

Congress of the United States

Washington, DC 20515

March 5, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chair Gensler:

We write to express our concern regarding reports that you are “considering a softening of planned rules,”¹ preemptively scaling back the Securities and Exchange Commission’s (SEC or Commission) proposed amendments to its rules that would require companies to provide climate-related risk information in their registration statements and annual reports.² As you have stated, “investors need reliable information about climate risks to make informed investment decisions” and the SEC’s rule as initially proposed “would provide investors with consistent, comparable, and decision-useful information and...would provide consistent and clear reporting obligations for issuers.”³ We urge the SEC to fulfill its duty to investors and follow through on finalizing a strong climate disclosure rule without delay.

Several news outlets have reported that you are “considering scaling back a potentially groundbreaking climate-risk disclosure rule” following “intense opposition from corporate America”⁴ and that a “primary concern is the wave of lawsuits that are expected to challenge the rule once it’s finalized.”⁵ The reports indicate that while the final rule will “likely still mandate some climate disclosures in financial statements,” the SEC is considering “dialing back the financial-reporting rules” such as “by raising the threshold at which companies must report climate costs” in an effort to “demonstrate that it has listened to business concerns.”⁶ The SEC is

¹ The Wall Street Journal, “SEC Considers Easing Climate-Disclosure Rules After Investor Pushback,” Jean Eaglesham and Paul Kiernan, February 3, 2023, <https://www.wsj.com/articles/sec-considers-easing-climate-disclosure-rules-after-investor-pushback-11675416111>.

² Politico, “SEC’s Gensler weighs scaling back climate rule as lawsuits loom,” Declan Harty, February 4, 2023, <https://www.politico.com/news/2023/02/04/sec-climate-rule-scale-back-00081181>; The Wall Street Journal, “SEC Considers Easing Climate-Disclosure Rules After Investor Pushback,” Jean Eaglesham and Paul Kiernan, February 3, 2023, <https://www.wsj.com/articles/sec-considers-easing-climate-disclosure-rules-after-investor-pushback-11675416111>.

³ U.S. Securities and Exchange Commission, “Statement on Proposed Mandatory Climate Risk Disclosures,” Chair Gary Gensler, March 21, 2022, <https://www.sec.gov/news/statement/gensler-climate-disclosure-20220321>.

⁴ Politico, “SEC’s Gensler weighs scaling back climate rule as lawsuits loom,” Declan Harty, February 4, 2023, <https://www.politico.com/news/2023/02/04/sec-climate-rule-scale-back-00081181>.

⁵ *Id.*; The Wall Street Journal, “SEC Considers Easing Climate-Disclosure Rules After Investor Pushback,” Jean Eaglesham and Paul Kiernan, February 3, 2023, <https://www.wsj.com/articles/sec-considers-easing-climate-disclosure-rules-after-investor-pushback-11675416111>.

⁶ The Wall Street Journal, “SEC Considers Easing Climate-Disclosure Rules After Investor Pushback,” Jean Eaglesham and Paul Kiernan, February 3, 2023, <https://www.wsj.com/articles/sec-considers-easing-climate-disclosure-rules-after-investor-pushback-11675416111>.

also reportedly considering curtailing “Scope 3” emissions disclosure requirements, which would require large companies to disclose upstream emissions generated by the production of the things they buy and downstream emissions from the use of what they sell if the company determines they are material, in the final rule.⁷ These reports are deeply concerning.⁸

Climate risk disclosure is key to the SEC’s mission of “protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation”⁹ The climate crisis and the clean energy transition are “two of the most significant, if not the most significant, factors in the performance of individual firms, markets, and the economy as a whole,”¹⁰ and a bipartisan report from U.S. financial regulators has stated: “disclosure of risks, and plans for managing them, can help foster the resilience of the financial system by allowing investors and market participants to factor that risk into their decision-making” and that “pricing of climate-related risk can help reduce the likelihood of a financial shock.”¹¹ As recently stated in a letter you received from advocates, “In addition to protecting investors from undisclosed and unreliable information about risks to public companies, [the proposed disclosure requirements] also promote efficient markets and capital formation by making available reliable information about opportunities....[which] can only be efficiently seized if investors have the standardized, reliable disclosures that are described in the proposed rule.”¹² The SEC rules will “standardize the [ESG-, climate- and sustainability-related] standards, including the metrics to be used, so investors can compare companies’ financials with some consistency and reliability” and avoid “hidden risks.”¹³

The proposed rules are necessary and overdue. While current rules require public companies to disclose climate costs and risks that they deem “material” for investors to have insight into, an analysis last year of over 130 global companies found “little evidence that they had considered the impacts of material climate-related matters in preparing their financial statements,”¹⁴ even though it is increasingly clear that climate change and the clean energy transition will have significant impacts on companies’ costs and risks across industries. Indeed, the SEC states that it

⁷ Politico, “SEC’s Gensler weighs scaling back climate rule as lawsuits loom,” Declan Harty, February 4, 2023, <https://www.politico.com/news/2023/02/04/sec-climate-rule-scale-back-00081181>.

⁸ *Id.*

⁹ U.S. Securities and Exchange Commission, “What We Do,” <https://www.sec.gov/about/what-we-do>.

¹⁰ Letter from Advocates to the Securities and Exchange Commission re “The Enhancement and Standardization of Climate-Related Disclosures for Investors Attention: 87 FR 21334; Docket ID: SEC-2022-06342; File No. S7-10-22,” June 17, 2022, https://www.citizen.org/wp-content/uploads/2pg-Sign-on-Letter_SEC-Climate-Disclosure-Proposed-Rule-1.pdf.

¹¹ Financial Stability Oversight Council, “Report on Climate-Related Financial Risk,” 2021, p. 68, <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>.

¹² Public Citizen, “SEC Climate-Related Disclosure for Investors – Feb 2023 Supplement,” February 8, 2023, https://www.citizen.org/article/sec_climate_disclosure_feb2023/.

¹³ Forbes, “Pushback On The SEC’s Proposed Climate Risk Disclosure Rules Is A Good Sign,” Joan Michelson, February 8, 2023, <https://www.forbes.com/sites/joanmichelson2/2023/02/08/pushback-on-the-secs-proposed-climate-risk-disclosure-rules-is-a-good-sign/>; Center for American Progress, “Why Companies Should Be Required To Disclose Their Scope 3 Emissions,” Alexandra Thornton, December 13, 2021, <https://www.americanprogress.org/article/why-companies-should-be-required-to-disclose-their-scope-3-emissions/>.

¹⁴ The Wall Street Journal, “SEC Considers Easing Climate-Disclosure Rules After Investor Pushback,” Jean Eaglesham and Paul Kiernan, February 3, 2023, <https://www.wsj.com/articles/sec-considers-easing-climate-disclosure-rules-after-investor-pushback-11675416111>.

is “concerned that the existing disclosures of climate-related risks do not adequately protect investors.”¹⁵

The SEC’s initial proposal also “has broad backing from institutional investors and asset managers,” including the California Public Employees’ Retirement System, the nation’s largest pension.¹⁶ An analysis of the comment letters of 320 institutional investors, including asset owners and managers who “collectively own or manage more than \$50 trillion in assets,” found that investors “are strongly in favor of the disclosure rule proposed by the [SEC] to require companies to disclose climate risk information, whether physical or transitional,” and that the comments “solidly underscore their support for standardizing climate risk disclosures.”¹⁷ In the comment letters, at least 129 investors “describe how they use climate-related data in investment decision-making and how standardized disclosure will improve the comparability, consistency, and reliability of this information.”¹⁸

Reports that the Commission may weaken or altogether drop Scope 3 emissions disclosure requirements in the final rule are particularly concerning.¹⁹ According to an S&P Global analysis, Scope 3 emissions comprise nearly 90 percent of fossil fuel companies’ emissions.²⁰ Not requiring Scope 3 emissions disclosures would enable these and other companies with similar types of emissions patterns to hide the vast majority of their exposure to climate risk from regulators and investors. For many companies and sectors, a greenhouse gas inventory that omits Scope 3 would be materially misleading to investors.²¹ Without comprehensive Scope 3 emission disclosures, companies could also simply offload emissions-intensive activities to suppliers or downstream customers to appear cleaner without actually lowering their emissions or the resultant transition risk,²² or redraw their organizational boundaries so subsidiaries that they own and operate are not part of their consolidated accounting group, as is common for private equity firms.²³ As a top executive at Amalgamated Bank stated, an investor looking at an oil company

¹⁵ Securities and Exchange Commission, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.

¹⁶ Pensions & Investments, “CalPERS, stakeholders press for added SEC climate disclosures at Capitol Hill forum,” Brian Croce, February 9, 2023, <https://www.pionline.com/washington/calpers-stakeholders-press-added-sec-climate-disclosures-capitol-hill-forum>.

¹⁷ Ceres, “Analysis shows that investors strongly support the SEC’s proposed climate disclosure rule,” Steven M. Rothstein, October 11, 2022, <https://www.ceres.org/news-center/blog/analysis-shows-investors-strongly-support-secs-proposed-climate-disclosure-rule>.

¹⁸ *Id.*

¹⁹ Politico, “SEC’s Gensler weighs scaling back climate rule as lawsuits loom,” Declan Harty, February 4, 2023, <https://www.politico.com/news/2023/02/04/sec-climate-rule-scale-back-00081181>.

²⁰ Center for American Progress, “Why Companies Should Be Required To Disclose Their Scope 3 Emissions,” Alexandra Thornton, December 13, 2021, <https://www.americanprogress.org/article/why-companies-should-be-required-to-disclose-their-scope-3-emissions/>; S&P Global, “It’s All Within Scope, With S&P Global Scope 3 Data,” Mona Naqvi, <https://www.spglobal.com/esg/insights/it-s-all-within-scope-with-sp-global-scope-3-data>.

²¹ As You Sow, “75 Investors With \$4.7 Trillion AUM Weigh in on Upcoming SEC Climate Disclosure Rulemaking,” press release, March 8, 2022, <https://www.asyousow.org/press-releases/2022/3/8/sec-climate-disclosure-rulemaking>; Letter from 75 Investors to the SEC on the Climate Risk Disclosure Rule,” March 7, 2022, <https://www.sec.gov/comments/climate-disclosure/c112-20118792-271629.pdf>.

²² *Id.*

²³ Principles for Responsible Investment, “Greenhouse Gas Accounting and Reporting for the Private Equity Sector,” May 9, 2022, <https://www.unpri.org/private-equity/greenhouse-gas-accounting-and-reporting-for-the-private-equity-sector/9937.article>.

and not looking at their product emissions would be “ridiculous” and would be like putting blinders on their risk analysis.²⁴

In response to questions from Senator Warren at a September 2022 hearing of the Banking, House, and Urban Affairs committee, you indicated that “if we look at the top three or four hundred investor letters that we got that manage tens of trillions of dollars of assets, most...are supportive to have all three scopes part of this disclosure. So that's straight from the investors.”²⁵

Indeed, the analysis of 320 institutional investors’ comment letters found that 297 investors mentioned Scope 3 emissions, with 97% of comments analyzed supporting the Scope 3 emissions disclosure requirements in the final rule.²⁶ Many stated that Scope 3 is the most important because it's the largest source of risk. This includes 75 investors representing \$4.7 trillion in assets under management, who said that “Failure to require disclosure and reporting of Scope 3 emissions is ... likely to result in the largest source of emissions remaining unaccounted for in company reporting and unaddressed in company activities...,”²⁷ and over 300 institutional investors with \$4 trillion assets under management who said “We strongly recommend that the SEC require Scope 3 emissions disclosure for all public companies.”²⁸

As a former SEC senior counsel has stated, Scope 3 disclosures are inevitable due to investor demand and European and global regulations which will require such disclosures—including the EU’s Corporate Sustainability Reporting Directive, which will apply to a significant number of U.S. and other non-European companies with business in the EU.²⁹ “This reporting is coming, it will happen. The SEC including Scope 3 in its final rule will expedite that and that's important

²⁴ Briefing by Americans for Financial Reform Education Fund, Climate Nexus, Institute for Agriculture and Trade Policy, Interfaith Center on Corporate Responsibility, Oxfam America, Public Citizen, SEIU, and Sierra Club, “The Hidden Financial Risk to Your Retirement: Climate Change,” <https://ourfinancialsecurity.org/the-hidden-financial-risk-to-your-retirement-climate-change/>, Notes on File with the Office of Senator Elizabeth Warren.

²⁵ Office of Senator Elizabeth Warren, “At Hearing, Warren Calls on SEC to Stand Up to Fossil Fuel Lobbying and Finalize Strong Climate Disclosure Rule,” press release, September 15, 2022, <https://www.warren.senate.gov/newsroom/press-releases/at-hearing-warren-calls-on-sec-to-stand-up-to-fossil-fuel-lobbying-and-finalize-strong-climate-disclosure-rule>.

²⁶ Ceres, “Analysis shows that investors strongly support the SEC’s proposed climate disclosure rule,” Steven M. Rothstein, October 11, 2022, <https://www.ceres.org/news-center/blog/analysis-shows-investors-strongly-support-secs-proposed-climate-disclosure-rule>.

²⁷ As You Sow, “75 Investors With \$4.7 Trillion AUM Weigh in on Upcoming SEC Climate Disclosure Rulemaking,” press release, March 8, 2022, <https://www.asyousow.org/press-releases/2022/3/8/sec-climate-disclosure-rulemaking>; Letter from 75 Investors to the SEC on the Climate Risk Disclosure Rule,” March 7, 2022, <https://www.sec.gov/comments/climate-disclosure/c112-20118792-271629.pdf>.

²⁸ Letter from the Interfaith Center on Corporate Responsibility to the SEC re “File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors,” June 17, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20132186-302699.pdf>.

²⁹ Deloitte, “#DeloitteESGNow — Global Reach of the E.U. Corporate Sustainability Reporting Directive and the Impact on U.S. Companies,” January 9, 2023, <https://dart.deloitte.com/USDART/home/publications/deloitte/heads-up/2023/esg-eu-corporate-sustainability-reporting>; Persefoni, What Is the CSRD? Updates That Companies Should Know, Persefoni Team, February 2, 2023, <https://persefoni.com/learn/what-is-CSRD>; Harvard Law School Forum on Corporate Governance, “EU Corporate Sustainability Reporting Directive – disclosure obligations for EU and non-EU companies,” Musonda Kapotwe, Peter Pears, Marcel Hörauf, and Mayer Brown LLP, December 11, 2022, <https://corpgov.law.harvard.edu/2022/12/11/eu-corporate-sustainability-reporting-directive-disclosure-obligations-for-eu-and-non-eu-companies/>.

because the financial risk to investors is only accelerating.”³⁰ The SEC’s rule must push companies to take the necessary steps to issue those disclosures and prepare for that eventuality. Conversely, if the SEC “enacts a less rigorous disclosure regime, it may well stand alone behind the many other jurisdictions that will swiftly codify the global baseline standards issued by the International Sustainability Standards Board (ISSB),” and as a result U.S. capital markets “will be less fair, and U.S. investors less protected, for the SEC’s failure to modernize with the rest of the world.”³¹ ISSB’s decision to include Scope 3 emissions in their global baseline standard was made after consultation with many large investors, who told the ISSB that they “cannot fully understand a company’s transition risk without information about its absolute gross Scope 1, 2, and 3 emissions.”³² In the United Kingdom, “reporting of one type of Scope 3 emissions is already compulsory for certain companies,” and more categories of reporting may be required in the future.³³ The SEC should lead the world in defining climate disclosures that investors need, not lag behind UK or European financial regulators.

Curtailing the Scope 3 disclosure requirement and the broader financial reporting rules in an effort to avoid a battle in the courts that are “stacked with pro-pollution judges”³⁴ is deeply misguided. Fossil fuel industry groups continue to campaign strongly against this rulemaking despite the obvious economic risks associated with climate change.³⁵ Corporate lobbyists have threatened to “throw the full weight of the industry behind [this] effort” to scale back the SEC’s proposed rule, though “[f]ormer SEC officials, including several commissioners from both sides of the aisle, academics and even one former clerk to conservative Supreme Court Justice Neil Gorsuch have written in support of the agency’s powers to regulate corporate disclosures, even if they relate to emissions,” clarifying that this rulemaking is well within the Commission’s authorities and long-standing practice of requiring standardized disclosures of investor-led, decision-useful information, and thus should not be reasonably at-risk under the Major Questions Doctrine.³⁶

These rules have already been delayed for too long: Senator Warren wrote to you almost exactly a year ago regarding reports of significant delays in the SEC’s release of the proposed rule due to “internal debate over how tough the rule should be.”³⁷ Those delays reneged on the commitment

³⁰ Pensions & Investments, “CalPERS, stakeholders press for added SEC climate disclosures at Capitol Hill forum,” Brian Croce, February 9, 2023, <https://www.pionline.com/washington/calpers-stakeholders-press-added-sec-climate-disclosures-capitol-hill-forum>.

³¹ Public Citizen, “SEC Climate-Related Disclosure for Investors – Feb 2023 Supplement,” February 8, 2023, https://www.citizen.org/article/sec_climate_disclosure_feb2023/.

³² IFRS, “ISSB announces guidance and reliefs to support Scope 3 GHG emission disclosures,” December 15, 2022, <https://www.ifrs.org/news-and-events/news/2022/12/issb-announces-guidance-and-reliefs-to-support-scope-3-ghg-emiss/>.

³³ Center for American Progress, “Why Companies Should Be Required To Disclose Their Scope 3 Emissions,” Alexandra Thornton, December 13, 2021, <https://www.americanprogress.org/article/why-companies-should-be-required-to-disclose-their-scope-3-emissions/>.

³⁴ Politico, “SEC’s Gensler weighs scaling back climate rule as lawsuits loom,” Declan Harty, February 4, 2023, <https://www.politico.com/news/2023/02/04/sec-climate-rule-scale-back-00081181>.

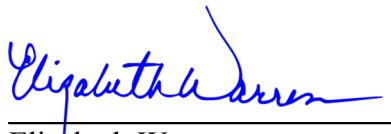
³⁵ The New York Times, “How Republicans are ‘Weaponizing’ Public Office Against Climate Action,” David Gelles, August 5, 2022, <https://www.nytimes.com/2022/08/05/climate/republican-treasurers-climate-change.html>.

³⁶ Politico, “SEC’s Gensler weighs scaling back climate rule as lawsuits loom,” Declan Harty, February 4, 2023, <https://www.politico.com/news/2023/02/04/sec-climate-rule-scale-back-00081181>; 28 U.S.C. 78d.

you had made in July 2021 to develop a rule proposal by the end of that year.³⁸ The proposed rule was finally released in March 2022, the comment period closed in June 2022,³⁹ and you have had eight months since then to review the comments.⁴⁰ This rule has already been delayed enough – and after that long delay, SEC would be failing its duty to protect investors if it issues a watered-down rule missing key reporting requirements from large public companies that investors want and need.

As several of us noted in our June 2022 letter urging you to strengthen the proposed rule, “[t]he SEC’s mandate is investor protection, not issuer protection, and it is clear where the vast majority of investors land on this issue. The market demands this information, and it is the Commission’s job to provide it.”⁴¹ We therefore urge you to reconsider your efforts to scale back the proposed rule and issue a strong climate risk disclosure rule as quickly as possible.

Sincerely,



Elizabeth Warren
United States Senator



Dan Goldman
Member of Congress

³⁷ Office of Senator Elizabeth Warren, “Warren Urges SEC to Act Quickly to Issue Strong Climate Risk Disclosure Rule,” press release, February 10, 2022, <https://www.warren.senate.gov/oversight/letters/warren-urges-sec-to-act-quickly-to-issue-strong-climate-risk-disclosure-rule>.

³⁸ SEC, Chairman Gary Gensler, “Prepared Remarks Before the Principles for Responsible Investment “Climate and Global Financial Markets,” July 28, 2021, <https://www.sec.gov/news/speech/gensler-pri-2021-07-28>.

³⁹ Pensions & Investments, “CalPERS, stakeholders press for added SEC climate disclosures at Capitol Hill forum,” Brian Croce, February 9, 2023, <https://www.pionline.com/washington/calpers-stakeholders-press-added-sec-climate-disclosures-capitol-hill-forum>.

⁴⁰ Reuters, “Upcoming SEC climate disclosure rules bring urgency to ESG data strategy planning,” Zach Warren, January 30, 2023, <https://www.reuters.com/legal/legalindustry/upcoming-sec-climate-disclosure-rules-bring-urgency-esg-data-strategy-planning-2023-01-30/>; Bloomberg News, “SEC Bogs Down on Climate Rule, Handing White House Fresh Setback,” Robert Schmidt and Benjamin Bain, February 8, 2022, <https://www.bloomberg.com/news/articles/2022-02-08/sec-bogs-down-on-climate-rule-saddling-biden-team-with-new-woe>.

⁴¹ Letter from Senators Schatz, Whitehouse, Warren, and Colleagues to SEC Chair Gary Gensler, June 17, 2022, https://www.schatz.senate.gov/imo/media/doc/sec_climate_comment.pdf; Office of Senator Brian Schatz, “Schatz, Whitehouse, Warren, Senators Call For Stronger Emissions Disclosure Requirements, Dark Money Transparency In Proposed SEC Climate Risk Rule,” press release, June 17, 2022, <https://www.schatz.senate.gov/news/press-releases/schatz-whitehouse-warren-senators-call-for-stronger-emissions-disclosure-requirements-dark-money-transparency-in-proposed-sec-climate-risk-rule>.



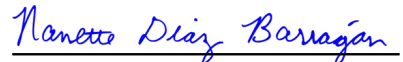
Sheldon Whitehouse
United States Senator



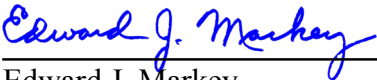
Jamie Raskin
Member of Congress



Martin Heinrich
United States Senator



Nanette Diaz Barragán
Member of Congress



Edward J. Markey
United States Senator



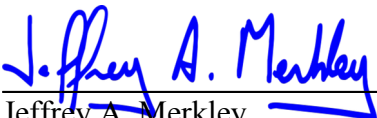
Emanuel Cleaver, II
Member of Congress



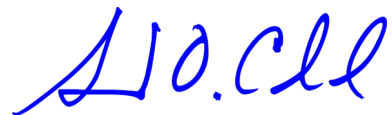
Bernard Sanders
United States Senator



Yvette D. Clarke
Member of Congress



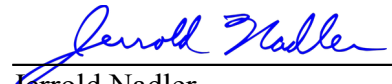
Jeffrey A. Merkley
United States Senator



Salud Carbajal
Member of Congress



Tina Smith
United States Senator



Jerrold Nadler
Member of Congress



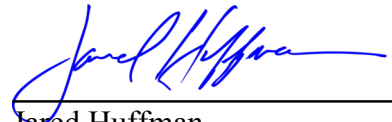
Cory A. Booker
United States Senator



Katie Porter
Member of Congress



Doris Matsui
Member of Congress



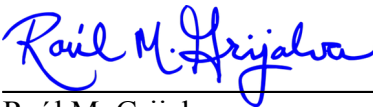
Jared Huffman
Member of Congress



Eleanor Holmes Norton
Member of Congress



Ayanna Pressley
Member of Congress



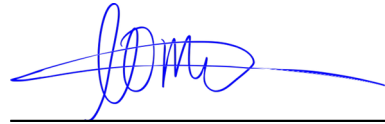
Raúl M. Grijalva
Member of Congress



Barbara Lee
Member of Congress



Rashida Tlaib
Member of Congress



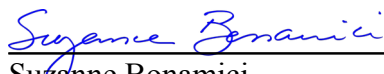
Ilhan Omar
Member of Congress



Dwight Evans
Member of Congress



Ro Khanna
Member of Congress



Suzanne Bonamici
Member of Congress



Adam Smith
Member of Congress



Mike Levin
Member of Congress



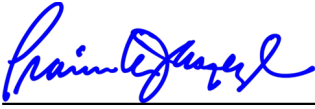
Adriano Espaillat
Member of Congress



Troy Carter
Member of Congress



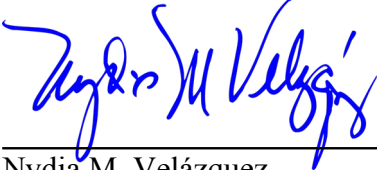
Bonnie Watson Coleman
Member of Congress



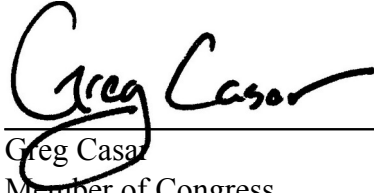
Pramila Jayapal
Member of Congress



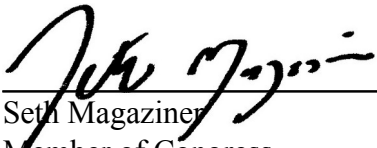
C. A. Dutch Ruppersberger
Member of Congress



Nydia M. Velázquez
Member of Congress



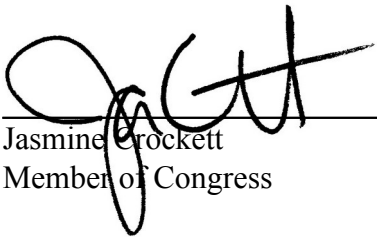
Greg Casar
Member of Congress



Seth Magaziner
Member of Congress



Mark DeSaulnier
Member of Congress



Jasmine Crockett
Member of Congress



Betty McCollum
Member of Congress



Robert Garcia
Member of Congress



Al Green
Member of Congress



Frederica S. Wilson
Member of Congress



James P. McGovern
Member of Congress



Jesús G. "Chuy" García
Member of Congress



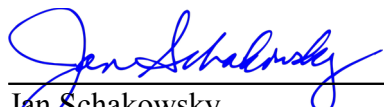
Madeleine Dean
Member of Congress



JM Tokuda
Member of Congress



Brendan F. Boyle
Member of Congress



Jan Schakowsky
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



Greg Landsman
Member of Congress