No. 20-1780

In the Supreme Court of the United States

NORTH DAKOTA,
Petitioner

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

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

BRIEF OF *AMICI CURIAE* SOUTH TEXAS ELECTRIC COOPERATIVE, INC., BUCKEYE POWER, INC., ASSOCIATED ELECTRIC COOPERATIVE, INC., ARIZONA ELECTRIC POWER COOPERATIVE, INC., EAST KENTUCKY POWER COOPERATIVE, INC., AND MINNKOTA POWER COOPERATIVE IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

South Texas Electric Cooperative, Inc. ("STEC"), Buckeye Power, Inc. ("BPI"), Associated Electric Cooperative, Inc. ("AECI"), Arizona Electric Power Cooperative, Inc. ("AEPC"), East Kentucky Power Cooperative, Inc. ("EKPC"), and Minnkota Power Cooperative ("MPC") (collectively "Amici") appear as *Amici Curiae* in support of North Dakota's petition for writ of certiorari to express their deep concern with the decision below. Amici are nonprofit generation and transmission cooperatives whose missions are to provide the infrastructure and services to deliver reliable and economical electric power to their members across a large swath of the United States.

STEC was formed in 1944. Using a variety of energy sources, including wind, lignite, natural gas, diesel fuel, and hydroelectric, STEC provides wholesale electric services to its member distribution cooperatives, comprised of multiple cooperatives in the South Texas area. These rural distribution cooperatives serve over 241,000 members in forty-seven South Texas counties.

BPI, Ohio's generation and transmission cooperative, similarly provides power to 24 Ohio-

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[1] Amici have timely notified counsel for all parties of its intent to file this brief and obtained consent to file. Sup. Ct. Rules 37.2. No party or counsel for a party authored this brief in whole or in part, and no person or entity, other than STEC, made any monetary contribution to its preparation or submission. Sup. Ct. Rule 37.6.

based electric cooperatives and the Michigan-based Midwest Energy & Communications. Formed in 1959, BPI is focused on providing reliable, affordable electricity to member cooperatives, who then distribute it to nearly 400,000 homes and businesses in the state of Ohio. Owned and governed by the cooperatives it serves, BPI is dedicated to providing its member cooperatives with affordable and responsibly produced power by balancing affordability, reliability, and environmental responsibility. Included in that mix is coal, natural gas, solar, hydropower, biomass, and other small-scale renewable energy generation.

AECI, founded in 1961, is a three-tiered cooperative that provides wholesale electric services to six electric cooperative members. These cooperatives, in turn, supply 51 local electric cooperatives in Missouri, Iowa, and Oklahoma, serving about 910,000 member homes, farms, and businesses. AECI delivers affordable and reliable power to its members through a blend of generation that includes coal, natural gas, wind, and hydropower.

Also formed in 1961, AEPC is a member-owned, not-for-profit electric generation and transmission cooperative providing power to meet its members' energy needs in Arizona, California, and New Mexico. AEPC strives to provide safe, reliable, and affordable power to electric cooperatives across the Southwest.

EKPC was formed in 1941. Although initially sidelined by World War II, by 1954, EKPC brought light to the countryside, dramatically improving the lives of rural citizens. EKPC's first power lines brought a new freedom and a better way of life to Kentucky families. EKPC is owned by and provides power to sixteen member cooperatives. Like the other amici herein, EKPC generates power using a mix of resources, including coal, natural gas, fuel oil, solar, methane gas, and hydropower.

MPC is a not-for-profit electric generation and transmission cooperative headquartered in Grand Forks, N.D. Formed in 1940, Minnkota provides wholesale electric energy to eleven member-owner distribution cooperatives located in eastern North Dakota and northwestern Minnesota. These members serve nearly 137,000 consumer accounts in a 34,500 square-mile area. Minnkota also serves as operating agent for the Northern Municipal Power Agency (NMPA). NMPA supplies the electric needs of twelve associated municipals that serve more than 15,000 consumer accounts in the same geographic area as the Minnkota member-owners. The primary source of electric generation for the Minnkota member-owners is the Milton R. Young Station, a two-unit, lignite coal-fired power plant located near the town of Center, North Dakota. Minnkota's electric generation portfolio also includes energy purchased from three North Dakota wind farms and hydroelectricity.

Amici and their member cooperatives serve mainly rural Americans who require affordable and reliable power. Electric cooperatives are unique because they have a cost sensitive end-user base of rural, economically disadvantaged communities, and agricultural users. As a result, cooperatives must serve reliable power over larger geographic areas with limited financial resources, as compared to investor-owned utilities. To meet their customer and member obligations, Amici all depend, in varying degrees, on coal-fired and natural gas generation sources. And all either own or have entered long-term power purchase agreements with such sources—many extending decades into the future.

The D.C. Circuit's decision below threatens Amici's generation sources with forced early retirement, which will in turn cause significant uncertainty and unwarranted reliability challenges. Indeed, as aptly demonstrated by Winter Storm Uri, as well as summer grid conditions, coal-fired and natural-gas power plants play a critical role in the grid reliability and in the affordability of power in rural areas across each of the states served by Amici.

STEC, BPI, AECI, AEPC, EKPC, and MPC have a strong interest in ensuring the continued availability of this aspect of their generation capability. Amici urge the Court to grant the petition.

SUMMARY OF ARGUMENT

North Dakota's petition for certiorari presents important and compelling questions that necessitate the Court's attention and resolution. Under the D.C. Circuit's decision—and contrary to the controlling statutory text—the EPA now has unfettered discretion, through the imposition of carbon-emission caps, to control the available power generation sources in this country by forcing the closure of fossil-fuel-fired plants, without regard to the useful life of those sources, the cost of replacing them, or the effectiveness of their federally preferred replacements. With this recently discovered power, EPA is now authorized to set regulations far out of the bounds set by Congress in the Clean Air Act ("CAA"), imposing tremendous expense and undue uncertainty on rural power generators such as Amici, and ultimately on the rural (and relatively less affluent) American public. Granting North Dakota's petition to answer the legal questions created by the D.C. Circuit's decision is the only way to prevent the looming, unrecoverable costs that will be associated with the EPA's regime.

The D.C. Circuit's erroneous decision goes to the very heart of the system of cooperative federalism embodied in the CAA. Sweeping aside the plain terms of CAA section 7411(d), which unmistakably leave to *the States* the authority in the first instance to assess and regulate existing sources (such as Amici) within their borders, the D.C. Circuit concluded instead that section 7411(d) vests *the EPA* with broad, unlimited,

authority to regulate existing sources without regard to the State's authority or their regulatory regimes. Simply put, the D.C. Circuit got it exactly backwards.

Not only did the D.C. Circuit ignore the CAA's statutory text, it also ignored the Court's clear warning that agencies are not free to rewrite statutory terms to accommodate what the agency—as opposed to Congress—desires. In doing so, the D.C. Circuit has given the EPA *carte blanche* to undermine the State's authority to regulate power sources within their borders, as expressly contemplated by the CAA.

The D.C. Circuit's expansive grant of authority to the EPA contravenes the plain text of the CAA; it flouts this Court's consistent jurisprudence limiting administrative agencies to the powers assigned them by Congress; and it threatens grave, uncompensable harm to those (like Amici) who will undoubtedly fall under the EPA's newly minted (and extra-statutory) authority.

ARGUMENT

I. THE COURT SHOULD GRANT THE PETITION.

The scope and extent of EPA's authority to regulate greenhouse gas emissions with measures that set mandatory state carbon emission budgets derived from "outside the fence line" assumptions has been a looming question for over five years—since the EPA promulgated the former Clean Power Plan. *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*,

80 Fed. Reg. 64,662 (Oct. 23, 2015) (the "Clean Power Plan" or "CPP"). Under the CPP, the EPA set "final emission guidelines" in the form of mandatory state carbon budgets that States were, in turn, required to meet through the establishment of performance standards for existing power plants within their borders. *Id.* at 64,662; 40 C.F.R. § 60.22. EPA's so-called "guidelines" included "performance rates" for coal and other fossil-fuel-fired plants, derived from what the EPA identified as the "best system of emission reduction" for existing plants. 80 Fed. Reg. at 64,662.

By all accounts, the CPP's mandates applicable to existing coal and other fossil-fuel-fired power plants imposed limits that could not be achieved with control technologies available at the plants themselves or in the industry as a whole. It is generally understood that the only way fossil-fuel-fired power plants could have hypothetically complied with the CPP would have been to install certain carbon-capturing technologies. But in reality, carbon-capture technologies are not commercially demonstrated and, even if they were, such technology are not viable options at many facilities due to lack of space or options for subsurface carbon sequestration. The only way the targeted plants could have "complied" with the CPP would have been to curtail operations at coal and/or gas fueled plants or retire such plants (often in advance of the end of their useful lives).

Thus there is no dispute that the CPP would have effectively forced the shut-down or significant curtailment of coal and other fossil-fuel-fired plants well before the expiration of their useful lives. This was precisely the intent of the regulations. As EPA acknowledged: "most of the CO2 controls need to come in the form of . . . replacement of higher emitting generation with lower- or zero-emitting generation." *Id.* at 64,728.

The CPP was immediately challenged in the D.C. Circuit Court of Appeals by numerous parties. But before the CPP could take effect, this Court stayed its implementation pending the outcome of the D.C. Circuit challenges. Order in Pending Case, *North Dakota, et al. v. EPA*, *et al.*, Nos. 15A793, 15A773, 15A776, 15A778, 15A787 (Feb. 9, 2016).

The Court's action in this regard was noteworthy. Obtaining a stay from this Court is not an easy hurdle in any situation. In the context of a stay sought *pending resolution* of a petition for writ of certiorari, for example, a majority of the Justices of the Court must conclude that there was at least: "(1) 'a reasonable probability' that th[e] Court w[ould] grant certiorari, (2) 'a fair prospect' that the Court w[ould] then reverse the decision below, and (3) 'a likelihood that irreparable harm [will] result from the denial of a stay.'" *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers) (citing *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers)).

Here, however, the Court stayed the CPP *before* the D.C. Circuit had the chance to consider and rule on it. That action, reportedly the first of its kind,[2] alone signals the importance of the EPA's unprecedented exercise of authority under the CPP. Moreover, it aptly demonstrated that EPA's attempt to federally control power sources available to the States using outside-the-fence-line regulations exceeded the scope of EPA's authority under CAA section 7411(d).

Indeed, subsequent to the Court's stay order, the EPA heeded the Court's warning and repealed the CPP, promulgating in its place the Affordable Clean Energy Rule. *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations*, 84 Fed. Reg. 32,520 (July 8, 2019) ("ACE Rule"). The ACE Rule eliminated regulations that would apply "wholly outside a particular source," *id.* at 32,526, and issued standards and limits that could be applied and achieved at a particular source—*inside* the fence line. In doing so, the EPA's stated intention

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[2] Courtney Scobie, *Supreme Court Stays EPA's Clean Power Plan*, AM. BAR ASS'N PRAC. POINTS (Feb. 17, 2016), https://www.americanbar.org/groups/litigation/committees/environmental-energy/practice/2016/021716-energy-supreme-court-stays-epas-clean-power-plan/ ("This is the first time the Supreme Court has ever issued a stay on regulations before an initial review by a federal appeals court.").

was to strictly abide by the limits on its authority set by CAA section 7411(d). *Id.* at 32,532.

On challenge to the D.C. Circuit again, this time with the parties reversed, the court below struck down the ACE Rule, concluding that the EPA's *repeal* of the CPP was invalid and that there are effectively no limits on EPA's authority under CAA section 7411(d). Under the D.C. Circuit's decision, the EPA is now authorized to impose unrealistic—and unattainable—emission standards on existing sources, such as those operated by Amici. As noted by North Dakota's petition for certiorari, the effect of the D.C. Circuit's decision is to grant EPA authority under CAA section 7411(d) to federally force States to shift their generation capacity from coal and other fossil-fuel-fired sources to renewable sources, regardless that the plain text of the statute *requires* EPA to permit States to take into consideration, among other State-centered factors, the remaining useful-life of their existing sources. North Dakota Pet. for Cert. at 5.

Absent necessary action from this Court, the EPA has a free pass, granted by the D.C. Circuit, to run roughshod over CAA section 7411(d), the States' position in the CAA's system of cooperative federalism, and power generators like Amici to promulgate a rule that, like the CPP, imposes strict limits and regulations on carbon emissions to force the shutdown of fossil-fuel-fired plants, regardless that those plants may provide a State with the most reliable and cost effective power source. And—more

importantly—regardless of the fact that the authority to make that choice in the first instance was expressly granted by Congress to the States.

Time is of the essence. This Court has every ability to address these pressing issues now. The harm cannot be undone if the DC Circuit decision goes unreviewed. In particular, harm is being done by the uncertainty caused by the looming threat of EPA's inference of unchecked authority, not just the actual anticipated rule. The D.C. Circuit's sanction of expansive inferred (and extra-statutory) authority exposes rural cooperative members to immediate reliability risks and economic harm.

For STEC, for example, the uncertainty created by the D.C. Circuit decision is the opposite of a trivial matter. It is a matter of great human and economic consequence. The risk to grid reliability and resilience associated with the continued loss of coal-fueled power plants is not abstract, as Texas just saw firsthand. STEC was fortunate during Winter Storm Uri to have enough power generation to cover the needs of its members, which protected it from the kind of economic ruin experienced by other rural electric cooperatives in Texas that did not have enough reliable generation to meet the needs of their members. *See, e.g.*, *In re Brazos Elec. Power Coop., Inc.*, No. 21-30725 (Bankr. S.D. Tex. 2021) (information regarding the multi-billion dollar exposure of Brazos due to insufficient generation resources may be obtained on the website of the

Debtor's claims and noticing agent at http://cases.stretto.com/Brazos).

But STEC's ability to cover the needs of its members is dependent on the ongoing viability of the San Miguel coal-fueled power plant. That very plant was the focus of one of the declarations establishing the need for this Court's stay of the CPP. *Basin Elec. Power Coop., et al. v. EPA, et al.*, No. 15A776, App. at a307-332 (declaration of Derrick Brummett, CFO, San Miguel Electric Cooperative, Inc.). As the declaration made clear, the immediate threat to San Miguel (and STEC, due to its dependence upon San Miguel's power) caused by EPA's outside-the-fence carbon regulation of power plants is not just from the ultimate passage of a rule. There is also harm from the uncertainty caused in the meantime by the threat of EPA vastly expanding its authority beyond the letter of the law on which San Miguel and STEC rely when making generation planning decisions. Like the irreparable harm San Miguel demonstrated would result if it had to make major capital decisions while awaiting the CPP's fate, the current state of EPA's broad authority, untethered by the statutory text, precludes STEC from making necessary planning decisions.

Adding insult to injury, the regulatory uncertainty caused by EPA's actions makes financing resources more expensive and scarce due to the reluctance of private financial institutions to invest in fossil-fuel-fired assets. Accordingly, even if Amici

attempted to comply with the EPA's overreach, they would be hard pressed to do so, simply for financial reasons.

In a world where tight grid conditions mandate that STEC continue to make capital investments in its generation resources, the fact that EPA has been given a license by the D.C. Circuit to regulate far beyond the limits of the CAA puts in question whether the investments STEC, San Miguel, and other cooperatives make in their plants will be wasted if those assets are forced to retire before the end of their useful lives once carbon caps are imposed.

Unless the Court acts, the uncertainties described above will compel San Miguel and others in its position to toe EPA's line, if they are financially able, regardless of its underlying legality. This exact situation happened with the EPA's Mercury Air Toxics Standards. By the time the Court ultimately held EPA's rule was defective in *Michigan v. EPA*, 576 U.S. 743 (2015), the industry had essentially come into compliance costing ratepayers millions of dollars (and severely compromising the market competitiveness of plants in deregulated wholesale markets) through an illegal exercise of power. Tellingly, as noted by North Dakota, EPA proudly trumpeted its ability to impose its illegal regulations in the breach. North Dakota Pet. for Cert. at 33 (citing *e.g.*, *In Perspective: the Supreme Court's Mercury and Air Toxics Rule Decision*, EPA CONNECT (June 30, 2015), https://blog.epa.gov/blog/2015/06/in-

perspective-the-supremecourtsmercury-and-air-toxics-rule-decision/). Because the Court's firmly established precedent prohibits regulation by such extra-legal means, it must step in to limit the agency's action to that clearly authorized by Congress and not by agency (or even judicial) creativity in evading the bonds that Congress imposed.

Therefore, it is not just permissible and useful for the Court to provide immediate clarity regarding the nature and scope of the authority Congress granted the EPA under section 7411(d) of the CAA, it is also essential to enable rural electric cooperatives like Amici to make prudent use of their limited resources. Those entities need to be able to attempt to fend off the human and economic fallout of power outages without fear that the investments they make will be wasted. For a rural electric cooperative like STEC, that serves several of the poorest rural counties in the United States, including Starr, Willacy, Dimmit, Hidalgo, Zavala, Brooks, Zapata, Bee, Webb, Cameron, and Duval counties, the prudent investment of limited funds is a very serious matter.

The Major Questions doctrine is compelling in situations like this, where multi-billion dollar decisions must be made to avoid multi-billion dollar losses. Decision-makers should be able to rely upon the express authority granted to the EPA by Congress, not the judicial expansion of that authority created by the D.C. Circuit's opinion. The time to stop

the wild swing of statutory interpretation from administration to administration is now.

The Court should grant North Dakota's petition for certiorari and decide the important questions presented therein.

II. THE COURT SHOULD REVERSE THE D.C. CIRCUIT'S DECISION.

The Court should reverse the D.C. Circuit's decision. The decision grievously misconstrues the CAA and erroneously grants to the EPA authority expressly reserved to the States by permitting the EPA to regulate wholesale energy markets with regulations applying outside the fence line of an existing source's facility. In doing so, the D.C. Circuit ignored the text of the statute as well as long-standing Court precedent limiting agency powers to those granted by Congress.

A. The D.C. Circuit's Decision Upends the System of Cooperative Federalism Embodied in the CAA by Stripping States of Their Statutory Right to Serve as the Primary Regulator of Existing Sources.

As the Court has confirmed, and the D.C. Circuit acknowledged, the CAA establishes a system of cooperative federalism between the EPA and the States, under which the States are assigned the primary role in air pollution prevention and control. *Am. Electric Power Co. v. Connecticut* ("*AEP*"), 564 U.S. 410, 424-28 (2011); *Am. Lung Assoc. v. EPA*, 985

F.3d 914, 942 (D.C. Cir. 2021) (describing CAA section 7411(d) as creating "complementary roles" for the EPA and the States and stating "This case concerns the mechanics of that cooperative framework for existing sources and, specifically, restrictions the Agency now claims the statute imposes on regulation of the air pollutants those sources emit.").

Under this "cooperative framework," CAA section 7411(d) expressly requires the EPA to direct States to set standards for existing sources, but assigns to the States the primary responsibility for setting and enforcing their standards.

In particular, section 7411(d), entitled "Standards of performance for existing sources; remaining useful life of source," requires States to submit to the EPA a plan establishing standards of performance for existing sources of air pollutants. 42 U.S.C. § 7411(d)(1). Under this provision, the EPA "shall permit" the States to "take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies." *Id.*

The EPA is permitted to interfere in this process only if a State fails in its obligation to submit a plan. *Id.* § 7411(d)(2). Even in that circumstance, the EPA still "shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies." *Id.*

The D.C. Circuit swept aside the plain terms of section 7411(d) in concluding that the EPA has authority to "reach past the States and directly promulgate standards of performance" to States' existing sources under the CPP. North Dakota Pet. for Cert. at 6. As a result, the D.C. Circuit's decision permits the EPA to impose standards on existing sources, irrespective of their useful life or other considerations the States are entitled to consider under the terms of CAA section 7411(d).

The D.C Circuit downplayed the impact its decision would have on States, claiming that the CPP afforded States "considerable flexibility in choosing how to calculate and meet their emissions targets." *Am. Lung Assoc.*, 985 F.3d at 963. But, contrary to the court's assurances, the CPP's carbon dioxide limits were based on hard-wired assumptions designed to force fossil-fuel-fired plants out of existence regardless of age or importance to a given State's grid. Rather than providing States with true flexibility in meeting the EPA's emissions targets, treating them as the co-equal sovereigns envisioned by Congress under the CAA, the "flexibility" afforded by the CPP's carbon caps was neither flexible nor cooperative. As pointed out by Professor Lawrence Tribe in commentary about the coercive nature of the CPP, "a robber who says, 'Your money or your life,' can't eliminate the coercion

by saying, 'And you can pay me in cash, or credit, or bitcoin.'"[3]

The CPP did not cooperate with the States or provide them with the flexibility, to which they are statutorily entitled, to regulate their power grids. It effectively commandeered the States, in violation of the Tenth Amendment, to impose the EPA's chosen carbon standards—irrespective of the States' preferred (and more economically sensible) power sources. *E.g. New York v. United States*, 505 U.S. 144, 188 (1992). By holding that the EPA was authorized to promulgate the CPP, the D.C. Circuit's decision upsets the delicate balance of state and federal power forged by Congress in the CAA.

B. The D.C. Circuit's Decision Erroneously Confers on the EPA Extra-Statutory Authority to Regulate (and Effectively Shut Down) Wholesale Energy Markets with "Outside the Fence" Regulations.

It is axiomatic that EPA has no discretion to act beyond the power delegated to it by Congress. *Util. Air Regulatory Grp. v. EPA* ("*UARG*"), 573 U.S. 302, 315 (2014). When an agency acts beyond its authority, it acts "ultra vires." *City of Arlington v. F.C.C.*, 569 U.S. 290, 297 (2013).

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[3] *Tribe: Why EPA's Climate Plan Is Unconstitutional*, https://today.law.harvard.edu/why-epa-climate-plan-is-unconstitutional/

Moreover, "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy," the Court "typically greet[s] its announcement with a measure of skepticism." *UARG*, 573 U.S. at 324. And the Court expects "Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.'" *Id.* (quoting *F.D.A. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).

Here, EPA promulgated a regulation that unquestionably would have had the effect of shutting down all coal-fired contributors to the country's power grid, contrary to State preferences. It is hard to imagine a decision of greater "economic and political significance." Yet, nowhere in the CAA, much less section 7411(d) of the CAA (which expressly grants *States* the right to make the first call with regard to regulation of existing sources), is there any authority for EPA to undertake such a mission.

Certainly, Congress has not spoken remotely clearly that it intended to authorize direct *EPA control* over States through a provision in which it vested *States the primary authority* to regulate existing sources. Nonetheless, the D.C. Circuit approved the EPA's discovery of its own previously "unheralded power" and granted EPA authority to effectively "force generation shifting for States under Section 111(d)." North Dakota Pet. for Cert. at 6.

In doing so, the D.C. Circuit focused on the definition of "best system of emission reduction" in isolation without regard to the fact that the CAA requires this standard be applied to "new sources" by EPA and "existing sources" by the States. Having decoupled the statutory analysis, the D.C. Circuit erroneously concluded that Congress empowered the EPA to look beyond the source to any combination of factors it wants to fashion a "best system of emissions reduction." But section 7411(d) authorizes regulation of *sources*, not amorphous "*systems*" and EPA's regulations must be fashioned for those *sources*. *See Maracich v. Spears*, 570 U.S. 48, 65 (2013) ("It is necessary and required that an interpretation of a phrase of uncertain reach is not confined to a single sentence when the text of the whole statute gives instruction as to its meaning.").

The D.C. Circuit's decision ignores the text and structure of section 7411(d). As this Court has made clear, there is no "federal common law" that the courts may wield to adjust a statute according to what they perceive is (or should have been) required. Instead, "the Clean Air Act *displaces* federal common law" and "when Congress addresses a question . . . the need for such an unusual exercise of law-making by federal courts disappears." *AEP*, 564 U.S. at 423-24 (emphasis added). Simply, the role of the courts is to enforce the statutes as Congress has enacted them.

The D.C. Circuit's decision disregards the plain limits on EPA's authority under CAA section 7411(d).

It confers unchecked authority on the EPA to dictate power generation sources in a manner far outside the bounds of the CAA. The rural ratepayers served by Amici will shoulder the economic and human consequences unless this Court acts now.

CONCLUSION

The Court should grant the petition for certiorari and reverse.

Respectfully submitted.

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