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NCLA Asks Appeals Court to Stop SEC’s Unconstitutional New Climate Disclosure Rules

National Center for Public Policy Research v. Securities and Exchange Commission

Washington, DC (April 29, 2024) – Today, the New Civil Liberties Alliance filed a [petition](#) with the U.S. Court of Appeals for the Third Circuit requesting review of the Securities and Exchange Commission’s new rules that would require public companies to disclose their climate-related business risks and mitigation procedures. SEC has exceeded its statutory authority by making these intrusive rules, which run roughshod over core constitutional rights. Representing the National Center for Public Policy Research, NCLA demands an immediate end to this illegal SEC pursuit of climate activism at the cost of civil liberties.

SEC passed the new rules by a 3-2 vote in March after two years of rulemaking and over 20,000 comments. They would force public companies to reveal a broad swath of climate-related risks and their associated impacts, including potential “changes in law or policy,” “reduced market demand for carbon-intensive products,” and “litigation defense costs.” In other words, the government is trying to require companies to guess how the government will regulate in the future, how consumers will respond to hypothetical government regulations, and how courts will rule with respect to those theoretical regulations. One rule would also mandate that companies disclose greenhouse-gas emissions from their operations and the energy they consume, even if such emissions are untethered to a traditional understanding of financial materiality.

SEC only has authority to protect investors and foster fair markets in securities transactions. It does not have plenary power to regulate the economy, and certainly not the environment, through climate-focused rulemaking. To make matters worse, the rules violate the First Amendment, which limits compelled disclosures to “purely factual and uncontroversial information.” NCLA asks the Third Circuit to transfer this case to U.S. Court of Appeals for the Eighth Circuit, where other challenges to the illegal rules are already pending. SEC has stayed implementation of its rules pending the resolution of these challenges.

NCLA released the following statements:

“It’s hard to count all the ways the SEC rules violate the law. They were created through an unlawful process; they far exceed the Commission’s statutory authority; and they violate constitutional rights beginning with the First Amendment. The rules should be set aside.”

—**Andrew Morris, Senior Litigation Counsel, NCLA**

“Congress created SEC in the 1930s to protect investors and ensure fair securities transactions. It did not give that agency power to regulate climate change. Nor can SEC give itself power to enact environmental regulations by claiming that some investors care about the environment. If that were so, the agency would have power to regulate any social issue that some investors purport to care about, from war in the Middle East to border control.”

—**Sheng Li, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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