

ORAL ARGUMENT NOT YET SCHEDULED

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

No. 19-1140 (and consolidated cases)

AMERICAN LUNG ASSOCIATION, *et al.*,
Petitioners,

v.

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

On Petition for Review of Final Agency Action of the
United States Environmental Protection Agency
84 Fed. Reg. 32,520 (July 8, 2019)

**BRIEF OF FAITH ORGANIZATIONS AS AMICI CURIAE IN SUPPORT
OF STATE AND MUNICIPAL, PUBLIC HEALTH AND
ENVIRONMENTAL, POWER COMPANY, AND CLEAN ENERGY
TRADE ASSOCIATION PETITIONERS**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

All parties, intervenors, and amici appearing in this case are listed in the brief for State and Municipal Petitioners.

References to the rulings under review and related cases appear in State and Municipal Petitioners' brief.

**STATEMENT REGARDING SEPARATE BRIEFING, CONSENT TO FILE,
AUTHORSHIP, AND MONETARY CONTRIBUTIONS**

Faith Organizations, listed in the Rule 26.1 disclosure statement below, file this separate amicus brief in compliance with the word limits set forth in the Court's Order of January 31, 2020 (Doc. 1826621). *See* Fed. R. App. P. 29(a)(5), 32(a)(7)(B)(i). A single joint brief is not practicable in this case because the other amicus briefs do not address the unique perspective of Faith Organizations and the faith communities that they represent regarding the spiritual importance of honoring God through protecting the earth and combating climate change, or the moral interests of people of faith. *See* D.C. Cir. R. 29(d).

All parties have consented to the filing of this brief. Amici filed their notice of intent to participate in this case as amici curiae on April 21, 2020.

Under Federal Rule of Appellate Procedure 29(a)(4)(E), Faith Organizations state that no party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund the preparation or submission of this brief. No person—other than the amici curiae or their counsel—contributed money intended to fund the preparation or submission of this brief.

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, amici curiae submit the following corporate disclosure statement:

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

National Council of Churches USA;

Evangelical Environmental Network;

Coalition on the Environment and Jewish Life;

Hazon;

Maryknoll Sisters;

Sisters of Mercy of the Americas, Institute Leadership Team;

The Union for Reform Judaism;

Women of Reform Judaism;

Men of Reform Judaism;

Central Conference of American Rabbis; and

National Baptist Convention, USA, Inc.

None of the amici has 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 Individual Statements of Interest.

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INTERESTS OF AMICI CURIAE

We are the following Jewish and Christian faith organizations: National Council of Churches USA; Evangelical Environmental Network; Coalition on the Environment and Jewish Life; Hazon; Maryknoll Sisters; Sisters of Mercy of the Americas, Institute Leadership Team; The Union for Reform Judaism; Women of Reform Judaism; Men of Reform Judaism; Central Conference of American Rabbis; and National Baptist Convention, USA, Inc. (“Faith Organizations”). We represent diverse groups within the Jewish and Christian faiths, and are united in a common conviction that we and all people collectively carry a moral obligation to care for the earth and combat climate change. Our communities include and serve some of the populations most vulnerable to the effects of climate change. We have long supported efforts toward combating climate change and believe that the rescission of the Clean Power Plan and replacement with the Affordable Clean Energy Rule will harm the earth, our own spiritual communities, and all of humanity.

Because we are numerous, detailed description of each amicus’ individual interest is set forth in Appendix A at the end of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

We are a diverse group of Christian and Jewish faith organizations, united in our common conviction that we and all people collectively carry a moral obligation to care for the earth and all of God’s children. We expect the government to fulfill its own legal and moral obligations to address the climate change crisis and its humanitarian consequences. Over a decade ago, the Supreme Court recognized that, under the Clean Air Act, EPA has both the authority and the *responsibility* to regulate greenhouse gases as “air pollutants” once EPA determined that they cause health- and welfare-damaging climate change, stating that EPA cannot “shirk its environmental responsibilities.” *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). Since *Massachusetts*, the pace of climate change has accelerated, and we now face a climate catastrophe even more dire than previously understood.

By repealing the Clean Power Plan (“CPP”) and replacing it with the Affordable Clean Energy (“ACE”) rule, EPA is not merely “shirk[ing] its environmental responsibilities”; it is acting in direct opposition to them. As leaders of the faithful, amici must speak out in opposition to EPA’s abdication of its moral and legal responsibilities to our planet and our people.

ARGUMENT

I. IT IS OUR MORAL DUTY TO CARE FOR GOD’S CREATION AND PROTECT CURRENT AND FUTURE GENERATIONS FROM CATASTROPHIC CLIMATE CHANGE.

The evidence of climate change and our human contribution to it is undeniable. The threat is acute, reaches cities and farms, coasts and deserts, and will over time affect virtually every person and living thing around the world. We all share a moral imperative to protect the planet from this unprecedented environmental and humanitarian crisis.

As far back as 2007, the Supreme Court recognized that “[t]he harms associated with climate change are serious and well recognized.” *Massachusetts*, 549 U.S. at 521. In 2009, following *Massachusetts*, EPA issued the “Endangerment Finding,” *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). The Endangerment Finding compiled a vast and compelling body of scientific research, recognized “that human-induced climate change has the potential to be far-reaching and multi-dimensional,” and made clear that the existing and growing concentrations of greenhouse gases in the atmosphere endanger the public health and welfare of current and future generations. *Id.* at 66,496-97. Following the Endangerment Finding, EPA developed the Clean Power Plan in order to help the United States reduce emissions of carbon dioxide from the power sector by

transitioning to cleaner energy production. EPA explained that “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.” *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64,661, 64,683 (Oct. 23, 2015). Without effective emission reduction policies, 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.

Recent assessments of the best available science from the United States government and the international scientific community have confirmed both that these climate change hazards are even more severe than previously believed, and that the harms are already being felt. *See, e.g.*, Myles Allen et al., Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C*, at 53 (Oct. 8, 2018), <https://bit.ly/39TnjnT> (“*IPCC Report*”) (climate change has already “resulted in profound alterations to human and natural systems, including increases in droughts, floods, and some other types of extreme weather, sea level rise, and biodiversity loss” and is “causing unprecedented risks to vulnerable persons and populations,” including a decline in food security and the risk of severe impacts to global ecosystems); Allison Crimmins, et al., U.S. Global Change Research Program, *The Impacts of Climate Change on Human Health in the United States: A Scientific*

Assessment, at 2 (2016), <https://bit.ly/39Rhx6r> (“Climate change is a significant threat to the health of the American people,” with impacts that are “increasing nationwide,” including temperature increases, precipitation changes, increases in the frequency and intensity of some extreme weather events, and rising sea levels, which are “endanger[ing] our health by affecting our food and water sources, the air we breathe, the weather we experience, and our interactions with the built and natural environments”).

This transformation of the climate, with grave consequences for the earth and all of its inhabitants, is a problem of our own making. Federal agencies, including EPA itself, explained in the most recent National Climate Assessment that “based on extensive evidence, it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.” Donald J. Wuebbles, et al., U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment, Vol. I*, at 10 (2017), <https://bit.ly/3cYSi3Z> (“*National Climate Assessment Vol. I*”).

The science establishes that humanity caused climate change, and we therefore have a corresponding moral responsibility to do all that we can to limit its damage. United across diverse theological lines, amici recognize a shared human

responsibility to serve as caretakers of the climate, air, water, and the entire natural world, and to protect all of us—particularly the most vulnerable—from this man-made disaster. These convictions are fundamental tenets of our faiths and moral traditions. *See Genesis 2:15* (“The Lord God took the man and put him in the garden of Eden to till it and keep it.”), 9:9-10, 9:12-17; *Kohelet Rabbah 7:13* (“See to it that you do not spoil and destroy My world; for if you do, there will be no one else to repair it”). *See also, e.g., Address by His All-Holiness Ecumenical Patriarch Bartholomew at the Opening of the Ecological Symposium, Athens Acropolis Museum (June 5, 2018), <https://bit.ly/3cGKDGj>* (“For the Orthodox Church, creation care—the preservation of nature and the protection of all people—emanates from the essence of our faith”); *Statement of the Rev. Mark S. Hanson, Presiding Bishop, Evangelical Lutheran Church in America, before the Senate Environment and Public Works Committee (June 2007), <https://bit.ly/34Yw6n4>* (“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”). In his 2015 encyclical, Pope Francis called on world leaders to develop a “culture of care,” and 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, *Laudato Si’*, Encyclical Letter on Care for Our Common Home, ¶¶ 67, 229 (May 24, 2015) (“*Laudato Si’*”).

Drawing from these religious traditions, amici and other groups of the faithful have spoken out about our collective moral responsibility to minimize the ecological devastation wrought by climate change and the need to take immediate action to combat carbon emissions. *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”); Tyler Edgar & Lee Xu, National Council of Churches, *Climate and the Church: How Global Climate Change Will Impact Core Church Ministries*, at 9, 11-12 (2008), <https://bit.ly/3eCsJQt> (“*Climate and Church*”) (“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”); *Comment from Anthony R. Picarello, Jr., Associate General Secretary and General Counsel, U.S. Conference of Catholic Bishops, on the Proposed Rule to Repeal the Clean Power Plan*, Docket No. EPA-HQ-OAR-2017-0355-19814 (Apr. 25, 2018) (“The USCCB has long

supported the EPA in its efforts to maintain clean air, land and water, and has stressed the need for a national carbon standard to help reduce carbon emissions”).

Faith-based organizations and members of our faith communities from across the nation, representing a wide array of Jewish and Christian traditions, have submitted comments to EPA and have spoken to their communities, explaining their opposition to EPA’s repeal of the CPP and promulgation of the ACE rule.¹ But the faithful were making their voices heard long before. For example, several of the current amici filed an amicus brief in *Massachusetts v. EPA*, and faith-based

¹ See, e.g., *Letter to Members of Congress from Catholic Climate Covenant, et al.* (Oct. 15, 2019), <https://bit.ly/2U6g99l> (last visited Apr. 22, 2020) (“People of faith submitted thousands of comments in opposition to the ACE rule and have consistently advocated for protecting communities from the devastating impacts of air pollution and climate change”). See also Jesuit Conference Office of Justice and Ecology, *Statement from the Jesuit Conference Office of Justice and Ecology on EPA’s Affordable Clean Energy Rule* (Aug. 24, 2018), <https://bit.ly/2wVY4CY> (expressing deep disappointment with “this inadequate proposal” that “threatens human health, particularly those who are most vulnerable and at risk from harmful pollution and an increasingly unstable climate” (quoting Ted Penton, SJ, Secretary of the Office of Justice and Ecology of the Jesuit Conference)); Friends Committee on National Legislation, *FCNL Decries Rollback of Obama-Era Clean Power Plan* (Aug. 21, 2018), <https://bit.ly/2TSZnvn> (“We are profoundly disappointed with the Affordable Clean Energy rule,” and weakening the rule “is threatening public health, risking lives, and exacerbating climate change” (quoting Diane Randall, Executive Secretary for FCNL)); Victoria Goebel, Young Evangelicals for Climate Action, *Administration’s New Climate Plan is a Sham* (June 19, 2019), <https://bit.ly/2TPNy94> (explaining that the ACE rule is an inappropriate replacement for the CPP); *Comment Submitted by Harriett Jane Olson, General Secretary and Chief Executive Officer, United Methodist Women*, Docket No. EPA-HQ-OAR-2017-0355-23618, at 2 (Oct. 30, 2018) (“ACE does the opposite of the IPCC report[’]s recommendation for a rapid low carbon transition where annual global emissions would be reduced by half by 2030”).

organizations, including many amici, advocated for the initial promulgation of the CPP and spoke out in support of it when it was challenged in this Court. *See, e.g.*, Archbishop Thomas G. Wenski & Bishop Richard E. Pates, U.S. Conf. of Catholic Bishops, *Comments to EPA on Carbon Pollution Standards for Existing Power Plants*, Docket No. EPA-HQ-OAR-2013-0602-14026 (July 30, 2014) (“Catholic Bishops’ Comment”); *Testimony of Barbara Weinstein, Director of the Commission for Social Action of Reform Judaism and Associate Director of the Religious Action Center of Reform Judaism* (Feb. 7, 2014), <https://bit.ly/2XYCHMD> (testimony at EPA public hearing on the Rule); Br. of Catholic Climate Covenant et al. as Amici Curiae, *West Virginia v. EPA*, No. 15-1363 and consolidated cases (D.C. Cir. Apr. 1, 2016).

In addition to our public advocacy, amici are individually taking tangible steps to fight climate change. For example, amici have taken actions such as installing solar panels on churches, synagogues, and other religious buildings; completed energy audits and utilized energy efficiency measures; planted trees; and hosted roundtable events to highlight the importance of addressing climate change.

We are compelled to act not just because of our general responsibility to steward God’s earth, but to respond to a deepening humanitarian crisis. Our religious traditions all state a moral obligation to protect God’s children and especially the poor, powerless, and dispossessed. *See, e.g., Matthew 25:35* (“for I was hungry and

you gave me food, I was thirsty and you gave me something to drink...”); *Deuteronomy* 15:11 (“I therefore command you, Open your hand to the poor and needy neighbor in your land”); *Psalms* 22:24 (“For he did not despise or abhor the affliction of the afflicted; he did not hide his face from me, but heard when I cried to him”). Climate change has already harmed so many, through fires, floods, and other disasters. Left unabated, it will cause untold deaths, and, as parts of the earth that are now heavily populated become effectively uninhabitable, will turn millions of people into refugees from their own homelands. The IPCC Report estimates that even a 1.5°C rise in global temperature above pre-industrial levels will lead to hundreds of millions more people being exposed to life-threatening floods, heat waves, and water shortages by 2050. *IPCC Report* at 177-81, 213, 231, 242, 263.

These consequences will be experienced disproportionately by the least powerful among us—the old, young, sick, and poor. Amici have a moral duty to speak out in support of these vulnerable populations. *See Catholic Bishops’ Comment*, at 1 (commenting on the CPP; “[t]oo frequently we observe the damaging impacts from climate-related events in the United States and across the globe, particularly on poor and vulnerable communities”); *Laudato Si* ¶ 48 (“[T]he deterioration of the environment and of society affects the most vulnerable people on the planet: Both everyday experience and scientific research show that the gravest effects of all attacks on the environment are suffered by the poorest”) (internal

quotation omitted); *Written Testimony of The Most Rev. Katharine Jeffers Schori, Presiding Bishop of the Episcopal Church, Before the Senate Environment and Public Works Committee* (June 7, 2007), <https://bit.ly/2KqYhRT> (noting that “[c]limate change is also disproportionately affecting indigenous cultures”); David Reidmiller, et al., eds., U.S. Global Change Research Program, *Impacts, Risks, & Adaptation in the United States: Fourth National Climate Assessment, Vol. II* (2018), at 547 (“The health impacts of climate change are not felt equally, and some populations are at higher risk than others. Low-income communities and some communities of color are often already overburdened with poor environmental conditions and are disproportionately affected by, and less resilient to, the health impacts of climate change”).

In addition to experiencing a disproportionate impact, the poor and vulnerable are the least able to adapt to climate disasters. *See* Vien Truong, *Addressing Poverty and Pollution: California’s SB 535 Greenhouse Gas Reduction Fund*, 49 Harv. Civil Rights-Civil Liberties L. Rev. 493, 497-99 (2014). *See also* U.S. Conf. of Catholic Bishops, *Global Climate Change: A Plea for Dialogue, Prudence and the Common Good* (June 15, 2001), <https://bit.ly/2VOiIgR> (“[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”); *Climate and Church* at 4-6 (explaining that 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). As one example, in recent years we have witnessed vulnerable populations face devastation from Hurricanes Katrina, Harvey, and Maria, with low-income communities suffering from higher food prices and water shortages, and many without the resources to repair and return to badly damaged homes. California's 2006 heat wave killed over 600 people and resulted in 16,000 emergency department visits. James H. Thorne, et al., eds., California Natural Resources Agency, *California's Changing Climate: California's Fourth Climate Change Assessment*, at 7 (2018), <https://bit.ly/2Vpwrfh> ("*California's Changing Climate*"). These severe heat waves are magnified in urban "heat islands" where many low-income Americans live, and they often kill those unable to afford relief measures such as air conditioning. Alyson Kenward et al., *Summer in the City: Hot and Getting Hotter* (2014), <https://bit.ly/2xP75OL> ("*Summer in the City*"). See also *California's Changing Climate* at 7 (explaining that all Californians "will likely endure more illness and be at greater risk of early death because of climate change," but that vulnerable populations will feel the worst effects, including with regard to heat waves). Similarly, ozone pollution intensified by rising temperatures exacerbates asthma, which disproportionately affects low-income communities and communities of color. 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.

We have firsthand knowledge of how these impacts are felt within the communities in which we live, work, and worship. Climate change will have significant impacts on amici's core ministries such as refugee resettlement, feeding the hungry, and disaster relief. For example, as global climate change increases the number of refugees and the population experiencing food insecurity, faith-based organizations and churches will need to dramatically increase our support for these groups, far beyond our current budgets and resources. *Climate and Church* at 3-4.

Amici come from Christian and Jewish faith traditions, but humanity's obligation to steward the earth and protect the vulnerable is shared by adherents and authorities of many other religious traditions, who have likewise called for action to combat climate change. *See, e.g.*, Global Buddhist Climate Change Collective, *Buddhist Climate Change Statement to World Leaders* (Oct. 29, 2015), <https://bit.ly/2U6gyZp>; *Shared Vision, Shared Volition: Choosing Our Global Future Together, A Statement of the Baha'I International Community to the United Nations Climate Change Conference in Paris, France* (Nov. 23, 2015), <https://bit.ly/2U0IHSs>; *The Time to Act is Now: A Buddhist Declaration on Climate Change* (May 14, 2015), <https://bit.ly/2IMayzN>; Rev. Gengo Akiba & Rev. Hozan Kushiki Alan Senauke, Soto Zen Buddhist Ass'n, *A Western Soto Zen Buddhist*

Statement on the Climate Crisis (Apr. 2016), <https://bit.ly/3aW5V1R>; *Hindu Declaration on Climate Change* (Dec. 8, 2009), <https://bit.ly/3aOAxCy>; *Interfaith Declaration on Climate Change*, <https://bit.ly/2IOuLEU>; Int'l Islamic Climate Change Symposium, *Islamic Declaration on Global Climate Change* (Aug. 2015), <https://bit.ly/2QbnrHF>; EcoSikh, *First Sikh Statement on Climate Change* (Sept. 18, 2014), <https://bit.ly/2xxiUsq>. This issue affects us all, and all of us must act to protect the earth and our fellow human beings.

II. EPA'S DECISION TO REPEAL THE CPP AND REPLACE IT WITH THE ACE RULE CONTRAVENES ITS MORAL AND LEGAL DUTY TO PROTECT THE PUBLIC HEALTH AND WELFARE.

As humanity already feels the effects of unprecedented heatwaves, devastating wildfires, and increasingly severe weather, EPA's decision to repeal the CPP and replace it with the ACE rule—which will do next to nothing to mitigate greenhouse gas emissions and therefore climate change's devastating consequences—defies understanding. EPA has chosen to simply ignore the realities of climate change, failing to take seriously its statutory responsibility to curtail carbon pollutants. *See, e.g., Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 424 (2011) (holding that EPA's statutory responsibility to control carbon pollutants displaced the federal common law of nuisance for carbon emissions, so the public can rely only on EPA to curtail those emissions and cannot seek relief on its own through the courts); Clean Air Act § 111(b)(1)(A), 42 U.S.C. §7411(b)(1)(A)

(requiring EPA to regulate pollutants that may “endanger public health or welfare”). As amici work to address the impacts of climate change on our populations through our humanitarian ministries, we look to our governmental leadership to fulfill *its* own role in combating greenhouse gas emissions, the root cause of climate change. We are profoundly disappointed in the weakened ACE rule, which threatens health and exacerbates climate change.

EPA, rather than serving as a leader in environmental preservation, now instead seeks to repeal a rule that was projected to have significantly reduced carbon pollution and saved lives, while proposing a wholly unreasonable and detrimental alternative. Just as amici have a moral duty to protect the planet and its people, EPA has both a moral and legal obligation to reduce carbon pollution and protect human health and welfare.

On its own website, EPA explains that “[t]he mission of EPA is to protect human health and the environment.” U.S. EPA, *Our Mission and What We Do*, <https://bit.ly/3cUtlGK> (last visited Apr. 19, 2020). But the ACE rule does not further this mission in the slightest. To the contrary, it *removes* environmental protections. Under EPA’s new rule, states could ease pollution rules, set weak emissions standards, or even decline to limit plant emissions altogether, failing to ensure the necessary reductions in carbon pollution from the power sector. *See, e.g.*, Niina Heikkinen & Nick Sobczyk, *Trump Kicks Off Next Big Climate Battle*, Greenwire

(Aug. 21, 2018), <https://bit.ly/3eAjiHT> (“At the end of the day, there is no floor, there is no maximum”) (quoting EPA Assistant Administrator Bill Wehrum). In fact, EPA’s analysis projects emission increases in some states under certain scenarios. In one scenario, EPA projects that by 2035, twenty-one states would actually see emission increases in 2030 under the ACE rule, compared to prior CPP projections. See Georgetown Climate Center, *Issue Brief: Final ACE Rule Raises State Concerns*, at 7, fig. 1 (July 2, 2019), <https://bit.ly/39s7Jys>.

EPA acknowledges that under the ACE rule, emission reductions would be exceedingly minimal. According to EPA’s own Regulatory Impact Analysis, the ACE rule would represent almost no change from what the power sector would emit without any regulation, and falls far short of requiring the emission reductions needed to address the climate change threat. See U.S. EPA, *Regulatory Impact Analysis for the Repeal of the Clean Power Plan, and the Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units*, EPA-452/R-19-003, at 3-11 (June 2019).²

EPA’s weak effort comes at a time when EPA’s moral and legal responsibilities call for it to do *more* to protect Americans from the climate and

² EPA projects that, under the ACE rule, power sector carbon emissions in 2030 will be 35% below 2005 levels—almost indistinguishable from the reductions that would be achieved in the business-as-usual scenario with no standards in place. *Id.* at 3-11, tbl. 3-4.

health impacts of power plant pollution.³ EPA had available alternative policies that could have met its responsibilities to protect health and welfare. In their comments on the proposed ACE rule, both the Environmental Defense Fund (“EDF”) and the Natural Resources Defense Council (“NRDC”) modeled the results of regulatory policies analogous to the CPP but updated for intervening changes in the power sector. EDF’s modeling found that one such policy would achieve a 48% reduction in power sector carbon emissions below 2005 levels by 2030. *Comments of Environmental Defense Fund on EPA’s Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to New Source Review Program*, Docket No. EPA-HQ-OAR-2017-0355-24423, at 10-11 & tbl. 3 (October 31, 2018). NRDC’s modeling found that a 60% reduction in power sector carbon emissions below 2005 levels in 2030 would be possible with an updated policy. *Natural Resources Defense Council Comments on EPA’s Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing*

³ Many commentators noted even during rulemaking for the CPP that EPA could have gone further to reduce carbon emissions at that time. *See, e.g.*, Am. Lung Ass’n, *Comment Letter*, Docket No. EPA-HQ-OAR-2013-0602-23044 (Dec. 1, 2014); Am. Academy of Pediatrics et al., *Comment Letter*, Docket No. EPA-HQ-OAR-2013-0602-23211 (Dec. 1, 2014); Union of Concerned Scientists, *Comment Letter*, Docket No. EPA-HQ-OAR-2013-0602-33893 (Dec. 1, 2014).

Regulations; Revisions to New Source Review Program, Docket No. EPA-HQ-OAR-2017-0355, at 20 (October 31, 2018), <https://on.nrdc.org/2VxNAnd>.

In order to justify its failure to act to protect human health and welfare, and unable to mount a plausible legal or policy rationale for the ACE rule, EPA relies on strained arguments that are not supported by the relevant statute or caselaw. EPA cannot replace the CPP with a framework that achieves only minimal pollution reduction, when its obligation under the Clean Air Act is to provide for the *best* system of emission reduction for existing power plants—which “requires maximum feasible control of pollutants.” 42 U.S.C. § 7411(a)(1), (d); 40 Fed. Reg. 53,340, 53,342 (Nov. 17, 1975). A rule that achieves next to nothing in reducing carbon emissions cannot be the “best” system when it ignores other feasible options that have the potential for greater reductions in greenhouse gas emissions and other air pollution.

In its dramatic weakening of greenhouse gas standards, the new ACE rule is an abdication of EPA’s legal duty to protect our environment and human health and welfare, and amici are called by our own moral responsibility to oppose it.

The most recent reports by thousands of the world’s leading scientists agree that there is a pressing need to take urgent action in order to avoid dire health and welfare outcomes. For example, the Fourth National Climate Assessment published by the U.S. Global Change Research Program—a federal program for which EPA is

a constituent agency—explained that “[c]hoices made today will determine the magnitude of climate change risks beyond the next few decades,” and that “[t]here is significant potential for humanity’s effect on the planet to result in unanticipated surprises and a broad consensus that the further and faster the Earth system is pushed toward warming, the greater the risk of such surprises.” *National Climate Assessment Vol. I* at 31, 32. Similarly, the Intergovernmental Panel on Climate Change (“IPCC”) synthesized the latest peer-reviewed climate science research, and issued a stark warning that the time to act is right now, as human-induced climate change threatens the health, safety, and welfare of our communities. The IPCC’s report considered the effects of global warming of 1.5°C above pre-industrial levels (versus the previously-considered 2°C), and concluded that pathways to limit warming to 1.5°C with little or no overshoot require “a rapid phase out of CO₂ emissions and deep emissions reductions in other GHGs and climate forcers.” *IPCC Report* at 112. A failure to sufficiently limit greenhouse gas emissions would increase “risks to health, livelihoods, food security, water supply, human security, and economic growth,” with greater risks associated with more warming. *Id.* at 9. In order to keep the temperature increase within this 1.5°C limit, global net CO₂ emissions must decline by about 45% from 2010 levels by 2030, reaching net zero around 2050. *IPCC Report* at 14. Achieving this goal demands every effort by governmental authorities, particularly with regard to the power sector—the largest

stationary source of greenhouse gas emissions in America. EPA's approach does not even come close.

Placing virtually no limits whatsoever on the climate pollution the power sector emits, the ACE rule fails to fulfill EPA's core mission "to protect human health and the environment" and its legal obligation to protect human health and welfare under the Clean Air Act. Amici take seriously their own duty to care for Creation, and believe that the government should also fulfill its moral and legal responsibilities to do the same. As a nation that professes care and concern for the health and well-being of its environment and people, as manifested by the very existence of an *Environmental Protection Agency*, we are falling woefully short. EPA's action to dismantle vital environmental safeguards in a time of environmental crisis undermines our moral standing as a nation.

CONCLUSION

For the foregoing reasons, the Court should grant the petitions.

Respectfully submitted,

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April 24, 2020

**APPENDIX A:
INDIVIDUAL STATEMENTS OF INTEREST OF AMICI CURIAE**

Evangelical Environmental Network (“EEN”), 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. EEN publishes materials to equip and inspire individuals, families, and churches, and seeks to educate and mobilize Christians to make a difference in their churches and communities, and to speak out on policies that affect our ability to preach the Gospel, protect life, and care for God’s Creation.

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. In 1988, concern about the impact of fossil fuel combustion on global climate prompted the National Council and other religious groups to begin to address climate change. Since then, the National Council has considered 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 serious threat.

Coalition on the Environment and Jewish Life (“COEJL”) is an initiative of the Jewish Council for Public Affairs, a 501(c)(3) nonprofit organization. The Jewish Council for Public Affairs is the public affairs arm of the organized Jewish community and 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 as well as action to reduce our own greenhouse gas emissions. COEJL challenges and supports Jewish organizations to pursue sustainability in their facilities, operations, and programs, in order to protect the earth for future generations.

Hazon, a 501(c)(3) nonprofit organization 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”).

Maryknoll Sisters, a 501(c)(3) nonprofit organization, is a group of 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.

Sisters of Mercy of the Americas, Institute Leadership Team, is a congregation made up of about 3,000 Roman Catholic women religious, who minister in educational and healthcare institutions, social service ministries and parishes throughout the United States, Central and South America, the Caribbean, the Philippines, and Guam. As partners in both the Catholic Climate Covenant and the Global Catholic Climate Movement, Sisters of Mercy 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.

The Union for Reform Judaism, a 501(c)(3) nonprofit organization, comprises a network of vibrant Jewish congregations and affiliates across North America. The URJ supports member congregations in their efforts to enrich and energize worship, deepen Jewish learning, pursue social justice, nurture strong leaders, and expand community, both within the synagogue and beyond. The Union for Reform Judaism, whose nearly 850 congregations across North America include 1.5 million Reform Jews, come to the issue of climate change informed by our Jewish values and tradition that teach us to be stewards of the Earth for the benefit of those with whom we share the planet today and also for future generations. Biblical commentary on *Ecclesiastes Rabbah* (7:13) teaches us that God says to Adam, “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.”

Women of Reform Judaism: Founded in 1913 as an affiliate of the Union for Reform Judaism and now a 501(c)3 nonprofit organization, 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. Women of Reform Judaism represents more than 65,000 women in nearly 500 women's groups in North America and around the world. To fulfill its vision, WRJ engages tens of thousands of women through a global network of hundreds of sisterhoods and women's groups.

Men of Reform Judaism: Founded in 1923 as an affiliate of the Union for Reform Judaism, MRJ promotes the establishment of brotherhoods and other local organized men's groups in Reform congregations. As a focused, mission-driven organization, MRJ engages men in the real issues they face in Jewish life across North America and advocates for tearing down barriers to adult men entering organized Reform Jewish life. MRJ serves as a leader in developing and fostering meaningful conversations and programs about progressive Jewish values that speak to the realities facing many Reform Jewish men and families.

Central Conference of American Rabbis: Established in 1889, the Central Conference of American Rabbis is the Reform Rabbinic leadership organization whose membership includes more than 2,000 Reform rabbis. CCAR amplifies the voice of the Reform rabbinate on social, ethical, and religious matters. CCAR

members lead the Reform Movement on spiritual, social, cultural, and human rights issues. For over 50 years, CCAR has utilized its rabbinic authority on climate change. Guided by the Jewish tradition of stewardship and our responsibility to future generations, CCAR advocates for living within the ecological limits of the Earth, so that we will not compromise the ecological or economic security of those who come after us.

National Baptist Convention, USA, Inc. (“NBCUSA”), a religious organization founded in 1886, is the nation’s oldest and largest African American religious convention with an estimated membership of 7.5 million. The denomination serves to unite National Baptist churches, district associations, and state conventions in Christian evangelism. NBCUSA promotes home and foreign mission efforts; encourages and supports Christian education; publishes and produces Sunday School and other Christian literature, music and other works of art; and engages in endeavors to advance the cause of Jesus Christ throughout the world.

CERTIFICATE OF COMPLIANCE WITH WORD LIMITATION

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), counsel hereby certifies that the foregoing Brief of Faith Organizations as Amici Curiae in Support of State and Municipal, Public Health and Environmental, Power Company, and Clean Energy Trade Association Petitioners contains 5721 words, as counted by counsel's word-processing system, and this complies with the applicable word limit established by the Court.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 24th day of April, 2020, a true and correct copy of the foregoing Brief of Amici Curiae Faith Organizations in Support of Petitioners was filed with the Clerk of the United States Court of Appeals for the D.C. Circuit via the Court's CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by the CM/ECF system.

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