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PENSIONS - ALABAMA

[Ex parte Bronner](#)

Supreme Court of Alabama - December 31, 2014 - So.3d - 2014 WL 7403996

Public employee and teacher brought putative class action against CEO of Employees' Retirement System, who was also the CEO of the Teachers' Retirement System, and the Retirement Systems, and officers and members of the boards of the Systems, alleging that defendants breached their fiduciary duties. More specifically, the plaintiffs objected to the investment in Alabama-based investments that they alleged resulted in lower returns than could have been obtained via other investments. The Circuit Court denied defendants' motion to dismiss. Defendants sought writ of mandamus.

The Supreme Court of Alabama held that:

- Prudent-man rule did not advance a specific duty that could have served as a basis for a court order to the executive branch to take certain action going forward, as would surmount sovereign immunity;
- Beyond-authority exception to sovereign immunity did not apply; and
- Permanent injunction requiring Systems to follow prudent-man rule would have run afoul of the separation of powers.

The "prudent-man rule," which allows boards of state retirement systems to approve, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with the matters would use in the conduct of an enterprise of a like character and with like aims, investments in bonds, mortgages, stocks, and other investments, did not advance a specific duty that could have served as a basis for a court order to the executive branch to take certain action going forward, as would surmount the wall of sovereign immunity from action by public employee and teacher against CEO of the retirement systems, and officers and members of their boards for breach of fiduciary duty.

Granting permanent injunction to public employees requiring state retirement systems to follow the prudent-man rule and refrain from investing in any Alabama-based investment that the CEO, officers, or boards of the systems were aware or expected would yield less of a return than alternative or other investments would have run afoul of the separation of powers. Employee and teacher sought a mere reiteration in a court order of what was already the statutorily-prescribed standard applicable to the investment decisions, and the complex task of continually analyzing, comparing, and choosing from among the myriad of different investment vehicles available in the sophisticated investment world was a task delegated by the legislature to the executive branch and to the boards of control in particular.