

# State Attorneys General Join Anti-ESG Effort, Amid...

[documented.net/investigations/state-ags-join-anti-esg-effort-amid-growing-backlash](https://documented.net/investigations/state-ags-join-anti-esg-effort-amid-growing-backlash)



## News



## **The Right's Desperate Push to Tank ESG and Avoid Disclosing Climate Risks**

July 2, 2023

By Amy Westervelt

Over the past year and half, dark money political groups have manufactured a tempest of opposition to efforts by large financial institutions to promote ESG investing and greater disclosure of climate-related financial risks. The groups pushing this attack on “woke” capitalism are now enlisting state attorneys general into the effort, Documented can reveal.

Documented has been investigating the coordinated effort to undermine ESG—shorthand for investment decisions that consider environmental, social, and governance factors. This fight has recently escalated with the introduction of state legislation banning some of the largest asset managers in the world from handling state funds in Texas, Oklahoma, and West Virginia. In 2023, 37 states introduced 165 bills aimed at punishing large financial institutions for their alleged bias against the fossil fuel industry.

Those bills can be traced back to organizations like the Texas Public Policy Foundation (TPPF), a dark money group funded by oil and gas interests that regularly denies the causes and effects of climate change. Alongside groups like the American Legislative Exchange Council (ALEC), TPPF is now pressing state attorneys general to join the fight against ESG, according to new recordings and evidence obtained by Documented. Climate reporter and host of the podcast Drilled Amy Westervelt recently reported on these findings for The Intercept.

As state legislators jab away at climate risk disclosure through legislation, state attorneys general are lobbying legal threats and alleging serious antitrust violations by financial institutions that dare to factor climate change risks into their portfolios.

The seeds of the attorney general strategy were planted as far back as June 2021, when TPPF issued a white paper laying out a rationale for AGs to accuse companies of antitrust violations, under the theory that financial firms considering ESG factors are colluding on boycotts of polluting companies. The white paper was authored by Boyden Gray & Associates, a Republican legal group with a long history of supporting climate science denial.

A little over a year later, during a July 2022 meeting of the American Legislative Exchange Council (ALEC), TPPF’s Jason Isaac described a multi-part strategy to build an antitrust case and encourage attorneys general to pursue it.

In a session titled, “How States Can Fight Back Against ESG,” Isaac described how TPPF was working with a Texas state senate committee to subpoena “truckloads” of documents from financial institutions in the hope of finding material that might support the antitrust theories posited in the TPPF white paper. The goal, Isaac said, is for attorneys general to then use those materials to pursue antitrust cases against financial institutions.

Isaac said that the Texas Senate’s Committee on State Affairs had “sent out letters to these financial institutions to get some paper documents to find out where this collusion is happening. We anticipate truckloads of documents being delivered.”

Isaac described how TPPF planned to then go through those documents “meticulously,” “because we believe that there is ... corporate collusion, liability risk for the ESG agenda to charge higher fees and rig the market. We believe that there's antitrust violations.”

“But this is really kind of geared towards our attorneys general to lay the foundation for antitrust violations on this corporate collusion, find out the connections with the global client or the Glasgow Financial Alliance for Net Zero... It's all rooted in decarbonization, which is net zero. So I hope our committee gets a ton of paper back from these large financial institutions and they get hammered in the courts. And our attorneys general around the country file antitrust violations.”

A month after the ALEC meeting, the Texas Committee on State Affairs sent requests for documents to a set of financial institutions that have become the main target of the anti-ESG campaign. The letters sought communications with the Global Financial Alliance for Net Zero (GFANZ) and other climate focused alliances, as well as internal documents and communications regarding fossil fuel companies like Exxon and ConocoPhillips. The Committee subsequently held a hearing on the subject, and compelled representatives from BlackRock, State Street, and other target companies to attend. Jason Isaac was specifically thanked by the committee chair, an ALEC member, in the opening moments of the hearing.

“If you're saying, hey, I'd like to run with this model legislation, let us know. We already have grassroots on the ground. We have experts we can connect you to. We have op-eds that can be written, letters to the editor. We can win this in many ways, and so please let us know.”

Catherine Gunsalus, Heritage Action

## **The Dark Money Groups Behind The Anti-ESG Campaign**

---

TPPF is not working alone. At the ALEC meeting, TPPF's Isaac mentioned some other members of the anti-ESG “coalition.”

“I'll say our coalition is pretty broad and we're trying to make it even more broad. It's America First Works, which is the c4 affiliated or loosely affiliated with the America First Policy Institute, its Heritage—Heritage Action for America. It's Heartland Institute. It's the State Financial Officers Foundation, it's Consumers' Research.”

America First Works (AFW) is the 501(c)(4) arm of the America First Policy Institute (AFPI), a think tank closely aligned with former President Trump. Heritage Action and the Heartland Institute are nonprofit political groups that have received fossil fuel industry funding while participating in efforts to deny climate science. The State Financial Officers Foundation (SFOF), which targets state treasurers, is closely tied to ALEC and Heritage and has collaborated with oil industry lobbyists on anti-ESG efforts. Consumers' Research is a

political group funded by far right dark money kingpin Leonard Leo. Leo, the recipient of a \$1.6 billion political gift in 2020 from billionaire Barre Seid, has spent more than \$10 million on the anti-ESG campaign so far.

Alongside TPPF's Isaac, the ALEC panel included Catherine Gunsalus of Heritage Action, Mike Nelson of ALEC, and John Murante, the state treasurer of Nebraska. Gunsalus, who is registered to lobby in 13 states as of 2022, detailed how the coalition functions as an astroturf operation, with Heritage Action providing "air cover" for anti-climate action. Gunsalus said that Heritage Action can provide state lawmakers with expert witnesses, lobbying support, and also can help generate media, op-eds, and letters to the editors.

"If you're saying, hey, I'd like to run with this model legislation, let us know," Gunsalus said. "We already have grassroots on the ground. We have experts we can connect you to. We have op-eds that can be written, letters to the editor. We can win this in many ways, and so please let us know."

### **ALEC Lawmakers In Other States Also Collaborating with AG Offices**

Documents obtained through records requests show ALEC legislators in other states have taken an interest in their state's AG's actions on ESG. Indeed, at the ALEC meeting, ALEC's Mike Nelson urged state legislators to "talk to your attorneys general," reminding them that "Your attorneys general have tremendous amount of power in this space. They, too, can step up."

Following the July 2022 ALEC conference, representatives in Georgia who attended the conference communicated about the anti-ESG campaign with the Georgia AG's office.

The following month, Georgia's attorney general joined 18 other attorneys general on a letter critiquing BlackRock's ESG investments and raising potential antitrust violations. Records show that a representative from the Georgia attorney general's office, Jordan Watson, had attended the ALEC meeting a month before, and Watson shared the BlackRock letter with Representative Will Wade. "When you and I attended ALEC we were briefly discussing ESG policy. Wanted to share this letter written to BlackRock that AG Carr cosigned," Watson wrote. Rep. Wade urged the AG's representative to share the anti-ESG letter with other state lawmakers: "let them know I asked to share this info. We four have sincere interest in this issue..." he wrote. Records show that Watson subsequently shared the AG's letter with at least one other lawmaker.

### **TPPF Whitepaper Appeared to Prompt AG Action**

Even before TPPF embarked on an effort to drum up evidence for AGs to pursue antitrust cases, its initial whitepaper on the topic appears to have inspired action from Republican attorneys general across the country. Then-Arizona Attorney General Mark Brnovich was the first to act, announcing he was "looking into ESG investing practices" in November of 2021 –

five months after TPPF published its whitepaper. On March 6, 2022, Brnovich announced his office had “launched an investigation into this potentially unlawful market manipulation,” warning that climate disclosure may be “the biggest antitrust violation in history.” Later that summer, Brnovich and 18 fellow attorneys general sent a letter accusing BlackRock of forcing “the phase-out of fossil fuels.” The letter laid out six complaints against the company, the fifth being “antitrust.”

Mike Nelson mentioned Brnovich’s antitrust investigation specifically in the ALEC session:

“The attorney general in Arizona has publicly stated an investigation has started. They can't say which company. But as I recall, it was the one of the largest, the largest controlling of those assets, which is kind of easy to figure out.”

Other AGs have raised similar antitrust allegations. In April, 2022, Utah’s Attorney General Sean Reyes, alongside the state’s treasurer and congressional delegation, sent a letter to S&P objecting to the use of climate-related disclosures and warning that “state antitrust” statutes may be relevant. Missouri Attorney General Eric Schmitt, and Louisiana AG Jeff Landry have also led letters warning that ESG conflicts with “securities law.”

Defending against these antitrust accusations is expensive and time consuming, according to the Department of Justice. A loss in court could come with millions of dollars in penalties. Such risks can be an effective way to intimidate financial institutions away from making climate commitments. Already, the asset manager Vanguard has dropped out of the climate-focused Alliance Net Zero Asset Managers Initiative, a move linked to political pressure brought by dark money groups that have made opposition to disclosure a new feature of climate denial.

Documented is investigating the dark money groups behind the anti-ESG campaign. If you have questions or information to share, you can contact Jesse Coleman at [jesse@documented.net](mailto:jesse@documented.net).