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 THE STATE RESPONDENTS

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March 12, 2025

QUESTION PRESENTED

Whether petitioners carried their burden to establish the redressability component of Article III standing.

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INTRODUCTION

Parties who seek to invoke the jurisdiction of a federal court bear the burden of showing that they have Article III standing. As their case progresses, they must "point to factual evidence" establishing that they satisfied the three elements of standing—injury, causation, and redressability—as of the time they filed suit. *Murthy v. Missouri*, 603 U.S. 43, 57-58 (2024). The only question here is how to apply those long-settled requirements to the peculiar circumstances of this case, involving a waiver of preemption under Section 209(b) of the Clean Air Act.

As petitioners describe things, that question is "straightforward" because standing is automatic here. Pet. Br. 35. Petitioners profit from sales of fuel. They note that the waiver allowed California to impose state standards limiting greenhouse-gas emissions across automakers' fleets and requiring automakers to sell a certain percentage of zero-emission vehicles. Petitioners assert that "[t]hey promptly challenged EPA's waiver," *id.* at 20; that the waiver injures petitioners and their members by "reduc[ing] the use of liquid fuel," *id.*; and that "[s]etting aside EPA's waiver would . . . end[] the artificial depression of demand for petitioners' products," *id.* at 20-21. Standing was so "obvious," in their view, that they did not "need to supply additional record evidence" to establish redressability. *Id.* at 17, 18.

But "applying the law of standing" frequently demands a "heavily fact-dependent" inquiry, *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 384 (2024), and petitioners elide the most salient facts in this case. EPA granted the relevant waiver in 2013. Petitioners did not challenge that waiver and neither did anyone else. It remained in effect for more than six years before

EPA withdrew it in 2019. During those six years, in response to the state standards and wider national and global trends, automakers invested heavily in changing their fleets and building consumer demand for electric vehicles. Consumer preferences and the automobile market evolved. Even when EPA withdrew the waiver, automakers accelerated their transition to electric vehicles and consumer demand continued to grow.

In 2021, when EPA invited comment on whether to reinstate the waiver, the state respondents supported reinstatement. As their comment explained, the withdrawal had exceeded EPA's authority and it deprived California's regulations of legal effect. But by the time EPA reinstated the waiver and petitioners challenged that decision in 2022, "'both internal sustainability goals and external market forces'" were pushing "manufacturers to transition toward electric vehicles, irrespective of California's regulations." Pet. App. 24a n.8. Indeed, publicly available evidence submitted by the state respondents showed that zero-emission vehicles sold in California in 2022 already exceeded what the relevant standards required. Consumers were willing to pay substantial price premiums for those vehicles. And automakers had strong incentives to keep selling them.

When the court of appeals confronted petitioners' challenge to the reinstatement, it had to assure itself of jurisdiction by evaluating whether vacatur of that reinstatement would likely lead automakers to make choices that would redress petitioners' asserted injury. Given the circumstances when petitioners filed suit in May 2022, would automakers change their fleets or prices in a way that would increase demand for petitioners' liquid-fuel products? Or would automakers

exceed the requirements of California's standards for their own economic and strategic reasons, even without a legal requirement to do so? Petitioners submitted no evidence addressing that critical issue. And given that absence of proof, the court of appeals properly held that petitioners failed to meet their burden of demonstrating redressability.

Petitioners ask this Court to excuse that failure. They first urge the Court to adopt a new "categorical rule." Pet. Br. 4. Under that rule, redressability would be established automatically whenever petitioners challenge a regulation that implicates the use of their products—even if the regulation applies only to third parties, and even where petitioners introduce no evidence indicating that those third parties would have acted differently in the regulation's absence. *Id.* In the alternative, petitioners ask the Court to credit their unsubstantiated predictions about how automakers might respond to a vacatur. *Id.* at 30-35. Those arguments find no support in this Court's precedent. Adopting them would effectively eliminate the plaintiff's "burden of showing that third parties will likely react" to a favorable judgment in a way that provides redress. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019). And they would allow a court to assume redressability even if all the evidence before it indicates that a favorable judgment would not, in fact, redress the plaintiffs' injury. This Court should reject petitioners' novel standing theories and affirm the judgment below.

STATEMENT

A. Legal and Regulatory Background

1. The Clean Air Act directs EPA to prescribe federal standards governing emissions of air pollutants

from new motor vehicles and new motor vehicle engines. 42 U.S.C. § 7521. Section 209(a) of the Act generally preempts States and their political subdivisions from "adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines." *Id.* § 7543(a). But Section 209(b) instructs EPA to "waive application of [Section 209] to any State which ha[d] adopted" qualifying emission standards "prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards." *Id.* § 7543(b)(1). If a State makes that determination, EPA must waive preemption unless it makes one of three enumerated findings. *See id.* § 7543(b)(1)(A)-(C).

California is the only State eligible for a waiver under Section 209(b) because it was the only State that had developed qualifying motor vehicle emissions standards before March 30, 1966. Pet. App. 7a. "Congress recognized that California was already the 'lead[er] in the establishment of standards for regulation of automative pollutant emissions' at a time when the federal government had yet to promulgate any regulations of its own." *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1079 (D.C. Cir. 1996). Congress designed Section 209 to allow California to continue to serve as a "'laboratory for innovation,'" *id.* at 1080, while also "avoid[ing] the economic disruption" that would come from manufacturers "having to meet fifty-one separate sets of emission control requirements," *Motor & Equip. Mfrs. Ass'n, Inc. v. EPA*, 627 F.2d 1095, 1109 (D.C. Cir. 1979); *see also* 42 U.S.C. § 7507 (1977 amendment allowing other States to adopt standards "identical to the California standards for which a waiver has been granted for such model year"); Pet.

App. 9a n.3 (noting that "seventeen states have chosen to adopt some portion of the California regulations").

California received its first waiver in 1968 and has received additional waivers in every subsequent decade.[1] For instance, EPA granted a waiver in 1993 for California's first Zero Emission Vehicle (ZEV) regulation, which required a specific percentage of light-duty vehicles to be zero-emission vehicles with no exhaust or evaporative emissions. 58 Fed. Reg. 4166 (Jan. 13, 1993).[2] EPA granted another waiver, in 2009, for California's first set of regulations to control greenhouse-gas emissions from motor vehicles. 74 Fed. Reg. 32,744 (July 8, 2009).

2. This litigation concerns a set of emissions standards that California adopted in 2012 as part of its Advanced Clean Cars I program. 78 Fed. Reg. 2112 (Jan. 9, 2013). As relevant here, those standards included a requirement that automakers reduce the average greenhouse-gas emissions across the fleets of vehicles they sell in California. *See id.* at 2114. They also included new ZEV standards, requiring manufacturers to meet specified "ZEV credit percentage" requirements. Cal. Code Regs. tit. 13, § 1962.2(b) (2012).

A manufacturer can satisfy the "ZEV credit percentage" in several ways: by generating credits from sales of qualifying vehicles, purchasing credits from other manufacturers, using excess credits banked in prior years, or applying credits obtained by overcom-

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[1] *See* EPA, *Vehicle Emissions California Waivers and Authorizations*, https://tinyurl.com/3rxscztw (last visited Mar. 6, 2025).

[2] *See* Cal. Air Res. Bd., *Low-Emission Vehicle Program*, https://tinyurl.com/49m28yze (last visited Mar. 6, 2025).

plying with the greenhouse-gas emission requirements. *See* Cal. Code Regs. tit. 13, § 1962.2(d)(5); 78 Fed. Reg. at 2119-2120, 2135. The number of ZEV credits generated by a vehicle sale depends on the vehicle's range when operating on electric power. *See* Cal. Code Regs. tit. 13, § 1962.2(d)(5). For example, a plug-in hybrid vehicle with a "50 mile" electric range earns one credit, while a fully battery-electric vehicle with a "350 mile" range earns four credits.[3] As a result, a fleet may satisfy the standards even though ZEV sales as a percentage of light-duty vehicles sold is well below the applicable ZEV credit percentage requirement.

The Advanced Clean Cars I standards affected model years beginning in 2017 (for greenhouse-gas emissions) and 2018 (for ZEV requirements). Both sets of standards were originally structured to increase in stringency through model year 2025 and remain in effect at 2025 levels for subsequent model years. *See* Cal. Code Regs. tit. 13, § 1961.3(a)(1)(A) (2012); *id.* § 1962.2(b)(1)(A) (2012); J.A. 50. In 2022, however, California amended the ZEV standards (but not the greenhouse-gas standards) to expire after model year 2025. *See* Cal. Code Regs. tit. 13, § 1962.2(b)(1)(A) (2022).[4]

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[3] 78 Fed. Reg. at 2114-2115; *see* Cal. Air Res. Bd., *ACC II ZEV Technology Assessment*, at 11-12 tbl. 2 (Apr. 12, 2022) (showing electric ranges of model year 2021 battery and plug-in hybrid vehicles), https://tinyurl.com/2d2db9vc (last visited Mar. 11, 2025).

[4] California adopted that amendment because its Advanced Clean Cars II standards included a new set of ZEV requirements applicable to model years 2026 and beyond. *See* Cal. Code Regs. tit. 13, § 1962.4(a) (2022). EPA granted a waiver for the Advanced Clean Cars II standards on December 17, 2024. 90 Fed.

(continued…)

California requested a waiver for the Advanced Clean Cars I program in 2012. That request described how the new standards would increase production of zero-emission vehicles, thus decreasing emissions of criteria pollutants and greenhouse gases. J.A. 34-35, 40-44. EPA granted the waiver in early 2013. 78 Fed. Reg. at 2145. As the Federal Register notice of that action observed, petitions for judicial review were due by March 11, 2013. *Id.*; *see* 42 U.S.C. § 7607(b)(1). Nobody challenged EPA's decision to grant the waiver.

More than six years later, EPA withdrew the parts of the waiver at issue in this case. 84 Fed. Reg. 51,310 (Sept. 27, 2019). By that time, automakers had made "investments to meet" the greenhouse-gas and ZEV standards and "had adjusted their fleets to comply with" them. Pet. App. 12a; *see id.* at 124a. Consumers had grown increasingly familiar with zero-emission vehicles. Even after the waiver was withdrawn, consumer demand for those vehicles continued to grow and automakers continued to announce plans to sell them in greater numbers. J.A. 191-192, 201-203. By 2020, for example, zero-emission vehicles were around 8% of the new light-duty vehicles registered in California; that figure jumped to over 12% the following year.[5]

In 2021, EPA solicited comment on whether it should reinstate the waiver. The state respondents submitted a comment in July 2021, explaining that

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Reg. 642 (2025). Several challenges to that waiver are now pending, including one that two of the petitioners here filed on February 28, 2025. Pet. for Rev., *Valero Renewable Fuels Co., LLC v. EPA*, No. 25-1078 (D.C. Cir.).

[5] Cal. Energy Comm'n, *New ZEV Sales in California*, https://tinyurl.com/pt526fp5 (displaying "ZEV Sales Share" in top-right corner when 2020 and 2021 filters are selected).

the withdrawal was unlawful and poorly reasoned. C.A. J.A. 188-215; *see* J.A. 51-68. Auto-industry commenters emphasized the "billions of dollars of investment in electric vehicle manufacturing and infrastructure" that automakers had already made as a result of the 2013 decision to grant the waiver. J.A. 103 (National Coalition for Advanced Transportation comment); *cf.* J.A. 63 (California comment observing that "automakers have complied with, and often overcomplied with, model years 2017-2020 already"). EPA reinstated the waiver in March 2022. 87 Fed. Reg. 14,332 (Mar. 14, 2022).

B. Procedural Background

1. The petitioners here are various companies that produce or sell liquid fuels, as well as related trade associations. Pet. App. 2a. They filed petitions for review of EPA's reinstatement decision in the D.C. Circuit on May 12, 2022. *Id.* at 15a. The court of appeals consolidated those cases, along with another case initiated by a group of States led by Ohio. *Id.* Shortly thereafter, the state respondents here filed an unopposed motion for leave to intervene in support of EPA, as did various automakers and public-interest organizations. *Id.* at 15a & nn.4-6; *see* J.A. 107. Those motions were granted. *See* Pet. App. 15a.

Petitioners principally argued that EPA's reinstatement of the waiver contravened the Clean Air Act. Pet. App. 16a. Before the court of appeals could reach the merits of that claim, however, it had to assure itself of jurisdiction. Under longstanding circuit rules, the opening brief for a petitioner seeking review of agency action "must set forth the basis for the claim of standing." D.C. Cir. R. 28(a)(7). And if "standing is not apparent from the administrative record, the brief must include arguments and evidence establishing the

claim of standing." *Id.*; *see also Sierra Club v. EPA*, 292 F.3d 895, 901 (D.C. Cir. 2002).

Petitioners' opening brief below devoted just two paragraphs to standing. J.A. 118-119. Petitioners explained that "depressing the demand" for liquid fuels "injures petitioners and petitioners' members financially." *Id.* at 118. They cited documents from California's 2011 rulemaking in which a California agency had forecast the prospect of financial injury to oil and gas industry participants. *Id.* (citing C.A. J.A. 799, 801, 830, 832). Petitioners asserted that "[t]his economic injury . . . is caused by the challenged regulatory action, and this Court can redress that injury by setting aside the action." J.A. 118. They attached 14 declarations, but the only discussion of redressability in those declarations consisted of unsupported assertions that vacatur would remedy petitioners' injury. *Id.* at 130, 137, 150, 154, 158, 167.

In response, the state respondents argued that petitioners had failed to establish standing, emphasizing that petitioners provided no evidence that vacatur of the reinstatement decision in May 2022 would change automakers' behavior in a way that would increase fuel sales. J.A. 185-187. The state respondents also submitted evidence undermining the likelihood of any such change: by 2022, sales of zero-emission vehicles in California exceeded what was required by the relevant standards; consumer demand for those vehicles was growing, as was consumer willingness to pay price premiums; and many manufacturers had announced plans for even greater zero-emission vehicle sales in the future. *Id.* at 191-195, 201-203. On reply, petitioners did not submit record evidence countering the state respondents' evidence about the circumstances in 2022. *See id.* at 209-211.

At oral argument, the panel questioned petitioners about jurisdiction, with a particular focus on the "argument that you haven't demonstrated redressability." C.A. Oral Arg. 25:50-26:12. Two weeks later, petitioners sought leave to file a supplemental brief and to supplement the record with two new declarations. Pet. App. 30a. The proposed brief and declarations mostly addressed the separate issue of mootness. *See* C.A. Private Pet. Proposed Supp. Br. 1-3, 4-13. In a short section on standing, petitioners characterized the arguments against redressability as "implausible" and "incredible," *id.* at 3, 4—but again cited no evidence establishing how judicial relief in May 2022 would have redressed their asserted injuries, and did not attempt to counter the state respondents' evidence on that point.

2. The court of appeals concluded that it lacked jurisdiction to decide petitioners' challenge because petitioners had failed to establish Article III standing. Pet. App. 16a-19a. Without deciding whether petitioners had established injury or causation, the court explained that petitioners fell "far short of meeting their burden" to establish a likelihood "that their alleged injuries would be redressed" if the court agreed with petitioners' merits theory and vacated EPA's reinstatement decision. *Id.* at 21a.

As the court explained, redressability for petitioners "'hinge[d] on' the actions of third parties—the automobile manufacturers who are subject to the waiver." Pet. App. 22a. Petitioners needed to show that automakers would respond to vacatur of the reinstatement "by producing and selling fewer non-conventional vehicles or by altering the prices of their vehicles such that fewer non-conventional vehicles—and more conventional vehicles—were sold." *Id.* But

the record indicated "that 'manufacturers are already selling *more* qualifying vehicles in California than the State's standards require,'" *id.* at 28a, and "that 'both internal sustainability goals and external market forces' are prompting manufacturers to transition toward electric vehicles, irrespective of California's regulations," *id.* at 24a n.8; *see also id.* at 28a.

Nevertheless, the court of appeals observed, petitioners "treated redressability as a foregone conclusion" instead of making a factual showing. Pet. App. 25a. They did not "attempt[] to explain in any detail how their injuries are redressable, let alone to 'cit[e] any record evidence' or to file 'additional affidavits or other evidence sufficient to support' redressability." *Id.* at 24a-25a. Nor did petitioners "meaningfully address[]" redressability on reply, after the state respondents introduced arguments and evidence contesting redressability. *Id.* at 28a. "Ultimately, the record evidence, coupled with the filings of the EPA and intervenors, provide[d] th[e] Court with no basis to conclude that Petitioners' claims are redressable—a necessary element of standing that Petitioners bear the burden of establishing." *Id.* at 29a.

The court of appeals also described its understanding that the challenge before it "concern[ed] only" the reinstatement of the waiver "as to Model Years 2017 through 2025." Pet. App. 22a. *But see supra* p. 6; *infra* p. 44. On that understanding, the court explained, petitioners had to show "not only that automobile manufacturers are likely to respond to a decision by this Court by changing their fleets in a way that alleviates [petitioners'] injuries in some way, but also that automobile manufacturers would do so relatively quickly—by Model Year 2025." Pet. App. 23a. That timing ele-

ment "further complicated" the redressability analysis," in the court's view. *Id.* at 22a. "[E]ven if" petitioners had established that "automobile manufacturers were inclined to change course" in response to a vacatur in a way that would increase fuel sales, it was "far from clear that they could do so" by model year 2025. *Id.* at 24a; *see id.* at 23a.

Finally, the court of appeals denied petitioners' post-argument motion for leave to file a supplemental brief and declarations. Pet. App. 30a-32a. The court explained that, under the circumstances, petitioners should have understood their obligation to address redressability in their opening brief. *Id.* at 31a. Moreover, "[p]etitioners offer[ed] no explanation for having failed to address redressability in their reply brief after California raised the issue in its opposition brief." *Id.* at 32a.

Petitioners did not seek panel rehearing or rehearing en banc. They instead filed a petition for a writ of certiorari respecting both the redressability question and the merits of their statutory claim (which the court of appeals had not reached). This Court granted certiorari on the redressability question only.[6]

SUMMARY OF ARGUMENT

Petitioners sought a judgment vacating EPA's reinstatement of a nearly decade-old waiver. Under settled precedent, petitioners had the burden of establishing that automakers would likely respond to

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[6] This Court also denied a petition for certiorari filed by Ohio and other petitioners, which advanced a separate constitutional claim. *See Ohio v. EPA*, No. 24-13 (Dec. 16, 2024). The court of appeals had held that the *Ohio* petitioners established standing to bring that claim, but it rejected the claim on the merits. *See* Pet. App. 32a-49a.

that vacatur in ways that would increase demand for petitioners' liquid-fuel products. By the time they filed suit in May 2022, however, the likely effect of a vacatur was not self-evident: in the nine years since EPA first granted the waiver, automakers had made enormous investments in producing and marketing zero-emission vehicles; consumer demand for those vehicles had recently surged; and evidence before the Court indicated that automakers would continue to sell those vehicles in large numbers regardless of the reinstatement or its potential vacatur. Article III required petitioners to introduce current evidence buttressing their assertion that a vacatur in 2022 would lead automakers to change their fleets or prices in ways that would increase liquid-fuel sales. Because petitioners did not even attempt to do so, the court of appeals properly held that they failed to establish standing.

In this Court, petitioners advance several novel theories for why they had no obligation to introduce any evidence of redressability. None of those theories is persuasive. They first propose a categorical rule that redressability is automatically established whenever a challenged government action implicates the use of the challenger's products. Pet. Br. 17-18. Precedent forecloses that proposal: this Court has consistently focused on the particular facts of a case—and required challengers to submit specific evidence supporting redressability before obtaining a final judgment. For similar reasons, plaintiffs may not rely on unsupported predictions about the effects of a judgment on a third party's choices. *See id.* at 18. They must instead meet "their burden of showing that third parties will likely react in predictable ways" by introducing actual evidence. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019). And the fact that a statute

or regulation "does not sunset" (Pet. Br. 19) does not, by itself, establish standing to challenge it.

Finally, petitioners' belated attempts to identify record evidence supporting redressability cannot change the outcome here. Their briefs and declarations below were conclusory on the subject of redressability. The additional evidence they describe in this Court not only comes too late, it would have been insufficient even if they had presented it below: it consists of outdated projections that cannot substitute for evidence about the market as it existed when petitioners filed this challenge in May 2022.

ARGUMENT

I. PETITIONERS FAILED TO ESTABLISH REDRESSABILITY

Petitioners had the burden to establish standing. As to redressability, they had to show that judicial vacatur of the reinstatement decision at the time they filed suit in May 2022 would likely lead to increased fuel sales. They failed to carry that burden.

A. It Was Petitioners' Burden to Introduce Evidence Establishing Each Element of Article III Standing

Before turning to the merits of a suit, a court must assure itself of jurisdiction. *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). The "burden of establishing" jurisdiction lies with "the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 182-183 (1936)).

Standing is "an essential and unchanging part" of Article III jurisdiction. *Lujan v. Defs. of Wildlife*, 504

U.S. 555, 560 (1992). The doctrine of standing is built on "the idea of separation of powers." *United States v. Texas*, 599 U.S. 670, 675 (2023). It "implements 'the Framers' concept of the proper—and properly limited—role of the courts in a democratic society.'" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (quoting Roberts, *Article III Limits on Statutory Standing*, 42 Duke L.J. 1219, 1220 (1993)).

The "irreducible constitutional minimum of standing contains three elements." *Lujan*, 504 U.S. at 560. First, the party bringing suit "must have suffered an 'injury in fact.'" *Id.* Second, that injury must "be 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.'" *Id.* (alterations omitted). And third, "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Id.* at 561. Each element is assessed as of the time the suit commenced. *Murthy v. Missouri*, 603 U.S. 43, 58 (2024).

A party seeking to invoke the jurisdiction of a federal court "must support each element of standing 'with the manner and degree of evidence required at the successive stages of the litigation.'" *Murthy*, 603 U.S. at 58. At the outset of litigation, "'mere allegations'" may suffice; as the case progresses, a party "must . . . point to factual evidence." *Id.* A petitioner who challenges agency action may be able to carry its burden by identifying evidence in the administrative record that establishes its standing. *See, e.g.*, *Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002). But if "standing is not apparent from the administrative record," a petitioner's "brief must include arguments and evidence establishing the claim of standing." D.C. Cir. R. 28(a)(7); *see Sierra Club*, 292

F.3d at 900; *see generally* 15 Redish, Moore's Federal Practice §§ 101.31, 101.61[10] (3d ed. & Supp. 2025).

Sometimes standing analysis is straightforward. For instance, in some cases the party invoking the court's jurisdiction is itself "an object of" the challenged government action. *Lujan*, 504 U.S. at 561. The government might, for example, proscribe speech that the plaintiff engages in. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161-167 (2014). Or it might require a state plaintiff to engage in particular regulation. *See, e.g.*, *West Virginia v. EPA*, 597 U.S. 697, 718-719 (2022). In those scenarios, "there is ordinarily little question that the action . . . has caused [the plaintiff] injury, and that a judgment preventing . . . the action will redress" that injury. *Lujan,* 504 U.S. at 561-562; *see All. for Hippocratic Med.*, 602 U.S. at 382.

In other scenarios, "much more is needed." *Lujan*, 504 U.S. at 562. When a party's "asserted injury arises from the government's allegedly unlawful regulation . . . of *someone else*," for example, standing can be "'substantially more difficult' to establish." *Id.* In those cases, "causation and redressability ordinarily hinge on the response of" that third party—"and perhaps on the response of others as well." *Id.* Because the inquiry turns on "choices made by independent actors not before the courts," the plaintiff must "adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury." *Id.* For instance, if plaintiffs are injured by the lack of affordable private housing, they must show "an actionable causal relationship" between the challenged zoning ordinance and the choices of private third parties who build and sell housing. *Warth v. Seldin*, 422 U.S. 490, 507

(1975). Their claim may not proceed if the asserted injury instead results from "the economics of the area housing market." *Id.* at 506; *see generally id.* at 508 (requiring the party "who seeks to challenge" a government action to introduce "specific, concrete facts demonstrating . . . that he personally would benefit in a tangible way from the court's intervention").

Concrete evidence from the plaintiff is especially critical if another party has introduced evidence undermining the asserted theory of standing. "When challenged by . . . an opposing party," for example, a plaintiff "invoking the court's jurisdiction cannot simply allege a nonobvious harm, without more." *Wittman v. Personhuballah*, 578 U.S. 539, 545 (2016). And if "there is no 'more,'" then there is no jurisdiction. *Id.*; *see generally Hertz Corp. v. Friend*, 559 U.S. 77, 96-97 (2010) (when defendants raise facts calling jurisdiction into doubt, plaintiffs "must support their allegations by competent proof").

B. The Circumstances of This Case Raised a Serious Question as to Whether Petitioners' Claim Was Redressable

As the court of appeals recognized, this is not a case where standing is self-evident. Petitioners comprise companies that produce or refine fuel, companies that develop biorefining technology, and various trade associations (for energy companies, farmers, and convenience store owners). Pet. Br. II-V, 20. They claim an injury of financial harm from reduced fuel sales. *Id.* at 21-22. But the standards at issue here do not regulate fuel production or sales. Instead, the standards regulate an activity in which petitioners do not participate: automobile sales. Because petitioners are not directly regulated by the challenged agency action,

they needed to identify evidence showing that automakers who *are* subject to those standards would make choices that would "produce causation and permit redressability of injury." *Lujan*, 504 U.S. at 562.

Petitioners' theory is that the state emissions standards injure them by effectively requiring automakers to sell more "vehicles that use less or no liquid fuel," which reduces demand for petitioners' products. Pet. Br. 17. They posit that their revenues would increase if the standards no longer had legal effect, because automakers would then make and sell more cars that run on liquid fuel. *Id.* at 24. That theory would indeed have been "straightforward" (*id.* at 35) if petitioners had promptly sought review following EPA's original approval of the waiver in 2013—as they recently did in challenging the Advanced Clean Cars II waiver, *see supra* p. 6 n.4.[7]

In calendar year 2013, zero-emission vehicles made up about 2% of light-duty vehicle sales in California.[8] To meet the "minimum ZEV credit percentage" requirements of the Advanced Clean Cars I standards,

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[7] Petitioners have suggested that D.C. Circuit precedent prohibited them from challenging the 2013 action because California deemed compliance with federal standards to satisfy the state standards. *See* Pet. 8 (citing *Chamber of Com. of U.S. v. EPA*, 642 F.3d 192, 206 (D.C. Cir. 2011)); Pet. Br. 8-9. But California's ZEV standards—the main focus of petitioners' present challenge—never contained a "deemed-to-comply" provision, and thus could have been challenged in 2013. J.A. 59-60 n.14 (deemed-to-comply provision "only applies to the [greenhouse-gas] standard").

[8] *See* Cal. Air Res. Bd., *California's Advanced Clean Cars Midterm Review*, App. B, at B15 fig. 9 (Jan. 18, 2017), https://tinyurl.com/yrzdx3t4.

automakers needed to grow their zero-emission vehicle sales many times over: they would have to meet a minimum credit percentage of 4.5% by model year 2018, rising to 22% by model year 2025. Cal. Code Regs. tit. 13, § 1962.2(b)(1)(A) (2012). Regulators estimated that meeting that 22% credit requirement would require zero-emission vehicles to comprise about 15% of light-duty new-vehicle sales by 2025. *See* J.A. 16, 32; 78 Fed. Reg. 2112, 2119 (Jan. 9, 2013). Absent the new regulatory requirement, there was no reason to think automakers would make that shift for their own independent reasons. Consumers in 2013 were largely unfamiliar with zero-emission vehicles or had a negative impression of them.[9] And automakers warned that "consumer demand for ZEVs" was so anemic that they might not even be able to meet the requirements for model year 2018. 78 Fed. Reg. at 2140.

But petitioner challenged EPA's reinstatement of the waiver nearly a decade later. By then, companies had been "making investments" for years "in updating their fleets and growing consumer demand for electric vehicles." Pet. App. 12a, 14a. They had built factories to make batteries and electric cars. *See* J.A. 103 (noting "billions of dollars of investment in electric vehicle manufacturing and infrastructure"); J.A. 205-206 (describing facilities in Alabama, Ohio, South Carolina, Texas, and West Virginia).[10] They had created sales channels and support capabilities for zero-emission

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[9] *See California's Advanced Clean Cars Midterm Review*, App. B, *supra*, at B38-B50.

[10] *See also* C.A. Admin. R. Doc. 137, at 2 (July 6, 2021) (Cmt. of Tesla, Inc.), https://tinyurl.com/5ed42zdy, *reproduced at* C.A. J.A. 368 (describing factories and facilities across the country).

vehicles. *See, e.g.*, J.A. 103-105. And they had invested in "consumer outreach" and "education" to boost demand.[11]

Some of those investments might have been in response to the California standards—but not all. Global demand and industry trends also spurred automakers to invest in developing and marketing zero-emission vehicles.[12] And even during the multi-year period when California's waiver was withdrawn, automakers had "accelerat[ed their] transition to electrified vehicles across a wide range of vehicle segments." 86 Fed. Reg. 74,434, 74,494 (Dec. 30, 2021); *see id.* at 74,486-74,487; Pet. App. 13a-14a.

Whatever their cause, automakers' enormous investments in electric vehicles since 2013 resulted in a dramatic increase in demand for zero-emission vehicles between 2020 and 2022. *See* J.A. 191 (national market share of qualifying vehicles "almost tripled" across that two-year period). Consumer demand had driven zero-emission vehicle prices well above manufacturers' suggested retail prices. *Id.* at 192-194. Consumers were willing to accept long waiting periods to get those vehicles. *Id.* at 194. Thus, "'both internal sustainability goals and external market forces'" were

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[11] C.A. Admin. R. Doc. 5966, at 3 (Oct. 26, 2018) (Cmt. of Nissan North America, Inc.), https://tinyurl.com/f7pevw4m, *reproduced at* C.A. J.A. 624.

[12] *See, e.g.*, J.A. 201-203; C.A. Admin. R. Doc. 29, at 1 (Apr. 29, 2021) (Cmt. of Ford Motor Co.), https://tinyurl.com/3zk2spwc, *reproduced at* C.A. J.A. 156 (Ford's plan to "invest $22 billion by 2025 to put electrified vehicle models on the road globally"); C.A. Admin. R. Doc. 133, App. F, at 9 (Oct. 2018) (Cmt. of California et al.), *reproduced at* C.A. J.A. 353 (describing automakers' plans to introduce additional models of electric cars), *also available at* https://tinyurl.com/2hu47fcw (Attach. 2).

pushing "manufacturers to transition toward electric vehicles." Pet. App. 24a n.8; *see also* J.A. 201-203; 86 Fed. Reg. at 74,486.

So it was hardly "obvious" (Pet. Br. 18, 34, 35) in May 2022 that reduced sales of petitioners' fuel products were caused by the reinstatement of the waiver—instead of market forces and automakers' prior investments and plans. Nor was it obvious that vacatur of the reinstatement would likely affect automakers' future behavior in a way that would redress the asserted injury.

Indeed, evidence submitted by the state respondents indicated the opposite. Publicly accessible sales data showed that "zero-emission vehicles sold in calendar year 2022" in California "exceed what [the] standards require." J.A. 192. For that calendar year, about 19% of light-duty vehicles sold in the State qualified as zero-emission vehicles under California's standards—exceeding the 15% that regulators had forecast would be needed for compliance. *Id.* at 191-192; *see supra* p. 19. The lion's share of those sales (16% of total light-duty sales) were battery-electric vehicles.[13]

That represented a surge in sales of battery-electric vehicles that far outpaced early forecasts. The forecasts had projected that automakers would need battery-electric vehicles to be just 3.7% of total light-duty sales by model year 2025 to meet the credit requirements of the ZEV standards. J.A. 9. The unexpected consumer shift to battery-electric vehicles (rather than plug-in hybrids, as forecasters originally

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[13] *New ZEV Sales in California*, *supra*, https://tinyurl.com/pt526fp5 (displaying 262,076 "BEV" out of 1,581,844 annual light-duty sales when 2022 filter is selected).

anticipated) had profound consequences for automakers' compliance with the Advanced Clean Cars I standards. Because battery-electric vehicles can travel longer distances without emitting tailpipe pollutants, they yield the most "ZEV credits" for purposes of the standards. *See supra* p. 6. So the fact that 16% of light-duty sales were battery-electric vehicles in 2022 yielded a ZEV credit percentage for that year that was far above the highest requirement that the standards would ever impose. *See* Cal. Code Regs. tit. 13, § 1962.2(b)(1)(A) (2012) (22% ZEV credit requirement starting in model year 2025). And sales in California in 2022 were also exceeding the most stringent requirements of the fleetwide greenhouse-gas standards, even for future years, because the battery-electric vehicles also have far lower emissions than plug-in hybrids. *See* J.A. 7.

By May 2022, nine years after EPA first granted a waiver for the Advanced Clean Cars I standards, there was substantial reason to believe that automakers would exceed the standards for their own reasons even without the reinstatement. The court of appeals could not "presume[]" that petitioners' challenge was redressable. *Kokkonen*, 511 U.S. at 377. Nor could it assume redressability based on petitioners' "unadorned speculation." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 44 (1976). Article III required the court to ask whether petitioners had "met their burden" by introducing evidence demonstrating that automakers would "likely react" to a vacatur of the 2022 reinstatement in ways that would increase demand for petitioners' products and services. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019).

C. Petitioners Did Not Introduce Evidence Establishing Redressability

Petitioners did not carry their evidentiary burden. Indeed, they submitted virtually no argument or evidence bearing on the likely effect of a vacatur on the market as it existed in 2022.

1. Petitioners' opening brief in the court of appeals devoted one sentence to redressability. They asserted that their "injury is caused by the challenged regulatory action, and this Court can redress that injury by setting aside the action." J.A. 118. That single conclusory statement was not supported by any citation to evidence in the administrative record or elsewhere. Petitioners attached 14 standing declarations to their opening brief. *See* J.A. 120-184. But none of those declarations was sufficient to carry their burden.

The bulk of each declaration described the declarant's asserted injuries, with details supporting the (undisputed) proposition that petitioners and their members profit from fuel sales. The declarants had almost nothing to say about the critical question going to causation and redressability, which "are often 'flip sides of the same coin.'" *All. for Hippocratic Med.*, 602 U.S. at 380. That question was whether, in 2022, the reinstatement of the waiver or the vacatur of that reinstatement would affect automakers' choices in a manner leading to changes in fuel sales.

Of the declarants who addressed causation, some asserted their "understand[ing] that California's greenhouse-gas standards and zero-emission-vehicle mandate reduce the demand for fuel in California." J.A. 125, 140, 169, 183; *see also* J.A. 176. Those assertions were not accompanied by supporting facts or any discussion of the circumstances in 2022. Other declarants invoked statements from California about how

the standards would reduce demand for liquid fuels. *Id.* at 129, 136-137, 148, 153, 157, 166, 173, 180. Petitioners now describe those statements as "recent[] project[ions] that the waiver would 'reduce emissions through reductions in fuel production.'" Pet. Br. 38 (citing J.A. 148, 180). But the projections are not "recent" at all. They are from California's "2012 Waiver Request"—and state rulemaking documents submitted as part of that request—prepared a decade before the challenged reinstatement and petitioners' suit. J.A. 148, 180; *see also id.* at 180 (citing state estimates from 2011). Those outdated sources did not establish that any reduced fuel sales in 2022 were caused by the waiver's reinstatement instead of the dramatic changes in the market and consumer demand that predated the reinstatement.[14]

The declarants who addressed redressability did so in a single boilerplate sentence asserting that petitioners' "injuries would be substantially ameliorated if EPA's decision were set aside." J.A. 130, 137, 150, 154, 158, 167, 181; *see* Pet. App. 21a-22a. Again, not one of the declarants addressed the state of the market in 2022, when petitioners filed their suit. Nor did they say a word about automakers' behavior at that time, or the economic and other considerations that would shape automakers' response to a judicial vacatur. *See generally Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 201 (2000) (Scalia, J., dissenting) (discussing this Court's "refus[al] to find

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[14] One declarant also referenced a 2020 report by a Minnesota agency. J.A. 174; *see* Pet. Br. 38. But the national market share of qualifying vehicles "almost tripled" between 2020 and 2022. J.A. 191. In any event, petitioners' briefs in the court of appeals never mentioned effects on the Minnesota market as a basis for standing.

standing based on the 'conclusory allegations of an affidavit'"); *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 898-899 (1990) ("agree[ing]" that an affidavit was "insufficient to establish [the challenger's] right to seek judicial review" where it was "'conclusory and completely devoid of specific facts'" with respect to the key issue).

Even after the state respondents submitted their own evidence addressing those subjects and undercutting petitioners' theory of redressability, *supra* p. 9, petitioners did not "meaningfully address[] the redressability of their economic injuries in their reply brief[]." Pet. App. 28a-29a. Their primary contention on reply was that the States' argument "defies common sense." J.A. 209. They also quoted statements from the state respondents' July 2021 comment in support of the reinstatement. *Id.* at 210; *see* Pet. Br. 38 (citing J.A. 66). Those statements explained why EPA's 2019 decision to revoke the waiver was unjustified based on the record EPA had before it in that year, *see* J.A. 66 (citing 84 Fed. Reg. 51,310, 51,337 (Sept. 27, 2019)), and then described California's "demonstration in its 2012 waiver request," J.A. 66. Neither statement could have taken account of the market data showing that zero-emission vehicle sales tripled between 2020 and mid-2022. *See id.* at 191.

And petitioners' reply (J.A. 208-212) did not meaningfully address that more recent data either—or the evidence showing that market penetration of zero-emission vehicles in California in 2022 far exceeded any current or future requirement of the relevant standards. Nor did petitioners respond to the evidence indicating that automakers would "ha[ve] a similar incentive to engage in" the promotion and sale of zero-

emission vehicles even if the standards were not in effect. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 417 (2013); *see Warth*, 422 U.S. at 506 (no standing where evidence suggested that plaintiffs' injury was "the consequence of the economics of the . . . market").[15]

In short, petitioners' initial submission relied on the "possibility, unsubstantiated by allegations of fact, that their situation . . . might improve were the court to afford relief." *Warth*, 422 U.S. at 507. And petitioners' submission on reply neglected their duty to "support their allegations by competent proof," once "challenged on allegations of jurisdictional facts." *Hertz Corp.*, 559 U.S. at 96-97.

2. Article III demanded more. This Court has repeatedly rejected theories of redressability that depend on "'guesswork as to how independent decisionmakers will exercise their judgment'" instead of concrete evidence submitted by the party seeking to invoke federal jurisdiction. *Murthy*, 603 U.S. at 57; *see, e.g.*, *id.* at 73-74; *Haaland v. Brackeen*, 599 U.S. 255, 293-294 (2023); *Lujan*, 504 U.S. at 568-571 (plurality opinion); *Simon*, 426 U.S. at 42-43. "A federal court cannot ignore" a party's failure to establish redressability "without overstepping its assigned role in our system of adjudicating only actual cases and controversies." *Simon*, 426 U.S. at 39. Because petitioners did not provide the court of appeals with any facts showing a likelihood that vacating EPA's 2022 reinstatement would redress their asserted injuries, the court properly held that it lacked jurisdiction to decide the merits. Pet. App. 30a.

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[15] *See generally Nat'l Council for Adoption v. Blinken*, 4 F.4th 106, 111-112 (D.C. Cir. 2021) (discussing when standing evidence may be introduced on reply).

No one can doubt petitioners' desire to obtain an immediate and definitive judicial resolution of their merits theories. *See* Pet. 26-27. But the requirements of Article III often "mean[] that the federal courts decide some contested legal questions later rather than sooner." *All. for Hippocratic Med.*, 602 U.S. at 380. The court of appeals properly adhered to those requirements here, refusing to reach the merits after petitioners forewent any genuine effort to introduce facts establishing a likelihood that vacatur of the 2022 reinstatement would increase demand for their products.

II. PETITIONERS IDENTIFY NO VALID BASIS FOR REVERSAL

Having failed "to 'cit[e] any record evidence' or to file 'additional affidavits or other evidence sufficient to support' redressability" in the court below, Pet. App. 24a-25a, petitioners now ask this Court to hold that they did "not need to supply additional record evidence," Pet. Br. 17. They advance three theories: (i) that the Court should "adopt [a] categorical rule" that this type of government action "alone suffices to establish redressability," *id.* at 17, 18; (ii) that redressability follows from the purported "predictable effects" of the 2022 reinstatement on automakers, *id.* at 18; and (iii) that the duration of the challenged waiver, by itself, establishes redressability, *see id.* at 19, 45-47. But this Court's precedent forecloses those theories. And petitioners' attempt to argue, in the alternative, that the record contains "plenty [of] evidence" supporting redressability (*id.* at 37) ignores the gulf between the referenced evidence and the question that mattered: how automakers would likely have responded to a decision vacating the waiver in May 2022.

A. Government Regulations Implicating the Use of a Product Do Not Categorically Establish Standing for Producers to Sue

Petitioners first propose a categorical rule that redressability is automatically established in every challenge seeking to "remove a regulatory impediment to the use of petitioners' products." Pet. Br. 17. They never clarify the scope of the word "impediment." But it appears that their rule would cover a flat prohibition on the use of a product as well as any lesser restriction that allegedly affects or implicates its use. And the rule would apply even where (as here) the record contains evidence indicating that a favorable judgment would not actually redress the asserted injury. That novel proposal finds no basis in this Court's precedent. For a court to conclude that it has jurisdiction, the "'specific facts'" matter—as does the "evidence" submitted by the parties. *Lujan*, 504 U.S. at 561.

1. Petitioners' proposed rule is at odds with the precedent they invoke

Petitioners point to *Bennett v. Spear*, 520 U.S. 154 (1997), as support for their proposed rule. Pet. Br. 25-26. That decision reiterated that an injury resulting from "the independent action of some third party not before the court" is insufficient to establish Article III standing. *Bennett*, 520 U.S. at 169 (internal quotation marks and emphasis omitted). It also noted that the bar on standing for injuries caused by independent action does not "exclude injury produced by determinative or coercive effect" of a government action on the choices of a third party. *Id.* *Bennett* thus confirms the common-sense proposition that a petitioner is not necessarily foreclosed from establishing redressability just because a third party is "the very last step in the

chain of causation." *Id.*; *see also Lujan*, 504 U.S. at 562.

But *Bennett* hardly supports petitioners' sweeping theory that redressability is automatically established whenever a challenger simply asserts some "regulatory impediment" (Pet. Br. 25) to the use of its product. To the contrary, the Court's decision underscores how much the particular facts of a case matter. In *Bennett*, ranchers and irrigation districts challenged a Fish and Wildlife Service biological opinion that proposed minimum water levels for a water project. But a third party (the Bureau of Reclamation) "retain[ed] ultimate responsibility" for deciding whether to adopt the proposal. *Bennett*, 520 U.S. at 168. With respect to causation and redressability, the main question was whether the Bureau would in fact feel constrained to do what the Service suggested.

Scrutinizing the facts before it, the Court determined that—"in reality"—the biological opinion would have a "determinative or coercive effect" on the Bureau's action. *Bennett*, 520 U.S. at 169. Although the opinion was theoretically advisory, the Service had acknowledged "the virtually determinative effect of its biological opinions." *Id.* at 170. And the Solicitor General conceded that this particular opinion would have "a powerful coercive effect" on the Bureau. *Id.* at 169. Before the opinion, the Bureau had operated the water project "in the same manner throughout the 20th century." *Id.* at 170. But the Bureau had notified the Service that in the future it "intended to act in accordance with" the recommendations in the Service's opinion.[16] Those facts showed that the opinion (not some

[16] Resp. Br., *Bennett v. Spear*, No. 95-813 (U.S.), 1996 WL 396714, (continued…)

other motivation) would cause the Bureau to alter its behavior. And they allowed the Court to hold that petitioners' injury would "'likely' be redressed—*i.e.*, the Bureau will not impose [the] water level restrictions—if the Biological Opinion is set aside." *Bennett*, 520 U.S. at 170-171.

The other cases invoked by petitioners featured similar factual assessments. In *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925), the law prohibiting parents from sending their children to private schools had "caused the withdrawal from [the plaintiff's] schools of children *who would otherwise continue*." *Id.* at 532 (emphasis added). In *CBS, Inc. v. United States*, 316 U.S. 407, 414, 423 (1942), an affidavit from the plaintiff radio network made clear that radio stations were in fact "cancelling or threatening to cancel their contracts in order to conform to" the challenged regulations. And in *Northeastern Florida Chapter of Associated General Contractors v. City of Jacksonville*, 508 U.S. 656, 668 (1993), standing rested on petitioner's allegation that its members "regularly bid on construction contracts" and "would have bid on contracts" unavailable to them due to the challenged program "were they so able." Because those allegations "ha[d] not been challenged," the Court "assum[ed] that they [were] true." *Id.* at 668-669.[17]

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at *27 n.14 (July 15, 1996); *see also id.* at *8; *Bennett v. Plenert*, 1993 WL 669429, at *3 (D. Or. Nov. 18, 1993).

[17] Because of the nature of the equal protection right at issue in *Northeastern Florida*, the companies did not need to show that third parties would have selected their bids—just that the companies were unable to compete on an equal basis. *See, e.g.*, *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003).

None of those cases supports a categorical rule excusing anyone who sells a product from the obligation to establish redressability when challenging a regulation implicating the use of that product. And the posture of cases like *Bennett* and *CBS* only underscores the deficiency of petitioners' showing here. The petitioners in those cases sought to survive a motion to dismiss, and therefore had the "relatively modest" burden of advancing "'general factual allegations'" on the elements of standing. *Bennett*, 520 U.S. at 168, 171; *see CBS*, 316 U.S. at 414, 423; *cf. Ne. Fla.*, 508 U.S. at 668-669. Here, petitioners were seeking to obtain a final judgment. So they needed to "'set forth' by affidavit or other evidence 'specific facts'" demonstrating that vacatur would likely redress their injury. *Bennett*, 520 U.S. at 168; *see Lujan*, 504 U.S. at 561. No amount of after-the-fact theorizing can excuse their failure to do so.

For similar reasons, *Energy Future Coalition v. EPA*, 793 F.3d 141 (D.C. Cir. 2015) (Kavanaugh, J.), does not establish standing here. That case involved ethanol producers who sought to challenge an EPA regulation prohibiting automakers from using fuel containing 30% ethanol when testing new vehicles. *Id.* at 143-144. The court of appeals observed that standing can be shown where judicial relief "would remove a regulatory hurdle" to the use of a petitioner's product. *Id.* at 144; *see* Pet. Br. 4, 13, 28, 29, 36. But that was the starting point for the court's analysis—not the finish line. Unlike the petitioners here, the challengers in *Energy Future* submitted a detailed standing analysis, which included an economist's explanation of how the regulated parties would react to the sought-

after change.[18] The court was therefore able to focus on actual record evidence establishing "substantial reason to think that at least some vehicle manufacturers would use" the fuel in testing if the challenged regulation were eliminated. *Energy Future*, 793 F.3d at 144; *see also id.* at 144 (describing comments from Ford Motor Company). And the court expressly distinguished the case before it from a case (like this one) in which studies and other "objective evidence directly undermined petitioners' theory of standing." *Id.* at 145 n.2.

2. Petitioners' rule would violate basic principles of Article III standing

That focus on the particular circumstances of the case, and the allegations and evidence before the court, is compelled by core requirements of Article III.

a. Federal courts may not exercise jurisdiction based on assumptions or speculation. *See, e.g.*, *Clapper*, 568 U.S. at 414; *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). After the pleading stage, they must assure themselves that standing exists by examining "'specific facts'" and "evidence" introduced by the plaintiff. *Lujan*, 504 U.S. at 561; *see All. for Hippocratic Med.*, 602 U.S. at 384 (noting the "heavily fact-dependent" nature of the inquiry). That obligation takes on added significance when the circumstances of a case (or evidence submitted by the opposing party) create serious doubts about one of the elements of standing. *See generally Hertz Corp.*, 559 U.S. at 96-97.

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[18] *See* Pet. Br., *Energy Future*, No. 14-1123, 2014 WL 5035232, at *29-41 (D.C. Cir. Oct. 8, 2014).

To be sure, "the nature and extent of facts that must be" submitted by a party seeking to challenge government action "depends considerably" on the surrounding circumstances. *Lujan*, 504 U.S. at 561. A plaintiff who is directly regulated by the challenged action, for example, may only need to submit evidence showing that it is an object of that regulation, and that it would engage in activities proscribed by the regulation if it were allowed to do so. *Supra* p. 16. Similarly, if the action prohibits other companies from using the plaintiff's product, causation and redressability may follow from basic evidence that the plaintiff sells the product and third-party companies would have used it absent the regulation. *See, e.g.*, *Energy Future*, 793 F.3d at 144.

But observations about the ease of satisfying evidentiary requirements in certain types of cases do not amount to a categorical legal rule that "suffices to establish redressability" absent evidence. Pet. Br. 17. As this Court has explained, presumptions run against jurisdiction—not in favor of it. *See, e.g.*, *Renne v. Geary*, 501 U.S. 312, 316 (1991) ("We presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record." (internal quotation marks omitted)); *see also Kokkonen*, 511 U.S. at 377.

A court must therefore examine the facts and evidence to determine whether—"in reality"—a judgment addressing a challenged government action would likely redress a plaintiff's asserted injury. *Bennett*, 520 U.S. at 169. For example, if a regulation makes it unlawful "for soda manufacturers to use sugar," *Energy Future*, 793 F.3d at 144, a plaintiff may establish standing by pointing to the regulation and introducing

evidence that it sells sugar and that some sodas contain sugar. But not every case will be that "simple" (Pet. Br. 47). If the regulation instead made it unlawful only for soda manufacturers to sell more than 80% of their beverages with sugar, and the administrative record established that sugar-free sodas already represented 30% of the market before the regulation, that plaintiff would have to do more to establish redressability.

As discussed above, petitioners' case does not resemble the "simple" scenarios, primarily because no one challenged EPA's initial decision to grant a waiver in 2013. In the ensuing decade, automakers made enormous investments in zero-emission vehicles and consumer tastes evolved. By May 2022, it was not at all clear that the presence or absence of the Advanced Clean Cars I standards would have a determinative or coercive effect on the mix of cars sold by automakers. *See supra* pp. 20-22. Market forces and internal goals were pushing automakers to continue their shift toward electric vehicles, regardless of California's regulations. Pet. App. 24a n.8. Those circumstances demanded actual evidence showing redressability—not unsupported assertions about "common sense and basic economics." Pet. Br. 30.

b. Petitioners' contrary arguments demonstrate a misunderstanding of this Court's precedent. It is true (Pet. Br. 27) that redressability involves "the relationship between 'the judicial relief requested' and the 'injury' suffered." *California v. Texas*, 593 U.S. 659, 671 (2021). But the necessary relationship is lacking where the plaintiff fails to prove that "depress[ed] market demand" for its product in fact "flows from" (Pet. Br. 27) the challenged regulation, and that vacatur would likely lead to increased demand.

Petitioners also contend that, "[a]s far as redressability is concerned, . . . Article III's demands are the same whether the plaintiff is directly or indirectly regulated." Pet. Br. 27. Justice Scalia long ago rejected that notion in an opinion for the Court. When a plaintiff is not the direct object of the government action it challenges, "standing is not precluded, but it is ordinarily 'substantially more difficult' to establish." *Lujan*, 504 U.S. at 562. That is because the plaintiff must "adduce facts" creating a likelihood that the third parties who *are* directly regulated will make "choices . . . in such manner as to produce causation and permit redressability of injury." *Id.* Petitioners did not do so here.

3. Petitioners' policy arguments do not justify their rule

Petitioners eventually resort to a series of "policy" arguments. Pet. Br. 41; *see id.* at 41-45. They first argue that the decision below effectively "require[s] the endorsement of a directly regulated third party before an indirectly regulated party can sue." *Id.* at 38. That would be a problem, they contend, because directly regulated entities often will be unwilling or unable to assist indirectly affected challengers. *See id.* at 42. But the court of appeals did not require petitioners to "provid[e] affidavits from automakers" as a condition of standing. *Id.* at 38. The court's opinion showed a willingness to consider a variety of other materials (if identified by the parties), including comments in the administrative record and public statements from industry participants. *See* Pet. App. 23a-24a, 28a.

And there are a range of evidentiary sources beyond "affidavits from automakers" that bear on how automakers would likely respond to a vacatur in 2022.

The state respondents gathered facts relevant to standing from public databases, news articles, securities and court filings, government reports, and corporate announcements. *See, e.g.*, J.A. 190-206. Just a few days after the oral argument caused petitioners to take the jurisdictional questions seriously, petitioners located retired auto executives to file supplemental declarations that purported to speak authoritatively about automakers' capabilities and practices. *See* J.A. 213, 218.[19] In similar contexts, other litigants have relied on a variety of sources. *See, e.g.*, C.A. Ohio Br. Add. 37-54 (economist's declaration); *Duke Pwr. Co. v. Carolina Envt'l Study Grp., Inc.*, 438 U.S. 59, 75-76 (1978) (congressional testimony); *Competitive Enter. Inst. v. FCC*, 970 F.3d 372, 383 (D.C. Cir. 2020) (expert's analysis); *Competitive Enter. Inst. v. NHTSA*, 901 F.2d 107, 117 (D.C. Cir. 1990) (testimony from administrative hearing).

The decision below thus does not "creat[e] artificially high evidentiary barriers." Pet. Br. 35. And it does not obstruct "suits by unregulated plaintiffs who are adversely affected by an agency's regulation of others." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 826 (2024) (Kavanaugh, J., concurring). It simply ensures that any such suits are

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[19] Those declarations are not before this Court because the court of appeals held that petitioners failed to establish good cause for their untimely filing, *see* Pet. App. 31a-32a, and petitioners did not seek review of that ruling, *see* Pet. I; State Opp. 14-15. In any event, the declarants did not account for 2022 market conditions. *See* J.A. 213-222. As to redressability, they merely asserted that automakers "likely would change their production, pricing, and/or distribution plans for Model Year 2025" absent California's standards. J.A. 215, 220. They offered no supporting details, and focused instead on the distinct question of how quickly automakers *could* change their fleets and prices.

brought by plaintiffs who are, in fact, adversely affected by the challenged action and would benefit from a favorable decision.

Next, petitioners argue that the "decision below creates troubling incentives for agencies." Pet. Br. 43. They assert that agencies may now "target entire industries with crippling burdens so long as they act through a conduit and placate that conduit." *Id.*[20] Again, however, a plaintiff whose sales are crippled as the result of an agency action can invoke numerous sources to demonstrate a likelihood that vacatur would increase sales. Nor does this case present any valid concern about "encourag[ing] agencies to act over shorter time horizons." Pet. Br. 44. The underlying waiver was granted in 2013 and addressed standards that increased in stringency through model year 2025. Any jurisdictional difficulties petitioners confronted resulted primarily from their own choice not to challenge the original 2013 action. *See supra* p. 18 n.7.

Finally, petitioners argue that the court of appeals "create[d] a one-way ratchet in favor of the regulator over the regulated" by requiring petitioners to introduce evidence of standing. Pet. Br. 44. They contrast that requirement with the principle that "[a] State will

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[20] Petitioners note that several automakers entered voluntary agreements with California in 2020 to continue producing more low- and zero-emission vehicles. *See* Pet. App. 13a-14a. But that was not a "troubling" effort by EPA to "insulate" the "entire industr[y]" from "review." Pet. Br. 43. And petitioners acknowledge that "many" other automakers did not enter any such agreement. *Id.* at 37. Nothing prevented petitioners from attempting to introduce evidence showing that the non-participating automakers would likely change their fleets in response to a vacatur of the reinstatement.

always have 'a legitimate interest in the continued enforceability of its own statutes.'" *Id.* (quoting *Maine v. Taylor*, 477 U.S. 131, 137 (1986)). But state plaintiffs *do* introduce evidence where necessary to show that a favorable judgment would redress their injuries. *See, e.g.*, *Dep't of Com.*, 588 U.S. at 767-768. And this Court's recognition that sovereigns have a protectable interest in effectuating their own statutes hardly amounts to "bad policy." Pet. Br. 41; *see Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); *Maine*, 477 U.S. at 137.

The more relevant policy consideration is the one underlying Article III: that federal courts have limited jurisdiction, and a party seeking to invoke that jurisdiction must show that its claim falls within those limits. That policy, which reflects the Framers' vision of the proper role of courts in our democratic system, *see All. for Hippocratic Med.*, 602 U.S. at 380, requires affirmance here.

B. Unsupported Predictions About the Effect of a Judgment on a Third Party Are Insufficient to Establish Redressability

Petitioners' alternative theory for why they did not need to introduce evidence of redressability fails for similar reasons. They contend that plaintiffs can establish standing simply by asserting that the "effects of the challenged government action on third parties" are "predictable"—and that "no more is needed." Pet. Br. 18. The cases petitioners invoke for that argument actually demonstrate the opposite.

Petitioners portray *Department of Commerce* as holding that unsupported inferences and predictions about "third-party behavior . . . can suffice" to establish standing. Pet. Br. 30; *see id.* at 31. In truth, that decision examined whether the plaintiffs "ha[d] met

their burden of *showing* that third parties will likely react in predictable ways" to a citizenship question on the 2020 census, and thereby cause harm to the plaintiffs. *Dep't of Com.*, 588 U.S. at 768 (emphasis added). The Court answered that question in the affirmative only after reviewing the district court's "findings of fact"—based on extensive "evidence"—which "established a sufficient likelihood that the reinstatement of a citizenship question" would depress census response rates. *Id.* at 767; *see New York v. Dep't of Com.*, 351 F. Supp. 3d 502, 578-581 (S.D.N.Y. 2019) (describing expert testimony, statistical data, and agency memoranda). The Court did not rely on "speculation" or predictions alone. *Dep't of Com.*, 588 U.S. at 768.[21]

Nor can petitioners dismiss the significance of the evidence before the Court in *Department of Commerce* on the ground that it merely recounted "historical practice." Pet. Br. 31. The plaintiffs in that case did not just reference the result of questions on prior censuses. They introduced detailed evidence that "overwhelmingly support[ed] the conclusion that the addition of a citizenship question to the *2020 census* will cause a significant net differential decline in self-response rates among noncitizen households." *New York*, 351 F. Supp. 3d at 578 (emphasis added).

The remaining authorities discussed by petitioners (Pet. Br. 31) do not advance their theory either. The standing analysis in *Massachusetts v. EPA*, 549 U.S. 497, 526 (2007), turned on evidence that included "petitioners' uncontested affidavits." That evidence

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[21] *See also California*, 593 U.S. at 678 (explaining that the plaintiffs in *Department of Commerce* "relied not only on 'the *predictable effect of Government action* on the decisions of third parties' but also on comprehensive studies, rather than mere 'speculation'").

showed that "the United States transportation sector emit[ted] . . . more than 6% of worldwide carbon dioxide emissions," *id.* at 524; that there was "a causal connection between manmade greenhouse gas emissions and global warming," *id.* at 523, *see id.* at 525; and that "[a] reduction in domestic emissions" resulting from the requested relief "would slow the pace of global emissions increases," providing partial redress for petitioners' undisputed injuries, *id.* at 526; *see id.* at 522-523.[22] In *Skyline Wesleyan Church v. California Department of Managed Health Care*, 968 F.3d 738, 750 (9th Cir. 2020), the plaintiff similarly offered "evidence" that regulatory enforcement had caused health insurers to abandon restrictions on abortion coverage. Specifically, "seven insurers had offered plans with abortion coverage restrictions" consistent with plaintiff's religious beliefs, then "all seven complied" with a regulator's warning to stop offering such plans. *Id.* at 750. Both decisions thus turned on actual evidence, not unsupported predictions.

Petitioners nonetheless advance a blanket rule that no evidence is required if "the behavior of third parties is predictable rather than speculative." Pet. Br. 30. They further contend that only "three circumstances" exist in which third-party behavior is sufficiently speculative to require evidence of redressability: (i) where a plaintiff's theory relies on "'counterintuitive' assumptions," *id.* at 32 (citing *California*, 593 U.S. at 678); (ii) where it relies on an attenuated "chain of events," Pet. Br. 32 (citing *All. for Hippocratic Med.*, 602 U.S. at 386); and (iii) where the "legal impact of a judicial decision is unclear," Pet. Br. 33

[22] The Court also accorded a "special solicitude" to the state petitioners, which does not apply to the private petitioners here. *Massachusetts*, 549 U.S. at 520.

(citing *Murthy*, 603 U.S. at 72-73, *Brackeen*, 599 U.S. at 294, and *Texas*, 599 U.S. at 691 (Gorsuch, J., concurring in the judgment)).

Those arguments profoundly misunderstand this Court's standing doctrine. Challengers must always identify "evidence" proving "'specific facts'" that establish standing. *Lujan*, 504 U.S. at 561; *see FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). And this Court's analysis of standing is "not a 'mechanical exercise'"—particularly when it comes to suits (like this one) "by unregulated parties against the government." *All. for Hippocratic Med.*, 602 U.S. at 384. In some cases, "familiar circumstances" make standing "likely," *id.*, and a plaintiff might be able to meet its burden with less evidence. In other cases, like those referenced by petitioners, the Court has pointed to circumstances calling for "far stronger evidence" of causation and redressability. *E.g.*, *California*, 593 U.S. at 678. But those circumstances are not the only ones in which plaintiffs are required to introduce *any* evidence.

Petitioners' own arguments illustrate the folly of their proposed rule. Invoking *Summers v. Earth Island Institute*, 555 U.S. 488, 494 (2009), petitioners argue (Pet. Br. 34) that "it is predictable that when the government 'regulates parks, national forests, or bodies of water,' it will affect the users of those natural resources." "In all such cases," *id.*, petitioners assert, no "[r]ecord evidence is required," *id.* at 30. But *Summers* held exactly the opposite. It reiterated that a plaintiff "bears the burden of showing that he has standing." *Summers*, 555 U.S. at 493. The Court insisted on particular evidence showing that the challenged regulations would affect a specific site that at least one of plaintiffs' members had "a specific and

concrete plan" to visit. *Id.* at 495. And it rejected a "hitherto unheard-of test" that would premise standing on a "probability" that "some (unidentified) members have planned to visit some (unidentified) small parcels affected by the Forest Service's procedures and will suffer (unidentified) concrete harm as a result." *Id.* at 497-498. That sort of predictive approach—unsupported by concrete evidence—would "make a mockery of" the Court's "prior cases." *Id.* at 498.

C. The Duration of the Waiver Does Not, By Itself, Establish Standing

Petitioners also contend that they were excused from submitting evidence because the "waiver for certain California standards does not sunset." Pet. Br. 19. But the fact that the greenhouse-gas standards plateau starting in model year 2025, and continue at the same levels in future years, *supra* p. 6, does not change the analysis.

1. Petitioners reason that because those standards "do not expire," a judicial vacatur "would necessarily have some effect on vehicle pricing, production, or distribution at *some* future point." Pet. Br. 46 (emphasis added). This Court has previously rejected that kind of reasoning. *See Summers*, 555 U.S. at 496 (statements of "'some day' intentions," without "any specification of *when* the some day will be," are insufficient to establish standing); *Lujan*, 504 U.S. at 564 (same). And for good reason. Statutes and regulations often do not sunset. The mere longevity of a challenged regulation is no substitute for "specific, concrete facts demonstrating that" the plaintiff is harmed by the government's action and "personally would benefit in a tangible way from the court's intervention." *Warth*, 422 U.S. at 508.

In this case, moreover, the facts belie petitioners' assertion (Pet. Br. 19) that the duration of the greenhouse-gas standards eliminates any "plausible dispute" about redressability. By the time of this suit, sales of battery-electric vehicles far exceeded original forecasts, and those vehicles generate an outsized number of ZEV credits and produce very few greenhouse-gas emissions. *See supra* pp. 6, 21-22. Petitioners did not submit any evidence that the market would reverse course if those standards were no longer in place in future years. *See supra* p. 25.

Nor does the court of appeals' apparent misunderstanding about the temporal scope of the greenhouse-gas standards (Pet. Br. 45) compel a different outcome. The court of appeals lacked jurisdiction because petitioners failed to introduce evidence showing that automakers would likely respond to vacatur by "selling fewer non-conventional vehicles or by altering the prices of their vehicles such that fewer non-conventional vehicles—and more conventional vehicles—were sold." Pet. App. 22a; *see id.* at 29a-30a. The court's belief that the challenge before it "concern[ed] only" the reinstatement of the waiver "as to Model Years 2017 through 2025," was a consideration that "*further* complicated" the redressability analysis. *Id.* at 22a (emphasis added); *see id.* at 24a. Setting aside that additional perceived complication does not make up for petitioners' failure to introduce any evidence addressing how automakers would likely respond to a vacatur in May 2022. *See* U.S. Opp. 12-14.

2. Relatedly, petitioners fault EPA and the court of appeals for the court's "incorrect" premise about the duration of the waiver, Pet. Br. 45, which they contend caused the court to improperly "conflate[] mootness

and redressability," *id.* at 39. Those arguments are puzzling.

It has never been a secret that California's "greenhouse-gas emission standards applied to model year 2025 '*and subsequent*.'" Pet. Br. 45-46 (quoting J.A. 50). That was plainly described in the California Code of Regulations. *See* Cal. Code Regs. tit. 13, § 1961.3(a)(1)(A); *see also* Cal. Code Regs., tit. 13, § 1962.2(b)(1)(A) (2012) (similar wording in originally enacted ZEV provision). Petitioners imply that the lower court's confusion about the duration of the waiver arose because EPA failed to "candidly explain[]" the matter until the certiorari stage. Pet. Br. 45; *see id.* at 46. But the more likely culprit was petitioners' opening brief below, which told the court that petitioners were challenging a program "cover[ing] vehicles from model years 2015 through 2025." C.A. Private Pet. Br. 9; *see also* C.A. Oral Arg. 33:55-34:13 (argument of petitioners' counsel that, to defeat standing, "the Government would need to come forward with some evidence that [automakers have] now planned around the restatement in a way that couldn't be withdrawn by 2025").

The lack of clarity on this point was perhaps understandable: petitioners' central focus in this case has always been on the ZEV standards, which *will* expire after model year 2025. Pet. Br. 46. That may be why petitioners urged this Court to resolve the merits of their statutory claim before "California's waiver expires at the end of model year 2025," Pet. 26, even after they had belatedly acknowledged that the greenhouse-gas standards apply to "Model Years '2025 *and subsequent*,'" C.A. Private Pet. Proposed Supp. Br. 5. But whatever the source of the confusion

below, it did not matter to the ultimate outcome. Regardless of the waiver's duration, petitioners failed to show that automakers would respond to its reinstatement (either sooner or later) by making changes that would increase fuel sales.

In the face of that failure, the court of appeals correctly explained why its decision was based on standing, not mootness: The jurisdictional problem was not that petitioners' "standing arguments were sufficient when originally filed" and then were "mooted by the passage of time." Pet. App. 25a; *see generally Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). Petitioners' "standing arguments were deficient from the start." Pet. App. 25a. By the time petitioners filed their challenge in May 2022, shifts in consumer demand and other transformations in the market made it speculative (at best) that vacating the reinstatement would lead to increased fuel sales in the future. Petitioners never even attempted to introduce evidence demonstrating that vacatur of the reinstatement would have the effects on automakers that they predicted. Pet. App. 29a-30a.

D. Petitioners' *Post Hoc* Attempts to Identify Evidence on Redressability Fail to Establish Standing

Finally, petitioners argue that if they "were legally required to produce record evidence to support redressability, plenty such evidence existed." Pet. Br. 37. But the few documents that petitioners cited in the court of appeals did not establish any likelihood that a vacatur in 2022 would increase fuel sales, as detailed in Part I.C above. And the additional materials petitioners now point this Court to would not have established redressability even if petitioners had invoked them in a timely fashion below.

Petitioners first highlight (Pet. Br. 38) a statement from an appendix to California's 2021 comment letter regarding the reinstatement. *See* J.A. 84. But that statement relied on forecasts from 2017. *See* J.A. 85 n.17 (citing January 2017 analysis of regulation compliance scenarios); *id.* at 85 n.18 (citing February 2017 modeling scenario). By 2022, the earlier projections had been overtaken by actual events. *See* J.A. 191 (national market share of zero-emission vehicles "almost tripled" in the period "between 2020 and the third quarter of 2022").

Petitioners also invoke declarations that the state respondents filed along with their motion to intervene, shortly after petitioners initiated this suit. *See* Pet. Br. 13, 34. Those declarations (like petitioners') asserted a conclusory "expect[ation]" that additional gasoline-fueled vehicles would be sold if California's standards were not in place. J.A. 110, 111; *see id.* at 115-116. The lack of any details or contemporaneous evidence for those assertions reflected both time constraints (the intervention declarations were signed four days after the case commenced) and the reality that the States' standing and entitlement to intervene were independently established for other reasons. *Cf. King*, 567 U.S. at 1303 (reasoning that a State suffers "ongoing irreparable harm" any time it "is enjoined by a court from effectuating . . . a duly enacted statute").

Another document referenced by petitioners (Pet. Br. 47) is outside the record and post-dates the decision below: EPA's recent request for public comment on its proposal to incorporate the greenhouse-gas standards of the Advanced Clean Cars I program into California's state implementation plan. *See* 89 Fed. Reg. 82,553 (Oct. 11, 2024); 42 U.S.C. § 7407. To be sure, the underlying state estimates referenced in that

proposal (*see* 89 Fed. Reg. at 82,557 & nn.19-20) are part of the record, because California submitted them to EPA in 2021 in connection with the reinstatement proceedings. *See* C.A. J.A. 276. But petitioners never invoked those submissions below. And the estimates took as their baseline a projection of zero-emission vehicle penetration based on 2019 data, which did not anticipate the dramatic increase in sales in the following years.[23]

None of the materials that petitioners belatedly reference could have satisfied their burden to submit evidence about how the market would respond to vacatur of the reinstatement in May 2022. And the fact that they were not "set forth" as "the basis for the claim of standing" below poses another insuperable obstacle for petitioners. D.C. Cir. R. 28(a)(7). As this Court recently reminded litigants, "'judges are not like pigs, hunting for truffles buried in the record.'" *Murthy*, 603 U.S. at 67 n.7 (alterations omitted). The court of appeals could not reasonably be expected to focus on a few sentences scattered across thousands of pages of record materials, which were never raised in petitioners' briefs. Nor could it be expected to recall isolated assertions in two declarations, filed in support of one of five unopposed motions to intervene, that were disposed of by the Clerk more than a year before oral argument. *See* C.A. Order (June 30, 2022).

In the end, petitioners are right that this case is "simple" (Pet. Br. 47)—but not in the way they suggest. They had the burden to introduce evidence establishing that their claim was redressable. Instead

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[23] *See* C.A. J.A. 277 (explaining reliance on "EMFAC 2021" model); Cal. Air Res. Bd., *EMFAC 2021 Volume III Technical Document*, at 6 (April 2021), https://tinyurl.com/2wsxz4uy (explaining use of DMV data through 2019).

of meeting that obligation head-on, they treated redressability as an afterthought—relying on assumptions and conclusory assertions, supplemented only by outdated projections. And when confronted with current evidence from the state respondents undermining their assumption that vacatur of the reinstatement in May 2022 would lead to increased fuel sales, petitioners offered no evidentiary response. Because petitioners failed to introduce specific facts and evidence establishing a likelihood of redressability, the court of appeals properly held that it could not reach the merits.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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