PRINCETON UNIVERSITY HIGH SCHOOL MOOT COURT COMPETITION

FALL 2016 DOCKET

CFFF v. Chao

Supreme Court of the United States

Oral Argument Scheduled for October 2016

FACT PATTERN:

Author's note: In keeping with Princeton's rules of academic honesty, I must credit my good friend Matt Saunders '15 for his help with the creation of this case. I took extensive inspiration for both the case and the associated case law from an excellent essay he wrote on the topic. The creation of this case would have been impossible without his aid.

Petitioner is the state government of Texas. On June 24th, 2017 President Peter Kallis announced that in response to the recently signed Paris Accords regarding climate change, that the EPA would be directing states to implement caps on their emissions of carbon dioxide emissions by modifying their State Implementation Plans (SIPs) for the control of carbon dioxide. The president justified the EPA actions by invoking Section 115 of the Clean Air Act, which is triggered when two prerequisites are triggered

> (1) EPA finds that emissions in the United States contribute to air pollution that endangers public health or welfare in another country (the "endangerment finding"), and
>
> (2) EPA determines that the other country provides "essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country"

President Kallis cited the EPA's earlier finding of the Intergovernmental Panel on Climate Change (IPCC) that anthropogenic climate change has contributed to the warming of the climate which he alleged met the first prong of the test and cited the Paris Accords to meet the second prong.

The EPA issued the final regulation in December 2017 after a notice and comment period and directed states to submit plans to implement the new cap by December 1st 2019. On February 1st, 2018, a collection of industry groups and private citizens under the name of Citizens For Fossil Fuels (CFFF), sued the head of the EPA, Ray Chao, alleging that the agency's interpretation of the Clean Air Act was an unconstitutional overreach of its power and that the regulations would impact their businesses as the states looked to cut emissions.

The cases were consolidated and the DC circuit instructed petitioners to brief the court on both the issue of standing and the merits of the case. On June 1st, 2017 a three judge panel found that while CFFF did have standing to sue; however, judge A. D. Charney found against the state arguing that the act was a valid interpretation of the law. Writing for the panel he remaking "the law says that if the two conditions are met, then the EPA can act. The two conditions have been met and thus the EPA has acted, its difficult to see what the petitioners case could possibly be."

On September 15th, in light of the important conflict between the state of Texas and the federal government, the Supreme Court granted cert.

It is therefore ordered that counsel present oral argument on the following questions:

1) Does CFFF, whose actions may be impacted by the final form of a regulation, have Article III standing to challenge the actions of the EPA?
2) Do the actions of the EPA exceed the scope of its statutory authority under the Clean Air Act?

RELEVANT LEGISLATION:

Section 115 of the Clean Air Act

(a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States
Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

(b) Prevention or elimination of endangerment
The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a) of this section. Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) Reciprocity
This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

(d) Recommendations
Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no national ambient air quality

standard has been established under section 7409 of this title unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

Article III of the Constitution of the United States

Section 1.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3.

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

RELEVANT CASE LAW:

Chevron U.S.A., Inc. v. Natural Resources Defense Council
1984

Syllabus

The Clean Air Act Amendments of 1977 impose certain requirements on States that have not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation, including the requirement that such "nonattainment" States establish a permit program regulating "new or modified major stationary sources" of air pollution. Generally, a permit may not be issued for such sources unless stringent conditions are met. EPA regulations promulgated in 1981 to implement the permit requirement allow a State to adopt a plantwide definition of the term "stationary source," under which an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant, thus allowing a State to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single "bubble." Respondents filed a petition for review in the Court of Appeals, which set aside the regulations embodying the "bubble concept" as contrary to law. Although recognizing that the amended Clean Air Act does not explicitly define what Congress envisioned as a "stationary source" to which the permit program should apply, and that the issue was not squarely addressed in the legislative history, the court concluded that, in view of the purpose of the nonattainment program to improve, rather than merely maintain, air quality, a plantwide definition was "inappropriate," while stating it was mandatory in programs designed to maintain existing air quality.

Held: The EPA's plantwide definition is a permissible construction of the statutory term "stationary source." Pp. 842-866.

(a) With regard to judicial review of an agency's construction of the statute which it administers, if Congress has not directly spoken to the precise question at issue, the question for the court is whether the **[p838]** agency's answer is based on a permissible construction of the statute. Pp. 842-845.

(b) Examination of the legislation and its history supports the Court of Appeals' conclusion that Congress did not have a specific intention as to the applicability of the "bubble concept" in these cases. Pp. 845-851.

(c) The legislative history of the portion of the 1977 Amendments dealing with nonattainment areas plainly discloses that, in the permit program, Congress sought to accommodate the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality. Pp. 851-853.

(d) Prior to the 1977 Amendments, the EPA had used a plantwide definition of the term "source," but in 1980, the EPA ultimately adopted a regulation that, in essence, applied the basic reasoning of the Court of Appeals here, precluding use of the "bubble concept" in nonattainment States' programs designed to enhance air quality. However, when a new administration took office in 1981, the EPA, in promulgating the regulations involved here, reevaluated the various arguments that had been advanced in connection with the proper definition of the term "source" and concluded that the term should be given the plantwide definition in nonattainment areas. Pp. 853-859.

(e) Parsing the general terms in the text of the amended Clean Air Act -- particularly the provisions of §§ 302(j) and 111(a)(3) pertaining to the definition of "source" -- does not reveal any actual intent of Congress as to the issue in these cases. To the extent any congressional "intent" can be discerned from the statutory language, it would appear that the listing of overlapping, illustrative terms was intended to enlarge, rather than to confine, the scope of the EPA's power to regulate particular sources in order to effectuate the policies of the Clean Air Act. Similarly, the legislative history is consistent with the view that the EPA should have broad discretion in implementing the policies of the 1977 Amendments. The plantwide definition is fully consistent with the policy of allowing reasonable economic growth, and the EPA has advanced a reasonable explanation for its conclusion that the regulations serve environmental objectives as well. The fact that the EPA has from time to time changed its interpretation of the term "source" does not lead to the conclusion that no deference should be accorded the EPA's interpretation of the statute. An agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis. Policy arguments concerning the "bubble concept" should be addressed to legislators or administrators, not to judges. The EPA's interpretation of the statute here represents a reasonable accommodation of manifestly competing interests, and is entitled to deference. Pp. 859-866.

222 U.S.App.D.C. 268, 685 F.2d 718, reversed. **[p839]**

STEVENS, J., delivered the opinion of the Court, in which all other Members joined, except MARSHALL and REHNQUIST, JJ., who took no part in the consideration or decision of the cases, and O'CONNOR, J., who took no part in the decision of the cases.

Opinion

STEVENS, J., Opinion of the Court

JUSTICE STEVENS delivered the opinion of the Court.

In the Clean Air Act Amendments of 1977, Pub.L. 95-95, 91 Stat. 685, Congress enacted certain requirements applicable[p840] to States that had not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation. The amended Clean Air Act required these "nonattainment" States to establish a permit program regulating "new or modified major stationary sources" of air pollution. Generally, a permit may not be issued for a new or modified major stationary source unless several stringent conditions are met.[n1] The EPA regulation promulgated to implement this permit requirement allows a State to adopt a plantwide definition of the term "stationary source."[n2] Under this definition, an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant. The question presented by these cases is whether EPA's decision to allow States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single "bubble" is based on a reasonable construction of the statutory term "stationary source."

I

The EPA regulations containing the plantwide definition of the term stationary source were promulgated on October [p841] 14, 1981. 46 Fed.Reg. 50766. Respondents[n3] filed a timely petition for review in the United States Court of Appeals for the District of Columbia Circuit pursuant to 42 U.S.C. § 7607(b)(1).[n4] The Court of Appeals set aside the regulations. *Natural Resources Defense Council, Inc. v. Gorsuch,* 222 U.S.App.D.C. 268, 685 F.2d 718 (1982).

The court observed that the relevant part of the amended Clean Air Act "does not explicitly define what Congress envisioned as a 'stationary source, to which the permit program . . . should apply," and further stated that the precise issue was not "squarely addressed in the legislative history." *Id.* at 273, 685 F.2d at 723. In light of its conclusion that the legislative history bearing on the question was "at best contradictory," it reasoned that "the purposes of the nonattainment program should guide our decision here." *Id.* at 276, n. 39, 685 F.2d at 726, n. 39.[n5] Based on two of its precedents concerning the applicability of the bubble concept to certain Clean Air Act programs,[n6] the court stated that the bubble concept was "mandatory" in programs designed merely to maintain existing air quality, but held that it was "inappropriate" in programs enacted to improve air quality.*Id.* at 276, 685 F.2d at 726. Since the purpose of the permit [p842] program its "*raison d'etre,*" in the court's view -- was to improve air quality, the court held that the bubble concept was inapplicable in these cases under its prior precedents. *Ibid.* It therefore set aside the regulations embodying the bubble concept as contrary to law. We granted certiorari to review that judgment, 461 U.S. 956 (1983), and we now reverse.

The basic legal error of the Court of Appeals was to adopt a static judicial definition of the term "stationary source" when it had decided that Congress itself had not commanded that definition. Respondents do not defend the legal reasoning of the Court of Appeals.[n7] Nevertheless, since this Court reviews judgments, not opinions,[n8] we must determine whether the Court of Appeals' legal error resulted in an erroneous judgment on the validity of the regulations.

II

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, **[p843]** as well as the agency, must give effect to the unambiguously expressed intent of Congress. [n9] If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, [n10] as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. [n11]

The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.

Morton v. Ruiz, 415 U.S. 199, 231 (1974). If Congress has explicitly left a gap for the agency to fill, there is an express delegation **[p844]** of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. [n12] Sometimes the legislative delegation to an agency on a particular question is implicit, rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency. [n13]

We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, [n14] and the principle of deference to administrative interpretations

has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations. *See, e.g., National Broadcasting Co. v. United States,* 319 U.S. 190; *Labor Board v. Hearst Publications, Inc.,* 322 U.S. 111; *Republic Aviation Corp. v.* [467 U.S. 845] Labor Board, 324 U.S. 793; *Securities & Exchange Comm'n v. Chenery Corp.,* 332 U.S. 194; *Labor Board v. Seven-Up Bottling Co.,*344 U.S. 344.

. . . If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.

United States v. Shimer, 367 U.S. 374, 382, 383 (1961). *Accord, Capital Cities Cable, Inc. v. Crisp, ante* at 699-700.

In light of these well-settled principles, it is clear that the Court of Appeals misconceived the nature of its role in reviewing the regulations at issue. Once it determined, after its own examination of the legislation, that Congress did not actually have an intent regarding the applicability of the bubble concept to the permit program, the question before it was not whether, in its view, the concept is "inappropriate" in the general context of a program designed to improve air quality, but whether the Administrator's view that it is appropriate in the context of this particular program is a reasonable one. Based on the examination of the legislation and its history which follows, we agree with the Court of Appeals that Congress did not have a specific intention on the applicability of the bubble concept in these cases, and conclude that the EPA's use of that concept here is a reasonable policy choice for the agency to make.

III

In the 1950's and the 1960's, Congress enacted a series of statutes designed to encourage and to assist the States in curtailing air pollution. *See generally Train v. Natural Resources Defense Council, Inc.,* 421 U.S. 60, 63-64 (1975). The Clean Air Amendments of 1970, Pub.L. 91-604, 84 Stat. 1676, "sharply increased federal authority and responsibility **[p846]** in the continuing effort to combat air pollution," 421 U.S. at 64, but continued to assign "primary responsibility for assuring air quality" to the several States, 84 Stat. 1678. Section 109 of the 1970 Amendments directed the EPA to promulgate National Ambient Air Quality Standards (NAAQS's) [n15] and § 110 directed the States to develop plans (SIP's) to implement the standards within specified deadlines. In addition, § 111 provided that major new sources of pollution would be required to conform to technology-based performance standards; the EPA was directed to publish a list of categories of sources of pollution and to establish new source performance standards (NSPS) for each. Section 111(e) prohibited the operation of any new source in violation of a performance standard.

Section 111(a) defined the terms that are to be used in setting and enforcing standards of performance for new stationary sources. It provided:

For purposes of this section:

* * * *

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

84 Stat. 1683. In the 1970 Amendments, that definition was not only applicable to the NSPS program required by § 111, but also was made applicable to a requirement of § 110 that each state implementation plan contain a procedure for reviewing the location of any proposed new source and preventing its construction if it would preclude the attainment or maintenance of national air quality standards. [n16]

In due course, the EPA promulgated NAAQS's, approved SIP's, and adopted detailed regulations governing NSPS's **[p847]** for various categories of equipment. In one of its programs, the EPA

used a plantwide definition of the term "stationary source." In 1974, it issued NSPS's for the nonferrous smelting industry that provided that the standards would not apply to the modification of major smelting units if their increased emissions were offset by reductions in other portions of the same plant. [n17]

Nonattainment

The 1970 legislation provided for the attainment of primary NAAQS's by 1975. In many areas of the country, particularly the most industrialized States, the statutory goals were not attained. [n18] In 1976, the 94th Congress was confronted with this fundamental problem, as well as many others respecting pollution control. As always in this area, the legislative struggle was basically between interests seeking strict schemes to reduce pollution rapidly to eliminate its social costs and interests advancing the economic concern that strict schemes would retard industrial development with attendant social costs. The 94th Congress, confronting these competing interests, was unable to agree on what response was in the public interest: legislative proposals to deal with nonattainment failed to command the necessary consensus. [n19]

In light of this situation, the EPA published an Emissions Offset Interpretative Ruling in December, 1976, *see* 41 Fed.Reg. 55524, to "fill the gap," as respondents put it, until Congress acted. The Ruling stated that it was intended to **[p848]** address

the issue of whether and to what extent national air quality standards established under the Clean Air Act may restrict or prohibit growth of major new or expanded stationary air pollution sources.

Id. at 55524-55525. In general, the Ruling provided that

a major new source may locate in an area with air quality worse than a national standard only if stringent conditions can be met.

Id. at 55525. The Ruling gave primary emphasis to the rapid attainment of the statute's environmental goals. [n20] Consistent with that emphasis, the construction of every new source in nonattainment areas had to meet the "lowest achievable emission rate" under the current state of the art for that type of facility. *See Ibid.* The 1976 Ruling did not, however, explicitly adopt or reject the "bubble concept." [n21]

IV

The Clean Air Act Amendments of 1977 are a lengthy, detailed, technical, complex, and comprehensive response to a major social issue. A small portion of the statute -- 91 Stat. **[p849]** 745-751 (Part D of Title I of the amended Act, 42 U.S.C. §§ 7501-7508) -- expressly deals with nonattainment areas. The focal point of this controversy is one phrase in that portion of the Amendments. [n22]

Basically, the statute required each State in a nonattainment area to prepare and obtain approval of a new SIP by July 1, 1979. In the interim, those States were required to comply with the

EPA's interpretative Ruling of December 21, 1976. 91 Stat. 745. The deadline for attainment of the primary NAAQS's was extended until December 31, 1982, and in some cases until December 31, 1987, but the SIP's were required to contain a number of provisions designed to achieve the goals as expeditiously as possible. [n23] [p850]

Most significantly for our purposes, the statute provided that each plan shall

(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173. . . .

Id. at 747. Before issuing a permit, § 173 requires (1) the state agency to determine that there will be sufficient emissions reductions in the region to offset the emissions from the new source and also to allow for reasonable further progress toward attainment, or that the increased emissions will not exceed an allowance for growth established pursuant to § 172(b)(5); (2) the applicant to certify that his other sources in the State are in compliance with the SIP, (3) the agency to determine that the applicable SIP is otherwise being implemented, and (4) the proposed source to comply with the lowest achievable emission rate (LAER). [n24] [p851]

The 1977 Amendments contain no specific reference to the "bubble concept." Nor do they contain a specific definition of the term "stationary source," though they did not disturb the definition of "stationary source" contained in § 111(a)(3), applicable by the terms of the Act to the NSPS program. Section 302(j), however, defines the term "major stationary source" as follows:

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

91 Stat. 770.

V

The legislative history of the portion of the 1977 Amendments dealing with nonattainment areas does not contain any specific comment on the "bubble concept" or the question whether a plantwide definition of a stationary source is permissible under the permit program. It does, however, plainly disclose that in the permit program Congress sought to accommodate the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality. Indeed, the House Committee Report identified the economic interest as one of the "two main purposes" of this section of the bill. It stated:

Section 117 of the bill, adopted during full committee markup establishes a new section 127 of the Clean Air Act. The section has two main purposes: (1) to allow reasonable economic growth to continue in an area while making reasonable further progress to assure attainment of the

standards by a fixed date; and (2) to allow [p852] States greater flexibility for the former purpose than EPA's present interpretative regulations afford.

The new provision allows States with nonattainment areas to pursue one of two options. First, the State may proceed under EPA's present "tradeoff" or "offset" ruling. The Administrator is authorized, moreover, to modify or amend that ruling in accordance with the intent and purposes of this section.

The State's second option would be to revise its implementation plan in accordance with this new provision.

H.R.Rep. No. 95-294, p. 211 (1977). [n25]

The portion of the Senate Committee Report dealing with nonattainment areas states generally that it was intended to "supersede the EPA administrative approach," and that expansion should be permitted if a State could

demonstrate that these facilities can be accommodated within its overall plan to provide for attainment of air quality standards.

S.Rep. No. 95-127, p. 55 (1977). The Senate Report notes the value of

case-by-case review of each new or modified major source of pollution that seeks to locate in a region exceeding an ambient standard,

explaining that such a review

requires matching reductions from existing sources against [p853] emissions expected from the new source in order to assure that introduction of the new source will not prevent attainment of the applicable standard by the statutory deadline.

Ibid. This description of a case-by-case approach to plant additions, which emphasizes the net consequences of the construction or modification of a new source as well as its impact on the overall achievement of the national standards, was not, however, addressed to the precise issue raised by these cases.

Senator Muskie made the following remarks:

I should note that the test for determining whether a new or modified source is subject to the EPA interpretative regulation [the Offset Ruling] -- and to the permit requirements of the revised implementation plans under the conference bill -- is whether the source will emit a pollutant into an area which is exceeding a national ambient air quality standard for that pollutant -- or precursor. Thus, a new source is still subject to such requirements as "lowest achievable emission rate" even if it is constructed as a replacement for an older facility resulting in a net reduction from previous emission levels.

A source -- including an existing facility ordered to convert to coal -- is subject to all the nonattainment requirements as a modified source if it makes any physical change which increases the amount of any air pollutant for which the standards in the area are exceeded.

123 Cong.Rec. 26847 (1977).

VI

As previously noted, prior to the 1977 Amendments, the EPA had adhered to a plantwide definition of the term "source" under a NSPS program. After adoption of the 1977 Amendments, proposals for a plantwide definition were considered in at least three formal proceedings.

In January, 1979, the EPA considered the question whether the same restriction on new construction in nonattainment areas that had been included in its December, 1976, Ruling **[p854]** should be required in the revised SIP's that were scheduled to go into effect in July, 1979. After noting that the 1976 Ruling was ambiguous on the question "whether a plant with a number of different processes and emission points would be considered a single source," 44 Fed.Reg. 3276 (1979), the EPA, in effect, provided a bifurcated answer to that question. In those areas that did not have a revised SIP in effect by July, 1979, the EPA rejected the plantwide definition; on the other hand, it expressly concluded that the plantwide approach would be permissible in certain circumstances if authorized by an approved SIP. It stated:

Where a state implementation plan is revised and implemented to satisfy the requirements of Part D, including the reasonable further progress requirement, the plan requirements for major modifications may exempt modifications of existing facilities that are accompanied by intrasource offsets, so that there is no net increase in emissions. The agency endorses such exemptions, which would provide greater flexibility to sources to effectively manage their air emissions at least cost.

Ibid. **[n26] [p855]**

In April, and again in September, 1979, the EPA published additional comments in which it indicated that revised SIP's could adopt the plantwide definition of source in nonattainment areas in certain circumstances. *See id.* at 20372, 20379, 51924, 51951, 51958. On the latter occasion, the EPA made a formal rulemaking proposal that would have permitted the use of the "bubble concept" for new installations within a plant as well as for modifications of existing units. It explained:

"Bubble" Exemption: The use of offsets inside the same source is called the "bubble." EPA proposes use of the definition of "source" (see above) to limit the use of the bubble under nonattainment requirements in the following respects:

i. Part D SIPs that include all requirements needed to assure reasonable further progress and attainment by the deadline under section 172 and that are being carried out need not restrict the use of a plantwide bubble, the same as under the PSD proposal.

ii. Part D SIPs that do not meet the requirements specified must limit use of the bubble by including a definition of "installation" as an identifiable piece of process equipment. [n27] [p856]

Significantly, the EPA expressly noted that the word "source" might be given a plantwide definition for some purposes and a narrower definition for other purposes. It wrote:

Source means any building structure, facility, or installation which emits or may emit any regulated pollutant. "Building, structure, facility or installation" means plant in PSD areas and in nonattainment areas except where the growth prohibitions would apply or where no adequate SIP exists or is being carried out.

Id. at 51925. [n28] The EPA's summary of its proposed Ruling discloses a flexible, rather than rigid, definition of the term "source" to implement various policies and programs:

In summary, EPA is proposing two different ways to define source for different kinds of NSR programs:

(1) For PSD and complete Part D SIPs, review would apply only to plants, with an unrestricted plantwide bubble.

(2) For the offset ruling, restrictions on construction, and incomplete Part D SIPs, review would apply to both plants and individual pieces of process equipment, causing the plant-wide bubble not to apply for new and modified major pieces of equipment.

In addition, for the restrictions on construction, EPA is proposing to define "major modification" so as to prohibit the bubble entirely. Finally, an alternative discussed but not favored is to have only pieces of process equipment reviewed, resulting in no plant-wide bubble and allowing minor pieces of equipment to escape NSR [p857] regardless of whether they are within a major plant.

Id. at 51934.

In August, 1980, however, the EPA adopted a regulation that, in essence, applied the basic reasoning of the Court of Appeals in these cases. The EPA took particular note of the two then-recent Court of Appeals decisions, which had created the bright-line rule that the "bubble concept" should be employed in a program designed to maintain air quality, but not in one designed to enhance air quality. Relying heavily on those cases, [n29] EPA adopted a dual definition of "source" for nonattainment areas that required a permit whenever a change in either the entire plant, or one of its components, would result in a significant increase in emissions even if the increase was completely offset by reductions elsewhere in the plant. The EPA expressed the opinion that this interpretation was "more consistent with congressional intent" than the plantwide definition because it "would bring in more sources or modifications for review," 45 Fed.Reg. 52697 (1980), but its primary legal analysis was predicated on the two Court of Appeals decisions.

In 1981, a new administration took office and initiated a "Government-wide reexamination of regulatory burdens and complexities." 46 Fed.Reg. 16281. In the context of that [p858] review, the EPA reevaluated the various arguments that had been advanced in connection with the proper definition of the term "source" and concluded that the term should be given the same definition in both nonattainment areas and PSD areas.

In explaining its conclusion, the EPA first noted that the definitional issue was not squarely addressed in either the statute or its legislative history, and therefore that the issue involved an agency "judgment as how to best carry out the Act." *Ibid.* It then set forth several reasons for concluding that the plantwide definition was more appropriate. It pointed out that the dual definition "can act as a disincentive to new investment and modernization by discouraging modifications to existing facilities" and

can actually retard progress in air pollution control by discouraging replacement of older, dirtier processes or pieces of equipment with new, cleaner ones.

Ibid. Moreover, the new definition

would simplify EPA's rules by using the same definition of "source" for PSD, nonattainment new source review, and the construction moratorium. This reduces confusion and inconsistency.

Ibid. Finally, the agency explained that additional requirements that remained in place would accomplish the fundamental purposes of achieving attainment with NAAQS's as expeditiously as possible.[n30] These conclusions were expressed [p859] in a proposed rulemaking in August, 1981, that was formally promulgated in October. *See id.* at 50766.

VII

In this Court, respondents expressly reject the basic rationale of the Court of Appeals' decision. That court viewed the statutory definition of the term "source" as sufficiently flexible to cover either a plantwide definition, a narrower definition covering each unit within a plant, or a dual definition that could apply to both the entire "bubble" and its components. It interpreted the policies of the statute, however, to mandate the plantwide definition in programs designed to maintain clean air and to forbid it in programs designed to improve air quality. Respondents place a fundamentally different construction on the statute. They contend that the text of the Act requires the EPA to use a dual definition -- if either a component of a plant, or the plant as a whole, emits over 100 tons of pollutant, it is a major stationary source. They thus contend that the EPA rules adopted in 1980, insofar as they apply to the maintenance of the quality of clean air, as well as the 1981 rules which apply to nonattainment areas, violate the statute.[n31]

Statutory Language

The definition of the term "stationary source" in § 111(a)(3) refers to "any building, structure, facility, or installation" which emits air pollution. *See supra* at 846. This definition is applicable only to the NSPS program by the express terms of the statute; the text of the statute does not

make this definition [p860] applicable to the permit program. Petitioners therefore maintain that there is no statutory language even relevant to ascertaining the meaning of stationary source in the permit program aside from § 302(j), which defines the term "major stationary source." *See supra* at 851. We disagree with petitioners on this point.

The definition in § 302(j) tells us what the word "major" means -- a source must emit at least 100 tons of pollution to qualify -- but it sheds virtually no light on the meaning of the term "stationary source." It does equate a source with a facility -- a "major emitting facility" and a "major stationary source" are synonymous under § 302(j). The ordinary meaning of the term "facility" is some collection of integrated elements which has been designed and constructed to achieve some purpose. Moreover, it is certainly no affront to common English usage to take a reference to a major facility or a major source to connote an entire plant, as opposed to its constituent parts. Basically, however, the language of § 302(j) simply does not compel any given interpretation of the term "source."

Respondents recognize that, and hence point to § 111(a)(3). Although the definition in that section is not literally applicable to the permit program, it sheds as much light on the meaning of the word "source" as anything in the statute. [n32] As respondents point out, use of the words "building, structure, facility, or installation," as the definition of source, could be read to impose the permit conditions on an individual building that is a part of a plant. [n33] A "word may have a character of its own not to be submerged by its association." *Russell Motor Car Co. v. United States,* 261 U.S. 514, 519 [p861] (1923). On the other hand, the meaning of a word must be ascertained in the context of achieving particular objectives, and the words associated with it may indicate that the true meaning of the series is to convey a common idea. The language may reasonably be interpreted to impose the requirement on any discrete, but integrated, operation which pollutes. This gives meaning to all of the terms -- a single building, not part of a larger operation, would be covered if it emits more than 100 tons of pollution, as would any facility, structure, or installation. Indeed, the language itself implies a "bubble concept" of sorts: each enumerated item would seem to be treated as if it were encased in a bubble. While respondents insist that each of these terms must be given a discrete meaning, they also argue that § 111(a)(3) defines "source" as that term is used in § 302(j). The latter section, however, equates a source with a facility, whereas the former defines "source" as a facility, among other items.

We are not persuaded that parsing of general terms in the text of the statute will reveal an actual intent of Congress. [n34] [p862] We know full well that this language is not dispositive; the terms are overlapping, and the language is not precisely directed to the question of the applicability of a given term in the context of a larger operation. To the extent any congressional "intent" can be discerned from this language, it would appear that the listing of overlapping, illustrative terms was intended to enlarge, rather than to confine, the scope of the agency's power to regulate particular sources in order to effectuate the policies of the Act.

Legislative History

In addition, respondents argue that the legislative history and policies of the Act foreclose the plantwide definition, and that the EPA's interpretation is not entitled to deference, because it represents a sharp break with prior interpretations of the Act.

Based on our examination of the legislative history, we agree with the Court of Appeals that it is unilluminating. The general remarks pointed to by respondents "were obviously not made with this narrow issue in mind, and they cannot be said to demonstrate a Congressional desire. . . ." *Jewell Ridge Coal Corp. v. Mine Workers,* 325 U.S. 161, 168-169 (1945). Respondents' argument based on the legislative history relies heavily on Senator Muskie's observation that a new source is subject to the LAER requirement.[n35] But the full statement is ambiguous, and, like the text of § 173 itself, this comment does not tell us what a new source is, much less that it is to have an inflexible definition. We find that the legislative history as a whole is silent on the precise issue before us. It is, however, consistent with the view that the EPA should have broad discretion in implementing the policies of the 1977 Amendments. **[p863]**

More importantly, that history plainly identifies the policy concerns that motivated the enactment; the plantwide definition is fully consistent with one of those concerns -- the allowance of reasonable economic growth -- and, whether or not we believe it most effectively implements the other, we must recognize that the EPA has advanced a reasonable explanation for its conclusion that the regulations serve the environmental objectives as well. *See supra* at 857-859, and n. 29; *see also supra* at 855, n. 27. Indeed, its reasoning is supported by the public record developed in the rulemaking process,[n36] as well as by certain private studies.[n37]

Our review of the EPA's varying interpretations of the word "source" -- both before and after the 1977 Amendments -- convinces us that the agency primarily responsible for administering this important legislation has consistently interpreted it flexibly -- not in a sterile textual vacuum, but in the context of implementing policy decisions in a technical and complex arena. The fact that the agency has from time to time changed its interpretation of the term "source" does not, as respondents argue, lead us to conclude that no deference should be accorded the agency's interpretation of the statute. An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations **[p864]** and the wisdom of its policy on a continuing basis. Moreover, the fact that the agency has adopted different definitions in different contexts adds force to the argument that the definition itself is flexible, particularly since Congress has never indicated any disapproval of a flexible reading of the statute.

Significantly, it was not the agency in 1980, but rather the Court of Appeals that read the statute inflexibly to command a plantwide definition for programs designed to maintain clean air and to forbid such a definition for programs designed to improve air quality. The distinction the court drew may well be a sensible one, but our labored review of the problem has surely disclosed that it is not a distinction that Congress ever articulated itself, or one that the EPA found in the statute before the courts began to review the legislative work product. We conclude that it was the Court of Appeals, rather than Congress or any of the decisionmakers who are authorized by Congress

to administer this legislation, that was primarily responsible for the 1980 position taken by the agency.

Policy

The arguments over policy that are advanced in the parties' briefs create the impression that respondents are now waging in a judicial forum a specific policy battle which they ultimately lost in the agency and in the 32 jurisdictions opting for the "bubble concept," but one which was never waged in the Congress. Such policy arguments are more properly addressed to legislators or administrators, not to judges. [n38] **[p865]**

In these cases, the Administrator's interpretation represents a reasonable accommodation of manifestly competing interests, and is entitled to deference: the regulatory scheme is technical and complex, [n39] the agency considered the matter in a detailed and reasoned fashion, [n40] and the decision involves reconciling conflicting policies. [n41] Congress intended to accommodate both interests, but did not do so itself on the level of specificity presented by these cases. Perhaps that body consciously desired the Administrator to strike the balance at this level, thinking that those with great expertise and charged with responsibility for administering the provision would be in a better position to do so; perhaps it simply did not consider the question at this level; and perhaps Congress was unable to forge a coalition on either side of the question, and those on each side decided to take their chances with the scheme devised by the agency. For judicial purposes, it matters not which of these things occurred.

Judges are not experts in the field, and are not part of either political branch of the Government. Courts must, in some cases, reconcile competing political interests, but not on the basis of the judges' personal policy preferences. In contrast, an agency to which Congress has delegated policymaking responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices -- resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the **[p866]** agency charged with the administration of the statute in light of everyday realities.

When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In such a case, federal judges -- who have no constituency -- have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones: "Our Constitution vests such responsibilities in the political branches." *TVA v. Hill,* 437 U.S. 153, 195 (1978).

We hold that the EPA's definition of the term "source" is a permissible construction of the statute which seeks to accommodate progress in reducing air pollution with economic growth.

The Regulations which the Administrator has adopted provide what the agency could allowably view as . . . [an] effective reconciliation of these twofold ends. . . .

United States v. Shimer, 367 U.S. at 383.

The judgment of the Court of Appeals is reversed.

It is so ordered

Massachusetts et al. v. Environmental Protection Agency
2007

Based on respected scientific opinion that a well-documented rise in global temperatures and attendant climatological and environmental changes have resulted from a significant increase in the atmospheric concentration of "greenhouse gases," a group of private organizations petitioned the Environmental Protection Agency (EPA) to begin regulating the emissions of four such gases, including carbon dioxide, under §202(a)(1) of the Clean Air Act, which requires that the EPA "shall by regulation prescribe … standards applicable to the emission of any air pollutant from any class … of new motor vehicles … which in [the EPA Administrator's] judgment cause[s], or contribute[s] to, air pollution … reasonably … anticipated to endanger public health or welfare," 42 U. S. C. §7521(a)(1). The Act defines "air pollutant" to include "any air pollution agent … , including any physical, chemical … substance … emitted into … the ambient air." §7602(g). EPA ultimately denied the petition, reasoning that (1) the Act does not authorize it to issue mandatory regulations to address global climate change, and (2) even if it had the authority to set greenhouse gas emission standards, it would have been unwise to do so at that time because a causal link between greenhouse gases and the increase in global surface air temperatures was not unequivocally established. The agency further characterized any EPA regulation of motor-vehicle emissions as a piecemeal approach to climate change that would conflict with the President's comprehensive approach involving additional support for technological innovation, the creation of nonregulatory programs to encourage voluntary private-sector reductions in greenhouse gas emissions, and further research on climate change, and might hamper the President's ability to persuade key developing nations to reduce emissions.

Petitioners, now joined by intervenor Massachusetts and other state and local governments, sought review in the D. C. Circuit. Although each of the three judges on the panel wrote separately, two of them agreed that the EPA Administrator properly exercised his discretion in denying the rulemaking petition. One judge concluded that the Administrator's exercise of "judgment" as to whether a pollutant could "reasonably be anticipated to endanger public health or welfare," §7521(a)(1), could be based on scientific uncertainty as well as other factors, including the concern that unilateral U. S. regulation of motor-vehicle emissions could weaken efforts to reduce other countries' greenhouse gas emissions. The second judge opined that petitioners had failed to demonstrate the particularized injury to them that is necessary to establish standing under Article III, but accepted the contrary view as the law of the case and joined the judgment on the merits as the closest to that which he preferred. The court therefore denied review.

Held:

1. Petitioners have standing to challenge the EPA's denial of their rulemaking petition. Pp. 12–23.

(a) This case suffers from none of the defects that would preclude it from being a justiciable Article III "Controvers[y]." See, *e.g.*, *Luther* v. *Borden*, 7 How. 1. Moreover, the proper construction of a congressional statute is an eminently suitable question for federal-court resolution, and Congress has authorized precisely this type of challenge to EPA action, see 42 U. S. C. §7607(b)(1). Contrary to EPA's argument, standing doctrine presents no insuperable jurisdictional obstacle here. To demonstrate standing, a litigant must show that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that a favorable decision will likely redress that injury. See *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555 . However, a litigant to whom Congress has "accorded a procedural right to protect his concrete interests," *id.*, at 573, n. 7—here, the right to challenge agency action unlawfully withheld, §7607(b)(1)—"can assert that right without meeting all the normal standards for redressability and immediacy," *ibid.* Only one petitioner needs to have standing to authorize review. See *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47 . Massachusetts has a special position and interest here. It is a sovereign State and not, as in *Lujan*, a private individual, and it actually owns a great deal of the territory alleged to be affected. The sovereign prerogatives to force reductions in greenhouse gas emissions, to negotiate emissions treaties with developing countries, and (in some circumstances) to exercise the police power to reduce motor-vehicle emissions are now lodged in the Federal Government. Because congress has ordered EPA to protect Massachusetts (among others) by prescribing applicable standards, §7521(a)(1), and has given Massachusetts a concomitant procedural right to challenge the rejection of its rulemaking petition as arbitrary and capricious, §7607(b)(1), petitioners' submissions as they pertain to Massachusetts have satisfied the most demanding standards of the adversarial process. EPA's steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both "actual" and "imminent," *Lujan*, 504 U. S., at 560, and there is a "substantial likelihood that the judicial relief requested" will prompt EPA to take steps to reduce that risk, *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U. S. 59 . Pp. 12–17.

(b) The harms associated with climate change are serious and well recognized. The Government's own objective assessment of the relevant science and a strong consensus among qualified experts indicate that global warming threatens, *inter alia,* a precipitate rise in sea levels, severe and irreversible changes to natural ecosystems, a significant reduction in winter snowpack with direct and important economic consequences, and increases in the spread of disease and the ferocity of weather events. That these changes are widely shared does not minimize Massachusetts' interest in the outcome of this litigation. See *Federal Election Comm'n* v. *Akins*, 524 U. S. 11 . According to petitioners' uncontested affidavits, global sea levels rose between 10 and 20 centimeters over the 20th century as a result of global warming and have already begun to swallow Massachusetts' coastal land. Remediation costs alone, moreover, could reach hundreds of millions of dollars. Pp. 17–19.

(c) Given EPA's failure to dispute the existence of a causal connection between man-made greenhouse gas emissions and global warming, its refusal to regulate such emissions, at a minimum, "contributes" to Massachusetts' injuries. EPA overstates its case in arguing that its decision not to regulate contributes so insignificantly to petitioners' injuries that it cannot be haled into federal court, and that there is no realistic possibility that the relief sought would mitigate global climate change and remedy petitioners' injuries, especially since predicted increases in emissions from China, India, and other developing nations will likely offset any marginal domestic decrease EPA regulation could bring about. Agencies, like legislatures, do not generally resolve massive problems in one fell swoop, see *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U. S. 483 , but instead whittle away over time, refining their approach as circumstances change and they develop a more nuanced understanding of how best to proceed, cf. *SEC* v. *Chenery Corp.*, 332 U. S. 194 . That a first step might be tentative does not by itself negate federal-court jurisdiction. And reducing domestic automobile

emissions is hardly tentative. Leaving aside the other greenhouse gases, the record indicates that the U. S. transportation sector emits an enormous quantity of carbon dioxide into the atmosphere. Pp. 20–21.

(d) While regulating motor-vehicle emissions may not by itself *reverse* global warming, it does not follow that the Court lacks jurisdiction to decide whether EPA has a duty to take steps to *slow* or *reduce* it. See *Larson* v. *Valente*, 456 U. S. 228 , n. 15. Because of the enormous potential consequences, the fact that a remedy's effectiveness might be delayed during the (relatively short) time it takes for a new motor-vehicle fleet to replace an older one is essentially irrelevant. Nor is it dispositive that developing countries are poised to substantially increase greenhouse gas emissions: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere. The Court attaches considerable significance to EPA's espoused belief that global climate change must be addressed. Pp. 21–23.

2. The scope of the Court's review of the merits of the statutory issues is narrow. Although an agency's refusal to initiate enforcement proceedings is not ordinarily subject to judicial review, *Heckler* v. *Chaney*, 470 U. S. 821 , there are key differences between nonenforcement and denials of rulemaking petitions that are, as in the present circumstances, expressly authorized. EPA concluded alternatively in its petition denial that it lacked authority under §7521(a)(1) to regulate new vehicle emissions because carbon dioxide is not an "air pollutant" under §7602, and that, even if it possessed authority, it would decline to exercise it because regulation would conflict with other administration priorities. Because the Act expressly permits review of such an action, §7607(b)(1), this Court "may reverse [it if it finds it to be] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," §7607(d)(9). Pp. 24–25.

3. Because greenhouse gases fit well within the Act's capacious definition of "air pollutant," EPA has statutory authority to regulate emission of such gases from new motor vehicles. That definition—which includes "*any* air pollution agent … , including *any* physical, chemical, … substance … emitted into … the ambient air … ," §7602(g) (emphasis added)—embraces all airborne compounds of whatever stripe. Moreover, carbon dioxide and other greenhouse gases are undoubtedly "physical [and] chemical … substance[s]."*Ibid.* EPA's reliance on postenactment congressional actions and deliberations it views as tantamount to a command to refrain from regulating greenhouse gas emissions is unavailing. Even if postenactment legislative history could shed light on the meaning of an otherwise-unambiguous statute, EPA identifies nothing suggesting that Congress meant to curtail EPA's power to treat greenhouse gases as air pollutants. The Court has no difficulty reconciling Congress' various efforts to promote interagency collaboration and research to better understand climate change with the agency's pre-existing mandate to regulate "any air pollutant" that may endanger the public welfare. *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120 , distinguished. Also unpersuasive is EPA's argument that its regulation of motor-vehicle carbon dioxide emissions would require it to tighten mileage standards, a job (according to EPA) that Congress has assigned to the Department of Transportation. The fact that DOT's mandate to promote energy efficiency by setting mileage standards may overlap with EPA's environmental responsibilities in no way licenses EPA to shirk its duty to protect the public "health" and "welfare," §7521(a)(1). Pp. 25–30.

4. EPA's alternative basis for its decision—that even if it has statutory authority to regulate greenhouse gases, it would be unwise to do so at this time—rests on reasoning divorced from the statutory text. While the statute conditions EPA action on its formation of a "judgment," that judgment must relate to whether an air pollutant "cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare." §7601(a)(1). Under the Act's clear terms, EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. It has refused to do so, offering instead a laundry list of reasons not to regulate, including the existence of voluntary

Executive Branch programs providing a response to global warming and impairment of the President's ability to negotiate with developing nations to reduce emissions. These policy judgments have nothing to do with whether greenhouse gas emissions contribute to climate change and do not amount to a reasoned justification for declining to form a scientific judgment. Nor can EPA avoid its statutory obligation by noting the uncertainty surrounding various features of climate change and concluding that it would therefore be better not to regulate at this time. If the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment, it must say so. The statutory question is whether sufficient information exists for it to make an endangerment finding. Instead, EPA rejected the rulemaking petition based on impermissible considerations. Its action was therefore "arbitrary, capricious, or otherwise not in accordance with law," §7607(d)(9). On remand, EPA must ground its reasons for action or inaction in the statute. Pp. 30–32.

415 F. 3d 50, reversed and remanded.

Justice Stevens delivered the opinion of the Court.

A well-documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere. Respected scientists believe the two trends are related. For when carbon dioxide is released into the atmosphere, it acts like the ceiling of a greenhouse, trapping solar energy and retarding the escape of reflected heat. It is therefore a species—the most important species—of a "greenhouse gas."

Calling global warming "the most pressing environmental challenge of our time,"1 a group of States,2 local governments,3 and private organizations,4 alleged in a petition for certiorari that the Environmental Protection Agency (EPA) has abdicated its responsibility under the Clean Air Act to regulate the emissions of four greenhouse gases, including carbon dioxide. Specifically, petitioners asked us to answer two questions concerning the meaning of §202(a)(1) of the Act: whether EPA has the statutory authority to regulate greenhouse gas emissions from new motor vehicles; and if so, whether its stated reasons for refusing to do so are consistent with the statute.

In response, EPA, supported by 10 intervening States5 and six trade associations,6 correctly argued that we may not address those two questions unless at least one petitioner has standing to invoke our jurisdiction under Article III of the Constitution. Notwithstanding the serious character of that jurisdictional argument and the absence of any conflicting decisions construing §202(a)(1), the unusual importance of the underlying issue persuaded us to grant the writ. 548 U. S. __ (2006).

I

Section 202(a)(1) of the Clean Air Act, as added by Pub. L. 89–272, §101(8), 79 Stat. 992, and as amended by, inter alia, 84 Stat. 1690 and 91 Stat. 791, 42 U. S. C. §7521(a)(1), provides:

"The [EPA] Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare … ."7

The Act defines "air pollutant" to include "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive … substance or matter which is emitted into or otherwise enters the ambient air." §7602(g). "Welfare" is also defined broadly: among other things, it includes "effects on … weather … and climate." §7602(h).

When Congress enacted these provisions, the study of climate change was in its infancy.8 In 1959, shortly after the U. S. Weather Bureau began monitoring atmospheric carbon dioxide levels, an observatory in Mauna Loa, Hawaii, recorded a mean level of 316 parts per million. This was well above the highest carbon dioxide concentration—no more than 300 parts per million—revealed in the 420,000-year-old ice-core record.9 By the time Congress drafted §202(a)(1) in 1970, carbon dioxide levels had reached 325 parts per million.10

In the late 1970's, the Federal Government began devoting serious attention to the possibility that carbon dioxide emissions associated with human activity could provoke climate change. In 1978, Congress enacted the National Climate Program Act, 92 Stat. 601, which required the President to establish a program to "assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications," id., §3. President Carter, in turn, asked the National Research Council, the working arm of the National Academy of Sciences, to investigate the subject. The Council's response was unequivocal: "If carbon dioxide continues to increase, the study group finds no reason to doubt that climate changes will result and no reason to believe that these changes will be negligible… . A wait-and-see policy may mean waiting until it is too late."11

Congress next addressed the issue in 1987, when it enacted the Global Climate Protection Act, Title XI of Pub. L. 100–204, 101 Stat. 1407, note following 15 U. S. C. §2901. Finding that "manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long-term and substantial increase in the average temperature on Earth,"§1102(1), 101 Stat. 1408, Congress directed EPA to propose to Congress a "coordinated national policy on global climate change," §1103(b), and ordered the Secretary of State to work "through the channels of multilateral diplomacy" and coordinate diplomatic efforts to combat global warming, §1103(c). Congress emphasized that "ongoing pollution and deforestation may be contributing now to an irreversible process" and that "[n]ecessary actions must be identified and implemented in time to protect the climate." §1102(4).

Meanwhile, the scientific understanding of climate change progressed. In 1990, the Intergovernmental Panel on Climate Change (IPCC), a multinational scientific body organized under the auspices of the United Nations, published its first comprehensive report on the topic. Drawing on expert opinions from across the globe, the IPCC concluded that "emissions resulting from human activities are substantially increasing the atmospheric concentrations of … greenhouse gases [which] will enhance the greenhouse effect, resulting on average in an additional warming of the Earth's surface."12

Responding to the IPCC report, the United Nations convened the "Earth Summit" in 1992 in Rio de Janeiro. The first President Bush attended and signed the United Nations Framework Convention on Climate Change (UNFCCC), a nonbinding agreement among 154 nations to reduce atmospheric concentrations of carbon dioxide and other greenhouse gases for the purpose of "prevent[ing] dangerous anthropogenic [i.e., human-induced] interference with the [Earth's] climate system."13 S. Treaty Doc. No. 102–38, Art. 2, p. 5 (1992). The Senate unanimously ratified the treaty.

Some five years later—after the IPCC issued a second comprehensive report in 1995 concluding that "[t]he balance of evidence suggests there is a discernible human influence on global climate"14—the UNFCCC signatories met in Kyoto, Japan, and adopted a protocol that assigned mandatory targets for industrialized nations to reduce greenhouse gas emissions. Because those targets did not apply to developing and heavily polluting nations such as China and India, the Senate unanimously passed a resolution expressing its sense that the United States should not enter into the Kyoto Protocol. See S. Res. 98, 105th Cong., 1st Sess. (July 25, 1997) (as passed). President Clinton did not submit the protocol to the Senate for ratification.

II

On October 20, 1999, a group of 19 private organizations15 filed a rulemaking petition asking EPA to regulate "greenhouse gas emissions from new motor vehicles under §202 of the Clean Air Act." App. 5. Petitioners maintained that 1998 was the "warmest year on record"; that carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are "heat trapping greenhouse gases"; that greenhouse gas emissions have significantly accelerated climate change; and that the IPCC's 1995 report warned that "carbon dioxide remains the most important contributor to [man-made] forcing of climate change." Id., at 13 (internal quotation marks omitted). The petition further alleged that climate change will have serious adverse effects on human health and the environment. Id., at 22–35. As to EPA's statutory authority, the petition observed that the agency itself had already confirmed that it had the power to regulate carbon dioxide. See id., at 18, n. 21. In 1998, Jonathan Z. Cannon, then EPA's General Counsel, prepared a legal opinion concluding that "CO2 emissions are within the scope of EPA's authority to regulate," even as he recognized that EPA had so far declined to exercise that authority. Id., at 54 (memorandum to Carol M. Browner, Administrator (Apr. 10, 1998) (hereinafter Cannon memorandum)). Cannon's successor, Gary S. Guzy, reiterated that opinion before a congressional committee just two weeks before the rulemaking petition was filed. See id., at 61.

Fifteen months after the petition's submission, EPA requested public comment on "all the issues raised in [the] petition," adding a "particular" request for comments on "any scientific, technical, legal, economic or other aspect of these issues that may be relevant to EPA's consideration of this petition." 66Fed. Reg. 7486, 7487 (2001). EPA received more than 50,000 comments over the next five months. See 68Fed. Reg. 52924 (2003).

Before the close of the comment period, the White House sought "assistance in identifying the areas in the science of climate change where there are the greatest certainties and uncertainties" from the National Research Council, asking for a response "as soon as possible." App. 213. The result was a 2001 report titled Climate Change: An Analysis of Some Key Questions (NRC Report), which, drawing heavily on the 1995 IPCC report, concluded that "[g]reenhouse gases are accumulating in Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise. Temperatures are, in fact, rising." NRC Report 1.

On September 8, 2003, EPA entered an order denying the rulemaking petition. 68 Fed. Reg. 52922. The agency gave two reasons for its decision: (1) that contrary to the opinions of its former general counsels, the Clean Air Act does not authorize EPA to issue mandatory regulations to address global climate change, see id., at 52925–52929; and (2) that even if the agency had the authority to set greenhouse gas emission standards, it would be unwise to do so at this time, id., at 52929–52931.

In concluding that it lacked statutory authority over greenhouse gases, EPA observed that Congress "was well aware of the global climate change issue when it last comprehensively amended the [Clean Air Act] in 1990," yet it declined to adopt a proposed amendment establishing binding emissions limitations. Id., at 52926. Congress instead chose to authorize further investigation into climate change. Ibid. (citing §§103(g) and 602(e) of the Clean Air Act Amendments of 1990, 104 Stat. 2652, 2703, 42 U. S. C. §§7403(g)(1) and 7671a(e)). EPA further reasoned that Congress' "specially tailored solutions to global atmospheric issues," 68 Fed. Reg. 52926—in particular, its 1990 enactment of a comprehensive scheme to regulate pollutants that depleted the ozone layer, see Title VI, 104 Stat. 2649, 42 U. S. C. §§7671–7671q—counseled against reading the general authorization of §202(a)(1) to confer regulatory authority over greenhouse gases.

EPA stated that it was "urged on in this view" by this Court's decision in FDA v. Brown & Williamson Tobacco Corp., 529 U. S. 120 (2000) . In that case, relying on "tobacco['s] unique political history," id., at 159, we invalidated the Food and Drug Administration's reliance on its general authority to regulate drugs as a basis for asserting jurisdiction over an "industry constituting a significant portion of the American economy," ibid.

EPA reasoned that climate change had its own "political history": Congress designed the original Clean Air Act to address local air pollutants rather than a substance that "is fairly consistent in its concentration throughout the world's atmosphere," 68 Fed. Reg. 52927 (emphasis added); declined in 1990 to enact proposed amendments to force EPA to set carbon dioxide emission standards for motor vehicles, ibid. (citing H. R. 5966, 101st Cong., 2d Sess. (1990)); and addressed global climate change in other legislation, 68 Fed. Reg. 52927. Because of this political history, and because imposing emission limitations on greenhouse gases would have even greater economic and political repercussions than regulating tobacco, EPA was persuaded that it lacked the power to do so. Id., at 52928. In essence, EPA concluded that climate change was so important that unless Congress spoke with exacting specificity, it could not have meant the agency to address it.

Having reached that conclusion, EPA believed it followed that greenhouse gases cannot be "air pollutants" within the meaning of the Act. See ibid. ("It follows from this conclusion, that [greenhouse gases], as such, are not air pollutants under the [Clean Air Act's] regulatory provisions …"). The agency bolstered this conclusion by explaining that if carbon dioxide were an air pollutant, the only feasible method of reducing tailpipe emissions would be to improve fuel economy. But because Congress has already created detailed mandatory fuel economy standards subject to Department of Transportation (DOT) administration, the agency concluded that EPA regulation would either conflict with those standards or be superfluous. Id., at 52929.

Even assuming that it had authority over greenhouse gases, EPA explained in detail why it would refuse to exercise that authority. The agency began by recognizing that the concentration of greenhouse gases has dramatically increased as a result of human activities, and acknowledged the attendant increase in global surface air temperatures. Id., at 52930. EPA nevertheless gave controlling importance to the NRC Report's statement that a causal link between the two " 'cannot be unequivocally established.' " Ibid. (quoting NRC Report 17). Given that residual uncertainty, EPA concluded that regulating greenhouse gas emissions would be unwise. 68 Fed. Reg. 52930.

The agency furthermore characterized any EPA regulation of motor-vehicle emissions as a "piecemeal approach" to climate change, id., at 52931, and stated that such regulation would conflict with the President's "comprehensive approach" to the problem, id., at 52932. That approach involves additional support for technological innovation, the creation of nonregulatory programs to encourage voluntary private-sector reductions in greenhouse gas emissions, and further research on climate change—not actual regulation. Id., at 52932–52933. According to EPA, unilateral EPA regulation of motor-vehicle greenhouse gas emissions might also hamper the President's ability to persuade key developing countries to reduce greenhouse gas emissions. Id., at 52931.

III

Petitioners, now joined by intervenor States and local governments, sought review of EPA's order in the United States Court of Appeals for the District of Columbia Circuit.16 Although each of the three judges on the panel wrote a separate opinion, two judges agreed "that the EPA Administrator properly exercised his discretion under §202(a)(1) in denying the petition for rule making." 415 F. 3d 50, 58 (2005). The court therefore denied the petition for review.

In his opinion announcing the court's judgment, Judge Randolph avoided a definitive ruling as to petitioners' standing, id., at 56, reasoning that it was permissible to proceed to the merits because the standing and the merits inquiries "overlap[ped]," ibid. Assuming without deciding that the statute authorized the EPA Administrator to regulate greenhouse gas emissions that "in his judgment" may "reasonably be anticipated to endanger public health or welfare," 42 U. S. C. §7521(a)(1), Judge Randolph concluded that the exercise of that judgment need not be based solely on scientific evidence, but may also be informed by the sort of policy judgments that motivate congressional action. 415 F. 3d, at 58. Given that framework, it was reasonable for EPA to base its decision on

scientific uncertainty as well as on other factors, including the concern that unilateral regulation of U. S. motor-vehicle emissions could weaken efforts to reduce greenhouse gas emissions from other countries. Ibid.

Judge Sentelle wrote separately because he believed petitioners failed to "demonstrat[e] the element of injury necessary to establish standing under Article III." Id., at 59 (opinion dissenting in part and concurring in judgment). In his view, they had alleged that global warming is "harmful to humanity at large," but could not allege "particularized injuries" to themselves. Id., at 60 (citing Lujan v. Defenders of Wildlife, 504 U. S. 555, 562 (1992)). While he dissented on standing, however, he accepted the contrary view as the law of the case and joined Judge Randolph's judgment on the merits as the closest to that which he preferred. 415 F. 3d, at 60–61.

Judge Tatel dissented. Emphasizing that EPA nowhere challenged the factual basis of petitioners' affidavits, id., at 66, he concluded that at least Massachusetts had "satisfied each element of Article III standing—injury, causation, and redressability," id., at 64. In Judge Tatel's view, the " 'substantial probability,' " id., at 66, that projected rises in sea level would lead to serious loss of coastal property was a "far cry" from the kind of generalized harm insufficient to ground Article III jurisdiction. Id., at 65. He found that petitioners' affidavits more than adequately supported the conclusion that EPA's failure to curb greenhouse gas emissions contributed to the sea level changes that threatened Massachusetts' coastal property. Ibid. As to redressability, he observed that one of petitioners' experts, a former EPA climatologist, stated that " '[a]chievable reductions in emissions of CO2 and other [greenhouse gases] from U. S. motor vehicles would … delay and moderate many of the adverse impacts of global warming.' " Ibid. (quoting declaration of Michael MacCracken, former Executive Director, U. S. Global Change Research Program ¶5(e) (hereinafter MacCracken Decl.), available in 2 Petitioners' Standing Appendix in No. 03–1361, etc., (CADC), p. 209 (Stdg. App.)). He further noted that the one-time director of EPA's motor-vehicle pollution control efforts stated in an affidavit that enforceable emission standards would lead to the development of new technologies that " 'would gradually be mandated by other countries around the world.' " 415 F. 3d, at 66 (quoting declaration of Michael Walsh ¶¶7–8, 10, Stdg. App. 309–310, 311). On the merits, Judge Tatel explained at length why he believed the text of the statute provided EPA with authority to regulate greenhouse gas emissions, and why its policy concerns did not justify its refusal to exercise that authority. 415 F. 3d, at 67–82.

IV

Article III of the Constitution limits federal-court jurisdiction to "Cases" and "Controversies." Those two words confine "the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process." Flast v. Cohen, 392 U. S. 83, 95 (1968) . It is therefore familiar learning that no justiciable "controversy" exists when parties seek adjudication of a political question, Luther v. Borden, 7How. 1 (1849), when they ask for an advisory opinion, Hayburn's Case, 2Dall. 409 (1792), see also Clinton v. Jones, 520 U. S. 681, 700, n. 33 (1997) , or when the question sought to be adjudicated has been mooted by subsequent developments, California v. San Pablo & Tulare R. Co., 149 U. S. 308 (1893) . This case suffers from none of these defects.

The parties' dispute turns on the proper construction of a congressional statute, a question eminently suitable to resolution in federal court. Congress has moreover authorized this type of challenge to EPA action. See 42 U. S. C. §7607(b)(1). That authorization is of critical importance to the standing inquiry: "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." Lujan, 504 U. S., at 580 (Kennedy, J., concurring in part and concurring in judgment). "In exercising this power, however, Congress must at the very least identify the injury it seeks to vindicate and relate the injury to the class of persons entitled to bring suit." Ibid. We will not, therefore, "entertain citizen suits to vindicate the public's nonconcrete interest in the proper administration of the laws." Id., at 581.

EPA maintains that because greenhouse gas emissions inflict widespread harm, the doctrine of standing presents an insuperable jurisdictional obstacle. We do not agree. At bottom, "the gist of the question of standing" is whether petitioners have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination." Baker v. Carr, 369 U. S. 186, 204 (1962) . As Justice Kennedy explained in his Lujan concurrence:

"While it does not matter how many persons have been injured by the challenged action, the party bringing suit must show that the action injures him in a concrete and personal way. This requirement is not just an empty formality. It preserves the vitality of the adversarial process by assuring both that the parties before the court have an actual, as opposed to professed, stake in the outcome, and that the legal questions presented … will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." 504 U. S., at 581 (internal quotation marks omitted).

To ensure the proper adversarial presentation, Lujan holds that a litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury. See id., at 560–561. However, a litigant to whom Congress has "accorded a procedural right to protect his concrete interests," id., at 572, n. 7—here, the right to challenge agency action unlawfully withheld, §7607(b)(1)—"can assert that right without meeting all the normal standards for redressability and immediacy," ibid. When a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant. Ibid.; see also Sugar Cane Growers Cooperative of Fla. v. Veneman, 289 F. 3d 89, 94–95 (CADC 2002) ("A [litigant] who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered. All that is necessary is to show that the procedural step was connected to the substantive result").

Only one of the petitioners needs to have standing to permit us to consider the petition for review. See Rumsfeld v. Forum for Academic and Institutional Rights, Inc., 547 U. S. 47 , n. 2 (2006). We stress here, as did Judge Tatel below, the special position and interest of Massachusetts. It is of considerable relevance that the party seeking review here is a sovereign State and not, as it was in Lujan, a private individual.

Well before the creation of the modern administrative state, we recognized that States are not normal litigants for the purposes of invoking federal jurisdiction. As Justice Holmes explained in Georgia v. Tennessee Copper Co., 206 U. S. 230, 237 (1907) , a case in which Georgia sought to protect its citizens from air pollution originating outside its borders:

"The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air."

Just as Georgia's "independent interest … in all the earth and air within its domain" supported federal jurisdiction a century ago, so too does Massachusetts' well-founded desire to preserve its sovereign territory today. Cf. Alden v. Maine, 527 U. S. 706, 715 (1999) (observing that in the federal system, the States "are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not the full authority, of sovereignty"). That Massachusetts does in fact own a great deal of the "territory alleged to be affected" only reinforces the conclusion that its stake in the outcome of this case is sufficiently concrete to warrant the exercise of federal judicial power.

When a State enters the Union, it surrenders certain sovereign prerogatives. Massachusetts cannot invade Rhode Island to force reductions in greenhouse gas emissions, it cannot negotiate an emissions treaty with China or India, and in some circumstances the exercise of its police powers to reduce in-state motor-vehicle emissions might well be pre-empted. See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U. S. 592, 607 (1982) ("One helpful indication in determining whether an alleged injury to the health and welfare of its citizens suffices to give the State standing to sue parens patriae is whether the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers").

These sovereign prerogatives are now lodged in the Federal Government, and Congress has ordered EPA to protect Massachusetts (among others) by prescribing standards applicable to the "emission of any air pollutant from any class or classes of new motor vehicle engines, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U. S. C. §7521(a)(1). Congress has moreover recognized a concomitant procedural right to challenge the rejection of its rulemaking petition as arbitrary and capricious. §7607(b)(1). Given that procedural right and Massachusetts' stake in protecting its quasi-sovereign interests, the Commonwealth is entitled to special solicitude in our standing analysis.17

With that in mind, it is clear that petitioners' submissions as they pertain to Massachusetts have satisfied the most demanding standards of the adversarial process. EPA's steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both "actual" and "imminent." Lujan, 504 U. S., at 560 (internal quotation marks omitted). There is, moreover, a "substantial likelihood that the judicial relief requested" will prompt EPA to take steps to reduce that risk. Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U. S. 59, 79 (1978) .

The Injury

The harms associated with climate change are serious and well recognized. Indeed, the NRC Report itself—which EPA regards as an "objective and independent assessment of the relevant science," 68 Fed. Reg. 52930—identifies a number of environmental changes that have already inflicted significant harms, including "the global retreat of mountain glaciers, reduction in snow-cover extent, the earlier spring melting of rivers and lakes, [and] the accelerated rate of rise of sea levels during the 20th century relative to the past few thousand years … ." NRC Report 16.

Petitioners allege that this only hints at the environmental damage yet to come. According to the climate scientist Michael MacCracken, "qualified scientific experts involved in climate change research" have reached a "strong consensus" that global warming threatens (among other things) a precipitate rise in sea levels by the end of the century, MacCracken Decl. ¶15, Stdg. App. 207, "severe and irreversible changes to natural ecosystems," id., ¶5(d), at 209, a "significant reduction in water storage in winter snowpack in mountainous regions with direct and important economic consequences," ibid., and an increase in the spread of disease, id., ¶28, at 218–219. He also observes that rising ocean temperatures may contribute to the ferocity of hurricanes. Id., ¶¶23–25, at 216–217.18

That these climate-change risks are "widely shared" does not minimize Massachusetts' interest in the outcome of this litigation. See Federal Election Comm'n v. Akins, 524 U. S. 11, 24 (1998) ("[W]here a harm is concrete, though widely shared, the Court has found 'injury in fact' "). According to petitioners' unchallenged affidavits, global sea levels rose somewhere between 10 and 20 centimeters over the 20th century as a result of global warming. MacCracken Decl. ¶5(c), Stdg. App. 208. These rising seas have already begun to swallow Massachusetts' coastal land. Id., at 196 (declaration of Paul H. Kirshen ¶5), 216 (MacCracken Decl. ¶23). Because the Commonwealth "owns a substantial portion of the state's coastal property," id., at 171 (declaration of Karst R. Hoogeboom ¶4),19 it has alleged a particularized injury in its capacity as a landowner. The severity of that injury will only increase over the course of the next century: If sea levels continue to rise as predicted, one Massachusetts official believes that a

significant fraction of coastal property will be "either permanently lost through inundation or temporarily lost through periodic storm surge and flooding events." Id., ¶6, at 172.20 Remediation costs alone, petitioners allege, could run well into the hundreds of millions of dollars. Id., ¶7, at 172; see also Kirshen Decl. ¶12, at 198.21

Causation

EPA does not dispute the existence of a causal connection between man-made greenhouse gas emissions and global warming. At a minimum, therefore, EPA's refusal to regulate such emissions "contributes" to Massachusetts' injuries.

EPA nevertheless maintains that its decision not to regulate greenhouse gas emissions from new motor vehicles contributes so insignificantly to petitioners' injuries that the agency cannot be haled into federal court to answer for them. For the same reason, EPA does not believe that any realistic possibility exists that the relief petitioners seek would mitigate global climate change and remedy their injuries. That is especially so because predicted increases in greenhouse gas emissions from developing nations, particularly China and India, are likely to offset any marginal domestic decrease.

But EPA overstates its case. Its argument rests on the erroneous assumption that a small incremental step, because it is incremental, can never be attacked in a federal judicial forum. Yet accepting that premise would doom most challenges to regulatory action. Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop. See Williamson v. Lee Optical of Okla., Inc., 348 U. S. 483, 489 (1955) ("[A] reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind"). They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more-nuanced understanding of how best to proceed. Cf. SEC v. Chenery Corp., 332 U. S. 194, 202 (1947) ("Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations"). That a first step might be tentative does not by itself support the notion that federal courts lack jurisdiction to determine whether that step conforms to law.

And reducing domestic automobile emissions is hardly a tentative step. Even leaving aside the other greenhouse gases, the United States transportation sector emits an enormous quantity of carbon dioxide into the atmosphere—according to the MacCracken affidavit, more than 1.7 billion metric tons in 1999 alone. ¶30, Stdg. App. 219. That accounts for more than 6% of worldwide carbon dioxide emissions. Id., at 232 (Oppenheimer Decl. ¶3); see also MacCracken Decl. ¶31, at 220. To put this in perspective: Considering just emissions from the transportation sector, which represent less than one-third of this country's total carbon dioxide emissions, the United States would still rank as the third-largest emitter of carbon dioxide in the world, outpaced only by the European Union and China.22 Judged by any standard, U. S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, according to petitioners, to global warming.

The Remedy

While it may be true that regulating motor-vehicle emissions will not by itself reverse global warming, it by no means follows that we lack jurisdiction to decide whether EPA has a duty to take steps to slow or reduce it. See also Larson v. Valente, 456 U. S. 228 , n. 15 (1982) ("[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury"). Because of the enormity of the potential consequences associated with man-made climate change, the fact that the effectiveness of a remedy might be delayed during the (relatively short) time it takes for a new motor-vehicle fleet to replace an older one is essentially irrelevant.23 Nor is it dispositive that developing countries such as China and India are poised to increase greenhouse gas emissions substantially over the next

century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.

We moreover attach considerable significance to EPA's "agree[ment] with the President that 'we must address the issue of global climate change,' " 68 Fed. Reg. 52929 (quoting remarks announcing Clear Skies and Global Climate Initiatives, 2002 Public Papers of George W. Bush, Vol. 1, Feb. 14, p. 227 (2004)), and to EPA's ardent support for various voluntary emission-reduction programs, 68 Fed. Reg. 52932. As Judge Tatel observed in dissent below, "EPA would presumably not bother with such efforts if it thought emissions reductions would have no discernable impact on future global warming." 415 F. 3d, at 66.

In sum—at least according to petitioners' uncontested affidavits—the rise in sea levels associated with global warming has already harmed and will continue to harm Massachusetts. The risk of catastrophic harm, though remote, is nevertheless real. That risk would be reduced to some extent if petitioners received the relief they seek. We therefore hold that petitioners have standing to challenge the EPA's denial of their rulemaking petition.24

V

The scope of our review of the merits of the statutory issues is narrow. As we have repeated time and again, an agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities. See Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U. S. 837, 842–845 (1984) . That discretion is at its height when the agency decides not to bring an enforcement action. Therefore, in Heckler v. Chaney, 470 U. S. 821 (1985) , we held that an agency's refusal to initiate enforcement proceedings is not ordinarily subject to judicial review. Some debate remains, however, as to the rigor with which we review an agency's denial of a petition for rulemaking.

There are key differences between a denial of a petition for rulemaking and an agency's decision not to initiate an enforcement action. See American Horse Protection Assn., Inc. v. Lyng, 812 F. 2d 1, 3–4 (CADC 1987). In contrast to nonenforcement decisions, agency refusals to initiate rulemaking "are less frequent, more apt to involve legal as opposed to factual analysis, and subject to special formalities, including a public explanation." Id., at 4; see also 5 U. S. C. §555(e). They moreover arise out of denials of petitions for rulemaking which (at least in the circumstances here) the affected party had an undoubted procedural right to file in the first instance. Refusals to promulgate rules are thus susceptible to judicial review, though such review is "extremely limited" and "highly deferential." National Customs Brokers & Forwarders Assn of America, Inc. v. United States, 883 F. 2d 93, 96 (CADC 1989).

EPA concluded in its denial of the petition for rulemaking that it lacked authority under 42 U. S. C. §7521(a)(1) to regulate new vehicle emissions because carbon dioxide is not an "air pollutant" as that term is defined in §7602. In the alternative, it concluded that even if it possessed authority, it would decline to do so because regulation would conflict with other administration priorities. As discussed earlier, the Clean Air Act expressly permits review of such an action. §7607(b)(1). We therefore "may reverse any such action found to be … arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." §7607(d)(9).

VI

On the merits, the first question is whether §202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a "judgment" that such emissions contribute to climate change. We have little trouble concluding that it does. In relevant part, §202(a)(1) provides that EPA "shall by regulation prescribe … standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U. S. C. §7521(a)(1).

Because EPA believes that Congress did not intend it to regulate substances that contribute to climate change, the agency maintains that carbon dioxide is not an "air pollutant" within the meaning of the provision.

The statutory text forecloses EPA's reading. The Clean Air Act's sweeping definition of "air pollutant" includes "any air pollution agent or combination of such agents, including any physical, chemical … substance or matter which is emitted into or otherwise enters the ambient air … ." §7602(g) (emphasis added). On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word "any."25 Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt "physical [and] chemical … substance[s] which [are] emitted into … the ambient air." The statute is unambiguous.26

Rather than relying on statutory text, EPA invokes postenactment congressional actions and deliberations it views as tantamount to a congressional command to refrain from regulating greenhouse gas emissions. Even if such postenactment legislative history could shed light on the meaning of an otherwise-unambiguous statute, EPA never identifies any action remotely suggesting that Congress meant to curtail its power to treat greenhouse gases as air pollutants. That subsequent Congresses have eschewed enacting binding emissions limitations to combat global warming tells us nothing about what Congress meant when it amended §202(a)(1) in 1970 and 1977.27 And unlike EPA, we have no difficulty reconciling Congress' various efforts to promote interagency collaboration and research to better understand climate change28 with the agency's pre-existing mandate to regulate "any air pollutant" that may endanger the public welfare. See 42 U. S. C. §7601(a)(1). Collaboration and research do not conflict with any thoughtful regulatory effort; they complement it.29

EPA's reliance on Brown & Williamson Tobacco Corp., 529 U. S. 120 , is similarly misplaced. In holding that tobacco products are not "drugs" or "devices" subject to Food and Drug Administration (FDA) regulation pursuant to the Food, Drug and Cosmetic Act (FDCA), see 529 U. S., at 133, we found critical at least two considerations that have no counterpart in this case.

First, we thought it unlikely that Congress meant to ban tobacco products, which the FDCA would have required had such products been classified as "drugs" or "devices." Id., at 135–137. Here, in contrast, EPA jurisdiction would lead to no such extreme measures. EPA would only regulate emissions, and even then, it would have to delay any action "to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance," §7521(a)(2). However much a ban on tobacco products clashed with the "common sense" intuition that Congress never meant to remove those products from circulation, Brown & Williamson, 529 U. S., at 133, there is nothing counterintuitive to the notion that EPA can curtail the emission of substances that are putting the global climate out of kilter.

Second, in Brown & Williamson we pointed to an unbroken series of congressional enactments that made sense only if adopted "against the backdrop of the FDA's consistent and repeated statements that it lacked authority under the FDCA to regulate tobacco." Id., at 144. We can point to no such enactments here: EPA has not identified any congressional action that conflicts in any way with the regulation of greenhouse gases from new motor vehicles. Even if it had, Congress could not have acted against a regulatory "backdrop" of disclaimers of regulatory authority. Prior to the order that provoked this litigation, EPA had never disavowed the authority to regulate greenhouse gases, and in 1998 it in fact affirmed that it had such authority. See App. 54 (Cannon memorandum). There is no reason, much less a compelling reason, to accept EPA's invitation to read ambiguity into a clear statute.

EPA finally argues that it cannot regulate carbon dioxide emissions from motor vehicles because doing so would require it to tighten mileage standards, a job (according to EPA) that Congress has assigned to DOT. See 68 Fed. Reg. 52929. But that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public's "health" and "welfare," 42 U. S. C. §7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and

Conservation Act, §2(5), 89 Stat. 874, 42 U. S. C. §6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.

While the Congresses that drafted §202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act obsolete. The broad language of §202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence. See Pennsylvania Dept. of Corrections v. Yeskey, 524 U. S. 206, 212 (1998) ("[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth" (internal quotation marks omitted)). Because greenhouse gases fit well within the Clean Air Act's capacious definition of "air pollutant," we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.

VII

The alternative basis for EPA's decision—that even if it does have statutory authority to regulate greenhouse gases, it would be unwise to do so at this time—rests on reasoning divorced from the statutory text. While the statute does condition the exercise of EPA's authority on its formation of a "judgment," 42 U. S. C. §7521(a)(1), that judgment must relate to whether an air pollutant "cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare," ibid. Put another way, the use of the word "judgment" is not a roving license to ignore the statutory text. It is but a direction to exercise discretion within defined statutory limits.

If EPA makes a finding of endangerment, the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles. Ibid. (stating that "[EPA] shall by regulation prescribe … standards applicable to the emission of any air pollutant from any class of new motor vehicles"). EPA no doubt has significant latitude as to the manner, timing, content, and coordination of its regulations with those of other agencies. But once EPA has responded to a petition for rulemaking, its reasons for action or inaction must conform to the authorizing statute. Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. Ibid. To the extent that this constrains agency discretion to pursue other priorities of the Administrator or the President, this is the congressional design.

EPA has refused to comply with this clear statutory command. Instead, it has offered a laundry list of reasons not to regulate. For example, EPA said that a number of voluntary executive branch programs already provide an effective response to the threat of global warming, 68 Fed. Reg. 52932, that regulating greenhouse gases might impair the President's ability to negotiate with "key developing nations" to reduce emissions, id., at 52931, and that curtailing motor-vehicle emissions would reflect "an inefficient, piecemeal approach to address the climate change issue," ibid.

Although we have neither the expertise nor the authority to evaluate these policy judgments, it is evident they have nothing to do with whether greenhouse gas emissions contribute to climate change. Still less do they amount to a reasoned justification for declining to form a scientific judgment. In particular, while the President has broad authority in foreign affairs, that authority does not extend to the refusal to execute domestic laws. In the Global Climate Protection Act of 1987, Congress authorized the State Department—not EPA—to formulate United States foreign policy with reference to environmental matters relating to climate. See §1103(c), 101 Stat. 1409. EPA has made no showing that it issued the ruling in question here after consultation with the State Department. Congress did direct EPA to consult with other agencies in the formulation of its policies and rules, but the State Department is absent from that list. §1103(b).

Nor can EPA avoid its statutory obligation by noting the uncertainty surrounding various features of climate change and concluding that it would therefore be better not to regulate at this time. See 68 Fed. Reg. 52930–52931. If the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming, EPA must say so. That EPA would prefer not to regulate greenhouse gases because of some residual uncertainty—which, contrary to Justice Scalia's apparent belief, post, at 5–8, is in fact all that it said, see 68 Fed. Reg. 52929 ("We do not believe . . . that it would be either effective or appropriate for EPA to establish [greenhouse gas] standards for motor vehicles at this time" (emphasis added))—is irrelevant. The statutory question is whether sufficient information exists to make an endangerment finding.

In short, EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change. Its action was therefore "arbitrary, capricious, … or otherwise not in accordance with law." 42 U. S. C. §7607(d)(9)(A). We need not and do not reach the question whether on remand EPA must make an endangerment finding, or whether policy concerns can inform EPA's actions in the event that it makes such a finding. Cf. Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U. S. 837, 843–844 (1984) . We hold only that EPA must ground its reasons for action or inaction in the statute.

VIII

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Utility Air Regulatory Group v. Environmental Protection Agency et al.
2014

Syllabus

certiorari to the united states court of appeals for the district of columbia circuit

No. 12–1146. Argued February 24, 2014—Decided June 23, 2014 1

The Clean Air Act imposes permitting requirements on stationary sources, such as factories and powerplants. The Act's "Prevention of Significant Deterioration" (PSD) provisions make it unlawful to construct or modify a "major emitting facility" in "any area to which [the PSD program] applies" without a permit. §§7475(a)(1), 7479(2)(C). A "major emitting facility" is a stationary source with the potential to emit 250 tons per year of "any air pollutant" (or 100 tons per year for certain types of sources). §7479(1). Facilities seeking to qualify for a PSD permit must, *inter alia,* comply with emissions limitations that reflect the "best available control technology" (BACT) for "each pollutant subject to regulation under" the Act. §7475(a)(4). In addition, Title V of the Act makes it unlawful to operate any "major source," wherever located, without a permit. §7661a(a). A "major source" is a stationary source with the potential to emit 100 tons per year of "any air pollutant." §§7661(2)(B), 7602(j).

In response to *Massachusetts* v. *EPA*, 549 U. S. 497, EPA promulgated greenhouse-gas emission standards for new motor vehicles, and made stationary sources subject to the PSD program and Title V on the basis of their potential to emit greenhouse gases. It recognized, however, that requiring permits for all sources with greenhouse-gas emissions above the statutory thresholds would radically expand those programs and render them unadministrable. So EPA purported to "tailor" the programs to accommodate greenhouse gases by providing, among other things, that sources would not become newly subject to PSD or Title V permitting on the basis of their potential to emit greenhouse gases in amounts less than 100,000 tons per year.

Numerous parties, including several States, challenged EPA's actions in the D. C. Circuit, which dismissed some of the petitions for lack of jurisdiction and denied the remainder.

Held: The judgment is affirmed in part and reversed in part.

684 F. 3d 102, affirmed in part and reversed in part.

Justice Scalia delivered the opinion of the Court with respect to Parts I and II, concluding:

1. The Act neither compels nor permits EPA to adopt an interpretation of the Act requiring a source to obtain a PSD or Title V permit on the sole basis of its potential greenhouse-gas emissions. Pp. 10–24.

(a) The Act does not compel EPA's interpretation. *Massachusetts* held that the Act-wide definition of "air pollutant" includes greenhouse gases, 549 U. S., at 529, but where the term "air pollutant" appears in the Act's operative provisions, including the PSD and Title V permitting provisions, EPA has routinely given it a narrower, context-appropriate meaning. *Massachusetts* did not invalidate those longstanding constructions. The Act-wide definition is not a command to regulate, but a description of the universe of substances EPA may consider regulating under the Act's operative provisions. Though Congress's profligate use of "air pollutant" is not conducive to clarity, the presumption of consistent usage " 'readily yields' " to context, and a statutory term "may take on distinct characters from association with distinct statutory objects calling for different implementation strategies." *Environmental Defense* v. *Duke Energy Corp.*, 549 U. S. 561. Pp. 10–16.

(b) Nor does the Act permit EPA's interpretation. Agencies empowered to resolve statutory ambiguities must operate "within the bounds of reasonable interpretation," *Arlington* v. *FCC*, 569 U. S. ___, ___. EPA has repeatedly acknowledged that applying the PSD and Title V permitting requirements to greenhouse gases would be inconsistent with the Act's structure and design. A review of the relevant statutory provisions leaves no doubt that the PSD program and Title V are designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens. EPA's interpretation would also bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization. *FDA* v.*Brown & Williamson Tobacco Corp.*, 529 U. S. 120. Pp. 16–20.

(c) EPA lacked authority to "tailor" the Act's unambiguous numerical thresholds of 100 or 250 tons per year to accommodate its greenhouse-gas-inclusive interpretation of the permitting triggers. Agencies must always " 'give effect to the unambiguously expressed intent of Congress.' " *National Assn. of Home Builders* v. *Defenders of Wildlife*, 551 U. S. 644. The power to execute the laws does not include a power to revise clear statutory terms that turn out not to work in practice. Pp. 20–24.

2. EPA reasonably interpreted the Act to require sources that would need permits based on their emission of conventional pollutants to comply with BACT for greenhouse gases. Pp. 24–29.

(a) Concerns that BACT, which has traditionally been about end-of-stack controls, is fundamentally unsuited to greenhouse-gas regulation, which is more about energy use, are not unfounded. But an EPA guidance document states that BACT analysis should consider options other than energy efficiency, including "carbon capture and storage," which EPA contends is reasonably comparable to more traditional, end-of-stack BACT technologies. Moreover, assuming that BACT may be used to force improvements in energy efficiency, important limitations on BACT may work to mitigate concerns about "unbounded" regulatory authority. Pp. 24–27.

(b) EPA's decision to require BACT for greenhouse gases emitted by sources otherwise subject to PSD review is, as a general matter, a permissible interpretation of the statute under *Chevron U. S. A. Inc.* v.*Natural Resources Defense Council, Inc.*, 467 U. S. 837. The specific phrasing of the BACT provision—which requires BACT "for each pollutant subject to regulation under" the Act, §7475(a)(4)—does not suggest that the provision can bear a narrowing construction. And even if the text were not clear, applying BACT to greenhouse gases is not so disastrously unworkable, and need not result in such a dramatic expansion of agency authority, as to make EPA's interpretation unreasonable. Pp. 27–29.

Scalia, J., announced the judgment of the Court and delivered an opinion, Parts I and II of which were for the Court. Roberts, C. J., and Kennedy, J., joined that opinion in full; Thomas and Alito, JJ., joined as to Parts I, II–A, and II–B–1; and Ginsburg, Breyer, Sotomayor, and Kagan, JJ., joined as to Part II–B–2.Breyer J., filed an opinion concurring in part and dissenting in part, in which Ginsburg, Sotomayor, andKagan, JJ., joined. Alito, J., filed an opinion concurring in part and dissenting in part, in which Thomas, J., joined.

Opinion

UTILITY AIR REGULATORY GROUP,PETITIONER

12–1146 *v.*

ENVIRONMENTAL PROTECTION AGENCY, et al.;

AMERICAN CHEMISTRY COUNCIL, et al.,PETITIONERS

12–1248 *v.*

ENVIRONMENTAL PROTECTION AGENCY, et al.;

ENERGY-INTENSIVE MANUFACTURERS WORKINGGROUP ON GREENHOUSE GAS REGULATION,et al.,PETITIONERS

12–1254 *v.*

ENVIRONMENTAL PROTECTION AGENCY, et al.;

SOUTHEASTERN LEGAL FOUNDATION, INC.,et al., PETITIONERS

12–1268 *v.*

ENVIRONMENTAL PROTECTION AGENCY, et al.;

TEXAS, et al., PETITIONERS

12–1269 *v.*

ENVIRONMENTAL PROTECTION AGENCY, et al.; and

CHAMBER OF COMMERCE OF THE UNITEDSTATES, et al., PETITIONERS

12–1272 *v.*

ENVIRONMENTAL PROTECTION AGENCY, et al.;

on writs of certiorari to the united states court ofappeals for the district of columbia circuit

[June 23, 2014]

Justice Scalia announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II.

Acting pursuant to the Clean Air Act, 69Stat. 322, as amended, 42 U. S. C. §§7401–7671q, the Environmental Protection Agency recently set standards for emissions of "greenhouse gases" (substances it believes contribute to "global climate change") from new motor vehicles. We must decide whether it was permissible for EPA to determine that its motor-vehicle greenhouse-gas regulations automatically triggered permitting requirements under the Act for stationary sources that emit greenhouse gases.

I. Background

A. Stationary-Source Permitting

The Clean Air Act regulates pollution-generating emissions from both stationary sources, such as factories and powerplants, and moving sources, such as cars, trucks, and aircraft. This litigation concerns permitting obligations imposed on stationary sources under Titles I and V of the Act.

Title I charges EPA with formulating national ambient air quality standards (NAAQS) for air pollutants. §§7408–7409. To date, EPA has issued NAAQS for six pollutants: sulfur dioxide, particulate matter, nitrogen dioxide, carbon monoxide, ozone, and lead. Clean Air Act Handbook 125 (J. Domike & A. Zacaroli eds., 3d ed. 2011); see generally 40 CFR pt. 50 (2013). States have primary responsibility for implementing the NAAQS by developing "State implementation plans." 42 U. S. C. §7410. A State must designate every area within its borders as "attainment," "nonattainment," or "unclassifiable" with respect to each NAAQS, §7407(d), and the State's implementation plan must include permitting programs for stationary sources that vary according to the classification of the area where the source is or is proposed to be located. §7410(a)(2)(C), (I).

Stationary sources in areas designated attainment or unclassifiable are subject to the Act's provisions relating to "Prevention of Significant Deterioration" (PSD). §§7470–7492. EPA interprets the PSD provisions to apply to sources located in areas that are designated attainment or unclassifiable for *any* NAAQS pollutant, regardless of whether the source emits that specific pollutant. Since the inception of the PSD program, every area of the country has been designated attainment or unclassifiable for at least one NAAQS pollutant; thus, on EPA's view, all stationary sources are potentially subject to PSD review.

It is unlawful to construct or modify a "major emitting facility" in "any area to which [the PSD program] applies" without first obtaining a permit. §§7475(a)(1), 7479(2)(C). To qualify for a permit, the facility must not cause or contribute to the violation of any applicable air-quality standard, §7475(a)(3), and it must comply with emissions limitations that reflect the "best available control technology" (or BACT) for "each pollutant subject to regulation under" the Act. §7475(a)(4). The Act defines a "major emitting facility" as any stationary source with the potential to emit 250 tons per year of "any air pollutant" (or 100 tons per year for certain types of sources). §7479(1). It defines "modification" as a physical or operational change that causes the facility to emit more of "any air pollutant." §7411(a)(4). [1]

In addition to the PSD permitting requirements for construction and modification, Title V of the Act makes it unlawful to *operate* any "major source," wherever located, without a comprehensive operating permit. §7661a(a). Unlike the PSD program, Title V generally does not impose any substantive pollution-control requirements. Instead, it is designed to facilitate compliance and enforcement by consolidating into a single document all of a facility's obligations under the Act. The permit must include all "emissions limitations and standards" that apply to the source, as well as associated inspection, monitoring, and reporting requirements. §7661c(a)–(c). Title V defines a "major source" by reference to the Act-wide definition of "major stationary source," which in turn means any stationary source with the potential to emit 100 tons per year of "any air pollutant." §§7661(2)(B), 7602(j).

B. EPA's Greenhouse-Gas Regulations

In 2007, the Court held that Title II of the Act "authorize[d] EPA to regulate greenhouse gas emissions from new motor vehicles" if the Agency "form[ed] a 'judgment' that such emissions contribute to climate change." *Massachusetts* v. *EPA*, 549 U. S. 497 (quoting §7521(a)(1)). In response to that decision, EPA embarked on a course of regulation resulting in "the single largest expansion in the scope of the [Act] in its history." Clean Air Act Handbook, at xxi.

EPA first asked the public, in a notice of proposed rulemaking, to comment on how the Agency should respond to *Massachusetts*. In doing so, it explained that regulating greenhouse-gas emissions from motor vehicles could have far-reaching consequences for stationary sources. Under EPA's view, once greenhouse gases became regulated under any part of the Act, the PSD and Title V permitting requirements would apply to all stationary sources with the potential to emit greenhouse gases in excess of the statutory thresholds: 100 tons per year under Title V, and 100 or 250 tons per year under the PSD program depending on the type of source. 73 Fed. Reg. 44420, 44498, 44511 (2008). Because greenhouse-gas emissions tend to be "orders of magnitude greater" than emissions of conventional pollutants, EPA projected that numerous small sources not previously regulated under the Act would be swept into the PSD program and Title V, including "smaller industrial sources," "large office and residential build-ings, hotels, large retail establishments, and similar facilities." *Id.,* at 44498–44499. The Agency warned that this would constitute an "unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land," yet still be "relatively ineffective at reducing greenhouse gas concentrations." *Id.,* at 44355. [2]

In 2009, EPA announced its determination regarding the danger posed by motor-vehicle greenhouse-gas emissions. EPA found that greenhouse-gas emissions from new motor vehicles contribute to elevated atmospheric concentrations of greenhouse gases, which endanger public health and welfare by fostering global "climate change." 74 Fed. Reg. 66523, 66537 (hereinafter Endangerment Finding). It denominated a "single air pollutant" the "combined mix" of six greenhouse gases that it identified as "the root cause of human-induced climate change": carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. *Id.,* at 66516, 66537. A source's greenhouse-gas emissions would be measured in "carbon dioxide equivalent units" (CO2e), which would be calculated based on each gas's "global warming potential." *Id.,* at 66499, n. 4.

Next, EPA issued its "final decision" regarding the prospect that motor-vehicle greenhouse-gas standards would trigger stationary-source permitting requirements. 75 Fed. Reg. 17004 (2010) (hereinafter Triggering Rule). EPA announced that beginning on the effective date of its greenhouse-gas standards for motor vehicles, stationary sources would be subject to the PSD program and Title V on the basis of their potential to emit greenhouse gases. As expected, EPA in short order promulgated greenhouse-gas emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles to take effect on January 2, 2011. 75 Fed. Reg. 25324 (hereinafter Tailpipe Rule).

EPA then announced steps it was taking to "tailor" the PSD program and Title V to greenhouse gases. 75 Fed. Reg. 31514 (hereinafter Tailoring Rule). Those steps were necessary, it said, because the PSD program and Title V were designed to regulate "a relatively small number of large industrial sources," and requiring permits for all sources with greenhouse-gas emissions above the statu-tory thresholds would radically expand those programs, making them both unadministrable and "unrecognizable to the Congress that designed" them. *Id.,* at 31555, 31562. EPA nonetheless rejected calls to exclude greenhouse gases entirely from those programs, asserting that the Act is not "ambiguous with respect to the need to cover [greenhouse-gas] sources under either the PSD or title V program." *Id.,* at 31548, n. 31. Instead, EPA adopted a "phase-in approach" that it said would "appl[y] PSD and title V at threshold levels that are as close to the statutory levels as possible, and do so as quickly as possible, at least to a certain point." *Id.,*at 31523.

The phase-in, EPA said, would consist of at least three steps. During Step 1, from January 2 through June 30, 2011, no source would become newly subject to the PSD program or Title V solely on the basis of its greenhouse-gas emissions; however, sources required to obtain permits anyway because of their emission of conventional pollutants (so-called "anyway" sources) would need to comply with BACT for greenhouse gases if they emitted those gases in significant amounts, defined as at least 75,000 tons per year CO2e.*Ibid.* During Step 2, from July 1, 2011, through June 30, 2012, sources with the potential to emit at least 100,000 tons per year CO2e of greenhouse gases would be subject to PSD and Title V permitting for their construction and operation and to PSD permitting for modifications that would increase their greenhouse-gas emissions by at least 75,000 tons per year CO2e. *Id.,* at 31523–31524. [3] At Step 3, beginning on July 1, 2013, EPA said it might (or might not) further reduce the permitting thresholds (though not below 50,000 tons per year CO2e), and it might (or might not) establish permanent exemptions for some sources. *Id.,* at 31524. Beyond Step 3, EPA promised to complete another round of rulemaking by April 30, 2016, in which it would "take further action to address small sources," which might (or might not) include establishing permanent exemptions. *Id.,* at 31525.

EPA codified Steps 1 and 2 at 40 CFR §§51.166(b)(48) and 52.21(b)(49) for PSD and at §§70.2 and 71.2 for Title V, and it codified its commitments regarding Step 3 and beyond at §§52.22, 70.12, and 71.13. See Tailoring Rule 31606–31608. After the decision below, EPA issued its final Step 3 rule, in which it decided not to lower the thresholds it had established at Step 2 until at least 2016. 77 Fed. Reg. 41051 (2012).

C. Decision Below

Numerous parties, including several States, filed petitions for review in the D. C. Circuit under 42 U. S. C. §7607(b), challenging EPA's greenhouse-gas-related actions. The Court of Appeals dismissed some of the petitions for lack of jurisdiction and denied the remainder. *Coalition for Responsible Regulation, Inc.* v.*EPA*, 684 F. 3d 102 (2012) (*per curiam*). First, it upheld the Endangerment Finding and Tailpipe Rule. *Id.,*at 119, 126. Next, it held that EPA's interpretation of the PSD permitting requirement as applying to "any regulated air

pollutant," including greenhouse gases, was "compelled by the statute." *Id.,* at 133–134. The court also found it "crystal clear that PSD permittees must install BACT for greenhouse gases." *Id.,* at 137. Because it deemed petitioners' arguments about the PSD program insufficiently applicable to Title V, it held they had "forfeited any challenges to EPA's greenhouse gas-inclusive interpretation of Title V." *Id.,*at 136. Finally, it held that petitioners were without Article III standing to challenge EPA's efforts to limit the reach of the PSD program and Title V through the Triggering and Tailoring Rules. *Id.,* at 146. The court denied rehearing en banc, with Judges Brown and Kavanaugh each dissenting. No. 09–1322 etc. (Dec. 20, 2012), App. 139, 2012 WL 6621785.

We granted six petitions for certiorari but agreed to decide only one question: " 'Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.' " 571 U. S. ____ (2013).

II. Analysis

This litigation presents two distinct challenges to EPA's stance on greenhouse-gas permitting for stationary sources. First, we must decide whether EPA permissibly determined that a source may be subject to the PSD and Title V permitting requirements on the sole basis of the source's potential to emit greenhouse gases. Second, we must decide whether EPA permissibly determined that a source already subject to the PSD program because of its emission of conventional pollutants (an "anyway" source) may be required to limit its greenhouse-gas emissions by employing the "best available control technology" for greenhouse gases. The Solicitor General joins issue on both points but evidently regards the second as more important; he informs us that "anyway" sources account for roughly 83% of American stationary-source greenhouse-gas emissions, compared to just 3% for the additional, non-"anyway" sources EPA sought to regulate at Steps 2 and 3 of the Tailoring Rule. Tr. of Oral Arg. 52.

We review EPA's interpretations of the Clean Air Act using the standard set forth in *Chevron U. S. A. Inc.*v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837–843 (1984). Under *Chevron*, we presume that when an agency-administered statute is ambiguous with respect to what it prescribes, Congress has empowered the agency to resolve the ambiguity. The question for a reviewing court is whether in doing so the agency has acted reasonably and thus has "stayed within the bounds of its statutory authority."*Arlington* v. *FCC*, 569 U. S. ___, ___ (2013) (slip op., at 5) (emphasis deleted).

A. The PSD and Title V Triggers

We first decide whether EPA permissibly interpreted the statute to provide that a source may be required to obtain a PSD or Title V permit on the sole basis of its potential greenhouse-gas emissions.

EPA thought its conclusion that a source's greenhouse-gas emissions may necessitate a PSD or Title V permit followed from the Act's unambiguous language. The Court of Appeals agreed and held that the statute "compelled" EPA's interpretation. 684 F. 3d, at 134. We disagree. The statute compelled EPA's greenhouse-gas-inclusive interpretation with respect to neither the PSD program nor Title V. [4]

The Court of Appeals reasoned by way of a flawed syllogism: Under *Massachusetts*, the general, Act-wide definition of "air pollutant" includes greenhouse gases; the Act requires permits for major emitters of "any air pollutant"; therefore, the Act requires permits for major emitters of greenhouse gases. The conclusion follows from the premises only if the air pollutants referred to in the permit-requiring provisions (the minor premise) are the same air pollutants encompassed by the Act-wide definition as interpreted in*Massachusetts* (the major premise). Yet no one—least of all EPA—endorses that proposition, and it is obviously untenable.

The Act-wide definition says that an air pollutant is "any air pollution agent or combination of such agents, including any physical, chemical, biological, [or] radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." §7602(g). In *Massachusetts*, the Court held that the Act-wide definition includes greenhouse gases because it is all-encompassing; it "embraces all airborne compounds of whatever stripe." 549 U. S., at 529. But where the term "air pollutant" appears in the Act's operative provisions, EPA has routinely given it a narrower, context-appropriate meaning.

That is certainly true of the provisions that require PSD and Title V permitting for major emitters of "any air pollutant." Since 1978, EPA's regulations have interpreted "air pollutant" in the PSD permitting trigger as limited to *regulated* air pollutants, 43 Fed. Reg. 26403, codified, as amended, 40 CFR §52.21(b)(1)–(2), (50)—a class much narrower than *Massachusetts*' "all airborne compounds of whatever stripe," 549 U. S., at 529. And since 1993 EPA has informally taken the same position with regard to the Title V permitting trigger, a position the Agency ultimately incorporated into some of the regulations at issue here. See Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Air Division Director, Regions I–X, pp. 4–5 (Apr. 26, 1993); Tailoring Rule 31607–31608 (amending 40 CFR §§70.2, 71.2). Those interpretations were appropriate: It is plain as day that the Act does not envision an elaborate, burdensome permitting process for major emitters of steam, oxygen, or other harmless airborne substances. It takes some cheek for EPA to insist that it cannot possibly give "air pollutant" a reasonable, context-appropriate meaning in the PSD and Title V contexts when it has been doing precisely that for decades.

Nor are those the only places in the Act where EPA has inferred from statutory context that a generic reference to air pollutants does not encompass every substance falling within the Act-wide definition. Other examples abound:

The Act authorizes EPA to enforce new source performance standards (NSPS) against a pre-existing source if, after promulgation of the standards, the source undergoes a physical or

operational change that increases its emission of "any air pollutant." §7411(a)(2), (4), (b)(1)(B). EPA interprets that provision as limited to air pollutants *for which EPA has promulgated new source performance standards*. 36 Fed. Reg. 24877 (1971), codified, as amended, 40 CFR §60.2; 40 Fed. Reg. 58419 (1975), codified, as amended, 40 CFR §60.14(a).

The Act requires a permit for the construction or operation in a nonattainment area of a source with the potential to emit 100 tons per year of "any air pollutant." §§7502(c)(5), 7602(j). EPA interprets that provision as limited to pollutants *for which the area is designated nonattainment*. 45 Fed. Reg. 52745 (1980), promulgating 40 CFR §51.18(j)(2), as amended, §51.165(a)(2).

The Act directs EPA to require "enhanced monitoring and submission of compliance certifications" for any source with the potential to emit 100 tons per year of "any air pollutant." §§7414(a)(3), 7602(j). EPA interprets that provision as limited to *regulated* pollutants. 62 Fed. Reg. 54941 (1997), codifiedat 40 CFR §§64.1, 64.2.

The Act requires certain sources of air pollutants that interfere with visibility to undergo retrofitting if they have the potential to emit 250 tons per year of "any pollutant." §7491(b)(2)(A), (g)(7). EPA interprets that provision as limited to *visibility-impairing* air pollutants. 70 Fed. Reg. 39160 (2005), codified at 40 CFR pt. 51, App. Y, §II.A.3.

Although these limitations are nowhere to be found in the Act-wide definition, in each instance EPA has concluded—as it has in the PSD and Title V context—that the statute is not using "air pollutant" in*Massachusetts*' broad sense to mean any airborne substance whatsoever.

Massachusetts did not invalidate all these longstanding constructions. That case did not hold that EPA must always regulate greenhouse gases as an "air pollutant" everywhere that term appears in the statute, but only that EPA must "ground its reasons for action *or inaction* in the statute," 549 U. S., at 535 (emphasis added), rather than on "reasoning divorced from the statutory text," *id.,* at 532. EPA's inaction with regard to Title II was not sufficiently grounded in the statute, the Court said, in part because nothing in the Act suggested that regulating greenhouse gases under that Title would conflict with the statutory design. Title II would not compel EPA to regulate in any way that would be "extreme," "counterintuitive," or contrary to " 'common sense.' " *Id.,* at 531. At most, it would require EPA to take the modest step of adding greenhouse-gas standards to the roster of new-motor-vehicle emission regulations. *Ibid.*

Massachusetts does not strip EPA of authority to exclude greenhouse gases from the class of regulable air pollutants under other parts of the Act where their inclusion would be inconsistent with the statutory scheme. The Act-wide definition to which the Court gave a "sweeping" and "capacious" interpretation, *id.,*at 528, 532, is not a command to regulate, but a description of the universe of substances EPA may*consider* regulating under the Act's operative provisions. *Massachusetts* does not foreclose the Agency's use of statutory context to infer that certain of the Act's provisions use "air pollutant" to denote not every conceivable airborne substance, but only those that may sensibly be encompassed within the particular regulatory program. As certain *amici* felicitously put it, while *Massachusetts* "rejected EPA's categorical

contention that greenhouse gases *could not* be 'air pollutants' for any purposes of the Act," it did not "embrace EPA's current, equally categorical position that greenhouse gases *must* be air pollutants for all purposes" regardless of the statutory context. Brief for Administrative Law Professors et al. as *Amici Curiae* 17. [5]

To be sure, Congress's profligate use of "air pollutant" where what is meant is obviously narrower than the Act-wide definition is not conducive to clarity. One ordinarily assumes " 'that identical words used in different parts of the same act are intended to have the same meaning.' " *Environmental Defense* v. *Duke Energy Corp.*, 549 U. S. 561, 574 (2007) . In this respect (as in countless others), the Act is far from a*chef d'oeuvre* of legislative draftsmanship. But we, and EPA, must do our best, bearing in mind the " 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.' " *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000) . As we reiterated the same day we decided *Massachusetts*, the presumption of consistent usage " 'readily yields' " to context, and a statutory term—even one defined in the statute—"may take on distinct characters from association with distinct statutory objects calling for different implementation strategies." *Duke Energy*, *supra*, at 574.

We need not, and do not, pass on the validity of all the limiting constructions EPA has given the term "air pollutant" throughout the Act. We merely observe that taken together, they belie EPA's rigid insistence that when interpreting the PSD and Title V permitting requirements it is bound by the Act-wide definition's inclusion of greenhouse gases, no matter how incompatible that inclusion is with those programs' regulatory structure.

In sum, there is no insuperable textual barrier to EPA's interpreting "any air pollutant" in the permitting triggers of PSD and Title V to encompass only pollutants emitted in quantities that enable them to be sensibly regulated at the statutory thresholds, and to exclude those atypical pollutants that, like greenhouse gases, are emitted in such vast quantities that their inclusion would radically transform those programs and render them unworkable as written. [6]

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Having determined that EPA was mistaken in thinking the Act *compelled* a greenhouse-gas-inclusive interpretation of the PSD and Title V triggers, we next consider the Agency's alternative position that its interpretation was justified as an exercise of its "discretion" to adopt "a reasonable construction of the statute." Tailoring Rule 31517. We conclude that EPA's interpretation is not permissible.

Even under *Chevron*'s deferential framework, agencies must operate "within the bounds of reasonable interpretation." *Arlington*, 569 U. S., at ___ (slip op., at 5). And reasonable statutory interpretation must account for both "the specific context in which . . . language is used" and "the broader context of the statute as a whole." *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 341 (1997) . A statutory "provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive

effect that is compatible with the rest of the law."*United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 371 (1988) . Thus, an agency interpretation that is "inconsisten[t] with the design and structure of the statute as a whole,"*University of Tex. Southwestern Medical Center* v. *Nassar*, 570 U. S. ___, ___ (2013) (slip op., at 13), does not merit deference.

EPA itself has repeatedly acknowledged that applying the PSD and Title V permitting requirements to greenhouse gases would be inconsistent with—in fact, would overthrow—the Act's structure and design. In the Tailoring Rule, EPA described the calamitous consequences of interpreting the Act in that way. Under the PSD program, annual permit applications would jump from about 800 to nearly 82,000; annual administrative costs would swell from $12 million to over $1.5 billion; and decade-long delays in issuing permits would become common, causing construction projects to grind to a halt nationwide. Tailoring Rule 31557. The picture under Title V was equally bleak: The number of sources required to have permits would jump from fewer than 15,000 to about 6.1 million; annual administrative costs would balloon from $62 million to $21 billion; and collectively the newly covered sources would face permitting costs of $147 billion. *Id.,* at 31562–31563. Moreover, "the great majority of additional sources brought into the PSD and title V programs would be small sources that Congress did not expect would need to undergo permitting."*Id.,* at 31533. EPA stated that these results would be so "contrary to congressional intent," and would so "severely undermine what Congress sought to accomplish," that they necessitated as much as a 1,000-fold increase in the permitting thresholds set forth in the statute. *Id.,* at 31554, 31562.

Like EPA, we think it beyond reasonable debate that requiring permits for sources based solely on their emission of greenhouse gases at the 100- and 250-tons-per-year levels set forth in the statute would be "incompatible" with "the substance of Congress' regulatory scheme." *Brown & Williamson*, 529 U. S., at 156. A brief review of the relevant statutory provisions leaves no doubt that the PSD program and Title V are designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens.

Start with the PSD program, which imposes numerous and costly requirements on those sources that are required to apply for permits. Among other things, the applicant must make available a detailed scientific analysis of the source's potential pollution-related impacts, demonstrate that the source will not contribute to the violation of any applicable pollution standard, and identify and use the "best available control technology" for each regulated pollutant it emits. §7475(a)(3), (4), (6), (e). The permitting authority (the State, usually) also bears its share of the burden: It must grant or deny a permit within a year, during which time it must hold a public hearing on the application. §7475(a)(2), (c). Not surprisingly, EPA acknowledges that PSD review is a "complicated, resource-intensive, time-consuming, and sometimes contentious process" suitable for "hundreds of larger sources," not "tens of thousands of smaller sources." 74 Fed. Reg. 55304, 55321–55322.

Title V contains no comparable substantive requirements but imposes elaborate procedural mandates. It requires the applicant to submit, within a year of becoming subject to Title V, a permit application and a "compliance plan" describing how it will comply with "all applicable requirements" under the Act; to certify its compliance annually; and to submit to "inspection, entry, monitoring, . . . and reporting requirements." §§7661b(b)–(c), 7661c(a)–(c). The procedural burdens on the permitting authority and EPA are also significant. The permitting authority must hold a public hearing on the application, §7661a(b)(6), and it must forward the application and any proposed permit to EPA and neighboring States and respond in writing to their comments, §7661d(a), (b)(1). If it fails to issue or deny the permit within 18 months, any interested party can sue to require a decision "without additional delay." §§7661a(b)(7), 7661b(c). An interested party also can petition EPA to block issuance of the permit; EPA must grant or deny the petition within 60 days, and its decision may be challenged in federal court. §7661d(b)(2)–(3). As EPA wrote, Title V is "finely crafted for thousands," not millions, of sources. Tailoring Rule 31563.

The fact that EPA's greenhouse-gas-inclusive interpretation of the PSD and Title V triggers would place plainly excessive demands on limited governmental resources is alone a good reason for rejecting it; but that is not the only reason. EPA's interpretation is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization. When an agency claims to discover in a long-extant statute an unheralded power to regulate "a significant portion of the American economy," *Brown & Williamson*, 529 U. S., at 159, we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast "economic and political significance." *Id.,* at 160; see also*MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 231 (1994) ;*Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U. S. 607–646 (1980) (plurality opinion). The power to require permits for the construction and modification of tens of thousands, and the operation of millions, of small sources nationwide falls comfortably within the class of authorizations that we have been reluctant to read into ambiguous statutory text. Moreover, in EPA's assertion of that authority, we confront a singular situation: an agency laying claim to extravagant statutory power over the national economy while at the same time strenuously asserting that the authority claimed would render the statute "unrecognizable to the Congress that designed" it. Tailoring Rule 31555. Since, as we hold above, the statute does not compel EPA's interpretation, it would be patently unreason-able—not to say outrageous—for EPA to insist on seizing expansive power that it admits the statute is not designed to grant. [7]

3

EPA thought that despite the foregoing problems, it could make its interpretation reasonable by adjusting the levels at which a source's greenhouse-gas emissions would oblige it to undergo PSD and Title V permitting. Although the Act, in no uncertain terms, requires permits for sources with the potential to emit more than 100 or 250 tons per year of a relevant pollutant,

EPA in its Tailoring Rule wrote a new threshold of *100,000* tons per year for greenhouse gases. Since the Court of Appeals thought the statute unambiguously made greenhouse gases capable of triggering PSD and Title V, it held that petitioners lacked Article III standing to challenge the Tailoring Rule because that rule did not injure petitioners but merely relaxed the pre-existing statutory requirements. Because we, however, hold that EPA's greenhouse-gas-inclusive interpretation of the triggers was *not* compelled, and because EPA has essentially admitted that its interpretation would be unreasonable without "tailoring," we consider the validity of the Tailoring Rule.

We conclude that EPA's rewriting of the statutory thresholds was impermissible and therefore could not validate the Agency's interpretation of the triggering provisions. An agency has no power to "tailor" legislation to bureaucratic policy goals by rewriting unambiguous statutory terms. Agencies exercise discretion only in the interstices created by statutory silence or ambiguity; they must always " 'give effect to the unambiguously expressed intent of Congress.' " *National Assn. of Home Builders* v. *Defenders of Wildlife*, 551 U. S. 644, 665 (2007) (quoting *Chevron*, 467 U. S., at 843). It is hard to imagine a statutory term less ambiguous than the precise numerical thresholds at which the Act requires PSD and Title V permitting. When EPA replaced those numbers with others of its own choosing, it went well beyond the "bounds of its statutory authority." *Arlington*, 569 U. S., at ___ (slip op., at 5) (emphasis deleted).

The Solicitor General does not, and cannot, defend the Tailoring Rule as an exercise of EPA's enforcement discretion. The Tailoring Rule is not just an announcement of EPA's refusal to enforce the statutory permitting requirements; it purports to *alter* those requirements and to establish with the force of law that otherwise-prohibited conduct will not violate the Act. This alteration of the statutory requirements was crucial to EPA's "tailoring" efforts. Without it, small entities with the potential to emit greenhouse gases in amounts exceeding the statutory thresholds would have remained subject to citizen suits—authorized by the Act—to enjoin their construction, modification, or operation and to impose civil penalties of up to $37,500 per day of violation. §§7413(b), 7604(a), (f)(4); 40 CFR §19.4. EPA itself has recently affirmed that the "independent enforcement authority" furnished by the citizen-suit provision cannot be displaced by a permitting authority's decision not to pursue enforcement. 78 Fed. Reg. 12477, 12486–12487 (2013). The Solicitor General is therefore quite right to acknowledge that the availability of citizen suits made it necessary for EPA, in seekingto mitigate the unreasonableness of its greenhouse-gas-inclusive interpretation, to go beyond merely exercising its enforcement discretion. See Tr. of Oral Arg. 87–88.

For similar reasons, *Morton* v. *Ruiz*, 415 U. S. 199 (1974) —to which the Solicitor General points as the best case supporting the Tailoring Rule, see Tr. of Oral Arg. 71, 80–81—is irrelevant. In *Ruiz*, Congress had appropriated funds for the Bureau of Indian Affairs to spend on providing assistance to " 'Indians throughout the United States' " and had not "impose[d] any geographical limitation on the availability of general assistance benefits." *Id.,* at 206–207, and

n. 7. Although we held the Bureau could not deny benefits to off-reservation Indians because it had not published its eligibility criteria, we stated in dictum that the Bureau could, if it followed proper administrative procedures, "create reasonable classifications and eligibility requirements in order to allocate the limited funds available." *Id.,* at 230–231. That dictum stands only for the unremarkable proposition that an agency may adopt policies to prioritize its expenditures *within the bounds established by Congress*. See also *Lincoln* v. *Vigil*, 508 U. S. 182–193 (1993). Nothing in *Ruiz* remotely authorizes an agency to modify unambiguous requirements imposed by a federal statute. An agency confronting resource constraints may change its own conduct, but it cannot change the law.

Were we to recognize the authority claimed by EPA in the Tailoring Rule, we would deal a severe blow to the Constitution's separation of powers. Under our system of government, Congress makes laws and the President, acting at times through agencies like EPA, "faithfully execute[s]" them. U. S. Const., Art. II, §3; see *Medellín* v. *Texas*, 552 U. S. 491–527 (2008). The power of executing the laws necessarily includes both authority and responsibility to resolve some questions left open by Congress that arise during the law's administration. But it does not include a power to revise clear statutory terms that turn out not to work in practice. See, *e.g., Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438, 462 (2002) (agency lacked authority "to develop new guidelines or to assign liability in a manner inconsistent with" an "unambiguous statute").

In the Tailoring Rule, EPA asserts newfound authority to regulate millions of small sources—including retail stores, offices, apartment buildings, shopping centers, schools, and churches—and to decide, on an ongoing basis and without regard for the thresholds prescribed by Congress, how many of those sources to regulate. We are not willing to stand on the dock and wave goodbye as EPA embarks on this multiyear voyage of discovery. We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate. EPA therefore lacked authority to "tailor" the Act's unambiguous numerical thresholds to accommodate its greenhouse-gas-inclusive interpretation of the permitting triggers. Instead, the need to rewrite clear provisions of the statute should have alerted EPA that it had taken a wrong interpretive turn. Agencies are not free to "adopt . . . unreasonable interpretations of statutory provisions and then edit other statu-tory provisions to mitigate the unreasonableness." App. 175, 2012 WL 6621785, *16 (Kavanaugh, J., dissenting from denial of rehearing en banc). Because the Tailoring Rule cannot save EPA's interpretation of the triggers, that interpretation was impermissible under *Chevron*. [8]

B. BACT for "Anyway" Sources

For the reasons we have given, EPA overstepped its statutory authority when it decided that a source could become subject to PSD or Title V permitting by reason of its greenhouse-gas emissions. But what about "anyway" sources, those that would need permits based on their emissions of more conventional pollutants (such as particulate matter)? We now consider

whether EPA reasonably interpreted the Act to require those sources to comply with "best available control technology" emission standards for greenhouse gases.

1

To obtain a PSD permit, a source must be "subject to the best available control technology" for "each pollutant subject to regulation under [the Act]" that it emits. §7475(a)(4). The Act defines BACT as "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation" that is "achievable . . . through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques." §7479(3). BACT is determined "on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs." *Ibid.*

Some petitioners urge us to hold that EPA may never require BACT for greenhouse gases—even when a source must undergo PSD review based on its emissions of conventional pollutants—because BACT is fundamentally unsuited to greenhouse-gas regulation. BACT, they say, has traditionally been about end-of-stack controls "such as catalytic converters or particle collectors"; but applying it to greenhouse gases will make it more about regulating energy use, which will enable regulators to control "every aspect of a facility's operation and design," right down to the "light bulbs in the factory cafeteria." Brief for Petitioner Energy-Intensive Manufacturers Working Group on Greenhouse Gas Regulation et al. in No. 12–1254, p. 7; see Joint Reply Brief for Petitioners in No. 12–1248 etc., pp. 14–15 ("BACT for [greenhouse gases] becomes an unbounded exercise in command-and-control regulation" of everything from "efficient light bulbs" to "basic industrial processes"). But see Brief for Calpine Corp. as *Amicus Curiae* 10 ("[I]n Calpine's experience with 'anyway' sources, the [greenhouse-gas] analysis was only a small part of the overall permitting process").

EPA has published a guidance document that lends some credence to petitioners' fears. It states that at least initially, compulsory improvements in energy efficiency will be the "foundation" of greenhouse-gas BACT, with more traditional end-of-stack controls either not used or "added as they become more available." PSD and Title V Permitting Guidance for Greenhouse Gases 29 (Mar. 2011) (hereinafter Guidance); see Peloso & Dobbins, Greenhouse Gas PSD Permitting: The Year in Review, 42 Tex. Env. L. J. 233, 247 (2012) ("Because [other controls] tend to prove infeasible, energy efficiency measures dominate the [greenhouse-gas] BACT controls approved by the states and EPA"). But EPA's guidance also states that BACT analysis should consider options *other than* energy efficiency, such as "carbon capture and storage." Guidance 29, 32, 35–36, 42–43. EPA argues that carbon capture is reasonably comparable to more traditional, end-of-stack BACT technologies, *id.,* at 32, n. 86, and petitioners do not dispute that.

Moreover, assuming without deciding that BACT may be used to force some improvements in energy efficiency, there are important limitations on BACT that may work to mitigate petitioners' concerns about "unbounded" regulatory authority. For one, BACT is based on "control technology" for the applicant's "proposed facility," §7475(a)(4); therefore, it has long

been held that BACT cannot be used to order a fundamental redesign of the facility. See, *e.g., Sierra Club* v. *EPA*, 499 F. 3d 653, 654–655 (CA7 2007);*In re Pennsauken Cty., N. J., Resource Recovery Facility*, 2 E. A. D. 667, 673 (EAB 1988). For another, EPA has long interpreted BACT as required only for pollutants that the source itself emits, see 44 Fed. Reg. 51947 (1979); accordingly, EPA acknowledges that BACT may not be used to require "reductions in a facility's demand for energy from the electric grid." Guidance 24. Finally, EPA's guidance suggests that BACT should not require every conceivable change that could result in minor improvements in energy efficiency, such as the aforementioned light bulbs. *Id.,* at 31. The guidance explains that permitting authorities should instead consider whether a proposed regulatory burden outweighs any reduction in emissions to be achieved, and should concentrate on the facility's equipment that uses the largest amounts of energy. *Ibid.*

2

The question before us is whether EPA's decision to require BACT for greenhouse gases emitted by sources otherwise subject to PSD review is, as a general matter, a permissible interpretation of the statute under *Chevron*. We conclude that it is.

The text of the BACT provision is far less open-ended than the text of the PSD and Title V permitting triggers. It states that BACT is required "for each pollutant subject to regulation under this chapter" (*i.e.,*the entire Act), §7475(a)(4), a phrase that—as the D. C. Circuit wrote 35 years ago—"would not seem readily susceptible [of] misinterpretation." *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 404 (1979). Whereas the dubious breadth of "any air pollutant" in the permitting triggers suggests a role for agency judgment in identifying the subset of pollutants covered by the particular regulatory program at issue, the more specific phrasing of the BACT provision suggests that the necessary judgment has already been made by Congress. The wider statutory context likewise does not suggest that the BACT provision can bear a narrowing construction: There is no indication that the Act elsewhere uses, or that EPA has interpreted, "each pollutant subject to regulation under this chapter" to mean anything other than what it says.

Even if the text were not clear, applying BACT to greenhouse gases is not so disastrously unworkable, and need not result in such a dramatic expansion of agency authority, as to convince us that EPA's interpretation is unreasonable. We are not talking about extending EPA jurisdiction over millions of previously unregulated entities, but about moderately increasing the demands EPA (or a state permitting authority) can make of entities already subject to its regulation. And it is not yet clear that EPA's demands will be of a significantly different character from those traditionally associated with PSD review. In short, the record before us does not establish that the BACT provision as written is incapable of being sensibly applied to greenhouse gases.

We acknowledge the potential for greenhouse-gas BACT to lead to an unreasonable and unanticipated degree of regulation, and our decision should not be taken as an endorsement of all aspects of EPA's current approach, nor as a free rein for any future regulatory application of

BACT in this distinct context. Our narrow holding is that nothing in the statute categorically prohibits EPA from interpreting the BACT provision to apply to greenhouse gases emitted by "anyway" sources.

However, EPA may require an "anyway" source to comply with greenhouse-gas BACT only if the source emits more than a *de minimis* amount of greenhouse gases. As noted above, the Tailoring Rule applies BACT only if a source emits greenhouse gases in excess of 75,000 tons per year CO2e, but the Rule makes clear that EPA did not arrive at that number by identifying the *de minimis* level. See nn. 1, 3,*supra*. EPA may establish an appropriate *de minimis* threshold below which BACT is not required for a source's greenhouse-gas emissions. We do not hold that 75,000 tons per year CO2e necessarily exceeds a true *de minimis* level, only that EPA must justify its selection on proper grounds. Cf. *Alabama Power*,*supra,* at 405. [9]

* * *

To sum up: We hold that EPA exceeded its statutory authority when it interpreted the Clean Air Act to require PSD and Title V permitting for stationary sources based on their greenhouse-gas emissions. Specifically, the Agency may not treat greenhouse gases as a pollutant for pur-poses of defining a "major emitting facility" (or a "modification" thereof) in the PSD context or a "major source" in the Title V context. To the extent its regulations purport to do so, they are invalid. EPA may, however, continue to treat greenhouse gases as a "pollutant subject to regulation under this chapter" for purposes of requiring BACT for "anyway" sources. The judgment of the Court of Appeals is affirmed in part and reversed in part.

It is so ordered.

Lujan v. Defenders of Wildlife
1992

Syllabus

Section 7(a)(2) of the Endangered Species Act of 1973 divides responsibilities regarding the protection of endangered species between petitioner Secretary of the Interior and the Secretary of Commerce, and requires each federal agency to consult with the relevant Secretary to ensure that any action funded by the agency is not likely to jeopardize the continued existence or habitat of any endangered or threatened species. Both Secretaries initially promulgated a joint regulation extending § 7(a)(2)'s coverage to actions taken in foreign nations, but a subsequent joint rule limited the section's geographic scope to the United States and the high seas. Respondents, wildlife conservation and other environmental organizations, filed an action in the District Court, seeking a declaratory judgment that the new regulation erred as to § 7(a)(2)'s geographic scope, and an injunction requiring the Secretary of the Interior to promulgate a new rule restoring his initial interpretation. The Court of Appeals reversed the District Court's dismissal of the suit for

lack of standing. Upon remand, on cross-motions for summary judgment, the District Court denied the Secretary's motion, which renewed his objection to standing, and granted respondents' motion, ordering the Secretary to publish a new rule. The Court of Appeals affirmed.

Held: The judgment is reversed, and the case is remanded.

911 F.2d 117, (CA 8 1990), reversed and remanded.

Justice Scalia delivered the opinion of the Court, except as to Part III-B, concluding that respondents lack standing to seek judicial review of the rule. Pp. 559-567, 571-578.

(a) As the parties invoking federal jurisdiction, respondents bear the burden of showing standing by establishing, *inter alia,* that they have suffered an injury in fact, *i.e.,* a concrete and particularized, actual or imminent invasion of a legally-protected interest. To survive a summary judgment motion, they must set forth by affidavit or other evidence specific facts to support their claim. Standing is particularly difficult to show here, since third parties, rather than respondents, are the object of the Government action or inaction to which respondents object. Pp. 559-562. **[p556]**

(b) Respondents did not demonstrate that they suffered an injury in fact. Assuming that they established that funded activities abroad threaten certain species, they failed to show that one or more of their members would thereby be directly affected apart from the members' special interest in the subject. *See Sierra Club v. Morton,* 405 U.S. 727, 735. Affidavits of members claiming an intent to revisit project sites at some indefinite future time, at which time they will presumably be denied the opportunity to observe endangered animals, do not suffice, for they do not demonstrate an "imminent" injury. Respondents also mistakenly rely on a number of other novel standing theories. Their theory that any person using any part of a contiguous ecosystem adversely affected by a funded activity has standing even if the activity is located far away from the area of their use is inconsistent with this Court's opinion in *Lujan v. National Wildlife Federation,* 497 U.S. 871. And they state purely speculative, nonconcrete injuries when they argue that suit can be brought by anyone with an interest in studying or seeing endangered animals anywhere on the globe and anyone with a professional interest in such animals. Pp. 562-567.

(c) The Court of Appeals erred in holding that respondents had standing on the ground that the statute's citizen-suit provision confers on all persons the right to file suit to challenge the Secretary's failure to follow the proper consultative procedure, notwithstanding their inability to allege any separate concrete injury flowing from that failure. This Court has consistently held that a plaintiff claiming only a generally available grievance about government, unconnected with a threatened concrete interest of his own, does not state an Article III case or controversy. *See, e.g., Fairchild v. Hughes,* 258 U.S. 126, 129-130. Vindicating the public interest is the function of the Congress and the Chief Executive. To allow that interest to be converted into an individual right by a statute denominating it as such and permitting all citizens to sue, regardless of whether they suffered any concrete injury, would authorize Congress to

transfer from the President to the courts the Chief Executive's most important constitutional duty, to "take Care that the Laws be faithfully executed," Art. II, § 3. Pp. 571-578.

SCALIA, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III-A, and IV, in which REHNQUIST, C.J., and WHITE, KENNEDY, SOUTER, and THOMAS, JJ., joined, and an opinion with respect to Part III-B, in which REHNQUIST, C.J., and WHITE and THOMAS, JJ., joined. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment, in which SOUTER, J., joined, *post,* p. 579. STEVENS, J., filed an opinion concurring in the judgment, *post,* **[p557]** p. 581. BLACKMUN, J., filed a dissenting opinion, in which O'CONNOR, J., joined, *post,* p. 589.

Opinion

SCALIA, J., Opinion of the Court

JUSTICE SCALIA delivered the opinion of the Court with respect to Parts I, II, III-A, and IV, and an opinion with respect to Part III-B in which the CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE THOMAS join.

This case involves a challenge to a rule promulgated by the Secretary of the Interior interpreting § 7 of the Endangered **[p558]** Species Act of 1973 (ESA), 87 Stat. 884, 892, as amended, 16 U.S.C. § 1536 in such fashion as to render it applicable only to actions within the United States or on the high seas. The preliminary issue, and the only one we reach, is whether the respondents here, plaintiffs below, have standing to seek judicial review of the rule.

I

The ESA, 87 Stat. 884, as amended, 16 U.S.C. § 1531 *et seq.,* seeks to protect species of animals against threats to their continuing existence caused by man. *See generally TVA v. Hill,* 437 U.S. 153 (1978). The ESA instructs the Secretary of the Interior to promulgate by regulation a list of those species which are either endangered or threatened under enumerated criteria, and to define the critical habitat of these species. 16 U.S.C. §§ 1533 1536. Section 7(a)(2) of the Act then provides, in pertinent part:

Each Federal agency shall, in consultation with and with the assistance of the Secretary [of the Interior], insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical.

16 U.S.C. § 1536(a)(2).

In 1978, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), on behalf of the Secretary of the Interior and the Secretary of Commerce, respectively, promulgated a joint regulation stating that the obligations imposed by § 7(a)(2) extend to actions

taken in foreign nations. 43 Fed.Reg. 874 (1978). The next year, however, the Interior Department began to reexamine its position. Letter from Leo Kuliz, Solicitor, Department of the Interior, to Assistant Secretary, Fish and Wildlife and Parks, Aug. 8, 1979. A revised joint regulation, reinterpreting **[p559]** § 7(a)(2) to require consultation only for actions taken in the United States or on the high seas, was proposed in 1983, 48 Fed.Reg. 29990 (1983), and promulgated in 1986, 51 Fed.Reg.19926 (1986); 50 C.F.R. 402.01 (1991).

Shortly thereafter, respondents, organizations dedicated to wildlife conservation and other environmental causes, filed this action against the Secretary of the Interior, seeking a declaratory judgment that the new regulation is in error as to the geographic scope of § 7(a)(2), and an injunction requiring the Secretary to promulgate a new regulation restoring the initial interpretation. The District Court granted the Secretary's motion to dismiss for lack of standing. *Defenders of Wildlife v. Hodel,* 658 F.Supp. 43, 47-48 (Minn.1987). The Court of Appeals for the Eighth Circuit reversed by a divided vote. *Defenders of Wildlife v. Hodel,* 851 F.2d 1035 (1988). On remand, the Secretary moved for summary judgment on the standing issue, and respondents moved for summary judgment on the merits. The District Court denied the Secretary's motion, on the ground that the Eighth Circuit had already determined the standing question in this case; it granted respondents' merits motion, and ordered the Secretary to publish a revised regulation. *Defenders of Wildlife v. Hodel,* 707 F.Supp. 1082 (Minn.1989). The Eighth Circuit affirmed. 911 F.2d 117 (1990). We granted certiorari, 500 U.S. 915 (1991).

II

While the Constitution of the United States divides all power conferred upon the Federal Government into "legislative Powers," Art. I, § 1, "[t]he executive Power," Art. II, § 1, and "[t]he judicial Power," Art. III, § 1, it does not attempt to define those terms. To be sure, it limits the jurisdiction of federal courts to "Cases" and "Controversies," but an executive inquiry can bear the name "case" (the Hoffa case) and a legislative dispute can bear the name "controversy" (the Smoot-Hawley controversy). Obviously, then, the Constitution's central mechanism of separation of powers depends **[p560]** largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts. In The Federalist No. 48, Madison expressed the view that

[i]t is not infrequently a question of real nicety in legislative bodies whether the operation of a particular measure will, or will not, extend beyond the legislative sphere,

whereas "the executive power [is] restrained within a narrower compass and . . . more simple in its nature," and "the judiciary [is] described by landmarks still less uncertain." The Federalist No. 48, p. 256 (Carey and McClellan eds.1990). One of those landmarks, setting apart the "Cases" and "Controversies" that are of the justiciable sort referred to in Article III -- "serv[ing] to identify those disputes which are appropriately resolved through the judicial process," *Whitmore v. Arkansas,* 495 U.S. 149, 155 (1990) -- is the doctrine of standing. Though some of its elements express merely prudential considerations that are part of judicial self-government, the core

component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III. *See, e.g., Allen v. Wright,* 468 U.S. 737, 751 (1984).

Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements: first, the plaintiff must have suffered an "injury in fact" -- an invasion of a legally-protected interest which is (a) concrete and particularized, *see id.* at 756; *Warth v. Seldin,* 422 U.S. 490, 508 (1975); *Sierra Club v. Morton,* 405 U.S. 727, 740-741, n. 16 (1972); [n1] and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" *Whitmore, supra,* 495 U.S. at 155 (quoting *Los Angeles v. Lyons,* 461 U.S. 95, 102 (1983)). Second, there must be a causal connection between the injury and the conduct complained of -- the injury has to be

fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.

Simon v. Eastern Kentucky Welfare **[p561]** *Rights Org.,* 426 U.S. 26, 41-42 (1976). Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.*at 38, 43.

The party invoking federal jurisdiction bears the burden of establishing these elements. *See FW/PBS, Inc. v. Dallas,* 493 U.S. 215, 231 (1990); *Warth, supra,* 422 U.S. at 508. Since they are not mere pleading requirements, but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.,* with the manner and degree of evidence required at the successive stages of the litigation. *See Lujan v. National Wildlife Federation,* 497 U.S. 871, 883-889 (1990); *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91, 114-115, and n. 31 (1979); *Simon, supra,* 426 U.S. at 45, n. 25; *Warth, supra,* 422 U.S. at 527, and n. 6 (Brennan, J., dissenting). At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss, we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim," *National Wildlife Federation, supra,*497 U.S. at 889. In response to a summary judgment motion, however, the plaintiff can no longer rest on such "mere allegations," but must "set forth" by affidavit or other evidence "specific facts," Fed.Rule Civ.Proc. 56(e), which for purposes of the summary judgment motion will be taken to be true. And at the final stage, those facts (if controverted) must be "supported adequately by the evidence adduced at trial,"*Gladstone, supra,* 441 U.S. at 115, n. 31.

When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred (at the summary judgment stage) or proved (at the trial stage) in order to establish standing depend considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has **[p562]**caused him injury, and that a judgment preventing or requiring the action will redress it. When, however, as in this case, a plaintiff's asserted injury arises from the

government's allegedly unlawful regulation (or lack of regulation) of *someone else,* much more is needed. In that circumstance, causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction -- and perhaps on the response of others as well. The existence of one or more of the essential elements of standing

depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict,

ASARCO Inc. v. Kadish, 490 U.S. 605, 615 (1989) (opinion of KENNEDY, J.); *see also Simon, supra,* 426 U.S. at 41-42; and it becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury. *E.g., Warth, supra,* 422 U.S. at 505. Thus, when the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily "substantially more difficult" to establish. *Allen, supra,* 468 U.S. at 758; *Simon, supra,* 426 U.S. at 44-45; *Warth, supra,* 422 U.S. at 505.

III

We think the Court of Appeals failed to apply the foregoing principles in denying the Secretary's motion for summary judgment. Respondents had not made the requisite demonstration of (at least) injury and redressability.

A

Respondents' claim to injury is that the lack of consultation with respect to certain funded activities abroad "increas[es] the rate of extinction of endangered and threatened species." Complaint ¶ 5, App. 13. Of course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for purpose of **[p563]** standing. *See, e.g., Sierra Club v. Morton,* 405 U.S. at 734.

But the "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.

Id. at 734-735. To survive the Secretary's summary judgment motion, respondents had to submit affidavits or other evidence showing, through specific facts, not only that listed species were in fact being threatened by funded activities abroad, but also that one or more of respondents' members would thereby be "directly" affected apart from their "'special interest' in th[e] subject." *Id.* at 735, 739. *See generally Hunt v. Washington State Apple Advertising Comm'n,* 432 U.S. 333, 343 (1977).

With respect to this aspect of the case, the Court of Appeals focused on the affidavits of two Defenders' members -- Joyce Kelly and Amy Skilbred. Ms. Kelly stated that she traveled to Egypt in 1986 and

observed the traditional habitat of the endangered Nile crocodile there and intend[s] to do so again, and hope[s] to observe the crocodile directly,

and that she

will suffer harm in fact as a result of [the] American . . . role . . . in overseeing the rehabilitation of the Aswan High Dam on the Nile . . . and [in] develop[ing] . . . Egypt's . . . Master Water Plan.

App. 101. Ms. Skilbred averred that she traveled to Sri Lanka in 1981 and "observed th[e] habitat" of "endangered species such as the Asian elephant and the leopard" at what is now the site of the Mahaweli Project funded by the Agency for International Development (AID), although she "was unable to see any of the endangered species;" "this development project," she continued,

will seriously reduce endangered, threatened, and endemic species habitat including areas that I visited . . . [, which] may severely shorten the future of these species;

that threat, she concluded, harmed her because she "intend[s] to return to Sri Lanka in the future and hope[s] to be more fortunate in spotting at least the endangered elephant and leopard." *Id.* at 145-146. When Ms. Skilbred was asked **[p564]** at a subsequent deposition if and when she had any plans to return to Sri Lanka, she reiterated that "I intend to go back to Sri Lanka," but confessed that she had no current plans: "I don't know [when]. There is a civil war going on right now. I don't know. Not next year, I will say. In the future." *Id.* at 318.

We shall assume for the sake of argument that these affidavits contain facts showing that certain agency-funded projects threaten listed species -- though that is questionable. They plainly contain no facts, however, showing how damage to the species will produce "imminent" injury to Mss. Kelly and Skilbred. That the women "had visited" the areas of the projects before the projects commenced proves nothing. As we have said in a related context,

"[p]ast exposure to illegal conduct does not, in itself, show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects."

Lyons, 461 U.S. at 102 (quoting *O'Shea v. Littleton,* 414 U.S. 488, 495-496 (1974)). And the affiants' profession of an "inten[t]" to return to the places they had visited before -- where they will presumably, this time, be deprived of the opportunity to observe animals of the endangered species -- is simply not enough. Such "some day" intentions -- without any description of concrete plans, or indeed even any specification of *when* the some day will be -- do not support a finding of the "actual or imminent" injury that our cases require. *See supra* at 560. [n2] **[p565]**

Besides relying upon the Kelly and Skilbred affidavits, respondents propose a series of novel standing theories. The first, inelegantly styled "ecosystem nexus," proposes that any person who uses any part of a "contiguous ecosystem" adversely affected by a funded activity has standing even if the activity is located a great distance away. This approach, as the Court of Appeals correctly observed, is inconsistent with our opinion in *National Wildlife Federation,* which held

that a plaintiff claiming injury from environmental damage **[p566]** must use the area affected by the challenged activity, and not an area roughly "in the vicinity" of it. 4 97 U.S. at 887-889; *see also Sierra Club,* 405 U.S. at 735,. It makes no difference that the general-purpose section of the ESA states that the Act was intended, in part, "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved," 16 U.S.C. § 1531(b). To say that the Act protects ecosystems is not to say that the Act creates (if it were possible) rights of action in persons who have not been injured in fact, that is, persons who use portions of an ecosystem not perceptibly affected by the unlawful action in question.

Respondents' other theories are called, alas, the "animal nexus" approach, whereby anyone who has an interest in studying or seeing the endangered animals anywhere on the globe has standing; and the "vocational nexus" approach, under which anyone with a professional interest in such animals can sue. Under these theories, anyone who goes to see Asian elephants in the Bronx Zoo, and anyone who is a keeper of Asian elephants in the Bronx Zoo, has standing to sue because the Director of AID did not consult with the Secretary regarding the AID-funded project in Sri Lanka. This is beyond all reason. Standing is not "an ingenious academic exercise in the conceivable," *United States v. Students Challenging Regulatory Agency Procedures (SCRAP),* 412 U.S. 669, 688 (1973), but, as we have said, requires, at the summary judgment stage, a factual showing of perceptible harm. It is clear that the person who observes or works with a particular animal threatened by a federal decision is facing perceptible harm, since the very subject of his interest will no longer exist. It is even plausible -- though it goes to the outermost limit of plausibility -- to think that a person who observes or works with animals of a particular species in the very area of the world where that species is threatened by a federal decision is facing such harm, since some animals that **[p567]** might have been the subject of his interest will no longer exist, *see Japan Whaling Assn. v. American Cetacean Soc.,* 478 U.S. 221, 231, n. 4 (1986). It goes beyond the limit, however, and into pure speculation and fantasy, to say that anyone who observes or works with an endangered species, anywhere in the world, is appreciably harmed by a single project affecting some portion of that species with which he has no more specific connection. [n3] **[p568]**

B

Besides failing to show injury, respondents failed to demonstrate redressability. Instead of attacking the separate decisions to fund particular projects allegedly causing them harm, the respondents chose to challenge a more generalized level of government action (rules regarding consultation), the invalidation of which would affect all overseas projects. This programmatic approach has obvious practical advantages, but also obvious difficulties insofar as proof of causation or redressability is concerned. As we have said in another context,

suits challenging, not specifically identifiable Government violations of law, but the particular programs agencies establish to carry out their legal obligations . . . [are], even when premised on allegations of several instances of violations of law, . . . rarely if ever appropriate for federal court adjudication.

Allen, 468 U.S. at 759-760.

The most obvious problem in the present case is redressability. Since the agencies funding the projects were not parties to the case, the District Court could accord relief only against the Secretary: he could be ordered to revise his regulation to require consultation for foreign projects. But this would not remedy respondents' alleged injury unless the funding agencies were bound by the Secretary's regulation, which is very much an open question. Whereas in other contexts the ESA is quite explicit as to the Secretary's controlling authority, *see, e.g.,* 16 U.S.C. § 1533(a)(1) ("The Secretary shall" promulgate regulations determining endangered species); § 1535(d)(1) ("The Secretary is authorized to provide financial assistance to any State"), with respect to consultation the initiative, and hence arguably the initial responsibility for determining statutory necessity, lies with **[p569]** the agencies, *see* § 1536(a)(2) ("*Each Federal agency shall,* in consultation with and with the assistance of the Secretary, insure that any" funded action is not likely to jeopardize endangered or threatened species) (emphasis added). When the Secretary promulgated the regulation at issue here, he thought it was binding on the agencies, *see* 51 Fed.Reg. at 19928 (1986). The Solicitor General. however, has repudiated that position here, and the agencies themselves apparently deny the Secretary's authority. (During the period when the Secretary took the view that § 7(a)(2) did apply abroad, AID and FWS engaged in a running controversy over whether consultation was required with respect to the Mahaweli project, AID insisting that consultation applied only to domestic actions.)

Respondents assert that this legal uncertainty did not affect redressability (and hence standing), because the District Court itself could resolve the issue of the Secretary's authority as a necessary part of its standing inquiry. Assuming that it is appropriate to resolve an issue of law such as this in connection with a threshold standing inquiry, resolution by the District Court would not have remedied respondents' alleged injury anyway, because it would not have been binding upon the agencies. They were not parties to the suit, and there is no reason they should be obliged to honor an incidental legal determination the suit produced. [n4] The **[p570]** Court of Appeals tried to finesse this problem by simply proclaiming that

[w]e are satisfied that an injunction requiring the Secretary to publish [respondents' desired] regulatio[n] . . . would result in consultation.

Defenders of Wildlife, 851 F.2d at 1042, 1043-1044. We do not know what would justify that confidence, particularly when the Justice Department (presumably after consultation with the agencies) has taken the position that the regulation is not binding. [n5] The **[p571]** short of the matter is that redress of the only injury-in-fact respondents complain of requires action (termination of funding until consultation) by the individual funding agencies; and any relief the District Court could have provided in this suit against the Secretary was not likely to produce that action.

A further impediment to redressability is the fact that the agencies generally supply only a fraction of the funding for a foreign project. AID, for example, has provided less than 10% of the

funding for the Mahaweli Project. Respondents have produced nothing to indicate that the projects they have named will either be suspended, or do less harm to listed species, if that fraction is eliminated. As in *Simon,* 426 U.S. at 43-44, it is entirely conjectural whether the nonagency activity that affects respondents will be altered or affected by the agency activity they seek to achieve. [n6] There is no standing.

IV

The Court of Appeals found that respondents had standing for an additional reason: because they had suffered a "procedural injury." The so-called "citizen suit" provision of the ESA provides, in pertinent part, that

any person may commence **[p572]** a civil suit on his own behalf (A) to enjoin any person, including the United States and any other governmental instrumentality or agency . . . who is alleged to be in violation of any provision of this chapter.

16 U.S.C. § 1540(g). The court held that, because § 7(a)(2) requires interagency consultation, the citizen-suit provision creates a "procedural righ[t]" to consultation in all "persons" -- so that *anyone* can file suit in federal court to challenge the Secretary's (or presumably any other official's) failure to follow the assertedly correct consultative procedure, notwithstanding their inability to allege any discrete injury flowing from that failure. 911 F.2d at 121-122. To understand the remarkable nature of this holding, one must be clear about what it does *not* rest upon: this is not a case where plaintiffs are seeking to enforce a procedural requirement the disregard of which could impair a separate concrete interest of theirs (*e.g.,*the procedural requirement for a hearing prior to denial of their license application, or the procedural requirement for an environmental impact statement before a federal facility is constructed next door to them). [n7] Nor is it simply a case where concrete injury has been suffered by many persons, as in mass fraud or mass tort situations. Nor, finally, is it the **[p573]** unusual case in which Congress has created a concrete private interest in the outcome of a suit against a private party for the government's benefit, by providing a cash bounty for the victorious plaintiff. Rather, the court held that the injury-in-fact requirement had been satisfied by congressional conferral upon *all* persons of an abstract, self-contained, noninstrumental "right" to have the Executive observe the procedures required by law. We reject this view. [n8]

We have consistently held that a plaintiff raising only a generally available grievance about government -- claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that **[p574]** no more directly and tangibly benefits him than it does the public at large -- does not state an Article III case or controversy. For example, in *Fairchild v. Hughes,* 258 U.S. 126, 129-130 (1922), we dismissed a suit challenging the propriety of the process by which the Nineteenth Amendment was ratified. Justice Brandeis wrote for the Court:

[This is] not a case within the meaning of . . . Article III. . . . Plaintiff has [asserted] only the right, possessed by every citizen, to require that the Government be administered according to

law and that the public moneys be not wasted. Obviously this general right does not entitle a private citizen to institute in the federal courts a suit. . . .

Ibid.

In *Frothingham v. Mellon,* 262 U.S. 447 (1923), we dismissed for lack of Article III standing a taxpayer suit challenging the propriety of certain federal expenditures. We said:

The party who invokes the power [of judicial review] must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. . . . Here, the parties plaintiff have no such case. . . . [T]heir complaint . . . is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and coequal department, an authority which plainly we do not possess.

Id. at 488-489.

In *Ex parte Levitt,* 302 U.S. 633 (1937), we dismissed a suit contending that Justice Black's appointment to this Court violated the Ineligibility Clause, Art. I, § 6, cl. 2. **[p575]** "It is an established principle," we said,

that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action, he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action, and it is not sufficient that he has merely a general interest common to all members of the public.

Id. at 634. *See also Doremus v. Board of Ed of Hawthorne,* 342 U.S. 429, 433-434 (1952) (dismissing taxpayer action on the basis of *Frothingham*).

More recent cases are to the same effect. In *United States v. Richardson,* 418 U.S. 166 (1974), we dismissed for lack of standing a taxpayer suit challenging the Government's failure to disclose the expenditures of the Central Intelligence Agency, in alleged violation of the constitutional requirement, Art. I, § 9, cl. 7, that "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." We held that such a suit rested upon an impermissible "generalized grievance," and was inconsistent with "the framework of Article III" because "the impact on [plaintiff] is plainly undifferentiated and common to all members of the public." *Richardson, supra,* at 171, 176-177. And in *Schlesinger v. Reservists Committee to Stop the War,* 418 U.S. 208 (1974), we dismissed for the same reasons a citizen-taxpayer suit contending that it was a violation of the Incompatibility Clause, Art. I, § 6, cl. 2, for Members of Congress to hold commissions in the military Reserves. We said that the challenged action,

standing alone, would adversely affect only the generalized interest of all citizens in constitutional governance. . . . We reaffirm *Levitt* in holding that standing to sue may not be predicated upon an interest of th[is] kind. . . .

Schlesinger, supra, at 217, 220. Since *Schlesinger,* we have on two occasions held that an injury amounting only to the alleged violation of a right to have the Government act in accordance with law was not judicially cognizable, because **[p576]**

assertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning.

Allen, 468 U.S. at 754; *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 483 (1982). And only two Terms ago, we rejected the notion that Article III permits a citizen-suit to prevent a condemned criminal's execution on the basis of "the public interest protections of the Eighth Amendment;" once again,

[t]his allegation raise[d] only the generalized interest of all citizens in constitutional governance . . . , and [was] an inadequate basis on which to grant . . . standing.

Whitmore, 495 U.S. at 160.

To be sure, our generalized-grievance cases have typically involved Government violation of procedures assertedly ordained by the Constitution, rather than the Congress. But there is absolutely no basis for making the Article III inquiry turn on the source of the asserted right. Whether the courts were to act on their own, or at the invitation of Congress, in ignoring the concrete injury requirement described in our cases, they would be discarding a principle fundamental to the separate and distinct constitutional role of the Third Branch -- one of the essential elements that identifies those "Cases" and "Controversies" that are the business of the courts, rather than of the political branches. "The province of the court," as Chief Justice Marshall said in *Marbury v. Madison,* 1 Cranch 137, 170 (1803) "is, solely, to decide on the rights of individuals." Vindicating the *public* interest (including the public interest in government observance of the Constitution and laws) is the function of Congress and the Chief Executive. The question presented here is whether the public interest in proper administration of the laws (specifically, in agencies' observance of a particular, statutorily prescribed procedure) can be converted into an individual right by a statute that denominates it as such, and **[p577]** that permits all citizens (or, for that matter, a subclass of citizens who suffer no distinctive concrete harm) to sue. If the concrete injury requirement has the separation of powers significance we have always said, the answer must be obvious: to permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an "individual right" vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive's most important constitutional duty, to "take Care that the Laws be faithfully executed," Art. II, § 3. It would enable the courts, with the permission of Congress, "to assume a position of authority over the governmental acts of another and coequal

department," *Frothingham v. Mellon,* 262 U.S. at 489, and to become "'virtually continuing monitors of the wisdom and soundness of Executive action.'" *Allen,* 468 U.S. at 760 (quoting *Laird v. Tatum,* 408 U.S. 1, 15 (1972)). We have always rejected that vision of our role:

When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted. This permits the courts to participate in law enforcement entrusted to administrative bodies only to the extent necessary to protect justiciable individual rights against administrative action fairly beyond the granted powers. . . . This is very far from assuming that the courts are charged more than administrators or legislators with the protection of the rights of the people. Congress and the Executive supervise the acts of administrative agents. . . . But under Article III, Congress established courts to adjudicate cases and controversies as to claims of infringement of individual rights, whether by unlawful action of private persons or by the exertion of unauthorized administrative power.

Stark v. Wickard, 321 U.S. 288, 309-310 (1944) (footnote omitted). **[p578]** "Individual rights," within the meaning of this passage, do not mean public rights that have been legislatively pronounced to belong to each individual who forms part of the public. *See also Sierra Club,* 405 U.S. at 740-741, n. 16. Nothing in this contradicts the principle that "[t]he . . . injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.'" *Warth,* 422 U.S. at 500 (quoting*Linda R. S. v. Richard D.,* 410 U.S. 614, 617, n. 3 (1973)). Both of the cases used by *Linda R. S.* as an illustration of that principle involved Congress's elevating to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law (namely, injury to an individual's personal interest in living in a racially integrated community, *see Trafficante v. Metropolitan Life Ins. Co.,*409 U.S. 205, 208-212 (1972), and injury to a company's interest in marketing its product free from competition, *see Hardin v. Kentucky Utilities Co.,* 390 U.S. 1, 6 (1968)). As we said in *Sierra Club,*

[Statutory] broadening [of] the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.

405 U.S. at 738. Whether or not the principle set forth in *Warth* can be extended beyond that distinction, it is clear that in suits against the government, at least, the concrete injury requirement must remain.

We hold that respondents lack standing to bring this action, and that the Court of Appeals erred in denying the summary judgment motion filed by the United States. The opinion of the Court of Appeals is hereby reversed, and the cause remanded for proceedings consistent with this opinion.

It is so ordered. **[p579]**

Sierra Club v. Morton
1972

Syllabus

Petitioner, a membership corporation with "a special interest in the conservation and sound maintenance of the national parks, game refuges, and forests of the country," brought this suit for a declaratory judgment and an injunction to restrain federal officials from approving an extensive skiing development in the Mineral King Valley in the Sequoia National Forest. Petitioner relies on § 10 of the Administrative Procedure Act, which accords judicial review to a

"person suffering legal wrong because of agency action, or [who is] adversely affected or aggrieved by agency action within the meaning of a relevant statute."

On the theory that this was a "public" action involving questions as to the use of natural resources, petitioner did not allege that the challenged development would affect the club or its members in their activities, or that they used Mineral King, but maintained that the project would adversely change the area's aesthetics and ecology. The District Court granted a preliminary injunction. The Court of Appeals reversed, holding that the club lacked standing, and had not shown irreparable injury.

Held: A person has standing to seek judicial review under the Administrative Procedure Act only if he can show that he himself has suffered or will suffer injury, whether economic or otherwise. In this case, where petitioner asserted no individualized harm to itself or its members, it lacked standing to maintain the action. Pp. 405 U. S. 731-741.

433 F.2d 24, affirmed.

STEWART, J., delivered the opinion of the Court, in which BURGER, C.J., and WHITE and MARSHALL, JJ., joined. DOUGLAS, J.,*post,* p. 405 U. S. 741, BRENNAN, J., *post,* p. 405 U. S. 755, and BLACKMUN, J., *post,* p. 405 U. S. 755, filed dissenting opinions. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the case.

MR. JUSTICE STEWART delivered the opinion of the Court.

I

The Mineral King Valley is an area of great natural beauty nestled in the Sierra Nevada Mountains in Tulare County, California, adjacent to Sequoia National Park. It has been part of the Sequoia National Forest since 1926, and is designated as a national game refuge by special

Act of Congress. [Footnote 1] Though once the site of extensive mining activity, Mineral King is now used almost exclusively for recreational purposes. Its relative inaccessibility and lack of development have limited the number of visitors each year, and at the same time have preserved the valley's quality as a *quasi*-wilderness area largely uncluttered by the products of civilization.

The United States Forest Service, which is entrusted with the maintenance and administration of national forests, began in the late 1940's to give consideration to Mineral King as a potential site for recreational development. Prodded by a rapidly increasing demand for skiing facilities, the Forest Service published a prospectus in 1965, inviting bids from private developers for the construction and operation of a ski resort that would also serve as a summer recreation area. The proposal of Walt Disney Enterprises, Inc., was chosen from those of six bidders, and Disney received a three-year permit to conduct surveys and explorations in the valley in connection with its preparation of a complete master plan for the resort.

The final Disney plan, approved by the Forest Service in January, 1969, outlines a $35 million complex of motels, restaurants, swimming pools, parking lots, and other structures designed to accommodate 14,000 visitors daily. This complex is to be constructed on 80 acres of the valley floor under a 30-year use permit from the Forest Service. Other facilities, including ski lifts, ski trails, a cog-assisted railway, and utility installations, are to be constructed on the mountain slopes and in other parts of the valley under a revocable special use permit. To provide access to the resort, the State of California proposes to construct a highway 20 miles in length. A section of this road would traverse Sequoia National Park, as would a proposed high-voltage power line needed to provide electricity for the resort. Both the highway and the power line require the approval of the Department of the Interior, which is entrusted with the preservation and maintenance of the national parks.

Representatives of the Sierra Club, who favor maintaining Mineral King largely in its present state, followed the progress of recreational planning for the valley with close attention and increasing dismay. They unsuccessfully sought a public hearing on the proposed development in 1965, and, in subsequent correspondence with officials of the Forest Service and the Department of the Interior, they expressed the Club's objections to Disney's plan as a whole and to particular features included in it. In June, 1969, the Club filed the present suit in the United States District Court for the Northern District of California, seeking a declaratory judgment that various aspects of the proposed development contravene federal laws and regulations governing the preservation of national parks, forests, and game refuges, [Footnote 2] and also seeking preliminary and permanent injunctions restraining the federal officials involved from granting their approval or issuing permits in connection with the Mineral King project. The petitioner Sierra Club sued as a membership corporation with "a special interest in the conservation and the sound maintenance of the national parks, game refuges and forests of the country," and invoked the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*

After two days of hearings, the District Court granted the requested preliminary injunction. It rejected the respondents' challenge to the Sierra Club's standing to sue, and determined that the hearing had raised questions "concerning possible excess of statutory authority, sufficiently substantial and serious to justify a preliminary injunction. . . ." The respondents appealed, and the Court of Appeals for the Ninth Circuit reversed. 433 F.2d 24. With respect to the petitioner's standing, the court noted that there was

"no allegation in the complaint that members of the Sierra Club would be affected by the actions of [the respondents] other than the fact that the actions are personally displeasing or distasteful to them,"

id. at 33, and concluded:

"We do not believe such club concern without a showing of more direct interest can constitute standing in the legal sense sufficient to challenge the exercise of responsibilities on behalf of all the citizens by two cabinet level officials of the government acting under Congressional and Constitutional authority."

Id. at 30. Alternatively, the Court of Appeals held that the Sierra Club had not made an adequate showing of irreparable injury and likelihood of success on the merits to justify issuance of a preliminary injunction. The court thus vacated the injunction. The Sierra Club filed a petition for a writ of certiorari which we granted, 401 U.S. 907, to review the questions of federal law presented.

II

The first question presented is whether the Sierra Club has alleged facts that entitle it to obtain judicial review of the challenged action. Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends upon whether the party has alleged such a "personal stake in the outcome of the controversy," *Baker v. Carr,* 369 U. S. 186, 369 U. S. 204, as to ensure that

"the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution."

Flast v. Cohen, 392 U. S. 83, 392 U. S. 101. Where, however, Congress has authorized public officials to perform certain functions according to law, and has provided by statute for judicial review of those actions under certain circumstances, the inquiry as to standing must begin with a

determination of whether the statute in question authorizes review at the behest of the plaintiff. [Footnote 3]

The Sierra Club relies upon § 10 of the Administrative Procedure Act (APA), 5 U.S.C. § 702, which provides:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

Early decisions under this statute interpreted the language as adopting the various formulations of "legal interest" and "legal wrong" then prevailing as constitutional requirements of standing. [Footnote 4] But, in *Data Processing Service v. Camp,* 397 U. S. 150, and *Barlow v. Collins,* 397 U. S. 159, decided the same day, we held more broadly that persons had standing to obtain judicial review of federal agency action under § 10 of the APA where they had alleged that the challenged action had caused them "injury in fact," and where the alleged injury was to an interest "arguably within the zone of interests to be protected or regulated" by the statutes that the agencies were claimed to have violated. [Footnote 5]

In *Data Processing,* the injury claimed by the petitioners consisted of harm to their competitive position in the computer servicing market through a ruling by the Comptroller of the Currency that national banks might perform data processing services for their customers. In *Barlow,* the petitioners were tenant farmers who claimed that certain regulations of the Secretary of Agriculture adversely affected their economic position *vis-a-vis* their landlords. These palpable economic injuries have long been recognized as sufficient to lay the basis for standing, with or without a specific statutory provision for judicial review. [Footnote 6] Thus, neither *Data Processing* nor *Barlow* addressed itself to the question, which has arisen with increasing frequency in federal courts in recent years, as to what must be alleged by persons who claim injury of a noneconomic nature to interests that are widely shared. [Footnote 7] That question is presented in this case.

III

The injury alleged by the Sierra Club will be incurred entirely by reason of the change in the uses to which Mineral King will be put, and the attendant change in the aesthetics and ecology of the area. Thus, in referring to the road to be built through Sequoia National Park, the complaint alleged that the development

"would destroy or otherwise adversely affect the scenery, natural and historic objects and wildlife of the park, and would impair the enjoyment of the park for future generations."

We do not question that this type of harm may amount to an "injury in fact" sufficient to lay the basis for standing under § 10 of the APA. Aesthetic and environmental wellbeing, like economic wellbeing, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many, rather than the few, does not make them less deserving of legal protection through the judicial process. But the "injury in fact," test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.

The impact of the proposed changes in the environment of Mineral King will not fall indiscriminately upon every citizen. The alleged injury will be felt directly only by those who use Mineral King and Sequoia National Park, and for whom the aesthetic and recreational values of the area will be lessened by the highway and ski resort. The Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the Disney development. Nowhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose, much less that they use it in any way that would be significantly affected by the proposed action of the respondents. [Footnote 8]

The Club apparently regarded any allegations of individualized injury as superfluous, on the theory that this was a "public" action involving questions as to the use of natural resources, and that the Club's longstanding concern with and expertise in such matters were sufficient to give it standing as a "representative of the public." [Footnote 9] This theory reflects a misunderstanding of our cases involving so-called "public actions" in the area of administrative law.

The origin of the theory advanced by the Sierra Club may be traced to a dictum in *Scripps-Howard Radio v. FCC,* 316 U. S. 4, in which the licensee of a radio station in Cincinnati, Ohio, sought a stay of an order of the FCC allowing another radio station in a nearby city to change its frequency and increase its range. In discussing its power to grant a stay, the Court noted that "these private litigants have standing only as representatives of the public interest." *Id.* at 316 U. S. 14. But that observation did not describe the basis upon which the appellant was allowed to obtain judicial review as a "person aggrieved" within the meaning of the statute involved in that case, [Footnote 10] since Scripps Howard was clearly "aggrieved" by reason of the economic injury that it would suffer as a result of the Commission's action. [Footnote 11] The Court's statement was, rather, directed to the theory upon which Congress had authorized judicial review of the Commission's actions. That theory had been described earlier in *FCC v. Sanders Bros. Radio Station,*309 U. S. 470, 309 U. S. 477, as follows:

"Congress had some purpose in enacting § 40(b)(2). It may have been of opinion that one likely to be financially injured by the issue of a license would be the only person having a sufficient interest to bring to the attention of the appellate court errors of law in the action of the Commission in granting the license. It is within the power of Congress to confer such standing to prosecute an appeal."

Taken together, *Sanders* and *Scripps-Howard* thus established a dual proposition: the fact of economic injury is what gives a person standing to seek judicial review under the statute, but, once review is properly invoked, that person may argue the public interest in support of his claim that the agency has failed to comply with its statutory mandate. [Footnote 12] It was in the latter sense that the "standing" of the appellant in *Scripps-Howard* existed only as a "representative of the public interest." It is in a similar sense that we have used the phrase "private attorney general" to describe the function performed by persons upon whom Congress has conferred the right to seek judicial review of agency action. *See Data Processing, supra,* at 397 U. S. 154.

The trend of cases arising under the APA and other statutes authorizing judicial review of federal agency action has been toward recognizing that injuries other than economic harm are sufficient to bring a person within the meaning of the statutory language, and toward discarding the notion that an injury that is widely shared is *ipso facto* not an injury sufficient to provide the basis for judicial review. [Footnote 13] We noted this development with approval in *Data Processing,* 397 U.S. at 397 U. S. 154, in saying that the interest alleged to have been injured "may reflect *aesthetic, conservational, and recreational,' as well as economic, values." But broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.*

Some courts have indicated a willingness to take this latter step by conferring standing upon organizations that have demonstrated "an organizational interest in the problem" of environmental or consumer protection.*Environmental Defense Fund v. Hardin,* 138 U.S.App.D.C. 391, 395, 428 F.2d 1093, 1097. [Footnote 14] It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review. *See, e.g., NAACP v. Button,* 371 U. S. 415, 371 U. S. 428. But a mere "interest in a problem," no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient, by itself, to render the organization "adversely affected" or "aggrieved" within the meaning of the APA. The Sierra Club is a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other *bona fide* "special interest" organization, however small or short-lived. And if any group with a *bona fide* "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same *bona fide* special interest would not also be entitled to do so.

The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial review, nor does it prevent any public interests from being protected through the judicial process. [Footnote 15] It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal would be undermined were we

to construe the APA to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process. [Footnote 16] The principle that the Sierra Club would have us establish in this case would do just that. As we conclude that the Court of Appeals was correct in its holding that the Sierra Club lacked standing to maintain this action, we do not reach any other questions presented in the petition, and we intimate no view on the merits of the complaint. The judgment is

Affirmed.

Summers v. Earth Island Institute
2009 tt

Syllabus

After the U. S. Forest Service approved the Burnt Ridge Project, a salvage sale of timber on 238 acres of fire-damaged federal land, respondent environmentalist organizations filed suit to enjoin the Service from applying its regulations exempting such small sales from the notice, comment, and appeal process it uses for more significant land management decisions, and to challenge other regulations that did not apply to Burnt Ridge. The District Court granted a preliminary injunction against the sale, and the parties then settled their dispute as to Burnt Ridge. Although concluding that the sale was no longer at issue, and despite the Government's argument that respondents therefore lacked standing to challenge the regulations, the court nevertheless proceeded to adjudicate the merits of their challenges, invalidating several regulations, including the notice and comment and the appeal provisions. Among its rulings, the Ninth Circuit affirmed the determination that the latter regulations, which were applicable to Burnt Ridge, were contrary to law, but held that challenges to other regulations not at issue in that project were not ripe for adjudication.

Held: Respondents lack standing to challenge the regulations still at issue absent a live dispute over a concrete application of those regulations. Pp. 4–12.

(a) In limiting the judicial power to "Cases" and "Controversies," Article III restricts it to redressing or preventing actual or imminently threatened injury to persons caused by violation of law. See, e.g., Lujan v. Defenders of Wildlife, 504 U. S. 555 . The standing doctrine reflects this fundamental limitation, requiring that "the plaintiff … 'alleg[e] such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction," Warth v. Seldin, 422 U. S. 490 . Here, respondents can demonstrate standing only if application of the regulations will affect them in such a manner. Pp. 4–5.

(b) As organizations, respondents can assert their members' standing. Harm to their members' recreational, or even their mere esthetic, interests in the National Forests will suffice to establish the requisite concrete and particularized injury, see Sierra Club v. Morton, 405 U. S. 727 , but generalized harm to the forest or the environment will not alone suffice. Respondents have identified no application of the invalidated regulations that threatens imminent and concrete harm to their members' interests. Respondents' argument that they have standing based on Burnt Ridge fails because, after voluntarily settling the portion of their lawsuit relevant to Burnt Ridge, respondents and their members are no longer under threat of injury from that project. The remaining affidavit submitted in support of standing fails to establish that any member has concrete plans to visit a site where the challenged regulations are being applied in a manner that will harm that member's concrete interests. Additional affidavits purporting to establish standing were submitted after judgment had already been entered and notice of appeal filed, and are thus untimely. Pp. 5–8.

(c) Respondents' argument that they have standing because they have suffered procedural injury—i.e., they have been denied the ability to file comments on some Forest Service actions and will continue to be so denied—fails because such a deprivation without some concrete interest affected thereby is insufficient to create Article III standing. See, e.g., Defenders of Wildlife, supra, at 572, n. 7. Pp. 8–9.

(d) The dissent's objections are addressed and rejected. Pp. 9–12.

490 F. 3d 687, reversed in part and affirmed in part.

Scalia, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Thomas, and Alito, JJ., joined. Kennedy, J., filed a concurring opinion. Breyer, J., filed a dissenting opinion, in which Stevens, Souter, and Ginsburg, JJ., joined.

Justice Scalia delivered the opinion of the Court.

Respondents are a group of organizations dedicated to protecting the environment. (We will refer to them collectively as "Earth Island.") They seek to prevent the United States Forest Service from enforcing regulations that exempt small fire-rehabilitation and timber-salvage projects from the notice, comment, and appeal process used by the Forest Service for more significant land management decisions. We must determine whether respondents have standing to challenge the regulations in the absence of a live dispute over a concrete application of those regulations.

I

In 1992, Congress enacted the Forest Service Decisionmaking and Appeals Reform Act (Appeals Reform Act or Act), Pub. L. 102–381, Tit. III, §322, 106 Stat. 1419, note following 16 U. S. C. §1612. Among other things, this required the Forest Service to establish a notice, comment, and appeal process for "proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974." Ibid.

The Forest Service's regulations implementing the Act provided that certain of its procedures would not be applied to projects that the Service considered categorically excluded from the requirement to file an environmental impact statement (EIS) or environmental assessment (EA). 36 CFR §§215.4(a) (notice and comment), 215.12(f) (appeal) (2008). Later amendments to the Forest Service's manual of implementing procedures, adopted by rule after notice and comment, provided that fire-rehabilitation activities on areas of less than 4,200 acres, and salvage-timber sales of 250 acres or less, did not cause a significant environmental impact and thus would be categorically exempt from the requirement to file an EIS or EA. 68Fed. Reg. 33824 (2003) (Forest Service Handbook (FSH) 1909.15, ch. 30, §31.2(11)); 68 Fed. Reg. 44607 (FSH 1909.15, ch. 30, §31.2(13)). This had the effect of excluding these projects from the notice, comment, and appeal process.

In the summer of 2002, fire burned a significant area of the Sequoia National Forest. In September 2003, the Service issued a decision memo approving the Burnt Ridge Project, a salvage sale of timber on 238 acres damaged by that fire. Pursuant to its categorical exclusion of salvage sales of less than 250 acres, the Forest Service did not provide notice in a form consistent with the Appeals Reform Act, did not provide a period of public comment, and did not make an appeal process available.

In December 2003, respondents filed a complaint in the Eastern District of California, challenging the failure of the Forest Service to apply to the Burnt Ridge Project §215.4(a) of its regulations implementing the Appeals Reform Act (requiring prior notice and comment), and §215.12(f) of the regulations (setting forth an appeal procedure). The complaint also challenged six other Forest Service regulations implementing the Act that were not applied to the Burnt Ridge Project. They are irrelevant to this appeal.

The District Court granted a preliminary injunction against the Burnt Ridge salvage-timber sale. Soon thereafter, the parties settled their dispute over the Burnt Ridge Project and the District Court concluded that "the Burnt Ridge timber sale is not at issue in this case." Earth Island Inst. v. Pengilly, 376 F. Supp. 2d 994, 999 (ED Cal. 2005). The Government argued that, with the Burnt Ridge dispute settled, and with no other project before the court in which respondents were threatened with injury in fact, respondents lacked standing to challenge the regulations; and that absent a concrete dispute over a particular project a challenge to the regulations would not be

ripe. The District Court proceeded, however, to adjudicate the merits of Earth Island's challenges. It invalidated five of the regulations (including §§215.4(a) and 215.12(f)), id., at 1011, and entered a nationwide injunction against their application, Earth Island Inst. v. Ruthenbeck, No. CIV F–03–6386 JKS, 2005 WL 5280466 *2 (Sept. 20, 2005).

The Ninth Circuit held that Earth Island's challenges to regulations not at issue in the Burnt Ridge Project were not ripe for adjudication because there was "not a sufficient 'case or controversy' " before the court to sustain a facial challenge. Earth Island Inst. v. Ruthenbeck, 490 F. 3d 687, 696 (2007) (amended opinion). It affirmed, however, the District Court's determination that §§215.4(a) and 215.12(f), which were applicable to the Burnt Ridge Project, were contrary to law, and upheld the nationwide injunction against their application.

The Government sought review of the question whether Earth Island could challenge the regulations at issue in the Burnt Ridge Project, and if so whether a nationwide injunction was appropriate relief. We granted certiorari, 552 U. S. ___ (2008).

II

In limiting the judicial power to "Cases" and "Controversies," Article III of the Constitution restricts it to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of law. Except when necessary in the execution of that function, courts have no charter to review and revise legislative and executive action. See Lujan v. Defenders of Wildlife, 504 U. S. 555, 559–560 (1992) ; Los Angeles v. Lyons, 461 U. S. 95, 111–112 (1983) . This limitation "is founded in concern about the proper—and properly limited—role of the courts in a democratic society." Warth v. Seldin, 422 U. S. 490, 498 (1975) . See United States v. Richardson, 418 U. S. 166, 179 (1974) .

The doctrine of standing is one of several doctrines that reflect this fundamental limitation. It requires federal courts to satisfy themselves that "the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction." 422 U. S., at 498–499. He bears the burden of showing that he has standing for each type of relief sought. See Lyons, supra, at 105. To seek injunctive relief, a plaintiff must show that he is under threat of suffering "injury in fact" that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury. Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U. S. 167, 180–181 (2000) . This requirement assures that "there is a real need to exercise the power of judicial review in order to protect the interests of the complaining party," Schlesinger v. Reservists Comm. to Stop the War, 418 U. S. 208, 221 (1974) . Where that need does not exist,

allowing courts to oversee legislative or executive action "would significantly alter the allocation of power … away from a democratic form of government," Richardson, supra, at 188 (Powell, J., concurring).

The regulations under challenge here neither require nor forbid any action on the part of respondents. The standards and procedures that they prescribe for Forest Service appeals govern only the conduct of Forest Service officials engaged in project planning. "[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily 'substantially more difficult' to establish." Defenders of Wildlife, supra, at 562. Here, respondents can demonstrate standing only if application of the regulations by the Government will affect them in the manner described above.

It is common ground that the respondent organizations can assert the standing of their members. To establish the concrete and particularized injury that standing requires, respondents point to their members' recreational interests in the National Forests. While generalized harm to the forest or the environment will not alone support standing, if that harm in fact affects the recreational or even the mere esthetic interests of the plaintiff, that will suffice. Sierra Club v. Morton, 405 U. S. 727, 734–736 (1972) .

Affidavits submitted to the District Court alleged that organization member Ara Marderosian had repeatedly visited the Burnt Ridge site, that he had imminent plans to do so again, and that his interests in viewing the flora and fauna of the area would be harmed if the Burnt Ridge Project went forward without incorporation of the ideas he would have suggested if the Forest Service had provided him an opportunity to comment. The Government concedes this was sufficient to establish Article III standing with respect to Burnt Ridge. Brief for Petitioners 28. Marderosian's threatened injury with regard to that project was originally one of the bases for the present suit. After the District Court had issued a preliminary injunction, however, the parties settled their differences on that score. Marderosian's injury in fact with regard to that project has been remedied, and it is, as the District Court pronounced, "not at issue in this case." 376 F. Supp. 2d, at 999. We know of no precedent for the proposition that when a plaintiff has sued to challenge the lawfulness of certain action or threatened action but has settled that suit, he retains standing to challenge the basis for that action (here, the regulation in the abstract), apart from any concrete application that threatens imminent harm to his interests. Such a holding would fly in the face of Article III's injury-in-fact requirement. See Lyons, supra, at 111.

Respondents have identified no other application of the invalidated regulations that threatens imminent and concrete harm to the interests of their members. The only other affidavit relied on was that of Jim Bensman.** He asserted, first, that he had suffered injury in the past from development on Forest Service land. That does not suffice for several reasons: because it was not tied to application of the challenged regulations, because it does not identify any particular site,

and because it relates to past injury rather than imminent future injury that is sought to be enjoined.

Bensman's affidavit further asserts that he has visited many National Forests and plans to visit several unnamed National Forests in the future. Respondents describe this as a mere failure to "provide the name of each timber sale that affected [Bensman's] interests," Brief for Respondents 44. It is much more (or much less) than that. It is a failure to allege that any particular timber sale or other project claimed to be unlawfully subject to the regulations will impede a specific and concrete plan of Bensman's to enjoy the National Forests. The National Forests occupy more than 190 million acres, an area larger than Texas. See Meet the Forest Service, http://www.fs.fed.us/aboutus/meetfs.shtml (as visited Feb. 27, 2009, and available in Clerk of Court's case file). There may be a chance, but is hardly a likelihood, that Bensman's wanderings will bring him to a parcel about to be affected by a project unlawfully subject to the regulations. Indeed, without further specification it is impossible to tell which projects are (in respondents' view) unlawfully subject to the regulations. The allegations here present a weaker likelihood of concrete harm than that which we found insufficient in Lyons, 461 U. S. 95 , where a plaintiff who alleged that he had been injured by an improper police chokehold sought injunctive relief barring use of the hold in the future. We said it was "no more than conjecture" that Lyons would be subjected to that chokehold upon a later encounter. Id., at 108. Here we are asked to assume not only that Bensman will stumble across a project tract unlawfully subject to the regulations, but also that the tract is about to be developed by the Forest Service in a way that harms his recreational interests, and that he would have commented on the project but for the regulation. Accepting an intention to visit the National Forests as adequate to confer standing to challenge any Government action affecting any portion of those forests would be tantamount to eliminating the requirement of concrete, particularized injury in fact.

The Bensman affidavit does refer specifically to a series of projects in the Allegheny National Forest that are subject to the challenged regulations. It does not assert, however, any firm intention to visit their locations, saying only that Bensman " 'want[s] to' " go there. Brief for Petitioners 6. This vague desire to return is insufficient to satisfy the requirement of imminent injury: "Such 'some day' intentions—without any description of concrete plans, or indeed any specification of when the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require." Defenders of Wildlife, 504 U. S., at 564.

Respondents argue that they have standing to bring their challenge because they have suffered procedural injury, namely that they have been denied the ability to file comments on some Forest Service actions and will continue to be so denied. But deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right in vacuo—is insufficient to create Article III standing. Only a "person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal

standards for redressability and immediacy." Id., at 572, n. 7 (emphasis added). Respondents alleged such injury in their challenge to the Burnt Ridge Project, claiming that but for the allegedly unlawful abridged procedures they would have been able to oppose the project that threatened to impinge on their concrete plans to observe nature in that specific area. But Burnt Ridge is now off the table.

It makes no difference that the procedural right has been accorded by Congress. That can loosen the strictures of the redressability prong of our standing inquiry—so that standing existed with regard to the Burnt Ridge Project, for example, despite the possibility that Earth Island's allegedly guaranteed right to comment would not be successful in persuading the Forest Service to avoid impairment of Earth Island's concrete interests. See Ibid. Unlike redressability, however, the requirement of injury in fact is a hard floor of Article III jurisdiction that cannot be removed by statute.

"[I]t would exceed [Article III's] limitations if, at the behest of Congress and in the absence of any showing of concrete injury, we were to entertain citizen suits to vindicate the public's nonconcrete interest in the proper administration of the laws. … [T]he party bringing suit must show that the action injures him in a concrete and personal way." Id., at 580–581 (Kennedy, J., concurring in part and concurring in judgment).

III

The dissent proposes a hitherto unheard-of test for organizational standing: whether, accepting the organization's self-description of the activities of its members, there is a statistical probability that some of those members are threatened with concrete injury. Since, for example, the Sierra Club asserts in its pleadings that it has more than " '700,000 members nationwide, including thousands of members in California' " who " 'use and enjoy the Sequoia National Forest,' " post, at 2 (opinion of Breyer, J.), it is probable (according to the dissent) that some (unidentified) members have planned to visit some (unidentified) small parcels affected by the Forest Service's procedures and will suffer (unidentified) concrete harm as a result. This novel approach to the law of organizational standing would make a mockery of our prior cases, which have required plaintiff-organizations to make specific allegations establishing that at least one identified member had suffered or would suffer harm. In Defenders of Wildlife, supra,at 563, we held that the organization lacked standing because it failed to "submit affidavits … showing, through specific facts … that one or more of [its] members would … be 'directly' affected" by the allegedly illegal activity. Morton, 405 U. S. 727 , involved the same Sierra Club that is a party in the present case, and a project in the Sequoia National Forest. The principal difference from the present case is that the challenged project was truly massive, involving the construction of motels, restaurants, swimming pools, parking lots, and other structures on 80 acres of the Forest, plus ski lifts, ski trails, and a 20-mile access highway. We did not engage in an

assessment of statistical probabilities that one of the Sierra Club's members would be adversely affected, but held that the Sierra Club lacked standing. We said:

"The Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the Disney development. Nowhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose, much less that they use it in any way that would be significantly affected by the proposed actions of the respondents." Id., at 735.

And in FW/PBS, Inc. v. Dallas, 493 U. S. 215, 235 (1990) , we noted that the affidavit provided by the city to establish standing would be insufficient because it did not name the individuals who were harmed by the challenged license-revocation program. This requirement of naming the affected members has never been dispensed with in light of statistical probabilities, but only where all the members of the organization are affected by the challenged activity. See, e.g., NAACP v. Alabama ex rel. Patterson, 357 U. S. 449, 459 (1958) (all organization members affected by release of membership lists).

A major problem with the dissent's approach is that it accepts the organizations' self-descriptions of their membership, on the simple ground that "no one denies" them, post, at 6. But it is well established that the court has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties. Bender v. Williamsport Area School Dist., 475 U. S. 534, 541 (1986) . Without individual affidavits, how is the court to assure itself that the Sierra Club, for example, has " 'thousands of members' " who " 'use and enjoy the Sequoia National Forest' "? And, because to establish standing plaintiffs must show that they "use the area affected by the challenged activity and not an area roughly in the vicinity of " a project site, Defenders of Wildlife, 504 U. S., at 566 (internal quotation marks omitted), how is the court to assure itself that some of these members plan to make use of the specific sites upon which projects may take place? Or that these same individuals will find their recreation burdened by the Forest Service's use of the challenged procedures? While it is certainly possible—perhaps even likely—that one individual will meet all of these criteria, that speculation does not suffice. "Standing," we have said, "is not 'an ingenious academic exercise in the conceivable' … [but] requires … a factual showing of perceptible harm." Ibid. In part because of the difficulty of verifying the facts upon which such probabilistic standing depends, the Court has required plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm—surely not a difficult task here, when so many thousands are alleged to have been harmed.

The dissent would have us replace the requirement of " 'imminent' " harm, which it acknowledges our cases establish, see post, at 4, with the requirement of " 'a realistic threat' that reoccurrence of the challenged activity would cause [the plaintiff] harm 'in the reasonably near future,' " post, at 5. That language is taken, of course, from an opinion that did not find standing,

so the seeming expansiveness of the test made not a bit of difference. The problem for the dissent is that the timely affidavits no more meet that requirement than they meet the usual formulation. They fail to establish that the affiants' members will ever visit one of the small parcels at issue.

The dissent insists, however, that we should also have considered the late-filed affidavits. It invokes Federal Rule of Civil Procedure 15(d) (West 2008 rev. ed.), which says that "[t]he court may permit supplementation even though the original pleading is defective in stating of a claim or defense." So also does Rule 21 permit joinder of parties "at any time." But the latter no more permits joinder of parties, than the former permits the supplementation of the record, in the circumstances here: after the trial is over, judgment has been entered, and a notice of appeal has been filed. The dissent cites no instance in which "supplementation" has been permitted to resurrect and alter the outcome in a case that has gone to judgment, and indeed after notice of appeal had been filed. If Rule 15(b) allows additional facts to be inserted into the record after appeal has been filed, we are at the threshold of a brave new world of trial practice in which Rule 60 has been swallowed whole by Rule 15(b).

* * *

Since we have resolved this case on the ground of standing, we need not reach the Government's contention that plaintiffs have not demonstrated that the regulations are ripe for review under the Administrative Procedure Act. We likewise do not reach the question whether, if respondents prevailed, a nationwide injunction would be appropriate. And we do not disturb the dismissal of respondents' challenge to the remaining regulations, which has not been appealed.

The judgment of the Court of Appeals is reversed in part and affirmed in part.

It is so ordered.

Lujan v. National Wildlife Federation
1990

Syllabus

The National Wildlife Federation (hereinafter respondent) filed this action in the District Court against petitioners, the Director of the Bureau of Land Management (BLM) and other federal parties, alleging that, in various respects, they had violated the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA) in the course of administering the BLM's "land withdrawal review program," and that the complained-of actions should be set aside because they were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" within the meaning of § 10(e) of the Administrative Procedure Act (APA), 5 U.S.C. § 706. Under the program, petitioners make

various types of decisions affecting the status of public lands and their availability for private uses such as mining, a number of which decisions were listed in an appendix to the complaint. The court granted petitioners' motion for summary judgment under Federal Rule of Civil Procedure 56, holding that respondent lacked standing to seek judicial review of petitioners' actions under the APA, § 702. The court ruled that affidavits by two of respondent's members, Peterson and Erman, claiming use of public lands "in the vicinity" of lands covered by two of the listed decisions, were insufficient to confer standing as to those particular decisions, and that, even if they had been adequate for that limited purpose, they could not support respondent's attempted APA challenge to each of the 1,250 or so individual actions effected under the program. The court rejected as untimely four more member affidavits pertaining to standing, which were submitted after argument on the summary judgment motion and in purported response to the District Court's postargument request for additional briefing. The Court of Appeals reversed, holding that the Peterson and Erman affidavits were sufficient in themselves, that it was an abuse of discretion not to consider the four additional affidavits, and that standing to challenge the individual decisions conferred standing to challenge all such decisions.

Held:

1. The Peterson and Erman affidavits are insufficient to establish respondent's § 702 entitlement to judicial review as "[a] person . . .

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adversely affected or aggrieved by agency action within the meaning of a relevant statute." Pp. 497 U. S. 882-889.

(a) To establish a right to relief under § 702, respondent must satisfy two requirements. First, it must show that it has been affected by some "agency action," as defined in § 551(13). *See* § 701(b)(2). Since neither the FLPMA nor NEPA provides a private right of action, the "agency action" in question must also be "final agency action" under § 704. Second, respondent must prove that it is "adversely affected or aggrieved" by that action "within the meaning of a relevant statute," which requires a showing that the injury complained of falls within the "zone of interests" sought to be protected by the FLPMA and NEPA. *Cf. Clarke v. Securities Industry Assn.,* 479 U. S. 388, 479 U. S. 396-397. Pp. 497 U. S. 882-883.

(b) When a defendant moves for summary judgment on the ground that the plaintiff has failed to establish a right to relief under 702, the burden is on the plaintiff, under Rule 56(e), to set forth specific facts (even though they may be controverted by the defendant) showing that there is a genuine issue for trial. *Cf. Celotex Corp. v. Catrett,* 477 U. S. 317, 477 U. S. 322. Where no such showing is made, the defendant is entitled to judgment as a matter of law. *Id.* at 477 U. S. 323. Pp. 497 U. S. 883-885.

(c) The specific facts alleged in the two affidavits do not raise a genuine issue of fact as to whether respondent has a right to relief under § 702. It may be assumed that the allegedly affected interests set forth in the affidavits -- "recreational use and aesthetic enjoyment" -- are sufficiently related to respondent's purposes that respondent meets § 702's requirements if any of its members do. Moreover, each affidavit can be read to complain of a particular "agency action" within § 551's meaning; and whatever "adverse effect" or "aggrievement" is established by the affidavits meets the "zone of interests" test, since "recreational use and aesthetic enjoyment" are among the sorts of interests that the FLPMA and NEPA are designed to protect. However, there has been no showing that those interests of *Peterson and Erman* were actually "affected" by petitioners' actions, since the affidavits alleged only that the affiants used unspecified lands "in the vicinity of" immense tracts of territory, only on some portions of which, the record shows, mining activity has occurred or probably will occur by virtue of the complained-of actions. The Court of Appeals erred in ruling that the District Court had to presume specific facts sufficient to support the general allegations of injury to the affiants, since such facts are essential to sustaining the complaint and, under Rule 56(e), had to be set forth by respondent. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP),* 412 U. S. 669, distinguished. Pp. 497 U. S. 885-889.

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2. Respondent's four additional member affidavits did not establish its right to § 702 review. Pp. 497 U. S. 890-898.

(a) The affidavits are insufficient to enable respondent to challenge the entirety of petitioners' "land withdrawal review program." That term does not refer to a single BLM order or regulation, or even to a completed universe of particular BLM orders and regulations, but is simply the name by which petitioners have occasionally referred to certain continuing (and thus constantly changing) BLM operations regarding public lands, which currently extend to about 1,250 individual decisions and presumably will include more actions in the future. Thus, the program is not an identifiable "agency action" within § 702's meaning, much less a "final agency action" under § 704. Absent an explicit congressional authorization to correct the administrative process on a systemic level, agency action is not ordinarily considered "ripe" for judicial review under the APA until the scope of the controversy has been reduced to manageable proportions, and its factual components fleshed out, by concrete action that harms or threatens to harm the complainant. It may well be, due to the scope of the "program," that the individual BLM actions identified in the affidavits will not be "ripe" for challenge until some further agency action or inaction more immediately harming respondent occurs. But it is entirely certain that the flaws in the entire "program" cannot be laid before the courts for wholesale correction under the APA simply because one of them that is ripe for review adversely affects one of respondent's members. Respondent must seek such programmatic improvements from the BLM or Congress. Pp. 497 U. S. 890-894.

(b) The District Court did not abuse its discretion in declining to admit the supplemental affidavits. Since the affidavits were filed in response to the court's briefing order following the summary judgment hearing, they were untimely under,*inter alia,* Rule 6(d), which provides that "opposing affidavits may be served not later than 1 day before the hearing." Although Rule 6(b) allows a court, "in its discretion," to extend any filing deadline "for cause shown," a post-deadline extension must be "upon motion made," and is permissible only where the failure to meet the deadline "was the result of excusable neglect." Here, respondent made no motion for extension, nor any showing of "cause." Moreover, the failure to timely file did not result from "excusable neglect," since the court's order setting the hearing on the summary judgment motion put respondent on notice that its right to sue was at issue, and that (absent proper motion) the time for filing additional evidentiary materials was, at the latest, the day before the hearing. Even if the court could have overcome these obstacles to admit the affidavits, it was not *compelled,* in exercising its discretion, to do so. Pp. 497 U. S. 894-898.

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3. Respondent is not entitled to seek § 702 review of petitioners' actions in its own right. The brief affidavit submitted to the District Court to show that respondent's ability to fulfill its informational and advocacy functions was "adversely affected" by petitioners' alleged failure to provide adequate information and opportunities for public participation with respect to the land withdrawal review program fails to identify any particular "agency action" that was the source of respondent's alleged injuries, since that program is not an identifiable action or event. Thus, the affidavit does not set forth the specific facts necessary to survive a Rule 56 motion. Pp. 497 U. S. 898-899.

278 U.S.App.D.C. 320, 878 F.2d 422, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST C.J., and WHITE, O'CONNOR, and KENNEDY, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which BRENNAN, MARSHALL, and STEVENS, JJ., joined, *post,* p. 497 U. S. 900.

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JUSTICE SCALIA delivered the opinion of the Court.

In this, case we must decide whether respondent, the National Wildlife Federation (hereinafter respondent), is a proper party to challenge actions of the Federal Government relating to certain public lands.

I

Respondent filed this action in 1985 in the United States District Court for the District of Columbia against petitioners the United States Department of the Interior, the Secretary of the Interior, and the Director of the Bureau of Land Management (BLM), an agency within the Department. In its amended complaint, respondent alleged that petitioners had violated the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2744, 43 U.S.C. § 1701 *et seq.* (1982 ed.), the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, 42 U.S.C. § 4321 *et seq.,* and § 10(e) of the Administrative Procedure Act (APA), 5 U.S.C. § 706, in the course of administering what the complaint called the "land withdrawal review program" of the BLM. Some background information concerning that program is necessary to an understanding of this dispute.

In various enactments, Congress empowered United States citizens to acquire title to, and rights in, vast portions of federally owned land. *See, e.g.,* Rev.Stat. § 2319, 30 U.S.C. § 22 *et seq.* (Mining Law of 1872); 41 Stat. 437, as amended, 30 U.S.C. § 181 *et seq.* (Mineral Leasing Act of 1920). Congress also provided means, however, for the Executive to remove public lands from the operation of these statutes. The Pickett Act, 36 Stat. 847, 43 U.S.C. § 141 (1970 ed.), *repealed,* 90 Stat. 2792 (1976), authorized the President

"at any time in his discretion, temporarily [to] withdraw from settlement, location, sale, or entry any of the

public lands of the United States . . . and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes. . . ."

Acting under this and under the Taylor Grazing Act of 1934, ch. 865, 48 Stat. 1269, as amended, 43 U.S.C. § 315f, which gave the Secretary of the Interior authority to "classify" public lands as suitable for either disposal or federal retention and management, President Franklin Roosevelt withdrew all unreserved public land from disposal until such time as they were classified. Exec.Order No. 6910, Nov. 26, 1934; Exec.Order No. 6964, Feb. 5, 1935. In 1936, Congress amended § 7 of the Taylor Grazing Act to authorize the Secretary of the Interior "to examine and classify any lands" withdrawn by these orders and by other authority as "more valuable or suitable" for other uses

"and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable public land laws."

49 Stat.1976, 43 U.S.C. § 315f (1982 ed.). The amendment also directed that

"[s]uch lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry."

Ibid. The 1964 classification and multiple use Act, 78 Stat. 986, 43 U.S.C. §§ 1411-1418 (1970 ed.) (expired 1970), gave the Secretary further authority to classify lands for the purpose of either disposal or retention by the Federal Government.

Management of the public lands under these various laws became chaotic. The Public Land Law Review Commission, established by Congress in 1964 to study the matter, 78 Stat. 982, determined in 1970 that "virtually all" of the country's public domain, *see* Public Land Law Review Commission, One Third of the Nation's Land 52 (1970) -- about one-third of the land within the United States, *see id.* at 19 -- had been withdrawn or classified for retention; that it was difficult to determine "the extent of existing Executive withdrawals and the degree to which withdrawals overlap each other," *id.* at 52; and that there were inadequate records to show the purposes

of withdrawals and the permissible public uses. *Ibid.* Accordingly, it recommended that

"Congress should provide for a careful review of (1) all Executive withdrawals and reservations, and (2) BLM retention and disposal classifications under the Classification and Multiple Use Act of 1964."

Ibid.

In 1976, Congress passed the FLPMA, which repealed many of the miscellaneous laws governing disposal of public land, 43 U.S.C. § 1701 *et seq.* (1982 ed.), and established a policy in favor of retaining public lands for multiple use management. It directed the Secretary to "prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values," § 1711(a), required land use planning for public lands, and established criteria to be used for that purpose, § 1712. It provided that existing classifications of public lands were subject to review in the land use planning process, and that the Secretary could "modify or terminate any such classification consistent with such land use plans." § 1712(d). It also authorized the Secretary to "make, modify, extend or revoke" withdrawals. § 1714(a). Finally it directed the Secretary, within 15 years, to review withdrawals in existence in 1976 in 11 western States, § 1714 (1)(1), and to

"determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs,"

§ 1714(1)(2). The activities undertaken by the BLM to comply with these various provisions constitute what respondent's amended complaint styles the BLM's "land withdrawal review program," which is the subject of the current litigation.

Pursuant to the directives of the FLPMA, the petitioners engage in a number of different types of administrative action with respect to the various tracts of public land within the United States. First, the BLM conducts the review and recommends the determinations required by § 1714(1) with

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respect to withdrawals in 11 western States. The law requires the Secretary to

"report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands;"

the President must in turn submit this report to the Congress, together with his recommendation "for action by the Secretary, or for legislation." § 1714(1)(2). The Secretary has submitted a number of reports to the President in accordance with this provision.

Second, the Secretary revokes some withdrawals under § 204(a) of the Act, which the Office of the Solicitor has interpreted to give the Secretary the power to process proposals for revocation of withdrawals made during the "ordinary course of business." U.S. Dept. of the Interior, Memorandum from the Office of the Solicitor, Oct. 30, 1980. These revocations are initiated in one of three manners: an agency or department holding a portion of withdrawn land that it no longer needs may file a notice of intention to relinquish the lands with the BLM. Any member of the public may file a petition requesting revocation. And in the case of lands held by the BLM, the BLM itself may initiate the revocation proposal. App. 56-57. Withdrawal revocations may be made for several reasons. Some are effected in order to permit sale of the land; some for record-clearing purposes, where the withdrawal designation has been superseded by congressional action or overlaps with another withdrawal designation; some in order to restore the land to multiple use management pursuant to § 102(a)(7) of the FLPMA, 43 U.S.C. § 1701(a)(7) (1982 ed.). App. 142-145.

Third, the Secretary engages in the ongoing process of classifying public lands, either for multiple-use management, 43 CFR pt. 2420 (1988), for disposal, pt. 2430, or for other uses. Classification decisions may be initiated by petition, pt. 2450, or by the BLM itself, pt. 2460. Regulations promulgated

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by the Secretary prescribe the procedures to be followed in the case of each type of classification determination.

II

In its complaint, respondent averred generally that the reclassification of some withdrawn lands and the return of others to the public domain would open the lands up to mining activities, thereby destroying their natural beauty. Respondent alleged that petitioners, in the course of administering the Nation's public lands, had violated the FLPMA by failing to

"develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands,"

43 U.S.C. § 1712(a) (1982 ed.); failing to submit recommendations as to withdrawals in the 11 western States to the President, § 1714(1); failing to consider multiple uses for the disputed lands, § 1732(a), focusing inordinately on such uses as mineral exploitation and development; and failing to provide public notice of decisions, §§ 1701(a)(5), 1712(c)(9), 1712(f), and 1739(e). Respondent also claimed that petitioners had violated NEPA, which requires federal agencies to

"include in every recommendation or report on . . . major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on . . . the environmental impact of the proposed action."

42 U.S.C. § 4332(2)(C) (1982 ed.). Finally, respondent alleged that all of the above actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," and should therefore be set aside pursuant to § 10(e) of the APA, 5 U.S.C. § 706. Appended to the amended complaint was a schedule of specific land status determinations, which the complaint stated had been "taken by defendants since January 1, 1981"; each was identified by a listing in the Federal Register.

In December, 1985, the District Court granted respondent's motion for a preliminary injunction prohibiting petitioners from

"[m]odifying, terminating or altering any withdrawal, classification, or other designation governing the protection

of lands in the public domain that was in effect on January 1, 1981,"

and from "[t]aking any action inconsistent" with any such withdrawal, classification, or designation. App. to Pet. for Cert. 185a. In a subsequent order, the court denied petitioners'

motion under Rule 12(b) of the Federal Rules of Civil Procedure to dismiss the complaint for failure to demonstrate standing to challenge petitioners' actions under the APA, 5 U.S.C. § 702. App. to Pet. for Cert. 183a. The Court of Appeals affirmed both orders. *National Wildlife Federation v. Burford,* 266 U.S.App.D.C. 241, 835 F.2d 305 (1987). As to the motion to dismiss, the Court of Appeals found sufficient to survive the motion the general allegation in the amended complaint that respondent's members used environmental resources that would be damaged by petitioners' actions. *See id.* at 248, 835 F.2d at 312. It held that this allegation, fairly read along with the balance of the complaint, both identified particular land-status actions that respondent sought to challenge -- since at least some of the actions complained of were listed in the complaint's appendix of Federal Register references -- and asserted harm to respondent's members attributable to those particular actions. *Id.* at 249, 835 F.2d at 313. To support the latter point, the Court of Appeals pointed to the affidavits of two of respondent's members, Peggy Kay Peterson and Richard Erman, which claimed use of land "in the vicinity" of the land covered by two of the listed actions. Thus, the Court of Appeals concluded, there was

"concrete indication that [respondent's] members use specific lands covered by the agency's Program and will be adversely affected by the agency's actions,"

and the complaint was "sufficiently specific for purposes of a motion to dismiss." *Ibid.* On petitions for rehearing, the Court of Appeals stood by its denial of the motion to dismiss, and directed the parties and the District Court "to proceed with this litigation with dispatch." *National Wildlife Federation v. Burford,* 269 U.S.App.D.C. 271, 272, 844 F.2d 889, 890 (1988).

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Back before the District Court, petitioners again claimed, this time by means of a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure (which motion had been outstanding during the proceedings before the Court of Appeals), that respondent had no standing to seek judicial review of petitioners' actions under the APA. After argument on this motion, and in purported response to the court's postargument request for additional briefing, respondent submitted four additional member affidavits pertaining to the issue of standing. The District Court rejected them as untimely, vacated the injunction, and granted the Rule 56 motion to dismiss. It noted that neither its earlier decision nor the Court of Appeals' affirmance controlled the question, since both pertained to a motion under Rule 12(b). It found the Peterson and Erman affidavits insufficient to withstand the Rule 56 motion, even as to judicial review of the particular classification decisions to which they pertained. And even if they had been adequate for that limited purpose, the court said, they could not support respondent's attempted APA challenge to "each of the 1250 or so individual classification terminations and withdrawal revocations" effected under the land withdrawal review program. *National Wildlife Federation v. Burford,* 699 F.Supp. 327, 332 (DC 1988).

This time the Court of Appeals reversed. *National Wildlife Federation v. Burford,* 278 U.S.App.D.C. 320, 878 F.2d 422 (1989). It both found the Peterson and Erman affidavits sufficient in themselves, and held that it was an abuse of discretion not to consider the four additional affidavits as well. [Footnote 1] The Court of Appeals also concluded that

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standing to challenge individual classification and withdrawal decisions conferred standing to challenge all such decisions under the land withdrawal review program. We granted certiorari. 493 U.S. 1042 (1990).

III

A

We first address respondent's claim that the Peterson and Erman affidavits alone suffice to establish respondent's right to judicial review of petitioners' actions. Respondent does not contend that either the FLPMA or NEPA provides a private right of action for violations of its provisions. Rather, respondent claims a right to judicial review under § 10(a) of the APA, which provides:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

5 U.S.C. § 702.

This provision contains two separate requirements. First, the person claiming a right to sue must identify some "agency action" that affects him in the specified fashion; it is judicial review "thereof" to which he is entitled. The meaning of "agency action" for purposes of § 702 is set forth in 5 U.S.C. § 551(13), *see* 5 U.S.C. § 701(b)(2) ("For the purpose of this chapter . . . *agency action' ha[s] the meanin[g] given . . . by section 551 of this title"), which defines the term as "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act," 5 U.S.C. § 551(13). When, as here, review is sought not pursuant to specific authorization in the substantive statute, but only under the general review provisions of the APA, the "agency action" in question must be "final agency action." See 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review" (emphasis added)).*

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Second, the party seeking review under § 702 must show that he has "suffer[ed] legal wrong" because of the challenged agency action, or is "adversely affected or aggrieved" by that action

"within the meaning of a relevant statute." Respondent does not assert that it has suffered "legal wrong," so we need only discuss the meaning of "adversely affected or aggrieved . . . within the meaning of a relevant statute." As an original matter, it might be thought that one cannot be "adversely affected or aggrieved within the meaning" of a statute unless the statute in question uses those terms (or terms like them) -- as some pre-APA statutes in fact did when conferring rights of judicial review. *See, e.g.,* Federal Communications Act of 1934, § 402(b)(2), 48 Stat. 1093, as amended, 47 U.S.C. § 402(b)(6) (1982 ed.). We have long since rejected that interpretation, however, which would have made the judicial review provision of the APA no more than a restatement of preexisting law. Rather, we have said that, to be "adversely affected or aggrieved . . . within the meaning" of a statute, the plaintiff must establish that the injury he complains of (his aggrievement, or the adverse effect upon him) falls within the "zone of interests" sought to be protected by the statutory provision whose violation forms the legal basis for his complaint. *See Clarke v. Securities Industry Assn.,* 479 U. S. 388, 479 U. S. 396-397 (1987). Thus, for example, the failure of an agency to comply with a statutory provision requiring "on the record" hearings would assuredly have an adverse effect upon the company that has the contract to record and transcribe the agency's proceedings; but since the provision was obviously enacted to protect the interests of the parties to the proceedings, and not those of the reporters, that company would not be "adversely affected within the meaning" of the statute.

B

Because this case comes to us on petitioners' motion for summary judgment, we must assess the record under the

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standard set forth in Rule 56 of the Federal Rules of Civil Procedure. Rule 56(c) states that a party is entitled to summary judgment in his favor

"if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Rule 56(e) further provides:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

As we stated in *Celotex Corp. v. Catrett,* 477 U. S. 317 (1986),

"the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

Id. at 477 U. S. 322. Where no such showing is made,

"[t]he moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof."

Id. at 477 U. S. 323.

These standards are fully applicable when a defendant moves for summary judgment, in a suit brought under § 702, on the ground that the plaintiff has failed to show that he is "adversely affected or aggrieved by agency action within the meaning of a relevant statute." The burden is on the party seeking review under § 702 to set forth specific facts (even though they may be controverted by the Government) showing that he has satisfied its terms. *Sierra Club v. Morton,*

405 U. S. 727, 405 U. S. 740 (1972). *Celotex* made clear that Rule 56 does not require the moving party to negate the elements of the nonmoving party's case; to the contrary,

"regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied."

477 U.S. at 477 U. S. 323.

C

We turn, then, to whether the specific facts alleged in the two affidavits considered by the District Court raised a genuine issue of fact as to whether an "agency action" taken by petitioners caused respondent to be "adversely affected or aggrieved . . . within the meaning of a relevant statute." We assume, since it has been uncontested, that the allegedly affected interests set forth in the affidavits -- "recreational use and aesthetic enjoyment" -- are sufficiently related to the purposes of respondent association that respondent meets the requirements of § 702 if any of its members do. *Hunt v. Washington State Apple Advertising Comm'n,* 432 U. S. 333 (1977).

As for the "agency action" requirement, we think that each of the affidavits can be read, as the Court of Appeals believed, to complain of a particular "agency action" as that term is defined in § 551. The parties agree that the Peterson affidavit, judging from the geographic area it describes, must refer to that one of the BLM orders listed in the appendix to the complaint that appears at 49 Fed.Reg.19904-19905 (1984), an order captioned W-6228 and dated April 30, 1984, terminating the withdrawal classification of some 4,500 acres of land in that area. *See, e.g.,* Brief for Petitioners 8-10. The parties also appear to agree, on the basis of similar deduction, that the Erman affidavit refers to the BLM order listed in the appendix that appears at 47 Fed.Reg. 7232-7233

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(1982), an order captioned Public Land Order 6156 and dated February 18, 1982.

We also think that whatever "adverse effect" or "aggrievement" is established by the affidavits was "within the meaning of the relevant statute" -- *i.e.,* met the "zone of interests" test. The relevant statute, of course, is the statute whose violation is the gravamen of the complaint -- both the FLPMA and NEPA. We have no doubt that "recreational use and aesthetic enjoyment" are among the *sorts* of interests those statutes were specifically designed to protect. The only issue, then, is whether the facts alleged in the affidavits showed that those interests of *Peterson and Erman* were actually affected.

The Peterson affidavit averred:

"My recreational use and aesthetic enjoyment of federal lands, particularly those in the vicinity of South Pass-Green Mountain, Wyoming, have been and continue to be adversely affected in fact by the unlawful actions of the Bureau and the Department. In particular, the South Pass-Green Mountain area of Wyoming has been opened to the staking of mining claims and oil and gas leasing, an action which threatens the aesthetic beauty and wildlife habitat potential of these lands."

App. to Pet. for Cert.191a. Erman's affidavit was substantially the same as Peterson's, with respect to all except the area involved; he claimed use of land "in the vicinity of Grand Canyon National Park, the Arizona Strip (Kanab Plateau), and the Kanab National Forest." *Id.* at 187a.

The District Court found the Peterson affidavit inadequate for the following reasons:

"Peterson . . . claims that she uses federal lands *in the vicinity* of the South Pass-Green Mountain area of Wyoming for recreational purposes and for aesthetic enjoyment, and that her recreational and aesthetic enjoyment

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has been and continues to be adversely affected as the result of the decision of BLM to open it to the staking of mining claims and oil and gas leasing. . . . This decision [W-6228] opened up to mining approximately 4500 acres within a two million acre area, the balance of which, with the exception of 2000 acres, has always been open to mineral leasing and mining. . . . There is no showing that Peterson's recreational use and enjoyment extends to the particular 4500 acres covered by the decision to terminate classification to the remainder of the two million acres affected by the termination. All she claims is that she uses lands 'in the vicinity.' The affidavit, on its face, contains only a bare allegation of injury, and fails to show specific facts supporting the affiant's allegation."

699 F.Supp. at 331 (emphasis in original).

The District Court found the Erman affidavit "similarly flawed."

"The magnitude of Erman's claimed injury stretches the imagination. . . . [T]he Arizona Strip consists of all lands in Arizona north and west of the Colorado River on approximately 5.5 million acres, an area one-eighth the size of the State of Arizona. Furthermore, virtually the entire Strip is, and for many years has been, open to uranium and other metalliferous mining. The revocation of withdrawal [in Public Land Order 6156] concerned only non-metalliferous mining in the western one-third of the Arizona Strip, an area possessing no potential for nonmetalliferous mining."

Id. at 332.

The Court of Appeals disagreed with the District Court's assessment as to the Peterson affidavit (and thus found it unnecessary to consider the Erman affidavit) for the following reason:

"If Peterson was not referring to lands in this 4500-acre affected area, her allegation of impairment to her use and enjoyment would be meaningless, or perjurious. . . .

[T]he trial court overlooks the fact that, unless Peterson's language is read to refer to the lands affected by the Program, the affidavit is, at best, a meaningless document."

"At a minimum, Peterson's affidavit is ambiguous regarding whether the adversely affected lands are the ones she uses. When presented with ambiguity on a motion for summary judgment, a District Court must resolve any factual issues of controversy in favor of the non-moving party. . . . This means that the District Court was obliged to resolve any factual ambiguity in favor of NWF, and would have had to assume, for the purposes of summary judgment, that Peterson used the 4500 affected acres."

278 U.S.App.D.C. at 329, 878 F.2d at 431.

That is not the law. In ruling upon a Rule 56 motion, "a District Court must resolve any factual issues of controversy in favor of the nonmoving party" only in the sense that, where the facts specifically averred by that party contradict facts specifically averred by the movant, the motion must be denied. That is a world apart from "assuming" that general averments embrace the "specific facts" needed to sustain the complaint. As set forth above, Rule 56(e) provides that judgment "shall be entered" against the nonmoving party unless affidavits or other evidence "set forth specific facts showing that there is a genuine issue for trial." The object of this provision is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit. *Cf. Anderson v. Liberty Lobby, Inc.,* 477 U. S. 242, 477 U. S. 249 (1986) ("[T]he plaintiff could not rest on his allegations of a conspiracy to get to a jury without *any significant probative evidence tending to support the complaint'"), quoting First National Bank of Ariz. v. Cities Service Co., 391 U. S. 253, 391 U. S. 290(1968). Rather, the purpose of Rule 56 is to enable a party who believes there is no genuine dispute as to a specific fact essential to the other side's case to demand at least one*

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sworn averment of that fact before the lengthy process of litigation continues.

At the margins, there is some room for debate as to how "specific" must be the "specific facts" that Rule 56(e) requires in a particular case. But where the fact in question is the one put in issue by the § 702 challenge here -- whether one of respondent's members has been, or is threatened to be, "adversely affected or aggrieved" by Government action -- Rule 56(e) is assuredly not satisfied by averments which state only that one of respondent's members uses unspecified portions of an immense tract of territory, on some portions of which mining activity has occurred or probably will occur by virtue of the governmental action. It will not do to "presume" the missing facts because, without them, the affidavits would not establish the injury that they generally allege. That converts the operation of Rule 56 to a circular promenade: plaintiff's complaint makes general allegation of injury; defendant contests through Rule 56 existence of specific facts to support injury; plaintiff responds with affidavit containing general allegation of injury, which must be deemed to constitute averment of requisite specific facts, since otherwise allegation of injury would be unsupported (which is precisely what defendant claims it is).

Respondent places great reliance, as did the Court of Appeals, upon our decision in *United States v. Students Challenging Regulatory Agency Procedures (SCRAP),* 412 U. S. 669 (1973). The *SCRAP* opinion, whose expansive expression of what would suffice for § 702 review under its particular facts, has never since been emulated by this Court, is of no relevance here, since it involved not a Rule 56 motion for summary judgment, but a Rule 12(b) motion to dismiss on the pleadings. The latter, unlike the former, presumes that general allegations embrace those specific

facts that are necessary to support the claim. *Conley v. Gibson,* 355 U. S. 41, 355 U. S. 45-46 (1957).

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IV

We turn next to the Court of Appeals' alternative holding that the four additional member affidavits proffered by respondent in response to the District Court's briefing order established its right to § 702 review of agency action.

A

It is impossible that the affidavits would suffice, as the Court of Appeals held, to enable respondent to challenge the entirety of petitioners' so-called "land withdrawal review program." That is not an "agency action" within the meaning of § 702, much less a "final agency action" within the meaning of § 704. The term "land withdrawal review program" (which as far as we know is not derived from any authoritative text) does not refer to a single BLM order or regulation, or even to a completed universe of particular BLM orders and regulations. It is simply the name by which petitioners have occasionally referred to the continuing (and thus constantly changing) operations of the BLM in reviewing withdrawal revocation applications and the classifications of public lands and developing land use plans as required by the FLPMA. It is no more an identifiable "agency action" -- much less a "final agency action" -- than a "weapons procurement program" of the Department of Defense or a "drug interdiction program" of the Drug Enforcement Administration. As the District Court explained, the "land withdrawal review program" extends to, currently at least, "1250 or so individual classification terminations and withdrawal revocations." 699 F.Supp. at 332. [Footnote 2]

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Respondent alleges that violation of the law is rampant within this program -- failure to revise land use plans in proper fashion, failure to submit certain recommendations to Congress, failure to consider multiple use, inordinate focus upon mineral exploitation, failure to provide required public notice, failure to provide adequate environmental impact statements. Perhaps so. But respondent cannot seek wholesale improvement of this program by court decree, rather than in the offices of the Department or the halls of Congress, where programmatic improvements are normally made. Under the terms of the APA, respondent must direct its attack against some particular "agency action" that causes it harm. Some statutes permit broad regulations to serve as the "agency action," and thus to be the object of judicial review directly, even before the concrete effects normally required for APA review are felt. Absent such a provision, however, a regulation is not ordinarily considered the type of agency action "ripe" for judicial review under

the APA until the scope of the controversy has been reduced to more manageable proportions, and its factual components fleshed out, by some concrete action applying the regulation to the claimant's situation in a fashion that harms or threatens to harm him. (The major exception, of course, is a substantive rule which, as a practical matter, requires the plaintiff to adjust his conduct immediately. Such agency action is "ripe" for review at once, whether or not explicit statutory review apart from the APA is provided. *See Abbott Laboratories v. Gardner,* 387 U. S. 136, 387 U. S. 152-154 (1967); *Gardner v. Toilet Goods Assn., Inc.,* 387 U. S. 167, 387 U. S. 171-173 (1967). *Cf. 387 U. S. S. 892*Goods Assn., Inc. v. Gardner,@ 387 U. S. 158, 387 U. S. 164-166 (1967).)

In the present case, the individual actions of the BLM identified in the six affidavits can be regarded as rules of general applicability (a "rule" is defined in the APA as agency action of "general or particular applicability *and future effect,*" 5 U.S.C. § 551(4) (emphasis added)) announcing, with respect to vast expanses of territory that they cover, the agency's intent to grant requisite permission for certain activities, to decline to interfere with other activities, and to take other particular action if requested. It may well be, then, that even those individual actions will not be ripe for challenge until some further agency action or inaction more immediately harming the plaintiff occurs. [Footnote 3] But it is at least entirely

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certain that the flaws in the entire "program" -- consisting principally of the many individual actions referenced in the complaint, and presumably actions yet to be taken as well -- cannot be laid before the courts for wholesale correction under the APA, simply because one of them that is ripe for review adversely affects one of respondent's members. [Footnote 4]

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The case-by-case approach that this requires is understandably frustrating to an organization such as respondent, which has as its objective across-the-board protection of our Nation's wildlife and the streams and forests that support it. But this is the traditional, and remains the normal, mode of operation of the courts. Except where Congress explicitly provides for our correction of the administrative process at a higher level of generality, we intervene in the administration of the laws only when, and to the extent that, a specific "final agency action" has an actual or immediately threatened effect.*Toilet Goods Assn.,* 387 U.S. at 387 U. S. 164-166. Such an intervention may ultimately have the effect of requiring a regulation, a series of regulations, or even a whole "program" to be revised by the agency in order to avoid the unlawful result that the court discerns. But it is assuredly not as swift or as immediately far-reaching a corrective process as those interested in systemic improvement would desire. Until confided to us, however, more sweeping actions are for the other branches.

B

The Court of Appeals' reliance upon the supplemental affidavits was wrong for a second reason: the District Court did not abuse its discretion in declining to admit them. Petitioners filed their motion for summary judgment in September, 1986; respondent filed an opposition, but did not submit any new evidentiary materials at that time. On June 27, 1988, after the case had made its way for the first time through the Court of Appeals, the District Court announced that it would hold a hearing on July 22 on "the outstanding motions for summary judgment," which included petitioners' motion challenging respondent's § 702 standing. The hearing was held and, as noted earlier, the District Court issued an order directing respondent to file "a supplemental memorandum regarding

the issue of its standing to proceed." Record, Doc. No. 274. Although that plainly did not call for the submission of new evidentiary materials, it was in purported response to this order, on August 22, 1988, that respondent submitted (along with the requested legal memorandum) the additional affidavits. The only explanation for the submission (if it can be called an explanation) was contained in a footnote to the memorandum, which simply stated that

"NWF now has submitted declarations on behalf of other members of NWF who have been injured by the challenged actions of federal defendants."

Record, Doc. No. 278, p. 18, n. 21. In its November 4, 1988, ruling granting petitioners' motion, the District Court rejected the additional affidavits as "untimely and in violation of [the court's briefing] Order." 699 F.Supp. at 328, n. 3.

Respondent's evidentiary submission was indeed untimely, both under Rule 56, which requires affidavits in opposition to a summary judgment motion to be served "prior to the day of the hearing," Fed.R.Civ.P. 56(c), and under Rule 6(d), which states more generally that,

"[w]hen a motion is supported by affidavit, . . . opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time."

Rule 6(b) sets out the proper approach in the case of late filings:

"When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. . . ."

This provision not only specifically confers the "discretion" relevant to the present issue, but also provides the mechanism

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by which that discretion is to be invoked and exercised. First, any extension of a time limitation must be "for cause shown." Second, although extensions before expiration of the time period may be "with or without motion or notice," any*post*-deadline extension must be "upon motion made," and is permissible only where the failure to meet the deadline "was the result of excusable neglect." Thus, in order to receive the affidavits here, the District Court would have had to regard the very filing of the late document as the "motion made" to file it; [Footnote 5] it would have had to interpret "cause

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shown" to mean merely "cause," since respondent made no "showing" of cause at all; and finally, it would have had to find as a substantive matter that there was indeed "cause" for the late filing, and that the failure to file on time "was the result of excusable neglect."

This last substantive obstacle is the greatest of all. The Court of Appeals presumably thought it was overcome because "the papers on which the trial court relied were two years old by the time it requested supplemental memoranda" and because

"there was no indication prior to the trial court's request that [respondent] should have doubted the adequacy of the affidavits it had already submitted."

278 U.S.App.D.C. at 331, 878 F.2d at 433. We do not understand the relevance of the first point; the passage of so long a time as two years suggests, if anything, that respondent had more than the usual amount of time to prepare its response to the motion, and was more than moderately remiss in waiting until after the last moment. As to the suggestion of unfair surprise: a litigant is never justified in assuming that the court has made up its mind until the court expresses itself to that effect, and a litigant's failure to buttress its position because of confidence in the strength of that position is always indulged in at the litigant's own risk. In any case, whatever erroneous expectations respondent may have had were surely dispelled by the District Court's order in June, 1988, announcing that the hearing on petitioners' motion would be held one month later. At least when that order issued, respondent was on notice that its right to sue was at issue, and that (absent proper motion) the time for filing any additional evidentiary materials was, at the latest, the day before the hearing.

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Perhaps it is true that the District Court could have overcome all the obstacles we have described -- apparent lack of a motion, of a showing, and of excusable neglect -- to admit the affidavits at issue here. But the proposition that it was compelled to receive them -- that it was an abuse of discretion to reject them -- cannot be accepted.

V

Respondent's final argument is that we should remand this case for the Court of Appeals to decide whether respondent may seek § 702 review of petitioners' actions in its own right, rather than derivatively through its members. Specifically, it points to allegations in the amended complaint that petitioners unlawfully failed to publish regulations, to invite public participation, and to prepare an environmental impact statement with respect to the "land withdrawal review program" as a whole. In order to show that it is a "person . . . adversely affected or aggrieved" by these failures, it submitted to the District Court a brief affidavit (two pages in the record) by one of its vice-presidents, Lynn A. Greenwalt, who stated that respondent's mission is to "inform its members and the general public about conservation issues" and to advocate improvements in laws and administrative practices "pertaining to the protection and enhancement of federal lands," App. to Pet. for Cert.193a-194a; and that its ability to perform this mission has been impaired by petitioners' failure

"to provide adequate information and opportunities for public participation with respect to the Land Withdrawal Review Program."

Id. at 194a. The District Court found this affidavit insufficient to establish respondent's right to seek judicial review, since it was "conclusory and completely devoid of specific facts." 699 F.Supp. at 330. The Court of Appeals, having reversed the District Court on the grounds discussed above, did not address the issue.

We agree with the District Court's disposition. Even assuming that the affidavit set forth "specific facts," Fed.R.Civ.P.

56(e), adequate to show injury to respondent through the deprivation of information; and even assuming that providing information to organizations such as respondent was one of the objectives of the statutes allegedly violated, so that respondent is "aggrieved within the meaning" of those statutes; nonetheless, the Greenwalt affidavit fails to identify any particular "agency action" that was the source of these injuries. The only sentences addressed to that point are as follows:

"NWF's ability to meet these obligations to its members has been significantly impaired by the failure of the Bureau of Land Management and the Department of the Interior to provide adequate information and opportunities for public participation with respect to the Land Withdrawal Review Program. These interests of NWF have been injured by the actions of the Bureau and the Department, and would be irreparably harmed by the continued failure to provide meaningful opportunities for public input and access to information regarding the Land Withdrawal Review Program."

App. to Pet. for Cert.194a. As is evident, this is even more deficient than the Peterson and Erman affidavits, which contained geographical descriptions whereby at least an action as general as a particular classification decision could be identified as the source of the grievance. As we discussed earlier, the "land withdrawal review program" is not an identifiable action or event. With regard to alleged deficiencies in providing information and permitting public participation, as with regard to the other illegalities alleged in the complaint, respondent cannot demand a general judicial review of the BLM's day-to-day operations. The Greenwalt affidavit, like the others, does not set forth the specific facts necessary to survive a Rule 56 motion.

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* * * * *

For the foregoing reasons, the judgment of the Court of Appeals is reversed.

It is so ordered.

Friends of the Earth v. Laidlaw

2000

Syllabus

Defendant-respondent Laidlaw Environmental Services (TOC), Inc., bought a facility in Roebuck, South Carolina, that included a wastewater treatment plant. Shortly thereafter, the South Carolina Department of Health and Environmental Control (DHEC), acting under the Clean Water Act (Act), 33 U.S.C. § 1342(a)(1), granted Laidlaw a National Pollutant Discharge Elimination System (NPDES) permit. The permit authorized Laidlaw to discharge treated water into the North Tyger River, but limited, among other things, the discharge of pollutants into the waterway. Laidlaw began to discharge various pollutants into the waterway; these discharges, particularly of mercury, an extremely toxic pollutant, repeatedly exceeded the limits set by the permit.

On April 10, 1992, plaintiff-petitioners Friends of the Earth and Citizens Local Environmental Action Network, Inc. (referred to collectively here, along with later joined plaintiff-petitioner Sierra Club, as "FOE"), notified Laidlaw of their intention to file a citizen suit against it under the Act, 33 U.S.C. § 1365(a), after the expiration of the requisite 60-day notice period. DHEC acceded to Laidlaw's request to file a lawsuit against the company. On the last day before FOE's 60-day notice period expired, DHEC and Laidlaw reached a settlement requiring Laidlaw to pay $100,000 in civil penalties and to make "every effort" to comply with its permit obligations.

On June 12, 1992, FOE filed this citizen suit against Laidlaw, alleging noncompliance with the NPDES permit and seeking declaratory and injunctive relief and an award of civil penalties. Laidlaw moved for summary judgment on the ground that FOE lacked Article III standing to bring the lawsuit. After examining affidavits and deposition testimony from members of the plaintiff organizations, the District Court denied the motion, finding that the plaintiffs had standing. The District Court also denied Laidlaw's motion to dismiss on the ground that the citizen suit was barred under §1365(b)(1)(B) by DHEC's prior action against the company. After FOE initiated this suit, but before the District Court rendered judgment on January 22, 1997, Laidlaw violated the mercury discharge limitation in its permit 13 times and committed 13 monitoring and 10 reporting violations. In issuing its judgment, the District Court found that Laidlaw had gained a total economic benefit of $1,092,581 as a result of its extended period of noncompliance with the permit's mercury discharge limit; nevertheless, the court concluded that a civil penalty of $405,800 was appropriate. In particular, the District Court found that the judgment's "total deterrent effect" would be adequate to forestall future violations, given that Laidlaw would have to reimburse the plaintiffs for a significant amount of legal fees and had itself incurred significant legal expenses. The court declined to order injunctive relief because Laidlaw, after the lawsuit began, had achieved substantial compliance with the terms of its permit.

FOE appealed as to the amount of the District Court's civil penalty judgment, but did not appeal the denial of declaratory or injunctive relief. The Fourth Circuit vacated the District Court's order and remanded with instructions to dismiss the action. Assuming, arguendo, that FOE initially had standing, the appellate court held that the case had become moot once Laidlaw complied with the terms of its permit and the plaintiffs failed to appeal the denial of equitable relief. Citing Steel Co. v. Citizens for Better Environment, 523 U.S. 83, the court reasoned that the only remedy currently available to FOE, civil penalties payable to the Government, would not redress any injury FOE had suffered. The court added that FOE's failure to obtain relief on the merits precluded recovery of attorneys' fees or costs because such an award is available only to a "prevailing or substantially prevailing party" under §1365(d). According to Laidlaw, the entire Roebuck facility has since been permanently closed, dismantled, and put up for sale, and all discharges from the facility have permanently ceased.

Held: The Fourth Circuit erred in concluding that a citizen suitor's claim for civil penalties must be dismissed as moot when the defendant, after commencement of the litigation, has come into compliance with its NPDES permit. Pp. 8—25.

(a) The Constitution's case-or-controversy limitation on federal judicial authority, Art. III, §2, underpins both standing and mootness doctrine, but the two inquiries differ in crucial respects. Because the Fourth Circuit was persuaded that the case had become moot, it simply assumed that FOE had initial standing. See Arizonans for Official English v. Arizona, 520 U.S. 43, 66—67. But because this Court concludes that the Court of Appeals erred as to mootness, this Court has an obligation to assure itself that FOE had Article III standing at the outset of the litigation. Pp. 8—9.

(b) FOE had Article III standing to bring this action. This Court has held that to satisfy Article III's standing requirements, a plaintiff must show "injury in fact," causation, and redressability. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560—561. An association has standing to bring suit on behalf of its members when its members would have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires individual members' participation in the lawsuit. Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343. The relevant showing for Article III standing is not injury to the environment but injury to the plaintiff. To insist on the former rather than the latter is to raise the standing hurdle higher than the necessary showing for success on the merits in a citizen's NPDES permit enforcement suit. Here, injury in fact was adequately documented by the affidavits and testimony of FOE members asserting that Laidlaw's pollutant discharges, and the affiants' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests. See, e.g., Sierra Club v. Morton, 405 U.S. 727, 735. These submissions present dispositively more than the mere "general averments" and "conclusory allegations" found inadequate in Lujan v. National Wildlife Federation, 497 U.S. 871, 888, or the " 'some day' intentions" to visit endangered species halfway around the world held insufficient in Defenders of Wildlife. 504 U.S., at 564. Pp. 9—13.

(c) Laidlaw argues that FOE lacked standing to seek civil penalties payable to the Government, because such penalties offer no redress to citizen plaintiffs. For a plaintiff who is injured or threatened with injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress. Civil penalties can fit that description. Insofar as they encourage defendants to discontinue current violations and deter future ones, they afford redress to citizen plaintiffs injured or threatened with injury as a result of ongoing unlawful conduct. The Court need not explore the outer limits of the principle that civil penalties provide sufficient deterrence to support redressability, because the civil penalties sought here carried a deterrent effect that made it likely, as opposed to merely speculative, that the penalties would redress FOE's injuries–as the District Court

reasonably found when it assessed a penalty of $405,800. Steel Co. is not to the contrary. That case held that private plaintiffs may not sue to assess penalties for wholly past violations, 523 U.S., at 106—107, but did not address standing to seek penalties for violations ongoing at the time of the complaint that could continue into the future if undeterred, see id., at 108. Pp. 13—17.

(d) FOE's civil penalties claim did not automatically become moot once the company came into substantial compliance with its permit. A defendant's voluntary cessation of a challenged practice ordinarily does not deprive a federal court of its power to determine the legality of the practice. City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289. If it did, courts would be compelled to leave the defendant free to return to its old ways. Thus, the standard for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: A case might become moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. United States v. Concentrated Phosphate Export Assn., Inc., 393 U.S. 199, 203. The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to recur lies with the party asserting mootness. Ibid. The Court of Appeals incorrectly conflated this Court's case law on initial standing, see, e.g., Steel Co., with its case law on mootness, see, e.g., City of Mesquite. Such confusion is understandable, given this Court's repeated description of mootness as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." E.g., Arizonans, 520 U.S., at 68, n. 22. Careful reflection, however, reveals that this description of mootness is not comprehensive. For example, a defendant claiming that its voluntary compliance moots a case bears a formidable burden. By contrast, it is the plaintiff's burden, in a lawsuit brought to force compliance, to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue and that the threatened injury is certainly impending. Whitmore v. Arkansas, 495 U.S. 149, 158. The plain lesson is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness. Further, if mootness were simply "standing set in a time frame," the exception to mootness for acts that are "capable of repetition, yet evading review" could not exist. See, e.g., Olmstead v. L. C., 527 U.S. ___, ___, n. 6. Standing admits of no similar exception; if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum. See, e.g., Steel Co., 523 U.S., at 109. Standing doctrine ensures, among other things, that the resources of the federal courts are devoted to disputes in which the parties have a concrete stake. Yet by the time mootness is an issue, abandonment of the case may prove more wasteful than frugal. Courts have no license to retain jurisdiction over cases in which one or both of the parties plainly lacks a continuing interest, see, e.g., Arizonans, 520 U.S., at 67, but the foregoing examples highlight an important difference between the two doctrines, see generally Honig v. Doe, 484 U.S. 305, 329—332 (Rehnquist, C. J., concurring).

Laidlaw's argument that FOE doomed its own civil penalty claim to mootness by failing to appeal the denial of injunctive relief misconceives the statutory scheme. Under §1365(a), the district court has discretion to determine which form of relief is best suited to abate current violations and deter future ones. See Weinberger v. Romero&nbhyph;Barcelo, 456 U.S. 305, 313. Denial of injunctive relief does not necessarily mean that the district court has concluded there is no prospect of future violations to deter. Indeed, it meant no such thing in this case; the District Court denied injunctive relief, but expressly based its award of civil penalties on the need for deterrence. A district court properly may conclude that an injunction would be too intrusive, because it could entail continuing and burdensome superintendence of the permit holder's activities by a federal court. See City of Mesquite, 455 U.S., at 289. Both Laidlaw's permit compliance and the facility closure might moot this case, but only if one or the other event made it absolutely clear that violations could not reasonably be expected to recur. Concentrated Phosphate Export Assn., 393 U.S., at 203. These are disputed factual matters that have not been aired in the lower courts; they remain open for consideration on remand. Pp. 18—23.

(e) This Court does not resolve FOE's argument that it is entitled to attorneys' fees on the theory that a plaintiff can be a "prevailing party" under §1365(d) if it was the "catalyst" that triggered a favorable outcome. Although the Circuits have divided as to the continuing validity of the catalyst theory following Farrar v. Hobby, 506 U.S. 103, it would be premature for this Court to address the question here. The District Court stayed the time for a petition for attorneys' fees until the time for appeal had expired or until any appeal was resolved. Thus, when the Fourth Circuit addressed the availability of counsel fees, no order was before it either denying or awarding fees. It is for the District Court, not this Court, to address in the first instance any request for reimbursement of costs, including fees. Pp. 23—25.

149 F.3d 303, reversed and remanded.

Ginsburg, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Stevens, O'Connor, Kennedy, Souter, and Breyer, JJ., joined. Stevens, J., and Kennedy, J., filed concurring opinions. Scalia, J., filed a dissenting opinion, in which Thomas, J., joined.

Justice Ginsburg delivered the opinion of the Court.

This case presents an important question concerning the operation of the citizen-suit provisions of the Clean Water Act. Congress authorized the federal district courts to entertain Clean Water Act suits initiated by "a person or persons having an interest which is or may be adversely affected." 33 U.S.C. § 1365(a), (g). To impel future compliance with the Act, a district court may prescribe injunctive relief in such a suit; additionally or alternatively, the court may impose civil

penalties payable to the United States Treasury. §1365(a). In the Clean Water Act citizen suit now before us, the District Court determined that injunctive relief was inappropriate because the defendant, after the institution of the litigation, achieved substantial compliance with the terms of its discharge permit. 956 F. Supp. 588, 611 (SC 1997). The court did, however, assess a civil penalty of $405,800. Id., at 610. The "total deterrent effect" of the penalty would be adequate to forestall future violations, the court reasoned, taking into account that the defendant "will be required to reimburse plaintiffs for a significant amount of legal fees and has, itself, incurred significant legal expenses." Id., at 610—611.

The Court of Appeals vacated the District Court's order. 149 F.3d 303 (CA4 1998). The case became moot, the appellate court declared, once the defendant fully complied with the terms of its permit and the plaintiff failed to appeal the denial of equitable relief. "[C]ivil penalties payable to the government," the Court of Appeals stated, "would not redress any injury Plaintiffs have suffered." Id., at 307. Nor were attorneys' fees in order, the Court of Appeals noted, because absent relief on the merits, plaintiffs could not qualify as prevailing parties. Id., at 307, n. 5.

We reverse the judgment of the Court of Appeals. The appellate court erred in concluding that a citizen suitor's claim for civil penalties must be dismissed as moot when the defendant, albeit after commencement of the litigation, has come into compliance. In directing dismissal of the suit on grounds of mootness, the Court of Appeals incorrectly conflated our case law on initial standing to bring suit, see, e.g., Steel Co. v. Citizens for Better Environment, 523 U.S. 83 (1998), with our case law on post-commencement mootness, see, e.g., City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283 (1982). A defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case. The Court of Appeals also misperceived the remedial potential of civil penalties. Such penalties may serve, as an alternative to an injunction, to deter future violations and thereby redress the injuries that prompted a citizen suitor to commence litigation.

I

A

In 1972, Congress enacted the Clean Water Act (Act), also known as the Federal Water Pollution Control Act, 86 Stat. 816, as amended, 33 U.S.C. § 1251 et seq. Section 402 of the Act, 33 U.S.C. § 1342 provides for the issuance, by the Administrator of the Environmental Protection Agency (EPA) or by authorized States, of National Pollutant Discharge Elimination System (NPDES) permits. NPDES permits impose limitations on the discharge of pollutants, and establish related monitoring and reporting requirements, in order to improve the cleanliness and safety of the Nation's waters. Noncompliance with a permit constitutes a violation of the Act. §1342(h).

Under §505(a) of the Act, a suit to enforce any limitation in an NPDES permit may be brought by any "citizen," defined as "a person or persons having an interest which is or may be adversely affected." 33 U.S.C. § 1365(a), (g). Sixty days before initiating a citizen suit, however, the would-be plaintiff must give notice of the alleged violation to the EPA, the State in which the alleged violation occurred, and the alleged violator. §1365(b)(1)(A). "[T]he purpose of notice to the alleged violator is to give it an opportunity to bring itself into complete compliance with the Act and thus … render unnecessary a citizen suit." Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc., 484 U.S. 49, 60 (1987). Accordingly, we have held that citizens lack statutory standing under §505(a) to sue for violations that have ceased by the time the complaint is filed. Id., at 56—63. The Act also bars a citizen from suing if the EPA or the State has already commenced, and is "diligently prosecuting," an enforcement action. 33 U.S.C. § 1365(b)(1)(B).

The Act authorizes district courts in citizen-suit proceedings to enter injunctions and to assess civil penalties, which are payable to the United States Treasury. §1365(a). In determining the amount of any civil penalty, the district court must take into account "the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require." §1319(d). In addition, the court "may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate." §1365(d).

B

In 1986, defendant-respondent Laidlaw Environmental Services (TOC), Inc., bought a hazardous waste incinerator facility in Roebuck, South Carolina, that included a wastewater treatment plant. (The company has since changed its name to Safety-Kleen (Roebuck), Inc., but for simplicity we will refer to it as "Laidlaw" throughout.) Shortly after Laidlaw acquired the facility, the South Carolina Department of Health and Environmental Control (DHEC), acting under 33 U.S.C. § 1342(a)(1), granted Laidlaw an NPDES permit authorizing the company to discharge treated water into the North Tyger River. The permit, which became effective on January 1, 1987, placed limits on Laidlaw's discharge of several pollutants into the river, including–of particular relevance to this case–mercury, an extremely toxic pollutant. The permit also regulated the flow, temperature, toxicity, and pH of the effluent from the facility, and imposed monitoring and reporting obligations.

Once it received its permit, Laidlaw began to discharge various pollutants into the waterway; repeatedly, Laidlaw's discharges exceeded the limits set by the permit. In particular, despite experimenting with several technological fixes, Laidlaw consistently failed to meet the permit's

stringent 1.3 ppb (parts per billion) daily average limit on mercury discharges. The District Court later found that Laidlaw had violated the mercury limits on 489 occasions between 1987 and 1995. 956 F. Supp., at 613—621.

On April 10, 1992, plaintiff-petitioners Friends of the Earth (FOE) and Citizens Local Environmental Action Network, Inc. (CLEAN) (referred to collectively in this opinion, together with later joined plaintiff-petitioner Sierra Club, as "FOE") took the preliminary step necessary to the institution of litigation. They sent a letter to Laidlaw notifying the company of their intention to file a citizen suit against it under §505(a) of the Act after the expiration of the requisite 60-day notice period, i.e., on or after June 10, 1992. Laidlaw's lawyer then contacted DHEC to ask whether DHEC would consider filing a lawsuit against Laidlaw. The District Court later found that Laidlaw's reason for requesting that DHEC file a lawsuit against it was to bar FOE's proposed citizen suit through the operation of 33 U.S.C. § 1365(b)(1)(B). 890 F. Supp. 470, 478 (SC 1995). DHEC agreed to file a lawsuit against Laidlaw; the company's lawyer then drafted the complaint for DHEC and paid the filing fee. On June 9, 1992, the last day before FOE's 60-day notice period expired, DHEC and Laidlaw reached a settlement requiring Laidlaw to pay $100,000 in civil penalties and to make " 'every effort' " to comply with its permit obligations. 890 F. Supp., at 479—481.

On June 12, 1992, FOE filed this citizen suit against Laidlaw under §505(a) of the Act, alleging noncompliance with the NPDES permit and seeking declaratory and injunctive relief and an award of civil penalties. Laidlaw moved for summary judgment on the ground that FOE had failed to present evidence demonstrating injury in fact, and therefore lacked Article III standing to bring the lawsuit. Record, Doc. No. 43. In opposition to this motion, FOE submitted affidavits and deposition testimony from members of the plaintiff organizations. Record, Doc. No. 71 (Exhs. 41—51). The record before the District Court also included affidavits from the organizations' members submitted by FOE in support of an earlier motion for preliminary injunctive relief. Record, Doc. No. 21 (Exhs. 5—10). After examining this evidence, the District Court denied Laidlaw's summary judgment motion, finding–albeit "by the very slimmest of margins"–that FOE had standing to bring the suit. App. in No. 97—1246 (CA4), pp. 207—208 (Tr. of Hearing 39—40 (June 30, 1993)).

Laidlaw also moved to dismiss the action on the ground that the citizen suit was barred under 33 U.S.C. § 1365(b)(1)(B) by DHEC's prior action against the company. The United States, appearing as amicus curiae, joined FOE in opposing the motion. After an extensive analysis of the Laidlaw-DHEC settlement and the circumstances under which it was reached, the District Court held that DHEC's action against Laidlaw had not been "diligently prosecuted"; consequently, the court allowed FOE's citizen suit to proceed. 890 F. Supp., at 499.1 The record indicates that after FOE initiated the suit, but before the District Court rendered judgment, Laidlaw violated the mercury discharge limitation in its permit 13 times. 956 F. Supp., at 621. The District Court also found that Laidlaw had committed 13 monitoring and 10 reporting

violations during this period. Id., at 601. The last recorded mercury discharge violation occurred in January 1995, long after the complaint was filed but about two years before judgment was rendered. Id., at 621.

On January 22, 1997, the District Court issued its judgment. 956 F. Supp. 588 (SC 1997). It found that Laidlaw had gained a total economic benefit of $1,092,581 as a result of its extended period of noncompliance with the mercury discharge limit in its permit. Id., at 603. The court concluded, however, that a civil penalty of $405,800 was adequate in light of the guiding factors listed in 33 U.S.C. § 1319(d). 956 F. Supp., at 610. In particular, the District Court stated that the lesser penalty was appropriate taking into account the judgment's "total deterrent effect." In reaching this determination, the court "considered that Laidlaw will be required to reimburse plaintiffs for a significant amount of legal fees." Id., at 610—611. The court declined to grant FOE's request for injunctive relief, stating that an injunction was inappropriate because "Laidlaw has been in substantial compliance with all parameters in its NPDES permit since at least August 1992." Id., at 611.

FOE appealed the District Court's civil penalty judgment, arguing that the penalty was inadequate, but did not appeal the denial of declaratory or injunctive relief. Laidlaw cross-appealed, arguing, among other things, that FOE lacked standing to bring the suit and that DHEC's action qualified as a diligent prosecution precluding FOE's litigation. The United States continued to participate as amicus curiae in support of FOE.

On July 16, 1998, the Court of Appeals for the Fourth Circuit issued its judgment. 149 F.3d 303. The Court of Appeals assumed without deciding that FOE initially had standing to bring the action, id., at 306, n. 3, but went on to hold that the case had become moot. The appellate court stated, first, that the elements of Article III standing–injury, causation, and redressability–must persist at every stage of review, or else the action becomes moot. Id., at 306. Citing our decision in Steel Co., the Court of Appeals reasoned that the case had become moot because "the only remedy currently available to [FOE]–civil penalties payable to the government–would not redress any injury [FOE has] suffered." Id., at 306—307. The court therefore vacated the District Court's order and remanded with instructions to dismiss the action. In a footnote, the Court of Appeals added that FOE's "failure to obtain relief on the merits of [its] claims precludes any recovery of attorneys' fees or other litigation costs because such an award is available only to a 'prevailing or substantially prevailing party.' " Id., at 307, n. 5 (quoting 33 U.S.C. § 1365(d)).

According to Laidlaw, after the Court of Appeals issued its decision but before this Court granted certiorari, the entire incinerator facility in Roebuck was permanently closed, dismantled, and put up for sale, and all discharges from the facility permanently ceased. Respondent's Suggestion of Mootness 3.

We granted certiorari, 525 U.S. 1176 (1999), to resolve the inconsistency between the Fourth Circuit's decision in this case and the decisions of several other Courts of Appeals, which have held that a defendant's compliance with its permit after the commencement of litigation does not moot claims for civil penalties under the Act. See, e.g., Atlantic States Legal Foundation, Inc. v. Stroh Die Casting Co., 116 F.3d 814, 820 (CA7), cert. denied, 522 U.S. 981 (1997); Natural Resources Defense Council, Inc. v. Texaco Rfg. and Mktg., Inc., 2 F.3d 493, 503—504 (CA3 1993); Atlantic States Legal Foundation, Inc. v. Pan American Tanning Corp., 993 F.2d 1017, 1020—1021 (CA2 1993); Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc., 897 F.2d 1128, 1135—1136 (CA11 1990).

II

A

The Constitution's case-or-controversy limitation on federal judicial authority, Art. III, §2, underpins both our standing and our mootness jurisprudence, but the two inquiries differ in respects critical to the proper resolution of this case, so we address them separately. Because the Court of Appeals was persuaded that the case had become moot and so held, it simply assumed without deciding that FOE had initial standing. See Arizonans for Official English v. Arizona, 520 U.S. 43, 66—67 (1997) (court may assume without deciding that standing exists in order to analyze mootness). But because we hold that the Court of Appeals erred in declaring the case moot, we have an obligation to assure ourselves that FOE had Article III standing at the outset of the litigation. We therefore address the question of standing before turning to mootness.

In Lujan v. Defenders of Wildlife, 504 U.S. 555, 560—561 (1992), we held that, to satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977).

Laidlaw contends first that FOE lacked standing from the outset even to seek injunctive relief, because the plaintiff organizations failed to show that any of their members had sustained or faced the threat of any "injury in fact" from Laidlaw's activities. In support of this contention Laidlaw points to the District Court's finding, made in the course of setting the penalty amount,

that there had been "no demonstrated proof of harm to the environment" from Laidlaw's mercury discharge violations. 956 F. Supp., at 602; see also ibid. ("[T]he NPDES permit violations at issue in this citizen suit did not result in any health risk or environmental harm.").

The relevant showing for purposes of Article III standing, however, is not injury to the environment but injury to the plaintiff. To insist upon the former rather than the latter as part of the standing inquiry (as the dissent in essence does, post, at 2—3) is to raise the standing hurdle higher than the necessary showing for success on the merits in an action alleging noncompliance with an NPDES permit. Focusing properly on injury to the plaintiff, the District Court found that FOE had demonstrated sufficient injury to establish standing. App. in No. 97—1246 (CA4), pp. 207—208 (Tr. of Hearing 39—40 (June 30, 1993)). For example, FOE member Kenneth Lee Curtis averred in affidavits that he lived a half-mile from Laidlaw's facility; that he occasionally drove over the North Tyger River, and that it looked and smelled polluted; and that he would like to fish, camp, swim, and picnic in and near the river between 3 and 15 miles downstream from the facility, as he did when he was a teenager, but would not do so because he was concerned that the water was polluted by Laidlaw's discharges. Record, Doc. No. 71 (Exhs. 41, 42). Curtis reaffirmed these statements in extensive deposition testimony. For example, he testified that he would like to fish in the river at a specific spot he used as a boy, but that he would not do so now because of his concerns about Laidlaw's discharges. Ibid. (Exh. 43, at 52—53; Exh. 44, at 33).

Other members presented evidence to similar effect. CLEAN member Angela Patterson attested that she lived two miles from the facility; that before Laidlaw operated the facility, she picnicked, walked, birdwatched, and waded in and along the North Tyger River because of the natural beauty of the area; that she no longer engaged in these activities in or near the river because she was concerned about harmful effects from discharged pollutants; and that she and her husband would like to purchase a home near the river but did not intend to do so, in part because of Laidlaw's discharges. Record, Doc. No. 21 (Exh. 10). CLEAN member Judy Pruitt averred that she lived one-quarter mile from Laidlaw's facility and would like to fish, hike, and picnic along the North Tyger River, but has refrained from those activities because of the discharges. Ibid. (Exh. 7). FOE member Linda Moore attested that she lived 20 miles from Roebuck, and would use the North Tyger River south of Roebuck and the land surrounding it for recreational purposes were she not concerned that the water contained harmful pollutants. Record, Doc. No. 71 (Exhs. 45, 46). In her deposition, Moore testified at length that she would hike, picnic, camp, swim, boat, and drive near or in the river were it not for her concerns about illegal discharges. Ibid. (Exh. 48, at 29, 36—37, 62—63, 72). CLEAN member Gail Lee attested that her home, which is near Laidlaw's facility, had a lower value than similar homes located further from the facility, and that she believed the pollutant discharges accounted for some of the discrepancy. Record, Doc. No. 21 (Exh. 9). Sierra Club member Norman Sharp averred that he had canoed approximately 40 miles downstream of the Laidlaw facility and would like to canoe in the North Tyger River closer to Laidlaw's discharge point, but did not do so because he was concerned that the water contained harmful pollutants. Ibid. (Exh. 8).

These sworn statements, as the District Court determined, adequately documented injury in fact. We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons "for whom the aesthetic and recreational values of the area will be lessened" by the challenged activity. Sierra Club v. Morton, 405 U.S. 727, 735 (1972). See also Defenders of Wildlife, 504 U.S., at 562—563 ("Of course, the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purposes of standing.").

Our decision in Lujan v. National Wildlife Federation, 497 U.S. 871 (1990), is not to the contrary. In that case an environmental organization assailed the Bureau of Land Management's "land withdrawal review program," a program covering millions of acres, alleging that the program illegally opened up public lands to mining activities. The defendants moved for summary judgment, challenging the plaintiff organization's standing to initiate the action under the Administrative Procedure Act, 5 U.S.C. § 702. We held that the plaintiff could not survive the summary judgment motion merely by offering "averments which state only that one of [the organization's] members uses unspecified portions of an immense tract of territory, on some portions of which mining activity has occurred or probably will occur by virtue of the governmental action." 497 U.S., at 889.

In contrast, the affidavits and testimony presented by FOE in this case assert that Laidlaw's discharges, and the affiant members' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests. These submissions present dispositively more than the mere "general averments" and "conclusory allegations" found inadequate in National Wildlife Federation. Id., at 888. Nor can the affiants' conditional statements–that they would use the nearby North Tyger River for recreation if Laidlaw were not discharging pollutants into it–be equated with the speculative " 'some day' intentions" to visit endangered species halfway around the world that we held insufficient to show injury in fact in Defenders of Wildlife. 504 U.S., at 564.

Los Angeles v. Lyons, 461 U.S. 95 (1983), relied on by the dissent, post, at 3, does not weigh against standing in this case. In Lyons, we held that a plaintiff lacked standing to seek an injunction against the enforcement of a police chokehold policy because he could not credibly allege that he faced a realistic threat from the policy. 461 U.S., at 107, n. 7. In the footnote from Lyons cited by the dissent, we noted that "[t]he reasonableness of Lyons' fear is dependent upon the likelihood of a recurrence of the allegedly unlawful conduct," and that his "subjective apprehensions" that such a recurrence would even take place were not enough to support standing. Id., at 108, n. 8. Here, in contrast, it is undisputed that Laidlaw's unlawful conduct–discharging pollutants in excess of permit limits–was occurring at the time the complaint was filed. Under Lyons, then, the only "subjective" issue here is "[t]he reasonableness of [the] fear" that led the affiants to respond to that concededly ongoing conduct by refraining from use of the North Tyger River and surrounding areas. Unlike the dissent, post, at 3, we see nothing

"improbable" about the proposition that a company's continuous and pervasive illegal discharges of pollutants into a river would cause nearby residents to curtail their recreational use of that waterway and would subject them to other economic and aesthetic harms. The proposition is entirely reasonable, the District Court found it was true in this case, and that is enough for injury in fact.

Laidlaw argues next that even if FOE had standing to seek injunctive relief, it lacked standing to seek civil penalties. Here the asserted defect is not injury but redressability. Civil penalties offer no redress to private plaintiffs, Laidlaw argues, because they are paid to the government, and therefore a citizen plaintiff can never have standing to seek them.

Laidlaw is right to insist that a plaintiff must demonstrate standing separately for each form of relief sought. See, e.g., Lyons, 461 U.S., at 109 (notwithstanding the fact that plaintiff had standing to pursue damages, he lacked standing to pursue injunctive relief); see also Lewis v. Casey, 518 U.S. 343, 358, n. 6 (1996) ("[S]tanding is not dispensed in gross."). But it is wrong to maintain that citizen plaintiffs facing ongoing violations never have standing to seek civil penalties.

We have recognized on numerous occasions that "all civil penalties have some deterrent effect." Hudson v. United States, 522 U.S. 93, 102 (1997); see also, e.g., Department of Revenue of Mont. v. Kurth Ranch, 511 U.S. 767, 778 (1994). More specifically, Congress has found that civil penalties in Clean Water Act cases do more than promote immediate compliance by limiting the defendant's economic incentive to delay its attainment of permit limits; they also deter future violations. This congressional determination warrants judicial attention and respect. "The legislative history of the Act reveals that Congress wanted the district court to consider the need for retribution and deterrence, in addition to restitution, when it imposed civil penalties. … [The district court may] seek to deter future violations by basing the penalty on its economic impact." Tull v. United States, 481 U.S. 412, 422—423 (1987).

It can scarcely be doubted that, for a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress. Civil penalties can fit that description. To the extent that they encourage defendants to discontinue current violations and deter them from committing future ones, they afford redress to citizen plaintiffs who are injured or threatened with injury as a consequence of ongoing unlawful conduct.

The dissent argues that it is the availability rather than the imposition of civil penalties that deters any particular polluter from continuing to pollute. Post, at 11—12. This argument misses the mark in two ways. First, it overlooks the interdependence of the availability and the imposition; a threat has no deterrent value unless it is credible that it will be carried out. Second, it is reasonable for Congress to conclude that an actual award of civil penalties does in fact bring with

it a significant quantum of deterrence over and above what is achieved by the mere prospect of such penalties. A would-be polluter may or may not be dissuaded by the existence of a remedy on the books, but a defendant once hit in its pocketbook will surely think twice before polluting again.2

We recognize that there may be a point at which the deterrent effect of a claim for civil penalties becomes so insubstantial or so remote that it cannot support citizen standing. The fact that this vanishing point is not easy to ascertain does not detract from the deterrent power of such penalties in the ordinary case. Justice Frankfurter's observations for the Court, made in a different context nearly 60 years ago, hold true here as well:

"How to effectuate policy–the adaptation of means to legitimately sought ends–is one of the most intractable of legislative problems. Whether proscribed conduct is to be deterred by qui tam action or triple damages or injunction, or by criminal prosecution, or merely by defense to actions in contract, or by some, or all, of these remedies in combination, is a matter within the legislature's range of choice. Judgment on the deterrent effect of the various weapons in the armory of the law can lay little claim to scientific basis." Tigner v. Texas, 310 U.S. 141, 148 (1940).3

In this case we need not explore the outer limits of the principle that civil penalties provide sufficient deterrence to support redressability. Here, the civil penalties sought by FOE carried with them a deterrent effect that made it likely, as opposed to merely speculative, that the penalties would redress FOE's injuries by abating current violations and preventing future ones–as the District Court reasonably found when it assessed a penalty of $405,800. 956 F. Supp., at 610—611.

Laidlaw contends that the reasoning of our decision in Steel Co. directs the conclusion that citizen plaintiffs have no standing to seek civil penalties under the Act. We disagree. Steel Co. established that citizen suitors lack standing to seek civil penalties for violations that have abated by the time of suit. 523 U.S., at 106—107. We specifically noted in that case that there was no allegation in the complaint of any continuing or imminent violation, and that no basis for such an allegation appeared to exist. Id., at 108; see also Gwaltney, 484 U.S., at 59 ("the harm sought to be addressed by the citizen suit lies in the present or the future, not in the past"). In short, Steel Co. held that private plaintiffs, unlike the Federal Government, may not sue to assess penalties for wholly past violations, but our decision in that case did not reach the issue of standing to seek penalties for violations that are ongoing at the time of the complaint and that could continue into the future if undeterred.4

B

Satisfied that FOE had standing under Article III to bring this action, we turn to the question of mootness.

The only conceivable basis for a finding of mootness in this case is Laidlaw's voluntary conduct–either its achievement by August 1992 of substantial compliance with its NPDES permit or its more recent shutdown of the Roebuck facility. It is well settled that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." City of Mesquite, 455 U.S., at 289. "[I]f it did, the courts would be compelled to leave '[t]he defendant … free to return to his old ways.' " Id., at 289, n. 10 (citing United States v. W. T. Grant Co., 345 U.S. 629, 632 (1953)). In accordance with this principle, the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: "A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." United States v. Concentrated Phosphate Export Assn., Inc., 393 U.S. 199, 203 (1968). The "heavy burden of persua[ding]" the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness. Ibid.

The Court of Appeals justified its mootness disposition by reference to Steel Co., which held that citizen plaintiffs lack standing to seek civil penalties for wholly past violations. In relying on Steel Co., the Court of Appeals confused mootness with standing. The confusion is understandable, given this Court's repeated statements that the doctrine of mootness can be described as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." Arizonans for Official English, 520 U.S., at 68, n. 22 (quoting United States Parole Comm'n v. Geraghty, 445 U.S. 388, 397 (1980), in turn quoting Monaghan, Constitutional Adjudication: The Who and When, 82 Yale L. J. 1363, 1384 (1973)) (internal quotation marks omitted).

Careful reflection on the long-recognized exceptions to mootness, however, reveals that the description of mootness as "standing set in a time frame" is not comprehensive. As just noted, a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur. Concentrated Phosphate Export Assn., 393 U.S., at 203. By contrast, in a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the "threatened injury [is] certainly impending." Whitmore v. Arkansas, 495 U.S. 149, 158 (1990) (citations and internal quotation marks omitted). Thus, in Lyons, as already noted, we held that a plaintiff lacked initial standing to seek an injunction against the enforcement of a police chokehold policy because he could not credibly allege that he faced a realistic threat arising from the policy. 461 U.S., at 105—110. Elsewhere in the opinion, however, we noted that a citywide moratorium on police chokeholds–an action that surely

diminished the already slim likelihood that any particular individual would be choked by police–would not have mooted an otherwise valid claim for injunctive relief, because the moratorium by its terms was not permanent. Id., at 101. The plain lesson of these cases is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness.

Furthermore, if mootness were simply "standing set in a time frame," the exception to mootness that arises when the defendant's allegedly unlawful activity is "capable of repetition, yet evading review" could not exist. When, for example, a mentally disabled patient files a lawsuit challenging her confinement in a segregated institution, her postcomplaint transfer to a community-based program will not moot the action, Olmstead v. L. C., 527 U.S. ___, ___, n. 6 (1999) (slip. op., at 8, n. 6), despite the fact that she would have lacked initial standing had she filed the complaint after the transfer. Standing admits of no similar exception; if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum. See Steel Co., 523 U.S., at 109 (" 'the mootness exception for disputes capable of repetition yet evading review . . . will not revive a dispute which became moot before the action commenced' ") (quoting Renne v. Geary, 501 U.S. 312, 320 (1991)).

We acknowledged the distinction between mootness and standing most recently in Steel Co.:

"The United States … argues that the injunctive relief does constitute remediation because 'there is a presumption of [future] injury when the defendant has voluntarily ceased its illegal activity in response to litigation,' even if that occurs before a complaint is filed. … This makes a sword out of a shield. The 'presumption' the Government refers to has been applied to refute the assertion of mootness by a defendant who, when sued in a complaint that alleges present or threatened injury, ceases the complained-of activity. … It is an immense and unacceptable stretch to call the presumption into service as a substitute for the allegation of present or threatened injury upon which initial standing must be based." 523 U.S., at 109.

Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake. In contrast, by the time mootness is an issue, the case has been brought and litigated, often (as here) for years. To abandon the case at an advanced stage may prove more wasteful than frugal. This argument from sunk costs5 does not license courts to retain jurisdiction over cases in which one or both of the parties plainly lacks a continuing interest, as when the parties have settled or a plaintiff pursuing a nonsurviving claim has died. See, e.g., DeFunis v. Odegaard, 416 U.S. 312 (1974) (per curiam) (non-class-action challenge to constitutionality of law school admissions process mooted when plaintiff, admitted pursuant to preliminary injunction, neared graduation and defendant law school conceded that, as a matter of ordinary school policy, plaintiff would be allowed to finish his final term); Arizonans, 520 U.S., at 67 (non-class-action challenge to state constitutional

amendment declaring English the official language of the State became moot when plaintiff, a state employee who sought to use her bilingual skills, left state employment). But the argument surely highlights an important difference between the two doctrines. See generally Honig v. Doe, 484 U.S. 305, 329—332 (1988) (Rehnquist, C. J., concurring).

In its brief, Laidlaw appears to argue that, regardless of the effect of Laidlaw's compliance, FOE doomed its own civil penalty claim to mootness by failing to appeal the District Court's denial of injunctive relief. Brief for Respondent 14—17. This argument misconceives the statutory scheme. Under §1365(a), the district court has discretion to determine which form of relief is best suited, in the particular case, to abate current violations and deter future ones. "[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law." Weinberger v. Romero&nbhyph;Barcelo, 456 U.S. 305, 313 (1982). Denial of injunctive relief does not necessarily mean that the district court has concluded there is no prospect of future violations for civil penalties to deter. Indeed, it meant no such thing in this case. The District Court denied injunctive relief, but expressly based its award of civil penalties on the need for deterrence. See 956 F. Supp., at 610—611. As the dissent notes, post, at 8, federal courts should aim to ensure " 'the framing of relief no broader than required by the precise facts.' " Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 222 (1974). In accordance with this aim, a district court in a Clean Water Act citizen suit properly may conclude that an injunction would be an excessively intrusive remedy, because it could entail continuing superintendence of the permit holder's activities by a federal court–a process burdensome to court and permit holder alike. See City of Mesquite, 455 U.S., at 289 (although the defendant's voluntary cessation of the challenged practice does not moot the case, "[s]uch abandonment is an important factor bearing on the question whether a court should exercise its power to enjoin the defendant from renewing the practice").

Laidlaw also asserts, in a supplemental suggestion of mootness, that the closure of its Roebuck facility, which took place after the Court of Appeals issued its decision, mooted the case. The facility closure, like Laidlaw's earlier achievement of substantial compliance with its permit requirements, might moot the case, but–we once more reiterate–only if one or the other of these events made it absolutely clear that Laidlaw's permit violations could not reasonably be expected to recur. Concentrated Phosphate Export Assn., 393 U.S., at 203. The effect of both Laidlaw's compliance and the facility closure on the prospect of future violations is a disputed factual matter. FOE points out, for example–and Laidlaw does not appear to contest–that Laidlaw retains its NPDES permit. These issues have not been aired in the lower courts; they remain open for consideration on remand.6

C

FOE argues that it is entitled to attorneys' fees on the theory that a plaintiff can be a "prevailing party" for purposes of 33 U.S.C. § 1365(d) if it was the "catalyst" that triggered a favorable

outcome. In the decision under review, the Court of Appeals noted that its Circuit precedent construed our decision in Farrar v. Hobby, 506 U.S. 103 (1992), to require rejection of that theory. 149 F.3d, at 307, n. 5 (citing S—1 & S—2 v. State Bd. of Ed. of N. C., 21 F.3d 49, 51 (CA4 1994) (en banc)). Cf. Foreman v. Dallas County, 193 F.3d 314, 320 (CA5 1999) (stating, in dicta, that "[a]fter Farrar … the continuing validity of the catalyst theory is in serious doubt").

Farrar acknowledged that a civil rights plaintiff awarded nominal damages may be a "prevailing party" under 42 U.S.C. § 1988. 506 U.S., at 112. The case involved no catalytic effect. Recognizing that the issue was not presented for this Court's decision in Farrar, several Courts of Appeals have expressly concluded that Farrar did not repudiate the catalyst theory. See Marbley v. Bane, 57 F.3d 224, 234 (CA2 1995); Baumgartner v. Harrisburg Housing Authority, 21 F.3d 541, 546—550 (CA3 1994); Zinn v. Shalala, 35 F.3d 273, 276 (CA7 1994); Little Rock School Dist. v. Pulaski County Special Sch. Dist., #1, 17 F.3d 260, 263, n. 2 (CA8 1994); Kilgour v. Pasadena, 53 F.3d 1007, 1010 (CA9 1995); Beard v. Teska, 31 F.3d 942, 951—952 (CA10 1994); Morris v. West Palm Beach, 194 F.3d 1203, 1207 (CA11 1999). Other Courts of Appeals have likewise continued to apply the catalyst theory notwithstanding Farrar. Paris v. United States Dept. of Housing and Urban Development, 988 F.2d 236, 238 (CA1 1993); Citizens Against Tax Waste v. Westerville City School, 985 F.2d 255, 257 (CA6 1993).

It would be premature, however, for us to address the continuing validity of the catalyst theory in the context of this case. The District Court, in an order separate from the one in which it imposed civil penalties against Laidlaw, stayed the time for a petition for attorneys' fees until the time for appeal had expired or, if either party appealed, until the appeal was resolved. See 149 F.3d, at 305 (describing order staying time for attorneys' fees petition). In the opinion accompanying its order on penalties, the District Court stated only that "this court has considered that Laidlaw will be required to reimburse plaintiffs for a significant amount of legal fees," and referred to "potential fee awards." 956 F. Supp., at 610—611. Thus, when the Court of Appeals addressed the availability of counsel fees in this case, no order was before it either denying or awarding fees. It is for the District Court, not this Court, to address in the first instance any request for reimbursement of costs, including fees.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.