No. 25-579

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF THE AIR FORCE, et al.,
Petitioners,

v.

PRUTEHI GUAHAN,
Respondent.

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

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA AND 20 OTHER STATES IN SUPPORT OF PETITIONERS

JOHN B. MCCUSKEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
mwilliams@wvago.gov
(304) 558-2021

MICHAEL R. WILLIAMS
Solicitor General
Counsel of Record

MATTHEW K. NIU
Caldwell Fellow

Counsel for Amicus Curiae *State of West Virginia*

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

It might be surprising to think that a waste disposal site at an isolated air base across the Pacific Ocean might have vast implications for all the States. But here, it does.

Things started simple enough. For four decades, the U.S. Air Force has disposed of World-War-II era munitions at Andersen Air Force Base in Guam. To conduct those activities, the Air Force secured a permit under the Resource Conservation and Recovery Act of 1976. Every so often, the Air Force must renew its permit. And because States and territories administer the RCRA permit process, see 42 U.S.C. § 6926(b), the Air Force submits its application to the Guam Environmental Protection Agency.

But things went sideways in 2021, when the Air Force once more sought to renew its permit. This time, before the Guam EPA could even reach any final decision, a "direct action" group sued the Air Force. The group insisted that the Air Force needed to prepare an Environmental Impact Statement or an Environmental Assessment under the National Environmental Policy Act of 1969 before the Air Force could put pen to paper on any permit application. The Ninth Circuit agreed.

So activists have successfully employed NEPA to hit the brakes on ongoing state review under a cooperative federalism scheme. Allowing this kind of midstream judicial review is problematic enough; after all, the Administrative Procedure Act contemplates that courts will review "final agency action," not every preliminary or intermediate step. But truth be told, NEPA had no role to play in this story at all. Because RCRA already provides for a sweeping environmental review, layering

NEPA over top of it does nothing but throw up an unnecessary roadblock.

If the Ninth Circuit's logic stands, then cooperative federalism schemes like RCRA's will be subject to serial lawsuits and challenges. Each procedural step will thus become another opportunity for opponents to attack. But as even the Ninth Circuit has recognized in other cases, the APA "prevents piecemeal or premature review of agency action." *Pacito* v. *Trump*, 169 F.4th 895, 930 (9th Cir. 2026). And "[f]ederal courts are courts of limited jurisdiction—not overseers of unfinished agency business." *Kewayfati* v. *Bondi*, 165 F.4th 342, 346 (5th Cir. 2026). Nothing about a federal submission to a state process changes these bottom-line rules. Maybe even more so in a cooperative federalism scheme, judicial review should wait until some *final* decision—not a *request* for a final decision—is on the table. Otherwise, state permit authority will effectively be cut down as review is punted to federal courts.

Perhaps worse still would be the consequences from adopting the Ninth Circuit's view that NEPA mandates redundant review processes even when another "comprehensive environmental statute" like RCRA gives the federal government all the information it needs. *Meghrig* v. *KFC W., Inc.*, 516 U.S. 479, 483 (1996). NEPA has already become a weapon of choice for those opposed to development of critical infrastructure projects. But if the decision below stands, then those project opponents will be emboldened to push ever more aggressive readings of NEPA in seemingly every conceivable context—all for no discernible benefit in return. Yet Congress didn't mean for NEPA to "impose red tape for its own sake." *Webster* v. *U.S. Dep't of Agric.*, 685 F.3d 411, 424 (4th Cir. 2012). It intended to balance environmental consciousness with the

need to "fulfill the social, economic, and other requirements." 42 U.S.C. § 4331(a). The decision below threatens that balance.

In granting this petition, the Court has already recognized that this otherwise localized dispute about weapons disposal carries national weight. The Court should now take the next step and reverse.

SUMMARY OF ARGUMENT

I. The Air Force's application was not final, so it was not properly subject to judicial review. It did not mark the end of any agency decision-making process, but rather only the beginning. It also did not impose legal consequences; consequences would follow from the Guam EPA's decision on the application, not the application itself. Allowing this sort of early review conflicts with the notions of cooperative federalism embodied in RCRA and other environmental statutes. These suits shift decision authority away from the States—who Congress intended to decide—and place it instead in the hands of federal judges.

II. The Ninth Circuit also erred in thinking that the Air Force's RCRA application was subject to NEPA's environmental evaluation requirements. RCRA already provides for a comprehensive scheme of environmental review. That more specific statute prevails over NEPA's general provisions, affording a functional equivalent that obviates the need for duplicative evaluations under the NEPA framework. Mandating NEPA review in circumstances like these—where it serves no useful function—only heightens the problems with NEPA. It transforms the statute from a useful informational device into a weapon to impede important development and other projects.

ARGUMENT

I. The Ninth Circuit improperly allowed review of a non-final agency action.

The Ninth Circuit first erred in thinking that now is the right time for judicial review. The Air Force's RCRA permit renewal application was just an initial, non-reviewable step. Treating it more than that will ultimately impair the States' role in statutes like RCRA, as the center of attention shifts to premature review in federal court.

A. The application was the *start* of the relevant process—not the end.

Because RCRA lacks its own judicial review provision, the APA decides when judicial review of a RCRA-related decision can be had. And the APA limits judicial review to "final agency action." 5 U.S.C. § 704. This provision "codifies the understanding that premature review squanders judicial resources, and that litigants are generally best served by a system which prohibits piecemeal appellate consideration of rulings that may fade into insignificance by the time proceedings conclude." *Vanda Pharms., Inc.* v. *FDA*, 123 F.4th 513, 521 (D.C. Cir. 2024). It then works "work[s] hand in hand" with Section 704's injury requirement,[1] *Corner Post, Inc.* v. *Bd. of*

[1] Remember that Respondent attacks the submission of the application itself. See App.23 (alleging that "Defendants' decision to submit an application" to Guam EPA triggered NEPA obligations). By attacking the application, Respondent has created a problem with Section 704's injury requirement, too, as Respondent has not alleged any injury from the application. Rather, Respondent focuses on the harms that would result if the application is approved and disposal activities are conducted. See App.7 ("The aforementioned cultural,

Governors of Fed. Rsrv. Sys., 603 U.S. 799, 808 (2024), guaranteeing that a given case presents the court with a crystallized dispute before the court jumps in.

"The cases dealing with judicial review of administrative actions have interpreted the 'finality' element in a pragmatic way." *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 149 (1967). Generally, "two conditions must be satisfied for agency action to be 'final.'" *Bennett* v. *Spear*, 520 U.S. 154, 177-78 (1997). First, the action must denote a "completed … decisionmaking process." *Franklin* v. *Massachusetts*, 505 U.S. 788, 797 (1992). Second, the action must determine "right[s] or obligation[s]" or have direct "legal consequences." *ICC* v. *Atl. Coast Line R. Co.*, 383 U.S. 576, 602 (1966); see also *Dalton* v. *Specter*, 511 U.S. 462, 469 (1994). At bottom, though, Section "704 asks whether a terminal event has occurred." *Driftless Area Land Conservancy* v. *Rural Utilities Serv.*, 74 F.4th 489, 493 (7th Cir. 2023) (Easterbrook, J.) (cleaned up).

Taking a pragmatic view, the Air Force's application was not a "final agency action" in any sense. See 40 C.F.R. § 124.19(*l*)(2) (explaining that a "final permit decision" is required for "final agency action" under RCRA).

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social, spiritual, health, professional, scientific, recreational, aesthetic, economic, and other interests of Prutehi Litekyan and its members in Guam will be adversely affected and irreparably injured *by the proposed OB/OD operations at the EOD Range on Andersen AFB*." (emphasis added)). Respondent is thus not aggrieved by the action it purports to challenge. Cf. *Cent. N.Y. Fair Bus. Ass'n* v. *Kempthorne*, No. 6:06-CV-1501, 2007 WL 1593727, at *5 (N.D.N.Y. June 1, 2007) (dismissing NEPA challenge to submission of "land-into-trust applications" to the Secretary of the Interior because, "even if acceptance of the applications constituted 'final agency action,' plaintiffs do not (and could not) allege how they were aggrieved by the acceptance of the applications").

1. An application for a RCRA permit is not the "consummation" of a decision-making process. *Bennett*, 520 U.S. at 177. Rather, an "application" is just a "request or petition," *Application*, BLACK'S LAW DICTIONARY (12th ed. 2024), to "seek[] permission for the exercise of a privilege," *Request*, BLACK'S LAW DICTIONARY (12th ed. 2024). At most, it is a "threshold determination that [Guam EPA's] further inquiry is warranted" and serves "only to initiate" the reciprocal response from the state regulator. *FTC* v. *Standard Oil Co. of Cal.*, 449 U.S. 232, 241-42 (1980). Because it requires Guam EPA's "further … action," *Final*, BLACK'S LAW DICTIONARY (12th ed. 2024), the application alone is "merely tentative," *Bennett*, 520 U.S. at 178. It is the start and not the end. See, *e.g.*, *Advanced Integrative Med. Sci. Inst., PLLC* v. *Garland*, 24 F.4th 1249, 1258 (9th Cir. 2022) (holding that an application for the renewal of a waste discharge permit would "begin" the "agency's decisionmaking process," which would not finish "until the [applicant] had exhausted the [administrative] appeal process" (cleaned up)).

Although the Ninth Circuit thought the application "marked an endpoint," Pet.App.23a, the Air Force still has every opportunity to withdraw, modify, or adjust its application—or make another decision entirely. Indeed, the whole *point* of the application process is that the Guamanian *agency* will have a chance to request—or more accurately, demand—changes from the Air Force lest it risk losing its permit. See, *e.g.*, 40 C.F.R. §§ 124.5(c), 124.6. Likewise, the required public comments and hearings might prompt changes. See 40 C.F.R. §§ 124.10-124.14. Yet in assuming that none of that will happen, the Ninth Circuit improperly dismissed both the importance of public involvement and the central role that a state regulator plays under delegated RCRA authority. See 42 U.S.C. § 6926(b). It presumed instead that Guam EPA

acted as a mere rubberstamp—even though, under RCRA, its view carries the same weight as the federal regulator's. *Id.* § 6926(d).

Far from turning on an endpoint, the Ninth Circuit's logic allows litigants to challenge any internal agency "assessment, plan, or decision" that takes a position on anything. Pet.App.25a. But this Court already closed the door on such a broad conception of judicial review: a party can't sue to "demand a general judicial review" of an agency's "day-to-day operations." *Lujan* v. *Nat'l Wildlife Fed'n*, 497 U.S. 871, 899 (1990). "To the extent that the Court of Appeals understood itself to be reviewing an abstract decision"—or assessment or plan—"apart from specific agency action, as defined in the APA, that was error." *Biden* v. *Texas*, 597 U.S. 785, 809 (2022).

The Ninth Circuit also here put too much weight on *Sackett* v. *EPA*, 566 U.S. 120, 127 (2012), in suggesting the application was more than some interlocutory step. See Pet.App.23a. Other lower courts have rightly warned that "courts should resist the temptation to define the [finality of an agency] action by comparing it to superficially similar actions in the caselaw." *Cal. Cmtys. Against Toxics* v. *EPA*, 934 F.3d 627, 631 (D.C. Cir. 2019). Unfortunately, the Ninth Circuit succumbed to that temptation here. The EPA compliance order at issue in *Sackett* offered no mechanism for further agency review after it is issued. *Sackett*, 566 U.S. at 127. It also marked the beginning and end of the relevant decision—a self-contained decision made by the federal agency. And it effectively bound another federal agency on issuance. *Id.* at 126.

In contrast to *Sackett*, the application here was only the start of a decision process by a separate governmental decisionmaker (Guam EPA) who was free to exercise

independent judgment. An agency action is not final where it "only affects [a plaintiff's] rights adversely on the contingency of future administrative action." *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125, 130 (1939); contra Pet.App.25a; see also, *e.g.*, *Parsons* v. *DOJ*, 878 F.3d 162, 168 (6th Cir. 2017) (explaining that an agency action is not final where it merely prompts actions by other parties, even when those other parties are "government actors"). And as for the Air Force, nothing commits it to its present course; it can reconsider its position until the moment before Guam EPA decides on its application. No one is bound.

Thus, Respondent's argument that this is final agency action fails on the first prong.

2. Beyond lacking completeness or consummation, the application also does not determine "rights or obligations" or have "direct legal consequences."

Rights and obligations cannot flow to the Air Force from an application alone because no "legitimate claim of entitlement" to dispose of hazardous waste arises until after the state agency approves the application. See *Bd. of Regents of State Colls.* v. *Roth*, 408 U.S. 564, 577 (1972). In other words, "[a] request cannot determine rights or obligations until another party acts on it, and when it does, that decision then becomes legally binding." *Friends of the Everglades, Inc.* v. *Sec'y of U.S. Dep't of Homeland Sec.*, No. 25-12873, 2026 WL 1077624, at *3 (11th Cir. Apr. 21, 2026) (cleaned up). This requirement of mutuality—an offer and acceptance—applies when it comes to constitutional property rights, *Roth*, 408 U.S. at 577, land zoning, *MacDonald, Sommer & Frates* v. *Yolo Cnty.*, 477 U.S. 340, 351 (1986), copyright registration, *Fourth Estate Pub. Benefit Corp.* v. *Wall-Street.com, LLC*, 586 U.S. 296, 300 (2019), and nuclear reactor operation, *Power Reactor*

Dev. Co. v. *Int'l Union of Elec., Radio & Mach. Workers, AFL-CIO*, 367 U.S. 396 (1961). It should be no different in the RCRA context, where hazardous-waste activities happen only *after* approval of the application and issuance of the permit. See 42 U.S.C. § 6925; *cf. In re Aiken Cnty.*, 645 F.3d 428, 437 (D.C. Cir. 2011) (holding that challenge to ongoing administrative proceedings after Department of Energy's submission—and later attempt to withdraw—application to the Nuclear Regulatory Commission was "premature").

An application also cannot command the Air Force "to do anything or to refrain from doing anything" because the material terms of the "doing" aren't yet set. See *Ohio Forestry Ass'n* v. *Sierra Club*, 523 U.S. 726, 733 (1998). A state agency can place conditions on the permit, 42 U.S.C. § 6925(c)(3); in practice, Guam EPA has done so at Andersen. See GUAM EPA, ANDERSEN AIR FORCE BASE, GUAM: HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT 1 (2018), https://tinyurl.com/2dak2r2s. Past conditions have included requirements for facility safety, security, inspection, contingency planning, and recordkeeping, among others. See generally *id.* So before the new permit is approved, the Air Force has no way of knowing the legal obligations that will flow from it. Any analysis of tentative legal obligations thus becomes speculative at best, as "new potential legal obligations … [can]not yet be[] determined." Pet.App.65a (Van Dyke, J., dissenting).

Faced with facts like these, the Ninth Circuit again looked to authority examining "quite different circumstances"—namely, *Bennett*. *Illinois* v. *Lidster*, 540 U.S. 419, 424 (2004). In particular, it perceived "the Air Force's waste disposal plan [to be] closely analogous to the agency action at issue in *Bennett* itself," which this Court

held was a final one. Pet.App.30a-31a (citing *Bennett*, 520 U.S. at 157-58, 178). But in *Bennett*, an affected agency could not "disregard the issued opinion" without "subject[ing] it or its employees to substantial civil and criminal penalties, including imprisonment." *Gill* v. *DOJ*, 913 F.3d 1179, 1185 (9th Cir. 2019) (cleaned up). The decision in *Bennett* also closed the door on specific agency actions unless those actions complied with "prescribed conditions." 520 U.S. at 178.

Again: neither the Ninth Circuit nor Respondent have pointed to such *Bennett*-like consequences from the application here. See also *supra* note 1. Were the Air Force to withdraw it, no consequences would follow. Further, any "prescribed conditions" or authorization will attach only on approval. Contrast with *Bennett*, 520 U.S. at 170 (characterizing the challenged action as a "permit authorizing the agency action"). And the application alone did not commit the agency to continue its waste disposal operations in any way. (Its present disposal activities result from the *prior* renewal application, not the current one. See 40 C.F.R. § 270.51(a), (d).) Without a legal penalty for removing the application, or an affirmative duty to do anything after submitting it, it's hard to spot any consequences at all. The consequences will instead arise from whatever Guam EPA *does* with that application (and the Air Force's later implementation of it)—when Respondent is free to try to challenge the action. See 5 U.S.C.A. § 704 (contemplating that judicial review is not available unless "no other adequate remedy in a court" is available). And even *Bennett* recognized that an agency action can't be final when it merely submits information to a recipient who then has "discretion to accept or reject [it]." *Bennett*, 520 U.S. at 178 (describing *Dalton*).

Respondent has thus failed to satisfy the second prong of this test, too.

B. The Ninth Circuit threw a wrench in cooperative federalism processes like RCRA's.

Respondent's dismissive reading of the finality requirement offends the States.

It helps to first level set. States enjoy "traditional and primary power over land and water use." *Solid Waste Agency of N. Cook Cnty.* v. *U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001). So the Court has long sought to leave them room to exercise "broad regulatory authority to protect … the integrity of [their] natural resources." *Maine* v. *Taylor*, 477 U.S. 131, 151 (1986). In other words, States hold an "absolute right," *Martin* v. *Waddell's Lessee*, 41 U.S. (16 Pet.) 367, 367 (1842), and "final power" over "all the earth and air within [their] domain[s]," *Georgia* v. *Tenn. Copper Co.*, 206 U.S. 230, 237 (1907). And when Congress has not made it "unmistakably clear" that it "intends to alter the usual constitutional balance between the States and Federal Government," the Court won't assume it has. *Gregory* v. *Ashcroft*, 501 U.S. 452, 460 (1991) (cleaned up).

Congress has been careful to respect the States' important role in all manner of environmental statutes. It most often does so by employing cooperative federalism. "Cooperative federalism" is "a partnership between the States and the Federal Government." *Arkansas* v. *Oklahoma*, 503 U.S. 91, 101 (1992). It "allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs." *Hodel* v. *Va. Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264,

289 (1981). Cooperative federalism is a key feature of "numerous federal [environmental] statutory schemes," including the Clean Water Act, the Alaska National Interest Lands Conservation Act, *New York* v. *United States*, 505 U.S. 144, 167 (1992), the Clean Air Act, *EPA* v. *EME Homer City Generation, LP*, 572 U.S. 489, 511 n.14 (2014), the Endangered Species Act, 16 U.S.C. § 1535, the Safe Drinking Water Act, see A. Dan Tarlock, *Safe Drinking Water: A Federalism Perspective*, 21 WM. & MARY ENVTL. L. & POL'Y REV. 233, 247 (1997), and, of course, RCRA, *Ky. Waterways All. v. Ky. Utilities Co.*, 905 F.3d 925, 929 (6th Cir. 2018).

States play all kinds of roles in these cooperative federalism regimes. In the Clean Air Act, for example, States formulate their own plans to implement the Act's requirements. *Union Elec. Co.* v. *EPA*, 427 U.S. 246, 249-52 (1976). And under the Clean Water Act, States have the "primary responsibilit[y] and right" "to prevent, reduce, and eliminate pollution." 33 U.S.C. § 1251(b). But most relevant here, Congress has expressly empowered States to subject federal facilities to state air, water, waste, and other environmental limits and permitting requirements. See, *e.g.*, Cmdr. Charles W. Tucker, *Compliance by Federal Facilities with State and Local Environmental Regulations*, 35 NAVAL L. REV. 87, 91-93 (1986) (describing RCRA, CWA, and CAA provisions). States have in turn passed many statutes requiring all entities—federal facilities included—to submit to their permitting authority through relevant applications.[2] That

[2] See, *e.g.*, ALA. CODE §§ 22-28-2(4), 22-28-16(d); ALASKA STAT. §§ 46.03.900(18), 46.03.100(a); ARIZ. REV. STAT. §§ 49-421(3), 49-426(A); ARK. CODE §§ 8-7-203(8), 8-7-215(b); CAL. HEALTH & SAFETY CODE §§ 39047, 42300(a); COLO. REV. STAT. §§ 25-8-103(13), 25-8-501(1); CONN. GEN. STAT. §§ 22a-423, 22a-430(a); DEL. CODE tit. 7,

then brings us to RCRA, which "obligate[s] a federal polluter, like any other, to obtain permits from … the state permitting agency." *U.S. Dep't of Energy* v. *Ohio*, 503 U.S. 607, 613 (1992); see also 42 U.S.C. § 6961(a).

The Ninth Circuit's approach upends the cooperative federalism embodied in RCRA and many other statutes. If the Ninth Circuit is right, then challengers will be motivated to file actions early and often (under NEPA or otherwise). These challenges will either halt the state review process before it starts (and before States get a reasonable opportunity to weigh in) or render it moot after

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§§ 6002(40), 6003(a); FLA. STAT. §§ 403.031(9), 403.161(1); GA. CODE §§ 12-9-3(23), 12-9-7(a)(2); HAW. REV. STAT. §§ 342B-1, 342B-11; IDAHO CODE §§ 39-4403(21), 39-4408(1); 415 ILL. COMP. STAT. 5/3.315, 5/9(b); IND. CODE §§ 13-11-2-158(a), 13-18-4-5(a); 327 IAC § 5-2-2; IOWA CODE §§ 455B.171(20)(a), 455B.183, 455B.186; KAN. STAT. §§ 65-164, 65-165; KY. REV. STAT. §§ 224.70-110, 224.1-010(16); LA. STAT. §§ 30:2004(11), 30:2076; ME. REV. STAT. tit. 38, §§ 361-A(4), 413(1); MD. CODE, ENV. §§ 9-301(f), 9-322; MASS. GEN. LAWS ch. 21, §§ 26A, 43(2); MICH. COMP. LAWS §§ 324.301(h), 324.3112(1); MINN. STAT. §§ 115.01 sub. 10, 115.07(a); MISS. CODE §§ 49-17-5(3)(b), 49-17-29(1)(a); MO. REV. STAT. §§ 644.016(19), 644.051(1); MONT. CODE § 75-5-605(1)-(2); NEB. REV. STAT. §§ 81-1502(10), 81-1506(1); NEV. REV. STAT. §§ 445A.390, 445A.465(1); N.H. REV. STAT. §§ 485-A:2(IX), 485-A:13(I)(a); N.J. ADMIN. CODE §§ 7:14A-1.2, 7:14A-2.1; N.M. STAT. §§ 74-2-2(O), 74-2-7(A); N.Y. ENV'T CONSERV. LAW §§ 17-0105(1), 17-0701(1); N.C. GEN. STAT. §§ 143-212(4), 143-215.1(a); N.D. CENT. CODE §§ 61-28-02(5), 61-28-06(1)-(2); OHIO REV. CODE §§ 6111.01(I), 6111.04(A); OKLA. STAT. tit. 27A, §§ 2-1-102(10), 2-6-304(A); OR. REV. STAT. §§ 468.005(5), 468B.050(1); 35 PA. CONS. STAT. §§ 691.1, 691.202; R.I. GEN. LAWS §§ 46-12-1(13), 46-12-5(a)-(b); S.C. CODE §§ 48-1-10(1), 48-1-110(a); S.D. CODIFIED LAWS §§ 34A-2-2(3), 34A-2-21; TENN. CODE §§ 69-3-103(28), 69-3-108(b); TEX. HEALTH & SAFETY CODE §§ 382.003(10), 382.0518(a); UTAH CODE §§ 19-1-103(4), 19-5-107(3); VT. STAT. tit 10, §§ 1251(8), 1259(a); VA. CODE §§ 62.1-44.3, 62.1-44.5(A); WASH. REV. CODE §§ 90.48.020, 90.48.160; W. VA. CODE §§ 22-11-3(14), 22-11-8(a)-(b); WIS. STAT. §§ 283.01(11), 283.31(1); WYO. STAT. §§ 35-11-103(a)(vi), 35-11-301(a).

it's done. For instance, under the Ninth Circuit's rule, Guam EPA could invest months developing permit conditions—negotiating monitoring requirements, specifying closure plans, tailoring corrective action schedules to local conditions—only to discover that a federal court has already passed judgment on some central issue that resets the board. The State's technical expertise and local knowledge, which Congress made central to the RCRA scheme, would be rendered advisory at best. More likely, the relevant State wouldn't be able to build a record at all, as litigation would leave it uncertain about what parts of the submitted application will actually hold. All the relevant action will then shift to federal courts, and the States who are supposed to keep hold of the wheel will instead become nothing more than silent passengers. And these problems will not be confined to NEPA or RCRA. For instance, challengers to a disfavored federally driven infrastructure project could challenge a state certification application under CWA Section 401 right out of the gate, arguing that it lacks some critical information (before the State even offered a chance to correct it). See *Standard Oil*, 449 U.S. at 242.

The consequences are also asymmetric. A challenger who succeeds in blocking an application before the State acts pays no cost for having bypassed the state process. But a State that loses its opportunity to shape the permit through conditions and public comment cannot recover that role after the fact. Federal court review of an unapproved application thus substitutes a judicial determination for the regulatory judgment Congress assigned to the States. And because a challenger will enjoy multiple chomps at the apple (by filing early and often), this kind of preemptive strike could become accepted practice in any cooperative federalism regime in which federal actors are regulated entities.

To be sure, others beyond the States would be hurt, too. Courts are the most obvious victims, seeing as *seriatim* litigation could quickly clog their dockets at a time when NEPA litigation is already increasing. NIKKI CHIAPPA ET AL., BREAKTHROUGH INST., UNDERSTANDING NEPA LITIGATION: A SYSTEMATIC REVIEW OF RECENT NEPA-RELATED APPELLATE COURT CASES 3 (2024), https://perma.cc/FX4M-YPYA. Really, that's no hypothetical; just witness how a single Montana coal mining company has been fighting NEPA challenges for almost 20 years. See Compl., *Mont. Env't Info. Ctr.* v. *Burgum*, No. 1:26-cv-00021-TJC (D. Mont. filed Mar. 3, 2026), ECF No. 1. Federal applicants will also need to avoid death by a thousand cuts. And it will hurt the public at large, as important projects could be delayed through the ancient tactic of war by attrition.

But the injury to federalism is enough, all on its own, to turn the Ninth Circuit's adventuresome approach to finality around. Especially considering how it's not even certain that "Congress and the President in 1970 actually intended or anticipated judicial review of agency compliance with NEPA," *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 179 n.2 (2025), the Court should not use that statute as a means to topple the sovereign bargain reflected in cooperative-federalism statutes like RCRA.

II. The Ninth Circuit improperly layered a needless NEPA review on top of RCRA's comprehensive provisions.

The Ninth Circuit further erred in thinking that NEPA's requirements apply at all when an agency submits a RCRA application. Heaping cumulative NEPA requirements on top of an already comprehensive RCRA

regime ignores ordinary principles of statutory construction—and invites nothing but more delay and obstruction. Yet Congress intended NEPA to "inform agency decisionmaking, not to paralyze it." *Seven Cnty.*, 605 U.S. at 173; see also *San Luis & Delta-Mendota Water Auth.* v. *Jewell*, 747 F.3d 581, 644 (9th Cir. 2014) (condemning "efforts to use NEPA as an obstructionist tactic" (cleaned up)).

A. Under the functional equivalence doctrine, NEPA review was not required.

1. In passing NEPA, Congress created a process by which federal agencies were to consider the environmental effects of their actions. See 42 U.S.C. § 4321. NEPA doesn't dictate outcomes, but instead "imposes only procedural requirements to ensure that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Winter* v. *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008) (cleaned up).

But implementing this seemingly understated goal is a bit trickier than it might first appear, as NEPA's requirements are subject to a host of statutory exceptions. See 42 U.S.C. § 4336(a); see also 40 C.F.R. § 1506.11. Likewise, NEPA compliance is not required where it results in overly burdensome practical consequences tantamount to a "clear and fundamental conflict of statutory duty." *Flint Ridge Dev. Co.* v. *Scenic Rivers Ass'n of Okla.*, 426 U.S. 776, 788-89, 791 (1976). And compliance is also unnecessary "where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant [environmental] actions." *DOT* v. *Pub. Citizen*, 541 U.S. 752, 770 (2004).

These exceptions reflect how NEPA "is subject to a construction of reasonableness." *Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375, 381 n.19 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974). Put differently, "inherent in NEPA and its implementing regulations is a rule of reason." *Pub. Citizen*, 541 U.S. at 767 (cleaned up). And "[w]here the preparation of a[NEPA environmental document] would serve no purpose in light of NEPA's regulatory scheme as a whole, no rule of reason worthy of that title would require an agency to prepare" one. *Id.* (cleaned up). "Application of the 'rule of reason' thus turns on the value of the new information to the still pending decisionmaking process." *Marsh* v. *Or. Nat. Res. Council*, 490 U.S. 360, 374 (1989).

One of the best manifestations of this "rule of reason" is the functional equivalence doctrine. Under that doctrine, federal agencies need not comply with NEPA's requirements under "organic legislation [that] mandate[s] specific procedures for considering the environment that are functional equivalents of the impact statement process." *Alabama ex rel. Siegelman* v. *EPA*, 911 F.2d 499, 504 (11th Cir. 1990). This exception avoids duplicative administrative burdens on federal agencies where they are already "set[ting] forth the environmental considerations" and providing an opportunity for public comment. *Env't Def. Fund, Inc.* v. *EPA*, 489 F.2d 1247, 1255-56 (D.C. Cir. 1973). Courts recognize that "[t]o require a 'statement' in addition to a decision setting forth the same considerations, would be a legalism carried to the extreme." *Int'l Harvester Co.* v. *Ruckelshaus*, 478 F.2d 615, 650 n.130 (D.C. Cir. 1973). Imposing further NEPA requirements would provide no new information—and it would thus serve no statutory purpose. This functional equivalence doctrine thus "strike[s] a workable balance between some of the advantages and

disadvantages of full application of NEPA." *Env't Def. Fund*, 489 F.2d at 1256 (cleaned up).

The doctrine is consistent with the Court's precedents "as a matter of judicial construction." *Siegelman*, 911 F.2d at 505 n.12. This Court has already recognized reasonable NEPA exceptions outside the express statutory exceptions—at least twice, in fact. When NEPA and the Interstate Sales Full Disclosure Act would have required the Department of Housing and Urban Development to file an EIS, this Court found it "inconceivable that an environmental impact statement could, in 30 days, be drafted, circulated, commended upon, and then reviewed and revised in light of the comments." *Flint Ridge Dev.*, 426 U.S. at 788-89. And the Court excused the Federal Motor Carrier Safety Administration when it lacked discretion to regulate cross-border operations, such that it could not control their environmental impacts. See *Pub. Citizen*, 541 U.S. at 770. Just as in those cases, the functional equivalence doctrine denotes "inconceivable" circumstances where imposing NEPA requirements does nothing but impair ordinary agency operations.

And it implements the ordinary rule of statutory construction that "a specific statute will not be controlled … by a general one." *Morton* v. *Mancari*, 417 U.S. 535, 550-51 (1974). "That is particularly true where … Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (cleaned up). Because NEPA applies to all federal agencies, it necessarily speaks in generalized terms. Thus, NEPA must give way to other statutes' more "precisely drawn, detailed" requirements. *United States* v. *Bormes*, 568

U.S. 6, 12 (2012) (cleaned up). Holding otherwise would allow NEPA to "sabotage the delicate machinery that Congress designed" in other comprehensive environmental statutes. *Merrell* v. *Thomas*, 807 F.2d 776, 779 (9th Cir. 1986), *cert. denied*, 484 U.S. 848 (1987).

The doctrine also comports with NEPA's purpose. In NEPA, Congress declared "sweeping policy goals" for "a broad national commitment to protecting and promoting environmental quality." *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 348, 350 (1989). But as in the Sherman Act, Congress "did not intend the text" of NEPA to "delineate the full meaning of the statute or its application in concrete situations." *Nat'l Soc'y Prof'l Eng'rs* v. *United States*, 435 U.S. 679, 688 (1978). That's why it expressly recognizes places where it cannot apply. 42 U.S.C. § 4332 (requiring compliance only "to the fullest extent *possible*" (emphasis added)). That's also why it defers to other environmental statutes. See *id.* §§ 4334, 4335. NEPA is thus "best read[]," *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 395 (2024), as simply requiring federal agencies to be aware of a project's environmental impacts and make the public aware of them, too, *Balt. Gas & Elec. Co.* v. *Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). Whether it achieves those aims under the banner of NEPA or some other statute does not matter, as Congress's policy goals are satisfied either way.

Practical experience confirms the doctrine serves these purposes. Virtually all the federal courts of appeal have applied this doctrine.[3] "Courts have upheld the

[3] See, *e.g.*, *Portland Cement*, 486 F.2d at 384-85 (applying the doctrine to the Clean Air Act); *Amoco Oil Co.* v. *EPA*, 501 F.2d 722, 750 (D.C. Cir. 1974) (same); *Getty Oil Co. (Eastern Operations), Inc.* v. *Ruckelshaus*, 467 F.2d 349, 359 (3d Cir. 1972), *cert. denied*, 409 U.S.

functional equivalency doctrine exception where the fundamental purpose of the statute was environmental protection," including cases "involving the Toxic Substances Control Act, the Ocean Dumping Act, the Safe Drinking Water Act, and the Federal Insecticide, Fungicide and Rodenticide Act." L. Diane Schenke & Sharon Shutler, *The Application of NEPA to Restoration Plans Under the Oil Pollution Act*, 45 BAYLOR L. REV. 345, 352 (1993) (cleaned up). Even some States apply it to State Environmental Protection Acts, or SEPAs. See, *e.g.*, *Holtz & Krause, Inc.* v. *DNR*, 270 N.W.2d 409, 420 (Wis. 1978); CAL. PUB. RES. CODE § 21080.5(a), (b)(1). But if the Ninth Circuit has its way, then five decades of authority will fall by wayside, introducing broad new uncertainties as to capital-intensive projects that *require* certainty.

So the functional equivalence doctrine has a role to play in cases like these.

2. NEPA review should not have applied here because the RCRA application process is functionally equivalent to NEPA's procedures. See, *e.g.*, *Siegelman*, 911 F.2d at 504-05; *Greenpeace, Inc.* v. *Waste Techs.*

1125 (1973) (same); *Appalachian Power Co.* v. *EPA*, 477 F.2d 495, 508 (4th Cir. 1973), *abrogated on other grounds by Union Elec. Co.* v. *EPA*, 427 U.S. 246, 254-55 (1976); *Tex. Comm. on Nat. Res.* v. *Bergland*, 573 F.2d 201 (5th Cir. 1978) (applied to the National Forest Management Act); *Buckeye Power, Inc.* v. *EPA*, 481 F.2d 162, 173-74 (6th Cir. 1973), *abrogated on other grounds by Union Elec. Co.*, 427 U.S. at 254-55 (applied to the CAA); *Ind. & Mich. Elec. Co.* v. *EPA*, 509 F.2d 839, 843 (7th Cir. 1975) (same); *W. Neb. Res. Council* v. *EPA*, 943 F.2d 867, 871-72 (8th Cir. 1991) (applied to the Safe Drinking Water Act); *Wyoming* v. *Hathaway*, 525 F.2d 66, 71-72 (10th Cir. 1975), *cert. denied*, 426 U.S. 906 (1976) (same); *Siegelman*, 911 F.2d at 504-05 (applied to RCRA); cf. *Merrell*, 807 F.2d at 779 (referring to the doctrine in the Federal Insecticide, Fungicide, and Rodenticide Act).

Indus., No. 4:93CV0083, 1993 WL 134861, at *10 (N.D. Ohio Mar. 5, 1993); accord 40 C.F.R. § 124.9(b)(6).

The statute's processes closely track one another. NEPA requires a State to identify whether its action will affect the environment, seek public comment, and then publish its decision after reviewing and revising it. 42 U.S.C. § 4336(a)-(b). RCRA does the same. "For instance, the standards of performance for the handling of hazardous waste must be such as may be necessary to protect human health and the environment." EPA, Off. of Solid Waste and Emergency Response, Directive No. 9522.1979(01), Opinion Letter on Applicability of the National Environmental Policy Act's Environmental Impact Statement Requirements to EPA's Actions Under the Resource Conservation and Recovery Act (Mar. 22, 1979), 1979 WL 51519 (cleaned up). RCRA requires agencies to identify the amount of hazardous waste it may generate in a calendar month, whether it receives, treats, stores, disposes, transports, and recycles the waste. See 42 U.S.C. §§ 6922, 6930, 6921(d); 40 C.F.R. § 262.13. Agencies must minimize hazards "from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water," 40 C.F.R. § 264.51, and "assess possible hazards to human health or the environment, including direct and indirect effects," *id.* § 264.56. States and EPA publish public notice and comment for the proposed permit application. 42 U.S.C. § 6974(b)(1)-(2). Then they issue the permit with a plethora of conditions on all the activities to ensure environmental safety. Altogether, these procedures ensure that the Air Force will take account of all relevant environmental issues; the public will then have an opportunity to weigh in on them, too.

Aside from procedural similarity, RCRA also fulfills NEPA's basic purposes. RCRA protects the environment in a specific way: requiring specific hazardous waste standards, an application for a permit, and public comment. One could say it acts as "extra protection" for NEPA review. *Portland Cement*, 486 F.2d at 383-84. At a minimum, by ensuring that the relevant environmental considerations are all brought out into the light, RCRA makes NEPA "redundant" (even if "less stringent" in some subjective sense). Lori Hackleman Patterson, *NEPA's Stronghold: A Noose for the Endangered Species Act?*, 27 CUMB. L. REV. 753, 763 (1997).

And given how NEPA and its attendant litigation so often produces delay, RCRA's delineated timing requirements—what one might call a need for an "unusually expeditious decision"—could "be thwarted by a NEPA impact statement requirement." *Portland Cement*, 486 F.2d at 384. Indeed, "it would only serve to impede" the Air Force's "efforts" at orderly, environmentally conscious waste disposal "to compel it to stop what it is doing so as to file an impact statement." *Hathaway*, 525 F.2d at 71. Congress intended RCRA to put all waste disposal issues under a single umbrella for reasons precisely like these; bolting on a NEPA review contravenes that intent. H.R. REP. No. 94-1491, at 4 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6238, 6242, 1976 WL 14072 (House committee describing its hope that RCRA would "permit the environmental laws to function in a coordinated and effective way").

In holding otherwise, the Ninth Circuit did too much flyspecking. Contra *Birckhead* v. *FERC*, 925 F.3d 510, 515 (D.C. Cir. 2019) (confirming a NEPA court's role is not to flyspeck). It correctly acknowledged that NEPA's procedural requirements and Guam EPA's RCRA

permitting process "[b]oth require some analysis of the environmental impact of a proposed action and some degree of public involvement." Pet.App.27. But it then mistakenly fixated on the timing and breadth of RCRA's environmental considerations. See Pet.App.37a-39a.

The purported timing issue is of no moment. For one, the Air Force had to consider specific environmental issues when it submitted its application in the first place. See 42 U.S.C. § 6925(b); see also 40 C.F.R. Pt. 270, Subpt. B. For another, environmental considerations will be further developed, and public comment will be had, once Guam EPA considers the application. Trying to segment and separately evaluate those two aspects of an integrated process serves no purpose, as it would just require the agency to memorialize the same facts over and over. NEPA's purpose was never "to generate paperwork—even excellent paperwork." 40 C.F.R. § 1500.1(c).

And as for the breadth of the environmental considerations, "NEPA imposes no substantive environmental obligations or restrictions." *Seven Cnty.*, 605 U.S. at 173. It does not even require an agency to "weigh environmental consequences in any particular way." *Id.* Rather, "the central principle of judicial review in NEPA cases is deference" to the agency's decision. *Id.* at 179. RCRA thus ensures that environmental considerations would have been "reasonably" weighed upon the application's determination. *Id.* at 173. The Ninth Circuit should have recognized as much and moved on. See *Strycker's Bay Neighborhood Council, Inc.* v. *Karlen*, 444 U.S. 223, 227 (1980) ("[T]he only role for a court is to insure that the agency has considered the environmental consequences.").

At bottom, if the Court does not perceive RCRA's comprehensive procedures to be functionally equivalent to

NEPA's, then every RCRA permit application submitted to a state agency—for any federal facility, anywhere in the country—could require a separate, prior round of NEPA review. The practical consequence would be to interpose a federal procedural layer before every state-administered permitting decision. And like the Ninth Circuit's decision about "final agency action," that holding would undermine the efficiency and autonomy that Congress sought to preserve when it allowed for a delegation of RCRA authority to the States.

So, far from "shunt[ing] aside" "the duty NEPA imposes upon the agencies to consider environmental factors," *Flint Ridge Dev.*, 426 U.S. at 787, RCRA is "comprehensive in its field of application" and "ensure[s] that EPA [and the States] consider[] fully, with the assistance of meaningful public comment, environmental issues involved in the permitting of hazardous waste management facilities," *Siegelman*, 911 F.2d at 505. The Air Force was quite right to think that a further round of NEPA review was uncalled for in the face of such sweeping protections.

B. Considering the harms, the Court should exercise caution before extending burdensome NEPA review.

The Court has sometimes construed NEPA's scope with an eye toward its practical consequences. See, *e.g.*, *Seven Cnty.*, 605 U.S. at 190. And here, requiring further NEPA review where it would not serve any useful function would not just be some innocuous belt-and-suspenders approach. Rather, it would allow NEPA to impede essential activities (like the mission-critical ordnance disposal at issue here) with little-to-no discernible return—an all too familiar story when it comes to NEPA.

Recall how we got here. "Since its enactment more than thirty years ago, [NEPA] has assumed quasi-constitutional status as one of the foundational laws of the modern administrative state." Bradley C. Karkkainen, *Whither NEPA?*, 12 N.Y.U. ENV'T L.J. 333, 333 (2004) (cleaned up). It was enacted without much fanfare. Albert C. Lin, *Revamping Our Approach to Emerging Technologies*, 76 BROOK. L. REV. 1309, 1336 n.152 (2011) ("[M]any legislators viewed the statute as an uncontroversial way to burnish their environmental credentials, and the legislation received relatively little attention from lobbyists and interest groups."). But it has since become the most heavily litigated federal environmental statute. KRISTEN HITE, CONG. RSCH. SERV., IF11932, NATIONAL ENVIRONMENTAL POLICY ACT: JUDICIAL REVIEW AND REMEDIES 1 (2025). Concomitantly, "NEPA has morphed into one of the most exacting burdens on the federal government." *Appalachian Voices* v. *FERC*, 139 F.4th 903, 921 (D.C. Cir. 2025) (Henderson, J., concurring).

The reason is easy to spot: "NEPA quickly became a main weapon of NIMBYs"—that is, those screaming, "Not in my backyard!"—"because of its universality." Denis Binder, *NEPA at 50: Standing Tall*, 23 CHAP. L. REV. 1, 43 (2020). In early cases, litigants tried to use "NEPA to block or delay proposed construction of government projects-low-income housing, federal detention centers, Job Corps centers, postal service facilities," and more. *People Against Nuclear Energy* v. *U.S. Nuclear Regul. Comm'n*, 678 F.2d 222, 229 (D.C. Cir. 1982), *rev'd on other grounds sub nom. Metro. Edison Co.* v. *People Against Nuclear Energy*, 460 U.S. 766 (1983). And over time, particularly when paired with the APA, NEPA "transformed from a modest procedural requirement into a blunt and haphazard tool employed by

project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects." *Seven Cnty.*, 605 U.S. at 183. Now, the statute "is notorious for special interest abuse" and "can be used by anyone interested in frustrating or delaying a major government action." Frank B. Cross, *The Judiciary and Public Choice*, 50 HASTINGS L.J. 355, 375 (1999).

Not surprisingly, then, painful consequences follow when a given action finds itself caught up in NEPA.

Most obviously, even NEPA fans concede that "NEPA compliance does come with costs"—big ones, actually. Alan Masinter, *The National Environmental Policy Act and the Value of Information*, 22 N.Y.U. J. LEGIS. & PUB. POL'Y 465, 471-72 (2020). First come the costs of conducting a NEPA review—a process that requires hundreds of pages of analysis and years of work, leading to millions of dollars of total expenses. See CEQ, ENVIRONMENTAL IMPACT STATEMENT TIMELINES (2010-2018) 1 (2020), https://perma.cc/RL9L7HDE. Then comes the expensive slog of litigation. See CHIAPPA, *supra*, at 5-6 (finding that NEPA challenges took an average of more than four years). If a NEPA challenge succeeds, the plaintiff might even collect attorneys' fees. See 28 U.S.C. § 2412(d). On top of all those costs come the financing expenses, price changes, and other burdens that come with delay and uncertainty. And often, this expense proves fatal to the endeavor. *Cronin* v. *U.S. Dep't of Agric.*, 919 F.2d 439, 443 (7th Cir. 1990) (Posner, J.) (describing how "costly and time-consuming" NEPA evaluations "ha[ve] been the kiss of death to many a federal project").

If costs don't push a project into oblivion, delay becomes the name of the game—and it might still be

enough to kill a project off in the end. Take the Atlantic Coast Pipeline, for instance. Quoting NEPA and Dr. Seuss, the Fourth Circuit had paused the project. See *Cowpasture River Pres. Ass'n* v. *Forest Serv.*, 911 F.3d 150, 183 (4th Cir. 2018). Although this Court stepped in and reversed, see generally *U.S. Forest Serv.* v. *Cowpasture River Pres. Ass'n*, 590 U.S. 604 (2020), that action proved to be too late to save the needed energy project. Project sponsors withdrew it because of the "ongoing delays and increasing cost uncertainty which threaten[ed] the economic viability of the project." Press Release, Duke Energy, *Dominion Energy and Duke Energy Cancel the Atlantic Coast Pipeline* (July 5, 2020), https://tinyurl.com/3mx8sere. This kind of story isn't unusual, either, as government agencies have taken more than five years to complete the average environmental assessment. See Mark C. Rutzick, *A Long and Winding Road: How the National Environmental Policy Act Has Become the Most Expensive and Least Effective Environmental Law in the History of the United States, and How to Fix It* 12, REGUL. TRANSPARENCY PROJECT (Oct. 16, 2018), https://tinyurl.com/3br559z5. Though Congress has now passed time limits, 42 U.S.C. § 4336a(g), agencies have sometimes ignored even those prescriptions.

And the States suffer at every turn. Most directly, the unchecked expansion of NEPA review threatens to federalize projects that States are already regulating. When courts construe NEPA's reach broadly, a single minor federal permit can swallow an entire state-permitted project. And the displacement is not merely procedural. When a federal court vacates an agency action for insufficient NEPA analysis, the state-level permits, investments, and regulatory decisions built around the federal approval are thrown into uncertainty.

More broadly, the economic consequences for the States are substantial. When NEPA litigation delays or kills a project, the State loses not just the project itself but the tax revenue, employment, economic activity, and affordability benefits that would have accompanied it. States rich in energy and mineral resources are particularly exposed: capital flows to jurisdictions with more predictable regulatory environments, whether that means other countries or simply other States with less federal land and fewer federal permitting triggers. And because the States cannot control the scope of federal NEPA review or predict how a federal court will assess its adequacy, they cannot offer the regulatory certainty that project sponsors need to commit investment. So States bear the economic costs of federal procedural excess without having any meaningful ability to prevent it. *Maybe* such consequences could be justified where the environment demands it, though even that idea warrants scrutiny. But certainly not where other protective measures (like those embodied in the RCRA process) are well taken care of. And even less so at a time when energy crises, housing crises, and infrastructure needs call for more efficient permitting and processes.

So the answer should be plain. Where another statute—like RCRA—already ensures that the relevant environmental considerations are addressed, and where the State is already exercising the regulatory authority that Congress delegated to it, more process serves no informational purpose. It simply displaces state judgment with federal litigation, trading the ability of state regulators for the uncertainty of judicial review. Adding injury to insult, it also does harm to the State's economy along the way.

Just recently, this Court offered "[a] course correction of sorts … to bring judicial review under NEPA back in line with the statutory text and common sense." *Seven Cnty.*, 605 U.S. at 184. The Court should do so again here. Otherwise, the Ninth Circuit's rule will invite challengers to short-circuit state regulatory processes across the country—turning every preliminary step in a cooperative federalism scheme into an occasion for federal litigation, and every comprehensive environmental statute into a backdrop for redundant NEPA review.

CONCLUSION

The Court should reverse.

Respectfully submitted.

JOHN B. MCCUSKEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
mwilliams@wvago.gov
(304) 558-2021

MICHAEL R. WILLIAMS
Solicitor General
Counsel of Record

MATTHEW K. NIU
Caldwell Fellow

Counsel for Amicus Curiae *State of West Virginia*

ADDITIONAL LEGAL REPRESENTATIVES OF THE STATES

STEVE MARSHALL
Attorney General
State of Alabama

BRENNA BIRD
Attorney General
State of Iowa

CORI MILLS
Acting Attorney General
State of Alaska

RUSSELL COLEMAN
Attorney General
State of Kentucky

TIM GRIFFIN
Attorney General
State of Arkansas

LIZ MURRILL
Attorney General
State of Louisiana

JAMES UTHMEIER
Attorney General
State of Florida

AUSTIN KNUDSEN
Attorney General
State of Montana

CHRIS CARR
Attorney General
State of Georgia

MICHAEL T. HILGERS
Attorney General
State of Nebraska

RAÚL LABRADOR
Attorney General
State of Idaho

DREW WRIGLEY
Attorney General
State of North Dakota

THEODORE E. ROKITA
Attorney General
State of Indiana

DAVE YOST
Attorney General
State of Ohio

ALAN WILSON
Attorney General
State of South Carolina

MARTY JACKLEY
Attorney General
State of South Dakota

JONATHAN SKRMETTI
Attorney General &
Reporter
State of Tennessee

KEN PAXTON
Attorney General
State of Texas

DEREK BROWN
Attorney General
State of Utah

KEITH KAUTZ
Attorney General
State of Wyoming