Nos. 26-277 & 26-298

IN THE

Supreme Court of the United States

COMMONWEALTH OF KENTUCKY, ET AL.
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

CHAMBER OF COMMERCE, ET AL.
Petitioners,

v.

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

BRIEF OF HEALTH, ENVIRONMENTAL, AND COMMUNITY GROUPS IN OPPOSITION

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QUESTIONS PRESENTED

The Clean Air Act requires the Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS or standards) that are "requisite to protect the public health." 42 U.S.C. § 7409(b)(1). The Act also authorizes EPA to "revise[]" NAAQS, without constraining the timing of such revisions. *Id.* In addition, every five years, EPA must "complete a thorough review" of air quality "criteria" (i.e., the underlying science) and the NAAQS and revise them as "appropriate." *Id.* § 7409(d)(1).

In 2020, after completing that mandatory periodic review for fine particulate matter, EPA affirmed the prior NAAQS. However, based in part on newly emerging scientific evidence, EPA soon recognized gaps in its decision-making. Accordingly, EPA engaged in a targeted review that resulted in a strengthened standard. Petitioners neither identify any evidence EPA failed to consider nor challenge the level at which the strengthened standard is set.

The questions presented are:

1. Whether the court of appeals correctly concluded that, in addition to mandating periodic comprehensive reviews of criteria and NAAQS, the Act authorizes EPA to undertake targeted reviews of key evidence to bring NAAQS into compliance with the Act; and

2. Whether the court of appeals correctly held that—because the Act prohibits EPA from considering costs in setting NAAQS—it likewise prohibits EPA from considering costs in deciding whether to review or revise NAAQS.

CORPORATE DISCLOSURE STATEMENT

Under Supreme Court Rule 29.6, respondents Alliance of Nurses for Healthy Environments, American Lung Association, Citizens for Pennsylvania's Future, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Northeast Ohio Community Resilience Centre, Rio Grande International Study Center, and Sierra Club (collectively, "Health, Environmental, and Community Groups") state that each of them is a nonprofit organization that has no parent corporation and no publicly held company has any ownership interest in any of them.

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INTRODUCTION

The Clean Air Act requires the Environmental Protection Agency (EPA) to set and then update national ambient air quality standards (NAAQS or standards) to ensure people don't breathe air pollution at levels that evolving science reveals may seriously harm their health. In 2020, EPA completed a review of the NAAQS for fine particulate matter and retained the prior standards. It did so following a process that starkly diverged from EPA's settled approach, and despite being told by internal and external experts that the evidence showed a then-eight-year-old standard was too weak. EPA soon initiated rulemaking to reassess its irregular 2020 decision and consider new evidence that bore most directly on the NAAQS's adequacy. After a three-year review that took the same fundamental steps EPA takes in any NAAQS review, including notice and comment, EPA strengthened the NAAQS by setting a lower standard.

In its 2021-2024 process, EPA proceeded cautiously and fully in line with all relevant scientific evidence. Although cost considerations are legally irrelevant, the standard EPA selected is entirely cost-justified, too. EPA projected the strengthened NAAQS would prevent 4,500 premature deaths in 2032 alone, while producing net benefits exceeding compliance costs by orders of magnitude.

Before this Court, no party challenges the actual level EPA set. Instead, petitioners (now joined by EPA) advance two procedural arguments. First, they argue that—notwithstanding EPA's targeted, careful multi-year review—EPA was instead required to restart even more comprehensive procedures. They

also argue that EPA was required to take account of costs at some point—even though the Act and this Court's precedent require EPA to consider only health factors in setting the NAAQS itself.

Faithfully applying ordinary statutory-interpretation principles and this Court's precedent, the D.C. Circuit correctly denied these challenges, even after EPA changed position. These narrow procedural disputes do not come close to clearing the bar for certiorari. Neither question presented is outcome determinative. To this day, petitioners and EPA are unable to explain what EPA's process lacked that realistically could have changed the outcome. Indeed, the Act's stringent harmless-error bar would serve as a ready alternative ground for affirmance on the first question. As for the second question, though EPA properly didn't rely on cost considerations, it undertook a cost analysis that demonstrated the NAAQS is overwhelmingly cost-justified.

In addition, the questions presented are relevant only in a limited factual setting: a situation where EPA has sufficient cause to undertake a review before the next mandatory juncture and ultimately determines revision is necessary. That situation hasn't arisen before and is unlikely to recur frequently. Further, even if petitioners and EPA could plausibly claim that an uncommon process leading to a single NAAQS warranted this Court's review because of its policy consequences—and they cannot—EPA has administrative avenues to address any concerns with the 2024 NAAQS.

The petitions for certiorari should be denied.

STATEMENT

I. The Relevant Pollutant

This case concerns EPA's regulation of fine particulate matter ($PM_{2.5}$), a deadly air pollutant. $PM_{2.5}$ consists of particles less than 2.5 micrometers in diameter. Their small size makes them especially harmful because they can be inhaled and enter the bloodstream. Among $PM_{2.5}$'s effects are premature death, cardiovascular harms (e.g., heart failure), respiratory harms (e.g., asthma attacks), neurological harms (e.g., dementia), and lung cancer. *See, e.g.*, C.A. App. 460-65, 470-71, 486-94, 1853-63. Though healthy adults can experience these harms, children, older adults, and people with preexisting heart or lung conditions face higher risk. Pet. App. 184a-190a;[1] C.A. App. 1611-15.

Over the last several decades, new evidence has revealed that $PM_{2.5}$ is linked to more human health harms, and at lower concentrations, than previously understood. *See, e.g.*, C.A. App. 446-65 (covering 2009 to about January 2018); *id.* at 1846-47, 1849, 1864-994 (detailing evidence from after January 2018).

II. Statutory Background

The Clean Air Act requires EPA to protect the public from harmful pollutants like $PM_{2.5}$. The Act describes a multi-step process for doing so.

First, EPA must list certain pollutants for regulation. 42 U.S.C. § 7408(a)(1). Second, for each

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[1] Pet. App. references are to the petition appendix in No. 26-277.

pollutant EPA lists, EPA must issue "air quality criteria" that form the scientific basis for the NAAQS that regulate the pollutant's level in the air. *Id.* §§ 7408(a)(2), 7409(b). The criteria must "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health." *Id.* § 7408(a)(2). Third, EPA uses those criteria to develop "primary" NAAQS, which are "ambient air quality standards the attainment and maintenance of which in the judgment of the [EPA] Administrator, … and allowing an adequate margin of safety, are requisite to protect the public health." *Id.* § 7409(b)(1).[2]

EPA issued initial NAAQS in 1971, one year after Congress required their development. The Act also required EPA to update criteria and NAAQS but did not speak in prescriptive terms. It directed EPA to "from time to time review, and, as appropriate, modify, and reissue any criteria," *id.* § 7408(c), and authorized EPA to "revise[]" NAAQS in "the same manner as promulgated," *id.* § 7409(b)(1).

By 1977, EPA had not updated any criteria or NAAQS, so Congress amended the Act also to require EPA to regularly and comprehensively review both. Specifically, Congress commanded EPA to "complete a thorough review of the criteria … and [NAAQS]" every five years and "make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with

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[2] The same process applies to "secondary" NAAQS that protect "public welfare." 42 U.S.C. §§ 7408(a)(2), 7409(b)(2). Secondary NAAQS are not at issue here.

[Section 7408] and [Section 7409(b)]." *Id.* § 7409(d)(1). Congress also required that a committee of independent outside experts, now called the Clean Air Scientific Advisory Committee (CASAC), review the criteria and NAAQS every five years and make recommendations. *Id.* § 7409(d)(2). This periodic "thorough review" ensures EPA examines all the effects a listed pollutant has, updates all the criteria for each pollutant, and keeps the NAAQS up to date with the science.

Congress left untouched, however, the preexisting Sections 7408(c) and 7409(b)(1), which sit outside this periodic-review process. Pet. App. 19a-20a. And in Section 7409(d)(1)'s second sentence, Congress underscored that the mandatory periodic-review process is not exclusive, specifying that EPA 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 Act prescribes detailed implementation requirements for NAAQS. Within two years of NAAQS promulgation, EPA must "designat[e]" all areas of the country depending on whether they violate the NAAQS. *Id.* § 7407(d)(1)(B)(i)-(ii). Areas that meet the NAAQS are "attainment" areas; areas that don't are "nonattainment" areas. *Id.* § 7407(d)(1)(A)(i)-(ii).[3] For attainment areas, the Act's main requirement is that "major" stationary sources of air pollution, like large power plants and refineries,

[3] A third designation, "unclassifiable," is equivalent to attainment for regulatory purposes. 42 U.S.C. §§ 7407(d)(1)(A)(iii), 7471. References herein to "attainment" areas cover "unclassifiable" areas.

obtain a permit before starting construction or expansion. *See id.* §§ 7410(a)(2)(J), 7475. For nonattainment areas, Congress established detailed implementation regimes and timelines (ranging from 3 to 20 years) for the areas to come into attainment. *E.g.*, *id.* §§ 7502-7503, 7511(a)(1) (ozone deadlines), 7513(c) (particulate matter deadlines). Contemplating that EPA might weaken primary NAAQS, Congress also enacted an anti-backsliding provision. That provision applies only to areas that "have not [yet] attained" the since-weakened NAAQS, and requires such areas to have "controls which are not less stringent than" the ones nonattainment areas had to implement pre-weakening. *Id.* § 7502(e).

There are exceptions to these implementation requirements for areas experiencing certain pollution outside their control. Some exceptions allow areas violating the NAAQS to be nonetheless designated attainment, and some relax compliance obligations. *E.g.*, *id.* §§ 7509a (addressing international emissions), 7513(f) (addressing "nonanthropogenic sources"), 7619(b) (addressing "exceptional events," like wildfires).

III. Procedural Background

1. EPA first adopted NAAQS specifically targeting $PM_{2.5}$ in 1997, because the agency recognized that those especially small particles were more dangerous than larger, also-regulated particles. 62 FR 38652 (July 18, 1997). EPA revised those NAAQS in 2006 and 2012, each time after completing a mandatory periodic review. 71 FR 61144 (Oct. 17, 2006); 78 FR 3086 (Jan. 15, 2013). The 2012 revision strengthened the annual $PM_{2.5}$ NAAQS from 15 to 12

micrograms per cubic meter (μg/m^3). 78 FR at 3086.

In 2014, EPA began its next required periodic review. But in 2017 and 2018, it changed course and dramatically departed from the way it had done prior reviews. It abandoned its previous schedule and excluded many scientists from serving on advisory committees like CASAC. C.A. App. 375-76, 399-401. The D.C. Circuit ruled that EPA's exclusion of those scientists arbitrarily failed to "confront[] the possibility" that it might deprive EPA of "the most qualified, knowledgeable, and experienced candidates." *Physicians for Social Resp. v. Wheeler*, 956 F.3d 634, 647 (D.C. Cir. 2019) (cleaned up); *see also Nat. Res. Def. Council v. EPA*, 438 F. Supp. 3d 220, 231-34 (S.D.N.Y. 2020) (vacating memorandum EPA relied on to exclude scientists from committees). EPA also replaced most of the existing seven-member CASAC—which the Act mandates as an "independent scientific review committee," 42 U.S.C. § 7409(d)(2)(A)—and abandoned its longstanding practice of supporting CASAC with a panel of pollutant-specific experts. C.A. App. 403. Without that $PM_{2.5}$-specific panel's support, CASAC said it lacked sufficient expertise for meaningful review, which EPA attempted to address by creating a novel "pool of consultants." *Id.* at 1186-87, 1189, 1198-99.

Despite those irregularities, the evidence assembled in that periodic review called for strengthened $PM_{2.5}$ NAAQS. In 2020, EPA's in-house scientists concluded that the evidentiary record "call[ed] into question the adequacy of" the existing 12 μg/m^3 annual NAAQS and observed that retaining the 2012 standard would give little weight to "the

broad body of epidemiologic evidence" that consistently tied health harms to $PM_{2.5}$ levels the existing NAAQS allowed. *Id.* at 1206-21. They supported strengthening that NAAQS to be as low as 8 $\mu g/m^3$. *Id.* at 1218-19. Former CASAC members likewise explained to EPA that the evidence supported that lower level. *Id.* at 371, 387-98.

But in December 2020, EPA decided to retain the existing 12 $\mu g/m^3$ annual NAAQS. 85 FR 82684 (Dec. 18, 2020). This was a stark departure from past practice: Under EPA's longstanding approach to setting the annual NAAQS, EPA would ensure the standard was "somewhat below the lowest long-term mean concentration shown by certain key epidemiologic studies to cause adverse health effects." *Nat'l Ass'n of Mfrs. v. EPA*, 750 F.3d 921, 924 (D.C. Cir. 2014) (Kavanaugh, J.) (citing prior examples). As external experts and EPA staff explained, that approach would have necessitated strengthening the annual NAAQS in 2020. Instead, EPA took a brand-new approach to selecting the NAAQS, without subjecting that change to notice and comment. *See* C.A. App. 1459-61.

States and health, science, and environmental groups filed lawsuits and petitions for administrative reconsideration. *California v. EPA*, No. 21-1014 (D.C. Cir.); C.A. App. 1321-477. Among other things, the petitions identified studies that EPA had failed to adequately consider, which further supported strengthening the 2012 NAAQS. *See* Pet. App. 81a-82a.

2. In March 2021, EPA announced that it would reconstitute CASAC to "correct[] for process

irregularities made in recent years." C.A. App. 1480, 1482-83. Then, in June 2021, EPA announced that it would begin a process to reconsider its 2020 NAAQS decision. *Id.* at 1478-79. EPA explained it was starting that process because "available scientific evidence and technical information indicate[d]" the existing NAAQS "may not be adequate to protect public health … as required by the [Act]." *Id.*; *see* Pet. App. 79a-83a. EPA's review was accordingly targeted: It took a deep look at the evidence bearing most directly on assessing the 2012 NAAQS's questionable adequacy, while not updating the criteria less likely to affect the stringency of any particulate matter NAAQS.

EPA's process included the same three procedural steps EPA takes in a mandatory periodic review. First, to ensure its NAAQS review was based on up-to-date science, EPA revised the criteria, with CASAC review. Pet. App. 83a-87a. The supplemented criteria assessment "focuse[d] on $PM_{2.5}$ health effects" that would be "given the most weight in an Administrator's decisions in a NAAQS review." *Id.* at 136a-140a. That supplement gave "a thorough evaluation" to "studies that became available after the literature cutoff date of the 2019 [criteria assessment] that could … further inform the adequacy of the current PM NAAQS." C.A. App. 1849. And, because the 2020 decision had relied on purported knowledge gaps in declining to strengthen the 2012 NAAQS, the supplement included studies that addressed those gaps. *See, e.g.*, Pet. App. 132a-36a, 138a.

Second, EPA staff used the criteria supplement, along with the 2019 criteria, to answer the core policy question of whether the existing NAAQS complied

with the Act. *Id.* at 82a-83a, 87a-90a; C.A. App. 1573-74. EPA did so in an updated policy assessment, which recognized that retaining the existing annual NAAQS risked allowing a significant number of $PM_{2.5}$-associated deaths. C.A. App. 1723. Like the criteria supplement, that policy assessment underwent CASAC review. Pet. App. 83a, 88a-90a. After reviewing the updated materials, all CASAC members—including one who had recommended against strengthening the annual NAAQS in 2020—recommended strengthening that NAAQS. *Id.* at 35a.

Finally, EPA undertook a notice-and-comment rulemaking and concluded in February 2024 that the 2012 annual $PM_{2.5}$ NAAQS was "not adequate to protect public health." *Id.* at 340a-54a; *see also id.* at 39a-898a (2024 NAAQS or Rule). EPA accordingly strengthened the annual NAAQS to 9 $\mu g/m^3$. *Id.* at 340a-41a.

In that rulemaking, EPA explicated its technical determinations in detail. *E.g.*, *id.* at 116a-415a. The agency maintained that it had authority to update NAAQS outside the mandatory periodic-review cycle, relying on its "authority under [Section 7409]" as a whole. C.A. App. 2797, 2801. EPA also specifically explained that it "understands [Section 7409(b)] to authorize the Administrator to revise the NAAQS." *Id.* at 2799.

EPA further explained that consistent with Section 7409(b)(1), as interpreted by this Court in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), its review did not consider economic costs. *E.g.*, C.A. App. 2798-99. But EPA issued a regulatory impact analysis, which projected the costs and

monetized benefits of complying with the standards in 2032 (when nonattainment areas would likely be required to meet the standard). That analysis found, in that single year alone, 4,500 lives would be saved and the benefits of the strengthened standard would be about $46 billion—about two orders of magnitude larger than the estimated costs of $590 million. EPA-HQ-OAR-2019-0587-0279 at 17 tbl.ES-6, https://perma.cc/89ZW-APUV; Pet. App. 765a tbl.3.

3. Petitioners challenged the 2024 NAAQS before the D.C. Circuit. They argued that Section 7409(d)(1)'s first sentence foreclosed EPA from revising NAAQS without undertaking a "thorough review." In response, EPA invoked both its implicit revision authority as well as its explicit authority under Section 7409. EPA C.A. Br. 29; *see also* State-Int. C.A. Br. 4-11 (defending EPA's action by citing 42 U.S.C. § 7409(b) and (d)(1)).

After oral argument, a new administration took office in January 2025. EPA then sought repeated abeyances. Pet. App. 14a. A high-ranking EPA official attested that the agency would start a new $PM_{2.5}$ NAAQS rulemaking and expected to sign a final rule by February 2026. EPA C.A. Abeyance Mot. 4 (Apr. 28, 2025); EPA C.A. Abeyance Ext. Mot., Decl. of Aaron Szabo ¶¶ 9-10 (Aug. 13, 2025).

In November 2025, however, EPA instead moved the D.C. Circuit to vacate the 2024 NAAQS. Pet. App. 14a-15a. Changing its legal position, EPA now agreed with petitioners that it lacked statutory authority to revise NAAQS without conducting the comprehensive five-year review and also erred by not considering costs in the rulemaking process. EPA C.A. Vacatur

Mot. 10-21 (Nov. 24, 2025). The status of EPA's promised rulemaking addressing the $PM_{2.5}$ NAAQS remains publicly unknown.

4. The D.C. Circuit denied the petitions for review and EPA's vacatur motion. Pet. App. 8a.

a. The court of appeals, in a unanimous opinion by Judge Ginsburg, explained that the 2024 Rule was "best understood as a revision" to the "NAAQS for particulate matter." *Id.* at 17a. The court interpreted the Act to authorize such revisions in at least two circumstances. EPA may, under Section 7409(b), revise NAAQS "'in the same manner as promulgated,'" and must, under Section 7409(d)(1), revise "as appropriate every five years." *Id.* at 20a. The second sentence of Section 7409(d)(1) merely clarifies that the mandatory "quinquennial review" "does not limit [EPA's] authority to revise a standard sooner," and thus that Section 7409(b) and (d)(1) supply independent revision authority. *Id.* at 20a-21a. The court saw "no evidence the Congress intended to limit the Administrator's preexisting revision authority in 1977 when it added the periodic-review requirement"; rather, Congress added clear deadlines so EPA would keep NAAQS from lagging too far "behind the evolving scientific evidence." *Id.* at 20a-21a.

The D.C. Circuit also rejected petitioners' contention that, even if Section 7409(b) authorizes off-cycle revision, Section 7409(d)(1)'s second sentence nonetheless requires that any such revision be preceded by a "thorough review." *Id.* at 21a. The court observed that the term "thorough review" doesn't appear in Section 7409(d)(1)'s second sentence and

that the sentence is not most naturally read to include it. *Id.* at 22a-23a. And insisting that the agency undertake an exhaustive review before revisions of any kind would clash with other statutory provisions and contravene the Act by limiting EPA's ability to "respond[] promptly to changes in the relevant science" and thereby protect public health. *Id.* at 22a-25a.

The D.C. Circuit explained that its construction still gives meaning to the Act's periodic thorough-review requirement because the latter serves "as an action-forcing device" to ensure EPA updates NAAQS. *Id.* at 20a, 25a. And transplanting the thorough-review requirement outside the periodic-review context was not necessary to put guardrails on EPA's revision authority: Revisions resulting from targeted reviews, like those resulting from thorough reviews, must "satisfy" the same "substantive standard in § 7409(b)" and the Act's other "strictures." *Id.* at 25a.

b. The D.C. Circuit next rejected petitioners' and EPA's argument that EPA was required to consider costs before revising the NAAQS. *Id.* at 28a. The D.C. Circuit explained that this Court's decisions in *Whitman* and *Michigan v. EPA*, 576 U.S. 743 (2015), squarely foreclose consideration of costs in setting a NAAQS. Pet. App. 28a-31a. The court concluded that neither those decisions, nor anything in Section 7409(d), indicate that EPA is nonetheless required to consider costs at some earlier step in the NAAQS-setting process, including in "whether to revise a NAAQS." *Id.* at 30a-31a.

5. No party sought rehearing.

REASONS TO DENY THE PETITIONS

Petitioners and EPA seek to overturn the 2024 NAAQS solely on procedural grounds. But they fail to identify the compelling reasons necessary for a grant of certiorari on either question presented. There is no circuit split and no conflict with any decision of this Court. Neither question presented is outcome determinative, nor are they likely to play a meaningful role in shaping NAAQS going forward. The two questions apply to an exceedingly narrow factual context—EPA's reconsideration or revision of existing NAAQS outside a mandatory periodic-review cycle—that has seldom been necessary and is unlikely to arise often in the future. To the extent the standard EPA set in 2024 is substantively flawed or unjustified (challenges petitioners have not pressed here), EPA would have avenues to address it through administrative action. And the court of appeals correctly resolved both statutory-interpretation disputes—one of which is governed by this Court's longstanding precedent Court. The petitions should be denied.

I. The Questions Presented Do Not Warrant This Court's Review

Petitioners' questions presented are poor candidates for certiorari because they are not outcome determinative and arise in a case-specific context lacking broader significance for EPA's Clean Air Act authority.

A. Resolving the questions presented in petitioners' favor would make no difference in this case or future NAAQS reviews

Petitioners and EPA fail to demonstrate that this Court's vindication of their position on either question presented will lead to different substantive outcomes, either in this case or in future NAAQS reviews.

1. The first question presented asks this Court to decide whether EPA was required to conduct the "thorough review" referenced in Section 7409(d)(1)'s first sentence—i.e., a comprehensive review of *all* aspects of the underlying criteria and the NAAQS, as opposed to a more targeted review—before updating the NAAQS in 2024. But resolving that question will make no difference to the outcome here, either as a legal matter or in real-world effect.

a. When EPA defended the 2024 NAAQS in the D.C. Circuit, it maintained that compliance with a "'thorough review' in the technical sense" would not have made any difference to the NAAQS it ultimately selected. EPA C.A. Br. 31-33; *see id.* at 44. This was because EPA's targeted review was "'thorough' in the usual sense of the word," and the effects for which the agency did not supplement the underlying criteria would not have "inform[ed] the level of the $PM_{2.5}$ standard." *Id.* at 31-33; *see id.* at 43-44.

After determining that scientific evidence and technical information indicated the existing NAAQS may not have satisfied the Act, EPA carefully evaluated relevant evidence, supplemented the criteria that underlie the NAAQS, and updated pertinent policy assessments. *See supra* pp.8-10. EPA

also consulted CASAC, which unanimously recommended strengthening the NAAQS based on that newly developed record. *See supra* pp.10. To be sure, the agency declined to review "scientific studies unlikely to affect the final standard" that would "delay but not improve the result." Pet. App. 23a-24a. But the notice-and-comment process gave petitioners opportunity to identify any way in which EPA's review was irrational or resulted in an arbitrary NAAQS. *See id.* at 24a n.6.

Despite having years to do so, petitioners and EPA have never explained how the difference in procedure would have altered the substantive result. The closest they've come to addressing this crucial question is Kentucky's attempt to dispute the significance of more recent scientific developments (Pet. 20-21), and EPA's assertion, upon its change of position, that "thorough review itself would shape the resulting standard" (EPA C.A. Vacatur Reply 21 (Dec. 23, 2025)). But Kentucky doesn't identify anything EPA bypassed in the 2024 Rule that might have been relevant to EPA's standard-setting decision. And EPA's assertion does not specify how "thorough review" would "shape" the standard into something different, let alone explain why its prior view was mistaken.

b. Petitioners' and EPA's inability to explain how their desired procedures would have changed the outcome here thoroughly undermines the certworthiness of the first question presented for at least two reasons. First, their failure to do so poses a major vehicle problem. Even if EPA had erred by engaging in a targeted review, that error would fall under the Act's stringent harmless-error provision,

which authorizes relief "only" when procedural "errors were so serious and related to matters of such central relevance … that there is a substantial likelihood that the rule would have been significantly changed." 42 U.S.C. § 7607(d)(8); *cf.* EPA C.A. Br. 44 (citing that provision). Petitioners (and EPA) have not attempted to make that showing. As a result, this Court could resolve petitioners' first claim of error on this narrow alternative ground without determining whether an error occurred.

Second, even assuming the Act's harmless-error provision wouldn't apply, requiring EPA to undertake petitioners' preferred review would still be highly unlikely to have any real-world effect. That is certainly true of this case, as just explained. *See supra* pp.15-16. And it likely will be true in most other instances of targeted review—in the rare event EPA engages in them, *see infra* pp.23-25—because no matter what review procedures EPA follows, all NAAQS are subject to the same substantive Clean Air Act and bedrock administrative law standards. *Any* NAAQS must be "based on" criteria that "accurately reflect the latest scientific knowledge" and comply with Section 7409(b)(1)'s "requisite to protect the public health" standard. 42 U.S.C. §§ 7408(a)(2), 7409(b)(1). EPA must also rationally explain why the NAAQS it selects complies with the Act's requirements and otherwise explain why it was justified in acting in advance of a mandatory periodic review. *See* Pet. App. 25a. These requirements provide an independent safeguard against any theoretical substantive gap between the five-year "thorough review" and more calibrated procedures.

In short, ruling in petitioners' favor on their first question presented will simply mean that EPA always must start from square one when updating a standard, even if doing so would have no substantive impact aside from "unnecessarily delay[ing] promulgation of a new standard" required to protect public health. *Id.* at 23a. This limited effect greatly diminishes the importance of the first question presented, for both the present dispute and any future instance when (if ever) EPA updates NAAQS in a targeted review.

2. So too for petitioners' and EPA's second contention, that the agency was required to consider costs at some point during the 2021-2024 review process. Even under their preferred rules, cost considerations would not allow EPA to *set* different NAAQS. *See* EPA Resp. 25; Kentucky Pet. 29-30; Chamber Pet. 38-39. Accordingly, it is once again far from clear that tacking on a procedural step will alter the substantive outcome in many (or any) NAAQS cases.

Indeed, petitioners and EPA cannot plausibly claim that such an omission made *any* difference here. EPA's regulatory impact analysis assessed the 2024 Rule's costs and benefits, and that analysis showed that the Rule was overwhelmingly cost-benefit justified—to the tune of a 1-to-77 cost-benefit ratio. *See supra* pp.10-11; Institute for Policy Integrity C.A. Amicus Br. 7-9, 13-18; NGO-Int. C.A. Vacatur Opp. 35 n.20 (Dec. 16, 2025). Petitioners thus have no colorable basis for claiming that if EPA were required to consider costs in deciding whether to review or revise the NAAQS, it would have—or could have—

come out another way. And there is no reason to believe that the favorable cost-benefit ratio here is atypical. *Cf.* Michael A. Livermore & Richard L. Revesz, *Rethinking Health-Based Environmental Standards and Cost-Benefit Analysis*, 46 Env't L. Rep. 10,674, 10,678 (2016) (recognizing that cost-benefit analysis will generally support adopting stricter NAAQS). So here again, a victory for petitioners and EPA on the second question presented would achieve little beyond procedurally delaying promulgation of well-grounded, necessary standards.

B. Petitioners' case-specific policy concerns do not justify review

Petitioners' and EPA's primary claims of importance center on the supposed burdens produced by the 2024 NAAQS. Kentucky Pet. 14-15; Chamber Pet. 42; EPA Resp. 26-27. But narrow concerns about a single rulemaking generally do not warrant this Court's intervention. That is especially true here, where petitioners make no claim that the 2024 standard is substantively flawed. *See supra* pp.15-18. Regardless, petitioners have not established that they need this Court's review to secure any appropriate relief from the 2024 NAAQS, and they overstate the standard's burdens.

1. This Court's review is unnecessary to provide relief, because EPA retains full authority to undertake amendment of the 2024 NAAQS via rulemaking—a step it started and has never disclaimed. Pet. App. 14a; *see supra* pp.11-12. EPA is also well overdue to begin another mandatory periodic review, which was supposed to conclude in 2025. C.A. App. 2800. If the 2024 NAAQS would not

survive that comprehensive review, EPA could change course.

Petitioners and EPA suggest that EPA may be "constrain[ed]" in its "ability to undo" the 2024 NAAQS in future rulemakings, pointing to Section 7502(e)'s anti-backsliding provision. EPA Resp. 27; Chamber Pet. 11. To the extent they suggest that statutory provision limits EPA's *authority* to weaken a NAAQS, that is wrong. The provision expressly contemplates that EPA may "relax[]" NAAQS. 42 U.S.C. § 7502(e).

To be sure, Congress has limited the consequences of such relaxation, by providing that EPA must still subject certain areas to pollution-control requirements based on the more stringent standard. *See id.* But that anti-backsliding proscription is expressly narrow: It covers only "areas which have not attained that standard as of the date of such relaxation." *Id.* For that reason, the vast majority of the country is not likely to trigger Section 7502(e)'s anti-backsliding protection for any requirement flowing from the 2024 NAAQS. There are only 68 counties (of the more than 3000 in the nation) that EPA acknowledges are in violation. *See* EPA-HQ-OAR-2024-0078-0677, https://perma.cc/R94J-J72E.[4]

Even in areas subject to the anti-backsliding

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[4] Analysis indicates that EPA identified those 68 counties after accounting for "exceptional event" demonstrations it has already approved, which resulted in EPA adjusting its formal assessment of an area's air quality by disregarding air quality data affected by, for example, wildfire smoke. *See* EPA-HQ-OAR-2024-0078-0677; *see also* 42 U.S.C. § 7619(b) (exceptional events provision); 40 C.F.R. § 50.14.

provision, EPA could allow alternative control approaches that could reduce the obligations of regulated entities. *See* 42 U.S.C. § 7502(e); *see also, e.g.*, 84 FR 12511 (Apr. 2, 2019) (approving alternative controls under revoked ozone NAAQS).

2. Petitioners overstate the purported impacts of the 2024 NAAQS on industry anyhow. The Chamber (at 10-11) points to the impact the 2024 NAAQS has on permitting requirements for new or modified major stationary sources under 42 U.S.C. § 7475(a)(3). But those permitting requirements apply only to a subset of sources—about 127 per year. EPA, Supporting Statement for Prevention of Significant Deterioration and Nonattainment New Source Review 15 (Nov. 2022), https://perma.cc/426D-Z3KN. Even for this small set of sources, the 2024 NAAQS has not blocked permitting: Industry and states continue to proceed through the permitting process. *See* Robyn Winz, The Gridlock Scare Was Just Hot Air (Aug. 25, 2025), https://perma.cc/MGK5-N8ZP.

Petitioners' pessimistic economic predictions are also unlikely to be borne out. *See* American Lung Ass'n, Clearing the Air: How the New Particle Pollution Standards Work 6-7 (May 2024), https://perma.cc/TN7M-CM75 (noting "more than 50 years of evidence to show that the economy has improved even as we have cut pollution"). As two economics professors have put it, a "defining feature of the research on the costs of the Clean Air Act is that predicted costs of the regulations are often higher than the costs that actually occur." Janet Currie & Reed Walker, *What Do Economists Have to Say about the Clean Air Act 50 Years after the Establishment of*

the Environmental Protection Agency?, 33 J. Econ. Persps. 3, 19 (2019).

3. Because this case does not implicate broadly important legal principles, this Court's review is not warranted. It's accordingly irrelevant that the disputes may not give rise to a circuit conflict, *see, e.g.*, Kentucky Pet. 16. Nor can petitioners claim that this Court's review is typically justified for nationally applicable Clean Air Act rules. That has not been the Court's practice, even in cases involving important rulemakings or when EPA itself petitions. *See, e.g.*, *Am. Mun. Power v. EPA*, 582 U.S. 949 (2017) (No. 16-1168) (denying review of national emission standards for industrial boilers); *EPA v. New York*, 550 U.S. 928 (2007) (No. 06-736) (denying review of rule governing stationary sources). Nor has it been the case for NAAQS disputes specifically: This Court has granted review of only one NAAQS decision—in *Whitman*—and denied petitions for all the others.[5]

C. The questions presented will rarely recur and lack broader significance

The questions presented are also unworthy of review because the fact pattern here is unlikely to arise with any frequency and, regardless, does not carry practical consequences warranting this Court's

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[5] *See, e.g.*, *Utility Air Regul. Grp. v. EPA*, 574 U.S. 814 (2014) (No. 13-1235); *ASARCO LLC v. EPA*, 568 U.S. 1143 (2013) (No. 12-510); *Am. Petroleum Inst. v. EPA*, 569 U.S. 904 (2013) (No. 12-760); *Am. Iron & Steel Inst. v. EPA*, 498 U.S. 1082 (1991) (No. 90-559); *Am. Petroleum Inst. v. Gorsuch*, 455 U.S. 1034 (1982) (No. 81-871); *Lead Indus. Ass'n v. EPA*, 449 U.S. 1042 (1980) (No. 80-482).

intervention.

1. Petitioners' and EPA's two questions presented are implicated only in discretionary, off-cycle reviews. To be sure, EPA has previously contemplated or initiated NAAQS revisions based on such targeted reviews. EPA proposed to reconsider its 2008 ozone NAAQS, "closely review[ed]" its 2015 ozone NAAQS to decide whether to "reconsider" that rule, and initiated a targeted-review process for the 2020 ozone NAAQS. EPA Mot. to Continue Oral Arg. 4, *Murray Energy Corp. v. EPA*, No. 15-1385 (D.C. Cir. Apr. 7, 2017); *see* Chamber Pet. 39 n.4.

But EPA did not finalize those prior contemplated revisions. That was not (as petitioners and EPA now contend, *e.g.*, Kentucky Pet. 23-24) because the agency concluded it lacked authority to undertake any such review or revision. Instead, the agency merely decided that developing the relevant scientific record through a soon-impending or already-initiated periodic-review process was preferable. *See* Letter from Cass Sunstein, Adm'r, Off. of Info. & Regul. Affs., to Lisa Jackson, Adm'r, EPA 1 (Sept. 2, 2011) (2011 OMB Letter), https://perma.cc/NA65-R834 (explaining that the science underlying the proposed revision of the 2008 ozone NAAQS was "no longer the most current" and emphasizing that a "new scientific assessment is already underway"); EPA, *EPA Initiates New Review of the Ozone National Ambient Air Quality Standards to Reflect the Latest Science* (last updated Aug. 21, 2023), https://perma.cc/AB7S-AHPZ (indicating a need for five-year review to "consider fully the information about the latest ozone science and potential implications for the ozone

NAAQS").

In 2021, by contrast, EPA confronted a confluence of highly unusual circumstances. First, the agency "became aware of certain scientific studies likely to require a change in the standard," Pet. App. 23a, which had come to light after the scientific record in the prior periodic review had closed. *See supra* pp.8-9. Second, the process leading up to the 2020 NAAQS decision departed in numerous ways from accepted practice, as court decisions recognized. *See supra* pp.7-8. There is no reason to assume that the combination will arise repeatedly.

Petitioners nonetheless speculate that the decision below will spur EPA's reliance on off-cycle revisions. Kentucky Pet. 15-16; Chamber Pet. 20, 43. But EPA seldom completes *mandatory* periodic reviews within the statutory five-year intervals.[6] It is unrealistic to expect that EPA will regularly confront circumstances that would induce it to expend resources to complete off-cycle reviews. Consistent with EPA's general obligation to engage in reasoned decisionmaking, such reviews will be appropriate only where EPA can explain why revising a NAAQS now, without waiting for the other research that the next comprehensive review might provide, fulfills the Act's instruction that an updated NAAQS be "requisite to protect public

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[6] For example, for particulate matter, EPA originally promulgated NAAQS in 1971 and only completed reviews in 1987, 1997, 2006, 2012, and 2020. Pet. App. 65a-79a. Similarly, for nitrogen dioxide, EPA originally promulgated primary NAAQS in 1971 and only completed reviews in 1985, 1996, 2010, and 2018. 83 FR 17226 (Apr. 18, 2018); 75 FR 6474, 6476 (Feb. 9, 2010).

health." 42 U.S.C. § 7409(b)(1); *see* Pet. App. 25a.

2. The rarity of off-cycle revisions defeats the claim that this case warrants review because more frequent revisions might mean that states "must begin" to comply with a NAAQS while a new "thorough review is imminent." EPA Resp. 22; *see* Chamber Pet. 43. Moreover, the potential for overlapping NAAQS is not unique to off-cycle reviews and accordingly is not a complication this Court's intervention could eliminate.

There is no dispute that the Act requires EPA to review and potentially revise NAAQS at least every five years. 42 U.S.C. § 7409(d)(1). Because "the implementation process alone takes years," Chamber Pet. 36, states often must simultaneously implement multiple NAAQS for the same pollutant. Specifically, the Act gives EPA up to three years to issue the air quality designations that kick off additional planning requirements. *See id.* at 9. And depending on the circumstances, areas designated nonattainment under a NAAQS can take years, sometimes even decades, from the designation date to come into attainment. *See, e.g.*, 42 U.S.C. §§ 7502(a)(2)(A) (5-10 years, by default), 7511(a)(1) (up to 20 years, for ozone). So it is always possible that EPA's later review of prior NAAQS will affect ongoing industry plans, *see* Chamber Pet. 43—yet the Act's periodic-review requirement forbids EPA from waiting to update NAAQS until all polluted areas come into compliance with prior NAAQS that no longer are adequate to protect public health.

II. The D.C. Circuit Correctly Resolved Both Questions Presented

Certiorari is also not warranted because the court of appeals adopted the best reading of the Act on both questions presented.

A. EPA has authority to engage in targeted NAAQS revisions

The D.C. Circuit correctly interpreted the Act to authorize EPA to revise the criteria and NAAQS at any time and without undertaking the process Section 7409(d)(1) requires only for mandatory periodic reviews. Pet. App. 19a-26a.

1. The court of appeals' analysis follows the statute's plain text. Two provisions grant EPA authority to revise existing NAAQS. First, Section 7409(b) states that NAAQS "may be revised in the same manner as promulgated," with no qualification as to timing. Second, EPA *must* carry out a "thorough review" of the NAAQS "at five-year intervals," and promulgate new or revised standards "as may be appropriate" under the substantive provisions governing NAAQS. 42 U.S.C. § 7409(d)(1).

The court below properly recognized that nothing in Section 7409(d)(1)'s five-year-review requirement displaces EPA's revision authority in Section 7409(b). Pet. App. 20a-21a. To the contrary, Congress took care to specify, in Section 7409(d)(1)'s second sentence, that notwithstanding the periodic review required by the first sentence, EPA may "review and revise criteria or promulgate new standards earlier or more frequently." *Id.* at 20a (quoting 42 U.S.C. § 7409(d)(1)).

The court of appeals correctly observed that this reading gives coherent meaning to all the relevant statutory provisions. Congress enacted Section 7409(b)(1) before Section 7409(d)(1) existed—strongly indicating that Section 7409(b)(1), which imposes no particular evaluation procedures, provides standalone revision authority. *See supra* pp.4-5. Indeed, petitioners and EPA offered no evidence that Congress intended to limit EPA's "preexisting revision authority" when it enacted the periodic-review requirement in 1977. Pet. App. 21a. It further makes perfect sense for Congress to *force* EPA to undertake a soup-to-nuts evaluation and potential revision of the criteria and NAAQS at set junctures—to *ensure* that such consideration happens—without foreclosing EPA's ability to revise more frequently if justified. *See id.* at 22a, 24a-25a. The periodic-review requirement is a floor, not a ceiling.

2. Petitioners' and EPA's efforts to resist that straightforward interpretation fail. They contend that the "thorough review" requirement in Section 7409(d)(1) carries over to limit EPA's NAAQS-revision authority under Section 7409(b)(1). EPA Resp. 16-17; Chamber Pet. 32-33. But nothing in either provision's text or the Act's structure suggests that Section 7409(d)(1) cabins Section 7409(b)(1) in this way. Instead, the provisions operate in parallel: EPA may revise NAAQS at any time, after undertaking whatever evaluation is necessary to fulfill the Act's substantive requirements and justify the decision it reaches, so long as it also fulfills its mandatory five-year-review responsibility under Section 7409(d)(1). *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 525 (2018) ("Because we can easily read Congress's statutes to

work in harmony, that is where our duty lies.").

Petitioners and EPA devote most of their efforts to arguing that the second sentence of Section 7409(d)(1) authorizes EPA to conduct only a "*thorough* review" (i.e., the review described in Section 7409(d)(1)'s first sentence) more frequently than every five years. *E.g.*, EPA Resp. 13-14; Chamber Pet. 21-25. Even if they were right, it's not clear how that sentence would restrict EPA's unqualified revision authority in Section 7409(b)(1).[7] For instance, Section 7409(d)(1)'s second sentence does not indicate that the listed actions are the *only* "earlier or more frequent[]" actions EPA can take.

In any event, the D.C. Circuit properly determined that petitioners' reading of Section 7409(d)(1)'s second sentence has little to commend it. Pet. App. 22a-25a. That sentence states only that EPA "may review and revise criteria or promulgate new standards earlier or more frequently" than is "required under this paragraph" (i.e., the "thorough" five-year review in the first sentence). 42 U.S.C. § 7409(d)(1). To read "thoroughly" into the second sentence reverses the "usual presumption that differences in language … convey differences in meaning." *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698 (2022) (cleaned up).

The "review" in Section 7409(d)(1)'s second

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[7] EPA and petitioners implausibly suggest that Section 7409(b)(1) is not a source of revision authority at all, but merely an instruction about the "manner" in which EPA must carry out such revisions based on some other implicit source of authority. *E.g.*, EPA Resp. 17. But the provision expressly specifies *both* that the NAAQS (1) "may be revised," and (2) the "manner" for doing so. 42 U.S.C. § 7409(b)(1).

sentence likewise cannot reasonably be read as shorthand for the review described in the provision's first sentence, *contra* Chamber Pet. 22-24; EPA Resp. 18. The clause "required under this paragraph" does not modify the verb "review," and much of the two sentences' language differs. In the periodic "thorough review" mandated in the first sentence, EPA must examine *both* the criteria and the NAAQS, but in the second sentence, EPA may "review and revise criteria *or* promulgate new standards"—which indicates that EPA may promulgate standards without reexamining the underlying criteria at all. 42 U.S.C. § 7409(d)(1) (emphasis added). It is far less convoluted to interpret Section 7409(d)(1)'s second sentence as "simply clarif[ying]" that Section 7409(d)(1)'s first sentence does not occupy the field. Pet. App. 22a-23a.

Moreover, petitioners' and EPA's understanding of Section 7409(d)(1)'s second sentence creates another glaring contextual problem. *Id.* at 24a-25a. A separate provision, Section 7408(c), grants EPA broad authority "from time to time" to "review, and, as appropriate, modify, and reissue any criteria." 42 U.S.C. § 7408(c). But because Section 7409(d)(1)'s second sentence similarly authorizes EPA to "review and revise criteria," the shorthand theory would mean that EPA may exercise its criteria-revision authority only following a thorough review. That would "effectively read[] the thoroughness requirement into § 7408(c), which is inconsistent with the broad and flexible terms used in that provision." Pet. App. 25a. Petitioners have no persuasive response to that aspect of the D.C. Circuit's textual analysis. *See, e.g.*, EPA Resp. 11 (reframing tension the court found), 12-20 (not addressing Section 7408(c)).

3. Because their textual reading is so strained, petitioners and EPA attempt to shore it up with a policy argument. They posit that Section 7409(d)(1)'s thorough-review requirement was designed as a deliberate source of drag on EPA's NAAQS-revision authority—in their telling, Congress authorized EPA to update NAAQS, but only after a built-in period of automatic process and delay. *E.g.*, EPA Resp. 18-20. But as the court of appeals recognized, there is nothing supporting that account of Congress's intent. Pet. App. 21a; *see also* H.R. Rep. No. 95-564, at 124 (1977) (Conf. Rep.) (EPA "is expected to revise standards whenever available information justifies a revision"). To the contrary, Congress's concern in enacting Section 7409(d)(1) and its thorough-review requirement was EPA's contemporaneous track record of failing to timely review and update criteria and NAAQS—to the detriment of public health. Pet. App. 19a-20a; *see supra* pp.4-5.

Petitioners also assert that allowing revision without the procedures accompanying periodic reviews could give EPA freewheeling power. *E.g.*, Kentucky Pet. 19. But they have no answer to the D.C. Circuit's recognition that the Act's substantive standards provide guardrails on the ultimate changes that follow off-cycle reviews. Pet. App. 25a; *see supra* p.17.

Finally, petitioners (Chamber Pet. 36-37; Kentucky Pet. 24) and EPA (at 15-16) claim that longstanding practice supports requiring a comprehensive review before any NAAQS revision. To the contrary, EPA has long maintained it has authority to revise NAAQS outside the periodic-

review cycle. *See supra* p.23. The major questions doctrine (Chamber Pet. 37) likewise has no relevance here. Even putting aside that EPA has repeatedly claimed this authority for both criteria and NAAQS, no party disputes that agency authority to timely revise administrative actions is ordinary, not extraordinary. *See, e.g.*, Chamber Pet. 32 n.5; EPA Resp. 17-18.

4. Petitioners separately maintain that the D.C. Circuit violated *SEC v. Chenery Corp.*, 318 U.S. 80 (1943), and party-presentation principles when it concluded that Section 7409(b)—as opposed to the second sentence of Section 7409(d)(1) standing alone—supported EPA updating the NAAQS here. *See* Kentucky Pet. 25-26; Chamber Pet. 25-30. EPA does not endorse those contentions, and they are meritless.

The D.C. Circuit correctly found no *Chenery* problem. Pet. App. 20a n.5.[8] In the rulemaking record, EPA relied on Section 7409 overall and specifically cited Section 7409(b). C.A. App. 2797, 2799, 2801. There is no party-presentation issue either, as EPA's authority under Section 7409(b) was briefed below. *E.g.*, State-Int. C.A. Br. 4-11; EPA C.A. Vacatur Mot. 15-18; NGO-Int. C.A. Vacatur Opp. 9-15, 17-33.[9]

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[8] The court of appeals' conclusion that petitioners' *Chenery* argument failed on the facts means that the court's position on the interaction between the *Chenery* doctrine and *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), was not outcome determinative. *See* Chamber Pet. 29.

[9] In addition, Health, Environmental, and Community Group respondents maintained—and continue to press here—that Section 7409(d)(1)'s second sentence independently supplied EPA authority to promulgate the 2024 NAAQS. *See* NGO-Int.

If anything, petitioners' threshold contentions counsel *against* a grant here. If resolved in petitioners' favor, they would prevent this Court from addressing the full scope of the Act's NAAQS-promulgation authority. And antecedent issues that "could stand in the way of … reaching the question presented … , or at the very least complicate [its] resolution," counsel strongly against certiorari. *Arizona v. City & Cnty. of San Francisco*, 596 U.S. 763, 766 (2022) (Roberts, C.J., concurring) (explaining a dismissal as improvidently granted).

B. *Whitman* controls whether EPA can consider costs at any stage in NAAQS rulemakings

EPA appropriately declined to consider costs during the 2024 NAAQS rulemaking. *See* Pet. App. 28a-33a. This Court has already interpreted the Act's text to foreclose the agency's consideration of costs. And petitioners' and EPA's strained attempts to circumvent that precedent fail.

1. The Act directs the EPA Administrator to set NAAQS that, in his judgment, are "requisite to protect the public health." 42 U.S.C. § 7409(b)(1). As *Whitman* explains, that language "unambiguously bars cost considerations from the NAAQS-setting process." 531 U.S. at 471; *see* Pet. App. 28a-31a.

Petitioners and EPA cannot escape Section 7409(b) and *Whitman* by arguing that EPA nonetheless may consider "costs and attainability when it initially

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C.A. Vacatur Opp. 29-30; *see also United States v. Tinklenberg*, 563 U.S. 647, 661 (2011) (this Court may affirm on alternative grounds).

decides *whether* a revision may be appropriate." Pet. App. 30a (cleaned up). After all, *Whitman* was a case about revised NAAQS. 531 U.S. at 463. So petitioners and EPA argue that even if EPA is *forbidden* from considering costs in setting NAAQS during mandatory periodic reviews, the Act *requires* (or at least permits) EPA to consider costs at some point during an off-cycle review. *See, e.g.*, Chamber Pet. i; EPA Resp. i. As an initial matter, petitioners and EPA are hazy about when exactly that point is: Their briefs before this Court are not clear about whether EPA should have considered costs when it decided to initiate the 2021-2024 review process,[10] to take final action to set a NAAQS in 2024,[11] or at some other juncture.[12] Their inability to identify that juncture confirms that they lack any textual hook for it.

Regardless, as the D.C. Circuit readily recognized, such fine parsing is insupportable as a matter of text and logic. Pet. App. 30a-32a. EPA concedes (at 25) that the Act forecloses cost considerations during five-year reviews and any resulting revisions. Yet EPA and petitioners maintain that the Act requires EPA to

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[10] *E.g.*, Kentucky Pet. 27 ("when EPA decides whether to conduct an off-cycle NAAQS revision"); Chamber Pet. 38-39 ("before deciding to conduct an off-cycle review"); EPA Resp. 20 ("whether to undertake the review").

[11] *E.g.*, Kentucky Pet. 28 (EPA needed to consider "economic consequences wrought by its early, off-cycle revision"); Chamber Pet. 38 ("whether to review and *revise* a NAAQS off-cycle" (emphasis added)); EPA Resp. 21 ("in deciding whether to [revise the NAAQS off-cycle]").

[12] *E.g.*, EPA Resp. 20 ("before exercising whatever discretionary authority [EPA] possessed").

consider the (speculative) implementation costs of a potential off-cycle revision at some earlier point, to *avoid* a process that would result in NAAQS compliant with Section 7409(b)(1). But such consideration would contravene Section 7409(b)(1), for injecting cost at the threshold "would have the same impermissible effect" as injecting cost into the standard-setting itself. Pet. App. 30a-31a.[13]

Petitioners' and EPA's argument also makes no sense as a practical matter, particularly if they mean to focus on EPA's decision to undertake review. Because the costs (and benefits) of NAAQS depend on the standard EPA ultimately sets—and that standard depends on EPA's scientific review—EPA cannot meaningfully understand the costs of the standard it might select until it starts that review. Any contention that EPA can't begin that review without considering costs is thus untenable.

Nor does this Court's decision in *Michigan*, 576 U.S. 743, support the notion that the decision to begin a NAAQS-review process is somehow different from the ultimate decision to set a standard. *See* Pet. App. 29a; *see also*, *e.g.*, EPA Resp. 25. *Michigan* dealt with a final determination that subjected certain sources to regulation, *see* 576 U.S. at 751-52—not a threshold decision whether to initiate a review process that

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[13] Alone, Kentucky emphasizes Section 7409(d)(1)'s authorization of revision "as may be appropriate." Kentucky Pet. 27-28; *but see* EPA Resp. 25 (disclaiming that argument). Kentucky overlooks the remainder of the sentence—"in accordance *with [Section 7408 and Section 7409(b)(1)]*"—language that makes clear that what is "appropriate" depends on Section 7409(b), the provision that bars cost consideration.

might result in updated NAAQS. Moreover, *Michigan*, like *Whitman*, is clear that when—as here—the "Clean Air Act expressly directs EPA to regulate on the basis of a factor that on its face does not include cost, the Act normally should not be read as implicitly allowing the Agency to consider cost anyway." 576 U.S. at 755-56.

The Chamber accordingly admits (at 41) that it simply seeks to overturn *Whitman*. But it has not come close to advancing the "special justification" necessary to overcome statutory stare decisis. *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 456 (2015).

2. Petitioners' and EPA's other arguments are unavailing.

The Chamber (at 39 n.4) and EPA (at 22-23) invoke a prior ozone NAAQS reconsideration process, citing the 2011 OMB letter. To begin with, that OMB letter recognizes that the Act "forbid[s] EPA to consider costs" in setting NAAQS. 2011 OMB Letter 1. Moreover, because the letter is responding to a draft final rule, *id.*, it doesn't support EPA's current theory about the need to consider costs in deciding whether to *initiate* any review. In any event, the OMB letter focuses on case-specific concerns about EPA revising NAAQS based on the prior scientific record when a mandatory periodic review (which would update the criteria) was already underway. *Id.*; *see also supra* pp.23-24. Those circumstances are not present here: EPA relied on scientific updates post-dating its last mandatory periodic review of the criteria and had not yet initiated its next periodic review (and, indeed, still has not).

Petitioners also seek to cabin *Whitman* with a

constitutional-avoidance argument, claiming that if EPA could not consider costs, there might be a nondelegation problem. Chamber Pet. 41-42. But there is no colorable constitutional problem here. As *Whitman* makes clear, Section 7409(b)(1) supplies sufficient guidance. 531 U.S. at 473, 475-76. Nor is there any reason to revisit *Whitman*'s own nondelegation holding, as only the Chamber requests (at 41). This Court reaffirmed that holding just last year. *See FCC v. Consumers' Research*, 606 U.S. 656, 683 (2025). The Chamber has neither included nondelegation in its questions presented, nor (once again) developed any argument that the extraordinary step of overturning precedent is justified. *See* Sup. Ct. R. 14.1(a); *Gamble v. United States*, 587 U.S. 678, 691 (2019). There is no such argument. As explained above, EPA was guided by the Act's text, structure, and history when it determined to undertake and complete an off-cycle review to update the annual $PM_{2.5}$ NAAQS to a level requisite to protect public health.

CONCLUSION

The petitions should be denied.

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