

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-472

HOLLYFRONTIER CHEYENNE REFINING, LLC, ET AL., PETITIONERS

v.

RENEWABLE FUELS ASSOCIATION, ET AL.

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

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, the Acting Solicitor General, on behalf of the federal respondent, respectfully seeks leave to divide the oral argument for respondents in this case. We move to allocate 15 minutes of oral argument time to the federal respondent and 15 minutes of oral argument time to the private respondents. Counsel for the private respondents have authorized us to state that they agree with that allocation of argument time and therefore join in this motion. Granting this motion would not require the Court to enlarge the overall time for argument.

The case involves 2005 and 2007 amendments to the Clean Air Act (CAA), 42 U.S.C. 7401 et seq., providing that transportation fuel sold in the United States must contain specified amounts of certain renewable fuels each year, see 42 U.S.C. 7545(o). As

relevant here, subparagraph (A) of Section 7545(o) exempts all small refineries from the annual requirements until 2011, see 42 U.S.C. 7545(o) (9) (A) (i), and directs the Environmental Protection Agency (EPA) to "extend" that exemption "for a period of not less than 2 additional years" based on the results of a study to be conducted by the Secretary of Energy, 42 U.S.C. 7545(o) (9) (A) (ii). The provision at issue in this case authorizes small refineries to petition EPA "at any time * * * for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship." 42 U.S.C. 7545(o) (9) (B) (i).

Petitioners are three small refineries that sought "an extension of the exemption under subparagraph (A)," 42 U.S.C. 7545(o) (9) (B) (i), in 2017 or 2018, see Pet. App. 32a-34a. EPA granted those requests. Pet. Supp. App. 1a-46a. The private respondents -- a coalition of renewable-fuel producers -- challenged EPA's decisions in the court of appeals. Pet. App. 3a. Petitioners intervened to defend EPA's decisions. See ibid. The court of appeals vacated EPA's decisions on multiple grounds. As directly relevant here, the court held that EPA could not grant "an extension of the exemption under subparagraph (A)," 42 U.S.C. 7545(o) (9) (B) (i), to a small refinery that (like petitioners) does not currently have such an exemption, see Pet. App. 65a-68a, 75a.

Petitioners filed a petition for a writ of certiorari contending that the court of appeals had interpreted Section

7545(o) (9) (B) (i) too restrictively. The government opposed certiorari but stated that the court of appeals' decision did "not violate any 'core principle of statutory interpretation.'" Gov't Br. in Opp. 10 (brackets and citation omitted). When the Court granted certiorari, EPA began a detailed review of the issue. See Gov't Merits Br. App. 36a. Following the change of Administration, EPA reached the "considered assessment that the Tenth Circuit's reasoning better reflects the statutory text and structure, as well as Congress's intent in establishing the" renewable fuel program. Id. at 36a, 38a. The government has accordingly filed a brief urging affirmance of the decision below.

Dividing the argument time for respondents between the government and the private respondents would be of material assistance to the Court. The government has a significant interest in this case because it directly implicates EPA's administration of a federal statute. The private respondents have a significant interest in this case because the statutory provisions at issue affect the market for their products. See Pet. App. 36a-54a. The government accordingly requests that the Court grant the motion for divided argument.

Respectfully submitted.

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MARCH 2021