November 3, 2025

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

Re: Prime Mover Institute's Comment on the Proposed Rule Entitled: *Reconsideration of the Greenhouse Gas Reporting Program*, 90 Fed. Reg. 44,591, Docket No. EPA-HQ-OAR-2025-0186 (Sept. 16, 2025)

Dear Administrator Zeldin:

The Prime Mover Institute is a public interest organization dedicated to advancing energy dominance in America. We work with coalition partners to engage in rulemaking processes with technical information and legal arguments, calling attention to the effects regulation has on citizens, the grid, personal transport and mobility, and the rule of law.

The main obstacle to energy dominance is what Robert Bryce calls the "anti-industry industry," the non-profits and lawyers dedicated to defending the status quo. These groups use litigation, regulatory comments, and intimidation to forestall change.

From Day 1, you have taken on these interests. This proposed rule shows that, as the Greenhouse Gas Reporting Program only stymies industry and energy dominance. Now it is the turn of advocates of energy dominance to show up and defend their ideas. In the words of Vaclav Smil, "prime movers are energy converters able to produce kinetic (mechanical) energy in forms suitable for human uses."[1] In the same way, Prime Mover Institute helps convert insight into action.

Thank you for the opportunity to comment.

Respectfully submitted,

/Russell Greene/
Russell Greene
Managing Director
Prime Mover Institute

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[1] Vaclav Smil, *Energy Transitions: History, Requirements, Prospects* (2020).

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Introduction and Summary of Argument

The purpose of this comment is to express Prime Mover Institute's (PMI) support for the proposed amendment to the Greenhouse Gas Reporting Program (GHGRP). The Environmental Protection Agency (EPA) lacks statutory authority for the GHGRP, as the Clean Air Act (CAA) does not authorize EPA to impose broad, continuous requirements for companies to report GHG emissions data. Additionally, the GHGRP violates the U.S. Constitution because it compels speech in violation of the First Amendment, and it runs afoul of the major questions doctrine and the non-delegation doctrine. Accordingly, this reporting program is unlawful, and EPA should amend it as proposed. And, when doing so, EPA should reiterate that this proposed amendment does not open the door for states to regulate GHGs. Rather, federal law still preempts this field, and any state attempt to regulate GHGs is preempted.

Those are reasons alone to amend the GHGRP. But EPA should also amend the program because it is redundant of other government programs, it imposes unreasonable financial and regulatory burdens on companies, and it undermines government efficiency.

At a time when the U.S. energy industry is competing for energy dominance, the GHGRP hampers the industry's ability to win that competition. Accordingly, EPA should amend the GHGRP as proposed, thereby allowing the U.S. energy industry to flourish.

Background

EPA proposes amending the GHGRP to remove reporting obligations for most source categories under 40 C.F.R. part 98, including the distribution segment of the petroleum and natural gas systems source category (subpt. W—Petroleum and Natural Gas Systems), and to suspend reporting obligations for the remaining subpart W segments until reporting year (RY) 2034.[1]

For fifteen years, EPA has collected data under the GHGRP, purporting to exercise authority from Section 114 of the CAA. *See* 42 U.S.C. § 7414. In the Fiscal Year (FY) 2008 Consolidated Appropriations Act, Congress authorized funding for and directed EPA to ''develop and publish a . . . [rule] to require mandatory reporting of GHG emissions above appropriate thresholds in all sectors of the economy of the United States.'' Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2128. Thereafter, EPA enacted a final rule in 2009, which required that entities with emissions above certain threshold levels monitor

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[1] Reconsideration of the Greenhouse Gas Reporting Program, 90 Fed. Reg. 44,591 (proposed Sept. 16, 2025) (to be codified at 40 C.F.R. pt. 98), Docket No. EPA-HQ-OAR-2025-0186 ("NPRM").

and report their emissions. In that rule, EPA pointed only to Section 114 of the CAA as the authority to require such reporting.

While Section 114 provides EPA with authority to collect information, that authority is limited to collecting information for certain limited purposes:

- (A) developing or assisting: (1) implementation plans under CAA section 110 or section 111(d); (2) any standard of performance under CAA section 111; (3) any emission standard under CAA section 112; or (4) any regulation under CAA section 129;

- (B) determining whether a person is in violation of any standard or requirement of a plan; and

- (C) carrying out any provision (other than Title II with respect to a manufacturer of new motor vehicles or engines) of the CAA.

In 2022, Congress amended Section 136 of the CAA to establish the Methane Emissions Reduction Program and require EPA to impose and collect a waste emissions charge from facilities in all segments of the petroleum and natural gas systems sector reported under subpart W, except for the Natural Gas Distribution industry. *See* Inflation Reduction Act of 2022, Pub. L. No. 117-169, tit. VII, § 60113, 136 Stat. 1818, 2073 (codified at 42 U.S.C. § 7436). On July 4, 2025, Congress delayed the start date for this waste emissions charge, where it will not begin until emissions are reported for calendar year 2034 and later. *See* One Big Beautiful Bill Act, Pub. L. No. 119-21, § 60012(b), 139 Stat. 72, 156 (2025).

EPA has now reviewed the GHGRP and its purported statutory authority, determining that there is no statutory requirement to collect GHG emissions information for sectors other than the subpart W segments subject to the waste emissions charge. And, for those segments, EPA has determined that it may only require reporting starting in 2034.

Suspending the subpart W reporting requirements until RY2034 will ensure consistency with the recent amendment to Section 136 of the CAA. Although reporting for subpart W is specifically required under Section 136, reporting is not needed for the natural gas distribution industry segment of subpart W, and reporting is not needed for the remaining subpart W industry segments until 2034.

It is within this context that EPA now reconsiders the GHGRP.

Argument

There are at least three reasons EPA should proceed with amending the GHGRP reporting requirement. But each reason points to the same goal—the U.S. energy industry must be free of unnecessary and unreasonable restraints at a time when the industry is engaged in a critical battle for energy dominance.

First, the GHGRP is unlawful. Section 114 of the CAA does not authorize EPA to require broad, continuous GHGRP reports. Rather, the only possible authority is found in Section 136 of the CAA, which authorizes EPA to require reports from certain sources, but only starting in RY2034. Accordingly, any other reporting requirements under the GHGRP are unlawful for lack of statutory authority.

Moreover, the GHGRP is unlawful because it violates the U.S. Constitution. The GHGRP requires reporting companies to endorse the controversial viewpoint that GHG emissions are the cause of climate-related concerns. And further, the GHGRP requires reporting companies to admit to being the causes of any such climate issues. The First Amendment's compelled speech doctrine does not allow for this type of self-incrimination.

The GHGRP is also unconstitutional because it violates the major questions doctrine and the non-delegation doctrine, which do not allow EPA to wield broad regulatory influence without clear statutory authority. And while the GHGRP should be amended, there are significant preemption issues lurking in this area. When amending the GHGRP, EPA should reaffirm that federal law preempts state GHG reporting requirements. That is particularly true as many states are purporting to use GHG reporting requirements to implement international policies that those states favor. Yet the Constitution vests the federal government with sole responsibility for such important matters as foreign policy, treaty negotiations, and national security.

Second, the GHGRP should be amended because it imposes significant burdens on reporting companies. In order to compose the required reports, reporting entities must retain sufficient staff to monitor, analyze, and report GHG emissions. They must also develop and maintain the appropriate databases to do so. This requires significant resources that must be diverted from the pressing work of growing the U.S. energy sector.

Additionally, GHGRP imposes burdens on reporting entities by subjecting them to regulatory uncertainty. GHGRP data are used by a host of entities—bureaucrats, potential investors, and other regulators. In each instance, the data may be used in different ways, thereby subjecting reporting entities to different and changing requirements. This imposes uncertainty that requires reporting entities to divert resources to plan for such changes, again at the expense of focusing on growing the U.S. energy sector.

Third, the GHGRP should be amended to conserve government resources. The current program requires significant staff and data resources. But the public's money should not be used for such costs when the underlying program is both unlawful and unreasonably burdensome. Rather, the GHGRP should be substantially reduced to ensure greater governmental efficiency.

1. The GHGRP is Unlawful.

The GHGRP is unlawful because EPA lacks statutory authority under the CAA to broadly require companies to report GHG emissions continuously. Additionally, the GHGRP is unlawful because it violates the U.S. Constitution. Yet while the GHGRP is unlawful, it remains the prerogative of the federal government to regulate in this area, and any state GHG reporting programs are therefore preempted.

1.1. The GHGRP Lacks Statutory Authority and Violates the Administrative Procedure Act.

EPA correctly concludes that Section 114 of the CAA does not authorize the GHGRP. NPRM at 44596–97. That program is thus *ultra vires* and violates the Administrative Procedure Act. But even if Section 114 permits EPA to establish some form of the GHGRP, any such authority is discretionary, and thus EPA is acting comfortably within its discretion to amend or rescind that program.

1.1.1. EPA lacks statutory authority for the GHGRP.

EPA's primary legal rationale is correct: Section 114 of the CAA does not authorize the current GHGRP. Nor does any other statute. Section 114 provides only general authority for information collection to support implementation of the CAA. And Section 114 allows for data collection only as necessary to develop or assist responsibilities set forth in certain CAA sections. *See* 42 U.S.C. § 7414(a) (listing specific provisions of the CAA). Given that each CAA section identified in Section 114 has a specific and narrow reach, Section 114 cannot be read to authorize a perpetual GHG reporting program. Indeed, notably missing from the list of provisions Congress included in Section 114 is any authorization for requiring GHG reporting to facilitate carbon capture or promote tax programs. Absent clear delegation, EPA should not and cannot regulate as it has been, especially in a manner that is so harmful to industry and the government itself. *See infra* Part 2.

That is where Section 136 of the CAA comes in, as it authorizes specific reporting requirements. *See* 42 U.S.C. § 7436(h). Thus, through Section 136, Congress showed that it knows how to authorize a specific reporting requirement, and by not including similar express requirements in Section 114, it must be assumed that Congress intentionally declined to expressly authorize such a broad GHG reporting requirement. *See Russello v. United States*, 464 U.S. 16, 23 (1983); *Bates v. United States*, 522 U.S. 23, 29–30 (1997).

EPA thus does not have statutory authority to collect broad, continuous GHG reporting data under Section 114(a)(1) of the CAA for those sectors not subject to Section 136, because the reporting requirements serve no other underlying statutory purpose. As for those sectors that are subject to Section 136, Congress made clear that any reporting should not be required until RY2034, so EPA likewise lacks authority to collect GHG reporting data in the meantime.

The CAA is best read to require a close nexus between continuous reporting obligations and an underlying statutory purpose, particularly given the Agency's obligation to take the cost of information collection and reporting into account when taking action. *Michigan v. EPA*, 576 U.S. 743 (2015).

Traditional principles of statutory interpretation and administrative law support this conclusion. The Supreme Court has recognized that "an agency's power is no greater than that delegated to it by Congress." *Lyng v. Payne*, 476 U.S. 926, 937 (1986).

And courts must ensure that agencies stay within the boundaries established by law. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 396 (2024). When agency action is "not in accordance with law" or "in excess of statutory ... authority," it may be challenged and set aside under the Administrative Procedure Act (APA). 5 U.S.C. § 706(2)(A), (C).

The APA forms an important "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)).

Thus, the APA prevents agency actions from exceeding the limits of the authority that Congress conveyed to that agency by statute. *West Virginia v. EPA*, 597 U.S. 697, 723 (2022).

In short, "[a]gencies have only those powers given to them by Congress and enabling legislation is generally not an open book to which the agency may add pages and change the plot line." *Id.* (cleaned up).

The GHGRP is just the type of added pages and changed plotline that the Supreme Court has warned against. EPA is thus correct to amend it and realign the EPA's actions with its statutory authority delegated by Congress.

1.1.2. EPA possesses the discretionary authority to amend the GHGRP.

In any final rule issued on this proposal, EPA should also address its proposed alternative legal rationale: EPA's Section 114 authority is discretionary, and any information obtained through the GHGRP is unnecessary to carry out the provisions of the CAA, including relevant rulemaking and enforcement functions. For more than 15 years, EPA has collected information through the GHGRP. Yet EPA has little to show for it. In fact, EPA itself admits that, since 2011, it has not used most of the information collected for the purposes contemplated by the CAA: developing or assisting the implementation of plans, standards of performance, or emission standards; determining violations; or carrying out other provisions of the CAA. 42 U.S.C. § 7414(a).

EPA's decision not to continue requiring such reporting thus makes complete sense.

Nothing in Section 114 *requires* the collection of data, so EPA is free to exercise its discretion to decline to do so. If EPA finds itself in need of specific information, it retains the ability to collect such information from more efficient sources, including particularized, targeted Section 114 information collection requests. *Id.*

While courts may review agency action that is "an abuse of discretion," 5 U.S.C. § 706(2)(A), they are not to review agency action that is "committed to agency discretion by law." *Id.* § 701(a)(2).

As the D.C. Circuit has recognized: "[S]ection 114 is not a mandatory provision—it only states that EPA 'may' require sources to supply data," so the Administrator has "discretion to decide what types of data should be used." *N.R.D.C. v. EPA*, 529 F.3d 1077, 1085 (D.C. Cir. 2008).

And it is "not unreasonable for the agency to decline to invoke its section 114 authority when more efficient data-collection methods were available." *Id.*

Here, of course, the circumstances would be slightly different, because EPA's decision to depart from prior practice may be subject to judicial review. The Supreme Court again provides helpful guidance for how EPA can properly depart from prior practice and exercise its discretion not to require GHG reporting. In *FCC v. Fox Television Stations, Inc.*, the Supreme Court explained that there are four requirements for an agency that departs from past practice: (1) demonstrate awareness of the change; (2) show that "the new policy is permissible under the statute;" (3) identify "good reasons" for the new policy; and (4) explain why the "agency *believes* it to be better[.]" 556 U.S. 502, 515 (2009). But an agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one." *Id.* EPA should ensure that any final rule here addresses each of these requirements.

1.2. The GHGRP Violates the Constitution.

EPA should also amend the GHGRP because it violates the Constitution in a host of ways. It unlawfully compels speech, in violation of the First Amendment. It also fails under the major questions doctrine and the non-delegation doctrine. And, beyond those concerns, the GHGRP raises serious preemption concerns as states attempt to mirror the GHGRP.

1.2.1. The GHGRP Unlawfully Compels Speech.

The GHGRP unlawfully compels speech, because its requirements go beyond neutral fact-gathering. The best place to start when examining this compelled speech is the GHGRP's 2009 implementation. At that time, EPA stated that the reporting data would be used for "climate change policy decisions." Mandatory Reporting of Greenhouse Gases, 74 Fed. Reg. 56,260, 56,265 (Oct. 30, 2009) (codified in scattered parts of 40 C.F.R.).

EPA also stated that the data were necessary to "address the breadth of climate change issues." *Id.* at 56266. Further, when discussing comments to the original proposed rule, EPA quoted comments stating that GHGs were "directly emitted by human activities" and "contribute to global climate change." *Id.* at 56269. In fact, even now EPA describes the GHGRP as collecting data to use to "identify opportunities to cut pollution, minimize wasted energy, and save money." *See, e.g.*, *Learn About the Greenhouse Gas Reporting Program (GHGRP)*, U.S. Env't Prot. Agency (Dec. 20, 2024), https://tinyurl.com/mry74uny.

Additionally, the GHGRP data are to be used by "States, cities, and other communities … to find high-emitting facilities in their area[.]" *Id.* These disclosures are not confined to confidential submissions for technical regulation; they are designed for public dissemination, and they serve an expressive function of naming, shaming, and norm-setting.[2]

This is the background against which companies submit GHGRP data, where they are tacitly buying into each of these progressive narratives. But the First

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[2] *See, e.g.*, Eric Nost et al., *Owning Up: A Tool to Measure US Carbon Emissions by Corporations*, Env't Data & Governance Initiative:EDGI Comms Blog (Apr. 20, 2022), https://tinyurl.com/2a2ysuse; Brian Lynk, *EPA's Greenhouse Gas Rollbacks Ignore Its Own Findings*, Env't L. & Pol'y Ctr. (Aug. 7, 2025) (using GHGRP reports to criticize U.S. power sector in this very repeal action), https://tinyurl.com/2yymm29x.

Amendment protects not only the right to speak but the right to refrain from speaking. When the government compels speech, it "invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (schoolchildren could not be compelled to salute the American flag).

Whether the government compels an "affirmative act," like a flag salute or a "passive act" of carrying a state motto on a license plate, "the difference is essentially one of degree." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (state may not require individuals to propagate the state's ideological motto on a license plate). The Constitution does not permit the government to force individuals and entities "to be an instrument for fostering public adherence to an ideological point of view [they] find[] unacceptable." *Id.*

The GHGRP violates these norms by impermissibly compelling covered entities to make public, standardized disclosures that communicate a contested governmental message about GHG emissions. Because these disclosures go beyond neutral, purely factual, and uncontroversial commercial information and instead compel entities to adopt and propagate the government's message, they trigger heightened First Amendment scrutiny and cannot be justified under applicable standards.

This standard is generally lessened in the commercial context, provided the required disclosures are purely factual and require uncontroversial information to prevent deception. But compelled statements that go beyond the facts, or that are unduly burdensome, trigger heightened scrutiny.[3] As the Supreme Court has recognized: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or *force citizens to confess by word or act their faith therein*." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps.*, 585 U.S. 878, 892 (2018) (quoting *Barnette*, 319 U.S. at 642).

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[3] *See Zauderer v. Off. of Disciplinary Counsel*, 471 U.S. 626, 651 (1985); *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 768–69 (2018) (limiting *Zauderer* to factual, uncontroversial disclosures reasonably related to preventing deception); *303 Creative LLC v. Elenis*, 600 U.S. 570, 586–87 (2023) (reaffirming robust protections against compelled speech); *accord Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1278 (9th Cir. 2023) (California cancer warning for glyphosate was disputed, not factual and uncontroversial); *Kimberly-Clark Corp. v. District of Columbia*, 286 F. Supp. 3d 128, 140–41 (2017) (contrasting cases involving factual and uncontroversial country-of-origin labels with others involving inflammatory tobacco package containers or statements for diamond retailers that their diamonds are not "conflict free").

Here, reporting entities are forced to convey a message with which they disagree: Their operations are socially harmful in proportion to reported tonnage, and that the EPA's methodological approach to climate change accurately captures real-world causation. These entities are thus forced to lend their voices and credibility to a narrative that casts those very entities as villains—pushing the progressive Environmental, Social, and Governance agenda.

For this additional reason, the GHGRP should be discontinued, and any final rule should address the First Amendment implication of the GHGRP, while also expressly disavowing the narrative the GHGRP has been used to advance. To further support this conclusion, EPA should identify other instances of GHGRP data being used (or misused) to support the progressive climate agenda.

1.2.2. The GHGRP Presents Serious Separation of Powers Concerns.

The GHGRP also exemplifies the type of expansive administrative action that frustrates the separation of powers, allowing EPA to wield significant regulatory influence without clear statutory authority. Allowing the GHGRP to continue thus implicates the major questions doctrine and the non-delegation doctrine.

1. The Supreme Court recently addressed similar issues in *West Virginia v. EPA*, where the Supreme Court recognized the overarching question: "[W]hether Congress in fact meant to confer the power the agency has asserted." *West Virginia*, 597 U.S. at 721.

In other words, "Congress … does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

The Court thus "declined to uphold EPA's claim of 'unheralded' regulatory power over 'a significant portion of the American economy.'" *West Virginia*, 597 U.S. at 722 (quoting *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). For similar reasons, EPA shouldn't be able to use this reporting requirement to assert authority over such a large part of the industry with such shaky statutory support. But that is just what the GHGRP attempts to do.

Allowing the GHGRP to continue would similarly require deference to EPA's expansive interpretation of the CAA. As explained above, Congress has not spoken directly to authorize the GHGRP. Rather, EPA has been relying on its own contorted view of the CAA to authorize the GHGRP. Of course, the Supreme Court recently confirmed that agencies cannot insist on such warped views of their own statutory authority. *See Loper Bright*, 603 U.S. 369. And *West Virginia* confirms as much, particularly where, as explained below, the GHGRP imposes substantial costs on both industry and the government.

Congress's charge to the EPA in Section 114 of the CAA for information collection was limited to specific statutory purposes and programs that the GHGRP does not satisfy. And the reporting requirement in Section 136 does not go into effect until RY2034. The GHGRP thus goes far beyond those statutes, which means it fails under the major questions doctrine.

2. For similar reasons, GHGRP implicates the non-delegation doctrine, which overlaps with the major questions doctrine. The GHGRP is a "decision of such magnitude and consequence" on a matter of "'earnest and profound debate across the country'" that its enactment must "res[t] with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." *West Virginia*, 597 U.S. at 732, 735 (quoting *Gonzales v. Oregon*, 546 U.S. 243, 267–68 (2006)). Congress cannot delegate its legislative authority. *See A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935).

It can only set forth an "intelligible principle" to constrain and direct agency action, so as not to delegate actual legislative power. *Gundy v. United States*, 588 U.S. 128, 145–46 (2019) (citation omitted).

But Congress has provided no such intelligible principle here. If EPA's prior reading of Section 114—authorizing the GHGRP—were accepted, the statute would confer on EPA nearly boundless information-collection powers. This would either mean that Section 114 lacks an intelligible principle, raising non-delegation concerns, or EPA has long misinterpreted its own authority. Either way, EPA's prior reading of the statute is not the "best reading" under *Loper Bright*, 603 U.S. at 400.

Considering the above, any final rule on this proposal should couple its discussion of the lack of statutory authority with a discussion of the GHGRP's immense reach.

1.2.3. Federal Law Preempts State GHG Reporting Laws.

In issuing any final rule here, EPA should also emphasize that federal law preempts any state GHG reporting programs. Furthermore, in any final rule issued, EPA should be careful to avoid justifying its action based on the existence of any state reporting requirements.

1. The clearest reason for EPA to reach this conclusion is that EPA has already said as much. When recently proposing to reconsider the Endangerment Finding, EPA recognized that "regulated parties may have reliance interests in national

uniformity and CAA preemption with respect to emission standards for new motor vehicles and engines." Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36,288, 36,297 (proposed Aug. 1, 2025) (to be codified at scattered parts of 40 C.F.R.). Given those concerns and the applicable law, EPA explained that, even if EPA rescinds the Endangerment Finding, "CAA section 209(a) and other applicable sources of federal preemption would continue to apply, and [EPA] would retain [its] authority to regulate emissions[.]" *Id.*

EPA was correct when it made that statement, and it applies equally here. It cannot be the case that states or municipalities may attempt to regulate GHG emissions beyond their own borders. Indeed, federal law includes a comprehensive regime for regulating GHG emissions, which includes an agency's decision *not* to regulate.

Specifically, the CAA continues to preempt state efforts to require reporting of GHG emissions because "Congress delegated to EPA the decision whether and how to regulate" such emissions. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011). EPA's bases for amending the GHGRP do not foreclose it from regulating such reporting in the future if the Administrator decides that it becomes necessary. Indeed, EPA's NPRM states that it will become necessary for a subset of affected industries to begin submitting reports in 2034. NPRM at 44597. As PMI explained in its comment on the EPA's proposal to rescind the Endangerment Finding: "The regulation of pollution that crosses state lines is an inherently federal matter and governed by federal common law or a federal statute." But as PMI further explained: "This federal common law no longer governs because Congress displaced it when it passed the Clean Air Act," which is "now the exclusive mechanism for addressing domestic GHG emissions." As the Supreme Court has explained: In this area, the CAA points to EPA as the "primary regulator of [domestic] greenhouse gas emissions." *Am. Elec. Power,* 564 U.S. at 428.

This conclusion is bolstered by other instances of Congress giving the federal government responsibilities related to GHG emissions. For instance, the Global Change Research Act establishes a committee within the federal government responsible for "increasing the overall effectiveness and productivity of Federal global change research efforts," 15 U.S.C. § 2932, where such "Federal global change research" will be used "to base policy decisions relating to global change," *id.* § 2934(b)(1). Similarly, through the National Climate Program, Congress established a Federal board responsible for, among other things, recommending changes to current laws and regulations related to climate matters. *See* 15 U.S.C. § 2904.

When read together, these authorities confirm that EPA was correct in the Endangerment Finding proposal when it stated that federal law preempts state efforts to regulate GHG emissions, which is plainly what state reporting requirements aim to do.

2. Current state reporting requirements are also preempted because they intrude on areas of obvious federal responsibility for foreign policy and national security. Many states have gone far afield with their GHG reporting requirements, to the point that they have usurped the federal government's role as the sole authority for determining foreign policy.

For example, twenty-four states representing approximately 55% of the United States population and 60% of its economy have formed a so-called "U.S. Climate Alliance," and they have gone so far as to appear at United Nations climate meetings to negotiate state agreements with other countries. This "Alliance" has publicly committed to reducing net greenhouse gas emissions by at least 26–28% below 2005 levels by 2025, 50–52% by 2030, and 61–66% by 2035, with a goal of achieving net-zero emissions as soon as practicable and no later than 2050. And although the United States withdrew from the Paris Agreement and the Senate never ratified it, these twenty-four states purport to be acting to implement GHG rules based on the Paris Agreement.

Such actions violate the Constitution, which grants exclusive authority over foreign affairs and national security, including the power "to make Treaties," to the President, who enters treaties with the consent of the Senate. U.S. Const. art. II, § 2, cl. 2; *see also* Global Climate Protection Act of 1987, Pub. L. No. 100-204, § 1103(c), 101 Stat. 1409 (The "Coordination of United States Policy in the International Arena" involves "the Secretary of State … under the direction of the President," who "shall be responsible to coordinate those aspects of United States policy requiring action through the channels of multilateral diplomacy, including the United Nations Environment Program and other international organizations."). Article II's treaty power is exclusive and comprehensive. Allowing states to implement international agreements independently would fragment the nation's foreign policy, undermine the President's prerogatives, and violate constitutional separation of powers principles.

Thus, because the United States is not a party to the Paris Agreement, states cannot enforce it unilaterally through reporting requirements.[4] States, as

[4] Similarly, the Kyoto Protocol also failed to come before the Senate after the Senate unanimously passed a resolution expressing opposition to any climate agreement that did not include binding emission targets for developing countries or that would seriously harm the United States economy. *See* S. Res. 98, 105th Cong., 1st Sess., 143 Cong. Rec. S8113, S8138–39, https://tinyurl.com/munyfzcb.

subordinate sovereigns in matters of foreign policy, must operate within the bounds of federal authority in foreign affairs. By adopting regulations aligned with the Paris Agreement, states are effectively imposing obligations of an international agreement to which the United States is not a party—thus exercising foreign policy powers reserved to the federal government.

That said, the United States is a party to the United Nations Framework Convention on Climate Change, which requires submittal of a national GHG emission inventory. But that only underscores why GHGRP and current state actions are unnecessary and unlawful. The United States's obligations under this Convention are already satisfied primarily through the Department of Energy and the Energy Information Administration, which, as discussed below, collect expansive data on all United States production and consumption of energy, including all fossil fuels. This information is sufficient to compile an emissions inventory to meet any obligations to that Convention. These ongoing data collection authorities and activities impliedly, if not expressly, preempt state programs to collect GHG emission data. There is little difference between requirements to report fuel consumption or emissions—they are two sides of the same coin—since they simply require a constant conversion factor to calculate emissions from fuel consumption.[5]

Foreign policy requires national uniformity, and state-level enforcement of international agreements risks sending conflicting and inconsistent signals abroad, potentially disrupting the nation's diplomatic relationships and treaty negotiations. This disuniformity obstructs the federal government's exclusive role and impairs the President's constitutional authority to speak with one voice in international matters.

3. To be sure, states will retort that they are merely regulating in-state sources of GHG emissions. But such arguments are unfounded, because the plain purpose of these state regulations are *first*, to lower *global* concentrations of GHGs.[6] Yet the

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[5] *See Greenhouse Gas Equivalencies Calculator - Calculations and References*, U.S. EPA (Apr. 24, 2025), https://tinyurl.com/5c6r6b7p (noting common conversion factor of CO_2 emissions per gallon of gasoline consumed).

[6] *See, e.g.*, Press Release, U.S. Climate All., U.S. Climate Alliance to the International Community: "We Will Continue America's Work to Achieve the Goals of the Paris Agreement," (Jan. 20, 2025) ("[W]e will continue America's work to achieve the goals of the Paris Agreement and slash climate pollution."), https://tinyurl.com/2yenhr2v; Press Release, Wash. Gov. Jay Inslee, Inslee, New York Governor Cuomo, and California Governor Brown announce formation of United States Climate Alliance (June 1, 2017) ("If the President is going to be AWOL in this profoundly important human endeavor, then California and other states will step up."), [archived at https://tinyurl.com/y7tkz26r].

federal government, not individual states or even a subset of the states, determines all U.S. climate policy and participation in international efforts. States have no authority to adopt any other position, such as net-zero emissions goals or mandates, to set caps, or create reporting programs to bypass the federal government (the stated purpose of the U.S. Climate Alliance).

Second, these state efforts constrain the use of specific types of energy in one state jurisdiction, while ignoring the resultant economic forces that increase the use of energy in other jurisdictions (states and countries), effectively regulating interstate and international emissions and, potentially, increasing global GHG emissions.

In doing so, these states are likely violating the dormant commerce clause, if the state seeks to inhibit fossil fuel energy sources produced by neighboring states in favor of "economic protectionism … designed to benefit in-state economic interests" in other energy sources. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023) (quoting *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337–38 (2008)). And, as a practical matter, their efforts are little more than counterproductive virtue signaling, shifting GHG emissions from one state to another, or from cleaner American energy to other nations.

4. Finally, state efforts to implement international climate-change policy run afoul of a related principle that has been known as the "dormant foreign affairs preemption." As the Supreme Court explained, this is the "general principle" that "'even in [the] absence of a treaty' or federal statute, a state may violate the constitution by 'establish[ing] its own foreign policy.'" *Deutsch v. Turner Corp.*, 324 F.3d 692, 709 (9th Cir. 2003) (quoting *Zschernig v. Miller*, 389 U.S. 429, 441 (1968)). This principle is foundational: "[O]ne of the main objects of the Constitution [was] to make us, so far as regarded our foreign relations, one people, and one nation; and to cut off all communications between foreign governments, and the several state authorities."[7] A hundred years later, the Court remained emphatic about federal exclusivity: "No State can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by

[7] *Holmes v. Jennison*, 39 U.S. (14 Pet.) 540, 575–76 (1840); *accord United States v. Belmont*, 301 U.S. 324, 331 (1937) ("[T]he external powers of the United States are to be exercised without regard to state laws or policies. . . . [I]n respect of our foreign relations generally, state lines disappear."); *The Chinese Exclusion Case*, 130 U.S. 581, 606 (1889) ("For local interests the several states of the Union exist, but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power."); *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) ("Our system of government . . . requires that federal power in the field affecting foreign relations be left entirely free from local interference.").

the States; it is vested in the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942).

This principle holds even when it comes to quintessentially state areas of law. In 1968, the Supreme Court applied this general principle to invalidate a state escheat law for impinging on the Nation's foreign policy interests in the absence of an established federal policy. *Zschernig*, 389 U.S. at 440–41. Thus, even if EPA's reading of the CAA is not accurate, and even if other federal laws do not preempt state reporting requirements, those state actions remain preempted by this principle.

2. The GHGRP is Burdensome.

The GHGRP program should also be amended because it imposes unnecessary burdens on reporting companies. To provide the required data, each reporting entity must devote resources to establishing the apparatus necessary to monitor, track, and report such data. EPA estimates that this can be measured in the hundreds of millions of dollars. But EPA likely undercounts the financial burden.

Additionally, the GHGRP imposes regulatory uncertainty on reporting entities, which stymies their ability to devote resources to the important task of growing and strengthening the U.S. energy industry. And, at the same time, the GHGRP provided minimal benefits because it is largely redundant and unnecessary.

2.1. The GHGRP Imposes Significant Financial Burdens on Industry.

As explained above, GHGRP lacks any statutory authority, and it raises serious constitutional concerns. Those reasons are sufficient alone to amend or rescind the GHGRP. But the GHGRP should also be amended because it imposes immense burdens on the energy industry with little associated benefit.

According to EPA's analysis, the GHGRP imposes an annual burden on the regulated community of $303 million.[8] Those costs come from a host of sources. For instance, regulated entities must invest substantial staff time and resources to track, collect, validate, and report greenhouse gas emissions data. And those costs are spread widely across the regulated company, as the reporting process must

[8] NPRM at 44596 (citing U.S. EPA, Information Collection Request Greenhouse Gas Reporting Program Renewal (Apr. 2, 2024), www.regulations.gov/document/EPA-HQ-OAR-2022-0883-0020).

involve environmental, engineer, and data-analytics personnel. According to EPA, this amounts to nearly $250 million per year in labor costs alone.[9]

Beyond labor costs, the GHGRP also requires regulated companies to spend their resources on recurring operations and maintenance (O&M) costs to establish and maintain monitoring systems, data platforms, and compliance infrastructure. And, of course, this means that the more complex the company's operations, the greater the O&M costs will be for developing the sophisticated systems needed to track data for the GHGRP's required reports. Moreover, the GHGRP has driven O&M costs even higher by periodically updating the reporting and recordkeeping requirements. For each incremental change, regulated companies must incur additional costs for retraining, system updates, and the development of new internal controls.

These costs are disproportionately borne by the energy industry, as EPA estimates that nearly 85% of the annual reporting costs fall on energy-industry participants.

Those figures are enough to support amending the GHGRP, but they likely underestimate the GHGRP's costs. In fact, EPA acknowledges that it did not reanalyze cost data, but "relied on past estimates" when calculating the cost burden. NPRM at 44603.

While there do not appear to be data identifying the costs for specific companies to comply with the GHGRP, insights can derive from comments filed by industry participants when the Securities and Exchange Commission (SEC) proposed a rule in 2022 to require climate-related disclosures from companies. From those comments, it can be gleaned that government estimates of regulatory costs often understate those costs, as it is the companies that best understand each expenditure that must be made to comply with a particular reporting program. When the SEC proposed its climate-related disclosure rule, the Commission estimated costs of approximately $500,000 per year for registrants. *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334, 21,439 (proposed Apr. 11, 2022) (to be codified at scattered parts of 17 C.F.R.). But several commenters explained that the costs would be *much* higher—with some large companies estimating that they would spend at least $4 to $5 million per year on ongoing compliance costs.[10] As companies

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[9] *See* Memorandum from U.S. EPA, Impacts of Reconsideration of the Greenhouse Gas Reporting Program 5–6, § 4.0 (Sept. 2025), https://tinyurl.com/ytc24u47.

[10] *See* Supplemental Comments of U.S. Chamber of Com. to SEC on The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22, at 11–12 (Nov. 1, 2022) (collecting cost estimates), https://tinyurl.com/yck2edmu; Supplemental Comment of Society for Corporate

explained at that time, such reporting rules require companies to divert resources to added headcount and significant audit expenses. So too here.

Those costs have real-world implications. Energy companies must divert resources away from key operations, including engineering, research, and development—potentially even away from projects that would reduce emissions. All the while, the United States is engaged in a critical race for greater energy dominance. By forcing companies to take resources and personnel off the front lines of that work, those companies are competing globally with one arm tied behind their backs.

2.2. The GHGRP Imposes Burdens from Regulatory Uncertainty on Industry.

The GHGRP also subjects companies to regulatory uncertainty. Since GHGRP's implementation, emissions reports have been used in a host of different fora and by various state and federal bureaucrats. And the data from GHGRP reports have been used to support various regulatory initiatives, like proposals for carbon pricing or establishing carbon-reduction targets. Yet the GHG data can be twisted in many ways, and reporting entities will struggle to predict how the reported data will be used by future federal or state decisionmakers.

Reporting entities thus face inconsistent applications of the GHGRP data, as agencies may interpret and apply the data differently. And such inconsistency or regulatory uncertainty stymies a company's ability to grow and innovate. These are precisely the types of concerns undergirding the Supreme Court's decision in *Loper Bright*, where the Court emphasized that regulatory uncertainty "leav[es] those attempting to plan around agency action in an eternal fog of uncertainty." 603 U.S. at 411.

2.3. The GHGRP is Redundant and Unnecessary.

While the GHGRP's financial and regulatory burden on the energy industry is high, the practical utility of the reported data is very low. As noted above, much of the data are not used, and the program is largely redundant. Federal law assigns to the Administrator of the Energy Information Administration authority to oversee the collection of energy information, with statutory provisions guiding surveys and data collection, as well as an annual national emissions inventory for GHG

Governance to SEC on The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22, at 3–4 (Nov. 1, 2022) (discussing survey results from member respondents, confirming that companies expected compliance costs to significantly outpace the SEC's estimates), https://tinyurl.com/4y2xye46.

emissions. 42 U.S.C. § 7135. The Federal Energy Administrator is similarly tasked with reporting energy information. 15 U.S.C. § 796 ("For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information, the Federal Energy Administrator shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy[.]"). As is the Secretary of Energy, via the Energy Information Administration. 42 U.S.C. § 13385(a), (b) (The Secretary must develop "an inventory of the national aggregate emissions of each greenhouse gas for each calendar year" and shall "issue guidelines for the voluntary collection and reporting of information on sources of greenhouse gases" on an annual basis.).

For instance, under 42 U.S.C. § 7135, the Administrator of the Energy Information Administration is authorized to gather, analyze, and disseminate "energy information," which includes data on coal, oil, and natural gas usage. And the Administrator makes this information public. These data must "provide a statistically accurate profile of each line of commerce in the energy industry in the United States." 42 U.S.C. § 7135(h)(1)(A). And the Administrator must "conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States at least once every four years." *Id.* § 7135(i)(1). Such "consumption" data must include the "quantity of fuels consumed," *id.,* which can be used to calculate emissions.[11] Unlike the naming and shaming function of the public disclosures mandated by the GHGRP, the Energy Information Administration is required to prepare its reports "in a manner designed to protect the confidentiality of individual responses." 42 U.S.C. § 7135(i)(1).

At a minimum, these statutes argue in favor of eliminating the EPA's mandatory reporting program given its duplication of actions already expressly mandated by Congress to be undertaken by the Department of Energy and the Energy Information Administration. Doing so would reduce unnecessary financial burdens on United States taxpayers, businesses, and consumers.

2.4. The GHGRP is Burdensome on the Government.

Finally, amending the GHGRP will conserve government resources. Presently, EPA maintains an extensive public-facing database that posts and analyzes data

[11] *See* EPA, *Greenhouse Gas Equivalencies Calculator, supra* note 9.

submitted in GHGRP reports.[12] That requires significant staff and infrastructure to maintain, likely including substantial costs for the hiring of contractors.[13]

Considering that public funds are being used to maintain a program that lacks statutory authority and imposes an unnecessary burden on industry, amending this program will allow EPA to cut unnecessary government expenditures. It will also allow EPA to comply with Executive Order No. 14154, *Unleashing American Energy* (Jan. 20, 2025), and Executive Order No. 14192, *Unleashing Prosperity Through Deregulation* (Jan. 31, 2025).

Conclusion

PMI thus supports EPA's proposed amendment of the GHGRP and urges EPA to remove the GHG reporting requirements, which are unlawful and unreasonably burdensome.

[12] *See Greenhouse Gas Reporting Program*, U.S. Env't Prot. Agency (Oct. 8, 2025), https://www.epa.gov/ghgreporting.

[13] For instance, EPA's Office of Air and Radiation awarded contracts for more than $5 billion under the Environmental, Analytical, Research, Technical, and Hybrid (EARTH) Support Services blanket purchase agreement, which includes, among other things, data analysis and modeling.