ENSURING THAT "WOKE" DOESN'T LEAVE AMERICANS BROKE: PROTECTING SENIORS AND SAVERS FROM ESG ACTIVISM

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

NOVEMBER 7, 2023

Serial No. 118–FC16

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PUBLISHING OFFICE
54–911 WASHINGTON : 2024

COMMITTEE ON WAYS AND MEANS

JASON SMITH, Missouri, *Chairman*

VERN BUCHANAN, Florida
ADRIAN SMITH, Nebraska
MIKE KELLY, Pennsylvania
DAVID SCHWEIKERT, Arizona
DARIN LaHOOD, Illinois
BRAD WENSTRUP, Ohio
JODEY ARRINGTON, Texas
DREW FERGUSON, Georgia
RON ESTES, Kansas
LLOYD SMUCKER, Pennsylvania
KEVIN HERN, Oklahoma
CAROL MILLER, West Virginia
GREG MURPHY, North Carolina
DAVID KUSTOFF, Tennessee
BRIAN FITZPATRICK, Pennsylvania
GREG STEUBE, Florida
CLAUDIA TENNEY, New York
MICHELLE FISCHBACH, Minnesota
BLAKE MOORE, Utah
MICHELLE STEEL, California
BETH VAN DUYNE, Texas
RANDY FEENSTRA, Iowa
NICOLE MALLIOTAKIS, New York
MIKE CAREY, Ohio

RICHARD E. NEAL, Massachusetts
LLOYD DOGGETT, Texas
MIKE THOMPSON, California
JOHN B. LARSON, Connecticut
EARL BLUMENAUER, Oregon
BILL PASCRELL, Jr., New Jersey
DANNY DAVIS, Illinois
LINDA SÁNCHEZ, California
BRIAN HIGGINS, New York
TERRI SEWELL, Alabama
SUZAN DelBENE, Washington
JUDY CHU, California
GWEN MOORE, Wisconsin
DAN KILDEE, Michigan
DON BEYER, Virginia
DWIGHT EVANS, Pennsylvania
BRAD SCHNEIDER, Illinois
JIMMY PANETTA, California

Mark Roman, *Staff Director*
Brandon Casey, *Minority Chief Counsel*

C O N T E N T S

OPENING STATEMENTS

WITNESSES

PUBLIC SUBMISSIONS FOR THE RECORD

United States House Committee on
Ways & Means
CHAIRMAN JASON SMITH

FOR IMMEDIATE RELEASE CONTACT: 202-225-3625
October 31, 2023
No. FC-17

Chairman Smith Announces Hearing on Ensuring that "Woke" Doesn't Leave Americans Broke: Protecting Seniors and Savers from ESG Activism

House Committee on Ways and Means Chairman Jason Smith (MO-08) announced today that the Committee will hold a hearing on protecting Americans' savings in tax-advantaged retirement plans from investment decisions that are rooted in non-financial factors. The hearing will take place on **Tuesday, November 7, 2023, at 10:00 AM in 1100 Longworth House Office Building.**

Members of the public may view the hearing via live webcast available at https://waysandmeans.house.gov. The webcast will not be available until the hearing starts.

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record can do so here: WMSubmission@mail.house.gov.

Please ATTACH your submission as a Microsoft Word document in compliance with the formatting requirements listed below, **by the close of business on Tuesday, November 21, 2023**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee.

The Committee will not alter the content of your submission but reserves the right to format it according to guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Please indicate the title of the hearing as the subject line in your submission. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

ACCOMMODATIONS:

The Committee seeks to make its facilities accessible to persons with disabilities. If you require accommodations, please call 202-225-3625 or request via email to WMSubmission@mail.house.gov in advance of the event (four business days' notice is requested). Questions regarding accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the Committee website at http://www.waysandmeans.house.gov/.

###

ENSURING THAT "WOKE" DOESN'T LEAVE AMERICANS BROKE: PROTECTING SENIORS AND SAVERS FROM ESG ACTIVISM

TUESDAY, NOVEMBER 7, 2023

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The Committee met, pursuant to call, at 10:01 a.m. in Room 1100, Longworth House Office Building, Hon. Jason T. Smith [Chairman of the Committee] presiding.

Chairman SMITH. The committee will come to order. Good morning.

Like many Americans, seniors and those living on fixed incomes have been decimated by President Biden's inflation crisis. The cost of goods and services has risen 17.7 percent—17.7—since Joe Biden became President. You can chart the rise in prices, starting with his first full month of Joe Biden's presidency and the rapid decline in American standard of living, as $5 of pay now buys only $4.25 of goods and services.

Yet Democrats in Congress and the Biden White House insist the economy is as healthy as ever. Not only has President Biden's inflation crisis harmed working families, but it has also endangered millions of seniors and those nearing retirement. Right now, 25 percent of Americans plan to delay their retirement, and 62 percent of women say they expect to retire later, or don't believe they will ever be able to retire, because of inflation. Every single day, roughly 10,000 Baby Boomers reach retirement age. Yet due to the President's cost-of-living crisis, one in six seniors are considering going back to work. The number-one reason they cite is simply lack of money.

Seniors who retired before President Biden took office haven't been spared, either. Inflation has eroded retirement accounts for even the most diligent savers. For example, a retirement portfolio valued today at $250,000 would buy the same amount of goods as $137,100 in 2000.

Make no mistake, the Democrats' reckless spending agenda caused this problem, and now their radical ESG agenda threatens what is left of seniors' retirement. Democrats are trying to enshrine so-called environmental, social, and governance ideology into America's financial system by removing protections for savers in the tax code. This political crusade threatens the 33 trillion Americans have saved for retirement.

As a committee, we have a responsibility to ensure that tax-advantaged retirement plans offer security to American seniors and future retirees. The tax code imposes strict requirements on every professional who manages tax-advantaged retirement plans in order to protect our seniors. The law states that state governments and the private sector must manage these accounts for the exclusive benefit of retirees. This standard has been in place for decades, and it predates rulemaking by the Department of Labor on fiduciary duties. Working families need that protection to prevent Wall Street money managers from putting climate alarmism and far-left policies ahead of their retirement security.

But over the last couple of years, we have seen the ESG agenda turn into a pressure campaign that allows—in some cases, forces—investment advisers to gamble with retirees' nest eggs. According to Bloomberg, investors have pulled back over 280 billion from ESG-targeted stocks since August of last year, and for good reason. According to our staff analysis of the top 20 ESG investment funds, ESG funds performed 18 percentage points worse than the stock market as a whole during the past year. A report on ESG investing produced by the Committee to Unleash Prosperity cites a review published by Boston College in 2020 that found "pension funds with an ESG orientation lagged those of non-ESG funds by 2 basis points per year over a 10-year period."

Requiring retirement plan managers to invest in ESG funds is reckless and a danger to the system. We have the responsibility to protect, as members of the Ways and Means Committee.

The Trump Administration's Department of Labor issued rules prohibiting Wall Street managers from investing Americans' retirement savings in woke ESG special interests. The purpose of the rules was to remind retirement plan managers of their sole responsibility: protect and build retirement security. The Biden Administration reversed course with a superseding rule that favors ESG activism and then went as far as to veto a congressional resolution back in March that would have corrected this error.

This committee has a duty to ensure that our tax rules support Americans' financial security. We have a responsibility to put the needs of seniors ahead of climate extremists and far-left activists who want to use retirement savings to finance a political agenda.

I hope my colleagues on the other side of the aisle will do what is right and join us in protecting our seniors. I look forward to today's discussion.

Chairman SMITH. And I am pleased to recognize the ranking member, Mr. Neal, for an opening statement.

Mr. NEAL. Thank you, Mr. Chairman. I wish this was a markup. I would be prepared to call the question. [Laughter.]

Mr. NEAL. The last two Congresses will be remembered by those who watched carefully—historic, bipartisan retirement wins that this committee put forward. Many people have asked me how we would follow those successes, or what would be the contours of SECURE 3.0. I am working on it.

I certainly never expected this majority would start retirement policy with woke, broke, and legislation that is so far outside of our jurisdiction. I would argue that all policy areas are ripe for bipartisan progress, but especially retirement, and all we are offered here is a manufactured crisis meant to distract the base from the lack of legislating.

Contrast that with the fruits of our legislative achievements. Last week, our nation crossed the threshold of 14 million jobs created under Joe Biden. The unemployment rate is below 4 percent for 21 months in a row, the longest stretch in 50 years. Meanwhile, more working-age Americans have jobs than they did before the pandemic, inflation has fallen by 60 percent, and the economy, remarkably enough, grew by 4.9 percent last quarter.

Our investments empowered workers, created the environment that made it possible for the United Auto Workers to secure outstanding contracts that recognized record growth of the big three. Their wage wins, more paid leave, stronger retirement security, and other wins will reverberate throughout our economy and continue strengthening the job market.

None of this happened by accident. It is the result of the growing economy from the bottom up and the middle out, and Democrats have continued to rewrite the playbook, putting American workers and families first and doing away with Republican failed trickle-down economics that reward the wealthy and the well connected.

The key piece of economic security is retirement savings. Democrats will continue to defend the principle and belief of the Social Security Retirement System. Retirement policy has also been the focus of my career, as everybody knows. I am extremely proud of what we have done with the bipartisan work from this committee that made it easier to save.

In the SECURE Act, we eliminate outdated barriers, making it easier for small businesses to offer retirement plans and require part-time workers to be included in 401(k) plans. From these changes, it is estimated that four million Americans will now be able to participate in their employer retirement vehicle.

Last year we doubled down on the success with SECURE 2.0, which expanded the Saver's Credit to the benefit of lower-income savers and automatically enrolls eligible workers in those plans. These changes have made serious headway in making it easier for working Americans to save for retirement.

Ways and Means Democrats did the right thing for red states and blue states by fighting to include the Butch Lewis Act in the American Rescue Plan. A reminder: when that legislation was on the House floor separately, 30 Republicans voted for it.

After a lifetime of playing by the rules and saving for retirement, millions were at risk of losing their hard-earned pensions, and the provisions that came out of this committee saved families and our economy from irreversible harm. Today, 770,000 plans have already been rescued. Two million people tonight will get a good night's sleep because of what we did.

While this is welcome progress, there is still a retirement crisis in our country. Half the people that get up and go to work every day in America are not in a qualified retirement plan. About half of all working-age households are at risk of being unable to maintain their pre-retirement standard of living. There is work to be done in the retirement space, and the best way to ensure that Americans are saving more is helping them make more, and that is what we should be talking about this morning.

Yet here we are, following one of the most productive congresses in recent history with now one of the most unproductive. The biggest threats to Americans' retirement security are calls for cuts to Social Security, which have come from two Senate prominent Republicans, and the obsession and the hysteria with fringe issues which clearly are not part of this committee's jurisdiction.

Could you imagine a lifetime of hard work when you are being told by some that you cannot choose how to invest your retirement savings? The public isn't interested in being told what to do by the government. Politicizing retirement policy jeopardizes workers' hard-earned savings, and that is the last thing the American people need.

We should be focused this morning on enhancing retirement opportunities, using the tax code, marrying it to the continued support we have for Social Security, and offering an opportunity for all Americans to save more. We are twenty-second in the world in terms of retirement savings. We should be far ahead of countries like Denmark and Iceland as we proceed.

Mr. NEAL. So with that, Mr. Chairman, I look forward to the testimony we are about to hear, and I yield back the balance of my time.

Chairman SMITH. Thank you, Mr. Neal. I will now introduce our witnesses.

Preston Rutledge is principal and founder of Rutledge Policy Group, LLC, and the former assistant secretary of labor for the Employee Benefits Security Administration.

We have—Jason Isaac is director of Life:Powered, and is a former member of the Texas State House of Representatives.

Marlo Oaks is the state treasurer of Utah.

Mason Bolay is senior vice president of First Bank and Trust Company.

And Brandon Rees is deputy director of corporations and capital markets for the AFL–CIO.

Thank you for joining us today. Your written statements will be made part of the hearing record, and you each have five minutes to deliver opening remarks.

Mr. Rutledge, you may begin when you are ready.

[Pause.]

Chairman SMITH. Let's make sure that you have a working microphone.

[Pause.]

Chairman SMITH. Can you move Mr. Isaac's microphone over to Mr. Rutledge?

Mr. RUTLEDGE. Can you hear me now?

Chairman SMITH. Yes, we can. Thank you.

Mr. RUTLEDGE. Sorry, I didn't mean to say it quite that way. [Laughter.]

STATEMENT OF THE HON. PRESTON RUTLEDGE, PRINCIPAL AND FOUNDER, RUTLEDGE POLICY GROUP, LLC

Mr. RUTLEDGE. Chairman Smith, Ranking Member Neal, and members of the committee, thank you for inviting me to testify today. I am Preston Rutledge, and I am pleased to provide comments to the committee. My written testimony contains details on the history of the administrative guidance on ESG retirement plan investing. I will just briefly highlight a few points from my statement.

The Employee Retirement Income Security Act, ERISA, passed in 1974, requires plan fiduciaries to invest retirement plan assets solely in the interest and for the exclusive purpose of providing benefits to participants. A similar rule, the Exclusive Benefit Rule, is part of the Internal Revenue Code.

Over the years, the DoL has grappled with issues related to retirement plan investments that seek to provide collateral benefits. That is, benefits that would be in addition to retirement benefits. The form and formality of the guidance has changed over the years, and so has the collateral benefit terminology. But the fundamental principle of exclusive purpose has remained: non-economic factors cannot justify accepting lower financial returns or higher investment risk in pursuit of collateral benefits.

In the 1990s, questions arose over the use of economically-targeted investments, ETIs, often intended to provide both jobs and retirement income. The DoL had become concerned that its early guidance had created a perception that investments in ETIs were not compatible with ERISA. The Department issued new guidance in 1994, providing that if an ETI met the standard of a risk return analysis, it would be compatible with ERISA. It later issued an opinion that came to the same conclusion with respect to the inclusion of a socially responsible mutual fund in a planned investment lineup.

DoL replaced the 1994 guidance in 2008, clarifying that consideration of non-economic factors, while allowed, should be rare and, when considered, should be documented to demonstrate compliance with ERISA. The guidance also provided that if two or more investments—alternatives are of equal value to a plan, a fiduciary may choose between the investments based on a non-financial factor.

In 2015, the Department expressed concern about confusion over collateral investment behaviors such as ESG investing. New guidance concluded that the fiduciary standards applicable to ESG investing, including the addition of an ESG-themed fund to a planned investment lineup, are no different than the standards applicable to planned investments generally. If the prudence and exclusive purpose standards are met, such investments will not violate ERISA, said the DoL.

In 2020, the Department issued the first ESG regulation that sought formal public comment. The 2020 final rule utilized the terms “pecuniary” and “non-pecuniary” to describe financial and non-financial factors for use in a fiduciary’s risk return analysis. Now, that terminology derived from a 2014 Supreme Court decision stating that the exclusive purpose of providing retirement benefits under ERISA must be understood to refer to financial benefits such as retirement income and not non-pecuniary factors.

The 2020 DoL regulation also banned the selection of an ESG-themed fund as a plan’s default investment. Now, a default investment is used by employees that do not make an investment choice. Actually, it is used by the employers because the employees haven’t made an investment choice. They default into that, and the DoL was concerned that more protections were needed for plan participants who declined to make an investment choice.

In 2021, the DoL engaged in new rulemaking. The DoL expressed concern that the 2020 rule discouraged plan fiduciaries from considering climate change and other ESG factors in investment decisions. The 2022 regulation removed the pecuniary and non-pecuniary terminology and lifted the ban on an ESG-themed fund as the plan's default investment, as long as the fund was otherwise prudent. The Department stated that fiduciaries may consider climate change and ESG factors but that the new rule did not change the longstanding principle that ERISA plan fiduciaries may not accept lower returns or higher risks in pursuit of collateral benefits.

This committee has always taken a leading role in promoting a strong and stable retirement system. It has provided significant tax subsidies and incentives to establish and operate reliable workplace retirement plans. The administrative guidance over the years has been remarkably consistent in supporting these core goals by making the focus on financial performance of retirement investments paramount.

Thank you, Mr. Chairman. I am happy to answer questions.

[The statement of Mr. Rutledge follows:]

Statement

of

The Honorable Preston Rutledge

to the

United States House Ways and Means Committee

Hearing on

Ensuring that "Woke" Doesn't Leave Americans Broke: Protecting Seniors and Savers from ESG Activism

November 7, 2023

I am pleased to provide comments to the House Ways and Means Committee on the history and evolution of the Department of Labor ("DOL") guidance on ESG investing by ERISA governed retirement plans.

I am Preston Rutledge, the Founder and Principal of the Rutledge Policy Group. I am the former Assistant Secretary of Labor, and, in that capacity, I led the Employee Benefits Security Administration which has oversight and regulatory responsibility for ERISA employee benefit plans. Prior to assuming the position of Assistant Secretary, I served eight years as the Senior Tax and Benefits Counsel for the Senate Finance Committee, Republican staff. I also served in senior capacities at the Internal Revenue Service and the Office of Chief Counsel, and for many years in private ERISA practice.

DOL History on ESG Investing

The Employee Retirement Income Security Act ("ERISA") was enacted in 1974. The statute includes a prudence standard that requires fiduciaries to discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to the participants and their beneficiaries.[1] The solely in the interest standard and exclusive purpose standard are bedrock principles of ERISA and are reflected in the Department's guidance.

The Department has a long history of addressing the use of retirement assets for collateral purposes, that is, for purposes other than or in addition to the provision of retirement benefits to plan participants and beneficiaries. For almost 50 years following the enactment of the historic retirement protection legislation the Department has opined in various forms on the appropriateness of the use and investment of employee retirement funds. I will provide the Committee with a brief history of the evolution of guidance in this area.

The DOL has addressed collateral investment practices in a number of forms, including Interpretive Bulletins ("I.B.s"), Field Assistance Bulletins ("FABs"), and Advisory Opinions (a "DOL Adv. Op." or "AO"). Interpretive Bulletins provide guidance of general applicability to plan sponsors and plan fiduciaries to help them understand their responsibilities under ERISA. Field Assistance Bulletins provide DOL investigators and enforcement staff with clarifications and policy changes. I.B.s and FABs are developed and issued under the Department's general authority to administer the laws and regulations under its jurisdiction. They may reflect changes or clarifications based on court decisions, legislative changes, or interpretations of the Department.

[1] ERISA Section 404(a)(1)

Individuals and organizations may also request specific guidance from the Department. Requests related to ERISA employee benefit plans are handled by the EBSA Office of Regulations and Interpretations under provisions established by ERSIA Procedure 76-1. EBSA responds to inquiries in the form of AOs or Information Letters. AOs apply the law to a specific set of facts submitted by the requestor. Information Letters are used to call attention to established principles or interpretations.

The Department also addresses issues though rulemaking subject to the Administrative Procedures Act, which includes notice-and-comment rulemaking. Issues related to investment practices, the duties of fiduciaries and collateral benefits have been addressed in a variety of these forms throughout the years. I will highlight significant ESG guidance and rulings that the Department has issued throughout the years.

Early Guidance

Advisory Opinions and Information Letters

Soon after the enactment of ERISA the Department was asked to opine on investment practices and collateral benefits. In the first two decades after the enactment of ERISA, the guidance was in the form of Advisory Opinions and Information Letters. A small sample of such guidance is summarized below, which generally reiterated the Department's position that plans could not subordinate a participant's interest in retirement benefits to the pursuit of collateral benefits.

DOL Adv. Op. 85-36A (October 23, 1985)

The DOL addressed the question whether the trustees of a pension plan could make an investment which was part of an overall agreement obligating an insurance company to invest a specified amount of insurance company assets in construction mortgages within the geographic jurisdiction of a union whose members were participants in a pension Fund. The agreement would also have required the insurance company to make such investments in construction projects employing only labor represented by a union and subject to a collective bargaining agreement.

The DOL pointed out that because the investment would cause the plan to forego other alternative investment opportunities, the investment would not be prudent if it provided the plan with less return, in comparison to risk, than comparable available investments. Additionally, the Department noted the investment would not be prudent if it involved a greater risk to the security of plan assets than other investments offering a similar return.

The DOL construed the requirement that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. The DOL observed that a decision by a fiduciary to make a plan investment may not be influenced by a desire to stimulate the construction industry and generate employment, unless the investment, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan.

DOL Adv. Op. 88-16A (December 19, 1988)

In 1988, the DOL was asked to address whether a company and a union may recommend that a plan allocate up to five percent of annual contributions to investments in residential mortgages in communities with substantial numbers of union members, and loans to nonprofit institutions in communities with large concentrations of union members.

The DOL concluded that the investments, with the potential to provide collateral benefits to union members, would be appropriate under ERISA only if the investment manager retained exclusive investment discretion and was required to obtain the maximum attainable total return, consistent with sound pension fund management. Also, the DOL stated that the plan fiduciary could be influenced by facts not related to investment return only if the investment is equal or superior to alternative available investments.

Information Lette to Mr. Kevin E. Davis (July 17, 1991)

In response to an inquiry whether an ERISA fiduciary may consider the fact that a securities firm is minority-controlled when deciding whether to retain the firm for securities execution services, the DOL responded: "[i]n deciding whether and to what extent to engage a service provider, fiduciaries must ordinarily consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. Such decision may not be influenced by non-economic factors unless the services provided, when judged solely on the basis of economic value to the plan, would be equal or superior to services otherwise available to the plan."

A significant theme of these examples of early DOL guidance was that non-economic factors or collateral benefits could not justify higher risk or supplant maximizing financial return to the plan.

Second Generation Guidance

Interpretive Bulletins and Clarifications

By the 1990s, questions arose over the use of economically targeted investments ("ETIs") by retirement plans. ETIs are investments selected for the economic benefits they create, such as jobs, in addition to the investment return to the retirement plan.

Some plan sponsors and fiduciaries were concerned that the early guidance did not fully address whether ETIs were appropriate. DOL was also concerned that its early guidance had created a perception within the investment community that investments in ETIs were not compatible with ERISA's fiduciary standard. The Department decided to issue an Interpretive Bulletin to address the issue.

Interpretive Bulletin 94-1, 59 FR 32606 (June 23, 1994)

I.B. 94-1 was the DOL's first formal broad-based guidance setting forth the DOL's views with respect to a plan fiduciary's decision to invest plan assets in ETIs. The DOL referred to "certain broad principals" established through previous guidance, principally that ERISA's fiduciary duty provisions require the investment manager to retain exclusive investment discretion and obtain the maximum attainable total return, consistent with sound pension fund management.

The I.B. states that the ERISA investment duties regulation requires the fiduciary to give appropriate consideration to the relevant facts and circumstances, and that consideration of the relevant facts and circumstances includes considering available alternative investments, and not choosing an investment (1) with a rate of return lower than available alternative investments with commensurate degrees of risk, or (2) with higher risk than available alternative investments with commensurate rates of return.

The DOL concluded that ETIs are compatible with ERISA's fiduciary duty obligations if the decision to invest follows these principles.

DOL Adv. Op. 98–04A (May 28, 1998)

Following the issuance of I.B. 94-1, the DOL issued an Advisory Opinion expressing the view that ERISA does not preclude consideration of collateral benefits, such as those offered by a "socially responsible" mutual fund, in a fiduciary's decision to designate an investment alternative in an ERISA section 404(c) participant-directed individual account plan. In many ERISA plans, the plan trustee or plan fiduciary makes all investment decisions. However, certain defined contribution plans give participants investment options within a suite of available options selected by the plan trustee. These plan accounts are commonly referred to as participant-directed accounts, or self-directed accounts, because they allow the participant to exercise an amount of independent control over the investment of their individual assets. The DOL stated that the question whether a particular fund or investment alternative satisfies the requirements of ERISA, including section 404(c) is an inherently factual question that the appropriate plan fiduciaries must decide based on all the facts and circumstances of the individual situation.

Interpretive Bulletin 2008-1, 73 FR 61734 (October 17, 2008)

In 2008, the DOL modified and superseded I.B. 94-1 relating to ETIs with I.B. 2008-1. The new I.B. addressed the limited circumstances under which fiduciaries may, in connection with investment decisions, take into account factors other than the economic interests of the plan.

I.B. 2008-1 clarified that a fiduciaries consideration of noneconomic factors (1) should be rare, and (2) when considered, should be "documented in a manner that demonstrates compliance with ERISA's rigorous fiduciary standards."

Fiduciaries may never subordinate the economic interests of the plan to unrelated objectives and may not select investments on the basis of any factor outside the economic interest of the plan, except in very limited circumstances. The DOL concluded that proper consideration of the relevant facts and circumstances includes giving appropriate consideration to the role that the investment plays in terms of such factors as diversification, liquidity, and risk/return.

Because every investment necessarily causes a plan to forgo other investment opportunities, the DOL concluded an investment would not be prudent if it would be expected to provide a plan with a lower rate of return than available alternative investments with commensurate degrees of risk or is riskier than alternative available investments with commensurate rates of return.

However, the DOL noted that if two or more investment alternatives are of equal economic value to a plan, fiduciaries could choose between the investment alternatives on the basis of a factor other than the economic interest of the plan - the so-called "tiebreaker" rule. This also has been described as the "all things being equal" test.

Interpretive Bulletin 2015-1, 80 FR 65135 (October 26, 2015)

By 2015, the DOL observed that it had been asked periodically over the previous 30 years to consider the application of ERISA's fiduciary rules to pension plan investments selected because of the collateral economic or social benefits they may further in addition to their investment returns.

The DOL noted that various terms have been used to describe these collateral investment behaviors, such as socially responsible investing, sustainable and responsible investing, environmental, social and governance (ESG) investing, impact investing, and ETIs. Further, the DOL observed that the terms did not have a uniform meaning and the terminology was evolving.

The I.B. again stated the principle that ERISA does not prevent plan fiduciaries from investing plan assets in ETIs if the ETI has an expected rate of return that is commensurate to rates of return of alternative investments with similar risk characteristics that are available to the plan, and if the ETI is appropriate in terms of diversification and the investment policy of the plan.

The DOL has stated that the focus of plan fiduciaries on the plan's financial returns and risk to beneficiaries must be paramount and, under ERISA, the fiduciary may not use plan assets to promote ESG at the expense of the financial interests of the plan's participants and beneficiaries. Thus, plan fiduciaries may not accept lower expected returns or take on greater risks to secure collateral benefits.

However, the Department believed that I.B. 2008-1 had unduly discouraged fiduciaries from considering ETIs and ESG factors, even where they would be used solely to evaluate the economic benefits of investments and identify economically superior investments. DOL also was concerned that a documentation requirement added by I.B. 2008-1 set a higher, but unclear, standard of compliance for fiduciaries when they were considering ESG factors or ETIs. The new I.B. stated that ESG factors may have a direct relationship to the economic value of the plan's investment, and in these instances such issues are not merely collateral considerations.

I.B. 2015-1 concluded that the fiduciary standards applicable to ETIs, and the selection of a "socially responsible" mutual fund or a designated investment alternative by an ERISA section 404(c) participant-directed individual account plan, are no different than the standards applicable to plan investments generally. Therefore, if the prudence and exclusive purpose requirements of ERISA as applied to fiduciary decisions to invest plan assets are met, the selection of an ETI would not violate ERISA.

Field Assistance Bulletin 2018-01 (April 23, 2018)

The DOL issued FAB 2018-1 to clarify I.B. 2015-1 for EBSA employees fielding calls in the National and Regional Offices. The FAB reiterated the DOL's longstanding position that ERISA fiduciaries may not sacrifice investment returns or assume greater investment risks as a means of promoting collateral social policy goals.

The guidance clarified that I.B. 2015-1 merely recognized that there could be instances when otherwise collateral ESG issues present material business risk or opportunities to companies that officers and directors need to manage as part of the company's business plan and that qualified investment professionals would treat as economic considerations under generally accepted investment theories. The DOL stated that, in such situations, these ordinarily collateral issues (1) are themselves appropriate economic considerations; (2) should be considered by a prudent fiduciary along with other relevant economic factors to evaluate the risk and return profiles of alternative investments; and (3) in these instances, the factors are more than mere tiebreakers.

The DOL then warned fiduciaries to "not too readily" treat ESG factors as economically relevant. The guidance cautioned that it does not necessarily follow that an investment which promotes ESG factors, or that arguably promotes positive general market trends or industry growth, is necessarily a prudent choice for retirement investors.

FAB 2018-1 also addressed the question whether the selection of an ESG-themed fund as a designated investment alternative in an ERISA section 404(c) plan or other individual account plan would be appropriate. The DOL concluded that a prudently selected, well managed, and properly diversified ESG-themed investment alternative could be added to the available investment options on a 401(k)-plan platform in response to participant requests for an investment alternative that reflects their personal values. However, it would not be prudent if the fund would provide a lower expected rate of return than available non-ESG alternative target date funds with commensurate degrees of risk, or if the fund would be riskier than non-ESG alternative available target date funds with commensurate rates of return.

FAB 2018-1 then addressed whether it is appropriate for a fiduciary of a 401(k)-type plan that allows participants to choose from a menu of investment funds to select an ESG-themed fund as a Qualified Default Investment Fund ("QDIA"). DOL stated that in the QDIA context, where the participant by definition has not affirmatively made an investment choice, the decision to favor the fiduciary's own policy preferences in selecting an ESG-themed option as a default investment without regard to possibly different or competing views of plan participants and beneficiaries would raise questions about the fiduciary's compliance with ERISA's duty of loyalty.

Regulations

2020 ESG Final Rule, 85 FR 72846 (November 13, 2020)

The 2020 ESG rule was a "notice-and-comment" rulemaking, the first ESG guidance from the DOL to seek formal public comment. The DOL's proposed rule received 692 individual comments, and six petitions containing a total of 7,617 signatures, which evidenced the widespread interest in the issue and represented significant stakeholder input.

In the preamble to the final rule the DOL noted the upward trend in use of the term ESG among institutional asset managers, an increase in the array of ESG focused investment vehicles, a proliferation of ESG metrics, services, and ratings offered by third-party service providers, and an increase in asset flows into ESG funds. Studies were cited showing that assets invested in sustainable funds were nearly four times larger in 2019 than in 2018.

The DOL concluded that as ESG investing has increased, it has engendered important and substantial questions due to a lack of precision and consistency in the marketplace with respect to defining ESG investments and strategies. Further, the Department expressed concern about shortcomings in the rigor of the prudence and loyalty analysis by some participating in the ESG investment marketplace.

The DOL observed that there was no consensus about what constituted ESG investing, and that rating systems were vague and inconsistent, despite featuring prominently in marketing efforts. The DOL stated that terms such as ESG, impact investing, sustainability, and nonfinancial performance metrics, among others, encompassed a wide variety of considerations without a common nexus or accepted taxonomy, and could take on different meanings to different people.

The DOL also noted that confusion stemmed from the fact that the ESG investing movement has had multiple goals, both pecuniary and non-pecuniary.[2] The DOL did not attempt to define the term ESG in its final rule. Rather, the rule required the fiduciary to evaluate an investment based only on pecuniary factors. "Pecuniary" was defined as a factor that a fiduciary prudently determines is expected to have a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and funding policy.

The DOL noted that ESG funds often come with higher fees, because additional investigation and monitoring are necessary to assess an investment from an ESG perspective (i.e., active management). The DOL stated the regulatory project was undertaken in part to make clear that ERISA plan fiduciaries may not subordinate return or increase risks to promote non-pecuniary objectives.

The rule also banned the selection of an ESG-themed fund as a QDIA in a participant-directed plan due, in part, to the heightened protections necessary in the context of QDIA's. A QDIA is a default investment that exists for participants who do not actively direct the investment of their account and would in operation sweep in many participants and beneficiaries with less investment experience and sophistication than more active investors.

The final rule retained the long-standing position of the DOL that when making an investment decision a fiduciary must give appropriate consideration to the risk of loss and the opportunity for gain associated with the investment, compared to the opportunity for gain associated with reasonably available alternatives with similar risks.

---

[2] The concept of "nonpecuniary" to describe non-financial factors was introduced by the U.S. Supreme Court in *Fifth Third Bancorp v Dudenhoeffer,* 573 U.S. 409 (2014). The Court stated that the exclusive purpose of providing benefits required of fiduciaries by ERISA must be understood to refer to financial benefits, such as retirement income, and does not cover nonpecuniary benefits like those supposed to arise from employee ownership of employer stock.

2022 ESG Final Rule, 87 FR 73822 (December 1, 2022)

The 2022 ESG rule also was a "notice-and-comment" rulemaking. The proposed rule received 895 individual comments, and six petitions containing a total of 21,469 signatures. Again, evidence of the ongoing strong interest in the issue and active stakeholder involvement,

The DOL announced on March 10, 2021, that it would reexamine the 2020 rule and suspend enforcement. The DOL stated that the new regulatory project was undertaken in response to E.O. 14,030.[3] Additionally the project sought to clarify the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments, including selecting QDIAs, due to the DOL's view that the 2020 rule had created a chilling effect with respect to the consideration of climate change and other ESG factors.

The DOL stated that the 2020 rule created uncertainty and was having the undesirable effect of discouraging plan fiduciaries' consideration of climate change and other ESG factors in investment decisions, even in cases where it was in the financial interest of plans to take such considerations into account. The DOL also expressed concern that fiduciaries would be deterred from taking steps that other marketplace investors may take to enhance investment value or improve portfolio resilience against the potential financial risks associated with climate change and other ESG factors.

The DOL emphasized that it was not changing the long-standing principle that ERISA requires plan fiduciaries to focus on relevant risk-return factors and not subordinate the interests of participants and beneficiaries, by sacrificing investment returns or taking on additional investment risk, to objectives unrelated to the provision of benefits under the plan.

The final rule removed the pecuniary terminology in the 2020 rule, stating that it was causing confusion and having a chilling effect on financially beneficial choices. The DOL said the final rule would clarify that a fiduciary's determination with respect to an investment must be based on factors that the fiduciary reasonably determines are relevant to a risk/return analysis, and that such factors may include the economic effects of climate change and other ESG factors.

[3] Executive Order No. 14,030, (2021) - Climate-Related Financial Risk: A Roadmap for Safeguarding the U.S. Economy. Sec. (4)(b): "Resilience of Life Savings and Pensions. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations, the Secretary of Labor shall…consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind "Financial Factors in Selecting Plan Investments," 85 Fed. Reg. 72846 (November 13, 2020)".

The rule also removed documentation and compliance requirements added by the 2020 rule related to utilization of the tie-breaker rule. In addition, it removed the ban on the selection of an ESG-themed fund as a QDIA.

One of the most notable features of the 2022 final rule was a significant deviation from the proposed rule. The proposed rule included a provision that the analysis by the fiduciary of projected investment return "may often require" an evaluation of the economic effects of climate change and other ESG factors. In response to public comments, the DOL replaced the "may often require" formulation with a provision in the final rule that the investment analysis "may include" the economic effects of climate change and other ESG factors.

Conclusion

The Department of Labor has grappled with issues related to retirement plan investment and collateral benefits throughout the nearly five decades of ERISA. The form of guidance and nuances, as well as preamble language and emphasis, have varied across the years and administrations, but the fundamental principle has remained. The north star of ERISA, embodied in the statutory text, is that fiduciaries must discharge their duties with respect to a plan solely in the interest of, and for the exclusive purpose of providing benefits to, the participants and their beneficiaries. The interest of participants and beneficiaries in their retirement income must remain the overriding concern of ERISA plan fiduciaries.

This committee has always taken a leading role in promoting a strong and stable retirement system as a worthy social goal. It has invested heavily in tax subsidies and incentives for the establishment and maintenance of healthy and reliable workplace retirement savings plans. The DOL and the IRS are entrusted to engage in robust and effective compliance oversight with the goal of ensuring well managed plans for the benefit of participants and beneficiaries. The guidance across the years reflects these core values and goals.

Chairman SMITH. Thank you.

Mr. Isaac, you are now recognized.

STATEMENT OF THE HON. JASON ISAAC, DIRECTOR, LIFE: POWERED

Mr. ISAAC. Thank you, Chairman Smith, Ranking Member Neal, and members of the committee. I am Jason Isaac, and I live a high-carbon lifestyle. And I think the rest of the world should, too. It is truly where you have economic prosperity and environmental leadership.

From 2011 to 2019, I served nearly 200,000 people in the Texas hill country as a member of the Texas House of Representatives. During my four times I primarily served—during my four terms, I primarily served on the environmental regulation committee, the economic development committee, and energy resources. And I learned that the United States is a world leader in environmental protection. We have reduced pollution nearly 80 percent over the last 5 decades. We are number one in the world when it comes to access to clean and safe drinking water.

But today, I want to discuss with you the threats that the ESG agenda is posing on American retirement savings, and why Congress must and should do everything in its power to stop this overreach in what is supposed to be a free market with fiduciary duty.

In just the past year not one of the largest individual ESG-labeled funds performed better than either the S&P 500 or NASDAQ. Aggregate returns on the top 20 largest ESG-labeled funds were −0.2 percent during the past year, while the S&P 500 and NASDAQ were up 19 and 25 percent, respectively. Concerningly, these ESG-labeled funds have over $170 billion in total assets under management, tossing Americans' hard-earned retirement savings to the wayside in the name of this insane agenda.

Now, over the past 10 years, so–called clean energy stocks have significantly under-performed the market as a whole, with the S&P 500 Clean Energy Index returning a mere 4.5 percent annually, compared to 11.5 percent annual returns for the S&P 500.

The ESG bubble in 2020 was a result of low interest rates, government largesse, and investor enthusiasm that wind and solar and similar technologies would soon outpace fossil fuels in the energy marketplace. This past year has shown that enthusiasm to be misplaced.

During 2020, I had the opportunity to work on drafting some legislation that would become law in Texas, referred to as Senate Bill 13, that I called the Pension Protection Act, and it was modeled after policy based on anti-BDS regarding Israel. I think nearly three dozen states have passed legislation that says if you boycott, divest, or sanction the state of Israel, you are no longer welcome to do business with that state.

And so I crafted a bill that said that if you boycott, divest, or sanction fossil fuels, you are no longer welcome to do business with the State of Texas. That bill passed in 2021 with overwhelming bipartisan support in both the Texas House and the Texas Senate, and became law, I believe, early June of 2021. And today, the world's largest financial institution, Blackrock, is on the boycott list in Texas, and is currently experiencing billions of dollars being divested because they are weaponizing retirement and pension dollars against the best interests not only of Texas, but of our nation, of our economic prosperity, and of our national defense.

Again, it had overwhelming bipartisan support.

I appreciate the opportunity to be here today and look forward to answering your questions. Thank you, Mr. Chairman.

[The statement of Mr. Isaac follows:]

November 7, 2023

Testimony of the Honorable Jason Isaac
CEO, American Energy Institute
Life:Powered Senior Fellow, Texas Public Policy Foundation
Before the
U.S. House Committee on Ways & Means

Chairman Smith, Ranking Member Neal, and Members of the Committee:

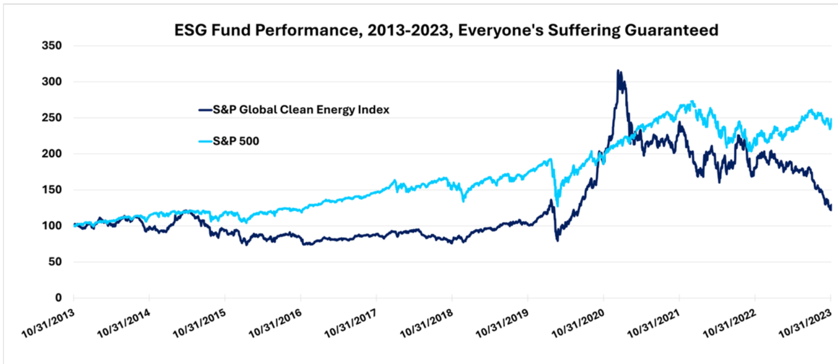
On behalf of Life:Powered, a national initiative of the Texas Public Policy Foundation to raise America's energy IQ, and the American Energy Institute, I thank you for the opportunity to testify today.

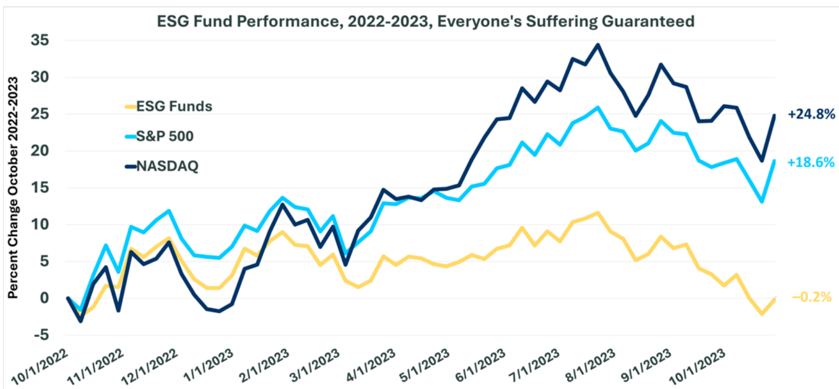
From 2011 to 2019, I served nearly 200,000 people in the Texas Hill Country as a member of the Texas House of Representatives. During my four terms in office, I primarily served on the Environmental Regulation, Energy Resources, and Economic Development committees; and learned that the United States is a world leader in environmental protection and economic prosperity. Now, in my work with the American Energy Institute and Life:Powered, one of my primary areas of focus is the way that environmental, social, and governance (ESG) investing and scoring threatens our economic prosperity to the benefit of China with its questionable human rights and environmental record. ESG has infiltrated our economy and has been weaponized against essential industries, including, but not limited to, fossil fuels, agriculture, and forestry.

Today, I want to discuss with you the threats that the ESG agenda is posing to American retirement savings and why Congress must do everything in its power to stop this overreach into what is supposed to be a free market with fiduciary duty.

Over the past ten years, so called "clean energy" stocks have significantly underperformed the market as a whole, with the S&P 500 Clean Energy Index returning a mere 4.5% annually compared to 11.5% annual returns for the S&P 500. The ESG bubble in 2020 was a result of low interest rates, government largesse (along with the expectation of more to come), and investor enthusiasm that wind, solar, and similar technologies would soon outpace fossil fuels in the energy marketplace. The past year has shown that enthusiasm to be misplaced.

In just the past year, not one of the largest individual ESG-labeled funds performed better than either the S&P 500 or NASDAQ. Aggregate returns on the top 20 largest ESG-labeled funds were -.2 percent during the past year, while the S&P 500 and NASDAQ went up 19 percent and 25 percent, respectively. Concerningly, these ESG-labeled funds have over $170 billion in total assets under management, tossing Americans' hard-earned retirement savings to the wayside in the name of this insane agenda.





The weaponization of ESG isn't just harmful to our economy, energy industry, and national security—it's likely criminal collusion.

A free market is no longer free when the major financial players are colluding—not behind the scenes but out in the open—to gut politically targeted businesses while forcing dollars into their own "green" investments. That's exactly what's happening on Wall Street with the rise of ESG investing. Energy companies that don't toe the line on progressive pet projects risk losing access to capital and even having existing contracts terminated. It's happening all over the country, as companies, from The North Face to BlackRock, are boycotting fossil fuels and as shady shareholder tactics are being used to take over oil companies.

These cartel-like tactics are a flagrant violation of longstanding federal antitrust laws. Corporations are legally barred from engaging in group boycotts. These rules were set into place to protect consumers from conspiracies to manipulate prices, constrain competition, and create politically or socially favored companies that limit consumer choice.

The worst part of all this? Even the most powerful financial mob could never actually succeed at eliminating fossil fuels—only at driving up prices and sending production overseas. It's a power grab with no net gain.

No matter how malicious the media narrative on climate change becomes, we won't stop needing affordable, reliable energy. Even after decades of multibillion-dollar subsidies intended to take renewable energy mainstream, the share of our energy provided by fossil fuels dipped from 80% to—wait for it—79%. All that expense, borne by the taxpayers, did next to nothing to improve renewable technology.

Faced with the possibility of losing access to capital and even having existing contracts canceled, many responsible American energy producers, especially small and medium-sized businesses without the vast resources of major oil companies, face the threat of going out of business altogether as banks and financial institutions increasingly refuse to serve the energy industry.

Unfortunately, this will drive energy production overseas, where environmental standards are lax. Not only will weakening America's energy dominance result in higher energy costs and a weaker stance in the global balance of power, ironically, the long-term result of ESG collusion will be more harmful air pollution and more carbon dioxide emissions—the opposite of environmentalists' stated goal of protecting the planet.

Energy producers shouldn't have to apologize for existing. Instead, we should be celebrating the role of responsibly produced American oil, natural gas, and clean coal in protecting our environment, improving our quality of life, and fighting poverty all over the world.

ESG investing, which could be a useful tool for individuals to make informed choices about their investments, has instead become a wrecking ball that could destroy entire industries.

The un-American agenda of the climate cartel is an affront to the principle of liberty that founded our country. As Life:Powered's Policy Director, Brent Bennett, Ph.D., points out in his research, *Keeping Politics Out of Texas Pensions Through Proxy Voting Reform*,

> *"A large portion of the voting shares in many public companies, up to 20%, is now controlled by three asset managers: Vanguard, BlackRock, and State Street. ESG investing has been a significant source of new revenue for these firms, enabling them to offer funds with a higher fee structure in an environment of declining fees, and they heavily market their ESG credentials.*
>
> *The market for proxy voting advisory services—used by pensions, foundations, and endowments, as well as many asset managers to facilitate voting in thousands of corporate elections each year—is even more concentrated. Two firms, Institutional Shareholder Services Inc. (ISS) and Glass Lewis, hold over 90% of the market share and have become major ESG promoters because they benefit financially from the increasing number and complexity of shareholder resolutions from ESG activists.*
>
> *Public pensions, as some of the largest institutional investors in the world, are important trendsetters in the investment industry, and several state pensions, particularly the California State Teachers' Retirement System (CalSTRS) and the California State Employees' Retirement System (CalPERS), the two largest public pensions in the country, have led the charge in ESG activism. ...*

One example of this activist pressure at work is the campaign to force major oil and gas companies to adopt "net zero by 2050" carbon emissions targets and essentially embark on a 30-year effort to cannibalize their existing businesses in favor of low- or zero-carbon alternatives. Some of the notable groups behind this effort are Climate Action 100+ (CA100+), As You Sow, and Follow This, as well as traditional environmental groups like the Sierra Club. Despite ample evidence that oil and gas demand will continue to grow over the next 30 years (EIA, 2021), these activists claim that government policies will be able to dictate a rapid transition away from fossil fuels and that companies need to manage so-called transition risk. What's really happening is that they are weakening the resolve of energy companies to fight those policies, as evidenced by the shifts in the stance of the American Petroleum Institute, the oil and gas industry's main trade group, on issues like methane regulations and carbon taxes.

ESG activists would be sideshows in most public company elections if not for the influence of two important groups of participants in the proxy voting process: investment managers and proxy voting advisory firms. Consolidation in the investment industry and the rise of large, passively managed index funds have brought a large portion of the proxy votes of the largest U.S. companies under the control of three asset managers ... Vanguard, BlackRock, and State Street. ... When these companies vote together, they have tremendous power to sway corporate elections, a fact that ESG activists have long been aware of and are using to their advantage."

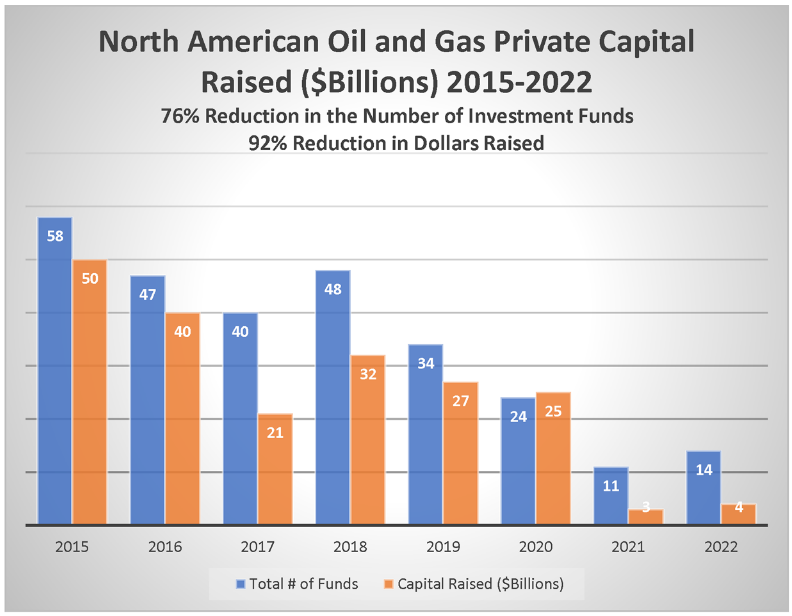
After working for months on a potential transaction, one entrepreneur was told by Credit Suisse First Boston that if he tweeted several points of agreement and alignment, including with the Paris Climate Accord and Net Zero by 2050, they would consider facilitating a transaction. That is clearly coercive in nature to align with political goals.

The European Union's embrace of ESG, namely the E (decarbonization), has led to energy becoming expensive, scarce, and government controlled. Germany and the UK are just a couple examples of countries that are now having to heavily subsidized reliable energy.

Financial institutions should not be able to use their financial power to coerce political agendas on businesses. The repercussions are tangible: Credit Suisse collapsed in March. No financial institution should be pursuing a political agenda over its fiduciary duty.

Energy is necessary for human flourishing. Cutting off credit to an essential industry to modern life because of a political agenda is problematic for our livelihoods.

The chart below details the effectiveness of the ESG agenda. Private capital investments in North American oil and gas operations have plummeted over the past several years despite the fact that global demand for oil and gas is rising. This anti-American and anti-capitalist ESG agenda is definitely playing a role in restricting our ability to produce more energy here, which means that autocratic nations abroad will have more control over the global energy market.



We are not troubled by individual financial institutions making their own independent decisions. What's troubling is the global collusive effort that is behind the modern ESG movement. Research we have done at Life:Powered shows the intricate feedback loop between public opinion, government policy, and corporate actions that is driving the politicization of capital. That loop must be broken to prevent the continued takeover of the means of production—from energy to agriculture to raw materials—by government and crony corporatists.

We cannot let the ESG corruption continue to infiltrate our economy. It puts our country and our very way of life at risk. Thank you for the invitation to testify today. I look forward to your questions.

Sincerely,

Jason Isaac

The Honorable Jason Isaac
CEO, American Energy Institute
Life:Powered Senior Fellow, Texas Public Policy Foundation

Chairman SMITH. Thank you.

Mr. Oaks, you are now recognized.

STATEMENT OF THE HON. MARLO OAKS, STATE TREASURER, UTAH

Mr. OAKS. Chairman Smith, Ranking Member Neal, members of the committee, thank you for inviting me to testify before you on the impact of ESG on retirement security.

Masquerading as a sophisticated, holistic, and enlightened way of creating shareholder value, ESG is a dangerous investment scheme. Proponents of the framework argue ESG is designed to provide investors with more information to make better-informed decisions. This is misleading. In truth, ESG has created an uncontrollable impulse to pressure corporations to solve complex global and societal issues. These issues, such as climate, income inequality, guns, and abortion, to name just a few, should be in the purview of a democratically-elected government.

ESG hijacks corporate governance to advance ideological objectives often divorced from, and even detrimental to, long-term shareholder value. It opens the door to coercion, bullying, and other forms of compulsion by activist shareholder proponents with little skin in the game. This happens in collusion with and the assistance of the foreign-owned duopoly of ISS and Glass Lewis. They are joined by large institutional shareholders who manage billions of dollars in state-owned pension funds.

The goal of ESG is not better financial performance, it is to force compliance to one view. The ESG trend that has infiltrated our capital markets will undermine our free market system, harm our economy, and erode the retirement security of hard-working Americans.

ESG is incompatible with free markets. The E in ESG is focused on pursuing net-zero carbon emissions. However, the primary objective is to transform the global economic system. Just ask Christiana Figueres, who oversaw the writing of the Paris Climate Agreement. She said in 2015, "the true goal of pursuing climate change initiatives is to abandon the economic model that has been the engine of global growth for 150 years." In fact, a United Nations-commissioned report in 2018 predictably concluded we cannot fight climate change with capitalism.

The markets allocate capital to environmental solutions by investing in innovation. However, when politics force an ideological agenda and get enough participants to behave one way, markets stop functioning. The buying and selling of the same security on any given day requires different views about the future, or trading will not happen. ESG dangerously moves the market to one view: the perspective of a small group of like-minded individuals that is generally subjective and controversial.

Simply put, ESG destroys markets.

ESG politicizes financial decisions. Americans put their trust in investment managers to grow their money for important savings goals like retirement, education, and future emergencies. Investment managers have a fiduciary obligation to focus solely on creating returns for investors.

In 2022, the Department of Labor foolishly loosened this fiduciary standard. Plan sponsors and investment managers now have a safe harbor to use politically-motivated investment strategies in retirement plans as a default option. When a manager tries to achieve a dual purpose, there is the significant risk that returns will suffer or volatility will increase. Indeed, academic researchers surveyed 1,141 primary peer-reviewed papers and 27 meta reviews, based on about 1,400 underlying studies published from 2015 to 2020. They found a statistically significant negative relationship between ESG investing and investor returns.

New Federal regulations, proposed regulations, and the regulatory approach to applying existing regulations support activists inserting their ideological agendas through corporate proxy ballots at annual shareholder meetings. Yet many asset managers are supporting shareholder proposals related to ESG issues, such as racial audits and fossil fuel restrictions even within non-ESG investment vehicles. In the vast majority of cases, these proposals are driving environmental, social, and political agendas that are not aimed at furthering shareholder value. In fact, multiple research studies have shown ESG-related proxy measures often have a detrimental effect on financial returns.

In conclusion, ESG represents the greatest threat to our economic engine which has produced more innovation, wealth, and opportunity than any other economic system in the history of the world, and that is the real problem with ESG. We will either have ESG and the economic coercion that system ushers in, or we will maintain our economic freedoms.

Thank you.

[The statement of Mr. Oaks follows:]

Statement before the House Committee on Ways and Means

Marlo M. Oaks
State Treasurer of Utah

November 7, 2023

Chairman Smith, Ranking Member Neal, and Members of the Committee, thank you for inviting me to testify before you on the impact of Environmental Social, and Governance ("ESG") on retirement security.

Masquerading as a sophisticated, holistic, and enlightened way of creating shareholder value, ESG is a dangerous investment scheme that threatens to displace our free market system and erode our democracy.

Proponents of the framework argue that ESG is designed to provide investors with more information to make better-informed decisions. This is misleading. For example, banks and insurance companies have long used financially material factors to evaluate risk, and companies are already required to disclose financially material risks to investors – regardless of whether today, some would categorize those factors or risks as "ESG."

In truth, ESG has become an uncontrollable impulse to pressure corporations to solve complex global and societal issues that are in the purview of a democratically elected government – such as climate, policing, income inequality, guns, and abortion, to name just a few. ESG hijacks corporate governance to advance ideological objectives often divorced from, and even detrimental to, long-term shareholder value. In other words, ESG goes beyond scores and risk measures and opens the door to coercion, bullying, and other forms of compulsion by activist shareholder proponents with little skin in the game, in collusion with and the assistance of the foreign-owned and very influential duopoly of ISS and Glass Lewis, as well as many large institutional shareholders, which manage billions of dollars in state-owned pension funds. The goal of ESG is not better financial performance, but rather, to force compliance to one world view.

Accordingly, it is not surprising that when academic researchers surveyed 1,141 primary peer-reviewed papers and 27 meta-reviews (based on about 1,400 underlying studies) published from 2015 to 2020, the results showed a statistically significant negative relationship between ESG investing and investor returns.[1]

The ESG trend that has overtaken our capital markets will undermine our free market system, harm our economy, and erode the retirement security of hard-working Americans.

---

[1] Atz, Ulrich and Van Holt, Tracy and Liu, Zongyuan Zoe and Bruno, Christopher, Does Sustainability Generate Better Financial Performance? Review, Meta-analysis, and Propositions (July 22, 2022). Journal of Sustainable Finance and Investment, Available at SSRN: https://ssrn.com/abstract=3708495 or http://dx.doi.org/10.2139/ssrn.3708495

ESG Is Incompatible with Free Markets

ESG is incompatible with free markets and will destroy our economic freedoms. Climate change is one of the animating forces behind ESG. The E is focused on pushing 'net zero' carbon emissions. However, the primary objective of proponents of the climate initiative is to transform the global economy. Christiana Figueres, who oversaw the writing of the Paris Climate Agreement, said in 2015 the true goal of pursuing climate change initiatives is to abandon the economic model that has been the engine of global growth for 150 years.[2] As reported by the Washington Post, Alexandria Ocasio-Cortez's chief of staff, Saikat Chakrabarti in 2019 echoed this sentiment stating, "The interesting thing about the Green New Deal, is it wasn't originally a climate thing at all… we really think of it as a how-do-you-change-the-entire-economy thing."[3] Similarly, a United Nations-commissioned report in 2018 predictably concluded, "We cannot fight climate change with capitalism."[4]

As is evident from our country's history of economic outperformance, the benefits of our economic system are extensive and critical to our success as a nation. Our free market system means we are free to choose how we make and spend money. Similar to our Constitutional form of government, where our political leaders serve the individuals who elect them, our economic system places each of us at the center – economic success depends on companies serving our wants and needs. Conversely, ESG places "elites" – such as the United Nations, large government investment pools, and the World Economic Forum – and their demands at the center of its system. Whether intentional or not, those who catastrophize climate are attacking and destroying our foundational economic freedoms.

The United Nations published a report in 2004 titled "Who Cares Wins," which is widely recognized as including the first significant mention of ESG. This report urged all stakeholders to band together to broadly adopt ESG principles.[5]

Now, the net zero climate pledges signed onto by the banking, insurance, and investment industries focus on transitioning away from traditional energy sources without addressing the question of what we are transitioning to, crafting a roadmap for how we will effectively execute that transition, or evaluating the very real human cost of boycotting fossil fuels. In other words, these climate pledges seek to address the "supply" side of the energy equation, without so much as referencing the "demand" side of the equation – or the significant impacts of the transition on our economy, economic well-being, standard of living, or energy security. The ESG enthusiasts' agenda would leave us susceptible to as-of-yet unscalable alternative energies. Ultimately, the climate issue must be solved by the democratic process, which is uniquely situated to balance the

---

[2] Figueres: First time the world economy is transformed intentionally. Internet archive: Wayback Machine. (2015, January 3). https://web.archive.org/web/20150423160411/https://unric.org/en/latest-un-buzz/29623-figueres-first-time-the-world-economy-is-transformed-intentionally

[3] The Washington Post. (2019, July 10). AOC's chief of staff isn't just running her office. he's guiding a movement. The Washington Post. https://www.washingtonpost.com/news/magazine/wp/2019/07/10/feature/how-saikat-chakrabarti-became-aocs-chief-of-change/?utm_term=.118277479754

[4] Paddison, L. (2018, September 11). We cannot fight climate change with capitalism, says report. HuffPost. https://www.huffpost.com/entry/climate-change-capitalism-economy_n_5b87bf0ce4b0cf7b00326edc

[5] United Nations Global Compact. (2004). Compact who cares wins - united nations environment programme finance ... https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf

costs, benefits, risks, and opportunities of the transition, and through innovation driven by a free market economy.

Our country was founded on the concept of plurality to prevent a consolidation of power. Our constitutional form of government separates power into equal branches with checks and balances. The markets represent one of our most pluralistic institutions, composed of many parties with diverse views about the future. Markets only operate when differing views are allowed. ESG dangerously moves the market to one view – the perspective of a small group of like-minded individuals – that is generally subjective and controversial.

The markets allocate capital to environmental solutions by investing in innovation. However, when politics force an ideological agenda and get enough participants to behave one way, markets stop functioning effectively. ESG distorts the markets, pulls funding from the very organizations most likely to find a solution, and attempts to bankrupt an industry that is vital to our day-to-day lives, including the food we eat, the clothes we wear, the healthcare we rely on, the electricity we consume, and our transportation.

ESG is not a function of the free markets. It is the result of direct or indirect coordination among international organizations, self-proclaimed "socially responsible investors," foreign proxy advisory firms ISS and Glass Lewis, and influential investment firms that manage other people's assets, which are effectively forcing an agenda through adopting or coercing others to adopt climate pledges.

Investment managers are using the trillions of dollars under their management as leverage to compel companies to implement certain policies for political reasons unrelated to returns. One CEO of a large investment management company has very publicly stated that "forcing behaviors" is necessary to achieve the firm's goals.[6]

Through shareholder proposals that are often backed by the powerful proxy advisory firms and many large institutional investors, to avoid having their board members targeted with no-votes or to receive an ESG score that will allow them to transact business with others, companies throughout our economy – from start-ups to multi-nations – are pressured to adopt certain politicized policies, driven by forces that do not have investors' nor America's best interests at heart. This is true with respect to not only environmental issues, but also social issues – the S in "ESG."

I have spoken with executives of start-ups and small companies who have said that venture capital firms ask them to complete long ESG questionnaires including questions such as whether or not 60% or more of their board and staff are trans, LGBTQ+, or women. If certain demographic ratios are not met, the surveys then ask whether there are policies in place to terminate employees who are not in the protected classes until at least 50% of employees are in those classes within six months. Other questions ask about efforts to monitor electricity usage monthly, assurance that renewable electric sources are used at an increasing amount each month, and policies to monitor airline travel to ensure employees are flying on aircraft with technology

[6] Fox Business. (2023, June 5). Blackrock CEO admits investment firm would "force behaviors" in 2017 interview: Fox Business Video. Fox Business. https://www.foxbusiness.com/video/6328848893112

that is reducing the carbon footprint. Executives have expressed concerns about not having the resources to monitor these activities and wasting precious capital needed to grow the company for these kinds of activities.

The obsession with ESG will be devastating to the economy and will snuff out start-ups and small corporations that cannot afford the enhanced burden. Importantly, all of this will not result in solutions to environmental and social challenges. It may help some people feel better about their investments, but its coercive nature should scare us all.

ESG Contributes to Inflation and Hurts Investment Returns

ESG politicizes what should be purely financial decisions. Americans put their trust in investment managers to grow their money for important savings goals like retirement, education, and future emergencies. Investment managers have a fiduciary obligation to focus solely on creating returns for investors. This important protection makes it illegal for those managing your money to do anything with it that is contrary to your financial best interest.

In 2022, the Department of Labor adopted a rule that provides plan sponsors and investment managers a safe harbor to use politically motivated investment strategies in retirement plans as a default option.[7] When a manager tries to achieve a dual purpose, there is the potential for returns to suffer or volatility to increase. Because investment managers are now allowed to use these strategies as a default option, it is unlikely most employees will know their investments are being politicized to their detriment.

The risk to retirement is not strictly through designated ESG funds. ESG has infiltrated the entire market, and asset managers are driving the agenda using all assets under management, not just ESG-related assets. There are 5,381 asset owners and asset managers, representing $121 trillion in assets under management,[8] that are signatories to the UN Principles for Responsible Investment ("PRI"), which requires signatories to commit to "incorporate ESG issues into investment analysis and decision-making processes." Moreover, the PRI's Blueprint for Responsible Investment specifically notes that they aim to "establish that asset owners' responsibilities to their beneficiaries extend beyond the risk/return profile of their investments to include making decisions that benefit the world beneficiaries live in.[9]

This politicization has manifested itself in the capital markets where, for example, banks are pressured to cut off capital to the oil, gas, coal, and firearms industries. In 2015, 59 oil and gas funds were raised globally representing $46.6 billion; in 2021, 11 funds were raised totaling $4.6 billion, a drop of 90%, despite improving economics.[10] This has contributed to sky-high gas

---

[7] Figueres: First time the world economy is transformed intentionally. Internet archive: Wayback Machine. (2015, January 3). https://archive.org/web/

[8] United Nations Global Compact. (2023). Principles for Responsible Investing: Signatory Update (January to March 2023). https://www.unpri.org/download?ac=18691, P. 3.

[9] United Nations Global Compact. (n.d.). Principles for Responsible Investing: A Blueprint for Responsible Investing. https://www.unpri.org/download?ac=5330, P. 14.

[10] Jacobius, A. (2022, March 14). War and sanctions ramp up oil prospects - pensions & investments. Pensions & Investments Magazine. https://www.pionline.com/alternatives/war-and-sanctions-ramp-oil-prospects

prices because of insufficient supply and inflation across the economy. Sadly, Americans who can least afford it are bearing the greatest burden.

In addition to the tangible harms to our free market system's economic freedoms and increased inflation, we have seen some truly baffling ESG scores, which further underscore the absurdity of ESG as an indication of value creation. For example, S&P Global Ratings assigned (and later retracted) Russian-controlled energy producers higher ESG ratings than similar entities in the United States. Russian energy giants Gazprom and Rosneft outscored American energy companies ExxonMobil and Chevron, despite the fact the Russian government is the majority owner of Gazprom and owns a 40% stake in Rosneft—the same government that invaded neighboring Ukraine in an unprovoked and unjustifiable attack, in violation of international law.

Following renewed aggressive sanctions by Western governments, any investor who relied on S&P Global's ESG ratings was left to wonder whether those ratings accurately captured the actual "social" risk attributable to the Russian government's longstanding and documented disregard for human rights and international law.[11]

Some recent headlines highlight how pursuing ESG can hurt a company's bottom line. Budweiser found itself at the center of a significant controversy when it introduced a limited-edition Bud Light can featuring transgender influencer Dylan Mulvaney. Consumers expressed outrage, and the company experienced a notable decline in business as a result. There is a reasonable case to be made that the decision to feature Mulvaney was designed to enhance Anheuser-Busch InBev's ESG score under the Diversity, Equity, and Inclusion (DEI) category. The company promotes its DEI rating through recognition on the Bloomberg Gender Equality Index (GEI) and the Human Rights Campaign's Corporate Equality Index (CEI). The CEI considers outward-facing policies, with a company facing a potential 25% penalty for actions that do not support LGBTQ+ causes.[12] Similarly, in Target's 2022 ESG Report, the company proudly highlights its perfect 100% score on the CEI. Yet, Target lost $10 billion in market valuation over 10 days, as the retailer faced backlash over its Pride-themed clothing line for children.[13]

Proxy Voting and Shareholder Activism Hurts Retirement Security

New federal regulations, proposed regulations, and the regulatory approach to applying existing regulations support activists inserting their ideological agendas through corporate proxy ballots at annual shareholder meetings, a practice that has become increasingly prevalent over the past few years. In some cases, these proposals are asking corporations to break the law. In any event, in the vast majority of cases, these proposals are driving environmental, social, and political agendas that are not aimed at furthering shareholder value.

---

[11] State of Utah. (2022, April 21). Letter to S&P Global. https://treasurer.utah.gov/wp-content/uploads/04-21-22-Utah-Letter_SP-Global_ESG-Indicators.pdf
[12] McGowan, J. (2023, April 14). Was Bud Light's Dylan Mulvaney decision about ESG? Forbes. https://www.forbes.com/sites/jonmcgowan/2023/04/12/was-bud-lights-dylan-mulvaney-decision-about-esg/?sh=547b8b2b8ba4
[13] McGowan, J. (2023b, May 30). Target's LGBTQ+ Pride marketing may be ESG DRIVEN. Forbes. https://www.forbes.com/sites/jonmcgowan/2023/05/25/targets-lgbtq-pride-marketing-may-be-esg-driven/?sh=15cd153a31f2

Multiple research studies have shown that ESG-related proxy measures often have a detrimental effect on financial returns. For instance, a study published in the Journal of Financial Economics investigated the influence of activist public pension funds on the market values of a subset of Fortune 500 companies. The findings revealed a negative correlation between increased activism by public pension funds and stock returns. Additionally, companies receiving proposals from activist public pension funds advocating for social agendas were valued at 14% less compared to similar companies that did not pursue such agendas.[14]

During both the 2022 and 2023 annual meeting seasons, activists have introduced numerous shareholder resolutions that call for companies to prioritize political agendas at the expense of growth and competitiveness. With the explicit support of the Securities and Exchange Commission (SEC), aggressive backing from the two large proxy advisory firms, and the affirmative voting practices of large global investment firms, these activists have outsized power to push their agendas on corporate America and unsuspecting American shareholders and even have the ability to influence the make-up of boards of directors based on their political objectives.

In 2022, Comcast shareholders proposed that the company "prepare a report assessing the alignment of the Company's retirement plan options with its climate action goals."[15] This proposal sought to deviate from the fiduciary standard for the purpose of achieving political aims using retiree funds. Although this proposal failed, had it passed, it likely would have resulted in lower returns or increased risks for investors.

In a 2022 proposal at insurance giant Chubb, shareholders requested a report on reducing greenhouse gas emissions associated with the company's underwriting and investment activities in alignment with the Paris Agreement's 1.5-degree goal. Chubb's response included the comment, "We are not aware of any method by which we could reasonably measure the GHG emissions of our insureds."[16] Nevertheless, the proposal passed by a large margin.

Moreover, for two consecutive proxy seasons, the SEC has allowed proposals on proxy ballots that, under the guise of "equity," promote blatantly illegal forms of discrimination. Another 2022 proposal, directed at Republic Services, a waste and recycling management company, called for an "environmental justice audit" to evaluate the "racial impacts" of its operations.[17]

According to a recent analysis, many asset managers are supporting shareholder proposals related to ESG issues, such as racial audits and fossil fuel restrictions, even within non-ESG investment vehicles. The report by the Committee to Unleash Prosperity evaluated the voting behavior of 4,814 non-ESG-branded funds in relation to 50 of the most extreme ESG-oriented

---

[14] Woidtke, T. (2002). Agents watching agents?: Evidence from pension fund ownership and firm value. Journal of Financial Economics, 63(1).
[15] Securities and Exchange Commission. (2022, April 13). Comcast Corporation: Rule 14A-8 No-action Letter. https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2022/kantorcomcast041322-14a8.pdf
[16] Sec.gov. (n.d.). https://www.sec.gov/Archives/edgar/data/896159/000121465922005166/0001214659-22-005166.txt .
[17] Republic Services Environmental Justice Audit. Investor Environmental Health Network (IEHN). (n.d.). https://iehn.org/resources/resolution/republic-services-environmental-justice-audit

shareholder proposals from 2022. For instance, one of these proposals urged Home Depot to conduct a “racial equity audit” to assess its impact on nonwhite stakeholders, while another called on Costco to establish climate targets for “Scope 3” emissions, including those resulting from “land use change” and “deforestation.” Notably, these proposals are unrelated to the financial performance of the companies involved.[18]

Conclusion

If lower investment returns were the only issue, that would be bad enough. Worse is the threat to our economic freedoms. Whereas Adam Smith, the 18th-century moral philosopher, spoke of an invisible hand as the driving force behind capital allocation, each citizen pursuing their own desires and interests, ESG represents an invisible fist of economic coercion. The much-discussed energy transition is perhaps the most dangerous. At no time in our history has a market economy attempted such a large-scale transition. Why? Because markets lead to organic natural transitions that are less expensive and happen without force or coercion. No matter how badly a small group of vocal individuals want to transition away from traditional energy, a forced transition will bring with it any number of negative foreseeable consequences, among which may include blackouts, intermittent power, higher energy costs, energy shortages, and other similar impacts, as well as lower life expectancy, worse education, and decreased healthcare – all of which will be felt most acutely by lower socioeconomic communities.

The efficient allocation of capital means we are more productive, generate greater wealth, are better positioned to confront adversaries and assist allies, and can help more people out of poverty. ESG represents the greatest threat to our economic engine, which has produced more innovation, wealth, and opportunity than any other economic system in the history of the world. And that is the real problem with ESG. We will either have ESG and the economic coercion that system ushers in, or we will maintain economic freedom.

[18] Dow Jones & Company. (2023, May 17). Opinion | the ESG proxy vote ranking. The Wall Street Journal. https://www.wsj.com/articles/committee-to-unleash-prosperity-esg-proxy-vote-ranking-investment-goldman-sachs-blackrock-glass-lewis-iss-29401488

Chairman SMITH. Thank you.

Mr. Bolay, you are now recognized.

[Pause.]

Chairman SMITH. I think that mic is not working. Move a mic where he doesn't have to hold it.

STATEMENT OF MASON BOLAY, SENIOR VICE PRESIDENT, FIRST BANK AND TRUST COMPANY

Mr. BOLAY. Chairman Smith, Ranking Member Neal, and distinguished members of this committee, thank you for the opportunity today. My name is Mason Bolay, senior vice president and loan officer at First Bank and Trust in Perry, Oklahoma. I am testifying today on behalf of the American Bankers Association and the Oklahoma Bankers Association and First Bank and Trust.

In our community bank, we have total assets of $225 million located in my hometown of Perry, Oklahoma. At First Bank and Trust, agriculture, real estate, and consumer real estate loans account for the majority of our lending activities, and our primary market is in north central Oklahoma.

Before joining FB&T, I worked as a farm loan officer for the USDA Farm Service Agency on the eastern side of Oklahoma. I am also part of a multi-generational farming operation that includes my brother, father, uncles, and grandfather. As a father of three children who are growing up on a farm, and with my wife and I both working for local businesses, I take immense pride in being able to offer you a firsthand, boots-on-the-ground perspective on the wider implications of environmental, social, and governance issues.

Our bank, like most banks, is not pro or anti-ESG. We are pro-free market and pro-consumer. Americans are best served when banks can pursue a free market approach to make the lending and investment decisions that are responsive to the needs of their customers, communities, and business plan.

Just as a one-size-fits-all policies have repeatedly demonstrated their ineffectiveness in promoting economic and sustainability, efforts to define and steer lending and investment for or against ESG factors are also destined to be economically harmful. The governance of banking institutions should remain focused on the risks they manage, and be tailored to account for their size, complexity, and the specific norms in which the regions they operate. Attempts to employ banking regulations as a means of indirect lending as other industries, whether to discourage or compel and investment [sic], are both unsustainable and detrimental to the economy, consumers, and the principles of a free market.

In Oklahoma, community banks play a vital role in supplying capital for a diverse array of services, from production agriculture and the logging industry to freeze dried candy food trucks. These credit decisions hinge on character, capacity, capital, collateral, and conditions. Our policies are established in our board room and upheld by all of our staff members. Each bank has the flexibility to either foster or curtail loan growth of their portfolio in any given industry. We firmly hold the belief that local decisions, driven by a precise analysis of risk and reward, should remain uninfluenced by irrelevant, politically-driven considerations.

Attempts to apply ESG in context of retirement accounts is particularly troubling. It is essential to prioritize stability and profitability to attain the retirees' objectives, and making decisions based on ESG considerations may not be conducive to achieving long-term financial benefits. Fiduciaries need the discretion to respond to the constantly changing financial landscape and the freedom to best represent the factors in which—the wishes of their clients, some of whom, but not all, may like to focus on ESG-related factors.

Government mandates imposing ESG principles, though well intentioned, may not pose—may pose challenges for small businesses, including farms and ranches like mine. Adding more environmental regulations and sustainability demands can place significant financial burdens on farmers and ranchers, particularly those who are just beginning or have limited resources. Compliance often necessitates investment in new equipment and technologies, impacting the profitability of operations. Finding a balanced approach is crucial, one that recognizes unique challenges that small businesses face.

Instead of ESG regulations, the Federal Government should be focusing on ways to make sure that farmers have risk management tools at their disposal. For example, passing a strong, improved farm bill while maintaining and strengthening crop insurance will ensure that we have farming and ranching sectors remain viable [sic].

Banks have always cared about issues impacting environmental, social, and governance as they relate to their customers, communities, and business model. What is new are regulatory and legislative efforts to intervene in banks' lending and investment decisions by picking and choosing which ESG-related issues that policymakers seek to favor or disfavor. This runs counter to the free market enterprises that has made the U.S. economy and our banking system the strongest in the world. We should not go down that path.

I welcome your questions.

[The statement of Mr. Bolay follows:]

Mr. Mason Bolay
Senior Vice President & Loan Officer
First Bank & Trust
Perry, OK

House Committee on Ways and Means
"Hearing on Ensuring that 'Woke' Doesn't Leave Americans Broke: Protecting Seniors and Savers from ESG Activism"

1100 Longworth House Office Building
Tuesday, November 7, 2023

Congressional Testimony

Mr. Chairman and distinguished Members of the U.S. House Committee on Ways and Means, thank you for the opportunity to speak with you today.

I am Mason Bolay, from Perry, Oklahoma. I am part of a multi-generational farming operation that includes my brother, father, uncles and grandfather. From a young age I have always had the desire to keep improving. My desires are driven from firsthand experiences of managing tight budgets and uncontrollable natural disasters on the farm.

My passion for agriculture took me to Oklahoma State University, where I earned my degree in Agricultural Business in 2007. Following graduation, I also became certified to teach Agricultural Education. As a father of three children who are growing up on the farm, and with my wife and I both working for local businesses, I take immense pride in being able to offer you a firsthand, boots-on-the-ground perspective on the wider implications of ESG (Environmental, Social, and Governance) issues.

I currently serve as the Senior Vice President and Loan Officer at First Bank & Trust, in Perry, OK. My tenure at First Bank & Trust has given me a range of experience. Before joining the bank in 2013, I was privileged to serve as a Farm Loan Officer with the U.S. Department of Agriculture's Farm Service Agency (FSA) in Eastern Oklahoma, adding valuable experience to my professional journey.

First Bank & Trust is a community financial institution with assets totaling $225 million. Our lending focus primarily revolves around agriculture, with agricultural real estate making up 36% of our loan portfolio. Consumer real estate loans and non-agriculture real estate loans, account for 42% of our lending. Our primary trade area encompasses north-central Oklahoma. We pride ourselves on our hands-on and detail-oriented approach, with unwavering commitment from both our management team and the Board to ensure the quality and integrity of the bank's financial position and risk management practices.

Our family farm, spanning five generations, covers 4,000 tillable acres where we rotate a variety of crops such as wheat, corn, cotton, soybeans, and grain sorghum. Furthermore, we oversee

3,000 acres of land allocated to both native and improved grasses, providing essential support for our 1,500-head stocker calf operation, with these calves later entering our feedlot. Additionally, we maintain a cow/calf operation, which consists of a herd of 100 head.

Agriculture and banking share a close relationship, with rules and regulations in place to protect consumers' interests. Community bankers have consistently contributed significant value by actively engaging in a wide array of community activities, ranging from serving on boards to coaching little league teams. Throughout my career I have observed the ongoing development of additional rules and regulations for both the community banking and agriculture sectors. I welcome the opportunity to offer insights into how Environmental, Social, and Governance (ESG) factors can impact everyday life on Main Street.

ESG Mandates – Can harm businesses, borrowers, and communities:

ESG is a broad term that can mean different things to different people. Our bank, like most, is not pro-ESG or anti-ESG. We are pro-free market and pro-consumer.

Americans are best served when banks can pursue a free-market approach to make the lending and investment decisions that are responsive to the needs of their customers, communities, and business plan. Using regulations on banks to drive other policy goals – or to regulate other industries – is harmful to economic growth, and the ability to best serve customers' needs.

Just as standardized or one-size-fits-all policies have repeatedly demonstrated their ineffectiveness in promoting economic growth and sustainability, efforts to define and steer lending and investment for (or against) ESG factors are also destined to be economically harmful. The governance of banking institutions should remain focused on the risks they manage, and be tailored to account for their size, complexity, and the specific norms of the regions in which they operate. Attempts to employ banking regulations as a means of indirectly regulating other industries, whether to discourage or compel lending and investment, are both unsuitable and detrimental to the economy, consumers, and the principles of a free market.

In Oklahoma, community banks play a vital role in supplying capital for a diverse array of services, spanning from production agriculture and the logging industry to freeze-dried candy food trucks. These credit decisions hinge on the fundamental principles of the 5 Cs of credit – character, capacity, capital, collateral, and conditions. Our policies are established in the boardroom and thoroughly upheld by all our staff members. Each bank has the flexibility to either foster or curtail growth of their loan portfolio in any given industry. We firmly hold the belief that local decisions, driven by a meticulous analysis of risk and reward, should remain uninfluenced by extraneous, politically driven considerations.

FB&T's 401k plan:

When devising retirement plans and investments, it is essential to prioritize stability and profitability to attain the retiree's objectives. Opting for investment decisions grounded in ESG considerations may not be conducive to achieving the financial goals of our beneficiaries. Nevertheless, fiduciaries need the discretion to respond to the constantly changing financial landscape and theories that also develop alongside it. Just as with other free market principles, fiduciaries need the freedom to best represent and factor in the wishes of their clients.

Broader impact of governmental intervention in ESG:

ESG principles, though well-intentioned, may pose challenges for small businesses, including farms and ranches like mine. Adding more and more environmental regulations and sustainability demands can place significant financial burdens on farmers and ranchers, particularly those who are just starting out or have limited resources. Compliance often necessitates investments in new equipment and technologies, impacting the profitability of operations. Additionally, the social dimension of ESG introduces labor-related complexities, potentially raising labor costs for smaller agricultural enterprises. The governance component adds administrative burdens with increased record-keeping and reporting requirements. Farming and ranching is already hard enough without the Federal government adding on more regulation and making it even harder.

While the overarching aim of ESG is to promote sustainability and ethical practices, finding a balanced approach is crucial, one that recognizes the unique challenges that small businesses face. I would suggest that – rather than layering on even more regulation to an already very risky and costly business – the Federal government should be focusing on ways to make sure farmers and ranchers have risk management tools at their disposal. Passing a strong, improved Farm Bill while maintaining and strengthening Crop Insurance will ensure that the farming and ranching sector remain viable. Allowing free market enterprise to foster changes, complemented by a strong Farm Bill and Crop Insurance, can help address these concerns and contribute to a resilient and vibrant production agriculture sector in America.

Conclusion:

Some have called ESG a new fad, but banks have always cared about issues impacting environmental, social and governance issues as they relate to their customers, communities, and business model. What is new are efforts to intervene in banks' lending and investment decisions by picking and choosing which ESG related issues that policy makers seek to favor or disfavor. This is risky because it contradicts the free enterprise principles that have made the U.S. economy the most successful in the history of the world and given us the deepest and most resilient banking system of any nation. Instead, this approach would replace those free market principles with state-directed lending more like that of China, which puts political considerations ahead of the needs and wishes of borrowers and businesses and raises the cost of borrowing for the very people ESG advocates seek to help. We should not go down that path. Thank you.

Chairman SMITH. Thank you.

Mr. Rees, you are now recognized.

STATEMENT OF BRANDON REES, DEPUTY DIRECTOR, AFL–CIO OFFICE OF INVESTMENT

Mr. REES. Chair Smith, Ranking Member Neal, and members of the House Ways and Means Committee, thank you for the opportunity to testify today on behalf of the AFL–CIO.

Our message is simple: Congress should not be playing politics with workers' retirement savings. Contrary to some of the testimony that we have just heard, proposals to restrict retirement plans' freedom to invest have more in common with a totalitarian command economy than a free market system.

The simple truth is that most Americans are not familiar with ESG investing. They trust their retirement plans to make these decisions, not politicians. And they certainly don't like the idea of the government restricting their ability to invest responsibly. The fact of the matter is that the consideration of ESG factors by retirement plans is already well regulated by the Department of Labor. We urge Congress to focus on genuine retirement income security crises that we face in our nation, rather than ESG-related woke hysteria.

With the decline of traditional pensions, workers are on their own to save for retirement through defined contribution plans such as 401(k) plans. And unlike a pension, these plans shift the burden of saving for retirement, investment risk, and longevity risk onto individual workers.

As a result of this shifting of responsibility, most Americans are ill prepared for retirement. According to the 2020 census, the median account balance for defined contribution plans in IRA accounts is about $30,000. At a prudent 4 percent withdrawal rate, $30,000 in retirement savings can support just $1,200 in annual spending, or about $100 a month. This is hardly enough for a dignified retirement after a lifetime of work.

Of even greater concern, nearly half of all Americans do not have a retirement plan account or individual savings account at all. For these workers, Social Security is their only form of retirement security. Social Security is our nation's nearly universal pension, and its funding needs can be addressed without benefit cuts. We strongly oppose benefit cuts of any kind, and Congress must strengthen Social Security by getting rid of the cap on taxable earnings for high earners, and by expanding benefits.

Workers find it hard to save for retirement for a variety of reasons.

First and foremost, low wages make it hard to save. We must strengthen the freedom of working people to come together in unions to be able to negotiate with their employers for higher wages and improved retirement benefits.

To restore balance to our economy between working people and corporations, we urge Congress to enact the Richard L. Trumka Protecting the Right to Organize, or PRO Act. The union difference in working people's ability to save for retirement is significant. On average, union workers' weekly earnings are 18 percent higher than non-union workers; 94 percent of private sector union workers have access to an employer-sponsored retirement plan, as opposed to only 68 percent of private sector, non-union workers; and two-thirds of private sector union workers have access to a defined benefit plan, compared with only 10 percent of non-union workers.

We must also address the tax code that provides the bulk of retirement saving incentives to the highest earners, who are most able to save on their own. We appreciate that the recently-enacted SECURE 2.0 Act includes a tax credit for low-wage workers' retirement contributions. But tinkering around the edges of the tax code falls short of addressing the retirement income security crisis.

The Butch Lewis Act is an example of important legislation that secured the hard-earned pensions of over 750,000 American workers, retirees, and their families, according to the most recent PBGC data.

Notably, not one multi-employer plan in the country required special financial assistance because of ESG investing.

But we need to do much more, such as updating the Department of Labor's fiduciary rule so that it applies to investment advice that workers receive regarding rollovers of their 401(k) account balances on retirement. For most workers, this is the single most financially important decision they will make in their lifetime.

I will conclude my remarks by quoting from a recent AFL–CIO Executive Council statement: "Pension plans represent the deferred wages of working people and must be invested with prudence and loyalty to provide retirement benefits. The proper stewardship of retirement savings requires the freedom to consider all relevant investment considerations, including ESG risks. Laws and regulations that restrict the ability of retirement plan trustees and asset managers to consider ESG risks contradict their fiduciary duties. Fiduciaries, not politicians, should make these judgments."

Thank you, and I look forward to your questions.

[The statement of Mr. Rees follows:]

TESTIMONY OF BRANDON J. REES
DEPUTY DIRECTOR OF CORPORATIONS AND CAPITAL MARKETS

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS

"ENSURING THAT 'WOKE' DOESN'T LEAVE AMERICANS BROKE:
PROTECTING SENIORS AND SAVERS FROM ESG ACTIVISM"

NOVEMBER 7, 2023

Chair Smith, Ranking Member Neal, and members of the House Ways and Means Committee, my name is Brandon Rees and I am the Deputy Director of Corporations and Capital Markets for the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"). Thank you for the opportunity to testify today on the consideration of Environmental, Social and Governance ("ESG") factors by investors including with regard to the retirement savings of working people.[1]

The AFL-CIO is a federation of 60 national and international labor unions that represent 12.5 million working people. We have one overarching goal: a better life for working people which includes a financially secure retirement. For union members, both defined benefit pension plans and defined contribution retirement savings plans, like 401(k) plans, are a big part of the compensation package negotiated through collective bargaining. Union members also participate in the capital markets as individual investors.

Congress should not be playing politics with our nation's retirement funds. We view the recent attacks on ESG investing as little more than partisan politics – and the search for a sound bite – rather than being based on factual reality. Moreover, proposals to limit investors' ability to consider ESG factors have more in common with a totalitarian command economy than a free market system. Retirement savers should not be subject to government overreach telling us what we and our retirement plans can and cannot invest in. As the AFL-CIO's Executive Council recently stated:

> *Pension plans represent the deferred wages of working people and must be invested with prudence and loyalty to provide retirement benefits. The proper stewardship of retirement savings requires the freedom to consider all relevant investment considerations, including ESG risks. Laws and regulations that restrict the ability of retirement plan trustees and asset*

[1] At the end of 2022, U.S. retirement plans and individual savings accounts held nearly $38 trillion in assets, including over $26 trillion in employer-sponsored retirement plans. John Topoleski, John Gorman, and Elizabeth Myers, "U.S. Retirement Assets: Data in Brief," Congressional Research Service, September 20, 2023, *available at* https://crsreports.congress.gov/product/pdf/R/R47699.

managers to consider ESG risks directly contradict their fiduciary duties. Fiduciaries, not politicians, should make these judgments.[2]

It's Time for Congress to Address the Real Retirement Income Security Crisis

We urge Congress to focus on and address the genuine retirement income security issues that we face in our nation rather than encouraging ESG-related "woke" hysteria. The Butch Lewis Act, part of the American Rescue Plan, is an example of important legislation that secured the hard-earned pensions of over 350,000 American workers, retirees, and their families.[3] Notably, not even one multiemployer plan in the country required special financial assistance because of ESG investing.

But there is more to be done to address working people's mounting retirement insecurity. Our retirement income crisis is rooted in our patchwork system which, with the decline of traditional defined benefit pensions, requires workers to go it on their own, e.g., through defined contribution retirement savings plans, like 401(k) plans.[4] Defined contribution plans shift the burden of saving for retirement, investment risk, and longevity risk of outliving one's retirement savings onto individual workers.[5]

We strongly support the Department of Labor's proposed fiduciary rule to protect defined contribution plan participants from financial professionals' conflicts of interest.[6] There is no question that these regulations need updating to account for the changes in the retirement savings landscape. In particular, the Department's proposed fiduciary rule covers investment advice about rollovers to IRAs – for many people, this is the most consequential financial decision they will make during their lifetime. We hope all members of Congress will support getting this rule over the finish line.

---

[2] "Pension Plans Need the Freedom to Consider Environmental, Social and Governance Risks and Responsible Workforce Management Principles," AFL-CIO, July 18, 2023, *available at* https://aflcio.org/about/leadership/statements/pension-plans-need-freedom-consider-environmental-social-and-governance.

[3] "President Biden Announces Historic Relief to Protect Hard-Earned Pensions of Hundreds of Thousands of Union Workers and Retirees," The White House, December 8, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/08/fact-sheet-president-biden-announces-historic-relief-to-protect-hard-earned-pensions-of-hundreds-of-thousands-of-union-workers-and-retirees/.

[4] Monique Morrissey, "The State of American Retirement: How 401(k)s Have Failed Most American Workers," Economic Policy Institute, March 3, 2016, *available at* https://www.epi.org/publication/retirement-in-america/.

[5] William Fornia and Dan Doonan, "A Better Bang for the Buck 3.0: Post-Retirement Experience Drives the Pension Cost Advantage," National Institute on Retirement Security, January 2022, *available at* https://www.nirsonline.org/reports/betterbang3/.

[6] "Retirement Security Proposed Rule and Proposed Amendments to Class Prohibited Transaction Exemptions for Investment Advice Fiduciaries," Employee Benefits Security Administration, Department of Labor, October 31, 2023, *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/retirement-security-proposed-rule-and-proposed-amendments-to-class-pte-for-investment-advice-fiduciaries.

Workers find it hard to save for retirement for a variety of reasons: first and foremost, low wages make it hard to pay today's bills, let alone save for the future. According to data from the 2020 Census, the median account balance for employer-provided retirement savings plans was just $30,000; the median balance for individual retirement accounts was about the same, just $30,820.[7] At a prudent 4 percent withdrawal rate, $30,000 in retirement savings can support just $1,200 in annual spending, or only $100 per month – hardly enough for a dignified retirement.

To strengthen the freedom of working people to negotiate for higher wages and retirement benefits, we urge Congress to enact the Richard L. Trumka Protecting the Right to Organize ("PRO") Act (HR 20). On average, union workers' weekly earnings are 18 percent higher than nonunion workers,[8] with an even greater union wage advantage for workers with less formal education and workers of color.[9] Furthermore, two thirds of private sector union workers have access to a traditional defined benefit pension, while only 10 percent of private sector nonunion workers have this benefit.[10]

While we appreciate the provision in the recently-enacted SECURE 2.0 Act of 2022 to provide a tax credit for low wage workers' IRA contributions, we must do much more. The tax code provides the bulk of retirement savings incentives to the highest earners who are the most able and likely to save without any incentives.[11] Tinkering around the edges of the tax code will not fix the retirement income security crisis. Nearly half of all Americans do not have an employer-provided retirement plan account or an IRA at all.[12] In other words, they have no retirement savings.

For these workers, Social Security is the only retirement benefit they can count on; it is our nation's nearly universal, albeit too modest, retirement plan. Social Security's long-term funding needs can be addressed without benefit cuts; the AFL-CIO opposes cuts of any kind, including increasing the retirement age, altering the benefit formula, or

---

[7] Maria Hoffman, Mark Klee and Briana Sullivan, "New Data Reveal Inequality in Retirement Account Ownership," U.S. Census Bureau, August 31, 2022, *available at* https://www.census.gov/library/stories/2022/08/who-has-retirement-accounts.html

[8] "Union Members – 2022," U.S. Bureau of Labor Statistics, January 19, 2023, *available at* https://www.bls.gov/news.release/union2.htm.

[9] "White House Task Force on Worker Organizing and Empowerment," The White House, 2022, *available at* https://www.whitehouse.gov/wp-content/uploads/2022/02/White-House-Task-Force-on-Worker-Organizing-and-Empowerment-Report.pdf.

[10] "Employee Benefits in The United States – March 2023," U.S. Bureau of Labor Statistics, September 21, 2023, *available at* https://www.bls.gov/news.release/ebs2.nr0.htm.

[11] Jean Ross, "Tax Breaks for Retirement Savings Do Not Help the Workers Who Need Them Most," Center for American Progress, May 20, 2022, *available at* https://www.americanprogress.org/article/tax-breaks-for-retirement-savings-do-not-help-the-workers-who-need-them-most/.

[12] Maria Hoffman, Mark Klee and Briana Sullivan, "New Data Reveal Inequality in Retirement Account Ownership," U.S. Census Bureau, August 31, 2022, *available at* https://www.census.gov/library/stories/2022/08/who-has-retirement-accounts.html.

reducing cost-of-living adjustments.[13] Instead, Congress must strengthen Social Security by eliminating the cap on taxable income for high earners and expand benefits to provide a secure retirement with dignity for all Social Security recipients.[14]

ERISA Already Prohibits Inappropriate Consideration of ESG Factors

The Employee Retirement Income Security Act of 1974 ("ERISA") governs the investment of private sector retirement plan assets and there are similar state laws for public sector retirement plans. ERISA does not mandate or prohibit particular types of investments. Instead, under ERISA's prudent expert rule, retirement plan fiduciaries have a duty to act with the same degree of care, diligence, prudence, and skill that a prudent person acting in a similar capacity, and familiar with such matters, would use.

For expert financial professionals acting in a fiduciary capacity, the consideration of ESG factors is an established best practice. Today, 85 percent of chartered financial analysts take ESG factors into consideration, up from 73 percent in 2017.[15] As of 2022, ESG factors were considered in the professional management of $8.4 trillion in U.S. assets.[16] And globally, over 5,300 institutional investors, representing $121 trillion in assets under management, have signed the UN Principles for Responsible Investment.[17]

Numerous academic studies have demonstrated that ESG factors are material information for investors and that their consideration contributes to financial performance.[18] According to a review of over 2,000 academic papers, 90 percent of studies have found a non-negative relationship between ESG and corporate financial

[13] "Convention Resolution 13: Retirement Income Security for All," AFL-CIO, June 13, 2022, *available at* https://aflcio.org/resolutions/resolution13.

[14] Josh Bivens and Elise Gould, "A Record Share of Earnings Was Not Subject to Social Security Taxes in 2021," Economic Policy Institute, January 17, 2023, *available at* https://www.epi.org/blog/a-record-share-of-earnings-was-not-subject-to-social-security-taxes-in-2021-inequalitys-undermining-of-social-security-has-accelerated/.

[15] "Future of Sustainability in Investment Management: From Ideas to Reality," CFA Institute, 2020, *available at* https://www.cfainstitute.org/-/media/documents/survey/future-of-sustainability.ashx.

[16] "2022 Report on US Sustainable Investing Trends," US SIF Foundation, December 2022, *available at* https://www.ussif.org//Files/Trends/2022/Trends%202022%20Executive%20Summary.pdf.

[17] Letter from the Principles for Responsible Investment to U.S. House Committee on Financial Services, July 12, 2023, *available at* https://www.unpri.org/download?ac=18874.

[18] "Empirical Research on ESG Factors and Engaged Ownership," Council of Institutional Investors, June 2022, *available at* https://www.cii.org/files/publications/June%202022%20update%20bibliography%20final.pdf; "Financial Performance With Sustainable Investing," US SIF, *available at* https://www.ussif.org/performance; "Top Academic Resources on Responsible Investment," Principles for Responsible Investment, *available at* https://www.unpri.org/research/top-academic-resources-on-responsible-investment/4417.article.

performance. To the contrary, the authors conclude that "the business case for ESG investing is empirically well founded. Investing in ESG pays financially."[19]

In light of the materiality of ESG factors to investors, the AFL-CIO strongly supported the U.S. Department of Labor's 2022 regulation titled "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," commonly referred to as the Department of Labor's ESG rule.[20] This rule clarifies that retirement plan fiduciaries may consider, but are not required to consider, ESG factors just as they would consider any other investment factor.[21] The ESG rule was recently upheld by the U.S. District Court of the Northern District of Texas.[22]

The 2022 ESG rule revised two Department of Labor regulations that hastily were adopted at the end of the Trump Administration titled "Financial Factors in Selecting Plan Investments"[23] and "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights."[24] The AFL-CIO strongly opposed these regulations because they introduced confusing new language by attempting to distinguish between "pecuniary" and "non-pecuniary" factors. This vague language is nowhere to be found in the text of ERISA and would have a chilling effect on financially beneficial investments.[25]

The Department of Labor's 2022 ESG rule also properly lifted the previous rule's prohibition on selecting ESG investments as the qualified default investment alternative

[19]Gunnar Friede, Timo Busch, and Alexander Bassen, "ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies," Journal of Sustainable Finance & Investment, Volume 5, Issue 4, p. 210-233, 2015, *available at* https://ssrn.com/abstract=2699610.

[20]Letter from the AFL-CIO to the Employee Benefits Security Administration, Department of Labor, December 12, 2021, *available at* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AC03/00767.pdf.

[21]"Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," Employee Benefits Security Administration, Department of Labor, 87 FR 73822, December 1, 2022, *available at* https://www.federalregister.gov/documents/2022/12/01/2022-25783/prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights.

[22]*State of Utah v. Walsh*., slip op. (N.D. Tex. September. 21, 2023).

[23]"Financial Factors in Selecting Plan Investments," Employee Benefits Security Administration, Department of Labor, 85 FR 72846, November 13, 2020, *available at* https://www.federalregister.gov/documents/2020/11/13/2020-24515/financial-factors-in-selecting-plan-investments.

[24]"Fiduciary Duties Regarding Proxy Voting and Shareholder Rights," Employee Benefits Security Administration, Department of Labor, 85 FR 81658, December 16, 2020, *available at* https://www.federalregister.gov/documents/2020/12/16/2020-27465/fiduciary-duties-regarding-proxy-voting-and-shareholder-rights.

[25]Letter from the AFL-CIO to the Employee Benefits Security Administration, Department of Labor, July 30, 2020, *available at* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00637.pdf; letter from the AFL-CIO to the Employee Benefits Security Administration, Department of Labor, October 5, 2020, *available at* https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91/00259.pdf.

for defined contribution retirement savings plans. We support allowing retirement plans to select the best investment options for plan participants regardless of whether the investment reflects a consideration of ESG factors. Moreover, as noted by the Department of Labor, offering ESG-related investment options in defined contribution plans may increase the eagerness of plan participants to save for retirement.

Importantly, the Department of Labor's ESG rule preserves the ability of retirement plans to consider the collateral benefits that result from their investment decisions such as good job creation, affordable housing, and economic growth for local communities. Under this "all things being equal" or tiebreaker standard, ERISA plans may consider collateral benefits so long as the competing investment courses of action equally serve the financial interests of the plan over the appropriate time horizon.

ERISA Also Regulates Proxy Voting and the Exercise of Shareholder Rights

The Department of Labor's ESG rule also regulates proxy voting and the exercise of shareholder rights by private sector retirement plans. Since the Reagan Administration, the Department has taken the view that ERISA's fiduciary duties of loyalty and prudence apply to proxy voting by pension and employee benefit plans.[26] ERISA's fiduciary duties apply to the voting of proxies and the exercise of shareholder rights by plan fiduciaries because the right to vote at shareholder meetings is a valuable plan asset.

The ESG rule holds proxy voting and the exercise of shareholder rights to the same fiduciary standards as any other investment decision under ERISA. Pension plans may refrain from proxy voting if the costs of voting exceed the potential benefit, e.g., certain international proxy voting materials may not be available in English. But they are not required to conduct an economic analysis before casting each individual vote as such a requirement would be more costly than simply deciding how to vote. And the rule correctly requires that proxy voting and the exercise of shareholder rights be held to the same documentation standards as any other investment decision.

It will be to their detriment if ERISA plans stop voting proxies because state corporate laws presume that shareholders take an active role in the governance of companies by voting at shareholder meetings.[27] Without shareholder votes, corporate directors could not be elected and other corporate decisions and actions could not be approved. And because an ERISA plan's decision not to vote effectively cedes voting power to other shareholders, it should be permitted only on a case by case basis – not pursuant to a general safe harbor to refrain from voting.

[26] Letter from the Department of Labor to Mr. Helmuth Fandl, Chairman of the Retirement Board of Avon Products, Inc., February 23, 1988, 198 WL 897696 ("In general, the fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock."). The Department of Labor subsequently restated this view in 1994 (Interpretive Bulletin 94-2, 59 FR 38863, July 29, 1994); in 2008 (Interpretive Bulletin 2008-02, 73 FR 61731, October 17, 2008); in 2016 (Interpretative Bulletin 2016-01, 81 FR 95879, December 29, 2016); and in 2018 (Field Assistance Bulletin 2018-01, April 23, 2018, *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01).

[27] *See e.g.* Delaware General Corporation Law, § 211 - § 233.

Finally, the ESG rule permits retirement plans to hold corporate CEOs accountable on ESG issues by exercising their shareholder rights to submit proposals at company annual meetings. Since it was first adopted in 1942, the Securities and Exchange Commission's shareholder proposal rule (Rule 14a-8) has been an integral part of our nation's shareholder democracy.[28] The submission of shareholder proposals is the most cost-efficient way for investors to elevate their concerns to boards of directors, corporate management, and their fellow shareholders.

Shareholder proposals are not generally binding on companies, but they have successfully promoted the voluntary adoption of best practices.[29] Examples of ESG best practices that have been widely adopted include environmental sustainability disclosure, respect for international human rights, and the appointment of independent board chairs.[30] Academic studies have found that shareholder proposals create long-term value by holding corporate management accountable and helping to reduce agency costs that stem from the separation of ownership and control in public companies.[31]

Anti-ESG Legislative Proposals Jeopardize Retirement Income Security

Given that retirement plan fiduciaries need to have the freedom to consider ESG factors in order to make prudent investment decisions, the AFL-CIO strongly opposes the various anti-ESG bills that have been reported this Congress by other House committees: the Guiding Uniform and Responsible Disclosure Requirements and Information Limits Act (HR 4790), the Businesses Over Activists Act (HR 4655), the Protecting Americans' Retirement Savings from Politics Act (HR 4767), the Roll Back ESG to Increase Retirement Earnings Act (HR 5339), the Retirement Proxy Protection Act (HR 5337), and the No Discrimination in My Benefits Act (HR 5338).

If enacted, HR 4790 will make compliance with future Securities and Exchange Commission ("SEC") disclosure rules voluntary depending on whether corporate management deems ESG information to be "material" to investors. Since the 1930s, Congress has authorized the SEC to issue uniform disclosure rules for public companies

[28] 17 CFR 240.14a-8; *see also* 7 FR 10655 (Dec. 22, 1942).

[29] Letter from the Council of Institutional Investors to the Securities and Exchange Commission, January 30, 2020, *available at* https://www.sec.gov/comments/s7-23-19/s72319-6729684-207400.pdf; Letter from the AFL-CIO to the Securities and Exchange Commission, February 3, 2020, *available at* https://www.sec.gov/comments/s7-23-19/s72319-6744323-207881.pdf.

[30] "The Business Case for the Current SEC Shareholder Proposal Process," CERES, USSIF and the Interfaith Center on Corporate Responsibility, April 2017, *available at* https://www.ussif.org/files/Public_Policy/Comment_Letters/Business%20Case%20for%2014a-8.pdf.

[31] Andrew Prevost, et.al., "Labor Unions as Shareholder Activists: Champions or Detractors?" Financial Review, Vol. 47, Issue 2, May 2012, pp. 219-421; Luc Renneebooga and Peter Szilagyi, "The Role of Shareholder Proposals in Corporate Governance," Journal of Corporate Finance, Vol. 17, Issue 1, February 2011, pp. 167-188. Lucian Bebchuk, "The Case for Increasing Shareholder Power," Harvard Law Review, Vol. 118, No. 3, pp. 833-914, January 2005.Matthew Denes, et. al., "Thirty Years of Shareholder Activism: A Survey of Empirical Research," Journal of Corporate Finance, Vol. 44, June 2017, pp. 405-424.

that provide consistency and comparability for investors.[32] Going forward, HR 4790 will radically curtail the SEC's authority to issue uniform disclosure rules for public companies by allowing corporate CEOs to decide whether or not to comply.

HR 4655 will effectively abolish the SEC's long-standing shareholder proposal rule by making compliance voluntary. Attacks on the shareholder proposal rule are motivated by the false premise that there are too many proposals. In reality, shareholder proposals make up a tiny fraction of all proxy votes.[33] Out of more than 171,500 votes at over 18,000 shareholder meetings during the 2022 - 2023 proxy season, only 813 of these votes were on shareholder proposals - less than 0.5 percent of all proxy votes cast.[34]

HR 4767 not only interferes with shareholders' ability to submit ESG shareholder proposals, but also seeks to disenfranchise investors from voting altogether. The bill creates unnecessary and burdensome red tape for the proxy voting advisors on whom institutional investors rely for independent proxy voting advice.[35] Investment managers will be faced with a Hobson choice of complying with a regulatory burden on their proxy voting or violating their duty of loyalty by always voting with corporate management, which includes casting votes to approve executive compensation.

HR 5339 will discourage fiduciaries from considering ESG factors by prohibiting the consideration of so-called "non-pecuniary" factors unless the fiduciary satisfies unnecessarily burdensome documentation requirements. Similarly, HR 5337 will discourage fiduciaries from voting proxies on ESG issues that might be considered "non-pecuniary" and disenfranchise retirement savers by creating a safe harbor to not vote at all. The Department of Labor has wisely rejected the distinction between pecuniary and non-pecuniary factors based on concerns that this ill-defined terminology causes confusion and has a chilling effect on financially beneficial investment choices.[36]

---

[32] *See* Allison Lee, "Living in a Material World: Myths and Misconceptions about 'Materiality'," Securities and Exchange Commission, May 24, 2021, *available at* https://www.sec.gov/news/speech/lee-living-material-world-052421.

[33] "CII Fact Sheet on Proxy Advisory Firms and Shareholder Proposals," Council of Institutional Investors, November 5, 2019, *available at* https://www.cii.org/files/about_us/press_releases/2019/11-05-19%20CII%20Fact%20Sheet%20on%20Proxy%20Advisory%20Firms%20and%20Shareholder%20Proposals.pdf.

[34] "2023 Global Voting Spotlight," Blackrock, 2023, *available at* https://www.blackrock.com/corporate/literature/publication/2023-investment-stewardship-voting-spotlight.pdf.

[35] *See* "CII Fact Sheet on Proxy Advisory Firms and Shareholder Proposals," Council of Institutional Investors, November 5, 2019, *available at* https://www.cii.org/files/about_us/press_releases/2019/11-05-19%20CII%20Fact%20Sheet%20on%20Proxy%20Advisory%20Firms%20and%20Shareholder%20Proposals.pdf.

[36] "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," Employee Benefits Security Administration, Department of Labor, 87 FR 73822, December 1, 2022, *available at* https://www.federalregister.gov/documents/2022/12/01/2022-25783/prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights.

HR 5338 takes aim at ERISA plans' consideration of diversity when selecting investment advisors. We oppose this bill as a blatant attempt to obstruct efforts to address long-standing racial and gender under-representation in asset management. Under existing regulations, ERISA plans are permitted to consider the benefits of investment advisor diversity so long as the plan does not sacrifice risk-adjusted returns. Indeed, studies have shown that diversity can be a source of investment outperformance by casting a wider net for professional talent that might otherwise be overlooked.[37]

We are also disturbed by the recent introduction of anti-ESG legislation in various states that seeks to blacklist investment advisors that consider ESG factors.[38] Estimates of the costs of these misguided proposals to state public retirement systems have been enormous, e.g., $6.7 billion for Indiana,[39] $6 billion for Texas,[40] and $3.6 billion for Kansas.[41] And state bills modeled on a 2021 Texas law that blacklisted municipal bond underwriters for anti-ESG reasons will cost taxpayers hundreds of millions more in higher interest rates.[42]

---

[37] "Diversity Wins: How Inclusion Matters," McKinsey & Company, May 19, 2020, *available at* https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters; Jenna Weinberg and Simon Greer, "Fiduciary Guide To Investing With Diverse Asset Managers And Firms," Diverse Asset Managers Initiative, April 2017, *available at* https://www.diverseassetmanagers.org/dami-studies.

[38] Connor Gibson and Frances Sawyer, "2023 Statehouse Report: Right-Wing Attacks on the Freedom to Invest Responsibly Falter in Legislatures," Pleiades Strategy, 2023, *available at* https://www.pleiadesstrategy.com/state-house-report-bill-tracker-republican-anti-esg-attacks-on-freedom-to-invest-responsibly-earns-business-labor-and-environmental-opposition.

[39] Christine Williamson, "Indiana PRS would lose $6.7 billion over 10 years if ESG funds banned," Pensions and Investments, February 14, 2023, *available at* https://www.pionline.com/esg/under-esg-ban-indiana-prs-could-lose-67-billion-over-10-years.

[40] Danielle Moran and Shelly Hagan, "Money Managers Raise Alarms Over Anti-ESG Crusade in GOP States," Bloomberg, March 28, 2023, *available at* https://www.bloomberg.com/news/articles/2023-03-28/anti-esg-crusades-in-gop-states-stumble-amid-pension-pushback.

[41] Michelle Celarier, "Kansas Pension Says New Anti-ESG Bill Could Cost $3.6 Billion in Returns," Institutional Investor, March 9, 2023, *available at* https://www.institutionalinvestor.com/article/2bstry3hba83a8f02m77k/culture/kansas-pension-says-new-anti-esg-bill-could-cost-3-6-billion-in-returns#.

[42] "ESG Boycott Legislation in States: Municipal Bond Market Impact,"Econsult Solutions, Inc., January 12, 2023, *available at* https://econsultsolutions.com/wp-content/uploads/2023/01/Sunrise-ESG-boycott-Impact_FINAL.pdf.

Chairman SMITH. Thank you. Thank you all for your testimony. We will now proceed to the question-and-answer session.

Mr. Rutledge, retirement plan assets are invested to maximize retirement security, not just because it is a good idea, but because it is the law. Why is it important that retirement plan trustees manage funds for the exclusive benefit of American savers, and not for ESG or other non-financial goals?

Mr. RUTLEDGE. Well, the importance is, over the course of a working person's career, the—you have got the contributions a person makes, the deferrals a person makes. But the assets are in a trust for the person's working career, and it is the interest earned, the investment return earned on that account that makes up a very substantial portion of the amount of money they have when they finally do reach retirement age.

The focus needs to be and has been, I believe, on maximizing investment performance. Regardless of the label of the fund, regardless of the—what you might call a particular fund, a good investment professional advising a fiduciary should be able to—and we trust them to be able to—direct them to the best performing investment, the investment with the best potential for return. That is the way you maximize retirement, and that is the way the subsidies that the Congress has granted the private sector for these plans are validated.

Chairman SMITH. So tax-advantaged retirement savings represent some of the most significant provisions in the tax code, and tens of millions of Americans rely on them to build their nest egg. How would this system be threatened if retirement plan managers put ESG considerations above financial considerations?

Mr. RUTLEDGE. It is—I put it this way. Regardless of whether it is an ESG fund, regardless of whether it is an EIT, economically-targeted investment, you still have to look at the plan, at the investment, and determine whether it is the one with the greatest potential for return.

It is possible that an ESG investment in a given situation might represent the best opportunity for gain in that situation at that time and place. And if that is the case, the rules have always been—the guidance has always been you go with that investment. But that is—the point is that this is a principles-based rule. It is not a rule that says you do this, or you choose that investment, or you don't choose that investment.

The principle is maximizing return, given the appropriate amount of risk that a plan is willing to endure.

Chairman SMITH. Thank you.

Mr. Isaac, as I noted in my opening remarks, a report on ESG investing produced by the Committee to Unleash Prosperity cites a review published by Boston College in 2020 that found "pension funds with an ESG orientation lag those of non-ESG funds by 2 basis points per year over a 10-year period." In your estimation, what sort of returns are investors seeing from ESG-labeled funds?

And does this performance indicate that the ESG agenda is aligned with maximizing retirement security?

Mr. ISAAC. ESG is certainly not aligned with maximizing retirement security or fiduciary principles. These funds have higher fees. They are—have lower returns.

Virtue signaling is proving very expensive to retirees here in this country, to the detriment of our national security, to the detriment of our fiscal responsibility, and really, to the detriment of fiduciary responsibility, fiduciary duty.

Chairman SMITH. So going to the fees that you mentioned that savers must pay to certain fund managers, how do the Wall Street management fees associated with ESG funds compare to the fees for typical market index funds?

Mr. ISAAC. They are typically higher, and there has been research and studies that have been published on this that show that, again, virtue signaling is expensive. And so they charge more money just to have a fund labeled ESG, which is interesting to note, that you look at some of these ESG funds, some of them contain companies like the China Coal Company that has higher ESG ratings than American companies that just own real estate, that just own assets maybe that are going to be produced, or you will have oil and gas produced on them.

But these funds have—again, China Coal Company is an ESG fund that has a higher rating than American real estate companies.

Chairman SMITH. Wow. How are Americans' long-term retirement savings affected by these ESG management fees which only line the pockets of Wall Street?

Mr. ISAAC. Well, you can see just over the last 10 years they have threatened—they have given up, essentially—they could have had an 11.5 percent return, but they have only had a 4.5 percent return. That is not keeping pace with inflation.

Chairman SMITH. So, Mr. Bolay, as you know, we held a successful field hearing back in March across the state from you in Yukon, Oklahoma. There we heard how the Biden economy has harmed hard-working families, farmers, oil and gas producers in your state. How do those same folks feel the impact of ESG activism?

Mr. BOLAY. Thank you for the question, Chairman. Across the State of Oklahoma—and we appreciate you guys coming to see actually what was going on on the home front, that was very refreshing for the people on Main Street—our people, the Main Street, the small towns and small communities, small businesses, we are not pro or anti.

I did a quick straw poll before I left and asked about local businesses' thoughts on ESG, and most of the time I had to explain it. But after I explained it, they said, you know, "We want the freedom to choose those things. We do not need an ESG mandate for anything on Main Street."

Chairman SMITH. So, what hurdles does the ESG agenda create for your bank and its goals of helping small businesses and building the community?

Mr. BOLAY. Again, Congressman, I would go back to—any mandates that are put on small businesses or small banks that we have to implement create a significant financial burden for us. Additional regulations, mandates are tough for us to implement.

Chairman SMITH. Thank you. I now recognize Ranking Member Mr. Neal for any questions he might have.

Mr. NEAL. Thank you, Mr. Chairman.

So, throughout my time as mayor of Springfield a long time ago, I decided in about 1986, I think, to sell all of the city's stocks in South Africa. Do any of you disagree with that as a reasonable policy about an acknowledged apartheid state? I wasn't looking for a Nobel Prize. I didn't even know what ESG was. Nobody was talking about it. I thought it was reasonable policy. And by the way, apparently, according to de Klerk, it prevailed.

I don't think that we are lecturing anybody here on what to do. That is certainly not my position. But I don't think that the argument that we are having today should get in the way of us acting on responsible and reasonable policies in the retirement space.

So, the Butch Lewis Act. If we did not do the Butch Lewis Act, which I said 30 Republicans in the House voted for as a standalone measure, it would have taken down the PBGC. Guaranteed to. So the request I had from Ohio came from business concerns who said, because of mergers, acquisitions, and simply outdated policy, their plans were going to be forfeited, which in time would have taken down the entire system.

So when we talk about what has been my passion, retirement security in Congress, people struggle to save for retirement. And they play, as Mr. Rees said, by the rules. Their whole lives they play by the rules. So for strong retirement benefits, people need issues like paid leave. The achievements of the UAW last week in Detroit are historic. Organized labor has made terrific strides this year alone in how to improve pay and strengthen workers' retirement futures.

A ringing defense of the Social Security system has pointed out we should be enhancing benefits there, but I am proud of what we did with the Butch Lewis Act. It addressed the multi-employer pension plan crisis. Two million people are going to get a better night's sleep because of what we did, including Republican members of this committee who voted for it as a standalone on the floor, even if they didn't vote for it in the American Rescue package.

As of November, the PBC has approved plans that cover 770,000 workers just in the central states plan, which received a benefit. The Butch Lewis Act is a good example of what Democrats did. It was the right thing for the American people, and we should be focusing on retirement plans this morning and how to enhance benefits, including the success we have had with SECURE and SECURE 2.0.

So Mr. Rees, do you want to discuss some of these achievements and some of the ideas that you outlined earlier about what retirement security ought to look like, given the success of what happened in Detroit during those negotiated settlement issues last week?

Mr. REES. Yes, sir, and thank you for the question. The achievements of UAW members in winning higher pay and increased employer contributions to their defined contribution plans are historic, and they show the importance of collective bargaining and freedom of association to secure workers' retirement savings.

And if I may commend Congress and you for your work on the Butch Lewis Act, which saved 750,000 Americans, including 350,000 members of the central states, pension plans, and if I may share just a few states where those retirees reside, the State of

Missouri 28,000 members receive $253 million in annual pension benefits that are secured thanks to the Butch Lewis; Florida 19,000 members receive $144 million in annual pension benefits; Ohio, 40,000 participants in that plan receive over $360 million in annual retirement events; Texas, 22,000 participants receive $162 million in annual pension benefits, and I can go on.

Mr. NEAL. You are doing fine. [Laughter.]

Mr. NEAL. I also want to point out that, as in SECURE 2.0, what we did—I have been the author of the automatic enrollment plans—I think that is a big deal—savers match, savers credits. We want to make sure that we can get an opportunity down to people at the lower end of the economic spectrum to save for retirement savings. That should be what we are talking about this morning.

I go home, nobody is talking to me about ESG. They are talking about, hey, is Social Security going to be around for me? They are talking to me about what my retirement plan might look like. And that is what the focus of the committee ought to be, our historic responsibility to make sure that security is provided to the American people.

I yield back, Chairman.

Chairman SMITH. Thank you. Mr. Smith is recognized.

Mr. SMITH of Nebraska. Thank you, Mr. Chairman. Thank you to our witnesses, as well. I appreciate your insight. I hope that we can agree that it is our job to empower consumers, it is our job to empower workers, and that certainly we can disagree perhaps on the Butch Lewis Act and what—how that came about, how the need came about, and what the solutions should be, but I think this issue is far different than perhaps the merits or lack thereof on the Butch Lewis Act.

I believe that we are talking about financial decisions that are made for political purposes, seeking political outcomes rather than really focusing on opportunity. But let me just focus a little bit on the testimony of Mr. Bolay.

Obviously, you bring an approach to the issue similar to many constituents of my district in Nebraska, and you work hard and—a full-time job, as well as also farming full time. And so I appreciate that your testimony covered the dual concerns of rural banks attempting to make lending decisions for farms and ranches in an ESG environment alongside the issues ESG demands can create directly for farmers and ranchers.

When I meet with producers in my district, what stands out is how much and how well they care for the land because it is their livelihood. That should go without saying. At the same time, many models used by ESG advocates don't adequately reflect advances in how efficiently producers grow crops in terms of land, water, and pesticide used in the 21st century.

Over the period from 1948 to 2019, effectively from the end of World War II until now, U.S. ag production has increased by 175 percent. That is pretty impressive. Over the same period of time overall agriculture input use grew by just four percent. Even more impressive. When policies don't reflect that it can shut American producers out of economic opportunity.

For example, two years ago Democrats moved out of this committee a sustainable aviation fuel tax credit, which utilized an outdated United Nations model which would have likely prevented fuel made from American soybeans from accessing the credit. Many of the same people advocating against American-made biofuels also promote policies which fail to recognize the contributions of American producers in efficiently feeding the world, and the reality that people would starve without efficient agriculture production.

Mr. Bolay, obviously, you are an ag producer yourself. Would you mind sharing your perspective on how you and your fellow farmers and ranchers promote efficiency and protect our environment without over-reaching ESG policies?

Mr. BOLAY. You bet. Thank you, Congressman, for the question.

So, in Oklahoma, we experienced the Dust Bowl of the 1930s. That was a detrimental time for our state, for our country. And, over time, we figured out that that was not the right way to farm. We had to innovate. We had to implement new technologies that were incentivized and not mandated in the agriculture industry. We implemented no-till, minimum till, cover crops. And through that we have established very healthy soils, very productive soils in our state. We have also done the same thing with animal husbandry, again, through voluntary incentives, not mandates.

So again, we appreciate the—in agriculture we don't like to be told what to do, and I don't think any other Americans do either, especially on Main Street. So incentivizing, rather than mandating, is what we would prefer. Thank you.

Mr. SMITH of Nebraska. Thank you. I appreciate your response there, and I appreciate the earlier criticism of a command economy, as well. I just can't help but think that if we focused more on opportunity than outcome, more people would benefit.

You know, it is interesting, the demonization of prosperity that we often hear about. It is not a new thing. That argument, that criticism has been around for some time. The irony is that our tax code depends very heavily on prosperity, disproportionately so.

But what I am even more concerned about is that disagreement and dissent is characterized in such a way that if you disagree with something, you are a bad person, not just that you disagree. I mean, we could probably have a little disagreement between the use of biofuels and petroleum right here, but I don't think there is a characterization of that disagreement meaning you are a bad person. I hope that we can elevate this conversation so that we can see more Americans across our country experience prosperity, rather than the central government deciding who gets it and who doesn't.

Thank you, I yield back.

Chairman SMITH. Thank you. Mr. Doggett is recognized.

Mr. DOGGETT. Well, thank you very much.

You know, we are on a countdown to shutdown. Not content with having shut down this House of Representatives with no legislative action for an entire three weeks at this time of challenges from—at home and abroad, we are going to be four days from a shutdown of all of the government next Monday. We could be acting on this today instead of this nonsense tomorrow, Thursday, Friday. But no, Speaker Johnson and these Republicans have decided to delay it until the very eve of the shutdown and are expecting to resolve with the Senate all differences on some bill they have not laid out until, at the earliest, Monday and maybe Tuesday, Wednesday, or Thursday of next week.

And so, instead of dealing with that crisis, what we are dealing with today is wokeness. Now, they don't—as the hearing notice says, they don't really know what it means to be woke, but it sounds a little Black. And it really appeals to the White nationalists that support, as part of the coalition that support Republicans, people that object to those who might be adopting policies to overcome historic injustices to people of color.

Well, before it is too late, I think we need the Republicans to get woke and to wake up to reality. And that reality concerns the dangers of a government shutdown, the harm it will cause, and it also relates to the outrageous interference that is being proposed here today, just as it has across the country in basic business decisions of responsible corporations.

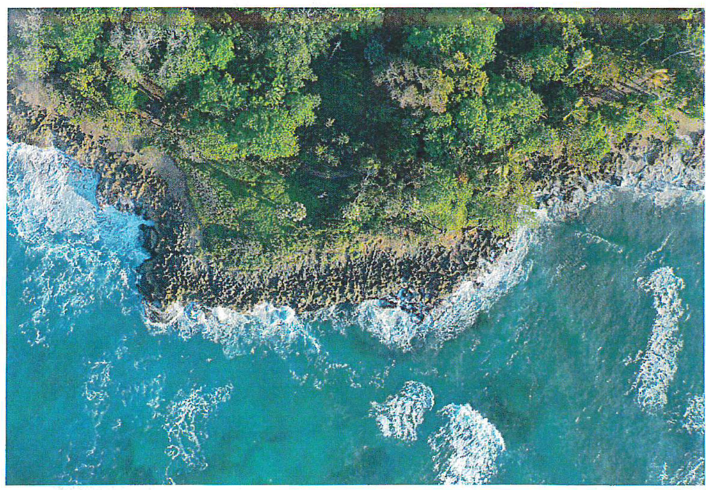
And I will ask unanimous consent, Mr. Chairman, to include in our record the 2023 Statehouse Report, "Right Wing Attacks on the Freedom to Invest Responsibly Falter in Legislatures," and another paper from Wharton: "Gas, Guns, and Governments: Financial Costs of Anti-ESG Policies."

Chairman SMITH. Without objection, so ordered.

[The information follows:]

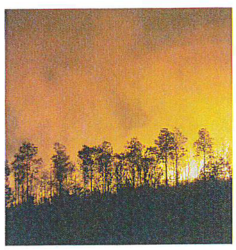
2023 STATEHOUSE REPORT:

Right-Wing Attacks on the Freedom to Invest Responsibly Falter in Legislatures



PLEIADES STRATEGY

TABLE OF CONTENTS



This report was written by Connor Gibson and Frances Sawyer for Pleiades Strategy.

EXECUTIVE SUMMARY

In 2023 Republican lawmakers in 37 states introduced 165 pieces of legislation to weaponize government funds, contracts, and pensions to prevent companies and investors from considering basic, common-sense risk factors. The legislation is framed around restricting the use of Environmental, Social, and Governance (ESG) investment criteria, such as the safety and treatment of employees, the diversity of management and workforce, and readiness to withstand the impacts of climate change. Were they to become law, the inevitable result of the bills would be to manipulate the market to favor select industries, particularly the volatile fossil fuel and firearms sectors.

This coordinated legislative effort, commonly referred to as the anti-ESG movement, generated massive backlash from the business community, labor leaders, retirees, and even Republican politicians. It is not an issue that resonates with the public. Despite all the hype, the vast majority of anti-ESG bills failed to progress through legislative chambers, including in ten states fully controlled by Republicans. At present, 22 laws and 6 resolutions in 16 states have made it through legislatures this year. Many of the finalized bills were heavily amended to reduce most of the substantive portions. Broad escape clauses were added to limit the most draconian prohibitions, which experts have warned legally contravene the basic tenets of fiduciary duty, creating a "liability trap."

This report is the first comprehensive look at this legislative campaign and the broad effort to counter it. It follows the general arc of these 165 bills — where they came from, who sponsored them, who supported and opposed them, and how they fared.

As of June, 2023, our tracking has concluded that:

- At least 165 distinct bills (including 9 resolutions) were introduced in 37 states.
- 83 bills are dead, across 23 states:
    - In 17 states where legislation was introduced, no laws passed. 10 of these states are controlled by Republicans.
    - 3 bills were vetoed by the governor in Arizona.
- 42 bills that did not pass will carry over into the 2024 legislative session.
- 22 bills and 6 resolutions were approved by state governments:
    - 19 laws and 6 resolutions have passed in 14 states this year.
    - 3 enrolled bills await governor action in 3 states.
- 12 active bills are pending. 6 have not had committee hearings.

Check out our spreadsheet of all of the anti-ESG bills we tracked in 2023.
Each bill is categorized, and traced to specific model legislation, when relevant.

In this report, we map the coordinated special interest groups that crafted model bills and lobbied for their introduction. We showcase the exceptionally diverse opposition to the bills, including the bankers, businesses, financial officers, labor advocates, and environmentalists who saw the campaign as an attack on the American economy itself. We also provide the first comprehensive analysis of the types of bills introduced, offering a taxonomy of bills, so that readers can understand the tactical options attempted by Republican legislators.

It is safe to assume that the interest groups behind this legislative push are revising their strategies by evaluating the success and failure of the bills so that new versions can be introduced across the country in 2024. To anticipate where this effort may go next, we find it critical to understand the network of actors behind this legislative push, the specific types of bills they proposed, and the ways they were received in the states.

Delaying Climate Accounting — and Action

The climate crisis presents material financial risks across sectors and is increasingly recognized by investors, executives, and regulators as a key threat to economic performance and stability. From floods and fires disrupting supply chains to high heat lowering workforce productivity to stranded asset risk as companies and governments alike set net zero emissions targets, climate risks are shaping economic fortunes today—and threatening long term market value.

Voluntary climate-related risk disclosure has brought significant transparency to these risks, enabling investors to make informed capital allocation decisions as they build a risk-adjusted portfolio that meets their clients' needs. U.S. and European regulators are now proposing mandatory disclosures of these key climate risks, so that investors in public equities have equal access to robust, useful information on which to base their decisions.

As capital and regulators have become more climate-focused, fossil fuel companies recognize climate financial action as a potential threat to continued investment in their firms. The fossil fuel industry and their political allies claim there is "discrimination" against fossil fuel companies, yet to date the companies targeted as "boycotting" fossil fuels include some of the largest investors in fossil fuels worldwide. Bill language and testimony by anti-ESG proponents in several states suggests that these bills were written to prevent companies from taking climate risk seriously and to artificially boost continued investment in the fossil fuel sector.

THE OPPOSITION

Echoing a position taken by state banking associations across the country, Jay Kaprosy of the Arizona Bankers Association said in testimony on Arizona's proposed SB 1138, "What you have in front of you is probably the most anti-free market bill that you'll see this legislative session." Because of the blatantly anti-free market nature of this legislative trend, business groups, chambers of commerce, and trade associations representing the financial sector led the charge against anti-ESG bills. Business lobbyists opposed anti-ESG legislation in at least 17 states: Arizona, Florida, Idaho, Indiana, Kansas, Maine, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Texas, Utah, and Wyoming.

> "What you have in front of you is probably the most anti-free market bill that you'll see this legislative session."
>
> JAY KAPROSKY
> ARIZONA BANKERS ASSOCIATION

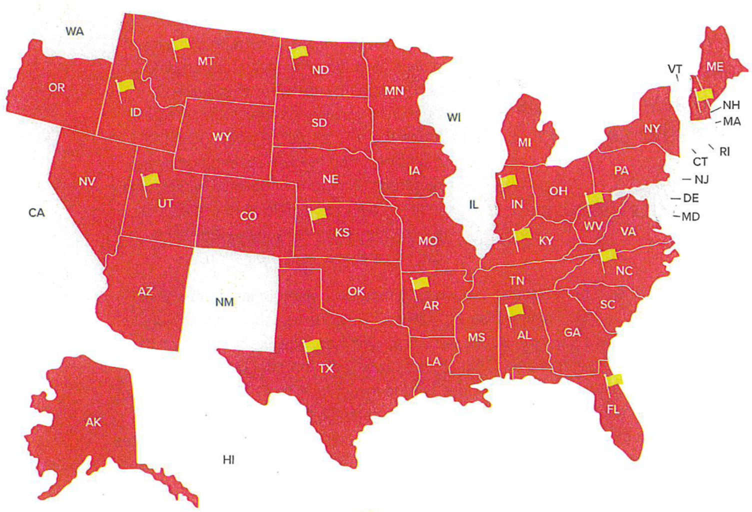
Damning cost estimates shared in testimony and legislative fiscal notes showed how the bills would drive up the costs of borrowing and decrease public pension returns. In multiple states, fiscal notes have shown the bills could cost state investments billions of dollars. In some instances, detailed below, such cost estimates were overlooked, obscured, or even ignored. Other studies found the bills restrict competition in the municipal bond market, costing taxpayers hundreds of millions of dollars. These costs, estimated and real, helped to coalesce a broad opposition early in the legislative cycle in states across the nation.

Advocates for pension beneficiaries and working families spoke out at length against the legislation in numerous states. From Florida to Ohio to Texas, labor unions fought to protect the financial security of public sector pension beneficiaries by ensuring their ability to invest with asset managers that charge lower fees and offer higher yield. They also reminded legislators of their members' right to invest *their own money* in ways that would benefit–and not harm–themselves and their communities. Investor advocates saw the bills as restrictive of their values and strategies, while environmental advocates saw them as an indirect subsidization of dirty energy and an attempt to delay solutions to the climate crisis.

While lawmakers sometimes worked with corporate lobbyists behind the scenes to prevent the most dangerous bill provisions from becoming law, it is important to understand that even watered down bills will exact costs on the public. Weakened bills still pose threats to public revenue and pensions. In some states, bills restricting the activity of pension fund managers passed despite cost estimates in the millions of dollars, a direct threat to the hardworking public employees who rely on public pensions for their financial security.

Whether through losses to public investments, or the forced investment in industries that carry heightened financial risks, anti-ESG laws could lead to reduced prosperity for the residents of states subject to them.

2023 ANTI-ESG BILLS AND LAWS



Bills (laws) were approved in the following states

THE COORDINATED NETWORK STAGING THE FIGHT

Corporate disclosures of risk factors enable prudent risk management by investors and improve the stability of financial systems. "Anti-ESG" bills muddy this basic principle of business, in order to shield risky industries from prevailing market trends. The campaign to target "Environmental, Social, and Governance" factors, or ESG, as a culture-war bogeyman is modeled on the fabricated hysteria over "critical race theory." The strategy was designed to serve billionaire donors and fossil fuel companies. It has provided Republican lawmakers another platform to advance racist, transphobic, anti-Semitic, and climate change-denying rhetoric.

A network of right-wing organizations have long coordinated to stifle corporate action on climate change. As an extension of this movement, organizations like the American Legislative Exchange Council (ALEC), the Heritage Foundation, the Heartland Institute, and the Foundation for Government Accountability (FGA) crafted and circulated model bills that form the basis of the anti-ESG legislative strategy. Advocacy for the legislation has predominantly been conducted by the Texas Public Policy Foundation (TPPF), the Opportunity Solutions Project (OSP), and Heritage Action. Consumers' Research has lobbied behind the scenes and waged complementary campaigns against companies and banks. Most of these groups are affiliated with the State Policy Network.

Organizations representing elected officers have also instructed members to push this legislative agenda. The corporate-backed State Financial Officers Foundation (SFOF) encouraged member treasurers and comptrollers to support anti-ESG legislation and use executive powers to advance complementary strategies. Similarly, state attorneys general appear to be coordinating legal pressure through groups like the Republican Attorneys General Association and the Rule of Law Defense Fund.

While many of these organizations' finances are obscured through donor-advised funds, there are clear connections between anti-ESG legislation, the fossil fuel industry, and right-wing figures. Fossil fuel companies, executives, consultants, and trade groups have advocated for the legislation detailed in this report. Involved right-wing activist groups have received funding from foundations controlled by executives from Koch Industries, which has significant fossil fuel operations. Many have received substantial funding from organizations controlled by Leonard Leo, including the Marble Freedom Trust, the 85 Fund and the Concord Fund. In potential violation of IRS nonprofit laws, Leo's for-profit consulting firm, CRC Advisors, is a top contractor for many of the organizations. The founders of struggling "anti-woke" exchange traded funds, including Vivek Ramaswamy and activist businessman Andy Puzder, have also advocated for bills that could boost their businesses' profits.

Through consistent investments in lobbying, campaigns, advocacy, and policy development, this coordinated network has pushed legislation forward that undermines conservative free-market ideology, works against the public interest, and is unpopular with the public. Despite the sheer danger and poor logic underpinning it, this trend illustrates how right-wing influence groups are capable of steering Republican priorities in state legislatures, regardless of the impacts or popularity of their ideas.

THE REAL COSTS

Evidence suggests anti-ESG bills impose real costs on Americans

Bills that punish financial institutions for using ESG metrics are predicted to cost millions or even billions of dollars, according to in-house legislative analysts and pension fund managers. Already, the negative effects of laws passed in 2021 and 2022 are becoming clear. Texas and Oklahoma now pay increased municipal bond rates because of contracting restrictions, and a similar impact is anticipated in Florida.

The cost to the public is dependent upon the specifics of any given bill. But in reviewing press, fiscal notes, and state house testimony, we found several trends of anti-ESG bills increasing contracting costs (especially for municipalities), lowering pension fund returns, raising management fees, and imposing administrative burdens on government agencies.

HIGHER COSTS TO MUNICIPALITIES

Municipal officials have a duty to spend tax dollars wisely. Bills that weaponize state treasuries by targeting state investment contractors essentially force those officers to violate this duty. After Texas passed a pair of anti-ESG laws in 2021, five of the largest bond underwriters were forced out of the market, resulting in an estimated $303 million to $532 million in higher interest payments on municipal bonds.

An Econsult study extrapolated the methodology to six other states and found similar bills would cost taxpayers up to $700 million if they were to become law. One of the states considered in the study was Oklahoma. In 2022, Oklahoma passed HB 2034, which instructs the state's Treasurer to create and maintain a financial blacklist that blocks the state from contracting with businesses that limit engagement with the fossil fuel sector. The Econsult study estimated that a boycott identical to Texas' would cost Oklahoma $49 million annually in bond interest.

It seems that costs are already accumulating in some of the state's municipalities. Earlier this year, Stillwater, Oklahoma negotiated to borrow $13.5 million from Bank of America to make city improvements, including to traffic lights and water infrastructure. However, on May 3, Oklahoma State Treasurer and SFOF member Todd Russ included Bank of America on his blacklist under HB 2034. Suddenly unable to contract with Bank of America, Stillwater's next best option would cost an additional $1.2 million due to higher interest rates, resulting in less ambitious plans for infrastructure improvements.

LOWER PENSION RETURNS AND HIGHER BUREAUCRATIC COSTS

Public worker pensions are a key target of many anti-ESG bills. Bills targeting pension management have threatened to impose a massive toll on state investments, the people managing them, and the people depending on them.

The same bill in Oklahoma that drove up lending costs for Stillwater, HB 2034, could likewise produce negative impacts for Oklahoma's pensions. The state's blacklist could cost state retirement systems millions of dollars by forcing rapid pension divestment from asset managers offering services at lower cost. The blacklist includes large asset managers that currently manage almost two thirds of the Oklahoma Public Employees Retirement System's (OPERS) assets. OPERS' investment committee declared that the rapid divestment would violate fiduciary duty.

Retirees' pension funds stood to lose billions of dollars due to reckless Republican bills in Texas (at least $6 billion over the next decade), Indiana ($6.7 billion) and Kansas ($3.6 billion). The Texas bill failed, and the bills in Indiana and Kansas were amended to exempt pension fund managers from some of the most harmful limitations.

But even after amendments, bills that became law in Indiana and Kansas are still expected to force states to waste millions of dollars in administrative costs in upcoming years, bloating the government in the name of an unpopular culture war. In a study of SB 224, Kansas determined it would need $300,000 per year for three full-time positions to implement the bill. SB 224 was a precursor bill to HB 2100, which became law after a fiscal note estimated annual costs of $915,000, a figure that has gone unreported. New administrative expenses or lower returns are expected in other states that passed laws, like Arkansas and Florida.

These increased costs likely contributed to the demise of bills in states like Wyoming and North Dakota. North Dakota estimated it would have needed at least 25 new full time employees to implement HB 1469, at a cost of $10.2 million per year. HB 1469 ultimately failed. North Dakota also recognized the steep price of establishing a blacklist in the fiscal note for HB 1283, which also failed. The bill's financial analysis estimated that the state would spend $1.5 million biennially to establish and maintain a list of offending companies, plus an additional one-time setup cost of $172,734.

Along with bloated administrative costs, anti-ESG proponents have inserted themselves into state advisory and proxy voting practices. The Indiana Public Retirement System's (INPRS) Tony Green revealed that the system hired Strive Advisory, a consulting firm co-founded by Vivek Ramaswamy, to advise on its proxy voting strategy. Ramaswamy's rate was set at $4,000 per hour. Democratic Representative Greg Porter, who sits on the financial committee, said, "One has to wonder whether the hysteria over ESG–in no small part manufactured and fanned by Strive Asset Management and Vivek Ramaswamy–is nothing more than a pretense to grift public retirement systems like ours."

The full costs of these bills will be learned through additional experience in the states that have passed laws. But we already have sufficient evidence that anti-ESG bills directly harm workers, taxpayers, companies, and municipalities by politicizing state investments, blacklisting select financial firms, and hurting workers' retirement security.

THE PLAYBOOK: A FLOOD OF BILLS

The architects of the anti-ESG campaign drafted model bills that change aspects of state financial regulation in order to prevent companies from advancing civil rights or responding to climate change as a matter of business strategy. These tactics range from limiting state contracting authority, restricting pension management, forcing disclosures under threat of liability, and combatting federal investment rules. Many states saw multiple bills introduced this session and while a majority of bills were not finalized, the bills that survived were often revised.

Missouri provides an example. This session, Missouri Republicans, who have a legislative supermajority, introduced 13 anti-ESG bills, none of which passed. One nonbinding resolution opposing federal ESG rules was approved. The 13 dead bills in Missouri included model legislation circulated by the American Legislative Exchange Council (ALEC), The Heritage Foundation, and the Heartland Institute, including those affecting pensions, contracts, proxy voting, and financial advisors. Multiple anti-ESG bills advanced through committee, where they were met with opposition from the Missouri Chamber of Commerce. One consolidated bill, HB 863, was approved by the House, but died in the Senate when the legislature adjourned.

In the following sections, we outline broad categories of legislation, along with distinct model bills, aimed to limit investor freedom and choice. These categories help chart the flow of ideas from organizations like ALEC, the Heritage Foundation, and The Foundation for Government Accountability into the halls of state power. The typologies that follow are meant to help understand the 2023 legislative session by identifying patterns within the legislation, its projected impacts to real people, and the support and opposition it drew.

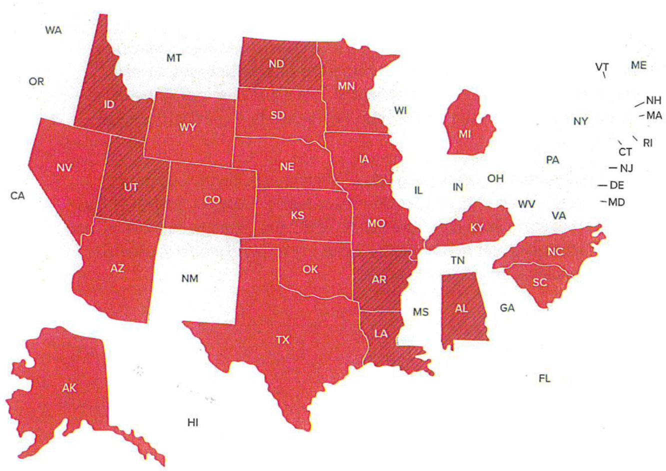
PART ONE

WEAPONIZING STATE CONTRACTS

In 2023, Republican lawmakers introduced 42 bills to block states and local governments from contracting with financial institutions that limit engagement with certain industries by categorizing this refusal as a "boycott" or "discrimination." These industries all donate disproportionately to Republican politicians, including fossil fuels, mining, agribusiness, timber and firearms. Many contracting bills direct a state authority to create a blacklist of financial institutions engaging in discrimination or boycotts and then subsequently ban the state from contracting with institutions taking such actions. Some versions of the bills even bar states from continuing existing contracts with blacklisted institutions.

BILLS WEAPONIZING STATE CONTRACTS

42 BILLS WERE CONSIDERED IN 23 STATES THIS YEAR



6 LAWS AND ONE RESOLUTION PASSED IN 6 STATES

Alabama SB 261
Arkansas HB 1307 + SB 62
Idaho H 190
Louisiana HCR 70 *(resolution)*
North Dakota HB 1429
Utah SB 97

Contracting bills leverage state contracting authority to control private sector decisions. Sweeping definitions of "boycott" or "discrimination" obscure the fact that many of the largest banks and asset managers continue to hold massive investments in fossil fuels.

Rather than respond to actual developments, these bills appear to attempt to preemptively chill climate action. From banking, to insurance, to asset managers, the combined pressure of the US anti-ESG movement has tempered ambition on corporate net zero pathways and even helped contribute to the weakening of voluntary net zero alliances.

These bills present costs to state residents. In many cases, they raise the cost of borrowing money on the municipal bond market and decrease returns on state investments. If a bond underwriter is blacklisted, then states and municipalities cannot contract with that underwriter. Similarly, states cannot invest with any blacklisted asset managers. These costs are detailed thoroughly in sections above.

Across the country, business groups and banking associations opposed contracting bills, describing them as anti-free market and harmful to small businesses. At least nine of these bills in as many states were of explicit concern to business lobbyists, in Alabama, Arizona, Idaho, Iowa, Kansas, Missouri, North Dakota, South Dakota, Utah, and Wyoming.

Like other anti-ESG legislation, contracting bills are tied to dark money operatives. Both the Opportunity Solutions Project and the Texas Public Policy Foundation publicly testified in support of these laws in multiple states. ALEC, the Heritage Foundation, and the Foundation for Government Accountability wrote or circulated model legislation that appeared to influence the text of many bills.

MODEL BILL:

Energy Discrimination Elimination Act

The Energy Discrimination Elimination Act is the name given to an ALEC-circulated model bill based on a 2021 Texas law. Co-opting language of "discrimination," the bills ignore actual discrimination in the financial sector, and instead attempt to make the case that financial institutions are "boycotting" proponents' preferred industries at both the state and national level.

While no laws of this kind were approved in 2023, five states followed Texas and passed laws similar in previous years. In 2021, the first bills of this kind were introduced by legislators in North Dakota (SB 2291), Oklahoma (HB 2034), and Texas (HB 2189, SB 13), respectively. North Dakota was the first state to pass legislation, although it amended into a de-fanged study bill. Then in June, 2021, Texas Governor Greg Abbott signed SB 13 into law. It barred state investments with businesses that "discriminate" against fossil fuel companies and became the basis for the Energy Discrimination Elimination Act model.

Affiliates of the Texas Public Policy Foundation (TPPF) claimed a central role in writing SB 13. A 2021 TPPF report by billionaire fracking tycoon Bud Brigham called "energy discrimination" the "greatest threat to capitalism." TPPF's Jason Isaac circulated the bill text within ALEC at its December, 2021 summit. While the ALEC board of directors did not approve the model bill text, it was widely circulated. In the year that followed, Kentucky, Oklahoma, Tennessee, and West Virginia enacted similar legislation.

This model bill is now generally disfavored in comparison to the more expansive Eliminate Economic Boycotts Act, detailed below.

9 BILLS WERE CONSIDERED IN 6 STATES THIS YEAR:

Arizona
Minnesota
North Carolina
Oklahoma
South Carolina
Texas

NO LAWS PASSED

MODEL BILL:

Eliminate Economic Boycotts Act

At the end of 2022, the organizations behind the Energy Discrimination Elimination Act (above) expanded the focus of their strategy. In the 2023 legislative session, ALEC and the Heritage Foundation circulated new model bills titled the Eliminate Economic Boycotts Act, which broadened the scope of the original Energy Discrimination Elimination Act to protect the mining, agriculture, and timber industries.

Activist businessman Andy Puzder and the TPPF promoted the new model bill through ALEC and the Heritage Foundation, two organizations with a long history of collaboration. As with the model Energy Discrimination Elimination Act, while ALEC task forces approved the proposed model, the ALEC board ultimately rejected it, reportedly amid opposition from banking lobbyists. Nonetheless, the model legislation was circulated to state lawmakers.

The ALEC and Heritage versions of the Eliminate Economic Boycotts Act are similar, but the Heritage version specifically includes firearms among favored industries, along with energy, mining, agriculture, and timber. The Heritage model also includes language condemning the refusal to finance companies that decline to "facilitate access to abortion, sex or gender change, or transgender surgery" in its definition of "economic boycott." Notably, the model text does not include a blacklist clause, even though such language was included in many of the state bills.

Four states – Arkansas, Idaho, Utah, and Alabama– passed laws in 2023 resembling the Eliminate Economic Boycotts Act that bar their state from contracting with certain firms. Hearings in Arkansas, Idaho, and Utah garnered little public business opposition. In Alabama, business leaders lobbied against the bill and the governor and state's financial department gave a Democratic senator an amendment that exempted the municipal bond market from the bill's provisions. North Dakota also saw a transformed bill. After business opposition, initial blacklist and boycott language was removed from HB 1429 and the final version no longer resembled the Eliminate Economic Boycotts Act bill.

31 BILLS WERE CONSIDERED IN 18 STATES THIS YEAR

Alaska
Alabama
Arkansas
Colorado
Idaho
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Nevada
Oklahoma
South Carolina
South Dakota
Texas
Utah
Wyoming

5 LAWS PASSED IN 4 STATES

Alabama SB 261
Arkansas HB 1307 + SB 62
Idaho H 190
Utah SB 97

In other states with substantial business opposition, no laws were passed. South Dakota's HB 1208 failed to advance after it was opposed by at least seven local business associations, including lobbyists representing electric utilities, bankers, retailers, and the state chamber of commerce. South Dakota legislators sided against the bill's proponents, which included the National Shooting Sports Foundation and the State Freedom Caucus Network, in a twelve to one vote.

MODEL BILL:

Protecting Free Enterprise and Investments Act

The Foundation for Government Accountability, a Florida-based conservative think tank funded by Leonard Leo and allied foundations, circulated this model in 2022. The bill combines aspects of the ALEC and Heritage Foundation model contracts bills (detailed above) and the ALEC and Heritage Foundation model pension bills (detailed below). To track this bill, we identified a limited number of unique phrases and particular combinations of provisions.

Similar to ALEC's Energy Discrimination Elimination Act, this model calls for states to stop contracting with financial institutions engaging in so-called "boycotts of energy companies." This model calls on state treasurers to create a blacklist of such firms, as opposed to the model Eliminate Economic Boycotts Act, which excluded the blacklist provision. The model uses the distinct phrase "pecuniary factors" that is otherwise unique to the ALEC State Government Employee Retirement Protection Act (detailed below). It also uses a unique phrase, "reasonable business purpose," as opposed to the "ordinary business purpose" referenced in other models.

These provisions attempt to block state-contracted pension fund managers from voting for a wide range of shareholder resolutions intended to combat corporate negligence against employees, ecosystems, or shareholders.

A block of text applying restrictions on proxy votes and proxy advisors is almost identical to similar sections in the pension-focused model bills published by ALEC and the Heritage Foundation (detailed below). These provisions appear to be an attempt to block state-contracted pension fund managers from voting for a wide range of shareholder resolutions intended to combat corporate negligence against employees, ecosystems, or shareholders.

One unique clause in this model threatens to revoke an investment professional's occupational registrations if they give investment advice based on factors outside the model's definition of "pecuniary." The clause mirrors a provision of Florida law, Chapter 517.161. Similar text appeared in Oklahoma's 2023 SB 985, which was not heard in

16 BILLS WERE CONSIDERED IN 10 STATES THIS YEAR

Arkansas
Arizona
Iowa
Idaho
Kansas
Louisiana
North Dakota
Oklahoma
Utah
Wyoming

3 LAWS AND ONE RESOLUTION PASSED IN 4 STATES

Arkansas HB 1307
Idaho H 190
Louisiana HCR 70
Utah HB 499

committee hearings but remains active for the 2024 legislative session.

Another unique clause explicitly empowers state attorneys general to investigate "any person, company, or financial institution found to be... restrain[ing] the trade or commerce of energy companies..." and empower any person whose business or property is harmed by such actions to file a civil lawsuit in the state circuit courts. Parts of the provision are similar to Utah's unique HB 449 (as amended), which was sponsored by a longtime ALEC member, Representative Ken Ivory.

Arkansas legislators approved HB 1307, which appears to include parts of both the FGA and Heritage Foundation model contracts bills, along with provisions affecting retirement funds. Sponsoring Representative Jeffrey Wardlaw described the bill as an effort "to make sure that we're following our beliefs in the state and making sure that nobody's discriminating against the industries that are important to Arkansas." In a committee hearing, Republican Senator Bryan King asked the sponsor for information on the bill's fiscal impact: "Is it too much to ask for financial impact? I mean, if it's gonna have an impact, I'd like to know what it is before I vote on it. [...] That's not a hard question to ask. If you can't know the answer, why would I want to vote on it?" Republicans wound up approving the bill, rejecting the findings of a disfavorable fiscal impact after it was published.

> "When you reduce markets, when you reduce competition, you increase costs."
>
> JONATHAN OPPENHEIMER
> IDAHO CONSERVATION LEAGUE

Idaho legislators approved H 190, which included an escape clause allowing the state treasurer to continue doing business with credit unions that "boycott" certain industries if doing otherwise is "inconsistent with the constitutional or statutory duties" of the state. In the Senate State Affairs committee hearing on March 21, 2023, Jonathan Oppenheimer of the Idaho Conservation League warned legislators the bill could expose state banks and credit unions to litigation. Oppenheimer flagged that the bill's accompanying fiscal analysis came to the implausible conclusion that the bill posed no cost to the state: "When you reduce markets, when you reduce competition, you increase costs," he said.

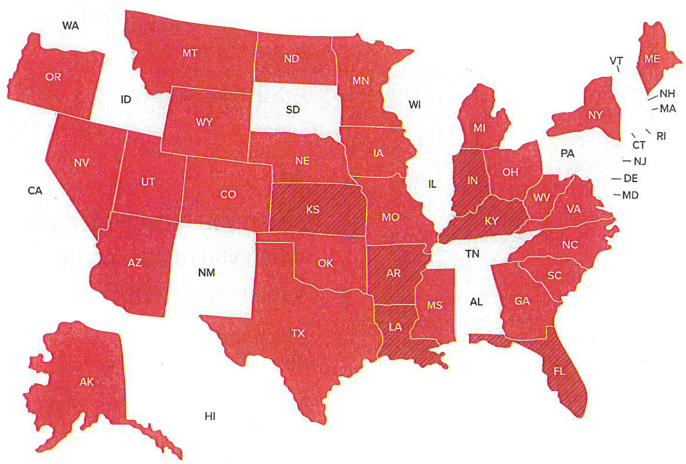
PART TWO

WAGERING RETIREE PENSIONS

US public pension funds manage an estimated $5.6 trillion in assets. The largest subset of anti-ESG bills in 2023 sought to leverage state retirement funds to artificially favor investments in fossil fuels, mining, agriculture, and weapons manufacturers, regardless of their long-term investment risk. These bills prevent state and municipal retirement systems from investing funds with specific asset managers. Some bills that generally targeted state investment contractors (detailed above) also included provisions implicating state pension funds.

BILLS TARGETING RETIREE PENSIONS

59 BILLS WERE CONSIDERED IN 30 STATES THIS YEAR



11 LAWS AND ONE RESOLUTION PASSED IN 10 STATES

Arkansas HB 1253 + HB 1307
Florida HB 3 + SB 110
Indiana HB 1008
Kansas SB 2100
Kentucky HB 236
Louisiana HCR 110 *(resolution)*
Montana HB 228
North Carolina H 750
Utah SB 96
West Virginia HB 2862

Pension fund bills come in two main varieties of model legislation, written and promoted by the American Legislative Exchange Council (ALEC) and the Heritage Foundation. Both models focus on blocking fund investors from considering risks posed by pollution and other corporate practices. They both apply limitations on shareholder proxy voting, an attempt to block shareholder resolutions intended to combat corporate harm against employees, ecosystems, or shareholders. Much like the model contract bills (detailed above), these models carry the threat of enforcement actions by state attorneys general. Beyond these shared provisions, there are other clauses unique to each model bill, as detailed in the sections below.

High Costs to Pensions Garner Pushback

Fiscal analyses have shown that anti-ESG pension bills cost states, municipalities, and pensioners enormous sums. This legislation can drastically decrease pension funds' projected returns, foist higher management fees onto funds, and raise administrative costs. When these or other factors cause public retirement systems to lose money, their assets to liability ratio decreases, which can raise required employer contributions. This year, multiple legislators had to amend anti-ESG pension bills after untenable fiscal assessments garnered national public scrutiny. In some cases, the bills' fiscal notes failed to include massive anticipated losses to investments. Even when bills contained escape clauses allowing exceptions to investment restrictions, state investment officers warned that they still threatened to impose substantial costs on retirement systems. Anti-ESG attacks on pension funds are part of a political war of attrition on pension programs and other retirement benefits. This longstanding war has already had disastrous consequences, like the 2014 pension crisis in Kansas.

These bills were most successful in states with Republican trifectas: Arkansas, Florida, Indiana, Kansas, Kentucky, Montana, Utah and West Virginia all passed anti-ESG pension laws. More pension bills that made progress in Republican-controlled states like Georgia, Iowa, Nebraska, Oklahoma, and South Carolina will carry over to the 2024 legislative session. However, in two other Republican-controlled states, North Dakota and Wyoming, anti-ESG pension bills failed after state investment officials and business interests opposed them (detailed in the case studies, below).

Dark money groups provided support to anti-ESG pensions bills, but public testimony from out-of-state groups affiliated with the State Policy Network (SPN) does not seem to have improved pension bills' reception. With the exception of Indiana HB 1008, supported by the Texas Public Policy Foundation (TPPF), and Montana HB 228, supported by the Florida-based Opportunity Solutions Project, we are unaware of any pension laws that passed with the support of out-of-state SPN affiliates–noting that lobbying disclosure on specific state bills is usually insufficient.

Republican lawmakers generally ignored concerns about anti-ESG legislation posed by pension fund managers and unions. In at least 13 states – Arkansas, Colorado, Indiana, Iowa, Kansas, Maine, Missouri, Nebraska, North Dakota, South Carolina, Texas, West Virginia, and Wyoming – representatives from public pension systems raised concerns or outright opposed anti-ESG bills targeting pensions. Michael Payne of the West Virginia Investment Management Board warned legislators that HB 2862 "likely would have a dampening effect on certain sections of our investments to perform as well as they did in the past...I just want to say, if it ain't broke, don't fix it." Legislators did not heed Payne's advice, and HB 2862 became law with the governor's signature.

Several major unions opposed bills restricting pension investments on the grounds that they threaten workers' retirement funds. State and local chapters of the Service Employees International Union (SEIU), American Federation of Teachers (AFT), National Education Association (NEA), the American Federation of State, County and Municipal Employees (AFSCME), and the AFL-CIO testified against bills in Florida, Indiana, Kansas, Maine, Missouri, Ohio and Texas. Jeff Derringer of SEIU District 1199 testified against SB 6 in Ohio, telling legislators that "this bill would cast a cloud of uncertainty and confusion and jeopardize returns by investors fearing subjective interpretation." Rich Templin of the Florida AFL-CIO said in opposition to HB 3, "Our real concern here is what this is going to do to the way that our public pension funds invest and make money for their participants." Tim Graham of the Kansas Education Association was more blunt: "I hate to sound provocative, but when it comes to our pensions, keep your culture wars out of them."

"I hate to sound provocative, but when it comes to our pensions, keep your culture wars out of them."

TIM GRAHAM
KANSAS EDUCATION ASSOCIATION

MODEL BILL:

State Government Employee Retirement Protection Act

The State Government Employee Retirement Protection Act is an ALEC model bill. It hinges upon narrowly-defined "pecuniary factors" as the means to limit certain risk assessments that might dissuade investment in certain industries. Pension managers have an existing legal duty to manage funds in their membership's sole interest. This model bill does not actually offer any new protections to pension funds. Instead, it provides a definition "pecuniary" that politicizes fund managers' risk assessment process and could complicate their ability to deliver the best returns for their members.

The ALEC model's unique approach is to establish a narrow definition of "pecuniary," rooted in an attempt to redefine the well-established concept of materiality. Together, the two definitions preclude pension managers from considering risks that are "systemic" or "involve a high degree of uncertainty regarding what may or may not occur in the distant future." Climate change relates to both of these kinds of risk assessments, according to the Financial Stability Board and other key financial decision-making bodies.

The ALEC model also dissuades the participation of financial institutions in industry working groups on topics that present material portfolio risks. Participation in such organizations may be used as evidence of basing a responsible decision on a "non-pecuniary" factor.

Across the country, bills influenced by this model garnered opposition for the costs and risks they forced on state retirement systems. In places where the bills did pass, they often did so despite warnings from retirement systems, pensioners, and unions. In West Virginia, Craig Slaughter, the Executive Director of the state's Investment Management Board, told legislators that HB 2862, which is now law, would force his office to make politicized decisions, which "undercuts returns." As Slaughter warned the state House Judiciary Committee, "You're starting to put handcuffs on us." In Florida, the AFL-CIO and Amalgamated Transit Union testified against HB 3, which appears to be based on provisions from the ALEC model, as well as the Heritage model pension bill (below).

33 BILLS WERE CONSIDERED IN 18 STATES THIS YEAR

Arizona
Arkansas
Florida
Georgia
Iowa
Kentucky
Maine
Michigan
Minnesota
Mississippi
Montana
North Carolina
North Dakota
Oklahoma
Oregon
South Carolina
Texas
West Virginia

7 LAWS PASSED IN 6 STATES

Arkansas HB 1253
Florida HB 3 + SB 110
Kentucky HB 236
Montana HB 228
North Carolina H 750
West Virginia HB 2862

In addition to Florida, laws influenced by this ALEC model were passed amid opposition from banking lobbyists in Indiana, Kansas, New Hampshire, North Dakota, and South Carolina. In opposition to the original version of HB 457, Kristy Merrill of the New Hampshire Bankers Association warned legislators, "We think that the fiscal note on the legislation, particularly the part by the New Hampshire retirement system...describe[s] the language used in the bill as being vague and undefined, and that will be nearly impossible to enforce." The New Hampshire bill was later gutted and replaced with unrelated language before it passed. The head of the South Carolina Bankers Association explained in a committee hearing on H 3690 that it would forbid basic loan making criteria, concluding that the bill was "just is unworkable for the banking industry."

> "The way the bill is written, it just is unworkable for the banking industry."
>
> FRED GREEN
> SOUTH CAROLINA
> BANKERS ASSOCIATION

The South Carolina bill was supported by a high-profile politician from outside of the state's borders. Vivek Ramaswamy, the founder and top shareholder of a right-wing asset management firm, helped introduce H 3690. More out-of-state interest groups were at work in North Dakota, where Brent Bennett of the Texas Public Policy Foundation testified in support of North Dakota HB 1469. State Securities Commissioner Karen Tyler and Todd Steinwand of the Bank of North Dakota reminded legislators that unlike Texas, North Dakota needs significant outside capital investment to build up carbon capture infrastructure. The Executive Director of North Dakota's Retirement and Investment Office, Jan Murth, also contradicted Bennett's testimony, explaining to legislators how Bennett greatly underestimated the costs of legislation by focusing on irrelevant data. Neither the North Dakota nor South Carolina bills passed, although the latter bill will carry over into 2024.

MODEL BILL:

State Pension Fiduciary Duty Act

States have introduced 21 bills incorporating aspects of the Heritage Foundation's State Pension Fiduciary Duty Act. The Heritage model uses a restricted definition of "fiduciary commitment" to accomplish the same goal as the ALEC model pension bill: forcing investors to ignore certain risks in order to be eligible to contract with state pension funds. It explicitly targets companies deemed to support "access to abortion" or "transgender surgery" among prohibited non-financial investment considerations, demonstrating how Republican lawmakers are adapting model bills to incorporate up-to-the minute culture war signaling. The Heritage model also includes unique liabilities for companies that could be forced to pay specific damages to the state.

In 2023, the bills carried price tags so enormous that they generated widespread negative headlines for Republican state legislators. Estimated lost investment returns reached the billions in states like Indiana, Kansas, and Texas. All of these bills bore a resemblance to the Heritage model pension bill. As detailed in sections above, the laws that passed continue to threaten pensions with lower returns and higher administrative costs even after significant amendments were made.

There was a breadth of opposition to these bills. In Kansas, the bills that culminated into HB 2100 were opposed by the state's largest pension fund. They were even a source of concern for the SFOF-affiliated State Treasurer, Steven Johnson, as well as the Kansas Bankers Association. After estimated losses of $3.6 billion and other extreme provisions created resistance to HB 2436 and SB 291, a final compromise was created by inserting softened language into a previously-unrelated bill, HB 2100. It passed with no further opportunity for opponent testimony. HB 2100 became law without the governor's signature. The bill's final fiscal note estimated $915,000 in additional annual costs.

In Nebraska, conservative legislators expressed skepticism over LB 743, which did not advance out of committee before the session adjourned. Leadership at the Nebraska Investment Council chided legislators for not providing sufficient time to assess the bill's impact in a fiscal note. The Council's State Investment Officer, Michael Walden-Newman, urged the legislature to pause on the bill and allow his office time to assess its

21 BILLS WERE CONSIDERED IN 15 STATES THIS YEAR

Colorado
Florida
Indiana
Kansas
Mississippi
Missouri
Nebraska
Nevada
Ohio
Oklahoma
South Carolina
Texas
Utah
Virginia
Wyoming

4 LAWS PASSED IN 4 STATES

Indiana HB 1008
Florida HB 3
Kansas SB 2100
Utah SB 96

impact on state retirement funds. LB 743 faced outright opposition from the Nebraska Independent Community Bankers Association, the Nebraska Insurance Federation, and the Nebraska Bankers Association, whose lobbyist noted the estimated $6.7 billion in lower returns from a similar bill proposed in Indiana. Amy Thompson, a utilities lobbyist representing the Omaha Public Power District and Nebraska Power Association, warned that the bill could prohibit public funds from limiting high-risk investments: "in other words, to be forced to make imprudent investment decisions."

"

We're worried that conflicts in the bill would keep us from partnering with some of the best investment managers in the world over issues such as violation of fiduciary duty and protecting competitive advantage."

AMY BISHOP
TEXAS COUNTY DISTRICT RETIREMENT SYSTEM

Amy Bishop, Executive Director of Texas County District Retirement System (TCDRS), told lawmakers that a bill resembling the model Heritage Foundation pension bill, SB 1446, could result in a loss of $6 billion to TCDRS. As Bishop summarized in a previous Senate committee hearing, "We're worried that conflicts in the bill would keep us from partnering with some of the best investment managers in the world over issues such as violation of fiduciary duty and protecting competitive advantage."

PART THREE

OBSTRUCTING NORMAL BUSINESS PRACTICES WITH BANS, LIABILITY THREATS, AND REQUIRED DISCLOSURES

This year, bills affecting liability and disclosures drew significant pushback. These model bills have not passed in any jurisdiction, even though 25 bills were introduced in 18 states. These bills open a distinct new front in the anti-ESG trend. While bills targeting state contracting authority or pension management leveraged funds directly managed by the government, these bills explicitly target private sector decisions between financial firms and the companies and individuals they do business with.

Like blinders on a horse, these bills seek to prevent private financial institutions from considering certain types of information when evaluating the bankability or credit-worthiness of individuals and businesses. These bills greatly limit the considerations a financial institution can use in making a lending decision, and so effectively restrict or ban bankers' professional discretion. Some versions of these bills require public disclosures by any firm utilizing any "nonfinancial, nontraditional, and subjective measures," including ESG factors or Diversity, Equity and Inclusion (DEI) metrics in their decision making. This disclosure can include pre-scripted disclaimers that must be signed by customers.

There is a wide range of proposed language in these bills. Most of them share language to ban banks from utilizing thorough risk analyses to guide their business decisions. This opens new liabilities for businesses seeking to analyze risks that could be construed as political, such as climate risk, labor standards, or DEI practices. Ignoring these risks could leave firms exposed to significant short-, medium-, and long-term risks. Some of the bills are also accompanied by enforcement provisions that encourage civil litigation against financial institutions — or even make it a crime if institutions repeatedly utilize banned factors in their analyses.

Business lobbyists and state investment officers warned that these bills would increase the cost of doing business in the state by adding administrative burdens, open up liability to "frivolous lawsuits," and prohibit basic considerations for lenders and insurers. As Jay Kaprosy of the Arizona Bankers Association said in testimony against Arizona's proposed SB 1138, "What you have in front of you is probably the most anti-free market bill that you'll see this legislative session."

MODEL BILL:

Fair Access to Financial Services Act

As of June, 2023, no state has passed a version of the Fair Access to Financial Services Act. Only two states moved a version of these bills through one legislative chamber: Arizona and Missouri. In both states, the bills failed to advance after opposition from local business lobbyists. Private sector lobbyists exhibited particular vigor against these bills, opposing at least ten of them in nine states: Arizona, Kansas, Maine, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Utah.

The first bill of this kind was New Hampshire's HB 1469, introduced in 2022. It received favorable testimony from the Heartland Institute's Bette Grande, before being replaced entirely by a study bill. The Heartland Institute is perhaps best known for denying climate change science and comparing those who accept it with Ted Kaczynski, the terrorist known as the Unabomber. Heartland is circulating a version of the model bill copied and pasted from North Dakota's 2023 HB 1283, which Grande provided the language for (see video at 8:08:53). In addition to Heartland, the supporters of these bills include firearms lobbyists and the Opportunity Solutions Project.

Republican sponsors of these bills have argued in committee that the legislation prevents discrimination. The title of these bills appears to be copied verbatim from congressional bills sponsored by Democrats in 2020 and again in 2022. The federal bills sought to prevent racist discrimination in the financial sector, based on real-world evidence. The Republican state legislation could have the opposite impact by using "subjective" ESG or DEI investment criteria as a means to impose liability on private investment managers, advisors, and financial institutions.

Business and banking associations have strenuously opposed versions of this bill in hearings across the country. In Maine, Nebraska, and Tennessee, the bills failed to advance after vocal opposition from businesses and state investment officers. Some lobbyists compelled legislators to gut the original language in these bills before passing laws with entirely different text. The original version of Utah HB 449 was replaced with substitute language at the behest of the Utah Bankers Association. In Montana, a draft bill was discarded in favor of an unrelated non-binding resolution, at the request of the Montana Bankers Association.

25 BILLS WERE CONSIDERED IN 18 STATES THIS YEAR

Arizona
Arkansas
Kansas
Maine
Minnesota
Missouri
North Carolina
North Dakota
Nebraska
New Hampshire
Oklahoma
Pennsylvania
South Carolina
South Dakota
Tennessee
Texas
Utah
West Virginia

NO LAWS PASSED

In Missouri, the state Chamber of Commerce opposed HB 863 which would mandate that customers of any financial services firm utilizing "subjective" factors, like ESG, to sign a disclosure form stating that the institution's product will not be focused on maximizing returns. The Chamber's Director of Legislative Affairs, Philip Arnzen, told legislators in a Senate Insurance committee that businesses would respond with excess caution and excess bureaucracy: "many financial firms which are risk averse are just going to mandate that these [disclosure] forms be signed by every customer, regardless of what the investment strategy is. So we believe that it would be costly and will put a new mandate on any financial firm that does business in Missouri."

PART FOUR

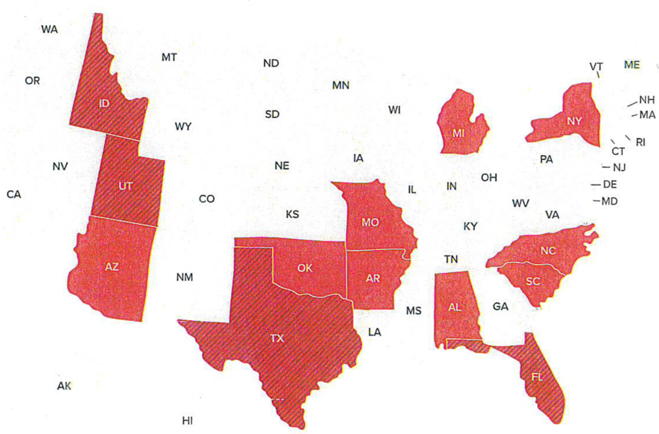
STOKING FEAR THROUGH ESG SCORES

Model legislation for a variety of bills banning the use of ESG "scores" has not yet been identified. Conspicuously similar bills in many states indicate that models are being circulated.

These bills target state and local governments, as well as the private sector. Many of the bills introduced this session focused on forbidding state governments from using ESG criteria in the selection of contractors. Some bills would preclude companies engaged in using ESG criteria from government procurement contracts. Other bills proposed bans on the use of ESG criteria by private companies as part of risk assessment before lending money, providing insurance, or making procurement decisions.

BILLS TARGETING ESG SCORES

23 BILLS WERE CONSIDERED IN 13 STATES THIS YEAR



5 LAWS PASSED IN 5 STATES

Florida HB 3
Idaho H 191
Texas SB 833
Utah HB 281
North Carolina H 750

This year, four states passed laws with unique variations of this approach. Florida's HB 3 is a broad law that affects pensions, but it also prohibits government bond issuers from entering "into a contract with any rating agency whose ESG scores for such issuer will have a direct, negative impact on the issuer's bond ratings." A law passed in Idaho, H 191, prohibits government contractors from being selected using ESG criteria. Texas SB 833 forbids the use of ESG criteria for private insurance companies. Utah HB 281 appeared to be a rhetorical exercise, conflating quantitative summaries of ESG analysis and data with conspiracy theories about "social credit scores."

Misinformation was a common feature of advocacy in support of these kinds of bills. The specter of personal ESG Scores are being used as a way to engage the grassroots in this fight, as exemplified in the Heritage Action video, "DENIED: Is Your Credit Score Woke Enough?" In statehouses, bill sponsors insinuated that financial institutions collected personal data to discriminate against individual people based on political ideology. In an introduction of two bills attacking the intentionally misused concept of ESG, Texas Senator Bryan Hughes said, "[ESG] has become the shorthand nomenclature for scoring or evaluating how 'good' a company is, not unlike a social credit score in communist China."

Government agencies expressed concern over many of the bills focused on prohibiting ESG criteria by governments, because they anticipated decreased contracting opportunities and increased costs. Robin Hillyard of the Arizona County Supervisor Association warned that SB 1611 could be responsible for "delaying our procurement contracts," due to the complications of verifying compliance. The bill was one of three bills vetoed by Democratic governor Katie Hobbs after being approved by the Republican-controlled legislature.

In Missouri, government employees flagged that several of the bills—all of which ultimately failed—could force them to pay higher contract fees. A fiscal note for SB 177 revealed that officials from Kansas City believed the bill could negatively impact that city's finances. Fiscal notes for HB 770, SB 50, and SB 316, flagged that the bills could block the state from continuing to do business with firms it already contracted, reducing the competitive pool, increasing costs, and lowering the quality of services. Similar concerns were unveiled in Idaho, where the fiscal note for H 191 contained glaring omissions: The Idaho Conservation League's Jonathan Oppenheimer warned legislators, "I fear that the fiscal note for this bill only addressed the potential fiscal impact to the general fund, yet it applies to all units of state government."

PART FIVE

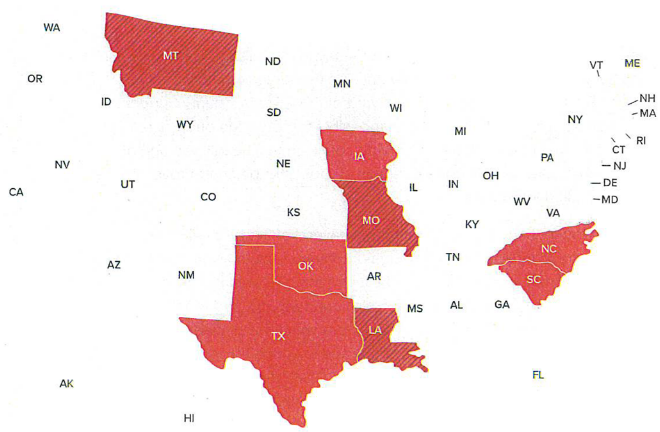
OPPOSING FEDERAL RULES

State lawmakers have also introduced bills and resolutions aimed at positioning their states against a variety of federal rules, including those perceived to involve ESG. While no bills in this category passed in 2023, Louisiana, Missouri, and Montana have passed nonbinding resolutions that focus on the US Securities and Exchange Commission climate disclosure rule.

All seven of the other bills shared language that appears to have been copied verbatim from a model bill, though it is unclear where the model came from and who might be circulating it. Texas SB 242 appears to have been prefiled before the other bills, in mid-November, 2022, with Missouri and South Carolina pre-filing similar bills in the weeks that followed.

BILLS OPPOSING FEDERAL RULES

10 BILLS & RESOLUTIONS WERE CONSIDERED IN 8 STATES



NO LAWS PASSED. THREE RESOLUTIONS WERE APPROVED:

Louisiana HCR 59 **Missouri** HR 12 **Montana** HJ 11

The bills and resolutions are typically broad enough to stage resistance to other relevant federal rules, such as a recent Department of Labor rule that "confirms that fiduciaries should consider ESG factors in investment decisions just as they would any other financially relevant factor," as Ceres summarized. This rule was challenged by Republicans in Congress under the Congressional Review Act, engendering the first presidential veto by the Biden Administration.

Notably, at least one proponent of Texas SB 242 appeared to encourage the consideration of violence at scale between states and the federal government. Chuck DeVore, a former California state legislator working at the Texas Public Policy Foundation, told members of the Senate State Affairs Committee, "Without the enforcement authority of state and local governments, the federal government is virtually powerless to work its will on the states and on the people. There's approximately 1.2 million state and local law enforcement personnel versus about 137,000 at the federal level." When asked to clarify his comments contrasting the size of federal and local law enforcement, DeVore repeated the statistics, and elaborated, "there's no way that the federal government by itself can enforce all of these edicts that come down from the federal level."

DeVore attempted to contrast his logic to escalation tactics used by Antebellum South enslavers in preparation for the Civil War. "Some critics have likened this to nullification...it is not at all like the situation that led to the nullification crisis in 1828 through 1832." DeVore is affiliated with the Claremont Institute. Claremont is known for laundering "white supremacist ideas," and it is actively organizing sheriffs in politics. Claremont affiliates have stated that "we are in a kind of cold civil war," and outright civil war is something the group's leaders have predicted.

WHAT HAPPENS NEXT

In 2024, Republican state lawmakers across the country will undoubtedly introduce more of the model bills discussed above, as well as new iterations. Understanding what happened in the 2023 legislative sessions helps us understand what is likely to come next.

We will be watching these developments:

CONGRESS

This fight is headed to the Hill. Members of Congress have introduced legislation, as detailed in the case study, above. Aspects of these bills are similar to some of the model bills discussed in this report. Within the span of a month, in the spring of 2023, there were two House Oversight hearings on ESG practices. Republican members of Congress offered anti-ESG advocates a national platform to reinforce the same manufactured narrative being pushed in the states.

In both hearings, witnesses for the minority and moderate and progressive Democratic members delivered complementary messages about fiduciary duty, the need for corporate transparency, the dark money origins of anti-ESG, the importance of environmental and social responsibility, and the emptiness of Republican culture war signaling. Democratic members are demonstrating that this is an issue they can find common ground on, strike a variety of crucial points, and dismantle Republican witnesses and arguments with a broad array of messaging centered on extremist Republican attacks on freedom. At the second of these hearings, very few Republican committee members even attended to speak on behalf of the agenda their party set.

THE STATES

This fight will accelerate in the states in the run-up to the 2024 legislative session. A majority of states operate on two year legislative calendars, and 42 bills that did not pass in 2023 could carry over into the 2024 legislative session. In addition, bill authors will likely resubmit revised bills or submit new legislation. The consolidation and watering-down of bills may have the effect of weakening the business coalition that opposed bills in 2023. However, weakened bills are still a threat to state finances, local and small businesses, clean energy development, racial and LGBTQIA justice, and gun control. Their full expected financial impact remains unknown.

Additionally, this continues to be a topic lawmakers know little about. As we saw in legislatures around the country, in some cases, even bill sponsors do not know how to defend the bills they introduced. This is the moment for lawmaker education, so that elected officials understand the broad threats of these bills. As lawmakers have a better understanding of these laws' potential impacts, legislative dynamics will adjust to reflect that reality. These fights will only be supercharged in a presidential election year where most state legislators are also up for election, and we have every indication that anti-ESG and woke capitalism will be at the center of the Republican platform.

INSURANCE

Multiple organizations helping to craft and circulate anti-ESG legislation – including ALEC and Heritage – have long histories of successfully advancing their preferred policies through experimental state legislation. We expect that these architects of this anti-ESG effort will continue to find new ways to legislate against sustainable business practices, and we expect insurance will be a critical new battleground. States may decide to follow Texas, which passed a law restricting insurance this year. Boldness from industry will be crucial to countering these bad bills.

The insurance industry is on the front lines of the climate crisis, and anti-ESG advocates are likely to expand their efforts targeting the sector. Anti-ESG attacks on actuarial duty are not simply attacks on the industry, they also degrade the ability of vulnerable communities to find and afford coverage, starting with those directly in the way of climate impacts. This is especially true in states where topics related to insurance are at the top of the political conversation, including the states of the Gulf South.

With 50 U.S. states, the fossil-fuel funded interests behind this campaign were able to experiment, mounting multiple attacks on sustainable finance in a variety of political, economic, and regulatory contexts this year. Consistently, their efforts were marked by division, contention, and uncertainty— often within their own party and in confrontation with traditional political allies. Going forward, we expect these attacks will be turbocharged by the broader financial and political conversation in the months to come.

The fate of 2024 state legislation — and broader campaign to weaponize state financial regulation to protect preferred industries — will be determined by the continued strength of the broad and diverse opposition speaking out against this manufactured crisis and standing up, from a variety of viewpoints, against the attacks on the freedom to invest and high costs these attacks would impose on the American economy.

TEXAS

Texas Republicans introduced 21 anti-ESG bills in 2023, one of which passed. The numerous forms of legislation proposed in Texas this year show the broad scope of ambition to coerce financial institutions to invest in coal and oil and gas. As part of the blitz, Texas lawmakers introduced an array of creative strategies to restrict the options of local governments and financial institutions, in addition to variations of most of the model bills detailed above.

Texas legislators field-tested a number of unique bills, most of which made no progress:

> HCR 38 called for a Congressional investigation into BlackRock CEO Larry Fink.
>
> HB 2752 proposed state-enforced noncompliance with rules established by the National Association of Insurance Commissioners.
>
> HB 3661 attempted to require companies to report their use of ESG criteria to the Texas Comptroller, SFOF member Glenn Hagar, as the basis for publishing a database.
>
> HB 4794 attempted to give shareholders more power to challenge companies for incorporating ESG metrics into business decisions.
>
> SB 1060, a proposed prohibition on "political" shareholder proposals for insurance companies, was approved by the Senate.

Many sponsors and supporters of the bills plainly stated their intent to favor the fossil fuel industry. State Senator Bryan Hughes indicated to members of his committee that a partisan strategy to protect fossil fuels was the motivation for two of his bills: "Companies are 'encouraged' to support liberal social positions and developing technologies and discouraged from traditionally conservative positions and disfavored technologies, like oil and gas."

Fossil fuel lobbyists at the Permian Basin Petroleum Association and two of the state's oil and gas royalty owners associations testified in support of various bills using ESG as rhetorical leverage. But the most consistent and vocal proponents of the numerous kinds of bills were the Texas Public Policy Foundation (TPPF) and the Florida-based Opportunity Solutions Project (OSP). As Chase Martin of the OSP testified in support of SB 1060: "We think it's an amazing bill that we'll hope to essentially push back against discrimination against companies, especially Texas oil and gas."

Texas Republican state senators were so committed to passing bills favoring fossil fuel companies that they overlooked evidence about major anticipated costs to the state and its retirees. This was illustrated in the deliberations over SB 1446, a bill based on the Heritage Foundation's State Pension Fiduciary Duty Act, which was approved by the Senate. Amy Bishop of the The Texas County and District Retirement System (TCDRS) told the legislature that SB 1446 would cost the state's public funds $6 billion over the next decade. Bishop told the legislature that the bill would force the system to divest from multiple asset managers and therefore lower TCDRS's projected return on investment by 1.5%. These staggering estimates were not mentioned in the bill's official fiscal note.

Only one Texas law passed in the 2023 regular session. SB 833 is an attempt to bar nearly the entire insurance industry, including health and property, from considering environmental or social concerns in their underwriting. Predictably, the insurance industry, which requires clear-eyed consideration of material risks to even function, did not favor the legislation.

The House companion to SB 833, HB 1239, was opposed by several business interests in a House committee hearing. The Reinsurance Industry Association of America's Paul Martin told the committee that greenhouse gas emissions and the resulting consequences of climate change are material considerations for insurers. LeeAnne Alexander of the American Property Casualty Insurance Association (APCIA) said the bill language "would not allow companies actually to use those actuarially justified factors when deciding whether to offer coverage, or how to write coverage if offered," a sentiment echoed by other insurance lobbyists. HB 1239 was abandoned in favor of SB 833.

The final language of SB 833 included multiple escape clauses allowing use of ESG criteria if it is consistent with "sound actuarial principles," based on an "ordinary business purpose," or coincidental to risk assessment criteria. Even with these changes, the APCIA remained opposed to the law. Experts in global insurance markets predict that companies attempting to comply with SB 833 could lose access to vital reinsurance on the global market, complicating recovery efforts for natural disasters.

SB 833 was the last bill approved by the Texas legislature on May 24th, before the chaotic session adjourned at midnight. After the session concluded, Lieutenant Governor Dan Patrick sent Governor Greg Abbott a list of bills he wanted to revive in a special session, including the three bills that failed after being approved by the Senate: SB 1060, which limits shareholder activities, SB 1446, which restricts pension investments, and SB 2530, which restricts contracting.

INDIANA

In 2022, Indiana failed to pass a bill that attempted to leverage state retirement funds against financial institutions deemed to be engaged in "boycotts" of energy companies. In 2023, state Republicans resumed the attack, introducing three more bills that all resembled the Heritage Foundation's State Pension Fiduciary Duty Act.

One of the bills, HB 1008, became law, but only after amendments were added to lower the bill's projected cost of $6.7 billion in lost pension fund returns over a decade. Indiana State Treasurer Dan Elliot, an SFOF member, supported the bill at its first public hearing. In the same initial House hearing, Tony Green of the Indiana Public Retirement System (INPRS) provided testimony in which he raised concerns over "unintended consequences" of the legislation. Green revealed that the system had hired Strive Advisory–an anti-ESG firm co-founded by Vivek Ramaswamy–to advise on its proxy voting strategy. Ramaswamy's rate was later revealed to be $4,000 per hour.

The original version of HB 1008, before amendments, was supported by gun lobbyists, several fossil fuel companies and affiliated advocacy groups. The coal mining companies Alliance Resource Partners and Hallador Energy supported the legislation in its first hearing. Reliable Energy, a coal trade association formed by consultants at Catalyst Public Affairs on behalf of Alliance and Hallador Energy, also supported the original bill. Supporters from the oil industry included Pioneer Oil and the Indiana Oil and Gas Association.

Out of state policy groups financed by fossil fuel fortunes came into Indiana to provide testimony as well, including the Texas Public Policy Foundation (TPPF) and Heritage Action, the lobbying arm of the Heritage Foundation. Supporter Eric Bledsoe of the Opportunity Solutions Project previously worked for the Charles Koch Foundation.

Public opposition to the bill increased in early February after INPRS released a fiscal note estimating that HB 1008 would diminish state pension system returns by $6.7 billion over the next ten years. The Indiana Chamber of Commerce tweeted: "Safe to say we still oppose H.B. 1008." Writers at many publications cited the $6.7 billion statistic, while opponents of similar bills cited the fiscal note during testimony in numerous other states.

After the backlash to the original bill's estimated costs, legislators made two rounds of amendments to HB 1008. The amended bill exempted private equity managers from certain provisions. It cut out restrictions on external fund managers that are unrelated to pension investments and allowed pension funds to hold disfavored investments if no "comparable" alternative was available.

However, the amended bill's final fiscal note underplayed the anticipated negative effects of slightly lessened divestment. The final note did not account for how INPRS would complete an increased workload, and it assumed that INPRS could make up the costs of rapid divestment by simply finding new asset managers with lower fees and higher rates of return. While administrative costs to INPRS were estimated to increase by about $5.5 million, it is impossible to measure the bill's intentional chilling effect aimed at investors and fund managers.

The amendments did not quell opposition from business leaders and unions in the bill's final Senate committee hearing on April 5th. Sally Sloan with the AFT said the bill was "a solution in search of a problem" and that "our members would be most comfortable if we left investing to the professionals." Jerrel Blakely of the Indiana State Teachers Association condemned the "demonization" of ESG policies, and asked legislators why the bill sought to change such a successful pension system model: "By all accounts our state pension system is a model to replicate."

The Indiana Chamber of Commerce opposed the bill throughout the entirety of the legislative session. At the April 5th Senate committee hearing, the Chamber's lobbyist, Greg Ellis, said, "We believe [the bill] is anti-free markets and anti-free enterprise." Ellis objected to Section 6 of the bill, which listed a wide variety of published materials politicians considered evidence of an "ESG commitment." Ellis warned, "We think that this bill might have a chilling effect on the Indiana economy. If you look at some of the recent investments in Indiana such as around the electric vehicle [manufacturing in the] Kokomo area...we think this is an issue." That text remained in the final version of the law.

NORTH DAKOTA

In North Dakota, Republican legislators and a variety of interest groups appeared poised to fast-track a barrage of bills targeting banks, credit unions, and financial advisors for holding vague affiliations with ESG investment metrics. All five of the bills introduced were scheduled in committee hearings in the first two months of 2023.

One by one, the bills were eviscerated by business lobbyists, state investment officers, and skeptical Republicans. By the end of the legislative session, only one heavily-amended bill was enrolled and sent to the governor. The general failure of anti-ESG bills in North Dakota is illustrative of a trend in Republican trifecta states in which persistent and coherent pushback from industry groups was enough to push legislatures to reject these bills.

The first bill to fail was HB 1347, an attempt to restrict state investment contracts with language similar to the Foundation for Government Accountability's model bill, the Protecting Free Enterprise and Investments Act. HB 1347 proposed a controversial blacklist of "restricted financial institutions." In a January hearing, the chair of the House Industry, Business and Labor committee declared the bill "unworkable" after opponent testimony from the state financial institutions commissioner and the North Dakota Bankers Association. The House voted the bill down two weeks later.

The next bill to falter was HB 1283, a version of the model Fair Access to Financial Services Act. The bill's text was provided by the Heartland Institute's Bette Grande. The bill's primary sponsor, Representative Anna Novak, indicated to the committee that her bill was about justice: "I believe that every single person in this room, and in the legislature, is opposed to discrimination in any form." The majority of the hearing featured vigorous united opposition from the state's financial institution commissioner, insurance commissioner, and multiple banks and credit unions. Rick Clayburgh of the North Dakota Bankers Association appeared to invoke Nazi Germany's branding of Jewish-owned businesses: "it reminds me of, you know, let's put a star in the window of the institution if it's doing something legal, but you just don't like what they're doing." The committee disapproved of the bill, and the House voted it down a month later.

A pensions-focused bill, HB 1469, resembled the American Legislative Exchange Council (ALEC) model State Government Employee Retirement Protection Act. HB 1469 was voted down by the House along with HB 1283. In a House committee hearing, the state Director of Financial Institutions, Lise Kruse, told the legislature, "It's my duty under law to let you know if there's anything that could hamper the safety and soundness of our institutions, so that's why I'm here today." This warning was consistent with one from the bill's own sponsor, Representative Anna Novak, who told the committee, "There's a pretty large fiscal note attached to this bill. Honestly when I saw it, I about fell off my chair." Despite attempts from the Texas Public Policy Foundation (TPPF) and Western Dakota Energy Association to support the bill, the committee was persuaded to reject HB 1469.

Two bills managed to make it out of the House, both of which were heavily amended after aggressive pushback to specific provisions of the original bill text, including blacklist mandates. HB 1278 was initially an attempt to block the state Investment Board from affiliating with groups deemed to be opponents of fossil fuels and agriculture. The bill received unflattering testimony from multiple state investment officers, including the state treasurer, Thomas Beadle, despite his membership in the State Financial Officers Foundation. Similarly, after pushback from state investment officers and banking lobbyists, HB 1429 was amended to remove language resembling the model "Eliminate Economic Boycotts Act."

Due to the similarities between both bills, HB 1278 was abandoned in favor of HB 1429, the only law North Dakota passed in 2023. Making minor amendments to a similar law from 2021, HB 1429 forbade state funds from using ESG or "social investments" unless they offered a "superior rate of return" or were part of a "prudent" risk assessment. The law added restrictions on proxy voting activity involving state investments, and it delegated a study on anti-ESG policy options to the Bank of North Dakota in preparation for the 2024 legislative session.

During comments in a Senate committee hearing, Jan Murtha of the state Retirement and Investment Office said the final version of HB 1429 simply codified her office's current practices. Murtha noted that her office already provided proxy voting disclosures upon request, explicitly correcting the TPPF's Brent Bennett, whom she said never attempted to contact her office to obtain such disclosures.

WYOMING

Wyoming Republicans, who control all branches of state government, turned out to be more skeptical of the impact of this legislative trend than North Dakota. Of the three bills considered in 2023, none became law, following a torrent of practical concerns from the state's top investment officers, bankers, municipalities, and even the state petroleum association.

While one of the bills targeting the state's investment contracts never advanced out of committee (HB 210), two more bills were approved by the state Senate before faltering in the House. SF 159 was very similar to the Heritage Foundation's model Eliminate Economic Boycotts Act, attempting to leverage state contract investments against financial institutions disfavored by Republicans. SF 172 was similar to the Heritage Foundation's model State Pension Fiduciary Duty Act, focused on leveraging the state's pension funds against the same disfavored financial institutions. Each of the bills were sponsored by state senator Bo Biteman, a landman with experience working for fossil fuel companies.

SF 159 and SF 172 were both supported by the National Shooting Sports Foundation, the Texas Public Policy Foundation (TPPF), and the Wyoming Mining Association. A bombardment of pointed criticism was offered by municipalities, pension fund officers, and the petroleum lobby. Most damning was the testimony delivered by members of the state treasurer's office, including concerns voiced by Wyoming State Treasurer Curtis Meier. In his criticism of the contracts bill, SF 159, Meier was openly concerned about alienating himself from the State Financial Officers Foundation.

Treasurer Meier left the most pointed criticism to his Chief Investment Officer, Patrick Fleming, who provided a litany of specific examples of how the bill could hamper the state's investments. Fleming pointed to Johnson & Johnson as a typical Fortune 500 company that the state invests in. Referencing the company's hundreds of subsidiaries in dozens of countries around the world, Fleming asked, "What would be the possibility of one of these entities doing something that goes against this bill?" Consequently, Fleming said, "we would basically have to divest from most of these entities," selling them at a significant loss of 10% under market value or even up to 25% "during a time of stress," according to two brokers he spoke with.

Fleming rebuffed the false notion that asset managers like BlackRock "boycott" fossil fuels, a myth attempted by the TPPF's Jason Isaac. Fleming repeatedly told legislators that Blackrock had $292 billion in exposure to energy producing companies, as the company told him directly. Fleming warned that the bill's liability provisions would scare away the most attractive investment contracts. "Bottom line... it would probably cause us to sell just about everything we have other than US Treasuries," Fleming stated in a Senate hearing presided over by Senator Biteman, the bills' sponsor. "Mr. Chairman, please do not shoot the messenger," Fleming told a frustrated Senator Biteman, assuring him that he was relaying concerns from experts.

In the subsequent House hearing, Fleming said that even with "escape clauses," the liability risks posed by SF 159 could result in losing the largest, most cost-effective contracted fund managers. "JP Morgan is only really one of two large managers that could do the work that we do for a $25 billion entity. It's not like just going out and getting somebody else to do this," he said. This point was reinforced by Scott Meier of the Wyoming Bankers Association, who told House committee members, "I listened to Mr. Fleming and I had to laugh a little bit to myself...None of your Wyoming banks, your community banks, can backfill on this baby. It's just too big. So we have to rely on the big banks to take care of that. We just don't have the capacity to do that."

In stark contrast to the fossil fuel salute expressed in Senator Biteman's bills, Fleming told legislators that the pension-focused bill, SF 172, could have blocked state retirement investments in Peabody Energy, simply for publishing material about reducing greenhouse gas emissions. Peabody is the world's largest private coal mining company, and it operates three large mines in Wyoming's Powder River Basin. Ironically, the bill was supported by the Energy Policy Network, a Peabody-funded front group that was established by one of the company's longtime lobbyists.

Fleming's concerns were shared by other lobbyists attending the hearings. Pete Obermueller of the Petroleum Association of Wyoming (PAW) told state representatives that many of PAW's member companies had prominently published ESG commitments. Obermueller provided three examples of companies that were making efforts to monitor and reduce methane emissions, or were recognized for ESG compliance, which could result in significant consequences if Biteman's bills became law.

By the end of a House Appropriations committee hearing on the bills, the committee's chairman and other Republicans were skeptical. After surprising Senator Biteman with substitute language that gutted both of his bills, Biteman was incredulous: "To say I'm disappointed is an understatement. To treat a sitting fellow legislator like this in a public committee—which is actually a public execution, not a public committee—but nonetheless, to spring a substitute bill on me in committee without me even knowing about it, seeing it...I just say shame on you." Both bills received a do not pass vote and proceeded no further.

CASE STUDY

FEDERAL

Congressional Republicans have emulated their state-level counterparts' attacks on socially responsible investing. Particularly as federal financial regulators have taken steps to acknowledge climate change as an "emerging and increasing threat" to the financial system, the federal-level campaign against ESG has sought to undermine steps taken to monitor and regulate systemic risks.

In February, congressional Republicans approved a Congressional Review Act (CRA) resolution to overturn a rule by the Department of Labor (DOL) that allows— but does not require— investment plans to consider ESG factors. The DOL rule expressly called for "appropriate regulatory neutrality" with respect to ESG considerations, yet was portrayed by congressional Republicans as forcing the pursuit of a "political agenda" through retirement plans. President Biden vetoed the CRA resolution.

In 2023, Congressional Republicans have introduced several pieces of federal legislation that strongly resemble model restrictions on the freedom to invest at the state level. US Representative Andy Barr (R-KY) has introduced the Fair Access to Banking Act. The bill would amend the Federal Reserve Act to deny large financial institutions who refuse to offer financial services to a business that is in compliance with the law access to key programs, such as the Federal Reserve's discount window. This sweeping approach would potentially restrict banks from making sound business decisions about exposure to physical, transition, and liability risks related to climate change.

Another example is Representative Barr's Ensuring Sound Guidance Act, which would modify the Employee Retirement Income Security Act of 1974 to ban retirement plan trustees from considering ESG factors. The legislation mimics the approach taken through numerous model state bills by requiring investment advisers to consider only "pecuniary factors" when making investment decisions. As legal scholars David Webber, David Berger, and Beth Young have pointed out in "The Liability Trap," this bill creates an unworkable definition of what is considered pecuniary and non-pecuniary, and purports to focus investment advisers only on factors that have a "material effect" on firm values, even though ESG factors have had a demonstrated material effect on firm value over time.

Gas, Guns, and Governments: Financial Costs of Anti-ESG Policies*

Daniel G. Garrett† Ivan T. Ivanov‡

January 2, 2023

Abstract

We study how regulation limiting ESG policies distorts financial market outcomes. In 2021 Texas enacted laws that prohibit municipalities from contracting with banks with certain ESG policies, leading to the exit of five of the largest municipal bond underwriters from the state. Issuers previously reliant on these underwriters face higher uncertainty and borrowing costs since the enactment of the laws. These effects are consistent with deterioration in underwriter competition as issuers face fewer potential underwriters. Texas issuers will incur $300-$500 million in additional interest on the $31.8 billion borrowed during the first eight months following enactment.

Keywords: ESG Policies, Public Finance, Municipal Bonds, Banking Competition

*The views stated herein are those of the authors and are not necessarily the views of the Federal Reserve Bank of Chicago or the Federal Reserve System. We thank Gene Amromin, Taylor Begley, Utpal Bhattacharya, Emilio Bisetti, Diana Bonfim, Michael Boutros, Joe Chimienti, Igor Cunha, Mark Curtis, Jennifer Dlugosz, Vidhan Goyal, Nick Hirschey, Kerry Inger, Paulo Manoel, Ralf Meisenzahl, Dermot Murphy, Gil Nogueira, Eric Ohrn, Rebecca Olsen, Nora Pankratz, Carlos Parra, Chris Rogers, Juan Carlos Suárez Serrato, Luke Taylor, Jonathan Wilcox, Alminas Zaldokas, and seminar participants at Banco de Portugal, the 2022 Brookings Municipal Finance Conference, EIEF, the Federal Reserve Board, Federal Reserve Bank of Chicago, 2022 Federal Reserve System Banking Conference, HKUST, NOVA School of Business and Economics, Politics, Philosophy, and Economics Society conference, PUC Chile, University of Kentucky, UBC, and Wharton for helpful comments. Thank you to Tim (Qian) Zhang for excellent research assistance. Any remaining errors are our own.

†University of Pennsylvania, Wharton, danielgg@wharton.upenn.edu

‡Federal Reserve Bank of Chicago, ivan.ivanov@chi.frb.org

1 Introduction

Interest in environmental, social, and governance (ESG) policies of market participants has skyrocketed in the last two decades. Flows into investment funds targeting ESG objectives more than doubled between 2019 and 2021, with nearly $650 billion invested in 2021, alone.[1] This movement of capital has garnered significant attention in both financial markets and the academic literature. Financial services firms such as banks have been early adopters of a wide variety of ESG policies with most large banks in the US committing to at least some policies.[2] Bank ESG policies have outsize importance for the allocation of capital in the broader economy because banks are central in intermediating credit to households, businesses, and governments.

The migration of capital toward ESG-friendly firms is likely to adversely affect economies reliant on less sustainable industries such as fossil fuel production or firearms manufacturing (Jones, 2021). For example, fossil fuel companies have recently faced higher costs of capital as a result of the transition to a lower carbon economy (Quinson, 2021). In turn, governments dependent on less sustainable industries may attempt to counter ESG policy adoption, thereby imposing substantial costs on both financial intermediaries and affected economies. Recently, 17 states in the US have proposed or passed legislation curtailing public sector activity of financial services firms that take ESG-friendly actions (Schroeder, 2022).

We assess the impact of anti-ESG laws on financial market outcomes, exploiting a significant and unexpected regulatory change in the state of Texas, Senate Bills (SBs) 13 and 19, barring any Texas municipality from contracting with banks that restrict funding to oil & gas or firearms companies. The laws were implemented in September 2021 and led to the abrupt exit of five of the largest municipal bond underwriters from Texas. We find that municipal bond issuers face both higher uncertainty and higher borrowing costs in bond markets as a result of the anti-ESG laws.[3]

[1] See https://www.reuters.com/markets/us/how-2021-became-year-esg-investing-2021-12-23/

[2] A 2004 report of the UN and 20 large financial institutions as signatories discusses the adoption of ESG policies by the financial sector: https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf

[3] We focus on the municipal bond market because we can measure timely market outcomes, allowing us to make causal inferences. Anti-ESG laws may also restrict the management of pension assets. This may lead to additional costs to taxpayers because pension manager choice is important for fund returns (Dyck, Manoel and Morse, 2022).

We exploit the differential exposure of Texas municipalities to the five exiting underwriters to examine how anti-ESG laws affect borrower outcomes. Relationships between municipal issuers and underwriters are sticky with many issuers repeatedly choosing the same underwriters (Chen, Cohen and Liu, 2022). We use this stickiness to identify the reliance of municipal issuers on the exiting underwriters prior to the regulatory change. We find that issuers previously reliant on the targeted banks are more likely to negotiate pricing instead of holding an auction and receive worse prices after the implementation of the Texas laws.

Although negotiated sales are associated with higher issuance costs than competitive offerings, they also allow underwriters to obtain a more complete picture of the potential market for the municipal bond issue and better place the bond with investors when issue or market uncertainty is high (Sorensen, 1979*b*; Smith, 1987; Cestau, Green, Hollifield and Schürhoff, 2019). Thus, issuers with significant reliance on the targeted banks opt into negotiations to soften the large volatility we document among competitive sales. Nevertheless, borrowing costs still increase by approximately 10 basis points for issuers with an additional standard deviation of reliance on the targeted banks. Borrowing costs increase by up to 41 basis points for issuers that had previously raised the majority of bond financing through the exiting underwriters.

The remaining competitive offerings, which make up slightly less than half of the Texas market, provide a particularly clear window into the impact of the Texas laws on bank competition. The number of underwriting bidders declines sharply, the variance among remaining bids increases, and the winning bid in terms of yield to maturity increases after the implementation of the Texas laws for issuers with higher previous reliance on the targeted banks. These results suggest that the exit of the targeted underwriters from the Texas market due to anti-ESG laws has adverse impact on underwriter competition and that the remaining banks may enjoy increased market power.

Finally, we show that the Texas laws led to significant changes in the placement of municipal bonds with investors as issuers lose direct access to the distribution networks of the targeted banks. The large underwriters targeted by the new Texas laws typically have national distribution networks and may be better able to place municipal bonds with a wider array of investors than regional and small underwriters. This is especially important for Texas municipal bonds that are widely-held out-of-state because the state does not levy individual income taxes (Babina, Jotikasthira, Lundblad and Ramadorai, 2021). The efficiency of bond placement can be assessed in part by comparing the underpricing of new issues around the implementation of the Texas laws. Higher-cost placement since the Texas laws should lead to a larger gap between the offering price and the eventual market price. We don't find any impact on underpricing, although this may be a byproduct of measurement shortcomings of the municipal trading data. We document significant changes in placement patterns that are consistent with more costly placement. Direct customer purchases increase as a share of trades and the average size of customer trades for affected issuers shrinks. These dynamics lead to a higher total dollar volume of customer purchases. Concurrently, average dealer trade size increases but dealer volume remains unchanged. These results combined imply a higher direct participation of retail investor trades and less dealer intermediation. To quantitatively assess the importance of the placement style changes, we extrapolate underwriter fixed effects from before 2021 and show the simple change in identities only explains about 2% of the increased financing cost. This evidence is consistent with issuers substituting the national intermediation of municipal bonds provided by the exiting banks with a more local placement, although the increase in local placement does not explain the higher borrowing costs.

We perform a variety of additional analyses to show that our results are not spuriously driven by contemporaneous factors. We highlight that pre-trends in issue type and offering yields are consistent between more and less effected borrowers in Texas and other states for the five years leading up to the implementation of the laws in September 2021. Additionally, given that previous reliance on the exiting banks is based on observable and potentially unobservable issuer characteristics, we employ a triple-difference approach to compare the evolution of outcomes for similar issuers in and out of Texas. The triple difference regressions are also useful for comparing Texas issuers unlikely to be directly affected by the Texas laws with non-Texas issuers around the US to test for potential spillover effects on the Texas control group. We also use an inverse probability weighting approach in the spirit of Hirano, Imbens and Ridder (2003) to directly compare outcomes for observably similar issuers within Texas, ensuring the effects we document are not a function of different secular trends across issuer type. To rule out the possibility that seasonality affects our results, we use the auction data and show that a placebo shock starting on September 1, 2019 does not have any of the same effects on auction outcomes as the actual anti-ESG policies in 2021. Finally, we show that our difference-in-differences results are robust to dropping all auctions that occur during the most volatile period of the COVID-19 crisis.

Our paper contributes to the nascent literature on ESG investing by documenting the real effects of anti-ESG regulation. ESG policies in the financial services industries have proliferated substantially in recent years. Prior research shows that adopting sustainable investing can be consistent with shareholder value maximization (Jagannathan, Ravikumar and Sammon, 2018). For example, ESG policies can help hedge climate and other downside risks associated with companies' poor sustainability practices in an environment with ESG uncertainty (Chava, 2014; Ilhan, Sautner and Vilkov, 2021; Avramov, Cheng, Lioui and Tarelli, 2022; Gibson, Glossner, Krueger, Matos and Steffen, 2022; Hoepner, Sautner, Starks and Zhou, 2022; Krueger, Sautner and Starks, 2020). Recent shifts in the preferences for sustainable strategies of institutional investors and shocks to climate concerns have also exerted upward pressure on equity prices of ESG adopters (Riedl and Smeets, 2017; Bauer, Ruof and Smeets, 2021; Pastor, Stambaugh and Taylor, 2021), leading to even higher equity valuations (Krueger, Gibson and Mitali, 2021; Pelizzon, Rzeznik and Weiss Hanley, 2021; Flammer, 2013). Although some firms have not fully met sustainability commitments (Basu, Vitanza, Wang and Zhu, 2022; Gibson, Glossner, Krueger, Matos and Steffen, 2022) or some investors do not necessarily exhibit preferences for ESG policies (Moss, Naughton and Wang, 2021), the literature documents significant adoption of ESG policies in recent years that may have been further facilitated by investor engagement (Dimson, Karakas and Li, 2021). Although these trends have been largely driven by market forces, we show that governments dependent on less sustainable economic activity may impose additional costs on both financial intermediaries and taxpayers when attempting to slow ESG adoption.

Prior research shows that banks respond to increases in climate policy uncertainty by penalizing and divesting from corporate customers with less sustainable business models and increasing flexibility to revoke credit to these firms in the future (Delis, de Greiff and Ongena, 2019; Ivanov, Kruttli and Watugala, 2021; Kacperczyk and Peydró, 2021; Green and Vallee, 2022). Analogously, banks engage in less monitoring of environmental outcomes when they face less environmental liability (Bellon, 2021). The adoption of sustainable policies in banking may have been accelerated by the enhanced focus of the Securities and Exchange Commission (SEC), the primary financial markets regulator in the US, on ESG disclosures.[4] There is, however, substantial ambiguity as to how ESG policies in the banking sector affect stakeholders such as governments reliant on less sustainable industries and how these stakeholders may respond to ESG policies. In our empirical setting, Texas bars banks with ESG policies from public finance in the state. In perfectly competitive credit markets with homogeneous preferences and beliefs about asset payoffs (Fama and French, 2007), barring banks with ESG policies may have no effect on issuer outcomes as other banks without such policies enter the market. We show that such prohibition has large adverse consequences for Texas municipalities in terms of higher borrowing costs that are ultimately born by taxpayers in the state.

This paper also contributes to the extensive literature since Petersen and Rajan (1995) and Gande, Puri and Saunders (1999) that studies how competition among financial intermediaries affects borrower outcomes (Yanelle, 1997; Boot and Thakor, 2000; Corwin and Schultz, 2005; Dick and Lehnert, 2010; Allen, Carletti and Marquez, 2011; Liu and Ritter, 2011; Cornaggia, Mao, Tian and Wolfe, 2015; Carletti and Leonello, 2019). While this literature has largely focused on deregulation and the resulting increase in competition due to bank entry, this paper highlights that the simultaneous loss of a significant number of intermediaries cannot be fully absorbed by a market even if the market is large and competitive. Going beyond the existing literature, we also show that the banks most likely to leave a market over ESG concerns are the largest, most interconnected banks. The exit of such banks with the largest dealer networks may lead to deterioration in distribution quality and adverse consequences for financial stability. Our results also comple-

[4]For a list of the six major categories of increased attention and enforcement priorities by the SEC, see https://www.sec.gov/sec-response-climate-and-esg-risks-and-opportunities.

ment the more extensive literature on competition in financial markets (Berk and Van Binsbergen, 2022; Clark, Houde and Kastl, 2021). The variation from these rule changes are appropriate for causal inference as they were unexpected and unlikely to be related to endogenous bank entry, bank integration decisions, or changes in municipal creditworthiness.

Finally, we also complement the literature studying intermediation in public finance markets (Green, Hollifield and Schürhoff, 2007; Brancaccio, Li and Schürhoff, 2017; Cestau, 2019, 2020; Garrett, 2021; Garrett, Ordin, Roberts and Suárez Serrato, Forthcoming) and the growing body of work on the impacts of social, political, and environmental issues on public finance markets (Gao, Lee and Murphy, 2020; Painter, 2020; Cornaggia, Li and Ye, 2021; Gao, Lee and Murphy, 2021; Goldsmith-Pinkham, Gustafson, Lewis and Schwert, 2021; Cornaggia, Hund, Nguyen and Ye, 2022). We find that forcing underwriters with ESG policies to exit the market leads to significant changes in public finance outcomes such as the method of sale, primary market costs, and secondary market placement patterns. Furthermore, we show that that even the largest issuers in the market are not immune from higher yields following a substantial reduction in the set of available underwriters.

2 Institutional Background

The public finance market in Texas has been used as an empirical setting in many studies because of a large and heterogeneous municipal bond market as well as rich school district voting and financial data (Martorell, Stange and McFarlin Jr, 2016; Yu, Chen and Robbins, 2022). The state was also early to publicly report granular data of competitive bond sales prior to the availability of nation-wide sources such as Ipreo and The Bond Buyer (Clarke, 1997). Finally, ownership of municipal bonds issued in Texas is more geographically diversified than that of bonds from most other states because Texas does not levy an individual income tax (Babina, Jotikasthira, Lundblad and Ramadorai, 2021).

The Texas municipal bond market is also a convenient laboratory to study anti-ESG regulation in the US because of the ability of Texas to regulate the business practices of banks that engage in public finance within the state. The most recent round of such rules in Texas began in 2017 with House Bill 89/SB 252, the "Prohibition on Contracts with Companies Boycotting Israel," which prohibits the state and contained governments to contract with banks that have policies restricting credit to firms with ties to Israel. The Municipal Advisory Council of Texas (MAC) keeps a record of the compliance letters banks submit to the Texas Attorney General with 42 banks having such letters at the time.[5]

Since then, there have been increasing calls by both the general public and various stakeholders for banks to promote environmentally and socially sustainable investments and business practices. On the environmental side, many banks have increased their flexibility to divest from energy companies in response to current or expected future climate change regulation (Ivanov, Kruttli and Watugala, 2021). Texas is one of the largest producers of oil and gas in the U.S. and some Texas lawmakers saw this as a direct boycott of their state. In March 2021, lawmakers introduced SB 13 which would ban banks that limit credit to the the oil and gas sector from participating in public finance markets in the state. Some Texas lawmakers discussed the measure as "boycott Texas, and we'll boycott you" (Adams-Heard, 2021). The new rule was slated to be implemented on September 1, 2021.

Some large financial services firms have also introduced company policies defining relations with the firearms industry in the aftermath of the Las Vegas shooting in 2017 and the Stoneman Douglas High School shooting in 2018. For example, Citigroup adopted a policy of limiting credit to firearm retailers that (1) do not always perform background checks, (2) sell firearms to those below 21 years of age, or (3) sell "bump stocks or high-capacity magazines." Citigroup stated that: "we want to do our part as a company to prevent firearms from getting into the wrong hands" (Skyler, 2018). Several other large banks followed suit by implementing similar policies in 2018 including JP Morgan Chase, Bank of America, and Goldman Sachs (Catlett, 2019). Consequently, the Texas legislature implemented SB 19 on September 1 2021, which prohibits state and local

[5]https://www.mactexas.com/Document/HB89Letter/

governments in Texas from contracting with lenders that limit business with the firearms industry.

Although Texas was the first state to adopt anti-ESG laws, it is important to note that sixteen other states including Arizona, Indiana, Kentucky, Missouri, Ohio, Oklahoma, South Dakota, West Virginia, and Wyoming have similar proposals either enacted or going through the legislative process.[6] In addition, even though an anti-ESG law in Lousiana has been vetoed by the governor, the Attorney General of the state has since rejected municipal bonds underwriters on anti-ESG grounds.[7] Finally, such anti-ESG laws have reached national prominence with the former vice president of the United States, Michael Pence, calling on states to adopt "measures to discourage the use of ESG principles."[8]

At least four banks seemed to be the target of the anti-ESG laws, particularly of SB 19: Citigroup, JP Morgan Chase, Goldman Sachs, and Bank of America. We also use a data-driven approach to check if other underwriters also left the Texas market. First, we create a list of banks underwriting or bidding for at least five municipal securities in Texas between 2008 and 2021. We then check whether each underwriter has filed a letter of compliance with the Texas Attorney General's office, as reported by the MAC. We consider an underwriter to have left the state if it has not filed a letter of compliance with the Texas laws and no longer participates in the Texas market starting in September 2021. Finally, we ensure that each institution underwrites at least five municipal bonds in non-Texas states after September 2021 so that we do not confuse exits from municipal underwriting with exits from Texas. This process indicates that Fidelity Capital Markets also left Texas in response to SB 13/19 and we treat them as a targeted bank in our analysis. We use "targeted" and "exiting" interchangeably to describe the set of banks that exited the Texas market. All five targeted underwriters stopped submitting competitive bids after the implementation of SB 13 and 19 (see Figure 1) although Citigroup tried to reenter the Texas market several times in following months.

The anti-ESG laws may have an even larger impact on bank exit in the foreseeable future as the

[6] https://www.reuters.com/legal/legalindustry/challenge-investing-face-state-anti-esg-legislation-2022-08-24/

[7] See https://www.bondbuyer.com/news/louisiana-legislature-tries-again-to-implement-pro-gun-litmus-test.

[8] See https://www.wsj.com/articles/only-republicans-can-stop-the-esg-madness-woke-musk-consumer-demand-free-speech-corporate-america-11653574189?mod=trending_now_opn_6.

SEC has initiated regulatory probes against banks simultaneously declaring compliance with the Texas laws and providing ESG disclosures in their SEC filings.[9] Potentially in response to these probes, TD Securities withdrew their letter of compliance with SB 13 and 19 on March 8 according to the MAC and could end their municipal finance underwriting in Texas.

Municipal bond underwriters distribute bonds to investors such as mutual funds and individuals. In a negotiated sale, the underwriter works directly with the issuer to arrive at the best issue price/yield-to-maturity. In a competitive sale, the underwriter places a bid in terms of yield in a first-price, sealed-bid auction for a pre-determined bond package. The underwriter bidding the lowest yield wins the auction and distributes the bonds to investors.[10] The complexity of the offering type decision as well as the wide array of services offered by underwriters imply that a change in the structure of the underwriter market can have far-reaching effects on municipal securities beyond issue prices. The set of available underwriters can affect the method of sale, the structure of the eventual issue, the issuance costs incurred by municipalities, and whether municipalities seek external finance at all. Consequently, underwriters are key in determining the cost of public funds and potentially the scale of public investment.

3 Data

We obtain the universe of municipal bond issues between January 2007 and April 2022 from the Mergent Municipal Bond Securities Database (Mergent).[11] Mergent identifies a wide range of issuance characteristics both at the issue and the maturity level. These include the offering amount, type, maturities, the presence of bond insurance, and yields. These data also include the identity of the municipal underwriter for each offering. We exclude issues with missing issuer state information given our focus on Texas issuers. We also exclude variable rate demand obligations (VRDOs)

[9]https://www.reuters.com/markets/us/exclusive-secs-texas-office-probes-banks-over-disclosures-guns-fossil-fuels-2022-01-05/

[10]See Appendix B for a detailed discussion of the bond issuance process.

[11]We discuss why the sample ends in April 2022 in Section 6 and in Appendix F. We consider April 2022 the end of the unexpected quasi-experimental time period that started with the exit of the targeted banks from Texas in September 2021.

since only a very small fraction of issuers typically have access to such short-term financing. This results in a sample of 242,158 bond offerings by 37,934 unique issuers since 2007.

We obtain data on the competitive sales since 2008 from The Bond Buyer, a trade publication for the municipal bond market. The Bond Buyer publishes the outcomes of all public auctions on a daily basis and provides basic issue and issuer characteristics including the identity of all bidders and bids expressed in yield-to-maturity (The Bond Buyer, 2022). These data are particularly beneficial because they allow us to gauge changes in the competitive dynamics in Texas for issues placed in the auction market.

Finally, to test for the effect of the Texas laws on the placement of municipal bonds with investors, we use the universe of secondary market trades published on the Electronic Municipal Market Access (EMMA) website provided by the Municipal Securities Rulemaking Board (MSRB). We exclude issuers we are unable to identify in Mergent and remove trades occurring after a bond's maturity date, with non-transaction based compensation arrangements, where the MSRB is unable to verify the dollar price submitted by the dealer, or where the transaction amount or price are missing. As we are interested in trading activity related to the the initial distribution of municipal issues—those occurring within 30 days of the issue date—we focus on customer purchases and inter-dealer trades. Finally, to mitigate the effect of outliers and data errors, we trim trade prices at the 0.5^{th} and the 99.5^{th} percentiles.

3.1 Texas Borrowers Reliant on the Exiting Underwriters

In this section, we explore the characteristics of the banks that exit the Texas underwriting market after September 2021 and we describe the Texas borrowers previously reliant on the exiting banks. This description yields two novel facts that are important for interpreting our results. First, governments reliant on the exiting banks are the largest issuers in the Texas market. These issuers typically raise seven times as much in bond financing as other Texas issuers upon issuance, while having similar bond maturities, yields, and propensities to negotiate pricing or float taxable issues. Second, the exiting banks are more likely to underwrite municipal bonds nationally, albeit several large, national banks maintain their municipal underwriting business in Texas immediately after SB 13/19.

We show summary statistics for the bond issues in our sample in Table 1. Panel (A) describes the differences between issues in Texas and in the rest of the US from 2017 through April 2022. Texas accounts for 9,546, or 12.4%, of the 76,992 bond issues in our sample between 2017 and April 2022. Offering amounts in Texas, ranging from $2 million at the 25^{th} percentile to over $18 million at the 75^{th} percentile and an average of $29 million, are very similar to offering amounts in the remaining US states. Texas municipalities issue longer maturity bonds than municipalities in other states, while yields and negotiated shares are similar across the two groups. Issuers in Texas have an average reliance on the five targeted banks of about 13% as compared to 16% for issuers in the rest of the country. Given the targeted banks tend to underwrite the largest issues, the dollar-weighted reliance in Texas in our estimation sample is 32%.

In Panel (B), we zoom in on the difference between issues in Texas underwritten by the exiting banks and by the remaining banks. The average issue underwritten by the exiting banks has a principal value of $135 million, while issues underwritten by the remaining banks are usually 1/6 the size with an average value of $21 million. The size difference remains large along the distributions of the two groups—the median issue underwritten by the targeted and the non-targeted banks has a principal value of $5 and $36 million, respectively. However, on other margins, issues underwritten by the two groups of banks are more comparable. For example, within Texas, the exiting banks underwrote issues with maturities averaging 162 months compared to an average of 164 months for other underwriters. Texas issues underwritten by the exiting banks also had slightly higher interest cost and were slightly more likely to be competitive sales.

Municipal borrowers in Texas range from small special districts to large cities and state agencies. For example, Mesquite Independent School District (ISD) serves over 38,000 students in a suburb east of Dallas, TX. From 2007-2016, Mesquite ISD never worked with any of the exiting banks and thus has no reliance on the exiting banks according to our measures. On the other side of the spectrum, Pflugerville ISD serves over 25,000 students in a suburb to the north of Austin, TX, and has historically relied on the targeted banks for approximately 70.2% of their bonds issuance volume. We consider Pflugerville ISD to be highly reliant on the exiting banks since they have over 50% of their historical borrowing underwritten by one of them. Similarly, cities and counties range from having no exposure to the targeted banks, such as Lewisville with 107,740 residents, to having high exposure, such as El Poso with 64% reliance and 678,815 residents. Larger cities and counties tend to have higher exposure to the targeted banks. Historically, the state of Texas itself has also had relied on these banks for over 60% of their underwriting volume.

The auction data further highlight the key role of the exiting banks in the Texas market and the types of borrowers most likely to be affected by the exit of these banks. These data cover 509 bidders that submit at least 5 bids from January 2017 through April 2022 in the entire US. 62 of these underwriters submit bids in Texas with five underwriters leaving the market after Senate Bills 13 and 19. Table 2 shows summary statistics on auctions based on all competitive bids submitted by each underwriter. The average exiting underwriter submitted 7,980 competitive bids for underwriting business between 2008 and 2021 with an average principal amount of $113.9 million, while the typical non-targeted underwriter submitted 4,145 bids with an average principal value of $54.9 million.[12]

Targeted banks tend to participate in the most competitive auctions with an average of 6.3 additional bidders per issue. These highly competitive auctions and the associated issuers may be most resilient to underwriter exit given that the marginal impact of an additional bidder on issue yield is declining in the number of bids (Garrett, Ordin, Roberts and Suárez Serrato, Forthcoming). Additionally, the exiting banks have greater national participation than the remaining banks, bidding, on average, in 47.4 states as compared to 34.7 states. Three of the five targeted banks were actively submitting underwriting bids in all 50 states in recent years. However, some remaining banks also have significant national presence, with over half of the remaining underwriters participating in auctions in at least 41 states. Finally, targeted banks submit 7.7% of their bids in Texas, while the remaining banks submit 21.1% of their bids in Texas, suggesting that the state's contribution to a

[12] We provide additional description and summary statistics of the auction data in Appendix G and in Table G.1.

bank's total underwriting business may be an important factor behind the exit decision.

We also examine the time series evolution of the share of underwriting and of competitive bidding by targeted banks over time in Figure 1, respectively. Before 2021, the five targeted banks underwrote about 35% of the municipal debt (Panel A) and made up just over 25% of bidding volume in Texas (Panel B). The share of underwriting by the targeted banks starts to decline slightly in early 2021, then falls to 0% in September 2021 as does the share of bids from targeted banks. A potential reason for the early decline in underwriting share as compared to the little change in competitive bidding before the passage of the anti-ESG laws is potential anticipation by market participants. Negotiated sales typically take several months to complete so issuers may have avoided the targeted underwriters in negotiated deals following the introduction of SB 13/19 on March 11, 2021. By contrast, competitive deals are placed with the underwriter on the issue date, so the targeted banks could underwrite such deals up until the enactment date.

Furthermore, underwriting and bidding shares do not remain at zero as Citigroup has tried to reenter the Texas market by submitting bids on a small number of issues in November and then again in 2022. In Panel A, the increase in underwriting in April 2022 is driven by Citigroup underwriting a $1.2 billion deal for the Dallas/Fort Worth International Airport. Citigroup's attempts to reenter the market suggest the importance of the Texas market to the bank and that the Texas laws may have adverse consequences for banks with ESG policies. We provide two estimates of the costs of leaving the Texas public finance market from the perspective of targeted banks in Section 6.

4 Empirical Design for Assessing Borrowing Outcomes

In this section, we detail the methodologies that we use to examine the effect of the anti-ESG laws on municipal bond issuers in the state.

4.1 Comparison of Affected Issuers in Texas

We first compare issuance outcomes around the implementation of the Texas law for issuers with differential past reliance on the targeted underwriters using a difference-in-differences regression:

$$y_{j,i,t} = \lambda \mathit{Targeted\ Share}_i \times \mathit{Implementation}_t + \psi_i + \phi_t + \delta_m + \varepsilon_{j,i,t}, \quad (1)$$

where t, j, and i denote offering date, distinct municipal bond offerings, and municipal issuers, respectively. $\mathit{Targeted\ Share}_i$ is the share of total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016, standardized by its in sample standard deviation of 0.19. $\mathit{Implementation}_t$ is an indicator variable that takes the value of one whenever the issue date is in September 2021 or later, and zero otherwise. ψ_i, ϕ_t, and δ_m are issuer, offering date, and time to maturity (in months) fixed effects.

We examine six major types of issuance outcomes: the likelihood of selecting a negotiated issue, offering yields, and placement characteristics for all issues in the sample and the number of bids, bid variance, and the winning bid for competitive issues. The placement characteristics shed light on how the offering is placed with investors in terms of underpricing, number of trades, trade size, and dealer/retail customer dollar volume as a share of total volume.

The model in Equation 1 estimates continuous treatment effects of previous underwriter reliance on the exiting banks on bond issuance outcomes after the implementation of the Texas laws. In alternative specifications, we use discrete versions of the treatment variable denoting whether an issuer's reliance on the targeted underwriters exceeds 10%, 20%, or 50% of the issuer's total previous issue volume between 2007 and 2016. In robustness specifications, we include calendar time $\times$ time-to-maturity fixed effects in addition to the offering date fixed effects to control for changes in the shape of the yield curve in the municipal bond market over time or for other time-varying risk factors related to bond maturity. Due to the large potential number of fixed effects, we convert the units of the time variable to calendar months and the time-to-maturity variable to years. Standard errors for all specifications are double clustered at the issuer and offering date level.

4.2 Additional Analysis and Heterogeneity

The regression specification in Equation 1 compares Texas issuers that differ in terms of their reliance on the five exiting banks. This framework naturally extends to a triple difference specification by expanding the sample to the rest of the municipal bond market in the US. Additionally, we estimate average treatment effects in the spirit of Hirano, Imbens and Ridder (2003) by using weights calculated from an issuer's likelihood of being most observably similar to the Texas issuers reliant on the exiting banks. Finally, we split the *Targeted Share* variable into the shares of negotiated and the share of competitive bond issues underwritten by the exiting banks to examine whether there is important heterogeneity in the nature of the relationship with targeted banks.

The triple difference specification allows us to difference out any impact of unobservable borrower type on borrowing costs around the implementation of the Texas laws. The underlying assumption of this model is that municipal issuers in Texas and other states select underwriters with ESG policies for similar unobservable reasons. For example, Texas and non-Texas issuers are likely to have significant reliance on JP Morgan Chase because the bank specializes in large, competitive issues that tend to be placed nationally. This analysis allows us to examine whether issuers reliant on the targeted banks in other states that do not bar intermediaries with ESG policies, have different outcomes than issuers reliant on the targeted banks in Texas. We add a new subscript, s, to the triple difference specification to describe the state in which each bond issue takes place:

$$\begin{aligned} y_{j,i,s,t} =& \lambda \mathit{Targeted\ Share}_i \times \mathit{Texas} \times \mathit{Implementation}_t \\ &+ \gamma \mathit{Targeted\ Share}_i \times \mathit{Implementation}_t + \xi \mathit{Texas} \times \mathit{Implementation}_t \\ &+ \psi_i + \phi_{s,t} + \delta_m + \varepsilon_{j,i,s,t} \end{aligned} \tag{2}$$

In Equation 2, the coefficient of interest is λ, which is the differential impact of previous reliance on the targeted banks in Texas relative to other states. The specification also includes calendar time $\times$ state fixed effects to allow state-specific time variation in issuance outcomes. To illustrate the benefits of the triple difference specification, assume that mutual funds working exclusively with the targeted banks specialize in the municipal bonds of certain types of issuers. Changes in fund flows to these mutual funds would represent a common shock to all issuers reliant on the targeted banks. In this setting, γ will capture such concurrent effects on these types of issuers, while λ will only capture the the incremental impact of reliance on the targeted banks by Texas issuers after the implementation of the anti-ESG laws.

The triple difference approach has the added benefit of shedding light on potential spillover effects in Texas from the exit of the targeted banks. The exit of the targeted banks may also adversely affect financing outcomes for issuers with low/no reliance on these banks, or those we use as a control group in Equation 1. This could happen if the targeted banks represented a viable outside option for the less reliant issuers. We can test this hypothesis by removing the time $\times$ state fixed effects and adding an interaction term of $Implementation_t$ with an indicator variable for the state of Texas, ξ from Equation 2. This coefficient tells us whether financing outcomes change for Texas issuers that are potentially indirectly affected by the anti-ESG laws.

Another way of alleviating concerns that issuers reliant on the targeted banks may be different from non-reliant issuers is to directly re-weight the two groups, thereby making them observably very similar. We follow Hirano, Imbens and Ridder (2003) to estimate a first-stage logistic regression of the likelihood of reliance on the exiting banks. We discretize the reliance variable similar to the previous difference-in-differences models and define municipalities with over 50% of their previous issues underwritten by the exiting banks as "treated" and those with no previous reliance as "control" issuers. The regression includes the average issue size, the number of bond issues, the average maturity of the issues, the share of issues that are taxable, the share of issues that are refunding outstanding bonds, and the share of issues that are placed via negotiation.[13] We then create inverse probability weights of treatment according to:

$$weight_i = \frac{treat_i}{P(treat_i = 1)} + \frac{1 - treat_i}{P(treat_i = 0)},$$

where $P(treat_i = 1)$ is the treatment (targeted bank reliance) likelihood estimated in the first stage

[13] We present and discuss these estimates in Appendix C.

regression. We then use these weights to estimate Equation 1 with weighted least squares (WLS).[14]

One potential disadvantage of the targeted share variable as measured so far is that it masks variation in the type of transactions that underlie the issuer-underwriter relationship. For example, relationships based on negotiated issues may be different from relationships based on auctions. To address this potential heterogeneity, we also re-estimate 1 while splitting the targeted share into the share of previous negotiations and the share of previous competitive sales.

5 The Texas Laws and Borrowing Outcomes

5.1 Difference-in-Differences Results

We first explore how the propensity of issuers to negotiate bond pricing has changed around the implementation of the Texas laws for issuers affected by these laws. We expect affected issuers to increase the use of negotiations following the implementation of the laws as issue uncertainty is likely to be substantially higher with the exit of five of the largest underwriters in the market. Negotiated sales allow underwriters to obtain a more complete picture of the potential market for the municipal bond issue and better place the issue with investors when uncertainty is high (Sorensen, 1979*b*; Smith, 1987).

Panel A of Table 3 presents the estimates of the difference-in-differences specification described in Equation 1, where the outcome of interest, $y_{i,j,t}$, is an indicator variable equal to one whenever the issue is placed via negotiation, and zero otherwise. The first column shows a difference-in-differences estimate of 0.074, which is significant at the 1% level. This means that a one standard deviation increase in issuer reliance on the targeted banks in Texas (0.19 in sample) is associated with 7.4 percentage point (pp.) higher probability of issuing bonds through negotiation after September 2021. Negotiations make up just over 50% of issues in Texas since September 2021, so an increase of 7.4pp. is indicative of a substantial change in issuer behavior away from

[14]These weights can be very large if issuers strongly predicted to receive one type of treatment receive the other type of treatment. We ensure that predicted probabilities of receiving the opposite treatment from what is observed do not exceed 99.9% or fall below 0.1%.

public auctions toward negotiations. Columns 2 through 4 of Panel A discretize the extent of reliance on the targeted banks to show that the impact on negotiations is increasingly economically significant with greater reliance. Issuers with a targeted share of at least 10% of their historical underwriting with the exiting banks are 18.9pp. more likely to negotiate, while issuers with over 50% of previous reliance on the exiting banks increase their likelihood of negotiation by 23.1pp (all statistically significant at the 1% level). Our results show that affected issuers attempt to mitigate the increased volatility associated with the exit of the targeted banks by retaining underwriters earlier in the issuance process.

The main assumption behind this analysis is that issuers with no reliance and issuers with high reliance on the exiting banks would have chosen the same method of issue sale absent the Texas laws barring the five banks from the Texas market. While this assumption is not directly testable, we provide evidence that this assumption has historically held in the Texas market. Specifically, we estimate Equation 1 while replacing the implementation indicator with an indicator variable for each quarter (three-month period) since the implementation of the laws.[15] We define reliant issuers as those with historical reliance on the exiting banks of 50% or higher. Panel A of Figure 2 shows that from the first quarter of 2017 through the second quarter of 2021, the difference in negotiation propensity between the two groups is very close to zero. By contrast, negotiation propensity starts increasing in the last quarter of 2021 and jumps significantly in the first two quarters of 2022 well above all historical estimates. The long pre-period shows no other change of this magnitude and no other statistically significant change, which is evidence in favor of the parallel trends assumption. The time series estimates show a sudden and large increase in the likelihood of negotiating or retaining an underwriter significantly earlier in the issuance process, which suggests a large increase in perceived uncertainty.

Even though issuers adjust the issue sale method as they lose access to the five major underwriters, borrowing costs could still be affected. To the extent that the exit of five of the largest underwriters reduces underwriter competition in the Texas market, issuers may face higher offer-

[15] For the sake of presentation, 2021Q4 is defined as September through November, 2022Q1 as December-February, and 2022Q2 as March and April. This ensures the SB 13/19 implementation happens between quarters.

ing yields. However, affected issuers are also forced to choose new underwriters, which may lead to lower borrowing costs if sticky relationships allowed the exiting banks to extract local monopoly rents prior to the enactment of the Texas laws.

Panel B of Table 3 presents the regression estimates in the offering yield specification (in percentage points). Column 1 shows an estimate of 0.083, which indicates that a one standard deviation increase in issuers' reliance on the targeted banks is associated with 8.3 basis points (bps) higher offering yields after the implementation of the Texas laws. Columns 2-4 highlight that this effect is driven by issuers that are most reliant on the targeted banks. For example, offering yields increase by 17.4bps for issuers that have at least 10% of their previous underwriting business with the targeted banks. Offering yields increase by roughly 20bps and 38bps for issuers with reliance of over 20% and 50%, respectively. The difference-in-differences estimates suggest that issuers that were previously most reliant on exiting banks for underwriting services face a reduced ability to use competitive sales and, consequently, higher interest costs. The average offering yield from September 2021 through April 2022 was 2.00pp., which means that the issuers with over 50% previous reliance on the targeted banks had a roughly 19% (0.38/2.00) increase in borrowing costs due to SB 13 and 19.[16]

We also show that the impact on offering yields over time (Panel B of Figure 2) exhibits a very similar pattern to the evolution of the negotiated sales estimates. Between the first quarter of 2017 and the third quarter of 2021, bond issue yields for reliant and non-reliant issuers track each other closely despite the large amount of volatility in the market during this period. Then, in the the fourth quarter of 2021 and the first quarter of 2022, yields for the most reliant issuers increase substantially and remain elevated through April. The individual quarterly point estimates are not statistically significant due to a lack of power, but the pooled impact of these three estimates is a statistically significant 38bps (displayed in the fourth column of Table 3, Panel B).

[16]The inclusion of offering type controls has no effect on our coefficients in the yield specification.

5.2 Design Robustness and Heterogeneity

Table 4 presents results from the triple difference specification described in Equation 2, corroborating the robustness of our results to state-specific as well as national trends in bond issuance outcomes over time. For the sake of comparability, we present two sets of specifications for each measure of issuer reliance on the targeted banks—one with the set of controls and fixed effects from Table 3 and one allowing for the yield curve, issuance size, and state to have a differential effect on issuance outcomes over time, as well as issuer fixed effects to vary with issue type (general obligation or revenue). Panel A shows the estimates of the negotiation propensity specification, while Panel B presents the results of the offering yields specification. In line with the difference-in-differences results, issuers most reliant on the targeted banks ($> 20\%$ and $> 50\%$) in Texas are 14-18pp more likely to issue bonds through negotiation relative to similarly reliant issuers in other states after the implementation of the anti-ESG laws. Panel B shows an increase in offering yield for issuers reliant on the targeted banks in Texas relative to similarly reliant issuers in other states. Our baseline, saturated specification in column 2 shows that offering yields increase by 10.7bps for a one standard deviation increase in reliance on targeted banks starting in September 2021, which is significant at the 5% level. Columns 5 and 6 show triple difference estimates of 30-41bps for the Texas issuers that were over 50% reliant on the exiting banks, which is very close to the 38bps estimated in the difference-in-differences specification.

Another way of putting these estimates into context is to calculate the additional expenditure required to raise the same amount of debt at the new borrowing costs. Municipalities in Texas issued \$31.8 billion in municipal bonds from September 2021 through April 2022, or about \$4 billion per month, and have an average 1.35 standard deviations reliance on the targeted banks accounting for issue size within the triple difference estimation sample ($\approx 0.319/0.237$). Assuming there are no spillover effects to control borrowers in Texas, our estimates imply that barring banks with ESG policies led to 14.4bps ($\approx 1.35 * 0.107$) higher yields on the average dollar of borrowing. Assuming municipal bonds will be outstanding until maturity, the higher yields on the \$31.8 billion issued since SBs 13 and 19 with an average duration of 11 years leads to an additional cost to taxpayers of about \$504 million ($\approx 31.8 * 0.00144 * 11.0$). This calculation follows Gao, Lee and Murphy (2021) and is based on the intuition that duration is the scalar characterizing of price changes corresponding to change in yield. If we instead assume all bonds will be called on the first call date, the average duration is 6.2 years with a total cost to taxpayers of \$284 million.[17] Yet another way of contextualizing these estimates is to focus on aggregate debt in equilibrium. Texas and its contained municipalities had \$289 billion in outstanding public bonds according to the 2017 Census of Governments. If this policy were to remain in place long enough that the interest rate on that debt went up by 14.4bps, and there were no endogenous entry responses by other entities or any endogenous weakening of the enforcement due to perceived costs, this would cost taxpayers in the state of Texas an additional \$416 million per year in interest payments ($\approx 289 * 0.00144$). In 2017, Texas and contained municipalities paid \$10.8 billion in interest, suggesting the response to these laws would increase interest expenditure outlays in the state by about 4%. Total state and local expenditures in Texas were \$263 billion in 2017, suggesting this additional spending could be about 0.16% of the total public budget.

The triple difference approach is also useful in showing potential spillover effects in Texas from the exit of the targeted banks to issuers with low/no exposure to the targeted banks. The specifications in columns 1, 3, and 5 examine this possibility by showing the estimate on the Texas $\times$ Post term and excluding the time $\times$ state fixed effects. The estimates in Panel A show the propensity to negotiate pricing remains similar for issuers with low/no reliance after the implementation of the Texas law. Column 1 of Panel B indicates a 5.2bps increase in yields for these issuers but focusing on the most reliant issuers shows a smaller and statistically insignificant change in offering yields in columns 3 and 5. These results suggest that the spillover effects to less reliant issuers are likely to be limited.

We complement to the triple difference analysis with inverse probability weighted regression estimates in Table 5, re-weighting the treatment and control groups to be more observably similar.

[17]The estimates in an earlier version of this paper using this same calibration were slightly larger, ranging from \$302 to \$532 million (Albright and Moran, 2022). This difference is a byproduct of using a May 2022 vintage of the Mergent data, which are updated and sometimes backfilled over time. The results in this version of the paper are based on a November 30, 2022, vintage of Mergent and has 30 more sample observations than the earlier vintage.

The first column shows that the likelihood of choosing a negotiation for issuers that are at least 50% reliant relative to the control group of issuers with no reliance increases by 29bps. This estimate is similar to that in the difference-in-differences and baseline triple difference specifications. The point estimate in column 2 indicates that issuers reliant on the exiting banks face an increase in offering yields of roughly 27bps, also closely comparable, albeit slightly smaller, to the 41bps point estimate shown in Panel B of Table 4. The analysis provides further evidence that the observed higher likelihood of negotiated sales and the increase in borrowing costs are unlikely to be driven by issuer selection based on unobservable or observable issuer and issue characteristics.

Finally, Table 6 explores the heterogeneity in source of treatment. Issuer-underwriter relationships can be formed through repeated negotiated sales with the same underwriter or through underwriters consistently winning the issuer's auctions. These different types of relationships may have different implications for how capital acquisition outcomes for affected municipalities may change after the implementation of the Texas laws. We test this hypothesis by constructing the targeted share variable based separately on either negotiated or auction offerings, but not both.

The estimates in the first two columns replicate Table 3. In columns 3 and 4 we construct the targeted share variable only based on previous negotiations, while in columns 5 and 6 the targeted share variable is based only on previous competitive sales. Issuers that have no negotiated or competitive deals between 2007 and 2016 have a missing targeted share in columns 3 and 4 or 5 and 6, respectively. These estimates point to an increase in the share of negotiations across both measures, but show a slightly different pattern for previous competitive interactions of issuers with the targeted banks. Issuers reliant on the targeted banks in previous auctions are more likely to switch away from competitive to negotiated sales. Finally, the effect of targeted reliance on offering yields is similar across specifications.

5.3 The Texas Laws and Underwriter Competition

In this section we examine the evolution of auction outcomes around the enactment of the Texas laws, which sheds light on how the municipal bond market responds to the decrease in potential competition from the five large, exiting underwriters. Such evidence is useful for understanding the potential for competition to contribute to the results in Section 5.1. We therefore estimate Equation 1 only for the subset of competitive sales for three different auction outcomes: the winning bid (yield to maturity), the number of participating bidders, and the variance of the submitted bids. The outcome of interest, targeted share, is similarly normalized in terms of in-sample standard deviations, which is only 9% in the auction data leading to smaller estimated coefficients than in the Mergent data that includes negotiations.

Panel A of Table 7 shows the difference-in-difference estimates for the specifications matching Table 3. Column 1 shows that issuers most reliant on the exiting banks face significant increases in the winning bid of about 3.6bps. The number of bidders, a measure positively correlated with underwriter competition, decreases by 0.8 bidders for an additional standard deviation in reliance on the targeted banks (in column 2). Similarly, we find that an additional standard deviation of reliance on the targeted banks increases bid variance by 12.2bps, typically an outcome decreasing with competition in first price auctions (Garrett, Ordin, Roberts and Suárez Serrato, Forthcoming). In other words, fewer institutions participate in auctions, leading to less aggressive bidding by the remaining underwriters conditional on entry.

In Panel B of 7, we show these results are robust to the substantial primary market volatility during the COVID-19 pandemic by dropping all issues from March 2020 through August 2021. The results in all panels are qualitatively similar albeit slightly larger in economic magnitude for the number of bidders and the winning bid, while the point estimate of bid variance is similar but loses some statistical significance. Panel C presents a placebo test such that treatment begins on September 1, 2019 instead of in 2021, avoiding both COVID-19 and SB 13/19.[18] We fail to find any evidence that reliance on the targeted banks affects the competitive landscape in normal times, suggesting that general seasonality in auction participation around the implementation of the Texas laws does not explain our difference-in-differences estimates.

[18] We provide additional placebos in Appendix E.

5.4 Placement of Offerings with Investors

The increase in negotiation propensity and offering yield presented so far is consistent with a decrease in underwriter competition. It is important to understand whether these results are also driven by changes in the quality of underwriting services in the Texas market.

As issuers face lower access to the distribution networks of the targeted banks, underpricing of the municipal bonds of affected issuers may also increase. The large underwriters targeted by the new Texas laws are much more likely to have national distribution networks and may be better at placing municipal bonds with a wider array of investors than the non-targeted regional or small underwriters. Similar to Bergstresser and Luby (2018) and Bergstresser and Herb (2021), we define underpricing as the log-difference of the volume-weighted average customer purchase prices within thirty days of the offering and the offering price of each maturity, averaged across different maturities proportional to a maturity's outstanding dollar volume in the issue.

Table 8 shows that average underpricing of the municipal bonds of affected issuers remains similar after the implementation of the laws even for issuers previously reliant on the targeted banks for the majority of their underwriting (column 4 through 6). Overall, the Texas laws do not appear to have an additional effect on pricing beyond decreasing bank competition. We also numerically calculate the decrease in yields that would explain the 9bp increase in underpricing for affected issuers from column 4. Given that the average bond from issuers with over 50% previous reliance on targeted banks has a maturity of 13.67 years, coupon rate of 3.65%, and offering yield of 1.79%, the lower average offering price is equivalent to a 0.1bps increase in offering yields.[19] This amounts to 1% of the estimated impact on yields from column 6 of Panel B of Table 4. While this effect is small economically and statistically insignificant, underpricing in the thirty days following a municipal bond offering may not be a comprehensive measure of underwriter quality. If new underwriters are not able to place bonds with the investors who value them most in 30 days,the underpricing measure will understate any adverse secondary market consequences of

[19] We estimate this implied yield increase by calculating bond prices at average characteristics with and without the observed underpricing. We numerically solve for the increase in yield associated with the lower offering price while holding cash flows constant, which is 0.1bps.

anti-ESG laws.

Table 9 also shows that the number of customer purchases increases by approximately 7-9% in response to a one standard deviation increase in reliance on the targeted banks. While the average size of customer trades declines since the implementation of the Texas laws, the total dollar volume of customer purchases as a fraction of outstanding issue amount increases by between 2.0-3.7%. Concurrently, average dealer trade size increases but dealer volume remains unchanged. These results imply a significant shift towards retail investor trades, or substituting away from the national intermediation chains of the exiting banks to a more local placement of bonds.

5.5 Decomposition of Yield Increases

So far, we have shown that Texas municipalities most affected by SB 13/19 (1) increase their use of negotiations and (2) face a large increase in borrowing costs. These patterns are consistent across a large set of robustness specifications. Additionally, there is a material decline in auction participation and a movement toward placing issues through a larger number of smaller, retail trades. In this section we quantify the importance of observable factors such as offering type and underwriter identity in explaining the observed increase in borrowing costs. While our results and robustness tests suggest that it is the anti-ESG laws that drive the increases in borrowing costs, it is plausible that merely switching the offering and underwriter type mechanically accounts for the bulk of our estimates. We rely on an effect decomposition in the spirit of Kitagawa-Oaxaca-Blinder (Kitagawa, 1955; Oaxaca, 1973; Blinder, 1973), in which the predicted change in outcomes can be decomposed into the change in characteristics multiplied by the original coefficients plus the change in coefficients multiplied by the original controls. We focus on the endogenous changes in discrete choices and their impacts on borrowing costs holding the yield impacts of those choices constant since we already control for the underlying characteristics of the bonds.

We show that issuers are more likely to negotiate pricing in response to the anti-ESG laws. Prior literature finds a mixed impact of negotiated sales on issue yields (see, for example, Sorensen, 1979*a*; Smith, 1987; Kriz, 2003; Liu, 2017; Cestau, Green, Hollifield and Schürhoff, 2019). To assess the importance of this adjustment for interpreting our results, we combine estimates of the cost differential for negotiations from prior literature with our result that a 1 s.d. increase in targeted share translates to 8.2pp. increase in negotiations (Table 4, Panel A, column 2). To the extent that negotiating pricing allows issuers to obtain lower yields, our estimates are likely to understate the true impact on borrowing costs as yields would have been higher if issuers were not able to switch to negotiations. Using a selection model, Kriz (2003) estimates that negotiations translate to 24bps lower yields than counterfactual competitive sales, which combined with our estimates implies that the cost impact would have been 2bps ($\approx 24bps \times 8.2\%$) larger without this adjustment margin. By contrast, two more recent studies, Cestau, Green, Hollifield and Schürhoff (2019) and Liu (2017), show an average increase in yields of 17bps and 22bps, respectively, when choosing negotiations. The average of these estimates suggests that a 1 s.d. increase in targeted share leads to 1.6bps higher issue yields ($\approx 8.2\% \times 19.5bps$), or 15% of our yield estimate of 10.7bps in column (2) of Table 4. Thus, the higher negotiation propensity, at most, accounts for a relatively small portion of the higher offering yields we document following Texas SB 13/19.

Next, we quantify the impact of time-invariant underwriter characteristics. One of the mechanical effects of removing the five underwriters from the market is that issuers match with different underwriters after SB 13/19. To the extent that the newly-selected underwriters of affected issuers always place bonds through a different, higher-cost, distribution network, we may expect average yields to go up. Using the same intuition as above, we assess the importance of this mechanical change in underwriters by first estimating underwriter fixed effects for each underwriter in the pre-SB 13/19 period and then multiplying the targeted share in the post-period by the underwriter fixed effects. We estimate the underwriter fixed effects in the issue yield specification using equation 2 on the pre-period data (following column (2) of Table 4). The average underwriter fixed effects for issuers with 24% reliance on the targeted banks (a 1 s.d.) in the pre-period in Texas is -0.34bps—such issuers enjoyed roughly a 0.34 basis point lower issue yield than the average issue. Following SB 13/19 in Texas, this changes to -0.12bps, an increase of 0.22bps. Relative to column (2) of Table 4, time-invariant underwriter identity mechanically explains 2% of the yield increase.

Overall, based on this decomposition, time-invariant factors such as offering type and underwriter identity explain up to 17% of our yield estimate. Given such limited explanatory power of time-invariant factors and the decline in underwriter competition (see Section 5.3), it is plausible that higher mark-ups associated with reduced competition account for the bulk of the effect of SB 13/19 on offering yields. However, there are other potentially relevant explanations for the increase in offering yields such as underwriter capacity constraints (Boeh and Dunbar, 2016) or destruction of underwriter relationship assets (Dick-Nielsen, Nielsen and von Rüden, 2021).

6 Policy Implications

The frequent attempts of Citigroup to reenter the Texas market since the enactment of SB 13 and 19 suggests the anti-ESG laws may also be expensive to the targeted banks. In order to get a sense of the magnitude of potential losses, we provide two estimates of the underwriting profits targeted banks had to forgo as a result of the laws. Joffe (2016) conducts an audit study of municipal bond issuance fees, showing that issuers pay 1.02% of the proceeds of the average bond in issuance fees. Of these fees, 46.03% are underwriter discounts and 1.67% are other underwriter fees. Taken together with the fact that the targeted banks accounted for 35% of underwriting in the Texas market, these figures suggest these banks gave up \$54 million in revenues during the sample period ($35\% \times \$31.8$ billion $\times 1.02\% \times 47.7\% = \$0.054$ billion). This measurement ignores costs incurred by banks during the underwriting process, so the ultimate profits are likely to be lower than \$54 million. Another approach to estimate foregone profits is to use markup estimates from competitive auction bidding in Garrett, Ordin, Roberts and Suárez Serrato (Forthcoming), which estimates the largest issuers pay markups of 13.8bps on average. This approach also captures any other sources of potential underwriter profits such as dealer fees from secondary market trading (Brancaccio and Kang, 2022). Using the duration identity, this suggests a combined economic loss to the 5 targeted banks of up to \$95 million, although this markup estimate may be inflated because it is not weighted according to dollar value and smaller issues have larger markups ($35\% \times \$31.8$ billion $\times$

$6.2 \times 0.00138 = \$0.095$ billion). Both estimates suggest the potential for economically important losses to the banks leaving the Texas market.

After Citigroup conspicuously reentered the Texas municipal bond market through the Dallas-Fort Worth International Airport issue in April 2022 (highlighted in red in Panel A of Figure 1), three things happened in the market that make it difficult to identify whether the short-run effects we estimate will persist in the future. First, the state began sending letters to other municipal underwriters beyond the original targeted banks in early May to ask for information about potential discrimination of oil and gas firms (Hagan, Albright and Moran, 2022). Second, on May 13, 2022 JP Morgan Chase submitted a letter of compliance with the Texas laws, which was accompanied by a sustained increase in auction activity from the targeted banks as documented in Appendix Figure F.1. Citigroup, JP Morgan Chase, and Fidelity also all show up as municipal bond underwriters in Texas starting after April. Third, an early version of this paper circulated in May and generated interest in the press and among potential market entrants.[20]

We also leave open the possibility that the targeted banks may have changed their policies in some way to move into compliance with the Texas laws, although there is little evidence of such changes in the public discussions around the anti-ESG laws. The exiting banks deny discriminating against the oil and gas and firearms industries, instead arguing that limiting dealings with less sustainable industries for "ordinary business reasons."[21] We cannot rule out that more capital may flow into less sustainable industries in Texas than in the absence of SB 13 and 19, although we have no knowledge of such benefits to date.

Finally, the long-run effects of anti-ESG laws may also be dependent on the changing nature of the ESG landscape and other states adopting such laws. Throughout 2022, 17 states in total have proposed or passed laws to bar financial intermediaries with ESG policies from public finance

[20]See Albright and Moran (2022) for an early example of the public discussion.

[21]In a letter to Texas Comptroller Hegar on May 13, 2022, JP Morgan Chase stated "JPMC does not "boycott energy companies," as defined in Chapter 809 of the Texas Government Code... [T]he decisions JPMC makes are based on ordinary business reasons and reflect its overall objective of managing its business – including reputation risk – in a manner that balances serving the interests of its clients, customers and investors while protecting its own safety and soundness and complying with its obligations under all applicable laws." The letter is available at https://thetexan.news/wp-content/uploads/2022/05/2022-05-13-JPMorgan-Chase-Co.pdf, accessed Dec. 22, 2022.

markets (Schroeder, 2022). One such state is West Virginia, announcing in July 2022 that five financial institutions, JP Morgan Chase, Citigroup, Wells Fargo, Morgan Stanley, and Blackrock, would be banned from working with the state due to their policies toward the coal industry (Benoit, 2022). This list only shares one firm in common with the August 2022 list Texas Comptroller Hegar put forward regarding Texas SB 13 – Blackrock.[22] If the 17 states coordinate on the anti-ESG laws, they could substantially increase the costs to financial service companies as Texas only represents about 1/10 of the municipal bond market. A consortium of states could increase the costs to underwriters well above the $54 million in lost revenue discussed earlier. In other words, the costs of ESG policies from banks' perspective could start to outweigh the benefits. So far, anti-ESG laws do not appear to be coordinated across states. For example, Texas focuses on firearm policies, while WV emphasizes coal policies.

7 Conclusion

Taking ESG concerns and risks seriously through new policies has become one of the top priorities for the banking sector. Such policies, however, may pose significant challenges for jurisdictions that have historical reliance on less sustainable industries. The recent laws in Texas highlight how governments can respond to ESG policies of financial institutions to the detriment of local markets.

This paper explores how the policy change in Texas in 2021 through Senate Bills 13 and 19 affected municipal bond market outcomes. These laws stipulate that banks with ESG policies restricting credit to oil & gas companies or to firearms firms can no longer contract with local governments, causing five of the largest underwriters to exit municipal underwriting in the state. We exploit the stickiness of underwriter relationships in the municipal market to examine the impact of the anti-ESG laws on municipal financing.

We show that affected issuers face higher uncertainty in bond markets, receive fewer and less competitive bids from underwriters, and incur higher borrowing costs after the state prohibits banks

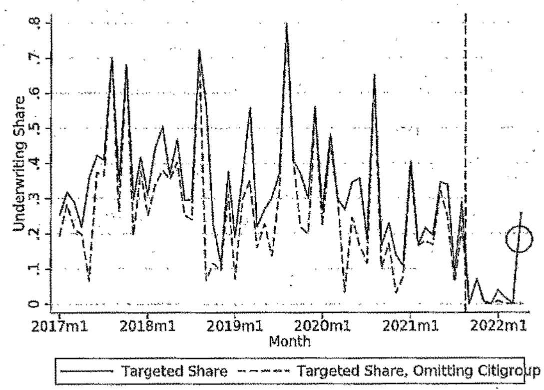
[22]See https://comptroller.texas.gov/about/media-center/news/20220824-texas-comptroller-glenn-hegar-announces-list-of-financial-companies-that-boycott-energy-companies-1661267815099.

with ESG policies from operating in the market. If this short-run impact were sustained in the long-run, Texas taxpayers could expect these bills to cost them about $416 million a year in additional borrowing costs. If more banks were to leave, these costs could go up. Ultimately, borrowing costs increase because there are fewer municipal underwriters competing for the state's municipal bonds, while the national bond placement networks of the major banks do not appear to have much explanatory power on their own. Our results suggest that if economies around the world that are heavily reliant on less sustainable industries attempt to undo specific bank ESG policies by imposing restrictions on the financial sector, local borrowers are likely to face significant adverse consequences such as decreased credit access and poor financial markets outcomes.

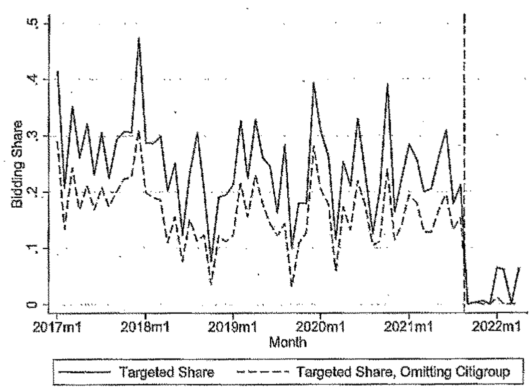
Figures

Figure 1: Texas Market Share of Targeted Banks

A. Share of Underwriting by Targeted Banks, Weighted by Offering Amt



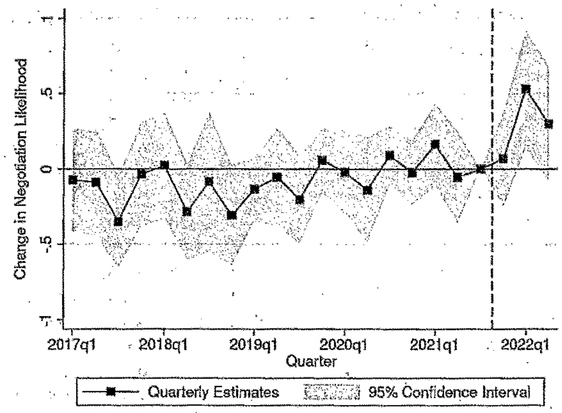
B. Share of Bids from Targeted Banks, Weighted by Principal



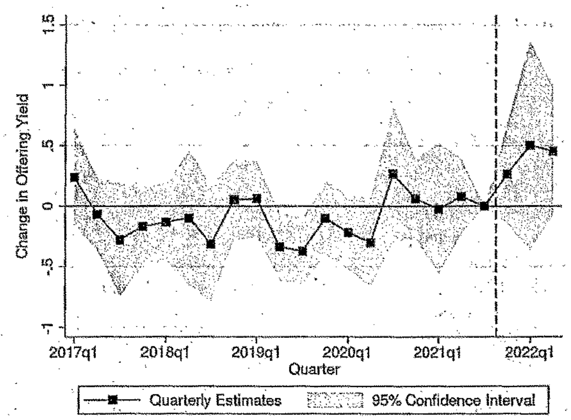
Note: Figure 1 shows the share of total underwriting activity (Panel A) and competitive bidding (Panel B) in Texas by banks targeted by Texas SB 13/19. Both panels are weighted according to par value of the issues. Before 2021, targeted banks underwrote around 40% of municipal bonds in Texas and submitted around 25% of competitive bids. These shares both drop to 0% in September 2021. The vertical dashed line represents the break before September 2021 when Senate Bills 13 and 19 were implemented. In following months, Citigroup attempts to resume submitting a small number of bids and underwriting in a limited capacity. In Panel A, the increase in underwriting in April 2022, circled in red, is due to Citigroup underwriting a $1.2 billion deal for the Dallas/Fort Worth International Airport.

Figure 2: Long Term Trends in Negotiated Share and Offering Yields by Targeted History

A. Negotiated Share Over Time



B. Offering Yield Over Time



Note: Figure 2 shows the quarterly distribution of the estimated effect of issuer targeted bank reliance on share negotiated (Panel A) and offering yield (Panel B) over time. We estimate these effects using specifications with issuer, offering date, maturity (in months), and issue type (in the yield specification) fixed effects. Issuer reliance on the targeted banks takes the value of one if these banks underwrite at least 50% of the issuer's municipal bond volume between 2007 and 2016. The quarterly effects are defined relative to the implementation of the Texas law of September 1, 2021. In other words, 2021Q4 corresponds to September, October, and November of 2021, while 2022q1 corresponds to December, January, and February of 2022.

Tables

Table 1: Municipal Bonds Issuance Characteristics

A. Differences Between Texas and non-Texas offerings

	Mean	SD	Obs	25^{th}	50^{th}	75^{th}
Average Offering Amount (Mil), 2017-22	32	121	76992	2	7	22
Non-Texas	33	113	67446	2	7	22
Texas	29	165	9546	2	6	18
Average Maturity (Months)	131	97	69299	55	118	186
Non-Texas	127	99	61507	46	110	179
Texas	164	73	7792	116	159	204
Average Yield (Percent)	1.96	1.24	74309	1.17	1.79	2.51
Non-Texas	1.97	1.26	64903	1.17	1.79	2.51
Texas	1.88	1.06	9406	1.21	1.77	2.48
Targeted Share	0.16	0.26	64502	0.00	0.00	0.26
Non-Texas	0.16	0.26	56861	0.00	0.00	0.27
Texas	0.13	0.23	7641	0.00	0.00	0.16
Negotiated Share	0.50	0.50	76992	0.00	1.00	1.00
Non-Texas	0.50	0.50	67446	0.00	1.00	1.00
Texas	0.51	0.50	9546	0.00	1.00	1.00
Fraction Taxable	0.14	0.34	69299	0.00	0.00	0.00
Non-Texas	0.14	0.35	61507	0.00	0.00	0.00
Texas	0.09	0.29	7792	0.00	0.00	0.00

B. Within Texas Statistics: Targeted Bank Reliance

	Mean	SD	Obs	25^{th}	50^{th}	75^{th}
Average Offering Amount (Mil), 2017-22	32	121	76992	2	7	22
Texas, Non-targeted	21	65	8807	2	5	14
Texas, Targeted	135	536	739	15	36	112
Average Maturity (Months)	131	97	69299	55	118	186
Texas, Non-targeted	164	72	7058	116	160	204
Texas, Targeted	162	83	734	106	150	208
Average Yield (Percent)	1.96	1.24	74309	1.17	1.79	2.51
Texas, Non-targeted	1.87	1.07	8683	1.19	1.75	2.47
Texas, Targeted	2.04	0.84	723	1.43	2.04	2.60
Negotiated Share	0.50	0.50	76992	0.00	1.00	1.00
Texas, Non-targeted	0.51	0.50	8807	0.00	1.00	1.00
Texas, Targeted	0.44	0.50	739	0.00	0.00	1.00
Fraction Taxable	0.14	0.34	69299	0.00	0.00	0.00
Texas, Non-targeted	0.09	0.28	7058	0.00	0.00	0.00
Texas, Targeted	0.12	0.32	734	0.00	0.00	0.00

Note: Table 1 presents summary statistics of municipal offerings comparing offerings based on Texas and non-Texas offerings (Panel A) and based on whether the bond was underwritten by one of the targeted banks or not (Panel B). The data come from Mergent and are restricted to the sample from 2017 through April 2022.

Table 2: Characteristics of Underwriter Auction Participation by Targeted Status

	Mean	SD	Obs	25^{th}	50^{th}	75^{th}
Total Number of Bids, 2008-21	771.3	2649.6	509	10.0	33.0	233.0
Texas Presence, Non-targeted	4145.2	5624.2	57	634.0	2479.0	5718.0
Texas Presence, Targeted	7980.0	4954.5	5	3655.0	10217.0	10521.0
Average Size of Issue (Millions)	14.1	60.7	509	1.5	3.0	8.6
Texas Presence, Non-targeted	54.9	162.0	57	6.9	14.7	29.6
Texas Presence, Targeted	113.9	98.3	5	83.8	88.0	104.0
Average Maturity of Issue with Bid	6.7	5.9	509	1.1	4.2	11.5
Texas Presence, Non-targeted	13.7	4.9	57	11.4	14.4	16.4
Texas Presence, Targeted	14.6	1.5	5	13.4	15.4	15.6
Average Number of Other Bidders	4.0	1.8	509	3.1	3.8	4.8
Texas Presence, Non-targeted	6.1	1.9	57	4.9	5.9	6.7
Texas Presence, Targeted	7.3	1.1	5	7.1	7.1	7.4
Texas Bids as a Share of all bids	4.1	14.1	509	0.0	0.0	0.0
Texas Presence, Non-targeted	21.1	29.0	57	3.3	10.0	26.2
Texas Presence, Targeted	7.7	3.0	5	4.7	8.6	9.6
Number of States with Bids	8.9	14.2	509	1.0	2.0	8.0
Texas Presence, Non-targeted	34.7	15.8	57	24.0	41.0	47.0
Texas Presence, Targeted	47.4	4.3	5	47.0	50.0	50.0

Note: Table 2 presents summary statistics of the Bond Buyer data aggregated to the bidder level. 509 banks submit at least 5 bids from 2008 to April 2022, of which 62 participate in the Texas Market. This exhibit shows the average characteristics separately for all 509 underwriters, the 57 underwriters that underwrite in Texas and do not appear to leave in September 2021, and the 5 targeted banks that leave the Texas municipal underwriting market in September 2021.

Table 3: **Within Texas Impact on Borrowing Outcomes**

A. Effects on Negotiated Share

	Negotiated			
	(1)	(2)	(3)	(4)
Targeted Share × Post	0.074***			
	(0.020)			
Targeted Share 10% × Post		0.189***		
		(0.055)		
Targeted Share 20% × Post			0.172***	
			(0.062)	
Targeted Share 50% × Post				0.231**
				(0.090)
Observations	6,805	6,805	6,805	6,805
Issuer FE	Yes	Yes	Yes	Yes
Month FE	Yes	Yes	Yes	Yes
Maturity-Month FE	Yes	Yes	Yes	Yes
Offering Type FE	No	No	No	No

B. Effects on Offering Yields

	Offering Yield			
	(1)	(2)	(3)	(4)
Targeted Share × Post	0.083***			
	(0.031)			
Targeted Share 10% × Post		0.174***		
		(0.058)		
Targeted Share 20% × Post			0.204***	
			(0.073)	
Targeted Share 50% × Post				0.381***
				(0.142)
Observations	6,740	6,740	6,740	6,740
Issuer FE	Yes	Yes	Yes	Yes
Month FE	Yes	Yes	Yes	Yes
Maturity-Month FE	Yes	Yes	Yes	Yes
Offering Type FE	Yes	Yes	Yes	Yes

Note: This table investigates the relation between bond issuance outcomes and issuer reliance on the underwriters targeted by Texas SB 13/19. We study two outcomes at the municipal offering level between January 2017 and April 2022: the probability of a negotiated offering (Panel A) and average yield. Targeted Share is defined as the share of the total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016. Targeted Share 10%, 20%, and 50% are indicator variables taking the value of one whenever the targeted banks had underwritten at least 10%, 20%, and 50% of offering volume for a given issuer and zero otherwise. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. All specifications include the natural logarithm of the total offering dollar amount as well as the fixed effects denoted at the end of each panel. The standard errors are double clustered at the issuer and offering date level.

Table 4: **Impact on Borrowing Outcomes: Triple Difference**

A. Effects on Negotiated Share

	(1)	(2)	(3)	(4)	(5)	(6)
Targeted Share × Post × TX	0.081***	0.082***				
	(0.026)	(0.024)				
Targeted Share 20% × Post × TX			0.177***	0.171***		
			(0.066)	(0.062)		
Targeted Share 50% × Post × TX					0.144	0.159*
					(0.093)	(0.091)
Post × TX	0.007		-0.036		-0.012	
	(0.028)		(0.033)		(0.031)	
Observations	59,736	57,672	59,736	57,672	59,736	57,672

B. Effects on Offering Yields

	Yield					
	(1)	(2)	(3)	(4)	(5)	(6)
Targeted Share × Post × TX	0.065	0.107**				
	(0.042)	(0.045)				
Targeted Share 20% × Post × TX			0.086	0.152**		
			(0.073)	(0.072)		
Targeted Share 50% × Post × TX					0.296**	0.407**
					(0.148)	(0.170)
Post × TX	0.052**		0.028		0.025	
	(0.026)		(0.028)		(0.025)	
Observations	57,972	55,980	57,972	55,980	57,972	55,980
Issuer FE	Yes	No	Yes	No	Yes	No
GO x Issuer FE	No	Yes	No	Yes	No	Yes
Date FE	Yes	Yes	Yes	Yes	Yes	Yes
Maturity FE	Yes	No	Yes	No	Yes	No
Mat x Month FE	No	Yes	No	Yes	No	Yes
State x Month FE	No	Yes	No	Yes	No	Yes
Issuance Amt x Month FE	No	Yes	No	Yes	No	Yes

Note: This table investigates the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas SB 13/19. We study two outcomes at the municipal offering level between January 2017 and April 2022: the probability of a negotiated offering (Panel A) and average yield (Panel B). Targeted Share is defined as the share of the total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016. Targeted Share 10%, 20%, and 50% are indicator variables taking the value of one whenever the targeted banks had underwritten at least 10%, 20%, and 50% of offering volume for a given issuer and zero otherwise. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. TX is an indicator equal to one if the issue takes place in Texas. All specifications include the natural logarithm of the total offering dollar amount as well as the fixed effects denoted at the bottom of Panel B. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table 5: **Within Texas Impact on Borrowing Outcomes: Inverse Probability Weights**

	Negotiated	Yield
	(1)	(2)
Targeted Share 50% × Post	0.288**	0.274**
	(0.118)	(0.133)
Log(Issuance Amt)	0.024**	-0.073
	(0.011)	(0.064)
Observations	3,371	3,328
Issuer FE	Yes	Yes
Month FE	Yes	Yes
Maturity FE	Yes	Yes
Offering Type FE	No	Yes

Note: This table investigates the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas SB 13/19. We study 2 outcomes at the municipal offering level between January 2017 and April 2022: (1) the probability of a negotiated offering and (2) average yield. The observations are weighted according to the inverse likelihoods from a first-stage logistic regression predicting the likelihood of having over 50% reliance on the targeted banks (described in Appendix C). Targeted Share 50% is an indicator variable equal to one whenever the targeted banks had underwritten at least 50% of the municipal securities of a given issuer between 2007 and 2016 and zero if the issuer has no reliance on targeted banks. This ensures issuers with intermediate values of reliance are not included in the sample. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table 6: **Within Texas Impact on Borrowing Outcomes: Heterogeneity**

	Negotiated	Yield	Negotiated	Yield	Negotiated	Yield
	(1)	(2)	(3)	(4)	(5)	(6)
Targeted Share × Post	0.074***	0.083***				
	(0.020)	(0.031)				
Targeted Share (NEG) × Post			0.066**	0.065**		
			(0.028)	(0.027)		
Targeted Share (COMP) × Post					0.087***	0.060**
					(0.022)	(0.025)
Observations	6,805	6,740	4,931	4,878	5,862	5,813
Issuer FE	Yes	Yes	Yes	Yes	Yes	Yes
Month FE	Yes	Yes	Yes	Yes	Yes	Yes
Maturity FE	Yes	Yes	Yes	Yes	Yes	Yes
Offering Type FE	No	Yes	No	Yes	No	Yes

Note: This table investigates the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas SB 13/19. We study two outcomes at the municipal offering level between January 2017 and April 2022: the probability of a negotiated offering (columns 1, 3, and 5) and offering yield (columns 2, 4, and 6). Targeted Share is defined as the share of the total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016. We compute Share Targeted (NEG) and (COMP) within the subset of past negotiated or competitive offerings, respectively. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. All specifications include the natural logarithm of the total offering dollar amount as well as the fixed effects denoted at the end of each panel. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table 7: Within Texas Impact on Competitive Sale Outcomes

A. Outcomes for Affected Auctions

	Winning Bid	# Bidders	Bid Variance
	(1)	(2)	(3)
Targeted Share × Post	0.036***	-0.772***	0.122***
	(0.014)	(0.242)	(0.041)
Log(Issuance Amt)	-0.035***	0.565***	0.004
	(0.009)	(0.113)	(0.021)
Observations	2425	2425	2425
Issuer FE	Yes	Yes	Yes
Date FE	Yes	Yes	Yes
Maturity Month FE	Yes	Yes	Yes

B. Robustness to Dropping COVID-19 Months

	Winning Bid	# Bidders	Bid Variance
	(1)	(2)	(3)
Targeted Share × Post	0.061***	-1.470***	0.100*
	(0.018)	(0.305)	(0.059)
Log(Issuance Amt)	-0.053***	0.538***	0.024
	(0.011)	(0.200)	(0.032)
Observations	1424	1424	1424
Issuer FE	Yes	Yes	Yes
Date FE	Yes	Yes	Yes
Maturity Month FE	Yes	Yes	Yes

C. Outcomes for Placebo Auctions

	Winning Bid	# Bidders	Bid Variance
	(1)	(2)	(3)
Targeted Share × Post (2019)	0.011	0.201	0.008
	(0.016)	(0.216)	(0.034)
Log(Issuance Amt)	-0.047***	0.662***	0.012
	(0.014)	(0.113)	(0.027)
Observations	1793	1806	1806
Issuer FE	Yes	Yes	Yes
Date FE	Yes	Yes	Yes
Maturity Month FE	Yes	Yes	Yes

Note: This table presents regression estimates of Equation 1 for competitive auction outcomes as a function of the standardized share of bids that historically came from the targeted banks. These outcomes are the winning bid (true interest cost), the number of bidders, and the variance of all submitted bids. Panel A shows the baseline estimates. Panel B shows the effects, while omitting the Covid pandemic period (March 2020 through August 2021), and Panel C replaces the Post indicator with a Post (2019) indicator that is equal to 1 for September 2019 through April 2020 and the sample ends in April 2020 matching the actual treatment ending in April 2022. Standard errors are double clustered at the issuer and offering day levels. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table 8: **Underpricing of Municipal Bonds.**

	Underpricing					
	(1)	(2)	(3)	(4)	(5)	(6)
Targeted Share × Post	0.0001	-0.0001	-0.0000			
	(0.0002)	(0.0003)	(0.0003)			
Targeted Share 50% × Post				0.0009	0.0007	0.0007
				(0.0009)	(0.0011)	(0.0011)
Log(Issuance Amt)	0.0003**			0.0003**		
	(0.0001)			(0.0001)		
Log(Av. Trade Size)	-0.0009***	-0.0010***		-0.0009***	-0.0010***	
	(0.0001)	(0.0001)		(0.0001)	(0.0001)	
Observations	6,148	5,389	5,389	6,148	5,389	5,389
Issuer FE	Yes	No	No	Yes	No	No
GO x Issuer FE	No	Yes	Yes	No	Yes	Yes
Date FE	Yes	Yes	Yes	Yes	Yes	Yes
Maturity FE	Yes	Yes	Yes	Yes	Yes	Yes
Offering Type FE	Yes	Yes	Yes	Yes	Yes	Yes
Mat x Month FE	No	Yes	Yes	No	Yes	Yes
Log(Issuance) x Month FE	No	Yes	Yes	No	Yes	Yes
Log(Av. Trade Size) x Month FE	No	No	Yes	No	No	Yes

Note: This table investigates the relation between 30-day underpricing and issuer exposure to the underwriters targeted by Texas SB 13/19. Underpricing is the log-difference of the volume-weighted average customer purchase prices within 30 days of the offering and the offering price of a given bond series, averaged across all series in a given issue that trade on the secondary market proportionally to the principal amount of each series. The sample runs from January 2017 through April 2022. Targeted Share is the issuer-level share of sales of each type that were underwritten by the exiting banks from 2007 through 2016, while Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. All specifications include the natural logarithm of the total offering dollar amount, the natural logarithm of the average par value per customer trade, as well as the fixed effects denoted at the end of each panel. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table 9: **Placing the Issuance with Investors.**

A. Base Specification

	Log(# Trades)		Log(Trade Size)		Volume	
	Customer	Dealer	Customer	Dealer	Customer	Dealer
	(1)	(2)	(3)	(4)	(5)	(6)
Targeted Share × Post	0.066*	-0.041	-0.130***	0.035	0.020**	0.051
	(0.038)	(0.060)	(0.043)	(0.048)	(0.009)	(0.044)
Observations	6,431	5,608	6,431	5,608	6,805	6,805
Issuer FE	Yes	Yes	Yes	Yes	Yes	Yes
Date FE	Yes	Yes	Yes	Yes	Yes	Yes
Maturity FE	Yes	Yes	Yes	Yes	Yes	Yes
Offering Type FE	Yes	Yes	Yes	Yes	Yes	Yes

B. Robustness

	Log(# Trades)		Log(Trade Size)		Volume	
	Customer	Dealer	Customer	Dealer	Customer	Dealer
	(1)	(2)	(3)	(4)	(5)	(6)
Targeted Share × Post	0.094*	-0.039	-0.167***	0.104	0.037***	0.096
	(0.055)	(0.082)	(0.062)	(0.073)	(0.012)	(0.060)
Observations	5,687	4,870	5,687	4,870	6,062	6,062
GO x Issuer FE	Yes	Yes	Yes	Yes	Yes	Yes
Date FE	Yes	Yes	Yes	Yes	Yes	Yes
Mat (years) x Month FE	Yes	Yes	Yes	Yes	Yes	Yes
Issuance Amt x Month FE	Yes	Yes	Yes	Yes	Yes	Yes
Offering Type FE	Yes	Yes	Yes	Yes	Yes	Yes

Note: This table investigates the relation between trade count, average trade size, and total par traded volume in the secondary municipal bond market within 30 days of an issue's offering date and issuer exposure to the underwriters targeted by Texas Senate Bills 13/19. Log(# Trades) is the natural logarithm of the total trade count of all bonds underlying a given bond issue. Log(Trade Size) is the natural logarithm of the average trade size for a given bond series, averaged across all bonds in a given issue that trade on the secondary market proportionally to the principal amount of each bond series. Volume is the total par value of a given bonds issue, divided by the total principal amount of the series within the issue that trade on the secondary market. The sample runs from January 2017 through April 2022. Targeted Share is the issuer-level share of bond sales that were underwritten by the exiting banks from 2007 through 2016, while Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. All specifications include the natural logarithm of the total offering dollar amount, the natural logarithm of the average par value per customer trade, as well as the fixed effects denoted at the end of each panel. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

References

Adams-Heard, Rachel. 2021. "Boycott Texas oil, and Texas will boycott you, says Gov. Abbott with new law." *World Oil.* Available at https://www.worldoil.com/news/2021/6/15/boycott-texas-oil-and-texas-will-boycott-you-says-gov-abbott-with-new-law, Accessed March 4, 2022.

Albright, Amanda, and Danielle Moran. 2022. "Texas' Wall Street Showdown Costing Cities Hundreds of Millions." *Blooomberg.* Available at https://www.bloomberg.com/news/articles/2022-06-13/texas-s-wall-street-showdown-costing-cities-hundreds-of-millions, Accessed December 22, 2022.

Allen, Franklin, Elena Carletti, and Robert Marquez. 2011. "Credit market competition and capital regulation." *Review of Financial Studies*, 24(4): 983–1018.

Avramov, Doron, Si Cheng, Abraham Lioui, and Andrea Tarelli. 2022. "Sustainable investing with ESG rating uncertainty." *Journal of Financial Economics*, 145(2): 642–664.

Babina, Tania, Chotibhak Jotikasthira, Christian Lundblad, and Tarun Ramadorai. 2021. "Heterogeneous taxes and limited risk sharing: Evidence from municipal bonds." *Review of Financial Studies*, 34(1): 509–568.

Basu, Sudipta, Justin Vitanza, Wei Wang, and Xiaoyu (Ross) Zhu. 2022. "Walking the Walk? Bank ESG Disclosures and Home Mortgage Lending." Working Paper.

Bauer, Rob, Tobias Ruof, and Paul Smeets. 2021. "Get Real! Individuals Prefer More Sustainable Investments." *Review of Financial Studies*, 34(8): 3976–4043.

Bellon, Aymeric. 2021. "Fresh Start or Fresh Water: The Impact of Environmental Lender Liability." Working Paper.

Benoit, David. 2022. "West Virginia Penalizes Banks Including JPMorgan, Goldman for Coal 'Boycotts'." *WSJ.* Available at https://www.wsj.com/articles/west-virginia-penalizes-banks-including-jpmorgan-goldman-for-coal-boycotts-11659029203, Accessed December 22, 2022.

Bergstresser, Daniel, and Martin J. Luby. 2018. "The Evolving Municipal Advisor Market in the Post Dodd-Frank Era." Working Paper.

Bergstresser, Daniel, and Patrick Herb. 2021. "The Risk Premium in Municipal Bond Offerings."

Berk, Jonathan B., and Jules H. Van Binsbergen. 2022. "Regulation of Charlatans in High-Skill Professions." *Journal of Finance*, Forthcoming.

Blinder, Alan S. 1973. "Wage discrimination: reduced form and structural estimates." *Journal of Human Resources*, 436–455.

Boeh, Kevin K, and Craig Dunbar. 2016. "Underwriter deal pipeline and the pricing of IPOs." *Journal of Financial Economics*, 120(2): 383–399.

Boot, Arnoud WA, and Anjan V Thakor. 2000. "Can relationship banking survive competition?" *Journal of Finance*, 55(2): 679–713.

Brancaccio, Giulia, and Karam Kang. 2022. "Search Frictions and Product Design in the Municipal Bond Market." National Bureau of Economic Research Working Paper 30775.

Brancaccio, Giulia, Dan Li, and Norman Schürhoff. 2017. "Learning by trading: The case of the US market for municipal bonds." *Working paper. Princeton University.*

Carletti, Elena, and Agnese Leonello. 2019. "Credit market competition and liquidity crises." *Review of Finance*, 23(5): 855–892.

Catlett, Erin A. 2019. "Banks and Guns: Social Activism Following the Parkland, Florida Shooting." *NC Banking Inst.*, 23: 507.

Cestau, Dario. 2019. "Competition and market concentration in the municipal bond market." *Available at SSRN 3497599.*

Cestau, Dario. 2020. "Specialization investments and market power in the underwriting market for municipal bonds."

Cestau, Dario, Richard C Green, Burton Hollifield, and Norman Schürhoff. 2019. "Should State Governments Prohibit the Negotiated Sales of Municipal Bonds?" *Available at SSRN 3508342.*

Chava, Sudheer. 2014. "Environmental externalities and cost of capital." *Management Science*, 60(9): 2223–2247.

Chen, Huaizhi, Lauren Cohen, and Weiling Liu. 2022. "Calling all issuers: The market for debt monitoring."

Clarke, Wes. 1997. "The interest cost implications of the financial advisor turned underwriter." *Public Budgeting & Finance*, 17(3): 74–86.

Clark, Robert, Jean-François Houde, and Jakub Kastl. 2021. "The industrial organization of financial markets." In *Handbook of Industrial Organization*. Vol. 5, 427–520. Elsevier.

Cornaggia, Jess, Yifei Mao, Xuan Tian, and Brian Wolfe. 2015. "Does banking competition affect innovation?" *Journal of Financial Economics*, 115(1): 189–209.

Cornaggia, Kimberly, John Hund, Giang Nguyen, and Zihan Ye. 2022. "Opioid crisis effects on municipal finance." *Review of Financial Studies*, 35(4): 2019–2066.

Cornaggia, Kimberly, Xuelin Li, and Zihan Ye. 2021. "Virtual Competition and Cost of Capital: Evidence from Telehealth." Working Paper.

Corwin, Shane A, and Paul Schultz. 2005. "The role of IPO underwriting syndicates: Pricing, information production, and underwriter competition." *Journal of Finance*, 60(1): 443–486.

Delis, Manthos D., Kathrin de Greiff, and Steven Ongena. 2019. "Being Stranded with Fossil Fuel Reserves? Climate Policy Risk and the Pricing of Bank loans." EBRD Working Paper No. 231.

Dick, Astrid A, and Andreas Lehnert. 2010. "Personal bankruptcy and credit market competition." *Journal of Finance*, 65(2): 655–686.

Dick-Nielsen, Jens, Mads Stenbo Nielsen, and Stine Louise von Rüden. 2021. "The value of bond underwriter relationships." *Journal of Corporate Finance*, 68: 101930.

Dimson, Elroy, Oguzhan Karakas, and Xi Li. 2021. "Coordinated Engagements." European Corporate Governance Institute – Finance Working Paper No. 721/2021.

Dyck, Alexander, Paulo Manoel, and Adair Morse. 2022. "Outraged by compensation: Implications for public pension performance." *Review of Financial Studies*, 35(6): 2928–2980.

Fama, Eugene F, and Kenneth R French. 2007. "Disagreement, tastes, and asset prices." *Journal of Financial Economics*, 83(3): 667–689.

Flammer, Caroline. 2013. "Corporate social responsibility and shareholder reaction: The environmental awareness of investors." *Academy of Management Journal*, 56(3): 758–781.

Gande, Amar, Manju Puri, and Anthony Saunders. 1999. "Bank entry, competition, and the market for corporate securities underwriting." *Journal of Financial Economics*, 54(2): 165–195.

Gao, Pengjie, Chang Lee, and Dermot Murphy. 2020. "Financing dies in darkness? The impact of newspaper closures on public finance." *Journal of Financial Economics*, 135(2): 445–467.

Gao, Pengjie, Chang Lee, and Dermot Murphy. 2021. "Good for your fiscal health? The effect of the affordable care act on healthcare borrowing costs." *Journal of Financial Economics*.

Garrett, Daniel. 2021. "Conflicts of Interest in Municipal Bond Advising and Underwriting." Working Paper.

Garrett, Daniel, Andrey Ordin, James W Roberts, and Juan Carlos Suárez Serrato. Forthcoming. "Tax Advantages and Imperfect Competition in Auctions for Municipal Bonds." *Review of Economic Studies*.

Gibson, Rajna, Simon Glossner, Philipp Krueger, Pedro Matos, and Tom Steffen. 2022. "Do Responsible Investors Invest Responsibly?" Swiss Finance Institute Research Paper No. 20-13.

Goldsmith-Pinkham, Paul S, Matthew Gustafson, Ryan Lewis, and Michael Schwert. 2021. "Sea level rise exposure and municipal bond yields." Working Paper.

Green, Daniel, and Boris Vallee. 2022. "Can Finance Save the World? Measurement and Effects of Coal Divestment Policies by Banks." Working paper.

Green, Richard C, Burton Hollifield, and Norman Schürhoff. 2007. "Financial intermediation and the costs of trading in an opaque market." *Review of Financial Studies*, 20(2): 275–314.

Hagan, Shelly, Amanda Albright, and Danielle Moran. 2022. "'Hell No': Finance Firms Tell Texas They Don't Boycott Energy." *Bloomberg*. Available at https://www.bloomberg.com/news/articles/2022-05-19/-hell-no-finance-firms-tell-texas-they-don-t-boycott-energy, Accessed December 22, 2022.

Hirano, Keisuke, Guido W Imbens, and Geert Ridder. 2003. "Efficient estimation of average treatment effects using the estimated propensity score." *Econometrica*, 71(4): 1161–1189.

Hoepner, Andreas, Zacharias Sautner, Laura T. Starks, and Xiaoyan Zhou. 2022. "ESG Shareholder Engagement and Downside Risk." European Corporate Governance Institute – Finance Working Paper No. 671/2020.

Ilhan, Emirhan, Zacharias Sautner, and Grigory Vilkov. 2021. "Carbon tail risk." *Review of Financial Studies*, 34(3): 1540–1571.

Ivanov, Ivan, and Tom Zimmermann. 2021. "The'Privatization'of Municipal Debt." *Available at SSRN 3056079.*

Ivanov, Ivan, Mathias Kruttli, and Sumudu Watugala. 2021. "Banking on Carbon: Corporate Lending and Cap-and-Trade Policy." Working paper.

Jagannathan, Ravi, Ashwin Ravikumar, and Marco Sammon. 2018. "Environmental, Social, and Governance Criteria: Why Investors Should Care." *Journal of Investment Management*, 16(1): 18–31.

Joffe, Marc. 2016. "Doubly bound: The costs of issuing municipal bonds." Haas Institute for a Fair and Inclusive Society.

Jones, Marc. 2021. "Climate change 'stranded assets' could slash countries' credit ratings: Fitch." *Reuters*. Available at https://www.reuters.com/article/us-climate-change-ratings-sovereigns/climate-change-stranded-assets-could-slash-countries-credit-ratings-fitch-idUSKBN2AF1JO, Accessed March 13, 2022.

Kacperczyk, Marcin T, and José-Luis Peydró. 2021. "Carbon emissions and the bank-lending channel."

Kitagawa, Evelyn M. 1955. "Components of a difference between two rates." *Journal of the American Statistical Association*, 50(272): 1168–1194.

Kraft, John L. 2012. "The Role of Bond Counsel in Public Agency Financing." *The Handbook of Municipal Bonds*, 69–77.

Kriz, Kenneth A. 2003. "Comparative costs of negotiated versus competitive bond sales: new evidence from state general obligation bonds." *Quarterly Review of Economics and Finance*, 43(2): 191–211.

Krueger, Philipp, Rajna Gibson, and Shema Mitali. 2021. "The Sustainability Footprint of Institutional Investors: ESG Driven Price Pressure and Performance." Swiss Finance Institute Research Paper No. 17-05.

Krueger, Philipp, Zacharias Sautner, and Laura T. Starks. 2020. "The Importance of Climate Risks for Institutional Investors." *Review of Financial Studies*, 33(3): 1067–1111.

Liu, Gao. 2017. "The Effect of Sale Methods on the Interest Rate of Municipal Bonds: A Heterogeneous Endogenous Treatment Estimation." *Public Budgeting & Finance.*

Liu, Xiaoding, and Jay R Ritter. 2011. "Local underwriter oligopolies and IPO underpricing." *Journal of Financial Economics*, 102(3): 579–601.

Martorell, Paco, Kevin Stange, and Isaac McFarlin Jr. 2016. "Investing in schools: capital spending, facility conditions, and student achievement." *Journal of Public Economics*, 140: 13–29.

Moss, Austin, James P. Naughton, and Clare Wang. 2021. "The Irrelevance of ESG Disclosure to Retail Investors: Evidence from Robinhood." Working Paper.

Oaxaca, Ronald. 1973. "Male-female wage differentials in urban labor markets." *International Economic Review*, 693–709.

Painter, Marcus. 2020. "An inconvenient cost: The effects of climate change on municipal bonds." *Journal of Financial Economics*, 135(2): 468–482.

Pastor, Lubos, Robert F Stambaugh, and Lucian A Taylor. 2021. "Dissecting Green Returns." National Bureau of Economic Research.

Pelizzon, Loriana, Aleksandra Rzeznik, and Kathleen Weiss Hanley. 2021. "The Salience of ESG Ratings for Stock Pricing: Evidence from (Potentially) Confused Investors." Working Paper.

Petersen, Mitchell A., and Raghuram G. Rajan. 1995. "The Effect of Credit Market Competition on Lending Relationships." *Quarterly Journal of Economics*, 110(2): 407–443.

Quinson, Tim. 2021. "Cost of Capital Spikes for Fossil-Fuel Producers." *Bloomberg*. Available at https://www.bloomberg.com/news/articles/2021-11-09/cost-of-capital-widens-for-fossil-fuel-producers-green-insight, Accessed December 21, 2022.

Riedl, Arno, and Paul Smeets. 2017. "Why do investors hold socially responsible mutual funds?" *Journal of Finance*, 72(6): 2505–2550.

Schroeder, Pete. 2022. "How Republican-led states are targeting Wall Street with 'anti-woke' laws." *Reuters*. Available at https://www.reuters.com/article/wallstreet-esg-insight-idTRNIKBN2OH0O1, Accessed December 21, 2022.

Skyler, Ed. 2018. "Announcing Our U.S. Commercial Firearms Policy." Available at: https://blog.citigroup.com/2018/03/announcing-our-us-commercial-firearms-policy/ (Accessed: March 4, 2022).

Smith, Richard L. 1987. "The Choice of Issuance Procedure and the Cost of Competitive and Negotiated Underwriting: an Examination of the Impact of Rule 50." *Journal of Finance*, 42(3): 703–720.

Sorensen, Eric H. 1979*a*. "The impact of underwriting method and bidder competition upon corporate bond interest cost." *Journal of Finance*, 34(4): 863–870.

Sorensen, Eric H. 1979*b*. "A Note on: Negotiated Municipal Bond Underwritings: Implications for Efficiency." *Journal of Money, Credit and Banking*, 11(3): 366–370.

The Bond Buyer. 2022. "Competitive Sales Results." *The Bond Buyer*, Available at: Subscription Service http://www.bondbuyer.com/ (Data Accessed: November 18, 2022).

Yanelle, Marie-Odile. 1997. "Banking competition and market efficiency." *Review of Economic Studies*, 64(2): 215–239.

Yu, Jinhai, Xin Chen, and Mark D Robbins. 2022. "Market Responses To Voter-Approved Debt." *National Tax Journal*, 75(1).

Internet Appendix: Not For Publication

This appendix includes several sections of supplemental information. Appendix A contains definitions for all the variables used in the paper. Appendix B provides a brief overview of the municipal bond issuance process. Appendix C shows the logit estimates describing the types of issuers who selected to work with targeted banks. Appendix D shows the estimated impact on quantity of bonds issued. Appendix E includes many robustness and specification checks to the analysis in the main paper. Appendix F discusses market changes after April 2022. Appendix G describes the auction data from The Bond Buyer in more detail.

A Variable Definitions

Variable Name	Description
Targeted Banks	The targeted banks are the 5 banks that were targeted and do appear to have exited the Texas market after Texas Senate Bills 13/19. These banks include JPMorgan Chase, Citigroup, Goldman Sachs, Bank of America, Fidelity Capital Markets. This list includes banks that (1) were active in Texas underwriting in 2007-2021, (2) did not file a letter of compliance, (3) do not underwrite in Texas in September 2021, and (4) continue underwriting in other states during the period when they do not operate in Texas. *Source:* The Municipal Advisory Council of Texas and manual data gathering by the authors.
Targeted Share	The share of an issuer's total dollar value of bond sales underwritten by the targeted banks between 2007 and 2016. *Source:* Authors' calculations from the Mergent Municipal data.
Targeted Share X%	An indicator variable taking the value of one whenever the issuer's share of bond sales underwritten by the targeted banks between 2007 and 2016 exceeds X% (by issue amount), and zero otherwise. X takes the value of 10, 20, and 50. *Source:* Authors' calculations from the Mergent Municipal data.
Targeted Share (Bids)	The share of all bids, weighted by the principal value of the underlying issue, received from the targeted banks. *Source:* Authors' calculations from The Bond Buyer.
Post	Post-August 31, 2021, indicator.
Offering Amount	Also referred to as "issuance amount" throughout the text, is the total principal dollar value of a given bond issue. The offering amount is also the sum of the principal amounts across all bonds series of a given issue. A given bond issue is typically comprised of different series, or "maturities." *Source:* Mergent Municipal.

Continued on next page

Table A.1 – *Continued from previous page*

Variable	Description
Offering Date	The date at which the underwriter purchases the municipal bond issue from the issuer. *Source:* Mergent Municipal.
Maturity	The issue maturity is the principal-weighted average maturity across all series of a given bonds issue, rounding the resulting values to the nearest month. The maturity of a given bond series is defined as the difference between the maturity date of the series and the issue offering date. *Source:* Mergent Municipal.
Type of Sale	This is a description of how a bond is placed with an underwriter or final investor. The main categories are competitive sales (auctions) and negotiations. Other categories include limited and private placements. *Source:* Mergent Municipal.
Offering Yield	The offering yield at the issue level is the average of offering yields across different bond series in the same bond issue. The offering yield for a given bond series is the original yield at which the series is made available to issuers. *Source:* Mergent Municipal.
Underpricing	The log-difference of the volume-weighted average customer purchase prices within 30 days of the offering and the offering price of a given bond series, averaged across all series in a given issue that trade on the secondary market proportionally to each series principal amount. *Source:* MSRB Trade Data.
Log(# Trades)	The natural logarithm of the total trade count across all trades of a given bond issue within 30 days of the offering date. We compute this measure separately for customer purchases and dealer trades. *Source:* MSRB Trade Data.
Log(Trade Size)	The natural logarithm of the average trade size for a given bond series within 30 days of the offering date, averaged across all series in a given issue that trade on the secondary market proportionally to the principal amount of each series. We compute this measure separately for customer purchases and dealer trades. *Source:* MSRB Trade Data.
Volume	The total par value of a given bonds issue traded within 30 days of the offering date, divided by the total principal amount of the bonds series within the issue that trade on the secondary market. We compute this measure separately for customer purchases and dealer trades. *Source:* MSRB Trade Data and Mergent Municipal.
Issuer	The group of the long issuer name and the state in which the issuer exists. *Source:* Mergent Municipal.

Continued on next page

Table A.1 – *Continued from previous page*

Variable	Description
State of Issue	The state in which a given issuer exists. *Source:* Mergent Municipal.
Winning Bid	The yield that the winning underwriter submitted in each auction. *Source:* The Bond Buyer.
# Bidders	The count of bids submitted in each auction. *Source:* The Bond Buyer.
Bid Variance	The variance of bids that are submitted in each auction. *Source:* Authors' calculations from The Bond Buyer.
Low Local Clientele	A group of states without state-level beneficial tax treatment for local muni bond interest. This includes all states without a personal income tax (Alaska, Florida, New Hampshire, Nevada, South Dakota, Tennessee, Texas, Washington, and Wyoming) as well as states that do not exempt income on local bonds from state taxes (Illinois, Iowa, Nebraska, Oklahoma, Utah, and Wisconsin).

B Municipal Bond Primary Market Process

State and local governments in the US issue around $400 billion per year of municipal bonds to finance projects such as roads, schools, water treatment plants, hospitals, and other local infrastructure. Over 50,000 unique state and local governments have issued municipal bonds since 1965 and there are currently over 1.2 million individual securities outstanding in the market. The bond issuance process exhibits substantial heterogeneity driven by differences in state regulations and project type. After selecting an investment project, municipalities typically choose four major aspects of the issuance process: (1) the bond counsel and municipal advisor, (2) whether to hold a public sale (a first price, sealed bid auction) or to negotiate directly with the underwriter, (3) the issuance amount and a timeline of repayment, and (4) covenants and contract terms such as call provisions credit enhancements, and collateral.

The bond counsel is a law firm that ensures the bond offering complies with state and local statutes (for further discussion, see Kraft (2012)). Similarly, the municipal advisor is a financial firm that offers a variety of services guiding a municipal entity through the issuance process and aids with public disclosure (Bergstresser and Luby, 2018; Garrett, 2021). The sale type—either public sale through an auction, negotiation with a single underwriter, or private placement with a final investor—guides the rest of the issuance process. In a public sale, the municipality first structures the bond package into different securities based on maturities and other characteristics then creates the necessary public disclosure documents. Underwriters compete to offer the lowest combined yield-to-maturity to the municipality, referred to as "True Interest Cost." The underwriter with the lowest bid purchases the entire issue at this price and then sells it to investors.

In a negotiation, the issuer involves the underwriter earlier in the issuance process. The underwriter can help the municipality choose a term structure and other bond characteristics that are most appropriate for both parties. Many municipalities still try to encourage competitive forces to keep costs low in a negotiation by holding a request for proposals before choosing an underwriter with whom to negotiate. In a private placement, the timeline is more similar to a negotiation than to a public sale, but the final securities do not need to be structured in a way that would allow sale in the secondary market.

The offering type decision depends on two key aspects of the issue. The first aspect pertains to whether the bond will trade on the secondary market—competitive or negotiated offerings typically do, while bank loans and private placements do not. Ivanov and Zimmermann (2021) explore the increase in "private" debt in the municipal space in the last 20 years noting that it has become a more substantial portion of the market. The second aspect relates to whether the issuer chooses an underwriter before or after the bond is structured. The choice of competition vs. negotiation is one of the oldest lines of inquiry in the security design literature (Sorensen, 1979*a*), with recent studies corroborating this margin has a large impact on municipal borrowing costs. For example, Cestau, Green, Hollifield and Schürhoff (2019) finds that negotiations are costlier than competitive sales while focusing on variation in offering types driven by statutory requirements.

C Estimates of Selection Model for Inverse Probability Weights

Before Texas Senate Bills 13 and 19, the targeted banks were not working with a perfectly random sample of issuers in Texas. These banks, by their stature as large national banks, often work with the largest issuers and issuers who may be trying to place bonds outside of Texas. In Section 5.2, we present an inverse probability of treatment weights approach that allows us to focus the attention of the analysis on marginally treated issuers. In that analysis, we discretize the treatment into issuers who were over 50% reliant on exiting banks while the control group is made up of issuers who had no interaction with exiting banks. The idea of the analysis is to verify that the selection on issuer types is not the key factor driving the results. The weighted regressions find very similar magnitudes as the baseline triple differences specifications, which suggests that these differences in issuer observables is not important for our inference although the selection may be very important for contextualizing the business these banks engage in.

In a first stage in the inverse probability weights analysis, we estimate a logit model that describes the likelihood of being in the treated group relative to the control. The control variables are all defined by the historical issuing patterns of the issuer from January 2017 through August 2021. The control variables include average issue size in millions of nominal dollars, the number of issues, the share of issues that were placed with an underwriter by negotiation, the share of issues that are exempt from all personal income taxes, the share of issues that were refunding outstanding debt and the average time to final maturity in years.

The estimates from this regression are presented in Table C.1. The results paint a striking picture of how issuers with more reliance on targeted banks are different from other issuers. First, the issuers with a large targeted share are much larger than other issuers, issuing larger bonds more frequently than the control issuers. There is not readily apparent selection by issuers who prefer to negotiate or hold competitive auctions. Issuers with more taxable bond issues, which are often placed with a more national or global set of investors instead of the general in-state segmentation common with municipal bonds (Babina, Jotikasthira, Lundblad and Ramadorai, 2021), are more likely to be reliant on the exiting banks. However, it does not appear this is related to the TCJA new tax treatment of advanced refunding issues because those issuers with relatively more refunding

Table C.1: **Selection of Targeted Banks**

	Targeted Share (50%)
	(1)
Average Issue Size (Millions)	0.032***
	(0.004)
Number of Issues	0.060***
	(0.013)
Share Negotiated	0.532
	(0.418)
Share Tax Exempt	-0.796*
	(0.475)
Share Refunding	-0.824*
	(0.452)
Average Maturity (Years)	-3.130**
	(1.239)
Observations	1,272

Note: Table C.1 presents estimates from a logit regression that predicts which issuers, as a function of their recent borrowing histories, are likely to be heavily reliant on the exiting banks. The sample for this regression is restricted to issuers who issue at least once in Texas between January 2017 and August 2021. Robust standard errors are included in parentheses. See Section C for a discussion of the control variables. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

issues are less likely to have been reliant on exiting banks. Finally, issuers with shorter maturity bonds, on average, are more likely to be reliant on the targeted banks.

D Credit Quantity Responses

A possible margin of response when losing access to a certain group of underwriters is whether to issue at all or to change the size of a municipal issuance. A change in equilibrium quantities of credit could arise either due to the change in prices – the increasing yield decreases quantity of credit demanded – or due to losing market access through a relationship with an intermediary.

This section tests whether there are observable changes on the extensive margin of seeking credit or on the intensive margin of the size of the issue. To begin, we aggregate the bond issuance data in Mergent Municipal to the issuer-month level for all issuers in Texas with at least one bond issue between 2017 and April 2022. The variables of interest are the count of issues and the total principal value issued in each month for each issuer from January 2017 through April 2022. With this panel, we follow a similar difference-in-differences specification as described in equation 1 while changing the outcome variable to be one of three quantity outcomes: (1) an indicator equal to one for a month-issuer with a bond issue, (2) the inverse hyperbolic sine of the principal issued, and (3) the nominal amount of principal issued. The specifications include month and issuer fixed effects, but they must omit day and maturity controls due to the level of aggregation.

We regress each outcome on the interaction of $Targeted\ Share_i$, which is fixed at the issuer level, and an indicator for months after August 2021 in addition to the issuer and month fixed effects. The coefficient of interest is the marginal impact of having more reliance on exiting banks

Table D.1: **Impact on Likelihood and Amount of Borrowing**

A. Quantities Compared within Texas, Difference-in-Differences

	P(Issue)	IHS(Principal Issued)	Principal Issued
	(1)	(2)	(3)
Targeted Share × Post	-0.001	-0.023	-86013.137
	(0.002)	(0.047)	(63953.738)
Observations	103,168	103,168	103,168
Issuer FE	Yes	Yes	Yes
Month FE	Yes	Yes	Yes

B. Comparing Texas to Other States, Triple Difference

	P(Issue)	IHS(Principal Issued)	Principal Issued
	(1)	(2)	(3)
Targeted Share × Post × Texas	-0.001	-0.016	-48908.265
	(0.002)	(0.044)	(59286.147)
Observations	1,054,784	1,054,784	1,054,784
Issuer FE	Yes	Yes	Yes
State × Month FE	Yes	Yes	Yes

Note: Table D.1 investigates the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas Senate Bills 13/19. We study three outcomes at the issuer-month level between January 2017 and April 2022: probability of issuing (column 1), the inverse hyperbolic sine of the principal issued (column 2), and the (column 3). Targeted Share is defined as the share of the total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016 scaled to standard deviations. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. All specifications include issuer and month fixed effects. Panel A shows the estimates from a difference-in-differences specification while the second panel shows estimates from a triple difference specification with state-by-month fixed effects. Standard errors clustered at the issuer and month levels are included in parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

after the 5 large banks were barred from operating in Texas. These estimates are displayed in Panel A of Table D.1. The column (1) shows the estimate for the linear probability regression where the outcome is a dummy variable equal to one if an issuer issues any bond in a given month. The sample average of the issuance dummy is 0.039, which indicates that the average issuer has a 3.9% chance of issuing a bond in a given month. After the Texas rules that restrict the set of underwriters, a 1 s.d. increase in the share of previous reliance on existing banks leads to a 0.1pp decline in the likelihood of borrowing, which is statistically insignificant at conventional levels. While this could be a non-trivial economic quantity, the standard error of the estimate suggests we can reject a decline of 0.5pp with 90% confidence.

The relatively low frequency of issuance, about once every 18 months for the average issuer, leads to a lack of power on the extensive margin. Another method of measuring the equilibrium quantity of credit provided is the scale the principal issued by the inverse hyperbolic sine. This scaling gives the same interpretation as the natural log in the limit, but allows the inclusion of zeros, which implicitly weights the intensive and extensive margins. The estimates from this specification are displayed in column (2), and suggest a 1 s.d. increase in Targeted Share led to a 2.3% decrease in issuance, although this is still insignificant at traditional levels. We can reject declines larger than 10.1% with 90% confidence. The final column shows the corresponding estimate when the outcome variable is the nominal principal value winsorized at the 1% level. This specification is similarly negative but indistinguishable from zero, statistically but does indicate an average decline of $86 thousand, which is economically meaningful and further suggests size of issuance is a margin of response.

Panel B of D.1 shows the corresponding estimates from a triple difference specification which compares the relative change in frequency and quantity of borrowing for issuers with previous reliance on banks targeted by Texas Senate Bills 13 and 19. The results are very similar with the specification and are all similarly negative and insignificant. We take this to mean there may be declines in borrowing on the part of affected issuers, but these declines are relatively small and not statistically significant. We can rule out a large scale change in frequency of issuing or in quantities issued.

E Robustness to Specification and Controls

This appendix presents a series of robustness checks to the primary analysis in the paper by using variations of the difference-in-differences results presented in Table 3 and of the primary triple difference results presented in column 2 of Table 4. First, we present estimates of the preferred difference-in-differences regressions allowing for time-varying impacts of maturity. Second, in the triple difference we show the impact of sequentially adding issue-level controls (including flexible time- and size- controls from the previous robustness) on the main coefficients of interest. Third, we show robustness to restricting the sample to bonds that are not guaranteed by state programs intended to insure borrowing for education. Fourth, we redefine issuers by the 6-digit CUSIP instead of issuer name in Mergent to test whether issuer aggregation matters. Fifth, we show that the results are robust to the group of control states that either (i) have no personal income tax from which bond income can be exempt or (ii) do not exempt the interest on local bonds from the state income tax. Sixth, we include two new measurements of yield based on aggregating the offering prices in Mergent that assumes either all bonds are called on first call date or all bonds are left outstanding to maturity. Seventh, we show the triple difference impacts are not a function of seasonality by showing placebos in the Mergent data for September 1^st of 2020, 2019, and 2018.

In Table E.1 estimate a version of the within Texas difference-in-differences specifications that allows for the yield curve and issuance size to have a differential effect on issuance outcomes over time, and issuer fixed effects to vary with issue type (general obligation or revenue). This specification adds maturity (in years) $\times$ month of sale fixed effects, the natural logarithm of the issuance amount interacted with month of sale fixed effects, and fixed effects for issuer $\times$ an indicator for general obligation bonds to our main specification. The idea behind these heavily saturated regressions is to allow differential time trends for different types of debt to be removed from the variation in outcomes. The past issuer reliance on the targeted banks loses both statistical and economic significance in explaining the choice of negotiated offerings after the inclusion of the additional fixed effects. Including the fixed effects in a sequential manner (in unreported tests) shows that adding issuance amount interacted with month of sale fixed effects reduces the size of the difference-in-differences estimate. Table D.1 sheds light on this seemingly puzzling result in that issuers previously most reliant on the targeted underwriters who issue the largest bonds raise lower offering amounts after the implementation of the Texas laws especially when measured in levels, although the estimates are statistically imprecise. The higher propensity of affected issuers to choose negotiations is correlated with these same issuers raising less financing after the implementation of the Texas laws. The inclusion of issuance amount $\times$ time fixed effects is likely a bad control in Texas in that it controls for a portion of the effect of interest. The issuance amount interacted with month of sale fixed effects are unlikely to pose a problem in our main specification in column 2 of panel B of Table 4 because of the substantially weaker reduction in issuance amount in Panel B of Table D.1. Additionally, the effect on negotiation likelihood is still large and significant at the 1% level when we include these fixed effects in column 2 of panel B of Table 4. Overall, the effect attenuation in this robustness check is not material to the our analysis.

The average effect of issuer targeted bank reliance on offering yields with this more saturated specification is very similar to results reported in Table 3 with an increase of 10.7bps instead of 8.3bps in the baseline specification. For the specification focusing on issuers with over 50% reliance on the targeted banks, the estimate is 38.3bps and still statistically significant at the 5% level despite the very granular controls. We further use the triple difference specifications to show robustness to the use of different issue-level controls added sequentially, to the exclusion of bonds with state-provided insurance, to the definition of an issuer, to the set of control issuers and control states, and to the measurement of yield with relation to call options in Appendix E. All of these results show that our findings of increased use of negotiations and higher borrowing costs in Texas for affected issuers after SB 13/19 are not sensitive to parametric modeling decisions in the regressions specifications.

To show the impact of individual controls more clearly, we also show the estimates of the triple difference regressions with sequential addition of issue-level controls in Table E.2. The first three columns use the outcome of an indicator variable equal to one for negotiations. The first column matches column (1) of Panel A of Table 4. The second column adds a series of issue level controls with their coefficients. These controls include the share of a bond issue that is taxable, the share of a bond issue that is senior, the share of a bond issue that is bank-qualified (also exempt from corporate taxes when held by banks), the share of a bond issue backed by a specific revenue source, the share of an issue that is refunding an outstanding bond, and the share of a bond issue that is insured by any source. All of these shares are scaled between 0 and 1. Column (3) also adds interactions of maturity with month FE and state with month FE. Across all 3 columns, the coefficient is between 0.080 and 0.081 and statistically significant at the 1% level. Columns (4) through (6) provide the same exercise where the outcome is the offering yield. Column (6) matches the specification in column (2) of Panel B of Table 4. The coefficient with additional controls is 0.089 instead of 0.107 without controls, and both coefficients are significant at the 5% level. Our results are not sensitive to the inclusion of a plethora of issue-specific controls.

Next, we show that the results are the same in Table E.3 when we restrict to only examine the set of bonds that are not backed by specific state guarantees for certain school bonds. Texas has a program that provides additional guarantees to certain education bonds: the Texas Permanent School Fund. This fund is backed by the state to provide additional credit enhancement and will pay investors in the event of default. Such insured bonds are said to have a PSF wrap. This sort of state guarantee can eliminate most or all credit risk and means that insured bonds may trade very differently and among different investors and the underwriting issues may be different. In order to make sure idiosyncratic issues affecting the state-guaranteed market are not driving our results, we replicate the continuous results from Table E.2 with the sample restricted to only bonds that do not have any sort of state guarantee. The estimate for the impact on negotiation is 0.079, which is indistinguishable from the baseline estimate of 0.082. The impact of reliance on targeted underwriters on offering yields is larger in this sample, with an estimate of one standard deviation increasing yields by 13.0bps after SB 13/19.

In Table E.4, we replicate the triple difference estimates where we create issuer identifiers based on the first six digits of the CUSIP code instead of by the long issuer names defined by Mergent. The first six digits of the CUSIP generally signify the issuer of a security, although some municipal issuers under a given name will issue under multiple CUSIP codes. We rerun the regressions using this more narrow definition of issuer and verify that the pooling of issuer identities does not have a material impact on our results.

Table E.5 shows that our results are robust to different control states included to be more similar to Texas in the tax treatment of municipal bond income. We restrict the comparison sample to make sure that Texas' somewhat unique tax treatment of their munis, which leads to lower local market clientele Babina, Jotikasthira, Lundblad and Ramadorai (2021), does not have any impact on our estimated coefficients. To this end, we define a set of control states that do not have special tax treatment for local bonds. This includes states that have no income tax from which to exempt bond interest (Alaska, Florida, New Hampshire, Nevada, South Dakota, Tennessee, Washington, and Wyoming) as well as states that do not exempt income on local bonds from state taxes (Illinois, Iowa, Nebraska, Oklahoma, Utah, and Wisconsin). These states all likely have less segmented ownership of local bonds and may experience different secular trends than the rest of the market. We show the estimates when restricting to this sample of low local clientele control states in Table E.5 where columns (2) and (4) show that the impacts on both the negotiated share and on yields are 10pp and 11bps per standard deviation, respectively, indicating that our results are not sensitive to the control states.

Mergent provides two different variables that can be used to measure the original pricing of a bond. The first is the offering yield, which is our primary measure of pricing in the paper. However, this yield assumes that a bond is outstanding to maturity, while many bonds include options to be called early. Trading data through the MSRB is reported in "yield to worst," which assumes that a bond will be called at the first available date. We create a version of yield to worst using the "offering price" variable in Mergent, the second variable that characterizes initial pricing. We use this new variable to replicate the results. To be exact, we calculate True Interest Cost according to MSRB Rule G-33.b.i.B while allowing the offering price to be the amount of money raised in the issue (P). We plug the offering price in for P, call price in for redemption value RV, normalize to 30 day months, and only include interest payments up to the first call date. We then calculate the internal rate of return that sets this price equal to the value of the future interest and coupon payments for all bonds in a given bond package (Y in Rule G-33 parlance). Given that the MSRB Rule G-33 guideline leads to yields that are potentially inconsistent with how yields are calculated in other contexts, we calculate a version of yield to maturity using this same process as well. We show the results of the triple difference regressions using these new measurements of the yield outcome in Table E.6. We find results that are very similar to our baseline triple difference results and are significantly different than zero at the 10% level but are not distinguishable from each other. However, the point estimate for the yield to worst outcome is slightly larger in magnitude than the yield to maturity outcome, indicating that presence of call options does not have a material bearing on our results.

In Table E.7 we show that the triple difference results are not a function of seasonality by showing placebo interactions for September firsts of earlier years that are in our sample. In the first column, we show the baseline triple difference estimate starting on September 1, 2021, and ending in April 2022. Column 2 replicates this analysis for a placebo treatment starting on September 1, 2020 with the sample ending in April 2021. The results from the first column match the baseline specification in column 2 of Table 4 but the placebo in column 2 shows no effect. In columns 3 and 4, we show the same type of placebo for September 1, 2019, which matches the auction placebo in Panel C of Table 7, and September 1, 2018. All 3 placebos show that there is not a positive impact on yields for issuers in Texas on September firsts in general, but days after the September first on which SBs 13 and 19 were implemented did see higher borrowing costs for reliant issuers.

Table E.1: **Within Texas Impact on Borrowing Outcomes: Robustness**

A. Effects on Negotiated Share

	Negotiated			
	(1)	(2)	(3)	(4)
Targeted Share × Post	0.029			
	(0.028)			
Targeted Share 10% × Post		0.052		
		(0.069)		
Targeted Share 20% × Post			0.057	
			(0.080)	
Targeted Share 50% × Post				0.006
				(0.125)
Observations	6,062	6,062	6,062	6,062

B. Effects on Offering Yields

	Yield			
	(1)	(2)	(3)	(4)
Targeted Share × Post	0.107***			
	(0.040)			
Targeted Share 10% × Post		0.198**		
		(0.078)		
Targeted Share 20% × Post			0.206**	
			(0.091)	
Targeted Share 50% × Post				0.383**
				(0.168)
Observations	6,004	6,004	6,004	6,004
GO x Issuer FE	Yes	Yes	Yes	Yes
Date FE	Yes	Yes	Yes	Yes
Mat (years) x Month FE	Yes	Yes	Yes	Yes
Issuance Amt. x Month FE	Yes	Yes	Yes	Yes
Offering Type FE	Yes	Yes	Yes	Yes

Note: This table presents investigates the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas Senate Bills 13/19. We study two outcomes at the municipal offering level between January 2017 and April 2022: the probability of a negotiated offering (Panel A) and average yield. Targeted Share is defined as the share of the total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016. Targeted Share 10%, 20%, and 50% are indicator variables taking the value of one whenever the targeted banks had underwritten at least 10%, 20%, and 50% of offering volume for a given issuer and zero otherwise. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. All specifications include the natural logarithm of the total offering dollar amount as well as the fixed effects denoted at the end of each panel. The specifications in this table include time (year-month) X time-to-maturity (in years) fixed effects. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table E.2: Triple Difference with Sequential Controls

	Negotiated			Yield		
	(1)	(2)	(3)	(4)	(5)	(6)
Targeted Share × Post × TX	0.081***	0.081***	0.080***	0.065	0.058	0.089**
	(0.026)	(0.025)	(0.024)	(0.042)	(0.036)	(0.042)
Share Taxable		0.017***	0.009		0.619***	0.641***
		(0.006)	(0.006)		(0.013)	(0.013)
Share Senior		-0.062***	0.002		-0.233***	-0.373***
		(0.008)	(0.011)		(0.019)	(0.037)
Share Bank-Qualified		0.011*	0.005		-0.043***	-0.032***
		(0.006)	(0.006)		(0.008)	(0.008)
Share Revenue		0.045***	0.034**		0.163***	0.182***
		(0.014)	(0.015)		(0.028)	(0.033)
Share Refunding		0.092***	0.086***		-0.067***	-0.064***
		(0.009)	(0.010)		(0.009)	(0.008)
Share Insured		0.040***	0.040***		-0.098***	-0.116***
		(0.011)	(0.012)		(0.021)	(0.023)
Observations	59,736	59,736	57,672	57,972	57,972	55,980
Issuer FE	Yes	Yes	Yes	Yes	Yes	Yes
GO x Issuer FE	No	No	Yes	No	No	Yes
Date FE	Yes	Yes	Yes	Yes	Yes	Yes
Maturity FE	Yes	Yes	No	Yes	Yes	No
Additional Controls	No	Yes	Yes	No	Yes	Yes
Mat x Month FE	No	No	Yes	No	No	Yes
State x Month FE	No	No	Yes	No	No	Yes
Issuance x Month FE	No	No	Yes	No	No	Yes
Offering Type FE	No	No	No	No	Yes	Yes

Note: This table presents investigates the robustness of the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas Senate Bills 13/19 to the inclusions of additional control variables. We study two outcomes at the municipal offering level between January 2017 and April 2022: the probability of a negotiated offering (columns 1-3) and average yield (column 4-6). Targeted Share is defined as the share of the total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. TX is an indicator equal to one if the issue takes place in Texas. All specifications include the natural logarithm of the total offering dollar amount as well as the fixed effects denoted at the end of each panel. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table E.3: Triple Difference Dropping Issues with State Guarantees

	Negotiated		Yield	
	(1)	(2)	(3)	(4)
Drop Guaranteed	N	Y	N	Y
Targeted Share × Post × TX	0.082***	0.079***	0.107**	0.130**
	(0.024)	(0.026)	(0.045)	(0.051)
Observations	57,672	48,185	55,980	46,518
GO x Issuer FE	Yes	Yes	Yes	Yes
Date FE	Yes	Yes	Yes	Yes
Mat x Month FE	Yes	Yes	Yes	Yes
State x Month FE	Yes	Yes	Yes	Yes
Issuance x Month FE	Yes	Yes	Yes	Yes

Note: This table investigates the robustness of the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas Senate Bills 13/19 when excluding bonds guaranteed by state school funds. We study two outcomes at the municipal offering level between January 2017 and April 2022: the probability of a negotiated offering (columns 1-3) and average yield (column 4-6). Targeted Share is defined as the share of the total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. TX is an indicator equal to one if the issue takes place in Texas. All specifications include the natural logarithm of the total offering dollar amount as well as the fixed effects denoted at the end of each panel. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table E.4: Triple Difference Estimates with Different Issuer Definition

	Negotiated		Yield	
	(1)	(2)	(3)	(4)
Targeted Share × Post × TX	0.064**	0.063**	0.101**	0.137***
	(0.028)	(0.028)	(0.047)	(0.051)
Observations	58,606	56,588	56,849	54,915
Issuer FE	Yes	No	Yes	No
GO x Issuer FE	No	Yes	No	Yes
Date FE	Yes	Yes	Yes	Yes
Maturity FE	Yes	No	Yes	No
Additional Controls	No	Yes	No	Yes
Mat x Month FE	No	Yes	No	Yes
State x Month FE	No	Yes	No	Yes
Issuance x Month FE	No	Yes	No	Yes

Note: This table investigates the robustness of the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas Senate Bills 13/19 to alternative definition of issuers. We define issuers in terms of the 6-digit CUSIP associated with the largest proceeds in a given offering. We study two outcomes at the municipal offering level between January 2017 and April 2022: the probability of a negotiated offering (columns 1-2) and average yield (columns 3-4). Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. TX is an indicator equal to one if the issue takes place in Texas. All specifications include the natural logarithm of the total offering dollar amount as well as the fixed effects denoted at the end of each panel. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table E.5: Triple Difference Comparing to States without Taxes or Exemptions

	Negotiated		Yield	
	(1)	(2)	(3)	(4)
Low local clientele	N	Y	N	Y
Targeted Share × Post × TX	0.082***	0.101***	0.107**	0.105*
	(0.024)	(0.028)	(0.045)	(0.057)
Observations	57,672	20,082	55,980	19,562
GO x Issuer FE	Yes	Yes	Yes	Yes
Date FE	Yes	Yes	Yes	Yes
Mat x Month FE	Yes	Yes	Yes	Yes
State x Month FE	Yes	Yes	Yes	Yes
Issuance x Month FE	Yes	Yes	Yes	Yes

Note: This table investigates the robustness of the relation between bond issuance outcomes and issuer exposure to the underwriters targeted by Texas Senate Bills 13/19 when restricting the sample to states that have no income taxes or municipal bond income exemptions. We study two outcomes at the municipal offering level between January 2017 and April 2022: the probability of a negotiated offering (columns 1-2) and average yield (columns 3-4). Targeted Share is defined as the share of the total dollar volume of municipal securities of each issuer underwritten by the targeted banks between 2007 and 2016. Post takes the value of one since the implementation of SB 13/19 in September of 2021 and zero otherwise. TX is an indicator equal to one if the issue takes place in Texas. All specifications include the natural logarithm of the total offering dollar amount as well as the fixed effects denoted at the end of each panel. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table E.6: Triple Difference using Yield to Worst and Yield to Maturity Calculated from Offering Prices

	Yield to Maturity		Yield to Worst	
	(1)	(2)	(3)	(4)
Targeted Share × Post × TX	0.066	0.071*	0.064	0.082*
	(0.041)	(0.041)	(0.047)	(0.048)
Observations	57182	55188	56717	54742
Issuer FE	Yes	No	Yes	No
GO x Issuer FE	No	Yes	No	Yes
Date FE	Yes	Yes	Yes	Yes
Maturity FE	Yes	No	Yes	No
Additional Controls	No	Yes	No	Yes
Mat x Month FE	No	Yes	No	Yes
State x Month FE	No	Yes	No	Yes
Issuance x Month FE	No	Yes	No	Yes

Note: This table tests the robustness of the primary triple difference specification to recreating measurements of the outcome variable equal to yield to maturity and yield to worst (first call date) using MSRB Rule G-33 definitions and the offering price variable in Mergent. The first two columns replicate Table 4 with the constructed yield to maturity variable. Columns 3 and 4 replicate the same specifications, but instead use the newly calculated yield to worst, which assumes the bonds are called at the first possible date at the contractually agreed upon price. When comparing the estimate in column 2 to the estimate in column 4, we find that assuming bonds are called on the first call date increases the magnitude of the yield impact, although the difference is not statistically distinguishable from zero. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

Table E.7: Triple Difference Placebos

	Yield			
	2021	2020	2019	2018
	(1)	(2)	(3)	(4)
Targeted Share × Post September × TX	0.107**	-0.007	0.025	-0.081
	(0.045)	(0.038)	(0.030)	(0.049)
Observations	55,980	43,917	30,195	18,381
GO x Issuer FE	Yes	Yes	Yes	Yes
Date FE	Yes	Yes	Yes	Yes
Mat x Month FE	Yes	Yes	Yes	Yes
State x Month FE	Yes	Yes	Yes	Yes
Issuance x Month FE	Yes	Yes	Yes	Yes

Note: This table tests the robustness of the primary triple difference specification to using September firsts from earlier years to show that there is no seasonality related to the reliance on targeted banks before SB 13/19. The first column replicates column 2 of Table 4. Columns 2, 3, and 4 redo this same regression defining the treatment as starting on September 1, 2020, September 1, 2019, and September 1, 2018, respectively. We see that the only positive yield impact happens starting in September 2021, which is also the only statistically significant impact. The standard errors are double clustered at the issuer and offering date level. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

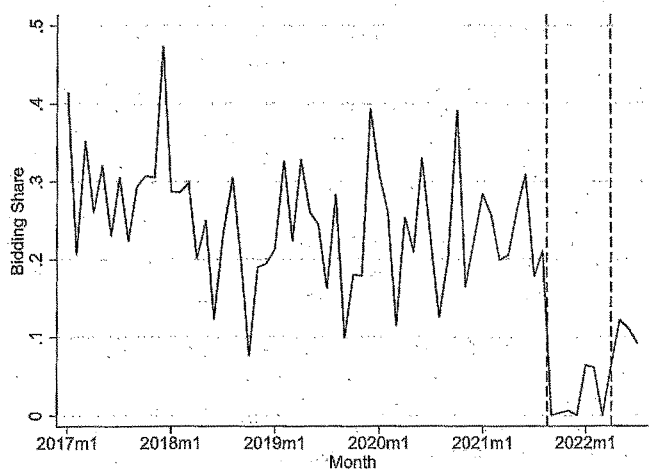
F Re-entry After April 2022

We end the sample in April 2022 after Citigroup conspicuously reentered the Texas municipal bond market through the Dallas-Fort Worth International Airport issue (highlighted in red in Panel A of Figure 1). We find that the unexpected treatment that started in September 2021 no longer is a good measurement of the ongoing arguments over financial institution ESG policies after Citigroup largely reenters the market, but there are a confluence of factors that make gleaning larger lessons challenging.

First, the state of Texas began sending letters to other municipal bond underwriters beyond the original targeted banks to ask for information about potential discrimination against oil and gas businesses.[23] This means that other banks appear to exit the market for a few weeks at a time throughout May, June, and July in the underwriting data, and our targeted share value becomes incorrect and may be negatively correlated with having a municipality's underwriter threatened by anti-ESG law enforcement after April 2022 with our extremely granular fixed effects. Next, JP Morgan Chase submitted and made public a letter stating that they believed they were in compliance with the Texas laws on May 13, 2022, which was coupled with increased auction activity from the targeted banks as documented in Appendix Figure F.1. This increase in auction participation left the targeted banks below their historical average level, but in the range of market share from recent history. Third, an early version of this paper began circulating in May that generated interest in the press and among potential market entrants.[24] For these reasons, we focus this paper on the sample from 2017 through April 2022, although we briefly discuss in the text what the dissipation of the short-run effects we estimate means for generalization.

[23] Hagan, Albright and Moran (2022) documents how these letters were sent in May and the initial public response.
[24] See Albright and Moran (2022) for an early example of the public discussion.

Figure F.1: Auction Participation by Targeted Banks in the Long-Run



Note: Figure F.1 shows the share of competitive bidding (Panel B) in Texas by banks targeted by Texas SB 13/19. The data are weighted according to par value of the issues. Before 2021, targeted banks underwrote around 40% of municipal bonds in Texas and submitted around 25% of competitive bids. These shares both drop to 0% in September 2021. The first vertical dashed line represents the break before September 2021 when Senate Bills 13 and 19 were implemented. Our sample ends at the second dashed vertical line which represents April 2022. We see bidding by the 5 banks increases to above 10% for May through August of 2022, which is back in the range of observed market shares before the SBs 13 and 19.

G Extended Auction Information

This appendix describes the auction data and summary statistics. The auction results are derived from the Bond Sales Results Archive posted by The Bond Buyer, which details the bidding results for bond auctions. The reports go back to early 2008. The data include the bids submitted by each underwriter in terms of "True Interest Cost" (or sometimes Net Interest Cost if that is the statutorily relevant outcome) for the complete package from each bidder as well as the complete term structure for the winning bidder. An example of the reported data is shown in Figure G.1, which shows the city of Richmond, TX, receiving 5 bids from underwriters with Baker Group winning the auction with a bid of 2.3854%. The winning yields for each individual maturity are only available for the winning bid. The other bids and identities are shown at the bottom.

The auction data aggregated to the issuer level are described in Table G.1. Here, we compare issuers in Texas to other issuers who host auctions elsewhere in the US. Auctions are often controlled by statute in a way such that auctions in Texas may be different than auctions in other places. These statutory restrictions are discussed at length in Cestau, Green, Hollifield and Schürhoff (2019).

Outside of Texas, the average issuer who holds at least 1 auction holds 7.2 total auctions, or about 0.55 auctions per year. In Texas, the average issuer only hosts 4.1 auctions, closer to 0.3 auctions per year. The sizes are similar with bond auctions mostly being for issues with principal value of 12 million, but the Texas issues have much longer maturities—20.3 years instead of 11.8 years elsewhere in the US. Texas auctions are also among the most competitive in the US, with the average issuer getting 5.5 bids instead of 4.6 bids in other states. This higher competition is also consistent with the lower bid variance in Texas relative to other states and consistent with the low average markup estimates for Texas from Garrett, Ordin, Roberts and Suárez Serrato (Forthcoming).

The share of bids from targeted banks at the issuer level (scaled by 100 in the table) is around 4% for the average issuer both in an out of Texas. This distribution is very skewed with the 75^{th} percentile being 3.3% and the 90^{th} percentile being 16% across the whole US. In Texas, the distribution is similarly skewed with 3.7% and 18% being the 75^{th} and 90^{th} percentiles, respectively. To put this differently, if we assume all Texas issuers receive the state average 5.5 bids in each auction, 10% of such issuers are receiving at least one bid (# bids$\approx$1/0.18) from a targeted bank in every single auction.

Table G.1: Auction Data Characteristics

	Mean	SD	Obs	25^{th}	50^{th}	75^{th}
Total Number of Auctions, 2008-21	6.8	9.8	13529	1.0	3.0	8.0
Non-Texas	7.2	10.2	11945	1.0	3.0	9.0
Texas	4.1	5.4	1584	1.0	2.0	5.0
Average Issue Size	11.9	38.1	13529	2.2	4.7	9.9
Non-Texas	11.9	31.6	11945	2.0	4.7	10.0
Texas	12.0	69.6	1584	3.3	5.0	9.0
Average Issue Maturity	12.8	7.6	13529	6.3	12.9	19.0
Non-Texas	11.8	7.2	11945	5.5	11.6	17.0
Texas	20.3	5.7	1584	17.2	20.5	24.7
Average Auction Participation	4.7	2.2	13529	3.2	4.5	6.0
Non-Texas	4.6	2.1	11945	3.0	4.3	5.8
Texas	5.5	2.2	1584	4.0	5.3	7.0
Average Bid Variance	0.3	0.5	13529	0.0	0.1	0.4
Non-Texas	0.3	0.5	11945	0.0	0.1	0.4
Texas	0.2	0.4	1584	0.0	0.0	0.2
Share Bids from Targeted Banks	4.0	8.7	11593	0.0	0.0	3.3
Non-Texas	4.0	8.7	10367	0.0	0.0	3.3
Texas	3.9	8.2	1226	0.0	0.0	3.7

Note: This table shows the characteristics of the issuers that hold auctions reported in the Bond Buyer data. The issuers are split into Texas and the non-Texas. There are 13,529 issuers who host auctions 6.8 times on average over the sample.

Figure G.1: Auction Report Example

TEXAS
Richmond (City)
23-Feb-22 $5,215,000
Combination Tax and Revenue Certificates of Obligation, Series 2022 (bank qualified) (book entry).
Dated Mar 1, 2022.
Due Mar 1, 2023 to 2042.
Callable Mar 1, 2031 at par.
Winning bid: Baker Group, at 106.4195, TIC 2.3854%.

DUE	AMOUNT	CPN	YIELD	CONC	INS
3/1/2023	$210,000	4.00%	0.95%		BAM
3/1/2024	$220,000	3.75%	1.20%		BAM
3/1/2025	$230,000	3.00%	1.35%		BAM
3/1/2026	$235,000	2.75%	1.45%		BAM
3/1/2027	$235,000	2.63%	1.60%		BAM
3/1/2028	$245,000	4.00%	1.65%		BAM
3/1/2029	$260,000	4.00%	1.75%		BAM
3/1/2030	$265,000	4.00%	1.80%		BAM
3/1/2031	$275,000	4.00%	1.85%		BAM
3/1/2032	$290,000	3.00%	1.90%		BAM
3/1/2033	$295,000	2.00%	2.00%		BAM
3/1/2034	$305,000	3.00%	2.00%		BAM
3/1/2035	$310,000	3.00%	2.05%		BAM
3/1/2036	$320,000	3.00%	2.10%		BAM
3/1/2037	$330,000	3.00%	2.15%		BAM
3/1/2039	$455,000	3.00%	2.20%		BAM
3/1/2041	$465,000	3.00%	2.30%		BAM
3/1/2042	$250,000	3.00%	2.35%		BAM

L.O.: Hunton Andrews Kurth LLP, Houston, TX; and State Attorney General.
F.A.: Hilltop Securities Inc., Houston, TX.
Other bidders were:
BOK Fin Secs, TIC 2.4306%
FHN Fin Cap Mkts, TIC 2.5419%
Raymond James, TIC 2.5529%
Baird, TIC 2.6085%

Note: This figure gives an example of the Competitive Sale Reports from The Bond Buyer. The example is for Richmond's $5.2 million bond issued on February 22, 2022. The winning bidder was Baker Group with a yield of 2.3854%. The total term structure for Baker Group's bid is shown in the table. The other bidder identities and bids are displayed at the bottom.

Mr. DOGGETT. And turning to the first of those reports, the—this comment—what you have in front of you is probably the most anti-free market bill that you will see this legislative session. A comment from the head of the Arizona Bankers Association—I am just guessing he is probably not a Democrat—but bankers across the country have challenged and challenged successfully proposals just like that that are being advanced this morning.

The Wharton paper is more meaningful because, as is so often tragically the case, when something really bad is happening Texas can get out there early and do it better than anybody else. And that is exactly what has happened with regard to these so-called anti-ESG policies.

And what is ESG? Well, I expect most Americans know as much about ESG as they do about CRT, which is another phony Republican punching bag that is raised at election time. It is about responsible corporations that consider the environmental consequences, the social consequences, and their governance, corporate accountability, whether corporations are accountable to their shareholders, and whether when shareholders ask questions about things like how much corporate money is being spent in dark investments to promote anti-ESG policies just like this morning, that the shareholders can find out about it, that the social policies consider the diversity of the workforce and whether the corporation is out there trying to reflect anti-discrimination policies.

But, in Texas, we have experience with this because, as Mr. Isaac pointed out, they were successful in adopting legislation. And what was the effect of that legislation? As reported in this paper, a study, an objective study by one of the board members of the Federal Reserve and a finance professor at Wharton, well, they point out that the effect is that about five major municipal bond underwriters, all the big names in banking, left the state. Texas issuers will incur 300 to $500 million in additional interest on the first 8 months after enactment of the bill. And, if this same process continues, it will cost Texans about $416 million a year in additional borrowing costs. That is the kind of freedom that is being proposed here today.

These policies, this interference with business and basic responsible decisions doesn't protect retirement funds, it costs retirees and local governments. All of this from a group that has gone from denying climate change to obstructing efforts to address climate change, and now to trying to reverse action for responsible protection against the overheating of our planet, which any sensible person can see going on around them every day.

I yield back.

Chairman SMITH. Mr. Kelly is recognized.

Mr. KELLY. Thank you, Chairman, and thank you all for being here today. This is an interesting conversation.

I am actually in the private sector, so I am like you, Mr. Bolay. In 1971, my father actually started a pension plan for our people because he said to me, "listen, when they retire, they are never—the Social Security is not going to be enough for them to live on. So let's—we are going to institute this." Now, I was 21 at the time, and I couldn't imagine how that would be important. Now I understand it.

So when we talk about this, I am trying to—what is so big about—in the environmental, social, governance—so I keep hearing when we come to any of these things and have these discussions, the average person doesn't have any idea how to invest his or her money, they are just not smart enough to do it, so the government has to get involved. And so we have something called ESG, because if people aren't going to be environmentally aware, socially aware, and aware of governance, we have got to shove it down their throat. It doesn't matter what the return on the investment is, because that is just too bad. You dumb, stupid people need to understand that we know better than you do.

Of course, we are $33 trillion in debt and going higher, but we will be the ones to advise you on how you should make your investments. This is absolutely insane that we are even having this conversation.

As far as Butch Lewis is concerned, I absolutely agree with it, and it was really great the taxpayers bailed out the Butch Lewis Fund and put in charge the same people who bankrupted it to watch it going forward. Good move, good move.

As far as the UAW, I am a Chevrolet dealer. I understand about how cars are built. I understand the importance of having great labor. I understand about making sure that they are compensated. I agree with all that. I agree with all that. That is not the problem. The problem today is how are we telling people how they should invest their money and where they should invest their money? Because actually, it just doesn't pan out when you look at the actual figures.

Mr. Bolay, if you can, just please try to explain the dual role that you have as a farmer, as a rancher, and what you are doing, and also as a banker, and your responsibility to those people who put money into your bank.

Mr. BOLAY. Thank you. Thank you for the question.

So, in our bank, whenever people come in and want to invest, we provide the basic services and let them choose what they want to do with their money. It is not—we don't try and direct them in any specific form. We try and talk to them about their goals of when they would like to retrieve their money back, or when they think they are going to retire.

Same on the farming and ranching community. Our community, particularly in my family, my great-grandfather had the first rubber-tired tractor in Noble County. So innovation is not anything new, and we look at these practices and try and help guide our producers, our farmers and ranchers in ways that would make them more profitable.

A lot of the science and technology is new, so jumping in feet first isn't always the best option. You want to read and make sure it is correct before we go and try and move a tremendous amount of acres to those types of farming and ranching practices.

Mr. KELLY. Yes, but again, you are looking forward at things that are best. I just don't like a company that is run so poorly as this government is as people telling you how you should invest your money.

Mr. Isaac, you really hit on some things that I thought were really important. You talked about China a little bit. So I think it is really great that we are able to put ourselves out of business and put them in better business mode. Tell me about the effect it is having on us.

Mr. ISAAC. We are. We are actually having companies that are pulling funds out of American companies, and they are putting them into Chinese companies.

You look at Blackrock investments in companies like Evergrande and Country Garden, these two real estate ventures that have—Blackrock has about a 3.5 percent share. Now, I use Blackrock because they are investing in these Chinese-based companies. They have the right to do that because they have partnered with the CCP——

Mr. KELLY. Right.

Mr. ISAAC [continuing]. To do that, and they are taking American pension dollars, people that are planning and counting on that for retirement, and both of those massive Chinese real estate companies are failing right before our eyes. And the detriment and the threat is to those retirees' pensions, and losing their money, and losing their investment that they are planning on for when they retire to the benefit of China and to the detriment of the United States.

Mr. KELLY. So for most investors—I know there is sophisticated investors out there, they are able to do these things on their own every day. But really, when we have people overlooking these funds and people are making decisions for us, and the fiduciary responsibility to do it, and then looking at this ESG and trying to understand where does that fit in in the long-range investment of people who put their hard-earned dollars into a fund so at the end of their time of working there would be something there, I just don't see it. Maybe somebody does see it, I don't see it.

And I thought the whole purpose of this meeting today was to talk about the actual investments that we were making, and people not being able to do it on their own because, quite frankly, they are too busy.

And I am amazed. I keep hearing about how good the economy is doing. I think people need to let the American people know that the economy is going well, because where I am, people can't understand it. I do all the shopping for our family because my wife won't go with me. She can't stand to have people tugging me aside and say, "Hey, get something done, will you guys, to let this energy thing get out of our way?"

And I says, "You know what? Elections have consequences, so God bless you. Just look in the mirror when you find out who voted the wrong way."

Thank you, and I yield back.

Mr. SMITH of Nebraska [presiding]. Thank you. I now recognize Mr. Thompson from California.

Mr. THOMPSON. Thank you, Mr. Chairman, and thank you to the witnesses for being here today, and I especially want to thank Mr. Neal, the ranking member, for, and he mentioned it, the work that we did in this committee in the retirement security space.

We did some great work, and your work on Butch Lewis. And I might add that that was a pretty bipartisan effort with you and

Mr. Brady. And I just want to tell you how much not only those of us on the dais, but the people we represent appreciate that.

But Mr. Chairman, I have got to admit I am a little bit confused about the topic of today's hearing. This is the oldest committee in Congress. We have oversight over some of the most pressing issues faced by our constituents. And I would just like to point out that woke retirement plans doesn't even crack the top 10 on the list of issues I hear about back home.

I have heard repeatedly lately about Israel, Ukraine, the importance of clean energy, the dangerous climate change that we face, the dangers of gun violence, the potential government shutdown, and the dysfunction that kept us from doing our work on the floor for over three weeks. I have heard more about the daylight savings time debate than I have about any woke retirement plans, and I think I know why, and I want to submit this for the record.

You know, you just look at the economic environment after our work in the last Congress: 14 million jobs created under the Biden Administration; unemployment rate below 4 percent for 21 straight months, the longest stretch in more than 50 years; core inflation at its lowest level in 2 years, GDP expanded at 4.9 percent from July to September; and wages increased 1.2 percent in the third quarter.

Mr. Chairman, I would like to submit this to the record.

Mr. SMITH of Nebraska. Without objection, so ordered.

Mr. THOMPSON. So now I think investors should be permitted to take into account climate and other factors. In fact, I think that is simple economics. Does anyone think insurers don't factor climate change into their calculations? We all know they do. I mean, my district insurance companies are running out of my district because of climate change and the impact that the climate change ramifications have had on my district; the fires that just ravaged Northern California as an example.

Investors in retirement plans should take into account these risks and should not be dissuaded from investing in clean energy technology. That is why legislation such as the Inflation Reduction Act, which included billions of dollars in green tax incentives, is so important in addressing this issue.

And it is not bad investment, it is not bad business practices. Mr. Chairman, for the record I would like to submit this study from Morgan Stanley, their Institute for Sustainable Investing, that explains just that. It is a good investment, and people are seeing a good return on that investment. And I would like to submit this for the record, Mr. Chairman.

Mr. SMITH of Nebraska. Without objection——

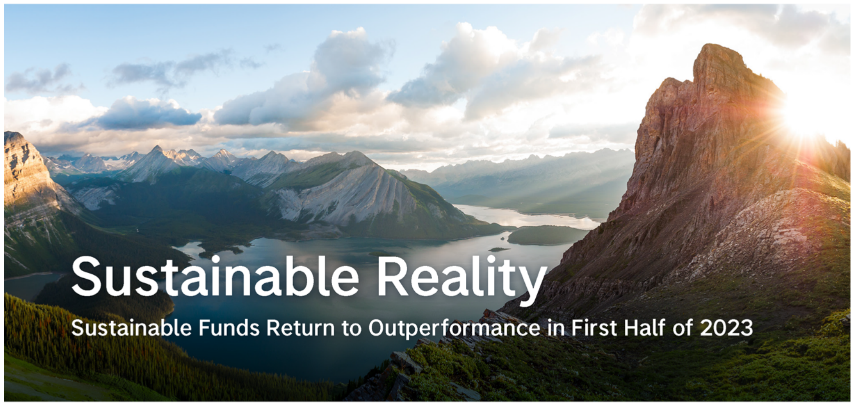
Mr. THOMPSON. Thank you.

Mr. SMITH of Nebraska [continuing]. So ordered.

[The information follows:]

Morgan Stanley

INSTITUTE FOR SUSTAINABLE INVESTING



Sustainable Reality

Sustainable Funds Return to Outperformance in First Half of 2023

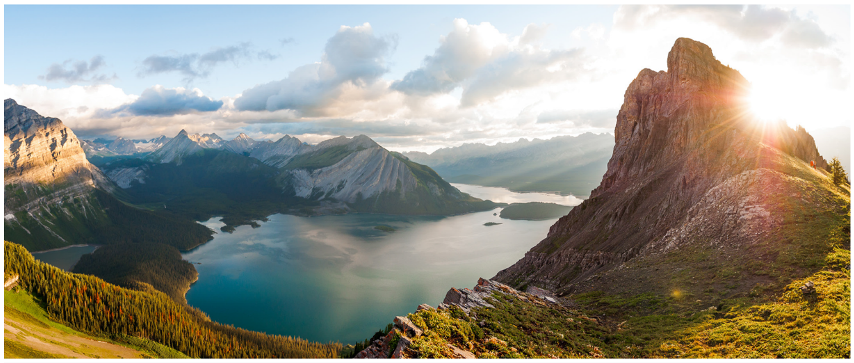
Key Findings

In the first half of 2023, sustainable funds returned to their long-run trend of outperforming traditional funds, up 6.9% compared with traditional funds' +3.8%. Relatively stable market conditions compared to 2022 meant that sustainable funds' more growth-oriented focus was a positive driver for performance. Despite short-term fluctuations in performance, sustainable funds appear to be holding steady as patient capital for investors targeting longer-term horizons.

Sustainable funds' assets under management (AUM) continued to grow, exceeding $3.1 trillion globally by the end of June 2023 (vs. $2.8 trillion at YE2022) to represent close to 8% of total AUM. Periods of underperformance, as sustainable funds experienced in 2022, can lead to asset outflows, yet this largely did not play out. Overall, sustainable funds saw first-half inflows of $57 billion at just over 2% of 2022 year-end AUM, although North America did see small outflows partly due to reclassification.

For the first time in the Sustainable Reality series, we include data on restriction screening. More than 20% of global AUM is now in funds using at least one restriction screen, up from 2% in 2019. The use of every type of restriction has increased, with nearly all of the rise attributed to Europe, where almost 60% of AUM uses screens compared with 8% in Asia and under 2% in North America. Controversial weapons, thermal coal and tobacco are the most commonly used screens.

SUMMARY



METHODOLOGY

This report is part of the Morgan Stanley Institute for Sustainable Investing's 'Sustainable Reality' series, which assesses the historical performance of sustainable funds against traditional funds over a specific timeframe using Morningstar data. This report analyzes performance for January 1, 2023–June 30, 2023.

The fund universe for this analysis includes closed-end funds, exchange-traded funds and open-end funds, taking the oldest share class, and excludes feeder funds, funds of funds and money market funds. In total, this analysis covered approximately 96,000 funds globally.

Morningstar classifies a fund as sustainable if "..in the prospectus or other regulatory filings it is described as focusing on sustainability, impact investing, or environmental, social or governance (ESG) factors. Funds must claim to have a sustainability objective, and/or use binding ESG criteria for their investment selection. Funds that employ only limited exclusions or only consider ESG factors in a non-binding way are not considered to be a sustainable investment product."

This analysis takes each fund's classification as of June 30 (for H1 data) and December 31 (for full year data) in each year; Traditional funds are those classified as 'Not Sustainable' by Morningstar. Morningstar's 'Sustainable' classification can differ from the newer, and still broad, European Sustainable Finance Disclosure Regulation (SFDR) Article 8 and Article 9 definitions. Over 99% of Article 9 funds are also classified as Sustainable by Morningstar, while this only applies for around 30% of Article 8 funds.

Morningstar's calculation of total return is expressed in percentage terms and is determined each month by taking the change in monthly net asset value, reinvesting all income and capital-gains distributions during that month, and dividing by the starting net asset value (NAV). This analysis builds on the 2019, 2020 and 2023 Sustainable Reality reports, now looking at global performance rather than just US.

Sustainable Funds Return to Outperforming Traditional Funds

1H23 saw sustainable funds return to relative outperformance, with median returns of +6.9% compared with traditional funds' +3.8%. This held true across all asset classes and geographies, with outperformance most evident in equities and in North America. Structural market factors, such as a growth focus in equities and longer duration in fixed income, helped contribute to sustainable funds' relative outperformance.

In 2022, sustainable funds underperformed traditional funds for the first time in five years. Underperformance was concentrated in the first half of the year and started to reverse in the second half. 1H23 saw sustainable funds return to outperforming traditional funds (Figure 1).

By asset class (Figure 2), sustainable equity funds saw the strongest returns (+10.9%), outperforming traditional equity funds (+8.0%). Fixed income performance was more muted, with sustainable funds at +3.8% and traditional funds at +2.2%.

By region (Figure 3), sustainable funds outperformed traditional funds across all major geographies, with the greatest outperformance in Oceania (+3.7%) and North America (+2.5%).

FIGURE 1

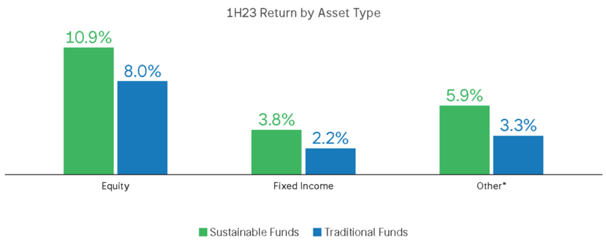
Sustainable Funds Modestly Outperformed Traditional Funds in 1H23

Historical Median Returns—Sustainable vs. Traditional

Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

FIGURE 2

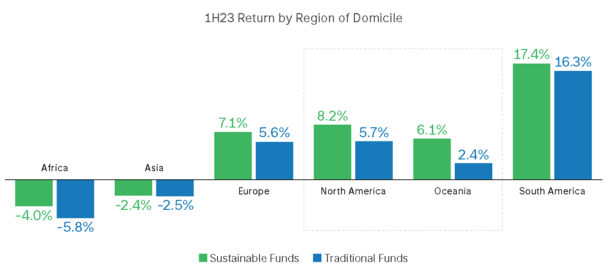
Equity Fund Performance Was Strongest in 1H23, With Sustainable Funds Outperforming Across Asset Classes



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.
*"Other" includes multi-asset, property, commodities, and alternative fund types.

FIGURE 3

Sustainable Funds Outperformed in All Regions, Particularly in Oceania and North America



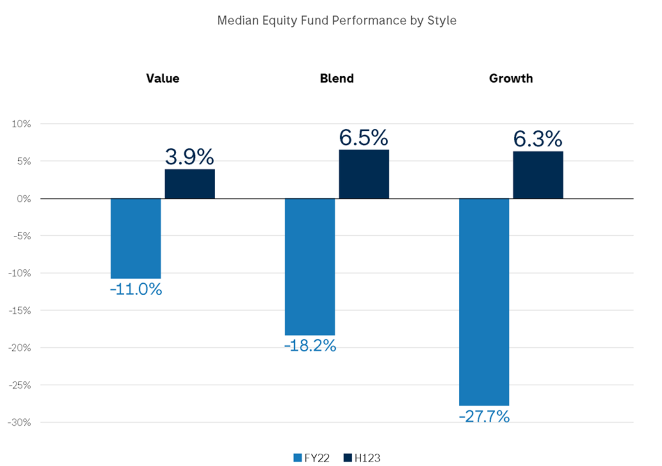
Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

Structural Market Factors Were More Favorable to Sustainable Funds' Positioning in 1H23

In 2022, a rapid rise in interest rates structurally benefited value styles of investing. However, the first half of 2023 saw more stable market conditions, favoring sustainable funds' more growth-oriented, long-term positioning. For example, only 10% of sustainable funds take a value approach, compared with 22% of traditional funds, which is unchanged from 2022. While market factors were not the only driver of sustainable funds' outperformance in 1H23, it is important to note that a return to a wider market environment favoring value or shorter duration assets still has the potential to impact future performance for sustainable funds.

FIGURE 4

1H23 Saw Value Styles Underperform Blend and Growth, Reversing the FY22 Trend



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

EQUITIES

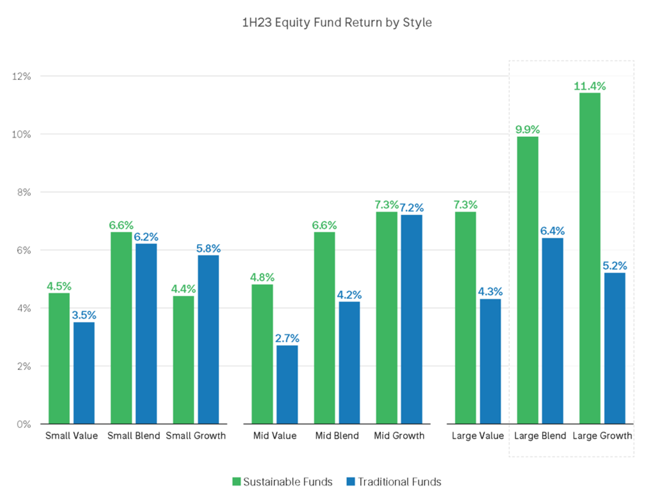
Sustainable Funds Outperform in Large-Cap Growth and Blended Categories

Sustainable funds outperformed traditional funds in most market cap and investing style categories (Figure 5).

This was particularly notable in the Large Blend and Large Growth categories, likely relating to specific stock or thematic exposures.

FIGURE 5

Sustainable Funds Outperformed in Large Blend and Large Growth Categories



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.
Morningstar categorizes equity funds by market capitalization focus, from small to large, and style, value/blended/growth. Returns are median returns.

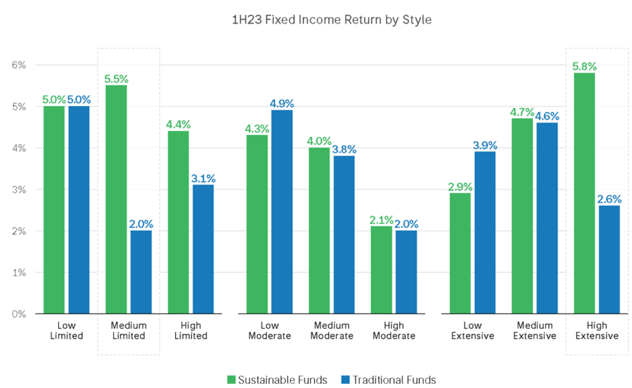
FIXED INCOME

Sustainable Funds' Longer-Dated Focus Offered a Small Advantage

Fixed income performance by style was less differentiated than in equities. The best performing funds were in lower credit quality categories (reversing the 2022 trend as markets stabilized), and in longer duration categories. Sustainable fixed income funds generally skew to the middle of the credit risk spectrum and away from short duration, so wider market moves supported their relative performance in the first half of 2023. Sustainable funds were also notable outperformers in the Medium Limited and High Extensive categories (Figure 6).

FIGURE 6

Sustainable Funds Were Notable Outperformers in the Medium Limited and High Extensive Categories



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

This model is based on the two pillars of fixed-income performance: interest-rate sensitivity and credit quality. The three duration groups are short, intermediate, and long-term, and the three credit quality groups are high (AA rated and higher), medium (BBB to AA rated), and low quality (<BB, all high-yield bonds). These groupings display a portfolio's effective duration and credit quality to provide an overall representation of the fund's risk, given the length and quality of bonds in its portfolio. Nine possible combinations exist, ranging from short duration/high quality for the safest funds to long duration/low quality for the riskiest.

Investor Demand for Sustainable Funds Remains Strong

Despite challenging market conditions in 2022, investor interest and demand for sustainable fund opportunities remained strong in 1H23. Sustainable funds' AUM as a proportion of total AUM continued to grow throughout the year, reaching record levels (7.9% vs. 7.6% in Dec. 2022). Similarly, sustainable funds saw net positive inflows, cumulatively $57 billion by the end of June, while traditional funds saw small positive inflows.

Sustainable AUM Continued to Grow in 1H23, Accounting for Almost 8% of Total AUM

By the end of June 2023, sustainable funds' AUM had increased to over $3 trillion, close to 2021 highs of ~$3.3 trillion. The proportion of overall AUM in sustainable funds continued to increase, reaching close to 8% of total AUM (Figure 7).

7.9%

of total AUM classified as sustainable in 1H23.

FIGURE 7

Sustainable AUM Continued to Grow as a Proportion of Total AUM

Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

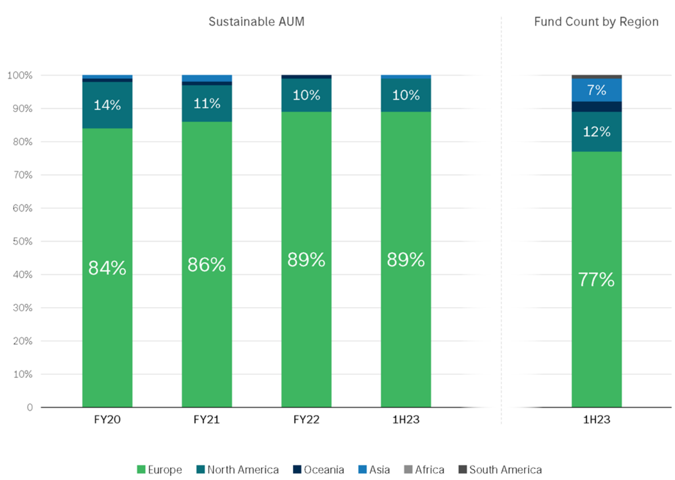
Regionally, Europe continues to outpace other geographies in terms of sustainable AUM and fund counts. 89% of total sustainable AUM are domiciled in Europe compared with 10% in North America and <2% in all other regions. By fund count, Europe is home to more than three-quarters of the world's sustainable funds, followed by North America (12%) and Asia (7%) (Figure 8).

89%

of sustainable assets under management are domiciled in Europe, far outpacing other regions.

FIGURE 8

Europe Far Outpaces Other Regions in Number of Sustainable Funds



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

Sustainable Funds Saw Positive Inflows, Reflecting Strong Demand

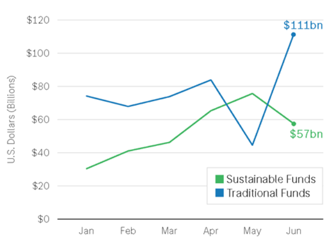
Sustainable funds continued to see net positive inflows in 1H23—cumulatively $57 billion for the year, or around 2% of 2022 year-end AUM. This was similar to the 2022 trend of around 3% of prior year AUM, indicating no significant impact on flows from the 2022 relative underperformance. Traditional funds saw proportionately smaller inflows at $111 billion (0.3% of 2022 year-end AUM), a slight recovery from the strong outflows seen throughout 2022 (Figure 9).

By region, almost all flows were in Europe, with 1H23 net inflows of $68 billion, 2.8% of 2022 year-end AUM (Figure 10). North American sustainable funds saw small outflows throughout the first half, at -$10 billion (3.6% of 2022 year-end AUM), although around half of this was due to one fund's reclassification.[1]

FIGURE 9

Sustainable Funds Continued to See Net Positive Inflows, Indicating that 2022's Relative Underperformance Did Not Have a Significant Impact on Flows

2023 Cumulative Monthly Net Flows

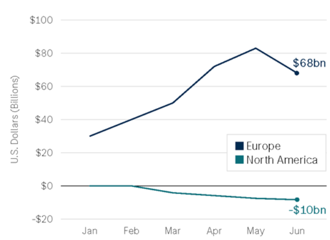


Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

FIGURE 10

Europe Saw Steady Inflows While North America Saw Small Outflows

2023 Sustainable Monthly Net Flow Cumulative by Region



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

[1] An ESG rating agency changed the credit rating requirements for fixed income funds, driving redemptions.

STATE OF PLAY

1H23 Performance and Demand for EU SFDR's Article 8 and 9 Funds

The EU's Sustainable Finance Disclosure Regulation (SFDR) sets out mandatory ESG disclosure requirements for asset managers with the goal of creating more transparency into sustainable investment strategies. According to the SFDR's classification system, which went into full effect on Jan. 1, 2023, a fund will either be classified as Article 6 (funds without a sustainability scope), Article 8 (funds that promote environmental or social characteristics) or Article 9 (funds that have sustainable investment as their primary objective).

We look at the state of play for funds classified under Article 8 and Article 9 at the end of June 2023.

PERFORMANCE: Article 8 funds were up 5.9% in 1H23 with Article 9 up 6.4% (Figure 11). Both slightly underperformed the European funds within Morningstar's 'Sustainable' definition (7.1%), but ahead of performance for European traditional funds (5.6%).

AUM: In total, Article 8 and 9 funds accounted for $6.4 trillion in AUM at the end of June 2023, up from $5.7 trillion at the end of 2022 (Figure 12). Of this, $6.1 trillion was labeled Article 8, accounting for 45% of total European AUM. As noted previously, this is materially larger than Morningstar's figure of $2.8 trillion for European sustainable AUM, as only a minority of Article 8 funds currently fit the Morningstar 'Sustainable' category. Article 9 funds accounted for $334 billion of AUM at the end of June 2023, a slight decrease from FY22 ($357bn), despite the widespread reclassification of some passive funds from Article 9 to Article 8 earlier in the year.

FLOWS: Both Article 8 and Article 9 funds saw modest inflows in the first half of 2023, at $28 billion[2] and $6 billion respectively, or 0.5% and 1.6% of 2022 year-end AUM. This was slightly lower than overall sustainable fund inflows through the first half of the year but remained positive (Figure 13).

FIGURE 11

Article 8 and Article 9 Fund Performance Slightly Below the Narrower Sustainable Definition, But Still Slightly Ahead of Traditional Funds

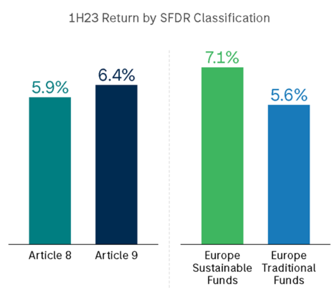


FIGURE 12

Article 8 and Article 9 Funds Accounted for $6.4 Trillion in AUM

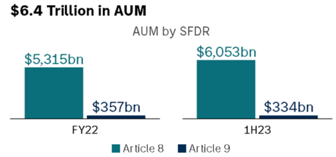
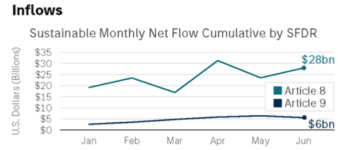


FIGURE 13

Both Article 8 and Article 9 Funds Saw Modest Inflows



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

2 Morningstar's review of Q223 trends in Article 8 and Article 9 funds references small outflows for Article 8 funds during the quarter—SFDR Article 8 and Article 9 Funds: Q2 2023 in Review | Morningstar. The variation in the data presented here is due to differences in the fund universes, and possibly some timing differences in when each dataset was generated.

A Fifth of Global AUM is in Funds Using Restriction Screening

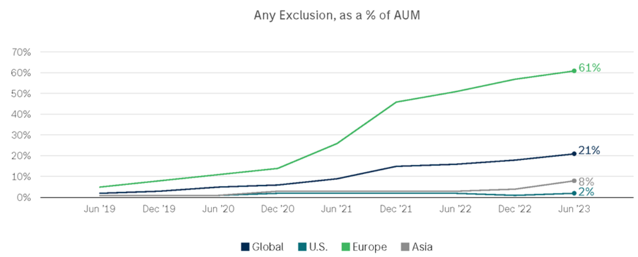
Restriction screening has grown sharply in recent years, now covering just over 20% of global AUM, up from 2% in 2019. Controversial weapons (20% of global AUM), thermal coal (14%) and tobacco (14%) are the most used commonly screens, but screening rates are rising across all themes.

For the first time in the Sustainable Reality series, the Institute for Sustainable Investing explores Morningstar data on how funds are using restriction screening. Just over 20% of global AUM is currently in funds using at least one screen. This rises to 90% for sustainable funds and falls to 16% for traditional funds.[3]

While restriction screening is long-established in sustainable investing, its use has risen sharply in recent years. In 2019, restriction screening covered just 2% of global AUM. By 2021, use significantly increased as SFDR came into effect for European-domiciled funds. Today, restriction screening is almost entirely concentrated in Europe, with nearly 90% of both Article 8 and Article 9 funds screening for at least one issue and over 60% of European AUM covered by some sort of screen. See the Appendix for an overview and definition of the restriction screens analyzed.

FIGURE 14

Rates of Restriction Screening Increased as SFDR Came Into Force in Europe in 2021

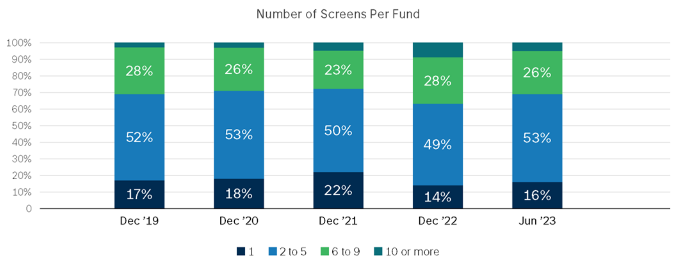


Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

[3] Based on Morningstar's classification, as with elsewhere in this report.

FIGURE 15

Indicating Rise in Screening Comes from More Funds Adopting the Approach



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

FIGURE 16

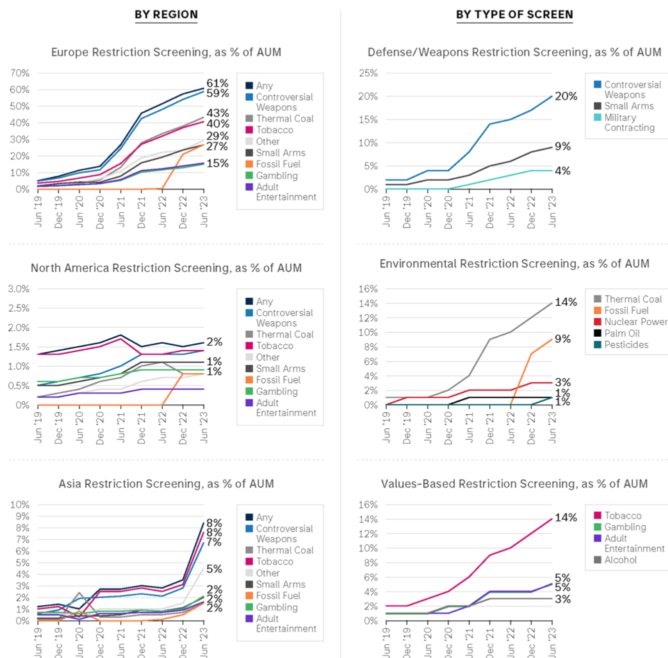
Controversial Weapons, Thermal Coal and Tobacco Are the Most Commonly Used Screens

RESTRICTION SCREENING AT JUNE 2023	NUMBER OF FUNDS	% FUNDS	GLOBAL AUM, $BN	% AUM
Any	**16,689**	**17.2%**	**$8,780**	**20.7%**
Controversial Weapons	15,199	15.7%	$8,417	19.8%
Thermal Coal	10,663	11.0%	$6,064	14.3%
Tobacco	11,393	11.8%	$5,988	14.1%
Other	8,212	8.5%	$4,259	10.0%
Small Arms	6,652	6.9%	$3,909	9.2%
Fossil Fuel	6,364	6.6%	$3,825	9.0%
Gambling	4,989	5.2%	$2,290	5.4%
Adult Entertainment	4,733	4.9%	$2,232	5.3%
Military Contracting	3,499	3.6%	$1,828	4.3%
Alcohol	3,175	3.3%	$1,372	3.2%
Nuclear Power	2,581	2.7%	$1,356	3.2%
Palm Oil	1,021	1.1%	$564	1.3%
Genetically Modified Organisms	1,082	1.1%	$554	1.3%
Pesticides	483	0.5%	$306	0.7%
Animal Testing	583	0.6%	$227	0.5%
Fur and Specialty Leather	304	0.3%	$148	0.4%
Abortion	477	0.5%	$143	0.3%

Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

FIGURE 17

Overview of Restriction Screens by Region and Type*



Source: Morgan Stanley Institute for Sustainable Investing analysis of Morningstar data.

*For definitions, please see the Appendix.

Conclusion

So far, 2023 saw a return to form for sustainable funds after challenging market conditions in 2022. This outperformance had both structural and secular drivers: The market environment was more favorable to sustainable funds' positioning and there was material outperformance within style categories. Demand for sustainable funds remained strong, with positive inflows throughout the year—particularly in Europe—and no market reaction to the 2022 underperformance. Overall, sustainable funds appear to be holding steady as patient capital for investors targeting longer-term horizons.

Appendix

RESTRICTION SCREENING CATEGORIES	MORNINGSTAR DEFINITIONS
Excludes Abortion/Stem Cells	These are strategies that avoid investments in companies that derive revenue from abortion services, abortifacients, and/or the use of embryonic stem cells. Strategies that exclude human cloning are also included in this data point because of the use of embryonic stem cells and the issue's relationship to life ethics questions. While many strategies employing these exclusions also exclude contraceptives, the exclusion of the latter is reflected in "Excludes Other."
Excludes Adult Entertainment	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from adult entertainment. Strategies that identify specific exclusions of a subindustry, such as pornography, also receive this tag.
Excludes Alcohol	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from the production, distribution, or sale of alcohol.
Excludes Animal Testing	These are strategies that intend to avoid investments in companies that engage in animal-testing practices.
Excludes Controversial Weapons	These are strategies that avoid investments in companies that derive a significant percentage of their revenue from controversial military weapons, such as weapons of mass destruction, nuclear weapons, land mines, and cluster munitions. These do not necessarily preclude investments in companies with revenue from conventional military weapons but may include companies that produce materials used in controversial weapons.
Excludes Fur and Specialty Leather	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from the production, distribution, or sale of fur and/or specialty leather.
Excludes Gambling	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from gambling or casinos.
Excludes GMOs	These are strategies that intend to avoid investments in companies that are significantly involved in the use of genetically modified organisms.

(continued on next page)

RESTRICTION SCREENING CATEGORIES	MORNINGSTAR DEFINITIONS
Excludes Military Contracting	These are strategies that intend to avoid investments in military contractors or companies that derive a significant percentage of their revenue from non consumer military contracting or operations. Some strategies cite companies that derive a significant amount of revenue from working with military organizations or defense more generally. This category does not necessarily exclude nonmilitary companies that are involved in materials or components used in controversial weapons.
Excludes Nuclear	These are strategies that intend to avoid investments in companies that are significantly involved in the research or production of nuclear energy. This does not reflect exclusions of nuclear weapons, which are instead reflected in "Excludes Controversial Weapons."
Excludes Palm Oil	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from the production, distribution, or sale of unsustainable palm oil and its products. This may not require the exclusion of companies that produce, distribute, or sell palm oil that has been shown to be sustainably sourced, including cosmetics and lotions.
Excludes Pesticides	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from the production, distribution, or sale of pesticides for environmental or biological concerns.
Excludes Small Arms	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from the production, distribution, or sale of personal weapons and small arms. These strategies most frequently exclude firearms but may exclude other personal weapons as well.
Excludes Thermal Coal	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from the extraction, distribution, sale, or use of thermal coal. Investments in companies exposed to metallurgical coal are typically not included in this category.
Excludes Tobacco	These are strategies that intend to avoid investments in companies that derive a significant percentage of their revenue from the production, distribution, or sale of tobacco and/or tobacco-related products.
Excludes Fossil Fuel	These are strategies that avoid investments in companies that derive a significant percentage of their revenue from the extraction, distribution, sale, or use of any fossil fuel. These strategies intend to avoid investments in companies that derive a significant percentage of their revenue from coal, petroleum, natural gas, oil shales, bitumen, tar sands, and heavy oils.
Excludes Other	These are strategies that intend to avoid investments in companies that are significantly involved in other products or practices deemed to be contradictory to the strategy's values. Examples include companies with business operations in countries whose governments pose human rights concerns or more general language about companies whose products or services have a negative impact on customers.

DISCLOSURES

This material was published in August 2023 and has been prepared for informational purposes only and is not a solicitation of any offer to buy or sell any security or other financial instrument or to participate in any trading strategy. This material was not prepared by the Morgan Stanley Research Department and is not a Research Report as defined under FINRA regulations. This material does not provide individually tailored investment advice. It has been prepared without regard to the individual financial circumstances and objectives of persons who receive it. Morgan Stanley Smith Barney LLC and Morgan Stanley & Co. LLC (collectively, "Morgan Stanley"), Members SIPC, recommend that recipients should determine, in consultation with their own investment, legal, tax, regulatory and accounting advisors, the economic risks and merits, as well as the legal, tax, regulatory and accounting characteristics and consequences, of the transaction or strategy referenced in any materials. The appropriateness of a particular investment or strategy will depend on an investor's individual circumstances and objectives.

Past performance is not a guarantee or indicative of future performance.

This material contains forward-looking statements and there can be no guarantee that they will come to pass. Information contained herein is based on data from multiple sources and Morgan Stanley makes no representation as to the accuracy or completeness of data from sources outside of Morgan Stanley. References to third parties contained herein should not be considered a solicitation on behalf of or an endorsement of those entities by Morgan Stanley.

The returns on a portfolio consisting primarily of Environmental, Social and Governance ("ESG") aware investments may be lower or higher than a portfolio that is more diversified or where decisions are based solely on investment considerations. Because ESG criteria exclude some investments, investors may not be able to take advantage of the same opportunities or market trends as investors that do not use such criteria.

Diversification does not guarantee a profit or protect against loss in a declining financial market.

Any securities mentioned are provided for informational purposes only and should not be deemed as a recommendation to buy or sell. Securities discussed in this report may not be appropriate for all investors. It should not be assumed that the securities transactions or holdings discussed were or will be profitable. Morgan Stanley recommends that investors independently evaluate particular investments and strategies, and encourages investors to seek the advice of a Financial Advisor. The appropriateness of a particular investment or strategy will depend on an investor's individual circumstances and objectives.

Morgan Stanley makes every effort to use reliable, comprehensive information, but we make no guarantee that it is accurate or complete. We have no obligation to tell you when opinions or information in this report change.

Historical data shown represents past performance and does not guarantee comparable future results.

Investing in the markets entails the risk of market volatility. The value of all types of investments, including stocks, mutual funds, exchange-traded funds ("ETFs"), closed-end funds, and unit investment trusts, may increase or decrease over varying time periods.

An investment in an exchange-traded fund involves risks similar to those of investing in a broadly based portfolio of equity securities traded on exchange in the relevant securities market, such as market fluctuations caused by such factors as economic and political developments, changes in interest rates and perceived trends in stock prices. The investment return and principal value of ETF investments will fluctuate, so that an investor's ETF shares, if or when sold, may be worth more or less than the original cost.

Investors should carefully consider the investment objectives and risks as well as charges and expenses of a mutual fund/exchange-traded fund before investing. To obtain a prospectus, contact your Financial Advisor or visit the fund company's website. The prospectus contains this and other information about the mutual fund/exchange-traded fund. Read the prospectus carefully before investing.

Because of their narrow focus, sector investments tend to be more volatile than investments that diversify across many sectors and companies.

Equity securities may fluctuate in response to news on companies, industries, market conditions and general economic environment. Companies paying dividends can reduce or stop pay-outs at any time.

Growth investing does not guarantee a profit or eliminate risk. The stocks of these companies can have relatively high valuations. Because of these high valuations, an investment in a growth stock can be more risky than an investment in a company with more modest growth expectations.

Bonds are subject to interest rate risk. When interest rates rise, bond prices fall; generally, the longer a bond's maturity, the more sensitive it is to this risk. Bonds may also be subject to call risk, which is the risk that the issuer will redeem the debt at its option, fully or partially, before the scheduled maturity date. The market value of debt instruments may fluctuate, and proceeds from sales prior to maturity may be more or less than the amount originally invested or the maturity value due to changes in market conditions or changes in the credit quality of the issuer. Debt instruments issued by U.S. corporate and municipal issuers that provide a return in the form of fixed periodic payments and eventual return of principal at maturity. Fixed income investments are advantageous in a time of low inflation, but do not protect investors in a time of rising inflation. Interest income on government securities is subject to federal income taxes, but exempt from taxes at the state and local level.

Bond funds and bond holdings have the same interest rate, inflation and credit risks that are associated with the underlying bonds owned by the funds. The return of principal in bond funds, and in funds with significant bond holdings, is not guaranteed.

Morgan Stanley, its affiliates and Morgan Stanley Financial Advisors do not provide tax, accounting or legal advice. Individuals should consult their tax advisor for matters involving taxation and tax planning, and their attorney for matters involving legal matters.

For more information about the Morgan Stanley Institute for Sustainable Investing, visit **morganstanley.com/sustainableinvesting**.

 CRC 5860000 08/2023

Mr. THOMPSON. So, Mr. Rees, on this point, the myths that we are considering today that clean energy technology would harm retirees, is it true that current Federal law imposes fiduciary duty on private sector retirement plan investors to make prudent investments on behalf of their clients?

And if so, can you explain how that works, and why this is a bogus issue today?

Mr. REES. Yes, sir, and thank you for the question.

The Department of Labor has long regulated retirement plan fiduciaries in the consideration of ESG factors, and retirement plan fiduciaries understand that the consideration of ESG factors must be considered through the lens of loyalty and prudence in protecting retirement savings of the working people that they have been entrusted to protect.

And so that has been part of the record for many decades, and most recently confirmed in the Department of Labor's 2022 ESG rule, as Preston explained in his testimony.

Mr. THOMPSON. Thank you. So, combating climate change will require both public and private investment. Is it safe to assume that anti-ESG laws could cause financial harm for future retirees?

Mr. REES. Yes. My written testimony refers to many of these state bills that are estimated to cost billions of dollars to state retirement systems by enforcing blacklists against certain asset managers that consider ESG factors.

Mr. THOMPSON. Thank you very much, I yield back.

Mr. SMITH of Nebraska. The gentleman yields back. I now recognize Mr. Schweikert of Arizona.

Mr. SCHWEIKERT. Thank you, Mr. Chairman, and I don't want to be too much of a heretic here.

I am a huge fan of something called information theory. I am sure everyone here is a big fan of George Gilder, the economist. He is both a friend and comes and visits me on a couple of occasions, though he is getting—he has got to be 90 now. And the basic premise there is if you—you can have minimal regulation as long as you have quality information, lots and lots and lots of information.

He has this whole model that says 2008 would have never happened if we had the information of what was in the bonds. You would have had price discovery, and you would not wake up one day and say, oh, God, what is going on in the bonds, and they collapse.

But this is—and for, you know, our friend from—you know, the union representative to some of the others, let's actually have a bit of an honest discussion here for a moment. Okay, so some of our activists want disclosures on, you know, potential theoretical—whatever you want to say—in regards to environmental impairments. And I wasn't able to finish the math before it became my time, but my math says that in about 18 years you would have to double every single U.S. tax to stabilize spending, to just keep current services. All U.S. taxes have to double. Shouldn't that be disclosed?

I mean shouldn't—because if you double taxes, the majority of businesses in the—are actually upside down, they would have negative—so part of my discussion here is, if this is about a disclosure regime for individuals, pension plans, others to make investment decisions, okay, well, what is the breadth of the disclosures? Should it be political impairment? Should it be our debt?

And the fact of the matter is that is going to require us sometime in the next decade to, if you want to stabilize, to double U.S. taxes. It is demographics and spending. Why is that not advocated by my brothers and sisters also on the left, that it is the full breadth of disclosures?

You know, my friend over there, he and I have both a fixation on retirement security. We see sometimes the math differently, but I am terrified when I look at some of these articles that—the number of Baby Boomers, because of housing prices, who are expected to be on the street and those things. But that is sort of a derivative of what this conversation really should be.

Does the way we are approaching—saying, okay, disclose these things, but don't disclose these things, we have turned it political, and when we make it political we are going to screw up markets.

Look, you are all freaky smart. Tell me what is wrong with my theory that, if you are going to have a regime that says these have to be disclosed as potential impairments to the value of these securities, why shouldn't it be the full breadth?

You know, Mr. Isaac, I will let you go first because you said something a little while ago that was somewhat close to this. Why shouldn't it be the full breadth of impairments, whether it be my version of taxes, whether it be fertility rates, whether it should be, you know, environmental issues?

Mr. ISAAC. As someone who works at a research institution, more information is helpful, and this would certainly be helpful.

And we have no issue with individual investors making investment decisions. If they don't want to invest in companies that manufacture ammunition or guns, or if they don't want to invest in companies that manufacture hydrocarbons necessary for life on Earth, they don't have to, and they shouldn't have to. But what we are seeing is this politicization of capital, and it is being weaponized against the very interests of——

Mr. SCHWEIKERT. So now you are beating me to the second half.

So, in that case, the discussion here is I put my money into my TSP, you know, our thrift savings account for Federal employees. Or if you are in CalPERS or something else, what influence—what is—now, we keep being told DoL says you have got to maximize rates of return. But we also know there are certain governance issues. Well, we want to invest in this, but this company makes ammunition and we have problems with that. What influence should those—when you are investing that retiree's money?

And then you also run into a demographic issue. Would a young, you know, contributor to the pension have a very different view than someone who is getting very close to retirement if you actually said, hey, I have, you know, how many thousands of government employees and let them vote on it? So how do you build that structure?

And I know, actually, union organizations go through these battles all the time. But at some point, the real focus of this discussion almost should be more does DoL really force their baseline rules of maximizing safe rates of return for future retirement and, for those of us who are interested, disclose everything?

I am terrified of the fact that U.S. debt, I believe, is going to make it so much of corporate America no longer is profitable. I actually see that as a much more realistic number than some of my global warming and climate change numbers. Disclose both of them.

And with that I yield back.

Mr. SMITH of Nebraska. The gentleman yields back. I next recognize Mr. Larson of Connecticut.

Mr. LARSON. Well, thank you, Mr. Chairman, and I thank you for your opening remarks. Well, not you, Mr. Smith, you weren't in the chair at the time, and your concern about the elderly and seniors. I think it is profound.

And so, here we are, talking about a subject matter today. As several have pointed out, we are on the verge of a governmental shutdown. We have major issues in front of us. And when it comes to protecting seniors, we are concerned about an issue that impacts 4 percent of people who have 401(k)s.

So, suffice it to say, as my colleagues know, we need to talk directly about Social Security. That is the responsibility of this committee. We are the committee of cognizance with regard to Social Security. Congress has not enhanced Social Security in more than 52 years. My colleague, who is always very good with numbers, let me remind him 70 million Americans will be needing Social Security, 70 million fellow Americans. And yet Congress has stood still and not enhanced Social Security since Richard Nixon was President of the United States.

Not only do we sit here and say we are trying to help out seniors today. What a joke. 10,000 Baby Boomers a day become eligible for Social Security, and the committee of cognizance should be holding hearings on Social Security and talking about what you plan to do for it.

We have our plan. We want to extend the solvency. We want to extend benefits. We want to make sure that the more than five million fellow Americans who get below-poverty-level checks now get uplifted. We want to make sure that we provide 23 million Americans a tax cut. We want to make sure that every single one of your districts who receive Social Security monies get enhanced so that we can help people on fixed incomes in this time of inflation to be able to utilize their money locally, where it will have the greatest impact.

These are your brothers and sisters. These are family members. It is an embarrassment and a disgrace that in the United States Congress we cannot address the nation's number-one anti-poverty program for the elderly, the number-one anti-poverty program for children. And we are in a committee today talking about an impact of 4 percent on people with 401(k)s. I hope the American public is listening.

There are solutions that are out there. Let me ask the audience. How many of you out there make more than $400,000 a year? Raise your hand.

Funny thing about that. President Biden has said very simply we can fix this issue by simply lifting the cap on people making over

$400,000 a year. Wow. What a stress that would put on everybody across this country. And yet what it would do is put America back on track in terms of what we need to be doing on behalf of our fellow citizens. The number-one anti-poverty program for the elderly, the number-one anti-poverty program for children. And my colleagues on the other side sit in silence.

Look in the mirror. Ask yourself if you feel good about what you are doing to your fellow Americans who haven't received an enhancement in more than 52 years. Don't try to do some double secret probation committee behind closed doors, where no one will get to discuss especially the committee of cognizance so that you can make a maneuver to cut people's benefits. Let's have a public discussion the way it should be, out front. Our proposals versus your proposals. That is the way a democracy is supposed to work.

I yield back.

Mr. SMITH of Nebraska. The gentleman yields back. I do want to emphasize that, even if we subjected all Social Security—all earnings to Social Security payroll taxes, let's see, the numbers say that Social Security would still have about a $10 trillion shortfall over the next 75 years. I think these are important data points to keep in mind as we, I hope, have a bipartisan discussion to solve——

Mr. LARSON. What about a bipartisan plan?

Mr. SMITH of Nebraska. We had a bipartisan action to help clergy just recently, and I think we can focus on that moving forward.

I now recognize Mr. LaHood from Illinois.

Mr. LAHOOD. Thank you, Chairman, and I want to thank our witnesses today for your valuable testimony and the conversation.

I just want to first acknowledge, you know, since the Biden Administration took office in January of 2021, we have seen time and time again this Administration prioritize social issues above all else. And the result of that has really been the disruption and the dismantling of many of the historic economic strides that were made in the previous administration.

We had the best economy in my lifetime pre-COVID, partly due to TCJA and a number of the policies put in place. That has changed since the Biden Administration came in. And so today's discussion, I think, is an important one as we better understand how the fixation on ESG activism by the executive branch and many U.S. companies is really leaving seniors and people that save money in the middle class and their retirement at risk.

And I would like to first concentrate on the corporate side of this issue and how intense—the intense focus on ESG by companies can be misguided and unnecessary, to the detriment of shareholders. I just read an article that I am going to submit for the record here. It is an article written by Harvard Business Review in 2022 by Professor Sanjai Bhagat, who has been an active leader on this issue, and highlighted the potential redundancy in businesses putting a particular focus on ESG. And what he says in this article is, "in competitive labor markets and product markets, corporate managers trying to maximize long-term shareholder value should, of their own accord, pay attention to employee, customer, community, and environmental interests on this basis. Setting ESG targets may actually distort decision-making."

What is more, this article goes on to cite an academic paper that found evidence that numerous companies have used an increased focus on ESG as a justification for poor business performance.

So, Mr. Chairman, I would ask unanimous consent to submit the professor's article for the record.

Mr. SMITH of Nebraska. Without objection, so ordered.

[The information follows:]

Harvard
Business
Review

Investment Management

An Inconvenient Truth About ESG Investing

by Sanjai Bhagat

March 31, 2022

John Scott/Getty Images

Summary. Investing in sustainable funds that prioritize ESG goals is supposed to help improve the environmental and social sustainability of business practices. Unfortunately, close analysis suggests that it's not only not making much difference to companies' actual ESG... **more**

As of December 2021, assets under management at global exchange-traded "sustainable" funds that publicy set environmental, social, and governance (ESG) investment objectives amounted to more than $2.7 trillion; 81% were in

European based funds, and 13% in U.S. based funds. In the fourth quarter of 2021 alone, $143 billion in new capital flowed into these ESG funds.

How have investors fared? Not that well, it seems.

To begin with, ESG funds certainly perform poorly in financial terms. In a recent Journal of Finance paper, University of Chicago researchers analyzed the Morningstar sustainability ratings of more than 20,000 mutual funds representing over $8 trillion of investor savings. Although the highest rated funds in terms of sustainability certainly attracted more capital than the lowest rated funds, none of the high sustainability funds outperformed any of the lowest rated funds.

That result might be expected, and it is possible that investors would be happy to sacrifice financial returns in exchange for better ESG performance. Unfortunately ESG funds don't seem to deliver better ESG performance either.

Researchers at Columbia University and London School of Economics compared the ESG record of U.S. companies in 147 ESG fund portfolios and that of U.S. companies in 2,428 non-ESG portfolios. They found that the companies in the ESG portfolios had worse compliance record for both labor and environmental rules. They also found that companies added to ESG portfolios did *not* subsequently improve compliance with labor or environmental regulations.

This is not an isolated finding. A recent European Corporate Governance Institute paper compared the ESG scores of companies invested in by 684 U.S. institutional investors that signed the United Nation's Principles of Responsible Investment (PRI) and 6,481 institutional investors that did not sign the PRI during 2013–2017. They did not detect any improvement in the

ESG scores of companies held by PRI signatory funds subsequent to their signing . Furthermore, the financial returns were lower and the risk higher for the PRI signatories.

Why are ESG funds doing so badly? Part of the explanation may simply be that an express focus on ESG is redundant: in competitive labor markets and product markets, corporate managers trying to maximize long-term shareholder value should *of their own accord* pay attention to employee, customer, community, and environmental interests. On this basis, setting ESG targets may actually distort decision making.

There's also some evidence that companies publicly embrace ESG as a cover for poor business performance. A recent paper by Ryan Flugum of the University of Northern Iowa and Matthew Souther of the University of South Carolina reported that when managers underperformed the earnings expectations (set by analysts following their company), they often publicly talked about their focus on ESG. But when they exceeded earnings expectations, they made few, if any, public statements related to ESG. Hence, sustainable fund managers who direct their investments to companies publicly embracing ESG principles may be over-investing in financially underperforming companies.

The conclusion to be drawn from this evidence seems pretty clear: funds investing in companies that publicly embrace ESG sacrifice financial returns without gaining much, if anything, in terms of actually furthering ESG interests.

SB

Sanjai Bhagat is Provost Professor of Finance at the University of Colorado, and author of *Financial Crisis, Corporate Governance, and Bank Capital*, published by Cambridge University Press.

Mr. LAHOOD. Mr. Isaac, do you agree with the claim that ESG targets by companies distort corporate decision-making?

And, if so, do you see companies reconciling that distortion with what should be the primary objective: maximizing shareholder value?

Mr. ISAAC. Unequivocally, yes and yes. And that is why there is this huge push, and why it is being driven down as you look at over three-quarters of the executives of S&P 500 have their compensation tied to ESG goals. Over three-quarters of S&P 500 company executives, their compensation is tied to ESG. That is why we are seeing the prevalence. This is why this affects so many more than 4 percent of the people that have 401(k). It affects the entire economic prosperity of this country.

Mr. LAHOOD. Thank you.

And Mr. Rutledge, on the asset manager side, I appreciated your testimony. I am sure this issue can be particularly challenging for managers who do work globally, given the strong focus on ESG investing within the European Union. Can you comment on this, and maybe share what we could be looking at in the U.S., where we do trend more towards the current EU regulatory framework in the future?

Mr. RUTLEDGE. Well, I sympathize with companies that are——

Mr. LAHOOD. Mic.

Mr. RUTLEDGE. This is not working.

Can you hear me now?

Mr. LAHOOD. Yes.

Mr. RUTLEDGE. All right. I sympathize with the companies that invest—have to make investment decisions globally.

The thing that gets missed in Europe and—is that for that several-trillion-dollar slice of institutional assets that are in ERISA-governed plans, be they defined benefit or defined contribution, they are subject to the ERISA exclusive purpose rule and the exclusive benefit rule. Exclusive is a pretty strong word. It has been there for 50 years, and it has actually been in the code for 100 years. It is a very strong word. “Exclusive” meaning exclusive—invest the money for the participants in the plan. It is not the trustees’ money, it is the workers’ money.

In Europe they don’t have—and frankly, even maybe at the state level in this country, because ERISA doesn’t cover state-governed plans, if you are outside of a system that has that exclusive purpose rule or that exclusive benefit rule, then governments can have different perspectives. They can perhaps have rules that require investing in certain ways that don’t maximize returns for some other purpose. So I very much sympathize.

I would say we have—in a way we have already done what we can for our American pension plan participants in ERISA-governed plans by having that exclusive purpose rule and exclusive benefit rule. I would be—I would just say our regulators should probably approach the companies that are caught in those crosshairs with regulators from, say, Europe with some sympathy, not bringing the hammer down too hard on that.

Mr. LAHOOD. Thank you, Mr. Chairman.

Mr. SMITH of Nebraska. Thank you. I now recognize Mr. Pascrell from New Jersey.

Mr. PASCRELL. Good morning, Mr. Chairman, nice day in the neighborhood again.

I believe that this hearing is based on an entirely false premise. Do you want me to believe that the retiree, male or female, sitting in wherever he lives in the United States of America is not concerned as much about whether he is going to wake up to have his house under him tomorrow morning when he sees the glaciers melting? That has nothing to do with retirement. That is what we are talking about.

We are not saying that the investments should not be reasonable, thought out. All I am saying today, this is what I personally believe, that the factors that we are talking about as if they are something from Mars are happening here right now, been happening. Whether it is the environment, whether it is social factors, and whether it is whatever.

Fiduciaries are obligated to act in the best financial interest of beneficiaries. We all know that. This is not grade school here. There is no evidence that I have read, you can direct me, properly speaking, of environmental social governance factors harming investors.

Now, you may not make as much if you take those factors into consideration, but that doesn't say they are irrelevant or are not as important. None of you said they are irrelevant; I am not saying that. Sustainable investments often provide the greatest returns over the long term.

This is a partisan attempt to stoke fear over a total non-issue. It is a distraction from the majority's other failures.

Here is the truth. This is what I believe. This is one of the most dysfunctional and unproductive congresses in history, according to many. Democrats are protected in retirement security.

You have heard about the Butch Lewis Act. Read it. See what it says. I think it is very important to the future of what we are talking about today. I may be wrong. Show me.

Democrats have protected retirement security for many, many workers. Not a single member on the other side of the aisle voted for this essential relief last Congress. It gets worse. House Republicans brought our nation to the brink of devastating default with their debt ceiling debacle. You made a deal, and you couldn't keep it. You did it, not us. And now we face the same thing next week, and we are here talking about the irrelevance in investments of environment and social needs of this nation.

We nearly saw retirement accounts vanish, millions of Americans cut off from Social Security and Medicare. And the study committee of the other side, which represents three-quarters of Republicans, proposed slashing Social Security benefits by $718 billion. These are the biggest threats, biggest threats to America's retirement security.

Democrats are building a stronger pro-worker economy. Where are they? Every job lost during the pandemic has been recovered. The job growth is at a 40-year high. Unemployment is at a 54-year low. The economy is booming.

This President never gets any credit. He never was even congratulated when he became the President. They don't even recognize him as the President. Who the hell do they think they are?

We need genuine action to protect retirement. Mr. Rees, let me ask you this question. How could future legislation build upon the successes of Butch Lewis to further strengthen retirement security?

Mr. REES. Thank you for the question.

We would like to see employers be required to contribute to their employees' defined contribution plans when the employer does not provide a defined benefit plan.

Mr. PASCRELL. How does the tax code provide the bulk of retirement incentives to the highest earners?

Mr. REES. The deduction you receive for contributing to a 401(k) plan is more valuable the more money you make.

Mr. PASCRELL. So, while we bleed, in conclusion, Mr. Chairman, while we bleed about the growing debt of this nation, we don't bleed about the growing tax cuts to the richest people in this nation.

Mr. SMITH of Nebraska. The gentleman's time has expired.

Mr. PASCRELL. Baloney.

Mr. SMITH of Nebraska. The gentleman's time has expired. I now recognize Mr. Arrington from Texas.

Mr. ARRINGTON. Thank you, Mr. Chairman. Thank you, witnesses.

Mr. Pascrell is a friend. So be gentle with him, Mr. Isaac, but answer his question about seeing no evidence that ESG is affecting the returns on investment from these hard-working Americans that are counting on the maximum value of their investment for their retirement security. Just hit a couple of them.

I—let me—you know what? Rather than ask you, let me be a little more efficient. You said that a -0.2 percent was the ROI on ESG, on average, and that the average return on investment with the S&P 500 was 19 percent in comparison. And with NASDAQ it was 25 percent. That is a pretty stark contrast in economic value accruing to the investor, to the employee for their retirement.

Look, I think it is fair to debate ESG on its merits, I really do. Let's talk about environmental and social policies, and let's establish those. And there—I think there are some Federal nexus to those issues. But they should be debated in the legislative context, not through rulemaking. That is, I think, the bigger issue here.

I think the ESG is wrongheaded. I think, as a policy and the substance and merits of the policy, not this labor rule and as it applies to fund managers, but just on its own merits I think it is divisive, further dividing the country. I think it is destructive to our economic prosperity ends, to our national security, to our way of life, to our leadership in the world. But hell, I will make those arguments when we debate them on the floor of the United States House, not by ceding article 1 powers. And you know them better than I do and have articulated a wonderful treatise on article 1.

This is giving away Article 1, instead of debating this. In my opinion, that is the bigger issue, circumvention of the constitutional democratic republic as we know it. And there is too much of it, and people are weary of the regulatory overreach. And it does feel like tyranny every time you turn around. And it is not just the economic cost. It is popular sovereignty, which is the fundamental foundational cornerstone of this great republic. The will of the people speaks through us, not through some bureaucrat at the DoJ.

And so, if we are to honor what our founding fathers espoused as a central doctrine, there is no just government except those that govern with the consent of the people. That is what is being undermined here.

Let's debate ESG. I think we ought to have more guns in the hands of law-abiding citizens to protect our communities against the crime spree and the criminals that are running amok and trampling the freedom and the lives of our families. I think we ought to have more pro-life policies, values, and culture. I think we ought to have a pumpjack in every backyard in order to maintain energy independence and dominance. But let's debate that not by putting those policies that I favor in some regulatory rigamarole coming out of some bureaucracy on account of the fact that they can't get it through Congress. I doubt I could get my wishes through Congress.

I mean, we repealed this thing through a CRA, and it was bipartisan. That was very thin on the Democrat side, I will admit, I don't want people to think it was 50/50. But by God, we repealed it in the House and the Senate, and the President said, "I don't give a rip, I am going to advance this environmental agenda, whether you like it or not, America." That is why—that was the sentiment. He didn't say it, but that was the sentiment.

And look, in my last 30 seconds, I love John Larson and I wish we all had the passion he has to fix the solvency issue of Social Security and Medicare. But let's be clear for the people here. If you didn't make $400,000, you didn't get the tax—I mean, you didn't get the subsidy from Obamacare that was $65 billion that could have gone to the solvency of Social Security.

And one more thing. They cut Medicare—they got savings out of Medicare through the price fixing on part D. That didn't go back into the solvency of Medicare. It went to subsidizing green energy corporations with tax breaks.

So, as we say, spare me the lecture. I hope you had the same enthusiasm to chastise the Democrat Party and his colleagues for when you had total control of the House and the Senate and you took money out of those things for environmental climate-related and not for the benefit of the seniors.

I know I have gone over my time, but, I mean, this is rich. I mean, this is rich in hypocrisy. And I love you guys, but I can't hear that and not respond. God bless America, go West Texas, and I yield back the balance of my time.

Chairman SMITH [presiding]. Mr. Davis is recognized.

Mr. DAVIS. Thank you, Mr. Chairman, and God bless America, indeed, because I think right now America is teetering and tottering and is seriously divided and split.

Mr. Rees, I am so proud of the work that Democrats have done in the last few years to strengthen retirement for workers and families. In addition to setting auto enrollment into 401(k)s and improving the Saver's Credit, my bill that was enacted to help younger workers start saving for retirement and by letting companies use their retirement matches for employee student loan payments. Those have been and are, indeed, helpful.

Further, the enactment of the multi-employer pension provision via the Butch Lewis Act already helped stabilize retirement for over 388,000 Illinoisans whose retirement was at risk of collapse due to no fault of their own.

At the end of the day, Social Security is the main retirement plan for the majority of people who live in my district, who live in the district where I live and work. Yet this Republican House is committed to cutting Social Security, undermining retirement security. How can you not realize that Social Security, the enactment of the Social Security laws and benefits, actually is the only door that millions of people in this country have to survive retirement? And if we do anything to it and with it, that cuts it, this damages all of these individuals who have no other recourse.

And so, Mr. Rees, can you speak about the importance that the multi-employer pension changes were to states like Illinois, and how critical Social Security is for low-income Black and Brown workers, as well as all of the others who will be entering the workspace?

Mr. REES. Yes, sir. Thank you for the question. I will start with addressing the need to strengthen and protect Social Security.

According to a new study that the National Institute of Retirement Security has recently issued, 40 percent of seniors rely on Social Security as their only source of income.

The average Social Security benefit is a meager $22,000 a year. We need to strengthen Social Security by lifting the cap on taxable earnings so that CEOs pay the same effective tax rate that working people pay on their income to support retirement security.

And regarding the State of Illinois, the PBGC has already accepted and approved applications for special financial assistance for multi-employer plans of over 388,000 citizens of Illinois, with annual pension benefits totaling in the billions, so—in the millions.

So I appreciate the question, and we really feel that this committee needs to be focused on the retirement income security crisis, not distractions like ESG wokeness.

Mr. DAVIS. Thank you very much.

And thank you, Mr. Chairman. My voice may not be as strong as that of John Larson, but my passion is just as great in terms of Social Security and what it means for the American people. Thank you very much, and I yield back.

Chairman SMITH. Thank you. Mr. Ferguson is recognized.

Mr. FERGUSON. Thank you, Mr. Chairman. And, you know, when we started this my good friend, the ranking member, said something that I fully agree with, and that is Americans don't want to be told by the government what to do.

Well, Americans also are business owners, and Americans are investors. And let's start with the very basic premise that the reason that American business exists is to return a profit to its shareholders. That is the sole purpose of running a business. And I think it is wrong to co-opt the business community to basically carry out a social agenda by our colleagues from the other side of the aisle. Businesses are there to make money to return value to the shareholder or to the investor, period. That is why it exists.

That is why my dental practice existed. It was there so that it could provide a return to my family and to my employees in the terms of a paycheck.

So we should be doing everything that we can, everything that we can to make American business the most competitive in the world. We should be drawing investment from around the globe, because that is where we get the greatest return. And to—you know, and to think that folks like Mr. Rees are dictating to us what—you know, where we should be investing with ESG, this is the same group that failed to do—to make the reforms and the needed changes in the pension plans before they went belly up.

So, Mr. Rees, I apologize if I don't take—if I don't want to take your advice too seriously, but, you know, we got pension plans that were going broke for years because basically the unions and the union leadership would not do the right thing to shore those up. That is a whole other conversation.

But when we go down this road of causing companies to do things so that they can—that go against their core mission so that they can simply attract investment dollars, that is counter-productive. It is not an efficient use of capital. And in return, American businesses slow down and they don't hire as many workers.

Now, if we want to have a serious conversation about Social Security, let's keep in mind that we need more people working and paying into the system, not fewer. So every time that we drive a business to lower productivity and to make them hire fewer people, we are hurting the very group that we are trying to help, which is to make sure that our seniors are protected.

So when America is less competitive and we are not hiring as many workers, and we are not building and inventing here in America and selling around the world, then we are backing up and we are hurting the Social Security system. I think it is important to put out there.

Also—and Mr. Isaac and Mr. Oakes, I will let you all answer this question—don't you think it would be wise to allow or maybe have rulings that allow shareholders and participants in funds to sue the fiduciary for failure to give the best return on the investment? Don't you think that would be a wise thing?

Mr. Oakes, I will start with you and just—if you could kick that around, I would appreciate that.

And Mr. Isaac, if you would, follow up on that.

Mr. OAKS. Yes, I think we are already seeing lawsuits along those lines. So in New York one of the pension systems is being sued for pursuing ESG as a strategy in their fund because it is clearly counter to the fiduciary duty. And that sort of legal action, I think, is required to uphold the fiduciary standard that we all hold dear to us, because that leads to the outcomes that we want, the financial outcomes that all of us need for our retirement.

Mr. FERGUSON. Very good. Mr. Isaac.

Mr. ISAAC. And I believe several states are suing, your attorneys generals are acting. And I believe it is S&P global that was issuing credit ratings based on ESG scores, they were considering ESG metrics and now, because of this pressure, they have dropped that, which is interesting to me because you look at—Sri Lanka at one time had the highest ESG rating of any country on the planet, and their first-ever elected net-zero candidate on the face of the Earth implemented net-zero policies and crushed their economy within one year, said no use of nitrogen-based fertilizers. Food production down 40 percent, cost up 80 percent. Today 9 in 10 people are hungry in Sri Lanka because of 1 person.

Mr. FERGUSON. I tell you, it is a great example. Look, Americans want a paycheck where they can take care of their families. They want to come home to a decent, safe place to live. They want their children educated, and they want this place to leave them the heck alone. That is a common thread that runs through every American.

And let me tell you something. When you enforce or you go down the road of imposing ESG requirements and all of this stuff, it violates every single one of those pillars. It is the government telling you where you can invest, where you can't invest.

The wokeness that occurs in the school system is destroying the education system. It is leading to policies that make our communities less safe.

And you know what? Look at inflation. Look at where we are with interest rates. It is not—the American economy and Bidenomics is not working for the American people.

With that I yield back, Mr. Chairman.

Chairman SMITH. Thank you, Dr. Ferguson. Congratulations on your Bulldogs victory over the weekend, as well.

Mr. FERGUSON. I was not going to say it, but I will. How about them dogs? [Laughter.]

Chairman SMITH. Dr. Wenstrup.

Mr. WENSTRUP. Thank you, Mr. Chairman. I am going to play off of what my good friend, Dr. Ferguson, was just talking about.

And the things I want to say, as a Member of Congress, I always ask myself, when considering policy, will it make Americans more free and will the next generation say thank you? And I think we should take those types of things into consideration when we go ahead with policy.

But allowing unelected financial bureaucrats with their own agenda to invest America's retirement savings in risky and unproven ventures to support an agenda of alarmism and social policy certainly doesn't make us more free. A free market is not free when major financial players are colluding behind the scenes to limit investment options and favor funding companies and projects that fit a certain agenda, especially financially failing agendas.

The next generation certainly won't thank us when their retirement savings are a fraction of what they need because activist investment managers went out of their way to promote an agenda, rather than serving their customers faithfully. Frankly, I think Americans would be shocked to see where their hard-earned dollars are being diverted each and every day now.

You know, so not only do these policies harm investors, they distort U.S. capital markets and, more broadly, hurt our economy by diverting funds away from the most worthy investment options, and instead prioritize pet projects that otherwise would not receive funding.

I think the most egregious example—this is in the energy sector—is we know financial heavyweights like Blackrock have committed to ending fossil fuels, and are staging an investment boycott against American companies who produce energy. It couldn't come at a worse time, a time when we need to increase energy production, to lower prices for American consumers, and provide much-needed energy supplies to our allies in Europe who need to wean off of Russia natural gas in order to fully enforce sanctions against Putin and his regime. None of this makes any sense on behalf of national security for the United States and our allies.

Worse yet is our investment managers put their fingers on the scale for green energy projects. These very same investment dollars are ultimately flowing to our adversaries in the Chinese Communist Party. This is completely backwards of the America that I know, or thought I knew.

And as we have discussed before in this committee, China dominates the supply chain for products like solar panels, electric vehicle batteries, and that is not even to mention pharmaceuticals, which is a grave risk to the United States. We have already spent billions in taxpayer dollars subsidizing the purchase of Chinese energy products, and the last thing we need to do is compound that failure by steering Americans' retirement savings towards these same Chinese-related industries.

You know, I always say, by the way, until Air Force One can fly on a solar panel, and we can make those solar panels, then we will talk about fossil fuels. But until that day comes, it should be off the table and let the market and technology dictate, not this.

So, I fear the next generation will not look kindly on the future that we build, or is being built around us right now, by aiding and abetting our geopolitical adversaries with our own retirement savings. Think about that. We are taking people's retirement savings and helping China and weakening ourselves. It makes no sense.

Mr. Isaac, can you discuss the dangers of an ESG-fueled investment boycott of fossil fuels, and how steering Americans' retirement funds toward green energy benefits our geopolitical adversaries like China?

Mr. ISAAC. Yes, I call it the China ESG agenda, and it is working as designed, as planned.

You look at the North American oil and gas private capital being invested. In 2015, there were 58 funds that raised nearly $50 billion to produce energy in this country, where we produce it more responsibly than anywhere else in the world. And that energy holds the key to ending poverty as we know it, it results in economic prosperity. And just in 2022, we have seen a 76 percent reduction in the number of funds raised, and a 92 percent reduction in dollars raised in North American capital to produce American energy. And that is why we are not producing nearly as much as we could. We are shifting production, not demand, but we are shifting production.

And we are seeing dollars flow into Iran from China to the tune of 50 to $80 billion because of the ESG agenda. And guess who is going to be refining—buying the refined products that China is producing because they have expanded their refining capacity? The

United States will be buying jet fuel, diesel, and home heating oil made from Iranian oil that is funding this war on terror.

And what are Americans feeling? From 2021 to 2022, there was a 30 percent increase in Americans having their electricity disconnected, a 76 percent increase in Americans having their natural gas disconnected in this country. This is the China ESG agenda, and it is working as designed to the detriment of our country and to the detriment of our economic prosperity.

Mr. WENSTRUP. Thank you. We need to lay the blame where it belongs.

I yield back.

Chairman SMITH. Ms. Sanchez is recognized.

Ms. SANCHEZ. Thank you, Mr. Chairman.

There are just 10 days remaining before governmental funding expires, and yet Republicans seem utterly unconcerned that they are once again steering us towards a fiscal cliff. And so today, we are talking about retirement security, which is an important topic, but my Republican colleagues, who are so concerned about shareholders, aren't talking about the economic hit that all Americans, seniors, veterans, children, working parents, and our servicemen and women will take when our government shuts down. Yet here we are, not dealing with serious and even life-threatening issues, but we are talking about the woke boogeyman that Republicans love to invoke whenever they want to distract from their inability to govern.

This committee has a strong history of advancing bipartisan retirement policy that benefits American workers. So, I am disappointed that today's hearing is this politically charged. And I want to refocus on retirement policy that actually helps working families. Take the Butch Lewis Act, which has saved hundreds and thousands of pensions, benefiting tens of thousands of workers in California alone, or consider the provision that I led in the SECURE Act that reduced filing costs for small businesses looking to establish retirement plans for their workers, or the Starter–K Act that Mr. LaHood and I worked to include in SECURE 2.0. Our bipartisan provisions streamlined regulations and lowered costs for small businesses and start-ups, leading to more access to easy retirement savings.

And despite bipartisan achievements in the retirement space, too few Americans have not saved enough for their retirement. Women, especially women of color, fall far behind in saving when they can no longer work. On top of the overall earning gap, Latino, Asian, and Black populations are more likely to work for employers that don't sponsor any savings plans for retirement.

We have to acknowledge that workers of color are more likely to face access and eligibility hurdles that can prevent them from enrolling in retirement plans, so why aren't we talking about this? Why is the committee not talking about this?

American workers deserve certainty and security as they prepare for a time when they can no longer work. I hope that our committee can refocus on ensuring that low and middle American families can rely on retirement savings, or even can work for an employer that provides some kind of retirement savings plans.

Mr. Rees, in your professional opinion, which do you think would hurt working American families more, ESG, which we are talking about today in this hearing, or a government shutdown, which my Republican colleagues don't seem to want to talk about?

Mr. REES. The government shutdown.

Ms. SANCHEZ. What would that do to the cost of borrowing, let's say, for the average American family?

Mr. REES. It would likely increase the cost of borrowing.

Ms. SANCHEZ. And what would that do to our economy if the government were to shut down?

Mr. REES. Put our economy in a tailspin, hurting investment returns.

Ms. SANCHEZ. Would it hurt our government's credit rating?

Mr. REES. Yes, it would.

Ms. SANCHEZ. Okay, great. I wish we were talking about that, but we are not today.

Mr. Rees, I want to thank you for your testimony that highlights key legislation that actually has helped American workers build retirement savings. What do you consider key policies that this committee could pursue to address working people's mounting retirement insecurity?

Mr. REES. We need to strengthen Social Security. We need to increase employer contributions to employees' retirement savings accounts when they don't have a defined benefit plan. And we need to allow investment fiduciaries of retirement plans the freedom to invest, to consider ESG factors because they are relevant to investment return decision-making.

Ms. SANCHEZ. You know, one of my colleagues on the other side of the aisle said that he asks himself will future generations thank us. Do you think future generations will thank us if we don't do something about the fact that our Earth is dying because of global warming and the pollutants that we are putting into the air, which are causing severe weather storms? Do you think future generations would thank us for doing nothing about that?

Mr. REES. No, ma'am.

Ms. SANCHEZ. Thank you.

Mr. Rutledge, can you expand on how SECURE 2.0 has helped small businesses address barriers and offer retirement plans to their employees?

Mr. RUTLEDGE. Yes, thank you, Representative Sanchez.

A couple of really good provisions in SECURE 2.0 included some tax credits for small employers that have never had a plan setting them up. That would be one. A new kind of 401(k) that is extremely simple called the Starter–K. The idea behind that is if an employer can set up a very simple plan, low maintenance, then after a few years they will hopefully set up a full-blown 401(k).

Also, there is—the refundable Saver's Credit was—I am sorry, the Saver's Credit, which had been in the law for a while, was made refundable, which will be particularly helpful for people that do not—that are at an income level where they don't have a Federal income tax liability. They will nevertheless get that credit, and it will be deposited in their 401(k) or their IRA, wherever they are contributing.

I would say those would be three things that the SECURE 2.0 Act did. There probably are others that I am missing, but those would be the three that come to mind most prominently.

Ms. SANCHEZ. Thank you for your testimony, and I yield back.

Ms. TENNEY [presiding]. Mr. Estes is recognized.

Mr. ESTES. Well, thank you, Chairwoman, and thank you for our—that sounds good, doesn't it, "Chairwoman," as you are sitting there? [Laughter.]

Mr. ESTES. Thank you for our witnesses, as well, for being here to discuss this phenomenon that is quietly reshaping American life to the detriment of seniors and savers.

I know I want to stay focused on ESG. I know a lot of—there has been a lot of distractions around various other topics that we have talked about, whether it was a bailout of pensions where the trustees had failed to be held accountable for their fiduciary responsibility. As a result, taxes are increased for single moms in my district. We talked about, let's see, critical race theory, climate change, talked about potential shutdown, even though we are focusing on appropriations bills this week, a host of other things. But I want to talk about ESG.

I has become really clear that ESG investing hurts seniors and other savers by privileging non-financial factors over positive financial outcomes. It is the opposite of fiduciary responsibility. Individuals have entrusted their money to corporations and firms to be stewarded towards a financial end, not some intangible goal in which they have no say.

The record-high inflation that we have seen since Joe Biden became President has underscored the importance of sticking to this critical mission. Finances are tight as inflation has grown more than 17 percent since President Biden took office. Kansans, including seniors on a fixed income, are having to stretch their dollars to spend nearly $1,000 more each month on the same goods and services, and savers have seen inflation eat away at the funds they have set aside. Americans should be able to trust the institutions stewarding their hard-earned money are doing all they can to provide the best financial return, not leaving anything on the table in exchange for advancing activist goals.

I have been concerned about the growing impact of ESG for a while, and last spring wrote an op ed for The Hill on the threats imposed by ESG that I would like to submit for the record, Chairwoman.

Ms. TENNEY. Without objection.

[The information follows:]

OPINION > CONGRESS BLOG

THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

Democrats willing to weaponize ESG scores to punish Americans

BY REP. RON ESTES (R-KAN.), OPINION CONTRIBUTOR - 04/25/22 7:30 AM ET

Share Tweet ... More

Consider the bakery aisle at your local grocery store – different types of bread ranging in unique tastes and ingredients to cost. Each company focuses on enticing you to purchase a mixture of water, yeast, flour and seasoning.

But today, top CEOs are abandoning market-based decisions to appease small groups of vocal extremists on the far left who demand they bow down to their "woke" agenda. It includes appeasing climate alarmists, radical transgender activists and abortion fanatics who want to silence the vast majority of everyday Americans.

Buying bread no longer becomes about flavor and price, but about favoritism and a political agenda.

Many Americans are right to be alarmed at the rapid increase in political activism and bullying among many of our nation's top corporations. Rather than focusing on the well-being of their employees, customers, or shareholders, there have been several notable examples of large companies using their market power to push far-left political causes at the expense of everything else.

Americans need to look no further than Disney to see how dramatic and disturbing this shift change, diversity, and a whole host of liberal causes above every other concern.

Just last month, President Biden's Securities and Exchange Commission proposed a controversial and far-reaching climate disclosure regime for companies, including environmental, social, and governance (ESG) scores. It's clear that Biden's SEC wants companies to force Americans to change their behavior.

It's not hard to see where it goes from here. By mandating liberal political concerns over fiducial responsibilities to shareholders, we are not far from a world where companies implement personal ESG scores for customers. This could be similar to a credit score, but these companies would be rating a person's so-called ESG risk instead of rating creditworthiness.

As we've seen in socialist and communist countries, a social score can be assigned to individuals. U.S. companies could use ESG to discriminate against Americans based on their political beliefs and affiliations.

For example, want a mortgage on a new home but own two large, three-row vehicles? Sorry, your ESG score now disqualifies you. You must offset your carbon footprint before you are approved for that loan. (*It obviously doesn't matter if you are under the poverty line*

This kind of heartless thinking would lead to the largest loss of liberty in American history. There would be nothing to stop these scores from bulldozing your constitutional rights. Buying a gun could affect an ESG score.

Think this sounds far-fetched? It's already been implemented outside the U.S., and a version was used in Canada to shut down hardworking truckers speaking out against vaccine mandates and lockdowns.

In China, a person could be banned from flights, denied college entry, have their internet speed throttled, or lose rights to their pets. A citizen's score is at the mercy of the Chinese Communist Party. The infractions that lower your score vary, ranging from not paying your bill on time to posting "misinformation" on social media.

The shift from a free market to social credits is dangerous. Instead, businesses, workers and consumers should return to the bread and butter of our robust, capitalist society that rewards those making better products at competitive prices for consumers who benefit from choice and maintain values separate from the totalitarian extremists on the left.

Utilizing ESG scores is a slippery slope that could easily lead to the government mandating companies to discriminate against you based on your political positions. Predictably, this has already led to discrimination against hardworking families who disagree with the cause being pushed.

To recover from the current economic catastrophe that Democrats and President Biden have steered us into, we need permanent policies that encourage active participation by U.S. investors to drive economic progress, rather than a divisive policy like assigning ESG scores that would put American families last and far-left special interest groups first.

Ron Estes, one of only a handful of engineers in Congress, worked in the aerospace, energy and manufacturing sectors before representing Kansas' 4th District since 2017. He is a fifth-generation Kansan, former state treasurer, and serves on the House Committee on Ways and Means and the Joint Economic Committee.

Mr. ESTES. Thank you.

Treasurer Oakes, how can a citizen already suffering from Bidenflation take control of their investments and protect them from ESG activism?

Mr. OAKS. Thank you for the question.

So one of the biggest challenges is that the risk to their retirement is not just through ESG-designated funds. What has happened is large—many large asset managers have signed onto pledges that commit them to push ESG with all assets under management. And so they will use, for example, a passive index fund and push ESG by using engagement with companies. And this is what people don't see. This is why a lot of people don't talk about it, because they don't understand what is happening.

You will have large investment managers go into a large oil company, for example, and say, "You need to reduce your greenhouse gas emissions, you need to create a plan to be net zero by 2050. And, oh, by the way, you need to cut oil production by 20 percent." Who does that impact? It is not just the investors in that fund, it is not just the investors with that particular manager. And in fact, it affects the entire marketplace. That is what we are talking about here.

These are funds that are—you have to have a massive amount of money to drive an agenda through the capital markets, and that is why these asset managers have signed on to these pledges, these commitments to drive ESG and use all of their assets under management. That is why this is so dangerous. That is why it changes the economic system. That is why our economic freedoms are at risk.

Mr. ESTES. Well, thank you. And you know, beyond just the impact on individuals, ESG activism is affecting everything from energy to agriculture to national security.

Undoubtedly speaking to climate activists, President Biden declared on the campaign trail that he would "end fossil fuels." In pursuit of this goal, he has undermined American energy independence, going so far as to drain the Strategic Petroleum Reserve in a bid to bring price relief to consumers suffering from the results of his policies.

Putin's invasion of Ukraine temporarily added a spike on top of the already soaring prices caused by President Biden. And now, with the war in the Middle East, there is a risk of prices again climbing higher, all in pursuit of answering the activist calls to end fossil fuels.

Mr. Isaac, if you shared—as you have shared, America continues to rely primarily on fossil fuels. If the United States continued to make it difficult for domestic energy producers, where will we get our energy from, and who will benefit from that change?

Mr. ISAAC. Yes, we will likely get our energy from people that don't care about us very much, and they will control the price, like OPEC cutting production right now to the benefit of Russia, to the benefit of OPEC, to the benefit of Iran that is fighting this war and funding this war on terror right now—or funding the terror, if you will—but for no environmental benefit whatsoever.

If we do end fossil fuels by 2050, the temperature differential by 2100, using the UN Intergovernmental Panel on Climate Change's model, would be less than one-tenth of one degree difference. It is 0.0892 degrees. That is no benefit. That is no benefit, but the costs are astronomical. We completely throw out our economic prosperity.

And I think we need to thank our forefathers for what they have done. Because if you look just at two generations ago, we started on this path to economic prosperity. And, in result, world leaders in environmental protection. Eighty percent reduction in pollution in five decades is incredible. We are number one when it comes to access to clean and safe drinking water.

Mr. ESTES. That is great that American innovation has done that. You know, if the United States wants to pursue ESG goals, it certainly should not do so at the expense of ordinary Americans savings, much less our national security and global competitiveness.

I yield back.

Ms. TENNEY. The gentleman yields. Mr. Hern, you are now recognized for five minutes.

Mr. HERN. Thank you, Madam Chair.

In my 35 years of business with one of the largest brands in the world, we always incorporated non-financial objectives and aspects of environmental, social, and governance—ESG, if you will—because if we disregarded these metrics, we would not have remained competitive in the free market.

The policy issue we are seeing here in the United States and across the globe is the weaponization and politicization of ESG to push activists' non-financial objectives and ideology that ultimately does not align with the objectives we made this nation—which made this nation an economic powerhouse. The United States was built on a free market, where every dollar that is utilized for the greatest returns wins, and the moment that stops, the economic dominance stops.

In a free market, a business chooses to be an active steward of the environment, the first letter of ESG, because the free market demands it. Companies implement environmental conservatism to reduce cost, enhance operational efficiency, and improve the business image in the public eye of their shareholders.

Businesses make drastic efforts to be socially responsible in the communities in which they operate, the second letter in ESG, because the free market demands it. Without these communities, the business itself would cease to exist. Millions of businesses across the United States and abroad give back to their communities and invest in areas that were previously economic deserts.

Without good governance, the third letter in the ESG, we would see failure. Throughout the history of this great nation we have seen businesses rise and fall due to substandard governance—just most recently, the failure of FTX and Silicon Valley Bank because of deficient governance.

ESG investing receives a lot of attention due to its political nature, but Congress should be concerned about all investing that utilizes metrics separate from the majority of investors' best interests, which is to achieve the highest rate of return on their investment. How can we assign a fair value to ESG funds or businesses, when not all shareholders are looking for a profitable return?

The intrinsic value of a company is the present value of all expected future cash flows. What percentage of a business's future earnings is owned by the environment? What percentage of a business's future earnings are owned by socially responsible causes? It is impossible to assign values to these metrics. And while these metrics might be important to a business's success, providing parity between these metrics and metrics aimed to achieve the greatest rate of return is dangerous.

Millions of Americans rely on the capital markets to grow their wealth by investing their hard-earned savings. Congress needs to have a watchful eye on the markets' funds and businesses that cater to activists and their non-financial goals, instead of hardworking Americans saving for their retirement.

Mr. Oaks, at the International Conference on Climate Change you said, "When truth is relative, you can't define reality." Can you explain what you mean by that in relation to ESG?

And by the way, I watched your 45-minute video at 6:00 this morning. Very good job. [Laughter.]

Mr. OAKS. Okay, all right. Sorry, can you repeat the question?

Mr. HERN. When you talk about when truth is relative you can't define reality, can you talk about what—and context you put that in as it relates to ESG?

Mr. OAKS. Yes. So we have to understand definitions, and definitions are one of the things that is being changed in ESG.

So when we talk about governance, for example, governance is—under traditional shareholder capitalism, we are talking about board independence, stock performance incentives for corporations. So companies have performed better, historically, by tying management pay to performance.

When we look at stakeholder capitalism, which is essentially ESG, governance has changed. We are now talking about demographic quotas for board members and for employees, and we are also talking about tying compensation to ESG metrics.

So the definitions have changed. And what happens when we change the definitions is that we suddenly are not talking about the same things. We are hiding an agenda when we politicize the language. That is one of the biggest things that is happening with the ESG.

Diversity, equity, inclusion under the social—the same thing. Traditionally, we think of diversity of—ideological diversity and experiential diversity. Now we are talking about demographic only, and ideological purity. Equity, we think of equal opportunities or equal opportunity in the United States, whereas today, under the equity of DEI, it is equity of outcomes, or equal outcomes. Inclusion, we think about a colorblind society and meritocracy. Under today's DEI, inclusion means discriminating against those who do not fit the chosen demographic.

So we have to understand the definitions that we are talking about. This is one reason why ESG is so dangerous, is that often times people hear the terminology, they think they understand it, but the definitions actually are different than what they think they mean.

Mr. ESTES. I would like to thank the witnesses and, Madam Chair, I yield back.

Ms. TENNEY. The gentleman yields. Mr. Higgins from New York is now recognized for five minutes.

Mr. HIGGINS. Thank you, Madam Chair.

America is 5 percent of the world's population; we are 25 percent of the world's economy.

America is the world's richest, most productive, and innovative of the—all the world economies. Today America is 58 percent of the wealth of the top 7 countries in the world. We were 40 percent in 1990. The U.S. dollar is the go-to currency in the world.

America owns 20 percent of the patents registered throughout the world, more than twice that of China and Germany. The five biggest corporate sources of research and development in the world are American. Investors who put $100 into the Standard Poor's 500, a—that tracks the performance of 500 largest companies in America—would have more than $2,000 today. That is four times more than any other country of the world would produce.

The top 12 of 15 universities in the world today are American universities.

The Federal Government has a history of bailing out insurance companies, banks that behave poorly, car companies, airline industries, but not doing nearly enough for our own people. And the purpose of an economy is to create a middle class because they pay our taxes, they fight our wars, they teach our children, and they protect our streets.

The Butch Lewis Act, which was in large part due to the persistence of the Chairman of the Ways and Means Committee at that time, Rich Neal, now the ranking member, saved 200 pension plans, $83 billion, 3 million retired workers. Before the Butch Lewis Act, all of those plans would have become insolvent by 2026. Now they remain solvent until at least 2051.

It seems to me that, when you look at the American worker, which is the backbone of the middle class of America, the AFL–CIO is 60 national and international labor unions, representing 12.5 million people throughout the world. Mr. Rees, what do these programs mean to the American worker within the context of the importance of consumption within the American economy, which is 70 percent of all consumption, or all of the American economy?

Mr. REES. Thank you for your question. I want to give an example of an ESG factor that the Federal Thrift Savings Plan has considered to prohibit investment in China under President Trump.

President Trump's Labor Secretary, Eugene Scalia, prohibited the investment in China for national security and human rights reasons. That is a decision I agreed with for financial reasons, because investing in China is risky because of opaque accounting in China and a lack of accounting oversight. And the Republican bills that have been introduced would prohibit retirement plans from considering those very same ESG factors.

And so, my point is that we should give financial advisors, we should give retirement plan fiduciaries the freedom to consider ESG factors when they deem them material to investment returns in the exact same way that the Trump Administration did for the Thrift Savings Plan that Members of Congress participate in.

Mr. HIGGINS. I yield back.

Ms. TENNEY. The gentleman yields. Mrs. Miller from West Virginia is recognized for five minutes.

Mrs. MILLER. Thank you, Madam Chairman and Ranking Member Neal, and thank you all for spending time with us today. I appreciate it.

I am from the beautiful state of West Virginia, which, for those of you who might not know, is a leading energy-producing state. Since 2008 the radical left-wing war on coal—and quite frankly, for all forms of traditional baseload energy—has devastated the communities in my home state of West Virginia. Despite Washington liberals' best efforts, coal exports still amounted to $3.8 billion of economic activity in my home state.

ESG mandates are just another opportunity for unelected bureaucrats to force freedom-loving Americans to accept one more step towards global socialism. We will never, never surrender to those who want to see our energy-producing states destroyed, and we will fight these mandates, tooth and nail.

The fact that the Biden Administration is encouraging retirement plan managers to steer investment funds away from profitable, time-tested energy companies and towards their pseudo-woke environmentalist corporations is not only fiscally irresponsible, it is a real slap in the face to hard-working folks like my constituents, who are counting on these managers to do their job and ensure their retirement accounts are secure.

Mr. Oaks, thankfully, in West Virginia we know better than to let woke leave us broke. We have experienced it. In March, our state established a law which prevents the State Investment Management Board or fund managers from considering environmental, social, and corporate governance factors when managing retirees' finances. Mr. Oaks, can you—you come from a state which has also taken a stand against the Administration's misguided ESG policies. Can you tell us how retirees in your state are better off now that their financial managers are focused solely on financial returns?

Mr. OAKS. Yes, thank you. So, as I mentioned before, I think one of the key issues is that asset managers have committed all of their assets under management to drive this agenda. So it is not just ESG funds that are pushing ESG policies.

And so that is really the challenge here. And several research studies have shown that ESG-related proxy measures often have a detrimental effect on financial returns. So the proxy vote is one of the very important roles that an owner of a stock has. They can exercise their right to vote their shares on issues that come before a corporation. And unfortunately, this process is being hijacked.

So, there was a study published in the Journal of Financial Economics that investigated the influence of activist public pension funds on the market values of a subset of Fortune 500 companies. And the findings revealed a negative correlation between increased activism by public pension funds and stock returns.

Additionally, companies receiving proposals from activist public pension funds advocating for social agendas were valued at 14 percent less, compared to similar companies that did not pursue such agendas.

So, the Utah legislature took several actions this past legislative session to protect Utahns. Very importantly, we passed a fiduciary standards law that included voting proxies for the best interests, in the best interests of the beneficiaries. That was one area that we had to look very closely at, because it is not always obvious what the proxy advisory firms are doing, and they don't have just an off-the-shelf fiduciary standard kind of proxy system.

So we worked on a fiduciary bill. I sit on the boards of the Utah Retirement Systems and the School and Institutional Trust Fund, our sovereign wealth fund. And we are—we have worked to ensure that our proxy voting is in the best interests of our beneficiaries, that we are upholding the fiduciary standards, and that we do not want ESG—or investment managers pushing ESG agendas on behalf of our retirees and the schoolchildren of Utah.

Mrs. MILLER. Thank you so much.

Mr. Bolay, I loved hearing about your background and your family farm. Some of us—some of the people here may not know, but Chairman Smith and I are both bison farmers. So hearing your implications of the ESG issues on family-run businesses and operations is important to me personally.

I think you made a great point in your testimony that community bankers should have the freedom to make investment decisions that make sense to their customers, rather than follow top-down mandates from bureaucrats in Washington that have no idea what is best fit for the individual communities. Can you talk a bit more about how ESG policies have the potential to harm small community banks and businesses?

Mr. BOLAY. Thank you for the question, Congresswoman, and I will be quick. Main Street has always taken care of Main Street, and it is best if you let us take care of Main Street and not have top-down-driven policies.

Mrs. MILLER. Thank you.

I yield back.

Ms. TENNEY. The gentlewoman yields. The gentleman from North Carolina, Mr. Murphy—Dr. Murphy—is recognized for five minutes.

Mr. MURPHY. Thank you, Madam Chairman. I want to thank all the folks for coming here today to discuss.

It is just kind of interesting. I think our Democratic colleagues know that ESG is indefensible. That is why they are trying to talk about everything else, you know, the sun and the moon here.

Just put plainly simple, this is a political motivation to try to move what should be an objective market. Very, very plain and simple. Through all the different tax revelations and tax breaks given to Chinese companies for American companies, what we are doing is we are pouring American money into our greatest enemy, point blank enemy, into China, where China is now developing weapons against us, their navy is far advanced, et cetera, et cetera. And they are buying up the world. They own—pretty much own New Zealand. They are owning Australia. They are bullying Australia, literally, today. And we are feeding China with this nebulous, absolutely out-of-touch reality.

As you pointed out, Mr. Isaac, it is going to be, what, 0.01 percent of a temperature raise? This is the problem when you make emotional decisions on math. Math is a very objective thing.

Guys, we all don't want what is happening with the Earth. I believe that the climate is changing. I absolutely believe it. But I don't believe we can do a damn thing through all these maneuvers to change any of this stuff. What we are going to do is bankrupt America and allow the Chinese Communist Party to basically take over the world. And we are going to be sitting there thinking that the rainbows and unicorns are going to come out because we have, you know, saved a—or we have pushed a few pennies, at the same time worsening returns for our investors.

Mr. Rees, you made a comment. You said—I don't want to put words in your mouth—you believe we should give financial advisers the freedom to use ESG, correct? Were those your words?

Mr. REES. That is correct.

Mr. MURPHY. Okay. Mr. Isaac, then can I ask you, are our financial advisors not—their compensation based upon using ESG, isn't that what you said earlier?

Mr. ISAAC. Yes, over 75 percent of executives in S&P 500 companies have their compensation tied to implementing ESG.

Mr. MURPHY. Okay, so how is that freedom?

Mr. ISAAC. That is not working out too well.

Mr. MURPHY. Well, it is not. It is an absolute—you say you want freedom to use it, but no, they are tying their compensation to that. So that is—hello, that is not anything at all. And so, you know, I have heard from several financial advisors back in my district that, "you wouldn't believe what the hell pressure that these companies are putting us on."

So, guys, you know, I want to protect our environment. Gosh, I love—I live in the most beautiful district in the country, in eastern North Carolina. But these are absolutely ridiculous policies to think we are actually going to change what is going on, but we are going to bankrupt our country and at the same time empower our greatest enemies in Iran, in China, and Russia today by doing this. It is an absolute absurd, pathological plan.

So I will just get back—you know, I was proud to introduce H.R. 9198 last year, the Safeguarding Investment for—Options for Retirement Act, because it is a financial and fiduciary responsibility for financial advisors to return the highest amount to their investors, period, point blank. Does anybody on the panel disagree with that?

No. Those are mere numbers. You know, a rainbow does not buy dinner for somebody who is poor. I am sorry, it just doesn't.

So let me ask you this, Mr. Isaac. In general, do Chinese businesses tend to focus on obtaining high ESG scores?

Mr. ISAAC. It is the last of their concern, along with human rights and environmental protection.

Mr. MURPHY. Yes, but then we fund all the money over to them. Do you think they are going to be truthful on any of these things?

I truly believe they are sitting back in Tiananmen Square, they are sitting back in Beijing and laughing at us because we are chasing butterflies and rainbows to make us feel better emotionally, and we are really absolutely screwing the American public, and we are screwing the 250 years of democracy and turning us down. I mean, the math just doesn't seem to work.

You know, Mr. Larson, I agree—he is not here anymore, but I would agree with your chair that we need to get working on Social Security. Absolutely. It was a plan put in place by Democrats many, many years ago. Without a future plan, that is going to hurt people today.

I guess there is just so much target-rich environment, I probably shouldn't go on.

But guys, you know, again, it is absolutely absurd that we motivate the markets to move because of a political agenda. I think even our Democratic colleagues understand that. We all want a beautiful environment, we all want to deal with these things, but the markets are not based upon emotion, they are based upon math.

With that, Madam Chairman, I will yield back.

Ms. TENNEY. The gentleman yields. Ms. Sewell from Alabama is now recognized for five minutes.

Ms. SEWELL. Thank you, Madam Chair. I want to echo some of the sentiments made earlier by many of my Democratic colleagues highlighting the successful legislation that has emerged from this committee in both the 116th and the 117th Congress regarding retirement security, as well as retirement savings.

These bipartisan achievements in our retirement system have, for the first time in a generation since their enactment, begun to elevate millions of Americans to financial security in their later years. The Butch Lewis Act is one very key example of how the work of the Ways and Means Committee have ushered in a new era in how American families save for their retirement.

Not very long ago just over 10,000 workers in Alabama, including teamsters, steelworkers, and mine workers in my district, were facing the serious threat of losing the hard-earned benefits that they fought for throughout their careers, many of these workers including those who spent decades working in coal mines, risking their life to provide for themselves and their families. Many have sacrificed wage increases throughout their careers to pay into their pension, as well as their retirement savings. Had we not enacted the passage of the Butch Lewis Act, an estimated 1.5 million American workers, retirees, and their families would have suffered as a result.

Legislation like the Butch Lewis Act, SECURE Act, and SECURE Act 2.0 gave Congress the opportunity to protect American workers' retirement savings and guarantee pension benefits into the future, preserving the financial security for millions of Americans.

There is still so much more work to be done. Mr. Rees, you spoke about how retirement savings for many Americans are out of reach for workers. What barriers exist to workers saving for retirement like low wages and lack of eligibility? Can you talk about the barriers to retirement savings?

Mr. REES. Yes, ma'am. First and foremost, low wages make it impossible for working people to save for retirement when they are struggling to pay today's bills.

Secondly, half of all working Americans do not participate in an employer-sponsored retirement plan. Half. We cannot let employers off the hook for their responsibility to help their employees save for retirement.

Ms. SEWELL. Thank you. You know, the gap that exists in retirement savings is astounding when you look at minority workers. Black and Hispanic workers remain behind their White peers when it comes to plan participation and planned retirement savings. The median retirement savings of White American workers was $1,000 in 2022. Median retirement savings for Black families was 39,000, and for Hispanic families, 55,000.

Moreover, the racial wealth gap expands even in retirement savings. Research has shown that the typical White household has 5 times more non-Social Security retirement wealth in their household than the typical Hispanic household, which has $35,000, and 7 times more than the typical Black household, which has $24,300 as their median retirement savings.

Mr. Rees, when we discuss retirement savings, is ESG the top priority for the AFL–CIO workers? I bet access, access to retirement savings and eligibility are far more important to your workers. Can you discuss what workers, especially minority workers, are most important when it comes to access and incentives and incentivizing retirement savings?

Mr. REES. Yes, ma'am. All working people—White, Brown, Black—deserve a secure retirement. The union difference in ensuring that working people can save for retirement and negotiate with their employers to have retirement plans disproportionately has benefitted workers of color who are union members. We are proud of that fact, and we will continue to fight for all working people, including the most disadvantaged workers in our society, to ensure that they, too, have access to a secure retirement.

Ms. SEWELL. Thank you, Madam Chair. I yield back the rest of my time.

Chairman SMITH [presiding]. Mr. Kustoff is recognized.

Mr. KUSTOFF. Thank you, Mr. Chairman. Thank you for convening today's hearing, and thank you to the witnesses for appearing today.

If I could, Mr. Bolay, with you, before I started serving in Congress, before my election in 2016, I had the opportunity to serve on a community bank board, which—an experience that I really enjoyed. And I saw when I was on the board the enactment of Dodd-Frank, which—it had tremendous over-reach on our bank, on the customers. In my opinion, it ultimately led to higher cost for those customers and decreased access to certain banking services.

If I could, in your opening statement, your opening statement you gave and your written statement, you talked about the ESG mandates essentially being—I think you characterized as a one-size-fits-all regulation, the government's efforts to steer ESG factors and how that affects the bank.

Can you talk about specifically, though, how those ESG mandates affect your bank customers?

Mr. BOLAY. Any—thank you for that question, Congressman.

Any direction to mandate to say that we have to loan to a certain customer because of their ESG policy or not, their ESG policy, is not something we would welcome. Our board sets our policies on who we are going to—what type of lending we are going to do.

Again, Main Street has always been known for staying in your lane. And, if our bank doesn't want to loan to oil and gas industry because we don't have the expertise, that is the way—that should be our policy and our choice.

In our bank at home, we are particularly heavy in ag lending, as I mentioned in my opening statement, because we feel we have an expertise in that area. There are some banks that don't have the expertise. And so again, they stay in their lane. And any direction from regulators or any type of mandate would help—would be detrimental to our bank.

Mr. KUSTOFF. Thank you. You also talk about your—the area that you—your bank serves. My congressional district, the 8th congressional district of Tennessee, sounds somewhat like your district, where ag plays a big part in my district in west Tennessee, certainly in your area.

You talked about your family-owned farm. Can you talk about the challenges that ESG mandates presents to family-owned farms like yours, to the ranchers and farmers?

Mr. BOLAY. You bet. Thank you for the question.

Again, any time you want to mandate a change or derive a practice, there are unintended consequences. And those—especially in agriculture. If—an example, to come say that we had to do all no-till for all across America, that that is unsustainable. It doesn't work in all areas. And especially in our area, there are certain farms, ranches, soil types that can handle no-till and across the country that wouldn't—it wouldn't work, and especially in—I am not going to talk too much about your district, but I don't know that no-till would work in your district. It depends on your climate and those things.

So again, any mandate would be detrimental to our production agriculture.

Mr. KUSTOFF. Can you talk about the labor issues and the—maybe the labor complexities as it relates to ESG mandates on your family farm or family farms in your area?

Mr. BOLAY. Our area is rural, and we want to hire anyone who can do the job. So it is tough to get quality labor like most areas of production agriculture, finding that. We want to hire the best person for the job.

Mr. KUSTOFF. Would these mandates raise the labor cost?

Mr. BOLAY. Most definitely. Any time you want to mandate something, it may not be probable for us to fit that mandate. So again, having the option and the flexibility is what we would like to see in the production ag sector.

Mr. KUSTOFF. Thank you, Mr. Bolay.

Mr. Isaac, thank you for appearing today, as well. I read your article that was posted on the Fox News website from earlier this year, I think February of this year. The column or the headline of the article was, "The Real Chinese Spies are Attacking America from Within." Can I ask you to talk about that?

And maybe specifically, is China using the ESG movement and American savings to advance their own geopolitical interests?

Mr. ISAAC. They are doing it to advance their own geopolitical interests. And what they are doing is they have built up and funded this network of financial institutions like the Climate Action

100+, which is part of another one of these organizations that has, you know, a vast majority of the assets under management under their umbrella, this organization meant to decarbonize the planet, which I showed and shared the numbers earlier.

The benefit—there is no benefit, but there are extreme costs to do that, and I say that having—drinking a carbonated beverage that contains more CO_2 than what is in the atmosphere, and I assure you I am not going to spontaneously combust.

But they are pushing this ESG agenda within these financial asset managers. And you look at the deep banking that has occurred with these companies. Coal was really the first thing. We are no longer going to make capital available to companies that are producing or earning their revenue from coal. And what has happened? Well, coal has decreased significantly in the United States to the detriment of our electric reliability.

But you look globally. Last year wasn't a -0.2 percent decrease like these ESG funds. It was a nine percent increase in global consumption of coal. And guess where it is getting produced? In a place that doesn't care about human rights or the environment: China. It is not getting produced here in the United States that produces it and utilizes it more responsibly than anywhere else on the planet. And I say utilize it, and I say, of all the technology the Chinese steal from us, it would be nice if they would utilize our pollution control technology, but they don't, and we do here in this country.

We produce that electricity, again, more responsibly than anywhere else. I wish the rest of the world would at least meet air quality standards that improved the air quality, rather than focusing on decarbonization, which is dangerous, deadly, and dumb, and doesn't do anything to mitigate a changing climate.

Mr. KUSTOFF. Thank you, Mr. Isaac.

I yield back.

Chairman SMITH. Ms. DelBene.

Ms. DELBENE. Thank you, Mr. Chairman. Thank you to our witnesses for being here today.

I find it frustrating that Republicans will stop at nothing to play politics, and today is the politicization of pension plans. This hearing is an attempt to distract the American people from a looming shutdown and the constant chaos of the Republican majority.

Now, many of us here work with our colleagues across the aisle on issues that are actually impacting Americans like increasing affordable housing production, ensuring families had access to safe baby formula during the national shortage, and helping seniors obtain medical care without unnecessary delays due to prior authorization. Unfortunately, that is not what we are doing here today. The title of this hearing shows that Republicans aren't serious about crafting thoughtful retirement policy, protecting seniors, or helping low and moderate-income people save for retirement.

Earlier this year, I introduced the Freedom to Invest in a Sustainable Future Act, which would codify the Biden Labor Department's rule regarding ESG investments. Mr. Rees, does the Biden Labor Department's rule require plan fiduciaries to invest retirement plan assets in ESG investments?

Mr. REES. No, ma'am.

Ms. DELBENE. Thank you. Also, isn't it true that under the Biden rule all plan fiduciaries must always act in the best financial interests of participants and beneficiaries?

Mr. REES. Yes, ma'am.

Ms. DELBENE. And specifically, isn't it true that the Biden rule provides that, in selecting plan investments, first and foremost, plan fiduciaries must consider risk and return factors and not subordinate the interests of participants and beneficiaries to support secondary goals?

Mr. REES. Yes, ma'am.

Ms. DELBENE. So, Mr. Rees, can you talk about what you see as political interference of the management of retirement plan assets? Or you talked about that, and I wondered if you could expand on that.

Mr. REES. Yes, ma'am. I want to address an important issue that retirement plans consider ESG factors both as an investment risk in selecting particular investments, but they also consider it when voting proxies.

Our free enterprise system depends on shareowners of companies deciding how businesses will address ESG risks, and that is the beauty of a free market system, that investors can decide their views on ESG as the owners of the company. And I trust shareholders to make those investment decisions.

But the Republican bills that have been introduced would place limits on the ability to vote in the best interest of plan participants. Instead, encourage retirement plans to always vote with corporate CEOs. CEOs are not always right. The CEOs—CEO of Enron was not right. The CEO of Bear Stearns and Lehman Brothers were not right.

And that is why we need to have shareholders have the ability to vote in the best interest of their pocketbooks, and retirement plans must be able to invest in the best interest of their plan participants that they owe fiduciary duty of loyalty. These bills would encourage retirement plans to violate their fiduciary duties, to vote in the interest of plan participants by always voting in the interest of corporate CEOs.

Ms. DELBENE. Thank you.

I yield back, Mr. Chairman.

Chairman SMITH. Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chairman.

The savings of everyday Americans are now a vehicle for radical environmentalists to exercise their political goals in the private financial sector because they can't achieve their autocratic tendencies through the means of government power. And the Biden Administration is supportive of these efforts, implementing rules to allow woke investors to control American savings and vetoing congressional action that tried to stop it.

The law is clear: tax-advantaged retirement plans in both state government and the private sector must be managed for the exclusive benefit of beneficiaries. This means that retirement plan managers may not pursue non-financial goals in their investments. But based on analysis done by the staff of this committee of 15 of the largest global ESG funds totaling over 120 billion in assets, ESG-labeled investments had a net loss over the past year, 18 percentage points worse than the S&P 500, and 25 percentage points worse than the NASDAQ.

Investment managers cannot prioritize politically partisan views over performing their legal obligations to provide security to American seniors and savers. Even though Joe Biden vetoed congressional action, we must continue to advance legislation in this committee and in the House of Representatives to curb this extremism that undermines the institutions of government and the financial security of everyday Americans.

Florida did it this past legislative session. I would like to add— I would like to ask unanimous consent, Mr. Chairman, to add a deeper look at Florida's anti-ESG legislation to the record, a Forbes article.

Chairman SMITH. Without objection, so ordered.

[The information follows:]

FORBES > MONEY

A Deeper Look At Florida's Anti-ESG Legislation: What Is ESG?

Jon McGowan Contributor

I am an attorney who writes about ESG policy, laws, and regulations.

Follow

0

Mar 28, 2023, 06:22pm EDT

Click to save this article.
You'll be asked to sign into your Forbes account.

FILE - Florida Gov. Ron DeSantis answers questions from the media in the Florida Cabinet following ... [+]

Florida's anti-ESG legislation, championed by Governor Ron DeSantis, is positioned to be the model for anti-ESG legislation in the United States. 20 Republican Governors have already signed on to adopt similar policies. The legislation itself is massive and sweeping, touching on multiple areas of law and policy. This is the first in a series of articles that will deep dive into Florida's proposed legislation and look into its potential impacts in the larger ESG debate. However, before looking at the language of the legislation, we must start at the beginning. What is ESG?

ESG stands for environmental, social, and governance. It has gone by other names over the years including impact investing, social impact investing, and sustainable investing. At its core, it is an investment strategy. A way to use your money to impact change. We often see this in political movements. Conservatives boycotting Disney because of "woke" policies, or going to a business to support their Christian values. Liberals boycotting businesses over Black Lives Matter stances, or supporting environmentally friendly companies. Companies know that, and they include it in their marketing strategy.

In theory, ESG just took that to the next step and applied it to your retirement funds, giving you the option to choose how your money is invested. Fund managers already present their clients with multiple options, allowing the investor to choose their level of risk. ESG adds another option, where the investor can choose a lower return, but feel like their money is doing something good. Investing in a green company may not make you as much money, but you'll feel like you're doing your part to help the environment. If that is your choice, you should be allowed to make it. However, ESG took on a life of its own.

If I told you that the United Nations developed a plan to manipulate financial investments to force businesses to enact environmental and social policies that align with their goals, announced by Al Gore, you would probably start pushing me into the conspiracy theory category. Yet, it happened. It didn't happen in secret. There are no leaked documents or conspirators. It happened in public, through public meetings, with clearly stated goals and outcomes, and they held a press conference to announce it. We just didn't know what they were talking about.

That push drove ESG, primarily in the European Union. This rapid growth was problematic for those tasked with making financial decisions. The first real issue for ESG was the lack of clarity. Sure, "e" stands for environmental, "s" stands for social, and "g" stands for governance. "C" is for cookie, and while that is good enough for the Cookie Monster, that is not good enough in the world of financial investments. Terms need clear definitions, measurements, and projected outcomes.

When most people discuss ESG, they gravitate towards the environmental piece. It appears to be fairly self-explanatory; a company that is environmentally friendly. However, environmentally friendly is a vague term. It could be a reduction in waste, adding solar panels, low emission vehicles, or any number of factors, all of which are self-reported by the company. As no reporting standards are currently in existence, companies can make their claims based on their own internal calculations, and fund managers can make their choice to invest based on what they choose to prioritize. This has led to what is known as greenwashing, or when a company exaggerates its environmental policies in order to appear more environmentally friendly than they really are.

Do not overlook the social and governance components, as that is where the real conflict arises. In the United Kingdom, social includes investment in affordable housing. In the European Union, it looks at factors like the use of slave labor in the supply chain. In the United States, it includes diversity and inclusion. Those factors, and how they are weighed, vary wildly from jurisdiction to jurisdiction and fund manager to fund manager. ESG is not just about the environment.

There are international efforts to create reporting standards, but they will not be released until later this year and no front-runner has been selected. That alone is problematic, to say the least.

To this point, I've presented ESG as if it is your choice, but ESG has taken a turn from elective to mandatory. A select group of fund managers followed the UN's lead and started including ESG factors in all their funds, under the premise that ESG is good for the long-term growth of a company. This approach has wide ranging impacts. It effects long-term growth calculations for publicly held companies. It impacts credit ratings for government bonds. Banks are calculating the risk of business loans and accounts based on ESG. What was an abstract concept a few years ago, is now directly driving sectors of the business and financial markets.

In response, business leaders and Republican elected officials began pushing pack. The Trump administration introduced a Department of Labor rule limiting ESG that was eventually overturned under the Biden administration. States then started taking action. Texas struck first by adjusting how they invested state pensions. Florida followed soon thereafter by doing the same, then took it a step further introducing their anti-ESG legislation.

The legislation addresses five key areas: investment of state money, investment of pension funds, issuing bonds, banks, and government contracts. Those areas are about states controlling what they can control. Over the next few articles, each of those areas will be looked at in depth. What is happening in Florida could be the future of the anti-ESG movement in the United States.

Follow me on Twitter or LinkedIn. Check out my website or some of my other work here.

Jon McGowan Follow

I am an attorney and the founder of The McGowan Law Firm in Jacksonville, Florida, where I practice in business law, administrative law, and legal... **Read More**

Editorial Standards Print Reprints & Permissions

Join Our Conversation

Commenting on this article has ended

Log in

No one seems to have shared their thoughts on this topic yet

Leave a comment so your voice will be heard first.

Mr. STEUBE. I am just going to read one paragraph out of this. I encourage people to read it. It is a good discussion about what Florida did. But this is just one paragraph: "If I told you that the United Nations developed a plan to manipulate financial investments to force businesses to enact environmental and social policies that align with their goals announced by Al Gore, you would probably start pushing me into the conspiracy theory category. Yet it happened. It didn't happen in secret. There are no leaked documents or conspirators. It happened in public, through public meetings, with clearly-stated goals and outcomes, and they held a press conference to announce it. We just didn't know what they were talking about."

So I would like to add that to the record, and I will start with Mr. Oaks—and thank you all for being here today, I thought your responses have been excellent.

Mr. Oaks, in your testimony, you note that the goal of ESG is not better financial performance, but rather to force compliance to a one-world view. Why are the proponents of ESG using these means to force their agenda on the American people?

Mr. OAKS. Well, I think it is pretty clear that these—this agenda would not be accepted by the American people any other way. And so it has got to happen in the private sector, and that is, I think, one of the reasons why this is so dangerous. We are going around bodies like this to implement policy that affects all Americans. And this is dangerous to our constitutional form of government and our free market system.

Mr. STEUBE. You also state that ESG policies politicizes what should be purely financial decisions. Why is it so important that investment managers adhere to the exclusive benefit duty instead of these ESG considerations?

Mr. OAKS. Well, if you think about information—we talk about, you know, investors wanting information—information that is material to an investment decision is an already required disclosure. And so, when we are pushing companies to create reports or disclose information, it costs money and resources on those companies. Spending resources on something that has no benefit is, frankly, irresponsible at best, and certainly not in the shareholders' best interests.

Many ESG proposals are not related to disclosing information, but rather they want specific corporate action like racial audits or net zero transition strategies. And often times these disclosures give fodder to activists who then apply pressure to comply with the agenda and—should the—should this disclosure show a company is not behaving according to that given agenda.

So, the information is often taken out of context to drive a narrative and shame a company to change its ways. Is a company giving to the right causes? Do they have a net zero plan so that targets can ratchet down as needed? Do they have racial equity? Racial equity audits often drive the composition of the workforce independent of merit or competency. All of this information is used to drive compliance.

Mr. STEUBE. You also cite data showing a statistically significant negative relationship between ESG investing and investor returns. How does this tangibly affect American families?

Mr. OAKS. Well, clearly, this is not about making money for people. There is another agenda at work. And that is why this is so problematic for all people. And in fact, if you look at gasoline prices today and the chronic under-investment in oil and gas that is leading to higher gas prices, it is really the low-income households that bear the burden of that because they spend three times more of their income on energy costs.

And so this has a very detrimental effect on those who can least afford it.

Mr. STEUBE. I agree with you 100 percent. Thank you for being here.

I yield back.

Chairman SMITH. Ms. Chu.

Ms. CHU. We are here today because the Republican majority would rather wage a pointless war, a culture war battle, than discuss policies that will actually protect Americans' retirement security.

Let us be clear. The ability for plans to consider environmental, social, and governance, or ESG, factors in employee benefit plan investment decisions is not an actual threat to workers or retirees. This is a delusion made up in the minds of Republicans.

The fact is, under the Biden Administration's rule, retirement plans are simply permitted, but not required to consider ESG factors when making investment decisions.

Furthermore, the retirement plan managers impacted by this rule are fiduciaries, meaning that they are required by law to act in the best financial interests of plan beneficiaries, regardless of whether they are considering ESG factors at all.

In reality, it is the Republicans' anti-ESG efforts that are presenting a real threat to Americans' retirement security. For example, several Republican-led states are seeking to blacklist investment companies that consider ESG factors or even offer ESG fund options, banning their state pension systems from contracting with these employees and these companies.

Firefighters, teachers, and other public service employees in these states have all raised concerns that this will harm their savings by limiting the pool of investment options available to pension funds. And, as Mr. Rees testified, these types of state-level bans are estimated to cost their public retirement systems, and therefore taxpayers, billions of dollars.

This committee needs to turn its focus to helping and not hamstringing our nation's workers and their ability to achieve retirement income security.

Now let me turn to a subject and talk about a subject that actually does help Americans in retirement, and that is SECURE 2.0. Mr. Rees, last Congress this committee worked together on a bipartisan basis to pass the SECURE 2.0 Act, building on the success of the SECURE Act and helping more Americans save for a stable retirement. It is unfortunate that, instead of thinking about how we can work together to benefit retirees and workers, our committee's time is spent on an issue outside of our jurisdiction and purely for political purposes.

So, I would like to instead talk about SECURE 2.0, and specifically about a provision that I was proud to author which strengthened the Saver's Credit into a more generous Saver's Match. The Saver's Match is now a fully refundable tax credit valued at 50 percent of retirement contributions for working-class Americans. It directly helps the workers who don't earn enough to save for retirement, while still making ends meet and putting food on the table for their families.

Can you talk about how the Saver's Match helps low-income workers who might be left behind by the more traditional tax advantages for retirement savings?

What are some of the ways that this committee can further help this group of workers save for retirement?

Mr. REES. Thank you for the question.

Yes, the Saver's Match is critical to assist low-wage workers who have not otherwise benefitted from the tax code's provisions to save for retirement, simply because their incomes are too low to benefit. And the Saver's Match is a way to help better target those tax incentives to help low-wage workers save for retirement.

We need to make sure that those same workers have the opportunity to save, and that is why things like auto enrollment that help plan participation are important—that was also in SECURE 2.0 Act. And we need to make sure that employers are contributing their fair share. And so, I would urge the committee to look at also requiring automatic enrollment of employers who do not offer a defined benefit plan to also provide a match to their employees saving for retirement.

Ms. CHU. And Mr. Rees, you said that Social Security is the only retirement benefit low-wage workers can count on. How will seniors be hurt if Congress cuts benefits?

Mr. REES. Their retirement security will be decimated. Forty percent of seniors rely solely on Social Security for their income. The average benefit is $22,000. Half of Social Security recipients' benefits are less than that. That is not a dignified retirement. Our country can and must do better to protect the retirement security of all working people, including low-wage workers in our economy.

Ms. CHU. Thank you, I yield back.

Chairman SMITH. Thank you.

Ms. Tenney.

Ms. TENNEY. Thank you, Mr. Chairman, and thank you to the witnesses for being here today and discussing environmental, social, governance. I know a lot of people don't know what ESG means in our listening audience, but we need to emphasize that, and actually talking about how it is undermining our long-term savings plans for many Americans.

And I am also grateful for the Chairman for doing this, because ESG is about politics. That is the—that is why we are standing up for the American people against the politics that is being forced on us by the other side, and this is an urgent issue, and one in which the House Republicans have rightfully sounded the alarm, led by our Chairman.

ESG—I want to keep saying it—environmental, social, governance—is not about financial responsibility. It is a dangerous tool that is being used by the far left for years to force their own radical ideology on all Americans. It often comes at the expense of an organization's core mission in order to bring about unpopular political change.

To nobody's surprise, this harmful tool has been also championed by the Biden Administration. In 2022, the Biden Administration issued new rules that retirement plan managers to—have to prioritize environmental, social, governance factors over maximizing financial returns, their core mission under the statute originally intended. This rule negatively impacts the retirement accounts of over 150 million Americans and puts their savings at risk. It pushes for ESG investing to become the standard, at the expense—or of providing a secure future for Americans.

Even some Democrats recognize that this investment strategy is irresponsible. Senator Manchin and Senator Tester both spoke out against the Biden Administration's rule, and correctly point out that this rule will jeopardize the retirement security of all Americans. But the Biden Administration clearly doesn't care and is willing to prioritize advancing far-left policies over Americans' retirement security.

Unfortunately, this ESG trend—the environmental, social, governance trend—is running rampant at the state level, too. In my home state of New York, officials in New York City have been pushing to exclude certain companies from pension funds, despite the negative impact on individual New Yorkers. In response, a New York City subway operator, a public school teacher, a school secretary, and an occupational therapist are suing New York City pension managers for an unlawful decision to elevate unrelated policy goals over the financial health of the plans.

The suit goes on to say that the actions of the New York City pension managers represented the culmination of a three-year pressure campaign mounted by public officials and other activists, and that in divesting, "the trustees chose to withdraw indiscriminately all of their investments in any publicly-traded fossil fuel security, a practice which has no basis in sound investment strategy," and that is a quote.

The numbers around the country back this story up, as well. During the past year, ESG investments have significantly underperformed the market as a whole. Aggregate returns on the top 20 largest ESG-labeled funds were close to zero, while the S&P 500, the NASDAQ went up 19 percent and 25 percent.

This is—to Ms. Chu talking about where they are going, people should be investing based on finances, not on the under-performance of ESG.

And I just want to say thank you to all the witnesses for what they have done and what they have said.

And I can just tell you when it comes to unions—and I just wanted to mention this to Mr. Rees—I used to represent Remington Arms, an iconic brand, one of the oldest manufacturers in our nation. They once had over 1,300 employees in my former district. They are now down to 200—and those are all good union jobs—because of ESG and negative policies toward manufacturers of firearms, which are used by our military, for shooting sports, and for personal protection. And in that realm that has caused problems.

But I want to ask just Mr. Oaks quickly—because I know you have been combating this, you have been spending a lot of time on this—what do we do? How do we change this strategy?

And I come from a state where it is one-party rule, and mostly dominated by negative media when it comes to this. We have no, you know, hydraulic fracturing. Among the best shale reserves in the nation, yet we can't do that. How do we go about countering this and protect retirement security when these types of rules have been put in place?

Mr. OAKS. That is a great question.

I think the first thing is the continuation of lawsuits to protect the fiduciary standard in this country. That is incredibly important.

The second thing is that people who are involved in the marketplace, each of us as consumers, need to have our voices heard when we see companies politicizing their business like we saw with Bud Light and Target, that we don't patronize those businesses. Businesses are supposed to serve us as individuals, not some higher authority that is telling them what to do.

And the third thing that I tell people is that we need to talk to our financial advisors and plan representatives and find out if our investment dollars are being used politically. And, if you think about ESG, it is really a thumb on the scale. The anti-ESG—like, what I am trying to do is get the thumb off of the scale so that capital can go—be allocated efficiently, like it is in a free market system.

Ms. TENNEY. Thank you so much.

I guess my time is expired. I yield back.

Chairman SMITH. Ms. Moore is recognized.

Ms. MOORE of Wisconsin. I want to thank you, Mr. Chairman and Ranking Member, for this hearing. I want to thank all of the witnesses for being here.

I just want to say before I start that just the title of this hearing, you know, woke attacking, being woke, well, I have sat here for two-and-a-half hours, almost three hours, wide awake, and I am not going to be asleep on important issues like retirement security.

I wish that we were using this time more productively, considering that we have been up midnight, 1:00 in the morning voting on crazy amendments to prevent a shutdown. And if, in fact, we are going to sit here for three-and-a-half hours, that we would really focus on those retirement policies that would really make a difference to people. For example, I think we did a great job with SECURE and SECURE 2.0, and the Butch Lewis Act. And of course, SECURE and SECURE 2.0 were bipartisan.

I think we have heard a lot of discussion here today about things that we really could do. We have mentioned Social Security, for example, and I heard people sort of, you know, decrying the situation with illegal immigrants.

But I guess I would ask you, Mr. Rees, do you think that immigration reform would increase the numbers of people who were not in the shadows, and would buoy our Social Security account as people paid into it?

Do you agree with, like, the Congressional Budget Office, that immigration, you know, reform would actually help our financial position and our Social Security fund?

Mr. REES. Yes, ma'am.

Ms. MOORE of Wisconsin. Okay. Thank you for that. You know, I wish, for example, I have heard a lot of people talk about how we need to maximize the returns to investors. Would it help our economy if we were to maximize the ability of people to save, like Ms. Chu's comments about the Saver's Match——

Mr. REES. Yes——

Ms. MOORE of Wisconsin [continuing]. Mr. Rees.

Mr. REES. Yes, ma'am.

Ms. MOORE of Wisconsin. Okay, and increasing the minimum wage, would it in fact—I am thinking now of the—our tribal communities, and I am proposing legislation, and I hope, Mr. Chairman, that the Republicans will join in bringing more equity—and I will get back to that—to this group of folks.

You know, Native Americans are tribal governments hampered to maintain government status under the current pension laws. The Indian tribal government must prove that it is performing essential government functions that are not commercial in nature. These limitations, would you agree, Mr. Rees, really force tribes to split their pension plans into smaller, more costly plans to preserve their government status and, in fact, are not using monies efficiently?

Mr. REES. Well, I am not an expert on tribal law, ma'am, but I would——

Ms. MOORE of Wisconsin. No, I am just talking about our current law. Okay, well——

Mr. REES. Yes, ma'am.

Ms. MOORE of Wisconsin. Thank you.

Well, I am going to introduce it, Mr. Chairman, this is a better discussion and a better use of our time.

Mr. OAKS. I just want to push back a little bit on your notion somehow about, you know, DEI. I heard—you have talked a little bit about it. Equity is not—when we talk—those of us who are woke, when we talk about equity we are not talking about equal outcomes, making sure that people have absolute equal outcomes. I am just wondering if you think that the lack of diversity, the lack of inclusion, the lack of equity in any way has contributed to low-wage workers, low-income workers, people of color not being able to participate fully in our economy.

Mr. OAKS. So again, I think it comes down to the definitions. How are those terms defined? Because some people will use those terms, and they have different meanings to different people.

In Chinese there is a term called "ji tong ya jiang." It is a chicken and a duck talking. And so, when we don't have the same definitions, that tends to be what happens.

Ms. MOORE of Wisconsin. Okay. Well, okay. We are not going to do the Chinese today. [Laughter.]

Ms. MOORE of Wisconsin. I just want to say before I yield back that I do—you know, my experience in this world is that you get better outcomes when you have diversity, equity, and inclusion. We have seen that not just in our markets, but, Mr. Rees, you might want to comment on how DEI has improved our economy, our economic and financial standing worldwide.

Mr. REES. Diversity is a source of strength and a source of investment returns. Accessing all available pools of talent is incredibly important to have a productive workforce. And having diversity in the boardroom helps prevent groupthink by having the same perspective being overly represented. And so, we strongly support diversity, equity, and inclusion in the boardroom and in the workforce.

Ms. MOORE of Wisconsin. Thank you so much, and thank you, Mr. Chairman, for your indulgence. I yield back.

Chairman SMITH. Thank you.

Mrs. Fischbach.

Mrs. FISCHBACH. Thank you, Mr. Chairman, and thank you, I really do appreciate having this important hearing to talk about America's retirement plans, but I will say it is baffling to me that this is even necessary, because this is not about politics. This is about making sure that people have solid retirement funds, and that is what we are talking about.

Retirement plans exist for a single purpose. I think we all know they are to provide financial assurance for working-class people when they are too old to work, when they retire. And Congress recognized the importance of investing in one's retirement, which is why it created the tax-advantaged plan to help people.

Mr. Rees, would you agree that the sole focus of retirement plans would be to provide the maximum financial return to the beneficiary?

Mr. REES. Yes, ma'am, I support the exclusive purpose rule for retirement plans. That is what we bargained for through collective bargaining with our employers.

Mrs. FISCHBACH. So you agree that their purpose is to make sure that they are making solid financial investments for the individuals when they retire?

Mr. REES. Yes, ma'am. That is in ERISA, which was passed the year I was born, 1974.

Mrs. FISCHBACH. And Mr. Rees, with all due respect, I asked if that is what you think it is. I understand the law. I understand the statutes.

And I think Mr. Steube mentioned it, but just a reminder, the Ways and Means Committee staff did conduct an analysis of the 15 largest global ESG funds and found that it had under-performed the S&P 500 by 18 percent and the NASDAQ by 25 percent. So, in cases where ESG investments do conflict with financial success, would you agree that it is irresponsible to prioritize ESG factors over financial success?

Mr. REES. Looking at a 3-year window for a retirement plan that is invested over a worker's life expectancies, 30, 40, 50 years is not appropriate to make investment decisions.

I will refer you to my written testimony, where I cite numerous academic studies showing that consideration of ESG factors are value creating, over 2,000 studies on this subject. Ninety percent of them found that there was a non-negative relationship between ESG and investment returns, the exact opposite of your contention, ma'am.

Mrs. FISCHBACH. Okay, but—so where ESG investments do conflict with financial success, you would then agree that it would be irresponsible to prioritize ESG factors.

Mr. REES. It would be irresponsible for us to put our heads in the sand and ignore ESG risks to our portfolios, ma'am.

Mrs. FISCHBACH. So you mentioned your written testimony, and that none of the multi-employer plans that receive tens of billions of dollars in taxpayer bailouts required special financial assistance because of ESG investing. You mentioned that. If, in the future, multi-employer plans are put in jeopardy due to ESG investing, do you think that they should qualify for taxpayer-subsidized bailouts?

Mr. REES. Ma'am, all I know is that Minnesota's 7th district, the district I believe you represent——

Mrs. FISCHBACH. Yes, sir.

Mr. REES [continuing]. They—that there were over 2,200 participants in the central states plan that receive $17 dollars in annual pension benefits, and the cost of the Butch Lewis Act and that plan needing financial assistance did not have anything to do with ESG.

Mrs. FISCHBACH. Well, and, Mr. Rees, while I appreciate all that, it is obvious you are not going to answer my questions, that you will not answer them directly.

And it is just disappointing that we are not here to make sure that those retirement funds are all about returns for those folks in their golden years——

Mr. REES. Ma'am, did you vote in favor of the Butch Lewis Act?

Mrs. FISCHBACH. Excuse me, it is my time. I am sorry. That is not generally what we do here is interrupt.

But I will just say I just—I am disappointed that not—all of us are not focused on making sure that retirement funds that people are working for and investing in are focused solely on that financial return, and that we should—all of us should be looking at that. And if ESG is interrupting that financial gain for people, we should be—we should not be focused on it.

And I appreciate the opportunity to have a few minutes and, Mr. Chair, I yield back.

Chairman SMITH. Mr. Moore is recognized.

Mr. Moore of Utah. Thank you, Mr. Chairman. I appreciate you holding this hearing today. It is very important. It is something that is very, very much of interest to my home state on these issues.

And I am pleased to have the Utah State Treasurer, Mr. Marlo Oaks, here testifying to—before our committee today.

More importantly, your wife, Elaine, is also in attendance, which always helps your message land better. And we appreciate you making the trip.

So I would like to submit for the record an April 2022 letter signed by Utah's entire Federal delegation and its statewide elected leaders opposing the use of so-called ESG credit indicators that could adversely affect Utah's credit rating based on factors other than Utah's ability to repay debt.

Chairman SMITH. So ordered——

Mr. MOORE of Utah. Thank you.

Chairman SMITH. No objections. So ordered, Mr. Moore.

[The information follows:]

State of Utah
Spencer J. Cox, Governor
Deidre M. Henderson, Lt. Governor
Sean D. Reyes, Attorney General
Marlo M. Oaks, Treasurer
John Dougall, Auditor

Utah Legislature
J. Stuart Adams, Senate President
Brad R. Wilson, Speaker of the House

State of Utah
Salt Lake City, Utah
84114-2315

United States Senate
Michael S. Lee, Senator
Mitt Romney, Senator

United States House of Representatives
Blake D. Moore, Utah First District
Chris Stewart, Utah Second District
John R. Curtis, Utah Third District
Burgess Owens, Utah Fourth District

April 21, 2022

Douglas L. Peterson
President and CEO
S&P Global Ratings
55 Water Street
New York, NY 10041

Martina L. Cheung
President
S&P Global Ratings
55 Water Street
New York, NY 10041

Re: ESG Credit Indicators - State of Utah

Dear Mr. Peterson and Ms. Cheung,

On behalf of the State of Utah, we object to S&P Global Ratings' ("S&P" or "you") publishing of ESG credit indicators as part of its credit ratings for states and state subdivisions. To call them "credit indicators" attempts to legitimize a dubious and unproven exercise in developing a political ratings system that is based on indeterminate factors. Traditional public finance entity credit ratings already incorporate financially material factors, including ESG factors.[1] Consequently, we were alarmed to learn of S&P's plans to publish ESG credit indicators to "augment" its credit ratings.[2]

We categorically object to any ESG ratings, ESG credit indicators, or any other ESG scoring system that calls out ESG factors separate from, in addition to, or apart from traditional credit ratings. We object further to the E-3, S-2, and G-2 credit indicators that S&P assigned to

[1] S&P Global Ratings, Through The ESG Lens 3.0: The Intersection Of ESG Credit Factors And U.S. Public Finance Credit Factors (Mar. 2, 2022), https://www.spglobal.com/ratings/en/research/articles/220302-through-the-esg-lens-3-0-the-intersection-of-esg-credit-factors-and-u-s-public-finance-credit-factors-12287505.
[2] S&P Global Ratings, S&P Global Ratings To Enhance Transparency In U.S. Public Finance Credit Analysis With ESG Credit Indicators (Feb. 16, 2022), https://www.spglobal.com/ratings/en/research/articles/220216-s-p-global-ratings-to-enhance-transparency-in-u-s-public-finance-credit-analysis-with-esg-credit-indicators-12279206.

Utah[3] and demand that S&P withdraw those credit indicators and cease to publish any ESG factors, ratings, indicators, or other scoring system related to or referencing Utah. Considering recent global events, the current economic situation in the U.S., and the unreliability and inherently political nature of ESG factors in investment decisions, we view this newfound focus on ESG as politicizing the ratings process. It is deeply counterproductive, misleading, potentially damaging to the entities being rated, and possibly illegal. Utah is very protective and proud of its credit rating. Indeed, we have proactively taken steps to improve our debt management, further strengthen our credit, avoid structural imbalance, and pass legislation recently creating a State Finance Review Commission.[4] This new entity will review and approve various borrowings, ensure proper disclosures are provided under SEC rules, and publish an annual debt affordability study.

S&P acknowledges that "having a social mission and strong ESG characteristics does not necessarily correlate with strong creditworthiness and vice versa."[5] S&P's ESG credit indicators politicize what should be a purely financial decision. This politicization has manifested itself in the capital markets where, for example, banks are pressured to cut off capital to the oil, gas, coal, and firearms industries. ESG is a political rating and should be characterized as such. This is clear when recognizing the two layers of indeterminacy that make ESG an exercise in servitude: 1) which "ESG factors" are chosen, and 2) the "correct" answer to any given factor. Whoever answers those questions has all the power in achieving a desired outcome.

These are not technocratic questions; they are normative questions. No financial firm should substitute its political judgments for objective financial analysis, especially on matters that are unrelated to the underlying businesses, assets, and cash flows it evaluates. This is especially true of a properly regulated independent entity like S&P that is charged with providing objective clarity and insight. The use of ESG-related quantitative metrics and analytical frameworks confounds the distinction between subjective normative judgments and objective financial assessments. It is therefore unconscionable for S&P to weigh in on indeterminate and normative questions. Moreover, the answers to the normative factors can and do change depending on circumstances. We believe this entire exercise in identifying, evaluating, and publishing ESG factors is highly intrusive and leads to manipulation, coercion, and misleading outcomes.

We are concerned that the normative assessment and disclosure of ESG factors will unfairly and adversely affect Utah's credit rating and the market for Utah's bonds, especially where the alleged indicators are not indicative of Utah's ability to repay debt. While it may be difficult to deliver "forward looking opinion[s] about the capacity and willingness of an entity to meet its financial commitments as they come due,"[6] integrating this analysis with the political

---

[3] S&P Global Ratings, ESG Credit Indicator Report Card: U.S. States And Territories (March 31, 2022), https://www.spglobal.com/ratings/en/research/articles/220331-esg-credit-indicator-report-card-u-s-states-and-territories-12322702.

[4] 2022 General Session H.B. 82, State Finance Review Commission, https://le.utah.gov/~2022/bills/static/HB0082 .html.

[5] S&P Global Ratings, Through The ESG Lens 3.0: The Intersection Of ESG Credit Factors And U.S. Public Finance Credit Factors (Mar. 2, 2022), at 2.

[6] S&P Global Ratings, Credit Ratings, https://www.spglobal.com/ratings/en/products-benefits/products/credit-ratings.

whims of the day is unacceptable. If they are not political, but are instead financially material, then they would be captured in the traditional credit analysis. ESG indicators are, therefore, not necessary. Certainly, disclosure requirements proposed by this administration lay the groundwork for greater securities litigation against corporations and governments whose public disclosures about ESG policies do not match actual action. On point, one recent article noted this growing trend of lawsuits based on ESG filings and determined 1,800 climate-related lawsuits have been filed worldwide with three quarters of those filings happening in the United States.[7]

S&P should have already learned the costly lesson that undue influence over its credit ratings can lead to disaster—both for the company and the nation. The failure of credit rating agencies, including S&P, to accurately assess mortgage-backed securities and related credit default swaps in the lead up to the financial crisis of 2007-2008 contributed to the proliferation of these products and the resulting catastrophic collapse of the financial system[8] and the global economy along with it. Indeed, S&P admitted in its $1.375 billion state Attorney General and Department of Justice settlement that it succumbed to conflicts of interest in rating these products by prioritizing business relationships with issuers over accuracy in its models and ratings.[9] Many Americans suffered because of S&P's failures. These failures should have resulted in S&P's greater commitment to sound financial practices rather than extraneous political impulsions.

It therefore troubles us to learn that S&P may be repeating the mistakes of its past by once again prioritizing peripheral concerns ahead of its core mission. This time, S&P appears to choose politicization over accuracy in its ratings. Even advocates of ESG accept that there is no agreed-upon standard for ESG reporting and that various ESG sub-components are inherently incommensurable.[10] How, for example, should environmental goals be prioritized over social ones, or governmental goals over environmental ones? This is to say nothing of what factors may populate the social realm of future ESG indicators. These may be legitimate questions for the people to answer in an open marketplace of ideas. They certainly are not appropriate for a credit rating agency, the purpose of which is to make impartial determinations about credit risk. This disturbing trend once again endangers S&P and those who rely on its ratings.

Nevertheless, S&P has pressed ahead and in the process generated some truly baffling results. For example, S&P gave Russian-controlled energy producers higher ESG ratings than

---

[7] Chike-Obi, Nneka and Marina Petroleka, ESG litigation risk: Climate lawsuits dominate, but scope is widening (February 21, 2022), https://www.miningreview.com/health-and-safety/esg-litigation-risk-climate-lawsuits-dominate-but-scope-is-widening/.

[8] *See* Lawrence J. White, A Brief History of Credit Rating Agencies: How Financial Regulation Entrenched this Industry's Role in the Subprime Mortgage Debacle of 2007-2008, Mercatus Policy Brief (Oct. 2009), https://www.mercatus.org/publications/monetary-policy/brief-history-credit-rating-agencies-how-financial-regulation.

[9] Press Release, Justice Department and State Partners Secure $1.375 Billion Settlement with S&P for Defrauding Investors in the Lead Up to the Financial Crisis, Dep't. of Justice (Feb. 3, 2015), https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-1375-billion-settlement-sp-defrauding-investors.

[10] *See, e.g.*, Robert S. Kaplan & Karthik Ramanna, How to Fix ESG Reporting, Harvard Business School Working Paper 22-005 (2021) at 2, https://www.hbs.edu/ris/Publication%20Files/22-005revised_ed6ac430-c3ca-4ba6-b0be-ca48c549aaf2.pdf ("[T]he absence of a common framework for the E, S and G elements produces contradictions even within a single ESG report. . . . The difficulty of reconciling across various ESG activities emanates from the challenges of objectively making the underlying moral judgments.").

similar entities in the U.S. Russian energy giants Gazprom[11] and Rosneft[12] outscored American energy companies ExxonMobil[13] and Chevron[14] on S&P's ESG scale. This despite the fact that Vladimir Putin's Russian government is the majority owner of Gazprom[15] and owns a 40% stake in Rosneft[16]—the same government that recently invaded neighboring Ukraine in an unprovoked and unjustifiable attack, in violation of international law. That attack appears to be degenerating into a total war on all Ukrainians, including noncombatant civilians, in violation of the Geneva Conventions, and has resulted in thousands of civilian casualties[17] and over 10 million displaced persons to date.[18] While S&P recently removed all Russian company scores from their website,[19] it is inconceivable how these energy giants, controlled by a corrupt and reckless regime[20]—and having been sanctioned for that regime's misadventures before[21]—managed to cobble together ESG scores up until a few weeks ago that exceeded those of law-abiding American companies critical to U.S. energy security. Following renewed aggressive sanctions by Western governments,[22] any investor who relied on S&P's ESG ratings will be left to wonder whether those ratings—the "social" component in particular—accurately captured the actual risk attributable to the Russian government's longstanding and documented disregard for human rights and international law. Indeed, S&P also gave the Chinese state-owned China Petroleum &

---

[11] S&P Global, Public Joint Stock Company Gazprom, https://www.spglobal.com/esg/scores/results?cid=4157223 (ESG score of 47) (last visited March 16, 2022).
[12] S&P Global, Public Joint Stock Company Rosneft, https://www.spglobal.com/esg/scores/results?cid=4157443 (ESG score of 47) (last visited March 16, 2022).
[13] S&P Global, Exxon Mobil Corporation, https://www.spglobal.com/esg/scores/results?cid=3007562 (ESG score of 36).
[14] S&P Global, Chevron Corporation, https://www.spglobal.com/esg/scores/results?cid=4004170 (ESG score of 39).
[15] Fitch Ratings, Fitch Affirms Gazprom at 'BBB'; Outlook Stable (Nov. 17, 2021), https://www.fitchratings.com/research/corporate-finance/fitch-affirms-gazprom-at-bbb-outlook-stable-17-11-2021.
[16] Mason Bissada, BP Drops Nearly 20% Stake in Russian-Owned Oil Firm After Invasion of Ukraine, Forbes (Feb. 27, 2022), https://www.forbes.com/sites/masonbissada/2022/02/27/bp-drops-nearly-20-stake-in-russian-owned-oil-firm-after-invasion-of-ukraine/?sh=424d5043ecb8.
[17] United Nations, Ukraine: Civilian Death Toll Demands Full Investigation and Accountability, Security Council Told (Mar. 17, 2022), https://news.un.org/en/story/2022/03/1114182.
[18] Alan Cullison, Isabel Coles, & Matthew Luxmoore, Russia's Assault on Ukraine Uproots 10 Million People, The Wall Street Journal (Mar. 20, 2022), https://www.wsj.com/articles/russias-halting-progress-in-attack-on-ukraine-puts-focus-on-resupply-efforts-11647775418.
[19] https://www.spglobal.com/esg/solutions/data-intelligence-esg-scores.
[20] Vindobona, Vienna International News, How Gazprom Helps the Kremlin to Manipulate Austria (March 8, 2022), https://www.vindobona.org/article/how-gazprom-helps-the-kremlin-to-manipulate-austria; The Conversation, How Vladimir Putin uses natural gas to exert Russian influence and punish his enemies (June 23, 2021), https://theconversation.com/how-vladimir-putin-uses-natural-gas-to-exert-russian-influence-and-punish-his-enemies-162413; and The Economist, How Gazprom helps the Kremlin put the squeeze on Europe (Feb. 26, 2022), https://www.economist.com/business/how-gazprom-helps-the-kremlin-put-the-squeeze-on-europe/21807841.
[21] Press Release, Announcement of Expanded Treasury Sanctions within the Russian Financial Services, Energy and Defense or Related Materiel Sectors, Dep't of Treasury (Sept. 12, 2014), https://www.treasury.gov/press-center/press-releases/Pages/jl2629.aspx; Baker & McKenzie, EU Updates Sanctions Against Russia and Crimea (Jan. 2015), https://www.bakermckenzie.com/-/media/files/insight/publications/2015/01/eu-updates-sanctions-against-russia-and-crimea/files/read-publication/fileattachment/al_germany_sanctionsrussiacrimea_jan15.pdf.
[22] Press Release, Fact Sheet, White House (Feb. 24, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/fact-sheet-joined-by-allies-and-partners-the-united-states-imposes-devastating-costs-on-russia/.

Chemical Corporation a higher ESG score[23] than ExxonMobil and Chevron, despite human rights violations by the Chinese.[24]

We also note that Russia's leading bank, Sberbank was sanctioned by both the U.S.[25] and the European Union[26] in response to Russia's annexation of Crimea in 2014, and was cut off from the U.S.-led financial system upon Russia's invasion of Ukraine this year.[27] Inexplicably, however, Sberbank's S&P ESG score[28] was higher than that of the largest American bank, J.P. Morgan.[29] One would have thought that a state-owned bank in an aggressor nation *that had already been sanctioned because of Russia's previous violations of national sovereignty* was a more significant risk than the largest bank in the United States. Clearly it should have been: since the start of this year, following the war and the sanctions that resulted, Sberbank stock has lost 99.9% of its value on the London Stock Exchange, and one of its European subsidiaries failed.[30] S&P's ESG ratings misled the public to the extent they suggested otherwise.

From an investment perspective, ESG is demonstrably unproven and therefore unreliable as an investment tool. Worse, we fear that just as conflicts of interest drove S&P's ratings disaster during the financial crisis, undue political influences may be skewing S&P's judgment once again. Gazprom, Rosneft, and Sberbank are not the only Russian companies that boast higher ESG ratings than their U.S. peers.[31] Especially in light of its admitted misconduct in the lead up to the financial crisis, S&P's opaque ESG activities raise serious questions about its impartiality and commitment to its lawful purpose.

As a nationally recognized statistical rating organization under federal law, S&P is "prohibited from having a conflict of interest relating to the issuance or maintenance of a credit rating."[32] More fundamentally, we are concerned that S&P's ESG activities may violate the law. To the extent S&P's ESG activities are driven by its membership in the Net Zero Financial

---

[23] S&P Global, China Petroleum & Chemical Corporation, https://www.spglobal.com/esg/scores/results?cid=5576887 (ESG score of 41).
[24] *See, e.g.*, Lindsay Maizland, China's Repression of Uyghurs in Xinjiang, Council on Foreign Relations (Mar. 1, 2021), https://www.cfr.org/backgrounder/chinas-repression-uyghurs-xinjiang, and Who are the Uyghurs and why is China being accused of genocide?, BBC News (June 21, 2021, https://www.bbc.com/news/world-asia-china-22278037.
[25] *See supra* note 15.
[26] *See supra* note 15.
[27] *See supra* note 16.
[28] S&P Global, Sberbank of Russia, https://www.spglobal.com/esg/scores/results?cid=4144827 (ESG score of 53) (last visited March 16, 2022).
[29] S&P Global, JPMorgan Chase & Co., https://www.spglobal.com/esg/scores/results?cid=100201 (ESG score of 40).
[30] Elliot Smith, Russia's Sberbank Collapses 95% on London Stock Exchange as It Exits Europe, CNBC (March 2, 2022), https://www.cnbc.com/2022/03/02/russias-sberbank-collapses-95percent-on-london-exchange-as-it-exits-europe.html.
[31] For example, Rostelecom's ESG score is higher than Verizon's; Magnit's is higher than Costco's, and Inter RAO (an electric utility) has a higher ESG score than NRG Energy. *See* S&P Global, Rostelecom PJSC, https://www.spglobal.com/esg/scores/results?cid=4308411 (ESG score of 40) (last visited March 16, 2022); S&P Global, Verizon Communications Inc., https://www.spglobal.com/esg/scores/results?cid=4057229 (ESG score of 37); S&P Global, Public Joint Stock Company Magnit, https://www.spglobal.com/esg/scores/results?cid=4912023 (ESG score of 33) (last visited March 16, 2022); S&P Global, Costco Wholesale Corporation, https://www.spglobal.com/esg/scores/results?cid=4126080 (ESG score of 20) (last visited March 16, 2022).
[32] 17 C.F.R. § 240.17g-5(a).

Service Providers Alliance[33] or intended to support similar social causes, S&P may be participating in unlawful anticompetitive activities.[34] Securities laws provisions, including the prohibition on making false or misleading statements, and state antitrust, or UDAP statutes may also be relevant.

Accordingly, Utah wholly objects to S&P's disclosure of public finance ESG credit indicators. We will not participate in a politicization of your statutorily privileged role. For the reasons discussed above, your focus on "ESG factors" rather than material factors suggests the potential for bias and conflicts of interests. A review of your publications on ESG in U.S. public finance further weakens our confidence in your impartiality and freedom from undue influence. We demand that you withdraw the ESG credit indicator report card.

Furthermore, we request information from you about your consideration of ESG factors in public finance credit ratings, including, without limitation the following:

1. You state that you "incorporate environmental, social, and governance (ESG) credit factors into [your] credit ratings analysis."[35] Please:
   a. State the date that you first began to incorporate ESG credit factors into your credit ratings (the "ESG Launch Date");
   b. Identify what outside sources were consulted in determining what ESG factors would be used in this initial analysis;
   c. Identify each ESG credit factor that you now incorporate into your credit ratings that you also incorporated into your credit ratings before the ESG Launch Date; and
   d. Identify each ESG credit factor that you now incorporate into your credit ratings that you did not incorporate into your credit ratings before the ESG Launch Date. For each such ESG credit factor, state whether the factor is material to your credit ratings analysis.
2. You state that "[b]ecause public finance issuers provide essential services and infrastructure, many ESG credit factors are fundamental to and embedded into our credit rating analysis and are often key credit determinants in our credit rating outcome."[36] Please identify each ESG credit factor that is "fundamental to and embedded into" your credit rating analysis in connection with U.S. public finance credit analysis, and please identify the date on which each such factor was first incorporated into your credit rating analysis. For each ESG factor that is not embedded into your credit rating, please provide the rational basis for its inclusion in the ESG score but not in the credit rating.
3. You state that "[w]e incorporate in our credit rating analysis those ESG factors that materially influence creditworthiness and for which we have sufficient visibility and

[33] Net Zero Financial Service Providers Alliance, Signatories, https://www.netzeroserviceproviders.com/signatories/.
[34] *See, e.g.*, C. Boyden Gray, Corporate Collusion: Liability Risks for the ESG Agenda to Charge Higher Fees and Rig the Market, Texas Public Policy Foundation (June 2021), https://www.texaspolicy.com/wp-content/uploads/2021/06/2021-06-RR-Gray-LP-Corporate-Collusion.pdf.
[35] *See supra* note 1.
[36] S&P Global Ratings, Through The ESG Lens 3.0: The Intersection Of ESG Credit Factors And U.S. Public Finance Credit Factors (Mar. 2, 2022), at 5.

certainty."[37] Please identify all such factors in connection with U.S. public finance credit analysis.

4. How, if at all, and to what extent does a company's relationship to authoritarian governments and/or governments that violate human rights or international norms affect the company's ESG score?
   a. How, if at all, and to what extent does such a relationship affect any ESG credit factor?
   b. How, if at all, and to what extent does such a relationship affect the company's ESG score, in particular in comparison with environmental factors?
   c. In addition to providing general answers, please answer questions 4, 4(a) and 4(b) specifically with respect to Gazprom, Rosneft, Sperbank, Rostelecom PJSC, and Magnit.
5. You state that "[c]limate transition risk and physical risk-related factors may be among the most significant ESG credit factors that affect the creditworthiness of rated entities. This is primarily because of policymakers' efforts to reduce emissions or to ensure that greenhouse emissions reflect their full social costs ('climate transition risk') and climate change, which is leading to more frequent and severe extreme weather events ('physical risk')."[38] How, if at all, and to what extent do your models relating to or incorporating "climate transition risk" incorporate factors relating to geopolitical conflict and resulting political developments?
   a. For example, how, if at all, and to what extent did your models relating to or incorporating "climate transition risk" predict the U.S.'s and Germany's recent calls for increased domestic energy production following Russia's invasion of Ukraine?
   b. How, if at all, and to what extent do your models relating to or incorporating "climate transition risk" incorporate the possibility that the U.S. would have to meet the world's energy needs without reliance on energy from countries under authoritarian governments and/or governments that violate human rights or international norms?
   c. How, if at all, and to what extent does the energy independence of free and democratic countries factor into your models, including without limitation, the "social" factor in your ESG scores or ESG credit factors? For example, energy production, including oil, gas, and coal production, by domestic producers may be important to the ability of free and democratic countries to avoid the depredations of countries under authoritarian governments and/or governments that violate human rights or international norms. How, if at all, and to what extent are such possibilities incorporated into your models, including, without limitation, the "social" factor in your ESG scores or ESG credit factors?
6. How do your models weight "social" factors vis-à-vis "environmental" factors? Please explain in detail the method by which you assign relative priority among "social" and

[37] S&P Global Ratings, S&P Global Ratings to Enhance Transparency in U.S. Public Finance Credit Analysis with ESG Credit Indicators (Feb. 16, 2022), at 2.
[38] *See supra* note 1.

"environmental" ESG credit factors, including without limitation in generating ESG scores.

7. How, if at all, and to what extent do your models account for the possibility of sanctions against China in the event of an invasion of Taiwan? Please include in your answer a detailed description of the effect, if any, such an event would have on the ESG score and credit rating of companies dependent on renewable energy components from China.
8. Please describe any communications you have had with The Children's Investment Fund or any related person or entity regarding the incorporation of ESG factors into your credit ratings or otherwise into your business.[39]
9. What factors did you consider in addition to water supply when deciding on an E-3 indicator for Utah? If, as you state in the report card, "Utah's ongoing demonstration and commitment to planning for long-term water challenges helps to alleviate additional pressure within our credit rating analysis," why did Utah not receive the neutral indicator of E-2?
10. Please describe any communications you have had with the Securities and Exchange Commission, the Municipal Securities Rulemaking Board, the Department of Treasury, any other governmental agency or regulatory authority, and/or any related person or entity regarding incorporation of ESG factors into your credit ratings or otherwise into your business.
11. Please identify what sources S&P is consulting for determining future ESG factors, with particular attention to S and G factors.
12. Please identify what sources S&P is consulting for determining how governments and corporations will be judged regarding ESG factors.

Please provide detailed responses to the requests above, together with your models, assumptions, and related information, so that they can be evaluated for undue political bias and conflicts of interest.

We reserve all rights, remedies, and claims.

Respectfully,

Spencer J. Cox
Governor

Deidre M. Henderson
Lieutenant Governor

Sean D. Reyes
Attorney General

Marlo M. Oaks, CFA, CAIA
State Treasurer

John Dougall
State Auditor

[39] *See* Carlos Tornero, Chris Hohn's TCI Files Climate Resolutions at S&P and Moody's in New 'Say on Climate' Campaign, Responsible Investor (Nov. 23, 2020), https://www.responsible-investor.com/chris-hohn-s-tci-files-climate-resolutions-at-s-and-p-global-and-moody-s-part-of-new-say-on-climate-campaign/.

Michael S. Lee
United States Senator

Mitt Romney
United States Senator

Blake D. Moore, Congressman
Utah First District

Chris Stewart, Congressman
Utah Second District

John R. Curtis, Congressman
Utah Third District

Burgess Owens, Congressman
Utah Fourth District

J. Stuart Adams, President
Utah State Senate

Brad R. Wilson, Speaker
Utah House of Representatives

Mrore SFR
(UT)

Mr. MOORE of Utah. Treasurer Oaks, considering—this will come as no surprise to my colleagues; I am going to talk about Utah's strengths and how good we are in so many different facets—but considering Utah's strong economic performance and job creation, could you describe how ESG investment frameworks might negatively impact the entrepreneurial ecosystem, particularly for startups and small businesses that are actually thriving in our state?

Mr. OAKS. Yes. Thank you for that question.

So whereas Adam Smith, the 18th century moral philosopher, he spoke of an invisible hand as the driving force behind capital allocation, each citizen pursuing their own desires and interests, ESG represents an invisible fist of economic coercion.

So, I have spoken with executives of startups and small companies in Utah who have said that venture capital firms and large clients have asked them to complete long ESG questionnaires, including questions such as whether or not 60 percent or more of their board and staff are trans, LGBTQ+, or women. If certain demographic ratios are not met, the surveys then ask whether there are policies in place to terminate employees who are not in the protected classes until at least 50 percent of employees are in those classes within 6 months.

Other questions ask about company benefit policies, efforts to monitor electricity usage monthly, assurance that renewable electric sources are used at an increasing amount each month, and policies to monitor airline travel to ensure employees are flying on aircraft with technology that is reducing the carbon footprint.

Executives have expressed concerns about not having the resources to monitor these activities, and wasting precious capital needed to grow the company for these kinds of activities. In some cases, smaller companies are forced to comply or lose business with larger companies.

Quite simply, ESG represents economic coercion that harms businesses, individuals, investors, and markets. It is not good for anyone.

Mr. MOORE of Utah. Mr. Oaks, you and I, I would say, we both understand the business community a little bit. We have both been in the private sector with a lot of business leaders, Utah leaders in general. A simple question: Would you say that they need ESG to contribute to their community, to engage in social impact projects, to care for the most vulnerable? Would you say that Utah needs that?

Mr. OAKS. I would say that people in general, particularly in Utah, are concerned about other citizens, and we really go out of our way to serve other people in our state and help other people, and there is no need to force that on businesses, that they have a desire to help out.

And you generally get better outcomes. As we see with the State of Utah, we have the highest volunteer rate in the country, and it is done because people want to, not because they are forced to.

Mr. MOORE of Utah. Yes, I am sure everybody here has read—I was part of publishing something called "The Giving State" in my previous career. That is a joke; I know you haven't read it. But it highlights that Utah has really focused on philanthropic causes:

most volunteer time, most volunteer dollars per capita. It is a state that understands it, and it is led by, primarily, the private sector.

Mr. OAKS. Yes.

Mr. MOORE of Utah. And the thing that I hear most from folks is, "don't force us into these particular outcomes. We are already doing the good work. Let us thrive. Let us be able to continue to make these decisions."

When it comes down to—and this is something you communicate really well—just highlight for me with the last 20 seconds any specific potential risks of ESG-driven investment strategies that prioritize political agendas over shareholder value.

Mr. OAKS. Yes, I think—you know, as has been stated, I think companies need to focus on their business and providing the best good and service in the marketplace at the most competitive price. That is the benefit to society. That is—that leads to better economic outcomes, it leads to a growth in living standards, and that is the value that business brings to the world and the community.

And the innovation that comes from our free market system is what allows us to address things like climate change, and that is what we need. We need to have our free market system independent of political agendas that are being pushed.

Mr. MOORE of Utah. And that is always something I have appreciated with your message. You talk about these things are good causes, let's go about it the right way, and let's go about it so people can make the—have the freedom to choose how they want to address it.

So thank you, and I yield back.

Chairman SMITH. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman, for recognizing me. I will say that I am disappointed that part of the tone of the hearing today has been rather divisive. I prefer the efforts to work on areas of mutual concern where we have some common ground.

I would like to raise an issue that I do think, at least in my time here in Congress, has caused us to work together across party lines, and it has to do with retirement security, the fact that people who work a career at a decent job ought to be able to have a retirement that was promised to them. So, the tossing around of sort of political catchphrases is kind of interesting, but I would rather kind of get back to the work that we might be able to get done that helps secure retirement.

And I would like to specifically address something we could do here in Congress we have already demonstrated, and that is to deal with the 20,000 Delphi salaried retirees who had their retirement taken away from them. When GM filed bankruptcy during the Great Recession, the U.S. Pension Benefit Guaranty Corporation, the PBGC, unfairly cut retirement benefits, some as much as 70 percent, for people who worked their whole lives with the expectation that that retirement was going to be there for them, and they planned as if it would be there for them. And, as a result, lots and lots of people I represent and I know others on this committee represent, as well, lost something that was promised to them. We have heard stories about Delphi salaried retirees having financial and medical hardships as a result. These folks played by the rules, and they got the rug pulled out from under them.

When the Federal Government rescued General Motors, they, the Federal Government itself, let those families down, left them hanging, and that is wrong. And that is why the bipartisan legislation that I have sponsored, the Susan Muffley Act, would right this wrong. It would make the difference up in those pension benefits that were expected to be earned by those retirees before GM went bankrupt in 2009.

Some have asked why the Delphi salaried retirees would deserve to have their pensions restored and not others who have had pensions lost. I understand that concern, but I will say this: there is a significant distinction. The government, the United States Government, was the one who decided to cut those benefits, not creditors, not the bankruptcy judges. The U.S. Government made that determination. And so, it is the government's responsibility to make those individuals whole.

And I know there are members on this committee on both sides of the aisle that share my concern. In fact, I know Mr. Carey has been supportive of this legislation. Others have, as well, because we know these are folks who worked hard, played by the rules, and should not have had that taken from them.

And so, I would ask Mr. Rees. I know the AFL–CIO, despite the fact that you don't represent these particular employees, support our legislation. Just because I think it is an important thing we could potentially agree on, I wonder if you might just take a minute or two to comment on the importance of that particular situation and what our legislation would do for those folks.

Mr. REES. Yes, thank you for the question. The AFL–CIO is pleased to support the Susan Muffley Act that would restore the pensions of those salaried workers who played by the rules and deserve a secure retirement.

And as you point out, they are not union members. They are largely management employees of Delphi.

Delphi was able to shed its pension obligations through the corporate bankruptcy code, and we strongly support reforming the corporate bankruptcy code to prevent employer misuse of it to shed those pension obligations. Pension plans need to be given higher priority in corporate bankruptcy to prevent these types of abuses.

Mr. KILDEE. I thank you for that comment. I couldn't agree with you more.

There is a fundamental difference between some obligations that a company may have. These are problems, no question about it, to vendors and other creditors. But a lifetime of work with the promise of a pension should be at the very top of the list when it comes to how these situations are discharged. And, with the exception of the Delphi salaried retirees, for the most part even in this case, people had their promises kept, had those pensions protected.

I represent these families. I know others on this panel do, as well. And so, while it may not be the specific subject of this hearing, if it relates to the sanctity of a pension, the promise of a pension, a lifetime of work, Congress ought to be able to do what it can to protect that.

I appreciate your comments on this. I appreciate the entire panel's participation today.

And, with that, Mr. Chairman, I yield back.

Chairman SMITH. Thank you.

Mr. Fitzpatrick.

Mr. FITZPATRICK. Thank you, Chairman Smith, for holding this hearing. And there is plenty of complexity surrounding ESG and its impact on investment decisions. Obviously, today's hearing is focusing on seniors and their retirement savings.

In my home state of Pennsylvania we have one of the highest aging populations in the United States. And obviously, it is—this is a critical issue for them.

My first question, for Mr. Rutledge, in your experience leading over 800 employee benefits professionals, how do you feel we can best balance the need to strengthen fiduciary standards for seniors, while at the same time ensuring our government does not overstep on the internal decision-making of private companies?

Mr. RUTLEDGE. I think that the continued focus on maximizing the returns, given the risks that—involved in the various choices, keeping in mind that when the pension plan trustees make investments they are always making a choice among investments that are available at that time, and at that time the investments might be one might be better than the other. Regardless of how it is labeled, they should always go with the best one.

I think the statute actually is fairly adequate. The exclusive purpose rule is, I believe, adequate. The exclusive benefit rule in the code is, I believe, adequate.

I think one thing, if we want to go down a level that—that could help, and it is more of an oversight function, is to make sure the departments are auditing these issues properly. It is one thing to say that you must always put the interests of the retirees first and the workers first in their—in the investment of the fund. But it is another thing to go out and check up after they have made investments and see if that is actually what happened.

So there has been talk about some of the ESG funds performing less well than people expected. You don't do a hindsight 20/20 on a pension fiduciary. But when you see things like that, there should be an auditor that can go in and look at the investment and ask, all right, when you did make this decision, did you follow a fiduciary process, a prudent process?

Employers do need to know that if they make mistakes in their process of deciding about the investment, they will have to perhaps answer for it. That will help them focus more laser-like on making sure they are maximizing their risk-adjusted return, regardless of the investment choices they have.

Mr. FITZPATRICK. Thank you.

Mr. Rutledge, DoL obviously released a—they released their fiduciary rule proposal, now called the Retirement Security Rule. What is your perspective, your sense on what the impact this proposal will have on your ability to provide retirement services to your customers?

Mr. RUTLEDGE. You bet. Thank you, Mr. Congressman, for that question.

It is our understanding the DoL rule is about 500 pages, and it just came out a few days ago. So it takes a while for us to comb through it. But for us, we are under the understanding that it does permit and not require us to look at those ESG factors. And, as long as it stays that way, just as the gentleman before me testified, we want to make sure that it does, they stay in their lane, and it does not require, it just permits.

Mr. FITZPATRICK. Thank you.

Mr. Chairman, I yield back.

Chairman SMITH. Mr. Feenstra.

Mr. FEENSTRA. Thank you, Mr. Chairman and Ranking Member. I just appreciate you holding this hearing. I am glad we have dug into how harmful these ideological investment practice practices can be to American retirees.

ESG encourages activism. Think about that. ESG—environment, social, governance—encourages activism over financial security of American workers. If you think about today, American workers, this is probably one of the top things that are on their mind: Do they have enough for retirement? Do they have enough dollars for when they get older? And yet we are going down rabbit holes, talking about what is good for society, what is good for the environment, and placating to a liberal ideology.

But it doesn't only affect retirees, as Mr. Bolay said and others have pointed out, these misguided investment practices also permeate every aspect of our economy, including agriculture, meaning a farmer or rancher would be put under the microscope if these SEC rules continue to go—they would be put under a microscope by the Federal Government, subjecting them to new reporting requirements and creating new compliance burdens. It would jeopardize privacy violations and create unnecessary liabilities. This would require farmers to actually report their emissions.

This is so far outside the scope of the SEC that I just feel it is unbelievable. It is appalling. But that is exactly what SEC—SEG [sic] does. Managers of retirement funds should be focused on financial security for their retirees. The SEC should be focused on protecting investors. And farmers and ranchers should be focused on feeding and fueling the world. SEG [sic] tells all of them that you should forget all this and focus on implementing these liberal, progressive climate and social agenda rules.

So, Mr. Bolay, you hit on this in your testimony. As both a farmer and a banker, which I applaud—we have similar backgrounds—can you talk about how the costs of a regulatory compliance like SEG [sic] would threaten farmers, and potentially could really affect their bottom line? Could you explain that?

Mr. BOLAY. You bet. Thank you, Congressman, for that question.

And, in regards to our farmers and our practices, we all know there is economies of scale. There are large farmers, small farmers, medium-sized farmers. And whenever you implement or mandate a technology to say that you have to use automatic row shutoff on a certain sprayer, if you only have a certain amount of acres to spread that over, that cost can be detrimental.

And any attempt for us, the banking industry, to be those regulators of that is absurd and really hard for us to do. We would have to hire consultants to go out to make sure that all of our farmers were matching a specific ESG policy, which again raises the cost of capital and raises the cost of food.

Mr. FEENSTRA. You nailed it. I want to talk about that. When you think about it, improving access to credit for rural communities and rural farmers is something I am extremely focused on. I actually introduced the ACRE Act, which would improve and lower the cost of rates for farmers.

How would these regulations—how could they result in higher costs of borrowing for rural farmers and rural producers?

So could SEG [sic] actually increase the cost of borrowing?

Mr. BOLAY. Thank you for that question and, yes, it could.

Again, any time you mandate more—you know, we are a small bank. We have 225 million. We are—you know, almost 35, 40 percent of our lending is in agriculture. And when you put those mandates on for us to follow the governance part of it, we have to have more people, which in turn raises the cost of capital and makes consumer goods more expensive.

Mr. FEENSTRA. Yes, so it is twofold. So my in-laws are farmers, you know, the—my dad-in-law and my brother-in-law farm. All right, so it affects not only their borrowing, all right, that will increase, but it also affects them by—they have to start managing all these new aspects. I mean, it is just an absolute hit to the breadbasket of our nation.

Mr. Oaks, how often are employees aware that their retirement funds are being used for—to pursue a political agenda? Do you think most people are aware of this?

Mr. OAKS. No, because most of the time people don't have the ability to move their money. So it might be in a defined benefit plan, in which case the plan administrator is overseeing those assets. They don't even often know what investment managers are being used. And, even if they did, they don't have any input on what managers can be used.

And you know, with the 401(k), a plan sponsor is going to hire typically an investment firm, and they are going to offer their plan, their investment options in that plan. And so you don't have the ability to move outside of that. So it is really not an investor choice.

Mr. FEENSTRA. Exactly. We are stomping on individuals, we are stomping on American producers. I am ashamed that this is going down this path.

Thank you, and I yield back. Mr. Beyer.

Mr. BEYER. Mr. Chairman, thank you very much.

I want to first point out that it is ironic that in a discussion largely about so-called woke issues, this is the least diverse panel I have seen in my nine years at Congress.

I love you, you are just like me, middle-aged, White businessman, but we don't represent all the American people.

Second, I would like to point out that jumping on what my friend, Mike Thompson, said, in all of the community service work I have done, the incoming emails, 120,000 a year, not a single person has ever raised a woke retirement plan agenda to me. So, I am not quite sure what we are talking about.

I also would like to—I love my friends on the other side. They are mostly really good people. I disagree with my friend, Dr. Drew Ferguson, though, who says that the only purpose of a business is to make profit. I have been in business 46 years, and we thought part of our job was to serve the customer, to provide good customer service and good products. Part of our job was to hire people who could then build their lives, buy homes, educate their children. I thought part of our job was to serve the community in the best possible way, to strengthen America, and that this notion that Milton Friedman capitalism was the only way to go forward doesn't match the values of almost any businessperson I know.

I know my friend, Kevin Hern, who did very well with McDonald's, I am sure he was not just about profit. It is important. You know, Edwards Deming says the very first rule of business is to survive. So, you have to do that.

And let me also just mention that my friend, Mike Kelly, talked about when you go home to Erie, Pennsylvania people are still hurting. Yes, absolutely, people are still hurting. We have income inequality like we haven't seen in 100 years. Right now, we are dead last in the G7 countries in income inequality; 69 percent of our wealth is controlled by exactly 10 percent of our population; 2.5 percent of our wealth is controlled by half of our population. It has never been that bad. Inflation has slowed, but prices got really high, and they are not going back.

I often fantasize about what would happen if Donald Trump had won in 2020. What would my Republican friends have blamed the inflation on? This wasn't too much money chasing too few goods, it was enormous supply chain disruptions and a tripling of the profit margins of virtually every business.

In the meantime, we have the Inflation Reduction Act, the infrastructure bill, CHIPS and Science. All these things are long-term investments. Labor productivity jumped to 4.7 percent last quarter, the highest probably in our lifetimes. We are at 4.9 percent GDP in the third quarter, again, close to the highest in our lifetimes. The JOLTS job, I looked up this morning 9,553,000 jobs advertised, again, a 2-to-1 ratio which we have never seen before.

But all of these are long term, and it is going to take a while for people to feel the benefits of it.

So, Mr. Rees, I want to turn to you. I was fascinated by the notion that, in a debate about freedom, as a businessperson, I never wanted people to tell me how to invest my money. So why are we telling North Face and Blackrock and others—Carlyle, all these—I am confused. I never thought Blackrock and Carlyle were the drivers of global socialism as I am hearing today. How can this be?

Why should we be telling them how to invest money that people have put in their care because they want to maximize their investment?

Why isn't there freedom to let business leaders invest it as they think proper, because my reading, word for word, from the last thing is that—I don't know if I have it right in front of me—the 2022 AFL–CIO says, "the rule clarifies retirement plan fiduciaries may consider, but are not required to consider ESG factors, just as they would consider any other investment factor." Mr. Rees.

Mr. REES. That is exactly right, that the 2022 DoL ESG rule protects the ability of retirement plan fiduciaries to consider ESG factors when they are material to investing.

And I don't care if you are considering an investment in China or an investment that involves environmental sustainability or workers' rights concerns, those factors matter for investment returns. And if you put blinders—if you tell retirement plan fiduciaries they have to stick their heads in the sand and ignore these ESG risks, you are doing a grave disservice to the retirement security of America's working families.

Mr. BEYER. It will be interesting to see. I just read that October was the warmest October since we have been keeping records for many hundreds of years. Do you think it might be responsible for an investment manager to think about the downside cost to our environment and our economy, of all the things that are coming from climate change?

Mr. REES. It would be imprudent not to consider those factors.

Mr. BEYER. Great, thank you very much.

And I yield back, Mr. Chairman.

Chairman SMITH. Mr. Carey.

Mr. CAREY. Thank you, Mr. Chairman, and thank you for the witnesses being here today.

Mr. Rutledge, it is great to see you again. Your work with the former Senator from Utah and what we spent a lot of many hours talking about, coal miners pensions and health care—and it is good to see you in this capacity again.

Back on July 18, the AFL–CIO put out this statement: "Workers' retirement security is at risk, as some Republican lawmakers play politics with working people's pension plans by restricting consideration of environmental, social, governance risks and investment and proxy voting decisions. These partisan politicians seek to control trillions of dollars in workers' pension investments."

Now, I don't really think that is true, but let me just go on. If you are looking at overall, I think, Mr. Rees, your organization also represents the United Mine Workers of America. Am I correct with that?

Mr. REES. That is right. My great-grandfather was a mine worker.

Mr. CAREY. Well, that is—God love him—which includes, obviously, all the coal miners. But there are a lot of other unions that have an association with the fossil fuel industry, whether it is operating engineers, steelworkers, what have you.

ESG investing in many ways is hurting some of these industries and, in turn, hurting many of the companies that actually employ those workers on a daily basis. And, as Chairman Smith highlighted earlier, the staff analysis showed that 15 of the largest global ESG funds have had a net loss over the past year, and were 18 percent points worse than the S&P 500, and 25 points worse than the NASDAQ.

So, given those numbers, how are you going to protect the pensions of these workers in the industries that ESG rules are actually targeting to eliminate?

Mr. REES. I disagree with your premise. I believe that investors need to be considering risks related to providing a just transition for working people in the energy sector to ensure that they have the opportunity to continue in the clean energy sector in good union jobs.

Mr. CAREY. Interesting. You know, I think the other thing that we have to look at is in the financial sector we have also looked at what has happened to our oil and gas industry. And I know that we are rushing to a lot of these renewable energies and the technology and the building of these. But meanwhile, we have to put into context that many of the supply chain pieces and parts that are going into the renewable energy markets are actually coming from China. And for cobalt, for example, 15 out of the 17 mines are actually owned by Chinese companies, and every renewable energy has to have a part of that.

So I guess the biggest thing I also want to point out is that while we are rushing to this—these clean energy jobs, most of which are in China, China is still relying mainly on coal-fired power. And I think this is a number that I don't—I know Mr. Isaac understands this number, but coal-fired power in China in 2022 was 6 times as large as the rest of the world combined, the new coal-fired power plants. So while we are rushing to the new green deal and to ESG and all of this stuff, China understands that reliable power is going to be based on baseload power, which is going to come from fossil energy.

So Mr. Isaac, can you describe the long-term ramifications on the oil and gas industry if ESG investing continues, and how would it be more prevalent?

Mr. ISAAC. I think the greatest threat that we face is deindustrialization, and we are staring down that path right now by walking down this green agenda.

It has happened in Germany. They are—their—and the German word is—it translates to energy turnaround. They are now turning around their energy turnaround because it has been an abject failure. The largest manufacturer for BMW, a German automobile manufacturer, the largest manufacturing facility is here in the United States because we have affordable, reliable electricity. That is—and it is—this deindustrialization has impacted Germany because they have embraced this just transition.

It hasn't been so just for the people of Germany. It hasn't been so just for the people of the United Kingdom. The jobs are shifting to China. They are shifting to South Africa, where you have kids from 4 and 13 working in these Chinese-owned and controlled mines, 40,000 children today producing this just transition and the materials that are needed for it.

Mr. CAREY. This has been a great panel, and I thank the Chairman, and I want to thank the ranking member for allowing this panel, too, and I appreciate all of your time today.

With that, we are voting, so I yield back.

Chairman SMITH. Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman and Ranking Member. I want to take this opportunity to have a real discussion about retirement——

Chairman SMITH. Mr. Evans, could you put on the mic? I don't think it is working.

Mr. EVANS. Thank you, Mr. Chairman and Ranking Member. I wanted this opportunity to have a real discussion about retirement security in this country, a topic that is critical to every citizen of this nation, including citizens in the Commonwealth of Pennsylvania and Philadelphia.

Mr. Rees, how has the AFL and your role brought about awareness to workers about the importance of retirement savings, and how can the Congress help workers, particularly young workers, start preparing the retirement early in their careers?

Mr. REES. Thank you for the question. Negotiating for retirement benefit plans is a key priority for union workers whenever they seek to negotiate for fair wages and benefits, and the union advantage is undeniable for retirement security that—union members are over 95 percent likely to have a retirement plan through their employer negotiated by coming together in a union, compared with less than half of all working Americans having that same opportunity to save.

If we want to strengthen the ability of working people to save for retirement, Congress needs to pass the Protecting the Right to Organize, or PRO Act.

Mr. EVANS. We know that Social Security is a particularly important source of income for groups with low income and less opportunity to save for retirement. In fact, more than 100,020 live in my district who rely on their Social Security to benefit.

Mr. Rees, how can Congress strengthen the long-term stability of Social Security so that benefits are expanded, and that would be the impact on my constituents if their Social Security was to be cut out?

Mr. REES. Very simply, we can strengthen Social Security by expanding benefits and lifting the cap on Social Security FICA taxes to include all income that high earners receive. Corporate CEOs should pay the same effective tax rate that working people do to Social Security. And, by lifting the cap, we can restore solvency to protect Social Security for the future.

Mr. EVANS. I thank you and yield back, Mr. Chairman.

Chairman SMITH. Mr. Panetta.

Mr. PANETTA. Thank you, Mr. Chairman.

Gentlemen, thank you for your patience today. I think we can all agree that retirement security is an important topic for all workers, especially as American workers have fewer traditional pensions, retirees are living longer, and Social Security is headed towards insolvency.

Now, I am proud that this committee has worked in a bipartisan fashion to help workers save for retirement by passing both SECURE and SECURE 2.0. We actually found ways to make it easier and simpler to open retirement accounts, to help workers save money in the long term, and we boosted participation in retirement savings programs which will benefit both low-wage workers and middle-income savers.

Today, however, I am doubtful that we are truly focused on savers, and instead we are focused on unnecessary slogans by focusing on plans that very few invest in. As we have heard over and over, only four percent of plans even offer ESG funds as a plan option.

Moreover, the focus of today's hearing suggests that money-losing ESG plans are being forced into unwitting middle-class savers. But it seems that this simply is not the reality. We know the current Administration put into place a revised ESG rule that allows for ESG investing options but does not mandate it. And it provides a clear roadmap for those who want to provide ESG options as part of their fiduciary process.

So, while I do believe that we can tighten up standards for what is considered an ESG fund, what is most important is that we continue to ensure that our working-class families can save for a lifetime.

Now, Mr. Rees, in your testimony you suggest that—and I quote—"proper stewardship of retirement savings requires the freedom to consider all relevant investment considerations, including ESG risk." Why do you believe that the option for ESG considerations helps, not harms workers?

Mr. REES. ESG factors are relevant to any investment decision, whether or not you call yourself an ESG fund, and this is particularly important when it comes to proxy voting. Corporations hold annual meetings in which the shareholders of the company have the opportunity to decide how to vote on important matters: the election of directors; the executive compensation of the CEO, the auditor; and shareholder resolutions addressing ESG topics.

And the Republican bills that have been introduced would create a safe harbor to discourage retirement plans from having their voices heard through proxy voting by either abstaining from voting or by always voting with corporate CEOs, and that violates the duty of loyalty. Abstaining from voting gives your vote to other shareholders who are voting. Voting always with corporate management violates your fiduciary duty, because corporate management is not always right. Ask the shareholders of Enron and WorldCom. Ask the shareholders of Bear Stearns and Lehman Brothers.

Mr. PANETTA. Okay.

Mr. REES. They would agree.

Mr. PANETTA. Thank you, thank you.

Mr. Rutledge, you noted in your testimony that the Biden Department of Labor determined that the 2020 ESG rule created uncertainty and was discouraging fiduciaries from considering climate change and other ESG factors in investment decisions. And you said, and I quote, "even in cases where it was in the financial interest of plans to take such considerations into account."

Do you agree with the Department of Labor that taking into account ESG considerations could be consistent with acting in a client's best interests?

Mr. RUTLEDGE. Yes, I do. What I don't agree is that the Trump rule—I think the Biden Administration was wrong that the Trump rule made it harder.

I think the thing about the Trump rule that concerned people—and I am not—and I don't think it was fair—was their decision to use this term "pecuniary" and "non-pecuniary." It was a new word, a new term. People kind of couldn't get past it.

But if you look at the way the Trump rule defined "pecuniary," it was straightforward. It means focusing on factors that are material to the economic performance of the investment. That is what the Supreme Court requires, it is what that rule required, and it was an attempt to tether the rule to some fixed law, Supreme Court cases, and maybe stop the ping-pong.

It didn't stop the ping-pong, but at least we are now in the world where it is notice and comment rulemaking, and the—you know, the commenters—the agency does have to take in public comment. So I am proud about that.

Mr. PANETTA. Great, thank you. Thank you, gentlemen.

Thank you, Mr. Chairman, I yield back.

Chairman SMITH. Thank you.

I would like to thank our witnesses for appearing before us today.

Please be advised that members have two weeks to submit written questions to be answered later in writing. Those questions and your answers will be made part of the formal hearing record.

With that, the committee stands adjourned.

[Whereupon, at 1:47 p.m., the committee was adjourned.]

PUBLIC SUBMISSIONS FOR THE RECORD

AMERICAN UNIVERSITY • KOGOD SCHOOL OF BUSINESS
KOGOD TAX POLICY CENTER

Statement for the Record
in connection with the hearing of the
United States House of Representatives
Ways & Means Committee,

Hearing on Ensuring that "Woke" Doesn't Leave Americans Broke: Protecting Seniors and Savers from ESG Activism

Dr. Julie Anderson
Professorial Lecturer in Management & Finance
Associate Program Director for the
Master of Science in Sustainability Management
Kogod School of Business, American University

Together with American University Students:
Julia Fucci
Zoë Mattioli
JéLynn Russell-Anderson
Anshika Tyagi
Binderiya Usukhbayar
Matthew Zirkle

AMERICAN UNIVERSITY • KOGOD SCHOOL OF BUSINESS
KOGOD TAX POLICY CENTER

November 21, 2023

Chairman Jason Smith, Ranking Member Richard Neal, U.S. Senate Ways & Means Committee (the "Committee") Members and Staff, thank you for holding a full committee hearing on November 7, 2023, titled, "Ensuring that 'Woke' Doesn't Leave Americans Broke: Protecting Seniors & Savers from ESG Activism." My name is Dr. Julie Anderson and I am a professor of management and finance at American University Kogod School of Business. I also serve as the Associate Director of the Master of Science in Sustainability Management. I am writing this Statement for the Record (the "Statement") in collaboration with six students at the Kogod School of Business who actively contributed to the research and writing of this Statement. Additionally, my colleague Professor Caroline Bruckner, the Managing Director of the Kogod Tax Policy Center, has been integral to the submission of this Statement.

Prior to joining the faculty of American University, I had a 30+ year career in the private sector. I have worked for some of the largest asset managers in the world and have held roles spanning municipal bond trader, U.S. economist, emerging markets sovereign debt analyst/portfolio manager, and as a senior executive managing investment teams in both equities and fixed income. In the past 10 years, I witnessed first-hand the growing importance of Environmental, Social, and Governance (ESG) factors in the valuation of financial assets. **It is with a sense of urgency that these six students and I submit this Statement. The U.S. cannot afford to ignore the fact that the world — its people, governments, and intergovernmental organizations — believe we need to collectively and fundamentally enhance the way we invest to secure a more sustainable world for all mankind, including the growing number of US pensioners.**

I. What ESG Investing is and What it is Not

The CFA Institute, the largest association of investment professionals in the world, defines ESG investing as "an approach to managing assets where investors explicitly acknowledge the relevance of ESG factors in their investment decisions, as well as their own roles as owners and creditors, with the long-term return of an investment portfolio in mind."[1] This definition highlights the dual role of long-term investors, in that they seek financial returns and provide capital to the economy. As such, long-term investors both create financial security and fund economic growth.

The most common approach to ESG investing is the integration of Economic, Social, and Governance data in the investment process. This means that ESG data are used by investors to help them judge the risk and return profile of a company *in addition* to the financial variables traditionally used.

---

[1] Clarisse Simonek and Thomas Verhagen, "Chapter 1: Introduction to ESG Investing," in *Certificate in ESG Investing Curriculum: Edition 3*, ed. CFA Society of the UK, (Charlottesville, VA:CFA Institute, 2021), 4.

While there has been an emphasis on Environmental factors such as climate change and carbon emissions, each ESG category encompasses a broader scope of issues that could have a material financial impact on a company.

Environmental	Social	Governance
Air & Water Pollution	Data Privacy & Protection	Bribery & Corruption
Waste Management	Labor Standards	Cyber Security
Water Scarcity	Human Rights	Executive Compensation
Food Security	Quality Education	Shareholder Rights
Biodiversity	Consumer Protection	Whistleblower Protection

Indeed, it is the global, human scope of these factors that gives them the ability to affect financial outcomes. And because of the likelihood that these factors impact the overall profitability of a company and contribute to its financial outcomes, more and more investors are both demanding insight from advisors on these issues and factoring in their impact in investment decision-making. In fact, the overwhelming majority of investment decisions executed worldwide already include consideration of ESG factors. Specifically, in a 2023 survey of 1,130 global investors managing approximately $53 trillion in assets, 90% of respondents reported incorporating ESG data in their investment approach, and in the U.S., the ESG integration rate is 69%.[2] The study also found that "[a] majority (57%) of global respondents think incorporating ESG analysis can uncover attractive investment opportunities." This finding likely reflects the understanding that some ESG factors are part of "megatrends," which means they are long-term drivers of global economic growth. Artificial Intelligence (frequently used to gather ESG-related investment data) and Green Technology (such as electric vehicles and photovoltaic materials) are two examples of megatrends that investors are currently focused on, which may be driving the high ESG adoption rates and expectation of attractive returns.

As part of its research, Congress should consider the approach taken by the largest U.S.-based global asset managers who actively utilize ESG data when evaluating the risk and return profiles of investment targets.[3] For each, the concept of materiality is central. U.S. Securities and Exchange Commission (SEC) Rule 405

[2] Capital Group. "Capital Group ESG Global Study 2023," Capital group, n.d., accessed November 20, 2023, https://www.capitalgroup.com/institutional/investments/esg/perspectives/esg-global-study.html?cid=p73227134265&ad_id=676759976332&ext_id=&gad_source=1&gclid=Cj0KCQiApOyqBhDlARIsAGfnyMqMzs_hOD6bs1SyeAiqhFE68z9rIKdVdvt3cBDURPevgIzm0m0XFDEaAvNREALw_wcB&gclsrc=aw.ds#go_deeper_section.
[3] SWFI."Top 100 Asset Manager Managers by Managed AUM - SWFI," SWFI, n.d., accessed November 20, 2023, https://www.swfinstitute.org/fund-manager-rankings/asset-manager.

provides that information is material if "there is a substantial likelihood that a reasonable investor would have considered the information important in making his or her investment or voting decision."[4]

1. Blackrock ($9.4t) — "Our approach to ESG integration focuses on identifying financially material sustainability insights – those that we believe may impact the financial performance of clients' portfolios - and including those insights into the broader mix of traditional financial information used to manage those portfolios."[5]
2. Vanguard ($7.2t) — "With these guiding principles, we offer environmental, social, and governance (ESG) products that can help your clients reach their investing goals, while giving them the access and choice to invest according to their preferences."[6]
3. Fidelity ($3.8t) — "Our deep proprietary research and disciplined investing principles are the foundation of Fidelity's sustainable investing approach. Our principles are built on: Investment performance, Research, Cross-asset class collaboration, and engagement." [7]
4. Capital Group ($2.3t) — "Evaluating material ESG risks and opportunities is embedded into our investment approach, The Capital System™. Our three-part process enhances our bottom-up, fundamental research and emphasizes materiality at the individual-issuer level."[8]
5. Pacific Investment Management Company ($1.7t) — "We believe the consideration of relevant ESG factors is part of a robust investment research process. Where material, ESG factors can be important considerations when evaluating long-term investment opportunities and risks across asset classes in both public and private markets."[9]

As referenced by Vanguard, offerings are designed to provide investors choice in how they invest their retirement savings. Increasingly, investors are demanding options that explicitly incorporate ESG data in their investment process. In fact, the U.S. Department of Labor (DOL) has reiterated that Employee Retirement Income Security Act of 1974 ("ERISA") retirement plans must explicitly provide choice for investors: "The [investment] plan also must provide a broad range of investments for participants to choose from and information on the plan's investments so participants can make informed decisions."[21] In view of the global trends and investor demands for ESG-related investment options, most U.S. asset managers

---

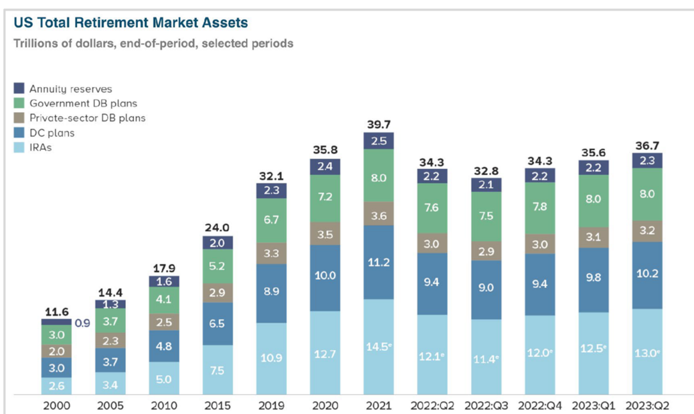
[4] Block, Dennis , and Johnathan Hoff. 2008. "SEC Release on Materiality on Financial Disclosure." FindLaw. March 26, 2008. accessed November 20, 2023, https://corporate.findlaw.com/finance/sec-release-on-materiality-in-financial-disclosure.html.
[5] BlackRock. "ESG Integration – Sustainable Investing - Themes | BlackRock," BlackRock, n.d., accessed November 19, 2023, https://www.blackrock.com/lu/intermediaries/themes/sustainable-investing/esg-integration.
[6] Vanguard. "ESG Investing | What Is ESG & How to Invest," Vanguard, n.d., accessed November 19, 2023, https://advisors.vanguard.com/strategies/esg-investing#overview.
[7] Fidelity. "Sustainable Investing ESG," Fidelity, n.d., accessed November 19, 2023, https://institutional.fidelity.com/advisors/investment-solutions/strategies/sustainable-investing-esg.
[8] Capital Group. "Environmental, Social and Governance (ESG)," Capital Group, n.d., https://www.capitalgroup.com/institutional/investments/esg.html.
[9] PIMCO. "Sustainable Investing Report 2022," PIMC, December 31, 2022, accessed November 19, 2023, https://documents.pimco.com/Viewer/file?id=VOG1ALuyTrQhCWoUxKbEhliQ%2BdLJI%2FFwPW9rTu%2Be8jE%2Ff7BUKBZnJl7wem53XVbf&s=Cq6iBW2uq%2BvHrsK1PhkVlBmidrbjfW6fvzSdjy1NkXo%3D&_ga=2.67415761.1344495756.1700492795-139720296.1700492795.

choose to include ESG-focused investment options in their ERISA plans in addition to the current traditional investment options.

It is U.S. forward-looking entrepreneurism (not a status-quo mentality) that has allowed the US to build the largest and most successful multinational enterprises—including the asset managers noted above.

II. ESG Investing is Aligned with Fiduciary Duty as Contemplated By ERISA

As of June 30th, 2023, US retirement assets totaled $36.7 trillion, of which only an estimated $13.4 trillion fall under the purview of ERISA, which consist of $3.2 trillion from private-sector defined benefit plans and $10.2 from defined contribution plans.



Retirement Assets Total $36.7 Trillion in Second Quarter 2023[10]

Notably, the $13.4 trillion in ERISA-governed retirement assets are subject to the rules set forth in the 2022 DOL Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights (the "2022 DOL Rule").[11] For plans under the 2022 DOL Rule, retirement plan fiduciaries are permitted to

---

[10] "Release: Quarterly Retirement Market Data." Investment Company Institute. September 14, 2023. https://www.ici.org/statistical-report/ret_23_q2#:~:text=Washington%2C%20DC%3B%20September%2014%2C,the%20end%20of%20June%202023.

[11] Employee Benefits Security Administration. *Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*. U.S. Department of Labor. November 22, 2022.

"take into account the potential financial benefits of investing in companies committed to positive environmental, social and governance actions."[12] Importantly, the 2022 DOL Rule makes clear that the consideration of ESG factors is not required. Rather, it allows ESG factors to be considered as part of the risk-return analysis, so long as the asset manager can demonstrate how those factors are relevant to the financial success of the retirement plan. This guidance aims to allow for the use of ESG factors when in the best interest of the plan, while also preventing these factors from sacrificing returns. This approach encourages an integrated approach to ESG, which is firmly within the scope of a fiduciary.

At the same time, we acknowledge the concerns raised at the hearing and support the need for increased regulation by designated regulatory bodies in order to protect both fiduciaries and beneficiaries with respect to ESG investing. For example, the SEC, which has provided investors with "material information about environmental risk facing public companies" since the 1970s, is currently developing a Standardization of Climate-Related Disclosures.[13] This new initiative is a direct response to both investors and companies seeking more standardized information regarding environmental risk. The SEC is tasked with maintaining fair, orderly, and efficient markets. Consequently, regulations surrounding ESG considerations are under the purview of SEC's mandate to engage in policy intervention for market failures if and when buyers and sellers do not have access to enough information.

Moving forward, there is opportunity to reimagine the existing U.S. regulatory framework with respect to ESG standards on par with traditional U.S. financial accounting standards.[14] The European Commission has already embraced this approach. The U.S. should similarly develop a transparent regulatory framework to ensure that global investors and global asset managers have clear and consistent regulatory requirements for each market. While private sector actors in the U.S. have done some work along these lines, more could be done to protect both investors and beneficiaries.

---

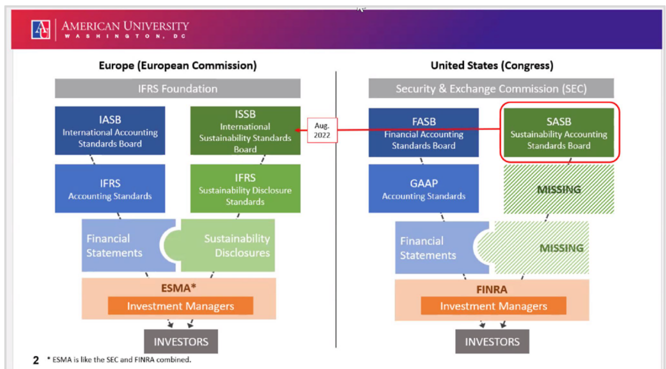
https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-on-prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights.

[12]Prince, Samantha J. 2023. "ERISA Plan Fiduciaries and ESG Factors." The Regulatory Review. April 26, 2023. https://www.theregreview.org/2023/04/26/prince-erisa-plan-fiduciaries-and-esg-factors/#:~:text=Under%20the%20new%20rule%2C%20plan.

[13] "Enhancement and Standardization of Climate-Related Disclosures Fact Sheet." n.d. U.S. Securities and Exchange Commission. https://www.sec.gov/files/33-11042-fact-sheet.pdf.

[14] For example, in 1973, the Financial Accounting Standards Board (FASB) was established as an independent, private-sector, not-for-profit organization that establishes financial accounting and reporting standards for public and private companies and not-for-profit organizations that follow Generally Accepted Accounting Principles (GAAP). Notably, "FASB is recognized by the U.S. Securities and Exchange Commission as the designated accounting standard setter for public companies." *See*, Financial Accounting Standards Board, *available at* https://fasb.org/facts.

AMERICAN UNIVERSITY • KOGOD SCHOOL OF BUSINESS
KOGOD TAX POLICY CENTER



While Congress gave the DOL the legal authority and responsibility to write a fiduciary duty rule for retirement plans, the SEC should now provide the necessary oversight to develop the ESG regulatory framework, similar to GAAP standards. This will allow companies to produce uniform and consistent ESG Statements for investors.

III. Integrating ESG Factors will be Accretive to Financial Performance in the Future

The correlation between ESG investing and financial performance has been widely investigated in academic literature, but provided mixed results. While these results understandably vary on a series of factors including, time horizon, ESG investment approach, and asset class, they have unfortunately been used opportunistically by both sides of the political spectrum. Importantly, SEC Rule 156, requires investment managers to state that past performance is not a guarantee of future results. Because much of the academic literature uses data spanning 20-25 years—a time period wherein ESG investing was not prevalent enough to impact financial outcomes—the results need to be viewed with caution. Indeed, there have been over 2,200 studies conducted on this topic since 1970,[15] but ESG-integrated investing only became widely understood and utilized in recent years. For example, United Nations Secretary-General Kofi Annan invited some of the world's largest investors to help develop the Principles for Responsible Investment in 2005 and it wasn't until 2016 that world leaders adopted the United Nations Sustainable Development Goals (SDGs). Because of the relatively recent adoption of these principles and frameworks, performance data from its nascent years is not reliable, further supporting the idea that past performance is not indicative of the future.

The academic literature examining the performance of ESG-focused investments is mixed.

[15] Gunnar Friede, Timo Busch, and Alexander Bassen, "ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies," Journal of Sustainable Finance & Investment 5, no. 4 (December 15, 2015): 210–33, https://doi.org/10.1080/20430795.2015.1118917.

- A study conducted between 2005 and 2016 found that Socially Responsible Mutual Funds underperformed during the period, but recognizes that it could be attributed to the 2008 financial crisis.[16] Another study from 2002 to 2011 based on Bloomberg ESG scores also found that high-ESG performers didn't show significant differences.[17] A similar study covering Sustainalytics ESG scores from 2004 to 2015 also found no differences between Socially Responsible Investing and traditional investing.[18]
- Other literature demonstrates that good ESG performance is associated with a lower tail risk, lower cost of equity, and lower spreads[19] and that higher ESG ratings are associated with better financial performance, especially if the firm is big[20] or the time horizon is long.[21] Reinforcing these findings, a 2015 meta-study that aggregated evidence from more than 2,200 empirical studies, which found that 63% demonstrated a positive relationship between ESG factors and corporate financial performance, compared to an 8% showing a negative relationship. In total, 90% of all findings indicated a nonnegative relationship between ESG and financial performance. This extensive body of empirical evidence emphasizes the concrete financial benefits linked to effective practices.[22]

When focusing on creating financial security for retirees, investors need to consider both return and *risk*. ESG factors have been cited as valuable indicators of risk, especially since 2019, as the post-pandemic period has proved to be particularly volatile for investments.[23] Integrating ESG ratings into pension fund planning can help increase returns in the long term *and* help keep investments safe from financial downturns and crises.[24] Companies with a higher ESG rating generally have lower stock volatility, leading to lower

[16] Nandita Das et al., "ESG Ratings and the Performance of Socially Responsible Mutual Funds: A Panel Study," *Journal of Finance Issues* 17, no. 1 (2018): 49–57, https://doi.org/10.58886/jfi.v17i1.2334.
[17] Gerhard Halbritter and Gregor Dorfleitner, "The Wages of Social Responsibility — Where Are They? A Critical Review of ESG Investing," *Review of Financial Economics* 26, no. 1 (April 2, 2015): 25–35, https://doi.org/10.1016/j.rfe.2015.03.004.
[18] Benjamin R. Auer and Frank Schuhmacher, "Do Socially (Ir)Responsible Investments Pay? New Evidence from International ESG Data," *The Quarterly Review of Economics and Finance* 59 (January 29, 2016): 51–62, https://doi.org/10.1016/j.qref.2015.07.002.
[19] Tim Verheyden, Robert G. Eccles, and Andreas Feiner, "ESG for All? The Impact of ESG Screening on Return, Risk, and Diversification," *Journal of Applied Corporate Finance* 28, no. 2 (July 11, 2016): 47–55, https://doi.org/10.1111/jacf.12174.
[20] Sang Kim and Zhichuan (Frank) Li, "Understanding the Impact of ESG Practices in Corporate Finance," *Sustainability* 13, no. 7 (March 27, 2021): 3746, https://doi.org/10.3390/su13073746.
[21] Tensie Whelan, Ulrich Atz, and Casey Clark, "ESG and Financial Performance - Sri360," *SRI360*, 2021, https://sri360.com/wp-content/uploads/2022/10/NYU-RAM_ESG-Paper_2021-2.pdf.
[22] Gunnar Friede, Timo Busch, and Alexander Bassen, "ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies," *Journal of Sustainable Finance & Investment* 5, no. 4 (December 15, 2015): 210–33, https://doi.org/10.1080/20430795.2015.1118917.
[23] Frederic Lepetit et al., "The Recent Performance of ESG Investing, the COVID-19 Catalyst and the Biden Effect," *SSRN Electronic Journal*, October 20, 2021, https://doi.org/10.2139/ssrn.3946483.
[24] Ick Jin, "Is ESG A Systematic Risk Factor for US Equity Mutual Funds?," *Journal of Sustainable Finance & Investment* 8, no. 1 (October 31, 2017): 72–93, https://doi.org/10.1080/20430795.2017.1395251.

risk and a higher rate of return.[25] This may be especially important in times of global instability, such as the 2008 Global Financial Crisis and the COVID-19 global pandemic.[26]

Concerns about underperformance can be justified given the nascent phase of development when the studies were conducted. Indeed, there is a growing consensus among academic literature that ESG research before 2014[27] or 2016[28] can be misleading. At the time, ESG data was less comprehensive or incomplete, relevant data was often unavailable, and frameworks to determine ESG impact were less developed.[29] **Nonetheless, we believe the focus should be forward-looking and we believe three factors — (1) consumer preferences for sustainable products and investments, (2) technological advances, and (3) clearer global regulation — will continue to encourage capital investments in companies that explicitly consider ESG factors or provide sustainable solutions. This flow of capital will inevitably support the financial returns of strong ESG-focused companies over those that do not prioritize these megatrends.**

Again, thank you to the Committee for holding this important hearing. I stand ready to help the Committee with its work. Feel welcome to contact me with questions regarding the foregoing.

---

25 N. C. Ashwin Kumar et al., "ESG Factors and Risk-Adjusted Performance: A New Quantitative Model," *Journal of Sustainable Finance & Investment* 6, no. 4 (October 4, 2016): 292–300, https://doi.org/10.1080/20430795.2016.1234909.
26 Rui Cheng, Hyeongjun Kim, and Doojin Ryu, "ESG Performance and Firm Value in the Chinese Market," *Investment Analysts Journal*, June 28, 2023, 1–15, https://doi.org/10.1080/10293523.2023.2218124.
27 Leila Bennani et al., "How ESG Investing Has Impacted the Asset Pricing in the Equity Market," *SSRN Electronic Journal,* November 27, 2018, https://doi.org/10.2139/ssrn.3316862.
28 Erick Meira et al., "The Added Value and Differentiation among ESG Investment Strategies in Stock Markets," *Business Strategy and the Environment* 32, no. 4 (August 28, 2022): 1816–34, https://doi.org/10.1002/bse.3221.
29 Robert G. Eccles, Mirtha D. Kastrapeli, and Stephanie J. Potter, "How to Integrate ESG into Investment Decision-making: Results of a Global Survey of Institutional Investors," *Journal of Applied Corporate Finance* 29, no. 4 (February 20, 2018): 125–33, https://doi.org/10.1111/jacf.12267.

Independent Women's Voice

IWV Statement on Ensuring that "Woke" Doesn't Leave Americans Broke Hearing

Chairman Jason Smith
House Ways and Means Committee
1139 Longworth HOB
Washington D.C. 20515

November 7, 2023

Dear Chairman Smith,

On behalf of Independent Women's Voice, I write to applaud the House Ways and Means Committee on holding a hearing on "Ensuring that "Woke" Doesn't Leave Americans Broke" examining how Environmental, Social, and Governance (ESG) investing is leaving Americans financially worse off.

Financial advisors overseeing 401(k) and related pension plans should be maximizing returns for their clients, not dabbling with funds that stray from this objective.

ESG funds tend to perform poorly compared to non-ESG funds. As IWF Center for Energy and Conservation Director Gabriella Hoffman noted that 152 million Americans will see their retirement funds, estimated to be valued at $10 trillion, jeopardized by ESG considerations.

Last year, savings accounts depreciated by 22.9%—from $126,100 on average in quarter three of 2021 to $97,200 quarter three of 2022. That's a loss of $34,000 in savings. Another estimate found savings depreciated $23,818 from January to December 2022, falling from $144,280 to $111,210.

According to its own proponents, ESG has been deemed "beyond redemption." An October 2023 Morning Consult poll found only 20% of investors report they have ESG funds. And a recent ESG Attitudes Survey from the Association of Investment Companies revealed private investors are souring on ESG funds– down from 66% in 2021 to 53% today.

IWV applauds the House Ways and Means Committee and its members for examining the true cost of ESG investing and its ruinous effects on Americans' hard-earned savings.

Respectfully,

Hadley Heath Manning
Vice President for Policy
Independent Women's Voice

Comments for the Record for the
U.S. House of Representatives
Committee on Ways and Means
Hearing on Ensuring that "Woke" Doesn't Leave Americans Broke:
Protecting Seniors and Savers from ESG Activism
Tuesday, November 7, 2023 at 10:00 AM

Michael Bindner
Center for Fiscal Equity

Chairman Smith and Ranking Member Neal, thank you for the opportunity to address this issue. We will address two areas.

First, we would like to associate ourselves with the testimony of the AFL-CIO regarding the ability of most Americans to save for retirement. Without adequate income, they simply cannot. This can be changed. We have proposals to raise wages generally, most especially for the working poor and disadvantaged.

- Raise the minimum wage to its purchasing power in 1965, which is somewhere in the neighborhood of $12 to $13 per hour for a 40 hour work week, or to a dollar more if the work week is shortened to four days at seven hours per day prior to overtime pay.
- Increase the Child Tax Credit, starting at post-pandemic level and increasing it to enough of an extent that Supplemental Aid for Needy Families can be safely abolished.
- Reestablish temporary disability for those who cannot work, including released inmates, alcoholics, addicts and those with mental illness who must focus on their recovery and who face stigma in returning to work.
- Provide these individuals with educational programs to address any deficits, intensive outpatient services and psychiatric rehabilitation services. Pay participants the minimum wage for doing so - with program administration and health benefits managed by the educational provider, such as the Catholic school system.
- Increase Social Security benefits below the first bend point by 40%, as for most retirees and almost all of the disabled have little or no retirement savings. Starving retirees or forcing them to apply for Food Stamps is not a reasonable incentive to save more.
- For the future, shift the employer contribution to FICA to a credit invoice value added tax, with equal dollar crediting to each worker in any quarter.

Please see our attached tax reform plan, which will show how each item on this list would be funded.

Secondly, we entirely agree that pension funds should not be "woke." Instead, they should allow for the active participation of fund management for the benefit of retired or soon to be retired investors. This would necessitate changes to law, including abandoning the concept of a unitary board of directors, abandon the prudent expert rule under ERISA and adjusting the thresholds in the Taft-Hartley to allow organized labor to invest more aggressively for the benefit of their members, as follows:

- Allow up to one third of pension assets to be invested in the firms that employ members.
- Allow up to one third to be invested in companies which provide goods and services to members, including in the banking, homebuilding, medical and retail sectors with adequate board representation in line with amounts invested, rather than simply serving as an oversight mechanism which allows Chief Executive Officers to line their pockets.
- Allow up to one third to be invested for merger and acquisition purposes, including investment in non-union owned firms with the specific goal of changing these arrangements.

It seems we have run out of thirds, which leaves no room for ESG investment.

Thank you, again, for the opportunity to add our comments to the debate. Please contact us if we can be of any assistance or contribute direct testimony.

Attachment - Tax Reform, Center for Fiscal Equity, March 24, 2023

Synergy: The President's Budget for 2024 proposes a 25% minimum tax on high incomes. Because most high income households make their money on capital gains, rather than salaries, an asset value added tax replacing capital gains taxes (both long and short term) would be set to that rate. The top rate for a subtraction VAT surtax on high incomes (wages, dividends and interest paid) would be set to 25%, as would the top rate for income surtaxes paid by very high income earners. Surtaxes collected by businesses would begin for any individual payee receiving $75,000 from any source at a 6.25% rate and top out at 25% at all such income over $375,000. At $450,000, individuals would pay an additional 6.25% on the next $75,000 with brackets increasing until a top rate of 25% on income over $750,000. This structure assures that no one games the system by changing how income is earned to lower their tax burden.

Individual payroll taxes. A floor of $20,000 would be instituted for paying these taxes, with a ceiling of $75,000. This lower ceiling reduces the amount of benefits received in retirement for higher income individuals. The logic of the $20,000 floor reflects full time work at a $10 per hour minimum wage offered by the Republican caucus in response to proposals for a $15 wage. The majority needs to take the deal. Doing so in relation to a floor on contributions makes adopting the minimum wage germane in the Senate for purposes of Reconciliation. The rate would be set at 6.25%.

Employer payroll taxes. Unless taxes are diverted to a personal retirement account holding voting and preferred stock in the employer, the employer levy would be replaced by a goods and receipts tax of 6.25%. Every worker who meets a minimum hour threshold would be credited for having paid into the system, regardless of wage level. All employees would be credited on an equal dollar basis, rather than as a match to their individual payroll tax. The tax rate would be adjusted to assure adequacy of benefits for all program beneficiaries.

High income Surtaxes. As above, taxes would be collected on all individual income taxes from salaries, income and dividends, which exclude business taxes filed separately, starting at $400,00 per year. This tax will fund net interest on the debt (which will no longer be rolled over into new borrowing), redemption of the Social Security Trust Fund, strategic, sea and non-continental U.S. military deployments, veterans' health benefits as the result of battlefield injuries, including mental health and addiction and eventual debt reduction.

Asset Value-Added Tax (A-VAT). A replacement for capital gains taxes and the estate tax. It will apply to asset sales, exercised options, inherited and gifted assets and the profits from short sales. Tax payments for option exercises, IPOs, inherited, gifted and donated assets will be marked to market, with prior tax payments for that asset eliminated so that the seller gets no benefit from them. In this perspective, it is the owner's increase in value that is taxed. As with any sale of liquid or real assets, sales to a qualified broad-based Employee Stock Ownership Plan will be tax free. These taxes will fund the same spending items as high income and subtraction VAT surtaxes. There will be no requirement to hold assets for a year to use this rate. This also implies that this tax will be levied on all eligible transactions.

The 3.8% ACA-SM tax will be repealed as a separate tax, with health care funding coming through a subtraction value added tax levied on all employment and other gross profit. The 25% rate is meant to be a permanent compromise, as above. Any changes to this rate would be used to adjust subtraction VAT surtax and high income surtax rates accordingly. This rate would be negotiated on a world-wide basis to prevent venue seeking for stock trading.

Subtraction Value-Added Tax (S-VAT). Corporate income taxes and collection of business and farm income taxes will be replaced by this tax, which is an employer paid Net Business Receipts Tax. S-VAT is a vehicle for tax benefits, including

- Health insurance or direct care, including veterans' health care for non-battlefield injuries and long term care.
- Employer paid educational costs in lieu of taxes are provided as either employee-directed contributions to the public or private unionized school of their choice or direct tuition payments for employee children or for workers (including ESL and remedial skills). Wages will be paid to students to meet opportunity costs.
- Most importantly, a refundable child tax credit at median income levels (with inflation adjustments) distributed with pay.

Subsistence level benefits force the poor into servile labor. Wages and benefits must be high enough to provide justice and human dignity. This allows the ending of state administered subsidy programs and discourages abortions, and as such enactment must be scored as a must pass in voting rankings by pro-life organizations (and feminist organizations as well). To assure child subsidies are distributed, S-VAT will not be border adjustable.

As above, S-VAT surtaxes are collected on all income distributed over $75,000, with a beginning rate of 6.25%. replace income tax levies collected on the first surtaxes in the same range. Some will use corporations to avoid these taxes, but that corporation would then pay all invoice and subtraction VAT payments (which would distribute tax benefits). Distributions from such corporations will be considered salary, not dividends.

Invoice Value-Added Tax (I-VAT) Border adjustable taxes will appear on purchase invoices. The rate varies according to what is being financed. If Medicare for All does not contain offsets for employers who fund their own medical personnel or for personal retirement accounts, both of which would otherwise be funded by an S-VAT, then they would be funded by the I-VAT to take advantage of border adjustability.

I-VAT forces everyone, from the working poor to the beneficiaries of inherited wealth, to pay taxes and share in the cost of government. As part of enactment, gross wages will be reduced to take into account the shift to S-VAT and I-VAT, however net income will be increased by the same percentage as the I-VAT. Inherited assets will be taxed under A-VAT when sold. Any inherited cash, or funds borrowed against the value of shares, will face the I-VAT when sold or the A-VAT if invested.

I-VAT will fund domestic discretionary spending, equal dollar employer OASI contributions, and non-nuclear, non-deployed military spending, possibly on a regional basis. Regional I-VAT would both require a constitutional amendment to change the requirement that all excises be national and to discourage unnecessary spending, especially when allocated for electoral reasons rather than program needs. The latter could also be funded by the asset VAT (decreasing the rate by from 19.25% to 13%).

Carbon Added Tax (C-AT). A Carbon tax with receipt visibility, which allows comparison shopping based on carbon content, even if it means a more expensive item with lower carbon is purchased. C-AT would also replace fuel taxes. It will fund transportation costs, including mass transit, and research into alternative fuels. This tax would not be border adjustable unless it is in other nations, however in this case the imposition of this tax at the border will be noted, with the U.S. tax applied to the overseas base.

Contact Sheet

Michael Bindner
Center for Fiscal Equity
14448 Parkvale Road, Suite 6
Rockville, MD 20853
240-810-9268
fiscalequitycenter@yahoo.com

Committee on Ways and Means
Hearing on Ensuring that "Woke" Doesn't Leave Americans Broke:
Protecting Seniors and Savers from ESG Activism
Tuesday, November 7, 2023 at 10:00 AM

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears:

This testimony is not submitted on behalf of any client, person or organization other than the Center itself, which is so far unfunded by any donations.