

Supreme Court Upholds Broad Eligibility For Small Refineries Seeking Hardship Exemptions From Compliance With The EPA's Renewable Fuel Standards

Client Alert | June 25, 2021

Decided June 25, 2021

HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association, No. 20-472

Today, the Supreme Court held 6-3 that the Clean Air Act authorizes the EPA to exempt a small refinery from compliance with the renewable fuel standards program, even if the small refinery had not received an exemption each year since the program commenced in 2011.

Background:

The renewable fuel standard program in the Clean Air Act ("CAA") requires refiners and importers of transportation fuel to blend certain amounts of renewable fuels into their products. The CAA exempted small refineries from the program until 2011, and provided that small refineries could "at any time petition [the EPA] for an extension of the exemption ... for the reason of disproportionate economic hardship." The EPA granted exemptions to three small refineries that had not continuously received exemptions since 2011. The Tenth Circuit vacated the EPA's exemption orders, holding that a small refinery may not receive "an extension of the exemption" unless it has a continuous, unbroken history of exemptions since the program commenced.

Issue:

Whether the EPA may grant an extension of the hardship exemption to a small refinery that has not received continuous extensions of the initial exemption for every year since 2011.

Court's Holding:

The EPA may grant extensions of the hardship exemption to small refineries that have not received prior extensions because the CAA permits small refineries to petition EPA "at any time."

"[T]he key phrase at issue before us ... means exactly what it says: A small refinery can apply for ... a hardship extension 'at any time.'"

Justice Gorsuch, writing for the Court

What It Means:

- The Court's decision confirms that the CAA itself does not preclude small refineries from obtaining the hardship exemption simply because they did not

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[Lucas C. Townsend](#)

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obtain an exemption for one or more prior years.

- The Court observed that both sides presented “plausible accounts of legislative purpose and sound public policy,” but concluded that “[n]either the statute’s text, structure, nor history afford [it] sufficient guidance to be able to choose ... between the parties’ competing narratives.” As a result, the Court rested its decision on “the statute’s text”—which, the Court held, “nowhere commands a continuity requirement.”
- The Court noted that the Tenth Circuit’s contrary interpretation would force small refineries that once attained, but could not maintain, compliance with the program’s requirements “to exit the market” but permit “the least compliant [small] refineries” that never comply with the program’s requirements to continue operating.
- The Court did not address the Tenth Circuit’s alternative ruling that EPA may not grant an exemption based on hardship flowing from “something other than” compliance with the program’s obligations, such as economic hardship caused by other factors.
- In January 2021, EPA announced that it would cease granting hardship exemptions to small refineries that had not received continuous exemptions since 2011. It is uncertain whether EPA will begin granting hardship exemptions again in light of the Court’s decision or withhold hardship exemptions on other grounds.

The Court’s opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Allyson N. Ho
+1 214.698.3233

aho@gibsondunn.com

Mark A. Perry
+1 202.887.3667

mperry@gibsondunn.com

Lucas C. Townsend
+1 202.887.3731

ltownsend@gibsondunn.com

Bradley J. Hamburger
+1 213.229.7658

bhamburger@gibsondunn.com

[m](#)

Related Practice: Environmental Litigation and Mass Tort

Daniel W. Nelson
+1 202.887.3687

dnelson@gibsondunn.com

Stacie B. Fletcher
+1 202.887.3627

sfletcher@gibsondunn.com

David Fotouhi
+1 202.955.8502

dfotouhi@gibsondunn.com

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