United States Senate
WASHINGTON, DC 20510

March 19, 2020

President Donald Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

It is our understanding that the U.S. Environmental Protection Agency (EPA) is considering an appeal of the recent unanimous decision by the U.S. Court of Appeals – *Renewable Fuels Association et al. v. EPA, 10th Circuit*[1]– concerning small refinery exemptions (SREs). We write to reiterate our support for the Renewable Fuel Standard (RFS) and express our deep concern with the EPA's consideration of an appeal that would undercut your commitments made to American farmers. We also request that you direct EPA to cease administering SREs if an appeal is made until the rehearing is completed.

The RFS has been a critical economic driver for rural America and the agricultural industry in each of our states. Farm country has taken successive blows from low commodity prices, trade disruptions, inclement weather, and continued uncertainty over the RFS. Now, with the global economy bracing for the full consequences of the coronavirus, upholding this court decision is a small step that will have resounding benefit for farmers and ethanol stakeholders who are on the ropes.

We applaud the Tenth Circuit ruling that found EPA had abused its discretion in granting SREs to three small refineries in 2016 and 2017. The court ruled that the RFS statute only allows the agency to grant extensions for continuously extended exemptions that have been in effect since 2011. In the case of all three of these refineries, there were no continuous exemptions to "extend," and therefore, EPA had no authority in granting an exemption.

The Court also found that the EPA failed to explain how the agency could determine that a small refinery might suffer a disproportionate economic hardship by complying with the RFS when the EPA has, at the same time, maintained that cost for RFS compliance credits—Renewable Identification Numbers (RINs)—are passed through and recovered by those same refineries. Simply put, the burdens of RINs decried by small refineries do not exist. Accordingly, the Court ruled that EPA exceeded its authority in granting SREs based on economic hardship unrelated to RFS compliance.

Since 2016, the EPA has haphazardly handed out 85 SREs, far exceeding its authority in the process. At the same time 20 ethanol operations have idled or shut down, removing an economic anchor from their communities. As EPA continues to mull an appeal, it may come under pressure from small refineries to act on the 23 pending retroactive small refinery exemption requests for

[1] Renewable Fuels Assn. v. EPA, No. 18-9533 (10th Cir. 2020)

2019. We believe the court ruling prevents EPA from approving any of those 2019 exemption requests while any appeals are pending. EPA should immediately deny any of the petitions that do not meet the criteria laid out in the court decision. Nationwide application of the Tenth Circuit's opinion by EPA would, in this instance, provide a level playing field and help restore stability and certainty to the RIN markets. Appealing the decision would stall, if not set back, recent progress made on the RFS.

The undersigned members of the U.S. Senate support the unanimous ruling of the court and believe its findings should not be appealed and instead, applied nationwide in all future issuance of SREs. We implore you to stand with farmers and biofuel producers across rural America in upholding the law and restoring integrity to the Renewable Fuel Standard.

Sincerely,

Deb Fischer
United States Senator

Tammy Duckworth
United States Senator

Roy Blunt
United States Senator

Debbie Stabenow
United States Senator

Chuck Grassley
United States Senator

Tammy Baldwin
United States Senator

M. Michael Rounds
United States Senator

Amy Klobuchar
United States Senator

John Thune
United States Senator

Richard J. Durbin
United States Senator

Joni K. Ernst
United States Senator

Sherrod Brown
United States Senator

Josh Hawley
United States Senator

Tina Smith
United States Senator

Ben Sasse
United States Senator

Gary Peters
United States Senator

*The Senators listed above support the contents of this letter. Due to COVID-19, physical signatures for this letter were not collected.