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Title: Resolution Authorizing the City of Ann Arbor to be Listed as a Supporting Municipality in an Amicus Brief to be filed with the Court of Appeals for the District of Columbia Circuit in State of West Virginia, et al. v. United States Environmental Protection Agency, et al. (Case No. 15-1363 consolidated with other cases)

Sponsors: Christopher Taylor, Sabra Briere

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Resolution Authorizing the City of Ann Arbor to be Listed as a Supporting Municipality in an Amicus Brief to be filed with the Court of Appeals for the District of Columbia Circuit in *State of West Virginia, et al. v. United States Environmental Protection Agency, et al.* (Case No. 15-1363 consolidated with other cases)

Prepared by: Mary Joan Fales, Senior Assistant City Attorney

Sponsored by: Mayor Taylor

Whereas, In October 2015 the U.S. Environmental Protection Agency (EPA) issued its final action titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "Clean Power Plan")

Whereas, EPA promulgation of the Clean Power Plan was challenged in the U.S. Court of Appeals for the District of Columbia Circuit by a coalition of 24 states, by three states that filed independently, and by various industry groups;

Whereas, The lawsuit [the cases were consolidated into one case in the Court] challenge the Clean Power Plan as an overextension of the EPA's authority under the Clean Air Act;

Whereas, Michigan Attorney General Schuette joined the lawsuit against the Clean Power Plan, even though Governor Snyder had directed the state to develop its own compliance plan with the plan to avoid the risk of having a federal decision imposed on Michigan;

Whereas, In November 2015, 18 states, a county and five cities filed a unopposed motion for leave to intervene in support of respondents EPA et. al. and EPA's final action promulgating the Clean Power Plan as a means to achieve the goal of preventing and mitigating climate change harms in their states and municipalities;

Whereas, On January 21, 2016, the Court, denied a request by the challengers to stay the plan pending final resolution of the case and on January 26, 2016 the request for a stay was made to the U. S. Supreme Court;

Whereas, On February 9, 2016, the U.S. Supreme Court issued a stay of the plan while it is under review in the Court of Appeals for the D.C. Circuit and until the Supreme Court makes a determination on any subsequent petition to it to review the Court of Appeals decision;

Whereas, On February 16, 2016, Michigan suspended its effort to comply with the plan while it waits for the Court to decide the matter;

Whereas, A Coalition was formed by The National League of Cities, U.S. Conference of Mayors, and the cities of Baltimore (MD), Coral Gables, (FL), Grand Rapids (MI), Houston (TX), Jersey City (NJ), Los Angeles (CA), Minneapolis (MN), Portland (OR), Pinecrest (FL), Providence (RI), Salt Lake City (UT), San Francisco (CA), West Palm Beach (FL), and Boulder County (CO) (the "Coalition"), and filed a motion with the Court in *State of West Virginia, et al. v. United States Environmental Protection Agency, et al.* (Case No. 15-1363 consolidated with other cases) requesting permission to participate as *amici curiae* in support of the EPA's implementation of the Clean Power Plan; which motion was granted;

Whereas, The Coalition seeks to expand the list of local government *amici* prior to its filing deadline of April 1, 2016;

Whereas, The EPA's Clean Power Plan is expected to reduce carbon dioxide emissions from power plants 32% below 2005 levels by 2030;

Whereas, Under the Clean Power Plan, it had been anticipated that Michigan would submit initial plans in September 2016 and request an extension until September 2018 while working toward the development of its own State emission plan to meet the standard after 2025 (MDEQ baseline modeling indicated the State would not require any changes to existing State standards until at least 2025);

Whereas, In 2012, Ann Arbor City Council adopted the city's first Climate Action Plan which set goals to reduce communitywide greenhouse gas (GHG) emissions by 25% by 2025, from 2000 levels;

Whereas, In 2013, Ann Arbor City Council adopted the sustainability framework as an element of the City Master Plan which includes the goal of improving access to and increase use of renewable energy by all members of the community, reducing new and existing buildings' energy use, carbon impact and construction waste while respecting community context and reducing energy consumption and eliminating net greenhouse gas emissions in the community;

Whereas, The City of Ann Arbor Energy Office works to reduce energy consumption and advance energy efficiency and renewable energy projects at the municipal level and throughout the community;

Whereas, As stated in the Coalition's request for the City of Ann Arbor to participate as *amici curiae* "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" on both a local and national level;

Whereas, It is the Coalition's position 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 through a rule that incentivizes local demand-side energy efficiency initiatives and renewable energy projects that will help reduce greenhouse gas emission; and

Whereas, As an *amici curiae* the City of Ann Arbor has valuable experience to share with the Court on the economic and public benefits that it and its residents have experienced in implementing clean energy initiatives, energy efficiency improvements, and long-term sustainability policy;

RESOLVED, That the City of Ann Arbor shall request, through its City Attorney, to be listed as a supporting municipality to the *amicus* brief to be filed by Sabin Center for Climate Change Law, Columbia Law School on behalf of the Coalition supporting the U.S. EPA's position as respondent in *State of West Virginia, et al. v. United States Environmental Protection Agency, et al.* (Case No. 15-1363 consolidated with other cases), in defense of EPA's implementation of the Clean Power Plan;

RESOLVED, That a certified copy of this resolution be provided to Sabin Center for Climate Change Law, Columbia Law School, and to Bloomberg Philanthropies, the consultant coordinating communications support to the Coalition, as evidence of the City's support in the matter; and

RESOLVED, That the City Attorney be authorized to take any other actions necessary to implement this Resolution.