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Beyond Scope: How the SEC's Climate Rule Threatens American Markets
Hearing Before the House Committee on Financial Services
April 10, 2024
Rayburn House Office Building
Room 2128
10:00AM Eastern Time

Good morning, Chairman McHenry, Ranking Member Waters, and members of the Committee. My name is Chris Wright, and I am the Founder, Chairman and CEO of Liberty Energy Inc. ("Liberty"). Liberty is a leading North American oilfield services firm that offers cutting-edge completion services and technologies to onshore oil and natural gas exploration and production companies. Liberty is publicly traded and is listed on the NYSE under the ticker LBRT and is headquartered in Denver, Colorado.

Thank you for inviting me to testify today on the SEC's new rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors* ("Climate Rule" or "Rule"). As a publicly traded company and a large accelerated filer under the SEC's rules, Liberty is subject to the Climate Rule and imminently faces compliance costs to meet the Rule's reporting timelines. Liberty has brought a legal challenge to the Climate Rule, as have states attorneys general and several industry groups, which is currently pending in the United States Eighth Circuit Court of Appeals. I appreciate the opportunity to discuss the Climate Rule and the effect it will have on Liberty, companies in the oil and gas industry, our capital markets, and, ultimately, consumers and their families.

The Climate Rule's true purpose is to regulate climate change, not protect investors and or the public interest in maintaining the health of America's capital markets. For that reason, among others, the Climate Rule is unlawful. Specifically, the Climate Rule exceeds the SEC's statutory authority, is arbitrary and capricious, and violates the First Amendment by compelling speech on socially and political controversial matters.

The Climate Rule is also bad public policy. It will make energy production more expensive by driving up compliance costs and making conditions more difficult for investment. Some energy companies may conclude that they cannot bear the increased costs of compliance and subsequent litigation over allegedly misleading disclosures the Climate Rule compelled them to make, and they will be forced to go private, increasing their cost of capital and in turn leading to even more expensive energy production and, ultimately, increased costs for energy consumers. Not only is that bad for American consumers, but it is also self-defeating for the Climate Rule's goal of reducing greenhouse gas (GHG) emissions because it will drive energy production to foreign countries that lack strong environmental protections.

I. Background.

Liberty was founded in 2011 with a relentless focus on developing and delivering next-generation technology for the sustainable development of unconventional energy resources. Our business revolves around partnering with the leading oil and gas producers in the United States

and Canada to unlock their vast underground shale oil and natural gas reserves through hydraulic fracturing. Liberty began as a pure-play provider of hydraulic fracturing operations. We have grown into an integrated supplier of all the supporting services that are required to execute the frac operations.

Our founders were pioneers of the shale revolution that began with natural gas 25 years ago, and Liberty has been a leader in the effort to broaden the shale revolution to include oil production. These efforts have transformed the United States from the world's largest importer of oil and natural gas to a net exporter of oil and refined oil products and the world's largest exporter of natural gas today. Energy enables all human activity, and we are proud to play a growing role in helping lift everyone's standard of living. Liberty employs over 5,000 people and fracs roughly 20 percent of the onshore wells drilled in the United States and Canada. We are proud to say that about 10 percent of total primary energy production in the United States comes from wells frac'd by Liberty.

At Liberty, our ultimate mission is to better human lives. Affordable, reliable, and secure energy are essential to securing the existence and quality of the material preconditions for human flourishing such as food, shelter, health, education, and longevity. In addition to other reports and securities filings, Liberty's annual *Bettering Human Lives* report covers the profound progress in the human condition brought about by hydrocarbon energy and discusses Liberty's business in that context.[1]

The story of the 20th century is the story of the triumph of energy.[2] The arrival of fossil fuels transformed humanity, lifting billions out of poverty and more than doubling human life expectancy.[3] Fossil fuels today support billions of people in lifestyles that were simply unimaginable only a few generations ago. Planes, trains, and automobiles changed the game for human mobility. Modern medicine, communications, the internet, and air conditioning have changed the human condition beyond anything our ancestors would recognize.

This unprecedented growth was accomplished largely on the backs of coal, oil, and natural gas—with the latter two increasingly displacing coal in the United States in recent decades.[4] The shale revolution has caused American natural gas production to climb, pushing global and United States natural gas prices down. The biggest impacts of the change in energy production are in the electricity sector, where natural gas has vaulted to the top, supplying over 40% of U.S. electricity in 2023.[5] Coal has fallen from over 50% of U.S. electricity supply just 15 years ago, to less than

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[1] *See Bettering Human Lives*, Liberty Energy (Jan. 2024), https://libertyenergy.com/bettering-human-lives-2024/.
[2] *2020 ESG Report: Bettering Human Lives*, Liberty Oilfield Services (2020) at 16, https://www.libertyfrac.com/wp-content/uploads/2021/06/Liberty-ESG-2020-Bettering-Human-Lives.pdf.
[3] Max Roser, et al., *Life Expectancy*, OUR WORLD IN DATA (Oct. 2019), https://ourworldindata.org/life-expectancy.
[4] *Monthly Energy Review*, U.S. ENERGY INFO. ADMIN. (Apr. 2021), https://www.eia.gov/energyexplained/us-energy-facts/.
[5] *U.S. Total Energy Statistics,* U.S. ENERGY INFO. ADMIN. (Apr. 2021), https://www.eia.gov/energyexplained/us-energy-facts/data-and-statistics.php.

20% today. This reduction in coal has meant both cleaner air (lower particulate matter, sulfur dioxide, mercury, etc.) in the United States and a decline in U.S. GHG emissions on a per capita basis to its lowest level in over 50 years.[6] Well over half of the steep drop in U.S. GHG emissions over the last 15 years is attributable to natural gas displacing coal.[7]

Demand for oil and natural gas is also increasing. In the thirty years since the Kyoto climate accords were drafted, total global energy from hydrocarbons has grown by 60%. The U.S. Energy Information Administration expects petroleum and natural gas production to continue to increase through 2050.[8] The continuing increase in demand is largely because they are essential components in global manufacturing and food production. Oil and natural gas are core to the synthesis of fertilizers, plastics, and steel. Without synthetic nitrogen fertilizers, mainly made from natural gas through the Haber-Bosch process, current farmland could sustain only about half of the global population.[9] Nearly all plastics (99.8%), ubiquitous in modern life, are made from fossil fuels.[10] Steel cannot yet be produced in a commercially viable way without fossil fuels, steel production is currently responsible for 8% of the world's energy demand, and steel production is expected to increase by more than a third by 2050.[11]

It is popular today to suggest that somehow in the next 10 or 30 years we are going to "Transition" fully away from fossil fuels. This cannot and will not happen. The fact is that fossil fuels are and will continue to be essential to affordable, secure, and reliable energy production. A willful ignorance of this reality is driving politically motivated attacks on our industry that will impoverish American consumers and consumers around the world. The SEC Climate Rule is an unfortunate demonstration of such ignorance.

II. The Climate Rule's True Purpose is to Regulate Climate Change.

The SEC serves as an important regulator for our financial markets. Liberty has dealt with the SEC for many years, both before our IPO in 2018 and in the years since that we have been a public company on the NYSE. We have had positive and constructive interactions with the SEC. We appreciate the role that they play. But now the SEC is proposing to venture well outside of their lane, without any congressional mandate to do so. We strongly oppose this destructive mission creep.

The Climate Rule is unique in the history of the SEC. Never before has the SEC claimed the power to demand such broad "climate"-related disclosures, which will occupy a significant

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[6] Hannah Ritchie & Max Roser, *United States: CO2 Country Profile*, OUR WORLD IN DATA (2020), https://ourworldindata.org/co2/country/united-states.
[7] *The Role of Gas in Today's Energy Transitions*, INT'L ENERGY AGENCY (2019), https://www.iea.org/reports/the-role-of-gas-in-todays-energy-transitions.
[8] *EIA Expects U.S. Fossil Fuel Production to Reach New Highs in 2023*, U.S. ENERGY INFO. ADMIN. (Jan. 21, 2022), https://www.eia.gov/todayinenergy/detail.php?id=50978.
[9] *See* Hannah Ritchie, *World Population Supported by Synthetic Fertilizers*, Our World in Data (Nov. 7, 2017), https://ourworldindata.org/how-many-people-does-synthetic-fertilizer-feed.
[10] *Fossil Fuels & Plastic,* CTR. FOR INT'L ENV'T LAW (2022), https://www.ciel.org/issue/fossil-fuels-plastic/.
[11] *Iron and Steel Industrial Roadmap,* International Energy Agency (Oct. 21, 2020).

portion of public companies' SEC filings and subject them to increased enforcement and litigation. In fact, the SEC stated for nearly 50 years that it lacks the power to do so absent a change in statutory authority—which has not materialized. It is plain that the Climate Rule is part of an attempt to surreptitiously support unpopular climate policies under the veil of protecting against financial risk, while ignoring the hard compromises necessary to enact real climate policy—compromises that only Congress can lawfully undertake.

On its surface, the Climate Rule purports to merely protect investors from financial risks. But its consequences and true purpose run much deeper. The true effect of requiring the disclosure of greenhouse gas (GHG) emissions, "physical risks," and speculative "transition risks" is to manipulate the capital-market system to achieve energy and climate policy goals. The activists who call for these disclosures have made clear why they want them: to drive "aggressive reductions" in GHG emissions.[12] Through broad disclosure regimes, climate activists hope to open the door to public shaming, further regulation, and aggressive enforcement through actions by the SEC, other agencies, state and local officials, and through private lawsuits.[13] Further, because there is great uncertainty in determining the short and long-term risks from climate change, such disclosures would expose issuers and investors to greater litigation risk.

Now the SEC has imposed a government mandate requiring companies to disclose the information that activists have long sought. With the Climate Rule, the SEC has established a new financial framework to discourage fossil fuel investments. The proposed version of the rule almost admitted as much, listing as supporters dozens of groups who have admitted that they want these disclosures to support "the goal of net zero GHG emissions by 2050 or sooner,"[14] to "achieve the goals of the Paris Agreement,"[15] and to "transform the global financial system in order to finance the investment in a net-zero economy."[16] The final version of the Climate Rule executed on this vision by requiring "comprehensive and standardized climate-related disclosures, including disclosure on governance, business strategy, targets and goals, GHG emissions, risk management, and financial statement metrics."[17]

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[12] *Ceres Ambition 2030*, CERES, https://www.ceres.org/climate/ambition2030 (last accessed May 4, 2022) (referenced as calling for the disclosures in the proposed version of the Climate Rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21334, 21338 (Apr. 11, 2022)).

[13] Rupert Darwall, *Capitalism, Socialism, and ESG*, REAL CLEAR BRIEFING (May 2021), https://www.realclearpolitics.com/docs/2021/rupert_darwall_capitalism_socialism_and_esg_may_2021.pdf.

[14] The Net Zero Asset Managers Initiative, https://www.netzeroassetmanagers.org/ (last accessed March 7, 2024).

[15] *Business Case*, Climate Action 100+, https://www.climateaction100.org/approach/business-case/ (last accessed March 7, 2024).

[16] FSB, *FSB Roadmap for Addressing Climate-Related Financial Risks* 3 (July 7, 2021), https://www.fsb.org/2021/07/fsb-roadmap-for-addressing-climate-related-financial-risks.

[17] *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, SEC (SEC-Issued Version) at 646, https://www.sec.gov/files/rules/final/2024/33-11275.pdf ("Climate Rule").

As SEC Commissioner Hester Peirce explained in her dissent to the Rule, at each step the Rule demonstrates the SEC's "insistence that climate issues deserve special treatment and disproportionate space in Commission disclosures and managers' and directors' brain space."[18] The Rule is littered with special requirements for climate change that no other topic is afforded. For example:

- "For no other risk does the Commission require prescriptive, forward-looking disclosure of the risk's impacts on the company's strategy, business model, outlook, financial planning, and capital allocation."[19]
- The "requirement to disclose GHG emissions and obtain an attestation report on such disclosure is in a class of its own without comparison in the Commission's disclosure regime."[20]
- The Rule "requires disclosure of climate related targets and goals, even though the Commission has no similar requirements for a company's targets and goals related to other, more important matters affecting the company, such as financial performance."[21]
- Companies must describe "the process of how a company's board oversees and is informed of climate risk, how a company's management assesses and manages material climate risk, which management positions manage climate risk and the associated expertise, the geographic location of physical climate risk, and how climate risks affect items like a company's '[p]roducts or services,' 'suppliers,' climate mitigation activities, and 'expenditures for research and development.'"[22]
- The Rule acknowledges that "existing rules already require disclosure about material risks," but the SEC nonetheless "continue[s] to believe that a specific disclosure item focusing on managing material climate-related risks is warranted."[23]
- "In no other context is a company required to provide an explanation of expenses that exceed one percent of income before taxes and analyze the significant contributing factor to the expense,"[24] but the Rule specially compels that explanation for expenses related to "severe weather events and other natural conditions."[25]

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[18] SEC Commissioner Hester M. Peirce, *Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors* (Mar. 6, 2024), https://www.sec.gov/news/statement/peirce-statement-mandatory-climate-risk-disclosures-030624.
[19] SEC Commissioner Mark T. Uyeda, *A Climate Regulation under the Commission's Seal: Dissenting Statement on The Enhancement and Standardization of Climate-Related Disclosures for Investors* (Mar. 6, 2024), https://www.sec.gov/news/statement/uyeda-statement-mandatory-climate-risk-disclosures-030624.
[20] Commissioner Uyeda, *supra*.
[21] *Id*.
[22] Commissioner Uyeda, *supra*.
[23] Climate Rule at 193.
[24] Commissioner Uyeda, *supra*.
[25] Climate Rule at 845.

- Far from remaining agnostic, the Rule's definitions of transition risk and climate-related risk always assume "reduced market demand for carbon-intensive products."[26]

These requirements and the special treatment they afford climate change make no sense other than as "climate regulation promulgated under the Commission's seal."[27] That is what the Climate Rule is.

III. The Climate Rule Is Unlawful.

As Liberty has argued in court filings, the Climate Rule is unlawful for several reasons.[28] *First*, the SEC lacks the statutory authority to issue the Climate Rule. The Rule fails the major-questions doctrine, which requires that agencies have clear authority to regulate matters of vast economic and political significance. *Second*, the Rule is arbitrary and capricious because it fails to account for the SEC's drastic change in position and is premised on evidence the Rule admits is at-best mixed, which precedent holds is insufficient to justify an SEC rule. *Third*, the Rule violates the First Amendment by mandating controversial disclosures using controversial frameworks and effectively mandating discussions about climate change.

A. The SEC Lacks Statutory Authority to Issue the Climate Rule.

The Supreme Court has explained that under the major-questions doctrine, when "agencies assert[] highly consequential power beyond what Congress could reasonably be understood to have granted," or "discover in a long-extant statute an unheralded power representing a transformative expansion of … regulatory authority," "there is every reason to hesitate before concluding that Congress meant to confer" the power claimed.[29] As the Supreme Court has said: "We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance."[30] Moreover, "[w]hen an agency has no comparative expertise in making certain policy judgments, … Congress presumably would not task it with doing so."[31]

The SEC overran precisely these guardrails in issuing the Climate Rule. The Securities Act was passed in 1933, and the Exchange Act in 1934. For the last 50 years, the SEC itself agreed that it could not mandate blanket climate disclosures.[32] Echoing this longstanding position, the SEC reiterated in 2016 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."[33]

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[26] Climate Rule at 850.
[27] Commissioner Uyeda, *supra*.
[28] *See* Emergency Mot. For Admin. Stay and Stay Pending Judicial Review at 7–27, *Liberty Energy Inc. v. SEC*, Case No. 24-60109 (5th Cir. Mar. 8, 2024) ECF No. 5.
[29] *West Virginia v. EPA*, 597 U.S. 697, 724–25 (2022).
[30] *UARG v. EPA*, 573 U.S. 302, 324 (2014).
[31] *W. Virginia*, 597 U.S. at 729.
[32] *Environmental and Social Disclosure, Notice of Commission Conclusions and Rulemaking Proposals*, 40 Fed. Reg. 51,656, 51,657 (Nov. 6, 1975).
[33] *Business and Financial Disclosure Required by Regulation S-K*, 81 Fed. Reg. 23,916, 23,970 (Apr. 22, 2016) (emphasis added).

Departing from this longstanding interpretation of its authority, through the Climate Rule, the SEC would now impose over $4 billion in compliance costs and purport to resolve one of today's most hotly debated political issues.

With the Climate Rule, the SEC is operating well outside its expertise. Both GHG emissions data itself and determining whether that data is material involve broad scientific considerations that lie outside of the SEC's core competencies. The Rule largely adopts third-party frameworks implemented by outsiders like the Task Force on Climate-Related Financial Disclosures precisely because such matters are outside the SEC's expertise. Even more tellingly, Congress has already dictated that the EPA—not the SEC—has expertise over climate- and emissions-related issues, including the mandatory disclosures of climate information.[34]

The Climate Rule also implements by regulatory fiat legislation that Congress has considered and, so far, declined to adopt. Members of Congress, including members of this Committee, have proposed legislation requiring the SEC to mandate disclosure of emissions and climate risks, but those proposals not yet passed.[35] The SEC decided to act only when Congress declined to do so.

Because the major-questions doctrine applies, the SEC must identify *clear* authority for the Rule. It cannot do so. Congress knows how to provide clear authority to an agency to mandate disclosure of climate data: it did so for the EPA, as explained above. But the SEC has no similar grant of clear authority.

The SEC relies on statutory language authorizing disclosures when "necessary or appropriate in the public interest or for the protection of investors," and contends that language provides broad authority to demand almost anything the SEC wants.[36] But read in context, none of those provisions authorizes the Rule, let alone clearly. The neighboring paragraphs in the statute show that disclosures are concerned with management and "balance sheet and profit and loss statement[s]."[37] The SEC cannot require disclosures of just *anything* it thinks will be in the public interest. The information must be of the same nature as disclosures Congress dictated.[38]

Climate data and risks are of a completely different type: they are not measurements of any traditional financial performance or indicator, and often are entirely outward looking. For example, the SEC never explains how a company's *own* GHG emissions somehow reflect its profitability. Rather, the SEC wants them just for disclosure's sake. The proposed rule even made Freudian slips distinguishing "climate-related disclosures" from *actual* "financial disclosures."[39]

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[34] The Clean Air Act tasks the EPA with collecting reports from emission sources and making them available to the public. *See* 42 U.S.C. § 7414; *see also Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011)..
[35] *See, e.g.*, H. Rep. 117-39 (2021) (Climate Risk Disclosure Act); H. Rep. 116-563 (2020); S. 1217, 117th Cong. (2021); S. 2075, 116th Cong. (2019); S. 3481, 115th Cong. (2018).
[36] 15 U.S.C. § 77g(a)(1); *see* §§ 77j(c), 78*l*(b)(1), 78o(d), 78m(a); Climate Rule at 59–69.
[37] 15 U.S.C. § 78*l*(b)(1)(A)–(K); § 78m.
[38] *See* Andrew N. Vollmer, *The SEC Lacks Legal Authority to Adopt Climate-Change Disclosure Rules*, (Apr. 12, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20123525-279742.pdf.
[39] 87 Fed. Reg. at 21,335, 21,411.

The Rule lacks clear authority for another reason: the securities laws' references to "the public interest" and "protection of investors" provide clear authority only for compelling the disclosure of information that is *actually* material to the particular company.[40] The Supreme Court has indicated that the "public interest" is not furthered by requiring companies "simply to bury the shareholders in an avalanche of trivial information," which "is hardly conducive to informed decisionmaking" and thus would "accomplish more harm than good."[41] The existing materiality requirement is thus part-and-parcel of the "public interest" text in these statutes. As proof: when Congress wants the SEC to regulate *outside* the realm of materiality, Congress has provided express and separate authority to do so.[42] No such authority exists for climate disclosures, of course.

B. <u>The Rule Is Arbitrary and Capricious and Is Not Supported by Substantial Evidence.</u>

In our court filings, we also argue the Climate Rule is unlawful because it is arbitrary and capricious under the Administrative Procedure Act and lacks substantial evidence. I would like to highlight three of our points here.

First, the SEC did not explain the switch in its position, held for decades, that it lacks authority to impose such broad climate disclosures. The Supreme Court has said that an agency must "display awareness that it *is* changing position" and "show that there are good reasons for the new policy."[43] The SEC insists it hasn't changed its position at all, but of course the SEC has never before required such voluminous climate disclosures. These failures are necessarily arbitrary and capricious.

Second, the rule lacks substantial evidence. The U.S. Court of Appeals for the D.C. Circuit has explained that when there is "at best" "mixed" evidence showing that an SEC rule "will result in improved board and company performance and shareholder value," it lacks substantial evidence and is invalid.[44] The SEC admitted no study has shown an overall positive effect on corporate profitability or stock price as a result of mandating climate disclosures, while numerous studies found overall negative effects or no effect at all.[45] That is not even "mixed" evidence—it is one-sided and squarely against the Rule's fundamental premise. The Rule justifies itself on the theory that higher temperatures, droughts, and "exposure to physical climate risk" all reduce firm revenues, and that there is supposedly a relationship between climate information and asset pricing.[46] But the SEC did not substantiate these claims with available evidence.

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[40] 15 U.S.C. §§ 77g(a)(1), 77j(c), 78*l*(b)(1), 78o(d), 78m(a).
[41] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976); *see also Basic Inc. v. Levinson*, 485 U.S. 224, 249 (1988); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 384 (1970).
[42] 15 U.S.C. §§ 78m(p)(1)(A) (conflict minerals), 78m(q)(2)(A) (resource extraction), 78n(i) (executive compensation).
[43] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).
[44] *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1151 (D.C. Cir. 2011).
[45] Climate Rule at 658-59.
[46] Climate Rule at 647–49 & nn.2737–46.

Third, the types of climate-risk and GHG emissions disclosures the Rule mandates are highly subjective and speculative. The attempted financial quantification of dubious climate-related risks, as required by the Climate Rule, will lead to immediate confusion, regulatory uncertainty, and litigation—but not to meaningful investment information.

The fact is that few if any climate-related risks rise to the level of "materiality." The Climate Rule divides climate-related risks into two categories: "physical risks," or the risks associated with increased extreme weather; and "transition risks," or the risks posed by policy changes driving companies away from fossil fuels. As the proposed version of the Climate Rule openly admitted, a registrant's ability to identify these risks is, at best, sheer guesswork because they will rely on subjective modeling about events with time horizons over decades away.[47]

What little information we do have about physical and transition risks suggests that nearly the opposite of the proposed rule's claims is true: the risks associated with extreme weather are decreasing, and the world is increasing its demand for natural gas and oil, as explained above. The Rule thus mandates "authoritative-looking results" that are ultimately "high-priced guesses" that will "spam investors" with useless information.[48] That is arbitrary and capricious.

C. The Rule Violates the First Amendment.

The First Amendment prohibits the SEC from seeking disclosure of political issues under the guise of disclosure requirements. But that is what the Climate Rule does. Climate change in general is a politically charged matter, and, more specifically, whether emissions information is material to corporate performance is a strongly debated political matter. In fact, even the frameworks the SEC uses—e.g., pegging disclosures to the controversial Paris Climate Accords—are themselves controversial, as is deciding which emissions should be attributed to a particular company. The Rule even expressly demands that companies "[d]escribe the board of directors' oversight of climate-related risks."[49] The Climate Rule forces Liberty to take a side on these issues—a side with which it disagrees. The Climate Rule thus forces Liberty to speak about and wade into controversial political realms in violation of core First Amendment principles.

IV. The Climate Rule Is Bad Public Policy.

While the litigation challenging the Climate Rule raises important technical and legal issues, the biggest threat the Rule poses is to bettering human lives through clean and efficient energy production. If it stands, the Climate Rule will not only impose severe compliance costs on companies but encourage investors to disinvest in a critical sector, which could have a remarkably negative impact on human lives. Not only that, but the Climate Rule is self-defeating for its own stated goals, as increased costs would drive energy production abroad to countries like Russia and China that will *increase* global GHG emissions.

A. The Climate Rule Harms Energy Production and Consumers to No Apparent Public Benefit.

[47] 87 Fed. Reg. at 21,445, 21,427.
[48] Commissioner Peirce, *supra*.
[49] Climate Rule at 852.

The Climate Rule harms the public by making fossil fuels more expensive by driving up compliance costs and making conditions more difficult for investment. Some energy companies may conclude that they cannot bear the increased costs of compliance and subsequent litigation over allegedly misleading disclosures, and they will be forced to go private, which increases their cost of capital, and which in turn will lead to even more increase in the costs of energy production and ultimately increased costs for energy consumers. Because most Americans live paycheck to paycheck, a surge in energy prices beyond what is already occurring today, with record high gasoline and diesel prices, would be devastating.[50]

In addition to imposing immense costs directly on publicly traded companies like Liberty, the Climate Rule would burden smaller and private companies in the energy sector. For example, Liberty makes equity investments in start-up or early-stage companies that have new or innovative technologies and the potential to reduce greenhouse gas emissions. One such company is Nomad Proppant Services LLC, a business that is focused on mobile, local mining of frac sand near wellsites which, among other ecological benefits, reduces greenhouse gas emissions by drastically decreasing the number of truckloads needed to deliver sand. Nomad is a small private company that currently only has a few employees involved in administrative activities. Liberty's reporting of Nomad's climate-related information under the Climate Rule will reduce Nomad's profitability and, in turn, Liberty's return on its investment in Nomad. As a result, public companies like Liberty will have less incentive to invest in small entities like Nomad. The end result will be an increase in the cost of capital for startups like Nomad.

The SEC's mistakes with the Climate Rule extend across the market. Despite the extraordinary benefits of fossil fuels and the immense consequences of making them more expensive, the Climate Rule is irrationally premised on the notion that companies nonetheless face "transition risks" related to "reduced market demand" for fossil fuels."[51] That gets the facts exactly backwards. As discussed above, fossil fuel demand is increasing, not decreasing.

The SEC claims that companies face risks from climate change. Although increased GHG emissions are generally associated with warmer temperatures, there remains significant scientific uncertainty around feedback effects. Changes in temperature can lead to secondary effects like increasing atmospheric water vapor or increased surface albedo that further drive temperature changes up or down.

But global temperature rise is—by itself—not the concern. In fact, millions of lives have been saved by reducing cold-related deaths. While both extreme hot and extreme cold can be fatal, extreme cold is far more deadly. A 2015 meta-study found that 17 times more deaths are attributable to low temperatures than to high.[52] This is why a 2021 study found that, while heat-

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[50] Jessica Dickler*, As Inflation Heats Up, 64% of Americans Are Now Living Paycheck to Paycheck*, CNBC (Mar. 8, 2022), https://www.cnbc.com/2022/03/08/as-prices-rise-64-percent-of-americans-live-paycheck-to-paycheck.html.

[51] Climate Rule at 93.

[52] *See* Antonio Gasparini, et al., *Mortality Risk Attributable to High and Low Ambient Temperature: A Multicountry Observational Study*, 386 LANCET 369 (2015), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)62114-0/fulltext.

related deaths have increased somewhat over the last two decades, they were more than offset by reductions in cold-related deaths, with the net effect that climate-related mortality has decreased by about 166,000 deaths per year. [53]

The Climate Rule addresses supposed increases in extreme weather events, mandating that companies track and report their expenditures for severe weather events because the SEC claimed at the rulemaking stage that "many" physical risks, like "increased severity of extreme weather events, such as cyclones, hurricanes, or floods" associated with climate change "have already impacted"[54] companies and that there is a "consensus" that in the long-term climate change "poses significant global risk."[55] But this simply is not true. Extreme weather features prominently in the news—perhaps because of the frightening sense of awe inspired by hurricanes, tornadoes, floods, and droughts—but to date we have not seen an increase in extreme weather events. Deaths from extreme weather events have been plummeting as a wealthier, more energized world has proven far more resilient than in times past. Take hurricanes, for example. While there is large annual variability in hurricane activity, the data shows no obvious increasing trend.[56] Tornadoes are also often mentioned—but tornadoes of a greater than F3 magnitude have shown a *downward* trend over the last 70 years.[57] Flood damage as a percentage of GDP has plummeted since 1940, and while wildfires have burned millions more acres of forest in the 2010s than in the 1990s, that number represents only a small fraction of the more than 40 million acres burned nearly each year in the 1930s and 1940s.[58]

By far the most important factor regarding extreme weather is the impact that it has on human lives. There has been an over *90% decline* in annual global deaths from extreme weather over the last century even while the world population has more than tripled over the same time period.[59] Wealthier societies with abundant access to affordable energy are simply far safer places to live than they were a century ago. The large majority of the remaining deaths from extreme weather are concentrated in poorer nations with high rates of energy poverty. Spreading energy access to those currently in energy poverty is the key to further driving down deaths from extreme weather. While climate change is broad and complicated, it is simply incorrect to suggest that increasing extreme weather is posing a risk to businesses. If anything, the opposite is the case.

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[53] *See* Qi Zhao et al., *Global, Regional, and National Burden of Mortality Associated with Non-optimal Ambient Temperatures from 2000 to 2019: A Three-stage Modelling Study*, 5 LANCET PLANET HEALTH (2021) https://doi.org/10.1016/S2542-5196(21)00081-4.
[54] 87 Fed. Reg. at 21,350.
[55] 87 Fed. Reg. at 21,339 n.40.
[56] *See* Philip J. Klotzbach, et al., *Continental U.S. Hurricane Landfall Frequency and Associated Damage: Observations and Future Risks,* 99 BULLETIN AM. METEOROLOGICAL SOC'Y 1359 (2018).
[57] *See National Weather Service, Storm Prediction Center,* NAT'L OCEANIC & ATMOSPHERIC ADMIN., https://www.spc.noaa.gov/wcm.
[58] *See* Frances V. Davenport, et al., *Contribution of Historical Precipitation Changes to US Flood Damage*, 118 PNAS (Jan. 11, 2021); Sean A. Parks, et al., *High-severity Fire: Evaluating its Key Drivers and Mapping Its Probability Across Western US Forests*, 13 Environmental Res. Letter. (Apr. 18, 2018).
[59] *See* Hannah Ritchie & Max Roser, *Natural Disasters*, OUR WORLD IN DATA (Nov. 2021), https://ourworldindata.org/natural-disasters.

B. The Climate Rule is Self-Defeating of Its Goal to Reduce GHG Emissions.

The Climate Rule cannot hope to achieve its goal of reducing greenhouse gas emissions globally. Its main impact will be to make it more expensive and riskier to produce oil and natural gas in the United States. That means displacing more oil and gas production to Russia, Iran, Venezuela, and other countries with comparatively less stringent environmental regulations. Outsourcing energy production to these countries would raise, not reduce, GHG emissions, in addition to displacing American jobs and empowering foreign adversaries. There is no policy "win" in those outcomes.

Climate change is a real and global challenge that we should and can address. However, representing it as the most urgent threat to humanity today crowds out action on urgent issues like malnutrition, access to clean water, air pollution, endemic diseases, and human rights, among many others. Will the SEC be adopting rules on all these issues as well? I hope not. The SEC is not a roving commission for solving social problems. Bureaucrats responding to the perceived need to "do something" cannot replace thoughtful action.

By issuing the Climate Rule, the SEC has made itself an environmental regulator. That means it must honestly assess and measure climate risks against the jeopardy of human deprivation, illness, and death that accompanies a lack of access to that affordable, reliable, secure energy that the Climate Rule would make more expensive. The stakes are high because energy from hydrocarbons is the essential ingredient that makes everything happen. Even though many believe solar, wind, and batteries can transform our whole energy system and address the climate crisis, the reality is that they have not, will not, and cannot replace most of the energy services and raw materials provided by hydrocarbons.

Today, renewables are deployed almost exclusively in the electricity sector, which in total delivers only 20 percent of total primary energy consumption. Manufacturing is the largest user of energy globally, mostly in the form of process heat that cannot effectively be supplied via electricity. To make matters worse, aviation, global shipping, long-haul trucking, and mobile mining equipment have no viable replacements in sight. Critical materials from hydrocarbons provide nitrogen fertilizer that is responsible for fully half of global food production. In addition, hydrocarbons supply critical materials to produce plastics and petrochemicals that are essential components of modern lives. They also provide asphalt, paints, lubricants, cosmetics, 60 percent of global clothing fiber, and thousands of other products. Without hydrocarbons we would have no way to produce the vast quantities of steel and cement that undergird our built world. Even wind turbines, solar panels, and batteries are made of hydrocarbon materials and require huge amounts of process heat energy from hydrocarbons for their fabrication.

Fossil fuels are not going away. They are even necessary to reducing GHG emissions. The Climate Rule's opposite assumption is wrong and makes for bad public policy.

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I thank the Committee again for the invitation to testify today on this important subject, and I look forward to discussing it further with the Committee's members.