

ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF WEST VIRGINIA,
STATE OF TEXAS, et al.

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY, and
REGINA A. MCCARTHY,
Administrator,

Respondents.

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

Case 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, 15-1483,
15-1488

**UNOPPOSED MOTION BY THE SERVICE EMPLOYEES
INTERNATIONAL UNION FOR LEAVE TO PARTICIPATE AS *AMICUS
CURIAE***

Pursuant to Fed. R. App. Pro. 29(b) and D.C. Cir. Rule 29(b), the Service
Employees International Union (“SEIU”) respectfully moves for leave to

participate as *amicus curiae* in support of the Respondents Environmental Protection Agency (“EPA”) and Regina A. McCarthy, EPA Administrator.

Counsel for the federal respondents in these consolidated cases has provided the consent of their clients to *amicus* participation by SEIU. Counsel for several movant intervenors in support of federal respondents, including, City of Austin d/b/a Austin Energy, City of Seattle by and through its City Light Department, National Grid Generation, L.L.C., New York Power Authority, Pacific Gas & Electric Company, Sacramento Municipal Utility District, and Southern California Edison Company, Advanced Energy Economy, American Wind Energy Association, NextEra Energy, Inc., Solar Energy Industries Association, and Health and Environmental Non-Governmental Organizations (including the NRDC, EDF, Sierra Club, and the American Lung Association), also all expressed their consent to *amicus* participation. Counsel for the State of North Dakota and counsel for the petitioners in Case Nos. 15-1363, 15-1364, 15-1376, and 15-1409, have stated that they take no position on the question whether this motion for leave to participate as *amicus curiae* should be granted. No counsel for any of the additional petitioners in this consolidated case or for any other movant intervenors responded to notice sent to liaison counsel asking whether they consented to *amicus*'s proposed participation sent to liaison counsel on Tuesday January 26, 2015.

In support of this motion, SEIU states as follows:

1. While climate change and the greenhouse gas emissions driving climate change pose dire threats to all people, these threats are especially acute for workers, low-income communities, and communities of color. First, the emissions causing climate change, especially those from fossil-fueled power plants, are devastating to the health of residents of the communities—disproportionately low-income communities of color—where emissions are concentrated. Second, as these emissions change the global climate, increases in illness and death, economic destabilization, scarcity, and loss of jobs and other economic opportunities will hit hardest already vulnerable communities, including the working poor, low-income communities, and communities of color. Conversely, a robust response to climate change stands to provide these communities with enormous opportunities for reinvestment and growth.

2. SEIU is a labor union of more than two million people in the United States (including Puerto Rico) and Canada, and the largest health care union in the United States. More than half of SEIU's two million members work in the health care industry, including as doctors, nurses, nursing assistants, therapists, technicians, home care providers, administrative staff, janitorial workers, and food service staff. SEIU also represents workers in the property service industries. Approximately 250,000 SEIU property services workers nationwide clean,

maintain, and provide security for commercial office buildings, co-ops, and apartment buildings, as well as public facilities like theaters, stadiums, and airports. SEIU is also one of the largest unions of public service employees with more than one million local and state government workers, public school employees, bus drivers, and child care providers, including approximately 80,000 early learning and child care professionals. Given the workers the SEIU represents, a significant portion of SEIU's members live, work, and raise families in the communities currently bearing the disproportionate impacts of greenhouse gas emissions and climate change.

3. SEIU seeks to participate as *amicus curiae* to support the SEIU's view that the Clean Power Plan is a valid exercise of the EPA's authority and represents a reasonable interpretation of the "best system of emissions reduction" standard established under Section 111(d) of the Clean Air Act. SEIU is especially qualified to provide a frontline perspective on the impact of greenhouse gas emissions and climate change on the most impacted communities. SEIU's members, as healthcare professionals in low-income communities and communities of color, and as low-income workers and people of color themselves, know all too well about the disproportionate impacts of greenhouse gas emissions and climate change the Clean Power Plan will help to remedy.

4. As SEIU would elaborate in its *amicus* filing, SEIU's strong concern about climate change stems from two missions that underlie all of the Union's work. First, the Union's primary mission is to achieve social and economic justice for all workers and their families. A significant portion of SEIU members are people of color, who live and work in communities that are already disproportionately affected by climate change. Second, as the largest union of health care workers in the United States, SEIU works every day to address issues of public health and access to quality healthcare. The Union's members understand that climate change is one of the most significant threats to the fulfillment of both these goals. Its members, many of whom live, or are caregivers in, vulnerable communities, have experienced extreme weather events and pollution-related health conditions that have become increasingly common consequences of climate change.

5. SEIU recognizes that power plants are the single biggest source of carbon pollution in the United States. As SEIU would discuss further in its *amicus* filing, the Clean Power Plan will provide important health benefits for the communities where our members live and work. It will reduce carbon emissions that result in climate change, and therefore, illnesses that extreme weather events have exacerbated, such as heat-related illnesses and insect and waterborne diseases. According to the EPA's impact analysis, because reductions in carbon

emissions also reduce conventional air pollution, the EPA estimates that by 2030 the Rule will avoid up to 3,600 premature deaths, 1,700 heart attacks, 90,000 asthma attacks in children, and 300,000 missed days of work and school. The Clean Power Plan will significantly reduce the pollutants that cause and contribute to life-threatening respiratory illnesses such as lung cancer and pulmonary diseases, which disproportionately affect people of color, including SEIU members and the people for whom they care. SEIU believes that the Clean Power Plan's health benefits to the communities where our members live and work will be enormous. The Union knows that one in six African-American children, which many SEIU members care for, has asthma, as compared to one in nine nationwide.¹ Likewise, African-American children are three times more likely to be admitted to the hospital for an asthma attack and twice as likely to die of asthma.² Many of SEIU's own members suffer from asthma themselves.

6. As environmental justice advocates and scholars have shown, many of the nation's fossil fueled power plants are located in or adjacent to low-income and minority communities.³ As the Union will elaborate in its *amicus* filing, this proximity constantly exposes these communities and SEIU members—who too

¹ Environmental Protection Agency, EPA's Clean Power Plan, Climate Change, and African Americans, *available at* <http://www3.epa.gov/airquality/cppcommunity/afam-climate-change.pdf>, at 1.

² See NAACP Statement on President Obama's Clean Power Plan, *available at* <http://www.naacp.org/press/entry/naacp-statement-on-president-obamas-clean-power-plan>.

³ See, e.g., NAACP, "Coal Blooded: Putting Profits before People," *available at* <http://www.naacp.org/pages/coal-blooded> 1, at 27-31.

often lack the economic resources to prevent adverse health outcomes—to dangerous particulate matter and ozone precursors that become dangerous lower-atmosphere ozone.

7. As it will highlight in its *amicus* filing, SEIU members are intimately aware of the beneficial effects of reducing air pollution on the patients they care for. For example, in Los Angeles County SEIU nurses who regularly treat young patients for asthma and bronchitis believe that the asthma rate is no longer rising in large part because state and local governments in California have limited air pollution emissions and encourage clean energy alternatives. The Clean Power Plan will result in reductions of these dangerous air pollutants nationwide.

8. SEIU also recognizes the Clean Power Plan will have significant financial benefits for our healthcare system. The EPA's analysis of the rule estimates that reduction of pollution-related illnesses will result in up to \$54 billion per year of public health and climate benefits. The Clean Power Plan will also result in fiscal benefits as healthcare expenditures attributable to fossil fuel pollution decline, with positive impacts on taxpayers. It will also create good jobs for hard-working Americans in a new energy economy. Conversely, should this court strike down the Clean Power Plan, SEIU members and the members of the communities where they live and work will continue to be harmed by the public health and economic impacts of climate change and air pollution.

9. 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 principle brief of the party being supported, but encourages the filing of a notice of intent as soon as practicable. *Amicus* SEIU is 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, *amicus* 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.

WHEREFORE, the proposed *amicus* SEIU respectfully requests leave to file a brief of *amicus curiae* pursuant to the schedule and any other direction, including word limitations, established by the Court.

Dated: February 5, 2016

Respectfully submitted,

/s/ Renee M. Gerni _____

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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/ Renee M. Gerni_____

Dated: February 5, 2016

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, counsel for *amicus curiae* makes the following disclosure: the Service Employees International Union has no parent company. No publicly held corporation has a 10% or greater ownership in SEIU. SEIU is a non-profit organization, the general nature and purpose of which is to advocate for, protect and advance workers' rights.

/s/ Renee M. Gerni

Dated: February 5, 2016

CERTIFICATE OF SERVICE

I certify that the foregoing MOTION BY THE SERVICE EMPLOYEES INTERNATIONAL UNION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE, Certificate of Compliance, Corporate Disclosure Statement and Certificate of Parties and Amici Curiae were served today on all registered counsel in these consolidated cases via the Court's CM/ECF system.

/s/ Renee M. Gerni

Dated: February 5, 2016