No. 23-975

In the Supreme Court of the United States

SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL.,
Petitioners,

v.

EAGLE COUNTY, COLORADO, ET AL.,
Respondents.

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

BRIEF FOR THE STATE OF LOUISIANA AND 23 OTHER STATES AS *AMICI CURIAE* SUPPORTING PETITIONERS

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September 4, 2024

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INTEREST OF *AMICI CURIAE*

Amici curiae are the States of Louisiana, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming. *Amici* have a profound interest in high-stakes environmental litigation such as this, which implicates basic principles of cooperative federalism. Under those principles, the States and the federal government work together in harmony for the good of the people and our environment.

The decision below, however, undermines our cooperative federalism. It faults a federal agency that has no regulatory authority or expertise over oil refining for failing to consider the effects of such refining on communities over a thousand miles away from the project actually under the agency's review. To be precise, the decision specifically names communities in Louisiana and Texas that purportedly may be harmed by a short rail line in Utah, which only underscores the bizarre nature of that decision and the personal attack on States that regulate oil refining—and power our Nation—every day.

This case is as much about federalism and State sovereignty as it is about environmental law. States are not children, and the federal government is not our mother. The Court should reverse the decision below and restore the States' rightful place in our cooperative federalism.

INTRODUCTION AND SUMMARY OF ARGUMENT

The facts in this case are simple—and the decision below is simply wrong. Petitioners seek to build and operate a relatively short rail line in the Uinta Basin. The Basin sits in northeast Utah, near the intersection of the Wyoming, Colorado, and Utah borders. The proposed rail line would connect the Basin to a nearby interstate freight rail network. As a result, the proposed rail line would permit goods produced in the Basin—most predominantly, crude oil—to be transferred by train to the interstate network and then throughout the United States, including along the Gulf Coast. On Petitioners' application, the Surface Transportation Board authorized the construction and operation of the proposed rail line. In the decision below, however, the D.C. Circuit vacated the authorization order. As relevant here, the court faulted the Board for failing to consider potential downstream "environmental effects" of the new line—including "the effects of increased crude oil refining on Gulf Coast communities in Louisiana and Texas." Pet. App. 12a.

The oil in the Uinta Basin is some 1,536 miles away from oil refineries in Baton Rouge, Louisiana. That's a 24-hour car ride (with no stops). So, if it seems wrong to fault a federal agency that has no regulatory authority over crude oil for (a) approving a rail line on one side of America while (b) failing to consider the environmental effects of crude oil refining on the other side of America, that's because something is wrong. For the reasons explained in Petitioners' opening

brief, the decision below is wrong as a matter of law and common sense, and this Court should reverse.

Rather than reprise those merits arguments, *amici* States submit this brief to highlight a few simple, yet significant, practical consequences of the D.C. Circuit's decision that are particularly troubling from the States' perspective. Specifically, that decision fails to account for, and threatens to undermine, myriad federal and State agencies that already govern a barrel of Utah oil that may travel to Louisiana. As a result, the decision below threatens the foundation of cooperative federalism on which our environmental law is built. And even more fundamentally, the red tape demanded by the D.C. Circuit will only harm States whose economies depend on the energy industry and every American who depends on the products refined by such States. For these reasons, if there were any doubt that reversal is in order, these stark and avoidable consequences should resolve that doubt in favor of reversal.

ARGUMENT

The decision below holds that—in approving a Utah rail line—the Surface Transportation Board failed to comply with the National Environmental Policy Act (NEPA), specifically by failing to consider distant potential environmental effects like "the effects of increased crude oil refining on Gulf Coast communities in Louisiana and Texas." Pet. App. 12a. That decision is wrong in capital letters as Petitioners explain and as the U.S. Solicitor General, after much handwringing, agrees.

That the decision below is wrong is underscored by at least three practical considerations important to *amici* States. *First*, the D.C. Circuit's wildly expansive view of NEPA overlooks—and indeed, undercuts—the extensive federal and State regulations that already account for that court's concerns. *Second*, by aggrandizing the federal government's bureaucratic reach, the D.C. Circuit's decision undermines the cooperative federalism on which our environmental law is based. And *third*, by requiring even more delays in already-protracted NEPA analyses, the D.C. Circuit's decision threatens States whose economies depend on the energy industry and every American who benefits from that industry's products. The Court should reverse.

A. The Decision Below Undercuts Extensive State and Federal Environmental Regulations.

Start with the practical implications for environmental regulation throughout the Nation—and look at them from the perspective of a barrel of crude oil that, at some unspecified point in the future, may be extracted from the Uinta Basin. *Compare* Schoolhouse Rock!, *I'm Just a Bill* (Mar. 27, 1976), *available at* https://tinyurl.com/3zs75266 (following a bill through Congress to illustrate how a bill becomes law). That barrel of unrefined Utah oil does not magically become a refined Louisiana product such as diesel or jet fuel. The magic is a process. And from extraction to post-refining, that barrel of oil will be one of the most heavily regulated items in America, by both federal and

State laws designed to target every aspect of that barrel's life. And that only underscores the nonsensical consequences of the D.C. Circuit's decision to transform NEPA into a super environmental law that would bizarrely preempt all of these unique regulatory schemes.

1. Take first a sampling of transportation-minded regulatory agencies. Our barrel of oil cannot move out of Utah, and ultimately cannot leave any refinery, without running into a host of federal agencies. As this case illustrates, transportation by rail line would implicate the Surface Transportation Board, "an independent federal agency that is charged with the economic regulation of various modes of surface transportation, primarily freight rail," which would oversee construction and operation of the rail line. *About STB*, SURFACE TRANSPORTATION BOARD, https://tinyurl.com/76wekyah (last visited Sept. 3, 2024). Transportation by rail also would implicate the Federal Railroad Administration, which "promotes and regulates safety throughout the Nation's railroad industry." *Railroad Safety*, FEDERAL RAILROAD ADMINISTRATION, https://tinyurl.com/2s3tby3y (last updated Aug. 5, 2024); *see also STB Proceeding Filings*, FEDERAL RAILROAD ADMINISTRATION, https://tinyurl.com/4d7pdjd7 (last updated Jan. 19, 2024) ("Since 2020 the STB has been active in a variety of proceedings which have been of utmost importance and interest to the Federal Railroad Administration (FRA) and the wider Department of Transportation

(DOT)."); *Federal Railroad Administration and Pipeline and Hazardous Materials Safety Administration Hazmat/Crude Oil FAQ*, FEDERAL RAILROAD ADMINISTRATION, https://tinyurl.com/bdeb3tfu (last visited Sept. 3, 2024) ("We are taking several steps to address increases in crude oil rail traffic throughout the United States.") (*Hazmat/Crude Oil FAQ*).

But train transportation is not our barrel's only option. It also may travel through the vast network of pipelines around the Nation. If that happens, then it will run across the Pipeline and Hazardous Materials Safety Administration, whose "primary mission under the Federal laws governing the transportation of hazardous materials is to protect people and the environment from the risks inherent in the transportation of hazardous materials by pipelines and other modes." *See PHMSA Enforcement*, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, https://tinyurl.com/3sncmf3a (last updated June 15, 2024); *see also Hazmat/Crude Oil FAQ*, Federal Railroad Administration, https://tinyurl.com/bdeb3tfu ("PHMSA's Office of Pipeline Safety is responsible for regulating the safety of design, construction, testing, operation, maintenance, and emergency response of U.S. oil and natural gas pipeline facilities."). So, too, would it implicate the Federal Energy Regulatory Commission, which "[r]egulates [the] rates and practices of oil pipeline companies engaged in interstate transportation." *Oil*, FEDERAL ENERGY REGULATORY COMMISSION, https://tinyurl.com/htmfnr6e (last updated June 6, 2024).

Or, if our barrel of oil is loaded on a ship for transportation, then it enters the domain of the United States Coast Guard. *See Hazardous Materials Division*, UNITED STATES COAST GUARD, https://tinyurl.com/29fye88d (last visited Sept. 3, 2024) ("The Hazardous Materials Division is responsible for developing and maintaining regulations, standards, and industry guidance to promote the safety of life and protection of property and the environment during the marine transportation of hazardous materials ...."); *see also United States v. Coal. for Buzzards Bay*, 644 F.3d 26 (1st Cir. 2011) (vacating Coast Guard rule intended to regulate the transportation of oil because the Coast Guard failed to comply with NEPA).

And this is just a sample of transportation-related agencies. That says nothing about, for example, Respondent Center of Biological Diversity's assertion in proceedings below that the mortality rate for grizzly bears and black bears in Louisiana due to train collisions is relevant to the construction of a short rail line in Utah. C.A. JA192. If that is so, then our barrel of oil would encounter regulations by the U.S. Fish and Wildlife Service, which praises itself as "the only federal government agency whose primary responsibility is to manage fish and wildlife resources in the public trust for today and future generations." *Our Focus*, U.S. FISH AND WILDLIFE SERVICE, https://tinyurl.com/mrxsjj9v (last visited Sept. 3, 2024).

In short, the mere transportation of a barrel of oil runs into a panoply of federal agencies, each designed to regulate activity surrounding that barrel.

2. When that barrel ultimately enters, say, a Louisiana refinery, the regulatory pressure on the barrel only intensifies. That is principally so because of the Clean Air Act and the Environmental Protection Agency (EPA), which is charged with "protect[ing] human health and the environment." *Our Mission and What We Do*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://tinyurl.com/4rya5tpa (last updated May 11, 2024). Before our barrel may be refined, the Clean Air Act imposes a mind-numbing array of standards and obligations on refineries. For example, under the Act, EPA sets National Ambient Air Quality Standards (NAAQS) "for six principal pollutants"—carbon monoxide, lead, nitrogen dioxide, ozone, particle pollution, and sulfur dioxide—"which can be harmful to public health and the environment." *NAAQS Table*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://tinyurl.com/bdzysaak (last updated Feb. 7, 2024). The Act, in turn, requires States to submit State Implementation Plans (SIPs) that reflect "a general plan to attain and maintain the [NAAQS] in all areas of the country and a specific plan to attain the standards for each area designated nonattainment"—or else EPA will develop its own plan. *Process of Working with Areas to Attain and Maintain NAAQS (Implementation Process)*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://tinyurl.com/bdhf3u2m (last updated Nov. 30, 2023). Like many States, Louisiana adopted its own SIP, which EPA approved. *See Current Louisiana SIP-Approved Regulations*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://tinyurl.com/mrxvcswt

(last updated Apr. 1, 2024). And thus, Louisiana directly regulates the emissions of these core pollutants, including from refineries.

The same is true of the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA under the Act. Both types of Standards target "[s]tationary sources of air pollution, including … refineries." *Stationary Sources of Air Pollution*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://tinyurl.com/2yvkpsh6 (last updated Aug. 12, 2024). Specifically, entire sections of the Code of Federal Regulation are dedicated to NSPS for refineries. *See* 40 C.F.R. Part 60, Subpart J (Standards of Performance for Petroleum Refineries); *id.* Subpart JA (Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007); *see also id.* Subparts OOOOa–OOOOc (standards of performance for crude oil and natural gas facilities). Similarly, entire sections of the Code are dedicated to NESHAP for refineries and oil facilities. *See* 40 C.F.R. Part 63, Subpart CC (National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries); *id.* Subpart HH (National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities). EPA, moreover, has delegated to Louisiana the authority and responsibility to enforce the NSPS and NESHAP. *See Delegation Documents for State of Louisiana*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://tinyurl.com/42h68ejv (last updated on

June 21, 2024); *Delegation of EPA's Authority*, LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY, https://tinyurl.com/32ksuwcv (last visited Sept. 3, 2024).

This barely scratches the surface of the extensive air-focused regulations that govern the refining of our barrel of oil—and that does not speak to water. Under the Clean Water Act, several aspects of the refining process trigger corresponding regulatory requirements. For example, if a refinery wishes to discharge a pollutant into waters of the United States, it is subject to the National Pollutant Discharge Elimination System—which Louisiana administers on behalf of EPA. *See NPDES State Program Authority*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://tinyurl.com/2df8uzre (last updated Apr. 22, 2024); *Louisiana Pollutant Discharge Elimination System*, LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY, https://tinyurl.com/bdcupywm (last visited Sept. 3, 2024). Similarly, refineries are subject to EPA's direct enforcement of the Spill Prevention, Control, and Countermeasure rule, which "requires facilities to develop, maintain, and implement an oil spill prevention plan." *Spill Prevention, Control, and Countermeasure (SPCC) for the Upstream (Oil Exploration and Production) Sector*, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://tinyurl.com/e5vuz2uu (last updated Feb. 15, 2024).

Here, too, even more ancillary regulatory schemes may come into play. For instance, insofar as marine life is implicated by refining our barrel of oil, that is

where the National Marine Fisheries Service (also known as NOAA Fisheries) arrives, wielding its "responsib[ility] for the stewardship of the nation's ocean resources and their habitat." *Our Mission*, NOAA FISHERIES, https://tinyurl.com/ms2jpdbb (last visited Sept. 3, 2024). And the government and environmental groups have long sought to leverage other wildlife laws like the Migratory Bird Treaty Act to change and regulate refineries' behavior. *See, e.g.*, *United States v. CITGO Petro. Corp.*, 801 F.3d 477 (5th Cir. 2015) (reversing criminal convictions based on refinery's alleged noncompliance with the Clean Air Act by using uncovered oil tanks that purportedly resulted in bird deaths, which, in the government's incorrect view, violated the Migratory Bird Treaty Act).

At bottom, our hypothetical barrel of oil is the subject of innumerable regulations, especially at the heart of the refining process.

3. All this reinforces the deeply impractical and nonsensical problem with the D.C. Circuit's view. Under that view, NEPA required the Surface Transportation Board to analyze a proposed Utah rail line with an eye toward refining activities that might occur years later, over a thousand miles away, and subject to myriad regulations and regulatory oversight specifically tailored to those activities. Making even less sense, many of the necessary prerequisites for refining activity—such as constructing a refinery—*themselves* will have been subject to a NEPA analysis. That is because NEPA's requirements generally apply when an

agency is tasked with "undertaking major federal actions that will affect the environment." U.S. Br. 2.

That makes a joke of a bureaucracy already often (and rightly) maligned for its frustrating inefficiencies. (Said one person in a play on Dr. Franklin's words: "The only thing certain in life is death, taxes, and endless bureaucratic red tape.") Whether as a matter of NEPA's original understanding or common sense, there is zero reason to believe that Congress intended NEPA to be a super environmental law that tasks each federal agency with divining the propriety and effects of every hypothetical activity that could flow from its discrete regulatory action—no matter that the activity may be years and thousands of miles away; or that the agency has no regulatory authority over the activity; or that other actually knowledgeable federal and State agencies will regulate that activity if and when it occurs.

Existing federal and State regulations exist for a reason—and there is no basis to believe that Congress intended NEPA to make all those regulations superfluous for a barrel of oil that someday may be extracted from the Uinta Basin.

B. The Decision Below Threatens Our Cooperative Federalism.

In addition—and as a byproduct—the D.C. Circuit's decision does considerable violence to the concept of cooperative federalism which has existed in American law for decades. *Cf. Berger v. N.C. State*

Conf. of the NAACP, 597 U.S. 179, 197 (2022) (rejecting position that "would make little sense and do much violence to our system of cooperative federalism"); *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 775 (2019) (plurality op.) ("[c]onsider[ing] just some of the costs to cooperative federalism").

1. For years, Congress has embedded cooperative federalism in statutes across the United States Code. *See, e.g.*, *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 52 (2005) (the Individuals with Disabilities Education Act "is 'frequently described as a model of cooperative federalism'" (internal quotation marks omitted)); *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 128 (2005) (Breyer, J., concurring) (in the Telecommunications Act of 1996, Congress adopted "a system based on cooperative federalism," where "[s]tate and local authorities would remain free to make siting decisions … subject to minimum federal standards—both substantive and procedural—as well as federal judicial review"); *Wis. Dep't of Health & Family Servs. v. Blumer*, 534 U.S. 473, 495 (2002) ("The Medicaid statute … is designed to advance cooperative federalism."); *New York v. United States*, 505 U.S. 144, 167–68 (1992) (collecting examples of federal statutory schemes based on cooperative federalism, including the Clean Water Act, the Occupational Safety and Health Act of 1970, the Resource Conservation and Recovery Act of 1976, and the Alaska National Interest Lands Conservation Act); *Hodel v. Va. Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 289

(1981) ("[T]he Surface Mining Act establishes a program of cooperative federalism that allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs."); *California v. United States*, 438 U.S. 645, 650 (1978) ("If the term 'cooperative federalism' had been in vogue in 1902, the Reclamation Act of that year would surely have qualified as a leading example of it."). And the concept itself is exceedingly simple: "Cooperative federalism" is "federal and state actors working together." *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 182 (2023).

The concept is uniquely apt in environmental law—and in particular, in the Clean Air Act. As the Court recently emphasized, "[t]he Clean Air Act envisions States and the federal government working together to improve air quality." *Ohio v. EPA*, 144 S. Ct. 2040, 2048 (2024). And that is best demonstrated by several Louisiana schemes detailed above. Through its SIP, Louisiana enforces the NAAQS. And it enforces the NSPS, NESHAP, and NPDES. By doing so, Louisiana and other similarly situated States have shouldered their sovereign responsibilities to regulate within their borders, and they have harnessed their unique knowledge of their citizens' needs to advance what, in their view, is the best policy for their State. That is by design. As the Court has explained, "[w]hen interpreting [statutes embodying cooperative federalism], we have not been reluctant to leave a range of permissible choices to the States, at least where the

superintending federal agency has concluded that such latitude is consistent with the statute's aims." *Blumer*, 534 U.S. at 495. That is uniquely true in environmental regulation.

3. The D.C. Circuit's decision, however, threatens to transform our cooperative federalism into an empty promise. Just ask Louisiana, which—if our hypothetical barrel of Utah oil arrives in Baton Rouge for refining—stands ready to oversee the refining of that oil subject to searching regulations. The "authority" Louisiana holds under federal law to perform that oversight function is meaningless if, at the same time, Congress intended other random federal agencies to short-circuit Louisiana's authority by deciding for themselves whether the refining activity is intolerable by their lights.

"Cooperative federalism that is not." *Texas v. New Mexico*, 144 S. Ct. 1756, 1785 (2024) (Gorsuch, J., dissenting) (cleaned up). It is instead "paternalistic central planning," *Atlantic Richfield Co. v. Christian*, 590 U.S. 1, 43 (2020) (Gorsuch, J., concurring in part and dissenting in part), which "turn[s] [cooperative federalism] upside down, [by] recasting the [] presumption in favor of cooperative federalism into a presumption of federal absolutism." *Id.* at 44; *cf. EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 537 (2014) (Scalia, J., dissenting) ("This remarkably expansive reasoning makes a hash of the Clean Air Act, transforming it from a program based on cooperative federalism to one of centralized federal control.").

This is not how environmental regulation is supposed to work—and there is no good reason to allow this lasting damage to our cooperative federalism.

C. The Decision Below Is An Attack On States' Policies and Economies.

Finally, and perhaps most important to the States, the D.C. Circuit's decision, if upheld, would directly and negatively impact the States by hindering economic development and energy production.

1. The energy industry—and in particular, the oil refining segment of that industry—is critical to the livelihood of Americans everywhere. Louisiana's story is a prime example. It is home to 15 crude oil refineries that "account for about one-sixth of the nation's refining capacity and can process almost 3 million barrels of crude oil per calendar day." *Louisiana State Energy Profile*, U.S. ENERGY INFORMATION ADMINISTRATION, https://tinyurl.com/4rsurbx6 (last visited Sept. 3, 2024). But Louisiana does not keep all of those refined products for itself. Instead, it "sends most of its refined petroleum products out of state." *Id.* The 3,100-mile PPL Pipeline, for example, "distributes about 720,000 barrels per day of motor gasoline, jet fuel, diesel fuel, and biodiesel throughout much of the South," before ending "in the suburbs of Washington, D.C." *Id.* And the 5,500-mile Colonial Pipeline carries about 2.5 million barrels each day "to 11 other states before it ends in Linden, New Jersey." *Id.* In other words, much of

America would not survive without the refined products that Louisiana and other States deposit in these critical arteries destined for the northeast.

Within States like Louisiana, moreover, the vitality of the industry bears directly on the vitality of the States' citizens. One recent report, for instance, describes Louisiana as one of a few States in which the oil and gas industry has "exceptionally large direct impacts" on the State itself, since "more than 90,000 [Louisiana] jobs [are] directly attributable to the oil and natural gas industry." *Impacts of the Oil and Natural Gas Industry on the US Economy in 2021* at 10, PwC (April 2023), https://tinyurl.com/3ytbc5du. And that, in turn, generates quite literally billions of dollars for Louisianans themselves and the State's economy. *Id.* at B-1 (describing $10.7 billion in direct labor income and $29.2 billion in direct value added).

2. It is little wonder, then, that the D.C. Circuit's opinion made a point to name Louisiana in questioning "the effects of increased crude oil refining on Gulf Coast communities in Louisiana and Texas," Pet. App. 12a—these communities are the backbone of America's fuel. Nor is it any wonder that Respondent Center for Biological Diversity named Louisiana in complaining to the D.C. Circuit that "half the oil production increase—up to 175,000 barrels/day—would be delivered to Houston and/or Port Arthur, Texas, and another 35 percent to the Louisiana Gulf Coast," Pet. App. 30a—Respondent's mission is to shut the whole thing down, damaging Louisiana's economy and injuring America's livelihood in the process.

This is not right. By forcing the Surface Transportation Board to consider wildly distant effects of crude oil refining in Baton Rouge—1,536 miles from the Uinta Basin—the D.C. Circuit's decision compels untold delays while the agency attempts to figure out how to regulate Louisiana activities based on a Utah project. *See Environmental Impact Statement Timelines (2010-2018)*, COUNCIL ON ENVIRONMENTAL QUALITY (June 12, 2020), https://tinyurl.com/yrrtuaz3 (finding that the average NEPA environmental impact statement completion time across all federal agencies was four-and-a-half years). And that's exactly Respondent's gambit: Fight a war of attrition, where the attrition is delay upon delay that chokes economic development and livelihood in States across the country. That is an affront to States like Louisiana that serve as America's energy backbone, and to our citizens whose livelihood depends on working energy jobs and reaping their benefits. The Court should swiftly and resoundingly reverse.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted,

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