

November 14, 2022

The Honorable Mitch McConnell  
U.S. Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
U.S. House of Representatives  
Washington, DC 20515

Dear Senators and Members of Congress:

Environmental, social, and governance (ESG) investing is a dangerous trend infecting the financial sector. While the ever-shifting definitions, applications and scoring metrics are constantly being rewritten to incorporate the cause-du-jour, the financial harm to vulnerable groups—including retirees and pensioners—is very real.<sup>1</sup>

Recent reports have underscored the financial consequences of the ESG scam. University of Chicago researchers analyzed the Morningstar sustainability ratings of more than 20,000 mutual funds representing over \$8 trillion of investor savings. The report found that “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.”<sup>2</sup> Another analysis comparing one of the leading ESG funds to the S&P 500 found that, as of mid-2022, the ESG fund was down 23.7% vs. 20% for the S&P 500 index.<sup>3</sup> These reports demonstrate ESG funds are little more than Wall Street marketing gimmicks rebranding low-performing virtue-signaling corporations as a “sound investment.”

The truth is these losses are adding up and hitting the pocketbooks of Americans who have spent years working hard, building up savings and planning for a reliable amount of returns in the future. Asset managers gambling with their hard-earned money is not only financially damaging, but likely an illegal betrayal of financial trust.

The Employee Retirement Income Security Act (ERISA) has made it unlawful to sacrifice the financial interests of beneficiaries for other interests aimed at advancing a “particular social cause.” Over 44 states have adopted legislation modeled after ERISA, including Kentucky, where the Attorney General issued a memo finding that ESG investing practices that “introduce mixed motivations to investment decisions” are inconsistent with the state’s law governing fiduciary duties.<sup>4</sup>

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1 Mandy Gunasekara, *Wall Street Is Using Your Money to Buy Virtue; Don't Let Them*, Inside Sources (August 30, 2022) available at: <https://insidesources.com/wall-street-is-using-your-money-to-buy-virtue-dont-let-them/>.  
2 Samuel Hartzmark, & Abigail Sussman, *Do Investors Value Sustainability? A Natural Experiment Examining Ranking and Fund Flows*, The Journal of Finance (December 2019) available at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/jofi.12841>.  
3 Andy Kessler, *The Many Reasons ESG Is a Loser*, WSJ Opinion (July 10, 2022) available at: <https://www.wsj.com/articles/esg-loser-funds-costs-basis-points-blackrock-500-environment-green-sec-11657461127>.  
4 Opinion of Kentucky Attorney General 22-05 (May 26, 2022) available at: <https://ag.ky.gov/Resources/Opinions/Opinions/OAG%2022-05.pdf>.

Legal analysts have also suggested that the practice of boycotting certain types of companies and industries could constitute an illegal collusion against politically-targeted businesses in violation of federal antitrust laws.<sup>5</sup> Perhaps the most concerning are the attacks on domestic energy producers, which ironically are some of the best performing companies of 2022. Divestment from oil and gas companies is undercutting our grid stability and broader energy security.<sup>6</sup> Domestically this has led to higher energy prices fueling inflation while also leaving our international allies to rely on nefarious actors like Russia for access to energy.<sup>7</sup> Adding insult to injury, ESG metrics have rated certain foreign-owned energy companies tied to egregious human rights and environmental violations higher than U.S. oil and gas companies.<sup>8</sup>

One analysis revealed that the social scores have been good for the diversity business, but not effective in terms of creating actual diversity within corporations. Google, for example, reportedly spent \$114 million on its diversity program in 2014,<sup>9</sup> but its diversity report in 2022 showed that Black employees make up just 5.3% of the workforce and 4.7% of leadership roles.<sup>10</sup>

Other companies seem to incorporate diversity language solely for marketing benefit. Two prominent case studies exposing this practice come to mind. In one reported case, Wells Fargo employees interviewed “diverse” candidates after the position had already been filled.<sup>11</sup> In another, a former Miami Dolphins head coach has alleged the New York Giants attempted to circumvent a diversity requirement in the Rooney Rule by holding a “sham interview” with him three days *after* it was promised to another candidate.<sup>12</sup>

As policy leaders planning for the next congress, we urge you to consider using your oversight responsibilities to shine a light on this damaging trend, including assessments of the following issues:

1. Legal implications of ESG investing including possible violations of fiduciary duties and antitrust laws.
2. ESG’s negative impact on energy independence and national security.
3. How ESG is being used to justify poor business performance or cover for poor labor and environmental compliance records.

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5 C. Boyden Gray, *Corporate Collusion: Liability Risks for the ESG Agenda to Charge Higher Fees and Rig the Market*, Texas Public Policy Foundation (June 2021) available at: <https://www.texaspolicy.com/wp-content/uploads/2021/06/2021-06-RR-Gray-LP-Corporate-Collusion.pdf>.

6 Darwall, *Net-Zero and ESG Are Worsening the Energy Crisis – and Weakening the West*, Real Clear Energy (March 17, 2022) available at: [https://www.realclearenergy.org/articles/2022/03/17/net-zero\\_and\\_esg\\_are\\_worsening\\_the\\_energy\\_crisis\\_and\\_weakening\\_the\\_west\\_822337.html](https://www.realclearenergy.org/articles/2022/03/17/net-zero_and_esg_are_worsening_the_energy_crisis_and_weakening_the_west_822337.html).

7 Gabriella Hoffman, *An Inconvenient Truth: ESG Is Fueling Inflation Woes*, Real Clear Energy (July 29, 2022) available at: [https://www.realclearenergy.org/articles/2022/07/29/an\\_inconvenient\\_truth\\_esg\\_is\\_fueling\\_inflation\\_woes\\_845052.html](https://www.realclearenergy.org/articles/2022/07/29/an_inconvenient_truth_esg_is_fueling_inflation_woes_845052.html).

8 Chuck DeVore, *The ‘ESG’ Scam Rates Slave-Using Chinese Firms Higher Than Clean American Energy Producers*, The Federalist (June 28, 2022) available at: <https://thefederalist.com/2022/06/28/the-esg-scam-rates-slave-using-chinese-firms-higher-than-clean-american-energy-producers/>.

9 Pamela NewKirk, *Diversity Has Become a Booming Business. So Where Are the Results?*, Time (October 21, 2010) available at: <https://time.com/5696943/diversity-business/>.

10 Google, 2022 Diversity Annual Report, available at: <https://about.google/belonging/diversity-annual-report/2022/>.

11 Emily Flitter, *At Wells Fargo, a Quest to Increase Diversity Leads to Fake Job Interviews*, New York Times (May 19, 2022) available at: <https://www.nytimes.com/2022/05/19/business/wells-fargo-fake-interviews.html>.

12 Pamela NewKirk, *Brian Flores’ Lawsuit Shows the Limits of Diversity Initiatives*, Time (February 7, 2022) available at: <https://time.com/6145755/brian-flores-lawsuit-rooney-rule-diversity/>.

4. Financial losses for retirees and pensioners due to ESG investing.
5. The prevalence of marketing over measured outcomes, such as “greenwashing”.
6. How ESG creates division in the workplace by forcing controversial “anti-racism” training on employees.
7. The impact of gender-based quotas that reek of tokenism and affirmative action and can perpetuate harmful stereotypes such as women needing special treatment to succeed.
8. ESG’s increasing alignment with a woke agenda embraced by many Democrats including the mobilization of dangerous political campaigns like “defund the police”.
9. Attempts by administrative agencies to mandate ESG standards via regulatory fiat without a clear grant of Congressional authority.
10. Whether foreign governments are funding ESG campaigns to undermine American competitiveness and economic strength.
11. Assessing state actions by Attorneys General and financial officers aimed at protecting local citizens as well as business and consumer interests from ESG.
12. Developing policies that will protect American investments from virtue signaling schemes and maximize tangible financial value.

As more Americans learn about ESG, they are catching on to its harmful outcomes and looking for ways to push back. One poll asking who—asset managers or individual investors—should decide whether retirement funds and pension plans are allocated towards ESG criteria found that 66% supported the right of individual investors to opt out of ESG-style investments. Only 20% supported deferring to asset managers.<sup>13</sup>

Accordingly, the below signatories stand ready to assist your oversight and policy development goals.

Sincerely,

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Richard Morrison  
*Senior Fellow*  
*Competitive Enterprise Institute*

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<sup>13</sup> Ben Zeisloft, Exclusive Poll: By Two-To-One Margin, Investors Reject Woke Companies Pushing Political Causes, Daily Wire (May 26, 2022) available at: <https://www.dailywire.com/news/poll-by-two-to-one-margin-investors-reject-woke-companies-pushing-political-causes>.

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