No. 23-1229

IN THE

Supreme Court of the United States

ENVIRONMENTAL PROTECTION AGENCY,
Petitioner,

v.

CALUMET SHREVEPORT REFINING, LLC, ET AL.,
Respondents.

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

OPPOSITION OF RESPONDENTS GROWTH ENERGY AND RENEWABLE FUELS ASSOCIATION TO MOTION OF THE PETITIONER TO HOLD THE BRIEFING SCHEDULE IN ABEYANCE

Petitioner Environmental Protection Agency has moved "to hold further proceedings in this case in abeyance to allow for EPA to reassess the basis for and soundness of the denial actions" underlying this case. Mot. of the Pet'r to Hold the Briefing Schedule in Abeyance 4 (Jan. 24, 2025). Growth Energy and the Renewable Fuels Association ("Biofuels Respondents")—as Respondents supporting Petitioner—respectfully urge the Court to deny the motion. The Court granted certiorari to resolve an irreconcilable circuit split regarding the proper venue for reviewing EPA actions that decide petitions for small-refinery exemptions from annual obligations under the Renewable Fuel Program ("RFP"). Resolution of this question will be consequential for the exemption petitions underlying this case and for many other RFP exemption petitions pending now or in the future, as well as for petroleum refineries and

renewable-fuel producers generally. Nothing EPA could do in reassessing the exemption actions could eliminate the circuit split or the urgent need to resolve the venue question presented.

EPA's statement that it wishes to reassess the basis for and soundness of the underlying denial actions changes nothing about the status of this case. Before this Court granted certiorari, the court below had already vacated the denial actions and remanded them to EPA for reconsideration, as had the D.C. Circuit in a separate case. Thus, this Court granted certiorari knowing that EPA was already bound to reassess the basis for and soundness of the underlying denial actions. The possibility that EPA would issue revised actions on the exemption petitions while this case was pending—and might even reverse course and grant the petitions—rightly did not deter the Court from granting certiorari because the question presented does not relate to the basis for or soundness of the underlying denial actions. The Court's judgment remains sound.

Given that the reply briefs are due in less than four weeks and that EPA has a long history of adjudicating RFP exemption petitions at a glacial pace, *see* C.A.ECF #270-3 at 23-24, it is unlikely EPA will issue revised decisions on the exemption petitions before the Court could decide this case in the ordinary course.

But even if that happened, it is hardly clear that the case would become moot. "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. The case remains live as long as the parties have a concrete interest, however small, in the outcome of the litigation." *MOAC Mall Holdings LLC* v. *Transform Holdco LLC*, 598 U.S. 288, 295 (2023) (quotation cleaned). Here, a judgment that the Fifth Circuit was not the appropriate venue would result in

vacatur of the Fifth Circuit's substantive standards for adjudicating exemption petitions and would clarify that the D.C. Circuit's substantive standards will govern EPA's reassessment of the underlying exemption petitions and its adjudication of future exemption petitions.

Moreover, the Court's resolution of the question presented would determine the proper venue going forward, sparing the parties and many others the burdens of the current circuit split. EPA will necessarily re-adjudicate the underlying exemption petitions and will necessarily also adjudicate many other pending and future RFP exemption petitions. Those actions will inevitably be challenged in court, and litigants will need to know where to file their cases. If the Court avoids resolving the question presented before EPA decides such exemption petitions, interested parties will unfortunately have no choice but to replicate the wasteful and confusing litigation process that accompanied the denial actions underlying this case—filing duplicative petitions for review in circuits around the country, litigating the threshold venue question in most or all of those circuits, and possibly even conducting duplicative litigation of the merits in multiple circuits. The parties have a strong concrete interest in avoiding a repeat of this situation. "It is of first importance to have a [rule] … that will not invite extensive threshold litigation" over the proper court to hear a case. … [L]itigation over whether the case is in the right court is essentially a waste of time and resources." *Navarro Savings Ass'n* v. *Lee*, 446 U.S. 458, 464 n.13 (1980) (quotation cleaned).

In short, the Court should deny the abeyance motion for largely the reasons it granted certiorari: There is a firm circuit split on a threshold forum issue that will

affect these and myriad other RFP exemption petitions, involving the parties to this case and many others that participate in the transportation-fuel industry. The Court should proceed to decide the question presented without delay, so that the many participants in the RFP and associated fuels industry can be spared the wasteful burdens imposed by the current lack of clarity and split of authority on the proper venue for reviewing RFP exemption actions.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I, Seth P. Waxman, a member of the bar of the Court, certify that on January 27, 2025, counsel for all parties required to be served have been served copies of the foregoing via overnight courier and electronic mail at the addresses below:

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