United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

April 20, 2021

The Honorable John F. Kerry
Special Presidential Envoy for Climate
United States Department of State
2201 C Street, Northwest
Washington, DC 20520

Dear Mr. Kerry,

We are concerned by reports you have been pressuring banks to make extralegal commitments regarding energy-related lending and investment activities.[1] These commitments would result in discrimination against lawful U.S. energy companies and their employees, higher energy costs for American consumers, and slower economic growth. In addition, we are equally concerned by the Biden administration's related effort to create and impose new global warming disclosure requirements on companies without any explicit statutory authorization from Congress. Regardless of the policy merits, such requirements misuse financial regulators to achieve environmental goals and harm investors by undermining the quality and reliability of both accounting standards and the Securities and Exchange Commission's (SEC) existing corporate disclosure framework.

One of the main causes behind America's economic success has been that our government is based on the rule of law. Only Congress through the enactment of laws can decide what activity is permissible or prohibited, thereby protecting one's property from a whimsical and capricious administrative state. Your recent comments about President Joe Biden's forthcoming global warming executive order suggest a government that is not based on law, but on coercion. On April 7, 2021, at an event hosted by the International Monetary Fund, you stated the executive order will seek to "change allocation of capital."[2] Beyond the poor track record associated with central economic planning, this apparent attempt to prevent energy companies from obtaining capital disturbingly resembles the Obama administration's notorious "Operation Choke Point" scandal, in which financial regulators attempted to coerce banks into denying services to legal yet politically-disfavored businesses.

Misusing government power to influence bank lending and investment practices will distort capital allocation, raise energy costs for consumers, and slow economic growth. Without readily

---

[1] *See, e.g.,* Zack Colman, *Kerry to Wall Street: Put your money behind your climate PR*, POLITICO (Mar. 12, 2021, 3:40 PM), *available at* https://www.politico.com/news/2021/03/12/kerry-to-wall-street-put-your-money-behind-your-climate-pr-475565.
[2] IMF Seminar: A Critical Year for Climate Action: A Conversation between Kristalina Georgieva and John Kerry, INTERNATIONAL MONETARY FUND (Apr. 7, 2021), *available at* https://meetings.imf.org/en/2021/Spring/Schedule/2021/04/07/imf-seminar-a-critical-year-for-climate-action.

available bank financing, energy companies will need to retain high levels of unproductive capital on their balance sheets—capital that otherwise could be invested in their employees, facilities, and communities. As marginal funding costs rise, energy companies will have two choices: raise the cost of their products or cut expenses, including by laying off employees. Eventually, they may be forced to do both. Unsurprisingly, these effects are likely to be borne by working class Americans. Contrary to claims that consumers can move to alternative energy sources, fossil fuels continue to represent approximately 80 percent of U.S. energy production and consumption.[3] As one energy policy expert put it, "[t]hose pushing to end fossil fuel production now are missing the point that fossil fuels will still be needed for some time."[4] Perhaps most disconcertingly, this self-harm will diminish America's strategic advantage in fossil energy over adversaries but not meaningfully reduce global carbon emissions given that 90 percent of total emissions come from outside of U.S. borders, as you have recognized yourself.[5]

Finally, we are troubled by the Biden administration's efforts to politicize oversight of financial disclosure, especially at the SEC. Your recent comments indicated President Biden's executive order will "require disclosure."[6] This statement is concerning because, under federal securities law, all public companies—including banks—are already required to disclose material information, including climate-related risks. This point bears repeating: if a climate-related risk is material, a public company must already disclose it. Your comments suggest the White House and SEC may misuse the current disclosure framework to advance a liberal political agenda on global warming, rather than provide the public with material information. Given that material climate-related risks must already be disclosed, any new disclosure requirement would force companies to disclose non-material climate-related information, including information based on highly speculative data and inconsistent sustainability standards.[7] Inundating investors with such information would undermine the quality and reliability of the SEC's disclosure framework, which is intended to provide investors with information that is objectively important for making an investment decision. Moreover, imposing expensive reporting regimes like "scope 3 reports," which require companies to calculate greenhouse-gas emissions from activities by their suppliers and customers, will only further deter firms from going public and raise additional competitive barriers to new market entrants. The apparent objective of this effort is not to protect investors, but to punish lawful energy companies by deterring lending to, and investment in, such firms.

If the administration wants to ban or diminish fossil energy production to achieve environmental policy outcomes, it should not misuse financial regulators. Instead, it should come to Congress and seek to have the law amended. Until then, we strongly urge the Biden administration to

---

[3] *See* U.S. ENERGY INFORMATION ADMINISTRATION, Fossil fuels continue to account for the largest share of U.S. energy (Sept. 18, 2019), *available at* https://www.eia.gov/todayinenergy/detail.php?id=41353.

[4] Samantha Gross, *Why are fossil fuels so hard to quit?* BROOKINGS INSTITUTION (June 2020), *available at* https://www.brookings.edu/essay/why-are-fossil-fuels-so-hard-to-quit.

[5] *See* Tim Hains, *Climate Envoy Kerry: USA "Could Go To Zero [Carbon] Tomorrow, And The Problem Wouldn't Be Solved,"* REALCLEARPOLITICS (Jan. 27, 2021), *available at* https://www.realclearpolitics.com/video/2021/01/27/climate_czar_john_kerry_we_could_go_to_zero_tomorrow_and_the_problem_wouldnt_be_solved.html.

[6] IMF Seminar, *supra* note 2.

[7] *See, e.g.*, Andrew Ramonas, Amanda Iacone, and Nicola M. White, *SEC's Next Difficult Task for ESG Is Finding a Standard Setter*, BLOOMBERG LAW (Apr. 13, 2021, 5:00 AM), *available at* https://news.bloomberglaw.com/employee-benefits/bidens-sec-faces-uphill-battle-to-form-esg-reporting-body.

refrain from abusing government power—via executive order, regulatory or supervisory overreach, or informal pressure—to steer lending and investments away from lawful energy businesses.

Thank you for your consideration of our views on this matter.

Sincerely,

Pat Toomey
U.S. Senator

Richard Shelby
U.S. Senator

Mike Crapo
U.S. Senator

Tim Scott
U.S. Senator

M. Michael Rounds
U.S. Senator

Thom Tillis
U.S. Senator

John Kennedy
U.S. Senator

Bill Hagerty
U.S. Senator

Cynthia Lummis
U.S. Senator

Jerry Moran
U.S. Senator

Kevin Cramer
U.S. Senator

Steve Daines
U.S. Senator

cc: Gary Gensler, Chair, Securities and Exchange Commission
Brian Moynihan, Chairman of the Board and Chief Executive Officer, Bank of America
Thomas P. Gibbons, Chief Executive Officer, Bank of New York Mellon
Jane Fraser, Chief Executive Officer, Citigroup
David M. Solomon, Chief Executive Officer, Goldman Sachs
Jamie Dimon, Chairman of the Board and Chief Executive Officer, JPMorgan Chase
James P. Gorman, Chairman of the Board and Chief Executive Officer, Morgan Stanley
Robert P. O'Hanley, Chief Executive Officer, State Street
Charles W. Scharf, Chief Executive Officer and President, Wells Fargo
Rob Nichols, President and Chief Executive Officer, American Bankers Association
Greg Baer, President and Chief Executive Officer, Bank Policy Institute
Kevin Fromer, President and Chief Executive Officer, Financial Services Forum