

ORAL ARGUMENT HEARD ON SEPTEMBER 27, 2016

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

_____)	
STATE OF WEST VIRGINIA, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 15-1363
)	(and consolidated cases)
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
_____)	

RESPONDENT-INTERVENOR PUBLIC HEALTH AND ENVIRONMENTAL ORGANIZATIONS’ RESPONSE TO EPA’S SUPPLEMENTAL STATUS REPORT

Public Health and Environmental Respondent-Intervenors submit this response to the supplemental filing of the Environmental Protection Agency, which reports that the agency “has transmitted a draft proposed rule to the Office of Management and Budget’s Office of Information and Regulatory Affairs” and that the proposed rule is undergoing interagency review. EPA Suppl. Status Report, ECF No. 1679311, at 3-4 (June 12, 2017).

EPA’s supplemental report does not support EPA’s request that the case be placed in indefinite abeyance. First, EPA provides no timetable for when the interagency review process will be complete or when the agency will issue a

proposed rule. Second, a proposed rule is merely the first step of a public rulemaking process that – particularly with rules as significant as this one – may stretch on for years. As we have previously explained, because the Clean Power Plan has been stayed pending resolution of the litigation, such a prolonged abeyance is improper. *See* Pub. Health and Env'tl. Orgs.' Opp. to Mot. to Hold Cases in Abeyance, ECF No. 1669759, at 5-10 (Apr. 5, 2017); Pub. Health and Env'tl. Orgs.' Suppl. Br., ECF No. 1675202, at 6-10 (May 15, 2017). Third, because the legal issues presented here will recur in litigation over a subsequent rule and because the rule now before the Court will remain in place if a repeal rule is found unlawful, a decision by this Court not to decide the fully aired legal issues presented could further delay, by years more, critical and already long-delayed protections for public health and welfare. *Id.* at 13-14.

The Court has before it a duly promulgated and presumptively valid regulation, which has been stayed solely for purposes of judicial review. Petitioners continue to maintain their challenges to it. Those challenges have been subjected to uncommonly thorough briefing and argument and months of judicial deliberation. Nothing in EPA's supplemental report diminishes the Court's obligation to decide this ripe and fully presented case. If it chooses not to do so,

the Court should remand the case to EPA. *See* Pub. Health and Env'tl. Orgs.'

Suppl. Br., at 8-10.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Response was printed in a proportionally spaced font of 14 points and that, according to the word-count program in Microsoft Word 2016, it contains 346 words.

CERTIFICATE OF SERVICE

I certify that on June 16, 2017, the foregoing Response was filed via the Court's CM/ECF system, which will provide electronic copies to all registered counsel.

/s/ Sean H. Donahue