

IN THE
Supreme Court of the United States

STATE OF WEST VIRGINIA, ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

THE NORTH AMERICAN COAL CORPORATION,
Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

WESTMORELAND MINING HOLDINGS, LLC,
Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

STATE OF NORTH DAKOTA,
Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**MOTION FOR DIVIDED ARGUMENT
AND TO EXPAND ARGUMENT TIME**

Pursuant to Supreme Court Rules 21, 28.3 and 28.4, Petitioners in three of the four consolidated cases—the States of West Virginia, Alabama, Alaska, Arkansas, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming; Mississippi Governor Tate Reeves (Petitioners in No. 20-1530; together, “the 19-State Coalition”); The North American Coal Corporation (Petitioner in No. 20-1531, “NACCO”); and Westmoreland Mining Holdings, LLC (Petitioner in No. 20-1778, “Westmoreland”)—respectfully move to expand and divide oral argument time. Petitioners request that the Court expand oral argument to 40 minutes for each side and then divide that time as follows: 15 minutes to the 19-State Coalition, 15 minutes to the private petitioners, and 10 minutes to the State of North Dakota (Petitioner in the remaining consolidated case, No. 20-1780). Alternatively, Petitioners ask that the Court divide 30 minutes oral argument time evenly between the private petitioners and the 19-State Coalition.

Respondents do not oppose this motion, provided that Respondents are allowed the same number of arguing counsel as Petitioners. Respondents in support America’s Power and Basin Electric Power Cooperative support the motion. Respondent in support National Mining Association supports the motion, so long as it is clear that there will be an advocate speaking on behalf of respondents in support of petitioners. Petitioner North Dakota supports the request for expanded argument time and three-way division of argument, but opposes the alternative relief.

1. Different counsel have represented the four sets of petitioners throughout this litigation. They filed separately in the court below, and they filed separate petitions for writs of certiorari before this Court.

2. Although they are generally aligned, the 19-State Coalition, North Dakota, and the two private petitioners have distinct interests. Among other things, these groups have suffered separate harms from Respondents' actions. For the private petitioners, the decision below (among other things) threatens their very existence, authorizing rules that may force them to undertake a fundamental restructuring of their operations under a new regulatory regime. For the States, the decision below (among other things) offends their sovereign interests, undermining notions of federalism and upsetting the States' central role in implementing the Clean Air Act. It also has significant consequences for their residents' energy costs and reliability, and for the development of industry across multiple sectors in their borders.

3. These different harms have led the parties to emphasize different aspects of the case. Although the decision below should be reversed for multiple reasons, each group has highlighted different reasons for doing so. The private petitioners, for instance, have emphasized how the decision below is inconsistent with this Court's major-questions doctrine and with the text, structure, and history of the Clean Air Act. While the 19-State Coalition has argued that point, too, they have further explained why the lower court's decision challenges our federalist system, contravenes the non-delegation doctrine, and disregards the plain statutory text. Meanwhile, North Dakota has focused on certain text and federalism-related considerations.

4. Dividing argument time will assist the Court by ensuring that each set of petitioners can adequately present its different interests and perspectives. The Court often grants divided argument time in circumstances like these, particularly when governments and private parties support the same side of a case. See, e.g., *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 1263 (2021) (mem.); *United States v. Texas*, 142 S. Ct. 416 (2021) (mem.); *Trump v. New York*, 141 S. Ct. 870 (2020) (mem.); *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (mem.); *Dep't of Homeland Security v. Regents of the Univ. of Cal.*, 140 S. Ct. 398 (2019) (mem.); *Dep't of Commerce v. New York*, 139 S. Ct. 1543 (2019) (mem.); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 466 (2017) (mem.). And the Court has allowed multiple sovereigns to argue on the same side of a case before. See *Biden v. Missouri*, No. 21A240, 2021 WL 6138620 (S. Ct. Dec. 30, 2021) (mem.) (permitting both Missouri and Louisiana to argue as respondents).

5. Indeed, in the strikingly similar case of *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S. Ct. 1050 (2014) (mem.), this Court ordered a similar split, allowing state and private parties to argue separately. And a division seems all the more important here given the sheer breadth of the issues involved; oral arguments in the court below took over eight hours. At the same time, counsel for the 19-State Coalition and the private petitioners are prepared to coordinate to ensure that argument is not repetitive and most useful to the Court.

6. If the Court is not inclined to entertain arguments from three counsel or to expand argument to 40 minutes, then movants here request that the Court divide argument equally between one counsel for the private petitioners and one counsel for the 19-State Coalition.

Counsel for the 19-State Coalition are best positioned to argue state-related interests, as the Coalition raises several arguments that the State of North Dakota does not, including the clear-statement canons and principles of constitutional avoidance related to the non-delegation doctrine.

6. For all these reasons, allowing the 19-State Coalition, the private petitioners, and the State of North Dakota to participate in oral argument would materially aid the Court in resolving this case. Therefore, movants ask that argument time be expanded to 40 minutes for each side, with petitioner-side argument time allocated 15 minutes to the 19-State Coalition, 15 minutes to the private petitioners, and 10 minutes to the State of North Dakota. Alternatively, movants ask that the petitioner-side argument time be divided equally between one attorney for the private petitioners and one attorney for the 19-State Coalition, or such other relief as the Court may direct.

Respectfully submitted.

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