# ESG PART I: AN EXAMINATION OF ENVIRONMENTAL, SOCIAL, AND GOVERNANCE PRACTICES WITH ATTORNEYS GENERAL

## HEARING

BEFORE THE

## COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY HOUSE OF REPRESENTATIVES

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*Opening statements and the prepared statements for the witnesses are available in the U.S. House of Representatives Repository at: docs.house.gov.*

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* Case Law, *WestLaw*, "Central States, Southeast and Southwest Areas Pension Fund *v.* Central Transport, Inc."; submitted by Rep. Biggs.
* Public Interest Comment, Mercatus Center, GMU, "The SEC Lacks Legal Authority to Adopt Climate-Change Disclosure Rules"; submitted by Rep. Biggs.
* Case Law, "Fifth Third Bancorp, et al. *v.* Dudenhoeffer, et. al."; submitted by Rep. Biggs.
* Letter, from Attorney General Landry to Rep. Comer and Rep. Raskin, May 10, 2023; submitted by Rep. Higgins.
* Article, *The Post*, "While Silicon Valley Bank Collapsed, Top Executive Pushed 'Woke' Programs"; submitted by Rep. Timmons.
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# ESG PART I: AN EXAMINATION OF ENVIRONMENTAL, SOCIAL, AND GOVERNANCE PRACTICES WITH ATTORNEYS GENERAL

**Wednesday, May 10, 2023**

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

*Washington, D.C.*

The Committee met, pursuant to notice, at 10:16 a.m., in room 2154, Rayburn House Office Building, Hon. James Comer [Chairman of the Committee] presiding.

Present: Representatives Comer, Gosar, Grothman, Palmer, Higgins, Sessions, Biggs, Fallon, Armstrong, Timmons, Burchett, McClain, Boebert, Fry, Luna, Langworthy, Burlison, Raskin, Norton, Connolly, Khanna, Ocasio-Cortez, Porter, Bush, Brown, Stansbury, Garcia, Frost, Balint, Lee, Crockett, and Moskowitz.

Also present: Representative Seth Magaziner (D-RI).

Chairman COMER. The Committee on Oversight and Accountability will come to order. I want to welcome everyone here.

Without objection, the Chair may declare a recess at any time.

I recognize myself for the purpose of making an opening statement.

Welcome to the Committee on Oversight and Accountability's first hearing on the Environmental, Social, and Governance Agenda, also known as ESG. Americans should be free to invest their money in any legal investment strategy they choose. This freedom does not exist when asset managers use their clients' funds to push ESG into the client's return, and let us not kid ourselves; ESG is just window dressing for liberal activism and radical far-left ideology.

Because the left are not big fans of diverse thought or individual freedom, they are using the feel-good language of ESG to force compliance to their ideology. That is why I am concerned that asset managers and activist shareholders are pushing a political agenda with their clients' money, agreeing to ESG pledges pushed by global advocacy groups. These ESG pledges and commitments are often at odds with their clients' best interests and happen without their clients' knowledge.

Asset managers control an estimated $126 trillion—that is "trillion" with a "T"—and almost 30 percent of all global financial assets. That is a lot of money being manipulated to push a leftist ideology. Even beyond control by asset managers, ESG activists have infiltrated the broader market by influencing just two proxy advisory firms who, together, control more than 90 percent of the market. This is a coordinated effort by unelected shadow organizations to force their policies on U.S. taxpayers, investors, and retirees. And instead of providing Americans with financial protections they are due, regulators under the Biden Administration are actively encouraging this political takeover of the American financial system.

President Biden dealt a heavy blow to workers and retirees when he used his first veto to kill a bill that reinforces fund managers' fiduciary duty to maximize returns on pensions instead of focusing on the ESG effort. When Biden vetoed this bipartisan bill, Senator Manchin said, "This Administration continues to prioritize their radical policy over the economic, energy, and national security needs of our country, and it is absolutely infuriating." Senator Manchin is right. No Administration should be able to gamble with Americans' retirement funds to its own political agenda in the private market. We must expose and investigate the propriety and legality of this coordinated effort.

In today's heated political environment, it is impossible to avoid the ever-expanding web of issues people call ESG. Whether it is climate change, abortion, guns, DE&I initiatives, or energy independence, the passions run very deep. Our country is based on a system of laws. Issues of policy should be decided by elected officials accountable to voters. I am concerned about the well-coordinated campaign to push ESG policies through markets and bureaucratic action, even though those policy goals do not appeal to voters and have not been decided by elected officials. They are trying to achieve through intimidation and coercion what they cannot achieve at the ballot box.

This issue is not theoretical. It is very real for any American family planning and saving for their retirement. Trillions of dollars in retirement plan assets are at stake. Obviously, maximizing the return on investment within a retirement account should be the primary factor asset manager's focus on for their clients. The ESG agenda prioritizes leftist ideology over the growth over retirees' investments. This is an injustice to those who shoulder the burden for their retirement savings. Even the slightest reduction in returns from chasing social policy instead of value can have long-term impacts on Americans' retirement savings and ability to retire and spend quality time with their families.

Today's hearing is specifically focused on concerns that Attorney Generals have with ESG policies pushed by left-wing activist on the asset management industry and the potential harm for investors and retirees, but today will not be the end of this committee's work. Asset managers should understand that they are stewards of money that is not theirs, and their failure to act in the best interest of their clients is dereliction of duty. Proxy advisors should understand they cannot intimidate and coerce companies to implement ESG policies without scrutiny.

While this is the first official hearing of what will be a series of oversight actions by this Committee to explore ESG, we have already held several hearings to investigate related issues, including misguided energy policy and progressivism in the military. We must also continue our oversight of the Biden Administration's governmentwide efforts by unelected bureaucrats to dictate to the American people what they are allowed to say, spend their money on, or do what their hard-earned savings. Whether it is the SEC and the Federal Reserve, the EPA and Department of Energy, the Pentagon, the State Department, know this: we are watching.

I now yield to the Ranking Member for five minutes.

Mr. RASKIN. Thank you, Mr. Chairman, for launching this important discussion and for holding a hearing on responsible investment strategies that take into account all material considerations and risks when planning for Americans' retirement and savings. And, you know, that is precisely what insurance companies, asset managers, builders, energy suppliers, transportation companies, farm businesses, auto manufacturers, landscapers, investment firms, and countless others are doing right now by incorporating into their business plans all relevant factors, including the calamitous consequences of climate change, the devastating hurricanes, the dangerous droughts, the sea-level rise and coastal erosion, the storm water flooding, the spread of disease, and other costly natural disasters produced by destabilization of the earth's climate.

But the same Big Oil and Big Gas companies that suppressed for decades their scientific understanding of the dynamics of climate change now want to deploy government to literally block the ability of other private companies and asset managers to fulfill their fiduciary duties by planning around all relevant risks and costs, including the risks of climate change, which has cost businesses, government, pensioners, and consumers billions and billions of dollars. Amazingly, the fossil fuel industry wants big brother now to march in and stop the free market from responding to the climate crisis that the carbon kings created. I hope that we will bring in this process, Mr. Chairman, real business people and other private asset managers and investment advisors to testify about how outrageous and indefensible it is to assault the free market in this way.

It is clear that honest American businesses are not buying the propaganda of climate denialism. They have a duty of loyalty and care to their shareholders, and they are focused on the actual bottom line, and that always means, as we will hear from the minority witness today, facing reality, facing the real risks and costs that businesses encounter, not swallowing a bunch of mythology and lies. America's most successful investors and asset managers have voluntarily and freely embraced responsible investment principles as a fulfillment of their legal fiduciary duty to minimize risk, maximize returns, and prudently plan for long-term challenges like the ones associated with climate change. That is the freedom, and that is the decision that the fossil fuel industry and its supporters want to destroy, but responsible investing works, and we have the opportunity to explain it today.

The proof is in the pudding. Over the last decade, Bloomberg's ESG Index performed dramatically better than Standard & Poor's traditional fossil fuel-based index. Consider this remarkable contrast on the sign behind me.

[Chart]

Mr. RASKIN. Now, the ESG Index is obviously performing a lot better than the general stock index, but I would never say, Mr. Chairman, because of these stunning trend lines, which smart investors will certainly take note of, I would never say that the states or the Federal Government should force all investors or asset managers to steer all their investments into ESG stocks, like wind or solar or conservation, or whatever. I would never say that. If there are investors who want to continue to invest in just Big Gas and Big Coal and Big Oil, that is totally their prerogative and right to do so, and I would never interfere with that. But one can only regard with amazement the fact that the fossil fuel industry is using their massive wealth and power now to try to force investment funds, asset managers, unions, pension funds, and businesses to invest in the less successful carbon-dominated stocks. It makes sense to say in the free market that no one should be forced to do the demonstrably right thing with their money, but it is appalling to say that everyone should be forced to do the demonstrably wrong thing with their money. Let us let the free market operate.

The new campaign against what Tocqueville called the enlightened self-interest of American business comes dressed as an attack on woke capitalism, the same epithet used by Governor DeSantis in his attack on the Disney Corporation, which has backfired so badly on him. Although every other word coming out of their mouths these days is "woke," our friends have proven famously unable to define what they mean by "woke." So, I did a little research, and I want to help with the etymology of the word.

"Woke" comes from the Indo-European root "weg," which means to be strong, lively, alert. That root grew into "woke," "awake," "wakefulness," but it also grew into the closely related word "vigilance," and I think vigilance is probably the best definition of "woke" as you guys are using it. The whole point of being a fiduciary is to be vigilant, watchful, and alert to opportunities and risks, and that is what asset managers, corporate board members, and executives do with other people's money. The opposite of a vigilant, woke investment strategy is a negligent and inattentive investment strategy, or, to put it more simply, when it comes to climate change, if you don't have a woke capitalism, you are going to have a broke capitalism.

Responsible investing principles, including ESGs, have been freely chosen by America's companies and employed by asset managers and pension fund managers for decades. Right-wing attacks on these principles, fueled by dark money, corporate special interests, and flawed legal arguments, threaten now the savings and retirement of Americans by forcing asset managers to ignore material risks and considerations and violate their fiduciary duties, and we are hearing this from all over America.

After Kentucky passed a law in April of last year to divest state funds from financial companies that used ESG principles, the county Employment Retirement System responded that the requirement was "inconsistent with its fiduciary responsibilities." An analysis by the Kansas Public Employees Retirement System of the anti-ESG legislation proposed in the state found that it could cause more than a billion dollars in losses due to the early sale of assets and could reduce returns by $3.6 billion over the next decade.

In August 2022, the Florida State Board of Administration divested its pension from BlackRock due to the asset managers' ESG commitment, and in May 2023, Governor DeSantis signed into law a bill prohibiting state and local government funds and pensions from considering any social, political, or ideological factors. Analysis by the Sunrise Project indicates that because of these incomprehensible actions, Florida stands to spend between $97 million and $361 million more on municipal bonds alone to satisfy this new anti-woke political correctness standard. These anti-ESG laws threaten American retirements, especially those of public workers, like teachers, and firefighters, and librarians.

At the end of the day, the only way for asset managers to meet their fiduciary duties is to allow them the freedom to invest, focusing on what will provide the greatest return for their beneficiaries that they have a fiduciary duty to. Even if you favor as a personal financial strategy exclusive investment in oil and coal, you should not be interfering with the rights of others to make other decisions, especially when their decisions have been yielding significantly higher returns. Thank you, Mr. Chairman. I yield back.

Chairman COMER. The gentleman yields back. I am pleased to welcome our three witnesses today, who are all statewide elected officials, but first I yield to the gentleman from Alabama, Mr. Palmer, to introduce his good friend and our very first witness.

Mr. PALMER. Thank you, Mr. Chairman. I am very pleased to welcome Steve Marshall, Alabama's 48th Attorney General. Attorney General Marshall has done an excellent job as Alabama's AG. He is so well esteemed that virtually every District Attorney in Alabama attended his inauguration, and it has been a personal privilege to have worked with Attorney General Marshall on some issues involving state and Federal interest.

I would like to also recognize a former colleague of mine, Katherine Robertson, who is the Deputy Attorney General of the state of Alabama, in attendance today. And, Attorney General Marshall, welcome to the Oversight Committee, and we look forward to your testimony. I yield back.

Chairman COMER. The gentleman yields back. Next, Attorney General Sean Reyes.

Mr. REYES. Reyes.

Chairman COMER. Reyes—it takes me a minute; thank you—was appointed by the Governor to serve the people of Utah as Attorney General in 2013. He was then elected in 2014 and has since been reelected twice. Our third witness is Treasurer Michael Frerichs.

Mr. FRERICHS. Frerichs.

Chairman COMER. Frerichs. Mr. Frerichs was first elected as the 74th Treasurer of the state of Illinois in 2015 and is now in his 3d term in office. I look forward to hearing from Attorneys General Reyes and Marshall as well as Treasurer Frerichs on their experiences with ESG investment strategies.

Pursuant to Committee Rule 9(g), the witnesses will please stand and raise their right hands.

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[A chorus of ayes.]

Chairman COMER. Let the record show that the witnesses all answered in the affirmative.

Now we will begin with opening statements, and we will begin with General Marshall.

**STATEMENT OF STEVE MARSHALL**
**ATTORNEY GENERAL**
**ALABAMA**

Mr. MARSHALL. Chairman Comer, Ranking Member Raskin, and Members of the Committee, thank you for the opportunity to be here today. My name is Steve Marshall, and it is my honor to serve as Attorney General for the state of Alabama.

Alabama law, like the laws of many states, empowers me to represent the state's interest in court and to enforce the state's consumer protection laws. ESG poses unique challenges to Alabama's energy consumers as well as many of our state's leading industries, like steel, iron, coal, agriculture, timber, and oil and gas, but it is bigger than just Alabama. ESG is a clear and present danger to consumers and to our democracy. An unelected cabal of global elites is using ESG to hijack our capitalist system, capture corporations, and threaten hard-earned dollars of American workers.

Since President Trump's election, the global elites have formed at least 10 alliances dedicated to implementing radical ESG plans. These alliances threaten consumers by limiting output, raising prices, risking retirement funds, and creating anti-competitive conduct. They also undermine our system of government because unelected elites are making policy decisions outside of democratic processes. Groups like Climate Action 100+ and Net-Zero Banking Alliance require their members to coordinate on business activity to meet ESG standards not otherwise required by law. This private coordination is designed to accomplish what could not be done through normal democratic processes or the free market. ESG requires companies to forgo otherwise profitable economic transactions to achieve woke social policy.

These global alliances hurt consumers by breaching fiduciary duties. Those entities entrusted with Americans' money have a fiduciary duty to act in their investors' sole interest by maximizing returns. Yet ESG acolytes have openly pledged allegiance to causes over profits, often failing to give consumers adequate notice or any meaningful say in the decision to virtue signal with their hard-earned dollars.

ESG is not good for American workers. The retirement savings, and many Americans are invested, advised, or affected by an entity that is participating in Net-Zero Alliance. Woke agendas should not impact how retirement dollars of workers are invested. Americans who responsibly save for retirement should be confident that their money is invested in a manner to maximize returns and not further the goals of agenda-driven investment managers.

ESG also hurts consumers by increasing energy prices. To accomplish their net zero goals, these alliances must work to phaseout fossil fuels. Energy output is then limited, which results in higher prices for consumers, and in states like Alabama, under these policies, consumers would not only face higher prices but also a lack of energy supply altogether.

ESG threatens America's energy independence and national security. America achieved energy independence during the Trump Administration, but ESG weakens America by constricting foundational economic sectors, like energy, such that we now must beg foreign countries for oil. ESG also makes America dependent on products made in China, like solar panels and electric battery components. This threatens to give China and other bad actors a competitive advantage and leverage against the United States.

These alliances also hurt consumers through anticompetitive conduct. Alliance members appear to be conspiring to restrain trade and commerce by colluding with other members to reduce competition amongst themselves and coordinating restricted investment and action toward specific companies unless ESG policy objectives are implemented. And let us be clear: ESG activity is subject to antitrust laws as the Biden Administration has publicly confirmed.

ESG threatens America's democratic system. In this country, important policy decisions are supposed to be made through the process set forth in the Constitution. Congress debates issues and passes legislation, the President signs and enforces legislation, and the judiciary reviews any challenged legislation. The global elites are using ESG alliances to circumvent our system of government by shifting power to unelected elites, both inside and outside the United States, who are not accountable to American voters. Global elites are advancing ESG through unlawful and anti-democratic means, but Republican Attorneys General are fighting back to protect consumers from harm caused by woke ESG policy.

Republican Attorneys General have launched investigations in the Net-Zero Banking Alliance, Climate Action 100+, and other companies, commented on policy proposals, warned companies to not violate the law, and initiated litigation where warranted. Republican Attorneys Generals are defending Americans from these global elites and radical ESG activists.

We appreciate the attention this committee and Members of Congress are giving to ESG. This conversation and debate is one that must be returned to you, our Nation's policymakers. Mr. Chairman, thank you for the time of being here today.

Chairman COMER. Thank you. General Reyes.

**STATEMENT OF SEAN REYES**
**ATTORNEY GENERAL**
**UTAH**

Mr. REYES. Chairman Comer, Ranking Member Raskin, and Members of the Committee, thank you for inviting me to testify before you on this important issue of whether environmental social and governance, or ESG, factors are distorting our financial system and harming consumers and working-class Americans.

ESG involves some of the biggest and most powerful players in the global economy, forcing costly operational changes on American companies in pursuit of the 2015 Paris Agreement goals. These goals have never been adopted as yet by Congress but contemplate changes to our way of life that are far reaching and fundamental. They would impact everything from how we grow our food and what we eat to how we power our homes and businesses. These changes involve balancing multiple tradeoffs, including financial costs and benefits, how quickly or slowly the government imposes new technologies, and how reliable of a power grid we will have.

My view is that we should trust consumers, promote American energy independence or even dominance, and avoid as much regulation as possible, but answering these difficult and critical policy questions is the role of the people's elected representatives in our republican form of democracy. That would be each of you in Congress and state and local policymakers, not me or unelected bureaucrats, foreign governments, asset managers, proxy companies, or anyone else.

But ever since the signing of the Paris Agreement, there has been an open conspiracy to bypass Congress using the power of horizontal agreements by key players in our financial system. Some of these groups are Climate Action 100+ and the Glasgow Alliance for Net Zero, which include the largest asset managers, banks, and insurance companies globally. These horizontal organizations seek to use their collective market power over tens of trillions in assets to force burdensome changes on American companies. Such changes drive up the cost of goods, and they harm shareholders by reducing returns. In sum, ESG is an undemocratic tax on our economy and productivity.

ESG also weakens America's national security and that of our allies for all the reasons that my colleague outlined. Many renewables require rare earth elements and other supply chain needs that are dominated by China. Thus, adopting these fundamental changes to our energy supply provides China even more leverage over our economy and security. The various problems with ESG present a multifaceted topic beyond the scope of any single hearing, but in addition to the more macro ESG concerns that General Marshall and I have raised, I present three very specific ESG concerns to you today. These are areas that the Committee can and should investigate further.

The first is the role of asset manager agreements on utility companies and whether the Federal Energy Regulatory Commission, or FERC, is doing its job to ensure asset managers, who collectively own significant percentages of utility stock, are improperly influencing the operations of those utilities. The second is the role of proxy advisory firms in making recommendations for share voting that are based on the goals of pressure groups rather than shareholders' best interests. In one particular case, this includes a proposal for considering race in insurance underwriting, which violates applicable anti-discrimination laws and, therefore, should not even be on proxy statements. The third is the recent Department of Labor rule allowing ERISA fiduciaries to consider collateral fractures and investments in shareholder voting. This is a severe weakening of the fiduciary rule, and I applaud you for the bipartisan action that you took in Congress to repeal this rule under the CRA. It is only because of the President's veto that this rule presently stands, and I am proud to be leading a coalition of 26 states, along with private parties, challenging this rule in court.

In conclusion, I am not here to debate the policy of E, S, or G. There is a time and place for that, and while it may not be today or in this Committee, I am convinced it is in this larger body of Congress where such policy should be determined. So, if I am not here to dispute or defend policy, what is my purpose? I am here to warn you about the process of involved in effectuating ESG goals.

No matter how much you may agree with the policy being pushed, if you deconstruct the process, it is a flawed and dangerous one and may also be illegal. The process threatens your prerogative as representatives of the people. It gives no consideration to checks and balances or separation of powers. It ignores the rule of law. It undermines our American system of lawmaking, however inefficient and vexing it may be at times. The process focuses all the power centers of the financial sector into one organized syndicate of pressure. Whenever such a concentrated array of power conspires together for a specific outcome, we must be wary.

As State AGs, we will exercise our power to expose these entanglements and protect consumers. We hope you will use your power to do the same. Thank you.

Chairman COMER. Thank you. The Chair recognizes Treasurer Frerichs.

## STATEMENT OF MICHAEL FRERICHS ILLINOIS STATE TREASURER

Mr. FRERICHS. Thank you much. Good morning, Chairman Comer. Good morning, Ranking Member Raskin and Members of the Committee. My name is Michael Frerichs, and I am the Illinois State Treasurer. I am the state's Chief Investment and Banking Officer, and in that role, my office manages approximately $52 billion. That portfolio includes by $26 billion in state funds, around $17 billion in college savings and retirement funds, and about $9 billion on behalf of local and state governments. I also serve as a trustee of the Illinois State Board of Investment, which manages approximately $28 billion in pension assets on behalf about 230,000 beneficiaries.

It is my job to protect and grow the hard-earned savings of families across the state as well as funds that state and local units of government depend upon. I take this responsibility very seriously. Whether it is the single mom trying to save for her kids' college tuition, or the town financing new schools, I know they are trusting the Treasurer's Office to grow returns on those funds over the long term and ensure that they have the money they need in the meantime. I am tasked with investing not just for the next quarter but with the goal of maximizing returns over the next quarter century.

This is what brought me here today. We are witnessing a widespread, highly coordinated, politically motivated attack on investors and the hard-working people they serve. This pushback is anti-free market and anti-investor. It is misleading, and it is harmful. It harms retirement savers, pensioners, working people, businesses, and it harms America. This coordinated campaign is focused on ESG investing.

Most people do not know what ESG is. ESG is data. ESG is simply additional information that investment professionals use to assess risk and return prospects. It is about value, not about values. In order to maximize returns, an investor must be able to manage and mitigate risk. The more data we as investors have, the better informed our decisions are when selecting investments over the long term. ESG is about looking at a wider range of risks and value opportunity that have a material financial impact on investment performance. For example, if you are investing in a pharmaceutical company, it is thinking about whether that company has exposure to massive lawsuits because of its role in the opioid epidemic.

Our approach is to integrate material ESG factors into investment decisions along with many other considerations. We are not ignoring traditional financial factors, like profitability and creditworthiness. We are integrating more data into our decisions to give us a better idea of risk and growth prospects. This approach is backed by academic research, but it is also common sense. Companies that value their workers have less turnover and higher productivity. Companies that build a strong corporate governance structure will be more resilient and valuable over the long term.

While I welcome healthy debate about best practices and fiduciary duty, I do not welcome the deployment of blacklists and overreaching legislation that would strip professionals of their freedom to invest responsibly. I do not welcome decrees that ignore the research, fundamentally misunderstand the role of fiduciaries, and impose real costs on taxpayers, pensioners, and hardworking families. When it comes to material data, it is irresponsible to tell investment professionals to ignore information that they can use to do their jobs better.

Frankly, I am deeply concerned by the highly orchestrated attacks on the investment profession and the focus on restricting investors' freedom to exercise their professional discretion and fiduciary duty. To ask investment professionals to ignore material risks and investment opportunities is asking us to stop doing our jobs. For example, should we ignore when healthcare companies understaff their operations and jeopardize the safety of patients? Would you expect a company that does this to continue to increase in shareholder value? It would be irresponsible to ignore issues like these. It would be foolish to hinder professionals' abilities and their freedom to invest responsibly.

This astroturf opposition to decades of work by investment professionals is a dangerous intrusion in our free market system. If unchecked, this war on investors will stifle economic growth, cost taxpayers and pensioners billions of dollars, as many studies have already found, and it will obstruct investors' ability to protect and grow people's hard-earned savings.

In closing, now is not the time to stop investors from considering prudent data that can lead to better returns over the long term. The American economy depends on investors. Please let us do our jobs. Thank you for your time and attention.

Chairman COMER. Thank you. Thank you.

Without objection, Representative Magaziner will be waived on the Committee for the purpose of asking questions at today's hearing.

Without objection, so ordered.

And I want to remind our witnesses and the Members before we enter into the question-and-answer phase that we have a five-minute clock, and we try to adhere to that five-minute timeframe. If someone asks a question and the five minutes expires, we will give you an opportunity to answer it, but please be mindful we have a lot of questioners, and we want to get through this. So, we will begin questioning.

I recognize the gentleman from Louisiana, Mr. Higgins, for five minutes.

Mr. HIGGINS. Thank you, Mr. Chairman. Part of the focus of our hearing today is based upon a recent letter signed by 21 Attorneys General highlighting how organizations, including asset managers and proxy advisers, could be violating state and Federal law to channel funds for political objectives in the category of ESG, environmental, social, and government practices. One of our witnesses exclaimed that we are asking him to stop doing his job. We are not asking you to stop doing your job, good sir. We just expect to review whether or not some of your colleagues are violating the law and, of course, of doing their job.

In the second paragraph of that letter, which was signed, by the way, again, Mr. Chairman, by 21 Attorney Generals. I would like to submit for the record the opening statement of my own Attorney General, my colleague and friend, Attorney General Jeff Landry, former Congressman here in this body, was not able to attend hearing today, but I would like to submit his statement for the record, Mr. Chairman.

Chairman COMER. Without objection, so ordered.

Mr. HIGGINS. Thank you, Mr. Chairman.

Mr. HIGGINS. From the second paragraph of the letter signed by so many of our Attorneys General addressing asset managers, said, "These companies are some of the largest asset managers in the United States"—it is important for the American people watching to grasp this—"collectively controlling trillions of dollars of investments. Many individuals and organizations count on these asset managers to provide sound investment products and advise. The top three asset managers alone cast about a quarter of the votes for the S&P 500 company shareholder meetings. They are, therefore, not only bound to follow the general laws discussed but also have extensive responsibilities under both Federal and state laws governing securities. Broadly, those laws require asset managers to act as a fiduciary and in the best interest of clients, exercising due care and loyalty. Simply put, asset managers are not the same as political or social activists and should not allow vast savings entrusted to be commandeered by activists, like ESG activist organizations."

So, Attorney General Reyes, I would like to address the question to you, sir, to clarify for America what legal requirements must asset managers, who act as fiduciaries, adhere to when investing on behalf of a client, and how do these requirements impact investment decision-making? And I am going to ask you to address not only the letter of the law but the spirit of the law that we are inquiring about today.

Mr. REYES. Thank you for the question, Congressman. I will try to be brief, and it is very simple. Their duty is a fiduciary duty under laws like ERISA. It is the highest of all duties that one can owe to another in a fiduciary relationship. And that fiduciary duty requires them, investing assets on behalf of others, to maximize shareholder value, to maximize return back to the shareholder. It is as simple as that. That has been the rule, the prime directive, if you will, for generations, and it has served our market and it has served our Nation well.

Mr. HIGGINS. For the Committee and for Americans viewing this hearing, how would you assess, Attorney General Reyes, the performance of ESG investment versus traditional investment?

Mr. REYES. I believe there are a number of studies that show that ESG funds have globally underperformed. So, my data contradicts the data that we saw earlier from the Ranking Member, if I recall, and there are studies, but I will point to one. Over the past five years, global ESG funds have underperformed the broader markets by more than 250 basis points per year and average 6.3 percent return compared with an 8.9 percent return. So, in other words, an investor who put $10,000 into an average global ESG fund in 2017 would have about $13,500 today compared with $15,250 investment in the broader market.

So that is one example from one study or some market research that demonstrates that ESG is not necessarily a good bet and that asset managers should, again, be investing in the best interests of their beneficiaries or the shareholders, not for a proscribed outcome that is dictated by these horizontal agreements and pushed and pressured by organizations, like NZAM and Climate Action 100+.

Mr. HIGGINS. I thank General Reyes for his clarification there. Mr. Chairman, I yield.

Chairman COMER. The gentleman yields back. The Chair recognizes the Ranking Member.

Mr. RASKIN. Thank you, Mr. Chairman. So, Mr. Frerichs, you said that ESG is data, and some people call ESG, some people call it responsible investing. Some people just call it exercise of fiduciary obligations. But in any event, you are saying what is under attack is data. How could more data hurt?

Mr. FRERICHS. More data cannot hurt. More data is what we need as investors to make good decisions. I liken these attacks on states that would proscribe asset managers or proxy advisors providing this data for us, as to making us pick a fantasy football team without knowing the players' weights, their injury status, their track record. You can not make good decisions without useful, pertinent information, and that is what ESG is.

Mr. RASKIN. Go into a time machine for a second, if you could. How does your job differ from someone who was the Treasurer of Illinois 50 years ago? I mean, back in those days, it seemed like it would be simple if you were trying to do the valuation for an auto company, how many autos are pumped out every year, and number of man hours that go into it, and so on. How is the valuation of companies different today in 2023 than it was 50 years ago?

Mr. FRERICHS. The nature of value on the S&P 500 has changed dramatically over the last 50 years. If you look back in the early 1970's, somewhere between 75 to 80 percent of the total value of the S&P 500 was intangible assets, things like cars, things like paper, things like pencils. And you could do an analysis of how many acres of forest you have under contract, and you could see how many cars and pencils you could produce, and you can reach a value.

Today the S&P 500 has about 80 percent of the value in things like brands, intellectual property, and those things are subject to different risks than those companies 50 years ago. We are just trying to guard against those risks. A company like Google is not worth how much it is today because of the number of petaflops of data they have. It is based on their reputation. Apple is not worth a trillion dollars because of the number of iPhones they sell but because of their reputation. And those are susceptible to social and governance risks.

Mr. RASKIN. Well, you know, some of the disagreement here is about facts, and I appreciate what Attorney General Reyes just said. He made the claim that the ESG-informed investments do more poorly than the Standard & Poor's general. Our data is completely different from that, showing that it has been over performing. I would like your comments on that, but then I would like you to comment on this. Let us say Utah sees it differently than Illinois. Is there any problem with you pursuing the investment strategy you want and Utah pursuing the investment strategy they want?

Mr. FRERICHS. Investing is not easy. Some people want to put more work into it than others. If someone does not want to look at this data, that is fine. They have that freedom. Nothing in ESG proscribes that someone has to consider these sources. I would say they would be not fulfilling their fiduciary duty if they did not, but they have that right to. And I would cite other studies, like a New York study, Stern School of Business, a recent meta study which is a statistical analysis that combines the results of multiple academic studies, looked at 245 individual studies on ESG and financial performance. The study found a positive relationship between ESG and financial performance for 58 percent of those studies. Only eight percent showed a negative relationship.

You can pick and choose. Any investment strategy will have quarters where it performs better than others. You can pick and choose, but over time, ESG has been a good set of data to help us make better investment.

Mr. RASKIN. And you make that judgment as a financial expert who has a fiduciary duty to everybody in Illinois, right?

Mr. FRERICHS. I have a fiduciary duty to the beneficiaries of those pension funds, the beneficiaries of those college investments. I do not have a fiduciary duty to the oil and gas industry.

Mr. RASKIN. But you have got a fiduciary duty to maximize the returns, and what you are saying is you want more information. Like, somebody says this Purdue company just got 57 percent in the last quarter, invest in Purdue. What about saying, well, that is all that you could do at that point. You cannot look at whether or not they are trying to get people addicted to drugs because that would be too woke.

Mr. FRERICHS. That was exactly what happened with Purdue Pharma. If you looked at their financial returns, they showed themselves to be a very profitable company, but we wanted to know more because there are risks associated with selling highly addictive drugs.

Mr. RASKIN. So, that is a real case for you.

Mr. FRERICHS. Real case.

Mr. RASKIN. Yes.

Mr. FRERICHS. Reputational risks, regulatory risks, litigation risk, and those litigation risks took a company that was very profitable for a long time and bankrupted it.

Mr. RASKIN. OK. This is my final question. Why shouldn't Congress say, well, you know what? We are the House of Representatives. The anti-ESG people, we are in control. We are going to stop states like Illinois from looking at all the data. What is wrong with that?

Mr. FRERICHS. Well, that is what some states are doing, and it is costing those states not insignificant amounts of money. You pointed out some of those. The state of Indiana, their pension system said it is going to cost an additional $6.7 billion to comply with their anti-ESG law. The state of Kansas, it is about $3.6 billion. The state of Kentucky, the Kentucky Pension System said if forced to comply with their state's anti-ESG law, they would not be following their fiduciary duty.

Mr. RASKIN. But they would rather be broke than woke. I yield back to you, Mr. Chairman.

Chairman COMER. The Chair recognizes Mr. Gosar of Arizona for five minutes.

Mr. GOSAR. Attorney General Reyes, you just heard that comment about science. This is about data. Can you dispute that?

Mr. REYES. Thank you. A couple of things I want to comment on. I think my colleague mentioned that more data is all good, right, and that more date cannot hurt. I disagree with that because I think there can be bad data if it distracts or, in some cases, even distorts the import and the focus of what fiduciaries should be solely laser focused on if it is not benign data. I will give you an example.

Standard & Poor's issued ESG indicators alongside the creditworthiness for states. In a state like Utah that has a Triple A credit rating, Standard & Poor's would point out, in one instance, the issue of drought without taking into consideration a whole other host of mitigating factors that Utah has anti-drought measures. By itself and without the context, Standard & Poor's all of a sudden makes it look like the most important factor is not Utah's creditworthiness over a long history, a Triple A credit rating, but one particular factor of drought. And in that instance, it illustrates my point of distortion.

My colleague used the fantasy football analogy, and all data is good data, I guess, in kind of a Moneyball sense. Again, I would take issue with that. To use football as an example, if all of a sudden, we started crowning the Super Bowl champion not by who scored the most points in the game but by who had the most green arena or who had the most environmentally friendly equipment, I think that data would be destructive. I think that is something that is not necessarily the indicator that we are looking for.

And in this instance, again, I want to point out that we are contesting the process. And you can have all the data in the world, but when that data is driven to one particular outcome, and it is a predetermined outcome, and there is a cabal of players who are all pushing toward that one outcome, then the data is just window dressing to achieve that particular outcome.

Mr. GOSAR. It is manipulated. Would you give me that?

Mr. REYES. Yes. I want to quote from NZAM, which is, you know, has $59 trillion AUM, assets under management, and this commitment is that its ambition for all assets under management to achieve net zero emissions by 2050 or sooner. That is all of their assets, and it says this: "The transition to net zero will be the biggest transformation in economic history. Our industry's ability to drive the transition to net zero is extremely powerful. Without our industry on board, the goals set out in the Paris Agreement will be difficult to meet." Again, I could read chapter and verse of many other public statements like this. This just demonstrates the concerted effort by all of these organizations to push a particular outcome, regardless of what the data may or may not——

Mr. GOSAR. I would cite a quote. BlackRock's former CIO for sustainable investment even said in an article for Medium in 2021 that ESG investing "provided for the opportunity for a bump in what were otherwise plummeting fees as competition had grown in recent years." So maybe if we went back to the Fisher Investments, which says, "When our clients do better, we do better," instead of having these commissions on here. Do you think that is an opportunity to get things right?

Mr. REYES. I definitely think that is an opportunity, Congressman, and let me also mention something that was said, "just because it is not mandated." I think that was a reference. This data, you are not forced to look at it. Just because it is not mandated does not make it any more legal. You know, if it is allowed, again, it is data that, you know, distracts from a fiduciary's sole responsibility to maximize shareholder value.

Mr. GOSAR. I got one more thing. You brought up FERC in regard to energy. So, are you aware that we were dangerously close to having a nationwide blackout earlier this year?

Mr. REYES. Yes.

Mr. GOSAR. And what did that play in that investment portfolio in regard to where we get our energy, intermittent versus baseload energy?

Mr. REYES. That is what several FERC Commissioners testified to just last week in a Senate hearing, Congressman. That effort to transition to cleaner energy is happening so fast, too fast, that it would have catastrophic effects on reliability and security of our electric grid.

Mr. GOSAR. We are outpacing, out pushing our science, and you have to have dependable science that is peer reviewed and is repeatable. So, thank you very much. I yield back.

Chairman COMER. The gentleman yields back. The Chair recognizes Ms. Ocasio-Cortez from New York for five minutes.

Ms. OCASIO-CORTEZ. Thank you. Thank you very much, Mr. Chair. Mr. Frerichs, if you had to describe your job to a layperson, how would you describe it in one or two sentences?

Mr. FRERICHS. As the chief investment officer, my job is to maximize returns for the state of Illinois and our beneficiaries.

Ms. OCASIO-CORTEZ. And your beneficiaries are the citizens and folks who reside in the state of Illinois, correct?

Mr. FRERICHS. The citizens of the state. They are the participants in college savings plans and retirement savings plans and retiree pensioners.

Ms. OCASIO-CORTEZ. So, everyday people saving for college, saving for retirement, and who really just want to make sure they can put their dollar in a long-term investment that is stable, correct.

Mr. FRERICHS. Most of these people put their money, and they expect not to look at the next quarter, but we look at next quarter century.

Ms. OCASIO-CORTEZ. And that is a distinction between what we see sometimes on Wall Street or in other types of short-term investment where you really just want to look at what is going to make you money by the end of the year or the end of a quarter, correct?

Mr. FRERICHS. Frequently, a CEO might be motivated by a bonus trying to hit a point for the next quarterly profit report, but we want to make sure they are putting the company on a sustainable path to be profitable for the next 10 or 20 years because that is what families saving for college and people saving for retirement care about.

Ms. OCASIO-CORTEZ. Yes, and in the course of your work, have you noticed that short-term profit-seeking behavior is not always consistent with long-term returns for everyday people?

Mr. FRERICHS. Correct, the example we used with Purdue Pharma. When they sold highly addictive drugs to Americans, they made money hand over fist. It is a great business model to sell an addictive drug to someone——

Ms. OCASIO-CORTEZ. Mm-hmm.

Mr. FRERICHS [continuing]. Until when those people start dying off. Their relatives engaged in class action lawsuits that sank that company, or you can have a railroad company that determined we can make more money by cutting staff by 30 percent. We can add more cars to the rail to make more money——

Ms. OCASIO-CORTEZ. Mm-hmm.

Mr. FRERICHS [continuing]. And we do not spend time moving the cars around to distribute load, and then when that railroad has a derailment in Ohio——

Ms. OCASIO-CORTEZ. Mm-hmm.

Mr. FRERICHS [continuing]. It cost that company real dollars because it cost investors, shareholders, and beneficiaries.

Ms. OCASIO-CORTEZ. Yes, and it is interesting that you bring that up, Mr. Frerichs, because I think what we are seeing here is that the other side of the aisle is making the argument here that we should just look at the balance sheets, the short-term returns, and the short-term investments in order to make long-term financial decisions. But the irony of that is that this Committee right now and, in the past, has been charged with investigating companies that have abused the public by deliberately leaving critical information off those balance sheets. You have seen that in your work, haven't you, Mr. Frerichs?

Mr. FRERICHS. We have all seen this. I heard talk about bad data. There was bad data that sunk Enron. This had nothing to do with ESG. You can look and find bad data anywhere. It is the job of an investor to sort through that data and look through multiple lenses.

Ms. OCASIO-CORTEZ. Right. We just lived through this with SBF and FTX. We just saw this two years ago. We went through a multi-installment investigation of Dupont's poisoning with respect to PFAS in water. Veterans' communities, communities that live around military bases, airports, et cetera, dealing with reproductive cancers, testicular cancers from information that was withheld from those balance sheets. Norfolk Southern and the train derailment in East Palestine, those communities are struggling to access information that this company is hiding because it is not necessary to put on their balance sheets. Right now, we are investigating Abbott for baby formula and the issues that were happening with infants dying in baby formula, and that, too, was kept off balance sheets but also had financial impacts on the performances of those companies. They had to take that production offline.

And so, the argument here is that our investment managers in different states should not take this information into account when making investment decisions for the public. Mr. Frerichs, can you really do your job if you are just looking at short-term returns, if your job is for the long-term financial health of people saving for college and retirement.

Mr. FRERICHS. No. As a fiduciary, for family saving for college, for people saving for their retirement, you know, they do not really care so much if a company is profitable next quarter. They care if it is profitable for the next 10, 20 years, or quarter century.

Ms. OCASIO-CORTEZ. And so, when we talk about where this push is coming from, why now? Why is this happening?

Mr. FRERICHS. This is happening because the nature of valuing companies has changed. We still do traditional financial analysis, but we layer on another level of analysis to deal with these risks, and they are material. They may deal with human capital, they made deal with workers, they may deal with the environment, but they have real-world consequences on the bottom line of these corporations. And if we do not have access to that information, it is like investing with a blindfold on.

Ms. OCASIO-CORTEZ. Thank you very much, and I yield back.

Chairman COMER. The gentlelady yields back. The Chair recognizes Mr. Armstrong from North Dakota for five minutes.

Mr. ARMSTRONG. Thank you, Mr. Chairman. A lot of the testimony brings up many of the problems of ESG in the world of finance. Americans rely on a sophisticated financial investment system every day to plan for their future, yet the complexities of this system allow ESG causes to take precedence over the most important thing of all, which is the bottom dollar. The purpose of investments is to grow our financial security not shrink it. As you and my colleagues have pointed out, investment in ESG funds does not bring higher returns. I would like to focus on a little bit on understanding of what duties proxy advisories currently have and how Congress can actually ensure economic interest legally take precedent. I got the two different sides of glasses, so.

Mr. Marshall, in a few sentences, can you talk to me a little bit and define proxy advisors and proxy voting?

Mr. MARSHALL. Well, you have seen my colleagues reach out to the two proxy advisory firms to be very critical of the nature of how they do business. Really, I think much of the fundamental discussion we are having today is what is a fiduciary and what does that fiduciary responsibility to those hard-earned Americans who have given their money to be invested. One thing that is clear is that proxy advisors are acting outside of the directive of those particular investors but instead are making their own independent value judgments about how they vote with regard to certain shareholder initiatives.

Clearly, they are connected through various alliances to not only deal with global energy policy but also a set of preferred societal values. And we see various shareholder initiatives around issues that do not relate to the bottom line, do not relate to the return for those particular investors, but instead purport to be a political agenda. Then they are acting outside of the scope of their responsibilities and breaching their fiduciary duties.

Mr. ARMSTRONG. Mr. Reyes, what is robo-voting, how does it magnify the power of proxy advisor recommendations, and should Congress consider restricting its use?

Mr. REYES. Robo-voting, automatic voting, has given even more power to the proxy advisor duopoly that is ISS and Glass Lewis. That is part of what we would ask you, Congressman, to look at with regard to proxy voting. The market for proxy advisory firms, as I mentioned and General Marshall mentioned, is dominated by two players, Institutional Shareholder Services—ISS—and Glass Lewis, and their combined market share is approximately 97 percent. So, you are looking at predominant market players who influence many of the institutional advisors and asset managers for whom they provide supposedly objective advice for.

A study has shown, though, that a significant number of institutional investors simply follow the voting advice of proxy voters. This is like automatic straight-ticket voting. It is common sense that proxy advisory firms should focus on providing objective advice related to maximizing value of shares in the companies that are the subject of shareholder proposals and board of director elections. Unfortunately, for these two particular advisors, they, again, have very public, purposeful statements about what their end goals and objectives are, including retiring coal plants, including transitioning away from fossil fuels and getting to net zero Paris 2015 goals.

It is difficult to see and to imagine that they can be entirely neutral and provide objective opinions for those for whom they are serving when they have such strongly stated goals. And when they start every shareholder vote, I think one estimate was they have 38 percent or so of the votes already locked in. And so, it is very difficult to overcome their predisposed decision-making process. Those are all issues that we would like for you to take up in a further hearing with regard to proxy voting.

Mr. ARMSTRONG. And, Mr. Marshall, if proxy voters are not acting in the best interest of their shareholders, what current mechanisms are in place to hold them accountable, and what should be accountable?

Mr. MARSHALL. One thing that exists for AGs is under our consumer protection laws, Deceptive Trade Practices Act. I think one of the things that you have seen already is Republican Attorneys General have been active on the investigative side, using both our consumer protection laws as well as the antitrust laws. Multiple investigations are now pending, and we have the opportunity to be able to report back on those investigations. But as well, I think General Reyes has outlined for this Committee various ways that this body can act to be able to rein in what we believe is an unlawful practice.

Mr. ARMSTRONG. Well, as somebody who served in state government and the Federal government, I appreciate the fact that sometimes you can move more quickly than we can. With that, I yield back.

Chairman COMER. The Chair recognizes Ms. Bush from Missouri for five minutes.

Ms. BUSH. Thank you, Mr. Chairman. St. Louis and I are here today for a timely and important hearing to defend the planet itself. The acronym "ESG" has been used so much today already that I would like to remind everyone what it stands for: "environmental, social, and corporate governance." The relationship between the activities of giant corporations, like Microsoft, Apple, and eBay, have an immeasurable impact on our society and on our environment.

By now, we all know that the health of our planet is fleeting. All you have to do is step outside, feel the seasons getting shorter and the temperatures getting higher. You just have to turn on the news to see the latest natural disaster devastating communities. You just have to listen to the scientists and client climate experts who are telling us point blank that it is now or never. Act today or wish you had yesterday.

My hometown of St. Louis ranks among the highest across the country in rates of asthma, with rates significantly higher for Black residents than White residents. ESG principles are the bare minimum corporations can abide by to protect the communities that serve as their domestic headquarters in cities like St. Louis. The cost of doing business should not be a lifetime of pollution for small town and cities across this country.

Mr. Frerichs, do Republican attacks on responsible investing practices actually increase the waste and mismanagement of taxpayer dollars, yes or no, and if so, how?

Mr. FRERICHS. I think attacks that limit our ability to consider all factors to have access to data costs us, and this has been documented in other states. I think there is a misunderstanding of what proxy advising firms do. The secret right there is in the word "advisory." They do not make these votes. The fiduciaries make these votes, and if a fiduciary decides to just turn it all over to someone else, that is their choice, but a good fiduciary will rely on their advice and other sources of information.

You know, we are part of several coalitions we get information from. The example I like to use is we are trying to get a good clear picture of these corporations and their profitability over the long term. Now, you notice I wear glasses. I did not always wear glasses, but the nature of my eyes changed over the last 30 years, and

I had to take steps to see better. And when I went to go see an optometrist, they gave me a choice of two different lenses and said which helps you see better.

ESGs are different lenses to see. I say, OK, well, the first lens help me see better. They will show me two different ones, and eventually, after looking through several different lenses, we will get a much clearer picture. That is what ESG data does. It helps us to have a better picture about the long-term profitability of these companies.

Ms. BUSH. Thank you for that. I ask unanimous consent to submit into the record a study by Wharton Business School professor, Daniel Garrett, and the Federal Reserve economist, Ivan Ivanov, on the cost of the 2021 Texas law to limit responsible investing.

Chairman COMER. Without objection, so ordered.

Ms. BUSH. Thank you.

Ms. BUSH. Mr. Frerichs, could you briefly summarize the findings of this analysis for us?

Mr. FRERICHS. Yes. Back in 2021, the state of Texas passed legislation limiting the number of firms they could use for debt issuance, and because they limited some of the largest debt issuers, there was less competition. I find this difficult that I am the one defending the free market and the ability to have competition and access to data and for shareholders to have rights because I think I heard earlier someone mentioned that asset owners who own utility stocks are telling them what to do, as if that is a bad thing. They are owners of these companies. What they found is by limiting competition, it was costing the taxpayers of the state of Texas an initial $300 to $500 million a year.

Ms. BUSH. Thank you for lending your expertise. Strong labor unions like SEIU and AFL–CIO have fought long and hard to ensure large corporations and bad actors are being held responsible for harming workers. Workers should be able to determine if their state pension funds are being invested responsibly, and ESG principles are an important first step. Now unions are on the front lines of the fight to hold corporations accountable for their continued pollution of our communities. Whether fighting for paid sick leave, livable wages, workplace safety standards, and now ESG principles, we must support strong government regulations and oversight into all activities of large corporations.

The Federal Government has an obligation to provide resources and solutions to the climate crisis at every opportunity. Congress must ensure that with each piece of legislation we put forward that there is some component to it that addresses the climate crisis. Thank you, and I yield back.

Chairman COMER. The Chair recognizes Mr. Grothman from Wisconsin for five minutes

Mr. GROTHMAN. Sure. Mr. Marshall, can you give some examples of decisions that a business would be kind of muscled into doing because of strong ESG sort of policies being implemented by, say, major pension funds?

Mr. MARSHALL. Let me just speak to specific examples in Alabama that we have concerns about. The agriculture industry is obviously very important to us. One of the things being targeted, for example, is farmers' use of certain types of fertilizer, how it is that they use their land itself, and the products they use to be able to produce what food goes on to the tables of families across our country. So, imagine that a farmer is dealing with a member of Net Zero Insurance Alliance who comes to that farm and says, as part of our underwriting, we think that you need to be able to change the fertilizer that you are using. We need to be able to change your land management, or else we are not going to insure you, or we are going to make it cost-prohibitive.

Mr. GROTHMAN. Could you see a situation in which, say, a bank is kind of muscled into giving out more loans to people who have not saved money, for example?

Mr. MARSHALL. Congressman, I think we could not only see that, but we could also see the opposite, right? We know that the Net-Zero Banking Alliance group boycotts certain industries as well as limits funding of certain projects, so that not only could we see a bank coerced to lend in ways they would not previously but also see the exact opposite, and that is to keep capital from other industries that are suddenly disfavored.

Mr. GROTHMAN. OK. And that could be both individuals who perhaps have saved a lot of money. Maybe we do not want to give them loans as much. We know recently we have had situations on a nationwide level in which we try to penalize people who have down payments for things. Will this perhaps affect who people hire? Like right now there are certain disfavored groups in our society. People do not like men. People do not like, you know, people with European background, that sort of thing. Could this be something where you are encouraging businesses not to hire or promote people or have on their board of directors people from unfavored groups by people who view people as a group and not as an individual?

Mr. MARSHALL. And also, the concern about hostile workplace environments. There is a great push by ESG proponents to have corporations take policy decisions about societal issues that are occurring today, and to the extent that you are an employee of a certain company that believe very differently than the public position that that corporation has taken, taken as a result of being bullied by ESG proponents, then that concern would be whether or not that employee faces potential harm.

Mr. GROTHMAN. Could you give me an example?

Mr. MARSHALL. Sure. Let us assume that a company has taken a position on the issue of abortion and said that they believe that abortion should be lawful, and yet there are fundamentally employees at that company that believe the exact opposite. No. 1, they are going to be stigmatized if, in fact, they express their particular views, but also the concern is whether or not they are going to be denied opportunities for employment and advancement.

Mr. GROTHMAN. So, I will just share the wealth here, Mr. Reyes. Would that result in people being discriminated against, say, for a place on a board of directors based on political viewpoint?

Mr. REYES. Yes, and that has been stated by these organizations. They are not shy about it. They are very forthright, and they said that we will oppose, and we will not support directors with certain social or environmental backgrounds.

Mr. GROTHMAN. What type of potential directors would be hated by this group?

Mr. REYES. Again, any number of them who do not support, for example, on the social side, racial discrimination audits, and I will give you an example. There was a Traveler's Insurance case where a group of activist shareholders, I think it was Trillium Group, forced a shareholder vote on an audit that they demanded, which was a racial profiling audit, that would require Travelers Insurance Company to potentially violate state laws in numerous states if resolution passed.

Mr. GROTHMAN. So, these are the type of people who judge people by where their great, great grandparents came from, and they——

Mr. REYES. Yes. The irony of that is that what they were supporting actually violated anti-discrimination laws, so.

Mr. GROTHMAN. Wow. And as the result, companies may have to or will feel pressured to hire people based on these criteria, let us call it ancestral criteria. Is that right?

Mr. REYES. I think that is a fair assumption, Congressman.

Mr. GROTHMAN. OK. Thank you very much.

Chairman COMER. The Chair recognizes Ms. Stansbury from New Mexico for five minutes.

Ms. STANSBURY. Thank you, Mr. Chairman. As a social scientist who has worked on climate and sustainability issues for many years, in fact, all of my career, I actually welcome the discussion today on sustainable investing. As we know, it is crucial to the future of our planet and also our economy, but obviously that is not what this hearing is actually about. I have watched and listened today and seen as this hearing has devolved into yet another crusade in the political culture wars. But I am disappointed, Mr. Chairman, to see the use of this Committee's precious time to air yet another dark-money-funded, conspiracy-laden attack on American freedom. But I am surprised to see that in this case, it is an attack on the market itself.

It is amazing to me to see the kinds of attacks we have seen on American freedom by the Majority, attacks on our bodies, banning books, and now we are talking about banning the way that businesses are able to invest their own capital in public bodies, but what is especially amazing about this is how radically out of touch it is with the American public. And, in fact, what is particularly insane about these bans on ESG is how out of touch they are with voters themselves, including Republican voters.

And, Mr. Marshall, I know you have been at the forefront of this effort, but I want to ask you are you aware that the majority of Americans and Republican voters are actually opposed to ESG restrictions?

Mr. MARSHALL. I can tell you that I have had multiple comments from individuals throughout my state, the 5 million almost Alabamians that I represent.

Ms. STANSBURY. Thank you, Mr. Marshall. I am going to direct your attention to this chart behind me.

[Chart]

Ms. STANSBURY. A recent poll that was released in Politico shows that the vast majority of Americans are opposed to restrictions on ESG. In fact, 63 percent of American voters overall and over 70 percent of Republican voters—70 percent of Republican voters—are actually opposed to restrictions on ESG. But it is not just the public. It is American businesses as well—corporations, investment firms. Mr. Marshall, are you aware that the vast majority of American businesses are also opposed to these restrictions?

Mr. MARSHALL. Congresswoman, would you like me to be able to answer the first question that you asked me?

Ms. STANSBURY. Mr. Marshall, are you aware that the vast majority of American businesses are also opposed to these restrictions?

Mr. MARSHALL. I am going to answer the first question that you cut me off on, which is that as I have gone around——

Ms. STANSBURY. Thank you, Mr. Marshall. In fact, Mr. Marshall, media outlets, such as Fortune, Forbes, the Washington Post, have recently published articles warning American investors about these attacks on ESG and explaining why they are bad for business. Now, let us talk about why they are opposed, because profitability fundamentally depends on risk management, and, Mr. Frerichs, you know this because you are an asset manager. And corporate America understands the real and significant risks posed by global climate change and the other social and environmental factors that are presented as part of ESG factors and data as they are presented in investing.

So, my question is why on earth is the GOP waging a war on ESG, especially when it is so completely unpopular with American corporations, the market, investors, American voters? In fact, 19 states have actually moved under extreme governors and state officials to try to ban ESG investing. We are talking about legislation, executive orders, and the very lawsuit that we are here discussing today. So, my question is, why is this happening? And I think, Mr. Frerichs, as you have indicated, I think, in your testimony, we have to follow the money, and the reality is, is that this is a well-coordinated and political attack. Is that not true, Mr. Frerichs?

Mr. FRERICHS. It would seem that the fossil fuel industry is leading a charge here. We had talks about how banks are muscling companies. We have seen that. We have seen banks being muscled. Legislation in Texas is muscling banks to invest in the fossil fuel industry. Banks like to be diversified, and if they decided that they wanted to invest in renewable resources, like biofuels from Iowa, or wind turbine blades from Ohio, or solar panels being installed in Arizona, they would be punished for that. That is the real shame here.

Ms. STANSBURY. Right. So ESG has become another boogeyman in the culture wars. This is not about fiscal responsibility. You know, it is evident. We are sitting here in the very week that we are debating a potential default on the American debt ceiling, and yet the GOP is claiming that this is about fiscal responsibility and fiduciary responsibility to shareholders and the public. That is not what this is about. It is a well-funded, dark-money-funded culture war attack not only on the American economy but on the American people. And with that, I yield back.

Mr. SESSIONS. [Presiding.] The gentlewoman yields back her time. The gentlewoman from Colorado is recognized for five minutes.

Mrs. BOEBERT. Thank you, Mr. Chairman, and thank you to our panelists for being here today. As we have heard today, there are numerous concerns related to so-called environmental, social, and governance policies being indoctrinated into accounts by woke asset managers. Today's hearing will help us better understand what Congress can do to ensure that stakeholders will not encourage woke corporate activism as we have seen recently with Anheuser-Busch, Disney, and even Nike because, as we all know around here, when you go woke, you go broke. So, Attorney General Reyes, for background, could you elaborate on how asset managers can violate their duties by signing ESG pledges?

Mr. REYES. Sure. There are a number of ways. There are Federal laws that could be implicated. There are state laws, including state consumer protection laws, state securities laws. There are common law, contractual agreements that fiduciaries can violate. All of those different laws come into play, and one of the reasons why we filed a lawsuit against the current Administration's Department of Labor rule weakening the fiduciary role and the duty and the responsibility of fiduciaries is because we think it, among other things, violates major questions, doctrines, violates the APA, the Administrative Procedures Act. So, all of those different ways are legal reasons why we are concerned, Congresswoman.

When you hold yourselves out as being objective, and you represent to your customers and your shareholders that you are being objective, then you must live up to that and not have a predisposed, predetermined end goal in mind. And I will make one comment, my colleague and my friend, the good Treasurer, mentioned proxy advisors do not vote the shares. He is right, but in many ways, they are de facto voters because many of those fiduciaries have so many thousands of different investments that they rely almost solely on the proxy advisors. And when the fiduciaries are part of the same horizontal agreements as the proxy advisers are, they are all part of one and the same scheme, there really is no free market in that. They keep talking about free market, and that is why we are here because there is nothing free about the course of nature of these arrangements.

Mrs. BOEBERT. And, Mr. Reyes, you state in your testimony horizontal organizations are made up of asset managers, banks, and insurance companies. Now, I am aware several State Attorney Generals are investigating several of the Net-Zero Banking Alliance groups, including JPMorgan Chase. What have those investigations found to date?

Mr. REYES. Not ready to disclose all of our findings yet, but I will say comfortably enough that we are continuing our investigations, and we hope that you would——

Mrs. BOEBERT. So, Mr. Reyes, considering the Silicon Valley Bank has collapsed and JP Morgan Chase bought the bank, has there been any indication that there has been any involvement in ESG policies while reestablishing the bank?

Mr. REYES. There may be, but I am not willing to comment on that based on our investigation.

Mrs. BOEBERT. Thank you so much. Attorney General Marshall, as the Department of Labor under the Biden Administration has considered requiring fiduciaries to consider ESG in employee retirement savings decision, several 401(k)'s and thrift savings plans allow managers to use their voting rights on behalf of these retirement accounts. A prime example of this is BlackRock, a primarily left-wing activist fund that uses its status as the fiduciary for several investment funds to coerce companies into introducing these ESG politics into their retirement account savings. How can Congress help ensure that these companies are not introducing ESG policies into their investment funds and, instead, are maximizing returns for future seniors that will need to live off of this money in these accounts?

Mr. MARSHALL. Yes. Congresswoman, one thing that we heard earlier from one of your colleagues is how partisan this issue is. This body has demonstrated through the Senate, by attempting to overturn the new Safe Harbor Rule under ERISA and saying that it was an improper way to consider the investments for 152 million Americans and their retirement accounts. This body can clarify clearly under ERISA the role of a fiduciary, what that means for the investment return of the individuals who have invested their accounts, and make it clear that objective criteria, not subjective ESG criteria, are used for making those decisions.

Mrs. BOEBERT. Thank you very much for that suggested solution, and, Mr. Chairman, I yield.

Mr. SESSIONS. The gentlewoman yields back her time. The gentlewoman from Ohio is recognized for five minutes.

Ms. BROWN. Thank you, Chair and Ranking Member, and our witnesses. I continue to be surprised by the position of my friends on the other side. Aren't the values of free market a fundamental view of their Party? Environmental, social, and governance investing is one critical tool that businesses use to make financially smart investments. This type of investing emphasizes corporate models that are both financially smart and socially good, which is truly a win-win.

One aspect of corporate models that is too often overlooked is the governance and social strategies component. These strategies often center around diversity in the work force, both at the executive levels and within a particular organization and throughout the broader industry. The inclusion of people of all backgrounds, especially those from marginalized communities, is an essential part of America's corporate success. We thrive as a Nation when every one of us is empowered and has an opportunity to succeed. Diverse voices at the table make companies stronger and their products, goods, and services more inclusive and effective.

According to a 2019 McKinsey analysis, companies in the top quartile for ethnic diversity on executive teams were 36 percent more likely to have above-average profitability. Another study shows that employees are 5.4 percent more likely to want to continue working at a diverse company. Clearly, businesses have a moral obligation as well as a financial incentive to make sure there is a seat at the table for historically marginalized groups, but there is still so much work to be done.

So, Secretary Marshall or Secretary Reyes, do you know what percent of the 5,403 board members of Fortune 500 companies are women of color?

Mr. MARSHALL. Congressman, I do not.

Mr. REYES. No, ma'am.

Ms. BROWN. The answer is seven percent. Moving on, this year, the Pew Research Center published a report on Black-owned businesses in the United States which continue to face systemic structural barriers to equal opportunity, including lack of investment. I hope you all will have a chance to read it, and I ask unanimous consent that this be entered into the record.

Mr. SESSIONS. Without objection.

Ms. BROWN. Thank you so much.

Ms. BROWN. Secretary Marshall or Secretary Reyes, can you tell me the percentage of business nationwide that are Black-owned?

Mr. MARSHALL. Congressman, I cannot.

Mr. REYES. No, ma'am.

Ms. BROWN. Black-owned businesses make up only three percent of classifiable companies despite the Black Americans making up 12.4 percent of the U.S. population. Mr. Frerichs, in your experience as Illinois's top investor, how does diversity at all levels of a company help investors meet their fiduciary responsibilities and position themselves for success?

Mr. FRERICHS. Thank you very much for that question. The research has been fairly clear, and this is not by a left-wing organization—McKinsey is not a left-wing organization—that diversity is good for boards. I heard comments made earlier about discrimination against people from a certain ethnic background. There are still plenty of White men serving on corporate boards. The vast majority are, but research has shown that homogeneous boards underperform diverse boards, and it is not just the research. It is common sense.

If you bring people from the same backgrounds, the same educational schools, the same cultural backgrounds together, you are going to find a lot of groupthink. A good board does well when there is discussion and back and forth and differences of opinions, and so diverse boards reduce groupthink and produce better results.

Ms. BROWN. Thank you, and I would say that answer demonstrates the need for increased diversity both within individual corporations and throughout the broader business sector. Yet, unfortunately, punishing companies for these private corporate choices has become an element of the Republican platform from D.C. to Disney. While historically marginalized communities continue to face unique economic barriers, Republicans oppose corporate freedom to implement strategies for social investment, which even benefits the bottom line. In fact, the Republican platform appears to center around taking away the choice, the choice to promote diversity, equity, and inclusion, the choice of a woman to have control over her own body, and the choice to read a book and live without the fear of gun violence.

I urge my friends on the other side of the aisle to reconsider these misguided priorities, and with that, Mr. Chairman, I yield back.

Mr. SESSIONS. The gentlewoman yields back her time. The distinguished gentleman from South Carolina is recognized for five minutes.

Mr. FRY. Thank you, Mr. Chairman. Thank you for having this hearing today. Thank you to our witnesses for your time.

Under Federal and state law, asset managers owe fiduciary duties to their clients. What does that mean? Well, it essentially means that they put their clients' interests first. This is a concept that is old as time. It has become clear, however, that asset managers may have violated that fiduciary duty, based on your findings, to their clients through signing radical ESG pledges. Attorney General Reyes and Attorney General Marshall, you and several other Attorneys General, including Alan Wilson from South Carolina, penned a letter to 53 asset managers. In this letter, you said that "state and Federal laws require these asset managers to act as a fiduciary in the best interests of their clients in exercising due care and loyalty."

So today, I want to take a quick look at the history of fiduciary, starting with the basics. The Bible says that no one can serve two masters. The Romans defined as a "fiduciary" as a person holding the character of a trustee or character analogous of a trustee in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. The case of Keech *v.* Sandford, a 1727 English trust law, holds that a trustee owes a strict duty of loyalty and care so that there can never be any possibility of a conflict of interest. Under ERISA, a person who provides investment advice has that same fiduciary obligation to provide the advice in the sole interest of the plan participants.

It is clear that the history of fiduciary is not a new concept, so why are these asset managers now struggling with that duty? When someone invests their money, they have the intention that this money will grow and that they will get a return on that investment. However, these asset managers are throwing money in support of ESG initiatives that are contrary to those who have those holdings. Attorney General Reyes and Attorney General Marshall, will asset managers be forced to choose between their legal duties to achieve financial returns and ESG policy goals, and can you outline that?

Mr. MARSHALL. I think clearly there is a conflict, and one of the things that I would identify previously is the role of pension funds in states. And we have had two of our Attorneys General, both in the states of Kentucky and Louisiana, in examining the question of fiduciary duty, concluded the consideration of ESG factors would, in fact, violate state law. The laws in Kentucky and Louisiana are very similar to the laws throughout our country, very similar to the way that this body has defined "fiduciary" under ERISA and has identified that as the sole interest duty of loyalty. Very specifically, the Michigan Supreme Court many years ago said business corporations organized and carried out primarily for the profit of stockholders.

The role of asset managers is to maximize the return on that investment. Again, particularly for the hardworking Americans who have invested their retirement dollars, their concerns principally is what is going to be there when I am done? It is not necessarily all, and some of the factors that are subjective in ESG, but, instead, to those objective factors that qualify to determine what investments should be recognized.

You know, interestingly, my colleague from Illinois referenced glasses and an optometrist that had given him the glass prescription. An optometrist uses devices to objectively determine what your vision is to be able to make sure that you have the right glasses, that you are not using the wrong ones. ESG criteria, very differently, are not objective. They are subjective, and one of the reasons why we know that is the rating agencies themselves cannot agree on what the factors should be, and they also score individuals quite differently depending on their subjective view of those companies.

One thing that is also clear is that certain subjective ESG factors are in conflict. For example, let us take solar power, that if you have a company you want to be able to score well because they have converted to solar energy, we also have to recognize that that solar energy is coming from materials that are manufactured in China where forced labor practices are not acceptable. Which one do you favor more?

Mr. FRY [continuing]. Attorney General, and Attorney General Reyes, I want you to answer this one if you can for me because I am crunched for time. But are asset managers required to tell their clients when they enter in these ESG-related pledges? I mean, doesn't that seem to be kind of a problem because my understanding is that they do not have to disclose that.

Mr. REYES. I am sorry. Could you repeat? I know your time is up, but I did not——

Mr. FRY. Are asset managers required to tell their clients when they enter into these ESG-related pledges?

Mr. REYES. Not currently, and that would be something that the Trump rules that the Department of Labor ruled just changed, previously required. If it was a tie and it is an intricate answer, but yes, there had to be transparency and disclosure and an explanation. Those rules have now gone away because of the current Administration's hostility toward that. So, it would be advisable, but there is not a requirement per se. You could read into their fiduciary duty, and I think implicitly, there ought to be, but right now there is no statutory duty.

Mr. FRY. Thank you both. Thank you, Mr. Chairman. With that, I yield back.

Chairman COMER. [Presiding.] The gentleman yields back. The Chair recognizes Ms. Porter from California for five minutes.

Ms. PORTER. Thank you very much. Attorney General Marshall, we have different political views, but I am going to predict that we might be able to agree on something right at the outset. I think the United States should have the strongest possible capitalist economy that it can. Do you agree?

Mr. MARSHALL. I do.

Ms. PORTER. All right. And capitalism is a lot like democracy. You get choices, and just like a democracy lets you choose between different candidates who may have very different political views, capitalism is supposed to let you choose between more than one product, service, or investment that meets your needs. Do you agree that choice is a fundamental premise of capitalism?

Mr. MARSHALL. I do not disagree.

Ms. PORTER. All right. “Do not disagree.” I am going to take that as agree.

Mr. MARSHALL. I will say it again. I agree with you.

Ms. PORTER. Thank you. Mr. Marshall, when you buy a car, what criteria do you look at to make your final decision? What is important to you?

Mr. MARSHALL. The quality of the vehicle and the cost.

Ms. PORTER. OK. The car that is best for you may not be the car that is best for me. I drive a minivan, and you maybe would not be caught dead in one. For all I know, maybe you are a Tesla guy.

Mr. MARSHALL. I drive a pickup, Congressman. Let me make that clear.

Ms. PORTER. Well, I was going to get that. I have a lot of constituents who buy low-emission vehicles. You may have a lot of constituents who buy trucks to use for towing or hauling. The thought process behind shopping for a car is not so different from the thought process that goes into investing in a company. You gather information to see if you are getting what you want as a consumer, or, in this case, an investor. Mr. Marshall, what kind of information would an environmentally conscious investor be looking for? Let us assume that these investors exist. What would they be looking for to make an investment that meets their needs?

Mr. MARSHALL. I could not answer that question for you. I do not know exactly how you define what it is you are talking about.

Ms. PORTER. OK. So, I think they are going to be looking for information about what the company's policies are to mitigate climate change risk, how they are addressing fluctuating energy costs that might be related to changes in market prices and availability of fossil fuels. They might be looking at how water shortages caused by drought might affect their business model, how supply change interruptions caused by climate migration. There are any kinds of things they could be looking for. The point here is that a lot of investors want to know more than just dollar and cent disclosures when they are making the decision to invest or buy. Maybe you do not. Maybe all you want to look at is the dollars and cents. But environmental, social, and governance disclosures give those investors the option to take that information into account.

And it is not just progressives. Plenty of conservatives have dumped their stock in Disney or stopped buying Bud Light because they think that they are too woke. Mr. Marshall, if a company became less woke based on market pressures, would you take legal action against them as AG?

Mr. MARSHALL. You would have to give me a little more information to know whether or not we could.

Ms. PORTER. If Disney changed its policy on LGBTQ+ Americans, would you sue them? If they changed their policy to fail to protect LGBTQ Americans, would you sue them?

Mr. MARSHALL. I think the analysis for us would not necessarily be whether or not that individual company changed its policy. The question is whether or not they were compelled to do so for otherwise unlawful reasons. It is one of the reasons why you see currently that there are active antitrust investigations involving multiple players on the ESG front, including Climate Action 100+ and the Net Zero Bank Alliance.

Ms. PORTER. OK.

Mr. MARSHALL. Can I finish, please?

Ms. PORTER. Yes.

Mr. MARSHALL. Very quickly.

Ms. PORTER. Mm-hmm.

Mr. MARSHALL. And our evaluation there is whether or not their actions incur corporations to make decisions that otherwise would not be appropriate for them to make.

Ms. PORTER. OK. So, let us break this down. It is very important to be clear with the American people. The Labor Department's rule does not impose a mandate. It permits fiduciaries to consider ESG standards if they believe those considerations are prudent in their decision-making and what the information is they want to provide investors. There is no mandate under the Department of Labor, and I think these antitrust concerns are, at best, misplaced.

There is simply no evidence that there is a violation of the Sherman Act going on. There is no evidence that this is what is happening. It is up to each of these companies. These initiatives are no different than other initiatives that corporations have that come together. These are private actors making their decision. It strains credulity for me to hear people suggest that BlackRock is some kind of leftist commie organization. For crying out loud, BlackRock is about delivering value, and in doing that, they are looking at a lot of different kinds of propositions about value, including good governance, including the effect that climate change may have on their bottom line. That is the whole point.

This is about freedom. That is what we are talking about. Capitalism delivers freedom, and that happens when markets let people choose what they want. That is all that you are trying to block here. You are trying to block people from looking at disclosures that they find valuable. If they do not find them valuable, do not look at them. And I think capitalism is about choices. I heard you say you do, too, so I hope you will reconsider your policy. I yield back.

Chairman COMER. If you want an opportunity to respond, we will——

Mr. REYES. A bathroom break——

Chairman COMER. The Chair recognizes Mr. Palmer for five minutes.

Mr. PALMER. I thank the Chairman, and I thank the witnesses for appearing today. Attorney General Marshall, Alabama's economy depends on robust industries: agriculture, timber, energy, auto manufacturing, aircraft manufacturing. How would the ESG initiatives potentially harm the state economy and impact consumers, not only in Alabama but nationwide?

Mr. MARSHALL. I think first and foremost, Congressman, is on energy prices. If you look, particularly what has driven inflation and what has hit Americans in the pocketbook, including Alabamians, it has been an increased cost of energy, part of that attributable to decreased investment in what is currently producing the energy in our country itself. But beyond that, particularly, for example, within agriculture, it is going to be the attack on agriculture as it relates to their responsibility, according to the left, for increased carbon emissions.

Let us take, for example, our cattle industry. As you well know, that is a significant portion of our agriculture economy. We also know from data the cows themselves are the largest emitters of methane gas. And the question is going to be, do we find farmers discriminated against in their banking relationships. Do we see farmers discriminate against in other financial relationships that impact their ability to do their job? The reality is, Congressman, I do not think many in my state are ready to give up their hamburger. I do not think they are wanting to put tofu on their grill. The issue is whether or not we can produce the food products this country needs and to be able to do it in a way that we can make it affordable to Americans.

Mr. PALMER. I do not think I am willing to give up my pickup or many of my friends who drive pickup trucks are willing to do that either. I want to point out something here. In this headlong rush to eliminate hydrocarbons from our economy, it is really insane. The very things that you have to have to build a renewable structure—cement, steel, plastics—the majority of that is produced in China, but it all requires enormous amounts of natural gas. But there is one other thing that I would like to point out: over 80 percent of the cost of fertilizer that is necessary for food production is natural gas, and if we eliminated natural gas from that process, it would cut world food production in half. And what we are seeing with ESG-driven investments, I think, is not only a threat to our economy. It is a threat to our food supply in many respects, but it is also a huge help to China.

I made this point this morning in a speech that I gave that this headlong rush to renewables Europe engaged in created the energy crisis, not the war in Ukraine. The war in Ukraine exposed it, and if they were to go 100 percent renewable, they would no longer be relying on Russia or United States or anybody else for natural gas, but they will be reliant on China. And that is one of the big concerns that I have about this big push to ESG is how this empowers China. Would you agree with that?

Mr. MARSHALL. I do agree with that. And interesting, if you look at the history of energy transformation, our country has been driven by two sources, one which is economic and the other is through technology, and it has usually taken a century or more for that to be able to take place. The current change is not driven by any action that this body has s taken, but instead it is by global elites who believe there ought to be global energy policy, not Congress acting, not those that are accountable to the people, but, in fact, it is those outside of our country dictating what our policy should be. And it is benefiting China, who, by the way, is not tied into the Paris Accord, as many of our developed countries are, and it gives them an unfair competitive advantage over American companies as well by access to cheap energy.

Mr. PALMER. Well, as I have pointed out in another hearing, China's objective is not to save the planet from climate change. China's objective is to rule the planet as the world's sole superpower, and they want to do that by 2049. And we have this artificial target of trying to achieve net zero by 2050, which under no engineering scenario, no technologies scenario is achievable. So now we are getting down where ESG is not only a threat to our economy. It is a threat to our national security. That is my opinion.

I believe that as we continue to divest ourselves from our hydrocarbon infrastructure and go more to renewables, it will make us reliant on China for the very materials that we need to sustain our energy infrastructure for our economy and our national security. Would you agree?

Mr. MARSHALL. I would agree. I think we should have learned our lesson during COVID when we saw how dependent we were on products produced outside this country when we needed them during the pandemic.

Mr. PALMER. Mr. Chairman, I want to, again, thank the excellent witnesses, particularly the gentleman from Alabama. I yield back.

Chairman COMER. Thank you. The Chair recognizes Mr. Garcia of California for five minutes.

Mr. GARCIA. Thank you very much, Mr. Chairman, and I want to thank all of our witnesses for their service. Thank you for being here. I know, for me, I am not here to particularly defend any sort of corporate strategy or investment. I think most of the Democrats, and the Democrats on this Committee are really focused on supporting people, and we are not here to put working people above big corporations. And companies we do know also want to consider certain goals that they have when they are investing, whether it is because climate is obviously changing, and it is having an impact. Companies obviously prioritize diversity because America is actually more diverse, and it helps them do business in a diverse society. So, these are decisions that make financial sense, and I think corporations are making these all the time.

I think we should also be as honest about what we are actually doing here. I think the Majority is clearly trying to score political points with some sort of panic around whatever wokeism is. I am not even sure what wokeism still is or how to actually describe it. We have many business leaders in the community that are criticizing this Republican far-right agenda that is ignoring climate change and that really is not operating in any sort of reality but in some sort of Fox News bubble and ecosystem.

So, the far right wants revenge, and they want to revenge on corporations, on working people, on everybody. The interest campaign that is happening across this country and certainly here in this Committee is also heavily orchestrated and what and wide reaching. ESG efforts have a lot of ties to dark money also across this country, and I want to just give an example.

I want to ask unanimous consent to submit for the record A February 2023 article from the group, Documented, which describes a private anti-ESG dinner on June 1 of last year during an annual Heritage Foundation meeting. So, if I can please have that article submitted for the record. Attendees at this dinner included representatives of Consumers Research, which is an anti-Union and anti "woke organization." Now, Mr. Frerichs——

Chairman COMER. Without objection, so ordered.

Mr. GARCIA. Thank you, sir.

Mr. GARCIA. Mr. Frerichs, a dinner like this, what does this tell you about coordination behind these kind of anti-ESG attacks?

Mr. FRERICHS. I think that it is not a surprise. We see it when letters are signed that there is someone behind it.

Mr. GARCIA. Thank you, and at the heart of these anti-ESG campaigns is also a name that should be very familiar to the American public, and that is longtime conservative activist, Leonard Leo. We all know that Leonard Leo spent his career installing conservative justices to the Supreme Court in an effort to overturn Roe *v.* Wade and so much other progress across this country. You also may remember Mr. Leo from recent press reports that have said that he asked Kellyanne Conway and her polling firm to "give Ginni Thomas another $25,000." He emphasized that the paperwork should have "no mention of Ginni, of course." Now, we know that Mr. Leo has set his sights on our democracy, on our Court. He has amassed $1.6 billion to do it, and so this is incredibly problematic for us as a country, and this is actually what this Committee should be looking at.

I also want to note an October 2022 article by the New York Times, and it notes that Mr. Leo's network and his campaign to push some of the country's biggest corporations on making investments pushing environmental, social, governance causes, all links back to this kind of anti-ESG movement that is happening and that we are discussing today.

So again, Mr. Frerichs, as your perspective as Illinois State Treasurer, how do orchestrated campaigns, clearly as this one, also that have folks like Mr. Mr. Leo involved, how does it actually hinder the free market that our Republican colleagues seem to always be uplifting and care so much about?

Mr. FRERICHS. When they pass legislation that prohibits disclosure of information, that hinders our ability to make good decisions. When they pass legislation that punishes certain companies from making business decisions, it costs taxpayers in their states, and it is it is not insignificant dollars. We have documented billions and billions of dollars this legislation is going to cost American taxpayers.

Mr. GARCIA. Thank you for that. Now, you signed a letter, along with 13 other State Treasurers, opposing anti-ESU legislation and noted that these radical bans have very real consequences for taxpayers. You have discussed a lot of this today at this hearing, and I appreciate that. The letter warned that if these anti-ESG bands succeed, "There will be two kinds of states moving forward: States focused on short-term gains and states focused on long-term beneficial outcomes for all stakeholders," and you have alluded to this earlier today. Can you explain one more time, because I think this is a really critical piece of what you have focused on today, what exactly do you mean by this part by this quote, in particular?

Mr. FRERICHS. So, when we are investing college savings funds or retirement savings, I am not so much interested in the quarter profitability for a company but their ability to be profitable for the next quarter of a century. That is because as a fiduciary, I am looking out those beneficiaries' long-term interests. We are not day traders. We do not hop in and out of these companies. We are universal investors, and rather than trying to boycott certain companies, we try to work with them.

Mr. GARCIA. Thank you. Thank you, sir, and I just, you know, I hope that the next Committee meeting, we can actually investigate Mr. Leo and his anti-ESG campaigns and support that is happening and are causing destruction across this country. And with that, I yield back.

Chairman COMER. The gentleman yields back. The Chair now recognizes Mr. Burchett from Tennessee for five minutes.

Mr. BURCHETT. Thank you, Mr. Chairman. I appreciate you all being here, and I apologize that I am the 435th most powerful Member of Congress, and that by the time they get to me, sometimes my questions have already been asked. So, when I ask you a question that you have been asked for the third time, I expect each you to look at me with great respect and realizing that that is an incredibly important question at that time, and I appreciate that. So, thank you, guys.

How do you say your name?

Mr. FRERICHS. Frerichs.

Mr. BURCHETT. Frerichs. You are allowed to smile when a Republican says something. You will not get any trouble, I promise.

Mr. FRERICHS. Sure.

Mr. BURCHETT. You are good, brother.

(Laughter.)

Mr. BURCHETT. From me anyway. Mr. Reyes. Did I say it right, Mr. Reyes?

Mr. REYES. Yes.

Mr. BURCHETT. Yes, sir. Mr. Reyes, could you explain to me asset managers' fiduciary duties to their clients?

Mr. REYES. Again, maximize shareholder value, shareholder profit or return. And, again, and just to follow on the last comments by the Congressman, if you will allow me. We want, as Republicans and Republican AGs, climate debate. We want discussion, we want dispute, we want determination, but we want that here in Congress. And I am not sure why anybody on either side of the aisle would want to abdicate, would want to allow anyone else to usurp your power in Congress to make these rules. This is the frustrating thing about all of this. This is not just about ESG information and facts. It is about ESG policy being pushed, again, by a process that totally bypasses Congress and undermines our democratic system.

Mr. BURCHETT. Thank you.

Mr. REYES. And let me say this, Congressman. If the policies that we are talking about are so self-evident and so popular, as has been referenced before, with the American people, let them stand on their own merits here in Congress. Let them be passed into law. Do not let them be forced through a market that is anything but free with these ESG horizontal agreements.

Mr. BURCHETT. Along those same lines, could there be a scenario maybe that asset managers would have to choose between ESG initiatives and maybe their fiduciary duty to some of their clients?

Mr. REYES. Absolutely. Those are times competing interests. Sometimes they can be aligned. Sometimes you can have social good. You can have stakeholder capital along with shareholder all aligned, but at other times, they are definitely in conflict.

Mr. BURCHETT. What kind of risk could these clients face if some of these asset managers perhaps would choose an ESG policy over maybe a financial return?

Mr. REYES. Well, again, the risk short term is, as I have referenced earlier, a capital risk, a diminution in the value of their investments, but the long-term risk is broader, and that is the concern that we have. The more existential threat is to our system and government, you know, foundations.

Mr. BURCHETT. OK. I wonder is it true that over 300 asset managers signed onto the Net Zero Asset Managers Initiative.

Mr. REYES. I believe that is correct or more.

Mr. BURCHETT. OK. And do they control, I think, over $59 trillion possibly an asset?

Mr. REYES. AUM. I believe that is right. I think that was in my written statement.

Mr. BURCHETT. OK.

Mr. REYES. I believe that is correct, Congressman.

Mr. BURCHETT. Yes, and are you also aware that the largest asset manager in the world was BlackRock, and they signed on to the NZAM Initiative?

Mr. REYES. They did, and State Street and Vanguard, it is about $26 trillion in assets, which is more than the U.S. GDP.

Mr. BURCHETT. Right. One of the initiatives of NZAM is to achieve zero emissions by 2050, in accordance with the Paris Agreement. Is that accurate?

Mr. REYES. Yes, sir.

Mr. BURCHETT. OK. Would you consider that to be a radical investment strategy?

Mr. REYES. Yes, sir, given the——

Mr. BURCHETT. I realize "radical" is a little strong, but——

Mr. REYES. The lack of certainty that this would even become a law, that there are going to be requirements, there are a number of reasons why I would say that, yes, that is a——

Mr. BURCHETT. OK. Mr. Marshall, would you agree with that?

Mr. MARSHALL. I would, Congressman. I also agree that you get more questions per capita in five minutes than anybody else on this panel.

Mr. BURCHETT. Yes, sir. Well, I work on that, and I appreciate you being from Alabama. I know that is a two-year school being in Tennessee. It is a fully accredited four-year school, and——

(Laughter.)

Mr. BURCHETT. I forget, do you all play football down there? I cannot remember.

Mr. MARSHALL. Mr. Chairman, can I beg——

Mr. BURCHETT. You are out of order.

(Laughter.)

Mr. BURCHETT. OK. Mr. Marshall, under the Climate Action 100+ Initiative, the signers pledge to ensure 166 targeted companies take necessary action on climate change. Does that sound right to you all?

Mr. MARSHALL. That is my understanding.

Mr. BURCHETT. Are any of these signers, do you think they are aware that they have a combined $68 trillion in assets under management?

Mr. MARSHALL. I think they understand it because they exercise that amount of money to be able to coerce policy changes for companies as a result of that.

Mr. BURCHETT. OK. And those are in alignment with the Paris Agreement. I am out of time. I appreciate you all very much putting up with this. I know you come in here thinking, whoa, I am going before Congress, and I do not think we are even feeding you all, but anyway, that is all right.

(Laughter.)

Mr. MARSHALL. Thank you for your hospitality.

Mr. BURCHETT. It is the Democrats' job to feed you all, so thank you.

Chairman COMER. The gentleman yields back. The Chair recognizes Mr. Frost from Florida for five minutes.

Mr. FROST. Thank you, Mr. Chairman. Less than two weeks ago, my home state of Florida became one of the first states to pass a law targeting ESG factors and investment recommendations. Just like other anti-woke witch hunts, the Florida Legislature and Governor are hoping to take their campaign of environmental negligence, social oppression, and incompetent governance to the national level. Florida Governor Ron DeSantis signed this bill into law even after business leaders, legislators, and public officials warned that similar legislation could hurt investors' bottom line and perpetrate systematic justices. In January, a consulting firm estimated that just for Florida alone, prohibitions against responsible investing could cost taxpayers more than $300 million, and when a company chronically employs people of color in its lowest-paying roles or spills toxic pollutants into the Gulf of Mexico, I believe they become a greater financial risk. They also become more of a risk to the people of the state.

Americans do not want to sponsor bigotry, corruption, and the destruction of our climate, and it is not just everyday Americans. Many different folks have been talking about this in the business community. It never ceases to amaze me how far the Republican anti-woke agenda can get from what Americans actually want. Mr. Frerichs, thank you so much for being here. Are you familiar with the November 2022 letter that Republican AGs circulated related to responsible investment?

Mr. FRERICHS. Vaguely.

Mr. FROST. Are you also familiar with the letter circulated by 16 Attorneys General that eviscerated the Republican attack against the effectiveness and importance of responsible investing?

Mr. FRERICHS. I have not read both letters recently, but I am aware of both of them.

Mr. FROST. Mr. Chairman, I request unanimous consent to enter into the record a letter from Attorneys General that clearly outline that responsible investing is sound fiscal policy.

Chairman COMER. Without objection, so ordered.

Mr. FROST. Thank you, Mr. Chair.

Mr. FROST. A bill similar to the Florida bill was introduced in Kansas. That bill was projected to cost $3.6 billion over 10 years and lower pension system returns. That bill was met with so much backlash from stakeholders, that a Kansas legislator was forced to drop the toughest version of the bill. In Indiana, after researchers reported that an anti-ESG bill would cost its pension system $6.7 billion over 10 years, lawmakers were also forced to rewrite the bill before it could pass. Similar pushback stalled efforts like this in North Dakota as well. Mr. Frerichs, why do you think these bills are facing so much backlash even in Republican states?

Mr. FRERICHS. I think they are facing backlash because they are anti-free market. They are going to cost the taxpayers money. It is being pushed by a special interest out there. You know, I heard talk about we want Congress to make these decisions. If Congress is going to make the same decisions that are costing these states billions of dollars, they will cost this country trillions of dollars. I would say what happened to the argument of states' rights? In Illinois, we want the right to consider all of this data. If another state does not want to and they want to get lower returns, that is their choice. We believe in choice. Do not take away our choice.

Mr. FROST. Yes, I ask myself the same questions about rights of local government and states' rights. You know, in my state of Florida, that has completely gone out the window. This is not your father's Republican Party. If states like Florida or Texas blacklist the largest municipal bond underwriters—mind you, these bonds fund some of the most basic functions of cities like in Orlando—this could impose a hidden tax amounting to hundreds of millions of additional dollars on those trying to engage in good business practices. Who would ultimately bear this hidden tax?

Mr. FRERICHS. The taxpayers in the state of Florida. If nothing is done in terms of climate change, there is great risk to the homeowners of Florida, especially along the coasts. There is risk to farmers in Florida. I heard people say that they care about agriculture. Climate change is a real risk. We have seen an increase in storms in some states, an increase in droughts, in others, recent flooding. But all of this disrupts our agriculture, which feeds this country. These are things that need to be considered.

Mr. FROST. Exactly. We have seen an increase in storms, and we have seen those same storms become longer and worse in devastating effects. Entire cities in Florida were decimated due to the hurricanes last year. These anti-ESG laws benefit no one, not everyday Americans who want to see our financial sector invested in for what is good for America, not stakeholders, and, once again, Republican lawmakers are trying to restrict individual liberty and force compliance with policies that the majority of Americans oppose. This is especially shown by the backlash that many of these bills have faced in both Democratic-and Republican-controlled states. Thank you so much for your time, and I yield back.

Chairman COMER. The gentleman yields back. The Chair recognizes Mr. Fallon from Texas for five minutes.

Mr. FALLON. The new rule by the Biden Labor Department—thank you, Mr. Chairman—to allow ESG to be taken into account and prioritized over fiduciary duty not only violates current law but also common sense. So, what is more powerful? I thought we were proud to be a rule of law Nation, so the rule of law should be more powerful than the law of rule. Retirement, I mean, it is pretty straightforward. Under Federal and state law, asset managers owe a fiduciary duty to their clients. Essentially, this means that they put their clients' interests first. When asset managers enter into

ESG pledges or commitments, they violate their fiduciary duty and instead place undue risk on their clients' investments. If you have a retirement plan, a fiduciary must make investment decisions and exercise shareholder rights based on solely whether or not they enhance retirement savings. That is straightforward. That is simple. It is clear, and it is smart. Quite frankly, anything else is an attack on capitalism.

So, we had a chart here earlier from one of my colleagues that had ESG investments all really high, and the traditional investments were lower. So that was compelling. Is it true because if it was, it would seem that it would already fit into the definition that I just read about being and acting in your clients' best interest, but unfortunately, it is not.

Bradford Cornell of UCLA and Aswath Damodaran of New York University reviewed shareholder value created by firms with high and low ESG ratings and scores provided by professional rating agencies, and their conclusion was, "Telling firms that being socially responsible will deliver higher growth profits and value is false advertising." What they found at the micro level was also on the macro level over the past five years. Global ESG funds have underperformed in the market by 250 basis points, 6.3 percent as opposed to the 8.9 percent you would have received under traditional investments. This means that an investor that is going to put in $10 grand comes out with $13,500 instead of $15,250.

So, it is interesting to note, too, a new report from researchers from the Universities of Utah, Hong Kong, and Miami found there is no evidence that socially responsible investment funds improve corporate behavior. Now, why is that, and that is very simple. The production of goods and services declines only when people stop buying them, not when others stop investing in the companies that produce them. This is merely another attempt by the far left to perform an end around of current law, meddling in free markets to compel behavior and achieve their dreams of a non-existent socialist utopia.

What you get, and you are paying for it, what you get is more risks, more danger, less stability, and fewer returns. And the ESG ratings, by the way, themselves are all over the board, so consider this: broadly accepted financial accounting practices have enabled competing rating agencies—competing, competitors, like Fitch and S&P and Moody's—to reach similar credit evaluations 99 percent of the time. ESG counterparts cannot say the same thing. MSCI and Sustained Analytics, they only reach the same ratings 54 percent of the time, just about 1 in 2. So, the ratings are incredibly discretionary.

Attorney General Marshall, is this the role of the Federal Government? Should Joe Biden be able to gamble with retirement funds and pensions of the American worker?

Mr. MARSHALL. No, and we have heard during this hearing today that this a Republican issue. In fact, dealing with ERISA has been a bipartisan issue that the Senate showed very strongly when they voted overturn the rule that the Department of Labor had advanced, as well as the one that we are currently litigating. The concern has to do, what does it mean to be a fiduciary, and what are we doing to be able to protect the hard-earned dollars and investments of American workers. Clearly, this Administration has gone too far.

Mr. FALLON. Attorney General Reyes, Federal, state, and local governments defined benefit plans make up $7.6 trillion of the $33-and-a-half trillion of the U.S. investment retirement market. How does funneling these workers' retirement funds toward varying lobbying efforts impact these governments' ability to function independently?

Mr. REYES. I am going to quote from the Vanguard CEO when he pulled Vanguard out of the NZAM. He said, "We cannot state that environmental, social, and governance investing is better performance wise than broad index-based investing," said Buckley. "Our research indicates that ESG investing does not have any advantage over broad-based investing." This ERISA rule, again, critically important to 152 million working Americans. That is out of a total of 158 for $12 trillion of their hard-earned dollars. And, again, as you noted earlier, Congressman, the rule is violative of ERISA on its face, and we believe defective for a number of other reasons that we are confident we will prevail on in court.

Mr. FALLON. Thank you. Thank you, Mr. Chair. I yield back.

Chairman COMER. The gentleman yields back. The Chair recognizes Ms. Balint from Vermont for five minutes.

Ms. BALINT. Thank you, Mr. Chair, and thank you, gentlemen, for being here. I am sure it has been quite grueling to get to this point. So, I want to just say I am a former public school teacher, and I earned a state pension through that work, and I really see my job today as trying to explain to Vermonters why the topic of today's hearing matters to them. So, if you have a public pension or retirement plan, or if your retirement savings are invested in the market, this matters to you, and considering environmental, social, and governance factors in investment decisions, I believe, is just good fiduciary practice. And, in fact, considering ESG factors, also known as responsible investing principles, are part of an asset manager's fiduciary duty to their clients, who are regular people. They are teachers, first responders, nurses.

Mr. Frerichs, how would you define an asset manager's fiduciary duty to the layperson? How do you explain it to regular people who may be watching this?

Mr. FRERICHS. To make investments, to get the greatest return for the time period that the pensioners, so the beneficiaries, would need them.

Ms. BALINT. So, would you say an asset manager has a responsibility always to act on behalf of the client's best financial interests when they are managing their accounts?

Mr. FRERICHS. Most certainly.

Ms. BALINT. Would you agree that an asset manager's fiduciary duty requires the consideration of issues that affect a company's financial performance and its bottom line?

Mr. FRERICHS. Correct. I would.

Ms. BALINT. And so, you said earlier, and I thought this was great. You said we are not day traders, right?

Mr. FRERICHS. Yes.

Ms. BALINT. We are looking for investments in the long term, and certainly I think about that with my pension. I want to make sure that whoever is managing those investments is thinking about factors over the long term. So, to make it extremely clear for everyone, how do ESG factors help an asset manager assess investments because that is what we are talking about here: am I making the right investments? Flesh that out for us, if you could.

Mr. FRERICHS. These factors all deal with risk. We are universal investors. When you are investing hundreds of billions of dollars, you do not sort of pick and choose a couple of companies out there. We try to engage with do the companies we invest in and make sure they continue to be sustainable over the long run. We want these companies to be profitable, but if you make short-term decisions, now if you trying to be profitable this quarter, there are easy levers to pull. You can stop spending on R&D, you can lay off employees. You can raise prices, and that will make you profitable in the short run, but in the long run, your customers with those increased prices may leave you. Those employees that you laid off, the remaining ones may be despondent. They may be demoralized. They may slow down. They may go on strike. If you stop investing in R&D, your competitors will overtake you in the future. And so, the question is the timeframe.

Ms. BALINT. Mm-hmm.

Mr. FRERICHS. Do we want companies making decisions for the short run or for the long term? And as someone in charge of managing college savings funds, retirement funds, pensions, we invest for the long run.

Ms. BALINT. And the other thing that I thought was really interesting is, as a colleague said earlier, this is not a mandate, right? This is about——

Mr. FRERICHS. No.

Ms. BALINT [continuing]. Being permissive. So, do Republican efforts to prohibit the consideration—just the consideration—of these factors create legal risks for fiduciaries going forward?

Mr. FRERICHS. Yes. Let me say investing is hard. There is lots of information out there, lots of data you have to consider. If someone does not want to do that work, that is OK. I would say they are not doing their fiduciary duty if they do not do that, but if they limit my ability to have access to data, to consider all kinds of variables out there, they are making it difficult for me to maximize returns for the beneficiaries for the long run.

Ms. BALINT. So essentially, they are taking tools away from you that would enable you to make the best decisions on behalf of your clients.

Mr. FRERICHS. Correctly, and I am not trying to take any tools away from them. If they do not want to look at these risk factors, they do not have to. We do not mandate that, but what state legislators are doing is they are mandating that our asset managers that are advising firms cannot provide us with this data, and that is dangerous. It is dangerous for Americans. It is dangerous to pensioners. It is dangerous for those teachers who are retiring on a small pension.

Ms. BALINT. I am so glad that you just boiled it down because that is what we are talking about here. We are saying you cannot have the information that you need to make the best possible decisions for your client.

Mr. FRERICHS. Exactly.

Ms. BALINT. It is absurd, right?

Mr. FRERICHS. Yes.

Ms. BALINT. OK. I just want to be clear. So, you know, responsible investing means gathering information about and considering ESG factors or mount others that help you determine, you know, best choice for your client, and I just want to say this is just such a dangerous path that we are going down here. It goes along with the book banning that we had earlier. Taking away information from people is not what this government is supposed to be about. Thank you.

Mr. FRERICHS. Thank you.

Chairman COMER. The Chair recognizes Mrs. Luna from Florida for five minutes. Beforehand, I want to publicly say congratulations on your great news.

Mrs. LUNA. Thank you. It is like the best kept secret in Washington. I am expecting, so, yes, thank you guys.

Chairman COMER. And I thought it was interesting how many Members of Congress have delivered a baby?

Mrs. LUNA. I will be number 12, so it is .1 percent.

Chairman COMER. Twenty in the history of Congress.

Mrs. LUNA. Twelve.

Chairman COMER. Twelve? Twelve ladies have delivered babies while in Congress. I think that is a pretty interesting statistic, so congratulations, and you are recognized for five minutes.

Mrs. LUNA. Thank you, Chairman. I want to start out by saying I think investments made on behalf of the American people by assets managers should serve in the interest of the investor, not woke ideologies being pushed by corporate financial institutions and to entities, like the SEC. Honorable Reyes, I actually really liked how you kind of unloaded with some facts, and so if I have time at the end of this, I want to yield to just kind of let you speak on what you think it is important for the American people to know, but if I could just real quickly ask you a few questions. What are the challenges faced by companies in dealing with increasing numbers of shareholder proposals, especially those related to ESG metrics?

Mr. REYES. Well, they are being forced to, themselves, choose a path that may not be yielding the best returns to their own investors. They may be forced to make choices that push their own customers away from their own products. I mean, there are a whole host of different problems that this type of pressure can have on a particular company. And then on the other side, there are a lot of problems, as we have already discussed extensively, with investors and the potential loss of, you know, capital investments. All of those things are problematic, Congresswoman.

Mrs. LUNA. How often are clients informed that their asset managers are prioritizing ESG metrics over their financial return?

Mr. REYES. Asset managers are required to disclose what they are investing in, but I do not think it is readily apparent to most people that their investments are necessarily being invested with an ESG bent, right? So again, transparency laws and requirements would behoove, I think, the whole process, and that is what we are here, again, to talk about. Not the policy, but the process, how this is being effectuated. Is it being done fairly and in a free market, or is it being done coercively?

Mrs. LUNA. I think it is very interesting that obviously there are many things that my colleagues across the aisle and I probably disagree on, probably agree on some and mostly disagree on most. But I think it is very interesting that in this type of situation that you have people that sometimes blindly trust and really do not know that they might necessarily be investing in something that goes against what their moral principles are, whatever it might be.

Mr. REYES. Yes, I do not think most of us even understand the power that we have to vote our shares. The vast majority Americans are working hard and trying to raise families and not paying attention, so that is part of the problem. They rely too heavily on proxy services or their asset manager to make those decisions for them. Again, let me make this point, Congresswoman. We have never disputed your own ability to invest whatever assets you have the way that you want to, including an ESG program, but when you are an asset manager investing on behalf of others, it is an entirely and wholly different circumstance, and you have to live up to that fiduciary duty.

Mrs. LUNA. So, we have about two minutes left, and I want to yield the rest of my time to you. What is the most important takeaway for the American people to know from this hearing today?

Mr. REYES. Well, again, I would like to point back to the three things that we talked about. One was the DOL rule, but we have already covered that, I think, sufficiently. The second, going back to why the SEC would not exclude a shareholder proposal that violates state laws against anti-discrimination laws, and that is something that I hope that the Committee will take up and have a hearing on. The ICC could have easily excluded that. They chose not to, and, again, this is in the context of proxy groups. It was because of, my contention, the pressure of a proxy service that the shareholders garnered enough votes. They did not win, but they came a razor's edge of prevailing, 47 percent, to literally put their own company in harm's way by violating a number of state laws. So, that is one.

The other is, going back to FERC, and if this Committee would look at organizations like NZAM and Climate Action 100+, again, $68 trillion, $59 trillion AUM, and view them to see if they are a holding company, as we believe they should be construed under FERC. They are acquiring more than $10 million and other utilities. It is problematic because if they are a holding company, then they are violating a number of FERC regulations, including owning more than 20 percent of a particular utility. They own multiple utilities in excess of 20 percent. FERC requires asset managers to be passive, and these horizontal organizations are anything but passive. They are bluntly and very self-aggrandizingly clear about what their intent is, and that we believe also violates FERC's prohibitions on asset managers being not passive and trying to operate the utilities.

So those are the areas, again, that I would like for the Committee to be able to take up. Again, appreciate your time. Congratulations to you. I have six kids of my own, and this is the best news I heard all day.

Mrs. LUNA. Thank you, Chairman. I yield my time.

Chairman COMER. The gentlelady yields back. The Chair recognizes Ms. Lee from Pennsylvania for five minutes.

Ms. LEE. Thank you, Mr. Chairman. Every day, it seems like there is a new acronym that my Republican colleagues are afraid of or fear mongering and driving up some fear around. I am having a really difficult time keeping up with them, so I think like some of my colleagues before me, I hope that we can use this time to kind of get to the heart of what this is about. Mr. Frerichs, I was wondering if you can help me with a quick hypothetical, and, of course, please forgive me if any of this is a bit repetitive, but we are all just trying to figure out how to deliver this information best to our districts.

So, let us say I am a first-time investor looking to start my retirement fund, and we are discussing how to invest the money I have earned, or I have saved. Excuse me. Yes or no, would you consider the average earnings over the past few years of a company and the growth of the overall industry?

Mr. FRERICHS. Yes, most certainly.

Ms. LEE. Would you look at it if the board had been recently accused of fraud or mismanagement?

Mr. FRERICHS. That would be a risk.

Ms. LEE. Would you consider how compliant a company is with EPA regulations?

Mr. FRERICHS. Oh, certainly. You might be able save money by dumping chemicals illegally, but it will cost. You can either pay now or you can pay later.

Ms. LEE. Thank you. Adding to that, why would you look at all of those factors when advising me on how to invest my money?

Mr. FRERICHS. Because all of them will have an impact on the returns you make.

Ms. LEE. Thank you. Having as many data points, it sounds like, as possible minimizes risk and maximizes value, making our retirement accounts stronger. The pandemic, rising inflation, and stagnant wages have hit Americans hard over the past few years. Across the board, people are saving less for the future, so every single dollar counts. This Republican crusade against responsible investing is putting Americans' hard-earned savings at risk, and we cannot sit by and let that happen. Mr. Frerichs, how will banning responsible investing lead to worse returns for Americans relying on public pensions for retirement?

Mr. FRERICHS. Let me try to make an analogy here. We talked earlier about buying cars. You know, there are many factors you use in buying a car. You have got to look at the car, you got to sit in the car, feel the car, smell the car, see if you like it. You also might consider price. We also say that they should publish miles per gallon. Now, this is like saying, no, no, no, that is an environmental impact. You should not be able to know the information on MPGs in your car. Miles per gallon will directly affect your cost down the road. You ought to have access to that. These factors that we talked about are similar to that, and these efforts to deny us information on environmental and social and corporate governance issues are making it more difficult for us to be good consumers.

Ms. LEE. Thank you for that. Republicans would rather force our public servants to throw away hard-earned money and extra fees than simply allow financial professionals to invest responsibly. They are willing to risk the retirement savings of our teachers, our firefighters, our municipal workers, our public servants, all to protect wealthy corporate interests. Limiting responsible investing is not even a popular concept in Republican-controlled state legislatures. As my colleague from Florida before me mentioned, the Indiana bill as one such option. Mr. Frerichs, who will be stuck paying the price if Republicans are successful in restricting and banning responsible investing?

Mr. FRERICHS. It is ultimately on the pensioners, on the beneficiaries of these retirement funds. If they are getting reduced benefits, reduced interest returns, or they are paying more additional costs, like they are in Texas or like your colleague from Florida pointed out, ultimately it falls on the taxpayers.

Ms. LEE. Thank you. Typically, responding to these extreme conspiracy theories is not worth turning our attention away from so many of the important issues facing our country, but propping up their corporate buddies' interest at the expense of Americans' retirement is despicable, and we just cannot let that happen. Thank you, Mr. Frerichs and the panel. Mr. Chairman, I yield back.

Chairman COMER. The Chair recognizes Mrs. McClain from Michigan for five minutes.

Mrs. MCCLAIN. Thank you, Mr. Chairman, and thank you all for being here today. I appreciate it. In my opinion, simply put, ESG is politization of investing in and continues to be weaponized by the radical left.

I pulled the definition. "The primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries for the exclusive purpose of providing benefits and paying plan expenses. Fiduciaries must act prudently and must diversify the plan's investments in order to minimize the risk of large losses." Am I correct in that?

[A chorus of ayes.]

Mrs. MCCLAIN. That is the definition, right? So, I just want to make sure we are all on the same page. Mr. Reyes and Mr. Marshall, are asset managers required to tell their clients when they enter into these ESG-related pledges?

Mr. MARSHALL. I think General Reyes has answered specifically. The answer is no——

Mrs. MCCLAIN. No.

Mr. MARSHALL [continuing]. That there is not a direct disclosure requirement.

Mrs. MCCLAIN. Right. So, I want to make sure that everyone understands. I am an investor. I am going to invest in ABC fund, right? But you have made an agreement or a pledge with an ESG investment, right. That is based on your belief of what is ESG compliant or whatnot, and you do not have to tell me that you have entered into that pledge. Am I correct in that?

Mr. MARSHALL. Yes.

Mrs. MCCLAIN. OK. Could you imagine if we did that, like, with pro-life or something? I think my colleagues on the other side would actually go crazy. So, a follow-up to that, if you are telling me that money managers can invest clients' money into ESG-approved companies without the knowledge of investors, yes, we can do that, right? So, I heard the left talk about transparency. Is that a definition of transparent, not being transparent with the investors on the pledges that you have made behind their backs?

Mr. MARSHALL. Yes, I think one of the major issues for Attorneys General is for our consumers, to make sure they are fully informed on business transactions in which they engage.

Mrs. MCCLAIN. I mean, I am all for people to have choice in where their money goes and what they look at, right? But if we are going to be honest and we are going to be transparent, wouldn't it make sense? What is the harm in saying, hey, I entered into a pledge that requires me to do some ESG stuff? What is the harm in that? What are we trying to hide? I do not understand that. Why the lack of transparency?

Mr. FRERICHS. I will say from Illinois' perspective, that is not a problem. We publish all of our corporate engagements online——

Mrs. MCCLAIN. So, everyone does that or just Illinois?

Mr. FRERICHS. We do that in our office. That is the only office I can control.

Mrs. MCCLAIN. OK, because I do not think, by the answer to my first question, our asset managers, and perhaps I will repeat it, are asset managers required to tell their clients when they enter into ESG-related pledges. I believe the answer, and we can check the record, was no. So, to me, that is lack of transparency. Maybe I have a different definition of "transparency," but go ahead, Mr. Reyes.

Mr. REYES. Congresswomen, since you brought it up and maybe it was a hypothetical that you were just throwing out, but if truly there were a pro-life agenda and information in there were indexes to establish what companies were doing to foster pro-life or pro-Second Amendment, whatever——

Mrs. MCCLAIN. Pick one.

Mr. REYES. Pro-life. Under the same arguments and logic, having a larger work force would certainly help the economy and in 18 years, you know, when you have a person of majority being able to enter the work force, but certainly even sooner, than 2050 goals ostensibly, and even more impactful criteria, would then my colleagues be equally open to considering all of that information? I do not know, but it is a good hypothetical.

Mrs. MCCLAIN. I do not know either, but I have an opinion on where I think they might stand. But at any rate, in my opinion, ESG investments distribute money based on political agendas. That is not their job. It is not up to them to have a political agenda. Rather, their earnings are best returned for savers. I mean, at the end of the day, rate of return needs to matter because then we are going to go back when all of these investments fail, and we are going to look at the investment companies and say, well, you did not return your investment. We have to be transparent with the American people, and if we cannot be transparent with our ideological views, then what are we hiding? And that is the purpose in this. Let us just be transparent, and let us be transparent with a concept through all of our investing. And with that, I am over, so thank you.

Chairman COMER. The Chair recognizes Ms. Crockett from Texas for five minutes.

Ms. CROCKETT. Thank you, Mr. Chair, and before I begin, let me first just say thank you so much. I sit on the Ag Committee, so you were like feeding my soul as you were talking about the struggles of our farmers because I have been listening to my farmers talk about the droughts. And I am from the state of Texas where we are enduring droughts, floods, as well as freezes, so we have everything as a result of the thing that really does exist called climate change. So, thank you for that.

I am tired of my colleagues on the right using these hearings as a tool for their 2024 campaign. Pretty soon, this Committee's Majority will need to file with the FEC an in-kind contribution. Instead of talking about how Speaker McCarthy's manufactured crisis on the debt ceiling has led to declines in the stock market, instead of talking about how investors are scared about whether U.S. will pay its bills, today we are talking about their fear of what my colleagues call radical woke-ism.

ESG is not—I repeat—ESG is not radical or woke, and being from Texas I can tell you where radical looks like because, clearly, we have had some tragedies just this past week because of radical rhetoric, if we are going to talk about what radical looks like. ESG, like any financial information, is just good business. It is another tool in the toolbox to consider advantageous investments and business decisions. Asset managers have a legal fiduciary duty to maximize profits, but it is ignorant to say that to maximize profits you have to do it at the expense of ESG. That is just false.

ESG impacts our investment strategies that incorporate long-term risks to make long-term down payments as well as returns on future breakthroughs. They allow financial professions to manage and promote risk reduction for client investments to maximize returns. I am surprised our Chairman is opposed to this because just last week, he praised the GAO's High-Risk List as a valuable tool for, "Congress can make more informed decisions."

It is only responsible then that asset managers present all information posing financial risk to clients to allow them to make more informed decisions, especially Americans wanting to responsibly manage their retirement savings. The asset managers offer ESG information because large companies use ESG in their business decisions and investments. Why? Because there are real financial and monetary returns when ESG impacts are incorporated.

Attorney General Marshall, yes or no, ESG risks have monetary value that impact financial benefits and corporate opportunities?

Mr. MARSHALL. I disagree with all of ESG criteria.

Ms. CROCKETT. Actually, if you look at Royal Dutch Shell's annual reports dating back to 2005, it stated, "Shell assesses the underlying economic, political, social, and environmental drivers shaping the markets and margins to evaluate commercial opportunities and potential new business models." It has done so in almost every report, if we look back at examples from 2010 and 2022. Even Fox News, who my colleagues love, a publicly traded company, in its 2022 annual financial report noted that environmental, including climate, social, and governance matters, have costs that pose material adverse effects on its business, financial conditions, and operations.

By Republican standards then, Fox and Shell are advancing radical woke propaganda. I do not see efforts to cancel them or call them out. As Attorney General Marshall said in his written testimony, "Global elites are using ESG, a woke economic strategy to hijack our capitalist system," but I digress. Attorney General Marshall, will you file lawsuits against Fox for breaching its fiduciary duties, or is it just the investment advisors publicly providing information on ESG that you want to target?

Mr. MARSHALL. Fox does not have a fiduciary duty to the citizens of my state.

Ms. CROCKETT. Just to be clear, ESG is not woke or radical. It is just good business. Do not take my word for it. A New York University economic study examined over a thousand reports reviewing the relationship between ESG and financial performance. It overwhelmingly found a positive relation between ESG and financial performance for returns on assets, returns on equity or stock prices. Why are we wasting valuable time examining ideas that are not in the public interest and which the public has no interest in?

I have 30 seconds left, and with that, I would like to yield to the honorable Treasurer to just offer any thoughts, any additional thoughts that you may have?

Mr. FRERICHS. Yes. I will just say I heard talk about how these ESG data, there is not agreement, that it is difficult, it is all over the board. It is because we are looking at different industry, and there are different risks in different industries. Product safety is a big risk in consumer products.

Ms. CROCKETT. Yes.

Mr. FRERICHS. In business services, it is not as big of a risk. Climate change is a big issue for property insurance but not so large and supplemental insurance.

Ms. CROCKETT. Absolutely.

Mr. FRERICHS. I will repeat that investing is hard. You have to consider different industries. You have to consider a lot of different factors. A lot of people would like to just outsource that. Maybe they do not like their choices, but we take this very seriously, and when you pass legislation to deny us that data, it makes our job that much more difficult.

Ms. CROCKETT. Thank you so much.

Mr. FRERICHS. Thank you.

Ms. CROCKETT. With that, I yield.

Chairman COMER. The Chair recognizes Mr. Langworthy for five minutes, from New York.

Mr. LANGWORTHY. Thank you very much, Mr. Chairman, and thank you to our witnesses for joining us here today.

Asset managers wield tremendous power and responsibility over trillions of dollars of in assets, and it is important that they make investment decisions based solely on financial performance and risk management rather than being swayed by political and social activism. Now, while some view ESG policies and initiatives, like Climate Action 100+, is a noble cause, it is important to remember that the companies targeted by these initiatives are also vital to the American economy and provide jobs and livelihoods to millions of our citizens. If these initiatives are successful in imposing additional regulations and restrictions, it could lead to significant job losses and increased financial hardship for many Americans, which leads me to my first question.

Attorney General Marshall, Climate Action 100+ has identified companies targeted by asset managers, such as Lockheed Martin and Procter & Gamble, which produce military equipment and pharmaceuticals. If there were to be significant change in the allocation of capital toward these companies, how might it affect national security and public health in the United States?

Mr. MARSHALL. Well, I think it absolutely could impact it based upon the ability of those companies to fulfill their mission. Congressman, one thing that has been talked about here is the market, and what has been ignored by your colleagues on the left is the fact that the market is not driving individuals to boycott certain segments of industry. They are not asking people to not be financed because of the particular jobs that they do. That is driven by outside agencies, not the market itself. We need to let the market prevail, and if we do so, we have the opportunity to provide goods and services not only to the people of this country, but also to be able to maximize the value to investors.

Mr. LANGWORTHY. Thank you. The list also comprises energy producers and utility companies that rely on fossil fuels. If a shareholder proposal were to mandate a company like Xcel Energy, which provides natural gas and electricity to millions of Americans, to entirely abandon fossil fuels, how might that impact the customers and the employees of that company?

Mr. MARSHALL. Well, look at California, No. 1, by the way, about whether or not we are going to have rolling blackouts, whether or not we have reliable energy, and whether or not we have affordable power that the citizens of my state can be able to pay. When we have this radical transformation of energy policy not dictated by the body in which you sit, but instead by global elites, then there is not the opportunity to debate what are the consequences of those decisions. We are already beginning to see that, but yet, what may occur in the near future, we still do not know.

Mr. LANGWORTHY. These companies, whether or not ESG advocates agree, are essential to the American economy. They provide employment to hundreds of thousands of people as well as essential services to millions. The International Energy Agency concedes the technology to achieve a net zero by 2050 does not yet exist. Does an investment strategy ground in the basis of that target increase risk to investors?

Mr. MARSHALL. I think absolutely, and particularly risk as it relates to how it is that we are going to be able to provide cheap energy, which has been the driver of this company across the board to all Americans and all states.

Mr. LANGWORTHY. America is already in an energy price crisis, but if these major energy producers, they lose their financial backing or they are forced to abandon fossil fuels—either of the Attorney Generals can answer this—would you expect energy prices to rise if they lose a significant financial backing?

Mr. MARSHALL. Absolutely. I mean, first of all, the technology is not to where renewables are going to supply what already is being supplied by those plants that are fueled by natural gas or coal. And if, in fact, we are unable to acquire the resources we need for the power to be generated, which we saw recently, that cause the increased price for consumers, then America needs to be ready. We need to be ready to pay higher prices and also have unreliable energy, which we have been able to depend on for at least my lifetime, Congressman, and for others as well.

Mr. REYES. And on that point, again, Congressman, I will reiterate what the FERC commissioners just gave us a dire warning about the stability of the grid and the security of the grid, given current circumstances.

Mr. LANGWORTHY. And just in my closing seconds, Attorney General Reyes, I know that many of the companies who do conform to ESG initiatives, they are relying on rare earth minerals, specifically resources that just are not readily available in the United States. There is an overemphasis on companies that rely on these resources, which primarily come from China. Does that compromise American national security, in your opinion?

Mr. REYES. It absolutely compromises our national security, and, in addition, something we haven't mentioned earlier, there are other issues about our Southern border security that ESG also compromises. Thank you, Congressman.

Mr. LANGWORTHY. Thank you very much, and I yield back, Mr. Chairman.

Chairman COMER. The Chair recognizes Mr. Moskowitz from Florida for five minutes.

Mr. MOSKOWITZ. Thank you, Mr. Chairman, and I want to thank the witnesses for being here today and attending what could be called the Oversight Committee hearing on the death of the free market. I mean, boy, how things have changed in the Grand Old Party. I mean, it used to be about free markets, and it used to be about corporate freedom, and it used to be small government, and it used to be, you know, government out of businesses, government out of the bedroom. Boy, has that pendulum really swung here.

I mean, we want government everywhere. I mean, this is like corporate socialism where we now want the government to tell people that they have to invest in certain companies. Like individuals cannot make the decision? I mean, it is a wild sort of turn of events for the Grand Old Party. I mean, if Ronald Reagan was here and he was listening to people talk about, you know, that we need government to make sure that people have to invest in companies that, you know, make guns, you know he would not even recognize you guys.

But some of the witnesses, you know, when they were talking about ESG, they talked about it as if it was a deadly weapon that is going to destroy our country. You know, it is not. You know, it is not a widely supported investment strategy used to minimize and maximize returns, one that is shown to offer, you know, greater long-term resilience, lower risks due to factoring in all potential costs to society, but I want to focus on this deadly weapon part.

You know, I am from Parkland where the shooting was at my high school, Marjorie Stoneman Douglas, so if you want clear clarity on what a deadly weapon is, I can assure you it is not ESG. It is a kid with an AR–15 and unlimited ammunition walking into my school and killing 17 people. So, let us have a real sort of grip of reality of what investment strategy is or is not versus what a deadly weapon is. You know, after the Marjory Stoneman Douglas school shooting, you know, Walmart and Dick's Sporting Goods announced that they would stop selling assault rifles, and, you know, I applauded them for doing that. And if I want to invest in a company because they have decided to make a policy change, I should have that ability to do so or not do so, by the way.

I am pretty sure I just saw, you know, some of my colleagues, you know, going out and you know shooting Bud Light cans because, you know, they did not like what Bud Light was doing. Should we have government mandate that they got to go invest in Bud Light because we want to support Bud Light? I mean, that is what you guys are advocating. I mean, it is really kind of crazy.

And so, you know, I do not know what we are doing here, Mr. Chairman. You know, this is part one. There is going to be a part two. I mean, part one was just so fascinating, I cannot wait for part two. But, you know, this Committee has not taken any action on gun violence. We want to talk about a deadly weapon. This committee has not looked at all into AR–15s or deadly weapons or school shootings or mass shootings. I mean, do you think parents in this country care about ESG? No, they care about dropping their kid off at a movie theater or at a mall, you know, or at school. They do not care about ESG. You know, this is stuff that, like, 10 percent of Twitter cares about, OK?

And I just want to know when we are going to get serious here. And so, Mr. Chairman, I ask when is this Committee going to have a hearing on gun violence?

Chairman COMER. You were not here last year, but all the hearings pertained to the Washington Commanders football team. They pertained to the Equal Rights Amendment. They pertained to abortion. They did not have a single hearing with a single Biden Administration official. They did not have a single hearing on anything relating to how tax dollars were being wasted by this Administration. So maybe you should take the lead and campaigning for your side of the aisle, and then if you all win the majority, then you can have hearings on the Washington Commanders football team again.

Mr. MOSKOWITZ. Reclaiming my time, Mr. Chairman, you know, that is fine. I was not here, but, you know, you are in charge now, and mass shootings are completely out of control. And so, you have the power to make the decision decide whether we should have hearings on D.C. public urination or on mass shootings. You are the Chairman. I am just a lowly Democratic freshman, and so I implore that this Committee start to look at mass shootings and the real weapons that are destroying people's lives, which are AR–15s. Thank you Mr. Chairman.

Chairman COMER. The Chair recognizes myself for five minutes. General Reyes, in the letter that you led with your Attorney General colleagues, you said, "The 2023 proxy season will present multiple occasions on which asset managers will have to choose between their legal duties to focus on financial return and the policy goals of ESG activists." Can you provide some examples that illustrate these occasions?

Mr. REYES. Sure. Let me give you one very concrete example. I alluded to it earlier, Mr. Chair, but that resolution pertaining to Travelers Insurance——

Chairman COMER. Mm-hmm.

Mr. REYES [continuing]. Is back up again for this season of proxy proposals and for shareholder resolutions and voting, and I did not get a chance to perhaps articulate clearly enough the problematic nature of that situation. So, you have a very activist faction of ownership, backed by one of the two largest proxy voting agencies, pushing a particular agenda that they have agreed upon to conduct racial audits, which may be appropriate or may not be appropriate for other companies or other industries but certainly are not appropriate for the insurance industry.

The directors of Travelers have brought this to the Securities and Exchange Commission pleading for relief to exclude, which the SEC has the power to do, that type of proxy proposal—excuse me—that type of shareholder proposal from being even considered, but the SEC has sat on its hands and not done anything to exclude that, so it is back up again. This would require Travelers to then ask for information based on a person's race.

Chairman COMER. Mm-hmm.

Mr. REYES. They would solicit information for underwriting purposes and for identification, which clearly violate numerous different states' laws.

Chairman COMER. And I think that is a very good point that I do not think my friends on the Democrat side of the aisle understand. When they talk about ESG, they are just talking about what mutual funds, pension managers can invest in, or treasurers can invest in their pension funds. And Kentucky has the second worst funded pension in America, but we will always say thank God for Illinois because it was the one state worse than Kentucky's. But what I do not think the Democrats understand is this affects banking and insurance. It is not just investing, and we have got a problem in our banking industry right now, and, you know, we are not going to get into that, but this ESG is a political movement that is gaining ground. It is gaining ground on Wall Street, and it is affecting consumers not just investors.

But you have previously described how the insurers face the dilemmas by pursuing ESG goals. Do you think these insurers are facing these ESG-related proposals that push for unlawful altercations of underwriting activities?

Mr. REYES. Well, clearly, it is the same resolution that was proposed the previous year. They are just hoping that they can win over another 3 or 4 percent and carry the day, which——

Chairman COMER. So what risk are the insurers exposed to with the adoption of ESG factors in underwriting?

Mr. REYES. They would be potentially liable——

Chairman COMER. Liability, exactly.

Mr. REYES [continuing]. In dozens of states——

Chairman COMER. Money.

Mr. REYES [continuing]. For breaking the law, or excuse me, Mr. Chair, you alluded to banking. Although we have not seen yet concerted efforts to de-bank solely based on ESG criteria, that is not out of the realm of possibility.

Chairman COMER. It is not, and if we look at the website for the San Francisco Fed, it was all about ESG policy, and some of the banks, Silicon Valley sticks out in my mind.

Mr. REYES. Well, we just sent a letter to JPMorgan Chase with concerns over de-banking regarding religious liberties.

Chairman COMER. Right.

Mr. REYES. And it is only one step removed——

Chairman COMER. Exactly.

Mr. REYES [continuing]. To then migrate over. If they start to see more and more insurance companies and asset managers withdraw from some of these large horizontal agreements, then you may see more pressure on banks to start de-banking.

Chairman COMER. Exactly. And I think that is of the utmost importance. Mr. Moskowitz, I do not think, understands the issue. He is thinking in terms of Wall Street, but this has a potentially detrimental effect on our ability to bank and insure. This significantly increases liability costs for many industries, which will be passed along to consumers. I do not think my friends on the other side of the aisle have fully comprehended what inflation is and what causes inflation. But you know, my time has expired here, but, you know, I am just amazed at the defense of ESG policies and the defense of, you know, why we have to have this type of radical political ideology ingrained in our investing when we just had a press conference and showed bank records that showed the Biden family getting millions of dollars from places like China and Romania, and I wonder what type of ESG policies China and Romania have. You all probably cannot answer that, but maybe that is something my friends on the other side of the aisle could look into.

The Chair now recognizes Mr. Burlison for five minutes.

Mr. MARSHALL. Mr. Chairman?

Chairman COMER. Yes?

Mr. MARSHALL. Mr. Chairman?

Chairman COMER. Yes.

Mr. MARSHALL. I am sorry. Down here. This is General Marshall.

Chairman COMER. Oh yes. Yes. I am sorry. I thought it was a Member. Yes, General Marshall.

Mr. MARSHALL. May I briefly be excused?

Chairman COMER. Yes.

Mr. MARSHALL. OK. Thank you.

Chairman COMER. I am sorry. I am sorry, Mr. Burlison. It is Ms. Holmes Norton next for five minutes.

Ms. NORTON. Thank you, Mr. Chairman. When Chairman Comer announced this hearing, he stated that he shared the concerns of the Republican Attorneys General testifying today that ESG principles are being used by progressives to shape corporate behavior. This is a question for Mr. Frerichs. I disagree. Instead of a mixture of political theater and disinformation, Republicans are pandering to anti-ESG stalwarts, including Big Oil proponents, by attempting to influence the criteria of financial professionals.

ESG has wide-reaching support from climate activists to investment industry to investors, all for different yet legitimate reasons. Climate advocates support ESG principles because they may accelerate the transition to a low carbon economy and could help slow the climate crisis. The investment industry supports ESG because integrating responsible investment factors into the investment process can lead to prudent risk management and potentially better retirement outcomes for millions of Americans. Investors support ESG because, as consumers, they demand to invest their hard-earned money in companies that reflect their values and promote governance. Mr. Frerichs, as the Illinois State Treasurer, you are the main investor and asset manager for public funding in your state. Do you support using ESG principles as part of responsible investing for the state of Illinois?

Mr. FRERICHS. Well, certainly we do. It is fundamental to our risk analysis, which is our main responsibility for our pensioners, for our college savers to make sure that they do not suffer some of the risks that we have seen with collapses of companies, like Enron, like Purdue Pharma.

Ms. NORTON. Would you say there is widespread support for ESG in Illinois across political spectrums?

Mr. FRERICHS. I would say within the investment community, there has been increasing support. A significant percentage of investors, public asset managers out there consider this ESG data in their investments. The only thing radical going on right now, the only major change going on is this pushback. I hear a lot of concern for banks being bullied or muscled or told what to do, but I only know of one piece of legislation in the state of Texas that told banks where they have to invest. If you had asked me 30 years ago what I thought the odds of me defending the free market against a Republican legislature trying to have a planned economy mandating what businesses have to invest in, I would have laughed, but that is where we are today.

Ms. NORTON. Well, Mr. Frerichs, support up for ESG is derived not only from investors wanting to ensure their money is going to worthy companies but also the financial benefits of responsible investing. According to research, returns from responsible investment taking into account ESG factors offers greater long-term resilience and lower risk due to factoring in all potential costs to society, such as climate change and pollution. For example, companies that are less reliant on fossil fuels are more likely to be considered good long-term investments than companies that remain heavily dependent on them. Similarly, corporations that are more diverse and more reflective of the U.S. population are better suited to meet the needs of consumer demands of an increasingly diverse marketplace. Mr. Frerichs, can you explain why these types of considerations are so important to investors?

Mr. FRERICHS. Well, I could ask a question. Do you know which companies out there were happy that they made efforts over the last several years to carbonize? European countries affected by Vladimir Putin's war against Ukraine and with a rising spike in energy costs are happy they made those decisions. They limited risk from things like that aggression, but they also benefit from this climate transition. This is not all about costs. There are opportunities that come with climate change, and businesses that are positioning themselves to be at the forefront there are businesses that are going to be profitable in the future. Those are the businesses we want to be investing in.

Ms. NORTON. ESC is widely supported across the country and the political spectrum. Countless investors and asset managers have pivoted to focus on responsible investing because of the benefits it provides for the world and Americans' wallets. I yield back.

Chairman COMER. The Chair recognizes Mr. Timmons from South Carolina for five minutes.

Mr. FRERICHS. And for Congressman Timmons, I am not running away, but I could also use a slight break. I will be back shortly.

Mr. TIMMONS. Can you go in five minutes, please?

Mr. FRERICHS. Sure.

Mr. TIMMONS. Sorry. I am literally only asking you questions.

Mr. FRERICHS. Great. OK.

Mr. TIMMONS. Sorry. I appreciate that. We will let you leave right after this. So, I guess let us just talk about the goals of ESG. The ESG movement is designed to protect the environment. We all want that. It is to facilitate a cleaner environment for generations to come, social. We want every business and their teams to facilitate a working environment that everyone is accepted, is paid a reasonable wage appropriate with their skill set, and as governance. I am in the military, I am in the Air Force, and we have talk about this a lot. We want every decision-making room to reflect the people that they serve, whatever those percentages are, so those are the goals.

And so, you referenced two things that I just totally disagree with have anything to with the ESG: litigation risk for pharma and understaffing for whatever business you are referencing. Those are not ESG. That is a legitimate thing to take into account as it relates to the profitability of a business. If they are going to get sued and lose hundreds billions of dollars, that is going to affect their bottom line. Understaffing, it could result in a worse/good product, which could also subject it to major challenges in their profitability.

So, and you also reference football being merit based, and I would argue that professional sports might be the single most merit-based because they want to win, but almost zero professional team reflects the makeup of the people that they serve, whether it is United States or whether it is local. So, I mean, I do not see that as being relevant.

So, you also talked about the fact that this is important, everybody wants to do this, but I am OK with Illinois doing whatever you all want to do. But you currently have $140 billion deficit with your pension, and when you go into austerity measures, you are going to come to Congress, and you are going to say we have a massive deficit. We are going to have to go into austerity measures. It is going to impact all these people. It is going to be so sad. But I would argue that the decisions you are making, specifically as it relates to enforcing your proxy voting rights, I mean, I guess this is the governance social component of it, but it is not merit based. It is not designed to make a return on that investment.

And so, in a world where gender, where sexual orientation, where race have become fluid—I mean, these are things that change—how do you justify putting emphasis on that as it relates to your proxy voting rights? How do you not see that that is not merit based and that is going to result in a lower return, and it is going to cause more problems than you are having right now with your pension?

Mr. FRERICHS. I have explained this before, and I will explain because I think there is a misunderstanding of what ESG is. ESG is data, and you said all those goals that I have. Those are not my goals.

Mr. TIMMONS. So, there is no data——

Mr. FRERICHS. My goals are to maximize returns for——

Mr. TIMMONS. There is no data that shows that if you have a certain number of men and women or minorities on a board, that that board is going to produce better results. I would actually even argue that there is recent evidence that shows the opposite. SVB and Signature Bank, most of their emphasis was not on the nuts and bolts of banking. It was on diversity and inclusion. It was on ESG, and they failed. And you know what is the problem? My constituents, the people that I represent, have to pay for it because the systemic risk measures that were taken by Treasury and by the FDIC results in higher FDIC premiums for the banks that I serve.

So again, I do not care what you do in Illinois, but do not come to me when you bankrupt your pension. Do not come to Congress when you bankrupt your pension and think we are going to bail you out like we bailed out SVB and Signature Bank.

Mr. FRERICHS. Not asking.

Mr. TIMMONS. Well, you are not yet. You are not yet——

Mr. FRERICHS. Not asking.

Mr. TIMMONS [continuing]. Because you are actually violating your fiduciary obligations to the pension by not focusing on a return on the investment. You are focusing on things like gender and race and sexual orientation, which that has nothing to with merit.

Mr. FRERICHS. Yes. I believe these recordings are videotaped, and you will find, if you listen to my comments, that those are, in fact, my requirements. My requirements, returning a fiduciary duty. Silicon Valley Bank did not fail because a focus on woke. It failed because they did not listen to their risk managers.

Mr. TIMMONS. They did not have risk managers. I am sorry. They did not have risk managers because they had three diversity officers.

Mr. FRERICHS. That is why they failed.

Mr. TIMMONS. But they had three diversity officers. Do you not see the emphasis on ESG on diversity as being a problem——

Mr. FRERICHS. You said there is——

Mr. TIMMONS [continuing]. To pursuing profit, which is basically what happened there, and it is what you are doing.

Mr. FRERICHS. You mentioned diversity on boards. There are no quotas out there, but research has shown, multiple research undertaken shows that diverse boards outperform homogenous boards. We are not excluding anyone——

Mr. TIMMONS. Well——

Mr. FRERICHS [continuing]. In saying that getting more different opinions from different backgrounds on the table produce better results.

Mr. TIMMONS. In this case, having people that have experience in banking would result in SUV and Signature not failing. Instead, they were focused on diversity inclusion. They were focused on gender and race and on sexual orientation and pronouns, and that is why we need to stop this, and we need to focus on fiduciary obligations and getting return for investors. Thank you. I yield back.

Mr. FRERICHS. They focused too much on one specific risky industry. They did not have risk managers they were listening to. That was the cause——

Mr. RASKIN. Mr. Chairman——

Mr. FRERICHS [continuing]. Of their demise.

Mr. SESSIONS. [Presiding.] Just a moment. Does the gentleman yield back his time?

Mr. TIMMONS. Yes.

Mr. SESSIONS. The gentleman yields back his time. Does the gentleman seek——

Mr. RASKIN. I seek unanimous consent just to introduce an article on this very point saying SVB's collapse was a failure of governance and describing it as a textbook case of corporate mismanagement, and it is from Axios. So, I would like to introduce——

Mr. SESSIONS. Without objection——

Mr. RASKIN. Thank you.

Mr. SESSIONS [continuing]. We will enter that into the record.

Mr. RASKIN. Thank you.

Mr. SESSIONS. Does the gentleman seek further time?

Mr. RASKIN. No.

Mr. SESSIONS. Thank you very——

Mr. RASKIN. Thank you much. Thank you.

Mr. SESSIONS. The gentleman, Mr. Ro Khanna, is recognized for five minutes.

Mr. KHANNA. Thank you, Mr. Chair. Attorney General Marshall, I want to see if we can find——

Mr. SESSIONS. Excuse me just a minute. Will the gentleman hold on just one a moment, please? Does the gentleman seek agreement that he could go use the outside services?

Mr. KHANNA. Go ahead.

Mr. SESSIONS. OK. I am trying to make sure because I do not want to interrupt if that is the question. OK. Sir, the rooms might be outside and to the left.

Voice. We got one back there.

Mr. SESSIONS. OK. Got back there. OK. Excuse me. The gentleman now will be recognized for five minutes.

Mr. KHANNA. Thank you, Mr. Chair. Attorney General Marshall, I want to see if we can find some common ground. I assume you would agree with me that if BlackRock or a company wanted to prioritize investments for things that were made in America, that would OK.

Mr. MARSHALL. The question is whether or not that is going to maximize the return for the investor and that fund.

Mr. KHANNA. I mean, I believe that it is fine for companies to prioritize goods made in America, made in Alabama, made in the United States regardless of profit maximization. You would disagree with that?

Mr. MARSHALL. I would disagree with that. The role the fiduciary is to maximize the benefit for that individual for whom they represent.

Mr. KHANNA. OK. Well, I——

Mr. MARSHALL. If I can finish, please, sir. It is a sole interest duty of loyalty that exists for that fiduciary, and, in fact, investing in a company that produces American goods is not profitable nor does it provide a return, then that individual would be acting contrary to their duty of loyalty to that particular investor.

Mr. KHANNA. Well, we just disagree with this. I think your view is more of a globalist view. I would be curious what President Trump thinks actually because my view is that American investment firms should prioritize investing in making things in America. I thought that was half of the former President's campaign, so we just have a philosophical disagreement on that. Let me ask a second question. I assume you would be fine if BlackRock says even though the vast majority of a profit maximization would mean investing in China, which by the way they have said that is the highest returns, we are going to choose not to invest there because of the human rights violations of the Uyghurs. Would you be for them maximizing their profits and investing in China or would you support them not investing in China because of human rights concerns?

Mr. MARSHALL. Obviously, BlackRock has multiple investment vehicles for which people can choose. If, in fact, they have a global fund in which they are investing in China, then the investor has an opportunity to determine whether or not——

Mr. KHANNA. But would you say it is fair for BlackRock to make a decision that they should not invest in China, even if that is higher returns, because they have a problem with the human rights view and the Uyghurs?

Mr. MARSHALL. I think the question is: what is the purpose of the fund, what is the defined investment——

Mr. KHANNA. The purpose——

Mr. MARSHALL [continuing]. Goal that is there.

Mr. KHANNA. Yes, they are——

Mr. MARSHALL. And then they can make a decision about whether or not it is an appropriate return for that particular investor.

Mr. KHANNA. So, if they made a decision and Larry Fink said we are not investing in China in regions with the Xinjiang where there are Uyghurs, would you be fine with that?

Mr. MARSHALL. Tell me again this——

Mr. KHANNA. Uyghurs are basically oppressed in China, and if BlackRock said we are not going to invest there because we are concerned about the human rights violations, would you be fine with that?

Mr. MARSHALL. BlackRock has an opportunity to define the fund, how it would be invested, and how it is that they choose for those who choose to invest it.

Mr. KHANNA. So, you would be fine. If they made a decision on human rights grounds, would you be fine with that?

Mr. MARSHALL. It is a broader issue than that, Congressman, as far——

Mr. KHANNA. Well, no, I was just asking——

Mr. MARSHALL. Sir, you are not letting me answer my question. [Cross talking.]

Mr. MARSHALL. You may have an agenda that you want to ask for this question, but what I am answering for you——

Mr. KHANNA. I reclaim my time. Let me ask you this. Chairman Gallagher—I am on the China Committee—we have had Republicans lecture BlackRock saying that they should have the values not to be investing in China even if it is profit maximizing because of the human rights violations with the Uyghurs. Would support that view?

Mr. MARSHALL. First of all, I do not know exactly the circumstances that you are talking about.

Mr. KHANNA. Well, that is shocking that you do not know of the Uyghurs and the human rights violations there.

Mr. MARSHALL. I cannot tell you that I know anything about it, sir.

Mr. KHANNA. Well, I suggest maybe you should read up on it because it is a huge concern for America, but would you support that view? I mean, I am just trying to say where do you think values matter. Would you have supported the view that we should not be investing in Germany during World War II?

Mr. MARSHALL. I think the issue for investment companies is whether or not they are complying with their fiduciary duty.

Mr. KHANNA. Attorney General Marshall, I guess here is my point. Do you think there is ever a point that values, values of standing up against the human rights views of China, values of standing up against Nazism, values of standing up against Stalinism, do you believe there is ever a time that value should trump profit maximization?

Mr. MARSHALL. They have the right to choose not to invest in companies that they believe create certain risks. That is what the market provides.

Mr. KHANNA. Once you open that door, once you say that they have the right to, as you said, not invest in companies that have certain risks or I would say companies that offend certain fundamental human values, then the question is who gets to decide what those values are. And my view is it should not be the government deciding what those values are. It should not be you or I. It should be in the free market these companies. If you are saying it is fine that they should not be investing in China with human rights violations, then what is the difference between that and a company that says they do not want to invest in something because of climate?

Mr. MARSHALL. I do not believe that a small cabal of financial institutions ought to decide what are preferred societal values or global energy policy.

Mr. KHANNA. But that is not the case. The case is you are not even letting the cabal, are not even letting them invest in America. And then you are telling them do not invest in China on the Uyghurs, and I hope you are, and then you are saying, though, that you are defining these values narrowly. Anyway, my time has expired.

Mr. SESSIONS. The gentleman yields back his time. Thank you very much. I will yield myself five minutes.

Gentlemen, thank you, all three of you, for being here. You have withstood questions and ideas from about 15 on each side. This has gotten to be a little bit larger conversation than perhaps you thought you might be engaged in, but it is pretty normal for us. And we try and tout the things we believe in, and we try and perhaps do not tout those things we do not agree in. But thank you to all three of you for being here and putting up with us.

I am an old guy. I believe that the role of government is not to pick winners and losers. I believe it was to serve appropriately. People provide government services, to so in a fair and equitable way, to not overtax and not under-deliver. But I believe that government has a role, and it is not necessarily the activist governments that we have seen lately.

If you go back about two hours ago, there was a discussion about prudent risk management, lowering risk, oh, look at the long-term, maybe 20 years of a return. Well, that is good if you can do that, but I would say to the gentlemen, the Attorney Generals, that I have looked at the trends as of late in each of the last probably five years, but three years I have gone back and looked. California, New York, and Illinois have all lost hundreds of thousands of people. A hundred and fifty-one billionaires have moved out of California. That is economic. People moving, notwithstanding 109 out of 111 counties or in Illinois have decided to leave the state.

States have their own opportunity to do as they would choose, but activist governments, just like our Federal Government now, are lending them self to picking winners and losers, making decisions for people, and doing things of their own regard, even in midst of our Nation being probably a 50/50 country. And I find that this argument that we are into today about the role of ESG as being very germane to whether is going to be successful or not. We are dividing our self in this country, and people arbitrarily are moving, notwithstanding, to my home state of Texas, but in that process, dividing us.

Mr. Marshall, Mr. Reyes, please tell me, you come from two states that I do not think you try and divide each other. You do not try and pick winners and losers, but you do see where there are marketplace problems out there where people are doing that. Are you rejecting those ideas or are you simply trying to philosophically say let us let our state businesses decide where it goes, schools decide where they go, and try and be successful? Mr. Marshall?

Mr. MARSHALL. It is clearly the latter. One of the things that we have attempted to advance here today is this is not an objection to the individual investor. This is a question about whether those with outsized influence, as a result of the assets in which they manage, have the ability to dictate public policy that ought to be decided by accountable legislative bodies, as well as companies' pension funds, being able to dictate societal values in places in which they are not present. That is the purpose of this hearing today, I believe, and it is the focus of what we have talked about.

Mr. SESSIONS. Thank you. Mr. Reyes?

Mr. REYES. Definitely the latter, Mr. Chairman, and we are proud in Utah to be a fiscally conservative state that have seen in migration from many of those states that you have referenced because they value the cleanliness and the success and the business opportunities, the family friendly environment of our state, and then ironically, quickly try to change our values and our way of life, importing the very things they just fled from. ESG is a part of those policies and a process that thwarts the free market that caused them to leave where they came from and enjoy where they are living now in the great state of Utah.

So, I appreciate on behalf of my citizens who are very concerned about this on many levels—this being ESG—not just data, not just data in a free market, in a vacuum that allows people to make decisions without coercion, but in an environment where every major pressure point is choking out decisions and the free will of everyday Americans and hurting them at their pocketbooks, hurting them in their long-term savings, hurting them at the gas pump. And these are the things that we hope that you will continue to hold hearings on with regard to this ESG movement. Thank you.

Mr. SESSIONS. Thank you very much. I simply call it active government making decisions on behalf of free people, and I agree with you. I want to thank the gentleman from Illinois. I believe that his presence today says volumes about hot only what he believes in but, very clearly, my colleagues that are my dear friends also viewed you as an advocate to express their ideas, as an evaluator. And I want to thank you very much.

I yield back my time, and we now would recognize the gentleman from Rhode Island for five minutes.

Mr. MAGAZINER. Well, thank you, Chairman and Ranking Member. Thank you for letting me join you today. I asked to join the Oversight Committee today because of my background as a State Treasurer for eight years where I was a colleague of Treasurer Frerichs, and my experience as an investor in the private sector before that. And the message that I want to deliver, because people need to understand it, is that these attacks against ESG investing are based on a fallacy. They are based on the argument that somehow incorporating environmental and social and governance factors is a breach of fiduciary duty to clients or to beneficiaries. That is not true. The opposite is the case. As fiduciaries, we would not be doing our jobs if we did not consider environmental and social and governance risks when making investment decisions.

And, in fact, investors and companies that have failed to incorporate ESG risks into their decision-making have lost a lot of money as a result. Do you want some examples? BP. After the Deepwater Horizon spill, BP stock dropped 55 percent, eliminating $88 billion of shareholder value because that company failed to adopt proactive safety protocols. Volkswagen. Their emissions scandal caused their stock to drop nearly 30 percent, also costing investors billions of dollars. We have heard about Norfolk Southern and Purdue Pharma. The list goes on and on. Companies that do not manage their environmental risk, their labor risk, their consumer protection risks appropriately open up investors, including retail investors, pensioners, retirees to financial losses.

So, investors would not be doing their jobs if they did not think about these issues when making investment decisions. And, in fact, because we have a free market in this country, investors are voting with their feet. We have heard about how big companies like BlackRock and others that integrate ESG factors in their decision-making process control trillions of dollars. Yes, because investors have chosen to take their business there because they want their asset managers to be incorporating all of these factors into their decision-making process. And the data has borne out. Over the last five years, according to Morningstar, two-thirds of funds that emphasized ESG in their investment process have ranked in the top half of performance relative to their peers. That is mutual funds.

So, again, ESG investing, it is common sense, and it has been going on for years as well. Private investors have been doing this for decades. The Department of Labor has been allowing this for public funds for decades. The SEC has allowed proxy voting proposals on ESG issues for decades. What is new here is this trumped-up opposition, no doubt funded by and pushed by the oil and gas industry that is desperately trying to hang on because they know that the smart capital is moving toward a clean energy future. Again, if you want an example, if you had invested $100 in ExxonMobil stock five years ago, that hundred dollars would be worth $142 today. Pretty good. If you had invested that same hundred dollars in First Solar, a publicly traded company, it would be worth $267 today.

So, the industries of the future are winning, and the industries of the past are now trying to rig the game by employing government interference to prevent investors from doing their jobs. And I would note this government interference is being run oftentimes by people who have no investment experience themselves at all. The two Republican witnesses who are here, who may be very credentialed in other ways, between the two of them have zero degrees in investments or economics or finance, are not CPAs, are not chartered financial——

Mr. REYES. I ran a tech venture fund, just so you know, Congressman.

Mr. MAGAZINER. Yes, fair enough.

Mr. REYES. Yes. OK.

Mr. MAGAZINER. But no degrees, no securities license——

Mr. REYES. But just to be clear on the record, I just wanted——

Mr. MAGAZINER. Reclaiming my time. Reclaiming my time, all right? I have spent a career in this, as has Treasurer Frerichs and many others who were not given the opportunity to come here today. Our Republican witnesses have experience trying to overturn elections that were freely and fairly won but not incorporating smart ESG factors into investment decisions.

So listen, we know what is going on here. This is a taxpayer-funded effort to run interference for the oil and gas industries, prevent investors from doing their jobs and exercising their judgment, and prevent investors from having the options for where to move their money. It is un-American. It is not in keeping with the free market or sound investment principles. And with that, I am out of time, and I yield back.

Chairman COMER. [Presiding.] The Chair recognizes Mr. Burlison from Missouri for five minutes.

Mr. BURLISON. Thank you, Mr. Chairman. You know, I am an investment advisor representative. I do have a securities license, and I sat across the table from people when you manage someone's accounts and the burden is on you to make sure they make it all the way to end of life, and that their funds do not run dry. And I will tell you when you are facing someone and you are looking at them across the aisle, you realize that burden. It weighs on you, and when your clients' portfolios go down, you feel the pain. But you know what I would never do? I would never, and I would think it would be fiscally irresponsible, to apply my morality on my clients' funds, right? Mr. Marshall, would you not agree that people have different moralities, and if your investor is applying their brand of morality on your funds, would you be pleased with your performance?

Mr. MARSHALL. I would not, but that is the goal of those that initiated ESG concepts to the United Nations, which said that they want to transform the world by creating a global energy economy as well as being able to set preferred societal values.

Mr. BURLISON. Yes. And, Mr. Reyes, the problem is that we have a situation where the tail, folks like Mr. Frerichs, is wagging the dog and using his position and voting position to be able to change the direction of companies, and these companies are where are our citizens and their retirements are invested.

Mr. REYES. That is that is correct. I would not want anybody's morality, whether it was progressive, conservative, or something in between, voting with my dollars. And when I and my team invested on behalf of others, it was the same. We would not interject our own political preferences or personal preferences.

Mr. BURLISON. Well, and the impact on states is unbelievable. We heard that Illinois is over, I saw reports, $110 billion in a pension deficit. It may be more, right? And so, the problem is that in order to make that up is that the state has to kick in more dollars in order to get that fund to be solvent. That is what happens in every state. When you become below a particular level of solvency for your pension, you start having to kick in more, and the impact on the taxpayers is devastating.

So yes, we can talk about whatever moral decision that you want to make. You can make voting right decisions to direct people's money toward your brand of morality. But when you mess around with other people's money and they get hurt, who pays? Do you? No. You do not pay. They do, and that is what this is about. We are trying to make sure that people are not messing around with retirees' funds.

So, let me ask this question. It was mentioned that we just want to have more information out there, so let me ask a question. Mr. Marshall, and you guys can go down the line and just say, in Missouri, our Treasurer issued a rule that said if your money manager is using ESG in their metrics, then your client should probably know about that, right? More information would be good information. Would you agree with that?

Mr. MARSHALL. I do not disagree at all.

Mr. BURLISON. Mr. Reyes, do you agree with that?

Mr. REYES. Agreed.

Mr. BURLISON. Do you agree with that, Mr. Frerichs, more information is good information?

Mr. FRERICHS. Mike Frerichs, I agree with that.

Mr. BURLISON. Thanks.

Mr. FRERICHS. And I disclose all this on our website. We are public and transparent.

Mr. BURLISON. OK.

Mr. FRERICHS. I agree with you, but I would disagree with your statement that this about me pushing my values. This is about pushing value for companies. When we hold——

Mr. BURLISON. Right, and, Mr. Frerichs, businesses are not going to heaven or hell, are they? There is no——

Mr. FRERICHS. No, but businesses do declare bankruptcy, like Purdue Pharma.

Mr. BURLISON. Well, and that is math.

Mr. FRERICHS. That was a bad investment.

Mr. BURLISON. That is math. There is no morality to math. I reclaim my time.

Mr. FRERICHS. I completely agree with that statement.

Mr. BURLISON. But again, I reiterate that as an investment advisor, who actually had to deal with clients and actually worry and stress about whether or not, when they are making that decision, I am retiring, am I going to make it all the way through, and you are sweating that for them, you are stressing about that for them, it is not your money. But when you know them, you are looking at them in the eye, you know that you cannot mess around with their money and apply your morality. Thank you, Mr. Chairman. I yield back.

Mr. FRERICHS. I sweat the 850,000 families who are saving for college education to make sure they can graduate——

Mr. BIGGS. Point of order.

Mr. FRERICHS [continuing]. Without more debt.

Mr. BIGGS. There is no question before the gentleman.

Chairman COMER. The Chair recognizes——

Mr. BIGGS. He yielded back.

Chairman COMER. Oh, Mr. Biggs, yes.

Mr. BIGGS. Thank you, Mr. Chairman. So, I have been running back and forth from hearing to hearing today. Always interesting to hear people say things, just make them up, fantasy. We got to hear from one of our colleagues across the aisle a moment ago saying this hearing is a result of trying to protect oil and gas industry. You know, sometimes you get to fabricate, you get to promote a fantasy, and that is what we just heard, but that is too bad. That is too bad.

It has been nearly a decade since this Committee under Chairman Issa exposed Operation Chokepoint, the Obama Administration's weaponization of regulatory power to starve lawful businesses of their access to capital and banking services. Unfortunately, the latest iteration of Chokepoint is being undertaken by unaccountable international organizations, large asset managers acting in breach of their fiduciary responsibilities, and is encouraged by the Biden Administration, which is pushing the advancement of ESG priorities beyond agency authorities and at the expense of their statutory missions.

General Reyes and General Marshall, I understand that one of my Democratic colleagues has accused Committee Republicans of promoting corporate socialism today, another fabrication and fantasy. Given that ESG is being forced on the public by the Biden Administration and by activists, Mr. Reyes, Mr. Marshall, would either of you like to respond to the claim made by one of my colleagues?

Mr. MARSHALL. I think we are advocating corporate independence, the ability to make decisions for your business based upon what is best in the return for shareholders as a result of the work that you are doing. One of the things that we clearly have seen is a concentration of wealth in a very few that has caused for them to be able to create policy changes within companies that are not generated by their board, not generated by shareholders who generally are involved, but instead by a small group who happens to hold significant amounts of shares in those companies.

The other thing, Congressman, that we have heard today is what is truly a fiduciary duty. It is clear that this is a U.N.-generated project, ESG factors themselves. That is where it came from, and even the U.N. acknowledged in a recent report in 2021 that the definition of "fiduciary duty" needs to be changed in order to validly consider ESG factors. That is not a part of the financial return. It is clearly designed to create a very different political agenda and not one consistent with investor return.

Mr. BIGGS. Yes. So, I want to leverage this since we only have 2 1/2 minutes left because what you are talking about, the way I understand, is mixed-motive investing. So, there is a 2020 Stanford Law Review article by Max Schanzenbach and Robert Sitkoff, entitled, "Reconciling Fiduciary Duty, Social Conscience, the Law and Economics of ESG Investing by Trustees." Are either of you are familiar with that piece?

Mr. MARSHALL. I am not.

Mr. REYES. I am not, sir.

Mr. BIGGS. OK. Well, the articles goes on to describe for trustees acting with mixed motives, he says, "Acting with mixed motives triggers an irrebuttable presumption of wrongdoing under the sole interest rule." Does that sound accurate to you the way you understand the sole interest rule?

Mr. MARSHALL. Yes.

Mr. REYES. That is accurate, Congressman.

Mr. BIGGS. So, Mr. Chairman, I would like to submit to the record several decisions, Fifth Third *v.* Dudenhoeffer, Central States *v.* Central Transport case, and several articles by Valmer. But I want to——

Chairman COMER. Without objection, so ordered.

Mr. BIGGS. Thank you.

Mr. BIGGS. I want to go to this right here from that Stanford Law Review article, and then I am going to ask you to expand on this in our closing amount of time. "Acting with mixed motives triggers an irrebuttable presumption of wrongdoing, full stop. Because the sole interest rule is prohibitory rather than regulatory to prove a breach of beneficiary need to prove a breach, a beneficiary need only prove the fact of a trustee's mixed motives. Under the sole interest rule, the trustee violates the duty of loyalty even in the absence of self-dealing. If the trustee has any motive or rationale for undertaking an action other than the sole interest or exclusive benefit of the beneficiary." How does ESG standards encroach upon the fiduciary duty described by the sole interest rule?

Mr. REYES. Before you came, Congressman, we read numerous quotes from these horizontal organizations that clearly state their ultimate purpose, and there is an end result for net zero compliance. That is the motivation for them beyond anything else, and that is why that is more akin to corporate socialism than anything that we espouse. Socialism takes away liberty. It takes away free will, and socialism does not ask what is in the best interest of the individual. It asks what is in the best interest of the state. We are absolutely championing the opposite, which is how do you maximize shareholder value for the individual.

Mr. BIGGS. Thank you, and I see that my time has expired, but I wish you, Mr. Reyes, if you would give your State Treasurer, Morley Oaks, my regards.

Mr. REYES. I will pass on to our great Treasurer——

Mr. BIGGS. Thank you.

Mr. REYES [continuing]. Your hello.

Mr. BIGGS. I yield back. Thanks.

Chairman COMER. The gentleman yields back, and that concludes our questioning portion. I will now yield to the Ranking Member to deliver a closing statement.

Mr. RASKIN. Mr. Chairman, thank you very much, and I want to thank all of our witnesses for what was a truly enlightening and educational discussion which I would recommend to every U.S. citizen to come check out, and certainly business school students, economic students, law students, students of every type, because this has been a fascinating and important discussion. I do not know that it advanced the campaign against ESG. I think it reaffirmed the basic principles of the free market and to allow asset managers, like the distinguished treasurer of the state of Illinois, to do their jobs.

[Chart]

Mr. RASKIN. Now, Mr. Chairman, I started by showing a graph demonstrating that money invested over the last decade in a large-cap ESG influenced fund did substantially better than investment in the Standard & Poor 500 Energy Index, and that came not from us, not from the Democratic staff of the House Oversight Committee. It came from Bloomberg News. And I would like to submit the article for the record just so we can clarify that, if that is OK.

Chairman COMER. Without objection, so ordered.

Mr. RASKIN. Thank you, Mr. Chairman.

Mr. RASKIN. Now, that graph, which is quite dramatic showing that over a decade, your money would have been better put in an ESG-defined fund than just the general S&P 500 Energy Index, which I was not aware of, but that graph seems to support Mr. Frerichs' basic point today that ESG considerations are totally consistent with an asset manager's fiduciary duties to maximize shareholder value and, arguably, compelled by it. That is certainly the interpretation, I think, that Mr. Frerichs has offered today, that it would be in disregard of your fiduciary duties simply to try to close your eyes to environmental, social, and political concerns.

For example, we talked about Norfolk Southern. If it had come to the attention of investors before the derailment, which obviously caused a tanking of value of the stock, that Norfolk Southern was making a lot of money but it was cutting corners on safety and it was laying off workers to save money, but making it more dangerous on the rails, that is something that should be taken into account. I have not heard a single argument from the other side that it should not be taken into account.

You can say the exact same thing with Purdue. Mr. Frerichs testified—I was using it as a hypothetical—he said they actually came to Illinois. He faced the question whether or not to invest in Purdue, and Purdue was coming back with staggering profits, but he looked behind the curtain, and he did not like what he saw in terms of Purdue getting people hooked on Oxycontin, Oxycodone, and he said that is not a good long-term investment for the teachers and firefighters and cops of Illinois, and so he avoided it. He was doing his fiduciary duty. That is what it means to do your fiduciary duty. It would be at least arguably a violation of it to disregard all of those kinds of concerns.

I mean, the Massey Coal Company in West Virginia was making tons of money up until the Upper Big Branch Mine disaster, which killed 29 miners. If you had looked more deeply into it, they had hundreds of violations with OSHA and with the mine safety organization. That is something that asset managers should not take into account? That just seems way off to me.

But look, in the final analysis, it is all about free choice. If Illinois wants to look at, you know, the mine regulatory safety record of a particular company—I know you do not have mining there—but if you want to look at Purdue's actual record, what they are doing with Oxycontin and Oxycodone and Utah does not want to look at it, well, that is your choice. You do it, and, you know, different states can define the fiduciary duty differently. In Texas, They seem to be defining "fiduciary duty" as doing whatever the oil and gas industry wants or the gun industry.

Look what they just did in Texas under this whole anti-ESG, anti-woke campaign. They pulled the leash on municipal governments in the state and dramatically interfered in the free market to protect the oil and gas industry and the firearms manufacturers by telling local governments that they could not make contracts with certain private banks, which the legislature deemed to be too woke on those issues if they, you know, took policies or made statements that were considered too woke by the legislature. OK. Well, what was the upshot of this anti-woke legislation in Texas?

Well, do not take my word for it. Check out a study by Wharton professor, Daniel Garrett, and a Fed economist, Ivan Ivanov, which found that this anti-woke sledgehammer in Texas is costing the cities and towns of Texas, meaning the taxpayers of Texas, an additional $305 million to $532 two million in additional interest payments every single year. Now look, if Texas wants to spend an extra half billion dollars on interest payments to make a totally political, totally partisan anti-woke statement, then have at it. That is up to them. At some point, the people of Texas will wake up to it, but that is their choice. But do not interfere with the right of Illinois and all the other states to look at all of the factors that actually influence the valuation of companies.

Nobody should think, by the way, that this movement is striking a blow against global elites, which we have heard a lot about today. If you are interested in that, you should join our investigation into

Donald Trump and Jared Kushner who brought home $2 billion—not million—$2 billion from Saudi Arabia and the United Arab Emirates for a company he created the day after the Trump Administration ended. So, do not talk to me about global elites. That is the Trump family business trafficking in global elites and their businesses. And he collected millions of dollars in unconstitutional foreign emoluments from Saudi Arabia, United Arab Emirates, Indonesia, Egypt, a whole bunch of countries that patronized his hotels and his golf courses. So, I do not want to be lectured to by anybody about global elites because I was here for the years of the Trump Administration.

Now, my friend the Chairman asked the question, well, what would happen in China or what would happen in another authoritarian regime with ESG? Do they have ESG? Absolutely not. That is the difference between a free market democratic society and an authoritarian or totalitarian society. All that matters is what the state rulers tell you to do. Well here, the state rulers want to say everybody's got to invest in Big Oil and Big Gas, even if they do not think it is the right thing to do from a fiduciary perspective. They want to try to compel people's choices. Why don't we let the free market operate instead?

In the final analysis, these decisions are being made not, contrary to the gentleman's statements before, not according to morality but according to economics. That is what we heard from the excellent Treasurer of the state of Illinois today, those are the kinds of decisions that are being made across the country. Now, Americans have the opportunity to say we do not want to patronize businesses that are supporting China, General Xi, or Putin in Russia, or any authoritarian regime, but when they are managing pension funds, they are not making a moral decision. They are making a financial decision, and they are withdrawing from that, they are saying it is not a good bet, that is not a good bet for the people.

I know the Attorney General of Alabama said, well, you should disregard all moral criteria. I think he was asked about communist China. He was asked about Nazi Germany. He said, you know, just maximize profit. I understand that view, OK? That is not the view most citizens have, but a lot of the asset managers say it is not a good bet to invest in Marcos in the Philippines, or General Xi in China, Orban in Hungary, or what have you, but that is up to them, and we should not be interfering in one direction or another.

And that is the problem with this whole anti-ESG thing. Even though it is dressed up as a critique of political investing, it is all about promoting political investing and promoting a political agenda. But luckily, I think the asset managers see it for what it is, and the businesses see it for what it is, and the people see it for what it is. I do not think it is going anywhere, so it is going to be on to the next battle in the culture war. I yield back to you, Mr. Chairman.

Chairman COMER. The gentleman yields back, and I want to thank our witnesses for being here today, and it was a long day. To those watching, it may seem that there were two different hearings occurring today, one which explored concerns with asset managers violating their fiduciary duty to their clients by chasing left-wing agendas regarding the environment and social issues, and the other which sought to cover for the actions of asset managers abusing their authority by making broad appeals to the need for data or access to information.

My colleagues on the other side of the aisle seem to be conflating the term "responsible investing" to mean socially responsible investing, as opposed to the fiscal responsibility, that is asset managers' legally mandated fiduciary duty to their clients. I think we and asset managers need a reminder: the money asset managers invest is not their own. A fund manager's definition of "socially responsible" may not only directly oppose their clients' views, investing to satisfy money managers' own ESG agenda could tank savings and retirements across the Nation.

We will continue to investigate liberal agendas pushed throughout the economy and society, be it by the private sector or, more worrisome, by the government. And let us hope these left-wing activists who are pushing this ESG agenda do not continue regulating our banks, and setting our energy policy, and doing many other jobs that have a detrimental impact on our economy and on society. If the Biden Administration is weaponizing a whole-of-government approach to coordinate and force a whole-of-industry compliance with a woke agenda, it is this Committee's responsibility to conduct oversight to the American people, and we intend to provide it.

With that, again, I thank the witnesses for being here today. I know it was a very long day, and I declare this meeting adjourned.

[Whereupon, at 1:52 p.m., the Committee was adjourned.]

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