

IN THE
Supreme Court of the United States

ENVIRONMENTAL PROTECTION AGENCY,
Petitioner,

v.

CALUMET SHREVEPORT REFINING, LLC, ET AL.,
Respondents.

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

**MOTION OF RESPONDENTS GROWTH ENERGY AND
RENEWABLE FUELS ASSOCIATION FOR DIVIDED ARGUMENT**

Pursuant to Rule 28.4 of this Court, Growth Energy and the Renewable Fuels Association (“biofuels respondents”)—as respondents supporting petitioner—respectfully move to divide the oral argument for petitioner in this case. The biofuels respondents request the following division of argument time: 20 minutes for petitioner and 10 minutes for the biofuels respondents. This allocation would not require any enlargement of the overall time for argument. The Solicitor General of the United States, on behalf of petitioner, consents to the proposed division. Counsel for the other respondents takes no position on this motion.

The Renewable Fuel Program (“RFP”) is a Clean Air Act program that mandates the amount of renewable fuel to be blended annually into the nation’s supply of gasoline and diesel fuel. *See* 42 U.S.C. §7545(o). In 2022, EPA issued two actions

denying requests by various petroleum refineries around the country to be exempted from their RFP obligations for certain compliance years because of their alleged “disproportionate economic hardship.”

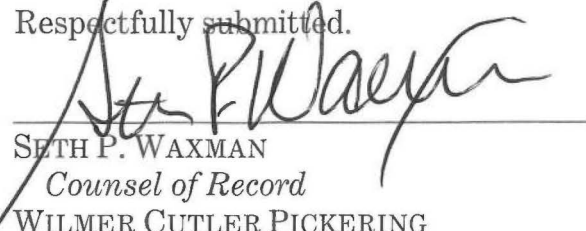
Section 307(b)(1) of the Act specifies that a petition for review of any “action” taken under the Act “may be filed only in” the D.C. Circuit “if” either (a) the action is “nationally applicable” or (b) the action “is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a de-termination.” 42 U.S.C. §7607(b)(1). Otherwise, the petition for review “may be filed only in the United States Court of Appeals for the appropriate circuit.” *Id.* Disappointed refineries sought review of EPA’s 2022 exemption actions in the Fifth Circuit (as well as in the Third, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits). The biofuels respondents intervened in support of EPA. In the decision below, a divided Fifth Circuit panel held that it was “the appropriate circuit” because the exemption actions are “neither nationally applicable nor based on a determination of nationwide scope or effect.”

EPA petitioned for certiorari, which this Court granted. The biofuels respondents have filed an opening brief on the merits supporting EPA.

Dividing petitioner’s argument time between petitioner and the biofuels respondents would materially assist the Court. As the argument is currently postured, the Court will hear the views of the regulatory agency and only one side of the regulated public, namely, the petroleum industry. As leading associations of producers of the renewable fuel used to comply with RFP obligations, the biofuels respondents are the sole representatives of the other side of the regulated public in this case, namely,

the renewable-fuels industry. Consequently, the biofuels respondents can offer the Court a distinct and vital perspective on both the RFP and the implications of the Court's resolution of the venue question presented, as illustrated by the different (though complementary) points and emphases in petitioner's and the biofuels respondents' opening briefs.

Respectfully submitted.



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January 17, 2025

CERTIFICATE OF SERVICE

I, Seth P. Waxman, a member of the bar of the Court, certify that on January 17, 2025, counsel for all parties required to be served have been served copies of the foregoing via overnight courier and electronic mail at the addresses below:

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