REJECT BIDEN'S ESG AGENDA

SUPPORT H.J. RES. 30

BACKGROUND:

On December 1, 2022, the Biden Department of Labor (DOL) published a final rule allowing retirement plan fiduciaries (i.e., retirement plan investment managers) to consider environmental, social, and governance (ESG) factors when making investment decisions and exercising shareholder rights. This rule removed protections for retirement savers established by the Trump administration, which ensured that retirement plan fiduciaries must evaluate investments and exercise shareholder rights based only on the financial benefits to the plan and participants.

THE PROBLEM:

Biden's ESG rule ignores current law and judicial precedent.

- The *Employee Retirement Income Security Act* (ERISA) sets minimum standards that govern the administration of private-sector, employer-sponsored retirement plans, such as 401(k)s and traditional pensions.
- Under ERISA, a retirement plan fiduciary must act "solely in the interest of the participants and beneficiaries" for the "exclusive purpose" of "providing benefits to participants and their beneficiaries" and "defraying reasonable expenses."
- In 2014, the U.S. Supreme Court ruled unanimously in *Fifth Third Bancorp v. Dudenhoeffer* that under ERISA, "benefits" must be "financial" and not a collateral benefit—such as advancing a political or ideological agenda.

Biden's ESG rule removes protections for retirees and workers saving for retirement.

- The rule allows retirement plans to place retirement savings into an ESG investment vehicle, without consent from the employee.
- If a fiduciary finds that two investments are equal, the rule allows the fiduciary to use collateral ESG factors to break the tie without documenting the decision.
- The rule removes transparency tools that allowed plan participants to monitor how their savings are being used in proxy voting.

Biden's ESG rule helps advance Democrats' radical climate and social agenda.

- The rule was issued at the direction of *two* Biden executive orders titled "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" and "Climate-Related Financial Risk."
- DOL expressly stated that the intended effect of the rule is to loosen restrictions on fiduciaries to consider ESG factors in their decision-making, which allows investment managers to further their own left-wing policy preferences.
- DOL's explanation of the rule lists ESG factors that DOL believes may be relevant to investment performance, including the effects of climate change, board composition, progress on workforce diversity and inclusion, and labor relations.
- DOL's explanation of the rule also inappropriately lists collateral "benefits" that may be used to break a tie.

ESG hurts American retirement savers.

- ESG products charge higher fees to participants than traditional investment funds, which can significantly reduce participants' retirement savings over time.
- ESG funds have underperformed for years. Additionally, investors are exposed to more risk when investing in ESG. Both situations can leave American savers with less.

THE SOLUTION:

H.J. Res. 30 nullifies Biden's ESG rule under the *Congressional Review Act*, restoring the 2020 Trump DOL protections, which made clear that retirement plan fiduciaries must make investment decisions based solely on whether they enhance retirement savings.

BOTTOM LINE: Republicans are committed to protecting the retirement savings of workers, retirees, and their families. Thanks to Biden's inflation, which is particularly concerning for retirees, there is increased worry about preserving and increasing retirement savings. Advancing a radical political agenda at the expense of retirement savers is irresponsible.