

Today, U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin announced the agency will reconsider the 2009 Endangerment Finding. Through this reconsideration, EPA will give the public a chance to weigh in on the science, law, and policy choices at issue in the Finding. EPA cannot prejudice the outcome of this reconsideration process.

WHAT IS THE ENDANGERMENT FINDING & WHY DOES IT MATTER?

The 2009 Endangerment Finding was the first step in the Obama-Biden Administration's (and later the Biden-Harris Administration's) overreaching climate agenda. That agenda has imposed trillions of dollars of costs on Americans. For a generation, defenders of this agenda have avoided scrutiny of how it all began. That evasion ends today.

THE HISTORY

In 2007, the Supreme Court in *Massachusetts v. EPA* ruled that the George W. Bush EPA erred when in 2003 it denied a petition to regulate greenhouse gas emissions from new motor vehicles that the petitioners argued were causing climate change. Massachusetts held that the Clean Air Act's general, Act-wide definition of "air pollutant" was broad enough to include carbon dioxide. Massachusetts explicitly did not hold that EPA was required to regulate these emissions from these sources.

ADDITIONAL CONTEXT

When the Court sent the matter back to EPA, the agency proceeded in an unorthodox manner. Slicing and dicing the language of the statute, it made an "endangerment finding" totally separate from any actual rulemaking setting standards for emissions from cars. EPA argued it had the authority to do this because Congress didn't specifically forbid it from taking this approach. By taking this approach, the Endangerment Finding intentionally ignored costs of regulations that EPA knew would follow from the Finding—and indeed ignored any other policy impacts of those regulations.

The Finding also took an unorthodox approach with the alleged "pollutant" at issue. It focused not solely on carbon dioxide, but on a mix of six gases—some of which cars don't even emit. Contrary to popular belief, the Finding never makes a straight-line conclusion that carbon dioxide from new motor vehicle engines is causing endangerment. Instead, it looked at this mix of six gases, from all sources over the world, and used multiple mental leaps to determine that this mix contributed, not caused, an unknown amount above zero to climate change, and that climate change contributed, not caused, an unknown amount above zero of endangerment to public health. Then, the Finding looked at U.S. vehicle emissions—the only thing this section of the Clean Air Act actually authorizes EPA to regulate—and said that they were a big enough piece of the pie (some 4 percent of global emissions) to be "causing or contributing" to the mix of six gases—not to the endangerment itself.

BOTTOM LINE

EPA does not prejudice the outcome of this reconsideration, but these and other legal issues require fresh scrutiny, particularly in light of multiple major Supreme Court cases issued since the Finding came out, including *Loper Bright*, *West Virginia*, *UARG*, and *Michigan*. Additionally, the Finding acknowledges multiple areas of serious uncertainty and does not take account of subsequent major developments in innovative technologies, science, economics, and mitigation. With this reconsideration, EPA will ensure that the Endangerment Finding complies with the law and is based on sound science and policy, as it must do with all its actions.