

No. 21-519

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In the  
**Supreme Court of the United States**

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GROWTH ENERGY, *Petitioner*,

*v.*

AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS,  
*et al.*, *Respondents*.

—————  
**On Petition for a Writ of Certiorari to the  
U.S. Court of Appeals for the D.C. Circuit**

—————  
**BRIEF OF RESPONDENTS  
URBAN AIR INITIATIVE, INC., ET AL.,  
IN SUPPORT OF THE PETITION  
FOR A WRIT OF CERTIORARI**

—————  
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## **CORPORATE DISCLOSURE STATEMENT**

Urban Air Initiative, Inc. (UAI) is a social welfare organization dedicated to educating the public about the health threats posed by domestic use of petroleum-based fuels. UAI has no parent companies, and no publicly held company has a 10% or greater ownership interest in UAI.

The Farmers' Educational & Cooperative Union of America, d/b/a National Farmers Union, is a Texas nonprofit agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in National Farmers Union.

Farmers Union Enterprises, Inc., is a Minnesota corporation that oversees a diverse portfolio of farm-related businesses, including fuel ethanol plants. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in Farmers Union Enterprises.

Big River Resources, LLC is an Iowa holding company with various subsidiaries currently engaged in the production of fuel ethanol. It has no parent companies. Farmers Energy Big River, LLC has a 10% or greater ownership interest in Big River Resources.

Glacial Lakes Energy, LLC is wholly owned by the Glacial Lakes Corn Processors. Glacial Lakes Corn Processors is a South Dakota cooperative with 4,100 shareholder/investors who reside primarily in eastern South Dakota. No publicly held company has a 10% or greater ownership interest in Glacial Lakes Energy, LLC.

Clean Fuels Development Coalition (CFDC) is a business league organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in CFDC.

Fagen, Inc., is a Minnesota industrial construction company whose projects include biorefineries engaged in the production of fuel ethanol. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in Fagen, Inc.

Jackson Express, Inc., is a fuel retailer and convenience store organized under the laws of Nebraska. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in Jackson Express, Inc.

Jump Start Stores, Inc., is a fuel retailer and convenience store organized under the laws of Kansas. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in Jump Start Stores, Inc.

Little Sioux Corn Processors, LLC is an Iowa renewable fuel producer. Little Sioux Corn Processors, LLC has no parent companies. Little Sioux Corn Processors, LLC owns the sole general partnership interest of LSCP, LLLP. Archer Daniels Midland Company, a publicly held company, has a 10% or greater ownership interest in LSCP, LLLP.

South Dakota Farmers Union is a nonprofit organization that works to promote the interests of South Dakota farmers. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in South Dakota Farmers Union.

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**RESPONSE IN SUPPORT OF CERTIORARI**

Respondents Urban Air Initiative, Inc., et al., agree with petitioner that a writ of certiorari should be granted.

This case is about Clean Air Act § 211(h)(4), a volatility allowance for certain fuel blends containing ethanol. 42 U.S.C. § 7545(h)(4). The Clean Air Act limits the volatility of gasoline fuels, but a small 1-pound-per-square-inch volatility allowance is available for all “fuel blends containing gasoline and 10 percent . . . ethanol.” *Id.* While ethanol has a very low volatility, mixing a small quantity of ethanol with gasoline causes a small increase in the fuel’s volatility. A small allowance is therefore needed to enable the sale of fuel blends with 10 percent or more ethanol in all areas subject to § 211(h)—most of the country.

The Court of Appeals below construed § 211(h)(4) to authorize a fuel volatility allowance only for fuel blends containing only gasoline and 9 to 10 percent ethanol, a blend known as “E10.” The Court of Appeals read the statute as a precise “scientific formula” for E10— a set of “instructions directing the preparation of the solution.” [Op. at 12–13]. As explained by petitioner, that construction is inconsistent with text and statutory purpose. It would also increase fuel volatility, create an impractical regulatory barrier for the sale of renewable fuel volumes required by law, and wreak havoc on fuel retailers that have invested in equipment to sell gasoline with more than 10 percent ethanol (E15). For these reasons, respondents support the petition for certiorari.

Respectfully submitted,

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October 25, 2021