Securities and Exchange Commission
"Rescission of Climate-Related Disclosure Rules"
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The Competitive Enterprise Institute (CEI) is pleased to comment on the Securities and Exchange Commission's proposal to rescind its climate disclosure rule. Since 1984, CEI has published research in support of free markets and limited government and has long advocated for policies that increase consumer choice, free investors from undue government burdens, and protect Americans from abuse by government agencies. CEI policy experts frequently comment on a wide variety of economic policy topics, including finance, regulatory reform, and property rights.

Introduction

The agency's proposed rescission of its climate disclosure rule states that "The Final Rules were a dramatic overreach of the Commission's statutory authority and, independently, unsound as a matter of policy."[3] This verdict is broadly consistent with the multiple commentaries submitted and published by the Competitive Enterprise Institute over the last several years, including in response to then-Acting Chair Allison Herren Lee's request for information on climate disclosure in 2021[4] and in response to the notice of proposed rulemaking for "The Enhancement and Standardization of Climate-Related Disclosures for

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[3] "Rescission of Climate-Related Disclosure Rules," Release Nos. 33-11421; 34-105572; File No. S7-2026-19, https://www.sec.gov/files/rules/proposed/2026/33-11421.pdf.
[4] Richard Morrison, "Public Input on Climate Change Disclosures: Questions for Consideration," Competitive Enterprise Institute, June 11, 2021, https://cei.org/regulatory_comments/public-input-welcomed-on-climate-change-disclosures-questions-for-consideration/.

Investors" in 2022.[5] It is also consistent with related analysis presented in CEI studies "The SEC's Costly Power Grab,"[6] "Climate Disclosure Spam,"[7] and "Climate Disclosure's Triple Threat."[8] It is also consistent with many popular commentaries published over the last several years.[9] The Commission is to be commended for reconsidering its previous flawed policy and moving under its current leadership toward remedying previous errors of judgement.

Lack of Statutory Authority

The Commission rightly emphasizes its lack of statutory authority in its explanation of its proposed withdrawal of the climate disclosure rule. While the final rule has multiple other deficiencies that are also grounds for proceeding with rescission, the statutory question is clearly primary. As with any rulemaking by any agency, a lack of authorization by statute alone renders further analysis redundant in terms of legal legitimacy.

As the SEC acknowledges in its current proceeding, its authority to require public companies to make disclosures of financially material information does not extend to environmental and social topics like climate change. The SEC's independent disclosure authority is broad but not unbound. Congress has acted multiple times since the agency was created to give it authority to require disclosures on topics that fall outside the purpose of protecting investors, such as conflict minerals and resource extraction.[10] Like conflict minerals and resource extractions, the SEC needs authority from Congress to require

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[5] Richard Morrison et al., "CEI Comments to SEC on Proposed Climate-Related Disclosures Rule," Competitive Enterprise Institute, June 16, 2022, https://cei.org/regulatory_comments/cei-comments-to-sec-on-proposed-climate-related-disclosures-for-investors-rule/.

[6] Richard Morrison, "The SEC's Costly Power Grab: The Securities and Exchange Commission's Climate Disclosure Risk Proposal Threatens an End-Run around Congress on Climate Policy," Competitive Enterprise Institute, June 2, 2022, https://cei.org/studies/the-secs-costly-power-grab/.

[7] Stone Washington, "Climate Disclosure Spam: Why investors will suffer if SEC's new rule survives," Competitive Enterprise Institute, June 26, 2024, https://cei.org/studies/climate-disclosure/.

[8] Stone Washington, "Climate Disclosure's Triple Threat: SEC, EU, and California regulators pile it on," Competitive Enterprise Institute, December 5, 2024, https://cei.org/studies/climate-disclosures-triple-threat/.

[9] Richard Morrison, "Let a Thousand ESG Certifiers Bloom," *National Review*, September 1, 2020, https://www.nationalreview.com/2020/09/esg-private-certification-should-proliferate/.
Richard Morrison, "Climate Change: The SEC Turns Up the Heat," *National Review*, March 24, 2022, https://www.nationalreview.com/2022/03/climate-change-the-sec-turns-up-the-heat/.
Richard Morrison, "SEC's Climate Rule Is Finally Here, but for How Long?," *National Review*, March 24, 2024, https://www.nationalreview.com/2024/03/secs-climate-rule-is-finally-here-but-for-how-long/.
Richard Morrison, "Time to End the ESG Shakedown," National Review, January 16, 2025, https://www.nationalreview.com/2025/01/time-to-end-the-esg-shakedown/.
Richard Morrison, "The Insane Climate Bureaucracy That Never Was," *National Review*, June 2, 2026, https://www.nationalreview.com/2026/06/the-insane-climate-bureaucracy-that-never-was/.

[10] 15 U.S.C. §§ 78m(p) and (q).

disclosures on climate change. Congress can act at any time to confer this authority onto the SEC but has not done so.[11]

Section 13(a) of the Securities Exchange Act of 1934 gives the SEC authority to prescribe rules that are “necessary or appropriate for the proper protection of investors and to insure fair dealing in the security,” but does not mention advancing non-financial policy goals, as the agency is currently attempting to do with climate change. Subsection (b) makes it unlawful to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."[12] The Supreme Court in *TSC Industries Inc. v. Northway Inc.* (1976) held that materiality applies to information about which there is “a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.”[13] The Court adopted the materiality rule “for the § 10(b) and Rule 10b-5 context” in *Basic Inc. v. Levinson* (1988). Neither SEC Rule 10b-5 17 C.F.R. § 240.10b-5 nor the *Basic Inc.* materiality standard establishes non-financial public policy goals as a basis for creating new disclosure requirements.

Some proponents of more aggressive climate regulation have ironically given the game away via their own advocacy efforts. Such commenters have urged the SEC forward with the argument that action is even more necessary than would otherwise be the case because there currently is no existing legal mandate on climate change and corporate governance – something only Congress has the power to establish.[14] They are, in effect, saying that if Congress refuses to act to establish their preferred policy outcomes, it becomes a moral imperative for independent agencies to step into this ostensible gap and create those policies of their own accord.

That argument may convince their fellow policy advocates, but that is not how the dynamics of federal power work under the U.S. Constitution, especially not in an era where the U.S. Supreme Court has increased its recognition of the limits imposed on agency discretion through a series of landmark decisions. It overruled *Chevron* deference,[15] formalized the Major Questions Doctrine,[16] reinforced the nondelegation doctrine,[17]

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[11] Andrew N. Vollmer, “The SEC Lacks Legal Authority to Adopt Climate-Change Disclosure Rules,” Mercatus Center, April 12, 2022, https://www.mercatus.org/publications/financial-regulation/sec-lacks-legal-authority-adopt-climate-change-disclosure-rules.

[12] 17 C.F.R. § 240.10b-5

[13] Jonathan D. Brightbill and Jennifer Roualet, “Evaluating Challenges to SEC’s ESG Disclosure Proposal,” Winston & Strawn, LLP, August 25, 2021, https://www.winston.com/en/winston-and-the-legal-environment/evaluating-challenges-to-secs-esg-disclosure-proposal.html. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438 (1976), https://supreme.justia.com/cases/federal/us/426/438/.

[14] “SEC Proposal on Climate-Related Disclosures for Investors,” Wellington Management, June 17, 2022, https://www.sec.gov/comments/s7-10-22/s71022-20131856-302305.pdf.

[15] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

[16] Michael Sebring, “The Major Rules Doctrine,” *Georgetown Journal of Law and Public Policy*, September 17, 2018, https://www.law.georgetown.edu/public-policy-journal/blog/the-major-rules-doctrine/.

[17] *Gundy v. United States*, 588 U.S. 128, 139 S. Ct. 2116, 204 L. Ed. 2d 522 (2019).

curtailed agency adjudication by requiring jury trials for common-law-type enforcement claims,[18] and broadened the window for judicial review of agency rules under the APA.[19]

Agencies can no longer rely on *Chevron* deference. Ambiguous provisions of an agency's enabling statute are now subject to *de novo* review. More importantly, for actions of vast economic and political significance, agencies must identify explicit and clear congressional authorization. Given how widely and frequently bills related to greenhouse gases, environmental quality, and energy use have been proposed and debated in Congress in recent years, the SEC's lack of specific authority over climate is not an oversight. It is a conscious policy choice by the legislative branch of government. That Congress chose not to take action in this instance reinforces the SEC's lack of authority to adopt the 2024 final rules, no matter how pressing the agency's commissioners believe the issue to be.

First Amendment Concerns

In addition to the general lack of statutory authority, the SEC's current proposal lists four other policy-specific deficiencies of the climate disclosure rule (inconsistent with materiality-based approach, strays beyond securities laws, imposes substantial costs, and at odds with the agency's other policy objectives). One concern that does not make the list, however, is the conflict with First Amendment protections for freedom of expression. This is a significant oversight and the rescission proposal's one significant flaw. The rule raises substantial First Amendment concerns that would have warranted serious judicial consideration had the merits been reached in the Eighth Circuit.

Most importantly, the disclosures that the climate disclosure rule currently requires constitute compelled speech on the part of public companies. The federal government's authority to compel speech by corporations is generally limited to information that is "purely factual and uncontroversial."[20] That is clearly not the case with the SEC's proposed climate rule. As Thomas Berry and Jennifer Schulp have written for the Cato Institute, "…the First Amendment protects 'the decision of both what to say and what not to say.'" The Supreme Court has also held that the First Amendment's protection against compelled speech extends "not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid."[21]

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[18] *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 144 S. Ct. 2117, 219 L. Ed. 2d 650 (2024)
[19] *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 144 S. Ct. 2440, 219 L. Ed. 2d 1139 (2024)
[20] "Compelled Speech: Overview," Legal Information Institute
, Cornell Law School, accessed July 27, 2026, https://www.law.cornell.edu/constitution-conan/amendment-1/compelled-speech-overview.
[21] Thomas A. Berry and Jennifer J. Schulp, "SEC Should Reject Climate Rules over First Amendment Issue," Cato Institute, July 2, 2022, https://www.cato.org/commentary/sec-should-reject-climate-rules-over-first-amendment-issue.

Such a regulation is especially questionable when considering that it would require a firm to make statements about itself that might be both subjective and disparaging.[22] The number of assumptions about climate science and policy that firms would have to make render substantial portions of the information produced to be subjective.

There is strong precedent for federal courts taking these First Amendment protections seriously. In *National Association of Manufacturers v. SEC* (2015), a federal appeals court invalidated the statutory provision under Section 1502 of the Dodd–Frank Wall Street Reform and Consumer Protection Act and implementing rule, which required regulated entities to report to the Commission and to state on their website that any of their products have "not been found to be 'DRC conflict free'" on compelled-speech grounds. The court held that requiring manufacturers to declare their products to be "conflict-free"—specifically, regarding involvement in the Congolese civil war—carried political and moral implications interfered with the "exercise of the freedom of speech under the First Amendment." It reasoned (1) that the government's interest in reducing DRC conflict financing through this required disclosure was unproven and speculative, and (2) the label was not purely factual and uncontroversial.[23]

Thus, even when the ostensible rationale for regulation is highly sympathetic, the federal government does not have unlimited authority to compel public disclosure of information from corporations.[24] Moreover, the categories of disclosure included in the 2024 rule present risks that the SEC has either not acknowledged, not attempted to quantify, or unduly downplayed. The SEC has suggested, for example, that the rule would not be particularly burdensome because many registrant firms already disclose various data related to their operations in relation to climate change. But many of those disclosures are in advertisements, sustainability reports, industry conferences, or via other informal channels. And most importantly, they were optional. Unlike existing voluntary informal disclosures, the 2024 rule mandating disclosures opens companies to increased legal risk because the SEC has the authority to impose fines and initiate legal actions, when

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[22] John Berlau, "First Ever Constitutional Ruling against Dodd-Frank Voids Destructive 'Conflict Minerals' Section," *OpenMarket*, Competitive Enterprise Institute, April 14, 2014, https://cei.org/blog/first-ever-constitutional-ruling-against-dodd-frank-voids-destructive-conflict-minerals-section/. For the same principle applied in a different industry and by a different agency, see "WLF Opposes FDA's Front-of-Package Labeling Rule," Washington Legal Foundation, July 16, 2025, https://www.wlf.org/2025/07/16/litigation-updates/wlf-opposes-fdas-front-of-package-labeling-rule/.

[23] *Nat'l Ass'n of Manufacturers v. SEC*, 800 F.3d 518, 547 (D.C. Cir. 2015), https://www.cadc.uscourts.gov/internet/opinions.nsf/D3B5DAF947A03F2785257CBA0053AEF8/$file/13-52521488184.pdf.

[24] "*National Association of Manufacturers v. SEC*: D.C. Circuit Limits Compelled Commercial Disclosures to Voluntary Advertising," *Harvard Law Review*, Vol. 129, No. 3 (January 11, 2016), pp. 819-826, https://harvardlawreview.org/2016/01/national-assn-of-manufacturers-v-sec.

companies fail to meet climate disclosure requirements.[25] This significantly changes the weight of the demand.

Conflicts of Interest in Sustainable Investing Advocacy

The current motion for rescission states that "…it is not the Commission's role to require disclosure of particular information because it is useful for any one investment strategy or desired by some political interests for the purpose of influencing business practices." This is an excellent summary of the flaws with the approach of the 2024 rule.

Investing themes with labels such as sustainable, climate conscious, environmentally responsible, or environmental, social, and governance (ESG)-aligned were rising in popularity in the years leading up to the adoption of the climate disclosure rule, and many of their professional adherents were highly motivated to promote them further. The market for ESG data and ratings alone was estimated to have been $1 billion a year in 2021.[26] Research, advising, and asset management with these themes was big business, and, as such, industry participants had a tremendous interest in promoting a regulatory framework that further entrenched it.

The SEC, under previous leadership, seems to have taken this considerable amount of industry hype at face value and agreed that imposing massive multi-billion-dollar costs on American equity investors was justified if it helped promote the green investing bubble of the early 2020s. The agency has routinely cited industry and professional sources with clear direct interests in the outcome of the rule as authorities on why it should be passed. Yes, corporations that sell climate-themed financial, consulting, and auditing products are in favor of more stringent climate finance regulations that guarantee demand for their services. If we're going to consider their advice, however, we should at least acknowledge their glaring conflicts of interest.

The agency has also been selective about citing industry trends and corporate investment decisions that support the pro-ESG/sustainability narrative. In the 2024 final rule for example, there are citations to investment decisions by very large industry players like BlackRock and JPMorgan Chase, presenting as legitimizing the rule's assumption that investing trends support the movement toward more climate-centered capital allocation.[27]

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[25] "SEC Climate Disclosure: Why Non-Compliance Is Not an Option," Persefoni, March 31, 2024, https://www.persefoni.com/blog/sec-climate-disclosure-risks-non-compliance.

[26] Richard Morrison, "Environmental, Social, and Governance Theory: Defusing a Major Threat to Shareholder Rights," Competitive Enterprise Institute, May 5, 2021, p. 8, https://cei.org/studies/environmental-social-and-governance-theory/.

[27] Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," *Federal Register*, Vol. 89, No. 61, March 28, 2024, p. 21672, https://www.govinfo.gov/content/pkg/FR-2024-03-28/pdf/2024-05137.pdf.

The real-world trend since the time of the initial draft rule in 2022 has not been kind to this characterization. *Financial Times* columnist Katie Martin recently commented on what many industry observers have understood for the past few years, writing that the ESG craze "collapsed under the weight of its own internal contradictions," citing that this once supposedly unstoppable force – demand for dedicated sustainable investment products – saw "$84bn in outflows [in 2025], according to Morningstar, after $38bn of inflows in 2024."[28] Prof. Colin Mayer of Oxford's Saïd School of Business wrote last year for the European Corporate Governance Institute that "ESG is dead. It failed because it didn't serve a purpose. [...] It was neither designed to save the world nor promote growth, investment and prosperity. It should not therefore be missed."[29]

Not everyone in the world of corporate finance is willing to be as blunt and categorical as Prof. Mayer, but the market developments of recent years have been unmistakable in support of his characterization. Not only have ESG-themed investing funds seen massive outflows and declines in investor interest, but the industry alliances and policy initiatives that soared to popularity around the time of the draft rule have crashed back to earth. Industry organizations like the Net-Zero Banking Alliance, Net-Zero Insurance Alliance, and Net-Zero Financial Service Providers Alliance have either disbanded entirely or dramatically downsized their operations and scope. The Net Zero Asset Managers initiative, which suspended operations in January 2025, has now relaunched, but without the largest U.S. firms as members and without their previously uniting goal of reaching net-zero operations by 2050.[30]

When the climate disclosure rule was initially drafted, there may have been some reason to believe that climate-aligned investing was such a hugely popular trend and in-demand theme that time and energy should be spend accommodating the world of modern financial regulation to it, and that the SEC should be doing something in order to recognize its growing influence. That would not have justified the rule that eventually emerged, but SEC staff at the time could, perhaps, have been forgiven for assuming that it was a major force that was here to stay. That is very far from being true today. Virtually every early 2020s high point that was used to justify the seriousness of so-called responsible investing is in clear retreat today. The SEC should not listen to voices from the investing industry who oppose the motion to rescind in order to prop up their failing business strategy.

Conclusion

[28] Katie Martin, "ESG Is Dead: Long Live ESG," *Financial Times*, July 16, 2026, https://www.ft.com/content/a30314b8-5ec1-4ce4-8d6f-f543d0514031.
[29] Colin Mayer, "ESG is Dead, Be True and Fair Instead," ECGI Blog, European Corporate Governance Institute, May 22, 2025, https://www.ecgi.global/publications/blog/esg-is-dead-be-true-and-fair-instead.
[30] Mark Segal, "Net Zero Asset Managers Initiative Relaunches," *ESG Today*, February 25, 2026, https://www.esgtoday.com/net-zero-asset-managers-initiative-relaunches/.

The Commission deserves credit for undertaking an about-face and moving to rescind an illegitimate and burdensome imposition on the investing public. The agency's arguments are sound:

- The Final Rules **were** a dramatic overreach of the Commission's statutory authority;
- The Final Rules **are** unnecessary and inconsistent with a registrant-specific, materiality-based approach to disclosure;
- The Final Rules **do** stray well beyond the policy concerns of the Federal securities laws;
- The Final Rules **do** impose substantial costs that are not justified by the informational benefits they may provide to some investors; and
- The Final Rules **are** at odds with the Commission's policy objectives of facilitating capital formation and promoting public company status.

Lastly, while raised in the agency's proposed repeal, the Final Rules were a form of compelled speech that would not have survived First Amendment scrutiny. The SEC will do well to move as expeditiously as possible toward a clean excision of the climate disclosure rule from the U.S. Code of Federal Regulations and leave the supply of detailed information on climate-themed corporate operations to those data providers best situated to provide it in a competitive marketplace.