

No. 25-1079

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In the  
Supreme Court of the United States

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RMS OF GEORGIA, LLC, D/B/A CHOICE REFRIGERANTS,

*Petitioners,*

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

*Respondents.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the  
District of Columbia Circuit

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**BRIEF OF AMICUS CURIAE  
SOUTHEASTERN LEGAL FOUNDATION  
IN SUPPORT OF PETITIONERS**

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

Southeastern Legal Foundation (SLF) is a national, nonprofit legal organization dedicated to rebuilding the American Republic by reclaiming civil liberties, protecting free speech, securing property rights, and restoring constitutional balance. Since 1976, SLF has advocated, both in and out of the courtroom, to protect individual liberty by restoring constitutional balance. This aspect of its advocacy is reflected in its regular representation and support of those challenging government overreach and other actions in violation of the constitutional framework. *See, e.g., Nat’l Ass’n of Mfrs. v. Dep’t of Def.*, 583 U.S. 109 (2018); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014). SLF also regularly files amicus curiae briefs with this Court about issues of agency overreach and deference. *See, e.g., Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024); *Kisor v. Wilkie*, 588 U.S. 558 (2019).

## SUMMARY OF ARGUMENT

The D.C. Circuit used legislative history and the text of the Clean Air Act to put words into the American Innovation and Manufacturing Act of 2020 (AIM Act), 42 U.S.C. § 7675, that Congress did not. The D.C. Circuit held that when Congress enacted the AIM Act, it actually enacted a program identical to “two predecessor cap-and-trade programs,” derived from the Clean Air Act, even though Congress used

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<sup>1</sup> Rule 37 statement: No party’s counsel authored any of this brief; Amicus alone funded its preparation and submission. Sup. Ct. R. 37.6. Counsel of record for all parties received timely notice of the intent to file this brief. Sup. Ct. R. 37.2.

different language in those programs. *See IGas Holdings, Inc. v. EPA*, 146 F.4th 1126, 1139 (D.C. Cir. 2025). “That is of course quite absurd, and the [D.C. Circuit’s 25] pages of explanation make it no less so.” *King v. Burwell*, 576 U.S. 473, 499 (2015) (Scalia, J., dissenting).

With its additions, the D.C. Circuit invented an interpretation of the Act divorced from the actual statutory text. It then called that unfounded alternative reading plausible and applied, *sub silentio*, the constitutional-doubt canon. Only through this convoluted interpretive method could the court manufacture constraints on the massive delegation of legislative power in the AIM Act. This grave departure from textualist principles shielded an overbroad delegation from proper constitutional scrutiny.

This Court should step in to correct this misuse of the constitutional-doubt canon (and the use of legislative history to replace unambiguous textual silence). The Court should provide guidance to the lower courts about the appropriate use of the canon. The constitutional-doubt canon only applies where a collision with the Constitution can be avoided by selecting among multiple *plausible* constructions of a statute. The D.C. Circuit never should have applied the canon, because the reading of the AIM Act it invented is implausible. Without a second plausible reading, the AIM Act’s plain text—including silence—must be read for conformity with the Constitution. Anything else is an arrogation of legislative power and an abdication of the judicial duty to confront the

broad and unguided delegation of legislative power in the AIM Act.

The Court should grant the petition for a writ of certiorari to restrain Congress from giving the EPA unbounded discretion to choose which private parties are entitled to participate in a multibillion-dollar market. The Court should use this opportunity to provide guidance to lower courts on the proper mode of statutory interpretation when addressing congressional silence.

### ARGUMENT

#### **I. The plain text of the AIM Act does not contain the Clean Air Act’s language setting allowances using baseline-year production.**

This Court’s intervention is needed because the D.C. Circuit read into the AIM Act language that does not exist, which courts may not do. The AIM Act and the Clean Air Act do not have identical text, yet the D.C. Circuit interpreted them identically. The AIM Act and the Clean Air Act both establish cap-and-trade programs, but only the Clean Air Act includes guidance about how to allocate allowances. The difference in the statutory text is obvious.

The Clean Air Act explicitly directs the EPA to allocate allowances based on the “quantity of such substance produced by such person during the baseline year.” 42 U.S.C. § 7671d(b)(1). The AIM Act has no language mirroring this provision. Nor does it have language incorporating by reference this provision. Yet the AIM Act *does* incorporate several other provisions of the Clean Air Act by reference. *See* 42 U.S.C. §§ 7675(d)(1)(B)(i), (h)(5)(B), (k)(1)(c).

Under established canons of statutory interpretation, there is only one conclusion to draw from this: the laws are different. After all, “differences in language like this convey differences in meaning.” *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). The Clean Air Act directs the EPA to set allowances dependent on baseline-year production. The AIM Act does not.

Because the AIM Act lacks the legislative guidance the Clean Air Act possesses, a reviewing court must grapple with whether the AIM Act is an impermissible delegation of legislative power. Rather than do that, the D.C. Circuit inserted the Clean Air Act’s guidance into the text. This violated basic principles of statutory interpretation that this Court must correct. That correction and guidance is especially critical in the case of the D.C. Circuit, the lower court which most often reviews the authority and constitutionality of federal agencies. *See, e.g., Loper Bright Enters.*, 603 U.S. 369 (reviewing opinion of the D.C. Circuit); *West Virginia v. EPA*, 597 U.S. 697 (2022) (same).

The only reliable indicator of Congress’ intent is the AIM Act’s textual silence about how to distribute allowances. That silence should have been read according to its ordinary meaning—silence. The D.C. Circuit should then have decided whether that lack of guidance resulted in an impermissible delegation of core legislative power.

**II. It is critical that this Court ensure that lower courts hew closely to the ordinary meaning of plain text as faithful agents of Congress.**

The D.C. Circuit held that because the AIM Act *does not* include the baseline-year production language of the Clean Air Act, it *does* include the baseline-year production language of the Clean Air Act. *IGas Holdings*, 146 F.4th at 1138. This circular holding “is of course quite absurd,” and defies long-established rules of statutory construction. *King*, 576 U.S. at 499 (Scalia, J., dissenting). This Court should correct at least three critical errors in the D.C. Circuit’s statutory interpretation to guide the lower courts.

First, rather than rely on the unambiguous silence in the statutory text, the D.C. Circuit used stray comments from two congressmen in a committee hearing to divine Congress’ intent and invent an alternative construction. *See IGas Holdings*, 146 F.4th at 1139. This flies directly in the face of the textualist mode of statutory interpretation that the members of this Court have blessed. *See, e.g.*, Amy Coney Barrett, *Congressional Insiders and Outsiders*, 84 U. Chi. L. Rev. 2193, 2193 (2017) (“[O]ne would be hard pressed to find anyone willing to say that a court should depart from statutory text to better serve Congress’s purpose.”); *West Virginia v. EPA*, 597 U.S. at 779 (Kagan, J., dissenting) (quoting Harvard Law School, The Antonin Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes (Nov. 25, 2015)); *Loper Bright Enters.*, 603 U.S. at 443 n.6 (Gorsuch, J., concurring).

Under a textualist view, “the statutory text is the only reliable indication of congressional intent.” Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 Bos. U. L. Rev. 109, 112 (2010); *see also* B. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2129–30 (2016) (“[T]extualists look to legislative history only infrequently, and even then only to resolve cases of true statutory ambiguity. They never use legislative history to depart from otherwise clear statutory text . . . .”). The stray statements by congressmen in committee hearings relied on by the D.C. Circuit are “so far removed from what the full house could possibly have had in mind that their asserted relevance is comical.” Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, 376 (2012).

Second, the D.C. Circuit ignored the omitted-case canon: “a matter not covered is to be treated as not covered.” Scalia & Garner, 93. The AIM Act is simply silent on how allowances are to be distributed, and “Congress’ silence is just that—silence.” *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 686 (1987). Silence is the best reading of silence.

Third, the D.C. Circuit ignored the many canons that explain that different statutory texts must have different meanings. This idea is present in the negative-implication canon, the consistent-usage canon, and the surplusage canon, all of which express that when Congress writes two similar statutes in different ways, they have different meanings. *Cf.* Scalia & Garner, 107 (negative-implication canon), 170 (consistent-usage canon), 174 (surplusage canon).

The D.C. Circuit threw off the shackles of both the AIM Act's text and the interpretive methods just described by crafting from whole cloth an alternative meaning to the AIM Act. With that alternative in hand, the court applied, *sub silentio*, the constitutional-doubt canon. The D.C. Circuit acted as an impromptu legislature, not a court.

To be fair, the D.C. Circuit gets right that this Court has held that “where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.” *United States ex rel. Att’y Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 408 (1909); *see also* Scalia & Garner, 247, 251 (describing this as the constitutional-doubt canon, a distinct one of two components of the constitutional avoidance canon). But the D.C. Circuit was wrong to create a second plausible construction where there was none.

Obviously, one plausible construction of the AIM Act's silence is that it is silent as to how the EPA was to distribute allowances. The D.C. Circuit concluded that a second plausible construction is that the AIM Act directs that allowances be distributed in the same way as the Clean Air Act. But the text itself contains no evidence of this idea and contains much evidence of its opposite.

Congress referenced the Clean Air Act elsewhere in the AIM Act, but it did not reference the allowance-distribution scheme it used. Nor did Congress write a similar standalone distribution provision into the AIM Act—even one that hints at the same idea. Yet the D.C. Circuit divined the inclusion of a provision

that describes how allowances should be distributed from unambiguous statutory silence. Then, having concluded that these two constructions were both plausible, the D.C. Circuit applied the constitutional-doubt canon in silence to place its newly-woven construction of the AIM Act in the crosshairs of Petitioner’s nondelegation challenge and uphold its rewrite of the AIM Act.

This case appears to be one more example of the constitutional-doubt canon permitting a court to “act[] as a roving commission to rewrite statutes to taste.” Frank H. Easterbrook, *Do Liberals and Conservatives Differ in Judicial Activism?*, 73 U. Colo. L. Rev 1401, 1405 (2002); *see also* Kavanaugh, 129 Harv. L. Rev. at 2146 (critiquing constitutional avoidance as “sometimes look[ing] more like judicial abdication—a failure to confront the constitutional question raised by the statute as written—than judicial restraint”). The constitutional-doubt canon should never have been applied because there is only one plausible construction of Congressional silence: silence. This Court should grant certiorari not only to correct this error but to guide lower courts on the proper methods of statutory interpretation.

## CONCLUSION

The Court should grant the petition for a writ of certiorari to provide guidance to lower courts on the proper mode of statutory interpretation when Congress is silent. Simply put, lower courts should not add text and put words in Congress’ mouth to rescue statutes from serious constitutional doubts, and this Court should say so.

Respectfully submitted,

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