

No. 25-879

In the Supreme Court of the United States

AMERICAN GAS ASSOCIATION, et al.,
Petitioners,

v.

U.S. DEPARTMENT OF ENERGY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

**BRIEF OF *AMICI CURIAE*
STATE OF WEST VIRGINIA
AND 20 OTHER STATES
IN SUPPORT OF PETITIONERS**

JOHN B. MCCUSKEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305

CHRISTOPHER D. PENCE
Counsel of Record

MICHAEL W. TAYLOR

PENCE LAW FIRM, PLLC
10 Hale Street, 4th Floor
Charleston, WV 25301
cpence@pencefirm.com
(304) 345-7250

Counsel for Amicus Curiae State of West Virginia
[additional counsel listed after signature page]

TABLE OF CONTENTS

Introduction and Interests of <i>Amici Curiae</i>	1
Summary of Argument	3
Argument	6
I. The D.C. Circuit’s refusal to “second guess” the DOE’s interpretation of “performance characteristic” undermines <i>Loper Bright</i> by evading independent judicial review and invoking agency deference.	6
II. The D.C. Circuit misapplied the EPCA’s unavailability provision and relied on agency deference in conflict with <i>Loper Bright</i>	12
III. The decision below permits the DOE to impose severe economic burdens on West Virginia and similarly situated States, undermining EPCA’s consumer protections and federalism	15
Conclusion	20

II

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.</i> , 467 U.S. 837 (1984)	1
<i>Duncan v. Walker</i> , 533 U.S. 167 (2001)	9
<i>Loper Bright Enter. v. Raimondo</i> , 603 U.S. 369 (2024)	1, 7, 10, 11, 14
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803)	3
<i>Mayo Found. for Med. Educ. & Research v. United States</i> , 562 U. S. 44 (2011)	14
Statutes	
42 U.S.C. § 6201	1
42 U.S.C. § 6295	6, 9, 10, 12
42 U.S.C. § 6313	6, 7, 10, 12
Rule	
S. Ct. R. 37.2.....	1

Other Authorities

Anna Tonn et al.,
Energy Burden and Access to Affordable Modern Energy Services in the United States, Nat'l Renewable Energy Lab.(Dec. 2016), available at <https://www.nrel.gov/docs/fy17osti/67784.pdf>) 18

Davis, J.C., Cromartie, J., Farrigan, T., Genetin, B., Sanders, A., & Winikoff, J.B.
 (2023), *Rural America at a glance: 2023 edition* (Report No. EIB-261)..... 18

Melissa Kollar & Zach Scherer,
Income in the United States: 2024, U.S. Census Bureau, Current Population Reports, P60-286, U.S. Gov't Pub. Off., Washington, D.C., September 2025, available at <https://www2.census.gov/library/publications/2025/demo/p60-286.pdf> 16, 17

“QuickFacts: West Virginia”,
U.S. Census Bureau,
<https://www.census.gov/quickfacts/WV>
 (last visited Feb. 9, 2026) 15, 17

U.S. Census Bureau,
American Community Survey Brief: Poverty in States and Metropolitan Areas: 2023, at pg. 4, ACSBR-022 (2024), available at <https://www2.census.gov/library/publications/2024/demo/acsbr-022.pdf> (last accessed Feb. 9, 2026) 18

IV

U.S. Census Bureau,
B25034: Year Structure Built
(American Community Survey),
available at
<https://data.census.gov/table/ACSST1Y2024.B25034?q=B25034:+Year+Structure+Built&g=040XX00US54> (last visited Feb. 9, 2026)..... 17

U.S. Census Bureau,
Income in the United States: 2024,
Current Population Reports, P60-286
(2025)..... 17

U.S. Department of Agriculture,
Economic Research Service, *available at*
at
<https://doi.org/10.32747/2023.8134362.ers>
s (last accessed Feb. 9, 2026)..... 18

USDA Econ. Research Serv.,
Rural Poverty & Well-Being (Jan. 14,
2025), *available at*
<https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being>
being (last accessed on Feb. 9, 2026)..... 18

U.S. Energy Information Administration,
West Virginia State Energy Analysis,
<https://www.eia.gov/states/WV/analysis>
(last visited Feb. 9, 2026) 16

INTRODUCTION AND INTERESTS OF *AMICI CURIAE*¹

“Today, the Court places a tombstone on *Chevron* no one can miss.” *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 417 (2024) (Gorsuch, J., concurring) (emphasis added). Despite the proclamation that *Chevron*² is laid to rest, the decision below suggests that the D.C. Circuit did not attend its services. Less than two years after *Loper Bright*, the Court effectively revived *Chevron*-style deference by declining to “second-guess” an agency’s “case-specific” statutory interpretation based on asserted technical expertise.

By accepting the Department of Energy’s (“DOE”) interpretation of the term “performance characteristic” in the Energy Policy and Conservation Act (“EPCA”), 42 U.S.C. § 6201 *et seq.*, the D.C. Circuit implicitly endorsed the very mode of deference this Court rejected in *Loper Bright*. The majority’s reasoning suggests that *Chevron* may persist so long as it is relabeled as deference to agency expertise in a “case-specific” context. That approach cannot be squared with this Court’s decision in *Loper Bright*.

Below, the D.C. Circuit upheld DOE efficiency standards that impose significant costs on natural gas consumers. The ruling presents millions of homeowners and businesses with a stark choice: incur substantial, unanticipated expenses or forgo access to natural gas appliances altogether. In West Virginia alone, more than 335,000 West Virginians, approximately four out of every

¹ Under Supreme Court Rule 37.2, amici timely notified counsel of record of their intent to file this brief.

² *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

ten households, rely on natural gas to heat their homes. Over 35,000 businesses do the same. Many of these homes are older: the average owner-occupied residence in West Virginia is roughly forty-five years old, and nearly sixty percent of the State's housing stock predates 1978. As a result, many homes are architecturally designed to accommodate non-condensing, natural-draft ventilation systems. The D.C. Circuit's decision effectively forces condensing technology on consumers whose homes are unequipped to support it. For many, compliance will require either replacing appliances with electric alternatives or undertaking costly renovations merely to replace an older appliance. The practical consequences are substantial.

But the method by which the D.C. Circuit reached its decision is just as concerning. Rather than independently determining the meaning of "performance characteristic," a clear legal question, the majority below deferred to DOE's asserted "expertise." In doing so, it failed to apply *Loper Bright's* directive that courts must exercise independent judgment when interpreting statutes and instead fell right back into *Chevron*-style deference. Amici States agree with Petitioners that the majority erred. They further agree that the error stems from implicit reliance on *Chevron*-style deference. And they agree that this case presents an ideal opportunity for the Court to clarify that *Loper Bright* admits of no "case-specific" exceptions.

The Amici States have a strong interest in protecting the consumer safeguards Congress embedded in the EPCA. It urges the Court to grant the petition and reaffirm that *Chevron* deference has no lingering foothold.

SUMMARY OF ARGUMENT

For four decades, *Chevron* deference displaced the judiciary’s obligation “to say what the law is.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). When confronted with statutory ambiguity, courts deferred to reasonable agency interpretations rather than exercising independent judicial interpretation. However, in *Loper Bright*, this Court rejected that approach. The case arose from a challenge to a National Marine Fisheries Service rule brought by Atlantic herring fishermen. The challenge was supported by 27 States, including West Virginia. Ultimately, this Court made clear that *Chevron* deference was overturned and returned the power to the courts “to say what the law is.”

I. The EPCA’s unavailability provision imposes a substantive limit on DOE’s authority by prohibiting efficiency standards that eliminate product types or classes possessing protected “performance characteristics,” “features,” “sizes,” “capacities,” or “volumes.” Although the statute does not define “performance characteristic,” that silence does not confer interpretive discretion on the agency nor does it mandate deference to the agency by a court. Where Congress has created express limits on regulatory power, *Loper Bright* requires courts to independently interpret the statute using the traditional tools of construction.

The decision below failed to independently interpret the EPCA. Rather than resolving statutory meaning, the D.C. Circuit treated ambiguity as a reason to defer to agency interpretation by accepting DOE’s assertion that the inquiry is inherently “case-specific” and declining to “second-guess” the agency’s interpretation of a statutory term. In doing so, the court bypassed the EPCA’s text; relied on non-exhaustive legislative examples; adopted a

design-versus-operation distinction unsupported by the statute; and otherwise failed to apply the traditional tools of statutory construction to interpret the statute. By engaging in this type of review, the majority collapses multiple statutory protections into a single concept, thereby rendering large portions of the unavailability provision superfluous, and effectively revives *Chevron*-style deference by not “second-guessing” the DOE’s interpretation of the statute. *Loper Bright* rejects this exact type of conduct by a reviewing court. Therefore, this Court’s intervention is warranted to reaffirm that statutory meaning is solely for the courts to decide and that EPCA’s limits on agency authority must be enforced as written, not based upon deference to the DOE.

II. The same unavailability provision of the EPCA that limits DOE’s actions also imposes a limited evidentiary burden on interested persons challenging DOE’s actions. An individual must show, by a mere preponderance of the evidence, that a challenged efficiency standard will result in the unavailability of a product type or class that was generally available at the time the Secretary acted. Once that factual showing is made, the statute requires courts to decide, as a matter of law, whether the eliminated product implicates protected “performance characteristics,” “features,” “sizes,” “capacities,” or “volumes.” The EPCA does not require further evidentiary balancing, nor does it ask whether protected characteristics differ in degree or kind from those of remaining products.

The decision below departed from the clear framework set forth in the EPCA. Although the DOE did not dispute that the challenged standards would eliminate non-condensing appliances, the D.C. Circuit imposed an extra-statutory evidentiary burden, faulting Petitioners for

failing to prove that non-condensing appliances offer performance characteristics “unlike” their condensing counterparts. That move conflated a legal question of statutory meaning with an evidentiary inquiry and cleared the way for deference to DOE’s interpretation. *Loper Bright* forecloses that approach. Once unavailability is established, courts must independently determine the statute’s meaning using traditional interpretive tools; they may not avoid that duty by recasting legal interpretation as a factual dispute or declining to “second-guess” the agency’s interpretation of the statute. By doing so here, the majority effectively revived the *Chevron*-style deference under another name, contrary not only to the EPCA’s plain language, but also this Court’s decision in *Loper Bright*. Therefore, this Court’s intervention is warranted to correct this error.

III. The economic consequences of the decision below demonstrate why the EPCA and the Supreme Court assigns courts, not agencies, the responsibility to enforce and interpret statutory limits on DOE’s authority. Congress included the unavailability provision to prevent efficiency standards from eliminating entire product classes in ways that impose disproportionate burdens on consumers, particularly those with limited financial flexibility. By deferring to DOE’s interpretation and declining to independently assess the EPCA’s constraints, the D.C. Circuit permitted precisely the kind of harm Congress sought to avoid with the creation of the unavailability provision. That is, harm that falls with a particular force upon fixed-income households, older residents, and economically vulnerable communities, especially in States like West Virginia, where reliance on existing natural-gas infrastructure remains widespread.

Those harms are not confined to a single State. Many States with substantial rural populations, older housing stock, and elevated poverty rates face similar exposure to the economic effects of eliminating widely used appliance classes. Uniform federal standards that disregard regional conditions can externalize significant, regressive costs onto low-income and rural households nationwide, disrupting local economies and intruding upon choices traditionally left to States and their residents. These consequences underscore why *Loper Bright* matters: independent judicial review is the mechanism by which courts ensure that agencies do not convert statutory ambiguity into regulatory power that imposes sweeping economic costs without authorization. The decision below illustrates the real-world stakes of agency deference and confirms the need for this Court’s intervention to restore the statutory and federal-state balance the EPCA was designed to protect.

The Court should grant the Petition, reverse the D.C. Circuit’s decision and avoid any revival of *Chevron*-style deference.

ARGUMENT

I. The D.C. Circuit’s refusal to “second guess” the DOE’s interpretation of “performance characteristic” undermines *Loper Bright* by evading independent judicial review and invoking agency deference.

The EPCA’s “unavailability” provision limits DOE’s authority to impose efficiency standards that are likely to result in the unavailability of products with protected “performance characteristics.” 42 U.S.C. § 6295(o)(4); see also 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa). The

unavailability provision operates as a substantive and critical constraint on the agency's regulatory authority, prohibiting DOE from adopting standards that are "likely to result in the unavailability ... in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes." *Id.* Although the statute does not define the term "performance characteristic," that silence does not transfer interpretive authority from the courts to the agency.

The majority below nevertheless concluded that Congress afforded DOE a "degree of discretion to decide what constitutes a 'performance characteristic' under the EPCA." App.14a. As Judge Rao explained in dissent, however, "Congress did not ... write the Department a blank check to pursue efficiency at all costs." App.46a (Rao, J., dissenting). To the contrary, Congress repeatedly "tempers the agency's authority" throughout the EPCA by embedding express limits on DOE's regulatory reach. *Id.* As *Loper Bright* makes clear, when there are such questions over an agency's authority, the responsibility of a reviewing court "is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits." *Loper Bright*, 603 U.S. at 395.

Here, the majority did not discharge that duty. It began by recognizing that the term "performance characteristic" is broad and accepted the parties' shared understanding that a "performance characteristic" is a product feature that "provides utility to consumers desiring to use the product." App.15a. Having acknowledged both the breadth of the statutory language and the centrality of consumer utility, however, the

majority declined to complete the interpretive task mandated under *Loper Bright*.

Instead, the majority accepted DOE's assertion that whether a particular product feature qualifies as protected "performance characteristic" is inherently "case-specific." App.16a. From there, and without first exhausting the traditional tools of statutory interpretation, the majority concluded that "the plain text of the statute does not get us home" and turned to legislative history. *Id.* Although the majority acknowledged the breadth of the term "performance characteristic," it still limited its reach by finding persuasive the fact that a House committee report accompanying a 1987 amendment to the EPCA did not identify venting mechanisms for gas furnaces as a specific example of a protected performance characteristic. *Id.* at 17a-18a. But those examples offered in the House committee report were offered as illustrations, not as an exhaustive catalog of features Congress intended to protect.

A fuller examination of the statutory text confirms as much. As Judge Rao observed, the EPCA is replete with contextual clues that inform the "best meaning" of "performance characteristic" when viewed within the "overall statutory scheme." App.52a (Rao, J., dissenting) (quoting *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016)). The statute repeatedly pairs the concepts of "utility" and "performance" when describing the value and usefulness of consumer products. App.53a-54a. That recurring linkage reflects Congress's intent to enact broad protections for consumer utility, not narrow safeguards limited to features that operate only during appliance use. Nothing in the EPCA suggests that Congress intended to exclude design features—such as venting mechanisms—

that materially affect whether consumers can install and use a product at all. App.54.a-55a (Rao, J., dissenting).

The traditional canons of statutory interpretation reinforce this conclusion. The EPCA’s unavailability provision prohibits DOE from eliminating not only “performance characteristics,” but also “features, sizes, capacities, and volumes.” 42 U.S.C. § 6295(o)(4); see also 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa). Despite this, the majority accepted the DOE’s interpretation that those terms relate only to a product’s operation. That deference collapses these distinct statutory terms into a single concept focused solely on operational output, violating the settled rule that courts must “give effect, if possible, to every clause and word of a statute.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (internal quotations and citations omitted). If “performance characteristics” protect only attributes experienced during operation, then Congress’s separate enumeration of “features,” “sizes,” “capacities,” and “volumes” does no independent work. Despite these words having independent meaning, the majority treats them as surplusage.

Treating these words as surplusage is a real problem, not one that is merely theoretical, but a real one. As Judge Rao explained, Congress’s decision to list multiple protected attributes reflects an intent to safeguard a range of consumer-relevant qualities, including physical and dimensional characteristics that determine whether a product can be used in a particular setting at all. App.55a (Rao, J., dissenting). DOE’s interpretation strips those terms of meaning by relegating installation-related characteristics to a later economic-justification inquiry. But Congress already addressed costs elsewhere in the EPCA, expressly directing DOE to consider installation expenses and consumer price impacts when evaluating

whether a standard is economically justified. 42 U.S.C. § 6295(o)(2)(B)(i); *id.* § 6313(a)(6)(B)(ii). Reading “performance characteristics” to exclude installation compatibility renders large portions of the unavailability provision superfluous.

Taken together, these textual failures confirm that the decision below is not merely an incorrect application of the EPCA, but a retreat from the interpretive discipline *Loper Bright* requires. The majority did not resolve statutory ambiguity by employing the traditional tools of construction—including text, structure, and settled canons—but instead treated ambiguity as a stopping point. Having concluded that the statute was “case-specific,” the majority expressly declined to “second-guess” DOE’s interpretation. App.27a. *Loper Bright* rejects that approach. It holds that when statutory meaning is contested, courts must press forward by using every available interpretive tool to determine the statute’s best reading, even where the agency has evaluated technical facts. *Loper Bright*, 603 U.S. at 395. The surplusage problems, structural incoherence, and textual distinctions identified above are not reasons for judicial restraint; they are precisely the reasons *Loper Bright* demands independent judgment. To decline to “second-guess” the DOE in the face of such defects is to reintroduce *Chevron* deference by another name.

The majority’s attempt to distinguish between an appliance’s “design” and its “operation” fares no better. Under the decision below, features that affect whether an appliance can be installed and used in an existing home, such as compatibility with traditional venting systems, fall outside the EPCA’s protection because consumers interact with appliances only after installation. App.25a-26a. Nothing in the statute supports that distinction. To

the contrary, the EPCA expressly protects attributes such as “sizes,” “capacities,” and “volumes,” which are features that often matter most at the design and installation stage. An appliance that cannot be integrated into an existing structure without significant alteration is no less unavailable to the consumer than one that fails during operation.

As Judge Rao explains in dissent, consumers plainly derive utility from appliances that “integrate directly into an existing exhaust system” rather than requiring “cumbersome and costly retrofits.” App.50a-51a (Rao, J., dissenting). By excluding such design-based utility from the definition of “performance characteristics,” DOE and the majority adopt a conception of consumer value untethered from real-world use and inconsistent with the EPCA’s text. The DOE’s own regulatory history confirms the point: it has repeatedly treated installation-related attributes as protected features warranting separate product classes. App.55a (Rao, J., dissenting). Nothing in the EPCA suggests Congress intended a different rule here under these circumstances.

Nevertheless, the majority deferred to DOE’s contrary view, reasoning that the agency’s interpretation rested on “evaluations of scientific data within its area of expertise” and therefore warranted judicial restraint. App.27a. That reasoning mirrors the very approach *Loper Bright* rejected. As this Court explained, the fact that a statutory question may “implicate a technical matter” does not “take[] power to authoritatively interpret a statute from the courts and give[] it to the agency.” *Loper Bright*, 603 U.S. at 402. Congress instead “expects courts to handle technical statutory questions.” *Id.*

By characterizing the meaning of “performance characteristic” as inherently “case-specific,” the majority

allowed DOE to define the scope of its own authority whenever a statute must be applied to particular facts. App.16a. If that reasoning were accepted, agencies could reclaim *Chevron*-style deference simply by asserting that statutory interpretation cannot be divorced from technical context. That result would recreate, in practice, the very regime *Loper Bright* repudiated. The majority thus treated statutory ambiguity as a license to defer—precisely where Article III demands independent judicial judgment.

II. The D.C. Circuit misapplied the EPCA’s unavailability provision and relied on agency deference in conflict with *Loper Bright*.

The EPCA’s “unavailability” provision precludes DOE from promulgating efficiency standards if:

Interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability ... in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary’s finding.

42 U.S.C. § 6295(o)(4); *see also* 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa). The statute thus imposes a defined and limited evidentiary burden on interested persons. They must demonstrate, by a preponderance of the evidence, that the challenged standard will result in the unavailability of a product type or class that was generally available at the time the Secretary acted. Once that showing is made, the statute does not contemplate further evidentiary balancing. It instead requires *courts* to determine, as a matter of law, whether the eliminated

product implicates protected characteristics Congress chose to preserve.

That evidentiary showing was undisputed here. DOE did not contest Petitioners' demonstration that the challenged efficiency standards would result in the unavailability of non-condensing consumer furnaces and commercial water heaters because those appliances cannot satisfy the amended efficiency requirements. App.57a (Rao, J., dissenting). Accordingly, the factual predicate for the EPCA's unavailability provision was established. What remained before the D.C. Circuit was a purely legal question: whether the venting mechanism of non-condensing appliances constitutes a protected "performance characteristic" within the meaning of the statute. *Id.* Resolution of that question did not depend on additional evidence and was wholly independent of the evidentiary burden governing unavailability.

The majority nevertheless reframed the inquiry as though Petitioners bore an additional evidentiary obligation. It began by declaring that "Petitioners' burden is a heavy one," despite being only a preponderance of the evidence, and concluding that Petitioners "failed to carry that burden." App.22a. It then held that Petitioners failed to show, by a preponderance of the evidence, that non-condensing appliances "offer performance characteristics that are unlike those offered by their condensing counterparts." App.27a. The EPCA imposes no such requirement. The statute does not ask whether protected characteristics differ in degree or kind from those of remaining products. It asks only whether a standard will eliminate a product type or class possessing characteristics Congress chose to protect.

That distinction matters. The EPCA's use of a "preponderance of the evidence" standard applies solely

to the factual question of unavailability. That is whether a standard will remove a product from the market. It does not govern the antecedent legal question of what Congress meant by “performance characteristics.” By importing an evidentiary requirement into that textual inquiry, the majority conflated fact-finding with statutory interpretation and altered the structure Congress enacted. That misstep also explains how the court arrived at deference. Having imposed an extra-statutory evidentiary burden and found it unmet, the majority treated statutory ambiguity as an invitation to accept DOE’s interpretation so long as it appeared reasonable. That is *Chevron* Step Two in substance, if not in name. See, e.g., *Mayo Found. for Med. Educ. & Research v. United States*, 562 U. S. 44, 53 (2011) (explaining that, under *Chevron* step two, a court asks whether an agency interpretation is arbitrary or capricious in substance). The question became not what the EPCA means, but whether DOE’s view could be sustained on the agency’s own terms.

This is precisely what *Loper Bright* rejects. Once the evidentiary predicate of unavailability is established, as it was here, the court’s obligation is to decide the statutory question independently, using the traditional tools of interpretation. *Loper Bright*, 603 U.S. at 395. It may not avoid that responsibility by recharacterizing legal interpretation as an evidentiary dispute or by declining to “second-guess” the agency’s view of its own authority. App.26a-27a. *Loper Bright* makes clear that “second-guessing” is not a judicial vice but a constitutional duty when Congress has spoken through statute.

Had the majority applied that discipline, it would have reached the conclusion Judge Rao articulated in dissent: that “the distinctive venting mechanism of non-condensing appliances is precisely the kind of

‘performance characteristic’ that condensing appliances lack and that the EPCA protects from regulatory elimination.” App.59a (Rao, J., dissenting). The majority’s error, therefore, was not merely interpretive. It was structural. By converting a legal question into an evidentiary one and then deferring to the agency’s expertise, the court reproduced the very framework *Loper Bright* repudiated and allowed *Chevron* to persist.

III. The decision below permits the DOE to impose severe economic burdens on West Virginia and similarly situated States, undermining EPCA’s consumer protections and federalism.

The economic consequences of the decision below underscore why the EPCA assigns courts, not agencies, the responsibility to enforce the EPCA’s limitations on DOE’s actions. Congress included the unavailability provision specifically to prevent efficiency standards from eliminating entire product classes in ways that impose disproportionate burdens on consumers. Deference to DOE’s interpretation and the D.C. Circuit’s refusal to independently interpret the statute has permitted precisely the kind of harm Congress sought to avoid, specifically harm that falls with acute force on fixed-income households and economically vulnerable communities.

Take West Virginia, for example, West Virginia’s socioeconomic profile magnifies the adverse effects of the majority’s error. According to the U.S. Census Bureau, the State’s median household income is approximately \$59,600, which is roughly 15% below the national median.³

³ “QuickFacts: West Virginia”, *U.S. Census Bureau*, <https://www.census.gov/quickfacts/WV> (last visited Feb. 9, 2026); *see*

Nearly 17% of West Virginians live below the poverty line, a rate well above the national average.⁴ These figures reflect widespread income insecurity, especially in rural counties where economic opportunity is limited and household savings are often minimal. For families operating on tight budgets, a requirement to retrofit home heating systems or purchase expensive alternative appliances does not represent a marginal expense; it represents a substantial economic burden with real consequences for household stability.

A significant portion of West Virginia households rely on natural gas as their primary source of home heating and water heating. U.S. Energy Information Administration data show that over 335,000 West Virginia households, which is nearly four in ten household, use natural gas for heating.⁵ Natural gas in West Virginia is also generally less expensive than electricity on a per-unit basis, making it an important source of affordable energy for working families and seniors on fixed incomes. The majority's deference to the DOE has real costs. Disrupting the availability of the non-condensing natural gas appliances that have long served these homes is not merely a matter of efficiency. Rather, it materially alters the cost of living for these residents.

The demographic realities of West Virginia further exacerbate these economic effects. The State's population

also Melissa Kollar & Zach Scherer, *Income in the United States: 2024*, U.S. Census Bureau, Current Population Reports, at pg. 1, P60-286, U.S. Gov't Pub. Off., Washington, D.C., September 2025, available at <https://www2.census.gov/library/publications/2025/demo/p60-286.pdf>.

⁴ *Id.*

⁵ U.S. Energy Information Administration, *West Virginia State Energy Analysis*, <https://www.eia.gov/states/WV/analysis> (last visited Feb. 9, 2026).

is notably older than the national average.⁶ A substantial number of households are headed by individuals over 65, many of whom live on fixed incomes and are particularly vulnerable to sudden, large household expenditures.⁷ Finally, a large portion of the housing stock in West Virginia was built decades ago, often without infrastructure compatible with modern condensing appliances.⁸ In many homes, non-condensing furnaces and water heaters represent the only practical and affordable option for meeting consumer needs without extensive renovation. Unlike more affluent homeowners, these residents cannot easily absorb the cost of structural modifications, updated venting systems, or electrical upgrades necessary to install alternative appliances.

Nor are these burdens unique to West Virginia. Many States have substantial rural populations, older housing stock, and elevated poverty rates. These conditions make large, up-front retrofit costs particularly destabilizing when a federal standard eliminates a widely used product class. The Census Bureau reports that multiple States, including Alabama, Arkansas, Kentucky, Louisiana, Mississippi, New Mexico, Oklahoma, and West Virginia,

⁶ “QuickFacts: West Virginia”, *U.S. Census Bureau*, <https://www.census.gov/quickfacts/WV> (last visited Feb. 9, 2026).

⁷ U.S. Census Bureau, *Income in the United States: 2024*, Current Population Reports, P60-286 (2025) (reporting that households headed by persons age 65 and over disproportionately rely on fixed incomes such as Social Security and pensions), *available at* <https://www2.census.gov/library/publications/2025/demo/p60-286.pdf>.

⁸ U.S. Census Bureau, *B25034: Year Structure Built* (American Community Survey), *available at* <https://data.census.gov/table/ACSDT1Y2024.B25034?q=B25034:+Year+Structure+Built&g=040XX00US54> (last visited Feb. 9, 2026).

have poverty rates of 15% or higher.⁹ This reflects millions of households with limited capacity to absorb sudden capital expenditures for home energy systems. The USDA’s Economic Research Service has found that persistent-poverty counties are overwhelmingly rural, underscoring that the populations most exposed to these costs are concentrated in rural communities across the country.¹⁰ Those same communities often face unusually high “energy burdens,” spending a larger share of income on basic energy needs than other households, a problem documented in national research on low-income energy burden and rural household energy costs.¹¹ In short, the decision below does not merely allocate costs within one State; it illustrates how agency deference in this context can externalize substantial, regressive costs onto low-income and rural households nationwide. This is *precisely*

⁹ U.S. Census Bureau, *American Community Survey Brief: Poverty in States and Metropolitan Areas: 2023*, at pg. 4, ACSBR-022 (2024), available at <https://www2.census.gov/library/publications/2024/demo/acsbr-022.pdf> (last accessed Feb. 9, 2026).

¹⁰ Davis, J.C., Cromartie, J., Farrigan, T., Genetin, B., Sanders, A., & Winikoff, J.B. (2023). *Rural America at a glance: 2023 edition* (Report No. EIB-261); U.S. Department of Agriculture, Economic Research Service, available at <https://doi.org/10.32747/2023.8134362.ers> (last accessed Feb. 9, 2026).

¹¹ USDA Econ. Research Serv., *Rural Poverty & Well-Being* (Jan. 14, 2025) (providing research on trends in rural income, poverty, employment, and well-being), available at <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being> (last accessed on Feb. 9, 2026); see also Anna Tonn et al., *Energy Burden and Access to Affordable Modern Energy Services in the United States*, Nat’l Renewable Energy Lab. 3–4 (Dec. 2016), available at <https://www.nrel.gov/docs/fy17osti/67784.pdf> (last accessed Feb. 9, 2026) (discussing that low-income and rural households spend disproportionately higher shares of income on energy).

the kind of consequence Congress sought to prevent through EPCA's consumer-protective limits.

The interaction between poverty, age, and rurality matters. National research consistently shows that rural households tend to have lower median incomes, less access to credit, and fewer consumer protections than urban households. When regulatory action increases the cost of basic home systems, it disproportionately burdens those with the least ability to pay. The EPCA's unavailability provision reflects Congress's well-reasoned judgment that these economic and other burdens should not be imposed without clear statutory authorization. Under DOE's and the D.C. Circuit's approach, however, those burdens cease to be bound by statutory limits and instead become the predictable result of agency policy free from independent judicial review.

Congress's attempt to limit the economic harms touch on federalism concerns. Energy use, housing characteristics, and infrastructure vary dramatically from State to State. As discussed above, West Virginia's geography, economic structure, and legacy housing stock, for instance, differ markedly from national averages. Congress accounted for that diversity when it crafted the EPCA's broad, consumer-driven protections. By allowing the DOE's interpretation to eliminate a widely used class of products that remain essential in many States, the decision below undercuts the federal-state balance that the EPCA envisions. A uniform interpretation that erases regionally appropriate technologies without clear textual authorization imposes costs that ripple through local economies, disrupt state planning, and intrude upon choices traditionally left to States and their residents.

These concerns illustrate why *Loper Bright* matters and why the majority clearly missed the mark by not

“second-guessing” the DOE’s interpretation of its own authority. Independent judicial review is not an abstract constitutional doctrine. Rather, it is the mechanism by which courts ensure that agencies do not externalize the costs of regulatory ambition onto the most vulnerable. When courts decline to “second-guess” agency interpretations, they permit agencies to convert statutory ambiguity into regulatory power. This power can impose sweeping economic consequences without democratic accountability or statutory warrant. *Loper Bright* rejected that mode of review precisely because it allows policy-driven interpretation to overshadow Congress’s will as outlined in the statutory text.

Here, the D.C. Circuit’s refusal to independently interpret the EPCA enabled the DOE to do what Congress forbade: eliminate a class of appliances that remains widely used, economically necessary, and regionally appropriate for residents of West Virginia and other similarly situated States. That result illustrates the real-world cost of agency deference in practice. It also confirms why this Court’s intervention is warranted. Restoring the judiciary’s role in interpreting statutory limits will safeguard not only textual fidelity, but also the economic wellbeing of consumers and the federal–state balance the EPCA was designed to preserve.

CONCLUSION

The Court should grant the petition and reverse.

Respectfully submitted.

JOHN B. MCCUSKEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305

CHRISTOPHER D. PENCE
Counsel of Record
MICHAEL W. TAYLOR

PENCE LAW FIRM, PLLC
10 Hale Street, 4th Floor
Charleston, WV 25301
mtaylor@pencefirm.com
(304) 345-7250

Counsel for Amicus Curiae State of West Virginia

ADDITIONAL COUNSEL

STEVE MARSHALL
Attorney General
State of Alabama

KRIS KOBACH
Attorney General
State of Kansas

STEPHEN J. COX
Attorney General
State of Alaska

RUSSELL COLEMAN
Attorney General
Commonwealth of
Kentucky

TIM GRIFFIN
Attorney General
State of Arkansas

LIZ MURRILL
Attorney General
State of Louisiana

CHRIS CARR
Attorney General
State of Georgia

LYNN FITCH
Attorney General
State of Mississippi

RAÚL LABRADOR
Attorney General
State of Idaho

CATHERINE HANAWAY
Attorney General
State of Missouri

THEODORE E. ROKITA
Attorney General
State of Indiana

AUSTIN KNUDSEN
Attorney General
State of Montana

BRENNA BIRD
Attorney General
State of Iowa

MICHAEL T. HILGERS
Attorney General
State of Nebraska

DAVE YOST
Attorney General
State of Ohio

GENTNER DRUMMOND
Attorney General
State of Oklahoma

ALAN WILSON
Attorney General
State of South Carolina

MARTY JACKLEY
Attorney General
State of South Dakota

JONATHAN SKRMETTI
Attorney General and
Reporter
State of Tennessee

KEN PAXTON
Attorney General
State of Texas