

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

November 1, 2023

Mr. Andrew D. Herman
Lawrence & Bundy LLC
1775 Pennsylvania Avenue NW, Suite 650
Washington, DC 20006

Re: As You Sow

Dear Mr. Herman:

The Committee on the Judiciary is conducting oversight of the adequacy and enforcement of U.S. antitrust laws. Pursuant to the Rules of the House of Representatives, the Committee has jurisdiction to conduct oversight of matters concerning the “[p]rotection of trade and commerce against unlawful restraints and monopolies” to inform potential legislative reforms, such as whether existing civil and criminal penalties and current antitrust law enforcement efforts are sufficient to deter anticompetitive collusion in the investment industry.¹

I. Background and Legislative Purpose of the Committee’s Oversight

Corporations are collectively adopting and imposing left-wing environmental, social, and governance (ESG)-related goals, and the Committee is concerned that As You Sow appears to facilitate collusion that may violate U.S. antitrust law. To advance our oversight and inform potential legislation related to collusive ESG policies, the Committee must understand how and to what extent As You Sow may facilitate collusion to promote ESG-related goals.

As we previously explained, As You Sow is a member of Climate Action 100+, whose members collusively have agreed to “work with the companies in which [they] invest to . . . deliver[] net zero [greenhouse gas (GHG)] emissions by 2050.”² You have “disagree[d] with the [Committee’s] description of [As You Sow’s] activity and the legal theory propounded by the Committee.”³ However, you acknowledge that As You Sow is a member of Climate Action

¹ Rules of the House of Representatives R. X (2023).

² Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. to Andrew Behar 1 (Aug. 1, 2023) [hereinafter August 1 Letter] (quoting CLIMATE ACTION 100+, THE THREE GOALS, <https://www.climateaction100.org/approach/the-three-goals/>).

³ Letter from Andrew D. Herman to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, 1 (Sept. 11, 2023) [hereinafter September 11 Letter].

100+, as well as a member of Ceres, Principles for Responsible Investment, and the Interfaith Center on Corporate Responsibility, “each of which have programs that address climate change”—implemented in similarly collusive manners.⁴ Moreover, As You Sow continues to boast that it “works with shareholders in several capacities,” including by “engag[ing]” with companies to “address shareholder concern[s],” “fil[ing] resolutions and represent[ing] shareholders,” and “act[ing] as a representative to move resolutions filed directly by shareholders.”⁵ Thus, the Committee’s concerns that As You Sow may be facilitating collusion in violation of U.S. antitrust law appear to be well-founded.

II. As You Sow’s Antitrust Arguments Lack Merit

You argue that “[t]here is no precedent or basis in law to support the assertion . . . that As You Sow[] . . . is potentially violating U.S. antitrust law.”⁶ That argument misapprehends well-established principles of antitrust law, including those set forth in the Committee’s initial letter.⁷ First, you appear to suggest that As You Sow cannot violate the antitrust laws because it “represent[s] shareholders on issues related to climate change.”⁸ However, as explained in our initial letter, the Supreme Court “has regularly refused . . . requests from litigants seeking special dispensation from the Sherman Act on the ground that their restraints of trade serve uniquely important social objectives The statutory policy of the Act is one of competition and it precludes inquiry into the question whether competition is good or bad.”⁹

Second, you assert that As You Sow is immune from antitrust liability because it is a “non-profit organization.”¹⁰ Again, that proposition consistently has been rejected by the Supreme Court, which recently emphasized that “the Sherman Act ha[s] already been applied to other nonprofit organizations” and rejected antitrust defendants’ argument that they “are not ‘commercial enterprises.’”¹¹

Third, you claim that “As You Sow is not the type of market actor with the power to achieve or compel such violations of the [Sherman] Act,” and that its “work is pro-competitive.”¹² That argument misapprehends the nature of section one of the Sherman Act. As we explained in our initial letter, certain conduct restraining trade is per se illegal.¹³ Thus, “[i]t makes no difference . . . whether the participants possess market control; whether the amount of interstate commerce affected is large or small; or whether the effect of the agreement is to raise

⁴ *Id.* at 5.

⁵ AS YOU SOW, 2023 SHAREHOLDER IMPACT REVIEW: CHANGING CORPORATIONS FOR GOOD 4–5 (Sept. 6, 2023).

⁶ September 11 Letter at 3.

⁷ *See* August 1 Letter at 2.

⁸ September 11 Letter at 3.

⁹ *NCAA v. Alston*, 594 U.S. ___, 141 S. Ct. 2141, 2159 (2021) (cleaned up); *see also, e.g., FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411 (1990); *NCAA v. Bd. of Regents*, 468 U.S. 85 (1984); *United States v. McKesson & Robbins, Inc.*, 351 U.S. 305 (1956).

¹⁰ September 11 Letter at 3.

¹¹ *Alston*, 141 S. Ct. at 2158–59; *see Bd. of Regents*, 468 U.S. at 100 n.22.

¹² September 11 Letter at 3.

¹³ *Bd. of Regents*, 468 U.S. at 100; *see* August 1 Letter at 2.

or to decrease prices.”¹⁴ The Supreme Court has explained that “the amount of interstate or foreign trade involved is not material, since [section one] of the Act brands as illegal the character of the restraint not the amount of commerce affected.”¹⁵ “It is the contract, combination or conspiracy, in restraint of trade or commerce which [section one] of the Act strikes down.”¹⁶ In any event, As You Sow has admitted that its objective is to reduce investment and output by forcing energy companies to “curb new investments in fossil fuel production assets”—a potential violation of the Sherman Act.¹⁷

III. The Committee’s Requests and As You Sow’s Response

As a part of the Committee’s oversight to inform potential legislative reforms, the Committee wrote on August 1, 2023, to request that As You Sow produce documents and communications related to how As You Sow advances ESG policies, in addition to other information.¹⁸ We requested that As You Sow produce responsive material by August 15.¹⁹ On the day of that deadline, As You Sow’s Chief Executive Officer, Andrew Behar, responded with a one-page letter stating that As You Sow was “reviewing” the Committee’s requests and “in the process of preparing a response,” with an anticipated response date of September 11.²⁰ As You Sow did not produce any documents with its August 15 letter.

On August 17, the Committee wrote to reiterate our outstanding requests for documents and information.²¹ In that letter, the Committee explained that not only had As You Sow failed to produce any documents whatsoever, it had not provided any indication of what steps, if any, it had pursued to identify and review potentially responsive documents.²² The Committee sought As You Sow’s voluntary compliance by August 31, and advised As You Sow that the Committee might be forced to pursue compulsory process if the requests remained outstanding.²³ At the deadline, you responded with a two-page letter stating that you had “recently been retained by As You Sow to assist . . . in addressing [our inquiry],” and “reiterate[d] [As You Sow’s] intent to provide a substantive response by September 11.”²⁴ As You Sow did not produce any documents with its August 31 letter.

On September 8, Committee staff contacted you via e-mail to request confirmation that “As You Sow’s intended September 11 ‘substantive response’ [would] contain documents, including e-mail communications, that are responsive to the Committee’s requests.”²⁵ Your

¹⁴ *McKesson & Robbins, Inc.*, 351 U.S. at 310.

¹⁵ *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224 n.59 (1940) (cleaned up).

¹⁶ *Id.* (same).

¹⁷ DANIELLE FUGERE & ANDREW BEHAR, AS YOU SOW, 2020: A CLEAR VISION FOR PARIS COMPLIANT SHAREHOLDER ENGAGEMENT 6 (Sept. 6, 2018).

¹⁸ See August 1 Letter.

¹⁹ See *id.* at 3.

²⁰ Letter from Andrew Behar to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (Aug. 15, 2023).

²¹ See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary to Andrew Behar (Aug. 17, 2023).

²² See *id.*

²³ *Id.* at 2.

²⁴ Letter from Andrew D. Herman to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, 1 (Aug. 31, 2023).

²⁵ E-mail from H. Comm. on the Judiciary Staff to Andrew D. Herman (Sept. 8, 2023).

September 8, 2023, reply again reiterated that As You Sow would “be providing a substantive response” on September 11, but refused to “provide additional details before that time.”²⁶

On September 11, you sent a letter acknowledging that “As You Sow is a member of [Climate Action 100+], Ceres, [Principles for Responsible Investment], and the Interfaith Center on Corporate Responsibility, each of which have programs that address climate change,” and boasting that “climate-related shareholder proposals supported by As You Sow have received majority votes at numerous companies, including Caterpillar, Chubb, General Electric, and The Travelers Companies, among others.”²⁷ As You Sow did not produce any documents with its September 11 letter. Instead, you questioned the Committee’s authority to conduct its oversight work to inform legislative reforms.

The Supreme Court has been clear that Congress has a “broad and indispensable” power “to secure needed information in order to legislate.”²⁸ This power “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them” so long as the subpoena “concern[s] a subject on which legislation could be had.”²⁹ Such is the case here. The Committee’s oversight of the adequacy and enforcement of U.S. antitrust laws to inform potential legislative reforms falls squarely within its jurisdiction.³⁰

IV. As You Sow’s General Objections to the Committee’s Investigation Lack Merit

You have raised several legal objections to the Committee’s requests, each of which is inapplicable here. First, you incorrectly suggest that the Committee’s requests were made “for the purpose of ‘law enforcement.’”³¹ However, as we previously explained, the Committee “is conducting oversight of the adequacy and enforcement of U.S. antitrust laws . . . [to] inform potential legislative reforms,” such as whether existing civil and criminal penalties and current antitrust law enforcement efforts are sufficient to deter anticompetitive collusion in the investment industry.³²

Second, you argue that the Committee’s requests are not pertinent because As You Sow is not an asset manager and because As You Sow believes the Committee’s requests to be broad.³³ However, the Committee’s initial letter made clear that As You Sow is a “[s]tockholder engagement service provider[]” that “promote[s] environmental and social corporate responsibility through shareholder advocacy [and] coalition building.”³⁴ As we explained both above and in our original letter, As You Sow has entered into apparently collusive agreements

²⁶ E-mail from Andrew D. Herman to H. Comm. on the Judiciary Staff (Sept. 8, 2023).

²⁷ September 11 Letter at 3, 5 (footnotes omitted).

²⁸ *Trump v. Mazars USA, LLP*, 591 U.S. ___, 140 S. Ct. 2019, 2031 (2020) (cleaned up).

²⁹ *Id.* (cleaned up).

³⁰ See Rules of the House of Representatives R. X (2023).

³¹ September 11 Letter at 4.

³² August 1 Letter at 1.

³³ See September 11 Letter at 4–5.

³⁴ August 1 Letter at 1 (quoting AS YOU SOW, ABOUT US, <https://www.asyousow.org/about-us>).

with Climate Action 100+ and other ESG cartels.³⁵ As You Sow also may have entered into agreements with asset managers, proxy advisors, and other third parties in violation of section one of the Sherman Act. Further, the Supreme Court has been clear that Congress has a “broad and indispensable” power “to secure needed information in order to legislate,” and the Committee’s requests are well within its jurisdiction to conduct oversight of the adequacy and enforcement of U.S. antitrust laws.³⁶ Indeed, even if As You Sow did not itself violate the antitrust laws, it is likely to have evidence relevant to others’ collusive ESG-related agreements that is necessary to inform the Committee’s oversight.

Third, you broadly assert that the Committee’s requests constitute a “clear infringement upon As You Sow’s First Amendment right of association.”³⁷ However, “[i]t is well settled that First Amendment rights are not immunized from regulation when they are used as an integral part of conduct which violates a valid statute.”³⁸ Thus, for example, the Supreme Court has noted that:

it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.^[39]

Further, the *Noerr-Pennington* doctrine,⁴⁰ which exempts “conduct . . . aimed at influencing decisionmaking by the government” from antitrust liability,⁴¹ cannot immunize As You Sow’s conduct because As You Sow is not petitioning the government.⁴² Nor would the First Amendment right to free association extend to As You Sow’s “commercial relationships” and “commercial transactions” that are the subject of the Committee’s requests.⁴³ Specifically, as discussed below, our requests seek information related to As You Sow’s targets for fossil fuel production and relationships with ESG cartels and players in the investment industry.⁴⁴

Fourth, you suggest that As You Sow’s anticompetitive conduct is somehow authorized because you claim it has been “conducted in accordance with a process established by Securities

³⁵ *See id.*

³⁶ *Trump v. Mazars USA, LLP*, 591 U.S. ___, 140 S. Ct. 2019, 2031 (2020) (cleaned up).

³⁷ September 11 Letter at 6.

³⁸ *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 514 (1972).

³⁹ *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949) (cleaned up).

⁴⁰ *E.R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965).

⁴¹ *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 556 (2014).

⁴² *See, e.g., Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005); *LaSalle Nat. Bank of Chicago v. DuPage Cnty.*, 777 F.2d 377, 384 n.6 (7th Cir. 1985).

⁴³ *Bean LLC v. John Doe Bank*, 291 F. Supp. 3d 34, 46 (D.D.C. 2018).

⁴⁴ *See August 1 Letter at 2–3.*

and Exchange Commission (SEC) regulations.”⁴⁵ However, there is no “plain repugnancy” or “clear[] incompatib[ility]” between the SEC’s shareholder proposal rules and the antitrust laws, so the Sherman Act continues to apply with full force and effect.⁴⁶ Further, you fail to explain how an agency rule could preempt a statute adopted by Congress and signed by the President.⁴⁷

V. As You Sow’s Specific Objections to the Committee’s Requests Lack Merit

In addition, you suggested that Committee “requests one, two, four, five, and six do not appear to be applicable to As You Sow” because of “[t]he Committee’s mistake regarding the identity of As You Sow as an asset manager.”⁴⁸ As discussed above, the Committee made no such mistake. We understand that As You Sow is a stockholder engagement service provider that may be colluding with alliances or initiatives and asset managers to advance ESG-related goals. Moreover, given its function as a stockholder engagement service provider, As You Sow may also have evidence relevant to third parties’ agreements that violate antitrust laws. In any event, the Committee has reason to believe As You Sow has non-public documents that are responsive to the Committee’s requests. For example:

- Request 1 seeks “documents and communications referring or relating to the need for As You Sow to advance decarbonization and net zero emissions goals.”⁴⁹ You argue that “As You Sow does not ‘need’ to advance decarbonization or net zero emissions goals.”⁵⁰ However, As You Sow has stated publicly that there is a “need to transition from fossil-fuel based energy to clean energy sources.”⁵¹ For example, your letter itself asserts that “there is global consensus on the reality and risks of climate change.”⁵² Similarly, As You Sow emphasizes the supposedly “catastrophic impacts of climate change” and “the importance of setting and achieving emissions reduction targets that hold global warming below 1.5 degrees C.”⁵³ It also urges that stockholders force corporations to “[p]rovide capital expenditure plans that are demonstrably in line with maintaining global temperatures well below 2°C.”⁵⁴ Further, documents produced to the Committee by other parties suggest that As You Sow has such goals.⁵⁵
- Request 2 seeks “documents and communications referring or relating to how As You Sow developed its decarbonization and net zero emissions targets and commitments.”⁵⁶ You argue that As You Sow “does not have decarbonization and net zero targets or

⁴⁵ September 11 Letter at 3 (citing 17 C.F.R. § 240.14a-8).

⁴⁶ *Credit Suisse Sec. (USA) LLC v. Billing*, 551 U.S. 264, 267, 285 (2007).

⁴⁷ *See, e.g., Caldera v. J.S. Alberici Const. Co.*, 153 F.3d 1381, 1383 n.** (Fed. Cir. 1998).

⁴⁸ September 11 Letter at 4.

⁴⁹ August 1 Letter at 2.

⁵⁰ September 11 Letter at 5.

⁵¹ As You Sow, *Energy Section Transition*, <https://www.asyousow.org/our-work/energy/energy-sector-transition>.

⁵² September 11 Letter at 2.

⁵³ As You Sow, *Road To Zero Emissions* (Mar. 2, 2022), <https://www.asyousow.org/report-page/2022/road-to-zero-emissions>.

⁵⁴ FUGERE & BEHAR, *supra* note 17, at 22.

⁵⁵ *See* documents on file with H. Comm. on the Judiciary.

⁵⁶ August 1 Letter at 3.

commitments.”⁵⁷ However, it is clear that You Sow has and pursues such targets and commitments. For example, your letter asserts that “climate-related shareholder proposals supported by As You Sow have received majority votes at numerous companies.”⁵⁸ Further, documents produced to the Committee by other parties suggest that As You Sow has such targets.⁵⁹

- Request 4 seeks “documents and communications referring or relating to how proxy advisors . . . can or should advance decarbonization and net zero emissions goals.”⁶⁰ You argue that “As You Sow does not hire proxy advisors and does not therefore maintain an institutional position on th[is] broad question.”⁶¹ However, documents produced to the Committee by other parties suggest that As You Sow communicates with proxy advisors about advancing such goals.⁶²
- Request 5 seeks “documents and communications referring or relating to any agreement . . . among As You Sow, asset managers . . . , proxy advisors . . . , and alliances or initiatives such as Climate Action 100+ . . . to advance decarbonization and net zero emissions goals.”⁶³ You argue that “As You Sow does not have agreements with asset managers, proxy advisors, and alliances or initiatives to advance decarbonization and net zero emissions goals.”⁶⁴ However, documents produced to the Committee by other parties suggest that As You Sow has entered into such agreements.⁶⁵
- Request 6 seeks “documents and communications referring or relating to how As You Sow’s decarbonization and net zero emissions goals, agreements, and commitments . . . affect output, price, or the choices available to consumers and investors.”⁶⁶ You argue that As You Sow “does not have decarbonization and net zero targets or commitments or agreements.”⁶⁷ However, as set forth above, documents both publicly available and produced to the Committee in this investigation by other parties undercut your contention. Indeed, As You Sow expressly has stated: “Shareholders need to unify behind a bold resolution asking companies to . . . commit to immediately ceasing capital expenditures for exploration of new sources of fossil fuels that would bring company emissions outside of” a 2°C increase.⁶⁸ An As You Sow-published report estimated that “\$1 trillion per year” in “investment must be diverted from fossil fuel-based power generation, industrial processes, transport, and land use.”⁶⁹

⁵⁷ September 11 Letter at 5.

⁵⁸ *Id.* at 3.

⁵⁹ See documents on file with H. Comm. on the Judiciary.

⁶⁰ August 1 Letter at 3.

⁶¹ September 11 Letter at 5.

⁶² See documents on file with H. Comm. on the Judiciary.

⁶³ August 1 Letter at 3.

⁶⁴ September 11 Letter at 5.

⁶⁵ See documents on file with H. Comm. on the Judiciary.

⁶⁶ August 1 Letter at 3.

⁶⁷ September 11 Letter at 5.

⁶⁸ FUGERE & ANDREW BEHAR, *supra* note 17, at 22.

⁶⁹ HEIDI WELSH & MICHAEL PASSOFF, AS YOU SOW ET AL., PROXY PREVIEW 2022 24 (Mar. 21, 2022).

You also challenged the supposed breadth and burden of the Committee’s third request.⁷⁰ Request 3 seeks “documents and communications referring or relating to how As You Sow and other stockholder engagement service providers can or should advance decarbonization and net zero emissions goals.”⁷¹ You argue, without explanation, that “[t]his request is so broad as to encompass essentially all substantive climate material.”⁷² However, Request 3 goes to the core of the Committee’s investigation as it pertains to As You Sow: determining what work stockholder engagement service providers like As You Sow do to advance ESG-related goals, such as collusively “engag[ing] . . . with companies” and “fil[ing] resolutions and represent[ing] shareholders,” and whether such collusive efforts increase prices, decrease output, or otherwise unreasonably restrain trade.⁷³ The Committee remains willing to discuss how its requests may be fulfilled as efficiently as possible—an invitation that As You Sow has declined for three months, despite indicating on August 15 that As You Sow was “in the process of preparing a response,”⁷⁴ and committing on August 31 “to provid[ing] a substantive response by September 11.”⁷⁵ Instead, As You Sow’s continued failure to produce even a single responsive document reveals its bad faith in responding to the Committee’s requests, and the need for compulsory process to issue.

Finally, As You Sow’s direction that the Committee consult As You Sow’s “publicly filed shareholder proposals and proxy memos” is an insufficient response to our requests.⁷⁶ While those public materials do raise questions about As You Sow’s compliance with section one of the Sherman Act, the scope of our investigation is not limited to public materials, and the Committee is entitled to exercise its subpoena power to obtain pertinent internal documents and communications. These internal materials are necessary to inform the Committee’s oversight of the antitrust laws and the potential legislative reforms that may be appropriate. In particular, private communications with other stockholders and non-public documents related to engagements with target companies may reveal the terms and the extent of As You Sow’s potentially collusive agreements.

* * *

As You Sow’s response without compulsory process has been inadequate. To date, three months after the Committee’s initial requests, As You Sow has not produced a single document in response to the Committee’s requests. Further, As You Sow has made clear that it does not intend to comply voluntarily with the Committee’s requests.

⁷⁰ See September 11 Letter at 5, 6.

⁷¹ August 1 Letter at 3.

⁷² September 11 Letter at 5.

⁷³ 2023 SHAREHOLDER IMPACT REVIEW, *supra* note 5, at 4–5.

⁷⁴ Letter from Andrew Behar to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (Aug. 15, 2023).

⁷⁵ Letter from Andrew D. Herman to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, 1 (Aug. 31, 2023).

⁷⁶ September 11 Letter at 5.

Mr. Andrew Herman
November 1, 2023
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Accordingly, please find enclosed a subpoena.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member
Mr. Andrew Behar, Chief Executive Officer, As You Sow

Enclosures

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

To Mr. Andrew Behar, Chief Executive Officer, As You Sow

You are hereby commanded to be and appear before the
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: House Committee on the Judiciary, 2138 Rayburn House Office Building
Date: December 1, 2023 Time: 9:00 a.m.

- to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

- to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time: _____

To The U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 1st day of November, 2023.


J. Jordan
Chairman or Authorized Member

Attest: Kevin F. McCulver

Clerk

PROOF OF SERVICE

Subpoena for

Mr. Andrew Behar, Chief Executive Officer, As You Sow 

Address P.O. Box 751, Berkeley, CA 94701

before the Committee on the Judiciary

*U.S. House of Representatives
118th Congress*

Served by (print name) _____

Title _____

Manner of service _____

Date _____

Signature of Server _____

Address _____

In accordance with the attached Schedule A, Instructions, and Definitions, you, Andrew Behar, in your capacity as Chief Executive Officer of As You Sow, are required to produce the following documents and communications that are in As You Sow's possession, custody, or control, in unredacted form:

SCHEDULE A

From December 1, 2016, to present:

1. All documents and communications referring or relating to the need for or efforts by As You Sow to advance decarbonization and net zero emissions goals, including As You Sow's decisions to join Climate Action 100+, Ceres, Principles for Responsible Investment (PRI), and the Interfaith Center on Corporate Responsibility.
2. All documents and communications referring or relating to how As You Sow developed or adopted its decarbonization and net zero emissions goals, agreements, targets, and commitments, including those goals, agreements, targets, and commitments developed or adopted by alliances or initiatives such as Climate Action 100+, the Net Zero Asset Managers initiative (NZAM), Ceres, PRI, and the Interfaith Center on Corporate Responsibility.
3. All documents and communications referring or relating to how As You Sow and other stockholder engagement service providers can or should advance decarbonization and net zero emissions goals, including but not limited to through direct engagement, sponsoring, supporting, opposing, or voting for directors and stockholder proposals (including at Caterpillar, Chubb, General Electric, and The Travelers Companies), and entering into agreement, commitment, or other participation with alliances or initiatives such as Climate Action 100+, NZAM, Ceres, PRI, and the Interfaith Center on Corporate Responsibility.
4. All documents and communications referring or relating to how proxy advisors, including but not limited to Institutional Shareholder Services and Glass Lewis, can or should advance decarbonization and net zero emissions goals, including but not limited to through sponsoring, supporting, opposing, or voting for directors and stockholder proposals (including at Caterpillar, Chubb, General Electric, and The Travelers Companies).
5. All documents and communications referring or relating to any agreement or commitment, or any effort to reach such an agreement or commitment, between or among As You Sow, asset managers such as BlackRock, State Street Global Advisors, Arjuna Capital, and Trillium Asset Management, proxy advisors such as Institutional Shareholder Services and Glass Lewis, and alliances or initiatives such as Climate Action 100+, NZAM, Ceres, PRI, and the Interfaith Center on Corporate Responsibility, or any of their members, to advance decarbonization and net zero emissions goals, including but not limited to documents and communications referring or relating to any of their knowledge or awareness of another's agreement or commitment, and documents and

communications reflecting or suggesting agreement or commitment as to specific steps, policies, or best practices.

6. All documents and communications referring or relating to how the decarbonization and net zero emissions goals, agreements, targets, and commitments developed or adopted by As You Sow, including those goals, agreements, targets, and commitments developed or adopted by alliances or initiatives such as Climate Action 100+, NZAM, Ceres, PRI, and the Interfaith Center on Corporate Responsibility, affect output, price, or the choices available to consumers and investors, including but not limited to the markets for fossil fuels such as coal, gas, and oil.

INSTRUCTIONS

For the purposes of this Subpoena, please apply the instructions and definitions as set forth below:

1. In complying with this subpoena, you are required to produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Requested documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this subpoena has been, or is currently, known by any other name, the subpoena shall be read also to include such other names under that alternative identification.
4. The Committee's preference is to receive documents responsive to the subpoena in electronic form in lieu of paper productions. Committee staff shall be consulted prior to production to discuss the best production method. If documents are produced in electronic form, they shall be produced to the Committee in both native file format and TIFF image format, with metadata and extracted/OCR text, as set forth in the enclosed eDiscovery Production Specifications. If documents are produced in paper form, each document should be produced in a form that may be copied by standard copying machines.
5. Documents produced pursuant to this subpoena shall be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should be produced together in the order they appear in your files. Documents produced in response to this subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. Indicate the office or division and person from whose files each document was produced.
6. Documents produced to the Committee should include an index describing the contents of the production and should identify the paragraph(s) and/or clause(s) in the Committee's schedule to which the document responds. To the extent more than one CD, hard drive, memory stick, thumb drive, box, folder, or cloud content service delivery is produced, each CD, hard drive, memory stick, thumb drive, box, folder, or cloud content service delivery should contain an index describing its contents.
7. All documents shall be Bates-stamped sequentially and produced sequentially.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

9. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this subpoena, you should identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.
10. If any document responsive to this subpoena was, but no longer is, in your possession, custody or control, state:
 - a. how the document was disposed of;
 - b. the name, current address, and telephone number of the person who currently has possession, custody, or control over the document;
 - c. the date of disposition; and
 - d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
11. If any document responsive to this subpoena cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction, or unavailability.
12. If a date or other descriptive detail set forth in this subpoena referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This subpoena is continuing in nature and applies to any newly discovered documents, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. A cover letter shall be included with each production and shall including the following:
 - a. A total page count for the entire production, including both electronic and any hard copy documents;
 - b. A list of custodians, identifying the Bates range for each custodian; and
 - c. All Bates Prefix and Suffix formats for all documents contained in the production.
15. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 2138 of the Rayburn House Office Building and one set to the minority staff in Room 2142 of the Rayburn House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.
16. In the event that a responsive document or portion thereof is withheld on any basis, including by a claim of privilege, you should provide a log containing the following

information concerning every such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author, and addressee; (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, only that portion should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document or portion thereof either may or must be withheld from production pursuant to any legal doctrine, statute, rule, or regulation.

- a. Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document or portion thereof prior to the subpoena compliance date.
- b. In complying with this subpoena, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
- c. Any assertion by a subpoena recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.

17. If the subpoena cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.
18. Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (a) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (b) documents responsive to the subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's subpoena or in anticipation of receiving the Committee's subpoena; and (c) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee as described in paragraph 16 above, or identified as provided in paragraphs 9, 10, or 11 above.
19. When representing a witness or entity before the Committee in response to a subpoena, document request, or request for transcribed interview, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that

counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

DEFINITIONS

The following definitions apply to terms used within the Subpoena, Schedule A, the Instructions, and these Definitions:

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), instant messages, calendars, contracts, cables, notations of any type of conversation (including, without limitation, telephone calls, meetings, or other communications), bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, PowerPoint presentations, spreadsheets, and work sheets, and graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. The term “document” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The phrase “possession, custody or control” means (a) documents that are in As You Sow’s possession, custody, or control, whether held by As You Sow’s past or present agents, employees, or representatives acting on As You Sow’s behalf, including but not limited to Andrew Behar, Chief Executive Officer of As You Sow; (b) documents that As You Sow has a legal right to obtain, that As You Sow has a right to copy, or which As You Sow has access to; and (c) documents that have been placed in the possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document, or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, instant message, MMS or SMS message, encrypted instant messaging application (e.g., Signal, WhatsApp, Telegram), Discord message, Google Hangouts message, Microsoft Teams message, Slack message, Skype message, Viber message, regular mail, telexes, releases, one-way communications channels (e.g., Teleporter), or otherwise.

4. The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business, or government entities (other than foreign government entities), or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The terms “referring” or “relating,” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, director, provisional employee, contract employee, contractor, or any other type of service provider.
8. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.
9. The term “As You Sow” means As You Sow, including (i) its predecessors, successors, parents, wholly or partly owned direct or indirect subsidiaries, divisions, affiliates, joint ventures, partnerships, and collaborations (such as Climate Action 100+, Ceres, Principles for Responsible Investment, and the Interfaith Center on Corporate Responsibility) and (ii) any current, past, or future partners, officers, directors, employees, representatives, or agents of any of the above entities.
10. The phrase “environmental, social, and governance-related goals” or “ESG-related goals” means any non-pecuniary or non-financial objective, including but not limited to environmental goals such as reducing oil and gas consumption and limiting carbon emissions; social goals such as improving labor relations and developing underserved communities; and governance goals such as reporting political contributions and advancing diversity, equity, and inclusion initiatives.

eDiscovery Production Specifications

Format of Electronically Stored Information (ESI) and Imaged Hard Copy Documents

All ESI, except where otherwise indicated, shall be produced in both native file format and TIFF image format, with extracted or optical character recognition (OCR) text, and accompanied by an Opticon/Concordance® Image Cross Reference file. All applicable metadata shall be extracted and provided in Concordance® load file format.

- a) **Native File Format:** All documents shall be produced in native file format.
- b) **Image File Format:** All documents shall be produced in black and white TIFF or color JPEG format.
Documents produced in black and white shall be produced as 300 dpi, 1 bit, single-page TIFF files, CCITT Group IV (2D Compression). Documents produced in color shall be produced as 300 dpi single-page JPEG files.
- i. All TIFF file names shall include the unique Bates number, burned into the image, or a unique image ID.
 - ii. All TIFF image files shall be stored with the “.tif” extension.
 - iii. Images without corresponding extracted text shall be OCR’d using standard commercial off-the-shelf (COTS) products.
 - iv. All pages of a document or all pages of a collection of documents that comprise a folder or other logical grouping, including a box, shall be delivered on a single piece of media.
- c) **Opticon/Concordance® Image Cross Reference file:** Images shall be accompanied by an Opticon load file that associates each Bates number/unique image ID with its corresponding single-page TIFF image file. The Cross Reference file shall also contain the relative image file path for each Bates numbered page. The Opticon/Concordance® Image Cross Reference file is a page level load file, with each line representing one image.

Below is a sample:

```
REL000000001,,.\IMAGES\001\REL000000001.TIF,Y,,,
REL000000002,,.\IMAGES\001\REL000000002.TIF,,,,
REL000000003,,.\IMAGES\001\REL000000003.TIF,,,,
REL000000004,,.\IMAGES\001\REL000000004.TIF,Y,,,
REL000000005,,.\IMAGES\001\REL000000005.TIF,,,,
```

The fields are, from left to right:

- Field One – (REL000000001) – the Bates Number. This value must be unique for each row in the OPT file. The first page of each document must match the DOCID or BEGDOC# value of the respective document.
- Field Two – (blank) – the volume identifier. This field is not required.
- Field Three – (. \IMAGES\001\REL000000001.TIF) – The relative file path to the image to be loaded.

- Field Four – (Y) – the document marker. A “Y” indicates the start of a unique document.
- Field Five – (blank) – The folder indicator. This field is not required, and typically is not used.
- Field Six – (blank) – The box indicator. This field is not required, and typically is not used.
- Field Seven – (blank) – The page count. This field is not required.

d) **Concordance® Load File:** Images shall also be accompanied by a flat, document-level load file to provide the metadata and native files containing delimited text that will populate fields in a searchable, flat database environment. The file encoding must be one of four types: Western European (Windows), Unicode (UTF16), Big-Endian Unicode or UTF8.

1. Text delimited load files are defined using the standard Concordance delimiters. For example:

Field Separator	¶ or Code 020
Text Qualifier	þ or Code 254
Newline	® or Code 174
Multi-value	; or Code 059
Nested values	\ or Code 092

2. This load file shall contain the relative file path to the individual multi-page, document level text files.
3. This load file shall also contain the relative file path to all provided native files, such as Microsoft Excel or PowerPoint files.
4. There shall be one line for every record in a collection.
5. The load file must contain a header listing the metadata/database fields contained within. For example, if the data file consists of a First Page of a Record (BegDoc#), Last Page of a Record (ending Bates / ENDDOC#), DOCID, DOCDate, File Name, and a Title, then the structure may appear as follows:

```
þBEGDOCP¶þENDDOCP¶þDOCIDþ¶þDOCDATEþ¶þFILENAM Eþ¶þTITLEþ
```

e) **Extracted/OCR** text shall be provided for each document as a separate single text file. The file name shall match the BEGDOC# or DOCID for that specific record and be accompanied by the .txt extension.

f) **Directory and folder structure:** The directory structure for productions shall be:

```
\CaseName\LoadFiles
\CaseName\Images (For supporting images. Can include subfolders as needed.)
\CaseName\Natives (Native Files location. Can include subfolders as needed.)
\CaseName\Text (Extract Text files. Can include subfolders as needed.)
\CaseName\Translated Images (For supporting images of translated documents, as
needed for rendered translated documents. Can include subfolders as needed.)
\CaseName\Translated Text (Translated Text files location. Can include subfolders
as needed.)
```