

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,
15-1409, 15-1410, 15-1413,
15-1418, 15-1422, 15-1432)

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

**UNOPPOSED MOTION BY THE NATIONAL LEAGUE OF CITIES;
THE U.S. CONFERENCE OF MAYORS; BALTIMORE, MD;
CORAL GABLES, FL; GRAND RAPIDS, MI; HOUSTON,
TX; JERSEY CITY, NJ; LOS ANGELES, CA; MINNEAPOLIS, MN;
PINECREST, FL; PORTLAND, OR; PROVIDENCE, RI; SALT LAKE
CITY, UT; SAN FRANCISCO, CA; WEST PALM BEACH, FL; AND
BOULDER COUNTY, CO FOR LEAVE TO PARTICIPATE AS *AMICI
CURIAE***

Michael Burger
D.C. Circuit Bar, Admitted Member
Sabin Center for Climate Change Law
435 W. 116th St.
New York, NY 10027
212.854.2372
michael.burger@law.columbia.edu
Counsel for Local Government Coalition

Pursuant to Fed. R. App. Pro. 29(b) and D.C. Cir. Rule 29(b), the National League of Cities; the U.S. Conference of Mayors; Baltimore, MD; Coral Gables, FL; Grand Rapids, MI; Houston, TX; Jersey City, NJ; Los Angeles, CA; Minneapolis, MN; Portland, OR; Pinecrest, FL; Portland, OR; Providence, RI; Salt Lake City, UT; San Francisco, CA; West Palm Beach, FL; and Boulder County, CO (hereinafter, “Local Government Coalition”) respectfully move for leave to participate as *amici curiae* in support of the Respondents Environmental Protection Agency (“EPA”) and Regina A. McCarthy, EPA Administrator.

Counsel for State and Municipal Respondent-Intervenors and for Non-Governmental Organization Respondent-Intervenors expressed their consent to *amici* participation by the Local Government Coalition. Counsel for several other movant intervenors in support of federal respondents, including Calpine Corporation, City of Austin d/b/a Austin Energy, City of Seattle by and through its City Light Department, National Grid Generation, L.L.C., New York Power Authority, Pacific Gas & Electric Company, Sacramento Municipal Utility District and Southern California Edison Company expressed that they do not object to *amici* participation. Counsel for the petitioners in Case Nos. 15-1363, 15-1364, 15-1376, and 15-1409 have stated that they take no position on the question whether this motion for leave to participate as *amici curiae* should be granted. Counsel for

federal respondents, other intervenor respondents and the additional petitioners in this consolidated case and for movant intervenors in support of petitioners did not respond to notice sent to liaison counsel asking whether they consented, objected, or took no position on *amici's* proposed participation. That notice, which was sent to liaison counsel on Monday, December 7, 2015, provided that if no response was received by Thursday, December 10, 2015, counsel for proposed *amici* Local Government Coalition would notify this Court that those parties took no position on this motion.

In support of this motion, the Local Government Coalition states as follows:

1. Climate change poses a grave threat to many cities and localities, and to their human populations, all across the United States. The unprecedented scope of climate change-related impacts to human health, the environment, built infrastructure, natural resources and local economies is by now well established. These impacts include increased heat-related deaths, exacerbated air quality problems, longer droughts that combine with increased temperatures and water evaporation rates to strain water supplies, increasingly frequent and severe storms that pose immediate threats to human welfare and critical infrastructure, damaged and disappearing coastlines, and degraded ecosystems and reduced ecosystem services function in urban and non-urban areas alike. The Clean Power Plan—

which requires the development of implementation plans to reduce greenhouse gas emissions from the country's largest source of such emissions, existing fossil-fueled power plants—is a necessary action to address these extraordinary risks.

2. The Local Government Coalition consists of leading national local government associations and cities and counties from around the country. The National League of Cities (NLC) is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with 49 State municipal leagues, NLC serves as a national advocate for more than 19,000 cities, villages, and towns, representing more than 218 million Americans. Its Sustainable Cities Initiative serves as a resource hub on climate adaptation and resilience and energy efficiency for its many members. The U.S. Conference of Mayors (USCM), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,200 cities at present. Each city is represented in the USCM by its chief elected official, the mayor. The Conference is home to the Mayors Climate Protection Center, formed to assist with implementation of the Mayors Climate Protection Agreement, which 1,060 mayors have joined, each pledging to reduce their city's greenhouse gas emissions levels below 1990 levels. Individual city members of the Local Government Coalition include Baltimore,

MD; Coral Gables, FL; Grand Rapids, MI; Houston, TX; Jersey City, NJ; Los Angeles, CA; Minneapolis, MN; Pinecrest, FL; Portland, OR; Providence, RI; Salt Lake City, UT; San Francisco, CA; West Palm Beach, FL; and Boulder County, CO.

3. Members of the Local Government Coalition have already suffered from the impacts of climate change, which are especially disruptive to cities' concentrated and tightly interwoven people, ecosystems, assets, and critical infrastructure systems.¹ For example, Houston, home to more than 2 million people, is contending with increasingly severe and frequent heat waves, droughts, storms and floods. Cities in South Florida including West Palm Beach, Coral Gables, and Pinecrest are seeing rising seas erode and invade the limestone

¹ See, e.g., Kevin E. Trenberth et al., *Attribution of climate extreme events*, 5 Nature Climate Change 725 (2015), <http://bit.ly/1MwnXZu> (linking climate change to destructive storms, including Hurricanes Katrina and Sandy and the 2013 Boulder County floods); EPA, Climate Change Indicators in the United States: Heat-Related Deaths (June 2015), <http://1.usa.gov/1SR6g7b>; William V. Sweet & John J. Marra, Nat'l Oceanic & Atmospheric Admin., 2014 State of Nuisance Tidal Flooding (July 2014), <http://bit.ly/1ISRdPw> (reporting on effects of flooding incident to sea level rise). See also Amy Joi O'Donoghue, *What's the impact of climate change on Utah? Study will try to find out*, Deseret News, June 7, 2015, <http://bit.ly/1M5RK5M> ("Some effects are already showing up, such as reduced snowpack and longer fire seasons"); Gayathri Vaidyanathan, *Planners in southeast Fla. try to awaken their state to sea-level rise*, E&E News--Climate Wire, Aug. 8, 2014, <http://bit.ly/1lyBB45>; D.F. Boesch et al., Univ. Md. Ctr. Env'tl. Sci., *Updating Maryland's Sea-level Rise Projections. Special Report of the Scientific and Technical Working Group to the Maryland Climate Change Commission*, (June 2013), <http://bit.ly/1NJiO0e>.

bedrock on which they are built and above which their drinking water sits, while other coastal cities along the Atlantic coast such as Baltimore, Jersey City and Providence are exposed to the climate risks of rising seas, extreme precipitation, and storm surge. Increased temperatures and extreme storm events are already affecting the Great Lakes region, including Grand Rapids. Boulder County was among the Colorado localities that suffered catastrophic flooding in 2013, an event that scientists have concluded is evidence of the increased risks associated with climate change. Looking forward, changes in precipitation will affect San Francisco's water and electricity supply and rising sea levels disproportionately threaten those in the community who have the fewest resources to prepare for and respond to increased flooding. Portland is exposed to increasing extreme heat events, along with drier summers and longer droughts, storm risk, and landslides. Salt Lake City and Los Angeles, like the rest of the American West, are contending with ongoing drought, and are keeping a close eye on vulnerability to climate-related risks such as wildfire and flood.

The acute relevance of climate change to local governments' responsibilities and activities has led members of the Local Government Coalition to grasp both the need to adapt to climate change and the costs of failing to act to mitigate it. Prompted by lived experience and by the prospect of future impacts, they have made efforts both to adapt to their changing climatic circumstances and to slow or

eliminate their greenhouse gas emissions.² Because the Clean Power Plan would further these goals and efforts, and would do so on a nationwide basis, the members of the Local Government Coalition have a uniquely well-informed view of the importance of the Clean Power Plan.

4. The Local Government Coalition’s view is widely representative in addition to being well-informed. The majority of Americans live and/or work in the urban areas represented by Amici National League of Cities and U.S.

² See, e.g., Baltimore Office of Sustainability, Climate Action Plan (Jan. 2013), <http://bit.ly/1OUtGcz>; Boulder County & Consortium of Cities Energy Strategy Task Force, Sustainable Energy Plan (Dec. 2007), <http://bit.ly/1ZhLCRr>; City of Coral Gables, Sustainability Master Plan, <http://bit.ly/1OeOR41> (last visited Dec. 19, 2015); City of Grand Rapids, Office of Energy and Sustainability, Annual 4th Year Sustainability Plan Progress Report 38-42 (2015), <http://bit.ly/1Yo3ahG>; City of Houston, Emissions Reduction Plan (2009), <http://bit.ly/1OeMDBA>; Press Release: Mayor Fulop, Councilman Rivera, and the New Jersey League of Conservation Voters Announce Long-term Plan to Reduce Jersey City’s Carbon Footprint (June 22, 2015), <http://bit.ly/1T8Eflm>; Minneapolis, Climate Action Plan (June 28, 2103), <http://bit.ly/1TDWzZC>; Village of Pinecrest, Green Action Plan (May 2010), <http://bit.ly/1OeQ8It>; City of Portland and Multnomah County, Climate Action Plan 2009 (Oct. 2009) <http://bit.ly/1lZHt6E>; City of Providence, Sustainable Providence (Sept. 2014), <http://bit.ly/1k8Un0n>; Salt Lake City, Sustainable Salt Lake–Plan 2015 (Dec. 2015), <http://bit.ly/1Rd3D1J>; San Francisco Mayor’s Renewable Energy Task Force Recommendations Report (Sept. 2012) <http://bit.ly/1OkPD5V>; Mayors’ National Climate Action Agenda: An initiative to combat climate change and prepare for global warming (Sept. 2014), <http://bit.ly/1vIfmZd> (signed by Mayors of Houston, Los Angeles, and Philadelphia); West Palm Beach Sustainability Action Plan (Apr. 2012), <http://bit.ly/1MnGYbe>. See also C40 Cities, Climate Action in Megacities 3.0 (Dec. 2015) (“C40 now maintains a database of 9,831 unique city climate actions spread across 11 city sectors, with nearly 3,000 actions reported in 2015 alone.”).

Conference of Mayors.³ Notably, the 13 Amici cities and one Amici county listed above are home to nearly 10 million people, about a third of whom—3.27 million Americans—live in states whose attorneys general have filed briefs in opposition to the Clean Power Plan.⁴

5. The Local Government Coalition and its member national associations and local governments seek to participate as *amici curiae* to support their common view that the Clean Power Plan is a valid exercise of EPA’s authority and represents a reasonable interpretation of the “best system of emissions reduction” standard established under Section 111(d) of the Clean Air Act. Among other things, the rule incentivizes local demand-side energy efficiency initiatives and renewable energy projects that will both increase resiliency to climate change impacts and help reduce GHG emissions in American cities. Indeed, the Clean Power Plan marks a necessary next step in the on-going transition to the low-carbon economy: a transition that our cities and local governments are at the forefront of implementing, and one that they are depending on for a sustainable future. In contrast, petitioners present an alternative—a rule that focuses

³ U.S. Conference of Mayors, U.S. Metro Economies (2013), <http://bit.ly/1fgVq8S>, (“In 2013, the nation’s metropolitan areas will contain 86% of total U.S. non-farm employment, 90% of real GDP and 85.7% of our country’s population.”).

⁴ See U.S. Census Bureau, Population Division, Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More; 2014 Population Estimates (May 2015).

exclusively on efficiency improvements at existing power plants—that would achieve little in the way of GHG emissions reductions.

Although some of the members of the State and Municipal Intervenors share the Local Government Coalition’s concerns about and interests in climate change mitigation and adaptation the Local Government Coalition is uniquely situated to offer the perspective of local governments nationwide, including cities and counties large, mid-size and small. As the Local Government Coalition would highlight in their *amici* filing, the Clean Power Plan is highly important to local governments, which stand on the front line of efforts to deal with climate change, both by adapting to its impacts and by developing innovative, less carbon-intensive ways to meet energy and infrastructure needs of the large and growing segment of the U.S. population that lives in cities.

6. 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* Local Government Coalition is filing this motion as soon as practicable, prior to the parties filing 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.

7. Counsel for the Local Government Coalition represents that the parties listed in the signature blocks below consent to the filing of this motion.

WHEREFORE, the proposed *amici* Local Government Coalition 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.

Dated: December 22, 2015

Respectfully Submitted,

/s Michael Burger
Michael Burger
Executive Director
Sabin Center for Climate Change Law
435 W. 116th St.
New York, NY 10027
(212) 854-2372

FOR THE NATIONAL LEAGUE OF
CITIES

Carolyn Coleman
Director, Federal Advocacy
National League of Cities
1301 Pennsylvania Avenue, N.W.,
Suite 550
Washington, D.C. 20004
202-626-3023

FOR THE CITY OF BALTIMORE

George Nilson
City Solicitor
William R. Phelan, Jr.
Chief Solicitor
Dawn S. Lettman
Assistant City Solicitor
Baltimore City Department of Law
100 Holliday Street
Baltimore, Maryland 21202
(410) 396-4094

FOR THE CITY OF GRAND RAPIDS

Catherine Mish
City Attorney
300 Monroe Avenue NW,
Grand Rapids, MI 49503
(616) 456-4021

FOR THE U.S. CONFERENCE OF
MAYORS

Judy M. Sheahan
Assistant Executive Director
The U.S. Conference of Mayors
1620 I Street, NW
Suite 400
Washington, DC 20006
202-861-6775

FOR THE CITY OF CORAL
GABLES

Craig Leen
City Attorney
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
(305) 460-5218

FOR THE CITY OF HOUSTON

Donna L. Edmundson
City Attorney
Judith L. Ramsey
Chief, General Litigation Section
City of Houston Legal Department
900 Bagby, 4th Floor
Houston, TX 77002
(832) 393-6468

FOR THE CITY OF JERSEY CITY

Jeremy Farrell
Corporation Counsel
Tom Fodice
Assistant Corporation Counsel
280 Grove Street
Jersey City, NJ 07302
(201) 547-5229

FOR THE CITY OF LOS ANGELES

Mike E. Feuer
City Attorney
James P. Clark
Chief Assistant City Attorney
200 N. Main Street, 8th Floor
Los Angeles, California 90012
(213) 978-8100

FOR THE CITY OF MINNEAPOLIS

Susan L. Segal
Minneapolis City Attorney
Corey M. Conover
Assistant City Attorney
Minneapolis City Attorney's Office
350 S. Fifth Street, Room 210
Minneapolis, MN 55415
(612) 673-2182

FOR THE VILLAGE OF PINECREST

Hon. Cindy Lerner
Mayor
12645 Pinecrest Parkway
Pinecrest, FL 33156
(305) 234-2121

FOR THE CITY OF PORTLAND

Tracy Reeve
City Attorney
Karen L. Moynahan
Senior Deputy City Attorney
1221 SW Fourth Ave., Suite 430
Portland, OR 97204
(503) 823-4047

FOR THE CITY OF PROVIDENCE

Jeffrey Dana
City Solicitor
Kathryn Sabatini
Assistant City Solicitor
444 Westminster St.
Providence, RI 02903
(401) 680-5333

FOR SALT LAKE CITY
CORPORATION

Margaret D. Plane
Salt Lake City Attorney
P.O. Box 145478
Salt Lake City, Utah 84114
(801) 535-7788

FOR THE CITY OF WEST PALM
BEACH

Kimberly Rothenburg
City Attorney
Office of the City Attorney
401 Clematis St., 5th Floor
West Palm Beach, FL 33401
(561) 822-1350

FOR THE CITY OF SAN
FRANCISCO

Dennis J. Herrera
City Attorney
Theresa L. Mueller
Chief Energy and
Telecommunications Deputy
William K. Sanders
Deputy City Attorney
City Hall, Room 234
San Francisco, CA 94102
(415) 554-4640

FOR THE COUNTY OF BOULDER

Deb Gardner
Chair
Boulder County Board of County
Commissioners
Boulder County Courthouse
Third Floor
1325 Pearl Street
Boulder, CO 80302
(303) 441-3500

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 as promptly as practicable after the case was docketed in 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) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

s/ Michael Burger

Dated: December 22, 2015

CERTIFICATE AS TO PARTIES AND AMICI CURIAE

Pursuant to D.C. Circuit Rule 28(a)(1)(A), counsel certifies as follows: Except for the Local Government Coalition, all parties, intervenors, and amici appearing in this court are, to the best of my knowledge, listed in the Joint Petitioners' Certificate as to Parties and *Amici Curiae*.

s/ Michael Burger

Dated: December 22, 2015

CERTIFICATE OF SERVICE

I certify that the foregoing MOTION BY THE NATIONAL LEAGUE OF CITIES; THE U.S. CONFERENCE OF MAYORS; BALTIMORE, MD; CORAL GABLES, FL; GRAND RAPIDS, MI; HOUSTON, TX; JERSEY CITY, NJ; LOS ANGELES, CA; MINNEAPOLIS, MN; PINECREST, FL; PORTLAND, OR; PROVIDENCE, RI; SALT LAKE CITY, UT; SAN FRANCISCO, CA; WEST PALM BEACH, FL, AND BOULDER COUNTY, CO FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE*, Certificate of Compliance, and Certificate of Parties and Amici Curiae were served today on all registered counsel in these consolidated cases via the Court's CM/ECF system.

s/ Michael Burger

Dated: December 22, 2015