No. 20-994

In the Supreme Court of the United States

VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
PETITIONERS

v.

THE ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY, FLORIDA AND SALT LAKE COUNTY, UTAH.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

During recalls and routine maintenance on cars driven in respondents' counties, petitioners (collectively, "Volkswagen") installed software that illegally tampered with the cars' emissions-control systems. Volkswagen did not disclose these defeat devices to the Environmental Protection Agency for the obvious reason that EPA never would have approved them. After Volkswagen got caught, respondents (the "Counties") sued them for tampering. Volkswagen moved to dismiss based on preemption under the Clean Air Act (the "Act").

The Act recognizes that "air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. 7401(a)(3). It carves out limited areas of exclusive federal control—like enforcing "any standard relating to the control of emissions from new motor vehicles," 42 U.S.C. 7543(a)—but otherwise provides that "nothing in this chapter shall preclude or deny the right of any State or political subdivision" to enforce "any standard" or "requirement." 42 U.S.C. 7416; see also 42 U.S.C. 7543(d) (preserving local authority over "the use, operation, or movement of" cars).

The Ninth Circuit rejected Volkswagen's preemption defense. It expressly grounded its conclusion on Volkswagen's "unusual" and "aberrant" misconduct, namely, "intentionally tamper[ing] * * * to deceive the regulators." Pet. App. 3a-4a.

The question presented is:

Whether the Clean Air Act preempts states and local governments from penalizing car manufacturers for tampering with emissions systems on post-sale, in-use vehicles, where EPA did not approve the manufacturers' actions.

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