

ORAL ARGUMENT NOT YET SCHEDULED

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

State of North Dakota, et al.,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 15-1381 and
)	consolidated cases
U.S. Environmental Protection Agency, et al.,)	
)	
<i>Respondents.</i>)	

**JOINT PROPOSAL OF 24 STATE PETITIONERS
TO ESTABLISH A BRIEFING SCHEDULE AND FORMAT**

This Court directed the parties to submit a briefing proposal in these consolidated cases by February 22, 2016, ECF No. 1594939, but the parties have been unable to agree. This proposal is being filed by 24 of the 25 sovereign States that are Petitioners in these cases and that jointly filed a petition for review, *see* Case No. 15-1399 (“State Coalition” or “Coalition”). The 24 States in the State Coalition have carefully conferred and agree that they can jointly present their arguments in a manner acceptable to all of the Coalition, and now ask for a single opening brief of 12,000 words, due on July 15, 2016, and a reply brief of 6,000 words due at a reasonable time afterwards. The State Coalition takes no position on the brief(s) and word count this Court may grant to any other parties in these cases.

BACKGROUND

The consolidated cases challenge a final rule promulgated by the United States Environmental Protection Agency (“EPA”) under Section 111(b) of the Clean Air Act (“CAA”), “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units,” 80 Fed. Reg. 64,510 (Oct. 23, 2015) (“Rule”). The Rule establishes new source performance standards for carbon dioxide emissions from new, modified, and reconstructed coal-fired and gas-fired electric generating units. The Rule was finalized and published on the same day as EPA’s carbon dioxide emission standards for existing electric generating units, 80 Fed. Reg. 64,662 (Oct. 23, 2015)—the subject of another significant litigation in this Court involving substantially the same petitioners

(and their counsel) as in these consolidated cases. *See West Virginia et al. v. EPA*, No. 15-1363 (and consolidated cases) (the “Section 111(d) case”). That decision by EPA to publish both massive rules on the same day required challenges to both rules to be filed on the same schedule and is the reason why the litigation in both cases is proceeding at the same time.

DISCUSSION

1. Schedule. The State Coalition requests a briefing schedule that requires opening briefs on or after July 15, 2016, and a reasonable schedule for subsequent briefing. This start date is reasonable and necessary, for several reasons.

First, the State Coalition takes this Court’s concern with duplicative argument seriously. As such, the State Coalition requests enough time for each of its 24 members to coordinate with each other to ensure a streamlined brief. Those efforts require coordination within each individual State, as well, where input and feedback may be required from multiple state agencies or officials. Sufficient time is also needed for the Coalition to coordinate with any other petitioners who file their own briefs.

Second, each of the States on this proposal is also simultaneously litigating another challenge to a major EPA rulemaking before this Court on an expedited schedule, the Section 111(d) case, No. 15-1363 (and consolidated cases). Oral argument in the Section 111(d) case has been set by this Court for June 2, 2016, and

may extend for a second day due to the depth and scope of the issues presented. Order, No. 15-1363, ECF 1594951 (Jan. 21, 2016).

The 24 States, which have a strong interest in both these consolidated cases and in the Section 111(d) case, face unique challenges in simultaneously briefing and preparing for oral argument in both. These challenges include preparing for both cases with limited staff and resources, as well as the internal review and approval processes within state government. Those challenges are exacerbated by the size of the coalition, requiring each single brief to be vetted and approved by 24 sovereign States. Simultaneous briefing in both cases and preparation for oral argument in the Section 111(d) case would make it very difficult for the State Coalition to meet deadlines in both cases.¹

2. Words. The State Coalition requests one opening brief not to exceed 12,000 words and one brief in reply not to exceed 6,000 words. With a clear understanding that this Court “looks with extreme disfavor on the filing of duplicative briefs in consolidated cases” and has directed the parties “[t]o avoid repetitious arguments,” D.C. Circuit Handbook of Practice and Internal Procedures at 37, this request will

¹ Opening briefs in the Section 111(d) case were due this past Friday, February 19, 2016. EPA’s response brief is due March 28, replies are due just over two weeks later on April 15, and final briefs are due on April 22. As noted, oral argument, which may span two days, is scheduled to begin June 2, 2016.

ensure that the interests of all 24 States in the coalition are fully represented without needless duplication.

The word limits sought by the State Coalition are entirely consistent with the limits set forth in D.C. Circuit Rule 32. *See* D.C. Cir. Rule 32(a)(7), (e)(2)(C). Rule 32 provides for 14,000 words and a single brief to fully address the arguments of one Petitioner, and one-half of that amount for reply. D.C. Cir. Rule 32. The State Coalition represents 24 State petitioners. Therefore, the State Coalition's request for one opening and reply brief of 12,000 and 6,000 words respectively is more efficient than what D.C. Circuit Rule 32 generally provides. Balancing the number of State petitioners within the State Coalition and the numerous issues that the State Coalition members share, the word limits are a reasonable application of D.C. Circuit Rule 32 and will best allow the Coalition to thoroughly but efficiently present the issues to the Court.

The State Coalition takes no position on the brief(s) and word count for any other parties in this case. The Coalition simply requests that, having reached agreement among 24 sovereign States, it be provided the opportunity to submit briefing on behalf of those 24 States.

CONCLUSION

For the foregoing reasons, this Court should adopt the State Coalition's proposal.

Dated: February 22, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 22nd day of February, 2016, a copy of the foregoing was served electronically through the Court's CM/ECF system on all registered counsel.

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