No. 24-13

In the Supreme Court of the United States

STATE OF OHIO, ET AL.,
PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

The Clean Air Act (CAA or Act), 42 U.S.C. 7401 *et seq.*, generally preempts state laws that regulate emissions from new motor vehicles, but the Act directs the Environmental Protection Agency (EPA) to waive preemption for California laws under specified conditions. See 42 U.S.C. 7543(a) and (b). The CAA further provides that, when California has received such a waiver, each other State may choose either to "adopt and enforce" California's emissions standards or to permit application of federal standards. 42 U.S.C. 7507(1). The question presented is as follows:

Whether the CAA's preemption scheme violates the Constitution's equal-sovereignty principle.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-54a) is reported at 98 F.4th 288.

JURISDICTION

The judgment of the court of appeals was entered on April 9, 2024. The petition for a writ of certiorari was filed on July 5, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Clean Air Act (CAA or Act), 42 U.S.C. 7401 *et seq.*, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," 42 U.S.C. 7401(b)(1). Under the Act, each State generally has flexibility to determine how it

will meet air-quality goals. Pet. App. 10a. For "new motor vehicles," however, the Act directs the Environmental Protection Agency (EPA) to prescribe nationwide "standards applicable to the emission of any air pollutant * * * which in [EPA's] judgment cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7521(a)(1). Section 209(a) of the Act generally preempts any "State or any political subdivision thereof" from "adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles." 42 U.S.C. 7543(a).

In turn, Section 209(b) of the Act, 42 U.S.C. 7543(b), creates an exception to that preemption rule. Section 209(b) generally requires EPA to "waive application of [Section 209(a)] to any State which has adopted standards * * * for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards." 42 U.S.C. 7543(b)(1). Section 209(b) further specifies, however, that "[n]o such waiver shall be granted if the Administrator finds that": "(A) the determination of the State is arbitrary and capricious, (B) such State does not need such State standards to meet compelling and extraordinary conditions, or (C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title." 42 U.S.C. 7543(b)(1)(A)-(C).

California is the only State that regulated vehicle emissions before March 30, 1966, so it is the only State that is eligible for a waiver under Section 209(b). *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d 1075, 1079 n.9 (D.C.

Cir. 1996). Congress made a waiver available to California because, at the time the CAA was enacted, that State "was already the 'lead[er] in the establishment of standards for regulation of automotive pollutant emissions' at a time when the federal government had yet to promulgate any regulations of its own." *Id.* at 1079 (citation omitted; brackets in original). Congress also recognized "the unique problems facing California as a result of its climate and topography." H.R. Rep. No. 728, 90th Cong., 1st Sess. 22 (1967).

Under the original 1967 CAA provision, a waiver of preemption was available only if California's standards were "more stringent than applicable Federal standards." Air Quality Act of 1967, Pub. L. No. 90-148, § 208(b), 81 Stat. 501. In 1977, Congress amended Section 209(b) to "expand California's flexibility to adopt a complete program of motor vehicle emissions control." *Motor & Equipment Mfrs. Ass'n* v. *EPA*, 627 F.2d 1095, 1110-1111 (D.C. Cir. 1979), cert. denied, 446 U.S. 952 (1980); see Clean Air Act Amendments of 1977 (1977 amendments), Pub. L. No. 95-95, § 207, 91 Stat. 755. The 1977 amendments added language (quoted above) specifying that, to obtain a waiver, California need only determine that its standards "will be, in the aggregate, at least as protective" as federal standards. § 207, 91 Stat. 755. The 1977 amendments also allowed other States to "adopt and enforce" vehicle-emissions standards that "are identical to the California standards for which a waiver has been granted for such model year." 42 U.S.C. 7507(1); see § 177(1), 91 Stat. 750.

Since the CAA's enactment, EPA has granted 75 Section 209(b) waivers for California's vehicle-emissions program. Pet. App. 15a. In 1993, EPA granted a waiver for California's "'Zero Emission Vehicle' pro-

duction requirement," which required an annually increasing percentage of vehicles sold in California to produce zero on-road emissions. 58 Fed. Reg. 4166, 4166 (Jan. 13, 1993). And in 2009, EPA granted a waiver for California's first set of greenhouse-gas emission standards. 74 Fed. Reg. 32,744, 32,745-32,747 (July 8, 2009).

Despite its substantial regulatory efforts, California "continue[s] to face significant pollution and climate challenges." Pet. App. 16a. California is home to seven of the Nation's ten worst areas for ozone pollution and six of the Nation's ten worst areas for small particulate matter. See 87 Fed. Reg. 14,332 14,377 n.469 (Mar. 14, 2022). And the State "is particularly impacted by climate change," including through "increasing risks from record-setting fires, heat waves, storm surges, sea-level rise, water supply shortages and extreme heat." *Id.* at 14,365.

2. This case concerns a set of emissions standards, known as the Advanced Clean Car program, that California adopted in 2012. That program includes a low-emission-vehicle program, which (as relevant here) establishes "standards to regulate [greenhouse-gas] emissions." 78 Fed. Reg. 2112, 2114 (Jan. 9, 2013). It also includes a zero-emission-vehicle program, which requires a certain percentage of manufacturers' fleets to be zero-emission vehicles. See *id.* at 2114-2115. In 2013, EPA granted California a waiver for the Advanced Clean Car program, *id.* at 2112, and that waiver was not challenged. In response to the waiver, "automobile manufacturers in California began making investments to meet" California's new emission standards. Pet. App. 18a.

In 2019, "after car manufacturers had adjusted their fleets to comply with California's Advanced Clear Car

Program," Pet. App. 18a, EPA withdrew California's waiver for the portions of the program that addressed zero-emission vehicles and set low-emission-vehicle standards for greenhouse gases, 84 Fed. Reg. 51,310, 51,310 (Sept. 27, 2019). EPA articulated three bases for the withdrawal. See *id.* at 51,328-51,341. First, EPA believed that the waiver conflicted with a then-recent determination by the National Highway Traffic Safety Administration (NHTSA) that state greenhouse-gas regulations like California's were preempted by the Energy Policy and Conservation Act (EPCA), 49 U.S.C. 32919(a). 84 Fed. Reg. at 51,337-51,338. Second, EPA asserted that Section 209(b) requires examination of California's emission standards in isolation, rather than "California's entire program in the aggregate." *Id.* at 51,341. Third, EPA determined that California could not demonstrate that its low-emission-vehicle and zero-emission-vehicle regulations were needed to meet compelling and extraordinary conditions because, in EPA's view, California could not show a "particularized nexus" between greenhouse-gas emissions and California's air-pollution problems. *Ibid.*

After EPA withdrew the 2013 waiver, automobile manufacturers representing nearly 30% of U.S. vehicle sales, including Honda, Ford, Volvo, BMW, and Volkswagen, entered into independent agreements with California under which the manufacturers would continue to meet California's low-emission-vehicle and zero-emission-vehicle standards. See 87 Fed. Reg. at 14,346 n.115. "Automakers were motivated to sign these agreements by the investments they had already made in updating their fleets and growing consumer demand for electric vehicles." Pet. App. 19a.

In 2022, EPA reinstated California's 2013 waiver. 87 Fed. Reg. 14,332. EPA identified three principal grounds for its reinstatement decision. First, EPA concluded that it had made procedural errors in 2019 when the agency reconsidered the 2013 waiver. *Id.* at 14,333. Second, EPA determined that the 2019 withdrawal decision had rested on a faulty interpretation and application of Section 209(b). *Ibid.* Third, the agency found that it had improperly considered NHTSA's interpretation of EPCA, which NHTSA had since withdrawn in any event. *Ibid.*; see Pet. App. 20a.

3. Petitioners, a group of 17 States, sought judicial review of EPA's 2022 reinstatement decision in the D.C. Circuit. See Pet. App. 8a & n.1; 42 U.S.C. 7607(b)(1).[1] Petitioners argued that EPCA preempted EPA's reinstatement of the 2013 waiver, and that Section 209(b)'s waiver provision violates "a constitutional requirement that the federal government treat states equally in terms of their sovereign authority." Pet. App. 9a. Various States (including California) and localities, automakers, and environmental organizations intervened in support of EPA. *Id.* at 20a-21a & nn.4-6.

The court of appeals dismissed petitioners' EPCA preemption claim for lack of standing and rejected petitioners' equal-sovereignty claim on the merits. Pet.

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[1] A group of entities that produce or sell liquid fuels and raw materials used to produce those fuels also sought judicial review. See Pet. App. 9a. Those entities have filed a separate petition for a writ of certiorari seeking review of the D.C. Circuit's decision in this case. See *Diamond Alternative Energy, LLC* v. *EPA*, No. 24-7 (filed July 3, 2024). The government is filing a separate brief opposing that petition.

App. 1a-54a.[2] At the outset, the court found that petitioners had standing to raise their equal-sovereignty claim because, "under the logic of the [Court's] Equal Protection cases, holding Section 209(b) unconstitutional and vacating the waiver would redress the claimed constitutional injury by leaving all states equally positioned, in that none could regulate vehicle emissions." *Id.* at 40a.

Turning to the merits, the court of appeals held that the equal-sovereignty principle does not "categorically prohibit[] Congress from using its Commerce Clause power in a way that withdraws sovereign authority from some states but not others." Pet. App. 38a. The court acknowledged that this Court's decision in *Shelby County* v. *Holder*, 570 U.S. 529 (2013), establishes "a 'fundamental principle of equal sovereignty'" under the Constitution. Pet. App. 41a (quoting *Shelby County*, 570 U.S. at 544). The court explained that in *Shelby County*, this Court had invalidated a Voting Rights Act (VRA), 52 U.S.C. 10101 *et seq.*, provision that required certain States but not others to obtain "preclearance" of voting-law changes, because the preclearance requirement's "coverage formula" "was founded on 'decades-old data and eradicated practices.'" Pet. App. 41a-42a (quoting *Shelby County*, 570 U.S. at 551). But the court emphasized that *Shelby County* "did not outright reject the coverage formula for treating states differently; instead, it held that the formula's 'disparate geographic coverage' was not 'sufficiently related to the problem that it targets.'" *Ibid.* (quoting *Shelby County*, 570 U.S. at 550-551).

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[2] Petitioners do not ask this Court to review the court of appeals' dismissal of their EPCA preemption claim.

The court of appeals found that petitioners had "forfeited any argument that the waiver here fails *Shelby County*'s 'sufficiently related' test." Pet. App. 42a (citation omitted). "Instead," the court emphasized, petitioners "rel[ied] on *Shelby County* to argue that the equal sovereignty principle operates as a categorical bar on" Congress's authority to "enact[] Commerce Clause legislation that leaves some states with more sovereign authority than others, regardless of Congress's reasons for doing so." *Ibid.* "For several reasons," the court determined that "*Shelby County* does not support [petitioners']" argument. *Id.* at 43a.

The court of appeals first observed that *Shelby County* had addressed only "the scope of Congress's power to enforce the Fifteenth Amendment 'by appropriate legislation.'" Pet. App. 43a (quoting 570 U.S. at 536). "But unlike the Fifteenth Amendment," the court explained, "Congress's Commerce Clause power is not limited to 'appropriate legislation.'" *Ibid.*

The court of appeals next observed that the VRA's coverage formula was a "drastic departure from basic principles of federalism" because "it intruded on states' power to regulate elections." Pet. App. 44a (quoting *Shelby County*, 570 U.S. at 535). The court explained that "Section 209(b) is not 'extraordinary' in that way" because "[t]he Constitution places regulation of all matters affecting interstate commerce—including vehicle emissions—squarely within Congress's domain." *Ibid.* "[N]o one questions," the court emphasized, "that Congress could readily preempt all states from regulating motor vehicle emissions, or that Congress itself could set different vehicle emissions standards for different regions of the country." *Id.* at 45a. The court thus found *Shelby County* inapplicable to an "area[] over

which the Constitution grants Congress such comprehensive control." *Ibid.*

The court of appeals found petitioners' argument "highly counterintuitive," because it would mean that "the equal sovereignty principle operates as a categorical bar" in the Commerce Clause context, even though in the Fifteenth Amendment context it requires only that "disparate treatment" be "'sufficiently related to the problem that it targets.'" Pet. App. 46a (quoting *Shelby County*, 570 U.S. at 550-551). The court rejected petitioners' request to "dramatically increase [the] force" of the equal-sovereignty principle "beyond the bounds [of] *Shelby County*." *Id.* at 45a.

The court of appeals also rejected petitioners' reliance on "the equal footing cases" involving "congressional attempts to place limits on new states as a condition of admission to the Union." Pet. App. 46a. The court concluded that those decisions "do not directly apply either outside of the admission context or to Article I powers like the Commerce Clause." *Id.* at 47a.

The court of appeals also determined that petitioners' theory was not supported by constitutional "text" or "history," or by "law of nations principles." Pet. App. 48a. As to the text, the court observed that "[t]he Constitution does not contain any textual provision suggesting an equal sovereignty limit on Congress's" Commerce Clause powers. *Ibid.* To the contrary, the court noted, the text "appears to cut against State Petitioners, because the Constitution does impose certain equality-based limitations on other Article I powers." *Id.* at 48a-49a; see *id.* at 49a (citing examples). As to history, the court found that "State Petitioners' version of the equal sovereignty principle" lacks a meaningful Founding-era "pedigree." *Id.* at 50a. And as to "law of

nations principles," the court determined that the Supremacy Clause refutes the premise that "the law of nations dictate[s] limits on Congress's authority in relation to the states." *Id.* at 52a-53a.

In rejecting petitioners' equal-sovereignty claim, the court of appeals "join[ed] the two other circuits to have considered" the question whether the equal-sovereignty principle categorically bars Congress from treating different States differently when exercising its Article I powers. Pet. App. 38a (citing *NCAA* v. *Governor of N.J.*, 730 F.3d 208, 239 (3d Cir. 2013), cert. denied, 573 U.S. 931 (2014), *abrogated on other grounds by Murphy* v. *NCAA*, 584 U.S. 453 (2018); *Mayhew* v. *Burwell*, 772 F.3d 80, 95 (1st Cir. 2014), cert. denied, 576 U.S. 1004 (2015)).

ARGUMENT

Petitioners contend (Pet. 10-28) that the equal-sovereignty principle categorically bars Congress from enacting Commerce Clause legislation that leaves some States with more regulatory authority than others. Petitioners argue that Congress violated that principle when, instead of preempting all state vehicle-emission regulations, it waived preemption for California under specified circumstances and allowed other States to choose between California's standards and federal standards. Those arguments find no support in constitutional text, history, or precedent, and accepting them would call into question scores of federal statutes. The court of appeals' decision rejecting petitioners' position accords with the decisions of the two other circuits that have considered comparable equal-sovereignty challenges. In any event, this case would be a poor vehicle for considering the scope of the equal-sovereignty doctrine because petitioners forfeited any argument that

Section 209(b) is not "sufficiently related to the problem that it targets." *Shelby County* v. *Holder*, 570 U.S. 529, 551 (2013) (citation omitted). The petition should be denied.

A. The Decision Below Is Correct

In construing the Constitution, this Court looks to "the constitutional text," "historical practice," and "th[e] Court's precedents." *United States* v. *Vaello Madero*, 596 U.S. 159, 164 (2022). Here, those indicia all point in the same direction: Section 209(b) does not violate the equal-sovereignty principle.

1. *Text.* The Commerce Clause empowers Congress "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. Art. I, § 8, Cl. 3. No "textual provision" of the Constitution "suggest[s] an equal sovereignty limit" on Congress's exercise of the Commerce Clause power. Pet. App. 48a.

In contrast, the Constitution "does impose certain equality-based limitations on other Article I powers." Pet. App. 48a-49a. For instance, it mandates that "all Duties, Imposts and Excises shall be uniform throughout the United States." U.S. Const. Art. I, § 8, Cl. 1. It authorizes Congress "[t]o establish a[] uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art. I, § 8, Cl. 4; see *Siegel* v. *Fitzgerald*, 596 U.S. 464, 478 (2022) (explaining that, although the bankruptcy uniformity requirement does not categorically preclude the use of geographic limitations in bankruptcy laws, the Clause "does not permit the arbitrary, disparate treatment of similarly situated debtors based on geography"). And it prohibits Congress from giving "[p]reference * * * by any Regulation of Commerce or

Revenue to the Ports of one State over those of another." U.S. Const. Art. I, § 9, Cl. 6. The constitutional text thus shows that the Framers were "aware of the dynamic that [petitioners] highlight"— potential unequal treatment of States—yet "did not explicitly limit" Congress's Commerce Clause authority through an equal-sovereignty guarantee. *CFPB* v. *Community Fin. Servs. Ass'n*, 601 U.S. 416, 437 (2024).[3]

A different provision of Article I, moreover, "expressly allows Congress to enhance the sovereign authority of some states without granting that authority equally to all states." Pet. App. 51a. Specifically, that provision declares that "[n]o State shall, *without the Consent of Congress*, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power." U.S. Const. Art. I, § 10, Cl. 3 (emphasis added). Under that provision, Congress may authorize individual States to take actions—including sovereign actions like imposing duties and entering compacts—that other States are barred from taking. That provision further undermines petitioners' theory of "inviolable equal state sovereignty." Pet. App. 50a.

Petitioners observe (Pet. 11) that certain other constitutional provisions "treat the States as equals." But the provisions they cite—the Full Faith and Credit Clause, U.S. Const. Art. IV, § 1; a clause addressing the

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[3] Even with respect to constitutional provisions (unlike the Commerce Clause) that do impose geographic-uniformity requirements, the Court has held that "geographically defined classifications" are permitted, so long as there is not "actual geographic discrimination." *United States* v. *Ptasynski*, 462 U.S. 74, 84-85 (1983) (discussing the Uniformity Clause in Art. I, § 8, Cl. 1); see *Siegel*, 596 U.S. at 478 (similar for Bankruptcy Uniformity Clause).

composition of the Senate, U.S. Const. Art. I, § 3, Cl. 1; and Article V's constitutional amendment process, U.S. Const. Art. V—do not address or constrain Congress's Article I powers. The provisions that petitioners cite thus simply reinforce the inference that the court of appeals drew from the absence of any express equal-sovereignty requirement under the Commerce Clause.

2. *History*. Founding-era debates about equal sovereignty arose in the context of States' representation in Congress, eventually producing the Great Compromise. See Pet. App. 50a-51a. But petitioners have identified no evidence suggesting that the Framers viewed equal sovereignty as a "fundamental yet unstated limit on Congress's authority to legislate." *Id.* at 51a.

"'Long settled and established practice'" since the Founding confirms that no such categorical equal-sovereignty limit exists. *Chiafolo* v. *Washington*, 591 U.S. 578, 592-593 (2020) (citation omitted). For example, early Congresses authorized certain States to impose tonnage duties, even though other States were barred from doing so. See, *e.g.*, Act of Feb. 9, 1791, ch. 5, 1 Stat. 190 (allowing Maryland to impose duty at Port of Baltimore); Act of Aug. 11, 1790, ch. 43, 1 Stat. 184-185 (allowing Georgia, Maryland, and Rhode Island to impose tonnage duties). Early Congresses also granted only certain States adjudicative authority over some federal revenue offenses. See Act of Mar. 8, 1806, ch. 14, § 2 Stat. 354-355. And early Congresses granted special permission to certain States to make navigational improvements. See Act of Apr. 14, 1802, ch. 23, 2 Stat. 152.

Modern Congresses have continued this trend. For instance, Congress has authorized Texas to regulate energy transmission, while subjecting all other States to federal public utility transmission regulation. See 16

U.S.C. 824k(k), 824p(k), 824q(h), 824t(f). Congress has authorized Hawaii to regulate employee benefit plans, even though the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, preempts all other States' laws on that topic. See 29 U.S.C. 1144(a) and (b)(5). Congress has authorized Alaska to regulate certain hydroelectric projects, while requiring all other States to follow federal regulations for such projects. See 16 U.S.C. 823c. Congress has allowed South Carolina, Washington, and Nevada to impose their own special limits on the amount of radioactive waste they will accept for disposal. See 42 U.S.C. 2021e(b).[4] And Congress also routinely differentiates between or among States through longstanding and deep-rooted legislative practices such as the targeting of pilot programs and appropriations to particular States and the grandfathering of certain States into new federal schemes.

Rather than grounding their theory in congressional practice, petitioners primarily invoke "[t]he 'law of nations.'" Pet. 12 (citation omitted). They argue (Pet. 12-13) that States had equal sovereignty under the law of nations and did not surrender that equal sovereignty in the Constitution. That argument is mistaken. "[T]he law of nations" recognizes a State's general police powers, which the Constitution does "not abridge[]" *in toto*.

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[4] Other similar provisions abound. See, *e.g.*, 15 U.S.C. 2056b(h)(2) (exempting certain state laws concerning toy safety); 29 U.S.C. 1185b(e)(1) (exempting certain state laws concerning health-insurance coverage); 42 U.S.C. 6297(c) (exempting Rhode Island, Georgia, New York, and California laws from preemption by certain federal energy-conservation standards); 49 U.S.C. 31112(c) (2018 & Supp. I 2019) (preserving authority of Wyoming, Ohio, Alaska, Iowa, Nebraska, Kansas and Oregon to maintain special highway-vehicle rules); 49 U.S.C. 32511(b) (exempting certain state bumper-collision standards for motor vehicles).

Gibbons v. *Ogden*, 22 U.S. (9 Wheat.) 1, 70 (1824). But the Constitution does "subject[] [those powers] to the superior power of Congress when actually exercised." *Ibid.*; see U.S. Const. Art. VI, Cl. 2. And in the CAA, Congress exercised its power by generally preempting state laws regulating motor-vehicle emissions, except for those of California in some circumstances (and other States adopting California's standards). See 42 U.S.C. 7543(a) and (b); 42 U.S.C. 7507(1). In this context, the law of nations cannot "dictate[] limits on Congress's authority in relation to the states." Pet. App. 53a.

Petitioners' effort (Pet. 16, 20) to analogize equal sovereignty to implicit constitutional principles like anti-commandeering and sovereign immunity only underscores the weakness of their position. In those contexts, this Court has relied on concrete historical evidence supporting the specific principles at issue. See *Franchise Tax Bd.* v. *Hyatt*, 587 U.S. 230, 244 (2019) (documenting substantial "historical evidence that interstate sovereign immunity is preserved in the constitutional design"); *New York* v. *United States*, 505 U.S. 144, 163 (1992) (explaining that "the question whether the Constitution should permit Congress to employ state governments as regulatory agencies was a lively topic of debate among the Framers"). By contrast, petitioners' evidence here supports only the abstract notion that States generally have equal sovereignty—without speaking to the precise question whether Congress may preempt some States' laws but not others when exercising its Commerce Clause power.

3. *Precedent*. This Court's Commerce Clause precedent strongly supports the decision below. The Court has held that "[t]here is no requirement of uniformity in connection with the commerce power." *Currin* v.

Wallace, 306 U.S. 1, 14 (1939). Thus, "Congress may choose the * * * places to which its regulation shall apply," based on the "relative situations and needs." *Ibid.* And Congress "may devise * * * a national policy with due regard for the varying and fluctuating interests of different regions." *Secretary of Agric.* v. *Central Roig Ref. Co.*, 338 U.S. 604, 616 (1950).

Petitioners primarily rely on this Court's decision in *Shelby County* v. *Holder*, 570 U.S. 529 (2013), Pet. 23-25, and on "cases about admitting new States," Pet. 21. Those authorities do not support petitioners here.

In *Shelby County*, the Court held that the VRA's coverage formula exceeded Congress's power to enforce the Fifteenth Amendment. 570 U.S. at 553. Although the Court observed that there is "a 'fundamental principle of *equal* sovereignty' among the States," *id.* at 544 (citation omitted), it recognized that Congress may depart from that principle when doing so is "rational in both practice and theory," *id.* at 550 (citation omitted). The Court also observed that "Congress may draft another formula based on current conditions," *id.* at 557, so long as its "disparate geographic coverage" is "sufficiently related to the problem that it targets," *id.* at 551 (citation omitted).

Shelby County does not advance petitioners' argument. As an initial matter, the court of appeals found that petitioners had "forfeited any argument that [EPA's] waiver here fails *Shelby County*'s 'sufficiently related' test." Pet. App. 42a (citation omitted). Because of their forfeiture, petitioners failed to develop any record supporting a "sufficiently related" argument before the agency or the court of appeals. Petitioners seek to revive that argument here (Pet. 31-32), but "[t]his Court 'normally decline[s] to entertain' arguments 'forfeited'

by the parties," *Ohio* v. *EPA*, 144 S. Ct. 2040, 2057 (2024) (citation omitted; second set of brackets in original), and petitioners offer "no persuasive reason to depart from that rule," *ibid.*

In any event, Section 209(b)'s "disparate geographic coverage" is "sufficiently related to the problem that it targets." *Shelby County*, 570 U.S. at 551 (citation omitted). As explained above, Congress waived preemption for California because that State has long been "the 'lead[er] in the establishment of'" vehicle-emissions standards, *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d 1075, 1079 (D.C. Cir. 1996) (citation omitted), and faces "unique problems" due to its "climate and topography," H.R. Rep. No. 728, 90th Cong., 1st Sess. 22 (1967). Those problems persist today, as California is particularly affected by climate change. See p. 4, *supra*. And unlike the coverage formula in *Shelby County*, Section 209(b) contains a built-in mechanism to ensure that California can obtain waivers only when justified "based on current conditions," 570 U.S. at 557: It makes the waiver unavailable if EPA finds that California "does not need [its] State standards to meet compelling and extraordinary conditions." 42 U.S.C. 7543(b)(1)(B).

In the court of appeals, petitioners relied on *Shelby County* solely "to argue that the equal sovereignty principle operates as a categorical bar on Congress's Commerce Clause authority." Pet. App. 42a. But the Court in *Shelby County* recognized that Congress *can* "depart" from "equal sovereignty" so long as it has sufficient justification. 570 U.S. at 542 (citation omitted). And it would be anomalous to conclude that Congress has less power to treat States differently when regulating interstate commerce in the CAA than when enforcing the Fifteenth Amendment through the VRA. Unlike

Congress's textually unqualified Commerce Clause authority, Congress's power to enforce the Fifteenth Amendment is limited to "appropriate legislation." U.S. Const. Amend. XV. And unlike the CAA, which regulates in an area of national concern where Congress could preempt state law entirely, Pet. App. 45a, the VRA "authorizes federal intrusion into [a] sensitive area[] of state and local policymaking," *viz.*, the regulation of elections, *Shelby County*, 570 U.S. at 545 (citation omitted).

Petitioners' reliance on "cases about admitting new States" (Pet. 21) fares no better. The Court has recognized that, "when a new State is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original States." *Coyle* v. *Smith*, 221 U.S. 559, 573 (1911). It follows that Congress may not use its admission authority to "impair[]" a new State's power in a manner "which would not be valid and effectual if the subject of congressional legislation after admission." *Ibid.* In those same decisions, however, the Court has observed that Congress *can* treat different States differently when regulating "commerce among the States" in the normal course. *Id.* at 574; see *ibid.* (observing that Congress could pass a law "touching the sole care and disposition of the public lands or reservations" in a single State). And *Shelby County* itself made clear that the admission cases do not "operate[] as a *bar* on differential treatment outside that context." 570 U.S. at 544.

B. The Question Presented Does Not Warrant This Court's Review

Other traditional certiorari criteria likewise counsel against review. There is no conflict among the circuits

on the question presented, and this case would be a poor vehicle in which to consider that question.

1. Petitioners acknowledge (Pet. 34) that "there is no circuit split over equal-sovereignty challenges to Article I legislation." Indeed, the court below "join[ed] the two other circuits to have considered the issue." Pet. App. 38a. The Third Circuit upheld a sports-gambling law that treated Nevada "more favorably" than other States, concluding that the equal-sovereignty principle does not "limit[]" Congress's ability to legislate under the Commerce Clause. *NCAA* v. *Governor of N.J.*, 730 F.3d 208, 238-239 (3d Cir. 2013), cert. denied, 573 U.S. 931 (2014) (emphasis omitted), *abrogated on other grounds by Murphy* v. *NCAA*, 584 U.S. 453 (2018). And the First Circuit upheld Spending Clause legislation that arguably treated Maine less favorably than other States, observing that "[f]ederal laws that have differing impacts on different states are an unremarkable feature of, rather than an affront to, our federal system." *Mayhew* v. *Burwell*, 772 F.3d 80, 95 (1st Cir. 2014), cert. denied, 576 U.S. 1004 (2015). Both circuits distinguished *Shelby County* on the same basic grounds identified by the court of appeals here. See *id.* at 94-96; *NCAA*, 730 F.3d at 238.

2. This case is an unsuitable vehicle in which to consider whether and how the equal-sovereignty principle applies to Article I legislation. As noted above, the court of appeals found that petitioners had "forfeited any argument that [EPA's] waiver here fails *Shelby County*'s 'sufficiently related' test," and the court therefore did not address that issue. Pet. App. 42a (citation omitted). That argument is therefore not properly before this Court. To the extent this Court wishes to clarify the proper application of the equal-sovereignty

principle to Article I legislation, it should await a case in which the plaintiff has raised an argument under the "sufficiently related" test and the court of appeals has addressed it.

Unlike the prevailing county in *Shelby County*, moreover, petitioners do not seek relief from federal constraints on their regulatory powers. Although petitioners argue (Pet. 29) "that equal sovereignty prohibits Congress from giving states unequal power to regulate," petitioners do not seek to exercise their own sovereign authority to regulate vehicle emissions. Instead, they seek only to disable California from regulating. See Pet. App. 39a. And if this Court granted review and petitioners ultimately prevailed on the merits, petitioners would be left with *less* regulatory flexibility than they now have, because they would no longer have the option of adopting California's standards. 42 U.S.C. 7507(1).

Based on an analogy to "Equal Protection cases," the court of appeals held that petitioners had Article III standing because a ruling in their favor would eliminate the current disparity in regulatory power between those States and California. Pet. App. 40a. If this Court granted certiorari, it would need to confront that novel standing issue before reaching the merits. But even assuming that the court of appeals' standing analysis is correct, petitioners are still in an awkward position to complain about infringement of their sovereign "power to regulate." Pet. 29.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2024