No. 00-1307

In the Supreme Court of the United States

WALTER A. HALTER, ACTING COMMISSIONER OF SOCIAL SECURITY, PETITIONER

v.

SIGMON COAL COMPANY, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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TABLE OF AUTHORITIES

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Respondents do not dispute that the Fourth Circuit's decision in this case—holding that the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), 26 U.S.C. 9701 *et seq.*, does not grant the Commissioner of Social Security the authority to assign liability for a retired miner's health benefits to the direct successor of the signatory operator that actually employed the miner (Pet. App. 26a)—conflicts directly with the decision of the D.C. Circuit in *R.G. Johnson Co.* v. *Apfel*, 172 F.3d 890 (1999), and that of the Third Circuit in *Aloe Energy Corp.* v. *Apfel*, No. 99-3915 (June 20, 2000), petition for cert. pending, No. 00-725. Rather, respondents argue that (1) the decision of the court of appeals is correct; (2) the Coal Act was the product of delicate legislative compromise that should not be

altered by a broad reading of its terms; and (3) the issue is not significant enough to warrant this Court's review. Each submission is without merit.

1. Respondents argue (Br. in Opp. 6) that the court of appeals correctly ruled that a direct successor of a signatory operator that employed a retired miner who is a beneficiary of the UMWA Combined Benefit Fund (Combined Fund) may not be held responsible for that miner's health-care benefits, even though a more distantly related direct successor of a related corporation within the same control group as a signatory operator may be held so responsible. Respondents fail to explain, however, why Congress would have wanted the Coal Act to be read to accomplish such a strange outcome. It was precisely the strangeness of that reading of the Coal Act's related-person definition in 26 U.S.C. 9701(c)(2) that led the D.C. Circuit in *R.G. Johnson* to conclude that the statute should be more sensibly construed to permit the imposition of liability on direct successors to signatory operators. See *R.G. Johnson*, 172 F.3d at 85.[1]

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[1] Although the D.C. Circuit concluded that the plain language of the Coal Act does not support such direct-successor responsibility for financing health-care benefits, see *R.G. Johnson*, 172 F.3d at 894, it also concluded that Section 9701(c)(2)(A) presented the unusual case in which the plain language of the statute is not a reliable indicator of Congress's intent, see *id.* at 895. The Third Circuit in *Aloe* adopted the same reasoning. See 00-725 Pet. App. 7a-8a (*Aloe Energy Corp.* v. *Halter*, *supra*) (reprinting court of appeals' decision in *Aloe*). In our view, the plain language of the Coal Act does support (or at least does not preclude) direct-successor liability. First, Section 9701(c)(2)(A) states that a person shall be considered to be a "related person to a signatory operator" (and therefore potentially responsible for the benefits of persons employed by that signatory operator) if it is a "related person" to, among other entities, a member of the controlled group of corpora-

Respondents suggest (Br. in Opp. 6 n.5) that Congress might have precluded direct-successor liability because it wanted to promote the buying and selling of companies free of Coal Act liabilities. Respondents point to nothing in the text or legislative history to suggest that this was one of Congress's objectives in enacting the Coal Act, however, and the suggestion is implausible. As *amicus curiae* Combined Fund points out (Br. 7), the shifting of corporate forms to avoid liability for miners' health-care benefits was one of the very practices that caused the crisis in financing of the predecessor UMWA Benefit Trusts and led Congress to intervene by passage of the Coal Act. Simply by selling its business to a new corporate entity, a signatory operator would be able to foist responsibility for its own employees' benefits on the government and, potentially, other signatory operators. See pp. 5-7, *infra*. As Judge Murnaghan observed in dissent below, there is no reason to conclude "that Congress intended

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tions that includes the signatory operator. But since a signatory operator is a member of the control group that includes itself, its own direct successor is a related person to it, under the Coal Act's definition of "related person." Second, while Section 9701(c)(2)(A) provides that certain entities "shall be considered to be a related person," it does not provide that all other entities shall *not* be considered to be so related, and thus does not preclude the Commissioner from looking to general principles of direct successorship in the law to assign responsibility for a signatory operator's beneficiaries to its direct successor. We do agree with the D.C. Circuit and the Third Circuit, however, that broader principles of effectuating legislative intent support direct-successor responsibility as well. Cf. *Johnson* v. *United States*, 120 S. Ct. 1795, 1804 n.9 (2000) (reiterating that "statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion").

to promote the exact practice that necessitated legislative action in the first place." Pet. App. 42a.[2]

2. Respondents further argue (Br. in Opp. 8-13) that the Coal Act is the product of a delicate legislative compromise after a contentious lawmaking process and so the Court should be reluctant to read broadly its terms imposing financial responsibility. It is true that the process of framing the Coal Act was difficult, as Congress sought to balance various interests and choose among divergent proposals for a remedy to the crisis in funding miners' health-care benefits. Nothing in the legislative record suggests, however, that there was any significant disagreement in Congress about the particular issue in this case, *viz.*, financial responsibility of direct successors to signatory operators. Senator Rockefeller, the principal sponsor of the Coal Act, explained on the floor of the Senate that the Coal Act's provision for responsibility of related persons included responsibility for direct successors to signatory operators, see 138 Cong. Rec. 34,033 (1992), and no one contradicted his statement. Similarly, no one contradicted the explanation inserted into the record by Senator Wallop that, "because of complex corporate structures which are often found in the coal industry, the number of entities made jointly and severally liable for a

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[2] Indeed, it is difficult to understand how the Coal Act could have promoted such an objective in any event. The Act can have no impact on sales that occurred before its operative date, because those transactions were negotiated and completed before the imposition of statutory liability. As for post-enactment transactions, Congress has expressly dealt with the disincentives posed by Coal Act liabilities in provisions empowering companies to transfer those liabilities by contract, provided that the selling company remains the guarantor of premium payments. See 26 U.S.C. 9711(g)(2).

signatory operator's obligations under the definition of related persons is intentionally very broad." *Id.* at 34,002.[3]

3. Finally, respondents argue (Br. in Opp. 14) that the issue of successor liability is not significant enough to warrant certiorari because the issue concerns only which among several private entities will be responsible for a miner's health-care benefits. As a factual matter, that submission is incorrect. As respondents note (*id.* at 15 n.12), in the case of a beneficiary of the Combined Fund who is deemed "unassigned" because no former employer or related person liable under the statutory definition could be identified, health-care benefits are financed at the outset by government funds (if such funds are available) transferred from interest earned on the Department of the Interior's Abandoned

[3] Respondents note (Br. in Opp. 12-13) that Representative Rostenkowski remarked on the floor of the House of Representatives that the House's conferees were uneasy with various provisions in the Coal Act, including "numerous inequities among the companies that will be required to pay for these benefits," but had acquiesced in those perceived inequities in order to secure passage of the comprehensive energy policy legislation before Congress. Representative Rostenkowski identified specific concerns about various provisions in the Coal Act, including provisions that imposed responsibility for miners' benefits on companies that, he believed, had either discharged their obligation for those miners' benefits (such as companies that had paid withdrawal liability to the old UMWA Benefit Trusts) or had only a tenuous connection to the miners (such as companies that only leased property to a mining operator). See 138 Cong. Rec. 32,080 (1992). Representative Rostenkowski nowhere indicated, however, that the Coal Act's approach to direct-successor liability was one of the "inequities" that he perceived.

Mine Reclamation (AMR) Fund.[4] Thus, the effect of the court of appeals' decision is to foist the cost of financing the health-care benefits of retired miners and their dependents on to the public fisc. That result is contrary to Congress's intent that the Combined Fund be established as a private entity with funding from private sources. See Pet. 4; Energy Policy Act of 1992, Pub. L. No. 102-486, § 19142, 106 Stat. 3037.

Second, as *amicus curiae* Combined Fund points out (Br. 9), if AMR funds are unavailable or exhausted, then responsibility for unassigned beneficiaries is placed on all signatory operators (or their related persons) in a *pro rata* fashion. The court of appeals' decision thus has the potential to recreate the very conditions that led to the Coal Act's enactment—responsibility for "orphaned" retirees (whose employers had dissolved or left the coal industry) being forced on a dwindling number of coal companies that had chosen not to avoid their responsibilities to their own employees and had remained in the coal business. If that process continues, the situation could ultimately impair the financial stability of the Combined Fund. And while the Social Security Administration (SSA) has not been able to obtain a precise count of the number of assignments that will be affected by the decision below (see Pet. 14 n.4; Br. in Opp. 16), SSA believes that that number is substantial, perhaps in the thousands. That potential impact is sufficient to warrant this Court's resolution of the conflict in the

[4] Transfers from interest on the AMR Fund to the Combined Fund are authorized only for fiscal years beginning on or after October 1, 1995. Before that date, the benefits of unassigned beneficiaries were paid in the first instance out of funds transferred from the predecessor UMWA Benefit Trusts, not the AMR Fund. See 26 U.S.C. 9705(a)(3); 30 U.S.C. 1232(h)(1).

circuits on the issue of responsibility for Coal Act benefits of a direct successor to a signatory operator.[5]

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For the foregoing reasons, and for those set forth in the petition, the petition for a writ of certiorari should be held pending the disposition of the petition for a writ of certiorari in *Aloe Energy Corp.* v. *Apfel*, No. 00-725, and then disposed of as appropriate in light of the disposition of that case.

Respectfully submitted.

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[5] As we stated in the petition (at 15), we do not oppose the private party's request for this Court's review in *Aloe Energy Corp.* v. *Halter*, No. 00-725, which was filed before our petition in this case and which raises the same issue. The Court should therefore hold this petition pending its disposition of *Aloe*.