TACKLING THE "S" IN ESG

Overview

Environmental, Social, and Governance (ESG) initiatives have been championed as ways for companies to identify, quantify, and address various environmental, social, and governance issues pertinent to their brands and business operations. But in reality, the social aspects of these ESG initiatives are frequently used as a catch-all for several anti-freedom, anti-free speech, and anti-life agendas. Activists are promoting these divisive agendas at companies in an open attempt to circumvent the ballot box and the First Amendment restrictions placed on government actors.

As such, trying to appease ESG advocates is a slippery slope into policies, positions, and practices that undermine core American values and freedoms. And sliding down that slope can result in legal risk, brand damage, backlash, and, in some circumstances, complicity and aiding alarming activities, including censorship and discrimination. When companies comply with such ESG initiatives, they fall short in their duty to steward their investors' capital to produce value in the marketplace and instead undermine free speech and religious liberty, essential ingredients for a free society.

In light of the dark objectives underlying the ESG agenda, companies ought to abandon their short-sighted and anti-freedom "ESG" objectives and instead support initiatives designed to support and protect the foundational freedoms that have made America great—freedom of speech, freedom of religion, and the right to life.

TALKING POINTS

- "Good ESG practices" are often equivalent to opposition and hostility to the values of life, freedom of speech, and freedom of religion, which benefit every American. Specifically, ESG initiatives are undermining Americans' civil liberties. Shareholder activists, asset managers, proxy advisors, regulators, and others use the "S" in ESG to:
  - Stifle free speech and religious freedom rights through active censorship of views deemed "intolerable" by a select few under the guise of combatting "hate" and "misinformation" online;
  - Trample freedom of religion by debanking individuals and institutions based on religious or political viewpoints;
  - Promote abortion on demand by offering benefits to women considering abortions; and
  - Promote institutionalized racism, sexism, and anti-religious bigotry through diversity, equity, and inclusion (DEI) programs.

- ESG hurts business. It infects businesses by turning their focus and diverting their resources to initiatives that ultimately are not in the interests of the company or its stockholders.


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THE SHORTCOMINGS AND RISKS OF THE "S" IN ESG

Broadly understood, the "S" in ESG deals with how companies evaluate and manage risks in the context of their relationships with stakeholders (e.g., shareholders, customers, suppliers, civil society, and governments) as well as "the societies in which (they operate), and the political environment." The "S" manifests in many different contexts and topics, many of which are a force for good. For example, Disney runs Make-a-Wish Foundation, granting wishes of children with critical illnesses; Walmart practices disaster preparedness and responds to help communities in need following disasters; Netflix matches employee giving to charitable organizations with two times the amount given; Brookdale Senior Living, a billion-dollar senior living company, raises funds to find a cure for Alzheimer's disease; and Amazon helps millions of people around the world grow their technical skills with free cloud computing skills training. Such programs are to be commended.

However, deeply embedded within many social policies in corporate ESG practices are policies and efforts that undermine the right to life, freedom of speech and freedom of religion and promote discrimination. These policies and practices are widespread throughout corporate America and are perhaps most glaringly manifested in the following areas:

- Promotion of diversity, equity and inclusion.
- Promotion of abortion on demand.
- Endorsement of other anti-biblical lifestyle choices.
- Combating "mis" and "dis" information and so-called "hate" speech.
- Debanking individuals and entities with politically or religiously disfavored views or beliefs.

These activists are trying to circumvent the democratic process because they know that these radical agendas would never pass at the ballot box and would risk violating important constitutional protections if the government were to impose them. For example, California passed a law in 2020 requiring boards of companies headquartered there to maintain a minimum number of directors from certain minorities. That law was struck down in 2023, as was the SEC's approval of a similar disclosure rule in 2024. But that did not stop BlackRock, Vanguard, and State Street from accomplishing the same thing in 2020 and 2021, when they stated that they expected the S&P 500 and Russell 3000 to maintain these same requirements. What's worse, these asset managers were implementing this social policy behind closed doors and by voting other peoples' money.

Activists are implementing similarly aggressive policies promoting abortion, censorship, and discrimination to ensure that companies normalize these highly partisan positions and limit market access to their opponents. Adoption, advocacy, and activism within the corporate walls in each of these areas pose their own unique risks to business and ought to be stopped.

1. DEI AS A PART OF THE "S" IN ESG

DEI initiatives that hire retain, promote, or otherwise discriminate against individuals based on race, color, sex, national origin, or religion are legally risky, and, depending on how they are implemented, may be illegal under federal and state laws.

For a closer examination of these risks, please review our resource, "First Steps to Lasting Change: Dismantling DEI." In short, while DEI programs have operated for years as part of the "S" in ESG initiatives under the guise of fairness and the need to promote individuals of a certain race, color, sex, or national origin to make up for the sins of America's past, in reality, most DEI programs are institutionalized discrimination because they seek to retain, hire, and promote individuals (and thereby discriminate against others) based not on merit, but on race, color, sex, and national origin.

2. ABORTION AS A PART OF THE "S" IN ESG

ESG initiatives routinely take the position that it is a woman's right to choose to kill her baby while the baby is in the womb, and in doing so, these initiatives undermine the foundational fabric of society—life. Nowhere was this more evident than in the aftermath of the U.S. Supreme Court's decision to overturn *Roe v. Wade*. When *Roe v. Wade* was overturned, many leading brands lined up to support abortion, doing everything from paying for abortions and travel to states where the procedure remains legal, to opposing state abortion restrictions, to funding pro-abortion activist groups. But often, those same companies provided scant support for adoption and other abortion alternatives. This is, at a minimum, highly controversial and polarizing, and at worst, it is complicit in the act of ending human life.

Ignoring that truth and cloaked in lies, the ESG agenda marches on, pressuring corporations to support abortion under the innocuous banner of support for women's health. It's here that business leaders must meet the cultural moment with courage and wisdom. Instead of making knee-jerk-reaction policy changes to recent development, companies need to think carefully about their stakeholders and their company's values, understanding that many of their customers, employees, shareholders, and other stakeholders do not support abortion on demand. For example, faith-based shareholders with over $100 billion in assets under management and 17 state treasurers and other financial officers wrote to Walmart and other companies with major pharmacies last fall advising them of the legal, political, and reputational risks of dispensing mifepristone, an abortion inducing drug.

3. ENDORSEMENT OF OTHER ANTI-BIBLICAL LIFESTYLE CHOICES AS A PART OF THE "S" IN ESG

Most "S" related efforts also promote lifestyle choices that remain at the center of cultural debate in America, including, most prominently, the LGBTQ+ agenda. But the LGBTQ+ agenda, when promoted by businesses, introduces significant blowback risk.

Consider the following examples:

- Bud Light's decision to platform transgender activist Dylan Mulvaney cost the brand an estimated $395 million dollars and resulted in probes from multiple state officials and members of Congress, examining whether the company's officers and directors had violated ethical marketing codes.
- Target's decision to market LGBTQ+ products to families and young children prompted a warning letter from several state attorneys general that the company may have run afoul of laws protecting children from harmful content.
- Disney's decision to oppose a Florida law generally banning schools from teaching elementary-age children about sexual orientation or gender identity issues and prohibiting instruction that is not age-appropriate for students resulted in months of public controversy, protracted litigation, and Disney ultimately losing the power to appoint its own members to a governing board that oversees its land development activities in parts of central Florida.

In each of these instances, each Company's endorsement of LGBTQ+ issues resulted in sustained loss in market value and fallout.

Another concerning example relates to the Human Rights Campaign's Corporate Equality Index (CEI). For several years, most American companies were vying to get 100% each year on the (CEI). HRC, in turn, coerces these companies into increasingly radical positions on contentious social issues. Starting in 2023, HRC began demanding that companies cover "puberty blockers for youth" in their healthcare plans. And it is doing so even though most Americans strongly oppose providing puberty blockers to minors. More recently, however, several companies, including Ford, Harley-Davidson, and Lowes, have stopped participating in the CEI as backlash and legal risks to DEI initiatives continue to grow.

4. CENSORSHIP AS A PART OF THE "S" IN ESG

In tech, reducing so-called "misinformation," "disinformation," and "hate speech" from the information eco-system has become a core mandate of ESG initiatives. Proxy advisor ISS casts this as a "path to rebuilding trust in media." Companies like Facebook bought in.

In its 2024 Responsible Business Practices Report, Meta (the parent company of Facebook) disclosed the following:

> **Misinformation**
>
> We remove misinformation that experts determine would be likely to directly contribute to the risk of imminent physical harm. We focus on reducing the prevalence of misinformation and directing people who use our technologies to authoritative information. As part of that effort, we partner with third-party fact-checking organizations to review and rate the accuracy of the most viral content on our technologies. We also provide resources to increase media and digital literacy ↗ so people can decide what to read, trust and share themselves.

While this misinformation statement sounds relatively innocuous on its face, more recent developments have revealed its more sinister application, including the fact that the federal government used "misinformation" efforts to push online censorship efforts. For example, in August 2024, Mark Zuckerberg, the CEO of Meta, testified before Congress that the federal government pressured Facebook to censor content about COVID-19. Similarly, X employees testified before the House Committee on Oversight and Accountability that Twitter was pressured by the U.S. government to remove content from its platform on politically important and medically significant information.

Now, the censorship affront to free speech has been exposed, and free speech has recently begun winning again. In fact, Mr. Zuckerberg appears to have made a 180-degree turn on censorship. On January 7, 2025, Mr. Zuckerberg promised to take a new approach to content moderation. Mr. Zuckerberg admitted that "[t]oo much harmless content gets censored, too many people find themselves wrongly locked up in "Facebook jail," and we are often too slow to respond when they do. We want to fix that and return to that fundamental commitment to free expression. Today, we're making some changes to stay true to that ideal." Similarly, X now utilizes a program called Community Notes to evaluate content on its platform rather than using its own employees to censor posts.

This rejection of censorship is a win for free speech and another rejection of a key tenet of the ESG movement in the tech space—a win that business leaders can rally around and build on in their own companies. For more on corporate censorship, please review our resource: "First Steps to Lasting Change: Stopping Censorship in Terms of Service."

5. DEBANKING AS A PART OF THE "S" IN ESG

Politicized debanking happens when a financial institution discriminates against a client due to their religious or political views or because they are politically disfavored. Politicized debanking, often justified as a reduction in "social risk," is on the rise and should be opposed because it destabilizes the marketplace, poses legal, regulatory, and reputational risks to the institutions that engage in it, and has a chilling effect on people's willingness to speak and live out their faith.

Case-in-point, in 2023, JPMorgan & Chase faced intense scrutiny over its decision to debank non-profit group, the National Committee for Religious Freedom (NCRF), for questionable reasons. After changing its explanation multiple times, 19 state attorneys general, 14 state financial officers, and financial experts with over $20 billion in assets under management wrote separate letters calling on the bank to ensure that it respects the freedom of expression of its clients.

Numerous laws prohibit financial institutions from discriminating based on religion. The Equal Credit Opportunity Act and Fair Housing Act bar religious discrimination in lending, broadly construed. Many states and cities prohibit religious discrimination in a wide variety of contexts. For example, both Washington D.C. and New York prohibit religious discrimination in housing, employment, public accommodations, and educational institutions. New York's Human Rights Law also specifically prohibits religious discrimination in providing credit services.

Barring discrimination against Americans based on their political views also has a pedigree in civil rights law. Though political views remain an emerging field in federal nondiscrimination law, the civil rights laws of numerous states like New York, Washington, and Washington D.C. already treat political affiliation or political activities as protected characteristics.

Tennessee and Florida have enacted legislation prohibiting banks and lenders from punishing citizens for their political or religious viewpoints. Texas also passed a law stopping insurers from setting rates based on any ESG criteria, including social factors.

Many financial institutions also hold themselves out as inclusive places and make promises not to discriminate. To the extent they make these representations, they may be liable under state and federal consumer protection laws for deceptive acts and practices. For additional information on Debanking, please review our resource, "First Steps to Lasting Change: Debanking."

THE SHORTCOMINGS AND RISKS OF THE "S" IN ESG - CONCLUSION

Ultimately, proponents of ESG want private companies to do what the government can't do under the Constitution and voters won't do. The "S" in ESG has been used to push anti-freedom, anti-free speech, and anti-life agendas. As such, companies need to stop trying to appease ESG advocates and take and communicate a better approach.

STRATEGIES FOR CHANGE

1. TAKE A BOLD AND COURAGEOUS STANCE AGAINST THE VEILED EVILS BOUND UP IN THE "S" IN ESG

Admitting there is a problem is the first step to change. It's not okay for companies to discriminate or use quotas in hiring or other employment practices based on an individual's race or color. It's not okay for companies to promote the killing of innocent babies via abortion. It's not okay to promote products, slogans, and pride for irreversibly mutilating boys' and girls' bodies under a rainbow-colored flag. It's not okay to censor free speech. And it's wrong to debank or deplatform people because of their religious or political views.

It's time to stand against these evils, which have been ushered into corporate practices, policies, and platforms under the ESG banner. It's time to stand for truth, freedom, and life. It's time to stop trying to tame the roaring ESG lion that is undermining every American's foundational freedoms and put it to death. The federal government under the new Trump administration, has recently taken significant steps to do its part in stopping the ESG agenda by calling DEI by its true name—discrimination—and halting DEI initiatives throughout the federal government. And the SEC has recently put a halt to its previously adopted ESG reporting requirements. Now, it's time for business leaders to do the same and say "goodbye" for good to these damaging social initiatives.

2. FLIP THE SCRIPT ON ESG'S "RISK" FRAMEWORK

ESG advocates have tried to create a homogenous ESG framework under which the "S" is used to push anti-freedom, anti-life, and anti-religion agenda. But bowing to such ESG demands need no longer be the norm. Business leaders can and should be bold in pointing out the problems with blindly adopting the ESG agenda and forge a path forward no longer hinged to the broader ESG agenda. Business leaders should point out the numerous negative impacts—especially those of the "S" – on the legal exposure, brand, and operational integrity of companies.

The "S" in ESG, far from being a tool of risk mitigation, has become a cancer intended to infect society with an anti-freedom malaise that hurts a company's relationships with its shareholders, employees, customers, and other stakeholders.

3. TARGET THE MOST EGREGIOUS PRACTICES FIRST

Given ESG's longstanding hegemony, overcoming it requires a strategic approach. Business leaders should begin by identifying and exploiting a select number of ESG's worst vulnerabilities.

For example, in light of several recent Supreme Court decisions, a good place to start is DEI trainings, materials, or programs that discriminate against certain employees based on their race, color, or religious views. You can suggest an audit of DEI programming to ensure it complies with federal and state employment law and is consistent with a broad commitment to respect each individual and promote equal opportunity. Real Unity Training Solutions is an organization that can conduct these audits. The audits will open the door to constructive conversations about alternative approaches to DEI.

4. ADOPT POLICIES THAT AFFIRM FUNDAMENTAL FREEDOMS

Simultaneous with challenging the worst elements of the "S," business leaders should introduce policies and practices that promote free speech and religious liberty. Viewpoint Diversity Score has a suite of policies, including policies prohibiting discrimination against customers based on political or religious views, affirming viewpoint diversity as a paramount value in the workforce, and extending greater protections for religious accommodation.

5. CALL FOR EQUAL TRANSPARENCY

Pushing companies to disclose politicized activities is often the first step away from harmful activism and back toward value creation. Companies have overwhelmingly committed to "transparency" and "disclosure" from ESG-aligned groups. But transparency is a two-way street. That commitment should extend to concerns about whether they are promoting civil discourse and respecting diverse ideologies.

One practical way to encourage equal transparency is to urge companies to voluntarily participate in benchmarks like the Viewpoint Diversity Score Business Index, which is run by Alliance Defending Freedom. Alliance Defending Freedom will work with companies to improve their policies so that they protect religious freedom and freedom of speech.

6. RESTORE AUTHENTIC MORALITY IN CORPORATE GOVERNANCE

ESG's authority and influence stems in part from its pseudo-morality. It purports to provide a moral conscience for business while weaponizing corporations against the very values and institutions necessary for their own prosperity. Defeating ESG requires business leaders to reclaim the moral high ground. Free markets and the pursuit of profit are certainly necessary conditions for business. But companies must also practice virtue. Every business should promote and protect human life and respect the basic social goods of any healthy society, including core civil liberties like freedom of speech and religion, and essential institutions like the family.

RECOMMENDED RESOURCES & EXPERTS

- "The Moral Duties of Business," Jeremy Tedesco and Daniel Cochrane, Law & Liberty (Feb. 8, 2023)
- "ESG should be boiled down to one simple measure: emissions: Three letters that won't save the planet," The Economist (July 21, 2023).
- "The Secret Diary of a 'Sustainable Investor' — Part 1," Tariq Fancy, Medium.com (Aug. 20, 2021)
- "The Endgame of ESG: Why it Matters to Policymakers and Enforcers," Nebraska Department of Justice (Dec. 9, 2022)
- "Fixing the S in ESG," Jason Saul, Stanford Social Innovation Review (Feb. 22, 2022)
- "The Need for an Authentic Morality of Business," Andrew Abela, Faith and Business (May 30, 2023)
- "Corporate America Continues to March Left. Here's What Can Set Them Free." Jeremy Tedesco, Townhall.com (June 28, 2023)

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