ORAL ARGUMENT NOT YET SCHEDULED

No. 24 - 1188 (consolidated with Nos. 24 - 1191 & 24 - 1192)

In the United States Court of Appeals for the District of Columbia Circuit

AMERICAN WATER WORKS ASSOCIATION, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

On Petitions for Review of Final Agency Action of the United States Environmental Protection Agency
89 Fed. Reg. 32,532 (April 26, 2024)

MOTION FOR LEAVE TO FILE BRIEF OF TOXICOLOGY EXCELLENCE FOR RISK ASSESSMENT AND THE INTERNATIONAL SOCIETY FOR REGULATORY TOXICOLOGY AND PHARMACOLOGY AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS AND VACATUR

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MOTION FOR LEAVE

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), *amici curiae* Toxicology Excellence for Risk Assessment (TERA) and International Society of Regulatory Toxicology and Pharmacology (ISRTP) respectfully request leave to file a brief in support of the Petitioners and vacatur of the rule promulgated by the Environmental Protection Agency (EPA) entitled "PFAS National Primary Drinking Water Regulation." 89 Fed Reg. 32,532 (April 26, 2024). TERA and ISRTP sought consent from the parties under Federal Rule of Appellate Procedure 29(a)(2). However, the Natural Resources Defense Council declined to provide consent. TERA and ISRTP now seek a motion for leave of court to file their amicus brief under Federal Rule of Appellate Procedure 29(a)(3). TERA and ISRTP's proposed amicus brief meets the requirements of Federal Rule of Appellate Procedure 29(a)(3) because it is both desirable and directly relevant to the disposition of this case.

A. *Amici* Identity and Interest

TERA is a 501(c)(3) nonprofit organization whose mission is to assist governments, industries, and other non-governmental organizations in evaluating the safety and risks associated with environmental chemical exposures; to develop toxicology and risk assessment values; and to educate both risk assessors and the public on environmental and public health issues.

TERA has worked on per- and polyfluoroalkyl substances (PFAS) risk assessment issues since its assistance to the State of West Virginia in 2002. Since then, it has worked for Health Canada, the United States Environmental Protection Agency (EPA), and other government and industry groups on these issues. TERA has also participated in three unfunded international collaborations. Of particular relevance to this litigation, TERA worked with the Alliance for Risk Assessment (ARA) to develop multiple international collaborations on the safety assessment of PFAS. As a result, TERA possesses a unique understanding of PFAS toxicity and extensive experience engaging with multiple entities in this field of study.

ISRTP is a 501(c)(3) scientific society formed to provide an open public forum for policy makers and scientists to promote sound toxicologic and pharmacologic science as a basis for regulation affecting human safety, health, and the environment. ISRTP is unique in its firm understanding of toxicology as it relates to regulatory policy.

The *amicus* brief advances the missions of both TERA and ISRTP by helping to educate this Court on the toxicologic issues that are relevant to this case.

B. The TERA and ISRTP *amicus* brief is both desirable and directly relevant to the disposition of this case.

Participation by TERA and ISRTP as *amici curiae* is necessary to provide the Court with a balanced presentation of the scientific issues at stake.

Amici's proposed brief does not repeat facts or legal arguments adequately addressed by other parties. The Petitioners' brief does not delve into the scientific issues underlying EPA's assessment of PFAS risks. Further, although the U.S. Chamber of Commerce has filed an *amicus* brief in support of the Petitioners, its argument focuses on economic costs, not the flaws in EPA's scientific analyses. Finally, while four individual scientists have submitted an *amicus* brief in support of the Respondents that provides one point of view of the scientific issues in this case, no scientific *amici curiae* have filed in support of the Petitioners.

For the aforementioned reasons, the Court should grant leave to file the accompanying brief.

Dated: April 15, 2025

Respectfully submitted,

/s/Edwin Donald Elliott, Jr.

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, The Toxicology Excellence for Risk Assessment ("TERA") is a non-profit, tax-exempt organization incorporated in the State of Ohio. The mission of TERA is to support the protection of public health by developing, reviewing, and communicating risk assessment values and analysis, improving risk methods through research, and educating assessors and managers and the public on risk assessment issues. TERA has no parent corporation, and no publicly held company has 10% or greater ownership in TERA.

The International Society for Regulatory Toxicology and Pharmacology is a non-profit, tax-exempt organization incorporated in Washington, D.C. The mission of ISRTP is to provide an open public forum for policy makers and scientists promoting sound toxicologic and pharmacologic science as a basis for regulation affecting human safety and health, and the environment. ISRTP has no parent corporation, and no publicly held company has 10% or greater ownership in ISRTP.

Respectfully submitted,

/s/ *Edwin Donald Elliott Jr.*
Edwin Donald Elliott, Jr.

Counsel for *Amici Curiae*

CERTIFICATE OF COMPLAINCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) and 32(g)(1) because the motion contains 540 words.

Dated: April 15, 2025

/s/Edwin Donald Elliott, Jr.
Edwin Donald Elliott, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on April 15, 2025. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: April 15, 2025

/s/Edwin Donald Elliott, Jr.
Edwin Donald Elliott, Jr.