

No. 25-758

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**In the  
Supreme Court of the United States**

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MORELAND PROPERTIES LLC,

*Petitioner,*

v.

GOODYEAR TIRE & RUBBER CO.

AND GOODYEAR FARMS, INC.,

*Respondents.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

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**BRIEF FOR *AMICI CURIAE*  
ARIZONA LEGISLATURE AND 18 STATES  
IN SUPPORT OF PETITIONER**

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Justin D. Smith

*Counsel of Record*

Michael C. Martinich-Sauter

Kenneth C. Capps

Daniel C. Carter

JAMES OTIS LAW GROUP, LLC

530 Maryville Centre Drive

Suite 230

St. Louis, Missouri 63141

(816) 678-2103

Justin.Smith@james-otis.com

*Counsel for Amicus Curiae*

*Arizona Legislature*

*Additional Counsel Listed  
After Signature Page*

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**INTEREST OF *AMICI CURIAE***

The Arizona Legislature and the States of Alabama, Alaska, Arkansas, Florida, Idaho, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, and West Virginia submit this brief in support of Petitioner.<sup>1</sup> *Amici* Arizona Legislature and the States have a strong interest in supporting State-led cleanup efforts and protecting the principles of cooperative federalism.

Because EPA cannot oversee cleanup efforts at every contaminated property in the country, State-led programs by *Amici* States fill an important need and enable prompt cleanups by private parties. These State-led programs protect human health and the environment, restore property to productive use, and increase property values and tax revenue, which benefit the States, state budgets, and our citizens.

The Ninth Circuit’s decision to not presume substantial compliance with the National Contingency Plan (“NCP”) based on State oversight—and the similar decisions by the Sixth, Eighth, and Tenth Circuits—undermines State-led cleanup programs and threatens the benefits that States and our citizens receive from them. Private parties will hesitate to voluntarily participate in a State-led program if they may be unable to recover costs from other responsible parties. The States are interested in resolving the split in the circuits in line with the

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<sup>1</sup> Pursuant to Sup. Ct. R. 37.6, no counsel for any party authored this brief in whole or in part, and no party or counsel for a party, or any other person, other than *amici curiae* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Sup. Ct. R. 37.2, counsel of record received timely notice of the intent to file this brief.

decisions by the First, Second, and Seventh Circuits, which have presumed that State-approved cleanups substantially comply with the NCP.

### **SUMMARY OF THE ARGUMENT**

CERCLA relies on cooperative federalism to ensure prompt cleanups of contaminated properties. Because of this country's large number of contaminated properties and EPA's limited resources, States play a critical role in overseeing cleanup efforts. State cleanup programs have resulted in hundreds of thousands of cleaned properties that may once again enjoy productive use.

Neither EPA nor the States could clean all contaminated properties on their own. Instead, they depend on voluntary cooperation by private parties. Private parties are incentivized to clean contaminated properties through liability protection and cost predictability. Compliance with the NCP is a key factor in cost predictability.

The Ninth Circuit ruled that cleanups under State oversight are not presumptively compliant with the NCP. This ruling threatens State cleanup programs because it discourages the voluntary cooperation on which they rely. Under this ruling, parties are incentivized to sit on their hands to avoid being stuck with all cleanup costs, or to cooperate only with EPA.

As a result, States will spend more resources pursuing responsible parties, fewer properties will be cleaned, and States and our citizens will be deprived of the jobs, housing value increases, and tax revenue generated by cleaned properties. The Court should grant the Petition to resolve the circuit split on this important issue.

## ARGUMENT

### I. CERCLA relies on cooperative federalism.

#### A. CERCLA seeks prompt cleanups paid by responsible parties.

“In the 1970s and 80s, a number of high-profile environmental disasters, including the ‘Love Canal’ dumping at Niagara Falls, New York, drew the public’s attention to the environmental risks and health hazards posed by improper hazardous waste disposal.” *Metro. Water Reclamation Dist. of Greater Chicago v. N. Am. Galvanizing & Coatings, Inc.*, 473 F.3d 824, 826 (7th Cir. 2007). These environmental disasters led to legislative action. “In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Act) ... in response to the serious environmental and health risks posed by industrial pollution.” *Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 602 (2009) (internal citations omitted). “The Act seeks ‘to promote the timely cleanup of hazardous waste sites and to ensure that the costs of such cleanup efforts [are] borne by those responsible for the contamination.’” *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 6 (2020) (citation omitted).

Cleaning contaminated property is not cheap. Cleanup actions under CERCLA “typically require private parties to incur substantial costs in removing hazardous wastes and responding to hazardous conditions.” *Key Tronic Corp. v. United States*, 511 U.S. 809, 814 (1994). To incentivize parties to carry out these expensive cleanups, “[t]he Act provided a federal cause of action to recover costs of cleanup from culpable entities.” *CTS Corp. v. Waldburger*, 573 U.S. 1, 4 (2014). The goal was so that “those actually ‘responsible for any damage, environmental harm, or

injury from chemical poisons [may be tagged with] the cost of their actions.” *United States v. Bestfoods*, 524 U.S. 51, 55-56 (1998) (quoting S.Rep. No. 96-848, p. 6119 (1980)). “The scheme envisioned by Congress protects taxpayers generally from bearing the costs of nationwide cleanup.” *Commander Oil Corp. v. Barlo Equip. Corp.*, 215 F.3d 321, 327 (2d Cir. 2000).

**B. CERCLA provides a robust role for the States.**

As this Court has recognized, “the ‘spirit of cooperative federalism ... run[s] throughout CERCLA and its regulations.” *Atl. Richfield Co.*, 590 U.S. at 24 (citation omitted). In that spirit, Congress “assigned the states a role in the enforcement of the substantive standards established for remedial actions.” *Broward Gardens Tenants Ass’n v. EPA*, 311 F.3d 1066, 1076 (11th Cir. 2002). When private parties are unwilling to conduct cleanups, “CERCLA empowers the federal government and the states to initiate comprehensive cleanups and to seek recovery of expenses associated with those cleanups.” *Niagara Mohawk Power Corp. v. Chevron U.S.A., Inc.*, 596 F.3d 112, 120 (2d Cir. 2010).

Congress also allowed the federal government to delegate authority to the States. “Section 104 of CERCLA, 42 U.S.C. § 9604, which sets out procedures for governmental response to hazardous substance releases, provides that state and local governments, as well as the Federal Government, may be delegated by the President to undertake appropriate measures and receive reimbursement from Superfund.” *Exxon Corp. v. Hunt*, 475 U.S. 355, 360 n.3 (1986). Nor does a State need such delegation to act. “A state may also independently engage in CERCLA remediation efforts, so long as those efforts are not inconsistent with the EPA’s National Contingency Plan.” *Arizona*

v. *City of Tucson*, 761 F.3d 1005, 1011 (9th Cir. 2014). In short, “CERCLA views the states as independent entities that do not require the EPA’s express authorization before they can act.” *Niagara Mohawk Power Corp.*, 596 F.3d at 127.

Throughout its text, “CERCLA promotes state participation.” *Trinity Indus., Inc. v. Chicago Bridge & Iron Co.*, 735 F.3d 131, 138 (3d Cir. 2013). For example, when EPA is cleaning a site, States “must be afforded opportunities for ‘substantial and meaningful involvement’ in initiating, developing, and selecting cleanup plans.” *Atl. Richfield Co.*, 590 U.S. at 24 (quoting 42 U.S.C. § 9621(f)(1)). And in those situations when a State starts the cleanup process, “EPA usually must defer initiating a cleanup at a contaminated site that a State is already remediating.” *Id.* (citing 42 U.S.C. § 9605(h)).

Time and time again, CERCLA empowers States to carry out its mission of timely cleaning contaminated property.

### **C. States are needed to carry out prompt cleanups.**

“[S]tates play a critical role in effectuating the purposes of CERCLA.” *Niagara Mohawk Power Corp.*, 596 F.3d at 126 (citation omitted). “As a practical matter, state participation in CERCLA enforcement is absolutely necessary because there are more contaminated sites than the EPA is capable of addressing on its own.” *City of Tucson*, 761 F.3d at 1019 (Callahan, J., concurring in part and dissenting in part).

State participation is necessary because Congress “grossly underestimated the number of sites requiring cleanup and the monies necessary to remedy the problem.” *United States v. Akzo Coatings of Am., Inc.*,

949 F.2d 1409, 1417 (6th Cir. 1991). EPA estimates that more than 450,000 contaminated sites exist in the United States. See Ronald G. Aronovsky, *A Preemption Paradox: Preserving the Role of State Law in Private Cleanup Cost Disputes*, 16 N.Y.U. ENVTL. L.J. 225, 232 (2008). This dwarfs estimates made at the time of CERCLA’s passage. “Congress enacted CERCLA in 1980 after receiving estimates that there were approximately 30,000-50,000 contaminated sites across the country.” Ronald G. Aronovsky, *Federalism and CERCLA: Rethinking the Role of Federal Law in Private Cleanup Cost Disputes*, 33 ECOLOGY L.Q. 1, 7 (2006).

EPA has addressed only a fraction of these contaminated sites. CERCLA “directs EPA to compile and annually revise a prioritized list of contaminated sites for cleanup, commonly known as Superfund sites.” *Atl. Richfield Co.*, 590 U.S. at 6. This is “now known as the National Priorities List.” *Exxon Corp.*, 475 U.S. at 374. The National Priorities List currently contains 1,343 sites and 38 proposed sites. EPA, *Superfund: National Priorities List (NPL)*.<sup>2</sup> Addressing these sites is important. Almost one-quarter of the U.S. population (78 million people) live within three miles of a final, deleted, or proposed National Priorities List site. EPA, *Population Surrounding 1,881 Superfund Sites* (July 2023).<sup>3</sup>

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<sup>2</sup> Available at <https://www.epa.gov/superfund/superfund-national-priorities-list-npl> (last visited Jan. 19, 2026).

<sup>3</sup> Available at <https://www.epa.gov/system/files/documents/2023-08/FY22%20Population%20Estimates%20Superfund%20Final.pdf> (last visited Jan. 19, 2026).



Despite the importance of cleaning these prioritized sites, EPA has completed work and deleted just 459 sites from the National Priorities List in the 45 years since CERCLA became law. See EPA, *Superfund: National Priorities List (NPL)*.<sup>4</sup> In Arizona, EPA has deleted only three sites from the National Priorities List during that time. EPA, *Deleted National Priorities List (NPL) Sites – by State*.<sup>5</sup> No sites have been deleted from the National Priorities List in two States—Montana and Nevada—and only one site has been deleted in four States—Hawaii, Nebraska, New Hampshire, and Rhode Island. See *id.* Compared to the four total sites deleted in these six States, 72 sites remain on the National Priorities List, EPA, *Superfund: National Priorities List (NPL)*,<sup>6</sup> and three more sites have been proposed, EPA, *Proposed National Priorities List (NPL) Sites – by State*.<sup>7</sup>

Action on National Priorities List sites often moves at a snail's pace. Eight of Arizona's 10 sites on the National Priorities List have been listed since 1990 or earlier. EPA, *Superfund: National Priorities List*

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<sup>4</sup> See note 2, *supra*.

<sup>5</sup> Available at <https://www.epa.gov/superfund/deleted-national-priorities-list-npl-sites-state> (last visited Jan. 19, 2026).

<sup>6</sup> Hawaii (three sites); Montana (18 sites); Nebraska (18 sites); Nevada (1 site); New Hampshire (20 sites); and Rhode Island (12 sites). See note 2, *supra*.

<sup>7</sup> Available at <https://www.epa.gov/superfund/proposed-national-priorities-list-npl-sites-state> (last visited Jan. 19, 2026) (proposing one site each for Montana, Nevada, and New Hampshire).

(NPL).<sup>8</sup> Arizona is not unique. EPA listed more than half of the sites on the National Priorities List—683 sites, totaling more than 27,000 acres—in the 1980s. *See id.*

Part of this delay is attributable to the time that it takes for EPA to decide the type of cleanup needed at a site. At one point, this phase lasted an average of eight years for non-federal sites. *See* U.S. Gen. Accounting Off., GAO/RCED-97-20, *SUPERFUND: Times to Complete the Assessment and Cleanup of Hazardous Waste Sites*, at 8 (1997).<sup>9</sup> This was a consistent issue. More than a decade after CERCLA became law, “18 percent (150) of the sites that have been in the Superfund program for at least 8 years have not progressed beyond the initial study phase (that is, decisions on the type of cleanup to perform have not yet been completed).” U.S. Gen. Accounting Off., GAO/RCED-94-256, *SUPERFUND: Status, Cost, and Timeliness of Hazardous Waste Site Cleanups*, at 2 (1994).<sup>10</sup> Amazingly, “[a]t 9 of these 150 sites, the study phase ha[d] not yet begun.” *Id.*

Implementation of the cleanup is another source of delay. “For Superfund sites expected to cost \$50 million or more to complete (‘mega sites’), the median duration is 14.8 years to reach the ‘construction complete’ phase. For non-mega sites, the average duration of cleanup activities is 10.1 years.” Betsy Marshall, *A Landowner Walks into A Bar: Using State*

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<sup>8</sup> *See* note 2, *supra*.

<sup>9</sup> Available at <https://www.gao.gov/assets/rced-97-20.pdf> (last visited Jan. 19, 2026).

<sup>10</sup> Available at <https://www.gao.gov/assets/rced-94-256.pdf> (last visited Jan. 19, 2026).

*Common Law to Encourage Efficient CERCLA Cleanups*, 48 *ECOLOGY L.Q.* 477, 478 n.1 (2021) (citing U.S. Gov’t Accountability Off., GAO-09-656, *Superfund: Litigation Has Decreased and EPA Needs Better Information on Site Cleanup and Cost Issues to Estimate Future Program Funding Requirements* 70 tbl.15 (2009)). Together, as these reports show, the study and cleanup phases for EPA-led cleanups can last decades.

EPA has cited its limited resources as a factor affecting timely cleanup of National Priorities List sites. According to EPA officials interviewed by the GAO, shortages in “regional staff available to perform the cleanup can cause delays.” U.S. Gov’t Accountability Off., GAO-25-108408, Testimony Before the Committee on Environment and Public Works, U.S. Senate, *SUPERFUND: Many Factors Can Affect Cleanup of Sites Across the U.S.*, at 9 (Apr. 9, 2025).<sup>11</sup> EPA has identified funding as another factor affecting timeliness. *See id.* Insufficient funding is not surprising. “Congress was well aware that the funding level of Superfund was and is insufficient to clean up more than a few of the most dangerous hazardous waste disposal sites.” *Exxon Corp.*, 475 U.S. at 371.

These well-documented resource constraints make clear that “without state participation, most contaminated sites will remain polluted.” *City of Tucson*, 761 F.3d at 1019 (Callahan, J., concurring in part and dissenting in part) (citation omitted). As a result, EPA has long recognized that “State and local governments play an important role in ensuring

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<sup>11</sup> Available at <https://www.gao.gov/assets/gao-25-108408.pdf> (last visited Jan. 19, 2026).

effective, efficient and well-coordinated cleanups.” *Id.* (quoting EPA, Pub. No. 9375.5–01/FS, *State and Local Involvement In the Superfund Program* (1989)). Indeed, “[a]t most sites, state or local government agencies serve as the lead regulatory entity.” Aronovsky, *Federalism and CERCLA*, 33 *ECOLOGY L.Q.* at 7-8.

States “play a significant role in assessing and cleaning up” contaminated properties. EPA, *State Response Programs* (last updated on May 29, 2025).<sup>12</sup> “Many States have the resources, expertise and desire to play a greater role in the Superfund process.” *Modernizing the Superfund Cleanup Program Before Subcomm. on the Env’t of the H. Comm. on Energy & Commerce*, 115th Cong. 11 (2018) (statement of Stephen Cobb, Chief of Land Division, Ala. Dep’t of Env’tl. Mgmt. & Past-President of Ass’n of State and Territorial Solid Waste Mgmt. Officials) (“Cobb Statement”). “When willing and able, those States should be encouraged . . . to do so.” *Id.*

## **II. States carry out robust cleanup programs that depend on voluntary cooperation.**

### **A. States are effectively cleaning properties.**

States “are at the forefront” of property cleanup efforts. *Cleaning Up and Restoring Communities for Economic Revitalization Before Subcomm. on Superfund, Toxics & Env’tl. Health of the S. Comm. on Env’t & Pub. Works*, 113th Cong. 11, 13 (2013) (statement of Mathy Stanislaus, Assistant Adm’r, Office of Solid Waste & Emergency Response, U.S.

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<sup>12</sup> Available at <https://www.epa.gov/enforcement/state-response-programs> (last visited Jan. 19, 2026).

Envtl. Prot. Agency). Under state programs,<sup>13</sup> States have completed more than 230,000 cleanups and annually enroll more than 33,000 properties in cleanup programs. EPA, *Accomplishments* (last updated Jan. 5, 2026).<sup>14</sup> These State efforts have made approximately 3.9 million acres ready for anticipated use. *Id.* By contrast, in 30 years under the comparable federal program, EPA has made approximately 13,000 properties totaling 184,000 acres ready for anticipated reuse. *Id.*

State programs oversee effective cleanups. In Arizona, for example, private parties may clean properties under the Arizona Department of Environmental Quality’s (“ADEQ”) supervision through an administrative settlement agreement or the state’s Voluntary Remediation Program, which “encourages property owners and other interested parties to invest resources voluntarily in recovering contaminated sites as quickly as possible to healthful standards.” Ariz. Dep’t of Env’tl. Quality, *Voluntary Remediation Program* (revised Feb. 18, 2025).<sup>15</sup> Administrative settlements set forth the expectations for property cleanup in exchange for a covenant not to

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<sup>13</sup> “[S]tates assess the vast majority of contaminated sites evaluated under the Superfund Cleanup Program, with fewer than 10% of these sites ultimately requiring listing on the [National Priorities List]. The balance of those sites requiring remediation are addressed under State cleanup authorities, under voluntary cleanup authorities, or under Brownfields cleanup authorities with State oversight.” See Cobb Statement.

<sup>14</sup> Available at <https://www.epa.gov/brownfields/accomplishments> (last visited Jan. 19, 2026).

<sup>15</sup> Available at <https://azdeq.gov/VRP> (last visited Jan. 19, 2026).

sue and liability protection. ARIZ. REV. STAT. § 49-292(B), (C). Codified in state law, the Voluntary Remediation Program includes a work plan that describes how the cleanup will comply with state law. ARIZ. REV. STAT. § 49-175(A). ADEQ reviews and approves the work plan, ARIZ. REV. STAT. § 49-177, oversees the project at the private party's expense, ARIZ. REV. STAT. § 49-179(B), and reviews cleanup progress reports, ARIZ. REV. STAT. § 49-180. Parties that complete the Voluntary Remediation Program to ADEQ's satisfaction may receive a "no further action" letter. ARIZ. REV. STAT. § 49-181(B).

Arizona's program has been successful. "Since its inception by statute in the 1990s, [the Arizona Department of Environmental Quality's Voluntary Remediation Program] has overseen the cleanup and closure of more than 200 sites around Arizona." Ariz. Dep't of Env'tl. Quality, *Voluntary Remediation Program*.<sup>16</sup> In addition, "more than 60 active sites [are] in various stages of completion, including some that are implementing long-term groundwater remediation — a vital concern in [the] arid, drought-prone state." *Id.* Many more sites have been addressed through administrative settlements. Recall that EPA has deleted just three Arizona sites from the National Priorities List during the past 45 years. EPA, *Deleted National Priorities List (NPL) Sites – by State*.<sup>17</sup>

Other State programs also have experienced success. By February 2025, Florida's cleanup program had cleaned 235 sites, entered 530 voluntary

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<sup>16</sup> See note 15, *supra*.

<sup>17</sup> See note 5, *supra*.

cleanup agreements, and “sparked the creation of 90,000 indirect and direct jobs and the investment of over \$3.18 billion.” *Cleaning Up the Past, Building the Future: The Brownfields Program Before Subcomm. on Water Res. & Env’t of H. Comm. on Transp. & Infrastructure*, 119th Cong. 18 (2025) (statement of Michael Goldstein). As of 2025, Ohio’s voluntary cleanup program had cleaned 750 sites. *Cleaning Up the Past, Building the Future: The Brownfields Program Before Subcomm. on Water Res. & Env’t of H. Comm. on Transp. & Infrastructure*, 119th Cong. 12-13 (2025) (statement of Lisa Shook, Ass’t Chief, Division of Env’tl. Response & Remediation, Ohio Env’tl. Prot. Agency). This has allowed more than 17,000 acres to be reused in Ohio, including “brand-new metro parks in areas that were otherwise industrial histories.” *Id.* at 45.

Almost every State has a voluntary cleanup program. Ass’n of State and Territorial Solid Waste Mgmt. Officials, *2020 State Brownfields Program Analysis* (Feb. 2021), 2.<sup>18</sup> Those few States that do not “report[] a variety of alternatives.” *Id.* Not surprisingly given the State’s successes, the federal political branches have responded by passing legislation to “help strengthen State cleanup programs, with more Federal funding and less Federal meddling.” *Remarks On Signing the Small Business Liability Relief and Brownfields Revitalization Act In Conshohocken, Pennsylvania*, 1

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<sup>18</sup> Available at [https://astswmo.org/files/Resources/CERCLA\\_and\\_Brownfields/2020-State-Brownfields-Program-Analysis.pdf](https://astswmo.org/files/Resources/CERCLA_and_Brownfields/2020-State-Brownfields-Program-Analysis.pdf) (last visited Jan. 19, 2026).

PUB. PAPERS 53, 55 (Jan. 11, 2002) (Remarks of President George W. Bush).

**B. Private parties voluntarily cooperate in exchange for certain protections.**

“Private party cleanups have become the backbone of CERCLA.” Rachel D. Guthrie, *The Silent Strength of CERCLA: Private Party Cleanups and the Judicial Decisions Jeopardizing Them*, 36 GEO. ENVTL. L. REV. 165, 205 (2024). This is because “the vast majority of cleanups are privately funded, often at enormous—if not always disclosed—expense.” *Id.* at 183. Thus, both EPA and the States need private party involvement to clean contaminated sites.

Private party cleanups often stem from settlements with government regulators. “Settlements are the heart of the Superfund statute.” *Atl. Richfield Co.*, 590 U.S. at 22; *see also California Dep’t of Toxic Substances Control v. Hearthside Residential Corp.*, 613 F.3d 910, 915 (9th Cir. 2010) (an “important purpose of CERCLA is to encourage early settlement between potentially responsible parties and environmental regulators”). At the federal level, “EPA’s efforts to negotiate settlement agreements and issue orders for cleanups account for approximately 69% of all cleanup work currently underway.” *Id.* (citation omitted). EPA “prefers to reach an agreement with a potentially responsible party (PRP) to clean up a Superfund site instead of issuing an order or paying for it and recovering the cleanup costs later.” *Id.* “Congress also envisioned that states would play a central role by enforcing CERCLA through early settlements.” *City of Tucson*, 761 F.3d at 1018 (Callahan, J., concurring in part and dissenting in part). Early settlements “allow[] energy and resources to be directed at site cleanup rather



than protracted litigation.” *Fireman’s Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 948 (9th Cir. 2002).

CERCLA “encourages potentially responsible parties to enter into such agreements by authorizing EPA to include a ‘covenant not to sue,’ which caps the parties’ liability to the Government.” *Atl. Richfield Co.*, 590 U.S. at 22 (citing 42 U.S.C. § 9622(c)(1)). CERCLA “also protects settling parties from contribution claims by other potentially responsible parties.” *Id.* at 22-23 (citing 42 U.S.C. § 9613(f)(2)). “[T]he liability and compliance provisions in CERCLA have provided impetus for many property owners to enroll in state voluntary and other cleanup programs. Sites managed under state programs tend to have roughly the same types of hazardous substances and resulting benefits as those in the federal Superfund program, but are generally, though not always, less complex.” Office of Superfund Remediation & Tech. Innovation, U.S. Env’tl. Prot. Agency, EP W-07-037, *Beneficial Effects of the Superfund Program* 4 (2011).

Cost predictability is another important driver of private party settlements. “Potential purchasers of abandoned or underutilized contaminated properties are often deterred from purchasing and cleaning up these properties by exposure to unbounded and uncertain liability.” *Fireman’s Fund Ins. Co.*, 302 F.3d at 948. Cleanups under federal or state law “have come to achieve some level of predictability, thus allowing for a reasonable estimate of exposure to liability and of the costs involved in taking on a cleanup.” *Id.* “Such certainty, to the extent that it is available, greatly encourages prospective purchasers to rehabilitate contaminated property and put it back into productive use.” *Id.*

The National Contingency Plan was intended to provide this cost predictability. “The NCP is EPA’s regulatory template for a ‘CERCLA quality cleanup.’” *Pub. Serv. Co. of Colorado v. Gates Rubber Co.*, 175 F.3d 1177, 1181 (10th Cir. 1999). The NCP “specifies procedures for preparing and responding to contaminations ... .” *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 161, n.2 (2004) (citing 40 C.F.R. pt. 300 (2004)). When EPA proposed the NCP regulations, “EPA intend[ed] that providing a list of requirements to be complied with in order to be consistent with the NCP will enhance the probability of a successful cost recovery action, thus providing an incentive to other persons to undertake response actions.” *See National Oil and Hazardous Substances Pollution Contingency Plan*, 53 FED. REG. 51,394, 51,462 (Dec. 21, 1988). Providing cost predictability under the NCP is an important incentive for property cleanups.

### **III. The Ninth Circuit’s ruling threatens State-led cleanups.**

#### **A. Petitioner’s cost recovery action denied despite State oversight.**

In 2010, Moreland Properties LLC purchased a parcel of land, “intending to resell it to a commercial developer.” *Moreland Props. LLC v. Goodyear Tire & Rubber Co.*, No. CV-20-02297-PHX-SRB, 2023 WL 11963448, at \*3 (D. Ariz. July 27, 2023). As part of a purchase and sale contract in 2014, Moreland hired an environmental consultant to conduct soil sampling on the property. *Id.* Eighteen of 26 samples tested for arsenic exceeded Arizona’s Soil Remediation Levels (“SRLs”). *Id.* At the time, Arizona’s SRLs for both residential and non-residential land uses were 10 mg/kg for arsenic. *Id.* at \*2 n.3. The arsenic concentrations on Moreland’s property reached 550

mg/kg. *Id.* at \*3 n.6. Based on this discovery, the prospective buyer of the property “withdrew from the sale.” *Moreland Props. LLC v. Goodyear Tire & Rubber Co.*, No. 24-2451, 2025 WL 2452372, at \*1 (9th Cir. Aug. 26, 2025).

In 2019, Moreland entered into an Administrative Settlement Agreement with the Arizona Department of Environmental Quality that required Moreland to “prepare and implement a remedial action plan [to] address the soil contamination” at the property. *Moreland Props. LLC*, 2023 WL 11963448, at \*4. Under ADEQ oversight, Moreland implemented an ADEQ-approved work plan that reduced the arsenic “below the current residential SRLs” and “‘fully eliminate[d] the public health threat’ posed by the contamination.” *Moreland Props. LLC*, 2025 WL 2452372, at \*3. Moreland then brought this action under CERCLA to recover its costs from Goodyear, a prior property owner whose aviation crop-dusting lessee released arsenic and other pesticides onto the property decades earlier. *Moreland Props. LLC*, 2023 WL 11963448, at \*1.

To recover its cleanup costs, the Ninth Circuit required Moreland “to show that its response action was ‘consistent with’ the National Contingency Plan.” *Moreland Props. LLC*, 2025 WL 2452372, at \*2. The Ninth Circuit did not credit Moreland with acting pursuant to an ADEQ administrative settlement, implementing an ADEQ-approved work plan, and operating under ADEQ oversight. *See id.* at \*3. Because it concluded that Moreland should have evaluated other alternatives before it cleaned the property, the Ninth Circuit concluded that Moreland “did not substantially comply” with an NCP requirement, rendering the remediation “inconsistent with the NCP.” *Id.*

**B. The Ninth Circuit's ruling deepens a significant circuit split.**

As Moreland details in its petition, the circuits are divided on whether a private party that cleans a property under the oversight and approval of State officials is presumptively compliant with the NCP. *See* Pet. at 13-29. In three circuits, State oversight and approval has created a presumption of NCP compliance. When the Illinois Environmental Protection Agency approved a private party's cleanup plan and monitored the cleanup's progress, the Seventh Circuit concluded that the private party satisfied the NCP. *NutraSweet Co. v. X-L Eng'g Co.*, 227 F.3d 776, 791 (7th Cir. 2000). When the Maine Department of Environmental Protection entered a consent decree with a private party that required "extensive involvement" by the State, the First Circuit determined that consistency with the NCP is often "met if the remediation work is carried out under the approval and monitoring of the appropriate state environmental agency." *City of Bangor v. Citizens Commc'ns Co.*, 532 F.3d 70, 85, 91 (1st Cir. 2008). And when the New York Department of Environmental Conservation entered a consent order with a private party and directed and approved cleanup plans, the Second Circuit ruled that "[o]ne way of establishing compliance with the national [contingency] plan is to conduct a response under the monitoring, and with the ultimate approval, of the state's environmental agency." *Niagara Mohawk Power Corp.*, 596 F.3d at 137.

The Ninth Circuit, joined by the Sixth, Eighth, and Tenth Circuits, reached the opposite conclusion. *See* Pet. at 19-28. In these circuits, the courts found that private parties did not substantially comply with the NCP even though they operated under State

agreements, oversight, and approval. *See id.* The Ninth Circuit’s decision, and the other decisions on that side of the split, “will ultimately make it more difficult for states to play the role that Congress envisioned for them in remediating the numerous polluted sites that blight our nation.” *City of Tucson*, 761 F.3d at 1016 (Callahan, J., concurring in part and dissenting in part).

Some private parties wield this circuit split as a sword to recover cleanup costs and a shield to defend against them. For example, Respondent below argued that ADEQ’s oversight did not establish substantial compliance with the NCP. Doc. 20, *Moreland Props. LLC v. Goodyear Tire & Rubber Co.*, No. 24-2451 (9th Cir. Oct. 9, 2024). But in Ohio just two years earlier, “Goodyear argue[d] that the fact that it has incurred costs in compliance with the Ohio EPA’s orders creates a presumption that the costs are necessary and consistent with the NCP.” *Goodyear Tire & Rubber Co. v. ConAgra Foods, Inc.*, No. 2:20-CV-6347, 2022 WL 22401182, at \*5 (S.D. Ohio Mar. 18, 2022). Like Moreland here, Respondent argued in Ohio that, “[w]here, as here, a cleanup plan is approved by a state agency and the state monitors the progress of the remedial activities, response costs incurred by a private party pursuant to a state led plan are consistent with the NCP.” Doc. 106, *Goodyear Tire & Rubber Co. v. ConAgra Foods, Inc.*, No. 2:20-CV-6347 (S.D. Ohio Aug. 13, 2021) (citing *NutraSweet Co.*, 227 F.3d 776)). The Court should grant the Petition to resolve the split and ensure that all cost recovery actions are subject to the same rules.

**C. The Ninth Circuit’s decision will make voluntary compliance more difficult.**

Declining to find NCP compliance based on State oversight and approval will make private parties more

reluctant to voluntarily cooperate. As Congress recognized 40 years ago, “[v]oluntary cleanups are essential to a successful program for clean up of the Nation’s hazardous substance pollution problem.” *E.I. DuPont de Nemours & Co. v. United States*, 508 F.3d 126, 135 (3d Cir. 2007) (quoting H.R.Rep. No. 99–253, pt. 5, at 58 (1985), *as reprinted in* 1986 U.S.C.C.A.N. 3124, 3181). Put simply, “[v]oluntary cleanups are vital to fulfilling CERCLA’s purpose.” *Id.*

In other CERCLA contexts, circuit courts have expressed concern that “prohibiting suit by a voluntary plaintiff ... may undermine CERCLA’s twin aims of encouraging expeditious, voluntary environmental cleanups while holding responsible parties accountable for the response costs that their past activities induced.” *Metro. Water Reclamation Dist. of Greater Chicago*, 473 F.3d at 836. Without the ability to recover cleanup costs, “such parties would likely wait until they are sued to commence cleaning up any site for which they are not exclusively responsible because of their inability to be reimbursed for cleanup expenditures in the absence of a suit.” *Consol. Edison Co. of New York v. UGI Utilities, Inc.*, 423 F.3d 90, 100 (2d Cir. 2005). Private parties have confirmed this prediction: “If PRPs engaged in voluntary cleanups may not seek contribution, DuPont and *amici* argue, ‘companies would resist undertaking new cleanup obligations, and would rarely do so voluntarily,’ thus frustrating core purposes of CERCLA.” *E.I. DuPont De Nemours & Co. v. United States*, 460 F.3d 515, 533 (3d Cir. 2006), *cert. granted, judgment vacated sub nom. E.I. du Pont de Nemours & Co. v. United States*, 551 U.S. 1129 (2007). Courts have thus avoided interpretations of CERCLA that “create a perverse incentive for PRPs to wait

until they are sued before incurring response costs.” *Syms v. Olin Corp.*, 408 F.3d 95, 106 n.8 (2d Cir. 2005).

States will enjoy fewer cleaned properties if private parties do not voluntarily cooperate to avoid assuming sole responsibility for cleanup costs. States also will need to spend more resources on pursuing recalcitrant parties if those parties believe that it is no longer in their interests to voluntarily cooperate. “A CERCLA regime which rewards indifference to environmental hazards and discourages voluntary efforts at waste cleanup cannot be what Congress had in mind.” *Nurad, Inc. v. William E. Hooper & Sons Co.*, 966 F.2d 837, 845–46 (4th Cir. 1992). The Court should grant the Petition to correct this result.

#### **D. The Ninth Circuit’s decision diminishes State cleanup programs.**

The Ninth Circuit’s decision incentivizes private parties to work with EPA instead of States if only EPA-led cleanups receive a presumption of NCP compliance. See 40 C.F.R. § 300.700(c)(3)(ii). But “the federal government ‘cannot do everything’; nor was it intended to do everything.” James P. Young, *Expanding State Initiation and Enforcement Under Superfund*, 57 U. CHI. L. REV. 985, 1006 (1990) (citation omitted). Under CERCLA’s “spirit of cooperative federalism,” *Atl. Richfield Co.*, 590 U.S. at 24, States have completed more cleanups than EPA. See Argument § II.A., *supra*. Yet the Ninth Circuit’s decision “effectively bottles up state resources while the EPA plods through the National Priorities List.” Young, *Expanding State Initiation and Enforcement Under Superfund*, 57 U. CHI. L. REV. at 999.

This harms both the States and our citizens. “State governments are likely to be more responsive, and the EPA is too far removed from the affected people in many instances to effectively meet the needs of a particular situation. Young, *Expanding State Initiation and Enforcement Under Superfund*, 57 U. CHI. L. REV. at 1004–05. “In the context of environmental regulation, self-determination and local control over local matters are important principles.” *Id.* at 1006. “State governments are certainly more politically accountable to their citizens than EPA. Christopher J. Redd, *The Adversarial Relationship Between the States and EPA: Conflict over State Authority Under CERCLA*, 3 DICK. J. ENVTL. L. & POL’Y 101, 112 (1993).

The Ninth Circuit’s decision diminishes State cleanup programs by reducing cost predictability under the NCP for private parties who voluntarily cooperate with States. The Court should grant the Petition so that parties have that predictability.

**E. Fewer cleaned properties will harm the States and our citizens.**

Reducing voluntary cooperation, and thereby cleaning fewer properties, will harm the States in numerous ways. Contaminated properties “can pose environmental exposure risks to community members via access to the sites or contamination of soil, air, and/or water at the site.” Laurel Berman et al., *An Overview of Brownfields Redevelopment in the United States Through Regulatory, Public Health, and Sustainability Lens*, J. Environ Health author



manuscript (May 2022), 4.<sup>19</sup> Protecting human health and the environment is the chief benefit of cleaning properties.

States and our citizens receive additional, important benefits from clean properties. Once clean, the property itself may be reused by businesses to create jobs; by builders to supply needed housing; and by the public to enjoy as green space. EPA, *Reuse Possibilities for Brownfield Sites* (Sept. 2019).<sup>20</sup> EPA estimates that cleaned sites in 50 metro areas “could potentially accommodate as many as 640,000 new housing units and 1.39 million new jobs,” or 13% and 11% of total expected growth, respectively, between 2013 and 2030. EPA, *Environmental Benefits of Brownfields Redevelopment—A Nationwide Assessment*, EPA 560-R-20-001 (May 2020), 45.<sup>21</sup>

Property neighbors benefit as well. Cleaner properties increase prices for nearby houses by as much as 15%. See Kevin Haninger *et al.*, *The Value of Brownfield Remediation*, Nat’l Bureau of Economic Research Working Paper 20296 (July 2014), 25 (“cleanup leads to housing price increases between

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<sup>19</sup> Available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC10191173/pdf/nihms-1847505.pdf> (last visited Jan. 19, 2026).

<sup>20</sup> Available at [https://www.epa.gov/sites/default/files/2019-09/documents/reuse\\_possibilities\\_for\\_brownfield\\_sites.pdf](https://www.epa.gov/sites/default/files/2019-09/documents/reuse_possibilities_for_brownfield_sites.pdf) (last visited Jan. 19, 2026).

<sup>21</sup> Available at [https://www.epa.gov/system/files/documents/2024-04/environmental\\_benefits\\_of\\_brownfields\\_redevelopment.pdf](https://www.epa.gov/system/files/documents/2024-04/environmental_benefits_of_brownfields_redevelopment.pdf) (last visited Jan. 19, 2026).

5.0% and 15.2%”);<sup>22</sup> see also Laura O. Taylor *et al.*, *Disentangling property value impacts of environmental contamination from locally undesirable land uses: Implications for measuring post-cleanup stigma*, 93 J. URBAN ECON. 85 (2016) (“we find that remediation increases property values as much as 5%”).<sup>23</sup> In one study, property values increased above their original value after the federal government awarded grants for cleanup. See Danielle Kaeding, *Study finds Great Lakes cleanup funding increases property values*, WIS. PUB. RADIO (Oct. 19, 2023) (“the initial listing of sites decreased property values by 15.8 percent or an average of \$25,700 per home. After awarding federal money for cleanup, property values went up by an average of \$27,000 per home.”).<sup>24</sup>

Cleaned properties also generate additional tax revenue. Businesses on cleaned properties generate tax revenue through jobs, sales, and property taxes. Likewise, housing on cleaned properties generates property taxes. And the increased value of neighboring residential properties generates additional property tax revenue. See Karen A. Sullivan, *Brownfields Remediation: Impact on Local Residential Property Tax Revenue*, 19 J. Envtl.

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<sup>22</sup> Available at [https://www.nber.org/system/files/working\\_papers/w20296/w20296.pdf](https://www.nber.org/system/files/working_papers/w20296/w20296.pdf).

<sup>23</sup> Available at <https://www.sciencedirect.com/science/article/abs/pii/S0094119016000243>.

<sup>24</sup> Available at <https://www.wpr.org/environment/study-great-lakes-cleanup-funding-increases-property-values> (last visited Jan. 19, 2026).

Assessment Policy Mgmt. 1750013, 1750013-17 (2017) (“the increase in residential property tax revenue from the cleanup of 48 brownfields ranged from \$29 million to \$97 million in a single year after cleanup when nearby residential properties were reassessed”).<sup>25</sup>

These significant benefits are threatened by the Ninth Circuit’s decision. The Court should grant the Petition.

### CONCLUSION

The Arizona Legislature and the States of Alabama, Alaska, Arkansas, Florida, Idaho, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, and West Virginia respectfully request that the Court grant the Petition.

January 28, 2026

Respectfully submitted,

Justin D. Smith  
*Counsel of Record*  
 Michael C. Martinich-Sauter  
 Kenneth C. Capps  
 Daniel C. Carter  
 JAMES OTIS LAW GROUP, LLC  
 530 Maryville Centre Drive  
 Suite 230  
 St. Louis, Missouri 63141  
 (816) 678-2103  
 Justin.Smith@james-otis.com

*Additional Counsel  
 Listed Below*

*Counsel for Amicus Curiae  
 Arizona Legislature*

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<sup>25</sup> Available at <https://www.worldscientific.com/doi/pdf/10.1142/S1464333217500132> (last visited Jan. 19, 2026).

**ADDITIONAL COUNSEL**

STEVE MARSHALL  
Attorney General  
State of Alabama

STEPHEN J. COX  
Attorney General  
State of Alaska

TIM GRIFFIN  
Attorney General  
State of Arkansas

JAMES UTHMEIER  
Attorney General  
State of Florida

RAÚL R. LABRADOR  
Attorney General  
State of Idaho

BRENNA BIRD  
Attorney General  
State of Iowa

KRIS W. KOBACH  
Attorney General  
State of Kansas

LIZ MURRILL  
Attorney General  
State of Louisiana

CATHERINE L.  
HANAWAY  
Attorney General  
State of Missouri

AUSTIN KNUDSEN  
Attorney General  
State of Montana

MICHAEL T. HILGERS  
Attorney General  
State of Nebraska

DREW H. WRIGLEY  
Attorney General  
State of North Dakota

DAVE YOST  
Attorney General  
State of Ohio

GENTNER DRUMMOND  
Attorney General  
State of Oklahoma

MARTY J. JACKLEY  
Attorney General  
State of South Dakota

KEN PAXTON  
Attorney General  
State of Texas

DEREK BROWN  
Attorney General  
State of Utah

JOHN B. MCCUSKEY  
Attorney General  
State of West Virginia