

Nos. 20-1530, 20-1531, 20-1778, 20-1780

In The Supreme Court of the United States

WEST VIRGINIA, ET AL.,
PETITIONERS,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
RESPONDENTS.

(Caption continued on inside cover)

*ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

**BRIEF OF APPLE INC., AMAZON.COM, INC., CUMMINS
INC., DANONE NORTH AMERICA, PBC, GOOGLE LLC,
JOHNSON CONTROLS, INC., LEVI STRAUSS & CO., META
PLATFORMS, INC., MICROSOFT CORPORATION,
NETFLIX, INC., PAYPAL HOLDINGS, INC.,
SALESFORCE.COM, INC., SIEMENS CORPORATION,
TESLA, INC., AND WORKDAY, INC., IN SUPPORT OF
RESPONDENTS**

LISA S. BLATT
Counsel of Record
MATTHEW B. NICHOLSON
KARI M. LORENTSON*
MIHIR KHETARPAL**
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
lblatt@wc.com

Counsel for Amici Curiae

THE NORTH AMERICAN COAL CORPORATION,
PETITIONER,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
RESPONDENTS.

WESTMORELAND MINING HOLDINGS LLC,
PETITIONER,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
RESPONDENTS.

NORTH DAKOTA,
PETITIONER,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
RESPONDENTS.

* Admitted in Illinois and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

** Admitted in Maryland and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

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INTEREST OF AMICI CURIAE¹

Amici, listed below, are among the leading and most innovative corporations in the United States. Although Amici's interests are diverse, they are united in their efforts to combat climate change and mitigate the ensuing impacts. To that end, Amici have made commitments to make increased use of clean energy and to reduce or remove their carbon footprints. Amici believe that both corporate and regulatory action are necessary to prevent the worst impacts of climate change and have a strong interest in the implementation of sound public policies to reduce greenhouse gas emissions.

Amici include the following fifteen companies: Apple Inc.; Amazon.com, Inc.; Cummins Inc.; Danone North America, PBC; Google LLC; Johnson Controls, Inc.; Levi Strauss & Co.; Meta Platforms, Inc.; Microsoft Corporation; Netflix, Inc.; PayPal Holdings, Inc.; salesforce.com, inc.; Siemens Corporation; Tesla, Inc.; and Workday, Inc.

SUMMARY OF ARGUMENT

Amici are among the nation's leading corporations, representing a wide range of products and services across the globe. They share a concern that the climate change crisis presents an urgent threat to our planet and economy. Based on a vast body of scientific research, it is "unequivocal" that human activities, especially those

¹ The parties have lodged blanket letters of consent to the filing of amicus curiae briefs. Pursuant to Rule 37.6, Amici affirm that no counsel for a party authored this brief in whole or in part and no person other than Amici or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief.

emitting greenhouse gases, have warmed the atmosphere, ocean, and land.² The rate of recent changes to the climate is unprecedented over at least the last two millennia.³ And climate change is affecting every inhabited region of the globe, contributing to extreme weather events like heatwaves, droughts, and tropical cyclones.⁴

Given these alarming realities, Amici believe it is imperative to confront the threat posed by climate change. Although Amici come from different industries and have varied and sometimes competing interests, they are united in their efforts to combat this threat.

To that end, Amici and many other companies are taking steps to mitigate climate change, including by increasing their use of clean energy, reducing their greenhouse gas emissions, and exploring innovative means of decarbonizing their businesses. But Amici and similar companies cannot fight climate change alone. It is vital that the U.S. Environmental Protection Agency (“EPA”) play a lead role by regulating greenhouse gas emissions. Both corporate action and EPA regulation are needed to reduce emissions at the rate necessary to avoid the worst impacts of climate change.

Amici are concerned, however, that petitioners and their amici seek to establish novel barriers that might prevent EPA from exercising its authority to regulate

² Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Scientific Basis, Summary for Policymakers* 4 (2021), <https://tinyurl.com/2p8sktm5>.

³ *Id.* at 6.

⁴ *Id.* at 10, 15.

greenhouse gas emissions. Such requests should be denied, especially given the urgent threat posed by climate change and the need for stable, nationwide rules governing such emissions. Amici also share the government's view that the Court should not address petitioners' contentions regarding section 111(d) of the Clean Air Act because there is no applicable EPA regulation currently in effect. But however the Court resolves this case, it should not impose new impediments to EPA's settled authority to regulate greenhouse gas emissions.

ARGUMENT

I. AMICI ARE COMMITTED TO MITIGATING CLIMATE CHANGE BY EXPANDING THEIR USE OF CLEAN ENERGY

A. Amici are a diverse group of corporations. While Amici's business areas and strategies differ, all Amici agree that climate change is "the most pressing environmental challenge of our time." *Massachusetts v. EPA*, 549 U.S. 497, 505 (2007). Amici must account for the impacts of climate change when structuring their operations and managing their supply chains. And Amici believe it is imperative to confront the climate challenge now, lest we create greater risks for future generations.

Amici thus are already taking steps to mitigate climate change. These steps include committing to make increased use of clean energy to reduce their carbon footprints. And Amici are not alone. Approximately sixty percent of Fortune 500 companies have made climate

commitments.⁵ And for good reasons. Amici and other businesses have found that using clean energy is not only good for the environment, but also makes sound business sense. Indeed, expanding use of clean energy and other emission reducing technologies is critical to furthering economic growth for companies and the country.

First, businesses are looking more and more to clean-energy sources, which already are competitive with, and often cheaper than, conventional sources of energy.⁶ What is more, the costs of clean energy continue to decline.⁷ Businesses thus may reduce their energy costs over the long term by committing to greater use of clean energy.

Second, a business' commitment to sustainability is increasingly important for recruiting and retaining employees. According to one survey, nearly half of respondents agreed that top talent would want to work only at companies that implement sustainable business practices.⁸ Employees also are more likely to leave companies that fail to implement such practices.⁹ By contrast, employees who believe their employers are committed to sustainability are happier, more productive,

⁵ Press Release, World Wildlife Fund, Fortune 500 Companies Are Acting on the Climate Crisis—But Is It Enough? (June 2, 2021), <https://tinyurl.com/2ym98kuu>.

⁶ See *Levelized Cost of Energy, Levelized Cost of Storage, and Levelized Cost of Hydrogen*, Lazard (2021), <https://tinyurl.com/ykafhfw>.

⁷ *Id.*

⁸ HP, *HP Workforce Sustainability Survey: Global Insights Report 14* (2019), <https://tinyurl.com/yc7edxy3>.

⁹ *Id.* at 16, 18, 20.

and more loyal.¹⁰ Thus, implementing climate-conscious policies is important for reducing employee turnover and improving retention.

Third, customers and investors share Amici's commitment to reducing greenhouse gas emissions. Indeed, an increasing number of public- and private-sector customers request not only that the businesses from which they purchase goods and services take steps to mitigate climate change, but that the goods and services themselves employ renewable resources. And a growing number of investors and large-scale purchasers also have such requests. For example, investors representing \$110 trillion in assets and purchasers with over \$5.5 trillion in procurement spending have demanded disclosure and action on climate change from companies.¹¹ Interest in sustainable investing continues to grow. In a 2020 report, the United States Forum for Sustainable and Responsible Investment found that total sustainable investment assets under management reached \$17.1 trillion—a 42 percent increase since 2018 and more than a 25-fold increase since 1995.¹² This represents 1 in 3 dollars of total U.S. assets under professional management.¹³

B. Both to protect the environment and to responsibly grow their businesses, Amici already have

¹⁰ *Id.* at 23.

¹¹ *Climate Change*, CDP Worldwide (2021), <https://tinyurl.com/2p83jbh8>.

¹² See US Forum for Sustainable and Responsible Investment, *Report on US Sustainable and Impact Investing Trends Executive Summary 1* (2020), <https://tinyurl.com/2p8ms8hb>.

¹³ *Id.*

incorporated climate-change mitigation strategies into their businesses and have committed to using such strategies in the future. Several examples are highlighted below. These examples show that businesses can thrive while also being good stewards of the planet.

Apple Inc. Apple will become carbon neutral across its entire business, manufacturing supply chain, and product life cycle by 2030. The company is already carbon neutral for its global corporate operations, including business travel and employee commuting. Its product-life-cycle commitment means that by 2030, every Apple device sold will have net-zero climate impact.

Apple has detailed its plans to reduce emissions by 75 percent by 2030, while developing innovative carbon removal solutions for the remaining 25 percent of its comprehensive footprint. Apple will remain at 100 percent renewable energy for its operations and will focus on creating new projects and moving its entire supply chain to clean power. For nearly four years, Apple has used 100 percent renewable energy for all offices, retail stores, data centers, and co-located facilities in 44 countries, with 90 percent of the renewable energy sourced from Apple-created projects.

Within its supply chain, 175 Apple suppliers will transition to using renewable energy, and the company and its suppliers will bring online more than 9 gigawatts of clean power around the world. These actions will avoid over 18 million metric tons of carbon dioxide emissions annually—the equivalent of taking over 4 million cars off the road each year.

Overall, Apple has achieved consistent reductions in its carbon footprint, even as its net revenue has increased,

showing what's good for the environment can also be good for business.

Amazon.com, Inc. As part of Amazon's mission to be Earth's most customer-centric company, it is committed to building a sustainable business for its employees, customers, and communities. In 2019, Amazon co-founded The Climate Pledge—a commitment to be net-zero carbon across its business by 2040. This pledge now has over 200 corporate signatories in 26 industries across 21 countries. Scaling up the use of renewable energy is central to Amazon's strategy to decarbonize its operations, and Amazon is on a path to power its operations with 100 percent renewable energy by 2025—five years ahead of its original target of 2030. In 2020, Amazon became the world's largest corporate purchaser of renewable energy.

Amazon is using a variety of methods to achieve the transition to renewable energy. For example, Amazon procures renewable energy beyond the existing grid mix through off-site contracts for wind and solar, on-site rooftop solar installations, and green tariffs with local utilities that result in new projects being added to the grid.

Cummins Inc. Cummins is a global technology company that designs, manufactures, distributes, and services reliable, clean power solutions, including diesel, natural gas, hybrid, electric, and other alternative solutions. Established in 1919 and headquartered in Columbus, Indiana, Cummins serves customers in more than 190 countries and territories around the world. Cummins' mission is to make people's lives better by powering a more prosperous world, which is

complemented by the company's vision: innovating for its customers to power their success.

The company recognizes climate change is an existential threat and has launched Destination Zero, with its strategy to go further and faster to reduce the greenhouse gas and air-quality impacts of its products and reach net-zero emissions by 2050 in a way that is best for Cummins and all stakeholders. This work is part of the company's PLANET 2050 initiative, which also includes a focus on improving its communities and using natural resources in the most sustainable way. For 2030, Cummins' goals regarding air quality and greenhouse gas emissions are to reduce absolute greenhouse gas emissions from facilities and operations by 50 percent; reduce scope 3¹⁴ absolute lifetime greenhouse gas emissions from newly sold products by 25 percent; and to partner with customers to reduce scope 3 greenhouse gas emissions from products in the field by 55 million metric tons.

Google LLC. In 2007, Google became the first major company to be carbon neutral for operations, and in 2017 it became the first major company to match 100 percent of its annual electricity use with renewable energy, which it has achieved for four consecutive years. By 2030, Google aims to: achieve net-zero emissions across all of its operations and value chain; become the first major company to run on carbon-free energy 24 hours a day, 7 days a week, 365 days a year; enable 5 gigawatts of new

¹⁴ Scope 3 emissions are indirect emissions that “are the result of activities from assets not owned or controlled by the reporting organization, but that the organization indirectly impacts in its value chain.” *Scope 3 Inventory Guidance*, EPA, <https://tinyurl.com/3s3mte4s>.

carbon-free energy through investments in key manufacturing regions; help more than 500 cities and local governments reduce an aggregate of 1 gigaton of carbon emissions annually; and help 1 billion people make more sustainable choices by 2022 through its core products.

Johnson Controls, Inc. Johnson Controls is committed to mitigating climate change, supporting customers in cutting their carbon footprints through offerings such as OpenBlue Net Zero Buildings. As a global leader in smart, healthy, sustainable building technology solutions, Johnson Controls has made sustainability a central focus of its operations for decades. Among the earliest industrial companies to report emissions and pledge emission reductions, the company has made tremendous progress—reducing carbon emissions intensity by more than 70 percent since 2002.

Johnson Controls is taking significant steps to further reduce its environmental impact. As a signatory to The Climate Pledge, Johnson Controls has committed to achieve net-zero scope 1 and 2 carbon emissions by 2040.¹⁵ The company also has committed to 100 percent renewable energy by 2040 and has set ambitious emissions reduction targets approved by the Science Based Targets initiative to reduce scope 1 and 2 emissions by 55 percent and scope 3 emissions by 16 percent by 2030.

¹⁵ Scope 1 emissions are direct greenhouse gas emissions that occur from sources controlled or owned by an organization, and scope 2 emissions are indirect greenhouse gas emissions associated with the purchase of electricity, steam, heat, or cooling. *Scope 1 and Scope 2 Inventory Guidance*, EPA, <https://tinyurl.com/mr2ncb3r>.

Johnson Controls also recently became the first industrial company to issue an Integrated Sustainable Finance Framework as well as a Sustainability-Linked Bond. These steps build on the company's earlier leadership in green finance with its prior green bond issuance and the linking of its senior credit facility to sustainability metrics.

Meta Platforms, Inc. Meta believes sustainability is an opportunity to support the communities it is part of and make a bigger impact on the world. In 2020, Meta achieved net-zero emissions in its operations, reducing its emissions by more than 94 percent compared to 2017 levels, and it also achieved 100 percent renewable energy for its operations by supporting new wind and solar projects. As one of the largest corporate renewable energy buyers, Meta has contracts in place for more than 7,000 megawatts of renewable energy across five countries. Meta's goal is to achieve net-zero emissions across its value chain in 2030 and be water positive by 2030.

A core part of Meta's approach to reaching net-zero emissions is making long-term commitments to new renewable energy projects and adding renewable capacity to the grids that support its fourteen data centers across the United States. Meta is known for its pioneering approach to renewable energy procurement and working with utilities to create green tariffs in regulated electricity markets. These enable customers to incorporate a specific source of renewable energy into their utility energy spending. Meta has led by example by being the first customer to participate in seven new or updated programs across the country, such as the Tennessee Valley Authority's ("TVA") Green Invest program. TVA estimates that nearly \$2.7 billion in solar

investment has been generated since the program's inception.

Meta released a study in May 2021 that looked at the economic impact of 55 solar and wind projects that support its U.S. data centers. During construction, these renewable energy projects have supported or will support over 42,000 jobs across the country, many in under-resourced communities, and contribute more than \$4.3 billion in U.S. gross domestic product.

Microsoft Corporation. Microsoft is committed to shifting to a 100 percent supply of renewable energy by 2025 and being carbon negative by 2030 for all scopes of its emissions. By 2050, Microsoft will remove from the environment all the carbon that the company has emitted either directly or indirectly by electrical consumption since it was founded in 1975. Microsoft is developing technology to help its customers and suppliers reduce their carbon footprints and has established a \$1 billion climate innovation fund to accelerate the development and deployment of new climate-focused innovations, including carbon reduction and removal technologies. Microsoft is also committed to making carbon reduction an explicit aspect of its procurement processes for its supply chain.

PayPal Holdings, Inc. PayPal has remained at the forefront of digital payment innovations for more than twenty years. The company's mission is to democratize financial services and empower consumers and merchants worldwide to join and thrive in the global economy by leveraging technology to make financial services and commerce more convenient, affordable, and secure. PayPal recognizes its responsibility to promote an inclusive and sustainable digital economy. The company has set a goal to reach net-zero greenhouse gas emissions

by 2040 across its value chain, established medium-term science-based targets, and reached nearly 100 percent renewable energy in its data centers. PayPal also believes in the potential of digital financial inclusion to help the underserved build climate resilience and seize opportunities in the global net-zero economy.

salesforce.com, inc. Salesforce is committed to creating a sustainable future by accelerating the world's largest businesses to net zero, sequestering 100 gigatons of carbon through conserving, restoring, and growing one trillion trees; protecting our oceans; and energizing the ecopreneur revolution. Salesforce is a net-zero company across its full value chain today, but the journey continues with a focus to reduce value chain emissions 50 percent by 2030 (relative to a 2019 baseline) and to near zero by 2040. Salesforce's goal is to align its full value chain to a 1.5 degree Celsius emissions trajectory. In fiscal year 2022, Salesforce purchased enough renewable energy to offset against all of the electricity it uses globally.

Since first committing to this goal in 2013, Salesforce has been working to accelerate the global transition to clean and renewable sources of electricity with the aim for a future where renewable energy is powering the world around the clock. Salesforce also launched its Net Zero Cloud, which is designed to help companies across all industries track and reduce their emissions as well as take action through a full view of their environmental footprint with investor-grade data for customizable environmental, social, and governance reporting. Salesforce recognizes that the protection of our planet requires everyone—governments, investors, businesses, individuals—working together, today, to take climate action.

Siemens Corporation. Throughout its 170-year history, Siemens has helped shape and transform the infrastructure, manufacturing and transportation industries that now form the backbone of the U.S. economy. Siemens is advancing the technologies of the future in the fields of electrification, decarbonization, resource efficiency, and digital technologies.

In September 2015, Siemens became one of the first global industrial companies to announce its intention to become carbon neutral in its operating business by 2030, and it has already reduced emissions by 54 percent. Siemens has since deepened its commitment by deciding to become not just carbon neutral, but carbon net zero across its global operations by 2030. Siemens is further committed to a science-based reduction pathway along its entire value chain, and is aiming for an entirely emission-free supply chain by 2050.

Siemens is also one of very few companies worldwide to sign up for four ambitious sustainability initiatives at once: the RE100, EP100, and EV100 initiatives led by the Climate Group, as well as the Science Based Targets initiative.

Siemens is backing these ambitions with systematized, measurable, and specific long-term targets for environment, social, and governance topics, and Siemens has added sustainability as a strategic imperative for its investment decisions. Siemens wants to advance sustainability by creating value for all its stakeholders, driving sustainable growth with its customers, and creating a better tomorrow for the communities it serves.

Tesla, Inc. Tesla was founded in 2003 on the principle that electric cars can be faster, safer, and more fun to

drive than internal combustion cars. Its very mission is to accelerate the world's transition to sustainable energy. Tesla currently manufactures four all electric vehicles: the Model S sedan, the Model X sport utility vehicle, the Model 3 sedan, and the Model Y crossover. These cars represent the future of automotive innovation and manufacturing, and Tesla vehicles are recognized as having the lowest carbon dioxide emissions (0 g/mi) and highest fuel economy (126 miles per gallon equivalent) of all the vehicles manufactured in the United States.¹⁶

Tesla's business is not limited to cars, but also includes an ecosystem of clean energy generation and storage products. The combination of solar and storage has been utilized for commercial and residential use, as a part of a virtual power plant that can eliminate the need for centralized power, establish microgrids for rural areas or islands, and provide critical infrastructure needs after natural disasters. Tesla's factories are also designed with sustainability in mind, and the company is shifting its own energy consumption to renewable energy as quickly as possible throughout all of its operations, including its U.S. Supercharging network and manufacturing facilities. For example, Tesla's Gigafactory Nevada was designed to be covered with solar panels. The factory is on its way to installing 24,000 kilowatts of solar capacity by the end of this year, making it the largest rooftop solar installation in the United States. Tesla's other American manufacturing facilities in Fremont, California; Lathrop, California; Austin, Texas; and Buffalo, New York have all installed and continue to expand significant solar arrays.

¹⁶ EPA, *The 2021 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975*, at 13 (2021), <https://tinyurl.com/3murk9re>.

Workday, Inc. Workday recognizes the need for governments and companies to take urgent and meaningful action to address climate change and remains active in supporting this effort. Workday achieved net-zero carbon emissions across its global offices, data centers, and business travel in 2020. Workday has long adopted clean and renewable energy, and in its fiscal year 2021, it matched 100 percent of electricity use at offices and data centers globally with clean, renewable sources. The company provides all of its customers—more than 9,500 globally—with a carbon-neutral cloud. Workday has committed to set science-based emissions reduction targets—across the entire value chain—that are consistent with keeping global warming to 1.5 degrees Celsius above pre-industrial levels.

II. EPA’S AUTHORITY TO REGULATE GREENHOUSE GAS EMISSIONS IS VITALLY IMPORTANT IN THE FIGHT AGAINST CLIMATE CHANGE

Although Amici and other companies have taken steps to combat climate change, EPA’s authority to regulate greenhouse gas emissions is vitally important. This Court recognized that EPA has such authority under the Clean Air Act in *Massachusetts v. EPA*, 549 U.S. 497 (2007), which concerned emissions from new motor vehicles. And in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011), this Court held that the Clean Air Act also “speaks directly” to emissions of greenhouse gases from power plants. *Id.* at 424.

As those cases reflect, EPA’s authority to regulate greenhouse gasses is critical to addressing “the most pressing environmental challenge of our time”: climate change. *Massachusetts*, 549 U.S. at 505 (citation omitted). This is true for several reasons.

First, given the complexity of the problem, “[i]t is altogether fitting that Congress [through the Clean Air Act] designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions.” *Am. Elec.*, 564 U.S. at 428. And EPA is well “equipped to do the job,” as it can draw on a wealth of “scientific, economic, and technological resources.” *Id.*

Second, although Amici and certain other companies have taken steps to reduce their carbon footprints, those steps on their own are not enough to solve a problem as massive as climate change. *Both* voluntary corporate action *and* public regulatory action are needed to drive down emissions at the pace and scale necessary to avoid the worst impacts of climate change.

Third, EPA action will not only reduce greenhouse gas emissions, but also create greater opportunities for the development of clean energy and related technologies. Those developments, in turn, will help companies achieve their own clean-energy commitments. This is critical, as billions of kilowatt hours of clean energy are still needed for companies to meet their goals.¹⁷

Fourth, only EPA can promulgate regulations that set consistent, nationwide baselines for reducing greenhouse gas emissions. Consistent, nationwide regulation is crucial because climate change is not limited to any particular state, but rather affects the entire country and indeed the globe. Nationwide regulation is needed to ensure that emissions are reduced at the scale necessary to mitigate the impacts of climate change.

¹⁷ World Resources Inst. & World Wildlife Fund, *Corporate Renewable Energy Buyers' Principles: Increasing Access to Renewable Energy 2* (2015), <https://tinyurl.com/2v2ur8ac>.

Moreover, Amici and other companies have operations spanning many states. Nationwide regulation of emissions will help ensure that clean energy and other greenhouse-gas mitigation technologies are available wherever in the country companies operate.

Fifth, EPA regulation of greenhouse gas emissions will provide greater certainty for industry. Amici and other companies must strategically plan for their future energy needs, and regulatory certainty will help companies commit to using clean energy. Stable, nationwide regulations also will spur additional innovation and investment in clean energy and related technologies, which is a predicate for achieving the emission reductions needed to address climate change.¹⁸

For all these reasons, EPA's authority to regulate greenhouse gas emissions is critical to combatting climate change. Amici share EPA's goal of reducing such emissions and have taken steps to do so. But, as noted, Amici and similar companies obviously cannot prevent climate change alone. Thus, however the Court resolves this case, it should not erect novel barriers to prevent EPA from exercising its settled authority to regulate greenhouse gas emissions.

CONCLUSION

The Court should dismiss the petitions, either for lack of standing or as improvidently granted, because there is no pertinent EPA regulation currently in effect. To the extent the Court decides the case on the merits, however, it should reject petitioners' efforts to erect novel

¹⁸ See Int'l Energy Agency, *Net Zero by 2050: A Roadmap for the Global Energy Sector* 82 (2021), <https://tinyurl.com/bddsmfe3>.

barriers to prevent EPA from regulating greenhouse gas emissions.

Respectfully submitted,

LISA S. BLATT

Counsel of Record

MATTHEW B. NICHOLSON

KARI M. LORENTSON*

MIHIR KHETARPAL**

WILLIAMS & CONNOLLY

LLP

725 Twelfth Street, N.W.

Washington, DC 20005

(202) 434-5000

lblatt@wc.com

JANUARY 25, 2022

* Admitted in Illinois and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

** Admitted in Maryland and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).