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Cc: "Srolovic, Lemuel" <Lemuel.Srolovic@ag.ny.gov>
Subject: NYOAG Application for NYU State Energy & Environmental Impact Center Fellows
Sent: Fri, 15 Sep 2017 17:10:53 -0400
NYOAG Application (9-15-17).pdf

David—

Great seeing you earlier this week. Per our conversations, attached please find NYOAG's application for two Impact Center fellows. As discussed, NYOAG believes the Fellows would significantly augment our office's recent environmental and energy work, which has already yielded some important victories on issues of regional and national importance. Please let us know if you have any questions or need anything else for the application.

Also, we would be happy to continue to work with you, Liz and Bruce on any of the underlying confidentiality issues and engagement agreements.

NYOAG looks forward to collaborating with the Center on these critically important issues.

Thanks,
Brian

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Office of New York State Attorney General Eric T. Schneiderman

Application to NYU State Energy & Environmental Impact Center
Special Assistant Attorneys General Fellowship Program

Introduction

The office of New York State Attorney General Eric T. Schneiderman (NYOAG) welcomes this opportunity to apply for two NYU School of Law State Energy & Environmental Impact Center fellows to serve as special assistant attorneys general in the NYOAG. Three factors converge here to present a compelling case for the Center to place fellows in this office. The first is the environmental urgency of today – from the clear and present danger of climate change to the hostility to the public health and environmental values of New Yorkers exhibited by a federal administration that actively is seeking to roll back federal environmental protections. Secondly, the office has a pressing need for additional subject matter expert attorneys to handle both its always-busy environmental docket and the added work of fighting federal rollbacks. Lastly, the NYOG has a proven track record in progressive environmental litigation and advocacy and in building effective advocates in this arena. From Connecticut v. American Electric Power, a common law public nuisance action that served as an impetus for federal action addressing climate change under the Clean Air Act, to New York v. Nuclear Regulatory Commission (D.C. Cir. 2012), requiring the Nuclear Regulatory Commission to conduct a thorough environmental review

of the consequences of failing to secure permanent storage for the Nation's spent nuclear fuel, to a substantial and growing federal environmental rollback check and balance docket at present, NYOAG has been and remains at the forefront of progressive state attorney general advocacy on clean energy, climate change and environmental matters.

The addition of two NYU School of Law State Energy & Environmental Impact Center fellows will allow NYOAG to meet the growing demands on our office to address and expand these efforts, in collaboration with other states, to protect the environment from federal curtailment of oversight and enforcement and to advance progressive clean energy, climate change and other environmental initiatives.

Application Elements

1. Program Eligibility and Narrative

Extending back for years but especially so now, the NYOAG is a state attorney general's office that coordinates and often leads multi-state coalitions of attorneys general in enforcing against the federal government the federal environmental and procedural laws that protect human health and the environment when federal agencies fail to implement those laws, defending those laws when challenged by industry and allied states and, more recently, challenging federal agencies as they seek to delay, suspend and repeal regulations implementing those laws. Presently, NYOAG is leading or is an active participant in nearly twenty such lawsuits – in courts

across the country – concerning climate change, oil and gas development on federal lands, interstate air pollution from stationary and mobile sources, water pollution and toxic pesticides. (A select list of some of those actions is attached as Exhibit A). All of those cases present clean energy, climate change or environmental issues of national or regional importance in addition to being important to the citizens of New York State. For example, NYOAG is leading the state attorney general coalitions defending both the Clean Power Plan and the Waters of the United States rule, one a key national rule regarding clean energy and climate change and the other water pollution and wetlands protection.

Since January 2017, NYOAG has filed or joined in the filing of six legal actions contesting the delay or rollback of federal rules regarding methane emissions from the oil and gas development sector, energy efficiency standards, ozone air pollution, the toxic pesticide chlorpyrifos and chemical accident prevention. NYOAG also has served formal and informal notices of intent to sue regarding additional energy efficiency standards, methane rules and car and light duty truck emissions standards.

A number of these actions already have proven successful. In April, NYOAG led a coalition of eight attorneys general, the Pennsylvania environmental agency and the City of New York in filing a petition for review in the U.S. Court of Appeals for the Second Circuit challenging the Department of Energy's delay of the effective date of efficiency standards for

ceiling fans. In May, the department ended the delay and confirmed the effective date of the standards.

Similarly, in August, NYOAG led a coalition of sixteen attorneys general in filing a petition for review challenging EPA's announced delay in designating attainment and non-attainment areas for ozone air pollution. The next day, EPA withdrew the delay announcement.

In court, NYOAG joined with other state attorneys general in seeking to intervene in support of non-governmental organizations challenging the delay of the date for the oil and gas industry to comply with a 2016 methane emissions rule. Thereafter, the court vacated the EPA's administrative stay of the rule and issued a mandate requiring immediate compliance with the rule. Subsequent to that order, the court denied industry's petition for rehearing.

Beyond the federal rollback actions, a significant number of NYOAG's "state-side" environmental cases concern clean energy, climate change or environmental issues of regional or national importance. For example, the office presently is defending two separate petitions for review of our State Department of Environmental Conservation's (NYDEC) denial of water quality certifications under Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341, for two different interstate natural gas pipelines. Those cases are establishing important national precedent on the permissible scope and timing of state water quality review under the Clean Water Act and the

inter-play of that act with the federal Natural Gas Act. We expect additional challenges in this area in the near future as the NYDEC has denied an additional certification and has a number of additional applications pending with the agency.

NYOAG's Environmental Protection Bureau has fewer than forty assistant attorneys general, and over 380 active cases, not counting investigations and non-litigation advocacy. The bureau's responsibilities include handling the prosecution and defense of all civil environmental cases in which the State or its departments and agencies are parties, with twelve of the Assistant Attorneys General primarily defending the state. Additionally, the bureau prosecutes civil litigation in the name of the People of the State of New York and conducts law enforcement investigations, including participating in NYOAG's on-going investigation of ExxonMobil's representations concerning climate change risk

NYOAG has an acute need for additional environmental litigators. First, the initial phase of fighting federal environmental rollbacks necessarily focused on challenging illegal delays to the effective dates of final rules and non-litigation advocacy. Opposing the Scott Pruitt nomination as EPA administrator, advocating for the United States to remain in the Paris Climate Accord, fighting EPA budget cuts and opposing the de-designation or downsizing of National Monuments were all non-litigation advocacy areas led by NYOAG but with significant strain on staff resources. As that initial

phase winds down, submitting substantive comments opposing the reversal of existing federal environmental rules, including the Clean Power Plan, the Waters of the United States rule, methane rules and car and light duty truck emission and mileage standards – to name a few examples – followed by substantive challenges to new replacement rules and compelling action on ignored legal mandates will be more litigation intensive, requiring additional personnel resources.

Second, given the federal efforts to delay and rescind clean energy and environmental rules and to greatly reduce the number of personnel in EPA and other federal enforcement agencies, we believe that it is likely that non-compliance with federal environmental rules has and will increase during this period of regulatory and enforcement disruption. It is vitally important that state attorneys general investigate and bring enforcement cases for serious violations of federal environmental laws by regulated entities, but NYOAG presently does not have attorney resources available to investigate and prosecute those cases.

Lastly, building on its experience and leadership in advancing common law claims to address climate change in Connecticut v. American Electric Power, NYOAG is building models for two different types of common law cases to seek compensation and other relief for harm caused by fossil-fuel emissions. NYOAG is undertaking this initiative but needs additional

attorney resources to assist with this project and the press of current litigation.

2. Program Structure

NYOAG needs a special assistant attorney general with the skills and experience to serve as lead attorney in complex federal environmental litigation of the type described in this application. This special assistant would lead a team of more junior attorneys and scientific or technical staff, and must be conversant with hiring expert witnesses and presenting their testimony in court. This special assistant would lead in developing and litigating the types of cases described herein. This attorney needs to have strong written and oral communication skills, and strong litigation skills and judgment.

NYOAG also needs a special assistant attorney general with five to six years of litigation experience who can work on cases with more senior lead attorneys. This special assistant would draft pleadings, motion papers and briefs, handle discovery and work with a senior attorney and experts in all other aspects of the cases. If a more experienced attorney as described above could not be placed in NYOAG, two attorneys as here described would be welcomed.

Any NYU fellows joining NYOAG as special assistants would be placed within the Environmental Protection Bureau and managed like their peers in the bureau. Their line of reporting would be to a section chief, deputy bureau

chief and bureau chief, each of whom is a highly experienced environmental litigator. As appropriate, the special assistants would interact with other areas of the office, including other legal bureaus, appeals and opinions, communications and intergovernmental affairs, and the Attorney General.

The bureau has approximately half of its staff at 120 Broadway in New York City, with the other half in Albany next to the state capital or in a small satellite office in Buffalo. NYOAG could host special assistants in New York City or Albany.

3 Budget Proposal and Confirmation of Authority

NYOAG proposes that special assistants be compensated at a rate comparable to Assistant Attorneys General with comparable experience. NYOAG uses metrics for the starting salaries of new hires. Those salaries range from approximately $84,000 for an attorney with five years of experience to $96,000 for an attorney with ten, and up to approximately $124,000 for attorney's with significant experience and specialized skills. Although raises are not assured, Assistant Attorneys General with satisfactory or better performance often advance in compensation on an annual basis. These raises, when given, are generally of approximately 2-4%. NYOAG proposes that special assistants who remain in the office for more than a year maintain salary parity with their Assistant Attorney General peers.

The Attorney General has authority to hire NYU fellows as Special Assistant Attorneys General pursuant to NY Executive Law § 62, which provides that "[t]he attorney-general may appoint such assistant attorneys-general, deputy assistant attorneys-general and attorneys as he may deem necessary and fix their compensation within the amounts appropriated therefor." This power to hire assistant attorneys general includes the power to hire volunteer assistant attorneys general. NYOAG has an existing program for volunteer assistant attorneys general that includes several volunteers each year, some of whom receive funding for their work from a third party.

There are no state-specific limitations governing NYU fellows' receipt of payment from NYU because: (1) the NYU fellows will owe a duty of loyalty to NYOAG only; (2) the NYU fellows' work will be supervised and directed by NYOAG attorneys only; and (3) NYOAG will implement internal controls to minimize any conflict that might exist by screening the NYU fellows from participation in or knowledge of any NYOAG matter involving NYU.

NYU fellows, as Special Assistant Attorneys General, will be governed by the provisions of Public Officers Law §§ 73 & 74 – the same provisions that govern the conduct of assistant attorneys general at NYOAG, whether paid or unpaid. See NYS Commission on Public Integrity, Advisory Opinion No. 10-02 (2010) (reviewing volunteer attorney program in DEC's Office of

General Counsel and opinion that volunteer attorneys were subject to Public Officers Law §§ 73 & 74).

Conclusion

We appreciate the opportunity to be considered as a placement for NYU School of Law State Energy & Environmental Impact Center fellows to serve in the NYOAG as Special Assistant Attorneys General and to work with us advancing progressive environmental litigation and other advocacy.

Please do not hesitate to contact us if there is any additional information that would assist in your decision-making.

Dated: New York, New York
September 15, 2017

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: s/s Lemuel M. Srolovic

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Exhibit A
(Select List of Actions)

Clean Power Plan

West Virginia v. EPA (defense of EPA Clean Power Plan, regulating carbon dioxide emissions from exiting power plants). (Coalition: New York, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, District of Columbia, Boulder, CO, Chicago, New York City, Philadelphia, South Miami and Broward County, FL).

CO2 New Source Performance Standards for New Power Plants

North Dakota v. EPA (defense of new source performance standards for carbon dioxide emissions from new, modified, or reconstructed power plants) (Coalition: California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington, District of Columbia and New York City).

Methane Rule: New Sources in Oil and Gas Development

Clean Air Council v. Pruitt (challenge to EPA delay of methane emission standards applicable to new and modified oil and gas facilities). (Coalition: Massachusetts, Connecticut, Delaware, the District of Columbia, Illinois, Iowa, Maryland, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington and Chicago).

American Petroleum Inst. v. EPA (defense of EPA methane emission standards applicable to new and modified oil and gas facilities). (Coalition: California, Connecticut, Illinois, Massachusetts, New Mexico, New York, Oregon, Rhode Island, Vermont and Chicago).

Methane: Oil, Gas, and Coal Development on Federal Lands

California v Bureau of Land Management (challenge to Bureau of Land Management delay of methane emission regulations). (Coalition: California, Maryland, New Mexico, New York, Oregon andWashington).

Auto Fuel Efficiency Standards

New York v National Highway Traffic Safety Administration (challenge to NHTSA delay of updated penalties for non-compliance with corporate average fuel efficiency (CAFE) standards). (Coalition: New York, California, Vermont, Maryland and Pennsylvania).

Clean Water Rule (Waters of the United States)

Murray Energy v. EPA (defense of regulations defining the "waters of the United States" – the types of water bodies covered by the Clean Water Act). (Coalition: New York, Connecticut, Hawaii, Massachusetts, Oregon, Vermont, Washington and District of Columbia).

Ground Level Ozone

New York v EPA (challenge to EPA delay in designating nonattainment areas for national ambient air quality standards for ozone). (Coalition: New York, California, Connecticut, Delaware, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and District of Columbia).

Murray Energy v. EPA (defense of 2015 national ambient air quality standards for ozone) (Coalition California, Massachusetts, New York, Rhode Island, Vermont, Washington, District of Columbia and Delaware Department of Natural Resources & Environmental Control).

Mercury Air Pollution

Murray Energy v. EPA (defense of EPA's supplemental cost finding on its Mercury and Air Toxics Rule). (Coalition: Massachusetts, California, Connecticut, Delaware, District of Columbia, Illinois, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington, Baltimore, Chicago, New York City, and Erie County, NY).

Cross State Air Pollution Update Rule

Wisconsin v. EPA (defense of regulation limiting interstate transport of ozone-forming pollutants). (Coalition: New York, Massachusetts, Maryland, New Hampshire, Rhode Island and Vermont).

Wood Heaters and Boilers

Hearth, Patio, & Barbecue Association v EPA (defense of standards for particulate matter emissions from new and modified wood heaters and wood boilers). (Coalition: New York, Maryland, Massachusetts, Oregon, Rhode Island, Vermont and Puget Sound Clean Air Agency, WA).

Energy Efficiency Standards

New York v. US Department of Energy (challenge to Department of Energy's delay in effective date of energy efficiency standards for ceiling fans). (Coalition: New York, California, Connecticut, Illinois, Maine, Massachusetts, Oregon, Vermont, Washington, Pennsylvania Department of Environmental Protection and New York City).

California v. Perry (challenge to Department of Energy's failure to publish final energy efficiency standards for five consumer and commercial product categories). (Coalition: California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New York, Oregon, Pennsylvania, Vermont, Washington and New York City).

Pesticide Chlorpyrifos

League of United Latin American Citizens v Pruitt (challenge to EPA's failure to make safety determination required to continue federal registration for the sale and use of chlorpyrifos). (Coalition: New York, Maryland, Massachusetts, Vermont, Washington and District of Columbia).

Chemical Risk Management Plan Program

New York v. Pruitt (challenge to EPA delay of rule updating the Chemical Risk Management Program requirements). (Coalition: New York, Illinois, Iowa, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont and Washington).