



United States House of Representatives  
One Hundred Eighteenth Congress  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

April 17, 2023

Megan Barbero  
General Counsel  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Dear Ms. Barbero:

We write as a follow up to our September 20, 2022, letter<sup>1</sup> and to reiterate our concern regarding the legal authority for the radical regulatory agenda that the Securities and Exchange Commission (“SEC” or “Commission”) has been pursuing under the leadership of Chair Gary Gensler.

As you know, the Commission—like any administrative agency—“has no power to act . . . unless and until Congress authorizes it to do so by statute.”<sup>2</sup> In the SEC’s case, the Securities Act and the Exchange Act (together, the “Acts”) limit the Commission’s authority to matters that further specific principles or directives set out in those Acts. As a result, the SEC cannot require disclosures or advance rulemakings on any topic it deems important. Instead, unless otherwise expressly authorized by Congress, the SEC may only act in areas that are necessary or appropriate to further those Acts.

In *West Virginia v. EPA*, the Supreme Court emphasized a “common sense” principle of statutory interpretation known as the “major questions doctrine.”<sup>3</sup> In that case, the Court reaffirmed the position that a government agency’s rulemaking authority is not unlimited and that the major questions doctrine requires a government agency to point to “clear” congressional authorization for its actions.<sup>4</sup> The Court held that an agency cannot make up new interpretations of laws based upon “vague terms” or “modest words” to justify far-reaching policy changes that Congress never intended.<sup>5</sup>

The Commission’s radical agenda plainly implicates the issues raised in *West Virginia v. EPA*. Over the next few months, the Commission is set to finalize massively expensive and complex changes to its regulatory regime that would redraw the structure of the U.S. equity markets,<sup>6</sup>

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<sup>1</sup> See Letter from McHenry, Comer, and Granger to Chair Gensler (September 22, 2022) available at [https://financialservices.house.gov/uploadedfiles/2023-02-22\\_hfsc\\_sbc\\_to\\_gensler\\_re\\_climate\\_disclosure\\_rule.pdf](https://financialservices.house.gov/uploadedfiles/2023-02-22_hfsc_sbc_to_gensler_re_climate_disclosure_rule.pdf).

<sup>2</sup> See *FEC v. Cruz*, 142 S. Ct. 1638, 1649 (2022).

<sup>3</sup> See 142 S. Ct. 2587, 2609 (2022).

<sup>4</sup> *Id.* at 2605.

<sup>5</sup> *Id.* at 2609-10 (second alteration in original).

<sup>6</sup> See Securities and Exchange Commission, *SEC Proposals: Market Structure* (December 2022) available at <https://www.sec.gov/newsroom/market-structure-proposals-december-2022>.

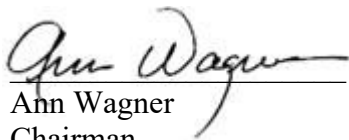
insert itself into the debate over climate change,<sup>7</sup> micromanage companies' cybersecurity programs,<sup>8</sup> and put onerous burdens on stock buyback programs.<sup>9</sup> These and other proposals would cost billions of dollars. By the Commission's own estimates, for instance, the climate rule alone would cost companies two-and-a-half times more than all SEC disclosures they currently make.<sup>10</sup>

To better understand the Commission's specific claims of authority to make these and other highly consequential changes to its regulatory regime, please provide written answers to the following questions.

1. Which of the proposals currently under consideration by the Commission raise "major questions" under *West Virginia v. EPA*? Please explain your reasoning.
  - a. If you do not identify the climate-disclosure rule as raising major questions:
    - i. Please explain in detail why in your view that proposal does not raise major questions.
    - ii. Please explain whether each of the items the rule would require companies to disclose is material under ordinary SEC standards of materiality.
2. Please describe what specific actions you or others within the Commission have taken to ensure the appropriate application of *West Virginia v. EPA* to the Commission's rulemaking process.

We would appreciate a response no later than May 1, 2023. Thank you for your attention to this important matter.

Sincerely,



Ann Wagner  
Chairman  
Subcommittee on Capital Markets



Bill Huizenga  
Chairman  
Subcommittee on Oversight and  
Investigations

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<sup>7</sup> See SEC Proposed Rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

<sup>8</sup> See SEC Proposed Rule, "Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure," available at <https://www.sec.gov/rules/proposed/2022/33-11038.pdf>.

<sup>9</sup> See SEC Proposed Rule, "Reopening of Comment Period for Share Repurchase Disclosure Modernization," available at <https://www.sec.gov/rules/proposed/2022/34-96458.pdf>.

<sup>10</sup> *The Enhancement and Standardization of Climate-Related Disclosures for Investors* (March 21, 2022), p. 456. The SEC estimates that the Proposed Rule would raise the cost burden associated with its related forms from a total of \$3.9 billion to \$10.2 billion – over a 2.5-fold increase.