A Lawsuit to Protect Pensions From Climate Politics

WORKERS SAY NEW YORK PENSION FUNDS CAN'T USE THEIR SAVINGS TO SERVE BILL DE BLASIO'S POLICY GOALS.

By The Editorial Board
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New York City leaders have boasted about using worker retirement savings to advance their climate agenda. They may come to regret it after several city workers this month sued their pension funds for putting climate over financial returns.

This could be a significant test of politicized investment by public pensions. New York law and regulation impose strict fiduciary duties on trustees of such funds. Plans are required to invest "for the exclusive benefit of the participants and beneficiaries" and with "care, skill, prudence and diligence." State courts have ruled that trustees owe a "duty of undivided and undiluted loyalty" to retirees and workers.

Yet three big public pensions—the New York City Employees' Retirement System, Teachers' Retirement System of the City of New York, and Board of Education Retirement System of the City of New York—have instead made investment decisions based on climate goals. The three plans manage about $150 billion.

Former Mayor Bill de Blasio led this climate socialism in 2018 when he declared that city pension plans would have to divest fossil-fuel-related assets within five years to show the city is "leading the fight against climate change." The mayor, city officials and union representatives control the boards of the three pension funds, which complied with his orders.

"Our first-in-the-nation divestment is literally putting money where our mouth is when it comes to climate change," Mr. de Blasio crowed. But it's not his money. New York City's police and firefighter pension funds notably refused to divest from fossil fuels because it would violate their fiduciary duty.

"The money in the pension fund does not belong to us, nor to the comptroller, nor to the mayor," a police pension fund trustee explained. "It belongs to the active and retired police officers who have worked and sacrificed to earn their pensions. Our views on any social or political issue cannot enter into the equation. The same is true for the elected officials who sit on the board."

But social and political issues dominate the investment calculation of the city's progressive leaders. In 2021 pension trustees voted to double their plan investments in "climate change solutions" and committed to eliminating greenhouse-gas emissions from their portfolios by 2040 to ensure "we have a livable planet for future generations," to quote Mr. de Blasio.

In February the city employees' pension fund adopted a plan to "decarbonize the market, not just our portfolio, and keep fossil fuels in the ground." The plan lets trustees blacklist investment managers who "fail to comply with the parameters to align with science-based pathways to maintain global warming to 1.5 degrees Celsius."

This action “shows just how completely the Trustees have allowed non-pecuniary, climate-related objectives to become the lodestar in their management of Plan assets,” says the lawsuit filed in state court. The pension funds didn’t even take into account the potential costs of their policies, which could be large.

The lawsuit notes that the S&P 500 energy sector rose 58% in value last year. When pension funds don’t meet their target rate of return, taxpayers have to chip in more. New York City Comptroller Brad Lander’s budget forecast this year estimates that city taxpayers will spend nearly $10 billion over the next four years to make up for pension fund investment shortfalls last year.

As State Comptroller Thomas DiNapoli said in 2019, “You can’t lose sight of the fact that while we certainly want companies to do the right thing on climate change, at the end of the day we have to produce returns that support retirement benefits of 1.1 million New Yorkers.”

Government pension funds in other states have also made climate and social policy an investment focus, if not as brazenly as those in New York. The lawsuit puts the funds on notice that they can’t hijack worker savings to serve their own political purposes.

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