

No. 12-1268

In the Supreme Court of the United States

SOUTHEASTERN LEGAL FOUNDATION, INC., *et al.*,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,
Respondents.

*On Petition for Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit*

**BRIEF OF THE COMMITTEE FOR A
CONSTRUCTIVE TOMORROW AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE AMICUS CURIAE	1
SUMMARY OF ARGUMENT	2
REASONS FOR GRANTING THE PETITION	4
I. EPA’s Endangerment Decision Is Arbitrary, Irrational, Improperly Based On Faulty U.N. Intergovernmental Panel On Climate Change Analyses, And Cannot Support Such A Dramatic Expansion Of Regulatory Authority	4
II. EPA Impermissibly Failed To Consider The Adverse Impacts That Its Endangerment Decision And Greenhouse Gas Regulations Will Have On Human Health And Welfare, And On Wildlife And The Environment ...	18
III. Even Full Compliance With EPA’s Carbon Dioxide And Greenhouse Gas Rules Would Achieve Zero Global Benefits, Because Emissions From Other Countries Will Continue To Increase Atmospheric GHG Levels	25
CONCLUSION	27

TABLE OF AUTHORITIES

	Page
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INTEREST OF THE *AMICUS CURIAE*

Founded in 1985, the Committee For A Constructive Tomorrow (CFACT) is a Washington, D.C.-based nonprofit public policy and education organization that promotes environmental protection, economic development, and longer, healthier, more productive and fulfilling lives through modern science and technology.¹

CFACT has served as an official non-governmental organization at United Nation's Framework Convention on Climate Change conferences, actively participating in every such conference and other U.N. events. CFACT also sponsors the www.ClimateDepot.com website for climate science news and policy information.

CFACT officers and advisors have appeared on radio and television programs and written books, reports and articles on climate change and impacts of government greenhouse gas policies on jobs, economic development, environmental values, and human health and welfare. They have also presented formal comments to the U.S. Environmental Protection Agency and other Federal agencies on proposals

¹ Pursuant to Supreme Court Rule 37, Petitioner Southeastern Legal Foundation and Respondent the Environmental Protection Agency received notice at least 10 days prior to the due date of the amicus curiae's intention to file this brief, and both parties consented to the filing. *Amicus* confirms that no counsel for any party authored this brief in whole or in part, and no person other than *amicus*, its members or its counsel have made any monetary contribution to fund the preparation or submission of this brief.

governing greenhouse gases, endangered species, and human health and welfare, to promote and protect the interests of CFACT members and supporters and other United States citizens.

CFACT supports the petition and urges the Court to grant review, because it is deeply concerned that the D.C. Circuit failed to address serious objections to EPA's endangerment decision and final rules regulating greenhouse gases. In particular, CFACT is submitting this brief to explain some of the serious flaws in EPA's approach and highlight the broad and sweeping importance of the issues raised by Petitioner. As described in more detail below, EPA's decision is not supported by reliable evidence in the record and, if it is left uncorrected, will impose significant harms to Americans' health, welfare and environment, and our society as a whole, without providing any meaningful benefits. In light of the importance of the issues and the substantial harms that will result from EPA's regulatory scheme, this Court should grant review.

SUMMARY OF ARGUMENT

This Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), gave the Environmental Protection Agency authority to rule that carbon dioxide and other greenhouse gases endanger human health and welfare. EPA so ruled and began issuing regulations governing such emissions from motor vehicles, electrical generating plants and other facilities. The rules could ultimately affect millions of facilities powered by fossil fuels.

In affirming EPA's decision, the D.C. Circuit failed to give proper consideration to arguments that EPA failed to act in a "rational matter" and failed to respond to serious objections to its approach. If the D.C. Circuit had addressed these arguments, it would have been forced to confront the fact that the Intergovernmental Panel on Climate Change (IPCC) analyses relied on by EPA in reaching its "endangerment" decision and issuing its greenhouse gas regulations are riddled with errors, biases, faulty analyses and methodologies, and outright falsehoods. The IPCC and EPA ignored those deficiencies, as well as studies by numerous scientists and a vast body of observational evidence that contradicts EPA's rulings. EPA also failed to consider the extensive adverse impacts that its endangerment decision and regulations will have on the environmental values and human health and welfare of American citizens.

EPA's decisions will add immense delays and costs to manufacturing, transportation and facility operations. They will adversely affect hiring and retaining of employees, maintaining modern living standards, and ensuring human health and welfare. By forcing greater reliance on "renewable" energy, they will also harm wildlife and environmental values.

Despite the pain that EPA's regulations will inflict, its endangerment decision will have no effect on atmospheric GHG levels, because emissions from other nations will overwhelm any U.S. reductions.

These energy and climate change matters are properly handled through the legislative and treaty process, not through unilateral Executive Branch

decisions driven by anti-hydrocarbon agendas that fail to consider the erroneous science, enormous human and environmental costs, and competing needs, risks and benefits involved here.

Failure to grant certiorari in this case, thereby allowing the D.C. Circuit decision to stand, would give EPA powers unprecedented in U.S. history, and virtually ensure widespread damage to America's job creation capabilities, living standards, health and environment, at levels far worse than the purported effects of manmade global warming.

REASONS FOR GRANTING THE PETITION

I. EPA's Endangerment Decision Is Arbitrary, Irrational, Improperly Based On Faulty U.N. Intergovernmental Panel On Climate Change Analyses, And Cannot Support Such A Dramatic Expansion Of Regulatory Authority.

In *Massachusetts v. EPA*, 549 U.S. 497 (2007), this Court held that the Clean Air Act's definition of "air pollutant" includes carbon dioxide and other substances that contribute to climate change, and that the United States Environmental Protection Agency has the statutory authority to regulate the emission of such gases, if the agency finds that such emissions rise to a level that "endangers" human health and welfare. This Court also held that EPA "must ground its reasons for action or inaction in the statute," and reserved any decision on "whether policy concerns can inform EPA's actions in the event that it makes such a finding." *Id.* at 534-35.

EPA subsequently ruled that carbon dioxide and other greenhouse gases (GHG) do endanger public health and wellbeing. It promulgated far-reaching rules governing motor vehicles and power plants and setting the stage for regulating any human activity that uses significant amounts of hydrocarbon energy. The rules could ultimately cover millions of factories, refineries, cement kilns, shopping malls, apartment and office buildings, hospitals, schools, churches, farms, and countless other facilities that emit significant amounts of greenhouse gases.

Petitioners challenged EPA's decision and regulations before the D.C. Circuit, which rejected their arguments, upheld the EPA program, and rejected Petitioners' motion for rehearing. The court erred in these rulings.

As Judge Kavanaugh noted below in his dissent from denial of rehearing *en banc*, EPA's greenhouse regulations represent "the most burdensome, costly, far-reaching program ever adopted by a United States regulatory agency." *Coalition for Responsible Regulation, v. Environmental Protection Agency*, 2012 U.S. App. LEXIS 25997 at *62 (D.C. Cir. 2012). "EPA's interpretation, he continued, "will impose enormous costs on tens of thousands of American businesses, with corresponding effects on American jobs and workers . . . and on the U.S. economy." *Id.* at *75.

Affordable, reliable energy is the lifeblood of modern society. This unprecedented expansion of regulatory control will affect every American business and household. It will drive employment downward, and damage the health and wellbeing of American citizens

– and of the nation’s wildlife and environment – far more than manmade GHG emissions and global warming. In short, EPA’s regulatory “cure” is far worse than the climate “disease” it claims to be preventing.

For these reasons, it is vitally important that EPA’s endangerment decision and rules be grounded not only in “the statute,” but also in solid science, sound public policy, careful attention to the *harmful effects* of its actions, and whether their costly, punitive approach will do anything to alleviate the dangers that EPA attributes to GHG emissions.

EPA has failed to meet these tests. Its conclusions about CO₂ endangerment are based on faulty, cherry-picked scientific reports, apocalyptic assertions, and computer models that poorly reflect our still inadequate understanding of climate system dynamics and have been wrong in their predictions of global temperature fluctuations and other manifestations of climate change.

The issue is not whether carbon dioxide and other greenhouse gases “contribute to” climate change. The issues are:

- (1) whether these gases now *dominate* planetary climate variation, supplanting complex solar, cosmic, atmospheric, oceanic and other forces that have governed global warming and cooling, storms and other climate changes throughout Earth’s history;
- (2) whether human GHG emissions will cause *dangerous* climate changes that a technologically

advanced United States will be unable to withstand or adapt to;

(3) whether an EPA *failure* to adopt endangerment regulations will be more harmful to Americans' environment, health and welfare than the effects of *implementing* these costly, damaging rules; and

(4) whether EPA actions will have any measurable effect on global temperatures, even using the most sensitive instruments and assuming CO₂ plays a dominant role in climate change.

Nothing in EPA's Endangerment Finding supports a positive answer to any of these questions. Nothing supports its claim of "90-99% certainty" that humans caused "most" of the atmospheric warming that Earth experienced between 1950 and 1996. Extensive empirical evidence suggests that EPA's actions were based on analyses and claims that were erroneous, dishonest and even fraudulent.

The Information Quality Act, 44 U.S.C. § 3516 (note), and related Federal guidelines require that EPA and other regulatory agencies base "major" and "influential" rulemakings on data and analyses that are accurate, clear, complete, unbiased and collected by the best available methods. EPA failed to do this. Indeed, the scientific and observational basis for EPA and Intergovernmental Panel on Climate Change (IPCC) claims of "dangerous manmade climate change"

is tenuous, unsupported by actual observations and lacking in scientific integrity.²

If EPA and IPCC claims about the effects of carbon dioxide and other greenhouse gases on weather and climate were correct, observations and measurements of temperatures, storms, sea levels and other physical parameters over the past 35 years would reflect those claims and forecasts of computer models used to generate them. However, actual physical evidence contradicts the models and claims of unprecedented catastrophes caused by increasing CO₂ levels.

Even as atmospheric carbon dioxide levels kept rising – slowly before 1940, more rapidly 1940-1970, and still more quickly after that, ultimately reaching 400 parts per million in 2013 (0.0400 percent of Earth’s atmosphere) – average global temperatures *rose* 1910-1940, *fell slightly or remained stable* 1940-1979, rose again 1979-1997, and remained *unchanged* from 1997 to the present. Rising levels of plant-fertilizing CO₂ do not appear to result in steadily higher temperatures. Even University of East Anglia’s Climate Research Unit scientists now acknowledges that they “cannot account for the lack of warming” in recent years.³

²The Information Quality Act: OMB’s Guidance and Initial Implementation, Congressional Research Service Report for Congress, (Order Code RL32532), September 17, 2004, https://it.ojp.gov/documents/CRS_IQ_Act_OMB_Guidance_and_Implementation.pdf.

³See David Whitehouse, *The Global Warming Standstill*, London: Global Warming Policy Foundation (2013), http://www.thegwpf.org/content/uploads/2013/03/Whitehouse-GT_Standstill.pdf; David

This actual 1998-2013 temperature record undermines EPA's reliance on models and its claim that Earth's climate is highly sensitive to increasing atmospheric carbon dioxide levels and is approaching a "tipping point" in preventing "dangerous" global warming.

The past two winters were among the coldest in decades for many parts of Canada, Russia, central Europe and the United Kingdom. A lethal "100-year, record-smashing" spring cold and snow across central Europe in March 2013 killed thousands of people. Britain's coldest on record Easter 2013 was followed by a week of freezing temperatures, gales and snow, with roads and schools closed, millions of families without power, and poor pensioners dying of hypothermia. The United States just recorded one of its coldest springs on record.⁴

Rose, *Global warming stopped 16 years ago, reveals Met Office report quietly released*, MailOnline (UK), Oct. 13, 2012, <http://www.dailymail.co.uk/sciencetech/article-2217286/Global-warming-stopped-16-yearsago-reveals-Met-Office-report-quietly-released-chart-prove-it.html>; "The Climate: A Sensitive Matter," *The Economist*, Mar. 30, 2013, <http://www.economist.com/news/science-and-technology/21574461-climate-may-be-heating-up-less-response-greenhouse-gas-emissions>. Hadley Center data show that the average global temperature was 58.1 degrees F (14.5 C) in 1997 and 2012, with periods of slight warming and cooling in between, ranging sporadically 0.1-0.7 degrees F annually above or below this 58.1 degree mark.

⁴ Nathan Rao, "Coldest Easter ever: Arctic misery set to last week as temperatures drop to -15C; Britain is braced for the coldest Easter on record," Daily Express (London), March 25, 2013; James M. Taylor, "Cold spring pummels people, animals from Russia to

The frequency and severity of hurricanes, tornadoes, floods and droughts have displayed no deviation from observed trends and cycles over the last century and are well within the normal range of historic variability. 2012 gave the United States its lowest number of strong tornadoes since 1954 and set a record for the number of years with no category 3 or higher hurricane making landfall in the USA. Arctic climate and sea ice are within a few percentage points of their “normal” levels for the past fifty years; the Antarctic is experiencing more ice and colder weather than at any time in decades; and the rate of sea level rise has not changed in a century.⁵

Florida,” *Environment & Climate News*, May 2013, page 13; Steven Goddard, “U.S. headed for coldest spring on record,” <http://steven-goddard.wordpress.com/2013/05/02/us-headed-for-the-coldest-spring-on-record/>; Our Amazing Planet, “Snowy spring snaps records across US: Cold temperatures as much as 20 degrees below normal,” <http://weather.aol.com/2013/05/02/snowy-spring-snaps-records-across-us/>. For Britain, the record cold and snow comes just 13 years after CRU scientist David Viner warned that global warming meant “children just aren’t going to know what snow is.”

⁵ *Climate Change Reconsidered: 2011 interim report of the Nongovernmental International Panel on Climate Change*, Chicago: Heartland Institute, Chapter 5, pp 123-150, <http://www.nipccreport.org/reports/2011/pdf/05ExtremeWeather.pdf>; Harold Brooks, “The tornado drought of 2012,” August 2, 2012, <http://www.norman.noaa.gov/2012/08/the-tornado-drought-of-2012/>; The Weather Channel, “Major hurricane drought continues in US,” October 24, 2012, <http://www.weather.com/news/weather-hurricanes/major-hurricane-drought-us-20120814>; Craig Idso and S. Fred Singer, *Climate Change Reconsidered: The report of the Nongovernmental International Panel on Climate Change* (NIPCC), Chicago, IL: Heartland Institute, 2009 (pages 114-130); Patrick Michaels and Paul Knappenberger, “New research calls

That the models' often scary forecasts have been incorrect and unsupported by actual observations is not surprising. Earth's climate system is complex, dynamic, turbulent and frequently changing. However, computer climate models employ simplified assumptions that: carbon dioxide is the primary driving force behind climate change; water vapor amplifies the effects of CO₂; and the sun and cosmic rays play only insignificant roles. These and other invalid assumptions illustrate the models' problem of "garbage in, garbage out" and reflect late physicist Niels Bohr's observation that "prediction is very difficult, especially about the future."

EPA did no climate research of its own. It cherry-picked studies that supported its political agenda and ignored empirical observations and extensive data and reports that *questioned or contradicted* the agency's findings. It relied "most heavily" on findings of the Intergovernmental Panel on Climate Change, to claim there is "compelling and overwhelming" evidence that climate change endangers human health and welfare. It insisted that the IPCC papers represent "the best

into question high rates of sea level rise," Cato Institute, December 20, 2012, <http://www.cato.org/blog/current-wisdom-new-research-calls-question-high-rates-sea-level-rise/>; S. Fred Singer and Dennis Avery, *Unstoppable Global Warming every 1,500 years*, Lanham, MD: Rowman & Littlefield Publishers, 2007 (pages 37-40,137-140); Willie Soon and Paul Driessen, "Desperately seeking Arctic warmth: 300 years of exploration records show recent Arctic warming is not unusual," *Washington Times*, May 12, 2010.

available scientific assessments” and that they “have gone through rigorous and transparent peer review.”⁶

However, EPA did not even review the studies on which it relied, to assess their reliability, credibility or integrity, or determine whether they actually had been peer-reviewed. This fatal flaw further underscores the arbitrary nature of its endangerment decision and its reliance on IPCC documents.

Just before EPA rendered its December 2009 endangerment decision, the first group of “Climategate” emails revealed that a closed network of scientists controlled the IPCC process, manipulated data and excluded opinions that differed from their own, to promote alarmist perspectives on global warming. As EPA was issuing its first four GHG rules in 2010 and

⁶ On April 24, 2009, EPA wrote: “EPA has developed a technical support document (TSD) which synthesizes major findings from the best available scientific assessments that have gone through rigorous and transparent peer review. The TSD therefore relies most heavily on the major assessment reports of both the Intergovernmental Panel on Climate Change (IPCC) and the U.S. Climate Change Science Program (CCSP). EPA took this approach rather than conducting a new assessment of the scientific literature. The IPCC and CCSP assessments base their findings on the large body of many individual, peer-reviewed studies in the literature, and then the IPCC and CCSP assessments themselves go through a transparent peer-review process.” Proposed Endangerment and Cause and Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 *Federal Register* 18886, 18894 (proposed April, 24, 2009). Since the CCSP itself also relies heavily on IPCC documents, the IPCC is really the primary source of all EPA analyses and pronouncements.

2011, a second collection of Climategate emails and other revelations and studies further undermined the scientific foundation for these destructive EPA rules.⁷

Climategate emails and independent studies also reveal that many analyses and reports included in the IPCC's Fourth Assessment Report and relied upon by EPA in reaching its conclusions were inaccurate, created by activist groups or students, represented as "peer-reviewed" when they were not, or otherwise fell far below standards of scientific honesty and credibility essential for such an important and far-reaching public policy decision as the CO₂ endangerment ruling.

Contrary to repeated claims by IPCC Chairman Rajendra Pachauri (and EPA) that the Panel's climate assessment reports rely solely, entirely and exclusively on scholarly peer-reviewed source material, fully 30 percent of the papers and other references cited by the IPCC in its 2007 Fourth Assessment Report (AR4) were *not* peer reviewed, and many of the IPCC's "lead authors" were graduate students or even environmental activists.⁸ Many of its scariest, most headline-grabbing claims of climate disasters deviated

⁷ See, e.g., Steven Mosher and Thomas Fuller, *Climategate: The CRUtape letters*, Lexington, KY: 2010; Peabody Energy Petition for Reconsideration of EPA's endangerment finding, http://epa.gov/climatechange/Downloads/endangerment/Petition_for_Reconsideration_Peabody_Energy_Company.pdf

⁸ Donna Laframboise, *The Delinquent Teenager Who Was Mistaken for the World's Top Climate Expert: An IPCC expose*; Toronto: Ivy Avenue Press (2011); pp. 184-185 (the citizen audit of AR4).

the most from basic standards of scrutiny, credibility and integrity. To cite just a few examples:

IPCC assertions about snow and ice disappearing from mountains all over the world had no peer-reviewed scientific basis. One source was a mountain climbing magazine article that relied solely on anecdotal statements by mountaineers; the other was a geography student's master's degree thesis, based on anecdotal stories by mountain guides about past and present ice conditions.⁹

Prominent IPCC claims that droughts caused by global warming would destroy 40 percent of the Amazon rainforest were founded on a World Wildlife Fund press release, which was based on "research" by two young activists, who predicated their analysis on a science journal article that addressed forest *logging and burning* by local people, and said nothing about rainfall or climate change.¹⁰

The IPCC's Fourth Assessment Report also claimed Himalayan glaciers would "disappear by the year 2035," depriving communities in the region of water. This assertion was based on another World Wildlife

⁹ Richard Gray and Rebecca Lefort, "IPCC based claims on student dissertation and magazine article," *The Sunday Telegraph*, January 31, 2010. See also Dean Nelson, "India to pull out of IPCC," *The Telegraph*, February 4, 2010.

¹⁰ Jonathan Leake, "UN climate panel shamed by bogus rainforest claim," *Sunday Times* (London), January 31, 2009; Richard Gray and Ben Leach, "The never-ending scandal: New list of errors in IPCC report," *Sunday Telegraph*, February 7, 2010.

Fund press release, which was based on a non-peer-reviewed article in a popular science magazine – which was based on an email from a single glaciologist, who later admitted his prediction was pure “speculation.” The IPCC lead author in charge of this section subsequently said the Himalayan glacier meltdown had been included – despite his knowing of its false pedigree – because he thought highlighting it would “encourage” policy makers and politicians “to take concrete action” on global warming.¹¹

Almost 90 percent of the National Weather Service’s climate-monitoring stations failed its “siting” requirements, by being too close to heat sources that contaminated data and caused stations to report higher than actual temperatures. Yet, their records and other biased data were relied on by the EPA and IPCC as evidence of U.S. and global warming trends.¹²

¹¹ Jonathan Leake and Chris Hastings, “IPCC mislead world over Himalayan glacier meltdown,” *The Times* (London), January 17, 2010; Gerald Traufetter, “Can climate forecasts still be trusted? Confidence melting away,” ABC News Internet Ventures, January 28, 2010; F. William Engdahl, “Glacier Meltdown: Another Scientific Scandal Involving the IPCC Climate Research Group,” *Global Research*, January 27, 2010; David Rose, “Glacier scientist: I knew data hadn’t been verified,” London *Daily Mail*, January 24, 2010. *The Times* reported that India’s top glaciologists called Hasnain’s claims about imminent glacial meltdown “inherently ludicrous.” India’s most renowned glacier experts had just completed an exhaustive study that found no evidence of unusual temperature upturns in the Himalayas and said it would take 300 years for the glaciers to melt.

¹² Anthony Watts, *Is the U.S. Surface Temperature Reliable? How do we know global warming is a problem if we can’t trust the U.S.*

These and numerous other errors, deficiencies and outright misrepresentations were further compounded by the IPCC's analytical and decision-making process, which is highly secretive, non-transparent and directed by scientists who frequently chose, evaluated and even modified colleagues' material, to build their case for alarming, human-caused global warming and prepare a first draft assessment report. At the second-draft stage, the review process is dominated by government officials, chosen to reflect their countries' climate policies and ensure diversity of national origin, though not diversity of expert opinion on critical climate issues. In fact, at both stages, world-renowned experts are *excluded* if their studies and conclusions do not reflect the contrived "consensus" views on warming, severe weather, species extinction, sea level rise, droughts, diseases and other topics.¹³

The arbitrary nature of EPA's claim of "certainty" is further underscored by a statement signed by 31,000 American scientists, saying they see "no convincing scientific evidence" that humans are causing dangerous climate change; and a U.S. Senate report listing more

temperature record?" SurfaceStations.org: 2009, <http://wattsupwiththat.com/2009/05/10/a-report-on-the-surfacestations-project-with-70-of-the-ushcn-surveyed/>; Craig Idso and S. Fred Singer, *Climate Change Reconsidered: The report of the Nongovernmental International Panel on Climate Change* (NIPCC), Chicago, IL: Heartland Institute, 2009 (pages 114-130).

¹³ Donna Laframboise, *The Delinquent Teenager Who Was Mistaken for the World's Top Climate Expert: An IPCC expose*; Toronto: Ivy Avenue Press (2011); especially pp. 106-109, 114-116, 152, 169, 214-219; Judith Curry, "Laframboise on the IPCC," <http://judithcurry.com/2011/10/19/laframboise-on-the-ipcc/>.

than 700 international scientists who “dissent from” manmade global warming disaster claims.¹⁴

Alan Carlin, a 37-year veteran EPA analyst, understood these problems and prepared a detailed paper, strongly advising the agency to look carefully at the science behind global warming claims and not rely on IPCC assessment reports. Carlin’s supervisor tried to suppress the paper and refused to forward it to the EPA group preparing the final report that would guide the endangerment decision. His supervisor told him: “The administrator and administration has [sic] decided to move forward on endangerment, and *your comments do not help the legal or policy case for this decision.*”¹⁵ [emphasis added]

Despite these rampant deficiencies in the IPCC reports and the blatant politics involved in handling

¹⁴ Oregon Institute of Science and Medicine, “Petition Project,” <http://www.oism.org/pproject/>; U.S. Senate Minority Report: “More than 700 international scientists dissent over man-made global warming claims: Scientists continue to debunk ‘consensus’ in 2008 and 2009,” http://www.hatch.senate.gov/public/_files/USSenateEPWMinorityReport.pdf; a Climate Depot report updates the Senate document, by adding 300 scientists to this list: <http://www.climatedepot.com/2010/12/08/special-report-more-than-1000-international-scientists-dissent-over-manmade-global-warming-claims-challenge-un-ipcc-gore-2/>.

¹⁵ Alan Carlin, “National Center for Environmental Economics comments on draft technical support document for endangerment analysis for greenhouse gas emissions under the Clean Air Act,” March 2009, <http://WattsUpWithThat.files.wordpress.com/200906/endangermentcommentsv7b1.pdf>; “Controversy over EPA report prepared by Carlin,” http://en.wikipedia.org/wiki/Alan_Carlin.

“the most burdensome, costly, far-reaching program ever adopted by a United States regulatory agency,” The Environmental Protection Agency simply adopted the IPCC’s conclusions and determined that it is “very likely” (a “90-99 percent probability”) that human greenhouse gas emissions caused “most” of the warming that Earth experienced during the second half of the twentieth century.¹⁶

EPA’s endangerment finding clearly has no foundation in reality or honest, objective science. It is irrational, arbitrary and capricious. It cannot justify this unprecedented expansion of regulatory authority, especially considering the severe impacts the decision will have on the environmental, economic and human wellbeing of our nation.

II. EPA Impermissibly Failed To Consider The Adverse Impacts That Its Endangerment Decision And Greenhouse Gas Regulations Will Have On Human Health And Welfare, And On Wildlife And The Environment.

EPA’s mission is to protect the environment, health and welfare of American citizens. The agency abrogates that mission and violates the law and its public trust when it “safeguards” people from exaggerated or illusory risks that exist only in faulty computer models or IPCC documents that are based largely on

¹⁶ Environmental Protection Agency, *Technical Support Document for Endangerment and Cause or Contribute finding for greenhouse gases under Section 202(a) of the Clean Air Act*, December 7, 2009, p. 7.

manipulated, manufactured or misrepresented data and analyses – or if the EPA “endangerment” decision endangers human health and welfare far more than any reasonably foreseeable effects from climate change.¹⁷

The agency’s endangerment decision will put EPA in control of nearly everything Americans make, ship, eat and do. It will necessitate major changes in energy use and prices, electricity generation, manufacturing, transportation, heating and air conditioning, employment, and other components of the life styles, living standards, health and welfare of every American. It will harm environmental values, and wildlife habitats and populations.

Complying with EPA’s GHG/CO₂ regulations will add hundreds of billions of dollars per year to current operating and compliance costs. It will result in higher electricity and fuel prices, expensive facility retrofits and replacements, hundreds of thousands of lost jobs annually, and acute hardship for millions of families.¹⁸

¹⁷ U.S. Environmental Protection Agency, “Our mission and what we do,” <http://www2.epa.gov/aboutepa/our-mission-and-what-we-do>.

¹⁸ United States Senate Committee on Environment and Public Works, Minority Staff Report, *A Look Ahead to EPA Regulations for 2013* (Oct. 2012), http://cnsnews.com/sites/default/files/documents/A_Look_Ahead_to_EPA_Regulations_for_2013.pdf; National Economic Research Associates, “Economic Impacts of EPA’s Transport Rule and Utility MACT rule,” June 2011; Testimony of Dr. Margo Thorning, senior vice president and chief economist, American Council for Capital Formation, before the United States House of Representatives Subcommittee on Energy

EPA's endangerment decision has been used to justify taking billions of dollars from profitable sectors of the economy and diverting the funds to subsidize wind, solar and biofuel programs. Recent Department of Energy records reveal that \$26 billion in Energy Department subsidies and loan guarantees for renewable energy projects since 2009 created only 2,298 permanent jobs, at a cost of \$11.45 million per job. As studies in Spain and Scotland have documented, these expensive "green" energy programs ultimately caused the loss of two to four traditional jobs for every renewable energy position created, resulting in still more human hardship that EPA failed to consider, especially for minority and poor families.¹⁹

As the cost of fuel, food, services and consumer products increases, families are left unable to heat and cool their homes properly, pay the rent or mortgage, buy clothing and medicine, take vacations, pay their bills, give to charity, save for college and retirement, or eat nutritious meals. Companies forced to pay more for energy and regulatory compliance must often suspend

and Power, Committee on Energy and Commerce, February 9, 2011; "Economy Derailed: State-by-state impacts of the EPA regulatory train wreck," American Legislative Exchange Council, April 2012.

¹⁹ Institute for Energy Research, "Department of Energy spends \$11 million per job," May 8, 2013, <http://www.InstituteForEnergyResearch.org/2013/05/08/does-11-million-jobs/>; Gabriel Calzada Alvarez, "Study of the effects on unemployment of public aid to renewable energy sources," King Juan Carlos University, 2009; James Delingpole, "The real cost of global warming," The Telegraph, February 28, 2011, <http://blogs.telegraph.co.uk/news/JamesDelingpole/100078040/the-real-cost-of-global-warming/>.

construction projects, outsource work to other countries, reduce work forces, shift people to part-time status, or file for bankruptcy and close their doors. As companies cut back and more people go on unemployment, government revenues decline, leaving government agencies with fewer funds for low income energy assistance, welfare, food stamps and similar programs – just when they are needed most.²⁰

Reduced nutrition and medical checkups, combined with the stress of being unemployed or involuntarily holding two or more low-paying part-time jobs, also lead to greater risk of strokes and heart attacks, and higher incidences of depression, alcohol, spousal and child abuse, and suicide. These problems are especially acute among military veterans and for middle-aged male breadwinners whose prospects for finding gainful employment, on par with what they once enjoyed, become increasingly lower the older they get and the longer they are out of work.²¹

²⁰ Management Information Systems, “Potential impact of the EPA endangerment finding on low income groups and minorities,” March 2010; Roy Innis, *Energy Keeper, Energy Killers: The new civil rights battle*, Bellevue, WA: Merril Press (2008), p.1. Paul Driessen, “Affordable Energy: The foundation of human rights and environmental justice,” American Legislative Exchange Council, April 2010.

²¹ Donald Lambro, “Casualties in the jobs war: Suicide statistics start to track the unemployment rate,” *Washington Times*, May 8, 2013; H. Harvey Brenner, “Many Factors in the Prediction of National Life Expectancy: GDP and unemployment,” testimony before the U.S. Senate Committee on Public Works, June 15, 2011, http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=37188bea-2c5f-4100-a767-f264f1a1ced2.

In calculating regulatory *benefits*, EPA says each “premature death” theoretically avoided creates millions of dollars in societal economic gains. However, it ignored the *adverse impacts* that its endangerment decision will have on people’s health, wellbeing, life spans, environmental justice and civil rights.²²

EPA’s endangerment decision could kill thousands of Americans annually, with lost “human life values” totaling many billions of dollars. These impacts will be far worse than any global warming damages theoretically avoided. The agency’s endangerment actions will also inflict significant harm on the natural environment. Hydrocarbons provide 84 percent of all U.S. energy. EPA’s greenhouse gas rules will compel America to replace these fuels with expensive, unreliable “renewable” alternatives that cost jobs, require far more land and raw materials than do fossil fuels, and cause significant impacts on scenic values, wildlife habitats, and bird and bat populations.

For example, Arizona’s Palo Verde nuclear plant generates 26,780 gigawatt-hours of electricity annually

²² Holly Richmond, “EPA: A human life is worth \$7.9 million,” Grist, January 26, 2011, <http://grist.org/article/2011-01-25-epa-a-human-life-is-worth-7-9-million/>; James M. Taylor, “House Testimony: EPA grossly overstates the economic benefits of regulation,” Environment & Climate News, July 2012, <http://news.heartland.org/newspaper-article/2012/07/13/house-testimony-epa-grossly-overstates-economic-benefits-regulation>; Matt Ridley, “Earth to Met Office: Check your climate facts. The latest science suggests that our policy on global warming is hopelessly misguided,” *The Times* (London), May 20, 2013, <http://www.thetimes.co.uk/tto/opinion/columnists/article3769210.ece>.

from a 4,000-acre site (half of which is open land and a lake). Getting the same amount of electricity far less reliably from solar panels like those at Nevada's Nellis Air Force Base would require 125,000 acres of wildlife habitat, more than three times the area of Washington, DC.²³

A 600-megawatt gas-fired power plant requires several hundred acres, to generate affordable power 90 percent of the time. A 600-MW wind installation like Fowler Ridge in Indiana requires 355 giant turbines, 50,000 acres and 515,000 tons of concrete, steel, copper, fiberglass and rare earth metals to generate expensive electricity intermittently 20 percent of the time. It also requires a 600-MW gas turbine, to provide power whenever the wind is not blowing.²⁴

The U.S. Fish and Wildlife Service says wind turbines kill 440,000 "protected" eagles, hawks, falcons and other birds each year. The actual total for the nation's 40,000 turbines is likely several million birds and bats annually, based on European studies and accounting for steps taken by turbine operators to minimize official death tolls. As turbines proliferate in response to EPA's endangerment decision, this

²³ Arthur Robinson, "Bricks without straw," Oregon Institute of Science and Medicine, June 22, 2009; Paul Driessen, "Our least sustainable energy option: From land use, economic, environmental or raw materials perspectives, wind is unsustainable," October 19, 2011, <http://www.ChallengingClimate.org/story/4210/4331/Our-least-sustainable-energy-option.c>

²⁴ Paul Driessen, "Our least sustainable energy option," *op. cit.*

unsustainable toll will rise and some species will be driven nearly to extinction in more areas.²⁵

EPA's greenhouse gas regulations will have *net deleterious impacts* on wildlife and their habitats, jobs, and human health and wellbeing. They will *cost human lives*. These facts must be part of the agency's calculations of risks and benefits, especially when the alleged benefits of its endangerment decision are so tenuous and based on such flimsy and dishonest scientific evidence.

However, EPA failed to consider these adverse impacts in making its endangerment decision. The agency's decision is thus arbitrary, capricious and harmful to the environment, health and welfare of American citizens.

²⁵ Meera Subramanian, "The trouble with turbines: An ill wind," *Nature*, June 20, 2012; American Bird Conservancy, "Bird deaths from wind farms to continue under new federal voluntary industry guidelines," <http://www.abcbirds.org/newsandreports/releases/110208.html>; Paul Driessen, "Big Wind tax credit exterminates bird species: Thousands of birds killed by wind turbines," *Washington Times*, December 22, 2012, <http://www.washingtontimes.com/news/2012/dec/22/big-wind-tax-credit-exterminates-endangered-specie/?page=all>.

III. Even Full Compliance With EPA's Carbon Dioxide And Greenhouse Gas Rules Would Achieve Zero Global Benefits, Because Emissions From Other Countries Will Continue To Increase Atmospheric GHG Levels.

EPA's proposed remedy to hypothetically dangerous global warming is not only costly. It is ineffective and pointless. Even the agency has admitted that its actions will reduce global temperatures by impossible-to-measure hundredths of a degree over the next century – even under the assumption that greenhouse gases dominate climate change.²⁶

By 2030, coal will be the most widely used fuel worldwide, as developing countries bring electricity to billions of people who still have little or no access to power and are desperate to escape crushing poverty. Even Europe has returned to coal in the last two years, with several countries using it to generate up to half their electricity, the International Energy Agency notes. These power plants will emit more carbon

²⁶ See Circuit Judge Brown's dissent from denial of rehearing *en banc*, citing the Joint Reply Brief for Non-State Petitioners and Supporting Intervenors: "Nor does [EPA] dispute that the new rules will impose massive burdens on a struggling economy, or that its program of vehicle standards will affect global mean temperatures by no more than *0.01 degree Celsius by 2100.*" [emphasis in original]. 2012 U.S. App. LEXIS 25997 at *48, n.3 (D.C. Cir. 2012).

dioxide, sending atmospheric CO₂ levels steadily higher.²⁷

China already accounted for 46 percent of global coal demand in 2011; its 2011-2012 *increase* in carbon dioxide emissions exceeded the United Kingdom's *total* CO₂ emissions by 200 million tons.²⁸

No developing countries are willing to sign new binding carbon dioxide reduction commitments. Japan is likely to abandon its pledge to slash GHG emissions by 25 percent. The European Union's climate change policy is verging on collapse, after the European Parliament voted against new subsidies for its CO₂ emissions trading program, and European leaders have called for a detailed study of how climate and renewable energy policies hurt families and industries, which are increasingly outraged over soaring energy prices, lost jobs, and elderly people dying of hypothermia because they can no longer afford adequate home heating.²⁹

²⁷ Patrice Hill, "As U.S. scales back, King Coal reigns as global powerhouse," *Washington Times*, March 4, 2013; Matt McGrath, "Green energy on the back foot after carbon trading blow," BBC News, April 18, 2013, <http://www.bbc.co.uk/news/science-environment-22183232>.

²⁸ Chris Booker, "The debt-ridden EU stares bankruptcy in the face," *The (London) Telegraph*, April 20, 2013.

²⁹ Joshua Chaffin, Pilita Clark and Chris Tighe, "Europe is shifting away from carbon agenda," *Financial Times*, April 18, 2013; Sid Maher, "Europe's \$287bn carbon waste: UBS," *The Australian*, November 23, 2011; *Wall Street Journal* editorial, "Cap and trade collapses," April 19, 2013; EurActiv, "EU leaders to square the

If EPA's endangerment policies are allowed to remain in force, the United States will soon be among very few nations that impose draconian and punitive GHG reduction schemes, regardless of their cost to human health, welfare and environmental values. The effect on *global* CO₂ emissions will be zero.

Such a result would be pointless, inhumane, environmentally damaging, contrary to any reasonable interpretation of the Clean Air Act, and a textbook example of arbitrary and capricious actions by unaccountable government regulators.

CONCLUSION

For these reasons, the Court should grant the Petition and reverse the judgment below.

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