No. 24-1626

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

TEXAS ALLIANCE OF ENERGY PRODUCERS and
DOMESTIC ENERGY PRODUCERS ALLIANCE,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

PETITIONERS' MOTION TO STAY ENFORCEMENT PENDING REVIEW

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the Petitioners confirm that neither the Texas Alliance of Energy Producers nor the Domestic Energy Producers Alliance have any parent corporation and that no publicly held corporation owns 10% or more of their stock.

s/ Luke A. Wake_________
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TABLE OF CONTENTS

Page

CORPORATE DISCLOSURE STATEMENT i
TABLE OF AUTHORITIES iii
INTRODUCTION 1
BACKGROUND 5
ARGUMENT 5
I. Petitioners Are Likely to Prevail on the Merits 6
  A. The Commission Lacks Statutory Authority 6
  B. The Climate Rule Violates the Nondelegation Doctrine 14
II. Petitioners Will Suffer Irreparable Harm Absent a Stay 19
CONCLUSION 22
CERTIFICATE OF SERVICE 23
CERTIFICATE OF COMPLIANCE 24

TABLE OF AUTHORITIES

Page(s)

Cases

A.L.A. Schechter Poultry Corp. v. United States,
295 U.S. 495 (1935) 18

Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.,
141 S. Ct. 2485 (2021) 7–8, 21

Ali v. Fed. Bureau of Prisons,
552 U.S. 214 (2008) 7

Am. Meat Inst. v. USDA,
760 F.3d 18 (D.C. Cir. 2014) 15

Am. Power & Light Co. v. SEC,
329 U.S. 90 (1946) 18–19

Basic Inc. v. Levinson,
485 U.S. 224 (1988) 12

Beecham v. United States,
511 U.S. 368 (1994) 9

Biden v. Nebraska,
143 S. Ct. 2355 (2023) 9

Breeze Smoke, LLC v. FDA,
18 F.4th 499 (6th Cir. 2021) 3

California v. Azar,
911 F.3d 558 (9th Cir. 2018) 20

Carter v. Carter Coal Co.,
298 U.S. 238 (1936) 16

Crowell v. Benson,
285 U.S. 22 (1932) 5

FDA v. Brown & Williamson Tobacco Corp.,
529 U.S. 120 (2000) 13

G & V Lounge, Inc. v. Mich. Liquor Control Comm'n,
23 F.3d 1071 (6th Cir. 1994) 21

Gonzales v. Oregon,
546 U.S. 243 (2006) 13

Gordon v. Holder,
721 F.3d 638 (D.C. Cir. 2013) 21

Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson,
559 U.S. 280 (2010) 7

Gundy v. United States,
139 S. Ct. 2116 (2019) 4

Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.,
448 U.S. 607 (1980) 17

Ledbetter v. Baldwin,
479 U.S. 1309 (1986) 20

Llewelyn v. Oakland Cnty. Prosecutor's Office,
402 F. Supp. 1379 (E.D. Mich. 1975) 21

Louisiana Pub. Serv. Comm'n v. FCC,
476 U.S. 355 (1986) 11

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992) 21

Matrixx Initiatives, Inc. v. Siracusano,
563 U.S. 27 (2011) 12

Montejo v. Louisiana,
556 U.S. 778 (2009) 20

Nken v. Holder,
556 U.S. 418 (2009) 6

Norfolk & Western Ry. Co. v. Train Dispatchers,
499 U.S. 117 (1991) 7

Panama Refin.Co. v. Ryan,
293 U.S. 388 (1938) 5, 14–15, 18

Schindler Elevator Corp. v. U.S. ex rel. Kirk,
563 U.S. 401 (2011) 10

Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs,
531 U.S. 159 (2001) 14

TSC Indus., Inc. v. Northway, Inc.,
426 U.S. 438 (1976) 12, 17

Union Pac. Ry. Co. v. U.S. Dep't of Homeland Sec.,
783 F.3d 885 (8th Cir. 2013) 11

Util. Air Regul. Grp. v. EPA,
573 U.S. 302 (2014) 14

Washington v. Glucksberg,
521 U.S. 702 (1997) 14

West Virginia v. EPA,
597 U.S. 697 (2022) 3, 14, 18

Youngstown Sheet & Tube Co. v. Sawyer,
343 U.S. 579 (1952) 21

Statutes

5 U.S.C. § 702 20

15 U.S.C. § 77aa 6, 9

15 U.S.C. § 77b(b) 17

15 U.S.C. § 78l(b) 10

42 U.S.C. § 264(a) 8

15 U.S.C. § 77g(a)(1) 6

15 U.S.C. §§ 77k-*l* 12

Regulations

17 CFR § 229.1501 (effective May 2024) 1–2

17 CFR § 229.1505 (effective May 2024) 1

Rule

Fed. R. App. P. 18(a)(2)(A)(i) 3

Other Authorities

Commission Guidance Regarding Disclosure Related to Climate Change (Feb. 2, 2010), https://www.sec.gov/files/rules/interp/2010/33-9106.pdf 17, 20

Knights of Columbus Joins Pro-Life Advocates at 51st Annual March for Life in Washington, D.C., PR Newswire (Jan. 19, 2024), https://www.prnewswire.com/news-releases/knights-of-columbus-joins-pro-life-advocates-at-the-51st-annual-march-for-life-in-washington-dc-302039928.html 15

Lee, Allison Herren, SEC Comm'r, *Living in a Material World: Myths and Misconceptions about "Materiality"* (May 24, 2021), https://www.sec.gov/news/speech/lee-living-material-world-052421#_ftnref6 12–13

Liberty Energy's Emergency Mot. for Stay, *Liberty Energy v. SEC*, No. 24-1628 (8th Cir. filed Mar. 26, 2024) 2

Napoletano, E., *Do Your Investments Support LGBTQ+ Equality?,* Forbes (June 22, 2023), https://www.forbes.com/advisor/investing/lgbt-friendly-investments 16

SEC Opp. to Pet. Emergency Mtn. for Admin. Stay, *Liberty Energy v. SEC*, No. 24-60109 (5th Cir. filed Mar. 13, 2024) 11

The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668 (Mar. 28, 2024) (to be codified at 17 C.F.R. §§ 210, 229, 230, 232, 239, 249) .... *passim*

Uyeda Mark T., SEC Comm'r, *A Climate Regulation under the Commission's Seal: Dissenting Statement on The Enhancement and Standardization of Climate-Related Disclosures for Investors* (Mar. 6, 2024) 13

INTRODUCTION

For the first time in its ninety-year history, the U.S. Securities and Exchange Commission has seized power to compel disclosures from publicly traded companies on environmental and social governance matters that have nothing to do with the agency's statutory mission of protecting investors and facilitating healthy capital markets. *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668 (Mar. 28, 2024) (Commission's Mar. 6, 2024 "Climate Rule" to be codified at 17 C.F.R. §§ 210, 229, 230, 232, 239, 249). The Climate Rule will soon compel burdensome corporate non-financial disclosures on climate change. Among other newly required climate disclosures, public companies must now: (1) acknowledge if they have yet to establish governance structures for confronting climate change, 17 C.F.R. § 229.1501 (effective May 2024); (2) report their greenhouse gas emissions if the Commission might deem them "material," *id.* at § 229.1505; and (3) acknowledge all conceivable "climate-related risks that" the Commission may deem "reasonably likely to have a material impact" on ***either*** the company's "financial condition" ***or*** financially

irrelevant matters of business "strategy" and "operations." *Id.* at § 229.1501.

In all this, the Climate Rule arrogates, to the SEC, Congress's exclusive authority to decide national climate change policy. The Commission claims that it can impose any disclosure rule it deems "in the public interest or for the protection of investors." 89 Fed. Reg. at 21683. But this is wrong for the reasons set forth already by Liberty Energy and the U.S. Chamber of Commerce in their respective—still pending—motions to stay enforcement. Those motions correctly explain that the Commission's rulemaking authority is limited to promulgating rules concerning disclosure of financial information, and that the Commission has no roving power to impose *any* disclosure rule it may deem "in the public interest" or "for the protection of investors." *See* Liberty Energy's Emergency Mot. for Stay at 13–20, *Liberty Energy v. SEC*, No. 24-1628 (8th Cir. filed Mar. 26, 2024).

The Texas Alliance of Energy Producers and the Domestic Energy Producers Alliance (collectively, "Alliance") now file their own Motion to Stay Enforcement because their members will suffer irreparable harm

unless the Climate Rule is enjoined quickly.[1] The Alliance agrees with Liberty and the Chamber that this Court can easily resolve this case by employing the major questions doctrine because the Commission relies on oblique language to impose a rule with major "economic and political" consequences. *West Virginia v. EPA*, 597 U.S. 697, 721 (2022). Therefore, in the interest of judicial economy, the Alliance incorporates the statutory arguments advanced by Liberty and the Chamber.

Yet the Alliance advances *additional arguments* that underscore the need for immediate relief.[2] First, the Commission has no statutory authority to compel companies to speak on climate change issues, except to the extent needed to clarify an otherwise misleading financial statement. But the Climate Rule compels all public companies to speak

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[1] The Petitioners are trade associations representing both small and publicly traded companies in the energy industry. *See* Exhibit A, Declaration of Karr Ingham ¶¶ 3–4; Exhibit B, Declaration of Jerry Simmons ¶¶ 3–4.

[2] It would have been impracticable to seek immediate relief before the Commission because the agency already has rejected countless comments contesting its authority and compliance efforts must begin immediately. *See* Fed. R. App. P. 18(a)(2)(A)(i). *See also Breeze Smoke, LLC v. FDA*, 18 F.4th 499, 503 (6th Cir. 2021) (stay is impracticable where contested rule imposes immediate injuries). The Commission opposes the relief sought in this pleading.

on climate change matters—regardless of whether they have said anything that could plausibly mislead investors on financial matters.[3]

Second, if the Commission truly has authority to impose any disclosure requirement that any three Commissioners might deem "in the public interest or for the protection of investors," then those provisions within the Securities Act and Securities and Exchange Act ("Securities Laws") violate the nondelegation doctrine.[4] The Constitution forbids Congress from delegating rulemaking powers without a governing intelligible principle. *See Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (Kagan, J., plurality op.) (affirming that "we would face a nondelegation question" if the statute "grant[ed] [the agency] plenary power" to make whatever rules it deems "fit."). Therefore, the Securities Laws should not be construed as delegating open-ended powers for the Commission to police corporate America with whatever socially or politically minded disclosure rules that the Commission might "think

[3] The Alliance presses a First Amendment claim. Respecting judicial economy, this motion incorporates the arguments set forth by Liberty and the Chamber on that issue. But the Alliance adds that the avoidance canon forecloses the Commission's constitutionally infirm statutory interpretation.

[4] Specifically, the SEC claims statutory authority for the Climate Rule under Sections 7, 10, 19(a), and 28 of the Securities Act and Sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act. Climate Rule, 89 Fed. Reg. at 21912.

desirable." *Panama Refin. Co. v. Ryan*, 293 U.S. 388, 421 (1938). *See Crowell v. Benson*, 285 U.S. 22, 62 (1932) (courts should avoid "serious [constitutional] doubt").

BACKGROUND

The Commission finalized the Climate Rule on March 6, 2024, after a hotly divided 3-2 vote. The Commission claims that it has authority for this Rule because the Securities Laws delegate "very broad" authority. Climate Rule, 89 Fed. Reg. at 21683, n.181. Specifically, the Commission claims that it can impose any disclosure rule that it deems "in the public interest or for the protection of investors" and that this elastic authority "authorize[s] the Commission to . . . build on the framework" that Congress created to impose climate disclosure rules simply because of alleged investor interest in the environment. *Id*. at 21683, 21685.

ARGUMENT

This Court should grant the Alliance's Motion to Stay Enforcement because: (i) the Petitioners are likely to prevail on the merits; (ii) the Petitioners will be irreparably harmed absent a stay; (iii) little or no harm will come to others if the stay is granted; and (iv) a stay will serve the public interest. *Nken v. Holder*, 556 U.S. 418, 425–26 (2009). The first

two factors are most critical. *Id.* at 434. The third and fourth factors merge when the government is the opposing party. *Id.* at 435.

I. Petitioners Are Likely to Prevail on the Merits

A. The Commission Lacks Statutory Authority

The Commission's primary authority for compelling climate related disclosures is section 7(a)(1) of the Securities Act, 15 U.S.C. § 77g(a)(1)—which incorporates an enumerated a list of financially relevant "Schedule A" disclosures, 15 U.S.C. § 77aa, that companies must make in their registration statements, and then provides the Commission with authority to require additional disclosures "as the Commission may . . . [deem] necessary or appropriate in the public interest or for the protection of investors." In the Commission's view, the authority to require additional disclosures "in the public interest or for the protection of investors" should be construed as a roving power to compel disclosure on any subject that certain investors care about when making their "voting decisions"—regardless of how tenuous that subject may be to the *financial* risks of investment. Climate Rule, 89 Fed. Reg. at 21685. But that approach violates basic canons of statutory construction. *See*

Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson, 559 U.S. 280, 287 (2010) ("A word may be known by the company it keeps.")

When a statute enumerates specific regulatory requirements and delegates rulemaking authority for an agency to impose additional requirements as it may deem "necessary or appropriate," that delegation must be construed as limiting the agency's authority to imposing rules of a similar character to those expressly enumerated in the text. *See Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 223 (2008) ("[W]hen a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration.") (*quoting Norfolk & Western Ry. Co. v. Train Dispatchers*, 499 U.S. 117, 129 (1991)).

For example, when the Centers for Disease Control and Prevention imposed a national eviction moratorium under the Public Health Service Act, the Supreme Court rejected the CDC's argument that it had authority to impose any conceivable order that the agency might deem "necessary" to control the spread of contagious disease. *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021) ("*Alabama Realtors*"). The text gave specific examples of the sorts of

orders that the CDC was authorized to pursue—all of which confirmed that Congress envisioned the CDC was limited to traditional disease control measures. *See* 42 U.S.C. § 264(a) (authorizing "inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected.") Accordingly, the Court concluded that it was unreasonable to construe the seemingly capacious delegation of authority to issue orders as deemed "necessary" to control contagious disease as authority for an eviction moratorium. *Alabama Realtors*, 141 S. Ct. at 2488 ("[T]he second sentence informs the grant of authority by illustrating the kinds of measures that could be necessary.")

As in *Alabama Realtors*, it is inappropriate to construe section 7(a)(1)'s residual clause as authorizing any conceivable rule that the Commission should deem "necessary or appropriate." Here, the text requires a catalogue of very specific information. But unlike the Commission's novel climate-focused disclosure rules, all the information that Congress deemed important in the text relates directly to corporate performance or matters that are obviously relevant to investors. For example, Schedule A requires that registration statements must include information on the issuer's name; organizational jurisdiction; principal

business office; names and addresses of management; underwriters; major shareholders, and counsel; nature of the business; capital stock amounts per class; outstanding funded debt; estimated net proceeds; proposed security offering price; promoter fees; major contracts; balance sheet; profit and loss statement; and articles of incorporation. *See* 15 U.S.C. § 77aa. As such, the Commission's delegated rulemaking authority must be understood—in context—as limited to requiring disclosures concerning a corporation's financial and business operations. *See Beecham v. United States*, 511 U.S. 368, 372 (1994) ("The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences."); *see also Biden v. Nebraska*, 143 S. Ct. 2355, 2378 (2023) (Barrett, J., concurring, quoting Scalia, J.) ("'In textual interpretation, context is everything.' After all, the meaning of a word depends on the circumstances in which it is used.") (internal parentheticals omitted).

Nor does the Commission fare any better in pointing to other delegations of rulemaking authority to issue rules "in the public interest or for the protection of investors" elsewhere in the Securities Laws. In each instance, the Commission seeks to construe the text as conferring

rulemaking authority without boundaries. But this does not comport with the prescriptive language Congress used elsewhere. *See Schindler Elevator Corp. v. U.S. ex rel. Kirk*, 563 U.S. 401, 412 (2011) (text must be construed to ensure "the statutory scheme is coherent and consistent").

For example, the Exchange Act lists registration requirements for securities and provides that the Commission may promulgate rules "in the public interest or for the protection of investors"—but only "in respect of" an enumerated list of disclosures that Congress deemed important. 15 U.S.C. § 78l(b). Here as well, the enumerated list makes clear the limited universe of permissible disclosure rules. For example, the Commission may make rules concerning required disclosures of: "bonus and profit-sharing arrangements"; "management and service contracts"; "balance sheets"; "profit and loss statements"; and "financial statements." *Id.* All of this confirms that Congress granted the Commission authority to command disclosures that relate to the financial performance of a company. But the Commission claims that the Securities Laws delegate authority to compel disclosure on non-financial markers, such as supposed "material impact" or "likely material impact" of "climate-risks" on a company's "strategy" and "results of operation"—

without regard to whether climate risks are anticipated to have any impact on the company's "financial condition." Climate Rule, 89 Fed. Reg. at 21915.

Failing to identify any textual basis for construing its rulemaking authority as a blank-check to compel any disclosure that certain investors might want, the Commission pivots to its "longstanding view" that it has a general power to require disclosures to help investors "understand[] the material risks faced by a registrant and how the registrant manages those risks . . . ." *Id.* at 21684. But the Commission has no power to impose any rule unless it can point to authority in the text Congress enacted. *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 357 (1986) ("An agency literally has no power to act . . . unless and until Congress confers power upon it.") *See also Union Pac. Ry. Co. v. U.S. Dep't of Homeland Sec.*, 783 F.3d 885, 896 (8th Cir. 2013) ("[O]ur 'starting point in discerning congressional intent is the existing statutory text.'") And here, the Commission already has acknowledged that "the word 'material' is nowhere to be found in the provisions granting the Commission authority to require disclosures." SEC Opp. to Pet.

Emergency Mtn. for Admin. Stay at 13, *Liberty Energy v. SEC* (No. 24-60109) (5th Cir. filed Mar. 13, 2024).

For that matter, the Commission's claim to authority to compel disclosure on anything it deems "material" or "likely" material is inapposite. In the Securities Laws, materiality is a factor in determining liability for securities fraud—not a license for expanding the Commission's rulemaking authority. *See, e.g.*, 15 U.S.C. §§ 77k–*l* (Securities Act, §§ 11–12). A statement or omission is material if its inclusion or omission has the potential to mislead investors in making financial decisions. *See TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *see also Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988). As the Supreme Court has noted, "[i]t bears emphasis that [anti-fraud securities laws] do not create an affirmative duty to disclose any and all material information." *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44–45 (2011). That is so because "[s]ilence, absent a duty to disclose, is not misleading." *Id.* Thus, "[e]ven with respect to information that a reasonable investor might consider material, companies can control what they have to disclose under these provisions by controlling what they say to the market." *Id. See also* Allison Herren Lee, SEC Comm'r, *Living in*

a Material World: Myths and Misconceptions about "Materiality" (May 24, 2021).[5]

But even if the authority to promulgate rules "in the public interest or for the protection of investors" could be construed as an open-ended authority to require disclosure on *anything* that *any* segment of investors might care about, it would be unreasonable to embrace such an unbounded view of the Commission's rulemaking authority. That is true because the major questions doctrine assumes that Congress does not intend to delegate rulemaking authority on issues of major economic and political importance absent a clear statement of authority. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000) (finding FDA lacked authority to ban tobacco products absent a clear Congressional grant of authority, given tobacco's long American political history); *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006) (requiring a clear

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[5] https://www.sec.gov/news/speech/lee-living-material-world-052421#_ftnref6. *See also* Mark T. Uyeda, SEC Comm'r, *A Climate Regulation under the Commission's Seal: Dissenting Statement on The Enhancement and Standardization of Climate-Related Disclosures for Investors*, (Mar. 6, 2024) ("After the rule goes into effect, companies will have a duty to provide prescriptive, climate-related disclosure knowing that any non-disclosure, including assessments of materiality, will be judged in hindsight. To avoid potential liability, companies may voluntarily disclose climate-related information despite concluding that the information is immaterial . . . The takeaway is that climate will be nearly everything, everywhere, all at once for public companies.").

statement for an assertion of regulatory authority that would cut off an "'earnest and profound debate' across the country") (*quoting Washington v. Glucksberg*, 521 U.S. 702, 735 (1997)). And even without the major questions doctrine, this Court must avoid any interpretation of the statute that would create a constitutional problem.[6] *See Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172–73 (2001) ("Congress does not casually authorize administrative agencies to interpret a statute to push the limit of congressional authority."). As the next section shows, the SEC's interpretation would violate the nondelegation doctrine.

B. The Climate Rule Violates the Nondelegation Doctrine

The Constitution prohibits Congress from delegating broad rulemaking powers without a governing intelligible principle. *See Panama Refin.*, 293 U.S. at 421. But there is no intelligible principle if "[investor] interest alone [is] sufficient" to justify non-financially focused

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[6] The Supreme Court has signaled that questions over whether the United States should impose regulation to address climate change concerns implicates the major questions doctrine on a *per se* basis. *See West Virginia*, 597 U.S. 697, 731–32 (stressing legislative history demonstrating Congressional reticence to impose regulation to address climate change); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (rejecting aggressively broad interpretation of nebulous language in Clean Air Act).

disclosure rules because—at that point—there "is no end to the information that [the Commission] [might] require [companies] to disclose . . . ." *Am. Meat Inst. v. USDA*, 760 F.3d 18, 31–32 (D.C. Cir. 2014) (Kavanaugh, J., concurring).

As the Supreme Court made clear in *Panama Refining*, a statute violates the intelligible principle test if Congress has given a blank check for the executive branch to do whatever it thinks "desirable." 293 U.S. at 421. But that is exactly what the Commission asserts here in claiming that it can issue any rule that any three Commissioners deem "in the public interest or for the protection of investors." And it is no answer for the Commission to say that its rulemaking authority is guided by investor interest because investors may take interest in any conceivable social or political issue.

Some investors care about whether companies are contributing to Planned Parenthood.[7] Others care about whether companies support or

[7] *See, e.g.*, *Knights of Columbus Joins Pro-Life Advocates at 51st Annual March for Life in Washington, D.C.*, PR Newswire (Jan. 19, 2024), https://www.prnewswire.com/news-releases/knights-of-columbus-joins-pro-life-advocates-at-the-51st-annual-march-for-life-in-washington-dc-302039928.html, (noting that the Knights of Columbus "offers investment services in accord with Catholic social teaching").

oppose LGBTQ rights.[8] Still others care whether companies are prioritizing "equity" in the workplace or embracing affirmative action. There is no end to the number and variety of big social causes—whether consequential or faddish—investors might want companies to embrace. And there is no way to determine *ex ante* whether and how any such issue will or will not impact the financial condition of every company in the nation. The same is true of climate change, yet the Commission offers no explanation for why investor interest in climate change warrants disclosure while investor interest in other social and political matters does not.[9] Climate Rule, 89 Fed. Reg. at 21686.

The authority to impose rules "in the public interest" is not an intelligible principle if the Commission is free to decide what serves the public interest without some objective standard rooted in the text. Unless the Commission is ***limited*** to promulgating rules that "promote

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[8] *See* E. Napoletano, *Do Your Investments Support LGBTQ+ Equality?*, Forbes (June 22, 2023), https://www.forbes.com/advisor/investing/lgbt-friendly-investments.

[9] What is more, there would be a nondelegation problem if Congress had delegated power to impose disclosure rules based on the demands of certain politically motivated investors because that would allow private interests to commandeer Congress' lawmaking powers. For example, in *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936), the Supreme Court held that it was unconstitutional for a statute to make minimum wage and other labor standards contingent on the preferences of labor and industrial stakeholders within a given district.

efficiency, competition, and capital formation," 15 U.S.C. § 77b(b), there is no governing standard controlling the Commission's discretion.[10]

Nor can the Commission rely on the general purpose of the securities laws for an intelligible principle. *See Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 682–84 (1980) (Rehnquist, J., concurring) (discussing Supreme Court's nondelegation jurisprudence and observing that while Court has considered congressional policy statements, the Court never has relied on general legislative purpose alone in upholding a statutory delegation). On the contrary, the Supreme Court's decisions confirm that an appeal to general statements of policy is insufficient in the absence of some textually grounded directive. *See Panama Refin.*, 239 U.S. at 417–18 (finding no "policy" speaking to "the

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[10] The GHG Rule does nothing to promote "efficiency, competition, and capital formation." On the contrary, the Rule undermines efficiency in imposing major burdens without any benefits to investors. Worse, it undermines market efficiency by burying investors in a sea of immaterial disclosures that obscure important matters. *See TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (securities law should not be construed to compel disclosures that will "bury [] shareholders in an avalanche of trivial information.") *See also* Commission Guidance Regarding Disclosure Related to Climate Change, 18 (Feb. 2, 2010), https://www.sec.gov/files/rules/interp/2010/33-9106.pdf ("2010 Guidance") ("The Commission has recognized that the effectiveness of [disclosures] decrease[] with the accumulation of unnecessary detail or duplicative or uninformative disclosure that obscures material information.") The Climate Rule does nothing to promote competition in the market. It serves only to manipulate natural market forces by incentivizing companies to adopt environmental reforms that may be economically inefficient. *See* Ex. B at ¶¶ 13, 20. While that may serve environmental goals, it does nothing to advance free market competition.

circumstances or conditions in which transportation of petroleum . . . should be prohibited"); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 523 (1935) (finding no intelligible principle in National Industrial Recovery Act's broad goal of improving economic conditions in face of emergency).

Nor does the authority to impose rules "for the protection of investors" entail an intelligible principle. Just as the Supreme Court said that the NIRA's supposed goal of promoting "fair competition" was insufficient, the authority to promulgate rules "for the protection of investors" is meaningless if the Commission can wield this authority to require non-financial disclosures. *See Schechter*, 295 U.S. at 531. Indeed, if "for the protection of investors" is understood as an "empty vessel" to be filled with whatever meaning any three Commissioners might deem fitting, there is no limit to what the Commission might require companies to disclose. *West Virginia*, 597 U.S. at 732.

Finally, the Commission was wrong in relying on *American Power & Light Co. v. SEC*, 329 U.S. 90, 104 (1946), in rejecting nondelegation concerns raised in comment letters. Climate Rule, 89 Fed. Reg. at 21686. In that case, Congress had specifically authorized the Commission to

compel dissolution of certain holding companies where their structure was "unduly or unnecessarily complicate[d]" or the company "unfairly or inequitably distribute[d] voting power among security holders." *Am. Power & Light Co*, 329 at 97. Both the legislative history and the text clarified that Congress established a policy aimed at pyramided holding companies, which limited the Commission's discretion. *Id.* at 103 (noting that it was "found in § 1(b)(3) that the national public interest . . . may be adversely affected 'when control of such (subsidiary) companies is exerted through disproportionately small investment.'") By contrast, nothing in the text of the Securities Laws establishes any policy governing the Commission's authority to promulgate rules "for the protection of investors" unless that authority is directly connected to financial performance.

II. Petitioners Will Suffer Irreparable Harm Absent a Stay

The Climate Rule is causing irreparable harm to the Alliance's publicly traded members because it imposes irrecoverable compliance costs for which Petitioners are now actively undertaking efforts. Ex. B ¶ 17. Petitioners cannot recoup spent time, energy, and money devoted to compliance with unlawful regulation. *See* 5 U.S.C. § 702 (allowing only

declaratory and injunctive relief). *See also California v. Azar,* 911 F.3d 558, 581 (9th Cir. 2018) (recognizing irreparable harm as APA forecloses "monetary damages"). Therefore, these compliance costs constitute irreparable harm. *See Ledbetter v. Baldwin*, 479 U.S. 1309, 1310 (1986).

III. A Stay Serves the Public Interest

No one will suffer harm if Petitioners' Motion for Stay is granted because no one has reliance interests in the Commission's unprecedented climate disclosure regime. *Cf. Montejo v. Louisiana*, 556 U.S. 778, 793 (2009) (reliance interests concern only settled expectations). For that matter, the Commission's existing regulations already require climate related disclosures to the extent necessary to avoid misleading investors when speaking on financial matters. *See* 2010 Guidance, *supra* n.10. As such, only politically motivated climate change activists may be disappointed by a delay in implementation of their preferred, but patently unlawful, policies. However, there is no cognizable injury in the temporary frustration of one's political desires. *Cf. Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (rejecting claims of abstract injuries).

Moreover, it is "always in the public interest" to enforce the Constitution. *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23

F.3d 1071, 1079 (6th Cir. 1994). "[T]he Constitution is the ultimate expression of the public interest." *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (quoting *Llewelyn v. Oakland Cnty. Prosecutor's Office*, 402 F. Supp. 1379, 1393 (E.D. Mich. 1975)). So, where it is clear that a federal agency has exceeded its statutory powers in violation of our constitutional structure or otherwise violated the nondelegation doctrine, equitable relief is necessarily in the public interest. *See Alabama Realtors*, 141 S. Ct. at 2490 (concluding that public's "strong interest in combatting the spread of COVID-19[,]" did not outweigh the equitable concerns of landlords facing an unlawful eviction moratorium because "our system does not permit agencies to act unlawfully even in pursuit of desirable ends") (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582, 585–86 (1952)).

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request an order staying enforcement of the Climate Rule.

DATED: April 3, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system.

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