Comments of Midwest Environmental Advocates on the U.S. Environmental Protection Agency's Proposal to Rescind the 2009 Greenhouse Gas Endangerment Finding

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Introduction

The Environmental Law & Policy Center (ELPC), together with other Midwest-based environmental organizations identified below, hereby submits these written comments opposing the U.S. Environmental Protection Agency's (EPA's) misguided and unlawful proposal to rescind the science- and fact-based Endangerment Finding that greenhouse gas pollution from motor vehicles harms public health and welfare. *Endangerment and Cause or Contribute Finding for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66496 (Dec. 15, 2009) (referred to herein variously as the 2009 Endangerment Finding or 2009 Findings).

We request that EPA withdraw its proposal as contrary to law and to sound, fact-based science. Climate change is real and accelerating. ELPC and its members are seeing the consequences here in the Midwest: extreme heat and erratic weather, more intense storms that destroy farmers' crops, and toxic algae outbreaks and other threats to the Great Lakes—which are our economic and cultural lifeblood and hold one-fifth of the world's fresh surface water. Moreover, the Agency's proposal whipsaws longstanding federal policies, which are key to ELPC's mission of advancing clean renewable energy alternatives like wind and solar generation, and transportation solutions, like electric buses, and discourage businesses' and state and local governments' long-term energy and transportation capital investments.

As described further in these comments, EPA's proposal to abandon the 2009 Endangerment Finding rests on several fundamentally false premises. *First*, the proposal relies on the false premise that greenhouse gas pollution does not substantially contribute to climate change. In the 2009 Finding, EPA concluded based on a rigorous analysis of a robust and voluminous scientific and factual record that greenhouse gas pollution, particularly from motor vehicles, harms public health and welfare. The scientific data developed since 2009, including as presented in a recent publication of the National Academy of Sciences, has only continued to strengthen the evidence that greenhouse gas pollution endangers public health and welfare and that U.S. motor vehicle emissions contribute to that pollution. *Second*, EPA's rationale contains multiple flawed legal conclusions: By arguing that motor vehicle greenhouse gas emissions are not "pollutants" subject to regulation under the Act, EPA's proposal misconstrues the Clean Air Act and Supreme Court precedent dating back to 2009 and ignores 2022 federal legislation that reinforces EPA's authority under the Clean Air Act. EPA further mischaracterizes the 2009 Endangerment Finding's conclusion that motor vehicle emissions "contribute" to concentrations of greenhouse gas pollution that poses a danger to health and welfare in localities and regions across the U.S, and decades of agency practice and legal decisions built on that 2009 Endangerment Finding. *Third*, EPA's position that federal common law remedies for climate harms will remain displaced by the Clean Air Act if EPA rescinds the Endangerment Finding on the grounds asserted in its proposal is contrary to the Supreme Court's decision in *American Electric Power v. Connecticut*. For these reasons, and as further detailed in these comments, EPA should withdraw the proposal to rescind the 2009 Endangerment Finding.

Background Regarding the Organizations Submitting this Comment

ELPC is the Midwest's leading environmental legal advocacy and eco-business innovation organization, with members across the region. As a locally and regionally focused organization, ELPC has knowledge, information, and membership that is uniquely tied to the effects of climate-altering pollution, its causes, and its solutions. The Midwest region is the nation's transportation system hub and agricultural center and has the highest concentration of polluting coal plants still running. It is also home to the Great Lakes, the world's largest freshwater body.

Hoosier Environmental Council's (HEC) vision is an Indiana where all residents have abundant access to clean water, natural lands, pure air, and affordable clean energy. Our mission is to lead and collaborate with diverse coalitions to achieve a healthy natural environment and thriving sustainable communities for all. Founded in 1983, HEC is Indiana's largest state based environmental nonprofit and we bring deep connections with communities, advocates, and elected officials across the state. HEC advances our mission through education, advocacy, policy and accountability through legal action.

Illinois Environmental Council is a network of over 100 environmental organizations that influence decision makers and ensure clean air, water, and communities in Illinois. The Council advances public policies that ensure a healthy environment across Illinois through collaboration, building power, and advocacy.

The Iowa Environmental Council (IEC) is a broad-based environmental policy organization with a mission to create a safe, healthy environment and sustainable future for all Iowans. IEC is a coalition of 100 diverse member and cooperator organizations ranging from agricultural, conservation, and public health organizations, to educational institutions, business associations, and churches, along with hundreds of individual members that coordinate to support IEC's mission. IEC's work focuses on clean water, clean air, conservation, clean energy, and a safe climate.

Minnesota Environmental Partnership (MEP) is a statewide coalition of more than 70 environmental and conservation nonprofits organizations - and other groups that align with MEP's mission and collaborative approach - that advocate together for clean energy, clean water, clean transportation and a healthy environment for all Minnesotans through policy initiatives, public education, and community events.

The Ohio Environmental Council (OEC) is a 56-year-old statewide advocacy organization based in Columbus, Ohio. The OEC pursues a clean, healthy Ohio where democracy empowers all communities to thrive in harmony with the environment. It achieves this goal through legal and policy advocacy, decision-maker accountability, and civic engagement.

Background and Comments on Preamble Part IV.B

I. EPA Properly Determined in 2009, and Just Recently Reaffirmed, That Greenhouse Gas Emissions from Motor Vehicles Contribute to Air Pollution That Endangers Public Health and Welfare.

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

- All aspects of this proposal, including legal and scientific developments that are being subject to public comment for the first time (C–1).
- The scientific underpinnings of the Endangerment Finding are weaker than previously believed and contradicted by empirical data, peer-reviewed studies, and scientific developments since 2009 (C–2).
- [In pertinent part,] [c]onversely, we seek comment on why the approach taken in the Endangerment Finding remains reasonable given the legal and scientific developments discussed in this proposal, and the impact, if any, of the EPA's denial of rulemaking petitions in 2022 and 2010 on this alternative proposal (C–27).

A. EPA's Own 2009 Endangerment Finding

On December 15, 2009, EPA published in the Federal Register its finding under Clean Air Act (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"). 74 Fed. Reg. 66496. EPA also found based on well-established scientific facts that "the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare under CAA section 202(a)." *Id.* EPA reached this decision after reviewing emissions data on the contribution of CAA section 202(a) source categories, which showed that these source categories were responsible for approximately 4 percent of total global greenhouse gas emissions and for over 23 percent of total domestic greenhouse gas emissions. *Id.* at 66537.

EPA based its conclusions—that greenhouse gases endanger public health and welfare and that new motor vehicle and engine emissions contribute to the problem—on sound science, as outlined in its nearly two-hundred-page Technical Support Document (TSD).[1] In accordance with EPA's guidelines, the TSD relied most heavily on peer-reviewed synthesis reports of

[1] Attachment 1, ENVTL. PROT. AGENCY, TECHNICAL SUPPORT DOCUMENT FOR ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(A) OF THE CLEAN AIR ACT (2009), https://www.epa.gov/sites/default/files/2021-05/documents/endangerment_tsd.pdf.

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)/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;
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> 2) have assessed numerous individual, peer-reviewed studies in order to draw general conclusions about the state of science;
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> 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 evaluated these assessments by 1) reviewing the processes utilized for development of each report, 2) assessing their substantive content in light of its in-house scientific expertise, 3) considering the depth of scientific consensus represented in each assessments, 4) considering the trends in the science.[2] After evaluation, 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. The Administrator called them "the best reference materials for determining the general state of knowledge on the scientific and technical issues before the agency in making an endangerment decision." *Id.* Further, EPA took comment on and affirmed its use of these assessments as the primary scientific basis for its determinations. *Id.* at 66510-12.

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 D.C. Circuit 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.

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[2] Attachment 2, ENVTL. PROT. AGENCY, EPA'S RESPONSE TO THE PETITIONS TO RECONSIDER THE ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(A) OF THE CLEAN AIR ACT: VOLUME 3: PROCESS ISSUES RAISED BY PETITIONERS, 3-2 (2022), https://www.epa.gov/sites/default/files/2021-05/documents/response-volume3.pdf.

B. EPA's Prior Decisions Not to Reconsider its Own Endangerment Finding

EPA consistently has denied petitions to reconsider its 2009 Endangerment Finding, including in a thorough 2022 decision explaining why the petitions did not raise doubts concerning the Finding.

Since finalizing the 2009 Endangerment Finding, EPA has denied fourteen administrative petitions for reconsideration.[3] In 2022, EPA issued a forty-page decision memorandum denying 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.[4] EPA found that the evidence accumulated subsequent to the Endangerment Finding only "strengthen[ed] [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;[5] increased incidence of large forest fires, affecting ecosystems in the western United States and

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

[4] Attachment 4, ENVTL. PROT. AGENCY, 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, (2022), [hereinafter, "Denial"] https://www.epa.gov/system/files/documents/2022-04/decision_document.pdf; *see also* 87 Fed. Reg. 25412 (Apr. 29, 2022).

[5] 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.

Alaska;[6] and the synchronous retreat of nearly all the world's glaciers, resulting in rapid sea level rise.[7]

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 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.

In the proposed rule, EPA now asserts that it "acknowledged that several recent studies contradicted assessments by the USGRCP and IPCC but reaffirmed our earlier position that such assessment reports are entitled to greater weight than dissenting views." *Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards*, 90 Fed. Reg. 36288, 36295–96 (Aug. 1, 2025) (citing Denial at 15-17). This assertion is misleading. EPA did not "acknowledge" that the studies "contradicted" the assessments. Rather, as EPA explained, the petitioners cited a primary study that *purported* to contradict the assessments but was flawed for several reasons—it "represents a single study conducted by a limited number of authors, provides no evidence of adequate peer review, and contains technical arguments that do not represent the best available scientific information." Denial at 17. On the contrary, the USGRCP, IPCC, and NRC assessments "evaluate the findings of numerous individual peer-reviewed studies in order to draw more general and overarching conclusions about the state of science" and "synthesize literally thousands of individual studies and convey the consensus conclusions on what the body of scientific literature tells us." *Id.* (citing 74 Fed. Reg. at 66510). EPA relied on the assessments "precisely to avoid an over-reliance on and narrow consideration of individual studies and to ensure that the Administrator's decision would be based on a comprehensive assessment of the scientific literature" and because that approach "provided the high level of transparency and consistency outlined by EPA's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency."[8]

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

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[6] *Id.* at 22.

[7] 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).

[8] *Id.* (quoting ENVTL. PROT. AGENCY, ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(A) OF THE CLEAN AIR ACT: EPA'S RESPONSE TO PUBLIC COMMENTS VOLUME 1, 1-2 (2009)); *see also* Attachment 7, ENVTL. PROT. AGENCY, GUIDELINES FOR ENSURING AND MAXIMIZING THE QUALITY, OBJECTIVITY, UTILITY, AND INTEGRITY, OF INFORMATION DISSEMINATED BY THE ENVIRONMENTAL PROTECTION AGENCY (2002).

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).

II. Recent Studies and Assessments Continue to Strengthen the Scientific Basis for EPA's Endangerment Finding.

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

- All aspects of this proposal, including legal and scientific developments that are being subject to public comment for the first time (C–1).

- The scientific underpinnings of the Endangerment Finding are weaker than previously believed and contradicted by empirical data, peer-reviewed studies, and scientific developments since 2009 (C–2).

- [In pertinent part,] [c]onversely, we seek comment on why the approach taken in the Endangerment Finding remains reasonable given the legal and scientific developments discussed in this proposal, and the impact, if any, of the EPA's denial of rulemaking petitions in 2022 and 2010 on this alternative proposal (C–27).

In just the past few years, evidence of human-driven climate change has grown stronger, and its impacts have worsened. Nearly every single health impact attribution study conducted in the last decade has reported "a substantial negative health impact of climate change—most often, loss of life due to rising temperatures or extreme weather."[9] The IPCC and USCRP published major climate assessment updates in 2023, which further strengthened the basis for the Endangerment Finding and the greenhouse gas emissions standards for motor vehicles which EPA now proposes to repeal.[10] 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 (NASEM), 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.[11]

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[9] Attachment 8, Colin J. Carlson et al., *Health Losses Attributed to Anthropogenic Climate Change*, NATURE CLIMATE CHANGE, Sept. 17, 2025, at 1.

[10] Attachment 9, Hoesung Lee et al., *Climate Change 2023 Synthesis Report Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2023); Attachment 10 A&B, 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 (split into two parts due to file size).

[11] Attachment 11, ENVTL. PROT. AGENCY, REPORT ON THE SOCIAL COST OF GREENHOUSE GASES: ESTIMATES INCORPORATING RECENT SCIENTIFIC ADVANCES (Nov. 2023) at 101.

Though the Clean Air Act instructs EPA to rely on the findings, recommendations, and comments of the Clean Air Science Advisory Committee (CASAC) and the National Academy of Sciences (NAS) when considering proposed rulemaking,[12] CASAC was disbanded in January 2025 and had not yet appointed new members.[13] As such, NASEM recently undertook an independent, peer-reviewed assessment of the science in response to EPA's request for public input in an effort to fill the scientific gap. *Id.* NASEM focused on "whether new evidence since 2009 strengthened or weakened the primary conclusions in [the Endangerment Finding] and addressed uncertainties that remain in our understanding of the science of climate change," while also identifying new risks not addressed in 2009. *Id.* at xiii. In total, NASEM reviewed over 600 peer-reviewed articles. *Id.* NASEM came to the overarching conclusion that the Endangerment Finding is now reinforced by stronger evidence and longer observational records and that additional risks to public welfare have been uncovered since 2009. *Id.* at 1. NASEM came to five primary conclusions:

> (1) Emissions of greenhouse gases from human activities are increasing the concentration of these gases in the atmosphere;
>
> (2) Improved observations confirm unequivocally that greenhouse gas emissions are warming Earth's surface and changing Earth's climate;
>
> (3) Human-caused emissions of greenhouse gases and resulting climate change harm the health of people in the United States;
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> (4) Changes in climate resulting from human-caused emissions of greenhouse gases harm the welfare of people in the United States; and
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> (5) Continued emissions of greenhouse gases from human activities will lead to more climate changes in the United States, with the severity of expected change increasing with every ton of greenhouse gases emitted.

Id. at 1–2. The evidence that human-induced greenhouse gas emissions endanger public health and welfare is "beyond scientific dispute." *Id.* at 2.

At the time of the 2009 Endangerment Finding, CAA section 202(a) source categories (new motor vehicles and new motor vehicle engines) were responsible for about 4 percent of total global greenhouse gas emissions and over 23 percent of domestic greenhouse gas emissions, coming in second only to the power sector. 74 Fed. Reg. at 66499. By 2022, however, the transportation sector was responsible for approximately 28 percent of domestic greenhouse gas emissions, surpassing the power sector.[14] "From 1990 to 2022, total

[12] 42 U.S.C. § 7607(D)(3)(c).

[13] Attachment 12, NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, EFFECTS OF HUMAN-CAUSED GREENHOUSE GAS EMISSIONS ON U.S. CLIMATE, HEALTH, AND WELFARE xiii (2025).

[14] Attachment 13, *Transportation Sector Emissions*, ENVT. PROT. AGENCY, https://www.epa.gov/ghgemissions/transportation-sector-emissions (last visited Sept. 18, 2025).

transportation emissions from fossil fuel combustion increased by 19%." *Id.* U.S. transportation CO_2 emissions exceeded the total fossil fuel emissions from all sectors in most countries.[15]

Data illustrating the severe impacts of climate change have strengthened the original basis for the Endangerment Finding and subsequent greenhouse gas emissions regulations. 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 ten years, with 2024 and 2023 taking the top two spots, respectively. 2025 seems to be on track to continue this trend. Heat-related deaths in the U.S. more than doubled between 1999 and 2023, increasing by 117% overall and 63% in age-adjusted mortality rate.[16] Contrary to EPA's assertions and sources, heat exhaustion and heat stroke are not the only, or even the primary cause of heat-related deaths. Heat-induced health concerns also include the exacerbation of respiratory, heart, and kidney conditions, pushing the body past its limits.[17]

EPA's claim that sea level rise has been minimal or too localized to justify concern is false. Global sea levels have risen approximately 4 inches since 1993, with the rate of rise accelerating in recent decades due to increased ice melt and thermal expansion, contributing to record-high coastal flooding events in the U.S.[18] While local variation exists, the long-term trend is unambiguously upward, and there will be an increase in the frequency of damaging floods regardless of local adaptation.[19] The 2009 Endangerment Finding's consideration of these threats remains well-supported by both the science and the observed impacts.

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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[15] Attachment 14, Pierre Friedlingstein et al., *Global Carbon Budget 2024*, EARTH SYSTEM SCIENCE DATA (Mar. 14, 2025), https://essd.copernicus.org/articles/17/965/2025/essd-17-965-2025.html.

[16] Attachment 15, Jeffrey T. Howard et al., *Trends of Heat-Related Deaths in the US, 1999-2023*, JAMA NETWORK (Aug. 26, 2024), https://jamanetwork.com/journals/jama/fullarticle/2822854.

[17] Attachment 16, *It's Summertime, Beware of Heat Illness*, NATIONAL KIDNEY FOUNDATION, https://www.kidney.org/news-it-s-summertime-beware-heat-illness (last visited Sept. 18, 2025); Attachment 17, Health Care Providers, *Clinical Overview of Heat and Cardiovascular Disease*, CDC HEAT HEALTH (June 18, 2024), https://www.cdc.gov/heat-health/hcp/clinical-overview/heat-and-people-with-cardiovascular-disease.html.

[18] Attachment 18, Rebecca Lindsey, *Climate Change: Global Sea Level*, CLIMATE.GOV (Aug. 22, 2023), https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level

[19] Attachment 19, W.V. Sweet et al., *Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines* (2022), https://earth.gov/sealevel/us/internal_resources/756/noaa-nos-techrpt01-global-regional-SLR-scenarios-US.pdf.

each, with the cumulative cost exceeding $2.9 trillion.[20] 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 indicates 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.[21] For example, WWA found that rainfall during Hurricane Helene was 10 percent heavier due to climate change.[22] 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.[23] The burn area of northern and central California forest fires increased fivefold during 1996-2021 relative to 1971-1995.[24] 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.

Climate change has demonstrably impacted the Great Lakes and residents of the region, including ELPC members who live in communities in the Great Lakes basin.[25] Since 1951, annual average air temperatures in the Great Lakes Region have increased by 2.9°F (1.6°C). *Id.* at 1. The Great Lakes Region experiences fewer cold nights, snowfall, and lake ice cover, and urban areas are now up to 10°F warmer. *Id.* at 1–2. Since 1951, annual total precipitation in the Great Lakes Region has increased by 15%. *Id.* at 1. "The number of days with at least 2 inches

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[20] Attachment 20, *Billion-Dollar Weather and Climate Disasters*, NOAA, https://www.ncei.noaa.gov/access/billions/ (last visited Aug. 29, 2025).

[21] WORLD WEATHER ATTRIBUTION, https://www.worldweatherattribution.org/ (last visited Aug. 29, 2025).

[22] Attachment 21A, *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/.

[23] Attachment 21B, *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.

[24] Attachment 22, Marco Turco, et al., *Anthropogenic Climate Change Impacts Exacerbate Summer Forest Fires in California*, 120 PROC. NAT'L. ACAD. SCI. 1, 2 (2023).

[25] Attachment 23, Donald Wuebbles et al., *An Assessment of the Impacts of Climate Change on the Great Lakes*, ENVIRONMENTAL LAW & POLICY CENTER (2025).

of precipitation during 2017-2024 was 6% higher than during 1986-2016 and 37% higher than during the baseline period of 1901-1960." *Id.* The Great Lakes themselves have also been impacted in recent years by increasing water temperatures, warming deep lake water, increasing lake heatwaves, decreasing ice cover, changes in flow patterns, and invasive mussels altering the water quality. *Id.* at 3–5.

III. EPA's Alternative Rationale in Preamble Section IV.B is Unsupportable.

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

- All aspects of this proposal, including legal and scientific developments that are being subject to public comment for the first time (C–1).

- The scientific underpinnings of the Endangerment Finding are weaker than previously believed and contradicted by empirical data, peer-reviewed studies, and scientific developments since 2009 (C–2).

- We propose that even if intervening legal developments have not foreclosed the regulation of GHG emissions from new motor vehicles and engines under CAA section 202(a), they provide a reasonable basis for the Administrator to approach the inquiry with greater caution today than was applied in the Endangerment Finding. We propose that the Administrator's new approach requires rescinding the Endangerment Finding as fundamentally inconsistent with the framework set out in this proposed alternative. We seek comment on this alternative proposal, including on the breadth of the Administrator's discretion to exercise judgment by rejecting the approach taken in the Endangerment Finding and the results of adopting a different approach (C–26).

- [In pertinent part,] [c]onversely, we seek comment on why the approach taken in the Endangerment Finding remains reasonable given the legal and scientific developments discussed in this proposal, and the impact, if any, of the EPA's denial of rulemaking petitions in 2022 and 2010 on this alternative proposal (C–27).

A. EPA's Underlying Reliance Material is Severely Flawed.

1. The Climate Working Group Report does not comply with the basic tenets of scientific ethics and quality.

Should EPA's primary rationale for the proposed recission fail, it purports in the alternative that "the Endangerment Finding unreasonably applied the statutory standard for regulation to the scientific record" and that "intervening legal and scientific developments . . . appear to undermine the assumptions, methodologies, and conclusions of the Endangerment Finding." 90 Fed. Reg. at 36307. EPA backpedaled from the robust, peer-reviewed body of sound scientific literature underlying the Endangerment Finding and now relies almost exclusively on a biased *draft* report of a so-called "Climate Working Group" (CWG) within the

Department of Energy (DOE).[26] The proposed rule cites the CWG Report twenty-two times and relies upon the CWG Report for each of its primary scientific assertions.

Secretary of Energy Christopher Wright hand-picked the five CWG members, all well-known skeptics of the impacts of climate change, and tasked the group with preparing a report to "challenge the mainstream consensus," *id.* at x, of climate scientists and to "cut against the prevailing narrative that climate change is an existential threat."[27] At the same time, the Trump Administration deleted all previous congressionally mandated National Climate Assessment reports from federal government websites and fired the scientists who were working on the upcoming version of the report.[28] Not a single member of the CWG shares the consensus view of the vast majority of scientists about the effects of climate change. Further, such a small group of scientists cannot possibly represent the breadth of scientific fields involved in climate change—atmospheric chemistry, atmospheric physics, oceanography, cryology, biology, glaciology, biogeochemistry, and health, to name just a few.[29] The five CWG members worked in secret, concealing their roles at DOE from reporters when directly asked,[30] and put together their draft report in the span of a couple months. Even though it was completed a couple months prior, it is no coincidence that the draft report was first released to the public on the same day that this proposed rule was announced, without any unbiased peer review and prior to any opportunity for public comment. The CWG report was created to manufacture a justification for the predetermined goal of rescinding the Endangerment Finding—peer review and public comment would only serve to delay this political objective.

The CWG Report manipulates data to serve a pre-determined outcome. It cherry-picks only a small set of unrepresentative data to support this Administration's narrative and ignores the substantial majority of the literature that does not. For example, the report includes a single figure from the supplementary materials of a paper by climatologist Zeke Hausfather to cast doubt on climate models while "discard[ing] the whole paper," which finds that historic climate

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[26] Christy, et al., CLIMATE WORKING GROUP, DEP'T OF ENERGY, *A Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate* (July 23, 2025) (hereinafter, "CWG Report").

[27] Attachment 24, Travis Fisher, *Why I Helped Organize the Department of Energy's Climate Report*, CATO AT LIBERTY (Aug. 6, 2025, 10:25 AM), https://www.cato.org/blog/why-i-helped-organize-department-energys-climate-report.

[28] Attachment 25, Ella Nilsen, *Trump Administration Dissolves Group That Authored Controversial Report Sowing Doubt in the Severity of Climate Change*, CNN (Sept. 10, 2025), https://www.cnn.com/2025/09/10/climate/trump-dissolves-contrarian-group.

[29] Attachment 26, *The Practice and Assessment of Science: Five Foundational Flaws in the Department of Energy's 2025 Climate Report*, AMERICAN METEOROLOGICAL SOCIETY (Aug. 27, 2025), https://www.ametsoc.org/ams/about-ams/ams-statements/statements-of-the-ams-in-force/the-practice-and-assessment-of-science-five-foundational-flaws-in-the-department-of-energys-2025-climate-report/pdf/.

[30] Attachment 27, Complaint, *Envtl. Def. Fund v. Wright*, No. 1:25-cv-12249 (D. Mass. Aug. 12, 2025) at 3, 10.

models were accurate in predicting warming, "as not fitting their narrative."[31] Further, multiple scientists whose papers were referenced in the CWG Report have expressed that their data and/or findings were misrepresented.[32] A group of over 85 climate scientists commented on the report, stating that it "exhibits pervasive problems with misrepresentation and selective citation of the scientific literature, cherry-picking of data, and faulty or absent statistics."[33]

The CWG Report violates the basic tenets of scientific ethics and must be dismissed. Notwithstanding the plethora of ethical critiques from scientific experts worldwide, the CWG Report violates the Trump Administration's own scientific guidelines, despite using these guidelines to evaluate the peer-reviewed and well-regarded scientific assessments underlying the 2009 Endangerment Finding. 90 Fed. Reg. at 36308. In his Executive Order titled "Restoring Gold Standard Science," the President asserts that his Administration is "committed to restoring a gold standard for science to ensure that federally funded research is *transparent, rigorous, and impactful*, and that Federal decisions are informed by *the most credible, reliable, and impartial scientific evidence available*."[34] Scientific knowledge should be applied "*in service of the public good*," "[r]eproducibility, rigor, and *unbiased peer review* must be maintained," and agencies must "practice data *transparency*, . . . approach scientific findings *objectively*, and communicate scientific data *accurately*." *Id.* at 22601–2. Under the Executive Order,

> Gold Standard Science means science conducted in a manner that is:
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> (i) reproducible;
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> (ii) transparent;
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> (iii) communicative of error and uncertainty;
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> (iv) collaborative and interdisciplinary;

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[31] Attachment 28, Molly Taft, *Scientists Say New Government Climate Report Twists Their Work*, WIRED (JULY 30, 2025, 4:31 PM), https://perma.cc/5HEV-QNHU.

[32] *See e.g.*, Attachment 29, Manon Jacob, *US Energy Department Misrepresents Climate Science in New Report*, AFP FACT CHECK (Aug. 1, 2025, 5:42 PM), https://factcheck.afp.com/doc.afp.com.68KV7WE ("Benjamin Santer, atmospheric scientist and honorary professor in the School of Environmental Sciences at the University of East Anglia. . . said a section of the report on 'stratospheric cooling' contradicted his findings while citing his research on climate 'fingerprinting,' a scientific method that seeks to separate human and natural climate change, as evidence for its analysis."). *Id.* ("Bor-Ting Jong, an assistant professor at the Vrije Universiteit Amsterdam . . . said the paper made false statements about the climate model her team examined and used different terminology that led to a flawed analysis of her findings.").

[33] Attachment 30, Andrew Dessler & Robert E. Kopp, *Climate Experts' Review of the DOE Climate Working Group Report*, Docket No. DOE-HQ-2025-0207 (Sept. 9, 2025).

[34] Attachment 31, Exec. Order No. 14303, 90 Fed. Reg. 22601 (May 23, 2025), https://www.whitehouse.gov/presidential-actions/2025/05/restoring-gold-standard-science/ (emphasis added).

(v) skeptical of its findings and assumptions;

(vi) structured for falsifiability of hypotheses;

(vii) subject to unbiased peer review;

(viii) accepting of negative results as positive outcomes; and

(ix) without conflicts of interest.

Id. at 22602.

The CWG Report fails to meet nearly all of these gold standard requirements. Drafting a report in secret is not transparent. Hand selecting only five authors who share a minority view is not impartial or unbiased, and is the antithesis of "collaborative and interdisciplinary." Obscuring science that does not fit this Administration's narrative is not credible, reliable, objective, or accurate. The CWG members were selected for their views and were instructed to author a report with a predetermined conclusion—this violates the requirement that science be communicative of error and uncertainty, skeptical of its findings and assumptions, and structured for falsifiability of hypotheses. The CWG members did not accept negative results as positive outcomes; rather, they intentionally cherry-picked data that fit their chosen conclusion and ignored data that did not. This is more akin to the Executive Order's definition of "falsification"—"manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record." *Id.* Finally, each CWG member has some degree of a conflict of interest that would benefit from the use of the CWG Report to rescind the Endangerment Finding. *See infra* Part III.A.2.

The Executive Order also states that "[w]hen scientific or technological information is used to inform agency evaluations and subsequent decision-making, employees shall apply a 'weight of scientific evidence' approach." 90 Fed. Reg. at 22603. In that approach, "each piece of relevant information is considered based on its quality and relevance, and then transparently integrated with other relevant information to inform the scientific evaluation prior to making a judgment about the scientific evaluation" considering, "at a minimum . . . study design, fitness for purpose, replicability, peer review, and transparency and reliability of data." *Id.* at 22602. EPA, in this proposed action, failed to apply a "weight of scientific evidence" approach in accordance with the President's Executive Order. On the contrary, EPA disregarded the many peer-reviewed synthesis assessments of thousands of climate change studies based on a handful of "critiques," which it does not clearly identify. 90 Fed. Reg. at 36308. EPA instead relies, apparently solely, on the CWG Report, without considering its lack of transparency, reliability, and external, unbiased peer review.

EPA also ignores its own guidelines and those of the Office of Management and Budget (OMB), which both require robust, independent peer-review by qualified scientific experts unrelated to the issuing agency of any significant scientific reports that are used to influence

major policy decisions.[35] Rather, the CWG Report was only "reviewed" by an internal "team of anonymous DOE and national lab reviewers."[36] This secretive process cannot credibly be considered rigorous, external, transparent, or independent. A proper peer review process is illustrated, by example, by the IPCC.[37]

> The IPCC is committed to preparing reports that aim for the highest standards of scientific excellence, balance, and clarity. Multiple stages of review are an essential part of the IPCC process to ensure a comprehensive, objective and transparent assessment of the current state of knowledge of the science related to climate change. Expert Reviewers and governments are invited at different stages to comment on the scientific, technical and socio-economic assessment and the overall balance of the drafts. The review process includes wide participation, with hundreds of reviewers critiquing the accuracy and completeness of the scientific assessment contained in the drafts. Assessment Reports and Special Reports are prepared by chapter teams of authors and Review Editors. . . . The Review Editors ensure that all substantive comments received during review are given appropriate consideration by the author teams and ensure that genuine diversity in perspectives in the literature is reflected adequately in the report.

Id. The rushed and anonymous internal review process of the CWG Report cannot compare.[38] Despite this fatal flaw, EPA touts the alleged scientific rigor of the CWG Report and tosses out climate assessments that have undergone extensive peer review.

2. The creation and operation of the CWG violates the Federal Advisory Committee Act of 1972.

Congress enacted the Federal Advisory Committee Act of 1972 (FACA) due to growing concerns that federal advisory committee operations were not transparent or consistent and that the lack of public scrutiny could allow federal decisionmakers to be influenced by entities acting

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[35] *See generally*, Attachment 32, U.S. ENV. PROT. AGENCY, PEER REVIEW HANDBOOK (4TH ED.) (Oct. 2015), https://www.epa.gov/sites/default/files/2020-08/documents/epa_peer_review_handbook_4th_edition.pdf; Attachment 33, OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB MEMO NO. M-05-03, ISSUANCE OF OMB'S "FINAL INFORMATION QUALITY BULLETIN FOR PEER REVIEW" (2004), https://obamawhitehouse.archives.gov/omb/memoranda_fy2005_m05-03; *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication*, 67 Fed. Reg. 8452 (Feb. 22, 2002).

[36] Christy, *supra* Sec. III.A.1.

[37] Attachment 34, IPCC FACTSHEET, HOW DOES THE IPCC REVIEW PROCESS WORK? (Jan. 2024), https://www.ipcc.ch/site/assets/uploads/2024/04/IPCCFactSheet_ReviewProcess.pdf

[38] To compare, the NASEM committee of fifteen distinguished experts produced a robust, peer-reviewed assessment of over 600 peer-reviewed articles within the time given to submit comments on this proposed rule. *See supra* Attachment 12.

against the best interest of the American public.[39] FACA broadly defines an "advisory committee" as any "committee, board, commission, council, conference, panel, task force, or other similar group . . . established or utilized to obtain advice or recommendations for the President or one or more agencies or officers of the Federal Government and that is . . . established or utilized by one or more agencies." 5 U.S.C. §§ 1001(2)(A)(iii), 1003(a). "While they may also be called by other names—such as task forces, panels, commissions, ***working groups***, boards, councils, or conferences—the practical purpose of federal advisory committees typically remains the same: to facilitate an exchange of policy ideas among experts and affected parties and to solicit recommendations."[40] The CWG is clearly an advisory committee within the meaning of FACA because it was established by DOE to obtain advice or recommendations for federal agencies, has been utilized and will continue to be utilized by DOE and EPA. Last week, a federal district court ruled that the CWG does not qualify for the exception to the 'advisory committee' definition outlined in 41 C.F.R. § 102-3.40(e).[41] Thus, the CWG was mandated to comply with FACA's requirements and failed to do so.[42]

First, FACA sets strict procedural requirements to facilitate the creation of advisory committees. Prior to forming a new advisory committee, the head of the agency must first consult with the Committee Management Secretariat of the General Service Administration (GSA) and explain the necessity of the advisory committee. 41 C.F.R. § 102-3.60(a)–(b). Following the Secretariat's review, the agency must publish a notice in the Federal Register, announcing the establishment of the advisory committee, describing its purpose, and affirming that it is necessary and in the public interest. *Id.* § 102-3.65(a). The advisory committee may not meet until its charter—which includes, *inter alia*, its designation, objectives and scope of activity, description of duties, and estimated number and frequency of meetings—is filed with the head of the agency to whom the advisory committee reports and the standing committees of the Senate and House of Representatives that have jurisdiction over that agency. 5 U.S.C. § 1008(c); *see also* 41 C.F.R. § 102-3.70–75. Finally, agency heads must designate an officer "to chair or attend each meeting of [the] advisory committee. 5 U.S.C. § 1009(e); *see also* 41 C.F.R. § 102-3.120.

The CWG failed to complete any of these requirements. To our knowledge, Secretary Wright did not consult with the Secretariat prior to forming the CWG. DOE did not publish a notice in the Federal Register, did not establish and/or file a charter for the CWG, and did not designate an office to chair or attend each meeting of the CWG. Thus, the formation of the CWG was unlawful under FACA.

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[39] *See* Attachment 35, Meghan M. Stuessy & Kathleen E. Marchsteiner, Cong. Research Serv., R47984, The Federal Advisory Committee Act (FACA): Overview and Considerations for Congress 1, n.1 (2024).

[40] *See* Stuessy & Marchsteiner at 1.

[41] Attachment 36, Order, *Envtl. Def. Fund v. Wright*, No. 1:25-cv-12249-WGY (D. Mass. Sept. 17, 2025).

[42] At least one action has been brought to enjoin the violations of FACA by the CWG and, as a result, EPA's reliance on the CWG Report. Attachment 27, *supra*, note 30.

Second, FACA establishes various requirements for the operation of advisory committees. Advisory committee meetings generally must be open to the public and must be noticed in the Federal Register at least fifteen days prior to the meeting. 5 U.S.C. § 1009(a); 41 C.F.R. § 102-3.150(a). Meetings must be held at reasonable times and places to be accessible to and accommodate a reasonable number of interested members of the public. 41 C.F.R. § 102-3.140(a)(1)–(2). Further, any interested member of the public must "be permitted to attend, appear before, or file statements with any advisory committee," subject only to reasonable rules or regulations prescribed by the Administrator of General Services. 5 U.S.C. § 1009(a)(3). FACA also imposes open records requirements, requiring all "records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports." *Id.* § 1009(b). Additionally, "[d]etailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee." *Id.* § 1009(c). Advisory committees must proactively make such records available such that the public need not submit requests under FOIA. 41 C.F.R. § 102-3.170.

No meeting of the CWG was open to the public—in fact, the public was not informed of the existence of the CWG until its Report was completed and published. When asked about their work with DOE, at least one CWG member purposefully obscured their role from reporters, stating that he was simply an "unpaid person who's available to [DOE] if they need it."[43] Beyond the CWG Report itself, no record, transcript, minutes, agenda, or other documents related to CWG meetings has been made publicly available.

Third, FACA makes clear its advisory committee membership requirements. In drafting FACA, Congress aimed to "ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee."[44] As such, FACA requires that committee membership is "fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." 5 U.S.C. § 1004(b)(2). The agency must provide the GSA with a Membership Balance Plan, describing "the agency's conclusions regarding the points of view that would promote fairly balanced committee membership," and its "intended selection criteria and approach." 41 C.F.R. §§ 102-3.60(b)(3)(i), (iii). After identifying "the points of view that would promote a fairly balanced advisory committee membership," the agency must "conduct broad outreach, using a variety of means and methods, to ensure that the call for nominees reaches the interested parties and stakeholder groups likely to possess those points of view." *Id.* § 102-3.60(b)(3)(ii). DOE's own Advisory Committee Management Program Manual incorporates FACA's requirements.[45] For

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[43] Attachment 27, s*upra* note 30 at 3, 10.

[44] *Nat'l Anti-Hunger Coal. v. Exec. Comm. of President's Priv. Sector Surv. on Cost Control*, 711 F.2d 1071, 1074 n.2 (D.C. Cir. 1983).

[45] *See* Attachment 37, DEP'T OF ENERGY, ADVISORY COMMITTEE MANAGEMENT PROGRAM MANUAL ("DOE Manual") at 20 (2007), https://perma.cc/FVE9-BZ9D.

example, it requires an "Action Memorandum" that must include, *inter alia*, a "description of the plan for ensuring a fairly balanced committee membership in terms of the viewpoints represented and the functions to be performed." *Id.* at II-2.

The CWG is in no way "fairly balanced," and DOE made no attempts to promote such balance or to conduct broad outreach, as required by FACA and DOE's own guidelines. The CWG does not include a single member who shares the consensus views of the vast majority of esteemed climate scientists. On the contrary, every single CWG member was hand selected because they are well-known climate skeptics whose beliefs have been debunked time and time again. The members were not given an opportunity to objectively evaluate science. They instead were charged with writing a report that would "cut against the prevailing narrative that climate change is an existential threat"[46] and support the rescission of the Endangerment Finding—a predetermined goal. The CWG also lacks balance in the representative range of scientific disciplines, institutions, geographic locales, and protected characteristics.

The establishment, operations, and membership of the CWG violated multiple provisions of FACA and the DOE's own guidelines. The CWG has since been disbanded, likely in hopes of mooting the lawsuit against it and to avoid responding to the thousands of public comments submitted to the report, which would expose its many flaws.[47] Regardless, DOE refuses to withdraw the CWG Report, and EPA still relies on this Report as the primary basis for its scientific arguments. *Id.* The CWG's Report should be invalidated, and EPA's reliance on it in this proposed rule is improper.

B. "Uncertainty" in Climate Science

EPA touts the supposed "uncertainty" of the degree and rate of climate change and its impacts as a reason to rescind the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards. 90 Fed. Reg. at 36308. When discussing the impacts of the complex physical, chemical, and ecological systems of an entire planet, it is practically impossible to obtain entirely complete data. Further, the greatest uncertainties lie in predicting future human (and government) behavior or the interactions between different intricate natural processes. However, while these uncertainties exist, they are not a reason to not act, and they do not negate the overwhelming scientific consensus that human-induced climate change is already affecting every inhabited region across the globe and will continue to harm humans and other species. Large-scale future trends are certain to continue—increasing surface temperatures, increases in extreme weather events, increased ice sheet melt, continued sea level rise, and more. Scientific evidence of these trends grows stronger by the day. *See supra* Part II. Additionally, uncertainty works both ways—the impacts of climate change could be at the low end of predictions or could meet the "worst-case scenario." That uncertainty makes it all the more imperative to act to avoid the most severe outcomes, and to follow the adage: "better safe than sorry."

[46] Attachment 24, *supra*, note 27.

[47] Attachment 25, *supra*, note 28.

If we were to demand scientific certainty prior to regulation, this would "allow for only reactive, not preventative, regulation."[48] Earlier this year, 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.[49] In its advisory opinion, the ICJ reasserted that member States are required to abide by the precautionary principle—"[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."[50] Here, EPA ignores the precautionary principle entirely in its efforts to deregulate harmful greenhouse gases and discredit scientific findings based on uncertainties.

EPA specifically criticizes the uncertainty of climate models. Modeling is "an established technique of environmental analysis" that "facilitates timely decision making."[51] Uncertainty is a given in climate models. However, the fact that "the model does not fit every application perfectly is no criticism; a model is meant to simplify reality in order to make it tractable."[52] The United States Climate Change Science Program described climate modeling as "one of the great success stories of scientific simulation" despite its limitations.[53] EPA has previously stated that climate models are "useful for attribution, projections, and understanding of climate phenomena." *Id.*

Climate scientists, and frankly all scientists who utilize predictive modeling, employ a number of measures to limit the impacts of uncertainty. First, scientists use "ensembles," or sets of multiple climate models, to understand the range of possible future outcomes. These ensembles often include models with different initial conditions, model structural differences, and emissions predictions.[54] By aggregating data from multiple models, trends that are consistent across multiple simulations can be identified, improving confidence. Second, scientists employ bias correction. Model outputs are corrected against observed data to improve

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[48] *Ethyl Corp v. EPA*, 541 F.2d 1, 25 (D.C. Cir. 1976) (en banc).

[49] Attachment 38, *Obligations of States in Respect of Climate Change*, Advisory Opinion, INTERNATIONAL COURT OF JUSTICE, ¶¶ 174–368 (July 23, 2025), https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf.

[50] *Id.* at ¶ 158. *See also id.* at ¶¶ 136, 146, 161, 172, 180, 198, 293–94.

[51] *Chem. Mfrs. Ass'n v. EPA*, 28 F.3d 1259, 1264 (D.C. Cir. 1994); *see also Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 535 (D.C. Cir. 1983) (explaining that EPA has "undoubted power" to use models if it "explain[s] the assumptions and methodology used.").

[52] *Chem. Mfrs. Ass'n*, 28 F.3d at 1265.

[53] Attachment 39, ENVTL. PROT. AGENCY, ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(A) OF THE CLEAN AIR ACT: EPA'S RESPONSE TO PUBLIC COMMENTS VOLUME 4 at 24 (response 4-27).

[54] Attachment 40, *Uncertainty in Climate Projections*, CLIMATE DATA CANADA, https://climatedata.ca/resource/uncertainty-in-climate-projections/ (last visited Sept. 18, 2025).

the reliability of their projections.[55] Finally, scientists are constantly researching to quantify and reduce model uncertainty.

EPA's concern that climate models focus on only the worst-case scenario is also unsupportable. However, climate models provide ranges of predictions based on a number of variables, including human adaptation and mitigation and interactions between natural processes.[56] Multiple IPCC reports have acknowledged these limitations, and the most recent report took steps to prioritize models that track more closely with observations.[57] Further, a recent study has shown that climate models that account for lower warming predictions from increases in greenhouse gases do not match satellite measurements.[58] Thus, models with a stronger warming response to increased greenhouse gas emissions are far more accurate and realistic. *Id.*

C. The Supposed Benefits of Greenhouse Gases

EPA's claims about the benefits of increased greenhouse gas emissions, particularly CO_2, are misleading or overly simplistic. *See* 90 Fed. Reg. at 36309–10. While CO_2 is essential for plant photosynthesis and can theoretically stimulate plant growth under certain conditions, the overall impacts of increasing CO_2 concentrations are far more complex and have a range of negative consequences that outweigh any potential localized benefits.

That CO_2 is "necessary for human, animal, and plant life" is true in a narrow sense. *Id.* at 36309. CO_2 is essential for plant growth because it is a key component of photosynthesis. However, this does not mean that increasing CO_2 concentrations indefinitely is beneficial. Further, EPA's misleading statement ignores that the broader effects of rising CO_2 concentrations—including increases in droughts, heatwaves, wildfires, shifting precipitation

[55] Attachment 41, *What is Bias Correction?*, COPERNICUS CLIMATE CHANGE SERVICE, https://climate.copernicus.eu/sites/default/files/2021-01/infosheet7.pdf (last visited Sept. 18, 2025).

[56] *See generally* Attachment 39, *supra*, note 53 at 1 (response 4-1); *see also* TSD at 63-64; Attachment 39, *supra*, note 53 at 20–25 (responses 4-24, 4-25, 4-27).

[57] Attachment 42, Shannon Osaka et al., *We Fact-Checked the Trump Administration's Climate Report*, THE WASHINGTON POST (July 31, 2025), https://www.washingtonpost.com/climate-environment/2025/07/31/endangerment-repeal-climate-science-report/.

[58] Attachment 43, Center for International Climate and Environmental Research, *Climate Models with Low Sensitivity to Greenhouse Gases Do Not Align With Satellite Measurements*, PHYS.ORG (June 12, 2025), https://phys.org/news/2025-06-climate-sensitivity-greenhouse-gases-align.html (citing Gunnar Myhre et al., *Observed Trend in Earth Energy Imbalance May Provide a Constraint for Low Climate Sensitivity Models*, 388 SCIENCE 1210 (2025)).

patterns, pests, and plant nutrient deficiency—are much more detrimental to plant growth in the long run.[59]

EPA's assertion that CO_2 "advances public health and welfare by directly impacting plant growth and therefore the price and availability of food, the success of American agriculture and related industries, and the traditional capacity of the United States to export significant food supplies around the world for economic and humanitarian purposes" is blatantly false. Due to the compounding impacts of climate change, higher CO_2 levels do not necessarily translate to higher food production in reality. Studies have already shown that increasing global temperatures are negatively impacting crop yields.[60] Researchers estimate that every additional degree Celsius of global warming will, on average, decrease the world's ability to produce food by 120 calories per person per day.[61] Rising temperatures and altered precipitation patterns are expected to shift growing seasons and reduce arable land. Thus, the supposed increase in agricultural productivity due to higher CO_2 levels may be temporary or localized, but it does not compensate for the broader effects of climate change. On our planet, which already feels the impacts of climate change, over 800 million people at times go a day or more without food because of access issues.[62] A landmark study even found that growing rice in high-CO_2 conditions causes an imbalance in its chemical composition, resulting in lower amounts of B-vitamins, protein, zinc, and iron—essentially making it less nutritious.[63] Clearly, the costs of greenhouse gas emissions far outweigh any marginal talking-point benefits that one could scrape together. EPA's arguments to the contrary are tenuous and a desperate pretext to pursue the political goals of this Administration.

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[59] Attachment 44, Karin Kirk, *More CO_2 in the Atmosphere Hurts Key Plants and Crops More Than It Helps*, YALE CLIMATE CONNECTIONS (Dec. 13, 2020), https://yaleclimateconnections.org/2020/12/more-co2-in-the-atmosphere-hurts-key-plants-and-crops-more-than-it-helps/; Attachment 45, Renée Cho, *How Climate Change Will Affect Plants*, NEWS FROM THE COLUMBIA CLIMATE SCHOOL (Jan. 27, 2022), https://news.climate.columbia.edu/2022/01/27/how-climate-change-will-affect-plants/.

[60] *See, e.g.*, Attachment 46, Chuang Zhao et al., *Temperature Increase Reduces Global Yields of Major Crops in Four Independent Estimates*, PNAS (Aug. 15, 2017), https://www.pnas.org/doi/10.1073/pnas.1701762114.

[61] Attachment 47, Andrew Hultgren et al., *Impacts of Climate Change on Global Agriculture Accounting for Adaptation*, NATURE (June 18, 2025), https://www.nature.com/articles/s41586-025-09085-w.

[62] Attachment 48, *Hunger Numbers Stubbornly High for Three Consecutive Years as Global Crises Deepen: UN Report*, WORLD HEALTH ORGANIZATION (July 24, 2024), https://www.who.int/news/item/24-07-2024-hunger-numbers-stubbornly-high-for-three-consecutive-years-as-global-crises-deepen--un-report.

[63] Attachment 49, Chunwu Zhu et al., *Carbon Dioxide Levels This Century Will Alter the Protein, Micronutrients, and Vitamin Content of Rice Grains with Potential Health Consequences for the Poorest Rice-Dependent Countries*, SCIENCE ADVANCES (May 23, 2018), https://www.science.org/doi/10.1126/sciadv.aaq1012.

D. Consideration of Six Well-Mixed Gases Together

The proposed repeal questions the consideration of the six well-mixed greenhouse gases together rather than individually. 90 Fed. Reg. at 36310. In the 2009 Endangerment Finding and its response to comments, EPA extensively addressed the validity of this approach. 74 Fed. Reg. at 66516–23. EPA considered the six well-mixed greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—together for the following reasons:

(1) These six greenhouse gases share common properties regarding their climate effects;

(2) these six greenhouse gases have been estimated to be the primary cause of human-induced climate change, are the best understood drivers of climate change, and are expected to remain the key driver of future climate change;

(3) these six greenhouse gases are the common focus of climate change science research and policy analyses and discussions;

(4) using the combined mix of these gases as the definition (versus an individual gas-by-gas approach) is consistent with the science, because risks and impacts associated with greenhouse gas-induced climate change are not assessed on an individual gas approach; and

(5) using the combined mix of these gases is consistent with past EPA practice, where separate substances from different sources, but with common properties, may be treated as a class (e.g., oxides of nitrogen).

Id. at 66517.

Among other similarities, the six greenhouse gases are all directly-emitted (not formed in the atmosphere through the interaction of precursor gases), long-lived so that they become globally well-mixed in the atmosphere, and have well-understood climate warming effects by trapping outgoing, infrared heat that would otherwise have escaped to space. *Id.* at 66537. It is because of the commonly shared properties that the six greenhouse gases are known to be the primary driver of climate change and, therefore, the focus of climate change policy.

The consideration of the six well-mixed greenhouse gases together is consistent with other EPA action. For example, EPA standards treat volatile organic compounds (VOCs) and particulate matter (PM) as single "air pollutants," despite each "pollutant" including *hundreds* of different chemical compounds.[64] VOCs and PM are grouped together because of their similar properties and effects related to their impact on the air pollution. 74 Fed. Reg. at 66541. It is the

[64] *Id.* at 66541; *see also e.g.*, 40 C.F.R. § 51.100(s) (defining VOC as "any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions"); 40 C.F.R. § 51.100(oo) (defining PM as "any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers").

compound greenhouse gas effect, not its individual composition, that poses a risk to public health and welfare. Here, "the number of substances included in the definition of well-mixed greenhouse gases is much smaller than other 'group' air pollutants." *Id.*

Further, section 202(a) requires a contribution finding for the "air pollutant," not for each individual substance within the defined air pollutant. Therefore, EPA is not required to make a separate contribution finding for each of the six greenhouse gases individually. Only the total amount of the greenhouse gas air pollutant emitted by motor vehicles is needed for a contribution analysis, not the amount emitted by each individual gas within the definition of the air pollutant.

EPA attempts to make much of the fact that motor vehicles do not emit all of the individual gases included in the defined air pollutant. 90 Fed. Reg. at 36310. However, as EPA explained in the 2009 Endangerment Finding, it remains true that each of the six greenhouse gases share relevant properties and are agents of the same air pollution regardless of what sources/source categories may emit each gas. 74 Fed. Reg. at 66541. If EPA were required to limit its definition of "air pollutant" according to which individual substances a particular source category emitted, the result would be multiple defined air pollutants which were significantly similar to one another in effect (contributing to climate change) and all containing many overlapping substances (for example, CO_2 is emitted by almost all regulated sources). Such an approach would result in unnecessarily confusing and cumbersome rulemaking. Again, this approach is consistent with other EPA actions defining an air pollutant broadly regardless of if a particular source category emits every substance with the definition of that air pollutant. *Id.* at 66541 ("EPA has heavy duty truck standards applicable to VOCs and PM, but it is highly unlikely that heavy duty trucks emit every substance that is included in the group defined as VOC or PM."). More importantly, even if EPA defined the air pollutant as including only the four compounds emitted by CAA section 202(a) sources, it would not have altered the result of the contribution finding. *Id*. Consideration of the six well-mixed greenhouse gases was a logical and reasonable exercise of EPA's discretion and should be maintained.

E. Science Advisory Board

EPA makes a brief point that "the Administrator's conclusions with respect to new motor vehicles and engines were never subject to [Science Advisory Board (SAB)] review as required by the CAA." 90 Fed. Reg. at 36310. However, as EPA has asserted in the past, and as the U.S. Court of Appeals for the District of Columbia determined, SAB review is not required here. The proposed Endangerment Finding was not a "proposed criteria document, standard, limitation, or regulation" within the meaning of 42 U.S.C. § 4365(c)(1). In particular, the proposed Endangerment Finding was not a regulation promulgated under Section 202(a) of the CAA, as it did not include any regulatory text, nor did it impose any requirements on any person or entity other than EPA.[65] Additionally, the SAB review requirements only applies where a proposal is submitted to other federal agencies for formal review. EPA only submitted a draft of the Endangerment Finding to the Office of Information and Regulatory Affairs, pursuant to Executive Order 12866, which EPA considered to be an "informal" review process as compared to a statutory review-and-comment process by which other agencies are given the opportunity to

[65] Attachment 4, Denial at 37, *supra*, note 4.

comment on the impacts a proposed rule could have on those agencies' universes of responsibility.[66]

There is no basis to suggest that review by the SAB would have altered the scientific basis for the Endangerment Finding in any way. Thus, as the D.C. Circuit found, even if EPA were required to make available to SAB the proposed Endangerment Finding, there is no evidence that this error was "of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made." *Id.* (citing 42 U.S.C. § 7607(d)(8) and *Am. Petroleum Inst.,* 665 F.2d 1176, 1188–89 (D.C. Cir. 1981) (applying this standard to EPA's failure to submit an ozone standard to the SAB)).

In short, EPA's proposed alternative rational for the rescission of the 2009 Endangerment Finding is not supported by science, fact, or law. Its reliance on biased sources is improper, and its policy-driven conclusions are unsubstantiated.

Comments on Preamble Part IV.A

IV. Greenhouse Gases are "Air Pollutants" That Cause or Contribute to Harmful "Air Pollution" Within the Meaning of the Clean Air Act.

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

- 1. All aspects of this proposal, including legal and scientific developments that are being subject to public comment for the first time (C–1).

- 11. We seek comment on the proposed interpretation of CAA 202(a) as discussed in section III.A.1[67] of this preamble, including the rationales presented in that section and any further rationales that commenters believe support, or detract from, this interpretation (C–11).

- 24. We further propose that Massachusetts must be read together with the Supreme Court's decisions in *West Virginia* and *UARG*, which applied the major questions doctrine to statutory provisions similar to CAA section 202(a). To that end, we seek comment on whether *Massachusetts* applied the major questions doctrine in the first instance, and, if it did, whether that analysis informs the meaning of CAA section 202(a) on its own terms and in light of *UARG* and *West Virginia* (C–24).

- 26. We propose that even if intervening legal developments have not foreclosed the regulation of GHG emissions from new motor vehicles and engines under CAA section 202(a), they provide a reasonable basis for the Administrator to approach the inquiry

[66] *Coalition*, 684 F.3d at 124.

[67] This appears to be an inadvertent error, with EPA presumably intending to refer to section IV.A.1 of the preamble. *Compare* 90 Fed. Reg. at 36299-305, *with id.* at 36325.

with greater caution today than was applied in the Endangerment Finding. We propose that the Administrator's new approach requires rescinding the Endangerment Finding as fundamentally inconsistent with the framework set out in this proposed alternative. We seek comment on this alternative proposal, including on the breadth of the Administrator's discretion to exercise judgment by rejecting the approach taken in the Endangerment Finding and the results of adopting a different approach (C–26).

- 27. [In pertinent part] Conversely, we seek comment on why the approach taken in the Endangerment Finding remains reasonable given the legal . . . developments discussed in this proposal[.]

90 Fed. Reg. at 36324-25.

EPA's "primary proposal" would rescind the 2009 Endangerment Finding on legal grounds. *See* 90 Fed. Reg. 36298-307. EPA begins by asserting that greenhouse gases are not "air pollutants" subject to regulation under CAA section 202(a)(1), and that their emission into the atmosphere from mobile sources does not cause or contribute to "air pollution" within the meaning of that provision. *Id.* at 36299-302. EPA's rationale misconstrues both the text of the Clean Air Act and its historical implementation. The plain text of sections 302(g)—i.e., the Act-wide "air pollution" definition—and 202(a)(1) encompass greenhouse gases as "air pollutants" and as "air pollution," and nothing in the latter provision shows an intent to exclude them from the broad language Congress used. Likewise, the ordinary understanding of the terms "air pollutant" and "air pollution" encompasses greenhouse gas emissions. *See infra* Part II.A.

Moreover, the categorical distinctions EPA attempts to draw between the substances it acknowledges as subject to CAA regulation and greenhouse gases are false. That is, greenhouse gases are not the only air pollutants whose public health and welfare impacts have historically been considered on a global scale rather than just "local[ly] and regional[ly]." 90 Fed. Reg. at 36300; *infra* Part II.B.1. They are not the only air pollutants whose harmful impacts result from manmade activities that increase their concentration in the upper atmosphere. *Infra* Part II.B.2. And they are not the only air pollutants whose harmful impacts occur through environmental processes that are perhaps less direct than with other air pollutants that make the local, ground-level air quality more toxic or change its odor. *Infra* Part II.B.3. EPA's proposal invents these purported distinctions as a basis for rescinding the 2009 Endangerment Finding, but they do not actually exist in the statute itself, either as written by Congress or as historically implemented by EPA.

Congress has had the opportunity on numerous occasions since *Massachusetts v. EPA* was decided to amend the statute in a manner expressing the intention not to authorize regulation of greenhouse gases. It has never done so. And, in 2022, Congress instead did the opposite—it amended the Clean Air Act to state even more explicitly that greenhouse gases are "air pollutants." Thus, EPA's proposal cannot credibly be presented as consistent with the statutory text—far from being consistent, EPA's proposal directly contravenes the statute. *Infra* Part II.C.

Finally, caselaw subsequent to *Massachusetts* creates no ground to consider rescinding the 2009 Endangerment Finding. The Supreme Court has repeatedly reaffirmed and even relied

upon *Massachusetts*' holding that greenhouse gases are air pollutants subject to Clean Air Act regulation. And even when holding that other aspects of EPA's implementation rules such as the Clean Power Plan made them unlawful, it has never called into doubt that EPA has regulatory authority over greenhouse gases as "air pollutants" and "air pollution." *Infra* Part II.D.

A. The Pertinent Statutory Text Plainly Includes Greenhouse Gases Within the Meaning of the Terms "Air Pollutant" and "Air Pollution."

Two statutory provisions are at issue. First, CAA section 302(g) states:

> The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

42 U.S.C. § 7602(g).

Second, section 202(a)(1) states, in pertinent part: "[t]he Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, 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, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1). Section 202 sets forth no separate "air pollutant" definition from that expressed in section 302(g). Nor does it define "air pollution." *See generally id.* § 7521.

The above-quoted statutory text is broad and plainly includes the greenhouse gases EPA identified in the 2009 Endangerment Finding. In *Massachusetts v. EPA*, the Supreme Court considered EPA's argument—identical to that in its current proposal—that "carbon dioxide is not an 'air pollutant' within the meaning of the provision." 549 U.S. 497, 528 (2007). The Court found EPA's reading "foreclosed" by the plain text of the statute. *Id.* The Court held that, "[o]n its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any.'" *Id.* at 529; *see also Department of Housing and Urban Development v. Rucker*, 535 U.S. 125, 131 (2002) (observing that "'any' ... has an expansive meaning, that is, one or some indiscriminately of whatever kind" (some internal quotation marks omitted)); *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 219 (2008) (same); *Babb v. Wilkie*, 589 U.S. 399, 405 n.2 (2020) (same). Moreover, "[c]arbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt 'physical [and] chemical . . . substance [s] which [are] emitted into . . . the ambient air.'" 549 U.S. at 529. Thus, the Court found that the statute "unambiguous[ly]" includes greenhouse gases in the definition of "air pollutant" for purposes of EPA's regulatory authority under section 202. *Id.*

EPA identifies nothing in the text of section 302(g) that would indicate greenhouse gases are beyond the scope of its "air pollution" definition. *See, e.g.*, 90 Fed. Reg. at 36299 (asserting

that EPA's rationale supports its proposal to rescind the 2009 Endangerment Finding "regardless of whether GHGs are properly considered 'agents of air pollution' under the general, Act-wide definition of 'air pollutant' at CAA section 302(g)"). Rather, EPA's proposal relies on reading the phrase "any air pollutant" as used in section 202(a)(1) more narrowly than in section 302(g)'s Act-wide definition. Specifically, EPA proposes that in the context of section 202(a)(1), "any air pollutant" should be read to refer only to "air pollutants that cause or contribute to air pollution that itself endangers public health and welfare through local or regional exposures." 90 Fed. Reg. at 36300; *see also id.* at 36301. EPA juxtaposes this newly conceived category of pollutants endangering the public "though local or regional exposures" against greenhouse gases, which EPA describes as associated with "global climate change concerns" that the Agency now believes it was not authorized to address through rulemaking under section 202(a)(1). *Id.* at 36299.

EPA fails to explain, however, how either the text of section 202(a)(1) or the ordinary meaning of the words "air pollutant" and "air pollution" would support this interpretation. EPA asserts, for example, "[d]efinitions of air pollution . . . emphasize the emission of '[c]ontaminants into the atmosphere.'" 90 Fed. Reg. at 36300 (citing Black's Law Dictionary 1403 (11th ed. 2019)). But EPA identifies nothing in this ordinary "air pollution" definition that facially or inherently excludes the "emission" of greenhouse gases into the "atmosphere." *Id.*

Similarly, EPA asserts that "[a]s a matter of ordinary language, a pollutant is '[a] poisonous or noxious substance that contaminates the environment,' and pollution is '[t]he harmful addition of a substance or thing into an environment.'" *Id.* But again, this phrase on its face readily fits greenhouse gases. What the scientific data before EPA showed it in 2009, and shows even more persuasively now, is that the "addition" of greenhouse gases from mobile sources into the atmosphere is "harmful," and "contaminates the environment," by contributing to climate change and its resulting adverse health and welfare impacts as summarized in Part I above. *Accord, e.g.*, Brittanica

Indeed, the common understanding of "air pollution" comfortably embraced greenhouse gas pollution of the upper atmosphere long before the 2009 Endangerment Finding and decades prior to the law dictionary publication EPA cites. For example, writing in 1996 and citing literature published a decade prior, Dieminger et al. stated:

> Basically, air pollution may be defined as 'any atmospheric condition in which substances are present at concentrations high enough above their normal ambient levels to produce a measurable effect on man, animals, vegetation or materials, with substances meaning any natural or man-made chemical elements or compounds capable of being airborne, which may exist in the atmosphere as gases, liquid drops or solid particles' (Seinfeld 1986).

Attachment 50, WALTER DIEMINGER, GERD K. HARTMANN & REINHART LEITINGER, THE UPPER ATMOSPHERE (1996) at 153-168;[68] *accord* Attachment 51, Oxford, "A Dictionary of

[68] *Available for purchase by institutional subscribers* at https://link.springer.com/chapter/10.1007/978-3-642-78717-1_6. As a precaution because this

Environment & Conservation" (1st ed. 2007) (defining "air pollution" as "[t]he presence in the air of any air pollutant that reduces air quality enough to threaten the health and welfare of people, plants, and animals, to adversely affect materials and structures, and/or to interfere with the enjoyment of life and property").[69]

Dieminger et al. also described how, by the 1990s, air pollution already was commonly understood as a "global" rather than merely local and regional problem. As they explained, "[w]hereas in the past decades atmospheric pollution could be considered as a local and temporal limited phenomenon characteristic of large urban centres and industrial regions, in recent years the principal pollution of the Earth's atmosphere has become a matter of world-wide concern and dramatically increasing ecological and political importance." Attachment 50 at 153. This contradicts the central theme of EPA's explanation for why it questions its authority to regulate greenhouse gases. EPA wrongly assumes that, in 2025, "local or regional exposure" to "air pollution" is the predominant or sole manner in which the term "air pollutant" is normally understood, and asserts that this supposed understanding strictly limits the way that the use of the term "air pollutant" in CAA section 202(a)(1) may be read. *See, e.g.* 90 Fed. Reg. at 36300. But Dieminger et al. and other sources discussed further below and in Part II.B.1 *infra*, show that EPA's assumption was no longer an accurate one decades ago, let alone in 2009 with the climate science data that was then before EPA, or in the present day with the even more robust and better understood climate science data that is available now. *Supra* Part I–II.

Even earlier than the 1990s, and in fact years *before* Congress amended section 202(a)(1) as part of the CAA's 1977 amendments, meteorologist John Stanley Sawyer published what proved to be remarkably accurate predictions of the temperature rise that would occur in the remainder of the 20th century, and described the relationship between greenhouse gas emissions and climate change in a manner fitting the plain meanings of "air pollutant" and "air pollution"

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document includes material that may be protected by copyright law, and because the website does not provide free and unlimited access to it, ELPC will submit this book chapter, and a few other attachments to this comment, to EPA using the email contact that EPA has identified for purposes of receiving comment materials not uploaded at https://www.regulations.gov/. *See* 90 Fed. Reg. at 36288. All attachments submitted in this manner are marked by an asterisk in the "List of Attachments" *infra*. The use of these documents to support a public comment in this rulemaking proceeding, and in any litigation that may later be filed in response to a final action in this rulemaking, is a lawful fair use. *See, e.g.*, *Jartech, Inc. v. Clancy*, 666 F.2d 403, 406–07 (9th Cir. 1982) (holding that it was fair use for a city council to introduce copyrighted material as evidence in a nuisance abatement proceeding); *Bond v. Blum*, 317 F.3d 385, 395–97 (4th Cir. 2003), *abrogated on other grounds by Kirtsaeng v. John Wiley & Sons, Inc.*, 579 U.S. 197 (2016) (holding that it was fair use to introduce a copyrighted manuscript into evidence in a state court custody proceeding); *Hollander v. Steinberg*, 419 F. App'x 44, 46–48 (2d. Cir. 2011) (holding that it was fair use to introduce copyrighted essays as evidence in two judicial proceedings).

[69] *Available at* https://www.oxfordreference.com/display/10.1093/oi/authority.20110810104326671 (last visited Sept. 11, 2025).

as EPA now describes them. J.S. Sawyer, *Man-made Carbon Dioxide and the 'Greenhouse' Effect*, 239 NATURE 23, 23-26 (Sept. 1972) (Attachment 52).[70] As Sawyer explained:

> [T]here are certain minor constituents of the atmosphere which have a particularly significant effect in determining the world climate. They do this by their influence on the transmission of heat through the atmosphere by radiation. Carbon dioxide, water vapour and ozone all play such a role, and the quantities of these substances are not so much greater than the products of human endeavor that the possibilities of man-made influences may be dismissed out of hand.

Id. at 23.

Other articles on the subject were published contemporaneously with Sawyer's. *See, e.g.*, *Inadvertent Climate Modification, Weatherwise*, 24 Taylor & Francis, 203 (1971) (Attachment 53).[71] Sawyer also cited previous literature from as early as the 1950s, 1940s, and 1930s identifying and accurately measuring the already-increasing carbon dioxide concentrations in the atmosphere. Attachment 52 at 23; *see also* John Mason, *The History of Climate Science* (posted June 5, 2020, and updated Oct. 2023) (Attachment 54)[72] (tracing the history of early climate science to investigations in the 19th century).

Moreover, as the opinion in *Massachusetts v. EPA* recounts, "by the late 1970's the Federal Government began devoting serious attention to the possibility that carbon dioxide emissions associated with human activity could provoke climate change." 549 U.S. at 507. For example, "[i]n 1978, Congress enacted the National Climate Program Act, 92 Stat. 601, which required the President to establish a program to 'assist the Nation and the world to 508 understand and respond to natural and man-induced climate processes and their implications,' *id*., § 3." 549 U.S. at 507-08. President Carter implemented this mandate by "ask[ing] the National Research Council, the working arm of the National Academy of Sciences, to investigate the subject." *Id.* at 508. The Council's response, as the *Massachusetts* Court emphasized, "was unequivocal: "If carbon dioxide continues to increase, the study group finds no reason to doubt that climate changes will result and no reason to believe that these changes will be negligible . . . . A wait-and-see policy may mean waiting until it is too late." *Id.* (quoting *Carbon Dioxide and Climate: A Scientific Assessment*, WASHINGTON, DC: NATIONAL ACADEMIES PRESS, at viii (1979) (Attachment 55)).[73]

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[70] *Available for purchase by subscribers* at https://www.nature.com/articles/239023a0 (last visited Sept. 11, 2025).

[71] *Available for purchase* at https://www.tandfonline.com/doi/abs/10.1080/00431672.1971.9931545 (last visited Sept. 11, 2025).

[72] *Available at* https://skepticalscience.com/history-climate-science.html.

[73] *Available at* https://nap.nationalacademies.org/catalog/12181/carbon-dioxide-and-climate-a-scientific-assessment.

Given this background, it is no surprise that the Supreme Court has already rejected the same contentions that EPA now reasserts in this proposal—*i.e.*, that greenhouse gases are legally distinct from "air pollutants" and are outside the scope of EPA's section 202(a) regulatory authority because of their global rather than local or regional impact or because their adverse impacts result from concentrations in the upper rather than the lower atmosphere. In *Massachusetts*, EPA attempted to distinguish between greenhouse gases and other air pollution agents "because greenhouse gases permeate the world's atmosphere rather than a limited area near the earth's surface," 549 U.S. at 529 n.26. The Court held that "EPA's distinction . . . finds no support in the text of the statute, which uses the phrase "the ambient air" without distinguishing between atmospheric layers." *Id.* Further, the Court emphasized that EPA's interpretation was "a plainly unreasonable reading of a sweeping statutory provision designed to capture 'any physical, chemical . . . substance or matter which is emitted into or otherwise enters the ambient air." *Id.* (quoting 42 U.S.C. § 7602(g)).

Thus, EPA's interpretation that the terms "air pollutant" and "air pollution" as used in CAA section 202(a)(1) are limited to "local or regional exposures" has no support in the statutory text; is inconsistent with the ordinary meaning of those terms as reflected in pertinent literature and public discourse for more than 50 years; and has been squarely rejected by the Supreme Court. EPA's proposed rationale fails to support reading the statute so narrowly.

B. EPA Fails to Draw Any Coherent Distinction Between Greenhouse Gases and Other "Air Pollutants" and "Air Pollution" Over Which It Acknowledges Its Regulatory Authority.

In addition to the lack of textual support for EPA's conclusion that it has no authority to regulate greenhouse gases under section 202(a)(1), a closer look at other CAA-regulated air pollutants reveals that the categorical distinctions EPA attempts to draw between those air pollutants and greenhouse gases are illusory. These flaws in EPA's analysis are discussed in more detail below.

1. "Global" versus "local or regional" concerns

EPA "propose[s] that the terms 'air pollutant' and 'air pollution' as used in CAA section 202(a)(1) should be construed in accordance with the specific air pollutants identified for other purposes in the remainder of CAA section 202." 90 Fed. Reg. at 36300. According to EPA, "[e]ach of these listed air pollutants share the common quality of causing or contributing to air pollution that adversely impacts public health or welfare through local or regional exposure to the air pollution itself." *Id.* at 36300 & n.47 (citing 42 U.S.C. 7521(a)(3)(A)(i), (b), (g), (h), (j), (k)). EPA further analogizes to statutory provisions outside of section 202 that also identify air pollutants—i.e., the criteria air pollutants listed under CAA section 108, 42 U.S.C. § 7408, and the initial list of hazardous air pollutants under section 112(b)(1), 42 U.S.C. 7412(b)(1). 90 Fed. Reg. at 36300 & n.48. EPA asserts that the same "pattern holds" for all of these listed pollutants—i.e., that they adversely impact public health or welfare through local or regional exposure to the air pollution itself. *Id.* at 36300. EPA distinguishes such local or regional exposure to air pollution from the "global climate change concerns" that it identifies as having

been the basis for the 2009 Endangerment Finding, and asserts that the CAA "does not authorize the EPA to assert jurisdiction over GHG emissions based on global climate change concerns in a standalone endangerment finding." *Id.* at 36299.

As an initial matter, EPA's interpretation of section 202(a)(1) seems to rest on a mis-application of the *noscitur a sociis* and *ejusdem generis* canons. Under these rules of statutory construction, "when a statute contains a list, each word in that list presumptively has a 'similar' meaning," and "general words following a list of specific words should usually be read in light of those specific words to mean something 'similar.'" *Yates v. United States*, 574 U.S. 528, 549-50 (2015) (J. Alito, concurring in the judgment). As the Supreme Court has recently explained, the first canon "teaches that a word is 'given more precise content by the neighboring words with which it is associated,'" while the second canon "track[s] the common sense intuition that Congress would not ordinarily introduce a general term that renders meaningless the specific text that accompanies it." *Fischer v. United States*, 603 U.S. 480, 487 (2024).

But in this instance, the text of section 202(a)(1) provides that the Administrator "*shall* prescribe regulations" establishing standards applicable to emissions of "*any* air pollutant" which he judges to cause or contribute to an endangerment, without specifying any list of specific pollutants he should regulate under this provision. 42 U.S.C. § 7521(a)(1) (emphasis added). Likewise, section 302(g) includes in the statute's general definition of "air pollutant" "*any* air pollution agent or combination of such agents, including *any* . . . substance or matter which is emitted into or otherwise enters the ambient air," again without identifying a list of specific examples. Thus, there is no basis to apply the above rules of statutory construction in the context of interpreting section 202(a)(1). *See Ali v. Federal Bureau of Prisons*, 552 U.S. at 225 ("The absence of a list of specific items undercuts the inference embodied in *ejusdem generis* that Congress remained focused on [a] common attribute when it used [a] catchall phrase."). Rather, "any air pollutant" should be read according to its ordinary meaning, "one or some indiscriminately of whatever kind." *Id.* at 219; *accord Massachusetts*, 549 U.S. at 529.

Even if it made sense to apply these canons of statutory construction in the context of interpreting the scope of EPA's authority under section 202(a)(1), EPA's contention that greenhouse gases are categorically distinct from the air pollutants listed in other parts of the Clean Air Act because they raise "global" rather than just "local or regional" concerns is demonstrably wrong. For example, EPA includes acid rain deposition in the category of "local or regional" public health or welfare impacts from air pollution that EPA is authorized to regulate. *See* 90 Fed. Reg. at 36300. As EPA's website explains, acid rain results when sulfur dioxide (SO_2) and nitrogen oxides (NO_X)—two of the listed criteria pollutants under CAA section 108—"are emitted into the atmosphere and transported by wind and air currents. The SO_2 and NO_X react with water, oxygen and other chemicals to form sulfuric and nitric acids. These then mix with water and other materials before falling to the ground."[74] Acid rain is not, however, merely a "local or regional" impact from SO_2 and NO_X pollution. Rather, "[w]inds can blow SO_2 and NO_X over long distances and across borders making acid rain a problem for everyone and not just those who live close to these sources." *Id.*

[74] Attachment 56, *What is Acid Rain?*, https://www.epa.gov/acidrain/what-acid-rain (last visited Aug. 28, 2025).

Smog, another example EPA's preamble mentions, 90 Fed. Reg. at 36300, likewise is a form of air pollution resulting from CAA-listed air pollutants or precursors (specifically, NO_X and volatile organic compounds) that can be transported long distances and across national borders. Indeed, the United States and Canada for decades have maintained an agreement on addressing transboundary pollution contributing to acid deposition and smog in both countries. *See* https://www.epa.gov/international-cooperation/us-canada-air-quality-agreement (last visited Aug. 27, 2025).[75]

Other Congressionally-listed CAA air pollutants that have necessitated the United States' international cooperation to address transboundary, and even trans-oceanic, air pollution transport issues include particulate matter, ozone, and mercury. *See* https://www.epa.gov/international-cooperation/transboundary-air-pollution (last visited Aug. 27, 2025).[76] EPA for two decades has co-chaired, along with the European Commission, a Task Force on Hemispheric Transport of Air Pollution that has technically assessed the intercontinental transport of all of three of those CAA-listed air pollutants.[77]

Thus, even if local or regional air pollution problems once were a "more typical" EPA focus historically,[78] there is nothing "unique" about the fact that addressing the serious public health and welfare impacts of greenhouse gas emissions implicates "global concerns" as well as impacts occurring on a local and regional scale. As a matter of statutory construction, this aspect of greenhouse gas air pollutant regulation provides no basis to distinguish it from other "substance[s] or matter[s] which [are] emitted into or otherwise enter[] the ambient air." 42 U.S.C. § 7602(g).

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[75] *See also* Attachment 57, Agreement Between the Government of Canada and the Government of the United States on Air Quality with Amendment (2000); Attachment 58, Joint Statement by the Governments of Canada and the United States of America on Bilateral Cooperation to Improve Air Quality (Apr. 12, 2007) *and* Attachment 59, Twenty Year Anniversary 1991-2011 (Mar. 4, 2011), *all available at* https://www.epa.gov/international-cooperation/additional-information-about-us-canada-air-quality-agreement (last visited Aug. 27, 2025).

[76] *See also, e.g.*, Attachment 60, NATIONAL RESEARCH COUNCIL, GLOBAL SOURCES OF LOCAL POLLUTION: AN ASSESSMENT OF LONG-RANGE TRANSPORT OF KEY AIR POLLUTANTS TO AND FROM THE UNITED STATES, THE NATIONAL ACADEMIES PRESS (2010), https://www.epa.gov/international-cooperation/transboundary-air-pollution.

[77] *Id.*; *see, e.g.*, Attachment 61, UNITED NATIONS, TASK FORCE ON HEMISPHERIC TRANSPORT OF AIR POLLUTION, HEMISPHERIC TRANSPORT OF AIR POLLUTION, PART A: OZONE AND PARTICULATE MATTER (2010); *and* Attachment 62, UNITED NATIONS, TASK FORCE ON HEMISPHERIC TRANSPORT OF AIR POLLUTION, HEMISPHERIC TRANSPORT OF AIR POLLUTION, PART B: MERCURY (2010), *both available at* https://www.epa.gov/international-cooperation/transboundary-air-pollution (last visited Aug. 27, 2025).

[78] *See* 90 Fed. Reg. at 36301 (quoting 74 Fed. Reg. at 66538).

2. Ground-level versus upper atmospheric air pollution

To the extent EPA attempts to legally distinguish greenhouse gas emissions from other CAA-regulated air pollutants because their adverse impacts result from elevated greenhouse gas concentrations "in the upper atmosphere" rather than at ground level, 90 Fed. Reg. at 36300, that too fails as a principled basis for making such a legal distinction. Under Title VI of the CAA, added in the statute's 1990 Amendments, EPA regulates "ozone depleting substances" that impact public health or welfare by depleting the ozone layer in the upper atmosphere. As EPA's website recounts, the chemical structure of ozone enables ozone molecules in the upper atmosphere to absorb harmful ultraviolet B (UV-B) radiation from the sun, which can cause cancer and cataracts in humans, and upsets biogeochemical cycles. *Information on Ozone and Ozone Depletion*, ENVT. PROT. AGENCY (Attachment 63).[79] In the 1970s, scientists discovered that certain human-made chemicals containing chlorine and bromine, which historically have been used in a number of industrial and commercial applications, can cause the depletion of stratospheric ozone. *Id.* "Once released at Earth's surface, they eventually migrate upwards to the stratosphere, where ultraviolet (UV) radiation from the sun converts them into reactive gases that destroy ozone." *Id.* "By the 1980s, it was clear that these ozone-depleting substances (ODS) were indeed having a significant impact on stratospheric ozone, leading to the creation of a progressively worsening 'ozone hole' each springtime over Antarctica." *Id.*

Global recognition of the problem of stratospheric ozone depletion led, in 1987, to the Montreal Protocol on Substances that Deplete the Ozone Layer, a treaty that was universally ratified, including by the United States. *Id.* The Montreal Protocol and its amendments provide for a complete phaseout of ozone depleting substances. *Id.* The United States implemented its part in these international treaty obligations through the enactment of CAA Title VI, which "empower[s] EPA to protect the stratospheric ozone layer." *Id.*; *see generally* 42 U.S.C. §§ 7671-7671q; *Natural Resource Defense Council v. Wheeler*, 955 F.3d 68, 74 (D.C. Cir. 2020); *Ozone Protection Under Title VI of the Clean Air Act*, ENVT. PROT. AGENCY (Attachment 63).[80]

Section 602(a) of Title VI specifically lists a number of "class I" ozone depleting substances and requires the EPA Administrator to add to this list "all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater." 42 U.S.C. § 7671a(a). Section 602(b) sets forth a list of "class II" ozone depleting substances and requires the Administrator to add to the class II list "any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer." *Id.* § 7671a(b). Title VI thus represents yet another example of EPA's regulation of air pollutants based on "global" air pollution concerns, *see supra* Part II.A.1, as well as a regulatory response to upper atmospheric air pollutant concentrations.

In *Massachusetts*, the Supreme Court was presented with EPA's then-rationale that, with Congress having enacted Title VI as "a comprehensive scheme to regulate pollutants that

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[79] *Available at* https://www.epa.gov/ozone-layer-protection/information-ozone-and-ozone-depletion (last visited Aug. 28, 2025).

[80] *Available at* https://www.epa.gov/ozone-layer-protection/ozone-protection-under-title-vi-clean-air-act (last visited Sept. 4, 2025).

depleted the ozone layer," the lack of a similar statutory scheme in the 1990 Amendments to address greenhouse gases "counseled against reading the general authorization of § 202(a)(1) to confer regulatory authority over greenhouse gases." 549 U.S. at 512. EPA claimed to find support for this view in *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), where the Court had invalided the Food and Drug Administration's reliance on its general authority to regulate drugs as a basis for asserting jurisdiction to regulate tobacco. 549 U.S. at 512. The *Massachusetts* Court rejected this argument, noting initially, "[t]hat subsequent Congresses have eschewed enacting binding emissions limitations to combat global warming tells us nothing about what Congress meant when it amended § 202(a)(1) in 1970 and 1977." 549 U.S. at 529-30. Furthermore, in contrast to *Brown & Williamson* where the key statutory terms under the Food, Drug and Cosmetic Act were plainly a poor fit for application to tobacco, the *Massachusetts* Court "there is nothing there is nothing counterintuitive to the notion that EPA [under CAA section 202(a)(1)] can curtail the emission of substances that are putting the global climate out of kilter." *Id.* Finally, the Court noted that there was no history of Congressional enactments "conflict[ing] in any way with the regulation of greenhouse gases from new motor vehicles," and that EPA itself had previously concluded that it had authority under the CAA to regulate greenhouse gases. *Id.*

We agree that the 1990 Amendments are not the best evidence of what Congress meant in 1970 and 1977. However, the language Congress used then in crafting section 202(a)(1) is broad, inclusive, and "reflects an intentional effort to confer" on EPA the "regulatory flexibility" needed to respond to "changing circumstances and scientific developments" in understanding the adverse impacts of air pollution. 549 U.S. at 532. Thus, as shown above, *supra* Part II.A, the text of section 202(a)(1) plainly confers authority to regulate greenhouse gases. And, as shown here, EPA's 2009 Endangerment Finding set no new precedent with respect to the regulation of upper atmospheric pollution under the Act.

3. "Direct" versus "indirect" impacts on public health or welfare

EPA also attempts to categorically distinguish greenhouse gases from the air pollutants listed in various provisions of the CAA by claiming that "Congress did not include," on any of these statutory air pollutant lists, "substances that are potentially indirectly harmful to public health or welfare based on elevated global concentrations in the upper atmosphere." 90 Fed. Reg. at 36,300. But to the extent this critique might initially be understood to rest on the "indirect" nature of the mechanisms through which carbon dioxide and other greenhouse gas emissions contribute to planetary warming and climate change, EPA's own preamble discussion refutes that impression by acknowledging that other pollutants over which it does not question its regulatory authority impact public health or welfare indirectly, rather than directly.

As EPA explains, "[f]or certain regulated air pollutants, the air pollutants are themselves the dangerous air pollution, *i.e.*, the air pollutants are the air pollution with adverse health and welfare impacts. An example is [carbon monoxide], which can be harmful, and even fatal, to humans at sufficient localized concentrations." *Id.* at 36300. EPA then adds that, "[f]or other regulated air pollutants, the air pollutants contribute to dangerous air pollution by interacting with other airborne chemicals or environmental factors such as sunlight to create the dangerous air pollution, *i.e.*, the air pollutants are ingredients that create the dangerous air pollution in

combination." *Id.* EPA identifies acid rain as an example of the second group of regulated air pollutants. *Id.* As discussed above, this pollution occurs as the end result of a process that begins with the emission of multiple chemical compounds into the air, followed by the airborne interaction of those compounds to form acids, which then mix with water and other materials, before reaching the ground as acidic precipitation.

Thus, although EPA later invokes the "background legal principles, including principles of causation and proximate cause," underlying the statutory phrase "cause or contribute" as a reason to conclude that greenhouse gases cannot be considered "air pollutants," 90 Fed. Reg. at 36301, EPA's preceding discussion makes clear that its regulatory authority extends beyond just the category of pollutants that cause harm "directly" upon respiratory exposure to them (e.g., carbon monoxide). Rather, EPA acknowledges that it is authorized to regulate the emission of air pollutants if the Administrator determines that their "interact[ion] with other airborne chemicals or environmental factors such as sunlight" may be reasonably be anticipated to endanger public health or welfare." *Id.* at 36300. Having made this acknowledgement, there is no principled basis to distinguish the public health and welfare impacts of greenhouse gas emissions from those of acid rain precursor emissions on the grounds of "indirectness." Both types of air pollution impact public health and welfare through complex chemical and/or physical mechanisms that are well understood and supported by robust scientific data.[81]

EPA's revisionist attempts to portray the 2009 Endangerment Finding as resting on speculation rather than sound science also fails to justify distinguishing greenhouse gases from other air pollutants over which EPA acknowledges it has regulatory authority. As EPA now characterizes it, "the Endangerment Finding asserted that GHG 'air pollution' would lead to increases in global temperature and change to ocean pH that, in turn, would lead to environmental phenomena, in combination with an open-ended universe of additional factors, which would potentially have adverse public health and welfare impacts of varying severity in certain regions." EPA's retelling suggests that the then-Administrator in 2009 was simply offering unsupported speculation about possible future harms.

But, in fact, the 2009 Endangerment Finding was amply supported by the scientific consensus and by a body of evidence that the D.C. Circuit found sufficient to sustain the Finding against every legal or record-based judicial challenge. As the court summarized:

> The body of scientific evidence marshaled by EPA in support of the Endangerment Finding is substantial. EPA's scientific evidence of record included support for the proposition that greenhouse gases trap heat on earth that would otherwise dissipate

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[81] *Compare, e.g.*, *How Exactly Does Carbon Dioxide Cause Global Warming*, COLUMBIA CLIMATE SCHOOL, STATE OF THE PLANET, (Feb. 25, 2021), *as updated* March 17, 2021 (Attachment 65), https://news.climate.columbia.edu/2021/02/25/carbon-dioxide-cause-global-warming/, *with Acid Rain*, United Nations Office for Disaster Risk Reduction, https://www.undrr.org/understanding-disaster-risk/terminology/hips/en0105 (last visited Aug. 28, 2025), *and* Attachment 56, *supra* note 74.

> into space; that this "greenhouse effect" warms the climate; that human activity is contributing to increased atmospheric levels of greenhouse gases; and that the climate system is warming.

Coalition, 684 F.3d at 120.

The ensuing decade and a half has further strengthened that evidence and the scientific consensus on what conclusions to draw from it. *Infra* Parts I–II. Thus, to the extent principles of legal causation inform the text Congress used in section 202(a)(1), those principles are not a basis to treat greenhouse gases as disparate from other "substances" that pollute the air. Likewise, they are not a basis to conclude that greenhouse gases are outside the scope of EPA's authority. The record that was before the Administrator in 2009 established the causal connection between increased greenhouse gas emissions in the upper atmosphere and the adverse health and welfare impacts of climate change at a sufficient level of scientific certainty to satisfy those causation principles. The record before the Administrator now reflects an improved understanding of climate science and an even stronger and scientific consensus. *Supra* Part I–II.

C. Congress Reaffirmed the Applicability of the CAA Term "Air Pollutant" to Greenhouse Gases When It Enacted the Inflation Reduction Act.

While there is no genuine question that greenhouse gases are "air pollutants" under section 202(a)(1) for the reasons stated above, any conceivable doubt was resolved by Congress' enactment of the Inflation Reduction Act, Pub. L. 117-169 (signed into law Aug. 22, 2022). EPA's discussion of the statutory meaning of "air pollutant" and "air pollution" and explanation of its proposal to find that greenhouse gases are outside of its section 202(a)(1) regulatory authority completely ignore this important legislation. *See* 90 Fed. Reg. at 36299-36302.

As House Energy and Commerce Committee Chair Frank Pallone contemporaneously explained, the Inflation Reduction Act "reinforces the longstanding authority and responsibility of the [EPA] to regulate [greenhouse gases] as air pollutants under the Clean Air Act." 168 Cong. Rec. E868 (2022). The Inflation Reduction Act amends Title I of the Clean Air Act by, in relevant part, repeatedly defining "greenhouse gas" as "the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride"—the same six gases included in EPA's 2009 Endangerment Finding. 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). These provisions express Congress's judgment that each of these six compounds falls within the definition of "air pollutant" in section 302(g), which applies throughout the Act, including Title I. 42 U.S.C. § 7602(g); *see also id*. § 7437 (new Clean Air Act Section 137 providing $5 billion in support for development and implementation of plans to address "greenhouse gas air pollution"); Greg Dotson & Dustin J. Maghamfar, The Clean Air Act Amendments of 2022: Clean Air, Climate Change, and the Inflation Reduction Act, 53 Env'l L. Rep. 10017, 10027 (2023) (noting that the "greenhouse gas" definition enumerating the six specific compounds served to limit the provisions' reach to a "smaller set than the entire universe of heat-trapping gases, while restating in statutory language the key holding of *Massachusetts*").

The Inflation Reduction Act thus makes it clear that Congress and the United States Code expressly recognize and adopt *Massachusetts*' holding that greenhouse gases are air pollutants for purposes of Clean Air Act regulation. *See Illinois Brick Co. v. Illinois*, 431 U.S. 720, 736 (1977) ("Considerations of *stare decisis* weigh heavily in the area of statutory construction, where Congress is free to change this Court's interpretation of its legislation."). Indeed, there were numerous *failed* legislative proposals to reverse *Massachusetts* before Congress enacted legislation affirmatively endorsing it in the Inflation Reduction Act. *See, e.g.*, S.J. Res. 26, 111th Cong. (2010), H.R. 910, 112th Cong. (2011), S. 482, 112th Cong. (2011). Congress has spoken directly to this issue, and it has left no room for EPA to question whether greenhouse gases are "air pollutants" subject to EPA's regulatory authority under section 202(a)(1).

D. Case Law Subsequent to *Massachusetts* Provides No Basis to Reconsider EPA's Authority to Regulate Greenhouse Gases Under Section 202(a)(1).

EPA strains to portray its proposal to disavow greenhouse gas regulatory authority under CAA section 202(a)(1) as a position driven by post-*Massachusetts* judicial precedent. More specifically, EPA claims not to seek judicial reversal of *Massachusetts*, but suggests that EPA's new proposed statutory interpretation is "consistent with the Supreme Court's decision in *Massachusetts*, which addressed distinct issues and must, as a matter of stare decisis, be read in harmony with the Supreme Court's subsequent decisions bearing on the EPA's authority and statutory interpretation in *UARG*, *West Virginia*, and *Loper Bright*." 90 Fed. Reg. at 36300. Contrary to EPA's suggestion, these decisions do not call *Massachusetts* into doubt and are not a basis to rescind the 2009 Endangerment Finding.

In the nearly two decades since *Massachusetts* was decided, the Supreme Court has relied on or at least reaffirmed *Massachusetts*'s holding regarding EPA's greenhouse gas regulatory authority no less than three times. First, in *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011), the Court—with Justice Sotomayor recused—held unanimously that there is no federal common law nuisance remedy for power plants' greenhouse gas emissions because CAA section 111, 42 U.S.C. § 7411, authorizes regulation of and "speaks directly" to those emissions. 564 U.S. at 424. The Court emphasized 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." *Id.* at 424, 427. EPA fails to even acknowledge, let alone address, this case in its discussion suggesting that other post-*Massachusetts* case law requires it to adopt the interpretation it now proposes. *See* 90 Fed. Reg. at 36300, 36302.

Second, in *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302 (2014), the Court, even as it concluded that EPA had misread the CAA's permitting provisions to apply to small sources, *id.* at 323-24, held that EPA properly read the Act to require control of greenhouse gases from large sources already subject to permitting requirements, *see id*. at 331. In the same litigation, 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. *Coalition,* 684 F.3d at 120. The D.C. Circuit concluded that the Endangerment Finding "is

consistent with *Massachusetts v. EPA* and the text and structure of the CAA," and found that the agency's judgments were supported by an "ocean of evidence." 684 F.3d at 102, 117. The Supreme Court then denied all three certiorari petitions asking it to review and reverse EPA's 2009 Endangerment Finding, while granting certiorari only on unrelated permitting issues as noted above. *See Util. Air Regulatory Grp. v. EPA*, 571 U.S. 951 (2013) (noting denials of certiorari in *Virginia v. EPA*, No. 12-1152, *Pacific Legal Foundation v. EPA*, No. 12-1153, and *Coal. for Responsible Regulation v. EPA*, No. 12-1253).

Third, although the Court in *West Virginia v. EPA*, 597 U.S. 697 (2022) held that the particular design of the Clean Power Plan exceeded EPA's authority under section 111, the Court once again 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 id.* at 724-27. Thus, it has been, and remains, settled law for nearly two decades that greenhouse gases are "air pollutants" subject to regulation under the CAA. *Massachusetts*, 549 U.S. at 532.

EPA asserts, nonetheless, that although *Massachusetts* settled the question of whether greenhouse gases are "air pollutants" under the Act-wide definition in section 302(g), it somehow "did not construe the scope of the EPA's authority to regulate under CAA section 202(a)." 90 Fed. Reg. at 36301-02. The specific issue supposedly left unresolved in *Massachusetts* that EPA identifies as pertinent to whether it has regulatory authority, is "whether including GHGs within the definition of 'air pollutant' meant that we must find that GHGs meet the statutory standard for regulation under CAA section 202(a) because they cause or contribute to air pollution which endangers the public health or welfare." *Id.* at 36302. EPA then reads the Court's subsequent decisions in *UARG* and *West Virginia* as having "made clear . . . that our authority to regulate air pollutants that fit within the Act-wide definition turns on the particular statutory provision that confers authority to regulate." *Id.* On that basis, EPA identifies a supposed need to newly address significance of causation in making the judgment whether to regulate under section 202(a), and claims that this necessitates a narrowing of *Massachusetts.* EPA summarizes its thinking as follows: "Put simply, regardless whether GHGs are 'air pollutants' as defined in CAA section 302(g), they must still satisfy the same standard as any other 'air pollutant' by causing or contributing to air pollution which may reasonably be anticipated to endanger public health or welfare." *Id.* These characterizations do not, however, give rise to any genuine legal basis for EPA to rescind or even alter the 2009 Endangerment Finding.

To begin with, EPA's description of what supposedly was left unconstrued in *Massachusetts* is wrong. In *Massachusetts*, the Court clearly acknowledged that causation is an essential predicate to prescribing regulations under CAA section 202(a). This is evident from the Court's framing of the issues presented: "On the merits, the first question is whether § 202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a 'judgment' that such emissions *contribute* to climate change. We have little trouble concluding that it does." 549 U.S. at 528 (emphasis added). As the quote makes clear, the Court in *Massachusetts* did not focus narrowly and solely on the text of section 302(g) while ignoring section 202(a)(1), as EPA's explanation would make it appear. Nor did

the *Massachusetts* Court ignore the role of causation in EPA's determination whether to regulate air pollutants under that provision.

EPA's recounting of *Massachusetts* obscures that the actual reason that Court limited its resolution of merits questions is that there was not then a *factual* record on which EPA could make the necessary findings pursuant to section 202(a). This is precisely because EPA, in that litigation and in the administrative proceedings that preceded it, had disclaimed its authority to develop such a record. *Massachusetts*, 549 U.S. at 510-14. Thus, the Court noted that it remained for EPA to decide if "sufficient information exists to make an endangerment finding." *Id.* at 534. As Part III examines in further detail, EPA subsequently amassed such information as the basis for its 2009 Endangerment Finding, and that Finding satisfied any legal obligation to establish causation consistent with the statutory phrase "cause of contribute." *Infra* Part V.

Loper Bright Enters. v. Raimondo, 603 U.S. 360 (2024), has no application here despite EPA's allusion to it. *See* 90 Fed. Reg. at 36300. There, the Court held that "courts need not and under the [Administrative Procedure Act] may not defer to an agency interpretation of the law simply because a statute is ambiguous." 603 U.S. at 413. *Massachusetts* was not a case involving deference to EPA's interpretation of ambiguous statutory language. Rather, the Court in *Massachusetts* rejected EPA's then-interpretation—which essentially was identical to the position EPA now reasserts in this proposal—because it found that "the statute is *unambiguous*." 549 U.S. at 520 (emphasis added).

Finally, there is no "major question" pursuant to *West Virginia* that could necessitate rescission of the 2009 Endangerment Finding, as we show in Part VII *infra*.

V. EPA's Identifies No Valid Basis to Rescind Its 2009 "Endangerment" and "Cause or Contribute" Findings.

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

- 1. All aspects of this proposal, including legal and scientific developments that are being subject to public comment for the first time (C–1).

- 11. We seek comment on the proposed interpretation of CAA 202(a) as discussed in section III.A.1 of this preamble, including the rationales presented in that section and any further rationales that commenters believe support, or detract from, this interpretation (C–11).

- 26. We propose that even if intervening legal developments have not foreclosed the regulation of GHG emissions from new motor vehicles and engines under CAA section 202(a), they provide a reasonable basis for the Administrator to approach the inquiry with greater caution today than was applied in the Endangerment Finding. We propose that the Administrator's new approach requires rescinding the Endangerment Finding as fundamentally inconsistent with the framework set out in this proposed alternative. We seek comment on this alternative proposal, including on the breadth of the Administrator's discretion to exercise judgment by rejecting the approach taken in the

Endangerment Finding and the results of adopting a different approach (C–26).

- 27. [In pertinent part] Conversely, we seek comment on why the approach taken in the Endangerment Finding remains reasonable given the legal . . . developments discussed in this proposal[.]

90 Fed. Reg. at 36324-25.

In addition to its above-noted assertions regarding the meaning of "air pollutant" and "air pollutants," EPA contends that its 2009 Findings were rendered in a manner that purportedly failed to meet causation requirements. EPA focuses on section 202(a)(1)'s mandate that the Administrator shall by regulation 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, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1); *see* 90 Fed. Reg. at 36303-04. EPA proposes that section 202(a) "requires the Agency to evaluate whether source emissions cause or contribute to air pollution and whether that air pollution poses endangerment in a single causal chain, rather than considering these issues in isolation by severing the inquiries." *Id.* at 36303. Under this view, EPA claims that the 2009 Findings violated section 202(a)(1) because EPA made separate findings regarding that greenhouse gas emissions concentrations in the upper atmosphere endanger public health and welfare, and that greenhouse gas emissions from section 202(a)(1) sources contribute to this endangerment, rather than a single finding. *Id.* (citing 74 Fed. Reg. at 66516, 66536).

EPA's current causation-based critique of the 2009 Findings largely recycles objections made by some commenters during that 2009 rulemaking process. *Compare, e.g.*, 90 Fed. Reg. at 36304 ("The Endangerment Finding also did not limit its analysis of contribution to '*new* motor vehicles or *new* motor vehicle engines' in the United States, which are the only sources covered by the EPA's CAA section 202(a) authority) (citing 42 U.S.C. 7521(a)(1)) (emphases in original), *with* 74 Fed. Reg. at 66542 ("The commenters that argue that the air pollution EPA must analyze to determine endangerment is limited to the air pollution resulting from new motor vehicles also argue that as a result, the contribution of emissions from new motor vehicles must be significant."). These comments did not identify any valid grounds then for EPA to refrain from finding that new mobile source emissions cause or contribute to an endangerment, nor do they state a valid basis now for rescinding that finding 16 years later.

A. The Statutory Text and Structure Do Not Support EPA's Proposed Interpretation.

EPA states that it "no longer believe[s] that the approach taken in the Endangerment Finding was consistent with the language of CAA section 202(a) and the structure of the CAA." 90 Fed. Reg. at 36304. But EPA fails to identify what aspect of the text of section 202(a)(1) purportedly *mandates* that EPA make the findings required under that provision in a single analysis. *See* 90 Fed. Reg. at 36304. Section 202(a)(1) specifically directs EPA to consider whether "air pollution"—*not* motor vehicle emissions—"may reasonably be anticipated to present an 'endangerment to public health or welfare.'" 42 U.S.C. § 7521(a)(1). The inquiry it

specifically directs with respect to "emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines," in turn, is whether such pollutant emissions "cause or contribute" to the "air pollution." *Id.* Thus, contrary to how EPA attempts to read section 202(a)(1), its text does not connect the sources of the "air pollutant" directly to the "endangerment" in any way to indicate that *only* the "single-analysis" approach now preferred by EPA is permissible under section 202(a)(1).

EPA explains its critique of the 2009 Endangerment Finding as follows: "Because the Administrator considered all sources in analyzing the danger posed by elevated concentrations of GHGs in the upper atmosphere, the endangerment analysis necessarily included emissions from foreign and domestic vehicles that had been in use for years or decades and were not 'new.'" 90 Fed. Reg. at 36304; *see also id.* (asserting that "[t]he Endangerment Finding effectively attributed the total GHG emissions coming from all of these various distinct sources within the United States, as well as from all international sources, to the mobile sources regulated under CAA section 202(a)"). EPA's critique necessarily implies that what it now proposes is that the existence of an "endangerment" must be determined *solely* based on the effects on public health and welfare that can be associated specifically with greenhouse gas emissions from new mobile sources. But that is not what Congress wrote in section 202(a)(1).

EPA's interpretation might have been plausible if section 202(a)(1) used all of the same words in the actually enacted text except for the phrase, "or contribute to":

> The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, 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,~~ air pollution which may reasonably be anticipated to endanger public health or welfare.

42 U.S.C. § 7521(a)(1) (text modified).

Under the above hypothetical alternative provision, a judgment would be required that the class or classes of new motor vehicle or engines "cause" the "air pollution which may reasonably be anticipated to endanger public health or welfare." In that hypothetical scenario, a case could more plausibly be made that the Administrator only had authority to consider emissions from the "class or classes of new motor vehicles or engines" in determining if there is "air pollution which may reasonably be anticipated to endanger public health or welfare." But that provision is only hypothetical. Congress *could have* written section 202(a)(1) this way, but it did not. It used the entire phrase, "cause, or contribute to."

All words in the statutory text must be considered meaningful. *See Fischer v. United States*, 603 U.S. 480, 493 (2024) (noting that "we must 'give effect, if possible, to every clause and word of [the] statute'") (quoting *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (alteration in original; other internal citation omitted). Moreover, absent evidence that Congress intended a specialized meaning, it is presumed that each word in a statute should be understood according to its ordinary meaning. *See Feliciano v. Department of Transportation*, 145 S. Ct. 1284, 1291 (2025); *accord Star Athletica, LLC. v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017) (courts

must "giv[e] each word its 'ordinary, contemporary, common meaning'") (quoting *Walters v. Metropolitan Ed. Enterprises, Inc.*, 519 U.S. 202, 207 (1997)). Therefore, EPA cannot rely on a proposed "interpretation" of the text of section 202(a)(1) that effectively ignores the last three words in the phrase "cause, or contribute to" on policy grounds. "EPA's discretion cannot include the power to rewrite a statute and reshape a policy judgment Congress itself has made." *NRDC v. EPA*, 902 F.2d 962, 977 (D.C. Cir. 1990), *vacated in other part*, 921 F.2d 326 (D.C. Cir. 1991); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 376 (1986) ("[O]nly Congress can rewrite [a] statute.").

In explaining its view that the 2009 Findings were made in a way that violated causation requirements, EPA does not identify if it considered any dictionary definitions of the term "cause," the term" contribute," or the entire phrase, "cause, or contribute to." *See* 90 Fed. Reg. at 36303-05. But "cause" and "contribute" have different ordinary meanings. "Cause," in the sense of cause and effect, ordinarily is understood as "something or someone that produces an effect, result, or condition."[82] "Contribute," on the other hand, does not communicate the same degree of causality, but means "to *help* to cause something to happen."[83] Because Congress used the phrase "cause, *or contribute to* air pollution which may reasonably be anticipated to endanger public health or welfare," it was consistent with the ordinary meaning of this text for EPA to determine in 2009 whether there was an endangerment from greenhouse gas "air pollution" that encompassed emissions from multiple sources, not only new mobile sources. 42 U.S.C. § 7521(a)(1). Thus, EPA's current proposal fails to show that the 2009 Findings were contrary to the statutory text.

EPA's proposal also attempts to find support for its view in the "structure of the CAA," which EPA argues "requires making distinct findings for regulating distinct types of emission sources and authorizes different regulatory tools when such standards are met." 90 Fed. Reg. at 36304. But, again, EPA fails to identify specifically what aspect of the statutory structure purportedly communicates that the "single-analysis" approach EPA now prefers is the only approach Congress authorized for making the findings required by section 202(a)(1). The only specific provision that EPA compares textually with section 202(a)(1) is section 111(b)(1), 42 U.S.C. § 7411(b)(1), which requires the Administrator to list a category of stationary sources "if in his judgment it causes, or contributes significantly to, air pollution which may be reasonably be anticipated to endanger public health or welfare." *Id.*; *see* 90 Fed. Reg. at 36304. However, this provision, as described above with section 202(a)(1), similarly does not textually link the "endangerment" with the emission "sources." 42 U.S.C. § 7411(b)(1). Rather, the inquiries it directs are (1) whether "air pollution . . . may be reasonably anticipated to endanger public health or welfare," and (2) whether a "category" of stationary sources "causes, or contributes significantly to [such] air pollution." *Id.* This design mirrors that used in section 202(a)(1) as shown above. Thus, the structure of section 111(b)(1) actually reinforces the conclusion that EPA's 2009 approach was consistent with the statute, and that EPA's current proposal is not.

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[82] *See* THE BRITANNICA DICTIONARY, https://www.britannica.com/dictionary/cause (last visited Sept. 13, 2025).

[83] *See* THE BRITANNICA DICTIONARY, https://www.britannica.com/dictionary/contribute (last visited Sept. 13, 2025) (emphasis added).

One notable distinction between section 111(b)(1) and section 202(a)(1) is that only the former provision adds the qualifying word "significantly" to the phrase "causes, or contributes significantly to air pollution." *Compare* 42 U.S.C. § 7411(b)(1), *with id.* § 7521(a)(1). This term also must be considered meaningful. *See Fischer*, 603 U.S. at 493. In EPA's contemporaneous rulemaking proposal to repeal the "Carbon Pollution Standards" (new source performance standards and emission limitations guidelines promulgated for power plants under 42 U.S.C. § 7411), EPA has stated that "significantly" means "having or likely to have influence or effect: important," and that "important" means "marked by or indicative of significant worth or consequence: valuable in content or relationship." 90 Fed. Reg. at 25752, 25765 (June 17, 2025). The *absence* of this modifier to the term "contributes" in section 202(a)(1) indicates that the degree of contribution to endangerment that would authorize the Administrator to prescribe regulations under section 202(a) is less than under section 111(b). To conclude otherwise would violate another fundamental rule of statutory construction—that when "engaged in the business of interpreting statutes we presume differences in language like this convey differences in meaning." *Henderson v. Santander Consumer USA, Inc*., 582 U.S. 79, 86 (2017). EPA's explanation of its proposal fails to even acknowledge and discuss its view regarding this difference in two statutory provisions' language, let alone identify a reason to depart from the canon that "Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another." *Department of Homeland Sec. v. McLean*, 574 U.S. 383, 391 (2015).

Thus, EPA's current view that the endangerment and cause-or-contribute findings must be conducted in a unitary analysis is merely a policy preference, not a statutory mandate, as it has no support in the statutory text or structure. The 2009 Findings were upheld by the D.C. Circuit against all legal and record-based challenges, and the court found that they were supported by an "ocean of evidence." *Coalition*, 684 F.3d at 123. And, as shown in Part III *supra*, EPA's proposal cites no competent and credible scientific data that suggests the 2009 conclusions regarding endangerment and contribution were wrong. Therefore, EPA's new policy preference, alone, is not a basis to rescind the Findings

B. EPA's Stated Concerns About the Potential to Regulate "De Minimis" Air Pollution Are Unsupported.

EPA repeatedly asserts that its proposed rescission of the 2009 Findings is necessary to avoid regulating "de minimis" air pollution. *See, e.g.*, 90 Fed. Reg. at 36301 ("Following the logic of the Endangerment Finding, any 'air pollutant' emitted at more than de minimis volumes would trigger our authority, and the statutory obligation, to prescribe standards so long as the emission contributes to 'air pollution' . . ."); *id.* at 36304 ("Nowhere in the Endangerment Finding did the Administrator consider the extent to which emissions from CAA section 202(a) sources have a more than de minimis effect on the danger identified with respect to elevated concentrations of GHGs in the upper atmosphere . . ."). EPA fails, however, to provide any explanation sufficient to invoke a de minimis exception to regulations otherwise required by the text of section 202(a). While agencies are generally presumed to have authority to promulgate de minimis exemptions to statutes they administer, "de minimis exemption power does not extend to 'extraordinarily rigid' statutes." *Shays v. Federal Election Comm'n*, 414 F.3d 76, 114 (D.C. Cir. 2005). "By promulgating a rigid regime, Congress signals that the strict letter

of its law applies in all circumstances, thus rebutting the presumption against 'pointless' applications." *Id.*; *see Sierra Club v. EPA*, 705 F.3d 458, 466 (D.C. Cir. 2013) (holding that EPA did not have authority to promulgate de minimis exemptions from preconstruction air quality monitoring "because . . . Congress was 'extraordinarily rigid' in mandating preconstruction air quality monitoring"). To the extent EPA is attempting to justify a de minimis exemption under section 202(a)(1), it has not made that intention clear. Nor has it explained its view on whether that provision should be considered "extraordinarily rigid," given Congress' broad and inclusive use of the terms "air pollutant" and "air pollution" and its mandate that EPA "shall" prescribe regulations applicable to new source air pollutant emissions "contributing" to endangering "air pollution."

Moreover, the circumstances covered by a de minimis exemption "must be truly de minimis. That is, they must cover only situations where 'the burdens of regulation yield a gain of trivial or no value.'" *Id.* (quoting *Envt'l Def. Fund v. EPA*, 82 F.3d 451, 466 (D.C. Cir. 1996) (other internal quotation omitted). A de minimis exemption "does not extend to a situation where the regulatory function does provide benefits, in the sense of furthering regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs," as that would constitute "impermissible second-guessing of Congress's calculations." *Id.* (internal quotations omitted); *see Waterkeeper Alliance v. EPA*, 853 F.3d 527, 530 (D.C. Cir. 2017) (vacating an EPA rule that had adopted an approach resembling a de minimis exception, where the record failed to show that the animal waste reports at issue were truly unnecessary). Here, EPA's regulatory analysis for the 2024 vehicle rules that it now proposes to repeal along with the 2009 Findings shows that those rules would result in $820 billion in fuel savings and $1.8 billion in public health and climate benefits over 30 years, were they left in place.[84] Thus, no credible case can be made that regulating greenhouse gases from section 202(a) sources—a sector responsible for 28 percent of U.S. annual greenhouse gas emissions and exceeding the *entire* annual emissions of most other countries, *supra* Part II—would have "no benefits" or would yield "trivial or no value."

While EPA now contends that "nowhere in the Endangerment Finding did the Administrator consider the extent to which emissions from CAA section 202(a) sources have a more than de minimis effect on the danger identified," 90 Fed. Reg. at 36304, the record from 2009 shows otherwise. EPA explained in detail in 2009 its analysis of this issue and how it compared with the agency's historical practice prior to 2009. 74 Fed. Reg at 66541-45. Among other things, EPA explained: (1) how it differentiated the causal requirements of the "cause, or contribute to" standard from "contribute significantly"; (2) how it considered the relative percentage of greenhouse gas emissions from section 202(a) sources as a share of domestic emissions and as a share of global emissions; (3) why it did not rely on a projection of future emissions form new vehicles rather than looking at current or recent vehicle emissions data; and (4) why it looked at the totality of the circumstances rather than attempting to define an absolute quantitative threshold below which any emissions quantity would be considered de minimis.

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[84] *See* Attachment 66, ENVT. PROT. AGENCY, MULTI-POLLUTANT EMISSIONS STANDARDS FOR MODEL YEARS 2027 AND LATER LIGHT-DUTY AND MEDIUM-DUTY VEHICLES, REGULATORY IMPACT ANALYSIS at 9-22, Table 9-19 (Mar. 2024); *see also id.* at 9-18 to 9-24 (other tables summarizing benefits).

See id. EPA's determinations on these issues were upheld in full by the D.C. Circuit, and its choice not to determine a minimum quantitative threshold for "contribution" followed longstanding judicial precedent. *See Coalition*, 684 F.3d at 122-23 (discussing and following *Ethyl Corp v. EPA*, 546 F.2d 1, 56-57 (D.C. Cir. 1976)). Here, by contrast, EPA vaguely rejects the approach taken in 2009 without explaining its consideration of the above details and case law, and without explaining what quantitative line (if any) it now proposes to draw between what it views as de minimis and non-de minimus greenhouse gas emissions.

Finally, to the extent EPA provides a specific example of how the approach taken in 2009 supposedly could lead to absurd results, the example fails to support its point. EPA argues that "the same logic" underlying EPA's 2009 approach "would allow the EPA to issue emission standards for water vapor (H2O), another substance emitted by new motor vehicles and engines that is also considered a powerful GHG." 90 Fed. Reg. at 36304. According to EPA, this proves that "severing the endangerment and cause or contribution findings leads to untenable results and lacks any limiting principle." *Id.* However, EPA identifies no sources to support its contentions concerning water vapor. *Id.*

Contrary to EPA's contentions, a recently published article finds that anthropogenic water vapor emissions are not comparable to carbon dioxide emissions in terms of their impact on global temperature rise. *See* Attachment 67, *Are Direct Water Vapor Emissions Endangering Anyone?*, REALCLIMATE.ORG (July 31, 2025) (as corrected, Aug. 1, 2025), https://www.realclimate.org/index.php/archives/2025/07/are-direct-water-vapor-emissions-endangering-anyone/. The article concludes, "[t]he bottom line . . . is that the impact of direct WV emissions are totally immaterial to whether CO2 emissions are a hazard." *Id.* This contradicts EPA's assumption that the same approach that led to endangerment and cause and contribute findings for the six well-mixed greenhouse gases identified in the 2009 Findings necessarily would lead to similar findings for water vapor. Because EPA itself failed to identify the source on which it based its assumption, its contentions about water vapor are not a valid ground to rescind the 2009 Findings. *See Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) (stating that for an agency's action to be upheld under the "arbitrary and capricious" standard, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'") (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

C. EPA's Remaining Asserted Grounds for Rescission in This Part of the Preamble Are Policy Considerations Held to Be Outside the Scope of Section 202(a)(1).

In *Massachusetts v. EPA*, after the Supreme Court concluded that "EPA has the statutory authority to regulate the emission of [greenhouse gases] gases from new motor vehicles," 549 U.S. at 532, it addressed EPA's alternative bases for not making an endangerment finding and held that EPA's reasoning consisted of policy considerations "divorced from the statutory text." *Id.*; *see also id.* at 533-35 (giving examples). The Court emphasized that the "judgment" the Administrator makes under section 202(a)(1) "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.'" 549 U.S. at 532-33 (quoting 42 U.S.C. § 7521(a)(1)) (alterations in original). And

as shown above, none of the pertinent case law since *Massachusetts* has called this into question *See supra* Part IV.D.

Thus, the remaining considerations EPA identifies in its discussion of the endangerment and cause and contribution findings, 90 Fed. Reg. at 36303-05, generally are foreclosed as a basis for rescission by *Massachusetts*, or otherwise are unsupported by competent data. These include:

- The contention that "reducing GHG emissions from all vehicles and engines in the United States to zero would not have a scientifically measurable impact on GHG emission concentrations or global warming potential." 90 Fed. Reg. at 36305. For this proposition, EPA primarily cites the 2025 draft report of the now-disbanded Climate Working Group, which is thoroughly discredited for reasons explained above. *Supra* Part III.A;

- The assertion that prescribing regulations on mobile sources could result in "carbon leakage," which EPA explains as "the situation that may occur if, for reasons of costs related to climate policies, businesses were to transfer production to other countries with laxer emission constraints . . . [and] could lead to an increase in their total emissions." 90 Fed. Reg. at 36305; *compare with* 549 U.S. at 533 (EPA's then-view that regulating greenhouse gases might impair the President's ability to negotiate with "key developing nations" to reduce their emissions was not a pertinent consideration); and

- The arguments that the 2009 Findings "failed to identify with sufficient rigor the purported danger linked to GHG emissions from new motor vehicles and engines," and that EPA in 2009 "did not consider whether emission standards for new motor vehicles would be futile as a means to address the identified dangers of GHG emissions from all anthropogenic sources." 90 Fed. Reg. at 36305; *compare with* 549 U.S. at 533 (EPA's then-view that "curtailing motor-vehicle emissions would reflect an inefficient, piecemeal approach to address the climate change issue" was not a pertinent consideration).

VI. The 2009 Endangerment Finding Properly Focused on Public Health and Welfare Effects of Motor Vehicle Pollution Independently from Factors That Guide Emissions Standards.

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

- 1. All aspects of this proposal, including legal and scientific developments that are being subject to public comment for the first time (C-1).

- 11. We seek comment on the proposed interpretation of CAA 202(a) as discussed in section III.A.1[85] of this preamble, including the rationales presented in that section and

[85] This appears to be an inadvertent error, with EPA presumably intending to refer to section IV.A.1 of the preamble. *Compare* 90 Fed. Reg. at 36299-305, *with id.* at 36325.

any further rationales that commenters believe support, or detract from, this interpretation (C–11).

- 14. We seek comment on the rationales presented in section V of this preamble, including on whether such public welfare considerations can and should be considered when prescribing and revising emission standards under CAA section 202(a) (C-14).

- 15. We seek comment on how to give effect to the statutory language discussed in section V of this preamble as incorporated into the reference in CAA section 202(a) to effects on "public health or welfare" (C-15).

- 27. [In pertinent part] Conversely, we seek comment on why the approach taken in the Endangerment Finding remains reasonable given the legal . . . developments discussed in this proposal[.]

A. EPA's Proposal to "Integrate" the Endangerment Finding Required in Section 202(a)(1) with the Emission-Standard-Setting Factors in Section 202(a)(1)-(2) Contravenes the Statute's Text, Context, and Purposes.

As discussed above, in the 2009 Endangerment Finding, EPA concluded that motor vehicle[86] emissions (among those from other sources) "cause, or contribute to," greenhouse-gas "air pollution, which may reasonably be anticipated to endanger public health or welfare" under CAA section 202(a)(1), 42 U.S.C. § 7521(a)(1). According to the statute's plain meaning and as interpreted by the Supreme Court and D.C. Circuit precedent, this "endangerment" finding is to be an independent scientific "judgment" focused on the dangers of "air pollution" to "public health or welfare." *Id.*; *Massachusetts*, 549 U.S. at 532-33; *Coalition*, 684 F.3d at 117. Congress expressly and intentionally omitted considerations of costs, timing, and feasibility from this initial endangerment finding, identifying those considerations as ones to be considered when EPA sets standards to address the air pollution identified as an endangerment. This is the best reading of the statute in light of the statutory text, context, and purposes. EPA's proposal that this scientific judgment regarding endangerment must be "integrated" with the independent factors Congress identified as relevant to the particular regulatory standards that EPA must set once it makes a judgment reads words into the statute that are not there, ignores Congress's design, and contravenes judicial precedent. *Contra* 90 Fed. Reg. 36298-99, 36303-04.

1. The best reading of the text requires EPA to make a scientific judgment regarding the health and welfare effects of certain air pollution independent of establishing emissions standards.

CAA section 202(a)(1) and 202(a)(2) contain two distinct administrative decisions with regard to emissions standards for new motor vehicles and engines:

[86] As used herein, the term "motor vehicle" or "motor vehicles" is used to encompass the phrase in section 202(a)(1) "new motor vehicles or new motor vehicle engines." 42 U.S.C. § 7521(a)(1).

- Under 202(a)(1), 42 U.S.C. § 7521(a)(1), EPA must make a "judgment" whether air pollution may reasonably be anticipated to endanger public health or welfare.

- "[I]f" the Administrator makes the "judgment" in section 202(a)(1) that such air pollution may be dangerous to public health or welfare, then EPA "shall by regulation prescribe … standards" in accordance with section 202. *Id.* § 7521(a)(1)-(2).

Section 202(a)(1) describes *what* the regulatory standards to be prescribed are "applicable to"—the emission of "any air pollutant" from "any class or classes" of new motor vehicles or engines that "cause, or contribute" to harmful air pollution. On the other hand, section 202(a)(2) tells EPA *how* to regulate such emissions. It instructs EPA that "[a]ny regulation prescribed under paragraph [202(a)(1)]"—i.e., one setting emission standards—must take effect "within the period the Administrator finds necessary to permit the development of requisite technology," giving "appropriate consideration" to cost. *Id.* § 7521(a)(2).

In setting forth these two administrative endpoints, Congress intentionally used language that distinguishes between the "judgment" EPA must make regarding an endangerment and the "standards," which are to be prescribed by regulations. The express and only question relevant to an endangerment finding under section 202(a)(1) is whether an endangerment "may reasonably be anticipated" to occur from the relevant "air pollution." This conclusion flows from the text itself: the endangerment inquiry ("which may reasonably be anticipated to endanger public health or welfare") follows and modifies the phrase "air pollution," 42 U.S.C. § 7521(a)(1), not the word "standards." Under the rule of the last antecedent, "a limiting clause or phrase … should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (citing 2A N. Singer, Sutherland on Statutory Construction § 47.33, p. 369 (6th rev. ed. 2000)).

To be sure, the standard-setting that Congress required if EPA makes an endangerment finding must take into account the timing, cost, and feasibility factors set forth separately in subsection 202(a)(2), to the extent "necessary" or "appropriate." 42 U.S.C. § 7521(a)(2). While the terms "necessary" and "appropriate" give EPA a certain amount of discretion to "fill up the details" in setting the standards, *see Loper Bright*, 603 U.S. at 395; *Michigan*, 576 U.S. at 752, nothing in the text allows EPA to "integrate" section 202(a)(2)'s discretionary factors into the specific health- or welfare-based "judgment" Congress told EPA to make in 202(a)(1). Doing so, as EPA proposes, would conflate the distinct administrative decisions Congress established without a textual basis and therefore should be rejected. *See Am. Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 465-67 (2001) (explaining that Congress's health-based direction to establish national air quality standards precluded EPA from considering costs, where costs where otherwise considered under the statute and citing section 202(a)(2) as an example of such a provision). Indeed, as discussed below, that Congress only authorized EPA's consideration of timing, cost, and feasibility in section 202(a)(2) and not section 202(a)(1) also undermines EPA's proposed newfound integration approach. *See infra* Part VI.A.2.

As the Supreme Court held in *Massachusetts*, the "judgment" required by section 202(a)(1) "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.'" 549 U.S. at 532-33 (quoting 42 U.S.C. § 7521(a)(1)). Moreover, where the scientific inquiry conducted by EPA

indicates that these statutory criteria are met, the Administrator simply does not have the discretion to decline to make a positive endangerment finding to serve other policy goals. *See Massachusetts*, 549 U.S. at 532-35.

Put another way, the statutory phrase's "use of the word 'judgment' is not a roving license to ignore the statutory text" defining that "judgment." *American Elec. Power*, 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. *Id.* ("it is evident" from the text that such considerations "have nothing to do with whether greenhouse gas emissions contribute to climate change").

EPA's proposal to read the CAA to require "integrating" the endangerment finding with standard setting is not the best reading of the text because it adds text that is not there. The word "integrate" appears nowhere in the text of section 202, § 7521. And "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).

2. Statutory structure and context establish that the endangerment finding required by section 202(a)(1) is to be based solely on potential public health and welfare effects and independent of the factors that guide emissions standards in section 202(a)(2).

As the foregoing explains, Congress's intentional design of section 202 describes distinct administrative endpoints related to setting emissions standards for motor vehicles. Section 202(a)(1) focuses on the relevant "air pollution" and whether it may present an "endangerment" to "public health and welfare." 42 U.S.C. § 7521(a)(1). Section 202(a)(2) provides guidance to EPA as to the timing, costs, and feasibility for setting standards that EPA must prescribe under section 202(a)(1), if it makes an endangerment finding. *Id.* § 7521(a)(2) (such standards "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period").

EPA cannot combine the distinct delegations in sections 202(a)(1) and 202(a)(2) where Congress intentionally kept them separate. *See, e.g.*, *Inhabitants of Montclair Twp. v. Ramsdell*, 107 U.S. 147, 152 (1883) ("It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."); *UARG*, 573 U.S. at 321 ("[R]easonable statutory interpretation must account for both 'the specific context in which ... language is used' and 'the broader context of the statute as a whole.'") (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)); *Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (cleaned up)). Because EPA's attempt to read in a requirement that the endangerment finding be "integrated" with factors separately

denominated as relevant to emissions standards collapses distinct duties, it is inconsistent with the structure and context of section 202, as a whole. Therefore, the interpretation in the proposal cannot be the best reading of the statute and should be rescinded. *See Loper Bright*, 603 U.S. at 400.

By segregating these inquiries, Congress established not only distinct statutory obligations but also fixed distinct statutory boundaries to guide the agency regarding endangerment and standards. It is EPA's proposal to collapse these inquiries that is "procedurally" defective, 90 Fed. Reg. 36299, 36303, not the interpretation that EPA has used since 2009 in accordance with the Supreme Court's interpretation in *Massachusetts*. Ultimately, the current-EPA's stated concern about the costs, timing, and feasibility of standards that will be "applicable to" the dangerous air pollution once identified is driven by the operation of the statute as designed by Congress, not by any choices made in the Endangerment Finding. Because Congress provided direction for EPA to consider cost and feasibility when promulgating regulations that prescribe standards—namely, section 202(a)(2)—EPA may not consider them as part of the "health or welfare"-based endangerment finding required by section 202(a)(1).

EPA's proposal claims that the Supreme Court's decision in *Michigan*, 576 U.S. at 752, provides "new guidance" as to how section 202(a)'s provisions should be interpreted. 90 Fed. Reg. at 36291, 36303. But *Michigan's* narrow holding that costs were among the relevant factors that EPA should have considered in regulating certain hazardous air pollution from power plants is based on different statutory provisions in a different part of the Clean Air Act. 576 U.S. at 57. If anything, *Michigan's* analysis shows why cost and feasibility are not relevant considerations in the context of section 202(a)(1)'s endangerment finding. Specifically, that case involved section 112(n)(1)(A), 42 U.S.C. § 7412(n)(1)(A), a "unique" procedure Congress established in section 112 to requires EPA to regulate hazardous air pollutants if it finds doing so would be "appropriate and necessary" following a study of the effects of such pollutants after regulation by other provisions of the Act. *Michigan*, 576 U.S. at 748. Leaving aside that the terms "appropriate" and "necessary" are used differently in section 202(a)(2) from how they are in section 112(n)(1)(A), those terms are entirely absent from section 202(a)(1)'s requirement that EPA determine whether emission of "any air pollutant from any class or classes of new motor vehicles or engines" "cause or contribute" to "air pollution" that may pose an "endangerment," *see* 42 U.S.C. § 7521(a)(1).

Contrary to EPA's proposal, 90 Fed. Reg. at 36303, the statutory provision governing the setting of National Ambient Air Quality Standards (NAAQS) analyzed in *American Trucking*, 531 U.S. 457, is the better statutory analogue to Congress's design in section 202(a) than the provision at issue in *Michigan*. Like section 202(a)(1), Clean Air Act section 109(b)(1), 42 U.S.C. § 7409(b)(1), instructs EPA to set the NAAQS "based on" the public health and welfare effects described in the air quality criteria established under section 108(a)(2), *id.*, § 7408(a)(2). While other provisions of the Act permit or require cost of implementation to be taken into account in implementing the NAAQS, those considerations are specifically omitted from the authorization to set the NAAQS. *See Am. Trucking*, 531 U.S. at 466-67. In fact, the Supreme Court in *American Trucking* rejected the argument that EPA makes now, that the endangerment inquiry under section 202(a)(1) is "not necessarily *limited* to those [health and welfare] effects," and thus that EPA could and should consider implementation cost in setting standards. *Id*., 531

U.S. at 467-69. The Court in *American Trucking* explained that it was unreasonable to infer such leeway in determining standards from the absence of an express prohibition, in part because implementation cost "is *both* so indirectly related to public health *and* so full of potential for canceling the conclusions drawn from direct health effects that it would surely have been expressly mentioned in [Sections 108 and 109] had Congress meant it to be considered." *Id*.

"*American Trucking* thus establishes the modest principle that where the Clean Air Act expressly directs EPA to regulate on the basis of a factor that on its face does not include cost, the Act normally should not be read as implicitly allowing the Agency to consider cost anyway." *Michigan*, 576 U.S. at 755. As already discussed, the factors relevant to the endangerment finding are distinct from the factors relevant to setting standards. While section 202(a)(2) allows EPA to consider costs, lead time, and feasibility in setting emission standards, section 202(a)(1) does not allow such considerations in determining whether certain "air pollution" may present an "endangerment" to "public health or welfare." Therefore, there is no basis for EPA's proposal to integrate those inquiries. *Am. Trucking Ass'n*, 561 U.S. at 465-67.

In attempting to sidestep *American Trucking*, EPA argues that section 202(a) is distinct from the NAAQS program and other statutory schemes that set forth "a multi-step inquiry in the environmental context." 90 Fed. Reg. at 36303. But the examples EPA provides are inapt. EPA points to the provisions of the Clean Air Act that implement NAAQS through state or federal implementation plans and certain Clean Water Act provisions that govern EPA's response to state-issued water quality standards. EPA fails to explain how these provisions, which address implementation of certain pollution control standards under principles of cooperative federalism are relevant comparisons to the delegation of authority for EPA to identify harmful air pollution from motor vehicles and establish standards for that pollution at the federal level.

EPA proposal to treat the term "welfare" in section 202(a)(1) as encompassing questions of cost of compliance or effectiveness of controls because it is distinct from "public health" also misses the mark. Congress defined all language "referring to effects on welfare" as including but not limited to:

> effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, *weather*, visibility, and *climate*, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, *whether caused by transformation, conversion, or combination with air pollutants*.

42 U.S.C. § 7602(h) (emphasis added). According to EPA, the inclusion of "economic values and on personal comfort and well-being" means EPA can consider whether the cost of compliance and effectiveness of controls make addressing climate change worth it, instead of whether these effects when caused by air pollutants cause or contribute to harmful air pollution. 90 Fed. Reg. at 36300.

It is hardly clear how EPA can claim that a term expressly defined to include effects on "weather" and "climate," whether by "transformation, conversion, or combination with air pollutants" can disallow EPA's consideration of greenhouse gas pollutants but require the

consideration of compliance costs and effectiveness of controls. Moreover, EPA's explanation omits important additional language from the statutory text and therefore does not reflect the best interpretation of the statute. Read in context, the plain and ordinary reading of the statute's references to "economic values and on personal comfort and well-being," as well as "climate" and "weather" are plainly intended to encompass effects in the context of air pollution from motor vehicles that may present and endangerment within the meaning of section 202(a)(1). Contrary to EPA's proposal, the definition of "welfare" is entirely consistent with and supports the reading of the statutory scheme for (1) identifying harmful motor vehicle pollution, and (2) establishing standards applicable to that pollution.

3. EPA's new interpretation of section 202(a) would override the Clean Air Act's purposes and the explicit preventative, precautionary intent of section 202(a).

EPA's new interpretation of section 202(a) conflicts with Congress's express language to make a "judgment" regarding effects on "public health or welfare," and the precautionary purposes of the Clean Air Act that were announced in its initial passage more than half a century ago. Even if the term "judgment" is understood to grant EPA some amount of discretion, EPA cannot act contrary to the statute's overall purposes. Courts favor "textually permissible readings that would advance statutory and regulatory goals over ones that would frustrate them." *NextEra Energy Res., LLC v. EPA*, 118 F.4th 361, 371 (D.C. Cir. 2024); *see generally* 42 U.S.C. § 7401 (Congressional findings and declaration of purpose); *id.* § 7401(b) (declaring purpose of Clean Air Act "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population").

Affirming the plain reading of the statute, *see infra* Parts VI.A.1 & VI.A.2, contemporaneous legislative history indicates that Congress's intent for section 202(a)(1) to require a protective, science-based judgment that is focused solely on potential threats to public health and welfare posed by air pollution. Congress added the present text of the endangerment provision in section 202(a)(1) in 1977, as an affirmation of *Ethyl Corp v. EPA*, 541 F.2d 1 (D.C. Cir. 1976) (en banc), which upheld EPA regulations restricting the amount of lead in gasoline. At issue in *Ethyl* was a pre-1977 fuel provision in section 211(c)(1)(A), 42 U.S.C. § 1857f-6c(1)(A) (1976), which provided that EPA could regulate fuel additives whose emissions "will endanger the public health or welfare." *See Ethyl*, 541 F.2d at 7. After a thorough analysis, this Court concluded that even this older "will endanger" standard "is precautionary in nature and does not require proof of actual harm before regulation is appropriate." *Id*. at 17.

Specifically, the *Ethyl* court distinguished the "will endanger the public health or welfare" provision from another CAA provision, which required EPA to make a finding as to whether the fuel additive would impair the performance of emission control devices. *See Ethyl*, 541 F.2d at 23-24. The Court explained that those other provisions call for a "peculiarly factual finding" that is "inherently unlike" the endangerment standard: "[d]anger is a risk, and so must be decided by assessment of risks as well as by proof of facts." *Id.* at 24.

When Congress amended the Act in 1977, it made clear its intent to ratify the approach taken in *Ethyl*. *See* H.R. Rep. No. 95-294, at 4351, *reprinted in* 1977 U.S.C.C.A.N. 1077, 1121-

29. First, Congress stressed that it intended to emphasize "the preventative or precautionary nature of the act" and "the predominant value of protection of public health." *Id.* at 49, 1977 U.S.C.C.A.N. at 1127. Congress also emphasized that it "authorize[d] the Administrator to weigh risks and make reasonable projections of future trends" and directed the Administrator "[t]o assure that the health of susceptible individuals, as well as healthy adults, will be encompassed in the term 'public health'." *Id.* at 49-50, 1977 U.S.C.C.A.N. at 1127-28. Consistent with these stated objectives, Congress amended the former "will endanger" language to the present "may reasonably be anticipated to endanger" language and expressly delegated this determination as a "judgment" to be made by the Administrator. *Id.* at 50-51, 1977 U.S.C.C.A.N. at 1129. Particularly relevant here, the Committee Report noted that it had considered and "expressly rejected "an amendment that would have deleted the phrase "in his judgment" and replaced it with a provision requiring factual findings instead. *Id*. at 51, 1977 U.S.C.C.A.N. at 1129.

Also relevant, Congress recognized that in light of the inherent "uncertainties and limitations in the data which will be available to the Administrator," courts should conduct "adequate judicial review of the reasonableness of the Administrator's judgment in assessing risks" but should not "attempt [] to act 'as the equivalent of a combined Ph. D. in chemistry, biology, and statistics'" *Id.* at 50, 1977 U.S.C.C.A.N. at 1128. By directing the Administrator to make a "judgment" to regulate even in the "awareness of the uncertainties and limitations in the data," the amendment effectuated Congress's desire to "emphasize the predominant value of protection of public health." *Id.*

Against this backdrop, Congress intentionally focused the endangerment finding required by section 202(a) solely on (1) whether "air pollution" (in this case atmospheric concentrations of six greenhouse gases) may reasonably be anticipated to endanger public health or welfare; and (2) whether any class or classes of motor vehicle emissions "cause or contribute to" this air pollution. The 2009 Endangerment Finding is properly focused on these considerations, independent of any analysis of appropriate emissions standards, and should be retained.

* * *

Even if section 202(a)(1) is ambiguous, 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."). As shown above, the meaning of section 202(a)(1) is clear, based on ordinary tools of statutory interpretation, and EPA has no "discretion" to rewrite the language Congress used or apply different procedures simply because the rewrite may suit the agency's current policy preferences. *UARG*, 573 U.S. at 375 (agencies have no power to "tailor" legislation to bureaucratic policy goals by rewriting ambiguous statutory terms).

B. Judicial Precedent and Agency Practice Affirms Rather Than Undermines EPA's 2009 Endangerment Finding.

Judicial precedent following *Massachusetts* affirms the statutory interpretation reflected in the 2009 Endangerment Finding and undercuts the current Administration's proposal, which

would significantly depart from EPA's longstanding, judicially approved approach. Most relevant here, in *Coalition*, both EPA's 2009 Finding, that greenhouse gas air pollution from may reasonably be anticipated to endanger public health or welfare, and its denial in 2010 of administrative petitions to reconsider that finding were thoroughly reviewed and upheld by the D.C. Circuit. *Coalition*, 684 F.3d at 119–126, *aff'd in part, rev'd in part on other grounds sub nom. UARG*, 573 U.S. 302, *and amended sub nom. Coal. For Responsible Regul., Inc. v. EPA*, 606 F. App'x 6. Contrary to the stance it now takes regarding section 202(a)(1), EPA recognized in *Coalition* that an endangerment finding under 202(a) is a "science-based judgment devoid of considerations of policy concerns and regulatory consequences." *Id.* at 117.

Particularly salient, the *Coalition* court explicitly rejected arguments that non-health and welfare policy considerations should inform EPA's judgment whether any air pollutant may "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" under Section 202(a) of the Clean Air Act. *Id.*, 684 F.3d at 117-18. The D.C. Circuit upheld the interpretation in the 2009 Finding and rejected petitioners' contrary arguments that section 202(a) required EPA to consider "the benefits of activities that require greenhouse gas emissions, the effectiveness of emissions regulation triggered by the [e]ndangerment [f]inding, and the potential for societal adaption to or mitigation of climate change." *Id.*[87] The court emphasized, as have prior decisions, that the endangerment language in section 202(a)(1) "require[s] a 'scientific judgment' about the potential risks greenhouse gas emissions pose to public health or welfare – not policy discussions." *Id.* at 117-18. In reaching its conclusion, the court relied on statutory text, the Supreme Court's decision in *Massachusetts*, and the fact that Section 202 directs the Agency to consider "questions about the cost of compliance with new emissions standards and the availability of technology for meeting those standards" in a separate subsection. *Id.* at 118. Thus, *Coalition* squarely shows that EPA's proposed new interpretation whereby EPA would integrate its judgment on endangerment with factors including costs, adaptation, and mitigation, has been thoroughly considered and rejected as contrary to the statute. *Contra* 90 Fed. Reg. at 36303.[88] The Supreme Court took certiorari from *Coalition* on a

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[87] Adaptation and mitigation are measures taken in response to a climate change. The Intergovernmental Panel on Climate Change defines mitigation as: "A human intervention to reduce emissions or enhance the sinks of greenhouse gases." Adaptation is defined as: "In human systems, the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities. In natural systems, the process of adjustment to actual climate and its effects; human intervention may facilitate adjustment to expected climate and its effects." Attachment 68, J.B. Robin Matthews (ed.), *Annex I: Glossary in* GLOBAL WARMING OF 1.5°C. AN IPCC SPECIAL REPORT ON THE IMPACTS OF GLOBAL WARMING OF 1.5°C ABOVE PRE-INDUSTRIAL LEVELS AND RELATED GLOBAL GREENHOUSE GAS EMISSION PATHWAYS, IN THE CONTEXT OF STRENGTHENING THE GLOBAL RESPONSE TO THE THREAT OF CLIMATE CHANGE, SUSTAINABLE DEVELOPMENT, AND EFFORTS TO ERADICATE POVERTY (V. Masson-Delmotte, et al. (eds.)) Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 541-562, doi:10.1017/9781009157940.008. Therefore, they have nothing to do with whether motor vehicle emissions "endanger" public health and welfare in the first instance.

[88] In the next section, this comment explains, in connection with the proposal's erroneous "major questions" analysis, that *UARG* provides no basis to rescind the 2009 Endangerment Finding based on EPA's new interpretation and approach. *See infra* Part VII.

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.[89] In 2022, EPA issued a forty-page decision memorandum denying 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.[90] 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). EPA's consistent application of section 202(a) since 2009, which rests on factual premises within [the agency's] expertise," is also "especially informative" and undercuts its current proposed change in interpretation. *Loper*, 603 at 402.

EPA now contends that "the decision to sever meant that the EPA has never meaningfully considered or invited public comment on the cost, effectiveness, and continued propriety of its GHG regulatory program." 90 Fed. Reg. at 36303. Aside from its strained and incorrect legal interpretation of section 202(a)(1)–(a)(2), EPA provides no support for this statement. Contrary to EPA's current view as expressed in the proposal, EPA has considered the cost, effectiveness, and propriety of its GHG emissions standards as set forth in section 202(a)(2).[91]

In addition to precedent interpreting section 202, D.C. Circuit case law addressing Clean Air Act section 111 also affirms the legal underpinnings of the 2009 Endangerment Finding and undermines the proposed rule's statutory analysis. Section 111 has a decision-making framework for certain stationary sources that is similar to section 202(a)'s framework for mobile sources. Under section 111(b)(1)(A), 42 U.S.C. § 7411(b)(A), EPA lists categories of sources that that in the Administrator's judgment, "cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." Under section 111(b)(1)(B), *id*. § 7411(b)(1)(B), must establish standards of performance in accordance with

[89] Attachment 3, *supra*, note 3.

[90] Attachment 4, Denial *supra*, note 4; *see also* 87 Fed. Reg. 25412 (Apr. 29, 2022).

[91] *See*, e.g., *Light-duty Greenhouse Gas Standards and Corporate Average Fuel Economy Standards*, 75 Fed. Reg. 25324, 25444-539 (May 7, 2010); *Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles*, 76 Fed. Reg. 57106, 57197-254, 57292-362 (Sept. 15, 2011); *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 Fed. Reg. 62624, 62701-957 (Oct. 15, 2012); *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2*, 81 Fed. Reg. 73478, 73530-931 (Oct. 25, 2016); *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, 85 Fed. Reg. 24174, 24242-25187 (Apr. 30, 2020); *Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards*, 86 Fed. Reg. 74434, 74473-520 (Dec. 30, 2021); *Multi-Pollutant Emissions Standard for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 89 Fed. Reg. 27842, 27983-28139 (Apr. 18, 2024).

certain procedures and criteria, including that the standards be based on the "best system of emissions performance." In *National Lime Association v. EPA*, 627 F.2d 416 (D.C. Cir. 1977), the D.C. Circuit recognized that decisions about the achievability of reductions for specific pollutants are part of the inquiry for setting an appropriate "best system of emission reduction" at the standard-setting step under Section 111(b)(1)(B). *See* 627 F.2d at 426-30. Nothing in the court's analysis indicates that the standard-setting criteria should have entered into the listing decision for that category at the first step under Section 111(b)(1)(A). To the contrary, Congress's decision to treat the act of listing a source and the act of issuing standards for that source as two distinct decision points shows exactly the opposite. *See supra* Part VI.A.

Another section 111 case relating to greenhouse-gas pollution specifically concluded that EPA's significant-contribution finding made in a 2015 rulemaking was lawful. *American Lung Ass'n v. EPA*, 985 F.3d 914, 976-77 (D.C. Cir. 2021). Among other things, Petitioners in *American Lung* challenged EPA's decision on the grounds that it did *not* consider the policy factors set out in the proposed rule when making the listing decision. The court held that EPA's decision to list fossil fuel-fired power plants' greenhouse gas pollution was not arbitrary and capricious in light of EPA's findings that 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.* Although the Supreme Court accepted certiorari on separate issues, *West Virginia*, 597 U.S. 697, it did not review or disturb the part of the decision upholding EPA's significant-contribution finding. Because the design of section 111(b) is similar to that in section 202(a), *American Lung* provides further support for EPA's 2009 Endangerment Finding.

VII. The 2009 Endangerment Finding Presents No "Major Question."

This Part VII responds, inter alia, to the following EPA request for comment:

- 24. We further propose that *Massachusetts* must be read together with the Supreme Court's decisions in *West Virginia* and *UARG*, which applied the major questions doctrine to statutory provisions similar to CAA section 202(a). To that end, we seek comment on whether *Massachusetts* applied the major questions doctrine in the first instance, and, if it did, whether that analysis informs the meaning of CAA section 202(a) on its own terms and in light of *UARG* and *West Virginia* (C–24).

The major questions doctrine is a tool of statutory interpretation that courts have applied only in "extraordinary cases," namely where an agency asserts novel and transformative powers under ambiguous statutory text. *West Virginia*, 597 U.S. at 716, 723-24; *UARG*, 573 U.S. at 324. The 2009 Endangerment Finding is not such an extraordinary case. In the Finding, EPA did not claim "unheralded authority," or read expansive power into vague and ambiguous statutory terms. The 2009 Endangerment Finding makes a judgment that the Supreme Court held in no

uncertain terms that EPA was required to make under the Clean Air Act, i.e., whether greenhouse gas emissions from motor vehicles contribute to air pollution that may endanger public health or welfare. *Massachusetts*, 549 U.S. at 532-34; *see Coalition*, 684 F.3d at 117-18 (reaffirming the holding in *Massachusetts* that CAA section 202(a)(1) "*requires*" EPA to make a "scientific judgment") (emphasis added). To the extent the Endangerment Finding raises any major question, that issue was considered and resolved by *Massachusetts.* *See infra* Part VII.A.

While the 2009 Endangerment Finding no doubt addresses an issue of exceptional importance, it is the kind of expert "judgment" that Congress routinely delegates to administrative agencies. *See Loper*, 603 U.S. at 394-95. The Endangerment Finding provides EPA's expert evaluation of a voluminous scientific and technical record regarding the effects of climate change from motor vehicle emissions. The proposal's argument that *UARG* and *West Virginia* require EPA to revisit its authority to issue the endangerment finding is not remotely compelled by those Supreme Court decisions, relating to different issues under different provisions of the Clean Air Act. *See infra* Part VII.B. Because EPA's authority to issue the Endangerment Finding has been acknowledged by courts and EPA for decades, the major questions doctrine does not apply and is no basis to rescind the Endangerment Finding. *See infra* Part VII.C.

A. Resorting to the Major Questions Doctrine Is Unnecessary Because Congress's Intent May Be Discerned Using the Usual Tools of Statutory Construction.

EPA's major question argument primarily relies on the economic and political significance of greenhouse gas regulation as imposing an industry-wide shift to electric vehicles as a reason to invoke the doctrine. 90 Fed. Reg. at 36306. As a threshold matter, the 2009 Endangerment Finding does not regulate greenhouse gas emissions from any class or classes of motor vehicles, prohibit the use of gasoline-powered vehicles, or specify any control technologies whatsoever, involving electrification or otherwise. The Endangerment Finding reflects EPA's robust consideration of voluminous and compelling evidence supporting the EPA Administrator's finding under Clean Air Act section 202(a)(1) that motor vehicle emissions contribute to elevated concentrations of greenhouse gases in the atmosphere that may reasonably be anticipated to endanger the public health and welfare of current and future U.S. generations. EPA issued the Finding only after the Supreme Court found in *Massachusetts* that EPA's failure to respond to a rulemaking petition raising the potential harms of greenhouse gases was a violation of a clear, mandatory duty of the statute.

Moreover, that an agency action may have large or even significant political and economic consequences does not by itself trigger the major questions doctrine when the action "fits neatly within the language of the statute" and thus aligns with the agency's statutory role. *Biden v. Missouri*, 595 U.S. 87, 93-94 (2022) (per curiam). For the reasons already discussed, EPA's conclusion in the 2009 Endangerment Finding that greenhouse gases are "air pollutants" and motor vehicles "contribute" to the mix of greenhouse gas air pollution that is dangerous to public health and welfare is action that is clearly authorized by 202(a)(1). *See supra* Parts IV, V, VI.

The Supreme Court in *Massachusetts*, 549 U.S. at 530-32, applied and rejected a major questions analysis as articulated in *FDA v. Brown & Williamson Tobacco Co.*, 529 U.S. 120, 133 (2000). EPA implausibly claims that the Court's analysis was not a major questions analysis, while at the same time urging that *Brown & Williamson* supports application of the major questions doctrine here. 90 Fed. Reg. at 36305-06. EPA's attempt to waive away the application of *Brown v. Williamson* is purely semantic. "[W]hile the major questions 'label' may be relatively recent, it refers to 'an identifiable body of law that has developed over a series of significant cases,'" *Brown & Williamson* among them. *Nebraska*, 600 U.S. at 504-05 (quoting *West Virginia*, 597 U.S. at 724). The *Massachusetts* Court thoroughly analyzed the doctrinal principles of major questions and rightly rejected arguments that it applied, holding that that there was nothing contrary to a "common sense" reading of the CAA that EPA possessed the authority to regulate harmful greenhouse gases. *Id.*, 549 U.S. at 531 (noting that "there is nothing counterintuitive to the notion that EPA can curtail the emission of substances that are putting the global climate out of kilter" and rejecting the "invitation to read ambiguity into a clear statute").

If the major questions doctrine has a role to play here at all, it requires rejecting EPA's new interpretation of section 202(a), which if adopted would itself cause severe economic disruption. EPA's own analysis shows that rescinding the 2009 Endangerment Finding would result in $350 *billion* in societal costs, mainly due to increased fuel prices.[92] According to the U.S. Energy Information Administration's most recent analysis, fuel prices will increase over the next decade if the proposed repeal of the Endangerment Finding is finalized, while they would continue to decline if the Endangerment Finding is left undisturbed.[93] Here, EPA's regulatory analysis for the 2024 vehicle rules that it now proposes to repeal along with the 2009 Findings shows that those rules would result in $820 billion in fuel savings and $1.8 billion in public health and climate benefits over 30 years, were they left in place.[94] EPA's current analyses do not consider these costs or potential impacts related to other proposed deregulatory actions[95] and therefore ignore significant societal costs of climate change.[96]

To the extent EPA attempts to minimize those costs by relying on the CWG Report predicting that the effects of climate change are not as harmful as was believed at the time of the

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[92] Attachment 69, ENVT. PROT. AGENCY, RECONSIDERATION OF 2009 ENDANGERMENT FINDING AND GREENHOUSE GAS VEHICLE STANDARDS: DRAFT REGULATORY IMPACT ANALYSIS, EPA-420-D-25-002, at 20 (July 2025) (emphasis added).

[93] Attachment 70, *Real Petroleum Prices: Transportation: Motor Gasoline*, U.S. ENERGY INFORMATION ADMINISTRATION (2024), Table 12, https://www.eia.gov/outlooks/aeo/data/browser/#/?id=12-AEO2025&region=0-0&cases=ref2025~hm2025~lm2025~highprice~lowprice~highogs~lowogs~highZTC~lowZTC~alttrnp~nocaa111~aeo2023ref&start=2023&end=2050&f=A&linechart=~~~~~~~~~~~~~~ref2025-d032025a.30-12-AEO2025~alttrnp-d032125a.30-12-AEO2025&map=&ctype=linechart&sourcekey=0 (last visited Sept. 15, 2025).

[94] *See* Attachment 66, *supra* note 84 at 9-22, Table 9-19, 9-18 to 9-24 (other tables summarizing benefits).

[95] *See* 90 Fed. Reg. at 36326 (discussing *Draft Regulatory Impact Analysis*).

[96] *See supra* Part II.

Endangerment Finding, that reliance should be rejected. The evidence of the harmful effects of climate change has only strengthened since what was reported in the 2009 Endangerment Finding, and the CWG Report minimizing those effects is based on bad science and has been roundly criticized.[97] Rescinding the 2009 Endangerment Finding would have profound effects on the nation's efforts to address greenhouse gases that lead to climate change and would be hugely costly. In view of these enormous effects on the national economy and public health and welfare, any rescission of the 2009 Endangerment Finding should be greeted with "skepticism." *UARG*, 573 U.S. at 324. Because the Endangerment Finding responds to a clear statutory duty to identify the harmful effects of greenhouse gas air pollution on public health and welfare, EPA should not finalize the proposal to rescind it.

B. Congress's Delegation to EPA of a Statutory Duty to Determine Potential Risks from Motor Vehicle Emissions as a Predicate to Regulating Them Is a Routine Administrative Matter Unlike Situations Where the Supreme Court Has Applied the Major Questions Doctrine.

EPA is simply wrong in the proposal that later Supreme Court decisions in *West Virginia* and *UARG* call into question the Supreme Court's holding in *Massachusetts*. EPA's judgment in the 2009 Endangerment finding that motor vehicles contribute to greenhouse gas pollution, and that such pollution is harmful to public health and welfare, cannot be characterized as a new or transformative assertion of regulatory authority. In *West Virginia* the Supreme Court faulted EPA for employing an "unprecedented" regulatory approach that departed from EPA's prior practice under that provision, transforming it from one regulatory scheme to an "entirely different kind." *Id*. at 728. The Endangerment Finding is no such claim of "unheralded" regulatory power over "a significant portion of the American economy." *Id*. at 324.

A judgment regarding the effects of certain pollution from sources long subject to pollution standards is simply not the kind of regulatory transformation that is addressed by the major question doctrine. The Supreme Court's decision in *UARG* demonstrates this point, contrary to EPA's proposal. In *UARG*, the Supreme Court addressed the question whether EPA could construe the term "air pollutant," in a specific provision of the Clean Air Act, to cover greenhouse gases. As the Court explained, the Agency's interpretation would have given it permitting authority over "millions of small sources, such as hotels and office buildings, that had never before been subject to such requirements." *Id*., 573 U.S. at 310, 324. As already discussed, control of harmful mobile source emissions is a cornerstone of the Clean Air Act and EPA has set (and revised) emissions standards for motor vehicles for decades. EPA's decision, made at the behest of the Supreme Court in *Massachusetts* that greenhouse gas pollutants from motor vehicles cause or contribute to harmful air pollution, is not a major question.

[97] *See supra* Parts I-III (response to preamble section V.B).

C. Recent Legislation Relating to Other Greenhouse Gas Programs Does Not Create a Major Question or Shed Any Light on the Well-Established Meaning of Section 202(a).

In an attempt to resurrect the major questions doctrine as applied to Clean Air Act section 202(a), EPA improperly relies on several recent legislative developments, including the 2020 American Innovation and Manufacturing (AIM Act), the Inflation Reduction Act of 2022, the One Big Beautiful Bill (OBBB) Act, and actions disapproving certain EPA actions under the Congressional Review Act (CRA) involving the Clean Air Act's pre-emption waiver in section 209. 90 Fed. Reg. at 36306-07. According to EPA, these developments are evidence that Congress did not intend in 1970 and 1977 to grant EPA broad authority to prescribe standards for greenhouse gas regulations akin to section 202(a) applicable to emissions of other air pollutants. *Id.* EPA is simply wrong that these recent developments trigger a major question, and, indeed, they shed no light whatsoever on Congress's intention in 1977, when it originally enacted the current version of section 202(a). *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 670 (2020) (actions of a later Congress are a "particularly dangerous basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt").

First, as has already been exhaustively explained by our comments above, the Supreme Court in *Massachusetts* addressed the relevant statutory question whether 202(a)(1) authorizes EPA to make an endangerment finding with regard to greenhouse gas pollutants that cause or contribute to dangerous air pollution. Not only did the Court say that EPA had authority to make such a finding, but it held that the Clean Air Act was *unambiguous* that EPA *mus*t make an appropriate finding under section 202(a)(1). At the time, EPA had argued that Congress's failure to amend the Act to explicitly grant EPA broad authority to address greenhouse gases should be taken as an indication that EPA lacked such authority. The *Massachusetts* Court rejected this argument, noting "[t]hat subsequent Congresses have eschewed enacting binding emissions limitations to combat global warming tells us nothing about what Congress meant when it amended § 202(a)(1) in 1970 and 1977." 549 U.S. at 529-30. So too here.

The 2009 Endangerment Finding that EPA then made in response to *Massachusetts* was reviewed by the D.C. Circuit, upheld by that court, and left undisturbed by subsequent agency actions and judicial decisions that followed. *See supra* Parts IV.D & VI.B. The Supreme Court has now revisited the issue of greenhouse gas pollution under the Clean Air Act numerous times and has not reversed its prior decision that greenhouse gas pollution is within EPA's authority under section 202(a). *Id.*; *see also supra* Parts IV.D. & VII.A-B. Likewise, EPA itself has responded to numerous administrative petitions for reconsideration and has promulgated multiple rounds of emissions standards and revised emissions standards in accordance with section 202(a) and the 2009 Finding, without any court questioning of EPA's basic statutory authority to address greenhouse gases under section 202(a). *See supra* Part VI.B & n.3. Thus, that Congress's conferral of broad authority in section 202(a) to address emissions of "any pollutant" from "any class or classes of motor vehicles" includes greenhouse gases is well-established and beyond debate.

Moreover, to the extent subsequent enactments could be at all informative of the intention of earlier Congresses, as discussed above, Congress reaffirmed the inclusion of greenhouse gases

within the meaning of "air pollutant[s]" addressed by the Clean Air Act when it enacted the Inflation Reduction Act, Pub. L. 117-169; *see* 42 U.S.C. § 7432(d)(4) (defining "greenhouse gas" as "the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride"); *id.* §§ 7433(d)(2), 7433(d)(2), 7434(c)(2), 7435(c), 7436(i), 7437(d)(2), 7438(d) (same). As was noted by the Committee chair Frank Pollone at the time, that Congress amended the Clean Air Act by repeatedly defining "greenhouse gas" as including the same six gases included in the 2009 Endangerment Finding stands to reinforce longstanding authority and responsibility of the [EPA] to regulate [greenhouse gases] as air pollutants under the Clean Air Act." 168 Cong. Rec. E868 (2022); *see also supra* Part IV.C.

While EPA points to subsequent legislative enactments, none of the examples it cites can outweigh the clear authorization in section 202(a)(2) to regulate "*any* pollutant" from "*any* class or classes of motor vehicles" that is found to *contribute* to dangerous air pollution, or Congress's express recognition of greenhouse gases as "air pollutants." Indeed, EPA's proposal does not point to any enactment that removes or amends EPA's authority under Clean Air Act section 202(a). 90 Fed. Reg. at 36306-07. Alleged "repeals by implication are not favored and a "rarity." *Maine Community Health Options v. United States*, 590 U.S. 296, 315 (2020) (citations omitted). Further, the Supreme Court has looked with special skepticism at implied repeals "in the appropriations context." *Id.* (citations omitted).

The OBBB Act provisions EPA cites in the proposal for the most part rescind unobligated monies appropriated in the Inflation Reduction Act for EPA to fund various greenhouse gas programs. With one exception (Clean Air Act section 134, 42 U.S.C. § 7534), Congress's rescission in the OBBB Act of monies appropriated to EPA under the Clean Air Act did not remove the underlying program authority that Congress previously delegated to EPA. P.L. 119-21, Title VI, July 4, 2025, 139 Stat. 72. The proposal also cites Congress's amendment to EPA's authority to collect monies under the waste reduction program for methane gas emissions, but this change merely extended the date by which EPA is to begin collecting the charge; Congress did not repeal the program. Because the OBBB Act merely rescinded appropriations and did not explicitly modify the underlying obligations, it is not sufficient evidence of repeal by implication. *See Maine Community Health*, 590 U.S. at 316-17.

For similar reasons, Congress's disapproval under the Congressional Review Act (CRA) of certain EPA actions under the methane waste emissions reduction program, 42 U.S.C. § 7436, and pre-emption waivers granted to California for its vehicle emissions programs under CAA § 209, 42 U.S.C. § 7543, should not be viewed to retroactively create a major question. The CRA resolutions that EPA cites do not pertain to the 2009 Endangerment Finding and therefore do not indicate any congressional intent with regard to the Finding. *See Safari Club Int'l v. Haaland*, 31 F.4th 1157, 1169 (9th Cir. 2022) (citing 5 U.S.C. § 801(g) ("If the Congress does not enact a joint resolution of disapproval [] respecting a rule, [then] no court or agency may infer any intent of Congress from any action or inaction of the Congress with regard to such rule.")). Moreover, EPA overstates the import of a resolution under the CRA, which provides that a rule that does not take effect under the CRA "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." 5 U.S.C. § 801(b)(1)-(2).

Finally, EPA argues that the AIM Act, enacted in 2020 as part of the Consolidated Appropriations Act of 2021, Pub. L. 116-260, Div. S, § 103, 134 Stat. 2255 (Dec. 27, 2020), and codified as 42 U.S.C. § 7675, shows that Congress chose not to delegate broad authority to EPA to address greenhouse gases because the AIM Act establishes detailed instructions, a timeline, and requirements for implementation of the authority delegated. 90 Fed. Reg. at 36306. As EPA is aware, the use of HFCs, an extremely potent greenhouse gas, has been rapidly increasing due to the global phase out of ozone-depleting substances, which is addressed by other provisions of the Clean Air Act, and the increased demand for refrigeration and air conditioning.[98] To address further encouraging the use of HFCs for ozone-depleting substances, the AIM Act authorizes EPA to establish a program to phase down consumption and production of hydrofluorocarbons (HFCs) in the United States 85% by 2036. In the case of HFCs, Congress was acting to deal with a specific air pollution problem—the rapid of a specific pollutant—in specific circumstances and it was legislating against the backdrop of pre-existing CAA provisions. The AIM Act is no basis to constrain the broad authority Congress clearly and expressly delegated to EPA under CAA section 202(a) to address the emissions of "any pollutant" from "any class or classes of motor vehicles" if those pollutants "contribute to" dangerous air pollution.

Indeed, despite these developments and with full knowledge of *Massachusetts'* resolution of these issues and EPA's practice since then, Congress has chosen not to amend the broad and inclusive language Congress enacted in section 202(a)(1) in 1977. *Supra* Part IV.C. While steps to ameliorate the impending harms of greenhouse gas related climate change must continue to be a focus of debate at all levels of government and with the public, EPA's clear authority to address greenhouse gas pollution under section 202(a) has been settled for decades and presents no major question to resolve. Against this backdrop, EPA's proposal to rescind the Endangerment Finding would be contrary to law, as well as completely at odds with the overwhelming evidence amassed within the Finding and since then as to the harms of greenhouse gas pollution to public health and welfare.

Comments on Federal Common-Law Displacement Discussion in Preamble Part VI

VIII. EPA's Proposed Statutory Interpretation Cannot be Reconciled with Displacement of Federal Common Law Remedies.

In Part VI of the preamble, EPA expresses and seeks comment on the view that a final action adopting the statutory interpretations it proposes would not affect the displacement of federal common law remedies for the adverse impacts of greenhouse gas emissions. 90 Fed. Reg. at 36315. EPA states that "the CAA would continue to preempt Federal common-law claims for GHG emissions because 'Congress delegated to EPA the decision whether and how to regulate' such emissions. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011)." 90 Fed. Reg. at 36315. EPA adds that "[t]he bases for repeal proposed in this action would not

[98] Attachment 71, *Background on HFCs and the AIM Act*, ENVT. PROT. AGENCY, https://www.epa.gov/climate-hfcs-reduction/background-hfcs-and-aim-act (last visited Sept. 19, 2025).

foreclose us from regulating CO_2, methane, NO_X, HFCs, PFCs, or SF6 emissions from new motor vehicles or engines if the Administrator determines that one or more of those gases meet the requirements for regulation under CAA section 202(a), as discussed herein." *Id.*

EPA's preemption discussion in Part VI directly contradicts what it explains in Part IV.A regarding its proposed interpretations of the statutory terms "air pollutant" and "air pollution" and the basis for those interpretations. In Part IV.A, EPA explains that under its "primary proposal" for repealing the 2009 Findings, it proposes to conclude that the six greenhouse gases identified in those Findings are categorically distinct from the air pollutants subject to CAA regulation, in ways that make greenhouse gases beyond EPA's section 202(a) authority. *See* 90 Fed. Reg. at 36300-02. EPA's proposed interpretations cannot *both* be accurate, however. If EPA's position as explained in Part IV.A is determined to be correct, then it necessarily should follow that federal common law preemption under *Am. Elec. Power* no longer applies. EPA's *authority* to regulate greenhouse gases was central to the decision *Am. Elec. Power*. The *Am. Elec. Power* Court emphasized that "*Massachusetts* made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act. 549 U.S. at 424. The Court then held that "the Clean Air Act *and the EPA actions it authorizes* displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired Powerplants." 564 U.S. at 424 (emphasis added). Thus, if EPA's interpretation in Part IV.A is finalized and upheld as EPA explains it, then the Clean Air Act no longer should displace federal common law claims arising from harm associated with greenhouse gas emissions.[99]

Conclusion

The comments above demonstrate that,

(1) EPA properly determined in 2009, and recently reaffirmed, that greenhouse gas emissions from mobile sources contribute to air pollution that endangers public health and welfare;

(2) Recent studies and assessments continue to strengthen the scientific basis for EPA's 2009 Finding;

(3) EPA's alternative rationale for the proposal, that the 2009 Endangerment Finding analyzed contribution and endangerment in an unreasonable manner, is unsupported by the law and the record;

(4) Greenhouse gases are "air pollutants" that cause or contribute to harmful "air pollution" within the meaning of the Clean Air Act;

[99] The Clean Air Act also does not preempt state common law and statutory nuisance remedies. *See, e.g.*, *Bell v. Cheswick Generating Station*, 734 F.3d 188, 296-97 & n.7 (3d Cir. 2013) (distinguishing *Am. Elec. Power*); *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 80-85 (S. Ct. Iowa 2014); *cf. National Pork Producers Council v. Ross*, 598 U.S. 356, 364 (2023) (affirming dismissal of complaint asserting a dormant Commerce Clause challenge to a state law).

(5) EPA identifies no valid basis to rescind its 2009 "Endangerment" and "Cause or Contribute Findings";

(6) The 2009 Endangerment Finding properly focused on public health and welfare effects of motor vehicle pollution independently from factors that guide emissions standards;

(7) The 2009 Finding presents no "major question";

(8) EPA's proposed statutory interpretation cannot be reconciled with displacement of federal common law remedies.

For these reasons, the proposal to rescind the Endangerment Finding is unlawful, arbitrary and capricious, and contrary to sound science. It should be withdrawn.

List of Attachments

Attachment 1	ENVTL. PROT. AGENCY, TECHNICAL SUPPORT DOCUMENT FOR ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(A) OF THE CLEAN AIR ACT (2009), https://www.epa.gov/sites/default/files/2021-05/documents/endangerment_tsd.pdf.
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