Eliminating the Foundation: Vulnerabilities in and Implications of EPA's Endangerment Finding Rescission

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EPA's rescission of the Endangerment Finding and the vehicle greenhouse gas standards that extend from it relies on a set of legal arguments that are aimed at eliminating EPA's ability to use the Clean Air Act to regulate greenhouse gas emissions. The final rule blurs the scientific and legal analysis required by statute and misapplies Supreme Court precedent. Although EPA dropped the science-based alternative rationale that was part of its proposal, EPA's justification for ending regulation of greenhouse gas emissions from new vehicles rests on a scientific conclusion that those emissions are too insignificant to matter.

To justify the rescission, EPA relies on a series of interrelated legal interpretations of the Clean Air Act: that section 202(a) only authorizes EPA to regulate pollution with local or regional effects, new vehicle GHG emissions do not contribute to pollution that endangers public health and welfare, and regulating emissions would be costly and futile, therefore EPA may not make an endangerment finding. Second, EPA asserts that the major questions doctrine limits its authority to regulate greenhouse gas emissions because Congress has not spoken clearly enough to give EPA that power. And finally, EPA contends that even if regulation were authorized by the Act, it is futile and thus unreasonable. Throughout the rule, EPA offers arguments that the Supreme Court previously rejected in *Massachusetts v. EPA* and overreads more recent Court decisions to assert that since *Massachusetts*, the Court has quietly eviscerated the fundamental EPA authority that decision recognized and that Congress's silence on EPA authority is a tacit rejection of that authority.

Vehicle regulations based on EPA's statutory authority and predicated on the Endangerment Finding have been a longstanding and effective tool for cutting emissions from the highest emitting sector in the U.S. The Supreme Court has rejected some of the regulatory approaches EPA has designed to reduce greenhouse gas emissions from other sectors, but it has never shown interest in eliminating the science-based determination in the Endangerment Finding — the foundation of these regulations. Congress, too, has never rejected the authority EPA claimed 17 years ago, but built on that authority in subsequent legislation.

This analysis breaks down each argument offered by the EPA in the final rule, explores the potential tension with the Supreme Court's decision in *Massachusetts v. EPA* and additional legal vulnerabilities we anticipate will be raised in the litigation, and evaluates what EPA's legal arguments, if successful, will mean for regulating greenhouse gas emissions from motor vehicles and other sectors by the Trump administration and any future administration.

For a brief overview of the legal issues in the rule, see EELP's Salata Institute Climate Brief. As challenges to EPA's Endangerment Finding rescission progress, we will be watching how the D.C. Circuit, and likely ultimately the Supreme Court, evaluate each part of EPA's reasoning for this reversal and will assess what the rescission means for GHG rulemakings for the power and oil and gas sectors, nuisance lawsuits, and state climate policies. To stay up to date on this rule and ensuing litigation, see EELP's Endangerment Finding tracker page.

EPA's Endangerment Finding Rescission: Legal Arguments and Vulnerabilities

To support its complete rescission of the Endangerment Finding and all vehicle greenhouse gas standards that rested on it, EPA offers a series of overlapping and interrelated justifications. First, it offers three "separate and independent" legal bases for its new assertion that EPA lacks the statutory authority to regulate greenhouse gas emissions from new motor vehicles because such emissions do not contribute to "air pollution" within the meaning of Clean Air Act section 202(a).[1] Second, EPA argues that even if had a plausible argument that the text of 202(a) allowed it to regulate greenhouse gas emissions, it reads recent Supreme Court precedent to require rescission because Congress has not spoken clearly enough to give EPA authority to regulate those emissions.[2] And third, even if there were legal authority to regulate greenhouse gas emissions from new motor vehicles, EPA asserts that "the futility of the GHG emissions standards program would support" repealing the Endangerment Finding and the standards extending from it.[3]

Each of these legal justifications is interwoven with the others to blur the distinct analytical steps in the Clean Air Act. EPA's approach segments greenhouse gas emissions from different sources to suggest the emissions are small in comparison to a global problem without engaging in the scientific and economic analyses to fully assess the costs and benefits of regulating U.S. vehicle emissions.

EPA's new textual and contextual reading of the limits of section 202(a)

Section 202(a) of the Clean Air Act provides in part:

> (1) The Administrator shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. . . .[4]

In 2009, EPA concluded "that emissions of well-mixed greenhouse gases from the transportation sources covered under CAA section 202(a) contribute to the total greenhouse gas air pollution, and thus to the climate change problem, which is reasonably anticipated to endanger public health and

[1] Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emissions Standards Under the Clean Air Act, 91 Fed. Reg. 7686, 7710–11 (Feb. 18, 2026) ("EF Rescission Rule").

[2] *Id.* at 7711.

[3] *Id.*

[4] 42 U.S.C. § 7521(a).

welfare."[5] EPA in 2010 issued its first set of greenhouse gas standards for vehicles[6] and has amended those standards and issued new ones many times since.[7]

In its final rule rescinding the 2009 Endangerment Finding and the vehicle standards extending from it, EPA presents three interconnected statutory interpretation arguments that it argues supports its new reading of section 202(a) and that require rescinding the finding. We have distilled EPA's arguments into three main points: (1) section 202(a) only authorizes EPA to regulate emissions that affect health and welfare through local or regional — not global — exposure; (2) EPA has no authority to regulate emissions from new U.S. vehicles because those emissions do not on their own cause or contribute to threats to human health or welfare; and (3) EPA must consider cost and effectiveness of regulating emissions before making an endangerment finding. Linking all three is EPA's insistence that it must consider both the question of endangerment and the question of regulatory standards — including their cost and effectiveness — at the same time, contra its approach in 2009.

(1) EPA argues that section 202(a) only authorizes EPA to regulate pollution with local or regional effects, and thus greenhouse gas emissions are not "pollutants" within the meaning of that section

First, EPA argues that section 202(a) only authorizes it to regulate "emissions that cause or contribute to air pollution that endangers public health or welfare through local or regional exposure."[8] To make this argument, EPA offers a list of reasons that climate change is too different from other "air pollution" and greenhouse gas emissions are too different from other "air pollutants" to be within EPA's regulatory authority under section 202(a).

EPA tries to distinguish "pollution that impacts public health and welfare by its presence in the ambient air" from greenhouse gases that affect health and welfare "only indirectly."[9] Although EPA does not point to any statutory text or reference to "local or regional exposure" in section 202, EPA reads that phrase into the statute. EPA states that when Congress enacted the Clean Air Act in 1970, it was primarily concerned with smog, criteria pollutants, and air toxics, and that Congress indicated its focus by directing EPA to prescribe emission standards for certain substances with direct effects and not including substances potentially indirectly harmful "based on elevated global concentrations in the upper atmosphere."[10] EPA acknowledges that Congress envisioned regulation of substances that are not harmful upon emission but that may combine with other factors or substances to create air pollution — such as acid rain. Yet EPA states that the regulation of these substances are different from greenhouse gas emissions because the interactions, pollution, and harm occur on a local or

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[5] Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,499 (Dec. 15, 2009).

[6] Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 88 Fed. Reg. 25,324 (May 7, 2010).

[7] *See* EPA, Regulations for Greenhouse Gas Emissions from Passenger Cars and Trucks, https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2012-2016-light-duty-vehicle (last accessed Feb. 20, 2026).

[8] EF Rescission Rule at 7712.

[9] *Id.*

[10] *Id.* at 7713.

regional level,[11] whereas greenhouse gas emissions cause harm through additional steps in a causal chain.[12]

EPA asserts that the Endangerment Finding reflected an extension of authority to address a global concern effectuated through a long causal chain by a combination of pollutants that went beyond the limits of discretion conferred by Congress.[13] EPA argues that a "limiting construction is necessary to avoid absurd results and potential conflict with the nondelegation doctrine," which EPA describes as requiring intelligible principles to guide an agency in exercising its statutory authority.[14] EPA insists that its previous broad interpretation of authority to make an endangerment finding is without such limits, and thus must be incorrect.[15] As evidence, EPA argues that under its previous reading of 202(a), even water vapor would be subject to an endangerment finding and required regulation.[16]

Additionally, EPA argues that climate change harms are not the kind of "welfare" Congress intended EPA to address. Although Congress explicitly referred to climate in section 302(h) when defining "welfare," EPA asserts that this term only refers to changes in local or regional weather patterns through local or regional exposure.[17]

EPA also emphasizes that Congress could have, but did not, direct EPA to address international GHG emissions in section 202(a). EPA states that Congress has indicated in specific parts of the Clean Air Act "when and how the EPA may consider international emissions," and thus where it has not so indicated — like in section 202(a) — EPA lacks that authority.[18]

As a final component of this reasoning, EPA concludes because greenhouse gas emissions do not relate to harms EPA could address through that statute, the emissions cannot be "air pollutants" within the meaning of section 202(a). EPA recognizes that the Supreme Court in *Massachusetts v. EPA* considered this argument when it held that "[b]ecause greenhouse gases fit well within the Clean Air Act's capacious definition of 'air pollutant,' . . . EPA has the statutory authority to regulate the emission of such gases from new motor vehicles." [19] Although that case concerned, and the Court focused on, the scope of EPA's authority under section 202, EPA now reads that case to only address the Act-wide definition of "air pollutant" in section 302(g).[20] And EPA states that after *Loper Bright v. Raimondo* and *Utility Air Regulatory Group v. EPA* it must use a narrower, section-specific definition of "air pollutant" when interpreting section 202(a).[21]

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[11] *Id.*

[12] *Id.* at 7714.

[13] *Id.* at 7715.

[14] *Id.*

[15] *Id.* at 7715–16.

[16] *Id.* at 7716.

[17] *Id.* at 7714–15.

[18] *Id.* at 7713.

[19] Massachusetts v. EPA, 549 U.S. 497, 532 (2007).

[20] EF Rescission Rule at 7713.

[21] *Id.* at 7713.

(2) EPA argues that U.S. new vehicle GHG emissions do not contribute to pollution that endangers public health and welfare

EPA asserts that it lacks authority to regulate greenhouse gas emissions from vehicles because they do not cause or contribute to air pollution that endangers human health or welfare "to a sufficient extent" in a "single causal chain."[22] In doing so, EPA adopts a new interpretation of what circumstances satisfy the statute's "cause or contribute" language.

At an initial step, EPA states that there is not a sufficient link between greenhouse gas emissions and harms to human health and welfare to authorize regulation: "global climate change concerns involve causal relationships that are too uncertain, conjectural, remote, and convoluted by intervening and confounding factors."[23] EPA also argues that the statute requires EPA to consider the extent to which an individual source category contributes to potential harm rather than considering the harmful effects of the pollution in its entirety. Thus, EPA rejects its prior approach focused on whether the air pollution (mixed greenhouse gases from whatever source) endangers human health or welfare, and says it should have instead focused only on whether annual emissions from new vehicles endanger human health or welfare.[24] And, EPA now concludes that these emissions from new U.S. vehicles have only a *de minimis* impact on climate impacts.[25]

(3) Because regulating emissions would be costly and futile, EPA concludes it may not make an endangerment finding

EPA states that section 202(a) requires it to consider cost and effectiveness of vehicle emissions standards at the time it makes an endangerment finding. In EPA's view, because regulation of those emissions is costly and it does not have a measurable impact on climate, the statute does not authorize an endangerment finding.

Central to this rationale is EPA's contention that its previous science-only approach to making the Endangerment Finding was incorrect because it also needed to consider other factors. Previously, EPA first asked whether emissions of an air pollutant cause or contribute to air pollution reasonably anticipated to endanger human health or welfare under section 202(a)(1), and then separately determined whether and how to set standards for the emission of such pollutants from new motor vehicles, considering the factors listed in section 202(a)(2).[26] Now, EPA sees those two steps as one: EPA asks whether emissions from new motor vehicles are significant enough to on their own cause or contribute to pollution that is reasonably expected to endanger human health or welfare and whether the costs and benefits of such regulation justify triggering its duty to regulate.[27] EPA insists

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[22] *Id.* at 7719.

[23] *Id.* at 7714, 7715.

[24] *Id.* at 7720.

[25] *Id.*

[26] Section 202(a)(2) states, "Any regulation prescribed under paragraph (1) of this subsection . . . shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." 42 U.S.C. § 7521(a)(2).

[27] EF Rescission Rule at 7718–19.

while it previously saw a two-step approach as within EPA's discretion, it now believes that Congress directed multi-step processes in other environmental statutes when it wished the agency to take that approach.[28]

As part of this justification, EPA asserts that its prior approach that attributed a portion of global greenhouse gas emissions to new U.S. vehicles was impermissible because it failed to make "particularized findings" about how that specific source category contributed to the harms of climate change.[29] And in connection with its new approach that merges the endangerment question with the regulatory design question, EPA faults its 2009 Endangerment Finding for not considering the cost of regulations, the benefits of climate change, and human adaptations to climate change before making the Endangerment Finding.[30]

Analysis of and legal vulnerabilities in EPA's new statutory interpretation

EPA asserts that the Endangerment Finding rested on a "profound misreading of" the Supreme Court's 2007 decision in *Massachusetts v. EPA* and that more recent Court decisions require this rescission.[31] There are, however, deep tensions between the Supreme Court's holdings and EPA's current approach. EPA's new statutory interpretation relies on arguments already rejected by the Court in *Massachusetts* and applies untested interpretations of subsequent caselaw.

Massachusetts v. EPA

In 2003, EPA denied a petition to regulate greenhouse gas emissions from vehicles, offering arguments similar to those EPA uses now in its rescission. At that time, EPA asserted that "the CAA does not authorize regulation to address global climate change," only local air pollutants.[32] EPA cited the Supreme Court's admonition in *Brown & Williamson* — a predecessor to the now-called major questions doctrine — that interpretation of Congress's delegation of policy decisions "be guided to a degree by common sense" about the likelihood of delegating "a policy decision of such . . . magnitude to an administrative agency."[33] EPA argued at that time that GHGs "are not air pollutants under the CAA's regulatory provisions," because to be an "air pollutant," a substance must be an "agent" of "air pollution."[34] EPA asserted that climate change was not "air pollution," and therefore GHGs could not be "air pollutants" subject to regulation under section 202(a).[35]

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[28] *Id.* at 7718.

[29] *Id.* at 7719.

[30] *Id.*

[31] *Id.* at 7689.

[32] Control of Emissions from New Highway Vehicles and Engines, 68 Fed. Reg. 52,922, 52,927 (Sept. 8, 2003).

[33] *Id. at* 52,925 (citing FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000)).

[34] *Id.* at 52,928.

[35] *Id.* at 52,928–29.

EPA also explained that even if it had the authority to regulate, it would not "be either effective or appropriate for EPA to establish GHG standards for motor vehicles at this time," citing "complex and still evolving science" and other preferred strategies for reducing emission intensity.[36]

In 2007, the Supreme Court rejected EPA's reasoning in *Massachusetts v. EPA.* The Court first addressed whether the states had standing to challenge EPA's refusal to make an endangerment finding, considering EPA's argument that any injury to the states from climate change was not redressable.[37] In rejecting that argument, the Court described the magnitude of the harm caused by greenhouse gas emissions from the transportation sector: "Judged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations."[38] The Court observed that "[a]gencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop. . . . They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed."[39]

On the merits, the Court considered EPA's argument that Congress did not intend EPA to regulate "substances that contribute to climate change" under section 202(a) and held that "[t]he statutory text forecloses EPA's reading" of the Act.[40] The Court characterized the Clean Air Act's section 302(g) definition of "air pollutant" as "sweeping" and "unambiguous," and the Court had "little trouble" concluding that GHG emissions fell within it for purposes of section 202(a).[41]

The Court found EPA's reliance on *Brown & Williamson* misplaced, explaining that EPA jurisdiction to regulate emissions would not lead to "extreme measures."[42] In doing so, the Court recognized that the design of regulation was a separate question from that of EPA's basic jurisdiction to regulate, explaining that the agency would have to consider cost and technology when it designed and implemented any regulatory program.[43] The Court also recognized that — unlike in *Brown & Williamson* — EPA had not identified any congressional action conflicting with a recognition of EPA's jurisdiction to regulate greenhouse gas emissions from new motor vehicles.[44] The Court held that the Clean Air Act's text revealed a broad — but not ambiguous — delegation of authority to the EPA: "While the Congresses that drafted § 202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act

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[36] *Id.* at 52,929–31.

[37] *Massachusetts*, 549 U.S. at 523–24.

[38] *Id*. at 525.

[39] *Id.* at 524 (citations omitted).

[40] *Id.* at 528.

[41] *Id.* at 528–29 (explicitly rejecting the dissent's invocation of *Chevron* to defer to EPA's narrower interpretation).

[42] *Id.* at 510–31.

[43] *Id*. at 531.

[44] *Id*.

obsolete. The broad language of § 202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence."[45]

The Court also rejected EPA's alternative rationale — that even if it had statutory authority, it would be unwise to regulate greenhouse gas emissions. The Court held that EPA's reasoning was "divorced from the statutory text," which was limited to the question whether "an air pollutant 'cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.'"[46] The only question for EPA to answer was "whether sufficient information exists to make an endangerment finding," in other words, a "scientific judgment" about "whether greenhouse gases cause or contribute to climate change."[47] "Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do."[48]

After *Massachusetts v. EPA*, EPA made that "scientific judgment" in its 2009 Endangerment Finding, concluding that greenhouse gas emissions contribute to pollution that endangers public health and welfare consistent with the Clean Air Act. EPA subsequently affirmed and built on the 2009 Endangerment Finding in subsequent rulemakings to regulate other sectors.[49]

Tensions between *Massachusetts* and EPA's Rescission Rule

EPA's current interpretation of section 202(a) is in tension with *Massachusetts* in several respects.

First, the Supreme Court considered and rejected EPA's assertion that section 202(a) did not extend to greenhouse gas emissions. Although EPA now contends that the Supreme Court considered only whether such emissions were within the Clean Air Act-wide definition of "air pollutant" in section 302(g), the Court held that "the statutory text forecloses EPA's reading" of "the provision" at issue in the case — section 202(a).[50] The Court expressly held that "EPA has the statutory authority to regulate the emission of such gases from new motor vehicles."[51] And while a subsequent case — *UARG v. EPA* — rejected EPA's extension of the same definition of "pollutant" to a different part of the Clean Air Act, that decision did not involve section 202(a) and did not disturb *Massachusetts*'s holding.

Second, EPA's interpretation of *Massachusetts v. EPA* rests on a strained reading of the statute that seeks to drive a wedge between "air pollutants" — which the Court held unambiguously included greenhouse gas emissions — and "air pollution." EPA argues that even if greenhouse gases are air

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[45] *Id*. at 532.

[46] *Id*. at 532–33.

[47] *Id*. at 533–34.

[48] *Id*. at 533.

[49] *See* Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510 (Oct. 23, 2015); Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35,824 (June 3, 2016).

[50] *Massachusetts*, 549 U.S. at 528.

[51] *Id.* at 532.

pollutants, they do not "cause, or contribute to, air pollution" for purposes of section 202(a). However, EPA's argument nearly mirrors its approach in 2003, when it insisted that greenhouse gases could not be "air pollutants under the CAA's regulatory provisions," because they were not an "agent" of "air pollution" within the meaning of the Act, as global climate change was outside EPA's ambit. While the Court's opinion focused on the meaning of "air pollutant," it rejected EPA's limited view of "air pollution" when it directed EPA to determine "whether greenhouse gases cause or contribute to climate change," substituting "climate change" for the phrase "air pollution" in the statute.[52]

Third, the Supreme Court rejected EPA's core contention that it must consider cost and regulatory effectiveness of the regulations that would later result from an endangerment finding before making the finding itself. *Massachusetts* makes clear that the endangerment finding step includes only a "scientific judgment," and questions of regulatory propriety and design arise only in a second, separate step. The Court faulted EPA for relying on other factors outside the relevant part of the statute. For example, the Court rejected EPA's reliance on its view that regulating vehicle emissions would be an "inefficient, piecemeal approach" to solving a global problem, because that was not a statutorily valid justification for not making an endangerment finding.[53] While EPA now contends that its 2009 approach failed to consider all required statutory factors,[54] EPA's cost-and-effectiveness factors are exactly what the Court directed EPA to not consider. The D.C. Circuit confirmed this approach in 2012: "At bottom, § 202(a)(1) requires EPA to answer only two questions: whether particular 'air pollution' — here, greenhouse gases — 'may reasonably be anticipated to endanger public health or welfare,' and whether motor-vehicle emissions 'cause, or contribute to' that endangerment."[55] The Supreme Court denied requests for it to review this aspect of the D.C. Circuit's decision, leaving the Endangerment Finding intact even while it rejected regulation of other sectors.

EPA attempts to avoid this tension with *Massachusetts* by relying on the Supreme Court's 2015 holding in *Michigan v. EPA* that EPA must consider other factors when deciding whether it is "appropriate and necessary" to regulate hazardous air pollutants under a different part of the Clean Air Act. But *Michigan* is inapposite, as Congress designed that section of the Act differently. Where section 112 uses more open-ended language that the Court held required EPA to consider the significance of emissions, the effectiveness of regulation, and the costs imposed when considering whether to regulate hazardous air pollutants, section 202(a) contains only language directing a science- and health-based inquiry.[56] EPA's argument fails to fully credit that Congress used different words to define EPA's task regarding vehicle emissions, and *Michigan* thus did not unsettle *Massachusetts*.

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[52] *Id*. at 533–34.

[53] *Id.* at 533.

[54] EF Rescission Rule at 7719 (citing *Michigan v. EPA*, 576 U.S. 743, 750 (2015)).

[55] Coal. for Responsible Regul., Inc. v. EPA, 684 F.3d 102, 117 (D.C. Cir. 2012), aff'd in part, rev'd in part sub nom. Util. Air Regul. Grp. v. EPA, 573 U.S. 302, and amended sub nom. Coal. for Responsible Regul., Inc. v. Env't Prot. Agency, 606 F. App'x 6 (D.C. Cir. 2015) (quoting Massachusetts, 549 U.S. at 532–33).

[56] *See Michigan*, 576 U.S. 743.

Fourth, *Massachusetts* rejected arguments akin to EPA's current assertions about the futility of regulating emissions in the context of assessing states' standing to sue. EPA now prefers to slice and dice U.S. emissions into small pieces, shrinking domestic emissions so they appear to be a less significant share of global emissions and then declaring regulation futile. The Court explained that EPA's "argument rests on the erroneous assumption that a small incremental step, because it is incremental" cannot redress an injury, like harms from climate change."[57] In other words, the Court declined to hold EPA to the impossibly high bar of effectiveness that EPA now sets for itself, rejecting the notion that, at least at the endangerment finding step, regulation of vehicle emissions clear some unenumerated effectiveness bar. That the Court also directed EPA on remand to answer a simple, broad question — "whether greenhouse gases cause or contribute to climate change" — also undermines EPA's new finely-diced approach of narrowly focusing on specific regulated sectors and only one year's worth of emissions when making an endangerment finding.

Loper Bright v. Raimondo

This decision overruled the longstanding *Chevron* doctrine under which courts would defer to an agency's reasonable interpretation of an ambiguous statute. The decision directs courts to instead use their "independent judgment" to determine "the single, best meaning" of a statute.[58] However, the Court made clear that Congress may still give agencies discretion to set policy within the bounds of authority Congress has delegated to them, recognizing that sometimes the best reading of a statute is that Congress "delegated discretionary authority to an agency."[59]

EPA's inapt reliance on *Loper Bright*

When EPA relies on *Loper Bright* to argue it cannot regulate greenhouse gases, it fails to grapple with the Supreme Court's holding in *Massachusetts* that the statute was "unambiguous" and did not rely on *Chevron* to conclude that the GHGs were pollutants for purposes of section 202(a).[60] Additionally, *Loper Bright* did not alter Congress's ability to delegate authority to agencies or to provide agencies with discretion to use their judgment, as *Massachusetts* held Congress "intentional[ly]" gave EPA "regulatory flexibility" to make a scientific judgment about endangerment, recognizing that "changing circumstances and scientific developments would" otherwise "soon render the Clean Air Act obsolete."[61]

By invoking *Loper Bright* and framing its reading of section 202(a) as the single best reading of the statute, EPA intends to lock in this cramped interpretation and prevent a future administration from using an alternative reading to regulate GHGs. If courts were to agree with EPA's reading, this narrow understanding of EPA's authority would bind the agency going forward, requiring Congressional

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[57] *Massachusetts*, 549 U.S. at 524.

[58] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 400, 412 (2024).

[59] *Id.* at 395. *See also* Sara Dewey & Sarah Hart-Curran, *Mapping Agency Authority in Environmental Law Post-Loper Bright*, Harvard Law School Environmental & Energy Law Program (Sept. 15, 2025), https://eelp.law.harvard.edu/mapping-agency-authority-in-environmental-law-post-loper-bright/.

[60] *Massachusetts*, 549 U.S. at 529. Indeed, the Court explicitly rejected the dissent's call to apply *Chevron*. *Id.* at 529 n.26.

[61] *Id.* at 532.

action to reverse the interpretation and direct EPA to regulate greenhouse gas emissions. However, litigants challenging the rescission are likely to focus on the Court's conclusion that Congress unambiguously already delegated to EPA the authority to make the scientific determination of whether a pollutant triggered 202(a)'s endangerment language.

EPA argues that the major questions doctrine limits its authority to regulate greenhouse gas emissions

As a separate rationale, EPA argues that even if its Endangerment Finding had been based on a colorable interpretation of 202(a), it also lacks the required "clear congressional authorization" now demanded by the major questions doctrine.[62] EPA states that since *Massachusetts*, the Supreme Court has articulated the major questions doctrine, which looks for Congressional clarity about government actions that the Court views as newly expansive and transformative and that have vast political and economic implications. EPA states that these cases — particularly *West Virginia* and *UARG* — require a clear statement from Congress directing EPA to regulate greenhouse gas emissions from new vehicles, and that no such direction exists.

Analysis of and legal vulnerabilities in EPA's major questions argument

Although these cases have shifted the way courts will approach some questions of agency authority in certain "extraordinary cases," they did not alter *Massachusetts* or call into question EPA's foundational authority to regulate greenhouse gas emissions generally. Rather, the cases highlight potential legal risks in EPA's reliance on them to support the rescission of the Endangerment Finding.

Utility Air Regulatory Group v. EPA (UARG)

In 2014, the Supreme Court considered a challenge to EPA's decision that its Endangerment Finding in the context of Clean Air Act section 202(a) also meant that it must regulate greenhouse gas emissions from stationary sources under another part of the Act.

In *UARG*, the Court recognized that *Massachusetts v. EPA* had "held that the Act-wide definition includes greenhouse gases because it is all-encompassing," but also recognized that certain provisions of the Act used a "narrower, context-appropriate meaning."[63] The Court observed that the permitting program for large stationary sources was designed differently from section 202(a) as it included Congressionally-set thresholds for EPA's regulation of any "major emitting facility."[64] *UARG* explicitly distinguished *Massachusetts*, which the Court characterized as requiring only "the modest step of adding [GHG] standards to the roster of new-motor-vehicle emissions regulations," rather than any step that would be "'extreme,' 'counterintuitive,' or contrary to 'common sense.'"[65] The Court reasoned that given the different statutory language, this program had always involved a class

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[62] EF Rescission Rule at 7723.

[63] Utility Air Regulatory Group v. EPA, 573 U.S. 302, 316 (2014) (UARG).

[64] *Id*. at 309.

[65] *Id.* at 319.

of emissions "much narrower" than the definition in *Massachusetts.* [66] While the Clean Air Act generally gave EPA authority to consider regulating greenhouse gas emissions, the Court concluded that it was not a direction that greenhouse gases must be "air pollutants" under every part of the Act.[67]

The Court explained that including greenhouse gases among the pollutants regulated under the permitting program would mean that "numerous small sources not previously regulated under the Act would be swept into the . . . program," including facilities like office buildings, hotels, and large retail establishments.[68] The Court saw this large expansion of the permitting program to be "incompatible" with Congress's intent in creating a program designed to apply to a small number of the largest sources of emissions, citing *Brown & Williamson* for the idea that when confronted with this kind of "enormous and transformative expansion" of an agency's regulatory authority with vast "economic and political significance" for "a significant portion of the American economy," the Court looks for Congress to speak clearly.[69] However, the Court did not prevent all regulation of greenhouse gases for the permitting program but instead left intact EPA's regulation of greenhouse gas emissions from sources that were already subject to the permitting program for other reasons.[70] The Court also did not suggest any question about the continued viability of the Endangerment Finding under section 202(a).[71]

West Virginia v. EPA

The Supreme Court looked for "clear congressional authorization" when it considered EPA's Clean Power Plan — a 2015 rule under section 111 of the Clean Air Act that included a broad strategy to address greenhouse gas emissions from existing coal and gas-fueled power plants. Relying on *Brown & Williamson* and building on *UARG*, the Court explained that in "certain extraordinary cases" presenting an agency asserting previously "unheralded power," with great "economic and political significance," and representing a "transformative expansion in [an agency's] regulatory authority,"[72] the Court must look for clear language conferring that authority to an agency.[73] The Court held that "this is a major questions case" and that no such "clear congressional authorization" provided EPA with authority to require the generation shifting approach in the Clean Power Plan.[74] Similar to *UARG,* the question of whether EPA had authority to regulate greenhouse gas emissions at all was not

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[66] *Id.* at 316.

[67] *Id.* at 318–19.

[68] *Id.* at 310.

[69] *Id.* at 322, 324.

[70] *Id.* at 329.

[71] The court did not, as Justice Gorsuch wrote in a solo concurrence in the tariffs litigation, broadly "rule[] that the term 'air pollutant' does not include greenhouse gases, even though greenhouse gases pollute the air." Learning Resources, Inc. v. Trump, slip op. at *19, 607 U.S. ___ (2026) (Gorsuch, J., concurring) (quoting *UARG*, 573 U.S. at 316, 323–24).

[72] *West Virginia v. EPA*, 597 U.S. 697, 721, 723, 724 (2022).

[73] *Id.* at 723.

[74] *Id.* at 724, 732.

before the Court. The Court did not question EPA's authority to do so but focused on how EPA regulated power sector emissions.

Indeed, a key difference between *West Virginia* and *Massachusetts* (and EPA's task in making an endangerment finding) is that the *West Virginia* Court was focused on the second step of the statutory structure: not the threshold scientific question about whether GHGs endanger public health and welfare, but how to regulate following that determination. Although the Court held that EPA overstepped its bounds in determining *how* to regulate, it never questioned EPA's underlying authority to regulate GHGs under the Act. By arguing that "[m]andating a shift in the national vehicle fleet from one type of vehicle to another is indistinguishable from the emission guidelines at issue in *West Virginia*, which were calculated to force a shift from one means of electricity generation to another,"[75] EPA misstates the effect of the scientific determination for the Endangerment Finding, and repeats its error of merging that finding with the separate regulatory design step. EPA's analogy may be relevant in the context of how EPA set standards for vehicles, but the analogy fails when it attempts to compare apples (the scientific question of endangerment) to oranges (a regulatory strategy). Even accepting EPA's fruit-mixing approach, the Endangerment Finding, and even the resulting regulation of new motor vehicles, did not mandate a shift in the vehicle fleet, nor is it an "unheralded" or "transformative" assertion of regulatory authority.[76] The Endangerment Finding required no particular regulatory design or result and did not expand EPA's authority to encompass a new set of sources. EPA's most recent vehicle regulations required fleet operators to offer a mix of different vehicles with different emission profiles whose emissions have long been regulated by EPA.

Also significant is that the Supreme Court in *Massachusetts* considered and rejected the very type of argument EPA now presents. Although the Court did not invoke the "major questions doctrine" by name, it recognized, analyzed, and rejected the government's argument under *Brown & Williamson* that Congress had not provided sufficiently clear regulatory authority to EPA to regulate greenhouse gas emissions. The Court had "little trouble" finding such an "intentional," and "broad" delegation of "regulatory flexibility" and rebuffed analogies to the case upon which the Court later constructed the doctrine EPA now uses to limit its own authority.[77] In other words, *Massachusetts* rejected the idea that EPA's authority to regulate greenhouse gas emissions from vehicles ran afoul of the doctrine that led the Court to later question EPA strategies under other parts of the Clean Air Act.

Congressional action regarding EPA authority to regulate greenhouse gas emissions

EPA also cites Congressional action related to greenhouse gases since the 2009 Endangerment Finding as part of its argument that Congress has not clearly authorized EPA to regulate greenhouse gas emissions from vehicles. EPA argues that Congress prefers "non-regulatory tools that incentivize, rather than mandate, changes in manufacturing and consumer choice," citing the 2021 Inflation Reduction Act (IRA) that created a structure for decreasing methane emissions from the oil and gas sector and otherwise incentivized emission reductions through targeted investments.[78] EPA insists

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[75] EF Rescission Rule at 7724.

[76] *West Virginia*, 597 U.S. at 724. Indeed, the Supreme Court recognized in *UARG* that adding GHG emissions regulation for cars was a "modest step." *UARG*, 573 U.S. at 318–19.

[77] *Massachusetts*, 549 U.S. at 528, 532.

[78] EF Rescission Rule at 7725.

that the 2025 One Big Beautiful Bill Act (OBBBA), which eliminated many components of the IRA and delayed the methane reduction program for ten years, indicates that Congress continues to be involved in an "ongoing national debate over the appropriate response to global climate concerns."[79] EPA also cites Congress's recent use of the Congressional Review Act to reject California's efforts to regulate vehicle emissions more strictly than EPA, arguing that Congress's disapprovals indicate that greenhouse gas regulation is a policy matter of "economic and political significance" that "Congress intends to reserve . . . for itself."[80]

However, Congress's limited actions related to greenhouse gas emissions cannot on its own indicate that the policy area is one that necessarily triggers the major questions doctrine — otherwise *any* policy area that Congress touches would also do so. And while Congress has enacted and retracted various climate-related laws over the last several years, it has not in the 17 years since the Endangerment Finding acted to limit or clarify EPA's authority under section 202(a). If anything, Congress's silence on this issue indicates an acceptance of EPA's assertion of authority. EPA insists in responses to comments that there is inadequate evidence of Congressional acquiescence, but EPA acknowledges that Congress was well aware of EPA's assertions of authority and has legislated in the vicinity of that authority without directly contradicting it.[81] To the extent Congress has spoken in legislation regarding EPA's authority to regulate greenhouse gas emissions, the legislation relied on the fundamental understanding that EPA holds authority to regulate greenhouse gas emissions. For example, Congress relied on EPA's authority to regulate methane emissions from the oil and gas sector when imposing the waste emissions charge in the IRA and when delaying, but not eliminating, the charge in the OBBBA. Although EPA insists that these actions do not address the "precise question" of EPA's authority, litigants challenging EPA's final rule are likely to argue these types of actions support Congress's acquiescence through reenacting or amending laws in other contexts.[82]

EPA's alternative futility basis: Even if regulation were otherwise lawful, it is futile and thus unreasonable

Finally, EPA argues that even if it had legal authority to maintain the Endangerment Finding and the vehicle standards, it is unreasonable to do so because regulating greenhouse gas emissions from U.S. vehicles would have "no meaningful impact" on climate change.[83] EPA asserts that modeling and data indicate that emissions standards for new U.S. vehicles could have no more than "trivial" effects. EPA presents the results of modeling that led it to conclude that the total expected greenhouse gas emissions from U.S. vehicles are projected to contribute 7 percent of the global

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[79] *Id.* at 7725.

[80] *Id.*

[81] Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards Response to Comments, Office of Transportation and Air Quality U.S. Environmental Protection Agency, at 64 (Feb. 2026), https://www.epa.gov/system/files/documents/2026-02/420r26003.pdf ("EF Rescission Response to Comments").

[82] *Id.* at 63–64 (attempting to distinguish Congress's acquiescence to an Internal Revenue Service policy via its reenactment of the Tax Code without disturbing the policy).

[83] EF Rescission Rule at 7728, 7734.

increase in emissions by 2100.[84] It also concludes based on its modeling that these emissions are expected to contribute 0.037deg C in global warming and 1.4cm in global sea level rise by 2100.[85] EPA declares emissions from new motor vehicles to therefore be "*de minimis*."[86] Because it now interprets section 202(a) as requiring a linked finding on endangerment and consideration of regulatory options and effectiveness, EPA argues that it must rescind the Endangerment Finding on this basis.[87]

In addition, EPA asserts that even if the Endangerment Finding stands, it has determined that a "futility rationale" also serves as a standalone basis for repealing greenhouse gas emissions standards for vehicles.[88] Citing *Michigan v. EPA*, which involved EPA's regulation of hazardous air pollutants under section 112,[89] EPA asserts that it is bound to consider costs, and that "where the costs o[f] regulation are certain and immense but the health and welfare value of regulation are uncertain and *de minimis*, it is unreasonable to maintain the GHG emissions program."[90] Although EPA included a much more detailed discussion for this rationale in its proposed rule, its brief explanation in the final rule does not rely on assertions that regulating greenhouse gas emissions from new vehicles will have adverse health and safety risks.[91]

Analysis of and legal vulnerabilities in EPA's futility argument

EPA's argument contradicts Supreme Court precedent and the agency's own past approach without adequate explanation. In *Massachusetts v. EPA*, the Supreme Court expressly rejected EPA's argument that if a regulation cannot solve the problem of climate change effects on the US, then it is worthless, explaining that even a small regulatory step can provide some relief. The Court's observation that regulations can provide incremental improvement conflicts with EPA's all-or-nothing approach. EPA also contradicts its own position in prior GHG vehicle emissions rulemakings, which have noted that even the relatively incremental reductions from vehicle standards are beneficial because each ton of abated emissions is important over time.[92]

The Court also observed in *Massachusetts v. EPA* that U.S. vehicle emissions, though only a fraction of the world's emissions, were still "meaningful," noting that "[a] reduction in domestic emissions

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[84] *Id.* at 7730.

[85] *Id.*

[86] *Id.* at 7732.

[87] *Id.* at 7729.

[88] *Id.* at 7734.

[89] *Michigan*, 576 U.S. 743.

[90] EF Rescission Rule at 7734.

[91] Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36,288, 36313 (Aug. 2, 2025); EF Rescission Rule at 7738, 7759.

[92] For example, EPA's 2024 multipollutant vehicle standards noted that "[b]ecause of the long lifetime of GHGs, and in particular CO_2, every ton emitted contributes to an increase in global temperatures for decades and centuries in the future: therefore, every ton abated has benefits for centuries. The warming impacts of GHGs are cumulative." Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27,842, 28,089–99 (Apr. 18, 2024).

would slow the pace of global emissions increases, no matter what happens elsewhere."[93] Expert commenters, including the National Academies of Sciences, explained how incremental GHG emissions impact public health and welfare.[94] While the share of the U.S. transportation sector as a percentage of global emissions has decreased since 2009, EPA does not explain why this reduction would warrant a full rejection of its long-standing regulatory scheme and, critically, does not cite any analysis to support its assertions.[95] Nor does EPA fully account for the public health benefits of reducing emissions from the transportation sector.[96] Rather, EPA presents modeling on GHG emissions from new vehicles and simply states that "[u]nder any reasonable understanding," the impacts are negligible.[97]

Absent from the final rule: a frontal assault on climate science

Notable in EPA's final rule rescinding the Endangerment Finding is the absence of an evaluation of, or direct reliance on, climate science. In its August 2025 proposal, EPA offered an alternative rationale for withdrawing the Endangerment Finding: that climate science is not sufficiently reliable to support the conclusion that U.S. vehicles are contributing to the endangerment of public health and welfare through climate change.[98] EPA's proposal relied largely on a report prepared in 2025 for the Department of Energy (DOE) by five outside scientists. This Climate Working Group produced a report styled as a rebuttal to "mainstream" climate science.

Based on that report, EPA asserted that many assumptions underlying the 2009 finding were "unduly pessimistic," that the 2009 analysis failed to account for the positive impacts of climate change, and that there are significant uncertainties in predicted warming rates and their effects.[99] That aspect of EPA's proposal received much attention from the scientific community. For example, the National Academies of Sciences submitted to EPA its September 2025 report on the evidence connecting greenhouse gas emissions to threats to U.S. climate, health, and welfare.[100] Separately, a group of 85 climate scientists rebutted the Climate Working Group report, explaining why many of

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[93] *Massachusetts*, 549 U.S. at 526.

[94] National Academies of Sciences, Engineering, and Medicine, *Report: Effects of Human-Caused Greenhouse Gas Emissions on U.S. Climate, Health, and Welfare*, at 39 (2025), https://www.nationalacademies.org/projects/NRCEO-CCX-25-02/publication/29239 (submitted to EPA at Comments of the National Academies of Sciences, Engineering, and Medicine on Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards (Docket ID EPA-HQ-OAR-2025-0194-0756) (Sept. 17, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-0756).

[95] As EPA notes in its Response to Comments, "EPA first would like to note that the proposed climate science basis is not being finalized, and fore many of the comments made are out of scope and no longer relevant." EF Rescission Response to Comments at 208.

[96] *See generally* EPA Office of Transportation & Air Quality, Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act: Regulatory Impact Analysis (Feb. 2026), https://www.epa.gov/system/files/documents/2026-02/420r26002.pdf.

[97] EF Rescission Rule at 7732.

[98] Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. at 36,310.

[99] *Id.* at 36,299, 36,308.

[100] National Academies of Sciences, Engineering, and Medicine, *supra* note 94.

the report's conclusions were unsound and misrepresented the scientific literature and data.[101] These and other experts affirmed that the 2009 Endangerment Finding remained scientifically sound and was bolstered by even stronger evidence accumulated over the past 17 years.

The Climate Working Group's report also faced legal pushback. The Environmental Defense Fund and Union of Concerned Scientists sued DOE and EPA arguing that the Climate Working Group violated the Federal Advisory Committee Act (FACA). FACA requires federal advisory committees "established or utilized by the President" to operate with certain transparency, membership, and open meeting requirements.[102] In September 2025, a federal court determined that DOE violated federal law when it formed the group of scientists that prepared the report, rejecting the government's assertions that the group fell within an exception to FACA because it was merely reviewing literature rather than providing advice or recommendations.[103] The government did not deny that it had failed to hold open meetings, provide open records, and maintain fair balance and influence, as FACA requires.[104]

Although the decision that DOE's Climate Working Group violated FACA did not expressly prohibit EPA from relying on the group's work, records that the court required DOE to release raised questions about the group's process and independence.[105] EPA's rescission rule states that "the Administrator continues to harbor concerns regarding the scientific determinations underlying the Endangerment Finding," but EPA "does not adopt or rely on the proposed scientific alternative rationale."[106] Given the strong scientific opposition and the court's decision that the Climate Working Group violated federal law, EPA likely determined that any reliance on its proposed assertions regarding climate science would be legally vulnerable.

The Rescission's Effects on Other Sectors and States

The immediate and direct effect of EPA's Endangerment Finding rescission is that greenhouse gas emissions standards for U.S. light-, medium-, and heavy-duty vehicles are repealed. But EPA's retreat from federal regulation of these emissions has other potential effects for other sectors that also have been subject to federal greenhouse gas regulation predicated on the Endangerment Finding and for states' ability to address climate harms through their own state laws and tort lawsuits.

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[101] Comments of Robert E. Kopp, Ph.D., & Andrew E. Dessler, Ph.D. on Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards by National Academies of Science (Docket ID EPA-HQ-OAR-2025-0194-2323) (Sept. 17, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-2323 (attaching *Climate Experts' Review of the DOE Climate Working Group Report* (2025)).

[102] *See generally* Congressional Research Service, The Federal Advisory Committee Act (FACA): Overview and Considerations for Congress (2024), https://www.congress.gov/crs_external_products/R/PDF/R47984/R47984.1.pdf.

[103] *Env't Def. Fund., Inc. v. Wright*, 800 F.Supp.3d 284, 288–89 (D. Mass. 2025).

[104] *Env't Def. Fund., Inc. v. Wright*, No. 25-12249-WGY, 2026 WL 251525 (D. Mass. Jan. 30, 2026).

[105] *See* Environmental Defense Fund, *Newly Disclosed Records Show Trump Administration's Unlawful Actions Related to Secretly Formed "Climate Working Group"* (Jan. 22, 2026), https://www.edf.org/media/newly-disclosed-records-show-trump-administrations-unlawful-actions-related-secretly-formed.

[106] EF Rescission Rule at 7734.

Notably, industry largely did not call for EPA to rescind the Endangerment Finding and many commenters expressed concern about the impact of the rescission on other sectors and the potential risks of lawsuits and state action.[107] While the Endangerment Finding rescinded in this rule directly applies only to new motor vehicles regulated under section 202(a), EPA's legal reasoning for the Endangerment Finding will have implications for other sectors, and EPA's actions for other sectors will have implications for EPA's defense of its rescission.

Regulation of GHG emissions from other sectors

Power sector

In 2015, EPA relied on its 2009 Endangerment Finding as the basis for regulating CO_2 emissions from power plants under section 111 of the Clean Air Act, while also noting additional scientific support for its conclusions.[108] Since that time, the Biden and first Trump administration adopted new power plant regulations adjusting the regulatory approach but not questioning its fundamental conclusion about endangerment under section 202 or section 111.[109]

However, in 2025, EPA proposed withdrawing its current greenhouse gas regulations for the power sector, arguing, in parallel to its rationale about vehicle emissions, that fossil fuel-fired plants "do not

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[107] Comments of Ford Motor Company on Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards (Docket ID EPA-HQ-OAR-2025-0194-1393) (Sept. 22, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-1393; Comments of Truck and Engine Manufacturers Association on Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, at 2 (Docket ID EPA-HQ-OAR-2025-0194-0888) (Sept. 23, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-0888; Comments of Alliance for Automotive Innovation on Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards (Docket ID EPA-HQ-OAR-2025-0194-7547) (Sept. 22, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-7547; Comments of American Petroleum Institute on Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards (Docket ID EPA-HQ-OAR-2025-0194-0869) (Sept. 22, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-0869; Comments of Edison Electric Institute on Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, at 8 (Docket ID EPA-HQ-OAR-2025-0194-1136) (Sept. 22, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-1136; Comments of Airlines for America on Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards (Docket ID EPA-HQ-OAR-2025-0194-1293) (Sept. 22, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-1293.

[108] Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510, 64,630 (Oct. 23, 2015); Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Unit, 80 Fed. Reg. 64,662 (Oct. 23, 2015).

[109] Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32,520 (July 8, 2019); New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,798 (May 9, 2024).

contribute significantly to dangerous air pollution."[110] Although EPA has not yet finalized that proposal, it may seek to rely on its Endangerment Finding rescission as an additional basis for ceasing its regulation of power sector emissions.

Given the legal arguments finalized in the rescission of the Endangerment Finding for the new vehicle sector, EPA is likely to align its power sector approach. We expect EPA to argue the Clean Air Act similarly does not provide EPA the authority to regulate greenhouse gas emissions from power plants, aligning its no-authority approach for the two largest sources of greenhouse gas emissions in the U.S.

Oil and natural gas facilities

EPA in 2016 similarly adopted methane standards for oil and natural gas facilities under section 111 of the Clean Air Act.[111] EPA relied on the 2009 Endangerment Finding as a basis for regulating methane and noted that "the recent scientific assessments confirm and strengthen the conclusion that GHGs endanger public health, now and in the future."[112] EPA affirmed that the oil and gas source category, which EPA has regulated since 1979, "contributes significantly to air pollution which may reasonably be anticipated to endanger public health and welfare."[113]

The first Trump administration rolled back the methane rules in 2020.[114] Early in the Biden administration, Congress used the Congressional Review Act to disapprove of the first Trump administration's actions.[115] The Biden administration implemented new regulations for the sector in 2024,[116] and finalized a rule implementing the IRA's Waste Emissions Charge (WEC) for excess methane emissions from oil and gas operators. Notably, Congress expressly designed the WEC, and how it applied to facilities, to rely on EPA implementing meaningful methane regulations under section 111 of the Clean Air Act.[117]

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[110] Proposed Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25,752, 25,755 (June 17, 2025); *see also* Carrie Jenks & Sara Dewey, *EPA Proposes to Eliminate Power Sector Greenhouse Gas Emissions Regulations*, Harvard Law School Environmental & Energy Law Program (June 23, 2025), https://eelp.law.harvard.edu/epa-proposes-to-eliminate-power-sector-greenhouse-gas-emissions-regulations/.

[111] Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35,824 (June 3, 2016).

[112] *Id.* at 35,834.

[113] *Id.* at 35,833.

[114] Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 85 Fed. Reg. 57,018 (Sept. 14, 2020).

[115] Joint Resolution Providing for Congressional Disapproval of the Rule Submitted by the Environmental Protection Agency Relating to "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review," Pub. L. No. 117-23, 138 Stat. 295 (2021).

[116] Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 Fed. Reg. 16,820 (Mar. 8, 2024).

[117] Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions, 89 Fed. Reg. 91,094 (Nov. 18, 2024). Congress subsequently disapproved the rule using the Congressional Review Act and delayed implementation of the WEC. Joint Resolution

The final Endangerment Finding rescission rule does not explain EPA's intent for regulating methane and how EPA will interpret the actions by Congress that expressly and implicitly endorsed EPA's regulation of methane under section 111. However, given the similar language in section 202 for vehicles to section 111 as it applies to the oil and natural gas sector, there are legal risks for EPA to argue motor vehicles do not contribute to endangerment but the oil and natural gas sector do "significantly contribute" under section 111's arguably higher threshold. And, if courts fully agree with EPA's rescission of the Endangerment Finding, challengers opposing any regulation of methane are likely to argue that if EPA lacks the authority to regulate greenhouse gases under section 202 and the similarly structured section 111, Congress's reliance on EPA authority to regulate methane was in error, and its programs resting on that authority are without a proper foundation.

Tort litigation and state policies

Federal law nuisance suits

The Supreme Court rejected the availability of federal common law tort claims for climate change harms in *American Electric Power v. Connecticut*, holding that the Clean Air Act and EPA's associated exercises of regulatory authority "displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants."[118] The Court explained that "*Massachusetts* made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act. . . . And we think it equally plain that the Act 'speaks directly' to emissions of carbon dioxide from the defendants' plants."[119] Because the Clean Air Act provided the same relief — limits on greenhouse gas emissions from power plants — that a successful federal common law claim would, there was "no room for a parallel track" of federal tort litigation.[120] That conclusion may become unsettled if the federal government no longer reads the Clean Air Act to allow greenhouse gas emission, either as a matter of law or of propriety.

State law nuisance suits and climate superfund laws

The rescission also raises questions about states' ability to fill a federal gap in greenhouse gas regulations. Over the last few years, several states and local governments have filed suits bringing state tort claims against the fossil fuel industry, seeking damages related to harms of climate change in their jurisdiction;[121] other states have sought to address harms through climate superfund laws.[122]

Providing for Congressional Disapproval of the Waste Emission Charge, Pub. L. No. 119-2, 139 Stat. 7 (2025); OBBBA, Pub. L. No. 119-21, 139 Stat. 72, 155–56 (2025).

[118] Am. Elec. Power Co. v. Connecticut, 564 U.S. 410, 424 (2011).

[119] *Id*.

[120] *Id.* at 425.

[121] *See* Center for Climate Integrity, *Big Oil Accountability Lawsuits* (last updated Feb. 10, 2026), https://climateintegrity.org/uploads/media/CCI-BigOilAccountabilityLawsuits.pdf.

[122] *See* Kristina McKean, *The Pending Fate of Climate Superfund Statutes,* The Georgetown Environmental Law Review Blog (Jan. 29, 2026), https://www.law.georgetown.edu/environmental-law-review/blog/the-pending-fate-of-climate-superfund-statutes/.

The federal government has sought to prevent these actions by suing states to preempt state tort suits,[123] suing states to invalidate their climate superfund laws,[124] and weighing in as an amicus in state or local lawsuits.[125] EPA's new reading of the Clean Air Act may complicate the federal government's efforts to prevent states and local governments from taking these kinds of actions under state law, which the Supreme Court has never addressed. As these cases proceed, the federal government will need to explain why its position in each type of case is consistent with EPA's Endangerment Finding rescission.

A federal court in January 2026 dismissed one of the United States' preemptive challenges to a state's potential future claims against the fossil fuel industry, holding that the United States had no claim ripe for judicial review against Michigan and had no standing to sue the state because Michigan was merely considering bringing, but had not yet brought, the kind of suit that the federal government objected to.[126] The United States has not indicated whether it intends to appeal that decision. A similar federal government suit against Hawaii — filed before the state brough a suit alleging that oil and gas companies engaged in deceptive marketing practices — remains pending.[127] The federal government has not yet indicated in that case how it views any effects of EPA's Endangerment Finding rescission on its claim.

Cases in which states or local governments have raised state tort claims are also now pending in several states, and the Supreme Court announced in February 2026 that it will hear a case in which the oil industry — and the federal government — has asked the Supreme Court to rule that these suits are not available as a matter of law either as a basic Constitutional matter or as a result of the Clean Air Act.[128] There are a range of outcomes possible for this case. A merits decision in that case could shut down the tort cases industry seeks to avoid or could confirm the availability of these causes of action in the absence of federal regulation. But it is unclear if the Court will reach the merits of the preemption question at all, as it has asked the parties to brief whether the Court even has jurisdiction to hear the case.

Similar questions arise about how the federal government's retreat from greenhouse gas regulation will affect its attack on state climate and clean energy laws, including "climate superfund" laws.[129] The federal government has sued the two states that have already enacted such laws, which seek to

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[123] *See* United States v. Michigan, 1:25-cv-00496 (W.D. Mich. filed Apr. 30, 2025); United States v. Hawaii, 1:25-cv-00179 (D. Haw. filed Apr. 30, 2025).

[124] *See* United States v. New York, No. 1:25-cv-03656 (S.D.N.Y. 2025); United States v. Vermont, No. 2:25-cv-00463 (D. Vt. 2025).

[125] *See* Brief for the United States as Amicus Curiae Supporting Petitioners, Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County, No. 25-170 (Sept. 11, 2025).

[126] *Michigan*, 2026 WL 194031 (Jan. 24, 2026).

[127] *Hawaii*, 1:25-cv-00179.

[128] *Suncor Energy*, No. 25-170, 607 U.S. ___ (cert. granted Feb. 23, 2026); *see also* Erika Kranz, *Suncor Energy v. Boulder County: The United States Urges the Supreme Court to Stop Climate Suits While EPA Questions Authority to Regulate Emissions*, Harvard Law School Environmental & Energy Law Program (Oct. 2025), https://eelp.law.harvard.edu/wp-content/uploads/2025/10/Boulder-and-endangerment-finding.pdf.

[129] Exec. Order No. 14260, "Protecting American Energy from State Overreach," 90 Fed. Reg. 15,513 (Apr. 8, 2025).

recover costs to help cover climate adaptation projects.[130] As in the challenges to state tort cases, the government has raised both constitutional arguments and statute-based preemption arguments that the Clean Air Act preempts state action against out-of-state greenhouse gas emissions.

The three types of cases involve different nuances, but EPA may attempt to argue in all that it both has authority (for preemptive purposes) and does not have authority (for regulatory purposes). Courts will have to decide that question against the backdrop of EPA's Endangerment Finding rescission and its implications for regulation on other sectors. Part of this analysis may include whether courts see the rescission as effectively abdicating any Clean Air Act authority to regulate greenhouse gases from any sector, or whether courts accept EPA's framing of its action as narrow and limited to the transportation sector until it takes further action on other sectors. EPA's responses to commenters' concerns about losing the preemptive force of the Clean Air Act focus almost exclusively on vehicle regulation under section 209. In its limited responses addressing preemption concerns more generally, EPA indicates that it does not believe its Endangerment Finding rescission alters the analysis about lawfulness of state tort suits or state climate laws.[131]

Looking Ahead

EPA's final rule is intended to reshape the legal landscape of climate regulation in the U.S. It is far from certain that courts will agree with EPA's reading of the text of the Clean Air Act, with its understanding of *Massachusetts v. EPA*, or with its arguments about how new administrative law doctrines apply to this area of law. However, if the Supreme Court were to fully accept EPA's arguments, it would preclude future administrations from regulating greenhouse gas emissions from the transportation sector — the largest source of greenhouse gas emissions in the U.S. — under section 202 of the Clean Air Act and likely from other sources for which their regulations are similarly predicated on an endangerment finding. As litigation begins in the D.C. Circuit,[132] we will track challengers' legal arguments and watch how industry responds to the final rule, especially in the face of uncertainty across sectors and potential legal risk from nuisance suits. We will provide updates on EELP's Endangerment Finding tracker page.

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[130] *New York*, No. 1:25-cv-03656; *Vermont*, No. 2:25-cv-00463.

[131] *See* EF Rescission Response to Comments at 297 (citing a motion the United States filed in September 2025 in the government's challenge to Vermont's climate superfund law).

[132] As of this writing, environmental and public health groups and an advocacy organization representing the interests of children have filed petitions in the D.C. Circuit challenging the final rule and more are expected. Am. Pub. Health Assn. v. EPA, No. 26-1037 (D.C. Cir. Feb. 18, 2026), https://earthjustice.org/wp-content/uploads/2026/02/2026.02.18-pios-petition-docketed.pdf; Venner v. EPA, No. 26-1038 (D.C. Cir. Feb. 18, 2026), https://www.publicjustice.net/wp-content/uploads/2026/02/2026.02.18PetitionforReview.pdf.