

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE RESOLUTION NO. 12
102ND GENERAL ASSEMBLY

1602H.03C

DANA RADEMAN MILLER, Chief Clerk

1 **WHEREAS**, in 2013, the United States Department of Justice and federal bank
2 regulatory agencies, through their executive officers and particularly the Federal Deposit
3 Insurance Corporation (FDIC), initiated "Operation Choke Point" to "choke off" access to
4 financial services by American citizens and businesses engaged in lawful commercial
5 activities based on ideological, economic, and political beliefs contrary to the laws of the
6 United States and the executive oath of each executive department officer to faithfully
7 discharge the duties of their office; and

8

9 **WHEREAS**, the FDIC purportedly abandoned Operation Choke Point following
10 litigation and Congressional oversight hearings and issued a Financial Institution Letter in
11 2015 (FIL 5-2015) advising insured depository institutions to serve their communities rather
12 than declining services to entire categories of customers (per Operation Choke Point); and

13

14 **WHEREAS**, in May 2021, the White House issued Executive Order 14030 on
15 Climate-Related Financial Risk, which directed federal agencies to develop and implement a
16 government-wide strategy on climate-related financial risk that may impact a variety of
17 public and private companies, and the White House has issued similar orders previously and
18 subsequently; and

19

20 **WHEREAS**, the aforementioned executive order and orders, similarly to Operation
21 Choke Point, are without and in excess of the lawful authority of Article II agencies and
22 reflect a usurpation of Article I powers vested in Congress; and

23

24 **WHEREAS**, the despotic and tyrannical actions of the executive agencies exceed the
25 boundaries that Congress may authorize under Article I, the powers reserved to the people
26 and to the individual states, and undermine the protections afforded all citizens under the Bill
27 of Rights and amendments thereto; and

28

29 **WHEREAS**, the actions of rogue executive officers and agencies, without
30 Congressional authorization or treaty approval, undermine the powers and rights reserved
31 to citizens and the individual states and undermine the sovereignty of the United States and
32 the individual states; and

33

34 **WHEREAS**, in March 2021, the Securities and Exchange Commission (SEC) sought
35 "public input . . . from investors, registrants, and other market participants on climate change
36 disclosure" and explored implementing new rules requiring disclosure of climate change risk
37 and other broader rules regarding the disclosure of environmental, social, and governance
38 (ESG) matters that may apply to publicly traded and privately held companies; and

39

40 **WHEREAS**, the SEC intends to propose and finalize regulations to "enhance
41 registrant disclosures regarding issuers' climate-related risks and opportunities"; and

42

43 **WHEREAS**, in 2021, the SEC sent threatening letters to a number of companies that
44 claimed "information related to climate change-related risks and opportunities may be
45 required in disclosures related to a company's description of business, legal proceedings, risk
46 factors, and management's discussion and analysis of financial condition and results of
47 operations"; and

48

49 **WHEREAS**, climate change risk and ESG disclosures and other elements of the
50 federal government's climate-related financial risk strategy are inconsistent with the First
51 Amendment, constituting compelled speech or, in the case of some elements of the Executive
52 Order on Climate-Related Financial Risk, unconstitutional conditions; and

53

54 **WHEREAS**, these efforts are inconsistent with the SEC's mission to protect
55 investors; maintain fair, orderly, and efficient markets; and facilitate capital formation; and

56

57 **WHEREAS**, SEC Commissioner Hester Peirce has warned that an SEC climate or
58 ESG disclosure regime would result in public shaming of certain firms based on nebulous,
59 incomplete, arbitrary, inconsistent, and political information; and

60

61 **WHEREAS**, Congress has not provided statutory authority for the SEC to adopt
62 mandates related to climate change risk or ESG disclosures, and the Congressional Research
63 Service recognized in 2021 that "federal securities law does not explicitly require disclosure
64 of specific climate-related risks". Congress has also not authorized any of the activities
65 directed under the Executive Order on Climate-Related Financial Risk; and

66

67 **WHEREAS**, Paul G. Mahoney and Julia D. Mahoney of the University of Virginia
68 School of Law stated, "The SEC has neither the expertise nor the political accountability to
69 pursue climate, diversity, or other public policy goals"; and

70

71 **WHEREAS**, such mandates will substantially increase costs for a wide variety of
72 businesses; and

73

74 **WHEREAS**, previous creation of national regulations on climate change included
75 multiple public hearings around the country, including outside of Washington, D.C., and in
76 areas with significant energy production; and

77

78 **WHEREAS**, many American corporations have committed to jointly use their market
79 power through organizations, such as Climate Action 100+ and the Glasgow Financial
80 Alliance for Net Zero, to phase out natural gas and coal-powered energy generation, restrict
81 investment in fossil fuels, and otherwise use their combined market power to pursue
82 environmental or other ESG policies without regard to the economic and other consequences
83 such transition will have on American citizens, including the citizens of Missouri; and

84

85 **WHEREAS**, a forced transition to "net zero" emissions would have negative effects
86 on Missouri and its citizens including, but not limited to, increased energy costs, increased
87 inflation, job losses, reduced job creation, reduced state tax base, harmed retirees and state
88 pension beneficiaries, reduced capital investment, reduced diversity of energy sources, and
89 increased vulnerability of energy production and of the citizens of Missouri who rely on
90 energy to survive extreme hot or cold weather:

91

92 **NOW THEREFORE BE IT RESOLVED** that we, the members of the Missouri
93 House of Representatives, One Hundred Second General Assembly, First Regular Session,
94 hereby:

95

96 (1) Urge the state of Missouri to exercise all of its authority, including litigation,
97 legislation, administrative action, and any other available method, to prevent a forced
98 imposition of environmental, social, and governance policies, whether from international and
99 foreign bodies and governments, the federal government and its executive officers and
100 agencies, or other form of coercion, including initiatives similar to Operation Choke Point, to
101 deny access to financial services to citizens and lawful businesses and urge the state of
102 Missouri to join together with other states sharing this commitment;

103

104 (2) Urge the governor and all executive officers to exercise all discretion afforded to
105 them under law to ensure that the federal government, domestic or international organizations
106 or agreements, or other entities coercing environmental or other ESG policies do not impose
107 costs and consequences on the citizens of Missouri, do not deprive citizens of their
108 constitutional freedoms and the guarantees of due process of law and equal treatment under
109 the law, and do not infringe on the sovereignty of Missouri;

110

111 (3) Urge Missouri state agencies to not base any action or decision upon the
112 assumption that a transition to "net zero" is likely to occur;

113

114 (4) Urge state officials to use all tools at their disposal, including filing public
115 comments and exploring legal challenges, to oppose forthcoming SEC regulations, the
116 implementation of the Executive Order on Climate-Related Financial Risk, and any other
117 topdown, one-size-fits-all environmental mandate;

118

119 (5) Demand that the SEC and other agencies making rules on climate change risk
120 disclosure, ESG, and climate-related financial risk be open and transparent, abide by the
121 Administrative Procedure Act, and strive to hold multiple public hearings to receive feedback
122 directly from people most impacted by such mandates, especially those people living outside
123 of Washington, D.C.; and

124

125 (6) Request the Missouri Congressional Delegation to do everything within its powers
126 to oppose any policies of the Federal Banking Regulators that require ESG to be used as any
127 component of the credit decision-making process to any business or individual and to prevent
128 federal regulators from using ESG as a component in determining the quality and strength of
129 any financial institution's loan portfolio; and

130

131 **BE IT FURTHER RESOLVED** that the Chief Clerk of the Missouri House of
132 Representatives be instructed to prepare a properly inscribed copy of this resolution for the
133 Federal Deposit Insurance Corporation; the Federal Reserve System; the National Credit
134 Union Administration; the Office of the Comptroller of the Currency; the Securities and
135 Exchange Commission; Consumer Financial Protection Bureau; the United States House
136 Committee on Financial Services; the United States Senate Committee on Banking, Housing,
137 and Urban Affairs; and each member of Missouri's Congressional Delegation.

✓