No. 24-7

IN THE

Supreme Court of the United States

DIAMOND ALTERNATIVE ENERGY, LLC, ET AL.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN AUTOMOTIVE LEASING ASSOCIATION, AMERICAN CAR RENTAL ASSOCIATION, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., NATIONAL MINING ASSOCIATION, NATIONAL RETAIL FEDERATION, AND TRUCK RENTING AND LEASING ASSOCIATION AS *AMICI CURIAE* SUPPORTING PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. The Chamber directly represents approximately 300,000 members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the Nation's business community.

The American Automotive Leasing Association ("AALA") is a national trade organization that represents commercial automotive fleet leasing companies. AALA members own and manage more than 3.5 million vehicles, which are leased to small businesses, nonprofit organizations, government entities, and corporations that usually have smaller divisions or franchises in all 50 states. These vehicles range from passenger cars to cargo vans and trucks that are customized and outfitted to fit business purposes, from electrical and plumbing repair and telecommunications installation to wholesale food and beverage distribution and fuel delivery. Fleet leasing companies make businesses of all sizes more competitive by allowing customers to focus on their core business activities rather than managing their vehicle fleets.

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The American Car Rental Association ("ACRA") is the national representative for over 98% of our nation's car rental industry. ACRA's membership consists of more than 300 car rental companies, including nationwide rental car companies, along with many system licensees and franchisees and mid-size, regional and independent car rental companies. ACRA members have over 2.1 million registered vehicles in service in the United States, with fleets ranging in size from ten cars to one million cars, and employ more than 160,000 workers at rental locations in nearly every county and in every State across the nation.

The Associated General Contractors of America, Inc. ("AGC of America") is the nation's largest and most diverse trade association in the commercial construction industry, now representing more than 28,000 member companies, that include general contractors, specialty contractors, and service providers and suppliers to the industry through a nationwide network of chapters in all 50 states, the District of Columbia, and Puerto Rico. AGC of America represents both union- and open-shop employers engaged in building, heavy, civil, industrial, utility, and other construction for both public and private property owners and developers. AGC of America works to ensure the continued success of the commercial construction industry by advocating for federal, state, and local measures that support the industry; providing education and training for member firms; and connecting member firms with resources needed to be successful businesses and responsible corporate citizens. The association also strives to maintain its members' longstanding commitment to skill, integrity and responsibility.

The National Mining Association ("NMA"), based in Washington, DC, is a national trade association that serves as the voice of the mining industry. The NMA represents over 250 members involved in every aspect of mining, from producers and equipment manufacturers to service providers. The NMA's members produce most of America's coal, metals, and industrial and agricultural minerals. America's mining industry supplies the essential materials necessary for nearly every sector of our economy—from technology and healthcare to energy, transportation, infrastructure, and national security—all delivered under world-leading environmental, safety, and labor standards. The NMA works to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security, and economic security. A core mission of the NMA is working with Congress and regulators to advocate for public policies that will help America fully and responsibly utilize its vast natural resources. The NMA also has a long history of representing the mining industry in front of the judiciary.

The National Retail Federation ("NRF") is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers from the United States and more than 45 countries. NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing $5.3 trillion to annual GDP and supporting one in four U.S. jobs—55 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating and communi-

cating the powerful impact retail has on local communities and global economies.

The Truck Renting and Leasing Association ("TRALA") is a voluntary non-profit trade association founded in 1978 to serve as the unified and focused voice for the truck renting and leasing industry. TRALA's mission is to foster a positive legal and regulatory climate within which companies engaged in leasing and renting vehicles and trailers, as well as related businesses, can compete without discrimination in the North American marketplace. TRALA's nearly 500 members engage primarily in commercial truck renting and leasing, vehicle finance leasing, and consumer truck rental. Its members also include companies with motor-carrier operations and more than one hundred supplier member companies that offer equipment, products, and services to TRALA renting and leasing company members. TRALA members purchase approximately 30% of all over-the-road Class 2-8 trucks and tractors in the United States annually, and today approximately one in every four trucks on the road, regardless of size, is a rented or leased vehicle.

Amici's members are frequently injured by agency action that does not directly regulate them but that has a significant impact on their operations and revenues. In those situations, *amici* and their members often seek redress for such injuries in federal court. *Amici* therefore have an interest in ensuring that artificial barriers to obtaining judicial review of agency actions that harm their members are not smuggled in under the guise of Article III.[2]

[2] *Amici* note that affected businesses do not have a unified view of the underlying merits of this litigation, which are not at issue be-

SUMMARY OF ARGUMENT

The decision below distorts Article III's redressability requirement beyond recognition—ignoring commonsense inferences based on predictable economic consequences. The court of appeals' misguided approach would, as a matter of constitutional law, foreclose a significant portion of everyday legal challenges to agency overreach. This Court should reverse.

A party wishing to challenge agency action in federal court must show not only that it was injured by the agency action, but that the federal court can "redress the alleged injury." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998). This redressability requirement helps ensure that the correct parties are before the court and that the court's decision could have some real-world benefit for the plaintiff.

Individuals and businesses can suffer a redressable injury from a regulation even if it does not directly regulate them. Indeed, in many cases agencies do not just *expect* that regulations will have predictable effects on individuals or businesses other than the regulated parties, they affirmatively *intend* those effects. Individuals or businesses who are indirectly harmed often will be well positioned to assert legal challenges that keep agencies within their statutory bounds. Sometimes they will even be the *best* positioned to bring such a challenge, especially when the directly

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fore this Court. For example, various vehicle manufacturers and other business entities intervened in support of respondents in this case, opposing various arguments that petitioners made in attacking the regulatory decision at issue here. *Ohio v. EPA*, 98 F.4th 288, 299 & n.6 (D.C. Cir. 2024).

regulated parties cannot or will not challenge the agency's overreach.

In those types of cases, courts assess standing by drawing common-sense inferences about the "predictable effect" of agency action on private conduct. *Dep't of Commerce v. New York*, 588 U.S. 752, 768 (2019). If the agency action causes regulated entities to behave in a way that injures other parties, common sense dictates that an order vacating the agency action will redress those other parties' injuries—at least to some degree.

Those straightforward principles require reversal here. EPA issued a preemption waiver for California's low-emission and zero-emission vehicle regulations, with the explicit goal of cutting emissions through a reduction in the consumption of the fuels that petitioners (or their members) produce and distribute. Manufacturers were required to comply with California's mandates by adjusting their production and pricing to favor low-emission or zero-emission automobiles. Basic principles of supply and demand dictate that if EPA's waiver is vacated—and vehicle manufacturers are free to produce and price their vehicles according to market forces—at least some manufacturers will produce or sell fewer low-emission or zero-emission vehicles. Demand for the fuels petitioners (or their members) produce and distribute will increase as a result. If that were not the natural economic consequence of vacating the agency's decision, then there would have been no reason for the agency to issue its preemption waiver to begin with. It is therefore "likely" that vacating EPA's waiver will redress at least some of petitioners' (or their members') injuries. *Dep't of Commerce*, 588 U.S.

at 766 (citation omitted). That is all redressability requires.

The D.C. Circuit refused to credit those commonsense inferences. Instead, it effectively required petitioners to obtain affidavits from vehicle manufacturers attesting that, if EPA's waiver were vacated, they would alter their vehicle production or pricing in a way that would increase demand for petitioners' fuel products.

The D.C. Circuit's rule threatens to preclude a substantial number of injured parties from obtaining judicial redress of their injuries. There are many valid reasons why directly regulated entities might decide not to challenge an agency action that adversely impacts them. Yet the D.C. Circuit's rule converts that decision into a bar on *other* parties' ability to seek redress of *their* injuries. Its rule would foreclose challenges to unlawful agency action in a significant swath of cases; indeed, "entire classes of administrative litigation … have traditionally been brought by unregulated parties." *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 833 (2024) (Kavanaugh, J., concurring). And unlike judicial construction of a *statutory* limitation on who may sue, the court of appeals' decision forecloses unregulated parties and indirectly regulated parties (like petitioners here) from bringing suit *as a matter of constitutional law*, which means that Congress cannot rectify the problem simply by amending the statute.

The D.C. Circuit's rule also would reward bait-and-switch tactics. California, for example, insisted that EPA's waiver was *necessary* to achieve California's goal of lowering emissions by reducing fossil-fuel consumption. Now that the waiver has been challenged,

though, California seeks to evade judicial review by disingenuously claiming that vacating the waiver will have no impact on fossil-fuel consumption.

This Court should reverse the lower court's decision to ensure that all injured parties have a judicial forum in which to seek redress from unlawful agency action that is harming them.

ARGUMENT

I. The D.C. Circuit's decision imposes artificial barriers to judicial review of agency action.

The decision below effects a dramatic distortion of Article III jurisprudence that slams the door on a significant proportion of challenges to agency action. The D.C. Circuit held that to show Article III redressability, petitioners had to prove that regulated third-party automobile manufacturers would take specific actions if EPA's waiver were vacated. The lower court's decision ignores both common sense and basic principles of supply and demand. When an agency adopts a rule that depresses demand for a product, vacating that rule will cause demand to rebound. That is precisely the case here. EPA and California envisioned and understood that EPA's waiver would cause economic injury to petitioners by promoting low-emission or zero-emission vehicles that use less of the fuels that petitioners (or their members) sell and distribute. Vacating EPA's waiver will redress that injury, at least in part—which is all Article III requires.

A. Businesses should be able to obtain judicial review of agency action that predictably harms them.

Article III requires petitioners to show that their injuries are "likely" to be "redressed by a favorable ruling" from a federal court. *Dep't of Commerce*, 588 U.S. at 766 (citation omitted). This requirement helps to avoid advisory opinions by ensuring that the correct parties are before the court, *see, e.g.*, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 568 (1992), and that the court's opinion could alleviate that injury in at least some way, *see, e.g.*, *Steel Co.*, 523 U.S. at 106. Redressability can be shown by drawing common-sense inferences from the natural, predictable effects of government action or its removal. Those common-sense inferences appropriately ensure that judicial review is limited to actual cases or controversies, but without closing the courthouse doors to those injured by agency action.

Department of Commerce illustrates this understanding of redressability. There, the Court held that States had standing to challenge the reinstatement of a citizenship question on the census questionnaire. 588 U.S. at 766-768. Reinstating the question would deter some noncitizens from responding to the census and, in turn, would cause States "a number of injuries," including the loss of federal funds "distributed on the basis of state population." *Id.* at 766-767. The Court rejected the argument that this injury was too "speculat[ive]" because it "depend[ed] on the independent action of third parties choosing to violate their legal duty to respond to the census." *Id.* at 767-768. "[H]istorically," the Court explained, noncitizens "responded to the census at lower rates … at least in part" due to "reluctance to answer a citizenship question." *Id.* at 768. The

States' "theory of standing" thus appropriately "relie[d] … on the *predictable effect* of Government action on the decisions of third parties": historical evidence substantiated the inference that a citizenship question would reduce the response rate. *Id*. (emphasis added). And because the resulting injury was "sufficiently concrete and imminent," there was "no dispute that a ruling in favor of [the States] would redress that harm," *id*. at 767—*i.e.*, more noncitizens would respond to the census and the States would receive more federal funds.

The "effect" of vacating an agency action is even more "predictable" when the injury is the *intended* or *obviously foreseeable* consequence of that action—not just collateral damage. Suppose, for example, that in an effort to curb consumption of high-sugar beverages, California banned retailers from selling soft drinks in cups bigger than 20 ounces, despite significant customer demand for Big Gulps. The effect would be obvious: soft-drink producers would sell less soda syrup in California. If the ban were overturned, then at least *some* retailers would be expected to again offer larger-sized sodas—given historic customer demand—which would repair at least *some* of the soft-drink producers' injuries. *Accord Bennett v. Spear*, 520 U.S. 154, 168-171 (1997) (finding injury-in-fact and redressability when the unregulated plaintiff's injury followed from the "coercive effect" of government action "upon the action of someone else").

Businesses should be able to challenge agency action that harms the products they sell, whether or not the agency explicitly targets those products or the businesses themselves, particularly when the stated goal or clearly foreseeable outcome of the government regula-

tion is to decrease consumer demand for those products. That economic harm is a classic Article III injury; setting aside the government action causing that injury is classic judicial redress. It makes no sense to bar these injured parties from coming into court unless they can convince their customers—U.S. retailers—to submit declarations attesting to the business decisions those customers would make if the government action were vacated. Nor has this Court ever required such an unreasonably high evidentiary showing to establish redressability. To the contrary: just last Term this Court eschewed any desire to adopt an "elevated standard for redressability.'" *Murthy v. Missouri*, 603 U.S. 43, 74 n.11 (2024) (citation omitted).

In cases like these, redressability does not require a crystal ball; it requires common sense. Once economic injury caused by regulation is established, redressability is a light lift, given that it is the mirror image of the injury that the unregulated or indirectly regulated entity experienced. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380-381 (2024) (explaining that "[i]f a defendant's action causes an injury, enjoining the action … will typically redress that injury," and "[s]o the two key questions in most standing disputes are injury in fact and causation").

B. Common sense and basic economics confirm that an order vacating EPA's waiver will redress petitioners' injuries.

An order vacating EPA's waiver will redress petitioners' injuries. California's Zero-Emission Vehicle program dictates that a minimum percentage of total vehicles sold into California by certain manufacturers must be zero-emission (at least up through model year

2025), *see* Cal. Air Res. Bd., *Zero-Emission Vehicle Program*[3], and its Low-Emission Vehicle program requires manufacturers of certain vehicles to meet "stringent emission standards" for vehicles, *see* Cal. Air Res. Bd., *Low-Emission Vehicle (LEV III) Program*[4]; *see also* 78 Fed. Reg. 2,112, 2,114, 2,119 (Jan. 9, 2013). A reduction in demand for the fuels made or distributed by petitioners was not an unforeseen byproduct of California's programs. California confirmed as much when it asked for the waiver—representing to EPA that "net upstream emissions [would be] reduced through the increased use of electricity *and concomitant reductions in fuel production*." 87 Fed. Reg. 14,332, 14,364 (Mar. 14, 2022) (emphasis added) (quoting 2012 Waiver Request, EPA-HQ-OAR-2012-0562-0004, at 15-16). Predictably, automakers responded to California's mandates by altering their production plans and vehicle pricing to conform to California's quotas. Pet. App. 12a.

Basic economics and common sense teach that a court order vacating EPA's waiver would redress the injury that the waiver foreseeably inflicted. Without EPA's waiver, the government compulsion that forced automakers to alter their production and pricing to adhere to California's requirements disappears. And without that market-altering compulsion, it is "likely" that *at least some* automakers would move back *at least partway* toward the market-driven production and pricing they set before California's artificial targets took effect. *Dep't of Commerce*, 588 U.S. at 766.

[3] https://ww2.arb.ca.gov/our-work/programs/zero-emission-vehicle-program/about.

[4] https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/lev-program/low-emission-vehicle-lev-iii-program.

Demand for the fuels petitioners produce and distribute would therefore increase as consumers purchased more conventional vehicles than they would have if EPA's waiver remained in place.

To be sure, it may not be *certain* that *all* automakers would reduce production of low-emission or zero-emission vehicles or raise those vehicles' prices if EPA's waiver were vacated. But redressability does not require a certain return to the *status quo ante*. *See Murthy*, 603 U.S. at 74 n.11 (refusing to "hold[] plaintiffs to a 'certainty' standard" to satisfy redressability) (citation omitted). It requires only that it be "likely" that vacatur would restore *some* of the demand for petitioners' fuels that EPA's waiver is suppressing. *Dep't of Commerce*, 588 U.S. at 766. If vacatur restores only $1 in revenue lost due to EPA's waiver, Article III is satisfied. *See Massachusetts v. EPA*, 549 U.S. 497, 526 (2007) (finding redressability when injury "would be reduced *to some extent* if petitioners received the relief they seek" (emphasis added)); *accord Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021) (availability of nominal damages satisfies redressability). Basic market forces compel that conclusion here.

This case thus falls squarely within this Court's established redressability doctrine. Petitioners are not seeking relief from the wrong party; they have sued the agency that issued the waiver that caused their injury. *Cf. Lujan*, 504 U.S. at 568 (no redressability where "agencies funding the projects" causing injury "were not parties to the case"). Nor is there any mismatch between the relief petitioners request and the injury they claim; they seek vacatur of the EPA waiver that injured them. *Cf. Steel Co.*, 523 U.S. at 107 ("Relief that does not remedy the injury suffered cannot boot-

strap a plaintiff into federal court"). Redressability requires nothing more.

In fact, the case for redressability is even stronger here than it was in *Department of Commerce*. There, the States established standing—both injury and redressability—without having to prove that the agency added a citizenship question to the census with the goal of suppressing census responses, or that fewer census responses was the necessary consequence of adding a citizenship question. *See* 588 U.S. at 766-768. Where, as here, a "reduction[] in fuel production" *is* the necessary (and, indeed, intended) consequence of California's mandates, 87 Fed. Reg. at 14,364 (citation omitted), standing should be easier to establish. The natural and logical consequence of an order blocking California's mandates (by vacating EPA's waiver) is the reversal of that reduction.

The court of appeals, however, eschewed commonsense inferences in favor of a rigid and heightened evidentiary standard. It held that petitioners had not shown redressability because they did not produce evidence proving what vehicle manufacturers would do in the event EPA's waiver is vacated. In essence, the court held that petitioners should have solicited affidavits from these automakers attesting to their future business plans if EPA's waiver is vacated. Pet. App. 24a-25a. Yet the D.C. Circuit identified no decision of this Court imposing such a heightened evidentiary burden that effectively makes an injured party's access to federal court contingent on third parties' litigation decisions. And no such case exists. *See* Brief for Petitioners at 25-29, 31-37. At the same time, the court of appeals noted EPA's statement that some, but not all, vehicle manufacturers had voluntarily agreed to com-

ply with California's requirements after EPA's 2013 waiver was rescinded, *see* Pet. App. 13a-14a, and the court conceded the "possib[ility] that manufacturers could change their prices *without* modifying their production cycles," which "may redress Petitioners' injuries." Pet. App. 24a (emphasis added). But the court of appeals ignored the common-sense inference of redressability that follows from these facts.

Instead, the D.C. Circuit premised its standing decision in part on its belief that automobile manufacturers would not have sufficient time to alter their vehicle specifications even if EPA's waiver were vacated, on the theory that the waiver only applies up through model year 2025 vehicles. Pet. App. 22a-23a. But standing is determined at the time suit is filed, *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 191 (2000), not at the time of a court's decision years later. Here, petitioners filed their petition for review 60 days after EPA's reinstatement of its waiver in March 2022, Brief for Petitioners at 12—at which point EPA's waiver would be in effect for several years more. If the limited time *now* remaining on EPA's waiver—two years after suit was filed—has jurisdictional implications, it would be as a matter of mootness, not as a matter of standing. And there are strong arguments that this case is not moot and would not be mooted by the expiration of EPA's waiver. *See* Brief for Petitioners at 39-41.

* * *

To be sure, establishing standing is generally *easier* for a regulated party. *All. for Hippocratic Med.*, 602 U.S. at 382. But that does not mean establishing standing is *impossible* for non-regulated or indirectly regulated parties. Here, EPA granted California a

waiver with the acknowledged consequence of reducing demand for the fuels petitioners make and distribute—causing petitioners injury. A court order vacating that agency action is likely to redress at least some of that injury going forward. That is more than sufficient for redressability. By ignoring common-sense inferences derived from basic principles of supply and demand, the court of appeals departed from this Court's precedents.

II. The D.C. Circuit's cramped view of redressability erodes effective judicial review of agency action and warrants reversal.

The D.C. Circuit's decision not only misapplies the law, it also undermines judicial review. The court's rationale threatens to insulate broad swaths of agency action from judicial scrutiny as a matter of constitutional law, and will incentivize the manipulation of federal courts' jurisdiction.

A. Judicial review of agency action is vitally important. More than two centuries ago, this Court proclaimed that "[t]he very essence of civil liberty … consists in the right of every individual to claim the protection of the laws." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). Congress later enshrined that principle in the APA's judicial review provision, which establishes a "'basic presumption' that anyone injured by agency action should have access to judicial review." *Corner Post*, 603 U.S. at 824 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 140 (1967)). This review serves both a corrective and prophylactic purpose. It enables courts to overturn unlawful agency action (and redress injuries those actions caused), and it deters errant agency action—encouraging agencies to

stay within their statutory authority, follow proper procedures, carefully review the facts, and employ sound judgment in promulgating and enforcing their many rules and regulations. *See, e.g.*, *Bowen v. Massachusetts*, 487 U.S. 879, 908 n.46 (1988) (judicial review constrains the exercise of discretionary power by administrative agencies and promotes fidelity to statutory requirements).

The need for meaningful judicial review of agency action is especially acute in light of the extraordinary growth in the size and power of the administrative state. The national government now houses a "vast and varied federal bureaucracy" that "wields vast power … touch[ing] almost every aspect of daily life," *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010), and has "expan[ded] … into new territories the Framers could scarcely have imagined," *Seila Law LLC v. CFPB*, 591 U.S. 197, 231 (2020).

Much of the federal government's operation now consists of "hundreds of federal agencies poking into every nook and cranny of daily life." *City of Arlington v. FCC*, 569 U.S. 290, 315 (2013) (Roberts, C.J., dissenting). To accomplish this, agencies "produce[] reams of regulations—so many that they dwarf the statutes enacted by Congress." *Kisor v. Wilkie*, 588 U.S. 558, 629 (2019) (Gorsuch, J., concurring in the judgment) (quotation marks omitted). And they "add thousands more pages of regulations every year." *Id.*; *see* National Archives, Federal Register & CFR Statistics (showing that the CFR was less than 10,000 pages in 1950 and now tops 100,000).[5] This enormous expan-

[5] https://www.federalregister.gov/reader-aids/federal-register-statistics.

sion of the administrative state poses "a significant threat to individual liberty." *Seila Law LLC*, 591 U.S. at 240 (Thomas, J., concurring in part and dissenting in part) (citation omitted).

Judicial review is an essential check against this threat. *Marbury*, 5 U.S. (1 Cranch) at 163; *see also Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 65 (1976) (Brennan, J., concurring in the judgment) ("In our modern-day society, dominated by complex legislative programs and large-scale governmental involvement in the everyday lives of all of us, judicial review of administrative action is essential both for protection of individuals illegally harmed by that action and to ensure that the attainment of congressionally mandated goals is not frustrated by illegal action." (citations omitted)). Accordingly, this Court has consistently rejected attempts to undermine the effectiveness of judicial review of agency action.

Most directly, the Court has refused to interpret statutes to displace the APA's judicial review provision without "'clear and convincing evidence' of congressional intent to preclude judicial review." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (quoting *Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43, 64 (1993)). It has also resisted efforts to undermine the *effectiveness* of judicial review of agency action. In *Corner Post*, for example, the Court adopted an injury-accrual rule for the APA's six-year statute of limitations, in part because that rule "vindicates the APA's 'basic presumption' that anyone injured by agency action should have access to judicial review," and "respects our 'deep-rooted historic tradition that everyone should have his own day in court.'" 603 U.S. at 824 (quoting *Abbott Labs.*, 387 U.S. at 140, and *Richards v. Jefferson Cnty.*,

517 U.S. 793, 798 (1996)); *see also id.* at 832 (Kavanaugh, J., concurring) ("Vacatur is … essential to fulfill the 'basic presumption of judicial review' for parties who have been 'adversely affected or aggrieved' by federal agency action" (citation omitted)).

The Court has also resisted efforts to use Article III to shield agency action from judicial review by disregarding the real-world effects of vacating the agency's action. In *Bennett v. Spear*, the Court held that two irrigation districts had standing to challenge a biological opinion of the Fish and Wildlife Service that would affect the amount of water available to them. 520 U.S. at 157, 159, 167-168. The government argued that the plaintiffs had not shown that the biological opinion caused their injury or that their injury would be redressed by vacating it, because the Bureau of Reclamation, not the Service, was the ultimate decisionmaker. *Id.* at 168-169. The Court rejected that argument. Although the biological opinion "theoretically serve[d] an 'advisory function,'" the Court looked to the real-life "coercive effect" it had on the Bureau of Reclamation's decisionmaking to conclude that vacating the biological opinion would redress the plaintiffs' injuries. *Id.* at 169-171 (citation omitted).

B. The D.C. Circuit's decision undermines this important safeguard against unlawful agency action. To be sure, Article III's requirements—including redressability—must be satisfied for any suit to be heard in federal court. *Lujan*, 504 U.S. at 560. But the paramount importance of judicial review of agency action counsels strongly against infusing constitutional standing doctrine with heightened and (often) insurmountable evidentiary burdens that are divorced from common sense and logic. Those types of burdens are en-

tirely unnecessary to prevent "mere bystander[s]" who lack "a personal stake in the dispute" from filing suit in federal court, or to "assure that the legal questions presented to the court will be resolved … in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *All. for Hippocratic Med.*, 602 U.S. at 379-380 (citations and quotation marks omitted). They instead erect a barrier to judicial redress for entities that have clearly been harmed by agency action.

Forcing everyone else who is injured to rely on *directly* regulated entities' cooperation to challenge agency action will shield significant amounts of agency action from judicial scrutiny. Sometimes businesses that are *not* directly regulated by agency action are the most harmed by it, but those that *are* regulated have no interest in mounting a challenge of their own or facilitating one brought by others.

After all, the interests of regulated entities do not always align with the interests of those that are not directly regulated but nonetheless harmed. *See* Pet. 20-21. Regulated parties may sometimes have powerful incentives to acquiesce in agency regulations that an unregulated entity or indirectly regulated entity wishes to challenge. Some regulations may be preferable to other likely alternatives (including potential legislative alternatives). Some may be leavened by a valuable benefit or incentive (like federal funding). Other regulations may give the regulated parties a market advantage that may dissuade them from bringing suit, such as by creating barriers to entry by competitors or reducing the marketability of a competitor's product or service. *Accord Corner Post*, 603 U.S. at 833-834 (Kavanaugh, J., concurring). And in many cases, the sim-

ple act of expressing public opposition to government regulation may impose heavy political or other costs on a company.

For any of these reasons, regulated entities may have limited or no appetite for challenging (or facilitating the challenge of) the agency action, especially with regard to harm suffered by unregulated or indirectly regulated entities. Nonetheless, the logic of the D.C. Circuit's ruling requires those plainly injured entities to obtain the active, overt support of the directly regulated companies. That dynamic creates a substantial barrier to judicial review that is not compelled by the Constitution or this Court's precedents.

If not corrected, that barrier will block a substantial number of challenges to agency action. Lawsuits by unregulated entities are hardly uncommon; to the contrary, unregulated parties "often will sue under the APA to challenge an allegedly unlawful agency rule that regulates others but also has adverse downstream effects on the plaintiff." *Corner Post*, 603 U.S. at 826 (Kavanaugh, J., concurring). In fact, there are "entire classes of administrative litigation that have traditionally been brought by unregulated parties." *Id.* at 833.

For example, this Court and the courts of appeals have long held that businesses have standing to challenge agency action that harms them *indirectly* by facilitating competition by their competitors. *Corner Post*, 603 U.S. at 834 (Kavanaugh, J., concurring) (noting that competitor suits "are ubiquitous in administrative law"). That was true in *National Credit Union Administration v. First National Bank & Trust Co.*, 522 U.S. 479 (1998), in which banks challenged an agency's interpretation of the Federal Credit Union Act that expanded the potential market for credit unions,

to the detriment of competitor banks. *Id*. at 483-485. The Court had no trouble concluding that the plaintiff banks could sue; they "suffered an injury in fact because the [agency's] interpretation allow[ed] persons who might otherwise be their customers" to be customers of their credit-union competitors. *Id*. at 488 n.4. Redressability was satisfied because rejecting the agency's interpretation would undo the benefit to the bank's competitors.

Similarly, *Honeywell International Inc. v. EPA*, 374 F.3d 1363 (D.C. Cir. 2004), *withdrawn in part on other grounds*, 393 F.3d 1315 (D.C. Cir. 2005), held that Honeywell was injured by an EPA decision approving the use of chemicals made by its competitors. *Id*. at 1368-1370. "As a favorable opinion of the court could remove the competing chemicals from the market, redressability [wa]s satisfied as well." *Id*. at 1369-1370; *see also, e.g.*, *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998) (holding that an energy company was injured by a FERC order benefiting its competitor and that injury "would be redressed by a favorable decision of this court vacating FERC's order").

Those cases, like this one, turn on basic economic realities—government regulation harms a business when it makes life easier for its competitors; eliminating the advantage will redress that injury. *Accord, e.g.*, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 40-44 (1983) (insurer challenge to agency rescission of vehicle safety standards); *Corner Post*, 603 U.S. at 834-837 (Kavanaugh, J., concurring) (collecting additional examples of unregulated-party challenges to agency action).

The D.C. Circuit's decision to retreat from this settled understanding thus strikes at the heart of agency litigation, threatening to "insulate a broad swath of agency actions from any judicial review." *Corner Post*, 603 U.S. at 831 (Kavanaugh, J., concurring). And that risk is especially high for agencies whose policies fluctuate dramatically when partisan control of the Executive Branch shifts. This is a case in point: EPA has flip-flopped between denying a waiver and granting a waiver each time control of the White House has shifted from one political party to another. Pet. App. 11a-14a.

This dynamic can help shield agency action from judicial review, as legal challenges can be mooted by a subsequent administration's repeal or modification of a challenged rule. *See, e.g.*, Order at 1-2, *In re Clean Water Act Rulemaking*, No. 3:20-cv-06137 (N.D. Cal. Jan. 24, 2024), ECF No. 46 (dismissing as moot challenge to EPA 2020 Clean Water Act rule because "the 2020 Rule is no longer in effect and has since been superseded by the 2023 Rule"); *Ohio v. EPA*, No. 2:15-cv-2467, 2022 WL 866273, at *1-4 (S.D. Ohio Mar. 23, 2022) (dismissing as moot challenge to 2015 EPA "navigable waters" rule in light of repeal by subsequent administration), *appeal dismissed*, No. 22-3292, 2023 WL 6458954 (6th Cir. Sept. 18, 2023). The D.C. Circuit's rule will only exacerbate this dynamic and further insulate agency action from judicial review by requiring injured parties to satisfy a heightened evidentiary burden to even bring an action in the first place.

That outcome would be bad enough if it had been accomplished by a wayward interpretation of the APA or some other statutory judicial review provision. In that scenario, Congress could at least fix the error.

Not so here, where the D.C. Circuit's error imposes improper *constitutional* limitations on what cases the federal courts have the power to decide.

Compounding these problems, the D.C. Circuit's rule rewards government bait-and-switch tactics, allowing overreaching agencies to manipulate federal-court jurisdiction to insulate themselves from any meaningful judicial review. In this case, for example, the Clean Air Act authorizes EPA to issue a waiver for California's zero-emission and low-emission vehicle programs only if the State shows it has a "need" for its own "standards to meet compelling and extraordinary conditions." 42 U.S.C. § 7543(a)-(b); *see* Pet. App. 3a-6a. So to request and grant the waiver, California had to argue (and EPA had to conclude) that the waiver was *necessary* to reduce fossil-fuel consumption sufficient "to meet compelling and extraordinary conditions" in California. 42 U.S.C. § 7543(b)(1)(B); C.A. J.A. 237 (California informed EPA that the waiver was "*critical* for incentivizing production and deployment of zero-emission vehicles") (emphasis added). And to demonstrate that they had standing to intervene in this case, California and States that chose to follow California's emissions standards submitted evidence explaining that if the waiver were overturned, "additional gasoline-fueled vehicles would be sold." Brief for Petitioners at 13 (quoting J.A. 115).

But now that it wishes to shield that same agency decision from judicial review, California has changed its tune. Despite previously insisting that an EPA waiver was necessary, California now claims that the agency's action was not needed after all, because industry will voluntarily comply with California's emissions standards even if they are not mandatory. Cali-

fornia cannot have it both ways. Erecting artificially high evidentiary burdens would simply bless efforts, like these, to insulate agency action from judicial scrutiny and deprive injured parties, like petitioners here, of their day in court.

* * *

The D.C. Circuit's flawed decision on Article III redressability risks closing the courthouse doors to numerous entities that have undeniably been injured by agency action—and doing so as a *constitutional* matter. That outcome breaks from this Court's standing jurisprudence, ignores the common-sense principles on which that jurisprudence rests, and severely undermines judicial review of agency action.

CONCLUSION

The Court should reverse the judgment of the court of appeals.

Respectfully submitted.

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