No. 23-1229

IN THE
Supreme Court of the United States

ENVIRONMENTAL PROTECTION AGENCY,
Petitioner,
v.
CALUMET SHREVEPORT REFINING, L.L.C., ET AL.,
Respondents.

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

BRIEF OF U.S. SENATORS MIKE LEE, BILL CASSIDY, M.D., AND TED BUDD AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae are United States Senators Mike Lee (UT), Bill Cassidy, M.D. (LA), and Ted Budd (NC). As Senators, they have a strong interest in the federal courts correctly interpreting and preserving the federalism-focused judicial review scheme that Congress fashioned in the Clean Air Act to ensure that disputes over EPA's local decisions should be heard by the local circuit courts, not funneled to the far-away and insular D.C. Circuit.

Indeed, the EPA's attempt to escape the plain language of the Clean Air Act's venue provision undermines the separation of powers and Congress's role in determining where actions may be filed. This Court should reject that argument and affirm the decision below.

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[1] No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from the *amici curiae* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

There are a lot of hard Clean Air Act cases. This is not one, and accordingly this Court should affirm. The CAA's venue provision states, in essence, that a nationwide action should go to the D.C. Circuit, but "local" actions should go to the local courts of appeals. EPA has long agreed that an individualized administrative "hardship" decision applying only to a single regulated entity is a paradigmatic example of a local decision, and thus one that would go to a local circuit court.

The EPA recently changed positions, however, and now insists, in defiance of common sense, that it can convert individualized, local decisions into nationally applicable action simply by bundling many of them together, even when doing so means violating applicable adjudicatory deadlines imposed by Congress, as occurred here. The strategy is obvious: the EPA wants the cases funneled to its preferred forum, the D.C. Circuit. But that is not the venue scheme Congress provided in the CAA, and the Fifth Circuit was correct to reject the EPA's position below.

Text, purpose, and precedent all confirm what common sense would compel: the CAA's venue provision turns on substance, not form; and it does not allow the EPA to pick its chosen forum based on how the agency chooses to package its notices.

At bottom, the CAA is designed so that regulated entities can have their decisions reviewed within their regional circuits, composed of judges who know that area, and who have more localized expertise. But as the EPA would have it, refineries like Calumet and

other regulated entities would need to schlep to D.C. to litigate these cases in the EPA's backyard whenever that agency chooses to bundle multiple such decisions together. That is fundamentally unfair, is nonsensical, and is not the scheme that Congress designed.

This Court should therefore affirm the Fifth Circuit's decision.

ARGUMENT

I. Section 7607(b)(1) Guarantees Local Review of Local Decisions.

The Clean Air Act divides judicial review of EPA actions into one of two general categories: actions that are either nationally applicable or of nationwide effect go to the D.C. Circuit; but "local or regional" actions—lacking true nationwide effect—go to the circuit for that particular region. 42 U.S.C. § 7607(b)(1).

This venue rule reflects the federalism principles core to the CAA's longstanding judicial review scheme and its cooperative-federalism regulatory function. The Act is a "comprehensive national program that made the States and the Federal Government partners in the struggle against air pollution." *Gen. Motors Corp. v. United States*, 496 U.S. 530, 532 (1990). And as part of that arrangement, the "Act envisions extensive cooperation between federal and state authorities." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 428 (2011). The Act thus assigns certain decisions—those bearing on the whole country—to the federal government, while reserving those that turn more on local expertise to the States, in the first instance. For example, the Act "relegate[s]" the

federal government to a "secondary role" over specific decisions about the "prevention and control of air pollution at its source," because that type of decision has traditionally been the "primary responsibility of States and local governments." *Train v. Nat. Res. Def. Council*, 421 U.S. 60, 64, 79 (1975).

The Act's venue provision tracks this division of responsibility. "All nationally applicable actions go to the D.C. Circuit, which promotes national uniformity." *Texas v. EPA*, 983 F.3d 826, 835 (5th Cir. 2020). In other words, nationwide rules go to a single court to apply a single understanding of the law to a single federal action. By contrast, "[a]ll locally or regionally applicable actions that are based on local and regional determinations go to the regional circuits, which promotes responsiveness and attention to local and regional diversity." *Id.* That is, where an action lacks a nationwide effect, courts from the communities that will actually bear the consequences of the EPA's decision are assigned by Congress to assess its lawfulness.

This just "makes sense." *Id.* While the CAA has only one meaning, of course, how its standards and adjudications cash out on the ground are often fact-intensive inquiries. *See, e.g.*, *Texas v. EPA*, 829 F.3d 405, 423 (5th Cir. 2016). Those sorts of inquiries should be evaluated by voisinage judges who are familiar with the businesses, relevant markets, and locales being regulated or affected—as opposed to judges reading about (or discovering) Louisiana refineries from hundreds or thousands of miles away. Congress believed that it was important for political buy-in and accountability that the States have a hand

in the judges supervising those decisions. *Cf*. 28 U.S.C. § 44(c) (providing "there shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit").

All in all, the CAA's venue provision was a conscious policy decision to guarantee local review of local decisions. After all, Congress knows how to send cases exclusively to the D.C. Circuit when it wants to do so. *See, e.g*., 8 U.S.C. § 1226a(b)(3) (detention review provision). And it knows how to do the opposite—including in analogous statutory schemes. *See, e.g*., 33 U.S.C. § 1369(b)(1). With the CAA, Congress struck a balance, centralizing review for truly federal actions, and decentralizing review over local decisions.

II. Hardship Adjudications Regarding a Single Refinery Are Quintessential Local Decisions.

The CAA is often complicated. And the line between what is national and what is local is not necessarily always crystal clear in every case. But none of those uncertainties are present here: this case involves a series of individualized administrative decisions, made by the EPA, and each applying to only a single regulated refinery in a single location.

The EPA itself had long argued that its decisions on small-refinery hardship petitions are "quintessentially local action[s]" for purposes of venue under Section 7607(b)(1), because they "adjudicate[] legal rights as to a single refinery in a single location." *See, e.g*., EPA Motion to Dismiss 10, 18, *Advanced Biofuels Ass'n v. EPA*, No. 18-1115 (D.C. Cir. July 13,

2018); EPA Br. 15, *Producers of Renewables United for Integrity Truth and Transparency v. EPA*, No. 18-1202 (D.C. Cir. Mar. 4, 2019); EPA Br. 2-3, *Lion Oil Co. v. EPA*, No. 14-3405 (8th Cir. Dec. 17, 2014).

But the EPA recently switched positions, in a transparent strategy to funnel such decisions to the D.C. Circuit. The EPA was right back then, and wrong now.

The venue analysis starts by examining "the nature of the EPA's action" challenged in court. *RMS of Georgia v. EPA*, 64 F.4th 1368, 1372–73 (11th Cir. 2023). And the relevant action here is the EPA's adjudication of the individual hardship exemptions that refineries sought and were denied.

Calumet and the other small refinery Respondents in this case each requested a hardship exemption for their single refinery. And the EPA denied relief to each of them based on whether they individually faced economic hardship. Under the CAA, that analysis must be based on an individualized determination of the particular refinery's economic hardship if compelled to comply with the CAA's Renewable Fuel Standard requirements. *See* 42 U.S.C. § 7545(o)(9)(A)(ii)(II), (B)(i). Common sense confirms that adjudicating legal rights with respect to a single small refinery in a single location, based on its economic hardship, is a classic local action and lacks the sort of nationwide effect needed to trigger review in the D.C. Circuit.

For comparison: the "EPA's action in approving or promulgating any [State] implementation plan is the prototypical locally or regionally applicable action

that may be challenged only in the appropriate regional court of appeals," *Am. Rd. & Transp. Builders Ass'n v. EPA*, 705 F.3d 453, 455 (D.C. Cir. 2013) (Kavanaugh, J.), despite the obvious fact that a SIP affects an entire State. That makes it all the more clear that the hardship determinations at issue here must be sent to regional circuit courts, as the decisions affect only a single refinery in a single location, not even a single State.

In short, every single tool of interpretation—text, purpose, precedent, logic, the EPA's own prior and long-held position, etc.—points the same way here: the EPA cannot rebut the presumption of regional-circuit review.

III. The Executive Cannot Evade Regional Review through Wordplay and Labels.

Congress thus made a deliberate choice for this kind of individualized administrative decision—which applies to only a single regulated refinery in a single location—to go to the regional circuits. This case asks whether that rule goes out the window when the EPA decides to bundle those decisions within a single notice. The answer is obviously no.

The whole point of a venue provision like the one here—one that assigns specific actions to specific courts, versus one that lays out a range of options (*e.g.*, 28 U.S.C. § 1391)—is to cabin the discretion of the litigants. Truly, the *only* function of a provision like § 7607(b)(1) is to remove decisions about venue from the hands of individual parties and codify what Congress has decided is the proper forum for a given matter.

The EPA's position in this case destroys this function. On its logic, the federal government can now forum shop to its heart's content: if it likes the judges on a regional court, it will issue a standalone hardship decision; if it feels it has better odds in its own backyard, it will bundle its decisions—and presto, it is a "nationally applicable" action.

No rational Congress would craft a venue provision in this directionless fashion—and no Congress did. Directing decisions like these to regional circuits is wise because such decisions are typically fact-intensive, and their review will benefit from "local and regional" expertise. *Texas*, 983 F.3d at 835. But under the EPA's logic, Congress wanted those fact-intensive decisions to be made by regional circuits *only when* the EPA issues standalone decisions; otherwise, it wanted the D.C. Circuit to review when the EPA opted for an omnibus announcement. That is nonsensical. Whether issued together or bundled, the judicial review of these decisions looks *exactly the same*—it is the same fact-intensive, refinery- and locally-dependent inquiry no matter what. There is zero cogent reason why Congress wanted the regional circuits to review those decisions only when issued one at a time.

Instead, Congress cared here about substance over form. That is the default rule in the law. *See, e.g.*, *Columbia Broad. Sys. v. United States*, 316 U.S. 407, 416 (1942). It is blackletter law under the APA, for instance, that what matters is the substance of the agency's action, not how the agency chooses to brand it. *See, e.g.*, *Clarian Health W., LLC v. Burwell*, 206 F. Supp. 3d 393, 407 (D.D.C. 2016) (Jackson, J.), *rev'd on*

other grounds, 878 F.3d 346 (D.C. Cir. 2017). So too here. As the Fourth Circuit explained: "[a]n action is local or regional if it assesses and analyzes local or regional circumstances that are distinct from the circumstances in other localities or regions and it rules on those circumstances," while a "determination would be national in scope and effect if it addressed and analyzed circumstances common to all regions in the Nation." *West Virginia. v. EPA*, 90 F.4th 323, 328 (4th Cir. 2024). Whether an action is regional or national does not turn on the label or the packaging. Rather, it turns on the *substance* of the action—and it is the *substance* of the action that determines what part of § 7601(b)(1) applies. *See, e.g.*, *Texas v. EPA*, No. 23-60069, 2023 WL 7204840, at *4 (5th Cir. May 1, 2023) ("Yes, the EPA packaged these disapprovals together" but "the EPA's chosen method of publishing an action isn't controlling. What controls is the CAA. And the CAA is very clear.").

More fundamentally, permitting the EPA to gerrymander venue in this way would undermine the separation of powers. One of the most important authorities vested in Congress is its plenary authority over the jurisdiction of the lower federal courts. *Sheldon v. Sill*, 49 U.S. 441, 449 (1850); *see also, e.g.*, *Mark v. Republic of the Sudan*, 77 F.4th 892, 896 (D.C. Cir. 2023). Through § 7607(b)(1), Congress exercised that constitutional structural prerogative. But the effect of the EPA's view would be to hollow out § 7607(b)(1), and transfer determinations of venue from Congress to the Executive. That would mean the EPA could now decide for itself where it wants to litigate—the precise sort of discretion that Congress

wanted to eliminate here, in guaranteeing local judicial review over local EPA decisions. *See, e.g.*, *Travis v. United States*, 364 U.S. 631, 634 (1961) ("[V]enue provisions in Acts of Congress should not be so freely construed as to give the Government the choice of 'a tribunal favorite' to it.").

The EPA's venue gamesmanship is even more transparent given that the agency could bundle these particular decisions only by violating Congress's statutory deadlines for adjudication. *See* 42 U.S.C. § 7545(o)(9)(B)(iii). If allowed, the EPA could not only improperly bundle decisions to force review in the D.C. Circuit but could do so retroactively or by delaying adjudications until there are more petitions to deny and bundle together. Again, the entire point of a venue provision is to prevent such games.

Finally, the EPA's position here cannot be justified on the ground that its decisions are nationally applicable, because it applied a uniform "analytical framework" or "generally consistent approach" when it evaluated these refineries. That logic would make *every* EPA action national, because the EPA is already expected (indeed, commanded) to apply the CAA and other federal standards in a consistent and uniform way. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

* * *

The Fifth Circuit correctly interpreted and applied the venue framework Congress provided in § 7607(b)(1). This Court should reject the EPA's newfound, contrary approach.

CONCLUSION

For the foregoing reasons, *amici* urge the Court to affirm the decision below.

Respectfully submitted,

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