

Texas District Court Strikes Down Anti-ESG Law

February 9, 2022

On February 4, Judge Alan Albright of the U.S. District Court for the Western District of Texas issued an [opinion](#) declaring Texas' anti-ESG law [Senate Bill 13](#) ("SB 13") to be unconstitutional under the First and Fourteenth Amendments, due to its overbreadth and impermissible vagueness, and entered an injunction staying its implementation and enforcement. The decision marks the second time a U.S. federal court has heard a challenge to a state-adopted anti-ESG law, and the second time such a law has been struck down.

Background

Texas was the first state to pass an anti-ESG statute, adopting SB 13 in 2021 with the stated aim of protecting the state's energy sector from discrimination.¹ The law contains two central provisions: (1) a "divestment provision" requiring state government entities to divest from financial companies identified by the Texas Comptroller as "boycotting" fossil fuel-based energy companies, and (2) a "procurement provision" prohibiting state governmental entities from entering into contracts without a certification that the counterparty does not "boycott" fossil fuel-based energy companies.

As part of the divestment provision, SB 13 requires the Texas Comptroller to compile a "blacklist" of all financial companies that have been deemed to "boycott" the fossil fuel industry, from which state entities are then generally required to divest. The list was last updated in [June 2025](#). The procurement provision applies to all contracts for goods or services with a company that has 10 or more full-time employees, where the contract value is in excess of \$100,000. The provision requires that the vendor does not and will not engage in a boycott of companies in the fossil fuel-based energy industry during the term of the contract.

The lawsuit challenging SB 13 was brought by the American Sustainable Business Council ("Plaintiff") against the Texas Comptroller and Attorney General (together, "Defendants") on behalf of two member companies whose funds were named on the Texas Comptroller's blacklist.

¹ Along with SB 13, Texas lawmakers also adopted similar legislation [Senate Bill 19](#) to protect the state's firearms industry.

District Court Opinion

After establishing the Plaintiff's standing, the court addressed the question of whether the law is overbroad in violation of the First Amendment, which requires that the statute burden a "substantial amount of constitutionally protected conduct." In concluding that the statute meets that standard, the court reasoned that the term "boycott energy companies," which is defined to include "taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with" a company in the fossil fuel industry, permits Texas to penalize companies for an array of protected expression concerning fossil fuels. Further, the court reasoned that the plain meaning of "taking any action that is intended to penalize" companies in the industry would include actions such as speaking about the risks posed by fossil fuels and advocating against reliance on fossil fuels, which are forms of constitutionally protected speech under the First Amendment.

Following the conclusion that SB 13's overbreadth violates the First Amendment, the court found that the law is unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment. This analysis hinges on whether the law forbids or requires the doing of an act "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." The court found that the language of SB 13 meets this test, because the statute fails to provide a reasonable opportunity to know what actual conduct is prohibited and does not provide explicit standards for determining compliance with the law.

The court noted that the law's definition of "boycotting" contains multiple key clauses which are undefined and not susceptible to objective measurement. This includes the terms "taking any action," "penalize" and "ordinary business purpose," the latter term providing an exception in the law for actions that are excluded from the definition of "boycotting." The court pointed to the fact that the Texas Comptroller has blacklisted companies that asserted their actions were driven by one or more ordinary business purpose, providing no further explanation, showing discriminatory enforcement of the statute.

The Defendants filed a notice of appeal on Feb. 6, 2026.

Broader Implications

The Texas litigation resembles a prior lawsuit successfully challenging a similar anti-ESG statute in Oklahoma, [House Bill 2034](#) ("HB 2034"). HB 2034 requires the State Treasurer to prepare and maintain a similar blacklist of publicly-traded financial companies that are deemed to "boycott" companies in the fossil fuel-based energy industry, and requires similar contractual assurances from state vendors regarding their obligation not to so "boycott." In July 2024, the District Court for Oklahoma County granted plaintiff's [motion](#) for partial summary judgment, and in October 2024, the District Court [granted](#) plaintiff's [motion](#) for summary judgment, finding that HB 2034 violates the Oklahoma Constitution's free speech, due process and other protections, and enjoining enforcement of the law. As in the SB 13 ruling, the court found the language of HB 2034 to be unconstitutionally vague, and to be more extensive than necessary to serve the state's interest. The ruling is currently subject to ongoing appeal.

The successful arguments in these cases could lead to similar action in other states. As of this writing, there are at least eleven other states (Arkansas, Idaho, Indiana, Kansas, Kentucky, Louisiana, Montana, Tennessee, Utah, West Virginia and Wyoming) with similar anti-ESG laws which restrict the ability of state entities to do business with companies that "boycott" or "discriminate" against certain industries. Most of these statutes use terms similar or identical to those highlighted by the Texas and Oklahoma district courts for their vagueness.

For tracking of SB 13, HB 2034 and other related anti-ESG legislation, see our [Battlegrounds](#) alert.

For further information regarding this Alert, please contact one of the following authors:

NEW YORK CITY

Leah Malone

+1-212-455-3560

leah.malone@stblaw.com

May Mansour

+1-212-455-3886

may.mansour@stblaw.com

Taylor J. Cowan

+1-212-455-2393

taylor.cowan@stblaw.com

Chayla S. Sherrod

+1-212-455-2779

chayla.sherrod@stblaw.com



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