



FOR IMMEDIATE RELEASE

November 19, 2019

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Supreme Court to Uphold Dismissal of Uninjured Pension-Plan Participants' Claims

(Thole v. U.S. Bank, N.A.)

“Plaintiffs are not permitted to seek relief in a federal court unless they have been injured by the defendant’s alleged misconduct. Here, the plaintiffs object to the way the defendants invested pension-plan assets, but they have not shown that the defendants’ conduct caused them any harm.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to affirm an appeals court’s dismissal of claims filed against administrators of a pension plan by two participants in the plan. The plaintiffs argued that the administrators acted imprudently by investing all of the pension plan’s assets in common stock, with the result that the value of plan assets decreased 27% in 2008 following the stock-market crash that year. WLF argues that the plaintiffs lack standing to sue under the Employee Retirement Income Security Act (ERISA) because they were uninjured by the alleged misconduct—their receipt of future pension benefits was never at risk.

The case involves U.S. Bank’s employee pension plan, which has more than 100,000 participants. The plan is a “defined-benefit plan,” which means that employees, upon retirement, are entitled to fixed periodic payments for the remainders of their lives. The employer bears the entire risk that plan assets may prove inadequate to cover all promised payments; it must pay into the plan the funds needed to cover any shortfall arising from an inadequate return on invested funds. If, on the other hand, a plan becomes overfunded, the employer need not make any contributions that year. Following the 2008 stock-market crash, the U.S. Bank plan was deemed somewhat “underfunded” (as measured by ERISA), and U.S. Bank made significant contributions to the plan for the next five years until the plan was once again overfunded.

WLF argues that the plaintiffs lack standing to invoke the jurisdiction of the federal courts because they were not injured by the defendants’ allegedly imprudent investment strategy. WLF notes that the plaintiffs have no ownership interest in the plan’s assets; their only interest is in receipt of their fixed pension benefits. In the absence of evidence that the alleged misconduct created any risk of nonpayment (particularly given U.S. Bank’s \$87 billion in liquid assets that were available as a back-up if the plan’s assets ever proved inadequate), the plaintiffs failed to show the injury-in-fact necessary for federal-court standing.

Celebrating its 42nd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

###