

Nos. 20-472

In the Supreme Court of the United States

HOLLYFRONTIER CHEYENNE REFINING, LLC, ET AL.,
Petitioners,

v.

RENEWABLE FUELS ASSOCIATION, ET AL.,
Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Tenth Circuit**

**BRIEF FOR THE STATES OF IOWA,
NEBRASKA, ILLINOIS, MICHIGAN,
MINNESOTA, OREGON, SOUTH DAKOTA,
AND VIRGINIA AS AMICI CURIAE
SUPPORTING RESPONDENTS**

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INTEREST OF AMICI CURIAE

The renewable fuel and agricultural industries are the cornerstone of the economies of many States, including Iowa and Nebraska. These industries—and the rural economies that they anchor—have grown over the past 16 years in reliance on the promise of the Renewable Fuel Standard (“RFS”). And all States have an interest in the environmental benefits and energy independence that the RFS promises to achieve.

But the Environmental Protection Agency’s recent trend of freely granting small-refinery exemptions has undermined these promises. This case presents the opportunity to affirm the limited authority of the EPA under the plain language of 42 U.S.C. § 7545(o)(9)(B) to grant small-refinery exemptions only to refiners that have previously received and continuously held the exemption. And the amici States urge this Court to use this opportunity to secure the intended promises of the RFS rather than permanently break them.

SUMMARY OF ARGUMENT

The Tenth Circuit got it right. The EPA’s authority under 42 U.S.C. § 7545(o)(9)(B) is limited to granting “an extension” of the small-refinery exemption to a refinery that previously received and continuously held the exemption. This interpretation reflects the ordinary meaning of “extension,” which requires an existing subject to be extended or prolonged. And it fits in the broader statutory context.

The statute is structured not as an independent exemption for economic hardship, but as “an

extension of the exemption under subparagraph (A).” 42 U.S.C. § 7545(o)(9)(B). And that subparagraph creates a blanket “[t]emporary exemption” for small refineries until 2011 that could be extended another two or more years based on a study of the effect of the RFS on small refineries. 42 U.S.C. § 7545(o)(9)(A). The Tenth Circuit properly reasoned that unless a refinery has continuously sought and received extensions since the initial exemption ended, there would be nothing for the EPA to extend.

This should be the beginning and the end of the analysis. *See Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253 (1992) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.” (cleaned up)); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012) (“The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.”).

But Petitioners and their amici invite this Court to venture further. They argue that Congress could not have intended this plain meaning of the statute because it would foreclose most small refineries from now obtaining the exemption. And without the exemption, they contend, small refineries could not remain in business. Pet. Br. 39-46; Wyo. et al. Amici Br. 14-25; Small Ref. Coal. Amicus Br. 20-29; AFPM Amicus Br. 17-27; CountryMark Amicus Br. 17-19.

These alleged harms to small refineries under the plain-language interpretation, however, are only a small part of the economic terrain surrounding the RFS. If this Court accepts the invitation to “travel[], in . . . search for the meaning of the lawmakers, beyond the borders of the statute,” it should do so with a more complete tour of the landscape. *United States v. Great N. Ry. Co.*, 287 U.S. 144, 154 (1932).

The expansive interpretation of the small-refinery exemption advanced by Petitioners has the practical effect of cutting the renewable fuel mandates significantly below the levels required by statute. This guts the RFS, rendering it ineffective in creating demand for renewable fuel. And without the demand created by the RFS, the renewable fuel industry will continue to suffer substantial economic harm.

This harm is not hypothetical. Over the past few years, we have seen the direct effects of the EPA’s unfettered granting of small-refinery exemptions. For compliance years 2016 through 2018, these exemptions reduced the RFS mandate by an average of 7% each year—causing more than \$2 billion in lost demand for renewable fuel each year. Renewable fuel plants have been slowed, idled, and shuttered. And if the gates are thrown open for all small refineries to be granted exemptions anew—even though they have previously complied with the RFS—the reduction could be even more drastic.

Because the renewable fuel industry anchors many rural economies, the harms inflicted by reversing the Tenth’s Circuit decision would ripple out to devastating effect on rural communities and States.

A gutted RFS also harms the environment and our nation's energy independence efforts. Growing evidence shows that corn ethanol has greenhouse gas and air pollution emissions significantly below petroleum gasoline. Biodiesel likewise reduces carbon dioxide emissions substantially compared to petroleum diesel over its life cycle. Some States have thus developed state-level plans for reducing carbon emissions and improving air quality that rely on increasing use of renewable fuels as an attainable near-term approach. And aside from these environmental benefits, every gallon of new capacity to produce renewable fuel is many future gallons of petroleum-based fuel that we will not need to import. But without the predictable RFS mandate to drive demand, fewer investments are made to reap these benefits.

All these negative effects undermine the purpose of the RFS. And thus a full survey of the landscape "beyond the borders of the statute," *Great N. Ry. Co.*, 287 U.S. at 154, supports the plain meaning of the statute—not Petitioners' expansive interpretation. The Tenth Circuit's decision should be affirmed.

ARGUMENT

I. Authorizing the unfettered granting of new small-refinery exemptions would gut the Renewable Fuel Standard.

Congress and the President enacted the RFS Program “to ‘move the United States toward greater energy independence and security’ and ‘increase the production of clean renewable fuels.’” *Ams. for Clean Energy v. EPA*, 864 F.3d 691, 697 (D.C. Cir. 2017) (Kavanaugh, J.) (quoting Energy Independence & Security Act, Pub. L. No. 110-140, preamble, 121 Stat. 1492, 1492 (2007)). The RFS accomplishes these goals by requiring gradually increasing sales of renewable fuels in place of crude oil fuel in the United States. See 42 U.S.C. § 7545(o). “By requiring upstream market participants such as refiners and importers to introduce increasing volumes of renewable fuel into the transportation fuel supply, Congress intended the Renewable Fuel Program to be a market forcing policy that would create demand pressure to increase consumption of renewable fuel.” *Ams. for Clean Energy*, 864 F.3d at 705 (cleaned up).

Annually, the EPA sets percentage standards by rulemaking, which inform refiners and importers what proportion of their fuel must be renewable fuel for the upcoming year. 42 U.S.C. § 7545(o)(3)(B)(i). The EPA must calculate the percentages at a level “that ensures” the total volume requirements mandated by statute—with any authorized adjustments—are met. *Ibid.*; see also *Ams. for Clean Energy*, 864 F.3d at 698-99.

A refiner or importer demonstrates compliance with its RFS obligation by providing sufficient

Renewable Identification Numbers (“RINs”)—tradeable credits accounting for a gallon of renewable fuel. RINs can be obtained by purchasing them on the open market or by producing or buying renewable fuel to blend into transportation fuel. Those with excess RINs may sell them or carry them over to the next compliance year. *See* 42 U.S.C. § 7545(o)(5); 40 C.F.R. §§ 80.1425-29; *Ams. for Clean Energy*, 864 F.3d at 699-700.

A small refinery that obtains an exemption from the RFS under § 7545(o)(9)(B) does not have to comply with these requirements. It does not have to acquire any RINs to prove compliance to the EPA. And if it has accumulated some, it can sell them or carry them forward to the next compliance year.

But the EPA does not readjust an issued annual percentage standard after granting a new small-refinery exemption. *See* EPA Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards, 75 Fed. Reg. 76790, 76804 (Dec. 9, 2010) (explaining EPA’s position that adjustment to account for new exemptions “would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties”). So the portion of the total renewable fuel volume that would have been satisfied by the exempt small refinery is left unmet. When many small refineries receive the exemption, even greater proportions of the RFS mandate are left unfulfilled. *See* Scott Irwin, *Clearing the Logjam on the RFS and SREs: A Simple Proposal*, farmdoc daily, Dep’t of Agric. & Consumer Econ., Univ. of Ill. at Urbana-Champaign, Sept. 19, 2019, at 2, <https://perm.a.cc/n8dh-bekn>.

For this reason, the expansive interpretation of the small-refinery exemption advanced by Petitioners has the practical effect of cutting the renewable fuel mandates significantly below the levels required by statute. This guts the RFS and renders it ineffective in creating demand for renewable fuel. And without the demand created by the RFS, the renewable fuel industry will continue to suffer substantial economic harm.

This harm is not hypothetical. Since 2017, the EPA has granted 86 small-refinery exemptions across three compliance years. U.S. EPA, *RFS Small Refinery Exemptions*, <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions> (last updated March 18, 2021). The exemptions led to an average reduction of 1.35 billion gallons of renewable fuel per year from the RFS mandate. Irwin, *Clearing the Logjam*, *supra*, at 3. This amounts to a 7% reduction in renewable fuel demand each year. *Ibid.* And it caused losses averaging more than \$2 billion per year—or \$6.4 billion over the three years—especially by devastating biodiesel demand. *Id.* at 4; *see also* Scott Irwin, *Small Refinery Exemptions and Biomass-Based Diesel Demand Destruction*, farmdoc daily, Dep’t of Agric. & Consumer Econ., Univ. of Ill. at Urbana-Champaign, March 14, 2019, <https://perma.cc/cb44-gaq7>.

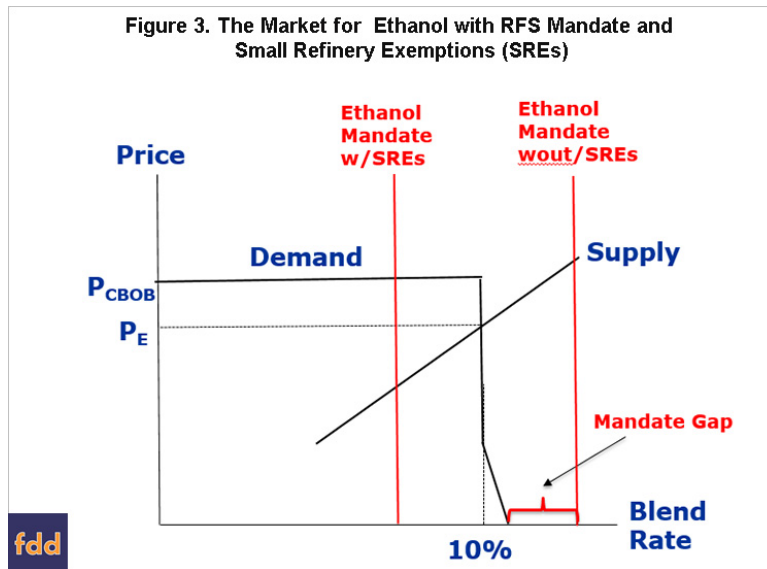
And it could become even worse if this Court accepts Petitioners’ expansive interpretation of the statute. So far, the EPA has not granted more than 35 small-refinery exemptions for a single compliance year. U.S. EPA, *RFS Small Refinery Exemptions*,

supra. Those exemptions led to a 9.3% reduction of the mandated volume for the 2017 compliance year. Irwin, *Clearing the Logjam*, *supra*, at 3. But if any small refinery can receive an exemption—even one that has no current exemption to extend—and all 54 obtain one, more than 10% of the statutory RFS mandate could be erased. *See* Wyo. et al. Amici Br. 18.

One might think that these 7% or 10% reductions in the mandated renewable fuel volume are relatively insignificant to the industry and the purpose of the RFS. But the difference between this reduced demand and the full RFS mandate is critical.

The RFS mandate exerts demand pressure only if it requires the use of *more* renewable fuel than the market would support on its own. The fuel market supports a substantial volume of ethanol for E10 blend. But that demand drops off abruptly because of physical limits in how much E10 can be used. *See Ams. for Clean Energy*, 864 F.3d at 700 (discussing the “E10 blendwall”).

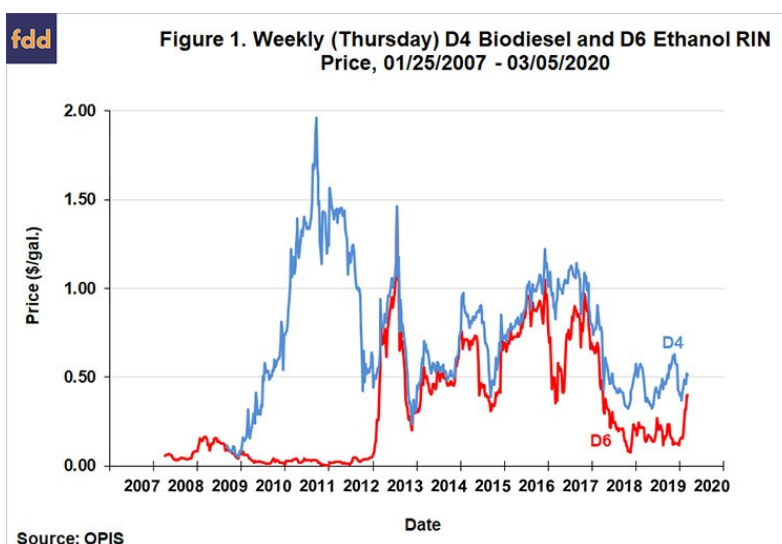
While the RFS mandate for recent years is set high enough to push demand beyond the market, it appears that the reduced mandate caused by the excessive granting of the small-refinery exemptions has moved to where it is without economic effect. *See* Jonathan Coppess & Scott Irwin, *EPA and the Small Refinery Exemption Issue in the Renewable Fuel Standard Mandates*, farmdoc daily, Dep’t of Agric. & Consumer Econ., Univ. of Ill. at Urbana-Champaign, Mar. 12, 2020, at 4-6, <https://perma.cc/d3ha-9jvq>. This is shown on the figure below:



Id. at 5.

The adverse effects of the reduced demand can also be seen in the RIN market. Because RINs can be bought and sold on the open market, their price is an efficient measure of ethanol demand. *Background on Renewable Identification Numbers Under the Renewable Fuel Standard: Hearing Before the H. Comm. on Energy & Commerce Subcomm. on Environment*, 115th Cong., at 5-6 (2018) (statement of Gabriel E. Lade, Assistant Professor, Center for Agricultural & Rural Development, Iowa State University), <https://perma.cc/3erv-k9cr>. Indeed the price of RINs is also a measure of the effectiveness of the RFS because their price serves as a subsidy to renewable fuels and a tax on regular gasoline. *Ibid.*

Tellingly, the RIN markets for both ethanol (in red below) and biodiesel (blue) plummeted to historically low levels as the small-refinery exemptions exploded—only starting to rise again after the Tenth Circuit’s decision in this case. Coppess & Irwin, *EPA and the Small Refinery Exemption, supra*, at 3.



Ibid.

In short, the reduction in demand caused by the expansive interpretation of the small-refinery exemption has an outsized impact and leaves the RFS ineffective. Because Petitioners’ interpretation would undermine the statutory purpose, the Court should not depart from the statute’s plain meaning.

II. Petitioners' broad interpretation would cause substantial economic harm to the rural economies of many States.

The harm flowing from Petitioners' interpretation is more than mere economic theory. The reduced demand caused by the unfettered granting of small-refinery exemptions has had real world impacts on people's lives.

Over the last few years, renewable fuel plants have been slowed, idled, and closed. *See* Letter from Kim Reynolds, Governor of Iowa, to Andrew Wheeler, EPA Administrator (Nov. 7, 2019), <https://perma.cc/t9wb-fmjv> (discussing the shuttering of biofuels plants in the Iowa towns of Crawfordsville, Emmetsburg, Merrill, and Sioux Center); Donnelle Eller, *Poet Writes an End to Crop Residue Ethanol: S.D. Firm Says Feds Failed to Give Effort Full Support*, Des Moines Reg., Nov. 20, 2019, at A1-2, <https://perma.cc/5d3c-nuyv> (describing the pause in production at a cellulosic ethanol plant in Iowa because of the EPA's granting of small-refinery exemptions).

As of October 2019—and before any impact from the current pandemic—19 ethanol plants had closed across the nation. *Protecting the RFS: The Trump Administration's Abuse of Secret Waivers: Hearing before H. Comm. On Energy & Commerce Subcomm. on Environment & Climate Change*, 116th Cong., at 9 (2019) (statement of Geoff Cooper, President & CEO, Renewable Fuels Ass'n), <https://perma.cc/mpe4-h9r7>. These closures led to many job losses and furloughs.

And because the renewable fuel industry anchors many rural economies, undercutting that industry

harms local farmers, retailers, and other service providers. “It’s not uncommon for the local grain elevator and biofuels facility to be the largest employers in the region, supporting the livelihoods of hundreds of Midwest families from the surrounding towns.” Letter from Gov. Reynolds, *supra*; see also *Protecting the RFS*, *supra*, at 10 (estimating that every job in an ethanol plant supports 4 to 6 jobs indirectly including farming, transportation, manufacturing, engineering, construction, and legal jobs).

This economic impact is particularly significant for a State like Iowa, where the renewable fuel industry accounted for \$4 billion—about 2%—of the State’s gross domestic product in 2020. John M. Urbanchuk, *Contribution of the Renewable Fuels Industry to the Economy of Iowa*, at 4 (Jan. 28, 2021), <https://perma.cc/2kcb-w2lr>. It supported more than 37,000 jobs and generates \$1.8 billion of income for Iowa household. *Ibid.*

Nebraska also depends on the renewable fuel industry to grow rural jobs. From 2010 to 2017, the industry directly contributed between 3,508 to 4,900 Nebraskan jobs each year. And these mostly rural jobs had average annual earnings of \$78,300, with total income generated of \$255 to \$352 million per year. Kathleen Brooks et al., *Economic Impacts of the Nebraska Ethanol and Ethanol Co-Products Industry 2015-2017*, at 16 (2019), <https://perma.cc/f3s3-bt5b>.

These economic impacts do not come solely from ethanol. Biodiesel is also a significant component of the renewable fuel economy. For example, in 2016, Minnesota produced 74 million gallons of biodiesel alone, which is associated with \$1.7 billion in total

output impact and 5,397 jobs. Minn. Dep't of Agric., *Minnesota Biodiesel Industry Economic Impact* (2017), <https://perma.cc/9eha-mgc5>.

More broadly, the renewable fuel industry plays an important economic role across the nation. In 2020—despite the negative effects on demand caused by the granting of small-refinery exemptions and the COVID-19 pandemic—the industry had an estimated \$34.7 billion impact on the GDP. And it supported more than 300,000 jobs and \$18.6 billion of household income. John M. Urbanchuk, *Contribution of the Ethanol Industry to the Economy of the United States in 2020*, at 9 (Feb. 2, 2021), <https://perma.cc/de8a-h2gt>; see also Ken Ditzel et al., *The Biodiesel Industry: Impacts on the Economy, Environment and Energy Security*, at 1 (2018), <https://perma.cc/v8dg-c5xj>. With more than 300 biofuel plants—across 40 States—built upon the promise of the RFS, the renewable fuel industry's economic importance should not be forgotten. See App. 1a-4a. Yet Petitioners' reading of the statute threatens to do just that.

III. An ineffective Renewable Fuel Standard would harm the environment and efforts to obtain energy independence.

Increased use of cleaner fuels and greater energy independence are both explicit goals of the RFS. *See Ams. for Clean Energy*, 864 F.3d at 697 (citing Pub. L. No. 110-140, preamble, 121 Sta. at 1492).

Recent evidence shows that greenhouse gas emissions from corn ethanol are significantly lower than petroleum gasoline. For example, a study by a senior USDA economist found that emissions from producing and using ethanol are 39% lower than gasoline. *See* Jan Lewandrowski et al., *The Greenhouse Gas Benefits of Corn Ethanol – Assessing Recent Evidence*, 10 *Biofuels* 361, 373 (2019), <https://perma.cc/6kwu-pgbr>. The reduction is even greater—43%—when the ethanol is produced with natural-gas power. *Id.* at 374; *see also* Michael Wang et al., *Well-to-Wheels Energy Use and Greenhouse Gas Emissions of Ethanol from Corn, Sugarcane and Cellulosic Biomass for US Use*, *Envtl. Res. Letters* 7, at 9 (2012), <https://perma.cc/t4ty-ff65> (describing findings of Argonne National Labs study that corn-starch ethanol reduced greenhouse gas emissions 19% to 48%).

Blending corn ethanol into conventional gasoline is also particularly effective in reducing the emissions of other pollutants in urban areas. One analysis comparing E85 corn ethanol with gasoline found reductions of 40% in sulfur oxides; 22% in nitrogen oxides; 13% in particulate matter; 5% in volatile organic compounds; and 2% in carbon monoxide. Minn. Office of the Leg. Auditor, *Evaluation Report*,

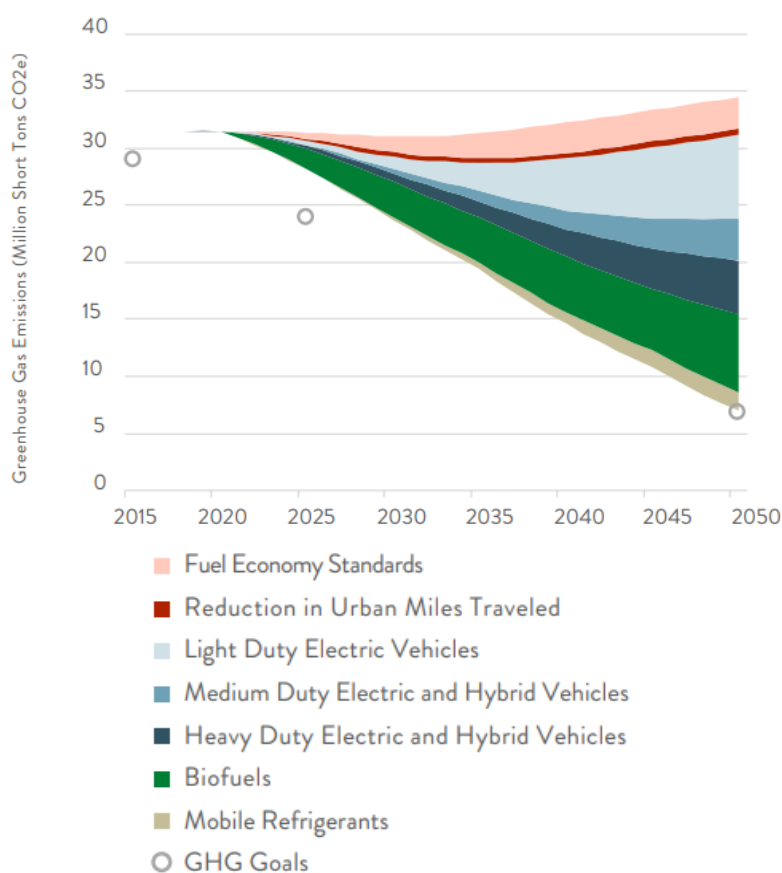
Biofuel Policies and Programs 52 (2009), <https://perma.cc/c2kr-3v3h>. States like Minnesota that have dense urban areas where the pollutants may otherwise accumulate have found these reductions to be particularly important to their efforts to prevent disproportionate exposure to urban communities.

Biodiesel likewise reduces carbon dioxide emissions by 75% compared to petroleum diesel over its life cycle of production and use. *See* U.S. Dep't of Energy, *Biodiesel Vehicle Emissions*, Alternative Fuels Data Center, <https://perma.cc/3dyn-rvsa>.

Because of these environmental benefits, some States have chosen to make renewable fuels a part of their state-level efforts to address air quality. One example is Minnesota's bipartisan Next Generation Energy Act enacted in 2007, which sets specific greenhouse gas reduction targets for the State. *See* Minn. Stat. ch. 216H (requiring Minnesota to reduce greenhouse gas emissions by 80% between 2005 and 2050—with interim reduction goals of 15% by 2015 and 30% by 2025—while supporting clean energy and energy efficiency and supplementing renewable energy standards).

In the wake of this legislation, Minnesota determined that its transportation sector has become the largest emitter of greenhouse gases. And in 2019, a multi-agency collaborative study concluded that increasing use of renewable fuels was a critical component to fulfilling Minnesota's environmental goals. *See* Minn. Dep't of Transp., *Pathways to Decarbonizing Transportation in Minnesota* 7 (2019), <https://perma.cc/dc89-l2lm>. This is particularly so in the near-term because it is the most attainable

solution while Minnesota transitions to longer-term clean energy technologies. The figure below shows this significant role of renewable fuels to Minnesota's greenhouse gas reduction efforts over the next thirty years:



Id. at 5. These state-level efforts relying on renewable fuels to address air quality depend on a strong renewable fuel industry with growing capacity.

Likewise, every gallon of new capacity to produce renewable fuel is many future gallons of petroleum-

based fuel that the United States will not need to import. Since the RFS was enacted, the United States has been steadily decreasing its net imports of petroleum, apparently aided at least in part by growing renewable fuel production during the same period. See Marc Chupka et al., *Blending In: The Role of Renewable Fuel in Achieving Policy Goals* iii, 3-11 (2017), <https://perma.cc/6cpt-zfxm>; see also U.S. Energy Info. Admin., *March 2021 Monthly Energy Review* 58 (2021), <https://perma.cc/38vy-znsc> (showing historical petroleum net imports).

In 2020, for the first time since the U.S. Energy Information Administration began keeping data in 1949, the United States exported more petroleum than it imported. U.S. Energy Info. Admin., *March 2021, supra*, at 59. This export surplus amounted to approximately 0.65 million barrels of petroleum per day, or 3.6% of the daily consumption of petroleum. U.S. Energy Info. Admin., *How Much Oil Consumed by the United States Comes from Foreign Countries?*, <https://www.eia.gov/tools/faqs/faq.php?id=32&t=6> (last updated March 29, 2021). But even so, the United States continues to import nearly 8 million barrels per day, so there is still plenty of room for more domestic fuel production growth. U.S. Energy Info. Admin., *March 2021, supra*, at 59.

Without a predictable RFS mandate to drive demand, fewer investments will be made to reap these environmental and energy independence benefits. Petitioners' expansive interpretation of the small-refinery exemption would render the RFS ineffective to advance these purposes.

CONCLUSION

For these reasons, the judgment of the court of appeals should be affirmed.

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APPENDIX**Ethanol and Biodiesel
Production Facilities in the States****Number of Facilities and
Capacity (Million Gallons per Year)**

State	Ethanol	Biodiesel	Total
IA	43 (4,593)	11 (394)	54 (4,987)
NE	26 (2,296)	3 (51.25)	29 (2,347.25)
IL	14 (1,867)	8 (182.6)	22 (2,049.6)
MN	19 (1,384)	3 (63)	22 (1,447)
IN	15 (1,337)	2 (94.42)	17 (1,431.42)
SD	16 (1,223)		16 (1,223)
ND	6 (542)	2 (259)	8 (801)
TX	4 (395)	9 (375.5)	13 (770.5)

2a

OH	7 (676)	1 (70)	8 (746)
KS	14 (615)	2 (64)	16 (679)
WI	9 (603)	2 (25)	11 (628)
MO	6 (287)	7 (231)	13 (518)
MI	5 (350)	3 (15.9)	8 (365.9)
CA	5 (217)	9 (132)	14 (349)
TN	3 (237)	3 (82)	6 (319)
PA	1 (120)	2 (95)	3 (215)
NY	2 (165)		2 (165)
GA	1 (120)	3 (27.5)	4 (147.5)
CO	5 (143)		5 (143)
MS		4 (119.5)	4 (119.5)

3a

AR		3 (114)	3 (114)
WA		2 (110)	2 (110)
KY	2 (50)	3 (47.1)	5 (97.1)
NC	1 (57)	2 (9)	3 (66)
ID	1 (60)		1 (60)
OR	2 (42)	1 (17)	3 (59)
AZ	1 (55)		1 (55)
SC		3 (45.3)	3 (45.3)
OK		1 (45)	1 (45)
CT		1 (40)	1 (40)
NJ		1 (25)	1 (25)
AL		1 (20)	1 (20)

4a

FL		2 (16.2)	2 (16.2)
VA	1 (2)	2 (8.6)	3 (10.6)
RI		2 (9.2)	2 (9.2)
NH		1 (6.5)	1 (6.5)
HI		1 (5.5)	1 (5.5)
MA		2 (2.95)	2 (2.95)
ME		1 (1.5)	1 (1.5)
AK		1 (0.3)	1 (0.3)
TOTAL (40)	209 (17,436)	104 (2,804.82)	313 (20,240.82)

Sources: Renewable Fuels Association, *Essential Energy: 2021 Ethanol Industry Outlook* at 7 (2021), <https://perma.cc/6cn4-ekr5>; *U.S. Biodiesel Plants*, Biodiesel Magazine, <https://perma.cc/3jjj-sh28> (last modified Dec. 15, 2020).