

# Energy & Sustainability Litigation Updates — January 2024

January 02, 2024 | Article | By **Jacob H. Hupart**

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### Federal Regulatory Developments

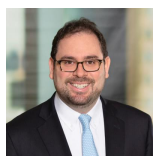
In a recent filing with the Office of Management and Budget, the Securities & Exchange Commission disclosed that the vote by the SEC Commissioners as to whether to issue the SEC's proposed climate disclosures is expected by April 2024 (and, with a Democratic majority on the Commission, it is expected to pass). Such a date of promulgation will be approximately two years since the SEC first proposed the climate disclosures in March 2022. However, the SEC has previously proposed a number of deadlines — both to issue the proposed rule and to finalize the rule — and has been consistently delayed in achieving any of them. So, it is not clear that the SEC's climate disclosures will actually be finalized and promulgated by April 2024, despite this development.

### State Regulatory Developments

Over the past couple of years, several states have adopted various anti-ESG laws that are intended to prevent state entities from conducting business with or through entities, particularly financial services companies, that allegedly discriminate against fossil fuels or adopt cultural policies deemed objectionable. However, many of these boycott laws and regulations contain significant loopholes or exemptions that were designed to offer an "out" to state entities if undertaking such a transition would be too costly or resource-intensive (eg, if it would violate a state pension fund's fiduciary duty). A number of recent media reports have revealed that the practical hurdles involved in implementing a boycott have led many state entities to take widespread advantage of these exceptions and exemptions, which has in turn led to tension with the political leaders that advocated these policies. This trend — the developing tension between the political and fiduciary responsibilities of public entities — is likely to increase over time, given the proliferation of the laws that have triggered this issue.

### Authors

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Jacob H. Hupart is Co-Chair of the ESG Practice Group and a Member in the firm's Litigation Section. He has a multifaceted litigation practice that encompasses complex commercial litigation, securities litigation — including class action claims — as well as white collar criminal defense and regulatory investigations. His clients sit in a variety of industries, including energy, financial services, education, health care, and the media.

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