

ORAL ARGUMENT HELD MARCH 16, 2018

DECISION ISSUED AUGUST 17, 2018

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

AIR ALLIANCE, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	
U.S. ENVIRONMENTAL	)	Nos. 17-1155; 17-1181
PROTECTION AGENCY, et al.,	)	
	)	
Respondents.	)	
	)	

**EMERGENCY MOTION FOR RECONSIDERATION OF THE  
COURT’S DECISION TO GRANT PETITIONERS’ JOINT  
MOTION FOR EXPEDITED ISSUANCE OF THE MANDATE**

1. Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27, State Intervenor-Respondents<sup>1</sup> move the Court to reconsider and withdraw its early issuance of the mandate in the above captioned case on the grounds that the Court failed to follow its procedures and

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<sup>1</sup> State Respondent-Intervenors are Louisiana, Arizona, Arkansas, Florida, Kansas, The Commonwealth Of Kentucky By And Through Governor Bevin, Oklahoma, South Carolina, Texas, Utah, West Virginia, And Wisconsin

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allow opposing parties to be heard. *See* August 31, 2018 Order (Doc. No. 1748554) (the “Order”).

2. The Court granted Petitioners’ motion before giving any other party in the case the time to respond provided by the Federal Rules of Appellate Procedure and this Court’s Rules. The Court should rescind its Order and recall its mandate on its own accord in light of these errors.

3. Rule 27 of the Federal Rules of Appellate Procedure provides that “[a]ny party may file a response to a motion ... [t]he response must be filed within 10 days after service of the motion unless the court shortens or extends the time.” Motions “authorized by Rule[] 41,” however, “may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.” Fed. R. App. P. 27(a)(3)(A).

4. This Court’s local Rules provide that the mandate usually will not issue “until 7 days after the disposition” of any rehearing petition, but that any party may “move for expedited issuance of the mandate for good cause shown.” D.C. Cir. R. 41(a)(1).

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5. The Court issued its judgment on August 17, 2018 and provided that its mandate would issue 7 days following the disposition of any rehearing petition. August 17, 2018 Order (Doc. No. 1746107). On August 24, 2018, Petitioners filed a motion to expedite the mandate, citing this Court's Rule 41(a)(1) and Federal Rule of Appellate Procedure 41(b).

6. Notwithstanding the Court rules or that the Petitioners requested issuance of the mandate on September 7, 2018, which was plainly calculated to allow for filing of oppositions to the Motion to Expedite, the Court issued its mandate today.

7. State Respondent-Intervenors were in the process of drafting their opposition to Petitioners' motion and were planning to file that response on Tuesday, September 4, 2018, consistent with the time frames provided in the Federal Rules of Appellate Procedure.

8. The Court never gave State Respondent-Intervenors notice of its decision to grant Petitioners' motion before the running of this 10-day period and thereby violated Federal Rule of Appellate Procedure 27(a)(3)(A). The Court should accordingly rescind the Order and recall

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its mandate to give parties in the case the opportunity to exercise their right to respond.

Wherefore, State Respondent-Intervenors respectfully request the Court to rescind the Order and recall its mandate on its own motion or in response to this motion.

Respectfully submitted,

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August 31, 2018

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g)(1) and 27(d)(2)(A), I certify that the foregoing Motion for Reconsideration contains 492 words as counted by Microsoft Word and thus complies with the 5,200 word limit.

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

/S/ MICHELLE M. WHITE  
MICHELLE M. WHITE

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### **CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 2018, I will cause the foregoing document to be electronically filed through this Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/S/ MICHELLE M. WHITE  
MICHELLE M. WHITE