

The Fiduciary Focus

Investment News From a Pro-Shareholder Perspective

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This Week: Supreme Court makes it easier to sue over DEI; Airlines plan to hike fares to pay for net zero goals; The Bitcoin Brief looks at biotech's bet on Bitcoin.

Supreme Court Makes It Easier to Sue Over DEI



On Thursday, a unanimous Supreme Court [ruled](#) that members of the majority are entitled to the same protections against discrimination as racial and sexual minorities, making it easier for employees to bring so-called reverse discrimination suits.

The case at hand:

- The plaintiff, Marlean Ames, alleged that the Ohio juvenile detention program she worked for discriminated against her because she was straight.
- She applied for a promotion, but it was given to a lesbian. Days later, she was demoted, and her old job was given to a gay man. The supervisor making these decisions was also gay.
- When Ames sued, the lower court applied a higher standard to her claim because she's not a minority. Rather than just prove discrimination, she had to show "background circumstances" suggesting her employer was hostile to straight people in general.
- All nine justices disagreed with this double standard and threw out the "background circumstances" test. Now, all employees—gay, straight, white, black, male, and female—need only prove they were discriminated against on the basis of a protected characteristic.

Justice Thomas chimes in: Justice Thomas joined the Court's opinion, but wrote separately to explain why he believed the "background circumstances" requirement was "nonsensical." Originally, courts made it harder for straight, white males to sue because they believed that it would only be in the most "unusual" circumstances that an employer would discriminate against a member of the majority group. But today, that kind of discrimination is rampant. As he explained:

[A] number of this Nation's largest and most prestigious employers have overtly discriminated against those they deem members of so-called majority groups. American employers have long been "obsessed" with "diversity, equity, and inclusion" initiatives and affirmative action plans. Initiatives of this kind have often led to overt discrimination against those perceived to be in the majority.

(citations omitted).

The DEI reckoning accelerates: The decision comes as DEI programs face mounting public and legal scrutiny.

- The law firm Gibson Dunn [reports](#) a "steady increase" in DEI-related litigation since the Harvard decision outlawing affirmative action in higher education.
- They predict that removing the "background circumstances" hurdle "will supercharge the current wave of reverse discrimination lawsuits by removing a significant obstacle for plaintiffs."
- Major companies, including Starbucks, Meta, Expedia, CBS, and Johnson & Johnson, have already been sued.

The bottom line: The Supreme Court has confirmed what it's been saying for years: discrimination is discrimination, whether it is done in the name of affirmative action or DEI or some other supposed social good. All of it is illegal. For companies that have taken the outreach approach when it comes to reassessing the risks of their DEI policies, now would be a good time to take their head out of the sand.

Airlines Plan to Hike Fares to Pay For Net Zero



Last week, the airline industry wrapped up a two-day summit where they confirmed their commitment to net zero goals, despite warning that they will pass those costs onto flyers to meet them, [Reuters](#) reports.

The Soaring Cost of Net Zero: Jet fuel is the largest source of emissions for airlines, but sustainable aviation fuel (SAF) costs about four times more than its conventional counterpart. All told, airline executives anticipate a \$4.2 billion cost to meet net zero goals by 2050. That means one thing: higher fares. "Going forward as we see increases in carbon costs, there has to be an impact on ticket prices as the industry transitions to net zero. The airlines cannot absorb increased costs," International Air Travel Association head Willie Walsh has previously said. Lufthansa Airline already charges a green fee of \$1 to \$78 per flight. Others could follow. None of this seems calculated to maximize value for shareholders.

Legal Turbulence Ahead?: The industry's calculated coordination on net zero goals—particularly coupled with increasing costs for consumers—also presents substantial antitrust risk.

- Already, [Texas](#) has sued asset managers for using net-zero pressure to reduce coal output, raising prices for consumers.
- And former Federal Trade Commission Chair Lisa Khan has made clear there is [no ESG exception](#) to the antitrust laws.

Strive Pushes the Call Button: The industry's commitment to net zero isn't new; nor is Strive's opposition. In our engagement with [Southwest](#) in 2023, we criticized the airline's commitment to purchasing sustainable jet fuel, despite its high cost and low supply. Not much has changed. While, following our engagement, Southwest softened its commitment to explain that "[p]rocurring increasing volumes of SAF for our operations is subject to a number of uncertainties outside our control," meaning that sustainable fuel may not be available "on commercially reasonable terms, if at all," Southwest continues to pursue its plans to make 10% of its jet fuel sustainable by 2030.

Where This Lands: With public support for net zero [waxing](#) even amongst those concerned about climate change, it's unlikely that these moves will help the airlines' bottom lines. Instead, airlines should get back to basics: delivering fast, reliable, affordable air travel for consumers.

SEC Commissioner Warns Against ESG



Last week, SEC Commissioner Hester Peirce shared her [views](#) on the ESG movement, including how it harms regulators, companies, and investors, and what the SEC is doing about it.

The Harms of ESG:

- **For Society:** ESG hurts society by rewarding the most politically powerful players, with the best lobbyists, with access to capital, while claiming it is picking favorites based on which companies and projects make the world a better place;
- **For Regulators:** "Regulators, often driven by good intentions, have poured countless hours into devising and implementing ESG frameworks," which has deprived them of the resources needed to meet their other responsibilities.
- **For Companies:** "ESG initiatives coming from every level of government and reinforced by grifting, silver-tongued sustainability sirens consume tremendous amounts of corporate resources. Employees across the organization spend time collecting and analyzing ESG data—time which otherwise would be directed toward corporate value maximization... ESG considerations influence product and supplier choices to the detriment of a company's long-term value."
- **For Investors:** Investors have suffered too. "These lengthy [ESG] disclosures are time-consuming and distracting to prepare and give ample fodder for costly shareholder class action litigation and SEC enforcement actions. In one recent case, a throwaway line about the recyclability of coffee capsules led to a \$1.5 million penalty. Increasing disclosure increases litigation risk."

How to Fix It: Commissioner Peirce shared how both states and the federal government are trying to solve these problems.

- At the state level, states are requiring asset managers to be "clear about what is driving their investment decisions" to ensure they fulfill their fiduciary duties.
- Federally, the SEC has rescinded guidance making it easier for ESG activists to bully companies via shareholder resolutions, and Commissioner Peirce recommends amending the SEC rulebook to tie all disclosure requirements to financial materiality.
- The Department of Labor has also been hard at work, engaging in new rulemaking to protect retirees and pensioners from ESG activism, as we also reported last week.

The Bottom Line: While rolling back pro-ESG regulations is a good start, the private sector also has an important role to play. For years, ESG activists have embedded themselves in sustainability groups and DEI departments in Wall Street firms and across corporate America. Rooting them out will take more than a regulatory shift; it will take an intentional, concerted effort to return to business fundamentals.

Bitcoin Brief



Biotech Companies Are Leading Bitcoin's Treasury Revolution

Last week, former Ripple executive Greg Kidd acquired [Kona Labs](#) for 1,000 Bitcoin plus cash, planning to transform it into a Bitcoin treasury company. The move follows at least [six other biotech companies](#) that have added Bitcoin to their corporate reserves since late last year. What started as a handful of isolated experiments has become a clear trend—and highlights why Bitcoin makes perfect sense for an industry facing challenging times.

The sector has been trapped in what industry insiders call the "biotech winter" since the post-Covid crash. Venture funding evaporated, inflation and interest rates spiked, and regulatory timelines stretched even longer than usual. For an industry that burns cash for years before seeing revenue, the traditional playbook suddenly stopped working.

Biotech companies occupy an almost paradoxical financial position: they're simultaneously cash-rich and cash-vulnerable. They raise large amounts upfront through IPOs or private rounds, then must preserve that capital while navigating approval processes that can take 10+ years to complete.

The problem? Inflation doesn't wait for FDA approvals. While these companies sit on massive cash reserves in near-zero yield accounts, their purchasing power steadily erodes. In an inflationary environment, preserving nominal value means accepting real losses.

That's where Bitcoin comes in. Companies like [Semler Scientific](#), [Atai Life Sciences](#), [Quantum BioPharma](#), [Enveda Therapeutics](#) and smaller players like [Hoth Therapeutics](#) and [ActoRx Therapeutics](#) have all added Bitcoin to their treasuries. [Vivanta Therapeutics](#) announced similar plans last week. They're not gambling or trying to get attention—they're solving a specific problem that traditional finance cannot address.

[Atai Life Sciences](#) founder Christian Angermayer frames the issue clearly: the current biotech winter exposes firms to financial risks during the approval process. "This context sets the stage for considering nonventional treasury moves—like adding Bitcoin to the treasury—to address the twin threats of inflation and low-yielding reserves, and in general to optimize and maximize shareholder value."

The Kona Labs deal shows how mature this thinking has become. Kidd isn't making a speculative play—he's deploying institutional capital allocation strategies that recognize Bitcoin's unique properties for patient capital. And critically, Kona Labs is continuing its proprietary diagnostic research; the plan is simply to use Bitcoin to maximize shareholder value and supercharge the logic for those efforts.

But while biotech may be leading this charge, the funding applies far beyond drug development. Any company sitting on significant cash reserves faces the same fundamental challenge—that fiat currency loses purchasing power over time. Given this reality, nearly all companies would benefit from Bitcoin treasury strategies. Biotech just happens to be feeling the pressure most acutely right now.

That might not be true for long. [TechCrunch](#) reported that startup shutdowns rose in 2024 as firms failed to secure additional funding; they predict 2025 will likely be another "brutal" year. In this environment, optimizing treasury management isn't just about returns, it's about survival. Companies that can stretch their runways by preserving purchasing power have a meaningful advantage.

Other capital-intensive industries should also take note. Aerospace, infrastructure, and energy face similar challenges with patient capital requirements. But even companies with shorter cycles should understand that traditional treasury management strategies can leave them either undercapitalized and vulnerable to market swings, or holding onto assets that are slowly deteriorating in value.

In other words, biotech's Bitcoin adoption story isn't really about biotech at all. It's about the evolution of corporate finance in response to monetary reality: in a world of infinite money expansion, finite assets have inherent advantages.

STRAIGHT FROM STRIVE

Strive CEO Speaks at The Bitcoin Conference

How much Bitcoin should states, nations and companies hold? As much as possible, Strive CEO Matt Cole explained.

To learn why, check out his comments at The Bitcoin Conference below.

[Watch Here](#)

Voting Spotlight: Netflix

NETFLIX

Each week during proxy voting season, Strive will highlight one interesting vote from a recent company's annual meeting.

Last week, Strive voted for a [proposal](#) asking Netflix to drop its affirmative action policies. The proponent noted that affirmative action has increasingly come under legal scrutiny and that several companies have faced costly litigation over their DEI policies. Creative these risks, Netflix continues to run programs, like its Netflix Fund for Disruptive Equity, that use racial and sex-based criteria.

The company opposed the proposal with a blanket statement that it has a compliance program and complies with all requisite laws.

Strive supported the proposal because we believe that companies that use merit-based criteria to select employees, vendors, and products are more likely to outperform those that do not and because we agree that Netflix's affirmative action policies create significant, and unnecessary, financial risks for Netflix's shareholders.

The Best of The Best

Additional stories about ESG investing, company happenings, and more.

- [Corporate mentions of DEI drop 72% in 2023](#) as term has come under public scrutiny.
- ["Demand-side policies crucial for net-zero heating, say researchers"](#), translations: people don't want to sacrifice creature comforts for net-zero goals, so governments should force them to do so.
- [Nvidia amends corporate code to attract more companies](#); will allow companies to waive jury trials and clarifies law regarding controlling shareholders.
- [Grand Theft Auto publisher swears DEI for "diversity of thought"](#) in annual report; 10-K removes any mention of LGBTQ+ rights or social justice issues.
- [Indiana's comptroller calls on SEC to delist Chinese companies](#): "As stewards of invested public funds, we have a responsibility to protect our beneficiaries from foreign entities to seek to exploit our capital markets while evading accountability," comptroller wrote.
- [Azeri inks deal with Azerbaijan's SOCAR to explore onshore oil production](#): "Azeri has proven oil reserves of 7 billion barrels and proven natural gas reserves of 1.7 trillion cubic metres," Reuters reports.

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Who Are We?

Strive is one of the fastest growing asset management firms. Our mission is to maximize value for our clients by leading companies to focus on excellence. [Click here](#) to learn more.

What Makes Strive Different?

While many asset managers push companies to focus on other stakeholders such as employees, suppliers, the environment and society at large, we live by a strict commitment to shareholder primacy—the belief that the purpose of a for-profit corporation is to maximize long-run value for investors. [Click here](#) to learn why shareholder primacy is so important.

How Does Strive Maximize Value?

Our corporate governance team engages with the companies in which our clients are invested to advocate for the pursuit of excellence in corporate America. We are aggressively apolitical when it comes to utilizing our corporate governance tools and demand that companies focus exclusively on delivering long-term financial value for investors. The corporate governance team also determines how to cast our shareholder votes at annual meetings and special elections, evaluating each proposal through the lens of maximizing financial return.

Our research team conducts deep analysis of macro economic trends, market developments, and industry- and company-specific metrics to identify potential risks and opportunities for our clients. We then incorporate the results of this research into our engagement and voting strategy, and share it with our clients in the form of white papers and market research reports so they can make the most educated investment decisions possible.

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