

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-1172

September Term, 2018

EPA-82FR29246

Filed On: January 2, 2019

American Lung Association, et al.,

Petitioners

v.

Environmental Protection Agency and
Andrew Wheeler, Acting Administrator, U.S.
Environmental Protection Agency,

Respondents

Consolidated with 17-1185, 17-1187

BEFORE: Rogers, Tatel, and Millett, Circuit Judges

ORDER

Upon consideration of the motion for summary vacatur or for stay pending judicial review, the response thereto, and the reply; the motion to dismiss, the response thereto, and the reply; the alternative motion to vacate upon a finding of mootness, the responses thereto, and the reply; the alternative motion to hold in abeyance, the response thereto, and the reply; the Environmental Protection Agency's September 28, 2018 motion to govern, which contains a renewed motion to dismiss and a request for attorneys' fees, the response thereto, and the reply; and the petitioners' September 28, 2018 motion to govern, which requests that the court grant the motion for summary vacatur or vacate upon a finding of mootness, the response thereto, and the reply, it is

ORDERED that the renewed motion to dismiss be granted. The challenged notice extending the deadline for promulgating final attainment status designations has been withdrawn and the Environmental Protection Agency (EPA) has issued the final designations. The court can no longer provide an "effective remedy" because petitioners have "already obtained all the relief" sought, and these cases are moot. Conservation Force, Inc. v. Jewell, 733 F.3d 1200, 1204 (D.C. Cir. 2013) (quotation

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omitted). Petitioners have not sufficiently shown that the “capable of repetition yet evading review” exception to the mootness doctrine applies to these cases. Although the challenged extension may “evade review,” see Ralls Corp. v. Comm. on Foreign Inv., 758 F.3d 296, 321 (D.C. Cir. 2014), petitioners have not demonstrated that the legal wrong complained of is reasonably likely to recur, see Del Monte Fresh Produce Co. v. United States, 570 F.3d 316, 324 (D.C. Cir. 2009); Armstrong v. Fed. Aviation Admin., 515 F.3d 1294, 1296 (D.C. Cir. 2008). It is

FURTHER ORDERED that the alternative motion to vacate upon a finding of mootness be denied. The circumstances of these cases do not support the “equitable remedy” of vacatur. U.S. Bancorp Mortgage Co. v. Bonner Mall P’ship, 513 U.S. 18, 25 (1994). It is

FURTHER ORDERED that EPA’s request for attorneys’ fees be denied. EPA has not shown that the requested fees are “appropriate” under 42 U.S.C. § 7607(f). It is

FURTHER ORDERED that the remaining pending motions be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Amanda Himes
Deputy Clerk