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Legal Sidebar

Supreme Court Clarifies Who Can Hear Challenges to Clean Air Act Actions

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On June 18, 2025, the Supreme Court decided *EPA v. Calumet Shreveport Refining* and *Oklahoma v. EPA*, a pair of cases about Clean Air Act (CAA) Section 307(b)(1), which governs judicial review of the U.S. Environmental Protection Agency's (EPA's) "final action[s]" under the CAA. Section 307(b)(1) channels review of those actions directly to the U.S. Courts of Appeals (individually identified in this Legal Sidebar according to their numerical or jurisdictional distinction) and provides a multi-step test for determining which circuit court can review a particular EPA action. Challenges to a "nationally applicable" action may be brought only in the D.C. Circuit. By contrast, a "locally or regionally applicable" action is usually reviewable only in the circuit in which that action applies. That general rule is subject to an exception, however: A locally or regionally applicable action will be reviewable only in the D.C. Circuit if it "is based on a determination of nationwide scope or effect" and the EPA Administrator "finds and publishes that" the action is "based on such a determination."

As detailed below, in both *Calumet* and *Oklahoma*, EPA announced in single *Federal Register* notices that it had simultaneously taken scores of locally or regionally applicable actions across many states based in part on common factual findings, legal interpretations, or analytical methods. The courts of appeals divided over how to apply Section 307(b)(1) under those circumstances. Some courts concluded that venue was proper in multiple regional circuit courts; others concluded that the D.C. Circuit alone could hear challenges. The Supreme Court resolved the circuit splits in a pair of opinions in which it clarified when a "final action" is "nationally applicable" under Section 307(b)(1) and when "locally or regionally applicable" actions are "based on determinations of nationwide scope or effect." This Sidebar examines the Court's reasoning and identifies considerations for Congress.

Background and Procedural History

Calumet arose from the CAA's Renewable Fuel Standard (RFS) program, which requires transportation fuel sold in the United States to contain specified volumes of renewable fuel. Most domestic oil refineries are subject to the program's requirements, but "small" refineries can petition EPA for exemption based on "disproportionate economic hardship."

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In December 2021, EPA proposed denying the exemption petitions that were then pending before it, giving two reasons for the proposed denials. First, EPA interpreted the phrase "disproportionate economic hardship" to cover only economic hardship caused by compliance with the RFS. Second, EPA concluded, based on its review of national market data, that RFS compliance did not impose disproportionate economic hardship because all refiners—small or otherwise—could pass RFS compliance costs along to consumers.

EPA finalized its denial of 105 small refiner exemption petitions through *Federal Register* notices in April and June 2022. In both of those notices, EPA characterized its consolidated denials as "nationally applicable" final actions because they concerned petitions from refiners across multiple states and judicial circuits. Alternatively, EPA maintained that all of its locally or regionally applicable petition denials were based on determinations of nationwide scope or effect because each denial rested on a common interpretation of "disproportionate economic hardship" and on "cost passthrough principles that are applicable to all small refineries no matter the location or market in which they operate." Either way, EPA concluded, review of the denials was available only in the D.C. Circuit under CAA Section 307(b)(1).

Some small refiners sought judicial review of EPA's denials in the D.C. Circuit, but others petitioned for review in the Third, Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits. EPA filed motions to dismiss or transfer all petitions filed outside the D.C. Circuit. Those motions were granted in every regional circuit save the Fifth Circuit, which denied EPA's motion and ruled against EPA on the merits. The Supreme Court agreed to review the Fifth Circuit's denial of EPA's motion.

Oklahoma arose from Title I of the CAA, which establishes a cooperative federalism framework that divides authority for regulating air pollution between EPA and the states. Under that framework, EPA must set and periodically revise national ambient air quality standards (NAAQS) for particular pollutants. Once EPA sets or revises a NAAQS, states have three years to submit to EPA State Implementation Plans (SIPs) to achieve or maintain the NAAQS. EPA then reviews SIPs to ensure compliance with certain requirements under the CAA, including a requirement that SIPs prohibit any in-state emissions that will "contribute significantly to" NAAQS nonattainment or "interfere with" maintenance of a NAAQS in another state. This requirement is commonly known as the "Good Neighbor" provision. If EPA concludes that a SIP meets all applicable statutory requirements, the agency must approve the plan. If not, the agency must deny the plan in whole or in part.

EPA last revised the NAAQS for ozone in 2015, which triggered states' obligation to submit SIPs. In 2023, EPA disapproved 21 of those SIPs for failure to comply with the Good Neighbor provision. In doing so, EPA relied in part on common data and modeling, used a uniform threshold to determine when upwind states contributed more than a de minimis amount of ozone pollution to downwind states, concluded that the ozone pollution contributions of other states or countries did not excuse upwind states from analyzing whether their emissions contributed "significantly" to downwind nonattainment, and refused to credit upwind states for any emission-reduction measures that were not incorporated into their SIPs.

As with its small refiner petition denials, EPA asserted that its consolidated disapproval of 21 SIPs was reviewable only in the D.C. Circuit either because it was a single "nationally applicable" action or because it comprised 21 locally or regionally applicable actions that all rested on common determinations "of nationwide scope or effect."

Various state and industry groups challenged 12 of the 21 disapprovals by filing petitions in circuit courts throughout the country. EPA moved to dismiss or transfer all petitions filed outside the D.C. Circuit. The Fourth, Fifth, Sixth, and Eighth Circuits denied the motions, holding that each of the 21 SIP denials was properly challenged in the appropriate regional circuit. The Tenth Circuit alone granted EPA's motion and transferred to the D.C. Circuit the petitions filed by Oklahoma, Utah, and various industry groups

challenging EPA's disapproval of Oklahoma's and Utah's SIPs. Those parties petitioned for certiorari, and the Supreme Court agreed to hear consolidated cases challenging the transfer.

The Supreme Court's Decisions

Calumet

In a 7-2 opinion authored by Justice Thomas, the Supreme Court vacated the Fifth Circuit's ruling. The threshold question in *Calumet* was whether the "final actions" at issue were EPA's two aggregated petition denials or were instead EPA's denials of each individual exemption petition. Section 307(b)(1) does not define "final action," but as the Court explained, that provision lists several examples of final actions, all of which "refer to particular exercises of EPA authority undertaken pursuant to particular CAA provisions." Interpreting the term "final action" in light of those statutory examples, the Court concluded that Section 307(b)(1) "makes the CAA's framing of the relevant 'action' controlling, regardless of how EPA chooses to package its decisions in the Federal Register."

Applying this principle, the Court observed that the CAA requires EPA to act on "a petition" within 90 days of receipt and thus "pegs EPA's 'action' under the exemption provision by reference to each individual exemption petition." The Court therefore concluded that the actions at issue were properly framed as discrete petition denials.

With the relevant final actions identified, the Court moved to the "next question" in the venue inquiry: whether EPA's petition denials were "nationally applicable" or only "locally or regionally applicable." Giving those terms their ordinary and plain meanings, the Court concluded that "'national' contemplates an activity with nationwide scope," while "'local' and 'regional' relate only to particular 'places' or regions." Because EPA's petition denials applied to single refiners in particular places, the Court described them as "paradigmatically" local.

That left the final step in the venue inquiry: determining (1) whether the locally or regionally applicable petition denials were "based on a determination of nationwide scope and effect" and (2) whether the EPA Administrator published a determination to that effect. The parties agreed that EPA had satisfied the second of those conditions, so the Court's analysis focused on the first.

Working again from the plain meaning of the statute's terms, the Court defined "determinations" to be the "the justifications" that EPA gave for an action, and it held that those "determinations" would have "nationwide scope or effect" if, as a legal or practical matter, they apply throughout the entire nation. That clarified little, however, because, as the Court observed, "nearly all agency actions" will be "based" in part on "determinations of nationwide reach or consequence," including interpretations of governing statutes. Thus, according to the Court, the "key question" was "the degree of causality contained in the phrase 'based on.'"

The Court described that phrase as "context dependent," sometimes indicating anything with a "but-for" causal relationship to agency action and sometimes indicating only an action's "core" causes. According to the Court, Section 307(b)(1) incorporated the latter, "more demanding" understanding of "based on." This was so, the Court explained, because "Congress made regional Circuit review the default for locally or regionally applicable action," with the "'nationwide scope or effect' exception" functioning "as just that—an exception." To preserve that statutory hierarchy, the Court held that a locally or regionally applicable action would be based on a determination of nationwide scope or effect only if the determination was the "*sine qua non*," "gravamen," "primary explanation for," or "driver of" EPA action. The Court also cautioned that a determination would "not rise to this level if EPA also relied in significant part on other, 'intensely factual' considerations or if the key driver is otherwise debatable."

The Court then directed reviewing courts to form their own "independent" judgment about "which determinations primarily drove" a given action. The Court inferred this "*de novo*" review standard from "the structure of the 'nationwide scope or effect' exception." That exception is triggered only if EPA declares that an action is based on a determination of nationwide scope or effect *and* the "action in fact ha[s] this basis," a "dual formulation" that "does not naturally suggest that courts should simply give EPA's finding deference." Still, the Court observed, "EPA's choices will matter." Because the nationwide scope or effect exception applies only when "EPA so finds and publishes," the Court explained that EPA "can decide whether the exception is even potentially relevant," and "when EPA does invoke the exception, its explanation for doing so will at a minimum focus the court's assessment."

Applying this reasoning, the Court sided with EPA, holding that the agency's locally or regionally applicable petition denials were subject to the "nationwide scope or effect" exception and were thus reviewable only in the D.C. Circuit. According to the Court, the rationales supporting those denials—EPA's interpretation of the phrase "disproportionate economic hardship" and its determinations about cost pass-through—applied "generically to all refineries" in the country "regardless of their geographic locations," giving them "nationwide scope or effect." Those determinations also served as the basis for EPA's denials because they enabled EPA "to reach a presumptive resolution" of all pending petitions, making them "the most important parts" of EPA's reasoning. The Court acknowledged that EPA had also considered refinery-specific facts but found that the agency had done so "only to confirm that it had no reason to depart from its presumptive disposition." Any refinery-specific considerations were thus "merely peripheral" and did not control the venue analysis.

Justice Gorsuch and Chief Justice Roberts dissented. While agreeing with the majority that the actions at issue were locally and regionally applicable petition denials, the dissenters would have restricted the "nationwide scope or effect" exception to instances when the CAA itself "calls for EPA to act on a determination of nationwide scope or effect." Because the CAA directed EPA to make no such "determination" when denying hardship petitions, the dissenters would have routed EPA's denials to the regional circuits regardless of EPA's reasons for acting.

Responding to the dissent (and to similar arguments from the respondents), the majority observed that many CAA provisions authorize EPA action without calling for a particular "determination" of any kind and that few (if any) CAA provisions expressly direct EPA to take local action based on national determinations—a point the respondents conceded at argument. Because "Congress would not have gone to the trouble of creating a superfluous exception," the majority refused to read "determination of nationwide scope or effect" in Section 307(b)(1) to refer only to determinations prescribed by statute.

Oklahoma

In *Oklahoma*, the Court applied the analytical framework that it announced in *Calumet* but unanimously concluded that challenges to EPA's SIP disapprovals could be brought only in the appropriate regional circuits. In an opinion authored by Justice Thomas, the Court began by identifying the relevant final actions and determining if those actions were nationally, regionally, or locally applicable. Here, the Court explained that Section 307(b)(1) had "simplifie[d] the analysis" by describing EPA's "action" on any SIP as an example of a "final action," thus "mak[ing] clear" that each SIP disapproval was an action in its own right. Because a SIP disapproval "on its face applies only to the State that proposed the SIP," the Court deemed that action "prototypical[ly]" local or regional.

The Court next considered whether EPA's locally or regionally applicable SIP disapprovals rested on determinations of nationwide scope or effect. Reiterating its holding in *Calumet*, the Court stated that a determination would "not rise to this level if EPA also relied in significant part on other, intensely factual considerations, or if the key driver of EPA's action is otherwise debatable." According to the Court, EPA's SIP disapprovals "fall into the latter category."

Although the Court agreed with EPA that the SIP disapprovals rested, in part, on determinations of nationwide scope or effect, it characterized those determinations as "analytical guideposts" and "heuristics that aided EPA's analysis." In contrast to the determinations in *Calumet*, the Court found that "no nationwide factor all but settle[d] EPA's ultimate decisions," which the agency reached only "after conducting predominantly fact-intensive, state-specific analysis" and producing state-specific "bases for disapproval." "In that circumstance," the Court concluded, "we cannot say that the 'nationwide scope or effect' exception applies."

Justice Gorsuch authored a brief concurrence, joined by Chief Justice Roberts, in which he agreed that EPA's SIP denials were reviewable in the regional circuits but explained that he would have reached that result by applying the analytical approach outlined in his *Calumet* dissent.

Considerations for Congress

While providing guidance to the lower courts, the framework articulated in *Calumet* and *Oklahoma* is unlikely to end venue disputes in CAA cases. To decide whether an action is based on a determination of "nationwide scope or effect," judges and litigants must now review EPA's often lengthy supporting justifications and must identify which of those justifications dictated the action. The *Calumet* dissent observed that this test would likely prove difficult to apply, and the majority did not directly disagree. Instead, the majority responded to the dissent's criticism by stating that any such difficulty was a function of the statute's text and thus "a problem for Congress."

Congress enacted Section 307(b)(1) in its current form through the 1977 CAA amendments. Those amendments expanded the scope of exclusive D.C. Circuit review from certain enumerated actions to all "nationally applicable" final actions and also added the "nationwide scope or effect" exception. According to the relevant House Committee report, those changes were based on comments that EPA's then-General Counsel, G. William Frick, submitted in response to a series of recommendations by the Administrative Conference of the United States. Those comments argued that centralized D.C. Circuit review was appropriate for all "matters on which national uniformity is desirable," both because that court had "expertise in administrative law matters" and because it was "thoroughly familiar" with the CAA and its legislative history. The comments also argued that the "generic determinations of nationwide scope or effect" that sometimes underpinned state-specific EPA actions were "virtually identical to . . . 'national standards.'"

Should Congress choose to do so, it could simplify the Section 307(b)(1) venue inquiry in a variety of ways. For example, Congress could eliminate the "nationwide scope or effect" exception. This change would streamline Section 307(b)(1), but it would mean that determinations of national import would be subject to review in multiple regional circuits. Those circuits might enter conflicting judgments, which might lead to a circuit-by-circuit patchwork of CAA implementation—a risk of inconsistency that the 1977 amendments mitigated by centralizing review of additional actions in the D.C. Circuit.

Second, Congress could reduce venue litigation by giving EPA greater power to determine venue. For instance, Congress could let EPA, rather than the courts, decide if an action is based on a determination of nationwide scope or effect. Congress could also codify EPA's position in *Calumet* and *Oklahoma* by allowing the agency to bundle multiple locally or regionally applicable actions into a single nationally applicable action. Both of these changes would likely reduce venue disputes, but both would give EPA broad discretion to channel litigation into the D.C. Circuit and could thus raise forum-shopping concerns.

Third, Congress could resolve an ambiguity about the scope of "nationally applicable" action, which the Supreme Court highlighted but did not resolve. If "an EPA action must formally apply to the whole country to be nationally applicable," the Court observed, "then actions could apply to nearly the entire country yet still be locally or regionally applicable." Conversely, "if an action that formally applies to

only a subset of the country can be nationally applicable, then line-drawing questions may arise." The Court offered no guidance on how to resolve these "difficult edge cases," but Congress could seek to eliminate confusion by adopting an objective threshold for national applicability. This threshold could be based on the number of states in which an action applies, the number of judicial circuits in which an action applies, or some other bright-line measure of geographic breadth.

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