



September 22, 2025

Administrator Lee Zeldin
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted Online via Regulations.gov to Docket ID No. EPA-HQ-OAR-2025-0194-0093

Dear Administrator Zeldin,

We are a coalition of concerned future environmental lawyers from the Elisabeth Haub School of Law at Pace University*, the #1 ranked environmental law program in the nation for the past five years. In collaboration with the Pace Energy and Climate Center (“PECC”), Pace Environmental Law Review (“PELR”), Pace Environmental Law Society (“Pace ELS”), and environmental law faculty members, we ask you to abandon the U.S. Environmental Protection Agency’s (“EPA” or the “Agency”) “Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards” proposed rule (the “Proposed Rule”).¹

In the Proposed Rule, EPA considers rescinding the “Administrator’s² prior findings in 2009 that greenhouse gas (“GHG”) emissions from new motor vehicles and engines contribute to air pollution which may endanger public health or welfare” (the “Endangerment Finding”) on three grounds.³

First, EPA contends that Section 202(a) of the Clean Air Act (“CAA” or the “Act”) “does not authorize EPA to prescribe emission standards to address global climate change concerns.”⁴ This assertion directly contradicts Supreme Court precedent in *Massachusetts v. EPA* where the Court held that GHGs are air pollutants, as defined under the Act. It additionally determined that EPA has a non-discretionary duty to regulate GHGs if science demonstrates that emissions threaten public health and welfare, as well as environmental harm.⁵

¹ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36288 (proposed Aug. 1, 2025).

² Capitalized terms quoted from the Proposed Rule shall have the meaning ascribed to them therein.

³ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

⁴ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

⁵ *Massachusetts v. E.P.A.*, 549 U.S. 497 (2007).

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Second, and in the alternative, EPA asserts that it “unreasonably analyzed the scientific record” when issuing the Endangerment Finding, and that recent “developments cast significant doubt on the reliability of the findings.”⁶ These developments, namely EPA’s reliance on the Department of Energy’s (“DOE”) Climate Working Group report entitled “Impacts of Carbon Dioxide Emissions on the U.S. Climate” (the “Climate Report”)⁷ to cast doubt on climate science, represent arbitrary and capricious decision-making under the Administrative Procedure Act (“APA”).

Finally, the proposed rule considers rescission because “no requisite technology for vehicle and engine emission control can address the global climate change concerns identified in the findings without risking greater harm to public health and welfare.”⁸ This claim ignores extensive regulatory experience, proven emissions control technologies, and the existing federal infrastructure for GHG measurement and enforcement.

Beyond its legal deficiencies, rescission would carry severe economic, social, and national security consequences—including diminished gross domestic product (“GDP”), higher consumer costs, destabilized domestic markets, weakened U.S. competitiveness, and erosion of ongoing investments in clean energy, electric vehicles, and battery manufacturing. The proposed rule would also invite extensive litigation and regulatory fragmentation across states, compounding harm to industry and the public.

In light of statutory obligations, binding judicial precedent, the scientific consensus on climate change, and the economic imperatives of regulatory certainty, EPA should withdraw the proposed rule and reaffirm the 2009 Endangerment Finding to protect public health, welfare, and future generations. Accordingly, we urge EPA to carefully reconsider and abandon this proposed rule for the reasons stated herein.

I. EPA has the Authority to Regulate Carbon Dioxide (“CO₂”) Under Section 202(a) of the CAA

EPA relies on recent administrative law developments to reverse course on a well-established understanding that CO₂ endangers public health—but this is an unambiguous dereliction of a clear statutory obligation, which requires EPA to regulate GHGs based on scientific judgment, rather than by extraneous policy preferences.

The U.S. Supreme Court made clear that GHGs, including carbon dioxide, “fit well within the CAA’s capacious definition of ‘air pollutant.’”⁹ It additionally held that EPA has both the authority and responsibility to regulate emissions from new motor vehicles when they contribute to air pollution reasonably anticipated to endanger public health or welfare.¹⁰ In 2009,

⁶ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

⁷ U.S. Dep’t of Energy Climate Working Grp., *Impacts of Carbon Dioxide Emissions on the U.S. Climate* (May 27, 2025), <https://www.regulations.gov/document/EPA-HQ-OAR-2025-0194-0060>.

⁸ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

⁹ *Massachusetts*, 549 U.S. at 532.

¹⁰ *Id.* at 507.

after an extensive review of scientific literature, EPA promulgated an Endangerment Finding which confirmed that GHGs, including Carbon Dioxide, posed a recognized and serious threat to public health and welfare. “The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases—carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—in the atmosphere threaten the public health and welfare of current and future generations.”¹¹

In *Massachusetts*, the Court explicitly rejected EPA’s reliance on policy judgments and executive priorities as a substitute for a reasoned scientific determination. “Although we have neither the expertise nor the authority to evaluate these policy judgments, it is evident they have nothing to do with whether greenhouse gas emissions contribute to climate change.”¹² Thus, the Court confirmed that EPA is obligated under the CAA to regulate GHGs based on both the text of the Act and scientific judgment regarding endangerment.

This finding is even more salient in light of the Court’s decision in *Loper Bright Enterprises v. Raimondo*, which held that it is the role of the judicial branch to “interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences.”¹³ The Court did just that in *Massachusetts*, and EPA’s reinterpretation of a statutory provision for which the Court has already exercised its “independent judgment”¹⁴ is an affront to “the province and duty of the judicial department.”¹⁵ In other words, it is the role of the courts to interpret statutory ambiguities, not administrative agencies. EPA is attempting to supersede Supreme Court precedent by reinterpreting an already-settled statutory ambiguity.

Not only is EPA attempting to supersede Court precedent, it is doing so while simultaneously using such precedent to argue against state-level climate laws in court. In its suit against the state of Vermont, EPA argues that the state cannot enact a climate superfund law because “greenhouse gases such as carbon dioxide and methane” fall under the CAA’s “comprehensive program for regulating air pollutants in the United States.”¹⁶ This is an explicit acknowledgement that state regulation of GHGs is preempted by the federal government’s enforcement of the CAA and operates under the assumption (based on the Supreme Court’s ruling in *Massachusetts*) that EPA must regulate GHGs for the field to be preempted.

EPA is bound to base its endangerment determination on the best available scientific evidence, not on shifting policy preferences and “inconsistent” agency interpretations.¹⁷ By

¹¹ Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

¹² *Massachusetts*, 549 U.S. at 533.

¹³ *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 403 (2024).

¹⁴ *Id.* at 412.

¹⁵ *Id.* at 385 (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)).

¹⁶ Pls.’ Consolidated Resp. in Opp’n to Mot. to Dismiss and Mem. in Supp. of Mot. for Summ. J., U.S. & EPA v. State of Vermont, No. 2:25-cv-00463, 29 (Sept. 15, 2025).

¹⁷ Clean Air Act, 42 U.S.C. §§ 7401-7671q (2018); *Loper Bright*, 603 U.S. at 399 (where the Court overturned *Chevron* deference in part because it demanded “that courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time.”).

proposing to rescind the Endangerment Finding without a scientific basis to conclude that GHGs do not endanger public health or welfare, EPA would exceed its lawful discretion and violate the CAA's plain mandate.¹⁸

Climate change's harms, recognized by EPA in 2009 (but much earlier by federal institutions such as the U.S. National Research Council), remain serious and imminent.¹⁹ EPA's own prior scientific assessments confirm these threats, and the body of climate science research published since does not provide justification for rescission or regression from these assessed conclusions. EPA cannot lawfully erase a valid finding of endangerment absent new scientific evidence demonstrating that GHGs no longer contribute to climate change or no longer pose a threat to public health and welfare.

Nor can EPA lawfully rely on arguments concerning the global nature of climate change, or the actions of foreign nations, as justification for inaction. The Supreme Court explicitly rejected such reasoning in *Massachusetts*, holding that "a reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere."²⁰ This global reasoning is at play in other sections of the CAA as well. Title VI of the Act outlines regulations for the phase-out of chemicals that contribute to the depletion of the ozone layer, a truly global (not local) environmental challenge.²¹ By abdicating its statutory responsibility here, EPA would compound harms to U.S. states, communities, and citizens already affected by climate change, including coastal erosion, flooding, agricultural disruption, and public health risks. The Court emphasized that states have a well-founded interest in protecting their territories from these harms and that EPA's refusal to act constitutes an imminent and actual injury.²² That reasoning remains binding today and directly undermines EPA's rationale for adopting the Proposed Rule.

Rescinding the Endangerment Finding and eliminating GHG vehicle standards would not only violate statutory and judicial mandates but also undermine private reliance interests in decades of regulatory progress. The CAA has driven technological innovation, reduced harmful emissions, and delivered substantial health and economic benefits to the American people. GHG vehicle standards have reduced fuel costs, promoted efficiency, and positioned the United States as a leader in clean technology development.²³ To abandon these standards now would ignore Congress's directive that EPA regulate "any air pollutant" that endangers public health or welfare, and would unlawfully substitute political expediency for science-based decision-making.²⁴ It would also usurp "pre-existing judicial precedent" and threaten the Supreme Court's "independent legal judgment" since it has already answered this very question of statutory interpretation.²⁵ For these reasons, EPA must withdraw its proposal and reaffirm the 2009

¹⁸ See discussion *infra* Part IV.

¹⁹ Climate Research Board, *Carbon Dioxide and Climate: A Scientific Assessment*, NATIONAL ACADEMY OF SCIENCES (1979).

²⁰ *Massachusetts*, 549 U.S. at 525.

²¹ 42 USC § 7671.

²² *Massachusetts*, 549 U.S. at 521.

²³ See discussion *infra* Part II.

²⁴ 42 U.S.C. § 7521(a)(1).

²⁵ *Loper Bright*, 603 U.S. at 399–401.

Endangerment Finding in accordance with its statutory duty and the Supreme Court’s binding interpretation of the CAA.

II. The Draft Regulatory Impact Analysis (“DRIA”) Must Address Additional Factors Regarding Costs to Consumers and Manufacturers

The DRIA fails to adequately account for the substantial economic, social, and national security consequences that would result from the repeal of the Endangerment Finding. Contrary to the assertions set forth in the Proposed Rule, deregulation of GHG emissions would not confer economic benefits; rather, it would materially diminish GDP, impose significant public health and disaster recovery costs, destabilize domestic markets, and undermine ongoing investments in clean energy, electric vehicles (“EVs”), and battery manufacturing. Moreover, a repeal would create regulatory fragmentation across the states, generate uncertainty in capital markets, impair labor productivity, and weaken the global competitiveness of U.S. manufacturers and exporters. Taken together, these adverse impacts demonstrate that the Proposed Rule is not only economically unsound, but also inconsistent with EPA’s statutory obligation to protect public health and welfare. Accordingly, the Agency must abandon the Proposed Rule considering these significant and foreseeable costs.

Failing to do so could invite litigation risk. The Supreme Court has previously struck down agency rules when corresponding RIAs were insufficient. In *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Automobile Insurance Co.*, the Court struck down a National Highway Safety Administration’s rescission of a previous rule because the RIA failed to consider an apparent alternative.²⁶ The Court found that agencies “must examine the relevant data and articulate a satisfactory explanation for its action” in order for rules to not be arbitrary and capricious.²⁷ Below we examine potential impacts of this Proposed Rule if alternatives are not thoroughly considered.

A. Economic Consequences of Repealing the Endangerment Finding

Contrary to the Proposed Rule’s assertions, EPA’s abdication of its duty to regulate GHGs will not benefit the economy. Unregulated GHGs are expected to reduce the GDP by 2-5% each year in certain scenarios.²⁸ Bluntly stated, a reduction in GDP indicates a weakened economy.²⁹ According to the Congressional Budget Office’s estimates, there is at least a 5% chance that the United States’ GDP would be 21% lower in 2100 than at present if climate

²⁶ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

²⁷ *Id.* at 43.

²⁸ Amir Jina, CLIMATE CHANGE & THE U.S. ECONOMIC FUTURE, UNIV. OF CHI. ENERGY POL’Y INST. 13 (last accessed Aug. 28, 2025).

²⁹ Beth Braverman, *How Weak GDP Does (and Doesn’t) Indicate a Recession*, U.S. NEWS & WORLD REP. (July 28, 2022), <https://money.usnews.com/money/personal-finance/family-finance/articles/what-is-gdp-and-how-does-it-measure-a-recession>.

change continues to progress.³⁰ Climate change will likely negatively impact the United States' GDP in most scenarios and enacting the Proposed Rule all but assures that such an impact will be more severe.

Beyond impacts to GDP, extreme weather events, which result from increased GHGs in the Earth's atmosphere, could cost the United States as much as \$150 billion per year, not accounting for deaths, hospitalizations.³¹ In fact, an estimated 2.5 billion hours of U.S. labor have been lost as of 2021 to heat exposure.³² Heat-related respiratory stress not only decreases economic productivity but also leads to increased hospitalizations.³³ In one study that covered only New York State, researchers found that heat-related respiratory distress created an excess \$644,069 in hospitalization costs.³⁴ More generally, direct health costs from climate change could total as much as \$800 billion per year.³⁵ This cost will not only affect individual Americans seeking relief from climate-related health issues, but also negatively impact health insurance premiums, overburden hospitals, and add costs to the operation of private businesses throughout the nation. A failure to regulate CO₂ harms the economy, our businesses, and our people.

B. Domestic Market Stability Favors Known Regulatory Regime

EPA argues that repealing the Endangerment Finding in favor of relaxing fuel emissions standards will favor manufacturers, but this is not likely to be the case. While deregulation may remove some short-term costs, businesses and manufacturers prefer long-term stability that encourages venture capital and institutional investors to enter the market and boost the economy.³⁶ As an example, major domestic car manufacturers, including Ford, have voluntarily complied with regulatory regimes that have increased emissions standards beyond those required by law.³⁷

Experts in the domestic energy industry have noted that “[m]anufacturers simply are not going to make long-term decisions that change how much they pollute based on a four-year

³⁰ *Media Tip Sheet: Climate Change Costs the U.S. Roughly \$150 Billion Each Year, New Report Finds*, GEO. WASH. U. (Nov. 16, 2023), <https://mediarelations.gwu.edu/media-tip-sheet-climate-change-costs-us-roughly-150-billion-each-year-new-report-finds>.

³¹ *Id.*

³² Talia Varley, *The Hidden Costs of Climate Change on the Workforce*, HARV. BUS. REV. (Jul. 29, 2024), <https://hbr.org/2024/07/the-hidden-costs-of-climate-change-on-the-workforce>.

³³ Shao Lin et al., *Excessive Heat and Respiratory Hospitalizations in New York State: Estimating Current and Future Public Health Burden Related to Climate Change*, 120 ENV'T HEALTH PERSP. 1571, 1574 (2012).

³⁴ *Id.*

³⁵ Varley, *supra* note 32.

³⁶ *The Role of Government Policies in Shaping Climate Tech Markets*, CLIMATE INSIDERS (Oct. 22, 2024), <https://www.climateinsiders.com/blog-posts/the-role-of-government-policies-in-shaping-climate-tech-markets>; Derek Baraldi et al., *3 ways the public sector can spur investment in next-gen climate solutions*, WORLD ECON. F. (Nov. 30, 2023), <https://www.weforum.org/stories/2023/11/wyman-investment/>.

³⁷ Cristen Hemingway Jaynes, *Ford Announces Support for EPA Automobile Tailpipe Emissions Rules*, ECOWATCH (May 21, 2024), <https://www.ecowatch.com/ford-epa-tailpipe-emissions-rule.html>.

enforcement cycle.”³⁸ Manufacturers adhere to “ideas that are economically resilient and secure their spot on the global market.”³⁹ By choosing to repeal the Endangerment Finding, EPA will send a signal to the market that the anticipated direction of technological changes is uncertain. This causes “American companies to look elsewhere” when investing in manufacturing, thereby undermining the Agency’s (and the President’s) aims.⁴⁰

C. Negative Impacts of Regulatory Fragmentation

Repealing the Endangerment Finding will likely cause states to adopt varying approaches to the EV market and manufacturing sector. This fragmentation of policy and approaches would significantly complicate national supply chains, create uncertainty of investment, and erode the economic scale of the EV market in the United States, further diminishing its place in the marketplace as compared to China and the European Union.

Without coordinated policy influenced by a strong federal regulatory regime, EV manufacturers must navigate inconsistent requirements, incentives, and standards across state lines. This hampers the development of critical industrial clusters for component sourcing, EV battery production, and distribution. Supply chains operating under fragmented regulatory pressures face significant challenges in efficiency and strategy due to a lack of clear direction in regulation which in turn creates an unstable consumer market. Thus, disruption of large supply chains and the likely ripple effects will lead to new and often conflicting demands from governments and consumers.⁴¹

D. Proposed Rule Will Undermine Existing Domestic Investment

Repealing the Endangerment Finding will undermine existing domestic investment and innovation. The DRIA claims that by repealing GHG standards, manufacturers would see reduced costs by having fewer requirements to address.⁴² However, this perspective completely ignores the economic prosperity attributable to clean energy and EV innovation. Repealing the Endangerment Finding undermines this investment, destabilizes these programs, and destroys the clean energy investments and advancements already underway in the manufacturing industry.⁴³

³⁸ Michelle No, *Manufacturers’ 2025 Sustainability Priorities*, MFG. DIVE (Feb. 20, 2025), <https://www.manufacturingdive.com/news/2025-sustainability-outlook-manufacturing-industry-emissions/739255/>.

³⁹ *Id.*

⁴⁰ Yusuf Khan, *American Battery Companies Are Shopping Abroad*, WALL ST. J. (Aug. 20, 2025, at 5:30 ET), <https://www.wsj.com/articles/american-battery-companies-are-shopping-abroad-6be6bbf8>.

⁴¹ David M. Herold & Łukasz Marzantowicz, *Supply Chain Responses to Global Disruptions and Its Ripple Effects: An Institutional Complexity Perspective*, 16 OPERATIONS MGMT. RES. 2213, 2217 (2023).

⁴² See U.S. ENV’T PROT. AGENCY, EPA-420-D-25-003, RECONSIDERATION OF 2009 ENDANGERMENT FINDING AND GREENHOUSE GAS VEHICLE STANDARDS: DRAFT REGULATORY IMPACT ANALYSIS 33–34 (July 2025).

⁴³ *Id.*

As of August 2024, clean energy investment created 334,000 new jobs with an economic value of \$265 billion.⁴⁴ Clean energy jobs grew by 4.2%, more than twice as much as the overall job growth rate of 2.0%.⁴⁵ Additionally, clean energy accounted for 56% of all new energy sector jobs, with growth in every U.S. state.⁴⁶ For example, “Idaho had the fastest rate of clean energy job growth, increasing at 7.7%, followed by Texas at 6.0%.”⁴⁷ This data demonstrates that even states won by President Trump in the 2024 presidential election have seen major economic booms as a result of clean energy investments. The proposed regulatory uncertainty creates an investment risk for businesses and manufacturers as weakening climate regulations could slow the investment and buildout of domestic supply chains for batteries, energy infrastructure, and EVs,⁴⁸ sectors that have all shown rapid scaling in recent years.⁴⁹

E. Potential Foreign Market Loss from Enacting the Proposed Rule

Repealing EPA’s 2009 Endangerment Finding would significantly undermine the trajectory of the domestic automobile industry and weaken the willingness of major U.S. manufacturers to continue investing in domestic production facilities.⁵⁰ The U.S. auto industry operates within a global marketplace that is increasingly defined by competition over natural resources, technological advancement, and energy independence, particularly among the United States, the European Union, and China. China has positioned itself to dominate the global vehicle market, not only through aggressive subsidies for EV manufacturing, but also by consolidating control over critical mineral supply chains necessary for battery production.⁵¹

At present, U.S. automakers benefit from tens of billions of dollars in annual export revenue; however, this competitive advantage depends on aligning with stringent fuel-efficiency

⁴⁴ Molly Hanson, *Two Years Ago, We Passed the Biggest Climate Spending Bill Ever. Here’s What It Has Achieved*, EARTHJUSTICE (Aug. 20, 2024), <https://earthjustice.org/article/the-biggest-climate-spending-bill-ever-just-turned-two-heres-what-it-has-achieved>.

⁴⁵ *DOE Report Shows Clean Energy Jobs Grew at More Than Twice the Rate of Overall U.S. Employment*, U.S. DEP’T OF ENERGY (Aug. 28, 2024), <https://www.energy.gov/articles/doe-report-shows-clean-energy-jobs-grew-more-twice-rate-overall-us-employment>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Rhodium Group & MIT Ctr. for Energy and Env’t Pol’y Rsch., *CLEAN INVESTMENT MONITOR: THE STATE OF US CLEAN ENERGY SUPPLY CHAINS IN 2025 2* (Apr. 24, 2025), <https://www.cleaninvestmentmonitor.org/reports/us-clean-energy-supply-chains-2025>.

⁴⁹ INT’L ENERGY AGENCY, *Outlook for Battery and Energy Demand*, in *GLOBAL EV OUTLOOK 2024* 142–150 (Apr. 2024), <https://www.iea.org/reports/global-ev-outlook-2024/outlook-for-battery-and-energy-demand>.

⁵⁰ Energy Innovation: Policy and Technology & Robbie Orvis, *Tariffs And Policy Repeals Could Force U.S. Auto Industry To Fail, Ceding Economic Growth To China*, FORBES (Feb. 23, 2025), <https://www.forbes.com/sites/energyinnovation/2025/02/23/tariffs-and-policy-repeals-could-force-american-auto-industry-to-fail-ceding-economic-growth-to-china/>.

⁵¹ Brad W. Setser, *Will China Take Over the Global Auto Industry?*, COUNCIL ON FOREIGN RELS. (Dec. 8, 2024), <https://www.cfr.org/blog/will-china-take-over-global-auto-industry>.

and emissions standards, which are increasingly the norm across advanced economies.⁵² A repeal of the Endangerment Finding would weaken GHG emissions standards, thereby eroding the competitiveness of U.S. suppliers. Weakened GHG emissions standards would hurt, not help, the U.S. auto industry.⁵³ As EPA itself has recognized in the Proposed Rule, lower standards would reduce the profitability of innovative fuel-efficient products, preventing U.S. manufacturers from recouping investments already made in advanced facilities and new technologies.

Companies that have acted in reliance on stable regulatory signals, by expanding EV lines and committing capital toward cleaner production, would be disadvantaged relative to global competitors. This creates a risk of stranded assets in the U.S. market while simultaneously allowing foreign competitors, particularly Chinese manufacturers, to gain greater market share globally.

Moreover, failing to maintain strong GHG regulations would diminish U.S. access to critical export markets such as the European Union, where compliance with carbon standards is a prerequisite for market entry. In effect, repealing the Endangerment Finding could incentivize reduced exports, causing U.S. automakers to forfeit opportunities in high-value international markets and thereby weakening the long-term global competitiveness of the U.S. auto industry. The result would not be economic growth, but instead a gradual ceding of technological leadership and market share to foreign competitors, undermining both U.S. economic security and geopolitical influence.

Accordingly, repealing the Endangerment Finding would not benefit the economy, but would instead inflict substantial and foreseeable harm upon U.S. industry, trade, and competitiveness. Such a result is inconsistent with the CAA's mandate to protect public health and welfare, ignores the reliance interests of regulated entities, and exposes U.S. manufacturers to heightened foreign competition at the expense of domestic economic security.

F. Enactment of Proposed Rule Will Increase Electricity Bills for Consumers and Small Businesses

The Proposed Rule will harm American consumers and small businesses by disincentivizing new electricity capacity additions and increasing consumer electricity prices. The Rhodium Group estimates that the EPA's proposal to abdicate its responsibility to regulate GHGs will be a key factor in increasing national average energy household expenditures by \$78-192 per year by 2035.⁵⁴

⁵² *US Auto Exports 2024-25: American Auto Export Data, US Car Exports by Country & Top Car Exporters*, USIMPORTDATA (July 1, 2025), <https://www.usimportdata.com/blogs/us-auto-exports-2024-25-car-export-data-top-exporters-by-country>.

⁵³ Susan Helper et al., *Why Undermining Fuel Efficiency Standards Would Harm the US Auto Industry*, BROOKINGS (July 2, 2018), <https://www.brookings.edu/articles/why-undermining-fuel-efficiency-standards-would-harm-the-us-auto-industry/>.

⁵⁴ Ben King et al., *What Passage of the "One Big Beautiful Bill" Means for US Energy and the Economy*, RHODIUM GRP. (July 11, 2025), <https://rhg.com/research/assessing-the-impacts-of-the-final-one-big-beautiful-bill/>.

The Proposed Rule will discourage the building of new renewable energy sources, which have been the cheapest sources of new power on the electricity grid. Renewable power is the cheapest and quickest power generation source to deploy in the United States, while the cost to build new gas-fired power plants has reached a ten year high.⁵⁵ Although consumer rate structure varies from state to state, it is generally accepted that utility companies will pass on their increased costs to energy consumers, including households and small businesses.

Building new energy sources will be required to meet the rising electricity demand resulting from AI datacenter growth and their constant need for power. Data centers will require expensive upgrades to the electric grid, a cost that will be shared with consumer households and smaller businesses through higher rates. Recent studies have found that electricity bills are on track to rise an average of 8% nationwide by 2030 and as much as 25% in places like Virginia because of data centers.⁵⁶ Simply stated, enacting the Proposed Rule will result in increased energy costs for American households and small businesses, since it will discourage new cheap energy sources, while energy demand increases due to datacenter proliferation.

G. The Proposed Rule Will Harm Investment in Battery Manufacturing and Storage

The Proposed Rule would directly undermine the growth and competitiveness of the U.S. battery sector by reducing incentives for innovation in batteries and advanced fuel-efficient technologies. As the Agency itself acknowledges, repeal of the Endangerment Finding would “weaken the competitiveness of U.S. suppliers” and “reduce the profitability of innovative fuel-efficient products.”⁵⁷ Those “innovative products” necessarily include advanced battery systems, which represent the core technology enabling EV deployment and compliance with stringent emissions standards.

By abdicating the EPA’s duty to regulate GHG requirements, the Proposed Rule would remove a critical driver of domestic demand for battery storage technologies, including, but not limited to EVs. Battery manufacturers rely on consistent regulatory signals to justify large-scale investments in production capacity, research and development, and supply chain integration. Without enforceable federal standards, U.S. automakers will scale back EV production, which in turn will depress demand for domestic batteries. This creates a cascading effect: manufacturers will not recoup prior capital expenditures, new investments will not occur, and foreign suppliers, particularly those in China, will gain market share at the expense of U.S. firms.

Moreover, the Proposed Rule exposes the U.S. battery sector to significant risks in international trade. Export markets such as the European Union condition vehicle access on compliance with stringent carbon standards. If U.S. automakers reduce EV production to align

⁵⁵ *Lazard’s Levelized Cost of Energy+ (LCOE+)*, LAZARD (June 2025), <https://www.lazard.com/research-insights/levelized-cost-of-energyplus-lcoeplus/>.

⁵⁶ Michael Blackhurst et al., *Data Center Growth Could Increase Electricity Bills 8% Nationally and as Much as 25% in Some Regional Markets*, CARNEGIE MELLON UNIV. (July 2025), <https://www.cmu.edu/work-that-matters/energy-innovation/data-center-growth-could-increase-electricity-bills>.

⁵⁷ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

with weakened domestic requirements, they will simultaneously reduce procurement from U.S. battery suppliers. This not only harms those suppliers' profitability but also denies them the opportunity to participate in global markets that continue to reward innovation in low-carbon technologies. The result is a policy-induced competitive disadvantage for U.S. battery firms relative to global rivals.

The battery sector is one of the fastest-growing energy industries, anticipated to double in value to \$322 billion globally within five years.⁵⁸ The EV market is experiencing a rapid increase in sales, with more than one in four cars globally expected to be electric in 2025.⁵⁹ This is occurring despite the apparent decline in U.S. market enthusiasm for EVs.⁶⁰ Revoking emissions standards will inject additional uncertainty into major battery storage projects, which are already experiencing difficulties from cancellations and regulatory change.⁶¹ Rather than an increase in onshoring, EPA's decision to abandon GHG controls will see an outflow of capital seeking other countries to invest in.

Core United States national security interests are directly impacted, since the same batteries that stabilize complex electric grids are also vital components to "every advanced technology defining global competition, from AI and data centers to electric vehicles and military systems like drones and other autonomous vehicles."⁶² The U.S. military has identified the vital role that batteries will play in U.S. capability going forward.⁶³ Choosing to lower emissions standards will harm domestic manufacturers and reduce the ability of U.S. industry to build the batteries that will be vital to future defense technology. The former Deputy Secretary of Defense has stated that America's private sector will be vital to leveraging the benefits of advanced manufacturing, as "batteries are also essential to thousands of military systems from handheld radios, to unmanned submersibles, and to future capabilities."⁶⁴

EPA should consider the effects its regulatory withdrawal will have on the near-term fuel prices, which are projected to raise gasoline prices substantially in the future. However, it should also pay heed to how this regulatory pullback will harm the President's goals of reviving our

⁵⁸ David Yellen and Sagatom Saha, *Policy Brief: How Tariffs are Undermining U.S. Energy and Economic Security*, CLEAN AIR TASK FORCE (June 4, 2025), <https://www.catf.us/resource/policy-brief-how-tariffs-undermining-us-energy-economic-security/>.

⁵⁹ *More than 1 in 4 Cars Sold Worldwide this Year is Set to be Electric as EV Sales Continue to Grow*, INT'L ENERGY AGENCY (May 14, 2025), <https://www.iea.org/news/more-than-1-in-4-cars-sold-worldwide-this-year-is-set-to-be-electric-as-ev-sales-continue-to-grow>.

⁶⁰ *Global Electric Vehicle Sales Set for Record-Breaking Year, Even as US Market Slows Sharply, BloombergNEF Finds*, BLOOMBERGNEF (June 18, 2025), <https://about.bnef.com/insights/clean-transport/global-electric-vehicle-sales-set-for-record-breaking-year-even-as-us-market-slows-sharply-bloombergnef-finds/>.

⁶¹ Phoebe Skok, *CEA: 21 GWh of US Battery Energy Storage Factories Cancelled in 2025*, PV MAG. ENERGY STORAGE (July 24, 2025), <https://www.ess-news.com/2025/07/24/cea-21-gwh-of-us-battery-energy-storage-factories-cancelled-in-2025/>.

⁶² Yellen and Saha, *supra* note 58.

⁶³ DEP'T OF DEFENSE, Deputy Secretary of Defense Dr. Kathleen Hicks Remarks at Wayne State University, Detroit, Michigan, on Climate Change as a National Security Challenge (Nov. 8, 2021), <https://www.defense.gov/News/Transcripts/Transcript/Article/2838082/deputy-secretary-of-defense-dr-kathleen-hicks-remarks-at-wayne-state-university/>.

⁶⁴ *Id.*

defense industrial base. This rule change would hurt not just consumers but also slow critical innovation that carries over directly into the defense sector.

III. Regulating CO₂ Is Technologically Feasible

EPA additionally considers rescission of the Endangerment Finding on the grounds that regulation of CO₂ is not technologically feasible.⁶⁵ To the contrary, CO₂ regulation is feasible not only because controls exist, but because emissions can be measured, and regulations can therefore be enforced. Since 2010, EPA’s Greenhouse Gas Reporting Program (“GHGRP”) has required approximately 8,000 facilities and fuel suppliers to report CO₂ and other GHG emissions annually.⁶⁶ This infrastructure provides verifiable data for compliance and market oversight.⁶⁷ Additionally, EPA publishes its Inventory of U.S. Greenhouse Gas Emissions and Sinks each year (most recently covering 1990–2022), evidencing long-standing capability to quantify CO₂ emissions across sectors—another pillar of enforceable regulation.⁶⁸

EPA, and states implementing EPA guidelines, have repeatedly promulgated and enforced GHG standards for vehicles and power plants. EPA’s 2024 power-sector package includes compliance timetables, state-plan mechanics, and regulatory impact analysis (“RIA”) assessing costs and grid/resource adequacy—evidence that CO₂ limits can be integrated without compromising reliability.⁶⁹ Also, EPA’s finalized 2024 vehicle standards follow a long history of GHG regulation for passenger cars and trucks, with extensive technical support and modeling, confirming the practical achievability of progressively tighter CO₂ performance.⁷⁰

Using EPA’s own rules, technical fact sheets, guidance, and data systems, CO₂ regulation is not only technologically feasible, but also already operational across major sectors, supported by proven control technologies, supplied with a mature measurement/verification backbone, and legally tested feasibility standards under the CAA.

With mandatory reporting in place, the federal government has been able to use this data to drive federal policy; this data is also shared with the United Nations. On September 12, 2025, EPA proposed ending the mandatory GHGRP.⁷¹ This action would limit the federal government’s ability to collect accurate data and would thereby prevent it from efficiently

⁶⁵ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

⁶⁶ 40 C.F.R. Pt. 98 (amended 2024).

⁶⁷ *Greenhouse Gas Reporting Program (GHGRP)*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/ghgreporting> (last visited Sep. 21, 2025).

⁶⁸ *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2022*, U.S. ENV’T PROT. AGENCY, (Apr. 2024), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2022>.

⁶⁹ *Final Carbon Pollution Standards to Reduce Greenhouse Gas Emissions from Power Plants*, U.S. ENV’T PROT. AGENCY, (Apr. 25, 2024) <https://www.epa.gov/system/files/documents/2024-04/cps-presentation-final-rule-4-24-2024.pdf>.

⁷⁰ *Regulations for Greenhouse Gas Emissions from Passenger Cars and Trucks*, U.S. ENV’T PROT. AGENCY <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-greenhouse-gas-emissions-passenger-cars-and-?>, (last visited Sept. 21, 2025).

⁷¹ *See EPA Releases Proposal to End the Burdensome, Costly Greenhouse Gas Reporting Program, Saving up to \$2.4 Billion*, U.S. ENV’T PROT. AGENCY (Sep. 12, 2025), <https://www.epa.gov/newsreleases/epa-releases-proposal-end-burdensome-costly-greenhouse-gas-reporting-program-saving-24>.

regulating emissions. EPA should keep the GHGRP in place and continue to use it as a basis upon which GHG regulation can be technologically feasible.

IV. EPA's Reliance on DOE's Climate Report Flies in the Face of Science

A. Relying on DOE's Report Constitutes Arbitrary and Capricious Decision-Making

EPA violates the Administrative Procedure Act ("APA") by relying on DOE's Climate Report, which ignores relevant scientific data and makes conclusory statements about CO₂ and the effects of GHG.⁷² The APA requires that agency decision-making not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."⁷³ An agency acts arbitrarily when it relies upon improper explanations and factors, ignores relevant data, or fails to provide a rational connection between the facts and conclusions drawn.⁷⁴

This doctrine was just recently re-emphasized by the Supreme Court in *Ohio v. EPA*. Under the Good Neighbor Provision, EPA had designed a Federal Implementation Plan ("FIP") that covered twenty-three upwind states whose emissions were impacting nonattainment in downwind states.⁷⁵ Yet, in promulgating its FIP, EPA had failed to address a keystone question: how would its emission standards be affected if one or more of the twenty-three states were not covered by it?⁷⁶ Ultimately, the Supreme Court ruled that EPA's actions were likely arbitrary and capricious because it had run "afoul" of the "long-settled" standard that agencies "cannot simply ignore 'an important aspect of the problem.'"⁷⁷

By cherry-picking data from scientific reports without a legal basis and arbitrarily excluding well-recognized scientific certainty, EPA is choosing to "ignore 'an important aspect of the problem.'"⁷⁸ Not only does the Proposed Rule epitomize arbitrary and capricious behavior by relying on DOE's Climate Report, it also independently fails under APA's requirement that agency action be rational, lawful, and consistent with statutory procedure.

In *Clean Air Council v. Pruitt*, the U.S. Court of Appeals for the D.C. Circuit reaffirmed that EPA cannot lawfully avoid its regulatory duties by selectively enforcing portions of the CAA, delaying or narrowing enforcement, or deferring necessary regulatory actions based on unsupported reasoning.⁷⁹ This arbitrary narrowing of federal oversight would allow unchecked emissions from categories of sources that, while not posing immediate harm, would contribute to cumulative and significant public health and environmental degradation.

Accordingly, the DOE Report undermines the protective purpose of the CAA. Congress designed the CAA to be a forward-looking, preventative statute that addresses both immediate

⁷² U.S. Dep't of Energy, *supra* note 7.

⁷³ 5 U.S.C. §706(2)(A).

⁷⁴ *Motor Vehicle Mfrs.*, 463 U.S. at 43 (explaining the "arbitrary and capricious" standard under the APA).

⁷⁵ *Ohio v. EPA*, 603 U.S. 279, 286 (2024).

⁷⁶ *Id.* at 287.

⁷⁷ *Id.* at 293 (quoting *Motor Vehicle Mfrs.*, 463 U.S. 29 (1983)).

⁷⁸ *Id.*

⁷⁹ *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017).

and long-term risks to public health and welfare. Central to the CAA's structure is the notion that regulators should act proactively, relying on scientific evidence to prevent harms before they become catastrophic or irreversible.⁸⁰ Even if we assumed, as the Climate Report concludes, that CO₂ "does not affect local air quality and has no human toxicological implications at ambient levels," the resulting unchecked emission of CO₂ would nonetheless result in future impacts on public health and welfare.⁸¹ This approach would also be violative of the Act's intent, as courts have held that "requiring EPA to wait until it can conclusively demonstrate that a particular effect is adverse to health before it acts is inconsistent with both the Act's precautionary and preventive orientation and the nature of the Administrator's statutory responsibilities."⁸²

This would shift the burden of environmental protection from prevention to post-hoc remediation. Unchecked GHG emissions would accumulate silently, inflicting irreversible damage, both economic and environmental, on vulnerable communities, sensitive ecosystems, and future generations.

B. EPA Has Mischaracterized the State of Science by Cherry-Picking Data.

In an alternative rationale for rescission, EPA is casting doubt on the scientific record underpinning the Endangerment Finding by throwing the proverbial baby out with the bathwater. The 2009 Endangerment Finding utilized a "weight of the evidence" approach, relying on the best available science from national and international peer-reviewed sources including the Intergovernmental Panel on Climate Change, U.S. Global Change Research Program, and National Research Council. Now, EPA relies on one non-peer reviewed report created at the direction of the DOE's political appointees (not career scientists) that cherry-picked data in order to mischaracterize the state of science and cast doubt on the overwhelming scientific consensus that GHG emissions from new motor vehicles and engines in the United States cause or contribute to endangerment to public health and welfare in the form of global climate change.⁸³ In the Climate Science Discussion section of EPA's proposed rule, EPA essentially seeks to muddy the waters by pointing to uncertainties and suggesting that because *some* scientific studies

⁸⁰ H.R. REP. NO. 95-294, 95th Cong., 1st Sess. 49 (1977) (One of the purposes of the CAA is "(t)o emphasize the preventive or precautionary nature of the act, i.e., to assure that regulatory action can effectively prevent harm before it occurs; to emphasize the predominant value of protection of public health.").

⁸¹ U.S. Dep't of Energy, *supra* note 7, at 2.

⁸² *Lead Industries Ass'n v. EPA*, 647 F.2d 1130, 1155 (D.C. Cir. 1980).

⁸³ The Department of Energy created the "Climate Working Group" comprised of five scientists known for their rejection of the well-established scientific consensus that burning of fossil fuels is heating the planet. The Climate Working Group's report underwent no professional peer-review, and upon external review, was found to be riddled with errors, misrepresentations, and cherry-picked data. *See* Lisa Friedman & Sachi Kitajima Mulkey, *Scientists Denounce Trump Administration's Climate Report*, NYT: TRUMP ADMIN. (Sep. 2, 2025), <https://www.nytimes.com/2025/09/02/climate/climate-science-report-energy-department.html>; *see also* Ayesha Tandon et al., *Factcheck: Trump's Climate Report Includes More Than 100 False or Misleading Claims*, CARBONBRIEF (Aug. 13, 2025), <https://interactive.carbonbrief.org/doe-factcheck/index.html> (interactive site detailing over 100 false or misleading statements identified in the Climate Working Group's 140-page report).

conclude the manifestations of increased CO₂ are not as severe as previous projections, that GHGs should simply be unregulated.

EPA claims the Endangerment Finding was “unduly pessimistic” because present CO₂ concentrations and temperatures are on the lower side of what the EPA predicted in 2009. EPA suggests that manifestations of climate change due to GHG emissions—such as heat waves, extreme weather, and sea level rise—are not having the predicted harmful impacts on public health and welfare. EPA supports these assertions using *only* DOE’s Climate Report, which has cherry-picked or otherwise mischaracterized information to fit this false narrative.

CO₂ has a direct impact on sea-level rise. Increasing levels of CO₂ not only threaten the world’s oceans but also contribute to further accelerating sea-level rise. EPA argues that “aggregate sea-level rise has been minimal.”⁸⁴ However, sea levels will continue to rise with high GHG emissions, which trigger rapid ice sheet collapse. By 2100, the projected ice sheet collapse may lead to a rise in sea level that will be two meters higher than it was in 2000.⁸⁵ Sea-level rise leads to flooding, and with approximately 40% of the U.S. population living in coastal areas, the impacts of flooding on coastal communities are and will continue to be devastating. Studies show that flooding can lead to increased mortality rates due to cardiovascular and respiratory disease. Therefore, consideration of how CO₂ can directly impact our environment and public health is vital and necessary.

Flooding is not merely an infrastructure or economic issue. It has direct consequences for human health. Research shows that flood exposure is associated with increased mortality from cardiovascular and respiratory disease.⁸⁶ Contaminated floodwaters and mold exacerbate respiratory illness, while the stress and displacement caused by flooding events strain the cardiovascular system.⁸⁷ On top of this, flood-related damage to health care infrastructure can prevent patients with chronic conditions from accessing necessary treatment, further elevating mortality risk in coastal communities.⁸⁸ Ultimately, sea-level rise fueled by CO₂ emissions directly undermines public health through compounding pathways of exposure, disease exacerbation, and systemic access disruption.

GHG emissions also intensify extreme weather patterns.⁸⁹ Spatial econometric studies demonstrate that CO₂ emissions significantly increase the probability of extreme heat events while decreasing the occurrence of extreme cold. Specifically, higher GHG concentrations raise the probability of extreme heat days in local regions while shifting cold-weather reductions across nearby regions, illustrating the broad destabilization of climate systems attributable to emissions.⁹⁰ Extreme heat is dangerous because it heightens the risk of cardiovascular failure,

⁸⁴ Rebecca Lindsey, *Climate Change: Global Sea Level*, NOAA, (Aug. 22, 2023), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level>.

⁸⁵ *Climate Change Indicators: Coastal Flooding*, U.S. ENV’T. PROT. AGENCY, <https://www.epa.gov/climate-indicators/climate-change-indicators-coastal-flooding>, (last visited Sept. 21, 2025).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Zhang, C. et al., *Impact of CO₂ Emissions on Extreme Temperature in Chinese Cities*, SCIENCE DIRECT (2021).

⁹⁰ *Id.*

respiratory complications, and heat-related mortality, especially among vulnerable populations such as the elderly and those with pre-existing health conditions.

EPA further claims that the 2009 Endangerment Finding did not properly balance the risks and benefits of GHGs and mischaracterizes the dangers of CO₂ to human health and the environment by suggesting CO₂ is a beneficial gas that “advances public health and welfare by directly impacting plant growth and therefore the price and availability of food.”⁹¹ While it is true that CO₂ is essential to crop growth and other necessary biological processes for humankind, these benefits are far outweighed by the harms from excess CO₂ in the atmosphere.⁹² The global increase in temperatures paired with higher levels of GHGs will result in poorly grown crops.⁹³ Additionally, the contention that public health will be positively impacted by the “price and availability of food” is misleading because GHGs can lead to an imbalance in the crop’s chemical makeup, with a decreased amount of protein, iron, zinc, and B-vitamins.⁹⁴ In addition, as atmospheric CO₂ increases, droughts in places like the American West worsen, subsequently reducing the water supply for the plants there and increasing the risk of catastrophic wildfires. Plants in other regions will experience more frequent disasters, including flooding and heat stress, exposure to saltwater from sea level rise, and an increase in pests.⁹⁵ EPA must therefore consider the resulting negative impacts on agriculture and public health when analyzing GHGs concentrations.

While the report acknowledges that the elevated levels of GHGs will increase plant production, it neglects to mention that the increase in plant production is not equal.⁹⁶ The higher concentrations of GHGs in the atmosphere may favor growth of certain plants, like invasive plants or vines, that are disruptive to our natural ecosystems.⁹⁷ Atmospheric GHGs levels will rise concurrently with temperature, which will have negative effects on plant health. Temperature elevation can increase respiratory carbon loss, leading to the negative effects of reduced plant carbohydrate reserves and creating water stress.⁹⁸ High temperatures can also put stress on plants, damaging proteins and membranes.⁹⁹ Wheat and rice individually make up

⁹¹ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

⁹² Karin Kirk, *More CO₂ 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/> (high CO₂ concentrations combined with warming temperatures lead to less nutritious crops).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Lewis H. Ziska, *Rising Carbon Dioxide and Global Nutrition: Evidence and Action Needed*, 11 PLANTS 1000 (2022), <https://doi.org/10.3390/plants11071000>.

⁹⁷ *Id.*

⁹⁸ Andrew E. Dessler et al., *Climate Experts’ Review of the DOE Climate Working Group Report*, 1, at 348, ESS OPEN ARCHIVE (Aug. 30, 2025), <https://essopenarchive.org/users/260056/articles/1330312-climate-experts-review-of-the-doe-climate-working-group-report>.

⁹⁹ *Id.*

approximately 20% of calories consumed globally.¹⁰⁰ Simultaneously, the nutrient density in wheat and rice are under threat from elevated CO₂ levels and temperature, with data suggesting that the protein content may decrease by 10% and Vitamin B may decrease by up to 30%, with other micronutrients decreased by approximately 5%.¹⁰¹

The combination of elevated GHGs and higher temperature increases the levels of toxins such as arsenic and cadmium in crops.¹⁰² The ingestion of toxins within food has major health consequences of illness, shorter life spans, reduced quality of life, and potentially death.¹⁰³ EPA claims that these impacts on plant nutrient health can be remediated by tools such as dietary supplements and biofortification. The health risks associated with increased toxins in plants from elevated atmospheric CO₂ cannot be addressed through either dietary supplements or biofortification.¹⁰⁴ Not only that, but fortification of produce and dietary supplements do not work to alleviate already existing nutrient deficiencies.¹⁰⁵ Thus, the EPA fails to address the serious impacts that elevated atmospheric CO₂ has on both plant and human health.

EPA neglects the growing body of evidence addressing the direct adverse health effects elevated GHGs exposures has on humans. Recent studies have challenged the assumption that CO₂ exposure of 5,000 parts per million ('ppm') are safe for short-term exposures, as brief exposures to concentrations between 1,000-2,000 ppm can result in measurable cognitive decline.¹⁰⁶ CO₂ was previously considered a reference parameter for indoor air quality, while monitoring other pollutants but not CO₂ itself. Now, CO₂ is the primary driver that initiates symptoms and risks associated with gastrointestinal, respiratory, and cognitive disorders described as "sick building syndrome."¹⁰⁷ Indoor exposures, such as office buildings or close-door bedrooms, are consistently within or above the 1,000-2,000-ppm range, putting those with long-term duration exposure at risk.¹⁰⁸ For example, a time-averaged CO₂ concentration of over 1,000 ppm was reported for 88% of 120 classrooms in Texas and peaked when levels exceed 3,000 ppm in 21% of those rooms.¹⁰⁹ Additionally, elevations in excess of 1,000 ppm over

¹⁰⁰ Joseph M. Awika, *Major Cereal Grains Production and Use Around the World*, 1089 AM. CHEM. SOC'Y 1 (2011), <https://doi.org/10.1021/bk-2011-1089.ch001>; Bekele Shiferaw et al., *Crops that Feed the World 10. Past Successes and Future Challenges to the Role Played by Wheat in Global Food Security*, 5 FOOD SEC. 291 (2013), <https://doi.org/10.1007/s12571-013-0263-y>.

¹⁰¹ Kristie L Ebi, et al., *Nutritional Quality of Crops in a High CO₂ World: an Agenda for Research and Technology Development*, 16 ENV'T RSCH. LETTERS (2021), <https://doi.org/10.1088/1748-9326/abfcfa>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Dessler, *supra* note 98.

¹⁰⁵ *Id.*

¹⁰⁶ Tyler A. Jacobson et al., *Direct Human Health Risks of Increased Atmospheric Carbon Dioxide*, NAT. SUSTAIN. 691 (2019), https://sj-admin.s3-us-west-2.amazonaws.com/2019_JacobsonDirectHealth.pdf.

¹⁰⁷ Stephen R. Thom et al., *Inflammatory Responses to Acute Elevations of Carbon Dioxide in Mice*, 123 J. APPLIED PHYSIOLOGY 297, 297 (2017).

¹⁰⁸ Ugo Bardi et al., *Carbon Dioxide as a Pollutant: The Risks on Human Health and the Stability of the Biosphere*, 4 ENV'T. SCI.: ADVANCES 1364 (2025), <https://doi.org/10.1039/D5VA00017C>.

¹⁰⁹ RL Corsi, et al., *Carbon Dioxide Levels and Dynamics in Elementary Schools: Results from the TESIAS Study*, 9th International Conference on Indoor Air Quality and Climate 74 (2002).

outdoor values were found in 45% of 434 classrooms in Washington and Idaho, where elevations correlated with student absences.¹¹⁰

Although EPA regulates outdoor air, it must recognize that indoor CO₂ concentrations are directly influenced by the rising outdoor levels. Since outdoor air is used to dilute indoor air, the outdoor concentrations of CO₂ set a floor for indoor concentrations that cannot be breached.¹¹¹ If EPA weakens regulations, the health impacts will disproportionately affect urban populations, where emissions are concentrated and natural ventilation is limited. Urban areas greatly contribute to anthropogenic GHG emissions, and experience what is referred to as the urban CO₂ dome effect.¹¹² Additionally, fluxes of GHG have been found to be two to five times higher in cities than their surrounding suburban residential areas.¹¹³

Furthermore, prolonged exposure to elevated GHG levels is linked to several serious health effects, including inflammation, oxidative stress, and diminished cognitive abilities.¹¹⁴ Inflammation is the body's natural response to an injury, infection, or other harmful stimuli.¹¹⁵ During inflammation, proinflammatory microparticles ("MPs") are shed from the surface of a cell, either inducing or amplifying the body's response to the injury.¹¹⁶ MPs function as intercellular messengers by carrying cytokines or other signaling proteins that often generate free radicals targeting the site of injury.¹¹⁷ Recent studies have recorded that 1,000 to 4,000 ppm of CO₂ rapidly triggers the production of MPs containing high concentrations of interleukin-1 beta (IL-1β) in humans.¹¹⁸ Although interleukin-1 beta plays a crucial role in resolving acute infections, emerging evidence demonstrates that IL-1β overproduction is linked to inflammatory diseases, cancer, and cardiovascular diseases.¹¹⁹ Therefore, increased CO₂ levels put the human population at greater risk for excessive IL-1β production and its associated health effects.

Excessive exposure to CO₂ has also been linked to inducing oxidative stress. Oxidative stress refers to an imbalance in the body which is marked by the elevated generation of reactive oxygen species due to the body's inability to neutralize them with antioxidants.¹²⁰ The increase in reactive oxygen species causes cellular damage that can lead to carcinogenic effects, cellular death, and accelerated aging processes. Excessive CO₂ can induce oxidative stress due to the bicarbonate buffer system, specifically when pushed above physiological levels, and can stimulate redox pathways that cause oxidative damage via free radical formation independently of acid-base imbalance.¹²¹

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Jacobson et al., *supra* note 106 at 693.

¹¹⁴ *Id.*

¹¹⁵ Stephen R. Thom et al., *supra* note 107, at 301.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 297.

¹¹⁸ Jacobson et al., *supra* note 106, at 695.

¹¹⁹ *Id.*

¹²⁰ Margalida Monserrat-Mesquida et al., *Carbon Dioxide (CO₂) Dietary Emissions Are Related to Oxidative and Inflammatory Status in Adult Population*, 15 NUTRIENTS (2023), <https://www.mdpi.com/2072-6643/15/24/5050>.

¹²¹ *Id.*

Overall, elevated GHG levels have a direct and significant impact on human health through triggering inflammatory diseases, oxidative stress, and cognitive decline. If EPA rescinds the Endangerment Act, the public will face serious health consequences from increased GHG emissions.

V. EPA’s Severance Theory Conflicts with the CAA’s Structure and Purpose

In its Proposed Rule, EPA posits that the issuance of endangerment findings under Section 202(a) of the CAA are severable by regulatory program—such that EPA must make a separate endangerment determination for each statutory provision under which it seeks to regulate.¹²² This theory has no basis in the text of the CAA and undermines the statute’s central aims.

First, the text of Section 202(a) requires a single, threshold determination: whether “any air pollutant” from new motor vehicles or engines “cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹²³ Once such a finding is made, the statute obligates EPA to regulate. Nothing in the statutory language supports the notion that EPA must make that determination anew for each separate regulatory action or section.

Second, the agency’s severance theory would create irrational gaps in regulation. Under EPA’s approach, a pollutant could be found to cause dangerous air pollution yet evade control merely because its harmful effects are distributed across multiple source categories (e.g., mobile and stationary sources). That outcome contradicts the Act’s holistic purpose: to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare,” 42 U.S.C. § 7401(b)(1). The CAA divides regulatory authority across source categories not to narrow the scope of regulation, but to tailor regulatory tools to the source type.

Third, Supreme Court precedent forecloses the agency’s narrow construction. In *Massachusetts*, the Court held that GHGs qualify as “air pollutants” under the Act and that EPA must regulate them once it finds they endanger public health or welfare.¹²⁴ The Court rejected EPA’s attempt to avoid its obligation by invoking policy considerations extraneous to the statutory text. The “severance” theory is a repackaging of the same unlawful avoidance strategy.

Finally, the agency’s approach undermines cooperative federalism and the CAA’s comprehensive design. Congress deliberately structured the Act so that regulation of different source categories works in concert to reduce pollution levels nationwide. Requiring separate endangerment findings for each regulatory program fragments this scheme and frustrates the cumulative reduction of pollutants that the Act envisions.

In sum, the agency’s proposed severance doctrine would transform the CAA’s integrated framework into a patchwork of contingent determinations that thwart the statute’s central

¹²² Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

¹²³ 42 U.S.C. § 7521(a)(1).

¹²⁴ *Massachusetts*, 549 U.S. at 497.

purpose. It is contrary to both the statutory text and binding Supreme Court precedent, and thus unlawful.

VI. EPA's Balancing Rationale is Contrary to the CAA and Established Principles of Environmental Law

The EPA asserts that the 2009 Endangerment Finding “did not adequately balance” projected adverse climate impacts with purported regional benefits of increased GHG concentrations.¹²⁵ That reasoning is unlawful for at least three reasons.

First, the CAA does not permit offsetting severe harms to some communities with speculative benefits to others. The statutory question under Section 202(a) is whether emissions of “any air pollutant” from motor vehicles “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹²⁶ The text is categorical: once a pollutant endangers health or welfare, EPA must regulate. Nothing in the Act authorizes the Agency to weigh those harms against claimed benefits to other regions.

Second, EPA's balancing approach would sanction arbitrary inequities across communities. Severe climate harms—such as sea-level rise for low-lying coastal communities, or heightened drought and wildfire risks in arid regions—cannot be “balanced away” by pointing to potential agricultural gains in northern latitudes. This logic would permit EPA to allow dangerous pollutant concentrations in one region simply because they incidentally generate benefits elsewhere. That is antithetical to the CAA's protective purpose.

Third, the Agency's reasoning is inconsistent with environmental justice principles and the CAA's mandate to protect vulnerable populations. Congress explicitly directed EPA to safeguard “sensitive populations” and prevent “any” endangerment to public health or welfare.¹²⁷ EPA's balancing rationale effectively dismisses disproportionate and irreversible harms to frontline communities, in contravention of both statutory purpose and longstanding environmental law principles that prohibit trading off one group's health for another's economic advantage.¹²⁸

In sum, the Agency's claim that benefits in some regions justify disregarding severe harms in others is inconsistent with the text, structure, and purpose of the Clean Air Act. The statute requires EPA to protect public health and welfare against endangerment, not to engage in zero-sum balancing that sacrifices vulnerable communities for speculative regional gains.

¹²⁵ Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, *supra* note 1.

¹²⁶ 42 U.S.C. § 7521(a)(1).

¹²⁷ *Id.*

¹²⁸ See *Union Elec. Co. v. EPA*, 427 U.S. 246, 256 (1976) (CAA's “overriding concern” is protection of health and welfare, even at economic cost).

VII. Conclusion

In light of the foregoing, EPA must abandon the Proposed Rule. Rescission of the 2009 Endangerment Finding would be contrary to the Clean Air Act's statutory mandate, inconsistent with binding Supreme Court precedent, unsupported by the scientific record, and arbitrary and capricious under the APA.¹²⁹ The economic record demonstrates that regulatory certainty and continued investment in emissions reduction technologies strengthen, rather than hinder, domestic markets and national security interests. The Proposed Rule unlawfully substitutes policy preferences for scientific judgement, disregards settled statutory mandates, and threatens to destabilize domestic markets, undercut technological innovation, and erode U.S. competitiveness.

The Clean Air Act, as interpreted by the Supreme Court, compels EPA to regulate greenhouse gases when they endanger public health and welfare. The substantial body of peer-reviewed science confirms that GHG emissions from motor vehicles endanger public health and welfare, and no new evidence warrants a departure from that conclusion. EPA cannot lawfully disregard its prior scientific determinations, nor may it rely on incomplete or selectively interpreted evidence to justify reversal of an established endangerment finding. The combined legal, economic and public health consequences of this Proposed Rule are substantial and foreseeable. For these reasons, the Agency must withdraw the Proposed Rule and reaffirm the 2009 Endangerment Finding in accordance with its statutory obligations and judicially recognized duty to regulate GHG emissions.

We, concerned Juris Doctor students, in collaboration with PECC, PELR, Pace ELS, and environmental law faculty members, thank EPA for this opportunity to comment. We hope that our comment is valuable in EPA's decision making moving forward.

Sincerely,

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¹²⁹ See Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

Daniel Khieninson, J.D. Candidate '26
Nicholas Mammel, J.D. Candidate '27
Hannah Dauray, J.D. Candidate '27, M.E.M Candidate '27
Alexandra Phillips, J.D. Candidate '26
Birgitta Cockburn, J.D. Candidate '27
Emily Petermann, J.D. Candidate '26
Mia Fraser, J.D. Candidate '27
Tamika Thomas-Murray, J.D. Candidate '26
Jack Finn, J.D. Candidate '26
Hannah Law-Price, J.D. Candidate '27
Grant Lenski, J.D. Candidate '27
Sukanya Kansara, MPH, J.D. Candidate '28
Maryn McConkey, J.D. Candidate '27
Natalie Ovena, J.D. Candidate '28
Jack Love, J.D. Candidate '26
Carlos Erazo, J.D. Candidate '26
Lucy Laudeman, J.D. Candidate '27
Emma Scrimgeour, J.D. Candidate '26
Emily Jamieson, J.D. Candidate '27
Brenna Knibbs, J.D. Candidate '27
Katerina Soltany, J.D. Candidate '27
Ailie Maclean, J.D. Candidate '28, M.E.M. Candidate '28
Henry Heintzman, J.D. Candidate '27
Stephen Badea, J.D. Candidate '28
Amanda Moore, J.D. Candidate '26
Kyleigh Weir, J.D. Candidate '28
Zoe Hord, J.D. Candidate '27
Anna Ottavi, J.D. Candidate '28
Anabel Riggio, MPA, J.D. Candidate '26
Michael S. Grant, J.D. Candidate '26
Maria Sutherland, J.D. Candidate '27
Elena Fasullo, J.D. Candidate '28
Maria Sanz Bentivegna, J.D. Candidate '26
Robert Gehring, J.D. Candidate '26
Vanessa Pasos, J.D. Candidate '27
Robert J. Donohue, J.D. Candidate '29
Kassandra Peralta Thomas, J.D. Candidate '28
Thomas Glawson, J.D. Candidate '27
Gregory Strakhov, J.D. Candidate '27
Olivia Haemmerle, J.D. Candidate '26

Mohammad Salahat, J.D. Candidate '28
Ryan York, J.D. Candidate '26
Victoria Sawchuk, M.A., J.D. Candidate, '26
Mackenzie Scheuermann, M.S., J.D. Candidate '27
Bianca Mazzearella, J.D. Candidate '27
Laila Greene, J.D. Candidate '27
Alysia LeComte, J.D. Candidate '26
Frances Gothard, J.D. Candidate '26
Mary Tyler, J.D. Candidate '27
Juli Farnham, J.D. Candidate '27
Evi Patterson, J.D. Candidate '26

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