Nos. 23A349, 23A350, 23A351, 23A384

In the Supreme Court of the United States

OHIO, ET AL., Applicants

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL., Respondents

KINDER MORGAN, INC., ET AL., Applicants

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL., Respondents

AMERICAN FOREST & PAPER ASSOCIATION, ET AL., Applicants

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL., Respondents

UNITED STATES STEEL CORPORATION, Applicant

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL., Respondents

ON APPLICATION FOR STAY OF ADMINISTRATIVE ACTION TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT MOTION FOR DIVIDED ARGUMENT

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Pursuant to Rules 21 and 28.4, the applicants in case 23A349 ("the State Applicants") and the applicants in cases 23A350, 23A351, and 23A384 ("the Industry Applicants") jointly move for divided argument. The applicants request to evenly divide their 30 minutes of argument time, with each applicant group receiving 15 minutes. Although the Industry Applicants filed three separate applications and are represented by numerous counsel, they have agreed to a single counsel to represent all Industry Applicants at oral argument before this Court. The State Applicants, who filed a single application, will also be represented by single counsel at oral argument before this Court.

1. The two groups of applicants have been represented by different counsel throughout this litigation. They each filed separately in the courts of appeals and they each separately sought relief from this Court.

2. Although generally aligned, the State Applicants and the Industry Applicants have distinct interests in this case. Both groups seek a stay to prevent irreparable injury from spending immense and un-recoupable amounts of money, time, and other resources complying with an unlawful federal mandate. The States, in addition, seek a stay to protect their industries, their citizens, and their own operations from potential electricity shortages because the challenged regulation threatens to undermine the States' electricity-generation capacity. And, because the challenged rule upended the system of cooperative-federalism that Congress enshrined in the Clean Air Act, the State Applicants seek a stay to prevent any further injury to the States' sovereign authority to regulate air quality within their borders.

The Industry Applicants include businesses in industries critical to the nation's power generation, manufacturing, and defense. They are collectively responsible for more than a trillion dollars annually of economic activity in the country and separately seek a stay to prevent irreparable injury to their businesses.

3. The State Applicants and Industry Applicants also advance different arguments germane to their specific interests in obtaining a stay. The State Applicants argued in their stay application that the rule in its current form places States subject to it at a competitive disadvantage. State Appl.20–21. For this and other reasons, including that the EPA imposed top-down control over the nation's air quality, the States argued that the challenged regulation injures their sovereign authority for every day it remains in effect. State Appl.26.

The Industry Applicants did not raise these arguments in their stay application. They, however, argue in their stay applications that their industries were unlawfully selected for regulation for the first time in decades or being regulated in a manner that unjustifiably departs from EPA's prior regulations. *See* Kinder Morgan Appl.13–23; AFPA Appl.20–24; U.S. Steel Corp. Appl.20–23. The State Applicants did not raise those arguments in their stay application filed with this Court.

4. In sum, the two groups of applicants have been consistently represented by different attorneys, have distinct interests, and have made different arguments, such that neither group can represent fully the interests of the other.

5. This Court often allows private and government entities to divide argument. *See, e.g.*, *Nat'l Fed'n of Indep. Bus. v. DOL, OSHA*, 142 S. Ct. 661 (2021); *United States*

v. Texas, 142 S. Ct. 416 (2021); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Dep't of Homeland Security v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719 (2018). Allowing the State and Industry Applicants to argue in this case would enable the Court to hear from two groups with distinct insights on a matter of exceptional importance to States, business, public welfare, and our federalist structure.

6. For all the reasons discussed above, the State and Industry Applicants believe that allowing both groups of applicants to participate in oral argument would materially aid in the resolution of this case. Therefore, they jointly move to divide evenly their 30 minutes of argument time.

Respectfully submitted,

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