

Comments of the Independent Women's Forum
Regarding the U.S. Securities and Exchange Commission's Proposed Rule entitled,
"The Enhancement and Standardization of Climate-Related Disclosures for Investors"
RIN 3235-AM87, File Number S7-10-22

**IWF Public Comment Regarding Proposed Securities and Exchange Commission Climate
Disclosure Rule
File No. S7-10-22**

Independent Women's Forum (IWF) appreciates the opportunity to comment on the Securities and Exchange Commission (SEC) proposed rule entitled "The Enhancement and Standardization of Climate-Related Disclosure for Investors." Our comments explain how the proposed rule will be damaging to the economy, limit entrepreneurial opportunities, especially for small businesses, and distract the SEC from focusing on its mission to stabilize markets at a time when confidence in the U.S. economy is at an all-time low. Additionally, the comments provide analysis regarding the proposed rule's lack of statutory authority, its duplicative outcomes, and how it will degrade the quality of investor related information resulting in harm that extends well beyond the investor class. Finally, the arguments make clear that this rule will do little to improve the environment or change the trajectory of declining U.S. emissions.

I. Introduction

IWF is the leading national women's organization dedicated to developing and advancing policies that are more than just well-intended, but actually enhance people's freedom, opportunities, and well-being. IWF is a 501(c)(3) non-profit that works every day to engage and inform women about how policy issues impact them and their loved ones and works to expand women's options and opportunities. A guiding principle at IWF is cutting red tape so that resources and control can be used by empowered individuals to improve their surrounding communities and pursue their own visions of happiness.

IWF knows that a strong economy and a healthy environment go hand in hand. A requisite to achieving both is a robust and efficient energy industry. A history of technological breakthroughs in the energy industry, fostered by a free and flourishing capital market, is how we have significantly reduced the environmental footprint of energy development and use and become a top energy producer. In the process, the U.S. has achieved energy independence and stood ready to export our low emissions energy and environmentally friendly technologies to the rest of the world. One recent analysis projected a reduction of one billion metric tons of carbon dioxide emissions per year if we increased the development and exports of existing Liquid Natural Gas (LNG) technologies.¹

¹ EQT Corp., *Unleashing U.S. LNG, The Largest Green Initiative on the Planet* (March 2022) available at: https://www.eqt.com/wp-content/uploads/2022/03/LNG_Final.pdf.

Instead of fostering this growth, advancing existing technologies and cultivating new breakthroughs, the current administration has been erecting barriers. In particular, political officials have been using the power of the federal government to restrict the development of coal, oil and natural gas, which have become politically disfavored. Political commitments² to extreme environmental groups and anti-development factions have driven much of the climate and energy decision making. Since January 2021, there have been canceled projects, layers of new red tape, moratoriums, bans and constant signals to the marketplace aimed at deterring investment in the very energy resources we rely on the most. The SEC proposed climate rule is the latest rendition whereby appointees are attempting to integrate activist-created metrics, referred to as environmental, social, and governance or ESG, that puts fossil energy at a conspired disadvantage.³

The purported justification for these actions is to cut emissions in an effort to address climate change. Central to this plan is to replace fossil fuels with renewable sources, primarily wind and solar. These technologies are not a feasible replacement. Despite decades of preferred treatment via direct taxpayer funded support and market mandates, renewables make up around 11 percent of electricity and only 4 percent of total energy used. Ignoring this reality and pushing full steam ahead with the anti-fossil policy is why Americans are paying exorbitant gas prices and electricity bills, and being groomed to accept forthcoming blackouts as a fact of life. When it comes to emissions reductions, this plan also falls short. As we have seen in other countries like Germany that have attempted a renewables-only approach, emissions have increased.⁴

The SEC should resist becoming a part of this flawed and damaging scheme. Accordingly, IWF urges the SEC to set aside its proposed climate disclosure rule and instead issue a withdrawal.

II. The SEC lacks requisite authority to finalize its climate disclosure proposal.

Protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation is the core mission of the Securities and Exchange Commission (SEC), which is critical to maintaining U.S. economic confidence and stability. Congress supports this mission by explicitly conferring mission-aligned authority. Missing from SECs existing grants of congressional authority is a legal justification for its proposed climate disclosure rule. In fact, Congress never entrusted the SEC with the authority to set climate policy for the United States. It has neither the mandate nor the expertise to set standards on issues of such vast consequence.

When previously pressured with requiring climate-related disclosures, the SEC respected these limits and openly acknowledged them. In 2010, in response to the interpretative guidance

² “But, kiddo, I want you to just take a look, OK? You don’t have to agree, but I want you to look in my eyes. I guarantee you, I guarantee you we are going to end fossil fuel and I am not going to cooperate with them, OK?” Joe Biden, remarks delivered in New Hampshire (September 6, 2019), available at <https://www.foxbusiness.com/politics/biden-fossil-fuel-gas-prices-promise-republican-study-comittee-memo>.

³ Sen. Warren, *The Climate Risk Disclosure Act Would Accelerate the Transition from Fossil Fuels* (April 15, 2021), available at <https://www.warren.senate.gov/newsroom/press-releases/warren-casten-colleagues-reintroduce-bill-requiring-public-companies-to-disclose-climate-related-risks>.

⁴ Financial Times, *Energy Shift Fails to Cut German Carbon* (October 9, 2018), available at [Energy shift fails to cut German carbon | Financial Times](https://www.ft.com/content/energy-shift-fails-to-cut-german-carbon)[https://www.ft.com](https://www.ft.com/content/energy-shift-fails-to-cut-german-carbon) > ... > Natural resources > Energy sector.

regarding climate change disclosures, former Commissioner Katherine Casey argued that the effort was unrelated to investor protection and therefore fell outside the agency’s expertise and fundamental mission.⁵ The SEC reiterated its limits on requiring climate disclosures in a 2016 concept release:

The Commission, however, has determined in the past that disclosure relating to environmental and other matters of social concern should not be required of all registrants unless appropriate to further a specific congressional mandate or unless, under the particular facts and circumstances, such matters are material.⁶

Regarding the current proposal, dissenting Commissioner Peirce also reiterated the agency’s limits:

Congress, however, did not give us plenary authority over the economy and did not authorize us to adopt rules that are not consistent with applicable constitutional limitations. This proposal steps outside our statutory limits by using the disclosure framework to achieve objectives that are not ours to pursue ...⁷

The Securities Act of 1933 and the Securities and Exchange Act of 1934 are cited as the legal justification for the agency’s proposed climate-disclosure rule. Legislators made clear, during the passage of those laws, that they did not want disclosure authority used to “elicit any information whatsoever”⁸ highlighting clear limitations to SEC authority.

Individual Congressional members have attempted to grant the SEC new authority related to climate-change disclosures, but to date, these legislative efforts have been unsuccessful.⁹ Accordingly, the SEC has not been granted any directive by Congress that would support the current climate disclosure proposal, nor has the agency been given an expanded role over the U.S. economy. To the contrary, Congress has authorized mandatory disclosures in other topic areas, such as executive pay¹⁰ and conflict minerals,¹¹ reinforcing that they will act clearly when they want the SEC to take disclosure actions beyond existing statutory limits.

⁵ SEC Commissioner Kathleen L. Casey, *Statement at Open Meeting on Interpretive Release Regarding Disclosure of Climate Change Matters* (January 27, 2010), available at <https://www.sec.gov/news/speech/2010/spch012710kic-climate.htm>.

⁶ Securities and Exchange Commission, *Business and Financial Disclosure Required By Regulation S-K* (April 13, 2016), available at <https://www.sec.gov/rules/concept/2016/33-10064.pdf>.

⁷ SEC Commissioner Hester Peirce, *We are Not the Securities and Environment Commission - At Least Not Yet* (March 21, 2022), available at <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>.

⁸ H.R. Rep. No. 73-1383, at 23 (1934).

⁹ Congress.gov, *Related Bills: H.R. 2570 – Climate Risk Disclosure Act of 2021* (April 15, 2021), available at <https://www.congress.gov/bill/117th-congress/house-bill/2570/related-bills>.

¹⁰ Congress.gov, *H.R. 3763 – Sarbanes-Oxley Act of 2002* (February 14, 2002), available at: <https://www.congress.gov/bill/107th-congress/house-bill/3763/text>.

¹¹ Congress.gov, *H.R. 4173 – Dodd-Frank Wall Street Reform and Consumer Protection Act* (December 12, 2009), available at: <https://www.congress.gov/bill/111th-congress/house-bill/4173>.

Alternatively, Congress has spoken specifically to the matter of making company-specific emissions information available to the public. In 2008, Congress directed the U.S. Environmental Protection Agency (EPA) “to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States.”¹² The EPA now oversees the U.S. Greenhouse Gas Reporting Program (USGHGRP) which covers more than 8,000 facilities across 41 different categories, providing insight of companies environmental footprints to the public.¹³ The USGHGRP has been built, defined and maintained by a highly specialized workforce that resides at the EPA.

The SEC’s proposed climate-disclosure rule would not only encroach on the EPA’s congressionally directed reporting responsibilities fulfilled by specialized, environmental experts, but would propose to duplicate it with a new, expansive reporting regime premised on speculative analytics overseen by securities experts. If finalized, this rule lends itself to wasteful duplication and confusion requiring the Commission to perform duties for which its experts are not equipped.

III. Investors already have access to decision-useful information related to climate change under existing disclosures that were clarified in 2010.

Existing SEC rules already require companies to disclose material risks, which for some includes the potential impacts of the changing climate as well as the impact of applicable legal, administrative, and legislative landscapes. In 2010, the SEC issued guidance clarifying how companies can incorporate climate risks into their existing disclosure responsibilities.¹⁴ For example, if a company is subject to environmental regulation, they must provide a description of how compliance could impact its capital expenditures under requirements laid out in Regulation S-K.

Appropriate disclosure also shall be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. The registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year and for such further periods as the registrant may deem material.¹⁵

Another provision, Item 103 of Regulations S-K, requires companies to describe pending legal matters of which it is a party and specifically clarifies how this disclosure requirement applies to certain environmental litigation.¹⁶ Of particular note, when the SEC integrated these requirements

¹² Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844, 2128 (2008) available at <https://www.govinfo.gov/content/pkg/PLAW-110publ161/pdf/PLAW-110publ161.pdf>.

¹³ US EPA, *Learn about the Greenhouse Gas Reporting Program*, available at <https://www.epa.gov/ghgreporting/learn-about-greenhouse-gas-reporting-program-ghgrp>.

¹⁴ SEC, available at <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.

¹⁵ 17 CFR 229.101

¹⁶ 17 CFR 229.103

into Item 103 during the 1980s, the Commission modified the disclosure standard to omit disclosure of a legal proceeding that was expected to produce a monetary sanction below \$100,000. The reason was “to address the problem that disclosure documents were being filled with descriptions of minor infractions that distracted from other material disclosures.”¹⁷ Early on, the SEC realized the problem of expansive, open-ended disclosure requirements especially in the context of environmental litigation and how the sheer volume of information affiliated with this type of disclosure could degrade the quality of investor reports.

More broadly, current disclosure rules require companies to describe any material factors that could make investment in the company or related offering “speculative or risky.”¹⁸ Additionally, the existing disclosures pertaining to Management’s Discussion and Analytics (MD&A) laid out in Item 303 require companies to disclose known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on financial condition or operating performance.¹⁹ The 2010 climate guidance specifically clarified this requirement’s application to pending climate change laws and regulations, even laying out a two-step process whereby managers could determine whether to disclose a known uncertainty within the “rapidly developing area” of climate change policy.²⁰

There are additional catch-all provisions under Securities Act Rule 408 and Exchange Act Rule 12b-20 whereby companies disclose risks that are not expressly required by the Commission but could provide important environmental context.²¹ As SEC Commissioner Peirce recently noted, in application companies have used this section “to disclose risks of wildfires to property, risk of rising sea levels, temperatures and risk of climate-change legislation or regulation when proven material to a company’s financial situation.”²²

In September of 2021, the SEC’s Division of Corporate Finance issued a *Sample Letter* to numerous companies to further clarify the Commission’s related disclosures expectations and to inform the proposal.²³ Of note, 25 out of 26 companies subject to these inquiries responded that

¹⁷ SEC, *Commission Guidance Regarding Disclosure Related to Climate Change*, 75 Fed. Reg. 6290 (Feb. 8, 2010), available at <https://www.sec.gov/rules/interp/2010/33-9106.pdf>. See footnote 45.

¹⁸ 17 CFR 229.503(c).

¹⁹ 17 CFR 229.303.

²⁰ Item 303 requires registrants to assess whether any enacted climate change legislation or regulation is reasonably likely to have a material effect on the registrant’s financial condition or results of operation. In the case of a known uncertainty, such as pending legislation or regulation, the analysis of whether disclosure is required in MD&A consists of two steps. First, management must evaluate whether the pending legislation or regulation is reasonably likely to be enacted. Unless management determines that it is not reasonably likely to be enacted, it must proceed on the assumption that the legislation or regulation will be enacted. Second, management must determine whether the legislation or regulation, if enacted, is reasonably likely to have a material effect on the registrant, its financial condition or results of operations. Unless management determines that a material effect is not reasonably likely, MD&A disclosure is required. SEC, *Commission Guidance Regarding Disclosure Related to Climate Change*, 75 Fed. Reg. 6290 (Feb. 8, 2010), available at <https://www.sec.gov/rules/interp/2010/33-9106.pdf>

²¹ 17 CFR 230.408 and 17 CFR 240.12b-20.

²² SEC Commissioner Hester Peirce, *We are Not the Securities and Environment Commission - At Least Not Yet* (March 21, 2022), available at <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>.

²³ U.S. SEC, *Sample Letter to Companies Regarding Climate Change Disclosures* (September 22, 2021), available at <https://www.sec.gov/corpfin/sample-letter-climate-change-disclosures>.

climate risk was important but not material and that the additional information the SEC sought was either already disclosed or too abstract and general.²⁴

Not only are there multiple existing avenues whereby companies already provide comprehensive information regarding potential impacts of the climate to investors, more recent efforts to expand these disclosures through SEC enforcement initiatives have made clear the potential for immaterial information making its way into investor reports. It appears that this new information is not geared towards informing the investor community but rather a specific strand of environmental advocates.

Finally, bending to the subjective interests of a few is not sufficient justification to ignore the Supreme Court defined materiality standard that disclosure requirements must be material to the “reasonable investor” that objectively views potential investments based on relative risks and returns.²⁵ This question of how to incorporate climate related matters in a manner consistent with the objective view of a reasonable investor has been asked and answered in the context of the 2010 guidance. Therefore, the SEC’s proposed rule offers investors nothing more than superfluous, irrelevant fodder.

IV. Diluting investor information with complex ESG metrics will degrade the quality of decision-useful information and undermine the SEC’s standards of efficiency.

The concept of environmental, social, and governance (ESG) investing whereby purportedly virtuous outcomes are prioritized over maximizing value for investors has gained recent traction. In reality, they have become a subjective litmus test for how corporations align with left-leaning policies, especially with regard to the left’s interpretation of and solutions for climate change. These activist-created metrics have loaded the investment dice against traditional energy sources like coal, oil, and natural gas that currently make up around 80 percent of total U.S. energy consumed in order to shift those resources to politically preferred alternatives, namely wind and solar.²⁶

Advocates behind the climate disclosure rule and broader integration of ESG standards present the issue of climate change as an immediate crisis that threatens the entire human race unless certain government-sponsored policies are adopted. These advocates further claim that the scientific work and discourse that underlies this truth is settled.

While our knowledge in the realm of climate change has greatly improved, the body of scientific work and our affiliated understanding is better described as incomplete and evolving. Our

²⁴ Bloomberg Law, *SEC Drops Hints About ESG Rule in Retorts to Vague Disclosures* (March 18, 2021), available at <https://news.bloomberglaw.com/financial-accounting/sec-scrutiny-of-big-companies-sheds-light-on-climate-priorities>.

²⁵ The standard for disclosures is whether there is “a substantial likelihood that the disclosure ... would ... [be] viewed by the *reasonable investor* as having significantly altered the ‘total mix’ of information made available.” *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); whether information would be material to a reasonable investor “is an objective one.” *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976).

²⁶ E&E News, *Thes 3 letters could end fossil fuels – or greenwash them* (June 15, 2020), available at: <https://www.eenews.net/articles/these-3-letters-could-end-fossil-fuels-or-green-wash-them/>.

understanding regarding the changing climate’s impact on present and future generations and the policies we should embrace to either mitigate or adapt are complex, nuanced and far from settled.

Admission of speculative assumptions, referred to as “uncertainties”, is a regular part of earnest climate discourse. The SEC’s proposal largely ignores this fact. It purports to create comparable, consistent, and decision-useful information surrounding the complex world of climate change into a single investor report, which has proved fleeting for the United Nations Intergovernmental Panel on Climate Change (IPCC). As some climate scientists have made clear, the underlying analysis of IPCC work has failed to produce reliably useful information for the general public.²⁷

Yet the SEC proposal would set this aside and place the burden of accurately disclosing “physical risk” tied to climate at the feet of the financial community. Beyond sifting through well-founded criticisms with the leading pathways’ analyses, companies would have to contend with the consistently unreliable nature of climate models, the unknown impact of climate sensitivities, and many other highly variable aspects of the climate that can change the degree of any purported risk.

The proposed SEC disclosures regarding “transition risk” are equally problematic. The standard of predicting markets, technology law, and policy across a company’s entire value chain is a recipe for endless, irrelevant disclosures. Investors may not find this information decision-useful but environmental activists with litigation-based business models will. Building off recent activist campaigns, they will now be able to use SEC-mandated information to build their cases against the companies and technologies they disfavor.

Filling reports with massive amounts of irrelevant information, while increasing legal exposure, also comes with a high compliance cost. By the proposal’s own admission, it would *more than double* the cost of complying with the SEC disclosure requirements it would amend, in terms of both expenditure and employee hours.²⁸

As the Commission has previously noted, these costs will ultimately be borne by the shareholders, which is why they have historically held back from mandating disclosures “to serve the needs of limited segments of the investing public, even if otherwise desirable.”²⁹

There is also the matter of efficiency. The Commission is statutorily required to consider whether an action will promote efficiency, competition, and capital formation.³⁰ Requiring companies to disclose massive amounts of irrelevant information adds needless inefficiencies into a process whereby relevant climate related disclosures are already made. With added

²⁷ “The climate scenarios that underlie much of climate research are badly outdated and no longer offer insight to plausible futures.” Dr. Roger Pielke, Jr., Statement to the U.S. Senate Committee on Banking, Housing and Urban Affairs (July 20, 2021), available at: <https://www.banking.senate.gov/imo/media/doc/Pielke%20Testimony%207-20-21.pdf>.

²⁸ See 87 Fed. Reg. 21334, 21461 (2022).

²⁹ SEC News Digest, *Conclusions and Proposals RE Environmental and Social Disclosure* (October 16, 1975) available at <https://www.sec.gov/news/digest/1975/dig101575.pdf>.

³⁰ 15 U.S.C. 77b(b).

compliance costs and liabilities to consider, companies are more likely to curb engagement in public capital markets.

V. Failed climate policies that have been rejected on Capitol Hill and limited by courts should not be adopted via regulatory fiat.

In 2013, Democrat politicians initiated a massive shift in approach to implementing their climate related policies. After a series of legislative losses, including a refusal by the Democrat-controlled Senate to take up House-passed climate legislation that had the backing of the Obama White House, they started looking to administrative agencies and existing authorities to achieve their policy objectives. As one Obama-era official explained:

[W]hile the president continued to call for Congressional action, political reality left no choice but to rely on existing law in order to show progress in addressing climate change. Otherwise, the president faced the prospect that the U.S. would fail to deliver on his Copenhagen commitment to a seventeen percent emission reduction by 2020, which would represent not only a personal embarrassment but a significant setback in rallying world leaders to the cause of deeper emission reductions in the years to come.³¹

This mentality, alongside the start of the second term that allowed then President Obama “more maneuvering room to address an urgent but politically divisive issue,”³² spurred Democratic politicians and aligned with environmental activists to push unpopular climate policies focused on making the price of traditional energy more expensive and less accessible through expanded interpretations of existing laws, regulations, and agency missions. This template for unauthorized action was initiated under the Clean Air Act within the U.S. EPA and has since ballooned into a “whole of the government” approach to climate whereby activists are finding imagined authority in all manner of statutes and agencies.

There have been more recent rebukes of extreme climate policies on Capitol Hill. In March of 2019, when the Green New Deal was put up for a vote in the Senate, it did not receive a single vote of support. Even the bill’s own sponsor opted to vote “present” instead of “yea”.³³ This clear opposition has not stopped President Biden from adopting the same “pen and phone” approach made famous by his former boss.³⁴

But sidestepping Congress and pushing expansive, new policies even at the behest of presidential directives has regularly come up against the courts. In recent years, the U.S. Supreme Court has issued a number of relevant rebukes of which the SEC should take note. In particular, the Court has made clear that “[w]hen an agency claims to discover in a long-extant statute an unheralded

³¹ Robert Sussman, *Power Plant Regulation Under the Clean Air Act: A Breakthrough Moment for U.S. Climate Policy*, 32 Va. Env'tl. L.J. 97, 109 (2014).

³² *Id.*

³³ New York Post, *Senate Rejects Ocasio-Cortez's Green New Deal in 57-0 Vote Blasted as 'sham' by Democrats* (March 26, 2019), available at [Senate rejects Ocasio-Cortez's Green New Deal in 57-0 vote ...https://nypost.com > 2019/03/26 > senate-rejects-ocasio...](https://nypost.com/2019/03/26/senate-rejects-ocasio...)

³⁴ NPR, *Wielding a Pen and a Phone, Obama Goes it Alone* (January 20, 2014), available at <https://www.npr.org/2014/01/20/263766043/wielding-a-pen-and-a-phone-obama-goes-it-alone>.

power to regulate ‘a significant portion of the American economy,’ we typically greet its announcement with a measure of skepticism.” The Court further reiterated that when agencies undertake actions of vast economic and political significance, there is an expectation that Congress will speak clearly in assigning such a role.³⁵

Even the EPA’s “landmark” climate regulation, the Clean Power Plan, which was final in 2015, has never fully gone into effect.³⁶ The Supreme Court issued an unprecedented stay against the rule after the majority of states argued that the agency’s expanded view of authority was defective. Seven years later, the same regulation and affiliated issues are once again before the Supreme Court. While a final opinion has yet to be published, there is an increasing expectation that the trend of skepticism towards unbridled agency actions—even those done in the name of climate change—will continue.

Without support from American voters and increased, limiting rebukes to preferred environmental statutes, activists have looked to international institutions to cultivate pressure against domestic resistance. Not surprisingly, environmentalists and their sponsored Democratic allies have found enthusiastic support within the United Nations, which is populated by economically competitive countries and industries that would love nothing more than government mandates that could curb American entrepreneurialism.

It's no surprise then that the SEC proposal is built off the UN’s Task Force on Climate-Related Disclosure, a derivative of the Paris Climate Accord.³⁷ Of note, in the lead up to the signing of the Paris Accord, lead negotiators famously stated that given the lack of political support for climate policies within the U.S., the final agreement had to be modeled in a way to avoid the U.S. Congress.³⁸ UN negotiators ultimately convinced the international law experts at the U.S. State Department that the Paris Accord and its derivative agreements were not legally binding to the point where it triggered Senate advice and consent. However, with the latest SEC proposal, the strategic international work around has come full circle.

Piece by piece, current political officials are attempting to codify elements of the now well-formed Paris Accord and its byproducts that do not have the force of law—by design—but will be referenced to pump new authority into existing laws to justify the progression of failed congressional objectives via administrative fiat.

³⁵ *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014).

³⁶ The White House, *Fact Sheet: President Obama to Announce Historic Carbon Pollution Standards for Power Plants* (August 3, 2015), available at <https://obamawhitehouse.archives.gov/the-press-office/2015/08/03/fact-sheet-president-obama-announce-historic-carbon-pollution-standards>.

³⁷ Institute and Faculty of Actuaries, *The Paris Agreement and the Task Force on Climate-related Financial Disclosures*, available at <https://www.actuaries.org.uk/learn-and-develop/lifelong-learning/sustainability-and-lifelong-learning/climate-change-curated-library/paris-agreement-and-task-force-climate-related-financial-disclosures>.

³⁸ "We must find a formula which is valuable for everybody and valuable for the US without going to the Congress." French Foreign Minister Laurent Fabius, France 24, *France says climate deal must avoid US Congress vote* (June 2, 2015), available at <https://www.france24.com/en/20150602-climate-change-deal-congress-fabius-bonn-usa>.

VI. Betrayal of the Commission’s mission will have far reaching consequences to the American economy and people.

When agencies become distracted by their relative missions, it comes with a series of consequences to the American people. At the U.S. Environmental Protection Agency, a long-term political distraction from its core function to work cooperatively—not coercively—with states to progress meaningful environmental improvements, coupled with a disregard for the rule of law and a proliferation of redundant, wasteful processes, led to a series of preventable environmental problems.

Some of these problems were acute and widely covered. They included the 2014 water crisis in Flint, Michigan, whereby local residents were exposed to high concentrations of lead. At the time, D.C.-based political leadership, busy pursuing its all-encompassing climate agenda, ignored concerns raised by regional staff that could have prevented the proliferation of this disaster.³⁹ There was also the 2015 Gold King Mine spill where mishaps by U.S. EPA contractors unleashed millions of gallons of toxic waste into the Animas River creating a series of harm to residents and wildlife.⁴⁰

Other problems were prolonged and received less attention. These included a massive backlog of state plans that laid out a path for compliance with air and water quality standards. When the EPA failed to make a final decision on these plans, it degraded overall environmental health and curbed economic opportunity.⁴¹ The agency’s Superfund program, which is charged with cleaning up the most polluted areas of our country, was placed on the backburner. As a result, some areas failed to be adequately cleaned up for decades, ultimately holding back the communities that had borne the consequences of legacy pollution.⁴²

These outcomes were a consequence of diverting agency resources, interest and talent away from fundamental duties because they had been overtaken by political pressures to advance actions that exceeded the agency’s statutory mission and authority. It not only caused tangible harm to the American public but also dealt the agency serious reputational damage that has culminated in the formation of distrust among the regulated community and disappointment among stakeholders who were promised outcomes which the agency cannot legally deliver.

These same efforts and political pressures are now being deployed at the SEC. The climate disclosure rule stands to be a massive distraction with the potential to produce serious

³⁹ Grist, *The EPA failed Flint. Now we know exactly how.* (July 19, 2018), available at <https://grist.org/article/the-epa-failed-flint-now-we-know-exactly-how/>.

⁴⁰ U.S. News & World Report, *EPA to Blame for ‘Preventable’ Gold King Mine Spill* (October 22, 2015), available at <https://www.usnews.com/news/articles/2015/10/22/epa-to-blame-for-preventable-gold-king-mine-spill-interior-dept-finds>.

⁴¹ U.S. EPA, *Memorandum: Back-to-Basics Process for Reviewing National Ambient Air Quality Standard* (May 9, 2018) available at <https://www.epa.gov/sites/default/files/2018-05/documents/image2018-05-09-173219.pdf>.

⁴² U.S. EPA, *Superfund Task Force Recommendations* (May 22, 2017), available at https://www.epa.gov/sites/default/files/2017-07/documents/superfund_task_force_report.pdf.

consequences far beyond the investor class. It stands to make it harder and more complex for good ideas and technologies to gain access to public capital. It will deter investment away from traditional energy sources, which will further drive up the costs of gas, electricity, and consumer goods.

A recent report from the International Energy Forum quantified harm ESG investment has already caused with regard to gas prices. It estimates that in 2021, oil and gas production remained 23 percent below the pre-pandemic level of \$525 billion, while investment slumped by 30 percent in 2020. The report identified ESG investing and changing regulatory signals to the capital markets on fossil fuel production as one of the primary contributors to investment remaining below what's needed to meet demand.⁴³ A codification and signal sending endorsement of these same policies within the federal government will only exacerbate this damaging trend.

Additionally, in reshaping investment strategy and capital allocation to favor perceived social good over financial returns, the Commission's rule stands to jeopardize the performance of pension retirement funds and the millions of retired Americans depending on them. Financial experts have warned for years that ESG investment funds typically return less than other funds that are free to invest anywhere as "constrained optimization will result in lower returns than unconstrained."⁴⁴ This outlook is proving true as ESG funds have performed worse, down 18.7 percent since the start of the year compared to S&P funds down 17.3 percent, causing some ESG industry insiders to voice skepticism.⁴⁵

VII. SEC Rule Will Close More Doors For Female Entrepreneurs

Perhaps the most damaging outcome of the proposed rule is what will be lost. Not only will a climate disclosure rule hurt investors and companies, it will discourage entrepreneurs from starting new businesses. Adding in additional climate reporting requirements will increase startup costs and raise even more barriers to creative Americans looking to develop innovative ways to solve the problems of today. SEC Commissioner Peirce notes in her dissent:

The climate-change mitigating invention which right now may be rattling around in the head of a young girl in Cleveland, Ohio—the intellectual descendant of great Cleveland inventors like Garrett Morgan and Rollin Henry White—is something of which we regulators cannot even dream. Our limited job as securities regulators is to make sure that enterprising young woman can get matched up with the funds necessary to bring her idea to life. We make that match less likely if we write rules that implicitly prefer the technology we have identified as promising today over the technology of the future germinating in our young inventor's dreams.⁴⁶

⁴³ International Energy Forum, *Deepening Underinvestment in Hydrocarbons Raises Spectre of Continued Price Shocks and Volatility* (2021), available at <https://www.ief.org/news/deepening-underinvestment-in-hydrocarbons-raises-spectre-of-continued-price-shocks-and-volatility>.

⁴⁴ ThinkAdvisor, *The Virtue Bubble is About to Burst. Good Riddance*. (May 31, 2022), available at: <https://www.thinkadvisor.com/2022/05/31/the-virtue-bubble-is-about-to-burst-good-riddance/>.

⁴⁵ *Id.*

⁴⁶ Commissioner Hester M. Pierce, *We are Not the Securities and Environment Commission - At Least Not Yet* (March 21, 2022), available at <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>.

Government agencies are not known for quick thinking or finding innovative solutions to problems. And shackling American entrepreneurs, many of whom are greatly invested in clean energy, will hurt both our country and any global efforts to improve clean energy technology.

In our current economic climate, faced with rising costs on every side from inflation to skyrocketing gas prices, American entrepreneurs are already struggling. The enormous risk and costs associated with new endeavors have only increased and the uncertainty of the economy further discourages our most creative individuals. Instead of supporting these innovators, whose ambition and dreams developed our country into the great nation it is today, this SEC climate disclosure rule would add more red tape and barriers and further dampen the ingenuity and opportunities of American entrepreneurs.

VIII. Conclusion

Accordingly, we urge the SEC to set aside its proposed rule and instead to publish a notice withdrawing the proposal from consideration. We further encourage the SEC to shift its focus to developing more surgical improvements to existing disclosure standards rather than creating an entirely new, legally dubious regime that comes with massive costs and little benefit.