No. 24-7

IN THE

DIAMOND ALTERNATIVE ENERGY, LLC, ET AL.,

,

v.

T ENVIRONME92 re6Da(T)-3A(L)-2( )] TJETQq0.00000912 0 612 792 reW* nBT/F3 12 Tf1 0 0 1 705

TABLE OF CONTENTS

A.

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes:

INTEREST OF THE [1]

The Chamber of Commerce of the United States of America is the world's largest business federation. The Chamber directly represents approximately 300,000 members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important func-

tomers to focus on their core business activities rather than managing their vehicle fleets.

The American Car Rental Association ("ACRA") is the national representative for over 98% of our nation's car rental industry. ACRA's membership consists

that would increase demand for petitioners' fuel products. That requirement imposes a substantial—often insurmountable—barrier to unregulated (or indirectly regulated) entities' ability to obtain judicial review of agency action that has injured them.

This Court's intervention is needed now to ensure that judicial review continues to serve its indispensable role as a check on unlawful agency action. By requiring the petitioners in this case to

vanaugh, J. concurring). The Court should grant certiorari now to ensure the continued availability of a judicial forum to evaluate the lawfulness of agency action.

ARGUMENT

I. The D.C. Circuit's decision imposes artificial barriers to judicial review of agency action.

The decision below effects a dramatic distortion of Article III jurisprudence that will close the door to a significant portion of challenges to agency action in the court that is most frequently tasked with reviewing agency decisions (and reining in agency overreach)—unless this Court promptly intervenes. The D.C. Circuit held that to show Article III redressability, petitioners had to prove what actions regulated third-party automobile manufacturers would take if EPA's waiver were vacated. The lower court's decision ignores both common sense and basic principles of supply and demand. When an agency writes a rule that depresses demand for a product, common sense dictates that vacating that rule will cause demand to rebound. That is precisely the case here: EPA and California envi-

The States' "theory of standing" appropriately "relie[d] … on the of Government action on

nomic injury is the

,[3] and dictate that a minimum percentage of total vehicles sold into California by certain manufacturers must be zero-emission, Cal. Air Res. Bd., [4];

78 Fed. Reg. 2,112, 2,114, 2,119 (Jan. 9, 2013). A reduction in demand for the fuels made or distributed by petitioners was not an unforeseen byproduct of California's programs. California confirmed as much when it requested that EPA grant the permission necessary for it to adopt these requirements—representing that

sense inferences in favor of a rigid and heightened evidentiary standard. It held that petitioners had not shown redressability because they did not produce evidence proving what vehicle manufacturers would do in the event EPA's waiver is vacated. In essence, the court held that petitioners should have solicited affidavits from these automakers attesting to their future business plans if EPA's waiver is vacated. Pet. App. 24a-25a; Pet. 20. Yet the D.C. Circuit identified no decision of this Court imposing such a heightened evidentiary burden—and there is none. Pet. 15-21. At the same time, the court noted EPA's statement that some, but not all, vehicle manufacturers had voluntarily agreed to comply with California's requirements after EPA's 2013 waiver was rescinded, Pet. App. 13a-14a, and it conceded the "possib[ility] that manufacturers could change their prices modifying their production cycles," which "may redress Petitioners' injuries." Pet. App. 24a (emphasis added). But the court of appeals ignored the common-sense inferences that follow from these facts.

Instead, the D.C. Circuit premised its standing decision in part on its belief that automobile manufacturers would not have sufficient time to alter their vehicle specifications even if EPA's waiver were vacated, because the waiver only applies up through Model Year 2025 vehicles. Pet. App. 22a-23a. But standing is determined at the time suit is filed,

, 528 U.S. 167, 191 (2000), not at the time of a court's decision years later. And here, petitioners filed their petition for review 60 days after EPA's reinstatement of its waiver in March 2022, Pet. 21—at which point EPA's waiver would be in effect for several years more. If the limited time remaining on EPA's waiver—two

A. Judicial review of agency action is vitally important. Well over two centuries ago, this Court proclaimed that "[t]he very essence of civil liberty … consists in the right of every individual to claim the protection of the laws." , 5 U.S. (1 Cranch) 137, 163 (1803). Congress later enshrined that principle in the APA's judicial review provision, which establishes a "'basic presumption' that anyone injured by agency action should have access to judicial review." , 144 S. Ct. at 2459 (quoting , 387 U.S. 136, 140 (1967)). This review serves both a corrective and prophylactic purpose: It enables courts to overturn unlawful agency action (and redress injuries those actions caused), and it serves as a deterrent against errant agency action—encouraging agencies to stay within their statutory authority, follow proper procedures, carefully review the facts, and employ sound judgment in promulgating and enforcing their many rules and regulations. , , 487 U.S. 879, 908 n.46 (1988) (judiciaes e(a)6le(a)-3()48(8(a)-3(g)7(a)-3(a)os(n)11( )78( )78(t)98( )7x)78(o)10(v)7(e

consists of "hundreds of federal agencies poking into every nook and cranny of daily life."
, 569 U.S. 290, 315 (2013) (Roberts, C.J., dissenting). To accomplish this, agencies "produce[] reams of regulations—so many that they dwarf the statutes enacted by Congress." , 588 U.S. 558, 629 (2019) (Gorsuch, J., concurring in the judgment) (quotations marks omitted). And they "add thousands more pages of regulations every year." .; National Archives, Federal Register & CFR Statistics (showing that the CFR was less than 10,000 pages in 1950, and now tops 188,000).[5] This enormous expansion of the administrative state poses "a significant threat to individual liberty." , 591 U.S.

on the Bureau of Reclamation's decisionmaking to conclude that vacating the Biological Opinion would redress the plaintiffs' injuries. . at 169-171 (citation omitted).

B. The D.C. Circuit's decision undermines this im-

parties may sometimes have powerful incentives to acquiesce in agency regulations that an unregulated entity wishes to challenge. Such regulations may be preferable to other likely alternatives (including potential legislative alternatives). Some regulations will be leavened by a valuable benefit or incentive (like federal funding). Other regulations will have impacts on competitors that may dissuade regulated parties from bringing suit, such as barriers to entry by competitors, effects on the marketability of a competitor's product or service, and other effects on incumbents' market advantages. , 144 S. Ct. at 2464-2465 (Kavanaugh, J., concurring) (collecting examples of lawsuits challenging agency action favorable to competitors). And in many cases, the simple act of expressing public opposition to a government regulation may impose heavy political or other costs on a company.

Under any of those circumstances, regulated entities may have limited or no capacity or appetite for challenging (or facilitating the challenge of) the agency action, especially with regard to harm suffered by unregulated entities. Nonetheless, the logic of the D.C. Circuit's ruling requires those plainly injured entities to obtain the active, overt support of companies—sometimes their own customers—who have chosen, often for good reason, not to assert a challenge themselves. That poses a substantial barrier to judicial review that is not compelled by the Constitution or this Court's precedents.

If not corrected, that barrier to judicial review will block a substantial number of challenges to agency action. Lawsuits by unregulated entities are not uncommon; to the contrary, unregulated parties "often

§ 7607(b) (Clean Air Act).[7] As a result, a greater proportion of the D.C. Circuit's docket consists of agency litigation than is the case for any other regional circuit court. U.S. Courts,

, tbl. B-1.[8] And because the D.C. Circuit "handles the vast majority of significant rulemaking appeals," it "has been the leader" among the circuits in developing rules and procedures governing those appeals, including rules and procedures used to determine standing. Antonin Scalia, Vermont Yankee:

CONCLUSION

The Court should grant the petition as to the first question presented.

Respectfully submitted.

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