October 18, 2022

The Honorable Chair Gary Gensler	Vanessa A. Countryman
Chair, U.S. Securities Exchange Commission	Secretary, Securities and Exchange Commission
100 F Street NE	100 F Street NE
Washington, DC 20549	Washington, DC 20549-1090

Re: File Number S7-10-22

Dear Chair Gensler and Secretary Countryman:

On behalf of millions of taxpayers, we write to you regarding the U.S. Securities and Exchange Commission (SEC)'s proposed rule to Enhance and Standardize Climate-Related Disclosures for Investors.

In late June, the U.S. Supreme Court ruled in a landmark decision in *West Virginia v. Environmental Protection Agency* that the Environmental Protection Agency (EPA) overstepped its authority in attempting to regulate greenhouse gas emissions from power plants. The court held that the EPA did not have a "clear statement" from Congress to implement an action that would trigger the "major questions doctrine". Simply put, unless an agency has been given an explicit mandate from Congress, it does not have sweeping rulemaking authority.

In the case of the SEC's proposed climate rule, the same "major questions doctrine" applies. It is our opinion that the SEC's proposed climate disclosure rule will ultimately meet the same fate as EPA's Clean Power Plan (CPP), scrapped not for its detractors in the business community, but for its failure to meet the most fundamental of judicial tests. Given these realities, the undersigned organizations recommend the SEC withdraw its proposed rule.

The parallels between these two regulatory proposals have not been lost on those following SEC action, including state officials. State Attorneys General from twenty-four states have submitted a new letter into the SEC's climate-related disclosure docket arguing that the recent Supreme Court decision rolling back EPA's authority reaffirms that federal agencies should avoid overreach.[1] According to the opinion of these chief legal officers, the SEC lacks the authority to require public companies to provide detailed information on greenhouse gas emissions, environmental risks, and what plans those companies might or might not have in place to combat climate change.

In July 2022, former SEC Commissioner Paul Atkins emphasized how the SEC's proposed climate disclosure rule could run afoul of the "major questions doctrine", similar to the way that doomed EPA's emission rule.[2] For example, Atkins argues that the SEC disclosure proposal relies on a new interpretation of the Securities Act and Securities Exchange Act, a law that dates back to the 1930s.

---

[1] https://www.sec.gov/comments/s7-10-22/s71022-20134128-303943.pdf

[2] https://www.wsj.com/articles/the-sec-climate-rule-wont-hold-up-in-court-west-virginia-epa-agency-congress-11657659630

"In nearly every case in which the SEC has used these statutes to demand disclosures in the past, it has claimed that it was doing so because the required information was material—that is, financially significant to the reasonable investor," Atkins explains. "But the commission does not even attempt to show that all its proposed climate disclosures are material." As Atkins notes, the SEC is "plunging ahead anyway," despite Congress having rejected proposed legislation that would have directed the SEC to do by law what the commission is now trying to do by fiat. We agree.

Furthermore, the proposed rule would have detrimental impacts on small and big business alike. The National Taxpayers Union (NTU) points out that the SEC's own data says "the new rule would cost smaller companies $420,000 and larger organizations up to $640,000 to capture and report the climate related information annually." The group goes on to argue, "most businesses who are subject to these new requirements will certainly have additional costs associated with hiring or contracting out to collect and report the new data."[3]

The official comment letter submitted by the Taxpayers Protection Alliance (TPA) adds to these valid objections by pointing out that the proposed climate disclosure rule would also pose significant costs to American investors and unnecessarily complicate the existing disclosure framework.[4] Major companies such as Dow, Gap, and UPS believe the same, with the *Wall Street Journal* reporting the new rule poses "heightened legal liability, hefty costs and reporting burdens."[5] If the SEC maintains its mission goal to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation," requiring reporting on indirect, immaterial data stands in stark contrast to those goals.[6]

At a time when investors in the S&P 500 have lost nearly $5 trillion in stock value, the SEC should avoid new rules that add to business costs, especially one that will cost an estimated $10.2 billion per year according to the SEC itself. [7] Rather, the Commission should view the Supreme Court's decision in *West Virginia v. EPA* for what it is: a clear signal that agencies are required to color within the lines authorized by Congress. Despite the SEC's noble stated goals, unfortunately this proposed rule is both unnecessary and costly. We encourage the SEC to retract this proposed rule and invest its time and taxpayer resources in more fruitful approaches to educating investors.

Sincerely,

David Williams
President
Taxpayers Protection Alliance

Phil Kerpen
President
American Commitment

---

[3] https://www.sec.gov/comments/s7-10-22/s71022-20131917-302377.pdf

[4] https://www.protectingtaxpayers.org/wp-content/uploads/TPA-Comments-Re-SEC-2022-06342.pdf

[5] https://www.wsj.com/articles/companies-skewer-secs-climate-disclosures-plan-in-comment-letters-11655834912

[6] https://www.sec.gov/our-goals

[7] https://www.marketwatch.com/story/growth-scare-permeates-u-s-stocks-as-estimated-5-trillion-to-8-trillion-of-household-wealth-evaporates-in-five-months-11653073692

Steve Pociask
President
American Consumer Institute

Richard Manning
President
Americans for Limited Government

Grover Norquist
President
Americans for Tax Reform

Jeff Mazzella
President
Center for Individual Freedom

Matt Kandrach
President
Consumer Action for a Strong Economy

Yaël Ossowski
Deputy Director
Consumer Choice Center

Adam Brandon
President
FreedomWorks

George Landrith
President
Frontiers of Freedom

Jessica Anderson
Executive Director
Heritage Action

Jerry Rogers
Vice President
Institute for Liberty

Andrew Langer
Chairman
Institute for Regulatory Analysis and Engagement

Pete Sepp
President
National Taxpayers Union

Bette Grande
President & CEO
Roughrider Policy Center

James Martin
Chairman/Founder
60 Plus Association

Karen Kerrigan
President & CEO
Small Business & Entrepreneurship Council