July 22, 2022

VIA CM/ECF

Lyle W. Cayce
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United States Court of Appeals for the Fifth Circuit
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New Orleans, LA 70130-3408

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Deborah N. Archer
President

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Executive Director

RE: Response to Notice of Supplemental Authority, *West Virginia v. EPA*, 142 S. Ct. 2587 (2022).

Dear Mr. Cayce:

In relying on *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), Plaintiffs continue to confuse a court's Article III power to rule on the legality of existing regulations with a court's Article III power to preemptively enjoin future regulations.

The Court in *West Virginia* held that the EPA's voluntary cessation was not sufficient to moot the case because the EPA failed to demonstrate that the challenged conduct was not reasonably likely to recur: "The case thus remains justiciable, and we may turn to the merits." *Id.* at 2607. The Court then proceeded to the merits and concluded that the EPA did not have statutory power to issue regulations requiring "generation shifting."

Unlike in *West Virginia*, the merits of this case have already been resolved, and the questions on appeal involve the scope of the district court's remedial power. The Supreme Court's precedent in *West Virginia* guarantees as a practical matter that any future attempt by the EPA to require "generation shifting" would be declared invalid. But the Court did not purport to authorize an *injunction* against all hypothetical future regulations requiring "generation shifting." Nothing in *West Virginia* or any other Supreme Court decision empowers a court to issue an injunction against hypothetical regulations that do not yet exist.

Respectfully submitted,

/s/ Joshua A. Block

Joshua A. Block
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