

HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association: The Supreme Court Holds that Clean Air Act’s Renewable Fuel Program’s Exemption Requires No Continuity in EPA Granting Extensions

I. OVERVIEW 199
 II. BACKGROUND 200
 A. *The Renewable Fuel Program*..... 200
 B. *Operating Principles of Judicial Statutory Construction* 202
 C. *APA and Judicial Deference* 203
 III. COURT’S DECISION..... 205
 A. *“Extension” Is Used in A Temporal Sense*..... 205
 B. *There Is No Continuity Requirement In “Extension”* 206
 IV. ANALYSIS 210
 V. CONCLUSION 214

I. OVERVIEW

Congress created the modern Renewable Fuel Program (RFP) through two amendments to the Clean Air Act (CAA): the Energy Policy Act of 2005 (Energy Policy Act) and the Energy Independence and Security Act of 2007.¹ The purpose of the RFP is to reduce the United States’ dependence on imported oil, reduce emissions, mitigate global warming, and improve farmer income.² The Energy Policy Act directed the Environmental Protection Agency (EPA) to create federal regulations to ensure renewable fuel production would rise from four billion gallons in 2006 to roughly fifteen billion gallons in 2012.³ The Energy Policy Act allowed for a “Temporary Exemption” until 2011 for small refineries

1. Corey J. Walker, *Using the Supreme Court’s Enigmatic Commerce Clause Holding in Sebelius to Challenge Congress’s Broken Renewable Fuel Standard*, 68 AM. U. L. REV. 667, 678-80 (2018); see Energy Policy Act of 2005, Pub. L. No. 109-58, § 1501(a), 119 Stat. 594, 1067-74 (codified as amended at 42 U.S.C. § 7545(o) (2005)); Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492 (codified as amended in relevant part at 42 U.S.C. § 7545(o) (2007)).

2. 153 CONG. REC. S15421, S15429 (daily ed. Dec. 13, 2007) (statement of Sen. Durbin) (“To help reduce our dependence on imported oil . . . we will shift some of our energy reliance from the oilfields of the Middle East to the corn fields of the Midwest . . . That represents a major advance in our commitment to renewable, home grown fuels that reduce emissions, mitigate global warming, and improve farmer income.”).

3. 42 U.S.C. § 7545 (o)(2)(B)(i).

whose average aggregate daily crude oil throughput for a calendar year did not exceed 75,000 barrels.⁴

Three refineries, Cheyenne, Woods Cross, and Wynnewood (Refineries), which were initially granted the blanket exemption, experienced a lapse after 2011 and petitioned for an extension under subparagraph B(i).⁵ Despite the DOE concluding that the Refineries would not experience disproportionate economic hardship from fulfilling their RFP obligations and recommending only partial exemptions for the latter two, EPA granted extensions of the full exemption for all three.⁶ A group of renewable fuel producers (Producers) appealed EPA's decision to the United States Court of Appeals for the Tenth Circuit, arguing that the agency acted in "excess of statutory jurisdiction, authority, or limitations" by granting the petitions.⁷ Finding there is a continuity requirement in the statute's use of the word "extension," the Tenth Circuit vacated EPA's orders and remanded the matter back to EPA.⁸ The EPA sought Supreme Court review.⁹ Upon review, the Supreme Court *held* EPA did not exceed its authority in granting the extension for the Refineries' exemption petition, finding no continuity requirement in "extension." *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2183 (2021).

II. BACKGROUND

A. *The Renewable Fuel Program*

The EPA uses the RFP's Renewable Identification Number (RIN) device to enforce the RFP mandates.¹⁰ The EPA requires a certain number of RINs to be used by each refinery, representing a quantity of blended renewable fuels.¹¹ Since RINs can be sold, refineries may fulfill their RFP obligations by retiring their RINs, or purchasing RINs from other

4. *Id.* at §§ 7545 (o)(1)(K), (o)(9)(A)(i).

5. *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2176 (2021).

6. *Renewable Fuels Ass'n v. EPA*, 948 F.3d 1206, 1227-30 (10th Cir. 2020), *cert. granted sub nom*; *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 974 (2021), and *rev'd sub nom*; *HollyFrontier*, 141 S. Ct. 2172 (2021), and *aff'd*, 854 F. App'x 983 (10th Cir. 2021).

7. *Renewable Fuels Ass'n*, 948 F.3d at 1214, 1244 (quoting 5 U.S.C. § 706(2)(C)).

8. *Id.* at 1245, 1258.

9. *HollyFrontier*, 141 S. Ct. at 2176.

10. *See* 42 U.S.C. § 7545(o)(5)(A)(i) (2009); *see also* 40 C.F.R. §§ 80.1415, 80.1425, 80.1429 (2020).

11. *See* 42 U.S.C. § 7545(o)(5)(B) (2009); *see also* 40 C.F.R. §§ 80.1425–80.1427 (2020).

refineries.¹² Refineries unable to meet their RFP obligations may carry their deficit forward to the next year but must make up for any deficit the following year.¹³ The RFP contains overall Congressional target standards for increasing the percentage of biofuels used every year.¹⁴ The EPA is responsible for designating individual volume obligations for each refinery, in pursuance of Congress’s yearly targets, and setting the number of RINs that each refinery must retire to meet their individual volume obligation.¹⁵

An initial blanket RFP exemption was given to small refineries until 2011.¹⁶ Congress further directed the EPA to grant an extension for the “exemption under clause (i)” for two years if the Department of Energy (DOE) determined fulfilling the RFP obligations would cause “disproportionate economic hardship” on small refineries.¹⁷ Congress clarified that a small refinery could petition for an extension of an exemption “at any time” if they would otherwise experience a disproportionate economic hardship.¹⁸ In order to meet the statutory targets while granting exemptions, EPA recognized that deficits resulting from exemptions will increase the proportional percentage standard for the remaining obligated parties, affecting their ability to acquire sufficient RINs to meet compliance.¹⁹

Under Senate pressure, the DOE revised their refinery hardship exemption study, and in 2016, EPA began to increase the number of petitions granted for an extension of the small refinery exemption.²⁰ This resulted in an increase in exempted volumes of gasoline and diesel, going from two billion gallons in 2013 to seventeen billion in 2017, and equating

12. *HollyFrontier*, 141 S. Ct. at 2175.

13. 42 U.S.C. § 7545(o)(5)(D).

14. *Id.* § 7545 (o)(2)(B)(i); 40 C.F.R. § 80.1405 (2020).

15. *See* 40 C.F.R. §§ 80.1405 (2020), 80.1407 (2021); *see also* Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018, 82 Fed. Reg. 58,486, 58,488 (Dec. 12, 2016) (“Under the RFS program, EPA is required to determine and publish annual percentage standards for each compliance year. The percentage standards are calculated to ensure use in transportation fuel of the national ‘applicable volumes’ of the four types of biofuel[s] . . . [and these] percentage standards are used by obligated parties . . . to calculate their individual compliance obligations . . .”).

16. 42 U.S.C. § 7545(o)(9)(A)(i).

17. *Id.* at § 7545(o)(9)(A)(ii).

18. *Id.* at § 7545(o)(9)(B)(i).

19. Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards, 75 Fed. Reg. 76,790, 76,805 (Dec. 9, 2010) (providing the rationale for amending 40 C.F.R. §§ 80.1405, 80.1426).

20. *Renewable Fuels Ass’n v. EPA*, 948 F.3d 1206, 1223-25 (10th Cir. 2020).

to an increase in RINs from 190 million in 2013 to 1.8 billion in 2017.²¹ Although obligated parties ineligible for exemption are supposed to make up these percentages, under the EPA's policy, small refinery petitions granted *after* the announcement of the applicable percentage standards for a given year are not subsequently included.²² This means exempted fuel is not reflected in the percentage standards for gasoline or diesel produced or imported that year and thus goes unaccounted for.²³ In 2015, the EPA noted that "challenges" have made the 2014-2016 statutory targets established by Congress unattainable.²⁴ Similarly, in 2018, the EPA announced volume requirements lower than their original intended statutory targets.²⁵ Additionally, while liberal granting of extensions benefits refineries, it harms domestic renewable fuel producers by increasing the competition against them and reducing the value of the product they market and sell.²⁶

B. *Operating Principles of Judicial Statutory Construction*

Courts operate on a few principles when evaluating statutory interpretation challenges to the CAA's relevant amended provisions regarding RFP exemptions. First, plain statutory language is enforced according to its terms, so that the legislative intent is captured in the ordinary meaning of the language.²⁷ A statutory term not furnished with a definition by Congress is afforded its ordinary and natural meaning.²⁸ The terms are read in their context and place within the statutory scheme.²⁹ Thus, when analyzing the terms of a statute, a court must not isolate their

21. *Id.* at 1225.

22. *Id.* at 1226.

23. *Id.* (citing Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019, 82 Fed. Reg. 58,486, 58,523 (Dec. 12, 2017)).

24. *Id.* at 1221 (citing Renewable Fuel Standard Program: Standards for 2014, 2015 and 2016 and Biomass-Based Diesel Volume for 2017, 80 Fed. Reg. 77,420, 77,422 (Dec. 14, 2015)).

25. *Id.* (citing Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019, 82 Fed. Reg. 58,486, 58,487 (Dec. 12, 2017)).

26. *Id.* at 1242.

27. *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) (quoting *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009)).

28. *FDIC v. Meyer*, 510 U.S. 471, 476 (1994).

29. *King v. Burwell*, 576 U.S. 473, 486 (2015) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)).

provisions,³⁰ but analyze them in construction with the coherent regulatory scheme,³¹ ensuring every provision is given effect.³²

When it comes to statutory exemptions, the Supreme Court has what appears to be two diametrically opposed attitudes: they should either be read (1) “fairly” or (2) “narrowly.”³³ For example, in *Food Marketing Institute v. Argus Leader Media*, the Supreme Court rejected a “substantial competitive harm” requirement for FOIA exemptions. The Court explained statutory exemptions serve important interests and such exemptions are as much a part of the statute’s policy as the disclosure requirements.³⁴ Under a “fair reading,” just as a court cannot expand an exemption, it cannot arbitrarily constrict it by adding limitations found nowhere in the statute.³⁵ Justice Breyer dissented, arguing the purpose of FOIA lies in the public’s right to government information and therefore should be judicially enforced.³⁶ A restrictive reading of “confidential” would serve this purpose and past Supreme Court decisions have consistently held a narrow construction of FOIA’s enumerated exemptions for that reason.³⁷

C. APA and Judicial Deference

Courts analyzing agency action look to the Administrative Procedure Act (APA). Under the APA, a court should set aside an agency action when the agency’s decision exceeds its statutory authority.³⁸ In cases concerning an agency’s statutory interpretation, courts normally either apply *Chevron*

30. *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 290 (2010) (explaining a court should “construe statutes, not isolated provisions”) (citation and internal quotation marks omitted).

31. *Brown & Williamson*, 529 U.S. at 133.

32. *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018).

33. *BP PLC v. Mayor of Balt.*, 141 S. Ct. 1532, 1538 (2021) (arguing the Court has “no license to give statutory exemptions anything but a fair reading” against the proposition that exceptions to statutes should be read narrowly) (citation and internal quotations omitted); *but see id.* at 1545 (Sotomayor, J., dissenting) (noting that courts have interpreted exceptions narrowly for “half a century”); *Maracich v. Spears*, 570 U.S. 48, 60 (2013) (explaining statutory exceptions are “usually read . . . narrowly in order to preserve the primary operation of the provision”) (citation and internal quotation omitted); *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002) (stating “statutory procedures for removal are to be strictly construed” out of respect for state sovereignty).

34. *Food Marketing Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019).

35. *Id.*

36. *Id.* at 2368 (Breyer, J., dissenting).

37. *Id.*; *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976); *see, e.g., Milner v. Dep’t of Navy*, 562 U.S. 562, 565 (2011); *FBI v. Abramson*, 456 U.S. 615, 630 (1982) (noting our “oft-repeated caveat that FOIA exemptions are to be narrowly construed”).

38. 5 U.S.C. § 706(2)(C).

deference or a weaker *Skidmore* deference. *Chevron* deference originated from *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, where the Supreme Court established a two-step analysis to determine whether to afford an agency's interpretation a generous level of judicial deference.³⁹ However, there are times when a court does not need to reach a *Chevron* analysis. In *United States v. Mead Corp.*, the Supreme Court clarified that *Chevron* only applies when Congress delegates authority to an administration through a "relatively formal administrative procedure," thus carrying the force of law.⁴⁰ Under *Mead*, legislative rules and formal adjudications are generally entitled to *Chevron* deference.⁴¹ Less formal pronouncements, like interpretative rules and informal adjudication, are less likely to be analyzed under this standard.⁴² If the agency's interpretation is not intended by Congress to have the force of law, then courts may apply a *Skidmore* deference in reviewing the persuasiveness of the agency's interpretation, which "will depend upon the thoroughness evident in [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."⁴³

The Tenth Circuit applies a *Skidmore* standard when evaluating informal adjudications of small refinery petitions.⁴⁴ Ultimately, the Tenth Circuit was unpersuaded by the EPA's statutory construction of "extension" in § 7545(o)(9)(A)-(B) because the agency failed to provide reasons for deviating from the DOE study, which concluded that required RIN costs did not disproportionately impact the refineries in question.⁴⁵ Moreover, the Tenth Circuit pieced together different parts of the statutory language to make sense of the regulatory scheme.⁴⁶ Because the EPA is unable to compensate for volumes exempted after their annual percentage deadline, the Tenth Circuit reasoned the term "extension" must be read with a continuity requirement, especially when coupled with

39. 467 U.S. 837, 840, 842-43 (1984).

40. *United States v. Mead Corp.*, 533 U.S. 218, 229-30 (2001).

41. *Id.*

42. *See Sinclair Wyo. Ref. Co. v. EPA*, 887 F.3d 986, 991 (10th Cir. 2017); *see also* Richard J. Pierce, Jr., *Administrative Law Treatise*, § 3.5 (2010) (explaining that only legislative rules and formal adjudications are generally entitled to *Chevron* deference).

43. *Sinclair*, 887 F.3d at 991 (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

44. *See id.* at 992 (concluding that under *Mead*'s instruction, *Skidmore* deference applies to EPA's interpretation of "disproportionate economic hardship"); *Renewable Fuels Ass'n v. EPA*, 948 F.3d 1206, 1251 (10th Cir. 2020) (concluding that *Skidmore*, rather than *Chevron* applies to EPA's interpretation of "extension").

45. *Id.* at 1255.

46. *Id.* at 1243 (citing *King v. Burwell* 576 U.S. 473, 486 (2015)).

§ 7545(o)(9)(B)(i)'s language: "at any time" cannot mean EPA can grant petitions any time after the deadline, otherwise those gallons of renewable fuel will go unproduced.⁴⁷ EPA also previously understood "extension" to require a predicate "exemption" explaining why it denied a petition submitted by Dakota Prairie Refining LLC: "[C]onsistent with the plain language of the CAA and in furtherance of Congressional intent, EPA promulgated regulations that only allow small refineries that previously had received the initial exemption to qualify for an extension of that exemption."⁴⁸ Although the Tenth Circuit found merit to the arbitrary and capricious argument by the Producers,⁴⁹ it ultimately centered its holding on the interpretation exceeding the EPA's statutory authority under Section 10(e) of the APA.⁵⁰

III. COURT'S DECISION

In the noted case, the Supreme Court reversed the Tenth Circuit's decision to vacate the EPA's decision and held the EPA did not exceed its statutory authority when it did not interpret a continuity requirement in the statutory language regarding RFP exemption extensions.⁵¹ The Court did not give *Chevron* nor *Skidmore* deference because the agency did not invoke it.⁵² Moreover, the Court made no mention of whether the agency's decision was arbitrary or capricious and focused solely on whether the agency exceeded its authority in its statutory construction.⁵³

A. "Extension" Is Used in A Temporal Sense

Under *Meyer*, courts should afford a statutory term "its ordinary or natural meaning" whenever Congress fails to provide a definition.⁵⁴

47. See *id.* at 1248 (citing *Am. Fuel & Petrochemical Mfrs. v. EPA*, 937 F.3d 559, 571 (D.C. Cir. 2019)); see also *Am. Fuel & Petrochemical Mfrs.*, 937 F.3d at 571 (noting the statutory gap in EPA being unable to "adjust renewable fuel obligations to account for exemptions granted after each year's percentage standards are finalized").

48. Petition for Review, *Dakota Prairie Ref., LLC v. EPA*, No. 16-2692, at 8 of 17 (8th Cir. 2016).

49. *Renewable Fuels Ass'n*, 948 F.3d at 1255 ("The EPA ignored or failed to provide reasons for deviating from prior studies showing that RIN purchase costs do not disproportionately harm refineries which are not vertically integrated.").

50. Brief for the Appellant at 17 n.8, *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172 (2021) (No. 20-472).

51. *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2183 (2021).

52. See *id.* at 2180.

53. *Id.* at 2176.

54. *Id.* (citing *FDIC v. Meyer*, 510 U.S. 471, 476 (1994)).

Because extension is undefined by Congress, the Court opened its discussion by determining whether the statutory term “extension” is used in a temporal sense.⁵⁵ Two possible ordinary meanings of extension exist: (1) “extension” can refer to an increase in time or (2) “extension” can refer to an offering or granting of something, such as the extension of a type of legal protection.⁵⁶ The Court found that the correct usage of the term is temporal from a contextual examination of the statutory text surrounding it.⁵⁷ For example, exemptions in (A)(i) and (A)(ii) are described as lasting “until calendar year 2011” and to be extended “for a period of not less than 2 years.”⁵⁸ Following *Santander’s* principle of presuming a term’s consistent usage, the Court additionally notes that (A)(ii) and (B)(i) likely use “extension” in a consistent sense since they share an identical title.⁵⁹

B. There Is No Continuity Requirement In “Extension”

Having concluded the term refers to a lengthening in duration, the Court turned to the primary semantic ambiguity of “extension.”⁶⁰ Disagreeing with the Tenth Circuit, the Court found that “extension” has no continuity requirement.⁶¹ Drawing on a few real-life examples, the majority illustrated the absence of a continuity requirement in the ordinary meaning of extension, such as a student asking for an extension after the deadline has passed, and a tenant who requests the same after the lease end date has passed.⁶² Citing Oxford English Dictionary and Webster’s Dictionary, the Court further noted that a lapse and resumption can be denoted from usages of “extension” requiring continuity because the definition of “continuation” ordinarily allows for a resumption from a lapse.⁶³ Moreover, federal law operates on this nonrestrictive understanding of “extension,” such as the party’s extension in time to appeal after the appeal deadline.⁶⁴ Lastly, the majority explained that Congress has often used the term in laws to extend benefits to the public

55. *Id.* at 2177.

56. *Id.*

57. *Id.*

58. *Id.* (citing 42 U.S.C. § 7545(o)(9)(A)(i)-(ii)).

59. *Id.* (citing *Henson v. Santander Consumer U.S.A. Inc.*, 137 S. Ct. 1718, 1722-23 (2017)).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 2177-78.

64. *Id.* at 2178 (citing 28 U.S.C. § 2107(c)).

that have already lapsed, such as unemployment benefits being extended after lapsing during the first year of COVID-19.⁶⁵

The Court then turned to the dissent's *nunc pro tunc* analogy. According to the dissent, post-due date extensions implicate continuity by retroactively extending original periods of time that already passed.⁶⁶ The majority concluded that a retroactive deeming of original allotted time as extending to a new continuous date is not within the ordinary or common meaning of the term.⁶⁷ The Court reasoned that lapsed COVID benefits and student deadlines can be extended without any retroactive effect.⁶⁸ The Court further found the *nunc pro tunc* analogy served no persuasive purpose since it cannot deny a lapse or interruption ever occurred.⁶⁹ Although some uses of "extension" can impose a continuity requirement, such a requirement is usually accompanied by a modifier.⁷⁰ Absent a modifier, strict continuity requirements are not commonly construed.⁷¹

The Court turned to the statute in question to confirm its reasoning.⁷² The Court found that "at any time" in RFP's subparagraph, (B)(i) connoted a broader meaning of "extension" within the statute.⁷³ Intuitively, "at any time" is the opposite of a strict continuity requirement.⁷⁴ The Court further elaborated that RFP's subparagraph (A)'s structure implies "extension" without a continuity requirement.⁷⁵ Specifically, under subparagraph (A)'s structure, a small refinery that has a blanket exemption under (A)(i) can increase production capacity, lose (A)(i) exemption status, then later decrease productive capacity, regain small refinery status, subsequently apply for an extension under (A)(ii), and receive that extension under a Secretary's finding that they would suffer disproportionate hardship.⁷⁶ The

65. *Id.* (citing Consolidated Appropriations Act of 2021, Pub. L. 116–260, § 203, 134 Stat. 1182) (noting extension of unemployment compensation was given in December 2020 after lapsing in July 2020); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136, § 2114, 134 Stat. 281 (noting extension of unemployment benefits in 2020, despite lapsing in 2013)).

66. *HollyFrontier*, 141 S. Ct. at 2178.

67. *Id.*

68. *Id.*

69. *Id.* at 2178-79.

70. *Id.* at 2179; *see, e.g.*, 8 U.S.C. § 1184(g)(8)(D) ("5 or more consecutive prior extensions"); 10 U.S.C. § 2304a(f) ("may extend the contract period for one or more successive periods"); 19 U.S.C. § 2432(d)(1) ("extensions of such authority for successive 12-month periods").

71. *HollyFrontier*, 141 S. Ct. at 2179.

72. *Id.* at 2179.

73. *Id.* (citing 42 U.S.C. § 7545(o)(9)(B)(i)).

74. *See id.*

75. *Id.*

76. *Id.* (citing 42 U.S.C. § 7545(o)(9)(A)(i)-(ii)).

Court concluded that since it is used this way in subparagraph (A), it is presumed to be used that way in (B).⁷⁷

Having concluded a continuity-free meaning, the Court rejected the Producers' argument that (A)'s title of "temporary exemption" suggests a quick end to the statutory scheme, (i.e., "sunset" scheme), and as such, (B)(i)'s extension of the "exemption under subparagraph (A)" should be read narrowly.⁷⁸ The Court noted that (A)(ii) allows EPA to grant a small refinery an extension that can last indefinitely, pushing back on the "sunset" scheme theory on (A).⁷⁹ Moreover, the Court reasoned the language "at any time" in (B)(i) implies Congress did not intend the exemptions to end after a certain period, additionally highlighting the congressional history of eschewing sunset statute provisions.⁸⁰ Simply put, the statute, when fairly read, produces a natural meaning of "extension" without a continuity requirement.⁸¹

Lastly, the Court considered the "safety valve" policy argument for the statute's purpose against the Producers' "funnel" policy argument.⁸² Against the idea that the statute's alleged continuity requirement was designed to "funnel" compliance or force an uncompliant refinery to exit the market, the Court seemingly agreed with the Refineries that Congress, taking into account the volatility of market fluctuations in the fuel industry, offered a "safety valve" to smaller refineries subject to such precarious market conditions.⁸³ Because market prices can remain steady for years, allowing compliance, but also shoot up to 100 percent higher in other years, Congress allows for refineries to seek a hardship exemption "at any time."⁸⁴ Moreover, the fact that there are other "safety valve" provisions, such as regional blanket exemptions, is not an argument against an additional waiving of RFP obligations for small refineries.⁸⁵ This directly addresses the dissent's contention that such a statutory construction would not make sense because it would permit hardship relief only to those

77. *Id.*

78. *Id.* at 2180.

79. *Id.* (citing 42 U.S.C. § 7545(o)(9)(A)(ii)(II)) ("shall extend the exemption . . . for a period of not less than 2 additional years").

80. *Id.* (citing 42 U.S.C. § 247d-7f(b) (authorizing a "limited antitrust exemption" that "shall expire at the end of [a] 17-year period" after the Act's passage).

81. *Id.* at 2181 (citing *BP PLC v. Mayor of Balt.*, 141 S. Ct. 1523, 1539 (2021)) (explaining statutory exemptions are to be read fairly, not narrowly).

82. *Id.* at 2181-82.

83. *Id.* at 2182.

84. *Id.*

85. *Id.*

refineries that were in existence when the statute was created.⁸⁶ The majority highlighted the petitioner’s argument that Congress could reasonably intend to protect existing refineries from shifts in the law while fully applying restrictions to new refineries.⁸⁷ The Court further spotlighted apparent flaws in the Producers’ policy reading: it would solely reward permanently noncompliant refineries with the exemption, defeating a “funneling” compliance argument.⁸⁸ Moreover, a harsh application of the Producers’ reading could reduce domestic fuel supply and increase reliance on imported fuels.⁸⁹ Despite the Court clarifying it did not take “sides” in evaluating plausible policy arguments, it expressly rejected the “funnel” argument as an abstract intuition that would be a mistake to rely on.⁹⁰ Ultimately, the Court held EPA’s approval of the Refineries’ extension requests was not in excess of its statutory authority and reversed the Tenth Circuit’s decision to vacate EPA’s orders.⁹¹

Justice Barrett, joined by Justice Sotomayor and Justice Kagan, dissented.⁹² Although Justice Barrett agreed with the statute’s temporal use of the term, she disagreed with the Court’s interpretation of the natural meaning of the “extent,” arguing that “extension,” by its definition⁹³ and by its common usage,⁹⁴ denotes the continuance of an existing thing, in contrast to “renewal,” which looks to restore something that used to exist.⁹⁵ The dissent addressed the majority’s examples of post-due date extensions, reasoning that retroactively prolonging pre-existing periods implicates continuity, and rejecting examples of emergency COVID-19 statutes as using the “natural” meaning of “extension.”⁹⁶ Justice Barrett described the RFP statute’s structure as supporting the continuity requirement, drawing on several provisions that import continuation into the meaning of extension and noted that, contrary to other provisions, subparagraph (B)(i)’s language does not share standalone waiver

86. *Id.* at 2181-82.

87. *Id.* at 2182.

88. *Id.*

89. *Id.*

90. *Id.* at 2183.

91. *Id.*

92. *Id.* at 2184 (Barrett, J., dissenting).

93. *Id.* at 2184 n.2 (Barrett, J., dissenting).

94. *Id.* (Barrett, J., dissenting) (citing RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY 684 (2d ed. 2001) (explaining it would be odd if a hotel guest returned three years after her original stay asking for an extension of that stay)).

95. *Id.* (Barrett, J., dissenting).

96. *Id.* at 2186-87 (Barrett, J., dissenting).

authority.⁹⁷ Moreover, the majority's reading of the statute would allow for a few odd results: (1) the 2008 study could be used for exemption applications for decades; (2) a lapsed exemption could be petitioned for an extension decades later, despite the new exemption having no connection to the original exemption; and (3) exemptions would not be applied to new refineries.⁹⁸ Instead, the dissent agreed with the Producers that subparagraph (B)(i)'s "at any time" should be construed as any time within a continuous exemption period and that subparagraph (A)(ii) refers to extending subparagraph (A)(i)'s exemption, not subject to a lapse.⁹⁹

IV. ANALYSIS

The holding in the noted case followed disputed traditions. Most notably, the decision follows the "fair" reading of exemptions in statutory language,¹⁰⁰ implicitly rejecting the "narrow" reading principle in *Maracich v. Spears*.¹⁰¹ The reasoning here derives from the conclusion that "at any time" should be read expansively.¹⁰² In doing so, the decision furthers the unnecessary exclusivity between "fair" and "narrow" readings of statutory exemptions, binding future courts to read an exemption both as a statutory regularity and routine.

Here, a fair reading and a narrow reading are one and the same. Under *Food Marketing Institute v. Argus Leader Media*, a fair reading requires that a court neither expand nor constrict an exemption.¹⁰³ Under *Maracich*, statutory exemptions are *usually* read narrowly to preserve the primary operation of the statute.¹⁰⁴ Although the statutory terms should be read according to their natural meaning,¹⁰⁵ *King v. Burwell* provides that statutory terms must be read in context with the statutory scheme.¹⁰⁶ Taken together, these principles provided by relevant case law instruct the natural

97. *Id.* at 2187 (Barrett, J., dissenting) (explaining Congress had an easy way to delegate authority for standalone waivers as it gave that authority in §§ 7545 (o)(7)(A), (o)(7)(E)(ii) and (o)(8)(D)(i), but because it did not choose that alternative in (B)(i), the most natural meaning does not encompass standalone waiver authority, implicating continuity in extension).

98. *Id.* at 2187-89 (Barrett, J., dissenting).

99. *Id.* at 2188-89 (Barrett, J., dissenting).

100. *Id.* at 2181.

101. 570 U.S. 48, 60 (2013) (citing *Comm'r v. Clark*, 489 U.S. 726, 739 (1989)).

102. *HollyFrontier*, 141 S. Ct. at 2179 (citing *United States v. Gonzales*, 520 U.S. 1, 5 (1997)).

103. 139 S. Ct. 2356, 2366 (2019).

104. 570 U.S. at 60 (citing *Comm'r v. Clark*, 489 U.S. 726, 739 (1989)).

105. *FDIC v. Meyer*, 510 U.S. 471, 476 (1994) (citing *Smith v. United States*, 508 U.S. 223, 228 (1993)).

106. 576 U.S. 473, 486 (2015).

meaning of the term within the context of the statute. Indeed, precedent provides that statutory provisions should not be read in isolation, but within the construct of the entire statute.¹⁰⁷ The natural or ordinary meaning of “at any time” cannot hinge on its isolated meaning outside of the context of the statute and its purpose. As the Tenth Circuit pointed out, the Refineries’ “at any time” interpretation would allow for unproduced fuel to go unaccounted for, ultimately defeating the purpose of the RFP.¹⁰⁸ While the Court used the establishment of extension without continuity to discern the meaning of the phrase “at any time,” a converse process would provide a better statutory construction without interpreting the natural meaning of terms in isolation.¹⁰⁹ When *fairly* read, “at any time” instructs a *narrow* construction of “extension.”

The Court also adopted a more current trend of refusing to give agency deference in the absence of a request.¹¹⁰ Future courts will be inclined to deny deference in cases like this, leaving loose guidelines. *Skidmore* deference would have been instructive in guiding the Court’s decision on how persuasive the agency was in its reasoning: the thoroughness of an agency’s consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all other factors that give it power to persuade.¹¹¹ Under a *Skidmore* deference analysis, the EPA decision remains unpersuasive, particularly because the agency had flip-flopped on its pronouncement that the extension only applied to those who were granted the initial extension.¹¹² Moreover, the EPA’s consideration was not thorough because it failed to provide adequate reasoning as to why it ignored the DOE’s findings that the Refineries would not suffer disproportionate economic hardship.¹¹³ The agency’s statutory interpretation is especially unpersuasive in light of (B)(ii)’s requirement: the agency must consult with and consider the findings of the Secretary of Energy when evaluating petitions.¹¹⁴ While this does not mean the agency *must* follow these consultations and findings, it is doubtful the agency’s consideration is thorough or its reasoning valid

107. *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 290 (2010).

108. *Renewable Fuels Ass’n v. EPA*, 948 F.3d 1206, 1248-49 (10th Cir. 2020).

109. *See id.*

110. *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass’n*, 141 S. Ct. 2172, 2180 (2021).

111. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

112. *Renewable Fuels Ass’n*, 948 F.3d at 1247 (citing Petition for Review at 8, *Dakota Prairie Ref., LLC v. EPA* (8th Cir. 2016) (No. 16-2692)).

113. *Id.* at 1252-53.

114. 42 U.S.C. § 7545(o)(9)(B)(ii).

since, as the Tenth Circuit pointed out, the EPA failed to provide reasons for deviating from previous studies showing RIN costs did not disproportionately harm refineries that were not vertically integrated.¹¹⁵

The Court claimed to have placed no weight from policy considerations on its decision, but it appears to have reinforced its decision on rebutting the Producers' policy arguments and accepting the Refineries'.¹¹⁶ According to the majority, the "funnel" compliance argument presented by the Producers is an abstract intuition.¹¹⁷ The Producers' arguments are marred by the reality of a volatile fuel market where flexible exemptions would make sense, the possibility of refineries extending their blanket exemption indefinitely, and the threat of a potential reduction of the national fuel supply under a strict RFP.¹¹⁸ But it is not clear how the legislative purpose of the RFP exemption provision is not at least primarily driven by funneling compliance. The RFP's goal of setting higher volumes of renewables each year¹¹⁹ can only logically work under two implicit assumptions: a profitable fuel industry will continue to grow, and at least some of those fuel providers will comply. Those unable to comply will either be exempt or carry the deficit over to next year, but presumably small refineries will grow to eventually bear the RIN costs the following years and those in deficit must meet the deficit the following year.¹²⁰ If the statute did not intend to funnel compliance, it would not have included a deficit carrying provision, Section (o)(5)(D)(i)(ii), and simply exempted any refinery unable to meet RFP obligations.¹²¹

The Producers' policy considerations of the RFP and how the exemption plays into that cannot be understated. While regulatory exemptions, or "unrules," may reduce regulatory cost, they may also diminish regulatory benefits.¹²² For example, the CAA's pollution exemption for existing plants has encouraged owners to focus on extending their plants' lives rather than to replace plants that would be

115. *Renewable Fuels Ass'n*, 948 F.3d at 1255.

116. *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2183 (2021) ("Neither the statute's text, structure, nor history afford us sufficient guidance to be able to choose with confidence between the parties' competing narratives and metaphors. We mention this only to observe that both sides can offer plausible accounts of legislative purpose and sound public policy.").

117. *Id.*

118. *Id.* at 2182-83.

119. 42 U.S.C. § 7545(o)(2)(B)(i).

120. *Id.* § 7545(o)(5)(D)(i)-(ii).

121. *Id.*

122. Cary Coglianese, Gabriel Scheffler & Daniel E. Walters, *Unrules*, 73 STAN. L. REV. 885, 911-13 (2021).

inherently cleaner.¹²³ Sometimes, such exemptions can adversely work against the purpose of the regulation. Consider Minerals Management Service approving exemptions from required protocols, such as blowout preventer testing, just days before the Deepwater Horizon's explosion and oil spill in 2007.¹²⁴ If the RFP exemption is not read in a funneling compliance scheme, the regulatory benefits can diminish and even work adversely against the regulation's purpose, (e.g., RFP exemptions can place farmers and producers in a precarious financial position).¹²⁵

Even under the Refineries' argument of the unrealistic possibility that certain refineries can be exempted indefinitely, these refineries would remain at the small refinery status, not exceeding 75,000 barrels a year, while growing refineries can make up adjustments for those exemptions.¹²⁶ In the case that the fuel industry experienced a national fuel shortage or disproportionately high prices where RFP requirements cannot be met, the dissent pointed out that the RFP equipped the EPA with standalone waiver authority under Section (o)(7)(A)(i) to exempt a State or region, and Section (o)(8)(A)–(D) to exempt based on significant consumer impact.¹²⁷ This would promote funneling compliance of individual refineries without risking a national fuel supply issue. The dissent's counter remained a blemish in the majority's analysis: had Congress intended to give EPA standalone authority to waive individual RFP obligations, (B)(i) would have mimicked the language used in those provisions.¹²⁸ The Court's response sat awkwardly: Congress could have intended the same safety valve effect for independent refineries, despite not using the same language.¹²⁹

123. *Id.* at 911.

124. *Id.* at 912.

125. Press Release, Cindy Axne, Congressional Representative, 3rd District of Iowa, House Biofuels Caucus Statement on Supreme Court's Renewable Fuel Standard Decision and the Future Integrity of the RFS (June 25, 2021), <https://axne.house.gov/media/press-releases/house-biofuels-caucus-statement-supreme-court-s-renewable-fuel-standard>.

126. *HollyFrontier Cheyenne Ref. LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2182 (2021).

127. *Id.* at 2188 (Barrett, J., dissenting).

128. *Id.*; see *Advoc. Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659 (2017) (“Had Congress wanted, as the employees contend, to alter only the maintenance requirement, it had an easy way to do so—differing by only two words from the language it chose, but with an altogether different meaning.”).

129. *HollyFrontier*, 141 S. Ct. at 2182.

V. CONCLUSION

In the noted case, the Supreme Court read § 7545(o)(9)(B)(i)-(ii)'s "extension" of an exemption without a continuity requirement. The decision adopted a "fair" reading standard, giving an expansive meaning to (B)(i)'s "at any time" provision and divorcing a predicate continuous blanket exemption from "extension."

The Court's decision promulgates a further divide between "fair" and "narrow" readings of statutory exceptions, further binding future courts to treat exceptions to statutes as equal to the statute's instructive rules, regardless of the effect it may have on meeting the statutory goals. Now, policy contentions regarding the liberally administered exceptions cannot effectively argue the statute's primary aim is for compliance in the long run. Moreover, the Court continued a newer trend of refusing to grant agency deference in absence of a request, allowing for a less structured rubric to analyze an agency's decision. Under a statutory authority analysis, future courts will have little basis to overturn the granting of an extension by the EPA against DOE findings and recommendations, no matter how unrelated the extension request is to the initial exemption or how much it hurts the regulatory goals and renewable fuel producers.

Steven Moctezuma*

* © 2022 Steven Moctezuma. J.D. Candidate 2023, Tulane Law School; B.A. 2017, Philosophy, University of California, Berkeley. The author would like to thank the environmental and energy law faculty at Tulane for their guidance and patience with the author's grappling with understanding the legal principles in this case note. The author would also like to thank the *Tulane Environmental Law Journal* editorial board for their support throughout the writing and editing process.