

IN THE
Supreme Court of the United States

WINSTON R. ANDERSON, CHRISTOPHER M. SULYMA,
ON BEHALF OF ALL THOSE SIMILARLY SITUATED,
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 INVESTMENT LAW SCHOLARS
AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

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April 30, 2026

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. The Shift To Opaque And Bespoke Investment Vehicles Has Made ERISA’s Duty Of Prudence More Important Yet Harder To Police	5
A. The Move From Defined-Benefit To Defined-Contribution Plans Has Shifted Investment Risk To Individual Workers	6
B. The Displacement Of Mutual Funds By Collective Investment Trusts And Other Vehicles Has Reduced Trans- parency And Public Disclosure	9
C. As Plans Add Less Standardized Assets, Meaningful Comparison Becomes Harder.....	13
II. A “Meaningful Benchmark” Requirement Would Immunize The Least Transparent Investments From Judicial Review.....	16
A. The Information Needed To Con- struct A “Meaningful Benchmark” Rarely Is Available Before Discovery.....	17
B. A Strict Benchmarking Rule Is Incon- sistent With This Court’s Precedents And ERISA’s Remedial Design	20
CONCLUSION.....	23

TABLE OF AUTHORITIES

	Page
CASES	
<i>Allen v. GreatBanc Tr. Co.</i> , 835 F.3d 670 (7th Cir. 2016).....	19
<i>Anderson v. Southwest Airlines Co.</i> , 2026 WL 820860 (N.D. Tex. Mar. 25, 2026).....	18
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) ...	6, 21
<i>Boggs v. Boggs</i> , 520 U.S. 833 (1997)	20
<i>Braden v. Wal-Mart Stores, Inc.</i> , 588 F.3d 585 (8th Cir. 2009).....	19
<i>Central States, Se. & Sw. Areas Pension Fund v. Central Transp., Inc.</i> , 472 U.S. 559 (1985)	17
<i>Cunningham v. Cornell Univ.</i> , 604 U.S. 693 (2025)	20
<i>Fifth Third Bancorp v. Dudenhoeffer</i> , 573 U.S. 409 (2014)	4, 5, 8, 20
<i>Firestone Tire & Rubber Co. v. Bruch</i> , 489 U.S. 101 (1989)	20
<i>Gobeille v. Liberty Mut. Ins. Co.</i> , 577 U.S. 312 (2016)	20
<i>Hill v. McDonough</i> , 547 U.S. 573 (2006).....	21
<i>Hughes v. Northwestern Univ.</i> , 595 U.S. 170 (2022)	4, 7, 8, 20
<i>Hughes Aircraft Co. v. Jacobson</i> , 525 U.S. 432 (1999)	7
<i>John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank</i> , 510 U.S. 86 (1993)	22

<i>Johnson v. Parker-Hannifin Corp.</i> , 122 F.4th 205 (6th Cir. 2024), <i>cert. petition pending</i> , No. 24-1030	21
<i>Jones v. Bock</i> , 549 U.S. 199 (2007).....	21
<i>Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit</i> , 507 U.S. 163 (1993)	21
<i>Massachusetts Mut. Life Ins. Co. v. Russell</i> , 473 U.S. 134 (1985)	5
<i>Mator v. Wesco Distrib., Inc.</i> , 2022 WL 1046439 (W.D. Pa. Apr. 7, 2022).....	18
<i>Meiners v. Wells Fargo & Co.</i> , 898 F.3d 820 (8th Cir. 2018).....	18, 19
<i>NLRB v. Amax Coal Co.</i> , 453 U.S. 322 (1981).....	21
<i>Smith v. CommonSpirit Health</i> , 37 F.4th 1160 (6th Cir. 2022).....	10
<i>Swierkiewicz v. Sorema N.A.</i> , 534 U.S. 506 (2002)	21
<i>Tibble v. Edison Int’l</i> , 575 U.S. 523 (2015) ...	3, 7, 8, 17

STATUTES AND REGULATIONS

Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 <i>et seq.</i>	3, 4, 5, 6, 8, 9, 10, 12, 17, 20, 21, 22, 23
29 U.S.C. § 1001(b)	4, 5, 9, 23
29 U.S.C. § 1002(34)	8
29 U.S.C. § 1104(a)(1)(B).....	5
29 U.S.C. § 1110(a)	22
Investment Company Act of 1940, 15 U.S.C. § 80a-1 <i>et seq.</i>	11

Securities Act of 1933, 15 U.S.C. § 77a <i>et seq.</i>	11
26 U.S.C. § 401(k)	3, 5
42 U.S.C. § 1983.....	21
29 C.F.R. § 2550.404a-5(a).....	12

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Brendan S. Maher, <i>Regulating Employment-Based Anything</i> , 100 Minn. L. Rev. 1257 (2016)	5
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Restatement (Third) of Trusts (2007)	17
Mahi Roy, <i>2026 Target-Date Fund Landscape</i> , Morningstar (Mar. 2026), https://perma.cc/8TVQ-Q5K3	10, 11
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INTEREST OF *AMICI CURIAE*¹

Amici are 20 professors of law and business who teach, research, and write about investments and investment advice, including in the context of retirement plans. *Amici* have a substantial interest in this case because their scholarship examines the investment vehicles increasingly used in defined-contribution retirement plans and the legal framework that governs fiduciary oversight of those vehicles. The pleading standard this Court adopts will shape whether that oversight remains meaningful.

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SUMMARY OF ARGUMENT

When Congress enacted the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, the typical retirement plan was a defined-benefit pension plan: the employer promised a fixed monthly payment and bore the investment risk of delivering it. But in the decades since, that system has shifted to defined-contribution plans—such as 401(k)s—in which employees may elect to allocate some of their earnings to fund their retirement. Employers may choose to make contributions to those retirement funds, but their financial obligation generally ends once the contribution is made. In such a plan, workers bear the investment risk, so their retirement security rises or falls with the performance of the assets in their individual accounts.

Those workers usually do not invest in an open market. Instead, they choose from a menu of options selected for them by fiduciaries—typically their employer or its designee.

ERISA’s fiduciary duty of prudence is a principal legal safeguard ensuring that the menu is soundly constructed and responsibly maintained. *See Tibble v. Edison Int’l*, 575 U.S. 523, 529 (2015). That duty bears exceptional weight: Defined-contribution accounts now hold *nearly \$15 trillion*. For millions of Americans, those investments—and the fiduciary decisions that affect them—mark the difference between retirement with financial security or without it.

Because the duty of prudence now does so much of ERISA’s protective work, the Court should review the pleading rules that accompany it with a clear view of the investment landscape in which that duty operates. That landscape has changed. Where plans once

offered mutual funds, which must make many public disclosures under the securities laws, they have increasingly turned to collective investment trusts and other investment vehicles that are exempt from such requirements. These new asset classes face fewer restrictions on permissible investments and may hold illiquid or alternative assets, including customized allocations to private equity, hedge funds, and real estate.

As investment vehicles become less transparent and their allocations more bespoke, comparisons become correspondingly more difficult. So a strict benchmarking requirement would stand as a barrier to many plaintiffs with meritorious claims.

This Court's precedents foreclose that result. The Court has rejected rules that "make[] it impossible for a plaintiff to state a duty-of-prudence claim." *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). ERISA demands a "careful, context-sensitive scrutiny of a complaint's allegations," *id.*, not "categorical" pleading requirements, *Hughes v. Northwestern Univ.*, 595 U.S. 170, 173 (2022), like a strict "meaningful benchmark" rule.

Such a rule is also incompatible with ERISA's remedial design. Congress enacted ERISA to protect "the interests of participants in employee benefit plans and their beneficiaries," in significant part "by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. § 1001(b). A pleading rule that shuts the courthouse door whenever fiduciaries choose opaque or unconventional investment options would undermine that design—at great cost to Americans' retirement savings and security.

ARGUMENT

I. The Shift To Opaque And Bespoke Investment Vehicles Has Made ERISA’s Duty Of Prudence More Important Yet Harder To Police

ERISA aims to protect workers who participate in employee benefit plans. 29 U.S.C. § 1001(b). Central to that aim is the duty of prudence, which requires plan fiduciaries to discharge their duties “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.” *Id.* § 1104(a)(1)(B). That provision “imposes a “prudent person” standard by which to measure fiduciaries’ investment decisions and disposition of assets.” *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 419 (2014) (quoting *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 143 n.10 (1985)).

The duty of prudence helps safeguard Americans’ retirements. Today, about half of all private-sector workers participate in defined-contribution plans like 401(k)s. See John J. Topoleski et al., Cong. Rsch. Serv., R43439, *Worker Participation in Employer-Sponsored Pensions: Data in Brief and Recent Trends* 4 (updated Sept. 18, 2024). Those workers bear the risk that their retirement investments will underperform. But typically they may invest only in the choices selected for them by plan fiduciaries. So it matters enormously that they are offered prudent investment options. See Brendan S. Maher, *Regulating Employment-Based Anything*, 100 Minn. L. Rev. 1257, 1270 (2016). And it matters even more today, as plans increasingly use opaque, bespoke investment vehicles that may create risks that bear directly on

workers' ability to understand, access, and protect their retirement savings.

That new reality provides important context for this Court in assessing whether to require a “meaningful benchmark” at the pleading stage. Imprudence focuses on process, not results. But plan participants rarely have access to the details of fiduciary decisionmaking—at least before discovery. So they typically deploy other evidence to connect alleged poor performance or excessive fees to fiduciary action, and thus “nudge[]” those claims “across the line from conceivable to plausible.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). One such form of evidence is a “benchmark”: a comparator fund with lower fees or better returns than the challenged fund. If the fiduciary could have chosen that comparator but did not, a court may reasonably infer that the decision-making process fell short. But some lower courts have converted those sometimes-helpful allegations into a categorical requirement, enforcing a “meaningful benchmark” pleading standard with “excruciating precision.” Lauren K. Valastro, *How Misapplying Twombly Erodes Retirement Funds*, 32 *Geo. Mason L. Rev.* 421, 465 (2025). That rule often demands the impossible, shielding imprudent fiduciaries and barring claims by the workers ERISA was enacted to protect.

A. The Move From Defined-Benefit To Defined-Contribution Plans Has Shifted Investment Risk To Individual Workers

1. In recent decades, there has been a “massive exodus” from employer-guaranteed defined-benefit pensions to defined-contribution plans. Peter J. Wiedenbeck et al., *Invisible Pension Investments*, 32 *Va. Tax Rev.* 591, 668 (2013). The traditional defined-benefit pension—under which workers received a

fixed stream of payments, typically monthly for life—has given way to the defined-contribution model. See Natalya Shnitser, *Overtaking Mutual Funds: The Hidden Rise and Risk of Collective Investment Trusts*, 134 *Yale L.J.* 1620, 1641 (2025). In a defined-contribution plan, “participating employees maintain individual investment accounts, which are funded by pretax contributions from the employees’ salaries and, where applicable, matching contributions from the employer.” *Hughes v. Northwestern Univ.*, 595 U.S. 170, 173 (2022).

The shift has been dramatic: as of March 2025, 70 percent of private-industry workers had access to defined-contribution plans; only 14 percent had access to defined-benefit plans. See U.S. Dep’t of Lab., Bureau of Lab. Statistics, *Employee Benefits in the United States Summary* (Sept. 25, 2025).

That transition has shifted investment risk from employers to workers. In a defined-benefit plan, the employer promises a fixed benefit, “typically bears the entire investment risk,” and “must cover any underfunding as the result of a shortfall that may occur from the plan’s investments.” *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439 (1999). In a defined-contribution plan, by contrast, the performance of a participant’s “chosen investments, as well as the deduction of any associated fees, determines the amount of money the participant will have saved for retirement.” *Hughes*, 595 U.S. at 173; see *Tibble v. Edison Int’l*, 575 U.S. 523, 525 (2015) (“[P]articipants’ retirement benefits are limited to the value of their own individual investment accounts, which is determined by the market performance of employee and employer contributions, less expenses.”); see also U.S.

Dep't of Lab., *What You Should Know About Your Retirement Plan* 3 (Sept. 2021); 29 U.S.C. § 1002(34).

So today, the consequences of imprudent investment options in plans fall directly on workers. When retirement investments underperform, workers may delay retirement, exhaust their savings prematurely, or never retire at all. *See* Valastro, *Misapplying Twombly*, 32 Geo. Mason L. Rev. at 429; 60 Minutes: *Retirement Dreams Disappear With 401(k)s* (CBS News, aired Apr. 17, 2009) (profiling Americans forced to remain in or return to the workforce after retirement funds “evaporated” following economic downturn).

One important way that ERISA protects workers from these dire consequences is by having employers select and maintain a menu of prudent investment options. Participants “may choose only from the menu of options selected by the plan administrators.” *Hughes*, 595 U.S. at 173. While participants may select freely among the options the fiduciary has assembled, *see Dudenhoefter*, 573 U.S. at 412, they usually cannot go off-menu, *see Shnitser, Overtaking Mutual Funds*, 134 Yale L.J. at 1642.

2. ERISA’s fiduciary regime polices that asymmetry. One of the most important aspects of a plan fiduciary’s obligations is the duty to exercise prudence in selecting, monitoring, and managing plan investment options. *See Tibble*, 575 U.S. at 529. That duty is the principal legal protection workers have against unsound retirement investment choices—and it bears particular weight because there are “relatively fewer substantive rules for defined contribution plans” than for defined-benefit plans. Natalya Shnitser, *Trusts No More: Rethinking the Regulation of Retirement Savings in the United States*, 2016 BYU L. Rev. 629, 646. With the shift away from defined-benefit plans,

many of ERISA’s original substantive protections—including those related to funding and insurance—are no longer relevant, and the trust-based fiduciary duty framework has assumed a correspondingly larger role. See Dana M. Muir, *An Agency Costs Theory of Employee Benefit Plan Law*, 43 Berkeley J. Emp. & Lab. L. 361, 367-74 (2022); Peter J. Wiedenbeck, *Untrustworthy: ERISA’s Eroded Fiduciary Law*, 59 Wm. & Mary L. Rev. 1007, 1012-23 (2018).

Private enforcement gives the duty of prudence its practical force. ERISA promises plan beneficiaries “ready access to the Federal courts,” 29 U.S.C. § 1001(b), and ERISA litigation has played an “important role” in “depress[ing] fees and protect[ing] participants’ retirement savings.” Valastro, *Misapplying Twombly*, 32 Geo. Mason L. Rev. at 436.²

B. The Displacement Of Mutual Funds By Collective Investment Trusts And Other Vehicles Has Reduced Transparency And Public Disclosure

1. Mutual funds have traditionally served as the dominant investment vehicle in defined-contribution plans. See Shnitser, *Overtaking Mutual Funds*, 134 Yale L.J. at 1628. They are subject to extensive disclosure requirements under the federal securities laws, including registration statements, prospectuses, fee disclosures, and proxy voting records. See Wiedenbeck, *Invisible Pension Investments*, 32 Va. Tax Rev. at 623-24.

² That private enforcement is about to matter more still: the Department of Labor recently announced that it would deprioritize enforcement of duty-of-prudence breaches. See U.S. Dep’t of Lab., Emp. Benefits Sec. Admin. Off. of Enforcement, Field Assistance Bull. No. 2026-01, *Guiding Principles for EBSA Enforcement Priorities* (Apr. 14, 2026).

Those disclosures have been helpful for ERISA plaintiffs bringing imprudence claims—particularly claims based on excessive fees. Participants have used other plans’ public filings to construct comparisons—that is, “benchmarks”—as evidence of their own plan’s imprudence. *See, e.g., Smith v. CommonSpirit Health*, 37 F.4th 1160, 1167 (6th Cir. 2022) (fund’s comparative underperformance “may offer a building block for a claim of imprudence”). But the transparency that allowed those comparisons is disappearing as plan fiduciaries have increasingly turned to investment vehicles that are not subject to the same disclosure requirements. *See Shnitser, Overtaking Mutual Funds*, 134 Yale L.J. at 1647.

The shift has been swift: In 2010, 67 percent of target-date funds—the most popular default investment options in defined-contribution plans—used the mutual fund investment vehicle; by 2023, only 28 percent did. *See Jamie McAllister, Callan 2024 DC Trends Survey: Focus on Plan Governance, and Continued Efforts to Rein in Fees*, Callan Inst. (Apr. 24, 2024). And from 2015 through 2025, more target date mutual funds closed than launched. *See Mahi Roy, 2026 Target-Date Fund Landscape*, Morningstar 12 (Mar. 2026).

2. Collective investment trusts have been the primary destination for that migration. *See Shnitser, Overtaking Mutual Funds*, 134 Yale L.J. at 1647. Like mutual funds, CITs are pooled investment vehicles that combine assets from eligible investors into a single fund with a specific investment strategy. *See id.* at 1624. But CITs operate under a different regulatory regime, and their investments are less restricted than mutual funds’. *See id.* at 1624-25.

The migration has been substantial. As of 2023, CITs held approximately \$7 trillion, including nearly 30 percent of assets in defined-contribution plans. *See id.* at 1622. By 2024, more than half of all target-date fund assets were held in CITs. *See id.* at 1646 n.126. And last year alone, asset managers converted more than \$54 billion in target-date funds from mutual funds to CITs, a 36 percent increase over the prior year. *See Roy, 2026 Landscape* at 11.

CITs are exempt from the Investment Company Act of 1940 and the Securities Act of 1933. They do not file registration statements or prospectuses, are not required to disclose fees publicly, and need not report corporate voting records. *See Shnitser, Overtaking Mutual Funds*, 134 Yale L.J. at 1624-26, 1653-56. Those exemptions “greatly reduce[] the amount of publicly accessible information about” CITs. *Id.* at 1656-57. Even fiduciaries who select CITs for plan participants may struggle to evaluate them: in 2024, the Government Accountability Office found that CIT disclosures, unlike mutual fund prospectuses, arrive in inconsistent formats that fiduciaries “may not understand.” U.S. Gov’t Accountability Off., GAO-24-105364, *401(k) Retirement Plans: Department of Labor Should Update Guidance on Target Date Funds* 51-52 (Mar. 2024).

The banks and trust companies that create CITs acknowledge as much. Morgan Stanley markets that CITs “are not subject to the extensive registration, operational, disclosure, and reporting requirements of federal and state securities laws.” Morgan Stanley, *Collective Investment Trusts: Potential Benefits To You And Your Employees* 1 (Mar. 2025). T. Rowe Price similarly states that CITs have “fewer compliance considerations” and “may be less transparent than

mutual funds.” T. Rowe Price Trust Co., *The Advantages of T. Rowe Price Collective Investment Trusts* 1, 4 (2025). It also concedes that CITs “do not trade on an exchange,” “daily prices aren’t publicly available,” investment information “can be limited to an individual (or specific) trust’s inception,” and “performance evaluations may be limited due to the lack of long-term data.” *Id.* at 4.

3. That is not to say CITs are black boxes. Plan administrators must provide plan participants certain basic information about the investment alternatives in their plans. Those disclosures are meant to allow participants “to make informed decisions with regard to the management of their individual accounts.” 29 C.F.R. § 2550.404a-5(a). And ERISA requires periodic reports to the Department of Labor. For example, when CITs hold ERISA plan assets, they typically qualify as “Direct Filing Entities” and must file Form 5500s with the Department of Labor, and the plans that invest in them file simplified annual reports in turn. *See* Wiedenbeck, *Invisible Pension Investments*, 32 Va. Tax Rev. at 605, 622, 696.

But those filings are a thin substitute for the investor-facing disclosures the securities laws demand of mutual funds. A plaintiff trying to piece together what assets a CIT actually holds must first “link” the Direct Filing Entity’s Form 5500 to the plan’s simplified report—a task that “poses serious challenges,” “effectively rendering part of the plan’s financial position invisible.” *Id.* at 595, 606. And even when that linkage is accomplished, because the Form 5500s and simplified reports are annual snapshots taken at a moment in time, the resulting filings still lack the volatility, flow, and activity data that SEC disclosure obligations would require. The result is that such

filings “do not include all the information a plaintiff would need to satisfy the probability pleading requirements imposed by many courts.” Valastro, *Misapplying Twombly*, 32 Geo. Mason L. Rev. at 471.

C. As Plans Add Less Standardized Assets, Meaningful Comparison Becomes Harder

The problem runs deeper than disclosure. CITs and similar vehicles are bespoke—privately negotiated, extensively customized, and varied in fee structure, redemption terms, and underlying asset composition. See Shnitser, *Overtaking Mutual Funds*, 134 Yale L.J. at 1653. They may invest in private equity, private credit, direct lending, hedge funds, and other assets not typically found in mutual funds. See *id.* at 1652-53. Here, for example, the complaint alleges that some Intel plans used CITs with significant allocations to hedge funds and private equity. See Am. Compl. ¶¶ 5, 10, 12. *Amici* take no position on the proper role of private-market investments in retirement plans—indeed, *amici* hold a variety of views on that policy question. But *amici* agree that the bespoke and illiquid character of these assets makes like-for-like comparison difficult—and thus makes a strict benchmarking requirement all the more likely to bar meritorious suits than to filter out deficient ones.

Even if plaintiffs can identify the holdings in the CIT offered by their plan and the holdings in CITs offered by other plans, the nature of CITs and similar vehicles complicate comparison in at least three ways: in how their assets are valued, in what redemption rights they offer, and in how they are customized to individual plans.

Valuation. A “meaningful benchmark” requirement assumes that the numbers being compared

measure the same thing in roughly the same way. For private-market assets, that assumption often fails.

Public securities are ordinarily priced by reference to observable market transactions. Private-market assets typically are not. Their reported values often depend on appraisals, models, or periodic judgments about comparable transactions, borrower health, and expected cash flows. *See* James An, *Private Equity in Retirement Savings* 30-31 (rev. Apr. 27, 2026). Because private-market prices are often updated only periodically, reported returns may appear smoother than the underlying economic exposure would suggest. *See id.* at 41; William W. Clayton & Elizabeth de Fontenay, *Private Equity for All: The Paradoxical Push to Democratize Private Markets*, ECGI Working Paper Series, No. 898, at 44 (Feb. 2026) (forthcoming in Duke L.J. (2026)).

Valuation gaps can be large. Two rival private-credit funds³ reportedly valued *the same loan* 14 points apart—one at 77 cents on the dollar, the other at 91. *See* Davide Scigliuzzo & Ellen Schneider, *Apollo, KKR See Record-Wide Gap on Valuing Stressed Private Loan*, Bloomberg Law (Nov. 13, 2025). So a plaintiff asked to plead a “meaningful benchmark” must compare performance figures that may rest on different methods, assumptions, and valuation dates.

³ Private credit—essentially loans issued outside the traditional banking system—is increasingly part of the mix of investments included in CITs. *See* Press Release, *Goldman Sachs to Launch Private Credit Collective Investment Trust for the Defined Contribution Market* (July 21, 2025); *CITs Open Door for Inclusion of Private Markets in DC Plans*, Cerulli Assocs. (Nov. 18, 2025).

Liquidity. A meaningful-benchmark requirement also assumes that similar-seeming funds permit access to capital on similar terms. That assumption breaks down for funds that hold alternative investments.

For alternative investments, the terms of liquidity may differ significantly among different vehicles. Such investments may contractually limit withdrawals to specified intervals, cap repurchases, impose gates (temporary suspensions on redemptions), or otherwise restrict redemptions.⁴ See Elizabeth de Fontenay & Yaron Nili, *Side Letter Governance*, 100 Wash. U.L. Rev. 904, 924 (2023); Thomas P. Lemke et al., *Hedge Funds and Other Private Funds: Regulation and Compliance* § 5:22 (2025); Andrew F. Tuch, *The Remaking of Wall Street*, 7 Harv. Bus. L. Rev. 315, 354 (2017). Because courts have identified liquidity terms as a basis on which to distinguish plan assets, a strict “meaningful benchmark” requirement could allow obscure or unique redemption restrictions to insulate a fiduciary from accountability.

Customization. CITs and similar vehicles are often customized. Allocations, leverage, fees, and liquidity terms may be tailored to a specific plan. See Shnitser, *Overtaking Mutual Funds*, 134 Yale L.J. at 1653. That flexibility further reduces the chance that a participant can identify an adequate benchmark.

⁴ In 2026, several private-credit funds received redemption requests far above that limit—from roughly 16 percent to more than 40 percent of shares—yet capped withdrawals at 5 percent. See Isaac Taylor, *Carlisle Private-Credit Fund Hit With Redemption Requests Totaling 15.7%*, Wall St. J. (Apr. 9, 2026); Leslie Picker, *Blue Owl Caps Private Credit Funds Redemptions at 5% After Steep Request Levels*, CNBC (Apr. 2, 2026).

These features make pre-discovery comparison materially harder. A plaintiff asked to plead a “meaningful benchmark” must identify not just a fund with similar objectives and returns, but one with similar valuation frequency, liquidity rights, and customizations—not to mention other features like time horizon, complexity, and leverage. Yet those terms are often set out in private fund documents or bespoke agreements unavailable before discovery.

When a plan uses customized vehicles with non-traditional exposures, participants may have good reason to plausibly infer imprudence yet lack the information needed to identify, before discovery, a comparator a court would deem sufficiently “meaningful.” That reality cuts against any categorical benchmark rule. Such a rule would make the duty of prudence hardest to enforce precisely where plans are least transparent and most bespoke. The law should not convert that practical obstacle into immunity from review.

II. A “Meaningful Benchmark” Requirement Would Immunize The Least Transparent Investments From Judicial Review

A judicially imposed meaningful-benchmark pleading requirement would foreclose scrutiny based on form, not substance. No matter how diligent the plaintiff or how imprudent the fiduciary, a “meaningful benchmark” sometimes cannot be pleaded at the outset—not because the claim lacks merit, but because either the information needed to construct one is unavailable or no comparable investment exists. A rule that presupposes robust disclosures and readily available comparators ignores the realities of today’s retirement investment landscape. So impos-

ing such a rule would contradict this Court’s precedents, which require context-sensitive consideration of imprudence claims, and ERISA’s remedial design, which depends on private enforcement of fiduciary duties.

A. The Information Needed To Construct A “Meaningful Benchmark” Rarely Is Available Before Discovery

1. This Court has “often noted that an ERISA fiduciary’s duty is ‘derived from the common law of trusts.’” *Tibble*, 575 U.S. at 528 (quoting *Central States, Se. & Sw. Areas Pension Fund v. Central Transp., Inc.*, 472 U.S. 559, 570 (1985)). Under the common law of trusts, courts ask whether a trustee invested as a prudent investor would have, not how the trust’s performance stacked up against comparators. See Restatement (Third) of Trusts § 90 (2007); *Bogert’s The Law of Trusts and Trustees* § 862 (2025). Put differently, the “standards of prudence in trust investments are standards of conduct rather than of performance or result.” *Bogert’s The Law of Trusts and Trustees* § 612.

Certainly comparators have a place within that framework. Comparators can be useful as one of an array of potential circumstantial allegations of imprudence. See App. 27a (Berzon, J., concurring). For years, ERISA plaintiffs have used comparator investments as circumstantial proof of imprudence. A plaintiff who shows that her plan charged higher fees, or delivered lower returns, than a readily available alternative gives a court reason to infer a flawed process. But some courts have turned that evidentiary tool into a requirement to plead a “meaningful benchmark.” See Valastro, *Misapplying Twombly*, 32 Geo. Mason L. Rev. at 465.

2. Courts have not converged on what a “meaningful benchmark” requires. *Anderson v. Southwest Airlines Co.*, 2026 WL 820860, at *3 (N.D. Tex. Mar. 25, 2026) (noting confusion about the doctrine). Initially described as requiring “a sound basis for comparison,” *Meiners v. Wells Fargo & Co.*, 898 F.3d 820, 822 (8th Cir. 2018), the lower court here required the comparison fund to “have similar aims, risks, and potential rewards to a challenged fund,” App. 52a. Whatever the definition, district courts have read the standard to require “excruciating precision” at the pleading stage. Valastro, *Misapplying Twombly*, 32 Geo. Mason L. Rev. at 465; *see also, e.g.*, App. 55a-61a (“common benchmark[.]” or “peer group category” insufficient). Indeed, one district court found even “apples-to-apples” comparisons insufficient because “one could be a Honeycrisp and the other a Granny Smith.” *Mator v. Wesco Distrib., Inc.*, 2022 WL 1046439, at *6 (W.D. Pa. Apr. 7, 2022). By demanding so much of the “meaningful benchmark” standard, courts often leave challenged plans “standing in leagues of their own, essentially immuniz[ed]” from fiduciary challenge. *An, Private Equity in Retirement Savings* 64-66.

A plaintiff pleading a “meaningful benchmark” needs detailed information—about fees, performance, risk profiles, and underlying holdings—not only about the challenged investment but about potential comparators as well. Historically, participants could sometimes draw those comparisons from the public disclosures that mutual funds must file. That was the Eighth Circuit’s rationale in imposing the requirement: “missing factual allegations . . . about the funds themselves” are facts “which ERISA plaintiffs can

research.” *Meiners*, 898 F.3d at 822. But that “misapprehend[s] the nature, effectiveness, and accessibility of the disclosure fiduciaries must give plan participants.” Valastro, *Misapplying Twombly*, 32 Geo. Mason L. Rev. at 471.

In practice, “specific details . . . are rarely in plaintiffs’ possession at the filing stage.” *Id.* at 427. Plan participants do not have pre-discovery access to the fiduciary’s decision-making process, the terms of bespoke trust agreements, or the detailed holdings of opaque vehicles—including the comparator investments on which benchmarking depends. Put another way, before discovery, plaintiffs have little way of “obtaining information defendants keep secret.” *Id.* at 468. Some lower courts have recognized as much. *See, e.g., Allen v. GreatBanc Tr. Co.*, 835 F.3d 670, 678 (7th Cir. 2016) (“ERISA plaintiffs generally lack the inside information necessary to make out their claims in detail unless and until discovery commences.”) (quoting *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 598 (8th Cir. 2009)). It therefore “would be perverse to require plaintiffs . . . to plead facts that remain in the sole control of the parties who stand accused of wrongdoing.” *Braden*, 588 F.3d at 602.

The shift to alternative investment vehicles has made this problem—a requirement to allege unavailable facts—vastly worse. CITs and similar vehicles are not subject to mutual funds’ disclosure requirements. *See supra* pp. 9-13. And their bespoke nature means that courts have “overwhelmingly” found them “too dissimilar from other investment products to allow meaningful comparisons.” Valastro, *Misapplying Twombly*, 32 Geo. Mason L. Rev. at 462. The result is that the less a vehicle resembles a traditional

mutual fund, the harder it is to “meaningfully benchmark”—and the more effectively a benchmarking requirement insulates it from challenge.

B. A Strict Benchmarking Rule Is Inconsistent With This Court’s Precedents And ERISA’s Remedial Design

“This Court has recognized that ‘the principal object of ERISA is to protect plan participants and beneficiaries.’” *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 324 (2016) (quoting *Boggs v. Boggs*, 520 U.S. 833, 845 (1997)) (cleaned up). One way ERISA does so is by “explicitly authoriz[ing] suits against fiduciaries and plan administrators to remedy . . . breaches of fiduciary duty.” *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989). The statute imposes context-dependent fiduciary duties to protect plan participants, and this Court has rejected attempts to graft additional requirements onto that framework. A strict benchmarking requirement is irreconcilable with those principles.

This Court’s precedents. The Court has rejected pleading rules that “make[] it impossible for a plaintiff to state a duty-of-prudence claim,” requiring instead a “careful, context-sensitive scrutiny of a complaint’s allegations.” *Dudenhoeffer*, 573 U.S. at 425. In *Hughes*, the Court reiterated that ERISA claims call for a context-specific inquiry, not “categorical” pleading requirements. 595 U.S. at 173. And just last Term, in *Cunningham v. Cornell University*, the Court reaffirmed that fiduciary duty suits are ERISA’s primary enforcement mechanism—and again declined to impose additional barriers to those suits. 604 U.S. 693, 696 (2025). A mandatory benchmarking rule is precisely the kind of categorical requirement these precedents foreclose.

Nothing in ERISA’s text requires plaintiffs to plead a “meaningful benchmark” to state a claim for imprudence. *See* App. 27a (Berzon, J., concurring). And while pleading a benchmark may sometimes help “nudge[] the[] claims across the line from conceivable to plausible,” *Twombly*, 550 U.S. at 570, nothing in ERISA suggests that “a meaningful benchmark is . . . required to plead a facially plausible claim of imprudence,” *Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205, 216 (6th Cir. 2024) (emphasis added), *cert. petition pending*, No. 24-1030. To hold otherwise would “impermissibly appl[y] what amount[s] to a heightened pleading requirement . . . beyond those necessary to state” a claim. *Twombly*, 550 U.S. at 570. This Court has declined to impose atextual, heightened pleading requirements across a variety of statutory contexts. *See, e.g., Jones v. Bock*, 549 U.S. 199, 203, 224 (2007) (prisoner litigation); *Hill v. McDonough*, 547 U.S. 573, 582 (2006) (42 U.S.C. § 1983); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514-15 (2002) (employment discrimination); *Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 168 (1993) (municipal liability). The result here should be the same.

ERISA’s remedial design. A mandatory meaningful-benchmark rule would undermine ERISA’s remedial design by insulating even imprudent investments from judicial review. Before ERISA, Congress had tried a disclosure-only approach to pension regulation. It did not work. *See* Dana Muir & Norman Stein, *Two Hats, One Head, No Heart: The Anatomy of the ERISA Settlor/Fiduciary Distinction*, 93 N.C. L. Rev. 459, 469-70, 473 (2015). So Congress enacted ERISA, imposing trust-law-based duties on plan fiduciaries. *See NLRB v. Amax Coal Co.*, 453 U.S. 322, 332 (1981)

(discussing ERISA’s codification of “strict fiduciary standards”).

A benchmarking rule that makes fiduciary enforcement contingent on the adequacy of disclosure would reopen the void that Congress meant to close. As noted above, CIT disclosures arrive in inconsistent formats that even plan sponsors may not understand, *see supra* p. 11 (discussing GAO-24-105364, at 51-52); daily prices “aren’t publicly available,” *see supra* pp. 11-12 (quoting T. Rowe Price); and researchers have found it challenging to match the available filings comprehensively to the plans that invest through them, *see supra* pp. 12-13 (discussing Wiedenbeck, *Invisible Pension Investments*, 32 Va. Tax Rev. at 593-94 & n.4). In that environment, conditioning fiduciary accountability on disclosure will often condition it out of existence.

“ERISA’s broadly protective purposes,” *John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank*, 510 U.S. 86, 96 (1993), “imposed broadly applicable uncompromising obligations” on fiduciaries, Wiedenbeck, *Untrustworthy*, 59 Wm. & Mary L. Rev. at 1015. Congress took those obligations so seriously that it barred even private agreements that would dilute them: exculpatory clauses purporting to relieve a fiduciary of liability are “void as against public policy.” 29 U.S.C. § 1110(a). If Congress prohibited parties from adopting contract terms that erode ERISA’s fiduciary protections, courts should not accomplish the same result by adopting a heightened pleading standard.

* * *

Congress enacted ERISA to provide plan participants “ready access to the Federal courts.” 29 U.S.C. § 1001(b). A pleading standard that rewards opacity with immunity provides the opposite.

CONCLUSION

The court of appeals’ judgment should be reversed.

Respectfully submitted,

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April 30, 2026