No. 25-2061

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LOCKHEED MARTIN CORPORATION,

Defendant-Appellant,

v.

BRUCE KONYA, SIMON SHIFF, STEPHEN SCHWARZ, DIANA VASQUEZ, individually and as representatives of a class of participants and beneficiaries on behalf of the Lockheed Martin Corporation Salaried Employee Retirement Program and the Lockheed Martin Aerospace Hourly Pension Plan

Plaintiffs-Appellees.

On Appeal from the United States District Court for the District of Maryland, No. 8:24-cv-750 (Hon. Brendan A. Hurson)

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, AND AMERICAN RETIREMENT ASSOCIATION AS AMICI CURIAE IN SUPPORT OF APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1(a)(2)(A), each of the Amici Curiae individually certifies that it is a non-profit corporation, that it does not have a parent corporation, and that no publicly held corporation has ten percent or greater ownership.

In accordance with Local Rule 26.1(a)(2)(B), each of the Amici Curiae individually certifies that it is unaware of any publicly held corporation or similarly situated legal entity, other than those listed in Petitioner's corporate disclosure statement, that has a direct financial interest in the outcome of the litigation by reason of a franchise, lease, other profit sharing agreement, insurance, or indemnity agreement.

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INTEREST OF THE AMICI CURIAE[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive.

The American Retirement Association ("ARA") is the coordinating entity for its five underlying affiliate organizations representing both the sponsors of private employer retirement plans and the full spectrum of service provider professionals who work with them, in support of America's private retirement system: the

[1] All parties have consented to the filing of this brief. No party or party's counsel authored this brief in whole or in part. No party, party's counsel, or person other than Amici, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

American Society of Pension Professionals & Actuaries; the National Association of Plan Advisors; the National Tax-Deferred Savings Association; the American Society of Enrolled Actuaries; and the Plan Sponsor Council of America. ARA's members include organizations of all sizes and industries across the nation that sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans.

Many of Amici's members maintain, administer, and/or provide services to employee-benefit plans governed by ERISA, covering virtually all Americans who work in the private sector and participate in employer-sponsored programs. Amici regularly participate as amici curiae in cases that affect plan sponsors, *see, e.g.*, *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020); *Trauernicht v. Genworth Financial Inc.*, No. 24-1880 (4th Cir.), and the Chamber filed a brief at the petition stage in this case. Amici submit this brief to highlight the robust regulatory framework that exists to protect retirees whose benefits are paid by annuity providers and the important separation-of-powers considerations in evaluating Article III standing here.

INTRODUCTION AND SUMMARY OF ARGUMENT

This litigation arrives as part of a swarm of recent lawsuits—mostly filed by counsel for Plaintiffs here—challenging commonplace annuity buyout transactions for pension plans, sometimes called pension-risk transfers ("PRTs"). In these transactions, which are explicitly authorized by ERISA, a pension plan typically

pays a lump sum to an insurance company and, in exchange, the insurer takes on the obligation to pay that portion of the plan's pension benefits in perpetuity. The former plan participants continue to receive exactly the same benefits and protections, such as survivor benefits, as before; the checks are simply sent from the insurer rather than the plan sponsor. Plaintiffs here, as in eight parallel cases elsewhere, filed suit because they claim that the independent fiduciary appointed to choose an annuity provider should have made a different choice.

In several other cases where virtually identical complaints were filed, courts have dismissed (or recommended dismissing) for lack of Article III standing. *See Camire v. Alcoa USA Corp.*, 2025 WL 947526 (D.D.C. Mar. 28, 2025); *Bueno v. Gen. Elec. Co.*, 2025 WL 2719995 (N.D.N.Y. Sept. 24, 2025); *Schoen v. ATI, Inc.*, 2025 WL 2970339 (W.D. Pa. Oct. 7, 2025) (R&R recommending dismissal). That outcome is dictated by the Supreme Court's decision in *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020), which held that plaintiffs lack standing to assert ERISA fiduciary-breach claims with respect to their defined-benefit pension plans when they "received all of their monthly pension benefits so far" and "will receive those same monthly payments for the rest of their lives." *Id.* at 542. In *Thole*, the Court reasoned, "[w]inning or losing this suit would not change the plaintiffs' monthly pension benefits," and so "[t]he plaintiffs have no concrete stake in this dispute and therefore lack Article III standing." *Id.* at 547.

Thole should be the end of this suit, too. Plaintiffs here likewise have received all their monthly benefits so far and will receive those same payments for the rest of their lives. Plaintiffs and the district court have struggled to distinguish *Thole* in various ways, none of which succeeds. Their chief argument rests on the freewheeling conjecture that Athene, the insurer selected by an independent fiduciary, may one day default and be unable to pay Plaintiffs' monthly benefits. As several courts have held, that theory is far too speculative to support standing, in no small part because the insurance market is hardly the Wild West. It is a heavily regulated industry policed by state insurance commissioners with extremely broad powers, and annuity benefits are safeguarded by numerous layers of structural protections—protections that are notably *absent* from ERISA-governed plans.

First, all states have enacted robust solvency regulations requiring insurers to maintain adequate risk-based capital ("RBC") and reserves, as well as enabling continuous oversight by state insurance regulators. Second, Athene (like many annuity providers) segregates the assets used to fund annuity payments through a "separate account" structure, which is insulated from Athene's general liabilities and is subject to additional oversight from state regulators. That means that *both* the separate account *and* Athene's general account would need to become insolvent to jeopardize Plaintiffs' benefits. Third, annuity providers typically maintain an additional layer of security through reinsurance—insurance for insurers—which is

also regulated and overseen by state insurance commissioners. Even *if* Athene's separate account and general account were both to default, therefore, the reinsurers would still be on the hook to pay Plaintiffs their full benefits. Finally, if all that fails, State Guarantee Associations ("SGAs") provide coverage in the event of the insurer's insolvency.

This regime is extremely safe and has stood the test of time. In the wake of the collapse of Executive Life Insurance Company in the early 1990s, regulators and industry responded with a series of reforms. Since that episode, not one retiree has lost *any* benefits due to a PRT. The same cannot be said for single-employer ERISA-governed pension plans. Close to a thousand such plans have failed since the 2008 financial crisis, resulting in billions of losses to plan participants—even when the Pension Benefit Guaranty Corporation ("PBGC") has partially covered those losses. Accordingly, Plaintiffs' speculation that Athene *might* someday fail, and all the other layers of protection would be inadequate to secure their benefits, does not "plausibly and clearly allege a concrete injury." *Thole*, 590 U.S. at 544.

Separation-of-powers and federalism principles also counsel against allowing these uninjured Plaintiffs to sue for the alleged violation of ERISA. "[T]he concrete-harm requirement is essential to the Constitution's separation of powers," because "the choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch,

not within the purview of private plaintiffs (and their attorneys)." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021). ERISA grants the Department of Labor ("DOL") extensive authority to enforce fiduciary conduct, including through litigation, and DOL would presumably do so if it saw hundreds of thousands of retirees at imminent risk of losing their retirement benefits through annuity buyout transactions like this one. Moreover, Congress has repeatedly recognized the critical role that state insurance regulators play in protecting beneficiaries, including with respect to pension plans. That is why ERISA's preemption statute includes an express carveout for "any law of any State which regulates insurance." 29 U.S.C. § 1144(b)(2)(A). Allowing suits like this one to go forward would invite the judiciary to encroach on regulatory turf occupied by the federal and state governments. The Court should decline that invitation.

And permitting suits like this to proceed, despite the absence of any concrete injury, will inevitably raise the costs of pension plans. If plan sponsors execute a PRT, there is almost nothing they can do to avoid being sued. For example, the Plaintiffs here fault Lockheed for choosing Athene rather than Prudential. Yet other employers that *did* choose Prudential, such as Verizon and IBM, were sued for that choice. And because transactions of this kind involve billions of dollars, the potential liability appears to be enormous even where no harm has occurred. That litigation risk will chill plan sponsors from pursuing an annuity buyout transaction

in the first place—even when doing so would be completely safe and economically beneficial for the company and its employees.

In the end, lawsuits of this kind will not protect retirees. They have received every penny they were promised and will continue to do so for the rest of their lives. Instead, these lawsuits deter plan sponsors from pursuing legally permissible, safe, and commonplace transactions that can help both employers and employees. This Court should rigorously enforce Article III's jurisdictional requirements and reverse the district court's order.

ARGUMENT

I. Annuity buyouts offer a safe and predictable way for employers to satisfy their pension obligations using heavily regulated annuity products.

Annuities play a significant role in the nation's private pension system and have for over a century. *See generally* James M. Poterba, Nat'l Bureau of Econ. Res., *The History of Annuities in the United States* (1997), https://tinyurl.com/2s4b2npu. One way that annuities play such a role is through PRTs—also called annuity buyout transactions—in which a plan sponsor transfers its pension obligations for some or all participants by using plan assets to purchase an annuity from an insurance company. U.S. Gov't Accountability Office, GAO-15-74, *Private Pensions: Participants Need Better Information When Offered Lump Sums That Replace Their Lifetime Benefits* 4-5 (2015) ("*Private Pensions*"), https://tinyurl.com/2acfcwaw. That purchase constitutes a distribution of benefits

that satisfies the employer's pension obligation, and the insurer assumes responsibility for making payments. *Id.* For retirees whose benefits were transferred, the *source* of their monthly benefits changes, but the *amount* of benefits and other features do not. *Id.*

ERISA expressly permits these annuity buyout transactions, *see* 29 U.S.C. § 1341(b)(3)(A), and the decision to engage in such a transaction is a "settlor" function not subject to ERISA's fiduciary obligations, *see Lee v. Verizon Commc'ns, Inc.*, 837 F.3d 523, 538 (5th Cir. 2016); *Private Pensions* at 6. PRTs are commonplace transactions. As DOL recently reported, between 2000 and 2022, single-employer plans purchased annuities to satisfy the pension obligations of more than 2.2 million plan participants, amounting to more than $52 billion in 2022 alone. *See* DOL, *Department of Labor Report to Congress on Employee Benefits Security Administration's Interpretive Bulletin 95-1*, at 5 (June 2024) ("*2024 DOL Report*"), https://bit.ly/4rNg4Gt.

A. Not a single retiree has lost any pension benefits due to a PRT in the past three decades.

Annuity buyouts are also safe, as decades of experience have proven. The ERISA Advisory Council[2] recently observed that, "over the past 30+ years, no one

[2] The ERISA Advisory Council operates pursuant to 29 U.S.C. § 1142. In the Secure 2.0 Act of 2022, Congress instructed DOL to consult with the ERISA Advisory Council to determine whether DOL's Interpretive Bulletin 95-1 should be amended.

has lost a penny under a PRT annuity." 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, at 4 (Aug. 29, 2023) ("*2023 ERISA Advisory Council Statement*"), https://tinyurl.com/2urfy3sm. "Despite massive changes that have occurred in the world of finance" in recent decades—including the 2008 financial crisis and the COVID-19 pandemic—there has not been "a single default or failure of any annuity" since the early 1990s. *Id.* at 1.

In fact, "[w]hile no insurer that provides pension annuity benefits has failed since the 2008 financial crisis, 931 single employer plans have failed." Am. Academy of Actuaries, *Issue Brief: Buy-Out Group Annuity Purchase Primer* at 14 (July 2023), https://bit.ly/3XzwEMl. These 931 *non-PRT* failures occurred between 2008 and 2015 and impacted over 560,000 participants. *See* NOHLGA, *Consumer Protection Comparison: The Federal Pension System and the State Insurance System* at 17-18 (May 22, 2016), https://bit.ly/4rhm22b; *see also* PBGC, *PBGC's Single-Employer Guarantee Outcomes,* 10-12 (May 2019), https://bit.ly/3LVLKJj.

Even the PBGC's director stated that he "did not think that a defined benefit plan with a PBGC guarantee was necessarily safer than an insurance company annuity backed by a state insurance guaranty association." DOL, ERISA Advisory

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See Pub. L. No. 117-328, Div. T, § 321, 136 Stat. 4459, 5356 (2022); *see also 2024 DOL Report* at 2-3; Compl. ¶ 56.

Council, *Private Sector Pension De-risking and Participant Protections* at 12 (Nov. 2013), https://bit.ly/48zcw2Y. Likewise, the Department of Treasury observed that "U.S. insurers are highly regulated by the U.S. states, in order to support their ability to meet their long term commitments to policyholders," whereas "[p]lan sponsors are not generally subject to similar regulation and are not typically in the business of retirement security." Letter from Jonathan Davidson, Assistant Sec'y for Legisl. Affairs, U.S. Dep't of the Treasury, to Sen. Sherrod Brown, at 4-5 (June 29, 2022), https://www.banking.senate.gov/imo/media/doc/fio_85.pdf (cited in Compl. ¶ 54).

Conspicuously, despite all their efforts to suggest that various annuity providers are about to implode, the Plaintiffs in this case (and those in similar cases) never allege that *any* PRT annuity provider has failed in this century. Indeed, the *only* example Plaintiffs can identify to support their assertion that "[t]he risk of insurance company failure is not merely hypothetical" is "[t]he collapse of Executive Life Insurance Company ('Executive Life') in the early 1990s." Compl. ¶ 33. But, as will be further detailed below, the response by regulators and industry to that episode has dramatically reshaped the landscape since then and introduced numerous layers of structural protection to protect PRT annuitants. *See* Meg Fletcher, *ELIC's Collapse Forces Regulatory Changes*, Business Insurance (May 9, 1999), https://tinyurl.com/bdzdrsh3 (discussing how "[t]he financial problems of [Executive Life] and other insolvent insurers at the beginning of the decade spurred

… regulatory changes" and that "48 states and the District of Columbia have adopted the package of laws and regulations governing areas such as investments, accounting practices, reinsurance and audits").

B. Annuity buyouts are heavily regulated to ensure that pension benefits are protected by numerous structural features.

Modern-day annuities (including those purchased through PRTs) are protected "through a comprehensive and interconnected set of laws and regulations that has served insurance consumers well for decades and can be expected to do so under any reasonably foreseeable circumstances in the future." Nat'l Org. of Life & Health Ins. Guaranty Ass'ns, *Pension Risk Transfers* at 6 (2025) ("*NOLHGA Report*"), https://bit.ly/3K48LJB.

States have enacted robust insurance regulations and oversight mechanisms governing annuity providers responsible for pension benefits. The key layers of protection include (1) solvency regulation and oversight under state insurance law, (2) segregation of assets used to fund annuity payments through a "separate account" structure, (3) reinsurance, and (4) backing by State Guarantee Associations ("SGAs") in the event of the insurer's insolvency.

1. State insurance regulations and oversight.

Following the model regulations propounded by the National Association of Insurance Commissioners (NAIC), states have adopted robust capital and reserving requirements for insurers, subject to oversight by state insurance commissioners.

See, e.g., U.S. Dep't of Treasury, The Impact of the International Insurance Capital Standard on Consumers and Markets in the United States, at 6-7 (Nov. 2024), https://bit.ly/4ob1xBh. For instance, state regulators require insurers to maintain "a statutory minimum level of capital," which is calculated based on a "risk-based capital" ("RBC") formula. *Id.* Such "RBC requirements consider the riskiness of an insurer's investments to determine capital requirements (*e.g.*, riskier assets have higher capital charges) and determine if an insurer is holding sufficient funds to make good on their financial promises to customers." *2023 ERISA Advisory Council Statement* at 3. If an insurer fails to maintain the requisite level of capital, state insurance regulators are empowered to intervene to address any risk of insolvency. *See NOHLGA Report* at 7.

Alongside minimum RBC requirements, states (again following NAIC's lead) have imposed requirements that insurers maintain adequate reserves to cover their expected obligations. *NOHLGA Report* at 8. And "state regulators are keenly aware of investment trends across the insurance sector," and they "closely scrutinize investments and investment portfolios." *2024 DOL Report* at 14. Moreover, "[e]very state also has a law that sets parameters over how an insurer can invest the funds it holds," and states "further regulate transactions between insurers and their affiliates and subsidiaries, as well as certain third-party transactions and reinsurance transactions." *NOHLGA Report* at 7.

State regulators also require mid-sized and large annuity providers to perform an "Own Risk Solvency Assessment" ("ORSA") to assess their risk management and solvency forecasts under various conditions, *id.* at 8, and to appoint an actuary to certify annually that the insurer has sufficient assets to support future obligations—known as "asset adequacy testing" ("AAT"), *see, e.g.*, Am. Academy of Actuaries, Asset Adequacy Testing Considerations for Year-End 2020, at 3 (Dec. 2020), https://bit.ly/4odeYRi; NAIC, Actuarial Opinion and Memorandum Regulation #822 (Apr. 2010), https://bit.ly/44jpVts.

While these solvency regulatory requirements (and others) apply to insurers (including Athene), they do not apply to plan sponsors, which are outside the ambit of state insurance regulation. 29 U.S.C. § 1144(b)(2)(B) (ERISA's Savings Clause).

2. Separate accounts.

In many PRTs (including Lockheed Martin's), the annuity provider segregates the assets devoted to pension liabilities in a separate account. This provides an additional layer of protection for the former plan participants because, "by state statute, the insurer cannot use the separate account assets for any purpose other than to pay the liabilities for which the separate account was established," and yet "[t]he insurer remains fully liable for all the annuity benefits it has guaranteed regardless of whether the separate account is sufficiently funded to cover the annuity benefits promised under the contract." *NOHLGA Report* at 5 n.4. Thus, even if the annuity

provider's general account were to become insolvent, the separate account exists to fund (and protect) pension beneficiaries. *Both accounts* would have to become insolvent for the insurer to default on its obligations to the pension beneficiaries. *See id.*; *see also 2024 DOL Report* at 19.

These separate accounts are themselves subject to regulatory oversight. Under Iowa's insurance laws, for example, Athene was required to submit a "plan of operation" for its separate account to the state insurance commissioner for approval before issuing any group annuity contracts. *See* Iowa Admin. Code §§ 191-96.1 to 191-96.12. That plan of operation must include a "description of the allowable investment parameters (such as objectives, derivative strategies, asset classes, quality, duration and diversification requirements applied to the assets held within the segregated portfolio)" and an explanation of "how the investments in the segregated portfolio reflect provision for benefits insured by the contract and how the contract value and market values and the rates of return may be affected by changes in the investment returns of the segregated portfolio." *Id.* § 191-96.5. And while plaintiffs lodge many accusations about the annuity provider's investment of its *general* account in allegedly risky assets, *e.g.*, *Spohn v. IBM Corp.*, No. 25-cv-12475, ECF No. 1 ¶ 27 (D. Mass. Sept. 5, 2025) (alleging Prudential "concentrates its investments in risky assets"); *Maneman v. Weyerhaeuser Co.*, No. 24-cv-02050, ECF No. 62 ¶ 68 (W.D. Wash. May 29, 2025) (similar for Athene), they

conspicuously offer *no* allegations that the separate accounts supporting their annuity benefits were invested in risky assets.

3. Reinsurance.

Another common feature of PRTs is the use of "reinsurance," which "provides an additional layer of protection for annuitants." *2023 ERISA Advisory Council Statement* at 10. When the assets supporting the annuity are reinsured, *both* the original insurer *and* the reinsurer would have to fail before the retirement benefits could be impacted. That is because "[a]n insurer's decision to reinsure an annuity that was part of a PRT does not relieve the annuity issuer of their obligation to pay certificate holders": "The annuity issuer selected by the plan fiduciary remains 100% liable for all annuities payments and reinsurance does not change that obligation." *Id.* at 2.

4. State Guaranty Associations.

As a final backstop, annuitants' pension benefits are also covered by SGAs. For PRT annuities, every state's guaranty association covers up to $250,000 in the present value of annuity benefits, while several SGAs offer more expansive coverage (up to $500,000). *See NOHLGA Report* at 11.

Given all the structural protections described above, SGA coverage is rarely invoked. Since the creation of SGAs in the 1980s, only a few dozen annuity providers (mostly smaller companies that could not have supported PRT

transactions) have been subject to liquidation since and, with the sole exception of Executive Life in the early 1990s before the substantial regulatory reforms, "none have included PRT annuities." *Id.* at 6-7.

* * *

Given this robust regulatory regime—much more robust than the regulation of an employer's management of the assets backing pension obligations—it is no surprise that employers and other ERISA fiduciaries have turned to annuities to place management of assets backing annuity obligations in the hands of financial professionals rather than maintain these employer obligations. PRTs are simply much safer today than they were 30 years ago. Plaintiffs' contentions otherwise are akin to complaining about the safety risks of modern SUVs by invoking accident data from 1980s station wagons, before seatbelts were required and airbags were commonplace.

II. Plaintiffs have not plausibly and clearly alleged any concrete injury.

Plaintiffs' claims should have been dismissed for lack of standing because they "failed to plausibly and clearly allege a concrete injury." *Thole*, 590 U.S. at 544; *see also Cunningham v. Cornell Univ.*, 604 U.S. 693, 708-709 (2025) (Article III requires courts to "dismiss suits that allege [ERISA violations] but fail to identify an injury"). As Lockheed's brief ably explains, under the Supreme Court's decision in *Thole*, the Plaintiffs here lack standing because they "have received all of their

monthly benefit payments so far, and the outcome of this suit would not affect their future benefit payments." 590 U.S. at 541. So, they "have no concrete stake in this lawsuit." *Id.* Amici here do not repeat those arguments, but instead highlight two critical doctrinal issues that have arisen in various PRT lawsuits thus far.

***"Increased risk" theory of standing*—**Plaintiffs in this case and others have argued that, as a result of a PRT, they "are now subject to an increased and significant risk that they will not receive the benefit payments to which they are entitled." Compl. ¶ 7. But that does not clearly and plausibly allege a future injury that is "certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). Indeed, "the requirement that threatened injury must be certainly impending" is not satisfied by a theory of standing that "relies on a highly attenuated chain of possibilities" or a "speculative chain of possibilities." *Id.* at 410, 414. As discussed above (at 11-16), Plaintiffs' pension benefits are safeguarded by numerous layers of protection—all of which would need to fail before Plaintiffs could suffer harm. The purported risk of future injury thus cannot support Article III standing. *See, e.g.*, *Camire v. Alcoa USA Corp.*, 2025 WL 947526, at *7 (D.D.C. Mar. 28, 2025) (rejecting essentially identical allegations of future injury because "there are several events that would need to take place before Plaintiffs could ever experience the harm they are concerned about"); *see also* Lockheed Br. 33-34. The district

court's decision *did not even mention* the "certainly impending" requirement articulated in *Clapper*.

In holding otherwise, the district court misunderstood the relevant standing inquiry. It reasoned that "Plaintiffs have adequately alleged facts, if only barely so, sufficient to conclude there is 'a substantially increased risk' that Athene will fail and Plaintiffs[] will suffer harm because of it." Op. 19. But an "increased risk" of harm relative to other insurers cannot, by itself, satisfy the "certainly impending" standard. *See FDA v. All. For Hippocratic Med.*, 602 U.S. 367, 381 (2024) ("The injury must be actual or imminent, not speculative—meaning that the injury must have already occurred *or be likely to occur soon*." (emphasis added)). After all, suppose the baseline risk of insurer default is 0.1%. Even a 10-fold increased risk of default by Athene would still result in only a 1% chance of future injury. That remote possibility may be substantially increased from the baseline, but it is nowhere near likely, much less imminent or certainly impending. *See Camire*, 2025 WL 947526, at *7 ("Plaintiffs do not allege that Athene is at a *high* risk of failure—just that it is at a *higher* risk of failure than other annuity providers," which "fail[s] to show 'a *substantial* probability of harm with that increase taken into account.'" (quoting *Pub. Citizen, Inc. v. Nat'l Highway Traffic Safety Admin.*, 489 F.3d 1279, 1295 (D.C. Cir. 2007))).

"Equitable exception" theory of standing—Plaintiffs here and in other PRT suits have also argued, and the district court said here, that alleging a breach of fiduciary duty *ipso facto* "confers standing for disgorgement and other forward-looking equitable relief." Op. 24-25. But there is no "forward-looking equitable relief" exception to Article III's requirement of individualized injury-in-fact, as *Thole* makes clear.

In *Thole*, the Supreme Court entertained arguments, like Plaintiffs' here, that ERISA plaintiffs need not demonstrate injury-in-fact so long as they allege a fiduciary breach. 590 U.S. at 538. The Court's rejection was unequivocal: "There is no ERISA exception to Article III." *Id.* at 547. Instead, the "ordinary Article III standing analysis" applies, including injury-in-fact. *Id.* Notably, the *Thole* plaintiffs themselves sought injunctive relief and disgorgement of profits, as the dissenting Justices repeatedly underscored. *See id.* at 541; *see also id.* at 551, 561 (Sotomayor, J., dissenting). Yet the plaintiffs' failure to plausibly allege injury-in-fact nonetheless meant they lacked standing to sue. *Id.* at 541-542 (majority opinion). That conclusion directly followed from the Court's earlier conclusion in *Clapper*, which itself concerned a request for equitable relief (an injunction) under a federal statute (the Foreign Intelligence Surveillance Act), and the Supreme Court held that plaintiffs were required to satisfy Article III's injury-in-fact element by affirmatively

demonstrating "threatened injury" that was not merely "reasonabl[y] likel[y]" but "certainly impending." 568 U.S. at 410.

Plaintiffs ask this Court to adopt the exact opposite rule. And the district court erroneously read dicta in this Court's decision in *Peters v. Aetna Inc.*, 2 F.4th 199 (4th Cir. 2021), to endorse such a result. *See* Op. 24. But *Peters* did not even involve a defined-benefit plan. And either way, *Peters* at most holds that "financial injury is not *specifically* required to create standing for disgorgement, injunctive, and declaratory relief in ERISA cases." *Camire*, 2025 WL 947526, at *5 (citing *Peters*, 2 F.4th at 219-221). But "that does not mean that Plaintiffs automatically have standing where they have alleged no actual injury at all." *Id.* "Plaintiffs fail to point to *any* injury—financial or otherwise," and that "dooms their equitable claims as well." *Id.*[3]

III. Allowing these uninjured Plaintiffs to sue would offend the separation-of-powers and federalism principles that underpin Article III.

As the Supreme Court has explained, "the concrete-harm requirement is essential to the Constitution's separation of powers." *TransUnion*, 594 U.S. at 429.

[3] The Supreme Court issued *Thole* a few months before this Court's decision in *Peters*, yet *Peters* did not mention *Thole*. To the extent *Peters* could be read as suggesting in dicta an ERISA exception to Article III's standing requirements for certain types of relief—critically, the *very same types of relief sought by the plaintiffs in Thole*—that is in direct conflict with Supreme Court precedent and must be rejected. Under binding Supreme Court precedent, ERISA plaintiffs must establish individualized injury-in-fact to sue, even when seeking statutory equitable relief.

When a plaintiff has not suffered any injury, she "is, by definition, not seeking to remedy any harm to herself but instead is merely seeking to ensure a defendant's 'compliance with regulatory law.'" *Id.* at 427 (citation omitted). But "the choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch, not within the purview of private plaintiffs (and their attorneys)." *Id.* at 429. And for good reason: "Private plaintiffs are not accountable to the people and are not charged with pursuing the public interest in enforcing a defendant's general compliance with regulatory law." *Id.*

Congress provided DOL numerous avenues to police breaches of fiduciary duties and other violations under ERISA, including bringing enforcement actions, 29 U.S.C. § 1132(a), assessing civil penalties, *id.* § 1132(l), and broad investigatory and subpoena authority, *id.* § 1134. Both Congress and DOL have extensively studied and examined trends and risks in the annuity pension market, as the Secure 2.0 Act and the *2024 DOL Report* demonstrate. *See* p. 8 n.2, *supra*; Compl. ¶ 56. The federal government is fully capable of investigating fiduciary decisions, including the selection of an annuity provider for a large PRT, for any ERISA violations. The government is accountable to the public and would presumably act if it believed that hundreds of thousands of retirees were at imminent risk of losing

their pension benefits. The Court should decline the invitation of uninjured Plaintiffs and their attorneys to encroach on the federal government's regulatory oversight.

Likewise, permitting this lawsuit to proceed would infringe the role of state insurance regulators—which form an integral part of the regulatory regime Congress envisioned. Even though ERISA broadly preempts many state laws, Congress intended state insurance laws to serve as a critical component in regulating pensions, including benefits that were originally governed by ERISA. ERISA's preemption statute therefore includes an express carveout for "any law of any State which regulates insurance." 29 U.S.C. § 1144(b)(2)(A). That deference to state insurance law comports with Congress's broader efforts to bolster state insurance regulators. *See, e.g.*, 15 U.S.C. § 1011 ("Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest …."); *id.* § 6701(b) ("No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law….").

As discussed above, state insurance regulators play an exceptionally prominent role in policing the solvency and reliability of insurers, including the many insurers (like Athene) who provide annuities for pension benefits. *See* pp. 11-16, *supra*. The wave of PRT litigation, of which this suit is just one example,

attempts to displace that robust regulatory system with ad hoc suits by uninjured private plaintiffs. Article III does not permit the judiciary to usurp that authority.

The Supreme Court has warned against interpretations of standing doctrine that "would interpose the federal courts as virtually continuing monitors of the wisdom and soundness of state fiscal administration, contrary to the more modest role Article III envisions for federal courts." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346 (2006) (quotation marks and citation omitted); *see also Ansley v. Warren*, 861 F.3d 512, 519 (4th Cir. 2017) (noting that "relaxing the bar against taxpayer standing for state taxpayers would raise serious federalism concerns"). Analogous considerations militate against adopting a loose form of standing that would permit unharmed private plaintiffs to wrest insurer-solvency regulation from the hands of state insurance commissioners and assign that task to federal courts instead.

IV. Article III's jurisdictional limitations are especially important where, as here, meritless lawsuits will likely cause extensive harm.

While Plaintiffs' supposed injuries are patently speculative, lawsuits of this sort can inflict very real harm on employers and pension plans even if the claims ultimately prove meritless. If Article III jurisdictional limitations are not rigorously enforced, virtually every plan sponsor that has executed an annuity buyout transaction could find itself defending against a huge class action seeking enormous sums of money.

The potential magnitude of these cases is staggering. The Lockheed PRT transactions that Plaintiffs challenge involve approximately $9 billion of pension liabilities transferred to the annuity provider. *See* Op. 7 n.6. Likewise, in *each* of the eight similar pending cases challenging PRTs, billions of dollars of pension liabilities were transferred.[4] Among other relief, the Plaintiffs here seek "disgorgement of the sums involved in the improper transactions." Compl. ¶ 5. Plaintiffs do not specify the precise amount they seek but, given the astronomical sums involved in the PRT transactions at issue, it is fair to assume that the liability sought is very high.

And these cases demonstrate that there is very little a plan sponsor can do to avoid being sued for selecting a supposedly "risky" annuity provider. For example, the Plaintiffs here allege that another insurer, Prudential, was a "Clear Candidate[]" for a safe annuity provider. Compl. ¶ 55. Plaintiffs thus fault Lockheed for choosing Athene rather than Prudential. Yet other plan sponsors (Verizon and IBM) *did* choose Prudential as the annuity provider—and they are being sued by former

[4] *See Spohn v. IBM*, No. 1:25-cv-12475 (D. Mass.) ($22 billion); *Piercy v. AT&T Inc.*, 2025 WL 2505660 (D. Mass. Aug. 29, 2025) ($8 billion); *Dempsey v. Verizon Commc'ns Inc.*, No. 1:24-cv-10004 (S.D.N.Y.) ($5.7 billion); *Camire v. Alcoa USA Corp.*, 2025 WL 947526 (D.D.C. Mar. 28, 2025) ($2.7 billion); *Bueno v. Gen. Elec. Co.*, 2025 WL 2719995 (N.D.N.Y. Sept. 24, 2025) ($1.7 billion); *Schoen v. ATI, Inc.*, 2025 WL 2970339 (W.D. Pa. Oct. 7, 2025) ($1.5 billion); *Maneman v. Weyerhaeuser Co.*, No. 2:24-cv-02050 (W.D. Wash.) ($1.5 billion); *Dow v. Lumen*, No. 1:24-cv-02434 (D. Colo.) ($1.4 billion).

participants in their plans anyway, based on essentially the same allegations that Plaintiffs here raise with respect to Athene. *See Spohn v. IBM*, No. 1:25-cv-12475, ECF No. 1 ¶ 21 (D. Mass. Sept. 5, 2025) (alleging that Prudential "is a high-risk annuity provider likely to fail"); *Dempsey v. Verizon Commc'ns Inc.*, No. 1:24-cv-10004, ECF No. 55 ¶ 16 (S.D.N.Y. Apr. 25, 2025) (same).

Or to take another example of the no-win situation plan sponsors are confronted with, consider the use of an independent fiduciary. As the Seventh Circuit recently explained, "[t]his court and others have long responded to ERISA fiduciaries' sometimes-conflicting interests by suggesting that the conflicted fiduciaries step aside in favor of new, independent fiduciaries who can focus exclusively on the interests of ERISA plan participants and beneficiaries." *Burke v. Boeing Co.*, 42 F.4th 716, 720 (7th Cir. 2022). Lockheed and many other plan sponsors did exactly that, hiring a professional independent fiduciary (*e.g.*, State Street Global Advisors Trust Company or Fiduciary Counselors, Inc.) to select the annuity provider. Instead of discouraging plaintiffs from suing them, however, the plaintiffs in those cases simply doubled down and sued *both* the plan sponsor *and* the independent fiduciary—and they have even alleged that the selection of the independent fiduciary was itself a breach of fiduciary duty. *See, e.g.*, *Doherty v. Bristol-Myers Squibb Co.*, 2025 WL 2774406, at *11 (S.D.N.Y. Sept. 29, 2025) (refusing to dismiss allegations that the plan sponsor "violated [its] fiduciary duty

by selecting State Street as the Plan's 'independent fiduciary' for the purposes of the Athene transaction"), *certified for interlocutory appeal*, 2025 WL 3204436 (S.D.N.Y. Nov. 17, 2025). No matter how carefully a plan sponsor proceeds, then, it can expect a gargantuan class-action suit.

If these lawsuits are allowed to proceed despite the lack of any concrete injury, plan sponsors will be sitting ducks for class-action strike suits filed by "plaintiffs with weak claims to extort settlements." *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 163 (2008). Indeed, courts have recognized the "ominous" prospects facing defendants in ERISA fiduciary-breach suits. *PBGC ex rel. St. Vincent Cath. Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013). Unless the suit is defeated at the motion-to-dismiss stage, the pressure to settle is overwhelming—even when the claims are meritless. Discovery is decidedly asymmetrical and exposes "the ERISA fiduciary to probing and costly inquiries and document requests about its methods and knowledge at the relevant times." *Id.* Litigation defense costs are often exorbitant,[5] which "elevates the possibility that 'a plaintiff with a largely groundless claim'" may pursue discovery

[5] Chubb, *A Surprise Twist in ERISA Class Action Trends In 2024*, at 2 (May 2025), https://bit.ly/492b8Gf ("Once an ERISA class action survives motion to dismiss, defense budgets skyrocket, requiring defendants to pay millions to defend spurious cases.").

as "an in terrorem increment of the settlement value." *Id.* (quoting *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 347 (2005)).

Such a reality "would impose high insurance costs upon" ERISA fiduciaries "and hence upon ERISA plans themselves," undermining Congress's "goal of containing pension costs." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262-263 (1993) (citation omitted). The surge in ERISA fiduciary litigation over the last several years has already "[h]arden[ed]" and "[s]cramble[d]" the fiduciary-insurance industry.[6] The risks of litigation have pushed insurers "to raise insurance premiums, increase policyholder deductibles, and restrict exposure with reduced insurance limits."[7] This dynamic will be aggravated if the new wave of PRT litigation is allowed to bypass traditional standing requirements.

Failing to rigorously enforce Article III's jurisdictional requirements will also chill plan sponsors from executing annuity buyout transactions from the outset. Rather than open themselves up to colossal class action suits, many plan sponsors will conclude that it is safer to avoid PRTs altogether—even when doing so would be perfectly safe and economically beneficial for everyone. As the American

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[6] Judy Greenwald, Business Insurance, *Litigation Leads to Hardening Fiduciary Liability Market* (Apr. 30, 2021), https://bit.ly/3ytoRBX; Jacklyn Wille, *Spike in 401(k) Lawsuits Scrambles Fiduciary Insurance Market*, Bloomberg L. (Oct. 18, 2021), https://bit.ly/307mOHg.

[7] Daniel Aronowitz, *Exposing Excessive Fee Litigation Against America's Defined Contribution Plans* 4, Euclid Specialty (Dec. 2020), https://bit.ly/3hNXJaW.

Academy of Actuaries has explained, "[r]isk transfer transactions can help a plan sponsor reduce its pension liability and related expenses, potentially improving the overall financial position of the plan sponsor and benefiting employees in other areas of the business." Am. Academy of Actuaries, *Issue Brief: Pension Risk Transfers*, at 12 (Oct. 2016), https://bit.ly/48XyPzz ("*American Academy of Actuaries Issue Brief*"). If the employer is unable to reliably predict its pension liabilities and optimize its business, they will be less likely to invest in new lines of business and capital improvements that can expand their operations, and employees who work there and depend on its financial stability are ultimately less secure.

If these lawsuits go forward, they will not protect retirees—who have received every penny they were promised and will continue to do so for the rest of their lives. Rather, they will simply turn a safe and common transaction that entrusts management of future liabilities to insurance professionals, whose core business is to manage exactly those liabilities and risks, into a litigation trap. This Court should not countenance that result.

CONCLUSION

The Court should reverse the decision below.

Date: December 10, 2025

Respectfully submitted,

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This brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,486 words, excluding the parts exempted by Rule 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on December 10, 2025.

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