

ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016

No. 15-1363 (and consolidated cases)

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**STATE OF WEST VIRGINIA, et. al.,**  
*Petitioners,*

v.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,**  
*Respondents.*

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**On Petitions for Review of Final Agency Action of the United States  
Environmental Protection Agency 80 Fed. Reg. 64,662 (Oct. 23, 2015)**

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**LANDMARK LEGAL FOUNDATION'S  
MOTION TO PARTICIPATE AS AMICUS CURIAE**

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Dated: February 23, 2016

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Pursuant to Federal Rule of Appellate Procedure 29(b), and D.C. Circuit Rule 29(b), Landmark Legal Foundation (Landmark or *Amicus*), respectfully moves for leave to participate as *amicus curiae* in support of Petitioners in the above-captioned action for review of the final rule promulgated by the United States Environmental Protection Agency (EPA) entitled Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,661 (Oct. 23, 2015) (Clean Power Plan).

Landmark has sought the consent of all Petitioners, Respondents and Intervenors. The states of Missouri and Louisiana consent to the motion. No other parties have expressed a position. In accordance with Landmark's request for consent, the absent of a response by a party or intervenor is being reported as not taking a position. Therefore, no objection to this motion has been received.

## **I. BACKGROUND**

On October 23, 2015, the 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 nearly forty consolidated cases seeking judicial review of the Clean Power Plan.

## **II. LEGAL STANDARD**

Pursuant to the D.C. Circuit Court of Appeals rules, “[a]ny individual or

non-governmental entity intending to participate as amicus curiae must file either a written representation that all parties consent to such participation, or, in the absence of such consent, a motion for leave to participate as amicus curiae.” D.C. Cir. R. 29(b). A motion for leave to participate must state “the movant’s interest... the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b).

### III. LEGAL ANALYSIS

Landmark Legal Foundation is a national public interest law firm committed to preserving the principles of limited government, separation of powers, federalism, advancing an originalist approach to the Constitution, and defending individual rights and responsibilities. Specializing in Constitutional history and litigation, Landmark seeks to present this Court a unique perspective concerning the EPA's serial abuse of power throughout the current administration.

Disregarding limits placed on the Executive branch by the Constitution's principles of federalism and separation of powers, the EPA has promulgated a rule granting itself broad new powers to regulate the United States’ electrical grid. EPA ignores unambiguous limitations contained within the Clean Air Act (“CAA” or “the Act”), forgoes the fact it lacks the requisite expertise to regulate the power sector, and engages in an unconstitutional legislative act. It does all of this in an

attempt to snuff out the most essential component of this nation's electrical power generation. Such brazen action should not be permitted by this Court.

### III. CONCLUSION

For reasons stated herein, Landmark respectfully moves for this Court's permission to participate as Amicus Curiae.

Respectfully submitted,

/s/ Richard P. Hutchison

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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 by this Court. This motion also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rules of Appellate Procedure 32(a)(5) & (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.



**CERTIFICATE OF SERVICE**

I hereby certify that, on this 23 day of February, 2016, a copy of the foregoing Brief of Amicus Curiae Landmark Legal Foundation In Support Of Petitioners was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Richard P. Hutchison  
Counsel for Amicus Curiae