

What South Carolina Can Do to Challenge the Threat Of ESG

To: FGA Partners

From: Eric Bledsoe, *Senior Fellow*, Foundation for Government Accountability

Bottom line

The Left is advancing an effort that, if left unchecked, will undermine the freedom of South Carolinians and others across the country. The Biden administration, in consort with Leftist activists, is leading an effort to advance an irrational climate agenda by forcing environmental, social, and governance (ESG) criteria upon the market. When the Left tries to pick and choose winners in the marketplace, everyone loses.

ESG

Issue

A corporatist alliance between the private sector and government is presently restricting the energy industry to advance the green agenda. Through federal regulation and attempts to publicly shame companies that don't agree with the political viewpoints of the current administration, this movement is picking winners and losers in the economy to serve a socialist ideology over free enterprise. This will hurt the people of South Carolina and many of its businesses and cause a host of other problems.

Background

When President Biden took office in January 2021, he immediately weaponized the Securities and Exchange Commission (SEC), the Environmental Protection Agency, and the Department of Labor (DOL) to bankrupt the fossil fuel industry.¹⁻²⁻³ These agencies will politically discriminate against corporations should they fail to align with the current administration's climate agenda.

Simultaneously, banks and investment firms are following in lockstep with the Biden administration to advance an irrational and highly partisan ideology in the boardroom to the detriment of economic prosperity. Just this year, BlackRock CEO Larry Fink said the company would be adopting a policy of investment to reach net-zero carbon emissions and even went so far as to say that the government and private sector ought to partner to reach the tenets of the green agenda.⁴ Fortunately, several states are taking measures to protect the principles that built

the American economy. Not only can South Carolina be counted among this cohort, but it can also take the lead as a state that protects free enterprise.

What you can do to stop ESG

South Carolina can protect its taxpayers, investors, and retirees from becoming political hostages of the far Left.

- **Recently, Florida Gov. DeSantis, along with Attorney General (AG) Moody and Chief Financial Officer Jimmy Patronis, banned consideration of ESG investments in the Florida Retirement System (FRS).⁵ South Carolina can take similar measures in its retirement system.**
- **Support legislative efforts giving State Treasurer Curtis Loftis the authority to manage state contracts with financial institutions that boycott fossil fuel companies.**
- **Challenge federal regulatory overreach that targets the fossil fuel industry through AG Alan Wilson.**
- **Open investigations into ESG groups engaged in antitrust practices through AG Wilson's office under existing South Carolina law.⁶**

The state legislature can protect the financial health of the state's economy. Already, states like Oklahoma and West Virginia have taken legislative approaches to grant their state financial officers the authority to manage any contracts with financial institutions that boycott energy companies.⁷⁻⁸ Under these measures, state financial officers would publicly identify financial institutions that divest from energy companies for political reasons. Once these banks and firms are given notice, the state treasurer would have the authority to cancel or deny the financial contract between them and the state, including the state retirement fund, if they refuse to end their boycott.

A legal step toward pushing back against ESG would be to challenge in federal court unjust regulations that target the fossil fuel industry and subsequently, businesses with a vested interest in oil and gas, like transportation, manufacturing, and agriculture. Taking the lead from the Biden administration, the SEC recently proposed rule changes that would hinder companies by forcing them to disclose any "climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition."⁹ And DOL proposed a rule also forcing retirement fund fiduciaries to consider similar climate-related risks.¹⁰ These sweeping and strategically ambiguous regulations are not intended to protect investors or everyday Americans saving for retirement, but are designed to advance a Leftist worldview. By the SEC's own admission, oil and gas companies, electrical services, transportation, and manufacturing would be the most affected by their rule. These regulations would certainly qualify as regulatory overreach that could be challenged legally by AG Wilson.¹¹

AG Wilson can also take an additional step toward pushing back on illegal practices from groups like Climate Action 100+ which conspire to restrict capital from companies that do not comply with the Left's radical agenda. These boycotts qualify as antitrust violations subject to legal action. Recently AG Wilson, along with 18 other AGs, identified this problem and challenged Larry Fink on the unethical and illegal practices of "woke" companies.¹² And Senator Tom Cotton (R-AR) has joined the effort in sending a letter to BlackRock inquiring about possible antitrust violations.¹³ Attorneys general across the country could start advocating this approach in coordination with their state treasurers, protecting South Carolina businesses, investors, and taxpayers harmed by this unfair practice.

Conclusion

ESG threatens freedom in South Carolina and across the country by undermining free enterprise and economic opportunity. An oft-quoted line attributed to Edmund Burke reads: "[T]he only thing necessary for the triumph of evil is for good men to do nothing." Strong and capable leaders must stand up to the Biden administration and the Left before it is too late.

References

¹ SEC Announces Enforcement Task Force Focused on Climate and ESG Issues, U.S. Securities and Exchange Commission (2021), <https://www.sec.gov/news/press-release/2021-42>.

² Executive Order on Tackling the Climate Crisis at Home and Abroad, White House Briefing Room (2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

³ US Department of Labor Proposes Rule to Remove Barriers to Considering Environmental, Social, Governance Factors in Plan Management, U.S. Department of Labor (2021), <https://www.dol.gov/newsroom/releases/ebsa/ebsa20211013>.

⁴ Larry Fink, The Power of Capitalism, BlackRock (2022), <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.

⁵ "Governor Ron DeSantis Eliminates ESG Considerations from State Pension Investments," Office of Governor Ron DeSantis (August 23, 2022), <https://www.flgov.com/2022/08/23/governor-ron-desantis-eliminates-esg-considerations-from-state-pension-investments/>.

⁶ South Carolina Code of Laws. § 39-5-10 *et seq.*, <https://www.scstatehouse.gov/code/t39c005.php>.

⁷ Oklahoma House Bill 2034, 2022 Regular Legislative Session, <http://oklegislature.gov/BillInfo.aspx?Bill=HB2034>.

⁸ West Virginia Senate Bill 262, 2022 Regular Legislative Session, https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=262&year=2022&sessiontype=RS.

⁹ SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors, Securities and Exchange Commission, Press Release (March 21, 2022), <https://www.sec.gov/news/press-release/2022-46>.

¹⁰ US Department of Labor Proposes Rule to Remove Barriers to Considering Environmental, Social, Governance Factors in Plan Management, U.S. Department of Labor (2021), <https://www.dol.gov/newsroom/releases/ebsa/ebsa20211013>.

¹¹ *See, e.g.*, 5 U.S.C. 706(2)(a).

¹² Lydia Moynihan, "BlackRock faces scrutiny from 19 state AGs over ESG investments," New York Post (August 16, 2022), <https://nypost.com/2022/08/16/blackrock-faces-scrutiny-from-19-state-ags-over-esg-investments/>.

¹³ Senator Tom Cotton (R-AR), "Cotton Demands Answers from BlackRock about Involvement with Climate Action 100+, Potential Antitrust Violations," <https://www.cotton.senate.gov/news/press-releases/cotton-demands-answers-from-blackrock-about-involvement-with-climate-action-100-potential-antitrust-violations>.