

No. 25-498

IN THE
Supreme Court of the United States

WINSTON R. ANDERSON, ET AL.,

Petitioners,

v.

INTEL CORPORATION INVESTMENT POLICY
COMMITTEE, ET AL.,

Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF OF AMICUS CURIAE
AMERICAN ASSOCIATION FOR JUSTICE
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... iv

INTEREST OF AMICUS CURIAE1

**INTRODUCTION AND
SUMMARY OF ARGUMENT**.....1

ARGUMENT5

**I. The Lower Court’s “Meaningful
Benchmark” Pleading Requirement for
ERISA Enforcement Actions Is Neither
Expressed Nor Implied by the Statutory
Text and Undermines the Intent of
Congress to Empower Workers to Protect
Their Own Retirement Savings by Bringing
a Civil Action for Breach of Fiduciary
Duty**.....5

A. Congress Enacted ERISA to Safeguard
Workers’ Retirement Savings by Authorizing
a Civil Action to Remedy Losses Caused by
Plan Trustees’ Breach of Their Fiduciary Duty
to Invest Plan Funds Prudently.....5

B. Plaintiff’s’ Complaint Sets Forth Factual
Allegations That, Taken as True, Support an
Inference That Intel’s Plan Trustees Did Not
Prudently Design Employees’ Retirement
Plan.9

C. The Lower Court’s Heightened Pleading Requirement That a Civil Action Complaint Identify a “Meaningful Benchmark” Is Not Supported by ERISA’s Text.....14

1. *The statutory text does not expressly require a civil action complaint alleging loss due to breach of the duty of prudence to identify a specific “meaningful benchmark” for comparison. 14*
2. *ERISA’s definition of the duty of prudence does not imply a requirement that a complaint must compare the defendant’s plan to an actual alternative plan. 16*
3. *This Court’s reference in Hughes to “difficult tradeoffs” does not imply that a complaint must compare the plan to an actual alternative plan..... 18*

II. The Lower Court’s Narrow “Meaningful Benchmark” Requirement Places District Courts in the Position of Deciding Issues of Fact Prior to Discovery While Immunizing Broad Categories of Egregiously Imprudent Fiduciary Decisions Affecting Workers’ Retirement Savings.19

A. The Categorical Requirement That Plaintiffs Identify a “Meaningful Benchmark” Requires District Courts to Decide Disputed Questions of Fact on Motions to Dismiss.....20

B. The Categorical Requirement That Plaintiffs Identify a Similar Plan as a “Meaningful Benchmark” Gives Safe Harbor for Plan

Administrators to Experiment and Gamble
with Workers' Retirement Savings.....22

**III. Imposing Enhanced Pleading
Requirements on ERISA Participants and
Beneficiaries Pursuing the Remedy
Provided by Congress Is Contrary to the
Purpose of ERISA and, If at All in the
Public Interest, Is a Matter for Congress to
Address.....25**

CONCLUSION.....28

TABLE OF AUTHORITIES

Cases

<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001)	26
<i>Anderson v. Intel Corp. Inv. Pol’y Comm.</i> , 137 F.4th 1015 (9th Cir. 2025)	9–11, 15, 16, 18, 21, 22–25
<i>Anderson v. Intel Corp. Inv. Pol’y Comm.</i> , 579 F. Supp. 3d 1133 (N.D. Cal. 2022)	10, 21
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	14, 20
<i>Atchison, T. & S. F. Ry. Co. v. Calhoun</i> , 213 U.S. 1 (1909)	17
<i>BedRoc Ltd., LLC v. United States</i> , 541 U.S. 176 (2004)	16
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	14, 20
<i>Braden v. Wal-Mart Stores, Inc.</i> , 588 F.3d 585 (8th Cir. 2009)	27
<i>California Ironworkers Field Pension Tr.</i> <i>v. Loomis Sayles & Co.</i> , 259 F.3d 1036 (9th Cir. 2001)	24
<i>Connecticut Nat’l Bank v. Germain</i> , 503 U.S. 249 (1992)	16

<i>Cunningham v. Cornell Univ.</i> , 604 U.S. 693 (2025)	26–27
<i>Donovan v. Bierwirth</i> , 680 F.2d 263 (2d Cir. 1982).....	8
<i>Fifth Third Bancorp v. Dudenhoeffer</i> , 573 U.S. 409 (2014)	16, 18, 22
<i>Hardt v. Reliance Standard Life Ins. Co.</i> , 560 U.S. 242 (2010)	16
<i>Hughes v. Northwestern Univ.</i> , 595 U.S. 170 (2022)	18, 22
<i>Intel Corp. Inv. Pol’y Comm. v. Sulyma</i> , 589 U.S. 178 (2020)	16, 28
<i>J.D.B. v. North Carolina</i> , 564 U.S. 261 (2011).....	17
<i>Jander v. Retirement Plans Comm. of IBM</i> , 910 F.3d 620 (2d Cir. 2018), <i>vacated on other grounds</i> , 589 U.S. 49 (2020).....	26
<i>Johnson v. Parker-Hannifin Corp.</i> , 122 F.4th 205 (6th Cir. 2024).....	11, 19, 21–22
<i>LaRue v. DeWolff, Boberg & Assocs., Inc.</i> , 552 U.S. 248 (2008)	11
<i>Massachusetts Mut. Life Ins. Co. v. Russell</i> , 473 U.S. 134 (1985)	8
<i>Massachusetts v. Morash</i> , 490 U.S. 107 (1989)	8

<i>Matousek v. MidAmerican Energy Co.</i> , 51 F.4th 274 (8th Cir. 2022).....	15
<i>Meacham v. Knolls Atomic Power Lab.</i> , 554 U.S. 84 (2008)	26
<i>Mertens v. Hewitt Assocs.</i> , 508 U.S. 248 (1993)	8, 27
<i>Nachman Corp. v. Pension Ben. Guar. Corp.</i> , 446 U.S. 359 (1980)	8
<i>National Ass’n of Mfrs. v. Department of Def.</i> , 583 U.S. 109 (2018)	16
<i>Oklahoma v. Castro-Huerta</i> , 597 U.S. 629 (2022)	16
<i>Smith v. CommonSpirit Health</i> , 37 F.4th 1160 (6th Cir. 2022).....	22
<i>Sommers Drug Stores Co. Emp. Profit Sharing Tr.</i> <i>v. Corrigan Enters., Inc.</i> , 793 F.2d 1456 (5th Cir.1986)	8

Statutes

Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 <i>et seq.</i>	2, 8, 10, 15, 17, 18, 26–27
29 U.S.C. § 1001.....	27
29 U.S.C. § 1104.....	17, 18
29 U.S.C. § 1109.....	2, 10, 15

29 U.S.C. § 1132.....	2, 10, 15, 26
Welfare and Pension Plans Disclosure Act, Pub. L. No. 85-836, 72 Stat. 997 (1958)	7
Other Authorities	
119 Cong. Rec. S30003 (daily ed. Sept. 18, 1973)...	6, 9
120 Cong. Rec. S29933 (daily ed. Aug. 22, 1974)	9
Brief for Respondents, <i>Hughes v. Northwestern Univ.</i> , 595 U.S. 170 (2022) (No. 19-1401)	19
Brief for the Chamber of Commerce of the United States of America as Amicus Curiae, <i>Anderson v. Intel Corp. Inv. Policy Comm.</i> , 137 F.4th 1015 (9th Cir. 2025) (No. 22-16268)	25, 26
Brief of Investment Company Institute as Amicus Curiae in Support of Respondents, <i>Hughes v. Northwestern Univ.</i> , 595 U.S. 170 (2022) (No. 19-1401)	19
Emp. Benefits Sec’y Admin, U.S. Dep’t. of Lab., <i>Private Pension Plan Bulletin</i> (Jan. 2026), https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf	28
First Amended Consolidated Class Action Complaint, <i>Anderson v. Intel Corp. Inv. Pol’y Comm.</i> , 579 F. Supp. 3d 1133 (N.D. Cal. 2022) (No. 3:19-cv-04618).....	11–14

H.R. Rep. No. 93-533 (1973).....	9
James A. Wooten, “ <i>The Most Glorious Story of Failure in the Business</i> ”: <i>The Studebaker-Packard Corporation and the Origins of ERISA</i> , 49 Buff. L. Rev. 683 (2001).....	6
Legislative History of the Employee Retirement Income Security Act of 1974 (Comm. Print 1976).....	6, 9
<i>Pensions: The Broken Promise</i> (NBC television broadcast, aired Sept. 12, 1972), available at https://www.youtube.com/watch?v=Sjxid18C_kU ...	7
S. Special Comm. on Aging, 98th Cong., <i>The Employee Retirement Income Security Act of 1974: The First Decade</i> (Comm. Print 1984), https://www.aging.senate.gov/imo/media/doc/report_s/rpt884.pdf	6–8

INTEREST OF AMICUS CURIAE¹

The American Association for Justice (“AAJ”) is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including medical-malpractice litigation. Throughout its 80-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

This case is of acute interest to AAJ. Many AAJ members represent workers whose retirement savings Congress protected in ERISA. The heightened pleading requirement engrafted onto ERISA by the court below dilutes those protections.

INTRODUCTION AND SUMMARY OF ARGUMENT

1. Congress enacted the Employee Retirement Income Security Act (“ERISA”) in response to the Studebaker scandal and similar tragedies that robbed

¹ Pursuant to Rule 37.6, amicus affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission.

workers of their retirement savings. A decade of investigation of America's pension plans revealed to lawmakers that not only were plans plagued with mismanagement and corrupt practices, but also victimized plan participants and their beneficiaries lacked *any* remedy for their wrongful losses. In response, Congress imposed a high standard of fiduciary duty on plan administrators and provided an express cause of action to enforce those standards.

Petitioners in this case were participants in Intel's defined-contribution retirement plans. Starting in 2009, Intel announced a dramatic shift in the options offered for plan participants, adding many non-traditional investment options on the theory that they would be independent of the stock market. Participants would, therefore, suffer less severe losses in a market downturn but would gain less than with equities in a rising market. The plans lost significant sums of money, and Petitioners brought this civil action under ERISA, 29 U.S.C. §§ 1132(a)(2) and 1109(a), to recover those losses.

Significantly, Petitioners did not allege that the funds' high costs and/or low returns alone indicated a breach of fiduciary duty. Nor did they allege that the administrators' goal of risk-mitigation was itself imprudent. Rather, they alleged that Intel's decision to attain this goal by including in the plans an extraordinarily high proportion of hedge funds and private equity funds gave rise to an inference that the administrators failed in their duty to thoroughly investigate whether such assets were appropriate for defined contribution retirement plans.

Specifically, Petitioners alleged that administrators would have learned that not only did such alternative investments earn less and cost more than traditional equity-heavy investments, but they also are not truly independent of the stock market and did not outperform stock-and-bond blended funds during market downturns. Hedge funds and private equity funds often undertake high-risk ventures and have a high failure rate, and are thus not suitable for workers whose savings cannot tolerate large losses. Trustees would have learned that hedge funds and private equity funds are largely unregulated and lack the transparency needed to protect the value of defined contribution plans. They also lack liquidity and portability, which can be costly for retirement plans. Accepting Petitioners' factual allegations as true, their complaint was clearly sufficient to state a claim for relief that is plausible on its face.

The court below, however, dismissed their complaint, imposing a heightened pleading requirement that plaintiffs alleging breach of fiduciary duty in their selection of investments for an ERISA plan must identify a "meaningful benchmark," an alternative fund with similar aims, risks, and potential rewards, for comparison.

The plain text of ERISA contains no such provision, and this Court has held squarely that the ERISA civil action does not require heightened or enhanced pleading. Nor is such a requirement implicit in ERISA's text, which measures fiduciaries' conduct against that of the ideal hypothetical prudent investor, but not against the performance of any specific, actual investment. The lower court conflated the

“aims” of ERISA retirement plans (to maximize savings while avoiding excessive risk) with Intel’s strategy for achieving that aim (investment in risky hedge funds and private equity funds). Finally, this Court’s admonition to give due regard to the expertise of professional plan administrators addresses factual determinations on the merits of ERISA civil actions. It did not suggest an enhanced pleading requirement.

2. The requirement that an ERISA plaintiff identify a specific alternative fund or investment to serve as a “meaningful benchmark” shifts the district court’s focus on the motion to dismiss from the plausibility of the alleged misconduct to factual determinations regarding whether the complaint’s comparator is sufficiently similar in aims, risk, and potential rewards to be “meaningful.” Those factual inquiries, if at all relevant, are more appropriately addressed at the merits stage of the litigation.

Additionally, the categorical requirement that the complaint identify a “meaningful benchmark” effectively immunizes fiduciary breaches occurring in myriad other contexts. Where, as here, a plaintiff asserts that allocation of a high proportion of plan investments to inappropriate, nontraditional investments, identification of an alternative fund with the same features would hardly be relevant to the plaintiff’s claim. Similarly, if the complaint alleges plan investments so imprudent that virtually no other retirement plan includes them, no meaningful benchmark is possible. Adoption of such a pleading requirement would set up a perverse incentive: the more imprudent the investment decision by the fiduciary, the more likely the victims will be denied the remedy Congress has provided.

3. Supporters of the enhanced pleading requirement argue that blocking lawsuits prior to any discovery serves the policies of preventing litigation that target fiduciaries; avoiding disincentives to innovation, diversification, and choice in employee retirement plans; and precluding enormous discovery costs for plans. This Court is not the proper forum to address such policy concerns. This Court has emphasized that, in dealing with an express statutory cause of action, the court's role is to apply the law as Congress wrote it.

ERISA is a wide-ranging and complex statute affecting millions of Americans. The civil action Congress provides to enforce ERISA's fiduciary standard has served plan participants and beneficiaries well for over 50 years. If policy reasons warrant change, that is a matter appropriately addressed by Congress, not the courts.

ARGUMENT

I. THE LOWER COURT'S "MEANINGFUL BENCHMARK" PLEADING REQUIREMENT FOR ERISA ENFORCEMENT ACTIONS IS NEITHER EXPRESSED NOR IMPLIED BY THE STATUTORY TEXT AND UNDERMINES THE INTENT OF CONGRESS TO EMPOWER WORKERS TO PROTECT THEIR OWN RETIREMENT SAVINGS BY BRINGING A CIVIL ACTION FOR BREACH OF FIDUCIARY DUTY.

A. Congress Enacted ERISA to Safeguard Workers' Retirement Savings by Authorizing a Civil Action to Remedy Losses Caused by Plan Trustees' Breach of

Their Fiduciary Duty to Invest Plan Funds Prudently.

Oftentimes, a single, tragic event galvanizes Congress to take action against a longstanding problem plaguing ordinary Americans. One such event, as this Court has recognized, was “the shutdown of Studebaker operations in South Bend, Ind., in 1963, with the result that 4,500 workers lost 85 percent of their vested benefits because the plan had insufficient assets.” 119 Cong. Rec. S30003 (daily ed. Sept. 18, 1973), *reprinted in 2 Legislative History of the Employee Retirement Income Security Act of 1974*, 1599 (Comm. Print 1976) (statement of Sen. Harrison A. Williams) [hereinafter Leg. Hist.]. The plight of the Studebaker autoworkers “burst like a bombshell on the private pension scene and contributed greatly to the sense that serious problems affected the plans that needed addressing.” S. Special Comm. on Aging, 98th Cong., *The Employee Retirement Income Security Act of 1974: The First Decade* 8 (Comm. Print 1984), <https://www.aging.senate.gov/imo/media/doc/reports/rpt884.pdf> [hereinafter *Senate Report*].

“Studebaker quickly emerged as a ‘battle cry’ for pension reformers” in Congress. James A. Wooten, “*The Most Glorious Story of Failure in the Business*”: *The Studebaker-Packard Corporation and the Origins of ERISA*, 49 Buff. L. Rev. 683, 735 (2001). But, as Senator Williams reminded his colleagues when he introduced the conference report, it was hardly the only pension scandal. “[O]ver 19,000 workers lost vested benefits last year because of the termination of insufficiently funded plans.” 119 Cong. Rec. S30003 (daily ed. Sept. 18, 1973), *reprinted in 2 Leg. Hist.*, *supra*, at

1600 (statement of Sen. Harrison A. Williams). Workers across the country told shocking stories of setting aside money through regular deductions from their paychecks only to find that their retirement savings had been lost by incompetent or outright corrupt private pension plans. Around the same time, NBC News aired an investigatory documentary by Edwin Newman highlighting some of those stories for the public. *See Pensions: The Broken Promise* (NBC television broadcast, aired Sept. 12, 1972), available at https://www.youtube.com/watch?v=Sjxid18C_kU. The program earned a Peabody award and added to the national outcry for Congress to do something.

Congress had not been entirely idle. Following World War II, young soldiers returned to the workforce, many seeking blue-collar jobs that were held by older workers. Large employers and labor unions found that retirement plans were a popular benefit. Favorable tax treatment led to “explosive post-World War II growth in private plans.” *Senate Report, supra*, at 4.

Many of these plans were actuarially unsound, ineptly administered, and plagued with corrupt dealings. In 1958 Congress enacted the Welfare and Pension Plans Disclosure Act, Pub. L. No. 85-836, 72 Stat. 997 (1958), to address these shortcomings by requiring pension plans to make full disclosure of their provisions and financial operations to their participants. *Senate Report, supra*, at 6. Sunshine was not sufficient, however. The legislation “unleashed a nonstop torrent of mail from employees all over the country complaining over their failure to qualify for private pension benefits and mistakenly assuming that the

WPPDA *provided some remedy* in this respect.” *Id.* at 8 (emphasis added).

Following “a decade of congressional study of the Nation’s private employee benefit system,” *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251 (1993), Congress enacted Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, a “comprehensive and reticulated statute” designed to protect workers from the loss of their retirement savings by those entrusted with administering their benefit plans. *Nachman Corp. v. Pension Ben. Guar. Corp.*, 446 U.S. 359, 361–62 (1980). Congress specifically intended ERISA to protect ordinary working Americans who were unsophisticated with respect to investments markets from “mismanagement of plan assets by plan administrators,” *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140 n.8 (1985), and “safeguard employees from the abuse and mismanagement of funds.” *Massachusetts v. Morash*, 490 U.S. 107, 112 (1989).

To this end, Congress expressly replaced “the inadequacy of current minimum standards,” for plan trustees that had resulted in “employees and their beneficiaries [being] deprived of anticipated benefits.” 29 U.S.C. § 1001(a). ERISA imposed a fiduciary standard of care on plan administrators, a duty that is the “highest known to the law.” *Sommers Drug Stores Co. Emp. Profit Sharing Tr. v. Corrigan Enters., Inc.*, 793 F.2d 1456, 1468 (5th Cir.1986); *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982) (Friendly, J.).

But, as Senator Williams bluntly stated when presenting the conference report, a “reason why so many employees have found their pension expectations to be

illusory is that . . . if there are insufficient funds to meet the vested claims of the participants, they have no recourse.” 119 Cong. Rec. S30003 (daily ed. Sept. 18, 1973), *reprinted in* 2 Leg. Hist., *supra*, at 1599. ERISA, therefore, included a civil action to ensure that “individual participants and beneficiaries will . . . be able to bring suit . . . to obtain redress of fiduciary violations.” 120 Cong. Rec. S29933 (daily ed. Aug. 22, 1974), *reprinted in* 3 Leg. Hist., *supra*, at 4745. *See also* H.R. Rep. No. 93-533, at 17 (1973), *reprinted in* 2 Leg. Hist., *supra*, at 2364 (“The enforcement provisions have been designed specifically to provide . . . participants and beneficiaries with broad remedies for redressing or preventing violations of the Act.”).

This case is largely about efforts by employer plans to water down those protections.

B. Plaintiffs’ Complaint Sets Forth Factual Allegations That, Taken as True, Support an Inference That Intel’s Plan Trustees Did Not Prudently Design Employees’ Retirement Plan.

Petitioners were participants in Intel’s 401(k) Savings Plan and its Retirement Contribution Plan, both of which are defined contribution ERISA benefit plans. As the court below explained, beginning in 2009, Intel trustees shifted the plans away from funds that consisted largely of traditional blends of stocks and bonds and dramatically increased the proportion of funds that relied on “alternative” assets, primarily hedge funds and private equity funds. *Anderson v. Intel Corp. Inv. Pol’y Comm.*, 137 F.4th 1015, 1019 (9th Cir. 2025). Intel explained to plan participants that

these assets would add diversity and would not lose as much value in a market downturn compared to traditional “equity-heavy” funds. *Id.*

In fact, Petitioners allege, Intel’s plans lost a great deal of money due to their large allocation of investments in those alternative assets. *Id.* at 1024.

Petitioners brought this civil action under 29 U.S.C. § 1132(a)(2), which empowers a plan participant or beneficiary to bring a civil action to hold plan trustees liable under 29 U.S.C. § 1109(a) to recover for substantial losses to the plans due to defendants’ breach of their fiduciary duties.

The district court dismissed the action for failure to state a claim, *Anderson v. Intel Corp. Inv. Pol’y Comm.*, 579 F. Supp. 3d 1133 (N.D. Cal. 2022), and the Ninth Circuit affirmed. The court of appeals emphasized that a court cannot infer imprudence in the trustees’ investments simply because their “costs are too high, or returns are too low.” 137 F.4th at 1022. Nor could the court infer imprudence from Intel’s “pursuing a purported risk-mitigation strategy” that sacrificed higher returns. *Id.* at 1024.

But this was not the gist of Petitioners’ claim. Instead, they alleged that, in view of the information readily available at the time, the trustees’ implementation of their strategy “by investing billions of dollars in retirement savings in unproven and unprecedented investment allocation strategies featuring high-priced, low-performing illiquid and opaque hedge funds and private equity funds” amounted to a breach of their fiduciary duties. First Amended Consolidated Class Action Complaint, *Anderson v. Intel Corp. Inv.*

Pol’y Comm., 579 F. Supp. 3d 1133 (N.D. Cal. 2022) (No. 3:19-cv-04618) [hereinafter Complaint] ¶¶ 1, 2.

A brief summary of the extensive and fully documented factual allegations in Petitioners’ original 161-page Complaint set out a factual basis far beyond a mere cost and performance “differential.” 137 F.4th at 1022. These specific and detailed allegations give rise to a very plausible inference that the trustees failed to properly research and investigate the past performance of hedge funds and private equity funds and the inherent features that render them inappropriate to include as a substantial portion of a defined contribution retirement plan.²

Plaintiffs specifically showed that Intel increased the percentage of its investment in private equity, hedge funds, and commodities in its Retirement Contribution Plan from 6.17% at the end of 2008 to 33% three years later. Complaint ¶ 127. Their allocation in Intel’s 401(k) Savings Plan soared from almost nothing to 23 percent over about the same period. *Id.* at ¶¶ 129, 329. Plaintiffs alleged that this heavy emphasis on hedge funds and private equity funds “drastically

² It is important to bear in mind that defined benefit plans are directed by professional investors. If the plan loses value due to poor investment choices, participants and their beneficiaries are nonetheless guaranteed to receive their defined benefit. Defined contribution plans, such as 401(k) retirement plans, are self-directed by participants who choose from a menu of investments assembled by the trustees. If the chosen investments lose value, that loss falls entirely on the individual participant or beneficiary. See *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 255–56 (2008); *Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205, 209 (6th Cir. 2024).

departed from prevailing standards of professional asset managers,” *id.* at ¶ 13, and was “the primary cause of the Intel Funds’ underperformance.” *Id.* at ¶¶ 322–24.

Hedge funds consistently underperform equity. *Id.* at ¶ 215. From 1998 to 2012, the effective return to hedge-fund clients has only been 2.1 percent a year, “half the return they could have achieved by investing in boring old Treasury bills.” *Id.* at ¶ 354–55.

And they specifically underperform equity markets during times of market downturn, the central rationale for including them in Intel’s retirement funds. They do not add diversity or perform counter to the stock market because, contrary to Intel’s explanation to participants, hedge funds often include publicly traded securities. *Id.* at ¶ 236. For that reason, they have been shown to have very high correlation to stock market movements. *Id.* at ¶ 273.

Consequently, Petitioners allege, “they do not sufficiently outperform equities to compensate for the opportunity losses in an up market.” *Id.* at ¶¶ 214, 238. Even during the market decline of 2008, which ostensibly prompted defendants’ move toward alternative assets, “traditional balanced portfolios provided superior returns.” *Id.* at ¶ 252. By one measure, an index of hedge funds lost 17 percent, compared to a 5.2 percent gain in the bond market. *Id.* at ¶ 327.

Intel funds also experienced substantially higher fees and costs, reducing the value of participants’ accounts, because hedge funds and private equity funds are structured as investment partnerships. Their management fees are inherently higher, sometimes

“ten times higher than the average standard wholesale level fees for pension plan investments.” *Id.* at ¶¶ 256, 270. In addition, private equity managers frequently charge additional hidden fees and other inflated fees. *Id.* at ¶¶ 292–93.

Hedge funds and private equity funds tend to be riskier than stocks and bonds. Their business plans often involve acquiring a stake in a new venture or an existing corporation that is in severe distress, betting that the company can be made to succeed. *Id.* at ¶ 246. Unsurprisingly, hedge funds and private equity funds have “relatively high attrition rates—about 8.5% fail each year.” *Id.* at ¶¶ 336, 346. Institutions and wealthy investors that underwrite defined benefit plans can monitor the progress of risky endeavors and can offset failures with profitable successes. The worker paying into a defined contribution plan does not have the information or the expertise needed to closely monitor such projects or the deep pockets to tolerate their failures. Including them as a substantial portion of a defined contribution plan is not a prudent choice. They are not prudent choices for defined contribution retirement plans.

Hedge funds and private equity funds lack the liquidity and portability of mutual funds or bond funds. They often require a long-term commitment of funds and impose restrictions on participants’ access to their own investments. *Id.* at ¶ 247. Participants seeking to liquidate or roll over their savings upon retirement or upon changing employers during a down market may suffer locked-in losses. *Id.* at ¶¶ 247–50, 265. Intel should have recognized that allocating substantial

amounts of such alternative investments is not appropriate for retirement plans.

Hedge funds and private equity funds are also unacceptably opaque for retirement funds. They are largely unregulated and therefore lack the transparency of publicly traded funds. *Id.* at ¶ 284. Their investment strategies and even their underlying holdings are not reliably known, even to institutional investors. Essentially, Intel’s plan trustees selected assets that are resistant to monitoring and valuation and thus undermine the trustees’ own effectiveness as fiduciaries. *Id.* at ¶¶ 233–35, 259–61, 276–77, 289, 298.

All of these factual assertions were supported in the Complaint by evidence that Intel knew or should have known when it was adding hedge funds and private equity funds to its retirement plans. To survive a Rule 12(b)(6) motion to dismiss for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Petitioners’ complaint does so.

C. The Lower Court’s Heightened Pleading Requirement That a Civil Action Complaint Identify a “Meaningful Benchmark” Is Not Supported by ERISA’s Text.

1. *The statutory text does not expressly require a civil action complaint alleging loss due to breach of the duty of prudence to identify a specific “meaningful benchmark” for comparison.*

Despite Petitioners’ detailed factual allegations strongly suggesting that Intel failed to prudently investigate whether hedge funds and private equity funds were appropriate for Intel’s pension fund, the court held the complaint could not state a cause of action without also identifying another fund to serve as a “meaningful benchmark” to compare with Intel’s. 137 F.4th at 1022. The court emphasized that “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.” *Id.* at 1021. The complaint must also include a detailed description of another plan, one with similar “aims,” “risks” and “potential rewards” to compare with the defendant’s plan. *Id.* at 1023. Such a comparator, in the lower court’s view, “provid[es] ‘a sound basis for comparison—a meaningful benchmark.’” *Id.* at 1022 (quoting *Matousek v. MidAmerican Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022)). The court found plaintiffs’ comparisons of Intel’s plans’ performance to other plans or benchmarks not “meaningful” because those comparators had “different aims, different risks, and different potential rewards.” *Id.* at 1023.

This Court should reverse. ERISA’s statutory text imposes no requirement that, to state a claim under 29 U.S.C. § 1132(a)(2) for breach of the duty of prudence under 29 U.S.C. § 1109(a), a plan participant must identify a specific alternative fund for comparison. Rather, this Court has made clear that such complaints are not subject to any enhanced pleading requirement beyond the threshold showing in Federal Rule of Civil Procedure 8(a)(2) of a “short and plain

statement of the claim showing that the pleader is entitled to relief.” See *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014).

In ascertaining the meaning of a statute, a court’s “inquiry begins with the statutory text, and ends there as well” if the text is unambiguous. *National Ass’n of Mfrs. v. Department of Def.*, 583 U.S. 109, 127 (2018) (quoting *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004)). Courts should “presume that a legislature says in a statute what it means and means in a statute what it says there,” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992), and must not “replace the actual text with speculation.” *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022) (citation omitted).

Consequently, when this case previously came before this Court, Justice Alito informed Intel, “We must enforce plain and unambiguous statutory language” of ERISA “according to its terms.” *Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 589 U.S. 178, 184 (2020) (quoting *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010)). That statutory language contains no requirement to plead a “meaningful benchmark.”

2. *ERISA’s definition of the duty of prudence does not imply a requirement that a complaint must compare the defendant’s plan to an actual alternative plan.*

Acknowledging that ERISA does not expressly require that a plaintiff’s complaint identify a “meaningful benchmark,” the court below, found such an enhanced pleading requirement “implicit in ERISA’s text.” 137 F.4th at 1022.

ERISA demands that plan fiduciaries discharge their duties:

[W]ith the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent [person] 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 textual provisions are straightforward. A fiduciary is judged in comparison with a “prudent” investor under the circumstances. As with the familiar “reasonable person” in negligence law, trust law does not require a plaintiff to identify a specific actual person to compare to the defendant. The prudent investor is an objective “hypothetical” comparator, *J.D.B. v. North Carolina*, 564 U.S. 261, 282 (2011), embodying the values of the community, “to whose ideal behavior we are to look as the standard of duty.” *Atchison, T. & S. F. Ry. Co. v. Calhoun*, 213 U.S. 1, 9 (1909). Plaintiffs’ extensive factual allegations, if true, were sufficient for a jury to determine that Intel failed to conduct the inquiry that a prudent investor would undertake.

Similarly, the ERISA’s comparison to an enterprise “with like aims” does not require plaintiffs to identify an alternative plan that, like Intel’s, seeks to minimize loss in a down market by offering alternative assets not correlated to the stock and bond markets. The proper “aims” of a retirement plan within the

meaning of 29 U.S.C. § 1104 are “(1) to maximize retirement savings for participants while (2) avoiding excessive risk.” *Dudenhoeffer*, 573 U.S. at 420. The court below conflates these “aims” with the strategy Intel adopted to achieve those aims. It is the *implementation* of that strategy, allocating an extraordinarily large proportion of its retirement plans to hedge funds and private equity funds, that forms the gist of plaintiffs’ complaint.

3. *This Court’s reference in Hughes to “difficult tradeoffs” does not imply that a complaint must compare the plan to an actual alternative plan.*

The lower court sought support in this Court’s dicta at the end of Justice Sotomayor’s opinion for the Court in *Hughes*: “At times, 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.” 137 F.4th at 1021 (quoting *Hughes v. Northwestern Univ.*, 595 U.S. 170, 177 (2022)).

The referenced statement lands far from the issues in the present case. At issue in *Hughes* was the trustees’ inclusion of “mutual funds and annuities in the form of ‘retail’ share classes that carried higher fees than those charged by otherwise identical ‘institutional’ share classes of the same investments.” 595 U.S. at 174. This Court obviously was not suggesting that the pleading standard for ERISA plaintiffs be increased. Quite the opposite: This Court unanimously

reversed the dismissal of plaintiffs’ cause of action for breach of fiduciary duty.

Rather, Justice Sotomayor ended the Court’s opinion with a simple reminder that factual allegations that raise an inference of imprudence to survive dismissal may, on the merits, be rebutted by evidence that the fiduciary did in fact exercise professional judgment. *See, e.g., Johnson*, 122 F.4th at 222 (“Once discovery is exchanged and evidence presented, a jury could conceivably credit evidence that” fiduciaries met the standard of prudence).

Respondents and a supporting amicus had argued to the Court that considerations apart from price may justify including costlier retail share classes, such as the minimum-share requirements on institutional classes or revenue sharing arrangements, *See* Brief for Respondents at 8, *Hughes v. Northwestern Univ.*, 595 U.S. 170 (2022) (No. 19-1401); *see also* Brief of Investment Company Institute as Amicus Curiae in Support of Respondents at 15–18, *Hughes v. Northwestern Univ.*, 595 U.S. 170 (2022) (No. 19-1401).

In sum, there is no basis, express or implied in ERISA’s text, to support the Ninth Circuit’s enhanced pleading requirement.

II. THE LOWER COURT’S NARROW “MEANINGFUL BENCHMARK” REQUIREMENT PLACES DISTRICT COURTS IN THE POSITION OF DECIDING ISSUES OF FACT PRIOR TO DISCOVERY WHILE IMMUNIZING BROAD CATEGORIES OF EGRE-

GIOUSLY IMPRUDENT FIDUCIARY DECISIONS AFFECTING WORKERS' RETIREMENT SAVINGS.

A. The Categorical Requirement That Plaintiffs Identify a “Meaningful Benchmark” Requires District Courts to Decide Disputed Questions of Fact on Motions to Dismiss.

Plaintiffs made extensive factual allegations from which a court could infer that Intel failed to conduct the investigation and research that would have led a prudent investor to conclude that hedge funds and private equity funds would not serve the aim of growing employees' retirement savings with minimum risk. *See supra* Part I.B.

To survive a motion to dismiss under Rule 12(b)(6), it is sufficient that a complaint “contain sufficient factual matter, *accepted as true*, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570) (emphasis added). This plausibility requirement serves to “give the defendant fair notice of what . . . the claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555. Rule 8(a) “simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence” to support the allegations. *Id.* at 556.

The lower court's added requirement that plaintiffs identify an alternative fund with the same aims, risks, and opportunities as Intel's, but which did not fare as poorly, requires the district court to engage in

factual inquiries more appropriately decided on consideration of the merits, not on a Rule 12(b)(6) motion to dismiss. The “meaningful benchmark” requirement shifts the court’s focus from the alleged misconduct, to whether the complaint’s comparator is sufficiently similar to qualify as a “meaningful benchmark.” A district court will necessarily require findings regarding the aims of the comparator fund, its risks of loss, and its opportunities for potential gain.

In this case, the district court devoted extensive factual analysis of the various proposed comparators, finally concluding that none was sufficiently similar to Intel’s to provide a “meaningful benchmark.” *See* 579 F. Supp. 3d at 1149–53. The Ninth Circuit also felt compelled to delve deeply into the details of alternate funds and investments that were not Intel’s. *See* 137 F.4th at 1023–25.

Even more clearly illustrative is another case that has been presented for this Court’s review. In *Johnson v. Parker-Hannifin Corp.*, the Sixth Circuit held that in an action for breach of ERISA fiduciary duty, a meaningful benchmark “*may* offer a building block,” but is not “always necessary in order to state a claim.” 122 F.4th at 216. The panel majority pointedly noted that the dissent’s application of the “meaningful benchmark” requirement required it to engage in a “seven-page long analysis of whether, *on the merits*, Johnson’s underperformance allegations are sufficient.” *Id.* at 219 n.4. The court correctly stated that such a “lengthy exposition of the showing Johnson would have to make in order to prevail *at trial*” is “entirely inappropriate” on a motion to dismiss. *Id.* (emphasis in original). Whether prudent investing would

have prevented the plan's losses "is for the jury to decide." *Id.* at 219. *See also Smith v. CommonSpirit Health*, 37 F.4th 1160, 1167 (6th Cir. 2022) (providing a "fund's underperformance, as compared to a 'meaningful benchmark,' may offer a building block for a claim of imprudence," but cannot "suffice[] alone.").

Essentially, the Ninth Circuit in this case transformed a matter of evidentiary relevance that may in some contexts provide a relevant building block into an atextual element of the ERISA civil action for breach of fiduciary duty.

B. The Categorical Requirement That Plaintiffs Identify a Similar Plan as a "Meaningful Benchmark" Gives Safe Harbor for Plan Administrators to Experiment and Gamble with Workers' Retirement Savings.

The Ninth Circuit acknowledged that there are "a myriad of circumstances" under which ERISA plan trustees might violate their fiduciary obligation to invest plan funds prudently. 137 F.4th at 1021 (citation omitted). It stands to reason, as this Court has repeatedly emphasized, that "the content of the duty of prudence turns on the circumstances" and that the court's "appropriate inquiry will necessarily be context specific." *Dudenhoeffer*, 573 U.S. at 425. For that reason, reliance on a "categorical rule" is "inconsistent with the context-specific inquiry that ERISA requires." *Hughes*, 595 U.S. at 173.

But in this case, the Ninth Circuit has imposed a rigid and narrow categorical pleading requirement in disregard of context:

[T]o the extent a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of the investments, as Anderson in part does here, he *must* compare that performance to funds or investments that are meaningfully similar.

137 F.4th at 1023 (emphasis added).

Petitioners' factual allegations showed that defendant should have known that hedge funds and private equity funds do *not* insulate retirement funds during market downturns, do *not* minimize costs, do *not* provide the transparency that fiduciaries need to make prudent decisions for plan participants, and do *not* provide the liquidity and portability that are essential for retirement plans. All this was not enough, in the court's view, to plausibly suggest that Intel's strategy of allocating such substantial amounts of these investments to its retirement plan was imprudent. *Id.* at 1021. The complaint did not survive a motion to dismiss because it "did not plausibly allege that Intel's funds underperformed other funds with comparable aims." *Id.* at 1022. Such a "meaningful benchmark" must only be "a better-performing plan or investment" but it must also be one that has "similar objectives," similar "opportunity for gain," and "similar risk." *Id.*

By rejecting any comparators that have "different aims, different risks, and different potential rewards," *id.* at 1023, the court excludes from ERISA's remedy victims of many other varieties of breach of fiduciary duty. For example, the court stated, plaintiff cannot

state a cause of action based on “generalized attacks on hedge funds and private equity funds” as imprudent for retirement funds without identifying which “specific investments were imprudent.” *Id.* at 1024–25. By that reasoning, a trustee’s investment of workers’ savings largely in cryptocurrency assets could not be alleged to be imprudent if the complaint did not identify another similar fund that did not lose as much.

Similarly, Judge Berzon in her concurrence posits a retirement plan that invests in an asset funded by lottery tickets. *Id.* at 1029 (Berzon, J., concurring). It is unlikely that a plan participant who suffered significant losses would be able to locate another fund with a similar investment strategy, as is the case here. *See id.* at 1023–24. The plaintiff ought to be permitted to go forward even without “any comparison to other investments or other plans, to support a claim of imprudence.” *Id.*³ The court’s demand that a complaint identify a “meaningful benchmark” creates a perverse incentive: it grants immunity to plan administrators who gamble with retirement savings in ways so egregiously imprudent as to lack comparables.

³ For example, the Ninth Circuit previously upheld a cause of action against an investment manager for an ERISA plan who invested nearly a third of the plan’s assets in a form of mortgage-backed security. *California Ironworkers Field Pension Tr. v. Loomis Sayles & Co.*, 259 F.3d 1036, 1045 (9th Cir. 2001). The court upheld the district court’s conclusion that the manager breached the duty of prudence by investing so high a proportion of the plan’s assets in a security that “could be highly risky” without a showing of a comparable plan. *Id.* at 1045.

Nor would it be relevant if a plaintiff *could* identify a lottery-based fund that happened to perform better than the defendant's. In the case before this Court, Anderson and other plan participants do not assert that Intel imprudently selected poorly performing funds for its menu of options rather than a better-performing investment that had the same aims and the same heavy reliance hedge funds and private equities. Plaintiffs allege that the Intel trustees acted imprudently because they chose such non-traditional investments at all. As the court recognized, plaintiffs' central claim is that, given the information available, "no prudent investor with the same aims would have invested in them, or at least not in the proportions the fiduciaries selected." *Id.* at 1024.

III. IMPOSING ENHANCED PLEADING REQUIREMENTS ON ERISA PARTICIPANTS AND BENEFICIARIES PURSUING THE REMEDY PROVIDED BY CONGRESS IS CONTRARY TO THE PURPOSE OF ERISA AND, IF AT ALL IN THE PUBLIC INTEREST, IS A MATTER FOR CONGRESS TO ADDRESS.

The U.S. Chamber of Commerce strongly urged the Ninth Circuit to adopt the heightened pleading requirement to make it easier to dismiss actions by plan participants and beneficiaries prior to discovery. *See* Brief for the Chamber of Commerce of the United States of America as Amicus Curiae at 29–30, *Anderson v. Intel Corp. Inv. Policy Comm.*, 137 F.4th 1015 (9th Cir. 2025) (No. 22-16268). The U.S. Chamber argued that making access to the ERISA remedy more difficult is "necessary to ensure that ERISA fiduciaries

are not targeted for class-action litigation,” to avoid discouraging “innovation, diversification, and employee choice,” and to prevent “enormous [discovery] costs on plan sponsors. *Id.* at 26–29.

This Court is not the proper forum for the Chamber’s parade of policy arguments in favor of engrafting a new pleading requirement onto ERISA, “no matter how desirable” the Chamber might believe it to be. *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001). The intent of Congress as expressed in the text of the statute “is determinative.” *Id.* Section 1132(a)(2) expressly authorizes plan participants and beneficiaries to sue for “appropriate relief,” including damages, for breach of fiduciary duty.”

An express statutory right of action that does not provide a heightened pleading requirement leaves no room for judicial creativity. This Court “must ‘read it the way Congress wrote it.’” *Cunningham v. Cornell Univ.*, 604 U.S. 693, 708 (2025) (quoting *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84, 101–02 (2008)).

ERISA’s private right of action has been available to plan participants since 1974 with no judicial requirement that the claimant describe a “meaningful benchmark.” None of the catastrophic consequences feared by the U.S. Chamber have come to pass. In fact, private actions by beneficiaries are “important mechanisms for furthering ERISA’s remedial purpose.” *Jander v. Retirement Plans Comm. of IBM*, 910 F.3d 620, 624 (2d Cir. 2018), *vacated on other grounds*, 589 U.S. 49 (2020). Not only does the robust private civil action directly serve “ERISA’s remedial purpose and

evident intent to prevent” misuse and mismanagement, the Department of Labor “depends in part on private litigation to ensure compliance with the statute.” *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 597, 597 n.8 (8th Cir. 2009).

This Court has also discounted the Chamber’s contention that multi-billion-dollar pension plans cannot afford to open their books in discovery to reveal to participants the decision-making processes affecting their savings. Courts can tailor discovery to best suit the limited objective at hand. “[D]istrict courts retain discretionary authority to expedite or limit discovery as necessary to mitigate unnecessary costs.” *Cunningham*, 604 U.S. at 709.

In fact, making a participant’s path to the courthouse steeper is contrary to Congress’s declared intent. Congress incorporated its intent in the provisions of the statute itself, declaring it the purpose of ERISA to:

[E]stablish[] standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and [provide] for appropriate remedies, sanctions, *and ready access to the Federal courts.*

29 U.S.C. § 1001(b) (emphasis added).

ERISA, a “comprehensive and reticulated statute,” governs employee benefit plans of many types, including retirement plans. *Mertens*, 508 U.S. at 251 (internal quotation marks omitted). The law directly affects 155 million pension plan participants and their beneficiaries. Emp. Benefits Sec’y Admin,

U.S. Dep't. of Lab., *Private Pension Plan Bulletin 2* (Jan. 2026), <https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf>.

Any departure from the plain text of the statute will have far-reaching implications. As Justice Alito pointed out, any judicial interpretation to shield fiduciaries from litigation also reduces ERISA's protections for plan participants and beneficiaries. 589 U.S. at 188. ERISA's existing language, which imposes no heightened pleading requirement to pursue the remedy statute's civil remedy, reflects the balance Congress has struck. *Id.* "If policy considerations suggest that the current scheme should be altered, Congress must be the one to do it." *Id.*

CONCLUSION

For these reasons, the American Association for Justice urges this Court to reverse the judgment of the Ninth Circuit Court of Appeals.

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