

ORAL ARGUMENT NOT YET SCHEDULED
**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.

Case No. 15-1363, consolidated
with cases no.

15-1364, 15-1365, 15-1366,
15-1367, 15-1368, 15-1370,
15-1371, 15-1372, 15-1373,
15-1374, 15-1375, 15-1376,
15-1377, 15-1378, 15-1379,
15-1380, 15-1382, 15-1383,
15-1386, 15-1393 & 15-1398

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

**UNOPPOSED MOTION FOR LEAVE TO INTERVENE AS
RESPONDENTS**

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), the States of New York, California (by and through Governor Edmund G. Brown Jr., the California Air Resources Board, and Attorney General Kamala D. Harris), Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota (by and through the Minnesota Pollution Control Agency), New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, Washington, the Commonwealths of Massachusetts and Virginia, the District of Columbia, the Cities of Boulder, Chicago, New York, Philadelphia, and South Miami, and Broward County, Florida (collectively, “State and Municipal Intervenors”) hereby

move for leave to intervene in support of respondents Environmental Protection Agency, et al. (“EPA”) in these consolidated cases, for the reasons set forth below:

1. These consolidated cases petition this Court for review of EPA’s final action, published in the Federal Register at 80 Fed. Reg. 64,661 on October 23, 2015, and titled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (the “Clean Power Plan”). EPA promulgated the Clean Power Plan pursuant to its authority in section 111(d) of the Clean Air Act. 42 U.S.C. § 7411(d).

2. The Clean Power Plan requires states to implement standards to reduce greenhouse gas emissions from fossil-fueled power plants, the country’s largest source of such emissions. These emission reductions will help prevent and mitigate harms that climate change poses to human health and the environment, including increased heat-related deaths, damaged coastal areas, disrupted ecosystems, more severe weather events, and longer and more frequent droughts. *See Massachusetts v. EPA*, 549 U.S. 497, 521 (2007); 74 Fed. Reg. 66,496, 66,523-66,536 (Dec. 15, 2009).

3. State and Municipal Intervenors have a compelling interest in defending the Clean Power Plan as a means to achieve their goal of preventing and mitigating climate change harms in their states and municipalities. In pursuit of this goal, State and Municipal Intervenors have taken significant steps to reduce greenhouse

gas emissions, including emissions from existing fossil-fueled power plants, in a variety of ways. Many states have enacted their own greenhouse gas emission limitations. *See, e.g.*, Cal. Code Regs. tit. 17, §§ 95801-96022; Conn. Gen. Stat. § 22a-200c & Conn. Agencies Regs. § 22a-174-31 (implementing nine-state Regional Greenhouse Gas Initiative)¹; N.Y. Comp. Codes R. & Regs. tit. 6, Part 251; Or. Rev. Stat. § 469.503(2); Wash. Rev. Code § 80.80.040(b). Many cities have similarly adopted measures to reduce their greenhouse gas emissions from the power sector. *See, e.g.*, City of Chicago, “Chicago Climate Action Plan” (2008), at 25-28 (committing to greenhouse gas reduction goal of 80 percent by 2050 and outlining reductions needed from the power sector to meet this goal); City of New York, “One New York: The Plan for a Strong and Just City” (2015), 166-71 (same). Because the Clean Power Plan would further the State and Municipal Intervenors’ goals and efforts, and would do so on a nationwide basis, State and Municipal Intervenors have a strong interest in defending the Clean Power Plan.

4. State and Municipal Intervenors also have an interest in these consolidated cases because many of them have participated extensively in the regulatory and judicial proceedings leading up to EPA’s adoption of the Clean Power Plan. For

¹ *See also* Del. Code Ann. tit. 7, § 6043 & Del. Admin. Code tit. 7, ch. 1147; Me. Rev. Stat. Ann. tit. 38, ch. 3-B; Md. Code Ann., Envir., § 2-1002(g); Mass. Gen. Laws ch. 21A, § 22 & 310 Mass. Code Regs. 7.70; N.H. Rev. Stat. Ann. § 125-O:21; R.I. Gen. Laws. § 23-82-4; Vt. Stat. Ann. tit. 30, § 255.

example, several State and Municipal Intervenors brought the petition that led to *Massachusetts v. EPA*, and EPA's subsequent finding that greenhouse gases may reasonably be anticipated to endanger public health and welfare. *See* 74 Fed. Reg. 66,496. Several State and Municipal Intervenors also sued EPA to promptly establish carbon dioxide emission standards for power plants under section 111 of the Clean Air Act, 42 U.S.C. § 7411. *New York v. EPA* (D.C. Cir. No. 06-1322). Many State and Municipal Intervenors also submitted comments to EPA in advance of—and, later, in response to—the agency's proposal of the greenhouse gas emission standards at issue in these consolidated cases. And when that proposal was challenged in the D.C. Circuit, many State and Municipal Intervenors intervened in support of the agency's authority to finalize that proposal. *In re: Murray Energy Corp.* (D.C. Cir. No. 14-1112); *Murray Energy v. EPA* (D.C. Cir. No. 14-1151); *West Virginia v. EPA* (D.C. Cir. No. 14-1146). Several states and New York City also brought public-nuisance claims against the largest owners of fossil-fueled power plants. *Am. Elec. Power v. Connecticut*, 131 S. Ct. 2527, 2537 (2011) (finding plaintiffs' federal common law nuisance claims displaced by section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d)).

5. State and Municipal Intervenors' interests may not be adequately represented by the other parties to these consolidated cases. As representatives of the interests of their citizens, State and Municipal Intervenors' interests in these

consolidated cases differ from those of other parties. In addition, State and Municipal Intervenors have unique sovereign interests in limiting climate change pollution in order to prevent and mitigate loss and damage to publicly-owned coastal property, to protect public infrastructure, and to limit emergency response costs borne by the public. *See Massachusetts v. EPA*, 549 U.S. at 521-23. These interests have not always aligned with those of EPA, as shown by the historical efforts of many State and Municipal Intervenors to compel EPA to address climate change.

6. In addition, the Clean Power Plan imposes specific obligations on many of the undersigned states. As a result, State and Municipal Intervenors' interests in defending certain aspects of the Clean Power Plan, including the state-specific emission-reduction targets the Plan assigns and the compliance options it allows, are distinct from EPA's interests.

7. This motion is timely under Rule 15(d), because it is filed within 30 days of the petition for review in case no. 15-1363. Pursuant to Circuit Rule 15(b), this motion also constitutes a motion to intervene in all petitions for review of the challenged administrative action.

8. The proposed intervention will also not unduly delay or prejudice the rights of any other party. This litigation is in its very early stages, and intervention will not interfere with any schedule set by the Court.

9. Counsel for State and Municipal Intervenors sought the position of Respondents and Petitioners in Case No. 15-1363 and the cases consolidated therewith by electronic mail communication to counsel of record at 9 A.M. EST on November 3. Counsel for Respondents has stated that they do not oppose the motion. Counsel for Petitioners in Cases No. 15-1378, 15-1379, 15-1393 & 15-1398 have stated that they do not oppose the motion. Counsel for Petitioners in Cases No. 15-1363, 15-1367, 15-1368, 15-1370, 15-1373, 15-1374, 15-1380, 15-1382 and 15-1386 have stated that they take no position on the motion. Counsel for Petitioners in the remaining consolidated cases had not stated a position as of the time of this filing.

10. Counsel for the State of New York represents that the other parties listed in the signature blocks below consent to the filing of this motion.

For the foregoing reasons, State and Municipal Intervenors respectfully request that this Court grant their motion to intervene.

Dated: November 4, 2015

Respectfully Submitted,

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Certificate of Service

I certify that the foregoing Motion for Leave to Intervene was filed on November 4, 2015 with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ Brian Lusignan
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