

No. _____

IN THE
Supreme Court of the United States

CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA, ET AL.

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY; LEE ZELDIN, ADMINISTRATOR, ET AL.

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The decision below raises two important questions about the U.S. Environmental Protection Agency’s (EPA’s) authority to revise a National Ambient Air Quality Standard (NAAQS). Such revisions reset the baseline for a legion of regulations that affect virtually every significant source of the regulated pollutant, and virtually all economic sectors, in the nation.

Section 109(d)(1) of the Clean Air Act requires EPA, every five years, to complete a “thorough review” of the latest science before revising a NAAQS, and also allows EPA to act “earlier or more frequently.” This provision requires a thorough review before *any* revision. But here, EPA claimed for the first time that it can skip that review when it revises a NAAQS between five-year intervals. EPA then confessed error. But the D.C. Circuit upheld the revision—based on a different statutory provision that EPA had not invoked (and even disavowed), and that in any event does not excuse the thorough review.

The questions presented are:

1. Whether EPA may revise a NAAQS without the “thorough review” required by section 109(d)(1) simply because it acts “earlier or more frequently” than mandated.
2. Whether EPA must consider costs and attainability when exercising discretion to review and revise a NAAQS “earlier or more frequently” than mandated.

PARTIES TO THE PROCEEDING

Petitioners in this Court, who were also Petitioners below, are the Chamber of Commerce of the United States of America; American Cement Association; American Chemistry Council; American Forest & Paper Association; American Petroleum Institute; American Wood Council; National Association of Manufacturers; National Mining Association; President of the Arizona State Senate Warren Petersen; Speaker of the Arizona House of Representatives Steve Montenegro¹; Arizona Chamber of Commerce and Industry; and the Essential Minerals Association.

Additional petitioners below were the Commonwealth of Kentucky, State of West Virginia, State of Alabama, State of Alaska, State of Arkansas, State of Florida, State of Georgia, State of Idaho, State of Indiana, State of Iowa, State of Kansas, State of Louisiana, State of Mississippi, State of Missouri, State of Montana, State of Nebraska, State of North Dakota, State of Ohio, State of Oklahoma, State of South Carolina, State of South Dakota, State of Tennessee, State of Utah, State of Wyoming, State of Texas, and the Texas Commission on Environmental Quality.

Respondents below were the United States Environmental Protection Agency and Lee Zeldin,

¹ Speaker Steve Montenegro was substituted for former Speaker Ben Toma by operation of Federal Rule of Appellate Procedure 43(c)(2).

Administrator, United States Environmental Protection Agency.

Respondent-Intervenors below were the Sierra Club; Citizens for Pennsylvania's Future (PennFuture); Conservation Law Foundation; Northeast Ohio Community Resilience Centre (formerly known as Northeast Ohio Black Health Coalition); the Rio Grande International Study Center; the Natural Resources Defense Council; the State of California; State of Arizona; State of Connecticut; District of Columbia; State of Illinois; State of Maryland; Commonwealth of Massachusetts; State of Michigan; State of Minnesota; State of New Jersey; State of New York; State of Oregon; Commonwealth of Pennsylvania; State of Rhode Island; State of Vermont; State of Washington; State of Wisconsin; City of New York; the Alliance of Nurses for Healthy Environments; American Lung Association; Environmental Defense Fund; and Harris County, Texas.

RULE 29.6 DISCLOSURE STATEMENT

Petitioners have no parent corporations, and no publicly held company has 10% or greater ownership in any of petitioners.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
RULE 29.6 DISCLOSURE STATEMENT	iv
TABLE OF AUTHORITIES.....	viii
OPINION BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
INTRODUCTION.....	4
STATEMENT	8
I. Statutory and regulatory background.....	8
A. The cascading consequences of a National Ambient Air Quality Standard (NAAQS)	8
1. Setting an initial NAAQS.....	8
2. Revising a NAAQS.....	10
B. Requirements for promulgating and revising a NAAQS.....	12
II. The proceedings below	14
A. The revised PM _{2.5} standard	14
B. The D.C. Circuit litigation	17
REASONS FOR GRANTING THE PETITION	20
I. The D.C. Circuit erred by excusing EPA from the Clean Air Act’s “thorough review” requirement.....	21

A. Section 109(d)(1) requires a thorough review for all NAAQS revisions, whether on- or off-cycle.	21
B. The D.C. Circuit’s contrary theory of statutory authority was improper and incorrect.	25
1. The D.C. Circuit violated the principle of party presentation.	25
2. The D.C. Circuit violated <i>Chenery</i>	27
3. The D.C. Circuit’s theory was wrong on the merits.	31
a) Section 109(b) does not confer revision authority.	31
b) Any prior revision authority is constrained by section 109(d)(1).	32
II. The D.C. Circuit wrongly held that EPA cannot consider costs and attainability in deciding whether to review and revise a NAAQS off-cycle.	38
III. The questions presented are exceptionally important.	42
CONCLUSION	44

APPENDIX MATERIALS

VOLUME I:

APPENDIX A: Opinion of the U.S. Court of Appeals for the District of Columbia Circuit Denying Petitions for Review and EPA’s Motion for Vacatur, *Commonwealth of Kentucky v. EPA*, No. 24-1050 (consolidated with Nos. 24-1051, 24-1052, 24-1073, 24-1091) (D.C. Cir. June 26, 2026) 1a

APPENDIX B: U.S. Environmental Protection Agency, Reconsideration of the National Ambient Air Quality Standards for Particulate Matter; Final Rule, 89 Fed. Reg. 16,202 (Mar. 6, 2024) (excerpts) 46a

VOLUME II:

APPENDIX C: Clean Air Act § 109, 42 U.S.C. § 7409 466a

APPENDIX D: EPA, Responses to Significant Comments on the 2023 Proposed Rule for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter (undated), Docket No. EPA-HQ-OAR-2015-0072-6025 (excerpts) 470a

APPENDIX E: Declaration of Aaron Szabo (Nov. 24, 2025) 500a

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abramski v. United States</i> , 573 U.S. 169 (2014).....	34
<i>All. for Cannabis Therapeutics v. Drug Enft Admin.</i> , 930 F.2d 936 (D.C. Cir. 1991)	38
<i>All. of Nurses for Healthy Env'ts v. Zeldin</i> , No. 26-cv-03118, 2026 WL 2078145 (N.D. Cal. July 17, 2026)	7, 20
<i>Am. Farm Bureau Fed'n v. EPA</i> , 559 F.3d 512 (D.C. Cir. 2009) (<i>per curiam</i>)	34
<i>Am. Trucking Ass'ns, Inc. v. EPA</i> , 283 F.3d 355 (D.C. Cir. 2002)	34
<i>Apogee Coal Co. v. Off. of Workers' Comp. Programs</i> , 113 F.4th 751 (7th Cir. 2024)	29
<i>Bank of Am., N.A. v. F.D.I.C.</i> , 244 F.3d 1309 (11th Cir. 2001).....	29
<i>Bartenwerfer v. Buckley</i> , 598 U.S. 69 (2023)	35

<i>Clark v. Sweeney</i> , 607 U.S. 7 (2025) (<i>per curiam</i>)	25, 27
<i>Dep't of Homeland Sec. v. Regents of the Univ. of California</i> , 591 U.S. 1 (2020)	28, 30, 44
<i>Encino Motorcars, LLC v. Navarro</i> , 579 U.S. 211 (2016)	44
<i>Env't Comm. of Fla. Elec. Power Coordinating Grp., Inc. v. EPA</i> , 94 F.4th 77 (D.C. Cir. 2024) (<i>per curiam</i>)	42
<i>EPA v. Calumet Shreveport Refining, L.L.C.</i> , 145 S. Ct. 1735 (2025)	34
<i>Exxon Corp. v. Hunt</i> , 475 U.S. 355 (1986)	23
<i>FDA v. Wages & White Lion Invs., LLC</i> , 604 U.S. 542 (2025)	28
<i>Kentucky v. EPA</i> , 179 F.4th 963 (D.C. Cir. 2026)	1
<i>Learning Res., Inc. v. Trump</i> , 607 U.S. 229 (2026)	37
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	21, 29, 37

<i>Margolin v. Nat’l Ass’n of Immigr. Judges,</i> 146 S. Ct. 1285 (2026) (<i>per curiam</i>)	26, 27
<i>Michigan v. EPA,</i> 576 U.S. 743 (2015).....	38, 41
<i>Mississippi v. EPA,</i> 744 F.3d 1334 (D.C. Cir. 2013) (<i>per curiam</i>)	34
<i>Montgomery v. Caribe Transp. II, LLC,</i> 146 S. Ct. 1199 (2026).....	36
<i>Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.,</i> 463 U.S. 29 (1983).....	44
<i>Murray Energy Corp. v. EPA,</i> 936 F.3d 597 (D.C. Cir. 2019) (<i>per curiam</i>)	11
<i>Nat. Res. Def. Council v. Regan,</i> 67 F.4th 397 (D.C. Cir. 2023)	32
<i>Ohio v. EPA,</i> 603 U.S. 279 (2024).....	9
<i>Oklahoma v. Castro-Huerta,</i> 597 U.S. 629 (2022).....	36
<i>RadLAX Gateway Hotel, LLC v. Amalgamated Bank,</i> 566 U.S. 639 (2012).....	32

<i>Richards v. United States</i> , 369 U.S. 1 (1962)	23
<i>Ross v. Blake</i> , 578 U.S. 632 (2016)	21
<i>SEC v. Chenery Corp.</i> , 318 U.S. 80 (1943)	18, 28, 30
<i>Skidmore v. Swift & Co.</i> , 323 U.S. 134 (1944)	36, 37
<i>United States v. Sineneng-Smith</i> , 590 U.S. 371 (2020)	25, 27, 30
<i>United States v. Williams</i> , 553 U.S. 285 (2008)	23
<i>Varity Corp. v. Howe</i> , 516 U.S. 489 (1996)	32
<i>Whitman v. American Trucking Ass'ns</i> , 531 U.S. 457 (2001)	6, 7, 17, 18, 19, 20, 25, 29, 39, 40, 41

Statutes

17 U.S.C. § 102(a)	24
18 U.S.C. § 1084(a)	24
28 U.S.C. § 1254(1)	1
42 U.S.C. § 7407(d)(1)(A)	8, 9, 11

42 U.S.C. § 7407(d)(1)(B)(i)	9, 11
42 U.S.C. § 7408	1, 3, 14, 22, 23
42 U.S.C. § 7408(a)(1)(A)–(B).....	8
42 U.S.C. § 7408(a)(2)	13, 25, 35, 36
42 U.S.C. § 7409	2, 3, 12
42 U.S.C. § 7409(a).....	12, 31
42 U.S.C. § 7409(b)(1)	12, 25, 31, 36
42 U.S.C. § 7409(d)(1)	12, 13, 19, 21, 24, 33
42 U.S.C. § 7409(d)(2)(A)–(B)	13, 35
42 U.S.C. § 7475(a)(3)	10
42 U.S.C. § 7501(3).....	11
42 U.S.C. § 7502(c)(6).....	10
42 U.S.C. § 7502(e).....	11, 44
42 U.S.C. § 7503(a)(2)	11, 42
42 U.S.C. § 7510a(a)(2)	10
42 U.S.C. § 7602(z)	9
42 U.S.C. § 7603	36
42 U.S.C. § 7607(b)(1)	17, 20

Legislative History

Clean Air Act Amendments of 1977, Pub. L. No. 95-95, § 106(a), 91 Stat. 685, 691 (1977)	35
---	----

Federal Register

85 Fed. Reg. 82,684 (Dec. 18, 2020)	14
88 Fed. Reg. 5558 (Jan. 27, 2023)	10, 15
89 Fed. Reg. 16,202 (Mar. 6, 2024)	1, 13, 14, 15

Miscellaneous

EPA, EPA-452/R-22-004, Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter (May 2022), EPA-HQ-OAR-2015- 0072-1584	13
EPA, Response to Comments (undated), EPA-HQ-OAR-2015-0072-6025 ...	16, 17, 19, 30, 38
Heinzerling, Lisa, <i>The Clean Air Act and the Constitution</i> , 20 ST. LOUIS U. PUB. L. REV. 121 (2001)	8

Press Release, EPA Initiates New Review of the Ozone National Ambient Air Quality Standards to Reflect the Latest Science (Aug. 21, 2023), https://tinyurl.com/mrhc329m (last visited Aug. 26, 2026)	39
Press Release, EPA, EPA to Reexamine Health Standards for Harmful Soot that Previous Administration Left Unchanged (June 10, 2021), https://tinyurl.com/2uvxmymj (last visited Aug. 26, 2026)	15
SCALIA, ANTONIN & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012).....	24
Statement by the President on the Ozone National Ambient Air Quality Standards (Sept. 2, 2011), https://tinyurl.com/ccdte5n7	39
Sunstein, Cass R., Office of Information and Regulatory Affairs Administrator, Letter to Lisa P. Jackson, EPA Administrator (Sept. 2, 2011) https://tinyurl.com/3ykfcy7n (last visited Aug. 26, 2026)	39

U.S. Chamber of Commerce, Comments on Proposed Rule, U.S. Environmental Protection Agency: Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 88 Fed. Reg. 5558–5719 (Jan. 27, 2023) (Mar. 28, 2023), EPA-HQ-OAR-2015-0072- 2428	10
WEBSTER’S NEW WORLD DICTIONARY, SECOND COLLEGE EDITION (1972)	31

OPINION BELOW

The opinion of the U.S. Court of Appeals for the District of Columbia Circuit is reported at 179 F.4th 963 (D.C. Cir. 2026) and is reproduced in the Petition Appendix (Pet. App.) at Pet. App. 1a–45a. Relevant excerpts of the United States Environmental Protection Agency’s (EPA’s) Final Rule titled “Reconsideration of the National Ambient Air Quality Standards for Particulate Matter,” 89 Fed. Reg. 16,202 (Mar. 6, 2024) (Rule), are reproduced at Pet. App. 46a-465a.

JURISDICTION

The D.C. Circuit’s decision was entered on June 26, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 7408 provides, in relevant part:

(a) Air pollutant list; publication and revision by Administrator, issuance of air quality criteria for air pollutants

(1) ...

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful

in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section

42 U.S.C. § 7409 provides, in relevant part:

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) ...

...

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

42 U.S.C. § 7409 is reproduced at Pet. App. 466a–469a.

INTRODUCTION

For more than four decades, EPA never revised a National Ambient Air Quality Standard (NAAQS) without thoroughly reviewing the latest underlying science, as required by the Clean Air Act (CAA). But in the rule at issue, EPA asserted for the first time that it could bypass that requirement if revising a NAAQS off-cycle—*i.e.*, between the five-year reviews required by the statute. EPA has since abandoned that position and conceded the rule was *ultra vires*. Yet the D.C. Circuit upheld it anyway. And the court did so by relying on a statutory provision that EPA never invoked (and even disavowed) as authority for its action, and that does not excuse the thorough-review requirement in any event. If allowed to stand, the court’s decision gives EPA the remarkable discretion to circumvent an important substantive safeguard. It also prohibits EPA from considering whether costs, disruptions, and other consequences might militate against exercising such discretion.

Few regulatory actions under the CAA are more far-reaching than a NAAQS revision, which adjusts the nationally applicable numeric limit on the air concentration of a particular pollutant. Air pollution is generated by virtually every sector of the economy, including transportation, agriculture, manufacturing, energy production, and residential heating. Accordingly, a single change to a NAAQS can impose enormous regulatory costs. It can push areas across the country out of compliance; force states to devise multiple, stringent, and complex state regulatory

regimes (State Implementation Plans or SIPs); and immediately impose stricter permitting requirements for all manner of construction in much of the country.

These consequences are particularly significant for the NAAQS at issue, which concerns fine particulate matter (PM_{2.5}). A growing majority of PM_{2.5} emissions originates from diffuse and episodic sources that are inherently difficult for States to control, such as wildfires, road dust, agricultural activities, and residential wood-burning. As a result, more stringent standards can be nearly impossible to meet.

Congress imposed the thorough-review requirement in 1977 precisely because of these stakes. It added section 109(d)(1) of the CAA not just as an “action-forcing” device—requiring EPA to act on a five-year cycle—as the decision below held. The provision is also a substantive safeguard, requiring EPA to complete a “thorough review” of the latest, underlying science before revising a NAAQS. Further confirming that mandate, Congress amended section 109(d) at the same time to require an independent scientific committee to advise EPA on the NAAQS.

In the rule at issue, EPA skipped that substantive safeguard. In December 2020, EPA completed an on-cycle thorough review and decided not to change the primary annual standard for PM_{2.5}. But after a new administration took office, EPA launched an off-cycle “reconsideration” that it acknowledged did not include a “thorough review”—*i.e.*, a comprehensive evaluation of all peer-reviewed literature on the pollutant

published since the last review. Instead, EPA reviewed a limited selection of additional studies and issued a rule that lowered the PM_{2.5} standard by 25%, nearing background concentrations that States have limited ability to control. It was—the agency also acknowledged—the first time EPA had ever revised a NAAQS without completing a thorough review.

In its rulemaking to lower the standard, EPA also refused to consider the costs or other consequences of its discretionary action. EPA explained that in its view, all such decisions relating to NAAQS revisions are subject to *Whitman v. American Trucking Ass'ns*, 531 U.S. 457 (2001), which prohibits EPA from considering costs when selecting the appropriate level for a NAAQS under section 109(b).

The D.C. Circuit's decision upholding EPA's unprecedented claim of regulatory power is wrong for two independent reasons, each of which warrants this Court's review.

First, the court of appeals erred in holding that EPA may skip the thorough-review requirement when it performs off-cycle revisions. Among other mistakes, the court selectively applied the omitted-case canon—the principle that a statutory omission is presumed deliberate. Specifically, the court held that the second sentence in section 109(d)(1) did not refer back to the word “thorough” from the first sentence, yet then held it does refer back to *other* language in the first sentence needed to sustain the court's conclusion. In addition, the court ultimately grounded EPA's

revision authority in a separate statutory provision—section 109(b)—that the agency never invoked as authority for its action during the rulemaking *and* expressly disavowed during litigation.

Second, the court of appeals erred in holding that EPA must not consider costs when choosing to exercise its discretionary off-cycle authority—ignoring this Court’s precedents on reasoned agency decision-making and extending *Whitman* far beyond its holding and reasoning.

Review is needed now. NAAQS challenges lie exclusively in the D.C. Circuit, so no circuit split over these questions of statutory interpretation will ever develop. And the only other means of reversing the PM_{2.5} standard at issue—further rulemaking—could be substantially hindered by the CAA’s anti-backsliding provision. That provision, which impedes EPA from lowering a NAAQS if certain conditions are met, looms ever larger as implementation of the standard continues apace. *All. of Nurses for Healthy Env’ts v. Zeldin*, No. 26-cv-03118, 2026 WL 2078145 (N.D. Cal. July 17, 2026) (ordering EPA, by February 2027, to issue final area designations concerning attainment of the PM_{2.5} standard at issue).

The Court should grant certiorari.

STATEMENT

I. Statutory and regulatory background

A. The cascading consequences of a National Ambient Air Quality Standard (NAAQS)

The NAAQS set numeric limits on the concentration of “listed” pollutants (known as “criteria” pollutants) in outdoor air. Under section 108(a)(1), EPA must list pollutants that endanger public health or welfare and stem from “numerous or diverse” sources, whether mobile or stationary. 42 U.S.C. § 7408(a)(1)(A)–(B). Since Congress passed the CAA in 1970, EPA has listed six pollutants.

1. Setting an initial NAAQS

When initially promulgated, a NAAQS becomes the organizing principle for a comprehensive regulatory system, creating a domino effect of State obligations, regulation, and industry compliance requirements. See, *e.g.*, Lisa Heinzerling, *The Clean Air Act and the Constitution*, 20 ST. LOUIS U. PUB. L. REV. 121, 121 (2001) (NAAQS “form the centerpiece of ... this country’s single most important environmental program”).

To begin, all fifty States must classify all areas within their territory as in “attainment” (meeting the standard), “nonattainment” (not meeting it), or “unclassifiable.” 42 U.S.C. § 7407(d)(1)(A). States must propose designations within one year of

promulgation of a NAAQS. *Ibid.* This requires States to analyze emissions, air quality, and other data, which can, for each State, cost seven figures and require hundreds of staff hours. State Pet’rs’ Opening Br. 18; *id.* Addendum (Add.) 100a, *Kentucky v. EPA*, 179 F.4th 963 (D.C. Cir. 2026) (No. 24-1050). EPA must then approve or revise those designations within two years of promulgation—or three, if EPA grants itself a one-year extension. 42 U.S.C. § 7407(d)(1)(B)(i).

States then generate one or more SIPs: comprehensive regulatory regimes comprising emission limits, permitting requirements, compliance schedules, monitoring requirements, and other control measures to implement and enforce the NAAQS. *Id.* § 7407(a); see *id.* § 7410(a)(1), (a)(2)(A). SIPs also include “good neighbor” provisions to prevent States from materially interfering with NAAQS attainment in States downwind. *Id.* § 7410(a)(2)(D); *Ohio v. EPA*, 603 U.S. 279, 283 (2024). SIPs require considerable expense, coordination, and outreach to develop, and then cost each State millions more annually to carry out. State Pet’rs’ Opening Br. Add. 63a, 78a–79a.

SIPs impose compliance obligations on any “source of an air pollutant.” 42 U.S.C. § 7602(z). That effectively includes the entire U.S. economy—from power plants and factories to construction sites, agricultural operations, transportation, commercial operations, and even residential heating and prescribed fires. U.S. Chamber of Commerce,

Comments on Proposed Rule, U.S. Environmental Protection Agency: Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 88 Fed. Reg. 5558-5719 (Jan. 27, 2023) at 3, 5 (Mar. 28, 2023), EPA-HQ-OAR-2015-0072-2428.

In nonattainment areas, SIPs require regulated parties to do whatever is “necessary or appropriate to provide for attainment.” 42 U.S.C. §§ 7510a(a)(2), 7502(c)(6). Existing sources must implement “reasonably available [emission] control measures as expeditiously as practicable.” *Id.* § 7502(c)(1). Such measures include expensive control equipment, such as high-efficiency cyclones. Industry Opening Br. Add. 216, *Kentucky v. EPA*, 179 F.4th 963 (D.C. Cir. 2026) (No. 24-1050).

2. Revising a NAAQS

Revising an already existing NAAQS sets in motion its own vast array of consequences.

For starters, a revision instantly tightens pre-construction permitting in areas that attained the prior standard (or were unclassifiable). Applicants there must show, through sophisticated air modeling, that any major new source or modification “will not cause, or contribute to, air pollution in excess of” the revised standard. 42 U.S.C. § 7475(a)(3). This may require significant redesign of planned projects—for example, spending \$20 million re-engineering stacks on paper machines, or spending millions paving what were planned to be gravel roads, Industry Opening Br. Add. 232. What is more, the revised NAAQS has been

held to apply immediately not just to new permit applications, but to pending ones too. *Murray Energy Corp. v. EPA*, 936 F.3d 597, 624–25 (D.C. Cir. 2019) (*per curiam*).

All fifty States then redo their regulatory regimes. They must again submit comprehensive area classifications, which can take EPA two to three years to approve or revise. 42 U.S.C. § 7407(d)(1)(A), (d)(1)(B)(i). And then they develop new SIPs, *id.* § 7410(a)(1), which require the same extensive coordination and outreach as when initially developed, State Pet’rs’ Opening Br. Add. 63a.

Revisions particularly affect areas that were not attaining the prior standard. New sources there must meet the “lowest achievable emission rate”—generally the more stringent of (a) the tightest limit in *any* State’s new plan and (b) the greatest reduction “achieved in practice” by the same class or category of source. 42 U.S.C. §§ 7501(3), 7503(a)(2). For example, if California sets an aggressive new emissions limit, or an industry there achieves an even more aggressive limit in practice, that limit will apply to all nonattainment areas in all 49 other States.

Finally, the CAA’s anti-backsliding provision provides that if EPA relaxes a standard after certain events have occurred, areas that had not attained the prior standard must retain “controls which are not less stringent” than what applied before. *Id.* § 7502(e). This impedes EPA’s ability to relax a NAAQS after a certain point in time.

B. Requirements for promulgating and revising a NAAQS

Given the consequences of setting or revising a NAAQS, the CAA prescribes specific requirements that EPA must follow.

Before setting a standard for the first time, EPA must issue “air quality criteria” for the pollutant under section 108. *Id.* § 7408(a)–(b). The criteria must “accurately reflect the latest scientific knowledge” regarding the impacts of the pollutant on public health or welfare. *Id.* § 7408(a)(2).

After issuing criteria, EPA promulgates the initial NAAQS. *Id.* § 7409, Pet. App. 466a. These initial NAAQS must be set to levels which “in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.” *Id.* § 7409(b)(1), Pet. App. 467a. And before doing so, EPA must provide notice and an opportunity for comment. *Id.* § 7409(a), Pet. App. 466a.

The CAA also specifies how EPA should revise NAAQS. Section 109(b)(1) instructs that NAAQS “may be revised in the same manner as promulgated.” *Id.* § 7409(b)(1), Pet. App. 467a. Section 109(d)(1) requires that NAAQS revisions follow “a ‘thorough review of the criteria ... and ... standards.’” *Id.* § 7409(d)(1), Pet. App. 468a. And a congressionally mandated independent Clean Air Scientific Advisory Committee (CASAC) must “recommend to the

Administrator” revisions to criteria and standards. *Id.* § 7409(d)(2)(A)–(B), Pet. App. 468a–469a.

The “thorough review” required by section 109(d)(1) is comprehensive, given that the criteria under review must reflect “the latest scientific knowledge” on “all identifiable effects on public health or welfare,” *Id.* § 7408(a)(2). Historically, EPA carried out this review by preparing an Integrated Science Assessment—a comprehensive evaluation of all peer-reviewed literature on the pollutant published since the last review cycle. Decl. of Aaron Szabo ¶¶ 36, 38, (Nov. 24, 2025), *Kentucky v. EPA*, 179 F.4th 963 (D.C. Cir. 2026) (No. 24-1050) (Szabo Decl.), Pet. App. 533a–534a; 89 Fed. Reg. at 16,207–08, Pet. App. 71a–74a. EPA has also traditionally prepared a Policy Assessment evaluating whether existing standards remain adequate in light of that science. See EPA, EPA-452/R-22-004, Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter 1–2 (May 2022), EPA-HQ-OAR-2015-0072-1584. Both documents are reviewed by the CASAC. Szabo Decl. ¶ 11, Pet. App. 508a.

Section 109(d)(1) also speaks to the timing of reviews and revisions. *Id.* § 7409(d)(1), Pet. App. 468a. The first sentence requires reviews and any appropriate revisions at “five-year intervals,” *i.e.* on-cycle. *Id.* The second permits what is “required under this paragraph” to occur between those intervals, *i.e.* off-cycle:

[A]t five-year intervals ... , the Administrator shall complete a thorough review of the criteria ... and ... standards ... and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

Id.

II. The proceedings below

A. The revised PM_{2.5} standard

The NAAQS at issue concerns PM_{2.5}—liquid or solid particles up to 2.5 micrometers (µm) suspended in air. 89 Fed. Reg. at 16,213–14, Pet. App. 103a. These come from many manmade sources, including power plants, manufacturing facilities, construction equipment, agricultural operations, and vehicle fuel combustion and brakes. *Ibid.* They also come from natural sources, including wildfires, pollen, and sea spray. 85 Fed. Reg. 82,684, 82,692 n.23 (Dec. 18, 2020).

EPA promulgated the initial NAAQS for PM_{2.5} in 1997, setting the standard at 15.0 micrograms per cubic meter of air (µg/m³) after an on-cycle thorough review. 89 Fed. Reg. at 16,207, Pet. App. 71a. In 2012,

EPA lowered the annual standard to 12.0 $\mu\text{g}/\text{m}^3$, again following an on-cycle thorough review. *Id.* at 16,208, Pet. App. 77a.

In 2020, EPA completed its most recent on-cycle thorough review and decided not to revise the primary annual standard. *Id.* at 16,209, Pet. App. 81a–82a. But several months later, in June 2021, a new administration announced that it would revisit the 2020 decision.² EPA then issued a proposed rule, 88 Fed. Reg. 5558, 5560 (Jan. 27, 2023), which it later finalized in 2024. The final rule lowered the primary annual $\text{PM}_{2.5}$ standard by 25%—from 12.0 $\mu\text{g}/\text{m}^3$ to 9.0 $\mu\text{g}/\text{m}^3$. 89 Fed. Reg. at 16,202, Pet. App. 46a.

When lowering this standard, EPA conceded that it had not conducted a “thorough review” of the criteria and standards for $\text{PM}_{2.5}$. Instead of preparing a new Integrated Science Assessment—the comprehensive evaluation of all peer-reviewed literature used in the 2020 thorough review—EPA prepared a “Supplement” covering newer select studies. 89 Fed. Reg. at 16,211–13, Pet. App. 91a–102a; Szabo Decl. ¶¶ 36, 38, Pet. App. 533a–534a, Pet. App. 536a–537a. It then “partially reopen[ed]” the criteria for “provisional consideration” of those select studies, deferring “full[]” assessment of the studies to “a more rigorous review process” during the next on-cycle review. 89 Fed. Reg. at 16,211, 16,213, Pet. App.

² See Press Release, EPA, EPA to Reexamine Health Standards for Harmful Soot that Previous Administration Left Unchanged (June 10, 2021), <https://tinyurl.com/2uvxmymj> (last visited Aug. 26, 2026).

88a, Pet. App. 102a; EPA, Response to Comments 121–22 (undated), EPA-HQ-OAR-2015-0072-6025 (RTC), Pet. App. 486a–488a. EPA acknowledged that this doubly abbreviated process—“provisional consideration” of only some new studies—did “not itself satisfy EPA’s obligation to periodically complete a thorough review of the air quality criteria.” RTC 121, Pet. App. 485a.

The agency had never revised a NAAQS without completing a thorough review. Szabo Decl. ¶¶ 36, 38, Pet. App. 533a–534a, Pet. App. 536a–537a; see also Final Br. for U.S. Environmental Protection Agency 79, *Kentucky v. EPA*, 179 F.4th 963 (D.C. Cir. 2026) (No. 24-1050) (EPA Resp. Br.) (agreeing that “EPA has never revised a NAAQS after a voluntary [off-cycle] reconsideration”); *infra* 39 n.4. In doing so for the first time, EPA acknowledged that “the first sentence of section 109(d)(1) imposes a duty ... to ‘complete a thorough review’” before revising a NAAQS. RTC 121, Pet. App. 486a. But, EPA explained, “a careful reading” revealed “that the last sentence” authorized EPA to revise a NAAQS without this “thorough review” so long as EPA did so off-cycle. *Ibid.*

EPA described this second sentence as providing “additional authority, independent of” the first—and that it specifically “authorizes” EPA to revise the NAAQS off-cycle without a “thorough review.” *Ibid.* At no point did EPA invoke section 109(b) as independent authority to bypass the thorough-review requirement. See Szabo Decl. ¶ 40, Pet. App. 538a.

EPA also refused to consider the costs or other consequences of initiating a wholly voluntary, discretionary off-cycle review. RTC 120, Pet. App. 483a. Here, EPA reasoned that section 109(b) requires any NAAQS revision to be “requisite to protect the public health,” and that this standard “unambiguously bars cost considerations from the NAAQS-setting process.” RTC 118, 120, Pet. App. 477a–478a, Pet. App. 481a (discussing *Whitman*, 531 U.S. at 471).

B. The D.C. Circuit litigation

Numerous parties filed petitions for review in the D.C. Circuit, which has exclusive jurisdiction over challenges to NAAQS. 42 U.S.C. § 7607(b)(1). Petitioners argued that EPA exceeded its authority by revising a NAAQS without a thorough review and without considering the costs of undertaking a discretionary off-cycle review. Industry Pet’rs’ Opening Br. 32–42; Industry Pet’rs’ Reply Br. 4–22, *Kentucky v. EPA*, 179 F.4th 963 (D.C. Cir. 2026) (No. 24-1050).

EPA defended the Rule by again claiming that the second sentence of section 109(d)(1) confers “separate, discretionary authority” to revise NAAQS off-cycle without a “thorough review.” EPA Resp. Br. 45. EPA did not rely on section 109(b) as authority for this claimed power. EPA also argued that it could not consider costs and attainability under *Whitman*—a case addressing EPA’s selection of a new NAAQS level

after a mandatory on-cycle review, 531 U.S. 457. EPA Resp. Br. 50–52.

At oral argument, a member of the panel proposed a different theory: that EPA’s off-cycle revision authority stemmed not from section 109(d)(1), but from section 109(b), which in the judge’s view contained no “thorough review” requirement. Tr. of Oral Arg. at 8–11, *Kentucky v. EPA*, 179 F.4th 963 (D.C. Cir. 2026) (No. 24-1050) (Tr. of Oral Arg.). Petitioners responded that this theory was foreclosed under the party-presentation principle and *SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943), and was mistaken anyway. Tr. of Oral Arg. at 12. State Intervenor’s embraced the panel’s theory, while EPA’s counsel was more circumspect—responding that the court “could go to (b)(1),” *id.*, but reiterating that the Rule was “also properly invoking (d)(1),” *id.* at 64:6–8, 83.

After oral argument, a new administration took office. EPA then confessed error and moved to vacate the Rule. EPA first argued that the Rule should be vacated because it was not based on a “thorough review.” In doing so, it confirmed that “[section 109(b)] was not the basis asserted in the Rule, and EPA has never attempted to bypass section 109(d)(1) by relying solely on section 109(b).” Resp’ts’ Mot. For Vacatur 2, *Kentucky v. EPA*, 179 F.4th 963 (D.C. Cir. 2026) (No. 24-1050) (Mot. To Vacate); Szabo Decl. ¶ 40, Pet. App. 538a (“To date, including in the 2024 Rule, the EPA never asserted that 109(b) alone authorized revising the NAAQS without also referencing 109(d).”). EPA

also argued that it had improperly failed to consider costs before deciding to review the NAAQS off-cycle. Mot. to Vacate 10–21.

The D.C. Circuit denied EPA’s motion to vacate and the petitions for review, upholding the Rule. Pet. App. 9a–10a. On the issue of “thorough review,” the court embraced the approach it had suggested for the first time at argument. Pet. App. 22a–30a. Under that theory, the second sentence of 109(d)(1) merely “clarif[ies]” that “nothing in § 7409(d)(1) displaces the Administrator’s revision authority in § 7409(b).” Pet. App. 24a. Because the court did not understand section 109(b) to require a thorough review, it concluded that EPA acted within its off-cycle revision authority. Pet. App. 22a–24a.

The court did not address petitioners’ party-presentation objection, but did briefly discuss *Chenery* in a footnote. Pet. App. 24a n.5. It first reasoned that *Chenery* is “inapplicable” to questions of “statutory construction.” *Ibid.* (citation omitted). It then reasoned that EPA satisfied *Chenery* anyway by mentioning section 109(b) in the statement discussed earlier (*supra* p. 17 (discussing RTC 120, Pet. App. 483a)), in which EPA explained why it could not consider costs. *Ibid.* (citing RTC 120, Pet. App. 483a).

The court next held that EPA need not consider costs or attainability when deciding whether to undertake a discretionary off-cycle review. Pet. App. 33a–39a. In doing so, it, too, relied on *Whitman*. 531 U.S. at 462–63. The court acknowledged that D.C.

Circuit precedent invoking *Whitman* “spoke of ‘*formulating* the NAAQS,’” “not the anterior decision” *whether* to review them (which exists only off-cycle). Pet. App. 37a. But the court did “not see” how that precedent “would permit the Administrator to consider costs at either stage.” *Ibid*.

Following the decision below, a district court ordered EPA to complete area designations under the 9.0 $\mu\text{g}/\text{m}^3$ standard by February 2027. *All. of Nurses for Healthy Env’ts*, 2026 WL 2078145.

REASONS FOR GRANTING THE PETITION

The decision below presents two important questions about EPA’s authority to revise a NAAQS. If that decision stands, EPA may now revise *any* standard for *any* criteria pollutant, without a “thorough review” of the criteria, and while ignoring cost—so long as it acts off-cycle.

This Court’s intervention is needed now, as this Court is likely the only path to fully effective relief. These purely legal questions fall within the D.C. Circuit’s exclusive jurisdiction, 42 U.S.C. § 7607(b)(1), and were squarely raised and decided below. And as implementation proceeds, the CAA’s anti-backsliding provision increasingly threatens to impede agency correction of the PM_{2.5} standard at issue—regardless of what a later review concludes, see *supra* p. 11.

I. The D.C. Circuit erred by excusing EPA from the Clean Air Act’s “thorough review” requirement.

The D.C. Circuit erred in concluding that EPA may revise a NAAQS without a “thorough review,” merely because it acts off-cycle. It did so by improperly injecting its own theory of EPA’s revision authority based on a separate statutory provision EPA never invoked for that purpose. That theory was also wrong on the merits.

A. Section 109(d)(1) requires a thorough review for all NAAQS revisions, whether on- or off-cycle.

Statutory interpretation “begins with the text,” *Ross v. Blake*, 578 U.S. 632, 638 (2016), applying “the traditional tools of statutory construction” to determine the “best reading.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400, 403 (2024). Here, the best reading is that section 109(d)(1) requires a “thorough review” for all NAAQS revisions.

Since 1977, section 109(d)(1) has imposed procedural and substantive requirements on all NAAQS revisions. Its first sentence addresses both. It requires EPA to review criteria and standards at “five-year intervals.” And it also imposes crucial substantive safeguards—by requiring EPA’s review to be “thorough” and mandating that any revisions be “appropriate” and “in accordance with section [108] and [section 109(b)].” 42 U.S.C. § 7409(d)(1), *Pet. App.* 468a.

The second sentence addresses timing alone. It allows EPA to do “earlier or more frequently” what the first sentence otherwise requires:

[A]t five-year intervals ... , the Administrator shall complete a thorough review of the criteria ... and ... standards ... and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. *The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.*

Ibid. (emphasis added). This sentence changes none of the preceding requirements.

This reading of the second sentence is bolstered by its reference to what is “required under this paragraph.” The only substantive requirements in “this paragraph” are in the first sentence: EPA must “complete a thorough review,” then make “revisions,” or “promulgate” new standards, as “appropriate” and “in accordance with” sections 108 and 109(b). The second sentence references those same three actions (“review,” “revise,” “promulgate”). *Ibid.* Together with the reference to “under this paragraph,” that symmetry confirms that the second sentence refers to the same substantive requirements found in the first.

The second sentence does not repeat every word of the first. It does not say “thorough,” does not refer to revising standards, and does not reiterate that all standards must be appropriate or in accordance with sections 108 and 109(b). But that is because the sentence does not set forth requirements; it addresses the timing for doing what *already* is “required under this paragraph.”

Courts “must not be guided by a single sentence,” but instead “look to the provisions of the whole law.” *Richards v. United States*, 369 U.S. 1, 11 (1962) (citation omitted). And a term is often “given more precise content by the neighboring words with which it is associated.” *United States v. Williams*, 553 U.S. 285, 294 (2008). Here, that context shows that the second sentence uses a “shorthand” reference, *Exxon Corp. v. Hunt*, 475 U.S. 355, 369 (1986)—*i.e.*, a concise reference to an otherwise complex subject. If this second sentence *had* repeated all elements in the first, it would be much more complex:

The Administrator may ~~review and~~
~~revise criteria or promulgate new~~
~~standards~~ complete a thorough review of
the criteria published under section 7408
of this title and the national ambient air
quality standards promulgated under
this section, and make such revisions in
such criteria and standards and
promulgate new standards as may be
appropriate in accordance with section
7408 of this title and subsection (b) of

this section, earlier or more frequently than required under this paragraph.

Such shorthand references appear throughout the law to simplify far less complex phrases. See, *e.g.*, 18 U.S.C. § 1084(a) (using “bets or wagers” to refer back to “bets or wagers on any sporting event or contest”); 17 U.S.C. § 102(a) (using “[w]orks of authorship” to refer back to “original works of authorship”).

Reading the second sentence’s omissions as exceptions to the requirements of the first sentence also would make little sense. The second sentence omits not only the word “thorough,” but also any language authorizing EPA to revise standards. See 42 U.S.C. § 7409(d)(1), Pet. App. 468a (“The Administrator may review and *revise criteria* or *promulgate new standards* earlier or more frequently than required under this paragraph.”) (emphasis added). If the sentence is *not* a shorthand reference, and the “omitted-case” canon applies equally to all missing words, then EPA has no authority to revise standards off-cycle at all. ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 93 (2012). The better interpretation is that the sentence uses shorthand, making the omissions immaterial.

That interpretation also best fits the statutory structure. The CAA uniformly defines what a NAAQS is—and what it must rest on. Under section 108, *all* air quality criteria must “accurately reflect the latest scientific knowledge” concerning “all identifiable

effects on public health or welfare.” 42 U.S.C. § 7408(a)(2). And under section 109(b), *all* NAAQS must be “based on such criteria.” *Id.* § 7409(b)(1), Pet. App. 467a. Indeed, that is why NAAQS pollutants are called “criteria” pollutants. As this Court has explained, the statute “*at a minimum* requires that ‘[f]or a discrete set of pollutants and based on published air quality criteria that reflect the latest scientific knowledge, [the] EPA must establish uniform national standards.’” *Whitman*, 531 U.S. at 473 (emphasis added, citation omitted). If all NAAQS must rest on criteria reflecting the latest science, EPA cannot escape that obligation by acting between review cycles.

B. The D.C. Circuit’s contrary theory of statutory authority was improper and incorrect.

Petitioners have the best reading of section 109(d)(1), and the D.C. Circuit erred by holding otherwise. Before reaching that provision, however, the court erred by injecting its own theory into the case.

1. The D.C. Circuit violated the principle of party presentation.

“In our adversarial system of adjudication, we follow the principle of party presentation.” *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (*per curiam*) (quoting *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020)). That principle requires that “the parties ... frame the issues for decision,” while the court serves

as neutral arbiter of matters the parties present. *Margolin v. Nat’l Ass’n of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026) (*per curiam*) (internal quotation marks and citation omitted).

The D.C. Circuit violated that principle. During litigation and rulemaking, the parties offered two competing readings of section 109(d)(1). Petitioners read section 109(d)(1) to require a thorough review for any revision of the NAAQS, whether on-cycle or off. See *supra* Section I. EPA argued that the second sentence independently authorized off-cycle revision without a thorough review. See *supra* pp. 17–18.

The D.C. Circuit rejected both readings and injected its own theory at oral argument that section 109(b) authorized EPA to revise the NAAQS off-cycle. Pet. App. 24a. Under this third approach, the first sentence of section 109(d)(1) limits revision authority under section 109(b), but only for on-cycle revisions. The second sentence then neither confers authority nor modifies the prior sentence’s timing requirement. Rather, it merely “clarif[ies]” that the on-cycle review process does not otherwise “displace[] the Administrator’s revision authority in § [109(b)].” *Ibid.*

But EPA affirmatively disclaimed this theory—explaining that section 109(b) “was not the basis asserted in the Rule” and that “EPA has never attempted to bypass section 109(d)(1) by relying solely on section 109(b).” Mot. to Vacate 2. EPA explained that “[t]o view section 109(b) that way contradicts decades of agency practice,” *id.* at 2–3, and that it has

“never asserted that 109(b) alone authorized revising the NAAQS,” Szabo Decl. ¶ 40, Pet. App. 538a. Despite that, the D.C. Circuit embraced its own theory and held that section 109(b) authorized the challenged Rule.

The D.C. Circuit’s opinion nowhere addressed petitioners’ objection that its approach violated the party-presentation principle. It did mention that Intervenor had ultimately embraced the section 109(b)(1) theory after the court proposed it. Pet. App. 20a. But the same occurred in *Sineneng-Smith*, where a party “adopted” and “rode with [a new] argument suggested by the panel.” 590 U.S. at 379. That didn’t “justif[y] the panel’s takeover of the appeal,” *id.*, so this Court vacated the judgment. The same is warranted here.

This Court has recently reversed several other circuit court decisions for ignoring the party presentation rule, and it should likewise do so here. See, e.g., *id.* at 380; *Margolin*, 146 S. Ct. at 1288 (reversing and noting a recent similar reversal); *Clark*, 607 U.S. at 9. And because the lower court already rejected the ground EPA *did* rely on below, this violation requires vacatur of the Rule. See *infra* pp. 30–31.

2. The D.C. Circuit violated *Chenery*.

The decision below violated *Chenery*, too. During rulemaking, EPA never relied on section 109(b) as the source of its off-cycle revision. The D.C. Circuit’s reliance on that provision was thus doubly improper.

The “now-bedrock” *Chenery* doctrine prohibits courts from upholding agency action “on an alternative ground raised for the first time in litigation.” *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 587 (2025). This rule “serves important values of administrative law,” by promoting “agency accountability,” allowing regulated parties to “respond fully” to a proposed action, and “instill[ing] confidence that the reasons given are not simply ‘convenient litigating position[s].’” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 22–23 (2020) (citations omitted). It also prevents courts from “intrud[ing] upon the domain which Congress ... exclusively entrusted to [the] administrative agency.” *Wages & White Lion*, 604 U.S. at 587 (quoting *Chenery*, 318 U.S. at 88).

The D.C. Circuit violated *Chenery*. EPA concedes that it “never attempted to bypass section 109(d)(1)” during rulemaking “by relying solely on section 109(b).” *Supra* pp. 26–27 (quoting Mot. to Vacate 2). Instead, EPA repeatedly claimed that the second sentence of section 109(d)(1) “specifically authorizes” off-cycle revisions. See *supra* pp. 16–17 (quoting RTC 121, Pet. App. 485a). Accordingly, the D.C. Circuit’s new theory based on section 109(b) was off limits.

The D.C. Circuit asserted in a footnote that *Chenery* did not apply for two reasons. Pet. App. 24a n.5. Neither is convincing.

First, the D.C. Circuit held that an exception to *Chenery* applies “when the question presented [is] one

of statutory construction,” *Ibid.* (citation omitted), pointing to *Loper Bright*, Tr. of Oral Arg. at 50–51. But *Loper Bright* directs courts to decide *what* a particular provision means. 603 U.S. at 394. It does not allow courts to decide *which* provision an agency should have invoked as authority for its action. In holding otherwise, the D.C. Circuit thwarted the core purposes of *Chenery*. See *supra* p. 28. It also split with two other circuits. See *Apogee Coal Co. v. Off. of Workers’ Comp. Programs*, 113 F.4th 751, 762 (7th Cir. 2024) (concluding, after *Loper Bright*, that *Chenery* “prohibits [courts] from scouring [statutes] for bases” of an agency’s authority); *Bank of Am., N.A. v. F.D.I.C.*, 244 F.3d 1309, 1321 (11th Cir. 2001) (“[e]ven if other statutory provisions could support the [agency’s] asserted authority,” courts “cannot supply grounds ... that were not invoked by the [agency] below.”) (quotation marks and citation omitted).

Second, the D.C. Circuit said that EPA *did* rely on section 109(b), citing a single comment by EPA in the extensive rulemaking record. Pet. App. 24a. But context shows that this comment invoked section 109(b) as a *restriction* on EPA’s authority, not a source. Addressing whether EPA was “required to consider costs,” EPA said:

The EPA understands [section 109(b)] to authorize the Administrator to revise the NAAQS and to require that every NAAQS revision be subject to the same basic requirements under section 109 (and *Whitman*)—the standards must be

based on the air quality criteria and must be requisite to protect the public health for primary standards.

RTC at 120, Pet. App. 482a.

That is not enough. Under *Chenery*, what matters is “the *grounds* upon which the agency acted.” 318 U.S. at 95 (emphasis added). And here, the “grounds” for EPA’s action was section 109(d)(1). RTC 121–22, Pet. App. 486a–487a.

* * *

The D.C. Circuit’s violations of the party-presentation principle and *Chenery* each independently require reversal and vacatur of the Rule. See *Sineneng-Smith*, 590 U.S. at 380 (party presentation); *Regents*, 591 U.S. at 21 (*Chenery*). In the decision below, the court rejected the only statutory ground EPA invoked during rulemaking. Pet. App. 24a–25a (holding that the second sentence of section 109(d)(1) merely “clarif[ies]” that “nothing in [section 109(d)(1)] displaces the Administrator’s revision authority”). And the court cannot rely on section 109(b). With no surviving statutory basis, nothing sustains the Rule. Indeed, EPA concedes “there is no serious possibility” it would adopt the same approach on remand. Mot. to Vacate 22.

3. The D.C. Circuit's theory was wrong on the merits.

Even setting aside that the D.C. Circuit should not have relied on section 109(b), the D.C. Circuit's reading of that provision was wrong for two independent reasons. First, section 109(b) does not provide revision authority at all. And second, even if it did, that authority is limited by section 109(d)(1).

a) Section 109(b) does not confer revision authority.

The D.C. Circuit erroneously read the second sentence of section 109(b)(1) to confer revision authority. That sentence has always exclusively addressed procedure—providing that NAAQS “may be revised in the same *manner* as promulgated.” 42 U.S.C. § 7409(b)(1), Pet. App. 467a (emphasis added). “Manner” means “a way or method in which something is done or happens.” WEBSTER'S NEW WORLD DICTIONARY, SECOND COLLEGE EDITION (1972). Here, the “manner” in which NAAQS are “promulgated” is prescribed by section 109(a) (titled “Promulgation”), which requires notice and an opportunity for “comments.” 42 U.S.C. § 7409(a), Pet. App. 466a. Accordingly, section 109(b) only requires notice and comment for NAAQS revisions.

EPA agrees. In briefing, it acknowledged that section 109(b) governs only the “manner” of revisions, expressly contrasting section 109(b)'s “procedural requirements” with section 109(d)(1)'s “substantive authority.” EPA Resp. Br. 34–35. And that is despite

the prior EPA having had every incentive to find sources of authority when promulgating the Rule and later defending it. Instead, the prior EPA relied exclusively on section 109(d)(1). See *supra* Section I.B.2; see also Szabo Decl. ¶ 40, Pet. App. 538a.

b) Any prior revision authority is constrained by section 109(d)(1).

Regardless, the D.C. Circuit failed to properly reconcile section 109(b) with section 109(d)(1). Any revision authority EPA had prior to 1977 must now be understood in light of section 109(d)(1). Whether that prior authority was implicit (as petitioners contend) or conferred by section 109(b) (as the D.C. Circuit erroneously held),³ section 109(d)(1) added specific constraints that must be considered. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“[T]he specific governs the general.”) (citation omitted); *Varity Corp. v. Howe*, 516 U.S. 489, 511 (1996) (“the specific governs the general” canon is “a warning against applying a general provision when doing so would undermine limitations created by a more specific provision”). Indeed, the D.C. Circuit agreed that it “must read [section 109(b)] in harmony with [section 109(d)(1)].” Pet. App. 25a.

Doing so properly leads to the conclusion that section 109(d)(1) imposed new procedural and

³ EPA’s revision authority was implicit in EPA’s power to promulgate NAAQS. *Nat. Res. Def. Council v. Regan*, 67 F.4th 397, 401 (D.C. Cir. 2023) (“the power to decide is normally accompanied by the power to reconsider”).

substantive requirements on *all* NAAQS revisions, as explained above. See *supra* Section I.A. The first sentence imposes both an action-forcing device (requiring EPA to review and revise every five years) and a substantive safeguard (requiring EPA’s review to be “thorough”). 42 U.S.C. § 7409(d)(1), Pet. App. 468a. The second sentence allows EPA to perform the same actions, subject to the same substantive safeguard, “earlier or more frequently than required under this paragraph.” *Ibid.*

The D.C. Circuit held instead that section 109(d)(1) did not change anything about off-cycle NAAQS revisions. But that is not the best reading of the statute, for the reasons set forth above, *supra* Section I.A., and explained further below.

First, the D.C. Circuit misread the text. It failed to appreciate that the second sentence of section 109(d)(1) simply allows EPA to do “earlier and more frequently” what is *already* “required under this paragraph.” See *supra* Section I.A. That then led the court to attribute material meaning to words not repeated from the first sentence, rather than acknowledging the second sentence’s use of a shorthand reference. *Ibid.* And it further compounded that error by applying the omitted-case canon to some of the missing words and not the others. *Ibid.*

Second, the D.C. Circuit’s reading allows EPA to end-run the thorough-review requirement, rendering superfluous a core component of the statutory scheme. In other words, it allows EPA to do exactly what it did

here—throw out a prior administration’s considered judgment based on a selective, less-than-thorough off-cycle review of the science. That would effectively nullify the thorough review requirement for on-cycle revisions and undermine the purpose of requiring a thorough review at all. See *Abramski v. United States*, 573 U.S. 169, 179–80 (2014) (rejecting statutory interpretation that “would virtually repeal [a] ... law’s core provisions”). Given the widespread and disruptive consequences of a relatively abbreviated off-cycle revision, *supra* Statement I.A., it would make little sense for Congress to “permit,” much less to encourage, “such gamesmanship.” *EPA v. Calumet Shreveport Refining, L.L.C.*, 145 S. Ct. 1735, 1748 (2025).

The D.C. Circuit dismissed this concern, reasoning that any off-cycle revision must still comply with the “requirement of reasoned decisionmaking,” which would call for some attention to science. Pet. App. 30a. But that misses the point. Arbitrary-and-capricious challenges to NAAQS take years. See, e.g., *Mississippi v. EPA*, 744 F.3d 1334 (D.C. Cir. 2013) (*per curiam*) (5 years); *Am. Farm Bureau Fed’n v. EPA*, 559 F.3d 512 (D.C. Cir. 2009) (*per curiam*) (2.5 years); *Am. Trucking Ass’ns, Inc. v. EPA*, 283 F.3d 355 (D.C. Cir. 2002) (5 years). And in the meantime, States and regulated parties bear enormous burdens. See *supra* Statement I.A. Even assuming a win in the end—which is hardly certain given the standard of review—the delay effectively nullifies the thorough-review requirement.

Third, the D.C. Circuit repeatedly relied on what it assumed was the purpose of section 109(d)(1). The court said “[t]he reason for [the thorough review] requirement is obvious”: “it serves as an action-forcing device” by requiring a review-and-revise process every five years. Pet. App. 23a. In the court’s view, requiring a “thorough review” for off-cycle revisions would “undermine ... the plain objective of the first sentence” by preventing EPA “from responding promptly to changes in the relevant science.” Pet. App. 27a.

That reasoning assumes the conclusion: that the sole purpose of section 109(d)(1) is to force more revisions. But “[n]o statute pursues a single policy at all costs.” *Bartenwerfer v. Buckley*, 598 U.S. 69, 81 (2023). By its plain text, section 109(d)(1) serves more than one purpose. It does force EPA to act by reviewing the criteria and NAAQS every five years. But it *also* imposes a substantive safeguard, ensuring that all standards are based on a “thorough review” of the relevant science. Congress confirmed as much by creating, at the same time it added section 109(d)(1), a “scientific review committee” to advise EPA on NAAQS. 42 U.S.C. § 7409(d)(2)(A)–(B), Pet. App. 468a–469a; Clean Air Act Amendments of 1977, Pub. L. No. 95-95, § 106(a), 91 Stat. 685, 691 (1977). Together, these safeguards aim to ensure that NAAQS are based on “the latest scientific knowledge.” 42 U.S.C. § 7408(a)(2).

Those two purposes—regular review and science-based standards—are perfectly consistent. But even if they weren’t, the court could not disregard the text in

favor of policy. See *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022) (“[T]he text of a law controls over purported legislative intentions[.]”); *Montgomery v. Caribe Transp. II, LLC*, 146 S. Ct. 1199, 1207 (2026) (“Better to live with the mystery than rewrite the statute.”).

Nor does petitioners’ reading contravene the statute by preventing EPA from responding more quickly to new information. To begin with, revisions were not designed to be fast—by statute, the implementation process alone takes years. See *supra* Statement I.A. That said, section 109(d)(1) allows EPA to act “more often” than five years—it simply requires a “thorough review” first. And if a source presents “an imminent and substantial endangerment to public health,” EPA can act faster by utilizing “[e]mergency powers” to “immediately restrain” that source under 42 U.S.C. § 7603.

Fourth, the D.C. Circuit reasoned that its reading fit better into the broader statutory context, pointing to section 108(c)’s allowing EPA to amend criteria from “time to time.” Pet. App. 29a. But that context also requires that *all* criteria “reflect the latest scientific knowledge,” 42 U.S.C. § 7408(a)(2), and that *all* NAAQS must be “based on such criteria,” *id.* § 7409(b)(1), Pet. App. 467a. See *supra* p.12. The court’s reading cannot be reconciled with those definitional provisions.

Finally, petitioners’ reading is supported by both *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), and the

major questions doctrine. An agency’s longstanding, consistent interpretation carries persuasive weight. *Loper Bright Enters.*, 603 U.S. at 394 (citing *Skidmore*). Here, prior to the 2024 Rule, EPA consistently took the well-reasoned position that section 109(d) required a thorough review before any revision. Mot. to Vacate 10–15; Szabo Decl. ¶¶ 36, 38, Pet. App. 533a–534a, Pet. App. 536a–537a.

The major questions doctrine supports petitioners’ reading for similar reasons. Under that doctrine, courts are “reluctan[t] to read into ambiguous statutory text’ extraordinary delegations of Congress’s powers,” particularly where the agency has never before exercised such authority. *Learning Res., Inc. v. Trump*, 607 U.S. 229, 242 (2026) (citations omitted). Never before has EPA asserted the power to revise the NAAQS off-cycle without a thorough review, a regulatory action that has enormous consequences for the national economy. See *supra* Statement II.B. That power is magnified by the CAA’s anti-backsliding provision, which can limit EPA’s ability to later relax the NAAQS in nonattainment areas. See *ibid.* Whatever else might be said about the language of section 109, it certainly contains no clear delegation of that much power, having spawned three competing interpretations in this case.

II. The D.C. Circuit wrongly held that EPA cannot consider costs and attainability in deciding whether to review and revise a NAAQS off-cycle.

The D.C. Circuit also erred by holding that EPA is prohibited from considering costs when deciding whether to review and revise a NAAQS off-cycle. In exercising that discretion, EPA must consider costs and attainability under *Michigan v. EPA*, 576 U.S. 743 (2015). EPA admits it did not. RTC 120, Pet. App. 483a.

Unless a statute clearly says otherwise, cost is a “centrally relevant factor” for agencies to consider “when deciding whether to regulate.” *Michigan*, 576 U.S. at 753. That is because “reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions.” *Ibid.* Those “disadvantages” include cost. See *ibid.* By extension, they include whether it is practicable, or even possible, to comply with the agency’s rule. See *All. for Cannabis Therapeutics v. Drug Enf’t Admin.*, 930 F.2d 936, 940 (D.C. Cir. 1991) (it is unreasonable to impose requirements that regulated parties cannot meet). Agencies must consider both factors unless Congress “expressly directs [them] to regulate on the basis of a factor that on its face does not include cost.” *Michigan*, 576 U.S. at 755–56.

At minimum, EPA was required to consider costs and attainability before deciding to conduct an off-

cycle review. Neither section 109(d)(1) nor section 109(b) expressly prohibits this. As construed in *Whitman*, section 109(b) prohibits EPA from considering costs when deciding *what level* to set for a NAAQS during an on-cycle review—since that level must be “requisite to protect the public health.” But section 109(b) says nothing about how EPA should decide the quite different question *whether* to conduct a voluntary off-cycle review. Accordingly, EPA’s failure to consider costs and attainability is an alternative ground for vacatur, as EPA conceded below. Mot. to Vacate 18–23.⁴

The D.C. Circuit erroneously concluded that *Whitman* was “controlling.” Pet. App. 33a–34a. There, this Court addressed the standard for “setting [NAAQS] under § 109(b)(1), which requires EPA to set

⁴ Like its confession of error on the first issue, EPA’s concession on this issue returned it to the executive branch’s longstanding understanding. The first time EPA attempted an off-cycle revision, President Obama and the OIRA Administrator instructed EPA not to finalize it, citing “regulatory costs and burdens.” Letter from C. Sunstein, Office of Information and Regulatory Affairs Administrator, to L. Jackson, EPA Administrator at 2 (Sept. 2, 2011), <https://tinyurl.com/3ykfcy7n> (last visited Aug. 26, 2026); see also Statement by the President on the Ozone National Ambient Air Quality Standards (Sept. 2, 2011), <https://tinyurl.com/ccdte5n7> (citing “regulatory burdens and regulatory uncertainty” when “withdraw[ing] the draft Ozone [NAAQS]”). The only other attempted off-cycle revision EPA abandoned in favor of a thorough review. Press Release, EPA Initiates New Review of the Ozone National Ambient Air Quality Standards to Reflect the Latest Science (Aug. 21, 2023), <https://tinyurl.com/mrhc329m> (last visited Aug. 26, 2026).

standards “requisite to protect the public health.” 531 U.S. at 462. *Whitman* held that this language “bars cost considerations from the NAAQS-setting process.” *Id.* at 471.

That holding does not control here. *Whitman* addressed how EPA should decide what “level” to set for a NAAQS during an on-cycle review—not whether to conduct a discretionary, off-cycle review at all. 531 U.S. at 462. Here, the problem is not just that EPA ignored costs and attainability when setting a level, but that EPA also ignored those factors when deciding whether to initiate the wholly optional off-cycle review that led to a lower level. *Whitman* had no occasion to address that issue, because the agency had undertaken a mandatory, on-cycle review, not a discretionary off-cycle review.

The D.C. Circuit acknowledged the difference between “*formulating* the NAAQS,” and the “*anterior* decision” of whether even to review them. Pet. App. 37a. But the court did “not see how” this difference “would permit the Administrator to consider costs at either stage.” *Ibid.* In other words, the court decreed both decisions—whether to review and what level to set—part of the same “NAAQS-setting process” and claimed that both were governed by *Whitman*. Pet. App. 36a.

But these two decisions are different. The costs of initiating a voluntary off-cycle review include, at least, the disruption to settled expectations, the burdens on States and regulated parties, and the risk

that anti-backsliding will lock in a stricter standard before the next on-cycle review. See *supra* pp. 11, Statement I. These are not the costs of setting a level during an on-cycle review, as EPA now concedes. Mot. to Vacate 19–20. They stem from EPA’s discretionary choice to depart from the five-year review cycle that Congress prescribed. Under *Michigan*, such discretionary choices require attention to costs.

By holding otherwise, the D.C. Circuit extended *Whitman*’s holding to conflict with *Michigan*. It also produced the very irrationality *Michigan* condemned: requiring EPA to ignore “billions of dollars in economic costs” when deciding whether to undertake a discretionary action it need not pursue. See 576 U.S. at 752. But if this Court concludes that *Whitman* controls in whole or in part, it should reconsider *Whitman*’s statutory and constitutional holdings.⁵

Further, by prohibiting the consideration of costs and attainability, the D.C. Circuit’s decision raises serious constitutional issues by reading the CAA to delegate discretion to decide to undertake a voluntary and disruptive off-cycle revision without *any* threshold guiding principles or constraints. See *Whitman*, 531 U.S. at 472 (“*Congress* must ‘lay down by legislative act an intelligible principle to which the

⁵ Cf. *Whitman*, 531 U.S. at 486-87 (Thomas, J., concurring) (“express[ing] ... concern that there may nevertheless be a genuine constitutional problem with § 109, a problem which the parties did not address”).

person or body authorized to act is directed to conform.”) (citation omitted).

III. The questions presented are exceptionally important.

Revisions to NAAQS have enormous consequences, creating a years-long domino effect that seriously burdens States and regulated parties. See *supra* Statement Section I.A. Implementing the initial NAAQS takes years, and requires all fifty States to submit area designations and SIPs—comprehensive regulatory regimes that are costly to create and require costly compliance after. *Id.* Put simply, SIPs impose “tremendous resource demands” and “huge administrative burdens.” *Env’t Comm. of Fla. Elec. Power Coordinating Grp., Inc. v. EPA*, 94 F.4th 77, 96 (D.C. Cir. 2024) (*per curiam*).

Revising a NAAQS requires States to redo this entire process, while also instantly tightening permitting requirements and subjecting prior nonattainment areas to the strictest standards nationwide. *Supra* Statement I.A. As noted, the immediate effect on pre-construction permitting applies both to new and pending applications. And for nonattainment areas, any new or modified sources must “comply with the lowest achievable emission rate.” 42 U.S.C. § 7503(a)(2). As also explained above, that means the most stringent emissions limit in *any* State’s SIP or achieved in practice. Revisions thus severely disrupt long-term infrastructure and industrial projects. *Supra* Statement I.A.

When EPA revises a NAAQS off-cycle, disruption is greater still, as States and regulated parties may still be implementing the *last* standard when they are forced to implement an even stricter standard. *Ibid.* Off-cycle revisions thus upend reliance interests across the regulatory system. States may still be developing SIPs for the prior standard when a further revision requires them to pivot—reevaluating area designations, revising emissions limits and control strategies, and redirecting resources to a new round of implementation. Major industrial projects, infrastructure investments, and long-term capital planning all depend on regulatory stability. An off-cycle revision can render years of planning and expenditure obsolete.

The questions presented concern two important safeguards on these off-cycle revisions. First, Congress required a thorough review for *all* revisions (on-cycle or off) precisely because of these immense consequences. If EPA wants to impose those consequences, it must rely on a thorough review of the latest science. Second, EPA must at least consider costs and attainability when launching a discretionary off-cycle review. The D.C. Circuit’s decision eliminates both protections: allowing EPA to upend regulatory regimes in all fifty States without fully understanding the science or considering costs and other consequences of an entirely voluntary action.

This Court has rigorously enforced similar safeguards on agency decision-making. The

requirements to provide a rational explanation, *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), to acknowledge a change in position, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016), and to address reliance interests, *Regents*, 591 U.S. at 30–33, all similarly ensure that the agency at least confronts, rather than ignores, important questions. The thorough-review requirement and the obligation to consider costs serve that same structural function.

Finally, both questions are even more important because EPA cannot readily correct errors through further rulemaking. The CAA’s anti-backsliding provision may effectively prevent EPA from relaxing an ill-considered standard—even if a subsequent, *thorough* review concludes that EPA should do so. See *supra* p. 11; 42 U.S.C. § 7502(e). That feature of the statutory scheme makes it all the more important for this Court to require EPA to comply with the statute, and avoid unlawful shortcuts, when it decides to revise a standard.

CONCLUSION

The petition for a writ of certiorari should be granted, as should the separate petition from the same judgment filed by the petitioner States.

August 28, 2026

Respectfully submitted,

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