

## MEMORANDUM

**To:** Members of the Committee on Financial Services

**From:** Financial Services Majority Staff

**Date:** June 16, 2023

**Re:** June 22, 2023, Subcommittee on Oversight & Investigations Hearing Entitled “Oversight of the SEC”

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On Thursday, June 22, 2023, at 9:00 a.m. in Room 2220 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations (Subcommittee) will hold a hearing entitled “Oversight of the SEC.” Testifying at the hearing will be:

- Megan Barbero, General Counsel, U.S. Securities and Exchange Commission

This hearing will examine the Securities and Exchange Commission (SEC)’s responsiveness to Congressional requests, and its commitment to abide by its statutory authority, particularly in light of the Supreme Court’s decision in *West Virginia v. EPA*. The Subcommittee will review the radical regulatory agenda that the SEC has been pursuing under the leadership of Chair Gensler.

### **Background**

In *West Virginia v. EPA*, the Supreme Court clarified limitations of certain agency action.<sup>1</sup> Although Article I, Section I of the United States Constitution vests “all legislative powers” in Congress, the Biden Administration has largely relied on executive action to advance its agenda that could not otherwise make it through the legislative process. The case reaffirmed the position that a government agency’s rulemaking authority is not unlimited and that the major questions doctrine requires a government agency to point to a “clear” congressional authorization for its actions. Yet, through Chair Gensler’s regulatory regime, the SEC continues to implicate the issues raised in *West Virginia v. EPA*.

In addition to ensuring the proper application of federal laws and federal agencies, the House Committee on Financial Services (Committee) plays a vital role in overseeing the Executive Branch, including conducting oversight of the SEC, to better inform its legislative agenda. To date, the SEC has provided insufficient responses to numerous Committee requests made at the beginning of the 118<sup>th</sup> Congress,<sup>2</sup> and continues to hinder the Committee’s access to records and information at the SEC.<sup>3</sup>

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<sup>1</sup> *West Virginia v. EPA* 597 U.S. \_\_ (2022).

<sup>2</sup> Letter from Patrick McHenry, Chairman and Bill Huizenga, Subcommittee Chairman, H. Comm. on Financial Services, to Gary Gensler, Chair, U.S. Securities and Exchange Comm’n (Feb. 10, 2023); Patrick McHenry, Chairman and Bill Huizenga, Subcommittee Chairman, H. Comm. on Financial Services, and Tim Scott, Ranking Member, Sen. Comm. on Banking, Housing, and Urban Affairs to Gary Gensler, Chair, U.S. Securities and Exchange Comm’n (Feb. 22, 2023).

<sup>3</sup> Letter from Patrick McHenry, Chairman and Bill Huizenga, Subcommittee Chairman, H. Comm. on Financial Services to Gary Gensler, Chair, U.S. Securities and Exchange Comm’n (May 9, 2023).