No. _____

In the Supreme Court of the United States

OHIO, ET AL.
Applicants

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

ON APPLICATION FOR STAY OF ADMINISTRATIVE ACTION TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATES OF OHIO AND KANSAS EMERGENCY APPLICATION FOR A STAY OF ADMINISTRATIVE ACTION

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The petitioners below included Ohio and Kansas.

The respondents are Environmental Protection Agency and Michael S. Regan, Administrator, U.S. EPA.

Petitioners below are, by court of appeals case number, as follows:

24-1120: States of West Virginia, Indiana, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming

24-1121: States of Ohio and Kansas

24-1122: National Rural Electric Cooperative Association

24-1124: National Mining Association and America's Power

24-1126: Oklahoma Gas and Electric Company

24-1128: Electric Generators for a Sensible Transition

24-1142: United Mine Workers of America, AFL-CIO

24-1143: International Brotherhood of Electrical Workers, AFL-CIO

24-1144: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO

24-1146: Midwest Ozone Group

24-1152: Edison Electric Institute

24-1153: NACCO Natural Resources Corporation

24-1155: Idaho Power Company

24-1222: Appalachian Region Independent Power Producers Association

24-1226: Rainbow Energy Center, LLC

24-1227: Montana-Dakota Utilities Co.

24-1233: Westmoreland Mining Holdings LLC, Westmoreland Mining LLC, and Westmoreland Rosebud Mining LLC

Intervenors below are the Louisiana Public Service Commission and Tennessee Valley Public Power Association, Inc., the American Lung Association, American Public Health Association, California Air Resources Board, City and County of Denver, City of Boulder, City of Chicago, City of New York, Clean Air Council, Clean Wisconsin, Commonwealth of Massachusetts, Commonwealth of Pennsylvania, District of Columbia, Edison Electric Institute, Natural Resources Defense Council, State of Arizona, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of Minnesota, State of New Mexico, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, State of Wisconsin, State of New Jersey, Consolidated Edison, Inc., New York Power Authority, Pacific Gas and Electric Company, Power Companies Climate Coalition, and Sacramento Municipal Utility District.

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE DISTRICT OF COLUMBIA CIRCUIT:

If the EPA's rule stands today, there will be no way to unwind its significant consequences. Our nation's power plants will have no choice but to make major and irreversible changes. A win by blitzkrieg would be regrettable in any case, but all the more here, where the States are quite likely to prevail on their claims. The EPA overstepped three statutory guardrails: it adopted a rule that is neither adequately demonstrated nor achievable; it denied the States their statutory powers; and it double-regulated a source contrary to the statute's text. And because of the urgency of the harm to power suppliers and the public, the equities lean heavily in favor of pausing the EPA's flawed rule. This Court should stay the Rule and thereby give the States a real chance to make their case.

JURISDICTION

This Court has jurisdiction to resolve this application under 28 U.S.C. §2101(f).

STATEMENT

Three programs govern air pollution under the Clean Air Act. The first two concern national standards for non-hazardous and hazardous air pollutants. 42 U.S.C. §7408(a)(1); §7412(b). The third program—the focus of this case—is called the "New Source Performance Standards" program. It authorizes the EPA to identify "categories of stationary sources" that contribute to air pollution and set standards for "new sources" in each category. §7411(b)(1). Those standards must be "achievable through the application of the best system of emission reduction" and "adequately demonstrated." §7411(a)(1). And even though the focus of this program is *new* or *modified*

sources, the statute also permits the EPA to take "ancillary" and "gap-filler" steps to regulate certain *existing* sources by determining "the best system of emission reduction that has been adequately demonstrated for existing covered facilities." *West Virginia v. EPA*, 597 U.S. 697, 709–10 (2022) (alterations and quotation omitted); §7411(d)(1). This ancillary power does not permit the EPA to regulate sources that are already regulated under the hazardous-air-pollutants statute. §7411(d)(1).

Even though the EPA sets emission standards, the States are the "primary" watchmen of air pollution under the Clean Air Act. §7407(a). States are first in "determining how best to achieve EPA emissions standards within its domain" by developing implementation plans that cover regulations and permitting. *AEP v. Connecticut*, 564 U.S. 410, 428 (2011); §7411(d)(1) (referencing §7410). For existing power plants, States create and submit plans for achieving the pollution reduction that the EPA requires, but the EPA must give leeway for States to deviate from its standards for individual sources. *West Virginia*, 597 U.S. at 710; §7411(d)(1). One factor States may consider when deviating is the power source's "remaining useful life." §7411(d)(1).

In recent years, the New Source Performance Standards program has become a testing ground for the EPA to aggressively assert control over power generation and State regulation. Almost a decade ago, the EPA tried to use this program to force fossil-fuel-fired power plants to either "reduce their own production of electricity, or subsidize increased generation by natural gas, wind, or solar sources." *West Virginia*, 597 U.S. at 706. This Court blocked that effort, explaining that determining the "best

system of emission reduction" does not mean determining that power generators should stop using fossil fuels and instead use something entirely different. *Id.* at 734–35.

Undeterred, the EPA proposed a new rule. 88 Fed. Reg. 33240 (May 23, 2023). As a "best system of emission reduction," the EPA decided to require power plants to use a heretofore experimental technology: carbon capture and sequestration. *Id.* at 33254. Under the proposed rule, that requires three steps. *Id.* First, power plants isolate at least 90% of the carbon emissions from the air coming from the power plant. *Id.* at 33244, 33254. Second, they transport it underground, likely through pipelines. *Id.* at 33254. Third, they inject it into underground geologic formations and store it there indefinitely. *Id.* Commenters pointed out that the proposed rule effectively required power plants to either actualize a result that has never been achieved or else abandon their current means of power production—the exact result that the EPA had sought before. *E.g.*, Ohio & 17 States' Comments 3–5 (Aug. 8, 2023), https://perma.cc/2JM4-UQSC.

The EPA published the Rule anyway. 89 Fed. Reg. 39798 (May 9, 2024). Under the Rule, coal plants have different standards depending on how much longer they will last. *Id.* at 39801. Any coal plant that will close by 2032 can carry on as normal. *Id.* Coal plants closing by 2039 only have to substitute natural gas for some coal. *Id.* But coal plants that will operate into 2039 or beyond must adopt carbon-capture-and-sequestration technology with 88.4% efficacy. *Id.* Their deadline is 2032—about eight years from now. *Id.* Under the Rule, States include in their implementation

plans the power plants' "enforceable commitments" to shut down, which are irreversible and "federally- and citizen-enforceable." *Id.* at 39958. The Rule also requires any new natural-gas-fired power plants to use carbon-capture-and-sequestration technology to reduce emissions by 90% before 2032. *Id.* at 39903.

The EPA dismissed feasibility concerns. It asserted that the required technology was "adequately demonstrated" because the EPA "project[ed] the development" of the technology in the future. *Id.* at 39801. That is, the EPA predicted that the technology would become adequately demonstrated between now and the deadline because the technology is feasible in theory, *id.* at 39830–31, and because some power plants have tried or plan to try out the technology, *id.* at 39848–50, 39926–27. As for transporting the captured carbon emissions, the EPA acknowledged that the rule will require power plants to build thousands of miles of pipelines across various jurisdictions that will require permits. *Id.* at 39856, 39858–60. It also noted that every power plant will need to find sites—*large* sites—both willing and able to accept the captured carbon. *Id.* at 39863. But the EPA asserted its confidence that the power plants would overcome all obstacles. *Id.* at 39860, 39863.

Lastly, the EPA preemptively rejected any State's attempt to deviate from its standard for any individual sources based on their "remaining useful life." §7411(d)(1); *see* 89 Fed. Reg. at 39964. After all, the EPA had already considered the remaining life of the coal plants when it wrote the standards. So unless the State could prove that its consideration was fundamentally different from the EPA's

consideration, it maintained that States lost their power to deviate based on the statute. 89 Fed. Reg. at 39964.

Ohio and Kansas were among the States who petitioned for review in the D.C. Circuit. *See* Pet. For Review, *Ohio and Kansas v. EPA*, 24-1121 (D.C. Cir. May 9, 2024). They also moved for a stay, which the D.C. Circuit denied to all the parties in the consolidated cases in a short order. Order Denying Stay, *West Virginia, et al. v. EPA*, No. 24-1120 (D.C. Cir. July 19, 2024). With minimal analysis, it found no likelihood of success and no irreparable harm. *Id.*

REASONS TO GRANT THE APPLICATION

Power plants have the slimmest of timelines to implement the sweeping changes required by the Rule. Their urgent attempts to comply with the Rule will create irreversible national change. Without a stay, the next time this Court sees this case will be in a world already bent around the Rule. Vindication of the State's position by then will be victory in name only. Such irreparable harm is one of the "most critical" stay factors. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

The other stay factors support the States too. The States are likely to succeed on the merits because the Rule is nothing close to adequately demonstrated or achievable. The technology it imposes on power plants is still an engineer's aspiration. At best, this is like an 1840 law requiring widespread use of incandescent light bulbs. At worst, this is the Betamax. Either way, projected demonstration tomorrow is not adequate demonstration today. To the extent it factors into the analysis, this Court is also likely to grant certiorari. This issue is nationally important, and there is no

reason to wait for a circuit split because all comparable cases will route through the D.C. Circuit. A stay will thus aid this Court's capacity to resolve the case.

Finally, the equities and the public interest favor the States. The EPA's goals are long-term and gradual, as are any anticipated benefits for the environment. But the damage to power production is around the next corner. That damage flows ineluctably to people who use power from the grid—that is, everyone.

I. The States will suffer irreparable harm without a stay.

If this Court denies a stay, preparations begin immediately. The infrastructure needed for transporting and storing the carbon emissions will be so extensive that only prompt, concentrated work could enable the power plants to finish before the deadline. Power plants must decide quickly between large investments in major construction projects—billions of dollars, to take the EPA's estimate—or shutting down facilities. 89 Fed. Reg. at 40021; Motion to Stay, *Nat'l Rural Elec. Coop. Ass'n v. EPA*, D.C. Cir. No. 24-1122, Doc. 2054191 at 19. Despite the many unknowns heading into the process, all those decisions are due within two years and irrevocably solidified in the State's implementation plan. 89 Fed. Reg. 39958. For those that press on with the required technology, the timeline for action may prove impossible despite best efforts. App.C-13–14. Before power plants can even begin constructing sites to hold the carbon, the EPA may burn through two years of their lead time in considering the power plants' applications. App.C-15.

Power plants will never recover the expenditures they must immediately pour into trying to develop and implement the unproven—but soon required—technology. Building a single pipeline can be a daunting task, even if it has significant political

backing. *See, e.g.*, *Mountain Valley Pipeline, LLC v. Wilderness Soc'y*, 144 S. Ct. 42 (2023). All the more, building thousands of miles of pipelines through countless jurisdictions in only a few years will be herculean. That kind of forced frenzy is exactly what Congress intended the "adequately demonstrated" requirement to prevent.

The combination of time pressure, unproven technology, and extensive construction threatens the power industry's ability to provide reliable power. If the squeeze leads (predictably) to widespread premature retirement of coal plants, the power plants that remain will struggle to compensate because carbon-capture technology saps significant electricity from the grid. App.C-12–13. Meanwhile, demand for electricity is rising. App.C-17. Demand for energy could quickly outpace supply, which will affect every energy consumer, including the States. App.D-4–8; *see* App.E-20–27 & E-30–33.

States also face burdens on their sovereign functions under the Rule. For their part, the States must develop and submit implementation plans within two years, which will require immediate action if they are to finish in time. App.C-9–10. When they do so, they cannot include the variations the statute permits based on remaining useful life because the EPA has already announced its intention to reject those variations. 89 Fed. Reg. at 39989; *see* §7411(d)(1). In addition to the ordinary burdens of creating these plans, the EPA also expects the States to complete "meaningful engagement" with stakeholders, which adds more time and expense to the process. 89 Fed. Reg. at 39992–94; App.C-9. The unlawful interference with the States' sovereignty is irreparable as well. Especially when a statute acknowledges the States'

prerogative to manage its individual power sources, §7411(d)(1), the EPA's engulfment of more regulatory power also unlawfully swallows a piece of the States' sovereignty, *see Ohio v. EPA*, 144 S. Ct. 2040, 2053 (2024).

II. The States will likely prevail on the merits.

The States will likely prevail because the EPA flouted the guardrails on its authority. In statutory terms, its actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 42 U.S.C. §7607(d)(9)(A); *accord* 5 U.S.C. §706(2)(A). Three aspects of the Rule demonstrate the EPA's error. First, the required technology is neither "adequately demonstrated" nor "achievable." Second, the EPA wrongly denied the States their statutory power. Third, the Rule regulates in a field already covered by the hazardous-pollutants plan, as the statute expressly prohibits. Finally, this Court is likely to grant certiorari and consider the merits.

A. Carbon capture and sequestration at a 90% rate has not been adequately demonstrated.

The Clean Air Act does not permit the EPA to adopt any standard it wants. Instead, it requires that a standard that is "achievable" by a system that "has been adequately demonstrated." 42 U.S.C. §7411(a)(1).

Adequate Demonstration. For the "adequately demonstrated" inquiry, the statute unambiguously limits the EPA to a technology that "has been adequately demonstrated." §7411(a)(1). Perhaps too obvious to state, the phrase "has been adequately demonstrated" is in the past tense. That means that the demonstration has already happened. When Congress wanted to refer to upcoming technologies, it used terms like "will be available," 42 U.S.C. §7521(a)(3), but it did not do so here. In short, the

adequate-demonstration standard does not allow the EPA to require technologies that "will be demonstrated."

Likewise, the word "adequately" does not give the EPA more latitude. That adverb modifies "demonstrated." It signals that the *demonstration* of a system must be "good enough" to fit what the EPA is "requir[ing]." *See* Webster's New World Dictionary 16 (2d College ed. 1972). Consequently, the EPA cannot use small-scale examples to show that technology has been *adequately* demonstrated for "full scale" use "throughout [an] industry." *See Sierra Club v. Costle*, 657 F.2d 298, 341 n.157 (D.C. Cir. 1981).

A system has been adequately demonstrated when it "has been shown to be reasonably reliable, reasonably efficient, and which can reasonably be expected to serve the interests of pollution control without becoming exorbitantly costly in an economic or environmental way." *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973). With that understanding, adopting an "emerging technology" as the chosen "adequately demonstrated" system carries "inherent tension." *Costle*, 657 F.2d at 341 n.157.

When comparing to the real world, the EPA relied on a handful of small-scale applications of carbon-capture technology to speculate about what might become feasible later. *See* 89 Fed. Reg. at 39848–50, 39926–27. Issues of scale, reliability, and subpar results plague even the EPA's best examples of carbon-capture experiments. Start with the Petra Nova Project, a three-year study that attempted to achieve a 90% capture rate for a part of a coal plant in Texas. *See* 89 Fed. Reg. at 39849–50; *W.A. Parish Post-Combustion CO2 Capture and Sequestration Demonstration Project:*

Final Scientific/Technical Report, at 3–6 (March 31, 2020) ("*Petra Nova Report*"), https://perma.cc/9DKF-B9AR. The EPA selectively emphasizes that the project achieved a 92.4% capture rate "during its operation," while downplaying the hundreds of outages this "first-of-a-kind facility" experienced, many of which affected the project's carbon-capture facility. 89 Fed. Reg. at 39850; *Petra Nova Report* at 41. The project thus failed to meet its targeted capture rate every single year of the three-year study. *Id.* at 47. And, because the project was limited in size, it did not show that the entire power plant (which housed the project) could achieve anywhere near the emissions reduction the Rule requires. *See* The Buckeye Institute Comments, at 14 (Aug. 8, 2023), https://perma.cc/E5SK-KVWE.

The EPA's reliance on the SaskPower's Boundary Dam—a coal plant in Canada—fares no better. *See* 89 Fed. Reg. at 39848. The relevant unit "was designed" to achieve 90% capture, but it has not consistently met that rate. *See id.* The EPA concedes that SaskPower has "been affected by technical issues," which have reduced "[t]otal capture efficiencies." *Id.* Consequently, SaskPower's actual performance remains far below the EPA's performance standard. The Buckeye Institute Comments at 3–4 (estimating that, in 2022, SaskPower's carbon-capture facility achieved a capture rate of only 63%). To make the EPA's projection even worse, Saskpower's carbon-capture unit—a 110-megawatt unit—is much smaller than most other coal plants, including those in Ohio. *Compare* 89 Fed. Reg. at 39848; *with* App.F-10, F-32; App.C-12.

Turning to natural-gas-fired plants, the EPA's reliance on the Bellingham Energy Center—a plant in Massachusetts—as the "most prominent" available example of carbon capture is likewise misplaced. 89 Fed. Reg. at 39926–27. Bellingham was a small-scale project that captured carbon from a slipstream (of 40 megawatts)—that is, emissions from roughly a tenth of the overall facility's production (of 386 megawatts). *Id.* at 39926. That example of carbon capture on a fraction of the plant's emissions makes it a poor candidate for proving adequate demonstration industry-wide. *See Costle*, 657 F.2d at 341 n.157.

The transport and storage aspects of carbon-capture are also not adequately demonstrated. The EPA can only guess whether the power plants will be able to transport and inject the captured carbon despite the need for thousands of miles of pipeline, 89 Fed. Reg. at 39856, which involve safety concerns, Congressional Research Service, P. Parfomak, *Carbon Dioxide Pipelines: Safety Issues* at 1 (June 30, 2022), https://crsreports.congress.gov/product/pdf/IN/IN11944, and only the "potential" of finding suitable storage sites, 89 Fed. Reg. at 39863. At bottom, the EPA relies on a handful of incomplete and small-scale examples to set an industrywide standard.

The EPA tries to justify its contra-textual approach via selective reading from isolated passages of D.C. Circuit opinions. It claims the authority to require technology "even if it is new and not yet in widespread commercial use" and to "reasonably project the development of a control system at a future time and establish requirements that take effect at that time." 89 Fed. Reg. at 39801; accord *id.* at 39830 (citing *Essex Chem*, 486 F.2d 427 (D.C. Cir. 1973)). In other words, the EPA reads its authorizing

statute to allow it to "make projections" anticipating "technological improvements" that will justify "more stringent standard[s]" than anything that "has been regularly shown" to work. 89 Fed. Reg. 39889 (citing *Costle*, 657 F.2d 298 (1981)). Based on the EPA's interpretation, a technology can be "adequately demonstrated" even though it has never been demonstrated at all in the real world. This result is only possible by twisting the words of the statute to mean the opposite of what they say.

Achievability. Even apart from the "adequately demonstrated" requirement, the Rule stumbles on the "achievable" prong. An achievable standard cannot be "purely theoretical or experimental." *Ruckelshaus*, 486 F.2d at 434. An achievable standard means one that is "capable of being met under most adverse conditions which can reasonably be expected to recur." *Nat'l Lime Ass'n v. EPA*, 627 F.2d 416, 431 n.46 (D.C. Cir. 1980).

There is no reason to conclude the EPA's standards are achievable. As described above, no one has ever achieved them in comparable industrial circumstances. And given the hurdles to the transport and storage aspects, achievability is more of a pipedream than a reasonable conclusion.

B. The Rule purports to remove States' power to make individualized exemptions.

The Rule unlawfully takes away States' discretion under the statute by effectively erasing their ability to consider the remaining useful life of a coal plant when they create their implementation plans.

After the EPA sets the "standards of performance," the States submit their plans to "implement[] and enforce[]" them. §7411(d)(1)(a). But the States retain "leeway"

to vary based on individual considerations. *Env't Comm. of Fla. Elec. Power Coordinating Grp., Inc. v. EPA*, 94 F.4th 77, 93 (D.C. Cir. 2024) (referencing §7410 framework also required under, and referenced by, §7411(d)). Those individual considerations include "the remaining useful life of the existing source" and when deciding the standard for any particular existing power plant:

> Regulations of the Administrator [for existing power plants] shall permit the State in applying a standard of performance to any particular source … to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

§7411(d)(1). The Act provides that room because it is supposed to be "an exercise in cooperative federalism." *See Env't Comm. of Fla. Elec. Power Coordinating Grp.*, 94 F.4th at 93 (referencing the §7410 state-implementation plan process).

The Rule denies that leeway and replaces it with a standard of the EPA's making: States may deviate from the federal standards only if they show a "fundamental difference[]" between what "the EPA considered" and "the information specific to a facility." 89 Fed. Reg. at 39966. And since the EPA considered the remaining life of the coal power plants when it wrote the Rule, that means that States simply cannot use that consideration to deviate as the statute permits. The EPA has no authority to rewrite the statute and preempt States' powers in that way.

C. The Rule regulates power plants already covered by another plan's exclusive domain.

This case presents a clean vehicle to address whether the EPA has illegally double-regulated, a question this Court did not address in *West Virginia v. EPA*. Under the New Source Performance Standards program, the EPA's ancillary "gap-filler" powers to regulate existing power plants may not encroach on the Act's other program

regulating hazardous air pollutants. §7411(d)(1); *AEP v. Connecticut*, 564 U.S. at 424 n.7 . In other words, any "source category" regulated by the hazardous air pollutants statute (42 U.S.C. §7412) cannot also be regulated by the statute covering standards of performance for new stationary sources (42 U.S.C. §7411). *See* §7411(d)(1); *see also Am. Lung Ass'n v. EPA*, 985 F.3d 914, 1003 (D.C. Cir. 2021*), rev'd and remanded sub nom. West Virginia v. EPA*, 597 U.S. 697 (2022) (Walker, J., dissenting).

The EPA ignored that limit. The EPA regulates coal plants under the hazardous-air-pollutants statute by limiting mercury emissions. 89 Fed. Reg. at 39827. It then turns around and attempts to regulate coal plants—the same "source category"—under the standards-for-new-stationary-sources statute. The statute expressly prohibits that maneuver.

D. This Court is likely to grant cert.

While likelihood of certiorari is not a stay factor, some Justices have found it helpful to consider. *See Ohio*, 144 S. Ct. at 2060 (Barrett, J., dissenting); *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring); *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). Should it come to that, this Court is likely to grant cert and review the merits of this case. For one, this case implicates national energy production—an issue with broad importance and all-consuming geographic scope. It also concerns federalism and the scope of statutes that both empower the EPA and limit its reach. And the EPA's action at least arguably flouts this Court's ruling in *West Virginia v. EPA* by seeking to do indirectly "what cannot be done directly." *Cummings v. Missouri*, 71 U.S. 277, 325 (1866).

The case also presents the best available vehicle for review. The interested States have been involved since the case began in the court below and can provide all the needed development to the issues in this case. And there is no need to wait for a circuit split because all legal challenges with issues like these will come through the D.C. Circuit. So waiting will not add anything to the voices available to inform the Court.

III. The equities favor a stay.

In addition to the equities inherent in the arguments above, the public interest favors a stay. The public needs consistent and reliable energy production. A stay would ensure that the public has the power it needs—"a steady supply of electricity during the summer months, especially in the form of air conditioning to the elderly, hospitals and day care centers"—not to mention heat in the winter. *Sierra Club v. Ga. Power Co.*, 180 F.3d 1309, 1311 (11th Cir. 1999) (*per curiam*). The public also suffers when the States (who use their tax dollars) and the power industries (who use their bill payments) squander their funding on experiments and feverish capital projects to meet the standards of an unlawful Rule.

The EPA can claim no analogous equities. The benefits it seeks are gradual and long-term, as the structure of the Rule demonstrates, so it has no need of immediate action. And because denying a stay would effectively require irreversible changes in the EPA's favor, equity favors a halt that permits orderly resolution of the State's claims, not a default win by strongarming immediate action while the case proceeds in the courts. But even if the EPA could assert equities in its favor, any countervailing "weighty" arguments "on both sides" would shift the focus back to "the merits and

the question who is likely to prevail at the end of this litigation." *Ohio*, 144 S. Ct. at 2052–53. For the reasons outlined above, the States are likely to prevail.

CONCLUSION

The Court should stay the greenhouse gas rule pending judicial review.

Dated: July 29, 2024

Respectfully submitted,

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