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Environmental, Social, and Governance (ESG) Scores

A Threat to Individual Liberty, Free Markets, and the U.S. Economy

THE HEARTLAND INSTITUTE

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EXECUTIVE SUMMARY

Environmental, social, and governance (ESG) scoring systems have rapidly become one of the more polarizing issues in the United States. Over the past half-decade, the economies of most sovereign states—especially those in the Anglosphere—have been rapidly transformed, with wealth, power, and influence becoming increasingly concentrated in the hands of a select few oligarchic individuals and institutions promoting ESG and their new economic ideology of "stakeholder capitalism." As a result, ESG has become one of the gravest threats facing the free societies of the world today.

At its core, ESG is a social credit scoring system that ideologically aligned elites and subservient bureaucratic authorities have been developing to "reset" the global financial system to their advantage, fundamentally transforming society in the process. This is accomplished by altering traditional frameworks of evaluating businesses and assessing investment risk. Rather than determining the credit-worthiness and value of a business or industry based upon objective measures such as profit, return on investment, consumer demand, and other material performance measures, ESG's architects seek to judge entities based upon subjective and difficult to quantify social and environmental goals. These objectives typically have little or nothing to do with business success in the marketplace based on consumer demand expressed through their purchases.

"At its core, ESG is a social credit scoring system that ideologically aligned elites and bureaucratic authorities are developing to "reset" the global financial system to their advantage, fundamentally transforming society in the process."

Entities deemed unworthy, such as those involved in the hydrocarbon extraction business, firearm manufacturing, or even agricultural production, are being frozen out of financial markets. Entities judged as "unworthy" are limited in their access to investment infusion, loans, insurance policies, basic access to financial services, and more. This limits growth potential, restricts the ability to hire qualified workers, and forces the reallocation of funds away from purchasing materially valuable goods and services that may be used for manufacturing, stock, and inventory in favor of subjective political goals.

This paper offers a sweeping overview of ESG. First, the paper outlines ESG's historical roots, which uncoincidentally correlate with the ever-increasing level of governmental market intervention endemic over the past century, including the gradual elimination of individual freedom and privacy rights under the guise of "intergovernmental cooperation."

Second, this paper delves into the specific details of commonly utilized ESG metrics used to favor some industries and discriminate against others. Some of these metrics are:

- Impact of GHG (greenhouse gas) emissions
    - "Report wherever material along the value chain (GHG Protocol Scope 1, 2, & 3) the valued impact of greenhouse gas emissions. Disclose the estimate for the societal cost of carbon used and the source or basis for this estimate"

- Diversity and inclusion
    - “Percentage of employees per employee category, by age group, gender, and other indicators of diversity (e.g., ethnicity)”
- Economic, environmental, and social topics in capital allocation framework
    - “How the highest governance body considers economic, environmental and social issues when overseeing major capital allocation decisions, such as expenditures, acquisitions and divestments”

Third, this paper examines myriad actors responsible for creating and promoting ESG, such as:

- International organizations such as the United Nations, World Economic Forum, International Monetary Fund, Bank of International Settlements, and World Bank
- Asset management firms such as BlackRock, State Street Global Advisors, and Vanguard
- The world’s largest banks, including Bank of America, Citigroup, Credit Suisse, Goldman Sachs, and JP Morgan Chase
- Insurance conglomerates like AXA, Allianz, and Zurich
- U.S. regulatory agencies such as the Office of the Comptroller of the Currency, the Department of Labor, and the Securities and Exchange Commission

Fourth, this paper analyzes the myriad deleterious impacts ESG systems pose against society, which can be broadly categorized under the six following themes:

1. ESG harms the economy by penalizing affordable and efficient hydrocarbon-based energy and agricultural output, thereby contributing to higher costs in virtually every sector of the economy
2. ESG circumvents democratic institutions and renders national sovereignty irrelevant
3. ESG reduces individual liberty
4. ESG supplants free-market capitalism with a top-down, centrally planned economic model under the control of a handful of monopolistic corporations and international bodies
5. ESG compliance results in tremendous waste of scarce economic resources
6. ESG could directly endanger U.S. national security

Fifth, this paper discusses a range of efforts taken by state and federal legislators and state legal and financial officers to combat ESG, with appendices including specific model legislation that various actors opposing ESG have developed.

The paper’s penultimate section explores two new ESG regulations proposed by the highest authorities within the European Union—one of which has recently become law, and the other of which will likely soon become law—and the substantial threat these regulations pose to American markets, democratic institutions, national sovereignty, and individual rights.

The paper concludes with specific recommendations for policymakers who cover anti-ESG measures, which could be enacted at the state and federal level, as well as in the foreign policy sphere.

INTRODUCTION

Since late 2021, environmental, social, and governance (ESG) scores have rapidly become one of the more polarizing policy issues in U.S. politics, as well as in Canada and Europe. Two years ago, most Americans would have been hard-pressed to know what "ESG" stands for, and many had never heard of the term at all. That was likely by design. ESG's primary architects and overseers have intentionally obfuscated ESG's existence and intricacies, allowing them to fundamentally restructure various parts of the global economy before most people understood what had happened. As a result, the economies of numerous Western nations, including the United States, have been rapidly transforming, and wealth and influence have become increasingly concentrated in the hands of an ever-shrinking number of institutions, making ESG one of the greatest threats facing the free societies of the world today.

"ESG is a kind of social credit scoring system. It serves as the chief mechanism by which ideologically aligned influential elites and powerful institutions—often working through unelected supranational organizations and regulators—are attempting to "reset" the global financial system to their advantage."

ESG is a kind of social credit scoring system. It serves as the chief mechanism by which ideologically aligned influential elites and powerful institutions—often working through unelected supranational organizations and regulators—are attempting to "reset" the global financial system to their advantage. ESG works by altering traditional frameworks used to evaluate business and investment decisions, such as risk assessment and capital and credit allocation.

The metrics used to determine ESG scores are closely aligned with the United Nations' Sustainable Development Goals (SDGs), why is why they focus heavily on commitments to "climate change mitigation" and "social justice"[1] causes. These subjective and politically motivated metrics are amalgamated into an overall ESG social credit score or series of scores, which then determine whether the evaluated entity—including sovereign countries, states, entire industries, large corporations, small- and medium-sized businesses, and even individuals—is "socially responsible" enough to be worthy of investment, loans, or even insurance policies. Businesses with high scores have received substantial capital in-flows, access to special financial vehicles, preferential contracting, and other advantages. Poorly scored companies are punished with reduced or altogether eliminated access to capital and credit, which coerces them to get in line or die on the vine.[2]

Ultimately, these measures are designed to centralize power and wealth in the hands of unelected supranational organizations, non-governmental organizations (NGOs), regulators, central bankers, technocrats, investment firms, and financial institutions, who intend, according to their own statements, to wield this power to socially engineer society. For instance, consider the words of World Economic Forum (WEF) founder and Executive Chairman Klaus Schwab, one of the leading designers and advocates of ESG: "The world must act jointly and swiftly to revamp all aspects of our societies and economies, from education to social contracts and working conditions. … In short, we need a 'Great Reset' of capitalism."[3]

ESG's full institutionalization, which appears imminent, would undermine democratic institutions and constitutional protections because most decision-making would be made outside of normal policymaking processes. It would also abrogate individual freedoms and undermine free markets, transforming free-market capitalistic economies around the world into top-down, centrally planned economic systems. As such, ESG must be eradicated to preserve market freedom and individual liberty in the United States and around the globe.

"This paper offers a sweeping overview of ESG, the dangers it poses, and strategies for preventing its influence and use."

This paper offers a sweeping overview of ESG, the dangers it poses, and strategies for preventing its influence and use. The paper first presents a brief history of how ESG has evolved, discusses the details behind ESG's specific metrics, reveals ESG's primary architects and implementers, and examines the myriad problems associated with ESG implementation. Next, the paper outlines efforts made by state and federal lawmakers to combat ESG, with specific examples, including legislative templates. The paper then conducts a lengthy examination of proposals to expand the use of ESG in the European Union, as well as how those proposals—which will almost certainly become law within the next year—will have profound ramifications for businesses and families in the United States. The concluding section of the paper offers specific policy recommendations that can and should be enacted at the state and federal level, as well as in the foreign policy sphere.

THE HISTORICAL ROOTS, EVOLUTION, AND PROLIFERATION OF ESG

Since the founding of the United States, conflicts within the realms of money and power have affected our history in ways both seen and unseen to the general public. The battle between centralized banking and free-market advocates date as far back as the heated arguments between Founding Fathers Alexander Hamilton and Thomas Jefferson, with Hamilton famously arguing for the creation of a central banking system and Jefferson strenuously opposed. The creation of the First Bank of the United States in 1790 represented a major triumph for Hamiltonians—the advocates of privatized, monopolistic control of the money supply through the issuance of debt.

"Since the founding of the United States, conflicts within the realms of money and power have affected our history in ways both seen and unseen to the general public."

The powers behind the creation of the first central bank, its two successors, and the national banking system as a whole gradually accumulated more power as decades wore on. The creation of the Second Bank of the United States, its eventual dismantling by President Andrew Jackson, and the "financial panics" of the late nineteenth and early twentieth centuries ultimately culminated with the private banking cabal's coup de grace in 1913: the U.S. Federal Reserve system.[4]

Since the Federal Reserve's genesis more than a century ago, it has gradually expanded its own mandate, beginning to conduct monetary policy free from government control, and therefore independent of the interests of the public. As a result, the United States has seen its already vastly abrogated free market ideology exponentially decline in favor of increased monetary and market interventions justified as responses to various crises, such as World War I, the Great Depression, and World War II—not to mention more recent events such as the 2008 financial crisis and the COVID-19 pandemic. Each step has further reduced Americans' freedom through more centralized control of the money supply and the economy. These interventions have allowed a government-sanctioned private banking sector to actuate control over the entirety of the U.S. economy, further reducing Americans' freedom and centralizing economic control in the hands of private interests. The Bretton Woods Agreement ratified in the final days of World War II—which created globalist institutions such as the International Monetary Fund and the World Bank—established the U.S. dollar as the world reserve currency and the primary global means of exchange.[5] This further cemented control in the hands of the secretive international oligarchic cartel that still remains at the levers of national and global power to this day.

As this slide into captured markets became more prevalent after the Great Depression, President Roosevelt's New Deal, and the Second World War, exhortations for company executives to "act responsibly" and improve the public welfare gained significant popularity.[6] This ushered in the novel concept of "corporate social responsibility" (CSR). CSR's popularity increased heavily in the ensuing decades, though not without contest from those still committed to traditional free-market principles. Nobel Prize winning economist Milton Friedman famously argued in 1970 that the only responsibility a corporation has is to its shareholders, an ideology that has since been labeled by its detractors as "shareholder capitalism."[7]

Despite the best efforts of Friedman and his peers, advocates of CSR continued to proliferate in the latter years of the twentieth century and in the early twenty-first century. Governments, corporate activists, and corporate managers seeking favor with government and financial institutions began to fundamentally transform large corporations into vehicles for "sustainable development." For instance, many corporate managers at the end of the twentieth century sought to alter their business practices to conform to what CSR advocate John Elkington defined in 1994 as the triple bottom line: people, planet, and profits.[8] Such practices were strongly encouraged by highly funded and powerful global institutions, including the private owners of central banks—such as the U.S. Federal Reserve and the Bank of International Settlements—the United Nations, World Bank, International Monetary Fund, and the World Economic Forum. This marked the beginning of an enormous "public-private partnership" between global political powers and global financial wealth that serves as the omniscient, omnipresent, and nearly omnipotent power structure behind ESG today.

The term "ESG" was first used in a 2004 United Nations report titled "Who Cares Wins," which called for "better inclusion of environmental, social, and corporate governance (ESG) factors in investment decisions."

Throughout the 1990s and 2000s, practices declared as "sustainable" were codified and embedded within the frameworks of international bodies, such as the UN-led "Agenda 21" initiative. Agenda 21's goals have since evolved numerous times, with its current iteration—Agenda 2030—sponsoring the "Sustainable Development Goals" (SDGs). The 17 SDGs include items such as "responsible consumption and production," "climate action," "sustainable cities and communities," and "gender equality."[9] If one looks closely at ESG's metrics, a task discussed in the next section of this paper, it is easy to see how they are closely associated to the United Nations' SDGs. These SDGs have been developed by the Intergovernmental Panel on Climate Change (IPCC), an organization that staunchly—and falsely—postulates that modern-day "climate change" is purely the result of human activity.[10]

The United Nations, through its many public and private tendrils, has been at the forefront of the sustainability crusade since its creation in 1945. However, sustainability and ESG did not begin to truly flourish until the late twentieth and early twenty-first centuries, when a large number of powerful corporate entities, non-profits, public-private partnerships, suspiciously funded non-governmental organizations, large international banks, and Wall Street financiers made known their participation. It appears that it was during this initial period of public-private integration that the term "ESG" was first used, in a 2004 United Nations report titled "Who Cares Wins," which called for "better inclusion of environmental, social, and corporate governance (ESG) factors in investment decisions."[11]

Once ESG became part of the sustainable investment movement's official lexicon, it gradually spread. The UN-backed Principles of Responsible Investment (PRI) association—founded in 2006 by a group of large investment managers and the United Nations—represented one of the first large-scale efforts to officially incorporate ESG into its practices. At its inception in 2006, PRI's membership was comprised of 63 financial institutions, businesses, and government-related funds, with approximately $6.5 trillion in assets under management (AUM) among them.[12] PRI would grow exponentially in the ensuing years. Its members controlled more than $100 trillion by early 2022.[13]

To cement widespread support for sustainable development practices from the general public as well as the international business community, thereby further consolidating market control over economic resources, a "new" theory of macroeconomics needed to be embraced. ESG's architects decided to adopt the relatively innocuous sounding term "stakeholder capitalism" as their official doctrine, thereby falsely marketing their brand of centralized economic control as a form of capitalism. It is not. Stakeholder capitalism shares more in common with fascism—under the guise of advancing socialist goals, just as many fascist governments have throughout history—than true free-market capitalism.

Stakeholder capitalism threatens the official institutionalization of inorganic corporate social responsibility goals, but with an extra ingredient: coercion. It authorizes, incentivizes, and coerces corporate executives to work on behalf of social objectives deemed by elites to be desirable for all "stakeholders," which includes workers, communities, the global environment, suppliers, lenders, customers, and company executives—though it can be expanded to include or exclude anyone or anything these elites choose.[14,15] ESG is the mechanism through which stakeholder capitalism operates and spreads. It is the control panel used by elite institutions to alter societies throughout the world, a control panel made of buttons and levers whose function and design are fundamentally subjective. These mechanisms may be amended and changed without due process or input from any elected officials.

"ESG is the mechanism through which stakeholder capitalism operates and spreads. It is the control panel used by elite institutions to alter societies throughout the world, a control panel made of buttons and levers whose function and design are fundamentally subjective."

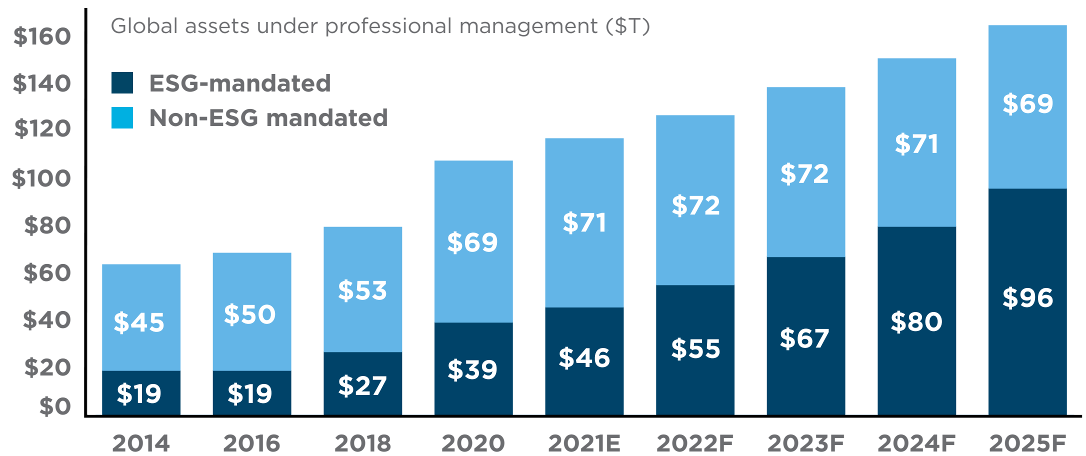
Klaus Schwab was one of the first notable figures to utilize the stakeholder capitalism concept, which he started using regularly in the early 1970s. Stakeholder capitalism steadily grew in popularity among those familiar with Schwab and the World Economic Forum's work, although it did not truly become pervasive in the United States until the Business Roundtable (BRT)—comprised of 181 of the most powerful corporate executives in the United States—officially revised its conception of a corporation's purpose to "promote an economy that serves all Americans" in August 2019.[16] Soon thereafter, at its December 2019 summit, the WEF formally announced that the new purpose of a corporation would be to "engage all of its stakeholders in shared and sustained value creation."[17]

In addition to the UN-sponsored PRI consortium—which incorporates ESG scores into all firm-level investment and decision-making processes—much of the world's financial leadership quickly became among the most ardent advocates of ESG and stakeholder capitalism. Powerful financial and political leaders started to use stakeholder capitalism and ESG in everyday parlance. For example, Larry Fink, BlackRock's chairman and CEO and one of ESG's primary architects and champions, has made numerous appeals to stakeholder capitalism and the impending global socioeconomic transformation in his annual "Letter to CEOs." In 2021, he stated, "As the transition accelerates, companies with a well-articulated long-term strategy, and a clear plan to address the transition to net zero, will distinguish themselves with their stakeholders—with customers, policymakers, employees and shareholders—by inspiring confidence that they can navigate this global transformation."[18] In 2022, Fink doubled down, claiming, "Most stakeholders—from shareholders, to employees, to customers, to communities, and regulators—now expect companies to play a role in decarbonizing the global economy."[19]

Bank of America Chairman and CEO Brian Moynihan—who also serves as chairman of the WEF-managed International Business Council (IBC)—

FIGURE 1

ESG-Mandated Assets Are Projected To Make Up Half Of All Professionally Managed Assets Globally By 2024



Note: All amounts are in U.S. dollars.
Source: proportion of ESG-mandated data through 2020 from Global Sustainable investment Alliance; DCFS analysis through 2025.

is another figure responsible for ESG's prolific dissemination. In late 2020, he stated, "Companies have to deliver great returns for shareholders and address important societal priorities. These metrics will provide greater clarity to investors and other stakeholders and ensure capital is aligning to drive progress on the SDGs. That's stakeholder capitalism in action."[20]

Even the highest echelon of political leaders have adopted the term. While campaigning for president in 2020, Joe Biden exhorted during a speech about America's economic recovery, "It's way past time we put an end to the era of shareholder capitalism. The idea the only responsibility a corporation has is with shareholders, that's simply not true, it's an absolute farce."[21]

Driven by direct central bank currency injections, stimulated debt and credit interventions and full adoption by some of the world's most powerful financial associations and their partners in the international political community, ESG began to spread like wildfire. By early 2022, PRI had more than 4,700 members, representing approximately $100 trillion in assets under management—a staggering increase from its 2006 totals, 63 organizations representing $6.5 trillion in AUM.[22] The United Nations Global Compact, another UN-sponsored effort, uses still loosely defined ESG "metrics" to track progress toward achieving the coveted Sustainable Development Goals. As of this writing, the Compact has more than 15,000 signatories from more than 160 countries, with the United States, China, Brazil, and EU nations comprising the majority.[23]

As for the United States specifically, a survey conducted by KPMG in 2020—which sampled the top 100 companies by revenue in 52 countries—found that 98 percent of American companies disclosed ESG scores, with 82 percent including sustainability-related information in their annual reports. As one KPMG partner involved in the survey remarked, "Investors and regulators are increasingly demanding information on the non-financial performance of all investments. … For companies, the stakes are real. ESG reporting can impact access to capital and the ability to attract new investors."[24]

For perhaps the clearest illustration of the unprecedented rise in ESG investing over the past decade, one should examine Figure 1 above, produced by Deloitte Insights. As Figure 1 illustrates, in 2014 and 2016, there were $19 trillion in ESG-mandated assets under management, comprising 29.7 percent and 27.5 percent of all professionally managed global assets, respectively. By 2020, the number of ESG assets more than doubled, to $39 trillion, representing 36.1 percent of global assets.

"The available evidence suggests ESG will only continue to exponentially expand its reach in the coming years."

By the end of 2022, ESG assets totaled a staggering $55 trillion, making up 43.3 percent of global assets. By 2025, ESG assets are projected to nearly double again, to $96 trillion, representing 58.2 percent of global assets.[25]

Most importantly, the available evidence suggests ESG will only continue to exponentially expand its reach in the coming years, as its coercive tentacles travel further downstream from large corporations and asset managers to small- and medium-sized businesses, which will be forced to comply or else suffer potentially catastrophic financial consequences.

ESG METRICS: A BASIC OVERVIEW

What, exactly, do ESG metrics cover? Before answering this vital question, it is important to note that ESG reporting is currently *not* mandatory in the United States, although mandatory reporting related to businesses' climate change and energy activities could be enforced by the U.S. Securities and Exchange Commission (SEC) as soon as 2024, an issue discussed in greater detail below.

The lack of a government-imposed ESG standard in the United States does not mean ESG systems are free of coercion. Due to the public-private partnerships outlined previously and discussed more heavily later in the paper, virtually all large U.S. companies and an increasingly substantial number of small- and medium-sized businesses are today effectively forced to report ESG scores and vast amounts of related data, whether they want to or not.

"Nearly every ESG system includes three primary themes: climate change mitigation and associated climate and environmental goals and actions; promoting social justice and diversity, equity, and inclusion (DEI) initiatives; and reforming corporate governance. A common fact of the many different ESG systems currently in use is that each of them contains highly subjective elements."

Existing ESG systems are sponsored by various international governmental organizations, financial institutions, and other organizations. Although there is currently no uniform ESG standard or benchmark applied universally to all businesses, nearly every ESG system includes three primary themes: climate change mitigation and associated climate and environmental goals and actions; promoting social justice and diversity, equity, and inclusion (DEI) initiatives; and reforming corporate governance. A common fact of the many different ESG systems currently in use is that each of them contains highly subjective elements.[26]

One 2021 academic report aggregating evidence from more than 1,000 studies on ESG performance found "studies use different scores for different companies by different data providers."[27] A 2020 study analyzed six prominent ESG ratings agencies and found that each of the six employ different category scopes, measurements, and weights. Moreover, researchers found a rater's subjective view of the firm being examined influenced the rater's assessment.[28]

A comprehensive analysis of every ESG ratings model and the ways in which they are employed is outside the scope of this paper. So, for the sake of brevity, and because there is nothing close to a uniform standard now in effect, this paper cites specific examples pulled from the ESG model promoted by the WEF-helmed and Moynihan-led International Business Council. The creators of the WEF-IBC system desire it to become the model for a unified international framework, and it has already received support from some of the most powerful and influential figures in global finance and business.

The paper introducing the WEF-IBC system explains, "This work defines a core set of 'Stakeholder Capitalism Metrics' (SCM) and disclosures that can be used by IBC members to align their mainstream reporting on performance against environmental, social and governance (ESG) indicators and track their contributions towards the SDGs on a consistent basis. The metrics are deliberately based on existing standards, with the near-term objectives of accelerating convergence among the leading private standard-setters and bringing greater comparability and consistency to the reporting of ESG disclosures."[29]

As examples below show, the 55 metrics promoted by the IBC and WEF combine different types of data, from qualitative metrics such as "material issues impacting stakeholders" to quantitative metrics such as "total social investment." Moreover, metrics are often assigned various weights, depending on the preferences of corporate directors. Further, these scores are, for the most part, self-reported by companies, calling into question the accuracy of the final ESG scores.

Environmental Metrics

Environmental and climate disclosures are at the heart of every ESG framework. Most metrics are geared towards achieving the goal of net-zero carbon dioxide emissions by 2050, which is the target that has been set by the United Nations-led international community to stave off the worst effects of purported anthropogenic climate change. Some of the many IBC environmental and climate metrics are included below:

- Impact of GHG (greenhouse gas) emissions
  - "Report wherever material along the value chain (GHG Protocol Scope 1, 2, & 3) the valued impact of greenhouse gas emissions. Disclose the estimate for the societal cost of carbon used and the source or basis for this estimate."
- Impact of freshwater consumption and withdrawal
  - "Report wherever material along the value chain: the valued impact of freshwater consumption and withdrawal."
- Impact of air pollution
  - "Report wherever material along the value chain: the valued impact of air pollution, including nitrogen oxides (NOx), sulphur oxides (SOx), particulate matter and other significant air emissions."
- Impact of water pollution
  - "Report wherever material along the value chain: the valued impact of water pollution, including excess nutrients, heavy metals and other toxins."
- Impact of solid waste disposal
  - "Report wherever material along the value chain, the valued societal impact of solid waste disposal, including plastics and other waste streams."[30]

Social Metrics

Social metrics are focused on a wide range of social justice issues, such as DEI policies, pay equity, charitable giving, community support, and employee well-being. Some of the IBC's social metrics are included below:

- Diversity and inclusion
  - "Percentage of employees per employee category, by age group, gender, and other indicators of diversity (e.g., ethnicity)."
- Pay equality
  - "Ratio of the basic salary and remuneration for each employee category by significant locations of operation for priority areas of equality: women to men, minor to major ethnic groups, and other relevant equality areas."
- Freedom of association and collective bargaining at risk
  - "Percentage of active workforce covered under collective bargaining agreements."
  - "An explanation of the assessment performed on suppliers for which the right to freedom of association and collective bargaining is at risk, including measures taken by the organization to address these risks."
- Employee well-being
  - "The number of fatalities as a result of work-related ill-health, recordable work-related ill-health injuries, and the main types of work-related ill-health for all employees and workers. Percentage of employees participating in "best practice" health and well-being programmes. Absentee rate (AR) of all employees."
- Social value generated
  - "Percentage of revenue from products and services designed to deliver specific social benefits or to address specific sustainability challenges."
- Significant indirect economic impacts
  - "Examples of significant identified indirect economic impacts of the organization, including positive and negative impacts."
  - "Significance of the indirect economic impacts in the context of external benchmarks and stakeholder priorities (e.g. national and international standards, protocols, policy agendas)."[31]

Governance Metrics

Governance metrics are thematically similar to social metrics. They typically focus on assessments of diversity and inclusion in corporate boardrooms and among upper-level management. They also cover issues related to the stated "purpose" of a business, as well as the ethical and moral aspects of a company's business practices. Some of the IBC's governance metrics include:

- Setting purpose
  - "The company's stated purpose, as the expression of the means by which a business proposes solutions to economic, environmental and social issues. Corporate purpose should create value for all stakeholders, including shareholders."
- Governance body composition
  - "Composition of the highest governance body and its committees by: competencies relating to economic, environmental and social topics; executive or non-executive; independence; tenure on the governance body; number of each individual's other significant positions and commitments, and the nature of the commitments; gender; membership of underrepresented social groups; stakeholder representation."
- Material issues impacting stakeholders
  - "A list of the topics that are material to key stakeholders and the company, how the topics were identified and how the stakeholders were engaged."
- Economic, environmental, and social topics in capital allocation framework
  - "How the highest governance body considers economic, environmental and social issues when overseeing major capital allocation decisions, such as expenditures, acquisitions and divestments."[32]

Readers should take note that most of the metrics listed above have little, if anything, to do with enhancing the value of a business, returns for business owners, or improving the goods and services that a business provides to its customers. By design, ESG metrics most often focus on non-financial factors that fundamentally alter a company's efficiency, optimization, growth capacity, and purpose. Ultimately, ESG metrics distort rather than enhance productivity and free markets, making goods and services more expensive and curtailing choices for consumers.

The Subjective and Discriminatory Nature of ESG Metrics

Although most ESG metrics are currently linked to environmental, climate, social justice, and governance issues, the system is designed to be infinitely malleable, giving power to elite institutions to change ESG models at will. New metrics or even entirely new categories can be added whenever it suits the most influential figures involved in the creation and distribution of ESG scores. And changes are typically made without any democratic processes. Not even large companies vote to change ESG systems. They are simply imposed on them by more influential and/or wealthier institutions, financiers, and soon central banks, which may directly administer them via inhuman algorithms applying ESG scores to people and businesses through the central bank digital currencies (CBDCs) now in development and implementation phases around the globe.

Moreover, ESG metrics in the United States have been designed so that they can be used to promote political or radical ideological goals by discriminating against certain groups of people or companies. In some cases, whole industries are at risk, which is discussed more heavily later in the paper. Those creating and imposing the ESG system are attempting to abrogate freedom itself, surveilling and controlling an individual's ability to transact with certain people, in certain amounts, at certain times, and under certain circumstances.

"ESG models create disharmony and inefficiency in business practices, elevating social engineering above supply and demand, customer satisfaction, profitability, and other important business and economic considerations."

Regarding groups of people, the metrics themselves are inherently discriminatory. For instance, if certain corporate boardrooms consist of qualified and capable individuals who have been subjectively determined to belong to an "undesirable" social group, the company could be downgraded in its ESG score because of its "non-diverse" composition based on skin color, gender, or a yet-to-be-determined new factor. This reduces the person to an input unit in a technocratic fascist nightmare without any regard to thought, action, character, integrity, or any other traditionally valued traits of an individual in a functioning society.

The same goes for the employees of the company. If, for example, the ratio of Asian to Hispanic workers at a company is not in line with the subjective desires of ESG analysts, the company could be downgraded, thereby pressuring it to make employment decisions based, at least in part, on race rather than ability, qualifications, and proven merit. This is, of course, the very definition of racism, and yet, it is common within all ESG systems currently in place and in development.

ESG models undermine basic human rights, individual liberty, and free markets, and they eviscerate merit-based individual advancement—all while promoting judgments based upon subjectively determined social criteria favored by a progressive elite. As a result, ESG models create disharmony and inefficiency in business practices, elevating social engineering above supply and demand, customer satisfaction, profitability, and other important business and economic considerations.

These practices can have far-reaching economic and social impacts. In November 2020, the U.S. Office of the Comptroller of the Currency (OCC) found financial institutions devoted to ESG practices had over nearly a two-year period attempted to de-bank and/or deny services to numerous industrial sectors, including health care and social service providers, family planning organizations, independent automated teller machine operators, firearm manufacturers, the agricultural industry, and multiple major energy industries that are vital to U.S. infrastructure and power generation, such as coal mining, coal-fired electricity generation, and oil exploration.[33]

Researchers and industry reports reveal that the firearm and hydrocarbon industries have been targeted by ESG practices at particularly high rates. Banks such as Citigroup and Bank of America have restricted services and lending to gun sellers and manufacturers, while asset management titan BlackRock has created an entirely new line of investment funds that does not include firearm producers or retailers.[34] Credit card giants Visa, Mastercard, and American Express have announced their intention to begin tracking firearms purchases through special merchant codes,[35] though they recently paused this in early March due to intense public outrage.[36]

Attempts to divest from coal, oil, and natural gas are legion as well. As part of a widespread corporate "race to net-zero" campaign, ESG-compliant companies have committed to transitioning their business practices so that they rely increasingly more on so-called "green" energy production, including wind and solar energy, thereby necessitating a reduction in the use of hydrocarbons. According to the Global Fossil Fuel Divestment Commitments Database, by March 2023, 1,559 institutions worth approximately $40.5 trillion had committed to full or partial hydrocarbon divestment.[37] For one stark example, Brigham Minerals Executive Chairman Bud Brigham testified under oath in front of the Texas Senate Committee on State Affairs that Credit Suisse— a major Wall Street bank—refused to offer him a loan unless he publicly supported the bank's climate agenda.[38] The Daily Caller reported:

> When he reached out to ask why [Credit Suisse had failed to respond to his application], Brigham claims a representative at Credit Suisse said the bank might not be able to partner with Brigham, allegedly telling him that 'climate change is real and it's not debatable.' Brigham claims he responded that the science is ever-evolving, prompting the representative to offer an opportunity to strike a deal—but only if Brigham parroted the bank's climate agenda. 'How about if I can get you some bullets to tweet? If you can tweet this out, [I] think there's a good chance we can do this deal,' the representative allegedly said. Brigham said he then received an email with the bullet points.[39]

"In addition to choking off financing and other banking services for entire industries, ESG metrics can also be used to promote certain political and ideological causes through metrics such as 'community investment.'"

In addition to choking off financing and other banking services for entire industries, ESG metrics can also be used to promote certain political and ideological causes through metrics such as "community investment." For example, there's nothing stopping ratings companies from using ESG to promote abortion by rewarding companies with a higher ESG score if they donate a significant amount of money to Planned Parenthood. Similarly, companies could be rewarded for providing donations to progressive organizations such as Black Lives Matter. In a similar vein, a company could be punished for donating to religious institutions that promote social or ideological positions such as being pro-life or supporting traditional definitions of marriage. This is precisely why many large corporations now brag about their commitment to "woke" ideological causes as part of their annual reports.

Further, it's important to remember the opportunities for future discrimination and market distortion are literally endless when one considers that metrics can be altered at any time, for any purpose by those who oversee ESG systems.

A more detailed discussion of specific mechanisms by which financial institutions have discriminated against others under the auspices of ESG appears later in this paper.

ESG'S ARCHITECTS AND OVERSEERS

There are myriad actors who have sponsored, developed, and/or implemented ESG metrics and other elements of the stakeholder capitalism model throughout the global economy. These actors can be grouped into five major categories: (1) international governmental organizations such as the United Nations; (2) asset management firms such as BlackRock; (3) large banking institutions such as Bank of America; (4) insurance conglomerates such as Zurich International; and (5) regulatory authorities such as the SEC. There are other actors involved as well, such as central banks, NGOs, and other behind-the-scenes interests, though their level of involvement is much more difficult to isolate and measure.

"There are myriad actors who have sponsored, developed, and/or implemented ESG metrics and other elements of the stakeholder capitalism model throughout the global economy."

1. International Organizations

Earlier, this paper noted that unelected international bodies are at the heart of ESG's recent rise to prominence. Influential authorities such as the United Nations, World Economic Forum, International Monetary Fund (IMF), Bank of International Settlements (BIS), and World Bank are just some of the many powerful international groups advocating for ESG.[40] The most important role of organizations like the UN and WEF—because they have no inherent legal authority (yet) to intrude upon sovereign jurisdictions—is to organize private-sector actors under the visage of a globalist movement to "do good." The role of the IMF, World Bank, and BIS—in addition to hosting numerous forums and symposiums on the benefits of sustainable investment practices—is to fund those endeavors via their considerable coffers.

A high-level IMF official stated in a 2022 speech that the organization's two main priorities in the coming years both concern climate change and sustainable finance, and they will play an integral role in the transition to a net-zero world. He explained, "First, developing a science-based, tailored, and consistent climate information architecture in emerging markets should be a prerequisite for the development of sustainable finance markets in emerging economies. It contributes to many of the objectives that are sought to effectively finance transition policies and manage risks stemming from climate change and other environmental concerns: the efficient pricing of climate risks, the fight against greenwashing practices, and the efficient allocation of capital towards transition and low-carbon projects."[41]

Their second priority reinforces the first:

> Second, lifting the data constraint in emerging economies is a policy priority to effectively develop sustainable finance markets. A few emerging market economies have now developed mandatory requirements for climate-related disclosures for corporates. This is a step in the right direction, and company disclosures will definitely lead to an expansion of the policy and financial research analysis beyond pure 'green' products.[42]

He even states that adopting the International Sustainability Standards Board's (ISSB's) unified global standards for ESG should be mandatory across the entire planet; the ISSB will be discussed shortly. Essentially, the highly destructive and country-shattering conditional lending practices the IMF already incorporates in its operations will almost certainly be linked to a country's commitment to climate and social justice goals, and its advanced financial surveillance will be expanded to monitor progress towards those goals.

As for the World Bank, it is seeking to "vastly increase its lending capacity to address climate change and other global crises and will negotiate with shareholders ahead of April [2023] meetings on proposals that include a capital increase and new lending tools," according to an exclusive interview with Reuters. The World Bank aims to "explore options like a potential new capital increase, changes to its capital structure to unlock more lending and new financing tools such as guarantees for private sector loans and other ways to mobilize more capital."[43] The World Bank already "curates and maintains a wide range of ESG data for policy makers, financial market participants, and academic researchers," according to its website.[44]

The Bank of International Settlements' own website declares that "climate change has wide ranging economic and financial implications. This is why central banks and financial authorities worldwide are playing an active role in promoting the transition to a green economy. The BIS supports these efforts through its own analytical work and banking services, the projects of the BIS Innovation Hub, and the activities of BIS committees and hosted associations."[45] Considering that the BIS essentially plays the role of a central bank for central banks, this is highly concerning, to say the least. If a central bank needs a temporary funding infusion, its commitments towards green energy policies will likely play a role in the terms and conditions of said loan—if that central bank is even offered one at all.

"Perhaps the most influential of the existing pro-ESG private organizations is the Glasgow Financial Alliance for Net-Zero (GFANZ), whose members control $130 trillion in assets. GFANZ consists of approximately 450 banks, insurance companies, and asset managers from 45 countries."

Perhaps the most influential of the existing pro-ESG private organizations is the Glasgow Financial Alliance for Net-Zero (GFANZ), whose members control $130 trillion in assets.[46] GFANZ consists of approximately 450 banks, insurance companies, and asset managers from 45 countries. GFANZ members are split into industry-specific subcategories such as the Net-Zero Asset Managers Initiative, Net-Zero Banking Alliance, and the Net-Zero Insurance Alliance. All members have committed to using their wealth and influence to push other companies to adopt and improve their ESG scores based upon unscientific and unproven "scientific consensus," which the United Nations claims to "own."[47] No one can "own" science. And, as the late Dr. Michael Crichton noted just over 20 years ago in a lecture at the California Institute of Technology, "There is no such thing as consensus science. If it's science, it isn't consensus. If it's consensus, it isn't science."[48]

Recently, the international ESG movement has been working to "harmonize" the disparate ESG reporting frameworks into one overarching system. The International Sustainability Standards Board[49]—governed by the non-profit International Financial Reporting Standards (IFRS) Foundation[50]— has been developed to regulate this future system. Recent statements by IFRS and ISSB executives indicate that a global framework might soon be developed and released to the public, perhaps as early as June 2023.[51] If ESG's architects have it their way, the ISSB's standards will be forced upon every large corporation, medium-sized company, and small business on the planet.[52]

2. Asset Managers

Asset management firms such as BlackRock, State Street Global Advisors, and Vanguard—collectively known as the "Big Three" asset management companies—have had an enormous influence on the growth of ESG. These three firms control at least $22 trillion in assets between them, as well as an average of 20 percent of the shareholder votes in the S&P 500.[53] They wield this power ruthlessly and consistently. For example, BlackRock organized a takeover of ExxonMobil's board of directors in 2021, replacing three of its 12 directors with climate activists committed to moving Exxon away from hydrocarbon-based energy production and sales, an astounding demand considering that ExxonMobil is a hydrocarbon company.[54]

Because of the enormous amount of capital asset managers like the Big Three direct, most companies have almost no choice but to fall in line with the ESG practices that these Wall Street titans demand, if they want to stay solvent. And it is not difficult to understand why these large firms push ESG; they reap significantly higher management fees due to ESG's relative novelty and complexity. As entrepreneur and NYU professor Hans Taparia explains, ESG "gives a pass to a large number of harmful actors, driving large fund flows to them and lowering their cost of capital, while CEOs and Wall Street executives celebrate a lucrative movement that they hope will improve their public image."[55] In total, the Net-Zero Asset Managers Initiative has 301 global signatories that control nearly $60 trillion in capital.[56] The Big Three contributes more than one-third of that total amount.

The Business Roundtable Signatories

Jeff Bezos – Founder and former CEO of Amazon

Doug Parker – CEO of American Airlines

Tim Cook – CEO of Apple

Brian Moynihan – CEO of Bank of America

Larry Fink – Chairman and CEO of BlackRock

James Quincey – Chairman and CEO of Coca-Cola

Ed Bastian – CEO of Delta

Jim Fitterling – Chairman and CEO of Dow

Jim Farley – President and CEO of Ford Motor Company

Lachlan Murdoch – Executive Chairman and CEO of Fox

David Solomon – Chairman and CEO of Goldman Sachs

Alex Gorsky – Chairman and CEO of Johnson & Johnson

Jaime Dimon – Chairman and CEO of JP Morgan Chase

Marillyn Hewson – Chairman, President, and CEO of Lockheed Martin

James Gordman – Chairman and CEO of Morgan Stanley

Adena Friedman – President and CEO of Nasdaq

Kathy Warden – Chairman, CEO, and President of Northrop Grumman

Safra Catz – CEO of Oracle

Albert Bourla – CEO of Pfizer

Kevin Johnson – President and CEO of Starbucks

Doug McMillon – President and CEO of Walmart

3. Banks

The world's largest banks are equally complicit in the ESG scheme. They use their combined wealth and influence to prohibit general services and lending to businesses that are deemed to be lacking in ESG adherence. Large banks also have been found to offer services or capital on a conditional basis and, in some cases, to give preferential treatment to companies with higher ESG ratings.

According to a 2021 report from Morningstar's pro-ESG research arm, Sustainalytics:

> Most major banks screen their lending practices against specific ESG risks. … and many embrace negative or positive screening for potential corporate lending transactions or project finance transactions. Negative screening and norm-based screening involve the exclusion or avoidance of transactions not aligned with environmental, social, and ethical standards.[57]

The Sustainalytics report also provides real-world examples of entities that have been screened out of many banks' portfolios on ESG grounds, such as weapon manufacturers, tobacco sellers, and hydrocarbon producers.[58]

An academic study corroborates Sustainalytics' claim, finding a strong causal link between ESG-focused banks and their lending activities. The authors explain, "Specifically, banks are more likely to grant loans to borrowers with ESG profiles similar to their own and positively influence the borrower's subsequent ESG performance."[59]

Another academic study found that sustainability-linked loans (SSLs), which are offered on a conditional basis, have grown exponentially in recent years.[60] Interestingly, the study's authors claim that lenders are incentivized by profit rather than the stated goals of ESG, explaining, "Overall, our findings suggest that the incentives for entering SLL contracts are likely to lie on the side of the lenders, who capture most of the benefits from such loans. These findings question the intended objectives of SLLs."[61]

"Two-hundred thousand people, a $3 trillion balance sheet, $60 billion in expenses—you start aiming that gun, and you take that across all these companies, it is huge. … [the companies] delivering on the metrics will get more capital, the ones that won't will get less."

Brian Moynihan
CEO, Bank of America

These objectives are being pushed at the highest levels of leadership. Bank of America CEO Brian Moynihan has become perhaps the most ardent advocate of ESG practices in the banking industry. During a panel at the WEF's 2022 annual summit, Moynihan committed to using the entire financial portfolio of Bank of America, including the deposits of individual account holders, to advance ESG:

"Two-hundred thousand people, a $3 trillion balance sheet, $60 billion in expenses—you start aiming that gun," Moynihan said, "and you take that across all these companies, it is huge. … [the companies] delivering on the metrics will get more capital, the ones that won't will get less."

During the same panel discussion, Moynihan went on to discuss how Bank of America and its allies will make purchasing decisions for their supply chains based on net-zero carbon-dioxide commitments, and even resorted to threatening his bank's individual account holders to get on board.[62]

Arguably among the most disturbing aspects of the big banks' push for ESG conformity is that, as some industry experts believe, banks could soon use ESG scores to discriminate against individuals as well as businesses. A 2021 publication from a FICO analyst noted:

> In financial institutions, much of the ESG agenda is delivered at the corporate level, but in 2022 I expect to see an increased focus on bringing ESG data into more granular lending and investment decisions. This will require increased innovation in the use of alternative data across all kinds of lending. One example would be the inclusion of property energy ratings data in mortgage valuation and decision making, and other CO2 emission data for small businesses.[63]

In total, the Net-Zero Banking Alliance, which is devoted to promoting at least some parts of the ESG agenda, consists of 122 of the world's largest and most influential banks, with $72 trillion in funds under management, representing 40 percent of global banking assets.[64]

It is important to note that banking systems globally are in the process of developing, testing, and implementing central bank digital currencies (CBDCs). Though a subject for an additional paper, it is important to understand that CBDCs, if allowed to be imposed, would allow banks, and those who direct banks, to program the very usability of money down to the individual transaction. This will deliver an unprecedented technological ability to control, direct, surveil, and/or limit all transactions, from employee pay to wholesale and retail purchases, with that power resting in the hands of the technocratic oligarchy intent on enslaving humanity in the hands of a very few who hope to "reset" the economy in the pursuit of progressive ideological goals.

4. Insurance Corporations

Insurance conglomerates operate in a similar way as big banking institutions. They promote ESG causes by refusing to underwrite policies for organizations that do not toe the ESG line. For instance, large insurance companies such as AXA, Allianz, and Zurich have refused to service clients that refuse to commit to "sustainable" practices.[65] Further, some companies involved in hydrocarbon extraction have seen an increase in their premiums, and others have been refused service entirely.[66]

Bloomberg reports that some of these efforts to discriminate against industries have been scaled back recently in the face of antitrust laws, though this will likely not stop such companies from doing everything in their power to control markets in tandem with banks and asset managers.[67] Pricewaterhouse Coopers released a report in May 2022 indicating that insurance companies have been, and will continue, embedding ESG frameworks in their underwriting policies. The report states, "Managing agents are expected to create ESG frameworks throughout 2022 and begin embedding these frameworks in governance and incorporating into investment and underwriting policy in 2023."[68]

"Insurance conglomerates operate in a similar way as big banking institutions. They promote ESG causes by refusing to underwrite policies for organizations that do not toe the ESG line."

Overall, 30 of the world's largest insurance companies representing 15 percent of the world's premium volume have signed on to the Net-Zero Insurance Alliance (NZIA).[69] NZIA published a white paper in April 2022 stating:

> The question is no longer just about having insurance coverage or not. Now the question is also about what assets and activities are being insured and their impacts on environment and society. The NZIA is therefore a concrete manifestation of how insurance can be a lever to reduce GHG emissions in line with a [1.5 degree Celsius] net-zero transition pathway.[70]

5. Regulatory Authorities

As with any endeavor that seeks to systematically transform the entire fabric of global society, elites in government and the private sector have called on public institutions to develop and deploy an army of regulators to enforce ESG. Such authorities exist and are currently being strengthened by executive edicts and legislative bodies around the world.

In the United States, the Biden administration has already demonstrated its unwavering commitment to ESG principles. A handful of the regulatory actions taken by the U.S. government are listed below.

The Office of the Comptroller of the Currency

In the final months of President Donald Trump's administration, the Office of the Comptroller of the Currency (OCC) proposed a new rule prohibiting category-based discriminatory practices, based on the fair access principles ensconced within the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The rule stated:

> Consistent with the Dodd-Frank Act's mandate of fair access to financial services and since at least 2015, the OCC has repeatedly stated that while banks are not obligated to offer any particular financial service to their customers, they must make the services they do offer available to all customers except to the extent that risk factors particular to an individual customer dictate otherwise.[71]

The formalization and enforcement of this rule would have been a strong step toward preventing non-financial criteria from being used to discriminate against certain entities. Though it was finalized and scheduled to become effective on April 1, 2021,[72] the Biden administration indefinitely paused the new rule on January 28, 2021.[73] It has not been revived since. However, multiple states have since used the language within the OCC's proposed rule to introduce legislation that would prohibit financial institutions from engaging in discriminatory practices. Those efforts are catalogued in greater detail later in this paper.

The Department of Labor

On November 22, 2022, Secretary of Labor Marty Walsh announced a new rule titled "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights."[74] Describing the rule, Walsh stated:

> Today's rule clarifies that retirement plan fiduciaries can take into account the potential financial benefits of investing in companies committed to positive environmental, social and governance actions as they help plan participants make the most of their retirement benefits. ... Removing the prior administration's restrictions on plan fiduciaries will help America's workers and their families as they save for a secure retirement.[75]

After the rule's proposal, numerous politicians, institutions, and investment experts expressed their disapproval, correctly arguing that the rule change would allow retirees' investment accounts to be utilized to achieve ESG objectives rather than to prioritize financial returns. More than two dozen state attorneys general filed a lawsuit in 2023 attempting to block the rule from being enforced.[76] At the time of publication of this paper, the lawsuit is still pending in court.

The U.S. Securities and Exchange Commission

Of all the regulatory agencies within the United States, the Securities and Exchange Commission (SEC) has presented the greatest threat in terms of ESG and sustainability policies. Multiple SEC rules have been proposed since President Biden entered the

White House. The first and perhaps most impactful ESG-oriented rule was proposed in March 2021, though it remains in the public comment phase at the time of this paper's publication.[77]

This "climate" rule would authorize an unprecedented method of risk assessment and impose financial disclosures related to climate change policies for SEC-listed companies. Among other things, the rule would, "require registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks."[78]

"Rather than protecting investors and free markets, these rules would erode both principles by forcing companies to make decisions based on subjective social goals that inherently run counter to natural market forces."

Under the terms of the proposed climate rule, which will likely be formally imposed in the first half of 2023, listed SEC companies would be forced to estimate and report on their Scope 1, 2, and 3 carbon-dioxide emissions. Companies would not only be forced to estimate their own impact on the climate, but also any customer or supplier within their supply chain. This represents an attempt by the SEC to co-opt regulated entities under its jurisdiction into being agents of the commission, weaponizing these regulated entities into coercing unregulated smaller businesses into adopting climate reporting and climate change mitigation strategies. Fortunately, SEC Chairman Gary Gensler has recently indicated that he may be willing to relax this policy in the face of significant public and corporate pressure, though whether that occurs is yet to be determined.[79]

In addition to the climate disclosure rule, Gensler and his allies within the SEC have proposed two additional ESG-related rules. They would require ESG disclosures for all registered investment companies, business development companies, and investment advisers in their fund prospectuses, annual reports, and adviser brochures, in addition to requiring environmentally focused funds to disclose greenhouse gas emissions related to their investments. Further, these rules would expand the requirements for certain funds to adopt policies to invest at least 80 percent of their assets in accordance with the investment focus of the fund, while enhancing reporting and recordkeeping requirements.[80]

Ultimately, the SEC's proposed rules would, if they ultimately go into effect, directly subvert its own mission statement. The SEC has been tasked with "protecting investors" and maintaining "fair, orderly, and efficient markets." Rather than protecting investors and free markets, these rules would erode both principles by forcing companies to make decisions based on subjective social goals that inherently run counter to natural market forces.

Finally, as if the U.S. government's regulatory actions were not concerning enough, regulatory and legislative actions imposed by other nations could soon affect Americans as well, particularly those crafted in the European Union. This will be discussed in this paper's penultimate section.

ESG'S MANY PROBLEMS

The myriad negative effects of ESG, though some are hard to precisely quantify at this stage, are difficult to overstate.

Negative Economic Impacts

First, ESG causes tremendous damage to the U.S. macroeconomy by disfavoring substantially more affordable and efficient hydrocarbon-based energy production, thereby contributing to higher costs in virtually every sector of the economy. ESG-aligned institutions have intentionally targeted the immensely profitable and economically vital oil and gas industries for wholesale destruction. There are few studies that can directly isolate ESG's impact on the hydrocarbon industry because there are many confounding variables at play and because ESG is still in its relative infancy. That said, we can assume from ESG's metrics and from the statements of its architects that the end goal is to completely phase out hydrocarbons in favor of "green" solutions as soon as possible. There is a bevy of evidence suggesting this would be disastrous.

"ESG-aligned institutions have intentionally targeted the immensely profitable and economically vital oil and gas industries for wholesale destruction."

The Heritage Foundation's chief statistician and data scientist Kevin Dayaratna has performed numerous studies examining how restrictions on fossil fuels are likely to increase energy costs, and thus the costs of goods and services throughout the economy. In his analysis of the potential economic effects of the Green New Deal (GND)—a policy outline that largely aligns with the climate goals inherent to all ESG metric systems—Dayaratna and his coauthors found that "the costs of the U.S. GND in terms of stranded assets, lost shareholder value, and the cost to taxpayers could easily surpass $5 trillion."[81] He also found that in the longer term (through 2040), achieving even a small fraction of the emissions reduction targets ensconced in the GND would create:

- "An overall average shortfall of over 1.1 million jobs"
- "A peak employment shortfall of over 5.2 million jobs"
- "A total income loss of more than $165,000 for a family of four"
- "An aggregate gross domestic product loss of over $15 trillion"
- "Increases in household electricity expenditures averaging 30 percent"[82]

Dayaratna has also conducted more recent studies analyzing the economic consequences of Biden's regulatory actions promoting the green energy transition. He and his coauthors found that in order to reach the Biden administration's emissions reduction targets—which, similar to the Green New Deal, align with the Paris Agreement and with ESG metrics—the "costs of the policy would be staggering."[83]

The economy would lose $7.7 trillion in GDP through 2040, which is equivalent to $87,000 for a family of four. Moreover, the study found that from 2023 to 2040, the United States would incur 1.2 million job losses, an average annual income loss for a family of four of $5,100, and "an increase in gasoline prices of more than $2 per gallon annually beginning in 2024 (a more than 90 percent increase over current policy).[84]

In another report from July 2022, Dayaratna and his coauthors analyzed the potential positive economic effects a reversal of Biden's energy policies would entail. The report found that, "compared to the energy-scarcity approach of the Biden Administration, pursuing an energy-abundance policy would have a trivial impact on global temperatures while increasing aggregate U.S. gross domestic product (GDP) by $3.4 trillion by 2040, or $39,000 for a family of four."[85] Moreover, such a policy reversal would lead to an average employment increase of 1.1 million jobs, and reduce gasoline prices by $0.20 per gallon in the short run, and $0.60 per gallon by 2040.[86]

"A 2023 report from The Heartland Institute found that Biden's climate regulatory actions have caused household energy prices to skyrocket, based on information gleaned from the U.S. Energy Information Administration."

In addition to the macroeconomy, it is also important to examine the costs to consumers. A 2023 report from The Heartland Institute found that Biden's climate regulatory actions have caused household energy prices to skyrocket, based on information gleaned from the U.S. Energy Information Administration. Since Biden became president in January 2021, the average household has been forced to pay more than $2,300 in increased energy costs.[87] Over the past two years: residential electricity prices increased by 17 percent; industrial electricity prices increased by 34 percent; home heating oil prices increased by 88 percent; oil prices rose 61 percent; natural gas prices rose 51 percent; and the price of gasoline rose by 46 percent.[88]

Even the Brookings Institution, a left-leaning think tank that has long pushed for the green energy transition, admits the importance of hydrocarbons. Brookings fellow Samantha Gross wrote in a 2020 report:

> Damaging the world's economy is not the way to deal with climate change. And in terms of oil, what will take its place? We haven't found a good substitute for oil, in terms of its availability and fitness for purpose. Although the supply is finite, oil is plentiful and the technology to extract it continues to improve, making it ever more economic to produce and use. The same is also largely true for natural gas.[89]

It is important to consider that the above studies primarily examine the impact of regulatory actions, affecting oil and gas production in territories under federal control, rather than state or private control. ESG would circumvent this, and artificially stifle oil and gas production through the private sector by reducing investment, refusing to offer loans and services, and rejecting insurance underwriting for companies involved in such industries, among other mechanisms. Though the effects illustrated above are very detrimental, ESG's total impact would be an order of magnitude worse.

Studies already suggest that investors have received lower returns from ESG funds than traditional funds focused purely on pecuniary factors. Bloomberg compared the performance of the 10 largest ESG funds by assets to the S&P 500 index. Eight of the 10 ESG funds performed worse than the S&P index, many by a significant margin. For example, Vanguard's FTSE Social and its ESG U.S. Stock suffered year-to-date losses of 20.6 percent, as compared to S&P's 14.8 percent loss. The Brown Advisory Sustainable Growth Fund suffered a 28.1 percent loss, nearly double that of the S&P index fund.[90]

Bloomberg is far from the only outlet to provide evidence of ESG's negative economic impacts. A study reported by *The Wall Street Journal* in March 2023 found similar results to Bloomberg's analysis. According to the study's authors, "The results are compelling. The market was down overall, by 1.8% for the S&P 500 and 3.2% for the Russell 1000. ESG funds performed worse, with most losing 2.5% to 6.3%. A simple index composed of only neutral companies gained 2.9%, significantly outperforming both broad-market and ESG indexes in up and down markets. Notably, the benchmarks include the outperforming neutral companies—indicating that the politically active companies further underperformed."[91]

The *Harvard Business Review*, after analyzing multiple "sustainable" ESG funds as compared to their traditional counterparts, revealed in March 2022 that, "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."[92] The same article also references a study conducted by researchers from Columbia University and the London School of Economics, which found that—when comparing the record of U.S. companies invested in ESG funds versus companies invested in non-ESG portfolios—"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."[93] The article also examines other academic studies and concludes that, "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."[94] Essentially, ESG funds not only perform more poorly than companies focusing solely upon making profits, but also fail to achieve the objectives that ESG's orchestrators ostensibly hope to achieve.

"The *Harvard Business Review*, after analyzing multiple "sustainable" ESG funds as compared to their traditional counterparts, revealed in March 2022 that, "ESG funds certainly perform poorly in financial terms."

Another deleterious ESG-induced macroeconomic impact relates to agriculture and food production. ESG's blind focus on "solving" climate change has reduced food production not only by raising the cost of hydrocarbons, but also by putting pressure on farmers to consume less water, cease utilizing chemical fertilizers and pesticides, and to use less land, among other activities.[95]

The world has already seen significant negative food shocks caused directly or indirectly by ESG mandates, with the most prevalent occurring in 2022 in Sri Lanka. Due to international pressure to embrace ESG, the Sri Lankan government imposed a regulatory ban on chemical fertilizers in April 2021 and signed onto a green finance taxonomy with the International Finance Corporation in May 2022 that further committed the country's farmers to use organic fertilizers, which are substantially less effective than chemical fertilizers. As a result, crop production was nearly cut in half in less than a year, which resulted in societal upheaval and riots in the streets that toppled the Sri Lankan government. The harmful effects are still being felt by the Sri Lankan people to this day.[96] Sri Lanka is not the only example. Other disruptions in food production related to ESG policies have occurred in recent years in the Netherlands, Canada, and the United States.[97]

Circumvention of Democratic Institutions

A second major negative effect of ESG is that it circumvents democratic institutions and renders national sovereignty irrelevant. In the United States, Congress has not authorized large corporations and asset managers to blatantly discriminate against companies and individuals who do not adhere to certain ideological views. Yet, that is exactly what is occurring on a large scale due to the ESG goals developed by unelected supranational entities such as the United Nations and its allied business partners in groups such as GFANZ. When globalist corporations and financial institutions—along with supranational bureaucratic authorities—are allowed to collude together to redesign society, voters and consumers have no say in how their economy operates or how to live their everyday lives. Whether entire industries thrive or fail should be decided by consumers acting freely in the marketplace, as well as by voters through their elected representatives—not by a public-private elite cabal working to rig the system for their own benefits or ideological goals.

"When globalist corporations and financial institutions—along with supranational bureaucratic authorities—are allowed to collude together to redesign society, voters and consumers have no say in how their economy operates or how to live their everyday lives."

Eradication of Individualism

Third, ESG has proven to dramatically reduce individual liberty. ESG eviscerates individualism by attempting to restrict personal choice and tear down the meritocratic approach to societal advancement, in favor of the Orwellian DEI policies that find their basis in the pseudoscience of critical theory. Basing financial and business decisions on these constructs restricts opportunities for those whom the elite deem "undesirable." ESG is nothing more than a mechanism for social engineering and control.

This social engineering is mechanized via two primary methods. ESG's architects intentionally eliminate the supply of "bad" products—such as oil and gas, meat, and anything that emits "too much" carbon dioxide during production—while incentivizing the production and consumption of "good" products such as electric vehicles, plant-based meat, and solar panels—which, uncoincidentally, the powerful interests behind ESG tend to be heavily invested in. *Brave New World* author Aldous Huxley warned of such social engineering tactics nearly a century ago, writing:

> Impersonal forces of over-population and over-organization, and the social engineers who are trying to direct these forces, are pushing us in the direction of a new medieval system. This revival will be made more acceptable than the original. ... but, for the majority of men and women, it will still be a kind of servitude.[98]

As with many of his contributions, Huxley's words have proven prophetic.

For instance, consider Klaus Schwab's remarks quoted earlier in this paper, among other important figures such as Larry Fink, UNESCO Director-General Audrey Azoulay, and former Bank of England governor and current GFANZ Co-Chairman Mark Carney. In Fink's 2022 "Letter to CEOs," he threatened, "Every company and every industry will be transformed by the transition to a net zero world. The question is, will you lead, or will you be led?"[99]

In a 2021 UNESCO report, Azoulay exhorted, "We need to take urgent action to change course, because the future of people depends on the future of the planet, and both are at risk. ... This new social contract is our chance to repair past injustices and transform the future."[100]

Carney stated in a speech at the 2019 Task Force on Climate-related Financial Disclosure summit in Tokyo, "Firms that align their business models to the transition to a net zero world will be rewarded handsomely. Those that fail to adapt will cease to exist."[101] Additionally, in 2021, Carney expressed via his Twitter account: "The power of the [market] must be directed to achieving what society wants. That requires measures of income [and] welfare that reflect values familiar to many indigenous communities: fairness, equity, and sustainability."[102]

This is only a small selection of comments world elites have enunciated regarding their overarching intention to inorganically engineer society into a globalist "utopia," which would naturally be administered and ruled by those same elites for their own personal gain.

"ESG destroys the concept of free-market capitalism, replacing it with a top-down, centrally planned economic model in which a handful of monopolistic corporations and international bodies dictate who and on what terms people and businesses are allowed to participate in the market."

Subversion of Free Market Capitalism

Fourth, ESG destroys the concept of free-market capitalism, replacing it with a top-down, centrally planned economic model in which a handful of monopolistic corporations and international bodies dictate who and on what terms people and businesses are allowed to participate in the market. As one article from the Global Financial Markets Center at Duke University's School of Law rightfully questions:

> Is it appropriate for company executives, who have been neither elected nor empowered to make social decisions, to decide that the prices set in the economy are not appropriate indicators for making corporate decisions ... are corporate executives qualified to evaluate these social policies? More importantly, what gives them the right to evaluate such policies on behalf of their shareholders and other stakeholders such as employees?[103]

Moreover, it is no coincidence that an ESG-dominated system produces immense financial gains for those in charge of establishing and enforcing the ESG standards. When insiders both set the rules for the system and then leverage their knowledge of those rules to take advantage of the market, their rivals are automatically disadvantaged, and the insiders profit immensely at their rivals' expense.

As mentioned earlier in this paper, ESG's novelty has justified substantially higher investment management fees, incentivizing large asset managers to allocate their investors' funds into ESG-centric portfolios.

For instance, BlackRock—the world's largest asset management firm—has leveraged its size and diversification to fully reap the benefits of ESG investments, regardless of its nebulous impact on client portfolios.[104] BlackRock's iShares Global Clean Energy ETF is one of the largest ESG funds in the world.[105] Having said this, the commitment of BlackRock and other asset management titans to promoting ESG is beginning to take a toll, as a result of substantial divestment activity from multiple state financial officers and the tide of public opinion beginning to shift against ESG due to its myriad toxic elements.

Economic Waste

Fifth, ESG compliance results in tremendous waste of scarce economic resources. Companies are forced to spend enormous amounts of time and resources estimating their ESG impacts, which drains their productive capacity. Instead of focusing on research and development and innovation in general, companies adhering to ESG must now divert resources to ascertaining whether a company in its supply chain emits "too much" carbon dioxide or employs "too many" Asians. Moreover, if a company hires and promotes individuals based on the color of their skin rather than merit, it will likely not perform at an optimal level.

The SEC has estimated that its proposed rules on climate disclosures will raise compliance costs by $420,000 a year for an average publicly listed small company and $530,000 for a larger firm, raising total compliance costs from $3.9 billion to $10.2 billion.[106]

A separate study conducted by The SustainAbility Institute, which surveyed corporate issuers and institutional investors, found compliance costs to be substantially higher than the SEC's estimates. Corporate issuers are currently spending $677,000 per year on climate-related disclosure activities, with the largest cost categories being greenhouse gas analysis and disclosure ($237,000), climate scenario analysis ($154,000), and internal climate risk management controls ($148,000). Investors are currently spending $1.34 million to collect, analyze, and report climate-related data, with the largest cost categories including spending on external ESG ratings, data providers, and consultants ($487,000), in-house, outside counsel, and proxy solicitor analysis ($405,000), and internal climate-related investment analysis ($357,000).[107] And, these estimates are only for climate disclosures and do not cover the host of other metrics related to ESG. Moreover, these high compliance costs are much more easily borne by large companies than their smaller competitors, who can least afford such expenses. This is yet another example of how ESG panders to the most powerful, while often driving small- and medium-sized businesses from the market.

"Overall, ESG poses a gargantuan threat to the U.S. economy, democracy, national security, and individual rights."

Dangers to National Security

Finally, ESG could directly endanger U.S. national security. Military production is likely to be hamstrung by adherence to climate-oriented objectives.

In pursuit of lower emissions, the Defense Department will likely be unable to produce or acquire the vehicles and equipment that provide the most optimal defensive or offensive capabilities. In fact, the Department of Defense has already signaled its commitment to climate objectives. For instance, in its official 2022 "Climate Strategy," the U.S. Army calls for fully transforming all tactical and non-tactical vehicles into electric vehicles by 2050. Such a policy would put our armed forces at a disadvantage due to poor electric vehicle performance in suboptimal weather conditions. Moreover, the use of battery technologies requires "charging stations both domestically and in foreign locations where vehicles and carbon neutral equipment might be deployed." A scenario in which there are enough effective charging stations to sustain the entire U.S. military in an offensive or defense posture is simply impossible at this time, and will remain extremely far-fetched in the future.[108]

In addition, ESG's intentional suppression of the hydrocarbon industry is already causing immense strain on power generation and threatens to cause a regional or even systemwide collapse of the entire U.S. energy grid under certain circumstances. Plus, the increased demand for wind, solar, and battery technologies to meet ESG net-zero goals, increases U.S. reliance on hostile nations such as China, Russia, Iran, Venezuela, and soon Afghanistan, to supply the United States with the energy that it could produce itself but chooses not to do so for ESG-related reasons.[109]

Overall, ESG poses a gargantuan threat to the U.S. economy, democracy, national security, and individual rights. Fortunately, the American people and their elected representatives are waking up to this grave threat and taking action.

STATE-LEVEL SOLUTIONS TO ESG

The substantial problems associated with ESG have become apparent to lawmakers and agency officials in various states over the past two years. Some lawmakers have started to take action to limit the damage ESG does in their states. They are considering, are currently in the process of enacting, or have successfully enacted myriad policies to combat ESG's nefarious impacts.

A growing number of state financial and legal officers have taken strong stances against ESG, using their vested powers to fight it through regulatory actions. For instance, 25 Republican attorneys general filed a lawsuit on January 26, 2023, against then-Secretary of Labor Marty Walsh and the Department of Labor in response to the Labor Department's aforementioned rule that allows plan fiduciaries to consider non-financial factors when determining fund allocation.[110] These are not simply hollow words.

"The substantial problems associated with ESG have become apparent to lawmakers and agency officials in various states over the past two years. Some lawmakers have started to take action to limit the damage ESG does in their states."

In addition, a number of state executives, financial, and legal officers have already enacted anti-ESG regulatory policies, chiefly by divesting from companies or organizations deemed to be boycotting industries essential to state economies, or preventing such entities from doing business with the state, for instance underwriting loans, or backing state projects.[111] Moreover, there have been many initiatives at the federal level that have attempted to reverse the Biden administration's regulatory actions, among other policies, as will be outlined in this paper's next section.

These regulatory actions taken by state financial officers are laudable, have already been providing an impact on the broader, global ESG debate, and have served as the policy genesis of the country-wide assault upon ESG. State legislatures can build upon these actions and legislate additional wide-ranging anti-ESG policies to protect their economies, domestic industries, and the freedoms of their citizens. To date, there are three primary legal frameworks that have been utilized to combat ESG at the state level. These three frameworks are described below, and examples of these approaches can be found in the appendix of this paper. (See page 43.)

1. Pension Fund Divestment

Pension funds—even in Republican-dominated states—are overwhelmingly run by left-wing activists who have been allocating the hard-earned money of their investors into ESG-centric funds, much like the federal government. To combat this, many states have opted to pursue anti-ESG strategies that bar state pension authorities from investing in ESG funds. This is an important way to fight back against the ESG tidal wave.

Withdrawing large state and municipal public employee pension funds from investment fund management companies pushing ESG is already having an impact. Based on public statements and testimonies in various states, these actions have given large investment management companies some pause in their ESG crusade—at least, temporarily.

Although this is certainly laudable, it is unlikely this approach alone will be sufficient to incentivize long-term change against the array of power and wealth that has thrown its weight behind ESG. These powerful forces hold more than $130 trillion in total assets, as outlined above. On the other hand, state and local pension funds in the United States have a combined total of $4.5 trillion. "Blue states" have $2.6 trillion invested in pension funds, "purple states" have $539 billion, and "red states" have $1.4 trillion. Even if every red and purple state were to divest from ESG-focused funds and dissociate with ESG-focused fund managers—which is unlikely to occur—the total of $1.9 trillion would represent less than 1 percent of the total private capital devoted to ESG.[112]

2. State Contract Prohibitions

Often pursued in tandem with the pension fund divestment strategy, many states have made it illegal to execute contracts with powerful entities that push ESG, including asset management firms like BlackRock and financial institutions like Bank of America. This includes, for example, allowing named firms to manage a state's public pension funds and underwrite state or local bonds. These entities have divested from key industries within states, especially hydrocarbon extraction, transportation, and production, but also firearm manufacturing and various agricultural endeavors.

For instance, West Virginia Treasurer Riley Moore barred the state from entering into contracts with BlackRock, Goldman Sachs, JP Morgan Chase, Morgan Stanley, and Wells Fargo in July 2022, allowing Moore to disqualify a financial institution from competitive bidding, refusing to enter into banking contracts, and requiring agreements by financial institutions to not boycott energy companies for the duration of the state contract.[113] Texas Comptroller Glenn Hegar has done the same thing, barring state entities from various dealings with BlackRock, BNP Paribas, Credit Suisse, HSBC, UBS, and many others.[114]

This is another chief strategy that state authorities can execute to push back against ESG. As important as these steps are to combat ESG, they are likely not enough to stem the ESG tide on their own. The majority of the coercive elements inherent to ESG operate outside of government contracts, with large investment managers, banking giants, and insurance conglomerates pressuring small businesses and individuals to adopt ESG at the point of a sword. Governments have little to no power to prohibit such activity, unless they implement policies that prohibit discriminatory practices, which leads us to the next major policy.

3. Anti-Discrimination Regulations

The third prominent anti-ESG strategy attempts to attack ESG closer to its foundations. At its core, ESG operates by discriminating against individuals, companies, industries, and even sovereign governments based on their adherence (or lack thereof) to subjective and politically motivated mandates. Large financial institutions such as JP Morgan Chase and Bank of America—among many others—are particularly guilty of this behavior.

To combat these discriminatory practices, as discussed above, the Trump-era Office of the Comptroller of the Currency adopted a regulation that stated, in part:

> Consistent with the Dodd-Frank Act's mandate of fair access to financial services and since at least 2015, the OCC has repeatedly stated that while banks are not obligated to offer any particular financial service to their customers, they must make the services they do offer available to all customers except to the extent that risk factors particular to an individual customer dictate otherwise.

FIGURE 2

Anti-ESG Action Map

(Last updated in March of 2023)

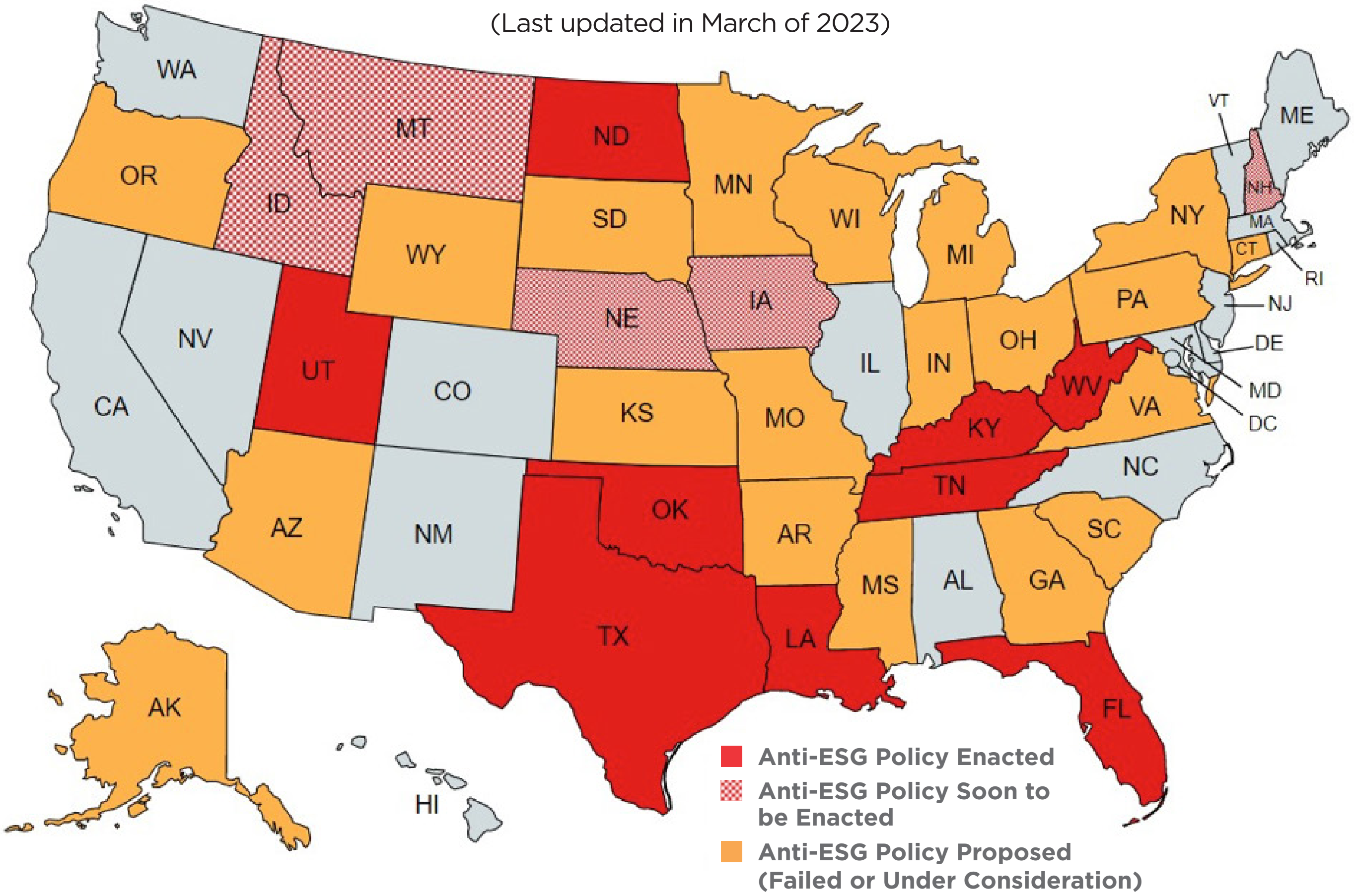


Figure 2. As indicated by the legend, dark red coloring indicates states that have already enacted anti-ESG policies, red-checkered coloring indicates states that are on the cusp of enacting anti-ESG legislation, and orange coloring indicates states that have either tried to enact anti-ESG policies or are currently attempting to do so.

Unfortunately, as was also noted above, this rule was put on hold within days of the Biden administration coming to power in January 2021. Yet, the OCC's rule has provided the basis for new legislation at the state level that attempts to protect businesses and individuals from discrimination and monopolistic financial coercion. The language ensconced in the "fair access" legislation—especially if strengthened by the fiduciary approaches outlined above and adopted in tandem—represents a politically aggressive approach to rolling back ESG policies that are already being weaponized against individuals and key state industries, which will only escalate as time transpires. Fortunately, a coalition of nearly 20 Republican governors led by Gov. Ron DeSantis (FL) intends to pursue anti-discriminatory action against financial institutions, based on a letter signed by 19 governors committing their states' resources to combating ESG in myriad forms.[115]

For more information on a state-by-state basis, see The Heartland Institute's Anti-ESG Action Map, featured above as Figure 2. For additional information as to Heartland's efforts, please visit Heartland's regularly updated ESG portal: Heartland.org/ESG.[116, 117]

FEDERAL SOLUTIONS TO ESG

Members of Congress have also introduced a number of bills to combat ESG in recent years, although none have become law at the time of publication of this paper.

Rep. Andy Barr (R-KY) introduced the "Ensuring Sound Guidance Act" in March 2022, which would prohibit Biden's Department of Labor rule allowing investment managers to utilize ESG from going into effect. Barr's bill would also require all investment advisors to base investment decisions on pecuniary factors unless a customer specifically requests non-pecuniary factors be taken into consideration.[118]

"Members of Congress have also introduced a number of bills to combat ESG in recent years, although none have become law at the time of publication of this paper."

U.S. Sen. Dan Sullivan (R-AK) introduced the "Investor Democracy Is Expected (INDEX) Act" in May 2022, which would require investment advisors for passively managed funds to vote by proxy based on the instructions of fund investors, rather than advisers.[119] This is clearly an attempt to limit the power of fund behemoths such as BlackRock from using their influence to direct corporate boardrooms. Rep. Bill Huizenga (R-MI) and Rep. Blaine Luetkemeyer (R-MO) introduced similar legislation in the House of Representatives.[120]

U.S. Sen. Mike Rounds (R-SD) introduced the "Mandatory Materiality Requirement Act" in July 2022, which would require that information disclosed to the Securities and Exchange Commission be material to investors.[121] This is a response to the SEC's proposed rules related to non-materiality, as discussed previously in this paper. Huizenga introduced identical legislation in the House in December 2022.[122]

U.S. Sen. Mike Braun (R-IN) introduced the "Maximize Americans' Retirement Security Act" in July 2022, which would require that fiduciaries select and maintain investments based solely on pecuniary factors, unless two investments are indistinguishable financially, at which point the fiduciary could choose between them based on non-pecuniary factors.[123]

U.S. Rep. Greg Murphy (R-NC) introduced the "Safeguarding Investment Options for Retirement Act" in October 2022, which would require plan managers to be subject to fiduciary duties, in opposition to the aforementioned Department of Labor rule.[124]

U.S. Sen. John Boozman (R-AR) introduced the "Protect Farmers from the SEC Act" in November 2022 which would protect farmers from the SEC's proposed climate rule requiring disclosure related to greenhouse gas emissions and other factors.[125]

Many of these federal efforts have sought to nullify the aforesaid Department of Labor rule, thereby prohibiting retirement fund fiduciaries from considering non-material factors. In March of 2023, both the House and the Senate passed a bill overturning the DoL rule, introduced by Rep. Barr. However, President Biden promptly vetoed the bill, and Congress lacked sufficient votes for an override, thereby allowing the pro-ESG regulation to remain in place.[126]

While many of the bills now under consideration at the state and federal levels would, if passed, likely be effective bulwarks against present efforts to impose ESG standards upon the United States economy and society at large, such solutions will soon be hampered if and when proposed regulations in the European Union become law. Domestic laws can only do so much against a global enemy that spans multiple jurisdictions and operates through supranational public-private partnerships. Proposed EU regulations, discussed in detail below, would directly impact many large multinational U.S. corporations and indirectly impact countless other U.S. companies via a trickle-down effect. Unfortunately, the approaches previously mentioned in this paper would be ineffective against such an attack.

THE LOOMING SPECTER OF THE EUROPEAN UNION'S PROPOSED ESG REGULATIONS

The European Union (EU) has long been the epicenter of ESG, sustainability, and climate change mitigation policy. It has developed countless policies intended to coerce EU companies into complying with metrics that will ostensibly curb climate change, promote social justice, and reform corporate governance to be more "diverse" and "fair."

The passage of the "Non-Financial Reporting Directive" (NFRD) in 2014 represented the official genesis of the effort to fundamentally alter corporate activity within the EU's jurisdiction.[127] In the near-decade since, numerous amendments and other policies, including a multitude of climate regulations driven by the European Green Deal—which aims to reduce greenhouse gas emissions by 55 percent by 2030 and become "climate neutral" by 2050[128]—have culminated in two important directives that will have far-reaching implications for EU companies, U.S. companies, and the global economy.

The first of these directives is known as the "Corporate Sustainability Reporting Directive" (CSRD), which was officially passed by all relevant EU authorities on December 14, 2022.[129] Essentially, the CSRD is a much more stringent and comprehensive version of the NFRD, requiring approximately 50,000 companies to adopt and abide by updated social and environmental goals. The CSRD's rollout is being staggered, with the first tranche of companies forced to report on these metrics for fiscal year 2024. In terms of the United States, the CSRD establishes that non-EU companies must report on these metrics if they generate a net revenue of more than €150,000,000 ($161,737,500), and either have an EU branch office with a net turnover [revenue] of at least €40,000,000 ($43,130,000) or have a large or listed subsidiary in the European Union.[130] This tranche of companies would be forced to comply by 2028. This will have sweeping implications for many large American companies, whether they are subject to the SEC's rules or not. As Deloitte Global Audit and Assurance Sustainability and Climate Leader Kristen Sullivan noted in *The Wall Street Journal*:

"The impact of this directive will be substantial, as U.S. companies must comply or suffer the consequences, which could entail reduced investment, diminished access to capital, and reputational damage."

> It's very important that U.S. companies with EU operations understand the extent to which these new sustainability reporting requirements in the European Union will impact the timeline and scope of their reporting requirements and where they may be similarities or differences to the SEC's proposed rule—and that they take steps to prepare now.[131]

The impact of this directive will be substantial, as U.S. companies must comply or suffer the consequences, which could entail reduced investment, diminished access to capital, and reputational damage.

The CSRD poses a significant threat to U.S. sovereignty and free market activity, as EU law—rather than U.S. law—will force American companies to change their business practices. Yet, the aforementioned second directive poses a substantially greater threat. The Corporate Sustainability Due Diligence Directive (CSDDD) is in the final stages of becoming law. Before discussing the CSDDD, however, a brief discussion of the EU's primary policymaking institutions and their interrelationships is warranted.

There are seven major institutions that administer the European Union. Of these seven, four of them have various degrees of responsibility for overarching governing and policymaking.[132] Of these four, one—the European Council—consists of the heads of state or government from EU member states. It does not develop laws, and functions more so as a priority-setting body; as such, it is not relevant to this discussion. The remaining three institutions are the European Commission (the "Commission"), the European Parliament (the "Parliament"), and the Council of the European Union (the "Council")—not to be confused with the European Council; they are two separate entities. The Commission is the EU's main executive body. In addition to its goals of managing EU policies and budgets, and ensuring that member states apply EU laws correctly, its primary role is to put forward proposals for new laws to the legislative bodies: the Parliament and the Council. The Parliament consists of representatives who are directly elected by citizens of the European Union. The Council consists of national ministers and cabinet members from EU member states who represent their respective governments. These two legislative bodies work in tandem to develop and vote on EU laws, after receiving proposals from the Commission.[133]

This relationship is important to understand, as it may determine the scope of the CSDDD, which is still being negotiated. In this instance, the European Parliament "unofficially" began the process for legislation using its "own-initiative procedure," which is seen as a precursor to official legislative procedures being initiated by the Commission. Simply put, the Parliament passed a resolution—the earliest draft of the CSDDD—asking the Commission to formally propose a new directive to be voted upon concurrently by the Parliament and the Council. The Parliament's version of the CSDDD is extremely broad in its scope, and would have drastic implications for the European Union—but more importantly, for the United States and the rest of the global economy.[134] The Parliament asked for typical ESG-related goals to be enshrined in the Commission's directive, such as environmental protections, "good" governance, and mandatory human rights protections, among other items.

"The Parliament's version of the CSDDD is extremely broad in its scope, and would have drastic implications for the European Union—but more importantly, for the United States and the rest of the global economy."

Even more significant, however, is the Parliament's desire to apply ESG due diligence standards to a company's entire value chain, which includes both upstream and downstream business relationships. In the European Union, "due diligence" is equivalent to "ESG." The proposal directly requests that "the Commission submit without undue delay a legislative proposal on mandatory supply chain due diligence." International law firm Shearman & Sterling explains:

> 'Value chain' means a company's activities, operations, business relationships and investment chains, including entities with which the company has a direct or indirect business relationship, both upstream and downstream, and which either: (a) supply products, parts of products or services that contribute to the company's products or services, or (b) receive products or services from the company.[135]

Essentially, supply chains are only one component of the overall value chain, which also includes all material inputs that add value to the product being supplied.

Most importantly, the Parliament's version of the CSDDD contains provisions for companies to be subject to sanctions and liability regimes that would be legally enforceable by the jurisdiction in which the company conducts business.

"If adopted, all EU Member States will be required to implement the Directive into their national laws," writes Shearman & Sterling, "This will result in substantive due diligence requirements being imposed on companies, whether based in the European Union or selling their products and services in the European Union, across their entire value chain, with potential sanctions for non-compliance."[136]

"American companies would be directly impacted in two ways: both upstream and downstream. For instance, any American company that produces material inputs for further refinement or final completion in the European Union would be considered part of the value chain, as would any American company that would refine or sell material inputs or goods supplied by an EU company."

The affected companies comprise three tranches, somewhat similar to the CSRD. The first tranche is all "large undertakings," which are companies that satisfy at least two of the three following criteria: a balance sheet total of more than €20,000,000 ($21,565,000); a net turnover of more than €40,000,000 ($43,130,000); and an average number of employees of more than 250 in a calendar year. The second tranche is all small- and medium-sized companies that satisfy at least two of the three following criteria: a balance sheet total from €4,000,000 ($4,313,000) to €20,000,000 ($21,565,000); a net turnover from €8,000,000 ($8,626,000) to €40,000,000 ($43,130,000); and an average number of employees from 50 to 250 in a calendar year. The final tranche includes any small market enterprise operating in a "high-risk" sector, regardless of balance sheet, turnover, or number of employees. Sectors include garments and footwear, forestry, and minerals, among others to be further clarified in the final document.[137] Overall, very few companies within EU member states will escape from these requirements. Even a small proprietorship involved in a high-risk sector would be forced to comply or suffer sanctions.

Non-EU companies will be directly affected by the CSDDD as well, similar to the CSRD. Global law firm Jones Day reports:

> If adopted as proposed, the CSDDD would apply to non-EU companies that either: (i) generated at least €150 million of net turnover in the EU in the preceding financial year; or (ii) both (a) generated at least €40 million of net turnover in the EU in the preceding financial year and (b) generated at least 50% of the non-EU company's worldwide turnover in a sector considered as being particularly vulnerable to adverse impacts (such as agriculture, textile manufacturing, and mineral extraction).[138]

Yet, these large non-EU companies—which are estimated to include approximately 4,000 businesses[139]—would hardly be the only companies affected. This is due to the CSDDD's inclusion of value chains. This is vital to understand.

American companies would be directly impacted in two ways: both upstream and downstream. For instance, any American company that produces material inputs for further refinement or final completion in the European Union would be considered part of the value chain, as would any American company that would refine or sell material inputs or goods supplied by an EU company.

Though many of these companies would not fall within the EU's jurisdiction and therefore not be sanctionable, they would likely be highly pressured to comply with the ESG strictures. European companies will have no choice under the new law but to remove American companies—and any other company outside the European Union—from their value chains if their American counterparts are deemed to be insufficient in their commitments to various ESG metrics. Essentially, this is the mechanism by which the European Union—at the urging of many international public-private partnerships and global organizations—can conduct an end-run around U.S. democratic institutions and laws to force companies into compliance.

"Any American company that is deemed to be insufficiently committed to diversity in corporate boardrooms or mitigating climate change, would be either sanctioned or frozen out of the value chain."

As discussed earlier, the Parliament sent this proposal to the Commission in March 2021, and the Commission largely agreed to all stipulations, passing along the directive to the Council and the Parliament for final comments and passage in February 2022.[140] Fortunately, the Council is less hardline than the Parliament and the Commission, and has narrowed the scope of the original proposal. Among a few smaller proposed changes such as a "phase-in" for the three company tranches and a softening of the language surrounding "business relationship," the Council has significantly altered the scope of the value chain proposition. The Council has changed the language from "value chain" to "chain of activities," which focuses much more upon upstream business partners, and therefore supply chains. As law firm Freshfields Bruckhaus Deringer explains, "[chain of activities] covers a company's upstream business partners and very narrowly its downstream business partners, without covering the use of a company's products or the provision of services."[141]

Despite the Council's softening of the Commission's proposal, the Council's version would still have dramatic effects upon EU companies and their global partners. The Council is still very much a key driver of the sustainability initiatives, as clearly evidenced by Council member and Czech Minister for Industry and Trade Jozef Sikela's comments after the Council's revised proposal:

> We have worked hard over the last months to reach this Council position today. For the European Union to reach its climate and sustainability goals and to ensure the protection of human rights, it is important that companies identify and prevent, bring to an end or mitigate the impact of their activities on human rights and the environment. Responsible behaviour for companies producing clothes, mobile phones and other everyday use objects is also something European customers start caring about more and more.[142]

Moreover, this is only the best-case scenario; the Council's positions must still be negotiated with the more hardline Parliament, which is currently working through its own revisions. As such, the finished product will likely fall somewhere between the initial proposal and the Council's recommended changes.

To conclude, the CSRD and the CSDDD will, if fully implemented, have dramatic effects on the global economy and the United States. Any American company that is deemed to be insufficiently committed to diversity in corporate boardrooms or mitigating climate change, would be either sanctioned or frozen out of the value chain. As of now, there is no way to stop this. However, as will be lightly touched upon in the next section, there could be a viable solution in the future.

POLICY RECOMMENDATIONS

This paper has made clear the immense threat ESG poses to nearly every aspect of American society, not to mention the entire planet. ESG eviscerates individual liberty, replaces free market capitalism with a centrally planned fascistic economic ideology, severely harms material economic conditions, endangers national security, and ultimately subserviates free individuals to an elite cabal bent on totalitarian control of all political, economic, and social institutions. It is paramount that policymakers—from all sides of the ideological spectrum—quickly act upon specific strategies that will counteract ESG's pernicious influence.

"It is paramount that policymakers—from all sides of the ideological spectrum—quickly act upon specific strategies that will counteract ESG's pernicious influence."

These policies can be implemented at the state, federal, and international levels.

State Solutions

As outlined earlier, there are three primary policies states have been considering and acting upon to fight back against ESG.

The first of these policies revolves around requiring pension fund fiduciaries to consider only material factors when making investment decisions on behalf of their investors, rather than considering ideological ESG goals.

The second policy bars state governments and agencies from entering into contracts with entities that are committed to boycotting certain industries such as hydrocarbon extraction, which are vital to state and federal economic well-being.

The third policy prohibits financial institutions of any kind from engaging in discriminatory behavior against companies or individuals based upon ideological grounds.

The first two policies have already been impactful, especially via the pressure they put on entities orchestrating ESG at the expense of the American economy and the wallets of American consumers. The third solution attacks ESG on economic, ideological, and moral grounds.

This policy, which is based on the "fair access to financial services" principle, provides even stronger protections for vital U.S. industries and prevents small- and medium-sized companies from global corporatist coercion. Moreover, this legislation provides critical protections based on First Amendment rights, which would prohibit entities from being discriminated against on political and ideological grounds by "woke" financial institutions.

A powerful state-level course of action would simply implement all three vital anti-ESG policies. Passing legislation in favor of even just one of the three proposed policies is a step in the right direction. However, all three policies—including potential yet-to-be-determined state-level solutions—will be necessary to truly close the door on ESG and provide the broadest spectrum of protection for American society.

Federal Solutions

At the federal level, Congress should continue to put pressure on the Biden administration by introducing legislation that would revoke pro-ESG regulatory measures. The bills discussed previously are a strong step in the right direction. There are three primary regulations that Congress must address, while also reining in the agencies responsible for these regulations.

First, as was recently attempted though ultimately rebuffed by President Biden's veto, Congress must overturn the Biden administration's Department of Labor rule allowing federal pension fund fiduciaries to consider ESG factors.

Second, Congress must direct the Office of the Comptroller of the Currency to remove the pause on the Trump-era OCC regulation prohibiting financial institutions from engaging in discriminatory practices. As was mentioned earlier, it is this rule that forms the basis for the third and most consequential state level solution against ESG: fair access to financial services. If this regulation could be made active once more, or perhaps even codified into law, ESG's reach would be significantly curtailed.

Third, Congress must rein in the Securities and Exchange Commission, and direct the SEC to revoke the proposed ESG and climate rules it introduced in early 2022. These rules will almost certainly be formalized in the coming months, with disastrous consequences.

Each of these three solutions may be difficult to implement considering the current partisan makeup of our federal government. However, with the 2024 elections quickly approaching, it could soon become feasible—and perhaps even highly likely—that all of these measures could be achieved.

International Solutions

Addressing the impacts of the European Union's current and proposed mandates is a thornier endeavor, though U.S. foreign policy solutions to combat said regulations may perhaps be the most vital policy solution to implement.

Any solution must be carefully considered and developed by those with significant expertise in foreign policy and/or international relations, though these experts could begin by exploring solutions such as:

- If possible, challenging the EU's ESG rules under existing trade agreements, citing their deleterious international and domestic economic impact, and, possibly illegal imposition on trade outside of the allowable grounds contained in existing trade agreements.
- If a bilateral trade agreement exempting the United States from the EU's ESG policies cannot be reached, the United States government could impose steep tariffs on European products in an effort to pressure the EU into exempting the United States from said mandates.
- If tariffs are not enough to dissuade the European Union, implementing strong economic sanctions against the EU to isolate it from its trading partners and force the EU to reconsider its ESG policies could be an effective measure, providing the United States is legally able to do so within the framework of its current international trade treaties.

To be clear, the policies of the international variety are meant as suggestions, to galvanize those with more foreign policy expertise into developing more concrete solutions. This being said, it is crucial that policy towards the European Union is not forgotten when it comes to the overarching fight against ESG.

APPENDICES

Appendix A: State Pension Fiduciary Act (Model Legislation)

Some state governments have begun to fight back against progressive ESG initiatives and the attempt to redefine the purpose of businesses.

States can enact legislation to ensure that state retirement funds are invested solely to achieve a return for state employees who are pension plan beneficiaries rather than to achieve political or social objectives by hiring only investment advisors that commit to not shortchange retirees to further a political or social objective. The following model legislation would accomplish this objective.

AN ACT relating to the fiduciary duty and proxy voting activities of public retirement systems.

Section 1. Definitions

a) "Fiduciary" includes any person acting on behalf of the [state][pension board] as an investment manager, or proxy advisor.

b) "Fiduciary Commitment" means any evidence of a fiduciary's purpose in managing assets as a fiduciary, including, but not limited to, any of the following in a fiduciary's capacity as a fiduciary:

i) advertising, statements, explanations, reports, letters to clients, communications with portfolio companies, statements of principles, or commitments; or

ii) participation in, affiliation with, or status as a signatory to, any coalition, initiative, joint statement of principles, or agreement.

c) "Financial" means having been prudently determined by a fiduciary to have a material effect on the financial risk or the financial return of an investment.

i) "Financial" does not include any action taken, or factor considered, by a fiduciary with any purpose whatsoever to further social, political, or ideological interests.

ii) A fiduciary may reasonably be determined to have taken an action, or considered a factor, with a purpose to further social, political, or ideological interests based upon evidence indicating such a purpose, including, but not limited to, any Fiduciary Commitment to further, through portfolio company engagement, board or shareholder votes, or otherwise as a fiduciary, any of the following beyond what controlling federal or state law requires:

(1) eliminating, reducing, offsetting, or disclosing greenhouse gas emissions;

(2) instituting or assessing corporate board, or employment, composition, compensation, or disclosure

criteria that incorporates characteristics protected in this state under [state civil rights statute];

(3) divesting from, limiting investment in, or limiting the activities or investments of, any company, for failing, or not committing, to meet environmental standards or disclosures; or

(4) [access to abortion, sex or gender change or transgender surgery; or]

(5) divesting from, limiting investment in, or limiting the activities or investments of, any company that engages in, facilitates, or supports the manufacture, import, distribution, marketing or advertising, sale, or lawful use of firearms, ammunition or components parts and accessories of firearms or ammunition.

d) "Public Retirement System" means any retirement or pension system or plan maintained, provided or offered by:

i) the State or any political subdivision of the State, including but not limited to any county, city [list all other subdivisions possible in the state (village, borough, school district, water district, etc.)], or

ii) any school, college, university, administration, authority, or other enterprise operated by the State or any political subdivision of the State.

Section 2. Fiduciary Duty

a) In making and supervising investments of the reserve fund of a public retirement system, an [investment manager] [fiduciary] or [the governing body] shall discharge its duties solely in the financial interest of the participants and beneficiaries for the exclusive purposes of:

(A) providing financial benefits to participants and their beneficiaries; and

(B) defraying reasonable expenses of administering the system.

b) An investment manager appointed under [state authorization state] shall be subject to the same fiduciary duties as the [governing body].

c) A fiduciary shall take into account only financial factors when discharging its duties with respect to a plan.

d) All shares held directly or indirectly by or on behalf of a public retirement system and/or the participants and their beneficiaries shall be voted solely in the financial interest of plan participants and their beneficiaries.

e) [Unless no economically practicable alternative is available,] the [governmental entity] that establishes or maintains a public retirement system may not grant proxy voting authority to any person who is not a part of the [governmental entity], unless that person has a practice of, and in writing commits to, follow guidelines that match the [governmental entity's] obligation to act solely upon financial factors.

f) [Unless no economically practicable alternative is available,] public retirement system assets shall not be entrusted to a fiduciary, unless that fiduciary has a practice of, and in writing commits to, follow guidelines, when engaging with portfolio companies and voting shares or proxies, that match the [governmental entity's] obligation to act solely upon financial factors.

g) [Unless no economically practicable alternative is available,] an [investment manager] [fiduciary] or [governmental entity] may not adopt a practice of following the recommendations of a proxy advisor or other service provider, unless such advisor or service provider has a practice of, and in writing commits to, follow proxy voting guidelines that match the [governmental entity's] obligation to act solely upon financial factors.

h) All proxy votes shall be tabulated and reported annually to the [Board]. For each vote, the report shall contain a vote caption, the plan's vote, the recommendation of company management, and, if applicable, the proxy advisor's recommendation. These reports shall be posted on a publicly available webpage on the Board's website.

Section 3. Enforcement

a) This article, or any contract subject to this article, may be enforced by the attorney general, or [applicable executive branch official].

b) If the attorney general or [applicable executive branch official] has reasonable cause to believe that a person has engaged in, is engaging in, or is about to engage in, a violation of this article, he may:

(A) Require such person to file on such forms as he prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning the violation, and

(B) such other data and information as he may deem necessary.

c) In addition to any other remedies available at law or equity, a company who serves as a fiduciary and who violates Section 2 shall be obligated to pay damages to the [state] in an amount equal to three times all monies paid to the company by the [state] [pension board] for the company's services.

Appendix B: Eliminate Economic Boycotts Act (Model Legislation)

Some state governments have begun to fight back against progressive ESG initiatives and the attempt to redefine the purpose of businesses.

States can enact legislation that generally requires companies that contract with the state to certify that they do not boycott or discriminate against companies to achieve woke political objectives. Specifically, states can require contractors to not discriminate against those engaged in conventional energy production, mining, agriculture, timber, or firearms industries. The following model legislation would accomplish this objective.

Summary: AN ACT relating to state contracts with certain companies that engage in economic boycotts based on environmental, social, or governance criteria.

Section 1: The **[name of state]** finds that:

1) numerous essential American industries—including fossil fuel production, agriculture, timber production, and firearms—are being targeted for boycotting, divesting, and sanctioning by large corporations and public and private institutional investors;

2) the goal of these colluding parties is to starve targeted legal industries of capital, restrict their productivity, and redirect that capital to favored industries;

3) these parties are working in concert with many state and federal lawmakers and regulators, as evidenced most recently by new climate disclosure rules from the Securities and Exchange Commission;

4) restricting the supply of energy and other essential commodities, without effective substitutes for those commodities, only serves to raise prices on consumers, profoundly impacting the poorest among us;

5) denying financing to American companies, who are among the most socially and environmentally responsible companies in the world, only serves to support hostile nations and less responsible producers;

6) banks and insurance companies are increasingly denying financing to creditworthy companies to market their environmental credentials to the detriment of consumers, shareholders and society;

7) institutional investors are divesting from entire industries and pressuring corporations to commit to environmental goals, such as reducing greenhouse gas emissions to zero by 2050, to burnish their environmental credentials or promote their own environmental, social, and governance funds at the expense of investor returns;

8) large investment firms, through their proxy votes on shareholder resolutions and board elections, are colluding to force companies to direct money, time, and attention away from their core responsibility of increasing shareholder returns, driving capital allocation decisions and political change outside the democratic process;

9) corporations are boycotting and sanctioning essential legal industries, such as fossil fuel and agriculture producers, by denying them capital, refusing to provide them with products or services or imposing undue burdens on them;

10) the collusion of corporations, and institutions to boycott, divest from, or sanction any industry may violate existing antitrust and fiduciary duty laws and harms consumers, shareholders, and this state; and

11) states, when financially prudent, should avoid doing business with companies that engage in such potentially illegal conduct, and threaten harm to this state, its businesses, and citizens.

Section 2. Prohibition on Contracts with Companies Engaging in Economic Boycotts

1) Definitions.

a) “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations. For the purposes of this section, “company” does not include sole proprietorships.

b) “Governmental entity” means a state agency or political subdivision of this state.

c) “Ordinary business purpose” does not include any purpose to further social, political, or ideological interests. A company may reasonably be determined to have taken an action, or considered a factor, with a purpose to further social, political, or ideological interests based upon evidence indicating such a purpose, including, but not limited to (i) branding, advertising, statements, explanations, reports, letters to clients, communications with portfolio companies, statements of principles, or commitments, or (ii) participation in, affiliation with, or status as a signatory to, any coalition, initiative, joint statement of principles, or agreement.

d) “Economic boycott” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any commercial action that is intended to penalize, inflict economic harm on, limit commercial relations with, or change or limit the activities of a company because the company, without violating controlling federal or state law:

i) engages in the exploration, production, utilization, transportation, sale, or manufacturing of, fossil fuel-based energy, timber, mining, or agriculture;

ii) engages in, facilitates, or supports the manufacture, import, distribution, marketing or advertising, sale, or lawful use of firearms, ammunition or components parts and accessories of firearms or ammunition;

iii) does not meet, is not expected to meet, or does not commit to meet environmental standards or disclosure criteria, in particular to eliminate, reduce, offset, or disclose greenhouse gas emissions;

iv) does not meet, is not expected to meet, or does not commit to meet corporate board, or employment, composition, compensation, or disclosure criteria that incorporates characteristics protected in this state under **[state civil rights statute]**;

v) [does not facilitate, is not expected to facilitate, or does not commit to facilitate access to abortion, sex or gender change, or transgender surgery];

vi) **[insert additional state specific boycotting criteria];** or

vii) does business with a company described by Paragraphs (i-vi).

2) Provision Required in Contract.

a) This section applies only to a contract that:

i) is between a governmental entity and a company with 10 or more full-time employees; and

ii) will pay a company **[minimum contract size]** or more over the term of the contract that is to be paid wholly or partly from public funds of the governmental entity; provided, however, the provisions of this paragraph shall apply separately to all companies in a multiple party contract.

b) Except as provided by Paragraph (2)(c), a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

i) does not engage in economic boycotts; and

ii) will not engage in economic boycotts during the term of the contract.

c) Subsection (b) does not apply to a governmental entity that determines the requirements of Subsection (b)

i) are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds; or

ii) prevent the governmental entity from obtaining the supplies or services to be provided in an economically practicable manner.

d) **[other exceptions for constitutional, statutory, or fiduciary duties]**

3) Interference with State Contracts

a) No party [term that includes federal government under state law] may take action to penalize or threaten to penalize any financial institution for compliance with this [article].

b) Any party taking such action shall have caused harm to this state, including by interfering with the state's sovereign interests in administering its programs and with the state's commercial relationships with its financial institutions.

4) Enforcement

a) This article, or any contract subject to this article, may be enforced by the attorney general, or [applicable executive branch official].

b) If the attorney general or [applicable executive branch official] has reasonable cause to believe that a person has engaged in, is engaging in, or is about to engage in, a violation of this article, he may:

i) Require such person to file on such forms as he prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning the violation, and such other data and information as he may deem necessary.

ii) Examine under oath any person in connection with the violation.

iii) Examine any record, book, document, account or paper as he may deem necessary.

iv) Pursuant to an order of the [state trial court], impound any record, book, document, account, paper, or sample or material relating to such practice and retain the same in his possession until the completion of all proceedings undertaken under this article or in the courts.

c) In addition to any other remedies available at law or equity, a company that enters into a contract with a government entity containing any verifications required by Section 2 and engages in any economic boycott during the term of the contract shall be obligated to pay damages to the [state] in an amount equal to three times all monies paid to the company under the contract.

Appendix C: Fair Access to Financial Services Act (Model Legislation)

[insert Code Title]. SHORT TITLE. This chapter shall be known as the "[state] Fair Access to Financial Services Act."

STATEMENT OF PURPOSE. The legislature recognizes the rights of [insert state] citizens including the freedom of speech and association. That these rights may be infringed when financial institutions limit access to financial services for any reason other than objective financial criteria. The protection of the rights of [insert state] citizens and businesses, including financial freedom, is a fundamental role of government and any limitations on access to financial services based on non-traditional criteria would not only threaten the rights and proper privileges of [insert state] citizens and businesses but would also be a menace to the institutions and foundation of a free democratic state and a threat to the peace, order, health, safety, and general welfare of the state and its inhabitants.

[Some Legislatures include a Statement of Purpose, disregard the above if your state's form & style does not require]

A BILL for an Act to create and enact a new chapter to [Banking Code], a new section to chapter [Credit Union Code], and subdivision ___ of subsection ___ of [Insurance Code, prohibited practices], relating to fair access to financial and insurance products and services; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to [title Banking Code] of the [State Statutes] is created and enacted as follows:

<u>Fair access to financial products and services - Scope</u>

1. To provide fair access to financial products and services, a financial institution may not deny a person a financial product or service:
    a. Except to the extent justified by the person's documented failure to meet quantitative, impartial, risk-based financial standards established in advance by the financial institution.
    b. Other than as provided in subdivision a, when the denial is to prevent, limit, or otherwise disadvantage the person from entering or competing in a market or business segment, or in a way that benefits another person or business activity in which the financial institution has a financial interest.
    c. In coordination with another person, which the financial institution offers.
2. A financial institution that uses standards or guidelines based on nonfinancial,

nontraditional, and subjective measures such as environmental, social, and governance criteria; diversity, equity, and inclusion policies; or political and ideological factors shall:

a. Disclose to the commissioner of financial institutions the standards, guidelines, and criteria used by the financial institution to determine access to or denial of a financial product or service to a person in this state.

b. Comply with any rules adopted by the commissioner of financial institutions.

c. Disclose to any person denied a financial product or service the specific data, information, criteria, and standard used to support the denial.

3. The commissioner of financial institutions shall publish a list of financial institutions that have adopted standards or guidelines based on nonfinancial, nontraditional, and subjective measures on the department of financial institution's website in a location open and free to the public.

<u>Penalties</u>

1. Unless otherwise authorized, a financial institution that violates this chapter is subject to civil enforcement by the department of financial institutions under section 6-01-04.3.

2. A person harmed by a violation of this Act may file a civil action under [insert Code Title of applicable civil action code].

3. Notwithstanding civil enforcement pursuant to subsections (1) and (2) of this section, it shall be a misdemeanor for a financial institution to commit five (5) or more violations of section [insert Code Title], Code.

4. The [Department of Financial Institutions] shall be authorized to promulgate rules if necessary for the enforcement of this chapter.

SECTION 2. A new subsection chapter [Credit Union Code] is crated and enacted as follows:
A credit union may not deny membership, a loan, or services to a person that meets the scope and field of membership for that credit union based solely on subjective measures such as environmental, social, and governance criteria; diversity, equity, and inclusion policies; or political and ideological factors without actual notice delivered to the person of the measures, criteria of factors used in making that determination.

SECTION 3. Subdivision __ of subsection___ of section [State Insurance Code (prohibited practices)] is created and enacted as follows:

e. An insurance provider may not refuse to insure solely in consideration of the risk's environmental, social, and governance criteria; diversity, equity, and inclusion policies; or political and ideological factors, unless is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

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