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**Taking Stock: The Increasing Reliance Upon the Role
of Markets To Address Climate Change and Encourage
Environmental Sustainability – EELS Annual
Legislative Forum**

**The Environmental Legacy of the Gaslight Era
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Taking Stock: The Increasing Reliance Upon the Role of Markets To Address Climate Change and Encourage Environmental Sustainability - EELS Annual Legislative Forum

By John L. Parker

The Annual Legislative Forum and Luncheon of the Environmental and Energy Law Section of the New York State Bar Association was held in person and virtually on May 8, 2024, in Albany, New York. The event was entitled *Encouraging Environmental Sustainability and Managing Climate Risk: The Increasing Role of Markets in Meeting the Climate Change Challenge*.

The Annual Legislative Forum focused on new and developing climate initiatives at the state, national and international levels that rely upon market-based approaches to address climate risk issues and sustainability. These approaches can be complex and controversial. This reality, and the varying regulatory efforts, brought together experts to discuss the latest developments from many perspectives. The Annual Legislative Forum addressed New York State Senate environmental concerns, priorities, and accomplishments. The event concluded with a keynote address from the new interim commissioner of the New York State Department of Environmental Conservation.

Background

The impacts of climate change are being felt in all corners of the globe and governments and businesses around the world are responding to these climate risks. Some of America's largest companies support these efforts and others oppose them. Nonetheless, the majority of the nation's CEOs recently noted that climate sustainability efforts are an important part of their profitability strategy.¹ Notably, these sustainability efforts are also important to customers and to corporate branding.² Additionally, over half of the CEOs of America's largest companies indicate that they expect significant returns from sustainability investments over the next three to five years.³ The climate data underlying these corporate decision-making efforts has become more compelling each year. Equally compelling is the interrelated nature of the impacts of companies in various countries around the world, which includes significant energy needs and often vast supply chains, that taken together can significantly impact climate emissions. Together, these forces demonstrate the growing role of climate risk disclosure demanded by government and by investors alike.

The Accelerating Reality of Advancing Climate Change

In 2023, atmospheric records were set, with the amount of carbon dioxide increasing from 2022 levels, and the planet witnessing the hottest surface temperatures on record.⁴ These increases impact other climate phenomena, such as El Niño, which can cause increased carbon dioxide levels in the atmosphere further exacerbating temperature and climate impacts by the trapping of heat caused by these emissions.⁵ The changing climate continued into 2024, which saw June record the twelfth consecutive month with median global temperatures exceeding 1.5 degrees Celsius.⁶ The temperatures changes are exceeding record levels and are having a cascading impact.⁷ The increases in ocean temperatures threaten a significant, if not record-breaking, 2024 hurricane season in the Atlantic Ocean.⁸ The warming oceans can produce not only hurricanes, but a rapid rise in the intensity of storms that may exceed the current highest designation of a Category 5 storm.⁹ Another climate impact is more extreme rainfall events causing flooding and threatening damage across the country.¹⁰ The impacts of these climate changes increase the costs of homeowner's insurance and threaten the profitability and viability of these insurance products.¹¹

Climate changes will alter and continue to impact quality of life. The USEPA's 2024 assessment of climate indicators indicates that volatile climate conditions and extreme weather are to be expected going forward.¹² The significant impacts of extreme weather demonstrate the increasing importance of up-to-the-minute reporting and notification of potentially harmful conditions.¹³ Human activity continues to magnify the impacts of carbon emissions, particularly when deforestation and extreme wildfires are added to the calculation.¹⁴ The impacts are extending to even the northernmost areas of the United States, with Alaska being unable to escape unscathed. There are thousands of glaciers in Alaska, but the loss of that ice is now accelerating as scientists analyze the data between 2010 and 2020. The concern is that losses in the Juneau Ice Field will impact increasing global sea levels – it has lost 25 percent of its mass since the late 18th century.¹⁵

Technological advances and commerce in our increasingly interconnected world are causing significant climate impacts, further underscoring potential benefits from cli-

mate disclosure laws. The activities in everyday life can have surprisingly significant environmental impacts. Even modern “mundane” human activities, like streaming movies and storing information in the cloud, are having significant and staggering impacts on energy demands due to the substantial need for air conditioning to cool large-scale computer operations that can have a larger footprint than the airline industry, and where a larger scale data center could consume up to the energy equivalent of 50,000 homes.¹⁶ While implementation of renewable energy at scale and increased industry efficiency will decrease the carbon footprint of these industries, there is no sign that such computer-reliant everyday activities will slow. The significant growth in the artificial intelligence (AI) technology sector further underscores the climate impacts of the electricity needed to power the technology.¹⁷ The carbon footprint needs to be measured and assessed as these technologies become commonplace – from small scale to large scale use of generative AI.¹⁸ Globally, CEOs indicate that generative AI is a top investment priority and is viewed as a key to their future competitiveness.¹⁹ The challenge to meet AI’s energy demands while simultaneously seeking to become carbon neutral will challenge even the largest companies, forcing them to find further reductions in existing carbon emissions to offset their growing use and development of AI technologies at far higher rates than imagined only a few years ago.²⁰

Amongst the growth in these energy intensive areas, the United States is making strides in its energy mix, with an increasing role of renewables coming close to providing almost 30% of the electrical generation in early 2024, while natural gas as a major source falling below 40%.²¹ Nonetheless, worldwide climate emissions impacts continue even though the United States and Europe saw reductions in carbon dioxide emissions, but countries like China and India saw emissions increases.²² From a climate disclosure point of view, these geographically dispersed emission rates, and the disparities, demonstrate the value in reviewing and analyzing climate data in the supply chains necessary for the companies that rely upon part or all of their products originating in these countries. It also underscores the challenge in obtaining the data needed for a full supply change assessment of all indirect emissions.

Legal Developments Taking a Market-Based Approach in Response to Climate Change

This past year, newly enacted climate laws in the United States and in Europe continue to define climate disclosure requirements. These initiatives directly address sustainability issues and will increase efforts to bring market forces into the regulatory equation. In New York, the Climate Leadership and Community Protection Act is requiring the development of a Cap and Invest climate trading program. These efforts build upon the lessons learned from the state’s leading role in

the Regional Greenhouse Gas Initiative, or RGGI. The goal of these state efforts is to push forward aggressive greenhouse gas emission reductions required by law, use market forces to achieve these goals, while simultaneously supporting an equitable transition for various communities and consumers throughout the state. There is no question that these new climate initiatives bring market forces directly into the sustainability equation.

Climate Disclosure Laws and Regulations: State, Federal, and International

Climate related risk is routinely factored into decision making of many businesses. Disclosure of these risks and company sustainability efforts was initially a voluntary effort. There are many narratives on climate change regarding business obligations. However, there is government consensus that larger companies need to transparently address the sustainability of their operations. The new climate disclosure laws will impact tens of thousands of companies and become milestones in the field of climate risk and sustainability.

SEC Adopts Climate Disclosure Requirements

On March 6, 2024, the Federal Securities and Exchange Commission (the SEC) adopted its climate disclosure rule requiring reporting of climate-related risks from greenhouse gases that are deemed to have a material impact on businesses.²³ The agency estimates that about 7,000 domestic publicly traded corporations will now be required to make specified disclosures.²⁴ The disclosures define direct impacts from greenhouse gas emissions as Scope 1 emissions and define indirect impacts for the energy needed for company operations as Scope 2 emissions. In the final rule, the SEC did not include indirect emissions from the supply chain and customers, both upstream and downstream, that a company does not directly control that are defined as Scope 3 emissions. Litigation has ensued, causing SEC to pause implementation of the new rule, challenging the regulation on administrative law issues and under the First Amendment.²⁵ The litigation will be further complicated given the Supreme Court decision that overturned *Chevron v. Natural Resources Defense Council*, which required the courts to give the benefit of the doubt to agency interpretations of law.²⁶ On the merits, those critical of the lack of the indirect Scope 3 emissions reporting in the new SEC rule have expressed concerns that it weakens the final rule because these supply chain emissions routinely account for the largest share of companies’ emissions.²⁷ These indirect emissions can be difficult to accurately quantify, which was part of the underlying controversy.²⁸

California's Climate Disclosure Laws

In 2023, California enacted two laws to directly address and define climate disclosure, the Climate-Related Financial Risk Act and the Climate Corporate Data Accountability Act.

The Climate-Related Financial Risk Act requires that each year, companies review, assess, and disclose financially related climate risks and the steps they are taking to manage these risks.²⁹ It applies to companies with a \$500 million California business threshold and addresses Scope 1, 2, and 3 emissions. The reality is that this threshold, and the fact that most businesses operate in California, will likely result in almost every large company being required to meet its disclosure requirements. The Act requires disclosure of company efforts to “reduce and adapt to climate-related financial risk,” and requires the California Air Resources Board to adopt regulations to implement the law, and to contract with non-profit organizations versed in climate risk disclosure. These requirements cover over 10,000 companies, including all large companies and not just those that are publicly traded.

The second law, the Climate Corporate Data Accountability Act, requires annual disclosure of carbon dioxide and methane emissions by companies with at least \$1 billion in revenue.³⁰ Unlike the SEC regulatory approach, this law does not limit disclosure of emissions to those that only have material impacts, and would apply to the broad scope of Scope 3 emissions, whether or not the entities that are the sources of these emissions are owned by the reporting company and include “purchased goods and services, business travel, employee commutes, and processing and use of sold products.” It is anticipated that this climate transparency effort would impact over 5,300 companies that operate in California.³¹ As the complexity and effort associated with complying with these new laws becomes clearer, the implementing regulations become more important. At this point, California is likely delaying the timelines for adopting new regulations, which ultimately may delay reporting of Phase 3 emissions to 2029.

New York's Climate Disclosure Legislation

Despite being the financial capital of the world, New York has yet to adopt its own climate disclosure law. There are, however, bills in the Legislature that could change that, bringing New York into to this climate and sustainability space. One leading bill is Senate Bill 897-C and its counterpart Assembly Bill 4123.³² The legislation establishes the “climate corporate data accountability act” and requires certain businesses within the state to disclose, annually, Scope 1, 2 and 3 emissions and creates the climate accountability and emissions disclosure fund. The bill was amended on May 17, 2024, and remains in the Senate Finance Committee. The legislation takes a similar approach to that of the new Cali-

fornia laws and includes Scope 3 emissions. Another Senate Bill, S5437, creates the obligation for companies with revenues greater than \$500 million to submit a “climate-related financial risk report.”³³ This legislation remains in the Senate Insurance Committee.

The European Corporate Sustainability Disclosure Directives

On April 21, 2021, the European Commission adopted the Corporate Sustainability Reporting Directive, which substantially expands the climate information that must be reported by covered companies. The directives are intended to “ensure that investors and other stakeholders have access to the information they need to assess the impacts of companies on people and the environment and for investors to assess financial risks and opportunities arising from climate change and other sustainability issues.”³⁴ It went into effect in January 2023 and will be phased in over the next five years. It is expected that approximately 49,000 companies, including most large multinational corporations, will be subject to these rules. On July 31, 2023, the European Commission adopted the European Sustainability Reporting Standards, that is meant to develop common standards for more reliable disclosure of sustainability related information to help inform companies and investors about company exposure to climate risk.³⁵

Direct Market Action: New York's Upcoming Cap and Invest System

In 2019, New York took a leadership position with the landmark Climate Leadership and Community Protection Act (CLCPA).³⁶ This law continues to drive legal developments in the state.³⁷ It requires a new Cap and Invest program that will account for all GHG emissions in New York.³⁸ It builds upon the lessons learned implementing the Regional Greenhouse Gas Initiative (RGGI), which is a multi-state effort to set a CO2 cap on emissions from electric generating facilities in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Virginia, and these facilities are required to have emission allowances equivalent to their emissions, with a decreasing number of such allowance over time to decrease these emissions.³⁹ The Cap and Invest program will set annual caps needed to meet emissions reductions of 40% by 2030, and at least 85% from 1990 levels by 2050.⁴⁰ The carbon emissions, by sector, show the distribution of sources of these emissions: 31% from buildings, 26% from transportation, 16% from electricity, 11% from waste, 10% from industry, and 6% from agriculture.⁴¹

The developing Cap and Invest program incorporates market incentives. Large sources would be required to report emissions and obtain allowances equal to the emissions as-

sociated with their activities.⁴² The allowance prices will increase over time, providing an incentive to transition to lower emitting sources. The program includes, among others, mandating climate change emissions reductions, addressing disadvantaged community's pollution concerns, ensuring affordability for statewide residents and businesses, and to support New York's overall investments in climate mitigation, energy efficiency, and clean transportation projects. These funds will be used, in part, to fund an annual Climate Action Rebate to address and mitigate costs to consumers of the climate transition.

New York State Legislative Leaders Panel

The Legislative Leader Panel focused on New York State Senate environmental priorities presented by the chair of the Senate Environmental Conservation Committee, Senator Peter Harckham.⁴³ Senator Harckham provided a pre-recorded statement due to scheduling conflicts, and we were joined by Brian Pugh, chief of staff, who focused on the complex and multiple environmental topics that the senator and the committee address in New York State and the Hudson River Valley.

The Senator's enacted bills that were discussed during the event include S-6893 – Chapter 279 of 2023, which prohibits the discharge of any radiological substance into the Hudson River in connection with the decommissioning of a nuclear power plant and provides for attorney general enforcement, and S- 6604 – Chapter 483 of 2023, which exempts certain geothermal boreholes at depths beyond five hundred feet from certain requirements.

There was also a plethora of legislation currently before the Senate that demonstrates the extent, depth, breadth, and diversity of environmental issues facing New York. In part, these legislative initiatives concern the Long Island shoreline, the suburban regulation of pesticides application, funding of necessary water infrastructure, and the challenge of addressing wetlands regulatory issues. The information regarding other environmental bills that are part of the senator's environmental priorities provided to the committee include: S- 2103B, which directs the commissioner to publicly publish an annual report on the environmental radiation surveillance program; S-5331A, which expands the food donation and food scraps recycling program; S-5868B, which relates to prevailing wage requirements applicable to brownfield remediation work performed under private contract; S-7781A, which relates to establishing an annual heat mitigation plan, and directing the extreme heat action plan work group to analyze the impact of extreme heat on incarcerated individuals and people working in prisons; S-8060, which relates to regulation of closed-loop boreholes installed for the purpose of facilitating a geo-

thermal heating or cooling system; S-8506A, which relates to individual sewage disposal disclosures and providing information on the property condition disclosure statement; S-9322, which relates to water pollution control revolving fund agreements; S-9341, which extends provisions of law relating to the taking of sharks; S-9342, which extends certain provisions relating to the repair of damaged pesticide containers; S-9379, which prohibits the application of pesticides to certain local freshwater wetlands; and S-9825, which extends provisions relating to the establishment of the mercury thermostat collection act.

Peter Harckham

Senator, 40th District

Chair, Senate Environmental Conservation Committee

Senator Harckham was first elected to the New York State Senate in November 2018. His distinguished career in the State Senate including serving as chair of the Senate Committee on Alcoholism and Substance Abuse. In 2015, Governor Andrew M. Cuomo appointed him as the assistant director of the Office of Community Renewal and he also served as the director of Intergovernmental Affairs for the Governor Mario M. Cuomo Bridge project. Between 2008 to 2015, Senator Harckham served on the Westchester County Board of Legislators including as the Majority Leader from 2010 through 2013.

Senator Harckham has served in a variety of leadership positions, including on the President's Council for the Northern Westchester Hospital, as a board member for the United Way of Westchester and Putnam, the Junior League of Northern Westchester Community Advisory Council, and the Livable Communities Council.

The Senator is a lifelong resident of the Hudson Valley, having grown up in Rockland County. He moved to Katonah in Westchester in 1991 and now lives in South Salem.

Panel Discussion

Annual Legislative Forum attendees appreciated the in-depth discussion about the increasing role of market-based laws, rules, and regulations in environmental sustainability, including New York State efforts regarding climate disclosure and the development of the Cap and Invest program at DEC. These New York initiatives, as well as legal developments in California and at the federal level at the U.S. Securities and Exchange Commission and in Europe, were the focus of the panel discussions.

Cynthia Hanawalt

Director, Climate Finance and Regulation

Sabin Center for Climate Change Law

Columbia Law School

Cynthia Hanawalt brought a nuanced background to the discussion of the rationale for climate disclosure law and regulations around the world. Among others, these include investor benefits from comparable and interoperable approaches to audited information across the globe to reduce costs, the need for consistent and clear climate reporting obligations, observed greenhouse gas reductions from these efforts, and ancillary benefits from standardized auditing, such as claims of greenwashing in the climate and business sustainability space.

Ms. Hanawalt discussed some of the key distinctions and defining points in the various approaches taken to develop and implement climate disclosure requirements in different jurisdictions in the United States, including California's approach, and in the European Union. Items discussed in the SEC approach include the concept of "materiality" regarding actual and potential impacts, the focus on Scope 1 and 2 emissions, and the overall climate goals regarding achieving climate goals as the economy transitions in the future. She also focused on the two California laws that together are the components of that state's approach, including the effort to disclose Scope 1, 2, and 3 emissions for corporations with more than \$1 billion of revenue in California, and the other law requiring disclosure of corporations with greater than \$500 million to disclose key details, to include climate impact mitigation plans. Items involved in the European approach include applicability to European and non-European entities depending on size, use of a standard accounting methodology, and a "double" materiality concept focusing on both financial and climate-impact perspectives. Ms. Hanawalt also discussed key aspects of ongoing litigation challenging climate disclosure efforts, including the numerous petitions challenging these efforts in the federal courts.

Cynthia Hanawalt is the director of Climate Finance and Regulation at the Sabin Center for Climate Change Law. Her work supports regulatory responses to climate-related financial risk and includes a focus on the complex intersections of ESG and antitrust law with sustainability goals.

Prior to joining the Sabin Center, Cynthia served as chief of the Investor Protection Bureau for the New York State Attorney General. She was previously in private practice serving as a litigation partner at the firm Bleichmar Fonti & Auld LLP.

Drew Howard

Managing Consultant

Economic and Complex Analytics

Roux Environmental Engineering and Geology, D.P.C.

Drew Howard's presentation focused on the efforts to collect and report climate data among the various companies, medium and larger sized, that are obliged to make climate disclosures. He noted that data collection and management of climate emissions are key to lowering costs of disclosure and reducing climate emissions.

Mr. Howard focused on the key components of the data and its analysis necessary to identify and report on climate risk. He noted that there are two fundamental types of climate risk – the physical risks related to the impacts of climate change, which are acute and may be longer-term, and the transition risk related to the transition to a lower-carbon economy, which are policy, market, and reputational focused. He also focused on a core and fundamental difference between the approach of the new California laws, the New York State legislation, and the SEC regulations – regarding the requirements of addressing Scope 3 emissions. The reporting of these emissions, he noted, are substantial since they can cause 90% of an organization's climate impact, but they are often difficult to measure given the expansive, and frequently, international nature of supply chains for business. The extent of the supply chain, he noted, frequently includes smaller or mid-size businesses that may not fall under the climate disclosure frameworks of the new laws and regulations, but whose data on emissions remain key to accurate disclosure reports. He noted that these disclosures are subject to audit, even though there is no one size fits all approach to data collection – both micro and macro data are equally important.

Drew is a managing consultant in the ESG and Economic and complex analytics practices of Roux Associates. He focuses on economic and financial analysis, ESG due diligence and disclosure, climate-risk management, natural resources damage assessment, and data analytics for litigation support and regulatory compliance. He has worked across various sectors including environmental product liability, mass tort, insurance, agriculture, electric power and natural gas markets, renewable energy, and finance.

As a founding member of Roux's ESG practice, he provides management and strategic consulting services to clients in the areas of ESG reporting and disclosure, carbon accounting and scoped emissions calculation, emissions reduction and management, and climate-risk due diligence.

Previously, Drew worked at Bates White Economic Consulting in Washington, D.C. in their energy and finance

practices. He holds a Master of Environmental Management from Duke University, with a specialization in Environmental Economics and Policy and a Bachelor of Science in Marine Biology from the University of North Carolina at Wilmington. He is certified in Sustainability and Climate Risk Analysis by the Global Association of Risk Professionals.

Jonathan Binder

Deputy Commissioner for Climate Change, Air Resources, and Energy

New York State Department of Environmental Conservation

New York State Department of Environmental Conservation (DEC) also participated in our climate disclosure panel discussion. Mr. Binder noted the significant progress made in developing the Cap and Invest Program. He focused on the incredibly important goal of achieving an equitable transition to a substantially lowered greenhouse gas emission future. His presentation gave a nod to the success of RGGI referred to it as the NYCI program (New York Cap and Invest Program.). Notably, he discussed that between 2005 and 2022, RGGI achieved a 50% reduction in New York's carbon dioxide emissions. He noted that the details of the NYCI program stem in part from the 2022 Scoping Plan which focused on, among other things, emission reduction, achieved through a declining cap, cost minimization, via efficient allocation of reductions across sectors where reductions are more affordable, and revenue opportunities support incentives, investment, workforce development, and equity priorities.⁴⁴

Mr. Binder also highlighted the projected benefits of NYCI. The NYCI revenues will directly fund a Consumer Climate Action Account, a Climate Investment Account, and an Industrial Small Business Climate Action Account, with the overall goal of at least 35% of NYCI investments going to disadvantaged communities. This may result in accelerating New York's progress toward meeting 2030 greenhouse gas emissions limits, improved air quality, substantial health benefits in all regions of the state, particularly in disadvantaged communities, and the project benefits of between six and twelve billion dollars per year for investments. These benefits, he noted, seek to make the transition to clean energy affordable, particularly to low-income households. Finally, he noted that NYCI is currently in the "access input and develop the proposal" stage of implementing the state's significant new market-based climate program.

Jonathan Binder is the Deputy Commissioner for Climate Change, Air Resources, and Energy at the New York State Department of Environmental Conservation. As deputy commissioner, Jon oversees DEC's Division of Air Resources and its Office of Climate Change. He is responsible for the development and execution of a wide range of efforts to re-

duce air pollutant emissions and help achieve the state's climate and clean energy policies.

Jon is leading DEC's implementation of the state's ambitious and nation-leading Climate Leadership and Community Protection Act, most notably through the development of New York's economy-wide cap-and-invest program. He is also responsible for DEC's regulatory and permitting activities under the federal Clean Air Act. Jon leads participation in the Regional Greenhouse Gas Initiative (RGGI) and serves as secretary of the RGGI, Inc. Board of Directors.

Prior to being appointed Deputy Commissioner in Spring 2023, Jon served as a DEC attorney for 15 years. Jon focused on climate change issues as a lawyer too, most recently as chief of the Bureau of Climate, Air, and Energy in DEC's Office of General Counsel. Jon is a graduate of Cornell University and Tulane University Law School. He resides in Albany, New York with his wife and two daughters.

Keynote Address

Sean Mahar

Interim Commissioner

New York State Department of Environmental Conservation

DEC Interim Commissioner Sean Mahar presented the keynote address. He discussed a number of important issues facing the DEC, from new hires to public access to information on the agency website to hazardous waste issues, interactions with municipal officials on environmental issues impacting their communities and efforts that the agency can undertake to facilitate more interaction and transparency on a variety of DEC initiatives, discussions about the future of remediation programs, including addressing growing concerns in the solid waste regarding New York's declining landfill availability, and he fielded many questions in an open and candid way.

The Legislation Committee extends a special thanks Interim Commissioner Sean Mahar for his first appearance before the Environmental and Energy Law Section for the Annual Legislative Forum.

Sean Mahar works to manage an agency of 3,000 employees engaged in all areas of environmental protection and management of the natural resources of the state of New York.

He served as the Executive Deputy Commissioner and prior to that was the chief of staff where he worked to oversee external agency affairs and operations and guided implementation of key agency priorities, and previously was the Assistant Commissioner of Public Affairs for the agency.

Before joining DEC, Sean was the Director of Government Relations and Communications for Audubon New York, where he led efforts to advance state and federal conservation policies and build support for wildlife conservation initiatives in the state, including climate change adaptation strategies. Sean was also an adjunct professor at Siena College teaching Environmental Policy and Management. He currently lives in Niskayuna, New York with his wife Jessica and daughter Stefanie.

Conclusion: Increasingly, a Changing Climate Requires New Approaches

The Annual Legislative Forum brought together experts who focused on new market-based developments to address climate change. The need to address climate change will continue to grow. Even with many efforts to reduce climate emissions, there are growing concerns because data show that decreasing climate changing emissions with the goal of limiting temperature increases to 1.5 degrees Celsius may prove elusive, unattainable, and consequential. Indeed, the 2015 Paris Climate Agreement goal of limiting the temperature increase to a 1.5 degrees threshold has been surpassed for an entire year by June 2024 – although scientists now indicate that a 10-year average of exceeding 1.5 degrees is probably a better measure of overall climate impacts.⁴⁵ Nonetheless, the threshold has been exceeded. Despite challenges evident from extreme weather and a hotter climate, there are a number of encouraging developments showing what is possible. In 2024, United States greenhouse gases from the energy sector decreased by 4%. New York is a leader in this category. A wind turbine farm located 35 miles east of Montauk can now power over 70,000 homes without any emissions.

Government is responding to climate change, but existing government regulations, alone, cannot solve the climate challenge. The new climate disclosure rules will set reporting requirements for company's climate risk and sustainability initiatives. The information will help inform sustainable investment strategies and impact climate risk aversion in the marketplace. In addition, New York's upcoming Cap and Invest program will create a market to decrease statewide emission levels.

These new laws, from climate disclosure to new market-based approaches to reduce emissions, will continue to face challenges, both legal and practical. Recent legal developments, like the impact of the Supreme Court's overturning of one of environmental laws bedrock precedents found in the *Chevron* decision, will further complicate national efforts to address climate change through administrative agency action. Government, despite this legal challenge, will need to continue to refine and to develop its approach to climate change through law and regulation – just as businesses must further

develop and refine their operations to reduce costs and climate impacts as they seek improved profitability. The complementary goals of addressing the climate crisis and enabling a more sustainable approach by business, and government, will remain necessary for the foreseeable future.



John L. Parker is a partner with Sahn Ward Braff Koblenz Coschignano PLLC where he leads the Environmental Energy and Resources Practice Group. He serves on the Environmental and Energy Law Section of the New York State Bar Association where he is a member of the Executive Committee, and he serves as the chair of the Legislation Committee that sponsors the Annual Legislative Forum. He also serves as the chair of the Environment Law Committee of the Nassau County Bar Association.

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 28. See “The SEC Watered Down Its Climate Reporting Requirements. Here’s What That Means for Companies,” available at <https://www.wsj.com/articles/the-sec-watered-down-its-climate-reporting-requirements-heres-what-that-means-for>

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29. The Climate-Related Financial Risk Act was SB 261. The Climate Corporate Data Accountability Act was SB- 253. See “New California Legislation Would Be a Major Step Forward for Climate Disclosure,” available at <https://clsbluesky.law.columbia.edu/2023/07/20/new-california-legislation-would-be-a-major-step-forward-for-climate-disclosure/>, last visited on June 10, 2024.
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 31. See also “Gov. Newsom signs new law requiring big companies in California to disclose emissions,” available at <https://www.pbs.org/newshour/amp/politics/gov-newsom-signs-new-law-requiring-big-companies-in-california-to-disclose-emissions>, last visited on April 22, 2024.
 32. See “Senate Bill S897 C Establishes the climate corporate data accountability act,” available at <https://www.nysenate.gov/legislation/bills/2023/S897/amendment/C> last visited on June 30, 2024.
 33. See Senate Bill S5437 Requires certain corporations to annually prepare a climate-related financial risk report for submission to the secretary of state and to make such report available to the public,” available at <https://www.nysenate.gov/legislation/bills/2023/S5437> last visited on May 12, 2024.
 34. See “What Should US Businesses Know About the New EU Sustainability Directives?” available at <https://www.lexisnexis.com/community/insights/professional/b/industry-insights/posts/us-businesses-eu-directive>, last visited on June 20, 2024.
 35. See “European Union Approves Climate/ ESG Reporting Standards,” available at <https://www.forbes.com/sites/jonmcgowan/2023/08/02/european-union-approves-climate-esg-reporting-standards/> last visited on June 1, 2024; see also, “Questions and Answers on the Adoption of European Sustainability Reporting Standards,” available at https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4043, last visited on June 1, 2024.
 36. The State legislation, S 6599 / A 8429, was signed into law on July 18, 2019. See, “Senate Bill S6599 – Relates to the New York state climate leadership and community protection act,” available at <https://www.nysenate.gov/legislation/bills/2019/S6599> last visited on September 1, 2022.
 37. See “New York’s Scoping Plan,” available at <https://climate.ny.gov/resources/scoping-plan/>, last visited on May 7, 2024.
 38. The new cap and invest regulations will be found at 6 NYCRR Part 252. See, “Developing New York State’s Economywide Cap and Invest Regulations,” available at <https://capandinvest.ny.gov/Cap-and-Invest-Rule>, last visited on May 25, 2024.
 39. See “Carbon Dioxide (CO₂) Budget Trading Program,” available at <https://dec.ny.gov/environmental-protection/air-quality/controlling-pollution-from-facilities/regional-greenhouse-gas-initiative>, last visited on May 25, 2024.
 40. See “Cap-and-Invest: Reducing Pollution, Investing in Communities, Creating Jobs, & Preserving Competitiveness,” available at <https://capandinvest.ny.gov>, last visited on May 20, 2024.
 41. See “2023 Statewide GHG Emissions Report: Summary Report,” at iv, available at <https://dec.ny.gov/sites/default/files/2023-12/summaryreportnysghgemissionsreport2023.pdf> last visited on May 1, 2024.
 42. See “Update on New York’s cap-and-invest program and proposed reporting requirements for greenhouse gases,” available at <https://www.reuters.com/legal/legalindustry/update-new-yorks-cap-and-invest-program-proposed-reporting-requirements-2024-03-18/> last visited on June 1, 2024.
 43. Unfortunately, Deborah Glick Chair, New York State Assembly Environmental Conservation Committee, and Assemblymember from the 66th District, was unable to attend the 2024 Annual Legislative Forum but has been a thoughtful and excellent contributor on Legislative priorities at previous events. Assemblymember Glick also serves on the Ways and Means, Rules, and Governmental Operations Committees. Assemblymember Deborah Glick, a lifelong resident of New York City, was elected to the NYS Assembly in 1990 and became the first openly LGBT State legislator who focuses on civil rights, health care, lesbian and gay rights, the environment, housing, higher education, social justice, animal rights, funding for the arts and tenant’s rights. Assemblymember Glick’s legislative victories include passage of the Reproductive Health Act, codifying *Roe v. Wade* in NYS law; a bill to provide hospital visitation rights for domestic partners; a ban on internet hunting; a bill authorizing localities to use red light cameras and speed cameras; and passage of the campus sexual assault legislation, among many others.
 44. See “New York’s Scoping Plan,” available at <https://climate.ny.gov/Resources/Scoping-Plan>, last visited on June 1, 2024.
 45. See “In a troubling milestone, Earth surpasses 1.5 degrees C of warming for 12 consecutive months,” available at <https://www.latimes.com/environment/story/2024-07-08/earth-surpasses-1-5-c-of-warming-for-12-consecutive-months>, last viewed on July 8, 2024.