

**ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016**

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

No. 15-1363 (and consolidated cases)

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

v.

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

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

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**UNOPPOSED MOTION BY LEON G. BILLINGS AND  
THOMAS C. JORLING FOR LEAVE TO PARTICIPATE AS  
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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Charles S. Warren (*Counsel of Record*)  
Theodore E. Lamm  
Jennifer M. Klein  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
212 715 9387  
cwarren@kramerlevin.com

*Counsel for Amici Curiae*

Pursuant to Federal Rule of Appellate Procedure 29(b) and D.C. Circuit Rule 29(b), Leon G. Billings and Thomas C. Jorling (collectively, “*amici*”) respectfully move for leave to participate as *amici curiae* in support of Respondents Environmental Protection Agency (“EPA”) and Regina A. McCarthy, EPA Administrator.

Counsel for Respondents expressed the consent of their clients to this motion, as did counsel for Power Company Respondent-Intervenors Calpine Corporation, et al.; Trade Associations Respondent-Intervenors Advanced Energy Economy, et al., and Public Health and Environmental Nongovernmental Organization Respondent-Intervenors, American Lung Association, et al. Counsel for the State and Municipal Respondent-Intervenors stated that their clients do not oppose this motion. Counsel for all Petitioners in case numbers 15-1363, 15-1364 and 15-1409 stated no position as to the participation of *amici*. Counsel for the additional State and Industry Petitioners in the other consolidated cases, and for the other Petitioner-Intervenors and Respondent-Intervenors, did not respond to the notice sent to liaison counsel requesting their consent as to the participation of *amici*. That notice, which was sent to liaison counsel on March 21, 2016, stated that if no response was received by March 25, 2016, counsel for proposed *amici* would notify this Court that those parties took no position as to the proposed participation of *amici*.

In support of this motion, *amici* state as follows:

1. EPA's final Clean Power Plan ("Plan") regulates carbon dioxide emissions from existing power plants under section 111(d) of the Clean Air Act ("Act"), 42 U.S.C. § 111(d). 80 Fed. Reg. 64,662 (Oct. 23, 2015). EPA has found that carbon dioxide is a pollutant that endangers the public health and welfare, 74 Fed. Reg. 66,496 (Dec. 15, 2009), and thus is required to regulate its emissions from stationary sources under the Act. *See* 42 U.S.C. §§ 111(b), 111(d).

2. *Amici* are former United States Senate staff members who were directly responsible for the drafting and deliberations that resulted in the 1970 Clean Air Act Amendments ("1970 Amendments"), which created the current framework of the Act, including section 111(d). As the lead majority staff person for the Senate Special Subcommittee on Air and Water Pollution of the Committee on Public Works ("Committee"), Mr. Billings held primary responsibility for the Act and was the chief negotiator for the Senate in conference committees with the United States House of Representatives. Mr. Jorling served as Minority Counsel to the Committee throughout the passage of the 1970 Amendments, interacting with both Senate majority and House staff and members in the negotiations. *Amici* also participated in the negotiations leading up to the 1990 Clean Air Act Amendments. *Amici* have both had extensive subsequent careers in environmental law and

policy, including private and public positions implementing, negotiating further amendments to, and teaching and disseminating information regarding the Act.

3. *Amici*, having led the drafting and negotiation of the Act, possess unique insight into the purpose and structure intended by its drafters. *Amici* seek to participate in this action to explain how the Plan fits perfectly within this intent, based on their unparalleled working knowledge of the Act. This information is distinct from arguments expected from other parties in these consolidated cases, and it is critical for the Court's understanding of the statutory basis for the Plan.

4. D.C. Cir. Rule 29 permits the filing of a motion for leave to participate as *amicus curiae* up to seven days after the filing of the principal brief of the party being supported, but encourages the filing of a notice of intent as soon as practicable. *Amici* are filing this motion as soon as practicable and before the parties have filed briefs addressing the merits of the case. If permitted to file an *amicus* brief, *amici* would file a document within the briefing schedule established by this Court for all briefs, including those filed by *amicus curiae* and within any proscribed word limitations.

WHEREFORE, the proposed *amici* respectfully request leave to file a brief of *amici curiae* pursuant to the schedule and any other direction, including word limitations, established by the Court.

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/s/

Charles S. Warren (*Counsel of Record*)

Theodore E. Lamm

Jennifer M. Klein

Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas

New York, New York 10036

212 715 9387

cwarren@kramerlevin.com

Dated: April 1, 2016

*Counsel for Amici Curiae*









UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW  
Washington, DC 20001-2866  
Phone: 202-216-7000 | Facsimile: 202-219-8530

Case Caption: State of West Virginia, et al.

v.

Case No: 15-1363, et al.

U.S. Envtl. Protection Agency, et al.

ENTRY OF APPEARANCE

Party Information

The Clerk shall enter my appearance as counsel for the following parties:  
(List each party represented individually. Use an additional blank sheet as necessary)

- Appellant(s)/Petitioner(s)     Appellee(s)/Respondent(s)     Intervenor(s)     Amicus Curiae

Leon G. Billings

Thomas C. Jorling

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Names of Parties

Names of Parties

Counsel Information

Lead Counsel: Charles S. Warren

Direct Phone: (212) 715-9387 Fax: (212) 715-8000 Email: cwarren@kramerlevin.com

2nd Counsel: Theodore E. Lamm

Direct Phone: (212) 715-9173 Fax: (212) 715-8000 Email: tlamm@kramerlevin.com

3rd Counsel: Jennifer M. Klein

Direct Phone: (212) 715-9369 Fax: (212) 715-8000 Email: jklein@kramerlevin.com

Firm Name: Kramer Levin Naftalis & Frankel LLP

Firm Address: 1177 Avenue of the Americas, New York, New York 10036

Firm Phone: (212) 715-9100 Fax: (212) 715-8000 Email: \_\_\_\_\_

Notes: This form must be submitted by a member of the Bar of the U.S. Court of Appeals for the D.C. Circuit.  
**Names of non-member attorneys listed above will not be entered on the court's docket.**

Applications for admission are available on the court's web site at <http://www.cadc.uscourts.gov/>