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U.S. Environmental Protection Agency
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Re: Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, Proposed Rule, 90 Fed. Reg. 36288 (Aug. 1, 2025)
Docket ID No. EPA–HQ–OAR–2025–0194

Administrator Zeldin,

Southeastern Legal Foundation ("SLF") appreciates this opportunity to provide comments on the Proposed Rule entitled Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, published at 90 Fed. Reg. 36288 on August 1, 2025 ("Proposed Rescission").

SLF is a national, nonprofit legal organization dedicated to defending liberty and Rebuilding the American Republic®. Founded in 1976, SLF has fought to protect the American people from government overreach, challenge government policies when they violate the Constitution, and restore constitutional balance in our system of government. SLF not only holds government officials accountable to the Constitution but also equips Americans with the tools they need to fight for their constitutional rights. For nearly 50 years, SLF has proudly defended constitutional rights both in and out of the courtroom.

SLF lauds EPA's decision to reevaluate its prior findings as to greenhouse gas emissions from mobile sources and its associated regulations under Section 202 of the Clean Air Act (CAA). Such reevaluations are appropriate not only when, as here, subsequent U.S. Supreme Court decisions have refined our understanding of

the scope of the agency's authority, but also generally to ensure agencies do not fall victim to the tendency toward ever-increasing assumptions of power. EPA's reevaluation is not only long overdue, but it is also vitally important to ensure the government remains firmly in the hands of the people as originally intended.

SLF offers these comments to support both this process and the proposed outcome. EPA's original Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule, 74 Fed. Reg. 66496 (Dec. 15, 2009) ("Endangerment Finding"), as well as the resultant greenhouse gas emissions standards, ran afoul of several constitutional principles and Supreme Court decisions and exceeded EPA's authority under the Clean Air Act.

Beyond the inaccuracy of EPA's findings, the Endangerment Finding was unlawful because EPA lacked any authority to issue it. Rather than answering the narrow question—as directed by CAA Section 202—of whether the emissions EPA sought to regulate are causing any danger (which the Obama and Biden EPA conceded they did not do), EPA made sweeping findings about greenhouse gas emissions' contributions to "global climate change" generally. EPA then leaped from that finding to the unsupported, unjustified, and ultra vires edict that car companies implement sweeping changes on our country's vehicle fleet. Neither the findings nor the resultant emissions standards were authorized by the text of the CAA and, therefore, must be withdrawn.

Accordingly, SLF supports the Proposed Rescission and respectfully requests that EPA consider these comments in its promulgation of a final rule that rescinds the Endangerment Finding and the associated CAA Section 202 regulations.

I. Executive Summary

SLF agrees with EPA's current analysis that, in order to ensure the Clean Air Act does not unconstitutionally delegate Congress' legislative function, Section 202 must be interpreted according to its clear terms. All Section 202 authorizes EPA to do is regulate new motor vehicle emissions EPA finds to be dangerous. In other words, before EPA can regulate particular new motor vehicle emissions, it must first find that the motor vehicle emissions it is seeking to reduce through that regulation are actually dangerous. Whether or not it believes greenhouse gases

broadly are dangerous is completely irrelevant. EPA knows this. For example, before it regulated the emission of NO_x, VOCs, PM, and carbon monoxide, it specifically found that their emission from new motor vehicles had adverse health effects that would be directly mitigated through regulation—it did not ground the regulation in some broad statement that these substances have ill-determined global ramifications.[1]

Despite the plain text and EPA's prior demonstration that it understood the assignment, EPA far exceeded the permissible limited statutory and constitutional scope when it issued its Endangerment Finding.

Instead, EPA relied on findings as to the effects of greenhouse gases generally, never determining that motor vehicle emissions as a whole are harmful, that new motor vehicle emissions are harmful, that those emissions EPA could reduce through regulation are harmful, or even that vehicles emitted the greenhouse gases EPA sought to regulate. To the contrary, EPA conceded it had no evidence at all that the motor vehicle emissions it sought to regulate pose any danger.[2] Rather, EPA's Endangerment Finding and its subsequent associated regulations were premised entirely on the Obama and Biden EPA's philosophy that we must nevertheless "do our part" to participate in a broader social agenda. This expansive intention is untethered from Section 202's directive to regulate dangerous motor vehicle emissions. Because Section 202 does not mandate EPA's expansive reading, it should not be interpreted to have authorized such an unconstitutional delegation of Congress' legislative power.

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[1] *See* Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements, 65 Fed. Reg. 6698 (Feb. 10, 2000) and its associated Regulatory Impact Analysis (Dec. 1999), calculating that the regulation would directly cause specific decreases in adverse health outcomes, projected out to 2030.

[2] *Compare* Tier 2 Motor Vehicle Emissions Standards (note 1, *supra*) with EPA's declaration in its Endangerment Finding that "[t]he Administrator does not need to find that the control measures following an endangerment finding would prevent at least a substantial part of the danger in order to find endangerment," 74 Fed. Reg. at 66507; *id.* at 66515 ("[T]his action does not attempt to assess the impacts of any future regulation"); and EPA's further regulation at 89 Fed Reg. 27842, 28099 (April 18, 2024) ("EPA did not conduct modeling to specifically quantify changes in climate impacts resulting from this rule in terms of avoided temperature change or sea-level rise."). *See further* EPA's admission that "[a]ccording to climate model simulations summarized by the IPCC, through about 2030, the global warming rate is affected little by the choice of different future emission scenarios." 74 Fed. Reg. at 66519.

SLF also agrees with EPA's analysis that the major questions doctrine precludes EPA's Endangerment Finding and associated attempts to regulate greenhouse gas emissions from mobile sources. But SLF posits that EPA's error here was even more egregious than the Proposed Rescission describes. As the Supreme Court explained in *Utility Air Regulatory Group v. EPA*, "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy, we typically greet its announcement with a measure of skepticism." 573 U.S. 302, 324 (2014) (*UARG*).[3] EPA's Endangerment Finding has earned that skepticism. Similar to EPA's Clean Power Plan that the Supreme Court partially invalidated in *West Virginia v. EPA*, 597 U.S. 697 (2022), EPA has assumed for itself the unprecedented responsibility of addressing its climate change concerns through wholesale changes in the American economy without the relevant expertise to analyze the ramifications. EPA is mandating a shift, not even from one vehicle type to another, but from a gasoline fuel source to an electric grid (power plant) fuel source. As the Court found in *West Virginia,* EPA is without authority to require such source shifting and, further, is entirely unsuited for the job of assessing our electric grid's capacity to handle such a shift and the myriad safety, national security, and economic risks that would be implicated.

The Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), also does not mandate the Endangerment Finding as the Obama EPA reasoned. Instead, it supports this Proposed Rescission because it instructed EPA to ground its findings and regulations in the statute. CAA Section 202 limits EPA's authority to regulating dangerous emissions from new motor vehicles, and any action beyond that exceeds EPA's delegated authority. Nowhere did *Massachusetts v. EPA* authorize EPA to untether itself from the text of CAA Section 202 and join a global climate change agenda without ever connecting the specific greenhouse gas emissions from new motor vehicles to any climate change or other actual danger.

Congress's directive to EPA in CAA Section 202 is clear from its context. EPA is to regulate dangerous emissions from new motor vehicles. Only by finding that the emissions EPA would reduce through regulation are causing a danger does EPA have any authority to regulate. EPA's Endangerment Finding was many steps

[3] SLF was a Petitioner in challenging the Tailoring Rule before the U.S. Court of Appeals for the D.C. Circuit, *SLF v. EPA*, No. 10-1131 (D.C. Cir.), and the United States Supreme Court, *UARG v. EPA*, No. 12-1268.

removed from that limited scope. As a result, it unconstitutionally usurps Congress' authority and must be rescinded. SLF supports EPA's Proposed Rescission, as further refined as set forth herein. SLF requests that EPA consider and incorporate these comments into its final rule.

II. SLF has long fought EPA's assertion of groundless authority to chase a climate change agenda.

In furtherance of its mission to advocate for the Constitution and against unlawful government overreach, SLF has been at the forefront of challenging EPA's unauthorized promulgation of greenhouse gas rules for over a decade.

SLF successfully challenged EPA's related attempt in its Tailoring Rule to "assert[] newfound authority to regulate millions of small sources" and "rewrite clear statutory terms to suit its own sense of how the statute should operate." *UARG*, 573 U.S. at 328. SLF now applauds EPA's decision to return to the dock from its "multiyear voyage of discovery" in search of ever-expanding regulatory authority. *Id.* It is rare for an agency to acknowledge it lacked the authority to issue prior regulations and to consider rescission. EPA's humility in undertaking this effort is a laudable exemplar of responsive government and a showcase of the strength of our American ideals.

III. The Endangerment Finding should be rescinded because it represents a usurpation of Congress' legislative authority.

Read correctly, CAA Section 202's directive to EPA is strikingly narrow: EPA is to regulate dangerous vehicle emissions. When instead interpreted as EPA did in its Endangerment Finding, Section 202 has serious constitutional infirmities because it delegates the legislature's sole authority to make laws. The Supreme Court will not unnecessarily interpret a statute to be unconstitutional, as EPA did. Therefore, EPA's interpretation as stated in its Endangerment Finding is wrong, and that finding and its associated regulations should be rescinded.

A. CAA Section 202 gives EPA a narrow directive: reduce dangerous emissions in new vehicles.

Like every executive branch agency, EPA has no inherent authority to make laws. Such is the job of the legislature. The U.S. Constitution confers legislative authority solely upon the legislative branch of government, authorizing Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its general powers. U.S. Const. art. I, § 1 ("All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."). One thing Congress cannot do is give away its power to unelected bureaucrats: "The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested." *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529 (1935). Congress may delegate the process of "adapting legislation to complex conditions involving a host of details with which the national Legislature cannot deal directly." *Id.* at 529–30. But "Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable." *Id.* at 537–38. Rather, "Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform." *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928).

Accordingly, before beginning any effort to promulgate a regulation, EPA must first identify the specific task the legislature has given it. If a statute contains no specific task, it is necessarily unconstitutional and does not operate as a grant of authority. Although inartfully worded, CAA Section 202 contains a specific directive to EPA:

> The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, 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.

42 U.S.C. § 7521(a)(1). This sentence can be simplified: "The Administrator shall … prescribe … standards applicable to the emission of any air pollutant from … new motor vehicles …, which in his judgment … endanger public health or welfare" due

to their "air pollution" effects. *Id.* Or, even more simply, EPA is to reduce dangerous emissions in new vehicles (subject to certain limitations located elsewhere in the statute).

Congress did not direct EPA to study, solve, or otherwise pursue a climate change agenda. Congress instead limited EPA to regulating harmful vehicle emissions in new vehicles. The extent of any exploration into the causes of any climate change under this Section 202 is very limited: whether the emissions from new motor vehicles that EPA is proposing to regulate are dangerous to human health because of their contribution to any climate change. *See Massachusetts v. EPA*, 549 U.S. at 534 ("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."). If EPA cannot show that any harm is avoided through the regulations it proposes (which the Obama and Biden EPA conceded it cannot), then EPA has not identified any danger from those emissions that triggers EPA's authority to regulate.

This should be axiomatic. Congress does not direct agencies to regulate with futility. *See, e.g., Jackson v. The Archimedes*, 275 U.S. 463, 468 (1928) (rejecting a proposed statutory interpretation because "a purpose so wholly futile is not to be attributed to Congress"); *Sandberg v. McDonald*, 248 U.S. 185, 196 (1918) (same); *U. S. v. Freeman*, 239 U.S. 117, 120 (1915) ("[A]ll will concede that Congress did not intend to do anything so obviously futile."); *Rhode Island v. Massachusetts*, 37 U.S. 657, 698 (1838) ("Congress would never have taken so blind a way, so unintelligible and futile, to effect such an object as the counsel of Massachusetts wish to effect.").

SLF, therefore, agrees with EPA's conclusion in its Proposed Rescission that:

- "CAA section 202(a) does not grant the Administrator 'procedural discretion' to issue standalone findings that trigger a duty to regulate, or, conversely, to prescribe standards, without making the requisite findings for the particular air pollutant emissions and class or classes of new motor vehicles or engines at issue" 90 Fed. Reg. at 36290; and

- "CAA section 202(a) does not authorize the Administrator to make separate findings for endangerment and causation or contribution. Rather, we propose

> that CAA section 202(a) requires the Administrator to find that the relevant air pollutant emissions from the class or classes of new motor vehicles or engines at issue cause, or contribute to, air pollution which endangers public health or welfare, without relying on emissions from stationary or other sources regulated by distinct CAA provisions." *Id.*

CAA Section 202 contains only one "shall," which precedes the entire clause, indicating that all that follows must be read as a unit. Congress gave EPA a simple directive: reduce dangerous emissions from new vehicles. Any determination as to danger must be narrowly tailored to the reduction in emissions the EPA is purporting to accomplish.

B. EPA's previous interpretation of CAA Section 202 would make the statute an unconstitutional delegation of legislative power.

EPA did not follow CAA Section 202's simple directive in its Endangerment Finding. Instead, EPA opined generally as to greenhouse gas emissions' contributions to global climate change. EPA then bootstrapped its own findings as a basis to regulate motor vehicles' emissions. Crucially, EPA never determined that those emissions are dangerous. If CAA Section 202 authorized such an approach, it would violate the Constitution's prohibition against Congress delegating to an administrative agency its fundamental legislative function. Fortunately, CAA Section 202 authorizes no such thing.

EPA shockingly considered it irrelevant that it was creating its own regulatory authority unconnected to specific emissions sources. It reasoned: "EPA's belief one way or the other regarding whether regulation of greenhouse gases from new motor vehicles would be 'effective' is irrelevant in making the endangerment and contribution decisions before EPA." 74 Fed. Reg. at 66507. And, similarly, "[t]he Administrator does not need to find that the control measures following an endangerment finding would prevent at least a substantial part of the danger in order to find endangerment." *Id.* If efficacy is "irrelevant" as EPA posits, then EPA admits it is not regulating anything dangerous. Rather, by its own admission, EPA has arrogated to itself power to make an endangerment finding that converts non-danger into danger and then legislate beyond the statutory confines.

And, indeed, EPA's finding was sweeping:

> Pursuant to CAA section 202(a), the Administrator finds that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare. Specifically, the Administrator is defining the 'air pollution' referred to in CAA section 202(a) to be the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6).

74 Fed. Reg. at 66497. Motor vehicles do not even emit two of these chemicals: perfluorocarbons (PFCs) and sulfur hexafluoride (SF6). *See* 90 Fed. Reg. at 36313. That EPA included them in its Endangerment Finding shows that the agency's action exceeded statutory authority and is alone a basis for rescission.

EPA further explicitly acknowledged that any connection between motor vehicle emissions and any danger to human health is several steps removed: "The Administrator also finds 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 welfare." 74 Fed. Reg. at 66499. EPA did not, therefore, connect the calculated total of vehicular greenhouse gas emissions to any danger (which, even that, would be too broad a question). Rather, the best EPA could reason was that "the emissions from these CAA section 202(a) source categories … are responsible for about 4 percent of total global well-mixed greenhouse gas emissions and just over 23 percent of total U.S. well-mixed greenhouse gas emissions." *Id.* But EPA never connected those percentages to a finding of actual danger.

The following logical gaps showcase the degree to which EPA's findings fail to connect the regulated emissions with any actual danger:

- The climate change models on which EPA relied in its Endangerment Finding are driven not by volumes of emissions but by atmospheric concentrations, which would not immediately be reduced by the emissions standards EPA promulgated in conjunction with its Endangerment

Finding. *See* 74 Fed. Reg. at 66518 ("The scientific evidence is compelling that elevated concentrations of heat-trapping greenhouse gases are the root cause of recently observed climate change."). EPA concedes emissions are merely a "proxy for contributions to atmospheric concentrations." 74 Fed. Reg. at 66538.

- EPA never determined whether *emissions* are even contributing to any climate change, much less whether 4% of total emissions are affecting the climate. Indeed, EPA admitted that "[a]ccording to climate model simulations summarized by the IPCC, through about 2030, the global warming rate is affected little by the choice of different future emission scenarios." 74 Fed. Reg. at 66519. If the emissions for the following 21 years have no bearing on climate change calculations, the 4% number is at best tangential to any danger. EPA further conceded that such "numerical percentages may have little meaning when viewed in isolation," *id.* at 66538, that it had not quantified whether vehicle emissions' contribution to any climate change "exceeds a de minimis level" and even boldly argued it was under no obligation to do so, *id.* at 66542.[4]

- Moreover, *total* vehicular emissions are not even the appropriate subject but rather only those from *new* motor vehicles. *See* 42 U.S.C. § 7521 (calling for the regulation of the "emission of any air pollutant from any class or classes of new motor vehicles"). Even if EPA were to prohibit the manufacture of new cars entirely, it would not take the current cars off the road and so would in the immediate term have no effect on that 4% number. Only gradually over time would the emissions begin to fall. But EPA expressly did not consider this: it "used the recent motor vehicle emissions inventory for the entire fleet as a surrogate for estimates of emissions for just new motor vehicles and engines." 74 Fed. Reg. at 66543. EPA made no calculations as to the amount of time it would take for the vehicle inventory to change over such that all vehicles would now be regulated or what effect that would have on climate change models.

[4] The D.C. Circuit decision on which EPA relied for such a brazen declaration (and further took out of context because it addressed local air pollution effects) is now obsolete following *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). *See Catawba Cnty., N.C. v. EPA*, 571 F.3d 20, 35 (D.C. Cir. 2009) (resting its holding on the reasoning that "if the statute is either silent or ambiguous on the specific question at issue, we defer to EPA's statutory interpretation so long as it is reasonable").

- Finally, eliminating all greenhouse gas emissions from even new vehicles would be impossible (because they would merely shift to power plant sources) and has never been proposed (because EPA has not to date banned the production of new gasoline-fueled vehicles entirely). Yet, EPA nevertheless considered the contribution of all vehicular emissions in calculating its 4% number, not merely the emissions it could or would eliminate by regulation. *See* 74 Fed. Reg. at 66544 ("The argument that the Administrator can only look at that portion of emissions that will be reduced by any CAA section 202(a) standards … finds no basis in the statutory language. … [T]he decisions on cause or contribute and endangerment are separate and distinct from the decisions on what emissions standards to set under CAA section 202(a). … [B]ecause … the Administrator does not have to propose standards concurrent with the endangerment and cause or contribute findings, she would have to be prescient to know at the time of the contribution finding exactly the amount of the reduction that would be achieved by the standards to be set.").[5]

This final logical gap reveals EPA's confusion and highlights its error. The statute directs EPA to regulate dangerous vehicle emissions. Any emissions that EPA cannot or chooses not to regulate fall outside EPA's authority in evaluating danger. EPA expressly did not follow CAA Section 202's directive.

Instead, EPA made its Endangerment Finding solely based on an "everyone must do its part" rationalization. *See* 74 Fed. Reg. at 66543 ("If the United States and the rest of the world are to combat the risks associated with global climate change, contributors must do their part even if their contributions to the global problem, measured in terms of percentage, are smaller than typically encountered when tackling solely regional or local environmental issues. … The Administrator's approach … is a reasonable exercise of her discretion to determine contribution in the global context in which this issue arises.").

[5] Remarkably, even when EPA did promulgate regulations, it still did not find that such regulations would mitigate any climate change, revealing that prescience was not the problem. *See* 89 Fed Reg. at 28099 ("EPA did not conduct modeling to specifically quantify changes in climate impacts resulting from this rule in terms of avoided temperature change or sea-level rise.").

But Congress did not direct EPA to find ways we could all do our part to participate in a global climate change agenda. It directed EPA to regulate emissions that are dangerous. If Congress had directed EPA to issue regulations for its perceived general betterment of the globe, disconnected from any finding that the regulated emissions are causing any specific danger, that would have violated the Constitution's prohibition against Congress delegating away its legislative function. *See A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537–38 (1935) ("Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable.").

But "[s]tatutes … should be read, if possible, to comport with the Constitution, not to contradict it." *Fed. Communications Comm'n v. Consumers' Rsch.*, 145 S. Ct. 2482, 2491 (2025). *See also Mistretta v. United States*, 488 U.S. 361, 374 (1989) (explaining that SCOTUS gives "narrow constructions … to statutory delegations that might otherwise be thought to be unconstitutional"); *W. Va. v. EPA*, 597 U.S. 697, 736 (2022) (Gorsuch, J., concurring) ("[A]bsent a clear statement otherwise, Congress means for its laws to operate in congruence with the Constitution rather than test its bounds."). Because CAA Section 202(a) can be readily interpreted to constrain EPA's authority only to regulate harmful emissions, it should not be read to encompass the unlimited and unconstitutional authority EPA found in issuing the Endangerment Finding.

Therefore, SLF agrees with EPA's justification in its Proposed Rescission that the Endangerment Finding should be rescinded because it would otherwise cause the Clean Air Act to be an unconstitutional delegation of Congress' legislative function.

IV. EPA's previous interpretation of CAA Section 202 would make the statute an unconstitutional usurpation of Congress' sole authority to decide major policy questions.

SLF further agrees that the Endangerment Finding should be rescinded because it violates the major questions doctrine. *See* 90 Fed. Reg. at 36291 ("[B]ecause the Nation's response to global climate change concerns is an issue of significant importance that Congress did not clearly address in CAA section 202(a),

we propose that the major questions doctrine further reinforces and provides an additional basis for our proposed interpretations and actions.").

A. History of the major questions doctrine

Similar to the principle of nondelegation, the major questions doctrine is rooted in the Constitution's separation of powers principles which vest legislative activities in Congress. The doctrine is nearly as old as jurisprudence itself, with early Supreme Court decisions instructing that "important subjects … must be entirely regulated by the legislature," while for "those of less interest," Congress may set forth "a general provision" and delegate the power "to fill up the details." *Wayman v. Southard*, 23 U.S. 1, 43 (1825). This fulfills our founders' vision that "[t]he genius of republican liberty" demands that "all power should be derived from the people" and that those entrusted with it should have "an immediate dependence on, and an intimate sympathy with, the people." The Federalist Nos. 11, 52. If Congress could delegate away the legislation of important subjects, then "[l]egislation would risk becoming nothing more than the will of the current President, or, worse yet, the will of unelected officials barely responsive to him." *W. Virginia v. EPA*, 597 U.S. at 739 (Gorsuch, J., concurring).

> In a world like that, agencies could churn out new laws more or less at whim. Intrusions on liberty would not be difficult and rare, but easy and profuse. … Stability would be lost, with vast numbers of laws changing with every new presidential administration. Rather than embody a wide social consensus and input from minority voices, laws would more often bear the support only of the party currently in power.

Id.

Given the constitutional rule that "important subjects" should be regulated by the legislature, the major questions doctrine is a principle of statutory interpretation under which any apparent transfer of such "power to any administrative body is not to be presumed or implied from any doubtful and uncertain language." *Interstate Com. Comm'n v. Cincinnati, N. O. & T. P. R. Co.*, 167 U.S. 479, 505 (1897). Rather, we must presume that "if congress had intended to grant such a power to" an administrative agency, "it would have used language open to no misconstruction, but clear and direct." *Id.* The major questions doctrine

thereby ensures that agencies do not "exploit some gap, ambiguity, or doubtful expression in Congress's statutes to assume responsibilities far beyond its initial assignment." *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 125 (2022) (Gorsuch, J., concurring). Because, after all, "Congress … does not … hide elephants in mouseholes." *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001).

The Supreme Court has applied the major questions doctrine to invalidate agency actions in situations where agencies have sought to use vague language in long-extant statutes to make sweeping changes that affect large segments of the economy. For example, in *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), the Supreme Court considered the FDA's claim that its authority to regulate "drugs" and "devices" gave it the authority to regulate or ban tobacco products. The Supreme Court concluded, "[W]e are confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion." 529 U.S. at 160. Similarly, in *Alabama Ass'n of Realtors v. Dep't of Health & Human Services*, 594 U.S. 758 (2021), the Supreme Court considered the CDC's moratorium on evictions during the COVID-19 pandemic implemented under the CDC's authority to control the spread of disease. The Court concluded, "Even if the text were ambiguous, the sheer scope of the CDC's claimed authority under § 361(a) would counsel against the Government's interpretation. We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Id.* at 764. Therefore, the Court vacated the stay imposed by the lower court, finding the issue to be so clear-cut that "[t]he applicants not only have a substantial likelihood of success on the merits—it is difficult to imagine them losing." *Id.* at 763. The statute under which the CDC claimed its authority was "a wafer-thin reed on which to rest such sweeping power." *Id.* at 765.

B. The Supreme Court's decision in *UARG v. EPA* requires rescission of EPA's Endangerment Finding.

The Supreme Court has twice applied the major questions doctrine to invalidate EPA Clean Air Act regulations in contexts similar to those at issue here. *UARG* arose out of EPA's promulgation of regulations applicable to stationary sources' emissions of greenhouse gases under Titles I and V of the Clean Air Act. 573 U.S. 302. These regulations followed on the heels of *Massachusetts v. EPA*,

which applied only to mobile source regulations under Section 202. The regulations at issue in *UARG* involved a series of rules applicable to already regulated stationary sources as well as gradually bringing the vast number of previously unregulated stationary sources into the Clean Air Act permitting schemes due solely to their greenhouse gas emissions.

The Supreme Court partially invalidated those regulations. The Court first held that the Clean Air Act did not give EPA clear authority to regulate stationary sources' greenhouse gas emissions merely because greenhouse gases fall within the Act's "capacious" definition of "air pollutant." 573 U.S. at 319. The Court reasoned that, for decades, EPA has given the term "air pollutant" a context-specific meaning as necessary to implement Congress' clear intentions from the surrounding text – including limiting the term "air pollutants" to those that are visibility-impairing (§ 7491), contributing to area nonattainment (§§ 7502, 7602), applicable to new source performance standards (§ 7411), or those that are regulated (§ 7414). The context of Title I and V – providing that sources must obtain a permit to emit above 100 or 250 tons of any "air pollutant" – similarly casts doubt on any congressional intention that greenhouse gases be considered "air pollutants" in those sections. That would result in the regulation of an untenable number of sources, so untenable that EPA found it necessary to "tailor" the language of the statute and raise the limit as it would apply to greenhouse gases.

The language of the Clean Air Act was therefore ambiguous. Considering the Act's ambiguity, the Court applied the major questions doctrine to hold that EPA's interpretation was unreasonable as to previously unregulated sources:

> EPA's interpretation … would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization. When an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy, we typically greet its announcement with a measure of skepticism.

UARG, 573 U.S. at 324. EPA even acknowledged that its interpretation "would result in a program that would have been unrecognizable to the Congress that designed PSD." Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31514, 31555 (Jun. 3, 2010). As a result, the Supreme

Court concluded that this "newfound authority" to "lay[] claim to extravagant statutory power over the national economy" without clear congressional authorization was unreasonable. *UARG*, 573 U.S. at 324, 328.

Just as in the Triggering and Tailoring Rules at issue in *UARG*, EPA overreached in its Endangerment Finding and its associated mobile source regulations by removing the term "air pollutant" from its Section 202 statutory context and imposing sweeping, unprecedented changes on the automotive industry. CAA Section 202 very simply instructs EPA to reduce vehicles' emissions of *dangerous* air pollutants. It does not clearly authorize EPA to decide that greenhouse gases contribute in an attenuated manner to any climate change and so we should "play our part" by reducing mobile sources' emissions–irrespective of whether those emissions are themselves dangerous. Under the major question doctrine, EPA simply cannot find such authority from a long-extant statute by claiming "unheralded power" to regulate on a subject of such "vast economic and political significance." The major questions doctrine precludes EPA from seizing this authority for itself in issuing the Endangerment Finding and associated regulations.

C. The Supreme Court's decision in *West Virginia v. EPA* requires rescission of EPA's Endangerment Finding.

The Supreme Court's next word on the interpretation of "air pollutant" as it relates to greenhouse gas emissions further confirms this conclusion. In *West Virginia v. EPA*, the Supreme Court considered EPA's "Clean Power Plan," wherein EPA set "numerical emissions ceilings so strict that no existing coal plant would have been able to achieve them" in order "to compel the transfer of power generating capacity from existing sources to wind and solar." 597 U.S. 697, 714 (2022). The Supreme Court held that the major questions doctrine applied because the "history and the breadth of the authority that the agency has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority." *Id.* at 721. "[C]ommon sense as to the manner in which Congress would have been likely to delegate such power to the agency … made it very unlikely that Congress had actually done so." *Id.* at 722–23. This is because Congress does not "typically use oblique or elliptical language to empower an agency to make a radical or

fundamental change to a statutory scheme." *Id.* at 723. Rather, "Congress intends to make major policy decisions itself, not leave those decisions to agencies." *Id.*

Applying the major questions doctrine, the Supreme Court required "clear congressional authorization" rather than a mere "colorable" basis for EPA's interpretation. *Id.* at 724. And the Supreme Court found none in the statute. In particular, the Supreme Court considered that "[p]rior to 2015, EPA had always set emissions limits under Section 111 based on the application of measures that would reduce pollution by causing the regulated source to operate more cleanly. … It had never devised a cap by looking to a system that would reduce pollution simply by shifting polluting activity from dirtier to cleaner sources." *Id.* at 725. This was very different from EPA's new "broader, forward-thinking approach" aimed at "improv[ing] the overall power system." Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64662, 64703 (Oct. 23, 2015).

In making this seismic emission-regulation shift, EPA grabbed "unprecedented power over American industry" without having the expertise to wield it. *W. Va. v. EPA*, 597 U.S. at 728. After it promulgated this regulation, EPA requested extra funding because "[u]nderstand[ing] and project[ing] system-wide ... trends in areas such as electricity transmission, distribution, and storage" requires "technical and policy expertise not traditionally needed in EPA regulatory development." EPA, Fiscal Year 2016: Justification of Appropriation Estimates for the Committee on Appropriations 213 (2015). EPA suddenly found itself responsible for – yet entirely unqualified for – the task of ensuring the nation's electrical grid would not collapse and energy prices would not skyrocket as a result of its shifting energy production requirements. *See W. Va. v. EPA*, 597 U.S. at 729. The Supreme Court reasoned that "[w]hen an agency has no comparative expertise in making certain policy judgments, we have said, Congress presumably would not task it with doing so." *Id.* Accordingly, the Supreme Court found that EPA lacked the authority under the Clean Air Act for promulgating the Clean Power Plan.

West Virginia is directly on point here because EPA did almost exactly the same thing in its mobile source greenhouse gas regulations as it did in the Clean Power Plan. EPA set emissions standards for greenhouse gases at levels unachievable by traditional gasoline and diesel engines such that manufacturers must shift from producing those vehicles to producing electric-powered vehicles. *See*

89 Fed Reg. 27842, 27995 (April 18, 2024) ("EPA's analysis projects that manufacturers will use electrification as their primary compliance pathway, given the significantly more favorable cost effectiveness of electrified powertrains in achieving more stringent GHG standards."). And just as with the Clean Power Plan, this is a truly "beyond the fenceline" shift in power generation for vehicles. An electric car is ultimately not powered by its battery but by the electric grid that charges that battery and by the power plants that fuel that grid.

The shift is thus even more dramatic and unauthorized than EPA states in its Proposed Rescission. EPA explains that requiring "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*." 90 Fed. Reg. at 36306. But *West Virginia* is even more on point than EPA recognizes. In both cases, the mandate was to switch from one source category to a wholly different one. By mandating a shift to electric vehicles, any greenhouse gases would now be generated not by cars but by an entirely different source – power plants. As the Supreme Court instructed, "by forcing a shift throughout the power grid from one type of energy source to another, … [t]his view of EPA's authority was not only unprecedented; it also effected a fundamental revision of the statute, changing it from one sort of scheme of regulation into an entirely different kind." *W. Va. v. EPA*, 597 U.S. at 727–28.

And yet, EPA did not consider in its Endangerment Finding that power plants must ultimately increase production to power the new fleet of electric cars, thereby increasing their greenhouse gas emissions and reducing any benefit EPA perceived itself to be creating. And EPA at no time considered the impacts to the American economy, national security, or individual safety from forcing individuals into vehicles without an immediately accessible power source in the case of emergency. In the event of a sudden evacuation need, complete reliance on electric vehicles would make people vulnerable to both the requisite charging time and the possibility of being unable to charge if the electric grid is compromised. Nowhere did EPA even indicate it recognized those risks, revealing that EPA has ventured into areas well beyond its expertise and charter. "[D]ecision[s] of such magnitude and consequence rest[] with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." 597 U.S. at 735. An unprecedented interpretation of a statute based on mere "definitional possibilities," "shorn of all context," does not qualify as such clear delegation. *Id.* at 732.

Accordingly, just as the Supreme Court decided in the strikingly analogous case of *West Virginia v. EPA*, the major questions doctrine requires rescission of EPA's Endangerment Finding and its associated regulations.

V. *Massachusetts v. EPA* was wrongly decided but its statutory focus nevertheless supports the Proposed Rescission.

As an initial matter, SLF believes *Massachusetts v. EPA* was wrongly decided. The Clean Air Act defines "air pollutant" to mean "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air." 42 U.S.C. § 7602(g). As Justice Scalia explains in his dissent to *Massachusetts v. EPA*, the Act does not define "air pollution agent." 549 U.S. at 556–60. But the majority skipped right past that phrase and defined "air pollutant," in the Clean Air Act's general definitions, to encompass all the words that followed the word "including." It is a clear error of statutory interpretation not to consider the meaning of the term "air pollution" within the definition. And certainly EPA's Endangerment Finding reading of the term "air pollution" to mean "global climate change" is unsupported by both the plain language of the statute and the context of the Clean Air Act.

SLF anticipates highlighting these errors in any future litigation over EPA's ultimate rescission of the Endangerment Finding. SLF further supports EPA's anticipated intention to make similar arguments ultimately before the relevant courts. For now, however, *Massachusetts v. EPA* did not mandate the Endangerment Finding. Instead, it merely permitted it so long as EPA grounded any finding of endangerment in the text of Clean Air Act.

And while it was wrongly decided on these grounds, *Massachusetts v. EPA* was also limited in important ways. The Court merely found that greenhouse gases can be "air pollutants" under the broad Act-wide definition of the term. The Court reasoned as follows: "On the merits, the first question is whether § 202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a 'judgment' that such emissions contribute to climate change. We have little trouble concluding that it does." 549 U.S. at 528.

But that is as far as *Massachusetts v. EPA* goes. The Court did not, as EPA suggested in 2009, decide that emissions from new motor vehicles contribute to global warming. In the section on standing (i.e., not even the portion of the decision on the merits), the Court stated: "Judged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, *according to petitioners*, to global warming." 549 U.S. at 525 (emphasis added). But, in its Endangerment Finding, EPA replaced the phrase "according to petitioners" with ellipses and presented the petitioners' argument as a finding from the Court: "As the Supreme Court noted, '[j]udged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, * * * to global warming.' *Massachusetts v. EPA*, 549 U.S. at 525." 74 Fed. Reg. at 66537–38. This misrepresented the Court's holding. The Court never made any statement one way or another as to whether motor vehicle emissions contribute to global warming.

The *Massachusetts v. EPA* Court also never found that EPA is obligated to make any determination as to whether vehicular emissions contribute to climate change, a distinction emphasized by *UARG*, 573 U.S. at 319 ("The Act-wide definition to which the Court gave a 'sweeping' and 'capacious' interpretation is not a command to regulate.") (citation omitted). And, here, it is important to recognize how the litigation in *Massachusetts v. EPA* arose. The International Center for Technology Assessment (ICTA) and 18 other organizations had petitioned EPA to regulate greenhouse gas emissions from motor vehicles based on a finding that greenhouse gases (broadly) contribute to global warming. The Court gave EPA two viable pathways for deciding that it would deny the petition: it could determine that the Petition was wrong because greenhouse gases do not contribute to global warming / climate change, or it could explain that it need not make any such finding. *Massachusetts v. EPA*, 549 U.S. at 533. And the Court was very clear that it was not advocating for one approach over the other. *See id.* at 534–35 ("We need not and do not reach the question whether on remand EPA must make an endangerment finding, or whether policy concerns can inform EPA's actions in the event that it makes such a finding. … We hold only that EPA must ground its reasons for action or inaction in the statute."). Here, the statute shows that the petition to EPA framed the analysis wrong. The question is not whether greenhouse gases (broadly) contribute to any climate change. Rather, the statute gives EPA the much more targeted authority of regulating vehicular emissions if EPA determines that those specific emissions are dangerous.

Accordingly, EPA can (and should) take the Court's second path – explain it need not do as the petition suggested and make a finding as to whether greenhouse gases (broadly) contribute to global warming. That would be outside the bounds of the statute. Instead, EPA should state that it will not regulate motor vehicles' greenhouse gas emissions because it has not determined that the emissions it could eliminate through regulation are dangerous. And EPA should further lean on the nondelegation and major questions doctrines to support its statutory interpretation. This approach gives EPA adequate basis for rescinding the Endangerment Finding while saving any arguments as to *Massachusetts v. EPA*'s unlawfulness for any future litigation.

EPA also asks for comment on whether *Massachusetts v. EPA* addressed the major questions doctrine. Nowhere in the decision is there any mention of the doctrine or its concepts, and, indeed, from a review of the briefing, it does not appear that any of the petitioners or intervenors mentioned the subject. Because *Massachusetts v. EPA* did not consider the major questions doctrine, *Massachusetts v. EPA* necessarily left open how the doctrine affects the interpretation of the Clean Air Act as it relates to the Endangerment Finding. EPA should now use the major questions doctrine as part of the Court's instruction that it "ground" its "reasons for action or inaction" "in the statute." 549 U.S. at 534–35. Specifically, EPA should apply the major questions doctrine to reason that the Clean Air Act did not instruct it to pursue a global climate change-related agenda through the shifting of emissions from mobile sources to power plants without first finding that those emissions are dangerous. EPA can also provide "some reasonable explanation as to why it cannot or will not exercise its discretion to determine" whether emissions are dangerous, perhaps relying on the major questions doctrine and the futility of regulating a theoretical global problem in a way that would not meaningfully address the problem. 549 U.S. at 533.

VI. Other Requests for Comment

SLF responds to two additional specific requests for comment in EPA's Proposed Rescission because they appear to reveal that EPA may be asking the wrong question. CAA Section 202 requires EPA to find that the emissions it is reducing through regulation are dangerous – not that vehicles' greenhouse gas emissions broadly are dangerous. To be clear, EPA did neither in its Endangerment Finding, but the distinction is important for any future attempted regulation.

First, "The EPA seeks comment, for the first time since the 2009 Endangerment Finding was proposed, on whether, due to new scientific information and developments since the 2009 Endangerment Finding, there is a strong enough scientific record to support an affirmative finding that GHG emissions from section 202(a) sources cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare."

With this question, it appears EPA is misframing the analysis. The question is not whether total greenhouse gas emissions from new motor vehicles are contributing to climate change but whether the quantity of emissions EPA is seeking to regulate sufficiently contribute to climate change as to create a danger. That analysis requires considering (1) that all vehicles only contribute 4% to the total greenhouse gas emissions (or at least purportedly did in 2009), and (2) EPA would not be reducing those emissions to zero. Because of legacy gas vehicles, the shift to power plant generation, and that EPA does not require a wholesale shift to electric vehicles, most emissions would continue despite EPA's regulation. EPA must determine whether those emissions that would actually be eliminated are at all dangerous. And, indeed, EPA has already conceded it developed no evidence to show any such danger.[6]

Second, EPA seeks comment on whether to rescind vehicular greenhouse gas emissions standards while leaving the Endangerment Finding in place. Specifically, EPA reasoned that "there is no 'requisite technology' responsive to the global climate change concerns identified in the Endangerment Finding given evidence that reducing GHG emissions from new motor vehicles and engines to zero would not have a scientifically measurable impact on global GHG concentrations and climate trends." 90 Fed. Reg. at 36291. If reducing the emissions to zero would have no impact on the danger (because it would not change the climate change models), then by definition there is no danger to address here. In other words, by finding

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[6] *See* 74 Fed. Reg. at 66507 ("The Administrator does not need to find that the control measures following an endangerment finding would prevent at least a substantial part of the danger in order to find endangerment,"); *id.* at 66515 ("[T]his action does not attempt to assess the impacts of any future regulation"); and EPA's further regulation at 89 Fed Reg. 27842, 28099 (April 18, 2024) ("EPA did not conduct modeling to specifically quantify changes in climate impacts resulting from this rule in terms of avoided temperature change or sea-level rise."). *See further* EPA's admission that "[a]ccording to climate model simulations summarized by the IPCC, through about 2030, the global warming rate is affected little by the choice of different future emission scenarios." 74 Fed. Reg. at 66519.

there is no "requisite technology" that would change the outcome, EPA has in effect determined that there is no endangerment. Based solely on this analysis, it is more appropriate under the statutory language to rescind the Endangerment Finding if EPA intends to rescind the vehicular greenhouse gas emissions standards.

VII. Conclusion

Our government is to be, "emphatically and truly, a government of the people. In form, and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." *M'Culloch v. State*, 17 U.S. 316, 404–05 (1819). "That congress cannot delegate legislative power to the president is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the constitution." *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892). This is because "the framers believed that a republic—a thing of the people—would be more likely to enact just laws than a regime administered by a ruling class of largely unaccountable 'ministers.' The Federalist No. 11, p. 85." *W. Va. v. EPA*, 597 U.S. at 737 (Gorsuch, J., concurring).

In its Endangerment Finding, EPA assumed for itself the crafting of laws for the general betterment of society. Congress did not assign it that task. Indeed, Congress could not have assigned EPA that task. Our Constitution places that responsibility in the hands of Congress, which is answerable to the people and therefore must ascertain and balance legislation's myriad social, economic, environmental, safety, and national security implications.

SLF supports EPA's Proposed Rescission. The Proposed Rescission would restore the legislative function to our elected representatives who are selected by the People to craft laws for the People. SLF requests EPA consider and incorporate these comments in its final rule to rescind the Endangerment Finding and its associated regulations.

[signature to follow]

SLF thanks EPA again for undertaking this effort and for its consideration of these comments. If EPA has any questions, SLF would welcome EPA to contact any of the undersigned to continue this dialogue.

Sincerely,

Southeastern Legal Foundation

SLF
SOUTHEASTERN LEGAL FOUNDATION