



## MEMORANDUM

To: President Craig Blair, Chair  
Speaker Roger Hanshaw, Chair  
Joint Committee on Government and Finance

cc: Brian Abraham, Chief of Staff  
Ann Urling – Deputy Chief of Staff  
Todd Hooker, Deputy Executive Director, West Virginia Economic Development  
Mitch Carmichael, Cabinet Secretary, West Virginia Economic Development

From: West Virginia Office of Energy

Date: January 17, 2022

Re: Quarterly Report Ending December 31, 2021  
Legal Challenges Potentially Impacting the Energy Industry

As mandated by West Virginia Code §5B-2F-2(s), the following information presents legal challenges with the potential to impact the state's energy industry. This submission was prepared by Amy Smith, Steptoe & Johnson PLLC. Reports are submitted on a quarterly basis.

**FOURTH QUARTER 2021**  
**REPORT TO THE JOINT COMMITTEE ON GOVERNMENT AND FINANCE**  
**PURSUANT TO WEST VIRGINIA CODE § 5B-2F-2(q)**

On October 29, 2021, the United States Supreme Court granted a petition for writ of *certiorari* filed on behalf of numerous states, including West Virginia, which challenges a decision by the United States Court of Appeals for the District of Columbia Circuit on greenhouse gas (“GHG”) emission standards for existing power plants and the rule intended to replace those standards. *W. Va. v. Env’tl. Prot. Agency*, 142 S. Ct. 420 (Oct. 29, 2021). In a January 2021 decision, the District of Columbia Circuit determined that the U.S. Environmental Protection Agency’s (“EPA”) rescission of the 2014 Clean Power Plan and its subsequent promulgation of the 2019 Affordable Clean Energy Rule fail because they are based on an incorrect assertion that Congress, through the Clean Air Act, intended to limit the EPA’s authority to control GHG emissions to the imposition of at-the-source-measures. *Am. Lung Ass’n v. Env’tl. Prot. Agency*, 985 F.3d 914 (D.C. Cir. Jan. 19, 2021). The question presented to the United States Supreme Court is

In 42 U.S.C. § 7411(d), an ancillary provision of the Clean Air Act, did Congress constitutionally authorize the Environmental Protection Agency to issue significant rules—including those capable of reshaping the nation’s electricity grids and unilaterally decarbonizing virtually any sector of the economy—without any limits on what the agency can require so long as it considers cost, nonair impacts, and energy requirements?

Petition for Writ of *Certiorari*, *W. Va. v. Env’tl. Prot. Agency*, 142 S. Ct. 420.