No. 24-7

In the
Supreme Court of the United States

DIAMOND ALTERNATIVE ENERGY, LLC, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

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

BRIEF FOR *AMICUS CURIAE* AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF PETITIONERS

PAUL D. CLEMENT
Counsel of Record
C. HARKER RHODES IV
NICHOLAS A. AQUART*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

*Supervised by principals of the firm who are members of the Virginia bar

Counsel for Amicus Curiae

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STATEMENT OF INTEREST[1]

The American Petroleum Institute ("API") is the national trade association for America's oil and natural gas industry. API has hundreds of members involved in all segments of the industry, including companies that produce, process, and distribute oil and natural gas products, as well as companies that support the oil and natural gas sector. With over 30 active chapters, API harnesses its members' experience to research and advocate for sound approaches to the production and supply of energy resources. API submits this brief to underscore the flaws in the D.C. Circuit's standing decision below, which departs from settled law, threatens to create unnecessary hurdles for a wide array of regulatory challenges, and warrants this Court's review. API also urges this Court to grant review on the merits as well and to vacate EPA's waiver of preemption, as EPA's decision to grant that waiver defies the plain language of the governing statute.

SUMMARY OF THE ARGUMENT

The net result of the decision below is that the D.C. Circuit deflected industry's challenge to EPA's decision to reverse course and green-light California's unprecedented efforts to regulate global climate

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, *amicus curiae* affirms that counsel of record for all parties received timely notice of the intent to file this brief.

change without even reaching the merits of the industry challenge. That decision is plainly wrong and plainly consequential. Article III's standing requirements are straightforward, and petitioners satisfy each element here—which is why the federal government did not even challenge petitioners' standing below. EPA's decision to waive federal preemption of California's heightened vehicle emissions standards causes straightforward and obvious harm to petitioners in the fuel industry, even though the standards are formally directed to automakers rather than the fuel industry itself. By forcing automakers to produce more electric vehicles, the standards necessarily reduce sales of fuel and the raw materials used to make that fuel. Indeed, that effect on fuel consumption and the fuel industry is the whole point of the rule. And both basic economics and the government's own administrative findings show that vacating EPA's waiver would be a setback for EPA and California and provide at least some redress for the fuel industry.

The decision below nevertheless concluded that petitioners had not shown redressability, because they had not submitted evidence showing precisely what effect vacating the waiver would have on automakers' manufacturing and pricing decisions. That decision overcomplicates the obvious and contravenes settled law. When a government regulation is imposed with a stated intent to reduce consumption of a particular industry's products, it does not take expert evidence or declarations from the directly regulated parties to show that vacating the regulation will be a setback for the regulators and a boon to the targeted industry—which is why other courts have routinely found Article

III satisfied without demanding that plaintiffs produce the kind of explicit evidence that the panel below considered necessary here. Put simply, the fact that a regulation has been designed to produce a particular effect should normally be sufficient to show that the likely result of vacating that regulation will be to reduce that effect, which is all that redressability requires. It is a fair assumption that a government regulation will at least advance its intended effect, and an equally fair assumption that vacating the rule will frustrate the government's efforts and be a boon to those seeking to avoid or minimize the government's intended effect. By demanding more, the decision below conflicts both with this Court's precedent and with decisions from other circuits.

That error should not escape this Court's review. Leaving the decision below in place threatens to create unnecessary hazards for future challenges to agency action. At best, it will drive parties to hire redressability experts whose testimony should be unnecessary, and encourage burdensome litigation of threshold redressability issues that should be straightforward. And at worst, the decision below may even in some cases entirely prevent judicial review of regulations that by their terms apply only to certain parties but whose effects fall heavily on others. Regulatory challenges are routinely brought by parties that are substantially affected by agency action even though they are not themselves formally regulated by that action, and redressability in those challenges should normally speak for itself. But if the decision below goes unreviewed, it will create perverse incentives for proponents of regulatory actions to contest redressability even where redressability is just

the flip side of what the government purports to accomplish with its regulation—which will in turn encourage litigants to file unnecessary affidavits, and increase the cost and burden of litigation for all involved. Those adverse effects on future regulatory challenges, especially in the D.C. Circuit, warrant further review.

This Court should also review the merits, rather than invite the court below to substitute a mootness ruling for its misguided standing ruling. Given that the challenged California standards are in effect only through model year 2025, granting review of the merits now may be the only way to ensure that any court reaches the substance of petitioners' challenge before the waiver expires. And that challenge deserves this Court's attention, as EPA's waiver decision rests on interpretations of the governing statute that cannot be squared with its plain text. The Clean Air Act authorizes EPA to waive preemption only if California "needs" its own standards to address a "compelling and extraordinary" problem in California. But California's stated problem—global climate change—is hardly limited to or "extraordinary" as to California, and California cannot "need" standards that do not meaningfully address a global problem in any event. This Court should grant certiorari and reverse.

ARGUMENT

I. This Court Should Grant Review And Reverse The D.C. Circuit's Standing Decision.

The standing decision below flouts both common sense and well-settled law. If left in place, it threatens

at a minimum to create unnecessary confusion and additional litigation burdens for countless "unregulated but adversely affected parties who traditionally have brought, and regularly still bring," challenges to agency rules that may have a significant and concrete impact on their interests even if those rules do not formally regulate their conduct. *Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 144 S.Ct. 2440, 2461 (2024) (Kavanaugh, J., concurring). Further review is accordingly warranted to ensure that the erroneous decision below will not imperil future challenges to agency rules that achieve their objectives by regulating third parties.

A. The D.C. Circuit Erred in Holding That Petitioners Lacked Standing.

1. To establish Article III standing, a party invoking federal jurisdiction must show an "injury in fact," a "causal connection between the injury and the conduct complained of," and that "the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The third element, redressability, does not usually present much ground for dispute in regulatory challenges. If the regulation is to have any effect vis-à-vis the petitioner, then vacating the rule will provide the petitioner some relief. It is generally that simple. When a plaintiff is itself regulated by a challenged agency action, "there is ordinarily little question" that a decision preventing or vacating that action will redress the plaintiff's injury. *Id.* at 561-62.

And as then-Judge Kavanaugh has observed, that is equally true when an agency action formally regulates a third party, but eliminating it "would

remove a regulatory hurdle" to the challenger's business. *Energy Future Coal. v. EPA*, 793 F.3d 141, 144 (D.C. Cir. 2015). That was the precise scenario presented in *Energy Future Coalition*, where (as here) fuel producers challenged an EPA regulation that was "technically directed at vehicle manufacturers" but whose effect was to "prohibit[] or impede[]" the use of one of the challengers' products. *Id.* In that scenario, the challengers were "an object of the action (or forgone action) at issue," and so there was "'little question'" that they had injuries that would be redressed by vacating the regulation. *Id.* (quoting *Lujan*, 504 U.S. at 561-62); *see Bennett v. Spear*, 520 U.S. 154, 169 (1997) (recognizing that standing can arise from an "injury produced by [the] determinative or coercive effect" of the challenged regulation "upon the action of someone else"); *cf. Corner Post*, 144 S.Ct. at 2460 (Kavanaugh, J., concurring) (recognizing that a "typical APA suit" will "often" involve a plaintiff challenging "an allegedly unlawful agency rule that regulates others but also has adverse downstream effects on the plaintiff"). More generally, in establishing redressability, a petitioner can rest on "the predictable effect of Government action on the decisions of third parties," without having to make any specific evidentiary showing to substantiate those predictable effects. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019).

A plaintiff likewise need not show that "a favorable decision will relieve his *every* injury." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982). Instead, it is enough if prevailing will "*slow* or *reduce*" the relevant harm, *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007), even if by as little as "one dollar,"

Uzuegbunam v. Preczewski, 141 S.Ct. 792, 802 (2021). As long as some degree of redress is "'likely' as opposed to merely 'speculative'" from a favorable judgment, Article III redressability is satisfied. *Lujan*, 504 U.S. at 561.

2. Under that settled precedent, the standing inquiry in this case should have been straightforward. The challenged EPA waiver empowers California to impose standards that require automakers to produce and deliver for sale vehicle fleets that consume less liquid fuel. The "predictable effect" of that regulation—and indeed, its explicitly intended effect—is to reduce the demand for petitioners' products. *Dep't of Com.*, 588 U.S. at 768. By the same token, vacating the waiver "would remove a regulatory hurdle" to petitioners' future sales, making clear that petitioners' injury "is redressable" even though they are not the direct object of the challenged agency action. *Energy Future Coal.*, 793 F.3d at 144-45; *see Lujan*, 504 U.S. at 561-62.

That conclusion is confirmed by California's own statements. After all, California had already determined that its standards would lead to "reductions in fuel production," 87 Fed. Reg. 14,332, 14,364 (Mar. 14, 2022) (quoting California's 2012 Waiver Request, EPA-HQ-OAR-2012-0562-0004, at 15-16), and acknowledged that the "oil and gas industry" would be among those "most adversely affected" by the new standards and their resulting "substantial reductions in demand for gasoline," C.A.App.801; *see also* State of California, *Advanced Clean Cars Waiver Request* 7-9 (May 2012), https://tinyurl.com/3ca8mf7s (noting that electric

vehicles can "dramatically reduce petroleum consumption"). The California Air Resources Board's declarant below likewise recognized that without the standards, "it is reasonable to expect that there would be … additional gasoline-fueled vehicles produced and sold during these model years to meet the market's demand for vehicles," C.A.States.Interv.Mot.Add.11, with an attendant increase in demand for liquid fuel. California's own representations thus demonstrate that the state's standards were designed to reduce the consumption of the fuel products that petitioners produce and sell, and that petitioners would benefit from increased sales absent those standards. Nothing more is required to establish redressability.

3. The D.C. Circuit's contrary decision defies this Court's precedent and common sense. The panel acknowledged that petitioners' injuries would be redressed "if automobile manufacturers responded to vacatur of the waiver by producing [or] selling fewer non-conventional [i.e., electric] vehicles or by altering the prices of their vehicles such that fewer non-conventional vehicles—and more conventional vehicles—were sold." Pet.App.22a. But instead of recognizing the obvious—that it is at least "likely," *Lujan*, 504 U.S. at 561, that a waiver designed to mandate automakers to produce more electric vehicles would in fact operate as intended, and that vacating that mandate would at least retard that intended result—the panel insisted on "record evidence" that "manufacturers would, in fact, change course with respect to the relevant model years if this Court were to vacate the waiver." Pet.App.23a. Likewise, despite admitting that manufacturers "could change their prices" in response to vacatur of the waiver, "which

may redress Petitioners' injuries because pricing could affect the mix of conventional and electric vehicles purchased," the panel refused to credit that theory either because (it believed) petitioners had not submitted explicit "evidence that manufacturers would change their prices." Pet.App.24a.

That demand for specific "record evidence" to prove that eliminating coercive regulations is likely to lead regulated parties to change their behavior, Pet.App.23a, cannot be squared with this Court's precedent. In *Bennett*, for example, this Court considered a challenge by a group of ranchers and irrigation districts to a Biological Opinion issued by the U.S. Fish and Wildlife Service under the Endangered Species Act. 520 U.S. at 158-59. That Biological Opinion concluded that unless the Bureau of Reclamation made changes to the operation of the Klamath Project, a series of lakes, rivers, dams, and irrigation canals in northern California and southern Oregon from which the petitioners received water, it would jeopardize the continued existence of two endangered species of fish. *Id.* The government challenged the petitioners' Article III standing, asserting that vacating the Biological Opinion would not necessarily redress the petitioners' injury because the Bureau of Reclamation "retain[ed] ultimate responsibility for determining" how to operate the Klamath Project, and could decide to allocate less water to petitioners even absent the Biological Opinion. *Id.* at 168.

In a unanimous opinion by Justice Scalia, this Court rejected the government's argument. As the Court explained, while redressability may be lacking

if a plaintiff's injury "is 'the result of the *independent* action of some third party not before the court,'" that "does not exclude injury produced by determinative or coercive effect upon the action of someone else." *Id.* at 169 (brackets omitted) (quoting *Lujan*, 504 U.S. at 560-61). Thus, it did not matter that the Bureau of Reclamation had the power to impose the same water restrictions independent of the Biological Opinion. What mattered was that the Biological Opinion "has a powerful coercive effect" on the Bureau, such that vacating it meant that petitioners' injury "will 'likely' be redressed—i.e., the Bureau will not impose [the same] water level restrictions—if the Biological Opinion" is set aside. *Id.* at 169, 171. The same logic applies here: Given the "powerful coercive effect" of the California standards, and their express intent of reducing liquid fuel consumption, it is "not difficult to conclude" that vacating the waiver is "likely" to affect the behavior of the regulated automakers and redress petitioners' injury. *Id.* at 169, 170-71. Petitioners here were not required to submit additional explicit evidence to prove that straightforward point, any more than the *Bennett* petitioners would have been required at summary judgment to submit an affidavit from the Bureau of Reclamation declaring that it would in fact change its water level restrictions if the Biological Opinion were vacated. *See id.* at 170-71.

This Court's decision in *Department of Commerce* confirms the point. The plaintiffs there—a variety of government and non-government organizations—challenged the government's decision to include a question about citizenship on the decennial census. 588 U.S. at 763-64. That decision did not regulate the plaintiffs directly, but they contended that they were

injured because including that question would predictably lead noncitizen households to respond to the census at lower rates than other groups. *Id.* at 766-67. This Court—again unanimously—found that theory sufficient to support Article III standing, rejecting the government's argument that any harm to the plaintiffs depended on "speculation about the decisions of independent actors." *Id.* at 768 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013)). Again, the Court concluded that the "predictable effect of Government action on the decisions of third parties" was sufficient to show standing, without requiring explicit statements from those third parties themselves describing precisely how they would respond to a favorable judicial decision. *Id.* The D.C. Circuit's decision to require more here cannot be reconciled with either *Bennett* or *Department of Commerce*.

In short, it has been "long understood" that agency action can be challenged "in suits by unregulated plaintiffs who are adversely affected by an agency's regulation of others," *Corner Post*, 144 S.Ct. at 2460 (Kavanaugh, J., concurring)—and yet this Court has never required those adversely affected plaintiffs to submit explicit testimony from the directly regulated third parties detailing their likely response to a favorable judgment in order to establish redressability. That is for good reason. After all, if those third parties were going to do what the agency regulation required whether or not that regulation existed, the agency "would presumably not bother" promulgating the regulation at all. *Massachusetts*, 549 U.S. at 526.

More to the point, there is a reason why "entire classes of administrative litigation … have traditionally been brought by unregulated parties," *Corner Post*, 144 S.Ct. at 2464 (Kavanaugh, J., concurring): The directly regulated parties in those cases typically have their own reasons for not bringing the litigation themselves—ranging from a clear-eyed recognition that the real costs of the regulation fall elsewhere to agency capture or fear of retaliation after getting crosswise with their regulator. The same considerations that caused them to forgo bringing their own challenge will make them reluctant to cooperate with the unregulated parties even when it comes to something as simple as confirming that vacating a rule designed to increase the production and delivery for sale of electric vehicles will likely result in the production of fewer electric vehicles.

4. The panel below believed this case was special because (in its view) the "relatively short duration" of the waiver at issue, which applies only through model year 2025, suggested that the directly regulated parties might already be locked into their production decisions. Pet.App.22a. But that is at most a (misplaced) mootness concern, not a redressability deficiency. The standing inquiry "focuse[s] on whether the party invoking jurisdiction had the requisite stake in the outcome *when the suit was filed*," not when the court eventually renders its decision. *Davis v. FEC*, 554 U.S. 724, 734 (2008) (emphasis added); *see* Pet.App.25a. And at the time petitioners filed their challenge—within 60 days of EPA's March 2022 order, *see* Pet.App.14a-15a—the waiver still had some four years left to run, which was ample time for

automakers to revise their production and/or pricing plans if the waiver were vacated.

Again, the agency's own actions prove the point: If manufacturers' plans for the next four years were already firmly locked in place in March 2022, there would have been no point in issuing the waiver at all. While manufacturers may take "years of lead time" to plan their entire future model fleets or "re-optimize" their product plans in response to regulatory shifts, Pet.App.23a-24a, it hardly follows that vacating the waiver would lead to *no change at all* in automakers' production mixes for the next four years—and any change at all would suffice, as even partial relief is enough to establish redressability. *Massachusetts*, 549 U.S. at 525; *Larson*, 456 U.S. at 243 n.15. Moreover, even the panel below conceded that manufacturers "could change their prices" within the period that the waiver covers, "which may redress Petitioners' injuries." Pet.App.24a. Article III did not require petitioners to also submit explicit "evidence" that automobile pricing would respond to the laws of supply and demand if the artificial constraints imposed by the waiver were removed.

B. The D.C. Circuit's Standing Decision Will Create Confusion and Unnecessary Litigation Burdens.

The decision below is not only wrong, but threatens to cause substantial confusion and unwarranted litigation burdens for the wide swath of "unregulated but adversely affected parties who traditionally have brought, and regularly still bring, APA suits challenging agency rules." *Corner Post*, 144 S.Ct. at 2461 (Kavanaugh, J., concurring). As

petitioners explain, the decision below conflicts with decisions from at least four other circuits that have correctly followed this Court's precedent and held that non-regulated parties can show standing based on a regulation's predictable effect on regulated third parties, without requiring those non-regulated parties to submit evidence explicitly spelling out that predictable effect in precise detail. Pet.21-23. That conflict over the basic question of what is required to establish Article III standing is of obvious importance and warrants this Court's attention.

That is all the more true because the decision below comes from the D.C. Circuit, which has long been a primary venue for regulatory challenges (and which Congress has made the exclusive venue for many challenges). By suggesting that adversely affected parties may need "additional affidavits or other evidence" to establish redressability even when the predictable effects of vacating the challenged regulation should be clear, Pet.App.24a-25a, the decision below threatens to encourage litigants in countless future regulatory challenges to spend significant resources filling the record with third-party declarations or expert evidence that should be unnecessary, just to explicitly state what common sense already makes obvious.

Those baleful consequences will not be limited to a handful of unlucky litigants. On the contrary, "entire classes of historically common and vitally important litigation against federal agencies" are routinely brought (and in some cases are only likely to be brought) by plaintiffs who are adversely affected but not directly regulated by the challenged agency

action. *Corner Post*, 144 S.Ct. at 2464, 2469 (Kavanaugh, J., concurring). API itself provides a perfect example, as it is currently challenging two more recent (and even more extreme) EPA rules and a National Highway Traffic Safety Administration ("NHTSA") rule that together represent the latest front in the same whole-of-government regulatory effort to mandate electrification of the Nation's vehicle fleets. *See Am. Petroleum Inst. v. EPA*, No. 24-1196 (D.C. Cir. docketed June 13, 2024); *Am. Petroleum Inst. v. EPA*, No. 24-1208 (D.C. Cir. docketed June 18, 2024); *In re Nat'l Highway Traffic Safety Admin.*, No. 24-7001 (6th Cir. docketed July 18, 2024). API's members are not the direct object of those rules, but they are unquestionably adversely affected by those rules, which seek to dramatically reduce the number of liquid-fueled vehicles on the Nation's roads by 2032. *See, e.g.*, 89 Fed. Reg. 27,842, 27,858, 28,092, 28,129 (Apr. 18, 2024) (projecting that EPA's new emissions standards will "lower demand for liquid fuel," "reduc[e] … U.S. gasoline consumption by 780 billion gallons," and adversely affect "the petroleum refining industry [and] fuel distributors").

Given the obvious and severe impact of the rules at issue in those cases on API's members, and the equally obvious fact that vacating those rules would at least mitigate that impact, the standing inquiry should be straightforward—which is presumably why the government has not disputed fuel producers' Article III standing in the ongoing litigation over the previous round of analogous EPA and NHTSA standards. *See Texas v. EPA*, No. 22-1031 (D.C. Cir. argued Sept. 14, 2023); *Nat. Res. Def. Council v. NHTSA*, No. 22-1080 (D.C. Cir. argued Sept. 14,

2023). Indeed, API's standing to challenge this latest round of rules is even clearer given that the new standards reach eight years or more into the future. Given the agencies' own projections that their standards will cause automakers to change their behavior (and reduce gasoline consumption by hundreds of billions of gallons), *see, e.g.*, 89 Fed. Reg. at 28,092, there should be no question that vacating those behavior-modifying standards will redress the injuries of API members. But despite the blindingly obvious standing of API and its members, the decision below would require devoting additional resources to an effort to substantiate the obvious. All of that not only wastes resources, but distracts attention from the merits. The latter reality is dramatically illustrated by the decision below, which completely sidestepped petitioners' challenge to a waiver determination that repurposed a provision designed to address California-specific problems into a tool to address the decidedly global issues surrounding global climate change. As explained next, this Court should repudiate this effort to sidestep the merits by not only correcting the D.C. Circuit's flawed standing analysis, but by addressing the merits. At a bare minimum, however, this Court should review and reverse a decision that converts straightforward redressability inquiries into a satellite litigation that needlessly consumes resources and distracts from the merits.

II. The Court Should Also Grant Review On The Merits And Vacate EPA's Erroneous Waiver Decision.

The Court should also review the merits and decide whether EPA has statutory authority to waive

preemption for California-specific standards directed at curbing global climate change. Despite repeated challenges, that important issue has now evaded judicial scrutiny for over a decade—and absent this Court's review, it may well evade judicial scrutiny here once again given that its application does not extend beyond the 2025 model year. That is no small matter, as EPA's strained interpretation of the statute cannot be squared with its plain text, and has allowed California to extend its unusual claim to regulatory authority over the Nation's automobile industry far beyond the careful limits that Congress set. This Court should take advantage of this opportunity to correct that seriously problematic state of affairs.

The waiver authority here was designed to allow California to continue to address extraordinary California-specific problems, not to empower California to supplant the federal government in addressing global issues. Under Section 209(b), EPA can waive preemption for California emissions standards only if it concludes that California "need[s] such State standards to meet compelling and extraordinary conditions." 42 U.S.C. §7543(b)(1)(B). The standards at issue here cannot meet that statutory test. They target global climate change, not "compelling and extraordinary" local conditions in California. *Id.* They cannot be "need[ed] … to meet" the conditions they target, *id.*, because (as EPA itself recognizes) they will have limited impact on climate change either in California or at the global level. And EPA's attempt to escape those problems by asserting that Section 209(b) allows it to waive preemption whenever California needs *any* part of its emissions program to address compelling local conditions—

whether or not it needs the particular "State standards" for which it seeks a waiver, *id.*—flatly contravenes the statutory text and would eviscerate the limits that Congress put on the unique regulatory power that it has permitted California to exercise.

1. Allowing California to rely on global climate change as a "compelling and extraordinary" condition that should allow California to set its own emissions standards contravenes the text, structure, and history of Section 209(b). *See* Pet.28-30. Global climate change is not "extraordinary" *to California*. And that is all that matters, as Section 209(b) is designed to allow California to address its own state-specific issues, not to second-guess federal regulation of national (let alone global) issues. *See, e.g.*, *Ford Motor Co. v. EPA*, 606 F.2d 1293, 1303 (D.C. Cir. 1979) (recognizing that the waiver provision "focus[es] on local air quality problems—problems that may differ substantially from those in other parts of the nation"); H.R. Rep. No. 90-728, at 22 (1967) (noting California's "unique problems" and particular "climate and topography"); *see also Motor Vehicle Mfrs. Ass'n v. N.Y. State Dep't of Env't Conservation*, 17 F.3d 521, 526 (2d Cir. 1994) (noting that the waiver provision applies to California "because its unique Los Angeles smog problem caused it to begin regulating auto emissions" before any other state). Nothing in the statutory text or structure remotely suggests that Congress intended to authorize California—and California alone—to set emissions standards targeted at nationwide issues, let alone global ones like global climate change.

2. Even if California were authorized to promulgate emissions standards targeting global

climate conditions, it does not "need" the standards at issue here to "meet" those conditions. By its plain and ordinary language, the statutory requirement that California must "need" its standards to "meet" the relevant conditions means that the standards must be essential to respond to those conditions. *See* Pet.31. That requirement cannot be met by standards that will have no meaningful impact on the conditions they are designed to address—as EPA itself has already concluded with respect to the standards at issue here. *See* 84 Fed. Reg. 51,310, 51,341 (Sept. 27, 2019) ("[T]he waiver would result in an indistinguishable change in global temperatures and … likely no change in temperatures or physical impacts resulting from anthropogenic climate change in California."); *id.* at 51,349 (California standards "will not meaningfully address global air pollution problems of the sort associated with [greenhouse gas] emissions").

And even if the standards at issue here were to produce some appreciable effect on greenhouse gas emissions, California cannot "need" those standards if there are other measures that would achieve the same reduction at a lower cost. Absent a showing that other regulatory options—from the wide swath of possible approaches to reducing greenhouse gas emissions that California has at its disposal—could not produce comparable outcomes at a lower cost, it cannot be said that California "needs" these particular emissions standards to meet its global climate change objectives. Section 209(b) therefore does not authorize waiving preemption for these standards.

3. Apparently recognizing those glaring problems, EPA attempts to evade them by arguing

that it can grant a waiver as long as California needs *any part* of its entire vehicle emissions program to respond to compelling and extraordinary local conditions—regardless of whether the particular standards for which California seeks a waiver respond to those local conditions. *See, e.g.*, 87 Fed. Reg. at 14,335. That whole-program approach fails to follow the statutory text. Section 209(b) permits EPA to waive preemption for particular California standards only when California "need[s] *such State standards* to meet compelling and extraordinary conditions," 42 U.S.C. §7543(b)(1)(B) (emphasis added), not whenever California may need some *other* part of its emissions program to address its local air pollution problems.

Congress understood when it enacted Section 209(b) that California's motor vehicle emissions control program would be an evolving program, and that California would have to apply for a new preemption waiver whenever it sought to impose new motor vehicle emissions standards based on changing circumstances. In that context, the decision to allow EPA to waive preemption only when "such State standards" are needed to address compelling local conditions, *id.*, cannot be read to give California free rein to issue any vehicle emissions standards it wants as long as some *other* part of its program is needed to address local air pollution. There is no plausible reason to believe that when Congress afforded California the unique power to set vehicle emissions standards to address its unusual local conditions, it also simultaneously handed California a blank check to tack on any other emissions regulations that California wants, especially when those tacked-on

regulations target nationwide (or worldwide) conditions.

To the extent it seeks any textual basis for its interpretation at all, EPA relies on the first sentence of Section 209(b)(1), which provides that EPA can provide a waiver only if California "determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards." *Id.* §7543(b)(1). But that "in the aggregate" requirement goes to the overall health and environmental protectiveness of California's program, allowing California to have standards that are different from EPA's but no less protective of public health or welfare. That threshold requirement has nothing to do with the separate requirement in Section 209(b)(1)(B) that the standards for which California seeks a waiver must be needed to meet compelling and extraordinary local conditions. Indeed, Congress' use of the "in the aggregate" language in setting the threshold condition for California's standards demonstrates that Congress knows how to focus on the overall effect of California's regulatory program when it wants to. By omitting that "in the aggregate" language in §209(b)(1)(B), Congress clearly wanted the focus to be on the particular standards for which California seeks a waiver.

The whole-program approach thus cannot be reconciled with the text or structure of Section 209(b)(1)(B). Indeed, it effectively eliminates the statutory requirement that California "need such State standards to meet compelling and extraordinary conditions" entirely, *id.*, and instead allows California

to expand its emissions program to include any standards California considers desirable to address national or global air pollution problems—eviscerating the strict limits that Congress set on Section 209(b)'s unusual one-state-only grant of regulatory power. This Court should not allow EPA to continue to rely on that flawed interpretation of the statute to issue waivers authorizing California to regulate far more than Congress authorized.

CONCLUSION

For the foregoing reasons and those stated in the petition, this Court should grant certiorari.

Respectfully submitted,

PAUL D. CLEMENT
Counsel of Record
C. HARKER RHODES IV
NICHOLAS A. AQUART*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

*Supervised by principals of the firm who are members of the Virginia bar

Counsel for Amicus Curiae

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