

ALSTON & BIRD

ESG Sustainability Spotlight

Q2 | 2025



In today’s business world, environmental, social, and governance (ESG) issues have taken center stage, and companies, both public and private, are increasingly recognizing the significance of ESG responsibility. Today’s executives, managers, and stakeholders find themselves navigating a complex landscape filled with risks and opportunities.

The ESG Imperative

ESG encompasses a broad spectrum of factors that impact a company’s long-term sustainability and performance. Let’s break down what each component entails:

- **Environmental (E):** This dimension focuses on a company’s impact on the environment. It includes considerations such as carbon emissions, resource usage, waste management, and climate change resilience.
- **Social (S):** The social aspect encompasses how a company interacts with its employees, customers, communities, and other stakeholders, as well as the non-environmental impacts of its supply chain. Topics like diversity and inclusion, labor practices, human rights, and community engagement fall under this category.
- **Governance (G):** Governance refers to the systems and processes that govern a company’s decision-making. It involves board composition, executive compensation, transparency, and adherence to ethical standards.

The ESG Landscape Today

Changes in presidential Administrations often come with changes in policies and priorities, and the most recent election was no different. Among the areas where the policies of the current Administration have differed from the prior Administration are included under the ESG umbrella, such as climate disclosures and diversity, equity, and inclusion programs. This quarter’s *ESG Tracker and Sustainability Spotlight* include some of the first signs of the policy shift at the federal level.

That shift does not mean that companies no longer need to concern themselves with ESG issues. As demonstrated by the updates that follow, states, attorneys general, shareholders, foreign governments, and private litigants continue to actively advance their own policy perspectives on ESG issues. This decentralized approach heightens the risk of inconsistent, or at least varying, ESG-related requirements across jurisdictions, making the need to stay up to date on the latest ESG developments more important than ever.

Alston & Bird’s ESG Advisory Team

At Alston & Bird, our ESG Advisory Team provides strategic guidance to companies navigating the ESG landscape. Our services include:

- **Understanding ESG Dynamics.** We help companies grasp the nuances of ESG and tailor their approaches accordingly.
- **Regulatory Insights.** Our team stays abreast of ESG-related regulations worldwide, ensuring clients remain compliant.
- **Shareholder Engagement.** Crafting effective responses to shareholder proposals requires expertise. We guide companies in this critical area.
- **Risk Mitigation.** Minimizing litigation and enforcement risk is crucial. Our strategies and materials help companies proactively address potential legal challenges.

ESG Tracker and Sustainability Spotlight

Our [ESG Tracker](#) and this publication offer valuable insights into federal and state enforcement actions, litigation trends, and shareholder proposals. They serve as a resource for companies seeking to stay informed and make up-to-date decisions on all matters related to ESG.

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[Environmental, Social & Governance \(ESG\) Team](#)

JUNE

SEC Withdraws Proposed Rule on Enhanced ESG Disclosures for Registered Investment Advisers

June 12, 2025 | [Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices](#)

The SEC formally withdrew its 2022 notice of proposed rulemaking that would have heightened disclosure requirements for funds that offer ESG-related investments. The proposed rule was intended to curb “greenwashing” and would have required investment advisers and fund managers to provide additional information on how ESG considerations factor into investment decisions. The withdrawal of this proposal aligns with the SEC’s recent shift toward relaxing disclosure requirements, though it stops short of curtailing ESG considerations in investing.

SEC Commissioner Eschews the “ESG Era” at Digital Insurance Forum

June 5, 2025 | [Regressing into Progress: Remarks Before the International Center for Insurance Regulation Digital Insurance Forum](#)

SEC Commissioner Hester Peirce offered remarks at the International Center for Insurance Regulation Digital Insurance Forum on the role of ESG in the SEC’s broader materiality framework. Peirce noted that historically, SEC disclosure has been governed by “materiality,” which required companies to evaluate whether a reasonable investor would have considered an issue significant in making an investment decision. Peirce commented that the “ESG era” has warped the definition of materiality by creating a presumptive categorization that any issue labeled as ESG is “inherently material to long-term financial value.” In Peirce’s perspective, labeling ESG issues as material harms investors and companies by including “irrelevant and misleading red herrings” in otherwise focused financial analysis. Peirce observed that investors may be harmed by warped incentives to company management that reward managers for achieving high ESG metrics while failing to maximize long-term financial success. Further, she noted that companies expend “tremendous amounts of corporate resources” analyzing ESG data rather than generating value for shareholders.



Recognizing these “dangers,” Peirce noted that the government is reassessing its approach—specifically referencing the Department of Labor’s plan to rescind Biden-era ESG rules and the SEC’s decision not to defend certain ESG rules in court. Peirce also stated her position that the SEC should amend its rulebook to explicitly define materiality as the “governor of disclosure mandates” and should remove any provisions inconsistent with that premise.

APRIL

SEC Given 90 Days to Make Decision on Climate Disclosure Rules

April 24, 2025 | *State of Iowa v. SEC*, No. 24-1522 (8th Cir.).

The Eight Circuit Court of Appeals gave the SEC 90 days to decide whether it will rescind disclosure rules that would require publicly traded corporations to report on greenhouse gas emissions and disclose information about the potential impact of climate change on their financial results. The SEC had previously said that it would no longer defend the rules in a

lawsuit brought by industry groups and states that argued that the regulations were beyond the scope of SEC’s charge as a financial regulator.

If the SEC decides to leave the rules in place, intervening states, such as Massachusetts, may decide to take up the defense. SEC Commissioner Caroline Crenshaw, who opposed the SEC’s decision to withdraw from the case, has urged the court to appoint a third party to defend the regulations.

SEC Approves Environmental Securities Exchange

April 11, 2025 | [In the Matter of the Application of Green Impact Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission](#)

The SEC approved the application of Green Impact Exchange to register as a national securities exchange. Green Impact Exchange will become the United States’ first environmentally focused national stock exchange, tapping into what it estimates is a \$35 trillion economic sector. The public-benefit corporation aims to provide dual-listing opportunities to sustainability-oriented corporations. The approval is a departure from recent SEC policy, which has been largely adverse to ESG initiatives. Dan Labovitz, the exchange’s founder, has sought to distinguish his platform from the ESG movement, noting that “[Green Impact Exchange] is focused exclusively on environmental sustainability, where there tends to be a very direct connection between environmental risk and long-term value preservation, and between sustainability and long-term value maximization.” Green Impact Exchange will be fully electronic and will open for trading in 2026.



MAY

Attorneys General File Lawsuits to Counteract Trump Administration’s Conditions on Funds for Emergency Services and Infrastructure

May 13, 2025 | [State of Illinois v. Federal Emergency Management Agency \(D.R.I.\)](#); [State of California v. U.S. Department of Transportation \(D.R.I.\)](#)

Several attorneys general filed suit against the Trump Administration for withholding federal emergency and infrastructure project funds unless states comply with the Administration’s federal immigration enforcement policies. One [suit](#) was filed against the Federal Emergency Management Agency, Department of Homeland Security, and Secretary Kristi Noem to challenge the Administration’s refusal to disburse emergency preparedness and response funding to states without compliance. The second [suit](#) was filed against the Department of Transportation and Secretary Sean Duffy to challenge the Administration’s refusal to disburse public safety and transportation project funding to states without compliance. The attorneys general chiefly argue that federal immigration enforcement is the sole responsibility of the federal government and request that the courts enjoin the Administration from withholding critical emergency- and infrastructure-related funds to the detriment of states and their citizens.

Attorneys General File Lawsuit Challenging Vermont’s Climate Superfund Act

May 1, 2025 | [Chamber of Commerce of the United States of America v. Moore \(D. Vt.\)](#)

Several attorneys general filed [suit](#) against the Vermont Agency of Natural Resources Climate Action Office to challenge to Vermont’s Climate Superfund Act (VCSA), which allows Vermont to recover damages from responsible parties whose actions allegedly impacted climate change in Vermont between 1995 and 2024. The attorneys general allege that the VCSA violates the U.S. Constitution, federal law, and the Vermont Constitution, including by potentially overreaching in its attempt to regulate interstate greenhouse gas emissions. The attorneys general chiefly argue that the VCSA may be Vermont’s attempt to regulate the nation’s energy infrastructure and ask the court to enjoin Vermont from enforcing the VCSA, among other relief.

APRIL

State Attorneys General Request CEOs of Nation’s Top Companies to Abandon DEI Initiatives

April 15, 2025 | [DEI initiatives Among Business Roundtable Members](#)

Several attorneys general issued a [letter](#) to CEO members of the Business Roundtable, a nonprofit association of the nation’s top companies designed to help “develop and advocate directly for policies to promote a thriving U.S. economy and expanded opportunities for all Americans,” urging them to abandon their companies’ DEI initiatives. The attorneys general claim that DEI initiatives are harmful to businesses and consumers and allege that practices supporting DEI violate civil rights laws and breach fiduciary duties to their shareholders.



JUNE

GrafTech Hit with Derivative Suit over Environmental Disclosures

Carponi v. Rintoul, [No. 1:25-cv-01216](#) (N.D. Ohio June 10, 2025).

Shareholders have filed derivative claims on behalf of GrafTech International over the graphite electrode product manufacturer’s alleged failure to disclose environmental contamination in Mexico. The complaint alleges that GrafTech executives made false and misleading statements about its pursuit of “an environmentally conscious agenda,” while it was in fact ignoring environmental laws and regulations at its factory in Monterrey.

The derivative plaintiff contends that GrafTech contaminated the Monterrey community for decades with gases and particulate matter that cause cancer but did not disclose those practices to investors. When the environmental contamination was revealed in 2022, the company’s stock price dropped. The derivative case was filed after a shareholder class action based on similar allegations.



JUNE

June 17, 2025 | *Walton v. W.L. Gore & Associates*, No. 1:25-cv-01948 (D. Md.).

Consumers from eight states filed a putative class action complaint against W.L. Gore & Associates alleging that the company misrepresents its products as “PFC* Free” despite its continued use of PFAS and alleged contribution to PFAS contamination. The complaint alleges that although Gore’s hang tags claim that certain products are “PFC* Free,” this representation is based on Gore’s own definition of “PFCs of Environmental Concern,” which excludes two PFAS used in Gore-Tex. The complaint further alleges that despite Gore’s representations that environmental stewardship is a “top priority” and that they take sustainability “seriously,” Gore’s manufacturing facilities and products have allegedly contributed to PFAS contamination in the environment. The plaintiffs bring 60 claims of fraudulent concealment, false advertising, unfair competition, and related claims under 28 states’ and the District of Columbia’s consumer protection laws, and seek injunctive relief, declaratory relief, and damages, including punitive damages.

June 10, 2025 | *Ellis v. Nike USA Inc.*, No. 4:23-cv-00632 (E.D. Mo.).

The Eastern District of Missouri denied the plaintiff’s motion for reconsideration of the court’s [March 28, 2024 order](#) granting Nike’s motion to dismiss a putative class action alleging violations of the Missouri Merchandising Practices Act and other state-law claims. The plaintiff alleged that Nike misrepresented its Sustainability Collection as being made with “recycled and organic materials” that reduce waste and Nike’s carbon footprint and that she relied on these representations when she purchased three Nike products from the Sustainability Collection. The court granted Nike’s Rule 12(b) (6) motion to dismiss the amended complaint, finding that the plaintiff failed to allege any information or testing to form the basis of the “bald conclusion” that the products were not made with recycled and organic fibers and that she failed to plausibly plead her claims under the Missouri Merchandising Practices Act. The court denied the plaintiff’s motion for reconsideration and request for leave to file a second amended complaint, finding the plaintiff was put on notice of her pleading deficiencies before entry of the final order.

MAY

May 9, 2025 | *State of Washington v. Trump*, No. 2:25-cv-00869 (W.D. Wash.).

Fifteen states filed [suit](#) challenging the President’s January 20, 2025 Executive Order 14156, “Declaring a National Energy Emergency.” The states allege the Executive Order is unlawful and unsupported because U.S. energy production “is at an all-time high, and growing” and there is no energy emergency warranting expedited project permitting. The states bring claims for common-law conduct outside the scope of statutory authority and four violations of the Administrative Procedure Act and seek declaratory and injunctive relief.

May 1, 2025 | *United States of America v. New York*, No. 1:25-cv-03656 (S.D.N.Y.); *United States of America v. Vermont*, No. 2:25-cv-00463 (D. Vt.).

The federal government sued [New York](#) and [Vermont](#), challenging the two states’ climate superfund laws. Both complaints raise the same five causes of action: (1) preemption under the Clean Air Act; (2) unconstitutional extraterritorial regulations in violation of due process; (3) violation of the Interstate Commerce Clause; (4) violation of the Foreign Commerce Clause; and (5) preemption by the foreign affairs doctrine. As relief in both actions, the Administration seeks declarations that the states’ climate superfund laws are unconstitutional, both facially and as applied, and permanent injunctions to prevent the states from implementing and enforcing their climate superfund laws, as well as costs and disbursements.

2025 Environmental Shareholder Proposal Trends

Early season results show that average support for environmental proposals is approximately 9.6%, continuing a several-year trend of decreased support, and dropping significantly from a 16.9% average in 2024.

As of June 16, 2025, shareholders submitted 140 known environmental proposals, 82 of them climate-related. No environmental proposals received majority support.

Rank	Proposal Description	Filed	Voted	Passed	Avg. Support (%)
1	GHG Emissions	52	12	0	11.1
2	Plastic/Sustainable Packaging	19	12	0	9.69
3	Climate Reporting	10	6	0	11.2
4	Sustainable Supply Chains	9	2	0	13.6
5	Food Waste	9	4	0	11
6	Carbon Emissions	8	6	0	2.3
7	Community Impact	8	3	0	12.3
8	Deforestation & Agriculture	7	0	0	NA
9	Climate Lobbying	6	4	0	13.9
10	Water Use	4	0	0	NA
11	Climate Transition Plans	3	3	0	9.4
12	Other	3	0	0	NA
13	Executive Compensation	2	1	0	1.5

Conservative Proposals

- Of the 140 known environmental proposals, 14 were conservative, or anti-ESG, proposals. One emissions-related proposal went to vote but did not pass.
- Although anti-ESG proposals have become more common, average support this year hovered around 1.5%—relatively consistent with anti-ESG support since 2023.
- Nevertheless, 131 anti-ESG proposals have been submitted by shareholders in the 2025 proxy season, an increase of 17% from 2024.
- Over two-thirds of these anti-ESG proposals focused on DEI-related initiatives.

No-Action Letters

As of May 16, 2025, companies submitted 59 requests for no-action relief to the SEC related to environmental proposals. The SEC granted 26 and rejected 21 requests, and the rest were withdrawn. Of those no-action requests granted by the SEC, 85% were due to the “ordinary business” exception.

Anti-ESG proposals account for 22% of no-action requests, but only 15% of all shareholder proposals. Most anti-ESG environmental proposals focused on greenhouse gas emissions and the costs of climate-related risk mitigation efforts.

Moving Forward

Support for environmental proposals declined sharply in 2025. This occurred in the context of a series of Executive Orders targeting expanding domestic energy production and regulations that decrease investment in renewable energy. Company-friendly changes to the SEC’s shareholder proposal rules, a rollback of the climate change rules, and changing executive priorities are likely to shape the coming proxy seasons.

We expect this trend in downward support for environmental proposals to continue in the United States.

CARB Counts on Public Comments on GHG Emissions and Financial Risk Disclosures

In May 2025, the California Air Resources Board (CARB) hosted a virtual public workshop on its plans for implementing California’s greenhouse gas emissions (SB 253) and climate-related financial risk disclosures (SB 261) programs. In the workshop, CARB presented “initial staff concepts” for the implementation of SB 253 and SB 261, including defining “doing business in California,” “total annual revenue,” and corporate parent-subsidary relationships. CARB also suggested it may look to the International Sustainability Standards Board’s (ISSB) standards instead of the Task Force on Climate-related Financial Disclosures (TCFD) as a framework for SB 261 implementation. CARB has not yet begun formal rulemaking for SB 253 or SB 261. The rulemaking timeline for SB 253 was delayed from July 1, 2025 to the end of 2025, and CARB has not yet decided whether it will issue guidance or regulations for SB 261. This delay in regulations prolongs the uncertainty for companies seeking to determine whether they are covered, what reporting requirements apply and when, and how to prepare for compliance. CARB indicated that “stakeholder input is critical” to the initial staff concepts and other interpretive issues, and stated that it plans to hold additional workshops or stakeholder sessions this year.



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