No. 23-1187

In the Supreme Court of the United States

FOOD AND DRUG ADMINISTRATION, ET AL.,

Petitioners,

v.

R.J. REYNOLDS VAPOR CO., ET AL.,

Respondents.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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INTEREST OF *AMICUS CURIAE*[*]

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

The Chamber has a strong interest in the interpretation of the venue provision at issue in this case. That provision includes language similar to that of many other venue provisions in statutes authorizing suits against the federal government. The Chamber, its members, and the broader business community often seek judicial review of actions taken by federal administrative agencies. The Chamber has an interest in ensuring that parties are able to pursue such review fairly and efficiently without undue burden, complexity, or expense.

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[*] Pursuant to Supreme Court Rule 37, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Today's administrative state "wields vast power and touches almost every aspect of daily life." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010). "[R]eams of regulations," not to mention orders and guidance documents, issue every year from Washington. *Alden v. Maine*, 527 U.S. 706, 807 (1999) (Souter, J., dissenting). Only a small percentage of those regulations are ever challenged, but those challenges are critical to holding the government accountable to the rule of law. Recognizing that these challenges can be resource-intensive—particularly for affected individuals, small businesses, and local trade associations far from Washington—Congress has allowed many such challenges to be brought where a petitioner or plaintiff is located. And federal courts have long allowed other petitioners to join properly venued petitioners in bringing such challenges.

The judicial-review provision of the Family Smoking Prevention and Tobacco Control Act (TCA) is one of these special venue provisions. It allows "any person adversely affected by" a marketing denial order from the Food and Drug Administration (FDA) to petition for review in either the D.C. Circuit or "the circuit in which such person resides or has their principal place of business." 21 U.S.C. § 387*l*(a)(1). In this case, the FDA contests that (1) retailers are "adversely affected by" the denial of marketing authorization for products they wish to sell, and (2) the TCA permits a joint petition for review if at least *one* petitioner "resides or has their principal place of business" in the circuit where the petition is filed. *Id.*

The Chamber takes no position on the first question. But if the Court reaches the second, it should hold that a joint petition for review satisfies the TCA venue provision so long as at least *one* petitioner "resides or has their principal place of business" in the circuit where the petition is filed. *Id.* That reading is consistent with the statutory text and the overwhelming consensus of federal courts that have construed parallel language in other federal venue provisions, including the general venue statute's provision for suits against federal officials, 28 U.S.C. § 1391(e)(1)(C). Congress acted against the backdrop of that consensus when it enacted the TCA in 2009. And allowing multi-party petitions where at least one party establishes venue is also consistent with the core civil-procedure objectives of broadening access to courts, reducing costs, promoting efficiency, and ensuring official compliance with the law.

The FDA relies heavily on the TCA venue provision's use of "such person" in the singular. 21 U.S.C. § 387*l*(a)(1). But that singular reference just means that at least one petitioner must satisfy the venue requirement; it does not address whether others must do so to join a petition. And while the FDA contends that Congress could have more clearly endorsed respondents' position by referring to "any petitioner," it is equally true that Congress could have more clearly endorsed the government's position by referring to "all petitioners." Congress instead chose a formulation that had attained a virtually uniform meaning in the most prominent federal venue provisions on the books in 2009, allowing multi-party challenges so long as at least one party satisfies the venue requirement. The FDA's reliance on century-old cases construing superseded statutes does not overcome the far stronger inference

that Congress incorporated that familiar modern meaning. And the FDA's preference for the precedent in the D.C. Circuit rather than in the regional circuits is hardly compelling.

The venue question in this case implicates particularly important concerns for the Nation's business community, which relies on fair, convenient, and affordable access to judicial review to constrain unlawful federal action. The FDA's proposed reading of the TCA would serve none of those aims. It would not prevent forum shopping, but it would risk closing the courthouse doors to lesser-funded litigants. It would create costly and duplicative litigation, threatening unnecessary conflicts. And it would channel more disputes to Washington, D.C.—away from the places where agency actions have real-world effect—bestowing a needless home-court advantage on the federal government.

At bottom, the statutory text, context, purpose, and policy all point in the same direction: If at least one petitioner who meets the other relevant TCA criteria files a petition in "the circuit in which such person resides or has their principal place of business," 21 U.S.C. § 387*l*(a)(1), additional petitioners are free to join.

ARGUMENT

THE TCA'S VENUE PROVISION PERMITS A JOINT PETITION FOR REVIEW WHERE AT LEAST ONE PETITIONER HAS VENUE

This case arises from the FDA's denial of marketing authorization for certain e-cigarette products manufactured by R.J. Reynolds Vapor Co. (Reynolds). Pet. App. 3a-4a. Reynolds and three other parties—retailers and an association with retailer members—jointly

petitioned for review of the FDA's denial order in the Fifth Circuit under the TCA, which allows a petition to be filed by "any person adversely affected by" such a denial order in either the D.C. Circuit or "the circuit in which such person resides or has their principal place of business." 21 U.S.C. § 387*l*(a)(1). Reynolds does not reside or have its principal place of business within the Fifth Circuit, but other petitioners—Avail Vapor Texas, LLC and Mississippi Petroleum Marketers and Convenience Stores Association—do. Pet. App. 5a. The central venue question is whether Reynolds can join those parties' petition in the Fifth Circuit or must instead file a separate petition in the D.C. Circuit or in the Fourth Circuit, where Reynolds resides and has its principal place of business.[1]

If the Court reaches the venue question, it should hold that the TCA venue provision is satisfied in this case. The parties from Texas and Mississippi undisputedly meet the requirement that the petition be brought by a person who "resides or has their principal place of business" in the circuit where the petition was filed. 21 U.S.C. § 387*l*(a)(1). And although the TCA does not expressly address joinder, background principles of venue law and statutory construction confirm that joinder is allowed in circumstances like these. The FDA provides no sound reason to adopt a different interpretation, while considerations of purpose and policy point strongly toward allowing joinder.

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[1] As noted, there is a separate question whether retailers are "adversely affected by" the FDA's order denying marketing authorization for Reynolds' products. 21 U.S.C. § 387*l*(a)(1). The Chamber takes no position on that question.

A. The TCA's Text And Context Indicate That Joint Petitions Are Permissible As Long As At Least One Petitioner Has Venue

The TCA's venue provision sets forth the requirements that must be satisfied from the perspective of one "person." 21 U.S.C. § 387*l*(a)(1). That approach is common; federal "venue statutes traditionally have been couched in terms that seemed to assume a single plaintiff and a single defendant." 14D Charles Alan Wright et al., *Federal Practice and Procedure* § 3807 (4th ed. 2024) (Wright & Miller). Yet no one, including the government, disputes that joint petitions may be filed under the TCA. *See* Pet. Br. 29 (citing Fed. R. App. P. 15(a)(1) and Fed. R. Civ. P. 20(a)(1)).

The statute does not expressly address whether such joint petitions are proper if at least one petitioner satisfies the venue requirement or if, instead, all petitioners must do so. But as is often the case, context supplies the answer. *See, e.g.*, *Deal v. United States*, 508 U.S. 129, 132 (1993). In particular, two principles of statutory interpretation indicate that the TCA permits joint petitions for review when at least one petitioner satisfies the venue requirement. First, similarly phrased venue provisions have been uniformly construed to allow multi-party actions as long as at least one party satisfies the venue requirement, and Congress presumably incorporated that familiar understanding in the TCA. *See, e.g.*, *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). Second, this Court has interpreted newer and more specific federal venue provisions in light of existing and more general ones, producing harmony in the law where textually possible. Given the longstanding construction of the general federal venue provision to permit multi-party actions when at least

one party satisfies the venue requirement, this Court's aim "to make sense, rather than nonsense, out of the *corpus juris*," *W. Va. Univ. Hosp., Inc. v. Casey*, 499 U.S. 83, 100-01 (1991), supports adopting the same reading of the TCA.

It is a well-accepted principle of statutory construction that, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well." *Bragdon*, 524 U.S. at 645; *see, e.g.*, *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 721-22 (2018). More colorfully, when Congress "transplant[s]" language with a settled meaning from one statute into another, "it brings the old soil with it." *George v. McDonough*, 596 U.S. 740, 746 (2022) (quoting *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019)); *see Cannon v. Univ. of Chi.*, 441 U.S. 677, 696 (1979) ("It is always appropriate to assume that our elected representatives, like other citizens, know the law.").

Here, Congress adopted singular terminology ("such person") in the TCA's venue provision against a backdrop in which courts had for decades uniformly construed similar language in venue provisions—including the general federal venue provision—to allow multi-party actions so long as at least one party satisfies the prescribed venue requirement. Congress presumably incorporated that settled understanding in the venue provision of the TCA.

a. The general venue provision authorizing suits against federal defendants, 28 U.S.C. § 1391(e), took its modern form in the Mandamus and Venue Act (MVA),

which Congress passed and President Kennedy signed into law in 1962. *See Stafford v. Briggs*, 444 U.S. 527, 534-35 (1980). As pertinent here, the statute permits suits against federal officers in their official capacities where "*the* plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(1)(C) (emphasis added). The statute's text thus shares a key feature with the TCA venue provision: both are written from the perspective of a single plaintiff (or petitioner) challenging federal government action.

Congress created Section 1391(e)(1)(C) to address concerns that "persons in distant parts of the country claiming injury by" federal actions "were faced with significant expense and inconvenience in bringing suits for enforcement of claimed rights." *Stafford*, 444 U.S. at 534. Specifically, prior venue law generally allowed suits only in venues linked to the defendant, which in the case of federal officials was almost always Washington, D.C. *See* 14D Wright & Miller § 3815. By allowing suits against federal officials where the plaintiff resides, Congress made "it more convenient for aggrieved persons to file actions" challenging official action in the venues where the action had its most practical effect. *Stafford*, 444 U.S. at 535; *see id.* at 540 (describing Section 1391(e) as "designed to permit an action which is essentially against the United States to be brought locally rather than requiring that it be brought in the District of Columbia" (quoting H.R. Rep. No. 86-1936, at 2 (1960) (emphasis omitted))). This Court has thus observed that Section 1391(e)(1)(C) is designed "to broaden the venue of civil actions which could previously have been brought only in the District of Columbia." *Schlanger v. Seamans*, 401 U.S. 487, 490 n.4 (1971); *see Stafford*, 444 U.S. at 542.

Against that background, federal courts considering the scope of Section 1391(e)(1)(C) have for more than 50 years uniformly read the provision's reference to "'the plaintiff' to mean 'any plaintiff.'" *Sidney Coal Co. v. SSA*, 427 F.3d 336, 344-45 (6th Cir. 2005) (collecting cases). That "broad interpretation is not only the majority view—it is the *only view* adopted by the federal courts since 1971." *Id.* at 345 (emphasis added; citation omitted); *see* 14D Wright & Miller § 3807 (stating without qualification that the statute is "satisfied if only one of several plaintiffs resides in th[e] district" where the suit is filed). The consensus interpretation of Section 1391(e)(1)(C) is so well-established that one district judge noted that, despite "the vast resources" available to the Department of Justice and a co-defendant's counsel, "they could not identify a single case deciding that [Section 1391(e)(1)(C)] should be interpreted to mean *all* plaintiffs." *A.J. Taft Coal Co v. Barnhart*, 291 F. Supp. 2d 1290, 1302 (N.D. Ala. 2003). It appears that the government has still not identified such a case.

In adopting the uniform interpretation that Section 1391(e)(1)(C) allows suits against federal officials wherever at least one plaintiff could properly file, courts have underscored Congress's manifest "purpose of easing plaintiffs' burdens when suing government entities." *Sidney Coal*, 427 F.3d at 344. The opposite reading "would result in an unnecessary multiplicity of litigation." *Exxon Corp. v. FTC*, 588 F.2d 895, 898 (3d Cir. 1978). And channeling a substantial percentage of multi-plaintiff suits into Washington, D.C. courts would both undermine Congress's intent and unduly "exalt the federal officer or employee above the citizens he is bound to serve." *Minn-Dak Farmers Co-op. v. Espy*, 851 F. Supp. 1423, 1425 (D. N.D. 1994).

The one-plaintiff reading of Section 1391(e)(1)(C) is now uncontroversial. Indeed, some of this Court's most recent significant administrative-law decisions have arisen from multi-party suits in which only one (or some) of the plaintiffs had venue where the suit was filed. *See, e.g.*, *Nebraska v. Biden*, 636 F. Supp. 3d 991, 995 (E.D. Mo. 2022) (six states, including South Carolina, brought suit in Eastern District of Missouri), *rev'd*, 143 S. Ct. 2355 (2023); *New York v. U.S. Dep't of Com.*, 351 F. Supp. 3d 502, 528 (S.D.N.Y. 2019) (18 states, the District of Columbia, and 15 local governments brought suit in Southern District of New York), *aff'd in part, rev'd and remanded in part*, 588 U.S. 752 (2019). Trade associations, nonprofits, and membership groups likewise regularly invoke Section 1391(e)(1)(C) to sue together with members or affiliates who reside in a particular venue. *See, e.g.*, Compl. ¶ 27, *Plano Chamber of Com. v. Su*, No. 24-cv-468 (E.D. Tex. May 22, 2024); Compl. ¶ 60, *Nat'l Ass'n of Mfrs. v. SEC*, No. 23-cv-58 (E.D. Ky. Sept. 12, 2023); Compl. ¶ 30, *Nat'l Ass'n of Mfrs. v. DHS*, No. 20-cv-4887 (N.D. Cal. July 21, 2020).

In short, when Congress enacted the venue provision of the TCA, it had been uniformly settled that the general federal venue statute allowed multiple plaintiffs to bring suit against federal officials wherever one of those plaintiffs had proper venue. There is no reason to believe that Congress intended to do something entirely different—or to provide special treatment for the FDA—when it used parallel language in the TCA.[2]

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[2] In 1976, Congress added a sentence at the end of Section 1391(e)(1) stating that "[a]dditional persons may be joined as parties to any such action in accordance with the Federal Rules of

b. Section 1391(e)(1)(C) is the most prominent statute governing suits against federal officials, but it is not the only one. Another frequently invoked statute—the Administrative Orders Review Act, or Hobbs Act—provides for judicial review of orders of a broad range of federal agencies. 28 U.S.C. § 2343. As originally enacted in 1950, the Hobbs Act contained a venue provision that permitted suit in the D.C. Circuit or "the judicial circuit wherein is the residence of the party or *any of the parties filing the petition* for review, or wherein such party *or any of such parties* has its principal office." Pub. L. No. 81-901, § 3, 64 Stat. 1129, 1130 (emphases added). In 1956, the Ninth Circuit interpreted that language to permit a challenge to proceed when only one of two dozen petitioners had its principal office

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Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party." That provision addresses only the addition of parties as *defendants*, not as plaintiffs (the relevant issue here). The language was added in part on the advice of then-Assistant Attorney General Antonin Scalia, who expressed concern that Section 1391(e)'s more expansive venue rules—which apply only where there is a federal defendant—could be used to create "hardships against non-government defendants which the ordinary venue rules are designed to avoid." H.R. Rep. No. 94-1656, at 30 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 6121, 6149; *see* 14D Wright & Miller § 3815 n.23 (explaining that "§ 1391(e) controls venue against the federal defendants and that other defendants may be joined if the venue is one that would be proper[] as to them without regard to § 1391(e)"). Both before and after the change, courts universally construed the phrase "the plaintiff" to mean "'a plaintiff' rather than 'all plaintiffs.'" *Nat. Res. Def. Council, Inc. v. Tenn. Valley Auth.*, 340 F. Supp. 400, 406 (S.D.N.Y. 1971), *rev'd on other grounds*, 459 F.2d 255 (2d Cir. 1972).

within the Ninth Circuit. *Anglo Canadian Shipping Co. v. United States*, 238 F.2d 18, 19-20 (9th Cir. 1956).

Congress amended the Hobbs Act in 1966 as part of its enactment of Title 5 of the United States Code, revising and codifying the many general provisions governing the organization of the government and its civilian employees. Pub. L. No. 89-554, § 4(e), 80 Stat. 378, 622. As part of that effort, Congress amended the Hobbs Act's venue provision "for clarity and conciseness." 28 U.S.C. § 2343 note (Historical and Revision Notes); *cf. Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 60 (2013) (looking to similar notes in construing federal venue provision). The revised venue provision dropped the phrase "any of such parties" and referred to "the petitioner" in the singular, providing that venue was proper in "the judicial circuit in which the petitioner resides or has its principal office, or in the" D.C. Circuit. 28 U.S.C. § 2343. Consistent with the non-substantive basis for the change, courts have uniformly interpreted the amended venue provision to mean the same thing as its predecessor, construing the phrase "the petitioner" to mean "any petitioner." *See, e.g.*, *Owner-Operator Indep. Drivers Ass'n v. Fed. Motor Carrier Safety Admin.*, 656 F.3d 580, 585 (7th Cir. 2011); *Glob. Van Lines, Inc. v. ICC*, 691 F.2d 773, 774 n.1 (5th Cir. 1982); *Atchison, T. & S. F. Ry. Co. v. United States*, 549 F.2d 1186, 1187 n.1 (8th Cir. 1977); *Radio Relay Corp. v. FCC*, 409 F.2d 322, 324 n.1 (2d Cir. 1969); *see also* 16 Wright & Miller § 3941 n.6 ("When more than one petitioner seeks review of the same order [under the Hobbs Act], the venue opportunities may expand considerably.").

c. Courts have interpreted venue provisions in more specific areas in much the same way. For instance, the

Fifth Circuit held decades ago that the venue provision of the Consumer Product Safety Act—which lays venue in the D.C. Circuit or where "such person, consumer, or organization resides or has his principal place of business," 15 U.S.C. § 2060(a)—is satisfied when some but not all of the petitioners have their principal places of business in the Fifth Circuit. *Formaldehyde Inst., Inc. v. CPSC*, 681 F.2d 255, 257, 262 (5th Cir. 1982); *see Nat'l Ass'n of Priv. Fund Managers v. SEC*, 103 F.4th 1097, 1109 (5th Cir. 2024) (same result for similarly worded venue provision governing certain Securities and Exchange Commission orders under the Investment Advisers Act, 15 U.S.C. § 80b-13(a)).

Courts have also read the Social Security Act's similar venue provision, 42 U.S.C. § 405(g)—which generally permits "[a]ny individual" who was a party to a Social Security hearing to sue in "the judicial district in which the plaintiff resides, or has his principal place of business"—"in harmony with § 1391(e), such that venue is proper … for all plaintiffs so long as it is proper for at least one plaintiff." *Fournier v. Johnson*, 677 F. Supp. 2d 1172, 1174 (D. Ariz. 2009). Courts have likewise adopted one-petitioner readings of other parallel venue statutes. *See, e.g.*, *Est. of Israel v. Comm'r*, 159 F.3d 593, 596 (D.C. Cir. 1998) (applying that reading to a Tax Code provision, 26 U.S.C. § 7482(b)(1)(A), which generally lays venue in the circuit of the "legal residence of the petitioner").

Under this Court's frequently applied principles of statutory interpretation, Congress's use of similar language in the TCA strongly indicates that it adopted the same understanding. *See Appling*, 584 U.S. at 721-22; *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 590-91 (2010); *Rowe v. N.H. Motor*

Transp. Ass'n, 552 U.S. 364, 370 (2008); *Bragdon*, 524 U.S. at 645; *Haig v. Agee*, 453 U.S. 280, 297-98 (1981).

2. This Court's interpretation of other federal venue provisions further reinforces that the TCA venue provision should be read to allow joint petitions so long as one petitioner satisfies the venue requirement. This Court has often read language in specific venue provisions like the TCA's to conform with the language of generally applicable venue statutes like Section 1391, thereby producing consistency and coherence across the law. The Court's decision in *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966), provides a good example. There, the Court construed language in the special venue provision of the Jones Act, which at the time referred to the place "the defendant employer resides or in which his principal office is located." *Id.* at 203 (citation omitted). Although the Court recognized that "corporate residence traditionally meant place of incorporation," the Court concluded that Congress had more recently redefined corporate residence in the general venue statute and that such redefinition also applied to special venue provisions like the one in the Jones Act. *Id.* at 203-04. The Court added that it would interpret the general venue statute's definition to apply "to all venue statutes using residence as a criterion" absent a contrary indication, pointing to Congress's "manifest" goal of "bring[ing] venue law in tune with modern concepts of corporate operations" and "the generality" of the statute's language. *Id.* at 204-05.

The Court adopted a similar approach in interpreting the venue language in 28 U.S.C. § 1406(a), which concerns transfers of venue to cure venue defects. The Court noted that the provision at issue "share[d] the same statutory context" and "contain[ed] a similar

phrase" as the general statute governing changes in venue, 28 U.S.C. § 1404(a). *Atl. Marine*, 571 U.S. at 58 (quoting *Van Dusen v. Barrack,* 376 U.S. 612, 621 n.12 (1964)). As it had with prior venue statutes, the Court accordingly read the two statutes in tandem. *Id.*

B. Traditional Principles Of Joinder And Venue Support The Ordinary Reading Of The TCA Venue Provision

The FDA's principal response is that the TCA venue provision's reference to "such person" in the singular means that each person in a multi-party petition must satisfy the venue requirement. Pet. Br. 28-29. The government accordingly suggests that allowing joint petitions where only one petitioner satisfies the venue requirement would "effectively nullify the Act's limits on venue." Pet. Br. 11; *see* Pet Br. 34-37. Those contentions are mistaken.

As an initial matter, an interpretation that at least one petitioner bringing a joint petition must meet the venue requirement ensures that the requirement is not nullified. Here, for example, venue would not have been proper without the petitioners from Texas and Mississippi. Requiring their presence (or the presence of another petitioner who adequately alleged standing and the required connection to the Fifth Circuit) gives effect to the language of the venue requirement.[3]

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[3] The FDA claims that "the Fifth Circuit's reading allows an applicant to seek review in *any* regional circuit" by "find[ing] someone who lives in the preferred circuit and is indirectly affected by the order" and "seek[ing] review alongside that person." Pet. Br. 35, 37. But raising the specter of an "indirectly affected" petitioner conflates the venue question with the question

The FDA contends that the TCA's reference to "such person," 21 U.S.C. § 387*l*(a)(1), must be read to mean "*every* person"—rather than "*any* person"—in a multi-petitioner case, *see* Pet. Br. 33. But as a matter of plain meaning, there is no reason to prefer the former over the latter. The FDA observes that Congress may enact statutes that refer to "any party" or "any plaintiff." *Id.* But that proves little. Congress is equally free to—and has—adopted venue statutes that refer to "*the* parties," 28 U.S.C. § 1405 (emphasis added), and "*all* parties," *id.* § 1404(a) (emphasis added), but did not do so in the TCA. At most, the FDA shows that its preferred reading is not inconsistent with the TCA's text. But showing that a reading is textually permissible is not the same as showing that it is textually required. *See, e.g.*, *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 231-32 (2014). Particularly when statutory language is consistent with multiple readings, its meaning "cannot be determined in isolation, but must be drawn from … context." *Deal*, 508 U.S. at 132.

The FDA's attempts to buttress its reading with relevant context fail. The FDA invokes "[t]raditional principles of joinder" to support its position, Pet. Br. 29-30, but its argument is largely circular. The only "[t]raditional principle[] of joinder" the FDA invokes is that the Federal Rules of Civil and Appellate Procedure do not independently authorize suits in a particular venue where a statute does not already do so. *See id.* From that premise, the FDA reasons that because the TCA "would not allow Reynolds to file its own petition for review in the Fifth Circuit," the Federal Rules do

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of how to define who is "adversely affected" by the FDA's decision—an issue on which the Chamber takes no position.

not allow it "to join someone else's petition in that circuit." *Id.* at 30. But that submission just assumes that the TCA does not authorize the joinder of additional parties to a petition for which one party has satisfied the venue requirement—as the MVA, Hobbs Act, and other parallel statutes all do. *See* pp. 8-15, *supra*. Other than repeating its invocation of the indeterminate statutory text, the FDA attempts no justification for that assumption.

The FDA's argument about purportedly "traditional principles of venue," Pet. Br. 30-34, fares no better. For one thing, the FDA's account of the "default rule[s]" of venue, Pet. Br. 33, acknowledges that Congress can provide a different rule through a special venue statute, as it did here. And as Wright and Miller note, special venue statutes are often more expansive than default rules. *See* 14D Wright & Miller § 3807; *see also* Pet. Br. 33 (listing statutes). The FDA's assertion that the TCA venue provision is not one of those more-expansive special venue statutes is not a persuasive "legal argument; it simply assumes the conclusion." *United States v. Apel*, 571 U.S. 359, 370 (2014).

The FDA also relies heavily on two cases decided by this Court more than a century ago, *Smith v. Lyon*, 133 U.S. 315 (1890), and *Camp v. Gress*, 250 U.S. 308 (1919). Those cases involved a diversity-jurisdiction statute (now defunct) providing that "suit shall be brought only in the district of the residence of either the plaintiff or the defendant." *Smith*, 133 U.S. at 317. Emphasizing the statute's singular phrasing and distinctive principles of diversity jurisdiction, the Court held that venue was not proper if either multiple plaintiffs or multiple defendants resided in different states. *See id.* at 317-

20; *Camp*, 250 U.S. at 315-16. But as numerous authorities have observed, *Smith* and *Camp* involve not only a superseded statute but a bygone era of venue law. *See, e.g., Sidney Coal*, 427 F.3d at 345 n.12 ("*Smith* referenced an 1887 federal diversity statute that is by no means binding precedent with regard to this [c]ourt's interpretation of § 1391(e)."); *Zumft v. Doney Slate Co.*, 698 F. Supp. 444, 446 (E.D.N.Y. 1988) (describing *Smith* as an "ancient case" on which modern reliance would be "severely misplaced").

Specifically, the reasoning of *Smith* and *Camp* was gutted by Congress's enactment of the MVA, the Hobbs Act, and similar provisions "liberalizing" venue rules, which courts have repeatedly construed to allow multiparty actions even if fewer than all parties meet the venue requirement. *Pure Oil*, 384 U.S. at 204; *see* pp. 7-15, *supra*. Indeed, the very treatise section the FDA invokes goes on to describe how the "rigidity" of *Smith* and *Camp* was "relieved considerably" and "liberalized … further" by subsequent venue enactments in the mid-20th century. 14D Wright & Miller § 3807; *see id.* § 3815 (referring to pre-MVA rules as "archaic doctrines"). In short, the venue principles of the early 20th century are not the venue principles of the 21st century. The latter cannot be extrapolated from the former.

Tellingly, the only recent venue decision that the FDA cites is a Ninth Circuit solo concurrence addressing the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). *See Nat'l Fam. Farm Coal. v. EPA*, 966 F.3d 893, 930-32 (9th Cir. 2020) (Nelson, J., concurring). But the majority opinion in that case—written by Judge Nelson himself—reviewed the petition despite venue being "improper as to three of the six" petitioners. *Id.* at 907 n.2. The court explained that "[v]enue is proper

as to the other three" petitioners, "[s]o regardless whether venue is improper as to three of the six … we can address the merits" of the petition. *Id.* To the extent FIFRA's venue provision is relevant to the interpretation of the TCA, the Ninth Circuit's unambiguous endorsement of the one-petitioner rule thus supports adopting the same approach here.

C. Statutory Purpose and Policy Further Support The One-Petitioner Reading

This Court has long construed the "general words" of federal venue statutes in light of "the whole statute" and the "objects and policies of the law," including "the convenience of individual plaintiffs." *Stafford*, 444 U.S. at 535, 542 (quoting *Brown v. Duchesne*, 60 U.S. (19 How.) 183, 194 (1856)). Here, those considerations strongly support allowing parties challenging allegedly unlawful government action to join petitions where at least one petitioner meets the venue requirement, rather than requiring challengers based outside the venue to file separate suits in different courts.

Challenging government action is an expensive, resource-consuming endeavor, particularly for individuals, small businesses, and local trade associations or membership groups. *See, e.g.*, *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 213-17 (2023) (Gorsuch, J., concurring in judgment). Allowing parties challenging the same agency action to join in a single petition brought by a petitioner who satisfies the TCA venue requirement allows for more efficient litigation than the FDA's preferred rule, which would saddle courts with parallel proceedings, delay the speedy resolution of litigation, and burden plaintiffs with unnecessary costs. Indeed, its practical result may be

to close the courthouse doors to litigants who cannot afford to bring suit alone.

The FDA observes that litigants can always join petitions filed in the D.C. Circuit. Pet. Br. 36. But that option, while undoubtedly convenient for the hometown agency, has drawbacks for everyone else. As an initial matter, this so-called solution for litigants who are not in a position to challenge agency action alone is only an option if another litigant has filed in the D.C. Circuit, which will not always be the case. In any event, concentrating litigation in the Nation's capital separates it from the places where the impact of government action is most acutely felt and undermines the importance of regionalism that the FDA elsewhere recognizes. Pet. Br. 35-36. And even setting all of that aside, litigation in Washington is expensive for parties located elsewhere; that is precisely why Congress amended the general venue statute more than 60 years ago. *See Stafford*, 444 U.S. at 536 (observing that pre-MVA venue statutes made it "too expensive to come back here to Washington, D.C. to litigate" suits against federal officers (citation omitted)).

The FDA also notes that parties can in certain circumstances invoke the circuit-lottery statute, 28 U.S.C. § 2112, to consolidate separate petitions filed in different circuits into a single circuit. *See* Pet. Cert. Reply Br. 6. Under Section 2112, if multiple petitions for judicial review of same order are filed "in at least two courts of appeals" within ten days of the order, the judicial panel on multidistrict litigation consolidates the petitions and sends them to one randomly designated court of appeals from those in which petitions were filed. *Id.* § 2112(a)(1), (3). If no party files a petition within the ten-day window and multiple petitions are

filed thereafter, the petitions are transferred to the circuit of the earliest-filed petition. *Id.* § 2112(a)(1).

As an initial matter, Section 2112 provides no help for prospective challengers in cases where multiple petitions are not filed. And in any event, Section 2112 can create costly litigation about litigation, raising questions like whether the right cases were consolidated, who filed first, what constitutes a single "order" for purposes of review and consolidation, and whether venue is proper. *See, e.g.*, *In re MCP No. 185*, 2024 WL 3517673, at *2 (6th Cir. June 28, 2024); *Gorss Motels, Inc. v. FCC*, 20 F.4th 87, 96 (2d Cir. 2021); *Nat'l Parks Conservation Ass'n v. EPA*, 991 F.3d 681, 684-85 (5th Cir. 2021). Such procedural disputes "eat[] up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). Imposing those hurdles when the end result—a single petition—is what the one-petitioner rule allows in the first instance would amount to "a waste of time and resources." *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 465 n.13 (1980) (citation omitted).

The FDA defends its construction as necessary to prevent "gamesmanship" and "forum shopping." Pet. Br. 34, 35, 37. The FDA's interpretation, however, does not actually accomplish that result. To begin, the FDA assumes that seeking favorable circuit precedent constitutes "forum shopping." But filing a lawsuit in a venue with a properly venued petitioner is not forum shopping. And if choosing amongst proper venues based in part on favorable precedent is forum shopping, then the FDA certainly seems to be engaged in some forum shopping of its own, given that the D.C. Circuit and Fourth Circuit have issued favorable rulings for the

government on the underlying merits of this case, while the Fifth Circuit has not. *See* Pet. Br. 4-5; *Avail Vapor, LLC v. FDA*, 55 F.4th 409 (4th Cir. 2022); *Prohibition Juice Co. v. FDA*, 45 F.4th 8 (D.C. Cir. 2022); *Wages & White Lions Invs., LLC v. FDA*, 90 F.4th 357 (5th Cir.) (en banc), *cert. granted*, 144 S. Ct. 2714 (2024).[4]

In any event, the FDA's position does not account for other ways in which parties may end up litigating in circuits outside of their home circuit under existing statutes and rules. These include the judicial-lottery provisions just discussed, *see* 28 U.S.C. § 2112, as well as intervention, *see UAW Local 238 v. Scofield*, 382 U.S. 205, 212-16 (1965). Under the FDA's theory of forum shopping, these two well established methods of aggregating claims for decision in a particular circuit would also seem to be improper.

In sum, the FDA's position would not resolve the practical problem it purports to address, and it would add costs, reduce access, and increase complexity for no reason rooted in law or policy. If the Court reaches the issue, it should reject the FDA's position and follow the long-settled approach to federal venue law allowing

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[4] Likewise, when the government acts as plaintiff and selects the venue, it appears to have little compunction about shopping for a favorable forum. *See, e.g.*, Danielle Kaye, *DOJ's Apple Suit Filed in New Jersey for Friendly Third Circuit*, Bloomberg (Mar. 27, 2024), https://tinyurl.com/yt9ubtz6. In certain instances, federal agencies also have assertedly "unfettered discretion" to decide whether to bring claims in its internal tribunals or Article III courts, a choice that often has dramatic ramifications for the case. *Jarkesy v. SEC*, 34 F.4th 446, 461 (5th Cir. 2022), *aff'd on other grounds*, 144 S. Ct. 2117 (2024).

joint petitions as long as at least one petitioner satisfies the venue requirement.

CONCLUSION

If the Court reaches the question, it should hold that 21 U.S.C. § 387*l*(a)(1) requires only one joint petitioner to satisfy its venue requirements.

Respectfully submitted.

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