No. 23-1067

IN THE

Supreme Court of the United States

STATE OF OKLAHOMA, *et al.*,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

The Clean Air Act requires each State to adopt an implementation plan for national air quality standards, which EPA reviews for compliance with the Act. *See* 42 U.S.C. § 7410. In 2023, EPA published disapprovals of 21 States' plans implementing national ozone standards. It did so in a single *Federal Register* notice. The Act specifies that "[a] petition for review of the [EPA's] action in approving or promulgating any implementation plan … or any other final action of the [EPA] under this Act … which is locally or regionally applicable may be filed only in" the appropriate regional circuit, while challenges to "nationally applicable regulations … may be filed only in" the D.C. Circuit. 42 U.S.C. § 7607(b)(1). Parties from a dozen states sought judicial review of their respective state plan disapprovals in their regional circuits.

The Fourth, Fifth, Sixth, and Eighth Circuits held that the plan disapprovals of States within those circuits are appropriately challenged in their respective regional courts of appeals. In the decision below, the Tenth Circuit held that challenges to the disapprovals of Oklahoma's and Utah's plans can be brought only in the D.C. Circuit, explicitly disagreeing with the decisions of its sister circuits.

The question presented is:

Whether a final action by EPA taken pursuant to its Clean Air Act authority with respect to a single State or region may be challenged only in the D.C. Circuit because EPA published the action in the same *Federal Register* notice as actions affecting other states or regions and claimed to use a consistent analysis for all States.

PARTIES TO THE PROCEEDING

Petitioners, the State of Oklahoma, by and through its Attorney General, and the Oklahoma Department of Environmental Quality, challenged EPA's disapproval of Oklahoma's state implementation plan in the Tenth Circuit. The State of Utah, by and through its Governor, Spencer J. Cox, and its Attorney General, Sean D. Reyes, separately challenged EPA's disapproval of Utah's state implementation plan, also in the Tenth Circuit.

The Tenth Circuit procedurally consolidated Oklahoma's challenge with petitions challenging the same agency action filed by Petitioners Oklahoma Gas & Electric Company, Tulsa Cement LLC, d/b/a/ Central Plains Cement Company LLC, Republic Paperboard Company, and Western Farmers Electric Cooperative.

The Tenth Circuit also procedurally consolidated Utah's challenge with petitions challenging the same agency action filed by Petitioners PacifiCorp and Utah Associated Municipal Power Systems.

The Environmental Protection Agency and Administrator Michael S. Regan were respondents in each challenge.

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INTRODUCTION

The Clean Air Act makes the regional courts of appeals the venue for challenges to EPA actions taken under enumerated statutory provisions, as well as challenges to any other "locally or regionally applicable" action. 42 U.S.C. § 7607(b)(1). Under the statute, EPA actions on state implementation plans, which govern how each State individually implements national air quality standards, are reviewable in the regional circuits. As then-Judge Kavanaugh put it, "EPA's 'action in approving or promulgating any implementation plan' is the prototypical 'locally or regionally applicable' action that may be challenged only in the appropriate regional court of appeals." *Am. Rd. & Transp. Builders Ass'n v. EPA*, 705 F.3d 453, 455 (D.C. Cir. 2013) (quoting § 7607(b)(1)).

In 2023, EPA disapproved 21 state implementation plans that States had separately prepared and submitted. Each state plan covered a single State and analyzed only that State's obligations under the Act, using state-specific reasoning. EPA separately evaluated "the contents of each individual State's submission … on [its] own merits." 88 Fed. Reg. 9,336, 9,354 (Feb. 13, 2023). Because under the text of the statute EPA action on an implementation plan is reviewable in the appropriate regional court of appeals, Petitioners and other parties from 12 States challenged EPA's disapproval of their respective state plans in the applicable regional circuit.

The Tenth Circuit rejected that straightforward venue determination. According to the Tenth Circuit, EPA's publication of 21 state plan disapprovals in a single *Federal Register* notice and application of

common statutory interpretations and analytical methods made the state plan disapprovals "nationally applicable" and therefore reviewable only in the D.C. Circuit. Pet.App.12a-13a.

This Court should reject that misinterpretation of the Act's venue provision. Under Section 7607(b)(1), venue depends on the EPA "action" under review. The statute defines the relevant EPA action by reference to the statutory authority EPA is exercising. Here, EPA exercised its Section 7410 authority, which requires separate review of each individual State's plan. Each state plan, after all, applies only to a single State. Even more clearly, state plan decisions are not "nationally applicable," like the setting of national air quality standards. The text of the Clean Air Act thus compels the conclusion that disapprovals of state plans are locally applicable actions reviewable in the regional courts of appeals.

EPA's choice to lump 21 state plan disapprovals into a single *Federal Register* notice does not change the state-specific statutory authority EPA was exercising or the substance of the action it took. If it did, EPA could manipulate venue by combining two locally applicable but entirely unrelated actions into a single notice. Nor does it matter that EPA used uniform statutory interpretations or some of the same analytical methods across otherwise locally applicable actions. *Every* EPA action incorporates the agency's interpretation of the Act. If EPA applied inconsistent statutory interpretations or differing analytical frameworks to similar actions under the Act, that unexplained inconsistency would be arbitrary and

capricious. And a venue test that turned on the *extent* to which EPA relied on uniform analytical methods or statutory interpretations would produce complex line-drawing problems that are not contemplated by the simple venue statute Congress enacted.

EPA also raised an alternative argument. Based on a narrow exception in the venue statute, EPA argued that the petitions belong in the D.C. Circuit because EPA designated the disapprovals as "based on a determination of nationwide scope or effect." § 7607(b)(1). The Tenth Circuit did not reach this question, but this Court should. EPA's alternative argument fails. EPA's disapprovals were "based on" its rejection of each State's analysis contained in their individual plans about the specific emissions stemming from in-state sources. That is not "a determination of nationwide scope or effect."

For these reasons, Petitioners' challenges to EPA's disapprovals of the Oklahoma and Utah state implementation plans belong in the Tenth Circuit. The opinion below must be reversed.

OPINIONS BELOW

The decision of the court of appeals (Pet.App.1a-19a) is reported at 93 F.4th 1262.

JURISDICTION

The Tenth Circuit's order transferring venue was entered on February 27, 2024. Petitioners timely petitioned for certiorari on March 28, 2024. This Court has jurisdiction to review that order on a writ of certiorari under 28 U.S.C. §§ 1254(1) and 2101(e).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced at Pet.App.20a-48a.

STATEMENT

A. Statutory Background

1. The Clean Air Act centers on the "'core principle' of cooperative federalism." *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 511 n.14 (2014). It does so by dividing responsibility and authority for assuring air quality between EPA and the States.

EPA, for example, establishes National Ambient Air Quality Standards (NAAQS) for certain pollutants, like ozone. *See* 42 U.S.C. § 7409(a)-(b). Each State then assumes "primary responsibility for assuring air quality." 42 U.S.C. § 7407(a). States do so by establishing state implementation plans, which "implement[], maint[ain], and enforce[]" the national standards based on state-specific considerations. *Id.* § 7410(a)(1).

When it comes to developing these implementation plans, "states, not EPA, drive the regulatory process." *Texas v. EPA*, 829 F.3d 405, 411 (5th Cir. 2016) ("*Texas 2016*"). "Each State is given wide discretion in formulating its plan." *Union Elec. Co. v. EPA,* 427 U.S. 246, 250 (1976). For example, a plan must "include enforceable emissions limitations," § 7410(a)(2)(A), but "so long as the ultimate effect of a State's choice of emission limitations is compliance with" the "general requirements" of the Act, the State may implement "whatever mix of emissions

limitations [is] best suited to its particular situation." *Train v. Nat. Res. Def. Council, Inc.*, 421 U.S. 60, 79 (1975). States thus enjoy "considerable latitude in determining specifically how the [NAAQS will] be met." *Id.* at 87.

By contrast, EPA "is relegated by the Act to a secondary role." *Id.* at 79. Once a State develops and submits its plan, EPA "shall approve" the plan "if it meets all of the applicable requirements of" the Act. § 7410(k)(3). EPA "has no authority to question the wisdom of a State's choices" in developing a state plan. *Train*, 421 U.S. at 79. EPA may disapprove a state plan and promulgate a federal plan for the State only if the submitted state plan does not satisfy the statute. § 7410(c)(1).

2. The Clean Air Act's venue provision reinforces this balance between national standards and local implementation. Section 7607(b)(1) grants the courts of appeals original jurisdiction over challenges to EPA's actions under the Act. And it divides venue between the regional courts of appeals and the D.C. Circuit. § 7607(b)(1).

Congress provided a list of actions that EPA takes under "specifically enumerated provisions of the Act" that are reviewable in the regional circuits. *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 584 (1980). Most relevant here, that list begins with any EPA action "approving or promulgating any implementation plan under section 7410 … or section 7411(d) of this title." § 7607(b)(1). It also includes other actions that are,

like implementation plans, by their nature local, such as "any order" issued under Sections 7411(j)[1] or 7419.[2]

By contrast, Section 7607(b)(1) directs to the D.C. Circuit a separate list of actions, each of which is national in nature. When EPA promulgates "any national primary or secondary ambient air quality standard," national emissions standards for hazardous pollutants under Section 7412, standards of performance for new sources under Section 7411, or emissions standards for motor vehicles under Section 7521, challenges to those actions must be brought in the D.C. Circuit. § 7607(b)(1).

In 1977, Congress made two changes to this venue provision. First, Congress added catchalls: "any other final action of the Administrator under [the] Act which is locally or regionally applicable" is reviewable in the regional circuit, while "any other nationally applicable regulations promulgated, or final action taken," by EPA is reviewable in the D.C. Circuit. *See* Pub. L. 95-95 (Aug. 7, 1977). Second, after realizing that the original provision only mentioned EPA's *approval* of state plans promulgated under Sections 7410 or 7411, Congress added a parenthetical to the provision directing locally or regionally applicable actions to the regional courts of appeals: "(including any denial or disapproval by the Administrator under title I)." Pub. L. 95-190 (Nov. 16, 1977).

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[1] Section 7411(j) grants EPA authority to give specific sources "waivers from the" pollution standards "to encourage the use of an innovative technological system."

[2] Sections 7419 authorizes EPA to issue "orders" that relate to a specific "nonferrous smelter."

Finally, Section 7607(b)(1) establishes an exception to the general rules for venue. Suits that would otherwise be filed in a regional circuit must "be filed only in the [D.C. Circuit] if [the] action is [1] based on a determination of nationwide scope or effect and [2] if in taking such action the Administrator finds and publishes that such action is based on such a determination." § 7607(b)(1).

B. Oklahoma's and Utah's State Implementation Plans

1. In 2015, EPA revised the NAAQS for ozone, reducing the national standard from 75 to 70 parts per billion. 80 Fed. Reg. 65,292, 65,293-94 (Oct. 26, 2015). Each State therefore developed an implementation plan for the revised NAAQS. *See* § 7410(a)(1).

These state plans addressed several statutory requirements, including the Act's "Good Neighbor" provision. *See* § 7410(a)(2)(D)(i)(I). That provision delegates to States the task of ensuring no "source or other type of emissions activity within the State" will emit "any air pollutant in amounts which will … contribute significantly to nonattainment" or "interfere with maintenance" of the NAAQS by "any other State." *Id.*; *see also Ohio v. EPA*, 603 U.S. 279, 284 (2024).

In addressing their Good Neighbor obligations, each state plan relied on state-specific reasoning and data to determine whether that State was significantly contributing to nonattainment or interfering with maintenance in downwind States. States worked in close coordination with EPA's Regional Offices. *See, e.g.*, J.A.27a-32a (correspondence between EPA's

Region 6 Office and Oklahoma regarding Oklahoma's draft Good Neighbor plan); No. 23-9509 (10th Cir.), J.A.0069-73 (correspondence between EPA's Region 8 Office and Utah regarding Utah's plan). Analyzing the potential impacts of emissions from one State to another State's air quality requires complex computer models or other analytical methods. Some States, like Utah, developed their individual analyses by reference to data, modeling, and analytical frameworks provided by EPA. But many state plans declined to rely on the materials EPA had developed, which EPA had assured States they could do in pre-submission guidance. No. 23-9514 (10th Cir.), J.A.66-75, 98-110.

For instance, Oklahoma relied on region-specific modeling prepared by Texas, rather than EPA's national modeling, to evaluate its projected contributions to other States. J.A.13a-14a. Oklahoma also performed a supplemental "weight-of-the-evidence" analysis of three specific sites to which EPA's modeling suggested Oklahoma might significantly contribute ozone, which differed from EPA's default framework for analyzing whether projected ozone contributions were "significant." J.A.23a-26a. That analysis explained why, notwithstanding EPA's modeling, Oklahoma would not significantly contribute to violations of the national ozone standard at those sites, based on emissions trends at those places and Oklahoma's own emissions trends. J.A.26a.

Similarly, while Utah's plan analyzed its future contributions to downwind States by reference to EPA's modeling and data, J.A.37a-39a, Utah applied

a weight-of-evidence approach to assess whether under the conditions specific to Utah and Colorado, Utah "contributed significantly" to nonattainment or "interfered with" maintenance in Colorado or other downwind States. J.A.42a-57a. Utah also discussed the sizable contribution of international emissions, wildfires, and biogenic (natural source) emissions "to illustrate the magnitude of these emissions compared to those modeled as coming from Utah." J.A.42a-51a Based on this weight-of-evidence approach considering all the evidence taken together, Utah concluded that its contributions to downwind state air quality are not significant and additional emission reductions were unnecessary. J.A.57a.

2. After States submitted their individual state plans, EPA reviewed them. It approved 24 state plans. And, in each approval, EPA asserted that the approval was a locally or regionally applicable action reviewable only in an "appropriate circuit," not the D.C. Circuit. *See, e.g.*, 87 Fed. Reg. 22,463 (Apr. 15, 2022) (Iowa).

But EPA proposed to disapprove 23 state plans, which it published in 13 separate *Federal Register* notices.[3] Many of the proposed disapproval notices covered a single State, like Utah. *See, e.g.*, 87 Fed. Reg. 31,470 (May 24, 2022). Other notices grouped together several States from one of EPA's regions, like the disapproval notice that included Oklahoma. *See*, *e.g.*,

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[3] EPA recently proposed to disapprove the state plans of five additional States. 89 Fed. Reg. 12,666 (Feb. 16, 2024) (Arizona, Iowa, Kansas, New Mexico, and Tennessee). EPA had previously approved the state plans for Iowa and Kansas.

87 Fed. Reg. 9,798 (February 22, 2022) (Arkansas, Louisiana, Oklahoma, Texas). And each of EPA's proposed disapprovals—whether issued individually or for a regional group of States—was signed by a regional EPA administrator. *See, e.g.*, 87 Fed. Reg. 9,798, 9,835 (Feb. 22, 2022).

EPA's proposed disapprovals examined each State's plan individually, considering each State's specific submission, emissions sources and trends, and downwind air quality contributions. For example, EPA proposed to disapprove Oklahoma's plan "[b]ecause" it concluded Oklahoma failed to correctly "analyze emissions from the sources and other emissions activity from within the State to determine whether its contributions [to downwind States] were significant." *Id.* at 9,823-24. EPA reached that conclusion by, among other reasons, rejecting the Texas air quality modeling used by Oklahoma and Oklahoma's region-specific "weight of evidence" analysis. *Id.* at 9,822.

EPA's analysis of Utah's plan was similarly tailored to Utah's submission. EPA found Utah's arguments based on meteorological and air transport issues unique to the West unconvincing. 88 Fed. Reg. at 9,360. EPA also concluded that there were "technical and legal flaws in [Utah's] arguments related to relative contribution, international and non-anthropogenic emissions, and the relationship of upwind versus downwind-state responsibilities." *Id.*

States and regulated companies submitted comments on the proposed disapprovals, explaining why each State's particular circumstances showed the

State's plan was factually, analytically, and legally justified. *See, e.g.*, No. 23-9514 (10th Cir.), J.A.0389-0404 (Oklahoma comment letter on EPA's proposed Oklahoma state plan disapproval); J.A.58a-67a (Utah comment letter on EPA's proposed Utah state plan disapproval); J.A.68a-105a (Utah industry comment letters).

3. EPA nevertheless finalized the disapproval of 21 Good Neighbor plans. But unlike its proposed disapprovals, EPA combined the final disapprovals into a single *Federal Register* notice. 88 Fed. Reg. at 9,336. Even so, EPA conceded that its final disapprovals were based on evaluations of "the contents of each individual state's submission … on [its] own merits." *Id.* at 9,354. EPA included individual discussions of each state plan. *See id.* at 9,354-9,361. And EPA codified each state plan disapproval in separate subparts of the Code of Federal Regulations. *See id.* at 9,381-84.

Yet EPA argued that its state plan disapprovals were "nationally applicable," asserting that any challenges "must be filed in the D.C. Circuit." *Id.* at 9,380. EPA offered two reasons. First, its notice covered state plans from "a large number of states located across the country." Second, the disapprovals were connected by "the interdependent nature of interstate pollution transport and the common core of knowledge and analysis involved in evaluating the submitted" state plans. *Id.*

EPA also took the alternative position that the rulemaking was "based on a determination of 'nationwide scope or effect.'" *Id.* EPA argued that it

was relying "on a common core of nationwide policy judgments and technical analysis," including a "nationally consistent 4-step interstate transport framework for assessing obligations." *Id.* EPA likewise pointed to its reliance on "the results from nationwide photochemical grid modeling." *Id.* And it explained that it "evaluated each state's arguments for the use of alternative approaches or alternative sets of data with an eye to ensuring national consistency and avoiding inconsistent or inequitable results" between States. *Id.* at 9,381.

C. Procedural History

States and industry parties in 12 States challenged their respective state implementation plan disapprovals in their regional circuits. In each case, EPA moved to dismiss or transfer venue to the D.C. Circuit, arguing that its state plan disapprovals were either "nationally applicable regulations" or "based on a determination of nationwide scope or effect." *E.g.*, Mot. to Transfer, *Oklahoma v. EPA*, No. 23-9514, Dkt. No. 10983947 (10th Cir. Mar. 16, 2023); Mot. to Transfer, *Utah v. EPA*, No. 23-9509, Dkt. No. 10983793 (10th Cir. Mar. 16, 2023). This tactic was largely unsuccessful.

The Fifth Circuit explained that the text of the Clean Air Act "makes clear that the EPA's relevant actions for purposes of the present litigation are its various [state plan] denials." *Texas v. EPA*, No. 23-60069, 2023 WL 7204840, at *4 (5th Cir. May 1, 2023). So while "the EPA packaged these disapprovals together with the disapprovals of eighteen other States … , the EPA's chosen method of publishing an

action isn't controlling." *Id.* "What controls is the [Act]" and the Act "is very clear: The relevant unit of administrative action here is the EPA's individual [state plan] denials." Meanwhile, "the 'legal impact' of the three [state plan] disapprovals is plainly local or regional" given that they "involve only the regulation of Texas, Louisiana, and Mississippi emission sources and have legal consequences only for Texas, Louisiana, and Mississippi facilities." *Id.* at *5. Nor are the actions challenged in that case "based on a determination of nationwide scope or effect" because EPA's decisions "were plainly based on a number of intensely factual determinations unique to each State." *Id.* (citation and internal marks omitted).

The Fourth Circuit also denied EPA's motion to transfer. *West Virginia v. EPA*, 90 F.4th 323, 325 (4th Cir. 2024). It held that EPA's disapproval was "based entirely on West Virginia's particular circumstances and its analysis of those circumstances," so it was "locally or regionally applicable" and "was not based on a determination of nationwide scope or effect." *Id.* at 329. It also rejected EPA's argument that the action was national because it applied "a national standard to disapprove a plan," reasoning if that "were the controlling factor, there never could be a local or regional action … because every action of the EPA purportedly applies a national standard created by the national statute and its national regulations." *Id.* at 329-30.

Most recently, the Sixth Circuit reached the same conclusion in a published opinion rejecting EPA's arguments as part of its opinion on the merits,

Kentucky v. EPA, __ F. 4th __, Nos. 23-3216/3225, 2024 WL 5001991, at *5-14 (6th Cir. Dec. 6, 2024), which followed an unpublished opinion rejecting EPA's motion to transfer, *Kentucky v. EPA*, 2023 WL 11871967 (6th Cir. July 25, 2023). The Sixth Circuit concluded that EPA's disapprovals were not "nationally applicable" actions. *Kentucky*, 2024 WL 5001991, at *7. Contrary to EPA's argument, "§ 7607(b)(1) focuses on the statute (not the rulemaking) to distinguish the EPA actions" and here, the relevant statute "requires the EPA to 'act' on each State's 'submission' on a plan-by-plan basis." *Id.* at *8-9 (citing, *inter alia*, § 7410). Finally, it rejected EPA's argument that the agency's "preliminary choices (such as its use of the four-step framework for the Good Neighbor Provision)" mean the action was "based on a determination of nationwide scope or effect" because "those choices did not 'end[]' the 'controversy': whether the EPA should approve Kentucky's plan." *Id.* at *12. "Instead, the 'determination' underlying the EPA's disapproval was its ultimate decision that Kentucky did not satisfy the Good Neighbor Provision." *Id.*

Meanwhile, the Eighth Circuit denied EPA's motions to transfer challenges to the disapprovals of Arkansas's, Missouri's, and Minnesota's plans in a series of summary orders. *E.g.*, Order, *Arkansas v. EPA*, No. 23-1320, Dkt. No. 5269098 (8th Cir. April 25, 2023). Motions panels in the Ninth and Eleventh Circuits have deferred decision on EPA's motions to transfer to a later merits panel in challenges to the state plan disapprovals of Nevada and Alabama. Order, *Nevada Cement Co. v. EPA*, No. 23-682, Dkt.

No. 27 (9th Cir. July 3, 2023); Order, *Alabama v. EPA*, No. 23-11173, Dkt. No. 24 (11th Cir. July 12, 2023). So too did the Tenth Circuit motions panel. Order, *Utah v. EPA*, No. 23-9509, Dkt. No. 10994985 (10th Cir. April 27, 2023).

But the merits panel of the Tenth Circuit held that EPA's disapprovals of the Utah and Oklahoma state plans were "nationally applicable" and ordered the cases transferred to the D.C. Circuit. Pet.App.12a-19a. The Tenth Circuit justified this conclusion by stating: "Petitioners seek review of a final rule disapproving [state plans] from 21 states across the country—spanning eight EPA regions and ten federal judicial circuits—because those states all failed to comply with the good-neighbor provision." Pet.App.12a. "And," the Tenth Circuit continued, "in promulgating that rule, the EPA applied a uniform statutory interpretation and common analytical methods, which required the agency to examine the overlapping and interwoven linkages between upwind and downwind states in a consistent manner." Pet. App. 12a-13a. In a footnote, the Tenth Circuit declined to "address EPA's alternative argument that the petitions belong in the D.C. Circuit" because they challenge actions "based on a determination of nationwide scope or effect." Pet.App.19a n.8.

SUMMARY OF ARGUMENT

I. The proper venue for Oklahoma's and Utah's challenges to EPA's disapproval of their state plans is the Tenth Circuit.

A.1. Section 7607(a)(1) designates venue based on the statutory authority EPA exercised in taking the

action being challenged. Oklahoma and Utah separately challenged EPA's disapproval of their individual state plans under Section 7410 of the Act. The question is thus whether those actions were nationally applicable, reviewable in the D.C. Circuit, or locally or regionally applicable actions, reviewable in the Tenth Circuit.

2. The text of Section 7410 establishes that EPA's disapproval of state implementation plans is a locally or regionally applicable action. That provision exclusively refers to State and EPA action on a state implementation plan in the singular. Section 7410 requires "each State" to develop a "plan" to govern emissions. EPA must then act "on each plan." EPA's action on a state plan is thus a "prototypical 'locally or regionally applicable' action" under Section 7607(b)(1). *Am. Rd. & Transp. Builders Ass'n*, 705 F.3d at 455.

3. The text of Section 7607(b)(1) dispels any remaining doubt about the actions at issue. Congress identified "any denial or disapproval" under subchapter I—which includes Section 7410—as an example of locally or regionally applicable actions.

This is further supported by Congress's decision in Section 7607(b)(1) to list state plan *approvals* as reviewable in the regional circuit. EPA exercises the same statutory authority—and conducts the same analysis—whether it approves or disapproves a state plan. Because state plan disapprovals require EPA to apply the same state-specific review as required by the statute, disapprovals are locally or regionally applicable too. Indeed, EPA has admitted its state

plan approvals are locally or regionally applicable. Its insistence that disapprovals are different is incoherent.

B. The Tenth Circuit's contrary holding does not withstand scrutiny.

1. The Tenth Circuit relied primarily on the belief that the "action" being challenged was the notice simultaneously announcing the disapproval of 21 state plans. But EPA's chosen format for *publishing* its disapprovals is different than the substantive actions EPA actually took. Section 7607(b)(1) itself distinguishes between the *action* being challenged—approval or disapproval of individual state plans—and EPA's *notice* of that action. The Tenth Circuit's rule would give EPA power to manipulate venue by transforming entirely unrelated (and locally applicable actions) into a single, nationally applicable action by issuing a combined *Federal Register* notice.

2. EPA's application of uniform statutory interpretation and common analytical methods does not matter either. EPA *must* apply consistent interpretations and methods, lest its decisionmaking be arbitrary and capricious. EPA thus correctly admitted at the certiorari stage that use of a national standard is not sufficient to render an action nationally applicable. After all, EPA applied the exact same principles and methodologies to its state plan approvals, which it admits were locally applicable. And EPA's state plan disapprovals considered and rejected state-specific reasoning within each State's plan.

Regardless, the Section 7607(b)(1) "applicability" analysis should not require a detailed inquiry into EPA's reasoning. Courts have repeatedly rejected an interpretation of Section 7607(b)(1)'s applicability inquiry that considers an action's "practical effects" or anything other than the substantive statutory authority EPA was exercising.

3. The Tenth Circuit further held that *no* action is categorically reviewable in the regional circuits, even actions Congress specifically listed as so reviewable. Rather, the court held that petitioners must always prove the action *was* locally or regionally applicable.

That interpretation renders the list of specifically enumerated examples in Section 7607(b)(1) entirely superfluous. It also ignores that the statute originally did not include a catchall. The prior version of the Act simply listed actions and identified the correct venue for each. When Congress added the catchall, it necessarily *expanded* the number of actions subject to challenge in the regional circuits. Finally, under the last-antecedent canon, the phrase "which is locally or regionally applicable" modifies "any other action," *not* the enumerated entries in the list.

II. EPA's reliance on Section 7607(b)(1)'s narrow exception—claiming that the challenges must be filed in the D.C. Circuit because the challenged actions are "based on a determination of nationwide scope or effect"—fails, too.

A. That exception requires EPA to first publish a finding that the action was "based on a determination of nationwide scope or effect" and then for courts to independently review the "determination" on which

EPA "based" its action—that is, the core or ultimate reason why EPA took the action it did. Once the court has assessed the "determination" the action was "based on," it must decide whether that determination has nationwide scope or effect. A determination has nationwide scope if it covers the entire country and nationwide effect if it produces consequences across the whole country. But if EPA's action was "based on" a determination specific to a State, the exception does not apply.

B.1 EPA's disapprovals were based on determinations specific to each State. State plans rely on intensely factual, state-specific analysis. Oklahoma's plan, for instance, analyzed state-specific projections of future ozone emissions using region-specific modeling. Utah's plan likewise analyzed emissions projections for specific sources within and near Utah based on state- and region-specific factors.

EPA rejected Oklahoma's use of region-specific modeling and concluded that Oklahoma had not correctly analyzed its projected contributions to downwind States. EPA likewise concluded that Utah had inadequately analyzed its projected contributions to nearby States because its analysis had "technical and legal flaws." These are plainly local determinations. And EPA's analysis of other state plans, whether it approved or disapproved them, was similarly state-specific.

2. EPA's contrary arguments fail. EPA principally argues that it used a nationally consistent, 4-step framework for analyzing state plans. But although that framework *organized* EPA's analysis, it did not

constitute the ultimate justification for its judgment on the merits of the underlying state plans. Indeed, EPA also used this 4-step framework when *approving* state plans. EPA's ultimate reasons for approving or disapproving a particular plan were thus "based on" state-specific circumstances, not this 4-step analytical framework.

Same with EPA's reliance on nationwide emissions modeling. EPA's core reasons for approving or disapproving a state plan turned on whether that State would significantly contribute ozone to downwind States, not what modeling it used. Indeed, EPA was adamant that neither its 4-step framework nor its nationwide modeling bound either the States or EPA.

EPA also sought to avoid inconsistent results when reviewing state plans. But that is a basic requirement of agency rulemaking. EPA's general preference for treating similarly situated States alike does not constitute the core reasons why EPA approved or disapproved a given state plan.

3. Finally, EPA argued that challenges to its state plan disapprovals should be filed in the D.C. Circuit to eliminate potentially inconsistent judicial opinions. But this desire for uniformity is not a "determination" on which EPA's underlying action was based. And, in any case, Section 7607(b)(1) is *designed* to allow different circuits to analyze distinct state plan actions.

ARGUMENT

I. The proper venue for a challenge to the disapproval of a state implementation plan is the regional circuit.

The venue analysis is straightforward. Under Section 7607(b)(1), venue depends on the type of EPA action being challenged, defined by reference to the statutory authority EPA exercises. Petitioners are challenging EPA's disapprovals of Oklahoma's and Utah's implementation plans under Section 7410. That provision grants States the authority to prepare and EPA the authority to approve or disapprove *individual* state plans. Indeed, Congress expressly identified state implementation plan approvals and disapprovals in the regional circuit review provision. § 7607(b)(1). There can thus be little doubt that state plan disapprovals are locally applicable actions.

In ruling otherwise, the Tenth Circuit misinterpreted the statute. Venue under Section 7607(b)(1) does not turn on whether EPA chose to publish several separate actions in a single notice—that confuses the substance of the statutory authority EPA exercised with the form of publication. Nor does it depend on whether EPA relied on uniform statutory interpretation and common analytical methods—that is true of nearly every lawful agency action. And the Tenth Circuit's further suggestion that *no* action, even those specifically listed in Section 7607(b)(1), is categorically reviewable in the regional circuits is inconsistent with the text.

A. Under the Act's plain text, EPA action on state plans is reviewable in the regional circuits.

1. Venue under Section 7607(b)(1) turns on the EPA "action" being challenged. Section 7607(b)(1) "specifically enumerate[s]" EPA actions subject to judicial review, itemizing actions that are reviewable in the D.C. Circuit and ones that are reviewable in the regional circuits. *Harrison*, 446 U.S. at 579, 584. Those lists make clear the relevant "action" is defined by the statutory authority under which EPA acts. *See* § 7607(b)(1). For example, an action promulgating "any emission standard or requirement under section 7412 of this title" is reviewable in the D.C. Circuit, while an "action in approving or promulgating any implementation plan under section 7410 of this title" is reviewable in the regional circuit. *Id*.; *see also Kentucky*, 2024 WL 5001991, at *8 (agreeing that "the phrase 'final action' adopts a 'statutory approach'" because "[t]he provision ties the proper tribunal to the activity taken 'under this chapter'").

Section 7607(b)(1) then provides "catchall" provisions for challenges to EPA actions not specifically enumerated. *See Harrison*, 446 U.S. at 579, 584, 587. "[A]ny other nationally applicable" action is reviewed in the D.C. Circuit and "any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I) which is locally or regionally applicable" is reviewed in the regional circuit. § 7607(b)(1).

Here, Petitioners are challenging EPA's disapprovals of Oklahoma's and Utah's implementation plans, actions EPA took under Section 7410 of Title 42, which is codified in subchapter I. The question is thus whether disapprovals under Section 7410 are reviewable in the regional circuit.

2. Section 7410 makes clear EPA's implementation plan decisions—the actions at issue—are locally or regionally applicable. Section 7410(a)(1) requires "[e]ach State" to develop "a plan" to govern emissions "within such State." Section 7410(a)(2) then requires "[e]ach implementation plan" to be "submitted by a State." Section 7410(k) next mandates EPA to "act[] on *each plan*," always referring to "'plan' in the singular." *West Virginia*, 90 F.4th at 330 (citing § 7410(k)(1)-(3)). That requires EPA to determine whether "the plan" is complete, § 7410(k)(1)(B), and to "approve" "a plan" if it meets the statutory requirements, § 7410(k)(2)-(3). And under Section 7410(c), if EPA "disapproves a State implementation plan," it may promulgate "a Federal implementation plan," unless "the State corrects the deficiency" in its state plan first. Section 7410 accordingly "requires the EPA to 'act' on each State's 'submission' on a plan-by-plan basis." *Kentucky*, 2024 WL 5001991, at *9.

EPA's approval or disapproval of a state plan under Section 7410 thus applies only to a "single state." *Chevron U.S.A. Inc. v. EPA*, 45 F.4th 380, 386 (D.C. Cir. 2022) (quoting *Sierra Club v. EPA*, 926 F.3d 844, 849 (D.C. Cir. 2019)). Because a state plan applies only to a single State, the "denial and legal impact" of

the disapproval of a state plan "affects only [that State]—that is, it does not concern the nation, let alone any other state." *Kentucky*, 2023 WL 11871967, at *2.

EPA is also required to review each state plan separately and on its own terms. States have the "primary responsibility for assuring air quality." § 7407(a). EPA's individualized review is necessary because the statute gives each State "wide discretion in formulating its plan." *Union Elec. Co.*, 427 U.S. at 250. That regulatory discretion—and the "intensely factual determinations" about the "particularities of the emissions sources" in the State and other local conditions on which state plans are based—means that state plans differ markedly from one another. *Texas*, 829 F.3d at 421. That is the point of state plans. Congress delegated this regulatory authority to States, rather than authorizing EPA to establish a uniform, nationally applicable plan, because States are "best positioned to adjust for local differences." *Alaska Dep't of Env't Conservation,* 540 U.S. at 488.

The inherently state-specific nature of the state plan preparation and review process is why EPA's approval of state plans is a "prototypical 'locally or regionally applicable' action" for venue purposes. *Am. Rd. & Transp. Builders Ass'n*, 705 F.3d at 455; *see also Sierra Club v. EPA*, 47 F.4th 738, 744 (D.C. Cir. 2022) (a state plan "by nature concerns a particular state"); *Nat'l Parks Conservation Ass'n v. McCarthy*, 816 F.3d 989, 993 (8th Cir. 2016) (same); *ATK Launch Sys., Inc. v. EPA*, 651 F.3d 1194, 1199 (10th Cir. 2011) (describing action on state plans as both "purely local

action" and "undisputably regional"); *Texas Mun. Power Agency v. EPA*, 89 F.3d 858, 866 (D.C. Cir. 1996) (same).

Context provides confirmation. The actions listed by Section 7607(b)(1) as reviewable only in the D.C. Circuit look nothing like a state plan disapproval under Section 7410. Each of those actions points to statutory provisions that grant EPA power to promulgate generally applicable "standards" or "requirements" applying uniformly to the whole country. *See supra* 6. When EPA promulgates "any national primary or secondary ambient air quality standard," national emissions standards for hazardous pollutants under Section 7412, standards of performance for all new sources under Section 7411, or new emissions standards for all motor vehicles under Section 7521, those must be challenged in the D.C. Circuit. *See* § 7607(b)(1). Under the "'ejusdem generis' canon," which "instructs courts to interpret the catchall as falling within the same class as the specific items that precede it," the nationally applicable catchall cannot apply to the disapprovals of state implementation plans, which unlike the setting of national standards are not national. *Kentucky*, 2024 WL 5001991, at *7 (citing *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 252 (2024)).

By contrast, the implementation plan disapprovals challenged here are closely akin to actions the statute designates for review in regional circuit. The regional circuit provision references, for example, Sections 7411(j), 7419 and 7420, each of which authorize EPA to take action directed towards

a specific source. *See* § 7607(b)(1); *see also W. Virginia Chamber of Com. v. Browner*, 166 F.3d 336, 1998 WL 827315, at *6 (4th Cir. 1998) (unpublished) ("[C]ertain types of actions are clearly regionally applicable, for instance, when the EPA brings an enforcement action against or makes a determination with respect to a particular facility."). Most tellingly, Section 7607 specifically enumerates "petition[s] for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title"—plans like the ones Oklahoma and Utah submitted here—as reviewable in the regional circuit. § 7607(b)(1). This context thus reinforces what is already clear from the text: any implementation plan disapproval under Section 7410 is a locally or regionally applicable action.

3. If any doubt remained, disapprovals of state plans are reviewable in the regional circuit because Congress identified them as locally or regionally applicable actions. Congress inserted within the locally or regionally applicable catchall the parenthetical phrase "(including any denial or disapproval by the Administrator under subchapter I)." That is what we have here: EPA disapproved Oklahoma's and Utah's implementation plans using its authority under Section 7410, which is codified in subchapter I of the Act.

An interpretation that state plan denials or disapprovals are nationally applicable actions would render superfluous Congress's decision to specifically mention denials or disapprovals in the parenthetical. *Milner v. Dep't of Navy*, 562 U.S. 562, 575 (2011)

("[S]tatutes should be read to avoid making any provision 'superfluous, void, or insignificant'" (citation omitted)). Recall: when Congress first added the catchall, it read "or any other final action of the Administrator under this chapter which is locally or regionally applicable." *See* Pub. L. 95-95 (Aug. 7, 1977). If Congress thought denials or disapprovals are sometimes nationally applicable, that language would have been sufficient. But Congress amended the catchall to clarify that it "includ[es] any denial or disapproval" under subchapter I. Pub. L. 95-190 (Nov. 16, 1977). "When 'Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.'" *Husky Int'l Elecs., Inc. v. Ritz*, 578 U.S. 355, 359 (2016). Here, the real and substantial effect of adding the parenthetical was to expand the actions expressly subject to the regional review provision. *See Harrison*, 446 U.S. at 585.

Moreover, Congress enumerated "approv[als]" of "any implementation plan under section 7410" as categorically reviewable in the regional circuits, so it would make little sense to think that *disapprovals* of the same implementation plans should be litigated in a different venue. § 7607(b)(1). After all, the scope of that catchall is "controlled and defined by reference" to the specific examples "that precede it." *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (citation omitted). So where EPA's "denial or disapproval" is made under the *same* statutory authority as the enumerated actions categorically reviewable in the regional courts of appeals, the action is necessarily locally or regionally applicable. Section 7410 governs

both approvals and disapprovals of implementation plans and there is no legal distinction between state plan disapproval and state plan approval actions. Because state plan approvals under Section 7410 are always reviewable in the regional circuit, state plan disapprovals under that Section must be, too.

EPA conceded that its state plan *approvals* implementing the *same* 2015 NAAQS were reviewable locally. It instructed that "petitions for judicial review … must be filed in the United States Court of Appeals for the appropriate circuit." *See, e.g.*, 85 Fed. Reg. 20,165, 20,177 (Apr. 10, 2020) (Colorado and North Dakota); 86 Fed. Reg. 68,413, 68,420 (Dec. 2, 2021) (Florida, Georgia, North Carolina, and South Carolina). That view mirrors how EPA (and courts) have treated state plan decisions historically. *See, e.g., Comm. for a Better Arvin v. EPA*, 786 F.3d 1169, 1174 (9th Cir. 2015) (reviewing challenge to approval of California's implementation plan); *Alabama Env't Council v. EPA*, 711 F.3d 1277, 1279 (11th Cir. 2013) (reviewing challenges to approval and subsequent disapproval of revisions to Alabama's implementation plan); *Ass'n of Irritated Residents v. EPA*, 686 F.3d 668, 671 (9th Cir. 2012) (reviewing challenge to partial approval of revisions to California's implementation plan); *BCCA Appeal Grp. v. EPA*, 355 F.3d 817, 821 (5th Cir. 2003) (reviewing challenge to approval of Texas's implementation plan). EPA's opposite position for state plan disapprovals makes no sense.

In sum, the text and context of Section 7607(b)(1) confirms that EPA's actions disapproving Oklahoma's and Utah's state implementation plans were locally or

regionally applicable actions reviewable in the regional circuit court. Venue for these cases accordingly lies in the Tenth Circuit.

B. The Tenth Circuit misinterpreted Section 7607(b)(1).

Despite the Act's plain text, the Tenth Circuit ruled that because EPA published its disapprovals of twenty-one state plans in a single *Federal Register* notice and applied a uniform statutory interpretation and common analytical methods, Oklahoma's and Utah's challenges may be filed only in the D.C. Circuit. That reasoning does not withstand scrutiny.

1. The Tenth Circuit rested primarily on the mistaken assumption that "the final EPA action being challenged" was "a final rule disapproving [state plans] from 21 states across the country." Pet.App.12a. But that reasoning conflates EPA's decision about how to *publish* rulemakings with the underlying substantive action EPA took. Under Section 7607(b)(1), "venue depends entirely on—and is fixed by—the nature of the agency's action." *S. Ill. Power Coop. v. EPA*, 863 F.3d 666, 670 (7th Cir. 2017). The relevant "action" here is thus EPA's disapproval of individual state plans under Section 7410. *See supra* 22-23.

The Tenth Circuit literally elevated form over substance. Its focus on the form of publication contradicts Section 7607(b)(1), which specifically distinguishes between the "action" being challenged and EPA's "*notice* of such … action … in the Federal Register." (emphasis added). But "the label that the particular agency puts upon its given exercise of

administrative power" should not matter. *Lewis-Mota v. Sec'y of Lab.*, 469 F.2d 478, 481 (2d Cir. 1972) (citation omitted)). "[R]ather it is what the agency does in fact" that should control. *Id.* at 482; *see also Brown Express, Inc. v. United States*, 607 F.2d 695, 700 (5th Cir. 1979) (holding "frivolous" the argument that the agency's decision to label its action a "Notice of Elimination" meant it was not a substantive rule subject to notice and comment requirements). This distinction "between the publication of a document and its issuance, prescription, or promulgation" is well-established. *Humane Soc'y of the U.S. v. U.S. Dep't of Agric.*, 41 F.4th 564, 569 (D.C. Cir. 2022).

Moreover, if venue turned on whether EPA chose to package multiple disapprovals in a single *Federal Register* notice, EPA would have unfettered power to ensure "the choice of 'a tribunal favorable' to it." *Travis v. United States*, 364 U.S. 631, 634 (1961) (citation omitted). After all, agencies have discretion to issue "omnibus" notices that combine many different rules into a single *Federal Register* document. *See Reeder v. FCC*, 865 F.2d 1298, 1300 (D.C. Cir. 1989) ("Normally, new FM channels are allotted in individual rulemaking proceedings; however, in this case the Commission decided to allocate all of the new channels pursuant to a single nationwide omnibus rulemaking."); 78 Fed. Reg. 5,666 (Jan. 25, 2013) (combining four final rules arising under different statutory authority into an "omnibus final rule").

The Tenth Circuit's rule would thus enable "gamesmanship" by EPA. *Hertz Corp. v. Friend*, 559

U.S. 77, 94 (2010). The agency could, for example, manipulate venue by combining two locally applicable but entirely unrelated actions under Section 7607(b)(1)—like the approval of Oklahoma's state plan under Section 7410 and an "order" related to a specific "nonferrous smelter" in Ohio under Section 7419. Section 7607(b)(1) expressly lists both actions as categorically reviewable in the regional circuit. If published separately, each would be challengeable in the appropriate regional circuit. But, under the Tenth Circuit's reasoning, if EPA published them in the same *Federal Register* notice, they would be nationally applicable and reviewable only in the D.C. Circuit. *See also Kentucky*, 2024 WL 5001991, at *8 ("Nothing in § 7607(b)(1)'s text would allow the EPA to obtain D.C. Circuit review of the smelter order simply by combining it with the air-quality standard.").

Take, as another particularly egregious example, EPA's contradictory venue determinations for the state plans submitted by Iowa and Kansas. EPA initially approved both state plans. When doing so, EPA admitted the approvals were locally applicable. *See* 87 Fed. Reg. at 22,463; 87 Fed. Reg. at 19,391. Two years later, EPA proposed to disapprove *the same* state plans for Iowa and Kansas but this time did so in a single *Federal Register* notice along with three other States. *See* 89 Fed. Reg. at 12,668, 12,695. EPA then asserted that the disapprovals (and simultaneous promulgation of a federal implementation plan) were "nationally applicable." *Id.* at 12,725. There is simply no principled basis to treat

these state plan *approvals* as locally applicable but treat *disapprovals* of the *same states* differently. And when EPA partially disapproves and partially approves a state plan, it likewise recognizes that is a locally applicable action. *See* 89 Fed. Reg. 95,117, 95,120 (Dec. 2, 2024). This further confirms that EPA's purported distinction between approvals and disapprovals is arbitrary.

2. The Tenth Circuit also pointed to EPA's application of "a uniform statutory interpretation and common analytical methods." Pet.App.12a-13a. But Section 7607(b)(1) says nothing about EPA's reasoning or analysis. Again, the venue provision is focused on the statutory authority under which EPA took the challenged action.

Nor could venue under Section 7607(b)(1) turn on whether EPA used a uniform statutory interpretation or common analytical methods across otherwise locally applicable actions. *Every* EPA action "purportedly applies a national standard created by the national statute and its national regulations." *West Virginia*, 90 F.4th at 329-30; *see also Chevron U.S.A. Inc.*, 45 F.4th at 387 (explaining that *all* "locally or regionally applicable actions may require interpretation of the Clean Air Act's statutory terms"). "Were that the appropriate consideration, there could be no local or regional action." *West Virginia*, 90 F.4th at 328.

Indeed, if EPA applied different standards or interpretations to similarly situated States, that may create "inconsistency" that would be "arbitrary and capricious." *Encino Motorcars, LLC v. Navarro*, 579

U.S. 211, 222 (2016) (citation and internal quotation marks omitted). A locally applicable action therefore does not become national simply because it "applies a broad regulation to a specific context and … may set a precedent for future [state implementation plan] proceedings." *Am. Rd. & Transp. Builders Ass'n*, 705 F.3d at 456. And because Congress provided an exception whereby locally applicable actions are reviewed in the D.C. Circuit if "based on a determination of nationwide scope and effect," EPA's invocation of nationwide standards in the applicability inquiry "would unravel this layered scheme" by requiring courts to "look[] to an action's justification at the start to decide whether the action is national or local." *Kentucky*, 2024 WL 5001991, at *10.

EPA's actions on the state plans below confirms its application of common standards does not render those actions nationally applicable. EPA applied the same legal principles and methodology to *both* the state plan approvals and the disapprovals. *Compare* 87 Fed. Reg. at 9,480 (explaining in its proposed approval of Iowa's state plan that "EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating … the approvability of" state plans), *with* 87 Fed. Reg. at 9,801 (same language in the proposed disapprovals for Arkansas, Louisiana, Oklahoma, and Texas state plans). But EPA conceded that each state plan *approval* was a locally or regionally applicable action. *See supra* 9. Applying the same statutory interpretation and methodology in the state plan *disapprovals* therefore cannot justify treating those disapprovals as

nationally applicable. And, in fact, EPA admitted at the certiorari stage that "EPA's use of a national standard" is not sufficient to render an action nationally applicable. Cert. Resp. 16-17.

The contents of the state plans that EPA disapproved here also confirm their local applicability. Each State submitted a separate plan. *Supra* 7-9. The plans differed in significant ways. Most importantly, each focused on the emissions sources within the State and how, if at all, they contributed to a handful of other States. Those state-specific evaluations also differed in mode of analysis. For instance, Texas conducted its own air-quality modeling, rather than relying on EPA's nationwide modeling. Oklahoma relied on Texas's region-specific modeling. J.A.13a-14a. Oklahoma likewise conducted a source- and Oklahoma-specific weight-of-the-evidence analysis of its future emissions. J.A.21a-26a. And while Utah used EPA's modeling, Utah applied a weight-of-evidence approach to assess contributions to Colorado or other downwind States. J.A.42a-57a.

EPA's review of the state plans was also locally and regionally focused. The proposed disapprovals were reviewed by EPA's regional offices and signed by regional EPA administrators. *See, e.g.*, 87 Fed. Reg. at 9,835. Many proposed disapprovals covered only a single State. *Supra* 9. When EPA combined several proposed disapprovals in a single proposed action, it grouped the state plans by EPA region. *Supra* 9-10. In the proposed and final rulemakings, EPA evaluated "the contents of each individual state's submission … on their own merits" and in separate

subsections. 88 Fed. Reg. at 9,354-61; *see also* 87 Fed. Reg. at 9,816-24 (discussing Oklahoma's plan separately from Louisiana's, Arkansas's, or Texas's plans). EPA considered and rejected the state-specific reasoning within each State's plan. For instance, EPA rejected Oklahoma's alternative approach to calculating whether a downwind "receptor" was likely to struggle to "maintain[]" attainment with the NAAQS. 88 Fed. Reg. at 9,359. EPA likewise rejected Utah's arguments about why "certain receptors in Colorado should not be counted as receptors" as "insufficient" and found "technical and legal flaws in the State's arguments related to relative contribution, international and non-anthropogenic emissions, and the relationship of upwind versus downwind-state responsibilities." *Id.* at 9,360. Finally, EPA codified each state plan disapproval in separate subparts of the Code of Federal Regulations. *Id.* at 9,381-84.

Regardless, determining where an action "applies" ought not require this kind of detailed inquiry. Courts have repeatedly rejected an interpretation of Section 7607(b)(1) that turns on the action's "practical effects," *Am. Rd. & Transp. Builders Ass'n*, 705 F.3d at 456, rather than its "*legal* effect," *Calumet Shreveport Refin., LLC v. EPA*, 86 F.4th 1121, 1131 (5th Cir. 2023). That is in part because a focus on the "*de facto* scope of the regulation" raises "complex factual and line-drawing problems." *Nat. Res. Def. Council, Inc. v. Thomas*, 838 F.2d 1224, 1249 (D.C. Cir. 1988). Section 7607(b)(1) requires courts to "analyz[e] the nature of EPA's *action*," instead of the practical effects of the

rulemaking or the "specifics of the petitioner's grievance." *RMS of Ga., LLC v. EPA*, 64 F.4th 1368, 1372 (11th Cir. 2023). Under the text of Section 7607, the nature of EPA's action is governed by the statutory provision under which EPA is exercising authority, not by the contents of the preamble EPA published in taking that action.

The Tenth Circuit's rule requiring courts to scrutinize the particularities of EPA's analysis, rather than merely identify the statutory authority being exercised, produces the same "complex factual and line-drawing problems" as other rejected methods of applying Section 7607. *Thomas*, 838 F.2d at 1249. EPA rulemakings can be immensely technical. A requirement for courts to analyze at the threshold of every case whether EPA's reasoning across several actions was "uniform" or applied "in a consistent manner" will squander judicial resources. Pet.App.12a-13a. Nor does the Tenth Circuit's rule clarify the *extent* to which EPA's reasoning must be based on uniform statutory interpretation and common analytical methods. EPA has never argued that its state plan disapprovals were *entirely* based on common reasoning. *See supra* 10-11 (noting EPA's analysis of state-specific reasoning in its disapprovals). If *any* reliance on uniform statutory interpretation is enough, no EPA action would be locally applicable. But neither the Tenth Circuit nor EPA identified where to draw that line. And because venue for most challenges will be determined by the challenged action's applicability, the Tenth Circuit's

interpretation would greatly complicate *most* venue determinations under Section 7607(b)(1).

3. The Tenth Circuit also implicitly held that no EPA action is *categorically* reviewable in the regional circuits even if specifically enumerated in Section 7607(b)(1)'s list of actions reviewable in the regional circuits. Rather, focusing on the catchall phrase "any other final action … which is locally or regionally applicable," the Tenth Circuit reasoned in a footnote that petitioners challenging enumerated examples of actions reviewable in the regional circuit must prove the "approval, promulgation, denial, or disapproval *is* locally or regionally applicable." Pet.App.11a-12a n.5 (emphasis added). It thus rendered meaningless the statute's specific reference to implementation plan approvals and disapprovals, which is a strong, if not definitive, indication that the actions challenged here are locally or regionally applicable. *See supra* 26-28.

The Tenth Circuit's reading violates bedrock principles of statutory interpretation. For one, the Tenth Circuit's view renders the enumerated examples in Section 7607(b)(1) superfluous.

The Tenth Circuit's interpretation also conflicts with how Congress amended the statute. The 1970 version of the statute did not include the phrase "which is locally or regionally applicable." Rather, Congress simply designated the venue for certain challenges—including EPA's "action in approving or promulgating any implementation plan under section 110"—in the "appropriate circuit" rather than the D.C. Circuit. *See* Pub. L. 91-604 (Dec. 31, 1970). The venue analysis under the 1970 version of the statute thus

turned solely on whether the action under review was listed in Section 7607(b)(1). The addition of a catchall in the August 1977 amendment did not narrow the scope of the existing categorical provisions. Congress instead *expanded* the ambit of Section 7607(b)(1) by "add[ing] to the list of locally or regionally applicable actions" the catchall. *Harrison*, 446 U.S. at 584.

The last-antecedent canon confirms this interpretation. Under that canon, "a limiting clause or phrase" should "ordinarily be read as modifying only the noun or phrase that it immediately follows," absent "other indicia of meaning" overriding that presumption. *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003). Here, the phrase "which is locally or regionally applicable" modifies "or any other final action of" EPA. That interpretation "reflects the basic intuition that when a modifier appears at the end of a list," it applies "only to the item directly before it." *Lockhart v. United States*, 577 U.S. 347, 351 (2016). That is doubly true where applying the modifier to the rest of the list would run "headlong into the rule against superfluity." *Id.* at 356.

* * *

Ultimately, the Section 7607(b)(1) venue analysis should not, and does not, turn on the Tenth Circuit's arbitrary and atextual distinctions. Neither EPA's amalgamation of multiple locally applicable actions into a single *Federal Register* notice nor its reliance on common statutory interpretation and reasoning changes the statutory authority underlying EPA's action. The interpretation advanced by EPA and accepted by the Tenth Circuit ignores: (1) the text of

Section 7607 categorically listing venue for actions based on the statutory authority exercised; (2) the text of Section 7410 delineating EPA's state-by-state authority to review each State's plan; (3) the listing of state implementation plan approvals and disapprovals in the regional circuit review provision; (4) the statutory history; and (5) the state-specific nature of implementation plans under the statute, including the ones by Oklahoma and Utah here. Because state implementation plans are locally applicable, venue for Petitioners' challenges lies in the Tenth Circuit.

II. EPA's disapprovals of Oklahoma's and Utah's plans were not based on a determination of nationwide scope or effect.

Section 7607(b)(1)'s general rule—that regional circuits review challenges to locally or regionally applicable actions—has a narrow exception. Petitions for review of those actions must be filed in the D.C. Circuit: "[1] if such action is based on a determination of nationwide scope or effect and [2] if in taking such action the Administrator finds and publishes that such action is based on such a determination." § 7607(b)(1).

The Tenth Circuit declined to address EPA's argument that this exception applies to Petitioners' challenges. Pet.App.19 n.8. This Court should address EPA's argument and reject it.

EPA asserted that it based the disapprovals on determinations of "nationwide scope or effect" for two reasons. 88 Fed. Reg. at 9,380. First, EPA claimed that it was "interpreting and applying" the Act's Good

Neighbor Provision "based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S." *Id.* Second, EPA found that "national uniformity in judicial resolution of any petitions for review is desirable" in order "to eliminate the risk of inconsistent results for different states" from different circuits. *Id.* at 9,381.

Neither of those rationales shows EPA's disapproval "action[s]" were "based on a determination of nationwide scope or effect." Using a common analytical framework to evaluate each State's plan, rather than arbitrarily evaluating each plan differently, merely fulfills EPA's baseline requirement of reasoned agency decision making. That framework was not the "determination" on which EPA "based" its disapprovals. After all, EPA's state plan *approvals* also used EPA's common analytical framework.

And EPA's desire to avoid potentially inconsistent results in other circuits speaks only to EPA's disagreement with the choices Congress made in dividing judicial review of Clean Air Act actions among different courts of appeals. EPA's view that D.C. Circuit review is "desirable" does not somehow turn the disapprovals into actions "based on a determination of nationwide scope or effect."

A. Section 7607(b)(1)'s exception applies only when the core or ultimate justification for EPA's action is nationwide in scope or effect.

Under Section 7607(b)(1), EPA's ultimate reasons for disapproving each Good Neighbor plan must be of

"nationwide" "scope or effect" for EPA to lawfully invoke the venue provision's exception. § 7607(b)(1). Because the Court is interpreting a "savings clause [that] is an exception[,]" it "must be read 'narrowly in order to preserve the primary operation of the provision.'" *Garland v. Gonzalez*, 596 U.S. 543, 555 n.6 (2022); *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519, 530 (2009) (exceptions should not be interpreted to "swallow the rule").

With that interpretive principle in mind, the ordinary meaning of the text establishes that an action is "based on" a "nationwide" "determination" if the "relevant determinations … lie at the core of the agency action" and have scope or effect "throughout [the] whole nation." *Texas 2016*, 829 F.3d at 419 & n.22.

Start with the word "determination." As the Fifth Circuit explained, the relevant "determination[s]" under the exception "are the justifications the agency gives for the action and they can be found in the agency's explanation of its action." *Id.* at 419; *see also West Virginia*, 90 F.4th at 329 ("[V]enue turns on the EPA's reasons for determining that [an implementation plan] was insufficient."). In this context, the word "determination" requires courts to "ask whether the ultimate decision underlying the EPA's 'final action' has a 'nationwide scope or effect,'" rather than "each *preliminary* step on the road to that decision." *Kentucky*, 2024 WL 5001991, at *11; *Determination*, The Merriam-Webster Dictionary 202 (1974) ("the decision or conclusion reached").

Next, "[b]ecause the statute speaks of the determinations the action 'is based on,' the relevant determinations are those that lie at the core of the agency action." *Texas 2016*, 829 F.3d at 419. That is, the Court must examine EPA's central justifications for taking the action under review. Because the action must be "based on" those determinations, "peripheral or extraneous" determinations are not enough. *Id.* Rather, the phrase "based on" requires that the determination form gravamen of the action. *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 33-34 (2015) (explaining that the term "based upon" requires looking at the "basis," "foundation," or "gravamen" of the action (citation omitted)); *see also Based*, The Merriam-Webster Dictionary 71 (1974) ("to form or serve as a base for"). Courts thus often identify "EPA's factual conclusions or expertise" underlying the challenged action. *Texas 2016*, 829 F.3d at 422.

Once a court has identified the ultimate justification on which the action is founded, the question becomes whether that determination has "nationwide scope or effect." § 7607(b)(1). A determination's "scope" relates to "[t]he area covered." *Texas 2016*, 829 F.3d. at 420 n.20; *Scope*, The Merriam-Webster Dictionary 621 (1974) ("extent covered"). A determination's "effect" is the "result" "brought about by" the determination. *Texas 2016*, 829 F.3d. at 420 n.21; *Effect*, The Merriam-Webster Dictionary 232 (1974) (defining "effect" as "result" and "the quality or state of being operative"). And, of course, "nationwide" means "[t]hroughout a whole nation." *Texas 2016*, 829 F.3d. at 420 n.22;

Nationwide, The Merriam-Webster Dictionary 466 (1974) (defining "nationwide" as "extending throughout a nation"). In short, the phrase "nationwide scope or effect" "reaches EPA decisions that apply to the entire country as a legal matter (de jure) or as a practical one (de facto)." *Kentucky*, 2024 WL 5001991, at *12.

Section 7607(b)(1)'s exception thus requires that the ultimate justifications on which EPA's locally or regionally applicable action is based must cover the entire country or necessarily result in consequences throughout the whole nation. Anything less and the action would not be "based on" a "determination" of "nationwide scope or effect." *See West Virginia*, 90 F.4th at 328 ("A determination would be national in scope and effect if it addressed and analyzed circumstances common to all regions in the Nation."); *Kentucky*, WL 5001991, at *12 ("[A] determination might have a nationwide 'scope' if its formal 'area' of operation covers the country[,] … [a]nd it might have a nationwide 'effect' if its 'operative influence' is felt everywhere." (citations to dictionaries omitted)); *see also Am. Rd. & Transp. Builders Ass'n*, 705 F.3d at 456 ("Nothing in the California [state implementation plan] approval contemplated nationwide scope or effect, … [where its reasoning] could be lawfully applied 'only to certain development projects within the geographic jurisdiction covered.'" (citation omitted)); H.R. Rep. 95-294 at 324 n.20 (1977) (referencing 41 Fed. Reg. 56,767, 56,768-69 (Dec. 30, 1976) (explaining the text of the venue provision "should be amended to provide that where 'national

issues' are involved they should be reviewed in the D.C. Circuit.")). An action is *not* based on determinations of nationwide scope or effect if the action turns on unique facts about a State or particular geographic region.

B. EPA's actions disapproving Oklahoma's and Utah's plans were not based on determinations of nationwide scope or effect.

Here, EPA's actions to disapprove Oklahoma's and Utah's state plans were based on determinations of facts specific to each State. Those determinations had consequences specific and unique to each State and the regulated sources within each State's borders, not to the nation as a whole. So, EPA's effort to invoke Section 7607(b)(1)'s exception to funnel these state implementation plan disapprovals to the D.C. Circuit must fail.

Yet, when invoking Section 7607(b)(1)'s exception, EPA ignored its own state-by-state inquiries and instead argued its use of a 4-step analytical framework, reference to national emissions modeling, and desire to avoid inconsistencies satisfy the "nationwide scope or effect" requirement. 88 Fed. Reg. at 9,380-81. But these aspects of EPA's decisionmaking process do not constitute the determinations on which EPA's decision to approve or disapprove specific state plans was based. EPA considered these factors in its state plan approvals and disapprovals alike. The core findings that made the difference as to whether any given plan was approved or disapproved rested on findings unique to

each State's submission. Because the determinations EPA's actions were ultimately "based on" are state-specific, they are not nationwide in scope or effect.

1. EPA's determinations were based on state-specific facts and circumstances.

The determinations on which EPA based its approval or disapproval of each State's plan were specific to each particular state plan and the facts specific to the emissions within the respective States or regions. The disapprovals therefore were not "based on a determination of nationwide scope or effect." § 7607(b)(1).

When EPA approves or disapproves state plans, those actions will almost always be "based on" determinations of local scope and effect. As explained, the statute requires EPA's review of state plans to be state-specific. *See supra* 23-24. States enjoy "wide discretion" and "considerable latitude" in crafting their implementation plans. *Union Elec. Co.*, 427 U.S. at 250; *Train*, 421 U.S. at 87. Congress delegated to States, not EPA, the power to make "legislative choices in regulating air pollution." *Union Elec. Co.*, 427 U.S. at 269. Although EPA may voice a "preferred approach" for state plans, it may not erase State discretion by insisting on its preference. *Train*, 421 U.S. at 69. A State's development and EPA's review of a state plan also involves "a number of intensely factual determinations" about the "particularities of the emissions sources" in the State and other local conditions. *Texas 2016*, 829 F.3d at 421; *Kentucky*, 2024 WL 5001991, at *12 (EPA, in the same *Federal*

Register notice as the actions in this case, rejected Kentucky's Good Neighbor plan "due to 'circumstances … unique' to that plan" (citation omitted)). So when EPA chooses to disapprove a State's plan, it almost always must be for reasons specific to that State's facts or choices rather than a one-size-fits-all imposition infringing on statutorily protected state discretion. *See* 41 Fed. Reg. at 56,768-69 (Administrative Conference of the United States recommendation) (actions on state plans "usually involve issues peculiar to the affected States").

To be sure, occasionally an EPA action with respect to States may involve "generic determinations of nationwide scope or effect." *Id.* at 56,767-68. For example, when EPA is "promulgat[ing] … generic regulations (applicable to all States) that require prevention of significant deterioration of air quality," the action is based on determinations of nationwide scope or effect. *Id*. at 56,769 (citation omitted). "As with national standards, such actions typically involve establishment or application of uniform principles for all States, are taken on a single administrative record, and do not involve factual questions unique to particular geographic regions." *Id*. at 56,769 n.2. An agency decision to publish multiple, discrete final actions in a single notice does not, however, change the scope of the relevant determinations. The scope of the notice itself does not matter because it "improperly focuses on the nature of the rule as a whole and not on the determinations on which [each action] is based." *Texas 2016*, 829 F.3d at 422.

True to form, EPA's disapprovals here each involved state-specific analysis and reasoning. Consider Oklahoma's state plan. Air quality models projected emissions sources in Oklahoma would contribute to ozone downwind, and those contributions to downwind States are different from any other State. Oklahoma analyzed those state-specific projections using region-specific modeling prepared by Texas, not EPA's national modeling. Oklahoma concluded it would not "significantly" contribute to any downwind State, based in part on Oklahoma's recent history of significantly reducing emissions, thus satisfying its Good Neighbor obligations. J.A.23a-24a, 26a.

EPA disapproved Oklahoma's plan "[b]ecause" it concluded Oklahoma failed to correctly "analyze emissions from the sources and other emissions activity from within the State to determine whether its contributions [to downwind States] were significant." 87 Fed. Reg. at 9,823-24. EPA pointed specifically to Oklahoma's projected ozone "contribution [of] 1.01 ppb to Denton County, Texas." 88 Fed. Reg. at 9,359. It likewise rejected Oklahoma's reliance on alternative air quality modeling and Oklahoma's approach to calculating whether a downwind "receptor" was likely to struggle to "maintain[]" attainment with the NAAQS. *Id.*; 87 Fed. Reg. at 9,823-24. EPA's ultimate reason for disapproving Oklahoma's plan thus constituted a state-specific, factual determinations.

Utah's Good Neighbor plan was no less state-specific. Utah's state plan identified areas around

Denver to which Utah contributes more than 1% of the 2015 Ozone NAAQS of 70 ppb. J.A.40a. Utah identified five locations in Colorado where individual contributions from Utah ranged between 0.83 ppb and 1.23 ppb. J.A.40a. Utah then applied a weight-of-evidence approach to assess whether under the conditions specific to Utah and Colorado, Utah contributed "significantly" to nonattainment or "interfere[ed] with" maintenance in downwind States. J.A.42a-57a.

Utah concluded that those contributions to downwind States were not significant. Utah based that conclusion in part on the differences between projected contributions by Utah compared to other states. Utah explained that in Eastern States, total contributions from the cumulative impact of upwind States are very high; Utah cited Connecticut as an example, noting that it received a collective upwind contribution of 44.24 ppb, which is 12 times greater than the sources of air pollution from within Connecticut. J.A.47a. By contrast, the dynamic in the West is flipped, and in-state contributions are much more significant than the total contribution from upwind States. J.A.49a. In Colorado, the highest collective upwind contribution at relevant areas was 7.06 ppb, while in-state contributions for that same area were 25.52 ppb. J.A.49a. Utah also pointed to the ozone contributions from international emissions, wildfires, and biogenic emissions, which contributed much more ozone "compared to those modeled as coming from Utah." J.A.49a-51a. Indeed, biogenic emissions (natural sources of emissions) alone

contribute between 4.19 ppb and 5.71 ppb to Colorado receptors, while Utah contributes one-quarter of this amount. J.A.49a.

Based on this weight-of-evidence approach, considering all factors taken together, Utah concluded that contributions to downwind air quality are not significant and additional emission reductions are not necessary. J.A.57a. The State also analyzed the substantial emission reductions between 2011 and 2017 that resulted from enforceable permit and regulatory requirements, as well as additional controls included in the plan for the Salt Lake City area and updated rules for oil and gas sources. J.A.51a-57a. These data showed that emissions from Utah were decreasing and would continue to decrease.

EPA's reasons for disapproving Utah's proposed plan were that (1) "Utah is projected to be linked above 1 percent of the NAAQS to three nonattainment receptors and one maintenance-only receptor … [located in] Colorado"; (2) "the State included an insufficient evaluation of additional emissions control opportunities"; (3) there were "technical and legal flaws in the State's arguments related to relative contribution, international and non-anthropogenic emissions, and the relationship of upwind versus downwind-state responsibilities"; (4) "several anticipated controls identified by Utah were included in the [later modeling performed by EPA], and yet Utah was still linked in that modeling"; and (5) Utah's Western-specific arguments supporting its submission were unconvincing. 88 Fed. Reg. at 9,360. These could not be more local determinations.

Oklahoma and Utah are not outliers. Every State's Good Neighbor plan was unique and therefore the determinations at the core of EPA's decisions on the States' plans varied. For instance, California's plan included an analysis focused on state-specific impacts related to the geography, meteorology, and wildfires as well as local, international, and non-anthropogenic emissions. *Id.* at 9,355. It also "argued that it had already implemented all cost-effective controls" and "that interstate transport is fundamentally different in the western U.S. than in the eastern U.S." *Id.*

EPA ultimately rejected California's plan because it presented "an insufficient evaluation of additional control opportunities" as well as "technical and legal flaws in California's geographic, meteorological, wildfire, and trajectories analysis, and the State's arguments related to local, international, and non-anthropogenic emissions." *Id.* In contrast, EPA approved Idaho's plan because "the impacts from emissions from sources in Idaho will not exceed a contribution threshold of 1 percent of the 2015 ozone NAAQS to any downwind nonattainment and maintenance sites," in part because "annual total [ozone precursor] emissions have declined" as a result of "reductions in emissions from onroad and nonroad vehicles" in Idaho. 85 Fed. Reg. 65,722, 65,724-25 (Oct. 16, 2020).

Because EPA's disapprovals or approvals of each State's Good Neighbor plan were based on a review of the specific facts and merits of that plan, EPA's core

justifications for its actions did not have nationwide scope or effect.

2. EPA's actions were not based on its preference for a uniform policy-based framework.

EPA asserted that it made and relied on several nationwide determinations. But none of those purported determinations constitute "the reason the agency [took] the action" that it did. *Texas 2016*, 829 F.3d at 419; *West Virginia*, 90 F.4th at 329 ("venue turns on the EPA's reasons for determining that West Virginia's [Good Neighbor plan] was insufficient"). They are not the "ultimate decision" upon which the actions to disapprove Oklahoma's and Utah's plans were based. *Kentucky*, 2024 WL 5001991, at *12.

First, EPA relies principally on its use of a "nationally consistent 4-step interstate transport framework for assessing obligations for the 2015 ozone NAAQS." 88 Fed. Reg. at 9,380. But that framework simply "provide[s] a reasonable organization to the analysis of the complex air quality challenge of interstate ozone transport." *Id.* at 9,338. The framework is not mandated by the Clean Air Act, codified in any regulation, or otherwise required by EPA. *See id.* at 9,375 ("EPA does not direct states to use a particular framework"). EPA in fact told States that they were free to "develop alternative frameworks to evaluate interstate transport obligations in their state plans." No. 23-9514 (10th Cir.), J.A.107; *see also* 88 Fed. Reg. at 9,338 (explaining that "states have some flexibility in developing analytical methods within this framework (and may also attempt to

justify an alternative framework altogether)"). EPA thus confirmed it would judge the appropriateness of the State's chosen framework "in light of the facts and circumstances of each particular state's submission," 88 Fed. Reg. at 9,340, as the statute requires, *supra* 23-24.

EPA's 4-step framework organized EPA's analysis, but it did not in itself constitute the core justification for the denial of Oklahoma's or Utah's proposed plans. Indeed, EPA's reference to a common analytical framework is not a "determination" at all. *Kentucky*, 2024 WL 5001991, at *11-12. EPA applied the same 4-step framework to analyze each state plan it reviewed. But, once again, EPA approved some plans and disapproved others using the same framework. EPA's "reason[s]" for approving or disapproving a given state plan thus necessarily depended on state-specific facts and considerations. *Texas 2016*, 829 F.3d at 419; *Kentucky*, 2024 WL 5001991, at *11-12.

In short, EPA's 4-step framework did not dictate the outcome of any disapproval decision because EPA rightly admitted it was non-binding. Nor could the framework have been the determination on which its decision to disapprove was based because both approval and disapproval actions used the 4-step framework—proving that state-specific determinations were the ultimate bases for EPA's actions.

Second, EPA contended that it made a nationwide determination when it relied on "the results from nationwide photochemical grid modeling." 88 Fed.

Reg. at 9,381; *see also id.* at 9,338-39 (describing this modeling). But EPA also made clear that States could rely on alternate methodologies for modeling emissions, including relying on modeling conducted by other States, which might better incorporate state-specific information and data. No. 23-9514 (10th Cir.), J.A.68, 73-74. Some States, like Utah, analyzed their future contributions to downwind States by reference to EPA's modeling and data. J.A.37a-39a. But others, like Texas and Oklahoma, relied on non-EPA modeling designed to more accurately project future emissions and air quality levels in surrounding States. J.A.13a-14a. In rejecting state plans that relied on region-specific modeling, EPA necessarily made intensely factual state-specific determinations.

Regardless, EPA's choice to conduct nationwide modeling was not the core justification on which its decision to approve or disapprove any state plan was based. As with the 4-step framework, EPA considered its ozone modeling for every state plan it reviewed. *See, e.g.*, 87 Fed. Reg. at 9,478-80, 9,482-43; 87 Fed. Reg. at 9,800, 9,822. But that modeling merely identified specific local downwind sites to which an upwind State might contribute ozone. *See* 88 Fed. Reg. at 9,341-42. States (and EPA) then had to evaluate whether those individual local projections amounted to "significant[]" contributions from upwind States based on the facts and circumstances of each State. § 7410(a)(2)(D)(i)(I). *That* was the core determination that governed whether EPA approved or disapproved a state plan.

Third, EPA claimed that it "evaluated each state's arguments for the use of alternative approaches or alternative sets of data with an eye to ensuring national consistency and avoiding inconsistent or inequitable results" between upwind and downwind States. 88 Fed. Reg. at 9,381. But that is no surprise. As already explained, if EPA treats similarly situated States inconsistently, it acts unlawfully. *Supra* 32-33. The mere fact that it sought to avoid arbitrary decision-making cannot be enough to make an action nationwide in scope or effect.

3. EPA's desire to consolidate judicial review does not constitute a determination of nationwide scope or effect.

Finally, EPA argued that any challenges to its state plan disapprovals should be made in the D.C. Circuit because "national uniformity in judicial resolution of any petitions for review is desirable … to eliminate the risk of inconsistent results for different states." 88 Fed. Reg. at 9,381. But EPA did not contend that this desire for uniformity was a "determination" on which EPA's state plan disapprovals were based. Section 7607(b)(1) therefore does not allow EPA to rely on its desire for consolidated judicial review to designate an action for review only in the D.C. Circuit.

Nor do EPA's concerns about judicial review have any validity. Each State is unique and each submitted Good Neighbor plan was "evaluated on [its] own merits." 88 Fed. Reg. at 9,354. That is precisely why Congress sent challenges to state plan approvals or disapprovals to the regional circuits, the courts most

familiar with the facts and circumstances of the States in their region.

Plan-by-plan judicial review may produce "[s]ome variation," but that is the "expected" operation of Section 7607(b)(1). *Texas 2016*, 829 F.3d at 423. "[I]ntercircuit conflicts in the application of EPA policies caused by inconsistent judicial decisions are inevitable because of the Act's judicial review provision in § 7607(b)(1)." *Nat'l Envtl. Dev. Ass'n's Clean Air Project v. EPA*, 891 F.3d 1041, 1050 (D.C. Cir. 2018) (holding EPA reasonably and permissibly interpreted the Act to allow intercircuit nonacquiescence). And there is "'wisdom' in 'allowing difficult issues to mature through full consideration' by different courts." *Kentucky*, 2024 WL 5001991, at *10 (quoting *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 135 n.26 (1977)). Congress weighed the possibility of conflicting judicial decisions and determined that when the action is locally applicable and not based on determinations of nationwide scope or effect, the regional circuits should be the exclusive venue regardless.

* * *

Because EPA's action on each state plan rested on justifications unique to each plan's "own merits," regardless of any uniform approach that EPA sought to use, EPA's actions were not based on determinations of nationwide scope or effect. EPA's reliance on Section 7607(b)(1)'s exception to regional circuit review of EPA's state implementation plan decisions therefore fails.

CONCLUSION

The judgment of the court of appeals should be reversed.

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