Sustainable Investing Policy Landscape: Mid-Year Review 2024

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The policy team at US SIF closely monitors the activities of state and federal governments and the courts that have an impact on our members and the field of sustainable investment. This includes tracking legislation in Congress and monitoring rules and regulations at federal agencies such as the Securities and Exchange Commission (SEC), monitoring important developments in states, and surveying the landscape in the courts.

At the end of 2023, we released a summary of federal-level policy developments for our members, which contained a detailed list of all of the bills impacting the field of sustainable investing that moved through Congress in 2023. This policy brief serves as a mid-year update on federal-level policy for 2024 as well as a look at the landscape in the states and the courts.

In March, the SEC released its final climate risk disclosure rule, setting off a flurry of lawsuits. In the states, this year has seen a steep drop in the number of bills that have passed into law since the high in 2023. There have been many lawsuits focused on sustainable investing at the federal level, state level, and with respect to private entities, some of which will take years to reach a resolution. We have summarized the cases expected to have the most significant impact on the field in this brief.

Overall, the most significant development in 2024 has been the SEC climate risk disclosure rule as Congress and the states have not yet seen the same level of anti-ESG activity as previous years.
Congress and Federal Agencies

In March, the SEC released its final climate risk disclosure rule, entitled “The Enhancement and Standardization of Climate-Related Disclosures for Investors.” The rule is a step forward that will increase the standardization of climate-related financial information that investors can use to analyze risks and opportunities in the market. Important changes from the 2022 proposed rule included the elimination of Scope 3 greenhouse gas emissions disclosures and a materiality test for Scopes 1 and 2 disclosures.

Within two weeks of the final rule being issued, nine different lawsuits were filed to stop the rule from taking effect. Given these developments, the SEC used its discretion under the Administrative Procedures Act to stay the rule pending judicial review citing an interest in avoiding confusion in the market “if registrants were to become subject to the Final Rules’ requirements during the pendency of the challenges to their validity.” For a more detailed analysis of the lawsuits facing the SEC, see the “In the Courts” section of this brief. The SEC is not expected to finalize any additional rules related to sustainable investing this year.

As of the date of publication, Congress has not passed any laws in 2024 impacting the sustainable investing field, although it is likely they will do so before the end of the year. While the full House of Representatives has not passed any laws, the House Financial Services Committee (HFSC) has held multiple hearings examining issues related to sustainable investing. These hearings focused on the SEC climate risk disclosure rule and Congressional efforts to make it more difficult for the SEC to complete important rulemaking going forward.

In April, the Committee passed a Congressional Review Act (CRA) resolution overturning the SEC’s climate risk disclosure rule. The CRA is a law that allows Congress to undo a recent administrative agency rulemaking and makes it challenging for that agency to issue a similar regulation in the future. The CRA resolution on the climate rule passed out of Committee on a party-line vote and is expected to be brought up by the full House of Representatives this summer.

Throughout the first half of 2024, we also worked closely with our investor organization peers as part of the Investor Voice Network (IVN) to continue to strengthen the investor voice within the national conversation pushing back on the attack on sustainable investing. In February, the IVN hosted a webinar for the members of the organizations involved in IVN about the state of the attack on sustainable investing featuring Rhode Island Representative Seth Magaziner. In addition to educating members of our organizations about the policy landscape, IVN has focused on educating members of Congress about the field of sustainable and impact investing. In April, IVN brought members to D.C. to meet with 30 Congressional offices. We talked about the field in general, the importance of the SEC’s climate risk disclosure rule, and the negative impact of the anti-ESG bills that have been introduced in Congress.

Looking ahead to the rest of 2024, US SIF will continue to work with our IVN partners to monitor developments at the federal level and expect to see Congress take up a handful of anti-ESG bills from 2023 before the end of the year.
In the States

State Legislatures

From 2021 to 2023, state legislatures experienced a significant surge in the introduction of anti-ESG proposals, accompanied by a broadening coalition of state attorneys general (AGs), treasurers, financial officers, agricultural commissioners and governors rallying against the integration of ESG factors into business practices, investment strategies, and insurance policies. However, the momentum seemed to shift in 2024, as the volume of legislative actions by state governments notably diminished.

Since 2021, a total of 371 anti-ESG bills have been proposed across 39 states. Of those 371 proposed bills, only 42 have successfully become law, reflecting a modest 11% conversion rate. The 2024 legislative season so far represents a substantial decrease in the number of laws that have been passed compared to 2023. In 2023, 23 anti-ESG laws and 6 non-binding resolutions were passed. So far in 2024, 160 pieces of proposed legislation have been considered across 28 states, but only 5 laws and 1 resolution have become law across 6 states (FL, GA, ID, SC, LA and TN). That means that approximately 80% of the proposed anti-ESG laws introduced in 2024 died in the legislature and will not become law this year.

State Elected Officials in 2024

State elected officials, specifically state treasurers and attorneys general, have spearheaded the anti-ESG movement at the state level, with 113 actions taken since 2018. Their efforts have aimed to curb voluntary corporate climate action, impede regulatory measures for climate change mitigation, and hinder the transition to clean energy. Like in state legislatures, 2024 has witnessed a notable decrease in anti-ESG initiatives by state executives.

Key actions by state officials in 2024 include state financial officers urging the SEC against changes to the NYSE Listed Company Manual for Natural Asset Companies and AGs challenging the DOL’s ESG rule and the SEC’s climate-related disclosure rule (more on these in the “In The Courts” section). Additionally, officials in Texas and West Virginia have expanded their states’ financial company blacklists of firms “boycotting fossil fuels,” while agricultural commissioners have raised concerns about ESG initiatives at banks impacting farmers. In Wyoming and Missouri, state officials have implemented laws requiring financial advisors to disclose when they incorporate a “social objective” into their discretionary investment decisions. Read more in US SIF’s “State Anti-ESG Efforts Affecting Financial Advisors.”
In the Courts

Anti-ESG attacks have begun to shift into the courts, where new cases on the use of ESG criteria in investing have been filed over the past few years. Cases aim to slow the proliferation of sustainable investing by restricting disclosure, undermining the proxy process, taking ESG out of fiduciary duty and targeting private sector actors that consider ESG criteria when making investment decisions. Conversely, there are a few cases aiming to stop anti-ESG actions in states, specifically in Oklahoma, Kentucky and Missouri.

The vast majority of the following cases are still awaiting their day in court, and it may be years before we know their outcome. Yet, they are important lines of sight into continuing and future attacks on the sustainable investing industry. While not a complete picture of every ESG-related lawsuit in the United States, the chosen cases below all have the chance to have a significant impact on the sustainable investing industry.

Restricting Disclosure

Iowa, et al. v. SEC

In March 2024, within two weeks of the finalization of the SEC’s climate-related disclosure rule, the nine different lawsuits against the rule (by different sets of AGs, energy companies and trade associations) were consolidated and the 8th U.S. Circuit Court of Appeals was chosen to hear the cases. The SEC’s final rule requires some registrants to disclose their Scopes 1 and 2 greenhouse gas emissions and some physical and transitional climate risk information. The consolidated case, which a group of Democratic AGs is assisting in defending, argues that the SEC’s final climate rule is an unauthorized expansion of the SEC’s statutory rulemaking authority, represents a major policy question and therefore must have congressional direction, violates the First Amendment by representing compelled speech and is arbitrary and capricious. On April 4th, 2024, the SEC voluntarily stayed its final climate-related disclosure rule pending judicial review.

Chamber of Commerce of the United States of America, et al. v. California Air Resources Board

In January 2024, the U.S. Chamber of Commerce, with other national and California-based trade associations, sued the California Air Resources Board (CARB) in the U.S. District Court in the Central District of California over California’s climate-related disclosure laws. These laws, SB 253 and SB 261, require large companies doing business in California to disclose their Scopes 1, 2 and 3 greenhouse gas emissions and other climate-related risks and impacts. The trade associations argued that the state’s rules compel companies to make public statements that are speculative, non-commercial and politically charged, therefore violating the First Amendment, and are unconstitutionally vague. The trade associations also raise the Supremacy Clause, arguing that the Clean Air Act and the U.S. Constitution preempt California’s authority to regulate greenhouse gas emissions and that the laws place significant burdens on interstate and foreign commerce with minimal corresponding benefits. In August 2024, CARB filed a partial motion to dismiss the challenge, pushing to dismiss all parts of the suit except the First Amendment claims. The motion is currently awaiting a decision by the court.
Undermining the Proxy Process

ExxonMobil v. Arjuna Capital and Follow This

ExxonMobil filed a complaint against their investors, Arjuna Capital and Follow This, to allow the company to legally leave a shareholder proposal submitted by the investors off Exxon's proxy statement and to not present it at its 2024 annual shareholder meeting. The shareholder proposal asked Exxon to accelerate its rate of greenhouse gas emissions reductions.

The suit was filed in the U.S. District Court for the Northwestern District of Texas, Fort Worth Division in January 2024. ExxonMobil argued that under Rule 14a-8 of the Securities Exchange Act of 1934 (Rule 14a-8), the shareholder proposal should be allowed to be excluded from its proxy statement because it dealt with the company’s ordinary business operations, was substantially the same in subject matter as proposals from 2022 and 2023 that did not pass the resubmission thresholds and did not support the economic performance of Exxon or create shareholder value. The suit separately aimed to end the current guidance by the SEC staff on how it applies Rule 14a-8, arguing that the guidance is at odds with the rule itself.

In February 2024, Arjuna and Follow This withdrew their proposal. Exxon did not withdraw its suit citing its need to know if the SEC rules on “ordinary business” and “resubmission” exclusions would have allowed it to exclude that proposal. In May 2024, the court ruled that the suit involving Follow This could not continue as the court does not have jurisdiction over the Netherlands-based group but that the case against Arjuna could continue. Following this decision Arjuna submitted a letter to Exxon stating that it would refrain from submitting any proposal at Exxon on climate issues, but Exxon rejected this and asked the court for further relief in the case. The court’s response is pending as of this writing.

NCPPR v. SEC

In April 2023, the National Center for Public Policy Research (NCPPR) sued the SEC in the U.S. Fifth Circuit Court of Appeals over the SEC staff decision to allow the exclusion of an NCPPR proposal at Kroger. NCPPR argued that the SEC discriminated against it and others, favoring ESG in its policy, breaching both its statutory duties and the First Amendment rights of NCPPR. In May 2023, the National
Association of Manufacturers (NAM) was granted a motion to intervene in the case and challenged the SEC’s authority to regulate proxy ballot items that investors should consider under Rule 14a-8. NAM argued that this authority should not sit with the SEC and instead be left to the states. The case is awaiting a decision by the court.

Texas, et al. v. SEC

In February 2023, the states of Texas, Louisiana, Utah and West Virginia sued the SEC in the U.S. Fifth Circuit Court of Appeals over its final enhanced reporting for proxy votes rule, which aims to enhance Form N-PX to make funds’ proxy voting records more usable for investors to monitor how their funds vote and requires reporting on how institutional investment managers vote on “say-on-pay” matters. The states argued that the final rule would increase activism, administrative costs and shareholders’ risk of loss. In May 2023, the court sided with the SEC, stating that without evidence of the rule’s impact on the states’ citizens, the states do not have standing to bring this suit, that there is no concrete evidence that investors would face higher costs due to increased regulatory burden and that it is speculative that the funds would pass on any costs to investors. This case is currently closed with the SEC rule surviving the legal challenge.

Taking ESG Out of Fiduciary Duty


In January 2023, a group of 24 conservative attorneys general sued the Biden Administration in the U.S. District Court in the Northern District of Texas over the Department of Labor (DOL)’s final ESG rule, which clarified that fiduciaries may consider climate change and other ESG factors when making investment decisions and exercising shareholder rights. The participants argued that the executive branch overstepped its power in the finalization of the DOL’s ESG rule, “overriding ERISA’s text and its stated objective” and instead politicizing the retirement system. The case is awaiting a hearing in court.

Spence v. American Airlines

In June 2023, a group of American Airlines pilots sued American Airlines in the U.S. District Court of Northern Texas, Fort Worth Division over the company retirement plan’s use of ESG criteria. The pilots argued that American Airlines breached its fiduciary duty by investing money to pursue a “leftist political agenda through environmental, social and governance ESG strategies, proxy voting and shareholder activism — activities which fail to satisfy these fiduciaries’ statutory duties to maximize financial benefits in the sole interest of the plan participants.” In February 2024, the suit survived a motion to dismiss by American Airlines. In May 2024, the Judge granted the pilots’ motion to certify a class, which turned this case into a class action suit and increased the pressure on American Airlines. There is a forthcoming settlement conference.

In May 2023, four New York City employees sued three of the city’s employee retirement funds in the Supreme Court of the State of New York over the funds’ decision to divest from fossil fuels. The employees argued that the retirement plans broke their fiduciary obligations to administer their plans for the “exclusive purpose of providing retirement benefits” and “solely in the interests of the Plans’ participants and beneficiaries” through the decision to divest $4 billion from fossil fuels. In August 2023, the retirement plans filed a motion to dismiss the case, primarily on the basis that the employees lacked standing. The motion is awaiting a decision by the court.

Targeting Private Sector Actors

Tennessee v. BlackRock

In December 2023, the state of Tennessee sued BlackRock in the Circuit Court of Williamson County, Tennessee over how it markets its use of ESG criteria to its clients. Tennessee argued that BlackRock had misled its customers about the scope and effect of widespread ESG activities including marketing its investment products and services in a fashion that constitutes deceptive acts and practices, violating the Tennessee Consumer Protection Act. This case is currently awaiting trial.

Mississippi Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty in the Matter of BlackRock, Inc.

In March 2024, the state of Mississippi served a cease-and-desist order to BlackRock over its language around its use of ESG criteria in its investment products. Mississippi argued that BlackRock has been making untrue statements and omitting material facts in order to mislead investors, violating the Mississippi Securities Act. Specifically, the state argued that by having a “net zero” carbon emissions target for the entire firm, BlackRock’s non-ESG funds are in practice ESG funds. Additionally, Mississippi rejects BlackRock’s claim that its marketed ESG funds produce long-term financial gains. There is no public record of BlackRock responding to this order yet.

AFBR and NCPPR v. SEC

In August 2021, the Alliance for Fair Board Recruitment (AFBR) and the National Center for Public Policy Research (NCPPR) sued the SEC in the U.S. Fifth Circuit Court of Appeals over its decision to approve the Nasdaq’s rule on board diversity and disclosure, which requires companies listed to provide certain information relating to board diversity or explain why it fails to provide the required information. In October 2023, the three-judge panel unanimously denied AFBR and NCPPR’s petition and upheld the rule, stating that Nasdaq is not subject to constitutional scrutiny, the rule was squarely within the standard of materiality, the SEC was within its authority when it approved the rule and that Nasdaq is not forcing companies to increase board diversity. Following the decision, AFBR and NCPPR filed for a rehearing en banc (full panel of judges), which was approved in February 2024 and is currently awaiting a full panel hearing.

These cases all have the chance to have a significant impact on the sustainable investing industry.
American Alliance for Equal Rights v. Fearless Fund Management

In August 2022, the American Alliance for Equal Rights (the same organization that successfully sued Harvard University to end affirmative action in college admissions) sued Fearless Fund Management in the U.S. District Court for the Northern District of Georgia in Atlanta over the Fearless Strivers Grant Contest which provides grants to black women-owned businesses. AAER argued that through this program, Fearless Fund is running a racially discriminatory practice that violates the Civil Rights Act of 1866’s guarantee of racial neutrality in private contracting. Originally rejected by the district court, in June 2024, the U.S. Eleventh Court of Appeals reversed the decision and issued a preliminary injunction, determining that Fearless Fund is “substantially likely to violate” section 1981 of the Civil Rights Act of 1866.

Stopping Anti-ESG Actions in States

Keenan v. Oklahoma and Todd Russ

In November 2023, a retired Oklahoma public servant, Don Keenan, sued the state of Oklahoma in the District Court of Oklahoma County over the state’s Energy Discrimination Elimination Act. Keenan argued that the state’s “boycott” law is unconstitutionally vague, violates the First Amendment as it represents compelled speech, viewpoint discrimination and content discrimination and breaks fiduciary duty by requiring state management pension systems to operate in a fashion that is not for the “exclusive benefit of their beneficiaries.” In May 2024, the Judge issued a temporary injunction barring the state from enforcing the law until the lawsuit is finalized.

SIFMA v. Ashcroft and Jacoby

In August 2023, the Securities Industry and Financial Markets Association (SIFMA) sued Missouri’s Treasurer and Securities Commissioner in the U.S. District Court in the Western District of Missouri over Missouri’s ESG disclosure requirements for financial advisors and broker-dealers. SIFMA argued that the disclosure rules are preempted by ERISA and NSMIA and violate the First Amendment as they represent compelled speech and are unconstitutionally vague. In January 2024, the suit survived an attempt to dismiss the case by Missouri. The Judge adopted SIFMA’s analysis that the case should continue forward and therefore is pending next steps in the lawsuit.

Hope of Kentucky v. Cameron

In October 2022, Hope of Kentucky, a local affordable housing construction company, and the Kentucky Bankers Association sued the Kentucky Attorney General, Daniel Cameron, in the Commonwealth of Kentucky Franklin Circuit Court over the AG’s subpoena of six major banks on their ESG efforts and involvement in the UN Net-Zero Banking Alliance. Hope of Kentucky argued that through the subpoenas and civil investigation demands, the Kentucky AG was exceeding the power of his office, violating the First Amendment by chilling the bank’s right to think, speak and associate freely without intrusion, and violating the Kentucky Senate Bill 205 which gives the power to deal with companies boycotting fossil fuels to the State Treasurer and would require the AG to first bring a civil action. In November 2022, the case moved to the U.S. District Court in the Eastern District of Kentucky’s Central Division at Frankfort. In September 2023, the court dismissed the First Amendment claims, stating that an investigation, in and of itself, does not show the Plaintiffs had their rights injured. The remainder of the case awaits further proceedings.
Looking Ahead

Looking across the policy landscape on sustainable investing, the overall trend suggests that there is a decrease in the appetite of politicians to target this industry from previous years, but the consequences of the lawsuits and legislative measures that have already been put in place will continue to play out over the coming months. The US SIF policy team will continue to keep members informed of developments as they occur and will monitor the 2024 U.S. election for its impact on the field of sustainable investing.
US SIF: Sustainable Investment Forum is the leading voice advancing sustainable investing across all asset classes. Its mission is to rapidly shift investment practices toward sustainability-aligned goals with the aim of achieving long-term investment goals and preserving our planet and society. US SIF members include investment management and advisory firms, mutual fund companies, asset owners, data and research firms, financial planners and advisors, broker-dealers, banks, credit unions, community development financial institutions and non-profit associations. JOIN US!

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