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Testimony in Support of SB 2148 Before the Tennessee Senate Committee on Commerce and Labor

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March 12, 2024

Chairman Bailey and Members of the Committee:

Thank you for holding this hearing on SB 2148, which would combat environmental, social and governance (ESG) scoring systems and ensure Tennesseans are not discriminated against for ideological reasons by financial institutions based on their exercise of speech, political activity, religious views, or their occupation.

My name is Tim Benson, and I am a policy analyst with Heartland Impact. Heartland Impact is the advocacy and outreach arm of The Heartland Institute. Both are independent, national, nonprofit organizations working to discover, develop, and promote free-market solutions to social and economic problems. Heartland specializes on providing state lawmakers the policy and advocacy resources to advance free-market policies towards broad-based economic prosperity.

Environmental, social and governance (ESG) scores are essentially a risk assessment mechanism increasingly being used by investment firms and financial institutions that forces companies and agricultural concerns to focus upon politically motivated, subjective goals which often run counter to their financial interests and the interests of their customers. Companies are graded on these mandated commitments to promote, for example, climate or social justice objectives. Those that score poorly can be punished by divestment, reduced access to credit and capital, and a refusal from state and municipal governments to contract with them.

The evidence shows that there are very good reasons to believe that financial institutions and banks plan to dramatically expand the use of ESG soon for individuals, families, and small businesses, a move that would dramatically change the U.S. economy and society.

It's impossible to know to what extent individuals, organizations, and businesses are *now* being denied access to financial services, including loans, based on subjective criteria because there are no databases nor reporting agencies tasked with compiling denials based on non-financial reasons. However, news outlets have reported many examples of such actions, and some industry reports openly admit that discrimination is common.

For example, in 2018, some large U.S. banks, including Citibank, rolled out restrictions for gun manufacturers and retailers. According to a report by the *New York Times*, "They are restricting their credit card and banking services to gun retailers and halting lending to gun makers that do not comply with age limits and background check rules determined by the banks. They are also freezing out businesses that sell high-capacity magazines and 'bump stocks,' attachments that enable semiautomatic rifles to fire faster, even though such products are legal under federal law."[i]

Deutsche Bank AG and Signature Bank announced in early 2021 that they would no longer provide services to former President Donald Trump or his business, the Trump Organization.[ii]

Also in 2021, Sustainalytics, an ESG business owned by Morningstar, published a report titled *How Sustainable Finance is Shaping Change in Banking*. In the publication, Sustainalytics notes:

> Most major banks screen their lending portfolios against specific ESG risks as per the OECD Due Diligence guidance, and many embrace negative or positive screening for potential corporate lending transactions or project finance transactions. Screening strategies filter potential transactions using predetermined ESG criteria to rule companies in or out of contention for financing. Negative screening and norm-based screening involve the exclusion or avoidance of transactions not aligned with environmental, social and ethical standards. Exclusion criteria often include issues like weapon manufacturing, tobacco sales or production of fossil fuels. While negative and norm-based screening are the most popular techniques used for ESG asset management, these practices have been losing traction since 2015.
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> Positive screening, on the other hand, selects corporate borrowers that score highly on ESG factors relative to their peers. This can include best-in-class screening, or the inclusion of investments in companies and sectors with higher ESG scores as compared to their peers or companies that are actively improving their ESG performance. This screening method does not necessarily exclude ESG laggards but rather focuses on those performing best with regards to ESG in relation to comparable companies or industries. In comparison to corporate lending transactions, the intensity of screening is often higher for project finance transactions given due diligence requirements under the Equator Principles.[iii]

Since January 2022, freedom-minded policymakers in more than 20 states have introduced legislation designed to discourage or limit the use of ESG by investment management firms, governments, public pensions, and/or financial institutions.[iv] These legislative efforts have sought to address the ESG problem in a multitude of ways. For example, lawmakers in Texas and West Virginia have created regulations that prevent

state pension funds and some agencies from utilizing services provided by firms that use ESG metrics in some of their most important business practices.
Perhaps the most far-reaching attempt to stop the spread of ESG, however, has come from lawmakers who have proposed regulations that would stop banks and/or insurance companies from using ESG when making determinations about access to banking or insurance services. Dozens of the world's most powerful banks and insurance companies have, to varying degrees, weaponized ESG to screen out businesses and even some individuals who refuse to comply with those institutions' social justice or environmental policies.[v]

Although there are many examples of financial institutions flexing their muscles as a tactic to create larger social changes, perhaps the most economically important is that virtually every large bank in the United States has committed to forcing the businesses they work with to phase out their use of fossil fuels—even if it causes economic harm to customers and business. Many of these financial institutions have pledged to make their entire business portfolios "net-zero emissions" by 2050, and to halve their emissions by 2030, less than six years from now.[vi,vii] If fulfilled, these pledges would necessitate that banks eliminate all or nearly all lending and banking activities with customers who use fossil fuels, including individuals who drive gasoline-powered motor vehicles, significantly impacting virtually every family and industry in the United States.

In my home state of Florida last May, Governor Ron DeSantis signed into law historic legislation that restricts banks' use of ESG metrics, the first time such a ban has been established at the state level.[viii] Prior to and following the passage of the bill, many bank and insurance lobbyists, left-wing activist organizations, and some politicians have claimed that states, including Florida, have no right to prevent banks from imposing ESG standards on their customers, even in cases where virtually every bank in a region is using similar metrics. They have claimed state policymakers do not have authority to regulate many of the largest banks operating within their state's borders, because federally chartered banks can only be regulated by federal agencies.

However, these claims are false and largely based on a poor understanding of Supreme Court precedence and federal law. The best evidence shows that existing federal law does grant states the power to regulate banks' use of ESG and other forms of social credit scoring, contrary to the claims of bank lobbyists and their allies.[ix] Thus, legislative efforts such as those achieved in Florida in May 2023, such as we see here with HB 2100, are likely to survive any legal challenges that assert only federal agencies can regulate federally chartered banks on the issue of ESG.

You, as legislators, should not be scared off by claims that you have no legal authority to issue ESG banking regulations or reign in banks that use ESG and other social credit scoring metrics to screen out, punish, or reward consumers. The Supreme Court and

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Congress have granted substantial regulatory powers to states, including in areas that are directly related to ESG.

And these ESG scoring systems need to be combatted. Further, it would be to the benefit of these institutions for you to do so. Anti-ESG laws do not interfere with banks' ability to lend or engage in other kinds of banking services, nor do they act as "obstacles" to banks' powers. In fact, they ensure banks do business with a greater number of potential customers than ESG screening would allow for. With anti-ESG banking laws in place, financial institutions will do more business, not less, and with a greater variety of customers. More bank accounts will be open or kept open. More loans and profits will be made. It is hard to imagine, then, that such legislation could be considered prohibitive to banks' rights under their federal charters, especially because their federal charters nowhere state that imposing ESG metrics is a privilege provided to banks.

By allowing ESG to gain a foothold in Tennessee, you would be perpetuating a distorted marketplace. The common-sense provisions in SB 2148 will go far in protecting Volunteer State residents from discrimination while also protecting the wallets and pocketbooks of all Tennesseans and also ensuring that radical activists, many from outside of this state and outside of this country, will not control the means of production and curtail the freedoms of each and every citizen of this state.

Thank you for your time.

Heartland Impact can send an expert to your state to testify or brief your caucus; host an event in your state; or send you further information on a topic. Please don't hesitate to contact us if we can be of assistance! If you have any questions or comments, contact Cameron Sholty, at csholty@heartlandimpact.org or 312/377-4000.

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[i] Alan Rappeport, "Banks Tried to Curb Gun Sales. Now Republicans Are Trying to Stop Them," *New York Times*, May 25, 2018, https://www.nytimes.com/2018/05/25/us/politics/banks-gun-sales-republicans.html.

[ii] Shahien Nasiripour, "Professional Bank joins lenders refusing to do business with the Trump Organization," *Fortune*, January 12, 2021, https://fortune.com/2021/01/12/professional-bank-lending-services-business-trump-organization/.

[iii] *How Sustainable Finance is Shaping Change in Banking*, Sustainalytics, 2021, https://connect.sustainalytics.com/scs-ebook-how-sustainable-finance-shaping-banking.

[iv] Jack McPherrin, ""Environmental, Social, and Governance (ESG) Scores: A Threat to Individual Liberty, Free Markets, and the U.S. Economy," *Policy Study*, The Heartland Institute, April 2023, https://heartland.org/wp-content/uploads/2023/04/2023-ESG-ReportvWeb-1-4.27.23.pdf.

[v] Justin Haskins, "Are Financial Institutions Using ESG Social Credit Scores to Coerce Individuals, Small Businesses?", *Policy Brief*, The Heartland Institute, February 27, 2022, https://heartland.org/wp-content/uploads/2023/11/Oct-23-ESG-Legal-Authority-1.pdf.

[vi] *Ibid*.

[vii] Eamon Barrett, "Wells Fargo is the last of the Big Six banks to issue a net-zero climate pledge. Now comes the hard part," *Fortune*, March 9, 2021, https://fortune.com/2021/03/09/wells-fargo-climate-carbon-neutral-net-zero/.

[viii] Saul Elbein, "DeSantis signs bill targeting 'discriminatory ESG' in Florida," *The Hill*, May 2, 2023, https://thehill.com/homenews/state-watch/3984507-desantis-signs-bill-targeting-discriminatory-esg-in-florida/.

[ix] For more information, see Justin Haskins, *Stop ESG in Banking: Do States Have the Legal Authority?*, The Heartland Institute, November 10, 2023, https://heartland.org/wp-content/uploads/2023/11/Oct-23-ESG-Legal-Authority-1.pdf.

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