"SEC Overreach and States' Role in Safeguarding the Separation of Powers"

Oversight and Investigations Subcommittee

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Dear Chairman Huizenga, Vice Chairman Rose, and Members of the Subcommittee,

Thank you for the invitation to testify about the Securities and Exchange Commission's recent climate-disclosure rule and how this unprecedented action fits within the broader pattern of federal agency overreach.[1] As a native middle Tennessean, it is a particular honor to be here before you all in Lebanon.

I recently returned home to Tennessee with my family after spending some thirteen years in Washington, D.C. There, I practiced law at a D.C. litigation firm and had the honor of clerking for esteemed federal judges, including Justices of the U.S. Supreme Court. During that time, I developed an academic interest in administrative law, agency power, and the separation-of-powers. And in representing private clients, I saw how suspect agency rules and procedures could devastate individuals, small businesses, and even whole industries.

But only after moving home to Tennessee have I seen firsthand the real harm federal agency overreach can inflict on federalism and States' sovereign policy choices. In my current role as Director of Strategic Litigation within the office of Tennessee Attorney General Jonathan Skrmetti, my day-to-day practice centers around pushing back on the bevy of aggressive and unlawful agency mandates raining down from unelected officials in Washington. SEC's misguided climate-disclosure rule is just the latest example.

My testimony today will focus on the high-level legal flaws with SEC's Final Rule, including the Rule's (a) lack of statutory authority, (b) distortion of materiality principles, (c) undue compliance and speech burdens, and (d) flawed process. I'll then discuss how this rule fits into a pattern of agency overreach that harms States and their citizens. Finally, I'll provide an overview of the central role States play in policing this Administration's penchant for pushing the legal envelope and how this in turn protects the separation of powers, both vertical and horizontal.

I. <u>The SEC's Climate-Disclosure Rule Suffers Several Legal Flaws</u>

[1] This analysis represents my personal views and does not reflect any official position on behalf of my state government employer, the Tennessee Office of the Attorney General and Reporter.

On March 6, 2024, a divided 3-2 SEC issued the climate-disclosure rule.[2] It is no exaggeration to say SEC's new regime marks a revolution in securities regulation. The Rule's asserted aim is to "enhance and standardize climate-related disclosures by public companies and in public offerings," with the end goal of providing more "reliable information about the financial effects of climate-related risks" on companies and their operations.[3] But no amount of jargon can mask the sea change SEC's rule would effect if permitted to stay in place.

Companies' assessment and disclosure of such climate-risk information is not currently standard practice—let alone included in public securities filings that trigger particularized obligations and risk of liability. As a result, SEC's rule amends Regulation S-K, which outlines the disclosures SEC-registered companies must provide in their Form 10-Ks and other public filings. The end result is a mandate for several categories of new required disclosures. Most relevant:

- ***Emissions disclosures.*** Companies must estimate and disclose so-called "Scope 1" and "Scope 2" greenhouse gas (GHG) emissions. Scope 1 emissions include "direct [GHG] emissions from operations that are owned or controlled by a registrant,"[4] while Scope 2 covers "indirect [GHG] emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant."[5]
- ***Auditing obligations.*** Accelerated and large accelerated filers moreover must obtain assurance on Scope 1 and 2 emissions, meaning they must subject their climate-related disclosures to an independent audit to assess their effectiveness and reliability.[6]
- ***Reporting other weather-related costs.*** Companies must disclose information about costs they incur "related to severe weather events and other natural conditions."[7]
- ***Assessing climate risks.*** Companies must disclose other information regarding "climate-related risks" (including risks faced by their "suppliers") and associated oversight steps, as well as climate-related targets or goals.[8]

News reports have cast the final version of SEC's rule as "scaled-back," and that's correct up to a point.[9] SEC most notably jettisoned its initial proposal to mandate Scope 3 disclosures, which would have required many companies to assess, calculate, and disclose all GHG emissions associated with their *entire supply chain*—at expected compliance costs of many billions per year. Industry, States, commenters on the proposed rule, and other stakeholders deserve credit for fending off that compliance behemoth. But the Scope 3 debate is far from over. Commission Chair Gensler offered

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[2] *See The Enhancement and Standardization of Climate-Related Disclosures for Investors*, SEC (Mar. 6, 2024), https://www.sec.gov/files/rules/final/2024/33-11275.pdf ("Final Rule").
[3] *SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors*, SEC, (March 6, 2024), https://perma.cc/K4TG-DE3U.
[4] Final Rule, at 29, FN 67.
[5] *Id.*
[6] *Id.* at 719.
[7] *Id.* at 458.
[8] *Id.* at 844-47, 852-58.
[9] *E.g.*, Declan Harty, *SEC Signs off on landmark climate rule as legal backlash looms*, Politico (Mar. 6, 2024), https://perma.cc/UJD7-CPDM.

only that SEC is not requiring public disclosures "at this time,"[10] while California has proposed to fill this gap with a Scope 3 requirement of its own that would govern many publicly traded companies.[11]

SEC likewise casts the major Scope 1 and Scope 2 disclosures as limited, saying they are required only when "material" to the company. Yet, as discussed, the Rule's watered-down conception of materiality risks rendering this limitation largely illusory. The lack of clarity around what it means for climate risks to be material will no doubt subject companies to costly litigation that would detract from innovation and investor value—thus harming rather than helping consumers on balance.[12]

Regardless, even in its scaled-back form, it is clear SEC's Final Rule will impose billions in new compliance costs annually. And the Rule as finalized still suffers from several legal defects that render SEC's approach invalid.

A. Lack of Statutory Authority

At the outset, SEC lacks statutory power to promulgate the climate-disclosure obligations.

The U.S. Constitution vests the legislative power exclusively in Congress, acting through bicameralism and presentment. U.S. Const. Art. I, § 1 and § 7, cls. 2-3. As an administrative agency, SEC thus "literally has no power to act … unless and until Congress confers power upon it."[13] The upshot: Agencies can only act "within the bounds" of their statutory authority when promulgating rules.[14]

For highly economically significant rules, like this one, agencies' bar is even higher. Under the Supreme Court's major-questions doctrine, an agency must come forward with "clear congressional authorization" before using a rule to settle an issue of great "economic and political significance."[15] This principle reflects the commonsense presumption that Congress "does not…hide elephants in mouseholes" when delegating agency authority.[16] Courts therefore may not approve agencies' attempt to use ambiguous statutory language to assert "highly consequential power beyond what Congress could reasonably be understood to have granted," or to "discover in a long-extant statute an unheralded power representing a transformative expansion of … regulatory authority."[17]

These principles foreclose SEC's Final Rule and the substantial shift in climate-disclosure obligations it requires. SEC's Rule imposes some ***$4 billion*** in compliance costs in an area of hotly contested scientific and political debate.[18] SEC's assertion of climate-disclosure authority is novel to boot; indeed, SEC has for decades *disavowed* the authority to mandate across-the-board social and environmental disclosures.[19] As dissenting Commissioner Uyeda put it, the Final Rule is "an

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[10] Chair Gary Gensler, *Statement on Final Rules Regarding Mandatory Climate Risk Disclosures*, SEC (Mar. 6, 2024), https://www.sec.gov/news/statement/gensler-statement-mandatory-climate-risk-disclosures-030624.
[11] Catherine Clifford, *California lawmakers urge SEC to follow their lead in climate disclosure requirements*, CNBC (Oct. 17, 2023), https://perma.cc/7M8B-CLTB.
[12] *See, e.g.*, *SEC Climate Change Disclosure Rule Will Hurt Stocks and Our Economy – Steve Forbes (Interview)*, Forbes YouTube Channel (Mar. 24, 2022), https://www.youtube.com/watch?v=6vMkRBsqCj8.
[13] *Louisiana Pub. Serv. Comm'n v. FCC*,476 U.S. 355, 374 (1986).
[14] *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 321 (2014); *see* 5 U.S.C. § 706(2)(C).
[15] *West Virginia v. EPA*, 597 U.S. 697 (2022).
[16] *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001).
[17] *West Virginia*, 597 U.S. at 724-25.
[18] *See* Final Rule at 740, 823-24 (detailing compliance costs).
[19] *See, e.g.*, *Environmental and Social Disclosure, Notice of Commission Conclusions and Rulemaking Proposals*, 40 Fed. Reg. 51,656, 51,657 (Nov. 6, 1975).

extraordinary exercise of regulatory authority by the Commission that involves an economically and politically significant policy decision."[20]

All of this means SEC must point to clear congressional authorization to move forward with imposing its novel and burdensome regime. It clearly cannot. EPA, not SEC, maintains express power to require GHG disclosures in certain instances. Nor can SEC justify its unprecedented power by pointing to boilerplate language authorizing disclosure when "necessary or appropriate in the public interest or for the protection of investors."[21] The major-questions doctrine, in short, bars SEC's effort to "hijack" this generic language to exert sweeping climate-policy authority over industry[22]—as parties challenging the Rule have already argued.[23]

B. Distortion of Materiality Principles

The Rule's repeated use of the term "materiality" refers to Commission Rule 10b-5, which prohibits concealing "a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."[24] The term "materiality" is expressly limited by its definition to the proper protection of investors against securities fraud. The U.S. Supreme Court has interpreted this concept in a limited way. Specifically, in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976), and again in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), the Court clarified that a fact is material "if there is a substantial likelihood that a reasonable shareholder would consider it important" to the relevant investment or voting decision, *Basic Inc.*, 485 U.S. at 231. Both the "substantial likelihood" and "reasonable shareholder" portions of the definition cabin the disclosures that are material for purposes of the securities laws. By ensuring the materiality bar is not "too low a standard," this formulation prevents "bury[ing] the shareholders in an avalanche of trivial information." *Id* (citation omitted).

The Final Rule's expansive and at times confusing conception of "materiality" flouts these limits. As Liberty Energy, a party challenging SEC's rule and who recently obtained an administrative stay of the Rule, summarized:

- "[F]or several requirements, the Rule does not even purport to require materiality."[25]
- "[T]hroughout the Rule, the SEC directs companies to disclose information that has material impacts 'on' or is material 'to' specific company activities, even when not material to the company overall."[26]
- Though the Rule in some instances purports to require "materiality," it "effectively deems materiality triggered when a company faces climate-change 'transition risk,' which in turn is defined so broadly that it sweeps in nearly every company."[27]

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[20] Comm'r Mark T. Uyeda, *A Climate Regulation Under the Commission's Seal: Dissenting Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors*, SEC (Mar. 6, 2024), https://perma.cc/X23Z-UWFN.
[21] 15 U.S.C. § 77g(a)(1).
[22] Uyeda Dissenting Statement, *supra* n.20.
[23] *See* Mot. for. Stay 9-11, *Liberty Energy v. SEC*, 5th Cir. No. 24-60109 (Mar. 8, 2024).
[24] 17 C.F.R. 240.10b-5.
[25] Citing Final Rule at 852 (board's oversight of climate-related risks), 844–45 (expenditures for "severe weather events and other natural occurrences" greater than $100,000).
[26] Citing Final Rule at 854 ("registrant's strategy, business model, and outlook"), *id.* ("suppliers, purchasers, or counterparties").
[27] Quoting Final Rule at 246.

By way of example, SEC suggests there is "transition risk"—which triggers materiality—anytime a nation in which a company operates supports a climate commitment, even if non-binding.[28] Or if a company's practices clash against "changes in consumer preferences or behavior."[29] It is anyone's guess where SEC thinks the limit of these open-ended provisions lies, or how a company is supposed to apply them with any confidence.

C. Unduly Burdensome Compliance and Compelled-Speech Requirements

SEC's burdensome compliance regime also runs afoul of the Administrative Procedure Act (APA) and the First Amendment's guarantee of free speech.

The APA, for its part, requires agency rules to be "reasonable and reasonably explained."[30] Agency analysis cannot "run[] counter to the evidence before the agency," and must show a "rational connection between the facts found and the choice made."[31] Part and parcel of this requirement is that an agency address and justify its rejection of any less-burdensome regulatory alternatives.

The First Amendment likewise limits the government's ability to compel private speech. Most relevant here, the government cannot compel disclosures that are "unjustified or unduly burdensome," or anything other than "purely factual and uncontroversial."[32] And it *SEC's* "burden to prove" that the Final Rule meets this standard.[33]

SEC's ill-justified rule fails this framework. Merely stating "public demand" or "investor interest" exists for these new and burdensome statistics is not sufficient to justify compelling registrants to spend billions compiling voluminous data regarding climate policy mitigation measures. Were it otherwise, the government could justify "any and all disclosure requirements" by citing consumers' interest in more information.[34] The required disclosures also are "hardly factual and non-ideological."[35] Either defect independently invalidates the Rule.

Neither has SEC shown the Rule pursues the least-restrictive means to accomplish its stated climate-disclosure goals. Under different SEC rules, companies are *already* required to disclose any material risks to their particular businesses—confirming that SEC's climate-disclosure Rule must be expanding materiality as traditionally understood.[36] Moreover, companies are free to provide climate information voluntarily or at the request of potential investors. And as dissenting Commissioner Hester Peirce noted, SEC concedes many companies are already tailoring statements to serve their customers in matters outside the SEC's control.[37] There is no "persuasive reason" to compel climate speech when the free market already provides this information where appropriate, and when SEC has not shown the reasonable investor would take broader, non-material climate information into account.[38]

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[28] Final Rule at 21 n.34.
[29] *Id.* at 850-51.
[30] *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423, 141 S. Ct. 1150, 1158, 209 L. Ed. 2d 287 (2021).
[31] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted).
[32] *Nat'l Inst. Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2372 (2018) (citation omitted).
[33] *Id.*
[34] *AMI v. U.S. Dep't of Agric.*, 760 F.3d 18, 31 (D.C. Cir. 2014) (Kavanaugh, J., concurring).
[35] *NAM v. SEC*, 800 F.3d 518, 530 (D.C. Cir. 2015) (invalidating conflict-mineral disclosures).
[36] *See* U.S. Chamber of Commerce, *The Chamber Fights Back Against Counterproductive Corporate Disclosure Requirements*, https://perma.cc/E94D-ECQT.
[37] Comm'r Hester M. Peirce, *Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors*, SEC (Mar. 6, 2024), https://perma.cc/6PEL-SGA6.
[38] *Id.*

D. Flawed Administrative Process

The APA sets out a series of procedural hurdles SEC's rulemaking process needs to clear. Chief among them, agencies must provide "adequate" opportunity for public comment on their proposed approach.[39] In practice, this means SEC cannot sandbag regulated parties by unveiling new regulatory requirements in the Final Rule that were missing from the initial proposed rule. For the reasons dissenting Commissioner Uyeda explains, SEC appears to have violated these APA procedural limits, too, by finalizing a proposal that differs too dramatically from its initial approach and wielding new studies not disclosed during the comment process.[40] This pivot prevented parties from meaningfully commenting on the costs of SEC's final regime, among other issues. The APA's notice-and-comment requirement should have dictated a supplemental comment period, at a minimum, to allow parties a full and fair opportunity to comment on SEC's climate regime.

II. <u>The SEC's Climate-Disclosure Rule Reflects a Pattern of Federal Overreach Extending Far Beyond SEC</u>

The SEC's rule is not an isolated overstep in the field of business and climate regulation. Recent years have seen a steady uptick in federal rulemaking. As a party challenging a different SEC rule recently observed, President Biden's first 18 months in office saw agencies propose 142 major rules and 451 significant rules—categories involving rules with over $100,000,000 in yearly economic effects, among other things.[41] That is a *75 percent* increase in major rules and a *67 percent* increase in significant rules as compared to the previous administration over the same time period.[42]

SEC has contributed mightily to this trend. During Chair Gensler's first 18 months, SEC proposed 38 new rules. Again, as compared to the prior time period under his predecessors, this clip marks an *111 percent* increase in proposed rules (which numbered 18).[43] Among other aggressive administrative steps, SEC has: shortened the standard settlement cycle for most broker-dealer transactions from two business days to one business day after the trade date[44] and adopted a legally flawed share-repurchase rule remanded and later vacated by a federal circuit court.[45]

Other agencies have likewise acted in a way that has saddled States, businesses, and individual consumers with burdensome climate-policy choices. To name just a few:

- the General Services Administration proposed a Single Use Plastic Packaging Rule,[46] which would greatly increase manufacturing and transportation costs for federal contractors;

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[39] *Tex. Ass'n of Mfrs. v. CPSC*, 989 F.3d 368, 381-83 (5th Cir. 2021).
[40] Uyeda Dissenting Statement, *supra* n.20.
[41] Br. of Nat'l Ass'n of Private Fund Mgrs. et al. 5-7, *Nat'l Ass'n of Private Fund Mgrs. v. SEC*, 5th Cir. No. 23-60626 (Mar. 12, 2024) (citing Keith B. Belton, *Regulatory Activity in the Biden Administration 1, Regulation: Regulatory Review* (2022), https://perma.cc/3UQ4-Y8QT).
[42] *Id.*
[43] *See* Securities Industry and Financial Markets Association, SEC Rulemaking Tracker: Data Set, https://perma.cc/XTP6-S3GQ.
[44] *Shortening the Securities Transaction Settlement Cycle*, SEC (Feb. 15, 2023), https://bit.ly/4ajq4hf.
[45] *See generally Chamber of Commerce v. SEC*, 85 F.4th 760 (5th Cir. 2023).
[46] Tennessee Attorney General Jonathan Skrmetti, *Comment Regarding Regulation of Single-Use Plastic Packaging*, No. GSA-GSAR-2023-0028-0001 (Feb. 26, 2024).

- the EPA has adopted several new standards governing methane emissions, coal-fired power plants, and more,[47] even after the U.S. Supreme Court has invalidated similar approaches;
- the Department of Energy has finalized a slew of regulations on household appliances that increase costs while decreasing products' effectiveness[48];
- the Administration has unilaterally paused liquified-natural-gas exports.[49]

And even when federal regulators do not affirmatively adopt new business-altering regulations, they have pursued regimes apparently aimed at positioning States like California as means to the same climate-policy endgame.[50]

On top of all this, SEC's putative status as an independent agency thwarts political accountability for its misguided policy choices. To ensure accountability for the exercise of the "executive Power," the Constitution demands that the President retain the ability "to remove those who assist him in carrying out his duties."[51] If "an agency does important work," its leaders must be accountable through removal—no matter the agency's "size or role."[52] Yet SEC Commissioners have been assumed to have protection from at-will presidential removal—meaning they can be removed only for neglect of duty or malfeasance, but no other cause.[53] This removal insulation unconstitutionally "subverts the President's ability to ensure that the laws are faithfully executed—as well as the public's ability to pass judgment on his efforts."[54]

III. States Play a Critical Role in Checking Agency Abuses and Safeguarding the Separation of Powers

The continued uptick in lawmaking by "pen-and-phone" regulation rather than through Congress is constitutionally problematic on several fronts. Our Constitution clearly contemplates policymaking by the People's Representatives, not unelected bureaucrats.[55] Most relevant here from the States' perspective, the procedural requirements governing how federal law gets made were a central part of the Founding-era "bargain" under which States acceded to the federal government's Supremacy Clause power.[56]

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[47] *See, e.g.*, EPA, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 Fed. Reg. 16,820 (Mar. 8, 2024); *Commonwealth of Kentucky v. EPA*, D.C. Cir. No. 24-1050 (challenge to EPA particulate matter rule).

[48] Tennessee Attorney General Jonathan Skrmetti, *Comment Regarding Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers, No. EERE-2017-BT-STD-0014* (May 2, 2023), https://perma.cc/Z9L5-CG3Z; Tennessee Attorney General Jonathan Skrmetti, *Comment Regarding Energy Conservation Program: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers, No. EERE-2017-BT-STD-0003* (April 28, 2023), https://perma.cc/DS6C-VPCP; *Louisiana v. DOE*, No. 22-60146 (5th Cir. 2024).

[49] Kansas Attorney General Kris Kobach, *Objections to the Liquefied Natural Gas Export Pause* (Feb. 6, 2024) https://bit.ly/3wOh455.

[50] California House Delegation, *Letter to SEC Chair Gensler Urging Inclusion of Robust Greenhouse Gas Emissions Disclosure Requirements* (Oct. 12, 2023), https://bit.ly/3PsFbwH; *State of Ohio v. EPA*, D.C. Cir., No. 22-1081 (2022).

[51] *Seila Law v. CFPB*, 140 S. Ct. 2183, 2191 (2020) (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 513–14 (2010)).

[52] *Collins v. Yellen*, 141 S. Ct. 1761, 1784 (2021).

[53] *Free Enter. Fund*, 561 U.S. at 487.

[54] *Id.* at 498.

[55] *West Virginia*, 597 U.S. 736-37 (Gorsuch, J., concurring).

[56] Bradford R. Clark, *Separation of Powers as a Safeguard of Federalism*, 79 Tex. L. Rev. 1321, 1339 (2001).

Permitting agencies like SEC rather than elected lawmakers to advance country-altering regulations upends our federal structure. Among other things, cutting States out of the political process of lawmaking unlawfully hampers their power to take political action to protect their interests and the interests of their citizens. Tennessee, for its part, has positioned itself as one of the nation's leaders in adopting pro-business policies that have spurred private-sector growth and the value investors receive.[57] Yet by enshrining burdensome, business-harming rules of nationwide scope, SEC and other agencies can stymie or even nullify state-level policy choices.

All of this means States must use the legal process to play a role in safeguarding the separation-of-powers and their citizens' interests. Coalitions of States, through their attorneys general, are increasingly banding together to scour thousands of pages of the federal register to locate proposed federal rules which establish legislative policy and encroach on state sovereignty. States can then comment on proposals to flag legal and practical problems—as many States did with respect to SEC's climate-disclosure rule. And when agencies do not heed these warnings, States have successfully initiated lawsuits seeking to enforce federal statutory and constitutional law against final agency action.

In the realm of climate policy, state-led suits already have made a difference. *West Virgnia v. EPA*—which invalidated EPA's sweeping Clean Power Plan—is among the latest in a string of examples involving federal rules. Even in the private sphere, States have made significant progress in helping protect consumers against activist climate policy and interest groups that risk detracting from companies' fiduciary obligations to drive investor value. After Tennessee filed a first-of-its-kind consumer-protection lawsuit against BlackRock, for instance, the company announced it was scaling back its ties with controversial Climate Action 100+, an investment group that has been pushing companies to decarbonize.[58] Similar investment groups like Vanguard have likewise retreated from collective promises to fulfil dubious climate-related goals after pushback from coalitions of state Attorneys General.[59]

States have mobilized swiftly to help fight SEC's climate-disclosure rule. Tennessee, Ohio, and Kentucky have sued SEC over the Final Rule in the U.S. Courts of Appeals for the Sixth Circuit. Coalitions comprising over a dozen other States have initiated litigation too. Under rules governing these types of challenges, all of the cases filed to this point will soon transfer to one federal circuit court for final resolution.

The volume and pace of federal rulemaking means holding agencies to account will continue to be a group effort among States, industry groups, affected citizens, and Committees like this one. Together, we can best help "continue to check and balance" the proliferation of power among federal agencies and protect the rule-of-law principles our federal Constitution enshrines.[60]

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[57] *E.g.*, Tenn. Sec'y of State, *Tennessee Marks 10 Years of New Business Growth*, https://bit.ly/3SYL0El.

[58] Andrew Ross Sorkin, et al., *Wall Street's Climate Retreat*, The New York Times (Feb. 16, 2024), https://www.nytimes.com/2024/02/16/business/dealbook/wall-streets-climate-retreat.html.

[59] Ross Kerber et al., Vanguard Quits Net Zero Climate Effort, Citing Need for Independence, Reuters (Dec. 7, 2022), https://www.reuters.com/business/sustainable-business/vanguard-quits-net-zero-climate-alliance-2022-12-07/.

[60] Jonathan Skrmetti, *Why We must Fight to Preserve the Constitution*, The Tennessean (Sept. 15, 2023), https://perma.cc/KK2T-G5YS.