

ORAL ARGUMENT JUNE 2, 2016

No. 15-1363 (Lead) and Consolidated Cases

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF WEST VIRGINIA et al.
Petitioners,

vs.

ENVIRONMENTAL PROTECTION AGENCY et al.
Respondents.

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

**BRIEF OF AMICI CURIAE
CATHOLIC CLIMATE COVENANT ET AL.
IN SUPPORT OF RESPONDENTS**

Fran M. Layton
Matthew D. Zinn
Peter J. Broderick
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102
(415) 552-7272
zinn@smwlaw.com

*Attorneys for Amici Curiae
Catholic Climate Covenant et al. in support of Respondents*

CORPORATE DISCLOSURE STATEMENT

Amici are the following 501(c)(3) nonprofit corporations or programs of such nonprofit corporations:

Catholic Climate Covenant
Catholic Rural Life
Evangelical Environmental Network
National Council of Churches USA
Coalition on the Environment and Jewish Life
Church World Service
Union of Reform Judaism
Women of Reform Judaism
National Baptist Convention of America
Progressive National Baptist Convention
Hazon
Sisters of Mercy of the Americas, Institute Leadership Team
Maryknoll Sisters
Sisters of the Divine Compassion
The Columban Center for Advocacy and Outreach
Cabrini College
Fordham University
University of San Diego
Center for Sustainability at Saint Louis University
Center for Human Rights and International Justice, Boston College
The Boisi Center of Boston College
Conference for Mercy Higher Education
University of San Francisco
Le Moyne College
The Center for Peace and Justice Education
Loyola University Maryland
The College of the Holy Cross
Florida Council of Churches
Wisconsin Council of Churches
The Diocese of Stockton, California
The Diocese of Des Moines, Iowa
The Diocese of Davenport, Iowa

Catholic Committee of Appalachia
Sisters of Charity of New York
Dominican Sisters of Springfield, IL
Sisters of St. Joseph Earth Center
Sisters of St. Joseph Peace Leadership Team
Sisters of Charity of Saint Elizabeth Office of Peace, Justice
and Ecological Integrity
School Sisters of Notre Dame Atlantic Midwest Province De-
partment of Justice, Peace and Integrity of Creation
Buffalo Diocese Care for Creation Committee
Dominican Sisters of Grand Rapids

None of the Amici have any parent corporation. No publicly held corporation owns any stock in any of the Amici. None of the Amici have members with ownership interests or that have issued shares or debt securities to the public. The general nature and purpose of each Amicus is described in the Statements of Interest at the end of this brief.

TABLE OF CONTENTS

	<u>Page</u>
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
RULE 29 STATEMENT	1
ARGUMENT	2
I. We face a moral imperative to protect the Earth and all its inhabitants from a climate crisis of our own making.....	2
II. The Rule is a crucial step to mitigate climate change, but contrary to Petitioners' contention, it is an incremental, not radical, one.....	10
CONCLUSION.....	14
STATEMENTS OF INTEREST	14
CERTIFICATES OF COMPLIANCE	25
CERTIFICATE OF SERVICE	26

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>Am. Elec. Power Co. v. Connecticut</i> 564 U.S. 410 (2011)	11
<i>Massachusetts v. EPA</i> 549 U.S. 497 (2007)	1, 2, 11
<i>Native Vill. of Kivalina v. ExxonMobil Corp.</i> 696 F.3d 849 (9th Cir. 2012)	9
 Administrative Materials	
<i>Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act</i> 74 Fed. Reg. 66,496 (Dec. 15, 2009)	2
<i>Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units</i> 80 Fed. Reg. 64,661 (Oct. 23, 2015)	2, 3, 4, 12, 13
 Other Authorities	
Am. Academy of Pediatrics et al., Comment Letter (Dec. 1, 2014), Docket No. EPA-HQ-OAR-2013-0602-23044	12
Am. Lung Ass'n, Comment Letter (Dec. 1, 2014), Docket No. EPA-HQ-OAR-2013-0602-23044	12
Barbero, R., et al., <i>Climate change presents increased potential for very large fires in the contiguous United States</i> , 24 Int'l J. of Wildland Fire 892 (2015)	5

Address of His All Holiness Patriarch Bartholomew at the Environmental Symposium, Saint Barbara Greek Orthodox Church, Santa Barbara, Cal., (Nov. 8, 1997)	5
Black Leadership Forum et al., <i>Air of Injustice</i> 6 (2002).....	8
<i>Buddhist Climate Change Statement to World Leaders 2015</i> (Oct. 29, 2015)	10
Campbell-Lendrum, D. et al., <i>Climate change and vector-borne diseases: what are the implications for public health research and policy?</i> 370 <i>Philosophical Transactions Royal Society B</i> (Feb. 16, 2016).....	5
<i>Letter from 14 Chicago Ministers to President Barack Obama</i> (July 1, 2015).....	7, 11
DeConto, Robert M. & David Pollard, <i>Contribution of Antarctica to past and future sea-level rise</i> , 531 <i>Nature</i> 591 (Mar. 31, 2016)	4
<i>Deuteronomy</i> 15:11	6
Pope Francis, “On Care for Our Common Home,” <i>Laudato Si</i> (May 24, 2015).....	6, 7, 8, 9
Statement of the Rev. Mark S. Hanson, Presiding Bishop, Evangelical Lutheran Church in America, before the Senate Environment and Public Works Committee (June 2007)	6
<i>Genesis</i> 2:15, 9:9-10, 9:12-17.....	5, 6
Hauer, Mathew E., et al., <i>Millions projected to be at risk from sea-level rise in the continental United States</i> , <i>Nature Climate Change</i> (Mar. 14, 2016).....	4
<i>A Hindu Declaration on Climate Change</i> (Nov. 23, 2015).....	10
<i>Islamic Declaration on Global Climate Change</i> (Nov. 23, 2015) ..	10

Kenward, Alyson et al., <i>Summer in the City: Hot and Getting Hotter</i> (2014).....	9
<i>Kohelet Rabbah</i> 7:13	5
Mallakpour, Iman & Gabriele Villarini, Letter, <i>The changing nature of flooding across the central United States</i> , 5 Nature Climate Change 250 (2015).....	4
Marchese, Anthony J. et al., <i>Methane Emissions from United States Natural Gas Gathering and Processing</i> , 49 <i>Envtl. Sci. & Tech.</i> 10,718 (2015).....	13
<i>Matthew</i> 25:35.....	6
Miller, Jane E., <i>The Effects of Race/Ethnicity and Income on Early Childhood Asthma Prevalence and Health Care Use</i> , 90 <i>Am. J. Pub. Health.</i> 428 (2000).....	9
Mote, Philip W., <i>Climate-Driven Variability and Trends in Mountain Snowpack in Western North America</i> , 19 <i>J. of Climate</i> 6209 (2006)	5
National Academy of Sciences, Engineering, & Medicine, <i>Attribution of Extreme Weather Events in the Context of Climate Change</i> (prepublication ed. 2016)	4
National Council of Churches, <i>Climate and Church: How Global Climate Change Will Impact Core Church Ministries</i> 9 (2008).....	8, 9, 10
National Oceanic and Atmospheric Administration, <i>Record annual increase of carbon dioxide observed at Mauna Loa for 2015</i> (March 9, 2016)	4
National Oceanic and Atmospheric Administration, <i>Winter was record warm for the contiguous U.S.</i> (March 8, 2016)	3
National Oceanic and Atmospheric Administration Centers for Environmental Information, <i>State of the Climate: Global Analysis for February 2016</i> (March 2016)	3

<i>Psalms 22:24</i>	6
Raffa, Kenneth F. et al., <i>Responses of Tree-killing Bark Beetles to a Changing Climate, in Climate Change and Insect Pests</i> 173 (Christer Bjorkman & Pekka Miemela, eds., 2015).....	5
Testimony of the Most Rev. Katharine Jeffers Schori, Presiding Bishop of the Episcopal Church, before the Senate Environment and Public Works Committee (June 2007)	9
Sheffield, Justin & Eric F. Wood, <i>Projected changes in drought occurrence under future global warming from multi-model, multi-scenario, IPCC AR4 simulations</i> , 31 <i>Climate Dynamics</i> 79 (2008).....	5
Truong, Vien, <i>Addressing Poverty and Pollution: California's SB 535 Greenhouse Gas Reduction Fund</i> , 49 <i>Harv. Civil Rights-Civil Liberties L. Rev.</i> 493, 497-99 (2014)	9
Union of Concerned Scientists, Comment Letter (Dec. 1, 2014), Docket No. EPA-HQ-OAR-2013-0602-33893.....	12
U.S. Conf. of Catholic Bishops, <i>Global Climate Change: A Plea for Dialogue, Prudence and the Common Good</i> (June 15, 2001)	7
U.S. Conf. of Catholic Bishops, <i>Letter to EPA Administrator Gina McCarthy</i> (July 30, 2014).....	7, 11
U.S. Energy Information Administration, <i>Analysis of the Impacts of the Clean Power Plan</i> 14 (May 2015).....	12
U.S. Energy Information Administration, <i>Carbon Dioxide Emissions Coefficients</i> (Feb. 2, 2016).....	12
U.S. Energy Information Administration, <i>Natural gas expected to surpass coal in mix of fuel used for U.S. power generation in 2016</i> (March 16, 2016)	11

Testimony of Barbara Weinstein, Director of the Commission
on Social Action of Reform Judaism and the Associate
Director of the Religious Action Center of Reform Judaism
(Feb. 7, 2014)..... 11

INTRODUCTION

In *Massachusetts v. EPA*, 549 U.S. 497 (2007), several of the present Amici filed an amicus curiae brief urging the United States Supreme Court to recognize that EPA has the authority — and *responsibility* — under the Clean Air Act to regulate as “air pollutants” the greenhouse gases that cause climate change. The Court agreed. That was ten years ago.

The ten years since have seen largely unchecked emissions and accumulating evidence that the pace of change and the resulting harm are worse than we then understood. After ten years, the promise of *Massachusetts* has not been fully realized. The rule challenged here is part of EPA’s conscientious effort to implement the mandate of *Massachusetts*.

Amici are 41 groups representing the abundant diversity within and among the Christian and Jewish faiths. Despite that diversity, Amici share a fundamental religious commitment to protect human and all other living beings. That commitment compels them to speak out in support of EPA’s effort to combat the climate crisis. Amici submit this brief to underscore the monumental scale of the problem and to place in that context the rule challenged by Petitioners here.

RULE 29 STATEMENT

No party’s counsel authored this brief in whole or in part. No party, or any party’s counsel, contributed any money that was intended to fund preparing or submitting this brief. No person, other

than Amici or their counsel, contributed money that was intended to fund preparing or submitting this brief.

Because of the large number of Amici, their Statements of Interest are set forth at the end of this brief.

ARGUMENT

I. We face a moral imperative to protect the Earth and all its inhabitants from a climate crisis of our own making.

Amici's religious traditions emphasize a moral obligation of responsibility to care for the natural world and for our fellow humans, particularly the most vulnerable among us. Climate change presents an acute threat to both. The rule challenged here, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64,661 (Oct. 23, 2015) ("Rule"), is necessary, but not sufficient, to carry out our responsibility to moderate or avoid climate change's worst consequences.

As the rulemaking record demonstrates, the evidence of climate change and our contribution to it is undeniable. In 2009, following *Massachusetts*, EPA issued *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496 (Dec. 15, 2009) ("Endangerment Finding"). The Endangerment Finding was based on a large body of compelling science demonstrating that the then-current concentrations of greenhouse gases in the atmosphere would endanger the public health and welfare of current and future generations in the United States. EPA revisited that evidence in developing the Rule, but it al-

so noted that, since the record for the Endangerment Finding closed, “the climate has continued to change, with new records being set for a number of climate indicators such as global average surface temperatures, Arctic sea ice retreat, CO₂ concentrations, and sea level rise.” 80 Fed. Reg. at 64,683 (reviewing major scientific assessments since 2010). For example, according to projections by the National Research Council since the Endangerment Finding, without a reduction in emissions, CO₂ concentrations by the end of the century would increase to levels that the Earth has not experienced for more than 30 million years. *Id.* at 64,684.

Evidence of the accelerating pace of change has continued to mount since EPA adopted the Rule. The National Oceanic and Atmospheric Administration (“NOAA”) has made several recent findings about the acceleration of climate change. It recently announced that 2015-2016 was the warmest winter on record in the contiguous United States, NOAA, *Winter was record warm for the contiguous U.S.* (March 8, 2016), <<http://www.noaa.gov/winter-was-record-warm-contiguous-us>>, and that February 2016 temperatures exceeded normal to a greater degree than any month since records began to be kept in 1880, NOAA National Centers for Environmental Information, *State of the Climate: Global Analysis for February 2016* (March 2016), <<http://www.ncdc.noaa.gov/sotc/global/201602>>. It also found that 2015 saw the largest year-to-year increase in atmospheric concentrations of CO₂ since measurements began in 1958. NOAA, *Record annual increase of carbon dioxide observed at Mauna Loa for*

2015 (March 9, 2016), <<http://www.noaa.gov/record-annual-increase-carbon-dioxide-observed-mauna-loa-2015>>.

Climate change promises to transform the face of our planet in ways that will have profound consequences for public health and welfare and will dramatically alter ecosystems. Climate-induced or exacerbated harms include rising sea levels, flooding, drought, depleted snowpack and water supplies, wildfires, storms, heat waves, exacerbated air pollution, proliferation of pests and weeds, migration of infectious diseases, and destruction or transformation of a variety of ecosystems and habitats.¹ See 80 Fed. Reg. at 64,683-86.

¹ A host of studies beyond those relied on by EPA, including considerable research published since the Rule was adopted, further attest to the array of harms likely to be caused by climate change. See, e.g., Robert M. DeConto & David Pollard, *Contribution of Antarctica to past and future sea-level rise*, 531 *Nature* 591 (Mar. 31, 2016) (“Antarctica has the potential to contribute more than a metre of sea-level rise by 2100 and more than 15 metres by 2500, if emissions continue unabated.”); Mathew E. Hauer et al., *Millions projected to be at risk from sea-level rise in the continental United States*, *Nature Climate Change* (Mar. 14, 2016) (sea level rise), available at <<http://www.nature.com/nclimate/journal/vaop/ncurrent/full/nclimate2961.html>>; Nat’l Academies of Sciences, Engineering, & Medicine, *Attribution of Extreme Weather Events in the Context of Climate Change* (prepublication ed. 2016) (extreme weather events), available at <<http://www.nap.edu/catalog/21852/attribution-of-extreme-weather-events-in-the-context-of-climate-change>>; Iman Mallakpour & Gabriele Villarini, Letter, *The changing nature of flooding across the central United States*, 5 *Nature Climate Change* 250 (2015) (flooding), available at <<http://www.nature.com/nclimate/journal/v5/n3/pdf/nclimate2516.pdf>>; Justin Sheffield & Eric F. Wood, *Projected changes in drought occurrence under future global warming from multi-model, multi-scenario, IPCC AR4 simulations*, 31 *Climate*

In sum, humanity is causing a potentially catastrophic transformation of the climate with grave consequences for the Earth and all of its inhabitants. Amici firmly believe that it is our responsibility to do all that we can to limit the damage. Amici's religious traditions recognize a moral obligation to protect both the natural world and humanity — particularly the least fortunate — from this disaster of our own making.

Amici's spiritual traditions compel them to preserve and protect the natural environment, as stewards of creation. *See Genesis* 2:15, 9:9-10, 9:12-17; *Kohelet Rabbah* 7:13 (“See to it that you do not spoil or destroy My world, for if you do, there will be no one to repair it after you.”). Understanding that creation includes all species, amici recognize a human responsibility to be caretakers of the climate, air, water, and the entire natural world. *See, e.g.,* Address of His All Holiness Patriarch Bartholomew at the Environmental Symposium, Saint Barbara Greek Orthodox Church, Santa Barbara, Cal., (Nov. 8,

Dynamics 79 (2008) (drought); Philip W. Mote, *Climate-Driven Variability and Trends in Mountain Snowpack in Western North America*, 19 *J. of Climate* 6209 (2006) (depleted snowpack and water supplies); R. Barbero et al., *Climate change presents increased potential for very large fires in the contiguous United States*, 24 *Int'l J. of Wildland Fire* 892 (2015) (wildfire); Kenneth F. Raffa et al., *Responses of Tree-killing Bark Beetles to a Changing Climate*, in *Climate Change and Insect Pests* 173 (Christer Bjorkman & Pekka Miemela, eds., 2015) (pests); D. Campbell-Lendrum et al., *Climate change and vector-borne diseases: what are the implications for public health research and policy?* 370 *Philosophical Transactions Royal Society B* (Feb. 16, 2016) (vector-borne disease), available at <<http://rstb.royalsocietypublishing.org/content/370/1665/20130551>>.

1997) (“For humans to cause species to become extinct and to destroy the biological diversity of God’s creation . . . for humans to degrade the integrity of Earth by causing changes in its climate, by stripping the Earth of its natural forests, or destroying its wetlands . . . for humans to injure other humans with disease . . . for humans to contaminate the Earth’s waters, its land, its air, and its life, with poisonous substances . . . these are sins.”). In his 2015 encyclical, Pope Francis wrote that *Genesis* 2:15 calls for “a relationship of mutual responsibility between human beings and nature. Each community can take from the bounty of the earth whatever it needs for subsistence, but it also has the duty to protect the earth and to ensure its fruitfulness for coming generations.” Pope Francis, “On Care for Our Common Home,” *Laudato Si* ¶ 67 (May 24, 2015) (“*Laudato Si*”).

Climate change represents an *ecological* crisis of unprecedented scale and severity. It threatens to profoundly disrupt the Earth’s ecosystems on a vast scale, from northern boreal forests threatened by unprecedented pest infestations to tropical coral reefs declining in warming and acidifying oceans. Amici and their co-religionists have repeatedly spoken out about our duty as stewards of the Earth to minimize the potential ecological devastation wrought by climate change. *See, e.g.*, Statement of the Rev. Mark S. Hanson, Presiding Bishop, Evangelical Lutheran Church in America, before the Senate Environment and Public Works Committee (June 2007) (“God’s exhortation to us to till and keep the earth (Genesis 2:15) urges us to

action in the face of a growing body of evidence from scientists around the world that global warming is threatening the future of creation, and the health and well-being of our children and all living things.”); *Laudato Si* ¶¶ 23-24.

The ecological crisis brings with it a *human* crisis. One of the foundational tenets of Amici’s religious traditions is the moral obligation to protect and assist the poor, powerless, and dispossessed. *See, e.g., Matthew 25:35; Deuteronomy 15:11; Psalms 22:24.* Climate change threatens human health and welfare, particularly for those living in poverty and the least powerful. The consequences of climate change are distributed neither evenly nor proportionally to the fruits of the economic activity that produces carbon emissions.

Quite the contrary, the impacts of climate change fall most heavily on those least able to bear the burden. *See U.S. Conf. of Catholic Bishops, Letter to EPA Administrator Gina McCarthy* (July 30, 2014) (commenting on the Rule; “Too frequently we observe the damaging impacts from climate-related events in the United States and across the globe, particularly on poor and vulnerable communities.”); U.S. Conf. of Catholic Bishops, *Global Climate Change: A Plea for Dialogue, Prudence and the Common Good* (June 15, 2001) (“[T]he common good requires solidarity with the poor who are often without the resources to face many problems, including the potential impacts of climate change.”); *Letter from 14 Chicago Ministers to President Barack Obama* (July 1, 2015) (comments in support of the Rule; referring to “countless evidence that shows how climate change

disproportionally impacts African American communities, particularly when it comes to public health”); *Laudato Si* ¶ 48 (“[T]he deterioration of the environment and of society affects the most vulnerable people on the planet: ‘Both every day experience and scientific research show that the gravest effects of all attacks on the environment are suffered by the poorest.’”). Low-income and marginalized communities are the least able to bear the costs of adapting to change, such as by relocating settlements to avoid rising sea levels. National Council of Churches, *Climate and Church: How Global Climate Change Will Impact Core Church Ministries* 9 (2008) (“*Climate and Church*”). Many of the nations of the developing world are located in the tropics and will experience the acute consequences of rising temperatures and extreme weather events.

The impacts of the warming climate will be felt unequally within this country as surely as between developed and developing nations.² As we saw vividly during Hurricane Katrina, low-income communities in the United States too are at the greatest risk from climate change. They are least able to adapt to climate disasters and the least able to absorb its day-to-day costs. See Vien Truong, *Addressing Poverty and Pollution: California’s SB 535 Greenhouse*

² Low income communities and communities of color are also disproportionately exposed to the conventional pollutants generated by fossil-fuel-fired power plants. See, e.g., Black Leadership Forum et al., *Air of Injustice* 6 (2002) (68 percent of African Americans live within 30 miles of a power plant, as compared with 56 percent of Caucasians), available at <http://www.energyjustice.net/files/coal/Air_of_Injustice.pdf>.

Gas Reduction Fund, 49 Harv. Civil Rights-Civil Liberties L. Rev. 493, 497-99 (2014); *Climate and Church* at 9. Severe heat waves are magnified in urban “heat islands” where many low-income Americans live, and they kill those unable to afford air conditioning. Alyson Kenward et al., *Summer in the City: Hot and Getting Hotter* (2014) (“*Summer in the City*”), available at <<http://assets.climatecentral.org/pdfs/UrbanHeatIsland.pdf>>. Ozone pollution intensified by rising temperatures exacerbates asthma, which disproportionately affects low income communities and communities of color. See Jane E. Miller, *The Effects of Race/Ethnicity and Income on Early Childhood Asthma Prevalence and Health Care Use*, 90 Am. J. Pub. Health. 428 (2000); *Summer in the City* at 17-18. And Alaskan native communities are unable to relocate to escape climate-induced rising sea levels and coastal erosion. See *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012); see also Testimony of the Most Rev. Katharine Jeffers Schori, Presiding Bishop of the Episcopal Church, before the Senate Environment and Public Works Committee (June 2007) (noting that “Climate change is also disproportionately affecting indigenous cultures.”).

Accordingly, Amici and their members and leaders have repeatedly and insistently spoken forcefully about the need to take *immediate action* to combat climate change. See, e.g., *Laudato Si* ¶ 26 (“There is an urgent need to develop policies so that, in the next few years, the emission of carbon dioxide and other highly polluting gases can be drastically reduced, for example, substituting for fossil

fuels and developing sources of renewable energy.”); *Climate and Church* at 11-12 (“The reality of this growing crisis calls for the church to be not just reactive in its response to global climate change but to prescribe to the world a need to reduce carbon emissions in order to prevent the catastrophic impacts of global climate change.”).

Amici’s solicitude for the natural world and for those who suffer most from environmental degradation is shared by adherents and authorities from many other religious traditions, who have accordingly called for action to combat climate change. *See, e.g., Buddhist Climate Change Statement to World Leaders 2015* (Oct. 29, 2015), <<http://gbccc.org/>>; *A Hindu Declaration on Climate Change* (Nov. 23, 2015), <<http://www.hinduclimatedeclaration2015.org/english>>; *Islamic Declaration on Global Climate Change* (last visited Mar. 31, 2016), <<http://islamicclimatedeclaration.org/islamic-declaration-on-global-climate-change/>>.

II. The Rule is a crucial step to mitigate climate change, but contrary to Petitioners’ contention, it is an incremental, not radical, one.

Amici fully support EPA’s diligent effort and agree that the Rule is an essential part of fulfilling our collective obligation to curtail climate change. It is an important step, but it is hardly the radical leap that Petitioners portray. In fact, the Court should recognize that there is a valid argument to be made that the urgency of the problem demands more aggressive action.

The Rule is in line with the Supreme Court’s decisions recognizing that climate-forcing pollutants such as CO₂ are “air

pollutants” subject to the Clean Air Act. *See Massachusetts*, 549 U.S. at 528-29; *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 424 (2011). Moreover, in *American Electric Power*, the Court held not just that EPA may regulate climate pollutants, but that EPA’s statutory responsibility to control carbon pollutants displaced the federal common law of nuisance for carbon emissions. 564 U.S. at 425. After *American Electric Power*, the public can only rely on EPA to curtail those emissions; it cannot seek relief on its own through the courts.

EPA has taken that responsibility seriously. The Rule is the latest, and perhaps most important, of several steps that EPA has taken to reduce carbon emissions. Amici participated in the administrative process in support of the Rule and have repeatedly spoken out in support of it. *See, e.g.*, U.S. Conf. of Catholic Bishops, *Letter to EPA Administrator Gina McCarthy* (July 30, 2014); *Letter from 14 Chicago Ministers* (July 1, 2015); Testimony of Barbara Weinstein, Director of the Commission on Social Action of Reform Judaism and the Associate Director of the Religious Action Center of Reform Judaism (Feb. 7, 2014) (testimony at EPA public hearing on the Rule).

Although Petitioners paint the Rule as revolutionary, it is in fact only an incremental step, albeit an important one, in reducing emissions of climate pollutants. The Rule is congruent with the existing economic conditions that have been reducing utilities’ reliance on coal as a fuel. U.S. Energy Information Administration, *Natural gas expected to surpass coal in mix of fuel used for U.S. power generation in 2016* (March 16, 2016), <<http://www.eia.gov/todayinenergy>

/detail.cfm?id=25392>. It acts at the margins to further encourage the ongoing move away from coal — the single most potent source of atmospheric carbon among fuels. *See* U.S. Energy Information Administration, *Carbon Dioxide Emissions Coefficients* (Feb. 2, 2016), <https://www.eia.gov/environment/emissions/co2_vol_mass.cfm>.

And it provides great flexibility to states and covered sources to chart their own routes to compliance. *See, e.g.*, 80 Fed. Reg. at 64,835-36 (describing “state measures” plan); *id.* at 64,665 (states have flexibility in planning and investing, facilitating clean energy innovation, and crafting their own emissions reduction trajectories).

Indeed, as many commenters noted during the rule making, EPA could have gone further to reduce carbon emissions. *See, e.g.*, Am. Lung Ass’n, Comment Letter (Dec. 1, 2014), Docket No. EPA-HQ-OAR-2013-0602-23044; Am. Academy of Pediatrics et al., Comment Letter (Dec. 1, 2014), Docket No. EPA-HQ-OAR-2013-0602-23044; Union of Concerned Scientists, Comment Letter (Dec. 1, 2014), Docket No. EPA-HQ-OAR-2013-0602-33893. The Rule relies heavily on inducing greater reliance on natural gas in establishing the performance standard. *See* 80 Fed. Reg. at 64,795-803; U.S. Energy Information Administration, *Analysis of the Impacts of the Clean Power Plan 14* (May 2015) (analysis of the Rule prepared at the request of Rep. Lamar Smith), *available at* <<http://www.eia.gov/analysis/requests/powerplants/cleanplan/pdf/powerplant.pdf>>. Natural gas is a fossil fuel with its own significant carbon emissions, and its extraction, transportation, and storage in-

volves potentially significant methane emissions, a greenhouse gas vastly more potent than CO₂. *See, e.g.,* Anthony J. Marchese et al., *Methane Emissions from United States Natural Gas Gathering and Processing*, 49 *Envtl. Sci. & Tech.* 10,718 (2015). The Rule also gives states and covered sources long lead times to comply. *See* 80 *Fed. Reg.* at 64,855 (state plans to be submitted as late as September 2018); *id.* at 64,864 (compliance periods for covered sources beginning in 2022 at the earliest). Until the Rule's compliance deadlines are reached, the emissions targeted by the Rule will continue unabated and unmitigated. Because greenhouse gases have long lifetimes in the atmosphere, swift emission reductions are essential. *Id.* at 64,682 (“[E]mission reduction choices made today matter in determining impacts experienced not just over the next few decades, but in the coming centuries and millennia.”).

In sum, the Rule represents a *compromise* position. Given the profound urgency of the climate crisis, EPA could well have drawn the line differently, demanding greater and earlier reductions, as many suggested. Petitioners have the louder voice here, because they chose to sue. But the Court should not ignore the millions of Americans who individually, or through advocacy groups like Amici here, asserted the moral imperative to address the impending catastrophes of climate change through strong and immediate action.

CONCLUSION

For the reasons above, Amici respectfully request that the Court deny the petitions.

DATED: April 1, 2016

SHUTE, MIHALY &
WEINBERGER LLP

By: /s/ Matthew D. Zinn

MATTHEW D. ZINN

Attorneys for Amici Curiae
Catholic Climate Covenant et al.
in support of Respondents

STATEMENTS OF INTEREST

1. **Catholic Climate Covenant**, a project of the Catholic Rural Life, a 501(c)(3) nonprofit organization, helps Catholics respond to the moral call for action on climate change. The Covenant lifts voices in the public arena, and works to reduce carbon footprints and share Catholic teaching on climate change through several programs in 31 states.

2. **Catholic Rural Life**, a 501(c)(3) nonprofit organization founded in 1923, is dedicated to improving the social, economic and spiritual lives of rural communities. CRL believes that global environmental issues, including climate change, place even greater demands on CRL to fulfill its mission of supporting and empowering rural people.

3. **Evangelical Environmental Network**, a 501(c)(3) nonprofit organization founded in 1993, is a ministry that educates, inspires, and mobilizes Christians in their effort to care for God's creation, to be faithful stewards of God's provision, and to advocate for actions and policies that honor God and protect the environment.

4. **National Council of Churches USA**, a 501(c)(3) nonprofit organization, is the principal ecumenical organization in the United States with 35 Protestant, Orthodox, and Anglican member denominations with a combined membership of more than 45 million Christians in nearly 100,000 congregations nationwide. The National Council considers the moral issues presented by climate change through the lens of long-standing social teaching and has adopted numerous policy statements calling for an immediate response to this threat.

5. **Coalition on the Environment and Jewish Life** is an initiative of the Jewish Council for Public Affairs, a 501(c)(3) nonprofit organization that serves as the advisory body for the 16 national and 125 local Jewish community relations organizations. COEJL's priorities are to mobilize the Jewish community to address the climate crisis through advocacy and reducing greenhouse gas emissions.

6. **Church World Service**, a 501(c)(3) religious organization founded in 1946, is an ecumenical relief, development, and refugee assistance ministry. Working in partnership with indigenous organizations in some 80 countries, CWS supports

sustainable self-help development, meets emergency needs, aids refugees, and helps address the root causes of poverty and powerlessness. CWS has responded to many disasters—hurricanes, floods, droughts, and wildfires—that are exacerbated by climate change.

7. **Union of Reform Judaism**, a 501(c)(3) nonprofit organization, is a network of 900 vibrant Jewish congregations across North America that include 1.5 million Reform Jews. The URJ approaches the issue of climate change inspired by Jewish tradition emphasizing that human dominion over nature does not provide a license to abuse the environment; rather we are called to “till and tend” God’s Earth.

8. **Women of Reform Judaism**, founded in 1913, is a 501(c)(3) nonprofit organization representing more than 65,000 women in nearly 500 groups in North America and around the world. WRJ strengthens the voice of women worldwide and empowers them to create caring communities, nurture congregations, cultivate personal and spiritual growth, and advocate for and promote progressive Jewish values.

9. **National Baptist Convention of America**, a 501(c)(3) religious organization, is a fellowship of voluntary churches approximating one and half million African-American Baptists. The Convention seeks to positively influence the spiritual, educational, social, and economic conditions of all humankind. It has taken a

keen interest in climate change because of the disproportionate impacts on African Americans.

10. **Progressive National Baptist Convention**, a 501(c)(3) religious organization, is a Baptist denomination with an estimated membership of 2.5 million people that aims to unite African Americans to positively impact the community. Their work on climate change advances the mission of “lifting our voice on behalf of the voiceless.”

11. **Hazon**, a 501(c)(3) founded in 2000, is the largest organization that works within and beyond the Jewish community to help create a healthier and more sustainable world for all. It has played a key role in catalyzing the Jewish Food Movement and in leading a range of organizations and leaders involved in Jewish Outdoor, Food, Farming and Environmental Education (JOFEE).

12. **Sisters of Mercy of the Americas, Institute Leadership Team**, a 501(c)(3) nonprofit organization, is a congregation made up of about 3,000 Roman Catholic women religious, minister in educational and healthcare institutions, social service ministries and parishes throughout the United States and abroad. It has consistently called for climate action that takes into consideration the needs of the most vulnerable and marginalized people in the US and around the world.

13. **Maryknoll Sisters**, a 501(c)(3) nonprofit organization, are more than 400 women religious missionaries founded more than 100 years ago. Maryknoll serves the poor and disadvantaged in more

than 20 countries around the world. Maryknoll is committed to fostering a mutually sustainable relationship with our one earth—including a healthier environment for the benefit of all on earth.

14. **Sisters of the Divine Compassion**, a 501(c)(3) nonprofit organization, stands firmly with Pope Francis as witness to the collective need to end planet-destroying dependence on fossil fuels and change to clean energy. The Clean Power Plan offers the best chance of ending injustice from the use of fossil fuels which undermines the health of the planet and of people.

15. **The Columban Center for Advocacy and Outreach** is the national advocacy office for the Missionary Society of St. Columban, a 501(c)(3) nonprofit organization. Their mission is to work towards a more just, peaceful, and environmentally sustainable world by engaging in the political process guided by their faith and the Gospel. Columbans have been at the forefront of protecting the environment from destructive practices and addressing the urgency of climate change.

16. **Cabrini College**, a 501(c)(3) nonprofit organization, is a Catholic liberal-arts college dedicated to academic excellence, leadership development, and a commitment to social justice, founded by the Missionary Sisters of the Sacred Heart of Jesus in 1957. Cabrini College recognizes that lowering carbon emissions aligns with Pope Francis' response to climate change as expressed in the encyclical *Laudato Si'*.

17. **Fordham University**, a 501(c)(3) educational institution, is a Catholic and Jesuit University. Its traditions emphasize a moral obligation of responsibility to care for the natural world and for our fellow humans. Inherent in the values of Fordham is the idea of *cura personalis*, or taking care of the whole person, of every person.

18. **University of San Diego**, a 501(c)(3) academic institution, is a Catholic university founded in 1949. Its support of the Clean Power Plan is consistent with its national reputation as a good steward of the Earth and puts into action Pope Francis' vision for ecological citizens and leaders to engage the world in addressing urgent issues of the day.

19. **Center for Sustainability at Saint Louis University**, a center of St. Louis University, which is 501(c)(3) educational institution, was established in 2010 and offers degrees in environmental science, urban planning and sustainability. To support research development, the Center provides grants to SLU faculty who propose promising sustainability-related research ideas.

20. **Center for Human Rights and International Justice, Boston College**, is a center of Boston College, which is a 501(c)(3) educational institution. The Center recognizes climate change as a pressing moral challenge that directly impacts its core concerns with the basic rights of every human person. The Center supports regulatory efforts to mitigate U.S. carbon pollution that will exacerbate the unjust human consequences of climate change.

21. **The Boisi Center of Boston College** a 501(c)(3) educational institution. The Center creates opportunities for scholars, policy makers, media and religious leaders to connect, converse, and reflect on issues at the intersection of religion and American public life.

22. **Conference for Mercy Higher Education**, a 501(c)(3) charitable organization, was formed in 2002 to reinforce the bonds of Mercy traditions and to strengthen the Catholic identity and Mercy mission at 16 Mercy colleges and universities across the United States.

23. **University of San Francisco**, a Jesuit Catholic University, founded in 1855, is a 501(c)(3) educational institution, offering, among others, courses of study that seek to understand human interactions with the natural world, climate change, and moral obligations to mitigate resulting damage to ecosystems and human communities.

24. **Le Moyne College**, a 501(c)(3) educational institution, is a liberal arts college founded by Jesuits in 1946 in Syracuse, New York. It offers undergraduate programs in the humanities and natural sciences and various graduate programs.

25. **The Center for Peace and Justice Education** is a curricular and co-curricular unit at Villanova University, a 501(c)(3) educational institution. The Center recognizes the profound moral implications of climate change and the urgent demand for action and

affirms the inseparable bond between a concern for the environment, justice for the poor, commitment to society, and peace.

26. **Loyola University Maryland**, a 501(c)(3) educational institution, is committed to the educational and spiritual traditions of the Society of Jesus and to the ideals of liberal education. Loyola's president has signed the American College and University Presidents' Climate Commitment and the St. Francis Pledge. Loyola is committed to taking action through long-term climate neutrality planning, ongoing education efforts, and prayer.

27. **The College of the Holy Cross**, a 501(c)(3) educational institution founded in 1843 by the Society of Jesus (Jesuits) in Worcester, Massachusetts, is an undergraduate liberal arts institution.

28. **Florida Council of Churches** is a 501(c)(3) religious organization that represents more than 20 denominational judicatories in Florida. The Florida Council of Churches believes that climate change is an inescapable spiritual challenge, reminding us of the call by God to faithful stewardship.

29. **Wisconsin Council of Churches**, a 501(c)(3) religious organization, is a community of 18 Christian denominations with approximately 2,000 congregations and over one million church members that covenant to engage in a common ministry. It believes that energy production must become more just and sustainable.

30. **The Diocese of Stockton, California**, a 501(c)(3) charitable organization, is a community of Roman Catholics that

provides a wide range of spiritual, educational, and social services. The Diocese of Stockton includes regions facing unprecedented ecological challenges of drought, wildfire risk, and dangerously poor air quality, and is concerned that the most marginalized people bear the greatest burden of climate change.

31. **The Diocese of Des Moines, Iowa**, a 501(c)(3) charitable organization, is a community of Roman Catholics that provides a wide range of spiritual, educational, and social services. The Diocese believes that care for creation is a core principal of Catholic Social Teaching and all Catholics are called to protect people and the planet, living our faith in relationship with all of God's creation.

32. **The Diocese of Davenport, Iowa**, a 501(c)(3) charitable organization, is a community of Roman Catholics that provides a wide range of spiritual, educational, and social services. The Diocese believes that care for creation is a core principal of Catholic Social Teaching and all Catholics are called to protect people and the planet, living our faith in relationship with all of God's creation.

33. **Catholic Committee of Appalachia**, a 501(c)(3) nonprofit organization, has existed since 1970 to serve Appalachia, her poor and the entire web of creation. CCA has addressed mountaintop removal, labor, private prison development, sustainable lifestyles and communities, poverty, health, clean water, racism, and climate change.

34. **Sisters of Charity of New York**, a 501(c)(3) religious organization, is a congregation of vowed women religious in the Roman Catholic tradition committed to living gospel values. It advocates for safe clean renewable energy and freedom from fossil fuel dependency.

35. **Dominican Sisters of Springfield, IL**, a 501(c)(3) charitable organization, is a Catholic religious congregation that recognizes the reality of global climate change and its impact on the whole Earth community, particularly on poor and vulnerable persons. They commit to lending their voice to efforts to mitigate the effects of climate change.

36. **Sisters of St. Joseph Earth Center: SSJ Earth Center**, located in Philadelphia, is a sponsored work of the U.S. Federation, Sisters of St. Joseph, a 501(c)(3) nonprofit organization. The center educates, advocates and consults on matters of care for creation.

37. **Sisters of St. Joseph Peace Leadership Team**, is a Ministry of School Sisters of Notre Dame Atlantic Midwest Province, a 501(c)(3) nonprofit organization. It was founded to seek peace through justice and care for the environment and are particularly concerned with human health, which is adversely affected by environmental damage.

38. **Sisters of Charity of Saint Elizabeth Office of Peace, Justice and Ecological Integrity** is a Ministry of Sisters of Charity of Saint Elizabeth, a 501(c)(3) Religious Organization. The

Office is the advocacy arm of a Roman Catholic congregation of women that joins Pope Francis in seeing the connection between abuse of Earth and the suffering of the marginalized and those made poor - the first to suffer the consequences of unsustainable energy practices.

39. **School Sisters of Notre Dame Atlantic Midwest Province Department of Justice, Peace and Integrity of Creation**; is a ministry of School Sisters of Notre Dame Atlantic Midwest Province, which is a 501(c)(3) nonprofit organization. This congregation of Catholic Women Religious dedicated to live more simply, responsibly, sustainably with all of creation.

40. **Buffalo Diocese Care for Creation Committee**, is a committee of the Diocese of Buffalo, which is a 501(c)(3) nonprofit organization. The Committee educates parish pastors in Buffalo and lay leaders on the importance of issues such as clean power and helps people urge their local, state and federal representatives to pass laws that would support clean air, water and renewable energy.

41. **Dominican Sisters of Grand Rapids**, a 501(c)(3) religious organization incorporated 1877, has had a long standing concern for the Care of Earth. The Dominican Sisters have collaborated in creation care efforts with the wider Dominican Family, and other groups.

CERTIFICATES OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because this brief contains **5,471** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief 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)(6) because this brief has been prepared in a proportionally spaced roman typeface, 14-point New Century Schoolbook, using Microsoft Word 2010.

This brief complies with Circuit Rule 29(d). Amici are filing a separate amicus brief in this action because of the unique nature of Amici's perspectives as faith groups. As a result, Amici are informed and believe that the arguments presented in this brief are not representative of the positions of any other amici participating in this litigation.

DATED: April 1, 2016

SHUTE, MIHALY &
WEINBERGER LLP

By: /s/ Matthew D. Zinn
MATTHEW D. ZINN

Attorneys for Amici Curiae
Catholic Climate Covenant et al.
in support of Respondents

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 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.

DATED: April 1, 2016

SHUTE, MIHALY &
WEINBERGER LLP

By: /s/ Matthew D. Zinn
MATTHEW D. ZINN

Attorneys for Amici Curiae
Catholic Climate Covenant et al.
in support of Respondents

765585.7