

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN LUNG ASSOCIATION,
et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

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No. 19-1140
and consolidated cases

OPPOSITION TO EPA’S MOTION TO EXPEDITE

The undersigned petitioners in the consolidated case of Robinson Enterprises, Inc., et al. v. United States Environmental Protection Agency, et al. (Case No. 19-1175) (the “Petitioners”),¹ respectfully submit their opposition to Respondent United States Environmental Protection Agency’s (“EPA’s”) motion to expedite this appeal (the “Motion”) (Doc. 1803976). Petitioners adopt the reasons in opposition articulated by other petitioners in the consolidated cases (Docs. 1805699, 1805732, 1805952), and additionally submit the following.

1 Petitioners consist of Robinson Enterprises, Inc.; Nuckles Oil Company, Inc., dba Merit Oil Company; Construction Industry Air Quality Coalition; Liberty Packing Company LLC; Dalton Trucking, Inc.; Norman R. “Skip” Brown; Joanne Brown; the Competitive Enterprise Institute; and the Texas Public Policy Foundation.

EPA filed the Motion on August 28, 2019, before the deadline for affected parties to file a petition for review, before many of the timely challengers to the agency action at issue were even identified. Petitioners timely filed their petition for review on September 5, 2019 (Doc. 1805328). Because of its prematurity, the Motion was made without any consultation with Petitioners as to a briefing schedule and has failed to show why this should be one of those cases meriting the “very rarely” granted motions for expedited consideration. Handbook of Practice and Internal Procedures for the U.S. Court of Appeals, District of Columbia at 33 (as amended through December 2018) (the “Handbook”).

EPA has not conferred with Petitioners on how to brief the issues relating to the final rule; nothing as to appropriate page limits or the alignment of parties to combine briefing. Indeed, because motions to intervene are due October 7, 2019, thirty days from the last-filed petition, Fed. R. App. P. 15(d), the universe of parties has yet to be determined. See Handbook at 24 (“The amount of time for briefing a case may vary depending on [a number of factors, including] whether there are intervenors or amici curiae.”).

This litigation involves consolidated challenges to an EPA rule consisting of (1) repeal of the Clean Power Plan, (2) new emission standards replacing those of the Clean Power Plan, and (3) revisions to EPA’s regulations governing state implementation plans. 84 Fed. Reg. 32,520 (July 8, 2019). While some parties who

have filed petitions for review oppose the challenged rule's repeal of the Clean Power Plan, and others support the challenged rule in its entirety (repeal of the Clean Power Plan and imposition of new emissions standards), Petitioners support the repeal of the Clean Power Plan but oppose the new emissions standards as suffering from the same legal flaws that plagued the Clean Power Plan. Determining the alignment of briefing for the extant parties, not to mention any future intervenors, will be a complex affair that requires consultation. That has yet to be done here.

For the foregoing reasons, the Court should deny EPA's Motion.

DATED: September 19, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 27(d)(2)(A), I hereby certify that the foregoing complies with the type-volume limitation because it contains 468 words, according to the count of Microsoft Word.

/s/Ryan D. Walters

RYAN D. WALTERS

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to EPA's Motion to Expedite was electronically filed September 19, 2019 with the Clerk of Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter, who are registered with the CM/ECF system.

/s/Ryan D. Walters

RYAN D. WALTERS