AFR Americans for Financial Reform

Attacks on "ESG" Are Attacks on Corporate Accountability, Responsible Investing, and Pensions

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I. Topline Messages & Resources

Messages

What this is about:

- "Anti-ESG" is an attempt to slow the energy transition, attack corporate progress on issues of racial justice and workplace diversity, and roll back corporate commitments to labor protections.

The money behind this effort:

- The fossil fuel industry is bankrolling this effort because it would rather let our planet burn to increase short-term profits rather than adjust its business practices to stave off the worst of the climate crisis and invest in the long term.
- Proponents want you to think that this "anti-ESG" movement is organic, that it emerged from the conservative grassroots, but that could not be further from the truth. The anti-ESG movement is a well-funded and well-organized campaign led by top conservative political operatives.
- With funding and guidance from prominent anti-democratic figures like the Koch brothers, Leonard Leo and Peter Thiel, Republican politicians have explicitly signaled their intention to make "ESG" the new "CRT."

On woke:

- Far-right, extremist forces have orchestrated a coordinated attack aimed at framing common sense investment practices — specifically, the consideration of environmental, social, and governance (ESG) factors in investment decisions — as "woke capitalism."
- Although woke simply means to be aware of racial and social injustices, some Republicans are using it as a smoke screen to protect big corporations' short-term financial interests at the expense of working class people and their retirement security. Those espousing "anti-woke" rhetoric are fueling racial resentment in pursuit of policies that serve their corporate donors.

Pensions/workers' money:

- Anti-ESG efforts are a threat to retirement security. This far-right political project exposes our retirement savings to significant financial risks that cannot be ignored, like those caused by destructive labor practices, worsening climate impacts, and excessive executive compensation.
- Studies have found that state-level anti-ESG bills could cost retirees money:
    - Indiana's budget office found that a bill forcing pension funds to divest from asset managers that consider ESG factors would cost $6.7 billion over the next decade in sub-market returns, force retirees to increase their contributions, and impose an additional $550,000 in administrative costs per year.
    - The Kansas Division of the Budget found that an anti-ESG bill could cost the Kansas Public Employees Retirement System (KPERS) upwards of $3.6 billion over the next ten years.

Short term versus long term:

- At its core, this fight is about how big corporations should behave in our society: should they focus on short-term, risky value extraction or long-term, sustainable value creation?

Regulation and investor protection:

- Anti-ESG efforts seek to undermine regulations that would equip investors with more information to make better decisions about their investments and insulate the management of companies from investor input and accountability.
    - Access to consistent, comparable, and decision-useful data helps investors get a fuller picture of risks and opportunities to make investment decisions.
- The attacks to restrict the ability of financial actors to consider ESG risk factors in investing run counter to the actions desired by responsible investors. Over the last five years, investors have been pushing to hold corporate boards accountable on critical risks

like climate change and racial inequality. The anti-ESG narrative is being used to undermine progress, using fear rather than legitimacy to quash sustainable investing practices.

Costs to the public:

- Studies have found that state-level anti-ESG bills could cost the public money:
    - 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.
    - A subsequent study used the same methodology to estimate that six additional states primed to pass similar investment blacklists would be raising debt servicing costs by over $700 million.

Voters oppose this:

- Over half of voters oppose legislation to limit the type of information about a corporation's business record that is disclosed to fund managers, investors, and the public, including 38% who strongly oppose. The opposition crosses partisan lines – Democrats 58% oppose, 38% strongly oppose; Independents 63% oppose, 46% strongly oppose; Republicans 52% oppose, 34% strongly oppose).

Resources

- ESGexplainer.org is an informational website that explains what ESG and responsible investing are, debunks myths, and demasks anti-ESG efforts.
- We hosted an event titled Protecting Workers' Retirement Security from Anti-ESG Attacks, during which labor leaders and allies reminded Capitol Hill that workers' hard-earned money is at the center of the "anti-ESG" controversy.

II. House Financial Services Committee (shareholder engagement & financial regulation)

In July 2023, the House Financial Services Committee hosted what it referred to as "ESG month," during which it held several hearings that culminated in a mark-up of four anti-ESG bills. Before the "ESG month" activities began, 58 organizations voiced opposition to it.

The marked-up bills can be categorized based on the effects they would have:

1. Undermine regulations that would equip investors with more information to make better investment decisions (**H.R. 4790**);
2. Insulate the management of public companies from investor input and accountability, including by eliminating fundamental investor rights to file shareholder proposals (**H.R. 4767** and **H.R. 4655**); and
3. Hamstring the ability of federal banking regulators to respond effectively to micro- and macro-prudential risks to the financial system (**H.R. 4823**).

Americans for Financial Reform submitted a detailed letter opposing these bills ahead of the mark-up. Later in the year, over 30 organizations opposed these bills. For a breakdown of what these bills would do, see slides 4-8 of this PPT.

A blog post explains how these bills would undermine racial equity efforts at public companies, including banks.

Another blog post on the recent battle trying to hold Exxon board members accountable for filing a lawsuit against its own shareholders explains the connection between shareholder advocacy and **H.R. 4767** and **H.R. 4655**.

Recent polling commissioned by Public Citizen found that voters:
1. Oppose Congress passing legislation to limit the type of information about a corporation's business record that is disclosed to pension and retirement fund managers, investors, and the public; and
2. Would reward an elected official who favors requiring corporations to disclose environmental, social, and governance information about their business dealings to investors and the public.

III. House Education & the Workforce Committee; House Ways & Means Committee (pensions)

Biden's first veto: Department of Labor rule

President Biden's first veto was of a Congressional Review Act (CRA) resolution seeking to nullify an important Department of Labor (DOL) rule that safeguards the savings of millions of workers who participate in private-sector employee benefit plans.

The rule makes it clear that those managing workers' retirement savings under ERISA can consider risks related to environmental, social, and governance factors. It also makes it easier to exercise shareholder rights and choose investment options with non-financial benefits like creating union jobs *only if* the investment options under consideration equally serve the financial interests of the plan. We co-led a letter with Public Citizen with over 60 signatories in opposition to the CRA resolution.

Four marked-up bills

A few months later, the House Education & the Workforce Committee took up the issue again, marking up four bills – two of which (**H.R. 5339** and **H.R. 5337**) would codify the Trump-era DOL rules the above rule replaced. Those rules were widely criticized and have since been rescinded due to having produced significant confusion about what fiduciaries are allowed to consider when making investment decisions, and causing a chilling effect on the consideration of financially relevant information – thereby putting workers' retirement security at risk.

The other two bills would also harm workers saving for retirement, **H.R. 5338** by interfering with efforts to increase diversity amongst asset managers managing workers' savings and **H.R. 5340** by mandating confusing and misleading information be sent to investors.

We submitted a letter opposing these bills ahead of the mark-up, as did the AFL-CIO.

Tax bill

The House Ways & Means Committee held a hearing on this topic, even though their only hook for jurisdiction was the fact that many retirement plans are tax exempt. We submitted a letter for the record, and Brandon Rees of the AFL-CIO provided powerful testimony in opposition to the premise of the hearing. **H.R. 7780** was introduced earlier this year, which would amend the Internal Revenue Code to chill the consideration of environmental, social, and governance risks and opportunities.

Intimidation tactics: letters to labor union leaders and the Biden administration

In May 2024, Republican leaders of the House Education & the Workforce Committee sent letters designed to stymie workers' ability to have their voices heard in their own investments. The Committe's Chairwoman Virginia Foxx sent letters to labor leaders asking questions about their exercise of shareholder rights. She and Health, Education, Labor, and Pensions Subcommittee Chairman Bob Good sent letters to labor leaders and Biden administration officials in response to a White House convening of a group of "asset owners representing over $1 trillion in public and pension fund capital" that has committed to "promote strong labor commitments among funds, asset managers, and companies."

Randi Weingarten, president of the American Federation of Teachers, and Sean McGarvey, president of the North America's Building Trades Unions published a powerful op-ed defending the rights of workers to ask their own asset managers "hard questions—even if they don't like it." They conclude: "What working people need, what our pension funds need, and what America needs is for us to work together to invest, create good jobs, and build a shared future where all of us can retire with security and dignity."

IV. House Judiciary Committee (antitrust)

The House Judiciary Committee has been subpoenaing asset owners, asset managers, and shareholder advocates as part of a misguided investigation into alleged possible antitrust violations.

This effort included a contentious hearing that attempted to frame ESG investing as anticompetitive. The hearing featured inflammatory rhetoric and easily debunked claims, as detailed in our blog post. A thorough report from the Minority released shortly before the hearing found that "[t]he evidence produced in the investigation undermines any possible theory of antitrust harm."

Legal experts have debunked this legal theory:

- The law firm Jenner & Block published a memo painstakingly debunking arguments Republican Attorneys General made in a letter to asset managers, including on antitrust issues (in addition to arguments about fiduciary duty and securities law). They concluded that "[t]he violations alleged by the state AGs and their representation of the law, which the AGs timed to coincide with the start of the 2023 proxy season, are an overreach at best and a misrepresentation of the law and fact at worst."
- The law firm Wilson Sonsini published a memo focusing on antitrust issues and concluded that "many common forms of shareholder activism do not raise any substantive antitrust risks, because they do not constitute agreements under antitrust law, nor do they result in any meaningful harm to competition."
- Colorado Attorney General Phil Weiser headlined an event hosted by the State Energy & Environmental Impact Center of the NYU School of Law. Highlights of his talk include:
  - "[W]hen businesses work together to protect, for example, consumer privacy, to safeguard natural resources, or to share information about the impact of our changing climate change and how they are responding to it, that advances public welfare and does not offend the antitrust laws."
  - "At this moment, it is important . . . that businesses stand up to intimidation efforts not grounded in the rule of law."
- Minnesota Attorney General Keith Ellison testified before the Committee: "As an antitrust enforcer, I consider these unsupported allegations irresponsible. Empty allegations can chill entirely legal business activity and slow vital innovation. Absent an

actual agreement to take actions that will harm our markets, companies and investors have every right to choose to make responsible investing commitments. Indeed, in light of the rapidly mounting evidence, businesses and investors should be applauded for considering the impacts of climate change in their planning."

V. Asset Managers

The right-wing forces seeking to maintain the status quo of short-term, risky value extraction by big corporations are trying to influence the asset management industry — often specifically targeting Larry Fink, the CEO of BlackRock (the largest asset management company in the world).

The asset management industry is heavily concentrated, with four asset managers — BlackRock, Vanguard, State Street, and Fidelity — managing about $25 trillion in assets. As of the end of 2021, the three largest asset managers collectively held nearly 22% of shares and voted nearly 28% of shares voted in the S&P 500.

Large asset managers like these have the power and fiduciary responsibility to address long-term risks and opportunities, especially those that have a portfolio-wide impact. However, the largest asset managers have not been fulfilling their responsibility, and clients lack mechanisms to monitor and hold them accountable.

Unfortunately, anti-ESG efforts have resulted in a chilling effect, making large asset managers even less likely to vote in favor of important shareholder proposals and more likely to abandon important efforts like Climate Action 100+ and the Net Zero Asset Managers initiative.

Below are some examples of the unmet need for asset managers to use their power in their clients' best interests:

- In May 2024, eight state and local financial officials and several pension fund trustees urged "the world's largest asset managers to vote to hold ExxonMobil's board of directors accountable for the company's actions to undermine shareholder rights" by voting against two directors. The letter urged:
    - "As the world's largest asset managers with holdings that amount to a 38 percent stake in ExxonMobil, your votes will be critical in determining the outcome of this month's director elections. We call on you to vote to protect shareholder voice – a key pillar of corporate governance and public equity markets."
- Letter from NYC Comptroller Brad Lander to BlackRock expressing his "growing concern that BlackRock is backtracking on its climate commitments, to the detriment of its portfolio, New York City's pension funds, and our planet."

- A report analyzing large asset manager votes on racial justice issues at 2023 annual shareholder meetings found that:
    - On average, the largest four asset managers supported just 6% of racial equity audit proposals, 15% of political spending and lobbying disclosure proposals, no political congruency proposals, and 15% of freedom of association and collective bargaining proposals.
    - Fourteen out of eighteen asset managers supported a smaller percentage of racial equity audit proposals in 2023 than in 2022.
- A report analyzing large asset manager votes on climate-related risks at 2023 annual shareholder meetings found that the largest four asset managers provided overwhelming support to the directors of U.S.-based companies with operations and business models that were most misaligned with 1.5°C pathways.

VI. State-Level Policies

Since 2021, Republican lawmakers in 39 states have introduced 373 pieces of anti-ESG legislation. These bills seek to weaponize government funds, contracts, and pensions to prevent companies and investors from considering basic, common-sense risk factors. A recent report found that in 2024, six state bills out of 161 considered became law, in contrast to 2023, when 23 state bills became law. The report notes that "[t]he slowdown in legislative success reflects the diverse, broad coalition of business leaders, bankers associations, trade groups, environmental advocates, and public workers who opposed these bills."

State executives have also been busy promulgating at least 113 executive actions in 31 states.

These actions have real costs to the public and pensioners:

- ***Costs to the public:*** 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. A subsequent study used the same methodology to estimate that six additional states primed to pass similar investment blacklists would be raising debt servicing costs by over $700 million.
- ***Costs to pensioners:*** Indiana's budget office found that a bill forcing pension funds to divest from asset managers that consider ESG factors would cost $6.7 billion over the next decade in sub-market returns, force retirees to increase their contributions, and impose an additional $550,000 in administrative costs per year. The Kansas Division of the Budget found that an anti-ESG bill could cost the Kansas Public Employees Retirement System (KPERS) upwards of $3.6 billion over the next ten years.