UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY)		
1212 Broadway, Suite 800)		
Oakland, CA 94612,)		
CENTER FOR ENVIRONMENTAL HEALTH)		
2201 Broadway, Suite 302)		
Oakland, CA 94612)		
)		
and)		
)		
SIERRA CLUB)		
2101 Webster St., Suite 1300)		
Oakland, CA 94612)		
)		
Plaintiffs,)		
)	Civ. No	
V.)		
)		
SCOTT PRUITT,)		
in his official capacity as Administrator,)		
U.S. Environmental Protection Agency,)		
1200 Pennsylvania Avenue, N.W.)		
Washington, DC 20460,)		
-)		
Defendant.)		

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY, THE CENTER FOR ENVIRONMENTAL HEALTH, and THE SIERRA CLUB bring this Clean Air Act citizen suit to compel Defendant, SCOTT PRUITT, in his official capacity as Administrator of the United States Environmental Protection Agency, ("EPA"), to undertake overdue Congressionally mandated duties. Specifically, the Administrator has failed to promulgate federal

implementation plans to ensure that Mississippi and Alabama address conflicts of interest for those who approve air pollution permits or enforce air pollution protective measures. Mississippi and Alabama are almost forty years late in having these conflict of interest avoidance and disclosure requirements in place.

2. Accordingly, Plaintiffs the Center for Biological Diversity, the Center for Environmental Health, and the Sierra Club bring this action against Defendant Scott Pruitt, in his official capacity as EPA Administrator, to compel him to perform these mandatory duties.

II. JURISDICTION

- 3. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a) (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).
- 4. An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

III. NOTICE

5. On June 21, 2017, Plaintiffs mailed to Defendant by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint.

More than sixty days have passed since EPA received this "notice of intent to sue" letter. EPA has not remedied the violations alleged in this Complaint. Nor has EPA responded to the Plaintiffs' notice of intent to sue in any manner. Therefore, a present and actual controversy

exists.

IV. <u>VENUE</u>

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1). A substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the District of Columbia. Defendant Administrator Pruitt is an officer of the United States, sued for acts and omissions in his official capacity as Administrator of the EPA, and EPA has its principal office in the District of Columbia.

V. PARTIES

- 7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3) organization. The Center for Biological Diversity has approximately 61,000 members throughout the United States and the world, including 86 members in Mississippi and 219 members in Alabama. The Center for Biological Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.
- 8. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is a nonprofit organization that works to protect human health and the environment, helps protect the public from toxic chemicals, and promotes business products and practices that are safe for public health and the environment. The Center for Environmental Health works in pursuit of a world in which all people live, work, learn, and play in healthy environments.

- 9. Plaintiff SIERRA CLUB is the oldest and largest grassroots environmental organization in the United States, with 842,270 members nationally, including 1,625 members in Mississippi and 4,063 members in Alabama. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club performs this mission through advocacy, litigation, and educational outreach to its members and state chapters. Sierra Club and its members are greatly concerned about the effects of air pollution on human health and the environment and have a long history of involvement in activities related to air quality.
- 10. Plaintiffs' members live, work, recreate, travel and engage in other activities throughout the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiffs' members as well as their ability to engage in and enjoy their other activities. Pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities and recreational opportunities and to work and engage in other activities of the affected areas.
- 11. EPA's failure to timely perform the mandatory duties described herein also adversely affects Plaintiffs, as well as their members, by depriving them of procedural protection and opportunities, as well as information that they are entitled to under the Clean Air Act. The failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiffs' members as to whether they are exposed to excess air pollution.
 - 12. The above injuries will continue until the Court grants the relief requested herein.
 - 13. Defendant SCOTT PRUITT is the Administrator of the EPA. In that role

Administrator Pruitt has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

VI. <u>LEGAL BACKGROUND</u>

- 14. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again." H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S. Code Cong. & Admin. News 5356, 5356.
- 15. To promote wholesome air, the Act requires that state plans to implement the Clean Air Act contain a provision that "any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to the permits or enforcement orders" under the Clean Air Act. 42 U.S.C. § 7428(a)(1). The Clean Air Act also requires that "any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed." 42 U.S.C. § 7428(a)(2).
- 16. The Clean Air Act required states to have these 42 U.S.C. § 7428(a) provisions in their state implementation plans by August 7, 1978.
- 17. Section 110(a)(2)(E)(ii) of the Clean Air Act also requires that state plans to implement the Clean Air Act for each new or revised national ambient air quality standard ("NAAQS") ensure that the state plan contain the provisions of 42 U.S.C. § 7428. *See* 42 U.S.C. § 7410(a)(2)(E)(ii).
- 18. If EPA disapproves a state implementation plan submittal, such as for failure to set forth provisions to comply with the requirements of 42 U.S.C. § 7428(a) for state boards,

EPA must promulgate a federal implementation plan ("FIP") to take the place of the disapproved submittal "at any time within 2 years" of the disapproval. 42 U.S.C. § 7410(c)(1)(B).

VII. FACTS

- 19. On March 2, 2015, EPA took final action to disapprove Clean Air Act section 110(a)(2)(E)(ii) of Mississippi's state implementation plan submittal pertaining to the Clean Air Act infrastructure requirements for the 2008 8-hour ozone NAAQS because it failed to meet the requirements of Clean Air Act section 128(a)(1). 80 Fed. Reg. 11,131, 11,132 (March 2, 2015). Specifically, EPA determined that the state plan failed to include a provision which required that at least a majority of members of any state board or body which issues air pollution permits or enforces air pollution restrictions do not derive any significant portion of their income from companies or people subject to the air pollution permits or enforcement orders. *See id*.
- 20. EPA's disapproval of Mississippi's state plan for failing to comply with 42 U.S.C. § 7410(a)(2)(E)(ii) and 42 U.S.C. § 7428(a)(1) was effective April 1, 2015. *See id*.
- 21. On April 2, 2015, EPA took final action to disapprove Clean Air Act section 110(a)(2)(E)(ii) of Alabama's state implementation plan submittal pertaining to the Clean Air Act infrastructure requirements for the 2008 8-hour ozone NAAQS because it failed to meet the requirements of Clean Air Act section 128(a)(1) & (2). 80 Fed. Reg. 17,689, 17,690 (April 2, 2015). Specifically, EPA determined that the state plan failed to include a provision which required that least a majority of members of any state board or body which issues air pollution permits or enforces air pollution restrictions do not derive any significant portion of their income from companies or people subject to the air pollution permits or enforcement orders and required that potential conflicts of interest of state boards and heads of executive agencies be adequately disclosed. *See id.*

22. EPA's disapproval of Alabama's state plan for failing to comply with 42 U.S.C. § 7410(a)(2)(E)(ii) and 42 U.S.C. § 7428(a)(1) and (2) was effective May 4, 2015. *Id*.

VIII. CLAIMS FOR RELIEF

CLAIM ONE

(Failure to Promulgate Mississippi FIP)

- 23. Plaintiffs incorporate by reference paragraphs 1 through 22.
- 24. EPA disapproved the 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Mississippi state implementation plan with regard to the 2008 ozone NAAQS because it does not require that a majority of members of boards that approve permits or enforcement orders in Mississippi do not derive a significant portion of income from persons subject to permits or enforcement orders issued by such Mississippi boards, and therefore, its current SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income.
 - 25. This disapproval was effective April 1, 2015.
 - 26. More than two years has passed since April 1, 2015
- 27. However, EPA has not promulgated a federal implementation plan to address the disapproved 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Mississippi state implementation plan with regard to the 2008 ozone NAAQS.
- 28. Nor has EPA approved a state implementation plan or plan revision to address the disapproved 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Mississippi state implementation plan with regard to the 2008 ozone NAAQS.
- 29. Therefore, EPA is in violation of its mandatory duty to promulgate a federal implementation plan, pursuant to 42 U.S.C. §7410(c)(1), requiring that the majority of members of boards that approve permits or enforcement orders in Mississippi do not derive a significant portion of income from persons subject to permits or enforcement orders issued by such

Mississippi boards.

CLAIM TWO

(Failure to Promulgate Alabama FIP)

- 30. Plaintiffs incorporate by reference paragraphs 1 through 22.
- 31. EPA disapproved the 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Alabama state implementation plan with regard to the 2008 ozone NAAQS because the Alabama state implementation plan did not contain provisions to comply with the requirements of section 128(a)(1) and (2) of the Clean Air Act.
 - 32. This disapproval was effective May 4, 2015.
 - 33. More than two years has passed since May 4, 2015
- 34. However, EPA has not promulgated a federal implementation plan to address the disapproved 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Alabama state implementation plan with regard to the 2008 ozone NAAQS.
- 35. Nor has EPA approved a state implementation plan or plan revision to address the disapproved 42 U.S.C. § 7410(a)(2)(E)(ii) element of the Alabama state implementation plan with regard to the 2008 ozone NAAQS.
- 36. Therefore, EPA is in violation of its mandatory duty to promulgate a federal implementation plan, pursuant to 42 U.S.C. §7410(c)(1), requiring that the majority of members of boards that approve permits or enforcement orders in Alabama do not derive a significant portion of income from persons subject to permits or enforcement orders issued by such Alabama boards and requiring that any potential conflicts of interest by members of such boards or the head of an executive agency with similar powers be adequately disclosed.

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IX. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that the Administrator is in violation of the Clean Air Act with regard to his failure to perform the mandatory duties listed above;
- B. Issue a mandatory injunction requiring the Administrator to perform his mandatory duties listed above by certain dates;
- C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;
- D. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and experts' fees; and;
- E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

Dated: September 28, 2017 /s/ Kathryn Amirpashaie

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Counsel for Plaintiffs

CIVIL COVER SHEET

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I. (a) PLAINTIFFS				DEFENDA						
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CENTER FOR ENVIRONMENTAL HEALTH,				United States Environmental Protection Agency						
and										
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Case 1:17-cv-02002 Document 1-1 Filed 09/28/17 Page 2 of 2

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O G. Habeas Corpus/ 2255	O H. Employment Discrimination	O I. FOIA/Privacy Act	O J. Student Loan		
530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)	895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act)	152 Recovery of Defaulted Student Loan (excluding veterans)		
	(If pro se, select this deck)	*(If pro se, select this deck)*			
 ○ K. Labor/ERISA (non-employment) □ 710 Fair Labor Standards Act □ 720 Labor/Mgmt. Relations □ 740 Labor Railway Act □ 751 Family and Medical Leave Act □ 790 Other Labor Litigation □ 791 Empl. Ret. Inc. Security Act 	O L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholder's Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	O N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)		
V. ORIGIN					
O 1 Original Proceeding from State from Appellate Court Cour					
VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.) Failure to perform a nondiscretionary duty under 42 U.S.C. 7604(a)(2) [issue a CAA Federal Implementation Plan]					
	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 JUF	\$ Check Y YES _	ES only if demanded in complaint		
VIII. RELATED CASE(S) IF ANY	(See instruction) YES	NO X If yes, plo	ease complete related case form		
DATE: 9/28/2017	SIGNATURE OF ATTORNEY OF RECO	ORD K. Quu			

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident
 of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed <u>only</u> if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the <u>primary</u> cause of action found in your complaint. You may select only <u>one</u> category. You <u>must</u> also select <u>one</u> corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT

	fo	r the		
	District of Columb	oia 🔽		
CENTER FOR BIOLOGI CENTER FOR ENVIRONI and SIERRA C Plaintiff(s v. SCOTT PRUITT, in his of Administrator of the United S Protection A	MENTAL HEALTH, LUB official capacity as States Environmental gency))) (Civil Action No.)))))		
	SUMMONS IN	A CIVIL ACTION		
To: (Defendant's name and address)	Scott Pruitt, Administrator U.S. Environmental Protecti 1200 Pennsylvania Avenue Washington, DC 20460			
A lawsuit has been file	ed against you.			
are the United States or a Unit P. 12 (a)(2) or (3) — you must	ed States agency, or an office serve on the plaintiff an ans	ou (not counting the day you received it) — or 60 days if you er or employee of the United States described in Fed. R. Civ. wer to the attached complaint or a motion under Rule 12 of n must be served on the plaintiff or plaintiff's attorney, nirpashaie, PLC		
If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.				
		CLERK OF COURT		
Date:		Signature of Clerk or Deputy Clerk		

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

was rec	This summons for (neeived by me on (date)	ame of individual and title, if an			
	☐ I personally serve	ed the summons on the ind			
			on (date)	; or	
	☐ I left the summon	as at the individual's reside	ence or usual place of abode with (name)		
		,	a person of suitable age and discretion v	who resides the	ere,
	on (date)	, and mailed a	copy to the individual's last known addre	ess; or	
	☐ I served the summ	nons on (name of individual)			, who is
	designated by law to	o accept service of process	on behalf of (name of organization)		_
			on (date)	; or	
	☐ I returned the sun	nmons unexecuted because	>		; or
	☐ Other (specify):				
	My fees are \$	for travel and \$	for services, for a tota	ıl of \$0	0.00 .
	I declare under pena	lty of perjury that this info	rmation is true.		
Date:					
			Server's signature		
		_	Printed name and title		
		_	Server's address		

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

		for the		
	District of Colu	mbia 🔻		
CENTER FOR BIOLOGICENTER FOR ENVIRON and SIERRA CORRESPONDENCE OF SIERR	MENTAL HEALTH, LUB s) official capacity as States Environmental gency)))) (Civil Action No.))))))		
	SUMMONS IN	N A CIVIL ACTION		
To: (Defendant's name and address	Jessie K. Liu U.S. Attorney for the Distr c/o Civil Process Clerk U.S. Attorney's Office 555 4th Street NW Washington, DC 20530	ict of Columbia		
A lawsuit has been file	ed against you.			
are the United States or a Unit P. 12 (a)(2) or (3) — you mus	ed States agency, or an offit serve on the plaintiff an ar	you (not counting the day you received it) — or 60 days if you cer or employee of the United States described in Fed. R. Civ. aswer to the attached complaint or a motion under Rule 12 of ion must be served on the plaintiff or plaintiff's attorney, Amirpashaie, PLC		
If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.				
		CLERK OF COURT		
Date:		Signature of Clerk or Deputy Clerk		

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

		ne of individual and title, if ar	ny)	
was rec	ceived by me on (date)		·	
	☐ I personally served	the summons on the ind	lividual at (place)	
			on (date)	; or
	☐ I left the summons		ence or usual place of abode with (name)	
			, a person of suitable age and discretion who res	ides there,
	on (date)	, and mailed a	copy to the individual's last known address; or	
		ons on (name of individual)		, who is
	designated by law to	accept service of process	s on behalf of (name of organization)	
			on (date)	; or
	☐ I returned the summ	nons unexecuted because	e	; or
	☐ Other (<i>specify</i>):			
	My fees are \$	for travel and S	for services, for a total of \$	0.00
	I declare under penalty	y of perjury that this info	ormation is true.	
Date:		_		
			Server's signature	
		_	Printed name and title	
		_	Server's address	

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

	for the
District of Col	umbia
CENTER FOR BIOLOGICAL DIVERSITY, CENTER FOR ENVIRONMENTAL HEALTH, and SIERRA CLUB Plaintiff(s) V. SCOTT PRUITT, in his official capacity as Administrator of the United States Environmental Protection Agency Defendant(s)))) ()) () () () () () () () () () ()
SUMMONS	IN A CIVIL ACTION
To: (Defendant's name and address) U.S. Attorney General U.S. Department of Just 950 Pennsylvania Avenu Washington, DC 20530	
A lawsuit has been filed against you.	
are the United States or a United States agency, or an of P. 12 (a)(2) or (3) — you must serve on the plaintiff an	. Amirpashaie, PLC
If you fail to respond, judgment by default will You also must file your answer or motion with the cour	be entered against you for the relief demanded in the complaint. t.
	CLERK OF COURT
Date:	
	Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

		ne of individual and title, if ar	ny)	
was rec	ceived by me on (date)		·	
	☐ I personally served	the summons on the ind	lividual at (place)	
			on (date)	; or
	☐ I left the summons		ence or usual place of abode with (name)	
			, a person of suitable age and discretion who res	ides there,
	on (date)	, and mailed a	copy to the individual's last known address; or	
		ons on (name of individual)		, who is
	designated by law to	accept service of process	s on behalf of (name of organization)	
			on (date)	; or
	☐ I returned the summ	nons unexecuted because	e	; or
	☐ Other (<i>specify</i>):			
	My fees are \$	for travel and S	for services, for a total of \$	0.00
	I declare under penalty	y of perjury that this info	ormation is true.	
Date:		_		
			Server's signature	
		_	Printed name and title	
		_	Server's address	

Additional information regarding attempted service, etc: