Nos. 26-277 and 26-298

In the Supreme Court of the United States

COMMONWEALTH OF KENTUCKY, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

CHAMBER OF COMMERCE, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENTS IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

The Clean Air Act requires the Environmental Protection Agency (EPA), at "five-year intervals," to "complete a thorough review" of air quality criteria and national ambient air quality standards (NAAQS) and "make such revisions" and "promulgate such new standards as may be appropriate." 42 U.S.C. 7409(d)(1). EPA also "may review and revise criteria or promulgate new standards earlier or more frequently than required." *Ibid.* The questions presented are as follows:

1. Whether EPA may revise a NAAQS without the "thorough review" required by 42 U.S.C. 7409(d)(1).

2. Whether, in exercising any discretionary NAAQS-revision authority that it possesses under the Clean Air Act, EPA must consider the costs associated with revising federal air quality standards earlier than required and without a "thorough review."

STATEMENT OF COMPLIANCE WITH SUPREME COURT RULE 12.6

The counsel of record for all parties received timely notice of the federal respondents' intent to file a brief in support of petitioners within 20 days after the petitions were placed on the docket.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-38a*) is reported at 179 F.4th 963.

JURISDICTION

The judgment of the court of appeals was entered on June 26, 2026. The petitions for writs of certiorari were filed on August 28, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

* This brief cites to the petition appendix in No. 26-277 unless otherwise noted.

INTRODUCTION

The Clean Air Act, 42 U.S.C. 7401 *et seq.*, requires the Environmental Protection Agency (EPA) to set and periodically review national ambient air quality standards (NAAQS) for particular pollutants. See 42 U.S.C. 7408, 7409. The Clean Air Act specifies that, "at five-year intervals," EPA must complete a "thorough review" of both the air quality criteria—information on health and welfare effects that serves as the scientific basis for setting the NAAQS—and the existing NAAQS themselves. 42 U.S.C. 7409(d)(1). By the end of each review period, EPA must conduct the "thorough review" and must "make such revisions" to the criteria and standards "as may be appropriate" under the statute. *Ibid.* Section 7409(d)(1) further provides that EPA "may review and revise criteria or promulgate new standards earlier or more frequently than required." *Ibid.*

For more than four decades, EPA implemented Section 7409(d) by completing a "thorough review" before deciding whether it was appropriate to revise the NAAQS. In circumstances where one Administration questioned whether a standard issued by its predecessor was sufficiently protective or reflected adequate consideration of available information, EPA consistently completed a thorough review before updating any standards. In 2020, EPA completed its fifth and most recent "thorough review" of the criteria and NAAQS for particulate matter, concluding that the revised criteria and standards promulgated after the fourth thorough review in 2012 were requisite to protect health and welfare with an adequate margin of safety.

In 2024, however, EPA issued a rule revising the NAAQS for fine particulate matter without undertaking

the "thorough review" required by the Act. EPA asserted that it had discretionary authority to "reconsider" and revise the NAAQS midcycle, unconstrained by the Act's "thorough review" requirement. And despite characterizing the authority as discretionary, EPA asserted that it was barred from considering the costs entailed by a midcycle less-than-thorough review of the NAAQS. The result of EPA's reconsideration was a substantially more stringent standard for fine particulate matter, imposing immense additional costs on States implementing the midcycle revision and on the regulated parties that are immediately subject to additional permitting requirements, with further additional requirements to follow as the standard is implemented.

State and industry parties filed petitions for review of the 2024 rule, and after the most recent change in Administration, EPA declined to defend its revision of the fine-particulate-matter NAAQS. EPA instead explained to the court of appeals that the agency had erred in asserting authority to revise a NAAQS without completing a thorough review, and in failing to consider the costs of exercising its purported discretion to take that step. The court nevertheless upheld the rule, concluding that the thorough-review requirement does not extend to a review conducted "earlier or more frequently" than the mandatory five-year review. 42 U.S.C. 7409(d)(1). That aspect of the court's decision does not reflect the best reading of the statute. Rather, Section 7409(d)(1)'s text and context make clear that, whatever authority EPA may possess to revise a NAAQS "earlier or more frequently than required under this paragraph," EPA must conduct the "thorough review" that

provision requires before effecting a NAAQS revision. *Ibid.*

The court of appeals compounded its error by holding that EPA had properly declined to consider costs when deciding whether to revise the fine-particulate-matter NAAQS based on a midcycle less-than-thorough review. Even accepting the court's view that EPA was *authorized* to take that step, nothing in the Clean Air Act *compelled* the agency to do so or prohibited the agency from considering costs in deciding whether a discretionary midcycle review was advisable. And absent any contrary statutory directive, bedrock principles of administrative law required EPA to consider the disruptive effect of a midcycle revision as an important aspect of the decision before it.

The court of appeals' decision thus is incorrect, and it warrants this Court's review. Because the Clean Air Act authorizes judicial review of NAAQS revisions only in the D.C. Circuit, see 42 U.S.C. 7607(b)(1), neither of the questions presented can become the subject of a circuit conflict. And the questions presented are exceptionally important, since the revised NAAQS will have sweeping effects on nearly every sector of the national economy. The rule sets in motion a yearslong implementation process that will culminate in tighter particulate-matter controls over a variety of sources affecting energy-production, manufacturing, transportation, and consumer sectors. And without this Court's review, that implementation process cannot easily be undone, given existing D.C. Circuit precedent interpreting the Clean Air Act to prohibit the relaxation of controls, even when EPA finds that existing standards go beyond what is necessary to protect the public health. See *South Coast Air Quality Mgmt. Dist.* v. *EPA*, 472 F.3d 882,

900 (2006), decision clarified on denial of reh'g, 489 F.3d 1245 (D.C. Cir. 2007), cert. denied, 552 U.S. 1140 (2008); 42 U.S.C. 7502(e). The Court should grant review and correct the court of appeals' errors.

STATEMENT

1. a. The Clean Air Act establishes a comprehensive regime to protect the Nation's air quality. The Act requires EPA to establish primary and secondary NAAQS, which limit the concentration of certain air pollutants in ambient air to protect against identified health and welfare impacts, respectively. 42 U.S.C. 7408, 7409(a). As relevant here, EPA must set the primary NAAQS at a level that is "requisite to protect the public health" with an "adequate margin of safety." 42 U.S.C. 7409(b)(1).

The Act requires EPA to "publish" and "from time to time thereafter revise" a list of air pollutants that the agency determines "cause or contribute to air pollution" and for which the agency intends to establish NAAQS. 42 U.S.C. 7408(a)(1)(A). Once EPA lists an air pollutant, the agency must publish air quality criteria for that pollutant. 42 U.S.C. 7408(a)(2). Those criteria are a compilation of the "latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities." *Ibid.*

When EPA publishes air quality criteria, it must also publish proposed primary and secondary NAAQS based on the criteria for the relevant pollutants. 42 U.S.C. 7409(a)(2) and (b). The primary NAAQS shall be standards that, if attained and maintained, "are requisite to protect the public health." 42 U.S.C. 7409(b)(1). Secondary NAAQS shall be standards that, if attained and maintained, are "requisite to protect the public welfare

from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air." 42 U.S.C. 7409(b)(2). Both primary and secondary NAAQS "may be revised in the same manner as promulgated." 42 U.S.C. 7409(b)(1) and (2); see 42 U.S.C. 7409(a)(1)(B) (requiring "reasonable time for interested persons to submit written comments" on proposed rules and specifying promulgation "by regulation" with "such modifications" as EPA "deems appropriate").

EPA must "complete a thorough review of the [air quality] criteria" and NAAQS at "five-year intervals." 42 U.S.C. 7409(d)(1). The Act authorizes EPA, after completing the "thorough review," to "make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 * * * and [section 7409(b)]." *Ibid.* Section 7409(d)(1) further specifies that EPA "may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph." *Ibid.*

To assist in the "thorough review," EPA must appoint an independent scientific review committee, the Clean Air Scientific Advisory Committee (CASAC), to review and recommend revisions to existing criteria and NAAQS. 42 U.S.C. 7409(d)(2)(A) and (B). CASAC submits its recommendations approximately one year before the date by which EPA must complete the five-year review. See 42 U.S.C. 7409(d)(1) and (2)(B). If EPA's revisions to the NAAQS differ significantly from CASAC's recommendations, EPA must explain the reasons for the departure. 42 U.S.C. 7607(d)(3) and (6).

b. EPA's promulgation of a NAAQS revision triggers various statutory obligations for States, EPA, and

regulated parties. Once the revision takes effect, persons who seek permits to construct or modify certain emitting facilities (which the court of appeals has determined includes persons with pending applications, see *Murray Energy Corp.* v. *EPA*, 936 F.3d 597, 625 (D.C. Cir. 2019) (per curiam)) must demonstrate that their facilities will not cause, or contribute to, a violation of the standard. 42 U.S.C. 7475. No later than one year after the promulgation of a new or revised NAAQS, each State must submit to EPA a list designating each area within the State as "nonattainment" (meaning it does not meet the NAAQS), "attainment" (meaning that it meets the NAAQS), or "unclassifiable" (meaning that it cannot be classified on the basis of available information). 42 U.S.C. 7407(d)(1)(A). Taking the States' initial designations into account, EPA must then promulgate designations for all areas, generally within two years after the promulgation of a new or revised NAAQS. 42 U.S.C. 7407(d)(1)(B).

For areas that EPA designates as nonattainment, the States within which those areas are located then must submit implementation plans, which EPA must evaluate, that are designed to attain the NAAQS as prescribed by the Act. 42 U.S.C. 7410(a)(1) and (2)(B). If EPA finds that a State has failed to submit a plan or disapproves a State's plan "in whole or in part," and the State does not correct the deficiency, EPA must promulgate a federal implementation plan within two years after that finding or disapproval. 42 U.S.C. 7410(c)(1)(B).

c. Once an area is designated nonattainment, EPA cannot "relax[]" the applicable NAAQS unless the agency promulgates controls that are "not less stringent than the controls applicable to areas designated nonattainment before such relaxation." 42 U.S.C. 7502(e). The

D.C. Circuit has interpreted that anti-backsliding provision to mean that "air quality should be improved until safe and never allowed to retreat thereafter," such that "if EPA set requirements that proved too stringent and unnecessary to protect public health, EPA was forbidden from releasing states from these burdens." *South Coast Air Quality Mgmt. Dist.* v. *EPA*, 472 F.3d 882, 900 (2006), decision clarified on denial of reh'g, 489 F.3d 1245 (D.C. Cir. 2007), cert. denied, 552 U.S. 1140 (2008). The D.C. Circuit has also broadly construed the term "controls" in Section 7502(e), defining the term to include any measure "designed to constrain [pollutant] levels." *Id.* at 902; see *id.* at 900-902.

2. EPA first promulgated NAAQS for particulate matter in 1971, and the agency has since completed five "thorough review[s]" under Section 7409(d)(1). See 89 Fed. Reg. 16,202, 16,207-16,209 (Mar. 6, 2024). Following a thorough review in 1997, EPA addressed fine particulate matter (also known as $PM_{2.5}$) separately from coarse particulate matter for the first time. See *id.* at 16,207. In 2006 and 2012, EPA revised certain NAAQS for fine particulate matter, again after thorough reviews. See *id.* at 16,208.

In 2020, following the fifth and most recent thorough review, EPA retained the existing NAAQS for fine particulate matter. 85 Fed. Reg. 82,684 (Dec. 18, 2020). Consistent with its past practices, EPA completed the thorough review by drafting and finalizing an Integrated Science Assessment that examined peer-reviewed literature published since the previous review on all identifiable effects of the pollutant on public health or welfare. *Id.* at 82,688-82,689. EPA also drafted and finalized a 2019 policy assessment that evaluated existing

standards. *Id.* at 82,690. After reviewing that information and consulting CASAC, EPA proposed and then finalized its decision to retain the existing particulate-matter NAAQS. *Id.* at 82,685.

In June 2021, following a change in Administration, EPA announced that it would reconsider the 2020 rule. 89 Fed. Reg. at 16,203 & n.1. Rather than conducting a new thorough review, EPA's reconsideration focused on a limited set of topics. *Id.* at 16,211-16,212. The agency developed a "supplement" to the 2019 Integrated Science Assessment and a revised policy assessment. *Ibid.* The supplement selected and analyzed several new studies on a targeted basis, covering only part of the scientific literature supporting the 2020 rule. See C.A. App. 1845, 1849. EPA explained that other effects related to the air quality criteria, such as respiratory effects, reproductive and developmental effects, and nervous system effects, had not been updated in this supplement. *Id.* at 2752, 2800. EPA thus acknowledged that the supplement did not "represent a full multidisciplinary evaluation of evidence" for the underlying air quality criteria and did not "satisfy the EPA's obligation to periodically complete a thorough review of the air quality criteria." *Id.* at 1845, 2800; see 89 Fed. Reg. at 16,212.

In March 2024, EPA issued a rule lowering the primary annual $PM_{2.5}$ NAAQS from 12 $\mu g/m^3$ to 9 $\mu g/m^3$. 89 Fed. Reg. at 16,203.

3. Petitioners—26 States and various industry groups—challenged the 2024 rule by filing two petitions for review, which the court of appeals consolidated. Pet. App. 14a. Other States and health, environmental, and community groups intervened to defend the rule. *Ibid.* The court heard oral argument in December 2024. *Ibid.*

Following a change in Administration, the court of appeals granted the government's motion to hold the case in abeyance to allow the new Administrator to review the rule. Pet. App. 14a. Upon further consideration, EPA confessed error and moved to vacate the rule on two grounds. First, EPA agreed with petitioners that the agency had exceeded its statutory authority by revising the NAAQS without first completing the thorough review required by Section 7409(d)(1). See Gov't Mot. for Vacatur 3, 10-15. Second, EPA asserted that, even if it had statutory authority to revise the NAAQS based on a midcycle less-than-thorough review, the agency had arbitrarily and capriciously declined to consider the costs associated with taking that step. *Id.* at 18-21.

The court of appeals denied the petitions for review and EPA's motion for vacatur, and the court upheld the rule. Pet. App. 1a-38a. In holding that EPA had statutory authority to revise the NAAQS without a thorough review, the court relied in part on Section 7409(b)'s language providing that NAAQS "may be revised in the same manner as promulgated." *Id.* at 19a (quoting 42 U.S.C. 7409(b)); see *id.* at 19a-21a. The court rejected the argument that Section 7409(b) "provide[s] only the procedure" for any revisions, and that Section 7409(d)(1) confers the requisite substantive authority. *Id.* at 21a.

The court of appeals further held that the Clean Air Act allows EPA to revise a NAAQS without first completing a "thorough review" of the relevant scientific information. The court explained that, although the first sentence of Section 7409(d)(1) requires EPA to conduct a "thorough review" at "five-year intervals," the provision's second sentence does not use the word "thorough" in authorizing EPA to "review and revise criteria

or promulgate new standards earlier or more frequently than required under this paragraph." 42 U.S.C. 7409(d)(1); see Pet. App. 21a-22a. The court expressed the concern that "[r]equiring a full review whenever the Administrator seeks to revise a single criterion or standard off-cycle would prevent the Administrator from responding promptly to changes in the relevant science." Pet. App. 23a. The court also viewed its reading of Section 7409(d)(1) as more consistent with other provisions of the Act, such as Section 7408(c), which requires EPA to review and potentially revise air quality criteria "from time to time" but does not mandate a thorough review. *Id.* at 24a (quoting 42 U.S.C. 7408(c)); see *id.* at 24a-25a.

The court of appeals further held that the rule is not arbitrary and capricious. Pet. App. 26a-38a. In particular, the court rejected the argument, advanced by petitioners and EPA, that the 2024 rule is invalid because the agency failed to take into account the costs associated with its midcycle review and NAAQS revision. Relying on *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 474 (2001), and *Murray Energy Corp.*, 936 F.3d at 605, the court stated that "[b]oth the Supreme Court and [the D.C. Circuit] have repeatedly rejected similar efforts to inject considerations unrelated to public health into the NAAQS-setting process." Pet. App. 28a; see *id.* at 28a-31a.

4. In separate proceedings, two plaintiff groups have sued EPA in the United States District Court for the Northern District of California, seeking to compel the agency to issue attainment-related designations under the 2024 rule for all areas of the country. The district court has granted summary judgment for the plaintiffs, ordering EPA to make the designations by

February 6, 2027, and the government has appealed. See *Alliance of Nurses for Healthy Env'ts* v. *Zeldin*, No. 26-cv-3118, 2026 WL 2078145 (N.D. Cal. July 17, 2026), appeal docketed, No. 26-5750 (9th Cir. filed Sept. 3, 2026); *California* v. *Zeldin*, No. 26-cv-3500 (N.D. Cal. July 17, 2026), appeal docketed, No. 26-5756 (9th Cir. filed Sept. 3, 2026).

DISCUSSION

In the decision below, the court of appeals made two independent errors. First, the court held that EPA could promulgate a new and more stringent revised NAAQS at any time and without conducting the "thorough review" required by 42 U.S.C. 7409(d)(1). Second, the court held that EPA could lawfully take that step without considering the distinct costs associated with a NAAQS revision premised on a midcycle less-than-thorough review. Those holdings reflect misreadings of the statutory text and of this Court's precedent.

This Court's review is warranted. The NAAQS and their implementation have sweeping consequences for virtually all major sectors of the Nation's economy. And under existing D.C. Circuit precedent interpreting the Clean Air Act's anti-backsliding provision, allowing the court of appeals' decision to remain in effect will hamper EPA's ability to revise the NAAQS, even if a future thorough review indicates that those standards are more stringent than necessary to protect the public health. This Court should not allow the D.C. Circuit to have the final word on issues of such importance.

1. The court of appeals erred in holding that EPA has statutory authority to revise the NAAQS without completing a thorough review. Section 7409(d)(1)'s text, the larger statutory context, and longstanding agency

practice all indicate that a thorough review is a prerequisite to any NAAQS revision.

a. "[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Utility Air Regulatory Grp.* v. *EPA*, 573 U.S. 302, 320 (2014) (citation omitted). The text of Section 7409(d)(1) is the proper starting place. Section 7409(d)(1)'s first sentence requires EPA to "complete a thorough review" of the air quality criteria and the NAAQS "at five-year intervals" and to "make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with" Sections 7408 and 7409(b). 42 U.S.C. 7409(d)(1). Section 7409(d)(1)'s second sentence then permits—but does not require—EPA to "review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph." *Ibid.*

Section 7409(d)(1)'s second sentence is ambiguous in one respect, but neither potential reading of that sentence supports the court of appeals' decision here. Whereas the first sentence of Section 7409(d)(1) authorizes EPA to revise criteria and standards, and to promulgate new standards, the second sentence refers only to the revision of criteria and the promulgation of new standards—not to the revision of existing standards. That omission could be understood to mean that the second sentence's authorization to act "earlier or more frequently than" every five years, 42 U.S.C. 7409(d)(1), does not extend to the revision of existing NAAQS. That would leave NAAQS revision to be governed solely by Section 7409(d)(1)'s first sentence and its requirement of a "thorough review."

Alternatively, the abbreviated list of EPA actions contained in Section 7409(d)(1)'s second sentence might

be understood as shorthand for the complete list set forth in the sentence that precedes it. See, *e.g.*, *Davis* v. *Michigan Dep't of the Treasury*, 489 U.S. 803, 809 (1989) (holding that "[t]he reference to 'the pay or compensation' in the last clause of § 111 must, in context, mean the same 'pay or compensation' defined in the first part of the section," despite the omission of certain words) (emphasis omitted). On that reading, the second sentence simply makes clear that EPA *may* do "earlier or more frequently" each of the things that the first sentence *requires* the agency to do "at five-year intervals." 42 U.S.C. 7409(d)(1). But if the second sentence is viewed as a shorthand reference to the first sentence's more comprehensive terms, the authorization that the second sentence confers should likewise be subject to the *limitations* that the first sentence imposes. Thus, any revised or new criteria or standards that EPA promulgates midcycle must comply with the first sentence's requirement that criteria and standards be "appropriate in accordance with" Sections 7408 and 7409(b). *Ibid.* By the same token, any such midcycle revisions must be premised on the "thorough review" that the first sentence requires. *Ibid.*

EPA's current interpretation of Section 7409(d)(1), under which a "thorough review" is a legal prerequisite to any NAAQS revision, is likewise most consistent with the provision's "place in the overall statutory scheme." *Utility Air Regulatory Grp.*, 573 U.S. at 320 (citation omitted). The Clean Air Act requires that all air quality criteria must "accurately reflect the latest scientific knowledge" regarding "all identifiable effects on public health or welfare," 42 U.S.C. 7408(a)(2), and that all NAAQS must be "based on such criteria," 42 U.S.C. 7409(b)(1). The thorough review that EPA periodically

conducts pursuant to Section 7409(d)(1) ensures that those requirements are met. Through that process, EPA gathers the "latest scientific knowledge" and "base[s]" any revisions on the full picture the agency compiles. A less-than-thorough review necessarily limits that picture, undermining those requirements.

The rulemaking here bears that out. As EPA acknowledged in promulgating the 2024 rule, the agency's supplemental "evaluation does not encompass the full multidisciplinary evaluation" that had been a part of EPA's thorough review in 2020. 89 Fed. Reg. at 16,212. Instead, the supplement looked only to recent studies that EPA "deemed to be of greatest significance." *Ibid.* EPA declined to consider "new studies" identified by commenters, while noting that those studies would "warrant closer consideration" in a future thorough review. C.A. App. 2800. EPA thus acknowledged that it was narrowing the scope of its review in a way that is inconsistent with Section 7409(d)(1)'s requirement of a "thorough review," and that is in significant tension with what is contemplated by Sections 7408(a)(2) and 7409(b)(1).

EPA's longstanding practice further supports the view that Section 7409(d)(1) mandates a thorough review before a NAAQS may be revised. See *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is.") (brackets in original, citation and internal quotation marks omitted). The 2024 rule at issue here marks the first time that EPA has relied on the second sentence of Section 7409(d)(1) as an independent

source of authority to revise the NAAQS without a thorough review. See 26-298 Pet. App. 536a-538a (Decl. of Aaron Szabo).

Since 1977, when Section 7409(d) was enacted in its current form, EPA has always conducted a thorough review before undertaking a NAAQS revision. Indeed, EPA has consistently declined to base NAAQS revisions on "[r]ecent studies available after completion of criteria review," pursuant to the agency's "long-standing practice of basing NAAQS decisions on studies and related information included in the pertinent air quality criteria and available for CASAC review." 62 Fed. Reg. 38,652, 38,662 & n.15 (July 18, 1997); see 71 Fed. Reg. 61,144, 61,148 (Oct. 17, 2006); 78 Fed. Reg. 3086, 3095-3096 (Jan. 15, 2013); 85 Fed. Reg. at 82,690-82,691. Instead of considering new studies outside of the thorough-review process, EPA historically has asked whether the "'new' studies" are "of such significance that it is appropriate to delay a decision in a NAAQS review and to supplement the pertinent air quality criteria so the studies can be taken into account" in the thorough review. 85 Fed. Reg. at 82,690-82,691. The approach that EPA took here, in which the agency supplemented its most recent thorough review with a new study *after* finalizing its review of air quality criteria and promulgating a final NAAQS in 2020, is inconsistent with that longstanding practice.

b. The court of appeals' analysis reflects a misunderstanding of Section 7409(b) and its interaction with Section 7409(d)(1), and of the broader statutory scheme.

The court of appeals interpreted the Act as authorizing EPA to revise the NAAQS separate and apart from Section 7409(d)(1). Pet. App. 20a-21a. In support of that assertion, the court observed that Section 7409(b)

was enacted in 1970, seven years before the enactment of Section 7409(d)(1), and provides that NAAQS "may be revised in the same manner as promulgated." *Id.* at 19a (quoting 42 U.S.C. 7409(b)(1)). The court inferred from that language that until Section 7409(d)(1) was added to the Clean Air Act, EPA "indisputably had authority to revise primary and secondary NAAQS at any time." *Ibid.* The court then asserted that Section 7409(d)(1)'s later enactment did not alter EPA's preexisting, "statutorily implicit" authority. *Id.* at 21a (citation omitted); see *id.* at 20a-21a. That is incorrect.

In providing that NAAQS "may be revised in the same manner as promulgated," Section 7409(b) speaks to the procedural requirements for such revisions. 42 U.S.C. 7409(b); see *Webster's Seventh New Collegiate Dictionary* 515 (1970) (defining "manner" as "a mode of procedure or way of acting"). The procedural requirements for promulgating NAAQS are set forth in Section 7409(a), which mandates notice-and-comment rulemaking. Section 7409(b) thus cannot serve as a separate source of EPA's revision authority.

To be sure, during the period between 1970 and 1977, EPA's authority to revise existing NAAQS would presumably have been deemed to be implicit in Section 7409(a)'s directive to promulgate the original NAAQS. And Section 7409(b)'s reference to the "manner" in which NAAQS could be revised would have been understood to presuppose, and thus to confirm, that such authority existed. That implicit authority was displaced, however, when Congress enacted Section 7409(d)(1) and expressly addressed the issue. See *Ivy Sports Med., LLC* v. *Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) (Kavanaugh, J.) (explaining that "any inherent reconsideration authority" an agency might have "does not apply

in cases where Congress has spoken"); cf. *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (applying the "well established canon of statutory interpretation" that a "specific provision" governs over a "general authorization"). By enacting Section 7409(d)(1), Congress "provided a mechanism" by which EPA may revise existing NAAQS, *Ivy Sports Med.*, 767 F.3d at 86 (citation omitted), following a "thorough review." Now that Congress has directly addressed that subject, "it is not reasonable" for a court to "infer authority" from other Clean Air Act provisions. *Ibid.* (citation omitted). It would be particularly unreasonable to rely on such inferences as a ground for avoiding Section 7409(d)(1)'s "thorough review" requirement.

The court of appeals appeared to acknowledge that it should read Section 7409(b)(1) "in harmony" with Section 7409(d)(1). Pet. App. 21a. The court erred, however, in holding that the two provisions could be reconciled without requiring a thorough review for midcycle NAAQS revisions. *Id.* at 21a-22a. The court based that holding on the fact that the second sentence of Section 7409(d)(1) does not include the word "thorough." *Id.* at 22a. The court failed to appreciate that, if the second sentence authorizes midcycle NAAQS revisions at all, it does so through shorthand language that should be understood to incorporate all of the first sentence's requirements. See pp. 13-14, *supra*.

The court of appeals' selective attention to the differing language of the two provisions appeared to reflect the view that the statute's "plain objective" is to allow EPA to "respond[] promptly to changes in the relevant science." Pet. App. 23a; see *id.* at 23a-24a. But the Clean Air Act provisions that govern promulgation and

implementation of the NAAQS indicate that revisions should not be rushed and that Section 7409(d) is designed to promote thoroughness and deliberation at predictable intervals. EPA's decision to revise a NAAQS triggers cascading, onerous, and significant obligations many years after EPA revises a standard:

- States must submit initial air quality designations to EPA within one year after a standard is promulgated, and EPA generally must finalize designations within two years after promulgation. 42 U.S.C. 7407(d)(1)(B)(i).
- Within three years after a standard is promulgated, States must submit plans to EPA providing for "implementation, maintenance, and enforcement" of the standard in their jurisdictions. 42 U.S.C. 7410(a)(1).
- States that have designated nonattainment areas generally must develop plans addressing that nonattainment within 18 months after designation. 42 U.S.C. 7513a(a)(2).
- States designated nonattainment are subject to attainment deadlines, with continued nonattainment resulting in the imposition of additional and increasingly stringent statutory requirements stretching years and even decades into the future. 42 U.S.C. 7502, 7513a, 7513b.

Given the chain of obligations stemming from a new NAAQS, it is critical that any revisions be carefully made. Section 7409(d)(1)'s requirement of a prior "thorough review" reflects that understanding. Allowing NAAQS revisions based on an ad hoc and partial review "would severely disrupt this complex and delicate administrative scheme." *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 348 (1984). To be sure, the required

thorough review will consume more time and resources than the more cursory analysis that EPA conducted before promulgating the 2024 rule at issue here. But the text of Section 7409(d)(1) reflects the balance that Congress struck between the potential benefits of a prompt response and the need to carefully evaluate the full body of available scientific knowledge before triggering consequential, cascading effects for the American public. Indeed, if EPA could undertake such revisions based on a truncated inquiry—even where, as here, the prior Administration's thorough review had recently reached a different conclusion—the thorough-review requirement's value to stakeholders would be substantially reduced.

2. The court of appeals compounded its error by holding that EPA was prohibited from considering costs in deciding whether to undertake the review at issue here. Even if the relevant Clean Air Act provisions are read to *authorize* EPA to revise the NAAQS through a midcycle less-than-thorough review, the statute clearly did not *require* EPA to take that course. And while the Clean Air Act forecloses consideration of costs when EPA sets the level of a revised NAAQS after the five-year "thorough review" mandated by the first sentence of Section 7409(d)(1), no such barrier applies when EPA exercises discretionary authority under Section 7409(d)(1)'s second sentence. Given the absence of any statutory prohibition on consideration of the costs that a midcycle less-than-thorough review would entail, bedrock principles of administrative law required EPA to consider those costs before exercising whatever discretionary authority it possessed.

a. Section 7409(d)(1)'s first sentence states that "at five-year intervals" EPA "*shall* complete a thorough review of the criteria" and the NAAQS "and *shall* make such revisions in such criteria and standards * * * as may be appropriate in accordance with" Sections 7408 and 7409(b). 42 U.S.C. 7409(d)(1) (emphases added). In promulgating the NAAQS revision at issue here, however, EPA did not claim to be performing that mandatory duty. To the contrary, EPA disclaimed having conducted the "thorough review" that Section 7409(d)(1) requires. See p. 9, *supra*.

Section 7409(d)(1)'s second sentence states that EPA "may" take certain actions "earlier or more frequently than required under this paragraph." 42 U.S.C. 7409(d)(1). "This Court has repeatedly observed that the word 'may' *clearly* connotes discretion." *Biden* v. *Texas*, 597 U.S. 785, 802 (2022) (citation and some internal quotation marks omitted). Even if that sentence is read to encompass NAAQS revisions (see pp. 13-14, *supra*), and to authorize such revisions without a prior "thorough review" (but see pp. 12-20, *supra*), the sentence simply allows but does not require the approach that EPA took here. And to the extent the court of appeals viewed Section 7409(b) as an alternative source of NAAQS-revision authority, that provision likewise uses the term "may." See 42 U.S.C. 7409(b)(1) and (2) (providing that primary and secondary NAAQS respectively "may be revised in the same manner as promulgated"). Thus, even assuming that the Clean Air Act authorized EPA to revise the fine-particulate-matter NAAQS through a midcycle less-than-thorough review, nothing in the statute either required EPA to do so or prohibited EPA from considering costs in deciding whether to take that step.

To engage in reasoned decisionmaking, an agency generally must consider each "important aspect of the problem." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). And the costs of an agency's action typically are an important aspect that warrants consideration. See *Michigan* v. *EPA*, 576 U.S. 743, 752-753 (2015). Requiring "[c]onsideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions." *Id.* at 753. Accordingly, except where Congress has precluded them from doing so, "[a]gencies have long treated cost as a centrally relevant factor when deciding whether to regulate." *Id.* at 752-753.

The potential costs of a midcycle NAAQS revision are particularly evident. Each NAAQS revision sets in motion a series of cascading obligations for States and regulated parties. See pp. 6-7, 19, *supra*. And because the midcycle inquiry that EPA conducted here was too truncated to constitute a "thorough review" within the meaning of Section 7409(d)(1), it did not reset the five-year clock for conducting the *next* "thorough review." The States and regulated parties therefore must begin complying with the obligations imposed by the revised NAAQS, while knowing that a new, more thorough review is imminent. That review in turn may result in additional changes that will compound the costs of implementing the NAAQS revisions adopted in the midcycle review.

In 2011, when EPA previously considered engaging in a midcycle review and NAAQS revision for ozone (another NAAQS pollutant), then-Administrator of the Of-

fice of Information and Regulatory Affairs Cass Sunstein urged EPA to reconsider that approach in light of the "significant costs" it would impose on regulated parties. Letter from Cass R. Sunstein, Adm'r, Office of Info. & Regulatory Affairs, to Lisa P. Jackson, Adm'r, EPA 2 (Sept. 2, 2011), https://perma.cc/NA65-R834. Sunstein explained that EPA would "be compelled to revisit the most recent standards again in 2013," and that a midcycle review "could produce needless uncertainty" because "a new assessment, and potentially new standards, will be developed in the relatively near future." *Id.* at 1. Consistent with Sunstein's letter, EPA never finalized the contemplated rule.

EPA should have considered the similar costs its midcycle review imposes here. Such consideration was particularly appropriate given the reliance interests among States and regulated entities accustomed to EPA's longstanding practice of revising NAAQS only through the thorough-review process. See p. 16, *supra*.

b. Relying on prior decisions of this Court and of the D.C. Circuit, the court of appeals held that EPA could not consider costs in this setting because the agency is barred from "inject[ing] considerations unrelated to public health into the NAAQS-setting process." Pet. App. 28a; see *id.* at 28a-33a. That holding reflects a misunderstanding of the relevant precedents, and a failure to appreciate the significance of EPA's 2024 departure from established agency practice.

In *Whitman* v. *American Trucking Associations*, 531 U.S. 457 (2001), this Court held that EPA may not consider costs when determining the level at which a NAAQS should be set. *Id.* at 465. The Court based that holding on Section 7409(b)(1), which requires the NAAQS to be set at the level "'the attainment and maintenance of

which . . . are requisite to protect the public health' with 'an adequate margin of safety.'" *Ibid.* (quoting 42 U.S.C. 7409(b)(1)). The Court viewed that language as "absolute," and it observed that "[n]owhere are the costs of achieving such a standard made part of th[e] initial calculation." *Ibid.* (citation omitted). This Court later described *Whitman* as "establish[ing] the modest principle that where the Clean Air Act expressly directs EPA to regulate on the basis of a factor that on its face does not include cost, the Act normally should not be read as implicitly allowing the Agency to consider cost anyway." *Michigan*, 576 U.S. at 755-756.

The D.C. Circuit subsequently applied *Whitman*'s reasoning to NAAQS revisions adopted by EPA under Section 7409(d)(1) after a thorough review. *Murray Energy Corp.* v. *EPA*, 936 F.3d 597, 605-606, 621-622 (2019) (per curiam). The court of appeals there rejected the argument that Section 7409(d)(1)'s reference to revising the NAAQS "as may be appropriate" should be read to allow consideration of costs. *Id.* at 621 (citation omitted). Thus, once EPA has gathered and reviewed the requisite information, and is determining the level at which an original or revised NAAQS should be set, the agency must "identify the maximum airborne concentration of a pollutant that the public health can tolerate, decrease the concentration to provide an 'adequate' margin of safety, and set the standard at that level." *Whitman*, 531 U.S. at 465; see *Murray Energy*, 936 F.3d at 621-622.

As explained above (see pp. 8, 16, *supra*), until EPA promulgated the 2024 rule at issue in this case, the agency had consistently promulgated NAAQS revisions only after conducting the "thorough review" specified

by Section 7409(d)(1). When the "NAAQS-setting process" (Pet. App. 28a) is conducted in that manner, consideration of costs is forbidden. EPA cannot consider costs in deciding *whether to conduct* a "thorough review" at the prescribed time, since Section 7409(d)(1) specifies in mandatory terms that the agency "shall complete" such reviews "at five-year intervals." 42 U.S.C. 7409(d)(1). And once a five-year thorough review has been completed, Section 7409(d)(1) directs in mandatory terms (in the language that was at issue in *Murray Energy*) that EPA "shall make such revisions" to the NAAQS "as may be appropriate *in accordance with * * * subsection (b) of this section*." *Ibid.* (emphasis added). As the Court in *Whitman* explained, Section 7409(b) ("subsection (b) of this section") specifies that NAAQS levels shall be set based on public-health criteria and does not authorize consideration of costs. See pp. 23-24, *supra*.

This case, by contrast, does not involve EPA's performance of its mandatory duty to conduct "thorough review[s]" of existing NAAQS every five years. Even assuming that the Clean Air Act *allows* EPA to conduct a midcycle less-than-thorough review of a NAAQS, no provision of the statute (a) requires EPA to do so, (b) forbids EPA from considering costs in determining whether such a review is appropriate, or (c) specifies other non-cost criteria that the agency must apply in deciding whether to conduct such a discretionary review. In the absence of a contrary statutory directive, "reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions." *Michigan*, 576 U.S. at 753. That principle is controlling here.

The court of appeals thus overread the relevant precedents in concluding that "considerations unrelated to

public health" may play no role in "the NAAQS-setting process." Pet. App. 28a. That statement may be accurate with respect to the NAAQS-setting process *as EPA has historically conducted it*, *i.e.*, through the five-year "thorough review[s]" mandated by Section 7409(d)(1). But the statutory provisions that preclude consideration of cost in that context do not apply to EPA's wholly discretionary decision to conduct a midcycle less-than-thorough review here. Even assuming that the Clean Air Act *allowed* EPA to conduct that review as a matter of agency discretion (but see pp. 12-20, *supra*), nothing in the Act can plausibly be construed either as requiring the agency to do so or as forbidding the agency to consider the associated costs in deciding whether to pursue that course.

3. The questions presented warrant this Court's review. The NAAQS revision at issue commenced a process that will impose substantial burdens on EPA, States, and regulated parties. See p. 19, *supra*; 26-277 Pet. 13-16; 26-298 Pet. 8-11, 42-44. Indeed, despite the pendency of this litigation concerning the validity of the 2024 rule, EPA is already facing *additional* litigation seeking to compel the agency to take the next steps in the process of implementing the revised NAAQS. See *Alliance of Nurses for Healthy Env'ts* v. *Zeldin*, No. 26-cv-3118, 2026 WL 2078145 (N.D. Cal. July 17, 2026), appeal docketed, No. 26-5750 (9th Cir. filed Sept. 3, 2026); *California* v. *Zeldin*, No. 26-cv-3500 (N.D. Cal. July 17, 2926), appeal docketed, No. 26-5756 (9th Cir. filed Sept. 3, 2026). And the obligations triggered by the NAAQS revision here detract from the agency's ability to fulfill its other responsibilities, including the statutorily mandated thorough review.

If the court of appeals' decision is allowed to stand, moreover, current D.C. Circuit precedent will likely constrain EPA's ability to undo those regulatory burdens at the conclusion of a future thorough review, even if the agency concludes that the NAAQS challenged here are "too stringent and unnecessary to protect public health." *South Coast Air Quality Mgmt. Dist.* v. *EPA*, 472 F.3d 882, 900 (2006), decision clarified on denial of reh'g, 489 F.3d 1245 (D.C. Cir. 2007), cert. denied, 552 U.S. 1140 (2008). See pp. 7-8, *supra*. The ramifications of the decision below thus will affect the obligations of EPA, States, and regulated parties well into the future.

Finally, because the D.C. Circuit has exclusive jurisdiction over petitions for review of any EPA decision promulgating a NAAQS, see 42 U.S.C. 7607(b)(1), the important questions presented here cannot become the subject of a circuit conflict. For that reason as well, this Court's review is warranted.

CONCLUSION

The petitions for writs of certiorari should be granted.

Respectfully submitted.

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