[ORAL ARGUMENT NOT YET SCHEDULED]

No. 22-1031 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF TEXAS, ET AL.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondents,

ADVANCED ENERGY ECONOMY, ET AL.,

Intervenors.

On Petition for Review from the United States Environmental Protection Agency

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BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Pursuant to D.C. Circuit Rule 29(b), undersigned counsel for *amicus curiae* Constitutional Accountability Center (CAC) represents that counsel for all parties have consented to the filing of this brief.[1]

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for *amicus curiae* certifies that a separate brief is necessary. *Amicus* is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to protect the rights, freedoms, and structural safeguards that our nation's charter guarantees. In furtherance of those goals, CAC has studied the rich history of legislative delegations to agencies, the development of the major questions doctrine, and its effects on the separation of powers. CAC accordingly has a unique interest in this case and is well situated to discuss the proper interpretation of the Supreme Court's decision in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022).

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I. PARTIES AND AMICI

Except for *amicus* Constitutional Accountability Center and any other *amici* who had not yet entered an appearance in this case as of the filing of Brief for Respondents, all parties, intervenors, and *amici* appearing in this Court are listed in the Briefs for Petitioners and Brief for Respondents.

II. RULINGS UNDER REVIEW

Reference to the ruling under review appears in the Brief for Respondents.

III. RELATED CASES

Reference to any related cases pending before this Court appears in the Brief for Respondents.

Dated: March 3, 2023

By: /s/ Brianne J. Gorod
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GLOSSARY

CAA	Clean Air Act
CDC	Centers for Disease Control and Prevention
EPA	U.S. Environmental Protection Agency
EPA Br.	Brief for Respondents
FDA	U.S. Food and Drug Administration
Fuel Br.	Brief for Private Petitioners
HHS	U.S. Department of Health and Human Services
IRS	Internal Revenue Service
OSHA	Occupational Safety and Health Administration
State Br.	Brief for State Petitioners

STATUTES AND REGULATIONS

Pertinent statutes, regulations, and legislative history are in the addendum to this brief.

INTEREST OF *AMICUS CURIAE*

Amicus Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works to preserve the structural safeguards that our nation's charter guarantees and accordingly has a strong interest in the scope of the major questions doctrine.

INTRODUCTION

In recent years, the Supreme Court has concluded in several cases that agencies were making novel assertions of transformative regulatory authority despite indications that Congress had not meant to grant that power. Taking stock of this case law, *West Virginia v. EPA* explicitly formulated a "major questions doctrine," explaining that "precedent teaches that there are 'extraordinary cases' that call for a different approach" from "routine statutory interpretation." 142 S. Ct. 2587, 2608-09 (2022) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-60 (2000)). In these extraordinary cases, courts do not simply analyze a law's text as usual but instead require agencies to show "clear congressional authorization" for their actions. *Id.* at 2609 (quoting *Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

As made clear by *West Virginia* and the precedent on which it relied, the "economic and political significance" of an agency decision does not alone render a

case "extraordinary." *Id.* at 2608 (quoting *Brown & Williamson*, 529 U.S. at 159-60). Instead, the "history and the breadth of the authority that the agency has asserted" must also indicate that the agency is seeking to fundamentally transform its power "beyond what Congress could reasonably be understood to have granted." *Id.* at 2608-09 (brackets omitted). To determine whether this second requirement is met, the Supreme Court has focused primarily on whether agencies are seeking "unheralded power" by twisting the "vague language" of "ancillary" provisions to "make a radical or fundamental change to a statutory scheme." *Id.* at 2609-10 (internal quotations omitted). An agency's claimed authority must be more than "unprecedented," it must represent a "'fundamental revision of the statute, changing it from one sort of scheme of . . . regulation' into an entirely different kind." *Id.* at 2612 (quoting *MCI Telecomms. Corp. v. Am. Telephone & Telegraph Co.*, 512 U.S. 218, 231 (1994) (brackets omitted)).

That is not the case here. The EPA—an agency with long-established expertise regulating motor vehicle emissions—is not employing an "obscure, never-used section of the law" to assert a fundamentally new type of power. *Id.* at 2602 (internal quotation omitted). Instead, it is using its flagship authority under Title II of the Clean Air Act to regulate automobiles as it has for decades: by setting technologically feasible vehicle emissions standards that protect health and welfare.

Applying the major questions doctrine too broadly—as urged by Petitioners—would unduly expand the situations in which a statute's best reading is subordinated to non-textual concerns like the practical consequences of agency action. It would also be in serious tension with the original understanding of the Constitution. Since the Founding, Congress has used broad language to grant the executive branch vast discretion over highly consequential decisions, and history does not suggest that Congress must speak in any particular fashion to assign such authority. Finally, overuse of the major questions doctrine would thrust the courts beyond their limited role interpreting the law, shifting their focus instead toward subjective assessments about pragmatic and political matters over which judges lack relative expertise.

These considerations all provide further reason to heed the Supreme Court's guidance and reserve the major questions doctrine for "extraordinary" cases in which agencies attempt dubious and spectacular transformations of their longstanding authority. In those situations, "a practical understanding of legislative intent" calls for judicial wariness. *Id.* at 2609. But here, where such radical and counterintuitive innovation is absent, refusing to give effect to the plain words of the CAA would unjustifiably interfere with the congressional intent plainly embodied in its text.

ARGUMENT

I. The Major Questions Doctrine Applies Only in "Extraordinary" Cases, Where an Agency's Breathtaking Assertion of Power Reflects a Dubious Effort to Transform the Fundamental Nature of Its Authority.

What is now known as the "major questions doctrine" emerged gradually in recent years, beginning as an aid to traditional statutory interpretation before transforming into a requirement of "clear congressional authorization" in "certain extraordinary cases." *West Virginia*, 142 S. Ct. at 2609 (internal quotations omitted). But while the doctrine has evolved, one thing has remained constant: the economic and political significance of an agency's action is not alone sufficient to trigger its application. Instead, other factors must indicate that the agency is subverting congressional intent by seeking "an unheralded power representing a transformative expansion in its regulatory authority." *Id.* at 2610 (internal quotations omitted).

The Supreme Court initially invoked the presumption that Congress speaks clearly when assigning authority over major questions only as additional support for conclusions reached through ordinary statutory interpretation. For example, the opinion containing the first glimmers of the doctrine, *Industrial Union Department, AFL-CIO v. American Petroleum Institute.*, 448 U.S. 607 (1980) (plurality op.), squarely rested its statutory construction on "language and structure" and "legislative history." *Id.* at 641. As further support, the opinion also noted that it would be unreasonable without a "clear mandate" to read the statute as permitting

"the unprecedented power over American industry" claimed by the agency, given that this interpretation would confer broad new authority to regulate "thousands of substances used in the workplace." *Id.* at 645.

After the Supreme Court decided *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), it occasionally buttressed its determination that a statute's plain meaning precluded judicial deference to agency interpretations with major questions analysis. In doing so, the Court continued to demand more than significant economic and political consequences; it also asked whether the agency sought to overhaul the basic nature of its authority. For example, in *MCI v. AT&T*, 512 U.S. 218 (1994), the Court rejected an agency's claim that its power to "modify" certain statutory requirements allowed it to completely exempt a large swath of industry from those requirements. *Id.* at 223-24. Because that word "connotes moderate change" and statutory context showed it was not intended to authorize "fundamental changes," this "subtle device" did not empower the agency to exclude "40% of a major sector" from obligations of "enormous importance to the statutory scheme." *Id.* at 228-31. In other words, the agency could not use this ancillary provision to effect a "fundamental revision of the statute." *Id.* at 231.

The same concerns animated a key case in the doctrine's development, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000). After nearly a century of claiming it lacked authority to regulate tobacco, the FDA reversed course, issuing

regulations to reduce youth smoking. *Id.* at 125. Examining the statute "as a whole," the Court concluded that "there is no room for tobacco products within the [FDA's] regulatory scheme," because other provisions would require the FDA to ban tobacco entirely if it fell within the agency's jurisdiction. *Id.* at 142-43.

Only then did the Court turn briefly to major questions considerations while discussing why it would not defer to the agency's interpretation. In "extraordinary cases," the Court wrote, "there may be reason to hesitate before concluding that Congress has intended such an implicit delegation." *Id.* at 159. Explaining why this was such a case, the Court emphasized the FDA's novel assertion of jurisdiction over an entire industry that previously fell outside its ambit, contrary to longstanding agency representations. *Id.* The Court further highlighted the agency's "extremely strained understanding of . . . a concept central to [its] regulatory scheme," the existence of "a distinct regulatory scheme for tobacco products," and repeated congressional actions "to preclude any agency from exercising significant policymaking authority in the area." *Id.* at 159-60. "Given this history and the breadth of the authority that the FDA has asserted," the Court concluded that "Congress could not have intended to delegate a decision of such economic and political significance" in "so cryptic a fashion." *Id.* at 160. The key point was the FDA's unpersuasive attempt to rewrite the boundaries of its regulatory authority.

The Court rejected a similar attempt in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), this time by litigants who claimed that the EPA must consider compliance costs when setting air quality standards. Disagreeing, the Court held that the statute "unambiguously bars cost considerations." *Id.* at 471. It rejected the argument that certain "modest words" in the statute authorized cost considerations, because Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions" or "hide elephants in mouseholes." *Id.* at 468 (citing *MCI*, 512 U.S. at 231; *Brown & Williamson*, 529 U.S. at 159-60). Once again, the focus was on preventing dubious transformations of regulatory regimes, not on the breadth of an agency's asserted power in isolation.

Confirming that point, *Massachusetts v. EPA*, 549 U.S. 497 (2007), emphasized the proper focus and narrow reach of the doctrine. There, the EPA justified its denial of a rulemaking petition to establish limits on vehicle greenhouse gas emissions by claiming that such limits "would have even greater economic and political repercussions than regulating tobacco." *Id.* at 512. The Court rejected this comparison to *Brown & Williamson*, explaining that while it was "unlikely that Congress meant to ban tobacco products," there was "nothing counterintuitive" about the EPA regulating greenhouse gas emissions. *Id.* at 530-31. In other words, because conflict "with the Agency's pre-existing mandate" was not apparent, the

Court would not "read ambiguity into a clear statute" simply because agency action would have significant consequences. *Id.*

In *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014), the Court began using major questions analysis when assessing the reasonableness of agencies' statutory interpretations. As before, the focus remained on whether an agency sought to transform its regulatory reach through improbable new interpretations. In this case, the EPA interpreted certain permit provisions to apply to stationary sources of greenhouse gas emissions, even though that interpretation would have swept in millions of additional sources. Admitting that its interpretation "would overthrow" the statute's "structure and design," the EPA tried to alleviate this result by changing statutorily prescribed emission thresholds to exempt many of those sources. *Id.* at 321-22. This obvious conflict with the statute made the EPA's approach unreasonable, "an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." *Id.* at 324. Thus, here too, the Court was concerned with an agency's "discover[y]" of an "unheralded power" in a "long-extant statute." *Id.*; *see id.* (the EPA was "seizing expansive power that it admit[ted] the statute [was] not designed to grant").

Other major questions cases underscore that a closer look is appropriate when agencies regulate new topics outside their areas of expertise. In *Gonzales v. Oregon*, 546 U.S. 243 (2006), the Court held invalid an Attorney General-issued rule barring

the provision of drugs for assisted suicide. To bolster its conclusion that *Chevron* was inapplicable because the rule exceeded the Attorney General's regulatory authority, the Court observed that Congress would not grant "broad and unusual authority" to alter a regulatory scheme's "fundamental details" through "vague terms or ancillary provisions." *Id.* at 259-61, 267 (internal quotations omitted). And in *King v. Burwell*, 576 U.S. 473 (2015), the Court did not defer to the IRS's interpretation of a law on health insurance tax credits, citing their importance to the statute's key reforms, their cost and scope, and the agency's lack of "expertise in crafting health insurance policy." *Id.* at 486. But the Court upheld the IRS's politically and economically significant rule nonetheless, concluding that it reflected the best reading of the statute. The Court pointedly rejected the challengers' reliance "on the ultimate ancillary provision: a sub-sub-sub section of the Tax Code." *Id.* at 497.

More recently, the Court's pandemic-era cases again underscore that more is required to trigger the major questions doctrine than vast economic and political significance. First, the Court ruled against an eviction moratorium issued pursuant to the CDC's authority "to prevent the introduction, transmission, or spread" of diseases. *Ala. Ass'n of Realtors v. HHS*, 141 S. Ct. 2485, 2487 (2021) (per curiam). Because the statute "illustrat[ed] the kinds of measures" it encompassed by listing examples, all directly tied to the spread of disease, the "far more indirect[]" eviction

ban was unauthorized. *Id.* at 2488. And "[e]ven if the text were ambiguous, the sheer scope of the CDC's claimed authority . . . would counsel against the Government's interpretation." *Id.* at 2489. This assessment hinged on more than financial costs or geographic reach alone: the "unprecedented" nature of the moratorium and the CDC's identification of virtually "no limit" to its claimed power were essential to the Court's conclusion that Congress did not likely grant this "breathtaking amount of authority." *Id.*

Similarly, when applying the doctrine to rule against OSHA's vaccination-or-testing mandate for large employers in *National Federation of Independent Business v. OSHA*, 142 S. Ct. 661 (2022) (per curiam), the Court discussed and relied on a variety of factors beyond the mandate's "significant encroachment into the lives—and health—of a vast number of employees." *Id.* at 665. These factors included the poor fit between OSHA's "sphere of expertise" in "workplace safety standards" and what resembled "a general public health measure," the conspicuous novelty of the mandate, and signs that Congress believed OSHA lacked this power. *Id.* at 665-66. At bottom, the Court concluded, the mandate was "simply not part of what the agency was built for." *Id.* at 665 (internal quotations omitted).

Significantly, that same day the Court did not apply the major questions doctrine to an HHS mandate that staff at medical facilities receiving Medicare or Medicaid funds be vaccinated against COVID. *Biden v. Missouri*, 142 S. Ct. 647

(2022) (per curiam). Dissenting justices highlighted the rule's economic and political significance, but that was not enough for the Court to invoke the doctrine. In view of the agency's "longstanding practice," the mandate was not "surprising," but rather was among the "routinely impose[d]" funding conditions relating to healthcare workers' responsibilities. *Id.* at 652-53. And unlike in *NFIB*, the Court found no mismatch with agency expertise: "addressing infection problems in Medicare and Medicaid facilities is what [the HHS Secretary] does." *Id.* at 653. The lesson: where agency action "fits neatly within the language of the statute," the major questions doctrine does not constrain the statute's "seemingly broad language." *Id.* at 652.

Finally, *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), announced the "major questions doctrine" as such and outlined its requirements. In "extraordinary cases," the Court explained, both "the history and the breadth of the authority that [the agency] has asserted, *and* the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority." *Id.* at 2608 (emphasis added) (internal quotations omitted).

West Virginia elaborated on the factors beyond economic and political significance that may indicate an agency is seeking to transform its authority in a way Congress did not likely intend. It cautioned against reading "modest words," "vague terms," "subtle device[s]," or "oblique or elliptical language" as providing

"extraordinary grants of . . . authority" to make a "radical or fundamental change to a statutory scheme." *Id.* at 2609 (internal quotations omitted). Applying the factors distilled from past major questions cases, the Court described the EPA as attempting a "transformative expansion in [its] regulatory authority" by asserting an "unheralded" power that changed the relevant statutory scheme "into an entirely different kind." *Id.* at 2610, 2612 (internal quotations omitted). The agency's novel approach relied on the "vague language of an ancillary provision[]," it required expertise not traditionally held by the agency, and Congress had "conspicuously and repeatedly declined to enact" such a regulatory scheme. *Id.* at 2610, 2612-13 (internal quotations omitted).

II. The EPA's Issuance of Motor Vehicle Emissions Standards Is Far From "Extraordinary."

In determining whether a case involves a major question, the issue is not merely whether an agency is asserting "highly consequential power," but whether that power is "beyond what Congress could reasonably be understood to have granted." *West Virginia*, 142 S. Ct. at 2609. While "vast economic and political significance" is necessary, it is not sufficient; the "history and the breadth" of the power asserted must also show that the agency is seeking a "transformative expansion in [its] regulatory authority" through a "radical or fundamental change to [the] statutory scheme." *Id.* at 2605, 2608-10 (internal quotations omitted). To identify such dubious transformations, the Court looks to several factors, focusing

in particular on eyebrow-raising novelty, conflict with the overall regulatory scheme, and reliance on vague, ancillary provisions. Unlike in *West Virginia* and prior major questions cases, those features are absent here.

A. Economic and political significance

Petitioners largely focus on the economic and political significance of the EPA's standards, Fuel Br. 22-34; State Br. 15-17, 22-24, but as just noted, *West Virginia* and prior cases treated economic and political significance alone as insufficient to render a case so "extraordinary" as to merit application of the major questions doctrine. *West Virginia*, 142 S. Ct. 2610-14 (relying also on "unheralded" and "transformative" use of "ancillary provision[s]"); *Missouri*, 142 S. Ct. at 652 (emphasizing that where action "fits neatly within the language of the statute," the doctrine does not constrain the statute's "seemingly broad language," notwithstanding significant consequences); *Utility Air*, 573 U.S. at 324 (also noting "unheralded" and "transformative" nature of power that agency "admits the statute is not designed to grant"); *Brown & Williamson*, 529 U.S. at 160 (also noting "history and breadth" of authority and "Congress' consistent judgment to deny the [agency] this power").

Indeed, Petitioners' arguments echo those made by the EPA in *Massachusetts*, where the agency argued that economic consequences precluded it from regulating vehicular greenhouse gases. *Compare* 68 Fed. Reg. 52,922, 52,928 (Sept. 8, 2003)

(asserting that such regulation would "require a wholesale remaking of this sector"), *with* Fuel Br. 26 (asserting that standards will "overhaul the American automobile industry"). The Court disagreed. Rejecting the notion that economic and political significance is enough to trigger the doctrine, the Court looked for (but did not find) evidence that the agency was seeking to transform its own power through dubious means: "there is nothing counterintuitive to the notion that EPA can curtail the emission of [greenhouse gases]." *Id.* at 531. So too here.

Moreover, when identifying actions with vast economic and political significance, the Court has focused more on the number of entities newly swept into regulatory schemes than on new costs imposed on already-regulated entities. *See Utility Air*, 573 U.S. at 332 (upholding greenhouse gas rules where "[w]e are not talking about extending EPA jurisdiction over millions of previously unregulated entities, but about moderately increasing the demands EPA . . . can make of entities already subject to its regulation"); *Brown & Williamson*, 529 U.S. at 159 (rejecting new assertion of jurisdiction over "an industry constituting a significant portion of the American economy"). There is no newly regulated industry to analyze here: the EPA has regulated automobile emissions for decades.

B. Transformative expansion of power unlikely to reflect Congress's intent

In applying the doctrine's second requirement that an agency has fundamentally transformed its authority in a manner "very unlikely" to have been

authorized by Congress, *West Virginia*, 142 S. Ct. at 2609, the Supreme Court looks for several potential indicators that such a transformation is afoot—none of which are present in this case.

1. Novel uses of agency power

The Supreme Court has repeatedly expressed skepticism about "unprecedented" claims of authority, *West Virginia,* 142 S. Ct. at 2612 (quoting *Industrial Union*, 448 U.S. at 645), in which agencies purport to find "unheralded power[s]" in "long-extant statute[s]," *id.* at 2610 (quoting *Utility Air*, 573 U.S. at 324).

Importantly, though, the Court considers novelty at a high level of generality. When an agency takes action "strikingly unlike" its past efforts, this can weigh in favor of the doctrine's application. *NFIB*, 142 S. Ct. at 665. But the same is not true when an agency has previously set standards in a particular area and its new regulations merely go "further than what [it] has done in the past." *Missouri*, 142 S. Ct. at 652-53; *see also* EPA Br. 51-52.

The EPA's rule is far from novel. The agency "routinely imposes," *id.* at 653, standards under Section 202 that encourage the development of cleaner vehicular technologies. Indeed, it has regulated automobile emissions for more than fifty years and has issued similarly designed greenhouse gas standards since 2010. *See* EPA Br. 6, 16.

Furthermore, the specific regulatory techniques challenged by Private Petitioners have a long pedigree of use under Section 202. *See* EPA Br. 17-18, 35-38. Nearly 40 years ago, the EPA permitted manufacturers to average emissions of light-duty diesel vehicles to meet particulate matter standards. 48 Fed. Reg. 33,456 (July 21, 1983). And in 1990, it enacted an averaging, banking, and trading program for certain heavy-duty engine emissions. 55 Fed. Reg. 30,584 (July 26, 1990).

2. Actions incongruent with overall regulatory scheme

When an agency asserts authority that fits poorly within a statute's overall regulatory structure, such a "fundamental revision of the statute" militates toward applying the major question doctrine. *West Virginia*, 142 S. Ct. at 2612 (quoting *MCI*, 512 U.S. at 231). But here, the EPA's rule does not transform the statute "'from [one sort of] scheme of . . . regulation' into an entirely different kind," *id.*, or plausibly "render the statute unrecognizable to the Congress that designed it," *Utility Air*, 573 U.S. at 324 (internal quotation omitted).

Private Petitioners admit that the statutory scheme permits the EPA to "set standards that are 'technology-forcing.'" Fuel Br. 59. But they artificially exclude electrification with no basis in the statute—Section 202(a) applies broadly to "motor vehicles," defined elsewhere as "any self-propelled vehicle designed for transporting persons or property on a street or highway." 42 U.S.C. §§ 7521(a), 7550(2). Indeed, when the CAA was passed, lawmakers recognized that the "urgency of the

problems" of automotive emissions "requires that the industry consider, not only the improvement of existing technology, but also alternatives to the internal combustion engine." 116 Cong. Rec. 32902 (Sept. 21, 1970) (Sen. Muskie); *see Int'l Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 634-35 (D.C. Cir. 1973) ("Congress expected the Clean Air Amendments to force the Industry to broaden the scope of its research").

As such, EPA regulations issued in 1990 under Section 202 encouraged development of lower-emission alternative-fueled engines. 55 Fed. Reg. 30,584, 30,585 (July 26, 1990). And the EPA's light vehicle greenhouse gas regulations have consistently considered electric vehicle technology alongside other "technologies that manufacturers could use to . . . reduce CO2 emissions of their vehicles" and encouraged its development. *See, e.g.*, 75 Fed. Reg. 25,324 25,373-75, 25,434-38 (May 7, 2010); EPA Br. 16. Indeed, the challenged standards did not "chang[e] the fundamental structure of the [preexisting] GHG standards." 75 Fed. Reg. 74,434, 74,446 (Dec. 30, 2021). Thus, the EPA's establishment of standards that encourage development of cleaner technology is a "straightforward and predictable example," *Missouri*, 142 S. Ct. at 653, of the use of its congressionally granted authority.

3. Use of vague or ancillary provisions to assert broad authority

The Supreme Court has been particularly wary of claimed authority that rests on "'subtle device[s]'" or "cryptic" delegations. *See, e.g.*, *Brown & Williamson*, 529

U.S. at 160 (quoting *MCI*, 512 U.S. at 231). *West Virginia* itself stressed that the EPA was using an "obscure," "ancillary," "little-used backwater" for its wide-reaching regulation. 142 S. Ct. at 2602, 2610, 2613 (internal quotations omitted).

Section 202, however, is far from an "ancillary" or "obscure" provision. Indeed, Petitioners concede that it is "the center of the scheme" for regulating motor vehicle emissions. Fuel Br. 5; *see also* State Br. 4.

And the provision is far from "cryptic." Section 202(a)(1) requires the EPA Administrator to set emission standards covering "any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1). This "broad language," *Massachusetts*, 549 U.S. at 532, is quite clear—conferring a "general power," *Nat. Res. Def. Council, Inc. v. EPA*, 655 F.2d 318, 322 (D.C. Cir. 1981), to tackle air pollution from motor vehicles. The EPA's use of this authority to control harmful motor vehicle emissions provides no "reason to hesitate before concluding that Congress meant to confer such authority." *West Virginia*, 142 S. Ct. at 2608 (internal quotation omitted).

4. Mismatch between expertise and claimed power

The Supreme Court also considers an agency's expertise when determining if it is seeking transformative power that Congress is unlikely to have granted. *See*

West Virginia, 142 S. Ct. at 2612-13 ("'when [an] agency has no comparative expertise' in making certain policy judgments . . . 'Congress presumably would not' task it with doing so" (quoting *Kisor v. Wilkie*, 139 S. Ct. 2400, 2417 (2019))). Consistent with that presumption, the Court has concluded that Congress was "especially unlikely" to grant the IRS authority to make health insurance decisions because the IRS "has no expertise in crafting health insurance policy." *King*, 576 U.S. at 486. Likewise, an "official who lacks medical expertise" is unlikely to be tasked by Congress with "medical judgments." *Gonzales*, 546 U.S. at 266.

In contrast, it does not "raise[] an eyebrow," *West Virginia*, 142 S. Ct. at 2613, that the EPA would be tasked with determining the feasibility of meeting emission standards using new automotive technology. The agency has substantial expertise in this field. *See Nat. Res. Def. Council*, 655 F.2d at 331 (noting "EPA's expertise in projecting the likely course of development" of such technology). Its National Vehicle and Fuel Emissions Laboratory tests "electrified and conventional vehicles" and "produces critical test data on new and emerging vehicle and engine technologies." EPA FY 2023 Budget Request Tab 04: Science and Technology, 84. Setting emission standards that weigh "public health or welfare," projected time for "development and application of the requisite technology," and the "cost of compliance," 42 U.S.C. § 7521(a), falls precisely within the EPA's "sphere of expertise," *NFIB*, 142 S. Ct. at 665.

5. Legislative activity implying lack of authorization

The Supreme Court has occasionally considered congressional activity occurring after a statute's enactment as part of its major questions analysis. *E.g.*, *West Virginia*, 142 S. Ct. at 2614 (failed legislation adopting cap-and-trade scheme suggested similar scheme was not already authorized). But *Brown & Williamson*—a key case in the doctrine's development—downplayed the probative value of such evidence, emphasizing that it did "not rely on Congress' failure to act," but instead on conflict between the agency's interpretation and other statutes addressing tobacco. 529 U.S. at 155-56; *see also Pension Ben. Gaur. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) (explaining "subsequent history is a hazardous basis for inferring the intent of an earlier Congress" and "a particularly dangerous ground" for interpretation when concerning "a proposal that does not become law" (internal quotations omitted)).

Petitioners have shown no evidence of "Congress' consistent judgment to deny the [EPA] this power." *Brown & Williamson,* 529 U.S. at 160. Unenacted bills to impose an entirely different type of regulatory scheme, *see* Fuel Br. 32-33—requiring each vehicle manufacturer to produce a minimum percentage of zero-emission vehicles—do not suggest that the EPA lacks authority to continue setting

emissions standards with an eye toward technological feasibility.[2] And an enacted law allocating billions to build electric vehicle charging stations, Pub. L. No. 117-58, 135 Stat. 429, 1421-26 (2021), does not show that Congress "remains in factfinding mode" about electrification, Fuel Br. 29, much less suggest limitations on the CAA. Importantly, Congress has not affirmatively "acted to preclude a meaningful role," *Brown & Williamson*, 529 U.S. at 156, for the EPA in regulating greenhouse gases from automobiles. Indeed, bills introduced to strip this authority from the agency were never enacted into law. *See, e.g.,* H.R. 910, 112th Cong. (2011); S. 482, 112th Cong. (2011).

III. Extending the Major Questions Doctrine to Cases Like This Would Undermine Traditional Statutory Interpretation and Constitutional Principles.

A. Textualism

When interpreting statutes, a court's "job is to interpret the words consistent with their ordinary meaning . . . at the time Congress enacted the statute." *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) (internal quotation omitted). After all, "[t]he people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020). Looking

[2] Unlike these failed legislative proposals, the challenged standards "are performance-based, and do not mandate a specific penetration of EVs and PHEVs." EPA Response to Comments at 2-179.

beyond the text to "impos[e] limits on an agency's discretion" can therefore amount to "alter[ing]" rather than "interpret[ing]" a statute. *Little Sisters of the Poor v. Pa.*, 140 S. Ct. 2367, 2381 (2020).

That is exactly what Petitioners ask this Court to do. By overemphasizing economic and political considerations unrelated to the text, while failing to show any "radical or fundamental change to [the] statutory scheme," *West Virginia*, 142 S. Ct. at 2609 (internal quotations omitted), Petitioners seek to limit broad statutory language based on their predictions of "undesirable policy consequences," *Bostock*, 140 S. Ct. at 1753; *see, e.g.*, State Br. 15-24 (purported threats to electric grid and global supply chains). They ask this Court to artificially constrain the text of Section 202 because of the rule's supposed practical consequences, *see* Fuel Br. 24-34; State Br. 15-17, 22-24, and because it "goes further than what the [agency] has done in the past," *Missouri*, 142 S. Ct. at 653 (rejecting similar claim).

But "[t]he broad language of § 202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall [regulatory] obsolescence," enabling the EPA to respond to "changing circumstances and scientific developments." *Massachusetts*, 549 U.S. at 532. Applying the major questions doctrine in this context would undermine, rather than promote, "a practical understanding of legislative intent." *West Virginia*, 142 S. Ct. at 2609; *see also Bostock*, 140 S. Ct. at 1753 (rejecting "naked policy appeals" in favor of "plain language"); Chad Squitieri, *Major*

Problems with Major Questions, Law & Liberty (Sept. 6, 2022), https://lawliberty.org/major-problems-with-major-questions/.

That concern is heightened because Congress could not have anticipated when enacting Section 202 that courts would later impose a new doctrine requiring "clear authorization" for specific regulatory actions. *See* John F. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2474 n.318, 2475 (2003) (judges should "attempt to identify the conventions in effect at the time of a statute's enactment" because legislators draft statutes in light of background legal precepts); Mila Sohoni, *The Major Questions Quartet,* 136 Harv. L. Rev. 262, 286 (2022) (it is "unfair to Congress" to apply new limiting rules "to earlier-enacted legislation").

Precisely because it departs from "routine statutory interpretation," the major questions doctrine is reserved for extraordinary cases involving efforts to transform statutes "from one sort of scheme of . . . regulation into an entirely different kind." *West Virginia*, 142 S. Ct. at 2609, 2612 (internal quotations omitted). Expanding the doctrine beyond that narrow sphere to a case like this would undermine established textualist principles. Politicians and interest groups cannot amend statutes by "creating political controversy around what an agency has done." Daniel Deacon & Leah Litman, *The New Major Questions Doctrine*, 109 Va. L. Rev. ___, at *40-41 (forthcoming 2023); *see* Fuel Br. at 28-29 (asserting relevance of state-level controversy).

B. Original Meaning

The overly broad major questions doctrine advanced by Petitioners is in serious tension with the Constitution's original meaning because it would impose heightened requirements on Congress whenever it attempts to authorize agencies to take actions with significant economic or political consequences. As originally understood, the Constitution embodies no skepticism toward agency resolution of consequential policy decisions and therefore does not require Congress to speak in any particular fashion to assign such authority. Indeed, early Congresses repeatedly used broad language to grant the executive branch vast discretion over some of the era's most pressing economic and political issues.

Recent scholarship has cataloged these early assignments of authority. For example, the First Congress banned all trade and intercourse with the Indian tribes without a license, while granting the president total discretion to devise the "rules, regulations, and restrictions" governing the licensing scheme. Act of July 22, 1790, ch. 33, § 1, 1 Stat. 137, 137. President Washington used this authority to specify who could trade, what items could be traded, and where—unilaterally shaping the scope of this politically significant trade. *See* Julian Davis Mortenson & Nicholas Bagley, *Delegation at the Founding*, 121 Colum. L. Rev. 277, 341 (2021).

The First Congress assigned similarly broad authority to address "arguably the greatest problem facing our fledgling Republic: a potentially insurmountable

national debt." Christine Kexel Chabot, *The Lost History of Delegation at the Founding*, 56 Ga. L. Rev. 81, 81 (2021). To that end, Congress authorized the president to borrow about $1.3 trillion in new loans (in today's dollars) and to make other contracts aimed at refinancing the debt "as shall be found for the interest of the [United] States." Act of Aug. 4, 1790, ch. 34, § 2, 1 Stat. 138, 139; *see* Chabot, *supra*, at 123-24. The statute left the implementation of this broad mandate largely to the president's discretion. *See id.*; Mortenson & Bagley, *supra*, at 344-45.

These statutes were not unusual. To list just a few examples: Congress also granted the Treasury Secretary "authority to effectively rewrite the statutory penalties for customs violations," Kevin Arlyck, *Delegation, Administration, and Improvisation*, 96 Notre Dame L. Rev. 243, 306 (2021); *see* Act of May 26, 1790, ch. 12, § 1, 1 Stat. 122, 122-23, "one of the most important and extensive powers" of the government at the time, *The Margaretta*, 16 F. Cas. 719, 721 (C.C.D. Mass. 1815) (Story, C.J.). Congress authorized an executive board to grant exclusive patents if it deemed inventions or discoveries "sufficiently useful and important," Act of Apr. 10, 1790, ch. 7, § 1, 1 Stat. 109, 110. And Congress gave federal commissioners power over the politically fraught question of how to appraise property values for the nation's first direct tax. *See* Nicholas R. Parrillo, *A Critical Assessment of the Originalist Case Against Administrative Regulatory Power: New*

Evidence from the Federal Tax on Private Real Estate in the 1790s, 130 Yale L.J. 1288, 1391-1401 (2021).

Just as the Founding-era Congress readily assigned consequential policy decisions to the executive branch, there is no basis for imposing heightened burdens on Congress when it seeks to do so today, merely because of those decisions' practical significance. That is why the major questions doctrine looks only for extraordinary cases in which an agency twists "vague" and "ancillary" provisions to claim "newfound power" that is "beyond what Congress could reasonably be understood to have granted." *West Virginia*, 142 S. Ct. at 2609-10 (internal quotations omitted). This is not such a case: Section 202 is an example of Congress choosing to grant an agency broad authority and concomitant flexibility to address consequential policy decisions within the scope of its expertise. *See* EPA Br. 40-44.

C. Separation of Powers

The major questions doctrine is meant to promote "separation of powers principles." *West Virginia*, 142 S. Ct. at 2609. But an aggressively applied doctrine raises its own separation-of-powers concerns, threatening to become "a license for judicial aggrandizement" that transfers authority "from agencies, the President, and Congress" to the courts. Nathan Richardson, *Antideference: COVID, Climate, and the Rise of the Major Questions Canon*, 108 Va. L. Rev. Online 174, 175, 200 (2022).

If expanded beyond the narrow bounds the Supreme Court has prescribed, the doctrine risks constraining Congress's power to authorize significant agency actions, or to grant flexible authority capable of addressing new developments within an agency's expertise. More than a "check on executive power," this would restrict legislative authority by "direct[ing] how Congress must draft statutes." Sohoni, *supra*, at 276.

Here, for instance, Petitioners seek to use the major questions doctrine to effectively rewrite Section 202, asking this Court to impose extratextual limitations on the EPA's authority to set emission standards for motor vehicles. But "[w]hen courts apply doctrines that allow them to rewrite the laws (in effect), they are encroaching on the legislature's Article I power." Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2120 (2016) (book review). And skewing a statute's meaning because of political controversies or other developments arising after its enactment would risk "amending legislation outside the single, finely wrought and exhaustively considered, procedure the Constitution commands." *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (quotation marks omitted).

This potential for encroachment on congressional prerogatives further underscores the need to reserve the doctrine for truly "extraordinary" cases. Applying it whenever an agency makes a costly or controversial decision would

place the courts in an especially fraught position. If the judiciary "starts to reject Congress's legislation on important matters precisely because it is important," this could erode courts' perceived status as non-political arbiters of the law. Lisa Heinzerling, *Nondelegation on Steroids*, 29 N.Y.U. Envtl. L. J. 379, 391 (2021).

Furthermore, while the doctrine is meant to reflect "a practical understanding of legislative intent," *West Virginia*, 142 S. Ct. 2609, applying it too broadly would be at odds with Congress's demonstrated intent to allow agencies to make decisions with dramatic economic consequences. The Congressional Review Act requires federal agencies to report new rules to Congress and to identify "major" rules, which "shall take effect" unless Congress acts to disapprove them. 5 U.S.C. § 801; *see id.* § 804 (defining such rules under the Act by their economic effect). Applying the major questions doctrine to all costly agency actions would upend this statute and the congressional policy it embodies, replacing its "*major-rules-are-valid-unless-rejected* framework with the judge-made *major-rules-are-invalid-unless-approved* framework." Squitieri, *Major Problems*, *supra*.

These concerns are not alleviated by Congress's ability to pass legislation after a judicial decision. "For a court to say that Congress can fix a statute if it does not like the result is *not* a neutral principle in our separation of powers scheme because it is very difficult for Congress to correct a mistaken statutory decision." Kavanaugh, *supra*, at 2133-34. Potential future correction "is not a good reason for

courts to do anything but their level best to decide the case correctly in the first place." *Id.* at 2134.

In sum, the major questions doctrine's heightened standard of clarity applies only when a number of factors together reveal that an agency is seeking a "transformative expansion" of the power Congress meant to assign it. *West Virginia*, 142 S. Ct. at 2610. Stretching the doctrine beyond those extraordinary cases would not serve, but instead would severely undermine, the separation of powers.

CONCLUSION

For the foregoing reasons, this Court should dismiss or deny the petitions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 6,492 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 3rd day of March, 2023.

/s/ Brianne J. Gorod
Brianne J. Gorod

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2023, I electronically filed the foregoing document using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: March 3, 2023

/s/ Brianne J. Gorod
Brianne J. Gorod

STATUTORY AND REGULATORY ADDENDUM

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Except for the following, all applicable statutes and legislative materials are contained in the Brief for Respondents.

Statutes

Legislative Materials

mitted to us by the said act, and in the name, and for and on behalf of the said state, do, by these presents, convey, assign, transfer, and set over unto the United States of America, for the benefit of the said states, North Carolina inclusive, all right, title, and claim which the said state hath to the sovereignty and territory of the lands situated within the chartered limits of the said state, as bounded and described in the above recited act of the General Assembly, to and for the uses and purposes, and on the conditions mentioned in the said act.

Boundaries and conditions of the cession.

In witness whereof, we have hereunto subscribed our names, and affixed our seals, in the senate-chamber, at New York, this twenty-fifth day of February, in the year of our Lord, one thousand seven hundred and ninety, and in the fourteenth year of the independence of the United States of America.

SAM. JOHNSTON. (L.S.)
BENJAMIN HAWKINS. (L.S.)

Signed, sealed, and delivered in the presence of
SAM. A. OTIS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said deed be, and the same is hereby accepted.

Accepted.

APPROVED, April 2, 1790.

STATUTE II.
April 10, 1790.

CHAP. VII.—*An Act to promote the progress of useful Arts.*(a)

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That upon the petition of any person or persons to the Secretary of State, the Secretary

Patents for useful discoveries, how applied for, and granted.

(a) The acts passed by Congress, subsequent to this statute, relating to patents for useful inventions, have been:

1. An "act to promote the progress of useful arts; and to repeal the act heretofore made for this purpose," passed February 21, 1793. Repealed by act of July 4, 1836.
2. An act supplementary to the act entitled an "act to promote the progress of useful arts," passed June 7, 1794. Repealed by act of July 4, 1836.
3. An act to extend the privilege of obtaining patents for useful discoveries and inventions to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees, passed April 17, 1800. Repealed by act of July 4, 1836.
4. An act concerning patents for useful inventions, passed July 3, 1832. Repealed by act of July 4, 1836.
5. An act concerning the issuing of patents to aliens for useful discoveries and inventions, passed July 13, 1832. Repealed by act of July 4, 1836.
6. An act to promote the progress of useful arts, and to repeal all acts heretofore made for that purpose, passed July 4, 1836.
7. An act authorizing the commissioner of the patent office to issue patents to Angier Marsh Perkins, and John Howard Ryan, passed March 31, 1838.
8. An act in addition to an act to promote the progress of the useful arts, passed March 3, 1839, chap. 87. Altered by act of August 29, 1842, chap. 262.
9. An act in addition to an act to promote the progress of the useful arts, and to repeal all acts heretofore made for that purpose, passed August 29, 1842, chap. 262.

The following cases have been decided in the courts of the United States, upon the laws granting patents for new and useful inventions:—

1. On the form and subjects of patents,—*Invention and Discovery,—the Specification and Description.*—Evans *v.* Eaton, 3 Wheat. 454; 4 Cond. Rep. 291. Pennock *v.* Dialogue, 2 Peters, 16. Grant et al. *v.* Raymond, 6 Peters, 218. Shaw *v.* Cooper, 7 Peters, 292. Prouty *v.* Ruggles, 16 Peters, 336. Whittemore *v.* Cutter, 1 Gallis. C. C. R. 429, 478. Odiorne *v.* Winkley. 2 Gallis. C. C. R. 51. Stearns *v.* Barret, 1 Mason's C. C. R. 153. Lowell *v.* Lewis, 1 Mason's C. C. R. 182. Bedford *v.* Hunt, 1 Mason's C. C. R. 302. Kneass *v.* The Schuylkill Bank, 4 Wash. C. C. R. 9. Barrett et al. *v.* Hall et al., 1 Mason's C. C. R. 447. Odiorne *v.* The Amesbury Nail Factory, 2 Mason's C. C. R. 28. Moody *v.* Fisk et al., 2 Mason's C. C. R. 112. Langdon *v.* De Groot, Paine's C. C. R. 203. Goodyear *v.* Matthews, Paine's C. C. R. 300. Morris *v.* Huntingdon, Paine's C. C. R. 348. Sullivan *v.* Redfield et al., Paine's C. C. R. 441. Rutgen *v.* Kanowers, 1 Wash. C. C. R. 168. Evans *v.* Chambers, 2 Wash. C. C. R. 125. Evans *v.* Eaton, 3 Wash. C. C. R. 443; Peters' C. C. R. 322. Dixon *v.* Moyer, 4 Wash. C. C. R. 68. Gray et al. *v.* James et al., Peters' C. C. R. 394. Mellus *v.* Silsbee, 4 Mason's C. C. R. 108. Ames *v.* Howard, 1 Sumner's C. C. R. 482. Delano *v.* Scott, Gilpin's D. C. R. 489. Wood *v.* Williams, *ibid.* 517. Evans *v.* Jordan et al., 1 Brockenb. C. C. R. 248. Davis *v.* Palmer, 2 Brockenb. C. C. R. 298. Ryan *v.* Goodwin, 3 Sumner's C. C. R. 514. Blanchard *v.* Sprague, 3 Sumner's C. C. R. 279. Alden *v.* Dewey, 1 Story's C. C. R. 336. Prouty *v.* Draper, *ibid.* 568. Reed *v.* Cutter, *ibid.* 590. Stone *v.* Sprague, *ibid.* 270.

Infringement of Patent Rights.—Evans *v.* Jordon et al., 9 Cranch, 199; 3 Cond. Rep. 358. Keplenger *v.* De Young, 10 Wheat. 358; 6 Cond. Rep. 135. Shaw *v.* Cooper, 7 Peters, 292. Whittemore *v.* Cutter,

Repealed by the act of 21st Feb. 1793, ch. 11.

The Secretary of State, the Sec. of war, and the Attorney General, or any two of them, if they shall deem the invention, &c. useful and important, to cause letters patent to be issued.

Continuance of a patent.

Attorney General to certify the conformity of the patent with this act.

Patents to be recorded.

for the department of war, and the Attorney General of the United States, setting forth, that he, she, or they, hath or have invented or discovered any useful art, manufacture, engine, machine, or device, or any improvement therein not before known or used, and praying that a patent may be granted therefor, it shall and may be lawful to and for the said Secretary of State, the Secretary for the department of war, and the Attorney General, or any two of them, if they shall deem the invention or discovery sufficiently useful and important, to cause letters patent to be made out in the name of the United States, to bear teste by the President of the United States, reciting the allegations and suggestions of the said petition, and describing the said invention or discovery, clearly, truly and fully, and thereupon granting to such petitioner or petitioners, his, her or their heirs, administrators or assigns for any term not exceeding fourteen years, the sole and exclusive right and liberty of making, constructing, using and vending to others to be used, the said invention or discovery; which letters patent shall be delivered to the Attorney General of the United States to be examined, who shall, within fifteen days next after the delivery to him, if he shall find the same conformable to this act, certify it to be so at the foot thereof, and present the letters patent so certified to the President, who shall cause the seal of the United States to be thereto affixed, and the same shall be good and available to the grantee or grantees by force of this act, to all and every intent and purpose herein contained, and shall be recorded in a book to be kept for that purpose in the office of the Secretary of State, and delivered to the patentee or his agent, and the delivery thereof shall be entered on the record and endorsed on the patent by the said Secretary at the time of granting the same.

Specification in writing with a draft or model thereof to be delivered and filed in the office of the Secretary of State.

Sec. 2. *And be it further enacted*, That the grantee or grantees of each patent shall, at the time of granting the same, deliver to the Secretary of State a specification in writing, containing a description, accompanied with drafts or models, and explanations and models (if the nature of the invention or discovery will admit of a model) of the thing or things, by him or them invented or discovered, and described as aforesaid, in the said patents; which specification shall be so particular, and said models so exact, as not only to distinguish the invention or discovery from other things before known and used, but also to enable a workman or other person skilled in the art or manufacture, whereof it is a branch, or wherewith it may be nearest connected, to make, construct, or use the same, to the end that the public may have the full benefit thereof, after the expiration of the patent term; which specification shall be filed in the office of the said Secretary, and certified copies

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1 Gallis. C. C. R. 429. Gray and Osgood *v.* James, Peters' C. C. R. 394. Sawin et al. *v.* Guild, 1 Gallis. C. C. R. 485. Lowell *v.* Lewis, 1 Mason's C. C. R. 182. Kneass *v.* The Schuylkill Bank, 4 Wash. C. C. R. 106. Barret et al. *v.* Hall et al., 1 Mason's C. C. R. 447. Boston Manufacturing Company *v.* Fiske et al., 2 Mason's C. C. R. 119. Dawson *v.* Follen, 2 Wash. C. C. R. 311. Evans *v.* Weiss 2 Wash. C. C. R. 342. Parke *v.* Little et al., 3 Wash. C. C. R. 196. Evans *v.* Eaton, Peters' C. C. R. 322. The Philadelphia and Trenton Railroad Company *v.* Stimpson, 14 Peters, 448.

Proceedings and Pleadings for Violation of Patent Rights.—Ex parte Wood and Brundage, 9 Wheat. 603; 5 Cond. Rep. 702. Grant *v.* Raymond, 6 Peters, 218. Whittemore *v.* Cutter, 1 Gallis. C. C. R. 429. Stearns *v.* Barrett, 1 Mason's C. C. R. 153. Sullivan *v.* Redfield et al., Paine's C. C. R. 441. Executors of Fulton *v.* Meyers, 4 Wash. C. C. R. 220. Pettibone *v.* Derringer, 4 Wash. C. C. R. 215. Kneass *v.* The Schuylkill Bank, 4 Wash. C. C. R. 106. Dixon *v.* Moyer, 4 Wash. C. C. R. 68. Isaacs *v.* Cooper, 4 Wash. C. C. R. 259. Evans *v.* Kremer, Peters' C. C. R. 215. Ames *v.* Howard, 1 Sumner's C. C. R. 482.

Evidence in Actions for the Violation of Patent Rights.—Evans *v.* Eaton, 3 Wheat. 454; 4 Cond. Rep. 291. Evans *v.* Hettick, 7 Wheat. 453; 5 Cond. Rep. 317. Whittemore *v.* Cutter, 1 Gallis' C. C. R. 478. Odiorne *v.* Winkley, 2 Gallis. C. C. R. 51. Stearns *v.* Barrett, 1 Mason's C. C. R. 153. Kneass *v.* The Schuylkill Bank, 4 Wash. C. C. R. 106. Dixon *v.* Moyer, 4 Wash. C. C. R. 68. Evans *v.* Eaton, Peters' C. C. R. 322.

Surrender and Repeal of Patents.—Ex parte Wood and Brundage, 9 Wheat. 603; 5 Cond. Rep. 702. The Philadelphia and Trenton Railroad Company *v.* Stimpson, 14 Peters, 448. Shaw *v.* Cooper, 7 Peters, 292. Grant *v.* Raymond, 6 Peters, 218. Delano *v.* Scott, Gilpin's C. C. R. 489. Stearns *v.* Barrett, 1 Mason's C. C. R. 153. Morris *v.* Huntingdon, Paine's C. C. R. 348. See post 318.

See also Peters's Digest, *Patents for useful inventions.*

thereof, shall be competent evidence in all courts and before all jurisdictions, where any matter or thing, touching or concerning such patent, right, or privilege, shall come in question.

Certified copies in what cases to be evidence.

SEC. 3. *And be it further enacted*, That upon the application of any person to the Secretary of State, for a copy of any such specification, and for permission to have similar model or models made, it shall be the duty of the Secretary to give such copy, and to permit the person so applying for a similar model or models, to take, or make, or cause the same to be taken or made, at the expense of such applicant.

Copies of specification, and models may be taken.

SEC. 4. *And be it further enacted*, That if any person or persons shall devise, make, construct, use, employ, or vend within these United States, any art, manufacture, engine, machine or device, or any invention or improvement upon, or in any art, manufacture, engine, machine or device, the sole and exclusive right of which shall be so as aforesaid granted by patent to any person or persons, by virtue and in pursuance of this act, without the consent of the patentee or patentees, their executors, administrators or assigns, first had and obtained in writing, every person so offending, shall forfeit and pay to the said patentee or patentees, his, her or their executors, administrators or assigns such damages as shall be assessed by a jury, and moreover shall forfeit to the person aggrieved, the thing or things so devised, made, constructed, used, employed or vended, contrary to the true intent of this act, which may be recovered in an action on the case founded on this act.

Penalty for making, &c. any art, &c. for which a patent has been granted.

Damages to be assessed by a jury.

SEC. 5. *And be it further enacted*, That upon oath or affirmation made before the judge of the district court, where the defendant resides, that any patent which shall be issued in pursuance of this act, was obtained surreptitiously by, or upon false suggestion, and motion made to the said court, within one year after issuing the said patent, but not afterwards, it shall and may be lawful to and for the judge of the said district court, if the matter alleged shall appear to him to be sufficient, to grant a rule that the patentee or patentees, his, her, or their executors, administrators or assigns, show cause why process should not issue against him, her, or them, to repeal such patents; and if sufficient cause shall not be shown to the contrary, the rule shall be made absolute, and thereupon the said judge shall order process to be issued as aforesaid, against such patentee or patentees, his, her, or their executors, administrators, or assigns. And in case no sufficient cause shall be shown to the contrary, or if it shall appear that the patentee was not the first and true inventor or discoverer, judgment shall be rendered by such court for the repeal of such patent or patents; and if the party at whose complaint the process issued, shall have judgment given against him, he shall pay all such costs as the defendant shall be put to in defending the suit, to be taxed by the court, and recovered in such manner as costs expended by defendants, shall be recovered in due course of law.

Patents surreptitiously obtained, how to be repealed.

SEC. 6. *And be it further enacted*, That in all actions to be brought by such patentee or patentees, his, her, or their executors, administrators or assigns, for any penalty incurred by virtue of this act, the said patents or specifications shall be *prima facie* evidence, that the said patentee or patentees was or were the first and true inventor or inventors, discoverer or discoverers of the thing so specified, and that the same is truly specified; but that nevertheless the defendant or defendants may plead the general issue, and give this act, and any special matter whereof notice in writing shall have been given to the plaintiff, or his attorney, thirty days before the trial, in evidence, tending to prove that the specification filed by the plaintiff does not contain the whole of the truth concerning his invention or discovery; or that it contains more than is necessary to produce the effect described; and if the concealment of part, or the addition of more than is necessary, shall appear to have been intended to

In actions for penalty, patents to be deemed prima facie evidence of the first discovery; but special matter may be given in evidence; and to what effect.

mislead, or shall actually mislead the public, so as the effect described cannot be produced by the means specified, then, and in such cases, the verdict and judgment shall be for the defendant.

Patent fees.

SEC. 7. *And be it further enacted*, That such patentee as aforesaid, shall, before he receives his patent, pay the following fees to the several officers employed in making out and perfecting the same, to wit: For receiving and filing the petition, fifty cents; for filing specifications, per copy-sheet containing one hundred words, ten cents; for making out patent, two dollars; for affixing great seal, one dollar; for indorsing the day of delivering the same to the patentee, including all intermediate services, twenty cents.

APPROVED, April 10, 1790.

STATUTE II.

April 15, 1790.

CHAP. VIII.—*An Act further to suspend part of an act intituled "An act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States," and to amend the said act.*

Repealed. Act of Aug. 4, 1790, chap. 35, sec. 74.

Restriction by a former act, on vessels bound up the Potomac, suspended until first May, 1791. Act of July 31, 1789, ch. 5.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That so much of an act, intituled, "An act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States," as obliges ships or vessels bound up the river Potomac to come to, and deposit manifests of their cargoes with the officers at Saint Mary's and Yeocomico, before they proceed to their port of delivery, shall be and is hereby further suspended, from the first day of May next, to the first of May in the year one thousand seven hundred and ninety-one.

Additional ports of delivery in Connecticut.

SEC. 2. *And be it further enacted, by the authority aforesaid*, That the landing places in Windsor and East Windsor, in the State of Connecticut, shall be ports of delivery, and be included in the district of New London.

APPROVED, April 15, 1790.

STATUTE II.

April 30, 1790.

CHAP. IX.—*An Act for the Punishment of certain Crimes against the United States.*

Act of April 2, 1792, ch. 16, sec. 19. Act of May 27, 1796, ch. 36, sec. 7. Jan. 30, 1799, ch. 1. Act of April 24, 1800, ch. 35. Act of March 26, 1804, ch. 40. Act of March 3, 1825, ch. 65.

What cases shall be adjudged treason. How proved and punished.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That if any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted, on confession in open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death.(*a*)

Misprision of treason.

SEC. 2. *And be it [further] enacted*, That if any person or persons, having knowledge of the commission of any of the treasons aforesaid, shall conceal and not as soon as may be disclose and make known the same to the President of the United States, or some one of the judges thereof, or to the president or governor of a particular state, or some one of the judges or justices thereof, such person or persons on conviction shall be adjudged guilty of misprision of treason, and shall be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars.

(*a*) *Treason.*—To constitute a levying of war, there must be an assemblage of persons for the purpose of effecting by force, a treasonable purpose. Ex parte Bollman and Swartwout, 4 Cranch, 75; 2 Cond. Rep. 33. The United States *v.* Vigol, 2 Dall. 346. The United States *v.* Vilatto, 2 Dall. 370. The United States *v.* The Insurgents of Pennsylvania, 2 Dall. 335. The United States *v.* Mitchell, 2 Dall. 348. The United States *v.* Stuart, 2 Dall. 343; 1 Burr's Trial, 14; 2 Burr's Trial, 401.

STATUTE II.
May 26, 1790.

CHAP. XI.—*An Act to prescribe the mode in which the public Acts, Records, and judicial Proceedings in each State, shall be authenticated so as to take effect in every other State.*

Act of March 27, 1804, ch. 56.
Legislative acts, records and judicial proceedings of the several states how to be authenticated; and
the effect thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: That the records and judicial proceedings of the courts of any state, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken.(*a*)

APPROVED, May 26, 1790.

STATUTE II.
May 26, 1790.

CHAP. XII.—*An Act to provide for mitigating or remitting the forfeitures and penalties accruing under the revenue laws, in certain cases therein mentioned.*

[Expired.]
Act of March 3, 1797, ch. 13. Act of Feb. 11, 1800, ch. 6. Act of March 2, 1821, ch. 13, sec. 3. Act of March 1, 1823, ch. 21, sec. 8.
Mitigation or remission of penalties, &c. how to be applied for; and

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever any person who now is, or hereafter shall be liable to a fine, penalty or forfeiture, or interested in any vessel, goods, wares or merchandise, or other thing which may be subject to seizure and forfeiture, by force of the laws of the United States now existing, or which may hereafter exist, for collecting duties of impost and tonnage, and for regulating the coasting trade, shall prefer his petition to the judge of the district in which such fine, penalty or forfeiture may have accrued, truly and particularly setting forth the circumstances of his case, and shall pray that the same may be mitigated or remitted; the said judge shall inquire in a summary manner into the circumstances of the case, first causing reasonable notice to be given to the person or persons claiming such fine, penalty or forfeiture, and to the attorney of the United States for such district, that each may have an opportunity of showing cause against the mitigation or remission thereof; and shall cause the facts which shall appear upon such inquiry, to be stated and annexed to the petition, and direct their transmission to the Secretary of the Treasury

(*a*) Art. 4, sec. 1, Constitution of the United States.—The decisions of the courts of the United States upon this statute, and on the introduction in evidence of the "acts, records, and judicial proceedings of the States," have been:

Under the fourth article and 1st section of the constitution of the United States, and the act of 26th May, 1790, if a judgment has the effect of record evidence in the courts of the State from which it is taken, it has the same effect in the courts of every other State; and the plea of nil debet is not a good plea to an action brought upon such judgment in a court of another State. Mills *v.* Duryee, 7 Cranch, 483; 2 Cond. Rep. 578. See Leland *v.* Wilkinson, 6 Peters, 317. United States *v.* Johns, 4 Dall. 412. Ferguson *v.* Harwood, 7 Cranch, 408; 2 Cond. Rep. 548. Drummond's adm'rs *v.* Magruder's trustees, 9 Cranch, 122; 3 Cond. Rep. 303.

Under the act of May 26, 1790, prescribing the mode in which the public records in each State shall be authenticated, so as to take effect in every other State, copies of the legislative acts of the several States, authenticated by having the seal of the State affixed thereto, are conclusive evidence of such acts in every other State. No other formality is required, than the annexation of the seal, and in the absence of all contrary proof, it must be presumed to have been done by an officer having the custody thereof, and competent authority to do the act. United States *v.* Amedy, 11 Wheat. 392; 6 Cond. Rep. 362.

The record of a judgment in one State is conclusive in another, although it appears that the suit in which it was rendered was commenced by an attachment of property, the defendant having afterwards appeared and taken defence. Mayhew *v.* Thatcher, 6 Wheat. 129; 5 Cond. Rep. 34.

In an action upon a judgment, in another State, the defendant cannot plead any fact in bar which contradicts the record on which the suit is brought. Field *v.* Gibbs, Peters' C. C. R. 155. See Green *v.* Sarmiento, Peters' C. C. R. 74. Blount *v.* Darrah, 4 Wash. C. C. R. 657. Turner *v.* Waddington, 3 Wash. C. C. R. 126.

of the United States, who shall thereupon have power to mitigate or remit such fine, penalty or forfeiture, or any part thereof, if in his opinion the same was incurred without wilful negligence or any intention of fraud, and to direct the prosecution, if any shall have been instituted for the recovery thereof, to cease and be discontinued, upon such terms or conditions as he may deem reasonable and just.(a) *Provided*, That nothing herein contained shall be construed to affect the right or claim of any person, to that part of any fine, penalty or forfeiture, incurred by breach of either of the laws aforesaid, which such person may be entitled to by virtue of the said laws, in cases where a prosecution has been commenced, or information has been given before the passing of this act; the amount of which right and claim shall be assessed and valued by the judge of the district, in a summary manner.

by whom granted;

Not to affect cases of previous information.

Sec. 2. *And be it further enacted*, That this act shall continue and be in force until the end of the next session of Congress, and no longer.

Continuance of the act.

Approved, May 26, 1790.

Statute II.

May 26, 1790.

Chap. XIII.—*An Act to continue in force an act passed at the last session of Congress, entituled "An act to regulate processes in the Courts of the United States."*

[Expired.] Act of Sept. 29, 1789, ch. 21.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act, entituled "An act to regulate processes in the courts of the United States," passed on the twenty-ninth day of September last, shall be, and the same is hereby continued in force until the end of the next session of Congress, and no longer.

Approved, May 26, 1790.

Statute II.

May 26, 1790.

Chap. XIV.—*An Act for the Government of the Territory of the United States, south of the river Ohio.*(b)

Act of June 1, 1796, ch. 46. Act of April 7, 1798, ch. 26. Territory south of the Ohio, to be one district; its privileges and government: Act of August 7, 1789, ch. 8. Exceptions.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the territory of the United States south of the river Ohio, for the purposes of temporary government, shall be one district; the inhabitants of which shall enjoy all the privileges, benefits and advantages set forth in the ordinance of the late Congress, for the government of the territory of the United States northwest of the river Ohio. And the government of the said territory south of the Ohio, shall be similar to that which is now exercised in the territory northwest of the Ohio; except so far as is otherwise provided in the conditions expressed in an act of Congress of the present session, entitled "An act to accept a cession of the claims of the State of North Carolina, to a certain district of western territory."

Act of April 2, 1790, ch. 6. Salaries of the officers therein.

Sec. 2. *And be it further enacted*, That the salaries of the officers, which the President of the United States shall nominate, and with the advice and consent of the Senate appoint, by virtue of this act, shall be the same as those, by law established, of similar officers in the government northwest of the river Ohio. And the powers, duties and emoluments of a superintendent of Indian affairs for the southern department, shall be united with those of the governor.

Approved, May 26, 1790.

(a) The decisions of the courts of the United States upon this act, and on subsequent acts, in pari materia, have been; M'Lean *v.* The United States, 6 Peters, 404. United States *v.* Morris, 10 Wheat. 246; 6 Cond. Rep. 90. Cross *v.* The United States, 1 Gallis' C. C. R. 26. The Margaretta, 2 Gallis' C. C. R. 515. The United States *v.* The Hunter, Peters' C. C. R. 10. The United States *v.* Lancaster, 4 Wash. C. C. R. 64.

(b) Ordinance for the government of the territory of the United States, northwest of the river Ohio, in note to page 51.

STATUTE II.
July 22, 1790.

CHAP. XXXII.—*An Act to amend the act for the establishment and support of Lighthouses, beacons, buoys, and public piers.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all expenses which shall accrue from and after the fifteenth day of August next, for the necessary support, maintenance and repairs of all lighthouses, beacons, buoys and public piers, within the United States, shall continue to be defrayed by the United States, until the first day of July, one thousand seven hundred and ninety-one, notwithstanding such lighthouses, beacons, buoys, and public piers, with the lands and tenements thereunto belonging, and the jurisdictions of the same, shall not in the mean time be ceded to or vested in the United States, by the state or states respectively, in which the same may be, and that the said time be further allowed to the states respectively to make such cessions.

Expense of lighthouses, &c. to be defrayed until 1st July, 1791, although not ceded, and States allowed till that day to make cessions.

APPROVED, July 22, 1790.

STATUTE II.
July 22, 1790.

CHAP. XXXIII.—*An Act to regulate trade and intercourse with the Indian tribes.*(a)

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no person shall be permitted to carry on any trade or intercourse with the Indian tribes, without a license for that purpose under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall appoint for that purpose; which superintendent, or other person so appointed, shall, on application, issue such license to any proper person, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, payable to the President of the United States for the time being, for the use of the United States, conditioned for the true and faithful observance of such rules, regulations and restrictions, as now are, or hereafter shall be made for the government of trade and intercourse with the Indian tribes. The said superintendents, and persons by them licensed as aforesaid, shall be governed in all things touching the said trade and intercourse, by such rules and regulations as the President shall prescribe. And no other person shall be permitted to carry on any trade or intercourse with the Indians without such license as aforesaid. No license shall be granted for a longer term than two years. *Provided nevertheless,* That the President may make such order respecting the tribes surrounded in their settlements by the citizens of the United States, as to secure an intercourse without license, if he may deem it proper.

Licenses to trade with the Indians, by whom to be granted,

and how to be obtained.

SEC. 2. *And be it further enacted,* That the superintendent, or person issuing such license, shall have full power and authority to recall all such licenses as he may have issued, if the person so licensed shall transgress any of the regulations or restrictions provided for the government of trade and intercourse with the Indian tribes, and shall put in suit such bonds as he may have taken, immediately on the breach of any condition in said bond: *Provided always,* That if it shall appear on trial, that the person from whom such license shall have been recalled, has not offended against any of the provisions of this act, or the regulations prescribed for the trade and intercourse with the Indian tribes, he shall be entitled to receive a new license.

May be recalled for certain transgressions.

SEC. 3. *And be it further enacted,* That every person who shall attempt to trade with the Indian tribes, or be found in the Indian country

Penalty for trading without license.

(a) See act of March 1, 1793, chap. 19. (Repealed.)

with such merchandise in his possession as are usually vended to the Indians, without a license first had and obtained, as in this act prescribed, and being thereof convicted in any court proper to try the same, shall forfeit all the merchandise so offered for sale to the Indian tribes, or so found in the Indian country, which forfeiture shall be one half to the benefit of the person prosecuting, and the other half to the benefit of the United States.

Sales of lands by Indians, in what cases valid.

Sec. 4. *And be it enacted and declared*, That no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

Offences committed within the Indian territory, how to be punished.

Sec. 5. *And be it further enacted*, That if any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit any crime upon, or trespass against, the person or property of any peaceable and friendly Indian or Indians, which, if committed within the jurisdiction of any state, or within the jurisdiction of either of the said districts, against a citizen or white inhabitant thereof, would be punishable by the laws of such state or district, such offender or offenders shall be subject to the same punishment, and shall be proceeded against in the same manner as if the offence had been committed within the jurisdiction of the state or district to which he or they may belong, against a citizen or white inhabitant thereof.

Proceedings therein.

Sec. 6. *And be it further enacted*, That for any of the crimes or offences aforesaid, the like proceedings shall be had for apprehending, imprisoning or bailing the offender, as the case may be, and for recognizing the witnesses for their appearance to testify in the case, and where the offender shall be committed, or the witnesses shall be in a district other than that in which the offence is to be tried, for the removal of the offender and the witnesses or either of them, as the case may be, to the district in which the trial is to be had, as by the act to establish the judicial courts of the United States, are directed for any crimes or offences against the United States.

Act of Sep. 24, 1789.

Continuance of this act.

Sec. 7. *And be it further enacted*, That this act shall be in force for the term of two years, and from thence to the end of the next session of Congress, and no longer.

Approved, July 22, 1790.

Statute II.

August 4, 1790.

Chap. XXXIV.—*An Act making provision for the [payment of the] Debt of the United States.*(a)

[Obsolete.] Recital.

Whereas, justice and the support of public credit require, that provision should be made for fulfilling the engagements of the United States, in respect to their foreign debt, and for funding their domestic debt upon equitable and satisfactory terms:

Duties on imports and tonnage appropriated to pay interest on the foreign debt and future loans, reserving

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That reserving out of the monies which have arisen since the last day of December last past, and which shall hereafter arise from the duties on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels, the yearly sum of six hundred thousand

(a) The acts making provision for the debt of the United States, contracted during the war of the revolution, have been: Act of August 4, 1790, chap. 34; act of August 10, 1790, chap. 39; act of December 27, 1790, chap. 1; act of August 12, 1790, chap. 47; act of May 8, 1792, chap. 38; act of March 2, 1793, chap. 25; act of May 30, 1794, chap. 36; act of January 28, 1795, chap. 13; act of February 19, 1796, chap. 2; act of March 3, 1797, chap. 25; act of March 3, 1791, chap. 25.

dollars, or so much thereof as may be appropriated from time to time, towards the support of the government of the United States, and their common defence, the residue of the said monies, or so much thereof, as may be necessary, as the same shall be received in each year, next after the sum reserved as aforesaid, shall be, and is hereby appropriated to the payment of the interest which shall from time to time become due on the loans heretofore made by the United States in foreign countries; and also to the payment of interest on such further loans as may be obtained for discharging the arrears of interest thereupon, and the whole or any part of the principal thereof; to continue so appropriated until the said loans, as well those already made as those which may be made in virtue of this act, shall be fully satisfied, pursuant to the contracts relating to the same, any law to the contrary notwithstanding. *And provided*, That nothing herein contained, shall be construed to annul or alter any appropriation by law made prior to the passing of this act.

600,000 dollars annually for support of government.

And as new loans are and will be necessary for the payment of the aforesaid arrears of interest, and the instalments of the principal of the said foreign debt due and growing due, and may also be found expedient for effecting an entire alteration in the state of the same:

For payment of interest and instalments of foreign debt.

SEC. 2. *Be it further enacted*, That the President of the United States be, and he is hereby authorized, to cause to be borrowed on behalf of the United States, a sum or sums, not exceeding in the whole twelve million of dollars; and that so much of this sum as may be necessary to the discharge of the said arrears and instalments, and (if it can be effected upon terms advantageous to the United States) to the paying off the whole of the said foreign debt, be appropriated solely to those purposes: And the President is moreover further authorized to cause to be made such other contracts respecting the said debt as shall be found for the interest of the said States. *Provided nevertheless*, That no engagement nor contract shall be entered into which shall preclude the United States from reimbursing any sum or sums borrowed within fifteen years after the same shall have been lent or advanced.

President may make new loans and contracts.

And whereas it is desirable to adapt the nature of the provision to be made for the domestic debt to the present circumstances of the United States, as far as it shall be found practicable, consistently with good faith and the rights of the creditors; which can only be done by a voluntary loan on their part:

SEC. 3. *Be it therefore further enacted*, That a loan to the full amount of the said domestic debt be, and the same is hereby proposed; and that books for receiving subscriptions to the said loan be opened at the treasury of the United States, and by a commissioner to be appointed in each of the said states, on the first day of October next, to continue open until the last day of September following, inclusively; and that the sums which shall be subscribed thereto, be payable in certificates issued for the said debt, according to their specie value, and computing the interest upon such as bear interest to the last day of December next, inclusively; which said certificates shall be of these several descriptions, to wit:

Domestic debt to be loaned to its full amount, and subscriptions thereto, how to be made;

Those issued by the register of the treasury.

in what payable.

Those issued by the commissioners of loans in the several states, including certificates given pursuant to the act of Congress of the second of January, one thousand seven hundred and seventy-nine, for bills of credit of the several emissions of the twentieth of May, one thousand seven hundred and seventy-seven, and the eleventh of April, one thousand seven hundred and seventy-eight.

Those issued by the commissioners for the adjustment of the accounts of the quartermaster, commissary, hospital, clothing, and marine departments.

Those issued by the commissioners for the adjustment of accounts in the respective states.

Those issued by the late and present paymaster-general, or commissioner of army accounts.

Those issued for the payment of interest, commonly called indents of interest.

And in the bills of credit issued by the authority of the United States in Congress assembled, at the rate of one hundred dollars in the said bills, for one dollar in specie.

Subscribers paying in principal of domestic debt, what proportions of principal, rate of interest and terms of payment entitled to.

Sec. 4. *And be it further enacted*, That for the whole or any part of any sum subscribed to the said loan, by any person or persons, or body politic, which shall be paid in the principal of the said domestic debt, the subscriber or subscribers shall be entitled to a certificate, purporting that the United States owe to the holder or holders thereof, his, her, or their assigns, a sum to be expressed therein, equal to two thirds of the sum so paid, bearing an interest of six per centum per annum, payable quarter yearly, and subject to redemption by payments not exceeding in one year, on account both of principal and interest, the proportion of eight dollars upon a hundred of the sum mentioned in such certificate; and to another certificate purporting that the United States owe to the holder or holders thereof, his, her or their assigns, a sum to be expressed therein, equal to the proportion of thirty-three dollars and one third of a dollar upon a hundred of the sum so paid, which after the year one thousand eight hundred shall bear an interest of six per centum per annum, payable quarter yearly, and subject to redemption by payments not exceeding in one year, on account both of principal and interest, the proportion of eight dollars upon a hundred of the sum mentioned in such certificate: *Provided*, That it shall not be understood that the United States shall be bound or obliged to redeem in the proportion aforesaid; but it shall be understood only that they have a right so to do.

Subscribers paying in interest of domestic debt, what proportions of principal, rate of interest, and terms of payment entitled to.

Sec. 5. *And be it further enacted*, That for the whole or any part of any sum subscribed to the said loan by any person or persons, or body politic, which shall be paid in the interest of the said domestic debt, computed to the said last day of December next, or in the said certificates issued in payment of interest, commonly called indents of interest, the subscriber or subscribers shall be entitled to a certificate purporting that the United States owe to the holder or holders thereof, his, her or their assigns, a sum to be specified therein, equal to that by him, her or them so paid, bearing an interest of three per centum per annum, payable quarter yearly, and subject to redemption by payment of the sum specified therein, whenever provision shall be made by law for that purpose.

Commissioner to be appointed in each state to receive subscriptions, &c.

Sec. 6. *And be it further enacted*, That a commissioner be appointed for each state, to reside therein, whose duty it shall be to superintend the subscriptions to the said loan; to open books for the same; to receive the certificates which shall be presented in payment thereof; to liquidate the specie value of such of them as shall not have been before liquidated; to issue the certificates above mentioned in lieu thereof, according to the terms of each subscription; to enter in books to be by him kept for that purpose, credits to the respective subscribers to the said loan for the sums to which they shall be respectively entitled; to transfer the said credits upon the said books from time to time as shall be requisite; to pay the interest thereupon as the same shall become due, and generally to observe and perform such directions and regulations as shall be prescribed to him by the Secretary of the Treasury, touching the execution of his office.

Sec. 7. *And be it further enacted*, That the stock which shall be created pursuant to this act, shall be transferable only on the books of

the treasury, or of the said commissioners respectively, upon which the credit for the same shall exist at the time of transfer, by the proprietor or proprietors of such stock, his, her or their attorney: but it shall be lawful for the Secretary of the Treasury, by special warrant under his hand and the seal of the treasury, countersigned by the comptroller, and registered by the register, at the request of the respective proprietors, to authorize the transfer of such stock from the books of one commissioner to those of another commissioner, or to those of the treasury, and from those of the treasury to those of a commissioner.

Stock created by this act, how transferable,

Sec. 8. *And be it further enacted*, That the interest upon the said stock, as the same shall become due, shall be payable quarter yearly—that is to say: One fourth part thereof on the last day of March: one other fourth part thereof on the last day of June: one other fourth part thereof on the last day of September; and the remaining fourth part thereof on the last day of December in each year, beginning on the last day of March next ensuing; and payment shall be made wheresoever the credit for the said stock shall exist at the time such interest shall become due—that is to say: At the treasury, if the credit for the same shall then exist on the books of the treasury, or at the office of the commissioner upon whose books such credit shall then exist. But if the interest for one quarter shall not be demanded before the expiration of a third quarter, the same shall be afterwards demandable only at the treasury.

and interest thereon payable quarterly.

And as it may happen that some of the creditors of the United States may not think fit to become subscribers to the said loan:

Non-subscribing creditors,

Sec. 9. *Be it further enacted*, That nothing in this act contained shall be construed in any wise to alter, abridge or impair the rights of those creditors of the United States, who shall not subscribe to the said loan, or the contracts upon which their respective claims are founded; but the said contracts and rights shall remain in full force and virtue.

their rights not to be impaired, and

And that such creditors may not be excluded from a participation in the benefit hereby intended to the creditors of the United States in general, while the said proposed loan shall be depending, and until it shall appear from the event thereof what farther or other arrangements may be necessary respecting the said domestic debt:

Sec. 10. *Be it therefore further enacted*, That such of the creditors of the United States as may not subscribe to the said loan, shall nevertheless receive during the year one thousand seven hundred and ninety-one, a rate per centum on the respective amounts of their respective demands, including interest to the last day of December next, equal to the interest payable to subscribing creditors, to be paid at the same times, at the same places, and by the same persons as is herein before directed, concerning the interest on the stock which may be created in virtue of the said proposed loan. But as some of the certificates now in circulation have not heretofore been liquidated to specie value, as most of them are greatly subject to counterfeit, and counterfeits have actually taken place in numerous instances, and as embarrassment and imposition might, for these reasons, attend the payment of interest on those certificates in their present form, it shall therefore be necessary to entitle the said creditors to the benefit of the said payment, that those of them who do not possess certificates issued by the register of the treasury, for the registered debt, should produce previous to the first day of June next, their respective certificates, either at the treasury of the United States, or to some one of the commissioners to be appointed as aforesaid, to the end that the same may be cancelled, and other certificates issued in lieu thereof; which new certificates shall specify the specie amount of those in exchange for which they are given, and shall be otherwise of the like tenor with those heretofore issued by the said register of the treasury for the said registered debt, and shall be trans-

to be paid a rate per cent. on the amount of their demands equal to the interest allowed to subscribing creditors.

All certificates in circulation, to be cancelled and new ones issued.

ferable on the like principles with those directed to be issued on account of the subscriptions to the loan hereby proposed.

Commissioners their salaries,

SEC. 11. *And be it further enacted*, That the commissioners who shall be appointed pursuant to this act, shall respectively be entitled to the following yearly salaries, that is to say: The commissioner for the state of New Hampshire, six hundred and fifty dollars: The commissioner for the state of Massachusetts, fifteen hundred dollars: The commissioner for the state of Rhode Island and Providence Plantations, six hundred dollars: The commissioner for the state of Connecticut, one thousand dollars: The commissioner for the state of New York, fifteen hundred dollars: The commissioner for the state of New Jersey, seven hundred dollars: The commissioner for the state of Pennsylvania, fifteen hundred dollars: The commissioner for the state of Delaware, six hundred dollars: The commissioner for the state of Maryland, one thousand dollars: The commissioner for the state of Virginia, fifteen hundred dollars: The commissioner for the state of North Carolina, one thousand dollars: The commissioner for the state of South Carolina, one thousand dollars: The commissioner for the state of Georgia, seven hundred dollars: Which salaries shall be in full compensation for all services and expenses.

to take an oath and enter into bond.

SEC. 12. *And be it further enacted*, That the said commissioners, before they enter upon the execution of their several offices, shall respectively take an oath or affirmation for the diligent and faithful execution of their trust, and shall also become bound with one or more sureties to the satisfaction of the Secretary of the Treasury, in a penalty not less [than] five thousand, nor more than ten thousand dollars, with condition for their good behaviour in their said offices respectively.

State debts

And whereas a provision for the debts of the respective states by the United States, would be greatly conducive to an orderly, economical and effectual arrangement of the public finances:

assumed, to amount of $21,500,000 and a loan proposed, payable in certificates of the states,

SEC. 13. *Be it therefore further enacted*, That a loan be proposed to the amount of twenty-one million and five hundred thousand dollars, and that subscriptions to the said loan be received at the same times and places, and by the same persons, as in respect to the loan herein before proposed concerning the domestic debt of the United States. And that the sums which shall be subscribed to the said loan, shall be payable in the principal and interest of the certificates or notes, which prior to the first day of January last, were issued by the respective states, as acknowledgments or evidences of debts by them respectively owing, except certificates issued by the commissioners of army accounts in the state of North Carolina, in the year one thousand seven hundred and eighty-six.

not exceeding a certain sum in each.

Provided, That no greater sum shall be received in the certificates of any state than as follows; that is to say:

In those of New Hampshire, three hundred thousand dollars.

In those of Massachusetts, four million dollars.

In those of Rhode Island and Providence Plantations, two hundred thousand dollars.

In those of Connecticut, one million six hundred thousand dollars.

In those of New York, one million two hundred thousand dollars.

In those of New Jersey, eight hundred thousand dollars.

In those of Pennsylvania, two million two hundred thousand dollars.

In those of Delaware, two hundred thousand dollars.

In those of Maryland, eight hundred thousand dollars.

In those of Virginia, three million five hundred thousand dollars.

In those of North Carolina, two million four hundred thousand dollars.

In those of South Carolina, four million dollars.

In those of Georgia, three hundred thousand dollars.

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And provided, That no such certificate shall be received, which from the tenor thereof, or from any public record, act, or document, shall appear or can be ascertained to have been issued for any purpose, other than compensations and expenditures for services or supplies towards the prosecution of the late war, and the defence of the United States, or of some part thereof during the same.

What certificates shall not be received.

SEC. 14. *Provided also, and be it further enacted*, That if the total amount of the sums which shall be subscribed to the said loan in the debt of any state, within the time limited for receiving subscriptions thereto, shall exceed the sum by this act allowed to be subscribed within such state, the certificates and credits granted to the respective subscribers, shall bear such proportion to the sums by them respectively subscribed, as the total amount of the said sums shall bear to the whole sum so allowed to be subscribed in the debt of such state within the same. And every subscriber to the said loan shall, at the time of subscribing, deposit with the commissioner the certificates or notes to be loaned by him.

Subscriptions exceeding the sum allowed to any state, what proportion shall be paid.

SEC. 15. *And be it further enacted*, That for two thirds of any sum subscribed to the said loan, by any person or persons, or body politic, which shall be paid in the principal and interest of the certificates or notes issued as aforesaid by the respective states, the subscriber or subscribers shall be entitled to a certificate, purporting that the United States owe to the holder or holders thereof, or his, her or their assigns, a sum to be expressed therein, equal to two thirds of the aforesaid two thirds, bearing an interest of six per centum per annum, payable quarter yearly, and subject to redemption by payments, not exceeding in one year, on account both of principal and interest, the proportion of eight dollars upon a hundred of the sum mentioned in such certificate; and to another certificate, purporting that the United States owe to the holder or holders thereof, his, her or their assigns, a sum to be expressed therein, equal to the proportion of thirty-three dollars and one third of a dollar upon a hundred of the said two thirds of such sum so subscribed, which after the year one thousand eight hundred shall bear an interest of six per centum per annum, payable quarter yearly, and subject to redemption by payments, not exceeding in one year, on account both of principal and interest, the proportion of eight dollars upon a hundred of the sum mentioned in such certificate; and that for the remaining third of any sum so subscribed, the subscriber or subscribers shall be entitled to a certificate, purporting that the United States owe to the holder or holders thereof, his, her or their assigns, a sum to be expressed therein, equal to the said remaining third, bearing an interest of three per cent. per annum, payable quarter yearly, and subject to redemption by payment of the sum specified therein whenever provision shall be made by law for that purpose.

Subscribers to said loan, what proportion of principal, rate of interest, and terms of payment entitled to.

SEC. 16. *And be it further enacted*, That the interest upon the certificates which shall be received in payment of the sums subscribed towards the said loan, shall be computed to the last day of the year one thousand seven hundred and ninety-one, inclusively; and the interest upon the stock which shall be created by virtue of the said loan, shall commence or begin to accrue on the first day of the year one thousand seven hundred and ninety-two, and shall be payable quarter yearly, at the same time, and in like manner as the interest on the stock to be created by virtue of the loan above proposed in the domestic debt of the United States.

Interest, how to be computed, and payable quarter yearly.

SEC. 17. *And be it further enacted*, That if the whole sum allowed to be subscribed in the debt or certificates of any state as aforesaid, shall not be subscribed within the time for that purpose limited, such state shall be entitled to receive, and shall receive from the United States, an interest per centum per annum, upon so much of the said sum as

Sum allowed to any state, not being subscribed, the

state to receive interest on amount of deficiency.

shall not have been so subscribed, equal to that which would have accrued on the deficiency, had the same been subscribed in trust for the non-subscribing creditors of such state, who are holders of certificates or notes issued on account of services or supplies towards the prosecution of the late war, and the defence of the United States or of some part thereof, to be paid in like manner as the interest on the stock which may be created by virtue of the said loan, and to continue until there shall be a settlement of accounts between the United States and the individual states; and in case a balance shall then appear in favour of such state, until provision shall be made for the said balance.

But as certain states have respectively issued their own certificates, in exchange for those of the United States, whereby it might happen that interest might be twice payable on the same sums:

State certificates issued in lieu of those of the U. States, payment of interest on, suspended.

Sec. 18. *Be it further enacted*, That the payment of interest whether to states or to individuals, in respect to the debt of any state, by which such exchange shall have been made, shall be suspended, until it shall appear to the satisfaction of the secretary of the treasury, that certificates issued for that purpose by such state, have been re-exchanged or redeemed, or until those which shall not have been re-exchanged or redeemed, shall be surrendered to the United States.

States chargeable with amount of subscriptions.

Sec. 19. *And be it further enacted*, That so much of the debt of each state as shall be subscribed to the said loan, and the monies (if any) that shall be advanced to the same pursuant to this act, shall be a charge against such state, in account with the United States.

Farther appropriation of monies arising from the revenue laws to the purposes of this act;

Sec. 20. *And be it further enacted*, That the monies arising under the revenue laws, which have been or during the present session of Congress may be passed, or so much thereof as may be necessary, shall be and are hereby pledged and appropriated for the payment of the interest on the stock which shall be created by the loans aforesaid, pursuant to the provisions of this act, first paying that which shall arise on the stock created by virtue of the said first mentioned loan, to continue so pledged and appropriated, until the final redemption of the said stock, any law to the contrary notwithstanding, subject nevertheless to such reservations and priorities as may be requisite to satisfy the appropriations heretofore made, and which during the present session of Congress may be made by law, including the sums herein before reserved and appropriated: and to the end that the said monies may be inviolably applied in conformity to this act, and may never be diverted to any other purpose, an account shall be kept of the receipts and disposition thereof, separate and distinct from the product of any other duties, imposts, excises and taxes whatsoever, except such as may be hereafter laid, to make good any deficiency which may be found in the product thereof towards satisfying the interest aforesaid.

and faith of U. States pledged to make good deficiencies.

Sec. 21. *And be it further enacted*, That the faith of the United States be, and the same is hereby pledged to provide and appropriate hereafter such additional and permanent funds as may be requisite towards supplying any such deficiency, and making full provision for the payment of the interest which shall accrue on the stock to be created by virtue of the loans aforesaid, in conformity to the terms thereof respectively, and according to the tenor of the certificates to be granted for the same pursuant to this act.

Proceeds from sales of western lands, to form a sinking fund.

Sec. 22. *And be it further enacted*, That the proceeds of the sales which shall be made of lands in the western territory, now belonging, or that may hereafter belong to the United States, shall be, and are hereby appropriated towards sinking or discharging the debts, for the payment whereof the United States now are, or by virtue of this act may be holden, and shall be applied solely to that use until the said debts shall be fully satisfied.

Approved, August 4, 1790.

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vides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

Statutory Notes and Related Subsidiaries

ABBREVIATION OF RECORD

Pub. L. 85–791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: ''This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].''

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of

jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) the later of the date occurring 60 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

(D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

(A) in the case of the Senate, 60 session days, or

(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

(I) in the case of the Senate, the 15th session day, or

(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

(Added Pub. L. 104–121, title II, § 251, Mar. 29, 1996, 110 Stat. 868.)

Editorial Notes

REFERENCES IN TEXT

Sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995, referred to in subsec. (a)(1)(B)(iii), are classified to sections 1532, 1533, 1534, and 1535, respectively, of Title 2, The Congress.

The date of the enactment of this chapter, referred to in subsec. (e)(1), (2), is the date of the enactment of Pub. L. 104–121, which was approved Mar. 29, 1996.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 104–121, title II, § 252, Mar. 29, 1996, 110 Stat. 874, provided that: ''The amendment made by section 351 [probably means section 251, enacting this chapter] shall take effect on the date of enactment of this Act [Mar. 29, 1996].''

SHORT TITLE

This chapter is popularly known as the ''Congressional Review Act''.

TRUTH IN REGULATING

Pub. L. 106–312, Oct. 17, 2000, 114 Stat. 1248, as amended by Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Truth in Regulating Act of 2000'.

''SEC. 2. PURPOSES.

''The purposes of this Act are to—

''(1) increase the transparency of important regulatory decisions;

''(2) promote effective congressional oversight to ensure that agency rules fulfill statutory requirements in an efficient, effective, and fair manner; and

''(3) increase the accountability of Congress and the agencies to the people they serve.

''SEC. 3. DEFINITIONS.

''In this Act, the term—

''(1) 'agency' has the meaning given such term under section 551(1) of title 5, United States Code;

''(2) 'economically significant rule' means any proposed or final rule, including an interim or direct final rule, that may have an annual effect on the economy of $100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; and

''(3) 'independent evaluation' means a substantive evaluation of the agency's data, methodology, and assumptions used in developing the economically significant rule, including—

''(A) an explanation of how any strengths or weaknesses in those data, methodology, and assumptions support or detract from conclusions reached by the agency; and

''(B) the implications, if any, of those strengths or weaknesses for the rulemaking.

''SEC. 4. PILOT PROJECT FOR REPORT ON RULES.

''(a) IN GENERAL.—

''(1) REQUEST FOR REVIEW.—When an agency publishes an economically significant rule, a chairman or ranking member of a committee of jurisdiction of either House of Congress may request the Comptroller General of the United States to review the rule.

''(2) REPORT.—The Comptroller General shall submit a report on each economically significant rule selected under paragraph (4) to the committees of jurisdiction in each House of Congress not later than 180 calendar days after a committee request is received. The report shall include an independent evaluation of the economically significant rule by the Comptroller General.

''(3) INDEPENDENT EVALUATION.—The independent evaluation of the economically significant rule by the Comptroller General under paragraph (2) shall include—

''(A) an evaluation of the agency's analysis of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of the persons or entities likely to receive the benefits;

''(B) an evaluation of the agency's analysis of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms and the identification of the persons or entities likely to bear the costs;

''(C) an evaluation of the agency's analysis of alternative approaches set forth in the notice of proposed rulemaking and in the rulemaking record, as well as of any regulatory impact analysis, federalism assessment, or other analysis or assessment prepared by the agency or required for the economically significant rule; and

''(D) a summary of the results of the evaluation of the Comptroller General and the implications of those results.

''(4) PROCEDURES FOR PRIORITIES OF REQUESTS.—The Comptroller General shall have discretion to develop procedures for determining the priority and number of requests for review under paragraph (1) for which a report will be submitted under paragraph (2).

''(b) AUTHORITY OF COMPTROLLER GENERAL.—Each agency shall promptly cooperate with the Comptroller General in carrying out this Act. Nothing in this Act is intended to expand or limit the authority of the Government Accountability Office.

''SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Government Accountability Office to carry out this Act $5,200,000 for each of fiscal years 2000 through 2002.

''SEC. 6. EFFECTIVE DATE AND DURATION OF PILOT PROJECT.

''(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act [Oct. 17, 2000].

''(b) DURATION OF PILOT PROJECT.—The pilot project under this Act shall continue for a period of 3 years, if in each fiscal year, or portion thereof included in that period, a specific annual appropriation not less than $5,200,000 or the pro-rated equivalent thereof shall have been made for the pilot project.

''(c) REPORT.—Before the conclusion of the 3-year period, the Comptroller General shall submit to Congress a report reviewing the effectiveness of the pilot project and recommending whether or not Congress should permanently authorize the pilot project.''

§ 802. Congressional disapproval procedure

(a) For purposes of this section, the term ''joint resolution'' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: ''That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.'' (The blank spaces being appropriately filled in).

(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(2) For purposes of this section, the term ''submission or publication date'' means the later of the date on which—

(A) the Congress receives the report submitted under section 801(a)(1); or

(B) the rule is published in the Federal Register, if so published.

(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(g) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(Added Pub. L. 104–121, title II, § 251, Mar. 29, 1996, 110 Stat. 871.)

§ 803. Special rule on statutory, regulatory, and judicial deadlines

(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

(b) The term ''deadline'' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

(Added Pub. L. 104–121, title II, § 251, Mar. 29, 1996, 110 Stat. 873.)

§ 804. Definitions

For purposes of this chapter—

(1) The term ''Federal agency'' means any agency as that term is defined in section 551(1).

(2) The term ''major rule'' means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

(A) an annual effect on the economy of $100,000,000 or more;

(B) a major increase in costs or prices for consumers, individual industries, Federal,

State, or local government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

(3) The term ''rule'' has the meaning given such term in section 551, except that such term does not include—

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

(Added Pub. L. 104–121, title II, § 251, Mar. 29, 1996, 110 Stat. 873.)

Editorial Notes

REFERENCES IN TEXT

The Telecommunications Act of 1996, referred to in par. (2), is Pub. L. 104–104, Feb. 8, 1996, 110 Stat. 56. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 609 of Title 47, Telecommunications, and Tables.

§ 805. Judicial review

No determination, finding, action, or omission under this chapter shall be subject to judicial review.

(Added Pub. L. 104–121, title II, § 251, Mar. 29, 1996, 110 Stat. 873.)

§ 806. Applicability; severability

(a) This chapter shall apply notwithstanding any other provision of law.

(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

(Added Pub. L. 104–121, title II, § 251, Mar. 29, 1996, 110 Stat. 873.)

§ 807. Exemption for monetary policy

Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

(Added Pub. L. 104–121, title II, § 251, Mar. 29, 1996, 110 Stat. 874.)

§ 808. Effective date of certain rules

Notwithstanding section 801—

(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.

(Added Pub. L. 104–121, title II, § 251, Mar. 29, 1996, 110 Stat. 874.)

CHAPTER 9—EXECUTIVE REORGANIZATION

Editorial Notes

AMENDMENTS

1984—Pub. L. 98–614, § 3(e)(3), Nov. 8, 1984, 98 Stat. 3193, substituted ''passage'' for ''disapproval'' in item 912.

1977—Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 29, reenacted chapter heading and items 901 to 903, 905 to 909, and 911 without change, substituted ''plan'' for ''plans'' in item 904 and ''Introduction and reference of resolution'' for ''Reference of resolution to committee'' in item 910, inserted ''; vote on final disapproval'' in item 912, and omitted item 913 ''Decisions without debate on motion to postpone or proceed''.

§ 901. Purpose

(a) The Congress declares that it is the policy of the United States—

(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions

[1] So in original. Does not conform to section catchline.

tin of September 15 regarding these points be printed at this point in the RECORD.

There being no objection, the article and editorial were ordered to be printed in the RECORD, as follows:

[From the Evening Bulletin, Sept. 15, 1970]

WHY NOT FAST TRAINS?

Scarcely a day passes without a painful reminder of how far this country has fallen behind in high-speed rail service. For instance, the British Association for the Advancement of Science announced that passenger trains in England will be traveling at 160 miles per hour on existing track within four years. Our own scientists, meanwhile, are talking in terms of developing the required technology simply to usher in high-speed rail service of any kind rather than in terms of expanded service.

This is not to disparage America's research efforts in this mode of travel. But scientists and rail experts agree that by means of a steel wheel on a steel rail, safe and comfortable speeds in excess of 150 miles per hour can be achieved. True, there are alternatives—the air-cushion vehicle, for instance—but interminable debate over alternatives can and does act like a dead head on progress. Surely Congress would be more disposed to sponsor enactment of a railroad bill that would create an agency to run the nation's passenger trains if it were clear just what type of passenger trains would be running a few years from now.

European governments and scientific communities have not worked themselves into a state of near paralysis by endlessly probing alternate technologies. In respect to high-speed rail service, it's as though the U.S. were possessed by a vision of the ultimate, beyond which there can be no conceivable improvement.

Meanwhile, the mayors of American cities warn that downtown streets may be closed to traffic because of the congestion and pollution. This is a time when the New York-Boston mainline track should be humming with Metroliner and Turbo Train service, and the best way to begin is to stop confusing the lawmakers, who control the purse strings, about alternate technologies for high-speed trains.

[From the Providence Journal, Sept. 19, 1970]

TURBOLINER TRAIN OPERATION MAY BE ENDED NEXT MONTH

Streamlined TurboLiner trains which have been carrying passengers between Boston and New York for nearly two years may stop running after October 22.

A decision on whether the service, begun as an experiment in April, 1969, will continue is expected in about three weeks.

The two streamlined trains, based at Field's Point and operated by the Penn Central Railroad, are leased to the federal Department of Transportation by the builder, United Aircraft Corporation.

The two-year lease expires Oct. 22 and contains a two-year option to be exercised 90 days before expiration. The option has not been exercised and a United Aircraft spokesman acknowledges, "The program definitely is in jeopardy."

A Transportation Department spokesman in Washington said there is only enough money left from the original 8.4-million-dollar budget to "tail off" the present program. There is no provision in the budget for the present fiscal year, not yet passed, for a continuance, he said.

Edwin Edel, director of public affairs for the department's railroad administration, said a decision on the fate of TurboLiners could be expected at least two weeks before the United Aircraft lease expires.

He said the expiring contract gives United 1.7 million dollars for leasing the two trains and 2.8 million dollars toward maintenance, fuel and operating costs of the Field's Point depot, over the two-year period. But United Aircraft, he said, is asking for about 7 million dollars for a two-year renewal and no such money is available.

The United spokesman said that on July 2, the Department of Transportation asked cost estimates on a new two-year contract and said it would choose to renew the contract if a mutually acceptable agreement could be worked out. He did not challenge the department's 7-million-dollar figure.

"We are negotiating, but the program definitely is in jeopardy," he said.

Mr. PELL. Mr. President, hopefully before this session is completed, the House of Representatives will have acted upon, and the Congress will have passed the legislation needed to establish a National Rail Passenger Corporation. If this new passenger corporation is to be successful, it will only be successful if it has new high-speed trains speeding up and down our country's urban corridors. If this vision is to be a reality, the Office of High-Speed Ground Transportation must be available to provide the corporation with the research and development support it needs in the area of high-speed ground transportation. In its present condition I do not believe the Office of High-Speed Ground Transportation can do the job.

Mr. President, while I realize that the Department's concerns are probably more focused now on the problems of moving a few people across the oceans at supersonic speeds than it is on problems of moving 19 million people up and down the east coast, I would hope that the Department could take time to reevaluate its policy posture in regard to the Office of High-Speed Ground Transportation. I believe the facts justify a reevaluation.

ORDER FOR ADJOURNMENT TO WEDNESDAY, THURSDAY, AND FRIDAY, RESPECTIVELY, AT 10 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business on Tuesday, Wednesday, and Thursday of this week, it stand in adjournment until Wednesday, Thursday, Friday, respectively, at 10 a.m.

The PRESIDING OFFICER (Mr. GOLDWATER). Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR CHURCH AND SENATOR YOUNG OF OHIO TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, immediately after disposition of the reading of the Journal and the disposition of any unobjected-to items on the Consent Calendar, the able Senator from Idaho (Mr. CHURCH) be recognized for not to exceed 20 minutes, and that he be followed by the able Senator from Ohio (Mr. YOUNG) for not to exceed 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL AIR QUALITY STANDARDS ACT OF 1970

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Order No. 1214, S. 4358.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read the bill by title, as follows: S. 4358, to amend the Clean Air Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maine?

There being no objection, the Senate proceeded to consider the bill.

Mr. MUSKIE. Mr. President, one of the most troubling aspects of our national mood is the crisis in confidence which afflicts too many Americans in all walks of life. It is a crisis marked by self-doubt, by a fear that our problems may be greater than our capacity to solve them, that our public and private institutions may be inadequate at a time when we need them most.

Our environmental problems have contributed heavily to that self-doubt and fear. A nation which has been able to conquer the far reaches of space, which has unlocked the mysteries of the atom, and which has an enormous reserve of economic power, technological genius, and managerial skills, seems incapable of halting the steady deterioration of our air, water, and land.

The legislation we take up today provides the Senate with a moment of truth: a time to decide whether or not we are willing to let our lives continue to be endangered by the wasteful practices of an affluent society, or whether we are willing to take the difficult but necessary steps to breathe new life into our fight for a better quality of life.

This legislation will be a test of our commitment and a test of our faith: in our institutions, in our capacity to find answers to difficult economic and technological problems, and in the ability of American citizens to rise to the challenge of ending the threat of air pollution.

I am prepared to affirm that faith—on the basis of the knowledge we have gained from existing air pollution control legislation, on the basis of our committee's studies, and on the basis of what Americans have been telling me and other Members of the Senate about their determination to overcome the obstacles to clean air.

I. THE NEED FOR THE LEGISLATION

Mr. President, we are considering this legislation in a year of environmental concern. The President devoted much of his state of the Union message to the environment, young and old together marked Earth Day in April, and Congress has considered an unprecedented number of bills dealing with the degradation of our air, water, and land.

In January of this year the President signed the National Environmental Policy Act. That law commits all agencies of the Federal Government to continuing environmental concern. In April of this year the Water Quality Improvement Act, built upon the record established by the Congress since 1965 in the

area of water pollution control, was enacted.

The bill we consider today, however, faces the environmental crisis with greater urgency and frankness than any previous legislation. The effect of these amendments to the Clean Air Act will be felt by all Americans. This bill states that all Americans in all parts of the Nation should have clean air to breathe, air that will have no adverse effects on their health. And this bill is aimed at putting in motion the steps necessary to achieve that level of air quality within the next 5 years.

It is a tough bill, because only a tough law will guarantee America clean air. It is a necessary bill, because the health of our people is at stake.

Over 200 million tons of contaminants are spilled into the air each year in America. Each year we soil more clothes and buildings, destroy more plant and animal life, and threaten irreversible atmospheric and climatic changes. And each year these 200 million tons of pollutants endanger the health of our people.

The costs of air pollution can be counted in death, disease and disability; it can be measured in the billions of dollars of property losses; it can be seen and felt in the discomfort of our lives.

A reduction of 50 percent in air pollution in urban areas would result in savings of over $2 billion in the annual costs of health care in America.

So there is a need for this legislation. During the past year all of us have recognized this need. Last month, in transmitting the first annual report of the Council on Environmental Quality, President Nixon recognized this need.

Man—

He said—

> has been too cavalier in his relations with nature. Unless we arrest the depredations that have been inflicted so carelessly on our natural systems . . . we face the prospect of ecological disaster.

In hearings on the bill before us, Mr. Joseph Germano, a steelworker from Chicago, also recognized this need. He told the committee:

> This old philosophy, that when you see the smoke rolling out of the tops of the blast furnaces there is prosperity, doesn't go anymore. The people don't look at that anymore. Prosperity doesn't mean anything if they are not going to live to enjoy the prosperity.

All Americans have agreed on the need for action. It is now time to determine whether that agreement has reflected only a lack of disagreement, or a genuine commitment to action.

II. A REVIEW OF THE LAW

The bill now before the Senate would amend the Clean Air Act. It is consistent with the purpose of that law and with the basic approach of the present program. In the Air Quality Act of 1967, Congress adopted this basic approach in amendments to the Clean Air Act of 1963.

The Senate report on the 1967 bill stated the purposes of the legislation:

> (It) is the intent of the Committee to enhance air quality and to reduce harmful pollution emissions anywhere in the country, and to give the secretary authority to implement that objective in the absence of effective state and local control.

The committee feels that S. 4358 is consistent with those purposes and reflects knowledge gained since the law has been in force.

The 1967 act established procedures for the achievement and maintenance of federally approved regional standards of ambient air quality. These standards, based on Federal criteria documents describing the effects of pollutants on health and welfare, are adopted and enforced on the State and local level. In the event that adequate standards are not developed or enforced, the Federal Government assumes the responsibility.

The underlying wisdom of the original legislation has been confirmed. We have learned from the criteria documents which have been issued for five pollutants that more decisive action must be taken now. We have learned from the standards-setting process that public participation is important, and we have learned from experience with implementation of the law that States and localities need greater incentives and assistance to protect the health and welfare of all people.

III. WHAT WE HAVE LEARNED FROM THE LAW

From the operations of the existing law, we have learned a great deal—about the concern of Americans over air pollution, about the response of polluters to this concern, and about the sacrifices we must make to protect our health.

The effectiveness of existing law depends in great part on the willingness of people to make tough decisions concerning the quality of air they want to breathe. And it depends on their willingness to make their wishes known in public hearings on the local level. This experiment in public participation has worked. It has opened doors once closed. People have become involved in the standards-setting process. They have learned of the threats to their health and they have sought to make the program responsive to their needs.

At the same time, some industries have not exerted their best efforts to control air pollution. Two steel companies in the Chicago area, for example, dumped more pollutants into the air in 1968 than in 1963—3,500 tons more. Oftentimes, funds which should have gone for air pollution control have been spent on advertising and public relations designed to reduce the pressure on the companies to do what is necessary.

In the face of citizen concern and corporate resistance, we have learned that the air pollution problem is more severe, more pervasive, and growing faster than we had thought. Unless we recognize the crisis and generate a sense of urgency from that recognition, lead times may melt away without any chance at all for a rational solution to the air pollution problem.

IV. WHAT WE HAVE LEARNED ABOUT THE LAW

While we have learned much from the operations of the laws passed in 1963, 1965, and 1967, we have also learned much about the law itself.

It is clear that Congress was right in 1967 when national emissions standards without ambient air quality standards for stationary sources were rejected—in favor of regional ambient air quality standards with emissions standards as tools to meet them. Emissions standards alone will not—and probably cannot—guarantee ambient air quality which will protect the public health. The implementation of air quality standards must take more forms than emissions controls.

It is also clear that ambient air quality standards which will protect the health of persons must be set as minimum standards for all parts of the Nation, and that they must be met in all areas within national deadlines.

Congress did adopt emissions standards as the basic control technique for moving sources in 1965, because they are not controllable at the local level. Here we have learned that tests of economic and technological feasibility applied to those standards compromise the health of our people and lead to inadequate standards. It is clear that the long-range proposal for emission standards will only be adequate if the timetable is accelerated.

In 1963, Congress recognized that the Federal Government could not handle the enforcement task alone, and that the primary burden would rest on States and local governments. However, State and local governments have not responded adequately to this challenge. It is clear that enforcement must be toughened if we are to meet the national deadlines. More tools are needed, and the Federal presence and backup authority must be increased.

Finally, no level of government has implemented the existing law to its full potential. On all levels, the air pollution control program has been underfunded and undermanned. To implement the greater responsibilities of this bill, great financial commitments will have to be made and met at all levels. Air pollution control will be cheap only in relation to the costs of lack of control.

V. CHANGES RECOMMENDED

What we have learned—from and about the existing law—forms the basis of the changes recommended by the committee. Because we have fallen behind in the fight for clean air, it is not enough to implement existing law. We must go further. The Senate committee report on the Air Quality Act of 1967 warned polluters:

> Considerations of technology and economic feasibility, while important in helping to develop alternative plans and schedules for achieving goals of air quality, should not be used to mitigate against protection of the public health and welfare.

That warning, Mr. President, has been on the books of this committee for 3 years, for all to read.

Contrary to this intent, these considerations have been used as arguments to compromise the public health. Therefore, the committee has made explicit in this bill what is implicit to standards designed to protect our health. That concept and that philosophy are behind every page of the proposed legislation.

The first responsibility of Congress is not the making of technological or economic

judgments—or even to be limited by what is or appears to be technologically or economically feasible. Our responsibility is to establish what the public interest requires to protect the health of persons. This may mean that people and industries will be asked to do what seems to be impossible at the present time. But if health is to be protected, these challenges must be met. I am convinced they can be met.

First, the bill provides for national ambient air quality standards for at least ten major contaminants that must be met by national deadlines. This means that in every region of the country, air quality must be better than that level of quality which protects health. Anybody in this Nation ought to be able at some specific point in the future to breathe healthy air.

Second, national air quality goals—protective against any known or anticipated adverse environmental effects—will be set for the major pollutants and must also be achieved within specific time-frames on a regional basis. Air quality goals are especially important because some pollutants may have serious effects on the environment at levels below those where health effects may occur. For example, the Secretary would be expected to disapprove regional air quality goals which would delay the application of controls required to protect plants and animals from the well-known hazards of exposure to fluorides.

Third, the bill provides that newly constructed sources of pollution must meet rigorous national standards of performance. While we clean up existing pollution, we must also guard against new problems. Those areas which have levels of air quality which are better than the national standards should not find their air quality degraded by the construction of new sources. There should be no "shopping around" for open sites. These standards of performance would not specify what technology must be used by particular types of sources, only the emissions performance that must be met.

Fourth, the bill provides the Secretary with the authority to prohibit emissions of hazardous substances. The committee was presented with strong evidence that any level of emissions of certain pollutants may produce adverse health effects that cannot be tolerated.

Fifth, the bill provides the Secretary with the authority to set emission standards for selected pollutants which cannot be controlled through the ambient air quality standards and which are not hazardous substances. These pollutants could later be covered by either ambient air quality standards or by prohibitions as hazardous substances.

These five sets of requirements will be difficult to meet. But the committee is convinced that industry can make compliance with them possible or impossible. It is completely within their control. Industry has been presented with challenges in the past that seemed impossible to meet, but has made them possible.

As far back as 1869, the Alkali Act prohibited the emissions of hydrogen sulfides in England. Although industry had said that requirement could not be met, there was compliance within 2 years.

At the beginning of World War II industry told President Roosevelt that his goal of 100,000 planes each year could not be met. The goal was met, and the war was won.

And in 1960, President Kennedy said that America would land a man on the moon by 1970. And American industry did what had to be done.

Our responsibility in Congress is to say that the requirements of this bill are what the health of the Nation requires, and to callenge polluters to meet them.

The committee has also recommended significant changes in title II of the Act dealing with moving sources, and especially with automobiles.

In 1968, moving sources were responsible for more than 42 percent of the total emissions of the five major pollutants—including 64 percent of the carbon monoxide and 50 percent of the hydrocarbons. In health effects, these pollutants mean cancer, headaches, dizziness, nausea, metabolic and respiratory diseases, and the impairment of mental processes. Clearly, solving the air pollution problem depends on the achievement of significant reductions in the emissions from automobiles. Clearly, protection of the public health requires quick and drastic reductions.

Since legislation to deal with the problem of automotive emissions was first introduced in 1964, the industry has known that they would have to develop the solutions to the problem. In 1965 they announced that national standards could be met in the fall of 1967.

As the report of the committee indicates, it is now clear that continued reliance on gradual reductions in automotive emissions would make achievement of the ambient air quality standards impossible within the national deadlines established in title I of this act. More important, it would continue hazards to our health long after they should have been eliminated.

In order to maintain those standards set under title I—standards which are necessary to protect the public health and which must be met in the next 5 years—the emissions standards for carbon monoxide, hydrocarbons, and nitrogen oxides which have been projected for 1980 must be met earlier. This bill would require that this be done by 1975.

To insure that production line vehicles perform adequately, this bill would require that each vehicle manufactured comply with the standards for a 50,000-mile lifetime. The manufacturer would be required to warranty the performance of each individual vehicle as to compliance with emission standards. The increased price of new cars that would be a result of this bill can be defended only if the emission control systems work satisfactorily for the life of the car.

The committee, in setting the 1975 deadline, made every effort to make that requirement consistent with what the industry has told the committee on many occasions over the years: It provides 2 years for research and development of the necessary technology, and 2 years to apply that technology in the mass production of vehicles.

In response to claims that these requirements cannot be met, the committee has included in the legislation an opportunity for a secretarial review of the 1975 deadline. A 1-year extension of the deadline could be granted upon a secretarial finding that such an extension would be necessary and justified. The bill also provides for a review of that decision by an appellate court.

It was only on the issue of secretarial review that the committee was divided. Several members, including myself, felt that an extension of the deadline was a major policy decision that should be made only by the Congress. We felt that if Congress decided the requirements of public health were not to be compromised in any way, any change in that policy would be properly reserved to the Congress.

It should be clear that the committee was unanimous on the important question of when review could be sought—either before Congress or the Secretary. In the committee's view, such review should not be available until the last possible moment. For an extension to be granted, the manufacturer would have to demonstrate not only impossibility, but also that all good-faith efforts had been made.

The committee is aware of the problems these requirements might create for individual companies. Therefore, the bill provides a procedure for mandatory licensing which would make available patents, trade secrets, or know-how necessary to achieve compliance with the Standards Act to any manufacturer who can show a need and to whom the information is not otherwise available. This provision would also apply to stationary sources.

Mr. President, I should like to make the philosophy of the bill clear, with this emphasis:

Predictions of technological impossibility or infeasibility are not sufficient as reasons to avoid tough standards and deadlines, and thus to compromise the public health. The urgency of the problems requires that the industry consider, not only the improvement of existing technology, but also alternatives to the internal combustion engine and new forms of transportation. Only a clear cut and tough public policy can generate this kind of effort.

This philosophy has been stated by the committee before. In reporting the Air Quality Act of 1967 to the Senate, the committee said:

> The Committee recognizes the potential economic impact, and therefore economic risk, associated with major social legislative measures of this type. But this risk was assumed when the Congress enacted social security, fair labor standards, and a host of other legislation designed to protect the public welfare. Such a risk must again be assumed if the nation's air resources are to be conserved and enhanced to the point that generations yet to come will be able to breathe without fear of impairment of health.

Detroit has told the Nation that Americans cannot live without the automobile.

This legislation would tell Detroit that if that is the case, they must make an automobile with which Americans can live.

The third major area in which the committee has recommended significant changes is the area of enforcement. Standards alone will not insure breathable air. All levels of government must be given adequate tools to enforce those standards.

The committee remains convinced that the most effective enforcement of standards will take place on the State and lo-

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cal levels. It is here that the public can participate most actively and bring the most effective pressure to bear for clean air.

Public participation is therefore important in the development of each State's implementation plan. These plans do not involve technical decisions; they do involve public policy choices that citizens should make on the State and local level. They should be consistent with a rational nationwide policy and would be subject to the approval of the Secretary.

The powers to enforce these standards must be increased for the State and local governments as well as the Federal Government. The bill thus requires adequate State enforcement authority as a part of implementation plans and provides that abatement orders may be issued by the Secretary or his representative. Violations of these orders will be punishable by statutory penalties of as much as $25,000 for each day of a first violation.

The bill also provides the Federal Government with the authority to use the influence of the Federal contract as an incentive to compliance with standards established under this act. Federal contracts could be awarded only to facilities which were in compliance with the standards and requirements of this act.

Finally, the bill extends the concept of public participation to the enforcement process. The citizen suits authorized in this legislation would apply important pressure. Although the committee does not advocate these suits as the best way to achieve enforcement, it is clear that they should be an effective tool.

VI. WHAT THE LAW CAN MEAN

These, then, are the commitments that the Congress should make—commitments to meaningful environmental protection; effective protection of the health of all Americans; and the early achievement of these goals.

Committing the Congress with this legislation, however, will not be enough. Here we can make only promises to provide the funds and manpower necessary to set and enforce the standards. We must carry this commitment through to the appropriations of those funds. If these promises that we make here are not kept, these will be empty promises.

May I re-emphasize the point, Mr. President, that the number of personnel in the agency available today to deal with these problems is less than 1,000. We asked the administration to give us its best estimate of the numbers needed and the costs to administer and fully implement the bill before us if it is enacted into law.

The details on the administration's figures are in the report. Personnel would have to be increased to 1,741 in the present fiscal year; 2,535 in fiscal 1972; and 2,930 in fiscal 1973. In 1973, in order to provide the necessary personnel, the annual appropriations would have to be $320 million.

We talked about commitment, Mr. President. The 1967 act has not worked as well as it should have because we did not provide the manpower and the money to enforce it. For that reason, we are now forced to consider a more stringent law. So, for those who look to the law enacted in 1967, to those who are tempted to weaken this one, let me make this point.

If the Senate passes the bill, if the House passes it in this form, and if the President signs it into law, we cannot make it work unless we have as a minimum the personnel and the dollars recommended by the administration.

Mr. President, I emphasize this because it is such an important point. The committee got these detailed estimates from the administration so that we could tell the Senate and the House of Representatives in advance what it is going to cost to make this law work.

I know the traditional attitude of the Appropriations Committee is that we in the legislative committees are good at putting together the big promises, but that since we do not have to concern ourselves with the details of what it will cost or how many people it will take, we are really not a very good bunch to write the figures into the law.

This is one time a legislative committee got the details. They are here for all to see. If the members of the Appropriations Committee are interested in those details, they are here.

If there is any doubt on the part of any Senator about whether he would support the appropriations necessary to make this law work, let him vote against the bill. Let us not vote for empty promises.

Mr. President, I emphasize that this bill seeks a commitment not only from Congress but also from the people. As I said earlier in this statement, clean air will not come cheap and it will not come easy.

The legislation would require new kinds of decisions with respect to transportation and land-use policies. It would require new discipline of our desire for luxury and convenience. And it would require a new perspective on our world, a recognition that nothing is more valuable or essential to us than the quality of our air.

Mr. President, 100 years ago the first board of health in the United States, in Massachusetts, said this:

> We believe that all citizens have an inherent right to the enjoyment of pure and uncontaminated air and water and soil, that this right should be regarded as belonging to the whole community and that no one should be allowed to trespass upon it by his carelessness and his avarice, or even by his ignorance.

Mr. President, 100 years later it is time to write that kind of policy into law. The pending bill is such a law. I urge the Senate to approve it overwhelmingly.

Mr. President, at this point I would like to pay tribute to all members of the Committee on Public Works and the Subcommittee on Air and Water Pollution for their involvement in, their commitment to, and their dedication to what, for me, has been one of the most unusual experiences of committee work since I have been a Member of the Senate.

Hearings on this legislation began early this year. They were concluded early in the spring, in ample time for us to have simply passed out any one of the bills that were introduced and consider our work done. But we were conscious of the fact that the legislation already enacted had proven inadequate.

We were also conscious of the fact that in the climate of environmental concern which we faced in the country, it was important that Congress give to the country the best bill it was possible for Congress to devise.

Since the completion of the hearings, therefore, the subcommittee and the full committee have spent long hours in deliberation and consultation and finally in decision. Never was a partisan line drawn in any of those deliberations. Never was there any effort to obstruct or delay the action of the committee.

The discussions were long because it was necessary to educate ourselves, the Senate and ultimately the country as to the options available to us and the implications of these options.

We have been conscious, I think, since early June that what we were considering writing into law could result in drastic changes in the pattern of the life we live in the urban areas of America. We felt that just such changes were essential if we were really to come to grips with the problem of air pollution. We cannot solve the problem of air pollution in the city of Washington by prohibiting the backyard burning of leaves. That has already been done in some of the suburban counties. It does not begin to touch the job.

All of us in the Senate travel about this country by air. I know of no city of more than 50,000—and that includes my own State—which is not threatened already by the pall of smog. Beyond any question the automobile is the principal contributor to that pall; and the results have grown visably since 1967. The problem that troubled the committee most was not the problem of the new car, but the problem of the used car. There are more than 100 million on the road. And before this law takes effect, if it is enacted into law, four or five new generations of automobiles will become used cars at the rate of 8 million to 9 million a year.

After new cars roll out of the showrooms onto the streets and into the control of their owners, it is technologically almost impossible to make them clean cars.

In title I of this act we have written a national deadline for the purpose of implementing applicable ambient air quality standards. That is going to require every State Governor and the mayor of every city in this country to impose strict controls on the use of automobiles before the new car is a clean one.

The only way we can deal effectively with the used car is to begin making clean cars in Detroit. Under the program as it is presently planned, the used car population will not be cleaned up until 1990. Under the pending bill, the used car population would not be cleaned up until 1985.

Mr. President, that is not too soon to be concerned about the health effects of automobiles on the lives of the people living in these cities.

Drastic medicine? Yes.

Necessary? Yes.

The industry will have 5 years to make its peace with this proposal. As we bear in mind the space program and other great technological achievements of American industry, I find it difficult to believe that, whatever their present doubts, they cannot meet the challenge of this bill.

They have been able to meet such challenges in the case of war when President Roosevelt asked them to build 100,000 planes a year.

They have been able to meet such challenges in the case of national curiosity when President Kennedy asked them to make it possible to send a man to the moon in the 1960's.

Here, in the case of a national objective more serious than either of those—the national health, I think that we have an obligation to lay down the standards and requirements of this bill.

I think that the industry has an obligation to try to meet them. If, in due course, it cannot, then it should come to Congress and share with the Congress—the representatives of the people—the need to modify the policy.

That is the philosophy of this bill. The committee felt it owed no less duty to the Senate and the Congress than to state it in these terms. That is why we have this kind of bill. It was not unreasonable or arbitrary in the sense that it was ill-considered. The committee spent hundreds of hours over weeks and months before it came to this hard decision.

Mr. President, I wish to list in the RECORD at this point the names of the members of the committee: Senator RANDOLPH, Senator YOUNG of Ohio, Senator MUSKIE, Senator JORDAN of North Carolina, Senator BAYH, Senator MONTOYA, Senator SPONG, Senator EAGLETON, Senator GRAVEL, Senator COOPER, Senator BOGGS, Senator BAKER, Senator DOLE, Senator GURNEY, and Senator PACKWOOD.

After all these hundreds of hours covering weeks and months of deliberations, all those Senators—obviously of widely varying political philosophies—voted unanimously to recommend to the Senate and Congress the passage of this bill, the goals it establishes, the sense of urgency it incorporates, and the program for meeting the problem. I cannot think of a major piece of domestic legislation that has had such complete committee support from that spectrum of opinion. There was no doubt in the minds of any of them about supporting it.

It is with that recommendation that I am proud to submit the legislation to the floor of the Senate.

At this point I would like to express my heartfelt appreciation to the chairman of the committee, the Senator from West Virginia (Mr. RANDOLPH), the ranking Republican member, the Senator from Kentucky (Mr. COOPER), the ranking Republican member of the subcommittee, the Senator from Delaware (Mr. BOGGS), and every one of the members of the committee for the most conscientious attention to duty, committee meetings, and the responsibilities this legislation imposes that I have ever witnessed in a committee in my experience.

This is not the usual pat on the back one gets on the floor of the Senate. This is heartfelt. Not only did they contribute their energy and time, but the ideas in this bill could not be separated along party lines of Democratic and Republican. These are Democratic, Republican, liberal, and conservative ideas. This is an integrated piece of legislation incorporating the full thought of all members of the committee.

I would like to express my appreciation to the members of the committee staff. I include their names here because they have given such a fine example of the kind of staff work that is possible in Senate committees. They are: Mr. Richard B. Royce, chief clerk and staff director; Mr. M. Barry Meyer, chief counsel; Mr. Bailey Guard, assistant chief clerk for the minority; Mr. Tom Jorling, minority counsel; Mr. Leon G. Billings, Mr. Richard W. Wilson, Mr. Philip Cummings, Mr. Richard Grundy and Mr. Harold Brayman, professional staff members; and Mrs. Frances Williams, Miss Rebecca Beauregard, Miss Sally White, and Miss Cecily Corcoran of the committee staff.

I would like to express my appreciation to Mr. Eliot Cutler of my staff and to the members of the staffs of members of the committee.

Mr. GRIFFIN. Mr. President, will the Senator yield to me for a few minutes? I realize that the ranking Republican Member has a statement to make and I do not wish to impose too much on his time.

Mr. MUSKIE. I yield.

Mr. GRIFFIN. Needless to say, there are portions of this bill which have a significant impact on the State of Michigan. The Senator from Maine has addressed himself to those provisions. I realize, of course, that there are other important portions of the bill. I would be less than honest with the Senate if I did not indicate some serious misgivings about certain provisions of the bill which write into legislative concrete, in effect, that certain standards—standards which are exceedingly high—must be met by 1975 or 15 million workers will lose their jobs.

Is it the position of the Senator from Maine that the state of the art is such now that the standards for automobile exhaust set in this bill could be met now?

Mr. MUSKIE. If that were the case, I would say somebody has failed in discharging his responsibilities under the 1967 law in not requiring that such standards be met by models coming off the lines now. No, if we thought the technology existed today we would insist that it be incorporated in these cars today.

Mr. GRIFFIN. Is it a fact that no hearings were held by the committee with regard to the question as to whether the standards set in the bill could be met by 1975?

Mr. MUSKIE. Let me read something to the Senator from the testimony in 1967 of Mr. Thomas Mann, president of the Auto Manufacturers Association. He made several points, but on this one he said:

> My fourth point is related to the third: As research indentifies objectionable or harmful pollutants and determines dangerous levels to be avoided, it defines ambient air quality needs in terms of specific goals to be met. With these goals clearly established it becomes appropriate to project timetables for all industries or other sources of emissions so they can begin research and development work to devise methods of achieving the goals.

At that time we did not have criteria identifying the health effects of pollutants. So Mr. Mann urged research to find these defects before timetables were set. He did not say that before we set timetables the committee should be satisfied that technology is available. No. He said, "With these goals"—talking about health effect goals—"clearly established it becomes appropriate to project timetables for all industries or other sources of emissions so that they can begin research and development work to devise methods of achieving the goals."

Since then, under pressure of hearings first held by the subcommittee in 1964 and held almost every year since, the industry has come before us and clearly has been pushing technology, research, and development to the point that they now indicate to us not any commitment to what they can do, but the contention, as one president of one auto company said:

> You can't put this in the record, but we are that close.

If we are "that close," it seems to me we have to set the timetable and challenge them to meet it. They can always come back to Congress.

There is something here in Mr. Mann's testimony, in another portion of his statement, on the timetable question where he defines the process through which a company has to go in order to devise the changes necessary to meet the goals; that is a separate process, after they have been told what the goals are. He said:

> Normally, what I have referred to in the preceding paragraph takes approximately two years in addition to the time needed for design, research, and development stages.

A lot of the hardware is already being tested. We saw at the time of the hearings prototype models which already meet the 1975 standards. Various companies have differing degrees of competency to meet 1980 standards under the present program, but they recognize they have to push ahead.

There is another point I would like to make about the attitude of the automobile companies. It is surely understandable, under the pressures of customer demands and expectations, and under the kinds of pressure generated in connection with safety devices, that the industry wants to walk the extra mile in testing and refining any new technical hardware before putting it in the hands of the customers. That is where, it seems to me, we have a problem of such urgency that normal procedures have to be shortened if we are to achieve the goals.

Mr. GRIFFIN. With all deference to the distinguished Senator from Maine, I must say he has not given a very satis-