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Patronis targets BlackRock as GOP leaders work in concert to discredit ESG
By Jeffrey Schweers, Orlando Sentinel, March 24, 2023

When Florida CFO Jimmy Patronis decided to drop BlackRock from managing $2 billion in state treasury funds, he blamed company CEO Larry Fink's commitment to using climate change and other factors to decide where to invest. Yet all but one of the firms that Patronis moved the money to actually follow those same ESG principles, which take into account a company's policies on environmental, social and governance issues when weighing investment risk. Yet financial analysts have calculated widescale divestiture could cost taxpayers billions in fees and interest, and put the pensions of millions of government workers at risk. Patronis, who's been the state's chief financial steward for six years, hadn't shown any concerns about BlackRock until July, when DeSantis declared war on ESG. He and other members of the State Board of Administration, which oversees the state pension investments and two dozen other funds and trusts, voted in August to stop doing business with managers that embrace it. Patronis told a House committee debating legislation (see below) **making state and local governments ban ESG investments** that the decision to divest BlackRock from the state's $60 billion treasury fund was triggered by its mediocre performance.
Editor's Note: In the Florida legislature, HB3 was approved by the state House of Representatives on March 24 by a vote of 80 in favor to 31 opposed. **SB302** is scheduled to be heard in the state Senate Fiscal Affairs Committee on March 31. To better understand the bills, read the Staff Analysis of the bill, which describes its impact on current law.

DeSantis' targeting of ESG could cost taxpayers, pension fund millions of dollars
By Jeffrey Schweers, Orlando Sentinel, March 1, 2023

Blacklisting investment managers and banks that make business decisions based on what Gov. Ron DeSantis calls "socialist" woke policies could come with disastrous consequences, including hidden costs and a chilling effect on free speech, economic analysts say. Legislation introduced for the upcoming session that begins Tuesday would embrace the governor's goal to prohibit state agencies and local governments from investing tax dollars into funds that follow environmental, social and governance principles known as ESG. It would also bar government agencies from depositing money with banks that have ESG policies, and prohibit banks from denying services based on a client's religious, social and political leanings, or if they are in the firearms or fossil fuel industries. But it carves out an exception for institutions that can claim a religious purpose. One analyst, Econsult Solutions Inc., calculated that if Florida were to enact anti-ESG banking restrictions similar to what Texas approved in 2021, it would cost taxpayers as much as $361 million in higher interest rates for municipal bonds because of the limited options the state would have in choosing bond brokers. Financial analysts also said it could affect millions of retired state employees invested in the state's $180 billion retirement fund because ESG issues do impact investment returns.

[House advances bill boosting state worker pensions]
By Gray Rohrer, Florida Politics, March 28, 2023

Buoyed by soaring revenues, the House is moving to spend $3.1 billion to reverse some of the changes made in 2011 to cut pension benefits for state workers. The House Appropriations Committee unanimously passed HB 239, which would restore the 3% cost of living adjustment for the 629,073 members of the Florida Retirement System Pension Plan and reduce the retirement ages for different classes of members. For example, Special Risk Class members, including police, firefighters, prison guards and others, could retire after 25 years or by age 55, instead of the 30 years or age 60 requirements under current law. House Appropriations Chair Tom Leek, an Ormond Beach Republican, said the move is reflecting the state's improved financial position as well as an attempt to recruit and retain state workers, especially law enforcement. Rep. Demi Busatta Cabrera, a Coral Gables Republican and the bill's sponsor, added that the state has a 16% vacancy rate in its workforce. It would make it easier for workers to enter the Deferred Retirement Option Program (DROP), and increase the maximum time to be in DROP from five years to eight years. The interest applied to a DROP benefit would increase from 1.3% to 4%. The Senate doesn't include the COLA changes in their version of the bill (SB 224).

Ron DeSantis' crackdown on "woke" banks could help a big Ron DeSantis donor
By Jason Garcia, Popular Information, March 17, 2023

Flogged on by Florida Gov. Ron DeSantis, state lawmakers in Tallahassee are plowing ahead with a bill this session that is meant to stop banks and investment managers from thinking about things like carbon emissions, worker pay and executive diversity when deciding where to invest money. Much of the debate on House Bill 3, which comes directly from DeSantis and is being fast-tracked through the Florida House of Representatives, has centered around provisions that would ensure public pension plans and other state-controlled funds cannot consider "environmental, social and governance" standards — ESG — when investing. But the proposal goes far beyond public investing. The legislation also attempts to exert state control over private banking, too — by threatening banks with financial and legal retaliation if they refuse to lend to a company based on its "business sector."And that could help one of the biggest and most politically influential companies in Florida: The GEO Group Inc., the Boca Raton-based operator of for-profit prisons and immigration-detention centers.

Congress sends Biden a measure to stop 'woke' 401(k)s
By Ben Werschkul, Yahoo Finance, March 1, 2023

The U.S. Senate passed a measure to block retirement account managers from considering environmental, social, and corporate governance principles (ESG) when evaluating investments in retirement plans. The joint resolution measure, approved in a 50-46 vote, aims to overturn a Labor Department rule that currently allows fiduciaries to consider those factors. But it is set to be blocked when it arrives at the White House in what would be President Biden's first veto since taking office. The vote was the highest-profile swipe yet from Republicans who are aiming to reverse a decades-long trend in Corporate America of taking factors like environmental impact into consideration when it comes to investment decisions in addition to just profits. The joint resolution originated in the House of Representatives and was first brought forward by Sen. Mike Braun (R-IN) and Rep. Andy Barr (R-KY). It passed the House of Representatives in a vote of 216 to 204.

WHY THE ALEC ANTI-ESG BILLS CREATE A LEGAL QUAGMIRE FOR FIDUCIARIES CONNECTED WITH PUBLIC PENSIONS
By David J Berger, David H Webber and Beth M Young, Harvard Law, February 15, 2023

Two proposed bills barring public pensions from considering environmental, social, and governance investment criteria create massive legal risk for any pension fiduciary or service provider. The American Legislative

Exchange Council “boycott bill” and the “fiduciary duty” bill, if adopted, would impose irreconcilable legal requirements on such fiduciaries, and subject them to compliance with arbitrary and unworkable legal demands. The main legal problems the bills create fall into four categories: (1) the unworkable distinction between “pecuniary” and “non-pecuniary,” a distinction so blurry that the bills are self-contradictory, as we demonstrate; (2) the clash between the bills’ definition of materiality and that established by the Supreme Court of the United States, such that state law would bar consideration of investment information that federal law requires; (3) similarly vague and self-contradictory requirements to boycott companies that engage in ESG, and (4) the transfer of control of proxy voting to elected officials, thereby ensuring the politicization of such voting in direct conflict with the bills’ stated goals.

Money Managers Raise Alarms Over Anti-ESG Crusade in GOP States

By Danielle Moran and Shelly Hagan, Bloomberg, March 28, 2023

The Republican Party’s crusade against ESG investments is fracturing after pension-fund managers and budget watchdogs in several states denounced proposals that came with hefty price tags for retirees and taxpayers. In a rebuke to a movement that’s taken hold in conservative strongholds like Texas and Florida, legislators in the GOP-controlled statehouses of Kansas, Wyoming, North Dakota and Indiana killed or significantly watered down bills that would limit so-called environmental, social and governance investing practices or force governments to sever business relationships with Wall Street firms that espouse the policies. Details vary state by state, but broadly speaking lawmakers who nixed the plans cited the costs to taxpayers following pushback from public retirement systems. In Indiana, an anti-ESG bill was dialed back in February after the state’s pension operator estimated it would cost retirees almost $7 billion over the next decade. In Kansas, the chief of its state pension fund said a proposal initially under consideration would reduce returns by $3.6 billion. The anti-ESG movement — part of the broader Republican pushback against businesses that take positions viewed as too liberal — is still going strong in state capitals from Austin to Tallahassee to Boise.
Also See: The Backlash Against ESG Faces Its Own Backlash, Institutional Investor, March 7, 2023

Largest Corporate Plans Hit Highest Funded Status Since 2007, Despite 2022 Investment Losses

By Larry Light, Chief Investment Officer, March 1, 2023

The 20 biggest corporate defined benefit plans climbed to their highest funded levels last year since 2007, even though they averaged a 21% investment loss, according to a new Russell Investments study. The pension plans saw their funded ratios rise to 97% for the year ending December 31, 2022, an average annual increase of 2.6 percentage points from fiscal 2021. The group’s investment returns mark a reversal from 2021’s 7% gain, not to mention 2020’s 14% and 2019’s 17%. Offsetting the investment slump was an increase in the discount rate, largely owing to a Federal Reserve-induced hike in short-term interest rates. This had the effect of reducing liabilities by almost $200 billion in total for the group, to $701 billion to end the fiscal year. Liabilities shrank faster than did assets. Meanwhile, sponsor contributions totaled $11 billion, the second lowest in the survey’s history, which began in 2005, and far down from their 2017 peak of $32 billion.

Fiduciary Duties of Public Pension Systems and Registered Investment Advisors

Posted by Jed Rubenfeld, Harvard Law School Forum on Corporate Governance, March 1, 2023

So-called Environmental, Social, and Governance (“ESG”) investment practices have come under increasing legal scrutiny. Areas of legal concerns include potential breaches of fiduciary duty, conflicts of interest, violations of antitrust law, and violations of federal securities law. This white paper addresses three questions: 1. Does state law prohibit public pension trustees from choosing investments, adopting investment strategies, or exercising appurtenant voting rights based on ESG considerations? 2. Does state law prohibit public pension trustees from allocating capital to funds, including index funds, owned by asset management firms that engage with portfolio companies, and/or exercise appurtenant voting rights, to promote ESG objectives? 3. Does state or federal law prohibit a registered investment advisor ("RIA") from investing client capital, or advising a client to invest capital, in funds, including index funds, owned by asset management firms that engage with portfolio companies and/or exercise appurtenant voting rights to promote ESG objectives, without expressly informing the client of these ESG-promoting practices and obtaining the client's express advance consent? In our opinion, the answer to all three questions is yes.

Public employee retirement plan falls short of benefits under previous system

By James Brooks, Alaska Beacon, March 8, 2023

Alaska's 401(k)-style retirement system for new employees is providing significantly smaller benefits than the pension-style retirement system (DB plan) discontinued for new hires in 2006, according to an analysis from the state Division of Retirement and Benefits. The analysis, presented to the Senate Finance Committee, comes as legislators are considering whether to revive a pension system for new employees as a way to encourage hiring. Almost one in six state government jobs were vacant in December, according to the governor's Office of Management and Budget. Most Alaska municipalities participate in the state-managed retirement system, which means that city and borough employees hired after July 1, 2006, also are in the defined contribution plan. The goal of the state plan is to have a retirement system that pays a worker 70% of their peak earnings each year during retirement.

Kansas anti-ESG bill could cut pension returns $3.6 bln -analysis

By Ross Kerber, Reuters, March 8, 2023

Legislation pending in Kansas to stop the use of environmental, social or governance (ESG) considerations by public contractors would reduce state pension system returns by $3.6 billion over 10 years, a new fiscal analysis shows. The note issued by the state's Division of the Budget is the latest to show the challenges facing Republican politicians looking to block or slow the growing use of ESG considerations by businesses and investors. Similar to Republican-sponsored bills in other states, the "Protection of Pensions and Businesses Against Ideological Interference Act" before the Kansas senate would require the Kansas Public Employees Retirement System (KPERS) to divest from financial companies found to engage in "ideological boycotts." The budget note says that KPERS has indicated it would have to restructure its portfolio "because the current investment managers would be disqualified as fiduciaries and replaced by alternative investment managers that would meet the bill's requirements."

Are 401Ks Protected in a Bank Collapse? What to Know About Retirement Funds

By Anna Skinner, Newsweek, March 14, 2023

The FDIC does not insure investments, such as 401(k) funds or IRAs including stocks, bonds or mutual funds. However, if someone invests in a qualifying account such as a CD or a money market within an insured bank and that bank then fails, FDIC will cover up to $250,000 lost by the customer. Retirement accounts including traditional IRA, Roth IRA, a Simplified Employee Pension IRA and Keogh plans are insured up to $250,000 if the accounts are held at an FDIC-insured bank, according to the FDIC. However, the same contingencies applied as for a 401(k). A person's IRA at an insured bank may be safe up to $250,000 if their money is placed in insured accounts such as money markets, CDs or an IRA savings, but if someone places their money into investment strategies such as stocks, bonds or mutual funds, their money is not insured.

[The Worldwide Debate Over Raising The Retirement Age]
By Howard Gleckman. Forbes, March 15, 2023

In the U.S., some Republican lawmakers are proposing to raise the age of eligibility for full Social Security benefits, provoking withering criticism from President Biden and many Democrats. But the debate over when government should begin paying retirement benefits isn't just a controversy here. It is happening all over the world. French President Emmanuel Macron has proposed gradually raising the retirement age from 62 to 64, Belgium is debating a plan to base benefit eligibility on years of work rather than age. And China's new premier Li Qiang hinted that his government may raise the retirement age there by an unspecified period. The fundamental problem is exactly the same in the U.S., throughout the developed world, and even in developing countries such as China. The number of working age people paying taxes is insufficient to support a growing cohort of retirees. That decline is caused by two historic demographic changes. Older adults are living longer than ever and had relatively few children. Those demographics are baked in the financial cake. Nothing will change them, short of a massive increase in immigration of young people from the developing world or a catastrophic wave of deaths among the old that would dwarf even what happened during the pandemic. Raising the retirement age is an issue that won't go away, either in the U.S. or in the rest of the world.

[Government Employees Express Fear of Outliving Retirement Income]
By Remy Samuels, Plan Sponsor, March 16, 2023

While many government workers say their jobs' retirement benefits are what attracted them to the position in the first place, a majority of these workers are also not confident that they are on the right track to financial security in retirement, according to new research published by MissionSquare Research Institute. MissionSquare's survey of 1,003 state and local government employees between October and November 2022 found that only 28% of that group are confident they will be able to retire when they want to, and only 23% are confident they will not outlive their savings. At the same time, 86% of the survey respondents cited retirement benefits as either major or minor factors that attracted them to their current public sector job in the first place. Factors like job security and personal satisfaction also ranked highly. According to the report, one in three respondents said they have a hard time paying their monthly bills on time and in full. In addition, 87% of respondents said they have one or more types of debt, and 77% of these employees said their level of debt prevents them from saving more for retirement. MissionSquare also found that more than half (56%) of the government employees surveyed reported they are participating in a defined benefit plan through their employer, and slightly fewer (48%) are participating in a defined contribution plan. Among those participating in a defined benefit plan, 76% are fully vested, based upon their years of employment.

[SVB Failure Shows the Need for Public-Pension Reform]
By Bryce Hill, NR Capital, March 21, 2023

The failure of Silicon Valley Bank could cause trouble for public pension funds. Reports indicate multiple public pension funds held stock in SVB Financial Group, the parent company of the bank. We know about SVB, but what other stocks will be affected negatively by the bank's collapse? And which public pension funds will take a hit because of it? The first step in protecting public retirement systems from a serious turn in the markets is to shore up funding ratios and eliminate unfunded liabilities to reduce the chances that poor investments might threaten overall solvency. That means making sure plans have reasonable retirement-age requirements, true cost-of-living adjustments instead of an arbitrary, compounding raise each year, and other common-sense tweaks, many of which have been employed in states across the country, including Arizona. Ultimately, the best way to protect public-sector retirees and taxpayers is to transition away from defined-benefit plans into defined-contribution plans. Individuals should have more control over their retirements, be able to choose how they want to invest, and then shoulder the responsibility for those choices — without burdening others.

[Could Defined-Benefit Pension Plans Make a Comeback?]
By Mark Miller, Morningstar, March 22, 2023

Once upon a time, many workers didn't need to worry about how they would spread 401(k) savings across their retirement years. Instead, they participated in a defined-benefit pension plan. Employers contributed to the plans and managed them; at retirement, a monthly check started arriving in the mail, and the checks continued until the retired employee died. But the availability of these plans has plunged over the past few decades: In 1989, 32% of workers had a traditional pension versus just 12% in 2019, according to the Center for Retirement Research at Boston College. Most of that decline occurred in the private sector; pensions remain the central retirement benefit for most state and municipal workers. But some experts think there's a chance for the defined-benefit pension plan to make a comeback in the private sector, at least among larger employers. The revival of defined-benefit pension plans would be a positive development for retirement security in the United States. A reassessment of the cost and risk associated with defined-benefit plans also is underway. Jared Gross, at J.P. Morgan Asset Management, argues in a recent paper that plan sponsors have developed a "collective blind spot" about defined-benefit plans, based on historical shortcomings that no longer exist. Today's private-sector plans are well-funded, and sponsors have learned the lessons from the problems sparked by the bursting of the tech bubble in 2000, when aggregate funding levels plunged.

[Retirement funds for teachers and firefighters are caught in ESG crossfire]
By Nidhi Sharma, NBC News, March 26, 2023

A growing wave of public pension administrators, business groups and labor unions are sending a message to Republicans looking to curb so-called "woke" investing: our money, our choice. Regulatory efforts to stop money from going to funds that consider environmental, social and governance issues, commonly known as ESG investing, have typically targeted big Wall Street asset managers. Now, public pensions are increasingly caught in the crosshairs and with them the retirement funds of teachers, librarians, firefighters and other public service employees. But while opponents of the anti-ESG restrictions are getting louder, their dissent hasn't yet stopped the tide. At least seven red states have implemented or are considering regulations banning public entities from considering ESG factors when investing state resources, according to a Harvard University report. Eight states have advanced bills or directives that target companies or banks accused of boycotting investments in oil and gas or firearms. However, state and municipal pension funds have shown strong support for ESG investing, backing resolutions in favor of the practice about 90% of the time in 2021, compared with 63% among general shareholders, Morningstar researchers found last summer. Rick Levy, president of the Texas AFL-CIO, said legislators are playing politics with working people's money. "It's extremely upsetting that state leaders are taking aim at investment companies trying to maximize returns for their shareholders — by turning it into a political event that negatively impacts our pensions." The ESG battle has been bubbling up in Washington, too. The House failed to override President Joe Biden's first veto, in which he blocked a bipartisan bill that would have nullified Labor Department rules permitting some retirement plans to consider ESG factors.

[Could a return to pensions solve the impending retirement crisis?]
By Stephanie Schomer, EBN, March 28, 2023

In the U.S., 67% of private industry workers receive retirement benefits from their employer, according to the Bureau of Labor Statistics, and for 52%, those benefits are defined contribution plans, such as a 401(k). But as an increasing amount of American workers are reaching retirement only to find themselves financially unprepared, employers and employees alike are craving a better solution. According to Fidelity's 2023 Retirement Savings Assessment, American savers have just 78% of the income they'll need to cover their expenses during retirement, a decline from 83% in 2020. Today, according to the BLS, just 3% of private industry workers have access to a defined benefit plan. Providing employers with retirement plans that set them up for financial success not only helps attract and retain talent in a challenging market, but can create better economic security for generations to come. The recent passage of the Secure Act 2.0 by Congress includes bright spots that may help employees shore up their finances — including opportunities to build emergency savings and auto enrollment in 401(k) or 403(b) plans — but Lowell is eager to see additional innovation within the space.

There's A New Retirement Normal For Public Employees: Supplemental Savings

By Dan Doonan, Executive Director, National Institute on Retirement Security, Forbes, March 27, 2023

Late last year, Congress passed and President Biden signed SECURE 2.0 legislation as part of the Omnibus spending bill. Enactment of this legislation is a clear signal that policymakers understand the depths of the frightening retirement savings shortfall facing millions of Americans. The reasons are many for the nation's retirement crisis – from rising costs to fewer pensions to longer life expectancy. Despite these challenges, one segment of the workforce has been on stable ground when it comes to retirement: the state and local government workforce. Today, the vast majority of state and local workers have a defined benefit (DB) pension, and nearly three-fourths of public employees participate in Social Security. Many state and local workers also are offered a retiree medical plan by their employer and have access to supplemental individual retirement savings plans similar to 401(k) accounts in the private sectors. But there are growing concerns that even with these important benefits, public workers may fall short when it comes to retirement income adequacy. While there's no denying that most state and local governments continue to provide solid retirement benefits, it will be critically important for both employees and employers to understand what is emerging as a "new retirement normal" that will require supplemental savings of about four to six percent from employees to achieve a secure retirement.