

Nos. 24-1522, 24-1624, 24-1626, 24-1627, 24-1628, 24-1631, 24-1634, 24-1685,  
24-2173

*United States Court of Appeals for the Eighth Circuit*

STATE OF IOWA, ET AL.,  
*Petitioners,*

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,  
*Respondent*

and

DISTRICT OF COLUMBIA, ET AL.,  
*Intervenors.*

**BRIEF AMICUS CURIAE OF AMERICAN CHEMISTRY COUNCIL IN  
SUPPORT OF PETITIONERS**

	<p>Nessa Horewitch Coppinger BEVERIDGE &amp; DIAMOND, P.C. 1900 N Street, NW, Suite 100 Washington, D.C. 20036 Telephone: 202-789-6053 <a href="mailto:NCoppinger@bdlaw.com">NCoppinger@bdlaw.com</a></p>
June 24, 2024	<i>Counsel for Amicus Curiae American Chemistry Council</i>

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and 8th Cir. R. 26.1.A., Amicus Curiae American Chemistry Council (ACC) states that it does not have a parent corporation and that no publicly held corporation owns 10% or more of the stock in it.

**TABLE OF CONTENTS**

CORPORATE DISCLOSURE STATEMENT .....i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii

I. STATEMENT OF INTEREST .....1

II. ARGUMENT .....2

    A. The Final Rule Will Discourage Climate-Related  
    Goal Setting.....3

    B. The Final Rule Could Inappropriately Draw in  
    Climate-Related Disclosures Mandated by Other  
    Legal Regimes.....8

CONCLUSION.....11

CERTIFICATE OF COMPLIANCE .....13

CERTIFICATE OF SERVICE.....14

## TABLE OF AUTHORITIES

### Cases

<i>Motor Vehicle Manufacturers Ass’n of United States v. State Farm Mutual Automobile Insurance Co.</i> , 463 U.S. 29 (1983).....	7
--	---

### Statutory Authorities

Cal. Health & Saf. Code § 38532 .....	8, 9, 10
Cal. Health & Saf. Code § 38532(c)(1)(D).....	10
Cal. Health & Saf. Code § 38533.....	8
Cal. Health & Saf. Code § 38533(b)(4)(A).....	8
Cal. Health & Saf. Code § 44475.....	10

### Regulations

17 C.F.R. § 229.303 .....	4
17 C.F.R. § 229.1502 .....	9
17 C.F.R. § 229.1504 .....	5, 6, 10
17 C.F.R. § 229.1504(a).....	5, 6, 7
17 C.F.R. § 229.1504(b).....	5, 6
17 C.F.R. § 229.1504(c).....	5, 6
17 C.F.R. § 229.1504(d).....	6

### Rules

Fed. R. App. P.29(a)(2).....	1
Fed. R. App. P.29(a)(4)(E). .....	1

### Federal Register

81 Fed. Reg. 23,916 (Apr. 22, 2016) .....	5
87 Fed. Reg. 21,471 (Apr. 11, 2022) .....	3
89 Fed. Reg. 21,668 (Mar. 28, 2024).....	2, 3, 4, 6, 7, 10

### Additional Authorities

A4123A, 2023-2024 Leg. Sess. (Ny. 2023) .....	8
American Chemistry Council, Comment Letter on Proposed Enhancements and Standardization of Climate-Related Disclosures for Investors (June 17, 2022), <a href="https://www.sec.gov/comments/s7-10-22/s71022-20132320-302878.pdf">https://www.sec.gov/comments/s7-10-22/s71022-20132320-302878.pdf</a> .....	3
Statement from SEC Comm’r Hester M. Pierce, <i>Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors</i> (March 6, 2024).....	4

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (2022).....8, 9  
H.B. 4268, 103rd Gen. Assemb. (Il. 2023).....8  
Resolution on the Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, (2024).....8, 9  
S.B. 6092, 2024 Reg. Sess. (Wa. 2024).....8  
S.F. 2744, 93rd Leg. Sess. (Mn. 2023) .....8  
Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 (Austl.).....10  
United Kingdom, UK Sustainability Reporting Standards (May 16, 2024), <https://www.gov.uk/guidance/uk-sustainability-disclosure-standards> .....10  
US Chamber of Commerce, Comment Letter on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 16, 2022), <https://www.sec.gov/comments/s7-10-22/s71022-20131892-302347.pdf> .....6

## I. STATEMENT OF INTEREST

The American Chemistry Council (ACC)<sup>1</sup> is a trade association representing leading companies engaged in the multibillion-dollar business of chemistry. ACC members work to solve some of the biggest challenges facing our nation and our world by providing chemical, plastic, and polymer products and materials used in the institutional, consumer, commercial, and industrial sectors of the U.S. economy. ACC members are key stakeholders and partners in the nation's drive toward a lower greenhouse gas (GHG) emissions future, both as heavily regulated entities and as providers and enablers of the materials, products, and technologies needed to reduce GHG emissions across the larger economy. These include carbon capture, utilization, and storage technologies; lower-emission energy sources including hydrogen, steam, and electricity; the use of biomaterials and circular feedstocks instead of virgin materials; cracker electrification; and industrial energy efficiency programs.

ACC members include various types of US registrants and foreign companies doing business within the United States. Our publicly traded members

---

<sup>1</sup> Amicus Curiae states: No party's counsel authored this brief in whole or in part; no party or party's counsel has contributed money that was intended to fund the preparation or submission of this brief; and no person—other than the amicus curiae, its members, or its counsel—contributed money intended to fund the preparation or submission of this brief. Fed. R. App. P.29(a)(4)(E). All parties consented to the filing of this brief. *Id.* at 29(a)(2).

recognize their fiduciary duty to provide investors and shareholders with accurate, material, and accessible information on the broad range of risk factors affecting the financial health of their investments. ACC supports a company-specific, principles-based approach to climate-related information reporting to focus on disclosures that are relevant and material to investors and shareholders without impeding the competitive marketplace.

## **II. ARGUMENT**

ACC focuses in this brief on two flawed aspects of the Securities & Exchange Commission's ("SEC") new rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors* ("Final Rule"):<sup>2</sup> (1) the Final Rule creates disincentives for regulated companies to set climate-related targets and goals and is therefore counter-productive; and (2) the Final Rule could inappropriately draw in climate-related disclosure requirements imposed by other legal regimes, exposing registrants to undue risks and costs that will increase over time.

---

<sup>2</sup> 89 Fed. Reg. 21,668, 21,673–76 (Mar. 28, 2024). In focusing on these two aspects, ACC is not conceding that any other aspect of the Final Rule is necessary or appropriate, or that the SEC has the appropriate legal authority to regulate in this space.

## **A. The Final Rule Will Discourage Climate-Related Goal Setting**

Companies may set and pursue climate-related targets and goals specific to their business and circumstances. Developing climate-related targets and goals is a complex and iterative process that often draws on sensitive and proprietary business information. The Final Rule unnecessarily creates new risks of legal enforcement and liability in relation to voluntary climate-related targets and goals, information pertaining to which is already subject to existing requirements to disclose material information. The Final Rule thereby discourages regulated companies from setting such targets and goals and therefore may be counterproductive to the objective of reducing GHG emissions – the actual, non-securities law policy objective underlying the Final Rule.

The SEC initially proposed detailed disclosures for registrants that voluntarily set *any* climate-related targets or goals.<sup>3</sup> Aware that unnecessarily creating potentially serious legal exposures for companies engaging in climate-related goal setting could discourage such activities, ACC urged the SEC to develop disclosures that “encourage rather than discourage[] sustainable management, planning, goal setting and investment.”<sup>4</sup> Other commenters echoed

---

<sup>3</sup> 87 Fed. Reg. 21471 (Apr. 11, 2022).

<sup>4</sup> American Chemistry Council, Comment Letter on Proposed Enhancements and Standardization of Climate-Related Disclosures for Investors, 5 (June 17, 2022), <https://www.sec.gov/comments/s7-10-22/s71022-20132320-302878.pdf>.



these sentiments, warning that the proposed disclosures would have a “chilling effect” on even preliminary discussions of climate-related initiatives at the board or management level.<sup>5</sup>

In the Final Rule, the SEC added a materiality qualifier to the targets and goals disclosure and asserted that this approach addresses flaws in the proposed disclosure.<sup>6</sup> Unfortunately, the SEC’s approach is not sufficiently principles-based to address the disincentives the Final Rule creates for climate-related goal setting.<sup>7</sup>

A principles-based disclosure requirement articulates an objective and requires management to exercise judgment in satisfying that objective by providing appropriate disclosure tailored to the specific circumstances of the registrant. An example of this approach is Management’s Discussion and Analysis.<sup>8</sup> A principles-based approach allows for disclosure that keeps pace with complex and developing issues without requiring the SEC to continuously add to or revise its

---

<sup>5</sup> 89 Fed. Reg. at 21,722.

<sup>6</sup> 89 Fed. Reg. at 21,723.

<sup>7</sup> Statement from SEC Comm’r Hester M. Peirce, *Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors* (Mar. 6, 2024) (“The Commission, in adopting today’s climate prescriptions, dismisses the role that materiality ought to play in balancing the costs and benefits of disclosure. ... This rule replaces our current principles-based regime with dozens of pages of prescriptive climate-related regulations.”).

<sup>8</sup> 17 C.F.R. § 229.303.

disclosure requirements. By contrast, prescriptive rules “rely on bright-line tests rather than management’s judgment to determine when disclosure is required.”<sup>9</sup>

The SEC’s approach in the Final Rule generally remains more prescriptive than principles-based, as exemplified by the targets and goals disclosure set forth in 17 C.F.R. § 229.1504:

(a) A registrant ***must disclose*** any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant’s business, results of operations, or financial condition. ...

(b) In providing ***disclosure required*** ... a registrant ***must provide*** any additional information or explanation necessary to an understanding of the material impact or reasonably likely material impact of the target or goal, ***including, as applicable, but not limited to***, a description of:

- (1) The scope of activities included in the target;
- (2) The unit of measurement;
- (3) The defined time horizon ... ;
- (4) If the registrant has established a baseline for the target or goal, the defined baseline time period and the means by which progress will be tracked; and
- (5) A qualitative description of how the registrant intends to meet its climate-related targets or goals.

(c) ***Disclose any progress made toward meeting the target or goal and how any such progress has been achieved.*** A registrant ***must update*** this disclosure each fiscal year ...

- (1) Include a discussion of any material impacts to the registrant’s business, results of operations, or financial condition ...
- (2) ***Include quantitative and qualitative disclosure*** of any material expenditures and material impacts on financial estimates and assumptions . . . .<sup>10</sup>

---

<sup>9</sup> 81 Fed. Reg. 23,916, 23,925 (April 22, 2016).

<sup>10</sup> 17 C.F.R. § 229.1504(a)-(c). (emphasis added)

The SEC’s claim that the materiality qualifier reduces the compliance burden on registrants is belied by the breadth and number of specific disclosures still required under § 229.1504 in the event a materiality determination triggers application of the rule.<sup>11</sup> Although the listed items under § 229.1504(b)-(d) are “non-exclusive,” a registrant “*must* disclose” these or similar information “if necessary to an understanding of the material impact or reasonably likely material impact of the target or goal.”<sup>12</sup> The listed items will inevitably become the *de facto* minimum requirement.

Moreover, the targets and goals covered by § 229.1504 include material internal targets or goals, whether or not formally adopted by the board or CEO.<sup>13</sup> Companies will thus need to devote time and resources to identifying when precisely an internal target or goal becomes material and subject to disclosure. Inserting a materiality assessment into an already complex and resource-intensive internal process will discourage such voluntary initiatives and divert resources that could be allocated to climate action.<sup>14</sup>

---

<sup>11</sup> 89 Fed. Reg. at 21,724.

<sup>12</sup> *Id.* (emphasis added)

<sup>13</sup> *Id.* at 21,723.

<sup>14</sup> US Chamber of Commerce, Comment Letter on The Enhancement and Standardization of Climate-Related Disclosures for Investors, 35 (June 16, 2022), <https://www.sec.gov/comments/s7-10-22/s71022-20131892-302347.pdf> (“[T]he impact of this requirement will not only discourage companies from conceiving and publishing targets or goals but may also chill private and preliminary

Registrants are already aware that they face potential legal risks if they fail to accurately assess materiality. The specific disclosures required following a materiality determination under § 229.1504(a) increase these risks to the point of deterring registrants from setting climate-related targets or goals. Despite acknowledging that “the requirement to disclose targets and goals may prompt registrants to forgo establishing targets or goals that may be or may become material in order to avoid the disclosure requirements,”<sup>15</sup> the SEC fails to adequately consider this issue.<sup>16</sup> It is irrational and arbitrary for the SEC to impose a rule intended to enhance the disclosure of climate-related information when that rule discourages registrants from taking climate-related actions in the first place.<sup>17</sup>

---

discussions at the board or management level of constructive initiatives that could be construed as potentially implicated by this disclosure obligation. This ultimately could lead to dampened enthusiasm and organizational efforts within companies in pursuit of these worthy objectives and therefore, fewer achievements beneficial for the climate and environment would be realized.”).

<sup>15</sup> 89 Fed. Reg. at 21,857. The SEC theorizes that “[t]his effect may be mitigated to the extent that registrants also consider other factors (*e.g.*, investor demand) for having or not having climate-related targets and goals when making such decisions.” *Id.* Not all registrants face such demands, however, and potential liability risks may also dampen investor demands for companies to set climate-related targets and goals.

<sup>16</sup> *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>17</sup> The disincentives to climate-related goal setting created by the SEC’s approach compound those resulting from disclosures required and under development in other jurisdictions by climate regulators, discussed in Section B, *infra*.

## **B. The Final Rule Could Inappropriately Draw in Climate-Related Disclosures Mandated by Other Legal Regimes**

Many states have recently enacted or proposed climate-related disclosure requirements that resemble and go beyond the Final Rule.<sup>18</sup> The fact that these disclosure requirements are driven by climate policy objectives further confirms the actual, non-securities law objective underlying the Final Rule. Notably, California has enacted laws requiring in-scope entities to disclose GHG emissions, including Scope 3, regardless of materiality; climate-related risks *and* opportunities;<sup>19</sup> and information on historical claims and forward-looking goals such as the achievement of net zero emissions, regardless of materiality.<sup>20</sup>

Outside the United States, the European Union (EU) has enacted expansive new climate-related reporting laws – the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive

---

<sup>18</sup> Cal. Health & Saf. Code §§ 38532-38533, 44475.

<sup>19</sup> *Id.* §§ 38532-38533.

<sup>20</sup> *Id.* § 44475. In addition to California, Minnesota passed a climate-related disclosure bill that requires banks and credit unions to submit an annual climate risk survey to the Commissioner of Revenue. S.F. 2744, 93rd Leg. Sess. (Mn. 2023). The New York legislature introduced its own Climate Corporate Data Accountability Act, which mirrors California’s SB 253 and would mandate annual disclosure and verification of scope 1, 2, and 3 emissions. A4123A, 2023-2024 Leg. Sess. (Ny. 2023). Illinois and Washington also introduced similar legislation with similar requirements. H.B. 4268, 103rd Gen. Assemb. (Il. 2023); S.B. 6092, 2024 Reg. Sess. (Wa. 2024).

(CSDDD) – which also apply to designated non-EU companies.<sup>21</sup> Under the CSRD, covered entities must provide detailed disclosures about their climate transition plan, such as decarbonization levers identified and key actions planned, including changes in the company’s product and service portfolio and the adoption of new technologies in its own operations or value chain.<sup>22</sup> The CSDDD requires all in-scope companies to adopt and put into effect a climate transition plan aligned with the Paris Agreement,<sup>23</sup> and undertake due diligence concerning adverse impacts (including environmental impacts).<sup>24</sup>

---

<sup>21</sup> Resolution on the Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Eur. Parl. (2024) (hereinafter CSDDD); Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, Eur. Pal. (2022) (hereinafter CSRD).

<sup>22</sup> European Sustainability Reporting Standards, E1-1.

<sup>23</sup> CSDDD, Art. 22. The plan must demonstrate that the company’s business model and strategy are compatible with limiting global warming to 1.5 °C in line with the Paris Agreement; contain time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence; and, where appropriate, absolute emission reduction targets for scope 1, 2 and 3 GHG emissions for each significant category. *Id.*, at Art. 22(a). The Final Rule only requires disclosure of a transition plan *if adopted* to manage a material risk. 17 C.F.R. § 229.1502 (“If a registrant has adopted a transition plan to manage a material transition risk, describe the plan.”).

<sup>24</sup> CSDDD, Arts. 8-11.

It is foreseeable that other major jurisdictions will adopt their own climate-related disclosures and transition planning obligations in the future.<sup>25</sup>

Companies subject to the Final Rule and one or more other reporting regimes – both now and on a going-forward basis – will be forced to either incorporate disclosures from these regimes into their disclosures to the SEC<sup>26</sup> or expend resources creating distinct and separate disclosures. Creating distinct and separate disclosures will risk allegations that companies omitted material information in their disclosures under the Final Rule. Companies may therefore need to combine disclosures to ensure consistent and efficient reporting, effectively converting non-binding *additional* disclosures required under other existing – and future – regimes into binding securities-law backed duties with concomitant liabilities. A company required to adopt a climate-related transition plan under the

---

<sup>25</sup> The United Kingdom is currently considering a Sustainability Disclosure Requirements framework. *See* United Kingdom, UK Sustainability Reporting Standards (May 16, 2024), <https://www.gov.uk/guidance/uk-sustainability-disclosure-standards>. The Australian government is also considering a bill that would require certain reporting entities to prepare and publish annual sustainability reports. *See* Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 (Austl.).

<sup>26</sup> SB 253 and SB 261 both contain provisions designed to permit a covered entity to satisfy its reporting requirements by complying with federally mandated disclosure requirements. Cal. Health & Saf. Code §§ 38532(c)(1)(D), 38533(b)(4)(A). However, as explained above, the requirements imposed by these laws extend beyond those prescribed in the Final Rules. Thus, a company may be able to satisfy California’s requirements using reports mandated by the Final Rules, but at the cost of expanding its risks and liabilities under federal securities law.

CSDDD, for example, will have adopted climate-related targets and goals, thus triggering the materiality assessment required by 17 C.F.R. § 229.1504.

The SEC acknowledged the existence of certain of these other reporting frameworks in the Final Rule,<sup>27</sup> but it failed to address the issue of combined disclosures and protect against the resulting expansion of registrants' enforcement and liability risks now and going forward.<sup>28</sup> The SEC's failure to address this aspect of the interaction of the Final Rule with existing and future climate-related reporting regimes further renders the SEC's actions arbitrary and capricious.

## CONCLUSION

For the foregoing reasons, the amicus curiae respectfully urges the Court to find in Petitioners' favor.

---

<sup>27</sup> 89 Fed. Reg. at 21,834-21,835. The SEC found that “a meaningful number of Commission registrants may be subject to the climate-related disclosure and reporting requirements of one or more additional Jurisdictions,” but inferred from this only that “some registrants subject to the final rules may already have in place, or may be developing, certain processes and systems to track and disclose aspects of their climate-related risks.” *Id.* at 21,835.

<sup>28</sup> *Id.* at 21,681 (“These laws may reduce the compliance burden of the final rules to the extent they impose similar requirements for registrants that are subject to them. However, the disclosure required by these laws will appear in documents outside of SEC filings and therefore will not be subject to the same liability, DCPs, and other investor protections as the climate-related disclosures required under the final rules.”). This omission is notable given the SEC's emphasis on the issue of fragmented reporting. *See, e.g., id.* at 21,670.



June 24, 2024

Respectfully submitted,

/s/ Nessa Horewitch Coppinger

Nessa Horewitch Coppinger

BEVERIDGE & DIAMOND, P.C.

1900 N Street, NW, Suite 100

Washington, D.C. 20036

Telephone: 202-789-6053

[NCoppinger@bdlaw.com](mailto:NCoppinger@bdlaw.com)

*Counsel for Amicus Curiae American  
Chemistry Counsel*

## CERTIFICATE OF COMPLIANCE

(1) The undersigned counsel for *amici curiae* certifies pursuant to Federal Rule of Appellate Procedure 32(a)(7) that the foregoing brief contains 2637 words, excluding those parts of the brief exempted by Fed. R. App. P. 32(f).

(2) This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point font of Times New Roman.

(3) To comply with 8th Cir. R. 28A(h)(2), the brief was scanned for viruses. The brief is virus free.

June 24, 2024

/s/ Nessa Horewitch Coppinger  
Nessa Horewitch Coppinger  
BEVERIDGE & DIAMOND, P.C.  
1900 N Street, NW, Suite 100  
Washington, D.C. 20036  
Telephone: 202-789-6053  
[NCoppinger@bdlaw.com](mailto:NCoppinger@bdlaw.com)

*Counsel for Amicus Curiae American  
Chemistry Counsel*

## **CERTIFICATE OF SERVICE**

I certify that the foregoing was filed with the Clerk using the appellate CM/ECF system on June 24, 2024. All counsel of record are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

June 24, 2024

/s/Nessa Horewitch Coppinger  
Nessa Horewitch Coppinger  
BEVERIDGE & DIAMOND, P.C.