



1 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that U.S. Senator John Kerry and U.S. Representative Jay  
3 Inslee (collectively *Amici Curiae*), by and through their counsel of record, do hereby move this Court  
4 for leave to file an *amici curiae* memorandum in support of Plaintiff’s motion for summary judgment  
5 in the above-captioned matter. The basis for this motion is set forth below.

6 **I. INTRODUCTION**

7 *Amici Curiae* are Members of Congress with an abiding interest in the proper and timely  
8 implementation of the Global Change Research Act (“GCRA”), 15 U.S.C. 2921 et seq., that lies at  
9 the center of this case. In particular, *Amici* are gravely concerned about Defendants’ failure to issue  
10 a second, comprehensive scientific assessment (hereinafter “National Assessment) or to revise and  
11 update the National Global Change Research Plan (hereinafter “Research Plan”), as required by the  
12 GCRA. Preparation of these documents is critical to legislators and policymakers charged with the  
13 formidable responsibility of developing the nation’s response to the threat of global warming.  
14 Having been long-engaged on this significant public policy issue, *Amici* believe they have important  
15 information and insights to offer the Court relevant to this case and, therefore, request permission to  
16 file the concurrently lodged friend-of-the-court memorandum in support of Plaintiff’s pending motion  
17 for summary judgment. With hearing on the pending motion scheduled for April 17, and with  
18 Defendants’ opening brief on their cross-motions not due until February 27, this motion is timely and  
19 will not prejudice the parties. Pursuant to the Court’s Standing Orders for Civil Cases, *Amici* have  
20 conferred with the parties concerning the filing of this motion. Plaintiffs consent to both the motion  
21 and the filing of an *amici curiae* memorandum in this case, and Defendants’ counsel has informed  
22 *Amici’s* counsel that Defendants take no position on the filing of this motion.

23 **II. ARGUMENT**

24 The question of whether to grant permission to file an *amicus* brief lies solely within the  
25 discretion of the Court. Hoptowit v. Ray, 682 F2d 1237, 1260 (9th Cir. 1982). The courts have  
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1 identified several relevant factors to guide in the exercise of this discretion. An *amicus* should “assist  
2 in a case of general public interest, supplement the efforts of counsel, and draw the court’s attention  
3 to law that escaped consideration.” Miller-Wohl Co., Inc. f. Commissioner of Labor and Industry,  
4 State of Montana, 694 F.2d 203, 204 (9th Cir. 1982); 3A C.S.J. Amicus Curiae Sect. 6 at 427  
5 (1973). Additionally, the perspective which a proposed *amicus* brings to a case should be  
6 “sufficiently different from that of the named parties to justify its participation.” Katelnikoff v. U.S.  
7 Department of Interior, 657 F. Supp. 659 (D. Alaska 1986).

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9 **A. This Case Raises Issues of Broad Policy Importance to the Public.**

10 The gravamen of this case is Defendants’ failure to prepare and issue a second National  
11 Assessment or to update the Research Plan as required by the express statutory deadlines imposed by  
12 Congress under the GCRA. This failure undermines the statute’s fundamental goal of developing  
13 effective policies to abate, mitigate, and cope with global change and has profound implications for  
14 the nation’s ability to begin seriously addressing today’s greatest environmental challenge – global  
15 warming.

16 *Amici* elaborate in their brief on three important issues that may not receive full briefing by  
17 the other parties in this case, each of which draws upon their unique perspective as legislators. First,  
18 they provide a detailed account of the legislative history of the GCRA’s passage. This account  
19 illustrates the intent of Congress in requiring timely updates to the Research Plan and regular  
20 submissions of new National Assessments to Congress.

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22 Second, *Amici* recount the successful development of the first National Assessment in 2000  
23 and the extensive degree to which it prompted both public dialogue and a variety of responsive  
24 legislative proposals. This information illustrates the vital importance of the first National  
25 Assessment to Congress in the development of informed policy and the significant role that a new  
26 comprehensive Assessment can and should play.

27 Third, *Amici* describe the current Administration’s history of suppressing the dissemination of  
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1 climate change science in general and the first National Assessment in particular. This historical  
2 account, which is not addressed in Plaintiffs’ brief, largely explains why Defendants’ failure to  
3 prepare a second National Assessment or to update the Research Plan must be viewed as the product  
4 of more than mere inadvertence or incompetence. Certain executive branch officials prefer that  
5 another comprehensive National Assessment never be prepared, despite unequivocal congressional  
6 directive to the contrary. Thus, *Amici’s* memorandum provides important background context for the  
7 Court to consider in weighing Defendants’ arguments and the potential remedies for their statutory  
8 violations.

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10 **B. *Amici* Bring a Unique Perspective to this Case.**

11 As Members of Congress, both *Amici* have been actively involved in climate change policy  
12 and legislation and both have an enduring interest in seeing that Congress’ expressed goals in  
13 adopting the GCRA are carried out. The GCRA is intended to facilitate the speedy assimilation of  
14 relevant global change science into government decisionmaking processes by requiring the synthesis  
15 and frequent updating of policy-relevant scientific information and its expeditious dissemination to  
16 executive agencies, lawmakers, and the larger public. Both Senator Kerry and Representative Inslee  
17 bring a long-standing interest to the issue and offer a unique perspective on the need for timely  
18 production of the National Assessment and an updated Research Plan.

19 Senator Kerry was a sponsor of the GCRA when it was first introduced in the Senate in 1989.  
20 More recently, together with Sen. John McCain, he requested the U.S. Government Accounting  
21 Office (“GAO”) evaluate Defendants’ compliance with the requirements of the GCRA. In 2005, the  
22 GAO issued a report concluding that the Defendants had not met the requirements of the GCRA and  
23 were not on track to do so. On August 16, 2006, Sen. Kerry submitted a formal request to the  
24 Climate Change Science Program to issue the overdue National Assessment, but was met with  
25 silence.  
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27 Representative Inslee has been similarly active in addressing the issue of climate change  
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1 since becoming a U.S. Congressman in 1994. He currently serves as a Member of the House  
2 Committee on Energy and Commerce, in the Subcommittee on Energy and Air Quality. On  
3 December 11, 2006, Representative Inslee wrote a letter to the Acting Director of the Climate  
4 Change Science Program requesting that a second National Assessment be issued as required under  
5 the GCRA.

6 Senator Kerry and Representative Inslee bring unique perspectives to this case. As United  
7 States legislators who have been exceptionally active in addressing the issue of global climate  
8 change, *Amici* can speak to the central importance of a second National Assessment and an updated  
9 Research Plan in aiding their efforts to develop adequate policy responses to the catastrophic threat  
10 posed by climate change.  
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#### 12 IV. CONCLUSION

13 For the foregoing reasons, *Amici* respectfully request that the Court grant their motion for  
14 leave to file an *amici curiae* memorandum in support of Plaintiff's pending motion for summary  
15 judgment.

16 Dated: February 8, 2007

Respectfully submitted,

17 STANFORD ENVIRONMENTAL LAW CLINIC

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19 By: /s/ Deborah A. Sivas

DEBORAH A. SIVAS

20 Attorneys for *Amici Curiae* Applicants  
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