Comments of Environmental Law & Policy Center on the U.S. Environmental Protection Agency's Proposed Rule Repealing Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units

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I. Introduction & Executive Summary

The Environmental Law & Policy Center (ELPC) submits these comments on the Environmental Protection Agency's (EPA's) proposed "Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units," Docket ID No. EPA-HQ-OAR-2025-0124, published at 90 Fed. Reg. 25752 (June 17, 2025). ELPC is a Midwest-based nonprofit public interest organization that works to improve environmental quality and protect natural resources on behalf of its members. ELPC opposes EPA's proposal to repeal all greenhouse gas emissions standards for the power sector, including the new source performance standards (NSPS) that EPA promulgated in 2015 under CAA section 111(b), 42 U.S.C. § 7411(b), and the Carbon Pollution Standards rule last year which established emission guidelines for existing sources under section 111(d), 42 U.S.C. § 7411(d), as well as standards for certain new and reconstructed sources. ELPC testified regarding our position on this proposed repeal during EPA's July 8, 2025, public hearing, and later submitted our oral testimony as a written comment. *See* Comment ID EPA-HQ-OAR-2025-0124-0113.

Decades of peer-reviewed science have shown that human-induced climate change is an ultimate threat to our environment and public health. The scientific data shows that greenhouse gas emissions directly contribute to the rapid acceleration of climate change and its impacts. The United States is historically the world's largest contributor to global greenhouse gas emissions. In fact, the U.S. domestic power sector's annual carbon emissions alone exceed the total annual greenhouse gas emissions of nearly every other nation and are greater than the collective greenhouse gas emissions of over half the world's countries put together. *See infra* at Part II.C.3.b. It is illogical to state that such a substantial contribution to global emissions is "insignificant."

Climate change causes more frequent and intense extreme weather events, increased instances of flooding and wildfires, reduced food and water security, property destruction, loss of life, and a variety of health impacts, including heart disease, stroke, respiratory conditions, and cancer. Rapidly rising global temperatures have resulted in the last ten years being the top ten hottest years in recorded history, with 2024 and 2023 taking the top two spots. Our communities and our environment are hurting, and the urgency with which greenhouse gas emissions need to be reduced cannot be overstated.

EPA's proposal rests on an improper reading of Clean Air Act (CAA) section 111 and an unlawful interpretation of the phrase "contribute significantly." EPA's assertion that it must make a new finding of "significant contribution" before regulating emissions from already-listed source categories is contrary to the statutory text as well as longstanding judicial precedent. Moreover, EPA departs arbitrarily from its own prior findings that power plants contribute significantly to harmful greenhouse gas pollution, and ignores robust, peer-reviewed scientific data showing that they continue to do so.

Part II.A of these comments discusses that, despite the proposed rule's assertions, once EPA has listed a source category under section 111(b)(1)(A), the Agency must establish performance standards for that category without revisiting the significant contribution threshold. EPA's alternative theory—that it has discretion to conduct a second "significant contribution" inquiry under section 111(b)(1)(B)—similarly contradicts the statutory framework. EPA has no discretion to rewrite the language Congress used in section 111(b)(1), and any such action would be contrary to law.

Part II.B shows that, even if a new "significant contribution" finding were required or within EPA's discretion, EPA's proposed interpretation of the key statutory phrase, including the terms "causes, or contributes significantly," is arbitrary and unlawful. EPA fails to give meaning to all terms in the phrase that the Agency purports to interpret, compounds its error by improperly conflating section 111(b)(1)(A)—the source of that phrase—with other statutory provisions, and ignores judicial precedent rejecting the same interpretation (as advanced in unsuccessful judicial challenges to EPA's previous rules) that EPA now proposes.

Part II.C highlights the continued validity and scientific support for EPA's prior findings in 2015 and 2021 that greenhouse gas emissions from power plants contribute significantly to climate change and threaten public welfare. The proposed rule fails to explain the Agency's departure from those findings, and does not contend with mounting scientific evidence of accelerating climate impacts. Moreover, EPA's singular focus on a "3 percent of global emissions" threshold ignores alternative ways of evaluating a source category's contribution to harmful pollution. The resulting conclusion that fossil fuel-fired power plants in the United States do not significantly contribute to global climate change is thus arbitrary and unsupported, in addition to the fatal legal errors discussed in Parts II.A and B.

Finally, Part II.D shows that no applicable "major question" issue under *West Virginia v. EPA*, 597 U.S. 697 (2022), exists that would justify this repeal.

EPA's proposal represents an unjustified regulatory reversal that abandons the Agency's statutory obligations at a time when stronger action is urgently needed for the sake of public health and welfare and the environment. Because the proposed rule misinterprets the Clean Air Act, arbitrarily departs from prior EPA findings, is unsupported by sound scientific data and is contrary to D.C. Circuit and Supreme Court precedent, we urge EPA to withdraw it in full.

II. Comments on EPA's Proposals

A. A "significant contribution" finding is not required to establish standards for a category of sources that is already listed pursuant to 42 U.S.C. § 7411(b)(1)(A).

This Part A responds, inter alia, to the following EPA requests for comment:

- The proposed interpretation of CAA section 111 to require, or at least authorize the EPA to require, an Administrator's determination of significant contribution for the air pollutant under consideration (C-1);

- Whether CAA section 111 requires a significant contribution finding for the fossil fuel-fired EGU source category first created in the 2015 NSPS (C-2);

- The textual requirements of CAA section 111(b), relevant context from the remainder of CAA section 111, and relevant structural arguments regarding the CAA more generally, including statutory provisions not specifically discussed in this proposal (C-6);

- The alternative interpretation of CAA section 111 to at least authorize the EPA to require a determination that an air pollutant significantly contributes to dangerous air pollution as a predicate to imposing standards of performance including with respect to whether the text of CAA section 111(b) confers sufficient discretion on the EPA and whether additional provisions of CAA section 111 or the CAA more generally inform the scope of that discretion (C-7);

- Whether the EPA erred in determining that it was not required to make a significant contribution finding in the 2015 NSPS or in not revisiting the issue in the CPS, and whether or not it would be appropriate to exercise its discretion here by requiring such a finding for GHG emissions from the fossil fuel-fired power plant source category (C-8); and

- Whether and how the Supreme Court's recent decision in *Loper Bright* should inform the EPA's approach to interpreting CAA section 111 and selecting which interpretation better reflects the best reading of the statute (C-10).

90 Fed. Reg. at 25777-78.

1. EPA's proposal is contrary to the text of CAA section 111 (b)(1)(A) and (B).

As EPA's proposal explains, 90 Fed. Reg. at 25756, CAA section 111(b)(1)(A) requires the Administrator to promulgate a list of categories of stationary sources. A category of sources is to be included on the list if the Administrator, "in his judgment," finds that it "causes, or

contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b)(1)(A) (hereinafter, "significant contribution finding" or "endangerment finding"). Thus, it is at the initial stage of deciding whether to list a category of stationary sources that the Administrator must make a significant contribution finding.

Once the Administrator lists a source category that contributes significantly to dangerous air pollution, EPA must, under CAA section 111(b)(1)(B), establish "standards of performance" for "new sources" ("new source performance standards" or NSPS) in the source category. 42 U.S.C. § 7411(b)(1)(B). In addition, where the new source performance standards concern air pollutants that are not regulated under the National Ambient Air Quality Standards program pursuant to CAA sections 108-110, or the National Emission Standards for Hazardous Air Pollutants program pursuant to CAA section 112, the promulgation of NSPS for a source category triggers a requirement that EPA also promulgate regulations for emissions of that pollutant from existing sources within the same category under CAA section 111(d), 42 U.S.C. § 7411(d). 90 Fed. Reg. at 25757. Section 111(b)(1)(B), in contrast to section 111(b)(1)(A), does *not* specify that a significant contribution finding is to be made in establishing standards.

EPA's proposal acknowledges that it has listed power plants as a source category that "causes, or contributes significantly to" dangerous air pollution within the meaning of CAA section 111(b)(1)(A) since the 1970s. 90 Fed. Reg. at 25759. In 1971, EPA listed "fossil fuel-fired steam generators of more than 250 million Btu per hour heat input" as a source category under CAA section 111(b)(1)(A). 36 Fed. Reg. 5931 (March 31, 1971). EPA subsequently promulgated NSPS for certain air pollutants from the source category. *See, e.g.*, 36 Fed. Reg. 24876 (Dec. 23, 1971); 40 C.F.R. 60 subpart Da. (1977). In 1977, EPA listed fossil fuel-fired stationary combustion turbines as a source category under CAA section 111(b)(1)(A), 42 Fed Reg. 53657 (Oct. 3, 1977), and subsequently promulgated NSPS for certain air pollutants. *See, e.g.*, 44 Fed. Reg. 62792 (Sept. 10, 1979); 40 C.F.R. 60 subpart KKKK. Thus, power plants have been listed under CAA section 111(b)(1)(A) as a category of stationary sources contributing to dangerous air pollution for more than 50 years.

In 2015, when EPA promulgated NSPS limiting CO_2 emissions from power plants, it correctly concluded that, "because the EPA is not listing a new source category in this rule, the EPA is not required to make a new endangerment finding with regard to affected EGUs in order to establish standards of performance for the CO2 emissions from those sources." 80 Fed. Reg. 64510, 64529 (Oct. 23, 2015). Under the plain language of CAA section 111(b), an endangerment finding is required only to take the initial step of listing a source category pursuant to section 111(b)(1)(A), not in taking the subsequent step of establishing NSPS for that source category under section 111(b)(1)(B). Section 111(b)(1)(B), in contrast to 111(b)(1)(A), makes no reference to any further endangerment finding in conjunction either with the initial promulgation of NSPS or reviewing and, if appropriate, revising NSPS "at least every 8 years" thereafter. 42 U.S.C. § 7411(b)(1)(B).

Congress' intentional usage of the phrase "cause, or significantly contribute" in section 111(b)(1)(A)'s authorization to list categories of stationary sources, coupled with its choice *not* to include that phrase in providing authorization to establish NSPS for such categories in section 111(b)(1)(B), is dispositive of EPA's current proposal and demonstrates that the proposal is unlawful. To conclude otherwise would "run[] afoul of the usual rule that when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 357 (2005) (internal quotations and citations omitted); *accord Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) ("Atextual [] supplementation [of a statutory provision] is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision.").

EPA's proposed view that it must make a significant contribution finding under section 111(b)(1)(B) for each pollutant to be addressed by a proposed NSPS is additionally flawed because that approach bears no resemblance to how Congress actually specified the use of this criterion in the text of section 111(b)(1)(A). Section 111(b)(1)(A) requires a determination as to the health or welfare impacts of the "pollution" to which the "source category" contributes, and as to the significance of the amount of the source category's contribution. *See* 42 U.S.C. § 7411(b)(1)(A). Section 111(b)(1)(A) does not provide that an endangerment finding is made as to specific "pollutants."

Furthermore, once a source category is listed, CAA section 111(b)(1)(B) does not specify what pollutants should be addressed by the standards established for that source category. Rather, the statute simply directs the EPA to propose and then promulgate regulations "establishing Federal standards of performance for new sources within such category." 42 U.S.C. § 7411(b)(1)(B). Thus, nothing in the text of section 111(b)(1)(B) creates any ambiguity with respect to what plain language of the preceding section requires—a "listing" of "categories" of sources determined to cause or significantly contribute to dangerous air "pollution," not a listing tied to specific "pollutants."

The language Congress used in section 111(b)(1) contrasts with other CAA provisions that *do* require the EPA to make endangerment findings for each particular pollutant that the EPA regulates under those provisions. For example, CAA section 202(a)(1) requires the Administrator to prescribe standards "applicable to the *emission of any air pollutant* from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to," an endangerment. 42 U.S.C. § 7521(a)(1) (emphasis added). CAA section 231(a)(2)(A) similarly requires the Administrator to propose emission standards "applicable to the *emission of any air pollutant* from any class or classes of aircraft engines" which in his judgment causes, or contributes to, an endangerment. *Id.* § 7571(a)(2)(A) (emphasis added). Section 111(b)(1)(A), by contrast, requires listing "*a category of sources*" if it "causes, or contributes significantly to, *air pollution* which may reasonably be anticipated to endanger public health or welfare." *Id.* § 7411(b)(1)(A) (emphasis added). This statutory language on its face does not require a significant contribution finding as to a specific "pollutant."

The Supreme Court repeatedly has recognized that section 111(b)(1)(A)'s focus is on determining whether there is a significant contribution to "pollution" from "categories" of sources. *See American Electric Power Co. Inc., v. Connecticut*, 564 U.S. 410, 426-27 (2011) ("[T]he Clean Air Act directs the EPA to establish emissions standards for *categories* of stationary sources that, 'in [the Administrator's] judgment,' 'caus[e], or contribut[e] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.' § 7411(b)(1)(A)."") (emphasis added); *West Virginia*, 597 U.S. at 709 ("[S]ection [111(b)(1)(A)] directs EPA to list "*categories* of stationary sources") (emphasis added). Moreover, in the context of holding that EPA's 2015 emission guidelines for existing sources in this source category (the "Clean Power Plan") were contrary to the requirements of 42 U.S.C. § 7411(d), the Court cautioned against reading into section 111 provisions that Congress used in other parts of the statute but not in the text of section 111. *See West Virginia*, 597 U.S. at 732-34 (concluding that Congress' authorization of cap-and-trade emissions trading programs in other provisions of the CAA did not give EPA authority to adopt such a program as the "best system of emission reduction . . . adequately demonstrated" for purposes of section 111(d)). Here, analogously, Congress' specification of a pollutant-specific endangerment finding as a prerequisite to establishing standards under sections 202(a)(1) and 231(a)(2)(A) does not support that such a finding is required to establish NSPS under section 111(b)(1)(B).

EPA's proposal advances two other theories purporting to show that the Agency erred in 2015 when it concluded that a new endangerment finding was not required to establish NSPS for CO_2 emissions from power plants. First, EPA asserts that its 2015 rule "combined" the two power plant source categories that EPA had previously promulgated in 1971 and 1977, respectively, for purposes of establishing standards to address CO_2 emissions. 90 Fed. Reg. at 25763. EPA reasons that "combining the two source categories for purpose of regulating GHG emissions had the effect of listing a new combined source category under CAA section 111(b)(1)(A) based solely on the emission of GHGs by sources within the new category." *Id.* This explanation does not make sense. As EPA acknowledges, its 2015 rule "did not otherwise revise the prior source category listings or promulgated NSPS." *Id.* at 26762. Thus, the effect of the 2015 rule was the same as if EPA had promulgated two *separate* NSPS addressing CO_2 emissions, with one set of standards applicable to the 1971-listed source category of fossil fuel-fired steam generators, and other applicable to the 1977-listed source category of fossil fuel-fired stationary combustion turbines. It is not logical to characterize such an action as a "new" "listing." Rather, what EPA did in 2015 is to promulgate standards addressing additional pollutants, which standards were made applicable to *both* of the *already-listed* source categories of power plants. EPA fails to explain any basis in the statutory text for its conclusion that promulgating a "combined" NSPS to apply to both of the already-listed source categories—without otherwise revising or amending those listings in any way—somehow triggered the endangerment finding prerequisite in the text of section 111(b)(1)(A), when it is clear that promulgating separate NSPS for each of the source categories would not have done so.

EPA's second theory for asserting that the 2015 approach was erroneous relies on finding "[a]dditional context and structure in CAA section 111" to support its view that the NSPS

requires a pollutant-specific significant contribution finding. 90 Fed. Reg. at 25764. For example, it points to CAA section 111(b)(3)'s requirement that EPA, from time to time, "issue information on pollution control techniques for categories of new sources *and air pollutants* subject to the provisions *of this section*." *Id.* (emphasis in original) (citing 42 U.S.C. § 7411(b)(3). EPA proposes to read this language as "treat[ing] 'categories of new sources' and 'air pollutants' in the same breath, suggesting that the required findings in 'this section' apply to both phrases." 90 Fed. Reg. at 25764. Once again, EPA's conclusion does not logically flow from its analysis. Section 111(b)(3) can be read more simply and plainly: (1) "provisions of this section" refers to exactly what it says, any and all "provisions" of section 111; (2) "categories of new sources" refers to categories listed under subsection 111(b)(1)(A); and (3) "air pollutants subject to the provisions of this section" is self-explanatory, but it is *not* a reference to the endangerment finding requirement of subsection 111(b)(1)(A) because that subjection only addresses the listing of "categories," not "pollutants."

EPA's analysis of sections 111(h) and 111(j), 42 U.S.C. § 7411(h), (j), likewise fails to support its interpretation of section 111(b)(1). *See* 90 Fed. Reg. at 25764. EPA notes that CAA section 111(h), which authorizes the EPA to impose design, equipment, work practice, or operational standards when standards of performance are not feasible, provides that standards of performance are not feasible when "a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant." 42 U.S.C. § 7411(h)(1), (2). EPA suggests that this provision "recognizes that CAA section 111(b)(1) is ultimately concerned with controlling particular pollutants, and reinforces the importance of making significant contribution determinations for such pollutants." 90 Fed. Reg. at 25764. But section 111(h) is concerned with the feasibility of standards of performance and the authority to craft alternative standards when a standard of performance is infeasible. These are questions about "how" to regulate pollutants. Section 111(h) does not speak to questions about "whether" to regulate pollutants, nor does it specify on what basis (i.e., rational basis or significant contribution finding) EPA is to answer such questions pursuant to section 111(b)(1)(B).

Section 111(j) authorizes, under certain conditions, source-specific "waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of innovative technological system or systems of continuous emission reduction." 42 U.S.C. § 7411(j)(1)(A). EPA deduces from this language that "waivers are granted on a pollutant-by-pollutant, in addition to source-by-source, basis." 90 Fed. Reg. at 25764. But section 111(j) speaks only to EPA's authority to waive a particular source's compliance with a standard; more precisely, it specifies the conditions under which EPA may "waive compliance with emission limits to permit a facility to test drive an 'innovative technological system' that has 'not [yet] been adequately demonstrated.'" *Am. Elec. Power*, 564 U.S. at 428 (quoting 42 U.S.C. § 7411(j)(1)(A)). This decision whether to grant a source-specific waiver has nothing to do with EPA's decision about what pollutants should be limited by a categorically applicable *standard*, nor with the basis for making that decision.

EPA's identification of various provisions within section 111, such as those discussed above, that are "concerned with . . . particular pollutants," 90 Fed. Reg. at 25764, does not change the plain meaning of the language that Congress used in section 111(b)(1)(A) and then *could* have, but did not use in section 111(b)(1)(B). The text of 111(b)(1) is clear—it does not require a significant contribution finding under section 111(b)(1)(B).

2. EPA's alternative proposal to "exercise discretion" to require an additional significant contribution finding under section 111(b)(1)(B) is also contrary to the statutory text and based on inaccurate premises.

EPA proposes that in the alternative—assuming that the text of section 111(b) does not mandate that the Agency make a new endangerment finding before establishing NSPS for CO_2 emissions from power plants—the Agency should "exercise its discretion" to administratively interpose such a finding into section 111(b)(1)(B) as a prerequisite to establishing the NSPS. 90 Fed. Reg. at 25764. EPA acknowledges that this alternative proposal is a departure from the approach EPA took in 2015. EPA then asserts that the Agency's 2015 approach was "a departure from the EPA's prior implementation of CAA section 111," in that EPA purportedly "for the first time [in 2015] specifically articulated the rational basis interpretation as allowing the EPA to regulate additional pollutants without ever having made a significant contribution finding for that pollutant." *Id.* These statements are incorrect for at least two reasons.

First, it in fact was EPA's longstanding practice, well prior to 2015, to rely on a rational basis explanation to determine which pollutants should or should not be addressed by standards established pursuant to CAA section 111(b)(1)(B). *See Nat'l Lime Ass'n v. EPA*, 627 F.2d 416, 431 n.48 (D.C. Cir. 1980) ("We think the danger of particulate emissions' effect on health has been sufficiently supported in the Agency's (and its predecessor's) previous determinations to provide a rational basis for the Administrator's finding in this case."); "Standards of Performance for Petroleum Refineries," 73 Fed. Reg. 35838, 35859–60 (June 24, 2008) (providing reasons why the EPA was not promulgating greenhouse gas emissions standards for petroleum refineries as part of that rule); *see also infra* Part II.C (discussing in more detail the extent to which EPA's current proposal departs from past Agency practice and caselaw). EPA's longstanding practice to articulate a "rational basis" for the decision about which pollutants should be limited by an NSPS s consistent with section 111(b)(1)(B)'s express delegation of rulemaking authority to EPA. *See* 42 U.S.C. § 7411(b)(1)(B) (the Administrator "shall promulgate . . . such standards with such modifications *as he deems appropriate*" following notice and comment on proposed NSPS) (emphasis added); *see also id.* (the Administrator "shall, at least every 8 years, review and, if appropriate, revise such standards," but "need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.").

Thus, it is EPA's current proposed statutory interpretation, not the approach EPA took in the 2015 NSPS, that represents an outlier in the Agency's historical administration of section 111(b)(1). That EPA "newly uncovered" its current proposed reading of section 111(b)(1) "long

after the dangers posed by greenhouse gas emissions had become well known" is further reason to regard EPA's proposed interpretation with skepticism and for EPA to abandon its proposal as contrary to the statute. *West Virginia*, 597 U.S. at 731.

Moreover, EPA's primary and alternative proposals entirely fail to acknowledge that the D.C. Circuit affirmed EPA's 2015 approach *in Am. Lung Ass'n v. EPA*, 985 F.3d 914, 974-77 (D.C. Cir. 2021), *rev'd & remanded on other grounds*, *West Virginia v. EPA*, 597 U.S. 697 (2022). There, the court considered, inter alia, arguments that the 2015 NSPS did not properly make a finding that fossil-fuel-fired power plants "contribute[ ] significantly" to greenhouse gas pollution. 985 F.3d at 975. The court confirmed that an explanation providing a rational basis for regulation is sufficient; that is, "EPA needed only to 'articulate a satisfactory explanation' for the New Source Rule's endangerment finding, making a 'rational connection between the facts found and the choice made.'" *Id.* at 976 (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*")). EPA ignores this precedent and does not even attempt to reconcile its current statutory reading with the D.C. Circuit's analysis.

In addition to the *Am. Lung Ass'n* decision, the D.C. Circuit previously considered a similarly phrased delegation of authority to EPA's Administrator in CAA section 231(a)(3) to "issue," following public hearings on proposed emission standards applicable to aircraft engines, "such regulations with such modifications as he deems appropriate." 42 U.S.C. § 7571(a)(3). This statutory text mirrors section 111(b)(1)(B)'s authorization of the Administrator to "promulgate, within one year after such publication [of proposed NSPS], such standards with such modifications as he deems appropriate." 42 U.S.C. § 7411(b)(1)(B). The D.C. Circuit held that section 231(a)(3)'s of delegation of authority to EPA "is both explicit and extraordinarily broad." *National Ass'n of Clean Air Agencies v. EPA*, 489 F.3d 1221, 1229 (D.C. Cir. 2007); *cf. Loper Bright Enters v. Raimondo*, 603 U.S. 369, 404 (2024) (noting that Congress may "confer discretionary authority on agencies . . . subject to constitutional limits, and it often has"). EPA also fails to acknowledge this judicial decision. Nor does it explain how, in light of the D.C. Circuit's analysis in *National Ass'n of Clean Air Agencies* and *Am. Lung Ass'n*, the language used in section 111(b)(1)(B) could restrict EPA from identifying a "rational basis" to determine what pollutants should be limited by an NSPS. The statutory text specifies a determination of "significant contribution" only in section 111(b)(1)(A) as a predicate to listing the source category, not in section 111(b)(1)(B) as a predicate to establishing NSPS. Moreover, this criterion applies only to "pollution" from a "category" of stationary sources to be listed, not to each "pollutant." 42 U.S.C. § 7411(b)(1)(A).

The second inaccuracy of EPA's stated premise for its alternative proposal is the assertion that EPA established NSPS for CO_2 emissions from power plants in 2015 "without ever having made a significant contribution finding for that pollutant." In fact, EPA's 2015 rule relied in part on EPA's 2009 finding that greenhouse gas air pollution may reasonably be anticipated to endanger public health or welfare, and its denial in 2010 of administrative petitions to reconsider that finding, both of which were upheld by the D.C. Circuit. *Coal. for Responsible Regul. v. EPA*, 684 F.3d 102, 119–126 (D.C. Cir. 2012) ("*Coalition*"); *see also infra* at Part II.B.

In that case, the court specifically held that "substantial evidence" supports the EPA's determination "that motor vehicle emissions of greenhouse gases contribute to climate change and thus to the endangerment of public health and welfare." 684 F.3d at 121. In 2015, EPA found that greenhouse gas emissions from power plants "far exceed in magnitude the emissions from motor vehicles, which have already been held to contribute to the endangerment." 80 Fed. Reg. at 64531. Current power sector greenhouse gas emissions in the U.S. are a close second to those of the transportation sector and remain, by far, the largest stationary source of such emissions.[1] Thus, EPA's stated premise for proposing to depart from its 2015 approach is mistaken, as EPA did find in 2015 that U.S. power plants "contribute significantly" to harmful greenhouse gas pollution; and current data shows that their contribution remains significant.

3. EPA should withdraw the proposal because it is contrary to the statute.

EPA should reevaluate its primary and alternative proposals in light of all of the considerations above and should find, based on the plain text of 42 U.S.C. § 7411(b)(1), that a new endangerment finding is neither a statutorily mandated prerequisite to establishing NSPS for CO_2 emissions from power plants under section 111(b)(1)(B), nor within EPA's administrative "discretion" to interpose as a prerequisite to establishing such standards. Rather, section 111(b)(1)(B) authorizes EPA to make a reasoned determination regarding the pollutants to be addressed by new source performance standards established under section 111(b)(1)(B), to the extent supported by its rulemaking record and an explanation establishing a rational basis for its determination. The statutory text requires a finding that a "category of sources" "significantly contributes" to "pollution," as a predicate to listing the category of sources under section 111(b)(1)(A). But it does not require EPA to make an additional "significant contribution" finding—either for "pollution" or for a specific "pollutant"—under section 111(b)(1)(B) as a predicate to establishing NSPS for the category.

Even if there were actual ambiguity in section 111(b)(1), no judicial deference would be owed to EPA's proposed interpretation. *Loper Bright*, 603 U.S. at 413 ("[C]ourts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous."). But as shown above, Congress' usage and non-usage, respectively, of the phrase "cause, or significantly contribute" in sections 111(b)(1)(A) and (B) is clear. EPA has no "discretion" to rewrite the language Congress used in section 111(b)(1) simply because the rewrite may suit the current administration's policy preferences. EPA's proposal is unlawful, and the Agency should withdraw it.

[1] Attachment 1, Sources of Greenhouse Gas Emissions, EPA (Mar. 31, 2025), https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions.

B. Even if a significant contribution finding is required or within EPA's discretion under section 111(b)(1)(B), EPA's interpretation of the phrase "contribute significantly" is contrary to the statutory text as well as Supreme Court and D.C. Circuit precedent.

This Part B responds, *inter alia*, to the following EPA requests for comment:

- The proposed interpretation of what it means for a source category to contribute "significantly" to dangerous air pollution (C-3);

- The interpretation that it is appropriate to regulate emissions of an air pollutant from a source category only if those emissions contribute significantly to dangerous air pollution (C-5);

- The textual requirements of CAA section 111(b), relevant context from the remainder of CAA section 111, and relevant structural arguments regarding the CAA more generally, including statutory provisions not specifically discussed in this proposal (C-6); and

- The alternative interpretation of CAA section 111 to at least authorize the EPA to require a determination that an air pollutant significantly contributes to dangerous air pollution as a predicate to imposing standards of performance including with respect to whether the text of CAA section 111(b) confers sufficient discretion on the EPA and whether additional provisions of CAA section 111 or the CAA more generally inform the scope of that discretion (C-7).

See 90 Fed. Reg. at 25777–78.

1. EPA has determined and recently reaffirmed that climate change endangers public health and welfare and is attributable to carbon emissions from industry.

On December 15, 2009, EPA published in the Federal Register its finding under CAA section 202(a), 42 U.S.C. § 7521(a), that the elevated concentrations of the six well-mixed greenhouse gases in the atmosphere—carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)—endanger the public health and the public welfare of current and future generations (hereinafter, the "2009 Endangerment Finding" or "Endangerment Finding").[2] 74 Fed. Reg. 66496. EPA based the 2009 Endangerment Finding on sound science, as outlined in its nearly two-hundred-

[2] On August 1, 2025, EPA published in the Federal Register a proposed rule to rescind the 2009 Endangerment Finding and all greenhouse gas emissions standards for vehicles. 90 Fed. Reg. 36288. ELPC opposes this proposed rule and will submit written comments in that docket.

page Technical Support Document (TSD).[3] In accordance with EPA's guidelines, the TSD relied most heavily on peer-reviewed synthesis reports of thousands of studies related to climate change science and assessing the impacts of climate change, including those by the Intergovernmental Panel on Climate Change (IPCC), the U.S. Climate Change Science Program (CCSP) and U.S. Global Change Research Program (USGCRP), and the National Research Council (NRC) of the U.S. National Academy of Sciences. *Id.* at 4–5, Box. 1.1. EPA chose these studies because they

> 1) are very recent and represent the current state of knowledge on GHG emissions, climate change science, vulnerabilities, and potential impacts;
>
> 2) have assessed numerous individual, peer-reviewed studies in order to draw general conclusions about the state of science;
>
> 3) have been reviewed and formally accepted, commissioned, or in some cases authored by U.S. government agencies and individual government scientists; and
>
> 4) [] reflect and convey the consensus conclusions of expert authors.

Id. at 5. EPA stated that "[n]o other source of information on climate change provides such a comprehensive and in-depth analysis across such a large body of scientific studies, adheres to such a high and exacting standard of peer review, and synthesizes the resulting consensus view of a large body of scientific experts across the world." 74 Fed. Reg. at 66511.

In 2012, the D.C. Circuit reviewed numerous legal and record-based challenges to the merits of the 2009 Endangerment Finding and upheld the Endangerment Finding on all contested grounds. *Coal. For Responsible Regul., Inc. v. EPA*, 684 F.3d 102, 120 (D.C. Cir. 2012) ("*Coalition*"), *aff'd in part, rev'd in part on other grounds sub nom. Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014) ("*UARG*"), *and amended sub nom. Coal. For Responsible Regul., Inc. v. EPA*, 606 F. App'x 6 (D.C. Cir. 2015). The court concluded that the Endangerment Finding "is consistent with *Massachusetts v. EPA* and the text and structure of the CAA, and is adequately supported by the administrative record." 684 F.3d at 117. The Supreme Court took certiorari on a separate statutory interpretation issue that did not disturb the portion of the D.C. Circuit's holding affirming the Endangerment Finding. *See UARG*, 573 U.S. at 314.

Since finalizing the 2009 Endangerment Finding, EPA has denied fourteen administrative petitions for reconsideration.[4] In 2022, EPA issued a forty-page decision memorandum denying

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[3] Attachment 2, *Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act*, ENVTL. PROT. AGENCY, https://www.epa.gov/sites/default/files/2021-05/documents/endangerment_tsd.pdf (last visited August 5, 2025).

[4] Attachment 3, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, ENVTL. PROT. AGENCY, https://www.epa.gov/climate-

four petitions for reconsideration or rulemaking related to the Endangerment Finding, reaffirming that climate change endangers public health and welfare and is attributable to carbon emissions from industry.[5] EPA found that the evidence accumulated subsequent to the Endangerment Finding only "strengthen [EPA's] understanding of the climate system and the impacts that greenhouse gases have on public health and welfare for both current and future generations," thus bolstering the original basis for the Endangerment Finding. Denial at 11.

In its 2022 decision memorandum, EPA emphasized that recent climate science assessments were consistent with the robust, voluminous, and compelling scientific record that informed both the 2009 Endangerment Finding and EPA's subsequent decisions to deny petitions for reconsideration. *Id.* at 1, 3, 13–14. In fact, by 2022, new records had been set for multiple climate indicators in the intervening years since 2009, including for global average surface temperatures, greenhouse gas concentrations, and sea level rise. *Id.* at 11. For example, the average global temperature had increased approximately 1.1 degrees Celsius from the 1850-1900 period to the 2011-2020 period. *Id.* at 13. Atmospheric carbon dioxide concentrations were the highest in at least 2 million years, reaching 416 parts per million in 2021 (as compared to 315 parts per million in 1958). *Id.* at 13, 31. The average global sea level had risen approximately 7-8 inches from 1900 to 2015, with the highest rate of sea level rise in the past 2800 years. *Id.* at 13. Further, the assessments showed that the extreme climatic events EPA had predicted in 2009 were indeed occurring and becoming more prevalent. These included, *inter alia*, an earlier spring melt and reduced snowpack impacting water resources in the western United States[6]; increased incidence of large forest fires, affecting ecosystems in the western United States and Alaska[7]; and the synchronous retreat of nearly all the world's glaciers, resulting in rapid sea level rise.[8]

The most recent scientific assessments EPA considered in 2022 also strengthened the basis for attributing the impacts of climate change to the human-induced accumulation of greenhouse gases in the atmosphere. Denial at 13. As EPA explained, "[t]he most recent major scientific assessments of [IPCC and USGCRP] have only increased their confidence in the

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change/endangerment-and-cause-or-contribute-findings-greenhouse-gases-under-section-202a (last updated Feb. 27, 2025).

[5] Attachment 4, *EPA's Denial of Petitions Relating to the Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, ENVTL. PROT. AGENCY (2022), https://www.epa.gov/system/files/documents/2022-04/decision_document.pdf (hereinafter, "Denial"); *see also* 87 Fed. Reg. 25412 (Apr. 29, 2022).

[6] Attachment 5, Donald J. Wuebbles et al., *Climate Science Special Report: Fourth National Climate Assessment*, USGCRP at 11 (2023), https://www.nrc.gov/docs/ML1900/ML19008A410.pdf.

[7] *Id.* at 22.

[8] Attachment 6, Richard P. Allan et al., *Climate Change 2021: The Physical Science Basis: Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE at 5, 8. (2021).

attribution of recent warming relative to the assessments prior to 2009." *Id.* at 16. For example, the IPCCs Sixth Assessment Report had stated in August 2021: "It is unequivocal that human influence has warmed the atmosphere, ocean and land." Denial at 16.

As it had done when drafting the 2009 Endangerment Finding, in its 2022 decision memorandum EPA appropriately considered the strengths and weaknesses of each data source to determine the conclusions it could reasonably draw. Denial at 25. Petitions for judicial review of EPA's 2022 decision were dismissed for lack of standing following merits briefing and oral argument. *Concerned Household Electricity Consumers Council v. EPA*, No. 22-1139, 2023 WL 3643436 (D.C. Cir. May 25, 2023), *cert. denied*, 144 S. Ct. 497 (Dec. 11, 2023).

2. Recent data further strengthens the basis for attribution and shows that climate change and the problems it causes are worsening.

In just the past few years, evidence of human-driven climate change has grown stronger, and its impacts have worsened. The IPCC and USCRP published major climate assessment updates in 2023, which further strengthened the basis for the Endangerment Finding and the subsequent greenhouse gas emissions standards for fossil fuel-fired EGUs which EPA now proposes to repeal.[9] In 2023, as a result of improved models and updated data, EPA updated its social cost of greenhouse gas values, following recommendations by the National Academies of Sciences, Engineering, and Medicine, public comment, and external peer-review. For example, the central social cost value of CO_2 for 2020 emissions increased by approximately 280% compared to EPA's interim estimates.[10]

Data illustrating the severe impacts of climate change have strengthened the original basis for the Endangerment Finding and subsequent greenhouse gas emissions regulations. As previously mentioned, one of the climate indicators considered by EPA is global average surface temperature. Every one of the top ten hottest years in recorded history has occurred in the last 10 years, with 2024 and 2023 taking the top two spots, respectively. 2025 seems to be on track to continue this trend.

Another impact of climate change is an increase in extreme storms and floods, which result in loss of life, unstable insurance markets, and property loss. Between 1980 and 2024, there were 403 weather and climate disasters in the United States costing more than $1 billion

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[9] Attachment 7, Hoesung Lee et al., *Climate Change 2023 Synthesis Report Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2023); Attachment 8, A.J. Crimmins et al., *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment*, U.S GLOBAL CHANGE RESEARCH PROGRAM (Apr. 2016), https://www.healthandenvironment.org/docs/ImpactsClimageChangeHumanHealthUSGlobalChangeResearchProgramSmall2016.pdf.

[10] Attachment 9, *Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances*, ENVTL. PROT. AGENCY, 101 (Nov. 2023).

each, with the cumulative cost exceeding $2.9 trillion.[11] The 1980-2024 annual average number of these billion-dollar events is 9 events per year. *Id.* However, the annual average for the most recent five years is 23 billion-dollar weather disasters per year. *Id.* The data indicate that extreme climate disasters will only continue to increase in frequency and intensity.

Further, recent advances in attribution science now make it possible to isolate the impact of human-induced climate change on a variety of extreme weather events, such as hurricanes, floods, wildfires, heatwaves, and droughts. Researchers formed the World Weather Attribution (WWA) initiative to use climate models and weather observation to understand the role of climate change in the intensity and likelihood of extreme weather events.[12] For example, WWA found that rainfall during Hurricane Helene was 10 percent heavier due to climate change.[13] WWA later analyzed historical data through climate models to find that human-induced climate change resulted in approximately a 40 percent increase in the likelihood and approximately a 9 percent increase in the intensity of the April 2025 flooding in the Central Mississippi river valley.[14] The burn area of northern and central California forest fires increased fivefold during 1996-2021 relative to 1971-1995.[15] Scientists recently found that nearly all of this observed increase is attributable to anthropogenic climate change. *Id.* at 1. It is unequivocal that human-caused greenhouse gas emissions are driving climate change and its devastating impacts, both globally and domestically.

3. EPA's proposed interpretation of the phrase "contribute significantly" is contrary to the statutory text as well as Supreme Court and D.C. Circuit precedent.

Despite the overwhelming evidence of adverse human health and welfare impacts from climate change and of U.S. power plants' contribution to these problems, EPA proposes to find

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[11] Attachment 10, *Billion-Dollar Weather and Climate Disasters*, NOAA, https://www.ncei.noaa.gov/access/billions/ (last visited July 29, 2025).

[12] WORLD WEATHER ATTRIBUTION, https://www.worldweatherattribution.org/ (last visited July 31, 2025).

[13] Attachment 11A, *Climate Change Key Driver of Catastrophic Impacts of Hurricane Helene that Devastated Both Coastal and Inland Communities*, WORLD WEATHER ATTRIBUTION (Oct. 9, 2024), https://www.worldweatherattribution.org/climate-change-key-driver-of-catastrophic-impacts-of-hurricane-helene-that-devastated-both-coastal-and-inland-communities/.

[14] Attachment 11B, *Effective Emergency Management Prevented Larger Catastrophe After Climate Change Fueled Heavy Rains in Central Mississippi River Valley*, WORLD WEATHER ATTRIBUTION (May 8, 2025), https://www.worldweatherattribution.org/effective-emergency-management-prevented-larger-catastrophe-after-climate-change-fueled-heavy-rains-in-central-mississippi-river-valley.

[15] Attachment 12, Marco Turco, et al., *Anthropogenic Climate Change Impacts Exacerbate Summer Forest Fires in California*, 120 PROC. NAT'L. ACAD. SCI. 1, 2 (2023).

that U.S. fossil fuel-fired electricity generation "does not contribute significantly to globally elevated concentrations of GHGs in the atmosphere." 90 Fed. Reg. at 25768. EPA proposes to reach this outcome by: (1) interpreting "significantly contribute" in a manner that is contrary to the statute, *see id.* at 25765-67; and (2) applying that interpretation to the power plants source category in a manner that mostly ignores the compelling data and previous EPA findings summarized in Parts II.B.1 and 2 above, *see id.* at 25767-68. This Part II.B.3 focuses on the flaws in EPA's interpretation, while Part II.C highlights the flaws in EPA's application of it to the power plants source category.

As shown above in Part II.A, EPA's interpretational approach conflates two substantively different administrative decisions under CAA section 111: (1) the Administrator's determination whether, "in his judgment," a source category "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare," 42 U.S.C. § 7411(b)(1)(A); and (2) the establishment of NSPS for such a source category after a significant contribution determination has been made, *id.* § 7411(b)(1)(B). The Supreme Court considered this identical statutory language as used in CAA section 202(a)(1), 42 U.S.C. § 7521(a)(1), and held that "[w]hile the statute does condition the exercise of EPA's authority on its formation of a 'judgment,'[] that judgment must relate to whether an air pollutant 'cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.'" *Massachusetts v. EPA*, 549 U.S. 497, 532-33 (2007). The Court also cautioned—and later re-emphasized in *American Elec. Power*—that the statutory phrase's "use of the word 'judgment' is not a roving license to ignore the statutory text." 564 U.S. at 427 (quoting *Massachusetts*, 549 U.S. at 533). Considerations about the "manner, timing, content, and coordination" of possible regulations to limit the pollution from the source category, or policy judgments that a particular regulatory approach would be "an inefficient, piecemeal approach to address the climate change issue," are not part of the "judgment" that the Administrator makes pursuant to this statutory phrase, because "it is evident" that such considerations "have nothing to do with whether greenhouse gas emissions contribute to climate change." *Massachusetts*, 549 U.S. at 533. As the Supreme Court has now made clear in numerous decisions relating to greenhouse gas regulation under section 111, "EPA must 'ground its reasons for action *or inaction* in the statute,' . . . rather than on 'reasoning divorced from the statutory text.'" *UARG*, 573 U.S. at 318 (quoting *Massachusetts*, 549 U.S. at 532, 535).

EPA's proposal explains its view that "[t]he CAA, and specifically the factors laid out in section 111(a)(1), provides guidance on the scope of the considerations relevant to assessing whether an air pollutant contributes significantly to dangerous air pollution." 90 Fed. Reg. at 25765; *see also id.* at 25765-66. The referenced factors in section 111(a)(1) are those that EPA must consider in setting "standards of performance"—that is, "the degree of emission limitation achievable through the application of the best system of emission reduction . . . adequately demonstrated," "taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements." 42 U.S.C. § 7411(a)(1). But these are *precisely* the types of considerations that the Supreme Court held are outside the scope of the judgment that the Administrator must make in a "significant contribution" determination. These

factors inform the Administrator's decision about "how" to regulate, not "whether" to regulate. *Massachusetts*, 549 U.S. at 532-33. EPA fails even to mention *Massachusetts* and the Supreme Court's subsequent decisions reaffirming it, let alone explain how its proposed interpretation is consistent with that precedent.

EPA also fails to acknowledge, much less explain any attempt to reconcile its interpretation with, the D.C. Circuit's decision in *Coalition for Responsible Regulation.* There, in upholding the 2009 Endangerment Finding, the court rejected arguments that EPA should have considered factors such as "the benefits of activities that require greenhouse gas emissions, [and] the effectiveness of emissions regulation triggered by the Endangerment Finding." 684 F.3d at 117. These are generally the same factors that EPA's proposed interpretation would make central to the significant contribution inquiry under CAA section 111. *Compare* 684 F.3d at 117, 118, *with* 90 Fed. Reg. at 25765-67. The D.C. Circuit held that such policy concerns "were not part of the calculus for the determination of the endangerment finding in the first instance" and were "foreclosed by the language of the statute and the Supreme Court's decision in *Massachusetts v. EPA*." *Coalition*, 684 F.3d at 117. Moreover, the court found that the petitioners in *Coalition* made the same error in their reading of the then-pertinent CAA statutory text that EPA makes here. That is, just as EPA here conflates the "standard of performance" criteria in section 111(a)(1), such as the "cost of achieving such reduction," with the "cause, or contribute significantly" language in section 111(b)(1)(A), so did the *Coalition* petitioners conflate section 202(a)(2)'s criteria for setting motor vehicle emission regulations—including "the cost of compliance"—with the "cause, or contribute significantly language in section 202(a)(1). *See* 684 F.3d at 118. The court held that, "[t]o be sure, the subsection following § 202(a)(1), § 202(a)(2), requires that EPA address limited questions about the cost of compliance with new emission standards and the availability of technology for meeting those standards . . . but these judgments are not part of the § 202(a)(1) endangerment inquiry." *Id.* Thus, *Coalition* squarely indicates that EPA's proposed interpretation is contrary to the statute.

Even if these judicial precedents were not dispositive, EPA's interpretation would still be invalid because EPA has failed to explain how the interpretation gives meaning to all terms in the phrase, "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For example, EPA's approach arbitrarily limits the meaning of "significantly" in a way that is contrary to the term's common understanding. EPA defines the ordinary meaning of "significant" as follows: "having or likely to have influence or effect: important. 'Important' is similarly defined, in turn, as 'marked by or indicative of significant worth or consequence: valuable in content or relationship.'" 90 Fed. Reg. at 25765. EPA's explanation makes clear, however, that its consideration of "worth or consequence" is focused on the "cost reasonableness" to sources of potential pollution control options if EPA imposes regulation and the benefits to sources of avoiding those compliance costs. *Id.* at 25766.67. EPA's interpretation largely if not wholly ignores the *social* costs that the public will incur if EPA fails to regulate, and the benefits of the public of reducing pollution. *Id*. The tools to measure such costs and benefits were available to EPA, as there have been major advances recently in the estimation of the social cost of greenhouse gases driven by both

methodological improvements as well as improved incorporation of scientific and economic research findings.[16] Nonetheless, EPA's Regulatory Impact Analysis for this proposal confirms that, "[c]onsistent with E.O. 14154 "Unleashing American Energy" (90 FR 8353, January 20, 2025) and the memorandum titled "Guidance Implementing Section 6 of Executive Order 14154, Entitled 'Unleashing American Energy,'" the EPA did not monetize benefits associated with CO_2 emissions changes."[17] Thus, EPA's definition of "significantly" embodies an arbitrarily narrow conception of "worth," "consequence" or "value."

More fundamentally, EPA fails to articulate any coherent relationship between the factors its proposed interpretation gives weight to, and the statutory terms "endanger public health or welfare." EPA explains its approach as follows: "when determining if a source category contributes significantly to dangerous air pollution, the EPA will look to the availability of achievable, cost-effective emission reductions. If no such reductions are available, the influence or effect of regulating the source category for that pollutant is null and its contribution to air pollution is not significant." 90 Fed. Reg. at 25766. Under this approach, any quantity of pollution—no matter how great the rate of emissions and how dire their impact on the public—will be deemed *no*t to "endanger public health or welfare" if the Administrator finds that the pollution limitations would not be "cost-effective." EPA's approach gives no meaning to the words "endanger public health or welfare," as it ensures that all outcomes will be driven by the Administrator's conclusion regarding the "cost-effectiveness" of proposed limitations, rather than on how the "pollution" impacts "public health or welfare." Worse, because EPA does not even attempt to monetize the social costs of pollution and benefits of avoiding pollution and instead simply ignores them, any conclusions about "cost-effectiveness" will necessarily be subjective and arbitrary.

C. EPA's proposed determination that power plants do not "contribute significantly" to harmful greenhouse gas emissions arbitrarily departs from EPA's prior findings, ignores overwhelming scientific evidence, and applies unlawful criteria.

This Part C responds, inter alia, to the following EPA requests for comment:

- Any other relevant arguments and information, including with respect to legitimate reliance interests on the 2015 NSPS and CPS (C-4);

- Whether the EPA erred in determining that it was not required to make a significant contribution finding in the 2015 NSPS or in not revisiting the issue in the CPS, and whether or not it would be appropriate to exercise its discretion here by requiring such a finding for GHG emissions from the fossil fuel-fired power plant source category (C-8);

[16] Attachment 9, *supra* note 10 at 57.

[17] *Regulatory Impact Analysis for the Proposed Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units*, ENVTL. PROT. AGENCY 4-1 (2025).

- The change in interpretation from the 2015 NSPS, which allowed the EPA to regulate additional pollutants without ever having made a significant contribution finding for that pollutant, including any specific reliance interests relevant to the interpretation taken in the 2015 NSPS, as carried over into the CPS, and the relative strength of the rationale for these respective interpretations (C-9); and

- The proposed determination that GHG emissions from the EGU source category do not "contribute significantly" to dangerous air pollution under CAA section 111(b)(1)(A) (C-13).

See 90 Fed. Reg. at 25777–78.

EPA's proposed finding that power plants do not "cause or significantly contribute" to harmful atmospheric greenhouse gas pollution stands in stark contrast to its previous decade of findings regarding the basis for regulating such pollution from power plants. The distinct approaches EPA used in 2015 and 2021, and the stated bases for EPA's conclusions, are summarized below in Parts II.C.1 and 2, respectively. Part II.C.3 addresses critical flaws in EPA's current proposal for applying its new "contribute significantly" interpretation to power plants, including that it departs arbitrarily from *both* the 2015 and 2021 approaches, and that it is belied by an enormous body of scientific evidence regarding the impact of U.S. power plants on global greenhouse gas emissions and associated adverse impacts to human health and welfare.

1. 2015 NSPS

In its 2015 rulemaking that established the still-extant standards limiting CO_2 emissions from new power plants, EPA determined that it "has a rational basis for concluding that emissions of CO_2 from fossil fuel-fired power plants, which are the major U.S. source of GHG air pollution, merit regulation under CAA section 111." 80 Fed. Reg. at 64530.[18] On the question of whether there is an endangerment from CO_2 emissions, EPA noted its finding in 2009 that GHS air pollution may reasonably be anticipated to endanger public health or welfare; its 2010 denial of administrative petitions to reconsider that finding; and the D.C. Circuit's opinion upholding both EPA decisions on the merits. *Id.*; *see Coalition*, 684 F.3d at 119-26. EPA particularly emphasized the D.C. Circuit's findings concerning the robustness of the evidentiary record supporting EPA's 2009 endangerment finding. The court acknowledged, for example:

- the "substantial record evidence that anthropogenic emissions of greenhouse gases 'very likely' caused warming of the climate over the last several decades," 684 F.3d at 121;

- "substantial scientific evidence . . . that anthropogenically induced climate change threatens both public health and public welfare . . . [through] extreme weather events,

[18] The Federal Register publication of the 2015 NSPS is attached in full as Attachment 13.

changes in air quality, increases in food- and water-borne pathogens, and increases in temperatures," *id.*; and

- "substantial evidence . . . that the warming resulting from the greenhouse gas emissions could be expected to create risks to water resources and in general to coastal areas[.]" *id.*

In addition, EPA noted that major climate science assessments published after 2010 lent further credence to the validity of the 2009 endangerment finding, and that no information provided to or otherwise reviewed by EPA during the 2015 rulemaking process provided any basis for reaching a different conclusion. 80 Fed. Reg. at 65430. EPA explained that the "current and evolving science . . . is confirming and enhancing our understanding of the near- and longer term impacts emissions of CO_2 are having on Earth's climate and the adverse public health, welfare, and economic consequences that are occurring and are projected to occur as a result." *Id.* In short, the scientific data subsequent to 2010 established that "[t]he facts, unfortunately, have only grown stronger and the potential adverse consequences to public health and the environment more dire in the interim." *Id.* at 65431.

On the question of whether NSPS limiting CO_2 emissions from new power plants were appropriate, EPA explained that "the high level of GHG emissions from fossil fuel-fired EGUs makes clear that it is rational for the EPA to regulate GHG emissions from this sector." *Id.* at 65430. EPA observed that EGUs were the source of nearly one-third of all greenhouse gas emissions from U.S. sources and that they comprised, by far, the largest stationary source category of such emissions. *Id.* EPA found that the CO_2 emissions from fossil fuel-fired EGUs were almost three times as great as the emissions from the next ten stationary source categories combined. *Id.* Moreover, their emissions far exceeded in magnitude the emissions from motor vehicles, which had already been held in *Coalition* to contribute to the endangerment. *Id.* at 65431.

Thus, EPA concluded, "even if CAA section 111 required the EPA to make endangerment and cause-or-contribute significantly findings as prerequisites for this rulemaking, then, so far as the 'CO_2 endangers public health and welfare' component of an endangerment finding is concerned, the information and conclusions described above should be considered to constitute the requisite endangerment finding." *Id.* at 65430. Likewise, "so far as a cause-or-contribute significantly finding is concerned, the information and conclusions described above should be considered to constitute the requisite finding. *Id.* at 65431.

The D.C. Circuit affirmed EPA's 2015 approach in *Am. Lung Ass'n v. EPA*, 985 F.3d 914, 974-77 (D.C. Cir. 2021), *rev'd & remanded on other grounds*, *West Virginia v. EPA*, 597 U.S. 697 (2022). There, the court considered, inter alia, arguments that the 2015 NSPS did not properly make a finding that fossil-fuel-fired power plants "contribute[ ] significantly" to greenhouse gas pollution. 985 F.3d at 975. The court confirmed that an explanation providing a rational basis for regulation is sufficient; that is, "EPA needed only to 'articulate a satisfactory

explanation' for the New Source Rule's endangerment finding, making a 'rational connection between the facts found and the choice made.'" *Id.* at 976 (quoting *State Farm*, 463 U.S. at 43).

Further, the court reaffirmed its prior holding—originally given in the context of affirming EPA's 2009 Endangerment Finding pursuant to CAA section 202(a)(1), 42 U.S.C. § 7521(a)(1)—that EPA is not obligated to identify "a 'precise numerical value' that defines the threshold at which air pollution endangers the public health and welfare." 985 F.3d at 976 (citing *Coalition*, 684 F.3d at 122). Rather, EPA may employ a "qualitative approach" based on empirical data and scientific evidence. *Id.* at 976. The court emphasized EPA's findings that fossil fuel-fired power plants' greenhouse gas emissions accounted for nearly a third of all greenhouse gas emissions from all U.S. sources and exceeded the emissions of the next ten stationary source categories combined. 985 F.3d at 975. Given the magnitude of these emissions, the court concluded that even if the lack of a numerical significance threshold "might prove problematic in cases at the margins, the EPA sensibly found that this one is not even close." *Id.* at 976. The court thus agreed that fossil-fuel fired power plants' greenhouse gas emissions, "under any reasonable threshold or definition," represent "a significant contribution" to dangerous air pollution. *Id.*

2. 2021 Pollutant-Specific Significant Contribution Finding

In 2018, EPA proposed revisions to the 2015 NSPS. 83 Fed. Reg. 65424 (Dec. 20, 2018). This proposed rule reiterated EPA's previous rational basis explanation for regulating greenhouse gas emissions from power plants, as summarized above, without articulating any change in that rationale. *Id.* at 65431-32. EPA made clear that it was proposing to retain the same rationale as the basis for regulating greenhouse gas emissions from power plants. *Id.* at 65432 n.25. Nonetheless, noting its awareness that some stakeholders held opposing views, EPA requested "comments on the correctness of the EPA's interpretations and determinations and whether there are alternative interpretations that may be permissible, either as a general matter or specifically as applied to GHG emissions." *Id*.

EPA ultimately did not finalize in that rulemaking any proposed revisions to the provisions of the 2015 NSPS. It did, however, take final action promulgating a "Pollutant-Specific Contribution Finding" for greenhouse gas emissions from power plants. Attachment 14A, 86 Fed. Reg. 2542 (Jan. 13, 2021). In this rule, EPA "articulat[ed] a framework under which source categories are considered to contribute significantly to dangerous air pollution due to their GHG emissions if the amount of those emissions exceeds 3 percent of total U.S. GHG emissions." *Id*. at 2542-43.

As part of this framework, EPA evaluated possible thresholds for determining "significance" based on the percentage contribution that a category of sources makes to domestic greenhouse gas emissions in the United States. *See id*. at 2552-54. EPA explained that "emissions are the best, but not necessarily only, indicator of significance because the quantity of

emissions emitted from a source category correlates directly with impacts." *Id*. at 2551. EPA noted that calculations using the Model for the Assessment of Greenhouse Gas Induced Climate Change (MAGICC model) have shown that the magnitude of emissions from a single sector is very close to being linearly related to the projected temperature change in 2100 resulting from eliminating that sector's emissions. *Id*. Likewise, a number of peer reviewed studies have found that temperature change is roughly proportional to the total quantity of CO_2 emissions over a wide range of potential scenarios. *See id*. at 2552 n.8.

EPA identified that there were "at least two natural breakpoints" between groups of emitting stationary source categories in the United States. *Id*. at 2552. The first was a proposed threshold of 3% of U.S. domestic greenhouse gas emissions from stationary sources, which was exceeded only by power plants—vastly so, as they account for more than 25 percent of all U.S. greenhouse gas emissions. *Id*. The second was a proposed threshold somewhere between 1.5 and 2.5% of U.S. domestic greenhouse gas emissions from stationary sources, as most source categories emitted less than 1.5%. *Id*. EPA "determined that 3 percent of the U.S. GHG emissions was the best threshold for determining significance," in part because of the correlation between hypothetical elimination of that quantity of emissions, and global temperature reduction. *Id*. at 2553. "The hypothetical elimination of all source categories above a 3 percent threshold corresponds to a hypothetical global mean temperature reduction of 0.049 degrees Celsius (°C) (approximately 0.1 degree Fahrenheit)." *Id*.

EPA emphasized, moreover, that "the U.S. GHG emissions of the EGU source category are more than an order of magnitude larger than the emissions threshold in the framework, representing 43 percent of U.S. stationary source GHG emissions." *Id*. at 2554. Based on the above-noted evidence supporting a linear correlation between emissions quantity and temperature change, this implied that the potential impact on global temperature reduction from reducing greenhouse gas emissions from U.S. power plants likewise is more than an order of magnitude larger than that associated with the 3-percent-of-domestic emissions threshold in EPA's framework—potentially more than half of a degree Celsius, rather than 0.049 degrees.

Following the change of Presidential administration in 2021, EPA obtained a voluntary vacatur and remand of the Significant Contribution Finding from the D.C. Circuit.[19]

3. EPA's current proposal to apply its new "contribute significantly" definition to power plants

EPA now proposes to conclude "that the volume of GHG emissions from U.S. fossil fuel-fired EGUs does not demonstrate [a] significant contribution to dangerous air pollution." 90 Fed. Reg. at 25767. EPA identifies three bases for the proposed determination: (1) "the considerations of statutory structure and policy regarding public welfare discussed in the previous section [explaining how EPA proposes to interpret 'contribute significantly']";

[19] Attachment 14B, *California v. EPA*, No. 21-1035, Doc. #1893155 (D.C. Cir. Apr. 5, 2021).

(2) "available information on the declining share of GHG emissions from U.S. EGUs relative to global emissions"; and (3) the supposedly "attenuated nature of the causal chain between the volume of greenhouse gas emissions from the EGU source category and potential danger to public health and welfare arising from anthropogenic climate change." None of these rationales support EPA's proposed conclusion, as discussed further below.

a. EPA's "statutory structure and policy" considerations are invalid in the context of determining "significant contribution."

First, as discussed more fully above, the factors EPA identifies as the focus of its "contribute significantly" interpretation are contrary to the statutory text as well as Supreme Court and D.C. Circuit precedent, and thus contrary to law in the context of determining whether a category of stationary sources "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare," within the meaning of CAA section 111(b)(1)(A). *Supra* at Part II.B.3. Because the proposed definition is unlawful, EPA's proposed application of that definition to the power plants source category also is unlawful.

b. Information on U.S. power plants' share of global greenhouse gas emissions shows that their contribution is "significant" by any rational measure.

EPA's second asserted basis for the proposed "not significant" determination attempts to portray the Agency's findings in the 2015 NSPS as having been "based exclusively on the volume of GHG emissions from the source category." 90 Fed. Reg. at 25767. EPA contrasts its current evaluation by asserting that recent evidence shows "the share of GHG emissions from the U.S. power sector, including CO_2, to global concentrations of GHGs in the atmosphere is relatively minor and has been declining over time," falling from 5.5% of total global greenhouse gas emissions in 2005 to 4.6% in 2010, 3.7% in 2015, and 3% in 2020. *Id.*

EPA's characterization is incomplete, however, and thus drastically understates the degree to which the United States and its power-generation sector are contributing to global greenhouse gas emissions and their associated adverse impacts on human health and welfare. Out of nearly 200 countries, the United States accounts for 11 percent of the world's total greenhouse gas pollution.[20] The U.S. power sector, alone, emits more greenhouse gas pollution annually than almost every country in the world; that is, there are only three countries whose total emissions from *all* sectors are higher than those from the U.S. power sector.[21] Moreover,

[20] *GHG Emissions of All World Countries*, EDGAR, https://edgar.jrc.ec.europa.eu/report_2024 (last visited July 29, 2025).

[21] Attachment 15, Robbie M. Andrew & Glen P. Peters, *The Global Carbon Project's Fossil CO_2 Emissions Dataset: 2024 Release (Update 2)*, CICERO CTR. FOR INT'L CLIMATE RES. (2024); Attachment 16, Pierre Friedlingstein et al., *Global Carbon Budget 2023*, EARTH SYS. SCI. DATA, 5301–5369 (2023).

when considering historic data quantifying cumulative greenhouse gas emissions over time, the United States has the largest historical responsibility for climate change of any country in the world and is responsible for almost a quarter (24.1%) of cumulative global CO_2 emissions from fossil fuels and industry.[22]

Fossil fuel-fired power plants emit more carbon pollution than any other category of stationary sources.[23] In 2023, domestic U.S. power plants alone released 1.4 billion metric tons of CO_2.[24] This is more than the total annual greenhouse gas emissions of nearly every other nation on Earth, and is greater than the *collective* greenhouse gas emissions of over half of the world's countries.[25] Further, domestic power sector CO_2 emissions in 2023 resulted in over $290 billion dollars in climate damages.[26] This amount is greater than the annual gross domestic product of over three-quarters of the world's countries.[27] It is hard to imagine any other context in which EPA would characterize an economic impact at the scale of hundreds of billions of dollars annually as "insignificant."

Just a few weeks ago, the International Court of Justice (ICJ) of the United Nations issued its advisory opinion on the *Obligations of States in Respect of Climate Change*, asserting that States have the obligation to ensure the protection of the environment and climate from anthropogenic greenhouse gas emissions under climate change and environmental treaty frameworks as well as international law.[28] The ICJ also stressed the importance of the human right to a clean, healthy, and sustainable environment. *Id.* ¶¶ 387–93. The ICJ's opinion asserts that all member States—most of which contribute far less to global greenhouse gas emissions than the U.S. power sector – have the duty to prevent significant harm to the environment. In interpreting and applying the relevant law, the ICJ used "common but differentiated responsibilities and respective capabilities" as a guiding principle, reflecting "the need to

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[22] *Cumulative CO_2 Emissions by World Region*, OUR WORLD IN DATA (2024), https://ourworldindata.org/grapher/cumulative-co2-emissions-region.

[23] New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39798, 39,799 (May 9, 2024).

[24] *GHGRP Power Plants*, ENVTL. PROT. AGENCY, https://www.epa.gov/ghgreporting/ghgrp-power-plants#trends (last visited Aug. 5, 2025).

[25] EDGAR, *supra* note 20.

[26] *See U.S. Energy-Related Carbon Dioxide Emissions, 2023*, Fig. 1 Data, U.S. ENERGY INFO. ADMIN. (Apr. 25, 2024), https://www.eia.gov/environment/emissions/carbon/archive/2023/; Attachment 9, *supra* note 10 at 154, Table A.5.

[27] Attachment 17, *GDP Ranking*, WORLD BANK DATA CATALOG, https://datacatalog.worldbank.org/search/dataset/0038130 (last visited Aug. 5, 2025).

[28] Attachment 18, *Obligations of States in Respect of Climate Change, Advisory Opinion*, INTERNATIONAL COURT OF JUSTICE, ¶¶ 174–368 (July 25, 2025), https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf.

distribute equitably the burdens of the obligations in respect of climate change, taking into account, inter alia, States' historical and current contributions to cumulative GHG emissions, and their different current capabilities and national circumstances, including their economic and social development." *Id.* ¶ 148. Given the degree of the U.S. power sector's greenhouse gas contributions, both historically and today, the assertion that the U.S. power sector's contribution of 3 percent of all global greenhouse gas emissions is not "significant" enough to be regulated goes directly against this principle and the ICJ's opinion.

EPA's assertion that 3 percent of global emissions is "insignificant" suffers from the fallacy of an appeal to futility. EPA in essence argues that taking any action to address the U.S. power sector's greenhouse gas emissions would be pointless because it would not address the remaining sources of the problem. This argument assumes that unless the action of a single country or industrial sector within a country solves the planet's entire climate crisis, it is not worth doing. EPA's nihilistic point of view ignores the fact that collective problems require collective action from many contributors. *See Massachusetts v. EPA*, 549 U.S. 497, 524 (2007) ("Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop," but rather in small incremental steps.). As the U.S. power sector is the largest industrial greenhouse gas emitting sector within a country that has contributed greatly to the planet's worsening climate change crisis, it is unconscionable for EPA to even consider deregulating this source category's CO_2 emissions.

The D.C. Circuit, when it upheld EPA's 2015 approach for determining the appropriateness of NSPS for CO_2 from power plants, held that while other cases might present difficult questions regarding "the trigger point for significance," the case with power plants "is not even close. Because of their substantial contribution of greenhouse gases, under any reasonable threshold or definition, carbon dioxide from fossil-fuel-fired power plants represents a significant contribution to air pollution." *Am. Lung Ass'n*, 985 F.3d at 976 (internal quotations and citations omitted). As EPA current proposal recounts, U.S. power plants' share of global greenhouse gas emissions at that time of that rulemaking in 2015 was 3.7%, not much higher than the 3.0% figure on which EPA bases its current analysis. Thus, the court's conclusion in *Am. Lung Ass'n* applies here as well.

c. EPA's causation analysis fails to account for its own 2021 determination and the association between emissions quantity and global temperature rise.

EPA's third asserted basis for proposing to find that U.S. power plants do not "significantly contribute" to global greenhouse gas pollution is "the attenuated nature of the causal chain between the volume of GHG emissions from the EGU source category and potential danger to public health and welfare arising from anthropogenic climate change." 90 Fed. Reg. at 25767. Completely absent from EPA's brief explanation regarding this part of its approach is *any* acknowledgement of its conclusion, just four years ago in its Pollutant-Specific Significant Contribution Finding (later vacated as described above), that 3 percent of *domestic* greenhouse

gas emissions "was the best threshold for determining significance." 86 Fed. Reg. at 2553; *see supra* at Part II.C.2.

EPA based that 2021 Finding on evidence that eliminating CO_2 emissions from the only U.S. stationary source category then exceeding that threshold—i.e., power plants—would make a measurable difference in reducing amount of global temperature rise. *See* 86 Fed. Reg. at 2551–52 & n.8. Here, conversely, EPA offers the conclusory assertion that "the risks to public health and welfare attributed to anthropogenic climate change would not be meaningfully different even if the fossil fuel-fired EGU source category were to cease all GHG emissions," but it identifies no scientific data to support this assertion. 90 Fed. Reg. at 25768.

Given EPA's finding in 2021 of a nearly linear relationship between a single industrial sector's quantity of greenhouse gas emissions and projected temperature change, 86 Fed. Reg. at 2551–52 & n.8, EPA's current assumption that reducing global emissions by 3 percent would have no meaningful impact on public health and welfare is dubious. EPA's 2021 Finding concluded that eliminating the U.S. power generation sector's greenhouse gas emissions "corresponds to a hypothetical global mean temperature reduction of 0.049 degrees Celsius (°C)." *Id.* at 2553. Scientific evidence pre-dating the 2021 Finding indicated that "[m]ortality effects are observed even for small differences from seasonal average temperatures [High Confidence]."[29] More recently, the 2023 National Climate Assessment found that in addition to temperature impacts on cardiovascular disease, respiratory disease, diabetes, and kidney/renal failure, higher temperatures are associated with adverse pregnancy and birth outcomes.[30] Another recent study that for every 0.1°C of warming above present levels, about 140 million more people globally will be exposed to dangerous heat.[31] Thus, based on EPA's own 2021 Finding and studies as those cited here concerning the adverse public health impacts of further increases in temperature, it is apparent that reducing greenhouse gas emissions in the quantities emitted by the U.S. power sector would have a measurable positive impact on public health outcomes compared to leaving those emissions unregulated.

D. The 2024 Carbon Pollution Standards created no "major question" issue under *West Virginia* that would justify repealing the rule.

This Part D responds, inter alia, to the following EPA requests for comment:

- Whether its proposed interpretation of CAA section 111(b)(1)(A) as requiring a pollutant-specific significant contribution finding is necessary to avoid implicating the major questions doctrine as articulated by the Supreme Court in West Virginia. Specifically, whether the proposed interpretations in this section are necessary to prevent

[29] Attachment 8, *supra* note 9 at 6.

[30] *Id.* at 50, 54.

[31] Attachment 19, Timothy M. Lenton et al., *Quantifying the Human Cost of Global Warming*, NATURE SUSTAINABILITY, 1237, 1237–1247 (2023).

the Agency from improperly expanding its regulatory authority by determining that emissions of de minimis amounts of air pollutants, or non-harmful substances that may nevertheless be defined as air pollutants, should be regulated under CAA section 111 (C-11); and

- The strength of this interpretation and its application to GHG emissions by EGUs (C-12).

90 Fed. Reg. at 25778.

EPA requests comment on whether the "major questions doctrine" as articulated in *West Virginia* makes EPA's current proposed interpretations necessary. 90 Fed. Reg. at 25777. EPA posits that the alternative of leaving the 2015 NSPS and 2024 Carbon Pollution Standards in place would "improperly expand[] its regulatory authority by determining that emission of de minimis amounts of air pollutants, or non-harmful substances that may nevertheless be defined as air pollutants, should be regulated." *Id.* However, the factual record before EPA concerning the adverse domestic and global public health and welfare impacts associated with atmospheric greenhouse gas emissions and associated climate change, and the contribution coming from the U.S. power sector, shows that U.S. power plants' greenhouse gas emissions cannot credibly be described as "de minimis" or "non-harmful." *See, e.g.*, *supra* at Parts II.B.1-2, II.C.3.b-c.

Moreover, EPA's 2015 NSPS and 2024 Carbon Pollution Standards did not in any sense "expand its regulatory authority." It has been settled law for nearly two decades that greenhouse gases are a "pollutant" under the CAA and thus subject to EPA determination about whether they endanger public health and welfare and thus should be regulated. *Massachusetts*, 549 U.S. at 532. The Supreme Court reaffirmed four years later that "*Massachusetts* made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act," and that "EPA may not decline to regulate carbon-dioxide emissions from power plants if refusal to act would be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Am. Elec. Power*, 564 U.S. at 424, 427. A year after that, the D.C. Circuit upheld EPA's 2009 Endangerment Finding, ruling in EPA's favor on all legal and factual challenges to the merits of that Finding. *Coalition*, 684 F.3d at 119-26. The D.C. Circuit subsequently upheld EPA's 2015 approach for determining that it was appropriate to establish NSPS limiting CO_2 emissions from the EGU source category. *Am. Lung Ass'n*, 985 F.3d at 974-77. Neither of these D.C. Circuit decisions was disturbed by the Supreme Court, which took certiorari only on other issues. *See UARG*, 573 U.S. at 314; *West Virginia*, 597 U.S. at 731. In *West Virginia*, the Supreme Court expressly acknowledged EPA's 2009 Endangerment Finding and recognized EPA's authority to regulate greenhouse gases emitted by power plants through measures that would cause individual sources to improve their emissions performance. *See* 597 U.S. at 724-27. That same year, Congress amended the CAA to expressly define "carbon dioxide" as an "air pollutant" under the

Act.[32] Thus, EPA's authority to regulate CO_2 emissions from power plants under CAA section 111 is well established and not at all controversial.

Finally, neither the 2015 NSPS nor the 2024 Carbon Pollution Standards rule employs any "cap-and-trade" mechanism or generation-shifting approach comparable to the Clean Power Plan, and therefore these rules do not implicate the major question issues that the Supreme Court determined were present in *West Virginia*. *See* 597 U.S. at 713-14, 727-28. Limiting CO_2 emissions "based on the application of measures that would reduce pollution by causing the regulated source to operate more cleanly"—as is the case under both the 2015 NSPS and the 2024 rule—falls within the heartland of EPA's standard-setting authority under CAA section 111 and does not implicate the major questions doctrine. *Id.* at 725.

III. Conclusion

EPA's proposal: (1) unlawfully attempts to write a "significant contribution" requirement into CAA section 111(b)(1)(B), contrary to the statutory text; (2) applies an interpretation of "contributes significantly" that fails to give meaning to the applicable statutory phrase and that conflates statutory provisions in a manner that both the D.C. Circuit and Supreme Court have held unlawful; (3) fails to coherently explain EPA's departure from the approach it used in 2015 to determine the appropriateness of NSPS for CO_2 emissions, which was upheld by the D.C. Circuit in *Am. Lung Ass'n*, 985 F.3d at 976; (4) fails even to acknowledge that it determined power plants' CO_2 emissions were "significant" in 2021, let alone explain its departure from that determination; (5) relies on a one-sided and thus incomplete consideration of economic impacts by excluding the social costs of carbon and the benefits of avoiding excessive carbon emissions; and (6) cursorily speculates that there will be no adverse public health and welfare impact from deregulating power plants' carbon emissions, but ignores extensive scientific evidence showing the opposite. EPA's proposal is contrary to law, arbitrary and capricious, and unsupported by sound science. EPA should withdraw it.

[32] 42 U.S.C. § 7432(d)(4) ("The term 'greenhouse gas' means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride."); *id.* §§ 7433(d)(2), 7434(c)(2), 7435(c), 7436(i), 7437(d)(2), 7438(d) (same).