No. 24-7

In the Supreme Court of the United States

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

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

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

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

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

CORPORATE DISCLOSURE STATEMENT

Petitioner Diamond Alternative Energy, LLC, is a Delaware limited liability company that manufactures biomass-derived liquid fuels. It is a wholly owned direct subsidiary of Valero Energy Corporation, a Delaware corporation whose common stock is publicly traded on the New York Stock Exchange under the ticker symbol VLO.

Petitioner American Fuel & Petrochemical Manufacturers is a national trade association that represents American refining and petrochemical companies. The Association has no parent corporation, and no publicly held corporation has a 10% or greater ownership in it.

Petitioner Clean Fuels Development Coalition is a business league organization established in a manner consistent with Section 501(c)(6) of the Internal Revenue Code. Established in 1988, the Coalition works with auto, agriculture, and biofuel interests in support of a broad range of energy and environmental programs. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in the Coalition.

Petitioner Domestic Energy Producers Alliance is a non-profit, nonstock corporation organized under the laws of the State of Oklahoma. The Alliance has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Energy Marketers of America is a federation of 47 state and regional trade associations representing energy marketers throughout the United States. It is incorporated under the laws of the Commonwealth of Virginia, has no parent corporation, and

no publicly held corporation has a 10% or greater ownership in it.

Petitioner ICM, Inc. is a Kansas corporation that is a global leader in developing biorefining capabilities, especially for the production of ethanol. It is a wholly owned subsidiary of ICM Holdings, Inc., and no publicly held company has a 10% or greater ownership interest in ICM Holdings, Inc.

Petitioner Illinois Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Petitioner Iowa Soybean Association is a non-profit trade association. Its members are soybean farmers and supporters of the agriculture and soybean industries. It operates for the purpose of promoting the general commercial, legislative, and other common interests of its members. The Iowa Soybean Association does not have a parent company, it has no privately or publicly held ownership interests, and no publicly held company has an ownership interest in it.

Petitioner Kansas Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Petitioner Michigan Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Petitioner the Minnesota Soybean Growers Association is a non-profit trade association. Its members are soybean farmers, their supporters, and members of

soybean industries. It operates for the purpose of promoting the general commercial, legislative, and other common interests of its members. The Minnesota Soybean Growers Association is a not-for-profit corporation that is not a subsidiary of any corporation and that does not have any stock which can be owned by a publicly held corporation.

Petitioner Missouri Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Petitioner National Association of Convenience Stores is an international trade association that represents both the convenience and fuel retailing industries with more than 1,300 retail and 1,600 supplier company members. The United States convenience industry has more than 152,000 stores across the country, employs 2.74 million people, and had more than $859 billion in sales in 2023, of which more than $532 billion were fuel sales. The Association has no parent corporation, and no publicly held corporation has a 10% or greater ownership interest in it.

Petitioner the South Dakota Soybean Association is a non-profit trade association. Its members are soybean farmers, their supporters, and members of soybean industries. It operates for the purpose of promoting the general commercial, legislative, and other common interests of its members. The South Dakota Soybean Association is not a subsidiary of any corporation, and does not have any stock which can be owned by a publicly held corporation.

Petitioner Valero Renewable Fuels Company, LLC, a Texas limited liability company that manufactures

ethanol, is a wholly owned direct subsidiary of Valero Energy Corporation.

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BRIEF FOR PETITIONERS

INTRODUCTION

"Courts sometimes make standing law more complicated than it needs to be." *Thole* v. *U.S. Bank N.A.*, 590 U.S. 538, 547 (2020). Article III standing should not be complicated here. The question is whether a party has standing to challenge a government action that works by depressing the market for that party's products. To ask the question is to answer it. Private schools have standing to challenge a law prohibiting parents from sending their children to private school. Publishers have standing to challenge a law banning bookstores from selling their books. And here, producers and sellers of liquid fuels have standing to challenge a rule requiring automakers to make cars that use less liquid fuel, or none at all.

This lawsuit arises from the Biden Administration's efforts to force the electrification of the Nation's vehicle fleet. In 2021, President Biden announced his "goal that 50 percent of all new passenger cars and light trucks sold in 2030 be zero-emission vehicles," as part of his administration's efforts to "address the climate crisis." 86 Fed. Reg. 43,583, 43,583 (Aug. 5, 2021). At the time, electric vehicles made up around 4% of the new automobile market. So to fast-forward to the result the President wanted—fewer combustion-engine vehicles on the road and less liquid fuel consumed—the federal government pursued a multi-pronged strategy of federal and state regulation.

On the state front, EPA turned to Section 209 of the Clean Air Act. That unique provision broadly preempts States from adopting their own motor-vehicle emission standards. 42 U.S.C. § 7543(a). But it permits California—and California alone—to obtain a narrow waiver from federal preemption. *Id.* § 7543(b). To receive a special preemption waiver, California must demonstrate that it "need[s]" its own emission standards "to meet compelling and extraordinary conditions." *Id.* § 7543(b)(1)(B).

For decades, EPA granted Section 209(b) preemption waivers to California to address the State's local pollution problems, such as smog. In recent years, however, different administrations have flip-flopped on whether Section 209(b) permits EPA to grant California a waiver to tackle global climate change. Most relevant here is EPA's 2022 flip, in which it reinstated a once-granted, once-revoked waiver for California's "Advanced Clean Cars" program. That program includes a set of stringent greenhouse-gas emission standards, as well as a mandate requiring automakers to meet a 22% zero-emission-vehicle target by model

year 2025. Pet. App. 55a-57a. California's governor explained that the program works "to end our reliance on fossil fuels."[1]

Petitioners immediately challenged EPA's reinstated waiver. Petitioners are entities (and associations of entities) that produce or sell liquid fuels and the raw materials used to make them. They challenged EPA's approval of California's standards as inconsistent with the major-questions doctrine and the plain text of Section 209(b), which allows for a special California exemption only for problems localized to and solvable in California—not for global issues like climate change. To establish their standing, petitioners submitted 14 declarations explaining that California's standards target their products and will result in lower sales.

The court of appeals held that petitioners lacked Article III standing. The court theorized that vacating EPA's waiver, and thus eliminating California's coercive regulations, might not have *any* effect on car manufacturers' decisions about the composition of their fleets, given market demand. As a result, the court concluded that petitioners had not shown that a favorable decision would redress their economic injuries. Pet. App. 29a.

That cannot be right. The entire point of California's Advanced Clean Cars program is to reduce demand for petitioners' products: the regulations are designed to compel automakers to change the kind of vehicles they produce so as to decrease the amount of liquid fuel burned by drivers. No one disputes that is the aim of California's standards. It is why EPA praised

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[1] Governor Gavin Newsom, *Governor Newsom Statement on Biden Administration's Restoration of California's Clean Car Waiver* (Mar. 9, 2022), https://perma.cc/T92E-2XM8.

its waiver as a "critical step to confront the climate crisis."[2] Eliminating the waiver and wiping California's Advanced Clean Cars program off the books would thus be *likely* to remedy at least *one dollar* of petitioners' economic injuries. Redressability here should not be more complicated than that.

There are three doctrinal paths to that commonsense conclusion. First, and most simply, redressability is satisfied because a favorable decision would "remove a regulatory hurdle" to the sale of petitioners' products. *Energy Future Coal.* v. *EPA*, 793 F.3d 141, 144 (D.C. Cir. 2015) (Kavanaugh, J.); *see Bennett* v. *Spear*, 520 U.S. 154, 169 (1997). Second, even absent that categorical rule, challengers to a government action may establish redressability by relying on the action's "predictable effect" on third parties. *Department of Commerce* v. *New York*, 588 U.S. 752, 768 (2019). It is entirely predictable that California's regulation of automakers would "cause downstream or upstream economic injuries to others in the chain"—especially petitioners. *FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 384 (2024). Third, at a minimum petitioners' injuries are redressable because EPA has now clarified that its waiver has no expiration date. Not even the court below doubted that setting aside a perpetual waiver would likely affect automaker behavior at some point in the future.

Article III's redressability requirement exists to align injuries and remedies, so that litigants do not sue the wrong parties and courts do not issue overly broad

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[2] EPA, *News Release: What They Are Saying: EPA Restoration of California Waiver Will Support State Climate Action, Improve Air Quality, and Advance our Electric Vehicle Future* (Mar. 11, 2022), https://perma.cc/896Q-N2X5 (*EPA News Release*).

relief or advisory opinions. The redressability requirement does not exist to block the intended targets of government regulation from challenging the very regulations that threaten their existence, so that courts can avoid deciding controversial or difficult questions. This Court should reverse.

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-49a) is reported at 98 F.4th 288. The EPA order under review (Pet. App. 50a-285a) is available at 87 Fed. Reg. 14,332.

JURISDICTION

The court of appeals entered judgment on April 9, 2024. The petition for a writ of certiorari was filed on July 2, 2024, and granted on December 13, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in an appendix to this brief.

STATEMENT

A. Statutory Background

"The Clean Air Act regulates pollution-generating emissions from both stationary sources, such as factories and powerplants, and moving sources, such as cars, trucks, and aircraft." *Utility Air Regul. Grp.* v. *EPA*, 573 U.S. 302, 308 (2014). This case concerns Title II of the Act, which authorizes EPA to regulate emissions from new motor vehicles. 42 U.S.C. §§ 7521, 7543.

To effectuate a (mostly) uniform federal emissions regime, Section 209(a) of Title II broadly prohibits States from "adopt[ing] or attempt[ing] to enforce any

standard relating to the control of emissions from new motor vehicles." 42 U.S.C. § 7543(a). This preemption provision prevents "an anarchic patchwork of federal and state regulatory programs, a prospect which threatened to create nightmares for the manufacturers." *Motor Equip. Mfrs. Ass'n* v. *EPA*, 627 F.2d 1095, 1109 (D.C. Cir. 1979).

Congress created one exception to Section 209(a)'s broad preemption of state emission standards: Section 209(b), which authorizes EPA to "waive" preemption for certain standards adopted by California. 42 U.S.C. § 7543(b).[3] Congress granted California this special status because of the State's "unique problems" with smog and other local issues caused by so-called "criteria" pollutants like particulate matter. H.R. Rep. No. 90-728, at 22 (1967). In particular, California's atypical "geography and prevailing wind patterns," together with its unusually large number of vehicles, made smog a more persistent problem there than elsewhere. 49 Fed. Reg. 18,887, 18,890 (May 3, 1984) (citing 113 Cong. Rec. 30,948 (Nov. 2, 1967)).

Congress limited California's ability to separately regulate emissions in several ways. The onus is first on California, which must "determine[] that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards." 42 U.S.C. § 7543(b)(1). After the State makes that determination and files an application, EPA must deny a waiver if it finds that (1) California's

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[3] Section 209(b) does not name California. It instead makes a preemption waiver possible for "any State" that had adopted certain standards "prior to March 30, 1966." 42 U.S.C. § 7543(b)(1). But as Congress was aware, California was the only State that met this criterion and "is thus the only state eligible for a waiver." *Motor Equip. Mfrs. Ass'n*, 627 F.2d at 1100 n.1.

protectiveness determination is "arbitrary and capricious," *id.* § 7543(b)(1)(A); (2) California "does not need such State standards to meet compelling and extraordinary conditions," *id.* § 7543(b)(1)(B); or (3) the proposed state standards are inconsistent with federal emission standards, *id.* § 7543(b)(1)(C).

In 1977, ten years after setting up this preemption framework, Congress amended the Clean Air Act to allow other States to follow California. Any State may now "adopt and enforce" California standards "for which a waiver has been granted," so long as the adopting State has an approved plan to attain the federal air-quality standards for criteria pollutants. 42 U.S.C. §§ 7507, 7408(a), 7409. The upshot of this unusual preemption system is that EPA sets nationwide emission standards; California may in limited circumstances set more stringent ones for itself; and other States may either apply EPA's standards or adopt California's, but may not set their own.

B. Regulatory Background

1. For decades, Section 209(b) worked as Congress had envisioned. EPA granted California waivers for the State to set emission standards designed to combat local air-quality problems like smog. *See, e.g.*, 38 Fed. Reg. 10,317, 10,318 (Apr. 26, 1973); 59 Fed. Reg. 48,625, 48,626 (Sept. 22, 1994). In recent years, however, California has sought to transform its unique preemption exception into a tool for targeting global climate change. It has done so through aggressive regulations that limit vehicle greenhouse-gas emissions and force electrification of the State's (and consequently the Nation's) vehicle fleet.

California's efforts initially stalled. In 2008, under President George W. Bush, EPA denied California's first application for a waiver for climate-change-

focused regulations. California sought to impose standards limiting greenhouse-gas emissions from new motor vehicles in the State. 73 Fed. Reg. 12,156, 12,156-12,157 (Mar. 6, 2008). EPA rejected California's application, explaining that Section 209(b)'s preemption waiver permitted California to enact standards to address only "local and regional" pollution where the "causal factors are local to California"—which obviously did not include global climate change. *Id.* at 12,163.

The day after President Obama took office, California sought reconsideration of EPA's denial of its waiver application. EPA granted reconsideration, reversed itself, and issued the waiver. 74 Fed. Reg. 32,744, 32,783 (July 8, 2009). EPA "reject[ed]" its prior conclusion that Section 209(b) did not authorize California to "promulgate state standards designed to address global climate change problems" and approved California's first set of greenhouse-gas emission standards. *Id.* at 32,746. In assessing the "protectiveness" of California's standards, EPA relied on California's finding that the standards "will result in a reduction in upstream emissions (emission due to the production and transportation of the fuel used by the vehicle) of greenhouse gas, criteria and toxic pollutants due to *reduced fuel usage*." *Id.* at 32,750 n.36 (emphasis added) (citation omitted).

A number of affected car dealers challenged EPA's waiver decision. Before the D.C. Circuit could rule, EPA "promulgated national greenhouse gas standards" for model years 2012 through 2016, "and California amended its regulations to deem compliance with those national standards as compliance with its own." *Chamber of Commerce* v. *EPA*, 642 F.3d 192, 206 (D.C. Cir. 2011). Pointing to those two developments, the

D.C. Circuit held that the challenge to EPA's Section 209(b) waiver was moot. *Ibid.*

2. This case concerns California's next greenhouse-gas waiver request. In 2012, California applied for a new waiver to allow it to impose its "Advanced Clean Cars" program, which includes stricter standards aimed at further curbing greenhouse-gas emissions from vehicles. The proposed standards govern all new passenger cars, light-duty trucks, and medium-duty passenger vehicles sold in California for model year 2015 through at least model year 2025. California praised its Advanced Clean Cars standards as "some of the best tools we have" "to tackle the climate crisis" by "reduc[ing] emissions" and "driv[ing] technological innovation." *EPA News Release*.

Two components of the Advanced Clean Cars program are especially relevant here. First, the program includes greenhouse-gas emission standards that limit carbon-dioxide emissions across fleets of vehicles. Manufacturers meet those limits by producing more electric vehicles or by implementing technologies that reduce fuel consumption in combustion-engine vehicles, such as "electric drive technologies" and "engine efficiency improvements." 78 Fed. Reg. 2,112, 2,136-2,137 (Jan. 9, 2013); *see* Cal. Code Regs. tit. 13, § 1961.3. Second, the program includes a "zero-emission vehicle" mandate, which requires each car manufacturer to produce and deliver for sale in California an increasing percentage of battery-electric or fuel-cell vehicles out of its overall fleet (or purchase regulatory "credits" instead). Cal. Code Regs. tit. 13, § 1962.2(b). This mandate culminates in a requirement that 22% of a manufacturer's passenger vehicles produced for model year 2025, accounting for credits, must be zero-emission

vehicles—up from 4.5% in model year 2018.[4] *Id.* § 1962.2(b)(1)(A). California explained in its waiver application that the zero-emission-vehicle mandate "can dramatically reduce petroleum consumption . . . compared to conventional technologies." J.A. 28 (citation omitted).

In 2013, EPA granted the waiver, allowing California "to enforce its [Advanced Clean Cars] emission regulations." 78 Fed. Reg. at 2,145. EPA concluded that California's standards met Section 209(b)'s requirements—including that they were "needed to meet compelling and extraordinary conditions"—because the threat of global climate change was itself "extraordinary." *Id.* at 2,129. Notably, EPA credited California's finding that the cost of its regulations would be "more than offset by consumer fuel savings over the life of the vehicles." *Id.* at 2,138.

3. Under the first Trump Administration, EPA reverted to its original approach to Section 209(b). In a 2019 joint rulemaking with NHTSA, EPA rescinded the 2013 preemption waiver for California's greenhouse-gas standards and zero-emission-vehicle mandate, again reasoning that global climate change is not the kind of "peculiar," California-specific condition covered by Section 209(b). 84 Fed. Reg. 51,310, 51,328, 51,342 (Sept. 27, 2019). EPA also found that California did not "need" its standards to "meet" climate-change conditions because California's standards would likely result

[4] California's regulations express this mandate as a "credit percentage requirement." Cal. Code Regs. tit. 13, § 1962.2(b)(1). Because electric vehicles with longer ranges can generate more than one credit, the exact percentage of electric vehicles can vary from manufacturer to manufacturer. *See id.* § 1962.2(d)(5); 78 Fed. Reg. at 2,119.

in "no change in temperatures or physical impacts resulting from anthropogenic climate change in California." *Id.* at 51,341.

4. On his first day in office, President Biden signed Executive Order 13,990, directing EPA to "consider suspending, revising, or rescinding" the 2019 withdrawal of California's 2013 waiver. 86 Fed. Reg. 7,037, 7,037 (Jan. 20, 2021). EPA dutifully reinstated California's waiver, allowing the Advanced Clean Cars program to come back into effect. Pet. App. 57a.

In reinstating the waiver, EPA flipped back to its 2013 interpretation of Section 209(b). Pet. App. 155a. Under that interpretation, California can obtain a waiver so long as it "needs its program *as a whole* to meet compelling and extraordinary conditions"—even if it does not actually need the specific standards at issue. C.A. EPA Br. 84 (emphasis added); *see* Pet. App. 158a. In other words, California can tack on any emission standards it likes to its exempt emissions "program," so long as the State's local criteria-pollutant problems "persist." C.A. EPA Br. 66. Applying that permissive reading of the statute, EPA concluded that the waiver was justified primarily because California needs its separate vehicle-emission program, as a whole, to address its ongoing problems with criteria pollutants. Pet. App. 155a-162a, 186a-188a.

EPA embraced the significance of its action, heralding the waiver as a "critical step to confront the climate crisis." *EPA News Release*. To date, 17 States and the District of Columbia have adopted California's greenhouse-gas emission standards, its zero-emission-vehicle mandate, or both. California Air Resources Board (CARB), *States that Have Adopted California's Vehicle Regulations* (June 2024), https://perma.cc/

M6LC-SVR8. Together with California, those jurisdictions account for more than 40% of the Nation's new vehicle market. Pet. App. 179a.

C. Proceedings Below

1. Petitioners are entities (and trade associations whose members include entities) that produce or sell liquid fuels—gasoline, diesel, biodiesel, renewable diesel, and ethanol—and the raw materials used to make them. They promptly challenged EPA's waiver reinstatement in the D.C. Circuit in May 2022, within 60 days of the agency action. Pet. App. 15a.

Along with their opening brief in the court of appeals, petitioners filed 14 standing declarations that explained how reinstating California's standards would depress demand for liquid fuel, injuring them financially in a variety of ways. J.A. 120-184. Fuel producers explained how reducing the demand for their products in California would lead to an unavoidable loss in business. J.A. 133-136. For example, petitioner Diamond Alternative Energy explained that it sells renewable diesel, a liquid fuel that can be used interchangeably with petroleum-derived diesel; that California "accounts for almost all of the renewable diesel consumed in the United States"; and that the standards would diminish that demand. J.A. 135.

Other petitioners similarly established the negative impact of California's standards on their bottom lines. An association of convenience stores explained that California's standards would mean its members' "fueling stations sell less fuel" and their convenience stores lose revenue because fewer customers "come through [their] stores." J.A. 140. And associations of corn growers noted that California's standards would drive down demand for ethanol (which is blended into gasoline), in turn "decreasing demand for the corn" grown

by their members to produce ethanol. J.A. 130, 154, 158, 167.

EPA did not contest petitioners' Article III standing below. But California and other state and local government intervenors did. J.A. 185-187. They argued that petitioners had not "established any probability that manufacturers would change course if EPA's [waiver] decision were vacated" because automakers were planning to increase electric-vehicle production for independent reasons. J.A. 187. Their own intervention motion, however, attached declarations asserting that "additional gasoline-fueled vehicles would be sold during these model years" if EPA's waiver were overturned. J.A. 115.

In reply, petitioners explained that they had standing because vacating the waiver would remove a "direct regulatory impediment" to their products' use. J.A. 210 (quoting *Energy Future Coal.*, 793 F.3d at 144). Petitioners also pointed out that they were entitled to rely on the "reasonably predictable" conduct of car manufacturers. *Ibid.* Petitioners noted that California itself had predicted automakers would produce more "zero-emission vehicles" in response to its standards. *Ibid.* (quoting C.A. J.A. 237). And there was ample record evidence that not all manufacturers had "irrevocably committed" to electrification. *Ibid.* (citing C.A. J.A. 477).

At oral argument in September 2023, counsel for the state and local government intervenors made arguments sounding in mootness, not standing. In response to questioning from the panel, California contended that automakers could no longer change their production and sales plans for vehicles through model year 2025—the year in which the court apparently assumed the waiver would end. *See* C.A. Oral Arg. 1:10:27-

1:10:31 (asserting that petitioners "need evidence that manufacturers are going to change their product lines and sell different vehicles *in model year 2025*") (emphasis added). In reaction to that shifting theory of justiciability, petitioners moved to file a supplemental brief and declarations explaining why their petitions were not moot. Petitioners also explained that the California standards covered by EPA's waiver purported to extend beyond model year 2025. C.A. Pet. Supp. Br. 5-6; *see* J.A. 50. EPA remained conspicuously silent about petitioners' standing and the temporal scope of the waiver.

2. The court of appeals held that petitioners lack Article III standing to challenge EPA's waiver. Pet. App. 19a. Although the court declined to "definitively decide" whether petitioners had established injury and causation, it did not question either showing. *Id.* at 21a.

Instead, the court of appeals concluded that petitioners had failed to show that their injuries would be redressed if EPA's decision were set aside. Pet. App. 19a. The court faulted petitioners for "fail[ing] to point to any evidence affirmatively demonstrating that vacatur of the waiver would be substantially likely to" prompt automakers to produce fewer electric vehicles or alter their prices so that more liquid-fuel-powered vehicles would be sold. *Id.* at 23a. It reasoned that "unsupported assumptions regarding the future actions of third-party market participants are insufficient to establish Article III standing." *Id.* at 29a. The court also thought that the redressability inquiry was "complicated by the relatively short duration of the waiver," *id.* at 22a, though it disclaimed any finding that the case had been "mooted by the passage of

time," *id.* at 25a. By hinging its decision on redressability, the court effectively held that even if the waiver had been vacated at the moment EPA reinstated it in *2022*, automakers might not have changed any production plans or prices before the end of model year *2025*. *Id.* at 22a-24a. The waiver was pointless the instant it was reinstated.

The court of appeals declined to consider petitioners' supplemental brief and declarations. Pet. App. 30a. The court reasoned that there was no "good cause" to supplement the record. *Id.* at 31a.

D. Subsequent Developments

1. Petitioners sought review in this Court. In response, EPA explained that while the court of appeals had based its redressability holding on the "relatively short duration of the waiver," Pet. App. 22a, in EPA's view the waiver does not actually sunset. EPA Br. in Opp. 12-13. According to EPA, California's greenhouse-gas standards continue to "remain in force" after model year 2025, and "the waiver likewise does not terminate with model-year 2025." *Id.* at 13.

Shortly thereafter, EPA took the same position in a different regulatory action. In proposing to approve California's request to include the Advanced Clean Cars greenhouse-gas emission standards in the State's updated state implementation plan, EPA credited California's July 2021 projections that those standards will reduce fuel consumption, and thus reduce nitrogen-oxide and particulate-matter emissions, *through at least 2037*. 89 Fed. Reg. 82,553, 82,557, 82,558 (Oct. 11, 2024); *see* C.A. Reply 4 (citing California's projections); J.A. 93-94.

2. On December 17, 2024, EPA granted two new Section 209(b) preemption waivers for California, including for the "Advanced Clean Cars II" program.

See 90 Fed. Reg. 642, 642 (Jan. 6, 2025). That program "will require all new passenger cars and light-duty trucks delivered for sale in California to be zero-emission" by 2035. EPA, *Decision Document: California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption* 73 n.188 (Dec. 2024), https://perma.cc/2YSG-VVXE (*ACC II Decision Document*). Starting with model year 2026, Advanced Clean Cars II thus replaces the zero-emission-vehicle standards challenged here, which apply through model year 2025.[5]

Advanced Clean Cars II does not, however, amend the challenged greenhouse-gas emission standards. *See* EPA Br. in Opp. 5; *ACC II Decision Document* 40 n.96. Those standards will remain at the model-year 2025 level of stringency for "subsequent" model years and will "continue to be covered" by the Advanced Clean Cars I waiver "reinstated in 2022." Cal. Code Regs. tit. 13, § 1961.3(a)(1)(A); *see ACC II Decision Document* 40 n.96.

SUMMARY OF ARGUMENT

Petitioners produce and sell liquid fuels and their raw materials. They have Article III standing to challenge an EPA waiver allowing California to enforce vehicle-emission standards designed to reduce the consumption of liquid fuel. The court of appeals was wrong to conclude otherwise.

I. Although the court of appeals did not consider the first two prongs of Article III's standing requirements, petitioners easily established that they have

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[5] At least some of petitioners plan to challenge EPA's recent decision to grant that waiver, and one challenge has already been filed. *American Free Enter. Chamber of Com.* v. *EPA*, No. 25-106 (9th Cir.).

suffered a concrete injury-in-fact fairly traceable to EPA's waiver.

A. EPA's preemption waiver for California's Advanced Clean Cars program hits petitioners with a classic pocketbook injury. Petitioners produce liquid fuel and its component parts, so any reduction in demand for their products brings down their bottom lines. Petitioners attested to their injuries in their many standing declarations submitted to the court of appeals, in which they explained the details of their businesses and how reduced demand for liquid fuels lowers their revenues.

B. EPA's waiver causes petitioners' injuries. The waiver allows California to enforce its zero-emission-vehicle mandate and its greenhouse-gas emission standards—both of which mandate the production of vehicles that use less or no liquid fuel. California's standards push the car market beyond what consumers would ordinarily demand and automakers would ordinarily produce and sell; that is the point of the standards. There is thus a clear causal connection between California's market intervention and petitioners' market-based injuries.

II. Petitioners' injuries are redressable for three reasons.

A. Most simply, a decision vacating EPA's waiver would remove a regulatory impediment to the use of petitioners' products. As this Court has found in a variety of circumstances, the removal of the coercive effect of government action on third parties alone suffices to establish redressability. Challengers do not need to supply additional record evidence of third parties' likely reactions. That is because such challengers (or their products) are being denied an opportunity to

compete in the marketplace, which vacating the government action will redress. Redressability, after all, focuses on the match between the judicial relief requested and the injury suffered—and when challengers seek to vacate a rule targeting their products, the match is perfect.

B. Even if this Court declines to adopt that categorical rule, petitioners can at least establish redressability by relying on the predictable effects of the challenged government action on third parties. This Court has time and again distinguished between speculative and predictable third-party responses to a judicial decision. When a third-party response is speculative, record evidence may be required to establish redressability. But when a third-party response is predictable, no more is needed than a dose of common sense.

It is not just predictable but obvious that allowing California to limit vehicles' emissions will result in less fuel consumption. California's standards require that automakers produce and sell more fuel-efficient cars and fewer cars that run on liquid fuel. If EPA's waiver is set aside and California's standards are preempted, at least one automaker will choose to sell more vehicles with lower fuel efficiency or more combustion-engine vehicles. It is difficult to imagine that the parties and their many amici would have litigated this case for nearly three years and counting if that were not true.

C. The court of appeals rejected these two straightforward theories of redressability. Instead, it imposed extraordinary burdens on entities indirectly affected by agency action, effectively requiring evidence from the directly regulated entities themselves. The court also raised timing concerns that conflated redressability and mootness, with significant consequences. Its misplaced redressability label flipped the burden of

proof from the government to petitioners, while leaving petitioners without recourse to established mootness exceptions.

If left uncorrected, the decision below would have practical repercussions as serious as its doctrinal errors. A heightened redressability requirement would lock the courthouse doors to numerous traditional challengers to agency action, so long as the targets of regulation have different interests than directly regulated parties (as is often the case). It would also encourage agencies to intentionally act on shorter time horizons to shield their actions from review, and it would cut off review of the most politically sensitive actions.

D. At a minimum, petitioners' injuries are redressable even under the court of appeals' mistaken reasoning, because EPA has now conceded that its waiver for certain California standards does not sunset. The court of appeals was concerned about what it viewed as the relatively short four-year duration of the waiver. But as EPA has since explained to this Court, its waiver does not expire unless California changes its standards, and California has never amended its greenhouse-gas standards. Put differently, the waiver's effects do not expire after model year 2025. There thus can be no plausible dispute that vacating the waiver will have some effect on automaker behavior at some point in the future. Standards that regulate market allocation *forever* are all but guaranteed to have at least one dollar of economic impact.

ARGUMENT

To demonstrate Article III standing, a plaintiff must show that he suffered a concrete injury, that the injury is fairly traceable to the challenged action, and that the "injury will be redressed by a favorable decision." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561

(1992) (citation omitted). Taken collectively, these requirements ensure that federal courts decide only "the rights of individuals," and maintain "their proper function in a limited and separated government." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021) (citations omitted).

When a plaintiff is directly regulated by a challenged agency action, "there is ordinarily little question" that he has standing to challenge the action. *Lujan*, 504 U.S. at 561. By contrast, when a "plaintiff is not himself the object of the government action or inaction he challenges, standing is . . . ordinarily 'substantially more difficult' to establish." *Id.* at 562 (citation omitted). Nevertheless, "entire classes of administrative litigation" have "traditionally been brought by unregulated" but "adversely affected parties." *Corner Post, Inc.* v. *Board of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 827, 833 (2024) (Kavanaugh, J., concurring); *see id.* at 833-837 (collecting cases). Those challenges make particular sense where government regulations *target* someone "downstream or upstream" from the entities that the regulations directly *govern*. *Alliance for Hippocratic Medicine*, 602 U.S. at 384.

Petitioners here are not directly regulated, but they are the prime targets of government regulation. They easily satisfy the three components of Article III standing. Petitioners produce, refine, or sell liquid fuels and the raw materials used to produce them. They promptly challenged EPA's waiver, which allows California to impose otherwise-preempted standards that are designed to reduce the use of liquid fuel—hitting petitioners with a classic pocketbook injury. Setting aside EPA's waiver would mean that California

cannot enforce its standards, ending the artificial depression of demand for petitioners' products. This case should be no more complicated than that.

I. PETITIONERS SUFFERED AN INJURY-IN-FACT CAUSED BY EPA'S ACTION

The court of appeals skipped the injury and causation prongs of standing, resting its holding entirely on redressability grounds. That may be because petitioners easily satisfy the first two prongs of the Article III standing analysis. Petitioners suffered concrete and particularized injuries, and those injuries are fairly traceable to EPA's waiver decision.

A. Petitioners Suffered Classic Pocketbook Injuries

Petitioners include businesses at every stage of the supply chain for liquid fuels. They grow the raw materials for liquid fuel, produce and refine liquid fuel, and sell liquid fuel at gas stations and convenience stores. *See, e.g.*, J.A. 127-128 (producers of corn to make ethanol), 131-132 (producers and sellers of renewable liquid fuels), 138-139 (owners of gas stations and convenience stores). Petitioners differ in the exact nature of their businesses, but they all have one thing in common: they profit from participating in the liquid-fuels market.

By design, California's standards operate to reduce the liquid-fuels market and thus injure those who participate in it. That is because the Advanced Clean Cars standards aim to reduce emissions by reducing liquid fuel combustion in vehicles. To comply, manufacturers must produce more electric vehicles, subsidize the production of electric vehicles, implement technologies that improve the fuel efficiency of vehicles, or some combination thereof. *See* J.A. 8-9 (identifying possible compliance technologies); 78 Fed. Reg. at 2,136-2,137

(same). The standards thus force automakers to produce a fleet of vehicles that use significantly less liquid fuel or no liquid fuel at all. In fact, California repeatedly represented as much when applying for the challenged waiver. J.A. 35, 49. Fewer cars that run on liquid fuel, or more cars that run on less liquid fuel, means less liquid fuel sold. And suppressing demand for a party's product is the prototypical monetary injury-in-fact. *See TransUnion*, 594 U.S. at 425; *United States* v. *Texas*, 599 U.S. 670, 676 (2023).

Petitioners explained these prototypical pocketbook injuries in the 14 standing declarations they submitted with their opening brief below. Those declarations detail how petitioners participate in the liquid-fuel supply chain and how the reduction in demand caused by California's standards would financially injure their businesses. *See* J.A. 120-184. For example, producers explained that a "significant reduction in California's gasoline demand, as contemplated by the [Advanced Clean Cars] I program, will detrimentally impact Valero's business." J.A. 147. And they confirmed their inability to "avoid financial harm" by shifting production outside of California or by repurposing their products. J.A. 170; *see* J.A. 144-145, 147-150. As these declarations underscore, petitioners have a concrete stake in the outcome: their businesses are on the line. "This is a classic pocketbook injury sufficient to give [them] standing." *Tyler* v. *Hennepin Cnty.*, 598 U.S. 631, 636 (2023).

B. Petitioners' Injuries Are Fairly Traceable To EPA's Waiver

Petitioners likewise satisfy Article III's causation requirement. To demonstrate causation, a party must establish a "causal connection between the injury and the conduct complained of." *Susan B. Anthony List* v.

Driehaus, 573 U.S. 149, 158 (2014) (citation omitted). That "requires only that the plaintiff's injury be fairly traceable to the defendant's conduct." *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 134 n.6 (2014). The connection between petitioners' injuries and EPA's waiver is straightforward here. The waiver allows California's greenhouse-gas emission standards and zero-emission-vehicle mandate to take effect, when federal law would otherwise preempt them. Pet. App. 55a-57a. Those portions of the Advanced Clean Cars program operate by requiring increased fuel economy or full electrification, thereby depressing demand for petitioners' products.

Petitioners' injuries are attributable to government regulation, not solely to existing consumer demand for electric vehicles. The entire purpose of California's standards is to go beyond what market forces would naturally produce. That is why California described its regulations as "critical" for "emissions reductions" and "critical for incentivizing production and deployment of zero-emission vehicles." J.A. 66. Those standards include a 22% zero-emission-vehicle mandate, far above what the market had naturally produced. Cal. Code Regs. tit. 13, § 1962.2(b)(1); *see* David Gohlke et al., *Assessment of Light-Duty Plug-in Electric Vehicles in the United States, 2010–2021*, at 1 (Nov. 1, 2022), https://perma.cc/Y6VE-2QB5. Because California's standards aim to reduce liquid-fuel use by increasing the number of electric or fuel-efficient vehicles beyond market demand, petitioners have "link[ed] their asserted injuries to the government's regulation . . . of someone else." *Alliance for Hippocratic Med.*, 602 U.S. at 382.

II. PETITIONERS' INJURIES ARE REDRESSABLE

Because petitioners suffered classic pocketbook injuries caused by a federal regulatory action, and because they challenged that action almost immediately, it would be unusual if petitioners' injuries were not redressable. Redressability requires only that a favorable judicial judgment would "take steps to *slow* or *reduce*" the plaintiff's injury. *Massachusetts* v. *EPA*, 549 U.S. 497, 525 (2007). Thus, when a plaintiff asserts an economic injury, she establishes redressability if a favorable decision would put even one dollar back in her pocket. *Uzuegbunam* v. *Preczewski*, 592 U.S. 279, 291 (2021). That is no high bar.

The bar is easily cleared here. Most simply, the challenged government action creates a legal hurdle to the use of petitioners' products, so setting aside that government action would provide redress. And were that not enough, petitioners can always rely on the "predictable effect" of regulation on third parties to establish redressability. *Department of Commerce*, 588 U.S. at 768. It is certainly predictable that an electric-vehicle mandate will result in fewer liquid-fuel-powered vehicles on the roads; that is the mandate's *raison d'être*. At a minimum, the decision below must be vacated because it was premised on a factual mistake. EPA has since confirmed that the waiver allowing California to target petitioners' products has no definite end date. An agency action limiting the use of petitioners' products in perpetuity must have some real-world effect.

A. Petitioners Have Established Redressability Because They Are Challenging A Regulatory Hurdle To The Use Of Their Products

California's Advanced Clean Cars standards require car manufacturers to produce an increasing percentage of vehicles that consume less liquid fuel or no liquid fuel at all. Because the standards impose a new legal barrier to the use of petitioners' products—and indeed reducing consumption of petitioners' products is how the standards achieve their intended purpose—vacating EPA's waiver would provide petitioners with redress. Article III requires nothing more.

1. *Removing the coercive effect of government standards provides redress*

a. This Court has long recognized that removing the "determinative or coercive effect" of government regulation "upon the action of someone else" is sufficient to establish redressability. *Bennett*, 520 U.S. at 169. Thus, if a plaintiff can establish the existence of a regulatory impediment that prevents its product from being used, that is enough.

In *Bennett*, this Court made clear that the removal of an adverse agency action—even one that operates on a third party—provides redress to individuals injured by that action. There, a group of ranchers challenged a biological opinion issued by the U.S. Fish and Wildlife Service, which advised the Bureau of Reclamation to maintain minimum water levels at several reservoirs that the ranchers used. 520 U.S. at 159-160. The government argued that Article III's causation and redressability requirements were not met because it was possible that the Bureau would independently opt to reduce the ranchers' access to water, even without the challenged biological opinion. *Id.* at 168. This Court unanimously disagreed, recognizing that the biological

opinion had a "virtually determinative effect" on the Bureau's decisions because disregarding it could expose the Bureau and its employees to liability under the Endangered Species Act. *Id.* at 170. The removal of the "coercive" force of the biological opinion on the Bureau alone established redressability. *Id.* at 171. The ranchers did not need to provide additional evidence to show that their injury was "fairly traceable" to the opinion or that it would "likely be redressed" if the opinion were withdrawn. *Id.* at 169-171.

Bennett made explicit what had been assumed in a long line of this Court's cases resolving challenges to government action brought by indirectly regulated parties. For example, this Court heard a suit by private schools challenging as unconstitutional an Oregon law making it a crime for parents to send their children to private school. *Pierce* v. *Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534 (1925). Although the parents were directly regulated, the private schools were the target—and there was no doubt that they could bring the lawsuit. The Court did not require the schools to provide evidence that parents would send their children to those schools absent Oregon's "unwarranted compulsion." *Id.* at 535. Similarly, in *CBS* v. *United States*, this Court found that the television network CBS could sue to challenge regulations denying a license to any broadcasting station that conducted certain business with CBS. 316 U.S. 407, 421-423 (1942). The Court did not call for evidence that licensees would change course and partner with CBS if the regulations were rescinded; it was enough that potential licensees intended to comply with the regulations. *Id.* at 422.

b. The rule that removal of the "unwarranted compulsion" of government action satisfies redressability

comports with the original purpose of the redressability requirement. As this Court has repeatedly explained, redressability ensures that there is a "relationship between 'the judicial relief requested' and the 'injury' suffered." *California* v. *Texas*, 593 U.S. 659, 660 (2021) (quoting *Allen* v. *Wright*, 468 U.S. 737, 753 n.19 (1984)). It thus prevents litigants from suing parties or challenging laws that have "nothing to do with" their injuries, or requesting overly broad relief. *Id.* at 675; *see Haaland* v. *Brackeen*, 599 U.S. 255, 293 (2023) (redressability not established because "state officials who implement [the challenged statute] are not parties to the suit"). And it similarly prevents courts from issuing "advisory opinion[s]" that amount to nothing more than "a general authority to conduct oversight," particularly "of decisions of the elected branches of Government." *California*, 593 U.S. at 673; *see Brackeen*, 599 U.S. at 294.

When a plaintiff asks a court to remove a coercive government regulation, there is no mismatch between injury and remedy. Indeed, there is a perfect correlation between the individual's injury (which flows from a constraint that may artificially depress market demand) and the remedy for that injury (removing the government constraint). And to the extent there are distinct concerns about attenuation, those concerns are housed in other doctrines, such as proximate-cause limitations that exclude plaintiffs whose injuries are "too remote" from the conduct a statute prohibits. *See, e.g.*, *Lexmark*, 572 U.S. at 133. As far as redressability is concerned, however, Article III's demands are the same whether the plaintiff is directly or indirectly regulated.

c. This Court should confirm the simple, clear rule that the removal of a regulatory hurdle to the use of a

challenger's product satisfies Article III's redressability requirement—no matter whether the regulation is formally applied to a third party. That rule has the benefit of comporting not just with traditional understandings of redressability but also with basic logic. As then-Judge Kavanaugh put it, if "the Government prohibits or impedes Company A from using Company B's product," there is "ordinarily little question" that Company B has standing, since Company B's product is the very "object" of the regulation. *Energy Future Coal.*, 793 F.3d at 144. Company B is being deprived of the "opportunity to compete in the marketplace," so a favorable judicial decision will provide at least some redress. *Ibid.* Or as this Court has succinctly recognized, if a regulatory program causes an injury in fact, "[i]t follows" that "a judicial decree directing [the government] to discontinue its program would 'redress' the injury." *Northeastern Fla. Chapter of Associated Gen. Conts. of Am.* v. *City of Jacksonville*, 508 U.S. 656, 666 n.5 (1993).

2. *California's standards impose a new regulatory hurdle to the use of petitioners' products*

The above rule—that removal of a regulatory hurdle to the use of a challenger's product satisfies Article III's redressability requirement—resolves this case. Petitioners' injuries arise from the "determinative or coercive effect" of California's standards (allowed to go into effect by EPA) on third-party automakers. *Bennett*, 520 U.S. at 169. Although California's standards do not directly impose obligations on petitioners, the standards require somebody else to make vehicles that use less of petitioners' products. It should be irrelevant that the requirement technically operates on automakers; the government is simply reducing the use of liquid

fuel by regulating the assembly line rather than the gas pump.

Again, the Advanced Clean Cars program includes two mechanisms that directly prevent market participants from consuming as much of petitioners' products as they otherwise might. First, California's zero-emission-vehicle mandate requires automakers to produce an increasing percentage of vehicles that consume no liquid fuel. Second, California's greenhouse-gas emission standards require automakers to produce vehicles with increased fuel efficiency—with a corresponding reduction in the use of liquid fuel. Under either mechanism, California's standards pose a legal barrier to the use of petitioners' products. In fact, California predicted that "[t]he oil and gas industry, fuel providers, and service stations are likely to be the most adversely affected by the proposed Advanced Clean Cars program due to the substantial reductions in demand for gasoline." J.A. 13. Petitioners are therefore being denied the "opportunity to compete in the marketplace" without California's interference. *Energy Future Coal.*, 793 F.3d at 144. Under this Court's cases and a traditional understanding of redressability, no more record evidence is needed.

B. Petitioners Have Established Redressability Because They Can Rely On The Predictable Effect Of Emission Standards

Even if this Court does not apply a categorical rule based on the removal of a regulatory hurdle to petitioners' products, petitioners can still establish redressability through case-specific inferences about third-party conduct. Article III does not demand certainty; it requires that the requested remedy will *likely* redress petitioners' injuries. That standard is satisfied

here, where the behavior of third parties is predictable rather than speculative.

1. *Litigants can rely on common sense and basic economics to demonstrate redressability*

Indirectly regulated parties have traditionally satisfied Article III's redressability requirement so long as the conduct of directly regulated parties is reasonably predictable. If it is, then a favorable judicial decision would "likely" redress injuries inflicted as a result of that third party's action—which is what Article III requires. *Davis* v. *Federal Election Comm'n*, 554 U.S. 724, 733 (2008). A contrary rule would shield from judicial scrutiny many government actions aimed at indirectly regulated, but undeniably injured, parties.

a. When a plaintiff's injury arises from "the unfettered choices made by independent actors," a plaintiff must show that the third party will behave in such a way as to "permit redressability of injury." *Lujan*, 504 U.S. at 562 (citation omitted). In applying that rule, this Court has repeatedly distinguished between reliance on speculative third-party actions and reliance on predictable third-party behavior. Record evidence is required to bolster the former but not the latter.

When third-party behavior is predictable, commonsense inferences can suffice. This Court held as much in *Department of Commerce*, 588 U.S. 752. There, the Court concluded that a group of States with a disproportionate share of noncitizens had standing to challenge the inclusion of a citizenship question in the census. *Id.* at 767. Although the States' harm "depend[ed] on the independent action of third parties"—the noncitizens living in those States—it was "predictable" that noncitizens would be "reluctan[t] to answer

a citizenship question" and thus potentially not respond at all. *Id.* at 767-768. The depressed population count, in turn, could result in a diversion of resources from the State challengers. *Id.* at 767. The Court accepted that predictable chain of events based on common sense and historical practice. *Id.* at 768. It did not require the challengers to gather, for example, affidavits from noncitizens asserting that they would not respond to a census with a citizenship question.

Although *Department of Commerce* focused on causation, its reasoning applies equally to Article III's redressability requirement. After all, "causation and redressability . . . are often 'flip sides of the same coin.'" *Alliance for Hippocratic Med.*, 602 U.S. at 380 (quoting *Sprint Commc'ns Co.* v. *APCC Servs., Inc.*, 554 U.S. 269, 288 (2008)). For that reason, lower courts have found Article III's redressability requirement satisfied based on the predictable response of a third party to a judicial decision in the plaintiff's favor. *See, e.g.*, *Skyline Wesleyan Church* v. *California Dep't of Managed Health Care*, 968 F.3d 738, 749-750 (9th Cir. 2020).

Indeed, this Court applied similar reasoning in *Massachusetts* v. *EPA*, when it determined that Massachusetts satisfied Article III's redressability requirement by looking to the predictable effect on global climate change of requiring EPA to regulate greenhouse-gas emissions. 549 U.S. at 525-526. In finding redressability, the Court attached "considerable significance" to EPA's own statements about its regulatory priorities, which suggested that ordering EPA to set emission standards would cause fewer vehicle emissions and therefore redress petitioners' injuries. *Id.* at 526. That is, the Court found that an effect

is predictable, and sufficient to establish redressability, when the agency itself presupposes that effect.

b. By contrast, redressability cannot rest on mere speculation. This Court has articulated three circumstances where relief is too speculative to satisfy the demands of Article III. None is applicable here.

First, when a plaintiff's causation or redressability theory relies on "counterintuitive" assumptions about third-party behavior, the plaintiff may need to support that theory with "stronger evidence." *California*, 593 U.S. at 678. That was true in *California*, where the State challengers failed to establish redressability because they sought to attack a government healthcare mandate that lacked any enforcement mechanism. The Court found it "counterintuitive" "that an unenforceable mandate will cause [the States'] residents to enroll in valuable benefits programs that they would otherwise forgo," so the Court required "stronger evidence" that the mandate would actually have such an effect. *Ibid.*

Second, redressability may also be too speculative if a plaintiff relies on a chain of events with thin links between them. For example, in *Alliance for Hippocratic Medicine*, the plaintiffs relied on overly "complicated causation theories" to establish their standing to sue. 602 U.S. at 386. The plaintiff doctors claimed that they suffered increased costs or potential liability as a result of the FDA's decisions to relax mifepristone regulations. *Id.* at 387. But the doctors would first have to experience "an increase in the number of pregnant women seeking treatment" for mifepristone complications, and then those treatments would have to result in the doctors' being "sued or required to pay higher insurance costs." *Id.* at 391-392. More "evidence" was

needed to prove that this chain of events was likely to occur. *Id.* at 391.

Third, if the legal impact of a judicial decision is unclear, redressability may be too speculative. That was true in *Brackeen*, where the challenged statute was enforced by non-party state officials, not the federal defendants. As a result, this Court's opinion could at best serve as a "persuasive . . . advisory opinion[]." 599 U.S. at 294 (citations omitted). A similar problem existed in *United States* v. *Texas*, where the challenged guidelines "merely advise[d] federal officials about how to exercise their prosecutorial discretion when it comes to deciding which aliens to prioritize for arrest and removal." 599 U.S. at 691 (Gorsuch, J., concurring in the judgment). And in *Murthy* v. *Missouri*, the government action had concluded by the time the suit was brought, so a judicial decision also served a purely advisory function. 603 U.S. 43, 72-73 (2024). In all those cases, additional evidence was required to establish redressability not because the federal government was regulating a third party but because it was not actively regulating at all.

c. The distinction between predictable effects (which do not require record evidence) and counterintuitive or unlikely effects (which do) is especially important for lawsuits brought by indirectly regulated parties.

The Court reinforced this point just last Term in *Alliance for Hippocratic Medicine*. Even as it disapproved the particular plaintiffs' standing theories, the Court acknowledged "a variety of familiar circumstances where government regulation of a third-party individual or business may be likely to cause injury in fact to an unregulated plaintiff." 602 U.S. at 384. For example, it is predictable that government regulation

of one business "may cause downstream or upstream economic injuries to others in the chain." *Ibid.* (citing *National Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 488 n.4 (1998); *General Motors Corp.* v. *Tracy*, 519 U.S. 278, 286-287 (1997); *Barlow* v. *Collins*, 397 U.S. 159, 162-164 (1970); and *Association of Data Processing Serv. Orgs., Inc.* v. *Camp*, 397 U.S. 150, 152 (1970)). And it is predictable that when the government "regulates parks, national forests, or bodies of water," it will affect the users of those natural resources. *Id.* at 385 (citing *Summers* v. *Earth Island Inst.*, 555 U.S. 488, 494 (2009)). "The list goes on." *Ibid.* (citing *Department of Commerce*, 588 U.S. at 766-768). In all such cases, plaintiffs rely on "a predictable chain of events leading from the government action to the asserted injury." *Ibid.*

2. *Automakers would predictably adjust their fleets if EPA's waiver were vacated*

The effect of EPA's waiver on automakers is more than predictable; it is obvious. EPA's waiver puts in place California's Advanced Clean Cars standards. Those standards are specifically designed to reduce the number of conventional, liquid-fuel-powered vehicles that would otherwise be produced. J.A. 110, 115-116. And no one has disputed that automakers have historically responded to California's greenhouse-gas emission and zero-emission-vehicle standards by selling fewer conventional vehicles. *See* 78 Fed. Reg. at 2,141-2,142. After all, if that were not the historical response, California "would presumably not bother with such efforts." *Massachusetts*, 549 U.S. at 526 (citation omitted).

In continuing to defend its standards, California has confirmed that it is intentionally trying to reduce de-

mand for petitioners' products. California has repeatedly told EPA that the State wants its greenhouse-gas emission standards to reduce the emissions that come from burning liquid fuel. It has explained that its standards increase the number of electric vehicles in use, thereby avoiding the "production and delivery of gasoline." J.A. 84. And California represented to EPA that the standards were "critical not just for immediate emissions reductions but also" for "greater emission reductions in the future." J.A. 66. If regulations are "critical" in the government's telling, surely litigants can reasonably predict that they will have some effect.

The bottom line here is unavoidable. If EPA's waiver is vacated, California can no longer force automakers to make more electric vehicles or higher-efficiency vehicles than they would otherwise produce in response to market forces. Free of government interference, automakers will respond to market demand, including by making more vehicles that run on more liquid fuel or by adjusting their distribution plans or prices in ways that will result in more liquid-fuel-powered vehicle sales. That theory of automaker behavior is far from speculative. It is Economics 101.

C. The Court Of Appeals' Redressability Analysis Is Wrong

Under the principles discussed above, the redressability inquiry should have been straightforward in this case. Vacating EPA's waiver would remove a legal obstacle to the use of petitioners' products, and automaker behavior is predictable in any event. Yet the court of appeals blinded itself to the obvious. It concluded that petitioners do not have Article III standing by creating artificially high evidentiary barriers to establishing redressability. In so doing, the court made

it nearly impossible for many parties indirectly affected by government action to secure judicial relief, and created incentives for government gamesmanship.

1. *The decision below contradicts this Court's precedents and common sense*

a. The court of appeals overstated petitioners' burden to establish redressability. Although the court acknowledged that it was "possible" automakers would change their plans and sell more liquid-fuel-powered vehicles or vehicles that use more liquid fuel if EPA's waiver were vacated, it faulted petitioners for failing to supply "record evidence" to that effect, such as "additional affidavits." Pet. App. 24a (internal quotation marks omitted). In the court's view, it was just as likely that California's standards have no real-world impact because some manufacturers are already selling "more qualifying vehicles in California than the State's standards require." *Id.* at 28a (emphasis omitted) (quoting J.A. 202). And the court believed that "unsupported assumptions regarding the future actions of third-party market participants are insufficient to establish Article III standing"—full stop. *Id.* at 29a (internal quotation marks omitted).

As explained, the court of appeals' categorical evidentiary demand is doubly wrong. First, it departs from *Bennett* and the D.C. Circuit's own precedent establishing that the removal of a regulatory hurdle to the use of the challenger's product satisfies redressability. *See* pp. 25-29, *supra*. Indeed, the court of appeals did not even acknowledge its precedent holding that "remov[ing] a regulatory hurdle" to the use of fuel suffices to establish redressability. *Energy Future Coal.*, 793 F.3d at 144. And second, petitioners were at least entitled to rely on common sense: automakers would predictably produce more vehicles that use more

liquid fuel if no longer subject to standards mandating the production of certain quantities of electric or fuel-efficient vehicles. *See* pp. 29-35, *supra*.

Nor could the court of appeals rely on supposed market forces to justify its heightened redressability burden. The limited evidence the court invoked supported the opposite conclusion. The court relied on California's declaration explaining that automakers had sold more electric vehicles than required in 2022—likely in anticipation of the increasingly stringent standards for the ensuing years. Pet. App. 28a (citing J.A. 202). That says nothing about how automakers would respond if they did not need to meet California's standards ever again. The court also highlighted that the intervening automakers had suggested that "internal sustainability forces and external market forces" were resulting in the production of more electric vehicles. *Id.* at 24a n.8 (quoting C.A. Industry Resp.-Int. Br. 6-7). But those automakers never said that *every* automaker would exceed California's standards if the standards were vacated. To the contrary, as petitioners explained in reply, five individual automakers intervened precisely because a decision vacating the waiver would put them at a "competitive disadvantage." J.A. 211 (quoting C.A. Industry Resp.-Int. Br. 17). That is, those five individual automakers were concerned that other automakers—many of whom have remained silent throughout this litigation—would pull back their electric-vehicle numbers and instead sell more liquid-fuel-powered vehicles.

b. Even if petitioners were legally required to produce record evidence to support redressability, plenty such evidence existed. The record included 14 declarations explaining how California's standards depress demand for liquid fuel, and how petitioners' injuries

would be ameliorated if the waiver were vacated. Other declarants further noted that California itself had recently projected that the waiver would "reduce emissions through reductions in fuel production." J.A. 148 (internal quotation marks and citation omitted); *see* J.A. 180; *see also* J.A. 174 (similar statements by Minnesota, which has adopted California's standards). Additional record evidence likewise documented California's position that it needs its greenhouse-gas standards to reduce motor-vehicle emissions and that doing so decreases liquid-fuel consumption. That included California's 2021 comment representing that its standards are "critical not just for immediate emissions reductions but also" for "greater emission reductions in the future." J.A. 66. And California elsewhere had publicly explained that the standards increase the number of electric vehicles in use, thereby avoiding "production and delivery of gasoline." J.A. 84.

None of this evidence was enough for the court of appeals. In context, the court apparently thought that petitioners could meet their burden of showing redressability only by providing affidavits from automakers promising to change production or pricing if the waiver were vacated. This Court has never required the endorsement of a directly regulated third party before an indirectly regulated party can sue, and it should not create such a rule now. Doing so would make it impossible for many parties indirectly affected by government action to secure judicial relief and would create incentives for government gamesmanship. *See* pp. 41-45, *infra*.

2. *The decision below conflates redressability with mootness*

The decision below creates additional doctrinal confusion because it conflates mootness and redressability. The court of appeals thought that the redressability inquiry here was "further complicated by the relatively short duration of the waiver." Pet. App. 22a. As the court saw it, petitioners needed to demonstrate not only that manufacturers were likely to respond to a judicial decision vacating the waiver by "changing their fleets," but also that they "would do so relatively quickly—by Model Year 2025"—the year in which the court believed EPA's waiver terminated. *Id.* at 23a. In the court's view, because vehicle product cycles "can also begin years before a vehicle is launched," it was "far from clear" that automakers could "change course . . . within the model years covered by the waiver." *Id.* at 24a.

Those (misplaced) timing concerns sound in mootness, not redressability. Redressability, like the other elements of standing, is assessed at the time the suit is filed. *See Lujan*, 504 U.S. at 569 n.4. Here, petitioners brought suit immediately after EPA's waiver reinstatement in 2022. At that point, the waiver was scheduled to be in effect for nearly *four years*. There was ample evidence in the record that automakers are at least nimble enough to change a production choice or a vehicle price four years in advance—surely enough to affect a single dollar of petitioners' sales. *See* pp. 37-38, *supra*; J.A. 209-211. Indeed, the court of appeals relied on a comment from Toyota explaining that some manufacturers were producing their vehicle fleets one year in advance—which affirmatively undermines the notion that no manufacturer could change plans four years in advance. Pet. App. 24a; *see* J.A. 98-100.

Given that context, the court's emphasis on the "relatively short nature of the waiver" makes sense only as a concern that the case was approaching model year 2025 still unresolved. Pet. App. 25a; *see* C.A. Oral Arg. 34:46-34:49 (Garcia, J.) ("[Y]ou need about two more years to plan and adjust how you're producing vehicles, and I don't see how we can assume that's going to happen by model year [20]25."). But it "is the doctrine of *mootness*, not standing, that addresses whether 'an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit.'" *West Virginia* v. *EPA*, 597 U.S. 697, 719 (2022) (quoting *Genesis HealthCare Corp.* v. *Symczyk*, 569 U.S. 66, 72 (2013)). Indeed, the federal government recently explained to this Court that when its regulations operate on a short time horizon, Article III concerns should be evaluated under the rubric of mootness, not redressability. *See* FCC Br. 14, *FCC* v. *Consumers' Research*, No. 24-354 (explaining that the mootness doctrine applies when "the challenged action is in its duration too short to be fully litigated") (citation omitted).

That "distinction matters" for several reasons. *West Virginia*, 597 U.S. at 719. First, although plaintiffs have the burden to establish Article III standing, the burden flips for mootness. EPA thus would "bear[] the burden to establish that a once-live case has become moot." *Ibid.* And neither intervenors nor EPA pointed the court of appeals to evidence sufficient to show that automakers' decisions have become irrevocable. Because the court misconstrued its mootness concern as a redressability obstacle, they had no need to.

Second, because mootness would have been a new development, the court below would have had to con-

sider the supplemental record evidence that petitioners offered. Counsel for the state and local government intervenors made arguments sounding in mootness for the first time at oral argument. In response, petitioners submitted supplemental declarations from individuals experienced in vehicle-emission compliance. Those declarations explained that "automobile manufacturers could and likely would change their production, pricing, and/or distribution plans for Model Year 2025 as late as December 2025, but at a minimum well into 2025." J.A. 215, 220. But the court rejected petitioners' supplemental brief and accompanying declarations as too late to show redressability. Pet. App. 31a. Had the court properly characterized California's arguments as newly raised concerns about mootness, there would have been no doubt about the propriety of petitioners' supplemental responses.

Third, and critically, mootness doctrine contains exceptions that redressability does not. In particular, if there is a concern about the "relatively short nature of the waiver," Pet. App. 25a, then the case would be an excellent candidate for applying "the established exception to mootness for disputes capable of repetition, yet evading review." *Federal Election Comm'n* v. *Wisconsin Right To Life, Inc.*, 551 U.S. 449, 462 (2007). But if that concern is improperly characterized as going to redressability, the challengers are out of luck.

3. *The decision below creates bad policy*

The decision below stacks bad policy on top of bad law. It would put injured businesses at the mercy of regulated third parties whose interests may not align, incentivize agency mischief, and create a one-way ratchet in favor of regulators over the regulated.

a. To start, the court of appeals' rule means that indirectly regulated entities will often be unable to challenge government action that undeniably injures them. That is because an indirectly regulated entity's standing will often depend on the actions of directly regulated parties. And the interests of directly regulated parties and downstream or upstream entities often diverge. That was the case where "workers challenged a Department of Labor rule that unlawfully allowed employers to access inexpensive foreign labor, with the effect of lowering American workers' wages." *Corner Post*, 603 U.S. at 836 (Kavanaugh, J., concurring) (citing *Mendoza* v. *Perez*, 754 F.3d 1002 (D.C. Cir. 2014)). It is also the case where a business challenges under-regulation of a competitor. *See, e.g.*, *Monsanto Co.* v. *Geertson Seed Farms*, 561 U.S. 139, 153-156 (2010) (conventional alfalfa farmers had standing to challenge deregulation of genetically modified alfalfa); *General Motors Corp.*, 519 U.S. at 282, 286-287 (purchaser of natural gas had standing to challenge Ohio's differential tax treatment of gas sales by certain Ohio utilities and gas sales by out-of-state sellers). Justiciable claims of under-regulation may also come from outside the industry, as when insurance companies challenged the recission of vehicle safety standards. *See Motor Vehicle Mfrs. Ass'n of U.S.* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

Even when directly regulated entities and upstream or downstream entities are not squarely at odds, other considerations might prevent a regulated party from joining the effort to challenge government action. Members of the directly regulated industry may be more minimally burdened by an action than downstream actors. The regulated entity may be unwilling

to risk negative publicity by challenging a popular government action, especially if it has less at stake. The government may have effectively purchased the regulated entity's cooperation by doling out countervailing regulatory benefits. Or businesses might simply lack the appetite to confront their regulator in court.

Those risks are particularly acute in industries that require lead time to comply with standards. In such industries, regulated entities may prefer to cooperate with the agency in exchange for certainty about the future regulatory environment or other benefits. The agency action may still have sweeping effect, but the only viable plaintiffs would have no incentive to bring suit. That was true here, where automakers had incentives to cooperate with EPA and California to obtain regulatory stability and to avoid the perceived negative publicity of interfering with California's environmental efforts. In short, one industry should not be held hostage to a related industry's incentives.

b. The decision below creates troubling incentives for agencies, too. It teaches agencies that they can target entire industries with crippling burdens so long as they act through a conduit and placate that conduit. Here, EPA, California, and several automakers entered into "California Framework Agreements" committing the automakers to accede to California's standards in exchange for certain benefits like additional lead time. CARB, *Framework Agreements on Clean Cars* (Aug. 17, 2020), https://perma.cc/ZM4Z-GDEK. Having entered into those agreements, the select automakers that intervened in this case were forced into defending California's standards, lest they be left to compete in a market undisturbed by California's artificial distortions. But appeasing the directly regulated industry should not insulate agency action from review,

particularly if that action cripples numerous other industries.

A too-demanding redressability standard may also encourage agencies to act over shorter time horizons to avoid meaningful review. Under the reasoning of the court below, EPA's latest waiver decision was effectively unchallengeable because it applied "only" over four years. Pet. App. 22a. That reasoning would have the perverse effect of shielding from review the most important and politically sensitive issues on which presidential administrations may disagree. *See, e.g.*, *West Virginia*, 597 U.S. at 715-718 (describing the history of EPA's Clean Power Plan across presidential administrations). California's Section 209(b) waivers for climate-change-focused standards are a perfect example: EPA has granted or rescinded a waiver like clockwork with each change in administration. An inflated redressability standard all but guarantees that these course-changes mean that agency authority is never settled, even in the most consequential cases.

c. Finally, the decision below creates a one-way ratchet in favor of the regulator over the regulated. A State will always have "a legitimate interest in the continued enforceability of its own statutes," regardless of their effects. *Maine* v. *Taylor*, 477 U.S. 131, 137 (1986). A State's interest in vindicating its laws would presumably allow California to challenge or intervene to defend any decision granting or denying a waiver. *See* C.A. State & Local Gov. Intervention Mot. 10 (citing *Alaska* v. *Department of Transp.*, 868 F.2d 441, 444 (D.C. Cir. 1989)). As California puts it, with EPA's "waiver, its standards have *legal* force; without it, they do not," so it need not show that the waiver influences the "mix of cars." Cal. Br. in Opp. 14 n.5 (citing *Alliance for Hippocratic Med.*, 602 U.S. at 382). But under

the court of appeals' theory, industries targeted by California's laws have no such luck.

D. At The Very Least, Petitioners Have Established Redressability Because The Challenged Waiver Continues In Perpetuity

If there were any doubt that petitioners' injuries are redressable, EPA's recent admission that its waiver has no definite end point should remove it. Even under the court of appeals' unduly high bar for redressability, petitioners have standing to challenge what EPA now freely describes as an open-ended waiver allowing California to impose emission standards in perpetuity.

1. The court of appeals' standing analysis was premised on its assumption that the waiver, and thus California's standards, would sunset after 2025. Pet. App. 14a, 22a. As noted, the court viewed the "relatively short duration of the waiver" as "complicat[ing]" the redressability analysis. *Id.* at 22a. According to the court, petitioners needed to demonstrate not only that manufacturers were likely to respond to a judicial decision vacating the waiver by "changing their fleets," but also that manufacturers would do so "relatively quickly—*by Model Year 2025*." *Id.* at 23a (emphasis added). And the court found it "far from clear" that manufacturers would change their prices or production cycles by model year 2025. *Id.* at 24a.

EPA has now admitted that the D.C. Circuit's central premise was incorrect. In opposing certiorari, EPA candidly explained that its waiver has no end date. *See* EPA Br. in Opp. 12-13. "Contrary to the court of appeals' suggestion," EPA told this Court, the waiver "does not expire after model-year 2025." *Id.* at 12. When this lawsuit was filed, both the zero-emission-vehicle mandate and the greenhouse-gas emission standards applied to model year 2025 "*and*

subsequent." J.A 50 (emphasis added). In 2022, after petitioners sued, California amended its zero-emission-vehicle mandate to sunset after model year 2025. *See* p. 16, *supra*. But California's greenhouse-gas emission standards continue to "remain in force" after model year 2025. EPA Br. in Opp. 13. So in approving the waiver, EPA approved standards that do not expire unless California chooses to replace them, which it has not done for its greenhouse-gas standards.

After this certiorari petition was fully briefed, EPA formalized its position that California's greenhouse-gas emission standards do not sunset. In its December 17, 2024 decision granting California's waiver request for its new Advanced Clean Cars II standards, EPA explained that California's "[greenhouse-gas] emission standards applicable to 2025 and subsequent model years remain[] unchanged." *ACC II Decision Document* 40 n.96. Those emission standards did not need any further approval from EPA; they "continue to be covered by EPA's [Advanced Clean Cars] I waiver issued in 2013 . . . and reinstated in 2022." *Ibid.*

2. Given EPA's newly articulated position, it should be beyond question that vacating the challenged waiver would ameliorate petitioners' injuries at least to some degree. Even if the court of appeals were right that it would take several years for every automaker to change its production cycle, Pet. App. 23a, some of the relevant standards are set to govern for more than several years. In other words, while the court below worried that vehicle manufacturers could not change course "quickly" enough, *ibid.*, speed should not have been a concern. Vacating an indefinite waiver permitting California to enforce stringent emission standards would necessarily have some effect on vehicle pricing, production, or distribution at some future point—

thereby alleviating at least one dollar of the artificially depressed demand for petitioners' products.

California and EPA have since made factual findings confirming that the perpetual greenhouse-gas emission standards will depress demand for liquid fuel into the next decade. In recently proposing to approve California's request to revise its state implementation plan, EPA accepted California's prediction that its greenhouse-gas standards would "achieve additional criteria pollutant emission reductions" in the State through at least *2037*. 89 Fed. Reg. at 82,557 & n.19 (citing J.A. 93-94). Citing the same analysis it had submitted when urging EPA to reinstate the challenged waiver, California reiterated that its greenhouse-gas emission standards target liquid fuel. Specifically, California attributed the criteria-pollutant reductions to the "avoided production and delivery of gasoline" from automakers' compliance with those ongoing standards. *Id.* at 82,559 & n.37 (citing J.A. 84). That analysis—embraced by EPA as "reasonable and adequately supported"—recognizes that California's greenhouse-gas emission standards will continue to affect liquid-fuel consumption for more than a decade. *Id.* at 82,558. At least one automaker is likely to adjust a single production or pricing decision over that period.

* * *

This case really is this simple: petitioners make and sell liquid fuels. EPA's waiver allows California to enforce standards requiring fewer cars that run on liquid fuel. Indeed, California's goal is to eliminate reliance on petitioners' products entirely. Removing EPA's waiver would thus likely cause at least a single customer to purchase at least a dollar's worth more of petitioners' products. The legality of EPA's actions may

raise controversial statutory or political questions, but their justiciability should never have been in doubt.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted.

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APPENDIX

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Statutory provisions:

1. 42 U.S.C. § 7507 provides:

New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

2. 42 U.S.C. § 7543 provides:

State standards

(a) **Prohibition**

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) **Waiver**

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines 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. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter.

(c) **Certification of vehicle parts or engine parts**

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).

(d) **Control, regulation, or restrictions on registered or licensed motor vehicles**

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) **Nonroad engines or vehicles**

(1) Prohibition on certain State standards

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing,

authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—

(i) the determination of California is arbitrary and capricious,

(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of subchapter I may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if—

(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.