Rep. Tom Emmer on House Committee Hearing

Broadcast: June 14, 2023 • Duration: 5:10

****COMMITTEE CHAIR:**

** Yes, the gentleman from Minnesota, the Majority Whip of the House, Mr. Emmer, is recognized for five minutes.

****REP. TOM EMMER:**

** Thank you, Mr. Chairman. I want to thank Chairman McHenry for holding this important hearing today, and I want to thank all the witnesses for your testimony. We're convening to discuss a remarkable piece of draft legislation on digital asset market structure. It's a product of joint committee collaboration, which here in Congress doesn't happen often, and is drafted thoughtfully and intelligently. I want to commend Chairman McHenry, Chairman Thompson of the Agriculture Committee, and both of their teams for all their hard work. Crypto will thrive with or without the United States. What we seek to do today in discussing this draft is to establish if the next iteration of the Internet is going to be designed by Americans and for Americans, or if it's going to emulate the values of some other country. It must be the former, not the latter. American digital asset innovators and entrepreneurs desperately need regulatory clarity, regulatory certainty, regulatory confidence, and regulatory competitiveness, the four Cs. Instead, as a product of Congress succeeding its power to the administrative state since the mid-90s, this administration has been able to abuse its regulatory power toward the digital asset ecosystem to the detriment of the American people. We have an SEC chair who flip-flops before Congress, telling us last year that he needs legislation to regulate the digital asset industry, and telling us this year that he has changed his mind. He actually does have the authority in his own mind, the statutory authority to regulate this space. I would disagree, but obviously this sends mixed signals. The SEC and the CFTC, the two potential primary regulators, are constantly at odds on what digital assets are commodities or securities. This sends, again, mixed signals to stakeholders. This administration weaponized the recent bank crisis to debank the digital asset community, deploying an Operation Chokepoint-style assault on this legal industry. We have enforcement actions almost every week alleging different tokens are securities or different actions fall under SEC jurisdiction. Yet the SEC has failed to produce a single rule or regulation to help the unique digital asset industry come into compliance, a failure of the administrative state. Congress needs to step into the driver's seat and pass a bill that provides regulatory clarity, certainty, confidence, and competitiveness. I believe the McHenry-Thompson bill can get us there. It sets up a dual-registration framework that allows projects to crowdfund and gives tokens a mechanism to move from issuance to decentralization. However, the way it is currently drafted conflicts philosophically with how I consider this asset class. Fundamentally, I don't believe digital assets themselves are ever securities. Instead, I believe digital assets can be obtained through a securities contract. The distinction between investment contract and the asset of the investment contract underpins my eight years of legislative work in this space, and it's a basis of my bill, the Securities Clarity Act, which I was fortunate to have Mr. Thompson on as a co-sponsor last Congress. Primarily, while I know this is not the author's intention, my concern is that the McHenry-Thompson bill as drafted currently sets up a framework where one fungible digital asset can be both a security and a commodity at the same time. On its face, that is not possible. For one thing to have two distinct classifications, that's not possible. That's because the SEC does not clearly distinguish the asset from the investment contract. In current law, securities inherently

include commodities. Let's go back to Hawley. The orange groves themselves were obviously a commodity, but they were obtained through a securities contract. Nonetheless, the SEC considered those orange groves a security rather than the asset of a security, but it did not consider all other orange groves a security. The SEC does this today with digital assets, which, if continued, makes it impossible for digital assets to be in compliance with the law and to be used for their utility. Chair Gensler gave a speech just last week discussing his belief that the asset of the investment contract is itself the investment contract. Completely bogus. Text to achieve what the authors wanted to achieve, which is to enable a framework in which a project can crowdfund and still create an asset that can be used for its utility, then the text needs to clearly assert concepts established in the Securities Clarity Act that a token is separate and distinct from an investment contract. This will allow the bill to provide the necessary regulatory clarity, regulatory certainty, regulatory confidence, and regulatory competitiveness to ensure the next iteration of the Internet is designed by Americans for Americans. Again, thanks to our witnesses for being here, and thanks to Chairman McHenry and Chairman Thompson for your work in this framework. I yield back.