No. 25-879

In the Supreme Court of the United States

AMERICAN GAS ASSOCIATION, ET AL.,
Petitioners,

v.

DEPARTMENT OF ENERGY, ET AL.,
Respondents.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

ANDREW R. VARCOE
STEPHANIE A. MALONEY
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 22062

JEREMY C. MARWELL
Counsel of Record
NATHAN CAMPBELL
VINSON & ELKINS LLP
2200 Pennsylvania Ave., NW, Suite 500 West
Washington, DC 20037
(202) 639-6507
jmarwell@velaw.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page(s)**

Statutes: **Page(s)**

Other Authorities—Continued: **Page(s)**

INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Many of the Chamber's members manufacture, sell, or use products subject to energy and water efficiency standards promulgated by Respondent the U.S. Department of Energy ("Department") pursuant to the Energy Policy and Conservation Act ("EPCA"). EPCA reaches a wide range of appliances used every day by American consumers and businesses—from hot water heaters and furnaces, to air conditioners and heat pumps, to dishwashers and clothes dryers, to kitchen ranges and ovens. *Amicus* has a significant interest in ensuring that the Department complies with EPCA, including those statutory provisions that prevent the

---

[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. The parties were given timely notice of *amicus's* intent to file this brief pursuant to Supreme Court Rule 37.2.

Department from imposing standards that would effectively pick winners and losers among product lines, eliminating from U.S. markets products that consumers want or need.

The D.C. Circuit below failed to enforce these key statutory provisions when it upheld the Department's decision to use EPCA to eliminate non-condensing gas-fired furnaces and commercial water heaters from the market. The court wrongly allowed the Department to use a cramped interpretation of the statute that ignores the unique utility that non-condensing appliances provide consumers.

As Petitioners explain (Pet. 6-7), non-condensing gas-fired appliances use unpowered vertical venting systems, like chimneys, with the natural heat and buoyancy of exhaust gases carrying them outside. Condensing gas-fired appliances, by contrast, produce exhaust gases that cannot naturally rise through vertical venting systems and instead typically require powered fans to be moved through a horizontal vent. Those systems can necessitate, for instance, installing a new exhaust pipe through an exterior wall instead of relying on an existing chimney. Condensing appliances, moreover, require specific plumbing to dispose of liquid condensate. See Pet. App. 6a-7a. For these reasons, costly, time-intensive, and disruptive renovations to existing residential and commercial spaces are often necessary to accommodate condensing gas-fired appliances (renovations that, in some structures, may not even be possible). By curtailing the availability of non-condensing appliances, the Department imposed these burdens on a wide range of consumers.

As Judge Rao recognized in dissent, the D.C. Circuit majority allowed the Department to take this step by "largely duck[ing]" the relevant legal question and by "declaring that EPCA is ambiguous." Pet. App. 57a-58a. "The majority" then "t[ook] this ambiguity as a license to defer to the Department." *Id.* at 58a. That approach to construing statutes is impermissible, as this Court has said. See generally *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369 (2024).

The Chamber has a significant interest not only in the proper legal interpretation of EPCA, but also in ensuring that courts use independent judgment to decide statutory interpretation questions and keep agencies within the bounds of their statutory authorities. Policing those boundaries is especially important here given the breadth of power wielded by the Department under EPCA to shape markets for everyday appliances. The Court should grant certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is a strong candidate for this Court's review. The court below committed obvious legal error in interpreting provisions of EPCA that Congress designed to protect the public from overregulation. The statute authorizes the Department to promulgate energy and water efficiency standards that govern a wide range of appliances that American consumers and businesses use on an everyday basis—including air conditioners, furnaces, dishwashers, clothes washers and dryers, hot water heaters, microwaves, and showerheads. EPCA, though, contains several provisions that block the Department from picking product win-

ners and losers at the expense of functionality and consumer choice. For example, the statute's "unavailability" provision prohibits the Department from promulgating a new or amended efficiency standard that "is likely to result in the unavailability * * * in any product type (or class) of *performance characteristics* (including reliability, features, sizes, capacities, and volumes)." 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa) (emphasis added); see *id.* § 6295(o)(4) (nearly identical).[2] To that end, EPCA directs the Department to create separate product "classes," with distinct efficiency standards, when products have unique "performance-related features" justifying different treatment. *Id.* § 6295(q)(1)(B). In doing so, the Department must take due account of "the utility to the consumer of such a feature." *Ibid.*

In the challenged actions, the Department determined that non-condensing gas-fired furnaces and commercial water heaters do not offer protected "performance characteristics." See 86 Fed. Reg. 73,947, 73,951 (Dec. 29, 2021). The Department, in turn, promulgated efficiency standards for furnaces and commercial water heaters that non-condensing versions cannot meet, thereby effectively eradicating them from the U.S. market. See generally 88 Fed. Reg. 69,686 (Oct. 6, 2023); 88 Fed. Reg. 87,502 (Dec. 18, 2023). But installing condensing appliances in certain existing residential and commercial spaces can

[2] The Department's actions implicate both 42 U.S.C. §§ 6313(a)(6)(B)(iii)(II)(aa) and 6295(o)(4). Although the two sections are not exactly identical, the parties below agreed, and the panel proceeded on the understanding, that the provisions are materially similar. See Pet. App. 6a n.3.

require costly, time-consuming, invasive, and disruptive renovations—renovations that may not even be feasible for some homeowners and businesses. See Pet. 6-7; see also Pet. App. 50a-51a (Rao, J., dissenting); 86 Fed. Reg. 4,776, 4,798, 4,816 (Jan. 15, 2021). In the Department's view, the costs and burdens of retrofits are irrelevant to the statutory "unavailability" protection. The term "performance characteristic," according to the Department, protects only "the benefits and usefulness the feature provides to the consumer while interacting with the product" after installation, "not through design parameters impacting installation complexity, or costs." 86 Fed. Reg. at 73,951. To the Department, non-condensing appliances offer no "unique utility" despite allowing customers to avoid renovations. *Ibid*.

A majority of the D.C. Circuit panel upheld the Department's interpretation. But as explained below, the plain and best interpretation of EPCA commands a contrary conclusion. See also Pet. 25-32; Pet. App. 51a-57a (Rao, J., dissenting). The panel's mishandling of this issue is an important matter: EPCA effectively covers the full range of appliances used every day by Americans and American businesses, shaping the availability of key product lines and directly affecting the national economy.

No less problematically, the D.C. Circuit majority viewed EPCA's unavailability provision as "ambigu[ous]," and strongly gestured towards the Department's expertise to resolve the question. The majority cited the "case-specific" nature of the question and the "degree of discretion" purportedly afforded the Department, reframing the legal question as one on which the agency should effectively receive deference. See Pet.

App. 14a, 16a, 22a, 27a. In *Loper Bright*, however, this Court squarely held that lower courts must exercise their "independent judgment in determining the meaning of statutory provisions" and should ascertain the "best reading" of the statute. 603 U.S. at 394-395. The D.C. Circuit's failure to do so here bolsters the need for this Court's review.

ARGUMENT

I. The D.C. Circuit's reading of EPCA is wrong.

A. *Loper Bright* requires courts to exercise independent judgment when interpreting statutes.

1. For decades, courts deferred to agencies' reasonable interpretation of ambiguous statutes they are charged with administering. See *Chevron U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-843 (1984). In *Loper Bright*, however, this Court decisively rejected *Chevron* deference.

Analytically, the shift from *Chevron* deference to *Loper Bright* "independent judgment" is meaningful. By overruling *Chevron*, this Court rejected the underlying "presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency * * * desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (S.D.), N.A.*, 517 U.S. 735, 740-741 (1996). Instead, courts must follow "the APA's demand that courts exercise independent judgment in construing statutes administered by agencies." *Loper Bright*, 603 U.S. at 406. "Independent judgment" calls for judges to do what they otherwise would do in cases not involving a federal agency:

resolve interpretive questions by applying the traditional tools of statutory construction. Doing so, courts must "ascertain[] the plain meaning of the statute," looking "to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp.* v. *Cartier, Inc.*, 486 U.S. 281, 291 (1988). Courts must identify the "best reading of the statute," as "if no agency were involved." *Loper Bright*, 603 U.S. at 400 (citing *Chevron*, 467 U.S. at 843 n.11).

2. *Loper Bright* cabined the circumstances in which a court may recognize a "degree of discretion" in the agency. *Id.* at 394. For instance, Congress may have vested "an agency [with] the authority to give meaning to a particular statutory term" through an express statutory delegation. *Id.* at 394-395 & n.5 (citing 29 U.S.C. § 213(a)(15) (exemption from Fair Labor Standards Act for employees having certain characteristics, "as such terms are defined and delimited by regulations of the Secretary") and 42 U.S.C. § 5846(a)(2) (notification requirement applicable to safety hazards "as defined by regulations which the Commission shall promulgate")).[3]

That kind of specific authorization is distinct from statutes that generically authorize agencies to engage

---

[3] *Loper Bright*'s citation to *Batterton* v. *Francis* for this proposition is instructive. In *Batterton*, a statute provided that the term "unemployment," for purposes of certain Social Security Act provisions, would be "determined in accordance with standards prescribed by the Secretary." 432 U.S. 416, 419 (1977) (quoting 42 U.S.C. § 607(a) (1977)). Pursuant to that explicit delegation, "Congress entrust[ed] to the Secretary, rather than to the courts, the primary responsibility for interpreting the statutory term." *Id.* at 425.

in rulemaking or adjudication. Indeed, Congress has given many, if not most, agencies general rulemaking authority. See Jennifer L. Selin & David E. Lewis, *Sourcebook of United States Executive Agencies* 118-119 (Admin. Conf. of U.S., 2d ed. 2018). If rulemaking authority were enough to justify judicial deference, then *Loper Bright's* overruling of *Chevron* would be meaningless.

Loper Bright further explained that where Congress has granted an agency general rulemaking authority, a reviewing court—still exercising independent judgment—may, in certain circumstances, conclude that the best interpretation of the statute authorizes the agency to "fill up the details" or "regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility, such as 'appropriate' or 'reasonable.'" 603 U.S. at 395 (internal quotation marks and citations omitted). Yet, even in those circumstances, authority to "fill up the details" is not a broad delegation for the agency to define statutory terms, but rather permission to fill interstitial gaps in a statutory scheme.[4] Furthermore, instances where

---

[4] *Loper Bright's* citation to *Wayman* v. *Southard*, 23 U.S. 1 (1825), for this point is instructive. *Wayman* "upheld a statute that instructed the federal courts to borrow state-court procedural rules but allowed them to make certain 'alterations and additions.'" *Gundy* v. *United States*, 588 U.S. 128, 157 (2019) (Gorsuch, J., dissenting) (quoting *Wayman*, 23 U.S. at 31). The statute in *Wayman* distinguished between "important subjects, which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and power given to those who are to act under such general provisions to fill up the details." 23 U.S. at 43; see *Gundy*, 588 U.S.

Congress uses "capacious[]" phrases like "appropriate and necessary," see *Michigan* v. *EPA*, 576 U.S. 743, 752 (2015) (citation omitted), present a different circumstance not present here—but one in which a reviewing court nevertheless must exercise independent judgment to determine the limits of those terms.

B. The D.C. Circuit erred in determining that EPCA does not protect non-condensing appliances.

The plain and best interpretation of EPCA protects non-condensing appliances, which provide utility to consumers independent of the appliance's general function—such as through compatibility with existing, standard chimney vents, or the fact that they require no condensate drain or associated plumbing modifications. See Pet. 25-32; Pet. App. 51a-57a (Rao, J., dissenting). Under *Loper Bright*, that "best reading" should decide the case.

1. The Department may not promulgate new or amended efficiency standards that would cause the "unavailability * * * in any product type (or class) of *performance characteristics* (including reliability, features, sizes, capacities, and volumes)." 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa) (emphasis added); accord *id.* § 6295(o)(4). EPCA further requires the Department to subdivide product categories, with differing efficiency standards, to protect performance-related features. In doing so, the Department "shall consider such factors as the utility to the consumer of such a

---

at 157-158 (Gorsuch, J., dissenting). Authority to "fill up the details" of ordinary interstitial gaps that arise during implementation does not confer interpretive authority for consequential or "important" matters.

feature." *Id.* § 6295(q)(1)(B). All agreed below that the ordinary meaning of the statutory term "performance characteristic" is "broad" and covers any "product attribute that provides utility to consumers desiring to use the product." Pet. App. 15a (majority); see *id.* at 52a (Rao, J., dissenting).

Looking to ordinary meaning, see *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 340 (1997), "performance characteristic" has considerable breadth. A "performance characteristic" is some "distinctive feature," *Characteristic*, Oxford American Dictionary 104 (1980); see also *Character*, Oxford American Dictionary 104 (1980) (a "qualit[y] that make[s] a * * * thing what * * * it is and different from others"), that aids in "the process or manner of performing," *Performance*, Oxford American Dictionary 496 (1980); see also *Perform*, Oxford American Dictionary 496 (1980) ("to carry into effect, to accomplish, or to do," or "to function"). "Utility," found in the related provision of 42 U.S.C. § 6295(q)(1)(B), further broadens matters by pointing to "usefulness" and "practical[ity]." *Utility*, Oxford American Dictionary 765 (1980).[5]

Thus, a product "performance characteristic" means some distinctive feature or quality that differentiates it from others, aids the product in performing its function, and is useful or otherwise attractive to

---

[5] Section 6295 was amended in 1987 to include the relevant statutory language on performance characteristics and performance-related features. See National Appliance Energy Conservation Act of 1987, Pub. L. No. 100-12, § 5, 101 Stat. 103, 115, 116. Section 6313 was similarly amended in 1992. See Energy Policy Act of 1992, Pub. L. No. 102-486, § 122(d), 106 Stat. 2776, 2813. *Amicus* provides contemporaneous authority as to the plain meaning of the relevant statutory terms.

consumers. The term is easily broad enough to capture non-condensing technology's compatibility with existing, standard chimney vents and other exhaust systems, allowing non-condensing appliances to fit into existing living and commercial spaces without the need for costly and invasive retrofits. That is no doubt an attractive feature or quality—one that is valuable and desirable to consumers and businesses.

2. The considerable breadth of the term "performance characteristic" is confirmed by surrounding text. See *Beecham* v. *United States*, 511 U.S. 368, 372 (1994) (looking to "plain meaning of the whole statute, not of isolated sentences"). In describing a performance characteristic, Congress provided an open-ended list: performance characteristics "includ[e] reliability, features, sizes, capacities, and volumes." 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa); accord *id.* § 6295(o)(4). This broadly written list captures product attributes that go beyond merely how a product functions during direct consumer interaction.

For instance, the list includes "size[]," as a distinct concept from "capacit[y]" (*i.e.*, how much a product can hold or produce) and "volume[]" (*i.e.*, how much space a product occupies). In this context, the term "size[]" must have independent meaning, such as "the measurements or extent of something." *Size*, Oxford American Dictionary 637 (1980); see *Freeman* v. *Quicken Loans, Inc.*, 566 U.S. 624, 635 (2012) ("favor[ing] that interpretation which *avoids* surplusage"). By mitigating the need for burdensome retrofits to accommodate a condensing appliance—such as installing horizontal vents in a house to replace vertical venting, or plumbing to handle condensate—a *non*-condensing appli-

ance affords consumers unique utility (akin to the concept of size) by preserving existing living and commercial spaces. And the statutory list is non-exhaustive, meaning it can capture other product characteristics and attributes.

Further evidence for a broad interpretation of "performance characteristic" is supplied by the initial, product-specific efficiency standards that Congress included in EPCA. For those standards, Congress carefully subdivided classes of covered products according to attributes related to size, installation, and physical design—even where two categories arguably serve the same general function (*e.g.*, refrigeration, heating, cooling). For instance, Congress separated mobile home gas-fired furnaces from other residential furnaces, likely reflecting the different and not-easily-avoidable physical installation and venting considerations for mobile homes compared with other houses. See 42 U.S.C. § 6295(f)(1)-(2). And Congress separated out "through-the-wall central air conditioners" in explicit recognition that they are "designed to be installed totally or partially within a fixed size opening in an exterior wall." *Id.* § 6295(d)(4)(A)(ii). Congress sought to preserve a product that conforms with existing spaces. Likewise with the separation between refrigerators, freezers, and automatic ice makers that are remote (*i.e.*, physically separated) condensing and those that are self-contained condensing. *Id.* § 6313(c), (d)(1). These statutory provisions evince Congress's recognition that the kinds of product features that merit preservation and protection include those that consumers do not directly interact with after the products are installed.

Indeed, as Petitioners explain (Pet. 28-30), the Department has long recognized the utility of and need to protect products that provide certain space- and installation-related benefits to consumers. See also *infra* Section II.A. The challenged Department actions thus present a sharp and unexplained departure from, rather than a furthering of, the accepted understanding of "performance characteristic" under EPCA.

3. The Department's new, narrower interpretation of "performance characteristic," upheld by the D.C. Circuit majority, is incongruent with EPCA. According to the Department, non-condensing technology "does not provide unique utility to consumers distinct from an appliance's function of providing heated air or water." 86 Fed. Reg. at 73,955; see Pet. App. 19a (D.C. Circuit majority asserting that "the unique utility a consumer furnace or commercial water heater provides to the consumer is that they either provide hot air or hot water, respectively," without regard to "particular methods of venting").

But EPCA requires the Department to make appropriate product distinctions for "any covered product type (or class)," 42 U.S.C. § 6295(o)(4), or "any group of covered products which have the same function or intended use," *id.* § 6295(q)(1). Congress, moreover, directed the Department to prescribe different standards if it finds that "covered products *within such [a] group*" have certain distinguishing "performance-related features," after considering "the utility to the consumer of such a feature." *Id.* § 6295(q)(1) (emphasis added). Even if all products in a group have the same basic function (*e.g.*, refrigeration, heating, cooling), the Department must nevertheless draw distinctions based on products' unique utility or performance-

related features. The contrary position—generalizing to the point that products with the same overarching function cannot be meaningfully subdivided, as if only that one function were important enough to be worth preserving—would "subvert" and "render * * * inoperative" EPCA's consumer-protecting provisions. See *CSX Transp., Inc.* v. *Ala. Dep't of Revenue*, 562 U.S. 277, 291 (2011) (citation omitted). Under the Department's apparent logic, sustained by the D.C. Circuit here, no covered product type could ever be subject to varying efficiency standards—all furnaces provide the function of heating space, all water heaters the function of heating water, all dishwashers the function of washing dishes, all clothes dryers the function of drying clothes, and so on.

Likewise, the Department erred badly in asserting that "performance characteristic" protects only attributes that affect direct consumer interactions with a product. See 86 Fed. Reg. at 73,951; Pet. App. 24a (repeating the Department's "consumer[] interaction" framing (citation omitted)). EPCA covers a range of products where direct consumer interaction, beyond turning the appliance on or off (or up or down), is minimal. That is true of almost any heating or cooling appliance. But it does not follow that a consumer never derives utility from other characteristics, such as installation. An average consumer may not understand the technical minutiae involved with replacing a noncondensing appliance with a condensing appliance. But consumers undoubtedly perceive and derive utility from avoiding costly and disruptive changes to their living or commercial spaces. Those changes could include spending thousands of dollars or more to

pay for retrofits; taking time off from work or other activities to accommodate contractor schedules and execute a major renovation project; and, not least, experiencing the disappointments and harms that arise from an unwanted structural modification to a home or workspace. Contractors, for example, might need to break through exterior walls and basement concrete slabs to install drainage pipes and sump pumps, or to render precious interior space unusable to accommodate new venting and plumbing infrastructure.

* * *

In sum, it strains credulity to find, as did the D.C. Circuit here, that the compatibility of non-condensing technologies with existing, standard chimney vents and other exhaust systems is not a "performance characteristic" that provides distinct utility to identifiable subsets of consumers and businesses. Protecting that product attribute affords consumers and businesses the benefit of using desired appliances without sacrificing existing living and commercial spaces.

C. The D.C. Circuit majority impermissibly tipped the scales in the Department's favor.

Although *Loper Bright* instructs courts to exercise their independent judgment to determine the best reading of statutes, the D.C. Circuit majority wrongly placed a thumb on the scale in favor of the Department's reading, further underscoring the need for this Court's review.

1. As Petitioners note (Pet. 3, 22), the parties and judges below agreed that the Department's actions would make non-condensing furnaces and commercial water heaters unavailable to consumers. See

Pet. App. 44a, 51a, 57a n.2 (Rao, J., dissenting). Because of that undisputed fact, EPCA's unavailability provisions were triggered, requiring consideration of whether the outcome would render unavailable a protected "performance characteristic." See *id.* at 51a-52a (Rao, J., dissenting); *id.* at 14a-15a (majority) (proceeding directly to the question whether non-condensing appliances offer a protected performance characteristic). And it was undisputed that, for at least some consumers and businesses, replacing a non-condensing appliance with a condensing appliance would be costly and would result in the temporary or permanent loss of living and commercial space. See, *e.g.*, 86 Fed. Reg. at 73,960, 73,962; 88 Fed. Reg. at 69,744, 69,750-69,751; 88 Fed. Reg. at 87,565; see also Pet. App. 6a, 17a, 25a-26a; *id.* at 44a-45a, 58a (Rao, J., dissenting).

The D.C. Circuit was therefore presented with a discrete legal question: whether non-condensing technology's compatibility with existing venting infrastructure qualifies as a protected performance characteristic under EPCA. That is precisely the type of question within "the proper and peculiar province of the courts." *Loper Bright*, 603 U.S. at 385 (citation omitted).

2. Yet the majority "duck[ed]" this dispositive legal question, citing "ambiguity" in the statute, and instead "defer[red] to the Department." Pet. App. 58a (Rao, J., dissenting). That error bolsters the case for this Court's review.

The panel majority reasoned that EPCA grants the Department "'a degree of discretion' to decide what constitutes a performance characteristic or feature under EPCA." Pet. App. 14a (quoting *Loper Bright*, 603

U.S. at 394). But Congress did not explicitly or specifically delegate interpretive authority to the Department to define operative terms, as in the situations discussed in *Loper Bright*. See 603 U.S. at 394-395. In particular, Congress did not expressly vest the Department with authority to define or give meaning to particular statutory terms. Compare *id.* at 394-395 n.5 (discussing 29 U.S.C. § 213(a)(15)'s reference to terms "as * * * defined and delimited by regulations of the Secretary [of Labor]" and 42 U.S.C. § 5846(a)(2)'s reference to standards "as defined by regulations which the [Nuclear Regulatory] Commission shall promulgate"), with 42 U.S.C. §§ 6295, 6313 (no similar language for terms such as "performance characteristic").

Nor does the mere existence of general rulemaking authority, see 42 U.S.C. § 6298, delegate such significant interpretative authority. *Loper Bright*, 603 U.S. at 394-395; see *supra* pp. 7-8. If it were, given that almost every agency possesses general rulemaking authority to some degree, courts would rarely have occasion to exercise "independent judgment." A limited delegation to "fill up the details" of a statutory scheme, *id.* at 395, should not be read in a manner that would consume the *Loper Bright* rule.

Finally, rather than capacious, open-ended terms like "appropriate" or "reasonable" that "leave[] agencies with flexibility," *id.* at 395, EPCA uses "performance characteristic" and "utility," which convey ascertainable meanings and limits and readily permit a court to exercise "independent judgment." Even the D.C. Circuit panel majority did not suggest otherwise. See Pet. App. 15a-16a. If the mere fact that a word or phrase is susceptible to multiple possible readings

were enough to trigger a "degree of discretion," *Loper Bright*, 603 U.S. at 394, that would effectively resurrect *Chevron* deference.

The majority also reasoned that the question of what constitutes a performance characteristic is, in the panel's view, "case-specific"—a framing that appears to sound in ambiguity and *Chevron*. Pet. App. 16a (quoting 86 Fed. Reg. at 73,948). But that is true of almost any interpretive question that arises in the context of a specific case or controversy. See Pet. 17-18. Statutory interpretation in the administrative context rarely, if ever, occurs in a vacuum—some type of agency action is generally required to give rise to a legal dispute. In its next breath, the majority identified the relevant EPCA provisions as "ambigu[ous]." Pet. App. 18a. But it remains the job of courts, not agencies, to "resolve the ambiguity" using their "best reading of the statute." *Loper Bright*, 603 U.S. at 400.

The majority's interpretative errors did not end there. At times, the panel improperly attempted to reframe the dispute as one of substantial evidence and arbitrary-and-capricious review, asserting that Petitioners "failed to carry th[e] burden" to prove that non-condensing appliances have a protected performance characteristic. Pet. App. 22a; see *id.* at 27a ("[T]he record fails to support Petitioners' claim that condensing consumer furnaces and commercial water heaters are not 'substantially the same' as their non-condensing counterparts."). But whether an efficiency standard will render unavailable a product and its protected performance characteristic is a factual question—and one undisputed here. That inquiry is distinct from the purely legal question of whether EPCA protects an asserted product characteristic. See Pet. App. 57a (Rao,

J., dissenting); cf. *Judulang* v. *Holder*, 565 U.S. 42, 52 n.7 (2011) (finding *State Farm* framework inapt to review agency's "interpretation of [] statutory language").

II. Further review is warranted.

A. EPCA has substantial effects on businesses, consumers, and the economy.

The interpretation of EPCA at issue in this case extends far beyond the specific subject matter of furnaces and water heaters. See Pet. 21-25. Furthermore, proper interpretation of the bounds on the Department's EPCA authority is key to ensuring that the Department cannot arbitrarily pick winners and losers, at the expense of consumer utility and choice.

By its terms, EPCA applies to a wide range of "covered products." 42 U.S.C. §§ 6292(a), 6295(a). As noted above, that scope captures everyday appliances like air conditioners, heat pumps, dishwashers, clothes dryers, microwaves, kitchen ranges, and showerheads. *See generally id.* §§ 6291(2), 6292(a) (19 categories of "covered products" plus "[a]ny other type of consumer product which the Secretary classifies as a covered product"). It does not risk overstatement to say that the Department's work under EPCA touches the day-to-day life of almost every American individual, family, and business.

The Department, moreover, is required to revisit existing standards, either periodically or upon certain triggering events. *See id.* §§ 6295(m), 6313(a)(6). Perhaps unsurprisingly, the number of EPCA efficiency standards has increased rapidly over time, particu-

larly since Congress substantially amended the statute in 2007. See Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492. In the nearly two-decade period between 1987 and 2006, the Department issued a total of seven energy efficiency standards, or about one new standard every two or three years. Between 2007 and 2014, by contrast, the Department issued twenty-five standards, or about three every year. See Brian F. Mannix & Susan E. Dudley, *The Limits of Rationality as a Rationale for Regulation*, 34(3) J. of Policy Analysis & Mgmt. 705, 706 (2015) (Figure 1), https://tinyurl.com/ypwzjxk3.

That pace has not slowed. In the most recent Unified Agenda published by the Office of Information and Regulatory Affairs, the Department reports over 20 energy conservation standards in the proposed or final rule stage. See Off. of Info. and Regul. Affairs, *Agency Rule List – Spring 2025: Department of Energy*, https://perma.cc/A3VV-E6AH (last visited Feb. 4, 2026); see also Jean-Cyril Walker et al., *DOE Continues High-Pace Rulemakings with New and Amended Test Procedures*, Nat'l L. Rev. (Oct. 28, 2022), https://perma.cc/5VSW-XLDV (noting "over 40 [Department] regulatory actions governing the consumer products category in the [] seven months" prior to October 2022). In such an active regulatory space, clarity and consistency are particularly critical for manufacturers and users of regulated appliances and other products.

The pervasiveness of EPCA regulations only heightens the importance of this case. As Petitioners explain (Pet. 22-23), the question of what constitutes a "performance characteristic" and consumer "utility" applies to appliances beyond furnaces and commercial

water heaters. Countless other appliances have variations that account for space- or installation-related considerations.

The Department, for instance, recognizes sub-categories for residential clothes dryers that address several such considerations. "Standard" and "compact" sizes account for space constraints. 120-volt and 240-volt versions account for differences in the ways existing residences and buildings are wired. Vented and ventless versions account for the inability of certain living spaces (*e.g.*, apartments) to accommodate dryer vents. Gas- and electric-powered versions account for existing utility hook-ups and consumer preference. See generally 10 C.F.R. § 430.32(h); see also 76 Fed. Reg. 22,454, 22,485 (Apr. 21, 2011) (Department acknowledging the "unique utility that ventless clothes dryers offer to consumers" and how "compact-size clothes dryers provide utility to consumers by allowing for installation in space-constrained environments"). Moreover, those classifications have less to do with a consumer's direct interaction with the appliance during operation, and more to do with the space- and installation-related utility offered to consumers.

The Department itself previously held the longstanding view—as it explained when promulgating separate standards for standard- and non-standard-sized package air conditioners and heat pumps—that consumers should not "be forced to invest in costly building modifications" to accommodate certain appliances in lieu of others. See 73 Fed. Reg. 58,772, 58,782 (Oct. 7, 2008). Other examples abound. See, *e.g.*, 10 C.F.R. § 430.32(a) (separate standards for compact versus standard refrigerators and refrigerator-freezers); *id.* § 430.32(c) (same for "split," "single package,"

and "small-duct, high-velocity," and "space-constrained" air conditioners and heat pumps); *id.* § 430.32(i) (same for fan, *i.e.*, electric-powered, and gravity, *i.e.,* un-powered, direct heating equipment).

It is no stretch to conclude that the D.C. Circuit's endorsement of the Department's contrary interpretation regarding non-condensing appliances calls into question the sensible and longstanding classifications that the Department has previously drawn, and on which consumers and businesses alike have long relied. Indeed, the Department's interpretation here—limiting the protection afforded by EPCA's unavailability provision so long as some theoretical substitute exists—could be used as a model to eliminate certain disfavored products, notwithstanding their consumer utility or consumer demand. Such an arbitrary exercise of regulatory authority would likewise hurt businesses, whose products would be at risk of being ordered out of the market.

If the D.C. Circuit's decision stands, upholding the Department's consumer choice-limiting interpretation, it will upset the careful balance drawn by Congress, which sought to protect consumer choice no less than promoting energy efficiency. See H.R. Rep. No. 100-11, at 22-23 (1987). This Court's review is needed to avoid frustrating congressional intent in a regulatory field of wide-reaching impact.

B. The D.C. Circuit's approach undermines regulatory predictability and stability.

To the extent the D.C. Circuit majority failed to faithfully apply *Loper Bright*, its approach risks undermining the values of administrative predictability and stability that *Loper Bright* promotes.

In the Administrative Procedure Act ("APA"), Congress sought to impose "a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Loper Bright*, 603 U.S. at 391 (quoting *United States* v. *Morton Salt Co.*, 338 U.S. 632, 644 (1950)). When looking to advance their preferred policies—sometimes, selectively so—federal agencies possess an "inherent aggressiveness" to see their goals met. Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2151 (2016). To that end, as a check on federal agencies, the APA codifies "the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment." *Loper Bright*, 603 U.S. at 391-392; see 5 U.S.C. § 706.

By overruling *Chevron*, this Court reinforced that proposition. And the Court underscored that the APA, and courts' role in deciding legal questions, serve a stability-enhancing function. The Court emphasized that *Chevron* deference long failed to "safeguard[] reliance interests" in agency-administered legal regimes. *Loper Bright*, 603 U.S. at 410. Instead, *Chevron* enabled regulatory whiplash by providing an agency "a license * * * to change positions," cabined only by the APA's prohibition on unexplained inconsistency. *Ibid.*

Chevron compelled courts to defer to agency flip-flops, so long as each successive interpretation remained within a sometimes-ill-defined zone of ambiguity. This attribute "foster[ed] unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty." *Ibid.*

This Court's emphasis on reliance interests in *Loper Bright* was appropriate. Businesses depend on clear, predictable rules when planning their operations, developing their product lines, and making investment decisions. Eliminating undue deference to agencies enhances stability in the law and promotes long-term decision-making.

This is particularly true regarding EPCA, which authorizes the Department to promulgate new and amended efficiency standards that can dictate which products a company may manufacture and sell to consumers. EPCA's requirement that the Department regularly reevaluate efficiency standards, see 42 U.S.C. §§ 6295(m), 6313(a)(6), opens the door for surprising changes to product markets, particularly if the statutory boundaries on the Department's standard-setting power are not enforced. The sudden unavailability of a line of products can be highly disruptive to consumers and businesses alike.

This case illustrates this reality, highlighting the danger of regulatory whiplash. See Pet. App. 48a (Rao, J., dissenting) ("The Department's approach to these appliances has flip-flopped across administrations."). In January 2021, the Department determined that non-condensing technology, including its compatibility with existing, standard chimney vents and

other exhaust systems, constituted a protected performance characteristic. See generally 86 Fed. Reg. 4,776. Less than a year later, in one of the actions challenged here, the Department reached the exact opposite conclusion. See generally 86 Fed. Reg. 73,947. The statutory language had not changed; the only salient change was that a new administration had assumed office. After *Loper Bright*, agencies are not allowed to make law in this fashion anymore.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

ANDREW R. VARCOE
STEPHANIE A. MALONEY
U.S. CHAMBER
LITIGATION CENTER
1615 H Street, NW
Washington, DC 22062

JEREMY C. MARWELL
Counsel of Record
NATHAN CAMPBELL
VINSON & ELKINS LLP
2200 Pennsylvania Ave., NW, Suite 500 West
Washington, DC 20037
(202) 639-6507
jmarwell@velaw.com

Counsel for Amicus Curiae

FEBRUARY 2026