Section 112 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. § 7412), requires the Environmental Protection Agency to list major sources of hazardous air pollutants and then to promulgate emission standards for those sources. Within this framework, Congress carved out a listing analysis that applies only to electric-utility steam-generating units, or power plants. To list electric power plants, § 112(n)(1)(A) provides that EPA must first conduct "a study of the hazards to public health reasonably anticipated to occur as a result of emissions" of hazardous air pollutants "after imposition of the requirements of [the Act]." EPA "shall" then regulate those power plants "if [it] finds such regulation is appropriate and necessary after considering the results of the study." The terms "appropriate and necessary" are not defined in the Act. EPA determined that listing of electric power plants is appropriate when emissions pose a hazard to public health or the environment and controls are available to reduce the hazardous emissions. Pursuant to those regulations, EPA listed electric power plants even though it estimated the annual cost of compliance to be $9.6 billion and the annual health benefit to be between $4 million and $6 million.

Today, the Supreme Court granted certiorari in three cases, *Michigan v. EPA*, No. 14-46, *Utility Air Regulatory Group v. EPA*, No. 14-47, and *National Mining Association v. EPA*, No. 14-49, to determine "[w]hether the Environmental Protection Agency unreasonably refused to consider costs in determining whether it is appropriate to regulate hazardous air pollutants emitted by electric utilities." The Court consolidated the cases for argument.

The petitioners—23 states, one governor, and two trade associations of fuel producers and electric companies—sued EPA to challenge the final rule that listed the plants. Facing the mammoth costs of complying with emissions standards as a result of being listed under the Act, petitioners contend that for EPA not even to consider the anticipated cost of implementing emission standards when listing electric power plants reads "appropriate" out of the statute.

The D.C. Circuit rejected petitioners' challenge. The majority held that because "§ 112(n)(1)(A) neither requires EPA to consider costs nor prohibits EPA from doing so," the statute "does not evince an unambiguous congressional intent on the specific issue of whether EPA was required to consider costs in making its 'appropriate and necessary' determination." 748 F.3d 1222, 1237-38 (D.C. Cir. 2014). Because the language of the statute was ambiguous, the majority held that EPA's interpretation of "appropriate and necessary" was entitled to deference under *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Judge Kavanaugh dissented from that portion of the court's opinion. He found it "entirely unreasonable for EPA to exclude consideration of costs," with the result that EPA's determination to do so was not entitled to *Chevron*deference. *Id.* at 1261.

The Supreme Court granted certiorari today to address the circumstances under which the costs of complying with regulations must be considered under the Clean Air Act and similar statutory frameworks. The Court's decision will be important not only to entities that operate electric power plants, but also to those that do business with them, and more broadly to all EPA-regulated entities with an interest in seeing EPA take the costs of compliance with its rules into account.

Absent extensions, amicus briefs in support of the petitioners will be due on January 16, 2015, and amicus briefs in support of the respondent will be due on February 17, 2015. Any questions about the cases should be directed to Timothy S. Bishop (+1 312 701 7829) in our Chicago office.