

State AGs Double Down on DEI (and ESG)

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In December, we [covered](#) the announcement by 11 Republican state AGs of an antitrust suit against investment companies related to coal companies and ESG goals led by Texas. With the new year and new administration, we have seen state AGs continue their actions combatting ESG and adding a new emphasis on DEI.

On January 23, a slightly different group of 11 Republican state AGs led again by Texas whose Attorney General Ken Paxton [penned](#) a letter to 5 major financial institutions, "Re: Apparent Legal and Contractual Violations by Financial Institutions." The letter begins by expressing concerns that the use of "race- and sex-based quotas" and "furtherance of political agendas" may violate federal and state laws. For example, the letter asserts Texas contractors must follow a Government Code provision requiring fiduciaries to act "solely in the interest" of benefiting owners and beneficiaries, and further some state contract requirements prohibit racial and sexual discrimination. The Civil Rights Act and several state labor codes also prohibit discrimination, and the letter suggests that diversity program policies may racially discriminate. For example, the AGs cite "race- and sex-based employment quotas" at the financial institutions with percentage and numerical employment targets. Further, the AGs point to board quotas they say focus on diversity rather than solely on maximizing financial performance, including voting guidelines that encourage diversity. Finally, the AGs say that supplier diversity programs may be discriminatory including by having goals of diverse vendors. As an additional point, the letter continues that in managing state assets the institutions also are breaching fiduciaries duties by "satisfy[ing] climate commitments rather than maximiz[ing] financial returns", including through supporting net zero agendas or other environmental proposals. The AGs' letter concludes by requesting answers to a series of questions and interviews of employees focused on specific representations made by each institution on the DEI and climate topics.

Four days later, the Iowa and Kansas Attorneys General Brenna Bird and Kris Kobach [led a letter](#) signed by 17 additional Republican state AGs to Costco regarding its "unlawful DEI policies" and "race-based employment hiring." The letter warns Costco of potential liability, citing recent Supreme Court cases, including the Harvard case regarding race-based college admissions. The AGs also note in the letter that they had previously warned corporations in 2023 regarding DEI policies and cited examples of businesses who had "renounce[ed] DEI" since. The letter further points the finger at some of Costco's other labor practices (suggesting the company would have "time to deal with" alleged child slave labor, for example if it didn't focus on DEI). This letter concludes by asking Costco to notify the AGs within 30 days if Costco has repealed its policies or explain why not.

We will continue watching the outcome of these letters and expect certain states to remain active in these areas.