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 ROYALTY COUNCIL, AMERICAN ROYALTY COUNCIL, AND NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS IN SUPPORT OF PETITIONERS

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IDENTITIES AND INTERESTS OF *AMICI CURIAE*[1]

The Texas Royalty Council (TRC) and American Royalty Council (ARC) are organizations representing mineral interest owners across Texas and the United States, respectively. TRC and ARC are dedicated to advancing domestic oil and gas production while protecting the property rights and economic interests of royalty owners. In Texas, for example, "a royalty interest in an oil and gas lease is an interest in real property, held to have the same attributes as real property." *Kelly Oil Co. v. Svetlik*, 975 S.W.2d 762, 764 (Tex. App. Corpus Christi 1998). Thus, an injury to a person's royalty is an injury to both that person's pocketbook and property.

The National Association of Wholesaler-Distributors (NAW) is the national voice of the wholesale distribution industry, representing a crucial link in the automotive and energy supply chains. NAW's members operate at the vital nexus between manufacturers and retailers, facilitating the efficient distribution of goods and playing an integral role in the complex web of commercial relationships that animate the modern economy.

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[1] Per Supreme Court Rule 37.6, *amici* confirm that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief.

While they represent different constituencies, ARC/TRC and NAW together represent many, many different types of entities harmed by the Environmental Protection Agency's (EPA) actions underlying this case and the lower court's erection of a massive, unwarranted hurdle to judicial review of the agency's actions here and agency actions generally.

The lower court's elevated redressability standard will bar *amici*'s members from pursuing judicial review of regulatory actions that are clearly designed to, and will inevitably, cause real harm to their economic (and even property) interests. This Court should not let the lower court erect such a barrier to judicial review in this and future cases. Accordingly, *amici* respectfully urge this Court to reject the lower court's "redressability" decision.

SUMMARY OF THE ARGUMENT

The lower court knit from whole cloth a new "redressability" standard that will prevent harmed entities from challenging the regulatory actions that harm them. The new standard is not consistent with the Court's precedents. This is not a case, for example, where plaintiffs seek access to federal courts so that they can potentially stop other governments a world away from *potentially* undertaking projects that this Nation would have no authority to prevent. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 568–71 (1992); *contra* Pet.App.22a, Pet.App.31a. No—in this case,

Fuel Petitioners look to challenge regulatory actions specifically designed to put them out of business. Pet'rs' Br. 16. The actions are also ***intended*** to harm *amici* and their members; that's the whole point of an EV Mandate. This Court has not shown an intent to deny access to federal courts in such a situation.

The lower court's decision should be seen for what it is: an attempt (and not the first) to use civil procedure in hopes of avoiding a clear-eyed look at economic reality, legality, and the nationwide impacts of upholding or striking down an EV Mandate and similar attempts by federal regulators to manipulate American markets. And in doing so, the lower court has either created or worsened an unwarranted procedural "disconnect" that supposedly separates "civil procedure" from "administrative law as decided through civil procedure." In what other ilk of case could a court slam its doors to a potential plaintiff because that potential plaintiff had not somehow coerced a third party to provide record testimony (in a case that does not yet exist) about how that third party ***might*** react to the harmful actions taken by the putative defendant? Sure, regulatory actions like the one at issue in this case bypass the federal district courts, but there is simply no procedural basis for the lower court's imposition of such a hurdle to judicial review.

The unfortunate result is that lower courts will continue to, and increasingly will, find ways to let regulators run roughshod over Americans by

inflicting unchecked harm on their economic (and, for royalty owners, property) interests. Accordingly, *amici* respectfully ask the Court to reverse the lower court's decision and keep the federal courts' doors open to those harmed by regulators.

ARGUMENT

I. THE LOWER COURT WENT AGAINST THIS COURT'S PRECEDENTS.

The lower court's redressability standard is an unwarranted departure from this Court's precedent, which has consistently held that plaintiffs need only show a likelihood, not a certainty, of redress. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (articulating the "likely to be redressed" standard); *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41–42 (1976). By demanding incontrovertible proof in the form of sworn statements from third-party automakers guaranteeing specific, quantifiable reactions to a prospective waiver vacatur, Pet.App.32a, the lower court unjustifiably contravened the pragmatic, consequence-focused approach this Court has long embraced.

Massachusetts v. EPA, 549 U.S. 497 (2007), exemplifies the Court's flexible, real-world-oriented redressability analysis. There, the Court recognized that requiring EPA to regulate vehicle emissions likely would mitigate at least some of the alleged harms, even if the precise extent of the reduction were

uncertain. The Court held that this was at least sufficient to show redressability and allow the case to go ahead. *Id*. at 525–26. The question was whether the requested relief would yield *some* meaningful benefit to the petitioner, however incremental or contingent on third-party responses. *Id*. Conspicuously absent was any suggestion that petitioners tender sworn commitments detailing the minutely quantifiable steps third-party entities ***might*** take in response to a successful judicial decision. *Id.* Going further, the Court found the alleged harm redressable even though it was logically certain that a third party likely would take steps that might worsen—rather than mitigate—the harm. *Id.* ("Nor is it dispositive that developing countries such as China and India are poised to increase greenhouse gas emissions substantially over the next century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere."). There was self-evident logic in the conclusion that a court decision benefitting the petitioner would at least present the possibility of some iota of harm reduction.

The practical stance is in line with *Friends of the Earth, Inc. v. Laidlaw Environmental Services*' contextual conception of causation. 528 U.S. 167, 185–86 (2000). The *Laidlaw* Court considered civil penalties "likely" to redress environmental injury by potentially deterring violations and reducing the risk of harm, even absent definite assurances of a violator's future conduct. *Id*. The Court pragmatically

recognized that penalized entities weigh myriad factors in calibrating behavior to legal decrees, and at no point did the Court suggest that a sworn, unconditional pledge of forward-looking compliance—from a putative third party, no less—was an Article III *sine qua non*. *Id.*

Even *Lujan v. Defenders of Wildlife*, on which the lower court relied, Pet.App.17a, Pet.App.22a, Pet.App.31a, belies any categorical requirement of definite third-party assurances. 504 U.S. at 562–67. *Lujan*'s plaintiffs lacked standing for many reasons, including because they did not allege cognizable injury or non-speculative causation. *Id.* And with respect to "redressability," there was simply no reason to think that a federal court in America could decide a question of regulatory lawfulness in a way that would enable the plaintiffs (or anyone else) to stop other governments a world away from potentially undertaking projects that this Nation would have no authority to prevent. *See id.* at 568–71. Maybe if, before filing suit, the *Lujan* plaintiffs had somehow secured sworn assurances from Congress and the President that the U.S. would declare war on any nation not consulting with American regulators about endangered species, then the outcome in that case might have been different. *See id.* at 571 n.5 ("Seizing on the fortuity that the case has made its way to this Court, Justice STEVENS protests that no agency would ignore an authoritative construction of the ESA by this Court. In that he is probably correct; in concluding from it that plaintiffs have demonstrated

redressability, he is not."). But nothing in *Lujan* made this or any other such outlandish pre-litigation-third-party-testimony scenario the requirement that the lower court created in this case.

What's more: here, Fuel Petitioners ***did*** present empirical data, detailed econometric models, and expert analysis showing how EPA's actions and an EV Mandate would harm them. Pet.App.19a–Pet.App.20a. That is enough to get inside the courthouse doors. *See*, *e.g.*, *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123–24 (1969) (market data and economic expertise can show antitrust injury).

II. THE LOWER COURT'S APPROACH TO ECONOMIC HARM IGNORES REALITY.

The lower court's redressability analysis rests on an oversimplified account of how regulatory acts impact modern economic systems. As Fuel Petitioners explain, energy markets are complicated and wide-ranging, Pet'rs' Br. 21–22, and EPA's desired endgame here is to artificially kill a spectrum of the energy markets by keeping oil in the ground, *see* Pet'rs' Br. 3. "The entire point [is] to decrease the amount of liquid fuel burned by drivers." Pet'rs' Br. 3.

Accordingly, assuming that an EV Mandate would only harm automakers defies common sense. *Contra* Pet.App.22a. A federal regulatory action intended to kill the market for liquid fuel will

obviously, self-evidently hurt fuel refiners and providers. *See* Pet'rs' Br. 21. And Fuel Petitioners provided evidence of that at the lower court. Pet.App.19a–Pet.App.20a.

Going further "downstream," what about the businesses that construct service stations and run them to sell liquid fuel to automobile drivers? What if an EV Mandate forces them either to close or to spend money to re-construct so that they are only providing non-liquid fuels?

What about supply-chain businesses that use liquid-fuel based automobiles to provide wholesale distribution of goods throughout the Nation, which is true of many of NAW's members? What if an EV Mandate forces them either to close or to trash their current fleet and buy non-liquid-fuel automobiles? *See supra*, at 1.

Tracking back "upstream," what about businesses that make money by constructing and running the pipelines that move liquid fuels (or their oil feedstocks) around the Nation? What if an EV Mandate makes their businesses a dead-letter because no one will pay them to move oil and liquid fuel?

What about the oil companies that explore for oil reserves and make their money by finding, producing, and selling oil? What if an EV Mandate, ***by design***, is intended to kill those businesses?

And not least, what about the families and individuals, like ARC's and TRC's members, who own land in this Nation, including land that has oil reserves? When an oil company wants to produce oil from their properties, the oil company must pay them for the right do so. That payment can include a one-time "bonus," and it can include a recurring royalty payment that aggregates not just to generational wealth, but also for many property owners a sole means of retirement income, a way to pay for medical expenses etc. What if a regulatory EV Mandate negates any expectation of income in exchange for letting an oil company produce oil from their properties? Those royalty owners suffer too.

None of those many entities or the myriad other entities harmed by an EV Mandate should have to coerce an automaker to provide record testimony in a case that does not yet exist about how that automaker might react to a regulatory EV Mandate before they could make it inside a federal courthouse. *See Lujan*, 504 U.S. at 560–61. In deciding otherwise, the lower court simply got "redressability" wrong.

The court below did not grasp these market mechanics, treating automakers collectively as the sole fulcrum on which the entire outfall of EPA's actions would pivot. But no single actor, however powerful, dictates the trajectory of a vast, multifaceted sector like energy. The notion that one private entity even *could* provide the definite,

conclusive assurances the lower court supposedly needed ignores reality.

And the lower court gave no limiting principle: is it enough to coerce ***one*** automaker to provide testimony before filing a lawsuit? Would a litigant need to coerce pre-filing testimony from ***all*** the automakers? All of them selling cars in the United States? Or selling cars around the world? And for notice-and-comment rulemaking, how exactly would the lower court propose that a liquid-fuel provider, or a supply-chain company, or a royalty owner convince an automaker (again, where there is no lawsuit yet) to submit public comment on a proposed regulatory action that might or might not come to fruition? And according to the lower court, how should a royalty owner coerce an automaker to make a public comment sufficient to convince the lower court that the automaker will take actions that will directly hurt the royalty owner?

Here, Fuel Petitioners provided record evidence showing that EPA's actions would hurt them. *E.g.*, Pet.App.19a–Pet.App.20a. Courts, for example, regularly rely on analogous evidence to discern causation in complex statutory settings. *See, e.g.*, *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 542 (1983) (market analysis can show antitrust injury). Article III demands no more to get inside the courthouse doors in the first place.

III. THE LOWER COURT'S APPROACH REFLECTS A PROCEDURAL DISCONNECT THAT BLOCKS PARTIES HARMED BY A REGULATION FROM CHALLENGING IT.

At best, the lower court has exposed an unwarranted procedural "disconnect"—whether one the lower court created or merely worsened—that supposedly separates "civil procedure" from "administrative law as decided through civil procedure." Taking the mine-run of civil litigation in federal courts started per Federal Rule of Civil Procedure 8, while the plaintiff's allegations must be "plausible," the federal court must accept them as true without recourse to other evidence (just "judicial experience and common sense"). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79, (2009). Fed. R. Civ. P. 8 does not require coerced, pre-litigation, third-party testimony to get in the courthouse doors. Nothing in the applicable federal appellate rules erects such a barrier either. *See* Fed. R. App. P. 15.

Of course, following Rule 8 gets only one foot in the courthouse door. The other foot comes from standing. Our Constitution only lets federal courts open their doors to actual "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. And there cannot be a case or controversy unless the plaintiff shows that it has "standing" to bring a case in the first place. *Lujan*, 504 U.S. at 560.

"Each element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. So, "at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, [but in] response to a summary judgment motion . . . the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts.'" *Id.* At first then, the lower court's decision makes some sense.

But wait—in *Lujan*, the Court did not specify that the plaintiff *had to* produce ***third-party*** testimony to meet its "standing" burden at summary judgment. *See id.* Sure, that might be a possibility, but it is not a requirement. *Id.* at 561–62. Certainly, one other way is to show by sworn statement that the plaintiff itself will suffer some actual or imminent injury from the defendant's action. *Id.* at 564.

Here is the disconnect: for cases brought in federal courts, like the lower court here, under the Administrative Procedure Act (generally) or the Clean Air Act provision at issue here, 42 U.S.C. § 7607(b)(1), judicial review is ordinarily confined to the administrative record and discovery is not allowed. *E.g.*, *Amfac Resorts, L.L.C. v. U.S. Dep't of the Interior*, 143 F. Supp. 2d 7, 10 (D.D.C. 2001) (APA); *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 593 (1980) (CAA) (if Congress had intended 42 U.S.C. § 7607(b)(1) cases to

include "the tools of discovery," then it would have said so). Consequently, a putative litigant challenging a regulatory action like the one at issue in this case must obtain any evidence from a third-party non-litigant *before* filing its lawsuit. But how?

Sure enough, in this case, Fuel Petitioners brought evidence to the lower court. *E.g.*, Pet.App.19a–Pet.App.20a. But how were they supposed to coerce even a single automaker, much less many of or all the automakers, to provide testimonial evidence of what those automakers would or even might do? Going further, how were Fuel Petitioners supposed to adduce that sort of statement from the automakers in a publicly filed rulemaking comment? Fuel Petitioners would have no "tools of discovery" there. The lower court has no answers.

And just as surely, the lower court refused to allow application of any "tools of discovery" in this case. Pet.App.30a. In the lower court's words, "After oral argument, Fuel Petitioners filed a motion to supplement the record and to file a supplemental brief regarding their standing." *Id.* But the lower court denied the request. *Id.* Read charitably, the lower court left open a door for post-petition discovery by citing its prior decision in *Sierra Club v. EPA*, 292 F.3d 895 (D.C. Cir. 2002). *Id.* at Pet.App.30a–Pet.App.31a. But nothing about the lower court's prior decision suggests that it would ever allow **third-party discovery** to show standing *after* the petitioner has begun its request for review. *See Sierra*

Club, 292 F.3d at 900–01. And nothing about *Lujan* addresses whether lower courts in APA or 42 U.S.C. § 7607(b)(1) cases will, must, or could allow **third-party discovery** to show standing *after* a petitioner starts its case. *See Lujan*, 504 U.S. at 561–62.

That brings us full-circle to the disconnect: a court cannot require third-party testimony to show standing in a record-review case. And the lower court should not have demanded it here.

IV. LOWER COURTS MUST PROVIDE A CHECK ON REGULATORY OVERREACH.

The lower court's mistaken new standard also implicates check-and-balance problems. Our constitutional order rests on each branch of federal government policing encroachments on its prerogatives. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 593–94 (1952) (Frankfurter, J., concurring). A federal court's unwillingness to check administrative power threatens that equipoise. *See City of Arlington v. FCC*, 569 U.S. 290, 315 (2013) (Roberts, C.J., dissenting) ("It would be a bit much to describe the result as 'the very definition of tyranny,' but the danger posed by the growing power of the administrative state cannot be dismissed.").

The federal courts' Article III duty to hear cases and controversies is a bulwark against "administrative state" "tyranny." *See id.*; *see also Loper Bright Enters. v. Raimondo,* 603 U.S. 369, 384 (2024). This is not a duty that the lower federal courts

can abdicate by erecting barriers to fair, neutral judicial review in cases challenging federal regulatory actions. *Id.* at 412. Yet as Fuel Petitioners describe, this case is one in a series where the lower court has manufactured procedural hurdles to avoid its obligation to definitively decide the lawfulness of various "California waiver" and other EV Mandate actions. *See* Pet'rs' Br. 8–9, 13–15, 35–45.

By reversing the lower court on "redressability," this Court can force the lower court to meaningfully address the regulatory overreach complained of in this case.

V. COURTS SHOULD NOT LET REGULATORS RUN ROUGHSHOD OVER AMERICAN MARKETS.

The lower court's decision defies common sense and threatens "Main Street America" nationwide. On common sense, the structural separation of powers and need for basic regulatory accountability require a redressability standard that acknowledges the Executive Branch's profound ability to influence markets.

Amici's interests in this case amplify Fuel Petitioners' primary point: federal regulatory actions can cause harm far beyond the *most directly* regulated "target." *See* Pet'rs' Br. 33–34. Here, the regulators' policy that forces automakers to stop making fossil-fuel-based automobiles obviously also hurts the entities that make and sell those fuels, *id.*, the entities

like NAW's members who will have to replace vehicle fleets with electric vehicles, *see supra*, at 1,[2] and the entities like ARC's and TRC's members who rely on fossil-fuel-production for income, *see id.*

As a practical matter, an unnecessarily formalistic redressability standard premised on an inert concept of markets will also harm the entities whose welfares hinge on a stable regulatory process: the businesses and entrepreneurs that drive growth and innovation. *See supra*, at 1.

"Main Street" businesses, more than perhaps any other segment of the Nation's economy, stand the most to lose if this Court adopts such a formalistic approach to deciding who can challenge a regulation in court. *Amici* represent a broad cross-section of the American economy, including small businesses and property owners nationwide. They suffer a shared harm stemming from the lower court's redressability

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[2] *See also, e.g.*, PwC, *Merge Ahead: Electric Vehicles and the Impact on the Automotive Supply Chain*, https://www.pwc.com/us/en/industrial-products/publications/assets/pwc-merge-ahead-electric-vehicles-supply-chain.pdf (last visited Jan. 31, 2025) (describing the challenges that transitioning to electric vehicles will impose on wholesaler-distributors (among others) even just *within* the auto-manufacturing industry). Aside from replacing fleets, there are potential harms inherent merely in figuring out how to supply the parts for electric vehicles. *Id.* at 8 ("Suppliers that aren't ready to meet the challenges that rising EV adoption will bring could present a risk to automobile manufacturers at the same time as their own business is evolving.").

standard: a future inability to challenge further market-distorting decisions—like an EV Mandate—foist upon them by federal regulators. *See supra*, at 1.

Consider the plight of *amici*'s royalty-owning members, many of whom are individuals and families whose livelihoods depend on the income streams generated by the network of exploration and production, transportation, refining, and distribution enterprises that are threatened—purposefully targeted—by an EV Mandate. For the royalty owners, the oil-and-gas concerns working on and in their properties are not faceless corporate entities; they are often independent businesses whose continued operations and relationships with the royalty owners underwrite the royalty owners' economic security and their communities' fiscal health.

The lower court created a new "redressability" hurdle that a litigant could never be expected to cross in a case like this. What's more, the lower court refused to allow use of the "tools of discovery" to cross that hurdle. But the creation of that hurdle was premised on a myopic view of the impacts of EPA's actions throughout this Nation and on the disconnect separating cases like this one from traditional civil litigation. As a result, the lower court has wrongfully abdicated its duty to meaningfully assess the regulatory actions in this case and more generally the devastation that a regulatorily imposed EV Mandate will have nationwide.

CONCLUSION

For the foregoing reasons, *amici* respectfully ask this Court to reverse the lower court.

Respectfully submitted,

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