior results while balancing "similar investment strategies, similar investment objectives, or similar risk profiles" as the subject fund, *Matney*, 80 F.4th at 1148.

Allowing plaintiffs to overcome a motion to dismiss any time they can point to a higher-performing investment does not give "due regard" to the fiduciary's judgment. *Hughes*, 595 U.S. at 177. If fiduciaries could be found to violate ERISA whenever they did not select investments that later proved to have the highest returns, most of them could be liable most of the time, because even prudent investors achieve a wide range of results.

Moreover, nothing in the statute requires fiduciaries to pursue only the highest returns. See *Anderson*, 137 F.4th at 1024 ("ERISA fiduciaries are not required to adopt a riskier strategy simply because that strategy may increase returns."). In fact, an exclusive focus on maximizing returns could well place a fiduciary in *violation* of the statutory duty to "diversify[] the investments of the plan so as to minimize the risk of large losses." 29 U.S.C. 1104(a)(1)(C). In a similar vein, this Court has recognized that a "component of the duty of prudence" is "a fiduciary's obligation to assemble a diverse menu of options" for participants. *Hughes*, 595 U.S. at 176; see *Smith* v. *CommonSpirit Health*, 37 F.4th 1160, 1165 (6th Cir. 2022). Diverse options—abiding disparate levels of risk to achieve varying ends—will, by design, yield different outcomes. But the fact that some of them are later known to have outperformed others does not mean it was imprudent to select the lower-performing options in the first instance.

Indeed, ERISA expressly contemplates such variation when assessing a fiduciary's performance. Fiduciaries are required to discharge their duties in the manner of "a prudent man acting in a *like capacity* * * * in the conduct of an enterprise of a *like character* and with *like aims*." 29 U.S.C. 1104(a)(1)(B) (emphases added). The text thus requires "an apples-to-apples comparison" between fiduciaries pursuing comparable strategies. *Matney*, 80 F.4th at 1149. It is not sufficient for a plaintiff to identify, without further elucidation, a particular investment that happened to outperform the subject fund, because "[c]omparing apples and oranges is not a way to show that one is better or worse than the other." *Davis* v. *Washington Univ. in Saint Louis*, 960 F.3d 478, 485 (8th Cir. 2020). Where plaintiffs allege that a fiduciary imprudently retained an underperforming investment, "[t]he key to nudging an inference of imprudence from possible to plausible is providing 'a sound basis for comparison—a meaningful benchmark.'" *Matousek*, 51 F.4th at 278.

b. The decision below departed from those principles. The Sixth Circuit stated that "a meaningful benchmark is not required to plead a facially plausible claim of imprudence." Pet. App. 19a. That statement is accurate in isolation: "a plaintiff does not necessarily need to identify comparable funds or investments; he might, for example, make direct allegations of a breach of ERISA's duty of prudence." *Anderson*, 137 F.4th at 1023. But where—as here—"a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of the investments, * * * he must compare that performance to funds or investments that are meaningfully similar." *Ibid.*

Respondents insist (Br. in Opp. 12-14) that the decision below should not be understood to dispense categorically with a meaningful-benchmark requirement in relative-underperformance cases, but only to "recognize[] that the extent to which a meaningful benchmark is needed or relevant necessarily depends on context." But the majority—which engaged with the dissent on several other issues—pointedly failed to respond to Judge Murphy's concern that its opinion can be understood "to suggest that plaintiffs need not identify such a benchmark when relying on an investment's *relative underperformance*." Pet. App. 54a (dissenting opinion). And litigants have read the decision the same way. See Reply Br. at *23, *Wehner* v. *Genentech, Inc.*, No. 24-2630, 2024 WL 6466373 (9th Cir. Dec. 6, 2024) ("Recently, in *Johnson*, the Sixth Circuit directly repudiated the argument * * * that [relevant] appellate authorities impose a dispositive 'meaningful' benchmark requirement" to "'demonstrat[e] that the challenged funds underperformed.'") (citation omitted); Plaintiff-Appellant Opening Br. at *25, *Bracalente* v. *Cisco Sys., Inc.*, No.

25-2131, 2025 WL 2304905 (9th Cir. May 12, 2025) (noting Sixth Circuit's rejection of any "requirement that plaintiffs" who "plead a breach based on the underperformance or cost of an investment * * * allege underperformance or excessive costs by comparison to a benchmark"). At a minimum, the decision below has created confusion about whether and when the Sixth Circuit will require a meaningful benchmark to allege imprudent investment based on relative underperformance.

2. Respondents cannot rely on conclusory allegations of failure to match a market composite to avoid pleading a meaningful benchmark

The court of appeals was also mistaken in holding that respondents have "plead[ed] a meaningful benchmark" by "alleg[ing] that the Focus Funds underperformed the S&P target date fund benchmark." Pet. App. 19a. Because that determination dilutes the pleading standard for such claims and conflicts with other pertinent authorities, that error warrants this Court's review.

In concluding that respondents have pleaded a meaningful benchmark, the court of appeals deemed sufficient their assertions that (1) the Focus Funds were "designed to meet [unspecified] industry-recognized benchmarks," Am. Compl. ¶ 70, and (2) "[t]he S&P target date fund benchmark is one such benchmark," *id.* ¶ 68. See Pet. App. 19a. As Judge Murphy noted, those allegations fail to establish the S&P TDF benchmark as a meaningful comparator for two reasons.

First, "the complaint pleads no details about this benchmark." Pet. App. 54a-55a (Murphy, J., dissenting). Respondents make no representations as to the S&P TDF benchmark's "risk profile," "bond to equity ratio," and whether it "follow[s] a passive or active strategy." *Id.* at 55a. That failure is perhaps understandable, given that their alleged benchmark "is not a fund" at all, "but a statistical data composite created from a 'universe of [TDFs],'" each of which has *its own* strategy, objectives, and risk profile. *Id.* at 82a (citation omitted). But regardless of their reason, respondent's "omissions," *id.* at 55a, deprive their comparison of the factors that courts have generally required when assessing benchmarks—namely, "similar investment strategies, similar investment objectives, [and] similar risk profiles to the plan's funds," *Matney*, 80 F.4th at 1148.

Second, the court of appeals' "suggest[ion] that Northern Trust designed the Focus Funds to match th[e S&P TDF] benchmark" has not been adequately pleaded. Pet. App. 55a (Murphy, J., dissenting). Although the complaint alleges that the Focus Funds were "designed to meet industry-recognized benchmarks," Am. Compl. ¶ 70, respondents never "say that Northern Trust developed the funds to match the S&P target-date benchmark in particular," Pet. App. 55a (Murphy, J., dissenting). Nor does the complaint provide sufficient detail about the "risk profiles" or "mix of equity and bond investments" of *either* the Focus Funds *or* the S&P TDF benchmark to permit an inference that the former was, in fact, designed to match the latter. *Id.* at 33a. Under this Court's precedents, "[a] pleading that offers 'labels and conclusions'" or "tenders 'naked assertion[s]' devoid of 'further factual enhancement'" cannot "survive a motion to dismiss." *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). The decision below runs afoul of that foundational rule.

B. The Conflict In The Circuits Warrants This Court's Review

1. This case satisfies the Court's criteria for certiorari because the decision below conflicts with those from other courts of appeals that have precluded underperformance claims from proceeding on such allegations. See Sup. Ct. R. 10(a).

a. As Judge Murphy's dissent noted, the decision below "create[s] a circuit split" by failing to clearly require a meaningful benchmark for an imprudent-investment claim based on relative underperformance. Pet. App. 54a. When evaluating relative-underperformance claims, both the Eighth and Ninth Circuits have clearly required a plaintiff to identify a comparator that exhibits the same strategies, objectives, and risks as the subject fund. And in the analogous context of fee-based claims, other circuits have held the same.

In *Meiners*, *supra*, the Eighth Circuit considered an imprudent-investment claim arising from the retention of allegedly "underperforming" Wells Fargo TDFs. 898 F.3d at 823. In support of that theory, the plaintiff had identified "one Vanguard fund" that "performed better than the Wells Fargo TDFs." *Ibid.* The asserted comparator, however, had "a different investment strategy"—specifically, a lower "'allocation of bond[s]'" rendering it a less-conservative vehicle—and was thus "not a meaningful benchmark" against which to judge the Wells Fargo TDFs. *Id.* at 823 & n.2. Consequently, the Eighth Circuit determined that the plaintiff did not meet the burden of "provid[ing] a sound basis for comparison" so as to raise a plausible inference that "'a prudent fiduciary in like circumstances' would have selected a different fund." *Id.* at 822.

In *Anderson*, *supra*, the Ninth Circuit affirmed the dismissal of a complaint in which the plaintiff had asserted that the subject funds "underperformed allegedly comparable alternatives, including published indices like the S&P 500 and Morningstar categories of peer-group funds." 137 F.4th at 1020. Pointing to the statutory criteria of "like capacity," "like character," and "like aims," 29 U.S.C. 1104(a)(1)(B), the court reasoned that "[t]he need for a relevant comparator with similar objectives—not just a better-performing plan or investment—is implicit in ERISA's text." *Anderson*, 137 F.4th at 1022. The court then explained that "'simply labeling funds as "comparable" or "a peer" is insufficient to establish that those funds are meaningful benchmarks'" and concluded that the plaintiff's "putative comparators were not truly comparable because they had 'different aims, different risks, and different potential rewards.'" *Id.* at 1023 (citation omitted). More recently, the Ninth Circuit rejected an ERISA plaintiff's express invitation to follow the reasoning of the decision below and instead adhered to its precedent requiring "factual content * * * '[]sufficient to establish that [alternative] funds are meaningful benchmarks against which to compare the performance of the [subject funds].'" *Wehner* v. *Genentech, Inc.*, No. 24-2630, 2025 WL 2505672, at *1 (9th Cir. Sept. 2, 2025) (quoting *Anderson*, 137 F.4th at 1022).

The "like aims" principle similarly applies to allegations that plans charged higher fees than available alternatives. Thus, courts have also required the identification of a meaningful benchmark in excessive-fees cases. In *Albert* v. *Oshkosh Corp.*, 47 F.4th 570, 582 (2022), the Seventh Circuit dismissed the plaintiff's fee-based claim because he failed to "provide any basis for comparison" sufficient for the court to assess whether the subject plan's recordkeeper charged higher fees than similar competitors. In *Matousek*, *supra*, the Eighth Circuit rejected the plaintiffs' attempt to "rely on industry-wide averages" "[r]ather than point[ing] to the fees paid by other specific, comparably sized plans." 51 F.4th at 279-280. And in *Matney*, *supra*, the Tenth Circuit agreed that, "when it comes to comparing investment management fees, a meaningful comparison will be supported by facts alleging" that the alternatives "have similar investment strategies, similar investment objectives, or similar risk profiles to the plan's funds." 80 F.4th at 1148 (collecting cases). Those cases further illustrate the Sixth Circuit's departure from consensus principles.

b. Other courts have uniformly required more than merely conclusory statements that a proffered comparator is similar to a challenged investment.

As explained by the district court, see Pet. App. 82a, it is doubtful that a market composite like the S&P TDF benchmark could ever qualify as a meaningful benchmark in these circumstances. Courts that have considered allegations pegged to the S&P TDF benchmark have determined that it is not an apt comparator to an actual fund with a defined investment strategy because it reflects an "amalgamation of the different characteristics of TDF strategies: TDFs with actively and passively managed underlying funds, TDFs with different risk profiles, and * * * those with different asset allocations." *Hall* v. *Capital One Fin. Corp.*, No. 22-cv-857, 2023 WL 2333304, at *7 (E.D. Va. Mar. 1, 2023) (citation omitted). The S&P TDF benchmark is therefore similar to the "industry-wide averages" that courts have found to be an inadequate substitute for "specific, comparably sized plans" that are available to (but not selected by) the fiduciary. *Matousek*, 51 F.4th at 279-280. Before the Ninth Circuit in *Wehner*, the plaintiff contended—as respondents do here—that "the S&P Target Date Indices * * * are the most widely used benchmark by target date providers" and alleged that the challenged funds had "consistently underperformed the S&P Indices." Plaintiff-Appellant Opening Br. at *11-12, *Wehner*, *supra*, 2024 WL 6466374 (9th Cir. July 16, 2024); cf. Pet. App. 19a. Indeed, in a supplemental brief, that plaintiff invoked the decision below to support his claim that "the S&P Target Date Indices provide a meaningful benchmark." Plaintiff-Appellant Supp. Br. at *6, *Wehner*, *supra*, 2025 WL 2210035 (9th Cir. June 12, 2025). But the Ninth Circuit affirmed the dismissal of his complaint. *Wehner*, 2025 WL 2505672, at *1-2.

Even assuming that a market composite (rather than an actual fund) could serve as a meaningful benchmark in some cases, respondents' threadbare allegations about the S&P TDF benchmark would not survive a motion to dismiss if they had been filed in other circuits, which have emphasized that "simply labeling funds as 'comparable' or 'a peer' is insufficient to establish that those funds are meaningful benchmarks." *Anderson*, 137 F.4th at 1023; see *Matney*, 80 F.4th at 1153-1154 ("The [complaint] contains a single allegation that the Plan's funds and the [proffered alternatives] are comparable. * * * But [the plaintiff] does not support this conclusory allegation with any facts actually showing the 'high correlation' of holdings."). The same logic refutes the Sixth Circuit's assessment that respondents carried their burden simply by labeling the S&P TDF benchmark a "match" for the Focus Funds. Pet. App. 22a. Given the "many alternative funds and * * * variety of investment styles" encompassed within that composite, respondents' "broad allegation [was] insufficient to plausibly allege the [S&P TDF benchmark] provide[s] a meaningful benchmark." *Matney*, 80 F.4th at 1154.

2. The question presented concerns an issue of substantial importance to the millions of Americans participating in ERISA-governed plans. Although "Congress enacted ERISA to ensure that employees would receive the benefits they had earned," it "did not require employers to establish benefit plans in the first place." *Conkright* v. *Frommert*, 559 U.S. 506, 516 (2010). Rather, ERISA "induc[es] employers to offer benefits by assuring a predictable set of liabilities, under uniform standards of primary conduct." *Rush Prudential HMO, Inc.* v. *Moran*, 536 U.S. 355, 379 (2002). Permitting such "liabilities" to become "[un]predictable" because the "standards" are no longer "uniform," *ibid.*, would jeopardize Congress's "'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans," *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 215 (2004) (citation omitted). And in preserving that "'careful balancing,'" this Court has identified "the motion to dismiss" as an "important mechanism for weeding out meritless [ERISA] claims." *Dudenhoeffer*, 573 U.S. at 424-425; see *Cunningham* v. *Cornell Univ.*, 604 U.S. 693, 710 (2025) (Alito, J., concurring) ("[I]n modern civil litigation, getting by a motion to dismiss is often the whole ball game because of the cost of discovery."). Review is warranted to prevent that mechanism from being hollowed out in the Sixth Circuit. Moreover, ERISA's flexible venue provision, 29 U.S.C. 1132(e)(2), may permit plaintiffs to bring future cases in the Sixth

Circuit, where they would survive a motion to dismiss on allegations that would fall short elsewhere. If defendants choose to settle such cases after district courts deny their motions to dismiss, the pleading-standard issue will evade further review.

3. Finally, the interlocutory posture of this case should not preclude review. By their nature, questions about pleading standards are often adjudicated on review of motion-to-dismiss decisions, and this Court has repeatedly reviewed judgments from the court of appeals that vacated or reversed dismissal orders. See, *e.g.*, *Macquarie Infrastructure Corp.* v. *Moab Partners*, 601 U.S. 257 (2024); *Health & Hosp. Corp.* v. *Talevski*, 599 U.S. 166 (2023); *Retirement Plans Comm. of IBM* v. *Jander*, 589 U.S. 49 (2020). The same course is appropriate here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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