

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

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STATE OF GEORGIA,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	No. 11-1427
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
<i>Respondent.</i>	)	

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**MOTION OF AMERICAN LUNG ASSOCIATION FOR LEAVE TO  
PARTICIPATE AS AMICUS CURIAE**

American Lung Association (“Movant” or “ALA”) respectfully moves for leave to participate in this case as amicus curiae in support of Respondent. Movant has consulted with counsel for the parties. Counsel for the parties have been consulted, and do not take a position on this motion.

On January 18, 2012, the Court granted the parties’ joint motion to hold this case in abeyance pending the decision in *EME Homer City Generation, L.P., v. EPA*, No. 11-1302, *et al.* The January 18 order also indicated that this Court will defer consideration of a pending motion for leave to participate as amici that was filed on January 17, 2012, by Environmental Defense Fund (EDF) and the Sierra Club. Movant understands that this case is presently in abeyance, but wishes to

register its intent to participate as “promptly as practicable,” *see* D.C. Cir. R. 29(b), and believes that it would serve judicial economy for this motion to be processed together with the pending EDF/Sierra Club motion once the case emerges from abeyance, particularly since, if the respective motions for leave to participate are granted, Movant ALA will join in a single amicus brief with EDF and Sierra Club. Movant recognizes that the parties will have the opportunity to file any responses to this motion once the case is removed from abeyance status.

In this challenge, Petitioner State of Georgia seeks to invalidate one basis upon which the Environmental Protection Agency (“EPA”) has made Georgia subject to certain provisions of the Cross-State Air Pollution Rule (“Transport Rule” or “Rule”), 76 Fed. Reg. 48208 (Aug. 8, 2011). Petitioner challenges EPA’s disapproval of portions of Georgia’s State Implementation Plan (“SIP”) on the basis that the SIP did not sufficiently address the “interstate transport” requirements of Clean Air Act section 110(a)(2)(D)(i)(I), 42 U.S.C. § 7410(a)(2)(D)(i)(I). *Approval and Promulgation of Air Quality Implementation Plan; Georgia; Disapproval of Interstate Transport Submission for the 2006 24-Hour PM<sub>2.5</sub> Standards*, 76 Fed. Reg. 43159 (July 20, 2011).

Movant ALA is a national nonprofit public health organization dedicated to saving lives by improving lung health and preventing lung disease in the United States through research, education and advocacy. ALA was founded in 1904, and

has chartered organizations (akin to state chapters) in all fifty states, including Georgia, and the District of Columbia. ALA's mission is "to save lives by preventing lung disease and promoting lung health." As scientific evidence has shown that air pollution is a primary contributor to the worsening of lung disease, the ALA has for many years conducted advocacy and litigation to promote full and timely implementation of the Clean Air Act. ALA, through its advocacy and education programs aimed at protecting human health, is pursuing initiatives at the state and national levels designed to support efforts to reduce emissions of pollutants such as nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) from all sources, including major sources such as electric generating plants. Its members, who have vital interests in efforts to reduce these emissions, benefit substantially from this work.

Movant has participated, as a party and as an amicus, in numerous cases in this and other federal courts concerning the construction and application of the Clean Air Act and other major federal pollution control statutes. Movant is also an active participant in the litigation challenging EPA's adoption of the Transport Rule and the agency's actions to ensure timely implementation of that Rule. This Court granted Movant leave to intervene in the consolidated challenges to the Transport Rule, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302, and Movant submitted oppositions to the various stay motions in that proceeding.

Movant has strong interests in ensuring that regulatory requirements addressing Georgia sources' significant contributions to serious air pollution problems in downwind states are fully and timely enforced, and in addressing the arguments Georgia may make, which could have an adverse effect on EPA's ability to implement statutory requirements in a timely manner. Movant's experience and expertise may be of assistance to the Court as it considers this case.

### CONCLUSION

American Lung Association should be granted leave to participate as amicus supporting Respondent in this case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on January 27, 2012, I filed the foregoing motion via the Court's CM/ECF system, which will electronically serve all counsel of record.

*Sean H. Donahue*