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 FOR *AMICUS CURIAE* AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF PETITIONERS

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February 3, 2024

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STATEMENT OF INTEREST[1]

The American Petroleum Institute ("API") is the national trade association for America's oil and natural gas industry. API has hundreds of members involved in all segments of the industry, including companies that produce, process, and distribute oil and natural gas products, as well as companies that support the oil and natural gas sector. With over 30 active chapters, API harnesses its members' experience to research and advocate for sound approaches to the production and supply of energy resources. API submits this brief to underscore the flaws in the D.C. Circuit's standing decision below, which departs from settled law, threatens to create unnecessary hurdles for a wide array of regulatory challenges, and warrants reversal.

SUMMARY OF THE ARGUMENT

Petitioners represent industry participants that produce and sell liquid fuel, and the raw materials used to make them. They challenge EPA's decision to reverse course and approve California's unprecedented efforts to regulate global climate change by forcing manufacturers to produce more electric vehicles, thereby decreasing demand for petitioners' products. But despite the obvious economic impact that petitioners faced (and continue to face) from that EPA decision, the D.C. Circuit deflected petitioners' challenge on standing grounds

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

without ever reaching its merits. That decision is plainly wrong and plainly consequential. Article III's standing requirements are straightforward, and petitioners satisfy each element here—which is why the federal government did not even initially challenge petitioners' standing below. EPA's decision to waive federal preemption of California's heightened vehicle emissions standards causes obvious and unmistakable harm to petitioners in the fuel industry, even though the standards formally apply to automakers rather than the fuel industry itself. If the EPA imposed a no-muffler mandate on vehicle manufacturers, it would be beyond obvious that muffler manufacturers would have standing to sue. The situation here is no different. By forcing automakers to produce more electric vehicles, the standards necessarily reduce sales of fuel and the raw materials used to make that fuel. Indeed, that effect on fuel consumption and the fuel industry is the whole point of the rule. And both basic economics and the government's own administrative findings show that vacating EPA's waiver would provide at least some redress for the fuel industry.

The decision below nevertheless concluded that petitioners had not shown redressability because they had not submitted evidence showing precisely what effect vacating the waiver would have on automakers' manufacturing and pricing decisions. That misguided conclusion overcomplicates the obvious and contravenes settled law. When a government regulation is imposed with a stated intent to eliminate use of an input or phase out consumption of a particular industry's products, it does not take expert evidence or declarations from those who are more

directly regulated but whose livelihoods are less directly endangered to show that vacating the regulation will redress the harm that it would otherwise impose on the targeted industry. The muffler industry would plainly benefit from repeal of a no-muffler mandate, and petitioners would just as obviously benefit from the repeal of the regulation here. That is why other courts have routinely found Article III satisfied in cases like this one without demanding that plaintiffs produce the kind of explicit evidence the panel below considered necessary here. Put simply, the fact that a regulation has been designed to produce a particular effect should normally be sufficient to show that the likely result of vacating that regulation will be to reduce that effect, which is all that redressability requires. The possibility that the government regulation is actually unnecessary to accomplish the government's intended result is sufficiently remote that it should not be a challenger's burden to negate. Moreover, to the extent the D.C. Circuit was suggesting that even deeply flawed regulations may continue to distort the market even after invalidation, that is hardly a reason to make it harder for injured parties to petition for review and to do so promptly without retaining experts to prove the obvious. In reality, it is a fair assumption that a government regulation will at least minimally advance its intended effect, and an equally fair assumption that vacating the rule will frustrate the government's efforts and at least partially redress the injury to those who would otherwise be harmed by the regulation's intended effect. By demanding more, the decision below conflicts both with this Court's precedent and with decisions from other circuits.

The decision below also threatens to create unnecessary hazards for future challenges to agency action. At best, it may drive parties to hire redressability experts whose testimony should be unnecessary, and encourage burdensome litigation of threshold redressability issues that should be straightforward. And at worst, the decision below may even in some cases entirely prevent judicial review of regulations that by their terms apply only to certain parties but whose effects fall heavily on others. Regulatory challenges are routinely brought by parties that are substantially affected by agency action even though they are not themselves formally regulated by that action, and redressability in those challenges should normally speak for itself. But if the decision below stands, it will create perverse incentives for proponents of regulatory actions to contest redressability even where redressability is just the flip side of what the government purports to accomplish with its regulation—which will in turn encourage litigants to file unnecessary affidavits, and increase the cost and burden of litigation for all involved. This Court should reverse.

ARGUMENT

I. The Panel Erred In Holding That Petitioners Lacked Standing.

The standing decision below flouts both common sense and well-settled law, creating unwarranted hurdles for countless "unregulated but adversely affected parties who traditionally have brought, and regularly still bring," challenges to agency rules that may have a significant and concrete impact on their interests even if those rules do not formally regulate

their conduct. *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 827 (2024) (Kavanaugh, J., concurring) (emphasis omitted). This Court should reverse the D.C. Circuit's erroneous decision and end the misguided threat that it poses to future challenges to agency rules that achieve their objectives by imposing a regulation on party A that directly (and intentionally) harms party B. That kind of regulatory indirection may mean both parties can sue, but it does not mean that the agency does not have to answer for directly and intentionally harming party B.

A. Petitioners Have Standing.

1. To establish Article III standing, a party invoking federal jurisdiction must show an "injury in fact," a "causal connection between the injury and the conduct complained of," and that "the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The third element, redressability, does not usually present a serious ground for dispute in regulatory challenges. If a regulation is to have any effect vis-à-vis the petitioner, then vacating that rule will provide the petitioner some relief. It is generally that simple. When a plaintiff is itself regulated by a challenged agency action, "there is ordinarily little question" that a decision preventing or vacating that action will redress the plaintiff's injury. *Id.* at 561-62.

As then-Judge Kavanaugh observed a decade ago, that is equally true when an agency action formally regulates a third party, but eliminating it "would remove a regulatory hurdle" to the challenger's business. *Energy Future Coal. v. EPA*, 793 F.3d 141,

144 (D.C. Cir. 2015). That was the precise scenario presented in *Energy Future Coalition*, where (as here) fuel producers challenged an EPA regulation that was "technically directed at vehicle manufacturers" but whose effect was to "prohibit[] or impede[]" the use of one of the challengers' products. *Id.* In that scenario, the challengers were properly considered "an object of the action (or forgone action) at issue," and so there was "'little question'" that they had injuries that would be redressed by vacating the regulation. *Id.* (quoting *Lujan*, 504 U.S. at 561-62); *see also Bennett v. Spear*, 520 U.S. 154, 169 (1997) (recognizing that standing can arise from an "injury produced by [the] determinative or coercive effect" of the challenged regulation "upon the action of someone else"); *cf. Corner Post*, 603 U.S. at 826 (Kavanaugh, J., concurring) (recognizing that a "typical APA suit" will "often" involve a plaintiff challenging "an allegedly unlawful agency rule that regulates others but also has adverse downstream effects on the plaintiff").

The rule could hardly be otherwise. Putting a no-muffler mandate on vehicle manufacturers might delight the vehicle manufacturers if the replacement technology involves higher margins. But the same no-muffler mandate could crush the muffler industry. Declaring that the latter cannot sue because the regulation operates more directly on the former makes zero sense.

More generally, in establishing redressability, a petitioner can rest on "the predictable effect of Government action on the decisions of third parties," without having to make any specific evidentiary showing to substantiate those predictable effects.

Dep't of Com. v. New York, 588 U.S. 752, 768 (2019); *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 384, 387 (2024) (highlighting "variety of familiar circumstances where government regulation of a third-party" supports standing for "unregulated plaintiff[,]" including where a regulation causes natural "downstream or upstream economic injuries to others in the chain"). A plaintiff likewise need not show that "a favorable decision will relieve his *every* injury." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982). Instead, it is enough if prevailing will "*slow* or *reduce*" the relevant harm, *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007), even if by as little as "one dollar," *Uzuegbunam v. Preczewski*, 592 U.S. 279, 292 (2021). As long as some degree of redress is "'likely' as opposed to merely 'speculative'" from a favorable judgment, Article III redressability is satisfied. *Lujan*, 504 U.S. at 561.

2. Under that settled precedent, the standing inquiry in this case is straightforward. The challenged EPA waiver empowers California to impose standards that require automakers to produce and deliver for sale vehicle fleets that consume less liquid fuel. The "predictable effect" of that regulation—and indeed, its explicitly intended effect—is to reduce the demand for petitioners' products. *Dep't of Com.*, 588 U.S. at 768. By the same token, vacating the waiver "would remove a regulatory hurdle" to petitioners' future sales, making clear that petitioners' injury "is redressable" even though they are not the direct object of the challenged agency action. *Energy Future Coal.*, 793 F.3d at 144-45; *see Lujan*, 504 U.S. at 561-62.

California's own statements demonstrate the point. After all, California has already determined that its standards would lead to "reductions in fuel production," 87 Fed. Reg. 14,332, 14,364 (Mar. 14, 2022) (quoting California's 2012 Waiver Request, EPA-HQ-OAR-2012-0562-0004, at 15-16), and acknowledged that the "oil and gas industry" would be among those "most adversely affected" by the new standards and their resulting "substantial reductions in demand for gasoline," C.A.App.801; *see also id.* ("As the directly regulated automotive manufacturing sector currently has a limited presence in California, indirect effects on affiliated business are likely to be of greater interest."); State of California, *Advanced Clean Cars Waiver Request* 7-9 (May 2012), https://tinyurl.com/3ca8mf7s (noting that electric vehicles can "dramatically reduce petroleum consumption"). The California Air Resources Board's declarant below likewise recognized that without the standards, "it is reasonable to expect that there would be … additional gasoline-fueled vehicles produced and sold during these model years to meet the market's demand for vehicles," C.A. States Interv. Mot. Add. 11, with an attendant increase in demand for liquid fuel. California's representations thus demonstrate that the state's standards were designed to reduce the consumption of the fuel products that petitioners produce and sell, and that petitioners would benefit from increased sales absent those standards. Nothing more is required to establish redressability.

In any event, petitioners submitted over a dozen declarations with their opening brief detailing how California's standards would artificially shrink the market for petitioners' products, reduce their

revenues, and cause significant harm. C.A. Priv. Pet. Br. Add. 11-76. Those declarations highlighted, for example, California's "estimated 'substantial reductions in demand for gasoline—exceeding $1 billion beginning in 2020 and increasing to over $10 billion in 2030,'" and the "demand destruction" that would likely harm petitioners if EPA's waiver was left in place. *E.g., id.* at 17, 25, 29-30, 36-38, 67. To say that more is required blinks reality and ignores settled principles of Article III standing.

B. The D.C. Circuit's Contrary Decision Defies This Court's Precedent and Common Sense.

1. The D.C. Circuit's contrary analysis cannot be squared with this Court's precedent and common sense. The panel acknowledged that petitioners' injuries would be redressed "if automobile manufacturers responded to vacatur of the waiver by producing [or] selling fewer non-conventional [i.e., electric] vehicles or by altering the prices of their vehicles such that fewer non-conventional vehicles—and more conventional vehicles—were sold." Pet. App. 22a. But instead of recognizing the obvious—that it is at least "likely," *Lujan*, 504 U.S. at 561, that a waiver designed to allow California to require automakers to produce more electric vehicles would in fact operate as intended, and that vacating that mandate would at least somewhat impede that intended result—the panel insisted on "record evidence" that "manufacturers would, in fact, change course with respect to the relevant model years if this Court were to vacate the waiver." Pet. App. 23a. Likewise, despite admitting that manufacturers

"could change their prices" in response to vacatur of the waiver, "which may redress Petitioners' injuries because pricing could affect the mix of conventional and electric vehicles purchased," the panel refused to credit that basic economic principle, asserting instead that petitioners needed explicit "evidence that manufacturers would change their prices." Pet. App. 24a.

That demand for specific "record evidence" to prove the obvious—i.e., that government coercion is not gratuitous, such that eliminating coercive regulations is likely to lead to less of the coerced behavior, Pet. App. 23a—cannot be squared with this Court's precedent. In *Bennett*, for example, this Court considered a challenge by a group of ranchers and irrigation districts to a Biological Opinion issued by the U.S. Fish and Wildlife Service under the Endangered Species Act. 520 U.S. at 158-59. That Biological Opinion concluded that unless the Bureau of Reclamation made changes to the operation of the Klamath Project—a series of lakes, rivers, dams, and irrigation canals in northern California and southern Oregon from which the petitioners received water—it would jeopardize the continued existence of two endangered species of fish. *Id.* The government challenged the petitioners' Article III standing, asserting that vacating the Biological Opinion would not necessarily redress the petitioners' injury because the Bureau of Reclamation "retain[ed] ultimate responsibility for determining" how to operate the Klamath Project, and could decide to allocate less water to petitioners even absent the Biological Opinion. *Id.* at 168.

In a unanimous opinion by Justice Scalia, this Court rejected the government's argument. As the Court explained, while redressability may be lacking if a plaintiff's injury "is 'the result of the *independent* action of some third party not before the court,'" that "does not exclude injury produced by determinative or coercive effect upon the action of someone else." *Id.* at 169 (brackets omitted) (quoting *Lujan*, 504 U.S. at 560-61). Thus, it did not matter that the Bureau of Reclamation had the power to impose the same water restrictions independent of the Biological Opinion. What mattered was that the Biological Opinion "has a powerful coercive effect" on the Bureau, such that vacating it meant that petitioners' injury "will 'likely' be redressed—i.e., the Bureau will not impose [the same] water level restrictions—if the Biological Opinion" is set aside. *Id.* at 169, 171.

The same logic applies here: Given the "powerful coercive effect" of the California standards, and their express intent of reducing liquid fuel consumption, it is "not difficult to conclude" that vacating the waiver is "likely" to affect the behavior of the regulated automakers and redress petitioners' injury. *Id.* at 169, 170-71. Petitioners here should not be required to submit additional explicit evidence to prove that straightforward point, any more than the *Bennett* petitioners would have been required at summary judgment to submit an affidavit from the Bureau of Reclamation declaring that it would in fact change its water level restrictions if the Biological Opinion were vacated. *See id.* at 170-71.

This Court's decision in *Department of Commerce* further confirms the point. The plaintiffs there—a

variety of government and non-government organizations—challenged the government's decision to include a question about citizenship on the decennial census. 588 U.S. at 763-64. That decision did not regulate the plaintiffs directly, but the plaintiffs contended that they were injured because including that question would predictably lead noncitizen households to respond to the census at lower rates than other groups. *Id.* at 766-67. This Court—again unanimously—found that theory sufficient to support Article III standing, rejecting the government's argument that any harm to the plaintiffs depended on "speculation about the decisions of independent actors." *Id.* at 768 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013)). Again, the Court concluded that the "predictable effect of Government action on the decisions of third parties" was sufficient to show standing, without requiring explicit statements from those third parties themselves describing precisely how they would respond to a favorable judicial decision. *Id.* The D.C. Circuit's decision to require more here cannot be reconciled with either *Bennett* or *Department of Commerce*.

In short, it has been "long understood" that agency action can be challenged "in suits by unregulated plaintiffs who are adversely affected by an agency's regulation of others," *Corner Post*, 603 U.S. at 826 (Kavanaugh, J., concurring)—and yet this Court has never required those adversely affected plaintiffs to submit explicit testimony from the directly regulated third parties detailing their likely response to a favorable judgment in order to establish redressability. That is for good reason. After all, if

those third parties were going to do what the agency regulation required whether or not that regulation existed, the agency "would presumably not bother" promulgating the regulation at all. *Massachusetts*, 549 U.S. at 526.

Finally, to the extent the D.C. Circuit's demand for additional evidence is fueled by a sense that regulatory harm may be harder to redress in some cases, because the nature of certain industries means that an invalid regulation once promulgated can continue to have repercussions even after it is invalidated, that is hardly a reason to make it harder to bring prompt challenges. The government should not be rewarded for structuring its regulations in ways that make it harder to reverse invalid agency actions.

Finally, there is a reason why "entire classes of administrative litigation … have traditionally been brought by unregulated parties," *Corner Post*, 603 U.S. at 833 (Kavanaugh, J., concurring): The directly regulated parties in those cases have their own reasons for not bringing the litigation themselves, ranging from, perhaps, a clear-eyed recognition that the real costs of the regulation fall elsewhere to agency capture or fear of retaliation after getting crosswise with their regulator. The same considerations that may cause those directly regulated parties to forgo bringing their own challenge will also make them reluctant to cooperate with the unregulated parties who do wish to challenge the government's action, even when it comes to something as simple as confirming that vacating a rule designed to increase the production and delivery for sale of electric vehicles

will likely result in the production of fewer electric vehicles.

2. The panel below believed this case was special because (in its view) the "relatively short duration" of the waiver at issue, which applies through model year 2025, suggested that the directly regulated parties might already be locked into their production decisions. Pet. App. 22a. But EPA has now conceded that its waiver "does not expire after model-year 2025" and will "remain in force thereafter." Fed. Resp. BIO. 12-13. Regardless, the D.C. Circuit's submission is at most a (misplaced) mootness concern for which the government bears a heavy burden of proof, not an additional redressability hurdle that petitioners must surmount. *See Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 221-22 (2000) (reversing the Tenth Circuit for confusing "mootness with standing," and placing "the burden of proof on the wrong party"). The standing inquiry "focuse[s] on whether the party invoking jurisdiction had the requisite stake in the outcome *when the suit was filed*," not when the court eventually renders its decision. *Davis v. FEC*, 554 U.S. 724, 734 (2008) (emphasis added); *see* Pet. App. 25a. And at the time petitioners filed their challenge—within 60 days of EPA's March 2022 order, *see* Pet. App. 14a-15a—the waiver had some four years left to run (and many more by EPA's current estimation, Fed. Resp. BIO. 12-13), which was ample time for automakers to revise their production and/or pricing plans if the waiver were vacated. The matter is no more intricate than that. *Cf. Thole v. U.S. Bank N.A.*, 590 U.S. 538, 547 (2020) ("Courts sometimes make standing law more complicated than it needs to be.").

Again, the agency's own actions prove the point. If manufacturers' future plans were already firmly locked in place in March 2022, there would have been no point in issuing the waiver at all. While manufacturers may take "years of lead time" to plan their entire future model fleets or "re-optimize" their product plans in response to regulatory shifts, Pet. App. 23a-24a, it hardly follows that vacating the waiver would lead to *no change at all* in automakers' production mixes for the next several years—and any change at all would suffice, as even partial relief is enough to establish redressability. *Massachusetts*, 549 U.S. at 525; *Larson*, 456 U.S. at 243 n.15. Moreover, even before EPA acknowledged that its waiver would extend past model-year 2025, *see* Fed. Resp. BIO. 12-13, the panel below conceded that manufacturers "could change their prices" before the end of 2025, "which may redress Petitioners' injuries." Pet. App. 24a. Article III does not require petitioners to also submit explicit "evidence" that automobile pricing would timely respond to the laws of supply and demand if the artificial constraints imposed by the waiver were removed.[2]

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[2] In any event, petitioners *did* submit supplemental declarations explaining that automakers would be likely to react to a decision vacating the waiver despite the passage of time. *See* C.A. Priv. Pet. Supp. Br., Kreucher Decl. ¶¶1-5; C.A. Priv. Pet. Supp. Br., Modlin Decl. ¶¶1-5. The panel's refusal to consider those supplemental declarations was yet another illustration of its error in confusing standing with mootness. *See* Petrs. Br. 39-41; *cf.* Pet. App. 30a-32a.

II. The Panel's Erroneous Approach To Standing Would Create Unnecessary Litigation Burdens.

The redressability analysis applied by the decision below not only conflicts with settled law, but threatens to impose unwarranted litigation burdens on a wide swath of "unregulated but adversely affected parties who traditionally have brought, and regularly still bring, APA suits challenging agency rules." *Corner Post*, 603 U.S. at 827 (Kavanaugh, J., concurring). By suggesting that adversely affected parties may need "additional affidavits or other evidence" from third parties to establish redressability even when the predictable effects of vacating the challenged regulation should be clear, Pet. App. 24a-25a, the panel's approach threatens to encourage litigants in countless future regulatory challenges to spend significant resources filling the record with third-party declarations or expert evidence that should be unnecessary, just to explicitly state what common sense already makes obvious.

Those baleful consequences will not be limited to a handful of unlucky litigants. On the contrary, "entire classes of historically common and vitally important litigation against federal agencies" are routinely brought (and in some cases are only likely to be brought) by plaintiffs who are adversely affected but not directly regulated by the challenged agency action. *Corner Post*, 603 U.S. at 833, 842 (Kavanaugh, J., concurring). The D.C. Circuit's approach risks "clos[ing] the courthouse doors on" those "unregulated plaintiffs," and would mark "a radical change to

administrative law that would insulate a broad swath of agency actions from any judicial review." *Id.* at 831.

API itself provides a perfect example of the potential effects of the D.C. Circuit's rule, as API is currently challenging two more recent (and even more extreme) EPA rules and a National Highway Traffic Safety Administration ("NHTSA") rule that together represent the latest front in the same whole-of-government regulatory effort to mandate electrification of the Nation's vehicle fleets. *See Am. Petroleum Inst. v. EPA*, No. 24-1196 (D.C. Cir. docketed June 13, 2024); *Am. Petroleum Inst. v. EPA*, No. 24-1208 (D.C. Cir. docketed June 18, 2024); *In re Nat'l Highway Traffic Safety Admin.*, No. 24-7001 (6th Cir. docketed July 18, 2024). API's members are not the direct object of those rules, but they are unquestionably adversely affected by those rules, which seek to dramatically reduce the number of liquid-fueled vehicles on the Nation's roads by 2032. *See, e.g.*, 89 Fed. Reg. 27,842, 27,858, 28,092, 28,129 (Apr. 18, 2024) (projecting that EPA's new emissions standards will "lower demand for liquid fuel," "reduc[e] … U.S. gasoline consumption by 780 billion gallons," and adversely affect "the petroleum refining industry [and] fuel distributors").

Given the obvious and severe impact of the rules at issue in those cases on API's members, and the equally obvious fact that vacating those rules would at least mitigate that impact, the standing inquiry should be straightforward—which is presumably why the government has not thus far disputed fuel producers' Article III standing. Given the agencies' own projections that their standards will cause

automakers to change their behavior (and reduce gasoline consumption by hundreds of billions of gallons), *see, e.g.*, 89 Fed. Reg. at 28,092, there should be no question that vacating those behavior-modifying standards will redress the injuries of API members. Nothing further is required to satisfy Article III and allow adjudication of API's challenges on the merits. By insisting on additional evidence of redressability — even when the challenged regulation is explicitly designed to limit demand for the challenger's products—the decision below threatens to impose unwarranted additional burdens on an entire class of regulatory litigants. Nothing about Article III requires that unjustifiable approach.

Finally, the stakes of this case in particular underscore the importance of correcting the D.C. Circuit's erroneous standing analysis. By relying on its mistaken view of standing, the panel below avoided deciding whether EPA has statutory authority to waive preemption for California-specific standards directed at curbing global climate change—an important issue that has now evaded judicial scrutiny for over a decade. That is no small matter, as EPA's strained interpretation of the statute cannot be squared with its plain text, and has allowed California to extend its unusual claim to regulatory authority over the Nation's automobile industry far beyond the careful limits that Congress set. While the merits of that interpretation are not at issue at this stage, they highlight the importance of correcting the D.C. Circuit's erroneous standing decision below, and ensuring that the limits of Article III are not distorted to empower courts to avoid questions they would prefer not to decide.

CONCLUSION

This Court should reverse the judgment of the court of appeals and remand for further proceedings.

Respectfully submitted,

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February 3, 2024