

ORAL ARGUMENT SCHEDULED FOR APRIL 17, 2017

No. 15-1381 (and consolidated cases)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NORTH DAKOTA, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

**STATE OF NORTH DAKOTA'S REPLY IN SUPPORT OF
MOTION TO EXTEND THE BRIEFING SCHEDULE**

Petitioner State of North Dakota respectfully submits this reply in support of its motion to extend the time to file its Reply Brief from January 18, 2017 to February 24, 2017. North Dakota agrees with the other Petitioners and Petitioner-Interveners (collectively, "Other Petitioners") that there is no merit to the objections of Respondent EPA and Respondent Interveners (collectively, "Respondents"), and North Dakota joins the arguments in the Other Petitioners' reply brief.

North Dakota adds that there appears to be no legitimate reason for Respondents' opposition other than a desire to require North Dakota and the Other Petitioners to devote time and resources to preparing reply briefs that may become unnecessary. Whether or not those reply briefs are filed on the current due date of

January 19 will not affect what the new Administration decides to do after January 20 with respect to the Rule being challenged in this case. The new Administration is going to do what it is going to do. And if the new Administration does decide to revisit the Rule -- as North Dakota and the Other Petitioners believe is likely, based on public announcements before and after the election -- then reply briefs filed on January 19 may become entirely moot, and certainly will have been prematurely filed.

There is simply no legitimate reason to require the reply briefs to be filed before the new Administration has an opportunity to announce its intentions with respect to the Rule under challenge. The Final Rule is currently in force, so Respondents are not prejudiced by having reply briefs in this litigation delayed until the new Administration makes its intentions known. Conversely, North Dakota and the Other Petitioners face the significant possibility of wasting substantial time and resources preparing reply briefs that will be overtaken by actions of the new Administration.

North Dakota's motion to extent the time to files its Reply brief from January 18, 2017 to February 24, 2017 should be granted.

Dated: December 27, 2016

Respectfully submitted,

State of North Dakota
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/s/ Paul M. Seby

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure and Circuit Rules 32(a)(1) and 32(a)(2)(C), I hereby certify that the foregoing Motion to Extend the Briefing Schedule contains 324 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit set by the Court.

Dated: December 27, 2016

/s/ Paul M. Seby

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December 2016, a copy of the foregoing State of North Dakota's Motion to Extend the Briefing Schedule was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Paul M. Seby