

ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016

No. 15-1363
(and consolidated cases)

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

STATE OF WEST VIRGINIA, ET AL.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

Respondents.

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

UNOPPOSED MOTION BY CURRENT MEMBERS OF CONGRESS AND BI-
PARTISAN FORMER MEMBERS OF CONGRESS FOR LEAVE TO PARTICI-
PATE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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Brianna J. Gorod
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Counsel for Amici Curiae

Pursuant to Fed. R. App. Pro. 29(b) and D.C. Circuit Rule 29(b), *amici curiae* respectfully move for leave to participate as *amici curiae* in support of the Respondents. Counsel for *amici curiae* sent notice of their proposed participation to all parties in these consolidated cases on March 24, 2016. The parties either consented to *amici curiae*'s participation or took no position; no party objected.

In support of this motion, *amici* state:

1. *Amici* are current and former members of Congress who are familiar with the Clean Air Act, 42 U.S.C. §§ 7401-7671q (CAA), and the authority it confers on the Environmental Protection Agency (EPA). Many amici were sponsors of CAA legislation, participated in drafting the 1990 CAA amendments, serve or served on key committees with jurisdiction over the CAA and EPA, and supported the passage of the CAA. A full listing of *amici* appears in the appendix to this motion.

2. *Amici* wish to participate in this case because they know, based on their experience serving in Congress, that the CAA not only specifies meaningful criteria for developing and implementing emission standards for pollutants, but also gives EPA, as the delegated expert agency, the discretion necessary to elaborate on those criteria, resolve ambiguities in them, and apply them to specific new problems as they arise. They further know that Congress intentionally used broad language in certain provisions of the CAA so EPA could play a key role in shaping

the approach to developing and setting standards for specific sources and pollutants. *Amici* recognize that EPA's ability to promulgate regulations pursuant to the discretion granted in the CAA is critical to the law's effective operation.

3. *Amici* also wish to participate in this case to respond to the assertion made by *amici* members of Congress in support of petitioners that the Clean Power Plan rule "seek[s] to usurp the role of Congress to establish climate and energy policy for the nation," Members of Congress *Amici Br.* in support of Pet'rs at 1, as well as their arguments about the purpose and effect of the 1990 amendments to the CAA. *Amici* know that, contrary to the assertion made by members of Congress in support of petitioners, the Clean Power Plan rule is one means by which EPA effectuates the robust clean air and public health policy that Congress established in the CAA. In addition, *amici* (some of whom were serving at the time of the 1990 amendments) are well-positioned to respond to the arguments made by *amici* members of Congress in support of petitioners about the purpose and effect of the 1990 amendments.

4. *Amici's* proposed brief is attached to the motion and complies with the Court's prescribed word limits. It is also timely filed under the scheduling order issued by this Court on January 28, 2016.

WHEREFORE, *amici* respectfully request leave to file the proposed brief of *amici curiae*.

Respectfully submitted,

/s/ Elizabeth B. Wydra

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Brianne J. Gorod

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Counsel for Amici Curiae

Dated: March 31, 2016

APPENDIX
LIST OF *AMICI*

U.S. House of Representatives

Pallone, Jr., Frank

Representative of New Jersey

Huffman, Jared

Representative of California

Pelosi, Nancy

Representative of California

Hoyer, Steny H.

Representative of Maryland

Clyburn, James E.

Representative of South Carolina

Becerra, Xavier

Representative of California

Crowley, Joseph

Representative of New York

Conyers, Jr., John

Representative of Michigan

Cummings, Elijah E.

Representative of Maryland

DeFazio, Peter A.

Representative of Oregon

Engel, Eliot L.

Representative of New York

LIST OF *AMICI* – cont'd

Grijalva, Raúl M.

Representative of Arizona

Johnson, Eddie Bernice

Representative of Texas

Levin, Sander

Representative of Michigan

Lewis, John

Representative of Georgia

Lowey, Nita M.

Representative of New York

McDermott, Jim

Representative of Washington

Neal, Richard E.

Representative of Massachusetts

Price, David

Representative of North Carolina

Rangel, Charles B.

Representative of New York

Rush, Bobby L.

Representative of Illinois

Serrano, José E.

Representative of New York

Slaughter, Louise M.

Representative of New York

LIST OF *AMICI* – cont'd

Adams, Alma S.

Representative of North Carolina

Aguilar, Pete

Representative of California

Bass, Karen

Representative of California

Bera, Ami

Representative of California

Beyer, Jr., Donald S.

Representative of Virginia

Blumenauer, Earl

Representative of Oregon

Bonamici, Suzanne

Representative of Oregon

Boyle, Brendan F.

Representative of Pennsylvania

Brady, Robert A.

Representative of Pennsylvania

Brown, Corrine

Representative of Florida

Brownley, Julia

Representative of California

Bustos, Cheri

Representative of Illinois

LIST OF *AMICI* – cont'd

Butterfield, G.K.

Representative of North Carolina

Capps, Lois

Representative of California

Cárdenas, Tony

Representative of California

Carney, Jr., John C.

Representative of Delaware

Carson, André

Representative of Indiana

Cartwright, Matt

Representative of Pennsylvania

Castor, Kathy

Representative of Florida

Castro, Joaquin

Representative of Texas

Chu, Judy

Representative of California

Cicilline, David N.

Representative of Rhode Island

Clark, Katherine M.

Representative of Massachusetts

Cleaver, II, Emanuel

Representative of Missouri

LIST OF *AMICI* – cont'd

Cohen, Steve

Representative of Tennessee

Connolly, Gerald E.

Representative of Virginia

Courtney, Joe

Representative of Connecticut

Davis, Danny K.

Representative of Illinois

Davis, Susan A.

Representative of California

DeGette, Diana L.

Representative of Colorado

Delaney, John K.

Representative of Maryland

DeLauro, Rosa L.

Representative of Connecticut

DelBene, Suzan K.

Representative of Washington

DeSaulnier, Mark

Representative of California

Deutch, Theodore E.

Representative of Florida

Dingell, Debbie

Representative of Michigan

LIST OF *AMICI* – cont'd

Doyle, Michael F.

Representative of Pennsylvania

Duckworth, Tammy

Representative of Illinois

Edwards, Donna F.

Representative of Maryland

Ellison, Keith

Representative of Minnesota

Eshoo, Anna G.

Representative of California

Esty, Elizabeth H.

Representative of Connecticut

Farr, Sam

Representative of California

Fattah, Chaka

Representative of Pennsylvania

Foster, Bill

Representative of Illinois

Frankel, Lois

Representative of Florida

Gallego, Ruben

Representative of Arizona

Garamendi, John

Representative of California

LIST OF *AMICI* – cont'd

Grayson, Alan

Representative of Florida

Gutierrez, Luis V.

Representative of Illinois

Hahn, Janice

Representative of California

Hastings, Alcee L.

Representative of Florida

Heck, Denny

Representative of Washington

Higgins, Brian

Representative of New York

Himes, Jim

Representative of Connecticut

Honda, Michael M.

Representative of California

Israel, Steve

Representative of New York

Jackson Lee, Sheila

Representative of Texas

Jeffries, Hakeem

Representative of New York

Johnson, Henry C. "Hank"

Representative of Georgia

LIST OF *AMICI* – cont'd

Keating, William R.

Representative of Massachusetts

Kelly, Robin L.

Representative of Illinois

Kennedy, III, Joseph P.

Representative of Massachusetts

Kildee, Daniel T.

Representative of Michigan

Kilmer, Derek

Representative of Washington

Kuster, Ann McLane

Representative of New Hampshire

Langevin, James R.

Representative of Rhode Island

Larson, John B.

Representative of Connecticut

Lawrence, Brenda L.

Representative of Michigan

Lee, Barbara

Representative of California

Lieu, Ted W.

Representative of California

Lipinski, Daniel

Representative of Illinois

LIST OF *AMICI* – cont'd

Loebsack, Dave

Representative of Iowa

Lofgren, Zoe

Representative of California

Lowenthal, Alan

Representative of California

Luján, Ben Ray

Representative of New Mexico

Lujan Grisham, Michelle

Representative of New Mexico

Lynch, Stephen F.

Representative of Massachusetts

Maloney, Carolyn B.

Representative of New York

Maloney, Sean Patrick

Representative of New York

Matsui, Doris

Representative of California

McCollum, Betty

Representative of Minnesota

McGovern, James P.

Representative of Massachusetts

McNerney, Jerry

Representative of California

LIST OF *AMICI* – cont'd

Meeks, Gregory W.

Representative of New York

Meng, Grace

Representative of New York

Moore, Gwen

Representative of Wisconsin

Moulton, Seth

Representative of Massachusetts

Murphy, Patrick E.

Representative of Florida

Nadler, Jerrold

Representative of New York

Napolitano, Grace F.

Representative of California

Norcross, Donald

Representative of New Jersey

Norton, Eleanor Holmes

Representative of District of Columbia

O'Rourke, Beto

Representative of Texas

Pascrell, Jr., Bill

Representative of New Jersey

Payne, Jr., Donald M.

Representative of New Jersey

LIST OF *AMICI* – cont'd

Perlmutter, Ed

Representative of Colorado

Peters, Scott H.

Representative of California

Pingree, Chellie

Representative of Maine

Pocan, Mark

Representative of Wisconsin

Polis, Jared

Representative of Colorado

Quigley, Mike

Representative of Illinois

Rice, Kathleen M.

Representative of New York

Richmond, Cedric L.

Representative of Louisiana

Roybal-Allard, Lucille

Representative of California

Ruiz, Raul

Representative of California

Ruppertsberger, C.A. Dutch

Representative of Maryland

Sablan, Gregorio Kilili Camacho

Representative of Northern Mariana Islands

LIST OF *AMICI* – cont'd

Sánchez, Linda T.

Representative of California

Sanchez, Loretta

Representative of California

Sarbanes, John P.

Representative of Maryland

Schakowsky, Jan

Representative of Illinois

Schiff, Adam B.

Representative of California

Schrader, Kurt

Representative of Oregon

Scott, Robert C. “Bobby”

Representative of Virginia

Sherman, Brad

Representative of California

Sires, Albio

Representative of New Jersey

Smith, Adam

Representative of Washington

Speier, Jackie

Representative of California

Swalwell, Eric

Representative of California

LIST OF *AMICI* – cont'd

Takai, Mark

Representative of Hawaii

Takano, Mark

Representative of California

Thompson, Mike

Representative of California

Titus, Dina

Representative of Nevada

Tonko, Paul D.

Representative of New York

Tsongas, Niki

Representative of Massachusetts

Van Hollen, Chris

Representative of Maryland

Vargas, Juan

Representative of California

Wasserman Schultz, Debbie

Representative of Florida

Waters, Maxine

Representative of California

Watson Coleman, Bonnie

Representative of New Jersey

Welch, Peter

Representative of Vermont

LIST OF *AMICI* – cont'd

Wilson, Frederica S.

Representative of Florida

Yarmuth, John

Representative of Kentucky

U.S. Senate

Baldwin, Tammy

Senator of Wisconsin

Bennet, Michael F.

Senator of Colorado

Blumenthal, Richard

Senator of Connecticut

Booker, Cory A.

Senator of New Jersey

Boxer, Barbara

Senator of California

Brown, Sherrod

Senator of Ohio

Cantwell, Maria

Senator of Washington

Cardin, Benjamin L.

Senator of Maryland

Carper, Thomas R.

Senator of Delaware

LIST OF *AMICI* – cont'd

Casey, Jr., Robert P.

Senator of Pennsylvania

Coons, Christopher A.

Senator of Delaware

Durbin, Richard J.

Senator of Illinois

Feinstein, Dianne

Senator of California

Franken, Al

Senator of Minnesota

Gillibrand, Kirsten E.

Senator of New York

Heinrich, Martin

Senator of New Mexico

Hirono, Mazie K.

Senator of Hawaii

Kaine, Tim

Senator of Virginia

King, Jr., Angus S.

Senator of Maine

Klobuchar, Amy

Senator of Minnesota

Leahy, Patrick J.

Senator of Vermont

LIST OF *AMICI* – cont'd

Markey, Edward J.

Senator of Massachusetts

Menendez, Robert

Senator of New Jersey

Merkley, Jeff

Senator of Oregon

Murray, Patty

Senator of Washington

Peters, Gary C.

Senator of Michigan

Reed, Jack

Senator of Rhode Island

Reid, Harry

Senator of Nevada

Sanders, Bernard

Senator of Vermont

Schatz, Brian

Senator of Hawaii

Schumer, Charles E.

Senator of New York

Shaheen, Jeanne

Senator of New Hampshire

Stabenow, Debbie

Senator of Michigan

LIST OF *AMICI* – cont'd

Warner, Mark R.

Senator of Virginia

Whitehouse, Sheldon

Senator of Rhode Island

Wyden, Ron

Senator of Oregon

Former Members of Congress

Boehlert, Sherwood

Representative of New York (retired)

Carr, Milton “Bob”

Representative of Michigan (retired)

Daschle, Thomas A.

Senator and Representative of South Dakota (retired)

Downey, Thomas

Representative of New York (retired)

Durenberger, David

Senator of Minnesota (retired)

Harkin, Tom

Senator and Representative of Iowa (retired)

Hughes, Bill

Representative of New Jersey (retired)

Kerrey, J. Robert

Senator of Nebraska (retired)

LIST OF *AMICI* – cont'd

Levin, Carl

Senator of Michigan (retired)

Lieberman, Joseph I.

Senator of Connecticut (retired)

Miller, George

Representative of California (retired)

Mitchell, George J.

Senator of Maine (retired)

Moran, Jim

Representative of Virginia (retired)

Waxman, Henry

Representative of California (retired)

Wirth, Timothy E.

Senator and Representative of Colorado (retired)

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* state that no party to this brief is a publicly-held corporation, issues stock, or has a parent corporation.

CERTIFICATE UNDER D.C. CIRCUIT RULE 28(a)(1)(A)

Pursuant to D.C. Circuit Rule 28(a)(1)(A), *amici curiae* certify that in addition to the parties and *amici* listed in Respondents' Brief, the *amici* listed in the appendix to this motion may have an interest in the outcome of this case.

/s/ Elizabeth B. Wydra

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Counsel for Amici Curiae

Dated: March 31, 2016

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 in a timely manner consistent with the briefing schedule set out by this Court. This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(5) & (6).

Executed this 31st day of March, 2016.

/s/ Elizabeth B. Wydra
Elizabeth B. Wydra

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on March 31, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 31st day of March, 2016.

/s/ Elizabeth B. Wydra
Elizabeth B. Wydra

Counsel for Amici Curiae