

Lawsuit Against NYC Pension Funds' Divestment in Fossil Fuels Dismissed

A New York State judge dismissed the complaint due to lack of standing and failure to demonstrate injury.

Reported by [NOAH ZUSS](#)

A New York State judge on Wednesday [dismissed a lawsuit](#) brought against pension funds for New York City workers, alleging the funds' divestment from securities of certain fossil fuel companies jeopardized the retirement security of participants.

New York State Judge Andrea Masley ruled the plaintiffs, including four city employees and the conservative nonprofit Americans for Fair Treatment, lacked standing to bring the case against the New York City Employees' Retirement System, Teachers' Retirement System of the City of New York and the Board of Education Retirement System of the City of New York. The plaintiffs had sought class-action status.

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Masley also ruled the accusers in *Wong et al. v. NYCERS*, brought in New York State Supreme Court, did not demonstrate sufficient injury. The accusers alleged the retirement security of plan participants was harmed by the plans' divestment from securities of certain fossil fuel companies, constituting a fiduciary breach.

The plaintiffs "have not demonstrated sufficiently concrete or particularized harm," wrote Masley.

The plaintiffs had argued they have a stake in the outcome of the litigation because the pension funds' decisions about defined benefit plan investments had "a detrimental impact on the financial health" of their retirement plans and on the plans' "ability to pay the pension benefits they owe."

"However," wrote Masley, the "plaintiffs' allegations regarding their plans' potential inability to meet their payment obligations are speculative."

She added: "The pension plans at issue are also 'defined benefit' retirement plans. Thus, plaintiffs are entitled to a fixed benefit each month and will receive the same amount regardless of whether they win or lose this action. ... Plaintiffs here have not, and will not, suffer any monetary losses based upon defendants' investment decisions."

In response to a question from PLANSPONSOR, Akiva Shapiro, a partner in Gibson, Dunn Crutcher LLP and the lead attorney for the plaintiffs, says by email, "We are reviewing the court's decision and evaluating potential next steps."

New York City Comptroller Brad Lander, a trustee to and investment adviser and custodian for the three pension funds, praised the order in a statement.

"This court's decision is a big win for common-sense responsible investing, for New York City's municipal workers and retirees, and for the future of our City and our planet," Lander stated. "Our pension funds are implementing ambitious and well-researched plans to address the material risks of climate change—including divesting from fossil fuels, investing in renewable energy and climate solutions, and actively engaging with our asset managers and portfolio companies to reduce their financed emissions. I'm delighted that the Court dismissed this attempt by anti-ESG forces to undermine responsible investing and prevent the transition to a low-carbon economy."

Attorneys for the pension funds filed a motion to dismiss the lawsuit in August 2023. The defendants relied on [established U.S. Supreme Court precedent](#) from *Thole et al. v U.S. Bank N.A. et al.*

The Supreme Court ruled in that case that the accusers lacked standing to challenge the plan's mismanagement under the Case or Controversy Clause of Article III, Section 2 of the U.S. Constitution, according to Masley. The accusers in *Wong* contended *Thole* as precedent "is distinguishable because it involves the application of federal standing principles to a federal statute," wrote Masley.

While this decision is "not a substantive one, it is nevertheless interesting [as] it draws from the reasoning of the Supreme Court's decision under [the Employee Retirement Income Security Act] that makes it harder for participants in defined benefit plans successfully to allege breaches of fiduciary duty regarding the management of plan assets where those breaches aren't likely to result in reduced benefit payments," says Drew Oringer, a partner in and general counsel at the Wagner Law Group, which was not involved in the litigation.

"The court here recognized that the federal authority on standing is not applicable in this case, but ultimately found the Supreme Court's reasoning to be persuasive," Oringer explains. "If the court's decision stands, resolution of the substantive question would have to wait until a party with valid standing asserts a claim."

In 2018, [the New York City pension funds'](#) trustees set a goal to prepare a five-year strategy to sell assets in fossil fuel reserve holdings. In 2021, the pension funds' boards of [trustees divested an estimated \\$4 billion](#) from securities related to fossil fuel-producing companies.

When the lawsuit was filed in May 2023, the New York City Employees' Retirement System held pension plan assets valued at \$77.5 billion; Teachers' Retirement System of the City of New York held \$64 billion; and the Board of Education Retirement System of the City of New York held \$5.9 billion, according to the complaint.

The plaintiffs include Americans for Fair Treatment and four individuals: a subway train operator, a public-school teacher, a school secretary and an occupational therapist in an elementary school, according to the complaint.

Tags

[defined benefit retirement plans](#), [Employee Retirement Income Security Act](#), [environmental social and governance](#), [environmental social and governance investing](#), [fiduciary breach](#), [fossil fuels](#), [Pension Funds](#), [Supreme Court](#), [The Wagner Law Group](#)

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