



## **2023 Special Committee on Foreign Adversary Investments and Land Purchases**

### **HEARING: Presentation on Property Rights**

**Topeka, KS  
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Chairman Thompson and Committee Members, thank you for having me present here today before the 2023 Special Committee on Foreign Adversary Investments and Land Purchases on the need to protect property rights in Kansas and beyond.

My name is Gabriella Hoffman. I'm a Senior Policy Analyst with the Committee for a Constructive Tomorrow (CFACT). CFACT is a public policy group in Washington D.C. that has been focusing on issues of energy and environment since 1985. Our organization produces studies and reports, has a large grassroots membership, and is considered a leading voice on issues such as climate change, ESG, property rights, energy policy and similarly related issues in the free market think tank community.

Property rights are inalienable to us as citizens and are foundational to a market-based society like that historically found in the United States. My hope is to illustrate the threat to property rights posed by both the federal government and the corporations - foreign and domestic - colluding with them.

I plan to address the following:

- Concerns regarding foreign-holdings of U.S. land—including adversarial nations like China that don't respect property rights.
- How certain corporations want to limit individual ownership of land
- How the Environmental, Social, and Government (ESG) movement - especially the E (environmental) prong - poses a threat to property rights

## **Foreign Land Ownership by Nations That Disregard Property Rights**

Americans worry certain foreign-held land holdings - agricultural, non-agricultural, crop, pasture, and forest - pose direct threats to our economy, food supply, and national security. Namely, those with direct or indirect ties to the Chinese Communist Party (CCP).

Increasingly, China's private land and real estate holdings have raised eyebrows. The CCP now controls a total of 383,935 acres<sup>1</sup>, under one percent of foreign-held acres, through direct holdings and holdings with U.S. investors . This signifies a troubling 20-fold increase<sup>2</sup> in ownership across a decade.

Last year, it was revealed the Chinese-based company, Fufeng Group, bought 300 acres near Grand Forks Air Force Base in North Dakota. This company allegedly had deep ties to the CCP. This past February, Grand

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<sup>1</sup> Bailey, Kayla. "Experts Sound Alarm Over China Buying US Land Near Military Bases: 'Chilling.'" *Fox Business*, 6 Feb. 2023, [www.foxbusiness.com/politics/experts-sound-alarm-over-china-buying-us-land-near-military-bases-chilling](http://www.foxbusiness.com/politics/experts-sound-alarm-over-china-buying-us-land-near-military-bases-chilling).

<sup>2</sup> U.S. Senator Mike Braun from Indiana. "Fox News | Bipartisan Group of Senators Pushes to Ban China From Buying US Farmland - Senator Mike Braun." *Senator Mike Braun*, 22 Mar. 2023, [www.braun.senate.gov/news/in-the-news/fox-news-bipartisan-group-senators-pushes-ban-china-buying-us-farmland](http://www.braun.senate.gov/news/in-the-news/fox-news-bipartisan-group-senators-pushes-ban-china-buying-us-farmland).

Forks City Council to unanimously vote 5-0 to halt<sup>3</sup> the project citing national security risks posed by the planned facility.

The most available data from the U.S. Department of Agriculture (USDA)'s Foreign Holdings of U.S. Agricultural Land Report<sup>4</sup> through December 2021, published this past July, reveals 40 million acres of U.S. agricultural land are foreign-owned. Kansas, in particular, has 52.4M acres total acres, of which 49.2 million are privately held. 1,183,033 acres of those privately-held lands - or 2.4% - are foreign-owned.

Canada owns<sup>5</sup> the largest share (12.8 million, or 31%). This is followed by the Netherlands (12%), Italy (7%), the U.K. (6%), and Germany (6 percent—collectively held 12.4 million acres or 31 percent of the foreign-held acres in the United States. China rounds out the list at the 18th spot.

While China's holdings are paltry compared to the aforementioned nations, it's confounding that our government would allow purchases by the Chinese Communist Party (CCP) to proceed—especially as the ruling party there is increasingly taking small and large stakes<sup>6</sup> in private companies. Why would the CCP respect our laws regarding private property rights when it actively

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<sup>3</sup> Norman, Greg. "Chinese Company's North Dakota Corn Mill Project Struck Down by Grand Forks, Prompting Cheers of 'USA!'" *Fox Business*, 7 Feb. 2023, [www.foxbusiness.com/economy/china-fufeng-north-dakota-corn-mill-project-halted-grand-forks-city-council](http://www.foxbusiness.com/economy/china-fufeng-north-dakota-corn-mill-project-halted-grand-forks-city-council).

<sup>4</sup> "Foreign Holdings of U.S. Agricultural Land Through December 31, 2021." *U.S. Department of Agriculture*, 12 July 2023, [www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2021\\_afida\\_annual\\_report\\_through\\_12\\_31\\_2021.pdf](http://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf).

<sup>5</sup> "Foreign Holdings of U.S. Agricultural Land Through December 31, 2021." *U.S. Department of Agriculture*, 12 July 2023, [www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2021\\_afida\\_annual\\_report\\_through\\_12\\_31\\_2021.pdf](http://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf).

<sup>6</sup> Wei, Lingling. "China's New Way to Control Its Biggest Companies: Golden Shares." *WSJ*, 8 Mar. 2023, [www.wsj.com/articles/xi-jinpings-subtle-strategy-to-control-chinas-biggest-companies-ad001a63](http://www.wsj.com/articles/xi-jinpings-subtle-strategy-to-control-chinas-biggest-companies-ad001a63)

restricts access to financial markets and blatantly violates intellectual property rights at home?<sup>7</sup>

## How ESG Could Undermine Property Rights

Foreign-held companies, especially those tied to adversary nations like China, Iran, Russia, or North Korea, aren't the only threat to property rights in the U.S. today.

Financial asset managers and the federal government are opting into the Environmental, Social, and Governance (ESG) agenda—especially the E (environmental) prong - to discourage ownership invited by property rights.

The ESG acronym was originally conceived in a 2004 United Nations report<sup>8</sup> called “Who Cares Wins.” Its most avowed proponents herald it as a market-friendly financial investment strategy<sup>9</sup> that fosters social corporate responsibility and sustainability in corporate boardrooms.

ESG, however, has leapfrogged from Wall Street to the whole of society and the federal government, with the Biden administration promulgating its tenets across all federal agencies.

The E prong, in particular, calls for phasing out fossil fuels and transitioning to a fully net-zero<sup>10</sup> (decarbonized) future by scaling up clean energy

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<sup>7</sup> Dorn, James. “China’s Constitutional Rights: A Grand Illusion.” <https://www.cato.org/blog/chinas-constitutional-rights-grand-illusion>, 1 Sept. 2021.

<sup>8</sup> UN Environment Programme – Finance Initiative. “Who Cares Wins: Connecting Financial Markets to a Changing World.” *UNEPFI*, 2004, [www.unepfi.org/fileadmin/events/2004/stocks/who\\_cares\\_wins\\_global\\_compact\\_2004.pdf](http://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf).

<sup>9</sup> Hood, David. “House Democrats Defend ESG by Invoking Free Markets, Friedman.” *Bloomberg*, Bloomberg News, 27 July 2023, [news.bloomberglaw.com/esg/house-democrats-defend-esg-by-invoking-free-markets-friedman](https://www.bloomberglaw.com/esg/house-democrats-defend-esg-by-invoking-free-markets-friedman).

<sup>10</sup> “ESG And Net-Zero Strategy.” *McKinsey & Company*, 10 Aug. 2022, [www.mckinsey.com/capabilities/sustainability/how-we-help-clients/esg-and-net-zero-strategy](https://www.mckinsey.com/capabilities/sustainability/how-we-help-clients/esg-and-net-zero-strategy).

sources like solar and wind in totality by 2050, despite their vast shortcomings.

Thus far, the Inflation Reduction Act - billed as “the single largest investment in climate and energy in America”<sup>11</sup>- appropriated \$369 billion in federal spending to spur clean energy projects. The catch, however, is they are being subsidized<sup>12</sup> by the U.S. taxpayer. \$110 billion of that \$369 billion in government spending doled out has reportedly gone to overseas companies— namely South Korea, Japan and China – who netted 60 percent<sup>13</sup> of clean energy subsidies. Government subsidies distort market investments by picking<sup>14</sup> winners and losers— usually by elevating larger, profitable companies over smaller, less profitable ones. Thus, resulting in “higher prices for consumers, fewer jobs, and less economic growth.”<sup>15</sup>

But these subsidies under the IRA aren’t enough. Net zero adherents are recommending the invoking of eminent domain- where the government seizes<sup>16</sup> private property for public use - to achieve this goal in a more timely fashion.

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<sup>11</sup> “INFLATION REDUCTION ACT OF 2022.” *Energy.gov*, [www.energy.gov/lpo/inflation-reduction-act-2022#:~:text=The%20President's%20Inflation%20Reduction%20Act,energy%20manufacturing%2C%20and%20putting%20the](http://www.energy.gov/lpo/inflation-reduction-act-2022#:~:text=The%20President's%20Inflation%20Reduction%20Act,energy%20manufacturing%2C%20and%20putting%20the).

<sup>12</sup> The Editorial Board. “The Coming Green Energy Bailout.” *WSJ*, 4 Sept. 2023, [www.wsj.com/articles/green-energy-nyserda-renewable-subsidies-rate-payer-bailout-b807ccb3?st=7t9j2cg3t3fgg8v&reflink=desktopwebshare\\_permalink](http://www.wsj.com/articles/green-energy-nyserda-renewable-subsidies-rate-payer-bailout-b807ccb3?st=7t9j2cg3t3fgg8v&reflink=desktopwebshare_permalink).

<sup>13</sup> Ramkumar, Amrith, and Phred Dvorak. “The Biggest Winners in America’s Climate Law: Foreign Companies.” *WSJ*, 20 July 2023, [www.wsj.com/articles/the-biggest-winners-in-americas-climate-law-foreign-companies-c672e09d](http://www.wsj.com/articles/the-biggest-winners-in-americas-climate-law-foreign-companies-c672e09d).

<sup>14</sup> Siry, Darryl. “In Role as Kingmaker, the Energy Department Stifles Innovation.” *WIRED*, 1 Dec. 2009, [www.wired.com/2009/12/doe-loans-stifle-innovation](http://www.wired.com/2009/12/doe-loans-stifle-innovation).

<sup>15</sup> Hoffman, Gabriella. “Green Skillset Mirage: IRA Artificially Boosting Green Jobs.” *Independent Women’s Forum*, July 2023, [www.iwf.org/2023/07/26/green-skillset-mirage-ira-artificially-boosting-green-jobs](http://www.iwf.org/2023/07/26/green-skillset-mirage-ira-artificially-boosting-green-jobs).

<sup>16</sup> “Eminent Domain.” *LII / Legal Information Institute*, [www.law.cornell.edu/wex/eminent\\_domain#:~:text=Eminent%20domain%20refers%20to%20the,e,compensation%20to%20the%20property%20owners](http://www.law.cornell.edu/wex/eminent_domain#:~:text=Eminent%20domain%20refers%20to%20the,e,compensation%20to%20the%20property%20owners).

A 2019 Wisconsin Law Review paper titled<sup>17</sup> “Eminent Domain Law as Climate Policy ” urged states to employ eminent domain as a clean energy policy. The paper also argues this model, if adopted, could be a “template for Congress if, in the future, it enacts federal climate policy.”

Some private sector leaders are echoing this call-to-action. JP Morgan Chase CEO Jamie Dimond recommended eminent domain in an April 2022 shareholder letter<sup>18</sup> — arguing it should be invoked to speed up the transition to clean energy. He wrote, “The need to provide energy affordably and reliably for today, as well as make the necessary investments to decarbonize for tomorrow, underscores the inextricable links between economic growth, energy security and climate change. We need to do more, and we need to do so immediately...We may even need to evoke eminent domain — we simply are not getting the adequate investments fast enough for grid, solar, wind and pipeline initiatives.”

### **Corporate Farming Undergirded By ESG Diminishes Ownership/Property Rights**

Not only would ESG embolden eminent domain to achieve infeasible net-zero goals, pension funds and corporations are adamant about diminishing and discouraging land ownership, as well.

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<sup>17</sup> Klass, Alexandra. *Eminent Domain Law as Climate Policy - University of Minnesota*, University of Minnesota Law School , 2020, [scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1683&context=faculty\\_articles](https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1683&context=faculty_articles).

<sup>18</sup> “Letter to Shareholders From Jamie Dimon, Annual Report 2022 | JPMorgan Chase and Co.” *JPMorgan Chase & Co.*, [reports.jpmorganchase.com/investor-relations/2022/ar-ceo-letters.htm](https://reports.jpmorganchase.com/investor-relations/2022/ar-ceo-letters.htm).

U.S. Senator Chuck Grassley (R-IA) warned<sup>19</sup> in a January 2023 Q&A: “If deep-pocketed investors come in, foreign or not, it drives up prices and makes it harder for new and beginning farmers to get started.”

And he’s not wrong.

The Cowboy State Daily, a Wyoming-based newspaper, also reported<sup>20</sup> in January about the diabolical plan by the not-for-profit retirement market provider, Teachers Insurance and Annuity Association (TIAA), with its subsidiary Nuveen, to facilitate “the separation of farming operations from its capital base” by creating a model of investors owning farmland with tenant farmer leasers.

The outlet reports it’s the largest global manager of farmland assets, totaling \$10.3 billion<sup>21</sup> of farmland assets and over 2 million acres under management. But Nuveen is hungry for more. It has “identified” and “evaluated” 3.8 billion acres<sup>22</sup> of croplands worldwide—including upwards of 32 million of U.S. croplands valued between \$420-500 billion— “suitable for institutional investment.”

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<sup>19</sup> “Q&A: Foreign Ownership of U.S. Farmland | U.S. Senator Chuck Grassley of Iowa.” *Chuck Grassley*, 4 Feb. 2022, [www.grassley.senate.gov/news/news-releases/qanda-foreign-ownership-of-us-farmland](http://www.grassley.senate.gov/news/news-releases/qanda-foreign-ownership-of-us-farmland).

<sup>20</sup> Urbigkit, Cat. “Cat Urbigkit: Corporate Capture of Ag Lands Is Happening Now.” *Your Wyoming News Source*, 17 Jan. 2023, [cowboystatedaily.com/2023/01/17/cat-urbigkit-corporate-capture-of-ag-lands-is-happening-now](http://cowboystatedaily.com/2023/01/17/cat-urbigkit-corporate-capture-of-ag-lands-is-happening-now).

<sup>21</sup> “Farmland Strategy.” *Nuveen*, [www.nuveen.com/global/investment-capabilities/real-assets/farmland](http://www.nuveen.com/global/investment-capabilities/real-assets/farmland).

<sup>22</sup> *NNC How Nuveen Identifies and Evaluates Farmland Suitable for Institutional Investment*. [documents.nuveen.com/Documents/Nuveen/Default.aspx?uniqueId=111a24ac-b1a0-453c-baec-42ad1814f0f7](https://documents.nuveen.com/Documents/Nuveen/Default.aspx?uniqueId=111a24ac-b1a0-453c-baec-42ad1814f0f7).

A company briefing entitled “Institutional farmland ownership: facilitating the separation of farming operations from its capital base”<sup>23</sup> argues, “Institutional investment can act to improve governance of farming operations by improving environmental standards and employment, while also facilitating research and development, training and trade, as well as contributing to social improvements in rural economies. Institutional investors, who invest third-party capital, can act as stewards helping to implement appropriate ESG (environmental, social and governance factors) policies and procedures that inform the land acquisition due diligence process and the ongoing management of the farmland.”

Nine midwestern states have already taken steps to limit or ban this form of “corporate” farming—including Kansas<sup>24</sup>.

It’s abundantly clear divorcing landowners from capital isn’t free market-oriented; it’s cronyism.

### ***SEC ESG Climate Rule Would Encroach on Small Rancher and Farmer Privacy***

As I mentioned before, ESG policies have invited government agencies like the Security and Exchange Commission (SEC), a governmental outfit purporting<sup>25</sup> to “promote a market environment that is worthy of the public’s trust,” to interfere with day-to-day operations of small and medium-sized farms and ranches.

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<sup>23</sup> Nuveen Natural Capital *Institutional Farmland Ownership: Facilitating the Separation of Farming Operations From Its Capital Base*.

[documents.nuveen.com/Documents/Global/Default.aspx?uniqueId=FD737FA7-B53B-4C47-BB73-04C268A8F399&subid=6%7C7](https://documents.nuveen.com/Documents/Global/Default.aspx?uniqueId=FD737FA7-B53B-4C47-BB73-04C268A8F399&subid=6%7C7).

<sup>24</sup> “More Study Sought for Kansas Corporate Farming Laws.” *The Kansas City Star*, 20 May 2014, [www.kansascity.com/news/local/article316577.html](http://www.kansascity.com/news/local/article316577.html).

<sup>25</sup> *SEC.gov | About the SEC*. 20 Apr. 2017, [www.sec.gov/about](http://www.sec.gov/about).



A proposed March 2022 rule, the “Enhanced and Standardization of Climate-Related Disclosures for Investors,” would require registrants (or publicly-traded companies) who do business with small operators “to include certain climate-related disclosures” called Scope 3 Emissions—indirect (upstream or downstream) emissions occurring in the value chain of the reporting company.<sup>26</sup>

Much to the chagrin of ESG proponents, SEC can’t regulate non-financial goals under Section 13(a) of the Securities Exchange Act of 1934 because it only creates rules deemed “necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.” Only Congress has jurisdiction here.

Requiring smaller and medium-sized producers to adopt more rigorous reporting regimes, should this SEC rule be adopted, would also invite massive privacy concerns that would infringe on property rights.

Small and medium-sized agribusinesses operate out of their personal residences. Therefore, disclosing data pertaining to individual operations and day-to-day activities—should they be made public— will likely invite threats by agriculture industry opponents and make them targets of radical environmentalists intent on disrupting and stopping their operations altogether.

The federal government has already weaponized federal agencies like the Environmental Protection Agency (EPA) to go after landowner property rights, including farmers and ranchers, through broadly-defined waters of the United States (WOTUS) rules. This summer’s landmark *Sackett vs. EPA* Supreme Court decision was a major win for property rights. The court unanimously ruled the EPA can’t regulate bodies of water that don’t have

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<sup>26</sup> Hoffman, Gabriella. “SEC’s New ESG Rule Hurts America’s Small Farms and Ranches.” *RealClearEnergy*, June 2022, [www.realclearenergy.org/articles/2022/06/22/secs\\_new\\_esg\\_rule\\_hurts\\_americas\\_small\\_farms\\_and\\_ranches\\_838700.html](http://www.realclearenergy.org/articles/2022/06/22/secs_new_esg_rule_hurts_americas_small_farms_and_ranches_838700.html).

continuous surface connection with “waters” of the United States under a significant nexus<sup>27</sup> test.

Recently, the EPA targeted<sup>28</sup> Nebraska property owners for allegedly violating the Clean Water Act for wanting to spruce up their property to make it suitable for hunting.

According to the husband, a neighbor reported them to the Army Corps of Engineers, an agency tasked with enforcing the Clean Water Act. He said, “In 2021, the neighbor turned me in and the Army Corps of Engineers sent out investigators. I was so pissed off at the neighbor, that I put the place on the market.”

Their lawyers at the Pacific Legal Foundation revealed the EPA had filed an administrative enforcement action against him and his wife. The agency accused the couple of discharging pollutants—dirt and other fill material—into “waters of the United States” on their property, contrary to the law.

After it was revealed the couple was preparing to take action against the agency, the EPA dropped its charges against the couple last month.

## **Conclusion**

Property rights here in Kansas and elsewhere across the U.S. are being undermined by the marriage of big government with crony capitalism. But it doesn't have to be the case.

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<sup>27</sup> Howe, Amy, and Amy-Howe. “Supreme Court Curtails Clean Water Act.” *SCOTUSblog*, May 2023, [www.scotusblog.com/2023/05/supreme-court-curtailed-clean-water-act](http://www.scotusblog.com/2023/05/supreme-court-curtailed-clean-water-act).

<sup>28</sup> Hunter, Brittany. “EPA Backs Down From Its Outrageous Claims Against a Nebraska Property Owner.” *Pacific Legal Foundation*, 30 Aug. 2023, [pacificlegal.org/epa-backs-down-from-claims-against-property-owner](http://pacificlegal.org/epa-backs-down-from-claims-against-property-owner).

Kansas has taken decisive action<sup>29</sup> to protect constituents and their investments from being subjected to non-pecuniary—namely politically progressive— factors affecting pensions and 401K’s. It is one of 14 states<sup>30</sup> to adopt anti-ESG legislation in 2023.

I’m confident the committee will devise solutions and recommendations and hope you can draw from my remarks as you do.

Thank you for the opportunity to speak today and I look forward to your questions.

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<sup>29</sup> Hanna, John. “Kansas Has New anti-ESG Law Amid Raft of Culture War Vetoes | AP News.” *AP News*, 25 Apr. 2023, [apnews.com/article/esg-woke-investing-kansas-culture-war-vetoes-20842bdda84432add49f267adb897df3](https://apnews.com/article/esg-woke-investing-kansas-culture-war-vetoes-20842bdda84432add49f267adb897df3).

<sup>30</sup> K&L Gates. “2023 ESG State Legislation Wrap Up.” *K&L Gates*, [www.klgates.com/2023-ESG-State-Legislation-Wrap-Up-7-19-2023#:~:text=By%20the%20Numbers%3A%20Adopted%20ESG,in%20the%202023%20legislative%20session.](https://www.klgates.com/2023-ESG-State-Legislation-Wrap-Up-7-19-2023#:~:text=By%20the%20Numbers%3A%20Adopted%20ESG,in%20the%202023%20legislative%20session.)