Nos. 12-1146, 12-1152, 12-1153, 12-1248, 12-1253, 12-1254, 12-1268, 12-1269 and 12-1272

In the Supreme Court of the United States

UTILITY AIR REGULATORY GROUP, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY

COMMONWEALTH OF VIRGINIA, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY

PACIFIC LEGAL FOUNDATION, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY

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

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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(Additional Captions Listed on Inside Cover)

AMERICAN CHEMISTRY COUNCIL, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

COALITION FOR RESPONSIBLE REGULATION, INC., ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ENERGY-INTENSIVE MANUFACTURERS WORKING GROUP ON GREENHOUSE GAS REGULATION, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

SOUTHEASTERN LEGAL FOUNDATION, INC., ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

STATE OF TEXAS, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

QUESTIONS PRESENTED

Petitioners challenge administrative decisions of the United States Environmental Protection Agency (EPA) relating to the regulation of greenhouse gas emissions under the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.* The questions presented are as follows:

1. Whether the EPA properly concluded that elevated concentrations of greenhouse gases in the atmosphere are reasonably anticipated to endanger public health or welfare, and that motor-vehicle emissions contribute to that air pollution (Endangerment Finding).

2. Whether the EPA appropriately prescribed new motor-vehicle emission standards for greenhouse gases following its Endangerment Finding.

3. Whether the EPA correctly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the CAA for stationary sources that emit greenhouse gases.

4. Whether petitioners have standing to challenge the EPA's implementation of the stationary-source permitting requirements applicable to the emission of greenhouse gases.

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In the Supreme Court of the United States

Nos. 12-1146

UTILITY AIR REGULATORY GROUP, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY

No. 12-1152

COMMONWEALTH OF VIRGINIA, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY

No. 12-1153

PACIFIC LEGAL FOUNDATION, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY

No. 12-1248

AMERICAN CHEMISTRY COUNCIL, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 12-1253

COALITION FOR RESPONSIBLE REGULATION, INC., ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 12-1254

ENERGY-INTENSIVE MANUFACTURERS WORKING GROUP ON GREENHOUSE GAS REGULATION, ET AL., PETITIONERS

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No. 12-1268

SOUTHEASTERN LEGAL FOUNDATION, INC., ET AL., PETITIONERS
v.
ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 12-1269

STATE OF TEXAS, ET AL., PETITIONERS
v.
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No. 12-1272

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ENVIRONMENTAL PROTECTION AGENCY, ET AL.

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BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 6a-107a)[1] is reported at 684 F.3d 102. Final actions of the Environmental Protection Agency are published at 75

[1] Citations to "Pet. App." are to the appendix to the petition in No. 12-1146.

Fed. Reg. 31,514 (June 3, 2010); 75 Fed. Reg. 25,324 (May 7, 2010); 75 Fed. Reg. 17,004 (Apr. 2, 2010); 74 Fed. Reg. 66,496 (Dec. 15, 2009); 67 Fed. Reg. 80,186 (Dec. 31, 2002); 45 Fed. Reg. 52,676 (Aug. 7, 1980); 43 Fed. Reg. 26,388 (June 19, 1978); and 43 Fed. Reg. 26,380 (June 19, 1978).

JURISDICTION

The judgment of the court of appeals was entered on June 26, 2012. Petitions for rehearing were denied on December 20, 2012 (Pet. App. 603a-607a). The petitions for a writ of certiorari in Nos. 12-1146, 12-1152, and 12-1153 were filed on March 20, 2013. On March 7, 8, 11, and 12, 2013, the Chief Justice extended the time within which to file a petition for a writ of certiorari in Nos. 12-1248, 12-1253, 12-1254, 12-1268, 12-1269, and 12-1272 to and including April 19, 2013. The petitions in No. 12-1253 and 12-1254 were filed on April 17, 2013. The petition in No. 12-1248 was filed on April 18, 2013. The petitions in No. 12-1268, 12-1269, and 12-1272 were filed on April 19, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case involves challenges to administrative decisions of the Environmental Protection Agency (EPA) regulating greenhouse gas emissions from mobile and stationary sources. In *Massachusetts* v. *Environmental Protection Agency*, 549 U.S. 497 (2007), this Court held that greenhouse gases are "air pollutant[s]" within the meaning of the Clean Air Act (CAA or Act), 42 U.S.C. 7401 *et seq.* 549 U.S. at 528-529. The Court further held that the CAA "requires the [EPA] to regulate emissions" of greenhouse gases from new motor vehicles if the agency determines that

greenhouse gases may endanger public health or welfare. *Id.* at 533.

On remand, the EPA made an endangerment finding, 74 Fed. Reg. 66,497 (Dec. 15, 2009), and it subsequently promulgated standards regulating the emission of greenhouse gases from certain new motor vehicles, 75 Fed. Reg. 25,324 (May 7, 2010). The EPA also implemented statutory permitting requirements for certain stationary sources of greenhouse gases. 75 Fed. Reg. 17,004 (Apr. 2, 2010); 75 Fed. Reg. 31,514 (June 3, 2010). The court of appeals denied, in part, petitions for review challenging the EPA's actions; it dismissed the petitions insofar as they asserted claims for which the court found that no party had standing. Pet. App. 6a-107a.

1. Congress enacted the CAA to address "the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles," which "has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation." 42 U.S.C. 7401(a)(2). The Act establishes a "lengthy, detailed, technical, complex, and comprehensive" framework for regulating air pollution. *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 848 (1984). Congress authorized the EPA to promulgate regulations implementing the CAA. 42 U.S.C. 7601(a). States and Indian Tribes also implement aspects of the CAA, subject to federal oversight. See, *e.g.*, 42 U.S.C. 7410.

The Act defines the term "air pollutant" to mean "any air pollution agent or combination of such agents,

including any physical, chemical, biological, [or] radioactive * * * substance or matter which is emitted into or otherwise enters the ambient air," including any precursors to the formation of such air pollutant. 42 U.S.C. 7602(g). References in the CAA to "effects on welfare" include "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to * * * property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being." 42 U.S.C. 7602(h).

The CAA regulates air pollution emitted by both mobile and stationary sources. Title II of the Act establishes a framework for federal control of pollution from motor vehicles and other mobile sources. 42 U.S.C. 7521-7590. Section 202(a)(1) directs the EPA to determine whether, in its judgment, a particular form of air pollution "may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7521(a)(1).[2] If the EPA makes an endangerment finding, Section 202(a)(1) directs the agency to "prescribe * * * standards applicable to the emission of [the] air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [the EPA's] judgment cause, or contribute to," the air pollution that may endanger public health or welfare. *Ibid.*

Titles I and V of the CAA focus on stationary sources of air pollution, such as power plants. 42 U.S.C. 7401-7515, 7661-7661f. Section 165 of the CAA requires any new "major emitting facility," or one to which a major

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[2] References to sections of the CAA are to the Act as amended by, *inter alia*, Pub. L. No. 89-272, 79 Stat. 992 and Pub. L. No. 95-95, 91 Stat. 685.

modification is made, to obtain a pre-construction permit to ensure the prevention of significant deterioration (PSD) of air quality. 42 U.S.C. 7475. The definition of "major emitting facility" includes stationary sources exceeding specified amounts of emissions "of any air pollutant." 42 U.S.C. 7479(1). Permitting requirements under the PSD program apply to "any * * * applicable emission standard or standard of performance under [the CAA]." 42 U.S.C. 7475(a)(3)(C). A permit application must show that the facility will employ "the best available control technology for each pollutant subject to regulation under [the CAA]." 42 U.S.C. 7475(a)(4). Similarly, Title V requires operating permits for stationary sources of air pollution exceeding specified amounts of emissions "of any air pollutant." 42 U.S.C. 7602(j); see 42 U.S.C. 7661(2)(B), 7661a(a).

2. In 2003, the EPA denied a petition for rulemaking that had asked the agency to regulate greenhouse gas emissions from new motor vehicles under Section 202 of the CAA. *Massachusetts*, 549 U.S. at 511; see 68 Fed. Reg. 52,922 (Sept. 8, 2003). That denial was based in part on the agency's determination that it lacked regulatory authority over emissions of greenhouse gases because such gases do not qualify as "air pollutant[s]" under the Act. *Massachusetts*, 549 U.S. at 511-513. In overturning that decision, this Court had "little trouble concluding" that greenhouse gases come within the EPA's regulatory authority, in light of the "Act's sweeping definition of 'air pollutant.'" *Id.* at 528 (quoting 42 U.S.C. 7602(g)).

The Court in *Massachusetts* remanded the matter for further consideration by the EPA. The Court did "not reach the question whether on remand EPA must

make an endangerment finding." 549 U.S. at 534. The Court observed, however, that "[i]f EPA makes a finding of endangerment, the [CAA] requires the Agency to regulate emissions of the deleterious pollutant from new motor vehicles." *Id.* at 533.

a. In response to the Court's decision, the EPA "compil[ed] and consider[ed] a considerable body of scientific evidence," Pet. App. 26a, and determined "that elevated concentrations of greenhouse gases in the atmosphere may reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations." 74 Fed. Reg. at 66,516 (Endangerment Finding).[3] The agency found that "atmospheric greenhouse gas concentrations are now at elevated and essentially unprecedented levels," and that the increase in each component gas is either "primarily" or "almost entirely anthropogenic in origin." *Id.* at 66,517. The EPA also found that mean global temperatures "show an unambiguous warming trend over the last 100 years, with the greatest warming occurring over the past 30 years." *Ibid.* The EPA recognized the existence of some continuing uncertainty regarding the causes of climate change. *Id.* at 66,518; see *id.* at 66,506, 66,523-66,524. The agency found, however, that "multiple lines" of "compelling" evidence support the conclusion that recent global warming is "due to the observed increase in anthropogenic greenhouse gas concentrations." *Id.* at 66,518; see generally *American Electric Power Co.* v.

[3] The EPA made this finding "specifically with regard to six key directly-emitted, long-lived and well-mixed greenhouse gases: Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride." 74 Fed. Reg. at 66,516.

Connecticut, 131 S. Ct. 2527, 2533 (2011) (discussing EPA Endangerment Finding).

The EPA further found that greenhouse gas air pollution is reasonably anticipated to endanger both public health and public welfare. 74 Fed. Reg. at 66,523. With respect to endangerment of public health, the EPA explained that the global warming caused by greenhouse gas emissions will produce an increase in heat-related deaths; an increase in respiratory illness and premature death relating to poor air quality; an increased risk of death, injury, and disease relating to extreme weather events; and an increase in food- and water-borne diseases. *Id.* at 66,524-66,526. The agency also determined that greenhouse gas air pollution is reasonably anticipated to endanger public welfare by causing "net adverse impacts on U.S. food production and agriculture, with the potential for significant disruptions and crop failure in the future"; by "endanger[ing] U.S. forestry in both the near and long term"; by "adversely affect[ing] water quality" and increasing the "risk of serious adverse effects from extreme events of flooding and drought"; by increasing the "risk of storm surge and flooding in coastal areas from sea level rise"; by causing adverse impacts on infrastructure, energy production, and distribution capacity; and by causing "predominantly negative consequences" for ecosystems and wildlife. *Id.* at 66,530-66,535; see 42 U.S.C. 7602(h) (defining "effects on welfare").

Having determined that greenhouse gases are a form of "air pollution which may reasonably be anticipated to endanger public health or welfare," 42 U.S.C. 7521(a)(1), the EPA next found "that emissions of the well-mixed greenhouse gases from new motor vehicles

contribute to" that air pollution, 74 Fed. Reg. at 66,537. The EPA determined that motor vehicles subject to regulation under CAA Section 202 are responsible for 23.5% of all greenhouse gas emissions in the United States and for 4.3% of such emissions worldwide. *Id.* at 66,539.[4]

b. In a joint rulemaking, the EPA and the National Highway Traffic Safety Administration (NHTSA) subsequently issued rules regulating greenhouse gas emissions from new light-duty vehicles manufactured in model years 2012-2016 and setting average fuel-economy levels for those vehicles. 75 Fed. Reg. at 25,324 (Tailpipe Rule). Those rules, which were promulgated pursuant to the EPA's authority under CAA Section 202 and NHTSA's authority under the Energy Policy and Conservation Act, 49 U.S.C. 32902(a), are intended to "achieve substantial reductions of [greenhouse gas] emissions and improvements in fuel economy." 75 Fed. Reg. at 25,326; see *id.* at 25,327 ("[T]he relationship between improving fuel economy and reducing CO_2 tailpipe emissions is a very direct and close one."). The EPA estimates that the greenhouse gas standards will "result in approximately 960 million metric tons of total carbon dioxide equivalent emissions reductions" over the lifetime of the covered vehicles. *Id.* at 25,328.[5]

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[4] The EPA denied petitions for reconsideration of the Endangerment Finding, concluding that petitioners' "arguments and evidence are inadequate, generally unscientific, and do not show that the underlying science supporting the Endangerment Finding is flawed, misinterpreted by EPA, or inappropriately applied by EPA." 75 Fed. Reg. 49,557 (Aug. 13, 2010).

[5] Because different greenhouse gases have common properties, it is "common practice" to measure their impact on the environment

c. The EPA's regulation of greenhouse gas emissions under Title II triggered permitting requirements under the PSD program and Title V of the Act, which are applicable to stationary sources of greenhouse gases. Those permitting requirements apply to stationary sources emitting "any air pollutant" above a statutory threshold. 42 U.S.C. 7475(a), 7479(1), 7602(j), 7661(2)(B), 7661a(a); see pp. 5-6, *supra*. Since 1978, the EPA has interpreted "any air pollutant" to mean "any air pollutant regulated under the Clean Air Act." 43 Fed. Reg. 26,382 (June 19, 1978); see 43 Fed. Reg. 26,403 (June 19, 1978); 45 Fed. Reg. 52,710-52,711 (Aug. 7, 1980); 67 Fed. Reg. 80,239-80,240 (Dec. 31, 2002). In 2010, the agency clarified that an air pollutant is "subject to regulation" under the CAA if it is subject either to a statutory requirement or to an EPA regulation "that requires actual control of emissions of that pollutant" rather than monitoring or reporting alone. 75 Fed. Reg. at 17,004 (Timing Rule). Accordingly, under the agency's construction of the CAA, when the EPA's regulation of greenhouse gas emissions from new motor vehicles took effect on January 2, 2011, the permitting requirements under the PSD program and Title V automatically applied to stationary sources emitting greenhouse gases in quantities above the statutory threshold. See *id.* at 17,019-17,023.

As a general matter, the statutory threshold for PSD and Title V permitting requirements is 100 or 250 tons per year of a particular pollutant, depending

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"on a carbon dioxide equivalent basis, based on each gas's warming effect relative to carbon dioxide (the designated reference gas) over a specified timeframe." 74 Fed. Reg. at 66,519; see *id.* at 66,499 n.4.

on the type of facility and program involved. See Pet. App. 27a. Because greenhouse gases "are emitted in far greater volumes than other pollutants," however, "millions of industrial, residential, and commercial sources exceed the 100/250 [tons per year] statutory emissions threshold for" greenhouse gases. *Id.* at 29a. Application of permitting requirements to all such facilities would impose "overwhelming permitting burdens that would * * * fall on permitting authorities and sources." 75 Fed. Reg. at 31,516; see *id.* at 31,533-31,541 (detailing financial costs to sources, and administrative and financial burdens to permitting authorities). The EPA recognized that Congress had deliberately employed "broad language" in the permitting provisions in "an intentional effort to confer the flexibility necessary to forestall * * * obsolescence." *Id.* at 31,559 n.41 (quoting *Massachusetts*, 549 U.S. at 532). The agency concluded, however, that a "literal" application of the statutory threshold would frustrate rather than further congressional intent and would lead to "absurd results." *Id.* at 31,541.

The EPA determined, for example, that the administrative burdens resulting from immediate implementation of greenhouse gas permitting requirements pursuant to the statutory thresholds would "overwhelm[] the resources of permitting authorities" and "severely impair[] the functioning of the programs." 75 Fed. Reg. at 31,514; see, *e.g.*, 42 U.S.C. 7661c(c) (requiring permitting authorities to issue or deny applications under Title V within 18 months of application); 75 Fed. Reg. at 31,564 (observing that "[i]t would be impossible for permitting authorities to meet this statutory [deadline] if their workload increases from some 14,700 permits to 6.1 million"). The EPA

also determined that "the addition of enormous numbers of additional sources would provide relatively little benefit compared to the costs to sources and the burdens to permitting authorities." *Id.* at 31,533. Under the PSD program, the agency explained, "the large number of small sources that would be subject to control constitute a relatively small part of the environmental problem." *Ibid.* And "[i]n the case of title V, a great many of the sources that would be newly subject to permit requirements would have 'empty' permits * * * that do not include any applicable requirements." *Ibid.*

To better achieve Congress's purpose in enacting the permitting provisions, the EPA promulgated a rule to "phas[e] in the applicability" of the permitting requirements, "starting with the largest [greenhouse gas] emitters." 75 Fed. Reg. at 31,514 (Tailoring Rule). Under that rule, a stationary source is subject to permitting requirements for greenhouse gas emissions if its emissions exceed regulatory thresholds rather than the thresholds specified in the CAA. *Id.* at 31,523-31,524. Because the regulatory thresholds are considerably higher than the statutory thresholds, the Tailoring Rule in effect limits permitting requirements to "the largest emitters" of greenhouse gases. *Id.* at 31,516.[6] Even as tailored, however, the EPA's implementation of the greenhouse gas permitting requirements "represents 86 percent of the coverage

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[6] The regulatory threshold is 75,000 or 100,000 tons per year on a carbon dioxide equivalent basis, depending on the program and project. 75 Fed. Reg. at 31,523-31,524. The statutory threshold is 100 or 250 tons per year of any air pollutant, depending on the program and project. 42 U.S.C. 7475(a), 7479(1), 7602(j), 7661(2)(B), 7661a(a).

at full implementation of the statutory * * * thresholds." *Id.* at 31,571. The EPA indicated that it would consider extending the PSD program and Title V permitting requirements to other stationary sources at a later date, to the extent that could be done without imposing prohibitive burdens on sources and permitting authorities. *Id.* at 31,524; see *id.* at 31,548 ("[The] EPA seeks to include as many [greenhouse gas] sources in the permitting programs at as close to the statutory thresholds as possible, and as quickly as possible.").

3. The court of appeals denied in part, and dismissed in part, petitions by "various states and industry groups" challenging the EPA's Endangerment Finding, Tailpipe Rule, Timing Rule, and Tailoring Rule. Pet. App. 24a.

a. The court of appeals denied the petitions insofar as they challenged the Endangerment Finding and Tailpipe Rule. Pet. App. 31a-60a. The court held that the EPA's interpretation of the relevant statutory provisions was consistent with the unambiguous text and the structure of the CAA, and that those administrative decisions "are neither arbitrary nor capricious." *Id.* at 24a. Petitioners argued that the EPA had misconstrued the CAA by resting its Endangerment Finding on "a science-based judgment devoid of considerations of policy concerns and regulatory consequences." *Id.* at 32a. That argument, the court of appeals concluded, was foreclosed by this Court's holding in *Massachusetts* that "policy judgments . . . have nothing to do with whether greenhouse gas emissions contribute to climate change." *Id.* at 34a (quoting 549 U.S. at 533). The court also found that "[t]he plain language" of Section 202(a)(1) makes the regula-

tory consequences of an endangerment finding "irrelevant" to the threshold endangerment determination. *Id.* at 36a, 37a.

The court of appeals further held that the scientific record adequately supported the EPA's Endangerment Finding. Pet. App. 37a-45a. The court explained that the evidence of endangerment was "substantial," *id.* at 40a, and that the EPA had properly exercised its independent judgment in evaluating that evidence, *id.* at 39a. The court held that the EPA was not required to identify the precise concentration of greenhouse gas that would endanger public health or welfare before making an endangerment finding. *Id.* at 45a. The court explained that CAA Section 202(a)(1) authorizes the EPA to make such findings based on "reciprocal elements of risk and harm, or probability and severity." *Ibid.* (citation omitted). The court also rejected a procedural challenge to the Endangerment Finding, concluding that even if the EPA had erred in failing to "make available" the proposed endangerment finding to the agency's Science Advisory Board, but see *id.* at 48a-49a (calling that proposition into doubt), petitioners had not shown that "the rule would have been significantly changed" if that alleged error had not occurred, *id.* at 49a (quoting 42 U.S.C. 7607(d)(8)).

b. The court of appeals rejected petitioners' contention that the EPA had misconstrued Section 202(a)(1) and acted arbitrarily and capriciously in promulgating the Tailpipe Rule without considering the consequences that rule would have for the regulation of stationary sources. Pet. App. 53a. The court found that argument to be foreclosed by "the plain text of Section 202(a) and precedent," *ibid.*, which

require the EPA to promulgate emission standards if it makes an endangerment finding. *Id.* at 54a (discussing 42 U.S.C. 7521(a)(1) and *Massachusetts*, 549 U.S. at 533). The court further observed that, because Section 202(a)(1) requires the EPA to regulate emissions from new vehicles if it determines that the emissions "contribute" to air pollution that may endanger public health or welfare, the EPA need not demonstrate as a precondition to regulation that its proposed emission standard "would meaningfully mitigate the alleged endangerment." *Id.* at 56a (citation omitted). In any event, the court observed, the EPA had identified meaningful mitigation. *Id.* at 57a-58a (noting the EPA's estimated reduction of 960 million metric tons of total carbon dioxide equivalent emissions from covered vehicles).

c. The court of appeals upheld, as "statutorily compelled," Pet. App. 72a, the EPA's longstanding interpretation of the PSD program and Title V as requiring stationary sources to obtain permits if they emit specified amounts of any air pollutant regulated by the EPA under any provision of the CAA, *id.* at 67a-95a.[7] Petitioners argued that the permitting re-

[7] The court of appeals held that at least some petitioners could timely challenge the EPA's interpretation—articulated in rules promulgated in 1978, 1980, and 2002—because the EPA's regulation of greenhouse gas emissions under Title II had the effect of expanding the permitting requirements under the PSD program to some stationary sources operated by those petitioners that had never been regulated under that program. Pet. App. 60a-67a; see 42 U.S.C. 7607(b)(1). Because none of the petitioners had adequately developed any arguments concerning Title V, however, the court held that petitioners had forfeited their challenge to the EPA's "greenhouse gas-inclusive interpretation of Title V." Pet. App. 78a.

quirements in the PSD program are "regionally" focused. *Id.* at 80a; see 42 U.S.C. 7471 (requiring implementation plans to contain emission limitations necessary "to prevent significant deterioration of air quality in each region"). Accordingly, petitioners argued, references in the PSD program to "any air pollutant" should not be understood to include pollutants, such as greenhouse gases, that are well-mixed throughout the atmosphere. Pet. App. 78a-80a. The court rejected that argument, explaining that the PSD program is not focused solely on regional air quality, but also requires permit applicants "to comply with '*any* . . . emission standard' under the CAA" and "to control 'each pollutant subject to regulation under [the CAA].'" *Id.* at 82a (quoting 42 U.S.C. 7475(a)(3)(C) and (4)). The court further explained that this Court in *Massachusetts* had found "plainly unreasonable" an interpretation of the CAA's definition of "air pollutant" that would limit the term to emissions causing only local pollution. *Id.* at 81a (quoting 549 U.S. at 529 n.26).

The court of appeals also rejected petitioners' more limited objection to the EPA's construction of the stationary-source permitting trigger. Pet. App. 83a-94a. Pursuant to CAA Section 109, the EPA has promulgated national ambient air quality standards for six pollutants known as "criteria pollutants." 42 U.S.C. 7409; 40 C.F.R. Pt. 50. One purpose of the PSD program is to prevent any "major emitting facility" located in regions that have attained the air quality standard for a criteria pollutant from contributing to the deterioration of air quality in the region. 42 U.S.C. 7475(a); see, *e.g.*, 42 U.S.C. 7475(a)(3)(A) and (B). The CAA provisions governing the PSD program

define "major emitting facility" as a stationary source that emits "any air pollutant" at levels above an identified threshold. 42 U.S.C. 7479(1). Petitioners argued that "any air pollutant" should be interpreted to mean any air pollutant for which the EPA has promulgated an air quality standard, *i.e.* any of the six criteria pollutants. Pet. App. 83a.

Under that interpretation, a particular stationary source would be subject to permitting requirements for greenhouse gas emissions if, but only if, it emitted a criteria pollutant at a level above the statutory threshold and was located in an attainment area for that criteria pollutant. Pet. App. 83a-84a; see 42 U.S.C. 7475(a)(3)(C) and (4). The court of appeals agreed that the context of some CAA provisions requires that the term "any air pollutant" be construed to refer only to criteria pollutants. See, *e.g.*, Pet. App. 87a (discussing 42 U.S.C. 7473(b)(4)). The court concluded, however, that petitioners had "failed to identify any reasons that the phrase should be read narrowly here." *Id.* at 93a.

d. The court of appeals concluded that "no petitioner has standing to challenge" the Timing and Tailoring Rules, and it accordingly dismissed the petitions insofar as they sought review of those Rules. Pet. App. 24a; see *id.* at 95a-106a. The court explained that the Timing and Tailoring Rules did not injure petitioners, but rather reduced the costs and administrative burdens to which petitioners otherwise would have been subject "by automatic operation of the statute." *Id.* at 101a.

e. The court of appeals denied petitions for rehearing en banc. Pet. App. 603a-607a. Judges Brown and Kavanaugh dissented from the denial of rehear-

ing. *Id.* at 613a-661a. The members of the original panel (Chief Judge Sentelle and Judges Rogers and Tatel) issued a separate opinion concurring in the denials of rehearing en banc. *Id.* at 609a-612a. Those judges acknowledged that "[t]he underlying policy questions and the outcome of this case are undoubtedly matters of exceptional importance." *Id.* at 612a. They concluded, however, that en banc review was unwarranted because "[t]he legal issues presented * * * are straightforward, requiring no more than the application of clear statutes and binding Supreme Court precedent." *Ibid.*

ARGUMENT

Collectively, petitioners suggest that nearly every aspect of the court of appeals' analysis involves a significant legal error warranting correction by this Court. Petitioners' wide-ranging attacks on the decision below lack merit. The court of appeals correctly held that the EPA's interpretation of the governing CAA provisions is compelled by the statutory text and by this Court's decision in *Massachusetts* v. *Environmental Protection Agency*, 549 U.S. 497 (2007); that the EPA's implementation of the statutory scheme was neither arbitrary nor capricious; and that no petitioner has standing to challenge the Timing or Tailoring Rules. The court of appeals' decision does not conflict with any decision of this Court and represents an unexceptional application of settled principles of statutory construction and administrative law. Petitioners' policy concerns with the implementation of an intentionally broad and precautionary statutory scheme are properly addressed to Congress. Further review is not warranted.

1. The court of appeals correctly upheld the EPA's determination that emissions from new motor vehicles "contribute to" greenhouse gases, and that such gases "may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7521(a)(1).

a. Like many other CAA provisions, Section 202(a)(1) directs the EPA to prescribe standards governing the emission of an air pollutant only after making a threshold determination that the air pollution may endanger public health or welfare. 42 U.S.C. 7521(a)(1); see, *e.g.*, 42 U.S.C. 7408(a)(1)(A), 7411(b)(1)(A), 7545(c)(1)(A), 7571(a)(2)(A). In *Massachusetts*, this Court held that, to make that threshold determination, the EPA must "form a scientific judgment," based on the available evidence. 549 U.S. at 534. The Court also explained that, even in the absence of scientific certainty, the EPA must make that threshold assessment or provide a "reasoned justification" for declining to do so. *Ibid.*; see *id.* at 506 n.7 (Section 202(a)(1) requires an endangerment finding "even if the regulator is less than certain that harm is otherwise inevitable") (quoting *Ethyl Corp.* v. *Environmental Prot. Agency*, 541 F.2d 1, 25 (D.C. Cir.) (en banc), cert. denied, 426 U.S. 941 (1976)).

Although it found some "uncertainties" in the scientific data, the EPA "determined that the body of scientific evidence compellingly supports" the finding that greenhouse gases may reasonably be anticipated to endanger public health and public welfare by driving global climate change, and that emission of greenhouse gases from new motor vehicles contributes to that pollution. 74 Fed. Reg. at 66,498; see pp. 7-9, *supra*. In making that Endangerment Finding, the EPA "compil[ed] and consider[ed] a considerable body

of scientific evidence." Pet. App. 26a. The EPA relied principally on "recent synthesis and assessment reports" of three scientific organizations: the United States Global Climate Research Program, the Intergovernmental Panel on Climate Change, and the National Research Council. 74 Fed. Reg. at 66,511; see *id.* at 66,497. The EPA explained that it had relied on those reports because they address the scientific issues the agency was required to consider in making an endangerment finding; "are comprehensive in their coverage of the greenhouse gas and climate change problem," synthesizing "thousands of individual studies" and conveying "consensus conclusions"; and were subject to "rigorous and exacting" peer review as well as review by government experts. *Id.* at 66,510-66,511. In the EPA's view, the reports were "the best reference materials for determining the general state of knowledge on the scientific and technical issues before the agency in making an endangerment decision." *Id.* at 66,511.

b. Petitioners present minimal challenges to the adequacy of the agency's scientific assessment. One petition contends that the EPA's finding is unsupported because it rests on "weak and inconclusive" evidence. 12-1268 Pet. 11. A court may not set aside the EPA's factual findings, however, unless they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 42 U.S.C. 7607(d)(9)(A). Under that standard, a reviewing court simply considers whether the agency "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States* v. *State Farm*

Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc.* v. *United States*, 371 U.S. 156, 168 (1962)); see *Baltimore Gas & Elec. Co.* v. *Natural Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983) (*BG&E*) (explaining that, when examining an agency's "predictions, within its area of special expertise, at the frontiers of science * * * a reviewing court must generally be at its most deferential"). Consistent with that well-established rule of administrative law, the court of appeals declined to "re-weigh the scientific evidence before EPA" and instead asked only "whether the conclusion reached by EPA is supported by substantial evidence when considered on the record as a whole." Pet. App. 44a. Neither the court's articulation of the governing standard, nor its application of that standard to the record in this case, presents any legal issue of recurring importance warranting this Court's review.[8]

c. In making its Endangerment Finding, the EPA conducted a science-based inquiry into whether atmospheric greenhouse gases reasonably may be expected to endanger public health or welfare, and whether emissions from new motor vehicles contribute

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[8] Other petitioners contend, in passing, that the EPA could not rationally find that greenhouse gas emissions may endanger public health or welfare without first identifying a specific quantitative threshold above which atmospheric greenhouse gas would be unsafe. 12-1253 Pet. 18-19. The court of appeals properly rejected that argument as "no more than a specialized version of [the] claim that the scientific record contains too much uncertainty to find endangerment." Pet. App. 46a; see *Ethyl Corp.*, 541 F.2d at 10, 31-32 (upholding the EPA's regulation of lead additives to gasoline despite the agency's acknowledgment "that it was virtually impossible to identify the precise amount of airborne lead that will endanger public health").

to that pollution. Petitioners argue that the agency should not have made an endangerment finding without first assessing the potential efficacy of the emission-control standards that would follow from that finding. See 12-1253 Pet. 20-29. That argument is foreclosed by both the unambiguous statutory language and this Court's decision in *Massachusetts*.

CAA Section 202(a)(1) requires the EPA to determine whether a form of "air pollution * * * may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7521(a)(1). If the EPA makes such a determination, and if the agency further concludes that emissions from new motor vehicles "cause, or contribute to" that pollution, the CAA directs the EPA to "prescribe * * * standards" governing those emissions. *Ibid.* The perceived likely efficacy of subsequent regulation has no legal or logical connection to the determination whether a form of pollution may endanger public health or welfare. As the Court in *Massachusetts* observed, the agency's views regarding the policy implications of greenhouse gas regulation "have nothing to do with whether greenhouse gas emissions contribute to climate change." 549 U.S. at 533; see Pet. App. 32a-36a. For the same reason, the EPA does not have "discretion" (12-1253 Pet. 30) to decline to make an endangerment finding based on the projected implications of such a finding for stationary-source permitting requirements under other CAA provisions.

d. Petitioners argue that the EPA acted improperly by considering indirect consequences of atmospheric greenhouse gases in determining whether the pollution may endanger public health or welfare. In petitioners' view, the EPA may make an endanger-

ment finding for a particular type of air pollution only if the EPA concludes that the air pollution is itself the "proximate cause" of the harm. 12-1272 Pet. 23 (citation omitted); see *id.* at 21-27. That argument lacks merit.

The EPA's interpretation of the undefined term "reasonably * * * anticipated to endanger," 42 U.S.C. 7521(a)(1), is controlling unless it is contrary to Congress's clearly expressed intent or otherwise unreasonable. See *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-843 (1984). Petitioners do not contend that the CAA unambiguously requires direct causation. And, as a matter of ordinary usage, a particular phenomenon "may reasonably be anticipated to endanger public health or welfare," 42 U.S.C. 7521(a)(1), if it is likely to set in motion a chain of events culminating in such harms, whether or not it is the proximate cause of injury to humans. See 74 Fed. Reg. at 66,526-66,529.[9] The Court in *Massachusetts* understood, moreover, that the potential harms associated with greenhouse gas emissions result from the effects of such emissions on the global climate. See 549 U.S. at 521-523. The Court's remand would have been a pointless exercise if the causal links between greenhouse gas emissions, climate change, and harm to the public health or welfare were as a

[9] For the same reason, the EPA's interpretation of the undefined terms "public health" and "public welfare" is entitled to deference. 74 Fed. Reg. at 66,527-66,528; cf. 12-1272 Pet. 24-26. In addition, contrary to petitioners' puzzling suggestion, *id.* at 25-26, the EPA's consideration of the effects of greenhouse gas on "public welfare" closely tracks the CAA's non-exhaustive definition of "effects on welfare." Compare 42 U.S.C. 7602(h) with 74 Fed. Reg. at 66,530-66,535.

matter of law too indirect to support an endangerment finding.

e. One petitioner seeks review of the court of appeals' determination, Pet. App. 48a-49a, that the EPA's Endangerment Finding is valid notwithstanding the agency's failure to "make available" to the agency's Scientific Advisory Board the proposed finding, 42 U.S.C. 4365(c)(1). See 12-1153 Pet. i. The CAA authorizes invalidation of EPA rules based on "alleged procedural errors * * * only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made." 42 U.S.C. 7607(d)(8). That provision is in substance a codification of harmless-error principles in the specific context of EPA procedural errors. Cf. *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 659-660 (2007) (*NAHB*). The court of appeals held that, even assuming the EPA had violated the procedural requirement on which petitioners rely, petitioner had failed to make the requisite showing that compliance with the requirement would likely have altered the agency's ultimate decision. Pet. App. 49a.

Petitioner contends that a "substantial likelihood" of "significant change" is "built into the fabric" of the provision requiring the EPA to make available to the Scientific Advisory Board certain documents under specified circumstances. 12-1153 Pet. 23. The apparent thrust of petitioner's argument is that, because the requirements of 42 U.S.C. 4365(c)(1) are intended to improve the quality of the EPA's deliberations, any violation of those requirements should be assumed to have affected the agency's decision. That argument is

inconsistent both with 42 U.S.C. 7607(d)(8), which assumes the existence of "procedural errors" that do *not* have a "substantial likelihood" of "significantly chang[ing]" the content of EPA rules, and with the background harmless-error principles on which that provision is based. In any event, certiorari is not warranted on this issue because petitioner "failed to respond" to the EPA's alternative argument that its statutory obligation to make available certain documents to the Scientific Advisory Board was not triggered in this case. Pet. App. 49a; see *United States* v. *Jones*, 132 S. Ct. 945, 954 (2012).

f. Petitioners seek review of the court of appeals' determination (Pet. App. 49a-53a) that the EPA properly denied petitions for reconsideration of the Endangerment Finding. 12-1152 Pet. i. In seeking reconsideration, petitioners argued that one of the three scientific assessments on which the EPA relied contained factual mistakes resulting from the use of non-peer-reviewed studies and "goal-oriented 'science.'" *Id.* at 23; see Pet. App. 50a. They also argued that several studies postdating the Endangerment Finding contradicted the EPA's central conclusions. *Ibid.* The EPA denied the petitions for reconsideration, concluding that they did not "provide substantial support" for the contention that the finding should be reconsidered. 75 Fed. Reg. at 49,561; see 42 U.S.C. 7607(d)(7)(B). The agency found that "petitioners' claims are exaggerated, are often contradicted by other evidence, and are not a material or reliable basis to question the validity and credibility of the body of science underlying" the Endangerment Finding. 75 Fed. Reg. at 49,557. The EPA further determined that the "two factual mistakes" identified by petition-

ers were "tangential and minor"; petitioners had "misinterpreted or misrepresented the meaning and significance" of the new studies on which they relied; and petitioners had "failed to acknowledge other new studies" that did not support their views. *Id.* at 49,558.

Petitioners contend that, in denying their reconsideration petitions, the EPA misapplied 42 U.S.C. 7607(d)(7)(B), which requires the EPA to grant reconsideration when a petitioner can demonstrate that a preserved objection "is of central relevance to the outcome of the rule." See 12-1152 Pet. 14-17. The court of appeals correctly rejected that argument, see Pet. App. 51a, which presents a fact-bound challenge to the EPA's evaluation of scientific evidence within its core area of expertise. See *BG&E*, 462 U.S. at 103. Petitioners also argue that, by relying on material not already in the administrative record in responding to the rehearing petitions, the EPA effectively revised the Endangerment Finding, thus requiring a new round of notice and comment. 12-1152 Pet. 15-19. But petitioners' "effective revision" theory founders on the fact that the EPA did not reopen the Endangerment Finding, which rests entirely on its own administrative record. As the court of appeals correctly recognized, when the EPA explains its reasons for denying petitions for reconsideration of a rule, it may refer to material outside the rule's administrative record "without triggering a new round of notice and comment for the rule." Pet. App. 53a.[10]

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[10] Petitioners suggest more generally that, in relying on assessment reports of three prominent scientific organizations, the EPA improperly "delegated its judgment to outside groups." 12-1152 Pet. 27; see *id.* at 27-30. That contention lacks merit. The "EPA

2. The court of appeals also correctly held that, once the EPA found that greenhouse gas emissions contribute to air pollution that may endanger public health or welfare, the CAA imposed on the agency a nondiscretionary duty to regulate the emission of such gases from new motor vehicles. See Pet. App. 54a.

a. Section 202(a)(1) states that the EPA "shall by regulation prescribe * * * standards applicable to the emission of any air pollutant" from any new motor vehicles if the EPA determines that the emission "cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7521(a)(1). A federal statute's use of the word "shall" ordinarily indicates Congress's intent to impose an obligation. See, *e.g.*, *NAHB*, 551 U.S. at 661 (noting that Section 402(b) of the Clean Water Act "provides, without qualification, that the EPA 'shall approve' a transfer application" under specified conditions, and holding that "[b]y its terms, the statutory language is mandatory").[11] This Court in *Massachusetts* recognized that, "[i]f EPA makes a finding of endangerment, the Clean Air Act requires the Agency to regulate emissions of the deleterious pollutant from new motor vehicles." 549 U.S. at 533 (citing 42 U.S.C. 7521(a)(1)).

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used the assessment reports not as substitutes for its own judgment but as evidence upon which it relied to make that judgment." Pet. App. 39a.

[11] In the context of a "well established tradition" of official discretion, a statute providing that an official "shall" take some action may be construed as discretionary. *Town of Castle Rock* v. *Gonzales*, 545 U.S. 748, 760-761 (2005). Section 202(a)(1) of the CAA does not implicate that doctrine.

b. As in the court of appeals, petitioners "do not challenge the substantive standards of the [Tailpipe] Rule." Pet. App. 53a. They contend instead that, notwithstanding the Endangerment Finding, the EPA lacks legal authority to regulate the emission of greenhouse gases from new motor vehicles. They argue, for example, that the EPA may prescribe greenhouse gas emission standards only if regulation "would meaningfully address the climate-related effects it invoked as the basis for regulating." 12-1253 Pet. 19; see *id.* at 24-32. Petitioners identify no CAA provision imposing such a requirement, which would be inconsistent with both Section 202(a)(1)'s mandatory language and this Court's decision in *Massachusetts*. See 549 U.S. at 533.

Petitioners' argument is also inconsistent with the precautionary and incremental approach reflected in the CAA as a whole. "A primary goal" of the Act is "pollution prevention," which includes "the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source." 42 U.S.C. 7401(a)(3) and (c). More than 35 years ago, the en banc D.C. Circuit rejected the contention that the EPA lacked authority under the Act to regulate gasoline additives (such as lead) unless "the additive to be regulated 'in and of itself,' *i.e.*, considered in isolation, endangers health." *Ethyl Corp.*, 541 F.2d at 29. The court held that, in deciding whether lead emissions "will endanger the public health or welfare," the EPA could consider "the impact of lead emissions * * * together with all other human exposure to lead." *Ibid.* (quoting 42 U.S.C. 1857f-6c(c)(1)(A), recodified as amended at 42 U.S.C. 7545(c)(1)(A)). The court upheld the EPA's regulation of leaded gasoline in light

of the agency's determinations that "the aggregate [lead exposure] was dangerous, and [that] leaded gasoline was a significant source that was particularly suited to ready reduction." *Id.* at 30 (emphasis omitted).[12]

Similarly here, the EPA determined that aggregate amounts of atmospheric greenhouse gas may endanger public health and welfare, and that the emission of greenhouse gases from new motor vehicles contributes to that air pollution. 74 Fed. Reg. at 66,537 (finding that new motor vehicles "are responsible for about 4 percent of total global greenhouse gas emissions, and for just over 23 percent of total U.S. greenhouse gas emissions"). The EPA noted, and agreed with, this Court's observation that, "[j]udged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations." *Id.* at 66,543 (quoting *Massachusetts*, 549 U.S. at 525). The agency estimates that the Tailpipe Rule will reduce by 960 million metric tons the total carbon dioxide equivalent emissions over the life of vehicles produced in model years 2012 through 2016. 75 Fed. Reg. at 25,328.

The Tailpipe Rule, moreover, is only one part of a larger strategy to mitigate the effects of vehicle emissions on atmospheric greenhouse gas concentrations. In subsequent rulemaking, for example, the EPA has issued standards regulating greenhouse gas emissions

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[12] Congress amended the CAA in 1977, in part to ratify the court of appeals' determination in *Ethyl Corp.* that the Act authorizes the EPA to "consider the cumulative risk to public health from multiple sources of the pollutant." H.R. Rep. No. 294, 95th Cong., 1st Sess. 49 (1977); see Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685.

from light-duty vehicles produced in model years 2017 through 2025. 77 Fed. Reg. 62,624 (Oct. 15, 2012). That rule, the EPA estimates, will reduce by 1610 million metric tons the total carbon dioxide equivalent emissions of vehicles manufactured pursuant to the prescribed standards. *Id.* at 62,893 (Table III-64); see 76 Fed. Reg. 57,294 (Sept. 15, 2011) (Table VI-4) (EPA standards applicable to medium- and heavy-duty vehicles produced for model years 2014 through 2018 will reduce by 227 million metric tons the carbon dioxide equivalent emissions of covered vehicles). And the EPA's vehicle greenhouse gas emissions standards are themselves part of a larger effort to address climate change by reducing greenhouse gas pollution. See generally Executive Office of the President, *The President's Climate Action Plan* (2013), http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf.

"[A]ny given [greenhouse gas] mitigation action when taken alone" will not prevent climate change. 76 Fed. Reg. at 57,298; see 75 Fed. Reg. at 25,496 (recognizing that "the magnitude of the avoided climate change projected" under the Tailpipe Rule "is small"); cf. *Massachusetts*, 549 U.S. at 524 ("Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop."). But each of the EPA's vehicle rules, including the Tailpipe Rule, "makes a significant contribution towards addressing the challenge by producing substantial reductions in greenhouse gas emissions from a particularly large and important source of emissions." 76 Fed. Reg. at 57,299; see 77 Fed. Reg. at 62,890; 75 Fed. Reg. at 25,495. The EPA estimates that the net present value of avoided climate-change-related damages (such as

losses in agricultural productivity, property loss due to flooding, and adverse health effects) from greenhouse gas emission reductions from vehicles produced over the next four decades under applicable standards ranges between 79 billion and 1.2 trillion dollars. 77 Fed. Reg. at 62,930 (Table III-88); 76 Fed. Reg. at 57,333 (Table VIII-15); 75 Fed. Reg. at 25,403 (Table III.A.3-3). The Tailpipe Rule "meaningfully address[es] the climate-related effects" (12-1253 Pet. 19) of greenhouse gas emissions, even though it is simply part of a much larger regulatory strategy.[13]

3. Under the PSD program, any new or modified "major emitting facility" must obtain a preconstruction permit. 42 U.S.C. 7475(a). A "major emitting facility" is a stationary source emitting "any air pollutant" in quantities above a statutory threshold. 42 U.S.C. 7479(1). Since 1978, the EPA has interpreted the term "any air pollutant" in the definition of "major emitting facility" to mean "any air pollutant regulated under the Clean Air Act." 43 Fed. Reg. at 26,382. The court of appeals correctly upheld that

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[13] Petitioners argue (12-1253 Pet. 27-28) that the EPA should have declined to promulgate the Tailpipe Rule in light of NHTSA's authority to regulate fuel-economy standards. That contention is foreclosed by *Massachusetts*. See 549 U.S. at 532 ("[T]hat [the Department of Transportation] sets mileage standards in no way licenses EPA to shirk its environmental responsibilities [under the CAA]."). Petitioners are also wrong in suggesting (12-1253 Pet. 27) that NHTSA's fuel-economy standards would provide the same benefits as the Tailpipe Rule. The agencies estimate that the Tailpipe Rule will result in the reduction of 960 million metric tons of carbon dioxide equivalent emissions, while the fuel-economy standards alone would reduce carbon dioxide equivalent emissions by 655 million metric tons. Compare 75 Fed. Reg. at 25,490 (Table III.F.1-2) with *id.* at 25,636 (Table IV.G.1-4).

longstanding agency interpretation of the "trigger" for stationary-source permitting requirements under the PSD program, finding it to be "statutorily compelled." Pet. App. 72a.

a. Congress enacted the PSD program's permitting requirements "to protect public health and welfare from any actual or potential adverse effect which in the [EPA's] judgment may reasonably be anticipate[d] to occur from air pollution," notwithstanding the attainment of air quality standards for specified criteria pollutants. 42 U.S.C. 7470(1); see 42 U.S.C. 7409; 40 C.F.R. Pt. 50; see also p. 16, *supra* (discussing criteria pollutants). A permit for a "major emitting facility" must show that the facility will not produce air pollution in excess of standards applicable to criteria pollutants. 42 U.S.C. 7475(a)(3)(A) and (B). The permit also must demonstrate that the facility will not produce air pollution in excess of "any other applicable emission standard or standard of performance under [the CAA]." 42 U.S.C. 7475(a)(3)(C). In addition, the facility "is subject to the best available control technology for each pollutant subject to regulation under [the CAA]." 42 U.S.C. 7475(a)(4).

The EPA's longstanding interpretation of the term "any air pollutant" in the definition of "major emitting facility" follows from the unambiguous statutory text and from Congress's purpose in enacting the PSD program. The CAA defines "air pollutant," "[w]hen used in [the CAA]," to mean "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive * * * substance or matter which is emitted into or otherwise enters the ambient air." 42 U.S.C. 7602(g). That definition is "sweeping," and Congress's inclusive intent is "under-

score[d] * * * through the repeated use of the word 'any.'" *Massachusetts*, 549 U.S. at 528, 529; see *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997) ("[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'") (quoting *Webster's Third New International Dictionary* 97 (1976)). The CAA's definition of the term "major emitting facility," which encompasses stationary sources of air pollution that emit "*any* air pollutant" in quantities above a statutory threshold, reflects the same inclusive intent. 42 U.S.C. 7479(1) (emphasis added).

"On its face, the definition [of 'air pollutant'] embraces all airborne compounds of whatever stripe." *Massachusetts*, 549 U.S. at 529. The EPA's longstanding interpretation of "any air pollutant" in the definition of "major emitting facility," however, limits the term to air pollutants regulated by the agency under the CAA. 43 Fed. Reg. at 26,382. That restriction reflects the PSD program's purpose of guarding against "any actual or potential adverse effect" that the EPA has determined "may reasonably be anticipate[d] to occur from air pollution." 42 U.S.C. 7470(1). If the EPA has not determined that a particular airborne substance may endanger public health or welfare, and if the CAA does not otherwise require regulation of the substance, the purpose of the PSD program would not be furthered by treating a stationary source's emission of that substance as a ground for applying the Act's permitting requirements. See Pet. App. 74a ("'[A]ny regulated air pollutant' is, in this context, the only plausible reading of 'any air pollutant.'").

b. In *American Electric Power Co.* v. *Connecticut*, 131 S. Ct. 2527 (2011), the Court explained that "*Massachusetts* made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the [CAA]." *Id.* at 2537. The Court found it "equally plain that the Act 'speaks directly' to emissions of carbon dioxide from [stationary sources]." *Ibid.* Some petitioners ask this Court to overrule *Massachusetts*'s interpretation of the statutory term "air pollutant" as including carbon dioxide and other greenhouse gases. 12-1269 Pet. 31-33. But "*stare decisis* in respect to statutory interpretation has 'special force,' for 'Congress remains free to alter what [the Court has] done.'" *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 139 (2008) (quoting *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172-173 (1989)). Petitioners identify no sound reason to depart from this "[b]asic principle[] of *stare decisis*," *ibid.*, especially after both this Court in *American Electric Power*, and the EPA in conducting the rulemakings at issue here, have relied substantially on the decision in *Massachusetts*.

c. Some petitioners contend that the EPA lacks authority under the PSD program to regulate greenhouse gas emissions from stationary sources. In their view, the only purpose of the PSD program is to regulate criteria air pollutants, *i.e.*, the six air pollutants regulated under national ambient air quality standards. See 12-1146 Pet. 25-26; 12-1268 Pet. 20; 12-1269 Pet. 11, 30; 12-1272 Pet. 28-29; see also 12-1254 Pet. 23-30. They argue on that basis that the PSD program permitting requirements can apply only to "pollutants that deteriorate local air quality," 12-1146 Pet. 25, not to air pollutants such as greenhouse gases that

do not cause "exposure-related health problems," 12-1272 Pet. 28.

That argument proceeds from a false premise. Although some PSD program provisions do regulate criteria pollutants, see, *e.g.*, 42 U.S.C. 7475(a)(3)(A) and (B), others unambiguously impose requirements for the control of non-criteria pollutants, see, *e.g.*, 42 U.S.C. 7475(a)(4) (requiring stationary sources to adopt the "best available control technology for each pollutant subject to regulation under [the CAA]"); 42 U.S.C. 7475(a)(3)(C) (imposing requirements related to "any other applicable emission standard" under the Act). In enacting the PSD program, moreover, Congress intended to "protect public health and welfare" from adverse effects resulting "from air pollution," a purpose that encompasses much more than the regulation of criteria pollutants. 42 U.S.C. 7470(1); see 42 U.S.C. 7602(h) (defining "effects on welfare" to include effects on "weather" and "climate"). Because provisions of the PSD program apply to any air pollutant regulated by the EPA, and because greenhouse gases "indisputably" (Pet. App. 79a) are such pollutants, applying that program's permit requirements to stationary sources of greenhouse gases is fully consistent with Congress's intent.[14]

Other petitioners recognize that the substantive provisions of the PSD program apply to any air pollu-

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[14] Because petitioners have "not identified any congressional action that conflicts in any way with the regulation of greenhouse gases" (*Massachusetts*, 549 U.S. at 531) emitted by stationary sources, their reliance on *Food & Drug Administration* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), is misplaced. See 12-1146 Pet. 32-33; 12-1268 Pet. 31-33; 12-1269 Pet. 29-30; 12-1272 Pet. 30.

tant regulated by the EPA, regardless of the manner in which the pollutant endangers public health or welfare. 12-1248 Pet. 24 n.12. They argue more modestly that the term "any air pollutant" in the definition of "major emitting facility" should be construed as limited to the six regulated criteria pollutants. *Id.* at 23-24 & nn.11, 12; see 42 U.S.C. 7479(1). Under that view, a particular stationary source will be subject to PSD permitting requirements only if it emits a criteria pollutant above the statutory threshold; emission of any amount of greenhouse gases would not trigger the requirements. 12-1248 Pet. 24. Where that prerequisite to regulation is established, however, stationary sources subject to permitting requirements because of their emission of criteria air pollutants would "be required under this interpretation to adopt the 'best available control technology' for greenhouse gas emissions," as well as for the criteria pollutants that (in these petitioners' view) are the only permissible trigger for PSD regulation. *Id.* at 24 n.12 (quoting 42 U.S.C. 7475(a)(4)).[15]

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[15] Petitioners suggest that their interpretation of "any air pollutant" in the definition of "major emitting facility" in 42 U.S.C. 7479(1) is supported by the fact that the PSD program imposes permitting requirements only on major emitting facilities "constructed in any area to which this part applies," 42 U.S.C. 7475(a), because the PSD program "applies" in areas that have attained air quality standards for criteria air pollutants, 42 U.S.C. 7471. See 12-1248 Pet. 21-22. That geographic limitation does not appear in the definition of "major emitting facility," however, and it cannot plausibly be construed as implicitly modifying "any air pollutant" in the separate, definitional provision. See Pet. App. 84a-94a; see also *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 352 (D.C. Cir. 1979) (per curiam) (upholding the EPA's view that PSD permitting requirements are triggered by emission of any regulated air

Petitioners contend that their interpretation reflects wise policy because it avoids the severe burden on permitting authorities and sources that will follow if greenhouse gas emissions above the statutory threshold trigger the PSD permitting requirements, and because it obviates the need for the EPA to phase in the statutory standard. 12-1248 Pet. 23-24. Petitioners' proposed ameliorating construction, however, ignores the statutory definition of "air pollutant," which "[o]n its face * * * embraces all airborne compounds of whatever stripe." *Massachusetts*, 549 U.S. at 529. And it suggests, at least implicitly, that by adding the "expansive" word "any" (*Gonzales*, 520 U.S. at 5) before the term "air pollutant," Congress intended to limit rather than extend the reach of the definition.

Petitioners argue that the EPA's interpretation of "major emitting facility" "cannot be deemed the 'unambiguous' meaning of the statutory language" because the agency construes "any air pollutant" to mean "any *regulated* air pollutant." 12-1248 Pet. 21, 23 (citation omitted). But the susceptibility of a term "to alternative meanings" does not render the term, "'whenever it is used, ambiguous,' particularly where 'all but one of the meanings is ordinarily eliminated by context.'" *Carcieri* v. *Salazar*, 555 U.S. 379, 391 (2009) (quoting *Deal* v. *United States*, 508 U.S. 129, 131-132 (1993)). Here, context makes it clear that Congress intended to impose permitting restrictions only on stationary

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pollutant so long as the stationary source is constructed in an area that is in attainment for any air quality standard).

sources emitting an air pollutant regulated under the CAA. See pp. 32-33, *supra*; Pet. App. 73a-74a.[16]

Petitioners' interpretation, moreover, leads to substantial anomalies. Section 111 of the CAA directs the EPA to list categories of "stationary sources" that "cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7411(b)(1)(A). That provision defines "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant." 42 U.S.C. 7411(a)(3). After the EPA identifies such categories of stationary sources, Section 111 directs it to establish performance standards for the emission of pollutants, specified by the EPA, from new or modified sources in that category. 42 U.S.C. 7411(b)(1)(B). Once the EPA has established new source performance standards for a particular category of sources, Section 111(d) (42 U.S.C. 7411(d)) requires States to issue performance standards, in accordance with EPA guidelines, for existing sources within that category, unless the air pollutant identified by the performance standard is already regulated under other, specified provisions of the Act.

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[16] Because the term "any air pollutant" is not ambiguous, petitioners' reliance, 12-1146 Pet. 21, 23; 12-1272 Pet. 29, on *Environmental Defense* v. *Duke Energy Corp.*, 549 U.S. 561 (2007), is misplaced. See *id.* at 575 (explaining that the Court has "declined to require uniformity when resolving ambiguities in identical statutory terms"). And even assuming that the term "any air pollutant" were ambiguous, the EPA's interpretation would be entitled to deference so long as it is reasonable. *Chevron*, 467 U.S. at 843. For the reasons given in the text, the EPA's interpretation is most congruent with the statutory scheme and so is a permissible construction of the provision.

When it considered Section 111 two years ago, this Court found it "plain that the Act 'speaks directly' to emissions of carbon dioxide from [stationary sources]." *American Electric Power*, 131 S. Ct. at 2537. In holding that the CAA "displace[d] federal common law," the Court identified as "[t]he critical point" its determination that "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from power plants." *Id.* at 2538; see *id.* at 2539 ("It is altogether fitting that Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions."); see also 77 Fed. Reg. 22,392 (Apr. 13, 2012) (*Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units*) (notice of proposed rulemaking). Under petitioners' interpretation, the term "any air pollutant" would *include* greenhouse gases in Sections 202(a)(1) (providing for emission standards for new motor vehicles), see *Massachusetts*; would *exclude* greenhouse gases in Section 169(1) (defining "major emitting facility" for purposes of the PSD program); and would again *include* greenhouse gases in Section 111 (providing for performance standards for stationary sources), see *American Electric Power*—all without any indication from Congress that it was using the term differently, and notwithstanding this Court's recognition that the CAA's definition of "air pollutant," applicable throughout the statute, "unquestionably" encompasses greenhouse gases. *Massachusetts*, 549 U.S. at 529 n.26.[17]

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[17] One petitioner notes that the EPA has interpreted the term "any pollutant," within the definition of "major stationary source" that appears in the CAA provision addressing visibility protection,

d. In arguing that the EPA's interpretation of "major emitting facility" should be rejected, petitioners rely heavily on the agency's own determination that "absurd results" would ensue if the PSD program requirements were immediately applied to all stationary sources emitting greenhouse gases in amounts above the 100/250 tons per year statutory thresholds. 12-1248 Pet. 20 (quoting 75 Fed. Reg. at 31,557); see 12-1254 Pet. 39-40; 12-1268 Pet. 19-23; 12-1269 Pet. 28-31; 12-1272 Pet. 18-20. To avoid those untoward consequences, the agency prescribed regulatory thresholds that are significantly higher than those specified by Congress. See note 6, *supra*. As petitioners observe, the EPA also concluded that applying the statutory thresholds "literally to [greenhouse gas] sources at the present time . . . would result in a program that would have been unrecognizable to the Congress that designed PSD." 12-1268 Pet. 19 (quoting 75 Fed. Reg. at 31,555). Petitioners argue (*e.g.*, 12-1248 Pet. 19-20) that this Court should reject an interpretation of "major emitting facility" that can be rendered workable and consistent with congressional intent only through regulatory modification of the statutory 100/250 tons per year thresholds for coverage in the PSD program.

That argument lacks merit. First, although the EPA found that *immediate* application of the 100/250

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as including only "visibility-impairing pollutants." 12-1146 Pet. 22 (quoting 42 U.S.C. 7491(g)(7) and 40 C.F.R. Pt. 51, App. Y, § III.A.2) (emphasis omitted). But context is critical. Because the visibility program regulates only visibility-impairing pollutants, that portion of the statutory scheme does provide an indication that Congress was using the term "any pollutant" in a more limited manner. See Pet. App. 89a-90a.

tons per year thresholds would be unworkable, the agency did not disavow the goal of ultimately applying those thresholds according to their literal terms. Rather, the agency stated that it "will implement the phase-in approach by applying PSD and title V at threshold levels that are as close to the statutory levels as possible, and do so as quickly as possible, at least to a certain point." 75 Fed. Reg. at 31,523. To be sure, the EPA acknowledged that it is currently uncertain whether the phase-in process can feasibly be continued all the way to the 100/250 tons per year thresholds. See *ibid.* (noting the possibility that the EPA "may make a definitive determination in one of the future rulemaking actions that, under the 'absurd results' doctrine, PSD or title V applies only to certain [greenhouse gas] sources"); *id.* at 31,548 (recognizing that the EPA "ultimately may stop the phase-in process short of the statutory threshold levels"). The agency's acknowledgment of that uncertainty, however, is something significantly different from simple disregard of the statutory thresholds.

Second, petitioners offer no textually-defensible *alternative* understanding of the term "any air pollutant" in the definition of "major emitting facility" that would avoid the over-regulation the EPA sought to prevent. The suggestion that the EPA should have treated the prospect of such over-regulation as a ground for declining to make the initial Endangerment Finding is contrary to the CAA's language and to this Court's decision in *Massachusetts*. See p. 22, *supra*. The contention that "any air pollutant" in this context means "any criteria pollutant" likewise has no grounding in the statutory text. See Pet. App. 70a-77a. And, as the court of appeals correctly held (Pet.

App. 95a-106a), petitioners lack standing to contend (by challenging the Tailoring Rule) that the EPA should have immediately applied the 100/250 tons per year thresholds according to their terms. See pp. 43-47, *infra*. In the absence of an alternative framework that can be reconciled with the literal text of all the relevant CAA provisions, the need for regulatory modification of the 100/250 tons per year thresholds cannot reasonably be viewed as a sufficient ground for rejecting the expert agency's approach.

Although the Congress that enacted the CAA "might not have appreciated the possibility that burning fossil fuels could lead to global warming," Congress drafted the CAA in broad terms "to confer the flexibility necessary to forestall * * * obsolescence." *Massachusetts*, 549 U.S. at 532; see *ibid.* ("[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.") (brackets in original) (quoting *Pennsylvania Dep't of Corr.* v. *Yeskey*, 524 U.S. 206, 212 (1998)). The EPA's determination that a phased-in implementation of the statutory thresholds was necessary in this context "may indicate that the CAA is a regulatory scheme less-than-perfectly tailored to dealing with greenhouse gases." Pet. App. 36a-37a. In contrast to petitioners' construction, however, the EPA's interpretation of "major emitting facility" is congruent with the statutory text and structure, and it best implements Congress's purpose in enacting the PSD program to "protect public health and welfare" from adverse effects resulting "from air pollution," 42 U.S.C. 7470(1), including adverse "effects on * * * weather" and "climate," 42 U.S.C. 7602(h). See 75 Fed. Reg. at 31,548

(explaining that the "EPA seeks to include as many [greenhouse gas] sources in the permitting programs at as close to the statutory thresholds as possible, and as quickly as possible").[18]

4. The court of appeals correctly held (Pet. App. 95a-106a) that no petitioner has standing to challenge the Timing and Tailoring Rules, which relieved petitioners of burdens they would otherwise have faced. That holding does not warrant further review.

a. Three elements comprise the "irreducible constitutional minimum of standing." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, a party invoking federal jurisdiction must establish an "injury in fact," *i.e.*, the "invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not conjectural or hypothetical.'" *Ibid.* (quoting *Whitmore* v. *Arkansas*, 495 U.S. 149, 155 (1990)) (internal citations and quotation marks omitted). Second, the party must show that the injury is "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." *Ibid.* (brackets in original) (quoting *Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). Third, the party must establish that it is "'likely,' as opposed to merely 'speculative,' that the

[18] In the court of appeals, petitioners did not adequately develop arguments concerning the application of Title V permitting requirements to stationary sources that emit greenhouse gases, and they consequently "forfeited any challenges to EPA's greenhouse gas-inclusive interpretation of Title V." Pet. App. 78a. There is consequently no warrant for this Court's review of the EPA's determination that Title V imposes permitting requirements on stationary sources that emit greenhouse gases above the applicable threshold. See *Jones*, 132 S. Ct. at 954.

injury will be 'redressed by a favorable decision.'" *Id.* at 561 (quoting *Simon*, 426 U.S. at 38, 43).

The Timing Rule clarified that an air pollutant is "subject to regulation" under the CAA if the Act or an implementing EPA regulation "requires actual control of emissions of that pollutant" rather than only monitoring or reporting. 75 Fed. Reg. at 17,004. Under the Timing Rule, greenhouse gas emissions became subject to regulation on January 2, 2011, the date on which the Tailpipe Rule took effect. See *id.* at 17,019-17,023. The Tailoring Rule began to phase in the PSD and Title V permitting requirements, "starting with the largest [greenhouse gas] emitters," by imposing those requirements on stationary sources emitting greenhouse gases in excess of a regulatory threshold that is higher than that specified in the CAA. 75 Fed. Reg. at 31,514; see *id.* at 31,523-31,524. In the court of appeals, the private petitioners claimed that they were injured by those rules because petitioners "are subject to regulation of greenhouse gases." Pet. App. 100a; see Non-State Pet'rs' C.A. Reply Br. 28 (No. 10-1073). The state petitioners "claim[ed] injury because they own some regulated sources," Pet. App. 100a, and so will be subject "to the costs of complying with the PSD and Title V programs," State Pet'rs' C.A. Br. 23 (No. 10-1073), "and because they now carry a heavier administrative burden," Pet. App. 100a.

Petitioners failed to establish any element of standing to challenge the Timing and Tailoring Rules. As the court of appeals explained, the PSD and Title V permitting requirements applied to petitioners "not because of anything EPA did in the Timing and Tailoring Rules, but by automatic operation of the statute." Pet. App. 101a; see pp. 31-33, *supra*. Rather

than causing the injuries that petitioners identified, the Timing and Tailoring Rules "actually mitigate Petitioners' purported injuries." Pet. App. 101a. Without the Timing Rule, petitioners "may well have been subject" to the PSD and Title V permitting requirements before January 2, 2011. *Ibid.* And because the Tailoring Rule phased in the permitting requirements for stationary sources, "an even greater number of * * * sources" would have been subject to the requirements, "and state authorities would be overwhelmed with millions of additional permit applications," if the Rule had not been promulgated. *Ibid.*

b. Petitioners identify no plausible reason for this Court's review of the court of appeals' straightforward standing analysis. The private petitioners contend that the court of appeals erred in not assuming the correctness of their argument on the merits in evaluating their standing to challenge the Timing and Tailoring Rules. See 12-1146 Pet. 30-31; 12-1268 Pet. 27-29. According to petitioners, if their "statutory construction argument were accepted—thereby establishing that [greenhouse gases] are not an air pollutant that is subject to PSD and Title V requirements—its members' present injury caused by [greenhouse gas] regulation would be redressed." 12-1146 Pet. 31; see 12-1268 Pet. 29 (arguing that petitioners have established injury caused by the EPA's greenhouse gas regulations "considered as a whole").

That injury, however, arises not from the Timing or Tailoring Rule, but from the EPA's interpretation of the PSD (and Title V) triggering mechanism, an interpretation embodied in separate rules first promulgated in 1978. See pp. 10, 31-43, *supra*. A party invoking federal court jurisdiction "must demonstrate

standing for each claim he seeks to press." *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 352 (2006); see *Davis* v. *Federal Election Comm'n*, 554 U.S. 724, 734 (2008) ("[S]tanding is not dispensed in gross.") (brackets in original) (quoting *Lewis* v. *Casey*, 518 U.S. 343, 358 n.6 (1996)). Petitioners therefore cannot rely on the injury caused by the EPA's interpretation of the PSD triggering mechanism to establish their standing to challenge the Timing and Tailoring Rules.[19]

The state petitioners contend that they "have standing coming and going" because vacatur of the Timing and Tailoring Rule "will either redress the injury of onerous regulation" or "will redress the environmental injury recognized in *Massachusetts*." 12-1269 Pet. 22-23. Their first argument fails for the reasons already discussed, see pp. 43-45, *supra*: without the rule, state authorities "would be overwhelmed with millions of additional permit applications." Pet. App. 101a. Thus, the States' regulatory burden would be increased rather than redressed by vacatur of the Timing and Tailoring Rules.

The state petitioners alternatively seek to establish their standing to challenge the rules by claiming that "they are adversely affected by global climate change." 12-1269 Pet. 23 (quoting Pet. App. 105a); see *id.* at 24 & n.1 (relying on Endangerment Finding).

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[19] The court of appeals' determination that petitioners lack standing to challenge the Timing Rule does not warrant this Court's review for the additional reason that petitioners' challenges to that rule, which served only to delay implementation of the PSD permitting requirements to January 2, 2011, have become moot. See, *e.g.*, *Norton* v. *Southern Utah Wilderness Alliance*, 542 U.S. 55, 67-68 (2004).

"In making this argument," however, the state petitioners "d[id] not concede the validity of EPA's Endangerment Finding," State Pet'rs' C.A. Reply Br. 4 n.1 (No. 10-1073), which they elsewhere rejected as resting on "highly uncertain climate forecasts," State Pet'rs' C.A. Br. 18 (No. 09-1322). The elements of standing "are not mere pleading requirements but rather an indispensable part of the plaintiff's case." *Lujan*, 504 U.S. at 561. Accordingly, "[t]he party invoking federal jurisdiction bears the burden of establishing these elements." *Ibid.* Because a party may not obtain a judgment on the merits without "prov[ing]" the facts necessary to support standing, *ibid.*, the state petitioners cannot establish their standing by relying on evidence they also repudiate.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 2013