Nos. 26-277, 26-298

In the Supreme Court of the United States

COMMONWEALTH OF KENTUCKY, *et al.*,
Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

CHAMBER OF COMMERCE, *et al.*,
Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

Consistent with federal agencies' general authority to revisit their decisions to correct mistakes or consider new evidence, Congress provided in the Clean Air Act that National Ambient Air Quality Standards (NAAQS) "may be revised" by the Environmental Protection Agency. 42 U.S.C. § 7409(b)(1)-(2). Congress also required EPA to complete a formal "thorough review" of the NAAQS "at five-year intervals" to ensure that NAAQS are up-to-date with scientific developments. *Id.* § 7409(d)(1). That "thorough review" process involves EPA consideration of the recommendations from an "independent scientific review committee"—recommendations that are provided at "five-year intervals." *Id.* § 7409(d)(2)(A)-(B).

The questions presented are:

1. Whether EPA may seek to revisit a prior NAAQS decision outside of the statutorily-required review occurring at five-year intervals, without undertaking a formal "thorough review" process and, if not, whether EPA's departure from that procedural requirement was harmless in the circumstances here.

2. Whether, in making the decision to review and revise a NAAQS outside of the statutorily-required review occurring at five-year intervals, EPA is required to consider costs and attainability—considerations that EPA is barred from evaluating when ultimately setting a NAAQS.

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INTRODUCTION

This case concerns a case-specific application of a longstanding principle of administrative law: agencies generally have broad authority to revisit their prior decisions to correct mistakes or consider new evidence. *See, e.g.*, *Motor Vehicle Mrs. Ass'n of the U.S. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). In 2021, EPA decided to reconsider a prior decision that rejected the recommendation of agency staff and other experts to strengthen the National Ambient Air Quality Standard (NAAQS) for fine particulate matter—that is, "$PM_{2.5}$." Because $PM_{2.5}$ particles are so small—about 1/30th the width of a human hair—they can lodge deep in the lungs and even enter the bloodstream. Exposure to excessive $PM_{2.5}$ can be enormously damaging to the human body, leading to heart disease, heart failure, and premature death, among other adverse health effects. In 2024, after reconsidering its prior decision, EPA concluded the NAAQS was inadequate to protect public health and issued a new rule that strengthened the standard.

In that reconsideration process, EPA comprehensively considered the scientific record from its prior decision and supplemented it to include new studies on the most relevant categories of evidence. For example, EPA evaluated studies examining the effects of $PM_{2.5}$ on mortality and cardiovascular health, which have a causal relationship to $PM_{2.5}$ exposure. EPA opted not to update the record with less relevant evidence, such as new studies on other health effects with a less-than-causal relationship to emissions exposure. EPA knew that such evidence would not drive its decision and that it would be required to consider that evidence in short order as part of the formal "thorough review"

process, which the Clean Air Act (CAA) requires EPA to undertake every five years.

There is no sensible reason for the Court to grant certiorari and review the D.C. Circuit's unanimous decision upholding EPA's 2024 revision. This Court has denied many similar requests to review cases concerning NAAQS. *See, e.g.*, *Util. Air Regul. Grp. v. EPA*, 574 U.S. 814 (2014) (No. 13-1235); *Am. Petroleum Inst. v. EPA*, 569 U.S. 904 (2013) (No. 12-760); *ASARCO LLC v. EPA*, 568 U.S. 1143 (2013) (No. 12-510). It should do the same here.

Although petitioners assert that the case raises questions "of great importance," *e.g.*, Ky. Pet. 13, they make no attempt to show that EPA erred in a material way. Their main argument is that EPA's review was procedurally inadequate because the agency did not conduct the sort of "thorough," exhaustive literature review that it undertakes every five years—a process that involves evaluating many studies that ultimately end up being irrelevant to EPA's final NAAQS-setting decision. Here, however, petitioners do not argue that EPA's targeted review "overlooked an important scientific study." Pet. App. 36a.[1] Indeed, petitioners do not identify *any* scientific evidence that EPA omitted from its reconsideration process that, in their view, would have changed the agency's ultimate decision.

Petitioners thus invoke a procedural requirement purely for the sake of procedural formality—not to further the "thorough review" requirement's "obvious" objective, which is "to ensure NAAQS do not fall too far behind the evolving scientific evidence." Pet. App.

[1] References to "Pet. App." are to the appendix in No. 26-277, except where otherwise noted.

20a. This Court has cautioned against using environmental statutes in that way—to accomplish ends unrelated to "concern for the environment." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 183 (2025). "[A]dministrative proceedings should not be a game or a forum to engage in unjustified obstructionism." *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978).

There is also no practical need for this Court's review because EPA can itself revisit its 2024 decision if there is an appropriate basis to do so. The current administration has already initiated that process. Petitioners' response is that certain areas—specifically, those in "nonattainment"—will be locked into requirements under the 2024 standard due to the CAA "anti-backsliding" provision, even if the standard is revisited. But only 68 counties—out of over 3,100 across the Nation—currently fall short of the 2024 standard. And many of those are in States, like California, that support the revised, strengthened NAAQS.

The decision below was also correct. Petitioners' first argument is that EPA failed to engage in a formal "thorough review" process when reviewing the $PM_{2.5}$ NAAQS "mid-cycle," meaning outside the five-year interval when EPA is statutorily required to review the NAAQS. But Section 109(b) grants EPA broad authority to revise NAAQS, 42 U.S.C. § 7409(b)—authority that encompasses the power to undertake a targeted mid-cycle revision. And as EPA acknowledges, *see* Br. for Fed. Resps. 6, the "thorough review" process involves EPA consideration of recommendations from an independent scientific review committee. The CAA calls for that committee process to occur "at five-year intervals"; Congress did not contemplate that it would occur during mid-cycle reviews. 42 U.S.C.

§ 7409(d)(2)(B). Even if a "thorough review" were required, moreover, any departure would be harmless here given petitioners' failure to show (or even argue) that consideration of additional evidence would have changed the result.

Petitioners' second argument has taken different forms throughout this litigation, but fails no matter how the Court construes it. At times, petitioners have suggested that EPA needed to consider costs when revising the NAAQS *in 2024*. Petitioners now mostly focus on the theory that EPA should have considered costs when initiating a mid-cycle review *in 2021*. The first theory is plainly contrary to *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), which held that EPA may not consider costs when setting NAAQS. It is not logically possible to distinguish between *revising* a standard and *setting* the standard because a NAAQS revision plainly requires EPA to set the NAAQS at a particular level.

The second theory fails as well. EPA's discretionary decision to initiate a mid-cycle review bears a striking resemblance to agency reconsideration decisions historically treated as committed to agency discretion by law. And even if judicial review of that type of decision were available, it would not make sense to inject cost considerations into EPA's process. That approach would force EPA to evaluate costs at the early review-initiation stage—when the agency has comparatively little information about scope and effects of possible NAAQS—only to bar the agency from considering costs at the final, NAAQS-setting stage. In any event, the question is purely academic here because EPA performed a cost-benefit analysis for public informational purposes and concluded that benefits will exceed costs by hundreds of billions of dollars.

STATEMENT

1. In 1970, Congress amended the CAA. *See* Pub. L. No. 91-604, 84 Stat. 1676 (1970). One provision enacted by those amendments—Section 108—requires EPA to "issue air quality criteria" for certain pollutants. 42 U.S.C. § 7408(a)(2). Air quality criteria "shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health" "from the presence of such pollutant[s]." *Id.*

The 1970 amendments also require EPA to promulgate NAAQS for pollutants for which criteria have been issued. 42 U.S.C. § 7409(a). Under Section 109(b), primary NAAQS "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." *Id.* § 7409(b)(1).[2] Consistent with agencies' general authority to revisit their decisions to correct mistakes or consider new evidence, *see, e.g.*, *Motor Vehicle Mrs. Ass'n*, 463 U.S. at 42, Section 109(b) further provides that NAAQS "may be revised in the same manner as promulgated." 42 U.S.C. § 7409(b)(1)-(2).[3]

In 1977, Congress again amended the CAA and added Section 109(d)(1). *See* Pub. L. No. 95-95, § 106, 91 Stat. 685, 691 (1977). The first sentence of Section 109(d)(1) requires EPA, "at five-year intervals," to "complete a thorough review of the criteria" and "the national ambient air quality standards," and to "make

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[2] Secondary NAAQS, which are not at issue here, are standards "requisite to protect the public welfare." 42 U.S.C. § 7409(b)(2).

[3] The "manner" in which NAAQS are "promulgated" is through a notice-and-comment process. 42 U.S.C. § 7409(a).

such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with" Section 108 and Section 109(b). 42 U.S.C. § 7409(d)(1). The second sentence provides: "The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph." *Id.*

The 1977 amendments also added Section 109(d)(2). That provision requires EPA to "appoint an independent scientific review committee," 42 U.S.C. § 7409(d)(2)(A), which is known as the Clean Air Scientific Advisory Committee (CASAC). The role of CASAC is "[t]o assist in the 'thorough review'" process, Br. for Fed. Resps. 6, by reviewing the criteria and standards and making recommendations to EPA, 42 U.S.C. § 7409(d)(2)(B). Although the CAA does not define the "thorough review" mentioned in Section 109(d)(1), the statute makes clear that CASAC conducts its review and provides recommendations to EPA—which informs the "thorough review" process—at "five-year intervals." *Id.* § 7409(d)(2)(B).

EPA's "thorough review" process also involves documenting the criteria in an Integrated Science Assessment. That document exhaustively evaluates recent scientific literature on all of the pollutant's effects. C.A. J.A. 447. Over hundreds of pages, an Integrated Science Assessment can include analysis of everything from cardiovascular effects to effects on building materials. *See, e.g.*, EPA, *Integrated Science Assessment for Particulate Matter* 6-1, 13-77 (Dec. 2019), https://perma.cc/DY8F-ER6W. Of all the studies evaluated by EPA when assembling such an assessment, however, "there are only a small number of critical scientific studies" that ultimately end up playing an important role in setting the NAAQS. Comment from

CASAC Member Dr. James Crapo 1 (Mar. 20, 2006), https://perma.cc/P6VX-GZ76.[4]

Once EPA sets a NAAQS, each State makes recommendations for designating areas as "nonattainment," "attainment," or "unclassifiable." 42 U.S.C. § 7407(d)(1)(A). A nonattainment area is "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet)" the standard. *Id.* § 7407(d)(1)(A)(i). An attainment area is an area that meets the NAAQS, *id.* § 7407(d)(1)(A)(ii), while an unclassifiable area is an area that "cannot be classified on the basis of available information," *id.* § 7407(d)(1)(A)(iii). EPA can make modifications to States' recommendations and must generally promulgate designations within two years of the NAAQS' promulgation. *Id.* § 7407(d)(1)(B).

After that, the CAA's cooperative federalism regime "shifts the burden to States" to implement the standard. *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 498 (2014). Within three years of the standard's promulgation, each State must adopt and submit to EPA a State Implementation Plan (SIP), or else EPA will promulgate its own plan. 42 U.S.C. § 7410(a)(1), (c)(1)(A). The SIP must explain how any nonattainment areas will eventually come into compliance with the NAAQS. *Id.* § 7502(c). "Each State is given wide discretion in formulating its" SIP. *Union Elec. Co. v. EPA*, 427 U.S. 246, 250 (1976).

In areas designated attainment or unclassifiable, stationary sources, such as factories and power plants, are subject to the Prevention of Significant Deterioration (PSD) program. *Util. Air Regul. Grp. v. EPA*, 573

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[4] *See also* Pruitt, *Back-to-Basics Process for Reviewing NAAQS* 7-8 (May 9, 2018), https://perma.cc/M6XN-QVYV (similar).

U.S. 302, 308 (2014). Under that program, "[i]t is unlawful to construct or modify a 'major emitting facility'" "without first obtaining a permit." *Id.* at 308-309 (quoting 42 U.S.C. § 7475(a)(1)). To qualify for a permit, "the facility must not cause or contribute to the violation of any applicable" NAAQS. *Id.* at 309.

2. a. In 1997, EPA promulgated the first NAAQS for $PM_{2.5}$. 62 Fed. Reg. 38,652 (July 18, 1997). There is "[a] large body of scientific evidence spanning many decades [that] clearly demonstrates there are health effects attributed to" $PM_{2.5}$ exposure. C.A. J.A. 470. Because $PM_{2.5}$ particles are incredibly small, they "can be inhaled" and "get deep into your lungs" and even "your bloodstream." EPA, *Particulate Matter (PM) Basics* (Sept. 18, 2026), https://perma.cc/REG3-9TMV. Exposure to $PM_{2.5}$ can "cause serious health problems," *id.*—such as inflammation that leads to heart disease and heart failure, C.A. J.A. 880.

In 2014, EPA began a statutorily-required five-year review of the $PM_{2.5}$ criteria and primary annual NAAQS, which had been set at 12.0 $\mu g/m^3$. 85 Fed. Reg. 82,684, 82,689 (Dec. 18, 2020). As part of that process, EPA updated the criteria by issuing the 2019 Integrated Science Assessment. *Id.* Key studies evaluated in the Assessment showed "statistically significant health effect associations" at mean concentrations below 12.0 $\mu g/m^3$. C.A. J.A. 1207.

Based on the 2019 Assessment, EPA staff concluded that the scientific evidence "call[ed] into question the adequacy" of the "primary $PM_{2.5}$ standards," and that it was "appropriate to consider revising the level of the current annual standard." C.A. J.A. 1207-1208. Members of an independent panel that had previously advised CASAC similarly concluded that the NAAQS "should be revised to a range of 10 $\mu g/m^3$ to 8

$\mu g/m^3$." C.A. J.A. 368. And CASAC itself—composed of newly appointed members, C.A. J.A. 401—split on whether to retain or lower the NAAQS, Pet. App. 12a.

Nonetheless, in late 2020, EPA decided to retain the standard at the level of 12.0 $\mu g/m^3$. 85 Fed. Reg. at 82,718. EPA cited "considerable uncertainty in the potential for additional public health improvements" if the NAAQS were lowered. *Id.* at 82,708. EPA's 2020 rule drew petitions for reconsideration, which are still pending. C.A. J.A. 1321, 1455.

b. In 2021, after a change in administrations, EPA announced that it had decided to reconsider, before the next five-year review, the decision to retain the NAAQS. Pet. App. 13a. EPA explained that it was concerned that the NAAQS was not adequate to protect public health as required by the CAA. 89 Fed. Reg. 16,202, 16,210 (Mar. 6, 2024). The agency emphasized that, as part of the recent five-year review, agency staff had "concluded that the scientific evidence and information" "support[ed] revising the level to below the current level." *Id.* EPA also determined that it would be appropriate to consider recent scientific studies. *Id.* at 16,211.[5]

As part of its reconsideration, EPA issued a Supplement to the 2019 Assessment. C.A. J.A. 1837. The Supplement evaluated studies published since the 2019 Assessment that were "of greatest significance for informing" the NAAQS decision. C.A. J.A. 1580.

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[5] EPA had previously announced similar plans to reconsider a NAAQS mid-cycle (though the agency ultimately abandoned those proposals). *See* 75 Fed. Reg. 2,938 (Jan. 19, 2010); EPA, *EPA Initiates New Review of the Ozone NAAQS to Reflect the Latest Science* (Aug. 20, 2023), https://perma.cc/BE43-9TWF; EPA's Mot. to Continue Oral Argument 6, *Murray Energy Corp. v. EPA*, 936 F.3d 597 (No. 15-1385).

For example, EPA focused on health effects where the Assessment had found a "causal relationship" with $PM_{2.5}$: cardiovascular effects and mortality. *Id.* Evidence of health effects with a causal relationship is "given the most weight" in EPA's NAAQS decisionmaking, as opposed to effects with a less-than-causal relationship. *Id.* at 1606. EPA also focused on studies "address[ing] key scientific topics"—such as at-risk populations—"where the literature has evolved since the 2020 review." *Id.* at 1579-1580.

The Supplement found that recent studies both "support[ed]" and "extend[ed]" the causal relationship between $PM_{2.5}$ exposure and cardiovascular effects and mortality. C.A. J.A. 1846. Some of the recent studies also "reduce[d] uncertainties" presented in the 2019 Assessment. *E.g.*, *id.* at 1918. And like the studies evaluated in the Assessment, the more recent studies continued to show alarming health effects at concentrations of $PM_{2.5}$ below 12.0 $\mu g/m^3$. *Id.* at 1648-1663. The reconstituted CASAC reviewed the scientific evidence, *see* 89 Fed. Reg. at 16,212, and unanimously concluded that the 12.0 $\mu g/m^3$ standard should be lowered, Pet. App. 13a-14a. CASAC also concluded that the Supplement was a "comprehensive evaluation of the new scientific information published since the 2019 [Assessment]" that "deserve[d] [EPA's] full consideration." 89 Fed. Reg. at 16,212.

In 2024, EPA promulgated a rule that revised the primary annual NAAQS for $PM_{2.5}$ by lowering it to 9.0 $\mu g/m^3$. 89 Fed. Reg. at 16,203. EPA relied both on the 2019 Assessment and the more recent Supplement in promulgating the rule, explaining that the evidence collectively showed that the existing standard "is not adequate" to protect public health as required by the CAA. *Id.* at 16,256. EPA estimated that, each year,

the 2024 rule will avoid thousands of premature deaths and many other adverse health effects. EPA, *Final Regulatory Impact Analysis* 17 (2024), https://perma.cc/C656-F9P3. And although the CAA does not allow EPA to set the NAAQS based on cost-related concerns, EPA published a regulatory impact analysis with an assessment of costs to provide information for the public. 89 Fed. Reg. at 16,206. EPA concluded that the benefits of the revised NAAQS would exceed the costs by at least $280 billion—and as much as $540 billion, depending on the discount rate—over the 20-year period running from 2032 to 2051. *Final Regulatory Impact Analysis*, *supra*, at 27.

In adopting the revised NAAQS, EPA rejected criticisms and proposals from both industry groups and environmental organizations. Certain industry groups urged EPA to retain the existing NAAQS of 12.0 μg/m^3. *See, e.g.*, C.A. J.A. 2640. Meanwhile, a number of environmental organizations argued that EPA should set the standard at no higher than 8.0 μg/m^3. *Id.* at 2174. They pointed to recent studies reporting associations between "cardiovascular mortality" and "stroke mortality" at concentrations nearing that level. *Id.* at 2175.

c. Two sets of parties—one composed of States and the other composed mostly of industry groups—petitioned for review of the 2024 rule in the D.C. Circuit. *See* 42 U.S.C. § 7607(b)(1). EPA defended the rule, and another group of States and local governments, as well as a group of health, environmental, and community nonprofits, intervened in the rule's defense.

While the case was pending, there was a change in administrations. In early 2025, after oral argument had been held, EPA informed the court of appeals that it would "initiate a new notice-and-comment process

revisiting the challenged rule" and asked for the case to be held in abeyance. Abeyance Mot. 4 (Apr. 29, 2025). A few months later, EPA reported that it "expect[ed] to sign a proposed rule in the Fall of 2025" and was "targeting signature of any final rule by February of 2026." Abeyance Mot. 2 (Aug. 13, 2025). But EPA then filed a motion "confess[ing] error" and asking the court to vacate the 2024 rule. Vacatur Mot. 1 (Nov. 24, 2025). It argued that its rulemaking plans were "irrelevant" because it "now agrees with Petitioners." Reply 17 (Dec. 23, 2025).

In an opinion by Judge Ginsburg, the court of appeals unanimously denied the petitions for review and EPA's motion for vacatur. Pet. App. 1a-38a. The court first rejected petitioners' argument that, when EPA revises a NAAQS mid-cycle, it must undertake the formal "thorough review" required as part of a five-year review. Under Section 109(b), EPA "indisputably had authority to revise" NAAQS. Pet. App. 19a; *see* 42 U.S.C. § 7409(b)(1)-(2). As to Section 109(d)(1), the court determined that the first sentence requires EPA to complete a "thorough review" every five years as an "action-forcing device to ensure NAAQS do not fall too far behind the evolving scientific evidence." Pet. App. 20a. The court further held that the second sentence of Section 109(d)(1)—which provides that EPA "may review and revise criteria or promulgate new standards earlier or more frequently," 42 U.S.C. § 7409(d)(1)—clarifies that the first sentence does "not limit [EPA's] authority to revise a standard sooner." Pet. App. 20a-21a. The court rejected petitioners' arguments for "importing the 'thorough review' requirement into the second sentence." *Id.* at 23a.

The court of appeals also rejected petitioners' argument that EPA erred by not considering costs and attainability. The court emphasized that *Whitman*, 531 U.S. at 464-471, "rejected similar efforts to inject considerations unrelated to public health into the NAAQS-setting process." Pet. App. 28a. As to petitioners' contention that interpreting the CAA to preclude cost considerations violates the non-delegation doctrine, the court explained that this argument was similarly foreclosed by *Whitman*. Pet. App. 31a n.7.

ARGUMENT

I. PETITIONERS VASTLY OVERSTATE THE LEGAL AND PRACTICAL CONSEQUENCES OF THIS CASE

1. Petitioners overstate their case in arguing that review is appropriate because of "what's at stake." Ky. Pet. 13; *see* Chamber Pet. 42-44. Although petitioners argued below that EPA's NAAQS revision was arbitrary and capricious because it was "insufficiently supported by the evidence," Pet. App. 33a, the court of appeals rejected that contention, *id.* at 36a-38a, and petitioners do not seek further review. Nor do they argue that the revised NAAQS is otherwise contrary to any of the CAA's substantive requirements.

Petitioners instead raise procedural questions—questions that arose here due to unusual circumstances that are unlikely to occur with any great frequency in the future. Both questions presented concern EPA's voluntary reconsideration and revision of a NAAQS outside of a statutorily-required five-year review. Although EPA has on other occasions announced an intent to voluntarily reconsider a NAAQS in between five-year reviews, this is the first time EPA has actually revised a NAAQS in that context. *See* EPA C.A. Br. 79-80 (Oct. 15, 2024); *supra* p. 9 n.5. The

circumstances that led to EPA's action here were uncommon: During the five-year review preceding the revision, agency staff and other expert scientists had found that the scientific evidence called into question the primary annual $PM_{2.5}$ NAAQS, yet EPA nonetheless decided to retain the standard. *Supra* pp. 8-9. And there were "scientific studies" post-dating EPA's decision that were "likely to require a change in the standard." Pet. App. 23a.

The Court's review would also have limited real-world impact for other reasons. The first question presented—whether a formal "thorough review" process is required during mid-cycle reconsiderations—will make little, if any, difference in most cases. If EPA fails to consider relevant studies during a mid-cycle review, that can be redressed through a challenge on arbitrary-and-capricious grounds or under the CAA's requirement that NAAQS be grounded in scientific evidence. Pet. App. 25a; *infra* p. 27. And in this case in particular, any departure from the "thorough review" requirement was harmless. Petitioners' statutory theory is that EPA's review was insufficiently "thorough" because it failed to review all scientific literature post-dating the 2019 Assessment. *See, e.g.*, Chamber Pet. 15. But petitioners have "not claim[ed] the Administrator overlooked an important scientific study" that could have plausibly led to a different result. Pet. App. 36a; *see id.* at 24a n.6.

Nor could petitioners credibly make any such argument. EPA considered "recent studies deemed to be of greatest significance" to the NAAQS decision, C.A. J.A. 1580, and determined that the NAAQS was inadequate to protect public health. *Supra* p. 10. Review of additional, *less relevant* studies would have "delay[ed] but not improve[d] the result." Pet. App. 24a;

see Comment from CASAC Member Dr. James Crapo, *supra*, at 1 (even in "thorough review," there are "only a small number of critical scientific studies"). EPA carefully evaluated recent scientific literature on health effects with a documented causal relationship to $PM_{2.5}$—mortality and cardiovascular effects—which "are given the most weight in an Administrator's decisions in a NAAQS review." C.A. J.A. 1606. Studies on other health effects, such as respiratory and reproductive effects, would have (if anything) provided added support for EPA's decision. *See id.* at 1463-1464.

Moreover, if petitioners were to prevail on their "thorough review" argument, *but see infra* pp. 19-28, the appropriate remedy would not be vacating the NAAQS revision. It would at most be a remand without vacatur to EPA to conduct a "thorough review" process. *See generally Allied–Signal, Inc. v. Nuclear Regul. Comm'n*, 988 F.2d 146, 150-151 (D.C. Cir. 1993). Alternatively, EPA could simply undertake forthwith its ordinary five-year "thorough review"—because the last such review was completed more than five years ago, in 2020. *See Murray Energy Corp. v. EPA*, 936 F.3d 597, 606 (D.C. Cir. 2019) (describing EPA decision to "consolidate[]" remand of NAAQS revision with ongoing five-year review). Either way, the revision challenged here would remain in effect during the pendency of EPA's review.

Petitioners' second question presented is also unlikely to make much, if any, practical difference—either generally or in this specific case. Petitioners' main argument is that EPA must consider costs and attainability in exercising discretion to initiate a mid-cycle NAAQS reconsideration. *Infra* pp. 28-29. At that point—when the only decision EPA is evaluating is whether to *begin* a reconsideration process—it will

be challenging for the agency to estimate costs and attainability with much accuracy. *Infra* pp. 31-32. And it is difficult to imagine preliminary, amorphous cost and attainability considerations playing a significant role in EPA's decisionmaking process.

Here, it is also difficult to imagine cost considerations providing a basis to vacate or reconsider the 2024 NAAQS revision because EPA has already analyzed costs and concluded that they pale in comparison to the benefits. Although EPA cannot base its NAAQS decisions on cost considerations, *see Whitman*, 531 at 464-471, the agency prepared a regulatory impact analysis "to provide the public with information," 89 Fed. Reg. at 16,206. That analysis shows that the benefits of the revised NAAQS will exceed costs by $280-$540 billion. *Final Regulatory Impact Analysis*, *supra*, at 27. And that figure likely overstates the costs: it does not account for the fact that, when States implement the NAAQS, they may adopt strategies that lower costs even further—for example, by collaborating on interstate trading programs that enable cost-effective emissions reductions. *See, e.g.*, *id.* at 327; Br. of State Amici at 9-15, *Murray Energy Corp.*, 936 F.3d 597 (D.C. Cir. 2019) (No. 15-1385).

Petitioners and EPA have no convincing response. Most of their arguments about consequences relate to NAAQS in general, not the particular revision challenged here. For example, petitioners argue that EPA's decision affects many States and localities. *See, e.g.*, Ky. Pet. 14. But under the CAA's cooperative-federalism regime, *any* change to the NAAQS will require States and localities to take various implementation steps. *Supra* p. 7. And given the nationwide scope of the NAAQS, any strengthening of standards will inevitably impose some economic costs. *Cf.* Ky. Pet. 13-16;

Chamber Pet. 42-43. But the mere fact "that the challenged . . . rulemaking will impose economic costs does not call for further review," Br. for Fed. Resps. in Opp. at 15, *Am. Petroleum Inst.*, 569 U.S. 904 (No. 12-760), especially in a case like this one, in which we already know that benefits vastly exceed costs.

2. Even if the consequences of EPA's 2024 revision provided cause for concern, the agency has the tools to resolve petitioners' challenge without this Court's involvement. EPA has recognized as much. Below, EPA announced its intent to revisit the 2024 rule and asked for the case to be held in abeyance. *Supra* pp. 11-12. EPA even represented that it was mere weeks or months away from "sign[ing] a proposed rule." Abeyance Mot. 2 (Aug. 13, 2025). At the time, EPA pointed out that "revisiting" the rule could "obviate the need for judicial resolution." *Id.* at 3. That remains true today. Although EPA has deemed its planned rulemaking "irrelevant" because it "now agrees with Petitioners," Reply 17 (Dec. 23, 2025), it is still the case that there is no need for this Court to spend its time and resources on a matter that EPA can itself resolve.

Indeed, there can be little doubt that EPA will soon revisit the 2024 decision because the last five-year review of the primary annual NAAQS for $PM_{2.5}$ concluded in 2020, meaning that EPA is now *required* to conduct the next such review of that standard. *See* 42 U.S.C. § 7409(d)(1). The five-year review provides another avenue through which EPA could revise the rule and address petitioners' challenge. EPA suggests in passing that "the obligations triggered by the NAAQS revision here detract" from its ability to conduct any such review, Br. for Fed. Resps. 26, but the agency has previously managed to implement a newly-revised NAAQS and conduct a five-year review at the same

time. *See* 85 Fed. Reg. at 82,688-82,689 (five-year review from 2007-2012); 73 Fed. Reg. 66,964 (Nov. 12, 2008) (NAAQS revision in 2008).

EPA and petitioners also contend that the CAA's anti-backsliding provision will "likely constrain" EPA's "ability to undo . . . regulatory burdens" stemming from the 2024 rule if this Court does not grant review here. Br. for Fed. Resps. 27; *see* Chamber Pet. 11, 41. But the anti-backsliding provision does not apply to all "regulatory burdens" imposed by the CAA. Once EPA relaxes a NAAQS, that lifts associated PSD requirements for new or modified facilities in areas that attain the standard or are unclassifiable. *See* 42 U.S.C. §§ 7471, 7502(e); *supra* pp. 7-8.

EPA and petitioners focus on requirements imposed on emitters in areas in nonattainment with the relevant NAAQS. *See, e.g.*, Br. for Fed. Resps. 7-8, 27. But the impact of those requirements is likely to be quite limited. EPA's own statistics show that only 68 counties—of more than 3,100 counties in the country—currently exceed the standard. *See* EPA, *2023-2025 PM2.5 Design Values* (Oct. 7, 2026), https://perma.cc/TFG6-RP9H. And EPA has projected that by 2032, only 52 counties will be in nonattainment. *See Final Regulatory Impact Analysis*, *supra*, at 70-71. Most of those counties are in States, like California, that *support* the revised NAAQS. *See id.* at 71, 176. And even without the anti-backsliding provision, those States could choose to more stringently regulate $PM_{2.5}$ under state law if EPA decided to relax the NAAQS. *See Union Elec. Co.*, 427 U.S. at 263-264.

II. THE D.C. CIRCUIT'S UNANIMOUS OPINION WAS CORRECT ON THE MERITS

The main argument that petitioners and EPA present in support of certiorari is that "[t]he court of appeals erred." Br. for Fed. Resps. 12; *see* Chamber Pet. 21-42; Ky. Pet. 16-32. But this is "not a court of error correction." *Martin v. Blessing*, 571 U.S. 1040, 1045 (2013) (Alito, J., respecting denial of certiorari). And petitioners' assertions of error do not withstand scrutiny in any event. The Court need not expend its limited resources to confirm that the D.C. Circuit correctly rejected petitioners' arguments.

1. a. The court of appeals was right to hold that EPA has authority to revise a NAAQS outside of the five-year review process without completing a formal "thorough review." *See* Pet. App. 19a-26a. Agencies typically have broad authority to revisit their prior decisions to correct mistakes and consider new evidence. *See, e.g.*, *Motor Vehicle Mrs. Ass'n*, 463 U.S. at 42; *Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) (Kavanaugh, J.). When agencies exercise that authority, they generally need not expand the record in any particular way, so long as they provide a reasoned basis for their decision. *See, e.g.*, *ICC v. Bhd. of Locomotive Eng'rs*, 482 U.S. 270, 280 (1987) (describing reconsideration "on the ground of 'material error'" as being "on the same record that was before the agency when it rendered its original decision").

Here, Congress made clear that EPA possesses that ordinary authority. When Congress amended the CAA in 1970 to require EPA to issue NAAQS, *supra* p. 5, it provided in Section 109(b) that NAAQS "*may be revised* in the same manner as promulgated." 42 U.S.C. § 7409(b)(1)-(2) (emphasis added). EPA

acknowledges that at the time of Section 109(b)'s enactment, that provision "confirm[ed]" EPA's "authority to revise existing NAAQS." Br. for Fed. Resps. 17.

In 1977, Congress again amended the CAA and added Section 109(d)(1). Its first sentence requires EPA, "at five-year intervals," to "complete a thorough review of the criteria" and "the national ambient air quality standards," and to "make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with" Sections 108 and 109(b). 42 U.S.C. § 7409(d)(1). The "obvious" point of that sentence is to ensure that EPA "comprehensively evaluate[s]" criteria and standards "on a regular basis," such that "NAAQS do not fall too far behind the evolving scientific evidence." Pet. App. 20a. The second sentence of Section 109(d)(1) then provides: "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(d)(1).

The adoption of Section 109(d)(1) did nothing to displace EPA's preexisting authority under Section 109(b) to revisit NAAQS through a targeted process to correct mistakes or consider new evidence. "It is well settled" that "repeals by implication are not favored, and will not be found unless an intent to repeal is clear and manifest." *Rodriguez v. United States*, 480 U.S. 522, 524 (1987) (citation and internal quotation marks omitted). And here, Section 109(d)(1)'s second sentence expressly "clarif[ies]" that the first sentence "does not limit [EPA's] authority to revise a standard sooner" as part of a targeted, voluntary reconsideration. Pet. App. 20a-21a.

While it makes perfect sense that Congress required EPA to conduct exhaustive literature reviews

periodically, there would be no good reason to require EPA to undertake a "thorough review" mid-cycle merely to correct a discrete mistake or consider new evidence. By analogy, a public company must conduct regular comprehensive audits—but may of course conduct targeted investigations of any irregularities that it discovers in between audits. As this case illustrates, EPA can reach a well-reasoned, scientifically supported mid-cycle decision by supplementing the prior record with recent studies addressing the most relevant evidence. And in other cases, where EPA discovers a discrete mistake that has nothing to do with the scientific literature, requiring a "thorough review" would be altogether pointless. *Cf.* Bress, Note, *Administrative Reconsideration* 91 Va. L. Rev. 1737, 1751-1755 (2005) (discussing reconsideration where an agency discovers a prior decision was tainted by fraud or based on a mistaken statutory interpretation).

Section 109(d)(2) provides further confirmation that a "thorough review" is required only as part of five-year reviews, not mid-cycle reviews. That provision requires appointment of an "independent scientific review committee," called CASAC, to study the criteria and standards, and make recommendations to EPA for "revisions of existing criteria and standards." 42 U.S.C. § 7409(d)(2)(A)-(B). As EPA acknowledges, CASAC's recommendations "assist in the 'thorough review'" process required by Section 109(d)(1). Br. for Fed. Resps. 6. Section 109(d)(2) makes clear that CASAC provides its recommendations "at five-year intervals." 42 U.S.C. § 7409(d)(2)(B). That provides powerful textual evidence that Congress contemplated

"thorough review" would be required every five years, but not during mid-cycle reviews.[6]

b. Even if a "thorough review" were required for mid-cycle reconsiderations, any departure from that requirement would be harmless here. The CAA provides that, as to any "action found to be" "without observance of procedure required by law," 42 U.S.C. § 7607(d)(9)(D), the action may be reversed only if the error was "so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made," *id.* § 7607(d)(8). That harmless-error standard is "tailor-made to undo any rigid presumption of vacatur that might apply in other contexts." *Ohio v. EPA*, 603 U.S. 279, 318 (2024) (Barrett, J., dissenting) (internal quotation marks omitted).

The standard applies here, as "thorough review" is plainly a "procedure required by law." 42 U.S.C. § 7607(d)(9)(D); *see id.* § 7607(d)(8).[7] And petitioners have not even "claim[ed] the Administrator overlooked an important scientific study." Pet. App. 36a; *see id.* at 24a n.6. They certainly do not argue that there is

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[6] To be clear, nothing in the CAA forbids CASAC from providing recommendations during mid-cycle reviews, as EPA's reliance on CASAC in this case illustrates. *Supra* p. 10. But in making the CASAC process an indispensable part of "thorough review," and expressly requiring the CASAC process to occur only on five-year intervals, Congress strongly signaled that the "through review" requirement was intended to apply only in five-year reviews.

[7] *See, e.g.*, *George E. Warren Corp. v. EPA*, 159 F.3d 616, 626 (D.C. Cir. 1998) (applying CAA's harmless-error standard where party argued agency had failed to consider "all relevant medical and scientific evidence" as required by statute).

any scientific evidence showing a "substantial likelihood" that the challenged rule "would have been significantly changed" if EPA had undertaken the "thorough review" process. 42 U.S.C. § 7607(d)(8). Although EPA has acknowledged that its reconsideration process was not "thorough" in a formal statutory sense, *see* EPA C.A. Br. 31 (Oct. 15, 2024), its review was certainly "thorough" in the ordinary sense of the word: the agency comprehensively considered not only the full record assembled in 2020, but also additional studies on health effects with a documented causal relationship to $PM_{2.5}$. *Supra* pp. 9-10.[8]

c. The counterarguments advanced by petitioners and EPA lack merit. At the outset, petitioners—but not EPA—contend that the court of appeals erred in considering Section 109(b). Petitioners assert that *SEC v. Chenery Corp.*, 318 U.S. 80 (1943), barred the court from considering that provision because EPA "never relied on" it in the rulemaking. Chamber Pet. 27; *see* Ky. Pet. 25. That is incorrect. Pet. App. 20a n.5. In responding to comments during the rulemaking, EPA "note[d] that section 109(b) provides that NAAQS 'may be revised in the same manner as promulgated.'" Chamber Pet. App. 482a. EPA "underst[ood] this provision to authorize the Administrator to revise the NAAQS." *Id.*

[8] Any noncompliance with the "thorough review" requirement would also be harmless for another reason: EPA could have simply revised the NAAQS by granting a pending petition for reconsideration under 42 U.S.C. § 7607(d)(7). Nothing in that provision suggests EPA must undertake a new "thorough" review before revising a NAAQS. And there were—and still are—pending petitions for reconsideration from the 2020 decision not to strengthen the NAAQS. *Supra* p. 9.

Petitioners also err in contending that the court of appeals violated the party presentation principle by considering Section 109(b). *E.g.*, Chamber Pet. 25-26. According to petitioners, EPA did not rely on Section 109(b) when it was still defending the rule in court and then "affirmatively disclaimed this theory" after it changed positions. *E.g.*, *id.* at 26. But the States and local governments that intervened to defend the rule *did* rely on Section 109(b). *See* C.A. Br. of State and Local Governments 4 (Oct. 15, 2024). And intervenors, of course, "are considered parties." *Diamond v. Charles*, 476 U.S. 54, 68 (1986). In any event, the party presentation principle is "supple, not ironclad," and there are "circumstances in which a modest initiating role for a court is appropriate." *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020); *see, e.g.*, *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025).

Apart from those "antecedent and factbound questions"—which at a minimum, would complicate the Court's review of the merits, *Scenic Am., Inc. v. Dep't of Transp.*, 138 S. Ct. 2, 3 (2017) (Gorsuch, J., respecting denial of certiorari)—petitioners and EPA contend that the court of appeals misunderstood Section 109(b). On their read, Section 109(b) does not "confer revision authority"; it instead merely "requires notice and comment for NAAQS revisions." *E.g.*, Chamber Pet. 31. By its plain terms, however, Section 109(b) does both: By stating that NAAQS "may be revised," Section 109(b) preserves EPA's authority to revisit its prior decisions to correct mistakes or consider new evidence. 42 U.S.C. § 7409(b)(1)-(2). And by stating that any revision must be adopted "in the same manner as promulgated," the provision requires notice and comment. *Id.*; *see id.* § 7409(a).

Turning to Section 109(d)(1), petitioners and EPA argue that the provision required a formal "thorough review" here. But they fail to address the powerful textual evidence in Section 109(d)(2)—the provision spelling out CASAC's role in the "thorough review" process—that Congress contemplated "thorough review" would occur only on "five-year intervals," not during mid-cycle reviews. 42 U.S.C. § 7409(d)(2); *see supra* pp. 21-22. They also provide no sensible reason to think Congress would have wanted to impose the formality of a "thorough review" process any time EPA wants to revisit a prior decision—including to correct a discrete mistake or consider new evidence regarding the most relevant health effects. *Supra* p. 21.

EPA asserts that there are two "potential reading[s]" of Section 109(d)(1). *E.g.*, Br. for Fed. Resps. 13. Both are fundamentally flawed, however, because they ignore Section 109(b) and instead presuppose Section 109(d)(1) provides the exclusive source of authority to revise NAAQS. Both readings also fail for other reasons. EPA's first construction is that Section 109(d)(1) "leave[s] NAAQS revision to be governed solely" by the "first sentence and its requirement of a 'thorough review.'" Br. for Fed. Resps. 13. The basis for that theory is that the first sentence of Section 109(d)(1) mentions the revision of standards, but the second sentence does not. *Id.* EPA's reading, however, "would compel an odd result" that Congress could not have reasonably intended. *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 509 (1989). On that bizarre understanding, EPA could revise criteria and *even promulgate brand-new NAAQS* mid-cycle without a "thorough review," but could revise existing NAAQS only during a five-year review cycle that includes a "thorough review." There is a far more sensible un-

derstanding: any omission in Section 109(d)(1)'s second sentence simply leaves in place EPA's broad authority under Section 109(b) to revise NAAQS.

Perhaps sensing that this first interpretation is too implausible to be taken seriously, petitioners and EPA press another theory: that Section 109(d)(1)'s second sentence is a shorthand that refers to "the first sentence's more comprehensive terms," including its requirement for a "thorough review." *E.g.*, Br. for Fed. Resps. 14; *see* Chamber Pet. 23-24. But a "shorthand phrase or term" "provide[s] a succinct way of expressing a concept that would otherwise require a lengthy or complex formulation." *Kellogg Brown & Root Servs., Inc. v. United States, ex rel. Carter*, 575 U.S. 650, 663 (2015). Congress would not have used "may review and revise" as a shorthand for something like "may *thoroughly* review and revise" because the word "thoroughly" is "neither lengthy nor complex." *Id.*

Petitioners and EPA also point to Section 108(a), which requires criteria to "accurately reflect the latest scientific knowledge," 42 U.S.C. § 7408(a)(2), and the requirement that NAAQS be "based on such criteria," *id.* § 7409(b)(1)-(2). They contend that failing to conduct a formal "thorough review" "necessarily limits that [scientific] picture" and "undermin[es] those requirements." Br. for Fed. Resps. 15; *see* Chamber Pet. 36. But as EPA acknowledges, it has "consistently declined to base NAAQS revisions" during five-year reviews "on '[r]ecent studies available after completion of criteria review.'" Br. for Fed. Resps. 16. Here, EPA not only considered the 2019 Assessment from the past five-year review but also expanded the record to include recent scientific studies on the most important health effects of $PM_{2.5}$. *Supra* pp. 9-10. In other words, the agency considered *more evidence* than it

typically evaluates during five-year review cycles. And again, petitioners have not argued that there are additional studies that would have altered EPA's conclusion.

Relatedly, petitioners assert that the decision below allows end-running the formal "thorough review" requirement, thereby facilitating "gamesmanship." Chamber Pet. 34; *see* Ky. Pet. 22-23. But as the D.C. Circuit explained, "[a]cting sooner than the five-year review cycle required by § 7409(d)(1) does not excuse [EPA] from doing a thorough review every fifth year." Pet. App. 25a. "Nor are the Industry Petitioners correct that an off-cycle revision . . . would be 'without any limitations or requirements whatsoever.'" *Id.* (emphasis omitted). Any revision "must satisfy," not only the CAA's substantive requirements, but also the arbitrary-and-capricious standard. *Id.*; *see, e.g.*, *id.* at 26a-28a, 33a-38a. Petitioners complain that arbitrary-and-capricious challenges "take years," Chamber Pet. 34, but they do not argue that the two standards would lead to different results. And petitioners' timing argument is illogical: assessing whether a NAAQS revision is arbitrary and capricious is unlikely to be any more time-consuming than evaluating whether review was sufficiently "thorough."[9]

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[9] The availability of arbitrary-and-capricious review is also an answer to petitioners' suggestion that mid-cycle NAAQS revisions risk "upend[ing] reliance interests." Chamber Pet. 43. Serious reliance interests do not frequently arise in the NAAQS context, given that NAAQS "are based on the science—which is not static"—and "must be reviewed and revised as appropriate no later than every 5 years but possibly sooner." C.A. J.A. 2807. But if serious reliance interests did arise, the arbitrary-and-capricious standard would require EPA to consider them. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

Finally, the industry petitioners try to shoehorn this case into the major questions doctrine, *see* Chamber Pet. 37, but it is a bad fit. The doctrine applies in "extraordinary cases" based on "the history and the breadth of the authority that [the agency] has asserted, and the economic and political significance of that assertion." *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (internal quotation marks omitted). The question here is whether EPA can revise NAAQS midcycle without updating the record to review additional scientific studies. Such a marginal, procedural question is hardly the sort of extraordinary issue that makes the major questions doctrine relevant. *See, e.g.*, *Biden v. Nebraska*, 600 U.S. 477, 506 (2023) ("major questions" are those "Congress would likely have intended for itself" (internal quotation marks omitted)).

2. The court of appeals also correctly rejected petitioners' contention that EPA failed to consider costs and attainability as part of its NAAQS revision process. *See* Pet. App. 28a-33a. Both this Court and the D.C. Circuit have "repeatedly rejected similar efforts to inject considerations unrelated to public health into the NAAQS-setting process." *Id.* at 28a. In *Whitman*, the Court emphasized that Section 109(b)(1) "instructs the EPA to set primary ambient air quality standards 'the attainment and maintenance of which . . . are requisite to protect the public health' with 'an adequate margin of safety.'" 531 U.S. at 465 (quoting 42 U.S.C. § 7409(b)(1)). This language "does not permit the EPA to consider costs." *Id.*

Petitioners' arguments have taken different forms throughout this litigation, but they seem to suggest two distinct theories: first, that *Whitman* is distinguishable because it applies to "*setting* a NAAQS" but does not cover EPA's 2024 decision "to *revise*" the

NAAQS, Pet. App. 30a (emphases added), and second, that EPA should have considered costs and attainability at an even earlier stage: when it decided in 2021 to *initiate a review* of the NAAQS outside of a five-year review. *See, e.g.*, Chamber Pet. 38-42. Neither theory is persuasive or consistent with *Whitman*.

As the court of appeals recognized, the first theory would "necessarily, but impermissibly, inject[]" cost considerations into the NAAQS-setting process. Pet. App. 30a. If EPA is considering whether to *revise* a NAAQS, it unavoidably must consider the standard for ultimately *setting* a NAAQS—that is, whether the NAAQS is "requisite to protect the public health" while "allowing an adequate margin of safety." 42 U.S.C. § 7409(b)(1). That is the language in Section 109(b)(1) that, under *Whitman*, 531 U.S. at 464-471, does not allow EPA to consider costs. Petitioners emphasize that *Whitman* concerned a five-year review, not a mid-cycle reconsideration, *see, e.g.*, Ky. Pet. 29, but there is no textual basis for distinguishing between the two: no matter when a NAAQS is revised, the revision must comply with Section 109(b)(1)—which again, does not allow for cost considerations.

Petitioners' second theory also fails. The first problem is that petitioners' briefing below did not clearly raise the theory. In fact, state petitioners argued *the opposite*—that when EPA decides whether "to begin the process" of reviewing a NAAQS, "only EPA's mandate to protect public health . . . can drive EPA's decisionmaking." State C.A. Reply Br. 14 (Oct. 15, 2024). As a result, the court of appeals did not pass upon this theory. That alone provides a sufficient basis to deny certiorari. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this is a "court of review, not of first view").

In any event, the second theory fails on the merits. Petitioners ask the Court to undo the 2024 rule—and the years of work that went into it—based on a purported error at the outset of EPA's review process in 2021. But there is no sensible reason to upset the apple cart in that way. EPA's initial decision in 2021 to begin a mid-cycle review is the type of decision traditionally "committed to agency discretion" by law, 5 U.S.C. § 701(a)(2), or at least the type of decision over which judicial review is extremely limited.[10] Either way, petitioners' concerns about EPA's initial decision provide no basis to overturn its final 2024 revision.[11]

Petitioners and EPA acknowledge that the agency's decision of whether to voluntarily review a NAAQS outside of a five-year review is "discretionary"—or "*wholly* discretionary" in EPA's words—but then urge that EPA is nonetheless bound by a requirement to consider costs. Br. for Fed. Resps. 26 (emphasis added); *see* Chamber Pet. 41; Ky. Pet. 29. EPA and petitioners invoke *Michigan v. EPA*, 576 U.S. 743 (2015), but that decision is not on point. It explained

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[10] Historically, agency decisions whether to "grant reconsideration of an action because of material error" are committed to agency discretion by law. *Lincoln v. Vigil*, 508 U.S. 182, 191-192 (1993). In some circumstances, courts have exercised extremely limited review of agency decisions whether to grant reconsideration in light of new evidence. *See, e.g.*, *ICC v. Jersey City*, 322 U.S. 503, 514-519 (1944). But even then, judicial review has focused narrowly on whether new evidence justifies reconsideration, *see, e.g.*, *id.* at 516, not other considerations like costs.

[11] To be clear, the ultimate revision in 2024 is not committed to agency discretion by law. It "is reviewable on the merits." *Bhd. of Locomotive Eng'rs*, 482 U.S. at 278. But that does not mean it can be attacked based on concerns about EPA's much-earlier discretionary decision to begin a mid-cycle review.

only that "[a]gencies have long treated cost as a centrally relevant factor when deciding whether *to regulate*." *Id.* at 752-753 (emphasis added). But here, the argument is that EPA is required to consider costs when deciding whether *to begin* a reconsideration process—which could only *later on* lead to a decision to regulate. And as to that later decision to regulate, *Whitman* held that EPA cannot consider costs, and *Michigan* reaffirmed *Whitman*'s statutory analysis. *See* 576 U.S. at 755-756.

The state petitioners (Ky. Pet. 27-28) compare language in the first sentence of Section 109(d)(1) to the statutory text at issue in *Michigan*, 576 U.S. at 753 (whether "regulation is appropriate and necessary"). But that comparison fails on multiple levels. First, it is irrelevant to mid-cycle reconsideration since the first sentence of Section 109(d)(1) governs only five-year reviews. 42 U.S.C. § 7409(d)(1). Second, Section 109(d)(1) provides that EPA must revise NAAQS "as may be appropriate *in accordance with* [Section 108 *and Section 109(b)*]." *Id.* (emphasis added). Congress thus directly "tied the word 'appropriate'" to the text of Section 109(b)—the provision that forecloses cost considerations under *Whitman*. Pet. App. 31a.

The statutory scheme favored by petitioners and EPA also makes little sense. Under their desired approach, EPA would be required to consider costs and attainability at a very early stage: when EPA is making the threshold decision whether to undertake a mid-cycle NAAQS review. At that point, the agency could only make imperfect guesses about the ultimate costs and attainability of its yet-unknown final decision. Under *Whitman*, the CAA would then bar EPA from considering costs and attainability when actually

revising and setting NAAQS—when EPA could provide a more accurate estimate of costs.[12]

Recognizing that their arguments are difficult to square with *Whitman*, petitioners invite the Court to reconsider that decision. *See* Chamber Pet. 41; Ky. Pet. 32. But *Whitman*'s non-delegation holding accords with this Court's modern cases. *See, e.g.*, *FCC v. Consumers' Rsch.*, 606 U.S. 656, 673 (2025) (relying on *Whitman*). And petitioners provide no reason to upset *Whitman* under the *stare decisis* factors—particularly its statutory holding, to which *stare decisis* applies with "enhanced force." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015).

[12] Much like petitioners' "thorough review" argument, the argument that EPA should have evaluated costs and attainability is a claim of procedural error that triggers the harmless-error standard discussed above. *See* 42 U.S.C. § 7607(d)(8), (d)(9)(D); *supra* p. 22. Petitioners cannot satisfy that standard because EPA performed a cost-benefit analysis for public informational purposes and concluded that the NAAQS revision's many benefits vastly exceed its costs. *Supra* pp. 11-16

CONCLUSION

The petitions for certiorari should be denied.

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