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

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INTRODUCTION

The parties agree venue for challenges to EPA actions under the Clean Air Act turns in the first instance on the "nature" of the EPA "action" being challenged. Br. 29; Resp. 19. In Petitioners' view, the nature of the action is fixed by the statutory authority EPA exercised in taking the action because that is how the text of the Act divides venue among the circuits. In EPA's view, the nature of otherwise local actions changes to a single national action if EPA chooses to process and publish them together.

Nothing in the statute says venue turns on such administrivia. The relevant action does not transform based on the agency's publication choices. Unable to rely on text, EPA says that courts "should ordinarily accept EPA's framing of its own action" when determining the quintessentially judicial question of venue, Resp. 27—a bid for deference that today cannot be countenanced.

EPA resorts to a fallback: it argues its state plan disapprovals are based on determinations of nationwide scope or effect under the venue clause's exception for local actions that nonetheless must be challenged in the D.C. Circuit. But the purported determinations EPA now points to are largely *not* the ones it identified in the *Federal Register* when invoking the venue exception.

That last-minute shift in position not only violates foundational administrative law principles—it is telling. None of the "nationwide" determinations EPA asserts now, or when it published its actions, are the dispositive reason for EPA's actions. More importantly, were EPA's statutory interpretation

accepted, the venue clause's exception would license EPA to always choose the D.C. Circuit as its forum. That nullifies Congress's choice to have the *statute*, not the most powerful litigant, choose venue. EPA's seizure of such authority must be rejected.

ARGUMENT

I. Section 7607(b)(1)'s plain text places review of EPA's approval or disapproval of state plans in the regional circuits.

According to EPA, its "decision to group the various state plan" denials into a single *Federal Register* notice transformed those otherwise local actions into a single "nationally applicable" action. Resp. 24. But under Section 7607, the relevant "action" is defined by the statutory authority under which EPA acts, not EPA's formatting choices. Because EPA's ministerial publication decisions do not alter the underlying actions, they cannot govern the forum for judicial review. The proper venue for Petitioners' challenges to EPA's quintessentially local actions—disapprovals of their respective state plans—is their local circuit.

1. Start with the text: Section 7607(b)(1) allocates venue for a challenge to an EPA "action" depending on the statutory authority EPA exercises. Br. 22. Here, EPA acted under 42 U.S.C. § 7410, which requires "[e]ach state" to submit a plan of its own, and repeatedly refers to EPA acting on "the plan" submitted by "each State," always in the singular. Br. 23-26; *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (explaining "[t]he consistent use of the definite article" in the phrase "the person" means there is "only one"

person being referred to). The statute thus requires EPA to act on each plan individually, and EPA did. Br. 24-25. Because each plan applies to only one State, EPA's approvals or disapprovals of them are 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) (Kavanaugh, J.). Indeed, EPA actions on state plans are explicitly listed in Section 7607's sentence setting venue in the regional circuit, *not* the sentence directing review of nationally applicable actions to the D.C. Circuit. Br. 25-28.

EPA contests little of this. It admits the "statute's use of singular articles makes sense because each State submits a single plan, and EPA must assess each State's submission." Resp. 23. EPA further concedes that "an action addressing a *single* State's implementation plan 'is the prototypical "locally or regionally applicable" action.'" Resp. 25 (emphasis added) (citation omitted); *see* Resp. 40. And EPA does not defend the Tenth Circuit's mistaken assertion that EPA's application of "a uniform statutory interpretation and common analytical methods" across otherwise locally applicable actions could make them nationally applicable. Br. 32-37. All parties therefore agree that if the "action" at issue is EPA's disapproval of *individual* state plans, the Tenth Circuit erred in transferring to the D.C. Circuit.

2. EPA contends that bundling separate actions into a single *Federal Register* notice transforms the "nature of the pertinent EPA action." Resp. 19. It

cannot defend that flawed position with the statutory text. So EPA argues instead that courts "should ordinarily accept EPA's framing of its own action," based on EPA's discretionary decision whether to "aggregate" otherwise locally applicable actions into a single notice. Resp. 27. But Petitioners have never challenged EPA's power to simultaneously consider separate actions for administrative convenience. *See* Br. 30. The question is whether doing so changes the nature of the action that EPA has taken.

The agency cites nothing in the statute that gives EPA unilateral power to "reframe" the relevant action to alter venue. Resp. 26. It contends only that nothing in the statute "restricts EPA's ability to consider state plan submissions together and resolve common issues in a single final action." Resp. 23. Section 7607(b)(1), however, is *not* silent on whether that affects venue: it distinguishes between the "action" and "notice of such … action … in the Federal Register." Br. 29-30. Section 7607(b)(1) then categorizes venue by listing statutory provisions that grant EPA substantive authority to act, not by how those actions were published. Br. 22. Section 7607(b)(1) thus ties venue "to the activity taken 'under this chapter,'" not how EPA published its notice of that activity. *Kentucky v. EPA*, 123 F.4th 447, 461 (6th Cir. 2024). Here, the statutory provision that authorizes EPA to act requires EPA to approve or disapprove individual state plans.

EPA suggests that, in applying Section 7607's venue provision, courts should not "substitute a judicial determination of the relevant unit of analysis" for EPA's. Resp. 26-27. But the "relevant unit of

analysis" is a question of statutory interpretation and "courts decide legal questions by applying their own judgment." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024). Interpreting and applying a venue statute is part of "the ordinary diet of the law" that courts independently decide without deference. *Id.* at 402 (citation omitted).

EPA's approach to defining the relevant "action" is unworkable, too. Venue statutes exist to *prevent* litigants from having unrestricted choice of venue. *Travis v. United States*, 364 U.S. 631, 634 (1961). Such statutes should be governed by clear rules, lest confusion over where to file produces unnecessary "appeals and reversals" and "encourage[s] gamesmanship." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). EPA agrees the venue provision should require a simple, objective analysis for "courts and litigants" to "quickly and efficiently determine where venue lies." Resp. 26. EPA's approach fails that test. Petitioners' view produces the necessary bright lines: Litigants and the reviewing court need only identify the statutory provision under which EPA is acting to determine the relevant "action" for venue purposes.

EPA's atextual approach, by contrast, allows it to manipulate the "action" at will. Br. 30-31. EPA does not deny this. It contends only that it has not "engaged in any such arbitrary aggregation here" and that courts could "reject[] a particular grouping" if EPA *did* attempt to "manipulate venue." Resp. 27. Judicial authority to police EPA's aggregation decisions is no reason to give EPA the power to manipulate in the first place. Moreover, EPA's approach will inevitably

produce case-specific arguments about whether aggregating locally applicable actions was justified and sufficient to transform local actions into a national one. EPA does not explain what standard courts would apply in making that determination or how that standardless approach emerges from the statute. This contorted interpretation of Section 7607(b)(1) will only invite the "wasteful expenditure of resources in resolving threshold issues" that EPA decries, Resp. 26—and that has already occurred here. *See Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464 n.13 (1980) ("[L]itigation over whether the case is in the right court is essentially a waste of time and resources." (citation omitted)). It would also harm regulated parties, which will experience extended uncertainty and compliance costs while venue is litigated. U.S. Chamber Br. 11.

3. Congress also identified disapprovals of state plans as locally or regionally applicable actions reviewable in the regional circuit, so EPA's decision to jointly publish multiple state plan disapprovals cannot shift venue to the D.C. Circuit. Br. 26-28. Moreover, Section 7607(b)(1) identifies "approv[als]" of "any implementation plan under section 7410" as categorically reviewable in the regional circuit. That confirms state plan disapprovals should be reviewed in the regional circuit, too. Br. 27-28; U.S. Senators' Br. 6.

EPA disputes this straightforward conclusion. It denies that state plan approvals are always reviewable in the regional circuit—but not for the reasons offered by the Tenth Circuit, which it does not

defend. *Compare* Br. 37-38 *with* Resp. 28-29. Rather, EPA hypothesizes that because Section 7607(b)(1) references "any implementation plan," that phrase "*could* reasonably be read as limited to the agency's approval of a single plan." Resp. 29 (emphasis added). Under that view, "an EPA action approving multiple state plans" *might* fall outside the "enumerated categories" of locally or regionally applicable actions. Resp. 29. EPA stops short of actually adopting this interpretation—for good reason. The argument is inconsistent with EPA's past practice. *See* Br. 28 (collecting examples of EPA admitting that state plan approvals were locally applicable, even if published together). More importantly, this Court has "repeatedly explained that 'the word "any" has an expansive meaning.'" *Babb v. Wilkie*, 589 U.S. 399, 405 n.2 (2020). "The standard dictionary definition of 'any' is '[s]ome, regardless of quantity or number.'" *Id.* (quoting American Heritage Dictionary 59 (def. 2) (1969)). Section 7607(b)(1)'s reference to *any* state plan approval thus means *all* state plan approvals, no matter how EPA packages them, are reviewable in the regional circuit.

That leaves state plan *disapprovals*, which EPA argues are governed by the catchall. Resp. 29. That misses the point. If a state plan approval under Section 7410 is categorically reviewable in the regional circuit, that is strong confirmation that a state plan disapproval under the same provision must be locally or regionally applicable. Br. 27-28; Arkansas Br. 7-8. Nonetheless, EPA asserts that while approval of a state plan would be locally or regionally

applicable, disapproval *of the same* plan might be nationally applicable. *See* Br. 31 (citing example of EPA taking this position). EPA does not try to make sense of that contradiction.

Worse, EPA's reading makes Congress's November 1977 amendment—which inserted the "any denial or disapproval" language—superfluous. Br. 27. EPA contends that "language indicates that EPA denials and disapprovals are subject to the same venue analysis that applies to 'other final action[s]' generally." Resp. 28. But that was just as true *before* the November 1977 amendment. *See Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 589 (1980). EPA's reading means that amendment changed nothing. That can't be right.

4. In all events, the action here was not "nationally applicable" because the state plan disapprovals covered only discrete parts of the country.

EPA argues that "any action that spans more than one judicial circuit is properly viewed as 'nationally applicable.'" Resp. 21. EPA derives this rule from legislative history and the thinnest of textual reeds: Section 7607(b)(1)'s reference to "*the* appropriate circuit," which EPA takes to mean that "for any given locally or regionally applicable action, there is only one appropriate regional court of appeals." Resp. 20-22.

EPA's reading, however, cannot be squared with the ordinary meaning of "nationally applicable." *See Mohamad v. Palestinian Auth.*, 566 U.S. 449, 458 (2012) ("[R]eliance on legislative history is unnecessary" when the statute is "unambiguous.").

The "word '[n]ational' contemplates an activity with a nationwide scope.'" *Kentucky*, 123 F.4th at 459-60 (quoting *Black's Law Dictionary* 923 (5th ed. 1979)); *see also* Br. 25 (explaining under the *ejusdem generis* canon, the nationally applicable catchall should be interpreted consistent with the national standards in the preceding list). EPA itself acknowledges that "nationally" means it applies "throughout the nation." Resp. 19 (citation and internal marks omitted). A nationally applicable regulation must therefore in "legal effect" apply to the whole country, even if it "practically appl[ies] only to some States." *Kentucky*, 123 F.4th at 462 (emphasis omitted). Here, even assuming EPA's disapproval of 21 state plans was a single "action," it was not "nationally applicable" because its "legal effect" covered barely "40% of the country." *Id.* at 459, 462.

Indeed, EPA repeatedly acknowledged the propriety of regional circuit review when the agency simultaneously approved multiple state plans from multiple circuits in combined *Federal Register* notices. Br. 28. EPA now disputes this, arguing that it merely recognized challenges to those actions should be filed in the "appropriate circuit," not that it found these *were* locally or regionally applicable actions. Resp. 25 n.5 (citing 86 Fed. Reg., 68,413, 68,420 (Dec. 2, 2021)). That is misleading at best. Section 7607(b)(1) directs challenges to "locally or regionally applicable" actions to "the appropriate circuit," and when EPA believes an action is nationally applicable, it says so. *See, e.g.*, 88 Fed. Reg. 9,336, 9,380-81 (Feb. 13, 2023) ("This rulemaking is 'nationally applicable'" and so "petitions

for judicial review … must be filed in the … District of Columbia Circuit.").

EPA also argues that Congress considered "EPA actions approving or promulgating 'implementation plans which run only to one air quality control region'" to be locally or regionally applicable. Resp. 21. But EPA's control regions for metropolitan areas frequently span multiple circuits. *See Maryland v. EPA*, 958 F.3d 1185, 1199 (D.C. Cir. 2020) ("'[A]ir quality control regions' include multistate areas"). The Metropolitan Memphis air quality control region, for instance, covers parts of Arkansas, Mississippi, and Tennessee. 40 C.F.R. § 81.44. The Metropolitan St. Louis air quality control region covers parts of Illinois and Missouri. *Id*. § 81.18.

EPA has consistently admitted that actions related to those interstate air quality control regions are locally or regionally applicable. *See, e.g.*, 89 Fed. Reg. 92,816, 92,820 (Nov. 25, 2024) (explaining that any challenge to EPA's conclusion that the "St. Louis, MO-IL bi-State nonattainment area failed to attain the 2015 ozone National Ambient Air Quality Standards" must be filed "in the appropriate circuit"); 66 Fed. Reg. 15,578, 15,589 (Mar. 19, 2001) (same for a final rule finding the St. Louis air quality control region to be in nonattainment of the national ambient air quality standards for ozone); *Sierra Club v. EPA*, 311 F.3d 853, 855 (7th Cir. 2002) (reviewing challenge to EPA action related to St. Louis air quality control region).

Under EPA's current interpretation, those single-city actions would be "nationally applicable" because

they affect parts of multiple federal circuits. If such actions are "national," the word means something different than almost anyone would understand. *See National*, Webster's Third New International Dictionary 1505 (1966) ("affecting or involving a nation as a whole esp. as distinguished from subordinate areas").

* * *

The text and context of Section 7607(b)(1)—to say nothing of common sense—thus establish that the relevant actions challenged in these cases are EPA's decisions to disapprove individual state plans, which are locally or regionally applicable actions reviewable in the Tenth Circuit. EPA's decision to publish separate actions related to individual States in a single *Federal Register* notice is irrelevant to the venue analysis.

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

Section 7607(b)(1)'s exception applies only when the dispositive reasons justifying EPA's action have nationwide scope or effect. Br. 40-44. EPA's core reasons for its denials of Oklahoma's and Utah's plans were state-specific. Br. 44-51.

In resisting that conclusion, EPA asks for deference to its "finding" that the determinations on which its actions were based had nationwide scope and effect. But the statute delegates to the agency the choice whether to *publish* such a finding to invoke the venue exception, not the legal conclusion whether the determinations on which EPA based its action have

"nationwide scope or effect." That venue question is one for the courts.

Neither of the determinations EPA relied on in the *Federal Register* qualifies for this exception. Br. 51-54. In a tacit admission of that fact, EPA now relies on three new "determinations" it did not previously identify as the reason the venue exception applies. *Compare* Resp. 34-36 *with* 88 Fed. Reg. at 9,380-81. The Court should reject EPA's effort to rely on these impermissible post-hoc rationalizations. Regardless, they lack merit.

A. Section 7607(b)(1)'s exception applies only when the dispositive reasons for EPA's actions are nationwide in scope or effect.

1. EPA disapproved individual state plans "based on" its determinations that the state-specific analyses and reasoning in those States' plans did not satisfy their Good Neighbor obligations. *See* Br. 44-51. EPA admits it "need[ed] to consider State-specific circumstances." Resp. 44-45.

Despite these state-specific determinations, EPA contends the venue exception applies because it based the disapprovals in sufficient measure on purported decisions of nationwide scope or effect. Resp. 45. In EPA's view, any time it addresses "controversies over specific methodological issues" that could be applied in more than one State, the exception applies. Resp. 47.

EPA's approach would impermissibly convert a narrow exception into unbounded authority for EPA to send cases to the D.C. Circuit. As EPA concedes, EPA will nearly always base its actions on nationwide legal

interpretations and frameworks. Resp. 47. Every action involves, for instance, "interpretation of the Clean Air Act's statutory terms," but "that kind of interpretive exercise alone does not transform a locally applicable action into a nationally applicable one." *Chevron U.S.A. Inc. v. EPA*, 45 F.4th 380, 387 (D.C. Cir. 2022).

That is why Section 7607(b)(1)'s exception looks at the dispositive reasons for the action—the ones of central relevance. Br. 41-42. EPA admits that the nationwide justifications under the venue exception must "lie at the core of the agency action" and cannot be "[m]erely peripheral or extraneous." *Id.* (quoting *Texas v. EPA*, 829 F.3d 405, 419 (5th Cir. 2016) ("*Texas 2016*"). Or, as EPA's industry allies frame it, the relevant reason must be "absolutely indispensable or essential" to the action. Growth Energy Br. 23, No. 23-1229 (citing *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 167 (2017) (the phrase "based on a determination" identifies something that is a "*sine qua non*" of the action)).*

2. EPA points to cases interpreting meaningfully different laws and statutory terms to justify a sweeping "but-for" test for the venue exception. Resp. 31-32 (citing cases interpreting the terms "based in whole or in part on" and "because of"). Not only are the

* EPA wrongly suggests that State Petitioners argue the "final action" must have "nationwide scope or effect" for the exception to apply. Resp. 41-42. That may be Industry Petitioners' position, but State Petitioners agree with EPA that, for the exception, what matters is the scope or effect of EPA's core "justifications," not the action itself. *See* Br. 43.

words in the Clean Air Act different, statutory context matters, too. Perhaps in other statutes or cases any intermediate "but-for" reason will do. Not so where, as here, it would allow the exception to swallow the rule and permit EPA to manipulate venue. Br. 30-31, 41. Indeed, EPA agrees that not *any* but-for reason is enough under Section 7607(b)(1)'s exception. Resp. 32. Only the justifications that "lie at the core of the agency action" suffice. Resp. 32 (citation omitted).

Section 7607(b)(1)'s textual context confirms this. Its third sentence must be interpreted in light of its first. Namely, an action is "based on a determination of nationwide scope or effect" if it is based on the same kind of uniform determinations that actions of nationwide applicability are. For example, EPA sets national ambient air quality standards by making determinations about the appropriate standard for the nation, without allowing for deviations based on local factors. Similarly, EPA's cited legislative history confirms the "generic determinations of nationwide scope or effect" covered by the exception are those that make the action "virtually identical to promulgation of 'national standards'" covered by the first sentence of Section 7607. 41 Fed. Reg. 56,767, 56,768-69 (Dec. 30, 1976). Here, EPA must assess unique, state-specific plans, which is the antithesis of those types of national actions.

EPA's view thus finds little refuge in the legislative history it cites. Resp. 40-41. EPA relies on what the Sixth Circuit found was a "meaningless statement [that] says nothing about the key question: Which state-plan issues are 'national'?" *Kentucky*, 123

F.4th at 467. At most, it "cut[s] the other way" because the actions Congress desired to be in the D.C. Circuit involved "uniform regulations," not fact-specific state plan decisions. *Id.*

As the Sixth Circuit correctly recognized, *id.*, the three cases identified in the legislative history involved uniform regulations or generic actions not dependent on the uniqueness of state plans. *See* 41 Fed. Reg. at 56,769 n.3 (citing *Dayton Power & Light Co. v. EPA*, 520 F.2d 703 (6th Cir. 1975); *Nat. Res. Def. Council, Inc. v. EPA*, 475 F.2d 968 (D.C. Cir. 1973); *Nat. Res. Def. Council, Inc. v. EPA*, 465 F.2d 492 (1st Cir. 1972)). *Dayton* involved EPA "regulations … developed through a unitary rule-making procedure, … amending every state's air quality implementation plan in precisely the same way." 520 F.2d at 705. Both *Natural Resources Defense Council* cases dealt with uniform deadline extensions for States to submit transportation portions of plans to attain national ambient air quality standards. 475 F.2d at 970; 465 F.2d at 493. These general determinations thus involved regulations that "affected all states." 465 F.2d at 494.

By contrast, the legislative history emphasizes that, because EPA's substantive actions on state implementation plans "usually involve issues peculiar to the affected States," they presumptively belong in the regional circuits. *See* 41 Fed. Reg. at 56,768. The *exception* created for EPA "determinations of nationwide scope or effect" that should be reviewed in the D.C. Circuit was intended to apply to "actions ... virtually identical to promulgation of 'national

standards'" ... which "do not involve factual questions unique to particular geographical areas" including actions like "[EPA's] promulgation of generic regulations (applicable to all States) that require prevention of signification deterioration of air quality." *Id.* at 56,678-79 & n.2.

Ultimately, EPA admits that a "determination" involves the "settling and ending of a controversy." Resp. 31 (citations omitted). The relevant determination must be the dispositive reason—the "core justification" or "central rationale"—for EPA's action. Resp. 31-32.

3. EPA elsewhere suggests that "a textually reasonable" interpretation of the Section 7607(b)(1) exception is that it considers whether a given determination is "likely to be called into question in any judicial challenge." Resp. 47. That suggestion has no basis in text, logic, or precedent. The speculation that some "nationwide rule, policy, or interpretation" may be litigated does not satisfy Section 7607(b)(1)'s requirement that the action be "based on" that determination.

EPA's proposed standard would also be a nightmare for courts and litigants to navigate. Courts (and EPA) would have to guess what determinations are likely to be contested when considering whether venue is proper. The text does not even hint at this tortured analysis, and this Court should not adopt a venue rule that turns on subjective speculation about likely arguments. *See Hertz Corp.*, 559 U.S. at 94.

4. EPA's final refuge, as always, is deference: it argues its "finding that the statutory standard is

satisfied … ordinarily will be governed by the arbitrary-and-capricious standard." Resp. 33. But determining venue is a quintessentially legal exercise. *See Kentucky*, 123 F.4th at 467. EPA's legal conclusion that the action falls within the venue exception deserves no deference. *Texas v. EPA*, 983 F.3d 826, 833 (5th Cir. 2020) ("The court—not EPA—determines both the scope of an action's applicability and whether it was based on a determination of nationwide scope or effect."); *Texas 2016*, 829 F.3d at 421 (applying *de novo* review).

To be sure, when EPA invokes the exception, it must identify the determinations that warrant transferring the case to the D.C. Circuit. But the question of whether the rationales EPA cited constitute determinations of national scope or effect that the action is based on is a legal question that courts can and should consider de novo. *See Loper Bright*, 603 U.S. at 402.

Identifying the action's dispositive justifications neither requires resolution of any "factual dispute" nor involves a question germane to EPA's "knowledge and expertise." *Contra* Resp. 33. EPA must include in the administrative record its explanation for its action and why a purported "determination" constitutes the basis of the action and is of national scope or effect. EPA's rationale will always be evident on the record and easily susceptible to review by the Court. That leaves the "legal question[]" of "whether an agency action rests on 'a determination of nationwide scope or effect.'" *Kentucky*, 123 F.4th at 467.

In the end, EPA conflates answering whether determinations of national scope and effect were the basis of its actions with the act of publishing a finding that a case should be moved to the D.C. Circuit. *See* Resp. 34. EPA's decision whether to publish that finding is at most reviewable for arbitrariness. Resp. 33-34. But if EPA does publish that finding, courts have an independent obligation under Section 7607(b)(1) to determine whether the identified rationales underlying that finding legally constitute determinations of nationwide scope or effect on which the actions are based.

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

EPA's disapprovals of the States' individual plans were based on state-specific determinations unique to each state plan—not "nationwide" determinations. Br. 47-51. Venue is therefore proper in the appropriate regional circuits.

1. EPA contends that "the State-specific analyses petitioners highlight largely reflect the application of nationwide determinations to each State's circumstances." Resp. 44. It is more than that: The *dispositive* issues on which EPA's actions turned focused on these "discrete local facts." Resp. 47; Br. 44-51.

After all, the Clean Air Act assigns States primary responsibility for managing air quality and affords States significant flexibility in how they satisfy that obligation. Br. 4-5, 45-46. To that end, each of the 21

state plans addressed in the final actions relied on state-specific reasoning and data to determine whether that State was significantly contributing to nonattainment or interfering with maintenance in downwind States.

For example, Utah's plan used a "weight-of-evidence" approach, pointing out that EPA had applied such an approach in approving Arizona's Good Neighbor plan for the 2008 ozone national ambient air quality standard and that Utah's situation was sufficiently analogous to Arizona's to warrant the application of that alternative approach. J.A.42a-43a. EPA rejected those arguments, not simply because Utah's approach is different than EPA's 4-step framework, but because EPA concluded that Utah's specific weight-of-evidence approach purportedly failed to accurately assess significant contribution given circumstances in Utah. 88 Fed. Reg. at 9,360. EPA necessarily considered Utah's "specific methodological issue," Resp. 47, producing a decision uniquely grounded in the particular details of Utah's plan.

The same is true for Oklahoma. For example, Oklahoma relied on air quality modeling prepared by Texas rather than EPA's 2016 national modeling. J.A.20a-22a. Oklahoma concluded that Texas' modeling better represented regional air quality conditions than EPA's generic national modeling. *Id.* EPA rejected Oklahoma's reliance on the Texas modeling. 87 Fed. Reg. 9,798, 9,823-24 (Feb. 22, 2022). But the flaw was not based on an EPA determination that Oklahoma *must* use EPA's preferred 2016

national modeling. Instead, EPA delved into specific aspects of the Texas modeling and concluded that the modeling purportedly does not accurately depict regional ambient air conditions. *See id.*

2. Section 7607(b)(1)'s exception requires EPA to affirmatively identify determinations with nationwide scope or effect it believes were the basis for its action. Neither of the determinations EPA identified in the *Federal Register* qualify. Br. 51-53.

EPA asserted the action was based on determinations of purported nationwide scope or effect because the agency applied "a common core of nationwide policy judgments" and tried to avoid "inconsistent or inequitable results among upwind States." 88 Fed. Reg. at 9,380-81. "In particular," EPA pointed to the "nationally consistent 4-step interstate transport framework … that it has applied in other nationally applicable rulemakings" and "the results from nationwide photochemical grid modeling … ." *Id.* at 9,380. Neither satisfies Section 7607(b)(1)'s exception.

EPA has correctly abandoned the argument that use of its 4-step framework was a determination on which its actions were based. That analytical framework was not a "determination"—in EPA's words, the "settling and ending of a controversy," Resp. 31—because it was optional for States to follow, Br. 51-52. The agency did "not direct states to use a particular framework." 88 Fed. Reg. at 9,375. And EPA's 4-step framework is a long-standing policy-based analytical framework first developed over a decade ago. *Id*. at 9,338; Resp. 5. So even under EPA's

reasoning, the disapprovals were not based on a determination in *this* action that the 4-step framework was required (or appropriate) for Good Neighbor compliance. *See* Resp. 47 (suggesting that older determinations of "settled" validity cannot trigger the venue exception).

That leaves EPA's reliance on national ozone modeling. Resp. 34-35. The agency argues only that the modeling "affected" the "manner in which responsibility … was allocated between upwind and downwind States" and was the "basis for its 'assessment,'" not its action. Resp. 34-35. But the Act does not require EPA to promulgate modeling and EPA cannot (and did not) require States to use it. Br. 53. It was thus not a "determination" on which the disapprovals were "based." And EPA's rejection of some States' region-specific modeling necessarily did not have nationwide scope or effect. Br. 53. Nor did EPA automatically reject a state plan because it did not rely on EPA's preferred model.

In any case, the modeling produced different results for each State, factoring differently into each State's plan. Br. 53-54. EPA's decision to approve or disapprove depended on how the modeling interacted with a state plan's evaluation of the facts and circumstances of that State. Br. 53.

3. EPA's brief takes a different course than its *Federal Register* notice. EPA identifies three new "determinations," in addition to modeling, on which it purportedly based its actions: (1) application of "a 1% contribution threshold," (2) treatment of "the relative contributions of other States," and (3) reliance on

"emission-reduction measures that are not actually incorporated into its state plan." Resp. 34-35. But it did not "find[] and publish[] that" its disapprovals were "based on" these determinations. 42 U.S.C. § 7607(b)(1). Because EPA failed to identify these three new determinations in its finding, the Court should not consider EPA's post-hoc rationalizations here.

As EPA repeatedly argues, "when EPA declines to publish such a finding," that "effectively precludes D.C. Circuit venue under Section 7607(b)(1)," even if that determination arguably had nationwide scope or effect. Resp. 33-34, 48. EPA's reliance on these new purported determinations would also violate "a simple but fundamental rule of administrative law" that "a reviewing court … must judge the propriety of such action solely by the grounds invoked by the agency." *SEC v. Chenery Corp.,* 332 U.S. 194, 196 (1947).

Even if EPA could rely on these post-hoc rationalizations, EPA's actions were not based on these new "determinations." At most, the rationales EPA points to clarified which emissions contributions and reductions measures EPA believed relevant. But none constituted the dispositive reasons for disapproving Oklahoma's or Utah's plans. Rather, EPA's actions ultimately depended on state-specific determinations. *Supra* 18-20.

First, EPA did not base its state plan disapprovals on the decision to adopt a 1% threshold for evaluating whether an upwind State may be significantly contributing downwind. To start, this issue was not "nationwide": EPA stated in the *Federal Register* that

"this issue is only relevant to a small number of" the state plans it was disapproving, specifically "Alabama, Kentucky, and Minnesota." 88 Fed. Reg. at 9,373. Nor was it dispositive for EPA's disapprovals. The 1% threshold is only "a screening threshold to identify states which *may* be 'contributing.'" *Id.* at 9,371 (emphasis added). When States contributed above 1%, EPA "expect[ed] states to *further* evaluate their emissions to determine whether" they constitute "significant contribution[s]." *Id.* (emphasis added). And it was not even a "determination": EPA stated it "has *not* imposed a requirement that states must use a 1 percent" threshold, only that a particular list of States each failed to make "a sufficient showing that the use of an alternative contribution threshold is justified *for those States*." *Id.* at 9,373 (emphases added). Indeed, EPA itself had proposed a state-specific justification for using an alternative threshold for Iowa. *Id.*

Second, EPA's assertion "that the relative contributions of other States or countries could not excuse a State from analyzing whether its own emissions 'significantly' contribute to downwind nonattainment" is simply wrong, and thus cannot stand as a "determination" affecting venue. Resp. 35. EPA adopted its 1% screening threshold to distinguish between "the combined impact of relatively small contributions, typically from multiple upwind states," and "substantially larger contributions." 88 Fed. Reg. at 9,342. So, in fact, the "relative contributions of other states" necessarily were considered under EPA's 1% threshold. To the extent a State sought to account for

relative contributions differently for state-specific reasons, EPA rejected them because it (wrongly) found the state plan's justifications inadequate. *See* 87 Fed. Reg. 31,470, 31,479-82 (May 24, 2022).

Third, EPA points to its decision that States "cannot rely on emission-reduction measures that are not actually incorporated into [a] state plan," which, as with EPA's decisions regarding relative contributions, implausibly claims its disapprovals were "based on" a determination of what is *not* relevant. Resp. 35. EPA cites the portion of the *Federal Register* where it rejected the argument—made by only "[o]ne comment"—that States should be able to rely on "emissions control measures" independently required by the federal government even if those measures are not "incorporated into and enforceable under state law." 88 Fed. Reg. at 9,376-77. EPA does not identify any state plans that made this argument, much less where this issue was the difference between approval or disapproval. *Id.* at 9,376. Once again, this is simply not a determination on which EPA's disapprovals were based.

In sum, none of EPA's purported determinations were the reason EPA disapproved Oklahoma's and Utah's plans.

C. EPA's policy arguments are unpersuasive.

EPA lastly resorts to policy. For instance, it contends Petitioners' interpretation would "limit D.C. Circuit review of locally or regionally applicable EPA actions to a vanishingly small category." Resp. 48. But Petitioners identify several instances where this

exception would apply. *Supra* 15-16. And Congress has already determined that D.C. Circuit review of local actions based on determinations of "nationwide scope and effect" should be the exception, not the rule. As a general matter, challenges to locally or regionally applicable EPA actions *should* be reviewed in the regional circuits. Br. 40-41. That is especially true of state plan approvals or disapprovals, which are not only explicitly provided for in the regional circuit review provision but also inherently require EPA deference to State judgments on state-specific issues. Br. 4-5, 45-46.

The agency similarly suggests that "[c]onsideration of the same basic legal challenges by multiple circuits wastes judicial resources and creates a substantial risk of inconsistent merits rulings." Resp. 49. But review of the same legal issues by different circuits is the ordinary course. As the United States elsewhere argues, this "ensur[es] that cases can percolate among multiple circuits before they get to this Court." *FDA v. R.J. Reynolds*, No. 23-1187, Tr. 30 (Jan. 21, 2025); *see* Br. 55. That is neither surprising nor a "waste[]." *Contra* Resp. 49.

CONCLUSION

The judgment of the court of appeals should be reversed.

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