

IN THE
Supreme Court of the United States

STATE OF MICHIGAN, ET AL.
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
ET AL.
Respondents.

ON WRITS OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE
D.C. CIRCUIT

**BRIEF OF PEABODY ENERGY CORP.
AS AMICUS CURIAE SUPPORTING
PETITIONERS**

TRISTAN L. DUNCAN
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108
816-474-6550
tlduncan@shb.com

LAURENCE H. TRIBE
Counsel of Record
1575 Mass. Ave.
Cambridge, MA 02138
617-495-1767
tribe@law.harvard.edu

JONATHAN S. MASSEY
MASSEY & GAIL LLP
1325 G St. NW, Suite 500
Washington, D.C. 20005
202-652-4511
jmassey@masseygail.com

Hence, the effects of higher energy costs are felt most acutely by the poor and other segments of the population at highest risk for the health problems targeted by EPA. The Institute for Research on Poverty at the University of Wisconsin has summarized the available research: "Health in the United States is very strongly correlated with income. Poor people are less healthy than those who are better off, whether the benchmark is mortality, the prevalence of acute or chronic diseases, or mental health."³² Ironically, the costs of EPA's Rule mean that it may aggravate the very respiratory illnesses it seeks

21

to prevent, because poverty is highly correlated with the incidence of those diseases.³³ The American Thoracic Society has opined that "poverty may be the number one risk factor for asthma."³⁴

In short, by focusing solely on compliance costs, EPA irrationally excludes the far-reaching and at least as significant systemic costs imposed by the Rule on the U.S. economy. EPA ignores the vital importance of reliable and affordable electricity to consumers. It fails to undertake a proper jobs and employment analysis. The Agency purports to consider employment impacts, *but only* in the electricity sector. EPA therefore does not consider job losses in other sectors due to the Rule and the substantial increases in electricity prices that it will entail.

The regulatory costs that EPA seeks to ignore are not simply a matter of concern to the industry within the agency's cross-hairs. These costs have substantial negative impacts on public health and welfare. Judge Easterbrook has cautioned, "[h]igher income is associated with better nutrition and medical care; regulations creating costs exceeding \$7.5 million per life (directly) saved may well yield greater indirect loss of life." *Monsanto Co. v. EPA*, 19 F.3d 1201, 1210 (7th Cir. 1994) (dissenting opinion) (citing BREYER, *BREAKING THE VICIOUS CYCLE*, at 23, *supra*); *see also Int'l Union, UAW v. OSHA*, 938 F.2d 1310, 1326 (D.C.

³² See Susan E. Dudley, *Economic Impact Analyses*, 16 PACE ENVTL. L. REV. 81, 84-86 (1998); Susan E. Dudley & Wendy L. Gramm, *EPA's Proposed Ozone Standard May Harm Public Health and Welfare*, 17 INT'L J. OF RISK ANALYSIS 403 (Aug. 1997).

³⁴ Dudley, *supra* note 31, at 84-85.