

# Congress of the United States

Washington, DC 20515

June 4, 2024

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

Dear Chair Gensler:

We write regarding the SEC's final climate risk disclosure rule.<sup>1</sup> While the rule is an important step forward that will provide investors with key information about publicly traded companies' climate risks and emissions, the rule was significantly weakened in response to intense corporate lobbying over the past two years, in ways that offer too much discretion to corporate managers to decide what information must be disclosed.<sup>2</sup> On April 4, 2024, the Commission exercised its discretion to stay the final rule pending the completion of judicial review.<sup>3</sup> One important way that you can begin to address the final rule's shortfalls during this time is to ensure robust enforcement of existing SEC climate disclosure-related guidance. Should the rule survive its legal challenges, the Commission should then focus its efforts on vigorous implementation and enforcement of the rule.

Investors need access to climate risk disclosures that are reliable, standardized, and easily accessible to properly assess the risks associated with their investments. Climate change is transforming the economy, increasing mitigation and resilience costs and risks from weather and supply chain disruptions for all businesses.<sup>4</sup> A wealth of peer-reviewed academic work,<sup>5</sup>

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<sup>1</sup> Securities and Exchange Commission, "FACT SHEET: The Enhancement and Standardization of Climate-Related Disclosures: Final Rules," <https://www.sec.gov/files/33-11275-fact-sheet.pdf>; Securities and Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," March 6, 2024, <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>.

<sup>2</sup> New York Times, "How a Climate Rule Got Watered Down," David Gelles, March 5, 2024, <https://www.nytimes.com/2024/03/05/climate/how-a-climate-rule-got-watered-down.html>.

<sup>3</sup> Securities and Exchange Commission, "Order Issuing Stay: In the Matter of the Enhancement and Standardization of Climate-Related Disclosures for Investors," File No. S7-10-22, April 4, 2024, <https://www.sec.gov/files/rules/other/2024/33-11280.pdf>.

<sup>4</sup> White House, "The Importance of Measuring the Fiscal and Economic Costs of Climate Change," March 14, 2023, <https://www.whitehouse.gov/omb/briefing-room/2023/03/14/the-importance-of-measuring-the-fiscal-and-economic-costs-of-climate-change/>.

<sup>5</sup> Earth's Future, "The Effects of Climate Change on GDP by Country and the Global Economic Gains from Complying with the Paris Climate Accord," Tom Kompas et al., July 13, 2018, <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2018EF000922>.

economic studies,<sup>6</sup> presentations by central banks,<sup>7</sup> testimony to the Senate Budget Committee,<sup>8</sup> and even a recent cover article from *The Economist*<sup>9</sup> all suggest that climate change poses systemic risks to the national and global economy. Investors—large and small—need access to information about these risks when evaluating investment targets.<sup>10</sup> Many public companies already voluntarily share some disclosures, but these are often incomplete and not standardized across corporations.<sup>11</sup> The new SEC rule will, for the first time, allow investors to “compare companies’ financials with some consistency and reliability.”<sup>12</sup>

While the rule’s legality is debated in court, there are several things the SEC should do in the interim to support existing climate-related rules and guidance—which the Commission has a long history of providing.<sup>13</sup> For example, in a 1971 release, the Commission “called attention to the requirements” under the *Securities and Exchange Acts* “for disclosure of legal proceedings and a description of the registrant’s business as these requirements relate to material matters involving the environment[.]”<sup>14</sup> This trend has continued throughout the years as the Commission made adjustments to environmental disclosures in Reg S-K in 1981 and provided staff guidance regarding accounting disclosures as they pertain to environmental losses in 1993.<sup>15</sup> Importantly, in 2010, the SEC provided additional Commission guidance on recent climate-change developments that could be required to be disclosed under SEC rules, asking companies “to consider climate change and its consequences as they prepare documents to be filed with us and

<sup>6</sup> Bank for International Settlements, “The Green Swan: Central banking and financial stability in the age of climate change,” January 2020, <https://www.bis.org/publ/othp31.pdf>; Deloitte Center for Sustainable Progress, “Global Turning Point Report,” July 2022, <https://www.deloitte.com/an/en/issues/climate/global-turning-point.html>.

<sup>7</sup> Network for Greening the Financial System, “A call for action: Climate change as a source of financial risk,” April 2019, [https://www.ngfs.net/sites/default/files/medias/documents/ngfs\\_first\\_comprehensive\\_report\\_-\\_17042019\\_0.pdf](https://www.ngfs.net/sites/default/files/medias/documents/ngfs_first_comprehensive_report_-_17042019_0.pdf).

<sup>8</sup> U.S. Senate Committee on the Budget, “Letter to Republican Budget Committee Members regarding Climate-related Risks to the Economy,” March 25, 2024, [https://www.budget.senate.gov/imo/media/doc/letter\\_to\\_republican\\_budget\\_committee\\_members\\_regarding\\_climate-related\\_risks\\_to\\_the\\_economy.pdf](https://www.budget.senate.gov/imo/media/doc/letter_to_republican_budget_committee_members_regarding_climate-related_risks_to_the_economy.pdf).

<sup>9</sup> The Economist, “Global warming is coming for your home,” April 11, 2024, <https://www.economist.com/leaders/2024/04/11/global-warming-is-coming-for-your-home>.

<sup>10</sup> 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>; Securities and Exchange Commission, “Petition for Interpretive Guidance on Climate Risk Disclosure Rule File No. 4-547,” June 12, 2008, <https://www.sec.gov/files/rules/petitions/2008/petn4-547-suppl.pdf>.

<sup>11</sup> Wall Street Journal, “SEC Approves Weakened Climate Disclosure Rule,” Scott Patterson, March 6, 2024, <https://www.wsj.com/finance/regulation/sec-climate-disclosure-greenhouse-gases-d57de27c>; Wisconsin Public Radio, “Corporate America has new climate rules to follow, but will they cut global warming?” March 6, 2024, <https://www.wpr.org/news/corporate-america-has-new-climate-rules-to-follow-but-will-they-cut-global-warming#:~:text=Wall%20Street's%20top%20regulator%20has,provide%20is%20consistent%20and%20comparable>.

<sup>12</sup> 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/joanmichelson/2023/02/08/pushback-on-the-secs-proposed-climate-risk-disclosure-rules-is-a-good-sign>.

<sup>13</sup> Jill E. Fisch and George S. Georgiev, “Comment Letter to SEC re: Enhancement and Standardization of Climate-Related Disclosures for Investors,” June 6, 2022, <https://www.sec.gov/comments/s7-10-22/s71022-20130354-297375.pdf>.

<sup>14</sup> *Id.* at 11 (citing Disclosures Pertaining to Matters Involving the Environment and Civil Rights, Release Nos. 33-5170, 34-9252, 36 Fed. Reg. 13,989, 13989 (July 29, 1971)).

<sup>15</sup> *Id.* at 12.

provided to investors.”<sup>16</sup> Under the leadership of your predecessor, the Commission passed rules that recognized that compliance with material environmental laws (Item 101(c) of S-K) and environmental legal proceedings (Item 103, with no “materiality” qualifier) would need to be disclosed.<sup>17</sup> The Commission needs to firmly state that it will ensure these previous climate-related rules and guidance are thoroughly enforced while the final rule is being litigated.

Additionally, during this time, the Commission should remind issuers that U.S. companies that are subject to alternative climate-related disclosure regimes must comply with those reporting regimes, including those from California and the European Union (the “EU”), as well as those put forth by the International Sustainability Standards Board (“ISSB”). For example, California’s new law, enacted in October 2023, requires any company—both publicly traded *and private*—with over a billion dollars in annual revenue that operates (or offers goods and services) in the state to publicly disclose Scope 1, Scope 2, *and* Scope 3 greenhouse gas (“GHG”) emissions.<sup>18</sup> Similarly, the EU’s Corporate Sustainability Reporting Directive (“CSRD”), which took effect on January 5, 2023,<sup>19</sup> requires Scope 3 emissions data for both publicly and privately listed EU-based companies (except certain companies exempted based on their small size), as well as non-EU companies that undertake “significant activity” in the EU.<sup>20</sup> The ISSB’s regime, influenced in part by the SEC’s original climate disclosure proposal, is investor, issuer, and user-friendly, and is quickly being adopted by and aligned with reporting regimes in advanced economies.<sup>21</sup>

Finally, to vigorously defend the final rule through the courts, you should spare no litigation resources to protect the rule.

As for the final rule itself, we commend the Commission for including several positive elements that represent the first steps toward a robust framework for climate disclosure. Companies are required to disclose their Scope 1 and Scope 2 GHG emissions, if material, subject to attestation requirements.<sup>22</sup> These attestation requirements will ensure that a third party backs a company’s emission disclosures before they are filed with the SEC, providing additional

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<sup>16</sup> *Id.*

<sup>17</sup> Securities and Exchange Commission, “Final Rule: Modernization of Regulation S-K Items 101, 103, and 105,” August 26, 2020, <https://www.sec.gov/corpfin/modernization-regulation-s-k-compliance-guide>. These rule changes, for example, raised the disclosure threshold related to environment-related legal proceedings from then-current \$100,000 to \$300,000, recognizing that these were disclosures investors needed even as costs related to legal proceedings were immaterial to the bottom line of the issuer.

<sup>18</sup> California Senate Bill 253 (signed Oct. 7, 2023), <https://legiscan.com/CA/text/SB253/id/2844397>.

<sup>19</sup> Institute for Policy Integrity, “Letter to SEC Secretary Vanessa Countryman re: The Enhancement and Standardization of Climate-Related Disclosures for Investors,” File No. S7-10-22, December 1, 2023, at 9, <https://www.sec.gov/comments/s7-10-22/s71022-306099-786982.pdf>.

<sup>20</sup> *Id.* at 10.

<sup>21</sup> Kirkland & Ellis, “ISSB Releases Final Global Sustainability Disclosure Standards,” June 29, 2023, <https://www.kirkland.com/publications/kirkland-alert/2023/06/issb-releases-final-global-sustainability-disclosure-standards>; S&P Global, “Where does the world stand on ISSB adoption?,” April 9, 2024, <https://www.spglobal.com/esg/insights/where-does-the-world-stand-on-issb-adoption>.

<sup>22</sup> Securities and Exchange Commission, “FACT SHEET: The Enhancement and Standardization of Climate-Related Disclosures: Final Rules,” <https://www.sec.gov/files/33-11275-fact-sheet.pdf>; Securities and Exchange Commission, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” March 6, 2024, <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>.

verification that disclosures are accurate.<sup>23</sup> To the extent that SEC registrants have or use material climate goals, scenario analyses, carbon pricing models, and transition plans to manage material transition risks, they are now required to disclose them, making it more difficult for companies to engage in “greenwashing.”<sup>24</sup> Under the rule, companies are also required to disclose capital expenditures associated with certain climate events and aspects of transition plans and to share whether estimates and assumptions in their financial statements were impacted by certain climate events and disclosed transition plans.<sup>25</sup> Importantly, companies must make all of these disclosures in their SEC filings, increasing the reliability of reporting given the penalties associated with false and fraudulent SEC filings.<sup>26</sup>

However, we are disappointed that—after a fierce pushback from corporate America—the final rule was scaled back significantly from the proposed rule despite strong investor support for the proposed version.<sup>27</sup> Disclosure of Scopes 1 and 2 GHG emissions, in addition to most other disclosures required by the final rule, now have a materiality qualifier, allowing corporate managers too much discretion to decide whether they wish to disclose this information.<sup>28</sup> A materiality qualifier, especially if not carefully monitored by the SEC, will lead to inconsistent reporting across companies, allowing some companies to opt out of emission disclosures entirely.<sup>29</sup> We share the concerns of former Acting Chair Allison Herren Lee that these newly established materiality conditions could give excuse to companies that are currently disclosing Scopes 1, 2, and 3 emissions to stop or reduce these disclosures.<sup>30</sup> There is also a significant delay on the attestation requirements for Scopes 1 and 2 disclosure, with the timeline for reasonable assurance attestation beginning nearly a decade from now in fiscal year 2033.<sup>31</sup> Most notably, the final rule completely removes Scope 3 emissions disclosure.<sup>32</sup> The omission of Scope 3 requirements will allow some companies to report only a fraction of their emissions—Scope 3 emissions can account for as much as 90% of emissions for oil and gas companies—and potentially allow some companies to hide their emissions by shifting their Scopes 1 and 2

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> New York Times, “How a Climate Rule for Watered Down,” David Gelles, March 5, 2024, <https://www.nytimes.com/2024/03/05/climate/how-a-climate-rule-got-watered-down.html>; 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>.

<sup>28</sup> Securities and Exchange Commission, “FACT SHEET: The Enhancement and Standardization of Climate-Related Disclosures: Final Rules,” <https://www.sec.gov/files/33-11275-fact-sheet.pdf>; Securities and Exchange Commission, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” March 6, 2024, <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>.

<sup>29</sup> E&E News, “Why the SEC climate rule might not standardize emissions reporting,” Avery Ellfeldt and Benjamin Storrow, March 13, 2024, <https://www.eenews.net/articles/why-the-sec-climate-rule-might-not-standardize-emissions-reporting>.

<sup>30</sup> Politico, “SEC climate rule offers escape hatch to corporations, critics say,” Avery Ellfeldt, March 7, 2024, <https://www.eenews.net/articles/sec-climate-rule-offers-escape-hatch-to-corporations-critics-say>.

<sup>31</sup> Securities and Exchange Commission, “FACT SHEET: The Enhancement and Standardization of Climate-Related Disclosures: Final Rules,” <https://www.sec.gov/files/33-11275-fact-sheet.pdf>; Securities and Exchange Commission, “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” March 6, 2024, <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>.

<sup>32</sup> *Id.*

emissions to entities in their supply chain.<sup>33</sup> These weaknesses in the rule limit its effectiveness and will require costly efforts by the SEC and investors to address.

Assuming the federal judiciary does not strike down or significantly limit the rule, the SEC must commit to its strong enforcement. First, the SEC must promptly share guidance once the rule is upheld on how to assess “materiality” and how companies must conduct and disclose materiality assessments, in order to limit companies’ ability to game this rule and avoid disclosures. Second, the Commission should recognize alternative reporting regimes such as those used by the ISSB to satisfy compliance with the final rule.<sup>34</sup> Issuing an order recognizing ISSB would, in Commissioner Caroline Crenshaw’s words, “be an easy and meaningful step for the Commission to take in order to avoid a patchwork of reporting obligations and potentially conflicting demands.”<sup>35</sup> Third, the Commission should commit sufficient staff and resources to the implementation and enforcement of this rule. Commission staff must carefully review all disclosures that are submitted to the SEC to ensure that companies are not submitting boilerplate disclosures or subverting the Commission’s requirements. Finally, the SEC should finalize a strong *Environmental, Social, and Governance (ESG) Disclosures for Investment Advisers and Investment Companies Rule*, also referred to as the ESG Funds Rule, with mandatory Scope 1, 2, and 3 (including financed) emissions requirements for investment funds that market themselves based on climate-related criteria.<sup>36</sup> This rule would complement the climate risk disclosure rule, “provid[ing] consistent standards for ESG disclosures, allowing investors to make more informed decisions... [and] to determine whether a fund’s or adviser’s ESG marketing statements translate into concrete and specific measures taken to address ESG goals and portfolio allocation.”<sup>37</sup>

To better understand what actions the Commission plans on taking to protect investors and implement the new climate risk disclosure rule, we ask that you answer the following questions no later than June 18, 2024:

1. While the final rule is stayed and pending judicial review, will the SEC:
  - a. Commit to enforcing the Commission’s existing climate-related rules and guidance?
  - b. Commit to releasing a statement to remind registrants that covered U.S. companies that are subject to alternative climate reporting regimes, such as those in California or the EU or those promulgated by the ISSB, must comply with those reporting regimes?

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<sup>33</sup> The Equation, “Investors Need to Know the Full Scope of Corporate Carbon Emissions,” Laura Peterson, May 23, 2023, <https://blog.ucsusa.org/laura-peterson/investors-need-to-know-the-full-scope-of-corporate-carbon-emissions>.

<sup>34</sup> IFRS, “ISSB: Frequently Asked Questions,” <https://www.ifrs.org/groups/international-sustainability-standards-board/issb-frequently-asked-questions/>.

<sup>35</sup> Commissioner Caroline Crenshaw, “A Risk by Any Other Name: Statement on the Enhancement and Standardization of Climate-Related Disclosures,” March 6, 2024, <https://www.sec.gov/news/statement/crenshaw-statement-mandatory-climate-risk-disclosures-030624>.


<sup>36</sup> Securities and Exchange Commission, “FACT SHEET: ESG Disclosures for Investment Advisers and Investment Companies,” <https://www.sec.gov/files/ia-6034-fact-sheet.pdf>.


<sup>37</sup> *Id.*


- c. Commit to releasing a statement to registrants that are already disclosing Scopes 1, 2 and 3 greenhouse gas emissions that they should continue disclosing this information?
  - d. Commit to sparing no resources to defend the rule in court?
- 2. Upon the rule being upheld in court, will the SEC:
  - a. Provide guidance to registrants on what constitutes “material” information, and how to conduct and disclose materiality assessments, under the climate risk disclosure rule?
  - b. Recognize alternative climate reporting regimes such as those in California or the EU or those promulgated by the ISSB to provide registrants with more options to satisfy compliance with the rule, as well as the factors the Commission will consider as it makes this determination?
  - c. Detail the enforcement and implementation resources it will devote to the rule?
  - d. Detail its plan to prepare and train staff to implement and enforce the rule?

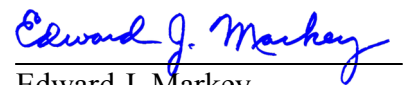
Thank you for your attention to this important matter.

Sincerely,

  
Elizabeth Warren  
United States Senator

  
Maxine Waters  
Ranking Member, Committee  
on Financial Services

  
Sheldon Whitehouse  
United States Senator

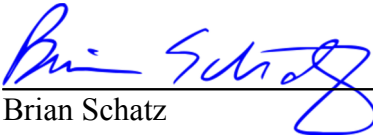
  
Edward J. Markey  
United States Senator



Tina Smith  
United States Senator



Bernard Sanders  
United States Senator



Brian Schatz  
United States Senator



Chris Van Hollen  
United States Senator



Jeffrey A. Merkley  
United States Senator



Cory A. Booker  
United States Senator



Peter Welch  
United States Senator



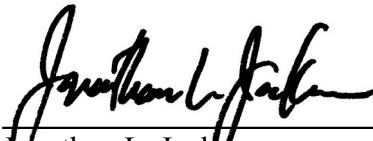
Jared Huffman  
Member of Congress



Adriano Espaillat  
Member of Congress

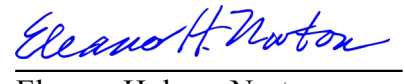


Rashida Tlaib  
Member of Congress




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Jonathan L. Jackson  
Member of Congress



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Eleanor Holmes Norton  
Member of Congress




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Joyce Beatty  
Member of Congress




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Delia C. Ramirez  
Member of Congress




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Dwight Evans  
Member of Congress



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Ilhan Omar  
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Betty McCollum  
Member of Congress




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Kevin Mullin  
Member of Congress



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Shri Thanedar  
Member of Congress



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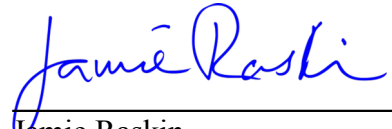
Nikema Williams  
Member of Congress





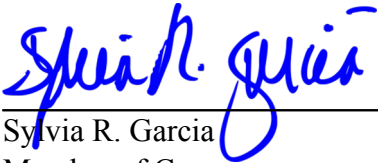
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Barbara Lee  
Member of Congress



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Jamie Raskin  
Member of Congress



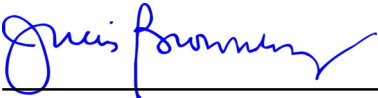
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Sylvia R. Garcia  
Member of Congress



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Pramila Jayapal  
Member of Congress



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Julia Brownley  
Member of Congress



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Earl Blumenauer  
Member of Congress



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Bonnie Watson Coleman  
Member of Congress



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Jamaal Bowman, Ed.D.  
Member of Congress



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André Carson  
Member of Congress



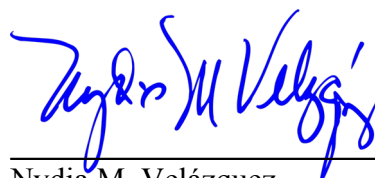
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Greg Casar  
Member of Congress



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Valerie P. Foushee  
Member of Congress



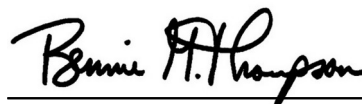
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Nydia M. Velázquez  
Member of Congress



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Emanuel Cleaver, II  
Member of Congress



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Bennie G. Thompson  
Member of Congress