

Kit Addleman in Law360: 'Debate Intensifies Over SEC's Climate Disclosure Authority'

April 6, 2022 Kit Addleman

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As the U.S. Securities and Exchange Commission rakes in hundreds of comment letters in response to its controversial proposal to require more climate risk-related disclosures from public companies, a central element of the debate is raging on: whether the agency has the authority to impose the rules in the first place.

In a letter to SEC Chair Gary Gensler on Tuesday, a group of 19 Republican senators argued public companies already have to disclose "material" risks and the agency lacks the legal authority to require nonmaterial disclosures. ...

"The SEC's authority to promulgate rules regarding climate impact disclosures is questionable, at best," said [Kit Addleman](#), chair of Haynes Boone's SEC enforcement practice group, in an email to Law360. "The rule is in many ways arbitrary and capricious having no congressional requirement for it, nor does it have any real ties to the SEC's mission."

Addleman compared the proposal to the SEC's controversial 2012 rulemaking regarding "conflict minerals" from the Democratic Republic of Congo, portions of which were later struck down as unconstitutional because they were found to violate the First Amendment.

Congress had at least required the SEC in the Dodd-Frank Act to develop the conflict minerals rules, while the agency has no similar legislation to lean on when it comes to climate disclosures, noted Addleman, who spent more than two decades at the SEC, including as the regional director of its Atlanta office.

"With disclosure of climate impact, carbon emissions and greenhouse gas, the SEC has no similar legislation to point to, so the ability to compel speech is even more problematic," she said. "I think we can expect some or all of the rule to be subject to litigation by industry groups and the rule may well be short-lived."

To read the full article, click [here](#).