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State AGs Are Turning Up The Antitrust Heat On ESG Actions

By **William McEnroe, Amanda Robinson and Rachel Mann** (August 19, 2025, 10:59 AM EDT)

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We recently saw two major antitrust developments from red state attorneys general regarding global climate initiatives.

First, U.S. District Judge Jeremy Kernodle of the U.S. District Court for the Eastern District of Texas largely denied motions to dismiss in a case brought by a Texas-led coalition of state attorneys general against three asset managers for allegedly conspiring to reduce coal output.

Second, the Florida attorney general announced an investigation into two prominent climate disclosure organizations for potential violations of state antitrust and consumer protection laws.

These developments continue a broader trend of intensified legal and political scrutiny of environmental, social and governance frameworks and collaborations.[1] In light of these developments, companies with public-facing environmental commitments should closely scrutinize how those priorities are presented and ensure that any messaging accurately reflects a company's unilateral strategy to address the material risks posed by climate change.

Texas v. BlackRock

On Aug. 1, the Eastern District of Texas issued an opinion in the closely watched Texas v. BlackRock litigation.[2]

In this case, Texas and 10 other state attorneys general have accused asset managers Blackrock, Vanguard and State Street of pressuring coal companies to reduce output as a result of alleged commitments to two climate change initiatives: the Net Zero Asset Managers initiative and Climate Action 100+.

In largely denying defendants' motions to dismiss, the court concluded that the states had stated a claim under Section 7 of the Clayton Act, Section 1 of the Sherman Act and certain state laws.

The court's opinion is significant because of the effect it may have on ordinary investors that hold shares in competing firms and the implications it has for members of climate initiatives.

A major point of contention among the parties was whether Section 7's investment-only safe harbor would immunize the asset managers for the ordinary activities of institutional investors, such as voting on governance matters.

The court reasoned that merely casting proxy votes on governance matters should remain free from Section 7 scrutiny, but in this case, the states had plausibly alleged that the asset managers had substantially lessened competition.

The court observed that Section 7's safe harbor applies when "an institutional investor casts proxy votes, engages with companies, or otherwise uses its stock without substantially lessening competition," and that "typical asset manager behavior" includes "conferring with directors and management on best practices for governance structures and oversight processes."

The safe harbor does not apply, however, when "holders of competing companies ... discourage competition among their investments in a manner that results in harm to consumers or businesses."

According to the court, the plaintiffs alleged more than routine governance activity because defendants allegedly joined climate initiatives with goals that would lead to decreased coal output, made public statements consistent with those goals, and proxy-voted or otherwise engaged with the coal companies to achieve those goals. These allegations, the court concluded, amounted to more than "typical asset manager behavior."[3]

The court also created significant uncertainty regarding membership in Net Zero Asset Managers initiative and Climate Action 100+. The court opined that both initiatives "did seek commitments from their signatories ... . While the Court is not suggesting that [Net Zero Asset Managers initiative and Climate Action 100+] were themselves the venue of an illegal agreement, neither were they mere 'trade associations' as Defendants claim."[4]

Participants may take some solace in that "even Plaintiffs agree that not all signatories were members of the alleged conspiracy."[5] But the potential scope of the plaintiffs' theory creates more questions than answers for members of climate initiatives.

Florida Attorney General Investigation

On July 28, Florida Attorney General James Uthmeier separately **announced an investigation** into two prominent climate disclosure organizations — the Climate Disclosure Project and the Science Based Targets initiative — for potential violations of state antitrust and consumer protection laws.[6]

Uthmeier's announcement noted that Florida is scrutinizing whether these organizations "coerc[ed] companies into disclosing proprietary data and paying for access under the guise of environmental transparency."

The Florida Attorney General's Office is also known for operating under a broad public records regime. Entities that have received civil investigative demands in other matters have seen their submissions disclosed relatively quickly under the state's Sunshine Act, because Florida's expansive Sunshine Act may apply to documents and other data produced pursuant to attorney general civil investigative demands.

As a result, even companies not directly targeted by this investigation may find their name or data becoming publicly accessible if they've shared information with the Climate Disclosure Project and the Science Based Targets initiative.

Many organizations are affiliated with one or both of these initiatives as signatories, data providers or participants in climate target-setting programs. While Florida's investigation does not currently target corporate participants, companies may face secondhand scrutiny — particularly if they have entered into agreements or disclosed proprietary data through these frameworks.

Recommended Next Steps

The Climate Disclosure Project highlights that in 2025, more than 640 capital market signatories, which represent more than a quarter of all institutional assets, have "requested thousands of companies to disclose their environmental risks and impacts through [the Climate Disclosure Project] further building on the world's largest environmental disclosure database." [7]

Given the widespread use of the Climate Disclosure Project or the Science Based Targets initiative disclosure frameworks, the scope of Florida's investigation is potentially immense.

Similarly, the implications of the Texas-led lawsuit against asset managers are potentially significant. Companies should promptly review any existing or past relationships with the Net Zero Asset Managers Initiative, the Climate Action 100+, the Climate Disclosure Project or the Science Based Targets initiative, including contractual terms, disclosures made, and any associated fee structures. In addition, companies can:

- Consider whether to continue participating in, or referring to, private sector sustainability or other ESG-related collaborations or initiatives;
- Scrutinize any policies not to conduct business based solely on environmental or social impacts;
- Review ESG-related disclosures and other public-facing materials;
- Scrutinize contracts conditioned on meeting specific environmental or diversity commitments, especially any commitments established or evaluated through industry sustainability or other ESG collaborations;
- Eliminate any practices that could be construed as collective attempts to coerce companies to pursue sustainability or ESG-related objectives as a condition to procuring or providing goods and services;
- Make clear that decisions about whether and under what terms to conduct business are made independently and are consistent with a firm's individual risk management and other economic objectives; and
- Establish guidelines and provide compliance training for employees involved in sustainability or other ESG industry collaborations.

Conclusion

These state-led actions are part of an ongoing trend signaling that ESG-related collaborations, even when voluntary, are likely to face aggressive antitrust scrutiny if they can be framed as coordinated restraints on competition.

Companies engaged in climate or sustainability initiatives should assume that participation, public statements and related governance activities may be examined in this light. Proactive compliance reviews and careful messaging can help mitigate both legal exposure and reputational risk.

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Disclosure: Morgan Lewis authored an amicus brief on behalf of SIFMA in the Texas v. Blackrock case.

[1] See https://corpgov.law.harvard.edu/2025/08/02/new-texas-law-puts-proxy-advice-under-the-microscope/ and https://www.law360.co.uk/articles/1861372/navigating-antitrust-considerations-in-esg-collaborations.

[2] See State of Texas/Ken Paxton Aty General v. BlackRock, Inc., 6:24-cv-00437, (E.D. Tex.).

[3] Op. at 27 (citations omitted).

[4] Op. at 37 (emphasis in original).

[5] Id. at 33.

[6] See https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-launches-investigation-climate-cartel-potential.

[7] See https://cdp.net/en/capital-markets-signatories.