

NEWS RELEASE

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AG STRANGE URGES U.S. SUPREME COURT TO REVIEW LAWSUIT CHALLENGING THE EPA'S ABILITY TO VETO PERMITS

(MONTGOMERY) – Attorney General Luther Strange today announced that his office has joined the West Virginia Attorney General and a bipartisan group of 25 other states in an amicus, or friend of the court, brief urging the U.S. Supreme Court to review the Environmental Protection Agency' retroactive veto of a Clean Water Act permit.

"At its core, this lawsuit is about saving and protecting jobs and ensuring public or private projects do not get halted midway by a federal agency that changed its mind," Attorney General Strange said. "This case is about states being able to engage and promote economic development, highway construction and other needed investments without fearing a federal agency will step in years later and halt the project. That is why we strongly support Mingo Logan Coal Co.'s appeal to the U.S. Supreme Court."

West Virginia was the lead author of the bipartisan brief which was signed by attorneys general representing Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, Wisconsin, and Wyoming.

"Alabama has a history of standing up to the EPA's overreaching regulations that would destroy our economic environment under the guise of protecting our natural resources," Attorney General Strange said. "I am proud to stand with West Virginia and the other states that joined this brief saying the EPA went too far in this matter."

The states' brief says the EPA's decision to gut an already-issued permit has sweeping nationwide consequences for state and local governments. Of the 13 permits vetoed by the EPA since the Clean Water Act was implemented, more than half have been public works projects, such as flood prevention and water supply ventures. The

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states say if the EPA's unlimited veto power is upheld, any public work project that has to receive a 404 permit would be subject to unending uncertainty. The states also argue the EPA could use its newly expanded authority to encroach upon other powers granted to the states in the Clean Water Act.

"The EPA's unlimited veto power would have unprecedented consequences on Alabama's continuing economic recovery by enabling the EPA to stop important public works projects even when all of the conditions and terms of the permit have been met and the projects are substantially underway," Attorney General Strange said.

The states' brief argues the EPA exceeded its authority under subsection 404(c) of the Clean Water Act when it effectively vetoed a permit (known as a 404 permit) issued by the U.S. Army Corps of Engineers for a coal mine in West Virginia. The coal company sued the EPA, and in 2012, a federal district judge sided with the company. The EPA appealed to the U.S. Court of Appeals for the District of Columbia, which earlier this year threw out the lower court's ruling. The company is now seeking to have its appeal heard by the U.S. Supreme Court.

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