

[NOT YET SCHEDULED FOR ORAL ARGUMENT]

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

STATE OF NEW JERSEY, et al.,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 21-5016
)	Consolidated with No. 21-5018
AL STEWART, in his official capacity as)	
Acting Secretary of Labor, <i>et al.</i> ,)	
)	
Defendants-Appellees.)	
)	

**OPPOSITION TO APPELLEES’ MOTION TO HOLD APPEAL IN
ABEYANCE BY APPELLANTS PUBLIC CITIZEN HEALTH RESEARCH
GROUP, AMERICAN PUBLIC HEALTH ASSOCIATION, AND COUNCIL
OF STATE AND TERRITORIAL EPIDEMIOLOGISTS**

Plaintiffs-appellants Public Citizen Health Research Group, American Public Health Association, and Council of State and Territorial Epidemiologists (the Public Health Plaintiffs) submit this response in opposition to the motion by appellees to hold this case in abeyance indefinitely, with no commitment to do anything but “re-evaluate the issues underlying this appeal” and without setting any timeline for doing so. Appellees’ Mtn. at 1–2. Because the Public Health Plaintiffs and others continue to be injured by the challenged rule, which remains in force, the Court should deny the motion.

This case involves a challenge under the Administrative Procedure Act (APA) to a final rule issued by the Occupational Safety and Health Administration, a component of the Department of Labor under the authority of the Secretary of Labor (collectively, OSHA). In two related cases consolidated in this appeal, the Public Health Plaintiffs and six states challenge the rule entitled “Tracking of Workplace Injuries and Illnesses,” 84 Fed. Reg. 380 (Jan. 25, 2019) (the Rollback Rule), that rescinds provisions of the rule entitled “Improve Tracking of Workplace Injuries and Illnesses,” 81 Fed. Reg. 29,624 (May 12, 2016) (the Electronic Reporting Rule), that required covered employers to submit electronically certain information from OSHA Forms 300 and 301 regarding workplace injuries and illnesses. In the two cases below, *Public Citizen Health Research Group v. Pizzella*, No. 19-166, and *State of New Jersey v. Pizzella*, No. 19-621, the district court issued a single decision, granting defendants’ motion to dismiss in Civil Action No. 19-166, and defendants’ motion for summary judgment in Civil Action No. 19-621, and denying plaintiffs’ motions for summary judgment in both cases. *Public Citizen Health Research Group v. Pizzella*, 2021 WL 86861 (D.D.C. Jan. 11, 2021).

OSHA seeks an indefinite stay of this appeal to allow the new administration “to become familiar with the issues in these cases.” Appellees’ Mtn. at 2. Although the Public Health Plaintiffs would welcome a future rulemaking that rescinds the Rollback Rule and reinstates the requirements of the Electronic Reporting Rule,

OSHA's motion should be denied. OSHA should be able to decide within 60 days whether it will embark on such rulemaking. If it decides to do so, the case could be held in abeyance for a reasonable additional time to cover the rulemaking period. The Public Health Plaintiffs would consent to a 60-day stay to allow OSHA sufficient time to make that decision.

Further, this appeal is in its initial stage and the Court has not yet entered a briefing schedule. Thus, OSHA has plenty of time to consider whether it will embark on rulemaking *before* it must begin devoting resources to drafting its brief in this case. OSHA has offered no compelling reason for the Court to grant its motion, when the agency as appellee faces no imminent briefing deadline.

Most importantly, the Rollback Rule remains in effect nationwide and is causing great harm to the Public Health Plaintiffs and others interested in protecting worker health and safety. The provisions of the Electronic Reporting Rule rescinded by the Rollback Rule were designed to provide public health organizations and others with access to data that would allow them to identify and analyze threats to worker health and safety and to develop solutions. 81 Fed. Reg. 29,629–31. The harms caused by the loss of this information have been magnified by the COVID-19 pandemic. If the Court grants OSHA's motion, the Public Health Plaintiffs' opportunity to receive relief from this harm may be delayed indefinitely.

OSHA's motion to hold this case in abeyance should be denied.

February 26, 2021

Respectfully submitted,

s/ Michael T. Kirkpatrick

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-face and volume limitations set forth in Federal Rule of Appellate Procedure 27(d)(1)–(2). The type face is fourteen-point Times New Roman font, and the word count is 589.

/s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick

CERTIFICATE OF SERVICE

I certify that on February 26, 2021, I caused the foregoing to be filed with the Clerk of the Court through the Court's ECF system, which will serve notice of the filing on all registered filers in this case.

s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick