Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards

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Landmark Legal Foundation ("Landmark") submits this comment on the Environmental Protection Agency's ("EPA" or "the Agency") proposed rule, **Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards** ("Proposed Rule")**.** For the reasons set forth in this comment, EPA should finalize the Proposed Rule.

The 2009 Endangerment Finding:

1) Exceeds EPA's statutory authority under Section 202(a) and Section 202(a)(1) of the Clean Air Act.
2) Improperly circumvents the requirement to evaluate costs and fails to properly analyze the Findings' effects.
    a. Circumvents cost evaluation and SAB approval.
    b. 5 U.S.C. § 604(a)(5) and 42 U.S.C. § 7621(a)
3) Can no longer be justified as it violates the Major Questions Doctrine, *West Virginia v. EPA*, 577 U.S. 1126 (2016), and runs afoul of the Supreme Court's recent decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

Introduction

Landmark Legal Foundation ("Landmark") submits this comment in support of the Environmental Protection Agency's proposed rule, "Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards." Fed. Reg. 36,288 (Aug. 1, 2025). Since 2009, EPA has relied on an improper interpretation of Section 202(a) of the Clean Air Act (CAA) to regulate Greenhouse Gas (GHG) emissions. Congress never provided EPA with explicit authority

to initiate an enormously transformative regulatory framework that would imposes hundreds of billions of dollars in costs. Recent decisions from the Supreme Court have held that administrative agencies can only justify regulations with vast and significant economic and political consequences when Congress has expressly delegated such authority. See *West Virginia v. EPA*, 577 U.S. 1126 (2016).

Rescinding the Endangerment Finding ensures that EPA's current regulatory framework is consistent with powers delegated to it via the CAA. Landmark therefore respectfully support EPA's decision to rescind the 2009 Greenhouse Gas Endangerment Finding ("Endangerment Finding" or "the Finding"). 74 Fed. Reg. 66,496 (Dec. 15, 2009).

Background: The Clean Air Act

Congress enacted the Motor Vehicle Pollution Control Act of 1965 (MVPCA) as an amendment to the 1963 Clean Air Act.[1] The MVPCA responded to growing environmental concerns from urban smog, leaded gasoline, and findings that emerged from the 1963 Clean Air Act—including a 1964 report written by Senator Edmund Muskie's subcommittee titled *Steps Toward Cleaner Air.* Under Section 202(a), the law extended the Secretary of Health, Education, and Welfare authority to "prescribe… practicable standards, applicable to the emission of any substance, from any new motor vehicles or new motor vehicle engines, which in his judgement cause or contribute to… air pollution which endangers the health or welfare of any person." Public Law 89-272, 202(a), 79 Stat. 992, 992-93 (1965).

Two years later, Congress enacted the Air Quality Act of 1967, expanding research into air pollution emission inventories, monitoring, and control techniques, while retaining Section 202(a). Public Law 90-148, 202(a), 81 Stat. 485, 499 (1967). By 1970, presidential requests from Richard Nixon, combined with strong bipartisan support, culminated in the Clean Air Act Amendments of 1970. Passing nearly unanimously (73-0 in the Senate; 447-1 in the House of Representatives),[2] the comprehensive legislation strengthened federal air quality requirements and vested the newly created EPA with broad, mandatory authority under Section 202(a)(1) to regulate air pollution from new motor vehicles and new motor vehicle engines.[3] Under the newly amended CAA, "[t]he Administrator shall by regulation prescribe... standards applicable to the emission of any air pollutant from any class or classes of new motor vehicle or new motor vehicle engines, which in his judgement causes or contributes to... air pollution which endangers the public health or welfare." Public Law 91-604, 84 Stat. 1690 (1970).

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[1] The Association of Centers for the Study of Congress, *Motor Vehicle Air Pollution Control & Solid Waste Disposal Act*, https://acsc.lib.udel.edu/exhibits/show/legislation/air-pollution-solid-waste (last visited Sept. 8, 2025).
[2] E. W. Kenworthy, Tough New Clean-Air Bill Passed by Senate, 73-0, THE NEW YORK TIMES (Sept. 23, 1970), https://www.nytimes.com/1970/09/23/archives/tough-new-cleanair-bill-passed-by-senate-73-to-0-a-tough-cleanair.html.
[3] The passage of the National Environmental Policy Act (NEPA) of 1969 led to the establishment of EPA to carry out the requirements under the 1970 Clean Air Act, which Congress enacted one year later.

The Act also created four regulatory programs: The National Ambient Air Quality Standards (NAAQS), State Implementation Plans (SIPs), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants. *Id*. These initiatives created standards for air pollutants identified by EPA that 'endanger public health or welfare' under Sections 108 and 109 of the CAA.[4] Under this authority, EPA promulgated NAAQS for *only* (emphasis added) six pollutants: sulfur dioxide (SO_2), nitrogen oxides, particulate matter ($PM_{2.5}$ PM_{10}), nitrogen dioxide (NO_2), carbon monoxide (CO), ground-level ozone, and lead. Carbon dioxide was excluded from this list.

Congress set ambitious nationwide deadlines: a 90% reduction goal in carbon monoxide (CO), hydrocarbons (HC), and nitrogen oxides (NOx) from motor vehicles and motor vehicle engines by 1975. *Id*. To meet these targets, EPA issued emissions standards and phased in stricter limits on vehicle emissions. EPA issued its first tailpipe emissions standards in 1971, limiting specific air pollutants—carbon monoxide (CO), volatile organic compounds (VOC), and nitrogen oxides (NOx). In 1977, Congress amended the CAA to extend emission standards deadlines, while also creating a schedule for EPA to continue regulating the reduction of air pollutants that were considered to contribute to air pollution.[5]

In implementing the 1977 amendments, Administrator Douglas Costle explained that EPA had "undertaken a thorough analysis of the regulatory option available under the Clean Air Act to ensure the approach we finally selected is cost-effective and consistent with our goal of *maintaining clean air (*emphasis added*).*[6] In 1981, Congress lowered the NOx emissions standards from motor vehicles and motor vehicle engines, and in 1990, again amended the Act with strong bipartisan support (89-11 in the Senate; 401-21 in the House of Representatives).[7] The 1990 Amendments extend EPA authority to regulate diesel particulate matter under Section 202(a), leading to rules for heavy-duty trucks and buses aimed at reducing particulate matter emissions (PM). *Id*.

Thus, across this twenty-five-year period, Congress amended the CAA multiple times to address issues associated with air pollution but never provided EPA with the authority to regulate carbon dioxide (CO_2) from GHGs.[8]

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[4] Richard K. Lattanzio, Cost and Benefit Considerations in Clean Air Act Regulation, R44840 (May 5, 2017), https://www.congress.gov/crs-product/R44840.
[5] Eugene P. Seskin, Clean Air Amendment of 1977, RESOURCES MAGAZINE, (Jan. 1, 1978), https://www.resources.org/archives/clean-air-amendments-of-1977/.
[6] Environmental Protection Agency, Press Release, EPA Announces New Rules on Industrial Growth in Clean Air Areas (June 13, 1978), https://www.epa.gov/archive/epa/aboutepa/epa-announces-new-rules-industrial-growth-clean-air-areas.html.
[7] Environmental Protection Agency, 1990 Clean Air Act Amendment Summary, (Last updated Dec. 17, 2024), https://www.epa.gov/clean-air-act-overview/1990-clean-air-act-amendment-summary; Environmental Protection Agency, Timeline of Major Accomplishments in Transportation, Air Pollution, and Climate Change, (Last updated Nov. 22, 2024), https://www.epa.gov/transportation-air-pollution-and-climate-change/timeline-major-accomplishments-transportation-air.
[8] Public Law No. 101-549

Following EPA's implementation of these regulations, industry groups and organizations repeatedly challenged EPA's authority under Section 202(a)(1). Key cases include Int'l Harvester Co. v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973); *Motor & Equipment Asso. v. EPA*, 627 F.2d 1095 (D.C. Cir. 1979); *Engine Manufacturers Ass'n, ex rel. Certain of its Members v. EPA, 88 F.3d 1075 (D.C. Cir. 1996),* each affirming EPA's authority to set emissions limits necessary to achieve *statutory* (emphasis added) goals, limiting the emission of air pollutants that are considered to contribute to air pollution.

For more than 45 years, EPA, Congress, and the courts applied Section 202(a)(1) to require EPA to regulate urban and regional air pollutants from new motor vehicles and new motor vehicle engines. In codifying and amending the CAA over time, Congress identified the emissions it expected EPA to regulate.

Although Congress amended the Act several times, it declined to authorize and direct EPA to regulate GHGs. For instance, three years before the 1990 Amendments, Congress enacted the Global Climate Protection Act of 1987. The Act required EPA to propose a "coordinated national policy on global climate change," but did not ask, require, or determine the need for the Administrator to regulate greenhouse gas emissions from new motor vehicles and new motor vehicle engines. Global Climate Protection Act of 1987 § 2901, 15 U.S.C. § 1102(b). In 1988, Dr. James Hansen's Senate testimony in front of the Senate Committee on Energy and Natural Resources heightened congressional awareness to the point that it was reported by the New York Times that "bipartisan support [was] growing in Congress to increase financing for climate research and to consider legislation aimed at controlling the introduction of greenhouse gases into the atmosphere."[9] Yet when Congress overhauled the Act in 1990, it again chose not to include greenhouse gases, instead authorizing EPA only to research "non-regulatory strategies." 42 U.S.C. § 7403(g)(1). A similar dynamic occurred in 1997, when the Senate unanimously rejected the Kyoto Protocol by a vote of 95-0, signaling strong opposition to binding international greenhouse gas limits.

Taken together, the history shows that while Congress was aware of greenhouse gases and the alleged risks they pose, it repeatedly chose not to grant EPA regulatory authority to include them in its definition of "pollutant."

Endangerment Finding

In *Massachusetts v. EPA*, the Supreme Court concluded that EPA had the authority to interpret the term "air pollutants" in the Act to include GHGs. *Massachusetts v. EPA*, 549 U.S. 497 (2007). The Court determined that under Section 202(a)(1) of the Act, EPA is required to regulate such "air pollutants" if found to "cause, or contribute to, air pollution which may

[9] John Noble Wilford, His Bold Statement Transforms the Debate On Greenhouse Effect, THE NEW YORK TIMES (Aug. 23, 1988), https://www.nytimes.com/1988/08/23/science/his-bold-statement-transforms-the-debate-on-greenhouse-effect.html.

reasonably be anticipated to endanger public health or welfare." *Id*. at 519 (quoting 42 U.S.C. § 7521(a)(1)).

Following the ruling in *Massachusetts*, EPA was thus required to regulate GHGs if they were found to endanger public health or welfare. *Massachusetts*, 549 U.S. at 497. In 2009, the Obama administration's EPA issued the Endangerment Finding, which concluded that GHGs did endanger public health or welfare. The Finding categorized six "well-mixed" GHGs as pollutants that endangered public health and welfare. It concluded that carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, were contributing to elevated concentrations in the upper atmosphere. 74 Fed. Reg. at 66,497. Vehicles and engines were determined to be significant contributors to the climate change issue, as their emissions were causally linked to global temperatures, air quality, and extreme weather. *Id*.

EPA used 2009 emission data to project that new motor vehicles and new motor vehicle engines would contribute to roughly 4.3% of global GHG emissions. *Id. at* 66,539. This link was the basis for claims that GHG emissions contribute to air pollution, which harms public health in various ways, including increased morbidity and mortality, risks to water resources, sea level rise, and impacts on agriculture and ecosystems. *Id. at* 66,497-66,529. While EPA noted within the Finding that most of the emission contribution would come from entities outside the United States, it concluded that the Finding necessitated regulatory action. *Id. at* 66,539. This triggered a bevy of subsequent GHG-related rules and regulations, such as the 2009 Tailpipe Rule, the Timing Rule, and the Tailoring Rule. Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496 (Dec. 12, 2009); Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31514 (June 3, 2010).

The Findings' justification for small contributors, however, ignored the analysis required of EPA as outlined by Executive Order 12866. By isolating the Endangerment Finding to interpret Section 202(a) in a precautionary way that demanded substantive regulatory action, the Agency circumvented a required cost-benefit analysis via a final regulatory flexibility analysis (FRFA) under the Regulatory Flexibility Act. 42 U.S.C. § 7621(a) and 5 U.S.C. § 604(a)(5).

Despite more than a decade of GHG regulations, domestic restrictions have comparatively done little to prevent the rise in global greenhouse gas emissions.[10] As stated by EPA," global GHG concentrations in the upper atmosphere have continued to rise, driven primarily by increased emissions from foreign sources,[11] all without producing the degree of

[10] Crippa, M. et al., GHG emissions of all world countries, Publications Office of the European Union (2023), https://doi.org/10.2760/953322.
[11] Crippa, M. et al. (2023). GHG emissions of all world countries. Publications Office of the European Union: https://doi.org/ 10.2760/ 953322.

adverse impacts to public health and welfare in the United States that the EPA anticipated in the 2009 Endangerment Finding."[12]

Revocation of the Endangerment Finding remediates EPA's improper assertion of its statutory authority under the CAA and cures its earlier error in failing to consider the economic impact inflicted on small businesses because of the Agency's failure to perform a regulatory flexibility analysis.

1. At the outset, EPA improperly circumvented agency requirements to evaluate costs, and effects of the Endangerment Finding.

EPA's decision to evade a cost-benefit analysis contradicted directions from the President and Congress. Section 202(a) of the CAA requires the Agency to assess the economic costs and benefits of any proposed rule. 42 U.S.C. § 7521(a). The Agency disregarded this section despite it being required by Executive Order 12866 and the Regulatory Flexibility Act. "Regulatory Planning and Review," Executive Order 12866, 58 *Federal Register* 51735, October 4, 1993; 5 U.S.C. § 604(a).

Executive Order 12866 required EPA to assess the costs and benefits of alternative remedies to limit vehicle and engine emissions. It compelled EPA to estimate costs and benefits any time an agency develops "economically significant" regulations, which are regulations that may "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." "Regulatory Planning and Review," Executive Order 12866, 58 Fed. Reg. 51735, October 4, 1993. In finding that risk reduction through adaptations and greenhouse gas mitigation was outside the scope of the endangerment analysis,[13] and by refusing to conduct an analysis of anthropogenic emissions of greenhouse gases,[14] EPA was incapable of assessing the *full* (emphasis added) effects of the Finding. Thus, EPA did not conduct a comprehensive cost-benefit analysis required by Executive Order 12866.

The Agency also ignored directives from Congress in promulgating the Endangerment Finding when it finalized the Endangerment Finding. The Regulatory Flexibility Act requires an impact assessment of proposed rules on small entities. Under 5 U.S.C. § 604(a)(5), an agency promulgating a final rule must prepare a final regulatory flexibility analysis. Yet the Agency did not provide an estimate of the "classes of small entities...subject to the requirement and the type of professional skills necessary for preparation of the report or record[.]" 5 U.S.C. § 604(a)(5).

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[12] *Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards*, 90 Fed. Reg. 36288, 36290 (proposed Aug. 1, 2025) (to be codified at 40 CFR Parts 85,86, 600, 1036, 1037, and 1039).
[13] Endangerment Finding, 74 Fed. Reg. at 66512.
[14] *Id*.

The Act aims to achieve statutory goals without imposing unnecessary burdens. 5 U.S.C. § 604(a). Rather than conduct this analysis by asking whether the means were necessary for addressing the issue, EPA treated the Finding as if it were in a vacuum. In doing so, the Agency assumed costs were necessary for addressing the issue of emissions-enhanced climate change. And the Agency conducted a cost-benefit analysis of the individual rules, isolating them from the cumulative economic impact. EPA ignored the cumulative impact by providing the Agency with a low threshold for showing that the costs outweighed the harm. This tactic was deceitful and sidesteps EPA's rulemaking responsibilities.

This unexplained departure from precedent relies on an interpretation that is arbitrary and capricious, as separating the Finding from its regulatory consequences was not the design of the CAA. When EPA created the GHG regulatory framework, Congress intended for the Endangerment Finding to be recognized along with the substantive regulation—i.e., the Tailpipe Rule and Timing Rule. The proposed regulations were intended to be contemplated and developed in conjunction with the Findings so that a comparison between the costs of such a rule's implementation could be measured against its benefits. Had reasonable economic analysis been conducted where the Findings were examined alongside the intended rules, the Agency would have determined the GHG regulatory framework was restrictive to innovation and economic growth in both the short- and long-term. Further, the analysis would have shown that the implementation of such a regulation would discourage new enterprises from entering the market.

As a result of evading this analysis, the Finding was used to impose a costly burden on American industries. Nearly a million mid-to-large-sized commercial buildings constitute "major emitting" facilities that accordingly fall under EPA's GHG regulation. The cost of adhering to agency regulations negatively impacted small and mid-sized businesses as compliance consumes time, money, and expertise—resources small businesses do not have. Within a year of the policies' implementation, the Chamber of Commerce estimated that if only 40,000 sources were found to need PSD permits for greenhouse gas emissions, "it would cost state and local agencies over $900 million in administrative costs besides the $5 billion it would cost businesses." U.S. Chamber of Commerce, *Re: Regulating Greenhouse Gases Under the Clean Air Act: Responding to Massachusetts v. EPA*, (Nov. 19, 2008). EPA estimates that regulatory costs have totaled over $1 trillion since it issued the Finding, and by rescinding all GHG standards related to it, Americans will save more than $54 billion annually in regulatory costs.[15]

Further illustrating this point, EPA has had to find remedies to counteract the impact of the costly regulations promulgated in response to the Endangerment Finding. For instance, the Tailoring Rule was implemented to "tailor" the thresholds of GHG permitting under Prevention of Significant Deterioration and Operating Permits, which aimed to limit the massive financial

[15] Press Release, EPA, EPA Releases Proposal to Rescind Obama-Era Endangerment Finding, Regulations that Pave the Way for Electric Vehicle Mandates (July 29, 2025), https://www.epa.gov/newsreleases/epa-releases-proposal-rescind-obama-era-endangerment-finding-regulations-paved-way.

burden imposed on small businesses by the Tailpipe Rule. 75 Fed. Reg. 25, 324 (May 7, 2010); 75 Fed. Reg. 31,514 (June 3, 2010). By raising permitting thresholds for GHG emissions through the implementation of the Tailoring Rule, only large industrial emitters were regulated, as EPA recognized that these regulations would have an "overwhelming" burden on small emitters, such as small businesses and buildings. *Id*.

EPA now seeks to remedy its past failures to produce a comprehensive cost-benefit analysis. Compared to the Agency's projected monetized benefits of rescinding the Finding, EPA estimates Americans will benefit from roughly $157 to $444 billion in regulatory cost savings. Office of Transportation and Air Quality, *Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards*, EPA, July 2025, at 38-39. Further, EPA estimates combined savings and opportunity cost savings in manufacturing new motor vehicle fleets to be roughly $114 billion to $365 billion annually. *Id*. This reduction includes an estimate of $17 billion to $44 billion in added value to consumer surplus ranges. *Id*. Moving forward with the proposed regulatory rescission supports the Agency's goal of providing a remedy to the decades-long economic impact of the burdensome regulations promulgated under the Endangerment Finding, without the required comprehensive cost-benefit analysis.

2. The Endangerment Finding relies on various forms of *Chevron* Deference, which has since been overturned.

a.* From *Chevron* to *Loper

Under the two-step *Chevron* doctrine, courts were required to defer to "permissible" agency interpretations of the statutes that those agencies administer in cases of textual ambiguity. *Chevron U.S.A. Inc. v. Natural Res. Def. Council*, 467 U.S. 837 (1984). *Chevron* presumed that when Congress "left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley v. Citibank (s.D.), N.A*, 517 U.S. 735 (1996).

Deference shown by courts to EPA's interpretation of its authority under the CAA allowed the Agency to wield enormous power to regulate what it considered pollutants. *Massachusetts v. EPA*, 549 U.S. 497 (2007). Courts, however, are no longer required to defer to an agency's interpretation of purported ambiguities in a statute. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). In *Loper*, the Supreme Court held that the Administrative Procedure Act requires courts to exercise their judgement in order to expand administrative authority. *Id*. This decision overturned *Chevron*, holding that "courts need not an under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Id*, at 413.

In 1946, Congress passed the Administrative Procedure Act, which states that courts, not agencies, will decide "all relevant questions of law[.]" 5 U.S.C. §706. The Court historically

concedes a degree of authority to the Executive Branch but does not cede authority nor surrender its judgement when interpreting a statute's meaning. *United States v. Dickson*, 40 U.S. 141, 15 Pet. 141, 162, 10 L. Ed. 689. The Court recognizes constitutional delegations and requires administrative agencies to conduct "reasoned decision making." *Allentown Mack Sales & Serv. V. NLRB*, 522 U.S. 359, 374 (1998). In *Loper*, the Court determined that the deference the *Chevron* doctrine requires of courts in reviewing agency action, "cannot be squared with the APA." *Loper Bright Enterprises*, 603 U.S. at 391-396. Now, the courts are obligated to interpret statutes using traditional tools of statutory interpretation, such as textualism, canons of construction, structural and contextual analysis, legislative history, Skidmore deference, and the major questions doctrine to determine congressional intent. *Id.*

Overturning *Chevron* erodes the applicability of earlier judicial decisions where courts deferred to EPA's interpretation of its authority under the CAA. For example, *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012) is a case where *Chevron* deference was central to the D.C. Circuit's decision to uphold the Endangerment Finding. The circuit court conducted the *Chevron* two-step test for statutory interpretation and determined that Congress had stayed silent on the challenged issues, so the court would defer to the agency's interpretation of the statute to decide whether it is "based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843.

The absence of *Chevron* deference in the post-*Loper Bright* world suggests that the Endangerment Finding would most likely not survive judicial review, since *Chevron* obligated courts to defer to EPA's interpretation of any ambiguities in the CAA. *Chevron*, 467 U.S. at 843. Now, EPA's authority to enact such broad regulatory power must be grounded in clear statutory text, and such authority is not clearly delegated to EPA in the Clean Air Act. 42 U.S.C. § 7401. Indeed, it's likely that, under *Loper Bright*, the Court would have found that the Endangerment Finding violates the major questions doctrine, contradicts the structure and context of the CAA, and defies its legislative history, leading the court to vacate the rule.

b. Major Questions Doctrine

In *West Virginia v. EPA,* 597 U.S. 697 (2022), the Supreme Court ruled that EPA exceeded its regulatory authority under the CAA when it sought to regulate carbon emissions by means of a generation-shifting approach without clear authorization from Congress. The Court held that regulatory actions with enormous economic or political consequences must come from Congress itself, or the agency acting on the decision must have clear congressional authorization to act. This decision recognized the inherent limitations on administrative agencies absent clear congressional delegation. It also means that EPA has limited authority to regulate GHGs.

Under the major questions doctrine, a court requires clear congressional authorization when agencies undertake matters of vast economic and political significance. When statutes give agencies regulatory authority, courts must decide whether Congress intends to delegate the power in question. See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000).

Extraordinary grants of authority, however, are rarely hidden in "modest words," "vague terms," or "subtle devices." *Whitman v. American Trucking Assns.*, 531 U.S. 457, 468 (2001). Courts always assume that Congress intends to make major policy decisions itself. *United States Telecom Assn. v. FCC*, 855 F.3d 381, 419 (D.C. Cir. 2017).

As demonstrated in *West Virginia*, the Clean Power Plan represented a policy that Congress consistently refused to enact. See *Brown & Williamson*, 529 U.S. at 159-60. EPA tried to justify its Clean Power Plan approach by bringing up the 2005 Mercury Rule, 70 Fed. Reg. 28616, which also used a cap-and-trade mechanism. But that rule could not compare, as it set caps based on readily available technologies (wet scrubbers), and its legality was never disputed. See *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008). On the other hand, the Clean Power Plan had no direct emission-control method that plants could install to comply with the emissions standards. In fact, EPA acknowledged that its interpretation of the CAA would give it the authority "to order the wholesale restructuring of any industrial sector." 84 Fed. Reg. 32529.

The main question presented in *West Virginia*, whether a plan that reshaped the national energy industry constitutes the "best system of emission reduction" under § 7411(d), shares similarities with the regulatory framework EPA has constructed using provisions of Section 202(a). Just as Congress has repeatedly rejected proposals similar to the Clean Power Plan's national cap-and-trade system for carbon emissions, congressional intent did not aim to include carbon emissions in the Clean Air Act. See 80 Fed. Reg. 64732.

The 2009 Endangerment Finding should be rescinded in accordance with the 2016 ruling in *West Virginia* because the Finding violates the major questions doctrine. Like EPA's purported statutory basis for the generation-shifting approach of the Clean Power Plan, the Endangerment Finding improperly interprets vague sections of the Clean Air Act as granting EPA broad regulatory authority to regulate GHGs. This is a decision with significant economic and political consequences, which Congress has not clearly authorized EPA to implement.

Conclusion

For these reasons, the Environmental Protection Agency should approve the Proposed Rule.

Respectfully submitted,

Aidan R. Sheahan
Gary L. McDowell Research Fellow

Justin E. Harned
Gary L. McDowell Research Fellow

Peyton L. Tuttle
Gary L. McDowell Research Fellow

Michael J. O'Neill
Vice President of Legal Affairs