

No. 16-299

**In the Supreme Court of the United States**

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NATIONAL ASSOCIATION OF MANUFACTURERS,

*Petitioner,*

v.

DEPARTMENT OF DEFENSE ET AL.,

*Respondents.*

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*ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT*

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OPPOSITION OF RESPONDENTS WATERKEEPER ALLIANCE, ET AL.  
TO MOTION OF THE FEDERAL RESPONDENTS TO HOLD THE  
BRIEFING SCHEDULE IN ABEYANCE

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## CORPORATE DISCLOSURE STATEMENT

Respondents Waterkeeper Alliance, Inc., Center for Biological Diversity, Center for Food Safety, Humboldt Baykeeper, Russian Riverkeeper, Monterey Coastkeeper, Snake River Waterkeeper, Inc., Upper Missouri Waterkeeper, Inc., Turtle Island Restoration Network, Inc., Puget Soundkeeper Alliance, and Sierra Club are non-profit organizations that have no parent corporations and do not issue stock.

## OPPOSITION TO FEDERAL RESPONDENTS' MOTION TO HOLD THE BRIEFING SCHEDULE IN ABEYANCE

Pursuant to Rule 21.4, respondents Waterkeeper Alliance, Inc., Center for Biological Diversity, Center for Food Safety, Humboldt Baykeeper, Russian Riverkeeper, Monterey Coastkeeper, Snake River Waterkeeper, Inc., Upper Missouri Waterkeeper, Inc., and Turtle Island Restoration Network, Inc. (collectively, "Waterkeeper"), along with respondents Puget Soundkeeper Alliance and Sierra Club, respectfully submit this opposition to the federal respondents' motion to hold the briefing schedule in abeyance.

The motion should be denied for several reasons. First, the mere "prospect that the 2015 Clean Water Rule *may* be rescinded or revised" (Fed. Respondents' Mot. at 3) (emphasis added) does not suggest that the issue presented is moot or even at significant risk of becoming moot in the near future, as respondents Natural Resources Defense Council et al. ("NRDC") make clear in their opposition. Second, as NRDC also notes, the combination of the Sixth Circuit's nationwide stay of the Rule and this Court's indefinite abeyance of the briefing schedule would amount to the de facto withdrawal of the Rule contrary to the Administrative Procedure Act (APA), 5 U.S.C. § 553(b), (c). These two reasons alone counsel strongly against granting the federal respondents' motion.

Moreover, there remains an urgent need for the Court to resolve the narrow jurisdictional question presented in this case once and for all. As the Sixth Circuit's fractured opinion makes clear, the lower courts "have arrived at conflicting answers" regarding applicability of Section 1369(b) in cases similar to this. *In re*

*U.S. Dep't of Def., U.S. E.P.A. Final Rule: Clean Water Rule: Definition of Waters of U.S.*, 817 F.3d 261, 264 (6th Cir. 2016). Petitioner National Association of Manufacturers said it well: uncertainty over the scope of the Clean Water Act's judicial review provision, 33 U.S.C. § 1369(b), has "generated widespread judicial disagreement, caused needless delay, and wasted valuable resources for no substantive purpose." Nat'l Assn. of Mfrs. Pet'n. for Cert., No. 16-299, at 2 (U.S. 2016). This disagreement extends, of course, to the parties to this very case, many of whom will likely challenge (or defend) any replacement regulation promulgated by federal respondents if and when they follow through on their notice of intent to rescind or revise the Rule. *See* 82 Fed. Reg. 12,532 (March 6, 2017). Resolution of the issue presented here will provide essential guidance to litigants in nearly every future challenge to a national Clean Water Act regulation.

For the foregoing reasons Waterkeeper, Puget Soundkeeper Alliance, and Sierra Club respectfully request that the Court deny the federal respondents' motion to hold the briefing schedule in abeyance.

Respectfully submitted,



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