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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Reading the other side's briefs is like traveling through the looking-glass: "Nothing would be what it is, because everything would be what it isn't." *Alice in Wonderland* (1951). No one disputes that, starting in 2013, California's standards forced automakers to produce far more vehicles that use no or less liquid fuel. No one disputes that, in reinstating those standards in 2022, both California and EPA said the standards were critical to decreasing the emissions that result from using liquid fuel. No one disputes that the parties have vigorously fought over the lawfulness of California's standards for the last three years. No one disputes that some automakers intervened here out of concern that vacating the waiver would advantage competitors less invested in electric vehicles. Nor does anyone dispute—indeed, the United

States acknowledges—that the President himself has publicly said that California's and EPA's actions have artificially inflated the demand for electric vehicles and harmed consumers.

EPA and California say only that petitioners had to and did not *prove* that California's standards matter to automaker conduct by submitting sufficient evidence to the court of appeals. From the jump, respondents are wrong about the law. Removing a coercive government standard that cabins the use of a challenger's products provides redress under Article III. *See Bennett* v. *Spear*, 520 U.S. 154, 169 (1997). Respondents reject that straightforward legal rule. They contend that if a regulatory target challenges a regulation that acts on a third party, it must "prove" redressability with "evidence"—such as affidavits from "economists," EPA Br. 43, 44, or facts from "securities and court filings," Cal. Br. 36—showing how the third party will react to the coercive regulation, independent of market forces. That rule is contrary to this Court's precedents and would lock indirectly regulated entities out of administrative challenges, keeping unlawful government mandates on the books.

Even if petitioners could not rely on the removal of California's coercive standards alone to establish redressability, respondents are still wrong. Petitioners could rely on the "predictable" effects of electric-vehicle mandates and greenhouse-gas emission standards—namely, reducing the use of liquid fuels. *Department of Commerce* v. *New York*, 588 U.S. 752, 768 (2019). Respondents contend that this is a unique circumstance in which the market changed faster than expected, outpacing the government regulations. EPA Br. 31-35; Cal. Br. 17-22. But respondents primarily rely on industry averages and certain automakers' plans—which undercut rather than support the idea that all automakers were irrevocably committed in 2022 to meeting California's standards. Respondents also criticize petitioners for submitting "no evidence" on redressability, EPA Br. 39; Cal. Br. 3, and then spend pages attacking that evidence in painstaking detail. EPA Br. 35-38; Cal. Br. 45-48.

Along the way, neither EPA nor California fully defends the decision below. All parties now agree that the court of appeals mistakenly believed that the waiver is of "relatively short duration" and expires in 2025, Pet. App. 22a, when some of its standards in fact last in perpetuity, EPA Br. 45; Cal. Br. 43-44. Respondents are thus left to argue harmlessness. They assert that a regulation that imposes an unlawful government mandate *forever* is unchallengeable if it tracks current "market forces" when enacted. *E.g.*, Cal. Br. 20-21; EPA Br. 16-17. "[I]f you find yourself in a place as absurd as that, you might want to consider whether you've taken a wrong turn along the way." *Kisor* v. *Wilkie*, 588 U.S. 558, 607 (2019) (Gorsuch, J., concurring in the judgment). It is simply incorrect that a mandate applicable to more than 40% of the Nation's new vehicle market was unchallengeable from the day it was reinstated in 2022.

ARGUMENT

PETITIONERS' INJURIES ARE REDRESSABLE

Respondents agree that this case turns on whether petitioners satisfied Article III's redressability component. *See* Cal. Br. 14; EPA Br. 19. First, they contend that vacating a government regulation prohibiting or restricting the sale of the challenger's products is insufficient to establish redressability. That is wrong. Next, they argue that, on the record here, these muchballyhooed and much-contested regulations were pointless from the moment they were reinstated. That is implausible. Finally, they acknowledge that the court of appeals misunderstood the perpetual nature of the waiver but contend that there is nothing petitioners can do to challenge it, ever. That is shocking. This Court should reject any one of respondents' arguments and reverse.

A. Petitioners Have Established Redressability Because They Are Challenging A Government Restriction On The Sale Of Their Products

The removal of the "determinative or coercive effect" of California's standards on automakers is sufficient to establish redressability. *Bennett*, 520 U.S. at 169. Respondents mischaracterize this straightforward legal rule, and then attack it as inconsistent with precedent and basic Article III principles. They are mistaken on all fronts.

1. Respondents first overstate the breadth of a commonsense categorical rule. As petitioners have explained (at 25-28), a challenger establishes redressability if a decision in its favor would remove a "direct regulatory impediment" to its product's use. *Energy Future Coal.* v. *EPA*, 793 F.3d 141, 144 (D.C. Cir. 2015). That rule need not extend to any "regulation implicating the use of [a] product," Cal. Br. 31, or any "legal impediment to third-party conduct that would benefit the plaintiff," EPA Br. 16. Instead, petitioners' rule merely simplifies an analysis that yields an obvious conclusion: when the government tells automakers to make more cars that use less fuel, there is "little question" that fuel producers have standing to sue. *Energy Future Coal.*, 793 F.3d at 144. The same is true of private schools when the government forbids parents from sending their kids there, *see Pierce* v. *Society of*

the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 534-536 (1925); of networks when the government tells broadcasters not to partner with them, *see CBS* v. *United States*, 316 U.S. 407, 422-423 (1942); of muffler producers when EPA imposes "a no-muffler mandate on vehicle manufacturers," API Br. 6; or of soda manufacturers when the government prohibits retailers from selling jumbo-sized soft drinks, Chamber Br. 10.

Or at least one would think. California disagrees and offers (at 33-34) its own hypothetical that crystallizes this dispute. Assume the FDA forbids soda makers from using sugar in more than 80% of their sodas, with the express purpose of reducing sugar consumption. Many soda makers do not feel strongly, as 30% of current sodas on the market are already sugar-free. But sugar refiners certainly care—they want to increase their market share without government interference, or sell without limits to those soda makers that would prefer to use more sugar than the average. As California sees it, even if the cap on sugary beverages is patently unlawful, sugar refiners cannot sue—and may forever be time-barred from doing so—because, for now, the market average exceeds the illegal mandate. Redressability doctrine has never functioned that way.

And that is just the example California apparently sees as *most* favorable to its cause. The absurdities of respondents' position only get worse from there. Assume the FCC enacts a regulation prohibiting networks from airing football more than four nights a week because Americans should diversify their tastes. Under respondents' rule, the NFL could not challenge the regulation because networks currently air games only three or four nights per week. Similarly, Tesla could not have challenged a law barring car dealers from devoting more than 5% of their lots to electric vehicles, so long as the electric-vehicle market was in its infancy. And if California required Starbucks to sell at least 50% of its coffee to women because it wanted businesses to be more female-friendly, men could not bring an equal-protection challenge if women are already half of Starbucks customers.

None of this makes any sense. Respondents' view of redressability fails to account for dynamic markets and the influence of government mandates. It allows agencies to set unlawful regulatory floors during a market high, and—with assistance from statutes of limitations—permanently insulate their illegal regulations from judicial review. California's (at 19-22) and EPA's (at 32-34) discussions of "market forces" are thus irrelevant. Even in the unlikely event that California's standards matched what market forces were producing in 2022, *but see* pp. 15-17, *infra*, the regulations illegally locked into place a minimum market share for electric and low-emission vehicles.[1] Removing the waiver allows market forces to once again govern. Fuel producers would be free to sell what the market will bear. At a minimum, they would have the ability to persuade automakers and consumers to shift away from electric vehicles through lower prices,

[1] Respondents repeatedly fault petitioners for not challenging EPA's initial waiver in 2013. *See, e.g.*, Cal. Br. 18; EPA Br. 17. As California acknowledges, however, D.C. Circuit precedent as of 2013 precluded petitioners from challenging the waiver to the extent it applied to California's greenhouse-gas standards. *See Chamber of Commerce* v. *EPA*, 642 F.3d 192, 206 (D.C. Cir. 2011). California counters (at 18 n.7) that petitioners could have challenged California's waiver for the zero-emission-vehicle mandate, but at the time the two market constraints significantly overlapped. *See* 78 Fed. Reg. 2,112, 2,130-2,131 (Jan. 9, 2013).

improved marketing, technological innovations, or otherwise—just as the NFL, Tesla, and coffee drinkers would remain free to shift others' market preferences.

2. Respondents next try to distinguish this Court's cases establishing or applying the straightforward principle that the removal of a regulatory barrier to the use of one's product establishes redressability. But they make each case far more complicated than this Court saw it.

In *Bennett*, the Court held that an injury can be redressed by removing a "coercive" government regulation that "alters the legal regime." 520 U.S. at 169. EPA (at 25) and California (at 29) say that was not enough to establish standing in *Bennett*. They note that the Court also relied on evidence that the Bureau of Reclamation would have changed course if the Fish and Wildlife Service's biological opinion were vacated. But that misses the point of *why* the Court looked at that evidence. The government argued that the biological opinion was merely "advisory" and not actually binding. 520 U.S. at 169. The Court therefore had to ask whether "in reality it ha[d] a powerful coercive effect" on the Bureau. *Ibid.* Here, there is no question that California's standards are *legally binding* on automakers, and accordingly there is no need for a further inquiry into what effects those standards have in practice. Simply put, if the government had conceded in *Bennett* that the biological opinion was binding, there would have been no doubt about standing.

Regardless, even if *Bennett* did require something more than the existence of "coercive" government action, that something was far less than what respondents demand here. It was enough for the *Bennett* challengers to allege that the Bureau had historically operated the dam "in the same manner" for a long time and then changed its practice after the biological opinion, which "alter[ed] the legal regime to which the [Bureau] is subject." 520 U.S. at 169, 170. All of that is true here. Automakers manufactured liquid-fuel-powered vehicles for a long time, until California's standards forced them to change. Petitioners have thus "met their burden" of showing that their injuries "will 'likely' be redressed," at least to some extent, by lifting California's standards. *Id.* at 171.

Respondents' attempts to distinguish this Court's other cases fare no better. Respondents emphasize that *Pierce* and *CBS* involved "factual allegations, of harms likely to be redressed." EPA Br. 27; Cal. Br. 30. But in *Pierce*, this Court did not rely on "factual allegations" of harm because the "inevitable practical result of enforcing the act"—criminalizing sending children to private schools—would be "destruction of" the challenging private schools. 268 U.S. at 534, 536. And in *CBS*, it was "enough" that the challenged "regulations purport[ed] to operate to alter and affect adversely" the challenging broadcast companies' "contractual rights and business relations with station owners." 316 U.S. at 422. Moreover, even if relevant, the bare allegations of harm in *Pierce* and *CBS* offered far less evidence of injury than petitioners supplied here in their declarations alone. *See* J.A. 211. EPA says (at 26-27) this case is different because *Pierce* and *CBS* concerned the "plaintiff's business relationship with a third party," while here there is "not any transaction between vehicle manufacturers and fuel producers." That *ad hoc* limit is irrelevant. The key question is the likely reaction of the directly regulated party.

Nor has the Court stopped with *Bennett*, *Pierce*, and *CBS*. For example, this Court has recognized that businesses have standing to challenge actions that increase competition for "persons who might otherwise be their customers"; they do not have to prove that those potential customers will become actual customers. *National Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 488 n.4 (1998). EPA derides (at 42 n.2) this principle as confined to the "competitor standing" context. That is yet another made-up limit. In any event, "[s]uits where one business challenges the under-regulation of another go well beyond competitor suits." *Corner Post*, *Inc.* v. *Board of Governors of Fed. Resrv. Sys.*, 603 U.S. 799, 834 (2024) (Kavanaugh, J., concurring).

Respondents also fail to distinguish the most on-point lower-court decision, *Energy Future Coalition*. The court of appeals there held that biofuel producers had standing to challenge "a direct regulatory impediment that prevent[ed]" the use of biofuel. 793 F.3d at 144. Respondents spin that holding as an "observation" "premised on the court's determination that some vehicle manufacturers would actually use" biofuel if permitted. EPA Br. 27-28; *see* Cal. Br. 31-32. The court said the opposite: "'vehicle manufacturers may have valid business reasons' other than EPA's" regulations not to use biofuels, but "that does not undermine causation" because the plaintiffs were "simply seek[ing] an opportunity to compete in the marketplace." 793 F.3d at 144.

At bottom, redressability usually "follows" when a regulation causes an injury: once the regulation goes away, so does the injury. *Northeastern Fla. Chapter of Associated Gen. Contractors of Am.* v. *City of Jacksonville*, 508 U.S. 656, 666 n.5 (1993). Despite respondents' attempts to distinguish various decisions exemplifying that principle, they have not come up with a single counterexample.

3. Respondents also repeatedly argue that petitioners' rule cannot be reconciled with basic Article III precepts. They correctly note that "standing is not dispensed in gross," but jump to the unrelated conclusion that there are *no* "categorical rules" that can simplify the standing analysis. EPA Br. 28 (quoting *Murthy* v. *Missouri*, 603 U.S. 43, 61 (2024)); *see* Cal. Br. 33. That leap is irreconcilable with this Court's standing doctrine. Here, as in other areas, this Court has adopted some rules to guide litigants and lower courts. *See, e.g.*, *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 464 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.' "); *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 211 (2020) (challenge to officer unlawfully insulated from removal need not prove that a lawfully serving officer would have acted differently).

In a similar vein, respondents contend that petitioners' straightforward rule would gut the redressability component of Article III standing. EPA Br. 28-29; Cal. Br. 32-34. It would not. Historically, redressability has ensured that the right parties are before the court, which can issue relief tied to a concrete factual context. *See FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 379-380 (2024); *see also* Cato Br. 5; Children's Trust Br. 6-8, 14. This case does not implicate those traditional functions. To be sure, redressability is usually easy when a party sues to vacate a regulation targeting its product, because there is a perfect match between injury and remedy. But that means only that Article III is satisfied here, not that it is a dead letter.

B. Alternatively, Petitioners Have Established Redressability On The Record Here

Even if there is no categorical rule of redressability for challenges to coercive government action, petitioners have satisfied Article III on the record here. The D.C. Circuit's demand for additional "record evidence," Pet. App. 24a, disregarded this Court's precedent allowing challengers to rely on the predictable effects of California's standards. Respondents are wrong to contend that petitioners cannot rely on such inferences, or that such inferences are inappropriate here.

1. Commonsense inferences establish redressability here

In establishing redressability, petitioners are entitled to rely on the "predictable effect of Government action on the decisions of third parties." *Department of Commerce*, 588 U.S. at 768. The application of that principle is straightforward here: if EPA's waiver were vacated, at least some automakers would predictably produce more vehicles that use more liquid fuel.

a. California alone resists the proposition that a party can ever rely on predictable inferences to establish redressability. According to California (at 41), when it comes to standing, "evidence" is always required to establish even the most obvious proposition. That flat (and inefficient) rule is impossible to square with this Court's decisions, as even EPA apparently recognizes (at 39).

California relies on *Summers* v. *Earth Island Institute*, which it says rejected the proposition that parties can rely on commonsense inferences. Cal. Br. 41-42 (citing 555 U.S. 488 (2009)). This Court has already disagreed, citing *Summers* for its observation that it is "predictable" that when a government "regulates parks [or] national forests," it will affect the area's actual users. *Alliance for Hippocratic Med.*, 602 U.S. at 385 (citing 555 U.S. at 494). Notably, this Court in *Alliance for Hippocratic Medicine* also observed in the same paragraph that where, as here, the government regulates a business, that regulation can predictably cause "downstream or upstream economic injuries to others in the chain." *Id.* at 384. This Court has not shied away from embracing the obvious.

In arguing that the Court should change course now, respondents cannot get around *Department of Commerce*'s holding that challengers can rely "on the predictable effect of Government action on the decisions of third parties." 588 U.S. at 768. Respondents point out that the record in that case included evidence about noncitizens' historical census response rates. EPA Br. 39-40; Cal. Br. 39. But no one here disputes that automakers have "historically" reacted to California's mandatory standards by producing and selling fewer cars that run on liquid fuel. *See* Cal. Br. 18-19; J.A. 110, 112. That is not enough for respondents. Under their view, petitioners had to submit affidavits proving automakers' likely future response to a government action, *see* pp. 17-19, *infra*, which is exactly what this Court in *Department of Commerce* deemed unnecessary.

Nor does reliance on common sense require courts to engage in unwarranted guesswork. This Court "has identified a variety of familiar circumstances where government regulation of a third-party individual or business may be likely to cause injury in fact to an unregulated plaintiff." *Alliance for Hippocratic Med.*, 602 U.S. at 384. The organizing principle behind these "familiar circumstances" is the same basic inference applied in *Department of Commerce*: third parties often react in predictable ways when subject to government action. *See* 588 U.S. at 785 (Judges "are 'not required to exhibit a naiveté from which ordinary citizens are free.'") (quoting *United States* v. *Stanchich*, 550 F.2d 1294, 1300 (2d Cir. 1977) (Friendly, J.)).[2]

At a minimum, this Court can safely rest redressability on the predictable results of government regulation if the regulator itself presupposes that effect. Pet. Br. 31-32. In addressing redressability in *Massachusetts* v. *EPA*, 549 U.S. 497, 526 (2007), this Court "attach[ed] considerable significance" to EPA's own assessments of regulatory consequences. Respondents try to minimize this statement by pointing out that this Court considered other record evidence in *Massachusetts*. EPA Br. 41; Cal. Br. 39-40. That is irrelevant. The question is whether respondents' own admissions are powerful evidence of the predictable effects of California's regulations. *Massachusetts* answers yes.

Here, both respondents' actions should establish that it is at least "likely" that these regulations affect the market by a single car or a single gallon of gas. *Davis* v. *FEC*, 554 U.S. 724, 733 (2008). California would "presumably not bother" urging EPA to reinstate the waiver if that waiver had and will have no effect. *Massachusetts*, 549 U.S. at 526 (citation omitted). And EPA does not explain why it would conduct 11 months

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[2] California relies (at 16-17, 26) on *Warth* v. *Seldin*, 422 U.S. 490 (1975), but that decision fits neatly into this Court's dichotomy between impermissible speculation and permissible commonsense inferences. *See* Pet. Br. 32-33. There, this Court found that challengers to a zoning ordinance lacked standing because there was no reason to believe they would ever be able to buy housing in the zoned area. 422 U.S. at 505-506 & 506 n.16.

of notice and comment to reinstate a waiver that is permissible only if California "*need[s]* such State standards to meet compelling and extraordinary conditions," 42 U.S.C. § 7543(b)(1)(B) (emphasis added), when, far from being necessary, the standards do nothing at all. EPA and California fail to acknowledge, let alone justify, the incongruity between their present arguments and past behavior.

Respondents cast their prior actions as outdated in light of market changes that conveniently occurred "circa 2022." EPA Br. 41; *see* Cal. Br. 17-22. But respondents have continued to act as though the waiver reinstatement accomplished a great deal. Weeks before petitioners sought judicial review, California's governor praised the waiver reinstatement for helping to "end our reliance on fossil fuels." Governor Gavin Newsom, *Governor Newsom Statement on Biden Administration's Restoration of California's Clean Car Waiver* (Mar. 9, 2022), https://perma.cc/T92E-2XM8. While the petition for certiorari was pending, EPA accepted California's projection that the greenhouse-gas standards would "achieve additional criteria pollutant emission reductions" through *at least* 2037. 89 Fed. Reg. 82,553, 82,557 & n.19 (Oct. 11, 2024) (citing J.A. 93-94). Neither government should be permitted to justify its regulatory actions by touting their consequences for fuel usage, while maintaining that those same actions are unreviewable because there are no consequences whatsoever.

To add insult to injury, EPA admits that it is "reassessing the 2022 reinstatement," EPA Br. 17, precisely because President Trump has required the agency to consider rescinding actions that "function to limit sales of gasoline-powered automobiles," *id.* at 2 (quoting 90 Fed. Reg. 8,353, 8,353 (Jan. 29, 2025)). Let us be clear about what that doublespeak means. EPA is poised to withdraw the waiver on the ground *that the waiver has been forcing a shift toward electric vehicles* from the moment it was reinstated, up through the present day. What EPA now says was not predictable three years ago, it will likely soon say has been obvious (and harmful) the entire time.

b. EPA concedes (at 39) that "commonsense economic principles" can sometimes establish redressability, at least in theory. But EPA again says (at 31-35) that this case is different because of supposed market changes in 2022. California agrees (at 17) that, at a minimum, commonsense inferences cannot establish redressability here because "another party has introduced evidence" demonstrating market changes. If the "inevitable reality of the market" were so clear on this record, EPA Br. 34, it is hard to understand why the federal government—ever a fan of standing objections—did not make one below. In any event, the evidence respondents now point to does them no favors.

First, respondents argue that automakers in 2022 were meeting or exceeding California's vehicle standards. EPA Br. 32-33; Cal. Br. 21-22. There are several problems with that argument. Most notably, bare compliance with government regulation suggests a regulatory effect, not the absence of any effect. To the extent respondents rely on data that automakers were *exceeding* the California standards, they primarily rely on average sales in California. *See* Cal. Br. 21 (citing J.A. 191-192); EPA Br. 32 (citing J.A. 95-97). Averages are no help: even if some automakers had independently and irrevocably moved toward more electric vehicles by 2022, that does not suggest that all automakers had done so.[3] And even if automakers in California had on average increased electric-vehicle production beyond the floor, that does not indicate every automaker had irrevocably followed suit in each of the 17 States that adopted California's standards. *See* J.A. 211 (citing Ryan Felton, *The EV Question for Auto Executives: How Fast To Make the Shift?* Wall St. J. (Feb. 22, 2023) ("Some companies are racing to convert entirely to electric vehicles, but others see caution flags.")).

Second, California points (at 20-22, 25) to rising electric-vehicle production when the waiver was not in place. California highlights (at 25) that the national market share of zero-emission vehicles "tripled between 2020 and mid-2022." But it fails to mention that this tripling was from almost nothing to a 6.5% nationwide market share. It is unclear why California believes that this nationwide 6.5% level suggests that the markets had outpaced California's regulations, when for the same year those regulations set a 14.5% floor (accounting for credits) for California and the 17 tagalong States. J.A. 191, 192; *see* Pet. Br. 9-10 & n.4. And even that supposedly free-market response was tainted by government regulation: the waiver rescission was immediately challenged, and the prospect of the waiver's reinstatement was clear by early 2021. *See* Pet. Br. 2.

Third, respondents offer statements from some automakers—most of whom intervened in this case—about their commitment to and investments in electrification. EPA Br. 32-35; Cal. Br. 19-21. As petitioners

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[3] EPA cites nothing for its suggestion (at 34-35) that petitioners needed to provide evidence that a *particular* automaker would change course absent the standards. Although not required, petitioners identified Toyota as one such candidate. *See* J.A. 210 (citing J.A. 99).

have explained (at 37), these statements, and the fact of automakers' intervention, prove exactly the opposite. These same automakers cut a deal with California to commit to the standards in exchange for certain benefits. *See* Pet. App. 13a-14a. They intervened precisely because if the waiver were vacated—and the market were allowed to function freely—they would face "a 'competitive disadvantage' because they have already invested in 'electrified vehicle models.'" J.A. 211 (quoting C.A. Industry Resp.-Int. Br. 17). In short, none of respondents' evidence remotely suggests that *every automaker in 18 States* would freely choose to meet or exceed California's standards.

2. Record evidence confirms that petitioners' injuries are redressable

Even though nothing more was required here, petitioners directed the court of appeals to evidence confirming what common sense dictates. Respondents repeatedly assert that petitioners presented "*no* evidence" to support their standing, even as they devote pages and pages to picking apart each bucket of evidence that petitioners offered. Cal. Br. 3, 45-48; EPA Br. 35-38. Petitioners satisfied whatever evidentiary burden was incumbent upon them.

First, respondents quibble with the evidentiary value of California's own analysis supporting the waiver reinstatement. California dismisses (at 46) its July 2021 report predicting that the standards would suppress demand for liquid fuels because that prediction "relied on forecasts from 2017." *See* J.A. 84. EPA likewise criticizes (at 37, 41) as stale California's 2012 analysis of the standards' effects. But California reiterated its earlier predictions in 2021 to urge reinstatement of the waiver. *See* J.A. 64-65, 84. Nor did EPA believe the analysis was outdated; it found *at the time* *of the reinstatement* that "California needs the ZEV sales mandate and GHG standards at issue to address compelling and extraordinary air quality conditions in the state." Pet. App. 64a-65a. If these projections were reliable enough for California in 2021 and for EPA in 2022, they should have been good enough for petitioners in 2022.

Second, respondents assail petitioners' 14 standing declarations as "conclusory" and lacking "any details." Cal. Br. 46; EPA Br. 17. The declarations speak for themselves. J.A. 123-184. Declarants noted California's representations about the effect of the standards and detailed how the suppression of the demand for fuel would injure petitioners' businesses. *See, e.g.*, J.A. 148, 174, 180. One declarant even cited 2020 findings from a Minnesota agency predicting the standards would "cause" fuel reductions in the State. J.A. 174. Although California protests (at 24 n.14) that petitioners did not rely on "effects on the Minnesota market" in particular "as a basis for standing," Minnesota's market is merely an example of the "demand depression" that would occur "in the other Section 177 states." J.A. 174.

Third, respondents contend that petitioners did not "introduce evidence" about automaker behavior. Cal. Br. 37 n.20; EPA Br. 34-35. But petitioners pointed below to statements from intervening automakers confirming that some (non-intervening) automakers would likely change their production plans absent the waiver. J.A. 211. Petitioners also cited Toyota's record comment (at J.A. 99) suggesting that it was not irrevocably committed to electrification and public reporting on the same. J.A. 210-211. Respondents offer no response.

Having brushed aside all this evidence, respondents try to come up with something—anything—petitioners could have done to establish redressability on this record without being beholden to the automakers that were themselves striking deals with California. *See* Pet. App. 24a-25a. Respondents suggest theoretical alternatives, like "public statements from industry participants," Cal. Br. 35, and affidavits from "economists," EPA Br. 44. But they quickly reject similar sources. Cal. Br. 36 n.19 (rejecting expert declarations petitioners tried to offer); EPA Br. 37-38 (rejecting reliance on a state regulator's statements). Apparently, the only evidence that could meet their or the D.C. Circuit's high bar is exactly what petitioners could not obtain—an affidavit from an automaker detailing its production plans in the hypothetical future world in which California's standards no longer existed.

3. A too-exacting theory of redressability would unnecessarily preclude judicial review

Respondents also dispute the policy implications of the heightened redressability standard they defend. They claim that affirming the decision below will not have any wider effects—or if it did, those effects would be just fine. EPA Br. 43-45; Cal. Br. 35-38. Neither defense works.

a. Respondents downplay the catastrophic implications of the decision below for indirectly regulated parties. Respondents do not seriously dispute that indirectly regulated entities will often be unable to obtain affidavits from directly regulated parties. But they contend that there is no such affidavit requirement, and so the decision below will not "obstruct 'suits by unregulated plaintiffs who are adversely affected by an agency's regulation of others.'" Cal. Br. 36 (quoting *Corner Post*, *Inc.*, 603 U.S. at 826 (Kavanaugh, J., concurring)); EPA Br. 43-44. Of course it will. Again, it is hard to see any option other than third-party affidavits that would satisfy the court below and respondents. *See* pp. 17-19, *supra*. Their demand for "additional affidavits" will make future challenges expensive and arbitrary. Pet. App. 24a (internal quotation marks omitted).

Respondents alternatively minimize the decision below as fact-bound. EPA Br. 44; Cal. Br. 35. The dozen amicus briefs in support of petitioners confirm that the implications of this case go well beyond the present dispute. As amici attest, the D.C. Circuit's "heightened redressability requirement" will "profoundly harm" all manner of litigants, including "[h]ouses of worship and other religious organizations," Foothill Church Br. 16; property owners, Texas Royalty Council Br. 1; and groups that represent "low income and minority communities," Two Hundred for Homeownership Br. 19. Even groups that "usually disagree[] with petitioners . . . including on the merits of their present suit" support correcting the mistaken standing decision below. Children's Trust Br. 1; *cf.* Chamber Br. 4 n.2 (noting that amici's members "do not have a unified view of the underlying merits").

b. Respondents largely do not contest the other ramifications of the decision below; they are simply untroubled by them. For example, they do not contest that the decision creates a one-way ratchet in favor of the regulator over the regulated. EPA defends (at 45) the disparity on the theory that targeting petitioners' products does not place them among "the regulated." Only the government could aim at one industry through another, and then claim the real objects of its regulation are mere bystanders. Meanwhile, California champions (at 37-38) a State's ability to defend its laws without explaining why entities targeted by government action should not have a corresponding right to challenge those laws.

c. Finally, respondents brush off the court of appeals' apparent conflation of mootness and redressability. Respondents argue that the court recognized that "redressability was to be assessed at the time petitioners sought judicial review." EPA Br. 46; Cal. Br. 45. The court no doubt said as much at one point. But the court also said that redressability was "complicated by the relatively short duration of the waiver" and emphasized that manufacturers need "years of lead time to alter their production plans"—both considerations that sound in mootness. Pet. App. 22a, 23a-24a. Shifting mootness concerns to the redressability inquiry has important consequences, including failing to hold the government to the "formidable standard" of showing that the court could grant no effective relief. *FBI* v. *Fikre*, 601 U.S. 234, 243 (2024); *see* Pet. Br. 39-41.

C. At A Minimum, EPA's Perpetual Waiver Suffices To Establish Redressability

The court of appeals was wrong for the reasons already given. But at a minimum, this Court should reverse because the parties now agree that the decision below rests on a critical mistaken assumption: that California's standards ended with model year 2025. EPA Br. 45; Cal. Br. 43. In fact, the greenhouse-gas emission standards will remain enforceable under the waiver in perpetuity. *See* Pet. Br. 45-47. Respondents blame petitioners for the court of appeals' error and contend that it was harmless anyway. Neither is right, and the fundamentally flawed decision below should not stand.

California first suggests (at 44) that petitioners are to blame for the court of appeals' error. That is flatly untrue. California's greenhouse-gas standards increase in stringency each model year from 2017 through 2025 and then continue at the 2025 level for "subsequent" model years. Cal. Code Regs. tit. 13 § 1961.3(a)(1)(A). But EPA described its 2022 waiver as covering only "model years (MYs) 2017 through 2025." Pet. App. 57a. Not until EPA opposed certiorari did it declare (at 13) that because California's greenhouse-gas standards do not "fully terminate with model-year 2025," neither does the waiver. Needless to say, only respondents knew how to understand their own actions, and neither corrected the D.C. Circuit's statement at oral argument that the standards would end in 2025. C.A. Oral Arg. 29:43-29:45. Respondents were apparently content to rest on the court of appeals' mistaken understanding until after they prevailed.

Finger-pointing aside, the court of appeals' error was far from harmless. *Contra* Cal. Br. 45; EPA Br. 45-46. As EPA acknowledges, the court's mistaken understanding of the waiver led it to "believe[] that petitioners could show redressability only by demonstrating that vehicle manufacturers would change their conduct 'relatively quickly.'" EPA Br. 45 (quoting Pet. App. 23a). The court demanded more evidence of redressability because automakers supposedly "need years of lead time" to change their fleets, and it doubted that automakers could make such changes by model year 2025. Pet. App. 23a. But the redressability analysis is far less "complicated" than the court of appeals thought it was. *Id.* at 22a.

With no reasoning below left to defend, respondents now contend that a waiver setting a *permanent* cap on vehicle emissions is unchallengeable—and was unchallengeable the moment it was reinstated—because it might not have any impact. EPA Br. 45-46; Cal. Br. 45.

This finale reinforces the absurdity of respondents' theory of redressability. In their view, to bring a challenge when the waiver was reinstated, petitioners had to predict market forces years in the future and prove that California's standards would outpace the market at some point between 2022 and eternity. And if petitioners could not make that showing, they would be out of time and out of luck if market forces later shifted. Article III's redressability requirement has never been applied to prevent vacatur of an unlawful regulation setting a permanent ceiling on the use of a challenger's products. This Court should not need an economist to tell it as much.

CONCLUSION

For the foregoing reasons and those in petitioners' opening brief, this Court should reverse the judgment below.

Respectfully submitted.

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APRIL 9, 2025