

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-1530

STATE OF WEST VIRGINIA, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 20-1531

THE NORTH AMERICAN COAL CORPORATION, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 20-1778

WESTMORELAND MINING HOLDINGS LLC, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

No. 20-1780

STATE OF NORTH DAKOTA, PETITIONER

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

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

MOTION FOR ENLARGEMENT OF THE TIME FOR ORAL ARGUMENT
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.3 and 28.4 of this Court, the Solicitor General, on behalf of the federal respondents, respectfully seeks leave to enlarge the time for oral argument for respondents and to divide the oral argument for respondents in these cases. We understand that petitioners will be asking this Court to enlarge petitioners' time for oral argument to 40 minutes and to divide that time three ways. Should the Court grant petitioners' request, we likewise move that respondents' time for oral argument be enlarged to 40 minutes and that the time for respondents be divided as follows: 20 minutes for the federal respondents, 10 minutes for the state and municipal respondents,¹ and 10 minutes for the power company respondents.² If, however, the Court does not consider it appropriate to divide each side's time three ways and instead wishes to divide each side's time two ways, we move, in the alternative, that the time for oral argument be enlarged to 35 minutes per side (70 minutes total) and that respondents' time be divided as follows: 20 minutes for the federal respondents and 15 minutes for either the state and municipal respondents or the power company respondents. We do not oppose an enlargement of argument time or a division of argument time between petitioners so long as respondents are granted the same enlargement and

¹ The state and municipal respondents are the respondents that filed the Brief for States and Municipalities in Opposition.

² The power company respondents are the respondents that filed the Brief in Opposition for Power Company Respondents.

division. Counsel for the state and municipal respondents, counsel for the power company respondents, and counsel for the non-governmental organization and trade association respondents have authorized us to state that they join in this motion.³ Petitioners do not oppose this motion.

In 2019, the Environmental Protection Agency (EPA) finalized two rulemakings: (1) the Clean Power Plan (CPP) Repeal Rule, which repealed a 2015 rule regulating power plants' emissions of greenhouse gases, and (2) the Affordable Clean Energy (ACE) Rule, a new set of emission guidelines for existing coal-fired steam plants. J.A. 1725. Numerous States and private parties petitioned for review in the court of appeals. J.A. 95-96. As relevant here, the state and municipal respondents and the power company respondents challenged the CPP Repeal and ACE Rules. Petitioners North American Coal Corp. and Westmoreland Mining Holdings LLC challenged the ACE Rule. And state petitioners in No. 20-1530 and North Dakota intervened in support of the CPP Repeal and ACE Rules.

The court of appeals vacated both the CPP Repeal Rule and the ACE Rule and remanded to the agency for further proceedings. J.A. 53-255. The court held that EPA had relied on an erroneous view of 42 U.S.C. 7411 in promulgating the Rules. J.A. 214. Specifically, the court concluded that EPA had erred in construing

³ The non-governmental organization and trade association respondents are the respondents that filed the Brief in Opposition of Non-Governmental Organization and Trade Association Respondents.

Section 7411 as unambiguously limiting the measures that the agency may consider in determining the "best system of emission reduction" for existing sources, 42 U.S.C. 7411(a)(1), to measures that can be applied to and at the level of an individual regulated source. J.A. 131. At EPA's request, the court stayed the vacatur of the CPP Repeal Rule pending a new EPA rulemaking. J.A. 270-271. This Court granted certiorari.

After the change in Administration and those intervening developments, EPA has reconsidered its position and has concluded that the text of Section 7411 does not unambiguously compel the interpretation adopted in the CPP Repeal and ACE Rules. The federal respondents are filing a brief arguing that petitioners lack standing to invoke this Court's appellate jurisdiction and that the court of appeals was correct on the merits.

Dividing the argument time for respondents would be of material assistance to this Court. The federal respondents have a significant interest in these cases because the cases involve EPA rulemakings and the interpretation of a statute that the agency administers. The state and municipal respondents have a significant interest in these cases because the statutory provisions at issue vest States with the responsibility to determine how to comply with emission limitations in EPA's rules. And the power company respondents have a significant interest in these cases because their power plants are subject to regulation under the statutory provisions at issue. We accordingly request that the Court grant

this motion for enlargement of the time for oral argument and for divided argument.

Respectfully submitted.

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Solicitor General
Counsel of Record

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