



C A L I F O R N I A

DEPARTMENT OF JUSTICE

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Hon. Scott Harris
Supreme Court of the United States
1 First St., NE
Washington, DC 20543

RE: *Diamond Alternative Energy, LLC, et al. v. EPA, et al.* (No. 24-7)

Dear Mr. Harris:

I write to respond to the October 23, 2024 letter filed by petitioners in this case, which addresses EPA's recent request for public comment on a proposal to approve California's incorporation of the greenhouse gas standards of the Advanced Clean Cars program into its State Implementation Plan. 89 Fed. Reg. 82553 (Oct. 11, 2024).

Petitioners contend that this "demonstrates that the D.C. Circuit's decision is patently incorrect." Pet. Letter 2. They are mistaken. The "recent development" that petitioners invoke (*id.* at 1) concerns emission-reduction estimates in a report published by the California Air Resources Board in 2021. *See* 89 Fed. Reg. at 82558 & n.29; *id.* at 82557 & nn.19, 20; C.A. J.A. 276. If petitioners believed those estimates bore on redressability, *see* Pet. Letter 1, that was an argument they could have made below. Instead, petitioners did not even "attempt[] to explain in any detail how their injuries are redressable, let alone to 'cit[e] any record evidence'" on the subject. Ohio Pet. App. 30a.

Like petitioners' post-oral-argument submission to the D.C. Circuit, *see* Ohio Pet. App. 35a-38a, petitioners' letter is a belated effort to meet the burden they faced—in 2022—to put forward the facts necessary to establish their standing. As both the federal government and the state respondents agree, the D.C. Circuit correctly held that petitioners failed to meet that burden. U.S. Opp. 10-16; Cal. Opp. 11-16. That factbound holding, and the D.C. Circuit's case-specific

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determination that petitioners forfeited certain arguments in support of their standing, Ohio Pet. App. 35a-38a, do not warrant this Court's review.

Respectfully submitted,

/s/ Joshua A. Klein
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