No. 24-7

In the Supreme Court of the United States

DIAMOND ALTERNATIVE ENERGY, LLC, ET AL.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

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

BRIEF OF *AMICI CURIAE* TEXAS OIL & GAS ASSOCIATION, LOUISIANA MID-CONTINENT OIL & GAS ASSOCIATION, THE PETROLEUM ALLIANCE OF OKLAHOMA, TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION, AND TEXAS ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a party may establish the redressability component of Article III standing by relying on the coercive and predictable effects of regulation on third parties.

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INTEREST OF *AMICI CURIAE*[1]

Amici are statewide trade associations from Texas, Oklahoma, and Louisiana, representing the oil and gas industry and related manufacturing industries in their respective states. These industries are the foundational economic drivers for Texas, Oklahoma, and Louisiana. The economies and public welfare of these states depend on the immediate and long-term future of these industries. *Amici*, and the industry members they represent, are squarely in the crosshairs of the previous administration's attack on fossil fuels in the transportation sector and other key economic sectors. EPA's preemption waiver, here, is a critical step in the previous administration's multi-agency effort to cripple the oil and gas industry.

1. The Texas Oil & Gas Association (TXOGA) represents every facet of the Texas oil and gas industry, including small independent businesses and major producers. Collectively, TXOGA's membership produces roughly 90% of Texas' crude oil and natural gas and operates the vast majority of the state's refineries and pipelines. In fiscal year 2024 alone, the Texas oil and natural gas industry supported over 490,000 direct jobs and paid $27.3 billion in state and

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[1] Pursuant to Supreme Court Rule 37.6, *Amici* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *Amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

local taxes and state royalties. In turn, Texas uses state oil and gas revenues to fund public education, infrastructure, first responders, and economic stabilization programs. TXOGA and each of its members are directly impacted by EPA's actions in this particular rulemaking.[2] For these reasons, all of Texas Oil & Gas Association's member companies and the dependent sectors of Texas' economy are subject to profound adverse consequences from the regulatory actions addressed in the petition.

2. Texas Independent Producers and Royalty Owners Association (TIPRO) is one of the country's largest oil-and-gas trade associations. TIPRO's nearly 3,000 members—from small family-owned operations to large publicly traded oil and gas producers and royalty owners of all sizes—represent Texas's foundational economic driver, the oil and gas industry. In 2023, Texas supplied 23% of all oil and gas jobs nationwide and provided highest oil and gas payroll in the country in 2023, totaling $59 billion. Texas produced over 1.9 billion barrels of oil and 12.2 trillion cubic feet of natural gas in 2023, both new records. And Texas's oil and natural gas industry purchased American goods and services to the tune of $288 billion, illustrating how deeply the oil and gas industry is woven into the fabric of the American

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[2] Texas Oil & Gas Association, *2023 Annual Energy & Economic Impact Report* (Jan. 30, 2024), https://www.txoga.org/2023eeir/

economy.[3] For these reasons, all of Texas Independent Producers and Royalty Owners Association's member companies and individual members, and the dependent sectors of Texas' economy, are subject to profound adverse consequences from the regulatory actions addressed in the petition.

3. Texas Association of Manufacturers (TAM) actively represents the interests of more than 600 member companies. Texan manufacturers account for more than 11.2% of the total output in Texas—$269 billion in 2022—and employ almost 925,000 Texans in jobs that pay more than $105,699 annually on average. And for each manufacturing job, five additional jobs are created in a community. For more than twenty years, Texas has remained the number one exporting state in the United States for manufactured goods. As noted by the U.S. Department of Energy, "refined products made from oil & natural gas make the manufacturing of over 6000 everyday products and high-tech devices possible." These products include everything from contact lenses and hearing aids to cell phones and laptops.[4] For these reasons, all of Texas Association of

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[3] Texas Independent Producers and Royalty Owners Association, *2024 State of Energy Report* 3–4 (2024), https://tipro.org/tipro-energy-report-2024/.

[4] Texas Association of Manufacturers, *Manufacturing Matters*, https://manufacturetexas.org/manufacturing-matters; National Association of Manufacturers, *Manufacturing in the United States: Texas*, https://nam.org/manufacturing-in-the-united-

Manufacturer's member companies and the dependent sectors of Texas' economy are subject to profound adverse consequences from the regulatory actions addressed in the petition.

4. Louisiana Mid-Continent Oil & Gas Association (LMOGA) represents the oil and gas industry in the second-largest oil producing state and fourth-largest gas producing state. In 2019, Louisiana supported the production of 738 million barrels of crude oil and liquid condensate, 3.81 trillion cubic feet of dry (or pipeline quality) natural gas, and 102.4 million barrels of natural gas plant liquids—a first-point-of-sale total value of $55.5 billion. The Louisiana oil and gas industry provided $73.0 billion dollars of direct, indirect, and related state income. And state and local tax revenues from the industry provided $4.5 billion to the state economy throughout the supply chain. A total of 249,800 private sector employees received wages or salaries in 2019 supported by oil and gas activity.[5] For these reasons, all of Louisiana Mid-Continent Oil & Gas Association's member companies and the dependent

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states/regions/texas/; U.S. Department of Energy, *Products Made from Oil and Natural Gas* (Nov. 2019), https://www.energy.gov/sites/prod/files/2019/11/f68/Products%20Made%20From%20Oil%20and%20Natural%20Gas%20Infographic.pdf.

[5] ICF International, Inc., *The Economic Impact of the Oil and Natural Gas Industry in Louisiana* (Oct., 5, 2020), https://www.lmoga.com/assets/uploads/documents/LMOGA-ICF-Louisiana-Economic-Impact-Report-10.2020.pdf.

sectors of Louisiana's economy are subject to profound adverse consequences from the regulatory actions addressed in the petition.

5. The Petroleum Alliance of Oklahoma (OK Petro) represents the oil and gas industry in the Nation's fourth-largest oil producing state and fifth-largest gas producing state. In 2022, Oklahoma's oil and gas industry produced more than 1.8 billion barrels in proved crude oil reserves and more than 36 trillion cubic feet of natural gas reserves, directly contributing $55.7 billion to state GDP in 2023. In turn, Oklahoma's oil and gas industry provided $30.7 billion in income to Oklahomans, and its total impact accounted for 22% of statewide economic activity. The oil and natural gas industry is Oklahoma's largest private-sector employer and is its largest taxpayer, contributing a record $2.9 billion in total taxes in 2023. And beyond taxes, state royalty payments exceeded $1.9 billion. The oil and gas industry provides Oklahoma's only major source of earmarked funding for education and county roads and bridges, totaling $288 million and $177 million, respectively, in 2023.[6] For these reasons, all of The Petroleum

[6] U.S. Energy Information Administration, *Oklahoma State Energy Profile* (July 18, 2024), https://www.eia.gov/state/print.php?sid=OK; Oklahoma Energy Resources Board, *Oklahoma Oil & Natural Gas: Economic Impact* (2023), https://oerb.com/ECONOMIC-IMPACT/; OERB, *Oklahoma Oil & Natural Gas: 2023 Economic Impact Update* (Mar. 2024), https://oerb.com/wp-content/uploads/2024/03/Economic-Impact-Full-Report.pdf;

Alliance of Oklahoma's member companies and the dependent sectors of Oklahoma's economy are subject to profound adverse consequences from the regulatory actions addressed in the petition.

SUMMARY OF THE ARGUMENT

Amici, representatives of the oil and gas industry in Texas, Oklahoma, and Louisiana (three of the largest liquid-fuel-producing states), write briefly to (1) expand on the context for EPA's grant of a preemption waiver under Section 209(b) of the Clean Air Act to California's "Advanced Clean Cars I" (ACC) program and (2) highlight the waiver's impact on producers, refiners, and sellers of liquid fuel and the raw materials used to make them.

The purpose of the preemption waiver is to substantially reduce the use of liquid fuels in vehicles. Taking a commonsense approach, those in the targeted liquid fuel industry have standing to challenge the waiver.

ARGUMENT

Targeting the oil and gas industry, EPA has deployed a platoon of rulemakings to force a change from fossil fuels and other liquid-fuel propulsion to electric vehicles. *See, e.g.*, Exec. Order No. 13,990, 3

Mark C. Snead et al., *Oklahoma's Oil and Gas Economy* (2022), http://oerb.com/wp-content/uploads/2022/02/RegTrk-OK-Oil-Gas-Final-Draft-20220201.pdf.

C.F.R. § 13990 (2022); Exec. Order No. 14,037, 3 C.F.R. § 14037 (2022).[7] This particular rulemaking—EPA's about-face grant of a preemption waiver for the ACC program—is one such attack on the industry.

The goal of the ACC program (and EPA's aim in applying a preemption waiver) is to progressively force elimination of fossil and other liquid fuels in vehicles. Leaders of both EPA and California have said as much. Former EPA Administrator Michael Regan, citing his belief in "California's long-standing statutory authority *to lead*" (seemingly an admission of EPA's abdication to CARB), proceeded to roll back EPA's prior denial of a preemption waiver at President Biden's direction. Press Release, U.S. Environmental Protection Agency, *EPA Reconsiders Previous Administration's Withdrawal of California's Waiver to Enforce Greenhouse Gas Standards for Cars and Light Trucks* (April 26, 2021), https://www.epa.gov/newsreleases/epa-reconsiders-previous-administrations-withdrawal-californias-waiver-enforce (emphasis added). EPA has continued to note that the California Air Resources Board's

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[7] As part of the coordinated agency strategy, EPA and the National Highway Traffic Safety Administration have also taken other challenged agency actions, which are currently awaiting decision by the D.C. Circuit. *See Texas v. EPA*, No. 22-1031 (filed Feb. 28, 2022); *Nat. Res. Def. Council v. NHTSA*, No. 22-1080 (filed May 11, 2022); *see also Kentucky v. EPA*, No. 24-1087 (filed April 18, 2024); *In re MCP No. 189 Corp. Avg. Fuel Econ (NHTSA-2023-0022)*, No. 24-7001 (consolidated in the 6th Cir. July 12, 2024).

(CARB) 2012 waiver request attributed certain "benefits" of its ACC program "not to vehicle emissions reductions specifically, but to increased electricity and hydrogen use *that would be more than offset by decreased gasoline production and refinery emissions*." 87 Fed. Reg. 14,332, 14,336 (Mar. 14, 2022) (emphasis added) (citing *CARB Request for Waiver of Preemption for Low Emission Vehicle and Zero Emission Vehicle Regulations ("Advance Clean Car Program")* (2012 Waiver Request), EPA-HQ-OAR-2012-0562-0004, 1, 6 (Aug. 30, 2012)). Put differently, one of the program's express goals is for "net *upstream* emissions" to be "reduced through the increased use of electricity *and concomitant reductions in fuel production*." *Id.* (emphasis added) (citing 2012 Waiver Request, at 15–16).

California officials have likewise touted the ACC program's intended goal—"to end" the country's "reliance on *fossil fuels*" and to "make a zero-emission future a reality *for all Americans*"—since the program's inception. Press Release, Gavin Newsom, Governor, State of California, Governor Newsom Statement on Biden Administration's Restoration of California's Clean Car Waiver (March 9, 2022), https://www.gov.ca.gov/2022/03/09/governor-newsom-statement-on-biden-administrations-restoration-of-californias-clean-car-waiver/ (emphasis added). Directing CARB in 2020 to develop progeny programs to the ACC program, Governor Gavin Newsom reiterated California's larger effort to "decarbonize[]" the transportation sector and "transition[] away from fossil fuels." Cal. Exec. Order N-79-20 (Sept. 23, 2020), https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf.

In short, the very purpose of EPA's grant of a preemption waiver was to support the overarching goal of forcing nationwide conversion from liquid-fuel-powered vehicles to electric vehicles.

Consistent with that aim, CARB correctly predicted that "[t]he oil and gas industry, fuel providers, and service stations are likely to be the *most* adversely affected by the proposed Advanced Clean Cars program due to the substantial reductions in demand for gasoline." California Air Resources Board, *Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider the "LEV III" Amendments to the California Greenhouse Gas and Criteria Pollutant Exhaust Emission Standards* 201 (Dec. 7, 2011), available at https://www.regulations.gov/document/EPA-HQ-OAR-2021-0257-0013 (emphasis added). In fact, CARB conceded that the ACC program would cause a likely $1 billion hit to the oil and gas industry in 2020 increasing to *$10 billion* in 2030. *Id.* While these estimates were orders of magnitude below the ACC program's actual impact, *see* J.A. 120–184, CARB itself noted Petitioners' "classic pocketbook injury" to the tune of *billions* of dollars. *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 636 (2023).

EPA's preemption waiver for the ACC program reaches well beyond California's borders. Concurrently with reinstating the preemption waiver, EPA withdrew an interpretation to allow Section 177 "opt-in" states to adopt CARB's mandates. 87 Fed. Reg. 14,332 (Mar. 14, 2022); *see* 42 U.S.C. § 7507. Seventeen states (as well as the District of Columbia) initially adopted CARB's standards, representing approximately 40% of the new car market and the commensurate liquid fuel products associated with those new vehicles. *See id.*; California Air Resources Board, *States that have Adopted California's Vehicle Regulations* (June 2024), https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/states-have-adopted-californias-vehicle-regulations. This widespread adoption continues to pose an existential risk to liquid fuel producers in Texas, Oklahoma, and Louisiana. In turn, the ACC program and EPA's preemption waiver threaten the livelihoods and wellbeing of millions of hardworking Americans and their families well beyond the borders of California.

Contrary to the lower court's conclusion, Petitioners (entities and associations representing interests at all levels of the liquid fuel supply chain) are not ancillary to EPA's final agency action. Rather, Petitioners (and *Amici*) are in its crosshairs. To be sure, automakers are also impacted by the rulemaking. But automakers are simply the device the agencies are using to directly undermine and eventually eliminate the Petitioners' industries and livelihoods. Agencies do not erect a redressability barrier for legal challenges from targeted industries simply because a regulation facially regulates an adjacent industry. For redressability analysis, "remov[ing] a regulatory hurdle" is enough. *See Energy Future Coal. v. EPA*, 793 F.3d 141, 144 (D.C. Cir. 2015) (Kavanaugh, J.).

There can be no question that the producers, refiners, and sellers of these fuels and the raw materials used to make them have standing to challenge a rule aimed directly at them. A commonsense approach leads to one conclusion: Petitioners have standing to challenge an agency action that targets and injures them.

CONCLUSION

Amici urge this Court to reverse the judgment below.

Respectfully submitted,

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