No. 24-7

IN THE

Supreme Court of the United States

DIAMOND ALTERNATIVE ENERGY, LLC, ET AL.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF PROFESSOR F. ANDREW HESSICK AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party other than amicus or his counsel made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The federal judiciary lacks jurisdiction to hear this case. Petitioners claim that they will be injured by the decisions of vehicle manufacturers, but Petitioners have not sued those manufacturers. Instead, they have sued the EPA and its administrator, in the hope that prevailing in that suit will incentivize the manufacturers to change their conduct. Article III does not permit federal courts to adjudicate suits seeking this sort of indirect redress.

The core function of the Article III judiciary is to redress injuries by providing judicial remedies to a plaintiff aggrieved by the defendant's conduct. The doctrine of standing enforces this limitation by restricting the jurisdiction of federal courts to suits in which a plaintiff seeks judicial redress for a legally cognizable injury.

Indirect redress is inconsistent with this basic principle. The means by which the judicial power redresses injuries is by rendering judgments, and a judgment redresses an injury only if of its own force the judgment remedies the plaintiff's injury. The judgment itself must order relief that redresses the injury—such as by enjoining the source of injury or by awarding damages to compensate for past injuries. A judgment that does not directly remedy the alleged injury is not a proper exercise of judicial power, even if that judgment is likely to prompt third parties to change their conduct in a way that relieves the plaintiff's injury.

Indirect redress is also inconsistent with historical practice. Historically, when an individual suffered an

injury by the violation of a right, the plaintiff could sue the wrongdoer to seek either an order restoring the individual's right or damages if restoration of the right was not possible. A plaintiff could not maintain an action against anyone other than the wrongdoer on the theory that a judgment against that other person would prompt the wrongdoer to change its conduct. Indirect redress deviates from this history by permitting a plaintiff to seek relief against someone other than the source of injury.

Extending standing to plaintiffs seeking indirect redress also violates the separation of powers. Standing protects the separation of powers by confining the federal judiciary to "the proper—and properly limited—role of the courts in a democratic society." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). When a court adjudicates a dispute in which the plaintiff does not seek to redress directly its alleged injury, it does not exercise its proper role of relieving injuries. Instead, by acting in that manner, the court assumes a policy role of using its judgment as a means of influencing the conduct of others not before the court.

This expansion of the judicial power is particularly problematic in suits against the government, because empowering a private individual to challenge how the government regulates someone else allows the courts to operate as the "'monitors of the wisdom and soundness' of government action." *Food and Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 384 (2024) (quoting *Allen v. Wright*, 468 U.S. 737, 760 (1984)).

ARGUMENT

Petitioners claim that they will be injured by the reduction in the production of liquid-fuel vehicles, but they have not sued the manufacturers causing their injury. Instead, they have sued the EPA and its administrator, hoping that a judgment against them will prompt the manufacturers to change their conduct in a way that relieves Petitioners' injury. Petitioners lack Article III standing to seek this relief.

I. To have Article III standing, a plaintiff must seek judicial relief that directly redresses the plaintiff's injury.

Article III—which confers on the federal courts the "judicial power" of the United States to decide "Cases" and "Controversies," U.S. Const. art. III, § 2—authorizes federal courts to "redress or prevent actual or imminently threatened injury," *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009). The doctrine of Article III standing enforces this limitation. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006). In this case, Petitioners do not seek a judgment against the source of their injury that would of its own force redress their injury. Instead, they seek a judgment against the government, in the hope that the judgment will influence the conduct of others in a way that will relieve their alleged injury. This sort of indirect redress cannot be squared with the requirements of Article III.

A. Article III empowers the federal judiciary to provide remedies that redress injuries.

Article III gives the federal judiciary authority to redress injuries through the issuance of judgments providing remedies. *See Summers*, 555 U.S. at 492 ("Article III of the Constitution restricts [the judicial power] to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury[.]"). The doctrine of Article III standing implements this limitation on the authority of federal courts.

1. Redressability is an irreducible requirement for Article III standing.

To establish Article III standing, a plaintiff must show "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021).

These three requirements are the "'irreducible constitutional minimum' of Article III standing." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 285 (2021) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). They ensure that a court acts only when a plaintiff has asserted an injury and seeks relief that will redress that injury. *See United States v. Texas*, 599 U.S. 670, 676 (2023) ("To establish standing, a plaintiff must show an injury in fact caused by the defendant and redressable by a court order."). If a plaintiff fails to establish the requirements of

standing, a federal court must "without exception" dismiss the suit for lack of jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998).

Standing disputes often focus on whether an adequate injury has been alleged, *e.g.*, *Spokeo*, 578 U.S. at 338–39 (describing "injury in fact" as the "'[f]irst and foremost' of standing's three elements." (quoting *Steel Co.*, 523 U.S. at 103)), but merely alleging an injury is not sufficient. Rather, federal courts may exercise the judicial power only when a plaintiff seeks a judgment to redress the injury asserted. As this Court explained, "[t]he Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Requiring the plaintiff to show that the remedy sought will redress the injury asserted ensures that the plaintiff has "'such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Id.* at 498–99 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Consistent with these principles, the remedy sought by the plaintiff must aim to redress the specific injury alleged. *See Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (stating that plaintiff must demonstrate "a personal stake in the outcome of the controversy" (internal quotation marks omitted)); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) (holding that a past injury does not provide standing to seek a prospective injunction).

A federal court may not issue a judgment that does not redress the injury giving rise to the case. *See*

California v. Texas, 593 U.S. 659, 672 (2021). "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement." *Steel Co.*, 523 U.S. at 107; *see also Dep't. of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of stay) ("[R]emedies . . . are meant to redress the injuries sustained by a particular plaintiff in a particular lawsuit."). "Because redressability is an 'irreducible' component of standing, no federal court has jurisdiction to enter a judgment unless it provides a remedy that can redress the plaintiff's injury." *Uzuegbunam*, 592 U.S. at 291 (quoting *Spokeo*, 578 U.S. at 338).

Thus, for example, redressability is not satisfied if the remedy does not itself redress the injury, but instead "depends on the unfettered choices made by independent actors." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992) (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989)). "[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 v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976)).

2. Despite the redressability requirement, this Court has recognized standing for a plaintiff seeking a judgment that will not directly redress its injury asserted but rather will make it more likely that third parties not before the court will change their conduct.

Notwithstanding the fundamental principle that a plaintiff has standing only to seek a remedy that of its

own force relieves the injury asserted, this Court has held that a plaintiff may have standing to sue the government to challenge its regulation of "someone else." *Hippocratic Med.*, 602 U.S. at 382 (quoting *Lujan*, 504 U.S. at 562). According to these cases, "the indirectness of the injury does not necessarily deprive the person harmed of standing." *Warth*, 422 U.S. at 505. At the same time, however, the Court has cautioned that redressability is "difficult to establish" in cases seeking this sort of indirect redress, because relief from the injury "'hinges on the response of the regulated (or regulable) third party'" to the court's judgment entered against the defendant. *Hippocratic Med.*, 602 U.S. at 382–83 (quoting *Lujan*, 504 U.S. at 562).

To establish redressability in a suit seeking indirect redress of this sort, the Court has held that a plaintiff must show a sufficiently high probability that the remedy sought will lead the third party to change its conduct in a way that will remove the injury. *See Dep't. of Com. v. New York*, 588 U.S. 752, 768 (2019). In particular, the plaintiff must show that the "third part[y] will likely react in predictable ways" that will relieve the injury. *Hippocratic Med.*, 602 U.S. at 383 (internal quotation marks omitted). "[S]peculative links" about how the third party might react to the order against the government do not suffice. *Id.* Nor is redressability satisfied if the link between the remedy against the government and the third party's reaction is too "attenuated." *Id.*

B. Redressability is not satisfied when a plaintiff seeks relief that only indirectly redresses its injury.

The Court's cases holding that a plaintiff may have standing to seek indirect redress—relief that will only indirectly remedy the plaintiff's alleged injury by making it likely that some other person not before the court will change its conduct—cannot be reconciled with Article III. They should be reconsidered.

1. Indirect redress is inconsistent with the Article III judicial power.

Because the Article III judicial power is the power to redress injuries, a federal court does not properly exercise that power when issuing a remedy that does not redress the injury asserted by the plaintiff. Put differently, a court may award only those remedies that by their own force redress the plaintiff's injury. *See Lewis v. Casey*, 518 U.S. 343, 357 (1996) ("The remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established."). For example, if Paul successfully sues Dan for battering him, a court may issue a judgment requiring Dan to pay damages to Paul for the battery. But the court in that case cannot issue a judgment requiring Dan to perform an unrelated contract with Paul. Requiring Dan to perform the contract does not redress the battery.

Allowing a plaintiff to establish redressability by seeking a judgment against the government for an injury caused by a third party—based on the theory that the judgment against the government is likely to coerce the third party into changing its conduct in a

way that removes the injury—violates this principle. In that situation, the plaintiff does not seek a judgment that of its own force redresses the plaintiff's injury. Such a judgment does not, for example, order the third party to cease its injurious conduct. Instead, the judgment orders someone else, usually the government, to change its conduct, with the expectation that doing so will result in a change in conduct by another party not before the court. Because the relief sought by the plaintiff from the defendant does not directly remedy the plaintiff's alleged injury, the plaintiff has not established the redressability element of standing. *See California v. San Pablo & T.R. Co.*, 149 U.S. 308, 314 (1893) ("[T]he court is not empowered . . . to declare . . . principles or rules of law which cannot affect the result as to the thing in issue in the case before it.").

It is of no consequence that the judgment against the defendant may have the effect of incentivizing the third party to cease its injurious conduct. The critical point is that the court's judgment does not of its own force redress the plaintiff's alleged injury. Instead, the judgment does nothing more than make it more likely that some other person will make a different decision about its conduct than it would have made absent the judgment. Any relief from injury is a result of the third party's response to the judgment. The voluntary choices of a person who is not a party to an action should not determine the scope of the judicial power.

Notwithstanding these fundamental principles, this Court has held that indirect redress may support standing so long as the remedy against the defendant

will predictably lead to the third party changing its conduct in a way that cures the plaintiff's injury. *Hippocratic Med.*, 602 U.S. at 383. This exception results in an unwarranted expansion of the judicial power, which is to render "judgments," *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995) (quoting Frank H. Easterbrook, *Presidential Review*, 40 Case W. Res. L. Rev. 905, 926 (1990)), that cure injuries, *see Summers*, 555 U.S. at 492 ("[T]he traditional role of Anglo-American courts . . . is to redress or prevent actual or imminently threatened injury[.]"). Whether a judgment relieves an injury should not turn on predictive assessments about how parties not before the court might respond to the judgment. As a matter of first principles, it should depend on the content of the judgment itself.

For that reason, a damage award against a judgment-proof defendant satisfies redressability, even though the award is unlikely to produce actual relief. *See Chafin v. Chafin*, 568 U.S. 165, 175–76 (2013) ("[T]he fact that a defendant is insolvent does not moot a claim for damages."). Likewise, an injunction barring the defendant from engaging in injurious conduct satisfies redressability, even if it is entered against a recalcitrant defendant who is unlikely to obey. *See Steel Co.*, 523 U.S. at 108 ("If respondent had alleged a continuing violation or the imminence of a future violation, the injunctive relief requested would remedy that alleged harm.").

An analogy to Congress's power illustrates the point. Congress does not have general legislative power. Instead, it has limited power to legislate only in those areas enumerated in Article I and other

provisions of the Constitution. *United States v. Morrison*, 529 U.S. 598, 607 (2000) ("Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution."). Whether a law falls within one of these enumerated areas depends on the content of Congress's regulation, not on the downstream effects of that regulation. For example, the interstate commerce clause does not authorize Congress to prohibit noneconomic activity such as assault, even if such a prohibition would predictably lead to changes in the markets or would have other economic effects. *Id.* at 617. The same logic applies to the judicial power. Downstream consequences of judgments are no more part of the judicial power than downstream consequences to legislation are part of the legislative power. The content of the judgment in relation to the alleged injuries, not its consequences, is what matters.

This Court has recognized a similar principle in the context of explaining why a wager on a lawsuit does not suffice to support standing. In that context, the Court held that, even though a wager on the outcome of a suit is a concrete, private interest in the suit, it is insufficient to support standing because it is "unrelated to [the] injury in fact." *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 772 (2000). To support standing, the plaintiff's interest must consist of "obtaining compensation for, or preventing, the violation of a legally protected right." *Id.* In other words, an interest in a suit suffices to support standing only if it will be directly vindicated by the court's ruling; secondary consequences that result from a ruling, such as winning a wager on the outcome, are inadequate.

The same logic applies to indirect redress. In that situation, the judgment does not, by its own force, provide compensation for or prevent the violation of a legal right. Instead, the way in which such a judgment provides redress is through the third-party's reaction to the judgment. The same could be true in the context of a judgment in a case on which a third party has made a wager and may change his conduct in response to the judgment. A plaintiff's standing should extend only to seeking a judgment that itself remedies the injury that forms the basis for suit.

2. Historical practice does not support indirect redress.

This Court has repeatedly emphasized that historical practice "is particularly relevant to the constitutional standing inquiry since . . . Article III's restriction of the judicial power to 'Cases' and 'Controversies' is properly understood to mean 'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.'" *Vt. Agency of Nat. Res.*, 529 U.S. at 774 (quoting *Steel Co.*, 523 U.S. at 102); *see also Spokeo*, 578 U.S. at 344 (Thomas, J., concurring) ("To understand the limits that standing imposes on 'the judicial Power,' therefore, we must 'refer directly to the traditional, fundamental limitations upon the powers of common-law courts.'" (quoting *Honig v. Doe,* 484 U.S. 305, 340 (1988) (Scalia, J., dissenting))). History does not support basing standing on indirect redress of a plaintiff's alleged injury.

The historical function of courts was to provide remedies to redress injuries. For example, Blackstone

described the "judicial power" as the power, "if any injury appears to have been done, to ascertain and . . . to apply the remedy." 3 William Blackstone, *Commentaries on the Laws of England* *25.

The injury warranting redress was the violation of a right. *Id.* at *2 (defining "wrongs . . . as being nothing else but a privation of right."). Judicial remedies cured these injuries by vindicating the right. Robert Malcolm Kerr, *An Action at Law* 9 (1854) ("The object of every proceeding in a court of justice is the recovery of a right or the redress of a wrong . . . to destroy or impair a right is to commit a wrong . . . ."). As Justice Story wrote, the judicial remedies were the means "by which rights are enforced and wrongs redressed." Joseph Story, *Discourse on the Past History, Present State, and Future Prospects of the Law* 5 (1835).

The types of remedies available to vindicate rights varied. A "natural" remedy was to restore the right, such as when a court ordered specific performance or delivery of property that was wrongfully withheld. 3 Blackstone, *Commentaries* *116. But when that remedy was not possible or adequate, courts could order "pecuniary satisfaction in damages." *Id.*; *see also* William Blackstone, *Tracts, Chiefly Relating to the Antiquities and Laws of England* 80 (3d ed., Oxford, Clarendon Press 1771) ("Injuries . . . are in general remedied by putting the party injured into possession of that right [but] [w]here that remedy is either impossible or inadequate, by giving the party injured a satisfaction in damages."); *see also* John C.P. Goldberg, *The Constitutional Status of Tort Law: Due Process and the Right to A Law for the Redress of*

Wrongs, 115 Yale L.J. 524, 548 (2005) ("The immediate purpose of the typical common law suit was to permit the victim to obtain a pecuniary satisfaction from the wrongdoer as an 'equivalent' to a literal restoration of his rights."). The common feature of these remedies was that they themselves redressed the injuries giving rise to the action.

Historically, a plaintiff could obtain a remedy only against a person who injured the plaintiff. A person who committed no wrong was not liable. *See* 3 Blackstone, *Commentaries* *314 (describing the demur when no "injury is done to the plaintiff"). Absent are instances in which a plaintiff could seek indirect redress by suing someone other than the wrongdoer. Even if prevailing on a suit against a non-wrongdoer might lead to the actual wrongdoer ceasing its injurious conduct, the plaintiff could not maintain an action against the non-wrongdoer, because a person who had not violated the plaintiff's rights was not liable.

Historical practice therefore does not support basing standing on indirect redress. There is no historical precedent for permitting a plaintiff to maintain an action against anyone other than the person whose conduct caused the plaintiff's alleged injury. Simply asserting that a judgment against the defendant might cause some third party to change its conduct was historically insufficient. A plaintiff could maintain an action only against the wrongdoer who allegedly violated the plaintiff's rights—to seek a remedy that by its terms would itself redress the wrong. A plaintiff thus could maintain an action directly against the third-party who was the source of

injury, but the plaintiff could not seek an indirect remedy for its injury by suing someone other than the wrongdoer.

3. Extending standing to plaintiffs seeking indirect redress conflicts with the separation of powers.

As this Court has repeatedly stressed, standing protects the separation of powers by confining the federal judiciary to "the proper—and properly limited—role of the courts in a democratic society." *Warth*, 422 U.S. at 498; *see also United States v. Texas*, 599 U.S. at 675 ("The principle of Article III standing is 'built on a single basic idea—the idea of separation of powers.'" (quoting *Allen*, 468 U.S. at 752)). It accomplishes this goal by preventing Article III courts from "usurp[ing]" the powers of the other branches of government. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013).

Standing thus ensures that courts "do not opine on legal issues in response to citizens who might 'roam the country in search of governmental wrongdoing,'" *Hippocratic Med.*, 602 U.S. at 379 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 487 (1982)), but instead pass judgment on legal questions only when a plaintiff has a "personal stake" in the dispute, *id.* (quoting *TransUnion*, 594 U.S. at 423). The redressability requirement is central to that limitation. It ensures that a plaintiff may maintain suit only if the court has the power to relieve the plaintiff's injury. Without that limitation, "courts would be 'virtually continuing monitors of the wisdom and soundness' of government action." *Id.* at 384

(quoting *Allen*, 468 U.S. at 760); *see also Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 80 (2019) (Gorsuch, J., concurring) ("If individuals and groups could invoke the authority of a federal court to forbid what they dislike for no more reason than they dislike it, we would risk exceeding the judiciary's limited constitutional mandate and infringing on powers committed to other branches of government.").

This Court relied on these principles in *Steel Co.* to hold that a private plaintiff lacked standing to seek civil penalties payable to the government for injuries resulting from the defendant's failure to inform the public about toxic chemicals. In holding that the plaintiff had not established redressability, the Court rejected the argument that plaintiff's "gratif[ication] by seeing [the violator] punished for its infractions" was sufficient. *Steel Co.*, 523 U.S. at 106. The Court explained that the plaintiff's gratification from seeing the polluter punished did not redress the plaintiff's alleged injury resulting from the polluter's failure to provide information about the toxic chemicals. *Id.* As the Court put it, "although a suitor may derive great comfort and joy from the fact that the United States Treasury is not cheated, that a wrongdoer gets his just deserts, or that the Nation's laws are faithfully enforced, that psychic satisfaction is not an acceptable Article III remedy because it does not redress a cognizable Article III injury." *Id.* at 107.

Similar principles underlie the Court's insistence that standing must be established "for each form of relief" that the plaintiff seeks. *TransUnion*, 594 U.S. at 431; *accord Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000); *see*

also Lyons, 461 U.S. at 105 (holding that a past harm does not support standing for prospective relief). As this Court explained in *DaimlerChrysler*, extending standing to allow a plaintiff to seek remedies that do not redress the alleged harm would empower courts to "decid[e] issues they would not otherwise be authorized to decide" and consequently would "erode" the "'tripartite allocation of power' that Article III is designed to maintain." *DaimlerChrysler*, 547 U.S. at 353 (quoting *Valley Forge*, 454 U.S. at 474).

Recognizing standing where the plaintiff seeks redress for an injury only indirectly by making it more likely that some party not before the court will adjust its conduct conflicts with these separation of powers principles. When a court issues a judgment that does not directly remedy the plaintiff's alleged injury it is not performing the traditional judicial function of relieving injuries. Instead, by acting in that manner, the court assumes a policy role of using its judgment as a means of influencing the conduct of others not before the court. *See Am. Legion*, 588 U.S. at 80 (Gorsuch, J., concurring) ("Courts would start to look more like legislatures, responding to social pressures rather than remedying concrete harms."). Allowing standing to rest on indirect redress therefore impermissibly empowers the federal judiciary to "decid[e] issues they would not otherwise be authorized to decide." *DaimlerChrysler*, 547 U.S. at 353.

The problem is particularly acute when, as in this case, indirect redress provides the basis for standing to sue the government. In that situation, indirect redress empowers a private individual to bring suit to

challenge how the government regulates someone else. It thereby allows the courts to operate as the "'monitors of the wisdom and soundness' of government action." *Hippocratic Med.*, 602 U.S. at 384 (quoting *Allen*, 468 U.S. at 760).

II. Petitioners lack Article III standing.

In light of these principles, Petitioners lack Article III standing to maintain this action.

Petitioners consist of "entities that produce or sell liquid fuels and the raw materials used to produce them, along with associations whose members include such entities." Pet. 10. They challenge a waiver granted by the EPA authorizing California to impose the Advanced Clean Car standards, which effectively limits the manufacture of vehicles that run on liquid fuel and requires car manufacturers to increase the production of electric or fuel cell vehicles. Petitioners are not directly affected by the waiver issued by the EPA nor are they subject to the California standards permitted by the waiver. Instead, Petitioners allege that they are injured by the waiver because the production of fewer vehicles that use liquid fuel will reduce fuel sales.

Petitioners do not seek a judicial remedy that would by its terms relieve their injury. For example, they do not seek an injunction directing vehicle manufacturers to produce more liquid-fuel vehicles, or even a declaratory judgment against the vehicle manufacturers stating that they need not comply with the California standards. Instead, Petitioners seek indirect redress by seeking to require the EPA to revoke the waiver permitting California's regulation

of vehicle manufacturers. Vacating that EPA waiver will not, of its own force, do anything to redress Petitioners' alleged injury of reduced fuel sales. To the contrary, the requested relief would only potentially make it more likely that parties not before the court will choose to act in a way differently than they would have otherwise—and even whether it would have that effect is contested.

The Court should hold that Petitioners do not have standing to seek this indirect redress. By suing the EPA in the hopes that prevailing on the suit might affect the conduct of third-party vehicle manufacturers not before the Court, Petitioners are seeking to use the courts as "'monitors of the wisdom and soundness' of government action." *Hippocratic Med.*, 602 U.S. at 384 (quoting *Allen*, 468 U.S. at 760). That is not a proper or permissible function of the federal judiciary.[2]

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[2] Redressability would pose no problem if the injury to be redressed were the violation of Petitioners' right under the APA to be free from arbitrary and capricious agency actions. But this Court has held that only factual harms, as opposed to violations of rights, may constitute Article III injuries. *See TransUnion*, 594 U.S. at 426–27 ("For standing purposes, therefore, an important difference exists between (i) a plaintiff 's statutory cause of action to sue a defendant over the defendant's violation of federal law, and (ii) a plaintiff's suffering concrete harm because of the defendant's violation of federal law."); *see also Lujan*, 504 U.S. at 572 & n.7 (suggesting that the thing to be redressed when an agency fails to follow required procedures is the factual harm that results from that failure).

CONCLUSION

For these reasons, the judgment below should be affirmed.

Respectfully submitted,

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