**No.24A213**

# In the Supreme Court of the United States

OKLAHOMA, ET AL.,
APPLICANTS,
*v.*
ENVIRONMENTAL PROTECTION AGENCY, ET AL.

**REPLY IN SUPPORT OF APPLICATION FOR STAY OF FINAL AGENCY ACTION DURING PENDENCY OF PETITION FOR REVIEW**

On Application For Stay To The
United States Court Of Appeals For The District Of Columbia

To the Honorable John G. Roberts, Jr.,
Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit


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## INTRODUCTION

As State-Applicants explained in their Stay Application, EPA designed the Rule at issue here to force States to adopt EPA's "presumptive standards" for regulating methane emissions from existing oil and gas facilities, thus depriving States of their statutory right to craft their own standards of performance for these facilities. EPA accomplished this by first illegally promulgating "presumptive standards of performance," thus forcing States to rebut EPA's standards before being able to adopt their own standards, and then by giving States what the agency knew would be an entirely insufficient amount of time to develop their own standards for these facilities. Absent a stay, EPA's gambit to force the States to submit to EPA's "presumptive standards" will impose irreparable harm upon the States. As State-Applicants showed through detailed declarations, absent a stay EPA's Rule will require States to surrender their sovereign right to adopt their own standards of performance, while spending unrecoverable sovereign resources to design Rule-compliant state plans that States will scrap once the courts vacate the Rule at the end of this litigation.

EPA responds largely with attempted misdirection. EPA repeats over and again that the Rule's "presumptive standards" do not completely "prevent" States from taking a different approach, EPA Resp.18, are not "binding," EPA Resp.22, and do not "predetermine" the outcome of a state plan submission, EPA Resp.23. While it would, of course, be illegal for EPA to have adopted "binding" standards for existing facilities under Section 111(d)—as the agency can do for new facilities under Section 111(b)—it is *also* illegal for the agency to do what it did here: give presumptive weight

to its own standards, while leaving open the theoretical possibility that some State could rebut that presumption. EPA also argues that States can submit standards within EPA's truncated two-year schedule because the Rule does not require States to "devise bespoke methane regulations for each covered facility in a State" or force States to inventory all regulated facilities. EPA Resp.25–26. But EPA disputes neither that Section 111(d) gives States the right to adopt bespoke standards, which requires an inventory, nor that two years is not enough time for many States to complete that type of work—especially States like Oklahoma, which will be regulating hundreds of thousands of existing facilities for the first time.

EPA's responses to State-Applicants' showing that a stay is necessary to prevent irreparable harm and advance the public interest fare no better. EPA urges that States can simply decline to submit a state plan and subject themselves to a federal plan. But the federal plan would consist of the very same "presumptive standards" that State-Applicants want to avoid. As to the consideration of the public interest, EPA does not dispute that its "presumptive standards" would raise energy rates on ordinary Americans, but it claims that urgency in combatting climate change outweighs these harms. Yet, EPA showed no such urgency when delaying the issuance of any methane rule for existing oil and gas facilities for more than a decade. EPA cannot now be heard to argue that States must surrender their sovereign, statutory rights because the agency has decided it wants to now act with haste.

## ARGUMENT

### I. State-Applicants Have Shown That This Court Would Likely Review And Reverse Any Decision Of The D.C. Circuit Upholding The Section 111(d) Component Of The Rule

#### A. The Rule's Imposition Of "Presumptive Standards" That States Must Rebut Before Exercising Their Authority To Establish Their Own Standards Of Performance Violates Section 111(d)

1. As State-Applicants explained, the Rule violates Section 111(d) of the Clean Air Act by imposing "presumptive standards of performance" that States must rebut to avoid EPA imposing a federal plan on the oil and gas facilities in their States, and this Court would likely grant review of a decision from the D.C. Circuit resolving that "important question of federal law" against State-Applicants. States Appl.15–20 (quoting Sup. Ct. R. 10(c)). Section 111(d) authorizes EPA only to determine the best system of emission reduction and the degree of emission limitation achievable for certain pollutants. 42 U.S.C. § 7411(a), (d); States Appl.15–16. Section 111(d) then grants States the power to "set the actual rules governing existing" sources to meet the emissions guidelines set by EPA for the pollutant at issue, *West Virginia v. EPA*, 597 U.S. 697, 710 (2022), including by achieving less reduction when "tak[ing] into consideration, among other factors, the remaining useful life of the existing source to which such standard applies," 42 U.S.C. § 7411(d)(1); States Appl.15–16.

The Rule here subverts this carefully crafted statutory structure and so is unlawful. The Rule arrogates to EPA a key portion of the States' Section 111(d) authority by purporting to impose "presumptive standards of performance" upon the States' state plan submission, such that States must rebut those "presumptive standards" before they may establish their own standards. States Appl.16–17 (citing

App.10a–11a; App.14a–16a; App.70a; App.176a). That is how a "presumption" operates under blackletter law: establishing some predicate fact that produces a conclusion in the absence of a contrary showing by the party against whom the presumption operates. States Appl.16–17. And that is how the "presumptive standards" operate here, with EPA explaining in the Rule that "components of a state plan that differ from any presumptively approvable aspects of the [emissions guidelines] . . . will be *thoroughly reviewed by the EPA*," App.187a (emphasis added); States Appl.19, while making clear that States must satisfy certain heightened requirements before they may exercise their statutory right to require smaller emission reductions based upon each facility's "remaining useful life," 42 U.S.C. § 7411(d)(1); *see* States Appl.17–19.

2. EPA's Response argues that the Rule's "'presumptive standards . . . do not *prevent* States from adopting a different approach," EPA Resp.18 (emphasis added), because those standards are not "*binding*," EPA Resp.22 (emphasis added), such that EPA did "not *predetermine* the outcome" of its action on any particular state plan, EPA Resp.23 (emphasis added). This is unresponsive to State-Applicants' argument that the "presumptive standards" operate just as their label indicates: When a State wants a state plan that is different than EPA's *presumptively* approvable standards, States must make a special showing beyond the one that would be required if EPA had stayed in its statutorily authorized lane by identifying "the best system of emission reduction" and the "degree of emission limitation achievable through application of" that system, 42 U.S.C. § 7411(a)(1), and then approving *any* state plan

that achieves either that level of emission reductions or a lesser amount if the State concludes that such lesser amount is justified after considering a facility's "remaining useful life," *id.* § 7411(d)(1).

Nowhere in its Response does EPA engage with State-Applicants' argument that, by adopting "presumptive standards," the Rule places upon the States "the burden of producing an explanation to rebut" these standards, or else EPA will reach the "required conclusion in the absence of [such] an explanation" that the State's Section 111(d) plan must include these standards. *Compare* States Appl.17–18 (quoting *St. Mary's Honor Ctr. v. Hicks,* 509 U.S. 502, 506 (1993)), *with* EPA Resp.18–24. Rather, EPA just asserts generally that "its understanding and intent [is] that its review of state methane-emission plans would be conducted under the generally applicable statutory and regulatory provisions that govern the state-plan-submission process." EPA Resp.2. But the Rule explains *how* EPA would apply these "generally applicable statutory and regulatory provisions," EPA Resp.2, to review States' Section 111(d) plan submissions, *see* States Appl.11–12, 16–17. And the Rule is clear on that point: A State must either adopt EPA's "presumptive standards" or rebut those "presumptive standards" to justify adopting its own standards. *See* States Appl.17–18.

EPA's Response has no serious answer to State-Applicants' argument that the Rule's "presumptive standards" undermine the States' statutory authority to adopt standards of performance that "take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies." 42 U.S.C.

§ 7411(d)(1). EPA claims that the Rule does not limit the States' statutory discretion to consider a "facility's remaining useful life" or "other factors" when crafting their Section 111(d) plans, but its own words give the game away. *See* EPA Resp.22–23. Under the Rule, States may only exercise their statutory rights to consider the remaining useful life of a facility and choose to apply a less burdensome emissions limitation on that facility—thereby departing from the Rule's "presumptive standards"—after satisfying specific, heightened requirements that the Rule lays out. *See* App.183a–86a (incorporating 40 C.F.R. § 60.24a (subpart Ba)). This is contrary to the plain text of Section 111(d), which expressly empowers the States to "take into consideration"—throughout the entire development of their Section 111(d) plan, with no limitation—"the remaining useful life of the existing source to which such standard applies" and "other factors." 42 U.S.C. § 7411(d)(1).

EPA's efforts to whitewash its multiple statements that the agency will give heightened review to state efforts to reject the agency's "presumptive standards" are, with respect, unserious. EPA asserts that the preamble's statement that "components of a state plan that differ from any presumptively approvable aspects of the [emissions guidelines] . . . will be *thoroughly reviewed by the EPA*," App.187a (emphasis added), "simply refers to EPA's use of notice-and-comment rulemaking to review state-plan submittals," EPA Resp.22. No one believes that is what EPA means here. The *entire state plan* must proceed through notice-and-comment rulemaking, not just "components" that depart from EPA's "presumptively approvable" standards. *See* App.10a. What EPA is clearly saying with the phrase "thoroughly review" is just

what it said elsewhere in the Federal Register: "[I]t would likely be difficult for States to demonstrate that the "presumptive standards" are not reasonable for the vast majority of designated facilities," 86 Fed. Reg. 63,110, 63,251 (Nov. 15, 2021), so States need to think twice before departing from the "presumptive standards" given EPA's threatened "thorough[ ] review[ ]," App.187a. The Rule also states that it would be "*extremely unlikely*" that States could depart from certain "presumptive standards" based on cost considerations, further showing that the Rule requires States to justify any departure from the "presumptive standards" before adopting their own standards. States Appl.19 (quoting App.185a (emphasis added)).

The Environmental and Health Respondents—but not EPA itself—attempt to address State-Applicants' point that the force of the "presumptive standards" is also demonstrated by the Rule's refusal to offer a "total program evaluation" for those States that already regulate methane in satisfaction of the Rule's requirements. *See* States Appl.11–12; Env'l & Health Resp.7. The Environmental and Health Respondents' only response is that a "total program evaluation" option would be "extremely complicated," given that States may have "programs containing a mix of performance standards . . . and equipment and work practice standards." Env'l & Health Resp.7–8. However, these parties' subjective view of the complexity of this approach cannot justify limiting the States' authority to set their own standards.

Finally, EPA claims that State-Applicants' merits arguments are "speculative and unripe" because they depend upon EPA "appl[ying] an unduly stringent standard in determining whether [their] state plans should be approved" under the Rule. EPA

Resp.23–24. But the Rule infringes States' statutory and sovereign authority *now* by imposing "presumptive standards," thus changing the way that the States will design their state plans. States Appl.16–20. Because the Rule requires States to rebut those "presumptive standards" to set their own standards, *see* States Appl.16–20, these "presumptive standards" will inevitably dictate how the States develop their Section 111(d) plans for EPA's review, *see, e.g.*, App.10a. To take an analogy, the standards of review that an appellate court will apply to a given appellate issue dictate the content and form of the parties' submissions on appeal. *See* Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 11–13 (2008) ("Pay careful attention to the applicable standard of decision."). So too here: because the Rule requires the States to rebut the "presumptive standards" if they wish to adopt their own standards of performance, States will have to shape their Section 111(d) plan-making efforts *now* around EPA's illegal "presumptive standards."

### B. The Two-Year Deadline For States To Submit Their Section 111(d) Plans Violates The APA

1. Many States commented during the rulemaking process that they needed at least three years to prepare a Section 111(d) plan under the Rule, given the number of previously unregulated sources involved. States Appl.21–22, 23–24. EPA did not meaningfully respond to this critical concern in the Rule, instead addressing only a different timing issue, related to completing state administrative processes and the like. States Appl.22–23. EPA's "fail[ure] to supply a satisfactory explanation" of how it reasonably dealt with this problem is the same APA violation that EPA made with the rule at issue in this Court's recent decision in *Ohio v. EPA*, 144 S. Ct. 2040, 2053–

54 (2024) (citation omitted). States Appl.24–25. And the error is particularly significant here because the agency's truncated timeframe, combined with the fact that the Rule requires States to regulate hundreds of thousands of new facilities for the first time, ensures that States will need to adopt EPA's "presumptive standards." States Appl.23–24.

2. EPA again attempts misdirection, focusing on the fact that the Rule does not *require* States to conduct an "inventory" of the hundreds of thousands of oil and gas facilities that the Rule will cover and underscoring that "a state plan *need not* and would not reasonably devise bespoke methane regulations for each covered facility in a state." EPA Resp.25–26 (emphasis added). But States have the statutory right under Section 111(d) to set "bespoke" standards of performance, including to modify appropriately the emissions-reduction amount set by EPA as "to any *particular* source," after "tak[ing] into consideration, among other factors, the remaining useful life of the existing source," 42 U.S.C. § 7411(d) (emphasis added). EPA does not dispute that the two-year deadline that the Rule provides is not enough time for many States to gather such an "inventory"—let alone to design a state plan tailored to the States' diverse oil and gas facilities—an omission that functions as a concession that the Rule does not give States enough time to exercise the full scope of their Section 111(d) statutory authority. *See generally* EPA Resp.24–29.[1] So, while the Rule does

[1] EPA asserts that the Rule's emission guidelines for existing sources cover only methane, and not also volatile organic compounds ("VOC")—a fact that, EPA claims, has "obvious bearing on the achievability of the two-year deadline." EPA Resp.24. But because

not require every State to conduct an inventory of the numerous newly regulated oil and gas facilities, States failing to carry out this task cannot fully and freely exercise their statutory obligations under Section 111(d), including by considering how any standards impact each existing facility's remaining useful life. States Appl.21–22. EPA prefers that the States just acquiesce to its one-size fits all approach, but Section 111(d) affords the States the right to make a contrary choice.[2]

EPA next argues that the Rule's preamble discussed "in detail a range of additional factors" that may make the development of state plans under Section 111(d) time-consuming. EPA Resp.28 (citing App.191a.). The preamble does not "grapple with [State-Applicants'] concern." *Ohio*, 144 S. Ct. at 2056 (citation omitted). Rather, it only generally references the time-consuming nature of "the requisite analysis," App.191a, without addressing the specific problem that State-Applicants present here: The Rule requires many States to regulate under Section 111(d), for the first time, hundreds of thousands of diverse oil and gas facilities, and two years is an

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covered facilities emit methane and VOCs in the same way, these facilities would adopt the same measures to "simultaneously reduce both methane and VOC emissions." *See* 81 Fed. Reg. 35,824, 35,841 (June 3, 2016). Thus, that this aspect of the Rule covers only methane has no "bearing on the achievability of the two-year deadline." *Contra* EPA Resp.24.

[2] While the State Respondent-Intervenors assert that "some of the state officials charged with submitting applicants' own plans agreed during the comment period that a two-year deadline would be adequate," *see* State Resp.19 & n.9, they do not (and cannot) point to anything that actually supports that assertion. The only comment submitted to EPA during the rulemaking that State Respondent-Intervenors cite stated that 24 months might be adequate for States to adopt Section 111(d) plans that followed federal standards—such as the Rule's "presumptive standards" here—but expressly emphasized that this would *not* be sufficient for States to develop their own standards of performance under Section 111(d). *See* State Resp.19 & n9; *contra* 24 EPA-HQ-OAR-2021-0317-2330, Comment by Kentucky Division for Air Quality, at 2, EPA-HQ-OAR-2021-0317-2330 (Feb. 13, 2023). That is the same point that State-Applicants make here.

insufficient amount of time for States to exercise their independent Section 111(d) authority. States Appl.22–23. Indeed, the Rule's preamble cuts *against* EPA. While the preamble admits that States need more time to exercise fully their Section 111(d) rights, it then sacrifices that state-sovereignty concern to regulatory expediency. App.191a. The preamble "recognizes that states need time to follow their state-specific processes and laws"—consistent with the States' authority under Section 111(d)—but then concludes that "[e]xtending the state plan submittal deadline beyond 24 months to account for any and all unique state procedures would inappropriately delay reductions in emissions." App.191a. This strongly supports State-Applicants' argument that EPA did not give States sufficient time to perform their statutory functions as it sought to advance its own policy objectives, States Appl.1–2, 8, 22–25, after having delayed in issuing the Rule for a decade, State Appl.12–13.

EPA's invocation of *American Lung Association v. EPA*, 985 F.3d 914 (D.C. Cir. 2021)—the decision that this Court reversed in *West Virginia*, 597 U.S. 697—to argue that "D.C. Circuit precedent" confirms that EPA has a "duty to ensure expeditious implementation and safeguard the public," gets the agency nowhere. EPA Resp.28. To the extent that the cited portion of *American Lung* remains good law, it establishes only that expeditious implementation is "an important aspect of the problem" that EPA must consider and address. *See* 985 F.3d at 994–95. This policy aim cannot override the States' statutory rights, as expressed in Section 111(d). *See West Virginia*, 597 U.S. at 723; *id.* at 736 (Gorsuch, J., concurring).

Finally, EPA claims that if a State "miss[es] the state-plan submission deadline," the Rule "neither produces any immediate regulatory effect nor forecloses the State from adopting its own standards" because the State could simply submit a plan later. EPA Resp.28–29 (citing 40 C.F.R. § 60.27a(c)(1)); *see also* EPA Resp.6 (citing 88 Fed. Reg. 80,480, 80,495 (Nov. 17, 2023)). But EPA's own regulations confirm that failing to submit a plan "within the time prescribed" requires EPA to promulgate a federal plan, 40 C.F.R. § 60.27a(c)(1), and nothing in those regulations requires EPA to act on a later-submitted state plan. Instead, "the act of a state submitting a plan alone does not abrogate the EPA's authority or obligatory timeline to promulgate a Federal plan," and "EPA is not obligated to act on a late state plan prior to promulgating a Federal plan." 88 Fed. Reg. at 80,495. Further, once EPA has imposed a federal plan upon a State's existing facilities, the sources within that State would then need to make irrevocable changes to their equipment and operations to comply with the federal plan, meaning that the damage of EPA infringing upon the States' sovereign rights under Section 111(d) would be essentially irreversible, even if a State were to later submit a tardy plan that EPA eventually approved.

## II. State-Applicants Will Suffer Irreparable Harm If This Court Does Not Grant A Stay

A. State-Applicants have also shown that they will suffer irreparable harm absent a stay. States Appl.25–30. The Rule's "presumptive standards" and two-year deadline for Section 111(d) plans impose significant, irreparable harm to State-Applicants' sovereign interests, forcing them to expend unrecoverable resources to submit Section 111(d) plans that they otherwise would not have developed. States

Appl.26–27. Faced with an unrealistic two-year deadline, State-Applicants must either adopt EPA's "presumptive standards" wholesale or quickly spend significant, unrecoverable resources to develop modified versions of those "presumptive standards." States Appl.27–28; *see* States Appl.28–30. This undermines the States' statutory right to adopt their own standards, based upon their knowledge of the existing sources within their borders. States Appl.27–29. Further, States' significant expenditure of resources will be wasted once State-Applicants prevail in this litigation, as EPA will have to allow States to adopt new Section 111(d) plans on a realistic schedule, while allowing States to exercise their rights to adopt their own standards of performance for the sources under the Rule's purview. States Appl.27.

B. EPA's various responses miss the mark.

*First*, EPA argues that States conducting the "state planning process" under Section 111(d) to comply with the Rule cannot itself serve as a "harm to be avoided." EPA Resp.49. State-Applicants do not claim that *any* state-planning process harms them, but rather that the Rule's mandate to use the "presumptive standards" within an unrealistic, two-year deadline harms the States by preventing them from exercising their statutory right to develop their own "standards of performance for any existing source for any air pollutant." 42 U.S.C. § 7411(d)(1); States Appl.26. While EPA disputes that the Rule requires States to adopt the "presumptive standards" and deters the States from developing their own Section 111(d) plans, EPA Resp.49–50, that is just a repeat of the agency's erroneous arguments on the merits, *see supra* Part I.

*Second*, EPA claims that a State "may simply refrain" from drafting a Section 111(d) plan to comply with the Rule or submit an untimely plan, so as to avoid suffering any harm now. EPA Resp.49–50. This would not avoid State-Applicants' harm, but asks States to surrender to federal regulation and the very "presumptive standards" that they seek to avoid, as explained above. *See supra* p.12.

*Third*, EPA claims that State-Applicants "misunderstand[ ]" "what is actually required to develop a state plan," EPA Resp.50, asserting that State-Applicants' alleged harms arise largely from *implementing* a plan after EPA has approved it, rather than *developing* a plan to submit for EPA's review. This too is wrong. As State-Applicants explained above—and as EPA itself concedes, EPA Resp.25—the Rule requires States to regulate *hundreds of thousands* of oil and gas facilities for the first time, and to do so in the face of EPA's "presumptive standards" and within a truncated two-year deadline, *supra* pp.9–10. State-Applicants have shown that *developing* such plans will require substantial state resources to complete. States Appl.28–30. For example, developing a state plan requires going through state rulemaking processes. States Appl.28–29 (citing App.441a–42a; App.451a–52a; App.458a; App.463a; App.474a; App.482a; App.534a; App.544a–45a; App.563a–64a; App.575a–76a; App.587a–88a). Devising a state plan will also often involve an inventory of all designated facilities (and, indeed, must include such an inventory to develop and justify an alternative to the "presumptive standards"); of all attendant performance standards; and of all compliance schedules (which must be made public for a reasonable period of time) to ensure proper stakeholder engagement and public

comment. *See* App.563a–64a; *see also* App.423a–25a; App.458a. And State-Applicants showed that they would need to hire and train hundreds of in-demand workers to assist with developing a plan *and then* implementing it. States Appl.29–30 (citing App. 472a; App.532a–33a; App.572a). Moreover, EPA cannot fault State-Applicants for having difficulty implementing Section 111(d) programs in line with the Rule because EPA has failed to respond to States' requests for implementation guidance. App.618a (noting EPA's failure to respond to Virginia's inquiries).

*Finally*, EPA claims that State-Applicants will not suffer irreparable harm because, even if they expend significant resources developing Section 111(d) plans within the Rule's two-year deadline and subsequently prevail in their challenge to that deadline, "none" of State-Applicants' "plan-development efforts will be wasted" because they may apply these "efforts to submit compliant plans by whatever alternative deadline is ultimately imposed." EPA Resp.50–51. But the State-Applicants' declarations—which declarations neither EPA nor any of its supporting parties has contested—explain that State-Applicants will *not* use those Section 111(d) plans if they prevail here. Such plans, hurriedly developed under the two-year timeline and within the context of EPA's "presumptive standards," would not be sufficiently "tailored to the unique needs" of each State, App.614a, or "well-calibrated" to "state rules that take [remaining useful life] into consideration," App.607a; *see also* App.591a; App.598a–99a; App.604a–07a; App.611a–13a; App.618a–19a. So, State-Applicants have shown that their plan-development efforts

will be wasted and that they will re-do this resource-intensive work differently after they prevail on the merits.

## III. Leaving The Rule In Place Is Contrary To The Public Interest

A. Considerations of the public interest also strongly favor a stay. States Appl.30–33. To begin, the unlawful Section 111(d) component of the Rule harms the public's interest in the Clean Air Act's cooperative-federalism regime—including as embodied in Section 111(d)—by allowing States only enough time to accept EPA's "presumptive standards" or some modified version of such standards, thereby limiting the States' authority to adopt their own standards of performance under Section 111(d) that account for their own unique state concerns. States Appl.31. Further, the Rule's burdensome "presumptive standards" also harm the public by imposing costs on the oil and gas industries that, as EPA concedes, will ultimately be borne by consumers. States Appl.31–32. EPA, for its part, will not suffer cognizable harm from a stay during the pendency of this case. EPA shares the public's interest in requiring it to "comply with its statutory mandate," *Sierra Club v. Morton*, 405 U.S. 727, 737 (1972), and EPA has delayed in regulating methane for a decade, demonstrating that timing is not critical to achieving its ends, States Appl.33.

B. EPA asserts that "[a]ny [ ] postponement" of the emission guidelines "would cause significant harm to the government and the public," because "[c]limate change is the Nation's most pressing environmental challenge" and "human-caused emissions of methane . . . are responsible for 'one-third of the [global] warming' that is attributable to greenhouse gases." EPA Resp.51 (citation omitted; brackets in

original). EPA's sudden urgency comes after years of delay. EPA determined that methane and five other gases contribute to climate change in 2009, 74 Fed. Reg. 66,496, 66,497 (Dec. 15, 2009), and by 2013, the Obama Administration called on EPA to "[c]urb[ ] emissions of methane" by "work[ing] collaboratively with state governments," Exec. Off. of the President, *The President's Climate Action Plan* 10–11 (June 2013).[3] Now, in 2024, EPA claims that the Rule must go into effect immediately, lest a parade of horribles occur. *See* EPA Resp.51 ("sea level rise," "increased 'storm surge and flooding,'" more frequent "'drought' and 'extreme rainfall events,'" "more intense and larger wildfires"). And, in any event, nowhere does EPA show how the Rule itself will prevent these concerns during the pendency of State-Applicants' challenges to the Rule here. EPA Resp.51–52.

EPA's assertion that "[a] stay could also harm oil-and-gas-industry participants" by "delay[ing] the availability of exemptions from methane charges under 42 U.S.C. 7436," EPA Resp.52, fails to weigh these charges against the substantial costs that the Rule would impose on the oil-and-gas industry. Those "charge[s]"—fines imposed on facilities with "methane emissions that exceed a[ ] . . . [statutorily-defined] threshold," 42 U.S.C. § 7436(c)—can only be waived after EPA determines that the offending facility achieves the emissions reductions contemplated by 42 U.S.C. § 7436(f)—so any fee waiver is speculative. Further, as Industry-Applicants point out, they "have invested, planned, and developed their

[3] Available at https://obamawhitehouse.archives.gov/sites/default/files/image/president27sclimateactionplan.pdf (all websites last visited Sept. 24, 2024).

operations based on the longstanding application of *State* regulations" "[f]or decades." Appl. For Stay at 33–34, *Cont'l Res., Inc. v. EPA*, No.24A215 (Aug. 26, 2024). But the Rule's "erasing [of] States from the picture" caused them to "begin the time consuming and costly process of adjusting their existing operations to comply with the Final Rule's presumptive standards," which "substantially impairs Industry Applicants' funding and . . . is already affecting [their] day-to-day operations." *Id.* at 33. These costs will lead to higher prices for consumers (as EPA admits) and, when coupled with the anticipated baseline price increase stemming from the Rule, will significantly impair access to essential utilities for Americans grappling with financial hardship. *Contra* Env't & Health Resp'ts Resp.37. And EPA's concern over assessing fees against oil and gas facilities should be weighed against the Rule's immense costs to oil and gas production, which is why no oil or gas facility is supporting EPA here. *See* EPA, *Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule*, at I-20-63, No.EPA-HQ-OAR-2021-0317-4009 (Nov. 2023); App.604a–06a (discussing "economic and social damage" caused by the Rule); App.591a; App.597a–99a.

EPA and its supporting parties briefly make a series of other equitable arguments about the timing of State-Applicants' application, all of which fail. Each wrongly claims that State-Applicants have sought "emergency relief." *See* EPA Resp.3, 18, 29, 47–49; State Resp't-Intervenor's Resp.10; Env't & Health Resp'ts Resp.10, 31. But State-Applicants are *not* seeking stay relief on an *emergency* basis, but rather standard stay relief against a Rule that imposes irreparable harms upon

them. *See* States Appl.14. In any event, the timing here is unremarkable. *Compare* Order, *In re: Clean Water Act Rulemaking*, Nos.21-16958, 21-16960, 21-16961 (9th Cir. Feb. 24, 2022) (denying applicants' Motion For Stay Pending Appeal), *with* Appl. For Stay, *Louisiana v. Am. Rivers*, No.21A539 (filing stay application on March 21, 2022); *see Louisiana v. Am. Rivers*, 142 S. Ct. 1347 (2022) (granting the stay). Some of EPA's supporters also bizarrely point to the allegedly "protracted briefing schedule" in the D.C. Circuit below, Env't & Health Resp'ts Resp.31, without revealing to this Court that the parties in the D.C. Circuit agreed to that schedule after mutual negotiation, including to accommodate the schedules that States, private parties, and the Department of Justice were juggling (including as to multiple other stay applications before this Court).

Finally, EPA argues that "this Court should limit any stay relief to the specific portions of the Rule that applicants have contested." EPA Resp.52–53. State-Applicants have already tailored their requested stay to the Section 111(d) component of the Rule, *see, e.g.*, States Appl.1, which is the specific portion of the Rule harming State-Applicants here. Thus, State-Applicants' requested relief would "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

## CONCLUSION

This Court should stay the Section 111(d) component of the Rule pending resolution of State-Applicants' petition for review.

Respectfully submitted,


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