

No. 26-____

In the Supreme Court of the United States

COMMONWEALTH OF KENTUCKY,
STATE OF WEST VIRGINIA, ET AL.

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, ET AL.

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Clean Air Act allows the Environmental Protection Agency (EPA) to revise a national ambient air quality standard (NAAQS) only after a “thorough review” of its air-quality criteria and the current standard. 42 U.S.C. § 7409(d)(1). But in 2024, EPA used a short-circuited reconsideration process—involving an intentionally narrow review of a few limited studies—to revise the air-quality standards for fine particulate matter (PM_{2.5}) to the most restrictive level ever. Although EPA later disavowed any power to revise NAAQS without a thorough review, the D.C. Circuit rejected that concession and approved an expansive view of EPA’s authority anyway.

The questions presented are:

1. Whether the Clean Air Act gives EPA the authority to revise NAAQS without conducting a thorough review merely because the revision occurs before the normal, five-year review.
2. Whether the Clean Air Act bars EPA from considering the costs and feasibility of revising NAAQS when deciding whether to exercise its discretion to undertake a revision before the normal, five-year review.

PARTIES TO THE PROCEEDING

The petitioners are the Commonwealth of Kentucky, the State of West Virginia, the State of Alabama, the State of Alaska, the State of Arkansas, the State of Florida, the State of Georgia, the State of Idaho, the State of Indiana, the State of Iowa, the State of Kansas, the State of Louisiana, the State of Mississippi, the State of Missouri, the State of Montana, the State of Nebraska, the State of North Dakota, the State of Ohio, the State of Oklahoma, the State of South Carolina, the State of South Dakota, the State of Tennessee, the State of Utah, the State of Wyoming, the State of Texas, and the Texas Commission on Environmental Quality.

The respondents are the U.S. Environmental Protection Agency and Lee M. Zeldin, in his official capacity as Administrator of the U.S. Environmental Protection Agency.

Additional petitioners in the court of appeals were the Chamber of Commerce of the United States of America, the American Chemistry Council, the American Forest & Paper Association, the American Petroleum Institute, the American Wood Council, the National Association of Manufacturers, the National Mining Association, the American Cement Association, the President of the Arizona State Senate Warren Peterson, Speaker of the Arizona House of Representatives Ben Toma, the Arizona Chamber of Commerce and Industry, and the Essential Minerals Association.

Intervenors in support of respondents in the court of appeals were the Alliance of Nurses for Healthy Environments, the American Lung Association, Citizens

for Pennsylvania's Future, the Conservation Law Foundation, the Environmental Defense Fund, the Natural Resources Defense Council, the Northeast Ohio Black Health Coalition, the Rio Grande International Study Center, the Sierra Club, the State of California, the State of Arizona, the State of Connecticut, the State of Illinois, the State of Maryland, the State of Michigan, the State of Minnesota, the State of New Jersey, the State of New York, the State of Oregon, the State of Rhode Island, the State of Vermont, the State of Washington, the State of Wisconsin, the Commonwealth of Massachusetts, the Commonwealth of Pennsylvania, the District of Columbia, the City of New York, and Harris County, Texas.

STATEMENT OF RELATED PROCEEDINGS

1. This case began as petitions for review consolidated in the D.C. Circuit. That case is *Kentucky, et al. v. EPA, et al.*, Nos. 24-1050, 24-1051, 24-1052, 24-1073, 24-1091 (D.C. Cir. June 26, 2026).

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INTRODUCTION

Few, if any, federal regulatory regimes touch more lives than the air-quality standards that EPA sets under the Clean Air Act. Given their sweeping impact, one might expect the agency to act with special care when it sets those standards. But under the decision here, EPA can now launch a premature review of air-quality standards and quickly rewrite them without undertaking the “thorough review” the Act normally demands. And in the D.C. Circuit’s view, EPA cannot consider the inevitably massive consequences of any new standards when deciding whether to make these off-cycle revisions to NAAQS.

Congress did not grant EPA such unbounded discretion. Under the Clean Air Act, EPA can revise NAAQS only after “a thorough review” of existing air-quality criteria *and* a decision that the revision would “be appropriate.” 42 U.S.C. § 7409(d)(1). To be sure, the Act allows for revisions outside the mandatory five-year cycle. *See id.* But it nowhere allows the agency to use off-cycle revisions to evade congressional constraints and impose NAAQS that result from a less rigorous assessment of current conditions.

It makes sense that Congress requires EPA to conduct a thorough review every time it revises NAAQS. As NAAQS lower, the uncertainty in scientific evidence about the public-health effects of exposure heightens. App. 118a–119a. So do the costs of attaining the lowered standards. How best to balance that uncertainty against those consequences is a line-drawing decision that cannot be made lightly.

In 2024, EPA took the unprecedented step of finalizing an off-cycle revision without a thorough review.

The result was the most stringent PM_{2.5} NAAQS ever, tightening the annual standard from 12 to 9 µg/m³. That single change starts a chain of obligations that runs for years and saddles the States with crushing expense. The Commonwealth of Kentucky, the State of West Virginia, and a coalition of 23 States and one State environmental agency (State Petitioners), alongside several industry and other affected parties, therefore filed petitions for review challenging EPA's choice to dispense with the usual process.

Later, even EPA admitted that it had misinterpreted the Clean Air Act, agreeing with the petitioners that section 109(d)(1) does not allow for revision without a thorough review. It also recognized that any off-cycle review must consider the consequences of that revision—something it failed to do in 2024.

Despite EPA's confession—and against the weight of 50 years of NAAQS-setting experience—the D.C. Circuit approved EPA's now-abandoned view that the Clean Air Act vests EPA with broad authority to make early NAAQS revisions without a thorough review. EPA can now avoid its most important statutory guardrails if it acts sooner than the statute requires. And when it does so, it cannot even consider the costs and feasibility of the NAAQS revision that results.

The D.C. Circuit's view of the statute cannot be the law. It grants a level of discretion that frustrates the constraints Congress set, turning a thorough review into a passing one. And it gives changing policy views—rather than the results of a rigorous scientific review—undue weight in the decision to revise

NAAQS. EPA should make its most important regulatory decisions only after it follows the rigorous process Congress established.

This Court should intervene to prevent the D.C. Circuit's error from being the last word on the statutory questions presented here. The Clean Air Act channels review of nationally applicable regulations exclusively to the D.C. Circuit, 42 U.S.C. § 7607(b)(1), and no other circuit will have a chance to consider these issues of surpassing importance. Nor can any future rulemaking dislodge the decision below, so this view will bind this administration and every one that follows. What's more, if the D.C. Circuit were right on the statute, granting EPA wide-ranging, unconstrained decisionmaking authority of the sort the D.C. Circuit envisioned raises serious constitutional questions. The correct interpretation of the Clean Air Act avoids those concerns.

State Petitioners thus request that the Court grant the petition for writ of certiorari.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a–38a) is reported at 179 F.4th 963 (D.C. Cir. 2026). The EPA order under review (App. 39a–898a) is available at 89 Fed. Reg. 16202 (Mar. 6, 2024).

JURISDICTION

The court of appeals entered judgment on June 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in the appendix to this petition. App. 899a–903a.

STATEMENT OF THE CASE

I. EPA sets air-quality standards, and States implement them.

1. The Clean Air Act requires EPA, through its Administrator, to determine what air pollutants “may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7408(a)(1)(A). The products of those determinations—called “air quality criteria”—must “accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected” from the pollutant. 42 U.S.C. § 7408(a)(2).

Once EPA identifies a pollutant and issues air-quality criteria, it must propose a NAAQS for that pollutant. 42 U.S.C. § 7409(a). Primary NAAQS—the kind at issue here—are “ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.” 42 U.S.C. § 7409(b)(1).

Both the air-quality criteria and the NAAQS are subject to “a thorough review” every five years. 42 U.S.C. § 7409(d)(1). After that “thorough review,” EPA “shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate” under sections 108 and 109(b). *Id.* A “thorough review” contemplates that the agency will

evaluate “the entire body of scientific evidence available.” *Murray Energy Corp. v. EPA*, 936 F.3d 597, 609 (D.C. Cir. 2019); *see also, e.g., Mississippi v. EPA*, 744 F.3d 1334, 1344 (D.C. Cir. 2013) (“EPA relied on a broad array of scientific studies, quantified models, and input from [the Clean Air Scientific Advisory Committee (CASAC)], EPA staff, and commenters.”).

EPA can also “review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph,” referring to section 109(d). 42 U.S.C. § 7409(d)(1).

2. This petition concerns particulate matter (PM), “a shorthand for a variety of substances that form particles in the ambient air.” *Nat’l Ass’n of Mfrs. v. EPA*, 750 F.3d 921, 923 (D.C. Cir. 2014) (*NAM*). EPA regulates two categories of PM. The type at issue here, PM_{2.5}, has a diameter under 2.5 micrometers—much smaller than the diameter of a human hair. App. 66a. In 2022, EPA concluded that a plurality of PM_{2.5} (44%) comes from wildland fires. App. 96a. Other sources of PM are dust, agriculture, stationary fuel combustion, industrial processes, and mobile vehicles. App. 95a–96a. Its specific components (and its potential effects) vary across the United States. App. 103a–106a.

EPA first issued air-quality criteria and set a NAAQS for PM in 1971, but it did not target PM_{2.5} specifically until 1997. *Am. Farm Bureau Fed’n v. EPA*, 559 F.3d 512, 516–17 (D.C. Cir. 2009). That 1997 proceeding set the NAAQS at 15 µg/m³, *see id.* at 517, which EPA lowered to 12 µg/m³ in 2013, *see NAM*, 750 F.3d at 923. *See also* App. 66a–73a. In the first two decades of the 21st century, national average PM_{2.5}

concentrations dropped 43% from 13.5 $\mu\text{g}/\text{m}^3$ to 7.6 $\mu\text{g}/\text{m}^3$. App. 100a.

3. When EPA issues air-quality criteria and sets NAAQS, States must implement them. 42 U.S.C. § 7407(a) (“Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State.”). The shift to state control at the implementation stage reflects the Clean Air Act’s cooperative-federalism scheme; the “Act envisions States and the federal government working together to improve air quality.” *Ohio v. EPA*, 603 U.S. 279, 283 (2024). But implementation is a complicated process involving multiple time consuming (and costly) steps.

The starting point for implementation is designation of geographic areas as “attainment”—within the relevant NAAQS—or “nonattainment”—either above the allowable level or contributing to nonattainment in a “nearby area.” 42 U.S.C. §§ 7407(d)(1)(A), (B). After the NAAQS is set or revised, States have one year to submit initial area designations to EPA. 42 U.S.C. § 7407(d)(1)(A). (That deadline here was February 7, 2025). EPA then adopts or modifies those initial designations. 42 U.S.C. § 7407(d)(1)(B)(i)–(ii). (A district court ordered that to happen here by February 6, 2027. *See All. of Nurses for Healthy Envts. v. Zeldin*, No. 26-cv-03118 (N.D. Cal. July 17, 2026)). If EPA modifies the initial designations, the States have 120 days to respond before finalization. 42 U.S.C. § 7407(d)(1)(B)(ii).

Once EPA issues final designations, States must prepare state implementation plans (SIPs) explaining

how they'll maintain attainment in any attainment areas or achieve attainment in any non-attainment areas. 42 U.S.C. §§ 7407(a); 7410(a)(1). The Clean Air Act requires multiple types of SIP revisions. One is an infrastructure SIP, which evaluates and certifies that a State is in compliance with the Act. *See* 42 U.S.C. § 7410(a)(2). States must also prepare interstate transport SIPs to address whether emissions contribute to nonattainment or interfere with maintenance in another State. *See* 42 U.S.C. § 7410(a)(2)(D)(i)(I). Those obligations of course change depending on the designations EPA issues.

If an area is in attainment, a SIP must “contain emission limitations and such other measures as may be necessary . . . to prevent significant deterioration of air quality.” 42 U.S.C. § 7471. But if an area is in non-attainment, States owe EPA another SIP with a non-attainment plan within 18 months. 42 U.S.C. §§ 7513a(a)(2), 7410(a)(2)(I). States with nonattainment areas must use “all reasonably available control measures” and “reasonably available control technology” to achieve attainment within a statutory deadline. 42 U.S.C. §§ 7502(a)(2)(A), (c)(1). Compliance “often mean[s]” using “potentially expensive technology or expensive process changes to reduce pollution levels” quickly. *Miss. Comm’n on Env’t Quality v. EPA*, 790 F.3d 138, 146 (D.C. Cir. 2015).

Another immediate burden on States and industry from a new NAAQS is permitting. Although the designation and SIP revision process takes time, EPA made permitting obligations kick in immediately. App. 753a. So after a NAAQS revision, any modifications, new construction, or renewals must go through a time-consuming and costly permitting process to ensure

compliance with the lowered NAAQS. That’s true for future applications and applications pending when the 2024 Rule was finalized. App. 753a. And if the State identifies an exceedance with a project, nearby projects will need to update their permits in turn. The result makes economic development more complicated for all involved.

II. In 2024, EPA decided to revise the NAAQS for PM ahead of schedule and without a thorough review.

1. The petitions here find their roots in EPA’s 2020 decision to retain the PM_{2.5} NAAQS set at 12 µg/m³ in 2013. App. 48a. EPA chose that standard in 2013 after population-level studies “reported statistically significant associations between adverse health effects and [PM] exposure at concentrations between 12.8 and 14.8 µg/m³.” *NAM*, 750 F.3d at 923 (citation omitted). It chose air-quality standards at the low end of those distributions. 85 Fed. Reg. 82684, 82695 (Dec. 18, 2020). But “uncertainties remaining in the scientific evidence” kept EPA from setting a standard below 12 µg/m³. *Id.* Those “important uncertainties and limitations . . . remain[ed] in the epidemiological evidence” in 2020. *Id.* at 82714. Plus, recent “scientific evidence” did not cause EPA to doubt the 2013 standard—even with the uncertain evidence factored in. *Id.* at 82717–18. So EPA retained the 2013 standards. *Id.* at 82718.

2. That 2020 decision came at the end of the first Trump Administration. But just weeks later, the new Administration upended the decision to hold PM_{2.5} NAAQS steady in the face of scientific uncertainty.

The opening salvo was the now-withdrawn Executive Order 14008, which directed a “government-wide approach” to “combat the climate crisis with bold, progressive action” involving “the full capacity of the Federal Government.” 86 Fed. Reg. 7619, 7622 (Jan. 27, 2021). Another directive, Executive Order 13990, ordered “federal agencies to consider whether Trump-era rules fit the new administration’s agenda.” *Arizona v. EPA*, 77 F.4th 1126, 1128 (D.C. Cir. 2023) (citing 86 Fed. Reg. 7037, 7037 (Jan. 25, 2021)). That new agenda included “advanc[ing] environmental justice” and “confront[ing] the climate crisis.” 86 Fed. Reg. at 7037. At EPA alone, President Biden directed that 48 rules be reviewed under Executive Order 13990.

That list of decisions to review included the 2020 rule retaining the 2013 PM_{2.5} NAAQS. App. 79a. EPA announced its decision to reconsider the 2020 rule less than six months later. *Id.*

The reconsideration process sharply departed from the “thorough review” that section 109(d)(1) requires. Rather than start its scientific analysis anew, as EPA did for the 2020 rule, EPA supplemented its 2019 Integrated Science Assessment (ISA)—the document that gathers and evaluates the relevant science—and updated its Policy Assessment. App. 82a–83a. The 2019 ISA ostensibly remained “the broad scientific foundation” for EPA’s analysis. App. 136a. EPA’s supplement simply evaluated “some studies that became available after the literature cutoff date of the 2019 ISA.” App. 84a. EPA chose “not to reassess areas” that it assumed, based on a first-pass review, were “unlikely to have new information.” App. 82a; *see also* App. 91a n.28 (EPA evaluated only “recent studies that [we]re of greatest policy relevance and utility”).

Thus, the ISA Supplement had only a “narrow scope” that did “not encompass the full multidisciplinary evaluation” undertaken in the 2019 ISA. App. 87a; *see also* App. 88a (noting that CASAC has said the “targeted purpose” and “limitation” on scope in the ISA Supplement “would not be appropriate for ISAs generally”).

Little about the evidence about PM_{2.5}’s health effects had changed since 2020. EPA looked at only two new studies based on data from ground monitors (rather than hybrid studies combining monitor data with other estimates), only one of which reported mean PM_{2.5} concentrations below 12 µg/m³. App. 220a–221a, figs. 1–2. And it still identified many of the same uncertainties and limitations present in 2020. App. 352a. Contrary to the 2020 EPA, the then-current EPA simply decided “to place less weight on these uncertainties.” *Id.*

3. The result was the 2024 Rule challenged here. It invoked section 109(d)(1) to revise the PM_{2.5} NAAQS from 12 to 9 µg/m³—the most stringent ever—without conducting a “thorough review.”

In that short-circuited process, EPA weighed the same “longstanding large body of epidemiological evidence” that it considered in 2020, with the same limitations and uncertainties. App. 352a. Yet this time, EPA discounted the uncertainties so that it could emphasize studies it gave little weight to in 2020.

Equally important is what EPA did not consider in its unprecedented revision: its real-world consequences. EPA repeatedly stated that “the economic and technical feasibility of attaining ambient standards are not to be considered in setting or revising NAAQS.” App. 763a, 59a, 61a, 64a, 68a, 767a. So EPA

offered no response to the significant consequences of revising the NAAQS down to 9 $\mu\text{g}/\text{m}^3$. EPA finalized the PM_{2.5} NAAQS in March 2024.

III. Petitioners challenged the 2024 Rule in the D.C. Circuit

State Petitioners—Kentucky, West Virginia, and 23 other States—filed petitions for review in the D.C. Circuit challenging the 2024 Rule. Industry groups led by the Chamber of Commerce filed petitions that the court of appeals consolidated with the State-led petitions. And 16 more States, several localities, and public-interest groups intervened as respondents to defend the 2024 Rule.

EPA initially defended the 2024 Rule in briefing and at oral argument. But it ultimately withdrew that defense and disavowed its asserted reconsideration authority. EPA admitted that it had not conducted a “thorough review” but instead had only “supplement[ed]” a “prior review with a limited selection of additional studies”; it had then “revis[ed] the NAAQS on that basis alone.” D.C.Cir.Dkt. # 2147050 (Mot. to Vacate) at 2. The “best reading” of the statute, EPA admitted, did not permit that approach. *Id.* at 9. It thus sought vacatur on two grounds: (1) that it lacked authority to revise NAAQS without conducting the “thorough review” that section 109(d)(1) requires, *id.* at 10–18, and (2) that, alternatively, its failure to consider costs made its revision arbitrary and capricious, *id.* at 18–21.

A panel of the D.C. Circuit denied the consolidated petitions. It agreed with the defenses EPA abandoned and adopted an additional statutory holding, now advanced by intervenors.

The D.C. Circuit’s primary holding grants EPA unprecedented revision power. The court began by identifying section 109(b) as the source of EPA’s authority to revise NAAQS off cycle. App. 19a. In its view, that section does not require a thorough review for off-cycle revisions. App. 19a, 21a. The court’s theory was suggested for the first time at oral argument by a member of the panel. And the court embraced it despite EPA’s admission that its rulemaking relied on section 109(d), not section 109(b). Section 109(d)(1), the court held, merely added a five-year review requirement; it “does not limit the Administrator’s authority to revise a standard sooner.” App. 20a–21a.

The upshot was that section 109(d)(1) does not “require a ‘thorough review’ as a precondition to an off-cycle revision.” App. 21a. The court took that view for two reasons, one textual and the other policy-based. In the text, it found dispositive that the word “thorough” does not appear in section 109(d)(1)’s second sentence. App. 21a–22a. And it rejected the argument that the words “review” and “under this paragraph” in that sentence import the “thorough review” requirement to off-cycle reviews because it “would stretch [the second sentence’s] meaning to the point of frustrating it.” App. 22a–23a. As a policy matter, it viewed the thorough-review requirement as “prevent[ing] the Administrator from responding promptly to changes in the relevant science.” App. 23a. Applying it to off-cycle reviews would thus “unnecessarily delay promulgation of a new standard.” *Id.* So the D.C. Circuit exempted all off-cycle reviews from the “thorough review” requirement, leaving these NAAQS revisions entirely up to the agency’s discretion. App. 25a.

The court also rejected petitioners’ alternative claim that the decision whether an off-cycle revision is “appropriate” should factor in the costs and feasibility of that revision. App. 28a–33a. According to the court, “economic considerations and attainability” are impermissible at any step of “the NAAQS-setting process.” App. 30a.

REASONS TO GRANT THE PETITION

The text of the Clean Air Act does not confer on EPA the expansive revision authority that the D.C. Circuit found. That mistaken holding will impose profound harms on the States and the businesses that fuel their economies. Only this Court can correct it, so it should grant a writ of certiorari and do so.

I. This case presents questions of great importance to the States that only this Court can answer.

Before turning to the statutory questions at the heart of this petition, the Court should consider what’s at stake here.

NAAQS are the core of EPA’s regulatory bailiwick. They “are the engine that drives nearly all of Title I of the [Clean Air Act].” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001); *see also Union Elec. Co. v. EPA*, 427 U.S. 246, 249 (1976) (describing NAAQS implementation as the “heart” of the CAA). No wonder, then, that NAAQS have such enormous practical consequence; indeed, they “affect the entire national economy.” *Whitman*, 531 U.S. at 475. One former official with the White House Office of Information and Regulatory Affairs even declared that “[t]he biggest rules—the biggest decisions—during [his] almost

thirty-year tenure involved the National Ambient Air Quality Standards.” Arthur Fraas, *Observations on OIRA’s Policies and Procedures*, 63 Admin. L. Rev. 79, 81 (2011).

The Clean Air Act’s cooperative-federalism design also hinges on EPA’s initial decision to set or revise NAAQS. After all, EPA’s adoption of a revised NAAQS “shifts the burden to States.” *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 498 (2014). State-level compliance with those NAAQS through revised SIPs and permitting all follows from that initial decision. And States can’t quibble with EPA’s standard-setting at any of those later stages.

For reasons like these, 41 States—25 petitioners and 16 intervenors—took a position below on whether the 2024 Rule is lawful. The two groups don’t agree on much in this case. But both groups understand that the 2024 Rule is important enough to justify spending limited State resources challenging or defending it. That fact alone should leave no doubt that the questions presented here are of national importance.

At the same time, the D.C. Circuit’s answers to these questions cause immediate—and local—harms in each of the States. Just look to some of the evidence State Petitioners offered below via sworn declarations. *See* D.C.Cir.Dkt. #2079737 (State Petitioners’ Opening Br. Add.). For initial area designations alone, States had to collectively spend millions of dollars and thousands of hours of staff time. *Id.* at 11a–14a, 57a, 74a–75a, 85a, 161a. And those figures look small compared to the time and hours that will be required once EPA issues its final designations. States expect to face

the high costs of developing and implementing nonattainment SIPs, exceptional-events demonstrations, and related submissions. *Id.* at 14a–18a, 57a–59a, 63a–66a, 76a–79a, 87a–88a, 94a, 103a–104a, 165a. And in the areas that could be first-time designees, States will be forced to train environmental regulators and conduct outreach on compliance. *Id.* at 16a, 58a, 75a–76a, 102a. Finally, permitting across the country has already become more difficult under the 2024 Rule, *see id.* at 18a–20a, 66a–67a, 79a–80a, 166a–168a, 216a–217a, hamstringing new development and construction that brings new jobs to States.

Many of these harms are immediate. States have already submitted initial designations, they are currently required to apply the 2024 Rule to pending permits, and many are preparing for the impending SIP revision process. Some of the costliest obligations, like responding to the designations and revising SIPs, are looming. There is little doubt that States’ obligations have become “more difficult and onerous,” *West Virginia v. EPA*, 362 F.3d 861, 868 (D.C. Cir. 2004), under the 2024 Rule, with matters growing worse as EPA takes more steps to implement the NAAQS. These immediate and impending burdens justify this Court’s quick intervention to correct the D.C. Circuit’s mistaken interpretation of the Clean Air Act.

To summarize, the questions presented here are significant enough for 41 States to have chimed in on one side or the other below. They are causing real harm to States across the nation. And going forward, EPA can use ad hoc reconsiderations to impose similar harms without undertaking the thorough review the statute requires. That new—and flawed—framework will upset the Clean Air Act’s cooperative-federalism

scheme. Yet without this Court’s intervention, the D.C. Circuit will get the first and only say on these weighty issues. The Clean Air Act requires that petitions like the ones below be heard in the D.C. Circuit alone. *See* 42 U.S.C. § 7607(b)(1). There will be no circuit split and no lower-court percolation of the questions presented. Only this Court can decide whether the Clean Air Act provides EPA with a shortcut to off-cycle NAAQS revisions that is blind to costs and feasibility.

This Court in recent history has not hesitated to interpret the limits of EPA’s Clean Air Act authority when called upon. *See, e.g., Ohio v. EPA*, 603 U.S. 279; *West Virginia v. EPA*, 597 U.S. 697 (2022); *Michigan v. EPA*, 576 U.S. 743 (2015); *Util. Air Reg. Grp. v. EPA*, 573 U.S. 302 (2014); *EME Homer City*, 572 U.S. 489; *Massachusetts v. EPA*, 549 U.S. 497 (2007); *Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461 (2004); *Whitman*, 531 U.S. 457. This petition once more “concern[s] the construction of a major federal statute,” *United States v. Donovan*, 429 U.S. 413, 422 (1977), and the Court should intervene again here.

II. The D.C. Circuit’s expansive view of EPA’s off-cycle revision power warrants review.

The Court should also grant the petition because the D.C. Circuit got the important questions in this case wrong. It was a mistake to adopt a novel interpretation of the Clean Air Act to provide EPA authority to conduct an off-cycle review free of essential statutory constraints.

1. The first question presented turns on whether EPA must engage in a “thorough review” of its air-

quality criteria and the current NAAQS when it conducts an off-cycle NAAQS revision. The answer is yes, and this Court should grant this petition to say so.

The Clean Air Act “forecloses” EPA’s “assertion of authority” in the 2024 Rule. *City of Arlington v. FCC*, 569 U.S. 290, 301 (2013). It establishes a five-year cycle within which EPA must “complete a thorough review of” its air-quality criteria and “the [NAAQS] promulgated” by EPA. 42 U.S.C. § 7409(d)(1). Only after undertaking that comprehensive review can EPA “make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with [section 108] and [section 109(b)].” *Id.* In other words, the “thorough review” operates as a condition precedent to standard-setting. Further, the two cross-referenced sections establish the process for issuing air-quality criteria and setting NAAQS. The first requires EPA to issue air-quality criteria that “accurately reflect the latest scientific knowledge.” 42 U.S.C. § 7408(a)(2). And the second requires EPA to issue NAAQS that, “allowing an adequate margin of safety, are requisite to protect the public health.” 42 U.S.C. § 7409(b)(1). So in multiple places and in multiple ways, the statute stresses that EPA’s NAAQS decision must start from an evidence-based, science-backed, and comprehensive record.

Beyond the mandatory five-year review, EPA can also “review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.” 42 U.S.C. § 7409(d)(1). But petitioners and ultimately EPA agreed below that EPA still must undertake a “thorough review” when it conducts such an off-cycle revision. In contrast, the D.C.

Circuit determined that EPA can engage in a less rigorous (yet undefined) form of review during an off-cycle revision mostly because the second sentence of section 109(d)(1) doesn't repeat the word "thorough." App. 21a–22a. In other words, it found sweeping agency authority in supposed congressional silence.

In context, the D.C. Circuit's reading is wrong. *See Util. Air Reg. Grp.*, 573 U.S. at 321 (“[R]easonable statutory interpretation must account for both ‘the specific context in which language is used’ and ‘the broader context of the statute as a whole.’” (citation omitted) (cleaned up)). Section 109(d)(1)'s second sentence references the “thorough review” process with the phrase “under this paragraph.” It thus speaks to the timing of the review process; it does not dilute the substance of that process or implicitly redefine “review.” The two sentences cannot be read in isolation. Section 109(d)(1)'s second sentence gives EPA more opportunities to revise NAAQS, but it does not give it the power to conduct a short-circuited reconsideration process.

Make no mistake, the off-cycle revision authority that the D.C. Circuit found in sections 109(b) and (d)(1) lacks meaningful guardrails. The ultimate decision is the same whether EPA acts on- or off-cycle, and “[s]tatutes should be interpreted as a symmetrical and coherent regulatory scheme.” *Mellouli v. Lynch*, 575 U.S. 798, 809 (2015) (citation omitted). But the D.C. Circuit's novel shortcut allows one Administrator, faced with facts and data without significant changes, to quickly reverse another Administrator's decision based on a new judgment alone—just what happened here. App. 354a. That level of discretion frustrates the statutory constraints set by Congress, as it effectively

renders the bounded, mandatory five-year process an empty formality that can quickly be mooted by an unbounded, discretionary, off-cycle review.

The D.C. Circuit responded to petitioners' objection to the scope of EPA's newfound power by pointing to the Clean Air Act's "substantive standard" and its "requirement of reasoned decisionmaking." App. 25a; *see also id.* ("Those requirements are not toothless and have been applied by this court when reviewing NAAQS on many occasions."). To be sure, the D.C. Circuit has rejected a decision to retain a NAAQS. *Am. Farm Bureau Fed'n*, 559 F.3d at 519–26. And it has rejected parts of rulemakings (including secondary standards) containing NAAQS revisions. *Id.* at 528–31; *Mississippi*, 744 F.3d at 1358–62; *Am. Trucking Ass'ns, Inc. v. EPA*, 283 F.3d 355, 361–362 (D.C. Cir. 2002). Yet the court below offered no example of the D.C. Circuit vacating a decision to tighten a primary NAAQS as substantively arbitrary and capricious—because none exists.¹ In a regulatory landscape in which EPA already has broad discretion given the scientific judgment call at the heart of the process, the arbitrary-and-capricious standard does little to remedy the removal of a key statutory constraint. Put an-

¹ When EPA first chose to regulate PM_{2.5}, the D.C. Circuit rejected the retention of PM₁₀ as an indicator because EPA failed to explain how it would avoid potential "double regulation" of the PM_{2.5} component of PM₁₀ and potential underregulation of the PM_{10-2.5} component." *Am. Trucking Ass'ns, Inc. v. EPA*, 175 F.3d 1027, 1054 (D.C. Cir. 1999). But the D.C. Circuit later approved the same indicator after EPA "cured that failure of explanation and provided a reasonable rationale for its choice of PM₁₀." *Am. Farm Bureau Fed'n*, 559 F.3d at 535–36.

other way, the general backstop of arbitrary-and-capricious review does not forgive the D.C. Circuit’s statutory error.

2. The D.C. Circuit made much of the notion that EPA must “respond[] promptly to changes in the relevant science” and claimed that “[t]his case illustrates the problem.” App. 23a. But the facts here—and the reality of NAAQS-setting generally—belies any suggestion that the Clean Air Act was meant to provide EPA with a shortcut to a NAAQS revision through an off-cycle revision.

In the court’s view, just months after the 2020 Action, EPA “became aware of certain scientific studies likely to require a change in the standard for fine particulate matter and began updating its science and policy assessments.” App. 23a. But that overstates the need for prompt action here. The NAAQS were not crying out for an immediate response because of urgent scientific evidence “requir[ing] a change.” *Id.* Indeed, a closer look at what EPA relied on reveals that little “changed” about the “existing corpus of scientific knowledge.” App. 272a.

Recall that EPA’s only addition in the 2024 Rule was a supplemental ISA that evaluated “some studies that became available after the literature cutoff date of the 2019 ISA.” App. 84a. They included studies with “alternative methods” to control for outside variables, experimental studies about cardiovascular effects, studies exploring evidence of race or socioeconomic risk disparities, and studies focused on COVID-19. App. 136a–140a. Yet EPA found the evidence in several of those categories inconclusive or too uncertain.

App. 183a, 195a–196a. And for the most important epidemiological studies, EPA’s data shed little new light on whether the current NAAQS were appropriate. App. 220a–221a, figs. 1–2. So the court below was wrong to assert that the 2024 Rule responded to some urgent update to scientific knowledge.

It’s also difficult to see how avoiding the thorough-review process is necessary to respond to new science. Section 108 requires that EPA’s air-quality criteria “accurately reflect the latest scientific knowledge.” 42 U.S.C. § 7408(a)(2). Requiring EPA to conduct a thorough review of its air-quality criteria is the best way to guarantee that the NAAQS-setting process is consistent with updated science, rather than a rushed and skewed half-picture of the relevant field.

Still, the D.C. Circuit’s assumption that late-breaking scientific studies could ever “require” a NAAQS revision doesn’t line up with the NAAQS-setting process. When EPA answers the Clean Air Act’s public-health question, “the available health effects evidence . . . reflects a continuum, consisting of levels at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain.” App. 118a–119a.

In other words, EPA’s line-drawing decision gets tougher as the NAAQS gets closer to zero because the health consequences are far less obvious and far more difficult to trace to a specific type of pollutant. So the notion that a few studies could “require” significant revisions doesn’t track reality. Indeed, that’s not how EPA framed its decision here. In the 2024 Rule, the uncertainties present in 2020 remained—EPA simply

decided “to place less weight on these uncertainties.” App. 352a. The key difference was in the Administrator’s judgment, based on nearly identical facts and data. *Id.*

The more obvious change was thus political, not scientific. A new President with a different agenda hired new EPA leadership with a different view of the uncertainties inherent in the NAAQS-setting decision. As the 2024 Rule explains, they immediately got to work reconsidering “certain agency actions” like “the 2020 Particulate Matter NAAQS Decision.” App. 79a (citing EO 13990). Those reconsiderations were part of the previous Administration’s larger effort to “confront” what it called “the climate crisis.” EO 13990, 86 Fed. Reg. at 7037.

New leadership with new ideas is expected. *Dep’t of Commerce v. New York*, 588 U.S. 752, 783 (2019) (“It is hardly improper for an agency head to come into office with policy preferences and ideas.”). And to be clear, the Clean Air Act leaves room for EPA to exercise its discretion in different ways. But it also requires that the NAAQS be informed by “the latest scientific knowledge.” 42 U.S.C. § 7408(a)(2). To that end, it requires every Administrator, no matter how they approach NAAQS-setting, to engage in a “thorough review” of the scientific evidence before promulgating major regulatory changes.

This approach provides certainty for States and businesses. All agree that “longstanding policies” can “creat[e] serious reliance interests,” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515

(2009)), and EPA’s well-settled practice of only revising NAAQS *after* a thorough review and on the five-year cycle no doubt fits that bill. And enforcing the thorough-review requirement for *all* revisions does not mean that off-cycle revisions can never happen. As was the case in the five decades before the 2024 Rule, it simply makes off-cycle review rare.

By forcing regulatory rigor, the Clean Air Act’s thorough-review process ensures that NAAQS revisions are rooted in science, not in politics. That, in turn, ensures that NAAQS revisions (and the compliance deadlines that follow) are not made quickly or lightly. That does not frustrate the Act’s purpose. It is the best-case scenario for States that must implement the NAAQS and the regulated entities that must comply with them.

3. The D.C. Circuit’s statutory holding was mistaken, and its policy justifications for the holding only expose its flaws. A final problem with the decision below further justifies this Court’s review: it gives EPA a power it has expressly disclaimed.

When the 2024 Rule was promulgated, EPA viewed section 109(d)(1) as “providing additional” and “independent” authority allowing revisions without a thorough review. Response to Comments 122. That was a marked departure from past practice. Each of its prior PM decisions was made after a thorough review, on (and often behind) the five-year schedule. *See Am. Farm Bureau Fed’n*, 559 F.3d at 516–18 (describing the 1997 and 2006 processes); *NAM*, 750 F.3d at 923 (describing the 2013 process); 85 Fed. Reg. at 82689 (describing the 2020 process). EPA sought in 2009 to

reconsider the ozone NAAQS, but it tabled the question before finalization. Letter from C. Sunstein to L. Jackson (Sept. 2, 2011).² And it more recently abandoned a reconsideration of the ozone NAAQS in favor of a “full and complete review.” *EPA Initiates New Review of the Ozone NAAQS to Reflect the Latest Science*, EPA (Aug. 21, 2023).³ EPA realigned its statutory views with that past practice when it confessed error below.

The D.C. Circuit should have at least considered that “longstanding practice of the government” as an interpretive tool. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (citation omitted). The “independent judgment” is left to the court, but “[c]areful attention to the judgment of the Executive Branch may help” that effort. *Id.* at 412–13. The court of appeals instead held that a different provision—section 109(b)—provides all the revision authority EPA needed here. App. 19a–21a. It did so on its own initiative, embracing a theory raised for the first time at oral argument by a member of the panel.

Looking to section 109(b) was a mistake for a few reasons. For one, EPA never relied on section 109(b) as a source of independent revision authority. That lack of reliance was already clear from the 2024 Rule and the briefs below, but EPA left no doubt when it moved to vacate the 2024 Rule. That means that the D.C. Circuit should not have reached the section 109(b) issue.

² Available at <https://perma.cc/G9WN-LGH7>.

³ Available at <https://perma.cc/ZPG7-YGXS>.

It is “a simple but fundamental rule of administrative law” that “a reviewing court . . . must judge the propriety of [agency] action solely by the grounds invoked by the agency.” *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) (*Chenery II*). Unless an “agency acted” under the same authority “upon which its action can be sustained,” its decision “cannot be upheld.” *SEC v. Chenery Corp.*, 318 U.S. 80, 95 (1943) (*Chenery I*). The Court reaffirmed this “now-bedrock principle” in 2025. *FDA v. Wages & White Lion Investments, L.L.C.*, 604 U.S. 542, 587 (2025).

EPA never invoked section 109(b) as the source of its authority to conduct an off-cycle revision without a thorough review, so the D.C. Circuit was wrong to uphold the 2024 Rule for that reason. To hold otherwise, the D.C. Circuit exempted all statutory questions from the *Chenery* doctrine, citing a line of circuit precedent. App. 20a n.5. That court’s precedent is muddled on this question. *See, e.g., N. Air Cargo v. USPS*, 674 F.3d 852, 860 (D.C. Cir. 2012) (“[W]e have held that [the *Chenery* doctrine] applies to statutory interpretations.”). Thankfully, this Court’s precedent is clear. It recently held that getting “the governing law” wrong does not excuse an agency’s failure to raise an issue. *Wages & White Lion*, 604 U.S. at 591. So the D.C. Circuit should not have engaged on this unpreserved issue.

To compound its error, the lower court also violated the party-presentation principle when it adopted an argument that EPA never raised. If a party fails to make an “argument entitling [it] to relief,” a court should not make and sustain that argument itself. *United States v. Sineneng-Smith*, 590 U.S. 371, 375–76 (2020). This Court has again made clear recently that “courts call balls and strikes; they don’t get a turn

at bat.” *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (citation omitted).

Finally, even if the court of appeals was right to reach the merits of section 109(b), it reached the wrong result. In its view, “nothing in [section] 7409(d)(1) displaces the Administrator’s revision authority in [section] 7409(b).” App. 21a. The thorough-review requirement, in other words, does not apply to a revision under section 109(b). But that conclusion requires overlooking the rule that when “a general authorization and a more limited, specific authorization exist side-by-side,” the “terms of the specific authorization must be complied with.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

An alternative approach renders the specific provision superfluous, *id.*, as the D.C. Circuit did in the off-cycle revision context below. That approach suggests that the Clean Air Act’s NAAQS-setting provisions were not enacted as a single statutory scheme. But Congress in sections 109(b) and 109(d) did just the opposite—section 109(d)(1) requires a thorough review before EPA sets the substantive standard defined in section 109(b). And section 109(b) authorizes revisions “in the same manner as promulgated.”

The D.C. Circuit’s conclusion also requires ignoring that “[w]hen Congress amends legislation, courts must presume it intends the change to have real and substantial effect.” *Ross v. Blake*, 578 U.S. 632, 641–42 (2016) (cleaned up). Applied here, a court should presume that the 1977 amendments updated the statutory scheme to add section 109(d)(1)’s substantive requirements to section 109(b)’s pre-existing process.

EPA was right below to abandon a novel interpretation of the Clean Air Act that claimed vast discretion to conduct an off-cycle NAAQS revision with less than a thorough review of the scientific evidence. But that abandoned approach is now the law in the D.C. Circuit, the only court of appeals that judges the limits of EPA's NAAQS-setting authority. The Court should step in to correct these errors.

III. The D.C. Circuit's holding that EPA is barred from considering the costs and feasibility of an early NAAQS revision warrants review.

Even if the Court is inclined to agree with the D.C. Circuit's statutory holding, it should grant this petition to clarify what considerations must underlie a reasoned decision. In particular, it should make clear that costs and feasibility are relevant when EPA decides whether to conduct an off-cycle NAAQS revision.

1. As with above, the best starting point is the Clean Air Act's text. Section 109(d)(1) allows EPA to revise a NAAQS only "as may be appropriate." 42 U.S.C. § 7409(d)(1). That appropriateness inquiry, tied to the decision whether to revise a NAAQS, is distinct from the inquiry tied to the ultimate NAAQS-setting decision. In that separate context, section 109(b) requires that NAAQS be set at a level "requisite to protect the public health" with "an adequate margin of safety." 42 U.S.C. § 7409(b)(1).

Undefined in the text, the word "appropriate" must have an independent meaning as it applies to a distinct inquiry. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (requiring that courts "give effect, if possible, to

every clause and word of a statute” (citation omitted)). As this Court has held, the word appropriate used elsewhere in the Clear Air Act is “the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors.” *Michigan*, 576 U.S. at 752 (quoting *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222, 1266 (D.C. Cir. 2014) (Kavanaugh, J.)). Among those factors, “cost” is “a centrally relevant factor when deciding whether to regulate” because “reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions.” *Id.* at 752–53.

Whether it is appropriate to conduct an off-cycle review is thus an inquiry subject to the standard requirements of reasoned decisionmaking. And unless the statute says otherwise, a reasoned decisionmaker must consider the costs of his decision. As this Court explained in *Michigan*, “[o]ne would not say that it is even rational, never mind ‘appropriate,’ to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits.” *Id.* at 752.

By these measures, the 2024 Rule was arbitrary and capricious. Agencies owe an obligation to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins.*, 463 U.S. 29, 43 (1983) (citation omitted). EPA refused to examine costs at all, much less connect them to the choice to revise the standard significantly down. Had it done so, it would have had to grapple with the profound economic consequences wrought by its early, off-cycle revision. Because it failed to do so, the 2024 Rule cannot stand.

2. To the D.C. Circuit, *Whitman* and related circuit precedent required rejecting this argument. App. 28a–33a. But *Whitman* is not dispositive here. That’s because this Court addressed only whether EPA “may consider the costs of implementation in *setting* [NAAQS] under [section 109(b)(1)].” *Whitman*, 531 U.S. at 462 (emphasis added). It adopted “the modest principle that where the Clean Air Act expressly directs EPA to regulate on the basis of a factor that on its face does not include cost, the Act normally should not be read as implicitly allowing the Agency to consider cost anyway.” *Michigan*, 576 U.S. at 755–56; *accord Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 223 (2009).

Whitman did not purport to apply to the “threshold decision to revise the primary NAAQS level,” *Mississippi*, 744 F.3d at 405—just the NAAQS-setting decision governed by section 109(b)(1)’s substantive standard. 531 U.S. at 465. Importantly, section 109(b)(1) does not contain the word “appropriate” located in section 109(d)(1). Moreover, it applied to a mandatory on-cycle revision, not a discretionary off-cycle review like here. And it expressly called for an express focus on public health in a way that section 109(d)(1) does not. It is thus wrong to assume that the section 109(b) concepts addressed in *Whitman* apply mechanically to the distinct context of section 109(d)(1) discretionary revisions. *See Env’t Def. Fund v. Thomas*, 870 F.2d 892, 898 (2d Cir. 1989) (refusing to read section 109(b) as imposing implicit limits on revisions under section 109(d)).

This Court should grant review to clarify that *Whitman*’s statutory holding is limited to the ultimate NAAQS-setting decision in an on-cycle revision. And

it should make clear to EPA that when it exercises its discretion to decide whether to conduct an off-cycle review, it must consider costs and feasibility.

3. Even if the D.C. Circuit’s interpretation were correct, it would raise serious constitutional questions about the authority Congress delegated to EPA to conduct off-cycle reviews. That’s because it endorses a sweeping regulatory power without the meaningful guardrails that come through considering costs and feasibility. And it’s another good reason for this Court to reject that interpretation. In general, this Court favors “[a] construction of the statute that avoids this kind of open-ended grant” and avoids this constitutional problem altogether. *See Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 646 (1980) (plurality); *see also Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998) (When “fairly possible,” courts should interpret statutes “to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.” (citation omitted)).

This Court’s traditional nondelegation test was described in *Whitman* itself. At its core, “the constitutional question is whether the statute has delegated legislative power to the agency.” *Whitman*, 531 U.S. at 472. For such delegation to be lawful, “Congress must ‘lay down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform.’” *Id.* (citing *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928)) (emphasis removed) (cleaned up). As this Court recently confirmed that “[t]he ‘guidance’ needed is greater . . . when an agency action will ‘affect the entire national economy.’” *FCC v. Consumers’ Research*, 606 U.S. 656, 673 (2025) (quoting *Whitman*, 531 U.S. at 475); *see also id.*

at 721–22 (Gorsuch, J., dissenting) (“Congress must give far more detailed instructions if it wants an agency to regulate an entire industry.”).

Under that approach, a statute that confers unfettered discretion to conduct an off-cycle review is unconstitutional. The 2024 Rule is a good example of why that’s so. EPA steadfastly refused to consider costs, yet it acknowledged that the Clean Air Act “does not require” EPA to set NAAQS “at a zero-risk level.” App. 414a. EPA thus stated the obvious: there exists a range at which it *could* regulate but has decided not to. See *Whitman*, 531 U.S. at 475 (discussing EPA’s “judgments of degree”).

But under the D.C. Circuit’s reading of *Whitman*, how future EPAs exercise that judgment is for EPA alone to know. App. 63a (“The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator’s judgment.”). That logic means that EPA has discretion to revise NAAQS to a zero-risk level, no matter the implications, if a future Administrator believed that no amount of PM_{2.5} is safe for the public.

These are “basic and consequential tradeoffs . . . that Congress would likely have intended for itself.” *West Virginia*, 597 U.S. at 730. So it is simply no longer the case that this sweeping power “fits comfortably within the scope of discretion permitted by” this Court’s precedent. *Whitman*, 531 U.S. at 476. The Court should not construe the Clean Air Act to give EPA discretionary off-cycle review authority that raises these constitutional concerns.

The Clean Air Act’s requirement that a NAAQS revision be “appropriate” means that EPA must think about costs and feasibility when deciding to conduct an off-cycle NAAQS revision. But if EPA’s only focus is public health—with no regard for the massive consequences of an off-cycle revision—then this review process would raise serious constitutional concerns.

CONCLUSION

As is often the case when this Court is asked to interpret EPA’s Clean Air Act authority, *see, e.g., Michigan v. EPA*, 576 U.S. 743; *West Virginia v. EPA*, 597 U.S. 697, the questions presented here are deeply important, for distinct reasons, to both States and industry. This petition is thus being filed alongside another petition filed by industry groups. The Court should grant both petitions for a writ of certiorari.

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