**Nos. 23-1067, 23-1068**

IN THE

# Supreme Court of the United States

STATE OF OKLAHOMA, ET AL.,
*Petitioners,*
v.
ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
*Respondents.*

PACIFICORP, ET AL.,
*Petitioners,*
v.
ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## BRIEF FOR THE STATES OF ARKANSAS, ALABAMA, ALASKA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NORTH DAKOTA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, VIRGINIA, WEST VIRGINIA, AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS


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*Amici* are the States of Arkansas, Alabama, Alaska, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming. Since 1977, Amici States have all understood that if EPA disapproved their state implementation plans for implementing the Clean Air Act, or SIPs, they could seek review of EPA's decision in their regional circuit. But after EPA announced the disapprovals of 21 States' SIPs in a deeply flawed rule that seven courts of appeals have vacated or stayed, EPA succeeded in persuading the Tenth Circuit that so long as EPA announces enough of them at once, SIP disapprovals are exclusively reviewable in the D.C. Circuit. Meanwhile, even though the other courts of appeals hearing challenges to EPA's disapprovals denied EPA's motions to transfer, EPA continues to relitigate venue before those courts—as it successfully did in the Tenth Circuit. Amici States ask this Court to make clear their current challenges and future SIP disapproval challenges belong in the relevant regional circuit.

## SUMMARY OF THE ARGUMENT

I. This case concerns a question to which the Clean Air Act speaks directly: the appropriate venue for challenges to EPA approvals or disapprovals of SIPs under the Act. The Act says that any local or regionally applicable EPA action under the Act, "including any denial or disapproval" of a SIP and any "action in approving" one, is reviewable in the appropriate regional circuit. 42 U.S.C. 7607(b)(1). That express classification of SIP approvals and disapprovals as

regionally applicable actions makes sense; SIP approvals and disapprovals are the paradigmatic regionally applicable action. Indeed, by definition, they concern only the relevant state's air-quality controls.

Yet the Tenth Circuit held that EPA's disapprovals of Oklahoma's and Utah's SIPs were nationally applicable actions, solely reviewable in the D.C. Circuit, because they were announced in a Federal Register notice alongside 19 other disapprovals. To justify that conclusion, the Tenth Circuit claimed that the Act merely says that SIP disapprovals can be locally or regionally applicable. But the Act does not say so little. Rather, it says locally or regionally applicable actions "includ[e] any [SIP] denial or disapproval." And this Court normally reads language like that to mean what it says—that such actions are included, not merely that they can be. That reading, moreover, is especially appropriate here, because a contrary reading would render the "including" clause superfluous.

Further, even if EPA could overcome the Act's express classification of SIP disapprovals as locally or regionally applicable, the Tenth Circuit's reasons for deeming these disapprovals nationally applicable action would still fail. It merely reasoned that they were announced alongside multiple other disapprovals. But the action on review here is not the entirety of EPA's rule; it is Oklahoma's and Utah's disapprovals. The Clean Air Act's venue provision makes clear that courts review disapprovals, not the rules in which they are contained. And EPA can't avoid that provision by simply "throw[ing] a blanket labeled 'national' over 21 individual decisions rejecting 21 separate States' SIPs in an effort to convert each unique state decision into a national one." *West Virginia v. EPA*, 90 F.4th 323, 330

(4th Cir. 2024). Moreover, EPA's—and the courts'—silence on the severability of its rule underscores that the judicially reviewable action in a SIP case is EPA's action on each SIP. EPA's actions were locally or regionally applicable.

II. In its rule, EPA alternatively argued that if its disapprovals were locally or regionally applicable, they satisfied an exception to regional-circuit venue for locally or regionally applicable actions that are "based on a determination of nationwide scope." 42 U.S.C. 7607(b)(1). That rationale for evading regional-circuit review also lacks merit. EPA theorized that its SIP disapprovals were based on a determination of nationwide scope because EPA interpreted the Clean Air Act in the same way when disapproving each SIP. But if that were all it took to satisfy the nationwide-scope exception, all locally applicable actions would qualify, because EPA must consistently interpret the Act. Instead, in this context, "based on" must refer—as it often does in the law—to an action's predominant basis. And the exception's drafting history confirms that reading, revealing that it was added at EPA's request to preserve court of appeals cases providing for D.C. Circuit venue where an EPA decision automatically triggered the same action on numerous SIPs. That kind of automatic action is absent here. Instead, on its own account, EPA applied the same legal standards to the particular facts and circumstances of each State's SIP and, as a result, approved about as many SIPs as it disapproved.

The Court should grant the petition and reverse the decision below.

## ARGUMENT

### I. EPA's Disapprovals of Oklahoma's and Utah's SIPs Were Not Nationally Applicable.

The Clean Air Act's venue provision assigns the review of nationally applicable actions to the D.C. Circuit and locally or regionally applicable actions to the regional circuits. The Tenth Circuit held that EPA's disapprovals of Oklahoma's and Utah's SIPs were nationally applicable actions because they were announced alongside 19 other disapprovals. But Section 7607 says that SIP disapprovals are per se locally or regionally applicable. That should have been the end of the matter.

A. Section 7607(b)(1) has a simple structure. Its first sentence says that "certain EPA actions of nationwide consequences under specifically enumerated provisions of the [Clean Air] Act," *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 590 (1980), or "any other nationally applicable . . . action taken" under the Act, may be reviewed in the D.C. Circuit. 42 U.S.C. 7607(b)(1). The second sentence says that "certain local or regional actions under specifically enumerated provisions," *PPG Indus.*, 446 U.S. at 590, or "any other final action" under the Act "which is locally or regionally applicable," may be reviewed only in the appropriate regional circuit. 42 U.S.C. 7607(b)(1). And the third sentence carves out an exception from the second sentence's rule, providing that locally or regionally applicable actions that are "based on a determination of nationwide scope or effect" are reviewable in the D.C. Circuit if the EPA publishes a finding of nationwide scope. *Id.*

This case involves one of the enumerated local or regional actions in Section 7607(b)(1)'s second sentence. The first kind of action that sentence lists is "approving or promulgating any implementation plan under section 7410," the section that governs SIPs. 42 U.S.C. 7607(b)(1). A later clause in the sentence provides in parallel that locally or regionally applicable actions also "includ[e] any denial or disapproval by the Administrator under subchapter I," *id.*, the subchapter that codifies Section 7410. Thus, the provision specifically designates both SIP approvals and disapprovals as local or regional actions that are reviewed in regional circuits.

That designation makes sense. A SIP is a state-specific plan "for [a] State" that sets forth how EPA's air quality standards "will be achieved and maintained within . . . such State." 42 U.S.C. 7407(a). In deciding whether to approve or disapprove a SIP, EPA must decide whether, as relevant here, the SIP "contain[s] adequate provisions" to prevent "emissions activity within the State" from contributing to nonattainment or interfering with maintenance of EPA's air quality standards elsewhere, *id.*, 7410(a)(2)(D), (D)(i). And if EPA disapproves a SIP, it must promulgate a federal implementation plan for the State within two years, "unless the State corrects the [SIP's] deficiency." *Id.*, 7410(c)(1). So a SIP disapproval is a decision about emissions controls in a single State, based on EPA's projections of emissions in that State.

Accordingly, until the decision below, every court of appeals to consider the question since the current version of Section 7607 was enacted in 1977—a period spanning thousands of SIPs—had held that SIP approvals and disapprovals were locally or regionally

applicable actions. Indeed, the D.C. Circuit has described actions on SIPs as "the *prototypical* 'locally or regionally applicable' action," observing Section 7607 "expressly provides" just that. *Sierra Club v. EPA*, 47 F.4th 738, 743 (D.C. Cir. 2022) (Srinivasan, C.J.) (quoting *Am. Rd. & Transp. Builders Ass'n v. EPA*, 705 F.3d 453, 455 (D.C. Cir. 2013) (Kavanaugh, J.)). After all, "a SIP by nature concerns a particular state." *Id.* Likewise, the Fifth Circuit nearly a decade ago explained that "the statutory text places review of SIP approvals or disapprovals in the regional circuits." *Texas v. EPA*, 829 F.3d 405, 419 n.16 (5th Cir. 2016). The Fourth Circuit has held that SIP disapprovals are locally or regionally applicable because they are "applicable *only to*" a single State and "particular to [that State's] circumstances." *West Virginia*, 90 F.4th at 331. And the Sixth Circuit has recently held the same. *Kentucky v. EPA*, — F.4th —, Nos. 23-3216/3225, 2024 WL 5001991, at *9 (6th Cir. Dec. 6, 2024).

Moreover, Section 7607's drafting history also underscores that SIP disapprovals are locally or regionally applicable. When Section 7607 was first enacted, it simply said that SIP approvals were reviewable in the "appropriate circuit." Clean Air Act Amendments of 1970, Pub. L. No. 91-604, sec. 12(a), 84 Stat. 1676, 1708 (1970). That "created uncertainties" and "threshold litigation" over what the appropriate circuit was. Recommendations of the Administrative Conference of the United States, 41 Fed. Reg. 56,767, 56,767 (Dec. 30, 1976). Accordingly, the Administrative Conference recommended Congress "clarify[] that the appropriate circuit is the one containing the state whose plan is challenged." *Id.* In amending Section 7607 the following year, Congress said it agreed; "except as

otherwise provided in" the newly created nationwide-scope exception, it said the provision for regional-circuit venue "applies . . . to the administrator's action in approving or promulgating an implementation plan for *any* State." H.R. Rep. 95-294, at 324 (1977) (emphasis added).[1]

B. Though Section 7607 specifically assigns review of SIP approvals and disapprovals alike to the regional circuits, the Tenth Circuit relegated that assignment to a footnote. Pet. App. 11a n.5. There, it asserted that because Section 7607 assigns "any other final action . . . (including any denial or disapproval . . . under subchapter I) which is locally or regionally applicable" to the regional circuits, 42 U.S.C. 7607(b)(1), Section 7607 merely says that SIP denials can be locally or regionally applicable, not that all SIP denials are. Pet. App. 11a n.5.

That's not how this Court typically reads language like that. Section 7607(b)(1)'s second sentence has a structure Congress often uses; it covers a broad category, "including" a specific item (subchapter I denials or disapprovals), that satisfies a condition (local or regional applicability). When faced with that structure, this Court has usually said the "including" clause simply "makes clear" that what it contains is "includ[ed]"—without further inquiry. *Yellen v. Confederated Tribes of Chehalis Rsrv.*, 594 U.S. 338, 347 (2021); *see also Cedar Rapids Cmty. Sch. Dist. v.*

[1] Recognizing the original amendments only listed SIP approvals as locally or regionally applicable actions, Congress corrected the oversight several months later in a technical amendment that added the clause "including any denial or disapproval." Safe Drinking Water Act Amendments of 1977, Pub. L. No. 95-190, sec. 14(a)(80), 91 Stat. 1393, 1404 (1977).

*Garret F.*, 526 U.S. 66, 73 (1999) (holding an "including" parenthetical "illuminated" a "general definition" by "listing examples . . . that are included within the statute's coverage"). For instance, *Confederated Tribes* held that "the best reading" of such clauses is that Congress's inclusion of a term "by name" means that term necessarily "satisfies" any following condition. 594 U.S. at 349. Thus, "[r]egardless of whether 'which is locally or regionally applicable' modifies" the parenthetical, "the statutory text places review of SIP . . . disapprovals in the regional circuits." *Texas*, 829 F.3d at 419 n.16.

This Court typically reads "including" clauses that way for two reasons. First, the "use of the word 'include'" in statutes "is not literal." *Advoc. Health Care Network v. Stapleton*, 581 U.S. 468, 476 (2017). Instead, Congress uses "including" to convey that a statute's coverage includes things whether or not in the literal sense they satisfy that statute's other terms, as when Congress says that "a State 'includes' Puerto Rico." *Id.* (citing 29 U.S.C. 1002(10)).

Second, reading "including" clauses to merely list illustrative examples that may or may not satisfy a subsequent condition will often render those clauses surplusage. *See Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. at 2448 (reasoning a contrary reading "would be redundant"); *Chickasaw Nation v. United States*, 534 U.S. 84, 89 (2001) (acknowledging that applying a restrictive condition to an "including" parenthetical "reduces the phrase . . . to surplusage"). That is the case here. It goes without saying that at least some SIP disapprovals are locally or regionally applicable actions; even under the Tenth Circuit's rule, any SIP disapproval announced in a stand-alone notice is one.

So if the "including" parenthetical in Section 7607 merely clarified that SIP disapprovals *can* be locally or regionally applicable, it wouldn't add anything.

Further, the rare cases in which this Court has read "including" clauses to merely illustrate a statute's potential coverage show why that reading is unwarranted here. For example, this Court once reasoned it wasn't "tautologic" to read "including dispensing physicians" to "encompass[] only doctors who would be covered by the word 'vendor,'" because readers of the statute could have thought physicians "were not 'vendors'" absent the "including" clause. *Young v. United States*, 315 U.S. 257, 261 (1942). By contrast, it would be a tautology to merely say that SIP disapprovals can be locally or regionally applicable. In *Chickasaw Nation*, faced with one item in an "including" clause that clearly failed the following condition, the Court chose to enforce the condition over the item.[2] 534 U.S. at 89-91. Here, there's no contradiction; every court but the Tenth Circuit to consider the issue has held that SIP disapprovals are categorically locally or regionally applicable in fact.

C. Yet even if EPA could overcome Section 7607's express classification of SIP disapprovals as locally or regionally applicable, the Tenth Circuit's reasons for deeming EPA's disapprovals here nationally applicable don't hold water. The Tenth Circuit's entire rationale for that conclusion is that Oklahoma's and Utah's disapprovals were announced in a rule containing 21

[2] The statute referenced provisions of the Internal Revenue Code, "including" a list of specific ones, concerning the reporting and withholding of taxes; the last one listed didn't concern reporting or withholding.

SIP disapprovals. Therefore, it said, the "final action" on review wasn't EPA's disapproval of Oklahoma's or Utah's respective SIPs, but "a nationally applicable final rule." Pet. App. 13a.

But that's not how the Clean Air Act classifies EPA's actions. Instead, the Act looks to the substance of what EPA has done, not the scope of the document in which it announces its actions. To start, the source of EPA's authority to take the actions at issue here is its authority to "disapprove[] *a* State implementation plan." 42 U.S.C. 7410(c)(1)(B) (emphasis added). As the Fourth Circuit explained, that use of "the singular" means "the agency acts on *each plan*," even if it "consolidate[s] its disapprovals in a single final rule." *West Virginia*, 90 F.4th at 330.

Likewise, as the Sixth Circuit has explained, Section 7607 refers "in the singular," *Kentucky*, 2024 WL 5001991, at *9, to both a singular SIP "denial or disapproval," and an "action in approving or promulgating any implementation plan," as the relevant "action." 42 U.S.C. 7607(b)(1). Section 7607 does not refer to rules *containing* SIP approvals or disapprovals as subjects of judicial review. Indeed, "[a]s a general matter, [Section] 7607(b)(1) focuses on the statute" EPA acts under, "not the rulemaking," when classifying actions as regional or national. *Kentucky*, 2024 WL 5001991, at *8. That shows that the unit of administrative action for Section 7607's purposes cannot be a rule, because a rule could, and often will, contain actions under multiple statutes. *See id.* And Section 7607's references to discrete statutory actions contrast with references to rules elsewhere in the Clean Air Act, including in Section 7607's own timing provision. *See id.* at *9 (citing 42 U.S.C. 7607(d)(6)(A)). In sum, the

Act "is very clear: The relevant unit of administrative action here is the EPA's individual SIP denials." *Texas v. EPA*, No. 23-60069, 2023 WL 72048040, at *4 (5th Cir. May 1, 2023).

Next, EPA's silence on the severability of its rule also underscores that the actions on review here are Oklahoma's and Utah's SIP disapprovals, not the rule containing them. When EPA believes its *rules* are subjects of judicial review, it addresses severability. For example, the FIP action at issue in this Court's decision in *Ohio v. EPA*, 603 U.S. 279 (2024), declared every "jurisdiction-specific aspect" of EPA's FIP severable from every other. 88 Fed. Reg. 36,654, 36,693 (June 5, 2023). Yet even though the rule here purports to be nationally applicable "given the interdependent nature of interstate pollution transport," 88 Fed. Reg. 9,336, 9,380 (Feb. 13, 2023), it says nothing about severability, and none of the seven courts of appeals that have vacated or stayed SIP disapprovals have addressed severability either. That's because it goes without saying that each SIP disapproval is a discrete agency action, not a mere subpart of a larger rule.

Last, Section 7607's drafting history also illustrates that Congress thought about omnibus SIP rules and deemed them locally applicable actions that, at most, might qualify for venue in the D.C. Circuit under the nationwide-scope exception. Before the current version of Section 7607, EPA sometimes announced blanket multi-state SIP approvals or amendments, based exclusively on common nationwide grounds. Courts of appeals generally held the "appropriate" court to review those actions was the D.C. Circuit. *See Dayton Power & Light Co. v. EPA*, 520 F.2d 703 (6th Cir. 1975); *NRDC v. EPA*, 465 F.2d 492 (1st Cir. 1972). When the

Administrative Conference proposed clarifying that *all* SIP actions were reviewable in the regional circuits, *supra* at 6, EPA objected through its general counsel, arguing the courts of appeals had rightly assigned "generic determinations of nationwide scope or effect" to the D.C. Circuit. 41 Fed. Reg. at 56,768-69 (separate statement of G. William Frick). Congress "concur[red]." H.R. Rep. 95-294, at 324. But it did so not by contracting its definition of locally or regionally applicable actions, but by enacting the nationwide-scope exception. "[E]xcept as otherwise provided" there, it said, the local-action provision applied "to the administrator's action in approving or promulgating an implementation plan for any State." *Id.* at 323-24. So to obtain D.C. Circuit venue here, EPA must satisfy the narrow nationwide-scope exception.

## II. EPA's Disapprovals of Oklahoma's and Utah's SIPs Were Not Based on a Determination of Nationwide Scope.

Below, EPA—though not the court of appeals—alternatively claimed that the proper venue to challenge its SIP disapprovals was the D.C. Circuit because those disapprovals were, if not nationally applicable, at least based on a determination of nationwide scope or effect. Not citing any nationwide determination in particular, EPA said it was "interpreting and applying" the Clean Air Act's good-neighbor provision with "a common core of nationwide policy judgments and technical analysis," including its "nationally consistent" four-step framework for assessing good-neighbor obligations. 88 Fed. Reg. at 9,380. But mere consistency between the standards applied to various SIPs does not satisfy the nationwide-scope exception. Instead, to invoke the exception, EPA must make a nationwide

determination that in and of itself triggers SIP approval or disapproval.

A. The nationwide-scope exception applies only to locally or regionally applicable actions that are "based on a determination of nationwide scope or effect." 42 U.S.C. 7607(b)(1).[3] Taken out of context, that exception—and particularly the phrase "based on"—might seem ambiguous. On the one hand, "based on" often refers to an exclusive or predominant basis. For example, this Court has held a claim is only "based upon a commercial activity" if commercial activity "forms *the* 'basis,' or 'foundation,' for a claim," *Saudi Arabia v. Nelson*, 507 U.S. 349, 357 (1993) (emphasis added), not just "*an element*" of it, *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 34 (2015). On the other hand, "based on" sometimes refers to one of multiple bases. *See Hughes v. United States*, 584 U.S. 675, 686 (2018) (holding a sentence "is 'based on' a Guidelines range if the range was *a* basis for the . . . sentence") (emphasis added); *but see id.* at 694-96 (Roberts, C.J., dissenting) (advocating the predominant-basis reading). Given that double meaning, the nationwide-scope exception "cannot be construed in the abstract." *Pulsifer v. United States*, 601 U.S. 124, 140 (2024). Instead, it must be read "in its legal context." *Id.* at 141.

Here, that context makes the exception's meaning exceptionally clear: a determination of nationwide

[3] Courts of appeals agree that "EPA's decision whether to make and publish a finding of nationwide scope or effect is committed to the agency's discretion," *Sierra Club*, 47 F.4th at 745, but that "[a] court may review . . . whether locally or regionally applicable action is based on a determination of nationwide scope or effect when EPA so finds," *id.* at 746. That review is de novo. *See Texas*, 829 F.3d at 421.

scope must be the basis for an action, not just a partial basis. The nationwide-scope provision is an exception to "the preceding sentence['s]" rule that locally applicable actions are reviewed in the regional circuits. 42 U.S.C. 7607(b)(1). Yet if that exception only required determinations of nationwide scope to be *a* basis for EPA's action, the "exception would swallow the general rule." *Knight v. Comm'r*, 552 U.S. 181, 191 (2008). For "*every* EPA action applies national standards." *West Virginia*, 90 F.4th at 328 (emphasis added). After all, if EPA applied different standards to different SIPs, it would violate the APA. *See Kentucky*, 2024 WL 5001991, at *11. Therefore, the partial-basis reading cannot be what Congress meant. *See Maracich v. Spears*, 570 U.S. 48, 60 (2013) (reading an exception "narrowly in order to preserve the primary operation of the provision"); *Knight*, 552 U.S. at 191 (rejecting "an expansive reading" of an exception that would "eviscerate" "a general rule"). Instead, as used in Section 7607, "based on" must refer to an action's predominant basis for the exception to remain an exception. Simply applying nationwide standards to state-specific facts cannot suffice.

EPA has argued that this reading of the nationwide-scope exception would "largely negate" it, because locally or regionally applicable actions "characteristically rest at least in part" on local factors. Reply at 5, *EPA v. Calumet Shreveport Refining, LLC* (No. 23-1229). Tellingly, EPA doesn't claim the exception would never apply, but only that it usually wouldn't. Yet that is just what one would expect of an exception, unlike EPA's reading, which would subsume the general rule altogether.

Nor could EPA claim that the predominant-basis reading makes the exception truly superfluous. In addition to the multiple examples in the 1970s of uniform actions on SIPs that inspired the rule, *see supra* at 11-12, *Kentucky*, 2024 WL 5001991, at *13 (noting that these rebut any superfluity argument), recent decisions of the Fifth Circuit, which has adopted the predominant-basis reading, provide multiple examples of actions that satisfy it. *See Wynnewood Refin. Co., L.L.C. v. EPA*, 86 F.4th 1114, 1119-20 (5th Cir. 2023) (holding that a locally applicable alternative-compliance approach for 32 small refineries was based on the nationwide "collective impact" of the individual refinery exemption denials held locally applicable in *Calumet Shreveport*); *Texas v. EPA*, 829 F.3d 405, 421 n.22 (5th Cir. 2016) (allowing a programmatic approval of all SIPs that adopted a particular national emissions-reduction standard would likely be based on a determination that has nationwide scope or effect). Under this reading, then, the nationwide-scope exception would be just that: an exception for exceptional regional actions, not a rule for all of them.

B. If any doubt remained, the exception's drafting history underscores that the exception covers only those rare instances where nationwide determinations automatically trigger a common action on SIPs. As discussed above, *supra* at 6, prior to the 1977 amendments the Administrative Conference proposed amending the Clean Air Act's venue provision to assign all actions on SIPs to the regional circuits. EPA protested that would abrogate court of appeals decisions holding the D.C. Circuit was the "appropriate" venue when EPA acted uniformly on many SIPs at once. *See Dayton Power & Light Co.*, 520 F.2d at 705

(considering regulations that had "the effect of amending every state's [SIP] in precisely the same way"); *NRDC*, 465 F.2d at 494 (considering an "automatic application of standard, nation-wide guidelines to all plans [that] simultaneously preordain[ed] wholesale approvals"). EPA reasoned that those actions, though formally state-specific, did "not involve factual questions unique to particular geographical areas," 41 Fed. Reg. at 56,769 n.2, but rather turned solely on "generic determinations of nationwide scope or effect," *id.* at 56,768-69. *See Kentucky*, 2024 WL 5001991, at *13 (noting EPA sought D.C. Circuit venue over those sorts of "uniform regulations"). Congress "concur[red]" with EPA's objection, H.R. Rep. No. 95-294, at 324, and it adopted EPA's terms word for word, excepting locally applicable actions that were based on "a determination of nationwide scope or effect" from Section 7607's general assignment of locally applicable actions to regional circuits.

In enacting the nationwide-scope exception, then, Congress merely ratified the pre-1977 court of appeals decisions that centralized review in the D.C. Circuit where a nationwide decision automatically triggered the same action on multiple SIPs. As the Fourth Circuit has explained, such actions must "address[] and analyze[] circumstances common to all regions in the Nation," not merely apply "a national rule or standard" to "local or regional circumstances." *West Virginia*, 90 F.4th at 328.

Here, EPA only claims to have done the latter. Claiming it applied "a consistent set of policy judgments," 88 Fed. Reg. at 9,339, to "the facts and circumstances

of each particular state's submission," *id.* at 9,440,[4] EPA split the nation down the middle, approving 24 States' SIPs, *id.* at 9,362, disapproving 19 in full, *id.*, at 9,336, and disapproving two in part, *id.*

That is a far cry from the "preordain[ed] wholesale approvals" or disapprovals, *NRDC*, 465 F.2d at 494, that the nationwide-scope exception was enacted to centralize review over. EPA's disapprovals were not "based on a determination of nationwide scope or effect."

## CONCLUSION

The Court should reverse the judgment below.

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[4] EPA avowed that it evaluated "the contents of each individual state's submission . . . on their own merits" dozens of times throughout the rule. *Id.* at 9,354. For example, EPA says that it did "not impose[] a requirement that states must use" a particular ozone-contribution threshold, *id.* at 9,373, but rather "considered the particular arguments raised by [each] state" for "an alternative threshold" and individually rejected them, *id.*

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