

No. 24-971

IN THE
Supreme Court of the United States

SEAFREEZE SHORESIDE, INC., *et al.*,

Petitioners,

v.

DEPARTMENT OF THE INTERIOR, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

**BRIEF OF *AMICUS CURIAE*
PROTECT OUR COAST NJ
IN SUPPORT OF PETITIONERS**

MICHAEL J. DONOHUE

Counsel of Record

KYLE WEINBERG

BLANEY, DONOHUE

& WEINBERG, PC

2123 Dune Drive, Suite 11

Avalon, NJ 08202

(609) 435-5368

mike@blaneydonohue.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

| | <i>Page</i> |
|--|-------------|
| TABLE OF CONTENTS..... | i |
| TABLE OF CITED AUTHORITIES | ii |
| INTEREST OF THE <i>AMICUS CURIAE</i> | 1 |
| SUMMARY OF ARGUMENT..... | 2 |
| ARGUMENT..... | 4 |
| A. There are Clear Examples and Admissions that Indicate that Biden Administration Climate Activists Created a Shadow Regulatory Process Found in Their Treatment of Serious Issues Surrounding the Protection of Endangered Right Whales and in their Abuse of the Regulatory Process in General..... | 4 |
| B. The Biden Administration Unlawfully Ignored a Host of Negative Economic Impacts Flowing from the Industrialization of the Atlantic Coast via the Installation of Massive Offshore Wind Energy Generation Facilities..... | 9 |
| 1. Increased Power Costs and Burdens on Taxpayers | 11 |
| 2. Negative Impacts on Tourism and Tourism Driven Economies | 15 |
| CONCLUSION | 22 |

TABLE OF CITED AUTHORITIES

| | <i>Page</i> |
|---|-------------|
| Cases | |
| <i>Bennett v. Spear</i> , 520 U.S. 154 (1997) | 9-10 |
| <i>Center for Biological Diversity v.</i> <i>United States Department of Interior</i> , 563 F.3d 466 (D.C. Cir. 2009) | 10 |
| <i>Center for Sustainable Economy v. Jewell</i> , 779 F.3d 588 (D.C. Cir. 2015) | 10, 11 |
| <i>City of Sausalito v. O’Neil</i> , 386 F.3d 1186 (9th Cir. 2004) | 10 |
| <i>Loper Bright Enterprises v. Raimondo</i> , 603 U.S. 639 (2024). | 4, 5 |
| Statutes, Rules and Regulations | |
| 16 U.S.C. §§1361-1423 | 5, 10 |
| 16 U.S.C. §§1531-1544 | 6, 7 |
| 43 U.S.C. §1344(a)(1) | 10 |
| 30 C.F.R. §285.702 | 18 |
| Supreme Court Rule 37.2 | 1 |

Cited Authorities

| | <i>Page</i> |
|--|-------------|
| Other Authorities | |
| 89 FR 31008, <i>Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase 2 Construction of the Vineyard Wind 1 Offshore Wind Project Off Massachusetts</i> | 5, 6 |
| BOEM AND NOAA FISHERIES – <i>North Atlantic Right Whale and Offshore Wind Strategy</i> , January 2024. (https://tinyurl.com/6y4m5c4n) | 8, 9 |
| BOEM, <i>Vineyard Wind Construction and Operations Plan</i> (https://tinyurl.com/3bhc3nrs) | 17 |
| BOEM, <i>Vineyard Wind Construction and Operations Plan</i> , Volume III (2020) (https://tinyurl.com/bdmzmy2a) | 21 |
| Bradley, “ <i>The Dismal Economics of Offshore Wind</i> ” (<i>onshore is bad enough</i>), Master Resource (2020) (https://tinyurl.com/mrbsahev) | 14 |
| Bushard, <i>Blown Away: Vineyard Wind’s turbine blade collapse riles island</i> , N Magazine (August 30, 2024) (https://www.n-magazine.com/vineyard-wind-turbing-fail) | 19, 20 |

Cited Authorities

| | <i>Page</i> |
|--|-------------|
| Buyinza <i>Nantucket evaluates economic, environmental fallout from turbine blade.</i> MassLive (October 9, 2024) (https://tinyurl.com/2tu34xep)..... | 16 |
| <i>Do offshore wind farms harm tourism?</i> , Orsted (https://tinyurl.com/yycp8b7m) | 20 |
| Dorell & Lee, <i>The Cost of Wind: Negative Economic Effects of Global Wind Energy Development</i> , Energies (2020) (https://tinyurl.com/mpv6waun)..... | 12 |
| Ford, <i>US set for faster offshore wind permits under new rules</i> , Reuters, May 3, 2024 (https://tinyurl.com/2uzne2nz) | 9 |
| Genter, <i>Broken Vineyard Wind Turbine Blade Scatters Debris on Nantucket</i> , Vineyard Gazette (July 15, 2024) (https://tinyurl.com/3vdz5yk6) | 16 |
| Houston, <i>The economic value of America's beaches</i> , U.S. Army Engineering Research and Development Center (2023) (https://tinyurl.com/28j7p6bp) | 21 |
| Lessner, <i>Out to Sea: The Dismal Economics of Offshore Wind</i> , Manhattan Institute (2020) (https://tinyurl.com/2e69s7fe)..... | 13 |

Cited Authorities

| | <i>Page</i> |
|---|-------------|
| Letter of James Bennet, Chief of BOEM Office of Renewable Energy Programs to Rachel Pachter, Chief Development Officer for Vineyard Wind (June 6, 2021) (https://tinyurl.com/ydec3yks) . . . | 17, 18 |
| Mishnaevsky, Sikora & Bohdal, <i>Root Causes and Mechanisms of Failure of Wind Turbine Blades: Overview</i> , National Library of Medicine (April 19, 2022). (https://tinyurl.com/bdzv3y84) . . . | 19 |
| Musial & Ram, <i>Large-Scale Offshore Wind Power in the United States</i> , National Renewable Energy Laboratory (2010) (https://tinyurl.com/48undz3d) . . . | 14 |
| NATIONAL MARINE FISHERIES SERVICE ENDANGERED SPECIES ACT SECTION 7 CONSULTATION BIOLOGICAL OPINION - Construction, Operation, Maintenance, and Decommissioning of the Vineyard Wind Offshore Energy Project, October 18, 2021 (https://doi.org/10.25923/h9hz-3c72) . . . | 5, 6 |
| NOAA, 2024 Marine Economy Report - Northeast Region (2024) (https://coast.noaa.gov/data/digitalcoast/pdf/marine-economy-northeast.pdf) . . . | 15 |
| Prevost, <i>Study: Offshore wind farms won't keep most people from enjoying the beach</i> , Canary Media (2020) (https://tinyurl.com/yc527hf4) . . . | 21 |

Cited Authorities

| | <i>Page</i> |
|--|-------------|
| Reed, <i>A Monster Wind Turbine Is Upending an Industry</i> , New York Times (January 1, 2021) (https://tinyurl.com/yfasauyd) | 20 |
| Sanders, <i>Big Blow: Offshore Wind Power's Devastating Costs and Impacts on North Carolina</i> , John Locke Foundation (2022) (https://tinyurl.com/36r8ftcp) | 20 |
| Sanders, <i>The Economic Effects of Offshore Wind Energy on Coastal Communities</i> , John Locke Foundation (2022) (https://tinyurl.com/36r8ftcp) | 15, 16 |
| U.S. Department of Energy, <i>advancing the Growth of the U.S. Wind Industry: Federal Incentives, Funding, and Partnership Opportunities</i> (2023) (https://tinyurl.com/5xx552bz) | 12 |
| Upton & Snyder, <i>Funding Renewable Energy: An Analysis of Renewable Portfolio Standards</i> , United States Association for Energy Economics, (2015) (https://tinyurl.com/ev7dkkm8) | 11, 12 |
| VINEYARD WIND 1 OFFSHORE WIND ENERGY PROJECT CONSTRUCTION AND OPERATIONS PLAN, May 10, 2021 (https://tinyurl.com/2vz2sa8n) | 6, 8 |

Cited Authorities

| | <i>Page</i> |
|--|-------------|
| Vineyard Wind, <i>GE Vernova Release Incident Response and Action Plan Overview of Blade Removal Operation</i> (AUGUST 9, 2024) (https://tinyurl.com/3e53epw3)..... | 18 |
| Vineyard Wind, <i>Vineyard Wind Update on Damaged GE Vernova Blade</i> (July 18, 2024) (https://tinyurl.com/57u2wb3n) | 16 |

INTEREST OF THE *AMICUS CURIAE*¹

Protect Our Coast NJ (“POCNJ”) is a New Jersey nonprofit, bringing people together to educate on what it believes are the devastating environmental and economic impacts of the industrialization of the Atlantic Coastal environment by the installation all along the Eastern Seaboard of hundreds of offshore wind turbines and related structures each extending over one thousand feet vertically and disrupting and covering hundreds of thousands of acres of the ocean floor. POCNJ partners with like-minded organizations all along the East coast to conduct research and circulate information through print and electronic means. POCNJ helps educate citizens and elected officials and leads protests and demonstrations against the serious perils associated with offshore wind. POCNJ has been especially active in attempting to protect the commercial fishing industry and tourism industry from potentially devastating losses that will occur if the Atlantic Coastal environment is invaded and damaged by the installation of industrial energy generation facilities, yet has also focused on the negative impacts on national security, transportation, benthic environments, wind and current patterns and the impact of the industrial pollutants associated with offshore wind.

1. Petitioner’s and Respondents’ counsel were provided timely notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or in part, and no party or counsel other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

SUMMARY OF ARGUMENT

In an effort to have the United States “catch up” with its so-called “climate goals” under the Paris Accords, the Presidential Administration of Joseph R. Biden, Jr., embarked on a breakneck process that ignored regulatory governors and guardrails in order to fast-track the approval of the installation of hundreds of industrial offshore wind energy generation facilities. The project in question in this appeal, Vineyard Wind, was one of the first and the process utilized one of the most egregious in terms of ignoring the negative impacts to the environment and the economic interests of important stakeholders. Amicus here respectfully argues that the Supreme Court should grant the petition a writ of certiorari inasmuch as the Court is the last opportunity for appropriate oversight and correction of this unprecedentedly flawed Executive regulatory process. Much of what amicus argues is expressly or implicitly woven into Petitioner’s case, but the exposition of these important issues was cut off by the erroneous holding of the First Circuit. The First Circuit’s premature termination of the underlying case is an affront to basic justice and fundamental fairness as it deprived the parties and the broader group of impacted business owners, individuals, marine mammals and other species the testing of the regulatory process through the crucible of litigation that these unprecedented circumstance called for.

Respectfully, it is important for the Court to hear the broad impacts and concerns generated by the installation of offshore wind facilities to obtain the full flavor of the immense public importance associated with this litigation and the issues joined thereby. Amicus points to the bold

ignorance on the part of the Executive in its devil-may-care, lawless regulatory approvals and their negative economic impacts as well as their reckless enhanced endangerment of the already endangered right whale. Amicus draws from public, scholarly information to outline multiple, substantial negative environmental and economic impacts that were and continue to be ignored and overlooked. Amicus also demonstrates the reality of this inappropriately adaptive regulatory procedure by pointing to subsequent and substantial regulatory changes advanced by the Biden Administration. The Biden administration changed the regulatory process without first changing the regulations. This was in derogation of all established and accepted regulatory and administrative procedures and the holdings of this Court.

Especially in light of the Court's recent exposition on the limits of administrative power, the Court is urged to take this opportunity to further expound on the appropriate limits of the exercise of administrative regulatory authority on the part of the state by granting the within petition for certiorari. These issues are not going away. At present, there are multiple lawsuits across several states, including multiple matters before this Court, related to the regulatory and administrative transgressions of the Biden Administration in its efforts on behalf of offshore wind corporations. Dozens of outer continental shelf lease areas for offshore wind remain extant. Even now, the foreign corporate owners of the Empire Wind project off of North Jersey, New York and New England are dumping hundreds of thousands of tons of rock onto the seabed for stabilization in advance of the installation of dozens of wind turbines over the course of the next several months. Other foreign offshore wind corporations continue to pursue projects that will undoubtedly generate more

litigation on these extraordinarily important public and legal questions. These issues are more than ripe for the Court's consideration and the stakeholders, the industry, marine mammals, the Atlantic coastal environment and the American public at large have a great interest in the Court's determination of these questions.

ARGUMENT

The Court Should Grant Review Because the Regulatory Process Applied to Permitting Here Not Only Runs Afoul of *Loper Bright*, but Because the Process was Created “On the Fly” by Climate Activists within the Biden Administration and Not Through the Legally Accepted Regulation Adoption and Promulgation Process and Certainly Not by Congress

Additionally, the Entire Biden Shadow Regulatory Process Completely Ignored the Myriad Negative Environmental and Economic Impacts of the Industrialization of the Atlantic Coastal Environment via the Installation of Massive Offshore Wind Facilities

A. There are Clear Examples and Admissions that Indicate that Biden Administration Climate Activists Created a Shadow Regulatory Process Found in Their Treatment of Serious Issues Surrounding the Protection of Endangered Right Whales and in their Abuse of the Regulatory Process in General

The exposition of the deficiencies of the applied regulatory review in question in the context of the Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 639, (2024), advanced by Petitioner and other amici

is well reasoned and detailed and need not be repeated by amicus here. But amicus argues that the Biden Administration engaged in a process of permit review that not only ran afoul of the principles of *Loper Bright*, but were also untethered from the regulatory review that was legally required under adopted and promulgated federal regulations at that time.

The North Atlantic right whale has been listed as Endangered since the Endangered Species Act's enactment in 1973. 89 FR 31008, *Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase 2 Construction of the Vineyard Wind 1 Offshore Wind Project Off Massachusetts*. The species was recently uplisted from Endangered to Critically Endangered on the International Union for Conservation of Nature Red List of Threatened Species. *Id.* The western Atlantic stock is considered depleted under the Marine Mammal Protection Act ("MMPA") 16 U.S.C. §§1361-1423. *Id.* North Atlantic right whale's range from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters. *Id.* The presence of North Atlantic right whales may occur year-round near Martha's Vineyard and Nantucket Shoals as well as throughout the Massachusetts and Rhode Island/Massachusetts Wind Energy Areas. *Id.* The five-year review for right whales completed in 2017 by the National Marine Fisheries Service included the recommendation that the status for right whales to remain as endangered.²

2. NATIONAL MARINE FISHERIES SERVICE ENDANGERED SPECIES ACT SECTION 7 CONSULTATION BIOLOGICAL OPINION - Construction, Operation, Maintenance, and Decommissioning of the Vineyard Wind Offshore Energy Project, October 18, 2021. (<https://doi.org/10.25923/h9hz-3c72>).

The plan noted that in many ways, progress toward right whale recovery had regressed since the previous 5-year review was completed in 2012 citing the declining population trend, below average calving rates, and worsened body condition. *Id.* at 67.

On September 7, 2018, the National Marine Fisheries Service received a request from Vineyard Wind for an authorization to incidentally take marine mammals under the MMPA during construction of an offshore wind energy project south of Massachusetts.³ Section 9 of the Endangered Species Act (“ESA”) 16 U.S.C. §§1531-1544 and Federal regulations pursuant to section 4(d) of the ESA prohibit the “take” of endangered and threatened species, respectively, without a special exemption.⁴ In the case of threatened species, section 4(d) of the ESA leaves it to the Secretary’s discretion whether and to what extent to extend the statutory 9(a) “take” prohibitions, and directs the agency to issue regulations it considers necessary and advisable for the conservation of the species. *Id.* at 383. “Take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. *Id.*

The population estimate for right whales on the entire planet in 2018 was just 368 individuals. *See, id.* at 59.

3. *VINEYARD WIND 1 OFFSHORE WIND ENERGY PROJECT CONSTRUCTION AND OPERATIONS PLAN*, May 10, 2021. (<https://tinyurl.com/2vz2sa8n>).

4. *NATIONAL MARINE FISHERIES SERVICE ENDANGERED SPECIES ACT SECTION 7 CONSULTATION BIOLOGICAL OPINION - Construction, Operation, Maintenance, and Decommissioning of the Vineyard Wind Offshore Energy Project*, October 18, 2021. (<https://doi.org/10.25923/h9hz-3c72>).

The Biden administration, in spite of the extraordinarily endangered status of right whales, approve a take of forty nine of the 368 members of the right whale population via harassment due to pile driving noise associated with the Vineyard Wind project. *Id.* at 166. Pile driving would occur on a daily basis over many months. *See, id.* at 228. In spite of this, the Biden Administration concluded, “While many right whales in the action area are in a stressed state that is thought to contribute to a decreased calving interval, the short-term (no more than three hours) exposure to pile driving noise experienced by a single individual is not anticipated to have any lingering effects and is not expected to have any effect on future reproductive output.” *Id.* at 356. One is left to wonder how any individual right whale would know to limit him/herself to only three hours of noise exposure as the project engages in pile driving over many months. This conclusion is illustrative of the many square pegs driven into round holes by permit approving climate activists in the Biden Administration designed to create the facade of a valid regulatory review when, in fact, they were ignoring long established regulatory and scientific principals in order to rush offshore wind permits out the door.

What is most egregious, is that it is patently clear that these members of the Biden Administration arguably knew they had no legitimate basis for the issuance of these permits in general and with regard to right whales specifically.

The Bureau of Ocean Energy Management’s (“BOEM”) *Vineyard Wind 1 Offshore Wind Energy Project Construction and Operations Plan - Record of*

Decision (“ROD”) was issued by BOEM on May 10, 2021.⁵ The ROD includes the authorized take via harassment of right whales. Yet, it was not until January 25, 2024, that the Biden Administration’s BOEM and NOAA published their *Final North Atlantic right Whale and Offshore Wind Strategy*.⁶ This was more than three years and five months after approving the right whale take for Vineyard Wind 1. This fact represents a tacit admission on the part of the Biden Administration that it was not armed with the appropriate or sufficient science or data in 2021 to issue an ROD for Vineyard Wind 1. How could it have been when it did not even have a plan for dealing with right whales in the context of offshore wind until 2024? It is clear that climate activists within the Biden Administration were willing to sacrifice some number of the 368 right whales left on Earth in the name of reaching President Biden’s “goal of 30 gigawatts of offshore wind by 2030.” *See, id.*

Further evidence of the fact that the Biden Administration was engaged in an unlawfully streamlined, shadow regulatory and permitting process when it issued permits for Vineyard Wind 1 and other offshore wind projects is found in the finalization by the Administration on or about April 24, 2024, of a host of new rules applicable to offshore wind permitting. Reporting indicated that “a BOEM spokesperson told Reuters Events... [that] Vineyard Wind 1 encountered first-of-a-kind challenges

5. *VINEYARD WIND 1 OFFSHORE WIND ENERGY PROJECT CONSTRUCTION AND OPERATIONS PLAN*, May 10, 2021. (<https://tinyurl.com/2vz2sa8n>).

6. *BOEM AND NOAA FISHERIES – North Atlantic Right Whale and Offshore Wind Strategy*, January 2024. (<https://tinyurl.com/6y4m5c4n>).

and provided learnings for industry stakeholders.”⁷ Prior to having regulatory authority to do so, the Biden Administration’s BOEM took it upon itself to cut regulatory corners. “In late 2022 the bureau set up the FAST-41 agency governance scheme ‘which has allowed for early identification and resolution of issues and improved overall interagency coordination,” the [BOEM] spokesperson said.” *Id.*

If BOEM and other federal agencies had the authority to streamline the regulatory process and rush permits through for Vineyard Wind 1 contrary to extant regulations and in the face of insufficient science and data, then they would not have had to push through the host of regulatory changes they effectuated in 2024. The fact is, they were trying to retroactively legalize the unlawful shadow regulatory process they employed to rush through offshore wind installation permits.

These serious issues beg for a full exposition by the Court. Accordingly, the Court is respectfully urged to grant the Petition for a Writ of Certiorari here.

B. The Biden Administration Unlawfully Ignored a Host of Negative Economic Impacts Flowing from the Industrialization of the Atlantic Coast via the Installation of Massive Offshore Wind Energy Generation Facilities

The Endangered Species Act’s zone of interests includes economic injuries. In *Bennett v. Spear*, 520 U.S.

7. Ford, *US set for faster offshore wind permits under new rules*, Reuters, May 3, 2024. (<https://tinyurl.com/2uzne2nz>).

154 (1997), the Supreme Court analyzed standing in the context of a Section 7 consultation claim under the ESA. The Court wrote that while species conservation is the overall goal of the ESA, “we think it readily apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives.” The Court found that economic interests fit “plainly within the zone of interests that the [ESA] protects.”

Likewise, courts have held that economic interests and injuries also fall under the Marine Mammal Protection Act’s zone of interests for standing. 16 U.S.C. §§1361-1423. In *City of Sausalito v. O’Neil*, 386 F.3d 1186 (9th Cir. 2004), the Ninth Circuit held that the “implementation of the MMPA would be severely hampered if affected parties with conservationist, aesthetic, recreational, or economic interests in marine mammal protection were not allowed to bring suits challenging failures” of agencies and found that the plaintiff, a City with economic and conservation interests in a marine mammal, had standing to sue under the MMPA.

In terms of permitting, 43 U.S.C. §1344(a)(1), sets forth the Outer Continental Shelf leasing program. That section states that “[m]anagement of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf. . . .” See also *Center for Biological Diversity v. United States Department of Interior*, 563 F.3d 466, 473 (D.C. Cir. 2009) (restating statute). In *Center for Sustainable Economy v. Jewell*, 779 F.3d 588, 594

(D.C. Cir. 2015), the D.C. Circuit stated that “Congress calls on Interior to strike an appropriate balance at each stage between local and national environmental, economic, and social needs.”

While amicus could spend many pages in a full exposition of all of the negative economic consequences flowing from offshore wind installation, in the interest of judicial economy and the spirit of amicus briefing, amicus here will focus on several highlights to provide the court with a flavor of the many economic problems appurtenant to the industrialization of the Atlantic Coast.

1. Increased Power Costs and Burdens on Taxpayers

The idea that the construction of offshore wind facilities will help to lower energy costs is a fallacy. The integration of offshore wind energy comes with considerable costs that can contribute to higher electricity prices for consumers.⁸ Wind energy is generally more expensive than traditional sources. *Id.* at 3. Some studies have suggested that energy prices associated with renewable energy projects have increased by as much as 10.9%-11.4%. *Id.* at 7. Outside of increased costs for energy consumers, taxpayers at large are also forced to shoulder a larger economic burden. Where policies unrelated to energy prices such as property tax exemptions for renewable energy facilities, renewable production and construction tax credits and other government subsidies are utilized to

8. Upton & Snyder, *Funding Renewable Energy: An Analysis of Renewable Portfolio Standards*, United States Association for Energy Economics, (2015) (<https://tinyurl.com/ev7dkkm8>).

assist renewable energy corporations, those expenses get passed on to taxpayers in the form of increased taxes or a diminution in spending on other governmental projects and services. *See, id.* at 19.

Offshore wind projects are substantially funded by government subsidies, meaning these projects are often funded in large part by the taxpayers.⁹ Without these subsidies, it is unlikely that such wind farms can be developed. *Id.* In fact, the Biden Administration expressly acknowledge this fact and created a vast array of taxpayer-funded subsidies for offshore wind companies.¹⁰

Utilizing the intentionally misleadingly named Inflation Reduction Act and other mechanisms, the Biden Administration established a buffet of taxpayers' money giveaways for offshore wind corporations, including, Inflation Reduction Act Tax Credits, Renewable Electricity Production Tax Credit, Business Energy Investment Tax Credit, Advanced Manufacturing Investment Tax Credit, Residential Renewable Energy Tax Credit, Advanced Manufacturing Investment Tax Credit, New Markets Tax Credit, Rural Energy for America Program Renewable Systems & Energy Improvement Loans & Grants, Title 17 Innovative Clean Energy Loan Guarantee Program, Department of Energy Research & Development Grants and Cooperative Agreements,

9. Dorell & Lee, *The Cost of Wind: Negative Economic Effects of Global Wind Energy Development*, Energies (2020) (<https://tinyurl.com/mpv6waun>)

10. U.S. Department of Energy, *advancing the Growth of the U.S. Wind Industry: Federal Incentives, Funding, and Partnership Opportunities* (2023) (<https://tinyurl.com/5xx552bz>).

Department of Energy Office of Technology Transitions Technology Commercialization Fund, State Energy Competitive Financial Assistance Programs, among others. In doing so, the Biden Administration aggressively ignored well established statutory requirements to consider the economic consequences of its actions for the American people. The entire offshore wind permitting and construction process became a Wild West of regulatory shortcuts and massive handouts of taxpayer funds.

Moreover, as the price for offshore wind increases for the consumer, the performance of these turbines decreases rapidly.¹¹ A 2020 study comparing the efficiency of onshore wind and offshore wind shows that the performance of the offshore wind turbines decrease 4.5% per year. *Id.* This decrease in output leads to higher maintenance for the continuation of offshore wind. *Id.* Given that these projects are so largely subsidized by American taxpayers, one is left to wonder where the money for maintenance and repair will come from. If those costs are passed on to electricity rate payers, the costs of electricity will skyrocket even faster than these projects are forcing it to do now. Studies in Europe over the last decade have shown that “larger turbine technologies have been accompanied by significant reliability and maintenance issues, causing the amount of electricity that the turbines generate each year to decline by almost half.” *Id.* The cost estimates do not provide an accurate picture. Output degradation, reliable electricity supplies and realistic future decommissioning costs are rarely, if ever, taken into account when the projects’ overall economic impacts are considered. *Id.* “Operation and

11. Lessner, *Out to Sea: The Dismal Economics of Offshore Wind*, Manhattan Institute (2020) (<https://tinyurl.com/2e69s7fe>).

maintenance costs are higher for offshore wind turbines than for land-based turbines, primarily because of access issues. It is simply more difficult to perform work at sea. Some reports estimate such costs are two to three times higher than on land and can reach 20% to 30% of the levelized cost of energy.”¹²

The offshore wind industry is unsustainable. Yet, in spite of this fact, the entire lifespan of the Biden Administration’s approach to offshore wind had been to ignore the dire economic consequences for the American people and instead focus on how to get as much American taxpayer money as possible into the accounts of foreign offshore wind companies. “Offshore wind is not cost-effective, and the forecasts of rapidly declining costs through increasing economies of scale are unrealistic. Absent continued subsidies—such as state mandates for offshore generation and renewable energy credits, which force electric utilities to sign long-term agreements with offshore wind developers at above-market prices—it is unlikely that any offshore wind facilities will be successfully developed. These subsidies, along with the need for additional transmission infrastructure and backup sources of electricity, will increase the cost of electricity for consumers and reduce economic growth.”¹³

Petitioners here were summarily deprived by the First Circuit of the right and ability to expound upon

12. Musial & Ram, *Large-Scale Offshore Wind Power in the United States*, National Renewable Energy Laboratory (2010) (<https://tinyurl.com/48undz3d>).

13. Bradley, “*The Dismal Economics of Offshore Wind*” (*onshore is bad enough*), Master Resource (2020) (<https://tinyurl.com/mrbsahev>).

the damage that the Biden Administration's shadow regulatory process was having upon the economics of the Vineyard Wind region and on the American taxpayers at large. As argued above, these project cost and cost-to-taxpayers issues are of critical importance to a valid and defensible regulatory and administrative approval process for offshore wind.

2. Negative Impacts on Tourism and Tourism Driven Economies

It is common knowledge that the Tourism industry is the lifeblood of many local economies along the Eastern seaboard of the United States. In the NOAA Northeast Region, Tourism and Recreation represent the largest employment sector at 66%, the largest GDP sector at 49%, the largest number of business establishments at 82% and the largest group of wage generators at 43%.¹⁴ Offshore wind projects will likely have a negative impact on local economies, specifically those that rely heavily on tourism.¹⁵ The operation of industrial offshore wind power generating facilities alters the landscapes and disrupts activities that local beach economies thrive on. *Id.* Indeed, 2024 saw the worst offshore wind environmental disaster in U.S. history at the hands of Vineyard Wind, the project that is the subject of this lawsuit. A single turbine blade broke and disintegrated, scattering debris into the Atlantic Coastal

14. NOAA, 2024 Marine Economy Report - Northeast Region (2024) (<https://coast.noaa.gov/data/digitalcoast/pdf/marine-economy-northeast.pdf>)

15. Sanders, *The Economic Effects of Offshore Wind Energy on Coastal Communities*, John Locke Foundation (2022) (<https://tinyurl.com/36r8ftcp>).

environment.¹⁶ In a statement made at the time, Vineyard Wind corporate officials stated that a 107 meter turbine blade broke off. *Id.* Three days later, more of the blade broke off leading to further environmental damage: “This morning, a significant part of the remaining GE Vernova blade detached from the turbine...more debris could wash ashore tonight and tomorrow as we continue to monitor coastal communities.”¹⁷ The Nantucket, Massachusetts local government stated that “The turbine blade failure contaminated our coastal water, restricted access to our beaches, negatively impacted our local businesses and has required months of focused attention to the aftermath which continues unabated.”¹⁸ The environmental and economic damage to Nantucket was substantial. It would be exponentially worse if such a scenario played out on Misquamicut State Beach, Rhode Island, or Jones Beach, New York, or Avalon, New Jersey, or Rehoboth Beach, Delaware, or Ocean City, Maryland or Virginia Beach, Virginia. If such an offshore wind environmental catastrophe were to occur at any of these locations forcing the closure of beaches for weeks at a time in July, economic losses would be staggering.

It appears the Vineyard Wind offshore wind environmental disaster at Nantucket can likely be traced to the Biden Administration’s penchant for cutting corners

16. Genter, *Broken Vineyard Wind Turbine Blade Scatters Debris on Nantucket*, Vineyard Gazette (July 15, 2024) (<https://tinyurl.com/3vdz5yk6>).

17. Vineyard Wind, *Vineyard Wind Update on Damaged GE Vernova Blade* (July 18, 2024). (<https://tinyurl.com/57u2wb3n>).

18. Buyinza *Nantucket evaluates economic, environmental fallout from turbine blade*. MassLive (October 9, 2024). (<https://tinyurl.com/2tu34xep>).

on regulatory processes as detailed above. In fact, the BOEM approved Construction and Operations Plan for Vineyard Wind, despite containing thousands of pages, contained no consideration of the prospects of a blade disintegration.¹⁹ There was no consideration of such a catastrophic failure, no provision for alerting nearby population centers, no required plan for containing the resultant industrial pollution and no plan for cleaning up the pollution. This, in spite of the fact that blade disintegration was a known occurrence within the offshore wind industry.

Worse yet, there is hard evidence of the Biden Administration’s reckless, extra-legal, shadow regulatory review that demonstrates that the fatally flawed permitting process likely led directly to the Vineyard Wind turbine blade environmental disaster. On June 6, 2021, BOEM approved a “departure” for Vineyard Wind from the long-established requirement of submitting design, fabrication and installation reports for its turbine blades prior to installation.²⁰ As stated in the BOEM departure approval, Vineyard Wind requested and was authorized to install turbine rotor blades without first providing the Facility Design Report and Fabrication and Installation Report that federal regulations required. *Id.* at 1. This BOEM departure decision is the closest that may be found to the proverbial “smoking gun.” The departure approval was not based on a rational and reasonable application of the

19. BOEM, *Vineyard Wind Construction and Operations Plan*, (<https://tinyurl.com/3bhc3nrs>).

20. Letter of James Bennet, Chief of BOEM Office of Renewable Energy Programs to Rachel Pachter, Chief Development Officer for Vineyard Wind (June 6, 2021) (<https://tinyurl.com/ydcc3yks>).

legal regulatory review processes. Instead, the departure approval was made to “allow Vineyard Wind to adhere to its construction schedule, maintain its qualification for the Federal Investment Tax Credit, and meet its contractual obligations under the Power Purchase Agreements with Massachusetts distribution companies.” *Id.*

Here, Vineyard Wind was up against the clock that was ticking on its access to investment tax credits and contracts it had with the private sector. The Biden shadow regulators put the financial interests of the foreign offshore wind corporation ahead of the applicable regulations and the safety of the marine environment and communities surrounding the Vineyard Wind project. More than three years before the Vineyard Wind turbine blade environmental disaster, BOEM set the stage for its occurrence. The Vineyard Wind so-called “Root Cause Analysis” of the blade catastrophe shifted blame to the blade manufacturer, stating “that a manufacturing deviation is considered to be the primary root cause of the blade event, which should have been identified through the quality assurance process at the blade manufacturing facility.”²¹

But for the BOEM allowed departure, 30 C.F.R. §285.702 of the Code of Federal Regulations would have required Vineyard Wind, prior to the installation of turbine blades, to provide:

- The industry standards you will use to ensure the facilities are fabricated to the

21. Vineyard Wind, *GE Vernova Release Incident Response and Action Plan Overview of Blade Removal Operation* (AUGUST 9, 2024) (<https://tinyurl.com/3e53epw3>).

design criteria identified in your Facility Design Report [and]

- Certificates ensuring adherence to a nationally or internationally recognized quality assurance standard.

By utilizing its unlawful shadow regulatory process and allowing Vineyard Wind in 2021 to depart from these preconstruction requirements so that the corporation could preserve its financial position, the Biden Administration's Bureau of Ocean Energy Management sealed the fate of the marine environment and coastal communities who continue to suffer as a result of the 2024 blade failure catastrophe.

In 2022, a full two years before the Vineyard Wind turbine blade environmental disaster, the Biden Administration's National Institutes of Health published a scholarly paper entitled "Root Causes and Mechanisms of Failure of Wind Turbine Blades: Overview."²² This report concludes that "With an estimated 700,000 blades in operation globally, there are, on average, 3800 incidents of blade failure each year...Failure events of different degrees take place relatively often." *Id.* Yet, at the time of the Vineyard Wind disaster, the Chief Sustainability Officer for Vineyard Wind's blade supplier, GE Vernova, called blade failures "highly unusual and rare."²³

22. Mishnaevsky, Sikora & Bohdal, *Root Causes and Mechanisms of Failure of Wind Turbine Blades: Overview*, National Library of Medicine (April 19, 2022). (<https://tinyurl.com/bdzv3y84>).

23. Bushard, *Blown Away: Vineyard Wind's turbine blade collapse riles island*, N Magazine (August 30, 2024) (<https://www.n-magazine.com/vineyard-wind-turbine-fail>).

The entire Vineyard Wind blade disintegration environmental disaster episode betrays an industry and federal regulatory process that was either wildly reckless or intentionally designed to issue permits for offshore wind installation no matter the economic or environmental costs and contrary to long-established legal and regulatory guardrails.

Offshore wind piles and turbines are some of the most massive machines human beings have ever built.²⁴ “The turning diameter of its rotors is longer than two American Football fields...[and] later models will be taller than any building on the mainland of Western Europe.” *Id.* “A 2015 BOEM study found that wind turbines of 577 feet tall would ‘dominate’ the horizon within 15 nautical miles from shore. Turbines under consideration for offshore wind in North Carolina [and all along the East Coast] are up to 1,042 feet tall—80 percent taller. By way of comparison, the tallest building in N.C. is the Bank of America Corporate Center in Charlotte at 871 feet.”²⁵

The Danish offshore wind corporation Orsted touted a study that indicated that “Very few tourists are put off by seeing an offshore wind farm on the horizon.”²⁶ Yet, the study touted indicated that approximately 15%

24. Reed, *A Monster Wind Turbine Is Upending an Industry*, New York Times (January 1, 2021) (<https://tinyurl.com/yfasauyd>).

25. Sanders, *Big Blow: Offshore Wind Power’s Devastating Costs and Impacts on North Carolina*, John Locke Foundation (2022). (<https://tinyurl.com/36r8ftep>)

26. *Do offshore wind farms harm tourism?*, Orsted, (<https://tinyurl.com/yycp8b7m>).

of tourists would not return.²⁷ Beach tourism generated \$240 billion in spending in 2022, more than the 2019 value of all crops grown in American or the value of the 2022 oil exported by Saudi Arabia.²⁸ Adding in other economic drivers advanced by beach tourists, and the total economic output for this group was approximately \$520 billion in 2023. *Id.* at 1. Simple math of which the Court may take notice indicates that a 15% diminution in beach tourism caused by the industrialization of coastal communities via the installation of offshore wind energy generating facilities could remove approximately \$78 billion worth of economic activity from American coastal communities.

The many potentially extraordinary negative economic impacts of offshore wind are easily identifiable and well established. Yet the Construction and Operation Plan for Vineyard Wind, despite covering thousands of pages, does not identify a single negative economic impact.²⁹ There can be no doubt whatsoever that the Biden Administration handed its review of offshore wind projects to climate activists within the Administration who created a shadow regulatory process that intentionally ignored the multiple statutory and regulatory requirements related to economic impact. This shadow process refused to identify such impacts and weigh those negative economic impacts

27. Prevost, *Study: Offshore wind farms won't keep most people from enjoying the beach*, Canary Media (2020) (<https://tinyurl.com/yc527hf4>).

28. Houston, *The economic value of America's beaches*, U.S. Army Engineering Research and Development Center (2023) (<https://tinyurl.com/28j7p6bp>).

29. BOEM, *Vineyard Wind Construction and Operations Plan*, Volume III (2020) (<https://tinyurl.com/bdmzmy2a>).

against the issuance of federal permits. In so doing, the Biden Administration not only moved the extraordinarily endangered right whale one step closer to extinction, it also placed in economic peril countless businesses and families that depend on coastal tourism for their livelihood.

CONCLUSION

For the reasons aforesaid, the Court is respectfully urged to grant the Petition for a Writ of Certiorari and allow a full exposition of the important public and legal questions presented.

Respectfully submitted,

MICHAEL J. DONOHUE

Counsel of Record

KYLE WEINBERG

BLANEY, DONOHUE

& WEINBERG, PC

2123 Dune Drive, Suite 11

Avalon, NJ 08202

(609) 435-5368

mike@blaneydonohue.com

Counsel for Amicus Curiae