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 THE FEDERAL RESPONDENTS

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QUESTION PRESENTED

The Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.*, generally preempts state laws that regulate emissions from new motor vehicles, but the CAA directs the Environmental Protection Agency (EPA) to waive preemption for California laws under specified conditions. See 42 U.S.C. 7543(a) and (b). In 2013, EPA issued a waiver to allow California to impose certain vehicle-emissions standards. EPA partially withdrew that waiver in 2019 but reinstated it in 2022. Petitioners, who had not challenged the 2013 waiver, challenged EPA's 2022 reinstatement decision. The court of appeals determined that petitioners lack standing. This Court granted a petition for a writ of certiorari limited to the following question, as stated in the petition:

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. Pet. I.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-49a) is reported at 98 F.4th 288.

JURISDICTION

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

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-12a.

INTRODUCTION

This case arises from a series of actions by the Environmental Protection Agency (EPA) under the Clean Air Act (CAA or Act), 42 U.S.C. 7401 *et seq.* In general,

the CAA authorizes EPA, not States, to prescribe nationwide standards to control the emission of air pollutants from new motor vehicles. Those federal standards ordinarily preempt state law. But in certain circumstances, Section 209(b) of the Act directs EPA to waive federal preemption for emissions standards established by the State of California. 42 U.S.C. 7543(b).

In 2013, EPA granted a waiver under Section 209(b) for California emissions standards that limit greenhouse gas emissions from new motor vehicles and require that a certain percentage of new vehicles sold in the State by each manufacturer be zero-emission vehicles, such as plug-in electric vehicles. As originally designed, both sets of standards were to increase in stringency until model-year 2025; thereafter, the 2025 levels would remain in effect. In 2019, EPA withdrew the portion of the 2013 waiver that had allowed California's greenhouse gas and zero-emission-vehicle standards to take effect. In 2022, EPA reinstated the 2013 waiver.

Upon taking office on January 20, 2025, President Trump ordered that the policy of the United States is to "terminat[e], where appropriate, state emissions waivers that function to limit sales of gasoline-powered automobiles" and to "consider[] the elimination" of other measures "that favor [electric vehicles] over other technologies and effectively mandate their purchase * * * by rendering other types of vehicles unaffordable." Exec. Order. No. 14,154, § 2(e), 90 Fed. Reg. 8353, 8353 (Jan. 29, 2025) (EO 14,154). Consistent with that order, EPA is now considering the basis for and legality of the agency's 2022 reinstatement of the 2013 waiver.

That review is ongoing and may culminate in a decision to again withdraw the 2013 waiver. EPA's review may also involve re-evaluating the effect of California's

emissions standards on demand for liquid fuels and conventional gas-powered vehicles. EPA will undertake any such re-evaluation based on the evidence before it, informed by the agency's accumulated experience and expertise. In the meantime, however, the narrow question before the Court in this case is whether, on the record presented to the lower court, petitioners—a coalition of groups that sell or refine liquid fuels or the ingredients used in liquid fuels—carried their burden of establishing their standing to challenge EPA's reinstatement at the time they sought judicial review in 2022. The answer to that distinct question is no.

To satisfy Article III's case-or-controversy requirement, the party invoking federal jurisdiction must have standing to sue, *i.e.*, a concrete and particularized injury in fact, which was caused by the challenged conduct of the defendant, and which is likely to be redressed by the judicial relief the party seeks. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Those elements are to be evaluated at the time federal jurisdiction is invoked, not based on later developments. See *id.* at 569 n.4. And each element is an "indispensable part of the plaintiff's case," which the plaintiff must prove "in the same way as any other matter on which the plaintiff bears the burden of proof." *Id.* at 561.

Petitioners do not manufacture any new motor vehicles and therefore are not themselves subject to the underlying emissions standards. Petitioners contend, however, that EPA's reinstatement of the 2013 waiver injured them by requiring manufacturers to sell more fuel-efficient vehicles, thus reducing consumer demand for liquid fuels. Petitioners further contend that vacating the 2022 reinstatement would redress their asserted injury by increasing demand for liquid fuels. On the

record amassed by the parties in the court of appeals, petitioners failed to substantiate that theory. Contrary to petitioners' principal submission in this Court, petitioners could not carry their burden of proving redressability merely by alleging that the emissions standards that were allowed to take effect as a result of the 2022 reinstatement had a coercive effect on vehicle manufacturers. Petitioners were also required to show that setting aside the reinstatement would likely cause vehicle manufacturers to change course, and petitioners failed to make that showing in this case. To attempt to prove their standing, petitioners submitted seven declarations that all contained the same sentence, repeated verbatim: "All these injuries would be substantially ameliorated if EPA's decision were set aside." J.A. 130, 137, 150, 154, 158, 167, 181. Petitioners' other declarations on standing did not address redressability.

The court of appeals determined that the evidence adduced below by other parties showed that manufacturers were already exceeding the challenged emissions standards, were planning to continue to exceed them in future model years, and would not likely change course even if the 2022 reinstatement were vacated. The court mistakenly thought that the underlying waiver would expire after model-year 2025 and thus that any such change of course would need to occur quickly for petitioners to show redressability. But, given the other evidence of record, the onus was on petitioners to show that, if a court entered the judicial decree that petitioners seek, at least one vehicle manufacturer would likely respond to that decision by altering its products or prices in a way that would lead to greater consumer demand for liquid fuels—whether for model-year 2025 or afterwards. Petitioners introduced no such support and

cannot rely on evidence circa 2013 or inferences circa now to fill the gap. The judgment below should be affirmed.

STATEMENT

A. Statutory Background

Congress enacted the CAA "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," 42 U.S.C. 7401(b)(1). This case concerns Title II of the Act, which governs control of air pollution from mobile sources, including motor vehicles. See 42 U.S.C. 7521-7590. For "new motor vehicles or new motor vehicle engines," the Act directs EPA to prescribe nationwide "standards applicable to the emission of any air pollutant * * * which in [its] judgment cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7521(a)(1).

The emissions standards prescribed by EPA under that authority apply to emissions of air pollutants from "new motor vehicles or new motor vehicle engines." 42 U.S.C. 7521(a)(1); see 42 U.S.C. 7550 (relevant definitions). The Act generally prohibits "a manufacturer of new motor vehicles or new motor vehicle engines" from selling, offering for sale, or importing into the United States any new motor vehicle or new motor vehicle engine unless the vehicle or engine is certified to comply with applicable emissions standards. 42 U.S.C. 7522(a)(1). The CAA authorizes the government to enforce that prohibition by bringing an action against a manufacturer to restrain violations of Section 7522(a)(1), and by suing for or assessing civil monetary penalties for a manufacturer's violations. 42 U.S.C. 7523, 7524(a).

The CAA generally "preempts any corresponding state regulation" of emissions from new motor vehicles, Pet. App. 4a, subject to EPA's authority to waive the Act's preemptive effect in certain circumstances for emissions standards promulgated by California. In particular, Section 209(a) of the Act provides that "[n]o State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles." 42 U.S.C. 7543(a). Section 209(b), in turn, directs EPA to "waive application of [Section 209(a)] to any State which has adopted 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." 42 U.S.C. 7543(b)(1). Section 209(b) specifies that "[n]o 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." 42 U.S.C. 7543(b)(1)(A)-(C).

California is the only State that regulated vehicle emissions before March 30, 1966, so it is the only State that is eligible for a waiver under Section 209(b). Pet. App. 6a (citing *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d 1075, 1079 n.9 (D.C. Cir. 1996)); see S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967) (Senate Report). Congress made a waiver available to California because, when the CAA was enacted, the State was perceived as a "'lead[er] in the establishment of standards for regulation of au-

tomotive pollutant emissions' at a time when the federal government had yet to promulgate any regulations of its own." *Engine Mfrs. Ass'n*, 88 F.3d at 1079 (citation omitted; brackets in original). Congress also viewed the State as facing "unique" air pollution problems "as a result of its climate and topography." H.R. Rep. No. 728, 90th Cong., 1st Sess. 22 (1967); cf. Senate Report 33 (citing the State's "peculiar local conditions" as justifying the waiver provision).

B. The Advanced Clean Car Program

In 2012, California adopted a set of emissions standards known as the Advanced Clean Car (ACC) program. Pet. App. 12a. That program includes a low-emission-vehicle program, which (as relevant here) establishes "standards to regulate [greenhouse gas] emissions." 78 Fed. Reg. 2112, 2114 (Jan. 9, 2013). It also includes a zero-emission-vehicle program, which requires a certain percentage of manufacturers' sales of new vehicles to be zero-emission vehicles. See *id.* at 2114-2115. Under the ACC program as originally constructed, both the low-emission-vehicle program and the zero-emission-vehicle program were to increase in stringency through model-year 2025. See Cal. Code Regs. tit. 13, § 1961.3(a)(1)(A) (2024); J.A. 50; C.A. Admin. R. Doc. 8111, at 1. After model-year 2025, the programs were designed to remain in effect, with their stringency held constant at 2025 levels. See *ibid.*; see also 78 Fed. Reg. at 2119 (describing the ACC's zero-emission-vehicle requirements as extending through "2025 and beyond"). In 2013, EPA found "that the entire ACC program me[t] the criteria for a waiver of Clean Air Act preemption," and the agency therefore "grant[ed] a waiver for [California's] ACC program." 78 Fed. Reg. at 2113; see *id.* at 2112.

In 2019, as part of a joint rulemaking process with the National Highway Traffic Safety Administration (NHTSA), EPA withdrew the 2013 waiver for the portions of California's ACC program that addressed zero-emission vehicles and that set low-emission-vehicle standards for greenhouse gases. 84 Fed. Reg. 51,310, 51,310 (Sept. 27, 2019). EPA identified three grounds for the withdrawal. First, NHTSA had determined that state regulations of greenhouse gas emissions from new motor vehicles "relate[] to fuel economy standards" and are therefore preempted by the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 32919(a). See 84 Fed. Reg. at 51,337-51,338. Second, EPA explained that, in evaluating whether a Section 209(b) waiver must be denied because California "does not need" a given emissions standard "to meet compelling and extraordinary conditions," 42 U.S.C. 7543(b)(1)(B), it was appropriate to consider each standard "individually" rather than focusing on "California's entire program in the aggregate," 84 Fed. Reg. at 51,341. And third, EPA determined that California could not demonstrate that the relevant emissions standards were individually needed to meet compelling and extraordinary conditions because California could not show a "particularized nexus" between greenhouse gas emissions and California's local air-pollution problems. *Ibid.*

After EPA withdrew the 2013 waiver, automobile manufacturers representing nearly 30% of U.S. vehicle sales, including Honda, Ford, Volvo, BMW, and Volkswagen, entered into independent agreements with California under which the manufacturers would continue to meet California's low-emission-vehicle and zero-emission-vehicle standards for specified model years.

See Pet. App. 13a-14a; 86 Fed. Reg. 74,434, 74,458 (Dec. 30, 2021).

In 2022, EPA changed course and reinstated California's 2013 waiver. 87 Fed. Reg. 14,332, 14,332 (Mar. 14, 2022). Among other grounds, EPA stated that, contrary to the interpretation of Section 209(b)(1)(B) that EPA had adopted in the 2019 withdrawal decision, the agency had decided to "examine[] whether California needs a separate motor vehicle program as a whole—not specific standards—to address the state's compelling and extraordinary conditions." *Ibid.* EPA also stated that Section 209(b) does not permit relying on the preemptive effect of other federal laws (such as the EPCA) as a reason for denying a requested waiver, and that in any event NHTSA had since withdrawn its preemption finding. *Ibid.*; see Pet. App. 14a.

C. The Present Controversy

Petitioners produce or sell liquid fuels and raw materials used to produce those fuels, or have members that engage in those activities. Pet. App. 2a. In 2022, petitioners sought judicial review of EPA's 2022 reinstatement decision in the D.C. Circuit. *Ibid.*; see 42 U.S.C. 7607(b)(1). Petitioners are not directly regulated by the emissions standards at issue. See Pet. App. 19a-20a. But petitioners contend that EPA's reinstatement of the 2013 waiver will cause manufacturers to produce and sell more fuel-efficient vehicles and will "depress the demand for liquid fuels." *Id.* at 19a.

A group of 17 States also sought judicial review of EPA's reinstatement decision. Pet. App. 15a. California, 19 other States, the District of Columbia, and two cities (collectively, the California respondents) intervened to defend EPA's decision, as did various environmental organizations. *Ibid.* Five manufacturers—Ford,

Volkswagen, BMW, Honda, and Volvo—and several trade groups also intervened to defend EPA's decision. *Id.* at 15a & n.6. The D.C. Circuit consolidated the petitions for review into a single proceeding. *Id.* at 15a.

As relevant here, the California respondents contended that petitioners had failed to establish the redressability component of Article III standing. See Cal. C.A. Br. 13-15. The California respondents observed that petitioners' asserted injury—reduced demand for liquid fuels—depended on decisions by manufacturers of new motor vehicles "about which vehicles to offer," and that petitioners had introduced no evidence to show that those third parties would make different decisions even if EPA's reinstatement were set aside. *Id.* at 13. In addition, the California respondents introduced their own evidence that, "in response to surging consumer demand, manufacturers have announced plans to sell even more zero-emission vehicles than required by California's standards." *Id.* at 14 (emphasis omitted); see J.A. 191-192, 201-203.

The court of appeals dismissed petitioners' claims for lack of Article III standing. Pet. App. 1a-49a. The court agreed with the California respondents' contention that petitioners had not "met their burden of demonstrating" that their alleged injuries would be redressed by a judicial decree holding the challenged EPA decision invalid. *Id.* at 19a.[1]

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[1] The court of appeals also determined that the 17 States opposed to EPA's decision lacked standing to bring their asserted claims—with the exception of a constitutional challenge, which the court rejected on the merits. Pet. App. 19a, 32a-49a. Those States filed a petition for a writ of certiorari seeking further review with respect to their constitutional challenge, which this Court denied. *Ohio* v. *EPA*, No. 24-13 (Dec. 16, 2024).

The court of appeals observed that "[t]he difficulty for [petitioners] is that their claimed injuries," in the form of reduced demand for liquid fuels, depend on "the actions of third parties—the automobile manufacturers who are subject to the waiver." Pet. App. 22a. As a result, the court explained, the redressability of petitioners' claimed injuries likewise "'hinges on the response of' those same automobile manufacturers." *Ibid.* (quoting *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 562 (1992)) (brackets omitted). Petitioners' "injuries would be redressed only if automobile manufacturers responded to vacatur of the waiver by producing and selling fewer non-conventional vehicles, or by altering the prices of their vehicles such that fewer non-conventional vehicles—and more conventional vehicles—were sold." *Ibid.*

In the court of appeals' view, "redressability is further complicated by the relatively short duration of the waiver" that petitioners challenge. Pet. App. 22a. The court observed that petitioners had challenged only EPA's 2022 decision "to reinstate the waiver [EPA] had previously granted California as to Model Years 2017 through 2025." *Ibid.* The court stated that, "to meet their burden of demonstrating redressability," petitioners would therefore need to "demonstrate a 'substantial probability' not only that automobile manufacturers are likely to respond to a decision * * * by changing their fleets in a way that alleviates their injuries in some way, but also that automobile manufacturers would do so relatively quickly—by Model Year 2025." *Id.* at 23a (citation omitted). The court emphasized, however, that the standing analysis was properly focused on the state of affairs "'as of the time' this lawsuit commenced," rather than on any developments postdating the filing of the petition for review in 2022. *Id.* at 25a (citation omitted).

The court of appeals determined that "[t]he record evidence provides no basis" for finding redressability. Pet. App. 23a. The court first noted that petitioners had "fail[ed] to point to any evidence affirmatively demonstrating that vacatur of the waiver would be substantially likely to result in any change to automobile manufacturers' vehicle fleets by Model Year 2025." *Ibid.* Indeed, the court found that "[t]he only evidence points in the opposite direction, indicating that automobile manufacturers need years of lead time to make changes to their future model year fleets." *Ibid.*; see *id.* at 23a-24a (discussing comments submitted by automakers at various times during EPA's consideration of possible withdrawal or reinstatement of the 2013 waiver).

The court of appeals further emphasized record evidence showing that "'manufacturers are already selling *more* qualifying vehicles in California than the State's standards require,'" which "suggest[s] that vacatur of the zero-emission-vehicle mandate would not redress Petitioners' injuries." Pet. App. 28a (citation omitted). The court observed that several automobile manufacturers had filed a brief explaining "that 'both internal sustainability goals and external market forces' are prompting manufacturers to transition toward electric vehicles, irrespective of California's regulations." *Id.* at 24a n.8 (citation omitted). The court thus perceived a lack of evidence that "vacatur of the challenged waiver" would "result in any change on the part of automobile manufacturers." *Id.* at 27a.

The court of appeals observed that, "[d]espite the paucity of evidence in the record regarding the redressability of their injuries" and "the relatively short nature of the waiver they challenge," petitioners "seem to have treated redressability as a foregone conclusion." Pet.

App. 24a-25a. The court noted that petitioners had not attempted "to explain in any detail how their injuries are redressable, let alone to 'cite any record evidence' or to file 'additional affidavits or other evidence sufficient to support' redressability." *Ibid.* (brackets and citation omitted). The court therefore found "no basis to conclude that Petitioners' claims are redressable—a necessary element of standing that Petitioners bear the burden of establishing." *Id.* at 29a.

After oral argument, petitioners had moved to supplement the record to address what they characterized as a question of mootness. Pet. App. 30a. The court of appeals denied that request, *ibid.*, finding no good cause to allow petitioners to add to the record at that juncture. See *id.* at 31a-32a.

D. Subsequent Developments

The court of appeals issued its decision in April 2024. Pet. App. 1a. Later that month, EPA published a final rule under Section 202(a) of the CAA to set "new, more stringent vehicle emissions standards for * * * greenhouse gas (GHG) emissions from motor vehicles" for model years "2027 through 2032 and beyond." 89 Fed. Reg. 27,842, 27,843 (Apr. 18, 2024).

On January 6, 2025, EPA published a notice of its approval of a Section 209(b) waiver that California had sought for a new program known as ACC II. 90 Fed. Reg. 642, 642-643 (Jan. 6, 2025). Under that new program, California has amended the emissions standards for which EPA reinstated its 2013 waiver. As explained above, the zero-emission-vehicle standards encompassed by the 2013 waiver were designed to increase in stringency until model-year 2025 and then to remain in effect at the 2025 levels. In ACC II, California amended the relevant state law so that those standards will cease to

apply after model-year 2025. See Cal. Code Regs. tit. 13, § 1962.2(a) (2024). California has also adopted a new set of zero-emission-vehicle standards in ACC II, which will apply to new vehicle sales starting in model-year 2026, and which will gradually increase in stringency through model-year 2035 and then remain in effect at the 2035 levels. See *id.* § 1962.4(a)(1) and (c)(B) (2024). The waiver that EPA published in 2025 encompasses those new standards.

After the change in Administration, President Trump issued an executive order finding that "burdensome and ideologically motivated regulations" have contributed to "high energy costs" and have harmed American consumers and businesses. EO 14,154, § 1, 90 Fed. Reg. at 8353. To address those problems, the President determined that it shall be the policy of the United States to, among other things, "terminat[e], where appropriate, state emissions waivers that function to limit sales of gasoline-powered automobiles." *Id.* § 2(e), 90 Fed. Reg. at 8353. The President also declared a policy of "considering the elimination of unfair subsidies and other ill-conceived government-imposed market distortions that favor [electric vehicles] over other technologies." *Ibid.* And he directed Executive agencies to undertake an immediate review of existing agency actions for conformity with the policies set forth in the order. *Id.* § 3(a), 90 Fed. Reg. at 8354.

Consistent with that order, EPA has determined that the agency should reassess the basis for and soundness of the 2022 reinstatement decision at issue in this case. See Fed. Resp. Mot. for Abeyance 3. That review is ongoing. EPA also transmitted to Congress the waiver the agency had published on January 6, 2025, relating to California's ACC II program, for Congress to con-

sider whether to disapprove the waiver under the Congressional Review Act, 5 U.S.C. 801 *et seq.* See EPA, News Release, *Trump EPA to Transmit California Waivers to Congress in Accordance with Statutory Reporting Requirements* (Feb. 14, 2025). When Congress exercises its authority under the procedures in that Act to enact legislation disapproving of an agency rule, the Act specifies that the rule "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued," unless specifically authorized by a later-in-time law. 5 U.S.C. 801(b)(2).

SUMMARY OF ARGUMENT

Petitioners failed to carry their burden under Article III of demonstrating that the judicial relief that they seek—vacatur of EPA's 2022 reinstatement of the 2013 waiver allowing California's ACC I emissions standards to take effect—would likely redress their asserted injuries. The court of appeals therefore correctly dismissed their petition for review based on petitioners' failure to establish standing on the record before that court.

A. The party invoking federal jurisdiction has the burden of establishing each of the elements of Article III standing, including redressability. The redressability inquiry is typically straightforward when a plaintiff challenges a regulation that restricts the plaintiff's own conduct and causes an injury in fact. But standing is more difficult to establish when a plaintiff challenges the regulation of a third party and asserts that setting aside the regulation will cause that third party to take steps that will in turn redress the plaintiff's injury. In those circumstances, the plaintiff may not rely on mere speculation about how the third party will respond to the

judicial relief that the plaintiff seeks. Here, petitioners are not the object of the underlying emissions standards.

Petitioners contend that, whenever a favorable judicial ruling would eliminate a legal impediment to third-party conduct that would benefit the plaintiff, redressability can be established on that basis alone, without regard to the practical likelihood that the third party would actually engage in the desired conduct if it were legally free to do so. That contention is unsound and unsupported by petitioners' principal authority for that view, *Bennett* v. *Spear*, 520 U.S. 154 (1997). The other cases that petitioners identify likewise do not support their request for any categorical rule that Article III's redressability requirement is always satisfied when a plaintiff challenges agency action that constrains the legal options available to a third party. Adopting any such rule would be inconsistent with the *practical* focus of Article III standing analysis. It would also contravene the principle that standing is not dispensed in gross and instead must be established separately for each claim and each form of relief.

B. On the record created by the parties during the judicial proceedings here, petitioners failed to carry their burden of demonstrating redressability. Petitioners' theory of standing turns on an inference that, if EPA's 2022 reinstatement of the 2013 waiver were set aside, vehicle manufacturers would likely alter their products or prices in such a way as to increase consumer demand for liquid fuels and their ingredients. As far as the record in this case reveals, however, manufacturers would not likely change course in that way because—according to statements from manufacturers—they are already planning to exceed the emissions standards at issue for reasons independent of those standards. Five

manufacturers intervened below and explained both their own plans to exceed the minimum floors set by the emissions standards at issue and the market forces driving those plans.

EPA is currently reassessing the 2022 reinstatement and may reevaluate its premises, including any potential economic harm it may have caused to manufacturers of conventional gas-powered vehicles and to fuel producers. The proper disposition of the redressability issue here, however, depends on the state of affairs that prevailed when petitioners invoked the court of appeals' jurisdiction, and on the record that was assembled during the judicial proceedings. Petitioners did not contribute to that record any meaningful particularized evidence concerning vehicle manufacturers' likely responses to the judicial ruling that petitioners seek.

The standing declarations that petitioners submitted merely asserted, in conclusory terms, that a favorable decision would redress their injuries. Petitioners cannot overcome their failure of proof by relying on statements that California or EPA made in connection with granting the original 2013 waiver. Petitioners did not challenge that waiver, and industry practices have changed substantially during the intervening years. To have standing to challenge the 2022 reinstatement, petitioners must establish that, under market conditions as of the time of suit, manufacturers would change course if that reinstatement were invalidated. Petitioners failed to make that showing.

Petitioners contend that they were entitled to rely on inferences and common sense to show standing. But petitioners cannot substitute attorney argument for the evidence they failed to submit below. Nor can petitioners overcome their failure of proof merely by asserting

that the future conduct of the third-party vehicle manufacturers is predictable. This Court's decision in *Department of Commerce* v. *New York*, 588 U.S. 752 (2019), does not support petitioners' approach. There, the Court held that the State plaintiffs had shown redressability by proving, with evidence introduced at trial, that including a citizenship question on the decennial census would predictably cause an increase in nonresponse rates for aliens' households. Petitioners introduced no comparable proof here.

Petitioners' policy arguments could not justify a departure from established Article III requirements, and those arguments are unsound on their own terms. The court of appeals did not limit the forms of proof that petitioners might have used to establish redressability in this case. The court instead focused on petitioners' failure to offer *any* meaningful particularized evidence of vehicle manufacturers' likely response to a judicial order vacating EPA's 2022 reinstatement. Consistent with core standing principles, that focus on the likely practical consequences of judicial action ensures that Article III courts will resolve legal disputes only at the behest of parties who have a personal stake in the outcome.

C. Although the court of appeals was wrong to believe that the reinstated 2013 waiver would expire after model-year 2025, that error was harmless. In the proceedings below, petitioners offered no persuasive evidence that, if the 2022 reinstatement is set aside, manufacturers will likely change course *after* model-year 2025 either. The judgment of the court of appeals should be affirmed.

ARGUMENT

PETITIONERS FAILED TO CREATE A RECORD SHOWING THAT THEIR ASSERTED INJURIES WOULD LIKELY BE REDRESSED IF EPA'S 2022 REINSTATEMENT OF ITS 2013 WAIVER WERE HELD TO BE INVALID

Article III limits the jurisdiction of the federal courts to the resolution of "Cases" and "Controversies." U.S. Const. Art. III, § 2. "A proper case or controversy exists only when at least one plaintiff 'establishes * * * standing to sue.'" *Murthy* v. *Missouri*, 603 U.S. 43, 57 (2024) (brackets and citation omitted); see *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). And to establish standing, a plaintiff must show that he has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 338 (2016). The party invoking federal jurisdiction bears the burden of proving that each of those elements was satisfied at the time federal jurisdiction was invoked. See *Defenders of Wildlife*, 504 U.S. at 561.

Here, petitioners assert that they have suffered economic injuries in the form of reduced demand for liquid fuels as a result of EPA's 2022 reinstatement of the 2013 waiver that EPA had granted for California's ACC program. Pet. App. 19a-20a. Contrary to petitioners' lead argument, petitioners could not establish standing simply by showing that judicial vacatur of EPA's reinstatement would remove a legal impediment to manufacturers' sale of less fuel-efficient vehicles. Rather, petitioners were required to show that, as of the filing of their petition for review in 2022, invalidating the 2022 reinstatement would likely result in actual increased sales of such vehicles, increasing consumer demand for

liquid fuels and thereby redressing petitioners' asserted injuries.

Petitioners failed to carry their burden of showing that such effects would likely result if the court of appeals issued the ruling that petitioners seek. Petitioners did not submit any evidence that setting aside the 2022 reinstatement would cause vehicle manufacturers to alter their products or prices in such a way as to increase the demand for liquid fuels. Other record evidence suggests that vehicle manufacturers would not do so. Based on the precise, narrow, and case-specific circumstances of the record before the court of appeals, petitioners failed to show that vehicle manufacturers are likely to change course in response to the judicial decree that petitioners seek, and thus lack standing to request that decree.

A. Because Article III Requires The Party Invoking A Federal Court's Jurisdiction To Prove Redressability, Petitioners' Proposed Categorical Rule Is Unsound

Petitioners are not regulated by the challenged agency action. Their theory of standing relies on a prediction that, if a court invalidated EPA's 2022 reinstatement of the 2013 waiver, third-party vehicle manufacturers would respond by altering their products or prices in ways that would in turn increase demand for liquid fuels. In the proceedings below, petitioners failed to substantiate that prediction with record evidence and thus failed to prove that they had standing to bring this challenge as of the time they filed their petition for review. And when a party fails to make that showing in a particular case, Article III requires that the suit be dismissed for lack of a concrete case or controversy.

Petitioners' lead argument (Br. 25-29) focuses on the fact that the judicial ruling they seek would eliminate a

legal impediment to manufacturers' sale of less fuel-efficient vehicles. Petitioners contend that this legal effect is sufficient to establish redressability, without regard to the practical likelihood that manufacturers would actually sell more such vehicles if EPA's 2022 reinstatement were vacated. That argument is inconsistent with well-established Article III principles. This Court has never recognized any such "categorical rule" for redressability (Pet. Br. 18), and it should not do so here.

1. Article III demands more than mere speculation when a party's theory of standing relies on future conduct by a third party

Redressability is part of the "irreducible constitutional minimum" for establishing Article III standing. *Defenders of Wildlife*, 504 U.S. at 560. And because "standing is not dispensed in gross," the party invoking federal jurisdiction must make that showing with respect to "each claim" and "each form of relief." *Murthy*, 603 U.S. at 61 (citation omitted). Mere speculation will not suffice. The party must show that an asserted injury is "*likely* to be redressed by a favorable ruling." *Department of Commerce* v. *New York*, 588 U.S. 752, 766 (2019) (emphasis added; citation omitted); see *Defenders of Wildlife*, 504 U.S. at 561.

That showing is particularly difficult to make in cases like this, involving hypothetical future conduct by third parties. "[I]t is a bedrock principle that a federal court cannot redress 'injury that results from the independent action of some third party not before the court.'" *Murthy*, 603 U.S. at 57 (citation omitted). "In keeping with this principle," the Court has "'been reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exer-

cise their judgment.'" *Ibid.* (quoting *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 413 (2013)). The Court has repeatedly rejected theories of redressability that depend on such guesswork.

In *Murthy*, for example, the Court found that the plaintiffs had failed to demonstrate redressability in a challenge asserting that the government had pressured social media platforms to adopt policies that had the effect of "suppress[ing]" the plaintiffs' speech on the platforms. 603 U.S. at 73. The plaintiffs sought an injunction to prevent the government from "coercing or encouraging the platforms" to apply the platforms' policies in particular ways. *Ibid.* The Court explained, however, that any such injunction against the government would have left the platforms "free to enforce, or not enforce," the same underlying policies. *Ibid.* The Court therefore concluded that, given the independent role of the platforms themselves, the plaintiffs had failed to establish that the requested judicial relief was likely to redress their alleged injuries. See *ibid.*; see also, *e.g.*, *Haaland* v. *Brackeen*, 599 U.S. 255, 293-294 (2023); *Defenders of Wildlife*, 504 U.S. at 568-571.

In a related vein, this Court has distinguished for standing purposes between suits in which the plaintiff is "himself an object of the action * * * at issue," and those in which the "plaintiff's asserted injury arises from the government's allegedly unlawful regulation * * * of *someone else*." *Defenders of Wildlife*, 504 U.S. at 561-562. In the latter circumstance, "much more is needed" to establish standing because "causation and redressability ordinarily hinge on the response of the regulated * * * third party to the government action." *Id.* at 562. When a plaintiff who is not the object of a challenged regulation asserts that invalidating it would cause reg-

ulated parties to make choices that would in turn redress the plaintiff's claimed injury, "it becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made." *Ibid.*

The three elements of Article III standing are "an indispensable part of the plaintiff's case" and must be "supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Defenders of Wildlife*, 504 U.S. at 561; see *Whitmore* v. *Arkansas*, 495 U.S. 149, 155-156 (1990) ("A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing."). And under the "time-of-filing rule," a party's Article III standing must be determined as of the "'state of things at the time of the action [is] brought,'" not based on events postdating the invocation of federal jurisdiction. *Grupo Dataflux* v. *Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004) (citation omitted) (discussing subject-matter jurisdiction); see *Davis* v. *FEC*, 554 U.S. 724, 734 (2008) ("While the proof required to establish standing increases as the suit proceeds, the standing inquiry remains focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed.") (citation omitted).

2. Petitioners were not exempt from making the case-specific showing of proof required by Article III

Petitioners devote hardly any of their opening brief to addressing the scant evidence they introduced below. See Pet. Br. 37-38, discussed at pp. 35-38, *infra*. Petitioners instead train their fire on the premise that they were required to prove redressability through evidence concerning the likely practical effects on third-party conduct of the judicial ruling they seek. Petitioners principally contend (Br. 25-29) that they have shown re-

dressability under the logic of this Court's decision in *Bennett* v. *Spear*, 520 U.S. 154 (1997). Petitioners describe *Bennett* as establishing that "the removal of the coercive effect of government action on third parties alone suffices to establish redressability," and that "[c]hallengers do not need to supply additional record evidence of third parties' likely reactions." Pet. Br. 17. This Court said no such thing, either in *Bennett* or in any of the other cases that petitioners invoke. To the contrary, the "categorical rule" that petitioners propose (Br. 18) would violate established Article III principles.

In *Bennett*, two irrigation districts and two ranch operators within those districts sought judicial review of a biological opinion issued by the Fish and Wildlife Service (FWS) under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.*, regarding the operation of a federal irrigation project by the Bureau of Reclamation (Bureau). See *Bennett*, 520 U.S. at 158-160. The FWS's biological opinion recommended—but did not require—that the Bureau maintain certain minimum water levels in two reservoirs to avoid jeopardizing the continued existence of endangered fish. *Id.* at 159, 168. The challengers in *Bennett* alleged that maintaining those water levels would result in less available irrigation water for the challengers' use. *Id.* at 167. The government contended in response that any such injury was not fairly traceable to the biological opinion itself, nor redressable by a judicial decision vacating the biological opinion, because the opinion was merely a recommendation to the Bureau, which had not been named as a defendant and which had the ultimate authority to decide how to proceed. *Id.* at 168.

This Court rejected the government's causation and redressability arguments in that case, but its reasons

for doing so do not support petitioners here. The Court emphasized that, although the biological opinion "theoretically serves an 'advisory function,' in reality it has a powerful coercive effect on the agency action." *Bennett*, 520 U.S. at 169 (citation omitted). An agency may disregard such advice only if it articulates reasons for doing so. *Ibid.* The Court further explained that "[a] Biological Opinion of the sort rendered here alters the legal regime to which the [Bureau] is subject," *ibid.*, since the Bureau and its employees would be subject to severe potential penalties if the Bureau behaved inconsistently with the biological opinion and its conduct was found to violate the ESA, *id.* at 170.

Petitioners focus (Br. 25) on the Court's observation that, although a plaintiff lacks Article III standing if the plaintiff's injury is "'the result of the *independent* action of some third party not before the court,'" that principle "does not exclude injury produced by determinative or coercive effect upon the action of someone else." *Bennett*, 520 U.S. at 169 (brackets and citation omitted). But petitioners are wrong to suggest (Br. 26) that merely alleging such an effect on a third party was sufficient to show redressability in that case. The Court in *Bennett* went on to explain that the challengers had satisfied their burden of showing redressability, at least at the pleading stage, by alleging that the Bureau would "not impose such water level restrictions" if the biological opinion were vacated. 520 U.S. at 171. The Court found that allegation plausible because the complaint recited that the Bureau had "operated the [irrigation project] in the same manner throughout the 20th century," before changing course when the biological opinion was issued. *Id.* at 170; see *id.* at 159.

That aspect of *Bennett* would have been unnecessary if the mere coercive *potential* of FWS biological opinions had been sufficient to satisfy Article III requirements. And if the FWS had advised the Bureau to take action that the Bureau already wished to take for independent reasons, any injury to the plaintiffs would not have been "produced by" the biological opinion's "determinative or coercive effect upon the" Bureau's conduct. *Bennett*, 520 U.S. at 169. Unlike the challengers in *Bennett*, petitioners did not identify any longstanding practice to which the relevant third parties here—the vehicle manufacturers—would necessarily revert in the absence of the challenged agency action. To the contrary, the immediate effect of the 2022 reinstatement was simply to restore the binding legal force of California requirements with which vehicle manufacturers were *already* complying. See Pet. App. 28a.

Petitioners are likewise wrong in relying (Br. 26) on two decisions involving what they describe as "indirectly regulated parties." Those cases concerned governmental limits on dealings between parents and private schools, see *Pierce* v. *Society of the Sisters*, 268 U.S. 510, 530-533 (1925), and between a television network and broadcasting stations, see *CBS, Inc.* v. *United States*, 316 U.S. 407, 410-411 (1942). Those decisions illustrate that a plaintiff may suffer a redressable injury if the government restrains the plaintiff's business relationship with a third party, even if as a legal matter the restraint falls only on the third party—the parents rather than the private schools in *Pierce*, for example.

Petitioners, however, are not in the same position as the schools in *Pierce* or the television network in *CBS*. The agency action at issue here regulates the vehicles that manufacturers may sell *to consumers*, not any

transaction between vehicle manufacturers and fuel producers. See 42 U.S.C. 7522(a)(1). And in any event, both *Pierce* and *CBS* involved evidence, or at least factual allegations, of harms likely to be redressed by a favorable decision. See *Pierce*, 268 U.S. at 533 (private school's "business [was] being destroyed" because the state law was causing parents to "refus[e] to make contracts for the future instruction of their sons"); *CBS*, 316 U.S. at 423 (stations were "cancelling or threatening to cancel their contracts" with the network "in order to conform to the regulations").

Petitioners' reliance (Br. 28) on the D.C. Circuit's decision in *Energy Future Coalition* v. *EPA*, 793 F.3d 141 (2015) (Kavanaugh, J.), is likewise misplaced. In that case, biofuel producers alleged that an EPA regulation prohibited the use of their product—an ethanol blend known as E30—as a test fuel in emissions testing under the CAA. *Id.* at 143-144. The court of appeals observed that, although the regulation governing which fuels could be used as test fuels was "technically directed at vehicle manufacturers," in practical effect both the biofuel producers and the manufacturers were "'object[s] of the action * * * at issue.'" *Id.* at 144 (quoting *Defenders of Wildlife*, 504 U.S. at 561-562). Pointing to comments in the rulemaking record from Ford that expressed the company's support for ethanol, the court found "substantial reason to think that at least some vehicle manufacturers would use" E30 as a test fuel if they were permitted to do so. *Ibid.* Petitioners seize (Br. 28) on the court's observation that a judicial decision in the challengers' favor would "remove a regulatory hurdle" to the use of their product as a test fuel. *Energy Future*, 793 F.3d at 144. But that observation was premised on the court's determination that some vehicle manufac-

turers would actually use E30 as a test fuel if the challenged regulation were set aside. See *ibid.* Petitioners proffered no comparable evidence here.

No decision of this Court supports petitioners' proposed "rule" that the "removal of a regulatory hurdle to the use of a challenger's product" will always suffice to show redressability. Pet. Br. 27-28. Article III demands that the party invoking federal jurisdiction show redressability on the particular facts of each case, "with the manner and degree of evidence required at the successive stages of the litigation." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 431 (2021) (citation omitted). The Court has generally eschewed categorical rules or shortcuts of the kind that petitioners propose here. See, *e.g.*, *FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 391-393 (2024) (rejecting any special Article III doctrine of "doctor standing" to challenge general safety regulations); *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 342-345 (2006) (rejecting any special Article III exception for state taxpayer standing). The Court has also repeatedly made clear that "standing is not dispensed in gross." *Murthy*, 603 U.S. at 61 (citation omitted). That principle precludes granting standing to the plaintiffs in a whole category of cases, without any case-specific inquiry into injury, causation, or redressability.

Petitioners' argument is also inconsistent with more general standing principles. Petitioners contend (*e.g.*, Br. 27) that, if the judicial ruling a plaintiff seeks would remove a legal impediment to third-party conduct that would benefit the plaintiff, the ruling would necessarily redress the plaintiff's injury. Article III standing analysis, however, focuses on the likely *practical* effect of the defendant's conduct and of a favorable judicial ruling.

A plaintiff cannot establish injury in fact, for example, simply by alleging and proving that a challenged statute or agency action constrains the range of options that are legally available to her. Rather, such a restriction will cause the plaintiff injury in fact only if it prevents her from engaging in conduct *in which she would otherwise engage*. See, *e.g.*, *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 159 (2014) (explaining that "a plaintiff satisfies the injury-in-fact requirement where he alleges 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by statute, and there exists a credible threat of prosecution thereunder'") (citation omitted); *id.* at 158-161. The redressability inquiry here is similarly practical, focusing on the steps that vehicle manufacturers would likely take if they were no longer subject to the legal obligations imposed by California's ACC program. And because petitioners bore the burden of establishing the elements of Article III standing, it was their obligation to proffer evidence concerning manufacturers' likely response to a judicial order vacating EPA's reinstatement.

B. On The Particular Record Here, Petitioners Failed To Carry Their Burden Of Demonstrating Redressability

For the reasons set forth above, Article III required petitioners to show that, at the time they filed their petition for review in 2022, it was likely that one or more vehicle manufacturers would respond to a judicial decree setting aside the reinstated 2013 waiver by taking steps that would in turn have the effect of increasing demand for liquid fuels. Petitioners failed to carry that burden here, instead treating redressability as an afterthought or "foregone conclusion." Pet. App. 25a. Petitioners therefore lack standing.

Petitioners attempt to minimize their burden of establishing redressability and to substitute attorney argument for the evidence that they failed to adduce below. Those efforts are unavailing. There may be cases in which appeals to "common sense" or "Economics 101" can suffice to show how third-party market participants likely would react to the invalidation of a challenged agency action. Pet. Br. 35-36. Given the specific record in 2022, however, this case is not one of them.

1. Petitioners failed to adduce the affirmative evidence required to prove standing in this case

a. Petitioners are not the "object of the action * * * at issue." *Defenders of Wildlife*, 504 U.S. at 561. The relevant emissions standards apply to manufacturers of new motor vehicles—not to producers or sellers of liquid fuels, let alone to soybean or corn farmers (Pet. Br. III, 12). EPA is authorized to adopt standards for controlling the emission of air pollutants from "new motor vehicles or new motor vehicle engines," 42 U.S.C. 7521(a), and the CAA prohibits "manufacturer[s]" from violating those standards by selling, offering for sale, or importing noncompliant vehicles or engines, 42 U.S.C. 7522. The federal standards generally preempt any state-law "standards relating to the control of emissions from new motor vehicles," subject to EPA's authority to waive federal preemption under Section 209(b). 42 U.S.C. 7543(a) and (b). Those provisions all address emissions standards for vehicle manufacturers; none imposes legal obligations or restrictions on petitioners.

Petitioners' theory of standing therefore necessarily "hinge[s] on the response" of third parties, namely vehicle manufacturers, to EPA's 2022 reinstatement. *Defenders of Wildlife*, 504 U.S. at 562. Petitioners contend (Br. 9) that vehicle manufacturers can comply with the

greenhouse gas emissions standards in the ACC program only by producing more electric vehicles or otherwise implementing within new cars technologies that reduce consumption of liquid fuels. Likewise, petitioners contend (*ibid.*) that manufacturers generally can comply with California's zero-emission-vehicle standards only by selling more electric vehicles, which do not combust liquid fuels.

b. To establish redressability on that theory, petitioners must show more than that vehicle manufacturers had to adopt particular fuel-saving mechanisms in order to comply with California's ACC program standards. Rather, petitioners must show that vehicle manufacturers would cease to utilize those mechanisms, and would instead make and sell "more vehicles that run on more liquid fuel," if EPA's 2022 waiver reinstatement were set aside and the relevant California standards were again preempted. Pet. Br. 35. The onus was on petitioners to substantiate that theory.

Petitioners did not satisfy that burden on the record amassed below. The court of appeals determined that the 2013 waiver has now been in effect for more than a decade (with a partial hiatus from 2019 to 2022), and during that period manufacturers have made significant "investments" in "updating their fleets and growing consumer demand for electric vehicles." Pet. App. 14a. The record below contained evidence that "'both internal sustainability goals and external market forces' are prompting [manufacturers] to transition toward electric vehicles, irrespective of California's regulations." *Id.* at 24a n.8 (citation omitted). The court further found that manufacturers "are already selling *more* qualifying vehicles in California than the State's standards require." *Id.* at 28a (citation omitted).

For example, in July 2021 the staff of the California Air Resources Board (CARB), which administers the State's emissions programs, reported that vehicle manufacturers "all have collectively exceeded" the zero-emission-vehicle requirements in the ACC program and had done so "by increasing margins" since 2012. J.A. 95. The staff further explained that manufacturers were "complying more and more on their own," rather than relying on a system of transferable credits available under the program, and were "in fact expected to increase [zero-emission-vehicle] production" in future years. J.A. 96-97. Manufacturers planned to increase such sales in part because their prior investments in research and development had yielded improved "[b]attery charge capacity, vehicle range, and efficiency," along with reduced costs for those technologies—all of which, the staff explained, "point to increased deployment of zero-emission technologies at costs competitive with conventional engines." J.A. 97.

In disputing redressability, the California respondents relied principally on a declaration from the Chief of CARB's Advanced Clean Cars Branch. See Cal. C.A. Br. 13-15; see also J.A. 188-207 (Cunningham Declaration). The Cunningham Declaration stated that "the zero-emission vehicles sold in calendar year 2022" in California already "exceed[ed] what California's standards require." J.A. 192. The Cunningham Declaration also explained that sales data and news reports both pointed to strong consumer demand for electric vehicles. J.A. 192-194. Citing public announcements by specific manufacturers including General Motors, Mercedes-Benz, and Stellantis, the declaration further noted that "multiple manufacturers have announced plans to sell substantially more zero-emission vehicles in the future

than the standards at issue in this litigation require." J.A. 202; see J.A. 202-203 & nn.37-44.

Several of those manufacturers intervened in the proceedings below to defend the 2022 waiver reinstatement. See Pet. App. 15a n.6 (listing the intervenors). Those manufacturers represented that, due to market forces and long-term investment decisions, they anticipated selling more electric vehicles in the future than would be required by California's ACC program. The manufacturers stated that they had already committed to massive investments in electrification, with plans for more than half of the vehicles they sold globally or in the United States to be "fully electric by 2030." Final C.A. Br. for Indus. Resp.-Intervenors 3 (Industry C.A. Br.); see *id.* at 2-3 (stating that Ford "expects that, by 2030, electric vehicles will represent half of its global volume"; that Volkswagen "plans to * * * make 55% of U.S. sales fully electric by 2030"; that BMW intends to "mak[e] electric vehicles half of its global volume" by 2030; and that Honda "has announced that 100% of its vehicles worldwide will be electrified by 2040"). Those estimates substantially exceed the sales mandates under the ACC program. As originally designed, the ACC program required zero-emission vehicles to represent 22% of sales for model-year 2025 and beyond. J.A. 50.

Petitioners discount (Br. 37) those statements as efforts to anticipate the increasingly stringent requirements of the ACC program. But the emissions standards at issue in the 2022 reinstatement were designed to increase in stringency to model-year 2025 and then to reach a steady state. See p. 7, *supra.* The manufacturers who intervened below also stated that the "transition [to electrification] is accelerating for numerous reasons beyond compliance with California's regulatory

program." Industry C.A. Br. 11. The intervenors identified "dramatically" growing "consumer demand for electric vehicles," and "myriad regulatory programs across the world" that have encouraged investments in electrification, as significant drivers of those changes. *Id.* at 11-12; see *id.* at 13 (acknowledging that those trends will "reduc[e] demand for conventional fuels," but explaining that "[r]educed interest in legacy products due to technology advancements and consumer preference shifts are an inevitable reality of the market").

Petitioners contend (Br. 37) that the court of appeals should not have relied on the stated plans of the industry intervenors because those parties did not speak for "*every* automaker." On petitioners' view (*ibid.*), the intervenors had an incentive to defend the 2022 reinstatement to protect their investments in electrification and to prevent being undercut by competitors who might "pull back their electric-vehicle numbers and instead sell more liquid-fuel-powered vehicles" if the reinstatement were invalidated.

The court of appeals' determination that petitioners had failed to establish redressability did not depend on proof that "*every* automaker" (Pet. Br. 37) had already committed to exceeding the challenged emissions standards. Rather, the burden was on petitioners to show that a decision in their favor would likely cause at least one manufacturer to alter its prices or products in a way that would increase demand for liquid fuels. Petitioners did not identify any such manufacturer when seeking to prove their standing below, and they still have not named a candidate. To be sure, a court need not treat as conclusive any regulated party's representation about the actions that party would take in specified hypothetical circumstances. But the court of appeals can

scarcely be faulted for giving weight to the vehicle manufacturers' representations here, given petitioners' failure to proffer any contrary evidence regarding the manufacturers' likely response to vacatur of the 2022 reinstatement.

c. The above factual conclusions may well be open to question. As noted above (see p. 14), EPA is currently reassessing the 2022 reinstatement and may reevaluate its factual premises, including any potential economic harms it may have caused to manufacturers of conventional gas-powered vehicles and to fuel producers. EPA's review will be appropriately based on the evidence before the agency in the ongoing administrative process. In evaluating that evidence, moreover, the agency can draw on the experience and expertise it has accumulated over decades in administering the CAA generally, and in implementing the California waiver program in particular.

The court of appeals' standing determination, by contrast, depended on the closed record that had been assembled by the parties in the federal litigation, and the court's inquiry focused on the state of affairs that existed at the time federal jurisdiction was invoked. And because federal judges are neither policy-makers nor specialized experts in the motor-vehicle industry, the court was appropriately reluctant to adopt a view of vehicle manufacturers' likely conduct that was both contrary to the manufacturers' own representations and unsupported by record evidence in this case. Focusing solely on the record here, the court correctly held that petitioners had failed to make the showing needed to establish redressability.

Petitioners point (Br. 37) to the "14 declarations" they submitted with their opening brief below. But

those declarations said virtually nothing about redressability. The declarants did not attempt "to explain in any detail how their injuries are redressable," nor did petitioners seek to file any "'additional affidavits or other evidence sufficient to support' redressability" with their reply brief. Pet. App. 24a-25a (citation omitted). Petitioners accordingly failed to meet their "burden * * * to adduce facts showing that" the third-party automakers would act "in such manner as to * * * permit redressability of [their asserted] injury." *Defenders of Wildlife*, 504 U.S. at 562.

For example, one of petitioners' 14 declarants was a representative of the Illinois Corn Growers Association, who stated that allowing California's ACC program to take effect had reduced demand for gasoline and in turn for ethanol, which is produced from corn. J.A. 128-129. But with respect to the effect of invalidating the 2022 reinstatement, that declarant merely asserted: "All these injuries would be substantially ameliorated if EPA's decision were set aside." J.A. 130. Petitioners' other standing declarations were similarly conclusory; many repeated word-for-word the same boilerplate. See, *e.g.*, J.A. 137 ("All these injuries would be substantially ameliorated if EPA's decision were set aside."); J.A. 150, 154, 158, 167, 181 (same). Others did not address redressability at all, simply asserting that EPA's 2022 reinstatement had caused financial injury. J.A. 126, 141, 162, 170, 174, 177, 184.

Rather than come forward with their own evidence, petitioners sought to rely below on various statements that California had made in seeking the original 2013 waiver—an approach petitioners reprise in this Court. See J.A. 118, 210; cf. Pet. Br. 3-4, 35, 38. Petitioners are correct that, when California sought a waiver for its

original ACC program more than a decade ago, the State predicted that the greenhouse gas emissions standards and zero-emission-vehicle sales mandate would result in "substantial reductions in demand for gasoline." J.A. 13; see J.A. 35. When EPA granted the waiver in 2013, it similarly contemplated that manufacturers would comply with the emissions standards by implementing technologies for more fuel-efficient cars. See, *e.g.*, 78 Fed. Reg. at 2114, 2136, 2140-2141.

Those predictions, however, are largely irrelevant to the present redressability inquiry. Petitioners did not contest the original 2013 waiver and instead brought this challenge to EPA's 2022 reinstatement of that waiver. Under Article III, petitioners had the burden to show that a judicial decision invalidating the reinstatement would cause third-party vehicle manufacturers to change their plans, and that showing must be based on the record in this case and evaluated as of the filing of the petition for review in 2022, not circa 2013. Even if California's 2013 predictions were accurate—*i.e.*, even if the Court assumes that the ACC program caused vehicle manufacturers to develop and implement fuel-saving technological features that they would not otherwise have adopted—that would not prove here that the manufacturers would abandon those features if the legal obligation to implement them were removed.

Petitioners cite one of the declarations filed below to suggest that California "recently projected that the waiver would 'reduce emissions through reductions in fuel production.'" Pet. Br. 38 (quoting J.A. 148). But as that declaration makes clear, California made that projection "in its original waiver request" in 2012. J.A. 148; cf. J.A. 180 (citing the same statement from 2012). Petitioners' invocation of a 2020 statement from a Minne-

sota regulator (Br. 38; see J.A. 174) is no more persuasive. That regulator was not predicting what would happen in the absence of the California standards, but rather was estimating how much less gasoline would be consumed by vehicles that complied with those standards than by vehicles that complied only with the default federal standards then in place. See Minnesota Pollution Control Agency, *Statement of Need and Reasonableness: Proposed Revisions to Minnesota Rules, Chapter 7023, Adopting Vehicle Greenhouse Gas Emissions Standards*, No. 04626, at 65 (Dec. 2020) (estimating "that the [low-emission-vehicle] standard would result in a reduction of approximately 700 million gallons of gasoline purchased by Minnesotans over these 10 years compared with if Minnesotans had instead been driving SAFE-certified vehicles").

Petitioners' remaining evidence (Br. 38) consists of two 2021 statements by California. Neither statement addresses any question about how manufacturers would respond if the 2022 reinstatement were set aside. See J.A. 66 (describing in general terms how California's emissions standards "incentivize technological advancement that facilitates greater emission reductions in the future"); J.A. 84 (describing cost-benefit analysis that took account of "emissions reductions that would result from the avoided production and delivery of gasoline" for zero-emission vehicles).

2. Attorney argument cannot substitute for the record evidence that petitioners failed to adduce

Petitioners contend (Br. 29-30) that they were entitled to rely on "case-specific inferences" about the "predictable" behavior of vehicle manufacturers in order to show redressability. Petitioners are of course free to argue about the inferences to be drawn from the evi-

dence before the Court. But as juries are routinely instructed, "the arguments of counsel [are] not evidence." *Darden* v. *Wainwright*, 477 U.S. 168, 182 (1986). And petitioners introduced no evidence to support the inference they are asking the Court to draw, beyond conclusory declarations stating that setting aside the 2022 reinstatement would ameliorate their injuries. See p. 36, *supra*.

Recognizing petitioners' failure of proof would not call into question any legitimate place in the law of standing for "common sense and basic economics." Pet. Br. 30. There may well be cases in which commonsense economic principles can establish redressability, given the other evidence of injury and causation. But as the court of appeals correctly recognized, this is not such a case. Pet. App. 24a-25a, 29a. On the record amassed here and judged at the time of the petition for review in 2022, it is hardly "Economics 101" (Pet. Br. 35) to assume that manufacturers would likely alter their products or prices in response to the judicial decree petitioners seek, given the contrary record evidence from those manufacturers. Petitioners also did not address the evidence showing that "manufacturers are already selling *more* qualifying vehicles in California than the State's standards require." Pet. App. 28a (citation omitted).

Petitioners' reliance (Br. 30-31) on this Court's decision in *Department of Commerce* v. *New York*, 588 U.S. 752 (2019), is also misplaced. That case came to this Court after an eight-day bench trial, at which the district court heard evidence about each of the elements of standing. See *New York* v. *United States Department of Commerce*, 351 F. Supp. 3d 502, 516, 576-625 (S.D.N.Y.) (district court's findings of fact and conclusions of law on standing), aff'd in part, rev'd in part, remanded, 588

U.S. 752 (2019). On clear-error review, this Court affirmed the district court's finding that the addition of a question about citizenship status to the decennial census would "result in noncitizen households responding to the census at lower rates than other groups, which in turn would cause them to be undercounted." *Department of Commerce*, 588 U.S. at 767. This Court also agreed that at least some of the State plaintiffs had standing to challenge the addition of the citizenship question because even a relatively small undercounting of aliens' households would cause the States to "lose out on federal funds that are distributed on the basis of state population." *Ibid.* And the Court found that the States had demonstrated causation under Article III even though their asserted injury relied on the "independent action of third parties choosing to violate their legal duty to respond to the census." *Ibid.*

The Court in *Department of Commerce* observed that aliens "will likely react in predictable ways to the citizenship question." 588 U.S. at 768. But that observation does not help petitioners here. The Court was not suggesting that *because aliens' behavior was predictable*, the plaintiff States had no need to prove causation. Rather, the Court reasoned that the plaintiff States had established causation by showing, through testimonial and documentary evidence, that aliens' households would predictably respond to the census at lower rates if the citizenship question were included. See *ibid.* (explaining that the States had "met their burden," and citing "[t]he evidence at trial" regarding historical non-response rates). Here, by contrast, petitioners have no persuasive evidence to warrant their predictions regarding how automakers would likely react to vacatur of EPA's reinstatement.

Massachusetts v. *EPA*, 549 U.S. 497 (2007) (cited at Pet. Br. 31-32), likewise does not support petitioners' redressability argument here. In that case, Massachusetts argued that EPA's denial of a rulemaking petition, seeking to require the agency to regulate greenhouse gas emissions from new motor vehicles, had injured the State in various ways, including by contributing to rising sea levels that were eroding state-owned coastal lands. *Id.* at 510-511, 521-522. This Court found that Massachusetts had adequately demonstrated Article III standing based on the scientific affidavits and other evidence the State had submitted to substantiate its theory. See *id.* at 521-526.

Petitioners describe this Court's decision in *Massachusetts* as reflecting the premise, based on "EPA's own statements about its regulatory priorities," that a judicial decree "ordering EPA to set emission standards would cause fewer vehicle emissions and therefore redress [the plaintiffs'] injuries." Pet. Br. 31 (citing *Massachusetts*, 549 U.S. at 526). That analogy might have force if petitioners had challenged EPA's 2013 waiver at the time it was issued. Petitioners could then have invoked California's projections as support for allegations that the waiver would injure petitioners by causing manufacturers to produce more fuel-efficient vehicles, and that vacatur of the waiver would redress that injury by allowing manufacturers to continue their existing practices.

As explained above, however, the evidence of likely future conduct by the manufacturers circa 2022 as amassed in the proceedings below, which petitioners did not counter with evidence of their own, suggested that the predictions California had made in instituting the ACC program have been overtaken by the events of the

past decade. The pertinent Article III question here is not whether the 2013 waiver caused manufacturers to produce more fuel-efficient vehicles than they otherwise would have. It is instead whether the record before the court of appeals shows that, at the time petitioners sought judicial review in 2022, it was likely that vacatur of the reinstatement, and consequent preemption of the ACC program, would cause manufacturers to reverse those practices.

Petitioners' remaining cases (Br. 32-34) involve circumstances in which this Court found that parties *lacked* Article III standing. See *Murthy*, 603 U.S. at 56; *Alliance for Hippocratic Med.*, 602 U.S. at 396-397; *United States* v. *Texas*, 599 U.S. 670, 675-678 (2023); *Brackeen*, 599 U.S. at 291-296; *California* v. *Texas*, 593 U.S. 659, 674 (2021). To the extent those cases addressed redressability, they confirm that petitioners—as challengers who are not the object of the emissions standards at issue—face a "difficult" burden to establish their standing and cannot "rely on speculation about the unfettered choices made by independent actors not before the courts." *Alliance for Hippocratic Med.*, 602 U.S. at 382-383 (citations omitted); see *Murthy*, 603 U.S. at 57-58; *California*, 593 U.S. at 675. Application of those principles supports the D.C. Circuit's conclusion that petitioners likewise failed to establish standing here.[2]

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[2] Petitioners also invoke (Br. 20, 34, 42) decisions involving competitor standing. See, *e.g.*, *National Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 488 n.4 (1998); *Association of Data Processing Serv. Orgs., Inc.* v. *Camp*, 397 U.S. 150, 152 (1970). But petitioners are not challenging the government's regulation of their competitors—or their suppliers or customers. Petitioners sell fuel or the raw material used to make fuel for the ultimate use of consumers (*i.e.*, drivers), not vehicle manufacturers.

Because petitioners failed to show that manufacturers would be likely to alter their practices in response to the judicial decree that petitioners seek, it is no help to petitioners to invoke (Br. 4, 19, 24) the principle that redressing even a small amount of economic harm can be sufficient for Article III standing. Cf. *Uzuegbunam* v. *Preczewski*, 592 U.S. 279, 291 (2021) (explaining that a judicial decree ordering the defendant to pay the plaintiff nominal damages "provide[s] redress"). The judicial decree that petitioners seek would not itself require anyone to pay petitioners anything.

3. Petitioners' policy arguments are irrelevant and unsound

The "triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement." *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 103-104 (1998) (footnote omitted). Those three requirements reflect the "irreducible constitutional minimum of standing." *Defenders of Wildlife*, 504 U.S. at 560. Accordingly, petitioners' policy arguments (Br. 41-45) are beside the point. If petitioners have failed to carry their burden of proving redressability, no policy concern could authorize an exercise of federal jurisdiction that Article III forbids. In any event, petitioners' policy arguments are unavailing.

Petitioners contend (Br. 42-43) that requiring them to prove how vehicle manufacturers would likely respond to the judicial decree that petitioners seek makes petitioners' standing too dependent on the manufacturers themselves, who may have incentives to cooperate with regulators. Nothing in the decision below, however, suggests that a supporting affidavit from a vehicle manufacturer was the *only* way petitioners could have carried their burden of proof on redressability. Peti-

tioners might instead have submitted affidavits from analysts, economists, or other knowledgeable experts who could have addressed the market factors that the manufacturers had identified as causing them to plan to exceed the challenged emissions standards.

The fact that petitioners' standing turns on manufacturers' plans is a feature, not a bug, of this Court's Article III case law. Article III standing principles ensure that federal courts decide disputed legal issues only at the behest of litigants who have a personal stake in the outcome. Even a plaintiff who has been injured by allegedly unlawful conduct has no such stake unless a favorable judicial ruling would redress that harm. Petitioners' injury would not be redressed by a decision in their favor unless such a decision caused at least one manufacturer to sell vehicles that increase demand for liquid fuels. When a litigant's theory of standing turns on "the independent action of some third party," this Court has properly required more than mere speculation or "guesswork" about the third party's likely future conduct. *Murthy*, 603 U.S. at 57 (citations omitted).

Petitioners contend (Br. 43-44) that affirming the decision below will create incentives for an agency to seek to avoid judicial review by "appeasing the directly regulated industry." But in assessing how vehicle manufacturers would likely react to a judicial decision vacating EPA's 2022 reinstatement, the court of appeals could scarcely have ignored the manufacturers' own submission addressing that question. And as explained above, petitioners could have introduced alternative evidence to support their theory of redressability. Petitioners simply failed to proffer such evidence.

Petitioners also observe that *California* would have standing to challenge an EPA *denial* of a CAA preemp-

tion waiver, based on the "State's interest in vindicating its laws." Pet. Br. 44. Petitioners assert that "the decision below creates a one-way ratchet in favor of the regulator over the regulated." *Ibid.* But under the legal regime at issue here, petitioners are not among "the regulated": California's ACC program regulates vehicle manufacturers, not providers of liquid fuel or fuel components. And this Court has long recognized that standing is more difficult to establish when a plaintiff challenges the government's regulation of a third party. See pp. 21-23, *supra*. There is consequently nothing anomalous about the disparity petitioners identify.

C. The Court Of Appeals' Error Regarding The Duration Of The Waiver Was Harmless

The court of appeals appears to have decided this case under the misimpression that EPA's reinstatement of the 2013 waiver pertained only to new-motor-vehicle emissions standards through model-year 2025. Based on that understanding, the court believed that petitioners could show redressability only by demonstrating that vehicle manufacturers would change their conduct "relatively quickly" if EPA's 2022 reinstatement were vacated. Pet. App. 23a; see U.S. Br. in Opp. 12-13.

In fact, EPA's reinstated waiver does not expire after model-year 2025. In its original form, California's ACC program set low-emission-vehicle standards and zero-emission-vehicle standards that would increase in stringency through model-year 2025 and then remain in effect at the 2025 levels. See p. 7, *supra*. When EPA reinstated the 2013 waiver, it waived federal preemption under the CAA for those emissions standards for as long as they continue in force as a matter of state law.

Petitioners now contend (Br. 45-47) that they have demonstrated redressability when the issue is analyzed

without the mistaken premise that the reinstated waiver pertained only to standards applicable through 2025. But the court of appeals' apparent error was harmless and should not be a basis for reversing the judgment below. Petitioners do not point to any record evidence that entry of the judicial decree they seek would cause any manufacturer to take steps *after* model-year 2025 that would redress petitioners' asserted injuries. Expanding the time horizon for assessing redressability beyond model-year 2025 thus does not help petitioners because they have no evidence for that period either.

Contrary to petitioners' assertion (Br. 39-41), the court of appeals' discussion of the duration of the 2013 waiver did not conflate redressability with mootness. The court correctly recognized that redressability was to be assessed at the time petitioners sought judicial review, and the court explained that petitioners had failed to show redressability "from the start." Pet. App. 25a.

* * * * *

This case does not present any occasion to address in the abstract the relationship between California's emissions standards and consumer demand for liquid fuels. Under Article III, the relevant question here is far narrower and more case-specific: On the record amassed below, did petitioners carry their burden to show that, as of the filing of their petition for review in 2022, it was likely that a decision in their favor would cause the vehicle manufacturers who are actually subject to the challenged emissions standards to change course in such a way as to redress petitioners' asserted injuries? The answer to that question is no.

As previously explained, EPA is undertaking its own review of the 2022 reinstatement, and the agency may ultimately conclude in that process that California's emis-

sions standards have had a deleterious impact on American consumers and liquid fuel producers. But parties seeking to invoke the jurisdiction of the federal courts cannot rely on later administrative developments to establish that they satisfied Article III standing requirements at the time of suit. Whatever EPA may conclude about the effects of the 2013 waiver, petitioners did not show during the judicial proceedings here that setting the waiver aside would redress their asserted injuries.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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. 7521(a)(1)-(2) provides:

Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b)—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

3. 42 U.S.C. 7522(a) provides:

Prohibited acts

(a) Enumerated prohibitions

The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part or part C in the case of clean-fuel vehicles (except as provided in subsection (b));

(2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 7542 of this title;

(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 7525(c) of this title or section 7542 of this title;

(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 7542 of this title;

(D) for any manufacturer to fail to make information available as provided by regulation under section 7521(m)(5) of this title;

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 7521 of this title or part C—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with (i) the requirements of section 7541(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 7541(c)(3) of this

title, or (ii) the corresponding requirements of part C in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C[1]

(B) to fail or refuse to comply with the requirements of section 7541(c) or (e) of this title, or the corresponding requirements of part C in the case of clean fuel vehicles[1]

(C) except as provided in subsection (c)(3) of section 7541 of this title and the corresponding requirements of part C in the case of clean fuel vehicles, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this chapter is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 7541(a) or (b) of this title or the corresponding requirements of part C in the case of clean fuel vehicles with respect to any vehicle; or

(5) for any person to violate section 7553 of this title, 7554 of this title, or part C of this subchapter or any regulations under section 7553 of this title, 7554 of this title, or part C.

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[1] So in original. Probably should be followed by a comma.

No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 7549 of this title. Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term "manufacturer parts" means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine. No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 7521 of this title when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

4. 42 U.S.C. 7523 provides:

Actions to restrain violations

(a) Jurisdiction

The district courts of the United States shall have jurisdiction to restrain violations of section 7522(a) of this title.

(b) Actions brought by or in name of United States; subpenas

Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district.

5. 42 U.S.C. 7524(a)-(b) provides:

Civil penalties

(a) Violations

Any person who violates sections[1] 7522(a)(1), 7522(a)(4), or 7522(a)(5) of this title or any manufacturer or dealer who violates section 7522(a)(3)(A) of this title shall be subject to a civil penalty of not more than $25,000. Any person other than a manufacturer or dealer who violates section 7522(a)(3)(A) of this title or any person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or mo-

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[1] So in original. Probably should be "section".

tor vehicle engine. Any such violation with respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component. Any person who violates section 7522(a)(2) of this title shall be subject to a civil penalty of not more than $25,000 per day of violation.

(b) Civil actions

The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

6. 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.