

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

DIAMOND ALTERNATIVE ENERGY, LLC, ET AL.,)

Petitioners,)

v.) No. 24-7

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,)

Respondents.)

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P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 24-7, Diamond Alternative Energy versus the Environmental Protection Agency.

Mr. Wall.

ORAL ARGUMENT OF JEFFREY B. WALL
ON BEHALF OF THE PETITIONERS

MR. WALL: Mr. Chief Justice, and may it please the Court:

The EPA waiver here allows California to limit the number of vehicles that run on liquid fuel. Petitioners make and sell liquid fuel, so vacating the waiver would redress their injuries in two ways.

First, as Justice Kavanaugh explained in Energy Future Coalition, part of the injury in a case like this one is the denial even to compete in the marketplace. Vacating the waiver redresses that injury perfectly. Indeed, it's the only thing that can.

Second, even setting aside that clear rule, this Court recognized in Department of Commerce that litigants may rely on common-sense

1 inferences about third-party behavior. It
2 doesn't take much common sense to figure out
3 that if California limits the number of cars
4 that can run on gas, automakers will make fewer
5 cars that run on gas.

6 Remember that we're here because
7 California asked for and EPA granted a waiver
8 because California said it needs its own
9 standards. California even intervened by
10 telling the court below that its standards are
11 likely to reduce fuel consumption. The
12 common-sense inference is that this waiver
13 matters in the real world, not that it is
14 completely meaningless.

15 But, if we needed hard evidence, we
16 had plenty of it, five kinds: one, our
17 declarations showing that California's standards
18 have historically harmed us; two, California's
19 and EPA's actions and statements in 2021 and
20 2022 saying that their standards are likely to
21 reduce fuel consumption; three, California's two
22 expert declarations from CARB officials in 2022
23 saying that their standards are likely to
24 decrease fuel consumption; four, the intervening
25 automakers' admission that, without the waiver,

1 some of their competitors were likely to back
2 away from electrification; and, fifth, Toyota's
3 comment and public reporting also indicating
4 that some automakers would back away from
5 electrification without the waiver. Taken
6 together, that is more than enough evidence to
7 establish redressability.

8 I welcome the Court's questions.

9 JUSTICE THOMAS: Mr. Wall, taking a
10 step away -- back from the evidence you just
11 provided or the points you just made, what is
12 your rule? How would you articulate --
13 articulate your categorical rule?

14 MR. WALL: Our rule is that when the
15 government denies a party the ability to compete
16 in a marketplace and the party sues to have that
17 market restriction lifted, there is
18 redressability because the party is asking for
19 the thing to be taken away that's causing its
20 injury.

21 JUSTICE THOMAS: Is there some degree
22 of hindrance to that party that has to be shown
23 to apply your rule?

24 MR. WALL: I don't think so because
25 we're not talking about just sort of some

1 indirect impediment. I'm talking about a market
2 restriction that directly tilts or forecloses
3 the playing field. It says you can't sell your
4 product, your good, your service into a
5 particular market either wholly or, here,
6 partially, up to some certain cap.

7 JUSTICE THOMAS: So how would you show
8 that?

9 MR. WALL: Well, what I'd say is it --
10 it's -- you show it by the nature of the injury.
11 So just like in a competitor standing case, like
12 in National Credit Union, if you come in and you
13 say the government is under-regulating one of my
14 competitors, right, this Court said that's
15 competitor standing. Government agrees with
16 that. That's Footnote 2 of their brief.

17 This is the same thing. It's just
18 that instead of picking winning and -- winners
19 and losers among particular market participants,
20 you're picking winners and losers as among
21 markets. So, if you come in and you say I have
22 something that yesterday I could freely sell and
23 today I cannot freely sell it as a result of a
24 government regulation that directly forecloses
25 me, you have standing on our view.

1 JUSTICE JACKSON: So, Mr. Wall, how --
2 how is that consistent with the Court's holding
3 in Warth versus Seldin?

4 I know you talk about it briefly in
5 one of your footnotes, but that seems to me to
6 map on exactly with what you're now saying.
7 There was an exclusionary zoning restriction
8 that prevented home builders and others from
9 building in a particular area, and the Court
10 found that that was not sufficient for
11 redressability.

12 MR. WALL: So the Court looked at it
13 more as a sort of predictable effects-type case
14 and said, well, we actually think it's very
15 speculative whether you could get into the
16 neighborhood at all. And so the Court saw that
17 case through a very different lens, and, of
18 course, nobody was there on --

19 JUSTICE JACKSON: But I guess that
20 I -- I -- I guess I'm questioning whether or not
21 it really is a different lens. I mean, the
22 Court said, if you're right that the rule is
23 just a common sense -- you don't really have to
24 have evidence, we just sort of infer based on
25 the relationships in the marketplace and

1 whatnot, that's exactly what was happening
2 there. The home builders said we aren't going
3 to be able to build our houses, our
4 single-family homes, in this zoned-off area.

5 And so we said, I think, when you look
6 at the case, that there's got to be evidence
7 that there actually would be home building in
8 this area absent that regulation. And I think
9 that's the same thing as saying here that you
10 can't just rely on the fact that we would think
11 that lifting this restriction would allow for
12 more cars to be built. There actually has to be
13 evidence that there would be more cars built,
14 you know, fuel-ingesting cars, in this
15 environment.

16 MR. WALL: So, Justice Jackson, what
17 I'd say is the Court has sort of two lines of
18 cases, and that's why we've made two arguments,
19 because we think we win under both lines.

20 You have some sets of cases, like the
21 equal protection cases or the competitor
22 standing cases, where you say that the nature of
23 the injury gives you causation or
24 redressability. It's the ability not -- you're
25 denied the ability to compete in the

1 marketplace. You're discriminated against no
2 matter what would happen in the marketplace
3 itself.

4 And then you have certain lines of
5 cases, like Department of Commerce or Warth
6 v. Seldin, where you say, look, we're going to
7 look at what the likely predictable effects are
8 in the market and if you show --

9 JUSTICE JACKSON: And what
10 distinguishes the two? Is it that we have
11 corporations in one, that we have -- like,
12 what -- how would we know which line we're
13 supposed to apply in this situation?

14 MR. WALL: I think it depends on
15 whether the Court believes that the nature of
16 the injury gives you causation and
17 redressability. So, as I understand the
18 competitor standing cases, and I think they're
19 correctly decided, if I'm in a market and I
20 allege or show that I am competing with, you
21 know, Mr. Klein in a market, and the government
22 comes in and tilts the playing field toward
23 Mr. Klein, I have standing because, by
24 definition, the nature of the injury is that the
25 government tilted the playing field and I have

1 redressability because I want the playing field
2 to be level again. That's what I'm asking for.

3 And we see our case as exactly the
4 same. We're -- and -- and -- and --- and I
5 think the D.C. Circuit got this exactly right
6 when --

7 JUSTICE SOTOMAYOR: I -- I'm sorry,
8 though, because I think what Justice Jackson may
9 be getting to is you want us to announce an
10 absolutist rule, which, in the standing area, is
11 very difficult to do because it really does rely
12 so much on facts.

13 You've marshaled many facts to support
14 your standing. In this case, the D.C. Circuit
15 thought erroneously -- it's been conceded by the
16 government -- that this regulation would expire
17 in 2025. So let's assume you came in a month
18 before the expiration and that the rule was
19 never going to be renewed, okay? Why would you
20 have standing?

21 Under your rule, merely because the --
22 the -- the barrier exists, you have standing.
23 But what the court here said is you might have
24 standing, but you don't have redressability
25 because the manufacturers can't change their

1 production right now. And this rule expires.

2 They made a mistake on that. It's conceded.

3 So isn't the issue whether the -- the
4 confluence of all the facts you put forth show
5 that this is more like the D.C. Circuit case
6 that Justice Kavanaugh relied upon or more like
7 the Chamber of Commerce versus EPA case, where
8 he said that the affidavits back and forth
9 showed that that particular set of claimants
10 wouldn't really be successful in selling their
11 products?

12 So why isn't it always a factual
13 dispute?

14 MR. WALL: So here's the importance of
15 the rule, Justice Sotomayor. Here's why you
16 need one, and here's why I think the D.C.
17 Circuit was right to adopt one in Energy Future
18 Coalition.

19 The importance of the rule is that
20 absent the rule, if you walk in and you put a
21 market restriction on at a time when you think
22 the restriction doesn't matter or at least you
23 can debate whether it matters, then the other
24 side will always say: A-ha, you don't have
25 predictable effects. You can't satisfy

1 Department of Commerce. You can't satisfy
2 Warth.

3 And, here, it's even worse than that.
4 There is a 60-day time limit.

5 JUSTICE SOTOMAYOR: What you want then
6 is an advisory opinion. And at a certain point,
7 we move from giving -- giving you relief or not,
8 but that's not this case.

9 MR. WALL: Justice Sotomayor, I want
10 to be very clear.

11 JUSTICE SOTOMAYOR: Why would we
12 announce a rule that's not pertinent to this
13 case?

14 MR. WALL: I do not want an advisory
15 opinion. They now acknowledge --

16 JUSTICE SOTOMAYOR: So they now
17 acknowledge that they were wrong. They'll have
18 to answer as to why they're even defending the
19 rule if it has no effect, which is my logical
20 question. If it doesn't affect the market, why
21 have the rule at all? But we can go -- let them
22 answer that.

23 MR. WALL: I -- I look forward to
24 hearing them do it. But I just -- I want to say
25 quickly, in this case, everybody now

1 acknowledges the greenhouse-gas standards
2 persist into the future indefinitely if nothing
3 changes from now to the end of time.

4 Absent a rule, they can come in and
5 say: The market is exceeding our standards
6 right now. You can't show that any automaker
7 will do anything. There's a 60-day time bar in
8 the statute. If we can't sue when we sued,
9 we're out of luck forever.

10 The advantage of our rule is that it
11 matches up with the injury perfectly, and it
12 makes sure that in the future, if the price of
13 electricity goes up or the availability of rare
14 earth minerals for batteries changes, we can
15 affect the market.

16 JUSTICE SOTOMAYOR: Let's assume that
17 they had affidavits from every single car
18 manufacturer. This is like Chamber of Commerce
19 versus EPA. Every car manufacturer, every
20 single one of them, says: Can't change it,
21 won't change it.

22 Do you still win? Can't change it,
23 won't change it. You're the fuel people, but
24 it's not going to affect you because they're
25 going to follow it no matter what.

1 MR. WALL: Yes, we do. The evidence
2 here is actually to the contrary, pages 99 to
3 211.

4 JUSTICE SOTOMAYOR: Well, but that's
5 the point.

6 MR. WALL: But I -- I take the point.
7 Yes, because the question isn't what are
8 automakers doing today when we get locked out of
9 the market. It's, yes, we have a pocketbook
10 injury, we believe, but we have an injury that
11 occurs even earlier than that.

12 We are denied the ability to go out
13 and compete in the marketplace, to convince
14 automakers that they shouldn't be making as many
15 electric vehicles. They should be making more
16 vehicles that run on liquid fuel. And the
17 government has foreclosed us from doing that.

18 And it's no different than the
19 examples we give in our brief.

20 JUSTICE BARRETT: What if, in Justice
21 Sotomayor's example, the manufacturers stand
22 with, you know, the California regulators and
23 with EPA on the very first day the regulation is
24 rolled out and say: We support this. You know,
25 we want a greener earth, we want to prevent

1 climate change, and this is going to be cheaper
2 for our business anyway.

3 So there's no question of a time lag.
4 You know, they're just fully onboard and so kind
5 of as Justice Sotomayor's hypothetical was
6 saying, but I want to imagine it happens on day
7 one. Why should you have standing and
8 redressability at that point?

9 MR. WALL: Because it seems to me,
10 Justice Barrett -- let's assume just for a
11 moment that -- that it's unlawful but that the
12 entire industry buys in. They cut a deal with
13 California. They accept the standards, they
14 want to abide by them, and they all agree and
15 they want to lock in the demand and force
16 consumers that way because they think it'll be
17 profitable for the auto-making industry.

18 We still are harmed in a direct way.
19 The government has tilted the playing field and
20 foreclosed us from being able to freely sell our
21 product. And we -- we ought to be able to make
22 our arguments on the merits and get our day in
23 court regardless of whether the directly
24 regulated industry cuts a deal or not.

25 We have an injury. We have been

1 locked out of a marketplace. That injures us
2 financially. It's caused by the regulation. I
3 don't take anybody to be disputing that.

4 So the only question is
5 redressability, and that should be easy in a
6 case like this one. If everybody grants that
7 the regulation is causing your injury, vacating
8 the regulation or California's standards that --
9 that they're allowed to adopt redresses the
10 injury.

11 JUSTICE ALITO: Well, in light of all
12 that, why do you think you need a special rule?
13 Why -- why isn't the -- in the situation that's
14 present here and in others like it, there's a
15 strong inference that this is likely to have an
16 effect.

17 Now maybe there could be situations in
18 which, by the submission of affidavits like the
19 ones that have been discussed or statements by
20 all the carmakers, it could be shown that, no,
21 contrary to what one would normally think, this
22 is not going to have any effect, in which case
23 you -- you might lose on standing. But I'm not
24 sure why you think you need a special rule in
25 this situation.

1 MR. WALL: Justice Alito, I don't want
2 to fight it too hard. If the Court says: Look,
3 you had far more here than we had before us in
4 Department of Commerce, you can have a
5 common-sense inference, it's predictable under
6 Department of Commerce --

7 JUSTICE ALITO: There are many
8 situations in which standing depends on a
9 probabilistic inquiry, and those are very
10 fact-specific. So, you know, you'd ask: What
11 is the -- what is the probability in a
12 particular situation?

13 When someone says I'm threatened
14 with -- you know, I expect that this will harm
15 me, we assess the -- the -- the -- the degree of
16 the risk.

17 MR. WALL: So I'll take -- I'll say
18 two things, Justice Alito.

19 First, what I'm worried about is that
20 we've been ping-ponged around for going on 15
21 years, trying to get a determination on the
22 merits. And if we get sent back for a
23 predictable effects analysis or all the rest in
24 this and future cases, I worry about where we
25 end up.

1 But, second, and -- and I -- more
2 logically doctrinally, in the competitor
3 standing cases, the Court doesn't say: Well, if
4 we leveled the playing field, would the
5 customers that you seek to compete for fairly
6 come to you rather than the other guy?

7 And I think that's the wrong -- I
8 think that would be the wrong way to look at
9 those cases.

10 Your injury isn't just what happens in
11 the marketplace when you are allowed to compete
12 and you think some dollars are taken out of your
13 pocket. You don't really know because the point
14 is you've been locked out of the marketplace.

15 And that's why I think the rule is
16 important. I think it's the same logic here as
17 in the competitor standing cases. And it's not
18 like the Court doesn't do that in other areas.

19 California is here saying: If we are
20 prevented from enforcing our standards -- and
21 this Court said it many times -- that is injury,
22 indeed, irreparable injury, to the state.
23 Without knowing what it will do under the
24 statutes, whether it will work, whether we'll
25 get a penalty or a conviction, the Court often

1 says: If the sovereign doesn't get to enforce
2 its statute, that is injury, and the state's got
3 standing to come in regardless.

4 JUSTICE ALITO: I would think that
5 you -- you would have injury in fact under our
6 cases if the effect of this is to cause your
7 clients to be unable to sell one car. Wouldn't
8 that be correct?

9 MR. WALL: Well, sell one gallon of
10 liquid fuel. Yes.

11 JUSTICE ALITO: I'm sorry, one gallon
12 of liquid fuel.

13 MR. WALL: Yes, that's true.

14 JUSTICE ALITO: So that doesn't seem
15 like very much to have to show.

16 MR. WALL: Justice Alito, I agree, but
17 that's what makes the case so odd.

18 The court of appeals said: All right,
19 we're not going to contest that there's injury
20 in fact and causation. We're not going to say
21 there is, but we're not going to say there
22 isn't. We're going to assume that you've got
23 injury in fact that you sell one gallon less of
24 gasoline, and we're going to assume it's caused
25 by the regulation. But we think you haven't

1 shown redressability.

2 JUSTICE KAGAN: But I think that the
3 reason for that was a combination of two things.

4 One was what Justice Sotomayor said,
5 that they were -- that they were mistaken about
6 the end date of the regulation. The other, you
7 know, honestly, was that you didn't put on much
8 evidence.

9 You know, and here, too, your sort of
10 common-sense inference, it is a common-sense
11 inference, but if it's such a common-sense
12 inference, it should be easy to put on evidence.
13 And -- and, here, there wasn't a lot of it.

14 MR. WALL: So, Justice Kagan, I don't
15 think that's fair. We had an on-point decision
16 from the D.C. Circuit dealing with this very
17 industry, fuel producers. We had our own
18 declarations. We had California's expert
19 declarations filed after we brought this case.

20 So, when California intervened, if you
21 look at pages 110 and 115 of the JA, California
22 put in declarations from two CARB experts, and
23 in both of them, their own experts -- these are
24 not statements in the brief --

25 JUSTICE KAGAN: I -- I agree with you.

1 I think it would be easy to read those
2 declarations back to California and say: What
3 do you make of those? But -- but your side
4 didn't really make that argument.

5 MR. WALL: Well, we pointed to our
6 declarations. We pointed to California's
7 statement in 2021, at page 66 of the JA, saying
8 these standards are critical -- their word -- to
9 reducing fuel consumption. We pointed to EPA's
10 statements in adopting the waiver saying they
11 need their own standards.

12 We pointed to the intervenor
13 automakers' admission saying: Hey, we've
14 invested a lot in electrification. If you don't
15 make them meet the same standard, we might be at
16 a "competitive disadvantage."

17 And I guess my point back, Justice
18 Kagan, is, look, if --

19 JUSTICE KAGAN: I think my point to
20 you is, surely, if that's all in the record, you
21 deserve to go forward.

22 MR. WALL: Oh, I agree. I -- I --
23 I -- I agree.

24 JUSTICE JACKSON: So then why do we
25 need the rule? Why do we need a bright-line

1 rule if you satisfy the regular evidence
2 standard?

3 MR. WALL: First, because I think it's
4 logically the correct inquiry. It's not what
5 happens in the market. It is, as Justice
6 Kavanaugh said in Energy Future Coalition, your
7 inability to get into the marketplace in the
8 first instance. That's a key part of the
9 injury, and not adopting the rule misses that
10 part. But even --

11 JUSTICE JACKSON: But I thought
12 your -- I thought the point of the rule was that
13 you didn't want to have to provide the evidence,
14 that -- that -- that you say: Yes, we have the
15 evidence, but we don't need it because, under
16 this rule that I'd like for you to adopt, we
17 have redressability.

18 MR. WALL: I don't think that evidence
19 is relevant for the same reason it's not in
20 competitor standing cases. But, if the Court
21 disagrees on our rule, I agree, we should win on
22 a standard Department of Commerce, what is the
23 likely effect here.

24 And we put in far more evidence than
25 you would typically see in a case like this.

1 And with all respect to the court below, we got
2 dinged not because we didn't do enough. Any
3 lawyer looking at what we had done at the time
4 would have said we had redressability. We got
5 dinged, in fairness, because the court below
6 moved the goalposts. We had Energy Future
7 Coalition and plenty of evidence to satisfy it,
8 and the court below, without citing any --

9 JUSTICE SOTOMAYOR: That is really
10 unfair, Mr. Wall. They were under a mistaken
11 understanding, partly because of the submissions
12 in this case where you were just complaining in
13 your papers about this rule being in effect only
14 until 2025.

15 MR. WALL: So, Justice Sotomayor, that
16 is part of the mistake that the court of appeals
17 made, but its error was more fundamental. When
18 it looked at standing, it should have said: We
19 have Energy Future Coalition. It tells us that
20 we have redressability in the same industry,
21 fuel producers, if the regulation locks them out
22 of the marketplace.

23 It didn't say that. It turned to the
24 evidence, and then, rather than on the evidence
25 saying, well, this is more than enough to

1 satisfy cases like Department of Commerce or
2 Alliance of Hippocratic Medicine, it -- it said,
3 ah, not enough here.

4 And what that really amounts to at the
5 end of the day is we couldn't get an affidavit
6 from an automaker who didn't intervene. They
7 sat on the sidelines. They didn't want to
8 participate. And because we couldn't get them
9 to stick their hand up, we couldn't -- we didn't
10 have someone saying here is how I will change my
11 fleet absent the waiver. And that's what we
12 didn't have.

13 And if that's what it's really going
14 to take for an indirectly regulated party to get
15 into court, it's going to be far more difficult
16 to challenge governmental action, and these
17 cases are going to become more expensive and,
18 frankly, arbitrary, because it will turn on
19 whether the directly regulated industry likes
20 the rule or they don't. And as far as my
21 clients are concerned, that shouldn't matter one
22 whit.

23 JUSTICE BARRETT: Why will you be
24 ping-ponged around? It -- you know, you want
25 the categorical rule. Imagine that I am not

1 sympathetic to the categorical rule but think
2 that your clients could demonstrate standing
3 based on the common-sense inferences.

4 You said that you've been pinged --
5 ping-ponged around for 15 years and so that's
6 why you want the categorical -- categorical
7 rule. But, if we just said you had standing,
8 how can you be ping-ponged around?

9 MR. WALL: Oh, if -- if this Court
10 declares that there's a common-sense inference
11 and applies Department of Commerce and says they
12 met it here, you are right, we should be able
13 then to get a determination on the merits.
14 And -- and, as I say, I think the rule is right,
15 but on either of those views, as long as the
16 Court says what we say about Department of
17 Commerce, you are right, we would be able to get
18 a determination on the merits, which we've been
19 trying to do for a very long time.

20 JUSTICE BARRETT: So why do you care
21 as between the -- on that view of the world, why
22 would you care, other than you want to go for
23 the big win --

24 MR. WALL: It -- it's --

25 JUSTICE BARRETT: -- as between them?

1 MR. WALL: The win is the same either
2 way. I think the rule is right. I think it
3 squares with the competitor standing cases. And
4 I think the logic of it is right.

5 The injury here is not just what
6 happens out there in the marketplace. We are
7 prevented from getting in at all. And my
8 concern, Justice Barrett, is that if you don't
9 adopt the rule, it will always be an argument
10 about what will happen in the marketplace. And
11 that's very difficult to show once you have a
12 governmental mandate because the governmental
13 regulation is skewing the entire market.

14 And so, as here, even though, in the
15 real world, everyone knows that California's
16 standards have affected automakers, we have a
17 whole debate now about whether, in fact, as a
18 matter of common sense, they actually affected
19 people, and even if they were affecting them in
20 2019, well, did things change in 2020 and 2021
21 in a way that by the time you sued in 2022, you
22 might have had standing before but now you no
23 longer do?

24 Yes, I think we're right about that
25 debate, but I don't think we should have to have

1 it in every case.

2 JUSTICE JACKSON: Can I understand the
3 rule better? Because I -- I had appreciated
4 from your briefs that you had different
5 theories, so I'm just trying to appreciate
6 what's happening.

7 Are you advocating for the direct
8 regulatory impediment species of this? Is that
9 what -- is that the rule that you're now
10 articulating and it has something to do with
11 being completely locked out of the market?

12 MR. WALL: That's our front-line rule.
13 If the government locks you out of a marketplace
14 or tilts it against you and you come in to sue
15 to have the playing field leveled, you have
16 standing. That's our front-line rule.

17 And then, obviously, our
18 second-line --

19 JUSTICE JACKSON: But you see how
20 that's a little bit different than saying -- if
21 there's a direct regulatory impediment, that's
22 different than saying you have to be completely
23 locked out of the market.

24 MR. WALL: Well, by direct regulatory
25 impediment, I mean sort of a lockout or, as

1 here, a cap, right? It's not that we can't sell
2 any fuel at all. It's that we can only sell so
3 much fuel in California and the other 17 states
4 that have adopted these standards because the
5 automakers have to make a certain number of cars
6 that don't run on the product we manufacture.

7 JUSTICE JACKSON: But where does that
8 end? I mean, I -- I guess I'm trying to figure
9 out -- I appreciate your argument that the
10 regulation is on the automakers and, as a result
11 of it being on the automakers, the fuel
12 producers are going to make less fuel.

13 But what about the convenience store
14 operators who are also part of this? They say
15 there are fewer people stopping into the
16 convenience store as a result. Are they in your
17 rule or not?

18 MR. WALL: I think that they come much
19 closer to the Department of Commerce, but, of
20 course, all I need is some Petitioners --

21 JUSTICE JACKSON: No, but I'm just
22 trying to understand how --

23 MR. WALL: Yeah.

24 JUSTICE JACKSON: -- your rule works.
25 So they -- so this splits your Petitioner --

1 your plaintiffs' class here because convenience
2 store operators are in. They're not complete --
3 in your class. They're not completely locked
4 out of the market, so your direct regulatory
5 impediment rule doesn't have them.

6 MR. WALL: That's right. It's just
7 like competitor standing, right? You can
8 harm -- you're harmed because they
9 under-regulate a competitor. That regulation
10 can harm lots of other people, people who supply
11 your inputs and all the rest. You have
12 competitor standing. Everybody else has to
13 satisfy predictable effects, Department of
14 Commerce, Warth. The same thing here.

15 JUSTICE KAGAN: But the way you --
16 you -- when you answered Justice Jackson, you
17 said your rule is if the government tilts the
18 market against you. And, here, that seems like
19 a easy thing to show and not one that would
20 cause a lot of debate. But, in many other
21 cases, does the -- did the government tilt the
22 market against you? Did it not? How much?

23 That would be a hard thing to show.
24 And -- and why shouldn't we just stick with a
25 rule that says we're going to look in each case

1 as to the -- the facts and the evidence, and
2 then we're going to apply reasonable inferences
3 and we're going to reach a decision, rather than
4 try to stick everybody -- do you fit the
5 categorical rule or do you not fit the
6 categorical rule?

7 MR. WALL: Justice Kagan, two things.
8 First, it hasn't been a problem on the
9 competitor standing side, and it's not a problem
10 here. We drew a very narrow rule. We took the
11 language of the D.C. Circuit that it had lived
12 with for quite a while.

13 JUSTICE KAGAN: See, I think that the
14 question are you a competitor seems a lot easier
15 to answer in a lot more cases than the question
16 has the government tilted the market against
17 you.

18 MR. WALL: Well --

19 JUSTICE KAGAN: I'll bet there are a
20 thousand people in every regulation who can come
21 in and say this regulation tilt the market --
22 tilted the market against me.

23 MR. WALL: I take the point. That --
24 that language was a shorthand for what we're
25 saying in our brief, which is the language of

1 the D.C. Circuit, a direct regulatory
2 impediment. And as we explained, what we meant
3 by that and what the D.C. Circuit meant is, are
4 you preventing someone from selling or placing
5 into a market? If it is a direct regulatory
6 impediment, you could sell yesterday, but you
7 can't sell today, you qualify for the rule. So
8 I think it's quite a narrow rule.

9 And the second thing is: Why do it?
10 It's the answer I gave to Justice Barrett:
11 Because, otherwise, we're going to have to have
12 this debate in every case. And, yes, I think I
13 win as a matter of common sense, but three
14 judges of the D.C. Circuit, as it turned out,
15 disagreed with me. And it seems to me we
16 shouldn't have that debate in every case.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 Justice Thomas, anything further?

20 Justice Alito?

21 Justice Kagan?

22 Justice Gorsuch?

23 Justice Kavanaugh?

24 JUSTICE KAVANAUGH: I'm not sure
25 there's a huge amount of difference between the

1 rule and the -- and the backup position. I
2 mean, the rule is based on a common-sense -- the
3 common-sense predictable effects in a particular
4 context. But, either way you go, you get to the
5 same destination. I'm -- I guess I'm not seeing
6 a huge gap.

7 MR. WALL: I agree, Justice Kavanaugh.
8 We should win no matter what the Court says.
9 But --

10 (Laughter.)

11 MR. WALL: -- I -- you know, I do
12 think that a case like this, it's not that
13 there's day -- there should be daylight in the
14 right outcomes. It's that once we make it about
15 evidence, right, we're going to have to come in
16 every case and there's going to be a debate,
17 like, well, what do you have to show to trigger
18 a common-sense inference and how common is that
19 common sense. Here --

20 JUSTICE KAVANAUGH: Well, what we said
21 last year in FDA versus Alliance for Hippocratic
22 Medicine, just summarizing what the standing law
23 should be, kind of gets at it, doesn't it?

24 MR. WALL: I would have thought so
25 too, Justice Kavanaugh, but here we are. But

1 I -- look, I'll be the first to grant that if
2 you take that paragraph in Alliance for
3 Hippocratic Medicine and you say, look, even if
4 we're not going to call it a rule, there are
5 certain categories where we've said the effects
6 seem awfully predictable and this falls into one
7 of the categories, that starts to look pretty
8 much like a rule to me, but I'll grant that if
9 that's language that the Court thinks squares
10 more comfortably with its standing precedents in
11 general, it gets us to the -- it should get us
12 to the same place.

13 JUSTICE KAVANAUGH: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Gorsuch, anything?

16 I'm sorry. Justice Jackson?

17 JUSTICE JACKSON: Yeah. So what --
18 what about corn and soybean growers? Are they
19 in or out?

20 MR. WALL: They're in. They --
21 they --

22 JUSTICE JACKSON: They're in?

23 MR. WALL: Yes. They make liquid
24 fuel, various kinds of liquid fuel, ethanol and
25 all the rest. And this rule says, no, can't go

1 try to convince the automakers to use your fuel.

2 They have to use -- make a certain --

3 JUSTICE JACKSON: So, I mean, what --

4 what about the ones that aren't quite the fuel

5 producers, but they're earlier in the chain?

6 MR. WALL: It's --

7 JUSTICE JACKSON: I mean, it sounds to

8 me like your rule is conferring standing on

9 anyone in the chain of production in a product

10 that gets affected as a result of government

11 regulation.

12 MR. WALL: I don't mean to reach down

13 the road to all the inputs and suppliers,

14 Justice Jackson.

15 JUSTICE JACKSON: But how do you stop

16 reaching down the road?

17 MR. WALL: Are you the producer? We

18 make and sell liquid fuel, and the government

19 says you could sell to them yesterday, but you

20 can only sell a certain amount today. That is a

21 direct restriction on the product we make and

22 sell. That -- we, by any account, ought to have

23 standing.

24 JUSTICE JACKSON: Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 MR. WALL: Thank you.

3 CHIEF JUSTICE ROBERTS: Mr. Kneedler.

4 ORAL ARGUMENT OF EDWIN S. KNEEDLER

5 ON BEHALF OF THE FEDERAL RESPONDENTS

6 MR. KNEEDLER: Mr. Chief Justice, and

7 may it please the Court:

8 Petitioners contend that there should
9 be a categorical rule establishing
10 redressability whenever the plaintiff challenges
11 government action that poses an impediment to
12 the use of its product without any need for an
13 evidentiary basis for that categorical rule or
14 prediction.

15 That proposal is inconsistent with
16 this Court's decisions which require a factual
17 basis for standing.

18 My friend refers to Department of
19 Commerce and the idea of a predictable or
20 common-sense outcome. And in Department of
21 Commerce, there was an evidentiary record.
22 There was evidence submitted. There were
23 factual findings that undergirded the prediction
24 or -- or the result in Department of Commerce,
25 where the Court could then conclude that people

1 who were answering a survey about -- or asked to
2 answer a census about the -- their citizenship
3 would be deterred from doing it. It wasn't just
4 a -- common sense.

5 And that runs throughout this Court's
6 standing law. And it's especially important
7 here because this Court has indeed said that
8 if -- if the plaintiff is subject -- is the
9 subject of the regulation, it may be easy to
10 prove.

11 But, when the plaintiff is not, the
12 Court has said repeatedly it's more difficult to
13 establish standing because whether you -- your
14 injury is caused by or will be redressed by the
15 Court's decision depends on decisions by third
16 parties, which may or may not be -- be true, and
17 you need evidence to support a conclusion that
18 that would be true.

19 I welcome the Court's questions.

20 JUSTICE THOMAS: Mr. Kneedler, wasn't
21 the -- a goal of the California regulations to
22 reduce the use of Petitioners' fuel?

23 MR. KNEEDLER: Certainly, in 2013,
24 when -- when it was adopted -- I think this is
25 an important point. In 2013, where the fuel

1 producers were already selling in the market, it
2 would have been, I think, quite easy to show
3 that their injury derived from this new
4 regulation, it was caused by that regulation,
5 and it would be redressed by lifting it.

6 It's now 10 years later, though. The
7 manufacturers -- and no one else challenged the
8 waiver in 2013. In the meantime, there has been
9 10 years of practical experience in which
10 manufacturers have adjusted and quite without
11 regard -- or without resting upon the California
12 rule have --

13 JUSTICE KAGAN: But, when EPA
14 reinstated the rule in 2022, was it intended to
15 do nothing at all?

16 MR. KNEEDLER: No, not at all. And --
17 and the -- I think -- on that point, I think
18 it's important to understand the legal rationale
19 or the legal analysis that EPA brought to bear.
20 And this is something on which there has been
21 changes from one administration to the next, and
22 that's under review.

23 But the -- a -- a waiver in the -- in
24 the approach that EPA was taking is for the
25 entire California program, not just these two

1 particular standards. So the -- a -- a -- a
2 waiver is for the entire program. And if the
3 entire program is necessary to address
4 compelling and extraordinary circumstances,
5 that's sufficient.

6 But the other -- another important
7 point is that --

8 JUSTICE KAGAN: But, in 2022, didn't
9 the EPA, in fact, in its submissions to the
10 courts say that the effect of the reinstatement
11 was going to be to reduce gasoline emissions?

12 MR. KNEEDLER: They -- they said that
13 in -- in -- in 2021 based, frankly, I think, on
14 2019 projections. A lot happened in the --
15 especially in the zero-emission vehicle market
16 between --

17 JUSTICE KAGAN: So we shouldn't take
18 the EPA's own representations seriously because
19 they --

20 MR. KNEEDLER: Oh, it's California,
21 but --

22 JUSTICE KAGAN: I think both EPA and
23 California made those representations in its
24 papers.

25 MR. KNEEDLER: Well, yes, but -- but

1 was that sufficient to -- I -- the evidence, as
2 you said, is pretty thin. And it's also
3 important to recognize what the --

4 JUSTICE KAGAN: Well, if it was so
5 thin, I don't think that you had a grounds to --
6 to reinstate the waiver.

7 MR. KNEEDLER: Well --

8 JUSTICE KAGAN: Or -- and -- and if --
9 you know, if it's so thin, why did you say what
10 you say in your briefs, and why did California
11 say what it said in its briefs? Because both
12 parties, I think, said in -- in their briefs,
13 yes, this is going to reduce gasoline emissions.

14 MR. KNEEDLER: Well, what -- what EPA
15 did in -- or the -- the reason -- the principal
16 reason that it did what it did in 2022 was
17 because it concluded that the withdrawal of the
18 previous waiver was unlawful. It was correcting
19 an error before. It was not -- it was not a new
20 waiver.

21 What -- what EPA did was conclude that
22 what it had done in 2019 was unlawful for a
23 variety of reasons. It rested on an erroneous
24 interpretation of the statute, the one that I
25 was just mentioning to you about do you look at

1 the whole program or do you look at -- at -- at
2 particular standards.

3 So they were -- they were going back
4 without -- without making a -- a -- a brand-new
5 assessment. And that's why I think it's
6 important to recognize that between 2013 --
7 there's no doubt that in 2013 that the man --
8 that full -- fuel producers were injured and
9 that that would have been redressed by
10 rescinding the rule.

11 But that's not the case now because
12 the manufacturers have adjusted and the market
13 now reflects the fact that they are -- that
14 there's no particular reason to assume -- or at
15 least there is objective evidence contradicting
16 the proposition that the manufacturers would
17 change their behavior --

18 JUSTICE SOTOMAYOR: Mr. Kneedler --

19 MR. KNEEDLER: -- in a material way.

20 JUSTICE SOTOMAYOR: -- the California
21 intervenors said that California's regulation
22 would mitigate competitive disadvantage by
23 ensuring "a level playing field" for
24 manufacturers who wanted to produce more
25 fuel-efficient vehicles.

1 I just don't see how that statement
2 alone doesn't destroy everything you're arguing.

3 MR. KNEEDLER: Well --

4 JUSTICE SOTOMAYOR: Meaning if it --
5 what it's doing is mitigating a competitive
6 level -- or -- or supporting a competitive
7 system, isn't that a negative effect on them?

8 MR. KNEEDLER: Let me make one other
9 point because I think it's responsive to that,
10 and that is that the D.C. Circuit was relying on
11 both FRAP and the local rule, Rule 28, that
12 addresses how standing -- an assertion of
13 standing should be raised on a direct petition
14 for review. It has to be raised in the
15 petition -- excuse me -- in the opening brief
16 with any supporting materials.

17 The only thing that was -- that was
18 submitted here were the 14 declarations that, in
19 a conclusory matter -- manner, said that their
20 injuries would be -- the Petitioners here, their
21 injuries would be ameliorated if --

22 JUSTICE SOTOMAYOR: But now we have a
23 full record.

24 MR. KNEEDLER: Well, but --

25 JUSTICE SOTOMAYOR: And if -- if --

1 let's --

2 MR. KNEEDLER: But -- but the --

3 JUSTICE SOTOMAYOR: -- address

4 Mr. Wall's concern, which is, if we reverse for
5 the D.C. Circuit to look at this again, vacate
6 and remand only, correcting their 2025
7 ending-date misperception, are you saying that
8 we -- we should not just say they have standing
9 on what we have before us now?

10 MR. KNEEDLER: No, I think that --
11 I -- I think, if the Court is uncertain, it
12 should vacate and --

13 JUSTICE SOTOMAYOR: No, if we're not
14 uncertain.

15 MR. KNEEDLER: Well, but what you have
16 here is effectively a summary judgment ruling in
17 favor of -- of EPA.

18 If -- if you think that there was --
19 that there are disputed issues of fact going to
20 the question of whether -- what the effect of
21 the reinstatement was, then just like any other
22 situation, it go -- should go to the trier of
23 fact to determine what the effect would be.

24 There should not -- otherwise, you're
25 effectively relying on the categorical rule

1 or -- or prediction that we think is wrong.

2 We -- we agree --

3 JUSTICE KAVANAUGH: In the -- in the
4 D.C. --

5 MR. KNEEDLER: -- that it should be
6 fact-based.

7 JUSTICE KAVANAUGH: Sorry to
8 interrupt.

9 MR. KNEEDLER: Sorry.

10 JUSTICE KAVANAUGH: In the D.C.
11 Circuit, EPA did not challenge standing.

12 MR. KNEEDLER: That's correct.

13 JUSTICE KAVANAUGH: And that's unusual
14 in my experience. Why -- why not?

15 MR. KNEEDLER: The -- it -- it did
16 not. And it -- and it -- I think maybe it -- it
17 should have, I think, particularly in
18 retrospect. But the issues of standing --

19 JUSTICE KAVANAUGH: But isn't that a
20 tell here? I mean, EPA, as you, of course,
21 know, routinely raises standing objections when
22 there's even -- even a hint of a question about
23 it.

24 MR. KNEEDLER: But -- but when --
25 when -- later on, after the government filed its

1 brief, that's when California made its standing
2 submission in it -- in its later-filed brief.

3 And then it should have been incumbent
4 on Petitioners to respond to that with something
5 beyond the conclusory affidavits that they did,
6 and -- and they really didn't come back with
7 anything substantial in their reply brief, and
8 they sought to file a supplemental brief, which
9 the D.C. Circuit rejected, and they haven't
10 sought review of that here.

11 So I -- I -- but I want to stress
12 that -- that we agree with the observation by a
13 number of the Justices that this should be a
14 factual inquiry. There may be many situations
15 in which it should be easy, and I think that
16 that would cover the category -- most of the
17 categories that Mr. Wall is mentioning.

18 In -- in a direct regulate -- if you
19 have a directly regulated party, the -- the --
20 this Court has said repeatedly it's probably
21 going to be pretty easy to establish standing.

22 But, when -- when the redressability
23 turns on decisions by a -- by a third party not
24 before the Court, I think it's -- I think it's
25 not a good idea to establish effectively a -- a

1 categorical or common-sense or predictive rule
2 because there are a number of situations in
3 which the Court has concluded that the fact that
4 they're independent decision-makers defeats
5 standing.

6 JUSTICE JACKSON: So, Mr. Kneedler, is
7 this really about -- I'm just trying to think
8 back to your conversation with Justice Thomas
9 and Justice Kagan. Is this really about the
10 sort of development of facts on the ground?
11 That it sounds to me like what you're saying is
12 that originally, back in 2013, when this
13 regulation was initially enacted and everybody
14 knew and said it was to reduce fuel emissions,
15 that a lawsuit brought at that moment has
16 injury, causation, and redressability, noting
17 that causation and redressability are actually
18 two different factors with respect to standing,
19 but that, you know, however many years later, in
20 2022, because the auto industry has actually on
21 the ground adjusted to the regulation and no
22 longer has a demand for the fuel products, you
23 might have injury, you might have causation, but
24 I think you're saying you no longer have
25 redressability in that situation, that this

1 might be one of the rare instances in which
2 these things aren't lining up 10, 12 years later
3 in the same way they would at the beginning.

4 And, therefore, a bright-line rule
5 that just has us thinking about the initial
6 scenario, like, was there injury, was there --
7 is it common sense, is not going to work because
8 what we're really supposed to be thinking about
9 in redressability land is the facts on the
10 ground and whether or not this -- changing this
11 regulation is going to make any difference?

12 MR. KNEEDLER: I think that's exactly
13 right. And this is a situation where
14 redressability gets separated. And may -- maybe
15 it would be helpful if I illustrated this in
16 another way. If a manufacturer had brought a
17 challenge to this regulation -- of course, no
18 manufacturer had done so -- the manufacturer
19 would have been required to say, if this waiver
20 is set aside, I will engage in the conduct that
21 the regulation prohibits, which is producing a
22 fleet that doesn't comply with the California
23 measures.

24 JUSTICE JACKSON: At the beginning,
25 we'd be predicting that the manufacturer would

1 be -- at the beginning, we'd be predicting. The
2 manufacturer would say that if they were the
3 plaintiff, and we'd be looking at evidence to
4 see if that was going to happen.

5 Here, it's already happened that
6 they've changed their results, right?

7 MR. KNEEDLER: Right. And -- and
8 there's certainly no evidence as far as I can
9 see that there would be an -- an immediate
10 material change in what -- in what manufacturers
11 would do, or at least that was the conclusion
12 the district -- or the court of appeals drew
13 from the record. Maybe down the road, five, 10
14 years ago -- or, in the future someday, the
15 manufacturers might decide that they want to
16 change their conduct.

17 But this Court has said some -- such
18 someday intentions down the road are not
19 sufficient to establish standing. It's too
20 contingent, it's too speculative. So, a
21 fortiori, the same thing should be true of the
22 fuel producers, who are not the directly
23 regulated parties, and they should -- they
24 should be required to show that the
25 manufacturers would change their behavior here

1 and now, not sometime in -- in the future. So I
2 think that lines up with what this Court has
3 said in *Defenders of Wildlife* and other cases.

4 And what may seem odd here is I think
5 precisely the mismatch that Justice Jackson was
6 referring to. And I don't think the Court
7 should adopt a -- a categorical or new rule or
8 new principles of standing to deal with this
9 particular case because this is actually the --
10 the quintessential case in which there should be
11 a factual determination because there is --
12 there is evidence that what one might think
13 about common sense or prediction or the way the
14 market might react is not so in this case.

15 And so there should at least be an
16 opportunity for the government to show that it's
17 not so and for the court of appeals in this case
18 to determine what -- what do -- what does the
19 evidence in the -- in the case show.

20 JUSTICE ALITO: Suppose there were an
21 affidavit by one carmaker saying that if this
22 waiver is rescinded, we will manufacture one
23 additional car. Would that be enough? We
24 absolutely commit ourselves, we will manufacture
25 one more car.

1 MR. KNEEDLER: I -- I think there are
2 many situations in which, you know, one person
3 saying that would be enough. One of the things,
4 again, that is -- that is, I think, cautionary
5 in this case is that that begins to look a lot
6 like the probability from some of the Court's
7 other cases, like if one member of the Sierra
8 Club could say surely one member will -- will be
9 injured and, therefore, we should have standing.

10 The question here isn't what one
11 manufacturer would do, but do any of the
12 individual plaintiffs benefit from what that one
13 manufacturer will do by producing an additional
14 car? That's why I think the Court ought to
15 think about this in broader terms, whether there
16 will be a material change in the industry.
17 Otherwise, you're -- you're allowing the corn
18 farmer or -- or a small liquid fuel producer to
19 have standing because one car might be produced.

20 JUSTICE ALITO: Yeah. Okay.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 Justice Thomas?

24 Anything further?

25 JUSTICE ALITO: Well, one more

1 question. By my count, the EPA has now changed
2 its mind on this four times. Am I right?

3 MR. KNEEDLER: Yes, I think that's
4 right.

5 JUSTICE ALITO: So what is the
6 probability that there will not be a fifth?

7 MR. KNEEDLER: Well, it is under --
8 the -- the president in an executive order
9 directed EPA to examine issue -- measures that
10 might have an effect, and EPA is undertaking
11 that. So I -- I can't say what EPA will decide,
12 but this is one of those that has, indeed,
13 gone -- gone back and forth.

14 But I don't think that should affect
15 the standing analysis because, despite that
16 back-and-forth, the manufacturers have gone
17 forward with their own plans because of their
18 own sustainability concerns or looking to the
19 future, where they're -- they're making
20 investments and they want to stick by that path.

21 CHIEF JUSTICE ROBERTS: Justice
22 Sotomayor?

23 JUSTICE SOTOMAYOR: You're not a
24 betting man, are you?

25 MR. KNEEDLER: Pardon me?

1 JUSTICE SOTOMAYOR: You're not a
2 betting man that you don't want to guess that
3 there's going to be a fifth change?

4 MR. KNEEDLER: I -- I'm respecting --

5 JUSTICE SOTOMAYOR: I -- I --

6 MR. KNEEDLER: -- the administrative
7 process. I know, but --

8 (Laughter.)

9 CHIEF JUSTICE ROBERTS: Justice Kagan?

10 JUSTICE KAGAN: I mean, just out of
11 curiosity, is there anything you can say about
12 the timing of that process?

13 MR. KNEEDLER: Not -- not at -- at
14 this point. I -- I think the -- the general
15 tenor of the executive order was to, you know,
16 do this, you know, expeditiously or with due
17 consideration. But, no, I don't have anything
18 specific.

19 CHIEF JUSTICE ROBERTS: Justice
20 Gorsuch?

21 Justice Kavanaugh?

22 Justice Barrett?

23 Justice Jackson?

24 Thank you, counsel.

25 Mr. Klein.

1 ORAL ARGUMENT OF JOSHUA A. KLEIN
2 ON BEHALF OF THE STATE RESPONDENTS
3 MR. KLEIN: Mr. Chief Justice, and may
4 it please the Court:

5 Federal courts don't assume there's
6 standing. The presumption runs the other way.
7 The party who brings a case must establish that
8 it, in fact, meets each element of standing.
9 That may be easier or harder depending on the
10 case, and Petitioners' case had unique problems.

11 EPA first approved this waiver in
12 2013, and the automakers quickly started working
13 to meet the standards. But this case started in
14 2022. The technology and market had changed.

15 Petitioners relied on decade-old
16 predictions from the original waiver
17 proceedings, but the only up-to-date evidence
18 showed surging consumer demand for clean cars
19 and automakers' sales well above any regulatory
20 requirements.

21 Petitioners failed their burden to
22 establish a non-speculative likelihood that
23 automakers would sell more gas cars, and
24 Petitioners sell more fuel, without the waiver.
25 And there is no basis for inventing categorical

1 rules that would have courts exercise Article
2 III power where the elements of standing don't,
3 in fact, exist.

4 I welcome the Court's questions.

5 JUSTICE THOMAS: Well, if you're
6 accurate about where the auto manufacturers are
7 now, are you willing to say your rules are
8 unnecessary?

9 MR. KLEIN: Well, Your Honor, we would
10 agree that the rule -- this set of standards is
11 not having an effect on emissions today.

12 JUSTICE THOMAS: No. I mean, would --
13 are you willing to say they're unnecessary?

14 MR. KLEIN: They're not necessary for
15 our emissions goals. The statutory meaning of
16 need in Section 209(b) is very precise. It
17 refers to -- as this EPA decision correctly
18 interpreted it, it refers to the need for
19 California to have a separate vehicle emissions
20 program as a whole, at all, not the need for
21 each successive individual waiver or standard.
22 And we do have a need for our entire program as
23 a whole.

24 JUSTICE THOMAS: So can you -- can you
25 say that each element of the automotive

1 industry or manufacturing industry is satisfied
2 or making -- adjusting to your rules?

3 Let's say, for example, can you say
4 that heavy trucking or medium trucking or large
5 RVs all could -- accepting of your rule and
6 complying with it?

7 MR. KLEIN: Well, I guess I haven't
8 thought about that because this standard affects
9 light-duty vehicles, which include pickup
10 trucks, I think --

11 JUSTICE THOMAS: Yeah.

12 MR. KLEIN: -- but not the other
13 things that you've mentioned.

14 But, as a -- as a broader question --
15 if the question is about the broader market as a
16 whole, I -- I think, you know, the Court had
17 nothing to do but speculate as to whether some
18 set --

19 JUSTICE THOMAS: Okay. Well, let's
20 just take the trucks then. Let's take the light
21 trucks. Are you willing to say that without
22 your rules, the light truck industry would
23 continue marketing the mix of vehicles it's
24 currently marketing or manufacturing?

25 MR. KLEIN: Your Honor, we can't

1 guarantee that, but I can say it was
2 Petitioners' burden to create a non-spec -- to
3 establish a non-speculative likelihood under
4 this Court's precedent.

5 JUSTICE THOMAS: Why would you expect
6 that of them if you're not willing to say: Your
7 rules are unnecessary at this point, or
8 ineffectual?

9 MR. KLEIN: Well, Your Honor, this
10 Court's cases have always put the burden on a
11 plaintiff or the party who invokes federal
12 jurisdiction to support with facts.

13 Now we did address the only facts they
14 brought, which were facts about the California
15 market with 2012/2013 predictions, but it was
16 not our burden to disprove every possible
17 likely -- every possible --

18 JUSTICE KAGAN: Mr. -- Mr. Klein,
19 I'm -- I'm wondering, actually, whether you, in
20 fact, made their case for them. So I'm thinking
21 here of the Vanderspek declaration, which was
22 submitted in support of your motion to
23 intervene, and here's one of the things it says.
24 There are a couple more, but it says: Should
25 EPA's restoration of California's waiver for the

1 state's existing light-duty vehicle
2 greenhouse-gas emission and ZEV standards be
3 overturned -- should those be overturned -- it
4 would result in higher criteria pollutant and
5 greenhouse-gas emissions.

6 Doesn't that just sort of make their
7 case?

8 MR. KLEIN: Well, it would --

9 JUSTICE KAGAN: That's out of your own
10 mouth.

11 MR. KLEIN: It was, Your Honor. And
12 let me place it in context. That declaration
13 was filed within days of the petitions for
14 review and to support one basis of our
15 intervention, not our independent basis as a
16 sovereign whose laws would be preempted, to
17 support one basis.

18 It -- the declarations relied on and
19 cited preexisting analyses which were themselves
20 based on 2019 DMV data. And it turned out that
21 when the parties had the burden to really
22 address standing before the court could exercise
23 its power on the merits, we presented evidence
24 that that 2019 data was no longer representative
25 of the actual market. The market had

1 dramatically changed. And we did promptly bring
2 that to the court's attention.

3 And Petitioners never responded about
4 the condition of the market in 2022. They
5 doubled down on presumptions and assumptions and
6 categorical rules, and they cited -- and I -- I
7 want to be clear about this. Mr. Wall cited JA
8 66, and if you look at that page, it addressed
9 the 2013 and 2019 records that EPA had because,
10 by the time the 2022 restoration decision was
11 coming around, our focus and EPA's focus was
12 that the 2019 recission had been substantively
13 and procedurally wrong because the -- the 2013
14 record adequately supported the 2013 findings
15 and the 2019 record didn't give a basis to -- to
16 overturn that.

17 And you can see that, for instance,
18 from the full discussion in the appendix to the
19 petition, around pages 226 to 227 of the EPA
20 decision, not the executive summary that their
21 briefs cite, which shows EPA's focus on the 2013
22 record and whether that record was deficient, as
23 the 2019 recission decision had found.

24 And that's, of course, on top of what
25 was really our fundamental argument and EPA's

1 fundamental position, which is longstanding and
2 from administrators throughout the life of this
3 provision, except for this very brief period,
4 which is that the need criterion in Section
5 209(b) refers to the need for California to have
6 a separate vehicle emissions program at all,
7 with all the standards we've enacted, you know,
8 which it's a program we've had since, frankly,
9 before the Clean Air Act was enacted.

10 And I -- I also want to --

11 JUSTICE BARRETT: Mr. Klein, can I ask
12 you a question? What is the burden of proof as
13 you see it here? Just more likely than not?

14 MR. KLEIN: Your cases haven't quite
15 said that, Your Honor. The language you've used
16 is a non-speculative likelihood.

17 And I think the cleanest thing to look
18 at is the non-speculative part because, if there
19 aren't facts supporting a -- a --

20 JUSTICE BARRETT: So what kind of
21 facts would you have wanted them to introduce?
22 Like affidavits from car manufacturers?

23 MR. KLEIN: They could have, but it
24 certainly didn't need to be that. The D.C.
25 Circuit opinion didn't say that. And we would

1 not say that.

2 Anything in the admin -- in an
3 administrative record which shows how the
4 directly regulated third party is likely to act.
5 There could be additional material.

6 JUSTICE BARRETT: But don't you think
7 the affidavit that Justice Kagan read you or --
8 I mean, I think -- I -- I don't think it's
9 speculation or wild speculation if you're
10 relying on common-sense inferences.

11 I mean, at some point, if you think
12 that they've carried the burden -- I'm not
13 saying that you couldn't poke holes in that,
14 but, you know, at some point, don't you think
15 that California could have tried to poke holes
16 that might take them down -- it's just -- it's
17 not that high a burden.

18 I guess I'm having a hard time seeing
19 why the affidavits and common-sense inferences
20 wouldn't just get them over that mark.

21 MR. KLEIN: Let me compare it to two
22 of this Court's cases, Lujan versus National
23 Wildlife Federation and the recent Carney case
24 on Delaware judicial selection.

25 In the Lujan case, the plaintiffs

1 submitted a declaration which maybe on its face
2 would have seemed sufficient: We recreate in
3 the area of -- I think it was Green Mountain --
4 and this mining will occur in the Green Mountain
5 Reserve.

6 But the United States submitted
7 evidence that the Green Mountain Reserve was
8 hundreds of thousands of acres and only a small
9 percentage was subject to the mining.

10 This Court held there was no APA
11 standing because the -- once the plaintiff's
12 affidavit was understood with what it actually
13 was and wasn't saying, it was insufficient.

14 Now, in Carney more recently, the
15 plaintiff said: If this judicial selection
16 criterion was -- was set aside, then I would
17 apply for any Delaware judicial spot.

18 And the defendants showed evidence
19 that: No, there were several spots that were
20 open recent -- recently that -- where this
21 criterion did not apply and you would have been
22 eligible, and you did not submit an application.
23 And, again, it showed that what the plaintiff
24 was saying was insufficient.

25 Well, here, the plaintiff was saying:

1 These 2012 predictions show that we are injured.

2 And our evidence and -- showed: No,
3 that's not obvious, and there's no reason to
4 think that's correct because the technology had
5 already improved, maybe thanks to our standards
6 back during the preceding years and years. The
7 market had already developed. Maybe it was our
8 standards that -- and -- as well as other things
9 that made auto manufacturers invest in
10 developing that market.

11 But the -- the point is that by 2022,
12 the cake was baked. Or at least Petitioners
13 presented no evidence that there was -- that
14 there would be any likelihood of a change if
15 this regulation were struck down.

16 JUSTICE KAVANAUGH: You don't expect
17 the court of appeals to have a trial when
18 there's affidavits that go both ways, do you?

19 MR. KLEIN: No, Your Honor. We -- we
20 think that would --

21 JUSTICE KAVANAUGH: So how does the
22 court of appeals then evaluate the affidavits?

23 MR. KLEIN: Well, I think it --

24 JUSTICE KAVANAUGH: Doesn't it have to
25 use some kind of common-sense understanding of

1 how markets work if it's not going to have
2 witnesses and what have you?

3 MR. KLEIN: Your Honor, I think the
4 court -- as the United States' brief said,
5 courts are quite accustomed to making decisions
6 about whether the particular inferences from
7 some evidence has a gap.

8 Not a credibility question. This
9 wasn't is our expert smarter than their expert.
10 This was a fundamental gap in the reasoning
11 which made them not having -- which left them
12 nothing but speculation.

13 And -- and so I think that -- now,
14 again, this -- this situation will -- will not
15 arise that frequently. I mean, this is a kind
16 of unheard-of nine-year gap.

17 And, in fact, Petitioners have pending
18 challenges to newer waiver that -- they raise
19 many of the same issues, I assume. And -- and
20 for those, there will be Article III standing
21 because, for those, the newer waiver is for
22 standards that will require automakers to change
23 what they're doing so that the -- the
24 unregulated party, the fuel sellers, will change
25 how much fuel they sell.

1 But that was not the case here.

2 JUSTICE JACKSON: So is your --

3 JUSTICE KAVANAUGH: How --

4 JUSTICE JACKSON: -- answer to -- oh,
5 I'm sorry, go ahead.

6 JUSTICE KAVANAUGH: Go ahead. Go
7 ahead.

8 JUSTICE JACKSON: Is your answer to
9 Justice Kavanaugh that common sense does play a
10 role when evidence is being presented on both
11 sides, but what you hear the other side to be
12 saying is we should substitute where there --
13 there doesn't need to be evidence, they're
14 saying, we can just draw these common-sense
15 inferences as a general matter?

16 MR. KLEIN: I think that's basically
17 right, Your Honor. The -- I mean, our point is
18 the inferences have to be based on evidence that
19 permits the inference. That's -- you know, in
20 Department of Commerce, there was no prediction
21 just from the air from this Court's or the
22 district court's --

23 JUSTICE JACKSON: Right.

24 MR. KLEIN: -- feeling --

25 JUSTICE JACKSON: So that's -- that's

1 your argument to the bright-line rule. Mr. Wall
2 says, but we did have evidence, and he points to
3 these declarations. And you're saying, in your
4 view, those declarations were insufficient
5 because they were based on old or outdated
6 information?

7 MR. KLEIN: Well, Petitioners'
8 declarations as to remedy were entirely
9 speculative and -- sorry, not speculative.
10 Conclusory, right? They just said this would be
11 redressed if you strike down the law.

12 I -- I want to make sure the Court
13 understands the one piece of evidence that we
14 haven't talked about, which is Minnesota. The
15 Petitioners do not appear to contest the United
16 States' point at I think it's page 38 of their
17 brief that the Minnesota report that was buried
18 in one of the 14 declarations and not cited in
19 the court of appeal did not actually say that
20 there would be any -- that automakers would have
21 to change what they were doing in response to
22 the standard. That just compared what if
23 automakers do the bare minimum that's required
24 under the federal standard versus what if they
25 do the bare minimum that would be required under

1 the state standard and did not address what's
2 really the question in this case, which is how
3 can there be an injury that's redressable if
4 automakers, for their own reasons and their own
5 motives, are doing more than either set of
6 regulatory requirements.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Justice Thomas, anything further?

10 Justice Alito?

11 JUSTICE ALITO: Well, just so I have
12 it fresh in mind, could you go back to the very
13 first question that Justice Thomas asked you:
14 Why do you need the waiver at this point?

15 MR. KLEIN: Right. Your Honor, we --
16 this waiver makes no difference right now to
17 California's emissions control. So, as to this
18 particular waiver, if we were applying for it
19 now, I -- well, I don't think we would apply for
20 it now because that's why we superseded this
21 with a new waiver that will require automakers
22 to make a change. We achieved our goals faster
23 and to a larger extent than we'd expected, but
24 there's just no sign anything would change now
25 if the waiver were struck down.

1 JUSTICE ALITO: So your -- do I
2 understand your answer to say you don't need
3 this waiver?

4 MR. KLEIN: Your Honor, no -- I mean,
5 we don't need the waiver for emissions control.
6 We -- we are glad that the 2019 recission was
7 struck down because of its erroneous substantive
8 and procedural rulings, but this waiver is not
9 making a difference on the ground now.

10 JUSTICE ALITO: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Sotomayor?

13 Justice Kagan?

14 Justice Gorsuch? No?

15 Justice Barrett?

16 Justice Jackson?

17 Thank you, counsel.

18 Rebuttal, Mr. Wall?

19 REBUTTAL ARGUMENT OF JEFFREY B. WALL

20 ON BEHALF OF THE PETITIONERS

21 MR. WALL: Just a few points, Your
22 Honor.

23 The first, Mr. Kneedler says, look,
24 who knows what will happen in the market five,
25 10 years down the road. Just so, that's why the

1 Court should adopt our front-line rule. We
2 should be allowed to compete in this marketplace
3 because we don't know exactly what will happen
4 down the road.

5 But let's say that the Court isn't
6 persuaded by the front-line rule. I think
7 you're right, Justice Kavanaugh, as long as the
8 Court repeats the language of Alliance for
9 Hippocratic Medicine, says there are certain
10 categories in which there are predictable
11 effects, and says this case is one of them
12 because it's in the upstream or downstream
13 category, I think that comes very close to being
14 the same thing.

15 Why is this case one of them? Justice
16 Alito, you're right, all we have to show is that
17 one EV would make one fewer electric vehicle in
18 any of 18 states. It's not just California.
19 Mr. Klein's looking only at California. There
20 are 18 states here that -- 17 others that have
21 adopted California's standards.

22 So what was the record on that? We
23 had California's statement in 2021, that's at JA
24 66, saying this is critical to reduce emissions.
25 Then you have the EPA, when it regrants the

1 waiver, saying in 2022, California needs these
2 standards. That's at pages 154 and 155 in
3 Footnote 180 of the Petition Appendix, also
4 pages 64, 65, 180, and 202. It says it again
5 and again.

6 Now I take Mr. Kneedler's point. The
7 EPA did speak out of both sides of its mouth.
8 It said, on the one hand, we're not going to
9 really go back and look at whether they need the
10 standards. We're just looking at whether we
11 messed up a few years ago. But they also say
12 we've looked at the whole record and California
13 needs the standards. I don't know exactly how
14 to square those statements, but either they
15 abdicated their statutory responsibility or they
16 said California does, in fact, need the
17 standards.

18 And then, in 2022, the two CARB
19 declarations come in. I think the Scheehle
20 statement at page 115 of the JA is -- is as good
21 or better than the Vanderspek statement,
22 California itself saying we need the waiver
23 because, otherwise, we get fewer electric
24 vehicles and more gasoline-powered vehicles.

25 Now I thought that the one thing they

1 would not clearly say -- and I can't tell
2 whether California's just saying it doesn't need
3 the waiver now or that was also true back in
4 2022. But I didn't think that either of the --
5 either the United States or California would
6 say, if we had not gotten the waiver in '22, no
7 automaker would have done anything from that day
8 forward to the end of time, because I thought it
9 was something that couldn't credibly be said by
10 anybody to the case because whatever would
11 happen in California, there are lots of other
12 states out there that are not close to the same
13 numbers on EV penetration as California.

14 California seemed to hedge on that,
15 Justice Thomas, but wherever California is on
16 that, I don't think it's right. And I -- the
17 one thing is Mr. Kneedler didn't go near it, and
18 I am a betting man, Justice Sotomayor, and I bet
19 my bottom dollar that the reason he didn't is
20 that in some number of months, the EPA will
21 withdraw the waiver and will say this waiver has
22 been having an effect from the time it was
23 reinstated and it is compelling automakers to
24 make more EVs than would otherwise be produced
25 in response to consumer demand. If the EPA says

1 that in a number of months, it will be right.

2 The last thing is I would say the
3 Court shouldn't just vacate and remand. That
4 does pose the risk that we get ping-ponged
5 because it doesn't correct the court of appeals'
6 legal errors. Even if it tells them that the
7 standards last forever, it doesn't do anything
8 on our front-line rule, and it doesn't do
9 anything to correct their misunderstanding of
10 how the predictable effects test works.

11 It is important for standing purposes
12 not just for us but, as our amici explain, for
13 lots of challengers in lots of different
14 settings. It is important that the Court
15 correct the court of appeals' legal errors so
16 that we can get our day in court and finally
17 have an opportunity to make our case for why EPA
18 and California have wrongly interpreted the
19 Clean Air Act.

20 Thank you.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 The case is submitted.

24 (Whereupon, at 11:10 a.m., the case
25 was submitted.)

Official - Subject to Final Review

<p style="text-align: center;">1</p> <p>10 [5] 37:6,9 46:2 47:13 66:25 10:04 [2] 1:15 3:2 11:10 [1] 70:24 110 [1] 20:21 115 [2] 20:21 68:20 12 [1] 46:2 14 [2] 41:18 64:18 15 [2] 17:20 25:5 154 [1] 68:2 155 [1] 68:2 17 [2] 28:3 67:20 18 [2] 67:18,20 180 [2] 68:3,4</p>	<p>abdicated [1] 68:15 abide [1] 15:14 ability [4] 5:15 8:24,25 14:12 able [5] 8:3 15:20,21 25:12,17 above [1] 52:19 above-entitled [1] 1:13 absent [4] 8:8 11:20 13:4 24:11 absolutely [1] 48:24 absolutist [1] 10:10 accept [1] 15:13 accepting [1] 54:5 account [1] 34:22 accurate [1] 53:6 accustomed [1] 62:5 achieved [1] 65:22 acknowledge [2] 12:15,17 acknowledges [1] 13:1 acres [1] 60:8 Act [3] 58:9 59:4 70:19 action [2] 24:16 35:11 actions [1] 4:19 actual [1] 56:25 actually [1] 7:14 8:7,12 14:2 26:18 45:17,20 48:9 55:19 60:12 64:19 additional [3] 48:23 49:13 59:5 address [5] 38:3 42:3 55:13 56:22 65:1 addressed [1] 57:8 addresses [1] 41:12 adequately [1] 57:14 adjusted [3] 37:10 40:12 45:21 adjusting [1] 54:2 admin [1] 59:2 administration [1] 37:21 administrative [2] 51:6 59:3 administrators [1] 58:2 admission [2] 4:25 21:13 26:9 48:7 67:1 adopt [6] 11:17 16:9 22:16 adopted [3] 28:4 36:24 67:21 adopting [2] 21:10 22:9 advantage [1] 13:10 advisory [2] 12:6,14 advocating [1] 27:7 affect [4] 12:20 13:15,24 50:14 affected [3] 26:16,18 34:10 affecting [1] 26:19 affects [1] 54:8 affidavit [4] 24:5 48:21 59:7 60:12 affidavits [8] 11:8 13:17 16:18 44:5 58:22 59:19 61:18,22 AGENCY [2] 1:6 3:6 ago [2] 47:14 68:11</p>	<p>agree [10] 15:14 19:16 20:25 21:22,23 22:21 32:7 43:2 44:12 53:10 agrees [1] 6:15 ah [1] 24:3 ahead [3] 63:5,6,7 Air [3] 58:9 63:21 70:19 AL [2] 1:3,6 ALITO [18] 16:11 17:1,7,18 19:4,11,14,16 31:20 48:20 49:20,25 50:5 65:10,11 66:1,10 67:16 allege [1] 9:20 Alliance [4] 24:2 32:21 33:2 67:8 allow [1] 8:11 allowed [3] 16:9 18:11 67:2 allowing [1] 49:17 allows [1] 3:12 alone [1] 41:2 already [4] 37:1 47:5 61:5,7 ALTERNATIVE [2] 1:3 3:5 ameliorated [1] 41:21 amici [1] 70:12 among [2] 6:19,20 amount [2] 31:25 34:20 amounts [1] 24:4 analyses [1] 56:19 analysis [3] 17:23 37:19 50:15 announce [2] 10:9 12:12 another [2] 38:6 46:16 answer [8] 12:18,22 30:15 31:10 36:2 63:4,8 66:2 answered [1] 29:16 answering [1] 36:1 anybody [2] 16:3 69:10 anyway [1] 15:2 APA [1] 60:10 appeal [1] 64:19 appeals [6] 19:18 23:16 47:12 48:17 61:17,22 appeals' [2] 70:5,15 appear [1] 64:15 APPEARANCES [1] 1:17 appendix [2] 57:18 68:3 application [1] 60:22 applies [1] 25:11 apply [6] 5:23 9:13 30:2 60:17,21 65:19 applying [1] 65:18 appreciate [2] 27:5 28:9 appreciated [1] 27:3 approach [1] 37:24 approved [1] 52:11 April [1] 1:11 arbitrary [1] 24:18 area [5] 7:9 8:4,8 10:10 60:3 areas [1] 18:18 aren't [4] 8:2 34:4 46:2 58:19</p>	<p>arguing [1] 41:2 argument [15] 1:14 2:2,5,8,11 3:4,8 21:4 26:9 28:9 35:4 52:1 57:25 64:1 66:19 arguments [2] 8:18 15:22 arise [1] 62:15 around [6] 17:20 24:24 25:5,8 57:11,19 Article [2] 53:1 62:20 articulate [2] 5:12,13 articulating [1] 27:10 aside [3] 3:23 46:20 60:16 assertion [1] 41:12 assess [1] 17:15 assessment [1] 40:5 assume [8] 10:17 13:16 15:10 19:22,24 40:14 52:5 62:19 assumptions [1] 57:5 attention [1] 57:2 auto [3] 45:20 53:6 61:9 auto-making [1] 15:17 automaker [3] 13:6 24:6 69:7 automakers [17] 4:4 5:4 14:8,14 26:16 28:5,10,11 34:1 52:12,23 62:22 64:20,23 65:4,21 69:23 automakers' [3] 4:25 21:13 52:19 automotive [1] 53:25 availability [1] 13:13 away [4] 5:2,4,10,19 awfully [1] 33:6</p>	<p>believe [1] 14:10 believes [1] 9:15 below [4] 4:10 23:1,5,8 benefit [1] 49:12 bet [2] 30:19 69:18 better [2] 27:3 68:21 betting [3] 50:24 51:2 69:18 between [5] 25:21,25 31:25 38:16 40:6 beyond [1] 44:5 big [1] 25:23 bit [1] 27:20 both [8] 8:19 20:23 38:22 39:11 41:11 61:18 63:10 68:7 bottom [1] 69:19 brand-new [1] 40:4 brief [12] 6:16 14:19 20:24 30:25 41:15 44:1,2,7,8 58:3 62:4 64:17 briefly [1] 7:4 briefs [5] 27:4 39:10,11,12 57:21 bright-line [3] 21:25 46:4 64:1 bring [1] 57:1 brings [1] 52:7 broader [3] 49:15 54:14,15 brought [5] 20:19 37:19 45:15 46:16 55:14 build [1] 8:3 builders [2] 7:8 8:2 building [2] 7:9 8:7 built [2] 8:12,13 burden [8] 52:21 55:2,10,16 56:21 58:12 59:12,17 buried [1] 64:17 business [1] 15:2 buys [1] 15:12</p>
<p style="text-align: center;">2</p> <p>2 [1] 6:16 2012 [1] 61:1 2012/2013 [1] 55:15 2013 [1] 36:23,25 37:8 40:6,7 45:12 52:12 57:9,13,14,21 2019 [10] 26:20 38:14 39:22 56:20,24 57:9,12,15,23 66:6 202 [1] 68:4 2020 [1] 26:20 2021 [5] 4:19 21:7 26:20 38:13 67:23 2022 [14] 4:20,22 26:21 37:14 38:8 39:16 45:20 52:14 57:4,10 61:11 68:1,18 69:4 2025 [4] 1:11 10:17 23:14 42:6 209(b) [2] 53:16 58:5 211 [1] 14:3 22 [1] 69:6 226 [1] 57:19 227 [1] 57:19 23 [1] 1:11 24-7 [1] 3:4 28 [1] 41:11</p>	<p>3</p> <p>3 [1] 2:4 35 [1] 2:7 38 [1] 64:16</p>	<p>3</p> <p>3 [1] 2:4 35 [1] 2:7 38 [1] 64:16</p>	<p style="text-align: center;">B</p> <p>back [16] 5:1,4,10 11:8 17:22 21:2,17 40:3 44:6 45:8,12 50:13 61:6 65:12 68:9 69:3 back-and-forth [1] 50:16 backup [1] 32:1 baked [1] 61:12 bar [1] 13:7 bare [2] 64:23,25 BARRETT [12] 14:20 15:10 24:23 25:20,25 26:8 31:10 51:22 58:11,20 59:6 66:15 barrier [1] 10:22 based [7] 7:24 25:3 32:2 38:13 56:20 63:18 64:5 basically [1] 63:16 basis [7] 35:13,17 52:25 56:14,15,17 57:15 batteries [1] 13:14 bear [1] 37:19 become [1] 24:17 beginning [3] 46:3,24 47:1 begins [1] 49:5 behalf [1] 1:18,21,24 2:4,7,10,13 3:9 35:5 52:2 66:20 behavior [3] 4:1 40:17 47:25</p>	<p style="text-align: center;">C</p> <p>cake [1] 61:12 California [38] 1:24 3:12 4:3,7,8,9 14:22 15:13 18:19 20:20,21 21:2 28:3 36:21 37:11,25 38:20,23 39:10 40:20 44:1 46:22 53:19 55:14 58:5 59:15 67:18,19 68:1,12,16,22 69:5,11,13,14,15 70:18 California's [13] 4:17,18,21 16:8 20:18 21:6 26:15 40:21 55:25 65:17 67:21,23 69:2 call [1] 33:4 came [2] 1:13 10:17 cannot [1] 6:23 cap [2] 6:6 28:1 car [8] 13:17,19 19:7 48:23,25 49:14,19 58:22 CARB [3] 4:22 20:22 68:18 care [2] 25:20,22 carmaker [1] 48:21</p>
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