

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF MISSISSIPPI, et al.,)	
)	
Petitioner,)	
)	
v.)	No. 08-1200
)	(and consolidated cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondents.)	

**AMERICAN LUNG ASSOCIATION’S REPLY IN SUPPORT OF
CROSS MOTION FOR MORE EXPEDITED BRIEFING SCHEDULE**

American Lung Association et al reply to EPA’s response of October 7, 2011 as follows:

1. Contrary to EPA’s assertion (at 2, 4), American Lung Association does not seek to shorten EPA’s briefing time “as a form of punishment,” but to remedy at least a portion of the more than 2 ½ years of delay of this case caused entirely by the government’s dilatory conduct – conduct that the government does not and cannot defend.

2. EPA is truly off base in suggesting (at 4) that nothing has changed in the last three years to justify altering the original briefing schedule. Had

that schedule been followed as envisioned, this case would have been briefed, argued, and decided 1 ½ to 2 years ago. Instead, it was delayed due to the government's repeated assurances to the Court that the ozone standard was on track to be revised. Moreover, American Lung Association never "recognized" that the time allowed in the original briefing schedule for EPA's brief was presumptively reasonable either then or for all time. The originally proposed schedule was a compromise based on a variety of considerations, including the reasonable presumption that briefing was to commence shortly thereafter – i.e., in late 2008 or early 2009.

3. Even more groundless is the claim by EPA's counsel that American Lung Association has not alleged any specific health threats from the delay. ALA's motion (at 4) cited very specific and substantial health threats, including thousands of premature deaths, thousands of heart attacks, thousands of hospitalizations, and tens of thousand of cases of asthma exacerbation each year due to ozone pollution at levels allowed by standards challenged here. EPA does not dispute the reality of these health risks, nor could it, as they are documented in the agency's own analyses. EPA-HQ-OAR-2007-0225; http://www.epa.gov/ttn/ecas/regdata/RIAs/s1-supplemental_analysis_summary11-5-09.pdf. ALA further cited a statement

by EPA's own Administrator stressing the urgency of strengthening these standards. 75 Fed. Reg. 2938, 2943 (Jan. 19, 2010).

4. EPA's claim that a shorter briefing schedule would not likely result in faster resolution of this case is based on pure speculation. The timing of argument and disposition of a given case is a matter for the Court to decide and can be affected by a variety of developments – some of which are not always foreseeable. Plainly, however, faster briefing increases the likelihood of faster resolution of the case, while more protracted briefing increases the likelihood of delay.

5. EPA's claim that it needs 100 days to prepare its brief is not well-founded. The agency's counsel cites a desire to provide for multiple rounds of review of drafts by EPA and Justice Department officials, but there is no reason to delay the case to facilitate such a bureaucratic process.

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Respectfully submitted,

/s/David S. Baron

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2011 I have served the foregoing **American Lung Association's Reply in Support of Cross Motion for More Expedited Briefing Schedule** on all registered counsel through the Court's electronic filing system (ECF).

/s/David S. Baron
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