No. 24-982

IN THE

Supreme Court of the United States

EXXONMOBIL CORPORATION, ET AL.,
Petitioners,

v.

ENVIRONMENT TEXAS CITIZEN LOBBY, INC., ET AL.,
Respondents.

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

BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN CHEMISTRY COUNCIL, AMERICAN FARM BUREAU FEDERATION, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL MINING ASSOCIATION, TEXAS CHEMICAL COUNCIL, AND TEXAS OIL & GAS ASSOCIATION SUPPORTING PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES – Continued

STATUTES

REGULATIONS

TABLE OF AUTHORITIES – Continued

ARTICLES

TABLE OF AUTHORITIES – Continued

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *Amici*'s counsel Baker Botts L.L.P. served as counsel for ExxonMobil in the early stages of the district-court proceedings. On January 12, 2012, the district court granted Baker Botts' motion to withdraw as counsel for ExxonMobil. Baker Botts has not

represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Chemistry Council ("ACC") represents the leading companies engaged in the multibillion-dollar business of chemistry. ACC members apply the science of chemistry to make innovative products, technologies and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health, safety, and security performance through Responsible Care ®; common sense advocacy addressing major public policy issues; and health and environmental research and product testing. ACC members and chemistry companies are among the largest investors in research and development, and are advancing products, processes and technologies to address climate change, enhance air and water quality, and progress toward a more sustainable, circular economy.

The American Farm Bureau Federation ("AFBF") was formed in 1919 and is the largest nonprofit general farm organization in the United States. Representing about six million member families in all fifty states and Puerto Rico, AFBF's members grow and raise every type of agricultural crop and commodity produced in the United States. Its mission is to protect, promote, and represent the business, economic, social, and educational

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represented ExxonMobil in this matter in the 13 years since that withdrawal. All parties were timely notified of the intent to file this brief.

interests of American farmers and ranchers. To that end, AFBF regularly participates in litigation, including as *amicus curiae* in this and other courts.

The American Fuel & Petrochemical Manufacturers ("AFPM") is a national trade association whose members comprise most U.S. refining and petrochemical manufacturing capacity. AFPM is the leading trade association representing the makers of the fuels that keep us moving, the manufacturers of the petrochemicals that are the essential building blocks for modern life, and the midstream companies that get our feedstocks and products where they need to go.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs nearly 13 million men and women, contributes $2.93 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of private-sector research and development in the Nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The National Mining Association ("NMA"), based in Washington, DC, is a national trade association that serves as the voice of the mining industry. The NMA represents over 250 members involved in every aspect of mining, from producers and equipment manufacturers to service providers. The NMA's members produce most of America's coal, metals, and industrial and agricultural minerals. America's mining industry supplies the essential materials necessary for nearly every sector of our economy—from technology and healthcare to energy, transportation, infrastructure, and national security—all

delivered under world-leading environmental, safety, and labor standards. The NMA works to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security, and economic security. A core mission of the NMA is working with Congress and regulators to advocate for public policies that will help America fully and responsibly utilize its vast natural resources. The NMA also has a long history of representing the mining industry in front of the judiciary.

The Texas Chemical Council ("TCC") is a statewide trade association of chemical manufacturers in Texas. TCC represents approximately 70 member companies who own and operate over 200 manufacturing and research facilities across the state. The business of chemistry is a major economic engine in Texas and has manufactured vital products that sustain our quality of life in Texas for nearly 100 years. The business of chemistry provides employment for approximately 500,000 Texans. The products of chemistry are the state's top non-energy export with over $50 billion in state exports annually to customers around the world.

The Texas Oil & Gas Association ("TXOGA") is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces approximately 90 percent of Texas' crude oil and natural gas and operates the vast majority of the state's refineries and pipelines. In fiscal year 2024, the Texas oil and natural gas industry supported over 490,000 direct jobs and paid $27.3 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders.

Like Petitioners, many of *amici*'s members are regulated under the Clean Air Act ("CAA") and the Clean Water Act ("CWA") by the Environmental Protection Agency ("EPA") and its state counterparts—including the Texas Commission on Environmental Quality ("TCEQ"). As a result, these members are subject to self-reporting requirements under state and federal law of the kind that generated the reports on which the citizen-plaintiffs here relied to show violations of the CAA. The Fifth Circuit's conception of standing, along with similarly relaxed rules from other circuits, would vastly expand the ability of plaintiffs to bring citizen suits beyond the bounds of the Constitution. Its irrebuttable, per se rules eliminate the need for plaintiffs to prove that they were injured by each violation, providing a roadmap for a flood of citizen-suit litigation by unharmed plaintiffs against a wide range of defendants. State and federal regulators, not private plaintiffs, are charged with the primary enforcement of environmental statutes. *Amici* seek to preserve constitutional limits on the role citizen suits play in enforcing environmental laws.

SUMMARY OF ARGUMENT

Amici agree with petitioners that certiorari is warranted to resolve the important questions presented and address confusion in the lower courts regarding environmental citizen-suit standing requirements. This brief elaborates on the legal and practical issues created by the Fifth Circuit's relaxed standing rules in environmental citizen-suit actions.

Under Congress's statutory design, state regulatory agencies and the EPA play the primary role in implementing and enforcing the CAA and the CWA. Duty-bound to act in the public interest, these regulatory agencies enjoy broad-ranging powers to enforce these enactments' requirements, including the power to seek penalties and

injunctive relief. Those penalties can be substantial; the CAA, for example, carries a maximum penalty of $121,275 per violation. See 40 C.F.R. § 19.4. The CAA and CWA also authorize citizens to bring civil actions in federal court to seek redress for violations of those statutes in certain circumstances. 42 U.S.C. § 7604; 33 U.S.C. § 1365. Citizen suits, however, play a limited and interstitial role in enforcing these statutes—a role that must supplement and not supplant the primary role of regulatory agencies.

Article III of the Constitution constrains the range of claims that a citizen-plaintiff may assert, even where the claim is authorized by statute. Article III restricts federal courts to adjudicating cases or controversies between parties. To that end, courts may decide only claims for which a plaintiff has suffered a concrete injury, fairly traceable to the defendant's wrongdoing, that can be redressed by judicial action. Moreover, a plaintiff who has standing for one claim may not leverage that claim to litigate myriad *other* claims for legal violations that caused that individual no concrete injury.

This case exemplifies a citizen suit that transgressed these constitutional limits. Filing a complaint that appended the self-reports that ExxonMobil submitted to the TCEQ, plaintiffs sued for thousands of violations across an almost eight-year period, seeking hundreds of millions of dollars in civil penalties. Disregarding the fundamental Article III requirement that plaintiffs prove injuries traceable to each violation, the Fifth Circuit crafted a standing test that irrebuttably presumes traceable injuries for certain types of violations. That approach, along with similarly loose approaches adopted by other circuits, contradicts this Court's precedent and would transform citizen suits from civil actions, limited to concrete controversies, into regulatory vehicles for dictating environmental policy. Allowing the Fifth Circuit's fractured en banc ruling to stand would be particularly troublesome because

the Fifth Circuit is home to a disproportionate number of refining and chemical facilities that, under the decision below, are sitting targets for citizen-suit actions threatening massive penalties, even without any effort to trace alleged harms to any legal violation.

Amici urge this Court to repudiate the Fifth Circuit's per se standing test, along with similar tests applied by other courts of appeals, lest this case become a national roadmap for interest groups using citizen suits to create a de facto regime of private-regulator enforcement. *Amici* and their members work hard to comply with a complex web of regulatory provisions under the Nation's environmental laws. Members of the state and federal executive branches enforce those laws daily. Citizen suits should not be allowed to supplant this ongoing regulatory process by substituting private persons and federal judges for the duly assigned law enforcers.

ARGUMENT

I. THE FIFTH CIRCUIT DEPARTED FROM ARTICLE III'S LIMITS ON ENVIRONMENTAL CITIZEN SUITS

In the decision below, and in other decisions, the Fifth Circuit—like other circuits—has allowed citizen suits to grow far beyond their intended, supplementary role into sprawling and burdensome regulatory-enforcement programs. Purporting to adjudicate thousands of violations of disparate environmental requirements over nearly a decade, these decisions now resemble 1970s-era institutional-reform litigation more than ordinary civil practice. Allowing individual citizens and federal courts to displace the Executive Branch's enforcement functions creates serious tension with Article II. It also flatly violates Article III when citizen-plaintiffs sue over numerous violations without establishing that each violation caused them harm traceable to the defendant and redressable by judicial relief. This Court should grant certiorari to instruct lower

courts that bedrock standing principles apply to citizen suits just as rigorously as to any other case in federal court.

A. Citizen suits were designed to supplement, not supplant, agency enforcement of environmental statutes

Under the CAA and other environmental statutes, State and federal executive-branch authorities enjoy broad, primary power to enforce the law. *Ohio* v. *EPA*, 603 U.S. 279, 283 (2024). The CAA also authorizes any person to commence a civil action for repeated or ongoing violations of an "emission standard or limitation," including a permit "term" or "condition." 42 U.S.C. § 7604(a)(1), (f); see also 33 U.S.C. § 1365(a)(1) (similar CWA provision). Given this statutory context, citizen suits serve a defined and specific purpose. They are "meant to supplement rather than to supplant governmental action." *Stringer* v. *Town of Jonesboro*, 986 F.3d 502, 506 (5th Cir. 2021). Thus, citizen suits play an "interstitial" role in enforcing environmental statutes, and this Court has warned against applications of the CWA citizen-suit provision that would "potentially intru[de]" on the "discretion of state [and federal] enforcement authorities." *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Found., Inc.*, 484 U.S. 49, 61 (1987).

Consistent with these principles, state regulators and the EPA are the authorities empowered to determine enforcement priorities and balance the costs and benefits that relate to the public interest. State and federal regulators have expertise continuously supervising enormous facilities like Petitioners' Baytown plant. Citizen suits, by contrast, adjudicate and redress concrete injuries to individual plaintiffs. This dual structure affords regulated businesses a unified approach to the interpretation and enforcement of environmental statutes. And this framework

is critical to the regulated community because compliance with environmental laws can require years of planning and millions of dollars in capital expenditures, even for a single project.

As this Court has recognized, "the choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law falls within the discretion of the Executive Branch, not within the purview of private plaintiffs (and their attorneys)." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 429 (2021). Private plaintiffs "are not accountable to the people and are not charged with pursuing the public interest in enforcing a defendant's general compliance with regulatory law." *Ibid.* Consequently, courts should decline private litigants' invitation to exercise "continuing superintendence" over a company's or industry's regulatory compliance. *Friends of the Earth, Inc.* v. *Laidlaw Env't Servs.*, 528 U.S. 167, 193 (2000).

B. Citizen-suit plaintiffs must demonstrate Article III standing for each claim

Article III standing doctrine reinforces the limited role of citizen suits. Acting as sovereigns, regulatory agencies may bring enforcement actions to pursue statutory violations without the need to prove individualized injuries or to show that judicial relief would redress those injuries. See 42 U.S.C. § 7413 (granting EPA the power to bring civil actions to enforce the CAA); 33 U.S.C. § 1319 (similar CWA provision). But standing doctrine imposes strict constraints on the scope of citizen suits in federal court. Article III helps ensure that "[f]ederal courts do not exercise general legal oversight of the Legislative and Executive Branches, or of private entities." *TransUnion*, 594 U.S. at 423-424.

"Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff

who would not otherwise have standing." *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 339 (2016); see *TransUnion*, 594 U.S. at 425. Article III permits a plaintiff to litigate only those statutory violations that she has standing to challenge.

To establish standing, a citizen-suit plaintiff must demonstrate the "irreducible constitutional minimum" of (1) a concrete and particularized injury-in-fact that (2) is fairly traceable to the violation and (3) will be redressed by a favorable decision. *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 560-561 (1992). Even statutory violations that directly relate to the plaintiff are insufficient, unless the plaintiff also shows that the violation concretely injured her. For example, in *TransUnion* many plaintiffs lacked standing even though the defendant had allegedly violated the Fair Credit Reporting Act by placing an inaccurate alert on each plaintiff's credit report. 594 U.S. at 417. This Court concluded that only plaintiffs whose credit files were provided to third parties had suffered a concrete harm and therefore had standing. *Id.* at 431-433. Thus, potential injury or even an increased likelihood of injury is not enough for standing to sue for monetary relief. See *id.* at 436-439.

Citizen-suit plaintiffs must also establish that their injury is "fairly * * * trace[able] to the challenged action of the defendant." *Lujan*, 504 U.S. at 560-561. An injured plaintiff provides only one side of the case or controversy. The other side is fulfilled by a defendant that allegedly caused the claimed injury.

Moreover, "standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek." *TransUnion*, 594 U.S. at 431. The same requirements apply no matter how many violations are alleged. See *id.* at 417 (holding, in case where class of 8,185 individuals sued

TransUnion, that only 1,853 class members had standing to assert a reasonable-procedures claim). Traceability works in conjunction with the bar on standing in gross to prevent a plaintiff who has an injury traceable to *one* violation from suing for *another* violation for which he did not suffer a traceable injury.

C. The Fifth Circuit's per se rules are insufficient to ensure that citizen-suit plaintiffs have standing

Amici agree with Petitioners that normal standing requirements—including the requirement of showing that the defendant's violation likely harmed a plaintiff—must apply with equal force in environmental citizen-suit cases. The Fifth Circuit's per se rules for establishing standing fall short of Article III's requirements in multiple ways and warrant review by this Court.

1. Even though the Fifth Circuit recognized that plaintiffs must prove standing for each violation, in *ETCL II and III* the court of appeals adopted a test and created a set of per se rules that largely nullify Article III's injury and traceability requirements. The traceability standard set forth in those opinions was applied by the district court, whose judgment was affirmed by the en banc Fifth Circuit. Pet. 15.

In *ETCL II*, the Fifth Circuit correctly recognized that plaintiffs alleged a large number and variety of violations rather than "the same injury resulting from a series of similar discharges," as was the case in *Laidlaw.* Pet. App. 300a. Moreover, unlike in prior cases, there is "doubt [in this case] that the pollutant emitted could cause the alleged injury." *Ibid.* But despite these cautionary signs that counseled a rigorous application of Article III, the court nonetheless adopted a standing test from *Sierra Club, Lone Star Chapter* v. *Cedar Point Oil Co.*, 73 F.3d 546 (5th Cir. 1996), that conflicts with the requirement

that plaintiffs prove traceable injuries for each actionable violation.

Applying its interpretation of *Cedar Point*, the Fifth Circuit reasoned that plaintiffs need only make two showings to demonstrate traceable injuries: (1) "each violation in support of their claims 'causes or contributes to *the kinds* of injuries' they allege," and (2) "the existence of a 'specific geographic or other causative nexus' such that the violation *could have* affected their members." Pet. App. 307a (emphases added); see *id.* at 265a (applying this test in *ETCL III*).

2. The per se rules the Fifth Circuit applied are incompatible with the principle that a plaintiff must establish a traceable, concrete injury for each claim on which he seeks relief. As Judge Jones correctly noted in her en banc dissent, traceability requires proof that the defendant's conduct is a cause-in-fact of the plaintiff's injury. *Id.* at 103a. The Fifth Circuit's rule, however, provides that a regulatory violation will *automatically* satisfy the injury prong of *Cedar Point* if it "(1) created flaring, smoke, or haze; (2) released pollutants with chemical odors; or (3) released pollutants that cause respiratory or allergy-like symptoms." *Id.* at 307a. The court of appeals further instructed the district court to find the geographic-nexus prong of the test *automatically* met if the emission "violated a nonzero emissions standard" or "had to be reported under Texas regulations." *Id.* at 311a. The Fifth Circuit allowed factfinding by the district court regarding traceable injuries only as to emissions that violated a zero-emissions standard. *Ibid.* Only for that limited class of emissions were plaintiffs required to prove ExxonMobil's emissions reached the areas where plaintiffs' members live and recreate.

Put simply, the Fifth Circuit's rules assume that because plaintiffs experienced *some* traceable injuries

during the relevant period, a traceable injury must *also* have arisen each time other similar specified violations occurred. These judicially constructed assumptions "eliminate[] traceability altogether," *id.* at 320a (Oldham, J., concurring in part and dissenting in part); see *id.* at 140a-141a (Jones, J., dissenting), as they dispense with the need to prove that a defendant's conduct is a cause-in-fact of a plaintiff's injury.

As this Court explained, "[a] plaintiff who has been subject to injurious conduct of one kind [does not] possess by virtue of that injury the necessary stake in litigating conduct of another kind, *although similar*, to which he has not been subject." *Blum* v. *Yaretsky*, 457 U.S. 991, 999 (1982) (emphasis added); see *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 335, 352 (2006) (rejecting the argument that standing to assert one claim also confers standing to assert other claims that "derive from a common nucleus of operative fact"). Nor can a court grant standing to plaintiffs based on speculation that *someone* must have been injured by the bulk of defendants' violations. *Blum*, 457 U.S. at 999. Rather, "the judicial power conferred by Art. III may not be exercised unless *the plaintiff* shows 'that *he personally* has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.'" *Ibid.* (emphases added).

The Fifth Circuit's test replaces the plaintiff's evidentiary burden with an irrebuttable judicial presumption that broadly similar violations will necessarily lead to further traceable injuries. Under that approach, plaintiffs can automatically establish standing to litigate violations from which they may have suffered no injury. And that violates Article III, which "grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions." *TransUnion*, 594 U.S. at 427.

3. A few examples suffice to illustrate why the Fifth Circuit's test violates Article III's requirement that at least one of plaintiffs' members must have suffered a concrete injury traceable to each violation.

First, take Judge Oldham's hypothetical of a plaintiff with asthma who lived in Baytown but was away during three emission events that (1) could have reached into Baytown, (2) were of reportable quantities or exceeded non-zero emissions limits, or (3) could have caused or contributed to flaring, smoke, or haze. Pet. App. 326a; see also *TransUnion*, 594 U.S. at 427-428 (providing a similar example). This plaintiff plainly lacks Article III standing as to those violations. Yet this scenario satisfies both the injury and geographic-nexus prongs of the Fifth Circuit's test.

Second, the Fifth Circuit provided a scenario in which there was "obvious[ly]" no Article III standing. Pet. App. 299a. If a citizen moved from Florida to Baytown in 2005, the court acknowledged he would not have standing to sue for violations that occurred in 2004. *Ibid.* Yet the Fifth Circuit's test contains no such limiting principle. The test contains a per se geographic-nexus component, but it contains no temporal requirements.

Moreover, the violations for which plaintiffs sued occurred between October 2005 and September 2013. *Id.* at 258a. Yet not all plaintiffs lived in Baytown during this entire period, and plaintiffs suffered different injuries from one another. *Id.* at 302a-303a. Nonetheless, the Fifth Circuit's per se rules irrebuttably presume that some plaintiff was in Baytown and suffering *all* the specified injuries throughout the entire period, even when this is plainly counterfactual. For instance, the only two plaintiffs who testified to suffering injuries after September 2012 did not even live in Baytown, and one of those members stopped visiting Baytown regularly after March 2013.

Id. at 491a-496a. By irrebuttably presuming that all specified emissions gave rise to traceable injuries, the Fifth Circuit effectively assumed, without any evidentiary basis, that at least one of those two members must have been visiting Baytown near the facility during the times of *all* the relevant alleged violations in late 2012 and 2013. This goes beyond even conjecture.

4. Article III requires still more than a plaintiff who is temporally present and geographically close enough to potentially experience a violation; the plaintiff must show that he was actually injured by the violation. The Fifth Circuit's per se rules, however, presume injury for certain categories of violations from the mere fact of proximity. The court stated, for example, that plaintiffs could "undoubtedly see" flares from their homes and other areas outside the Baytown complex and reasoned that plaintiffs' testimony that they saw flares on one or more occasions was "evidence * * * enough" to support standing for all flaring violations. *Id.* at 310a. But even assuming merely seeing a flare constitutes an injury-in-fact, no *evidence* supports the inference that seeing one flare equals seeing all flares, and there is good reason to doubt it. Weather conditions such as clouds, fog, or rain could obscure the flaring. Additionally, plaintiffs would need to be in view of the portion of the "massive" facility, *id.* at 292a, from which the flare emanated. Judicial assumptions cannot substitute for evidence of injury.

Similarly, the Fifth Circuit's test irrebuttably assumes without evidence that every emission of a reportable quantity or in violation of a non-zero limit would have reached at least one of plaintiffs' members in an amount sufficient to cause an injury. Once again, no evidence explains why this would be so, and there is reason for doubt. For one

thing, air emissions are affected by wind.[2] If the wind were blowing away from a member's location on given days, emissions may not reach the member in sufficient quantities to cause chemical odors or allergy symptoms. In fact, one of plaintiffs' members testified that "when the wind was blowing towards the Complex away from him during flaring events, he did not smell the odors." Pet. App. 350a. Plaintiffs must present evidence to establish *each* violation for which they can reasonably trace an injury. There is no basis for lessening plaintiffs' standing burden in citizen suits, not least because plaintiffs control the number of violations alleged in their complaint.

TransUnion strongly supports this conclusion. While this Court acknowledged the class members' "serious argument" that many of their credit reports were likely sent to third parties outside of the period covered by a relevant stipulation, it held that plaintiffs "had the burden to prove at trial that their reports were *actually sent* to third-party businesses." 594 U.S. at 439 (emphasis added). Plaintiffs' argument about probabilities simply did not "demonstrate that the reports of any *particular* number of the 6,332 class members were sent to third-party businesses." *Ibid.* (emphasis added). Likewise, the Fifth Circuit's test amounts to relying on "inferences" that are "too weak to demonstrate" injury-in-fact, traceability, and redressability for any *particular* number of alleged violations. *Ibid.* By substituting per se presumptions for specific proof tied to each alleged violation, the Fifth Circuit undermined Article III.

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[2] See *Wisconsin* v. *EPA*, 938 F.3d 303, 309 (D.C. Cir. 2019) ("Air pollution, once emitted, drifts with the wind * * * .")).

D. Per se standing rules convert citizen suits from discrete cases and controversies into sprawling regulatory-enforcement actions

1. By adjudicating alleged legal violations in citizen suits without evidence that such violations satisfy Article III, the Fifth Circuit and likeminded courts have improperly converted such suits to vehicles for broad-scale regulatory enforcement, unconstrained by the separation of powers. Without a concrete, traceable injury, plaintiffs' abstract interest in environmental enforcement does not differ from that of the public at large. Such abstract interests in ensuring legal compliance must be vindicated by the government, not private citizens. As this Court affirmed, "[a]n uninjured plaintiff who [brings a citizen suit] is, by definition, not seeking to remedy any harm to herself but instead is merely seeking to ensure a defendant's 'compliance with regulatory law' * * *. Those are not grounds for Article III standing." *TransUnion*, 594 U.S. at 427-428 (internal citations omitted). The Fifth Circuit's failure to apply this constitutional filter transformed what should have been a relatively narrow case into a wholesale relitigation of regulators' enforcement decisions concerning events at a large industrial complex over almost eight years.

Unless plaintiffs are required to prove that a defendant's conduct was a cause-in-fact of a concrete injury to establish standing, the standing-in-gross strategy pursued by the plaintiffs here will serve as a handbook for future citizen-suit plaintiffs unhappy with their states' regulatory-enforcement decisions. Such a result effectively converts the federal courts into "virtually continuing monitors of the wisdom and soundness of Executive action," a role this Court has always rejected. *Lujan*, 504 U.S. at 577. "A regime where Congress could freely authorize *unharmed* plaintiffs to sue defendants who violate federal law not only would violate Article III but also would

infringe on the Executive Branch's Article II authority." *TransUnion*, 594 U.S. at 429. Under the Fifth Circuit's approach, the only limits on a citizen suit's reach are the statute of limitations and the number of alleged violations plaintiffs can identify that fall into the Fifth Circuit's per se rules.

Worse still, confusion from relaxed standing rules in environmental citizen suits has expanded to other circuits. The problem began with the Third Circuit's decision in *Public Interest Research Group of New Jersey, Inc.* v. *Powell Duffryn Terminals Inc.*, 913 F.2d 64 (3d Cir. 1990), which introduced a relaxed traceability framework in CWA cases. *Id.* at 72. The Fifth Circuit adopted that framework in *Cedar Point*, and other circuits have followed suit. Pet. 21-23. In the weeks since the petition was filed, the First Circuit held for the first time that "in lieu of requiring a conclusive link" between a plaintiff's injury and a defendant's unlawful conduct, "a showing of geographic proximity can satisfy traceability" in CAA cases. *Conservation Law Found., Inc.* v. *Acad. Express, LLC*, 129 F.4th 78, 91 (1st Cir. 2025). This Court's review is necessary to prevent yet more courts from embracing the Fifth Circuit's error.

2. Even when standing rules *are* enforced, "citizen CAA suits" have the "potential to usurp the Executive Branch's principal prosecutorial responsibility under Article II." Pet. App. 139a n.32 (Jones, J., dissenting). That is because citizen suits "rais[e] '[d]ifficult and fundamental questions' about 'the delegation of Executive power.'" *Dep't of Transp.* v. *Ass'n of Am. R.Rs.*, 575 U.S. 43, 62 (2015) (Alito, J., concurring) (quoting *Laidlaw*, 528 U.S. at 197 (Kennedy, J., concurring)). "Under our Constitution, the 'executive Power'—all of it—is 'vested in a President,' who must 'take Care that the Laws be faithfully executed.'" *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 203 (2020) (quoting U.S. Const. art. II, § 1, cl. 1; *id.* § 3). Yet the

President can ensure that the laws are faithfully executed only when he "oversee[s] the faithfulness of the officers who execute them." *Id.* at 484. Citizen-suit provisions sit uneasily within that constitutional framework because they redelegate core executive power vested exclusively in the President to unaccountable private attorneys general. See Abell, *Ignoring the Trees for the Forests: How the Citizen Suit Provision of the Clean Water Act Violates the Constitution's Separation of Powers Principle*, 81 VA. L. REV. 1957, 1964 (1995).

The absence of accountability in private-enforcement actions presents well-recognized dangers. "Virtually none of the checks on executive enforcement discretion apply to private parties." Grove, *Standing as an Article II Nondelegation Doctrine*, 11 U. PA. J. CONST. L. 781, 818 (2009). And with citizen suits, there is a complete "lack of political accountability for important policy decisions" as to whether, where, how, when, and whom to sue. Pierce, *Agency Authority to Define the Scope of Private Rights of Action*, 48 ADMIN. L. REV. 1, 12 (1996).

Adding a diluted standing test to this mix compounds the acute separation-of-powers concerns that already attend citizen suits. Allowing plaintiffs to exercise executive authority where they *have* suffered traceable injuries is questionable at best under Article II. Allowing them to sue for years of regulatory violations, *without* even proving traceable injuries, eliminates all constraints and allows individual citizens to supplant executive agencies. "Regulated parties should not be placed in the position of bowing to both government and private masters, the latter of whom are under no democratic restraints and indeed whose attorneys reap significant benefits from prevailing." Pet. App. 139a n.32 (Jones, J., dissenting). Rigorously enforcing Article III boundaries will at least lessen the profound tension with Article II created by environmental citizen suits.

Article II principles likewise offer a reason for this Court to reexamine its problematic holding in *Laidlaw* that civil penalties paid to the government—not to citizen-plaintiffs—provide redress by "encourag[ing] defendants to discontinue current violations and deter them from committing future ones." 528 U.S. at 185-186. As Justice Scalia observed in dissent, "[b]y permitting citizens to pursue civil penalties payable to the Federal Treasury, the Act does not provide a mechanism for individual relief in any traditional sense, but turns over to private citizens the function of enforcing the law." *Id.* at 209. The citizen-suit plaintiff becomes "a self-appointed mini EPA" and these suits proceed "without meaningful public control." *Ibid.* By departing from bedrock Article III principles, *Laidlaw* helped lay the groundwork for sprawling cases that bear little resemblance to discrete controversies that aim to remedy a citizen's individual harms. See Pet. App. 185a-186a n.3 (Oldham, J., dissenting) (remarking on the "constitutional tension" in finding standing where civil penalties are payable to the Government and noting the "substantial arguments" that such a regime "is inconsistent with Article II" (quoting *United States ex rel. Polansky* v. *Exec. Health Res., Inc.*, 599 U.S. 419, 449 (2023) (Thomas, J., dissenting))).

3. Citizen-suit litigation is not only constitutionally anomalous; it is also uniquely burdensome, heightening the need for courts to enforce Article III guardrails. Citizen-suit litigation is already "frequent and aggressive." Zinn, *Policing Environmental Regulatory Enforcement: Cooperation, Capture, and Citizen Suits*, 21 STAN. ENVTL. L.J. 81, 139 (2002). Citizen enforcers "generally follow[] a much more vigorous enforcement policy than the responsible government agencies in at least two respects: in the number and kinds of cases brought, and in the level of penalties sought." *Ibid.* (quoting Boyer & Meidinger, *Privatizing Regulatory Enforcement: A Preliminary*

Assessment of Citizen Suits Under Federal Environmental Laws, 34 BUFF. L. REV. 833, 893 (1985)). Their "damage figures reportedly run ten to one hundred times higher than the amounts the EPA customarily receives in settled cases." *Ibid.* (quoting Boyer & Meidinger, *supra*, at 924). Because civil penalties are payable to the Treasury, they provide citizen-suit plaintiffs no financial incentive to settle; indeed, non-financial motivations may lead such plaintiffs to insist on exorbitant penalties that government regulators would never try to impose.

Environmental citizen suits are also particularly expensive to litigate due to their "inherent" "scientific and legal complexity." Lang, *Citizens' Environmental Lawsuits*, 47 TEX. ENV'T L.J. 17, 22 (2017). Parties often must obtain specialized attorneys experienced in environmental litigation, and sometimes "a team of PhD consulting and testifying experts, and a budget for laboratory testing of environmental samples." *Ibid.*

The en banc Fifth Circuit's fractured decision in this case, after years of proceedings bouncing back and forth between the district court and the court of appeals, promises to supercharge this costly breed of litigation. And the Fifth Circuit's jurisdiction over a disproportionate number of the nation's refining and chemical facilities means that citizen-plaintiffs will view the en banc court's failure to correct misguided circuit precedents as a green light to launch multi-year regulatory-enforcement lawsuits against plants throughout the Gulf Coast. Of the 132 U.S. petroleum refineries, 52 are within the Fifth Circuit's jurisdiction. U.S. Energy Information Administration, *Number and Capacity of Petroleum Refineries* (June 16, 2024).[3] If the decision below stands, nothing prevents environmental groups from finding residents near each plant, establishing injury-in-fact from a handful of

[3] https://www.eia.gov/dnav/pet/pet_pnp_cap1_dcu_STX_a.htm.

violations, and becoming de facto enforcement authorities supervising much of the Nation's industrial base.

4. The task of identifying alleged violations is eased by the comprehensive self-reporting and recordkeeping requirements that govern regulated businesses. For example, businesses with CAA operating permits are required to self-report every six months *all* "indications of noncompliance" with CAA requirements, regardless of whether they involve emissions that exceed limits. 30 Tex. Admin. Code §§ 122.10(5); 122.145(2). Similarly, under the CWA, businesses holding Texas Pollution Discharge Elimination System permits are required to periodically report their compliance with the conditions of permits and relevant statutes. 30 Tex. Admin. Code § 319.1.

Under the per se standing rules embraced by the Fifth Circuit and similar rules adopted by other courts, any time a report reveals an emission exceeding a permit limit that falls within the court-designated categories, citizen-suit plaintiffs could use the report to establish standing without proving they were injured by the alleged violation. *Amici*'s members take their reporting obligations seriously. But these reports are primarily designed to facilitate decision-making by executive-branch regulators about whether and how to address potential violations. They should not be weaponized to allow interest groups to pursue their own policy agendas in federal court against companies that faithfully comply with environmental-reporting duties.

CONCLUSION

The Court should grant the petition as to both questions presented.

Respectfully submitted.

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