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ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY

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May 20, 2024

Ken Paxton
Attorney General
300 W. 15th Street
Austin, TX 78701

Glenn Hegar
Comptroller of Public Accounts
P.O. Box 13528, Capitol Station
Austin, TX 78711

Dear Attorney General Paxton and Comptroller Hegar:

We write to inquire about the impact on Texas taxpayers of your policies against responsible investment. Texas is among several states that have recently enacted policies barring the investment of state funds with firms that consider certain material risk factors, such as climate change. To inform congressional oversight efforts, we ask that you provide information detailing the effects of these investment restrictions.

State efforts to penalize responsible investment by limiting investors' use of environmental, social, and governance ("ESG") factors have injected politics into previously objective financial decisions. For example, in 2023, Florida Gov. Ron DeSantis signed a law that bans the use of certain factors, including those furthering "social interests," that state officials can consider when investing state pension funds.[1] Texas enacted a law in 2021 that blacklisted from state contracts and investments any firm found to have engaged in a "boycott" of fossil fuel companies. The law defines "boycott" so broadly that it potentially includes actions by companies to reduce their own greenhouse gas emissions.[2] These states are hardly alone. In the 2023 legislative season, at least 14 states approved new limits on responsible investment.[3]

A growing body of evidence demonstrates that these policies threaten public employees' retirement savings and leave taxpayers on the hook for higher fees and increased borrowing

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[1] *Florida House Bill 3*, LEGISCAN (May 2, 2023), https://legiscan.com/FL/text/H0003/2023; Isla Binnie & Ross Kerber, *DeSantis signs sweeping anti-ESG legislation in Florida*, REUTERS (May 3, 2023), https://www.reuters.com/business/sustainable-business/desantis-signs-sweeping-anti-esg-legislation-florida-2023-05-02/.

[2] *Texas Senate Bill 13*, LEGISCAN (Sept. 1, 2021), https://legiscan.com/TX/text/SB13/2021.

[3] *2023 Statehouse Report: Right-Wing Attacks on the Freedom to Invest Responsibly Falter in Legislatures*, PLEIADES STRATEGY (2023) at 3, https://drive.google.com/file/d/1VJ82mMNupoFSZPQ98nLcW7AtcyBQWB18/view.

costs. For instance, a study by the University of Pennsylvania's Wharton School estimated that Texas' blacklist of responsible investors would cost the state as much as half a billion dollars in additional interest on its bonds.[4] A separate study by the Texas Association of Business found that, in fiscal years 2022-23, the state's policies had cost the state $669 million in lost economic activity, along with more than 3,000 full-time jobs.[5] Similar legislation in Oklahoma has cost the state nearly $185 million in additional expenses.[6] The law has also saddled Oklahoma's retirees with additional costs, as one pension fund estimated that complying with the state's blacklist of certain firms would cost nearly $10 million.[7]

These findings are not surprising, given that these laws appear to stem from a coordinated political campaign against responsible investment rather than any legitimate concerns about the sound stewardship of the public's money. Many of the laws limiting the use of responsible investment factors borrow directly from model legislation written by right-wing groups like the American Legislative Exchange Council ("ALEC") and the Heritage Foundation and promoted by dark money-funded organizations like the Texas Public Policy Foundation and the State Financial Officers Foundation.[8]

In short, when states substitute politics for the reasoned judgment of investment professionals, taxpayers foot the bill—along with the teachers, firefighters, and others who served their states and depend on well-managed public pension funds to safeguard their retirement savings.

The Republican majority on the House Judiciary Committee has been investigating the use of ESG investment factors by financial institutions, including some of the same firms targeted by state-level restrictions. To help the Committee better understand the rationale for responsible investment decisions, and the effect of laws prohibiting those decisions, we ask you to provide information in response to the following questions:

1. How have laws restricting responsible investment affected your state's finances directly? Please include in your answer all changes in expenses resulting directly from the laws, including, but not limited to, borrowing costs, fees to investment managers, transition expenses, and administrative costs.

2. How have laws restricting responsible investment affected your state's finances indirectly? Please include, to the extent known, costs relating to your state's business and

[4] *Texas Fought Against ESG. Here's What It Cost*, KNOWLEDGE AT WHARTON (July 12, 2022), https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/texas-fought-against-esg-heres-what-it-cost/.
[5] *TABCCF Releases Study Highlighting Economic Impact of Tightening Texas' Municipal Bond Market*, TEXAS ASSOC. OF BUSINESS (Mar. 13, 2024), https://www.txbiz.org/post/tabccf-releases-study-highlighting-economic-impact-of-tightening-texas-municipal-bond-market/.
[6] *Unintended Consequences of the Energy Discrimination Elimination Act in Oklahoma*, OKLA. RURAL ASSOC. (Apr. 22, 2024), https://www.oklahomarural.online/_files/ugd/283c8e_ea08d46831cd42798bd4c400bce0140e.pdf.
[7] Clifton Adcock, *State retirement system says Oklahoma fossil fuel blacklist could cost retirees millions*, READ FRONTIER (June 2, 2023), https://www.readfrontier.org/stories/state-retirement-system-says-oklahoma-fossil-fuel-blacklist-could-cost-retirees-millions/.
[8] *2023 Statehouse Report*, *supra* note 3 at 7–8, https://drive.google.com/file/d/1VJ82mMNupoFSZPQ98nLcW7AtcyBQWB18/view.

investment climate, including, but not limited to, lost economic activity, lost jobs, lost tax revenue, and lost benefits of competition from firms excluded from bidding for state contracts.

3. Have your state's pension funds ever estimated the costs of laws restricting their ability to invest on behalf of beneficiaries? What did they conclude the costs would be? Please include, to the extent known, transition and administrative costs borne by the plans. Please also include any anticipated future reductions in returns earned by plan beneficiaries.

4. How does the projected performance of your state's pension funds since the enactment of laws restricting responsible investment compare to equivalent funds in states without such laws?

5. Describe your consultations, if any, with the authors of model legislation restricting or banning responsible investment during the consideration and passage of your state's laws. Please include consultations with groups including, but not limited to, ALEC, the Heritage Foundation, the Texas Public Policy Foundation, and the State Financial Officers Foundation.

6. How many companies has Texas barred from doing business with the state or its municipalities since the adoption of your law against responsible investment? Please list each company and the reasoning for including that company on your state's blacklist.

To assist with the Committee's oversight in this matter, we ask that you provide responses by June 3.

Sincerely,

Jerrold Nadler

Ranking Member Jerrold Nadler
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

J. Luis Correa

Ranking Member J. Luis Correa
Subcommittee on the Administrative State,
Regulatory Reform, and Antitrust
U.S. House of Representatives
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cc: The Honorable Jim Jordan, Chairman

The Honorable Thomas Massie, Chairman
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust