Nos. 20-1530, 20-1531, 20-1778, 20-1780

IN THE

Supreme Court of the United States

STATE OF WEST VIRGINIA, ET AL.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL REGAN, ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF *AMICUS CURIAE* THE COMPETITIVE ENTERPRISE INSTITUTE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

In 42 U.S.C. § 7411(d), an ancillary provision of the Clean Air Act, did Congress constitutionally authorize the Environmental Protection Agency to issue significant rules—including those capable of reshaping the nation's electricity grids and unilaterally decarbonizing virtually any sector of the economy—without any limits on what the agency can require so long as it considers cost, nonair impacts, and energy requirements?

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INTEREST OF *AMICUS CURIAE*[1]

The Competitive Enterprise Institute ("CEI") is a nonprofit 501(c)(3) organization incorporated and headquartered in Washington, D.C., dedicated to promoting the principles of free markets and limited government. Since its founding in 1984, CEI has focused on raising public understanding of the problems of overregulation. It has done so through policy analysis, commentary, and litigation. In the field of energy and environmental policy in particular, CEI has long been active in opposing unfounded government claims of authority aimed at restricting energy use.

SUMMARY OF ARGUMENT

EPA claims the power to redesign entire industries, but such authority is not expressly provided for in statute. Congress has never acted as if it has delegated such authority to EPA.

When the CAA was created, global warming wasn't even a concern; when global warming was later added via amendment, those additions were expressly confined to non-regulatory contexts. President Obama tried to get cap-and-trade legislation enacted by Congress but failed. The Clean Power Plan ("CPP") issued by the Obama administration is a near replica

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[1] Pursuant to Rule 37.6, *amicus* affirm that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief, and that no person other than *amicus*, their members, or their its counsel made such a monetary contribution. All parties have consented to the filing of this brief.

of the legislative initiative that it failed to get through Congress. The purpose of the CPP is to do an end-run around Congress and enact policy in direct opposition to what Congress was willing to enact.

In response, Congress directly, explicitly, and contemporaneously repudiated the legal authority of the CPP when it passed S.J.Res. 24, which was vetoed by President Obama.

In light of this legislative history, it cannot be presumed, as EPA claims, that Congress intended to delegate to EPA the massive and sweeping power to redesign a significant part of the economy—including, in effect, the abolition of the coal industry.

The CPP also has a substantial effect on federalism and state authority. The CPP's underlying objective, and predictable consequence, is to undermine other states' energy cost advantage relative to California and the Regional Greenhouse Gas Initiative ("RGGI") states.

The explicit generation-shifting that Congress chose to enact for SO_2 cannot serve to justify the CPP. Congress used categorically different language in enacting the former. This shows that Congress knows how to authorize such generation-shifting when it chooses to, and that it chose not do so for CO_2.

ARGUMENT

I. THE LEGISLATIVE HISTORY OF THE CLEAN AIR ACT SHOWS THAT CONGRESS DID NOT DELEGATE THE AUTHORITY TO REDESIGN ENTIRE INDUSTRIES TO EPA

EPA'S CPP rests on the audacious claim that Congress intended to allow EPA to redesign from the

ground up, or abolish, entire industries, via rules that "establish[] standards of performance for any existing source for any air pollutant." 42 U.S.C § 7411(d). Through the CPP, EPA claims to be the nation's de-facto czar for any emitting industry, controlling hundreds of billions of dollars in private energy infrastructure investment over the next several decades. This claim cannot be simply presumed; it must rest on explicit statements from Congress. *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000) ("we are confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion.").

In fact, the legislative history makes clear that Congress did not believe it had delegated such sweeping powers to EPA. Congress enacted CAA section 111 in 1970 and amended it in 1977 and 1990. The 1990 language is virtually identical to the 1970 language. EPA, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 FR 64662, 64700 (2015). But in 1970, when global warming was not even a concern discussed by Congress, it could hardly have intended that CAA section 111 authorize EPA to de-carbonize, redesign, or in effect abolish entire industries such as the power sector or the coal industry. *MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218, 231 (1994) ("It is highly unlikely that Congress would leave the determination of whether an industry will be entirely, or even substantially, rate-regulated to agency discretion.").

Indeed, the 1970 and 1977 texts of the CAA do not mention "carbon dioxide," "greenhouse gases,"

"greenhouse effect," or "global warming." Not until the 1990 amendments does the CAA address global climate change, but then only in non-regulatory provisions.

The first reference to any of these terms came up in 1989, when S. 1630, the Senate version of the 1990 CAA Amendments, contained a provision (section 206) to establish CO_2 emission standards for new motor vehicles. S. 1630, Sec. 216(1), as introduced (1989). The Senate Environment and Public Works Committee approved a bill called "The Stratospheric Ozone and Climate Protection Act," envisioned as Title VII of the amended CAA. *Id.* Title VII would have authorized EPA to regulate ozone-depleting substances based in part on their "global warming potential" and establish CO_2 and methane emission reduction as a national goal. *Id.* The full Senate deleted the automobile CO_2 standards. S. 1630, Sec. 216(1), as enrolled (1989).

Instead of declaring a national goal to reduce CO_2 and methane emissions, Congress directed EPA, in CAA section 103(g), to develop "non-regulatory strategies and technologies" to reduce CO_2 among other "multiple air pollutants" from stationary sources. The phrase "non-regulatory" occurs six times in the section. Instead of directing EPA to consider global warming potential when regulating ozone depleting chemicals, Congress directed the agency, in CAA section 602(e), to "publish" (i.e., study) the global warming potential of such substances.

Moreover, both provisions admonish EPA not to jump to regulatory actions. After including CO_2 among "multiple air pollutants," CAA section 103(g) states: "Nothing in this subsection shall be construed to

authorize the imposition on any person of air pollution control requirements." Similarly, after mentioning "global warming potential," CAA section 602(e) states: "The preceding sentence shall not be construed to be the basis of any additional regulation under this chapter [i.e., the CAA]."

In short, when Congress last amended CAA section 111(d), it also told the agency not to control CO_2 emissions from stationary sources and not to regulate other substances based on global warming potential.

During 2009-2010, President Obama and EPA administrator Lisa Jackson tried to use the threat of EPA regulation of GHGs to coerce Congress into passing a cap-and-trade bill. They warned that an EPA-run system would be less efficient, less predictable, and less attuned to regional interests than the "clean energy and climate legislation" the House was debating. Bryan Walsh, "EPA's CO_2 Finding: Putting a Gun to Congress's Head," *Time*, April 18, 2009, http://content.time.com/time/health/article/0,8599,1892368,00.html. Their sales pitch was that, however strong congressional opposition to cap-and-trade might be, opposition to an EPA-run system was even stronger.

Nonetheless, cap-and-trade failed. In June 2009, the House narrowly passed the cap-and-trade bill sponsored by Reps. Henry Waxman (D-Calif.) and Ed Markey (D-Mass.). Public opinion quickly turned against what was termed "cap-n-tax." Over the next year, several senators tried to line up bipartisan support for companion legislation, without success. Rebranding the policy as "pollution control" and "linked fee" did not mollify opponents. Darren Samuelsohn, "Reid Warms to July Climate Vote,"

Politico, July 13, 2010, https://www.politico.com/story/2010/07/reid-warms-to-july-climate-vote-039677 ("Underscoring the delicate nature of the issue, Reid insisted that the proposal he will introduce in about 10 days should not be called a cap-and-trade plan or even a cap on emissions. 'I don't use that,' Sen. Reid said. 'Those words are not in my vocabulary. We're going to work on pollution.'"); Robert Puentes, "A Linked-Fee for Carbon Reduction?" The Avenue-Brookings Institution, March 12, 2010, https://www.brookings.edu/blog/the-avenue/2010/03/12/a-linked-fee-for-carbon-reduction/. $100 million lobbying campaign by environmentalist groups failed to win a "single Republican convert" to cap-and-trade. Darren Samuelsohn, "Greens Defend Climate Tactics," *Politico*, August 5, 2010, https://www.politico.com/story/2010/08/greens-defend-climate-tactics-040680. In late July, Senate leaders scuttled plans to vote on a Senate version of the bill. Evan Lehmann, "Senate Abandons Climate Effort, Dealing Blow to President," *New York Times*, July 23, 2010, https://archive.nytimes.com/www.nytimes.com/cwire/2010/07/23/23climatewire-senate-abandons-climate-effort-dealing-blow-88864.html.

Cap-and-trade was arguably the key issue on which Democrats lost control of the House in the November 2010 elections. In the House races, "virtually every close race was lost by a Democrat" who voted for Waxman-Markey, noted climate scientist Patrick J. Michaels. Patrick Michaels, "IPCC Political Suicide Pill: Politicians who legislated based on the IPCC's increasingly flawed findings lose their jobs," *National Review*, September 26, 2013,

http://www.nationalreview.com/article/359556/ipcc-political-suicide-pill-patrick-j-michaels. In contrast, the Senate never voted on cap-and-trade, and "every close Senate race was won by a Democrat." *Id.*

On the day after the 2010 elections, President Obama remarked that cap-and-trade was "just one way of skinning the cat" and vowed to find "other means" of addressing climate change. Press Conference by the President, November 3, 2010, https://obamawhitehouse.archives.gov/the-press-office/2010/11/03/press-conference-president. In his 2011 state of the union speech, he proposed a national clean energy standard (CES) whereby 80 percent of U.S. electric power would come from "clean sources" by 2035. Obama's State of the Union Transcript 2011, *Politico*, January 25, 2011, https://www.politico.com/story/2011/01/obamas-state-of-the-union-transcript-2011-full-text-048181. Although he did not mention it, the proposed standard was virtually identical to the 2030 electricity fuel mix projected by the U.S. Energy Information Administration (EIA) for the Waxman-Markey bill. Marlo Lewis, "Obama Recycles Waxman-Markey Utility Sector Target—Neglects to Inform Congress, Public," GlobalWarming.Org, January 26, 2011, http://www.globalwarming.org/2011/01/26/obama-recycles-waxman-markey-utility-sector-target-neglects-to-inform-congress-public/.

In March 2012, Sen. Jeff Bingaman (D-N.M.) introduced a CES bill based on Obama's proposal. S. 2146, Clean Energy Standard Act of 2012, https://www.congress.gov/bill/112th-congress/senate-bill/2146.The legislation went nowhere. The Senate

Energy and Natural Resources Committee held a hearing on the bill but did not vote on it.

Regulatory climate policy had so little appeal through the end of 2012 that neither President Obama nor Democratic lawmakers campaigned for cap-and-trade, a national clean energy standard, or a successor treaty to the Kyoto Protocol. Indeed, on energy policy, President Obama claimed credit for the shale boom and ran to the right of GOP candidate Mitt Romney, accusing his rival of being anti-coal. William Yeatman, "On Energy Policy, Debate Obama Bears No Resemblance to Real Life Obama," GlobalWarming.Org, October 17, 2012, http://www.globalwarming.org/2012/10/17/on-energy-policy-debate-obama-bears-no-resemblance-to-real-life-obama/.

Although presidential candidate Obama had run *from* climate policy during his 2012 election campaign, once re-elected, he governed to suppress the production, transport, and use of fossil fuels via executive action. In June 2013, President Obama unveiled his Climate Action Plan, which directed EPA "to work expeditiously to complete carbon pollution standards for both new and existing power plants." Executive Office of the President, The President's Climate Action Plan, June 2013, https://obamawhitehouse.archives.gov/sites/default/files/image/president27sclimateactionplan.pdf. One year later, EPA proposed the CPP.

Several passages in the CPP demonstrate that EPA intended to use it to pressure states into adopting and joining statewide and regional cap-and-trade programs. The final CPP emphasizes that states' "rate-based" performance goals are easily converted

into "mass-based" goals—i.e., the tonnage targets or "caps" characteristic of cap-and-trade programs. EPA, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 FR 34851, 34887, 34891-34898; EPA, TSD, Computation of Emission Performance Rate and Goal Computation, 2015, pp. 20-25.[2]

Even though the final CPP replaced state-specific with source-specific (coal and gas) performance rates, the rule still effectively regulates emissions as if each state power sector—and ultimately the U.S. power sector as a whole—were a single source ripe for regulation under a cap-and-trade program. The CPP describes the U.S. power sector as a "physically interconnected," "coordinated" "system" of "interdependent" actors, "integrated across large regions," which operates as a "single," "complex machine." 80 FR 64725-64726, 64739, 64740, 64768-64769, 64677.

The purpose of the CPP is to make an end-run around Congress and enact policy in direct opposition

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[2] The proposed CPP estimates that a "regional compliance approach" (multi-state emissions trading) would lower CPP compliance costs in 2030 from $7.5 billion to $5.5 billion (79 FR 34839-43840), repeatedly mentions that states are allowed to convert their rate-based into mass-based goals, and explains the conversion methodology in an accompanying Technical Support Document (79 FR 34892). The final CPP even more strongly pushes cap-and-trade. It publishes states' mass-based goals "so that states can move quickly to establish mass-based programs such that their affected EGUs readily qualify to trade with affected EGUs in states that adopt the same approach" (80 FR 64962-64963, 64675). It also describes mass-based trading as the most efficient and flexible emission-reduction strategy (80 FR 64726, 64835).

to what Congress had decided. Had Reps. Waxman and Markey sponsored legislation authorizing EPA to de-carbonize the U.S. power sector as it sees fit under CAA Section 111, the bill almost certainly would have been dead on arrival.

This is further demonstrated by the fact that in 2015 the House and Senate each passed S.J. Res. 24, a Congressional Review Act resolution of disapproval to abolish the CPP as not lawful under the CAA.

The purpose of S.J. Res. 24 was described by Rep. Mullin (OK-02) as: "Today, we are here to use this tool to rein in a President who has forgotten that the legislative branch makes the laws and that the executive branch enforces them. The final rules regarding emissions from new and existing power plants are a clear executive overreach. In issuing these rules, EPA has acted outside the authority it was granted by Congress in the Clean Air Act." 161 Cong. Rec. H8822 (Dec. 1, 2015).

Rep. Cramer (ND-at large) announced that President Obama "doesn't have the right to break the law because he couldn't get a law changed when he had a Democratic House and a Democratic Senate. And that is what we are here to talk about, the violation of the law." *Id.* at H8828.

"EPA's actions violate the words and the intent of the Clean Air Act," according to Rep. Olson (TX-22). *Id.* at H8829.

Rep. Womack (AR-3) described the problem as follows: "The Constitution clearly states that legislative powers are vested in the Congress. The Clean Power Plan is a clear attempt to take

policymaking out of the hands of Congress. That is unacceptable." *Id.* at H8833.

In passing S.J. Res. 24, Rep. Whitfield (KY-1) argued that it shows that Congress "believe[s] the President has exceeded his legal authority" through the CPP. *Id.* at H8836.

It is against the backdrop of this direct, explicit, and contemporaneous repudiation of the CPP's legal authority under the CAA by both houses of Congress that EPA asks this Court to find that Congress implicitly intended to grant such authority without saying so explicitly.

The CPP was, in a sense, a climate coup in which an administrative agency usurped legislative power from the people's representatives to impose a major national policy initiative with no democratic legitimacy.

Not only did Congress explicitly repudiate the legal basis for the CPP, it also underscored this regulation's extraordinary implications—and it follows from those implications that this Court cannot presume that Congress intended to leave this in EPA's hands.

Rep. Bost (IL-12) warned of the consequences of this regulation: the "Clean Power Plan rule is a dagger aimed at the heart of the coal industry and affordable, American-made energy." *Id.* at H8831. "That is an *unbearable burden* on working families, seniors, and those people who are on set incomes." *Id.* While Rep. Olson (TX-22) said, "These rules destroy new coal power in America." *Id.* at H8829.

Rep. Johnson (LA-4) said that it would cause "retail electricity prices doubling in 40 States." *Id.* at H8832. Rep. Duncan (SC-3) described the threat of this

regulation to the entire American society as: "We rely on 24/7, always on, baseload power to run the engines of our society to heat and cool our homes. We can't do that with intermittent solar and wind." *Id.* at H8825.

Even EPA came to recognize these problems, describing that the CPP's "generation-shifting scheme was projected to have billions of dollars of impact on regulated parties and the economy, would have affected every electricity customer (i.e., all Americans), was subject to litigation involving almost every State in the Union, and, as discussed in the following section, would have disturbed the state-federal and intra-federal jurisdictional scheme." EPA, Repeal of the Clean Power Plan, 84 FR 32529 (2019).

In light of the devastating impacts described above of, in effect, abolishing the entire coal industry, it cannot be presumed that such an important decision was left up to EPA to decide. This issue falls squarely in the category of major questions having "vast economic and political significance" that this Court described in *Utility Air Regulatory Group v. EPA*, 573 U.S. 301, 324 (2014) (internal quotation marks omitted). The notion that Congress implicitly delegated this major power in 1970, 1977, or 1990 is fundamentally at odds with the historical record.

II. THE CPP ILLEGITIMATELY CHANGES THE BALANCE BETWEEN THE FEDERAL GOVERNMENT AND THE STATES

As noted by West Virginia in comments to EPA that were joined by twenty other states, regulation of retail electricity markets is a "traditional state power" upon which EPA may not encroach "unless Congress has clearly authorized such intrusion." Comments of West Virginia et al. EPA-HQ-OAR-2017-0545, Feb. 26,

2018, pp. 6-7, https://ago.wv.gov/Documents/ANPR%20Comment%20Letter.PDF.

In addition, the CPP would constitute a major shift, endangering our federal system's ability to restrain the cost and growth of government.

Federalism is a structural pillar of our republic. From a citizen's perspective, the virtues of federalism include safeguarding economic opportunity and checking abuses of power. Barry R. Weingast, The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development, 11 J.L. Econ. & Org. 1 (1995); *See also,* Michael S. Greve, Real Federalism (1999) ("Federalism is about competition among the states. It serves not so much to empower the states but to discipline them"). Federalism enables Americans to "vote with their feet" for or against policy regimes they like or dislike. Ilya Somin, Free to Move: Foot Voting, Migration, and Political Freedom (2020). When a state's tax and regulatory policies make it hard to find gainful employment, start a business, or compete in the global marketplace, citizens and firms can relocate to states with more efficient policies. In so doing, they punish the anti-growth states by imposing brain drain, loss of tax revenue, and even loss of seats in the House of Representatives. They simultaneously reward the pro-growth states to which they move with an increase in human and financial capital, a bigger tax base, and additional House seats. Arthur B. Laffer, Stephen Moore, Jonathan Williams, *Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index*, 10th Ed., 2017, pp. 2-8,

https://www.alec.org/app/uploads/2018/01/RSPS-2017-WEB.pdf.

The CPP cites California's Global Warming Policy Solutions Act and the Northeast Regional Greenhouse Gas Initiative (RGGI) as examples of what "states" are "already" doing to control power-sector CO_2 emissions. 80 FR 64725, 64769, 64919. But, in fact, the CPP establishes an EPA-coordinated policy cartel, imposing on the entire country California/RGGI-style energy policies and prices. The CPP's predictable consequence—and an underlying objective—is to undermine other states' energy cost advantage relative to California and the RGGI states.

Over time, the CPP could have large impacts on national political balances. There is little point in electing governors and legislators who champion innovative, problem-solving energy policies if federal regulations do not allow states to pursue such policies.

III. CONGRESS USED CATEGORICALLY DIFFERENT LANGUAGE WHEN EXPRESSLY AUTHORIZING GENERATION-SHIFTING FOR SO_2 EMISSIONS; THIS FURTHER UNDERCUTS THE CLAIM THAT IT IMPLIEDLY AUTHORIZED GENERATION-SHIFTING FOR CO_2 EMISSIONS

It is unreasonable to infer authority under CAA section 111 from other CAA provisions in which such generation-shifting authority is explicitly granted. As EPA noted when it proposed to repeal the CPP:

> Congress expressly established the cap-and-trade program [for SO_2] under title IV, 42 U.S.C. 7651–7651o, and expressly authorized the use of "marketable permits" to implement ambient air

> quality standards under CAA section 110, id. at §7410(a)(2)(A). We think it unlikely that Congress would have silently authorized the Agency to point to trading [in other parts of the Act] in order to justify generation-shifting as a "system of emission reduction" [under CAA section 111(d)].

Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources, 82 FR 48042 (2017).

There is no evidence in the statute, legislative history, or regulatory history that Congress intended for CAA section 111(d) to kill the coal industry, revise the nation's electricity fuel mix, supervise state electric power resource development, or herd states into cap-and-trade programs.

EPA argues, in the CPP, that its conception of "best system of emissions reduction" "mirrors Congress' approach to regulating air pollution in this sector, as exemplified by Title IV of the CAA," which created a system of marketable permits for sulfur dioxide (SO_2) emissions. Congress "designed the SO_2 portion of that program with express recognition of the sector's ability to shift generation among various EGUs, which enabled pollution reduction by increasing reliance on natural gas-fired units and RE [renewable electricity]." 80 FR 64665, 64678. However, all that proves is that when Congress wants power plants to reduce emissions through generation shifting, it knows how to make its intent clear. *Whitfield v. United States*, 543 U.S. 209, 216 (2005) ("Congress … clearly demonstrating that it knows how to impose such a requirement when it wishes to do so."); *Central Bank of Denver v. First Interstate Bank*, 511 U.S. 164, 176-77 (1994). See also *Franklin Nat'l Bank v. New York*,

347 U.S. 373, 378 (1954) (finding "no indication that Congress intended to make this phase of national banking subject to local restrictions, as it has done by express language in several other instances.").

CAA section 111 contains none of the Title IV's SO_2-related vocabulary ("allowance," "auction," "purchaser," "seller," "sales price,", CAA section 416, "percentage of total generation decreased," CAA section 404(e)(1), "reduced output at the affected source," CAA section 408(c)(1)(B)) that indicates a congressional intent to promote generation shifting. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U. S. 16, 23 (1983).

Moreover, when Congress enacted Title IV in 1990, it did not abandon technology-based regulation of electric power plants. The Title IV provision on clean coal technology clearly echoes EPA's historic understanding of CAA section 111 performance standards: "This subsection applies to physical or operational changes to existing facilities." CAA Title IV, Section 415.

Although not discussed in the repeal proposal, Congress did not intend CAA section 111(d) to be used to control ubiquitous air pollutants—those that "result from numerous or diverse mobile or stationary sources." CAA section 108(a). As EPA's 1975 implementing regulation explains, a major purpose of CAA section 111(d) is to control pollutants ineligible for regulation under the national ambient air quality standards (NAAQS) program because such pollutants

"are not emitted from 'numerous or diverse' sources as required by section 108." EPA, Standards of Performance for New Stationary Sources: State Plans for the Control of Certain Pollutants from Existing Facilities, 40 FR 53340 (1975). Carbon dioxide, however, is emitted by more numerous *and* diverse sources than any other substance regulated under the CAA.

As the implementing rule also explains, because CAA section 111(d) air pollutants are not emitted by numerous or diverse sources, the health and welfare problems caused by such pollutants are "highly localized." 40 FR 53342. In other words, proximity to the source largely determines the health and welfare risks posed by such pollutants. That is another indication that Congress did not intend for CAA section 111(d) to regulate CO_2. The CO_2-greenhouse effect is global, not local. Whatever the impacts of CO_2 on global climate, or the impacts of climate change on particular communities, climate change risks have nothing to do with proximity to any source.

In short, carbon dioxide and CAA section 111(d) are a complete mismatch.

CONCLUSION

For the foregoing reasons, the Court should reverse the D.C. Circuit because the Affordable Clean Energy Rule's repeal of the Clean Power Plan was properly based on the lack of delegated authority to EPA to decide such a major question.

Respectfully submitted,

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