

Texas Sued By Environmental Group For Anti-ESG Law

Article By:

Jacob H. Hupart

On September 1, 2021, the State of Texas enacted a law (SB 13) that constitutes one of the most far-reaching anti-ESG laws among the various states. It bars state institutions from investing in companies that “boycott” energy companies and requires the state of Texas to fully divest from all of these designated companies (unless they cease boycotting energy companies). This legislation was one of many proposed and enacted by conservative states seeking to prevent state retirement funds from directing monies to entities that, from the perspective of these states, embraced an ESG-focused agenda--primarily targeting those businesses that sought to limit their relations with fossil fuel companies. Indeed, this law was expressly described as intending to combat a “movement” that is “denying capital to [Texas’s] responsible, hard-working energy businesses.”

A few weeks ago, a sustainability-focused business group--the American Sustainable Business Council--filed suit to declare this law unconstitutional, on the grounds that “it impermissibly infringes rights of free speech and association under a scheme of politicized viewpoint discrimination” in “violation[] of the First and Fourteenth Amendments to the U.S. Constitution.” In essence, this complaint seeks to invalidate the Texas anti-ESG law based on a variety of constitutional grounds, most prominently on the grounds that it restricts speech by penalizing “speech and other expressive conduct advocating against reliance on fossil fuels” and that it violates the right of free association by exacting penalties on “companies that refuse to associate with companies in the fossil fuel industry.”

The results of this lawsuit--a direct constitutional challenge to the validity of one of the most prominent anti-ESG laws, and to a common tactic (e.g., a blacklist)--will inform future legislative action around the country. If this law is overturned, it is likely that different tactics will be adopted by the anti-ESG movement; conversely, if the law is sustained, then many other states will likely echo Texas and seek to penalize companies engaging in ESG-focused behavior deemed objectionable by politicians.

©1994-2025 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. All Rights Reserved.

National Law Review, Volume XIV, Number 263

Source URL: <https://natlawreview.com/article/texas-sued-environmental-group-anti-esg-law>