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Corporate Political Responsibility Taskforce

Expert Dialogue with Zinner & Keenan

Zinner & Keenan - Module #2

Elizabeth Doty: [00:00:00] Thank you and welcome. My name is Elizabeth Doty, and I'm the director of the Erb Institute's Corporate Political Responsibility Task Force, and I'm delighted to be moderating today's conversation with Josh Zinner and John Keenan.

The Corporate Political Responsibility Task Force, or CPRT, is an initiative of the Erb Institute. A 25 year long partnership between the Ross School of Business and the School for Environment and Sustainability at the University of Michigan. Led by Managing Director Terry Nelodov and Faculty Director Tom Lyon, the Erb Institute is known for its leadership in three areas.

Teaching and Learning. Business engagement with groups like the C. P. R. T. and scholarly and applied research. The C. P. R. T. 's mission is to help companies better align their approach to political influence with their [00:01:00] commitments to purpose and values, sustainability and stakeholders. As we're seeing corporate political responsibility is an increasingly pivotal element in managing stakeholder trust, addressing systemic issues and rebuilding public trust in institutions.

I can't think of Two people I would rather be in conversation about this. First, let me introduce Josh Zinner, who's the CEO of the Interfaith Council for Corporate Responsibility, which is a coalition of 300 global institutional investors currently representing more than 4 trillion in managed assets.

Josh is a graduate of the University of Michigan Law School, for which we're grateful and we know what the quality is there, um, and has been a public interest lawyer for a long time, focused on, uh, corporate accountability in the financial sector in particular. So really relevant today as we talk about investors and worker investors.

And welcome Josh, uh, we'll get into the questions in a moment, but I just want to [00:02:00] say thank you so much for making time for this.

Josh Zinner: Thanks, a pleasure to be here.

Elizabeth Doty: John Keenan is a corporate governance analyst with the American Federation of State, County, and Municipal Employees. It's the largest union in the AFL CIO, and it represents some workers I hadn't thought of before.

It's state and local government, health care, and child care workers. Um, previously, John served on the board of the Council of Institutional Investors, and was a proxy voting analyst, which is a critical role in our Uh, current system looking at shareholder resolutions, uh, with institutional shareholder services, really bringing, uh, depth around how this process works and the long chain between asset owners, investment managers.

Voting boards, management and government, you know, and corporate behavior. So, uh, a big system here for us to go into and John just want to say welcome and so glad you can make time today. Really appreciate it. Yeah.

John Keenan: Thank you for having this [00:03:00] dialogue and glad to be here.

Elizabeth Doty: Let's go to our second topic area. Now, this one will be interesting. I'm going to ask you to recap. Um, you just talked about this and wonderful that Jim McRitchie is on the call. Um, there's a lot going on legally right now around investor actions and corporate concern about, uh, environmental issues, uh, social issues, and governance issues using the term ESG or, uh, Uh, impact investing or other, um, terminology, maybe you could recap the debate for us and then say where you each, um, come down and Josh, can I start with you and then go to, to John?

Sure.

Josh Zinner: Yeah, absolutely. I mean, there's, there's a lot to unpack here. I'll try it. Yeah. I mean, essentially ESG has come under scrutiny, right? And, um, and it's really interesting because it was kind of an obscure Transcripts Investment strategy for many years, and now it's, you know, a [00:04:00] political football going into 2024.

And, you know, part of it is, is, is, is, are the problems with the SG. It's been really ill defined. It's been used in greenwashing a lot. And so it's, uh, you know, there's issues there and the SEC has done a, you know, a proposed rule on SG greenwashing but at the same time really. What it's fundamentally about is, is, is investment strategy looking at long term risk, right?

That's really what's under scrutiny here. You know, climate is obviously a big fueler of this and there's, no pun intended, because there's a lot of oil and gas money behind this anti ESG push. Um, but basically, what's going on is the political right is, is, is using the fact that ESG is not very well defined to, to caricature ESG As, um, you know, woke investors and woke companies imposing their social values, uh, on, you know, hard, um, [00:05:00] hardworking pensioners at the expense of their future returns.

And I think, uh, you know, in the investment space, we, you know, we all know that this is nonsense and actually ESG is a strategy for understanding. long term risk. Uh, and really, you know, and and pension funds in particular need to be as part of their fiduciary duty, looking out for their their long term beneficiaries.

But what's resulted is a lot of laws and guidance and bills that are coming out that are really, um, creating a problem for for fiduciaries. Um, you know, I could Go on and on about what they are. I'll try to be really brief, but Alec, the American Legislative Exchange Council, who John has worked soldiered on for years trying to expose what Alec does, which is writing really reactionary bills in legislatures around the country that often get passed in red states.

They've pushed bills, you know, Texas has one that, um, that [00:06:00] prevents, um, so called boycotting of fossil fuel companies and basically the way it describes boycotting is any kind of climate related, climate risk related engagement. Uh, and, you know, I, again, we can go into the details of that, but I'll be brief.

There's guidance in Florida, investment guidance in Florida that essentially Blocks the use of environmental, social and governance factors and investment strategies. Some red state AGs are issuing, uh, AG opinions that makes it unlawful to consider ESG factors and investment, calling them non pecuniary, um, factors.

Um, and, um, and ALEC is, now has a model bill out that, um, that bans ESG as a risk assessment tool. And defines materiality as not including any events that may or may not happen in the future. In other words, this ALEC model bill, which is going to be come out as a, as a bill in many red state legislatures over the [00:07:00] next year, actually prohibits investment strategies that look at long term risk.

And so that's the political environment that we're in. You know, one other thing I'll say and then turn it over to john. The great irony is this right, they're accusing ESG of politicizing investment but any pension, any responsible pension fiduciary knows that. There's a duty of impartiality. Their duty is not just a person who's getting their pension, uh, in a year or two, or, you know, today, but also the person that's getting their pension in 20 years and as a fiduciary, they have to look at long term risk.

It's a fiduciary obligation. And so really these red state laws and bills and that are gaining momentum and frankly are concerning because they're going to become. Federal policy in 2024, if the white house changes hands, that these are actually prohibiting pension fiduciaries from considering longterm risk factors.

Um, so, you know, politicizing investment in a big way at the expense of, of, [00:08:00] uh, pension beneficiaries. So it's a, it's a challenging political environment. Uh, there's a lot of work that needs to be done, um, to unpack that and take that on, but I'll, I'll stop there for now. Yeah,

Elizabeth Doty: thank you very much and I'll turn to you, john but I hear in some ways what you're saying Josh is this is contrary to the interests of the actual investors in those states right like in every state that would even consider these.

There are consequences for the investors that this is not a fighting against an encroachment but actual misunderstanding in your, your words misunderstanding of the end.

Josh Zinner: Yeah, and I would say even more. Concerning that there are real consequences for pension beneficiaries. So investors in that regard. So, um, this creates a real problem for people who are going to be depending on, you know, receiving their, their pensions in, in, you know, over years.

Elizabeth Doty: Great. Okay. Well, let's thank you for clarifying and there are a couple of short [00:09:00] ways you described that there that are clearer than anything I've heard so far and much, much appreciated john,

John Keenan: I'm going to focus on kind of what what's happened at the Department of Labor, and what they call the ESG rule and how that affects private Um, retirement plans, but then also, um, what the DOL says winds up applying to public pensions.

And really, what I, I see this as an attack by the business community and, and originally, uh, oil and energy and, and groups like the National Association of Manufacturers on proxy voting. Like the very upset when a vote goes against management and, or for a shareholder proposal. And for whatever reason, rather than companies looking inward and saying, well, what are investors trying to communicate to us?

I think they, they blame the proxy advisor. So you've had had this fight going on for a long time. And what the department of labor, they set up rules around fiduciary duty [00:10:00] and what pension funds can do. And it's really been what. People describe as the pinging pong match. So, you know, you, you have proxy voting as a right and, um, as a plan asset and should be done in the interest of beneficiaries.

And then you get the, the, the bush, DOL bush too, um, come in and say, oh, well no, that's, you know, we're, we're, we're. Issuing a different interpretation, and this gets, you know, fun

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lawyers, they always refer to it as a chilling effect. Um, Obama removed the Bush guidance so that, that, you know, gave, gave funds permission to undertake, um, exercising that their rights as owners, including things like shareholder proposals and, and whatnot.

Then you get, um, the Trump DOL and you had, um, yeah, the commissioner there was, um, Eugene Scalia's son and, uh, been a lawyer at Gibson, Crutcher and Dunn and had basically, you know, filed suit against, uh, SEC [00:11:00] rules and always, always been very successful. Well, they went and said, Oh, you can only do things based on pecuniary interests, tried to take away, um, you know, longstanding established, um, rights that, that plans have.

The ability to do these things in the interest of their beneficiaries and then looking at like collateral benefits, and it really kind of what the new rule what the Biden deal has reestablished is very important. And it basically establishes that funds can use ESG for risk return analysis. So this puts the ball back in funds ability to do this.

It takes away, you know, and they can vote their proxies. Trump was trying to say funds didn't even have to vote their proxies if they didn't feel like it. I mean, it was just, you know, turning things on its head and it kind of just gets at, um, the, this pushback that Josh is talking about, the anti ESG when, when funds.

exercise their rights as owners, like companies or someone gets upset about it. [00:12:00] And, and you're seeing this with kind of the, the, the pushback and red states around industries that they say are being discriminated against and, and whether or not that's the case and, um, whether what they're doing is legally sound, I think is rather dubious.

But the important thing is the DOL has established this and it means funds going forward. Can take things like the climate and workers rights and other issues into consideration when they're making these these, you know, looking at the material risk and that's really what ESG is the way for investors to view risk and opportunity.

Elizabeth Doty: Gotcha. So what you're saying is, um, I heard in a, in a recent panel, this idea of being able to use this information. I mean, that's what I hear the theme that you're describing and saying that this has real consequences. I think I think we're back to the original catch 22 you both painted of not being able to address externalities because of political influence [00:13:00] and ESG information being one way to look at that right to, to reconsider that risk.

Is there any merit that you see in this skepticism about ESG and the idea of imposing social values, um, managerialism, uh, encroaching on people's, uh, choice? I heard examples of 30 year olds going in telling expert managers how to run their business. Do you see any merit to the, to the concerns? Could you?

Dig deep.

John Keenan: Not necessarily. I guess it's all, um, to Josh's point, like, um, the, the, the, the term is amorphous, um, else to other, other people. Um, but, and I, I do think, um, having, having these things defined, um, more clearly will help dispel some of this, um, trying to define it and as this, this bogeyman and this, This, um, catch all, um, of, of, of issues.

So, yeah, I guess I, I kind of [00:14:00] am punning on that, but, um, yeah, I, I think, yeah, they're, they're the, the fact that it is being attacked so vociferously points to some of the, the, the things that could be better defined.

Josh Zinner: One of the problems with ESG is as it's been interpreted, that can mean a lot of different things.

It's, it's about company by company value. And I think what, um, what that misses. And so I think that partly makes it a ripe target, you know, to your point about how can a 30 year old tell a, you know, a CEO how to run the company. But this is, this is really about systemic risk, um, and why investors are concerned about that.

So, um, there is a company by company argument. Um, about all of these systems level risks, um, reputational risk, financial risk, legal risk. But as investors, there's a concern about the impact as we talked about earlier, the impact that. Like the climate has on on the economy, the impact that, um, paying workers a sub [00:15:00] living wage has on the economy and so forth.

And so I think that's a really powerful argument. And I think that gets lost a little bit in the ESG noise. But it's a it's a really important part of the equation and it's a clear reason why pension fund fiduciaries need to be considering these major systemic risks in their investments.

Elizabeth Doty: And it's very well I that makes a lot of sense and we've been describing responsibility when you think about corporate, we have the individual company, don't misalign your activities lobbying or spending or other activities with your own commitments, but we're defining responsibility as thinking about your impacts and the health of systems.

Right. And that's hard for humans to do. Right. I mean, if you use somebody is attacking you think it's just your company, and it takes another step to look at the impacts on these larger systems, and it looks at aggregation. Yeah, so thank you that makes that makes a lot of sense and I think that points to places where we have shared interest and we should.

really get down to what's [00:16:00] best, um, and what is responsible. Let's turn, Adam, why don't you flag what you're noticing in the themes?

Adam: So there's some dialogue in the chat. Uh, we also have a question that was submitted by Bill Gridley, and I know he's on today. So, uh, if you want to come on, I know sometimes the discussion evolves your question, but it's essentially around, uh, somewhat about policymakers and their role in materiality, which I think I think it's a lens we haven't really focused on yet, but, um, what are the arguments essentially for lawsuits against U.

S. officials who move against responsible investing consideration of material risks?

Josh Zinner: Are you, are you talking, um, Billy, uh, about like states that are passing anti ESG legislation? Are you talking about rulemaking

Bill: by federal officials? So let's, let's go with the first one, which is, so you've got a. Anti diluvian illogical question mark illegal ruling, I would think by [00:17:00] the Texas or Florida person.

I mean, arguably, it is actually wrong to not consider these long term factors and as a prudent, you couldn't be a prudent for these fiduciary. So are there lawsuits emerging? And lawsuits are an interesting area of internet rising internationally, whether it's, uh, the indigenous people of, uh, a particular area, or even in Florida, a lake sued the state as a person.

Uh, I find these to be provocative, interesting, and I hope, um, effective.

Josh Zinner: You know, the Texas anti boycott law, there's some real first amendment. Um, and there were, there were actually, um, laws, uh, that, uh, that, those laws are based on these anti BDS laws that, um, came into a bunch of states that prohibit, um, state [00:18:00] contractors from, from, um, supporting, um, well, defined very broadly, um, anti Israel activity.

So there's a bunch of cases, First Amendment cases against those laws, and, and these Texas, the Texas law and the laws that followed, it's basically the same law inserting, um, fossil fuel companies in place of Israel. And so there's a lot of First Amendment concerns there. Um, about whether states as a condition of doing business can block speech.

Um, and so there may be some legal challenges there. Um, there's obvious fiduciary concerns as well. Um, but there's some complications in bringing those claims. These laws definitely run smack into the legal fiduciary obligations of, you know, a pension fund trustees and fiduciaries. And so there's some real legal problems there.

Um, some of the legal challenges can be complicated, but, but there's. There's real legal problems with those laws.[00:19:00]

Elizabeth Doty: There are a few places you can go from here if you find this interesting. This is emblematic of the kind of conversations we're having with those internal company officers as well as investors. I just came from a conference with boards of directors, some of you at conferences, um, stakeholder groups, etc.

This conversation about how to tip the direction of this reinforcing cycle or catch 22 towards something that acknowledges long term prosperity and averts risk. If you are in a company, contact us. The email address is on the right about joining. We're just getting started for the year with company executives wrestling with these issues and drafting the rest of our framework, including actions and ways to think about policy positions and spending practices.

You can join us for upcoming dialogues. We'll have Malik Gedichew in January from PolicyLink, working on corporate racial equity assessment and the political influence aspects of that. We have a resource list. We, if you sign up, we can get [00:20:00] updates over time, especially as we launch these principles. And lastly, uh, these are some ways you can continue to stay in touch with ICCR and AFSCME and their reports, shareholder resolutions, engagement strategies, data, et cetera.

And I turn to each of you and why don't I start with Josh and say one action you would invite. Very concrete, measurable action. You would invite a, uh, corporate executive to take in the near term to move towards this corporate political responsibility as you've as you've laid it out.

Josh Zinner: I think a really important one is is engaging with key stakeholders of the company and really understanding the impact that companies are having there.

Again, there's a framework for that through the UN guiding principles. That's a really critical place to start because it also gives a company More of an understanding of what the you know what what the broader risks are of those corporate externality so would start there. If I could add on, you know, we've talked a lot about the, you [00:21:00] know, companies really bringing corporate political engagement and and alignment under corporate governance and that's really critical.

Elizabeth Doty: Great. Yeah, thank you very much. We've actually found that doing that impact assessment helps you prioritize and decide where you're going to weigh in and where you won't and give a respectful reason, um, john.

John Keenan: Yeah, I would, um, yeah recommend that that companies and leaders, look to whether or not they're reporting by the global reporting initiative and to look at standard for 15 which is around public policies, and it actually requests and ask that companies which is reporting by GRI.

Report on their third party lobbying alignment and any alignments there. So it kind of is the basis that companies should be doing a lobbying alignment reports and also ask whether or not they are already looking at this, because if you're not looking at it, you don't know. And, and something I always say is, you know, what.

What gets disclosed [00:22:00] gets managed and what gets measured gets managed. So, you know, look at that. If you don't know, then, um, yeah, you, um, are, are coming at this from a place where you need to grow and, and know what's going on. So, great.

Elizabeth Doty: Thank you very much. And you just listed the second of the three actions we're, um, inviting companies to take, uh, GRI 415 is an interesting one.

It's relatively new. So I think it's worth. Invite people to look at. Thank you so much, Josh and John. Truly the beginning of a conversation. Lots more to pick up, but really deep respect for your thoughtfulness. Um, and for walking through the logic of where you stand, what you're concerned about and why you're taking these strategies.

Thank you. And thanks everyone else for joining the, the conversation and this whole topic.

Josh Zinner: Thanks Elizabeth. And thanks to everyone. Great conversation.

John Keenan: Thank you for the invitation. Great to be here.[00:23:00]