[ORAL ARGUMENT NOT YET SCHEDULED]
No. 19-1140
(and consolidated cases)

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

AMERICAN LUNG ASSOCIATION and AMERICAN PUBLIC HEALTH ASSOCIATION,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and ANDREW R. WHEELER, Administrator, United States Environmental Protection Agency,

Respondents.

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

BRIEF OF MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Pursuant to D.C. Circuit Rule 29(b), undersigned counsel for *amici curiae* members of Congress represents that all parties have been sent notice of the filing of this brief. All parties have consented to the filing of the brief.[1]

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for *amici curiae* certifies that a separate brief is necessary. *Amici* are members of Congress who are familiar with the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, and the authority it confers on the Environmental Protection Agency (EPA). Indeed, 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, or supported the passage of the CAA. Accordingly, *amici* are well situated to provide the Court with unique insight into the authority Congress conferred on EPA to promulgate regulations that are consistent with the statute and why, in light of that grant of authority, EPA was wrong to rescind the Clean Power Plan on the ground that it was unlawful.

[1] Pursuant to Fed. R. App. P. 29(c), *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

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 AS TO PARTIES, RULINGS, AND RELATED CASES

I. PARTIES AND AMICI

Except for *amici* members of Congress who are signatories to this brief and any other *amici* who had not yet entered an appearance in this case as of the filing of Petitioners' Briefs, all parties, intervenors, and *amici* appearing in this Court are listed in Petitioners' Briefs.

II. RULINGS UNDER REVIEW

Reference to the ruling under review appears in Petitioners' Briefs.

III. RELATED CASES

Reference to consolidated cases pending before this Court and any challenges to related agency action appears in Petitioners' Briefs.

Dated: April 24, 2020

By: /s/ Brianne J. Gorod
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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – cont'd

GLOSSARY

CAA	Clean Air Act
EPA	Environmental Protection Agency

STATUTES AND REGULATIONS

The pertinent statutes and regulations are set forth in the addendum to Petitioners' Briefs filed with this Court on April 17, 2020.

INTEREST OF *AMICI CURIAE*

Amici are members of Congress who are familiar with the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, and the authority it confers on the Environmental Protection Agency (EPA). Indeed, 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, or supported the passage of the CAA. Accordingly, *amici* are particularly well situated to provide the Court with insight into the authority Congress conferred on EPA in the CAA to promulgate regulations that are consistent with the statute, as well as why Congress would confer such authority on an expert agency. *Amici* also have a strong interest in preserving the statutory scheme for combatting air pollution that Congress put in place when it enacted the CAA—and which EPA has undermined by repealing the 2015 Clean Power Plan and promulgating the 2019 Affordable Clean Energy rule.

A full listing of *amici* appears in the Appendix.

SUMMARY OF ARGUMENT

In 2015, to address the air pollution driving climate change, EPA reasonably exercised the authority Congress conferred upon the agency by promulgating a final rule called the Clean Power Plan, which established guidelines for States to follow in limiting carbon dioxide emissions from existing power plants. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility

Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015) (citing, among other things, 42 U.S.C. § 7411(d)). As EPA explained, the Clean Power Plan aimed to "achieve significant reductions in [carbon dioxide] emissions by 2030, while offering states and utilities substantial flexibility and latitude in achieving these reductions." *Id.* at 64,663.

In 2019, EPA promulgated a new rule that, among other things, repealed the Clean Power Plan on the ground that it was unlawful. *See* Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32,520 (July 8, 2019) (codified at 40 C.F.R. pt. 60) ("the Rule"). EPA also promulgated the so-called Affordable Clean Energy rule, which established new guidelines for addressing carbon dioxide emissions from existing coal-fired power plants. *Id.*

This Court should hold that the Rule violates the CAA because it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 42 U.S.C. § 7607(d)(9)(A). In particular, EPA's rescission of the Clean Power Plan on the ground that it was unlawful was arbitrary and capricious because the Clean Power Plan was a lawful exercise of the authority that Congress conferred on EPA when it enacted the CAA.

Congress enacted the CAA to wage a "war against air pollution," H.R. Rep. No. 91-1146 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5356, and it amended it over time to ensure that EPA has comprehensive authority to achieve the Act's objectives. In 1970, for example, Congress amended the law to increase the federal government's responsibility for the fight against air pollution, including by conferring further discretion on EPA to ensure that it could apply the guidance Congress provided in the statute to both existing and future, yet-unknown, problems. Indeed, the Supreme Court has recognized that Congress drafted the CAA to provide EPA with the flexibility necessary to address new and evolving problems, including climate change, and that EPA is at the front line in determining when and how, consistent with statutory guidance, to address those problems.

Section 111 of the CAA, among other things, explicitly authorizes EPA to identify the "best system of emission reduction" to address dangerous pollution from specific categories of sources, thereby giving EPA the authority to tailor its response to the source and pollutant at issue. 42 U.S.C. § 7411(a)(1). When EPA promulgated the Clean Power Plan in 2015, it reasonably exercised its discretion by selecting a well-established system of emission reduction that it concluded would best address the dangers of carbon dioxide emissions.

The Clean Power Plan was thus a reasonable exercise of EPA's authority under the CAA. In the Rule, EPA now concludes that the Clean Power Plan was

precluded by the plain language of the statute and that the agency was thus compelled to repeal the Clean Power Plan. *See* 84 Fed. Reg. at 32,523. This is erroneous: far from being compelled by the CAA's plain language, EPA's conclusion that the Clean Power Plan was unlawful cannot be reconciled with the CAA's text, structure, or history. The Court should therefore grant the petitions for review.

ARGUMENT

I. CONGRESS GRANTED EPA BROAD AUTHORITY TO REGULATE UNDER SECTION 111(d) OF THE CLEAN AIR ACT.

As *amici* know well, Section 111(d) of the Clean Air Act was intentionally designed by Congress to grant EPA broad authority. The Clean Power Plan, which relied on approaches that have for decades delivered critical and cost-effective reductions in air pollution, was a reasonable exercise of this statutory authority. EPA's repeal of the Clean Power Plan rests on an unreasonably constrained interpretation of EPA's authority under the CAA. Because that interpretation is invalid, *amici* urge the Court to grant the petitions for review.

A. In Enacting the CAA, Congress Gave EPA Discretion to Determine How Best to Achieve Congress's Objectives.

Over 50 years ago, Congress enacted the first CAA, a law dedicated to "protect[ing] the Nation's air resources so as to promote the public health and welfare." Pub. L. No. 88-206, § 1(b)(1), 77 Stat. 392, 393 (codified as amended at 42 U.S.C. § 7401(b)(1)). In 1970, Congress amended that law to "speed up, expand, and

intensify the war against air pollution in the United States." H.R. Rep. No. 91-1146; *Union Elec. Co. v. EPA*, 427 U.S. 246, 256 (1976) ("[T]he 1970 Amendments to the Clean Air Act were a drastic remedy to what was perceived as a serious and otherwise uncheckable problem of air pollution.").

To achieve that goal, Congress "sharply increased federal authority and responsibility in the continuing effort to combat air pollution." *Train v. Natural Res. Def. Council, Inc.*, 421 U.S. 60, 64 (1975); *see* S. Rep. No. 91-1196, at 3 (1970) ("S. Rep.") ("The extent of Federal involvement in the development and maintenance of air pollution control programs would be broadened. The pace and degree of enforcement will be quickened."). Indeed, Congress wrote the CAA not just to address pollutants that were known at the time, but also to equip EPA with tools to respond to new problems as scientific knowledge evolved and new dangers were identified.

To that end, Congress established a comprehensive program in which it gave EPA three authorities that, among them, would cover all dangerous pollutants emitted from stationary sources: (1) criteria pollutants (covered by the National Ambient Air Quality Standards program, 42 U.S.C. §§ 7408-7410); (2) hazardous air pollutants (covered by the National Emission Standards for Hazardous Air Pollutants program, *id.* § 7412); and (3) other pollutants that, as EPA explained just a few years after the CAA was passed, "are (or may be) harmful to public health or

welfare but are not or cannot be controlled" under the other two programs (covered by standards of performance for existing sources), *see* 40 Fed. Reg. 53,340 (Nov. 17, 1975) (discussing 42 U.S.C. § 7411). Taken together, these categories establish a comprehensive regulatory regime designed to leave "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. Rep. at 20; *id.* at 4 ("[T]his bill would extend the Clean Air Act of 1963 as amended in 1965, 1966, and 1967 to provide a much more intensive and comprehensive attack on air pollution.").

To address pollutants that fall within the third category, the Act requires EPA to "establish a procedure" by which States can set standards of performance for existing sources for, in pertinent part, "any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title [i.e., regulated as part of the National Ambient Air Quality Standards program] or emitted from a source category which is regulated under section 7412 of this title [i.e., regulated as part of the Hazardous Air Pollutants program]." 42 U.S.C. § 7411(d)(1). The Clean Power Plan was promulgated pursuant to this third category under Section 111(d).

In establishing this statutory scheme, Congress specified meaningful criteria that EPA would need to follow in determining emission limitations for pollutants regulated under Section 111, but it also gave EPA discretion, as the expert agency,

to weigh those criteria, to resolve ambiguities in them, and to apply them to specific new problems as they arose. Congress also intentionally drafted certain provisions with expansive language so EPA could play a key role in shaping the approach to developing and setting standards for specific source categories and pollutants. *See* Thomas C. Jorling Amicus Br. 16-19. Indeed, Congress conferred particularly comprehensive authority on EPA with respect to Section 111(d)—the gap-filling provision addressing existing source emissions not covered by the National Ambient Air Quality Standards program or the Hazardous Air Pollutants program—because it understood that EPA would need flexibility in implementing a provision designed to address a diverse array of pollutants and sources, both known and unknown.

For example, reflecting Congress's desire to ensure that EPA could use the CAA's mandate to address new air pollution challenges, the CAA expressly gives EPA the authority necessary to revise the lists of sources that may be regulated under Section 111. 42 U.S.C. § 7411(b)(1)(A) (requiring the EPA Administrator "from time to time . . . [to] revise" the list of categories of stationary sources). The statute also requires the EPA Administrator to exercise "judgment" to determine what source categories emit dangerous air pollution consistent with the guidance provided in the statute. *See id.* (requiring the EPA Administrator to publish a list of categories of stationary sources, including sources that "in his judgment . . .

cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare"). And it delegates authority to EPA to determine how best to control those pollutants in light of the factors Congress stated that it should take into account. *See id.* § 7411(d)(1) (instructing that EPA shall "prescribe regulations which shall establish a procedure . . . under which each State shall submit to the Administrator a plan which . . . establishes standards of performance for any existing source for any air pollutant [that meets specified criteria]" and "provides for the implementation and enforcement of such standards of performance").

And, most importantly here, Congress charged the Administrator with determining what constitutes a "best system of emission reduction" for particular sources and particular pollutants. *Id.* § 7411(a)(1). As *amici* well know, and the text of the statute makes clear, this provision gives the Administrator substantial discretion in making that determination, subject to the criteria provided by the statute.

Pursuant to this authority, EPA promulgated the Clean Power Plan, which established emission guidelines for States to follow in developing plans to limit carbon dioxide emissions from existing power plants. 80 Fed. Reg. 64,662. As EPA explained, "[t]hese final guidelines, when fully implemented, will achieve significant reductions in CO_2 emissions by 2030, while offering states and utilities substantial flexibility and latitude in achieving these reductions." *Id.* at 64,663.

This exercise of Section 111 authority—to address climate pollution by relying on the measures most frequently and effectively deployed by States and power companies to reduce greenhouse gas emissions—was wholly consistent with the CAA's text, structure, and history. *See* State & Municipal Pet'rs Opening Br. 8-10, 39-41; Power Co. Pet'rs Opening Br. 17-29.

As *amici* well understand from their time serving in Congress, it is often impossible to anticipate in advance every problem that laws must address, or for Congress to include in laws every detail regarding how a problem should be addressed. *See, e.g.*, *Currin v. Wallace*, 306 U.S. 1, 15 (1939) ("[L]egislation must often be adapted to conditions involving details with which it is impracticable for the legislature to deal directly."). Thus, the Supreme Court has long recognized that Congress may establish broad policy goals and provide guidance about how those policy goals should be effectuated, while leaving it to expert administrative agencies to determine how best to achieve those goals in a manner consistent with the guidance provided by statute. Were it otherwise, "'we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility.'" *Id.* (quoting *Panama Refining Co. v. Ryan*, 293 U.S. 388, 421 (1935)); *cf. Morton v. Ruiz*, 415 U.S. 199, 231 (1974) ("The power of an administrative agency to administer a congressionally created and funded program necessarily requires the formulation of policy and the making of rules to fill any gap left,

implicitly or explicitly, by Congress."); *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984) ("[T]he principle of deference to administrative interpretations . . . 'has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations.'" (quoting *United States v. Shimer*, 367 U.S. 374, 382 (1961))).

This is particularly true in environmental law and policy, where the issues are complicated and technical, and where understanding of the precise nature of the problem is often evolving. When Congress amended the CAA in 1970, it was well aware of the serious threat to the national welfare posed by air pollution, as well as the deficiencies of prior efforts to address the problem. As Senator Muskie explained on the Senate floor, the nation "seem[ed] incapable of halting the steady deterioration of our air, water, and land," and the consequences of that deterioration were tremendous. Debate on S. 4358 (Sept. 21, 1970) (statement of Sen. Muskie), *cited in* 136 Cong. Rec. S2826, S2833 (Mar. 21, 1990). He went on to describe those consequences in stark terms, pointing out that "[t]he costs of air pollution can be counted in death, disease and debility; it can be measured in the billions of dollars of property losses; it can be seen and felt in the discomfort of our lives."

Id.; *see id.* at S2834 ("[W]e have learned that the air pollution problem is more severe, more pervasive, and growing faster than we had thought."). The law Congress passed in response to that problem was designed to effect a major change in the way the nation dealt with it. As Senator Muskie stated, "It is a tough bill, because only a tough law will guarantee America clean air." *Id.*

In short, by enacting Section 111(d) as a gap-filling provision that would give EPA flexibility to address new pollution problems, Congress ensured that the federal government would be able to respond to new and diverse challenges not anticipated at the time the law was enacted, and that EPA could tailor regulations to the specific nature of the source category and pollutant at issue. The Clean Power Plan was consistent with the text, structure, and history of the Act. It was a reasonable exercise of the authority Congress provided EPA in Section 111(d), directing EPA to regulate air pollutants that endanger human health and welfare that would otherwise go unaddressed.

B. The Supreme Court Has Recognized the Broad Discretion Congress Granted EPA in the CAA.

Congress drafted the CAA to provide EPA the flexibility necessary to address new and evolving problems, consistent with statutory guidance. As the Supreme Court recognized in *Massachusetts v. EPA*, 549 U.S. 497 (2007), the CAA's definition of "air pollutant" "unquestionably" and "unambiguous[ly]" encompasses greenhouse gases, and the 1970 Act specifically addressed threats to climate. *Id.* at

528-29, 532, 506. Thus, even while Congress in 1970 "might not have appreciated the possibility that burning fossil fuels could lead to global warming," it made the conscious choice to draft parts of the CAA with broad language—language that "confer[red] the flexibility necessary to forestall . . . obsolescence." *Id.* at 532. Indeed, Congress understood that "without regulatory flexibility, changing circumstances and scientific developments would soon render the [CAA] obsolete." *Id.* It was thus critically important to the Congress that enacted the CAA that the law be forward-looking, capable of addressing not only those pollution problems that Congress specifically contemplated, but new ones that might arise in the future. *See* Thomas C. Jorling Amicus Br. 19-21.

The Supreme Court has also recognized the critical role that EPA plays in giving meaning to the terms in the CAA and determining how best to implement the guidance the CAA provides about how to reduce harmful air pollution. As the Court explained in *American Electric Power Co. v. Connecticut*, "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants." 564 U.S. 410, 426 (2011). The reasons why Congress would delegate such decisionmaking authority to an expert agency like EPA were obvious; as the Court explained, "[t]he appropriate amount of regulation in any particular greenhouse gas-producing sector cannot be prescribed in a vacuum: As with other questions of national or international policy, informed assessment of

competing interests is required." *Id.* at 427. According to the Court, "[t]he Clean Air Act entrusts such complex balancing to EPA in the first instance, in combination with state regulators." *Id.*; *see id.* at 428 ("It is altogether fitting that Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions."); *cf.* S. Consideration of H.R. Conf. Rep. No. 91-1783 (Dec. 17, 1970), 1970 CAA Legis. Hist. at 130 (Sen. Ed Muskie) (explaining, as the bill's lead Senate sponsor, that Section 111's "system of emission reduction" language authorizes EPA to develop standards "based on the latest available control technology, processes, operating methods, and other alternatives").

II. THE CLEAN POWER PLAN WAS A REASONABLE EXERCISE OF EPA'S AUTHORITY UNDER THE CAA.

As explained above, Congress enacted Section 111(d)—the provision that authorized EPA to promulgate the Clean Power Plan—to serve a gap-filling function, directing EPA to regulate air pollutants that endanger human health and welfare that would otherwise go unaddressed. Congress's design is reflected in the text of the statute itself. By authorizing EPA to identify the "best system of emission reduction" to address dangerous pollution from specific source types, 42 U.S.C. § 7411(a)(1), Congress granted EPA discretion to tailor its response to the particular source and pollutant at issue. *See Consumer Elecs. Ass'n v. FCC*, 347 F.3d 291, 298 (D.C. Cir. 2003) ("[T]he Supreme Court has consistently instructed that statutes written in broad, sweeping language should be given broad, sweeping

application."). Indeed, Congress has repeatedly revised the language describing the emission reduction approaches that EPA could consider, *see* 80 Fed. Reg. 64,510, 64,537 n.124, and it has consistently used language that gives EPA the flexibility it needs to address a diverse spectrum of pollutants. *Id.* at 64,764 ("This history strongly suggests that Congress intended to authorize the EPA to consider a wide range of measures in calculating a standard of performance for stationary sources.").

Congress provided specific guidance in contexts where it knew exactly what the problem was and how best to deal with it; in contexts where the exact nature of the pollutant and the problem it posed was unclear, Congress spoke in broad terms and conferred authority on EPA to determine how best to address the problem. That is what it did in Section 111. It is entirely unsurprising that Congress would grant EPA maximal flexibility in this provision given that Section 111 was designed to address diverse sources and pollutants.

Accordingly, EPA's promulgation of the Clean Power Plan was a reasonable exercise of its authority to establish the best system of emission reduction as a means of reducing carbon dioxide emissions from existing power plants that are linked together by the electric grid. Indeed, EPA's decision to reduce emissions in a way that is cost-effective and responsive to realities on the ground is exactly what Congress intended for EPA to do when it gave EPA flexibility to deal with an

expansive array of pollutants. As the Power Company Petitioners explain, the Clean Power Plan did "no more than recognize how utilities have been shifting generation among plants as a means of meeting demand and achieving emission reductions at least-cost to consumers for decades." Power Co. Pet'rs Opening Br. 19; *see id.* at 17-29 (describing EPA authority to include and approve the use of generation-shifting measures, trading, and averaging pursuant to Section 111).

In sum, Section 111(d) was enacted to serve a critical gap-filling function as part of the CAA's comprehensive program to ensure that all dangerous pollutants are addressed. That has remained the case through each major set of amendments to the Act, and it remains true today. Indeed, when the CAA was amended in 1990, Congress, including many *amici*, recognized that air pollution remained a serious problem—a "public health crisis," as a Senate Report put it at the time, S. Rep. No. 101-228 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3388—and that "a strong national control strategy [was] needed," *id.* The Clean Power Plan, which was promulgated in response to an extraordinary administrative record documenting the serious dangers to the public health and welfare caused by greenhouse gas pollution, was a valid exercise of EPA's authority.

* * *

As detailed above, EPA's incredibly narrow interpretation of its Section 111 authority is inconsistent with the text and history of the CAA, and cannot be

reconciled with the grant of authority bestowed by Congress. *See generally* State & Municipal Pet'rs Opening Br. 42-48 (providing detailed textual analysis on this point); Power Co. Pet'rs Opening Br. 8-17 (same); Pub. Health & Envtl. Pet'rs Opening Br. 14-19 (same). To hold otherwise would critically undermine not only the nation's fight against air pollution, but also the statutory scheme that Congress put in place when it enacted the CAA. EPA erred in concluding that the Clean Power Plan "was not a permissible construction of the [CAA]." 84 Fed. Reg. at 32,523. Because EPA grounded its repeal of the Clean Power Plan on this erroneous conclusion, EPA's rescission of the Clean Power Plan was itself arbitrary and unlawful.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant the petitions.

Respectfully submitted,

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Dated: April 24, 2020

APPENDIX:
LIST OF *AMICI*

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Tonko, Paul
Representative of New York

Huffman, Jared
Representative of California

Pelosi, Nancy
Representative of California

Hoyer, Steny H.
Representative of Maryland

Clyburn, James E.
Representative of South Carolina

Luján, Ben Ray
Representative of New Mexico

Pallone, Frank Jr.
Representative of New Jersey

Castor, Kathy
Representative of Florida

DeFazio, Peter A.
Representative of Oregon

Engel, Eliot L.
Representative of New York

Grijalva, Raúl M.
Representative of Arizona

Johnson, Eddie Bernice
Representative of Texas

LIST OF *AMICI* – cont'd

Kaptur, Marcy
Representative of Ohio

McGovern, James P.
Representative of Massachusetts

Serrano, José E.
Representative of New York

Barragán, Nanette Diaz
Representative of California

Beatty, Joyce
Representative of Ohio

Beyer, Donald S., Jr.
Representative of Virginia

Blumenauer, Earl
Representative of Oregon

Blunt Rochester, Lisa
Representative of Delaware

Bonamici, Suzanne
Representative of Oregon

Brownley, Julia
Representative of California

Carbajal, Salud O.
Representative of California

Cárdenas, Tony
Representative of California

Casten, Sean
Representative of Illinois

Clarke, Yvette D.
Representative of New York

Cleaver, Emanuel, II
Representative of Missouri

Cohen, Steve
Representative of Tennessee

Connolly, Gerald E.
Representative of Virginia

Crow, Jason
Representative of Colorado

DeGette, Diana
Representative of Colorado

Dingell, Debbie
Representative of Michigan

Doyle, Michael F.
Representative of Pennsylvania

Eshoo, Anna G.
Representative of California

Espaillat, Adriano
Representative of New York

García, Jesús G. "Chuy"
Representative of Illinois

Green, Al
Representative of Texas

Haaland, Debra A.
Representative of New Mexico

Hastings, Alcee L.
Representative of Florida

Higgins, Brian
Representative of New York

Kennedy, Joseph P., III
Representative of Massachusetts

Kuster, Ann M.
Representative of New Hampshire

Levin, Andy
Representative of Michigan

Levin, Mike
Representative of California

Lieu, Ted
Representative of California

Lowenthal, Alan S.
Representative of California

Matsui, Doris O.
Representative of California

McEachin, A. Donald
Representative of Virginia

McNerney, Jerry
Representative of California

Napolitano, Grace F.
Representative of California

Neguse, Joe
Representative of Colorado

Norton, Eleanor Holmes
Delegate of District of Columbia

Omar, Ilhan
Representative of Minnesota

Perlmutter, Ed
Representative of Colorado

Peters, Scott H.
Representative of California

Pingree, Chellie
Representative of Maine

Pocan, Mark
Representative of Wisconsin

Quigley, Mike
Representative of Illinois

Ruiz, Raul
Representative of California

Rush, Bobby L.
Representative of Illinois

Sarbanes, John P.
Representative of Maryland

Schakowsky, Janice D.
Representative of Illinois

Soto, Darren
Representative of Florida

Titus, Dina
Representative of Nevada

Tlaib, Rashida
Representative of Michigan

Veasey, Marc A.
Representative of Texas

Wasserman Schultz, Debbie
Representative of California

Welch, Peter
Representative of Vermont

U.S. Senate

Bennet, Michael F.
Senator of Colorado

Cardin, Benjamin L.
Senator of Maryland

Carper, Thomas R.
Senator of Deleware

Feinstein, Dianne
Senator of California

Markey, Edward J.
Senator of Massachusetts

Von Hollen, Chris
Senator of Maryland

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,738 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that the attached *amicus* brief 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)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 and 14-point Times New Roman font.

Executed this 24th day of April, 2020.

/s/ Brianne J. Gorod
Brianne J. Gorod
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 April 24, 2020.

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 24th day of April, 2020.

/s/ Brianne J. Gorod
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