United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1190 **September Term, 2017**

EPA-07/06/18 Letter

Filed On: August 22, 2018

Environmental Defense Fund, et al.,

Petitioners

v.

Environmental Protection Agency,

Respondent

Consolidated with 18-1192

BEFORE: Henderson, Srinivasan, and Katsas, Circuit Judges

O R D E R

Upon consideration of the emergency motions for stay or summary disposition, the response thereto, and the replies; and the motion to dismiss, the responses thereto, and the reply, it is

ORDERED that the administrative stay entered July 18, 2018 be dissolved. Petitioners have withdrawn their requests for a stay. It is

FURTHER ORDERED that the motion to dismiss be granted. Petitioners' challenges to the July 6, 2018 "No Action Assurance" memorandum are moot in light of EPA's withdrawal of the No Action Assurance on July 26, 2018. See McBryde v. Comm. to Review, 264 F.3d 52, 55 (D.C. Cir. 2001) ("If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot.").

Although, as a general matter, "voluntary cessation of challenged activity does not moot a case," Nat'l Black Police Ass'n v. Dist. of Columbia, 108 F.3d 346, 349 (D.C. Cir. 1997), a defendant may show that its voluntary conduct has mooted a case by demonstrating that (1) "there is no reasonable expectation . . . that the alleged violation will recur," and (2) "interim relief or events have completely and irrevocably eradicated

the effects of the alleged violation," Coal. of Airline Pilots Ass'ns v. FAA, 370 F.3d 1184, 1189 (D.C. Cir. 2004) (quoting County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979)). Here, the July 26, 2018 withdrawal memorandum states that EPA "will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers." 7/26/18 Mem. at 3. Moreover, because the No Action Assurance did not purport to change the law, this court cannot provide "meaningful relief" with respect to penalties that could be imposed in future enforcement proceedings or citizen suits concerning glider vehicle production that may have occurred while the No Action Assurance remained in effect. In any future proceedings, the courts may consider any such factors "as justice may require." 42 U.S.C. § 7413(e)(1). Therefore, a decision from this court would constitute an impermissible advisory opinion as to the legality of the No Action Assurance. See Chamber of Commerce of U.S. v. EPA, 642 F.3d 192, 199 (D.C. Cir. 2011) ("[F]ederal courts are without authority to render advisory opinions or to decide questions that cannot affect the rights of litigants in the case before them.") (internal quotation marks and citation omitted). It is

FURTHER ORDERED that the motions for summary disposition 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/
Robert J. Cavello
Deputy Clerk