# THE SEC AND CLIMATE LITIGATION

*by*
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*The controversy surrounding the SEC's climate-related financial disclosure rule continues. This Essay updates my previous work on this issue, where I identified two opportunities and two obstacles to the SEC promulgating final rules on climate-related financial risk disclosures. The two opportunities were a shifting political landscape under the then-Biden Administration (which took a whole-of-government approach to addressing the climate crisis) and rising investor concern over the risks that climate change posed to their investments. The two obstacles I identified were business resistance to disclosure rules, and rising judicial hostility to the SEC. Today, the political landscape has shifted dramatically and the SEC, under the second Trump Administration, has taken an unusual step—stating it will no longer defend its final climate disclosure rule against litigation pending in the Eighth Circuit, but refusing to rescind its own rule. The Eighth Circuit has not accepted the Commission's position and has now asked the SEC to make up its mind—either recommence its prior defense of its own rule or rescind it via notice-and-comment rulemaking.*

*This Essay looks back on how we ended up here—providing a brief overview of the history of the SEC final rule, an analysis of a snapshot of comments submitted on the draft rule from a variety of actors, and an assessment of the major changes the SEC made to its final rule in response to comments received. It then walks through briefs from the petitioners and the SEC (which originally defended its final rule prior to the change in presidential administrations).*

*The outcome of this dramatic turn of events remains unclear. Will the SEC decide to defend a rule it no longer believes in, or undergo the lengthy and labor-intensive process of rescinding its rule? If the former strategy is chosen, the outcome of this pending litigation could be significant—not just for the climate disclosure rule but for the ability of the SEC to exercise statutory*

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[*] Associate Professor, Lewis & Clark Law School. This Essay builds upon my previous article, *The SEC and Climate Risk*, 40 UCLA J. ENV'T L. & POL'Y 1 (2022), which was published just after the SEC published a call for public input around climate-related financial disclosures in 2021. I would like to thank Kate Crowell and Lily Beck for their excellent research assistance.

*authority over disclosures generally that it considers to be in the public interest, whether climate-related or not. Alternatively, rescinding its own rule would likely attract litigation, and take years to complete. In either case, the saga around SEC climate-related disclosures continues.*



## INTRODUCTION

Climate change has, once again, become a political minefield in the United States, with the Securities and Exchange Commission's (SEC) most recent climate-related financial-disclosure rule subject to ongoing litigation in the Eighth Circuit. The Commission, under President Trump, has stated that it will no longer defend its rule.[1]

[1] Status Report of the Securities and Exchange Commission in Response to the Court's April 24, 2025 Order at 2, Iowa v. SEC, No. 24-1522 (8th Cir. July 23, 2025) [hereinafter Status Report of the SEC].

There have been major political shifts on this issue in the past year. At the beginning of his second term, President Trump called climate change a "con job" at the United Nations.[2] On his first day in office, he issued an executive order called Unleashing American Energy, which required an immediate review by agencies of all "[a]ctions that [p]otentially [b]urden the [d]evelopment of [d]omestic [e]nergy [r]esources," with a particular emphasis on "oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources."[3] This executive order revoked several of the prior administration's orders on climate change, including President Biden's Executive Order 14030 (Climate-Related Financial Risk).[4] The fossil fuel industry has generally supported this renewed attack on climate-related regulation, and many in the fossil fuel industry have been appointed to roles within the second Trump Administration.[5]

At the same time as these dramatic political shifts took place around climate change, significant judicial changes in administrative law were also underway. In particular, the major questions doctrine has significantly cabined agency authority.[6] In addition, the overturning of *Chevron* deference by the Supreme Court has revolutionized the approach to agency discretion by the judiciary.[7] This, combined

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[2] Melina Walling & Seth Borenstein, *Trump Called Climate Change a 'Con Job' at the United Nations. Here Are the Facts and Context*, PBS NEWS (Sep. 25, 2025, at 13:48 EDT), https://www.pbs.org/newshour/politics/trump-called-climate-change-a-con-job-at-the-united-nations-here-are-the-facts-and-context [https://perma.cc/8F9R-6AAW].

[3] Exec. Order No. 14154, 90 Fed. Reg. 8353, 8354 (Jan. 20, 2025).

[4] *Id.* at 8355; *see* Exec. Order No. 14030, 86 Fed. Reg. 27967, 27967 (May 20, 2021).

[5] *Trump Brings Fossil Fuel, Far-Right Think Tank Agenda to Government*, PUB. CITIZEN (Oct. 6, 2025), https://www.citizen.org/news/trump-brings-fossil-fuel-far-right-think-tank-agenda-to-government/ [https://perma.cc/C9R2-8TV2] (finding that President Trump has "installed more than 100 fossil fuel insiders, renewable energy opponents, corporate lobbyists, and far-right think tank alumni across nine agencies during his second term"); Dharna Nour, *Big Oil Spent $445m in Last Election Cycle to Influence Trump and Congress*, THE GUARDIAN (Jan. 23, 2025, at 08:00 EST), https://www.theguardian.com/us-news/2025/jan/23/big-oil-445m-trump-congress [https://perma.cc/5TK2-YZXD] (citing research that fossil fuel interests poured $96 million into now-President Trump's re-election campaign and affiliated political action committees directly, but those figures do not include money channeled through dark-money groups, so the report notes the figure is likely to be much higher); *see also* Lisa Friedman, *Candidate Trump Promised Oil Executives a Windfall. Now They're Getting It.*, N.Y. TIMES (July 30, 2025), https://www.nytimes.com/2025/07/30/climate/trump-campaign-funding-oil-industry-tax-breaks.html [https://perma.cc/B4GF-SN9A] (explaining pro-oil policies implemented under the current administration and the benefits of these policies to oil companies).

[6] *See* discussion *infra* Part II.

[7] *See* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024); Abbe R. Gluck, *A Year After* Loper Bright*: Textualism, Shadow Skidmore, and a New Major Questions Exception*, SCOTUSBLOG (Oct. 16, 2025), https://www.scotusblog.com/2025/10/a-year-after-loper-bright-textualism-shadow-skidmore-and-a-new-major-questions-exception/ [https://perma.cc/DB66-K2VV].

with historic judicial hostility to the SEC, does not bode well for any pending litigation against the final SEC rule on climate-related financial disclosures.

This Essay looks back at how we ended up here in relation to the SEC's rule on climate-related financial disclosures. Part I provides an analysis of a snapshot of comments submitted by industry and non-state actors on the draft rule and provides a brief assessment of the major changes the SEC made in response to those comments. Part II then looks at the arguments both for and against the SEC's final rule in the Eighth Circuit and concludes with some thoughts on what potential action the Commission might take now, and what an adverse ruling from the Eighth Circuit might mean for the Commission, both in terms of this rule, but also for the SEC's authority more broadly.

## I. THE SEC'S FINAL RULE

In my previous article, I laid out three interrelated factors which led to the SEC's past inertia on rulemaking on climate-related risks. The first was "lack of political feasibility."[8] Climate change remains "one of the most politically sensitive issues in the United States," and, until the Biden Administration, "mandating climate disclosures by public corporations had never been a high political priority."[9] The second factor was

> a clash of voices between public companies resisting calls for more climate-related disclosure, and investors, many of whom want increased disclosure from the public companies they invest in. While investors have repeatedly expressed a strong desire for clearer and better disclosures, the SEC has not catered to those concerns. Instead, the SEC [traditionally] focused on the entities it directly regulates—public companies.[10]

Business resistance was and is "particularly strong in public corporations that issue securities and are subject to the SEC's regulatory regime ('issuers')."[11] Many issuers still "do not want to disclose the risks that climate change poses to their business as this may make investors more reluctant to invest in them."[12] It remains true that "[i]ssuers at greater risk of climate impacts have an inherent incentive to hide or obscure climate-related risks."[13] This second point is illustrated by one of the briefs submitted by an issuer to the Eighth Circuit, and covered in Part II below. The third and final factor was "rising judicial hostility to the expanded remit of the SEC,

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[8] Lisa Benjamin, *The SEC and Climate Risk*, 40 UCLA J. ENV'T L. & POL'Y 1, 3 (2022).

[9] *Id.*

[10] *Id.* at 3–4.

[11] *Id.* at 4.

[12] *Id.*

[13] *Id.*

and recently to independent agencies more broadly."[14] This judicial hostility has only increased, not only to independent agencies generally, but to agencies' exercise of discretion generally.[15]

Despite these crosswinds, the SEC did take action on climate change under the Biden Administration. The next Section lays out a brief history of SEC rulemaking on climate-related financial risks before its eventual demise.

### *A. A Brief History of the SEC Rule*

In 2021, the SEC solicited comments on its existing policies related to climate-related disclosures.[16] The Commission "also announced its intention to enhance monitoring and enforcement of climate-related risks and created a Climate and ESG Task Force in the Division of Enforcement of the SEC."[17] In March 2022, the Commission promulgated a draft rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors.[18] The draft rule required, among other things, disclosure of climate-related risks by SEC registrants in their securities filings, including of Scope 1, Scope 2, and Scope 3 emissions.[19] The Commission

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[14] *Id.*

[15] *Id.* at 3; *see* Trump v. Wilcox, 145 S. Ct. 1415, 1416–17 (2025) (staying, on the emergency docket, an order blocking President Trump from removing Gwynne Wilcox of the National Labor Relations Board and Cathy Harris of the Merit Systems Protection Board—both independent agencies); *see also* Trump v. Boyle, 145 S. Ct. 2653, 2654 (2025) (extending the analysis in *Wilcox* to the Consumer Product Safety Administration); Trump v. Slaughter, 145 S. Ct. 18, 18 (2025) (U.S. argued Dec. 8, 2025) (authorizing, on the emergency docket, the removal of a member of the Federal Trade Commission and granting a petition for a writ of certiorari to allow for oral argument on broader questions related to removal protections for members of certain independent agencies); Trump v. Cook, No. 25A312, 2025 WL 2784699, *1 (U.S. argued Jan. 21, 2026) (involving the purported removal of a member of the Federal Reserve Board).

[16] Allison Herren Lee, Comm'r, Statement, U.S. Sec. & Exch. Comm'n, Public Input Welcomed on Climate Change Disclosures (Mar. 15, 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures [https://perma.cc/9UAM-86HY].

[17] Benjamin, *supra* note 8, at 14 (citing Press Release, U.S. Sec. & Exch. Comm'n, SEC Announces Enforcement Task Force Focused on Climate and ESG Issues (Mar. 4, 2021), https://www.sec.gov/news/press-release/2021-42 [https://perma.cc/6W27-Q2LY]).

[18] The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334 (proposed Apr. 11, 2022) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, 249).

[19] Scope 1 emissions are considered direct greenhouse (GHG) emissions that occur from sources controlled or owned by an organization (for example associated with fuel combustion); Scope 2 emissions are indirect GHG emissions (for example, associated with the purchase of electricity, steam, heat, or cooling); Scope 3 emissions are often referred to as value chain emissions, associated with the use or exploitation of a company's products or services (for example, emissions by third party vehicle owners of oil purchased from oil and gas distributors)—due to their third-party nature, Scope 3 emissions are harder to abate and involve more data collection

received over 24,000 comments to the draft rule. I provide a brief analysis of a snapshot of some of these comments below. In general, a number of commenters objected to the inclusion of Scope 3 emissions in the draft rule.[20] After a review of the comments, on March 6, 2024, the SEC promulgated its final rule,[21] without going through a new round of notice and comment. Therefore, the comments submitted on the draft rule are the only available comments on the rule. These comments are illustrative, however, demonstrating a number of investors and industry actors as being broadly supportive of the rule (with caveats regarding Scope 3 emissions).

### *B. A Brief Summary of Comments to the Draft Rule*

The SEC draft rule attracted 24,000 comments. Not all of these comments could be reviewed for this Essay, but a snapshot of comments from a diverse set of actors was reviewed. In total, 102 comments were reviewed, and focused on a strategic set of commenters: NGOs (22 comments were reviewed), financial institutions (12 comments were reviewed), industry (33 comments were reviewed, including the energy and heavy industry sectors), investors (29 comments were reviewed), and state and government actors (6 comments were reviewed). A table of sectors and names of commenters are attached in Appendix A.[22]

These comments were roughly categorized into sectors by the author based on the commenters' previous approaches or public statements on climate-related financial risks, and sometimes based on comments already submitted to the SEC's previous call for comments on this issue. The NGO category includes comments from a number of academics, a number of environmental NGOs, and from some known conservative NGOs such as the Heritage Foundation. The financial institution sector includes comments submitted by banks, retirement funds, and insurance companies.[23] The industry sector includes comments from energy

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by issuers. *See Scope 1 and Scope 2 Inventory Guidance*, U.S. ENV'T PROT. AGENCY (Apr. 2, 2026), https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance [https://perma.cc/8BZT-QU9L]; *Corporate Standard*, GREENHOUSE GAS PROTOCOL, https://ghgprotocol.org/corporate-standard [https://perma.cc/6VV7-TMTF] (last visited June 3, 2026).

[20] *See* discussion *infra* Section I.B.

[21] The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668 (adopted Mar. 28, 2024) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, 249).

[22] The search terms were based on the author's prior knowledge of comments submitted to the SEC's call for comments in 2021, and additionally the use of "command +F" was used on the SEC's website to find additional comments, using search terms such as "renewables," "utilities," "electric," "AG," "state," "bank," "financial corporation," "insurance," and "insurer." *See infra* app. A.

[23] While retirement funds could be categorized as investors, they have been separated out due to their unique features such as long-term investment interests. Many of these retirement funds have also issued specific positions on climate change itself.

companies (separated into oil and gas, renewables, utility companies, and mixed energy sectors), farmers, general and heavy industry, and transportation companies. The investor sector was roughly divided into "activist" and "non-activist" investors. While this categorization is far from perfect, the goal was to determine how different comments might be from investors who already, publicly at least, espoused support for climate action by the funds they invested in, such as BlackRock,[24] and other investors who had not publicly, until now, expressed any opinion on climate-related financial disclosures.

This Essay focuses on comments received from investors, as these commenters should be the primary focus of the SEC's regulatory attention. It also takes a look at other important sectors, such as finance and industry.

*1. Financial Institutions*

*a. Banks*

Comments from only five banks were reviewed. The results were not surprising, as several major financial institutions—such as Wells Fargo and Bank of America—were largely unsupportive of the SEC's draft rule, whereas Amalgamated Financial Corp. (Amalgamated Bank) was supportive. These financial institutions vary widely in their approach to climate change. For example, Amalgamated Bank was a "founding member[] of the UN-convened Net Zero Banking Alliance," and was, perhaps unsurprisingly, fully supportive of the SEC's draft rule.[25] Its comment focuses on the need for consistent and comparable financial disclosures around climate risks, and the limitations of the current voluntary disclosure regime. The comment is even supportive of Scope 3 emission disclosures and critiques the SEC's draft rule as being too limited in its then-requirement for Scope 3 emissions. Amalgamated Bank notes that emission data is needed for its own portfolio analysis and long-term planning, and therefore it has a strategic financial interest in supporting the SEC's rule.[26]

Wells Fargo also submitted a comment. The bank is not known for publicly supporting climate disclosures, and its comment, while recognizing the SEC's efforts to provide decision-useful information to investors, largely discourages the approach in the SEC's draft rule, particularly in terms of Scope 3 emissions, but also any attempt to require disclosure in any securities filings other than the MD&A (which

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[24] *See* BlackRock, Inc., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132288-302820.pdf [https://perma.cc/M243-3WUA].

[25] Amalgamated Fin. Corp., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131939-302392.pdf [https://perma.cc/2Y3W-YUCG].

[26] *Id.* ("We use our emissions analysis for portfolio analysis, providing the ability to manage targets, identify both high carbon assets or sectors that represent opportunities to support client emissions reductions and understand the value of new product opportunities.").

is disclosure in narrative form only).[27] Bank of America's comment reflects similar concerns with the rule, although it was supportive of Scope 3 emissions in a different form, and requested amendments such as extending the initial phase-in and compliance period, omitting the requirement to disclose board members' climate-related expertise, and expanding the rule's safe harbor protections[28] (which the SEC did incorporate into its final rule).

*b. Insurance*

The comments reviewed from the insurance industry were, more surprisingly, very mixed. Insurance companies are at the sharp end of climate-related risks.[29] Increasing losses, partly due to climate-related events, should make the industry more supportive of climate-related financial disclosures. But this did not appear to be the case. For example, the American Council of Life Insurers' comment was unsupportive of the rule in its entirety and expressed a preference for the previous "principles-based" approach the SEC has historically taken.[30] Allstate Insurance's comment was largely negative. It expressed a preference for a principles-based disclosure rule which provides more flexibility for registrants, a strictly voluntary Scope 3 emissions approach (which was adopted by the SEC in the final rule), and more flexibility on the attestation requirements (which the SEC also incorporated into the final rule).[31] The American Property Casualty Insurance Association had

[27] Wells Fargo & Co., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132255-302781.pdf [https://perma.cc/8RJV-DZ9X].

[28] Bank of Am., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131805-302241.pdf [https://perma.cc/Z6NL-H73H].

[29] *See* Joe Seydl & Dan Alter, *How Climate Risk—and Losses—Are Creating High Prices for Home Insurance*, J.P. MORGAN: PRIV. BANK (May 16, 2025), https://privatebank.jpmorgan.com/nam/en/insights/markets-and-investing/ideas-and-insights/how-climate-risk-and-losses-are-creating-high-prices-for-home-insurance [https://perma.cc/Q78Z-8C4E] ("Insurers are moving rapidly to price in greater climate risk as they incorporate sustained underwriting losses from climate-related events in the recent past—and take future climate risks more seriously.").

[30] Am. Council of Life Insurers, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132150-302641.pdf [https://perma.cc/Q8W3-CQZ7]. The principles-based approach is largely acknowledged to have been unsuccessful in eliciting "comparable, consistent, and decision-useful" climate disclosures for investors. MADISON CONDON, SARAH LADIN, JACK LIENKE, MICHAEL PANFIL & ALEXANDER SONG, INST. FOR POL'Y INTEGRITY, MANDATING DISCLOSURE OF CLIMATE-RELATED FINANCIAL RISK 11, 16 (2021), https://policyintegrity.org/files/publications/Mandating_Climate_Risk_Financial_Disclosures.pdf [https://perma.cc/Q3KA-7MNM].

[31] Allstate Corp., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132222-302742.pdf [https://perma.cc/Z639-H6SK].

similar concerns—noting that a principle-based approach may be more appropriate, suggesting a voluntary Scope 3 emissions approach, and advocating to omit climate expertise on Boards and expand safe harbor protections (most of these suggestions were incorporated by the SEC in the final rule).[32]

*2. Industry*

The position of industry was more mixed than expected, especially in the energy sector. While the range of comments came from a diverse array of actors, many expressed at least limited support for the draft rule. Heavy industry and the farming sector were less supportive of the draft rule, which is unsurprising given the large amount of emissions that flow from those sectors, and given that those emissions are hard to abate.[33]

*a. Energy*

The oil and gas sector was unsurprisingly largely unsupportive of the SEC's draft rule. The main reason provided by the oil and gas industry in their opposition was the cost of compliance.[34] But the industry was not uniformly opposed to the rule. For example, the Coalition for Renewable Natural Gas was supportive of the rule.[35] Chevron was largely supportive of the draft rule, although it requested a number of amendments such as an extended phase-in period for Scopes 1, 2 and 3 emissions, extended filing deadlines, more flexibility in line with the Task Force on Climate-Related Financial Disclosures (TCFD) guidelines, and extended safe harbor provisions for forward-looking statements (which the SEC incorporated into its final rule).[36] ExxonMobil objected to having to file

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[32] Am. Prop. Cas. Ins. Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131795-302230.pdf [https://perma.cc/D6HT-8PEU].

[33] *See* Oreane Y. Edelenbosch, Andries F. Hof, Maarten van den Berg, Harmen Sytze de Boer, Hsing-Hsuan Chen et al., *Reducing Sectoral Hard-to-Abate Emissions to Limit Reliance on Carbon Dioxide Removal*, 14 NATURE CLIMATE CHANGE 715, 716 (2024) (calling heavy industry, international transport, agriculture, and building the four hard-to-abate sectors of emissions).

[34] *See, e.g.*, Am. Pub. Gas Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132264-302792.pdf [https://perma.cc/H8LK-BV89] ("[W]e are concerned about the costs that [the rule] may indirectly impose on our members."); Ranger Oil Corp., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132259-302785.pdf [https://perma.cc/QG94-QE74].

[35] Coal. for Renewable Nat. Gas, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132074-302555.pdf [https://perma.cc/Q4KW-8W93].

[36] Chevron Corp., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132316-302853.pdf [https://perma.cc/R245-SWFZ].

disclosures in securities filings at all, and, among other things, requested that Scope 3 emissions be excluded from the rule.[37]

Utilities presented a mixed case, with the Electric Power Supply Association being largely unsupportive of the draft rule,[38] but Pacific Gas & Electric, Schneider Electric, and the Vermont and Rhode Island public utility commissions being very supportive of the draft rule.[39] Tucson Electric's comment expressed concern that the draft rule would increase costs for consumers, requested that the Scope 3 disclosure be reconsidered, and that disclosures be provided but not filed as securities filings.[40]

*b. Farmers*

A number of Farm Bureaus submitted comments, such as the Montana and Indiana Farm Bureaus.[41] Their concerns were similar to those of the American Farmers & Ranchers and Oklahoma Farmers Union—that the draft rule would impose a burden for small- and mid-size operations, and that compliance would decrease competition as small farms were already struggling financially.[42] The

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[37] Exxon Mobil Corp., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132323-302882.pdf [https://perma.cc/DW49-H3R8].

[38] Elec. Power Supply Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131959-302418.pdf [https://perma.cc/BUS2-V6H3].

[39] PG&E Corp., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132127-302613.pdf [https://perma.cc/Z8ME-PFH9]; Schneider Elec., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132608-303137.pdf [https://perma.cc/BR8F-UGU3]; R.I. Pub. Utils. Comm'n & Vt. Pub. Util. Comm'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132145-302635.pdf [https://perma.cc/A8DF-SVCV].

[40] Tucson Elec. Power Co., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 16, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131651-302031.pdf [https://perma.cc/E83X-EV6T].

[41] Mont. Farm Bureau Fed'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132245-302686.pdf [https://perma.cc/SV9U-XJKT]; Ind. Farm Bureau, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132277-302805.pdf [https://perma.cc/KD7N-35PR].

[42] *See* Mont. Farm Bureau Fed'n, *supra* note 41; Ind. Farm Bureau, *supra* note 41; Am. Farmers & Ranchers/Okla. Farmers Union, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132338-302903.pdf [https://perma.cc/S7L3-7NHU].

Food Industry Association was more supportive of the draft rule, although it requested longer phase-in periods.[43]

*c. Heavy Industry*

Comments from heavy industry tended more towards legal resistance to the authority of the SEC to promulgate the draft rule. For example, the American Chemistry Council considered the draft rule to stray beyond the authority of the Commission and to conflict with its statutory mission.[44] The National Mining Association added to this statutory argument and expressly stated the draft rule violated the major questions doctrine and was arbitrary and capricious.[45] The Metals Company's comments were more supportive,[46] and the National Association of Manufacturers' (a frequent litigant of SEC rules) comment was generally supportive, and expressed a clear preference for notice-and-comment rulemaking by the SEC,[47] however, the Association expressed a general preference that disclosures not be filed as part of securities filings.[48] This more muted response may be due to manufacturers' ability to more easily abate emissions than heavy industries such as mining and steel.

*d. Transportation*

The transportation industry was, unsurprisingly, not supportive of the draft rule. The American Automotive Leasing Association, American Car Rental Association, and Truck Renting and Leasing Association all considered the draft rule to fall outside of the SEC's statutory authority and expressed a strong preference for a voluntary regime.[49] Airlines for America (a trade association for leading

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[43] Food Indus. Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132351-302916.pdf [https://perma.cc/XFD7-8E6J].

[44] Am. Chemistry Council, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132320-302878.pdf [https://perma.cc/A9KN-YZ82].

[45] Nat'l Mining Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132354-302919.pdf [https://perma.cc/55EK-6JHZ].

[46] Metals Co., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132350-302915.pdf [https://perma.cc/8PP7-LJ3C].

[47] Nat'l Ass'n of Mfrs., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 6, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20130306-296969.pdf [https://perma.cc/2G73-CPQK]; *see, e.g.*, Nat'l Ass'n of Mfrs. v. SEC, 800 F.3d 518 (D.C. Cir. 2015) (challenging an SEC disclosure rule).

[48] Nat'l Ass'n of Mfrs., *supra* note 47.

[49] Am. Auto. Leasing Ass'n, Am. Car Rental Ass'n, Truck Renting & Leasing Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-

passenger and cargo airlines) supported the rule but requested longer phase-in periods, a narrative form of disclosure, and voluntary Scope 3 disclosures.[50] General Motors, while supporting the draft rule in principle and noting its desire to contribute to an all-electric future, stated the draft rule was too onerous, did not want a line-by-line disclosure requirement, and felt the transition and scenario-analysis disclosure required an exemption for competitively sensitive information.[51] Finally, Amazon had mixed levels of support, supporting disclosure of Scopes 1 and 2 but requesting expanded safe harbor provisions for Scope 3 disclosures, and expressing a preference for carbon-intensity disclosures.[52]

This snapshot of comments from across financial institutions and industry present a mixed bag for the Commission. While some elements of these sectors are largely supportive of the draft rule in its entirety, most of the comments reviewed, particularly from high-emitting industries or financial institutions which may currently invest in and profit from the fossil fuel industry, provided a number of concerns and recommendations to the Commission. While the Commission has a responsibility to review all the comments received, it should be paying particular attention to comments from investors, given its statutory mandate to protect investors and capital markets more broadly. The draft rule is aimed at informing investors of the risks facing issuers they may invest in by providing them with consistent, comparable, and decision-useful data. A summary of some investors' comments is set out below.

*3. Investors*

The Commission received a large number of comments from investors. Many activist investors supported the draft rule across the board, with few comments. Some activist investors, such as BlackRock, suggested amendments, and retirement funds were largely supportive. The picture amongst non-activist investors was much more mixed, with some questioning the SEC's regulatory authority to promulgate the rules.

*a. Activist Investors*

Adasina Social Capital submitted a comment joined by 143 other investors, representing "over $965 billion in assets under management."[53] They were fully

22/s71022-20132528-303019.pdf [https://perma.cc/22GS-ZKY9].

[50] Airlines for Am., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132234-302756.pdf [https://perma.cc/AS5X-JNH4].

[51] Gen. Motors Co., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132298-302830.pdf [https://perma.cc/TU42-6UJE].

[52] Amazon.com, Inc., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132266-302794.pdf [https://perma.cc/6L2F-K8DZ].

[53] Adasina Soc. Cap. et al., Comment Letter on Proposed Rule on The Enhancement and

supportive of the draft rule and sought a "rapid release" of the final climate disclosure rule.[54] Arjuna Capital describes itself as a sustainable investment manager and was fully supportive of the draft rule, stating it "believes climate-related disclosures are critical for effective investment analysis and decision-making."[55] Investors such as Carbon Tracker Initiative, Bloomberg, Climate Action 100, Ceres, Inc., Persefoni, Engine No. 1, and Investor Agenda (representing international investors) were also fully supportive.[56]

BlackRock submitted its comment as an investor and issuer, and strongly supported the draft rule.[57] It submitted some recommendations, including disclosure of Scope 1 and 2 only, with more expansive liability protection and removing the disclosure of Board members with climate expertise.[58] CohnReznick LLP's comment was supportive but recommended an opt-in or opt-out provision depending on the type of investor.[59] With a few exceptions, activist investors were, unsurprisingly, very supportive of the draft rule. The picture was more mixed among non-activist investors' comments.

#### b. *Non-Activist Investors*

A few non-activist investors had mixed or negative approaches to the draft rule. For example, the American Investment Council was opposed to the disclosure of Scope 3 emissions and of targets and goals (and requested these be omitted from required disclosures or be tied to materiality).[60] Comments from the 60 Plus

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Standardization of Climate-Related Disclosures for Investors (Dec. 21, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20153294-320739.pdf [https://perma.cc/A3AL-PQQC].

[54] *Id.*

[55] Arjuna Cap., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132238-302760.pdf [https://perma.cc/XC7V-XM7N].

[56] *See, e.g.*, Ceres, Inc. & Persefoni, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (Apr. 6, 2023), https://www.sec.gov/comments/s7-10-22/s71022-20163766-333922.pdf [https://perma.cc/RHF6-WDGV]; Engine No. 1, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132296-302828.pdf [https://perma.cc/DB3U-UDKQ]; Inv. Agenda, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20133378-303637.pdf [https://perma.cc/LV2D-L5WG].

[57] BlackRock, Inc., *supra* note 24.

[58] *Id.*

[59] CohnReznick LLP, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 22, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132716-303207.pdf [https://perma.cc/VRD5-TBMX].

[60] Am. Inv. Council, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132284-302816.pdf [https://perma.cc/RRA2-UQYS].

Association[61] and the Consumers' Research (representing retail investors) were strongly opposed to the draft rule.[62] The National Investor Relations Institute was also strongly opposed, noting in its comment that metrics to measure the impacts of climate change were still evolving.[63] And the Society for Corporate Governance questioned the SEC's authority to promulgate the draft rule in the public interest.[64]

Other investors were more supportive. The Chief Executives for Corporate Purpose's comment was based on broad surveys and consultations conducted with its members.[65] The comment made some recommendations but clearly stated that it believed the SEC had the authority to promulgate the rule. It supported disclosure of Scopes 1 and 2 emissions, but also supported reducing the level of granularity of disclosures and more closely integrating the requirements with existing International Sustainability Standards Board (ISSB) and TCFD disclosures.[66] The Investment Adviser Association submitted similarly supportive comments, with a caveat that requiring Scope 3 emissions now might be premature.[67]

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[61] The 60 Plus Association describes itself as non-partisan but in favor of lower taxes and less government, and advises its constituents regarding concerns to them, their children and grandchildren. It is considered to be the conservative alternative to AARP but has been linked to dark money funds and to Republican and MAGA causes, so it may not be as neutral of a commentator as other investor funds. *See, e.g.*, *60 Plus Association*, ISSUE ONE, https://issueone.org/60-plus-association/ [https://perma.cc/V6CG-U28F] (last visited May 21, 2026); *see also About Us*, 60 PLUS, https://www.60plus.org/about-60-plus-association/ [https://perma.cc/E35V-89J3] (last visited May 21, 2026) (describing the 60 Plus Association as a "501c4 non-partisan, non-profit organization that advocates for seniors who believe in market-based solutions and [is] dedicated to protecting your right to freedom of speech and limited but effective government").

[62] 60 Plus Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132517-303003.pdf [https://perma.cc/7LRE-J2H7]; Consumers' Research, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 16, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132345-302910.pdf [https://perma.cc/YAG9-PFE9].

[63] Cap. Area Chapter of the Nat'l Inv. Rels. Inst., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (July 6, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20133784-303780.pdf [https://perma.cc/XMP5-KR7D].

[64] Soc'y for Corp. Governance, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132044-302525.pdf [https://perma.cc/JL5H-9ZBE].

[65] Chief Execs. for Corp. Purpose, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132599-303119.pdf [https://perma.cc/FKG9-YVMS].

[66] *Id.*

[67] Inv. Adviser Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132170-302667.pdf [https://perma.cc/A5ZX-4M94].

Some investors were fully supportive. For example, the Consumer Federation of America stated in its comment that the draft rule was not only within the SEC's authority, but also that the rule was essential for fulfilling the SEC's public interest mission, and appropriately reflected the current level of demand for climate-related information.[68] Franklin Templeton was also fully supportive of the rule.[69] Other investors, such as retirement funds, were much more supportive of the draft rule across the board.

*c. Retirement Funds*

Retirement funds were more supportive of the SEC's draft rule, likely due to the longevity built into their portfolio management. The Colorado Public Employees' Retirement Association supported the SEC's draft rule and articulated many benefits to its beneficiaries of the rule, including that climate risks are considered in its active investment and proxy voting strategies.[70] However, it limits its support to risks that are determined to be material by the issuer. Comments from the Los Angeles County Employees Retirement Association and San Francisco Employees' Retirement System were also fully supportive of the SEC's draft rule, including the disclosure of Scope 3 emissions and attestation requirements.[71]

From this limited assessment of comments from financial institutions, industry, and investors, it is clear that the Commission faced a wide diversity of perspectives on its draft rule. Some sectors of industry were supportive, while other (mainly fossil fuel-intensive) industries were not supportive of the draft rule. As articulated below, the Commission responded to many of the recommendations and concerns submitted via comments. It did so by making a number of major changes from the draft rule to the final rule. The major changes reduced the disclosure burdens that the draft rule would have imposed on issuers, and so the Commission did not go through a second round of notice-and-comment procedures.

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[68] Consumer Fed'n of Am., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132349-302914.pdf [https://perma.cc/FC2U-F3CX].

[69] Franklin Templeton, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132326-302888.pdf [https://perma.cc/GM5C-SX9K].

[70] Colo. Pub. Emps.' Ret. Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132550-303091.pdf [https://perma.cc/3RWM-2Z23].

[71] L.A. Cnty. Emps. Ret. Ass'n, Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (July 28, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20135253-306146.pdf [https://perma.cc/WD8B-WZXW]; S.F. Emps.' Ret. Sys., Comment Letter on Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132510-302994.pdf [https://perma.cc/6C4D-ZXPK].

### *C. Major Changes from the Draft to the Final Rule*

The major change the SEC made from its draft to final rule was to remove the requirement for disclosure of Scope 3 emissions that were material to the issuer. This was in direct response to some of the recommendations and critiques of the cost and difficulty of issuers obtaining and updating this information.[72] Scope 3 emissions relate to the emissions of supply chains; for example, the emissions from drivers of General Motors cars, or consumers of chemicals, or customers of financial institutions. The SEC also changed the requirement to disclose Scope 1 and 2 emissions to large, accelerated filers, and only if those emissions were material.[73] The SEC also extended the time period for attestation of Scope 1 and 2 emissions, limited to large, accelerated filers only.[74]

The other major changes made by the SEC in response to comments were to delete the requirement to disclose climate expertise on an issuer's Board, and limit the requirement to disclose previous targets or goals only where they are or were material.[75] In addition, the draft rule required disclosure of the financial impact of severe weather events and other events (including transition activities) where they would have an impact on any relevant line item in the issuer's consolidated financial statements exceeding a 1% threshold—this requirement was also removed.[76]

Despite a considerable scale back of the draft rule, and the Commission's clear responsiveness to comments and concerns received, the final rule almost immediately became the subject of litigation in the Eighth Circuit. Some of the arguments which appeared in comments from heavy industry and some non-activist investors focused on the Commission's regulatory authority and even cited some administrative law doctrines such as the major questions doctrine or questioned whether the Commission's actions were arbitrary and capricious. These arguments also appeared in many comments from heavy industry, including the oil and gas industry, and re-appear strongly in the briefs filed by petitioners.[77] The litigation was spearheaded by fossil fuel companies in the Fifth Circuit, and was later consolidated in the Eighth Circuit.

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[72] The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668, 21728–36 (adopted Mar. 28, 2024) (to be codified at 17 C.F.R. pts. 210, 229, 232, 239, 249).

[73] *Id.* at 21674.

[74] *Id.* at 21674–75.

[75] *Id.*

[76] *Id.*

[77] *Compare* Nat'l Mining Ass'n, *supra* note 45 (arguing that the proposed rule violated major questions doctrine and was arbitrary and capricious), *with* Consolidated Brief of State Petitioners at 29–30, Iowa v. SEC, Nos. 24-1522, 24-1627, 24-1631 & 24-1634 (8th Cir. June 21, 2024) (arguing that the proposed rule improperly "addresses a major question").

## II. THE EIGHTH CIRCUIT LITIGATION

On the same day the SEC promulgated its final rule, March 6, 2024, Liberty Energy Inc. and Nomad Proppant Services LLC filed a petition for review of the rule in the Fifth Circuit.[78] The Fifth Circuit granted an administrative stay on the rule on March 15, 2024, and the SEC "stayed the effective date" of its rule pending the outcome of the litigation.[79] On March 12, 2024, the State of Iowa sued the SEC in the Eighth Circuit, and on March 21, 2024, the Eighth Circuit was selected as the court to receive all further challenges to the rule.[80] These challenges were consolidated, and briefs were submitted, including a defense of its rule by the SEC under the Biden Administration.[81] On March 27, 2025, the SEC, under the second Trump Administration, voted to end its defense of its rules at the Eighth Circuit.[82]

Part II of this Essay focuses on some of the arguments filed by petitioners seeking to vacate the rule, largely on administrative law grounds. Petitioners have made heavy use of the major questions doctrine (MQD) in their briefs, as well as, in many cases, arguing that the Commission acted in a manner which was arbitrary and capricious. The focus on the MQD in many briefs relied on an argument that climate change is "politically sensitive" and not squarely and expressly in the realm of the SEC's statutory mandate.[83] Many of these briefs were filed before the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* and so do not mention that case.[84]

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[78] Opening Brief of Petitioners Liberty Energy Inc. & Nomad Proppant Services, LLC at i, Liberty Energy, Inc. v. SEC, No. 24-1624 (8th Cir. June 21, 2024).

[79] *Id.*; Sara Dewey & Sarah Hart-Curran, *Eighth Circuit Says SEC Must Defend or Revise Climate Risk Disclosure Rule*, HARVARD L. SCH.: ENV'T & ENERGY L. PROGRAM (Oct. 8, 2025), https://eelp.law.harvard.edu/eighth-curcuit-says-sec-must-defend-or-revise-climate-risk-disclosure-rule [https://perma.cc/N77W-VNDH].

[80] Consolidated Brief of State Petitioners, *supra* note 77, at i; The Enhancement and Standardization of Climate-Related Disclosures for Investors; Delay of Effective Date, 89 Fed. Reg. 25804, 25805 (Apr. 12, 2024).

[81] *See generally, e.g.*, Consolidated Brief of State Petitioners, *supra* note 77 (providing state petitioners' consolidated briefing and arguments); Final Consolidated Brief for Respondent Securities & Exchange Commission, Iowa v. SEC, No. 24-1522 (8th Cir. Oct. 1, 2024) (providing respondents' then-defense).

[82] Press Release, U.S. Sec. & Exch. Comm'n, SEC Votes to End Defense of Climate Disclosure Rules (Mar. 27, 2025), https://www.sec.gov/newsroom/press-releases/2025-58 [https://perma.cc/2V3U-PZ99].

[83] *See, e.g.*, Petitioners' Opening Brief at 54–55, Tex. All. of Energy Producers v. SEC, No. 24-1626 (8th Cir. June 21, 2024).

[84] *See generally* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (overruling the *Chevron* deference doctrine and limiting agencies' authority to interpret laws).

The MQD is openly hostile to agency assertions of authority.[85] It requires "clear congressional authority"—in other words, the Supreme Court will require a clear statement from Congress in the Commission's organic statute that the Commission has the regulatory authority it claims.[86] The doctrine has been the subject of significant academic criticism. It is still unclear what constitutes a "major question," and its defining characteristics can only be gleaned from past cases.

In one of the main cases on the doctrine, *West Virginia v. EPA*, the MQD was characterized as a claim to unheralded power by an agency which represents a transformation of its regulatory authority based on an ancillary statutory provision.[87] The majority opinion in this case, delivered by Chief Justice Roberts, expressly adopted the MQD to deny the EPA the ability to pursue the regulatory program in the Clean Power Plan.[88] The majority determined that "a clear statement was necessary [for a court] to conclude that Congress intended to delegate authority 'of this breadth to regulate a fundamental sector of the economy'" to the EPA.[89] The Supreme Court asserted "that there are 'extraordinary cases' . . . in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority."[90] This moment of hesitation is brought about due to the absence, in the eyes of the Court, of a perceived clear statement from Congress which explicitly delegates the breadth of statutory authority deemed necessary for agencies to act in an area of "'vast economic and political significance.'"[91]

This case was deemed to be one of those extraordinary cases, and here the MQD was asserted to vacate the Clean Power Plan—a rule promulgated by the EPA in order to reduce emissions from power plants.[92] The Court determined that the "EPA 'claimed to discover . . . an unheralded power' representing a 'transformative

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[85] Nathan Richardson, Essay, *Antideference: COVID, Climate, and the Rise of the Major Questions Canon*, 108 VA. L. REV. ONLINE 174, 177 (2022).

[86] West Virginia v. EPA, 142 S. Ct. 2587, 2620 (2022).

[87] *Id.* at 2610 (characterizing section 111(d) of the Clean Air Act as ancillary on the basis that the EPA had only used it a handful of times).

[88] *See id.* at 2610, 2615–16.

[89] *Id.* at 2605 (quoting Affordable Clean Energy Rule, 84 Fed. Reg. 32520, 32529 (adopted July 8, 2019) (to be codified at 40 C.F.R. pt 60)).

[90] *Id.* at 2608 (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159–160 (2000)). For other cases that discuss congressional delegation of lawmaking powers, see, for example, Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2487 (2021); Util. Air Regul. Grp. v. EPA, 573 U.S. 302, 324 (2014); Gonzales v. Oregon, 546 U.S. 243, 267 (2006); Nat'l Fed'n of Indep. Bus. v. OSHA, 142 S. Ct. 661, 665–66 (2022).

[91] *West Virginia*, 142 S. Ct. at 2605 (quoting Affordable Clean Energy Rule, 84 Fed. Reg. at 32529).

[92] *Id.* at 2610, 2619.

expansion in its regulatory authority'" in the vague language of a rarely used statute originally designed as a gap filler.[93] Pursuant to this long-extant statute, the EPA adopted "a regulatory program that Congress had conspicuously and repeatedly declined to enact itself."[94] The absence of clear congressional authority, combined with these other factors (a perceived transformative regulatory action, an old statute, using what was considered an "'ancillary provision'"), gave the Court pause, and it decided to vacate the rule.[95] Many petitioners have attempted to map these circumstances onto the statutory authority claimed by the SEC to promulgate its climate-related disclosure rule.

### *A. The Petitioners*

Liberty Energy is an oil and natural gas exploration company.[96] Nomad Proppant Services is "a service based frac sand company."[97] Liberty Energy owns a stake in Nomad Proppant Services, so the two companies are related. They both filed the original briefs challenging the SEC's final rule. Their main claim is that the disclosure rule seeks to regulate vast portions of the nation's economy, is unique in the SEC's history, represents a transformative expansion of the Commission's regulatory authority, and therefore falls under the MQD.[98] In addition, they claim the rule is arbitrary and capricious as the SEC did not acknowledge a drastic change in position, presented inadequate evidence, misconstrued the costs of the rule, and acted inconsistently throughout the rule.[99] Finally, they claim the rule violates the First Amendment.[100]

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[93] *Id.* at 2610 (quoting *Util. Air Regul. Grp.*, 573 U.S. at 324).

[94] *Id.*

[95] *Id.* at 2610 (quoting Whitman v. Am. Trucking Ass'n, Inc., 531 U.S. 457, 468 (2001)); *see also* KATE R. BOWERS, CONG. RSCH. SERV., LSB10791, SUPREME COURT ADDRESSES MAJOR QUESTIONS DOCTRINE AND EPA'S REGULATION OF GREENHOUSE GAS EMISSIONS 2 (2022) ("Even though neither the [Clean Power Plan (CPP)] nor the [Affordable Clean Energy (ACE)] Rule was in effect, the majority held that the case was reviewable because the state petitioners were injured by the D.C. Circuit's judgment, which purported to bring the CPP back into effect, and because EPA's representation that it did not intend to enforce the CPP did not moot the case."). *Learning Resources, Inc. v. Trump*, 146 S. Ct. 628 (2026), had not been decided at the time of submission of the comments, and so is covered in the later parts of this Essay. *See infra* notes 122–23 and accompanying text.

[96] *Company Profile*, LIBERTY ENERGY, INC. (last visited May 22, 2026), https://investors.libertyenergy.com [https://perma.cc/67D9-3H8X].

[97] *About Us*, NOMAD PROPPANT SERVS. (last visited May 22, 2026), https://nomadproppant.com/about/ [https://perma.cc/9R6C-PR7Q].

[98] Opening Brief of Petitioners Liberty Energy Inc. & Nomad Proppant Services, LLC, *supra* note 78, at 3–5.

[99] *Id.* at 39, 41, 44, 46–47.

[100] *Id.* at 52, 57. This Essay will not delve deeply into the First Amendment arguments as this is beyond the scope of this Essay, but these arguments were covered in my previous work on

The MQD is the main thrust of their petition, and the petitioners focus on the age of the governing statutes (the Securities Act of 1933 and the Exchange Act of 1934). In their view, the SEC is unable to derive sufficiently broad authority from such an old statute, and in addition, that climate change is a hotly debated political issue and that scientific considerations lie outside of the SEC's expertise.[101] In particular, they focus on the phrase "public interest" which is the statutory mandate the SEC is relying on. In their view, that phrase is too "vague" to authorize mandatory disclosures such as the disclosure rule.[102] Instead, they argue that the SEC should protect investors and the public by requiring descriptive and accurate disclosures of financial information that is material to investors. Nowhere in these briefs do the petitioners attempt to counter the argument that climate risks are financial risks. The petitioners do claim, however, that "[t]here is great uncertainty about the risks that will (or will not) flow from temperature changes" and that "[c]limate models are consistently wrong" without citing any scientific data to back up these assertions.[103]

The State of Iowa also submitted a brief focusing on the MQD. In it, the state articulated six reasons why the rule fell under the doctrine. Iowa asserted that the rule constituted "a 'radical' and 'fundamental revision' to disclosure law," deployed an old law in a novel way, took the "SEC into areas well beyond its ken," involved "an issue of 'vast' 'political significance,'" exerted "'statutory power over the national economy,'" and intruded into the "'domain of state law'" (via corporate law).[104] The brief cites the conflict minerals rule as an example of Congress providing explicit statutory authority for the SEC to regulate where the SEC was going beyond its "typical zones."[105]

the proposed rule. *See* Benjamin, *supra* note 8, at 46, 49, 54–57. The arguments from petitioners are generally that the rule compels commercial speech because it requires a company to describe climate-related risks and public transition plans. This is not entirely true as the SEC confirmed in its brief that the requirement to publish only applied if, for example, the company in fact had a transition plan.

[101] Opening Brief of Petitioners Liberty Energy Inc. & Nomad Proppant Services, LLC, *supra* note 78, at 4–5, 27–28.

[102] *Id.* at 15.

[103] *Id.* at 38–39.

[104] Consolidated Brief of State Petitioners, *supra* note 77, at 30–37 (first quoting MCI Telecomms. Corp. v. Am. Tel. & Tel. Co., 512 U.S. 218, 229–31 (1994); then West Virginia v. EPA, 142 S. Ct. 2587, 2605 (2022); then Util. Air Regul. Grp. v. EPA, 573 U.S. 302, 324 (2014); and then Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2489 (2021)) (citing Kisor v. Wilkie, 139 S. Ct. 2400, 2417 (2019)).

[105] *Id.* at 41 (citing 15 U.S.C. § 78m(p) (requiring the SEC to promulgate rules regarding mandatory disclosure of the origin of conflict minerals if they are from the Congo region)). The Dodd-Frank Act included a mandate to the SEC to issue regulations requiring firms using so-called conflict minerals to investigate and disclose the origin of those minerals, 15 U.S.C. § 78m(p), and the SEC's 2010 conflict minerals rule was the subject of litigation. *See* Nat'l Ass'n

The brief submitted by Texas Alliance of Energy Producers and Domestic Energy Producers Alliance is perhaps the most honest about why there was (and is) such considerable opposition to the disclosure rule by many businesses.[106] It addresses investor requests for climate-risk-related information by framing it in ideological terms, stating that by requesting this information, investors are "waging ideological battles for control of the corporate board room."[107] It also cites the MQD as a mechanism to reject the SEC's "freewheeling" view of its statutory mandate of requesting disclosures in the public interest.[108] The reason why they object to the disclosure rule is that companies subject to the rule might "feel added pressure to develop new corporate governance structures to monitor and respond to climate change risks to minimize negative press that might follow from an admission that they are not prioritizing climate change activism."[109] Therefore, despite the fact that the rule did not and does not require reductions of greenhouse gas emissions, but only of the disclosure of material risks that climate change poses to a business, disclosing that climate change (1) poses a material risk and (2) the company is doing nothing about it would be bad for a company's reputation. The brief from the Texas Alliance of Energy Producers and Domestic Energy Producers Alliance openly admits this.

The brief states that "if a company has declined to commit to reducing its emissions or taking other actions to confront climate change, the company must publicly admit that it is not doing anything to respond to climate change 'activist concerns.'"[110] This assertion is not entirely accurate. The SEC, in its brief, confirmed that a company must only disclose a transition plan if it has one.[111] More likely, the real objection is the admission that an issuer lacks a transition plan while disclosing that climate change poses significant and material risks to its business. The Texas Alliance brief confirms some of the suspicions articulated in my previous work: that many issuers still do not want to disclose the risks that climate change poses to their business as this may make investors more reluctant to invest in them. Issuers at greater risk of climate impacts, such as fossil fuel-intensive businesses, have an inherent incentive to hide or obscure climate-related risks. This is bad for investors, and bad for capital markets. As stated in my previous work, climate change poses significant risks to both companies and the financial system writ large. Failing

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of Mfrs. v. SEC, 748 F.3d 359, 363, 365 (D.C. Cir. 2014), *overruled by*, Am. Meat Inst. v. Dep't of Agric., 760 F.3d 18, 22–23 (D.C. Cir. 2014).

[106] Petitioners' Opening Brief, *supra* note 83, at 5–6.

[107] *Id.* at 5.

[108] *Id.* at 43–44 ("Congress did not intend to give the Commission the freewheeling power it claims.").

[109] *Id.* at 10–11.

[110] *Id.* at 11–12 (internal quotation not in original).

[111] Final Consolidated Brief for Respondent Securities & Exchange Commission, *supra* note 81, at 16.

to disclose these risks may lead to a climate-risk bubble, which will eventually have negative, cascading, and potentially disastrous results for many companies, and potentially entire markets. The SEC's initial brief to the Eighth Circuit, filed under the Biden Administration, clearly emphasized that climate risks are financial risks, and therefore subject to regulation by the Commission within its normal statutory parameters.

### B. *The SEC's Position—Then and Now*

The SEC's brief to the court, filed under the Biden Administration, states that "[a]s with other risks, climate-related risks . . . can significantly affect a company's financial performance and position."[112] The Commission clearly states that the rule "is not about climate change or environmental policy," but about "protecting investors" from climate-related risks.[113] It clarifies that the statute does not require disclosure of just financial information, but is purposefully broad to enable the Commission to react to developments in the markets which occur over time. As such, the SEC claims that its governing statutes allow it to require disclosure of non-financial information that has financial impacts on issuers. As a result, the Commission confirms that it has, for decades, required disclosure of environmental information which may have material financial impacts on companies. According to the Commission, this rule "focus[es] on factual disclosure of known, existing, or reasonably likely material impacts from climate-related risks and the issuer's current approach, if any, to assessing and managing those risks."[114] The Commission also argued that requiring such disclosures fell squarely within its core statutory authority.

The Commission's brief engages with the question of its statutory authority. It clarifies that "Section 12(b) of the Exchange Act enumerates certain categories of information about which the Commission may require disclosure 'as necessary or appropriate in the public interest or for the protection of investors.'"[115] This list "include[s] 'the organization, financial structure, and nature of the business.'"[116] Engaging directly with the *Loper Bright* decision, the Commission cites rules promulgated just after the Exchange Act was enacted (by the SEC's predecessor agency) that required disclosure of information including "'the general character of the business,'" in order "'to assemble the facts as to the history and nature of the business, . . . its capital structure, and other factors which might [a]ffect the value of its securities.'"[117] The Commission does this, as *Loper Bright* states that courts

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[112] *Id.* at 1.

[113] *Id.* at 1–2.

[114] *Id.* at 14.

[115] *Id.* at 31 (quoting 15 U.S.C. § 78l(b)(1)).

[116] *Id.* at 31–32 (quoting § 78l(b)(1)(A)).

[117] *Id.* at 33, 46–47 (first quoting 15 U.S.C. § 77aa(8); and then quoting Exchange Act Release No. 66, 1934 WL 28615, at *2 (Dec. 21, 1934)).

may pay particular attention to agency "'interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time'" when determining the single best interpretation of the statute.[118]

The Commission's brief also engages directly with some of the factors which may characterize an agency action as a major question. For example, the Commission confirms that it "did not rely on 'vague,' 'cryptic,' 'ancillary,' or 'modest' statutory language," but instead invoked its core power of disclosure in order to protect investors.[119] The Commission further asserts that it has consistently promulgated rules requiring disclosure under this core provision "since the agency's inception," so this would not constitute an "'ancillary'" or little-used provision.[120]

The SEC distinguishes this from other MQD cases. It states that "the Supreme Court has never treated the [MQD] as a license to override statutory text based on assertions that an agency's action is politically or economically consequential."[121] This is an important point. In the Court's latest statement on the MQD, *Learning Resources v. Trump*,[122] the Court emphasizes the statutory interpretation element of the MQD, made by the Commission in its brief. Chief Justice Roberts' opinion steers the doctrine towards a firmly textualist, statutory interpretation approach as opposed to the (previously understood) politically controversial element of the doctrine. The Chief Justice does this by citing extensively to Justice Barrett's concurring opinion in *Biden v. Nebraska*, which characterizes the doctrine as a form of textualism.[123]

In addition, the Commission notes that "the Rules are not designed to address climate change," as some petitioners alleged.[124] The rules are instead designed to require disclosure of risks to issuers' businesses, which "is not controversial."[125] The Commission points to its "robust record" and the strong investor demand for decision-useful information on climate-related financial risks.[126] The Commission also points out the significant amendments it made to its proposed rule in response to comments received.[127]

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[118] *Id.* at 33 (quoting Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2262 (2024)).

[119] *Id.* at 54 (quoting West Virginia v. EPA, 142 S. Ct. 2587, 2608–10 (2022)).

[120] *Id.* at 54–55.

[121] *Id.* at 56 (citing Biden v. Nebraska, 143 S. Ct. 2355, 2374 (2023)).

[122] 146 S. Ct. 628 (2026).

[123] *See generally id.* (citing *Nebraska*, 143 S. Ct. at 2376–84 (Barrett, J., concurring)).

[124] Final Consolidated Brief for Respondent Securities & Exchange Commission, *supra* note 81, at 57.

[125] *Id.*

[126] *Id.* at 55, 63 ("The importance of climate-related information to investment and voting decisions is also confirmed by substantial investor demand.").

[127] *Id.* at 70–71.

The Eighth Circuit will have to engage with these arguments, as the required disclosure regime is one of the major planks of the SEC's statutory scheme. Removing or weakening an intentionally broad statutory authority may damage the Commission's core authorizing mandate and may have a consequential, damaging impact on the transparency of capital markets.

Of course, during the pendency of the litigation, the presidential administration changed. Under the second Trump Administration, control over the SEC changed hands, and on March 27, 2025, the SEC notified the Eighth Circuit that it would no longer defend its own rule.[128] On April 24, the Eighth Circuit held the case in abeyance.[129] But the SEC took "the unusual step," in July 2025, of asking the court to continue to decide the case on its merits, without the Commission's defense of its rule.[130] The usual course of action would be for the Commission to rescind its own rule, using the notice-and-comment procedure under the Administrative Procedure Act (APA). It appears the SEC hoped to avoid this potentially long and labor-intensive process, instead wanting the Eighth Circuit to vacate the rule for it, therefore constraining any future presidential administration from re-introducing the rule.[131] In its status report in July 2025, the SEC stated that "[a] majority of the current Commissioners believes that the Commission lacked statutory authority for the Rules" in the first place, and that a decision by the Eighth Circuit on the Commission's statutory authority would "conclusively resolve" the issue.[132] The Eighth Circuit decided it would not play ball with the Commission's unorthodox approach, and requested that the Commission either recommence its defense of its rule in court, or revise it using APA notice-and-comment processes.[133] The Eighth Circuit put the ball squarely back in the SEC's court, stating that "[i]t is the agency's responsibility to determine whether its Final Rules will be rescinded, repealed, modified, or defended in litigation."[134]

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[128] Status Report of the SEC, *supra* note 1, at 2–3.

[129] *Id.* at 1–2; Dewey & Hart-Curran, *supra* note 79.

[130] Dewey & Hart-Curran, *supra* note 79; SEC Status Report, *supra* note 1, at 2; ("The Commission does not intend to review or reconsider the Rules at this time.").

[131] *See* Dewey & Hart-Curran, *supra* note 79 ("Sometimes, a new administration may ask a court for a voluntary remand of a challenged rule so the agency can rescind or reconsider its prior decision using the normal rulemaking process. However, this can be time consuming and labor-intensive, which has led some administrations to try to have courts to vacate regulations instead to avoid the need to justify a recission.").

[132] Status Report of the SEC, *supra* note 1, at 4–5.

[133] *See* Order at 6, Iowa v. SEC, No. 24-1522 (8th Cir. Sep. 12, 2025).

[134] *Id.* (holding the SEC's climate-risk disclosure rules "in abeyance").

### C. *Potential Outcomes*

So, the SEC now has to make some decisions around its final rule. It can stay enforcement of the rule, but doing so would make it easier for a subsequent Democrat-led administration to lift the stay and bring the rule back into effect, which this Administration likely wants to avoid. The other two options are to defend the rule (which the SEC is unlikely to want to do), and hope for a negative judicial outcome, or revise and rescind the rule through the notice-and-comment process. Defending the rule in court would involve the Commission engaging with its own prior (and robust) defense of its rule, and its very detailed record on the matter. The Commission would have to explain, in detail, its abrupt change of course and engage with at least some of the record supporting the rule, including investor comments and some of the scientific evidence which also forms part of the record. Any rescission of its own rule will likely also be subject to litigation, so the Commission is looking at years of work ahead in order to rescind its rule via notice and comment.

In effect, a judicial decision on the SEC's statutory authority will likely be deferred for some time now, unless the SEC decides to defend (albeit weakly) its rule in the Eighth Circuit. In those circumstances, the Eighth Circuit would likely engage with the major questions arguments raised by many petitioners and may even vacate the rule on the basis of the MQD or the *Loper Bright* decision. What is unclear is how the court might coordinate or conflate these legal doctrines. The Supreme Court has not yet laid out a clear structure for when the single best reading of a statute, under *Loper Bright*, might or might not engage with the MQD.[135] In fact, the *Loper Bright* decision did not mention the MQD at all.

Recently, Justice Kavanaugh articulated some exceptions to the *Loper Bright* decision, in areas of national security or foreign affairs, where broad authority granted to the President by Congress may be assumed.[136] But other than this concurring opinion, we do not yet have a clear understanding of whether the MQD constitutes a linguistic canon which could be employed by a court when determining the single best reading of a statute under *Loper Bright*, or whether the doctrine is a separate, substantive canon—and if the latter is the case—when and how it might be triggered by the courts.[137] For example, in *Loper Bright*, the Supreme Court did articulate circumstances where broad language, such as "reasonable," could signal an intent by Congress to grant agencies broad

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[135] Gluck, *supra* note 7.

[136] FCC v. Consumers' Rsch., 145 S. Ct. 2482, 2515–2516 (2025) (Kavanaugh, J., concurring). *But see* Learning Res. v. Trump, 146 S. Ct. 628, 641–42 (2026) (clarifying, in an opinion by Chief Justice Roberts, that there is no national security or emergency exception to the application of the MQD).

[137] Gluck, *supra* note 7.

discretionary authority to interpret the statute.[138] In those cases, the MQD might serve as a "backstop" to prevent that discretionary authority being exercised in areas which the court considers to be of "vast political or economic significance."[139] It is unclear whether the "public interest" relied upon by the SEC when promulgating its final rule would be considered broad, discretion-granting language in the statute.[140]

When discussing statutory authority of the SEC, which it most certainly will, the court should engage with the argument that climate risks, in many cases and for many investors, do constitute financial risks. Only by dismissing the argument that climate-related risks constitute financial risks could the court then make a clear argument that the rule goes beyond the statutory remit of the Commission.

## CONCLUSION

The outcome remains a mystery as this now long and convoluted road towards SEC climate-related financial disclosures continues. A rescission of its former rule via the notice-and-comment procedure would likely take several years, and it is unclear whether the Commission would want to dedicate (now sparser) resources to such an exercise. Alternatively, the SEC may decide to strategically defend its rule at the Eighth Circuit, but this would involve a much-amended brief compared to its previous brief, which robustly defended the Commission's statutory authority to enact a climate-related disclosure rule. Therefore, the saga continues. We probably have not seen the last of this issue, and climate-related disclosure risks are likely to remain in the shadows, reappearing at some point in the future—if not the immediate future. I'll be preparing to write a third article in the series in another few years.

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[138] Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2263 (2024).

[139] Gluck, *supra* note 7.

[140] *See supra* notes 115–18 and accompanying text.

APPENDIX A: TABLE OF COMMENTS REVIEWED BY SECTOR

| | | |
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| NGOs (22) | Academics (4) | 1. Cynthia Williams (Maurer School of Law)<br>2. Kent Greenfield (Boston College Law School)<br>3. Robert Kaplan (Harvard School of Business) and Karthik Ramanna (University of Oxford)<br>4. The Institute for Policy Integrity (NYU School of Law) |
| | Conservative NGOs (3) | 1. American Enterprise Institute<br>2. The CATO Institute<br>3. The Heritage Foundation |
| | Environmental NGOs (15) | 1. Americans for Financial Reform Education Fund, Public Citizen, and the Sierra Club<br>2. Center for Climate and Energy Solutions (C2ES)<br>3. Center for International Environmental Law (CIEL)<br>4. The Climate Reality Project<br>5. Earthjustice, Environmental Working Group, and Greenpeace<br>6. ESG+H Coalition<br>7. Friends of the Earth<br>8. Natural Capital Index (NCX)<br>9. Natural Resources Defense Council (NRDC)<br>10. The Institute for Policy Integrity at New York University School of Law, the Environmental Defense Fund (EDF), and Professor Madison Condon<br>11. Science Based Targets initiative (SBTi)<br>12. Sustainable Forestry Initiative (SFI)<br>13. The Sierra Club<br>14. U.S. Green Building Council (USGBC)<br>15. Voluntary Carbon Market |
| Financial Institutions (12) | Banks (5) | 1. Amalgamated Financial Corp.<br>2. Bank of America<br>3. Citigroup<br>4. HomeStreet Bank<br>5. Wells Fargo |

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| | Insurance (4) | 1. American Council of Life Insurers (ACLI)<br>2. Allstate<br>3. American Property Casualty Insurance Association (APCIA)<br>4. Insurance Information Institute (Triple-I) |
| | Retirement Funds (3) | 1. San Francisco Employees' Retirement Fund (SFERS)<br>2. Los Angeles County Employees Retirement Association (LACERA)<br>3. Colorado Public Employees' Retirement Association (Colorado PERA) |
| Industry (33) | Energy (16) | Mixed Energy Sectors:<br>1. Edison Electric Institute (EEI) and American Gas Association (AGA)<br>2. American Biogas Council, Anew, Bioenergy Devco, CenterPoint Energy, DTE Vantage, Eco Engineers, Iogen, Kinder Morgan, Opal Fuels, Coalition for Renewable Natural Gas, and World Energy<br>Oil & Gas:<br>1. American Public Gas Association (APGA)<br>2. American Exploration and Production Council (AXPC)<br>3. Chevron Corporation<br>4. Exxon Mobil Corporation<br>5. Occidental Petroleum Corporation<br>6. Ranger Oil Corporation<br>7. Coalition for Renewable Natural Gas<br>Renewables:<br>1. American Council on Renewable Energy<br>2. Evergreen Renewables Inc.<br>Utilities:<br>1. Tucson Electric Power Company<br>2. Electric Power Supply Association (EPSA)<br>3. Pacific Gas and Electric Company (PG&E)<br>4. Rhode Island Public Utilities Commission and Vermont Public Utility Commission<br>5. Schneider Electric |

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| | Farmers (7) | 1. American Farmers & Ranchers/Oklahoma Farmers Union (AFR/OFU)<br>2. Food Industry Association (FMI)<br>3. Indiana Farm Bureau<br>4. Montana Farm Bureau Federation (MFBF)<br>5. Montana Farmers Union<br>6. Agricultural Retailers Association, American Farm Bureau Federation, American Soybean Association, National Cattlemen's Beef Association, National Corn Growers Association, National Pork Producers Council, and North American Meat Institute<br>7. Americans for Financial Reform Education Fund and National Farmers Union |
| | General Industry (1) | 1. National Association of Manufacturers (NAM) |
| | Heavy Industry (3) | 1. American Chemistry Council (ACC)<br>2. National Mining Association (NMA)<br>3. The Metals Company |
| | Transportation (6) | 1. Airlines for America (A4A)<br>2. American Automotive Leasing Association (AALA)<br>3. Amazon.com, Inc.<br>4. American Trucking Associations (ATA)<br>5. General Motors Company (GM)<br>6. Railroad Commission of Texas |
| Investors (29) | Activist Investors (18) | 1. Adasina Social Capital, and 142 other investors<br>2. Addenda Capital<br>3. Arjuna Capital<br>4. BlackRock<br>5. Bloomberg<br>6. Carbon Tracker Initiative<br>7. Ceres and Persefoni<br>8. CFA Institute<br>9. Climate Action 100+: Steering Committee<br>10. Climate Advisors |

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| | | 11. CohnReznick<br>12. Engine No.1<br>13. Inclusive Capital Partners (In-Cap)<br>14. The Investor Agenda<br>15. Institutional Shareholder Services (ISS)<br>16. Principles for Responsible Investment (PRI)<br>17. Vanguard<br>18. Ceres, World Business Council for Sustainable Development, We Mean Business Coalition, BSR, Center for Climate and Energy Solutions (C2ES) |
| | Non-Activist Investors (11) | 1. American Investment Council (AIC)<br>2. Chief Executives for Corporate Purpose (CECP)<br>3. Consumer Federation of America (CFA)<br>4. Consumers' Research<br>5. Fixed Income Investor Network (FIIN)<br>6. Franklin Templeton<br>7. Investment Adviser Association (IAA)<br>8. Society for Corporate Governance<br>9. Institute of Management Accountants (IMA)<br>10. National Investor Relations Institute (NIRI)<br>11. 60 Plus Association |
| State & Government Actors & Agencies (6) | | 1. Working Group on Securities Disclosure Authority<br>2. SEC Former Chairmen and Commissioners (Breeden, Lochner Jr., Roberts, Pitt, Atkins)<br>3. SEC Professionals Group<br>4. The U.S. Environmental Protection Agency (EPA)<br>5. SEC Small Business Capital Formation Advisory Committee<br>6. U.S. House of Representatives, Committee on Small Business |
| **Total Number of Comments Reviewed: 102** | | |