Testimony of Minnesota Attorney General Keith Ellison
House Financial Services Committee
July 12, 2023

Mr. Chairman, Ranking Member, and distinguished members of the House Financial Services Committee, my name is Keith Ellison and I serve as Minnesota Attorney General.

It is a pleasure to be back at the House Financial Services Committee where I had the honor to serve for 12 years while I was in Congress. I founded the Congressional Antitrust Caucus and understand these issues well. The issues you are talking about today are also central to my work as Minnesota's Attorney General.

As Attorney General, I serve on the governing board of the Minnesota State Board of Investment, which we call the SBI. The SBI is a fiduciary for approximately $125 billion of assets, serving over 820,000 active and retired Minnesota Public Employees, as well as various agencies of the State of Minnesota.

Active public employees entrust the SBI with a portion of their salaries in return for a secure retirement.

Public employers across the state entrust SBI with a portion of their balance sheets in return for a critical future benefit for their employees.

I am proud that the SBI pays more than $5 billion a year in benefits to our members. In many cases, these benefits payments are the recipient's most important financial asset.

One of our investment values that we have expressly adopted is that addressing environmental, social, and governance-related issues can lead to positive portfolio and governance outcomes. We believe that by taking a leadership role in promoting responsible corporate governance, SBI can contribute significantly to implementing ESG best practices — which should in turn add long-term value to SBI's investments.

And I am also proud that year over year, the Minnesota SBI is one of the highest-performing public pension funds in America. The Minnesota SBI is proof that ESG best practices and high market returns can and do go hand in hand.

The SBI has a covenant to help ensure a secure retirement for Minnesota's public employees. Their futures are in our portfolios. What beneficiaries want from us is simple: to invest wisely.

As fiduciaries and elected officials, we are charged with carefully considering all relevant investment risks and opportunities. We have a duty to hold companies accountable and to ensure they are meeting their fiduciary duties.

Indeed, it is the fiduciary duty for investment managers, banks, insurers, and other market leaders everywhere, in every sector, to consider the risks and opportunities that could impact their investments and their businesses.

Allow me to say this clearly: When it comes to ESG, the available data indicates that these desires — for wise investment, for evaluating risks and opportunities, and for ensuring companies are meeting their fiduciary duties — are not in conflict. Quite the opposite: they go hand in hand.

Allow me also to say *this* clearly: legislation that attempts to hijack investment decisions for purely political purposes are a threat to the financial security of retirees and families in every community in every state.

Most Americans aren't clear what ESG means, but at the end of the day, it's a bread-and-butter issue. So allow me to say this even *more* clearly: these bills hurt American families.

The private sector now overwhelmingly recognizes that it is vital to consider risk factors such as climate change and water usage, workplace safety, and corruption, among other environmental, social, and governance factors.

Simply put, prohibiting professionals, business executives, and asset managers from considering those factors is interfering with the free market. To prohibit professionals from adapting to recognized risks and opportunities is irresponsible, harmful, and dangerous.

When it comes to the urgent need to consider environmental factors in investing, consider that the last several days have been the hottest ever recorded on earth. Human-made climate change is real, and it is not going away. Quite the opposite: its effects and the risks it poses are intensifying.

According to the National Oceanic and Atmospheric Administration, weather-related disasters that caused more than $1 billion in damages each have cost the United States more than $2.5 trillion since 1980.

That's bad enough. What's worse is that they are becoming much more frequent.

In the 1980s, we saw about 3 weather disasters per year that caused more than $1 billion in damages. In just the last 3 years alone, we have seen 20 occurrences of $1 billion disasters per year. These are real risks for investors.

And yet there are also opportunities for investors, in the form of significant new business opportunities in renewable energy and emerging technologies, and the spin-off from the Inflation Reduction Act.

ESG is nothing more than looking clear-eyed at risks and opportunities in the real world and making sound investment decisions on that basis. As Illinois State Treasurer Mike Frerichs plainly stated in another congressional hearing on this topic: "ESG is data."

Some politicians may want to ignore data and look the other way. They may refuse to see clear threats or what's obvious to the rest of us. If they want to invest their own money blindly without regard to these risks, they're free to do so.

But fiduciaries don't look the other way. They can't ignore the clear risks or the opportunities.

Indeed, according to a recent poll, 80% of asset owners believe ESG factors are material and 96% of the largest 250 global companies now issue a sustainability report. They don't do it out of the goodness of their bleeding hearts. They do it because it's good for business, customers, shareholders, and profits.

The data speak for themselves.

In 2019, McKinsey determined that in over 2,000 studies on the impact of ESG propositions on equity returns, there was a 63% share of positive findings and only 8% negative.

Similarly, a New York University study examined the relationship between ESG and financial performance in more than 1,000 research papers from 2015-2020. They found a positive relationship between ESG and financial performance in 58% of the studies, with only 8% showing a negative relationship.

Despite this data, in states across this country there is an effort to rewrite the time-tested laws that govern the relationship between fiduciaries and beneficiaries and to prohibit consideration of large classes of risk. These are attacks on the freedom to invest.

Here are some states that have passed or threatened to pass this legislation that infringes on the freedom to invest, and the additional tax burden these states now bear or will bear:

- In Texas, anti-free market legislation may have cost taxpayers up to $532 million in higher interest costs in just one year.
- In Indiana, an anti-sustainable investing bill could cut state pension returns by $6.7 billion over the next 10 years.
- Kansas could lose upwards of $3.6 billion in the same time frame from a similar bill.
- The Arkansas Public Employees Retirement System estimated they could lose $30-40 million a year under a similar proposal.
- Taxpayers in six states — Florida, Kentucky, Louisiana, Missouri, Oklahoma, and West Virginia — could have been on the hook for up to $700 million in excess interest payments if restrictions on sustainable investing had been passed and implemented in those states.

These attacks on the freedom to invest will lead to distorted capital markets and more costs and lower returns for businesses, pensioners, and taxpayers.

But perhaps this issue is *not* about hard data or fiduciary duty. Perhaps it has nothing to do with ESG at all. Perhaps it *is* about running roughshod over the freedom to invest in order to protect the prerogatives of one industry in particular — the fossil-fuel industry — that bears so much responsibility for the costs of climate change and has waged a well-documented, decades-long campaign of deception to deflect that responsibility.

Fiduciary duty is simply the responsibility to act solely in the best interest of another person. As 16 attorney general colleagues and I wrote this committee last November, "Consideration of ESG factors is consistent with legal responsibilities to evaluate potential risk and reward in assessing the merits of an investment." This is a real consideration in the real world in which we live — not the world in which some members or some corporations wish we live, but the one in which we actually live today, with all its risks *and* opportunities.

In fact, the refusal to take into consideration environmental, social, or governance risks of an investment would be a breach of fiduciary duty in many circumstances.

Federal and state action that forbids professional investors from evaluating ESG risks forces them to breach that duty. It is irresponsible and dangerous for public officials to dictate which investments the managers must favor by censoring relevant financial consideration. It is exactly what Congress should *not* be doing.

Similarly, the effort to limit shareholders from voicing their concerns is also rewriting decades of work that guarantees that as part of being a stockholder, you have a voice in managing your money.

Investors and asset managers simply cannot afford to ignore financial risk. Now, to the politicians who want to block asset managers, banks, and insurance companies from considering these risks, I say: bet your own money. But common-sense Americans cannot afford to have climate deniers, ideologues, and apologists for corporations run amok gamble with their life savings.

Thank you for your consideration.