United States Senate

WASHINGTON, DC 20510

September 22, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OAR-2025-0194

Administrator Zeldin,

I write in opposition to EPA's lawless and unfounded proposal to repeal all greenhouse gas emissions standards for vehicles by withdrawing the 2009 Endangerment Finding (the "Proposal").[1] This sham regulatory proceeding can only properly be understood against its backdrop: a multi-year, multi-billion dollar, semi-covert campaign of climate denial fraud by fossil fuel interests; and its related multi-year, multi-billion dollar, semi-covert campaign of dark-money political influence and corruption. The climate denial fraud campaign is so extensive that it has generated its own prolific field of academic study.

Prologue. With this sham proceeding, climate denial fraud has metastasized inside government, with an arm of the operation operating within the halls of government, allowing fossil fuel interests to capture and exert official government agency power. A long and sordid history of agency capture, aka regulatory capture, resounds through the literature of economics and administrative law; this sorry episode of climate denial fraud is its latest and perhaps worst chapter. Consider it fraud-by-government.

The climate denial fraud operation has never had the goal that its statements be true; only that the falsehoods be loud and persistent enough to confound rational public debate; and that it provide a rhetorical structure for the political forces influenced and/or corrupted by its dark money operation. Those persistent falsehoods and related rhetoric litter EPA's work here.

The tactics of the climate denial fraud operation, now deployed from within government, remain the same: an embrace of fake science, propagated by a small stable of reliable climate deniers; deployment of fake proceedings that resemble legitimate proceedings but aren't; and behind it all the power of fossil fuel industry's pressure to ram the falsehoods home and protect its free-to-pollute business model. This is a simulacrum of a regulatory proceeding, not a real one.

Comment. It may be best to begin with EPA's repeated false assertion that the Endangerment Finding is "novel" and its reliance on this characterization as a justification for

[1] Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36,288 (August 1, 2025) (the "Proposal").

withdrawal. Simply put, that is false; the 2009 Endangerment Finding is not novel; it has stood for 16 years and is solidly grounded in incontrovertible science.

In 2007, recognizing the "well-documented rise in global temperatures," the Supreme Court in *Massachusetts v. EPA* concluded that the "clear terms of the Clean Air Act" authorized EPA to regulate greenhouse gas emissions from new motor vehicles.[2] The *Massachusetts* Court all but required EPA to issue the Endangerment Finding, stating that "EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. To the extent that this constrains agency discretion to pursue other priorities of the Administrator or the President, this is the congressional design."[3]

What is novel is EPA's attempted rollback of Clean Air Act protections, by twisting Supreme Court precedent into reverse meaning, selectively misquoting the Clean Air Act, parroting a pseudo-scientific Department of Energy climate denial report, and ignoring decades of established science, industry reliance, and agency actions. The virtually absolute consensus among serious scientists is that unfettered greenhouse gas emissions pose dire threats to our future. EPA's proposal to withdraw this settled finding introduces exactly the type of "unwarranted instability in the law" that the Supreme Court cautioned against in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024).

The Proposal is political rhetoric masquerading as legal and scientific reasoning, and it serves no purpose beyond regulatory corporate welfare to the fossil fuel industry interests who are its only beneficiaries.

I. The Proposal Is Wrong on the Law.

The Proposal relies on untenable interpretations of the Clean Air Act and applicable precedent to justify its conclusions. There are too many to name them all here; this letter will highlight some of the Proposal's most egregious deficiencies.

Start with the most fundamental: the Supreme Court's decision in *Massachusetts v. EPA* squarely forecloses EPA's statutory interpretation in the Proposal. Neither *West Virginia v. EPA*[4] nor *Loper Bright v. Raimondo*[5] change this.

In *Massachusetts*, several States challenged EPA's refusal to regulate greenhouse gas emissions from vehicles under section 202(a) of the Clean Air, 42 U.S.C. § 7521(a). The Supreme Court in *Massachusetts* considered the very question EPA attempts to reopen here—and rejected the very arguments EPA propounds. As the Court explained, it was faced with the question "whether § 202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a 'judgment' that such emissions contribute to climate change."[6] It answered the question in the affirmative. Thus, under

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[2] 549 U.S. 497 (2007).
[3] *Id.* at 533.
[4] 597 U.S. 697 (2022).
[5] 603 U.S. 369 (2024).
[6] *Massachusetts*, 549 U.S. at 528.

Massachusetts: (1) section 202(a) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles, and (2) if greenhouse gas emissions from new motor vehicles contribute to climate change—which they do, *infra* at 6-7—EPA must regulate them, or provide a rational explanation, grounded in the statute.

EPA's arguments in *Massachusetts* were nearly indistinguishable from EPA's arguments in the Proposal: "[b]ecause EPA believe[d] that Congress did not intend it to regulate substances that contribute to climate change, the agency maintain[ed] that carbon dioxide is not an 'air pollutant' within the meaning of the provision."[7] EPA even offered the same justification that it does in the Proposal today, claiming that it could not regulate greenhouse gas emissions in part because the Clean Air Act only "address[ed] *local* air pollutants rather than a substance that 'is fairly consistent in its concentration throughout the *world's* atmosphere.'"[8] But the Supreme Court rejected EPA's position, having "little trouble concluding" that section 202 encompasses the authority to regulate greenhouse gas emissions,[9] and that EPA's arguments were not permissible reasons to refuse to regulate greenhouse gas emissions.

The Court began and ended its analysis with the text of the Clean Air Act. Section 202 requires the EPA Administrator to set "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."[10] The *Massachusetts* Court concluded that the Clean Air Act's "sweeping" definition of "air pollutant" unambiguously includes greenhouse gas emissions under section 202, and that "[t]he statutory text forecloses EPA's reading."[11]

Nearly 20 years later, EPA turns to linguistic sleight-of-hand to try to wriggle out of the *Massachusetts* court's settled reading of "air pollutant" to include greenhouse gases. It improperly seeks to narrow the scope of EPA's section 202(a) authority by arguing that the statute only covers air pollution that "itself threatens public health or welfare" and recycling its rejected claim that only local or regional pollutants qualify.[12]

To give the wriggling some flavor, compare EPA's selective quotes of the statutory definitions of "air pollutant" and "welfare," with the full actual text. The Proposal states:

> Since 1977, CAA section 302(g) has defined the term "air pollutant" throughout the statute as "any air pollution agent or combination of such agents … which is emitted into or otherwise enters the ambient air."[44]

In full, section 302(g) states:

> (g) The term "air pollutant" means **any** air pollution agent or combination of such agents, including **any physical, chemical, biological**, radioactive (including

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[7] *Massachusetts*, 549 U.S. at 528.
[8] *Id.* at 512 (emphasis in original) (quoting 68 Fed. Reg. 5,927 (2003)).
[9] *Id.* at 528.
[10] 42 U.S.C. § 7521(a)(1).
[11] *Massachusetts*, 549 U.S. at 528-29.
[12] Proposal, 90 Fed. Reg. at 36,300 (emphasis added).

> source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes **any precursors to the formation of any air pollutant**, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.[13]

The Supreme Court in *Massachusetts* emphasized the broad scope of this definition: "On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any.'"[14] Nothing in the text limits "any air pollution" to only local pollutants, and the explicit inclusion of precursors undermines EPA's argument that the Act only covers air pollutants with direct effects.

Egregious too is EPA's selective quoting of what the Act considers relevant impacts on welfare. Here's what EPA states: "CAA section 302(h) also provides that any reference to 'effects on welfare includes, but is not limited to, effects on' the environment, property, transportation hazards, and 'on economic values and on personal comfort and well-being.'"[15] Here's what the full statutory text states:

> (h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, **weather**, visibility, and **climate**, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, **whether caused by transformation, conversion, or combination with other air pollutants**.[16]

These provisions clearly encompass regulation of indirect effects—such as those caused by "precursors to the formation of any air pollutant," "whether caused by transformation, conversion, or combination with other air pollutants," as well as global effects—such as those to "weather" and "climate."[17] Congress could not have been more clear: the Clean Air Act authorizes EPA to regulate emissions of "any air pollution agent" whose impacts on "weather" and "climate" endanger public welfare.[18] The statutory text forecloses EPA's attempt to wish away that expansive definition.

EPA compounds these textual misstatements by importing constraints not found in the Act. Congress provided an expansive definition of the term "air pollutant" for purposes of the Clean Air Act in section 302(g), and *Massachusetts* held that greenhouse gases are "without a doubt" air pollutants under the Clean Air Act for purposes of section 202(a).[19] EPA need not, and should not, define that term differently on its own. Congress and the Supreme Court told EPA exactly what it means. But because Congress's expansive definition of "air pollutant" does not

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[13] 42 U.S.C. § 7602(g) (emphasis added).
[14] *Massachusetts*, 549 U.S. at 529.
[15] Proposal, 90 Fed. Reg. at 36,300 (quoting 42 U.S.C. § 7602(h)).
[16] 42 U.S.C. § 7602(h) (emphasis added).
[17] *Id.* §§7602(g)-(h).
[18] *Id.*
[19] *Massachusetts*, 549 U.S. at 529.

fit with EPA's desire to narrow its established responsibilities, EPA's Proposal cobbles together its own definition, from dictionaries.[20]

Selecting dictionary definitions that describe air pollution as the release of a harmful substance into the atmosphere, EPA extrapolates that section 202(a) must be limited to air pollution "that itself endangers public health or welfare through local or regional exposures."[21] But Congress explicitly defined the term "air pollutant" in the statute, so EPA's fishing expedition into dictionaries to find a definition it prefers is improper and unnecessary.

The dictionary definitions EPA cites do not even support its contention. It is a logical and linguistic leap to go from the cited definitions—"[a] poisonous or noxious substance that contaminates the environment," "[t]he harmful addition of a substance or thing into the environment," and the release of "[c]ontaminants into the atmosphere"—to the definition EPA invents: "air pollution . . . that itself endangers public health or welfare through local or regional exposures."[22] EPA's decision to look outside the established statutory definition of the term "air pollutant" was improper and unjustified, but even putting that aside, its dictionary adventure fails to support the limited definition it invents.

EPA's attempt to invoke *Utility Air Regulatory Group (UARG) v. EPA*, 573 US 302 (2014), does not help. *UARG* concerned regulation of greenhouse gases under the Clean Air Act's Title V program, and the Court concluded that "air pollutant" under Title V might have a narrower scope than the Act-wide definition. That argument is inapplicable here. The Supreme Court in *Massachusetts* was interpreting the scope of section 202(a)—the *same section as the Proposal*. *Massachusetts* settled the definition of "air pollutant" in section 202(a); EPA cannot now rely on a Title V case to claim that "air pollutant" must have a narrower meaning than the *Massachusetts* Court's established definition for section 202(a).

The rest of EPA's argument is equally flimsy. Section 202(a) provides that the EPA Administrator shall set standards for emissions of "any air pollutant . . . which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."[23] EPA here propounds an interpretation of "air pollution" as twisted as its false interpretation of "air pollutant."[24] According to EPA's tortured twist, even if greenhouse gases qualify as air pollutants, they cannot count as "air pollution" for purposes of section 202(a) because the buildup of those pollutants in the atmosphere endangers public health at a global scale.[25] This argument is nonsensical.

There is no evidence whatsoever in the statutory text that Congress intended the term "air pollution" to narrow the term "air pollutant," such that acknowledged "air pollutants" could not, in the aggregate, form "air pollution." Even if the statute could support this mangled interpretation, *Massachusetts* cannot. EPA as a regulatory agency does not get to rewrite the

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[20] Proposal, 90 Fed. Reg. at 36,300.
[21] *Id.*
[22] *Id.*
[23] 42 U.S.C. § 7521(a).
[24] Proposal, 90 Fed. Reg. at 36,300-02.
[25] *Id.*

Supreme Court's decision in *Massachusetts*, negating the Supreme Court's determination that greenhouse gases are air pollutants under section 202(a), leaving no real-world impact to the *Massachusetts* decision, and reversing 16 years of consistent adjudication, regulation, enforcement, and reliance. Neither the statute nor *Massachusetts* support EPA's reading.

Subsequent case law has not undermined *Massachusetts*; nor does the "major questions" doctrine. Courts since *Massachusetts* have treated it as a settled question that greenhouse gases are air pollutants under the Clean Air Act. Even in *UARG*, the Supreme Court held that EPA could regulate greenhouse gas emissions from "major" sources under the Title V program. EPA claims that the Supreme Court in *UARG* "rejected [EPA's] attempt to extend greenhouse gas emission standards to stationary sources subject to Title I and Title V Requirements."[26] Not so; the *UARG* Court merely held that greenhouse gas emissions did not turn emissions sources into "major" sources; the question was what were "major" sources, not what was "air pollution."[27] The Court made clear that "major" sources could be subject to greenhouse gas regulations.[28]

Eight years later, in *West Virginia v. EPA*, the Supreme Court applied the major questions doctrine to the question of *how* EPA could accomplish reductions in greenhouse gas emissions (i.e., whether it was able to do so by assuming shifts from fossil fuel-burning electric generating units to clean energy sources such as wind and solar when setting the performance standard).[29] The question was of regulatory method, not a recast of a statutory definition. The predicate—that the Clean Air Act allows EPA to regulate greenhouse gas emissions, and specifically that the Clean Air Act allows EPA to regulate greenhouse gas emissions from power plants—was accepted without question. The "major questions" doctrine does not apply to the question of whether EPA can regulate greenhouse gas emissions, and the statute unambiguously gives EPA that authority.

Nor does *Loper Bright v. Raimondo* give EPA an out.[30] *Loper Bright* overturned the doctrine of *Chevron* deference, under which courts gave deference to reasonable agency interpretations of ambiguous statutory language. *Massachusetts*, however, did not rely on *Chevron* deference in concluding that "[c]arbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt" air pollutants under the Clean Air Act.[31] That was plain statutory interpretation by the Supreme Court. The *Massachusetts* Court specified: "[t]he statute is unambiguous" on this point.[32] So EPA cannot turn to *Loper Bright* to escape the *Massachusetts* holding that section 202(a) obliges EPA to regulate greenhouse gas emissions from new motor vehicles.

That brings us to the question of cumulative pollution effects. Regulating greenhouse gas emissions from new vehicles would not, on its own, solve climate change. EPA argues that this

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[26] Proposal, 90 Fed. Reg. at 36,305.
[27] *UARG*, 573 U.S. at 329.
[28] *Id.* at 331. And the Court observed that sources already regulated as major sources due to other pollutant emissions, and thus eligible for greenhouse gas regulations as well, accounted for "roughly 83% of American stationary-source greenhouse-gas emissions." *Id.* at 315.
[29] *West Virginia v. EPA*, 597 U.S. 697 (2022).
[30] 603 U.S. 369 (2024).
[31] *Massachusetts*, 549 U.S. at 528-29.
[32] *Id.*

is an excuse to abdicate its responsibility to regulate at all. Again, *Massachusetts* forecloses this argument. The Court explained:

> [R]educing domestic automobile emissions is hardly a tentative step. Even leaving aside the other greenhouse gases, the United States transportation sector emits an enormous quantity of carbon dioxide into the atmosphere . . . . Judged by any standard, U. S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations . . . . Nor is it dispositive that developing countries such as China and India are poised to increase greenhouse gas emissions substantially over the next century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.[33]

While the Court reached this conclusion in the context of standing, it applies here with equal force. EPA's own website recognizes: "[t]he transportation sector is one of the largest contributors to anthropogenic U.S. greenhouse gas (GHG) emissions."[34] The United States is the world's second largest greenhouse gas emitter,[35] and transportation accounts for nearly one third of total U.S. greenhouse gas emissions.[36] The U.S. transportation sector thus accounts for one of the *largest* single sources of potential greenhouse gas emissions reductions globally, let alone within the United States. Under the Clean Air Act, domestic emissions of all types are regulated by source, even where no single source entirely causes the relevant danger. EPA's logic would prevent it from ever having to regulate any pollutant whose cumulative effects are dangerous. That is simply not a permissible justification for inaction, either under the statute or under *Massachusetts*.

EPA's "slippery slope" here could dismantle many Clean Air Act pollution standards. Many air pollutants cross political boundaries and mix in the atmosphere. Through the years, "downwind" states have used Section 126 of the Clean Air Act to ask EPA to regulate, for instance, ozone pollution in "upwind" states, which wafts across state lines and worsens air quality far from its source. Some pollutants, such as hydrogen sulfide, are naturally occurring, and yet here again, EPA regulates emissions of this poisonous gas from sources that emit it. It is not true that EPA may only regulate a source's emissions of an air pollutant when doing so would bring ambient levels of that air pollutant to a non-harmful level, or eliminate the air pollutant entirely.

For another example, in the National Ambient Air Quality Standards ("NAAQS") program, a State must establish controls for sources within its borders where pollution exists at elevated levels in the "ambient air," regardless of what that State's specific contribution to the pollution has been.[37] When certain areas are out of "attainment" with the NAAQS, stricter requirements

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[33] *Massachusetts*, 549 U.S. at 524.
[34] EPA, "Fast Facts on Transportation Greenhouse Gas Emissions" (June 6, 2025), https://perma.cc/8FPS-B28P.
[35] Emissions Database for Global Atmospheric Research, "GHG emissions of all world countries" (2024), https://edgar.jrc.ec.europa.eu/report_2024.
[36] U.S. Energy Information Administration, "How much carbon dioxide is produced from U.S. gasoline and diesel fuel consumption?" (April 30, 2024), https://perma.cc/VW6J-2RAW.
[37] 42 U.S.C. § 7410.

are triggered; but nothing relieves States from regulating in-state NAAQS emissions even if regulation of those States' emissions will not cure the overall pollution levels.

Consider also section 111 of the Clean Air Act, under which EPA regulates air pollution emissions from certain categories of stationary sources. As with section 202(a), the Administrator must regulate a source category "if in his judgment it causes, or contributes significantly to, air pollution" that "may reasonably be anticipated to endanger public health or welfare."[38] Pollutants regulated under this program, such as SO_2 (a criteria pollutant) and NO_X (a collective term that includes criteria pollutant NO_2) are ambient air pollutants emitted by many different types of sources, even though only some source categories are regulated under section 111. EPA regulates specific source categories that contribute significantly to the problem of SO_2 and NO_X pollution, even though the regulated source categories are not the only sources of such pollution. Regulating SO_2 and NO_X pollution from specific source categories will not, on its own, solve the problem of SO_2 and NO_X pollution, but EPA does so anyway, as Congress intended and the law requires.

The NAAQS program and section 111 are, of course, different Clean Air Act sections than 202(a). But both programs confirm Congress's intent to require regulation of emissions from certain sources, whether or not the regulation on its own will substantially reduce or eliminate the relevant form of air pollution. This defeats EPA's argument in the Proposal that it cannot regulate greenhouse gas emissions from new motor vehicles under section 202(a) because doing so would not, on its own, eliminate climate change or bring global greenhouse gas concentrations down to acceptable levels. EPA's logic here would forestall it from regulating NAAQS and certain criteria pollutants under section 111—a clearly untenable position.

II. The Proposal is Wrong on the Facts.

Perhaps recognizing that its legal argument for withdrawing the 2009 Endangerment Finding is incurably defective, EPA pursues a preposterous attempt to undercut the Endangerment Finding's scientific foundation. Simply put, there are no credible scientific sources supporting EPA's assertion that "many of the scientific underpinnings of the Endangerment Finding are materially weaker than previously believed and contradicted by empirical data, peer-reviewed studies, and scientific developments since 2009."[39] There is near-absolute scientific consensus that climate change poses dire and worsening threats to humanity's collective future and must be addressed.[40] EPA ignores all this to rely on a report (the "DOE Report"),[41] by five known

[38] 42 U.S.C. § 7411(b)(1)(A).
[39] Proposal, 90 Fed. Reg. at 36,292.
[40] Mark Lynas *et al.*, "Greater than 99% consensus on human caused climate change in the peer-reviewed scientific literature," 2021 Environ. Res. Lett. 16 114005 (October 19, 2021), https://iopscience.iop.org/article/10.1088/1748-9326/ac2966.
[41] U.S. Department of Energy, "A Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate" (July 23, 2025), https://www.energy.gov/sites/default/files/2025-07/DOE_Critical_Review_of_Impacts_of_GHG_Emissions_on_the_US_Climate_July_2025.pdf.

climate science deniers, cherry-picked to produce the report,[42] in violation of relevant law,[43] who peddle tired and readily disproven[44] talking points[45] that the fossil fuel industry has been trotting out for years.[46]

EPA's claim that its Administrator reviewed "assessments by the U.S. Government and relevant international bodies, including the Third, Fourth, and Fifth National Climate Assessments (NCAs) reported by the U.S. Global Change Research Program (USGCRP) and the Fifth Assessment Report (AR5) and Sixth Assessment Report (AR6) by the United Nations Intergovernmental Panel on Climate Change (IPCC),"[47] does not obscure the fact that they were all ignored. The NCAs and the IPCC Reports make clear, of course, that human-caused climate change is happening, and that the projected harms are already happening, faster and more intensely than was projected in 2009.

The Proposal claims that the Administrator reviewed "critiques of the NCAs, and the Fifth NCA in particular, and reviewed these analyses for consistency with OMB information quality guidelines and the transparency and reliability requirements of Executive Order 14303, 'Restoring Gold Standard Science'"[48]; but the Proposal does not actually cite to or credibly describe any such critiques, or any evidence that the NCAs or the IPCC Reports were in any way unreliable or failed to follow the highest level of scientific integrity.[49] The Proposal's claim that those reports have been "criticized on process and quality grounds," including that "several public watchdog organizations" have raised concerns regarding the integrity of the Fifth NCA, is conspicuously devoid of any citations at all.[50] Presumably, the EPA reference here is to work product of the climate denial fraud operation referenced in the prologue of this comment, and the absence of citations is an effort to obscure that fact. The Proposal's argument that climate science is overblown thus must rely entirely on the DOE Report and its underlying citations.[51]

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[42] Maxine Joselow, New York Times, "Trump Hires Scientists Who Doubt the Consensus on Climate Change" (Jul. 8, 2025), https://www.nytimes.com/2025/07/08/climate/trump-climate-energy-department.html.
[43] Zack Colman, E&E News," DOE says it dissolved research group that wrote its controversial climate report" (Sept. 9, 2025), https://subscriber.politicopro.com/article/2025/09/doe-dissolved-climate-working-group-agency-said-in-court-filing-00553419.
[44] Ayesha Tandon *et al.*, "Factcheck: Trump's climate report includes more than 100 false or misleading claims," CarbonBrief (August 13, 2025), https://interactive.carbonbrief.org/doe-factcheck/index.html.
[45] Carlos Javier Martinez, Union of Concerned Scientists, "Trump Admin Uses Fossil Fuel Industry Deception Tactics to Undermine Climate Science" (August 13, 2025), https://blog.ucs.org/carlos-martinez/trump-admin-uses-fossil-fuel-industry-deception-tactics-to-undermine-climate-science/.
[46] Dharna Noor, *New files shed light on ExxonMobil's efforts to undermine climate science*, The Guardian (Sep. 14, 2023), https://www.theguardian.com/us-news/2023/sep/14/exxonmobil-documents-wall-street-journal-climate-science; Joint Staff Report, House Committee on Oversight and Accountability Democrats and Senate Committee on the Budget, "Denial, Disinformation, and Doublespeak: Big Oil's Evolving Efforts to Avoid Accountability for Climate Change" (April 2024), https://www.budget.senate.gov/imo/media/doc/fossil_fuel_report1.pdf. In this way, the scientific "reasoning" in EPA's Proposal tracks that of the legal arguments; both recycle old and entirely rebutted (here, by peer-reviewed science; there, by the Supreme Court) assertions.
[47] Proposal, 90 Fed. Reg. at 36,292.
[48] *Id.* at 36,308.
[49] *Id.*
[50] *Id.* at 36,310.
[51] *Id.* at 36,307-10.

Since EPA published the Proposal, the DOE Report's house of climate-denial cards has collapsed. A team of 85 climate experts thoroughly debunked the shoddy and misleading Report.[52] The National Academies of Sciences, Engineering, and Medicine published a peer-reviewed report that similarly debunked the DOE Report's claims, concluding that "EPA's 2009 finding that the human-caused emissions of greenhouse gases threaten human health and welfare was accurate, has stood the test of time, and is now reinforced by even stronger evidence."[53]

To cook up the DOE Report, DOE assembled a panel of climate skeptics who wrote the Report in violation of the Federal Advisory Committee Act ("FACA").[54] A district court found that the DOE group was an advisory committee subject to FACA.[55] Now that the panel has been disbanded, it is unclear how the authors will be able to respond to the tens of thousands of comments submitted by the public.[56] One of the authors of the DOE Report publicly admitted that it was not produced in compliance with FACA: "[t]he DOE dropped the ball on really making us an official group affiliated with the DOE, rather than . . . just sort of an ad hoc group," and the DOE "really didn't dot all the I's and cross the T's."[57] DOE has since disbanded the panel,[58] likely in an attempt to moot litigation challenging the validity of the DOE Report on FACA grounds.[59] This leaves the DOE Report as a draft, submitted by the Agency to the public for notice and comment, with no panel remaining to respond to tens of thousands of public comments.[60]

After all the climate-denial kabuki, the DOE Report remains the sole purported source of support for EPA's climate denial effort, and the DOE Report has been shown to be littered with factual errors and legally invalid. Setting aside the process problems of relying on a report whose source was never lawfully constituted and is now disbanded, the DOE Report is not factually sufficient to support the false climate claims in the Proposal. EPA is thus left with no viable support for its argument that any serious or credible science supports withdrawal of the Endangerment Finding.

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[52] Dessler, A.E. and R.E. Kopp (Ed.), "Climate Experts' Review of the DOE Climate Working Group Report" (August 30, 2025), https://drive.google.com/file/d/1PwAR8I9YYmPhbQ6CRekHkroJGMbjbX7l/view.
[53] National Academies of Sciences, Engineering, and Medicine, "Effects of Human-Caused Greenhouse Gas Emissions on U.S. Climate, Health, and Welfare" (2025), https://nap.nationalacademies.org/read/29239/chapter/1.
[54] 5 U.S.C. Chapter 10. Among other things, DOE violated FACA by failing to properly announce creation of the group, submit to the General Services Administration a plan to attain fairly balanced membership in the group, conduct required outreach to interested parties and stakeholders regarding the group's work, or comply with recordkeeping requirements.
[55] *Environmental Defense Fund et al. v. Wright et al.*, No. 25-12249, Order (D. Mass Sept. 17, 2025).
[56] The public submitted 59,563 comments on the Report by the September 2, 2025 deadline, but only 345 comments have been posted for public review as of September 22, 2025. *Id.*
[57] Scott Waldman, E&E News, "Disbanded DOE climate group vows to continue work" (September 11, 2025), https://subscriber.politicopro.com/article/eenews/2025/09/11/disbanded-doe-climate-group-vows-to-continue-work-00556267.
[58] Doug Obey, InsideEPA, "Disbanded DOE Climate Group Poses New Challenges For EPA, Critics Say" (September 10, 2025), https://insideepa.com/climate-news/disbanded-doe-climate-group-poses-new-challenges-epa-critics-say?utm_medium=mhc.
[59] *Environmental Defense Fund v. Wright*, No. 25-12249 (D. Mass).
[60] Regulations.gov, Docket, "Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate," https://www.regulations.gov/document/DOE-HQ-2025-0207-0001/comment.

Climate scientists agree with near-unanimity that anthropogenic greenhouse gas emissions are causing climate change.[61] The Fifth National Climate Assessment states: "The evidence for warming across multiple aspects of the Earth system is incontrovertible, and the science is unequivocal that increases in atmospheric greenhouse gases are driving many observed trends and changes. There are more greenhouse gases in the atmosphere primarily because humans have burned and continue to burn fossil fuels for transportation and energy generation."[62] Researchers are even able, with increasing accuracy, to pin climate disasters such as heatwaves to specific fossil fuel emitters.[63] Economists agree that climate change is costly and poses mounting risks to the economy and financial system.[64] There looms a cascading collapse from climate risk into a homeowners' insurance crisis; from insurance crisis into a regional (or worse) mortgage market collapse; from mortgage collapse to a "property values crash"; and in turn to "systemic" economic distress.[65] In a world where climate change is causing homeowners to face gut-wrenching financial decisions as insurance premiums and nonrenewal rates soar;[66] farmers to endure massive crop losses from flood and drought;[67] and families to suffer grocery "climate-

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[61] Lynas, supra n. 40.

[62] U.S. Global Change Research Program, Fifth National Climate Assessment (2023), https://toolkit.climate.gov/sites/default/files/2025-07/NCA5_2023_FullReport.pdf.

[63] Quilcaille, Y., Gudmundsson, L., Schumacher, D.L. *et al.*, "Systematic attribution of heatwaves to the emissions of carbon majors," *Nature* 645, 392–398 (September 10, 2025) https://doi.org/10.1038/s41586-025-09450-9.

[64] Already, health care costs relating to the combustion of fossil fuels are estimated to total nearly $820 billion annually in the U.S. alone. Senate Budget Committee, Staff Report, Uncovering the Economic Costs of Climate Change (December 2024), https://www.budget.senate.gov/imo/media/doc/uncovering_the_economic_costs_of_climate_change.pdf. And the costs are only predicted to grow, costing every American child born in 2024 a tax of approximately $500,000 over their lifetimes. Scott Medintz, *Climate Change could cost each American born today $500,000,* Consumer Reports (Apr. 16, 2024), https://www.consumerreports.org/home-garden/climate-change/the-per-person-financial-cost-of-climate-change-a6081217358/. Economists estimate that "climate change and the fight against it could wipe out 9% of the value of the world's housing by 2050—which amounts to $25 trn, not much less than America's annual GDP." *Global Warming is Coming for your Home*, The Economist (Apr. 11, 2024), https://www.economist.com/leaders/2024/04/11/global-warming-is-coming-for-your-home.

[65] *Global Warming is Coming for your Home*, The Economist (Apr. 11, 2024), https://www.economist.com/leaders/2024/04/11/global-warming-is-coming-for-your-home.

[66] Senate Budget Committee, Committee Staff Report, Next to Fall: The Climate-Driven Insurance Crisis is Getting Worse (December 2024), https://www.budget.senate.gov/imo/media/doc/next_to_fall_the_climate-driven_insurance_crisis_is_here__and_getting_worse.pdf; Christopher Flavelle and Mira Rojanasakul, *More Americans, Risking Ruin, Drop Their Home Insurance*, New York Times (Jan 16, 2025), https://www.nytimes.com/interactive/2025/01/16/climate/home-insurance-cancellations.html. As insurance coverage drops, so will mortgage eligibility, leading to a decline in property values. *Global Warming is Coming for your Home*, supra n. 65.

[67] Weather disasters cost American farmers $21.94 billion in crop and rangeland losses in 2023, Daniel Munch, Major Disasters and Severe Weather Caused Over $21 Billion in 2023, Farm Bureau (Feb. 29, 2024), https://perma.cc/2GDK-9GYY, and another $20.3 billion in 2024. Daniel Munch, Hurricanes, Heat and Hardship: Counting 2024's Crop Losses (Feb. 18, 2025), https://perma.cc/GXW6-JYC2 (noting also that roughly half of each year's losses were not insured).

flation," food insecurity,[68] displacement,[69] and even illness and death,[70] EPA's Proposal, with its legal and factual deficiencies, deserves zero credence. As a product of the fraud-by-government stage of the fossil fuel industry's linked climate denial fraud and dark money corruption operations, it merits condemnation.

Sincerely,



Sheldon Whitehouse
United States Senator
Ranking Member
Committee on Environment and Public Works

[68] Alisher Mirzabaev *et al.*, *Severe climate change risks to food security and nutrition*, Clim. Risk Manag. (2023), https://www.sciencedirect.com/science/article/pii/S2212096322000808#:~:text=The%20climate%20change%20risk%20to,populations%20already%20vulnerable%20to%20food; Maximilian Kotz, Markus Donat, Tom Lancaster *et al.*, *Climate extremes, food price spikes, and their wider societal risks*, Environmental Research Letters (July 21, 2025), https://iopscience.iop.org/article/10.1088/1748-9326/ade45f.

[69] David J. Craig, Columbia Magazine, "America's Great Climate Migration Has Begun. Here's What You Need to Know." (Fall 2024), https://magazine.columbia.edu/article/americas-great-climate-migration-has-begun-heres-what-you-need-know; New America, "Climate Change Will Drive Domestic Migration across the United States" (accessed September 16, 2025), https://www.newamerica.org/future-land-housing/reports/climate-migrations-impact-on-housing-security/climate-change-will-drive-domestic-migration-across-the-united-states/.

[70] Natural Resources Defense Council, "The Costs of Inaction: The Economic Burden of Fossil Fuels and Climate Change on Health in the United States" (2021), https://www.nrdc.org/sites/default/files/costs-inaction-burden-health-report.pdf.