TEXAS V. BLACKROCK TESTS THE LIMITS OF PASSIVE INVESTMENT

WRITTEN BY JACK PATTARINI | EDITED BY LEAH BU.S.HRA

Introduction

In *Texas v. BlackRock* (2024), the State of Texas led a coalition of Republican Attorneys General against the 'Big Three' asset managers: BlackRock, Inc., State Street Capital, and The Vanguard Group, Inc. in the Eastern District Court of Texas.[1] The coalition alleged that the companies coordinated to suppress U.S. coal production, reducing competition in U.S. energy markets and raising prices for American consumers. The plaintiff States claim that the output reduction scheme originated from joint participation in climate initiatives—Climate Action 100+ (CA100+) and the Net Zero Asset Managers (NZAM) Initiative—which obligate signatories to meet prescribed targets to reduce coal production. According to the complaint, the Big Three violated Section 1 of the Sherman Act and Section 7 of the Clayton Act by using their collective ownership stake in nearly every major U.S. coal producer to lessen competition and generate excessive returns.[2]

On 1 August 2025, the U.S. District Court for the Eastern District of Texas largely denied the defendants' motions to dismiss, holding that the plaintiffs' claims were plausible.[3] Vanguard settled with the plaintiffs and was dismissed on 26 February 2026. Under the settlement, Vanguard agreed to pay $29.5 million and to adopt governance rules for its investments.[4] Admitting no wrongdoing, Vanguard committed to withdrawing from climate agreements such as NZAM and offered investors the option to vote proxies according to management

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[1] *State of Texas/Ken Paxton Aty General v. BlackRock, Inc.*, 6:24-cv-00437, (E.D. Tex. Nov 27, 2024) ECF No. 1, https://cdn.climatepolicyradar.org/navigator/U.S.A/2024/texas-v-blackrock-inc_6a3e4727457277f9a4158570b9856114.pdf

[2] *Texas v. BlackRock*, No. 6:24-cv-00437 at 7 (E.D. Tex, Nov 27, 2024).

[3] *Texas v. BlackRock*, No. 6:24-cv-00437 at 7 (E.D. Tex, Aug 1, 2025), Memorandum Opinion and Order on Motions to Dismiss, 5.

[4] *Texas v. BlackRock, Inc.*, No. 6:24-cv-00437 (E.D. Tex, 2026), Settlement Agreement, 1.

recommendations. The terms of the resolution do not hinder Vanguard's ability to fulfill its fiduciary obligations while assuring the plaintiff States of Vanguard's passivity. BlackRock and State Street remain active defendants, having filed answers denying all material allegations.

i. Antitrust Context

Attorney Samuel Dodd of Standard Oil first formulated the concept of the trust, intending to consolidate the dividends of multiple companies under a single set of shareholders who could then dictate the management structure and practices of the businesses under their control.[5] The Sherman Act was the first federal act to outlaw monopolistic business practices, dissolving trusts and restoring competition on an intrastate and interstate level.[6]

The Clayton Act expands the reach of the Sherman Act by outlawing mergers and acquisitions that will substantially reduce competition and serving on the board of directors for multiple competing firms.[7] The expansion of the Sherman Act was meant to address large investment banks gaining controlling interests in many major corporations.[8]

These antitrust acts were intended to protect competition and, thereby, consumers. The plaintiffs attempt to cast proxy voting and ESG commitments as an illegal conspiracy, using the Acts to target lawful conduct.

ii. Modern Investing and Fiduciary Duty

Modern investing bears little resemblance to the industrial economy that America's foundational antitrust laws were meant to regulate. Fiduciaries manage trillions of dollars in assets, regularly designing investment portfolios to include holdings in multiple competing firms

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[5] *Sherman Anti-Trust Act (1890) | National Archives*. National Archives, https://www.archives.gov/milestone-documents/sherman-anti-trust-act. Accessed 17 Feb, 2026.
[6] *Sherman Anti-Trust Act (1890)*, National Archives
[7] *Clayton Act, ch. 323, § 2, 38 Stat. 730, 731 (1914)*. https://www.govinfo.gov/content/pkg/COMPS-3049/pdf/COMPS-3049.pdf
[8] *Research Guides: This Month in Business History: Sherman Anti-Trust Act Signed Into Law*, n.d., https://guides.loc.gov/this-month-in-business-history/july/sherman-antitrust-act-enacted?st_source=ai_mode#:~:text=After%20he%20returned%20to%20the,2. Accessed 7 Mar, 2026.

within the same industry.[9] This practice reflects the principle of diversification, the basis of all standard investment practices, which maximizes long-term returns and minimizes risk.[10] According to Dr. Wajahat Gilani, Ph.D., a former quantitative analyst, “Managers like [diversification] because their investment fund isn't reliant on one stock performing well… For the diversified fund to do badly, the whole industry or market has to underperform, and when that happens, it is easier for a manager to justify their losses.”[11] Thus, an asset manager’s duty to seek such returns requires building portfolios that often include competing firms within an industry.

Asset managers owe investors and other beneficiaries a fiduciary duty to act solely in the beneficiary’s best financial interests.[12] This duty makes no exception for political preference, nor does it make accommodations for personal dogma. Managers must consider all material risks affecting portfolio performance to uphold their fiduciary duty, from changes in consumer preferences to regulatory shifts and climate risks. Modern Portfolio Theory, a foundational component of index investing and virtually all activity in all stock markets, asserts that holding a variety of stocks across an industry or sector reduces unsystematic risk (risk that is particular to a specific investment rather than a market).[13] In doing so, a financial manager can better isolate market-wide portfolio risks rather than risks by investment. The Big Three, who manage trillions of dollars in assets across virtually every sector of the U.S. economy, employ diversification by

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[9] The Harvard Law School Forum on Corporate Governance, *Common Ownership: Do Institutional Investors Really Promote Anti-Competitive Behavior?* December 2, 2018, https://corpgov.law.harvard.edu/2018/12/02/common-ownership-do-institutional-investors-really-promote-anti-competitive-behavior/#:~:text=Common%20ownership%2C%20sometimes%20referred%20to,are%20potentially%20severe%20and%20disproportionate. Accessed 17 Feb, 2026.
[10] Cfi Team, *Modern Portfolio Theory (MPT)*, Corporate Finance Institute, February 23, 2025, https://corporatefinanceinstitute.com/resources/career-map/sell-side/capital-markets/modern-portfolio-theory-mpt/.
[11] Wajahat Gilani, Ph.D., in discussion with the author. Apr 9, 2026.
[12] *Fiduciary Duty*, LII / Legal Information Institute, n.d., https://www.law.cornell.edu/wex/fiduciary_duty. Accessed 17 Feb, 2026.
[13] Cfi Team, *Modern Portfolio Theory (MPT)*.

investing in coal, oil, gas, and renewable energies to align risk with the broader energy market rather than its constituent stocks or industries.

iii. ESG & Environmental Commitments

Climate change has already had far-reaching effects on all levels of the economy. Homeowners in California, Florida, and Louisiana face increasing exposure to wildfires and flooding, leading to rising premiums and ineligibility for coverage.[14] In another instance, rapid changes in the electric vehicle industry and harsher regulations are leading to premature devaluation and write-offs in manufacturers' equipment that uses internal combustion engines.[15]

Climate change will restructure commerce, rendering certain business models and industries uneconomical;[16] ignoring such risks could constitute negligence if the fiduciary fails to identify a financially-material climate risk.[17] When asset managers independently recognize and act to mitigate climate risk in their portfolios, the effort goes entirely unnoticed by the public. It is only when a group of businesses agrees to specific guidelines for what constitutes a climate risk, such as those outlined by ESG, that it is mistaken for a conspiracy; this uniformity is a rational reaction to market conditions in reality. To treat such actions as evidence of an illegal conspiracy is a misunderstanding on the part of the plaintiffs regarding the realities of modern investing and the obligations of those who practice it.

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[14] United States Joint Economic Committee, *Climate Risks Present a Significant Threat to the U.S. Insurance and Housing Markets*, Climate Risks Present a Significant Threat to the U.S. Insurance and Housing Markets - United States Joint Economic Committee, December 16, 2024, https://www.jec.senate.gov/public/index.cfm/democrats/2024/12/climate-risks-present-a-significant-threat-to-the-u-s-insurance-and-housing-markets?st_source=ai_mode#:~:text=Climate%2Dexacerbated%20disasters%2C%20such%20as,public%20services%2C%20and%20disaster%20relief. Accessed 5 Mar, 2026.

[15] *Climate change: Impact on the auto industry credit risk depends on a climate scenario* (Moody's, August 26, 2025), https://www.moodys.com/web/en/us/insights/physical-transition-risk/impact-on-the-auto-industry-credit-risk-depends-on-a-climate-scenario.html. Accessed March 5, 2026.

[16] Caterina Lepore, and Roshen Fernando. *Global Economic Impacts of Physical Climate Risk*, IMF Working Papers 2023, 183 (2023), https://doi.org/10.5089/9798400254147.001. Accessed 3/7/2026.

[17] Naila Karamally and Nicholas Franco, Redefining Fiduciary Duty: Climate Risk, Stewardship, and the Transition Imperative (Arlington, VA: Center for Climate and Energy Solutions, 2025), 2, https://www.c2es.org/wp-content/uploads/2025/09/Fiduciary_Duty.pdf.

iv. Thesis Statement

This essay argues that, although the court correctly held that the pleadings survive motions to dismiss, the remaining claims will fail, concluding that BlackRock and State Street should ultimately prevail at trial. Part 1 will examine the Section 1 conspiracy claim and explain why the evidence of agreement between the defendants is weak. Part 2 analyzes the Section 7 claim and shows why the "solely for investment" safe harbor likely protects the defendants.

Assessing Conspiracy According to Section 1 of the Sherman Act

To establish a Section 1 violation, the plaintiff must prove "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations."[18] The Supreme Court has routinely upheld that the standard for proof of conspiracy requires evidence of "a conscious commitment to a common scheme designed to achieve an unlawful objective."[19] The plaintiff States in *Texas v. BlackRock* have not met this standard. While the court found that the plaintiff States had adequately alleged a conspiracy based on "parallel conduct and plus factors," the evidentiary standard is higher at later proceeding stages.[20]

i. Lacking Proof of Section 1 Conspiracy

The complaint rests on the notion that the Big Three publicly committed to climate initiatives and voted to align with them. That is not enough to establish a conspiracy. In *Bell Atlantic Corp. v. Twombly* (2007), the Supreme Court set the standard for a Section 1 conspiracy: "While a showing of parallel 'business behavior is admissible circumstantial evidence from which' agreement may be inferred, it falls short of "conclusively establish[ing] agreement or . . .

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[18] *15 U.S.C. § 1, Sherman Act, ch. 647, § 1, 26 Stat. 209 , (1890)*. 1.
[19] *Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 760-764 (1984)*. 2.
[20] *Texas v. BlackRock (2024)*. Memorandum Opinion (Aug 2025), 33.

itself constitut[ing] a Sherman Act offense."[21] To qualify, evidence must prove unambiguously that such conduct was made by agreement.[22]

Evidence of agreement is circumstantial as of publication, where the case is currently in active litigation and discovery proceedings; the plaintiffs identify no communications, meetings, or agreements among the defendants regarding coal output, voting, or any other avenues for potential anticompetitive conduct. The plaintiffs cite independent decisions to join climate initiatives, such as CA100+ and NZAM, and the goals set out by these organizations as evidence of illegal conspiracy. Under the *Twombly* ruling, parallel conduct alone is insufficient to suggest an agreement when it is consistent with rational business decisions, such as a common belief that climate change poses material financial risks to the companies' investments. The complaint neglects to mention any evidence even suggesting a link between any of these independent decisions, let alone a concrete instance of the Big Three deliberately tampering with coal company management that would be necessary to prove Section 1 conspiracy.

ii. Parallel Conduct Claim vs. Independent Action

The plaintiff States cite three specific actions in alleging parallel conduct: joining climate initiatives, publicly acknowledging climate risk in statements, and occasionally voting against coal company management. However, these actions are equally explainable as independent business decisions.

First, the SEC voted to end the defense of its climate disclosure rules in March 2025.[23] While the future of mandatory climate disclosures is uncertain, the SEC has also stated that climate-related disclosures will remain for companies if it is deemed materially significant to

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[21] *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)*
[22] *City of Pontiac Police & Fire Ret. Sys. v. BNP Paribas Sec. Corp.*, 92 F.4th 381, 391 (2d Cir. 2024).
[23] U.S. Securities and Exchange Commission, "SEC Votes to End Defense of Climate Disclosure Rules," press release, March 27, 2025, https://www.sec.gov/newsroom/press-releases/2025-58.

shareholders. This aligns with the SEC's track record of requiring material risk disclosures before the second Trump administration. Federal securities laws have long required disclosure of environmental concerns under the traditional materiality standard.[24] A fact is material if there is a substantial likelihood a reasonable investor would view it as significantly altering the "total mix" of information available.[25] Despite the SEC's changes, each defendant's decision to disclose climate risks to portfolios may be independently consistent with their fiduciary responsibilities, as materiality remains the touchstone for disclosure.

Second, the climate initiatives do not contain any provisions for collective action. To the contrary, CA100+ states in their Investor Expectation document that CA100+, "does not require or seek collective decisionmaking or action with respect to acquiring, holding, disposing and/or voting of securities. Signatories are independent fiduciaries responsible for their own investment and voting decisions and must always act completely independently to set their own strategies, policies, and practices based on their own best interests."[26] After joining these initiatives, each of the Big Three issued statements affirming to continue acting independently according to their fiduciary responsibilities.[27]

Finally, the proxy votes identified by the plaintiffs do not show a conspiracy. BlackRock and State Street voted against coal company management for failing to disclose climate risks adequately. However, the Big Three never voted in a coordinated group.[28] Furthermore, Reuters

[24] Kristy Balsanek et al., "Horizon – News and Trends in Sustainability Law." DLA Piper, March 28, 2025, https://www.dlapiper.com/en-sk/insights/publications/horizon/2025/horizon-esg-regulatory-news-and-trends-march-2025

[25] Paul Munter, "Assessing Materiality: Focusing on the Reasonable Investor When Evaluating Errors," U.S. Securities Exchange Commission, March 9, 2022, https://www.sec.gov/newsroom/speeches-statements/munter-statement-assessing-materiality-030922

[26] Climate Action 100+, "Investor Expectations for Diversified Mining," 2023, 3.

[27] BlackRock "BlackRock's 2030 net zero statement," Apr 2022, https://web.archive.org/web/20230921213259/https://www.blackrock.com/corporate/sustainability/2030-net-zero-statement

[28] *Texas v. BlackRock, Inc.* (2024). Second Amended Complaint (SAC) (E.D. Tex. Jan 16, 2025), ECF No. 145

reported, “Vanguard never voted against coal company management or directors.”[29] These actions shatter the inference of parallel conduct.

iii. Speculative Evidence of Conspiracy

The complaint does contain other allegations that merit consideration. The plaintiffs cite CA100+’s alignment metrics and the defendants’ public commitments to use voting policy to achieve net-zero goals.[30] Additionally, in an analysis of BlackRock’s Investment Stewardship Annual Reports, the plaintiffs note that “BlackRock voted against 55 directors on climate-related issues in the 2019-20 proxy season, but it voted against 255 directors on climate-related issues in the 2020-21 proxy season.”[31] As stated previously, parallel conduct is not enough on its own as stated under *Twombly*. Each defendant’s conduct is independently explainable as fiduciary risk management, even as the SEC rolls back its climate disclosure rules under the Trump Administration.[32]

In *Matsushita Electric Industrial Co. v. Zenith Radio Corp.* (1986), the Supreme Court held that, “conduct as consistent with permissible competition as with illegal conspiracy does not, standing alone, support an inference of antitrust conspiracy.”[33] While *Twombly* alone does not discount circumstantial evidence of conspiracy, the inference of conspiracy is insufficient under Matsushita, thereby making the case for inferred conspiracy weak in *Texas v. BlackRock*.

iv. Addressing the Hub-and-Spoke Theory

The complaint features further Section 1 conspiracy claims, notably that “CA 100+ signatories were agreeing, in effect, to organize and police an output reduction cartel, to play the

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[29] Shivani Tanna, Ross Kerber, “Top fund managers ask U.S. court to dismiss climate-related antitrust lawsuit.” Reuters, March 18, 2025, https://www.reuters.com/legal/blackrock-vanguard-state-street-ask-court-dismiss-us-antitrust-lawsuit-2025-03-18/
[30] *Texas v. BlackRock, Inc. (2024)*. 46.
[31] *Texas v. BlackRock, Inc. (2024)*. 77.
[32] SEC, "SEC Votes to End Defense…"
[33] *Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 597 (1986)*.

role of the hub in a hub-and-spoke reduction arrangement."[34] This parallels the argument brought in *Interstate Circuit, Inc. v. United States* (1939) but differs in its critical assumptions. In *Interstate Circuit*, movie distributors and theater operators agreed to set a minimum admission price for first-run feature films to keep ticket prices high at first-run theaters. Movie distributors (the hub) explicitly told each exhibitor (the spokes) that all exhibitors had agreed to the same price restrictions, which the exhibitors then accepted. *Texas v. BlackRock* presents no allegation that any climate initiative undertaken by the defendants deceived any of the asset managers into joining. While a conspiracy taking on a hub-and-spoke structure does not require deceiving the spokes into agreement, there is no claim that each alleged 'spoke' knew of the others' participation by means of the hub. Additionally, each initiative's public guidelines are both general and aspirational, where no consequences hold for acting out of alignment with their goals.

iv. Per Se Violation of Section 1 vs. Rule of Reason

In the Memorandum Opinion and Order on Motions to Dismiss, the plaintiffs argue that the alleged agreement to reduce coal output is a *per se* violation of Section 1, that is, a horizontal agreement among competitors to restrict output.[35] In doing so, the plaintiffs would not have to analyze the actual anticompetitive effects of the conspiracy. However, even if such an agreement explicitly existed, it would not be *per se* unlawful if it were ancillary to a legitimate investment strategy. In *NCAA v. Board of Regents of the University of Oklahoma* (1984), the Supreme Court held that output restraints are evaluated under *per se* rules and the *rule of reason* when they are part of a legitimate enterprise to gauge the competitive significance of output restraint.[36] Any

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[34] *Texas v. BlackRock, Inc. (2024)*. 48.
[35] *Texas v. BlackRock (2024)*. Memorandum Opinion (Aug 1, 2025), 4.
[36] *National Collegiate Athletic Association v. Board of Regents of University of Oklahoma, 468 U.S. 85, 104 S. Ct. 2948, 82 L. Ed. 2d 70 (1984)*.

alleged coordination was ancillary to the legitimate purpose of meeting real market demand for ESG products and regulatory signals.

While the complaint lists figures showing the coal industry's decline, the plaintiffs would have to prove that the defendants' conduct actually produced this effect, thereby harming competition.[37] However, this would also allow the defendants to demonstrate that their engagement and voting policies improve corporate governance, reduce risk, and enhance shareholder value. The plaintiffs have not attempted to satisfy the burdens placed by the *rule of reason*.

v. Output Reduction as Necessary Action

The plaintiffs' central argument to allege conspiracy revolves around reduction targets established by the climate initiatives, citing CA100+ and their express goal to reduce thermal coal production by 50% by 2030, and that by committing to align with CA100+, the defendants necessarily agreed to force output reduction.[38] By conflating the outcome of CA100+ with specific actions to accomplish the emissions target, the plaintiffs critically misrepresent the agreement between the climate initiatives and defendants. Coal companies can reduce their emissions through various means other than output reduction by making existing processes more efficient, carbon capture, among others. However, even if the defendants desired lower output, that desire alone is not agreement.

Section 7 Liability & Passive Investment

Apart from the flaws in the Section 1 claim, the plaintiffs' other claim regarding acquisition and holding of substantial shares in competing coal companies is equally unconvincing. First, the "solely for investment" exemption shields passive investors. Excluding

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[37] *Texas v. BlackRock (2024)*. 88.
[38] *Texas v. BlackRock (2024).* 44.

this exception, the plaintiffs have not credibly alleged that the defendants' acquisitions threaten a substantial lessening of competition under longstanding antitrust standards.

i. The "Solely for investment" exemption

Section 7 of the Clayton Act states the act "shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition."[39] As further elaborated by the Supreme Court in *United States v. E. I. du Pont de Nemour & Co.* (1957), "[a]cquisitions solely for investment are excepted, but only if, and so long as, the stock is not used by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition."[40] The exception exempts passive investors who, by definition, do not influence the management of their holdings and, therefore, cannot harm competition in the way the plaintiffs claim. Nowhere in the filings do the plaintiffs allege that the Big Three acquired their coal companies holdings for any purpose other than investment. While the complaint acknowledges that the defendants hold diversified holdings across the coal industry, as they do everywhere else, such diversification is foundational to modern portfolio management.[41] [42]

The plaintiffs attempt to question the defendants' passive investor status by claiming the defendants used their shares, by means of engagement and proxy voting, to pressure coal companies to reduce output. Share "use" stipulated by Section 7 is with respect to use bringing about a substantial lessening of competition.[43] Engaging with portfolio companies regarding governance issues, including disclosing material risks like climate change, does not qualify as "use" according to Section 7 of the Sherman Act. As the FTC and DOJ explained in their

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[39] *Clayton Act (1914), 15 U.S.C. § 18. 12.*
[40] *United States v. E. I. du Pont de Nemours & Co., 353 U.S. 586 (1957).*
[41] *Texas v. BlackRock, Inc. (2024)*. 1.
[42] Cfi Team, *Modern Portfolio Theory (MPT).*
[43] *Clayton Act (1914), 15 U.S.C. § 18. 12.*

Statement of Interest, “even passive asset managers play a critical role in corporate governance matters by conferring with directors and management on best practices for governance structures and oversight processes.”[44] While their joint Statement of Interest asserts that “[the] Defendants overstate the protections under Section 7 for acquisitions made ‘solely for investment,’ and incorrectly claim that “the statutory exception ‘gives bright-line protection to passive minority investors, without subjecting them to further analysis,’” the Statement’s interpretation of the exception is entirely novel and warrants scrutiny. While Congress added the “solely for investment" exemption to protect ordinary investing activities, the Statement of Interest is the first time a federal antitrust body has recognized specific corporate governance activities as permissible, such as board structure discussions, compensation policy engagement, and reporting standards.[45] Though the Statement of Interest supports the plaintiffs’ reading of Section 7, the exemption remains a viable defense as the “use” of shares is arguably routine corporate governance.

ii. Substantial Lessening of Competition

If the passive investor exception did not apply, the plaintiffs’ Section 7 claim would still fail as they have not credibly alleged that the defendants’ stock acquisitions substantially lessened competition in the coal industry. Section 7 liability requires evidence that an investor’s holdings give it the power to influence competition between its portfolio companies.[46]

The plaintiffs’ complaint lacks any allegation that the defendants have, let alone have exercised, the power to dictate coal company output. The defendants are minority shareholders in every local company listed in the complaint. Combining these holdings does not confer control

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[44] *Texas v. BlackRock*, No. 6:24-cv-00437 (E.D. Tex. May 22, 2025), ECF No. 99.
[45] Jeetander Dulani, Nicci Warr, “FTC and DOJ Provide Critical Clarity on Passive Investment Rules Under Antitrust Law,” Stinson, Aug 4, 2025, https://www.stinson.com/newsroom-publications-ftc-and-doj-provide-critical-clarity-on-passive-investment-rules-under-antitrust-law#:~:text=Under%20Section%207%20of%20the,input%20or%20even%20to%20advocate:
[46] *United States v. Du Pont & Co., 353 U.S. 586 (1957).*

as per the FTC and DOJ guidelines as the plaintiffs provide no evidence that the defendants' influence was anything but hypothetical.[47]

iii. DOJ/FTC Guidelines

The 2023 Merger Guidelines, jointly published by the Department of Justice and Federal Trade Commission, explicitly and comprehensively address partial acquisitions and common ownership. In the complaint, the plaintiffs cite Guideline 11, titled "When an Acquisition Involves Partial Ownership or Minority Interests, the Agencies Examine Its Impact on Competition."

The guidelines acknowledge that the acquisition of partial control or minority interest "may still influence decision-making at the target firm or another firm in ways that may substantially lessen competition."[48] Within this analytical framework lie three principal anticompetitive effects of interest: (1) the ability to influence competitive conduct of the target firm, (2) the reduction of the incentive of the acquiring firm to compete, and (3) giving the acquiring firm access to nonpublic, competitively sensitive information from the target firm.[49]

However, the guidelines implicitly recognize the "solely for investment" exemption, seeing as passive investors do not participate in or direct business decisions of the issuer. Consistent with passive investment under the antitrust laws, the FTC and DOJ have clearly stipulated that certain corporate governance engagements, such as those relating to climate risks, can be considered consistent with passive investment provided they do not cross into directing competitive conduct.

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[47] *2023 Merger Guidelines. 11.*
[48] *2023 Merger Guidelines. 28.*
[49] *2023 Merger Guidelines. 29.*

Conclusion

The court correctly denied the defendants' motions to dismiss. Because the evidentiary standard being higher in summary judgement, the defendants are likely to prevail. The plaintiffs will be unable to produce direct evidence implicating the defendants in an agreement to influence coal output, cannot prove parallel conduct was coordinated, and fail to establish a causal link between the defendants' proxy votes and any output decision. Vanguard's settlement will not resolve the fundamental weaknesses in the plaintiffs' case against the remaining institutions either, seeing as Vanguard admitted no liability per the conditions of the settlement.

The surviving claims should ultimately be dismissed in summary judgement. If they proceed to trial, the Eastern District Court of Texas should enter judgement in favor of BlackRock and State Street. The antitrust laws were designed to protect competition and should remain faithful to their longstanding interpretations rather than adopting a Command school approach subject to changes in administration.[50]

[50] I would like to personally thank Dr. Gilani for his assistance certifying and enhancing the financial concepts presented in this paper. Your participation and encouragement has been invaluable to this work.