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U.S. Senate Date: Wednesday, March 5, 2025

Committee on Environment
and Public Works

Washington, D.C.

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HEARING ON THE NOMINATIONS OF DAVID FOTOUHI TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND AARON SZABO TO BE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF AIR AND RADIATION OF THE ENVIRONMENTAL PROTECTION AGENCY

Wednesday, March 5, 2025

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:03 a.m. in room 406, Dirksen Senate Office Building, the Honorable Shelley Moore Capito [chairman of the committee] presiding.

Present: Senators Capito, Whitehouse, Cramer, Curtis, Ricketts, Husted, Kelly, Padilla, Schiff, Alsobrooks.

Also present: Senator Mullin.

STATEMENT OF THE HONORABLE SHELLEY MOORE CAPITO, A UNITED STATES SENATOR FROM THE STATE OF WEST VIRGINIA

Senator Capito. Good morning. I am going to call this hearing to order and thank everybody for coming this morning.

Today we will receive testimony from David Fotouhi, the nominee to serve as the Environmental Protection Agency's Deputy Administrator and from Aaron Szabo, to serve as the EPA Assistant Administrator for Air and Radiation. These are two very important positions in the agency. So, I'm looking forward to this productive conversation about how Mr. Fotouhi and Mr. Szabo will ensure President Trump's agenda to get the agency back to its core mission and reestablish American energy dominance.

Mr. Fotouhi currently is a partner at Gibson, Dunn and Crutcher, where he has represented clients on matters relating to environmental law. He previously served as the Acting General Counsel and Principal Deputy General Counsel at the EPA. He is no stranger to EPA. Mr. Fotouhi has been recognized by multiple national law publications for his work in environmental and energy law, and as a leader on those issues.

Mr. Fotouhi's previous experience at the EPA provides him a wealth of perspective on the Agency's critical role in protecting our Nation's air, land, and water while doing so within the boundaries of the legal authority that Congress has

established.

The EPA Deputy Administrator is generally tasked with overseeing the day-to-day operations of the agency. In this role, Mr. Fotouhi will coordinate the work of the EPA's important air, water, and chemicals offices, in addition to the EPA's regional offices research, enforcement, and General Counsel teams. Effectively integrating the agency's work will be at the top of Mr. Fotouhi's list of responsibilities.

Facilitating economic growth while protecting public health and the environment requires the agency to establish consistent and legally defensible regulations, fairly and clearly enforce those rules, and communicate with the States, communities, and entities impacted by these regulations.

Mr. Szabo, President Trump's nominee to serve as the Assistant Administrator for the Office of Air and Radiation, is currently serving as a Senior Advisor to the EPA Administrator after representing a wide variety of clients in the private sector on energy and environmental matters. For more than 10 years, Mr. Szabo worked as a career civil servant, first for the Nuclear Regulatory Commission, and then the Office of Information and Regulatory Affairs, known as OIRA, and then the Council on Environmental Quality.

As an NRC career staff member, Mr. Szabo was repeatedly recognized with awards for his excellent performance in the

Office of Nuclear Reactor Regulation.

In June of 2016, during Mr. Szabo's tenure working for the Obama Administration's OIRA, he received the Special Achievement Award. Mr. Szabo's nomination to lead the Office of Air and Radiation will place him in a central role to roll back the Biden administration's extreme attack on reliable, baseload energy sources.

Under the Biden EPA, American energy producers were subject to a barrage of legally suspect regulations that were intended to bankrupt oil, gas, and coal companies. These attacks led to increased energy costs on American families, reduced electric reliability, and undermined our energy security.

In contrast to the Biden administration's agenda, President Trump's agenda will right size our environmental regulations within the bounds of the laws passed by this Congress and past Congresses, while in turn increase energy production, enable innovation, and unleash economic growth while protecting the environment. As Administrator Zeldin stated during his confirmation hearing, the EPA has far too often exceeded the legal authority Congress has provided in law.

This pattern, repeated during the Obama and then the Biden administrations, forced American businesses to pay for costly compliance requirements, even though the underlying regulation was ultimately struck down by the courts. Today's nominees

understand the impact of the Obama-Biden regulatory strategy.

Mr. Fotouhi and Mr. Szabo have represented a wide range of energy and environmental clients in legal and regulatory proceedings, as well as counseled clients on environmental compliance and due diligence. While some might suggest that representing regulated entities, particularly ones they don't like or agree with in private practice, should bar attorneys like Mr. Fotouhi and Mr. Szabo from serving in these roles. But I believe that view misses the extensive value of both of the nominees' public and private experiences.

It is important for all of the EPA's staff, especially senior leadership, to understand how the agency's use of statutory authority and enforcement tools affect States and regulated entities, as well as how that regulatory action can best achieve compliance and maximize positive environmental outcomes.

I am confident our witnesses' legal training, previous government experience, and professional experience will serve them well in the positions for which they have been nominated.

The EPA must get back to what it does best: facilitating cleanup of polluted sites in communities across America, establishing scientific sound and achievable regulations, and fulfilling the cooperative federalism model of working with States to meet national environmental standards.

I look forward to exploring these issues in more detail with our witnesses.

I now recognize Ranking Member Whitehouse for his opening statement.

[The prepared statement of Senator Capito follows:]

STATEMENT OF THE HONORABLE SHELDON WHITEHOUSE, A UNITED STATES SENATOR FROM THE STATE OF RHODE ISLAND

Senator Whitehouse. Thank you very much, Chairman.

Today is Day 45 of the second Trump administration. In his first month and a half, we have seen attacks on the rule of law, willful disregard for the Constitution, a funding freeze that is threatening to kill jobs and drive up energy costs for families, and to use the Project 2025's own words, "trauma" inflicted on dedicated career staff at various agencies.

We on this dais have oversight responsibility for the Environmental Protection Agency. But despite my asking, many times, I am still trying to figure out what is happening within the walls at 1200 Pennsylvania Avenue. I have sent reasonable requests to EPA for information and have been met with near total radio silence.

On January 31, along with all the Democrats on this dais, I wrote to Administrator Zeldin to request that he explain his legal basis for EPA's funding freeze that continues to threaten American jobs and jeopardize infrastructure projects from Alaska to West Virginia to my home State of Rhode Island. Much of this funding was passed on a bipartisan basis to make long overdue investments in our roads, bridges, transit, ports, drinking water, wastewater, and other systems that are the backbone of our Nation's economy.

On February 6th, I again wrote to Administrator Zeldin and his counterpart at OPM calling out the administration's so-called "deferred resignation" scam against hard-working civil servants, again asking how the administration could legally promise such a thing without Congressional appropriations. Promising money that's not yet there has a name. It is called Deficiency.

On February 24, I again led all of the EPW Democrats in demanding answers about EPW's efforts to claw back $20 billion in Congressionally approved clean energy funding for projects nationwide. Administrator Zeldin has been gaslighting the American people, manipulating facts as a pretext to terminate an already obligated, Congressionally authorized program that would lower household energy costs, spur economic development, and reduce pollution.

And on February 28th, all of us EPW Democrats again wrote to Administrator Zeldin, asking him about reports that he had made a backroom push to the White House to rescind the EPA's Endangerment Finding, a 2009 determination based on sound science that greenhouse gases are harmful to human health.

Now, last night you would never hear any recognition of what fossil fuel emissions are doing to our atmosphere or to our oceans. Those facts completely eluded the conversation. We never heard any recognition last night that 90 percent of new

power coming onto the grid in America is solar and wind and battery.

The Energy Executive Order doesn't even define solar and wind as energy, which would be news to energy recipients in Texas and Wyoming and Iowa.

That greenhouse gases harm public health was scientific fact when the endangerment finding was issued in 2009. Sixteen years later, the evidence has only gotten stronger, and the looming economic harms more dangerous. One obvious way climate change is harming Americans across the Country is through spiraling insurance premiums and a looming collapse in property insurance markets. Another is through spiking grocery prices.

The only people who benefit from repealing the endangerment finding are the planet's biggest polluters.

In reply to these four letters, we received just one response, which didn't come close to answering the questions. My staff have now twice requested a briefing on the funding freeze. Those requests have been met with radio silence. I suspect that's because Administrator Zeldin knows that he has no legal basis for the funding freezes, the clawbacks, or the manipulation of science.

And yet, because I and my fellow Democrats do respect the Constitution and the rule of law, here we are today to consider two additional nominees to the EPA. I hope they will be more

forthcoming, transparent, and honest in their answers than was Administrator Zeldin at his confirmation hearing.

David Fotouhi, nominated to serve as Deputy Administrator, has held two jobs since graduating law school. First, as lawyer for a prominent white-shoe law firm defending a raft of big polluting interests including Chevron and Sunoco. Second, in EPA's Office of General Counsel during the first Trump administration, working hard to repeal environmental regulations meant to protect human health and the environment.

It remains difficult for me to understand how someone who has made a career defending he very industries that destroy our environment has any business now being entrusted to protect it.

Then there is Aaron Szabo, who has been nominated to serve as the Assistant Administrator for the Office of Air and Radiation. He is credited by name as a contributor to the EPA chapter of Project 2025, the extremist billionaire-funded right-wing blueprint for dismantling the Federal Government that Trump is now dutifully implementing.

Some environmental highlights from Project 2025: weaken the Clean Air Act by reversing the Endangerment Finding; purge the agency and bring trauma to its employees. In case you aren't keeping score at home, Administrator Zeldin is already hard at work on these.

Mr. Szabo was an advisor to the America First Policy

Institute, the Trump-aligned billionaire-funded think tank funded by Big Oil interests, and he worked as a lobbyist where he pushed the interests of major polluters like the American Petroleum Institute's members.

Is this really what we want for the EPA? Is this really how we protect clean air and clean water?

As I said at our hearing to consider Administration Zeldin, I will be watching closely today to see if Mr. Fotouhi and Mr. Szabo are able to differentiate themselves in any substantive ways from the polluter agenda.

Forgive me, in light of their client lists and the chaos and lawlessness that have already occurred 45 days into this second Trump administration, if I seem skeptical.

Thank you, Madam Chair.

[The prepared statement of Senator Whitehouse follows:]

Senator Capito. Thank you. I wanted to put your little sign up there.

Senator Whitehouse. Thank you.

Senator Capito. We are very pleased here to have one of our fellow Senators to introduce one of the nominees. Thank you, Senator Mullin, for being here, and thank you for joining us. You are recognized. We miss you on this committee.

STATEMENT OF THE HONORABLE MARKWAYNE MULLIN, A UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA

Senator Mullin. Thank you, Chairman. It is with a heavy heart that I no longer sit on the dais with you guys.

It is a privilege of mine today, Chairman Capito and Ranking Member Whitehouse, to introduce a fellow Oklahoman to the Environment and Public Works Committee. David Fotouhi is President Trump's nominee to be the Deputy Administrator for the U.S. Environmental Protection Agency. David was born in Venezuela, immigrated to Oklahoma when he was four years old with his parents, who are here today.

Funny story, side note on that one, they dearly love each other, but I guess she doesn't trust him driving, so she flew and he drove from Oklahoma today. I think my wife may be doing that one day.

After David graduated from high school in Oklahoma City, he attended Vanderbilt University, graduating with the highest honors and achieving a law degree from Harvard. An impressive guy, if you ask me. In Trump's first administration, David served at EPA in several senior roles, including Principal Deputy General Counsel, and later Acting General Counsel, where he lead the office of nearly 250 lawyers and staff.

David's primary focus during the time included EPA's program under the Clean Water Act, Safe Drinking Water Act,

Clean Air Act, Superfund and Resource Conservation and Recovery Act. In addition to working closely with leaders in multiple agencies such as the Department of Justice, throughout his service at EPA David prioritized stability, regulation that duly benefitted both our environment and the economy, and did so with the highest personal standards of integrity.

Prior to EPA, David worked as a partner with Gibson, Dunn and Crutcher in the international law firm practicing environmental law. There, David developed a wide breadth of litigation regulating experiences helping clients understand their legal obligation to reach compliance standards with State and Federal environmental law, which led to many legal publications, publicly recognizing him for his talented work.

There is no doubt that David has the talent, experience, professionalism and temperament to be able to work with a broad group of career employees at the EPA and stakeholders of all kinds in this new position of responsibility as the EPA's Deputy Administrator.

I am proud to be able to introduce a fellow Oklahoman this morning nominated to such a position in our Federal Government. I am confident that David will serve the EPA Deputy Administrator with the high personal and professional standards he is known for throughout his entire career.

On a side note, I will say, ma'am, I am very deeply sad

that I don't sit on this committee. Because I would take a great honor today to be able to sit up there with pride and see David down here answering questions and putting the EPA back on track and not just serving one side of our constituents base, but the entire Country, making sure that our economy and our environment can both thrive.

With that, I yield back.

[The prepared statement of Senator Mullin follows:]

Senator Capito. Thank you, and thank you for being here.

I am now going to turn to Senator Husted to give his introductory remarks. Thank you.

STATEMENT OF THE HONORABLE JON HUSTED, A UNITED STATES SENATOR FROM THE STATE OF OHIO

Senator Husted. Thank you, Chairman Capito. I appreciate the chance to introduce Aaron Szabo this morning. It is my honor to do so. He is President Trump's nominee to be the Assistant Administrator for Air and Radiation at the Environmental Protection Agency.

Joining him today is his wife, Pamela, and his parents, John Szabo and Teddi Fine. Welcome, I am sure you are very proud.

I have no doubt that Aaron's background will be impressive to the members of this committee, and he will do a great job in this important position. As someone who worked 25 years in State government, I know very well what Federal regulations can do to a State's economy. I have seen the EPA delay, provide conflicting advice, provide poor customer service at time, and negatively impact Ohio businesses and the Ohio economy. We know that time is money.

But I also know that we must be important, that it is important that our State and Federal regulators are good stewards of our natural resources. We have seen in an industrial State like Ohio how to strike that balance and we know how to do it right. States are in the best position to be able to do that, because they know what is best for their

communities, they know what is best for their environment, they know what is best for business and the people, the people of the State that they represent.

We know that protecting the environment and growing our economy are not mutually exclusive, and I know that, I believe that the colleagues, my colleagues on this committee understand that the people of their State know what is best and can be great collaborators, and in fact, they must.

As we consider Aaron Szabo's nomination to serve at the EPA today, I want to note that EPA Administrator Lee Zeldin traveled to East Palestine, Ohio just days after he was confirmed to lead that agency along with Vice President Vance and Senator Moreno and I were both there as well. Administrator Zeldin decided to make it his first trip in his new role to meet Ohioans on the two-year anniversary of the devastating train derailment at East Palestine.

I spent time on the ground with Ohioans there. I was there for many days after that happened, saw the effects firsthand. I can tell you that it matters that this administration remembers us, the people in East Palestine, and is working to keep our air clean and our economy thriving as we recover, as the people particularly of that community, as I have witnessed it, recover from those unthinkable hardships.

I am also pleased to see the Trump EPA focus on working

with States and not against them in our joint efforts to protect the environment. That is why I look forward to working with Aaron and the EPA to advance our shared mission in Ohio and see that the EPA work similarly with every State. That partnership working with the States is so very, very important, because they get it, they know what needs to be done.

Let me share a bit more about why Aaron is here with us today and why he belongs at the EPA. Aaron understands how to promote a healthy environment and successful communities firsthand. He has followed in his parents' footsteps as a career civil servant. He began his own career as a public servant at the Nuclear Regulatory Commission while he was in law school.

Aaron continued to serve in other career positions at the Council on Environmental Quality and at the Office of Information and Regulatory Affairs. He worked on issues related to the important statutes, such as the Clean Air Act, the National Environmental Policy Act, and regulations surrounding power plants.

That experience will serve him well as an EPA Assistant Administrator. After more than a decade in public service, Aaron helped businesses navigate environmental and energy issues as a regulatory affairs attorney. He is highly qualified to fill this role, and he is motivated by service.

Aaron understands how to keep Americans safe and healthy while powering the great American comeback. I believe he will lead the EPA Office of Air and Radiation with expertise and integrity, and believe me, that is what we all want in a person in charge of air quality. He understands these issues well.

The Office of Air and Radiation developed policies and oversees the implementation of core environmental statutes like the Clean Air Act. Aaron will leverage his extensive experience to navigate complex issues for the America people. I have confidence in his ability and I am glad he is here today and willing to take on this responsibility as a continued work in public service.

Congratulations to you, Aaron, to your wife, Pamela, on your nomination, and thank you for the opportunity to introduce you today.

Madam Chairwoman, thank you, Ranking Member, thank you for the opportunity to share the reasons why we should support the nomination of Aaron Szabo.

[The prepared statement of Senator Husted follows:]

Senator Capito. Thank you. Thank you very much.

I will ask the witnesses to move up to the witness table, if you would. But don't sit down, because before we move to opening statement for our nominees, I will administer the oath to receive their sworn testimony.

So if you would raise your right hand. Please stand, raise your right hand and answer the following question.

Do you swear the testimony you are about to give to this committee is the truth, the whole truth and nothing but the truth, so help you God?

[Witnesses respond in the affirmative.]

Senator Capito. Thank you. Let the record show that the witnesses have answered in the affirmative. So we will now proceed to our opening statements. Thank you both, and thank the families for joining them as well.

Mr. Fotouhi, you are going to be recognized first for five minutes for your opening statement.

STATEMENT OF DAVID FOTOUHI, NOMINEE FOR DEPUTY ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Fotouhi. Good morning, Chairman Capito, Ranking Member Whitehouse, and distinguished members of the committee. It is my honor to appear before you today as President Trump's nominee for Deputy Administrator of the Environmental Protection Agency.

I want to thank President Trump for the confidence he has placed in me and Administrator Zeldin for support of my nomination.

If confirmed, I pledge to work every day for the American people to advance the mission of EPA to protect human health and the environment, and to support Administrator Zeldin as he does the same.

I want to thank my family, current and former colleagues, and close friends for being here to support me, many of whom have traveled great distances. In particular, I want to thank my parents, who are both here today, for their sacrifices and unabating support.

EPA's mission is deeply personal to me. I am an immigrant to this Country. I was born in Venezuela and came to the United States as a child with my parents, with the hope of a better future. As a naturalized citizen, I have a unique view of our Nation's heritage of conservation and strong environmental protections that are not shared by many other countries.

The American legacy of stewardship toward our air, water, and land was not my birthright, it was not something I was predestined to enjoy. But thankfully, I do get to enjoy it, along with every other American. And we need to look no further than to places like Venezuela to see how differently things can go.

From my perspective, I see environmental protection and conservation as woven into every fiber of this Country. They are at the core of what makes this Nation great and prosperous.

EPA's human health mission specifically resonates with me in a deeply personal way. Like millions of other Americans, I am a cancer survivor. EPA plays a critical role in protecting the health of all Americans, including by reducing cancer risk through programs addressing air and water quality along with hazardous waste and chemical substances, across the agency and directly in communities facing the greatest challenges.

Professionally, I have devoted my life to environmental law and environmental issues. I have practiced environmental law for nearly 14 years, including my prior service at EPA.

In private practice, I have represented a broad array of clients and spent much of my career helping them understand and achieve compliance with their environmental legal obligations and responsibilities.

As mentioned, I served for nearly four years at EPA,

culminating in my time as the agency's acting General Counsel. It was a privilege to work alongside the career lawyers and other professionals at EPA, where I found some of the most knowledgeable and most dedicated public servants.

If confirmed, I will work every day to earn their trust and respect as I did during my prior tenure at the agency.

That tenure also reaffirmed my belief in the importance of the rule of law. Indeed, it is critical that EPA upholds the rule of law by carrying out its mission based on the enumerated authorities given to it by Congress. EPA must also provide necessary clarity and certainty so that every American obligated by an environmental requirement knows exactly what is expected of them.

If confirmed, I will work every day to earn and keep the public's trust in EPA and its actions.

America has made dramatic environmental progress in my lifetime. More Americans now have access to clean drinking water than ever before. Sulfur dioxide air emissions in 2023 were 94 percent lower than they were in 1980. NOx emissions were 75 percent lower.

America accomplished this while growing our population and GDP, setting an example for the world. We have much to be proud of, but there is more work to do.

In 2023, our major cities experienced more days of

unhealthy air quality than in any year of President Trump's first term. More than 1,300 contaminated sites across the Country remain on the National Priorities List, not ready to be fully returned to their communities for reuse.

Drinking water supplies in some communities face challenges from lead and emerging contaminants like certain PFAS chemicals. And our changing climate demands work at home, like fully implementing the AIM Act and expediting carbon sequestration permitting, and work abroad to ensure a level global playing field that does not disadvantage hardworking Americans.

EPA must work with States, tribes, and local partners, as well as with the regulated community and NGOs, to confront these and other issues consistently with the law and while preserving our global economic dominance.

I am confident EPA, under Administrator Zeldin's leadership, can make progress through smart, transparent, and cost-effective regulatory solutions rooted in sound science; through compliance efforts that achieve real pollution reduction and enforcement efforts for violators who refuse to follow the law; and, importantly, through unleashing American innovation and our economic growth engine to find tomorrow's solutions for today's challenges.

Thank you again for the opportunity to appear before you today. I look forward to learning more about your priorities

and answering your questions.

[The prepared statement of Mr. Fotouhi follows:]

Senator Capito. Thank you, Mr. Fotouhi.

Now we will turn to Mr. Szabo. I will now recognize you for five minutes for your opening statement. Thank you.

STATEMENT OF AARON L. SZABO, NOMINEE TO BE ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION OF THE ENVIRONMENTAL PROTECTION AGENCY

Mr. Szabo. Thank you, Chairman Capito, Ranking Member Whitehouse, and distinguished members of this committee. I am honored to be here today and deeply grateful to President Trump for nominating me to serve as Assistant Administrator for the Office of Air and Radiation at the Environmental Protection Agency and help protect America's air.

I also want to thank Administrator Zeldin for his trust, both in my current role and this nomination.

I would also like to thank my wife Pamela, my parents, in-laws, and other friends and colleagues that are here supporting me today in person and virtually. I would not be here today without them.

I sit before you today as the nominee for Assistant Administrator of the Office of Air and Radiation who suffers from a chronic lung disease. I was diagnosed with cystic fibrosis at six months old. Throughout my life, I have taken hundreds of thousands of pills, spent countless hours using nebulizers, and been hospitalized multiple times. While it has not always been easy, unlike many others with cystic fibrosis, I am blessed to be alive today.

Because of my lung disease, I have always been acutely

aware of air quality. Growing up, I could feel the impact of poor air quality in my lungs. After college, I followed in my parents' footsteps as Federal employees and began my professional career in government service as a career employee at the U.S. Nuclear Regulatory Commission).

At the NRC, I had the privilege to work with and learn from exceptional hard-working career staff for six and a half years. In 2014, I joined the White House and served in the Office of Information and Regulatory Affairs. At OIRA, I had the opportunity to work with EPA career staff and both Democratic and Republican political officials. I saw firsthand the process of translating policy direction into regulatory outcomes consistent with laws and facts

For example, during the Obama Administration I worked as hard as I could to complete the Clean Power Plan, the 2015 Ozone National Ambient Air Quality Standards, and oil and natural gas methane regulations. Then, during the Trump Administration, I continued with that same dedication while working on rescinding the Clean Power Plan, revising the oil and natural gas methane regulations, and implementing President Trump's Two-for-One Executive Order.

After over 10 years of Federal service, I transitioned to the private sector where I learned how regulated entities comply with the Federal Government's thousands of regulations and

policies. I also saw firsthand that the people working in these companies want to ensure the environment is properly protected.

I rejoined the Federal Government on inauguration day for the first time as a political appointee. Currently, I serve as Senior Advisor to the Administrator of the EPA.

If I have the honor to be confirmed to be head of the Office of Air and Radiation, I commit to you and to the American people that all this experience will guide me in this role. I will give my utmost every day working with the talented career staff and responsible stakeholders to provide the best and most durable air quality solutions for the Nation.

Since the enactment of the Clean Air Act, the United States has made remarkable progress in reducing air pollution. We have seen significant decreases in carbon monoxide, sulfur dioxide, lead, ground-level ozone, particulate matter and other hazardous air pollutants, all while our economy has continued to grow.

I believe all those who worked to improve air quality for the past 50 years, whether it be within or outside the government, deserve our appreciation for their successes.

Congress structured the Clean Air Act around the principle of cooperative federalism and controlling air pollution at its source is the primary responsibility of States and local government. EPA must always work hand-in-glove with its State partners to ensure that air quality standards are attained and

maintained.

The best environmental results are reached in a collaborative way. This was the wise decision by Congress in establishing the Clean Air Act and it remains the best approach today.

One subject area that was not on Congress' radar when it enacted the Clean Air Act in 1970 was climate change. I believe the climate is changing. EPA must always carefully analyze all matters before it to make sure they are squarely grounded in statutory authority, are sound policy, and are based on a robust evidentiary record.

Finally, if confirmed, I will work to ensure that we are mitigating traditional air pollution. As someone with a lung disease, I find it deeply concerning that there are around 140 million people that currently live in nonattainment areas, many of which have been living in those nonattainment areas for decades. We should prioritize helping these areas achieve compliance and improve air quality.

Chairman Capito, Ranking Member Whitehouse, and all the members of this committee, thank you again for your time and consideration. I look forward to answering your questions and discussing the issues that matter to your constituents.

[The prepared statement of Mr. Szabo follows:]

Senator Capito. Thank you. Thank you both.

I will start with the questions, but first I would make a comment that you both have very compelling personal stories, particularly as it regards to your own personal health. I think that is one of the main missions of EPA, to help folks that have been affected much like you, but also for future generations. So thanks for being so open about those issues.

I want to ask my first question on cooperative federalism. We have talked a little bit, a couple of us have mentioned it already. But the environmental laws are based on the principle of which States are co-regulatory partners with the Federal Government.

Rather than considering the States as partners, the previous Administration has sort of overlooked and treated States as subordinates. State and local environmental agencies are dedicated to working to working together with Federal regulators and a lot of times, certainly understand the areas, their own personal, their own regions a lot better. State agencies are best suited to understand the diversity in their geographic, economic and social elements.

So I will start with you, Mr. Fotouhi. Will you commit to engaging with States under the cooperative federalism framework to establish workable rules and implementation strategies -- this is for both of you -- to protect public health and the

environment?

Mr. Fotouhi. Thank you, Senator. Yes, absolutely. The environmental statutes, as you said, broadly speaking, are drafted in a way that the Federal Government and States and tribes and others work in partnership to achieve the results that Congress intended when the statutes were promulgated.

Doing so in a way that empowers States through cooperative federalism, as you mentioned, providing the technical assistance that States need to understand their resources best, and also to encourage States and tribes to assume the responsibility for Federal permitting programs will be a priority of mine if confirmed.

Senator Capito. Thank you. Good.

Mr. Szabo, same question, and can you describe what you see as the primary benefits and, I didn't know if you had had experience with this in your prior government service.

Mr. Szabo. Thank you, Senator. I would say that for me, it is, as I mentioned in my opening statement as well as in my conversations with you and other Senators on both sides of the aisle, the importance of cooperative federalism, as David mentioned, it is important that States have the primary role in regulating. They know what is best for their States. It is something I believe and it is something which the Clean Air Act requires.

States know how to regulate their entities the best, and it is important to allow them to do that under the Clean Air Act. Additionally, it is also important not to punish those States for emissions that are not the fault of their own State.

I think that we can work better in a cooperative manner with the States and provide those environmental protections faster.

Senator Capito. Thank you. I think it is important to note in the last administration under one of the provisions the States were asked to do a State implementation plan when doing that, to the EPA, of their oversight. They just scrapped all the State plans and said, no, you are going to do the Federal plan.

That to me does not speak of cooperative federalism. I think, again, we want to keep our eye on where are the core functions, but also what functions the best.

I want to talk a little bit about electric energy reliability. We know that the Clean Power Plan has certainly had a lot of experience with this, intentionally designed to impose unattainable requirements to cause the early retirement of our lot of coal and natural gas plants.

But during the same time, prices have skyrocketed and our reliability has been called into question. The North American Electric Reliability Corporation forecasts that well over half

of the U.S. will face potential electricity shortages and blackout risks. This is a large result of reduced supply baseload power.

So, Mr. Szabo, I warned your processor, Mr. Goffman, about the potential for his strategy to undermine the reliability of our electric grid several times. And based on his actions, he ignored these warnings.

As you oversee and implement the Clean Air Act's statutory obligations to protect public health and environment, will you ensure that the agency takes into account electric reliability and energy affordability on the impacts on American families?

Mr. Szabo. Thank you, Senator, for the question. Currently, and then also if confirmed, we are bound by what is stated in the Clean Air Act, and that includes the consideration of costs and impacts on the Country. With respect to any action within Section 111 that the Clean Power Plan was, or the Clean Power Plan 2.0, whichever version you want to call it, was established under, we must follow the law and that includes the consideration of impacts on electricity reliability.

Senator Capito. Well, I would say too the prior administration, at one point I remember seeing a chart of where, you know, this is number one, two, three, four, they reordered where the priorities should like in terms of looking at reliability. And I would discourage that.

Mr. Fotouhi, do you have a comment on that, on the reliability issue?

Mr. Fotouhi. Yes, thank you, Senator. I think the agency needs to heed the decision of the Supreme Court and the West Virginia case in particular. That was very clear that EPA is not a grid-wide energy regulator. It is not an entity that is responsible for determining whether generation shifting should occur between different sources. EPA should always, when implementing the Clean Air Act or any other program, abide by its statutory authority that Congress has delegated to it.

Senator Capito. Thank you.

Before I turn to the Ranking Member, I will have to slip out, we have a roll call vote over in Commerce, so I will go do that, and then I will come back. Thank you.

Senator Whitehouse. Mr. Szabo, good morning. What effects are carbon dioxide emissions from fossil fuel combustion having in the earth's atmosphere?

Mr. Szabo. Thank you, Senator, for that question. I cannot speak to generally what the specific impacts would be from fossil fuels. But carbon dioxide in combination with other greenhouse gases can result in heat being trapped in the atmosphere.

Senator Whitehouse. Can result, or are actually resulting?

Mr. Szabo. My understanding is that there is some heat

trapping that occurs from greenhouse gases.

Senator Whitehouse. Is it not scientifically established that CO2 and methane are both greenhouse gases that trap heat in the atmosphere?

Mr. Szabo. That is my understanding.

Senator Whitehouse. What effect does methane leakage from fossil fuel production and transport have in the atmosphere?

Mr. Szabo. Thank you for the question. As I mentioned previously, I cannot call out what the specific impacts would be from methane from fossil fuels. But methane in general is also a greenhouse gas that can trap heat in the atmosphere.

Senator Whitehouse. Can trap heat in the atmosphere, or actually does trap heat in the atmosphere right now?

Mr. Szabo. It does, I am not specific to every single molecule of methane. I know in general methane does trap heat. But I just am not a scientist and don't know what the impact of every single molecule of methane may be in the atmosphere.

Senator Whitehouse. What effect are carbon dioxide emissions from fossil fuel combustion having in our oceans?

Mr. Szabo. As I mentioned previously with respect to just carbon dioxide in general, it does result in acidification of the ocean, as well as there is heat trapping in the oceans, as you mentioned in your opening statement.

Senator Whitehouse. How much heat trapping? How would you

measure what the oceans are taking up in terms of excess heat from carbon dioxide emissions from fossil fuel combustion?

Mr. Szabo. As I mentioned, I can't speak to specifically from carbon fuel combustion but my understanding is, I believe NOAA has stated that 90 percent of the heat is trapped in the ocean.

Senator Whitehouse. And you have no disagreement with that?

Mr. Szabo. I am not a scientist, so I defer to the scientists.

Senator Whitehouse. And do you understand that the excess heat going into the ocean is measured in zettajoules, which is an enormous number with 21 zeroes?

Mr. Szabo. As I mentioned, Senator, I am not a scientist. But if that is the number, I am not aware of the exact number.

Senator Whitehouse. Have we hit the 1.5 degree climate risk threshold, and why is that important?

Mr. Szabo. My understanding is that we are on a trajectory to hit that threshold, according to scientists. The stated importance of that, I believe, is that climate impacts would get worse at that degree temperature. However, my understanding is that was also a policy decision that was made as part of the UN discussions and the Paris Climate Accord.

Senator Whitehouse. You used the word "stated." Does that

indicate any hesitation in believing that?

Mr. Szabo. I have not -- my understanding is there is various scientific studies on the impact of 1.5 degrees as well.

Senator Whitehouse. What do they generally conclude?

Mr. Szabo. I mean, it would depend on which, I mean, as I said, I am not a scientist.

Senator Whitehouse. I said generally. What do they generally conclude? What is the strong consensus message about 1.5 degrees as a risk threshold?

Mr. Szabo. That it could result in increased climate change based on that temperature threshold.

Senator Whitehouse. What are key climate tipping points that you would watch in your position to try to avoid?

Mr. Szabo. Senator, I believe that the climate is changing. I believe that it is important for us to adapt to any change including those that occurred with respect to climate.

Senator Whitehouse. Not to mitigate, to prevent it. Just to adapt to it, even if it is man-made pollution that is driving it?

Mr. Szabo. I am currently, and if confirmed am bound by the laws that Congress has established and cannot --

Senator Whitehouse. Last question. Are we now on a pathway to climate safety? Or do we need to do more to reduce carbon emissions in order to get on that pathway?

Mr. Szabo. As I stated previously, I believe that we need to be adapting to all changes, including those to the climate.

Senator Whitehouse. Thank you.

Senator Capito. Senator Cramer?

Senator Cramer. As tempting as it is to give Senator Whitehouse my time, I am going to take a little bit of it first.

Thank you both for being here. I join the Chairwoman in thanking you for your personal testimonies, and being so transparent. It is inspirational, to say the least.

One or both of you have referenced the United States' contribution to the global issue. I think we flaunt it too often, take all the blame for our own excellence, compared to the world that is not, it is quite mediocre in comparison, in my view.

In fact, I also share Chairman Capito's affection for cooperative federalism. I mean, for the life of me I don't know why a State like North Dakota or West Virginia or any other State of excellence would relinquish that excellence to mediocrity at the Federal level.

But that being said, I want to explore a little bit with you the contribution of the United States emissions to compare to the globe's emissions. As I see the reduction, and I think on or both of you have testified to this, the reductions that we have been making as a country while growing our economy and

growing our manufacturing base, growing even our energy sector at a time when there is actual electricity hogs out there, just waiting for a place that would welcome the opportunity to invest, why would they seek the United States if we are going to have these, what I think are actually very non-competitive regulatory issues?

So that said, I have been looking at a lot of the -- by the way, I am not as smart as you guys, but I am fairly nerdy and pretty resourceful, and having been an energy regulator for a long time. The issue of reliability is a really big deal. And the issue of availability at a time when again these economy, whether it is AI, crypto, the energy hogs, are looking for places to land, I think it is really, really important.

So I would like to explore our contribution and our declining contribution in the global state of things. Maybe Mr. Szabo, you could start with what you may know about the various models and data and how the United States measures up.

Mr. Szabo. Thank you, Senator Cramer. It isn't going to be shocking to anyone, but we have significantly decreased both our greenhouse gas and traditional air pollution emissions tremendously, especially over the past 20 years. While other countries such as China have significantly increased their greenhouse gas emissions as well as their traditional air pollution emissions over the years, and what we are seeing now

actually is that international emissions, as you kind of mentioned about not talking about some of the other things, traditional air pollution from China goes and impacts States like California, due to the transport from the Pacific.

But generally, if we shut off all greenhouse gas emissions in this Country tomorrow, that would not have any real impact with the increases that we have seen from other countries around the world, specifically China.

Senator Cramer. Mr. Fotouhi, anything to add to that?

Mr. Fotouhi. Thank you, Senator. I would echo those comments. I think something over the last 20 years or so, as Mr. Szabo was saying, American greenhouse gas emissions have decreased by something like a million tons per year, while China's have increased by something like six to seven million tons per year, completely swamping our hard-earned reductions in greenhouse gas emissions.

So I think to the extent there needs to be work to be done to address that issue, it needs to be done both domestically and globally.

Senator Cramer. So I have been looking at some MAGICC data in modeling. Would it be an exaggeration to say that our trend of going down and the rest of the world, particularly the big polluters going up in terms of emissions, that our power sector can be like contributing less than .2 percent of the emissions

in the future, with current trends? Does that sound plausible?

Mr. Szabo. Senator, I would have to go look back at the exact data, but happy to work with you on those numbers after talking to staff and make sure we are working with you on getting those values.

Senator Cramer. I would welcome that opportunity and wish you both well. Thank you.

Senator Capito. Senator Padilla?

Senator Padilla. Thank you, Madam Chair. I want to thank both of the nominees before us for their public service and their willingness to continue to serve. I especially appreciate the comments that have been made by you, Mr. Fotouhi, by Mr. Szabo especially and even the Chairwoman recognizing our collective mission to achieve clean air. Clean air is possible, not just environmental, but the health impacts that pollution contaminants have and the recognition that State and local governments have a primary role.

Did I get that language correct from your testimony, for both of you?

Mr. Szabo. Yes.

Mr. Fotouhi. Yes, Senator.

Senator Padilla. Okay, thank you. So it is in that spirit, proudly representing the State of California that prides itself in policy leadership in so many areas, but including and

especially when it comes to environmental protection and clean air.

Given the special collaborative relationship over the years between the State of California and the Federal Government, I would like, Mr. Szabo, for you to walk me through the statutory basis for EPA's authority to grant California a waiver of Federal preemption under the Clean Air Act.

Mr. Szabo. Thank you, Senator Padilla, for that. It was a pleasure talking to you earlier about various issues related to California.

The Clean Air Act requires EPA to provide a waiver to California assuming that certain requirements are met with respect to that. To my knowledge, we currently do not have any waivers in front of EPA.

Senator Padilla. That is not my question. I am well aware of what was submitted in the prior administration, waivers that were granted, requests that have been withdrawn. And just for the record, it is from Section 209 of the Clean Air Act, which allows California to exercise this waiver opportunity and adopt its own emission standards if those waiver requests are granted.

But in reading the statutes, can you share with us, Mr. Szabo, under what specific statutory conditions can EPA deny a waiver request?

Mr. Szabo. Thank you, Senator. At this time, I cannot

recall the exact provisions in Section 209 and I don't want to provide incorrect information to you. But I am happy to get back to you with that information.

Senator Padilla. Okay. Colleagues, red flag number one. Obviously you are up for consideration for a very critical position. We are talking about air quality, must the environment's impact to health impacts that you both personally shared with the committee your experience.

We are talking about the State of California, not just the most populous State in the Nation, but home to the largest number of people by far who live in non-attainment levels. We know the Federal Government hasn't done as much as it can and should do to improve air quality in California and elsewhere. But we know that California has taken upon itself to do more.

Given the jurisdictional balance and relationship between State and Federal Government, California has been successful through the waivers process to achieve more gains, yet you can't articulate for me the basis for denying a waiver request when you are going to play such a critical role is concerning.

Let me ask this, then. Does the Clean Air Act give EPA discretion to deny a waiver simply because the Administrator may disagree with California's policy goals?

Mr. Szabo. That, my understanding is no, it would not be just because of policy goals.

Senator Padilla. So their answer isn't discretion, then, on behalf of the Administrator and the agency?

Mr. Szabo. From my recollection, within Section 209, there is nothing that states that it would be related to just a policy difference between California and the Federal Government.

Senator Padilla. Do you believe that California faces compelling and extraordinary conditions when it comes to air quality?

Mr. Szabo. When it comes to traditional air pollution, I believe that that can be the case.

Senator Padilla. Then by traditional air pollution, the EPA is tackling pollutants and air quality?

Mr. Szabo. I believe when it comes to National Ambient Air Quality Standards that that is right, as well as hazardous air pollutants. That is what I mean by it.

Senator Padilla. To your knowledge, has an administrator ever denied a waiver on the ground that California does not face compelling and extraordinary conditions?

Mr. Szabo. I believe that was part of the justification in the 2020 Safe Vehicle Rule Part 1.

Senator Padilla. Okay. Well, for the record, let me share with our colleagues that the answer is actually no. The EPA has tried to deny on other grounds, but never for the argument that California does not face compelling and extraordinary

conditions.

Mr. Szabo, my time is running out, so I will end with this. Can you point to where in the Clean Air Act it gives EPA the authority to revoke a waiver once it is granted?

Mr. Szabo. I believe that would be within Section 209 of the Clean Air Act.

Senator Padilla. Actually, no. And we know that there will be efforts to do just that. So I will end. I know my time is up, with the recognition, very important distinction between a waiver request, a waiver denial, and a waiver being granted versus rulemaking. So when there are attempts by Congress to utilize the CRA to undo a waiver that was granted, precedent has established that that is not appropriate because a waiver is a waiver, not a rule.

Thank you, Madam Chair.

Senator Capito. Thank you.

Senator Husted?

Senator Husted. Thank you, Chairman Capito. I appreciate the opportunity to talk with the nominees today.

Mr. Szabo, I want to bring up an issue that we talked about briefly, based on my experience in the East Palestine train derailment and subsequent fire and disaster that happened there, just for the sake of sharing something that can be hopefully helpful, is that one of the things that happened in that crisis

moment is that while we had a team of people on the ground there from the EPA who were very versed in the rules and regulations they weren't very versed at crisis management.

I just shared with you in our conversation that I, this administration in the course of four years will face one of those moments. It is inevitable that the unexpected will occur. And I just want to share thoughts, and either of you, actually, can respond to this about thoughts that you have on how we can be better prepared for a time of crisis.

Mr. Fotouhi. Senator, I am happy to respond initially. It is a critical function of the agency, its emergency response function. I had the privilege, when I worked in the agency during the first term of the Trump administration to work closely with the career civil servants who are housed in that emergency response office within the Office of Land and Emergency Management and across EPA's regional offices. They are often the ones who plan for natural disasters, things like hurricanes, making sure that industrial sites are prepared so that there are not environmental incidents as a result of a natural disaster.

Similarly, they play an important role in responding to issues like the East Palestine derailment or the fires in Los Angeles or the floods in western North Carolina. And Administrator Zeldin, in his first month on the job, has made

the emergency response function of the agency a critical priority. And if confirmed, I would support him in that effort.

Senator Husted. Great. Thank you.

I have, my next question is also largely an Ohio-related question. It is because in the final, literally the final day of the Biden administration, they imposed a new rule at EPA over, it is called a nuisance rule. And it was enacted on January the 20th, regarding rules on air, dust, grime, things like that.

It is unique to Ohio. We have our own nuisance rule regulations in Ohio to be adjudicated through the Ohio EPA and the Ohio court system. And now we have one State that was identified, basically picked on, the EPA and the administration, to put this new rule in place. And the Ohio delegation is united behind eliminating that.

But this is what we talk about, when we talk about the Federal Government imposing things on States without the cooperation of those States and the people who understand what makes sense in those States. And I just would ask for your support in our efforts to overturn this rule and that any comments that you have about that or the partnership between Federal and State regulators in general.

Mr. Szabo. Senator, thank you for that question. I know in my time at EPA I have heard about the issues with that

action. If confirmed and just in general right now, as I stated in my opening statement and in our conversations, cooperative federalism is key. That is working with the States, not against them. I look forward to working with you as well as the State of Ohio in resolving these kinds of concerns and issues that have been created.

Senator Husted. Thank you. I just will close with this thought. The people who run State government, the EPA, the governors, the communities that are affected, they care more about their States and their communities than anybody else. They know what is best. Please be collaborative with the States of this Nation and their regulators and their enforcement entities to make sure that they can solve environmental issues and do it in a timely manner, but also in a manner that is not burdensome to the people who are trying to live and operate in those States.

Thank you.

Senator Capito. Thank you.

Senator Alsobrooks?

Senator Alsobrooks. Thank you so much, Chair Capito and Ranking Member Whitehouse.

Mr. Fotouhi, Mr. Szabo, good to see you. Congratulations on your nominations.

Last week at his cabinet meeting, the President said that

Administrator Zeldin "thinks he is going to be cutting 65 percent or so of the percent of the people," is what he said, from the EPA. Administrator Zeldin later clarified that he meant 65 percent of the agency's budget.

So I have questions for both of you. I just want to be clear and get a direct answer. Do you support cutting the EPA's budget by 65 percent?

Mr. Fotouhi. Senator, thank you for the question, and I appreciated the time that you took to meet with me earlier in this process. My view on that is that what Administrator Zeldin has referred to publicly on that issue is that the reduction would pertain to a baseline reduction from the amount of expenditure in 2024, which included a significant amount of IRA funding as opposed to a reduction of the base budget, which is of course Congressional, is for Congress to determine.

Senator Alsobrooks. Okay, so you agree, then, that the role of setting funding levels belongs to Congress, and not to the administration?

Mr. Fotouhi. Senator, Congress sets EPA's budget.

Senator Alsobrooks. Okay. And so then if you are confirmed, will you enforce the law, including appropriations law, and ensure that that function continues to remain one that is a Congressional function?

Mr. Fotouhi. Senator, thank you for the question. On this

issue and all issues, if confirmed, I will always follow the law and always advise Administrator Zeldin in the same manner. That extends to issues related to appropriations and budget.

Senator Alsobrooks. Thank you.

Now, in Maryland we are doing really great work where climate is concerned. And we are also working to reduce greenhouse gas emissions and air pollutants.

But right now, there are many actions related to Maryland's State implementation plan for the Clean Air Act that are pending approval at the EPA. This plan is very critical to Maryland. It ensures that my constituents have healthy air to breathe, and it also provides certainty to businesses who are investing in Maryland.

I understand that there are similar backlogs in other States, and it is because the office that you have been nominated to lead is understaffed and not overstaffed. So the question is, in light of this concern around slashing budgets, how would you achieve the efficiencies that will be necessary to ensure we have clean air to breathe and that we meet our other goalposts, if we are cutting budgets and slashing workforce?

Mr. Fotouhi. Senator, thank you for the question. It is a priority of mine, if confirmed, to ensure that across the agency that we are reducing backlogs for things like State implementation plans under the Clean Air Act, for water quality

standards from States under the Clean Water Act, other submittals like permit applications and the like. Working to ensure with Administrator Zeldin that appropriate staffing is put in the right places and that we have the expertise needed to process those applications and State implementation plans in a timely manner would be an area of emphasis to me. I look forward to working with you and your staff on the Maryland issues that you raised specifically.

Senator Alsobrooks. Okay, thank you. And just one final question, and this question I would be asking of Mr. Szabo. The cost of homeowners insurance is on the rise. Since 2018, homeowners insurance non-renewals have increased by 30 percent in Maryland. This means that major homeowners insurance providers are dropping hundreds of thousands of policy holders in response to frequent extreme weather events caused by climate change.

So I want to know whether or not you acknowledge that the root cause of climate change, including reducing greenhouse emissions, has a very serious connection to what we are seeing in terms of unaffordable insurance premiums, and ask what you intend to do about that.

Mr. Szabo. Thank you, Senator, for that question.

In my current role and if confirmed, while I believe that it is important that we as Americans and we as humans continue

to adapt to all changes, including those with respect to climate, I would not have any regulatory authority over the insurance markets themselves and how those insurance companies may or may not react to changes in the climate. But I am fully supportive of Americans and people adapting to any changes in the climate that may be occurring.

Senator Alsobrooks. But the last part, and I know my time is up, would you agree that the effects of climate change are driving economic hardship for families?

Mr. Szabo. I believe that there are impacts to climate change.

Senator Capito. Senator Curtis?

Senator Curtis. Thank you, Chairman.

It is great to be with you, both of you, thank you for coming by my office. Some of what I want to talk about in my short five minutes we discussed. But I think it is important to have this discussion so that everybody, particularly back in Utah, can hear our discussion and your thoughts on it.

We discussed, and I tried to make the point in this venue a lot of times, Utah's unique geography and natural phenomenon require a nuanced approach. Approximately 80 percent of our ozone comes from, ozone emitting from the earth surfaces or from outside of the region. And as Utahns, that means we only control 20 percent of the ozone in the area.

Utah's air quality has improved significantly, and that is because our publicly elected officials, our education, our business leaders, all have made commitments and we have had great investments in new technology to improve our air.

I might say I am very grateful for the new administration's early jump into this and some of the relief that we have received already. Please pass along my appreciation for that.

Utah's Uinta Basin faces similar challenges of oil and gas production in the region where we provide affordable, reliable and clean energy are burdened by EPA standards and don't account for this unique geography that we have in Utah. Fortunately, all of our stakeholders, as I mentioned, are all committed, the education community, the political leaders and business communities are all committed to this.

But despite this, in the final stretch the Biden administration EPA reversed course, instead of granting the extension as previously proposed, the agency issued a final ruling redesignating northern Watsatch Front Uinta Basin as non-attainment with significant impact to it economically and otherwise for our area.

So once again, thanks for your help there.

I would like to just ask both of you, so folks back home can hear, if confirmed, can we count on this flexibility in working with regional administrators to follow their lead in

dealing with these tough issues? And hopefully we can have that commitment from both of you?

Mr. Szabo, if you want to jump in.

Mr. Szabo. Sure. Senator, it was great talking to you yesterday about these issues as well. In my current role as well as if I am confirmed I will commit that we will work with the State of Utah as well as all the States on each State's unique issues, but specifically Utah's.

Senator Curtis. Okay, thank you.

Mr. Fotouhi. Thank you, Senator, and I also appreciated the time meeting with you. You have my commitment to work together to resolve these issues and to do so in a way that protects our air and also protects the economic development and growth that your community is looking for.

Senator Curtis. Thank you. I am glad that you mentioned that. Everybody does want to protect the air, everybody wants clean air. We just have some unique geographic features.

Also part of the Uinta Basin, we have a number of small suppliers. And they really struggle to meet the methane regulations, not out of will, but just simply out of resources. And we find that EPA sometimes has been overly restrictive in how they fix the problem, rather than defining what they want fixed and letting people get there through using different types of technologies.

Once again, I would like to ask for your working with regional administrators to get to the end goal and not be so prescriptive on how we get there.

Mr. Szabo. Absolutely, Senator.

Mr. Fotouhi. Yes, you have my commitment on that, Senator. Thank you.

Senator Curtis. Good, thank you.

Mr. Fotouhi, we talked in the office about this chemical approval problem. And I would also just like to clarify, previous administration we had zero percent of chemicals approved within their statutory guideline. Many of these chemicals would replace currently problematic chemicals that are bad for our environment.

So by not approving them, we are actually really harming our environment. And I would like to just have you assure with my folks back home your commitment to work on getting these chemicals approved in a timely manner.

Mr. Fotouhi. Yes, thank you, Senator Curtis. It is a critical function that the agency performs to review new chemicals. And it needs to do so in abidance with its statutory timelines and in consideration of the science as well.

As you said, those chemicals often replace older chemistries and the newer chemicals are often more environmentally friendly. So you have my commitment to take

that as an area of emphasis, so that EPA gets back on track and is meeting its statutory obligations in its new chemicals program.

Senator Curtis. Thank you.

With all my love and affection for you and your new boss, we will have a honeymoon period and then I will use this pulpit to be really tough on you as I was your predecessors, if we are not getting those approved.

Thank you, I yield my time.

Senator Capito. Senator Schiff?

Senator Schiff. Thank you, Madam Chair.

Mr. Szabo, is climate change real?

Mr. Szabo. Thank you, Senator. Yes, the climate is changing.

Senator Schiff. Mr. Fotouhi, the same question, is climate change real?

Mr. Fotouhi. Yes, Senator.

Senator Schiff. Mr. Szabo, would you agree that human activities contribute to climate change?

Mr. Szabo. Senator, I believe there are many things that can create the climate to change themselves.

Senator Schiff. And that would include human activities, would it not?

Mr. Szabo. In the aggregate, there is a potential impact

from human activities on the climate.

Senator Schiff. And you would agree, Mr. Fotuhi, that human activity contributes to changes in the climate?

Mr. Fotouhi. Yes, Senator.

Senator Schiff. And some of those human activities include burning coal, oil, and gas, Mr. Szabo?

Mr. Szabo. I believe there are many activities that can release greenhouses gases into the atmosphere in general.

Senator Schiff. Well, I am asking you in particular, burning coal, burning oil, burning gas contributes to climate change, does it not?

Mr. Szabo. Those activities do release greenhouse gases into the atmosphere.

Senator Schiff. Mr. Fotouhi, you would agree that burning coal, oil, and gas contributes to climate change?

Mr. Fotouhi. Senator, emission of greenhouses gases into the atmosphere plays a role and does contribute to the changing climate.

Senator Schiff. And in particular, burning coal, oil, and gas contributes to climate change?

Mr. Fotouhi. Senator, those activities, depending on how they are undertaken, can result in the emission of greenhouse gases, yes, including methane.

Senator Schiff. And in trying to address climate change,

would you agree that trying to reduce our reliance on coal, oil, and gas as they are contributors to climate change makes sense, Mr. Szabo?

Mr. Szabo. I believe that it is important that we adapt to any changes, including those with respect to the climate. I believe that the American people can adapt to those changes.

Senator Schiff. That is a bit of a murky answer. If coal, oil, and gas are contributing to climate change, wouldn't you agree that one strategy to address climate change would be to reduce our reliance on coal, oil, and gas?

Mr. Szabo. I believe, once again, that we can adapt to the potential impacts to climate change without causing potential issues to our reliance on our natural resources within this Country.

Senator Schiff. I am not sure I understand that answer. If coal, oil, and gas are contributing to climate change, would it make sense as part of our strategy to address climate change to reduce our reliance on coal, oil, and gas? Yes or no.

Mr. Szabo. Senator, I think it is important to take the, with respect to the potential impacts from those sources of emissions with respect to the global nature of any with climate change, and consider it that with respect to any policy positions moving forward.

Senator Schiff. I am still having trouble understanding

your answer.

Should we reduce the consumption, the burning of coal, oil, and gas as part of a strategy to mitigate climate change? Yes or no.

Mr. Szabo. Senator, I believe that it is important that we follow the law with respect to any actions we take. If Congress wishes for us to take a different action on climate change, I would leave that into the decision of those in Congress about what policies the United States would take with respect to that.

Senator Schiff. But as a potential top official in the EPA, you would agree, would you not, that if coal, oil, and gas contribute to climate change and climate change is resulting in horrendous fires like we had in Los Angeles and stronger hurricanes and more flooding, that one part of a sensible approach to dealing with climate change would be to reduce our reliance on fossil fuels that are contributing to that crisis? Wouldn't you agree with that?

Mr. Szabo. Senator, I would say that the wildfires in California were very tragic. There were many reasons as to what the results of those, why those wildfires occurred in and of themselves.

Senator Schiff. Mr. Szabo, do you think the oil industry has a disproportionate impact on our ability, willingness, to speak plainly about climate change? You seem to be having

difficulty. Does the oil industry exert too great an influence on our policy dealing with climate change such that you can't answer that question?

Mr. Szabo. No. And I am curious if you are insinuating that I am somehow under the influence of the oil and natural gas industry. I have been consulting with career executives --

Senator Schiff. I think this whole Congress is under the influence of the oil, coal, and gas industry. That makes it so difficult to answer a simple question about if these are contributors to climate change. Wouldn't a sensible policy be to reduce our reliance on them? There is some explanation for why that question is difficult to answer, and it is not science.

I yield back.

Senator Capito. Senator Ricketts?

Senator Ricketts. Great. Thank you, Chairman. Appreciate it. Thank you, Ranking Member, for calling this hearing today. Thank you to our witnesses for being willing, or our nominees for being willing to serve in the Federal Government. I appreciate it.

I do want to hit upon some of the things that have come up in this topic before. First of all, the cooperative federalism, States being responsible -- nobody cares more about our environment than the States. That is, as a former governor, that is what we want to do, we want to protect our environment,

we want clean air, clean water. So we do want to work cooperatively with the EPA to be able to have it. And when the EPA just throws out State implementation plans, it really is a disregard for the law and our system of federalism. So I think that is one aspect that I want to hit upon.

Also I wanted to hit upon this idea of consensus. Because there was a consensus early on in the pandemic, and I was just introduce Dr. Jay Bhattacharya at the Health Committee about, we should lock down schools. Well, it turns out that, because this was just wrong, right? Science is about arguing, it is about research, it is about everything, like you may have an idea, you have a theory, you test it, you have research, and there is going to be research not always going to agree.

So consensus is meant to be challenged, right? That is what the point of science is. So we want to make sure we are thinking about those things. For example, when you are, the Senator from California was just talking about oil and gas. Well, why don't we sequester carbon dioxide, if you are worried about that? We can burn coal and sequester the carbon, the technologies could be out there, we don't have to reduce it. We can just sequester the carbon dioxide, if that is the problem you are concerned about.

So there are other solutions out there. I don't think we have to run to a one-size big government solution about how to

fix this, and that has been the problem for the last administration. They tried to mandate certain solutions, like EVs, that don't work in places like Nebraska. Let's let American innovation solve these problems.

And one of the innovations that we can solve happens to be biofuels. I know the Chairman knows I love talking, being on this committee, talking about biofuels.

[Laughter.]

Senator Ricketts. So the good news is biofuels are safe, can save consumers money at the pump, they clean up our environment, all the things the Senator from California wants to do, and it is good for our farmers and ranchers.

So what I want to do is just work on making sure we can do that. E15 is one of the things we can do to do that. The EPA has been issuing waivers to be able to do that.

But this is a very simple question for the both of you. Waiver is an annual emergency thing. To make it permanent, Mr. Fotouhi, don't we actually need to pass a bill on E15? Legislation has to be passed by Congress to be able to make E15 all year around permanent, is that right?

Mr. Fotouhi. Senator, thank you for the question. That is my view. When I served in the first term of the Trump administration at EPA, we attempted a regulatory proceeding to allow for the expanded use of E15, and ultimately a court

determined that the agency lacked the adequate statutory authority for that action.

So my view is that Congressional, if that is the Congressional intent, then Congressional action is required for EPA to be able to take that on without going through the RVP waiver or emergency waiver process.

Senator Ricketts. Mr. Szabo, same question.

Mr. Szabo. I would just echo what David said, and yes, we would need a legislative solution.

Senator Ricketts. Great. Perfect. Second, additionally, timely review of renewable volume obligations are mandated by the renewable fuels standard, that is a law, should be a biofuels priority for the EPA here. RVOs are powerful signals to producers of the fuel markets. They need to be published reliably in thoughtful increments and should be reflective of market realities.

I understand you cannot prejudge the outcome of an agency rulemaking, but I want to get you on the record here. Will you commit, again, because the RVOs that were supposed to be published November of 2024 are not supposed to be done now until December of 2025, a year late, Mr. Fotouhi and Mr. Szabo, do you each commit to implementing statutory directives in the renewable fuels standard to publish a timely rulemaking for the renewable volume obligations?

Mr. Fotouhi. Senator, thank you for the question. It is important that we hit our statutory timing obligations for setting RVOs. My recollection is that in the Biden administration when EPA set the RVO for 2023 half the year had already passed. And that is not the type of clarity and certainty to all market participants that are needed from this program.

So my view is that the statutory timelines are very important.

Mr. Szabo. Senator, I agree with what David said, and commit to make sure that we get RVOs out in time to provide that certainty for industry.

Senator Ricketts. Great. Follow the law is exactly the right answer from both of you. Thank you very much. I look forward to your speedy confirmations.

With that, Chairman, I turn it back over to you.

Senator Capito. Thank you. We may have some others coming. We did commit to have a second round.

I have one question, then I will go to the Ranking Member. And then Senator Padilla, do you have a question for a second round? Yes.

Mr. Fotouhi, you have served as an attorney who has advised and litigated on behalf of both private clients and the EPA for almost 15 years. How would that experience guide your approach

to ensuring the EPA rules are consistent with statute and durable for the long term? I think this is part of the problem. I have been on this panel for 10 years. The swings in administrations and regulations and viewpoints and other, even reflected really on the questioning that has been coming from the panelists, from the Senators, as well, I think is a difficult part of the system. Because I don't know how people adjust from a business standpoint, environmental, municipality, whoever, even a State.

So how does your past experience, would it be consistent with not just the statute, but more durable, so we don't have these swings that we have seen recently?

Mr. Fotouhi. Thank you for the question, Senator. Rule of law is my touchstone. It is extremely important to me as a professional, as an environmental lawyer, as it was the case when I served at EPA, in my role there advising the administrator on options and legal issues.

The critical touchstone has to be, in every occasion, ensuring that we are following the Congressional authorization and statutory language that has been drafted by Congress. The Supreme Court has been very clear on this point, repeatedly. In the Biden administration alone, the Biden EPA lost every Supreme Court case that it had in front of a court over the last four years.

We need to restore trust in EPA's actions, and part of that is to ensure that those actions are done consistently with the law, and that we are not over-reading our statutory authority and exceeding the boundaries that this Congress has placed on the agency.

With regard to your point about switching and lack of predictability or certainty, I think the Waters of the U.S. Rule is a prime example of that, where the court has now spoken in the Sackett decision in a very prescriptive manner about what is and is not jurisdictional for regulatory purposes under the Clean Water Act. And it is incumbent now on the agency to clarify that for the American public, so that they can understand when they need a permit from the Corps of Engineers or from EPA or their State and when they don't, without hiring a legion of consultants and attorneys to tell them what the law means.

Senator Capito. Senator Whitehouse?

Senator Whitehouse. Thanks very much.

Mr. Szabo, let's go back to your work for Project 2025. You were a contributor to that document and were thanked by the author of the chapter on EPA, correct?

Mr. Szabo. Yes, that is correct, Senator.

Senator Whitehouse. How did you contribute? What precise advice did you give to the document's authors?

Mr. Szabo. Thank you, Senator, for that question. I provided just general advice and thoughts with respect to policies that, within the Clean Air Act section specifically.

Senator Whitehouse. Do you have, or do they have any record of the advice that you gave?

Mr. Szabo. I am not aware of any records they may have. I was a volunteer, and I do not have any records myself.

Senator Whitehouse. You have no notes, you have no memos, nothing was in writing on all of this?

Mr. Szabo. I have no records, Senator.

Senator Whitehouse. Is that because you had records and you have gotten rid of them, or were there never any records?

Mr. Szabo. Senator, I have no records.

Senator Whitehouse. That doesn't answer the question.

Is the reason you have no records because you got rid of your records of your engagement with Project 2025?

Mr. Szabo. Senator, as a private organization, I am not sure what their recordkeeping policies were or are. But I do not have any records.

Senator Whitehouse. Did you submit anything in writing to them at any point? Did you ever have records? You not them, you.

Mr. Szabo. Senator, I provided advice to Project 2025.

Senator Whitehouse. How? By email? By phone? Personal

conversations? Memos?

Mr. Szabo. Senator, I provided them advice in a number of ways.

Senator Whitehouse. Including ways that were in writing?

Mr. Szabo. Senator, that is likely.

Senator Whitehouse. Likely? Isn't that something you would actually know, since it was your advice and you would have written it down? How is that likely? Isn't that yes or no?

Mr. Szabo. Senator, I would have to go back and, as I said, I have no records. I would have to go think more about whether there were --

Senator Whitehouse. Well, I will ask you to think more and also to make this a records preservation request. And we will follow up as appropriate.

The EPA chapter of Project 2025 has dedicated five pages to the Office of Air and Radiation, which you intend to lead. Do you stand by the policy recommendations in that subsection related to NAAQS, climate change, HFCs, mobile and stationary source permitting, Clean Air Act sections 111 and 112, radiation and EPA personnel?

Mr. Szabo. Senator, thank you for the question. My understanding is these are aspirational ideas that were put out by a non-profit which are very similar to what other non-profits have done, including the Center for American Progress, for

decades, for potential candidates. I was not involved in any sort of final review or determination as to what went into that chapter or any of the other chapters within Project 2025.

Senator Whitehouse. Were you compensated for that work?

Mr. Szabo. No.

Senator Whitehouse. What is your intention, well, let me just go back a step. What we have seen is everybody from President Trump down saying, we had nothing to do with Project 2025, and that is not our blueprint. And then as we watch things roll out in real life, we see that it is the Project 2025 blueprint, over and over and over again.

So my question to you, is it your intent going into this job to implement the recommendations of Project 2025 in the office that you intend to lead?

Mr. Szabo. Senator, if confirmed, I believe in an open door policy with respect to ideas from all potential stakeholders, whether they be conservative or democratic. I am open to any groups' ideas. I believe that is the best way to be a regulator is to have an open, collaborative framework with anyone who would like to engage with the Federal Government.

Senator Whitehouse. Yes. Nice in theory, except that your career working for America First, which is a fossil fuel funded organization, doing the work for American Petroleum Institute members, who are by definition fossil fuel corporations,

facilitating Project 2025, which was run by Heritage, a fossil fuel funded front group, everything in your past shows you absolutely aligned with the industry that is the heart of climate pollution. And it makes me wonder how it is possible for you to take an honest look at climate change and the risks that it presents to us from that background.

My time is expired.

Senator Capito. You can respond.

Mr. Szabo. Thank you, Senator. I would also mention I spent over 10 and a half years as a Federal career civil servant, including over two of those, I think two of those, in the Obama White House, implementing many of those policies. I believe that based on my extensive career of civil service that that would be done.

Senator Whitehouse. Time will tell, won't it?

Senator Capito. Senator Kelly?

Senator Kelly. [Remarks off microphone.] As we discussed, and as I discussed with Administrator Zeldin during his confirmation hearing, we are facing serious challenges when it comes to ozone non-attainment under the Clean Air Act. All the data shows that the overwhelming source of our ozone pollution does not come from sources within Maricopa County. Yet, any new development in the region needs to identify offsets to get their permit.

Of course, the goal of the Clean Air Act, and a goal that I share, is to find a pathway to improve air quality without stifling economic development, like Arizona's clean energy manufacturing industry.

Do you agree that the goal of the Clean Air Act is to improve air quality?

Mr. Szabo. Senator, it was a pleasure talking to you earlier, and yes, the goal of the Clean Air Act and my goal currently and if confirmed is to improve air quality.

Senator Kelly. Of course, as you know, ozone pollution is a challenge to address. I know you know this, but for my colleagues here, can you just explain how ozone pollution forms and why regions like Phoenix are susceptible to ozone formation?

Mr. Szabo. Yes, thank you, Senator, for the question. Nitrous oxides and other forms of emissions interact with the atmosphere, and therefore, create ground level ozone, which can happen in smog, create smog. With respect to the geographic nature of your States, that can increase that potential ground level ozone, especially with potential emissions from outside.

Senator Kelly. Yes, a combination, we have nitrous oxide and we have volatile organic compounds reacting with sunlight, it creates ozone.

And the problem we have is a lot of this doesn't come from the Phoenix area. In fact, somewhere between 80 and 85 percent

of the emissions come from outside of the region, yet when a new permit has to be issued, EPA requires emissions reductions that generate offsets or credits that can only come from within the region, even though the ozone is coming from outside the region, or the organic compounds or the nitrous oxide comes from outside.

So first, if confirmed, will you commit to making yourself and your staff available to work with my staff, other members of the Congressional delegation, and our Arizona stakeholders to help us work through non-attainment related challenges?

Mr. Szabo. Yes.

Senator Kelly. Second, without prejudging outcomes, will you commit to ensuring that the Region 9 office and EPA headquarters dedicate resources to quickly review any pending new source review permits in the region, ideally before we move into serious non-attainment?

Mr. Szabo. Senator, I would be happy, if confirmed, and in my current role, to work with Arizona on those issues.

Senator Kelly. Thank you. Similarly, without prejudging outcomes, will you commit to ensuring that coordination between Maricopa County, Region 9 and EPA headquarters continues to make progress on the two local rules proposed by Maricopa County? We spoke about these, Rule 204 and 205.

Mr. Szabo. Senator, as I mentioned earlier, I think it is

very important to follow the Clean Air Act with respect to cooperative federalism, and can commit that if confirmed and in my current role, will work with Arizona on these issues.

Senator Kelly. And will you commit to having EPA Region 9 and EPA work with our local officials to ensure our attainment plans can account for pollution from other countries and ensure there is a more streamlined exceptional event process for wildfire smoke?

Mr. Szabo. Senator, yes, I can confirm that.

Senator Kelly. Thank you. I have 40 more seconds; I want to talk a little bit about staffing issues and cuts. Mr. Szabo, I understand you haven't been a part of a staffing conversation in your current role. We spoke about that. But if you are confirmed, do you believe you could significantly reduce the number of staff in the Office of Air and Radiation and still keep the commitments you just made to me?

Mr. Szabo. Senator, yes, I believe that we can meet our obligations with the budget provided.

Senator Kelly. My understanding is you have been working at EPA for the past six weeks, is that correct?

Mr. Szabo. Since January 20th, yes.

Senator Kelly. So far, has your impression been that the Air office is overstaffed or understaffed?

Mr. Szabo. Senator, I believe that both the political and

the career civil servants have been doing a fantastic job implementing their obligations under the Clean Air Act.

Senator Kelly. All right. Thank you. Madam Chair, my apologies for going over by 10 seconds.

Senator Capito. Oh, no problem.

Senator Padilla?

Senator Padilla. Thank you, Madam Chair. I am happy I was able to make it back for the second round of questions.

I would like to pick up where I left off with questions for Mr. Szabo. Before I left, I was trying to highlight the difference and distinctions between the rulemaking process and the waiver process.

So maybe let me ask you, if you have a minute here, to articulate for the record your understanding of the difference between the two procedurally, the waiver process under Section 209 versus the rulemaking process under the Administrative Procedures Act.

Mr. Szabo. Senator, thank you for that question. My understanding is that they both go through a comment period themselves, and for instance, the California waiver granting is similar to a SIP approval process.

Senator Padilla. Is the process identical, pretty much identical? Or how are they different?

Mr. Szabo. They are both rules, and the process is with

respect to what the requirements are under the Clean Air Act.

Senator Padilla. They are not both rules. One is a rulemaking process; one is a waiver process. So if you are not familiar with the important distinctions, let me move on.

Does granting a waiver implement a new EPA policy? Or is it simply granting, in my case the State of California, the ability for it to enforce its own standards?

Mr. Szabo. Similar to granting a State a state of implementation plan that would just be providing that State that authority.

Senator Padilla. That is my understanding as well.

When the EPA does grant a waiver, when does it go into effect?

Mr. Szabo. My understanding is it goes into effect when it is signed.

Senator Padilla. Automatically, right? Immediately. And as a follow-up, you may or may not know the answer to this question, what does the Congressional Review Act say about the time length for Congress to act on a disapproval resolution?

Mr. Szabo. I believe it is within 60 legislative days from the date that it is either the later of the publication within the Federal Register notice or when it has been submitted to Congress and GAO.

Senator Padilla. Right. So unless or until that happens,

the waiver is in effect.

Is the granting of a waiver adjudicatory?

Mr. Szabo. It is a rule.

Senator Padilla. Is it adjudicatory?

Mr. Szabo. It is a rule under the Congressional Review Act.

Senator Padilla. All right, adjudicatory, the action is covered under the Congressional Review Act.

Mr. Szabo. With respect to the waivers, they are a rule under the Congressional Review Act.

Senator Padilla. They are waivers; they are not rules. That has been established. And for the record, that is why for 50 years, including under the first Trump administration, the EPA has treated waivers, including the attempted revocation of a waiver, as an adjudication and not a rule. That is fact.

I just want to end by spending a minute emphasizing, Madam Chair, why I have been so insistent and precise with my line of questioning. As I mentioned earlier, California has a disproportionate number of people who live in non-attainment areas, significantly.

On the one hand, I am encouraged by what I heard from the nominees and from you, Madam Chair, and several members of this committee, of the State and local governments having the primary role in improving air quality. For multiple reasons, from an

environmental protection standpoint and from a health standpoint, that is why EPA can and should help, collaborate, it should, when it may not be willing to consider this, it certainly should not hold up States and locals from going above and beyond if that is what they choose, if that is what their constituents need and deserve, so that we can have less Californians and less Americans in the future having to suffer from cancer or chronic lung disease and other impacts of the high levels of emissions, pollution and air contamination that so many communities throughout California and throughout the Country currently suffer from.

Thank you, Madam Chair.

Senator Capito. Thank you both very much.

As we conclude here, I would like to ask unanimous consent to enter into the record letters of support for both nominees.

[The referenced information follows:]

Senator Capito. And I did not give you the three standard questions that I should have done, and I apologize for that. So I am going to ask you now.

Do you agree, if confirmed, to appear before this committee or designated members of this committee and other appropriate committees of this Congress to provide information subject to appropriate and necessary security protections with respect to your responsibilities? Yes or no.

Mr. Fotouhi. Yes, Senator.

Mr. Szabo. Yes, Senator.

Senator Capito. Do you agree to ensure that testimony, briefings, documents, and electronic and other forms of communication of information are provided to this committee, its staff, and other appropriate committees in a timely manner?

Mr. Fotouhi. Yes.

Mr. Szabo. Yes, Senator.

Senator Capito. Thank you.

Finally, do you know of any matters which you may or ma not have disclosed that may place you in conflict of interest if you are confirmed?

Mr. Fotouhi. No, Senator.

Mr. Szabo. No, Senator.

Senator Capito. Perfect. Okay.

Now we have no further questions. I would like to thank

the nominees, and all my colleagues for their participation. Senators who wish to submit written questions, and I believe there are some unanswered questions that we will need you to follow up on, or further research I think you were going to do.

For the record, you have until 5:00 p.m. this Friday, March 7th, to do so. The nominee responses to those questions are due back to the committee no later than 5:00 p.m. on Monday, March the 10th, and will be submitted to the record.

With that, this hearing is adjourned. Thank you all very much.

[Whereupon, at 11:46 a.m., the hearing was adjourned.]