NO. 24-7

IN THE
Supreme Court of the United States

DIAMOND ALTERNATIVE ENERGY, LLC, ET AL.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

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

BRIEF OF FOOTHILL CHURCH AND CEDAR PARK ASSEMBLY OF GOD OF KIRKLAND, WASHINGTON AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

JOHN J. BURSCH
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001

RORY T. GRAY
Counsel of Record
CHLOE K. JONES
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd. NE, Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
rgray@ADFlegal.org

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

INTEREST OF *AMICI CURIAE*[1]

This Court granted certiorari to determine whether parties may establish redressability by showing the coercive and predictable effects of government regulation on third parties. Petitioners rightly say the answer is yes. Both Petitioners and their supporting amici emphasize this case's importance to administrative challenges. But the impact of the Court's decision in this case will be far greater. As Amici Foothill Church and Cedar Park Assembly of God explain, reaffirming the principle that plaintiffs directly harmed by third-party regulation have Article III standing is crucial to upholding fundamental constitutional rights.

Foothill and Cedar Park have seen California's standing arguments before. After California and Washington required health insurers to insert abortion coverage in churches' employee health plans over Amici's sincere religious objections, Amici sued to vindicate their constitutional rights. Both States sought to evade judicial review by contesting redressability.

Amici are Christian churches in California and Washington that believe and teach that humans are created in the image of God and that every human life is valuable from the moment of conception. Accordingly, Amici cannot participate in, facilitate, or indicate approval of abortion in any way.

---

[1] No counsel for a party authored this brief in whole or in part, and no person other than Amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Consistent with their doctrine and religious obligations to care for their employees' physical, emotional, and spiritual well-being, Foothill and Cedar Park contracted with insurers to provide robust healthcare insurance for church employees. Reflecting their pro-life beliefs, the churches sought and obtained health plans that provided comprehensive maternity care while excluding abortion coverage. Washington and Californian insurance carriers willingly provided this coverage, enabling the churches to care for the health needs of their staff and stay true to their religious beliefs.

But California and Washington disagreed with Foothill and Cedar Park's pro-life values and mandated that health insurers insert elective abortion coverage into the churches' group health plans over their staunch religious objections. The insurers immediately complied with state regulators, inserting abortion coverage in violation of the churches' sincerely held religious beliefs.

Foothill, Cedar Park, and other churches sued California and Washington to vindicate their First Amendment rights. But those States attempted to block judicial review of their actions by contesting the churches' Article III standing. E.g., *Skyline Wesleyan Church* v. *Cal. Dep't of Managed Health Care*, 968 F.3d 738, 745–46 (9th Cir. 2020); *Cedar Park Assembly of God of Kirkland* v. *Kreidler*, 860 F. App'x 542, 543 (9th Cir. 2021). Just as California argues now, the States claimed that unregulated parties (*i.e.*, the churches) had not demonstrated redressability because redress depended on the actions of third parties—health insurers. *Skyline*, 968 F.3d at 749–50; *Cedar Park*, 860 F. App'x at 543.

The States' unsupported standing arguments caused churches significant harm by delaying justice and prolonging their constitutional injuries. For instance, Washington has forced Cedar Park's group plan to include abortion coverage for *five years*. And Washington continues to contest Cedar Park's standing via cross-appeal, even though the Ninth Circuit held that the church had standing three years ago. Appellees' Answering Br. at 22–31, *Cedar Park Assembly of God of Kirkland* v. *Kreidler*, No. 23-35560 (9th Cir. Jan 22, 2024).

Because California has a history of using standing arguments to evade the merits of churches' free-exercise claims, and Washington continues to do so in ongoing litigation, Foothill and Cedar Park have a substantial interest in the Court's resolution of the question presented, which will impact their ability to challenge regulations on third parties that directly implicate their First Amendment rights.

SUMMARY OF THE ARGUMENT

The court below was wrong to require iron-clad evidence of redressability, defying this Court's precedent and commonsense.

The D.C. Circuit's heightened redressability requirement erects an additional barrier to courtroom access nowhere found in Article III. It places higher litigation costs on plaintiffs by requiring counsel to convince directly regulated entities to file affidavits that merely state the obvious and place them firmly in the crosshairs of government regulators. Religious organizations like churches are particularly vulnerable to these consequences because of their limited financial resources. Plus, directly regulated parties are hesitant to defy government regulators and cooperate with plaintiffs, especially those with unpopular religious values.

The D.C. Circuit's burdensome redressability standard will either pose an insurmountable bar to plaintiffs or delay adjudicating the merits of plaintiffs' claims, postponing justice—often by years—as the parties litigate and re-litigate straightforward standing issues. In the interim, unchecked government action will deprive churches and others of their constitutional rights.

Affirming the decision below would enable government entities to insulate their actions from judicial review. Governments can achieve their political goals by targeting disfavored entities through indirect regulation of third-party industries. Amici know this stratagem's harm firsthand.

To force pro-life churches to provide insurance coverage for abortion, States like California and Washington—in concert with organizations like Planned Parenthood—regulated the insurance industry, mandating that most health carriers offer only group plans with abortion coverage. Predictably, the insurers—whose ability to offer health coverage in California and Washington was on the line—complied, injecting abortion coverage into churches' health plans over the churches' sincere religious objections. Then, when churches brought suit to vindicate their First Amendment rights, the States contested the churches' standing, arguing that the loss of their previous insurance plans was simply a result of the marketplace and private business decisions, such that a ruling against the States would not redress the churches' injury.

Endorsing California's theory of standing here would catastrophically harm houses of worship and other religious entities. Hostile governments will weaponize this newly heightened standing requirement to evade judicial review of policies designed to suppress religious exercise. And because regulated industries are reluctant to participate in third-party litigation and churches often have limited resources, the harms imposed by States like California and Washington will often go unchecked.

To ensure the courthouse doors remain open to churches seeking to vindicate their First Amendment rights, this Court should reject the D.C. Circuit's novel rule and reverse.

ARGUMENT

I. This Court should reverse the D.C. Circuit's unsupported standing decision.

Standing doctrine "serves to identify those disputes which are appropriately resolved through the judicial process." *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up). Article III's "irreducible constitutional minimum" requires "an injury in fact," "a causal connection between the injury and the conduct complained of," and a likelihood "that the injury will be redressed by a favorable decision." *Id.* at 560–61 (cleaned up). Oftentimes, the causality and redressability elements are "flip sides of the same coin." *Food & Drug Admin.* v. *All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (cleaned up).

The circumstances in this case are not unique. Unregulated entities suffering from "adverse downstream effects" often challenge unlawful government action. See *Corner Post, Inc.* v. *Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 826 (2024) (Kavanaugh, J., concurring); accord *All. for Hippocratic Med.*, 602 U.S. at 384 ("[W]hen the government regulates (or under-regulates) a business, the regulation (or lack thereof) may cause downstream or upstream economic injuries to others in the chain, such as certain manufacturers, retailers, suppliers, competitors, or customers."). In such cases, redressability depends "on the response of the regulated (or regulable) third party to the government action." *Lujan*, 504 U.S. at 562.

What *is* unique about this case is the lower court's unsupported requirement that the plaintiff proffer definitive proof of a future third-party decision. Despite Petitioners' unrebutted declarations explaining how California's waiver will increase electric vehicle sales, thereby reducing oil consumption, the court stated it had "no basis to conclude" that the companies' claims were redressable. Pet.App.19a–20a, 29a. The court said that Petitioners failed to show redressability, faulting them for "offer[ing] only assertions, not facts, … about the [third-party manufacturers'] likely response" to the waiver's vacatur. Pet.App.29a (cleaned up). The only evidence that might have satisfied the D.C. Circuit is affidavits from the regulated automakers themselves, declaring precisely what their price and production models would be absent the waiver—something the automakers themselves may not know and would be unlikely to share in advance if they did.

Were this Court to affirm that heightened evidentiary requirement, government regulators would have a free pass to target houses of worship through third-party regulation. Indeed, such approval would sanction the standing arguments *rejected* by the Ninth Circuit and upend that court's sound determination that the churches' claims against California and Washington's abortion mandates were redressable. Whereas the D.C. Circuit's holding defies this Court's standing jurisprudence, the Ninth Circuit correctly rejected California's and Washington's redressability arguments and did not require affidavits that health insurers would respond to a government mandate by complying with it. *Skyline*, 968 F.3d at 742; *Cedar Park*, 860 F. App'x at 543.

A. The lower court's redressability standard has no basis in this Court's standing jurisprudence.

The lower court's decision flouts settled precedent. To be sure, standing is more difficult to establish "when the plaintiff is not himself the object of the government action." *Lujan*, 504 U.S. at 562. But that simply means an unregulated plaintiff cannot base its standing theory on "mere *speculation* about the decisions of third parties." *Dep't of Com.* v. *New York*, 588 U.S. 752, 768 (2019) (emphasis added). Article III standing exists where plaintiffs articulate "the *predictable* effect of Government action" on regulated parties. *Ibid.* (emphasis added); accord *Murthy* v. *Missouri*, 603 U.S. 43, 57–58 (2024) ("Rather than guesswork, the plaintiffs must show that the third-party platforms will *likely react in predictable ways* to the defendants' conduct.") (cleaned up; emphasis added).

Under this Court's precedents, it is enough for plaintiffs to show "the injury would *likely* be redressed by judicial relief." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021) (emphasis added). Iron-clad certainty has never been required. *Utah* v. *Evans*, 536 U.S. 452, 464 (2002). Similarly, plaintiffs need not show that total victory is within reach, as "a partial remedy satisfies the redressability requirement." *Uzuegbunam* v. *Preczewski*, 592 U.S. 279, 291 (2021) (cleaned up); accord *Larson* v. *Valente*, 456 U.S. 228, 243 n.15 (1982) ("a favorable decision" need not "relieve [plaintiffs'] *every* injury"). In the case of the churches, it was both "predictable" and "likely" that health insurers would do what the government ordered them to do on threat of license revocation.

The decision below turns these "relatively modest" conditions, *Bennett* v. *Spear*, 520 U.S. 154, 171 (1997), into a practically insuperable bar that exceeds this Court's standard of predictability and probability. Consider this Court's decision in *Department of Commerce*. Various government and non-governmental organizations challenged a citizenship question about citizenship, asserting that fewer noncitizens would respond if the government included that inquiry. *Dep't of Com.*, 588 U.S. at 764–66. This Court ruled for the plaintiff organizations because their standing theory did "not rest on mere speculation about the decisions of third parties." *Id.* at 768. This was true *even though* a noncitizen's decision not to respond to the census would be unlawful, and *even though* the government had mitigated any fears by mandating individual answers' confidentiality. *Ibid.* This Court didn't require third-party affidavits from noncitizens explaining how they planned to respond (or not respond) to the census. Rather, the Court said plaintiffs had "met their burden of showing that third parties will likely react in predictable ways …." *Id.* at 767–68. That makes eminent sense.

If there was no impermissible speculation in *Department of Commerce*, where the predicted third-party decision was unlawful and assumed that the government itself would break the law by revealing confidential information, there is certainly no impermissible guesswork here. See *id.* at 767. Redressability is especially obvious in cases like this one, where the government *explicitly predicts*—and *designs the regulation to achieve*—the injurious effects that nonregulated parties seek to challenge. *Id.* at 768.

California's own waiver application said its heightened emissions standards and "increased use of electricity" would result in "concomitant reductions in fuel production." 87 Fed. Reg. 14,332, 14,336, 14,364 (Mar. 14, 2022). In support, California cited EPA reports concluding that electric and hybrid vehicle production "can dramatically reduce petroleum consumption" and lead to "decreased gasoline production." California Air Resources Board, *Clean Air Act § 209(b) Waiver Support Document* 2, 6, 16 (May 2012), https://tinyurl.com/3ca8mf7s.

A government's explicit findings and designs in implementing its programs are highly indicative of the predictable effects of government action. Accord *Massachusetts* v. *EPA*, 549 U.S. 497, 526 (2007). Indeed, if the manufacturers would produce more electric vehicles *absent* the waiver, the state "would presumably not bother" applying for the waiver in the first place. *Ibid.* (cleaned up).

Petitioners' theory of standing here is predictable and clear-cut. It is not "counterintuitive," "rest[ing] on a 'highly attenuated chain of possibilities'" that "would require far stronger evidence." *California* v. *Texas*, 593 U.S. 659, 678 (2021) (quoting *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 410–11 (2013)). Rather, it is based on basic economics and common sense. It is hardly speculative that ordering automakers to manufacture more non-gasoline-powered vehicles will "likely" lead to decreased demand for gasoline-related products. *All. for Hippocratic Med.*, 602 U.S. at 384–85. That's precisely the reason why California issued the order in the first place.

All this makes it "likely" that vacating the waiver will redress some of Petitioners' economic harms. *Lujan*, 504 U.S. at 561. At minimum, vacating the waiver would remove a regulatory hurdle to selling at least "one dollar" more of their products, and that is sufficient for standing, *Uzuegbunam*, 592 U.S. at 292; accord *Energy Future Coal.* v. *EPA*, 793 F.3d 141, 144–45 (D.C. Cir. 2015) (Kavanaugh, J.).

The lower court's decision here is also at odds with its own precedent. For example, in *Tozzi* v. *United States Department of Health & Human Services*, 271 F.3d 301, 303–04 (D.C. Cir. 2001), the D.C. Circuit considered whether a PVC manufacturer had standing to challenge HHS's decision to label dioxin—a compound emitted by burning PVC—as a known carcinogen. The manufacturer in *Tozzi* argued that, if the federal government removed the label, "State and local governments would be less likely to regulate dioxin, and healthcare companies would in turn be less likely to stop using PVC plastic." *Id.* at 310.

The D.C. Circuit agreed with that commonsense prediction of the regulatory action's effect: if HHS's label was vacated, "dioxin activists could no longer point to an authoritative determination" that PVC is known to cause cancer. *Ibid.* The court reached this unremarkable conclusion without affidavits or direct testimony about how state and local governments, or healthcare entities, would respond to a change in the label because "reclassifying dioxin would redress at least some of [the company's] economic injury." *Ibid.* Applying the D.C. Circuit's reasoning below in the present case, *Tozzi* would have been decided the opposite way for lack of evidence showing how the market would react.

The D.C. Circuit reached a similar conclusion in upholding competitor standing in *Energy Future Coalition* v. *EPA*. There, biofuel producers challenged an EPA regulation requiring fuels to be "commercially available" before automotive manufacturers could use them to test their products. *Energy Future Coal.*, 793 F.3d at 144. Though "vehicle manufacturers may have valid business reasons other than EPA's test fuel regulation for not seeking to use" the biofuel producers' fuel, then-Judge Kavanaugh reasoned that the petitioners had standing because the regulation denied them "an opportunity to compete in the marketplace." *Ibid.*

Specifically, the court held that the biofuel producers' injury was redressable because "[i]nvalidating the 'commercially available' requirement would remove a regulatory hurdle to the use of" petitioners' fuel. *Ibid.* Because petitioners didn't need to "show that a favorable decision will relieve" their "*every* injury," they had standing to challenge the EPA's regulation imposed upon a third party. *Id.* at 145 (quoting *Massachusetts*, 549 U.S. at 525). The same is true here.

In short, the D.C. Circuit violated this Court's precedent—as well as its own—by assuming that "speculation" occurs in the absence of concrete evidence of a third-party's likely response to government action. To the contrary, redressability is satisfied based on California's regulatory design and its conclusions throughout the application process. Vacating the waiver will have predictable and commonsense market repercussions. Admissible evidence is unnecessary to show that.

B. California's redressability argument failed when the State targeted religious employers through third-party insurers.

The oil and gas industry is not California's only target when it comes to evading or delaying judicial review through meritless standing challenges. As Petitioners and other amici have highlighted, California distorts the law to achieve political ends in the environmental realm. Amici testify to another hot-button issue in which States like California use the same litigation tactics to achieve their political ends—abortion coverage.

In 2014, the California Department of Managed Health Care directed health insurers to remove any limitations on abortion coverage from employers' plans, including those of religious employers. *Skyline*, 968 F.3d at 742. In 2018, Washington passed a similar law that required nearly all group health plans to include coverage for abortions and abortifacients. *Cedar Park Assembly of God of Kirkland* v. *Kreidler*, 683 F. Supp. 3d 1172, 1176–78 (W.D. Wash. 2023); Wash. Rev. Code § 48.43.073(1); Wash. Admin. Code § 284-43-7220(2). Insurers promptly complied with these clear-cut government directives, inserting abortion coverage into churches' health plans over their religious objections. *Skyline*, 968 F.3d at 744–45; *Cedar Park*, 683 F. Supp. 3d at 1177–78. When churches contacted their insurers to re-obtain coverage tailored to their religious beliefs, the insurers predictably said they could no longer provide an abortion-excluding plan due to the States' mandates. *Skyline*, 968 F.3d at 745; *Cedar Park*, 860 F. App'x at 543.

Foothill, Cedar Park, and other churches sued to vindicate their constitutional rights. E.g., *Foothill Church* v. *Rouillard*, No. 2:15-CV-02165 (E.D. Cal. complaint filed Oct. 16, 2015); *Cedar Park Assembly of God of Kirkland* v. *Kreidler*, No. 3:19-cv-05181 (complaint filed Mar. 8, 2019). But instead of complying with the Religion Clauses and exempting houses of worship, California and Washington attempted to dodge judicial review by contesting the churches' standing. Like California's argument here, the States argued that the free-exercise harm to churches wasn't redressable because relief depended on the "action by a non-party health care insurer in the form of furnishing [the churches] with a plan containing the exemption it desires." *Skyline*, 968 F.3d at 746 (cleaned up); accord Appellees' Answering Br. at 22–23, *Cedar Park Assembly of God of Kirkland* v. *Kreidler*, No. 20-35507 (9th Cir. Dec. 2, 2020).

According to the States, insurers' inability to offer abortion-excluding plans wasn't a result of government mandates requiring the insurers to include abortion coverage in all polices but instead a product of the marketplace. Like California here, they argued the churches hadn't "show[n] that an insurer would likely agree to offer coverage consistent with" their beliefs if the mandates were enjoined, *Skyline*, 968 F.3d at 749, either by "depos[ing]" or "obtain[ing] a sworn declaration" from the insurer, Appellees' Answering Br. at 24–25, *Cedar Park*, No. 23-35560 (9th Cir. Jan. 22, 2024). In other words, the States insisted that admissible evidence was required before a court could assume that regulated entities would comply with a government mandate that applied to their activities.

The Ninth Circuit disagreed with the States' arguments—twice. Correctly construing this Court's precedent, the Ninth Circuit held that "a plaintiff *does* have standing when the defendant's actions produce injury through their 'determinative or coercive effect upon the action of someone else.'" *Skyline*, 968 F.3d at 749 (quoting *Bennett,* 520 U.S. at 169); accord *Cedar Park*, 860 F. App'x at 543. Indeed, before the States mandated abortion coverage, insurers *had* offered plans consistent with the churches' pro-life beliefs. After the States mandated abortion coverage, the insurers predictably and immediately complied, amending those plans. *Skyline*, 968 F.3d at 747; *Cedar Park*, 860 F. App'x at 543.

That the insurers previously offered abortion-free plans was "strong evidence" that a favorable court decision would redress the churches' injuries. *Skyline*, 968 F.3d at 750; accord *Cedar Park*, 860 F. App'x at 543. And though it was theoretically "possible no insurer" would re-offer a tailored plan, the Ninth Circuit recognized that it "need not be *certain* how insurers would respond." *Skyline*, 968 F.3d at 750. Instead, the churches satisfied the redressability element because "the predictable effect of an order granting the [requested] relief" would be "that at least one insurer would be willing to sell it a plan that accords with its religious beliefs." *Ibid.* Because their theory of harm relied "on the predictable effect of Government action on the decisions of third parties," the Ninth Circuit rightly held that the churches had standing to challenge the State mandates. *Id.* at 749 (quoting *Dep't of Com.*, 588 U.S. at 768); accord *Cedar Park*, 860 F. App'x at 543 (citing *Skyline*, 968 F.3d at 750).

II. Affirming the D.C. Circuit would have catastrophic consequences for religious liberty.

Adopting the lower court's heightened redressability requirement would profoundly harm religious organizations. Houses of worship and other religious organizations are vulnerable for three reasons: (1) an exponential increase in litigation costs, (2) prolonging of First Amendment injuries during the years spent litigating clear-cut standing issues, and (3) directly regulated industries' reluctance to participate in litigation because of the risks of offending state overseers and public backlash. A redressability ruling against Petitioners here would exacerbate each of those problems.

1. Churches like Foothill and Cedar Park seek to honor God and their members' trust by faithfully stewarding their financial resources. The D.C. Circuit's high evidentiary bar for redressability would prolong expensive litigation, demanding needless third-party affidavits and expert evidence before a court could even consider the merits of churches' constitutional claims.

Unlike oil and gas companies that can front high litigation costs, few non-profit churches possess the necessary resources to engage in drawn-out discovery battles and the creation of evidence. Even if churches could reorganize their finances, doing do would necessarily force them to divert significant resources from their religious ministries, exacting even greater First Amendment harm and irreparably injuring the communities they serve.

2. Foothill, Cedar Park, and other churches prevailed on jurisdiction in the Ninth Circuit. But the States' unfounded standing arguments significantly prolonged their injuries—litigating straightforward standing issues consumed several years, delaying consideration of the merits of their First Amendment claims. E.g., *Skyline*, 968 F.3d at 745, 754 (ruling in the church's favor on standing but remanding for consideration on the merits over *four years* after the lawsuit began); accord *Foothill Church* v. *Rouillard*, No. 2:15-cv-02165, 2016 WL 3688422, at *6–7 (E.D. Cal. July 11, 2016). Cedar Park's case is a prime example, as Washington *still* contests the church's standing on appeal, even though the Ninth Circuit ruled in Cedar Park's favor on the issue *three years ago* and is now the law of the case. Appellees' Answering Br. at 22–31, *Cedar Park*, No. 23-35560 (9th Cir. Jan 22, 2024).

All the while, the States' unconstitutional mandates have remained in effect, forcing churches to fund health plans that violate their religious beliefs. For example, Washington has forced Cedar Park to include abortion and abortifacient-contraceptive coverage in its health plan *for the last five years*. First Br. of Appellant/Cross-Appellee at 5, 23, *Cedar Park Assembly of God of Kirkland* v. *Kreidler*, Nos. 23-35560, 23-35585 (9th Cir. Nov. 22, 2023). But see *Foothill Church* v. *Watanabe*, 623 F. Supp. 3d 1079 (E.D. Cal. 2022). So even if churches could afford to fight for their First Amendment rights in court, California's redressability standard would allow states to inflict First Amendment harms on churches for years during pending standing litigation.

3. Even if churches could front these sky-high costs, directly regulated parties are unlikely to willingly participate in the litigation. Such participation in a challenge to government mandates would place the third party directly in government regulators' bullseye. Many third parties will resist providing affidavits or giving testimony that supports plaintiffs in challenges to government mandates out of fear of antagonizing their regulators.

This is especially true when—as in religious liberty cases—regulated third parties have little-to-nothing to gain and much to lose from cooperating. Plus, the reluctance to challenge a government mandate may be heightened in the religious-freedom context. Third parties may deem a church's values too "controversial" if they contradict popular culture. Abortion is a prime example. Seeking to avoid the consequences of widespread "cancel culture," third parties will likely decline to assist groups seeking a religious exemption from an abortion mandate out of fear of public backlash—especially in States like California and Washington, where activism is a cottage industry.

Under the D.C. Circuit's onerous redressability standard, the opportunity for a church to have its day in court will become vanishingly small. The rule will not only require cash-strapped churches to bear unnecessary and mounting litigation costs, but also to convince third parties to participate in high-risk litigation on hot-button issues that could alienate their regulators and the public alike.

III. Hostile governments will employ California's regulatory model to insulate themselves from judicial review.

If this Court affirms the D.C. Circuit's extreme view of redressability, California is sure to replicate its regulatory model beyond mandating electric vehicle production and abortion coverage. Other states will follow suit, crafting regulations to achieve desired political ends, while skirting judicial accountability. Plaintiffs who are harmed by those regulations—whose injuries range from financial to constitutional—will only have their day in court if their pocketbook and the whims of directly regulated parties allows. With no guaranteed check by the judicial branch, the sky's the limit. Hostile governments may expand mandated health care coverage beyond abortion services to include coverage that many religious organizations morally oppose, such as elective sterilization, transgender procedures, and even euthanasia and assisted suicide.

States will undoubtedly use this regulatory tactic for purely political purposes. The California abortion-coverage mandate is a perfect example. California issued the mandate as a direct response to "media outlets report[ing] that two Catholic universities in California … had taken steps to exclude coverage for what the universities termed 'elective' abortions." *Skyline*, 968 F.3d at 743. In response, proponents of expanded abortion access—who sought to eliminate "religious restrictions"—met with state officials and pressured them to "rescind its approval of plans that include an abortion." Appellant's Opening Br., *Skyline*, 968 F.3d 738 (No. 18-55451), 2018 WL 4443727, at *10–11 (cleaned up).

One of those opposition organizations, Planned Parenthood, warned the state that if it failed to "fix" the churches' plans, the organization would promote its own legislative "solution." *Id.* at *11.

Though the State's mandate regulated insurers, California's real target was religious employers like the Catholic universities. Making the lower court's heightened redressability standard the law of the land gives governments a blank check to target religious entities, inflicting direct constitutional injuries through indirect regulation.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

JOHN J. BURSCH
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001

RORY T. GRAY
Counsel of Record
CHLOE K. JONES
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd. NE, Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
rgray@ADFlegal.org

JANUARY 2025