No. 25-879

In the Supreme Court of the United States

AMERICAN GAS ASSOCIATION, ET AL.,

Petitioners,

v.

UNITED STATES DEPARTMENT OF ENERGY, 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 AMICUS CURIAE WM TECHNOLOGIES, LLC IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICUS CURIAE WM TECHNOLOGIES, LLC[1]

Isadora and Benjamin Weil founded Weil Brothers in Chicago in 1881. In 1918, the brothers acquired supplier J.H. McLain Company, and the Weil-McLain brand was born. The brand presently operates under WM Technologies, LLC. For over 100 years, it has been the leading North American brand of comfort heating systems for residential, commercial, and institutional buildings and the largest brand of non-condensing boilers in North America.

WM Technologies is interested in the outcome of this case because its product portfolio includes boilers that use the same non-condensing technology the Department of Energy ("DOE") regulations ban here. This gives WM Technologies unique experience with both condensing and non-condensing technology and specialized industry knowledge. WM Technologies frequently comments on DOE rulemaking in this area. It offers this brief to explain the venting mechanisms, space-related attributes, and installation factors at issue. It also contextualizes the choice DOE strips from American consumers, harming WM Technologies and its broad customer base, including schools, offices, hotels, and other facilities.

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[1] Pursuant to Supreme Court Rule 37.2, WM Technologies provided timely notice of its intent to file this brief to counsel for all parties. Pursuant to Rule 37.6, no party, counsel for any party, or any person other than WM Technologies and its counsel authored this brief or made any monetary contribution for its preparation or submission.

INTRODUCTION

This case concerns an issue of national importance: American consumer choice in selecting commercial water heaters and residential furnaces.

Traditionally, homes and commercial buildings use gas furnaces and water heaters with non-condensing technology. These appliances use a heat exchanger where burning gas heats the air or water for space heating, and the resulting exhaust is then moved out through a venting system. Standard chimneys suffice to vent non-condensing technology because the gas expelled is hot enough to naturally draft upwards through the chimney with no additional propulsion, typically making them easy to vent. These appliances are proven reliable, with lifespans that trend anywhere from twenty to fifty years. Weil-McLain, *Seven Telltale Signs Your Boiler Needs to be Replaced*, https://www.weil-mclain.com/news/seven-telltale-signs-your-boiler-needs-to-be-replaced/ [https://perma.cc/R937-5DLL] (last visited Feb. 18, 2026); *see Am. Gas Ass'n v. U.S. Dep't of Energy*, 157 F.4th 476, 505 (D.C. Cir. 2025) (Rao, J., dissenting) (discussing reliability). They are lower cost to purchase and install and require simple annual maintenance, but typically have energy conservation, or efficiency[2], ratings at approximately

[2] To determine energy efficiency ratings, manufacturers must follow the test procedures specified by DOE. *See, e.g.*, U.S. Dep't of Energy, *Commercial Water Heating Equipment*, https:/ /www.energy.gov/eere/buildings/commercial-water-heating-equipment [https://perma.cc/GZE7-FH3D] (last visited Feb. 19, 2026); U.S. Dep't of Energy, *Consumer Furnaces*, https:/ /www.energy.gov/

eighty to eighty-five percent. *See Understanding Commercial Condensing vs. Non-Condensing Appliances*, PATTERSON-KELLEY SOLS. BLOG (Feb. 17, 2025, at 11:00), https://info.pattersonkelley.com/blog/commercial-condensing-vs.-non-condensing-appliances [https://perma.cc/PM8T-B6R9]; *see also, e.g.*, Weil-McLain, *CGa Gas Boiler Series 3*, https://www.weil-mclain.com/products/cga-gas-boiler-series-3/ [https://perma.cc/W3EC-3KWU] (last visited Feb. 18, 2026) (noting eighty-four percent efficiency for a natural draft, gas-fired boiler).

Condensing technology, which is more energy efficient, also exists. This technology uses one or two heat exchangers that capture and recycle heat, which in turn cools the exhaust to where it can no longer contain moisture, leading to condensation. The cooler exhaust is then routed through a fanned, horizontal vent and the liquid condensate through a drain. *See* Department of Energy, *Preliminary Technical Support Document - Commercial Packaged Boilers for Energy Conservation Standards for Commercial Packaged Boilers*, Appendix 8-D, at 8-D-2 to 8-D-3 (Nov. 26, 2014), https://www.regulations.gov/document/EERE-2013-BT-STD-0030-0027; *Understanding Commercial Condensing vs. Non-Condensing Appliances*, *supra*. Given their repeated exposure to moisture, the components used in this technology must be immune to corrosion such as stainless steel or plastic. *See Preliminary Technical Support Document*, *supra*, at 8-D-3. The chimney venting mechanism used in non-condensing appliances is incompatible with condensing appliances in part because the cooler exhaust is not hot enough to rise

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eere/buildings/consumer-furnaces [https://perma.cc/2RQS-EC82] (last visited Feb. 19, 2026).

through the chimney on its own. *See Am. Gas Ass'n*, 157 F.4th at 483. They are more expensive than non-condensing appliances to purchase and install and typically require more maintenance. *See Understanding Commercial Condensing vs. Non-Condensing Appliances*, *supra*. Additionally, while more efficient, condensing appliances have shorter lifespans, typically around fifteen years. *See Seven Telltale Signs*, *supra*.

The United States Court of Appeals for the D.C. Circuit's opinion below bans an entire class of these appliances based on erroneous legal analysis and an illogical understanding of what constitutes "performance characteristics" under the Energy Policy and Conservation Act ("EPCA"). Its rationale for favoring condensing technology is contrary to this Court's directive in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), and common sense. It prohibits the sale and distribution of commercial water heaters and residential furnaces using non-condensing technology, stripping American consumers of their right to purchase appliances that are demonstrably reliable, cost effective, and have great utility. Compelling reasons therefore exist for this Court's review, and WM Technologies urges this Court to grant the Petition.

BACKGROUND

EPCA is the framework created to, among other things, "provide for improved energy efficiency" in American products through federal energy conservation standards and DOE regulations. 42 U.S.C. §§ 6201(5), 6295(a)(1)–(2). This purpose is not absolute. It is balanced by a mandate to preserve consumer choice in product features. For example, EPCA prevents DOE from promulgating regulations that are "likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time." *Id.* § 6295(o)(4). More simply, DOE cannot regulate into extinction products with features American consumers find desirable. Yet that is happening here.

In December 2021, DOE issued a final interpretive rule under EPCA concerning energy conservation standards for residential furnaces and commercial water heaters ("Final Interpretive Rule"). Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, 86 Fed. Reg. 73947 (Dec. 29, 2021). DOE's purpose in doing so was to reconsider what constitutes a "performance-related feature" under EPCA in the context of condensing and non-condensing technology in these appliances. *Id.* at 73947–48. DOE, just eleven months earlier, had concluded that for these appliances, non-condensing technology provides unique performance characteristics that, if eliminated from the market, would violate EPCA's unavailability

provision. *See* Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, 86 Fed. Reg. 4776, 4816 (Jan. 15, 2021). These characteristics included (1) avoiding complex or costly installations; (2) preventing the loss of usable space possible when installing a condensing unit; and (3) maintaining control over the type of fuel used by preserving an affordable gas-powered option. *Id*.

But then DOE concluded these same features—venting mechanisms, installation, and cost—provide no "unique utility to consumers separate from an appliance's function of providing heated air or water, as applicable." 86 Fed. Reg. at 73951. According to DOE, "differences in cost or complexity of installation between different methods of venting" are not "performance-related feature[s]" under EPCA. *Id.*

Rather, whether a feature is "performance-related" turns on the utility of the technology and "is determined through the benefits and usefulness the feature provides to the consumer while interacting with the product." *Id*. Here, the two technologies provide the same benefits and usefulness, DOE concluded, because both provide hot water or air. *See id*. at 73951. Accordingly, DOE found no justification for separating non-condensing and condensing appliances into separate classes under 42 U.S.C. § 6295(q)(1), which allows for differing energy efficiency requirements among similar appliances.

Two years later, relying on its Final Interpretive Rule, DOE published a final rule updating the energy efficiency standards for commercial water heaters. Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69686 (Oct. 6, 2023). There, DOE set min-

imum efficiency standards for all gas-fired commercial water heaters at ninety-five percent. *Id.* at 69687. DOE also promulgated a similar rule concerning residential furnaces, which are also at issue here (collectively "Final Rules"). Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87502 (Dec. 18, 2023). Non-condensing commercial water heaters and furnaces cannot achieve this level of efficiency.

As a result, DOE now bans manufacturers from selling or distributing non-condensing commercial water heaters and residential furnaces. Those that do face penalties. 42 U.S.C. §§ 6302, 6303. This deprives American consumers of the choice to continue using non-condensing technology.

In a divided opinion, the D.C. Circuit upholds DOE's Final Interpretive Rule and Final Rules. *Am. Gas Ass'n*, 157 F.4th 476. In doing so, the majority gives great deference to DOE's conclusions, refusing to "second-guess DOE's view" because "it rests on the agency's evaluations of scientific data within its area of expertise." *Id.* at 492–93 (citation and quotation omitted). The majority concludes that DOE "has fulfilled its duty to examine the relevant data and articulate a satisfactory explanation for its conclusion[s]." *Id.* at 493 (citation and quotation omitted). Thus, "although not identical, condensing [appliances] offer substantially the same performance characteristics and features as non-condensing options." *Id.* (citing 42 U.S.C. §§ 6295 (o)(4), 6313(a)(6)(B)(iii)(II)(aa)).

The dissent concludes that DOE's "cramped interpretation of 'performance characteristic' cannot be reconciled with the text and structure of EPCA." *Id.* at 505 (Rao, J., dissenting). "Nothing in EPCA suggests"

DOE's restrictive interpretation of "'performance characteristic'"—meaning only "features that provide utility during operation"—is correct. *Id.* Rather, Congress "explicitly protected the availability of sizes, capacities, and volumes, terms that plainly encompass an appliance's physical dimensions and compatibility with a building's existing infrastructure." *Id.* (quotation omitted) (further concluding that "'reliability' similarly refers to a performance characteristic that goes beyond operation to consider a product's long-term effectiveness").

SUMMARY OF THE ARGUMENT

The D.C. Circuit considered whether DOE's Final Interpretive Rule and Final Rules violated EPCA's prohibition on energy regulations that are "likely to result in the unavailability . . . of [product] performance characteristics." 42 U.S.C. § 6295(o)(4). Relying heavily on DOE's determination that defining a particular attribute of a product as a "performance characteristic" is highly "'case-specific,'" the court finds no reason to "second-guess" DOE's interpretation. *Am. Gas Ass'n*, 157 F.4th at 488, 492–93 (citation omitted). That decision is contrary to this Court's precedent and harms American consumers, manufacturers, and this Court's precedent. Two compelling reasons exist for this Court to grant *certiorari* review.

First, the D.C. Circuit's analysis conflicts with this Court's recent decision in *Loper Bright*. This Court held just two years ago that federal courts must not defer to agency interpretations of statutory terms. *Loper Bright*, 144 S.Ct. at 2273. The D.C. Circuit revi-

vifies agency discretion for "case-specific" statutory interpretations, apparently viewing the meaning of "performance characteristics" as a fact-specific inquiry rather than statutory definition. *Loper Bright* affords no such loophole. And even if it did, this case would not fit into it. This Court should correct this problematic analysis and confirm *Loper Bright*'s dictate that statutory interpretation remains the province of courts and "their independent judgment." *Id.* Underscoring this mistake, in relying on DOE's interpretation, the D.C. Circuit upholds a result directly contrary to EPCA's dual purpose: to promote energy efficiency while preserving consumer choice.

Second, the practical, nationwide costs to American consumers and manufacturers of the DOE regulations cannot be overstated. Banning non-condensing appliances here paves the path for banning other products with the same technology, endangers manufacturers and American jobs, and unduly burdens lower socioeconomic consumers. There can be little doubt that this question raises serious, national concerns worthy of this Court's attention.

ARGUMENT

I. The Opinion Conflicts With *Loper Bright*, Presenting an Important Question of Federal Law

In *Loper Bright*, this Court eschewed the practice of "defer[ring] to 'permissible' agency interpretations of the statutes those agencies administer." 144 S.Ct. at 2254. The D.C. Circuit disregards this directive and resurrects agency deference, concluding that EPCA requires a "case-specific" analysis of products in determining what constitutes a performance characteristic better left to DOE's expertise. *Am. Gas Ass'n*, 157 F.4th at 488 (citation and quotation omitted). In other words, the meaning of the term "performance characteristics" in § 6295(o)(4) varies depending upon the product to which it applies.

Left untouched, this approach creates a loophole in *Loper Bright* that undermines its holding and allows courts to avoid their interpretive responsibility. Moreover, the facts here demonstrate that denying review will have precedential consequences.

A. EPCA's Statutory Framework

Section 6295(o)(4) gives DOE discretion in evaluating whether a "standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics" that are "substantially the same as those generally available in the United States at the time of [DOE's] finding." Nothing in the plain language of this—or any other—section gives DOE discretion to define what a

"performance characteristic[]" is. *Cf. City of Arlington v. FCC*, 569 U.S. 290, 317 (2013) (Roberts, C.J., dissenting) ("Agencies are creatures of Congress; an agency literally has no power to act unless and until Congress confers power upon it." (citation and quotation omitted)).

B. The D.C. Circuit Improperly Defers to DOE's "Expertise" on a Purely Legal Question of Statutory Interpretation

Loper Bright represented a return to "the unremarkable, yet elemental proposition . . . that courts decide legal questions by applying their own judgment." 144 S.Ct. at 2261 (interpreting the APA). "[C]ourts, not agencies" are meant to "decide *all* relevant questions of law arising on review of agency action." *Id.* (citation and quotation omitted). Agency decisions receive deference only insofar as they engage in "policymaking and factfinding," unless the statute "expressly delegate[s] to an agency the authority to give meaning to a particular statutory term," "empower[s] an agency to prescribe rules to fill up the details of a statutory scheme," or permits the agency "to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility, such as 'appropriate' or 'reasonable.'" *Id.* at 2261, 2263 (citations and quotations omitted).

Despite this unambiguous limitation on agency authority, the D.C. Circuit carves out an additional slice of discretion for agencies: when a statutory term is "'very case-specific'" such that "'[n]o single definition could effectively capture the potential'" facts that satisfy it, courts do not "second-guess" the agency's interpretation of the term. *Am. Gas Ass'n*, 157 F.4th at 488, 492 (citation omitted). This extra deference "especially" applies when that view "rests on

the agency's evaluations of scientific data within its area of expertise." *Id.* at 492–93 (citation and quotation omitted). The problems with this approach are self-evident.

Initially, the D.C. Circuit's approach runs afoul of basic principles of statutory interpretation. No recognized canon of statutory construction allows the meaning of an ambiguous statutory term to vary from case to case or product to product simply because its application is potentially widespread. The very purpose of statutory interpretation is to give effect to Congress's intent, not vary that intent based on the circumstances in which it is applied. *See, e.g.*, *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 145 S.Ct. 2006, 2028 n.5 (2025) (Kagan, J., dissenting) (characterizing "ordinary statutory interpretation" as "figur[ing] out what Congress wanted").

Further, this approach confuses a difficult legal question of statutory interpretation with a delegation to agency expertise. *See Loper Bright*, 144 S.Ct. at 2267–68 ("The view that interpretation of ambiguous statutory provisions amounts to policymaking . . . is especially mistaken. . . . [R]esolution of statutory ambiguities involves legal interpretation."). The D.C. Circuit mistakes EPCA's grant of discretion to DOE to determine whether interested parties (like WM Technologies) have shown a regulation will result in the "unavailability" of a performance characteristic with an unfettered grant of discretion that cannot be "second-guess[ed]" in interpreting what constitutes a performance characteristic. *See Am. Gas Ass'n*, 157 F.4th at 492.

This disregards *Loper Bright* and sets a precedent for other courts to do so. If lower courts follow suit—and they are likely to, given the D.C. Circuit's

prominence in administrative law—the decision creates a third bucket in the administrative deference analysis: (1) no deference for legal questions, (2) deference where statutorily provided, and (3) deference where a term, though subject to interpretation by the courts, contemplates fact-dependent analysis.

That third bucket introduces a new line-drawing problem into federal law: how broad must a statutory term be before courts may rely on the agency's "case-specific" determination? Without guidance from this Court, and faithful adherence to *Loper Bright*, lower courts may begin to view legal questions requiring the interpretation of broad statutory terms as invitations to resuscitate a bygone era of agency deference.

C. The Opinion Creates Instability

Every question of statutory interpretation arises from a "case-specific" factual scenario yet defines the statute for future cases. By the very nature of the American common law system, one opinion's statutory interpretation informs another. Deferring statutory interpretation questions to agencies introduces uncertainty *Loper Bright* intended to erase.

This case exemplifies a seemingly fact-bound decision that reaches far beyond its immediate application. The venting mechanism differences of these appliances are critical to whether consumers can easily and immediately install them without modification to homes and buildings. That determination applies equally to other appliances. The D.C. Circuit's conclusion that the term "performance characteristics" is "very case-specific" and entitled to agency deference sets a precedent for its approach to other appliances. Put another way, if venting mechanisms or installation readiness are not

performance characteristics for water heaters and furnaces, they may not be for other products.

For example, non-condensing boilers also typically use natural-draft chimneys. *See Preliminary Technical Support Document*, *supra*, 8-D-2 to 8-D-3. The same venting concerns that impact furnaces and water heaters apply with equal force to boilers. Moreover, boilers rely on plumbing and piping throughout a building to heat its interior. Condensing boilers are not always compatible with the existing systems in a building that previously had a non-condensing unit, in part because condensing boilers typically heat the water to a lower temperature than non-condensing boilers. U.S. Environmental Protection Agency, *Commercial Boilers: Optimize Efficiency with Condensing Boilers and Low Return Water Temps*, Energy Star (May 2020), https://www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Commercial%20Boiler%20Design%20Guide.pdf [https://perma.cc/5WER-C4ZN].

The result: even if this older system works with a condensing boiler, consumers may never see the benefits of the increased efficiency because running the unit in a system designed for hotter water requires running it for longer and hotter water may prevent the condensing that provides increased efficiency. *See id.* So, to realize the efficiency gains of a condensing unit, consumers may have to retrofit their entire home or building. *See id.* But under the precedent set by the rules and the opinion below, these concerns would likely be considered irrelevant in the "performance characteristics" analysis.

This case-by-case interpretation of a key term under EPCA, combined with the lack of proper judicial

review on questions like this, leaves consumers and manufacturers at the whim of changing DOE views on energy efficiency (as the history here demonstrates). As WM Technologies previously explained to DOE, "EPCA had the foresight to realize significant advances in technology will shift a market to higher technologies *over time*. Therefore, the market should not be forcibly changed through regulation in these instances." Weil-McLain, *Comment Letter on Proposed Interpretive Rule for Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, at 2 (Sep. 9, 2019), https://www.regulations.gov/comment/EERE-2018-BT-STD-0018-0086 (emphasis added). But the court's "case-specific" exception would allow DOE to force these changes any time it defined a product's feature as "not a performance characteristic."

More pointedly, as DOE's history here demonstrates, what falls into and out of the definition of "performance characteristics" is subject to changing agency interpretations. In 2021, DOE first published an interpretive rule explaining that venting mechanisms were "performance characteristics" under EPCA. Standards for Residential Furnaces and Commercial Water Heaters, 86 Fed. Reg. 4776. But just a few months later, DOE reversed course and issued the Final Interpretive Rule. 86 Fed. Reg. 73947. This rule represents a 180-degree change in less than a year, simply because the agency made a policy-based decision about the interpretation of EPCA. *See Am. Gas Ass'n*, 157 F.4th at 483–85 (describing the multiple interpretive rules).

Because EPCA prohibits DOE from lowering efficiency standards without meaningful court review, manufacturers and consumers alike may have no

avenue to challenge rules that "forcibly change[]" the product market. Weil-McLain, *Comment Letter*, *supra*, at 2. EPCA's anti-backsliding provision is meant to keep the markets from reversing course, not to force sudden change. *See Louisiana v. U.S. Dep't of Energy*, 90 F.4th 461, 476 (5th Cir. 2024) ("The anti-backsliding provision generally prohibits DOE from issuing new energy- and water-conservation standards that are more lenient than legacy standards." (citing 42 U.S.C. § 6295(o)(1)).

Improperly treating EPCA as a license to force sudden change leaves manufacturers guessing. They must try to predict when DOE will either force technology to leap forward or mandate that they abandon a product. This guessing places manufacturers in a compromised position, unsure where to invest their time and money because a product might be deemed obsolete by DOE next year, even if market demand for that product remains high. If courts exercise their interpretive role, they give manufacturers—and consumers—a way to push back against these inconsistent whims and secure a steadfast interpretation of EPCA. The alternative risks instability for the sake of courts deferring to agencies on difficult questions.

D. Whether Venting Structures Are a Performance Characteristic Influences Future Rulemakings

Even if *Loper Bright* permitted a "case-specific" exception, this case would not satisfy it. The underlying question can be framed as whether integration into existing structures is a "performance characteristic[]" generally, not just whether "venting mechanisms, installation factors, or space-related" "attributes *of small furnaces and water heaters*" count as "performance

characteristics." *Am. Gas Ass'n*, 157 F.4th at 488 (emphasis added). The D.C. Circuit seems to nominally recognize this question to some extent. *See id.* But, in reality, it gives short shrift to the importance of "installation factors." *See id.* at 492. It dismisses the installation question as one of "'economic impact'" or "'initial charges,'" setting another dangerous precedent. *See id.* (quoting 42 U.S.C. §§ 6295(o)(2)(B)(i), 6313(a)(6)(B)(ii)).

"Installation factors" are more than just the increased cost to replace a non-condensing product with a condensing one. The ability to easily install a replacement product means consumers will be able to use their appliance immediately—a feature that surely provides utility. Disregarding the importance of this feature grants DOE greater license to impose energy efficiency standards at great cost and disrespect to the American consumer. This further imperils EPCA's clear intent to balance efficiency gains with consumer realities and desires. Thus, whatever "case-specific" exception could exist under *Loper Bright*, this case does not satisfy it.

E. DOE's Interpretation Erodes EPCA's Protection of Consumer Choice

One of EPCA's most fundamental features is that it balances progress in energy efficiency with preservation of consumer choice. *See Louisiana*, 90 F.4th at 473 ("EPCA balances energy efficiency with the availability of desirable 'performance characteristics.'" (first quoting 42 U.S.C. § 6295(o)(4), then citing 42 U.S.C. § 6295(o)(2)(B)(i)(IV)). Its statutory mandates affirmatively prohibit DOE from promulgating standards that will make a performance characteristic unavailable to consumers. *See* 42 U.S.C. § 6295(o)(4)

(prohibiting the Secretary from prescribing "an amended or new standard" if it "is likely to result in the unavailability . . . of performance characteristics").

The parties below agreed "that the plain text of 'performance characteristic' means a product attribute that provides utility to consumers desiring to use the product" and has "to be about using the product." *Am. Gas Ass'n*, 157 F.4th at 487 (citation and quotations omitted). But the D.C. Circuit pivots from the parties' agreed definition, relying on the Final Interpretive Rule to ultimately interpret this statutory term. *Id.* Specifically, the court narrows the interpretation to require that performance characteristics "relate[] to 'the product's useful output.'" *Id.* (quoting 2021 Interpretive Rule, 86 Fed. Reg. at 73955). This restrictive interpretation is inconsistent with EPCA's express language and intent.

A product feature can "provide utility" outside of its "useful output." If performance characteristics could not include features outside of "useful output," it would make little sense for size to be listed among or alongside "performance characteristics" in EPCA. *See* 42 U.S.C. §§ 6295(o)(4), 6313(a)(6)(B)(iii)(II)(aa). Words are generally known by the company they keep. *See McDonnell v. United States*, 579 U.S. 550, 568–69 (2016); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 31, p. 195 (2012) ("When [words] are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them *similar*" especially when "grouped in a list" (emphasis added) (quotation omitted)). So "performance characteristics" must share something in common with "sizes"—as well as "features, . . . capacities, and

volumes." 42 U.S.C. § 6295(o)(4). The most natural through-line is that each of these terms impacts a specific attribute that consumers find valuable, whether a utility function, fit, or comparative advantage to other products.

Venting mechanisms, for example, offer great utility to a consumer replacing a non-condensing appliance and exemplify the connection between "performance characteristics" and "sizes." The consumer can immediately use non-condensing appliances in older buildings because there is no need to renovate or retrofit the existing structure. On the other hand, replacing the appliance with a condensing appliance may require relining or restructuring chimneys, vent resizing, and adding condensate piping, pumps, neutralizers, and electrical outlets. *See Preliminary Technical Support Document*, *supra*, at 8-D-7 to 8-D-8. These changes are far more extensive and ultimately delay use of the appliance, decreasing its utility. Venting, space-related attributes, and installation factors are features that consumers actively seek in replacing their appliances, as evidenced by the simple fact that a market continues to exist—and thrive—for non-condensing commercial appliances. *See* American Gas Association, et al., *Joint Comment Letter on Proposed Rule, Department of Energy; Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces*, at 1 (Oct. 6, 2022), https://www.regulations.gov/docket/EERE-2014-BT-STD-0031/comments?filter=EERE-2014-BT-STD-0031-0391. It would be odd, then, to conclude that Congress intended for the size of products to be a protected performance characteristic but not the functional ability to install a product in the space already provided in a building.

Moreover, condensing appliances generally have a shorter lifespan than non-condensing ones. *See Seven Telltale Signs*, *supra*. Thus, while immediate efficiency gains may result from installing a condensing appliance, replacement becomes more imminent. Not only must consumers purchase a new appliance more often, they must dispose of the old one, in turn increasing landfill and technological waste. Discarding these realities is surely not consistent with EPCA's efficiency goals.

II. The Opinion Harms Consumers Nationwide

In deferring its statutory interpretation task to DOE, the court allows DOE to functionally ban an entire class of products that provide distinct utility to consumers. This result is contrary to EPCA's express intent and presents a question of national importance, particularly given its impact on American consumers.

EPCA is intended to balance steady progress towards efficiency with consumer choice, not force wholesale and sudden changes in the product market. EPCA requires DOE to consider seven factors just in assessing whether a regulation is economically justified, preventing rapid-scale adoption of energy efficiency technology that creates negative, immediate economic harms to manufacturers and consumers. *See* 42 U.S.C. §§ 6295(o)(2)(B)(i); 6313(a)(6)(B)(ii). These, among other factors, instruct that Congress sought to advance and protect both energy efficiency and consumer choice, not elevate one over the other.

DOE regulations like the Final Interpretive Rule and Final Rules upend this balanced statutory scheme, eliminating a cost-effective, reliable option for American consumers, hitting hardest the consumers least resilient to price fluctuations.

A. Banning Non-Condensing Appliances Restricts Consumer Choice

"[A]pproximately 40 percent of non-weatherized natural gas furnaces shipped to customers are non-condensing furnaces that would be eliminated from the marketplace" if DOE's rules remain. American Gas Association, et al., *Joint Comment Letter*, *supra*, at 1. This would immediately eliminate an entire swath of reliable appliances from the market. *See* Weil-McLain, *From Cupcakes to Comfort: Weil-McLain's Enduring Legacy Powers 45-Year Residential and Culinary Odyssey*, https://www.weil-mclain.com/news/from-cupcakes-to-comfort-weil-mclains-enduring-legacy-powers-45-year-residential-and-culinary-odyssey/ [https://perma.cc/HPZ7-5YNZ] (last visited Feb. 19, 2026) (detailing case study of Weil-McLain non-condensing, oil-fired cast iron boiler installed in 1978 that provided both domestic hot water and heat for nearly forty-five years that only now requires replacement due to "wear and tear" from the "extraordinary workload it bore"); *see also Elm Street School*, Weil-McLain, https://www.weil-mclain.com/news/elm-street-school-2/ [https://perma.cc/8X86-5AHG] (last visited Feb. 19, 2026) (detailing recent installation of three non-condensing commercial gas and oil boilers in century-old school, offering up to 85.7 percent thermal efficiencies, reducing fuel costs and providing integration with the building management system).

The court rejects the notion that consumers consider the immediate usability of their appliances by stating, without support, that "[a]t a certain level, it is obvious that consumers do not buy small furnaces or commercial water heaters because of how the appliance vents. In fact, venting is a quality that both condensing and

non-condensing appliances share." *Am. Gas Ass'n*, 157 F.4th at 489. The fallacy in this statement is obvious. It belies common sense to assume that potentially major renovations to accommodate new venting, plastic tubing, and draining are not features consumers consider in purchasing an appliance. This is because "many residential applications simply can't support upgrading the existing venting system as would be required for non-natural draft venting or higher efficiency products. Specifically, the older population of homes and buildings which were built with [c]himneys are not always conducive to significant changes in venting." Weil-McLain, et al., *Joint Comment Letter on Proposed Rule on Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces*, at 5 (Oct. 6, 2022), https://www.regulations.gov/comment/EERE-2014-BT-STD-0031-0386.

A huge percentage of the United States population, especially on the East Coast and in the Midwest, live in homes that will likely require retrofitting to accommodate a condensing appliance but may not even be compatible with that retrofitting. Some estimates indicate that forty percent of homes in the United States are more than fifty years old and ten percent are more than ninety years old. *Id.* To put a finer point on it, as of 2022, "the existing residential building stock in at least seventeen states ha[d] twenty percent or more of the homes and buildings which were built before 1950." *Id.* at 6. "The building stock of thirty-four states have more than ten percent of their buildings constructed prior to 1950." *Id.* In these old and very old homes, prior renovations may make it impossible to alter the venting system. For example, common venting (using the same vent for more than one

appliance) is more common in older buildings. *Id.* at 5. Adding a condensing appliance to that vent is likely impossible, and the home's design around a single vent may make adding a new one impracticable. Given the market demand for non-condensing appliances, the D.C. Circuit's dismissive conclusion that venting mechanisms are not a feature consumers value defies logic and EPCA's purpose.

So too does the court's implicit assumption that non-condensing technology cannot make gains in energy efficiency. As recently as 2023, DOE mandated that commercial boilers manufactured after January 2023 meet higher minimum efficiency standards. Weil-McLain's non-condensing cast iron boiler product lines, intended for multi-family, municipal, education, religious, and institutional facilities, met these standards, offering thermal efficiencies up to eighty-seven percent and combustion efficiencies up to eighty-eight percent. *Weil-McLain Design-Enhanced Commercial Cast Iron Boiler Product Lines Meets New US Department of Energy Regulations with Enhanced Boiler Efficiencies*, Weil-McLain (Feb. 28, 2023), https://www.weil-mclain.com/news/weil-mclain-design-enhanced-commercial-cast-iron-boiler-product-lines-meets-new-us-department-of-energy-regulations-with-enhanced-boiler-efficiencies-2/ [https://perma.cc/F39L-QUCJ]. This, in turn, results in lower fuel consumption and operating costs. This example, among numerous others, demonstrates that efficiency gains can be made while still balancing consumer demands.

B. Lower-Income Consumers Bear the Brunt of DOE's Rulemaking

The consequences of DOE's regulations fall hardest on vulnerable portions of the American population. In

addition to the sheer upfront cost of replacing a non-condensing appliance with a condensing one, apartments, multifamily dwellings, offices, schools, and other older facilities are the most likely to be unable to accommodate condensing appliances.

DOE is fully aware of this fact. Its own analysis "shows that the proposal will negatively impact, *i.e.*, increase costs for, millions of consumers that can least afford it." American Gas Association, et al., *Joint Comment Letter*, *supra*, at 1–2. "Specifically, DOE's data shows that the proposal will result in higher overall costs for 15 percent of senior-only households, 14 percent of low-income households, and 20 percent of small business consumers." *Id.* "[F]or consumers with mobile homes, 22 percent of all customers would be negatively impacted, including 15 percent of senior-only mobile home households and 13 percent of low-income mobile home households." *Id.*

The cost of replacing a non-condensing appliance with a condensing one is cumulative. It includes a more expensive appliance, renovation or retrofit costs, and lost usable space. "[M]illions of homes and businesses were designed for noncondensing furnaces that use atmospheric venting systems, which have been the primary exhaust gas venting system in millions of homes, apartments, and businesses for generations." *Id.* "Once DOE eliminates non-condensing furnaces as an option, customers will need to update their existing venting systems to accommodate" new appliances or "switch to an electric" model, with "higher operating costs and . . . upgrade[s] of home or business electrical systems." *Id.* For many consumers, the costs associated with either option may be a heavy burden.

By way of example, the cost of resizing a venting system ranges from $2,148 to $8,675, and relining ranges from $2,255 to $9,041, depending on the product class. *See Preliminary Technical Support Document*, *supra*, at 8-D-6 to 8-D-7, Table 8-D-2.3 (Average Venting Resizing and Chimney Relining Costs for Natural Draft Boilers). Again, it bears emphasis—to assume these costs are not factored into a consumer's utility calculation in purchasing a product belies common sense.

Finally, consumers may not recoup those costs in efficiency gain for years. Especially in warmer climates, consumers may not run their appliance often enough for the energy efficiency gains to compete with the cost and burden of retrofitting a building. Moreover, even a condensing appliance used frequently may provide only marginal efficiency benefits if other aspects of a building's system, like plumbing or piping, are not updated too.

III. The Opinion Harms American Manufacturers and Workers

The opinion similarly threatens American manufacturers like WM Technologies. These DOE regulations will lead to reductions in American jobs. Steady, predictable environments are essential for business success. WM Technologies, LLC, *Comment Letter on Interim Final Rule on Adoption and Procedures of the Section 232 Steel and Aluminum Tariff Inclusions Process*, at 2 (June 12, 2025), https://www.regulations.gov/comment/BIS-2025-0023-0075. Instability leads to financial losses.

Dramatic changes concerning product availability, like those in these regulations, can result in manu-

facturers shuttering their factories. *Cf.* Peter Whoriskey, *Light Bulb Factory Closes; End of Era for U.S. Means More Jobs Overseas*, WASH. POST (Sep. 8, 2010, at 9:48 PM), https://www.washingtonpost.com/wp-dyn/content/article/2010/09/07/AR2010090706933_pf.html [https://perma.cc/YKE5-D6ZM]. Indeed, eliminating approximately forty percent of a manufacturer's product stream essentially overnight has catastrophic consequences. WM Technologies "is an American company that employs both union and non-union workers across . . . its U.S. production and development facilities." WM Technologies, LLC, *Comment Letter on Interim Final Rule*, *supra*, at 2. A forced shift to condensing appliances "will drive up appliance costs and lead to job losses for American workers." *See id.* This harm is particularly acute for WM Technologies, which operates its own Michigan City, Indiana foundry to produce cast iron heat exchangers used in non-condensing boilers. Weil-McLain, *Weil-McLain Foundry Heritage in Michigan City* (YouTube, Jan. 31, 2024), https://www.youtube.com/watch?v=4JMxF7EsHq4 [https://perma.cc/8VET-NX5H]. That foundry employs skilled American workers to cast and finish a critical part of the non-condensing boilers, part of the nearly 300 manufacturing employees of WM Technologies. Weil-McLain, *About Us: Weil-McLain Branded Products*, https://careers.spx.com/WM/content/About-Us/?locale=en_US [https://perma.cc/QCK9-K336] (last visited Feb. 18, 2026).

CONCLUSION

The opinion is legally and logically erroneous, necessitating this Court's review. WM Technologies urges this Court to grant the Petition.

Respectfully submitted,

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