No. 24-1522 and all consolidated cases: Nos. 24-1624, 24-1626, 24-1627, 24-1628, 24-1631, 24-1634, 24-1685, and 24-2173

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

STATE OF IOWA, *et al.*,
PETITIONERS,

V.

SECURITIES AND EXCHANGE COMMISSION,
RESPONDENT,
DISTRICT OF COLUMBIA, *et al.*,
INTERVENORS.

ON PETITION FOR REVIEW OF AN ORDER AND RULE OF THE SECURITIES AND EXCHANGE COMMISSION

INTERVENOR STATES' RESPONSE TO THE JULY 23, 2025 STATUS REPORT OF THE SECURITIES AND EXCHANGE COMMISSION

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On April 24, 2025, this Court held these consolidated petitions in abeyance and ordered the Securities and Exchange Commission (SEC) to answer three specific questions: (1) "whether the Commission intends to review or reconsider the rules at issue"; (2) if not, "whether the Commission will adhere to the rules if the petitions for review are denied"; and (3) if not, "why the Commission will not review or reconsider the rules at this time." Doc. 5509839, No. 24-1522. On July 23, SEC filed a status report purporting to answer these questions. Doc. 5540471, No. 24-1522 (Status Report). But SEC hedges on the first question and refuses entirely to answer the second and third. This Court should continue to hold these petitions in abeyance until SEC clearly indicates what it intends to do with the Rules, including whether it will rescind the Rules if the Court upholds them.

To start, SEC's filing is equivocal (at best) but its import is clear: "The Commission simply does not want to say what we all know to be true by now—it has no intention of allowing the Climate-Related Disclosure Rules to go into effect." Caroline A. Crenshaw, *Statement on the Commission's Status Report in the Climate-Related Disclosure Rules Litigation*, SEC (July 23, 2025) (Crenshaw Statement), https://tinyurl.com/3npynfft. Indeed, SEC urges the Court to "proceed with the litigation" because it "does not intend to review or reconsider the Rules at this time" (i.e., right now). Status Report 2. Yet SEC simultaneously acknowledges that most of its current Commissioners oppose the Rules and that it might rescind the Rules if

the Court upholds them: "it is possible the Commission would engage in further action," including directing staff "to develop recommendations to . . . replace, rescind, or modify the Rules." Status Report 2-3, 4, 6.[1]

SEC's Janus-faced response just exacerbates the judicial-efficiency concerns that prompted the Court to hold these petitions in abeyance. As state intervenors have previously explained, to conserve judicial resources, this Court should not devote the time and energy necessary to hear oral argument and write an opinion addressing the many issues these petitions raise unless doing so is necessary. And it would be an outright waste of judicial resources for this Court to issue a decision upholding the Rules only to have SEC nullify them using the same notice-and-comment process that it could have used all along. Indeed, "the primary reason for holding a case in abeyance is to promote judicial economy," *Utah by & through Cox v. EPA*, No. 23-1157, 2025 WL 1354371, at *2 (D.C. Cir. May 2, 2025)

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[1] *See, e.g.*, Mark T. Uyeda, *Acting Chairman Statement on Climate-Related Disclosure Rules*, SEC (Feb. 11, 2025), https://tinyurl.com/2r7y2zxx ("The Rule is deeply flawed and could inflict significant harm on the capital markets and our economy."); 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://tinyurl.com/4v2ha88z ("Today's rule is the culmination of efforts by various interests to hijack and use the federal securities laws for their climate-related goals."); Hester M. Peirce, *Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors*, SEC (Mar. 6, 2024), https://tinyurl.com/4bsbnmvy ("I do not support the recommendation before us[.]").

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(statement of Rao, J., joined by Walker, J.), and this Court has implicitly recognized as much in holding cases in abeyance at the urging of federal agencies, *see, e.g.*, Order, *Sw. Elec. Power Co. v. EPA*, No. 24-2123 (8th Cir. Feb. 28, 2025), Doc. 5491197 (granting EPA's abeyance motion). SEC offers no sound reason why the Court should treat this case differently.

Despite leaving open the door to rescind the Rules, SEC refuses to answer this Court's second and third questions based on a fear of "[p]re-judging" its "future actions," purportedly because "the outcome of the litigation and the reasoning of the Court will bear heavily on the Commission's next steps with the Rules." Status Report 4, 5-6. Yet SEC ignores its own admission that "a majority of the current Commissioners" have *already* publicly prejudged the Rules as exceeding SEC's "statutory authority," Status Report 4; *see supra* p. 2 & note 1—a point that has not been lost on petitioners, *see* National Legal and Policy Center, *SEC Puts Final Nail in Climate Rule Coffin* (Apr. 2, 2025), https://perma.cc/3DK8-7AV5 (pronouncing the Rules "doomed" given the current "majority on the SEC"). And SEC further ignores its own previously expressed view in a similar case that an "abeyance will conserve judicial resources" where "[f]urther regulatory action" regarding a challenged rule "could substantially narrow or moot some or all of [petitioner's] claims." SEC Abeyance Mot., at 3-4, *Institutional S'holder Servs., Inc. v. SEC*, No. 19-cv-3275 (D.D.C June 1, 2021), ECF No. 53; *see Institutional S'holder Servs.,*

Inc. v. SEC, --- F.4th ---, No. 24-5105, 2025 WL 1802786, at *3 (D.C. Cir. July 1, 2025) (noting that the district court granted several of SEC's abeyance motions).

At any rate, SEC never explains how the outcome of this litigation will bear on its next steps. A decision invalidating the Rules in total would render it unnecessary for SEC to take any "next steps." A decision upholding the Rules in whole or in part would confirm their total or partial legality, in which case SEC's "next steps" would be to either enforce the Rules—a question this Court posed directly and that SEC avoided answering—or to initiate notice-and-comment procedures to rescind them based on the same policy objections that several Commissioners have already voiced but refused to act upon, *see* Status Report 4, 6; *supra* p. 2 & note 1. Either way, SEC cannot explain why it must wait until *after* this Court has issued a decision before choosing whether to seek to rescind the Rules.

In effect, SEC appears to ask the Court to undo the Rules because rescinding them through the notice-and-comment process "would consume significant time and resources." Status Report 5.[2] That is not a valid reason to lift the abeyance. The rigors of notice-and-comment rulemaking are features, not bugs, of administrative

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[2] *See* Mark T. Uyeda, Remarks at the "SEC Speaks" Conference 2025, SEC (May 19, 2025) (Uyeda Remarks), https://tinyurl.com/4vpbvatr ("For the Commission to rescind the climate-related disclosure rule—and address the countless factual findings discussed in that 885-page release—would place a significant strain on the Commission's resources.").

law, *see* 5 U.S.C. § 553(e), and compliance "'is not a matter of agency choice,'" *Iowa League of Cities v. EPA*, 711 F.3d 844, 872 (8th Cir. 2013) (quoting *Reno-Sparks Indian Colony v. EPA*, 336 F.3d 899, 909 n.11 (9th Cir. 2003)). Indeed, notice-and-comment procedures almost always "consume significant time and resources," Status Report 5, yet agencies cannot ignore those requirements simply because they "would be a difficult lift," Uyeda Remarks. *See Azar v. Allina Health Servs.*, 587 U.S. 566, 581 (2019) ("If the government doesn't like Congress's notice-and-comment policy choices, it must take its complaints there.").

SEC thus "cannot take the easy way out" by avoiding its "statutorily-required work" or otherwise "throw[ing] the ball back at the Court." Crenshaw Statement. True, affected parties may bring legal challenges if SEC rescinds the Rules after notice-and-comment rulemaking. *See* Status Report 5. But that is simply how Congress has structured judicial review of administrative actions, and courts can and will address those issues in due course when properly teed up. The sheer possibility of future legal challenges to future SEC action, however, is no reason for this Court to unnecessarily decide this case in its current posture, at least not until SEC clarifies its responses to the Court's still-unanswered questions.

The rest of SEC's status report addresses uncontested issues of jurisdiction and state intervenors' willingness to defend the Rules to protect their unique interests. *See* Status Report at 2-3. But all of that is beside the point. The question

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is whether it would be a sound use of this Court's judicial resources to decide these cases now under the cloud of uncertainty left by SEC's evasive response. The answer to that question is no. Even if a decision of this Court would not be "advisory" in a jurisdictional sense, Status Report 3, it would very likely be advisory in a practical sense given the current SEC majority's avowed opposition to the Rules. *See supra* p. 2 & note 1. Further, because the Rules remain stayed for the pendency of this litigation,[3] preserving the current status quo portends no meaningful hardship. *See Utah*, 2025 WL 1354371, at *2 (Rao, J.) ("[W]hen a challenger will not be subject to the regulation while the case is held in abeyance—such as when the rule has been stayed—a legitimate interest in judicial economy will likely prevail over any alleged hardship."). Given this, the proper course is to avoid delving into the merits until SEC explains why doing so is worth the Court's resources.

* * *

For all of these reasons, this Court should continue to hold these consolidated cases in abeyance and direct SEC to file status reports every 60 days until it decides on a course of action for the Rules.

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[3] *See* "The Enhancement and Standardization of Climate-Related Disclosures for Investors; Delay of Effective Date," Release Nos. 33-11280; 34-99908 (April 4, 2024), 89 Fed. Reg. 25,804 (April 12, 2024) (ordering the Rules' "effective date" to be "delayed indefinitely").

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CERTIFICATE OF COMPLIANCE

I certify that this response complies with the type-volume limitation in Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,557 words, excluding exempted parts. This response complies with the typeface and type style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

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