



## SEC faces avalanche of lawsuits for exceeding authority Congress gave as financial regulator

### Description

**US : On top of state lawsuits, the SEC is facing legal challenges from companies, nonprofits and business advocacy groups. A U.S. appeals court on Friday temporarily paused the new rules.**

The New Orleans-based 5th U.S. Circuit Court of Appeals granted a request from Liberty Energy Inc. and Nomad Proppant Services LLC to put the rules on hold while it considers the oilfield companies' lawsuit challenging them.

The final rule didn't include the stringent Scope 3 reporting requirements, which would have required companies registered with the SEC to disclose all emissions along the entire supply chain through the end use of products.

If it had been included, the average per-firm costs of producing climate disclosures would have been \$864,864 across 7,400 companies, according to the National Review.

The final rules still require large and mid-sized companies to report Scope 1 and 2 emissions, and a deluge of lawsuits have raised a number of objections to what did end up in the final rule.

The day after the SEC voted 3 to 2 to adopt the final rules, West Virginia Attorney General Patrick Morrisey announced his state and Georgia were leading a coalition of 10 states in filing a petition to the 11th Circuit Court of Appeals.

"Today, the Biden administration has once again got on the attack against America's energy industry. It actually may be one of the most egregious attempts yet," Morrisey said in a press conference.

Morrisey said the SEC is exceeding the authority Congress granted it to be a financial regulator. The climate disclosure rules, he said, were an attempt by the SEC to be an environmental regulator.

“Congress only wanted the SEC to focus on the financial regulation. And that’s all the SEC has the power to do. Certainly, the SEC has nothing to do with climate change or energy,” Morrissey said.

## **Materiality**

The new rule, Morrissey said, twists the definition of materiality, which has been the basis for what information companies need to supply to investors. The SEC considers a matter “material” if there is a substantial likelihood that a reasonable person would consider it important.

Commissioner Hester Peirce had also raised this objection in explaining her dissenting vote on the final rule.

“While the commission has decorated the final rule with materiality ribbons, the rule embraces materiality in name only,” Peirce said.

Morrissey said the reporting requirements under the new rule will be onerous, and that it will make it virtually impossible for companies to calculate how their environmental impact is material.

“How is the company supposed to know if greenhouse gas emission will affect its finances? How many trucks are going to be too many? How much coal do you use versus natural gas or other forms of energy?” Morrissey said.

He also said there are First Amendment issues with the final rule as it may fall under compelled speech.

Steve Milloy, a senior legal fellow with the Energy and Environmental Legal Institute and publisher of JunkScience.com, told Just The News that the strongest legal argument against the rules is that the agency is exceeding its authority.

“Congress never authorized the SEC to participate in climate regulation — number one of two. The SEC can only require disclosure of material facts, and it cannot be shown that climate is in any way material to any investor decisions. So it fails on those two counts,” Milloy said.

Milloy had made these points in the comments he submitted to the SEC during the review process. He pointed out that Vistra Energy is the largest emitting issuer with over 106 million tons of carbon dioxide-equivalent emissions in 2019. That is 0.18% of the total global emissions.

“Nothing Vistra Energy, the largest U.S. emitter, emits or does can possibly affect climate and so cannot possibly be important to any reasonable investor,” Milloy argued.

The SEC, however, argues it is acting within its authority.

“The Commission undertakes rulemaking consistent with its authorities and laws governing the administrative process and will vigorously defend the final climate risk disclosure rules in court,” an SEC spokesperson said in a statement emailed to Just The News.

The SEC is also facing legal actions from 16 other states. Iowa Attorney General Brenna Bird announced Tuesday her state, along with nine others filed a lawsuit in the 11th Circuit.

Biden “knows his radical climate agenda doesn’t have support from Congress, so he illegally sidesteps our lawmakers to force his mandate on lowans. Not only will this mandate impose costly red tape on businesses, but it will devastate our supply chain and hurt Iowa family farms,” Bird said in a statement.

Ohio Attorney General Dave Yost announced Wednesday that Ohio was suing the SEC on behalf of the Ohio Bureau of Workers’ Compensation. That lawsuit, which was filed in the 6th Circuit Court, is joined by Kentucky and Tennessee.

Louisiana, Mississippi and Texas filed a separate suit in the 5th Circuit Court, which also questions the SEC’s authority to require climate disclosure information.

“The Biden administration’s ill-advised war on hard-working Americans continues. Not only do these disclosure requirements fall outside of the commission’s authority and violate the First Amendment, but they also drive up business costs, which will then be passed on to the consumers,” Louisiana Attorney General Liz Murrill said in a statement.

### **Other lawsuits**

In addition to the lawsuits filed by U.S. states, companies and nonprofits have also filed their own lawsuits. The Sierra Club filed a lawsuit against the SEC because it didn’t include the Scope 3 reporting requirements.

“While the SEC’s final climate disclosure rule will provide investors with some much needed information, the Commission’s arbitrary decision to remove robust emissions disclosure requirements and other key elements from the proposed rule falls short of what the law requires,” Ben Jealous, executive director of the Sierra Club said in a statement.

The U.S. Chamber of Commerce filed a lawsuit Thursday, Reuters reported.

Tom Quaadman, executive vice president of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness, said that, while the final rule was an improvement over the proposed rule, it will still cause “substantive harmful changes.”

The Texas Alliance of Energy Producers and the Domestic Energy Producers Alliance filed a suit to block the new rule.

“Congress did not authorize the SEC to demand that companies report environmental or any other controversial issues completely unrelated to finance,” said Luke Wake, an attorney at Pacific Legal Foundation, in a statement. The foundation is representing the two companies.

Liberty Energy, an oil and gas company, and Nomad Proppant Services, an oilfield service company, also filed a suit against the SEC over its disclosure rules.

**by TLB Staff**

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