No. 25-2061

In the United States Court of Appeals
for the Fourth Circuit

BRUCE KONYA, ET AL.,

Plaintiffs–Appellees,

v.

LOCKHEED MARTIN CORPORATION,

Defendant–Appellant,

AMICUS CURIAE BRIEF OF THE U.S. SECRETARY OF LABOR IN SUPPORT OF THE APPELLANT AND REVERSAL

Appeal from the United States District Court
for the District of Maryland (No. 8:24-cv-00750-BAH),
Hon. Brendan A. Hurson

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

As the United States Officer with chief authority over Title I of the Employee Retirement Income Security Act ("ERISA"), the Secretary of Labor has a profound interest anytime an opportunity arises to "assur[e] the . . . uniformity of enforcement of . . . the ERISA statutes." *See Sec'y of Lab. v. Fitzsimmons*, 805 F.2d 682, 691–93 (7th Cir. 1986) (en banc). This includes all instances in which "standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans" may be clarified. *See* 29 U.S.C. § 1001(b). The fiduciary-centered issue in this case—the first of ten similar putative class actions to reach the federal courts of appeal—resides in the heartland of the sort of standards in which clarity, uniformity, and consistency must prevail. For that reason, the Secretary offers the following to aid the Court's deliberation.

[1] The Secretary files this brief under Federal Rule of Appellate Procedure 29(a)(2), which provides that a United States Officer "may file an amicus brief without the consent of the parties or leave of court."

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case involves a process, expressly permitted by ERISA, called a "pension risk transfer," or "PRT." Distilled to its core, the PRT concept is straightforward. No employer has an obligation to sponsor a pension plan for its employees, so to incentivize more employers to do so, ERISA provides them with an off-ramp for pension liabilities that they no longer wish to manage—the right to transfer some or all the assets and liabilities of their defined-benefit pension plans to an annuity provider (typically, an insurance company that specializes in providing pension-plan annuities).[2] For a plan's participants and beneficiaries, a PRT changes nothing material; they remain entitled to the same benefits irrespective of whether their employer or an annuity provider pays what they are owed. For the plan's original sponsor, in contrast, PRTs allow employers to safely manage financial risks by moving pension-plan obligations off their books without jeopardizing the benefits owed to their employees.

And, to put it bluntly, PRTs work—swimmingly. Over the last three decades, no annuity selected in a PRT transaction has defaulted or failed. During the same

[2] There are two primary types of employer-sponsored retirement plans—defined-benefit plans and defined-contribution plans. This case concerns a defined-benefit plan, a contract-based arrangement by which employers promise their employees a certain monthly payment or specific healthcare benefits for the rest of their lives in exchange for their employment. *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439–40 (1999).

period, by contrast, participants and beneficiaries who remained in employer-run pension plans have lost at least $8.5 billion because their employers were not able to fully fund their plans and the Pension Benefit Guaranty Corporation's minimum guarantee did not cover all of the funding shortfall.[3] PRTs thus have a proven track record of guaranteeing participants' and beneficiaries' benefits while allowing employers to effectively steward company finances.

And this makes sense. Here, for instance, Lockheed Martin is in the business of creating defense, security, and space-exploration technology—not providing retirement benefits, whether through annuities or otherwise.[4] After opting to help ensure the long-term financial security of roughly thirty thousand of its employees by creating two defined-benefit pension plans, Lockheed made the business decision to entrust payment of those earned benefits to an annuity provider—i.e., the sort of company that specializes in paying out earned financial benefits.

In other words, when left unencumbered, PRTs benefit employers and participants/beneficiaries alike, which is why ERISA provides for them (and the

[3] *See* ERISA Advisory Council, U.S. Dep't of Lab., Statement of the 2023 Advisory Council on Employee Welfare and Pension Benefit Plans to the U.S. Department of Labor Regarding Interpretive Bulletin 95-1 (Aug. 29, 2023) at 4, available at https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/about-us/erisa-advisory-council/statement-regarding-interpretive-bulletin-95-1.pdf.

[4] *See* LOCKHEED MARTIN, *What we do*, https://www.lockheedmartin.com/en-us/capabilities.html (last visited Dec. 29, 2025).

Secretary supports businesses' right to engage in them). When PRT decisions are forced through the crucible of federal-court litigation, however, those upsides are (at best) obstructed or (at worst) obliterated. And when that occurs, the damage does not stop with employers such as Lockheed or its employees. Congress intended that states take prime responsibility of regulating insurance and annuity products, like those that arise after a PRT. So, if employers are thwarted from conducting PRTs because of the ever-present specter of litigation, the delicately calibrated balance Congress established between federal and state regulatory prerogatives will deteriorate.

And, more perversely, if employers are thwarted from conducting PRTs, they are far less likely to offer pension plans to their employees in the first place. Cases like this (and the nine other putative class actions trending behind it) do nothing but punish employers for their considered choice to protect the long-term financial health of their aging workforce through a PRT. The result: employees like the roughly thirty thousand at Lockheed who benefited from the company's decision to offer pension plans for decades will suffer, as opportunistic litigants (or more precisely, opportunistic litigators) erode incentives for employers to enter the pension-plan market at all.

Given the stakes and her duty to protect the American worker, the Secretary offers her views on two issues. The first is standing; specifically, how the district

court misread the Supreme Court's decision in *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020). Read faithfully, *Thole* did no more than apply non-controversial and bedrock standing precedents, all of which require plausible allegations that a threatened injury is "certainly impending" before it can trigger federal-court subject-matter jurisdiction. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013). *Thole* did not, as the district court seemed to believe, water down the threatened-injury test for suits related to pension plans, and this case provides an apt vehicle for this Court to confirm that point.

Second, and relatedly, is the continued misinterpretation, advocated by the Plaintiffs, of Interpretive Bulletin 95-1. The Department promulgated IB 95-1 to guide employers when selecting a PRT annuity provider. At its core, IB 95-1 sets out a prudent process for ERISA fiduciaries to follow as they determine, within their discretion, which annuity provider is the safest available, given the unique circumstances of their specific plans and the attendant PRT transactions. But by creating this process, which provides that fiduciaries should balance six different (sometimes complementary, sometimes competing) factors, the Department was self-consciously *not* imposing an ends- or results-based test premised on the notion that for every PRT, there is only *one* annuity provider that can be prudently selected, and deviation from that lone choice means *per se* fiduciary liability. IB 95-1 (like ERISA itself) is concerned with rational and responsible processes, and IB 95-1 (like

ERISA itself) affords fiduciaries with ample flexibility and discretion to reach different conclusions, so long as fiduciaries (1) engage in the objective, thorough, and analytical process described in IB 95-1 (which demonstrates prudence) (2) with the sole goal of making the safest choice (which demonstrates loyalty). The common misinterpretation risks supplanting ERISA's context- and process-based analysis with a Monday-morning-quarterback, ends-based, per-se liability test, which further taints the decision on appeal and underscores why reversal is imperative.

BACKGROUND

A. As noted above, ERISA explicitly gives employers, as plan sponsors, the right to perform "pension risk transfer[s]." *See* 29 U.S.C. § 1341(b)(3)(A)(i). In a PRT, a plan's sponsor (usually an employer) transfers the plan's assets and liabilities to an insurance company in exchange for an annuity contract covering the plan's liabilities. *See Beck v. PACE Int'l Union*, 551 U.S. 96, 99 (2007). Nothing about the benefits provided by the plan itself changes except for which entity has responsibility for making payments. *See id.* at 103 (citing 29 U.S.C. § 1341(b)(3)(A)(i)–(ii)).

For purposes of this case, a crucial point bears emphasizing at the outset. The decision to transfer a plan to an insurance company through a PRT is not a fiduciary act of the employer who sponsors the plan. In ERISA parlance, this is a "settlor

decision," which means that it remains in the sole discretion of the employer.[5] When the settlor exercises that discretion, they bear no fiduciary responsibility whatsoever.[6] *Hughes Aircraft Co.*, 525 U.S. at 444. So, the fiduciary duties at issue in this case (and all other PRT cases) arise *only* when examining the decision to select one annuity provider over another. And given that allocation of complete discretion with respect to the decision to enter into a PRT, any legal standard for the subsequent fiduciary considerations that would meaningfully interfere with that front-end decision should be immediately suspect as inconsistent with ERISA's statutory structure. That is exactly the case here, where the district court's expansive approach to standing and misreading of Department guidance threatens to leave every plan sponsor who elects to enter a PRT open to vexatious litigation.

[5] The settlor is the entity, usually the employer, that makes the initial, discretionary decision to create the plan, and other decisions about the form, design, or structure of the plan are similarly made in a settlor capacity and are likewise completely elective. *Hughes Aircraft Co.*, 525 U.S. at 444. Because settlor decisions are not encumbered by fiduciary duties, the consequences of settlor decisions necessarily cannot give rise to a breach of fiduciary duty claim. *Id.* Because Lockheed's decision to undertake a PRT, which as a matter of law transfers regulatory authority from the federal Department of Labor to state insurance regulatory apparatuses, is a settlor decision, the switch from federal to state oversight cannot form the basis of an Article III injury in fact. Thus, the district court was wrong insofar as it seemed to suggest that the switch from federal regulation to state regulation could bolster the Plaintiffs' standing allegations.

[6] In this case, Lockheed was both the plan sponsor and, as plan administrator, the plan's fiduciary.

Because ERISA establishes the fiduciary duties that apply to the selection decision, in so doing, an employer (or other plan fiduciary for the decision) must 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," 29 U.S.C. § 1104(a)(1)(B), and "solely in the interest of the participants and beneficiaries" of that plan, *id.* § 1104(a)(1). These are, respectively, the fiduciary duties of prudence and loyalty.

ERISA (and the cases interpreting it) recognize that, when a fiduciary acts, there are generally a "range of reasonable judgments a fiduciary may make," based on factual predicates of the decision in question. *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022). In other words, ERISA creates a process-based regulatory scheme, not an ends- or results-based regulatory scheme. *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1166 (6th Cir. 2022) (stating that the defining characteristic of the duty of prudence is that it is "largely a process-based inquiry."); *Matousek v. MidAmerican Energy Co*., 51 F.4th 274, 278 (8th Cir. 2022) (noting that for the duty of prudence, "[t]he process is what ultimately matters."). So long as the *means* through which a fiduciary acts are conducted with the requisite prudence and loyalty, the relative success of the *ends* matters far less for purposes of, among other things, legal liability under the statute. *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 424 (4th Cir. 2007) ("[W]hether a fiduciary's actions are prudent cannot be measured

from the vantage point of hindsight" because "'the prudent person standard is not concerned with results; rather it is *a test of how the fiduciary acted* [when] viewed from the perspective of the time of the challenged decision . . .'") (quoting *Roth v. Sawyer-Cleator Lumber Co.*, 16 F.3d 915, 917–18 (8th Cir. 1994)) (emphasis added).

After a PRT concludes, so too does ERISA coverage. This, however, is a feature, not a bug, of the system. Once an annuity provider assumes the plan's assets and liabilities, it becomes immediately subject to rigorous state regulatory regimes, including state guarantee associations that provide protection to persons receiving annuity payments and to other insurance company beneficiaries.

B. To guide fiduciaries in choosing an annuity provider, the Department of Labor issued Interpretive Bulletin 95-1 ("IB 95-1"). 29 C.F.R. § 2509.95-1. Most fundamentally, and like ERISA itself, IB 95-1 makes clear that a fiduciary must *engage in a prudent process* aimed at selecting what the fiduciary loyally believes to be the safest available annuity provider. That process, in turn, is given form with six factors to be considered.[7]

[7] The six factors are: "(1) The quality and diversification of the annuity provider's investment portfolio; (2) The size of the insurer relative to the proposed contract; (3) The level of the insurer's capital and surplus; (4) The lines of business of the annuity provider and other indications of an insurer's exposure to liability; (5) The structure of the annuity contract and guarantees supporting the annuities, such as the use of separate accounts; and (6) The availability of additional protection

Here, another critical point bears underscoring. By its terms, IB 95-1 gives fiduciaries ample discretion when weighing those six points. It contemplates that different fiduciaries might (indeed, probably would) balance those six (sometimes competing) points differently.[8] And for that reason, IB 95-1 does not, and should not be read to suggest, that for every PRT there can be only one "safest" annuity that every fiduciary would have selected, the deviation from which necessarily translates into a fiduciary-duty violation. To the contrary, and when read holistically, IB 95-1 imposes on fiduciaries a duty to conduct the annuity-selection *process* for the purpose of selecting the safest available annuity. So long as the exercise of fiduciary discretion is done for that purpose and follows the prudent process described in IB 95-1, it matters far less if a different fiduciary (or, relevant here, a plaintiffs' lawyer or federal court) may have chosen a different annuity provider.

C. This case centers around Lockheed's decision to move, via a PRT, the liabilities of two of its defined-benefit plans to an annuity provider. *Konya, et al v. Lockheed Martin Corp.*, No. 8:24-cv-00750 (D. Md. Mar. 13, 2024), ECF No. 1 ("Compl.") ¶¶ 1, 3. In a defined-benefit plan, participants and beneficiaries generally are promised, by the plan sponsor, a consistent stream of income during

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through state guaranty associations and the extent of their guarantees." 29 C.F.R. § 2509.95-1(c)(1)–(6).

[8] Similarly, IB 95-1 acknowledges that a fiduciary may need to balance the goal of choosing the safest annuity against the potential for cost savings.

retirement. *Hughes Aircraft Co.*, 525 U.S. at 439–40. Defined-benefit plans differ from defined-contribution plans, in which plan participants and beneficiaries have individual accounts that are attributable to them. *Id*. In the former (at issue here), the value of the plan's total assets has no effect whatsoever on the amount due to any specific participant or beneficiary. In the latter (not at issue here), the value of the plan's total assets generally does have such an effect.[9]

After searching for an annuity provider, Lockheed chose Athene, "one of the leading players" in PRTs, Compl. ¶ 47, for both of its plans, which cover 31,600 participants and beneficiaries, *id*. ¶¶ 58–59. Athene has an A+ credit rating from Standard & Poor's and an A1 rating from Moody's. *See* Letter from Sean Brennan, Pension Group Annuity and Flow Reinsurance to Christine Donahue, ERISA Advisory Council at 2 (July 10, 2023) (on file with the Retirement Income Journal), available at https://retirementincomejournal.com/wp-content/uploads/2023/07/Athene-Part-1-Sean-Brennan.pdf. It has performed annuity transfers totaling $50 billion and covering more than half a million pension-plan participants and beneficiaries.

[9] *See Thole v. U. S. Bank N.A*, 590 U.S. 538, 540 (2020) ("In a defined-benefit plan, retirees receive a fixed payment each month, and the payments do not fluctuate with the value of the plan or because of the plan fiduciaries' good or bad investment decisions. By contrast, in a defined-contribution plan, such as a 401(k) plan, the retirees' benefits are typically tied to the value of their accounts, and the benefits can turn on the plan fiduciaries' particular investment decisions.") (first citing *Beck v. PACE Int'l Union*, 551 U.S. 96, 98 (2007), then citing *Hughes Aircraft Co.*, 525 U.S. at 439–40).

Compl. ¶ 47. To date, it has never failed to pay any participant or beneficiary what is owed. *See* Advisory Council Statement at 1.

Athene gives its annuities several layers of protection arguably more robust than those Lockheed provided to its participants and beneficiaries as pension-plan sponsor. For example, Athene holds annuity liabilities in separate accounts from those of its general liabilities; this "ring-fencing" technique provides an extra security-structure layer and reduces participant losses in an annuity failure by a factor of 10. *See* PENSIONS & INVESTMENT, *The Plan Sponsor's Guide to Pension Risk Transfer*, https://www.pionline.com/pension-risk-transfer-guide (accessed Dec. 29, 2025).

The Plaintiffs are all participants in or beneficiaries of the plans that Lockheed transferred to Athene. Their putative class action alleges that Lockheed violated its ERISA-imposed fiduciary duties by choosing Athene, which they allege was not the "the safest possible" annuity provider. Compl. ¶¶ 1, 3–4. Although they acknowledge that Athene has paid all benefits to date and remains contractually obligated to do so, the Plaintiffs allege that choosing Athene "substantially increased the risk" that they will fail to receive their benefits in the future. *Id*. ¶¶ 42–56. This, according to the Plaintiffs, amounts to a violation of Lockheed's fiduciary duties. *Id*. ¶¶ 68–74. Lockheed moved to dismiss, arguing that the Plaintiffs lacked standing

to challenge the selection of Athene because they failed to allege a concrete injury in fact. *See generally* ECF No. 26.

The district court denied Lockheed's motion. Although it noted that the Plaintiffs had "barely . . . eked out sufficient injury-in-fact to establish standing," *Konya, et al v. Lockheed Martin Corp.*, No. 8:24-cv-00750 (D. Md. Mar. 13, 2024), ECF No. 79 at 19–20, it nonetheless concluded that they had plausibly alleged that Lockheed's choice of Athene was "so egregious that it substantially increased the risk that the plan and the employer would fail and be unable to pay the participants' future pension benefits," *id*. at 17. In so reasoning, the district court cited IB 95-1 for the notion that "a PRT transaction must obtain the 'safest annuity available'" and credited the Plaintiffs' allegation that "Athene was far from it and was, for various alleged reasons, 'substantially riskier than numerous traditional annuity providers.'" *Id*. at 7 (first quoting 29 C.F.R. § 2509.95-1(c), then quoting Compl. ¶¶ 3–4).

ARGUMENT

I. THE PLAINTIFFS LACK STANDING.

Supreme Court jurisprudence makes clear this fundamental point: plaintiffs alleging fiduciary mismanagement of a defined-benefit pension plan must plead either that (1) they have not received the benefits their plan sponsor promised them or (2) a default is "certainly impending." If the Plaintiffs cannot plausibly allege either, they have not demonstrated that they have Article III standing. The district

court erred in concluding otherwise, and if this error metastasizes to more courts, it will allow PRT litigation to obstruct the use of this crucial, ERISA-approved process, all to the detriment of the American worker. As discussed at greater length below, *see infra* at 23–27, any such obstruction will inflict a grave wound on the pension system more broadly because it will impose a severe disincentive for employers to adopt these plans in the first place.

A. Under *Thole* and *Clapper*, the Plaintiffs have not alleged a sufficiently concrete injury in fact.

In *Thole*, the Supreme Court decided a case with standing issues materially identical to those here. *Thole*'s plaintiffs were pensioners who sued their employer after a series of bad investments resulted in a $700-million loss to the employer's pension plan. 590 U.S. at 540. Although the plaintiffs continued to receive the benefits owed to them, they alleged that the loss to the plan's overall worth amounted to a violation of the employer's ERISA-imposed fiduciary duties, which, in their view, amounted to a cognizable injury in fact. *Id.*

The Supreme Court disagreed. Because a "defined-benefit plan is . . . in the nature of a contract" and "[t]he plan participants' benefits are fixed and will not change, regardless of how well or poorly the plan is managed," the Court reasoned that plan participants and beneficiaries have an interest only in the benefits their employer promised them—and *not* the overall value of the plan itself. *Id.* at 542–43. Without more than a nonconcrete apprehension that, someday, their employer

might not be able to live up to the terms of the pension plan, the plaintiffs in *Thole* had no injury that a federal court could redress. So far, so good.

In so doing, however, *Thole* mused about how "the plaintiffs' amici" had surmised that "plan participants in a defined-benefit plan" might have "standing to sue if the mismanagement of the plan was so egregious that it substantially increased the risk that the plan and the employer would fail and be unable to pay the participants' future pension benefits." *Id*. Because the plaintiffs themselves in *Thole* had not made either this argument or the purported requisite showing to satisfy it, the *Thole* Court did not hazard a guess as to whether a circumstance like that could indeed give rise to a cognizable injury in fact. *Id*. at 546. And because the Court's passing cogitation here on this question formed no part of *Thole*'s holding, it constitutes dicta. *See Central Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006) ("[W]e are not bound to follow our dicta in a prior case in which the point now at issue was not fully debated").

Even though this stray language had nothing to do with *Thole*'s holding (recall that it was merely a recitation of an argument floated by *Thole*'s amici), it has nonetheless been exploited quickly and mercilessly. The Supreme Court decided *Thole* in 2020. By 2024, *thirteen* putative class action complaints (consolidated to ten) have cited *Thole*'s egregious-mismanagement dicta to support standing in PRT-stymying lawsuits. And in this case, the district court bit, seemingly reluctantly

holding that the Plaintiffs had sufficiently alleged an egregious-mismanagement injury in fact sufficient to overcome Lockheed's motion to dismiss.

That was error. Above and beyond the district court's confusion of dictum and binding precedent, the fatal flaw in the district court's reasoning was in treating *Thole* as if it deviated from the Supreme Court's otherwise-unbroken line of threatened injury-in-fact jurisprudence. *Thole* did no such thing.

Instead, *Thole* faithfully applied the reasoning of *Clapper*, which held that *some* threatened injuries may be so pressing and so certain that they have calcified to the point of a concrete injury in fact. *Clapper* emphasized, however, that those instances are the rare exception to the general rule.[10] According to *Clapper*, a "threatened injury must be *certainly impending* to constitute injury in fact." 568 U.S. at 409 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) (emphasis in original). "Allegations of *possible* future injury," in contrast, "are not sufficient." *Id*. (quoting *Whitmore*, 495 U.S. at 158) (emphasis in original). *Thole* was in accord; there, the plaintiffs made no showing that they were at any non-speculative risk of

[10] Even if there existed any tension between *Clapper* and *Thole* (and there is none), *Thole* did not sub silentio overrule *Clapper* or create an ERISA-based exception to the general rule that the irreducible constitutional standing requirement now, in the context of ERISA, requires something less than a certainly impending threatened injury. *See Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000) ("This Court does not normally overturn, or so dramatically limit, earlier authority sub silentio.").

not receiving the "monthly benefits that they are already slated to receive," and, accordingly, the Court rightly held that they had "no concrete stake in th[e] lawsuit." *Thole*, 590 U.S. at 541.

Thole, read faithfully, controls this case. Here, the Plaintiffs alleged that Lockheed's PRT "substantially increased" the chances that Lockheed's chosen annuity provider "may fail and jeopardize Plaintiffs' future benefits." *Konya, et al. v. Lockheed Martin Corp.*, No. 8:24-cv-00750 (D. Md. Mar. 13, 2024), ECF No. 79 at 27. What they have not alleged, as required by *Thole* and *Clapper*, is a "certainly impending" risk that Lockheed's PRT will result in their failure to receive the "fixed payment each month" their defined-benefit plan promised them. As noted above, Lockheed chose an annuity provider with an A+ credit rating from Standard & Poor's and an A1 rating from Moody's.[11] Those ratings are investment grades indicating a strong capacity to meet obligations, low risk, and a potential for 5-percent default rate over a twenty-year period, which comes nowhere near *Clapper*'s "certainly impending" bar. *Bueno v. Gen. Elec. Co.*, No. 1:24-CV-0822 (GTS/DJS), 2025 WL 2719995, at *18 (N.D.N.Y. Sept. 24, 2025); *see also Beck v. McDonald*,

[11] *See* Letter from Sean Brennan, Pension Group Annuity and Flow Reinsurance to Christine Donahue, ERISA Advisory Council at 2 (July 10, 2023) (on file with the Retirement Income Journal), available at https://retirementincomejournal.com/wp-content/uploads/2023/07/Athene-Part-1-Sean-Brennan.pdf.

848 F.3d 262, 266–67 (4th Cir. 2017) (holding that a thirty-three percent chance of the alleged injury occurring was not enough to show the injury was certainly impending for Article III standing). At bottom, the Plaintiffs have failed to allege that they are facing a certainly impending risk that they will not receive their annuity due to Lockheed's PRT. That failure commands dismissal for lack of standing along with this Court's emphatic clarification regarding the harmony between *Thole* and *Clapper*.

B. The Plaintiffs cannot manufacture standing by alleging a bare fiduciary-duty breach without a certainly impending risk that the breach will prevent them from receiving their plan benefits.

The district court also held that the Plaintiffs "adequately alleged an independent Article III injury because the[y] claim that the selection of Athene was a breach of fiduciary duty, which alone gives rise to standing when coupled with the allegations related to Athene's alleged instability and potential risk of failure." *Konya, et al. v. Lockheed Martin Corp.*, No. 8:24-cv-00750 (D. Md. Mar. 13, 2024), ECF No. 79 at 24. As noted above, "alleged instability and potential risk of failure" do not cut it under *Clapper* or *Thole*. Simply adorning that insufficient allegation with "fiduciary duty" window dressing changes nothing. The district court's contrary holding was wrong.

Article III standing requires a *concrete* injury. The Supreme Court has explained that a concrete injury is one that has "traditionally been regarded as

providing a basis for a lawsuit in English or American courts." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (citing *Vt. Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 775–77 (2000)). Traditionally, this has meant harm to one's person, finances, reputation, or other interests. Breach of an abstract legal principle *without* any accompanying concrete harm, however, does not suffice.

For that reason, even though there exist many "legal prohibitions and obligations," it remains true that "an injury in law is not an injury in fact." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021). "[O]nly those plaintiffs who have been concretely harmed by a defendant's [legal] violation may sue that private defendant over that violation in federal court." *Id.* "As then-Judge Barrett succinctly summarized, 'Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions.'" *Id.* (quoting *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 332 (7th Cir. 2019) (Barrett, J.)).

For that reason, the district court erred by assigning talismanic significance to the Plaintiffs' invocation of Lockheed's fiduciary duties. Even if Lockheed acted imprudently or disloyally in selecting Athene (and the Secretary respectfully asserts that the Plaintiffs have not adequately pled that Lockheed did either), the Plaintiffs still lack standing because they have not shown, and cannot show, that Lockheed's purported breach caused any monetary harm or has created a certainly impending

threat of monetary harm. Without more, the Plaintiffs stand in the same place as the *Thole* plaintiffs; i.e., because "[t]hey have received all of their vested pension benefits so far, and they are legally entitled to receive the same monthly payments for the rest of their lives," they have "no concrete stake in this lawsuit." *Thole*, 590 U.S. at 547.

II. THE DISTRICT COURT MISINTERPRETED IB 95-1.

Compounding the district court's standing error was its apparent misreading of IB 95-1. And the district court was not the first to do so. For that reason, the Court should take this opportunity to crystallize what IB 95-1 does and, more importantly, what it does not do.

IB 95-1 (codified at 29 C.F.R. § 2509.95-1) explains the Department's views on how the duties of loyalty and prudence apply to a fiduciary's selection of an annuity provider.[12] Specifically, IB 95-1 advises fiduciaries to "take steps calculated

[12] Although interpretive bulletins are guidance documents that do not have the force of law under the Administrative Procedure Act, they "receive 'Skidmore deference,'" *Humana Health Plan, Inc. v. Nguyen*, 785 F.3d 1023, 1027 (5th Cir. 2015) (internal citation omitted), and are therefore entitled to consideration as "a body of experience and informed judgment to which courts and litigants may properly resort for guidance . . . depend[ing] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade," *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); *see also Bussian v. RJR Nabisco, Inc.*, 223 F.3d 286, 297 (5th Cir. 2000) (applying *Skidmore* deference to IB 95-1 governing annuity selection). For that reason, its misinterpretation can (and here, did) lead to grievous errors.

to obtain the safest annuity available, unless under the circumstances it would be in the interests of participants and beneficiaries to do otherwise." 29 C.F.R. § 2509.95-1(c). In so doing, IB 95-1 does little more than restate a fiduciary's general duty of loyalty and process-based duty of prudence; then, it applies those duties to the specific PRT context.

The process articulated by IB 95-1 requires that a fiduciary consider (among other things, such as cost savings) the following six factors when selecting an annuity provider:

> (1) The quality and diversification of the annuity provider's investment portfolio;
>
> (2) The size of the insurer relative to the proposed contract;
>
> (3) The level of the insurer's capital and surplus;
>
> (4) The lines of business of the annuity provider and other indications of an insurer's exposure to liability;
>
> (5) The structure of the annuity contract and guarantees supporting the annuities, such as the use of separate accounts;
>
> (6) The availability of additional protection through state guaranty associations and the extent of their guarantees.

Id. § 2509.95-1(c)(1)–(6).

IB 95-1 does not weigh these factors for fiduciaries—it does not instruct, for instance, that low "capital and surplus" necessarily trumps "the size of the insurer relative to the proposed contract," or vice versa. Instead, IB 95-1 requires fiduciaries to weigh these factors for themselves. So long as the process is followed (and,

specifically, followed in accordance with the fiduciary duty of loyalty to try to identify the safest option), different fiduciaries may end up opting for different annuity providers.

For that reason, the Secretary deliberately opted not to endorse (and continues to explicitly disclaim) the proposition that there is one single "safest" annuity that a fiduciary must select on pain of legal liability, without regard to whether the fiduciary properly followed a prudent process. IB 95-1 expressly makes that point manifest, emphasizing that "[a] fiduciary may conclude, after conducting an appropriate search, that more than one annuity provider is able to offer the safest annuity available." *Id.* § 2509.95-1(c)(6). This statement reflects the Supreme Court's observation that "the circumstances facing an ERISA fiduciary" will necessarily "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*, 595 U.S. at 177.

The process is what matters, and because IB 95-1 has been exploited by opportunistic litigants who foresee monetary windfalls in asking federal courts to engage in post hoc second-guessing of fiduciary actions, the Court should take this opportunity to emphasize that fiduciaries are to enjoy flexibility and discretion, so long as they follow the prudent process described in IB 95-1, and do so loyally. Because here (and elsewhere), IB 95-1 has been used as an ERISA-plaintiff sword

in ways that the Secretary never intended, now is the time to clarify that IB 95-1 has never stood for the proposition that there arises a fiduciary breach if a federal court retrospectively proclaims that an annuity provider was the one safest option, and that post-hoc selection happens to differ from the one chosen by a PRT fiduciary who otherwise loyally followed IB 95-1 to the letter.

III. THIS CASE AND THE OTHERS THAT FOLLOW WILL WREAK HAVOC ON THE AMERICAN PENSION-PLAN SYSTEM (AND AS A RESULT, THE AMERICAN WORKER) IF THEY ARE NOT CURTAILED.

The magnitude of this case and these issues are hard to overstate. Both the district court and this Court have already recognized as much by virtue of allowing this appeal to proceed under 28 U.S.C. § 1292(b).[13] And since doing so, four district courts have addressed materially identical motions to dismiss.[14] They are not in accord: two (like the district court below) have (incorrectly) found that plaintiffs have standing, and two have (correctly) found that they lack it.

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[13] *See* 28 U.S.C. § 1292(b) (allowing an interlocutory appeal of "an order not otherwise appealable" if it "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.").

[14] *See Bueno v. Gen. Elec. Co.*, No. 1:24-cv-822-GTS-DJS, 2025 WL 2719995, at *19 (N.D.N.Y. Sep. 24, 2025) (finding plaintiffs lacked Article III standing); *Schoen v. ATI, Inc.*, No. 2:24-cv-1109-NR-KT, 2025 WL 2970339, at *7 (W.D. Pa. Oct. 7, 2025) (same); *Doherty v. Bristol-Myers Squibb Co.*, No. 1:24-cv-6628-MMG, 2025 WL 2774406, at *10 (S.D.N.Y. Sep. 29, 2025) (finding plaintiffs had Article III standing); *Piercy v. AT&T Inc.*, No. 24-CV-10608-NMG, 2025 WL 2505660, at *12 (D. Mass. Aug. 29, 2025), report and recommendation adopted, 2025 WL 2809008 (D. Mass. Sept. 30, 2025) (same).

While the Court resolves these issues, the Secretary urges it to keep in mind a fundamental thread that the Supreme Court pronounced more than fifteen years ago. "Congress enacted ERISA to ensure that employees would receive the benefits they had earned." *Conkright v. Frommert*, 559 U.S. 506, 516 (2010). ERISA puts the American worker first. The Secretary, as ERISA's steward, takes this responsibility more seriously than all others.

It remains true that the American workers' interests reach their apex when their employers provide them with pension plans. That said, "Congress did not require employers to establish benefit plans in the first place." *Id*. at 516–17 (citing *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996)). Because employers cannot be forced to offer their employees pension plans, it necessarily follows that the employees benefit the most when their employers are incentivized to do so.

Incentivization requires tradeoffs, and, accordingly, "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.'" *Id.* (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 215 (2004). That was intentional; "Congress sought 'to create a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place.'" *Id.* (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996)). And

since ERISA took effect in 1974, it has served the purpose that Congress intended, all to the advantage of the American worker.

PRTs are a vital component of the delicate calibration established by Congress. Suffice it to say, creating and running pension plans for (as is the case here) more than thirty-thousand participants and beneficiaries represents a tremendous, and tremendously unpredictable, financial undertaking. This is especially true for the employee-friendly defined-benefit plans, through which participants and beneficiaries are guaranteed a fixed payment each month, irrespective of the plan's overall worth. If companies like Lockheed have no meaningful way to eliminate oversized financial risks by engaging in a PRT, they will have terrifically reduced incentives to provide their employees with defined-benefit pension plans in the first place.

And it bears repeating: defined-benefit plan participants and beneficiaries lose *nothing* if their employer undertakes an PRT. They remain contractually entitled to receive the exact same annuity they had before the PRT; the only thing that changes is which entity pays what they are owed. And setting aside the Plaintiffs' handwringing, it remains true that not one plan participant/beneficiary has lost even a single red cent due to a PRT in the last thirty years.

Industry experts have recognized the inherent risks in overregulation for the pension market (particularly overregulation achieved by litigation). A decade ago,

the American Academy of Actuaries noted that, "[i]n light of the voluntary nature of sponsorship, plan sponsors generally believe that the ability to close a plan to new entrants, reduce or freeze benefits, or completely terminate a plan (after providing for all accrued benefits) if business conditions dictate such actions has been and remains necessary to encourage adoption and continuation of plans."[15] Stated more bluntly, "a rational business person would not adopt a plan with uncertain future costs and no ability to control those costs if the business can no longer afford them."[16] And for that reason, "it is important to keep in mind that existing regulatory restrictions on unwinding or de-risking plans might further reduce employers' willingness to offer defined-benefit plans, and further proposals to restrict employers' flexibility in this area could produce a rush to exit sponsorship of plans."[17]

The Academy sounded this warning years before the current PRT litigation blitzkrieg, which has besieged several of the globe's biggest employers: e.g., Lockheed Martin, Verizon, and IBM, among others. In other words, the precarious situation described by the Academy is primed to get much, much worse—unless this

[15] American Academy of Actuaries, Issue Brief, Pension Risk Transfer (Oct. 2016), available at https://actuary.org/wp-content/uploads/2017/11/PensionRisk Transfer10.16.pdf.

[16] *Id.*

[17] *Id.*

Court assumes the role of the vanguard. The time to do so is now, and the American worker is counting on this Court getting it right.

CONCLUSION

Reversing the district court's wayward standing conclusion is right as a matter of blackletter law and unbroken Supreme Court standing precedent. It is right as a matter of fact. It is right as a matter of our Nation's structural separation of powers. And is it right as a matter of American worker protection.

For all these reasons, the Secretary respectfully urges the Court to reverse the district court's order and remand with instructions to dismiss this case for lack of subject-matter jurisdiction.

January 9, 2026

Respectfully submitted,

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January 9, 2026

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I HEREBY CERTIFY that, on this 9th day of January, 2026, a true copy of the foregoing Amicus Curiae Brief of the U.S. Secretary of Labor in Support of the Appellant and Reversal was filed electronically with the Clerk of Court using the Court's CM/ECF system, which will send by email a notice of docketing activity to all registered Attorney Filers.

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January 9, 2026

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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