



October 4, 2022

The Honorable Mike Rounds
United States Senate
Washington, DC 20510

Dear Senator Rounds:

The U.S. Chamber of Commerce strongly supports S. 5005, the “Mandatory Materiality Requirement Act of 2022,” which would require that the Securities and Exchange Commission (SEC) adhere to the longstanding materiality standard when promulgating any new disclosure requirements for public companies. We commend you for introducing this important bill.

Since the securities laws were first enacted, materiality has been the standard to determine what information public companies must disclose to investors. In the 1976 *TSC Industries, Inc. vs. Northway, Inc.* decision, the Supreme Court established a meaningful standard of materiality that was designed to provide investors with the significant information they need to make informed voting and investing decisions. Importantly, the Court provided further guidance but noted that the “disclosure policy” under the federal securities laws “is not without limit” because investors should be safeguarded from being overwhelmed with information that runs counter to the goal of better investor decision making. The Court operationalized this principle in its decision – subsequently affirmed by the Court in *Basic, Inc. v. Levinson* – by rejecting¹ the notion that information is material if it “might” be important to an investor in favor of the following test: information is material for purposes of federal securities regulation if “there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote” or invest. The Court has noted its concern that absent a defined materiality standard, investors could be buried “in an avalanche of trivial information – a result that is hardly conducive to informed decisionmaking.” The materiality standard has served investors well for decades and has been a bedrock of corporate disclosure in the United States.

The Chamber has been a staunch advocate for the standard of materiality the Court formulated and that lower courts have applied over the years. The Chamber’s 2017 report on materiality² emphasized that the Supreme Court’s materiality standard helps shield investors from the harms of information overload, and also appropriately

¹ 485 U.S. 224 (1988).

² Center for Capital Markets Competitiveness, U.S. Chamber of Commerce. “Essential Information: Modernizing Our Corporate Disclosure System”. (Winter 2017). Available at: http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information_Materiality-Report-W_FINAL.pdf?x48633

tethers federal securities regulation to the SEC's and securities laws' reason for existence. That purpose is to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. Traditionally, materiality has centered on information that is important for investors focused on understanding the financial and operating performance of companies as investors attempt to gain wealth and earn income. In other words, investment returns – as compared to other interests that, even when worthwhile, fall outside the SEC's remit – is the well-established touchstone of materiality. Bounding the meaning of materiality with reference to the SEC's mission keeps the SEC and the federal securities laws from being politicized, injects regulatory certainty and predictability into the U.S. capital markets, avoids placing the SEC in the difficult position of regulating outside its expertise, and protects investors.

S. 5005 would codify the standard expressed by the Supreme Court into law, and prohibit the SEC from mandating disclosure requirements that are outside the scope of the securities laws or are intended to promote objectives that are at odds with the interests of investors. Your legislation is especially important and timely given the unprecedented nature of the SEC's current regulatory agenda and efforts to prescriptively expand corporate disclosure on several topics including climate change, cybersecurity, human capital management, and others.

The Chamber strongly supports S. 5005 and appreciates your leadership in introducing this legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil Bradley", with a stylized flourish at the end.

Neil Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce