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 OF *AMICI CURIAE* TEXAS ROYALTY COUNCIL AND AMERICAN ROYALTY COUNCIL IN SUPPORT OF PETITION FOR CERTIORARI

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IDENTITIES AND INTERESTS OF *AMICI CURIAE*[1]

Texas Royalty Council (TRC) is a grassroots entity dedicated to representing and advancing the interests of Texas royalty owners and energy professionals. The TRC was organized to monitor, advocate, and educate royalty owners, elected officials, and the energy industry on issues affecting royalty owners in Texas. TRC's primary focus is to promote the exploration and production of Texas oil, natural gas, and minerals while maximizing the return on the value of Texas' natural resources. In Texas, "It is well-settled that a royalty interest in an oil and gas lease is an interest in real property, held to have the same attributes as real property." *Kelly Oil Co. v. Svetlik*, 975 S.W.2d 762, 764 (Tex. App.--Corpus Christi 1998). So an injury to a person's royalty is an injury to that person's property.

American Royalty Council (ARC) represents royalty owners and energy professionals across the United States and is dedicated to advancing domestic oil and natural gas production by creating best business practices through dialogue, communication, and education. ARC encourages, promotes, and supports energy issues on a local, state, and national level through educational efforts on the grassroots

[1] Per Supreme Court Rule 37.6, the undersigned affirms that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. And as required by Rule 37.2, *amici*'s counsel notified counsel of record for all parties of *amici*'s intention to file this brief at least 10 days prior to the due date for the brief.

level in all 435 congressional districts on the importance of the oil and natural gas industry.

TRC and ARC share a common interest in this case. Each *amicus* is committed to protecting the well-being of royalty owners. But unelected regulators are trying to take the royalty interests away from those they represent. The regulators do not have authority to do that, and they are not being reasonable. In this case, the focus is on the regulators, the vehicle manufacturers, and the liquid-fuels providers. But the impact of the case goes *way* further.

The federal Environmental Protection Agency's preemption waiver, which lets California regulators impose their vehicle-emission standards on the rest of the country and lets those state-level regulators put an end to liquid-fuel vehicles in the United States, injures oil and gas royalty owners. The royalty owners give up their properties in return for royalty payments, but federal regulators at the EPA have decided that California regulators can just negate those expectations of property-based returns.

If a free market led to an "EV transition," then that might be okay. But this case shows unlawful and otherwise unreasonable regulator-meddling in markets. Instead of allowing a free market, the federal regulators (unelected, of course) have decided to let California regulators kill an entire industry and take away property rights. In reviewing that regulatory action, the lower court did not think about the families and other property owners that the regulators would hurt along the way. So ARC and TRC write separately to ask the Court to take this

case in hopes that the Court will help them *redress* their royalty owners' injuries.

The EPA's action not only affects fuel providers but further significantly impacts royalty owners across the country. For many of these individuals, royalties are their primary source of income, used to cover essential expenses like medicines, energy bills, and food. The majority of royalty owners are everyday Americans trying to make ends meet. By allowing California to effectively implement a nationwide EV mandate, the EPA's waiver threatens to severely diminish the value of these royalty interests, potentially leaving many families struggling financially. This Court should recognize the broad impact of the EPA's action and the importance of allowing affected parties to challenge it.

The court below said that people hurt by the EPA's waiver could not sue to redress their injuries, but that's wrong.

SUMMARY OF THE ARGUMENT

The lower court should have considered the merits of this case rather than invent a new "redressability" hurdle to avoid review. According to the lower court, fuel providers who (like the royalty owners represented by TRC and ARC) would be hurt by the EPA's preemption waiver and *de facto* adoption of an EV mandate, could not establish standing to sue because they did not submit affidavits from *third-party* automakers promising that an EV mandate would result in reduced manufacturing of liquid-fuel based vehicles. The fuel providers *did* provide record evidence of the harm sure to flow—*intended* to flow—from an EV mandate, which will also harm *amici*'s

royalty owners. But to avoid review, the lower court demanded more.

The lower court's newly invented redressability standard tackled an important question—what does a claimant have to do to get a court to review its claims?—in a way that conflicts with relevant decisions of this Court. When a claimant has provided record-evidence of how an agency action would cause the claimant injury, this Court has not further required third-party affidavits or other third-party record evidence corroborating that injury. And this Court has not required the claimant to show that a court could *fully* redress the claimed injury before opening the courthouse doors. The lower court's invention of those requirements conflicts with this Court's more lenient standards. *See* Rule 10(c).

And while the lower court's ruling barred the courthouse doors against the very claimants (fuel providers) that the EPA's regulatory action is intended to harm, it also goes further. For example, the whole point of an EV mandate is to end oil production and consumption. But *amici*'s royalty owners rely on oil production and consumption. They receive economic benefits—royalty payments—in return for letting others produce oil from their properties. A federal regulator's action to take away royalty owners' economic benefits injures them. Further, royalties are not mere economic interests; they are property interests. *See, e.g.*, *Kelly Oil Co.*, 975 S.W.2d at 764. A federal regulator's action to take away royalty owners' properties also injures them.

The whole point of the EPA's action in this case—waiving its preemption authority to create a

nationwide EV mandate—is to stop oil production and consumption in the United States. It is targeted directly at liquid-fuel providers, and it injures royalty owners like TRC's and ARC's royalty owners too. These injured groups should obviously have access to the federal courts to assess their claims that the EPA's action is unlawful or otherwise unreasonable, and it makes no sense that they should have to obtain affidavits explaining that automakers would produce less non-conventional vehicles or change their pricing in response to vacatur of the waiver. But this misapprehends the nature of petitioners' injuries and the relief they seek.

Petitioners are not asking the court to dictate automakers' business decisions. Rather, they are asking the court to remove a regulatory mandate that effectively compels automakers to produce and sell fewer liquid-fuel vehicles than they otherwise would. By vacating the EPA's unlawful waiver, the court would eliminate a substantial regulatory burden on the production and sale of liquid-fuel vehicles, restoring a more level playing field and allowing automakers to respond to consumer demand and market forces. The significant impact of the mandate and basic economics demonstrate that removing this burden would likely lead to increased production and sales of liquid-fuel vehicles, thus redressing the injuries to fuel providers and royalty owners.

Moreover, the underlying policy question at issue in this case—whether and how to electrify the Nation's vehicle fleet—is one of immense economic and political significance that should be decided by Congress, not administrative agencies. The EPA overstepped its statutory authority by effectively

delegating that major policy judgment to California through the waiver. And the court below insulated the EPA's action by inventing new reasons to lock the courthouse doors. The Court should grant certiorari to address whether and how the "major questions" doctrine applies to the EPA's regulatory action.

ARGUMENT

I. THE DECISION BELOW CONFLICTS WITH THE RELEVANT DECISIONS OF THIS COURT.

Sometimes, this Court takes cases because a lower court "decided an important question of federal law that . . . conflicts with relevant decisions of this Court." Rule 10(c). In this case, the lower court did exactly that, and review is warranted.

Under this Court's relevant decisions, "The irreducible constitutional minimum of standing" has three elements: (1) injury in fact, (2) causation, and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). With respect to the third element, redressability, this Court has not set a high bar; the general rule is that "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561. And a favorable ruling need not *fully* redress the alleged injury. *Massachusetts v. EPA*, 549 U.S. 497, 525–26 (2007).

In *Massachusetts v. EPA*, for example, the Court found standing based on the predictable effects of the EPA's decision to not regulate greenhouse gas emissions from motor vehicles. Even though (1) courts

could not *fully* redress the alleged climate-related injuries and (2) much of the remedy would ultimately turn on what other, third-party entities might do, the courts likely could still redress *some* of the claimed injuries; that was sufficient to find standing. *Id.*

The Court recognized that while regulating motor-vehicle emissions would not "reverse" climate change, "a reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere." *Id.* at 526. That was enough—the Court did not require the petitioners (States and local governments) to submit, for example, affidavits *from third-party automakers* detailing exactly how *they* would respond to EPA regulation for purposes of deciding whether the petitioners themselves would be injured.

True, the petitioners in *Massachusetts* sued per a specific Clean Air Act "procedural right." *Id.* at 517–18 (citing 42 U.S.C. § 7607(b)(1)). But the D.C. Circuit—that is, the lower court here—has already applied *Massachusetts* and this Court's other relevant decisions to a case very similar to this case, and it has shown that this Court's relevant decisions require allowing fuel providers to challenge EPA climate/fuel regulations even though the regulations facially target automakers rather than fuel providers.

In *Energy Future Coalition v. EPA*, 793 F.3d 141 (D.C. Cir. 2015), the D.C. Circuit held that ethanol producers—situated similarly to the fuel-provider petitioners here—had standing to challenge an EPA regulation that impeded the use of their product (E30) as a test fuel. *Id.* at 144–45. Writing for the court's panel, then-Judge Kavanaugh explained

that the fuel providers suffered a redressable injury because "EPA's test fuel regulation prohibits the use of E30 as a test fuel," which the court described as a "regulatory impediment" to the use of the fuel providers' product. *Id*. at 144.

But *wait*, said the EPA, "the test fuel regulation is technically directed ***at vehicle manufacturers***, not biofuel producers." *Id.* (emphasis added). According to the EPA, because the regulation facially targeted automakers instead of fuel providers, the fuel providers' alleged injuries were not redressable and they did not have standing.

The court rejected that constrained view of standing—as the lower court *should have* done here—and held that the fuel providers could challenge the E30 regulation. The fact that the regulation facially targeted automakers rather than fuel providers

> does not undermine petitioners' standing. The standing question . . . is straightforward: If the Government prohibits or impedes Company A from using Company B's product, does Company B have standing to sue? Suppose the FDA bans or makes it harder for soda manufacturers to use sugar. Does a sugar manufacturer have standing to sue? . . . ***Ordinarily the answer to those questions is yes.*** In such cases, both Company A and Company B are "an object of the action (or forgone action) at issue," so "there is ordinarily little question" that they have standing . . . . So it is here.

Id. at 144 (citations omitted, emphasis added). And specifically on redressability:

> [P]etitioners' injury is redressable. Invalidating the [EPA's regulatory] requirement would remove a regulatory hurdle to the use of E30 as a test fuel. That is enough to demonstrate redressability. . . . . The plaintiff "need not show that a favorable decision will relieve" his or her "every injury."
>
> Put simply, petitioners have standing to challenge the legality of the test fuel regulation.

Id. at 144–45 (quoting *Massachusetts*). In applying this Court's relevant decisions, the court did not require the fuel providers to submit affidavits *from automakers* saying that they would use E30. Instead, it enough that "invalidating the [EPA regulatory] requirement would remove a regulatory hurdle to the use of E30 as a test fuel." *Id.* at 145.[2]

Here, the fuel providers *did* provide record-evidence of the harm sure to flow—*intended* to flow—from an EV mandate. *See* Pet. 3–4 (petitioners introduced unrebutted declarations that the EV

[2] Similarly, in *Bennett v. Spear*, 520 U.S. 154 (1997), the Court held that a plaintiff could show standing by alleging that the "injury fairly can be traced to the challenged action" and that the injury is "likely [to] be redressed by a favorable decision." *Id.* at 167. In such a case, the "remov[al] [of] a regulatory hurdle" to the petitioners' desired action was sufficient for redressability. *Id.* at 169. The Court did not demand proof that third parties would act in a specific way if the regulatory barrier were removed.

mandate would reduce consumption of liquid fuel). The lower court recognized that, Pet.App.19a–20a, but demanded more.

The lower court's demand for more—here, additional affidavits from automakers that they would indeed make fewer EV-compliant vehicles if the waiver was vacated—conflicts with this Court's relevant decisions, which stand only for the proposition that an injury is redressable if a favorable court ruling would likely provide the claimant *some* relief. *E.g.*, *Massachusetts*, 549 U.S. at 525–26. Not only does it misunderstand the desired relief, but there was evidence (and it was self-evident) that by vacating the EPA's action—removing a "regulatory hurdle," *Energy Future Coalition*, 793 F.3d at 145—the lower court would have given the fuel providers (and royalty owners like those represented by TRC and ARC) some relief. That is all this Court requires to show "redressability," and the Court should review the lower court's conflicting decision. *See* Rule 10(c); *see also Massachusetts*, 549 U.S. at 525–26; *Bennett v. Spear*, 520 U.S. at 167–69.

Vacating the EPA's waiver would provide immediate relief to both fuel providers and royalty owners. It would remove the regulatory hurdle imposed by California's EV mandate, restoring demand for liquid fuels and preserving the value of royalty interests. This relief, even if partial, is sufficient to establish redressability under this Court's precedents. The lower court's demand for additional evidence from third parties goes beyond what this Court has required and would create an insurmountable barrier to judicial review in many cases involving agency action.

II. ROYALTY OWNERS WOULD SUFFER REDRESSABLE INJURIES FROM THE WAIVER AND "EV MANDATE."

If the unelected federal regulators at the EPA can stop the sale of liquid-fuel vehicles, then that would injure TRC's and ARC's royalty owners. By depressing demand for liquid fuels, the regulations reduce the value royalty owners' property interests in mineral rights and royalty agreements. In contrast, vacating the EPA's action would restore demand and royalty revenues compared to a world in which California's "EV mandate" is the law of the land.

Courts have recognized that royalty owners may be within the "zone of interests" protected by federal statutes regulating the energy industry, even if the statutes do not directly regulate royalty owners themselves. *See, e.g.*, *Panhandle Producers & Royalty Owners Ass'n v. Econ. Regul. Admin.*, 822 F.2d 1105, 1109 (D.C. Cir. 1987) (finding that royalty owners were within the zone of interests protected by the Natural Gas Policy Act, because royalty owners had a direct financial stake in the regulated price of natural gas sufficient "to establish the 'concrete, perceptible harm of a real, non-speculative nature'"); *cf. Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 225 (2012) (the prudential-standing threshold "is not meant to be especially demanding").

The effect of the lower court's ruling on entities like royalty owners amplifies the effect of the court's decision on the fuel providers. How are royalty owners—often families and individuals dispersed throughout the country—going to obtain affidavits

from international automakers who might not want anything to do with a challenge to a given federal regulatory action? What if the automakers agree with the royalty owners but do not want to get crosswise with the same regulators that can investigate and impose penalties on the automakers? As a matter of practice, the lower court would erect a barrier to the courthouse that the royalty owners could never overcome, no matter how great their injuries nor how obviously the court could redress those injuries.

III. THIRD-PARTY AFFIDAVITS ARE NOT NECESSARY FOR STANDING.

Any time the effects of a challenged regulation will flow through the conduct of regulated third parties—a feature common to many agency actions—the decision below would demand affidavits *from those third parties* proving exactly how those third parties would respond to the relief sought. But courts have long entertained challenges by plaintiffs whose "injur[ies] arise[] from the government's allegedly unlawful regulation (or lack of regulation) of someone else." *Lujan*, 504 U.S. at 562. The courts did not require third-party affidavits to demonstrate standing.

For example, in *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010), conventional alfalfa farmers had standing to challenge an agency decision to deregulate genetically engineered alfalfa, which threatened to contaminate their crops. *Id.* at 154–55. Similarly, in *Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479 (1998), banks could challenge agency action that exposed them to increased competition from credit unions. *Id.* at 488.

In neither case were the petitioners required to provide third-party affidavits from the directly regulated parties.

The lower court would dismiss those cases for lack of standing. In *Monsanto*, for instance, the conventional farmers would have needed affidavits from competitor farmers specifying the extent to which the deregulated alfalfa growers would have contaminated their fields. In *Nat'l Credit Union Admin.*, the banks would have needed affidavits proving how many new members the credit unions would have poached.

If affirmed, the lower court's novel hurdle to standing would prevent injured entities from seeking judicial review of agency action. That would impair the courts' critical function of policing the bounds of agency authority and ensuring executive fidelity to the law. *See City of Arlington v. F.C.C.*, 569 U.S. 290, 327 (2013) (Roberts, C.J., dissenting) ("the obligation of the Judiciary" is to ensure that the other branches confine themselves to their "proper role[s]"). This Court should intervene to ensure that the courthouse doors are still open to those harmed by unlawful exercises of agency power.

IV. THE WAIVER AND "EV MANDATE" IMPLICATE PROPERTY INTERESTS.

For TRC, ARC, and the royalty owners they represent, the effects of the EPA's waiver are not merely economic—they implicate fundamental property rights. Mineral rights, including the right to royalty payments, are generally property interests protected by the Takings Clause. *See Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393 (1922); *see also Munn*

v. Illinois, 94 U.S. 113 (1876). By letting California regulators kill demand for domestically produced oil, the EPA's waiver directly affects the values and utilities of these rights.

This Court has long held that government actions that significantly diminish property values or impair the use of property can violate the Fifth Amendment. A "regulation that deprives land of all economically beneficial use" is a *per se* taking requiring compensation. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1027 (1992). Even where a regulation does not affect a complete deprivation, it may still go "too far" in burdening property rights and violating the Takings Clause. *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

By green-lighting California's "EV mandate," the federal regulators at the EPA are letting California regulators impose severe burdens *nationwide* on royalty owners' abilities to enjoy and use their property interests. As demand for oil and gas plummets in the Nation's largest vehicle market, the value and productivity of royalties across the Country would necessarily be impaired. While some royalty owners may still be able to extract *some* value from their properties, the "EV mandate" imposed by the waiver significantly interferes with their investment-backed expectations. *See Penn Central*, 438 U.S. at 124 (the extent of interference with investment-backed expectations is a factor in takings analysis).

The EPA's waiver further enables California to impose these burdens on royalty owners without any political accountability. If *California's* "EV mandate" were enacted through federal legislation, then

property owners would have the opportunity to persuade their representatives to vote against the law. But by allowing California to impose the mandates by regulatory fiat, the waiver short-circuits the political process that normally provides some check on the potential for regulatory abuse. *See Murr v. Wisconsin*, 582 U.S. 383, 398 (2017) ("States do not have the unfettered authority to 'shape and define property rights and reasonable investment-backed expectations,' leaving landowners without recourse against unreasonable regulations.") (citation omitted). Royalty owners would suffer from the undemocratic process.

Of course, States keep substantial authority to regulate private property. *See Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 488 (1987). But California's regulations in this case are not run-of-the-mill land-use restrictions; they are a targeted effort to phase out a particular type of property interest. While a typical zoning law might limit the use of property in certain ways, it cannot aim to completely devalue a specific class of property rights. The "EV mandate," by contrast, specifically intends to kill the primary economic use of mineral rights and royalties—using properties to provide oil that fuels this Country. It goes far beyond the "restrictions that background principles of the State's law of property and nuisance already place upon land ownership." *Lucas*, 505 U.S. at 1029.

The Court has previously recognized the need for heightened scrutiny under the Takings Clause when regulations uniquely burden a particular property interest rather than adjusting "the benefits and burdens of economic life to promote the common

good." *Penn Central*, 438 U.S. at 124. In *E. Enters. v. Apfel*, 524 U.S. 498 (1998), for example, a plurality of the Court applied takings scrutiny to a retroactive liability scheme that impaired companies' contract rights. *Id.* at 528–29. The Court explained that the law operated in an "unusually disproportionate manner" by imposing severe burdens on a particular class of property owners. *Id.* at 537. Similarly, in *Hodel v. Irving*, 481 U.S. 704 (1987), the Court invalidated a law that abrogated Native Americans' rights to pass on small fractional land interests, explaining that the right to transfer property is a core property right. *Id.* at 716–17.

Like the laws in *E. Enterprises* and *Hodel*, California's "EV mandate" would uniquely burden a specific property interest—royalties—to the point of potentially extinguishing their values. The ability to extract and sell oil and gas is the core economic benefit of property ownership.

A regulatory scheme aimed at erasing that value is a "regulatory taking" if ever there was one, and at a minimum raises serious constitutional concerns. *Armstrong v. United States*, 364 U.S. 40, 49 (1960) (the Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.").

V. THE WAIVER AND "EV MANDATE" RAISE MAJOR QUESTIONS.

Although the lower court did not reach the merits, it is worth pointing out that this case implicates the major-questions doctrine. Courts

should not defer reflexively to agency statutory interpretations on questions of vast "economic and political significance" absent clear congressional authorization. *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). By letting California unilaterally destroy demand for oil, the EPA has made a policy judgment of immense significance.

The "EV mandate" would be enormously consequential in economic and political terms. It would fundamentally transform the Nation's transportation sector by phasing out the internal-combustion engines that have powered motor vehicles for over a century. And it is a direct assault on the oil and gas industry, threatening the livelihoods of thousands of businesses and workers across the country. With nearly 15 million vehicles sold annually in California and the states that follow California's standards, companies throughout the liquid-fuel supply chain—from the wellhead to the gas pump—will feel severe economic pain. *See* California New Car Dealers Ass'n, Cal. New Vehicle Registrations Predicted to Exceed 1.9 Million Units in 2022 (Feb. 2022), https://www.cncda.org/wp-content/uploads/CA-Auto-Outlook-4Q-2021.pdf. The "EV mandate" would also profoundly affect consumers, increasing vehicle prices and limiting choice for millions of Americans who prefer liquid-fuel-powered cars and trucks.

But the lower court's merits-avoidance approach closes the courthouse doors to any "major questions" challenge. Why do these few unelected federal and state actors get to impose a nationwide policy change? The lower court would have no answer for that other than, "Because the challengers provided

evidence of their injuries but we want even more evidence from third parties." That is just an untenable approach to nationwide legislation and policy.

"[T]he Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people's representatives." *West Virginia*, 597 U.S. at 753 (Gorsuch, J. concurring). Letting California dictate national fuel-economy policy and run roughshod over property rights would enable a dramatic "expansion of [] regulatory authority [based on] vague language" that is inconsistent with the separation of powers. *Id.* at 700.

Reasonable minds might differ as to the ultimate merits of the EPA's waiver. But holding that the petitioners and other injured entities cannot even bring their challenges—despite the weighty issues involved, the cumulative interests at stake, and the evidence and self-evident natures of those injuries—would turn standing doctrine on its head.

The Court should take this case and reaffirm that injured plaintiffs can show redressability without proving definitively and with evidentiary certainty how all relevant *third parties* would respond to a favorable ruling. By letting the lower court's decision stand without review, the Court would slam the courthouse doors to those injured by government overreach.

VI. THE D.C. CIRCUIT ERRED BY ADDRESSING MOOTNESS DISGUISED AS REDRESSABILITY.

Finally, the D.C. Circuit's decision conflated mootness and redressability in a manner that allowed the court to avoid addressing exceptions to mootness. The court held that the short time remaining on the challenged waiver meant that vacatur would not redress the petitioners' injuries. But this reasoning improperly disguised a mootness analysis as a redressability inquiry.

Had the court directly addressed mootness, it would have been compelled to consider well-established exceptions to mootness, such as the capable-of-repetition doctrine. *See Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016). This case falls squarely within that exception.

By dodging the mootness question, the D.C. Circuit has enabled the EPA to evade judicial review of its waiver authority for years to come. Even if a new administration were to change course, the underlying legal question could remain unresolved for the foreseeable future. All the while, regulated entities and royalty owners would continue to suffer injury from EPA overreach without any opportunity for redress in court.

This Court should intervene to correct the lower court's error and ensure that the judiciary remains available to check unlawful agency action. Regulated parties should not be denied their day in court by a decision that blends redressability and mootness to preclude consideration of controlling legal

principles. The Court should grant certiorari to address this important issue and preserve the vital role of the courts in our constitutional system.

CONCLUSION

For the foregoing reasons, TRC and ARC respectfully ask this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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