ORAL ARGUMENT HELD SEPTEMBER 15, 2008

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

AMERICAN FARM BUREAU FEDERATION, et al.	)	
Petitioners,	)	
v.	)	No. 06-1410 (and consolidated cases)
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

PETITION BY AMERICAN LUNG ASSOCIATION, ENVIRONMENTAL DEFENSE FUND, AND NATIONAL PARKS CONSERVATION ASSOCIATION FOR WRIT TO ENFORCE THE COURT'S MANDATE

Petitioners American Lung Association, Environmental Defense Fund, and National Parks Conservation Association ("Petitioners"), pursuant to Rule 21(c) of the Federal Rules of Appellate Procedure and Circuit Rule 21, ask the Court to issue a writ ordering the U.S. Environmental Protection Agency ("EPA") to propose national ambient air quality standards ("NAAQS") for fine particulate matter ("$PM_{2.5}$") within 45 days of the date of the Court's order but no later than February 15, 2012, and to complete the rulemaking within 7 months of signing the proposal, but by no later than September 15, 2012. The current $PM_{2.5}$ standards were remanded by this Court in *Am. Farm Bureau Fed'n v. EPA*, 559 F.3d 512,

528 and 531 (D.C. Cir. 2009). It has been nearly three years since the Court's decision and EPA has yet to even propose action to address the deficiencies identified by this Court. By EPA's own analyses, each year of delay results in thousands of avoidable deaths and even greater numbers of people suffering from respiratory and heart-related illnesses. Petitioners bring this mandamus action to cure EPA's unreasonable delay in correcting its 2006 standards.

BACKGROUND

A. The Clean Air Act's Requirements for National Ambient Air Quality Standards.

At issue in this matter are the national ambient air quality standards for $PM_{2.5}$. These standards are at the center of Congress' strategy in the Clean Air Act to address air pollution. They define whether an area has "clean" or "dirty" air, and, as a result, the pollution controls that must be adopted in an area. *See, e.g.*, 42 U.S.C. §§ 7410, 7502, and 7511-7514a.

Section 108 of the Act directs EPA to publish a list of air pollutants, the emissions of which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7408(a)(1)(A). For each listed pollutant, EPA must prepare "air quality criteria" that collect and present information "reflect[ing] the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may

be expected from the presence of such pollutant in the ambient air . . . ." *Id.* § 7408(a)(2).

For each of these pollutants, EPA is to promulgate national primary and secondary ambient air quality standards. 42 U.S.C. § 7409(a). The primary standards are those that, "the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health." *Id.* § 7409(b)(1). The secondary standards are those "requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air." *Id.* § 7409(b)(2). The Act provides that adverse effects on welfare include visibility degradation. *Id.* § 7602(h).

The Act requires EPA to review the criteria documents and standards every five years and "make such revisions in such criteria and standards and promulgate such new standards as may be appropriate . . . ." 42 U.S.C. § 7409(d)(1). To assist in that review, section 109(d)(2) of the Act requires EPA to appoint an independent scientific review committee – the Clean Air Scientific Advisory Committee ("CASAC") – to review the criteria documents and standards, and recommend to the Administrator any new standards and any revisions of existing standards and criteria as may be appropriate. *Id.* § 7409(d)(2).

B. Fine Particulate Matter Pollution.

The basis for this petition is the Court's ruling on EPA's 2006 review and revision of the national ambient air quality standards for particulate matter. Particulate matter pollution refers generally to a broad class of diverse types of particles that can be suspended in the air. *See* 71 Fed. Reg. 61144, 61146 (Oct. 17, 2006). EPA has divided this pollution into two categories based on the size of the particles – coarse and fine. *Id.*

Fine particles ("$PM_{2.5}$") are those particles 2.5 microns in diameter and smaller. *Id.* Because of its size, $PM_{2.5}$ can penetrate deep into the respiratory system and increase the potential for absorption of the toxic components of the particles. 61 Fed. Reg. 65638, 65648 (Dec. 13, 1996); *see also* 71 Fed. Reg. 2620, 2627 (Jan 17, 2006) (describing cardiovascular concerns related to the ability of smaller particles and their soluble constituents to move directly from the lungs into systemic circulation). Elevated $PM_{2.5}$ exposures have been linked to both lung- and heart-related diseases and deaths. *See*, *e.g.*, 71 Fed. Reg. at 61152. EPA has also found that "currently available evidence is suggestive of a causal relationship between long-term $PM_{2.5}$ exposures and other health effects including developmental and reproductive effects (e.g., low birth weight) and carcinogenic, mutagenic, and genotoxic effects (e.g., lung cancer)." EPA, Office of Air Quality Planning and Standards, "Policy Assessment for the Review of the Particulate

Matter National Ambient Air quality Standards," at 2-18 (April 2011) (emphasis omitted) (available at: www.epa.gov/ttnnaaqs/standards/pm/data/20110419 pmpafinal.pdf). In all, EPA estimates that $PM_{2.5}$ pollution causes thousands of premature deaths and tens of thousands of hospital visits every year. *See, e.g., id.* at 2-43.

EPA has also identified a number of adverse welfare impacts associated with elevated $PM_{2.5}$ levels. *See* 71 Fed. Reg. at 2675 and 2681. Of primary concern are the impacts on visibility. EPA has found that fine particles in the air act to scatter and absorb light which adversely affects visibility both by limiting the distance that one can see and by degrading the color, clarity, and contrast of scenes. *Id.* at 2676; *see also id.* at 2679 (finding "clear correlations exist between 24-hour average $PM_{2.5}$ concentrations and reconstructed light extinction, which is directly related to visual range").

C. EPA's $PM_{2.5}$ Standards.

EPA first adopted standards for fine particulate matter in 1997 by establishing an annual $PM_{2.5}$ standard of 15 $\mu g/m^3$ and a 24-hour $PM_{2.5}$ standard of 65 $\mu g/m^3$. 62 Fed. Reg. 38652, 38679 (July 18, 1997). In 2005, under court order to review the 1997 standards, EPA staff concluded that the 1997 standards were inadequate to protect public health and welfare, and recommended revising the standards. *See* EPA, "Review of the National Ambient Air Quality Standards for

Particulate Matter: Policy Assessment of Scientific and Technical Information," at 5-46 (Dec. 2005). CASAC agreed with Staff that EPA should revise the 1997 standards and recommended setting the 24-hour $PM_{2.5}$ standard in the range of 30 to 35 $\mu g/m^3$ "in concert with" revising the annual standard in the range of 13 to 14 $\mu g/m^3$. *See, e.g.*, Letter from Dr. Rogene Henderson, Chair, CASAC, to Stephen Johnson, Administrator, EPA, "EPA's Review of the National Ambient Air Quality Standards for Particulate Matter (Second Draft PM Staff Paper, January 2005)," at 7 (June 6, 2005).

In the final rule promulgated on October 17, 2006, the EPA Administrator rejected the recommendations of EPA staff, CASAC, and numerous medical and public health groups, and retained the annual standard of 15 $\mu g/m^3$ with a new 24-hour standard of 35 $\mu g/m^3$. 71 Fed. Reg. at 61177. EPA also decided to set secondary standards for visibility protection identical to the primary standards. *Id.* at 61210.

Petitioners here challenged EPA's action in this Court. On February 24, 2009, the Court filed its decision holding that EPA's rulemaking was arbitrary and capricious, and remanded the 2006 $PM_{2.5}$ standards for further Agency action in accordance with the Court's opinion. *Am. Farm Bureau Fed'n*, 559 F.3d at 528 and 531. Specifically, the Court rejected EPA's decision to retain the annual standard for $PM_{2.5}$ of 15 $\mu g/m^3$ because EPA failed to adequately explain why this

level was "sufficient to protect the public health while providing an adequate margin of safety from short-term exposures and from morbidity affecting vulnerable subpopulations." *Id.* at 528. In addition, the Court held that "EPA's decision to set secondary fine PM NAAQS identical to the primary NAAQS was unreasonable and contrary to the requirements of 42 U.S.C. § 7409(b)(2)." *Id.* at 531. The mandate in the case issued on April 17, 2009.

Now, nearly three years after the Court's remand, and over five years since EPA promulgated the 2006 standards, EPA has not even proposed new standards for $PM_{2.5}$.

ARGUMENT

I. THE COURT HAS JURISDICTION TO ENFORCE ITS MANDATE.

The Court has continuing jurisdiction to enforce its previous orders under the All Writs Act, which provides that "all courts established by an Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). Such jurisdiction includes the ability to "enjoin agencies from unreasonably delaying compliance with a court order." *Sierra Club v. Thomas*, 828 F.2d 783, 797 n.100 (D.C. Cir. 1987); *see also Potomac Elec. Power Co. v. Interstate Commerce Comm'n*, 702 F.2d 1026, 1032 (D.C. Cir. 1983) ("*PEPCO II*") ("The question whether [a petitioner's] right to a timely decision from [an agency] has been violated can be reviewed through our inherent power to

construe the mandate of our earlier decision."); *Int'l Ladies' Garment Workers' Union v. Donovan*, 733 F.2d 920, 922 (D.C. Cir. 1984) ("The power of an original panel to grant relief enforcing the terms of its earlier mandate is clearly established in this Circuit . . . in cases that have been remanded directly to an administrative agency.").

This case is substantially similar to *PEPCO II*. In *PEPCO v. U.S.*, 584 F.2d 1058 (D.C. Cir. 1978) ("*PEPCO I*"), appellant PEPCO challenged an administrative decision by the Interstate Commerce Commission regarding railroad freight charges. The Court found the Interstate Commerce Commission's justification for these charges was inadequate, and remanded the case to the agency for further assessment of the disputed charges. *Id*. at 1067. Although the Interstate Commerce Commission began proceedings to consider the issue, it repeatedly invoked extensions and eventually reopened the record for new evidence. *PEPCO II*, 702 F.2d at 1029. PEPCO challenged the agency's continued delay in the D.C. Circuit and this Court issued a writ of mandamus, compelling agency action within 60 days. *Id*. at 1035. In reaching this decision, the Court emphasized that it had the power to issue a writ of mandamus "to effectuate or prevent the frustration of orders previously issued." *Id*. at 1032.

The Court likewise has continuing jurisdiction here to compel EPA to respond to the Court's 2009 mandate ordering remand in this case. Indeed,

Petitioners' sole avenue for enforcing the Court's mandate is through this petition for a writ of mandamus. Because EPA has failed to take any action to respond the Court's prior mandate remanding the 2006 $PM_{2.5}$ standards, Petitioners ask the Court to enforce the prior mandate by ordering EPA action by a date certain.

II. EPA HAS UNREASONABLY DELAYED COMPLIANCE WITH THE COURT'S MANDATE.

This Court has acknowledged that a remand order "implicitly include[s] the understanding that the [agency will] respond to [the court's] mandate in a timely manner." *PEPCO II*, 702 F.2d at 1034. This Court has identified six factors to help determine whether mandamus should issue to compel agency action unreasonably delayed:

> (1) the time agencies take to make decisions must be governed by a "rule of reason"; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is 'unreasonably delayed.'"

Telecomm. Research and Action Ctr. ("TRAC") v. Fed. Communications Comm'n, 750 F.2d 70, 80 (D.C. Cir. 1984) (citations omitted). These factors support mandamus in this case.

A. EPA's Delay Exceeds the Rule of Reason.

It has been more than two-and-a-half years since the Court's remand of the 2006 $PM_{2.5}$ standards in this case. EPA's refusal to date to even propose action in response to the remand assures that the delay will extend to more than three years before EPA establishes any new $PM_{2.5}$ standards. This Court has explained that "[t]here is 'no *per se* rule as to how long is too long' to wait for agency action, but a reasonable time for agency action is typically counted in weeks or months, not years." *In re American Rivers and Idaho Rivers*, 372 F.3d 413, 419 (D.C. Cir. 2004); *see also Midwest Gas Users Ass'n v. Fed. Energy Regulatory Comm'n*, 833 F.2d 341, 359 (D.C. Cir. 1988) ("Although the issue of whether delay is unreasonable necessarily turns on the facts of each particular case, this Court has stated generally that a reasonable time for an agency decision could encompass 'months, occasionally a year or two, but not several years or a decade.'") (quoting *MCI Telecomm. Corp. v. Fed. Communications Comm'n*, 627 F.2d 322, 340 (D.C. Cir. 1980)); *Pub. Citizen Health Research Group v. Auchter*, 702 F.2d 1150, 1157 (D.C. Cir. 1983) (finding a three-year delay unreasonable).

EPA's delay has been so excessive that it has effectively merged the correction of its 2006 standard with its duty under the Clean Air Act to review and update that standard by October 17, 2011 – a deadline EPA has now missed. *See* 42 U.S.C. § 7409(d)(1) (requiring EPA to review the criteria documents and

standards every five years). The result is that EPA has rendered its defective 2006 standard, "for all practical purposes, the accepted one." *TRAC*, 750 F.2d at 81. This delay undermines judicial review and the remedies guaranteed by section 307 of the Clean Air Act, 42 U.S.C. § 7607, by allowing EPA to adopt and maintain defective standards until it is required by statute to review the standards anyway.

EPA's delay is all the more egregious considering the chronology of events underlying this challenge. As this Court explained, the review process that led to the 2006 $PM_{2.5}$ standards remanded in this case began *nearly 14 years ago*, in October 1997, shortly after EPA promulgated the 1997 $PM_{2.5}$ standards. *See Am. Farm Bureau Fed'n*, 559 F.3d at 517. EPA failed to complete the next review of the 1997 standards within the five-year period required by the Act, and in 2003 several environmental groups brought a lawsuit challenging EPA's failure. *Id.* That lawsuit led to a consent decree requiring the 2006 rulemaking. *Id.* As described above, the 2006 revisions changed only the 24-hour limit on $PM_{2.5}$ concentrations and left in place the inadequate annual standard adopted in 1997. EPA's maneuverings have thus resulted in maintaining for nearly a decade an annual $PM_{2.5}$ standard that fails to protect public health as required by the Clean Air Act. Continuing delay cannot be justified.

B. EPA's Delay Is Inconsistent With The Timetables Provided In The Clean Air Act.

Under the second *TRAC* factor, the Court may consider whether the statutory scheme supplies content for the rule of reason. As noted above, section 109(d) of the Clean Air Act, 42 U.S.C. § 7409(d), requires EPA to review its national ambient air quality standards every five years. This means EPA should have completed its review of the 2006 $PM_{2.5}$ standards by no later than October 17, 2011.[1] EPA's refusal to take any action in response to the remand is not only unreasonable on its own terms but also shows flagrant disregard of the timeframes established by Congress. Mandamus requiring prompt EPA action is therefore reasonable and consistent with the schedule provided in the Clean Air Act.

C. EPA's Delay Is Unreasonable In Light Of The Human Health And Welfare Impacts At Stake.

There can be no dispute that EPA's delay here is injuring public health and welfare. This Court has already determined that the particulate matter standards adopted by EPA in 2006 and currently in place have not been demonstrated as adequate to protect human health and welfare. *See Am. Farm Bureau Fed'n*, 559

[1] The statute actually requires EPA to complete reviews "at five-year intervals" after December 31, 1980. *See* 42 U.S.C. § 7409(d)(1). Therefore, EPA was required to complete reviews of the PM standards by December 31 of 1985, 1990, 1995, 2000, 2005 and 2010. Even if the statute is read as allowing EPA to measure the five-year interval from the time it completed its last review, however, EPA has missed that timetable as well, as indicated in the text.

F.3d at 520. As outlined above, elevated concentrations of fine particulate matter have been linked with a variety of serious health impacts including respiratory diseases and deaths, heart diseases and deaths, developmental effects and lung cancer. Moreover, these effects are not evenly distributed among society; groups that may be especially susceptible or vulnerable to PM-related effects include those with preexisting heart and lung diseases, older adults, children with developing lungs and people from lower socioeconomic strata. 71 Fed. Reg. at 2636-37; *see also Am. Farm Bureau*, 559 F.3d at 524 (finding that in adopting the current standards, EPA has failed to live up to its "obligation to explain how the annual standard it set would protect . . .'sensitive citizens'").

In its recent assessment of the risks posed by particulate matter pollution, EPA looked at the health impacts in 15 urban areas assuming those areas just met the current standards, and compared those results to the impacts predicted under more protective alternative standards. *See* EPA, "Quantitative Health Risk Assessment for Particulate Matter" (June 2010) (available at: www.epa.gov/ttnnaaqs/standards/pm/data/PM_RA_FINAL_June_2010.pdf). Under the 2006 standards, EPA estimates that in these 15 urban areas alone, there will be over 8,000 deaths per year due to long-term exposures to $PM_{2.5}$, over 2,500 deaths per year due to short-term exposures to $PM_{2.5}$, and over 2,700 hospital admissions per year due to respiratory and cardiovascular illness from short-term $PM_{2.5}$ exposures.

See id. at E-13, E-76, E-103 and E-112 (totals derived from summing data presented for each urban area). EPA's analysis for these cities suggest that adopting new $PM_{2.5}$ standards of 12 µg/m^3 (annual) and 25 µg/m^3 (24-hour) would reduce long- and short-term exposures and save over 5,000 lives per year. *Id.* at E-13 and E-76 (based on totals derived from summing data for each urban area). With these more protective standards, more than 750 annual hospital admissions due to respiratory and cardiovascular illnesses could also be avoided in these cities. *Id.* at E-103 and E-112.

The American Lung Association, Clean Air Task Force and Earthjustice commissioned an expanded analysis of these data to look beyond the 15 cities analyzed by EPA and "conduct a national analysis of the mortality and morbidity benefits of a greater range of annual and daily [PM] standards . . . ." *See* McCubbin, D., "Health Benefits of Alternative $PM_{2.5}$ Standards," at 1 (July 2011) (Ex. A, hereto). Dr. McCubbin's analysis projected that adopting standards of 12 µg/m^3 (annual) and 25 µg/m^3 (24-hour) would save 14,000 to 27,000 lives per year nationally compared to the current standards, and even more protective standards of 11 µg/m^3 and 25 µg/m^3 would save 15,000 to 30,000 lives nationally compared to the current standards remanded by the Court. *Id.* at 18 (based on a comparison of mortalities avoided under various alternative standards).

Under either EPA's 15-city analysis or Dr. McCubbin's national analysis, EPA's delay in adopting new particulate matter standards means thousands of unnecessary deaths every year and many more people suffering from avoidable respiratory and cardiovascular illnesses. More than unreasonable, EPA's refusal to even propose a standard in the nearly three years since this Court's remand is unconscionable. The public health and welfare values at stake in this petition clearly support mandamus. *See Pub. Citizen Health Research Group*, 702 F.2d at 1157-58 (establishing that "[d]elays . . . are less tolerable when human lives are at stake . . . particularly . . . when the very purpose of the governing Act is to protect those lives"); *see also In re Bluewater Network & Ocean Advocates*, 234 F.3d 1305, 1316 (D.C. Cir. 2000) (mandamus appropriate when the "delayed regulations implicate important environmental concerns").

D. Ordering EPA To Correct The Defective $PM_{2.5}$ Rulemaking Promptly Will Not Impede EPA's Regulatory Agenda.

EPA cannot legitimately claim that a court-ordered deadline to act on the remanded PM standards would impede EPA's regulatory agenda because the Agency is already under a statutory duty to complete its next review of the PM NAAQS forthwith (*see supra* note 1 and accompanying text). Moreover, EPA itself has repeatedly promised that revising these standards was one of the Agency's top priorities. EPA Administrator Jackson, in her January 12, 2010 memo to all EPA employees, included her commitment to "strengthen our ambient

air quality standards for pollutants such as PM" in her list of seven priorities for the Agency. *See* Memorandum from Lisa P. Jackson, Administrator, EPA, to All EPA Employees (Jan. 12, 2010) (available at: blog.epa.gov/administrator/2010/01/12/seven-priorities-for-epas-future/).

Nor can EPA claim that it has a plan or schedule for taking action on the PM standards that would be impeded by a court-ordered deadline. On multiple occasions EPA has announced schedules for issuing the new PM standards but then failed to meet those promised deadlines. In its October 5, 2009, presentation to the CASAC review panel for the PM standards, EPA staff announced that it planned to propose action on the remanded standards by July 2010 and issue a final action by April 2011. *See* Lydia N. Wegman and Beth M. Hassett-Sipple, EPA, "Review of the Particulate Matter National Ambient Air Quality Standards – Schedule and Development of Policy Assessment – Presentation for CASAC PM Panel," at 5 (Oct. 5, 2009) (available at: yosemite.epa.gov/sab/sabproduct.nsf/41D9A1D53C581EAF852576450061556C/$File/Wegman+and+Hassett-Sipple+presentation+10+05+09.pdf). In its June 2010 "Quantitative Health Risk Assessment for Particulate Matter," EPA announced that "[p]roposed and final rulemaking are now scheduled for November 2010 and July 2011, respectively." EPA, "Quantitative Health Risk Assessment for Particulate Matter," at 1-3. EPA has completed all of the preliminary review steps needed to prepare a rulemaking:

the Integrated Science Assessment was completed in December 2009; the Quantitative Risk Assessment was completed in June 2010; CASAC review of EPA's policy assessment was completed in June 2010; and, after much delay, EPA finalized its Policy Assessment with staff recommendations on new standards in April 2011. *See generally* www.epa.gov/ttnnaaqs/standards/pm/s_pm_index.html (EPA's portal website for activities on the current review of the PM standards). Yet since then, EPA has announced no further progress and has not offered any new schedule for taking action on the remanded PM standards.

Accordingly, EPA's delay cannot reasonably be justified as the result of higher agenda priorities or other complications in the rulemaking process. Nor can EPA reasonably complain that a court-ordered deadline would impede its ability to conduct its business.

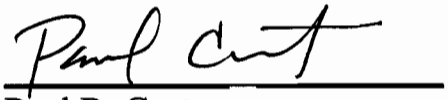
CONCLUSION AND RELIEF REQUESTED

For all the foregoing reasons, Petitioners respectfully ask the Court to issue a writ of mandamus directing EPA to revise the 2006 $PM_{2.5}$ rulemaking to fully carry out the intent of Congress and address the deficiencies identified by this Court. Petitioners respectfully request that the Agency be ordered to propose standards within 45 days of the Court's order granting relief but by no later February 15, 2012, and to promulgate final standards within seven months of the Administrator's singing of the proposal but in no event later than September 15,

2012. EPA has completed all of the steps necessary for proposing action on these standards. The requested schedule is in line with the timeframes EPA has offered for completing this rulemaking on several occasions. *See, e.g.*, EPA, Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter, at 17 (Mar. 2008) (providing for nine months between proposed and final rulemaking) (available at http://www.epa.gov/ttn/naaqs/standards/pm/data/2008_03_final_integrated_review_plan.pdf); Lydia N. Wegman and Beth M. Hassett-Sipple, EPA, "Review of the Particulate Matter National Ambient Air Quality Standards – Schedule and Development of Policy Assessment – Presentation for CASAC PM Panel," at 5 (same); EPA, "Quantitative Health Risk Assessment for Particulate Matter," at 1-3 (suggesting eight months between proposal and final rule).

Petitioners further request that the Court retain jurisdiction pending full compliance with that schedule. *See, e.g., In re United Mine Workers*, 190 F.3d 545, 556 (D.C. Cir. 1999) (retaining jurisdiction until agency promulgated final regulations and permitting plaintiff to seek additional relief if the agency failed to comply); *In re Monroe Comms. Corp.*, 840 F.2d 942, 947 (D.C. Cir. 1988) (same). Petitioners believe that retaining jurisdiction will aid prompt resolution of this matter and likely save judicial resources.

DATED: November 15, 2011.



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RULE 26.1 CORPORATE DISCLOSURE STATEMENT OF PETITIONERS

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, Petitioners make the following disclosures:

American Lung Association. American Lung Association has no parent companies, and no publicly held company has a 10 percent or greater ownership interest in the American Lung Association.

American Lung Association, a corporation organized and existing under the laws of the State of Maine, is a national nonprofit organization dedicated to the conquest of lung disease and the promotion of lung health.

Environmental Defense. Environmental Defense has no parent companies, and no publicly held company has a 10 percent or greater ownership interest in Environmental Defense.

Environmental Defense, a corporation organized and existing under the laws of the State of New York, is a national nonprofit environmental organization dedicated to creating innovative, equitable and cost-effective solutions for the most urgent environmental problems.

National Parks Conservation Association. National Parks Conservation Association has no parent companies, and no publicly held company has a 10 percent or greater ownership interest in National Parks Conservation Association.

National Parks Conservation Association, a corporation organized and existing under the laws of the District of Columbia, is a nonprofit membership organization dedicated to protecting and enhancing America's National Park System for present and future generations.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITION FOR WRIT TO ENFORCE THE COURT'S MANDATE** has been served by United States first-class mail this 15th day of November, 2011, upon the following:

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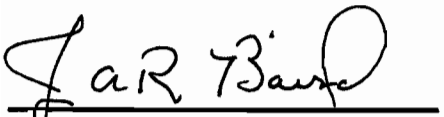
DATED: November 15, 2011.



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