



Comments by America First Policy Institute
on The U.S. Securities and Exchange Commission’s Proposed Rule entitled
“The Enhancement and Standardization of Climate-Related Disclosures for Investors”
File Number S7-10-22

The America First Policy Institute (AFPI) 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 lacks an appropriate statutory basis, is duplicative, will degrade the quality of investor-related information available, and will cause harm that extends well beyond the investor class while doing little to improve the environment or change the trajectory of U.S. emissions.

AFPI is a 501(c)(3) non-profit, non-partisan research institute. AFPI exists to conduct research and develop policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do. One of AFPI’s core priorities is advancing policies that promote economic strength. We believe that access to a free and flourishing economy is a necessity for any nation, and its citizens must have the opportunity to build and to prosper. We also know a strong economy and a healthy environment go hand-in-hand. Adherence to this principle is why the U.S. is a leader in environmental progress and clean, efficient, and—until recently—robust economic growth.

Additionally, a requisite to achieve these outcomes is a strong domestic energy industry that responsibly uses our abundant natural resources to support the advancement of Americans. Leveraging our domestic energy industry led to record-breaking growth, a new class of successful entrepreneurs, and perhaps most importantly, energy independence. With the start of the Biden Administration in 2021, there has been a dramatic shift on the energy front. Political officials are now using the power of the federal government to fulfill President Biden’s promise to “end all fossil fuels,”¹ and the SEC proposed rule is the latest rendition. Administrative appointees are attempting to integrate activist-created metrics, referred to as environmental, social, and governance or ESG, that have successfully pushed investors away from politically disfavored industries on Wall Street.² This proposed regulatory framework is the latest in a long

¹ “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?” Vice President 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-committee-memo>.

² 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>.

line of deceptive policymaking that, despite its stated intentions, will only serve to increase costs for struggling Americans.

Given a current lack of confidence in the U.S. economy, with the highest inflation in 40 years, along with skyrocketing gas prices, the SEC’s proposed rule stands to exacerbate these problems. Additionally, the rule represents a consequential distraction as the agency attempts to realign itself as a climate-focused environmental regulator creating a massively complex, highly speculative reporting regime in the process. If the agency were committed to providing “investors with consistent, comparable, and decision-useful” information as the proposed rule suggests,³ then there are more surgical and legally prudent options that could be developed within the existing disclosure construct.

Accordingly, AFPI urges the SEC to set aside its proposed climate disclosure rule. The comments below highlight the statutory insufficiencies, lack of sound policy justifications, and expansive harm the proposed rule could cause if finalized.

I. The SEC lacks authority to mandate climate disclosures without a clear directive from Congress.

The mission of the Securities and Exchange Commission (SEC)—to protect investors; to maintain fair, orderly, and efficient markets; and to facilitate capital formation—is critical to maintaining confidence in and stability of the U.S. economy. In support of this mission, Congress has been explicit in conferring mission-oriented authority. These grants of power also come with carefully considered limitations, which is the case for the laws the SEC has cited as its legal justification for the proposed climate-disclosure rule: the Securities Act of 1933 and the Securities and Exchange Act of 1934.

During the passage of those laws, legislators made clear that they did not want disclosure authority used to “elicit any information whatsoever.”⁴ Congress instead was very clear in listing specific categories of information tied to a company’s potential for creating value and prospect for success.

The SEC has historically respected these limits and openly admitted them amidst more recent pressure to require climate-related disclosures. In 2010, in response to the interpretative guidance 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 Again, in 2016 when the SEC issued a concept release on potential climate disclosures, the agency formally reiterated relevant limits:

³ Chair Gensler, *SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors* (March 21, 2022), available at <https://www.sec.gov/news/press-release/2022-46>.

⁴ H.R. Rep. No. 73-1383, at 23 (1934).

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/spch012710klc-climate.htm>.

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

In the context of 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

To date, Congress has not granted the SEC a specific directive that would support its current climate disclosure proposal, nor has it granted the agency an expanded role over the U.S. economy. Individual Members of Congress have attempted to grant the SEC specific authority related to climate-change disclosures, but that legislation has yet to gain necessary traction.⁸ Instead, Congress has authorized mandatory disclosures in other topic areas, such as executive pay⁹ and conflict minerals¹⁰ reinforcing that it will act clearly when it wants the SEC to take disclosure actions beyond existing statutory limits.

Additionally, Congress has spoken specifically to the matter of making company-specific emissions information available to the public. In 2008, Congress directed the EPA to “to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States.”¹¹ The agency now oversees the U.S. Greenhouse Gas Reporting Program, covering over 8,000 facilities across 41 different categories, which provides publicly available insight into a company's environmental footprint.¹²

SEC's proposal not only seeks to circumvent existing Congressionally directed reporting requirements to which U.S. companies are already subject but proposes to unduly duplicate it with a new, expansive and suffocating 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,

⁶ Business and Financial Disclosure Required by Regulation S-K, 81 Fed. Reg. 23,916, 23,970 (Apr. 22, 2016); referencing Environmental and Social Disclosure, 40 Fed. Reg. 51,656 (Nov. 6, 1975), available at <https://www.govinfo.gov/content/pkg/FR-2016-04-22/pdf/2016-09056.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 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>.

⁹ 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>.

¹⁰ 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>.

¹¹ 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>.

¹² US EPA, *Learn about the Greenhouse Gas Reporting Program*, available at <https://www.epa.gov/ghgreporting/learn-about-greenhouse-gas-reporting-program-ghgrp>.

and for which the Commission is not mandated to perform—this time absent any Congressional authorization.

II. “Material Risk” disclosure requirements already provide investors access to decision-useful climate information, which was clarified in 2010 Guidance.

Existing SEC rules already require companies to disclose material risks. For some companies this includes disclosing potential climate impacts 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.¹³ For example, if a company is subject to environmental regulation, it 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.¹⁴

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.¹⁵ Of note, when the SEC integrated these requirements 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.”¹⁶ 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 involved with this type of disclosure could degrade the quality of investor reports.

Current disclosure rules require companies to describe any material factors that could make investment in the company or related offering “speculative or risky.”¹⁷ Additionally, the existing disclosures pertaining to Management’s Discussion and Analytics (MD&A) laid out in Item 303 requires 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.¹⁸ The 2010 climate guidance, specifically, clarified this requirement’s application

¹³ SEC, available at <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.

¹⁴ 17 CFR 229.101

¹⁵ 17 CFR 229.103

¹⁶ 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.

¹⁷ 17 CFR 229.503(c).

¹⁸ 17 CFR 229.303.

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.¹⁹

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.²⁰ As SEC Commissioner Peirce correctly noted, companies already use 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.”²¹

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.²² Of the 26 companies subject to these inquiries, 25 responded that climate risk was important but not material and that the additional information the SEC sought was either already disclosed or too abstract and general.²³

Not only are there multiple existing avenues whereby companies already provide comprehensive information regarding potential impacts of the climate to investors, efforts to expand these disclosures through SEC enforcement initiatives have the potential for immaterial information making its way into investor reports.

III. Mandating excess climate disclosures will degrade the quality of decision-useful information available to investors and undermine the SEC’s standards of efficiency.

The SEC was not created to address matters of science, especially vast and evolving aspects of our changing climate. While activists behind the climate disclosure rule present climate change as a definitive crisis that threatens the entire human race unless certain government sponsored policies are adopted, the body of scientific work and our affiliated understanding is better

¹⁹ 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>

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

²¹ 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>.

²² 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>.

²³ 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>.

described as incomplete and evolving. Our 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, yet 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. Even the United Nation’s Intergovernmental Panel on Climate Change (IPCC) has found the task of producing precise, conclusive outcomes to be fleeting throughout its multi-decadal existence. In attempts to set some standard of comparison within climate science, the IPCC has produced four possible future scenarios called Representative Concentration Pathways (RPC). To date, the existence and use of these four possible scenarios has failed to produce reliably useful information for the general public.²⁴

Nevertheless, the SEC proposal would place the impossible 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 funding 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 have vowed to abolish. This would be detrimental not only to investors, but also to our broader economic health.

Filling reports with massive amounts of irrelevant information while increasing legal exposure also comes with a high compliance cost. 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.”²⁵

There is also the matter of efficiency. The Commission is statutorily required to consider whether an action will promote efficiency, competition, and capital formation.²⁶ Requiring companies to disclose massive amounts of irrelevant information adds needless inefficiencies into a process where relevant climate related disclosures are already made. With added

²⁴ “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>.

²⁵ 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>.

²⁶ 15 U.S.C. 77b(b).

compliance costs and liabilities to consider, companies are more likely to curb engagement in public capital markets. It is for these reasons and those that flow below that AFPI believes that the disclosure requirements could be violations of the First Amendment. Mandates that are overly attenuated, grossly inefficient, and are not compelled by statute are dimly viewed constitutionally. The disclosure requirements under review are unduly ambiguous, arbitrary, and resemble similar ideas that Congress has decided not to mandate. The proposed disclosures are likely a form of compelled speech in violation of the First Amendment.

IV. This is an attempt to push expansive climate policies via regulatory fiat that have been rejected on Capitol Hill and limited by courts.

In 2013, Democrat politicians initiated a massive shift in their approach to implementing 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.²⁷

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”²⁸ spurred liberal politicians and aligned 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 of unauthorized expansion started under the Clean Air Act within the U.S. EPA but has since ballooned into a “whole of the government” approach to climate, in which activists are finding imagined authority in all manner of statutes and agencies.

But sidestepping Congress and pushing expansive, new policies even at the behest of presidential directives has regularly been struck down by 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 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.²⁹

²⁷ 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).

²⁸ *Id.*

²⁹ *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014).

Even EPA's "landmark" climate regulation, the Clean Power Plan, which was final in 2015 has never fully gone into effect.³⁰ 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 action—even those done in the name of climate change—will continue.

The lower courts have also refused to be a tool in the ongoing congressional run-around. The strongest rebuke came from the 9th Circuit when liberal justices dismissed the *Juliana v. United States* case.³¹ After five years of litigation in which activists used children to bring suit in a sympathetic forum, the circuit court ruled that climate change was essentially a political question best resolved outside of Article III courts. Should the SEC finalize its climate disclosure rule and create a new right of action or shareholder suit, then it potentially puts climate change back into court, where it does not belong per *Juliana*.

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 liberal 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 is no surprise then that the SEC proposal is built off the U.N.'s Task Force on Climate-Related Disclosure, a derivative of the Paris Climate Accord.³² 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.³³ U.N. 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 advise and consent. However, with the latest SEC proposal, the strategic international work around has come full circle.

³⁰ 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>.

³¹ U.S. News, *Court Throws Out Kids' Climate Case Against Feds* (January 17, 2020), available at <https://www.usnews.com/news/national-news/articles/2020-01-17/court-tosses-juliana-climate-change-case-against-government>.

³² 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>.

³³ "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>.

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. Referencing compliance with the Paris Accord as a justification does not magically expand the scope of administrative authority. As experienced by other administrative agencies that have embraced this legally dubious path, it will result in protracted litigation and divert resources away from fulfilling important agency missions.

V. Distractions from the Commission’s mission will cause harm that goes beyond the investor class, negatively impacting the lives of everyday Americans.

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 implement 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, in which local residents were exposed to high concentrations of lead. At the time, DC-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.³⁴ 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 harms to residents and wildlife.³⁵

Other problems were prolonged and received less attention. This 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.³⁶ The agency’s Superfund program, which is charged with cleaning up the most polluted areas of our country, had been 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.³⁷

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

³⁴ 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/>.

³⁵ US 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>.

³⁶ US 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>.

³⁷ US 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.

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 form of distrust among the regulated community and disappointment among stakeholders who were promised outcomes that 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 consequences far beyond the investor class. It will make it harder and more complex for good ideas and technologies to gain access to public capital. It will also 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 for the American people. It estimates that in 2021, oil and gas production remained 23% below the pre-pandemic level of \$525 billion, while investment slumped by 30% 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 is needed to meet demand.³⁸ A codification and signal-sending endorsement of these same policies within the federal government will only exacerbate this damaging trend.

Additionally, reshaping investment strategy and capital allocation to favor perceived social good over financial returns can jeopardize the performance of funds, including pension retirement funds—and harm the millions of retired Americans depending on them.

VI. Conclusion

With record-breaking inflation, rising energy prices and a potential recession, it is increasingly important for Commissioners to adhere to the traditional intent, purpose, and affiliated authorities of the SEC. With this proposed climate disclosure rule, the SEC is on the precipice of being transformed from an important market watchdog to a political tool whereby its purpose and authorities are weaponized to disrupt and ultimately destroy politically disfavored, yet economically vital, industries.

While the benefits of the proposed climate disclosure rule are negligible at best, the consequences are vast: undercutting important agency missions, ignoring the rule of law, expanding the bureaucracy, wasting taxpayer dollars, increasing corporate liability, costing investors billions, limiting economic growth, and harming the economic future of American families. Furthermore, compelling an entire industry to disclose information, arbitrarily and without an enabling statute, is likely a violation of the First Amendment.

For the foregoing reasons, AFPI urges the SEC to set aside its proposed rule and to restore its focus on fulfilling the agency's statutorily authorized mission.

³⁸ 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>.