No. 25-879

IN THE

Supreme Court of the United States

AMERICAN GAS ASSOCIATION, *et al.*,

Petitioners,

v.

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 *AMICI CURIAE* DURAVENT GROUP AND METAL-FAB INC. IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the United States Department of Energy may, consistent with the Energy Policy and Conservation Act, eliminate as a "performance characteristic" an appliance's ability to operate in existing homes and buildings without costly renovation?

INTEREST OF *AMICI CURIAE*[1]

Though competitors in the venting industry, Duravent Group ("Duravent") and Metal-Fab Inc. ("Metal-Fab") jointly file this amicus brief because the Department of Energy's ("DOE" or "Department") regulations at issue—and the D.C. Circuit's decision upholding them—threaten to eliminate the market for one of their principal product lines and, in doing so, lay bare a fundamental legal error that this Court can and should correct. *See* Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87,502 (Dec. 18, 2023) (Consumer Furnaces Rule); Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69,686 (Oct. 6, 2023) (Commercial Water Heaters Rule); and Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, 86 Fed. Reg. 73,947 (Dec. 29, 2021) (2021 Interpretive Rule).

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1. Under this Court's Rule 37.6, amici Duravent Group and Metal-Fab Inc. state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than amici, its members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Amici timely notified the parties of amici's intent to file this brief.

Duravent and Metal-Fab are U.S.-based manufacturers of venting systems for residential and commercial appliances, including gas furnaces and water heaters. Both have operated for several decades, manufacturing venting systems used nationwide. One such venting system is the "B-vent." The B-vent is used for residential and commercial non-condensing gas furnaces and water heaters. The B-vent encompasses around 12% of Duravent's business and about 25% of Metal-Fab's business.

DOE's efficiency regulations affect Duravent's and Metal-Fab's B-vent markets by eliminating the very appliances those systems are designed to serve. Non-condensing furnaces and water heaters require specific systems that have been manufactured, installed, and relied on nationwide for decades (e.g., chimneys or B-vents). But because condensing appliances use different venting materials and configurations (primarily PVC piping), DOE's rules do not merely alter the competitive landscape; they obliterate established appliances and eliminate consumer choice. This affects not only Duravent's and Metal-Fab's B-vent sales, but also their replacement parts business. Duravent and Metal-Fab thus have a significant economic interest in this matter.

But Duravent and Metal-Fab's interest extends beyond economics. They also have a strong interest in ensuring that DOE's rulemaking is properly constrained within the limits Congress established in the EPCA. The EPCA pursues two goals at once: improving energy efficiency and preserving consumer choice. *Am. Gas Ass'n v. United States Dep't of Energy*, 157 F.4th 476, 500 (D.C. Cir. 2025) (Rao, J., dissenting). DOE's rulemaking fundamentally

undermines the latter. And neither Congress by way of the EPCA nor this Court's decisions give DOE free rein to treat downstream manufacturers like Duravent and Metal-Fab as legally invisible. "Agencies are creatures of Congress; an agency literally has no power to act unless and until Congress confers power upon it." *City of Arlington v. FCC*, 569 U.S. 290, 317 (2013) (Roberts, C.J., dissenting).

Thus, Duravent and Metal-Fab have two substantial interests: first, preventing the economic destruction of their B-vent product line, and second, ensuring that DOE stays within the bounds Congress set.

INTRODUCTION AND SUMMARY OF ARGUMENT

The circuit court's decision blesses exactly what the EPCA forbids: using efficiency standards to make lawful products unlawful. *See Am. Gas Ass'n*, 157 F.4th at 503 (Rao, J., dissenting). The EPCA prohibits DOE from adopting standards that result in the "unavailability" of a covered product type that possesses unique "performance characteristics." *See id.*; 42 U.S.C. §§ 6295(o)(4), 6313(a)(6)(B)(iii)(II)(aa). The circuit court's interpretation of the EPCA eliminates that protection by excluding infrastructure compatibility and installation feasibility, features that determine whether a gas furnace or water heater can be used at all in existing buildings.

The circuit court's decision also suffers from a threshold defect. Before it reached the merits, the court resurrected *Chevron* deference, the very framework with which this Court disagreed in *Loper Bright Enterprises*

v. Raimondo, 603 U.S. 369 (2024). The circuit court's majority acknowledged that the term "performance characteristic" has a "plain" and "broad" meaning. *Am. Gas Ass'n*, 157 F.4th at 487. And the Parties agreed. Yet rather than apply the term's plain and ordinary meaning to the undisputed facts, the majority found this to be a case-specific scenario and deferred to DOE's "expertise." *Am. Gas Ass'n*, 157 F.4th at 488–93. As Judge Rao aptly put it, the majority engaged in "*Loper Bright* avoidance." *Id.* at 506 (Rao, J., dissenting).

These foundational errors have real-world consequences. For downstream manufacturers like Duravent and Metal-Fab, DOE's rules will demolish demand for B-vents and compel a costly pivot to PVC venting that may shift domestic manufacturing overseas. And for the millions of consumers in older homes and commercial buildings equipped with chimney venting or B-venting systems, the rules will force disruptive and expensive renovations. DOE and the lower court overlooked the countless commercial buildings, apartment complexes, and homes that must retrofit or replace their standard efficiency furnaces and water heaters to conform to the new rule. This retrofitting comes with practical barriers that make renovation infeasible or impossible.

This Court's review is thus needed to ensure the D.C. Circuit does not establish a loophole swallowing *Loper Bright*, to restore the EPCA's protective structure and protect consumer choice, and to prevent DOE from using efficiency standards as a one-way ratchet to dismantle established appliances and the downstream manufacturers' lines of products that support them.

ARGUMENT

I. The D.C. Circuit Improperly Deferred To The Department's Interpretation In Violation Of *Loper Bright*.

The circuit court's majority acknowledged that "performance characteristic" has a "plain" and "broad" meaning. *Am. Gas Ass'n*, 157 F.4th at 490. All Parties agreed it means "a product attribute that provides utility to consumers desiring to use the product." *Id.* at 487. So far, so good. But rather than applying that agreed-upon meaning to the undisputed facts—that non-condensing appliances work in millions of existing buildings without renovation, and condensing appliances often do not—the majority punted. *See id.* at 488–93 ("We have no reason to second-guess DOE's view[.]"). It accepted DOE's position that the concept here is "very case-specific," concluded that "[n]o single definition could effectively capture" the term, and refused to "second-guess DOE's view." *Id.*

That is *Chevron* deference. *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984). The Supreme Court, in *Loper Bright*, overruled *Chevron* and held that courts must "exercise their independent judgment in deciding whether an agency has acted within its statutory authority." 603 U.S. at 412 ("*Chevron* is overruled."). Indeed, agency views may be considered for their persuasive force. *See id.* at 402. But they get no special weight just because Congress charged the agency with administering the statute. *Id.* at 400–01, 412–13. The circuit court violated that command. Judge Rao was right to call this out. She explained that the majority's approach is "*Loper Bright* avoidance" that is "inconsistent

with [this] Court's directive that a court must 'use every tool at [its] disposal to determine the best reading of the statute and resolve the ambiguity.'" *Am. Gas Ass'n*, 157 F.4th at 506 (Rao, J., dissenting) (quoting *Loper Bright*, 603 U.S. at 400).

Now, a *Loper Bright* loophole exists in the D.C. Circuit and this Court should patch it. Under the majority's reasoning, an agency can regain *Chevron* deference simply by asserting that its broadly applicable interpretation requires "case-specific" application. *See Am. Gas Ass'n*, 157 F.4th at 488–93. But that happens in every challenge to an agency rule. And the result is particularly unjustifiable here, where the facts are undisputed. No one contests that non-condensing appliances function in millions of existing buildings that condensing appliances cannot serve without sometimes substantial renovation. *Id.* at 506 (Rao, J., dissenting). Thus, the dispute is purely legal. And resolving it requires no technical expertise.

The Supreme Court has a well-established practice of applying its own independent analysis to statutory terms, even where those terms are heavily fact-dependent. In *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 14–21 (2018), the Court independently assessed whether certain land qualified as "critical habitat" rather than simply accepting the agency's determination. Similarly, in *Garland v. Cargill*, 602 U.S. 406, 415–23 (2024), the Court reached its own conclusion about whether bump stocks fell within the statutory definition of "machinegun," without yielding to ATF's specialized knowledge. The Court took the same approach in *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab.*, 595 U.S. 109, 117–18 (2022), independently

concluding that a broad vaccine mandate exceeded the scope of "occupational safety" rather than accepting OSHA's interpretation. And in *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 763–65 (2021), the Court refused to accept the CDC's position that its statutory authority was broad enough to encompass a nationwide eviction moratorium.

The circuit court also confused *Loper Bright*'s discussion of statutory "discretion." *Am. Gas Ass'n*, 157 F.4th at 487. *Loper Bright* recognized that Congress sometimes confers discretion through express textual signals like "appropriate" or "reasonable." 603 U.S. at 395–96. But general administrative responsibility does not allow agencies to redefine the statutory limits on their own power. *See id.* at 401–03. Other circuits have gotten this right. *See Moctezuma-Reyes v. Garland*, 124 F.4th 416, 420–21 (6th Cir. 2024); *Rangel-Fuentes v. Bondi*, 155 F.4th 1138, 1143 (10th Cir. 2025). The D.C. Circuit, in contrast, grants deference whenever DOE calls something "case-specific," without identifying any statutory language that gives DOE discretion to interpret the provision that limits its own standard-making authority.

For Duravent and Metal-Fab, this is not an abstract issue. If the D.C. Circuit can defer to DOE's interpretation of the EPCA's unavailability provision, the statutory backstop Congress created to protect consumer choice—and by extension, the downstream industries that serve those consumers—is a nullity. This Court should review the D.C. Circuit's erroneous ruling.

II. The D.C. Circuit's Narrow Reading Of "Performance Characteristics" Contradicts The EPCA's Text, Structure, And Purpose.

Under the EPCA's text, structure, and purpose, a non-condensing appliance's compatibility with existing building infrastructure is a protected "performance characteristic" whose elimination the statute vetoes.

The EPCA provides that DOE "may not prescribe an amended or new standard" if that standard "is likely to result in the unavailability . . . [of] 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." 42 U.S.C. §§ 6295(o)(4), 6313(a)(6)(B)(iii)(II)(aa). As a result, the dispositive issue is whether non-condensing appliances possess a protected "performance characteristic" that condensing appliances lack.

They do. "Performance characteristic" is not defined in the EPCA. So it is taken with its ordinary meaning. *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227 (2014). "Performance" means "the execution of an action." *Am. Gas Ass'n*, 157 F.4th at 487. And "characteristic" means "a distinguishing trait, quality, or property." *Id.* Moreover, everyone agrees that yields a broad definition: "a product attribute that provides utility to consumers desiring to use the product." *Id.*

Non-condensing gas furnaces and water heaters provide that kind of utility that condensing appliances do not. For instance, non-condensing gas furnaces and water heaters vent their exhaust through standard chimneys or vent systems such as the B-vent that exist

in millions of homes and commercial buildings across the country. Condensing gas furnaces and water heaters, however, do not and cannot use chimneys or vent systems like the B-vent. Those appliances, instead, typically use plastic venting (e.g., PVC) that vents to the outdoors and require a condensate drain. So for consumers in buildings with existing chimneys or vertical venting system infrastructure, the ability of a non-condensing appliance to plug into that infrastructure without costly renovation provides enormous practical value.

The EPCA's statutory list confirms this. The unavailability provision protects "performance characteristics" such as features, sizes, capacities, and volumes. 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa). These listed terms are expansive and practical. They include intangible qualities such as "features" alongside concrete physical attributes like "sizes, capacities, and volumes." The word "sizes" is illuminating here. Congress listed it as distinct from "capacities" and "volumes." If "sizes" meant the same thing as capacity or volume, it would be surplusage. It must therefore refer to something else: the appliance's physical dimensions and where and how it fits within a building. *See Am. Gas Ass'n*, 157 F.4th at 505 n.1 (Rao, J., dissenting).

The broader structure of the EPCA confirms this reading. The EPCA pairs "utility" and "performance" as related concepts. When DOE evaluates whether an efficiency standard is "economically justified," it must consider "any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard." 42 U.S.C. §§ 6313(a)(6)(B)(ii), 6295(o)(2)(B)(i). Section 6295(q)(1) requires separate efficiency standards for products with a "performance-related

feature" that provides "utility to the consumer." 42 U.S.C. § 6295(q)(1). Notably, this is distinct from the utility a consumer perceives while operating the product. *Cf. Am. Gas Ass'n*, 157 F.4th at 491. Accordingly, nothing in these provisions restricts "utility" to the moment a consumer adjusts a thermostat.

But that's the narrow interpretation DOE takes, and which the circuit court upheld. This operational-interaction test appears nowhere in the EPCA. And it produces illogical results. Under DOE's logic, consumers derive no protected "utility" from the fact that a furnace can be installed in their existing home or building without demolishing walls, rerouting lines, or abandoning a functional chimney or venting system. *See Am. Gas Ass'n*, 157 F.4th at 503, 506 (Rao, J., dissenting). A furnace that cannot be installed in a building provides no utility at all. Thus, the Department's stated goal of protecting consumers is contradicted by the foreseeable effect of its own action, which will ultimately harm the very consumers it claims to serve.

III. The Department's Practices Prove Installation Compatibility Is A Protected Feature.

DOE has repeatedly created separate product classes to preserve installation-related features, the very kind of feature the majority held is not a performance characteristic.

Ventless clothes dryers. In 2011, DOE separated ventless and vented residential clothes dryers because "a substantial subset of consumers . . . would be deprived of the benefits of . . . having [a] clothes-drying appliance in their residence entirely unless DOE established a ventless

clothes dryers product class." 2021 Interpretive Rule, 86 Fed. Reg. at 73,957. The majority tried to distinguish this by arguing that ventless dryers are the "only available option" for consumers in certain high-rises. *Am. Gas Ass'n*, 157 F.4th at 489–92. Not so. DOE's projections show that some consumers will be effectively deprived of gas-powered appliances by the new standards—forced into prohibitively expensive retrofits or into switching to electric. *Id.* at 507, 510–11 (Rao, J., dissenting). And nothing in the EPCA requires all consumers to be deprived of their appliances before the unavailability provision kicks in.

Space-constrained air conditioners. DOE also established separate standards for packaged terminal air conditioners that fit into non-standard wall openings in older buildings. The Department explained that without separate standards, "customers could be forced to invest in costly building modifications to convert non-standard sleeve openings to standard size dimensions." 73 Fed. Reg. 58,772, 58,782 (2008). The logic is indistinguishable from this case: existing buildings have infrastructure designed around current appliances, and forcing a switch to differently configured equipment requires expensive structural modification.

Manufactured home furnace fans. DOE created a separate category because these fans "meet certain design requirements that allow them to be installed in manufactured homes," including fitting in "a more compact cabinet size." 78 Fed. Reg. 64,068, 64,077 (2013). Once installed, consumers do not interact with a furnace fan. DOE still recognized that its installation and design parameters are performance characteristics.

Front-loading clothes washers. DOE protected these as separate classes even though they are less efficient than top-loading ones, in part because they can fit in small spaces and cabinets. 84 Fed. Reg. 37,794, 37,797 (2019). The distinguishing feature was the product's compatibility with the consumer's physical space—not its operational output.

The Department did not dismiss dryer vent installation issues for apartment dwellers as mere "cost issues" or expect those consumers to simply renovate their buildings. It did not treat the inability to fit a standard-sized air conditioner into a non-standard wall opening as merely an "economic" matter. In each case, DOE correctly recognized that installation compatibility is a performance characteristic that the EPCA protects. Its refusal to apply the same principle to non-condensing furnaces and water heaters is an unexplained and arbitrary departure from its own longstanding practice.

IV. DOE's Rulemaking Will Impose Material Costs On Duravent, Metal-Fab, And Consumers.

For vent manufacturers like Duravent and Metal-Fab, DOE's latest rulemaking is devastating: it obliterates demand for their B-vents, which are specifically designed for non-condensing furnaces and water heaters. B-vent sales represent a critical revenue stream for both companies, and this latest rulemaking threatens to wipe out that income. Worse, as B-vent demand collapses, Duravent, Metal-Fab, and other B-vent manufacturers will be forced to pivot their business model toward PVC venting. This transition would require substantial capital investment, retooling and relocation of manufacturing

facilities, and development of new supplier relationships. DOE's rules are a double blow: they eliminate an established, profitable product line while also compelling costly and disruptive operational changes.

The downstream impact of the regulations is not cabined to Duravent's and Metal-Fab's bottom lines, either. They will affect contractors, distributors, and installers who have long relied on standardized non-condensing venting configurations. Most notably, though, the regulations will impact consumers.

B-vents are ubiquitous in existing residential and commercial buildings. In many existing buildings, condensing equipment cannot be installed without significant renovation and retrofitting. Because the existing infrastructure cannot accommodate condensing appliances, owners must retrofit venting systems—at substantial costs—and in other cases, redesign layouts to make installation possible at all.

Imagine an older home with an 80%-efficient gas furnace vented through an interior chimney near the center of the house. A new 95% condensing furnace would require PVC exhaust piping to an exterior wall of the house, but the layout makes that impracticable—the nearest outside wall is far away and would require routing pipe through finished ceilings and walls, causing substantial costs. This is not a speculative hypothetical. Many older homes were designed around chimney venting, not PVC, so a retrofit can require major demolition and reconstruction just to create a compliant vent path and availability for a condensate drain.

DOE suggests in its rulemaking that venting conversion solutions exist to allow for easy substitution from non-condensing to condensing appliances. That is wrong. Condensing appliances typically have different venting approaches such as PVC piping, different sizing, and routing constraints. For instance, in older apartment buildings, swapping in a new condensing gas furnace may require the owner to build a new vent system (out of PVC) for that apartment that vents out through a side wall. But in many buildings, there isn't an adequate spot on the exterior wall to run that new vent because the wall is already occupied by windows and doors.

And the costs do not stop after installation. Compared to non-condensing furnaces, condensing furnaces typically require more frequent service calls and higher repair costs over the life of the appliance. When those ongoing service and repair expenses are added to the upfront retrofit costs, the payback period extends beyond ten years. By contrast, a non-condensing furnace is largely a "set it and forget it" appliance, avoiding those recurring service demands and higher lifetime repair costs.

This forced transition to PVC venting (if left to stand) will impact Duravent's and Metal-Fab's B-vent sales, replacement parts markets, and domestic manufacturing operations, as PVC venting is cheaper to produce and does not require the same specialized B-vent capabilities, potentially shifting production to lower-cost facilities outside the United States. And under the circuit court's reasoning, Duravent, and Metal-Fab have no recourse.

Technological progress in the appliance industry is driven by market adoption, not regulatory mandate. Where condensing technology offers genuine advantages,

the market has already rewarded it. The EPCA does not authorize DOE to override that process by eliminating proven non-condensing technology that millions of consumers depend on.

V. The Question Presented Is Important And Recurring.

The effect of the circuit court's decision extends well beyond this case. If allowed to stand, the decision authorizes DOE to eliminate long-lived building infrastructure and entire appliance classes without clear congressional authorization.

The question of what constitutes a "performance characteristic" under the EPCA arises every time DOE promulgates efficiency standards for covered products. The EPCA governs a vast range of consumer appliances and commercial equipment. The efficiency standards here alone impact millions of Americans. But the EPCA also governs commercial boilers, consumer water heaters, pool heaters, consumer direct heating equipment (including room heaters, wall furnaces, and floor furnaces), and many other products intertwined with existing building infrastructure. *See* 42 U.S.C. §§ 6295(e), 6313(a)(4)(A). And DOE must reevaluate appliance standards every six years. *Id.* § 6313(a)(6)(C)(i). As DOE continues to regulate appliances embedded in durable infrastructure, downstream manufacturers like Duravent and Metal-Fab will repeatedly face the same existential threat without a meaningful statutory backstop.

The circuit court's decision thus implicates two fundamental issues. First, it guts the EPCA's unavailability provision, the substantive constraint Congress imposed

to ensure that efficiency gains do not come at the expense of consumer choice. Under the circuit court's logic, DOE can nullify that constraint by defining performance characteristic so narrowly that no installation-related feature ever qualifies. Its interpretation creates a template for evading the EPCA: redefine protected characteristics in a way divorced from the text, dismiss incompatibility with existing structures as an economic inconvenience, and eliminate longstanding product categories by regulation. Nothing in the EPCA authorizes that result.

Second, the decision establishes a *Loper Bright* loophole in the most consequential circuit court for administrative law. The D.C. Circuit handles nearly all challenges to federal regulations. If it can defer to agency statutory interpretations by invoking "case-specific" factors, *Loper Bright* means little. Regulations that eliminate an entire class of common consumer appliances, devastate downstream industries, and impose billions of dollars in renovation costs on consumers would seem to qualify.

This Court should grant the petition for writ of certiorari to decide whether the EPCA permits DOE to treat infrastructure compatibility and installation feasibility as irrelevant, to ensure that lower courts do not resurrect *Chevron* deference through a back door, and to prevent DOE from requiring millions of Americans to renovate or stop using non-condensing gas furnaces and water heaters.

CONCLUSION

For these reasons, the Court should grant Petitioners' writ of certiorari.

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