

ORAL ARGUMENT NOT YET SCHEDULED

No. 15-1363, consolidated with Nos. 15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398, 15-1409, 15-1410, 15-1413, 15-1418, 15-1422, 15-1432, 15-1442, 15-1451, 15-1459, 15-1464, 15-1470, 15-1472, 15-1474, 15-1475, 15-1477, 15-1478, 15-1479, 15-1483, 15-1485, 15-1488]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

State of West Virginia, *et al.*,
Petitioners,

v.

United States Environmental Protection Agency, and Regina A. McCarthy,
Administrator,
Respondents.

**On Petition for Review of the Final Rule of the
United States Environmental Protection Agency**

**UNOPPOSED MOTION BY THE AMERICAN THORACIC SOCIETY,
THE AMERICAN MEDICAL ASSOCIATION, THE AMERICAN
COLLEGE OF PREVENTIVE MEDICINE, AND THE AMERICAN
COLLEGE OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE
FOR LEAVE TO PARTICIPATE AS AMICI CURIAE**

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Dated: January 15, 2016

Counsel for Amici Curiae

Pursuant to Federal Rule of Appellate Procedure 29(b) and D.C. Circuit Rule 29(b), the American Thoracic Society, the American Medical Association, the American College of Preventive Medicine, and the American College of Occupational and Environmental Medicine (collectively, “Public Health *amici*”) respectfully move for leave to participate as *amici curiae* in support of Respondents Environmental Protection Agency (“EPA”) and Regina A. McCarthy, EPA Administrator.

Counsel for federal respondents and for Non-Governmental Organization Respondent-Intervenors expressed the consent of their clients to this motion, as did counsel for several other movant intervenors in support of federal respondents, including the District of Columbia, American Wind Energy Association, Advanced Energy Economy, Calpine Corporation, the City of Austin d/b/a Austin Energy, the City of Los Angeles, by and through its Department of Water and Power, the City of Seattle, by and through its City Light Department, National Grid Generation, LLC, New York Power Authority, Pacific Gas and Electric Company, Sacramento Municipal Utility District, and Southern California Edison Company. Counsel for state petitioners in case no. 15-1363, and counsel for industry petitioners in case no. 15-1376, stated that they take no position as to this motion. Counsel for other intervenors and the additional state and industry petitioners in the other consolidated cases did not respond to the notice sent to liaison counsel requesting

their consent as to the participation of the Public Health *amici*. That notice, which was sent to liaison counsel on January 6, 2016 as to the American Thoracic Society, the American Medical Association, and the American College of Preventive Medicine, and on January 8, 2016 as to the American College of Occupational and Environmental Medicine, provided that if no response was received by January 11, 2016, counsel for proposed Public Health *amici* would notify this Court that those parties took no position as to the proposed participation of the Public Health *amici*.

In support of this motion, the Public Health *amici* state as follows:

1. Climate change is a human health problem. Left unchecked, the effects of climate change will create diverse risks for human health. For instance, higher temperatures are correlated with higher concentrations of ozone and particulate matter, which have negative impacts on respiratory health. *See, e.g.*, Patrick L. Kinney, *Climate change, air quality, and human health*, 35 AM. J. PREVENTIVE MED. 459, 461 (2008). Rising temperatures will also put vulnerable populations, such as the elderly, at risk from heat exposure. *See, e.g.*, Janet L. Gamble *et al.*, *Climate Change and Older Americans: State of the Science*, 121 ENVTL. HEALTH PERSPS. 15 (2013). Hospitalizations due to heart disease, kidney disease, diabetes, and other medical conditions increase with higher ambient temperatures and heat waves. *See, e.g.*, Rupa Basu *et al.*, *The effect of high*

ambient temperature on emergency room visits, 23 EPIDEMIOLOGY 813, 815-18 (2012). Temperature increases are likely to lead to increased pollen levels and duration of allergy seasons, which will cause higher numbers of allergic diseases. *See, e.g.*, Lewis H. Ziska & Paul J. Beggs, *Anthropogenic climate change and allergen exposure: the role of plant biology*, 129 J. ALLERGY & CLINICAL IMMUNOLOGY 27, 28-29, 30-31 (2012). Climate change is expected to result in increased forest fires, which worsen air quality, and more severe weather events, such as droughts, floods, and storms, that negatively impact human health. *See, e.g.*, D.V. Spracklen *et al.*, *Impacts of climate change from 2000 to 2050 on wildfire activity and carbonaceous aerosol concentrations in the western United States*, 114 J. GEOPHYSICAL RES.: ATMOSPHERES, Oct. 27, 2009, at 7, 12, 15; Working Group I Contribution to the IPCC Fifth Assessment Report: Climate Change 2013: The Physical Science Basis. Summary for Policymakers 5, tbl. SPM.1 (Thomas F. Stoker *et al.* eds., 2013).

2. On October 23, 2015, EPA published its final version of the Clean Power Plan, which regulates carbon dioxide emissions from existing power plants under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d). 80 Fed. Reg. 64,661 (Oct. 23, 2015). Petitioners have filed these consolidated cases, seeking judicial review of the Clean Power Plan.

3. By curbing emissions of carbon dioxide that contribute to climate change, EPA's Clean Power Plan will play a critical role in mitigating the harmful impacts of climate change for human health.

4. In addition to carbon dioxide, the Clean Power Plan will reduce emissions of sulfur dioxide and nitrogen oxide, which are precursors to the formation of particulate matter and ozone pollution. As noted, exposure to particulate matter and ground level ozone leads to health problems, and is associated with increased mortality rates. Reductions in carbon dioxide, sulfur dioxide, and nitrogen dioxide that follow from implementation of the Clean Power Plan are expected to avoid premature deaths, asthma attacks, respiratory and cardiovascular disease, and hospital admissions.

5. Public Health *amici* experience the public health consequences of climate change and poor air quality first-hand. For example, the American Thoracic Society ("ATS") is a non-profit public health organization whose members have worked for over a century to tackle global health challenges. ATS's 15,000 respiratory health professionals in more than 120 countries protect human health by preventing and fighting respiratory illnesses through research, education, care, and advocacy. ATS members, including physicians, advanced practice nurses, and respiratory therapists, encounter the human health impacts of air pollution in their daily practices. Other ATS members are experts and research

scientists, helping to publish ATS's three peer-reviewed scientific journals that distribute groundbreaking research, including studies on air pollution and health.

6. The American Medical Association ("AMA") is the largest professional association of physicians, residents, and medical students in the United States. Through state and specialty medical societies and other physician groups with seats in the AMA's House of Delegates, substantially all U.S. physicians, residents, and medical students are represented in the AMA's policy making process. The objectives of the AMA are to promote the science and art of medicine and the betterment of public health. AMA members practice in all fields of medical specialization and in every state.

7. The American College of Preventive Medicine ("ACPM") is a national professional society for over 2,700 member physicians committed to evidence-based disease prevention and health promotion. ACPM's members are employed in research, academia, government, clinical settings, and other entities worldwide.

8. The American College of Occupational and Environmental Medicine ("ACOEM") represents more than 4,500 physicians and other health care professionals specializing in the field of occupational and environmental medicine. Founded in 1916, ACOEM is the nation's largest medical society dedicated to promoting the health of workers through preventive medicine, clinical care,

research, and education. Occupational and environmental medicine is the medicine specialty devoted to prevention and management of occupational and environmental injury, illness and disability, and promotion of health and productivity of workers, their families, and communities.

9. Public Health *amici* seek to participate in this action to detail the importance for human health of both the primary and secondary emissions reductions that will result from the Clean Power Plan, as well as to discuss the negative public health consequences that will follow a failure to uphold the Plan. This information is distinct from arguments expected from other parties in these consolidated cases, and is critical for the Court's understanding of the full scope of the public interest in implementation of the Clean Power Plan.

10. D.C. Cir. Rule 29 permits the filing of a motion for leave to participate as *amicus curiae* up to seven days after the filing of the principal brief of the party being supported, but encourages the filing of a notice of intent as soon as practicable. Public Health *amici* are filing this motion as soon as practicable and before the parties have filed briefs addressing the merits of the case. If permitted to file an *amicus* brief, *amici* would file a document within the briefing schedule established by this Court for all briefs, including those filed by *amicus curiae* and within any proscribed word limitations.

11. To the extent that other *amici* intend to participate in support of the federal respondents to discuss the relationship of the Clean Power Plan to the public health impacts of climate change and poor air quality, Public Health *amici* welcome joinder with those parties on a single *amicus* brief.

WHEREFORE, the proposed Public Health *amici* respectfully request leave to file a brief of *amici curiae* pursuant to the schedule and any other direction, including word limitations, established by the Court.

Respectfully submitted,

/s/ Sarah J. Fox

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Dated: January 15, 2016

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rules of Appellate Procedure 27(d)(1)&(2) and 29(b) and D.C. Circuit Rule 29(c) because it meets the prescribed format requirements, does not exceed 20 pages, and is being filed as promptly as practicable after the case was docketed in this Court. This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(5)&(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/ Sarah J. Fox

Sarah J. Fox

Dated: January 15, 2016

**CORPORATE AND FINANCIAL DISCLOSURE STATEMENT
PURSUANT TO FEDERAL RULES OF APPELLATE PROCEDURE 26.1,
29(c) AND D.C. CIRCUIT LOCAL RULE 26.1**

Amici curiae are non-profit organizations. *Amici* do not have parent corporations, and no publicly held corporation owns 10% or more of the stock of the *amici*.

/s/ Sarah J. Fox

Sarah J. Fox

Dated: January 15, 2016

CERTIFICATE AS TO PARTIES AND AMICI CURIAE

Pursuant to D.C. Circuit Rule 28(a)(1)(A), counsel certifies as follows:

except for the Public Health *amici* and the following, all parties, intervenors, and *amici* appearing in this Court are, to the best of my knowledge, listed in the Joint Certificate as to Parties, Rulings, and Related Cases [1587532] and the Unopposed Motion of the Institute for Policy Integrity at New York University School of Law for Leave to File Amicus Curiae Brief in Support of Respondents [1589260]:

- (1) the National League of Cities; U.S. Conference of Mayors; Baltimore, Maryland; Coral Gables, Florida; Grand Rapids, Michigan; Houston, Texas; Jersey City, New Jersey; Los Angeles, California; Minneapolis, Minnesota; Pinecrest, Florida; Portland, Oregon; Providence, Rhode Island; Salt Lake City, Utah; and San Francisco, California are *Amici Curiae* in support of Respondents;
- (2) the Municipal Electric Authority of Georgia is *Amicus Curiae* in support of Petitioners State of West Virginia, *et al.*, case no. 15-1363;
- (3) Pedernales Electric Cooperative, Inc. is *Amicus Curiae* in support of Petitioners National Rural Electric Cooperative Association, *et al.*, case no. 15-1376.

/s/ Sarah J. Fox

Sarah J. Fox

Dated: January 15, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system for service on all registered counsel in these consolidated cases.

/s/ Sarah J. Fox

Sarah J. Fox

Dated: January 15, 2016