

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF NEW YORK, et al.,

Petitioners,

v.

No. 21-1026 &
consolidated cases

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Respondents.

UNOPPOSED MOTION FOR ABEYANCE

The U.S. Environmental Protection Agency et al. (EPA), hereby requests that the Court place this case in abeyance pending EPA's implementation of the President's Executive Order on "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," published at 86 Fed. Reg. 7,037 (Jan. 25, 2021) (Health and Environment EO). That Executive Order directs EPA to review the Clean Air Act regulation at issue in this case (the "Rule"). Accordingly, EPA respectfully requests that this Court hold these cases in abeyance for 90 days while the Agency conducts its review. Counsel for EPA has

conferred with the other parties, and is informed that all parties consent to this motion.

In further support of its motion, EPA states as follows:

1. The Petitioners seek review of an EPA final action entitled, “Increasing Consistency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,” 85 Fed. Reg. 84,130 (December 23, 2020).

2. As the Court is aware, a new Administration took office on January 20, 2021. That same day, the President signed the Health and Environment EO. The order establishes a policy

to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

86 Fed. Reg. 7,037. To that end, the order directs federal agencies to “immediately review” and, as appropriate, address actions from the last four years that conflict with that policy. *Id.*

3. In a list of agency actions accompanying the Executive Order, the President specifically identified the Rule as falling within

the scope of the Executive Order, requiring that it be reviewed “in accordance with the Executive Order: ‘Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.’” Ex. 1, “Fact Sheet: List of Agency Actions for Review,” at “U.S. Environmental Protection Agency.”

4. In conformance with the Health and Environment EO, EPA needs time to brief its incoming administration officials on the Rule and decide whether any further action is necessary in light of the Executive Order.

5. Abeyance is warranted here because courts have long recognized that agencies have inherent authority to review their past decisions. *See, e.g., Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (explaining that an agency’s “reevaluation of which policy would be better in light of the facts” is “well within” its discretion and that a change in administration is a “perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations.” (cleaned up)).

6. Abeyance would also preserve resources both for the parties and the Court. It is possible that after its review, EPA could take

further action that may obviate the need for judicial resolution of some or all the disputed issues.

7. No party would be prejudiced by an abeyance. Merits briefing has not been scheduled and Petitioners support an abeyance.

8. If, as the new administration continues to assess the Rule, the Agency decides to revise or reconsider the Rule, EPA will notify the Court immediately.

For the foregoing reasons, EPA respectfully requests that the Court hold this matter in abeyance for 90 days, including all pending deadlines. Thirty days after the abeyance concludes, EPA proposes that the parties file motions to govern and shall advise the Court as to whether the abeyance should continue.

Dated: February 22, 2021

Respectfully submitted,

/s/ Meghan E. Greenfield

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Meghan E. Greenfield
MEGHAN E. GREENFIELD

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d) because this document contains 630 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook font.

Dated: February 22, 2021

/s/ Meghan E. Greenfield
MEGHAN E. GREENFIELD