 Three sets of Obama Administration's environmental rules are in the news these days: those on climate change, mercury and ozone. The President is being praised among environmentalists for his ambitious actions and lambasted by some business and Republican leaders for engaging in a "war on coal." Yet lost among the clamor is one key fact: without the citizen suit provision of the Clean Air Act, which allows "any person" to sue the Administrator of the EPA for failing "to perform any act or duty" under the statute, our air would be a whole lot dirtier and the prospects for global action on climate change a whole lot dimmer. Let's take the three actions as prime examples of this proposition.

Climate change regulations are the best example. The landmark ruling in *Massachusetts v. EPA*, holding that greenhouse gases are air pollutants under the CAA and directing EPA to consider whether to regulate them, is the result of a citizen suit. Without it, it is safe to say that we would not have federal policies to reduce greenhouse gas emissions from cars or new industrial plants. The proposed rules to reduce carbon pollution from power plants — the largest single action the U.S. has taken — are the direct result of a citizen suit. We would have no agreement with China to reduce our emissions by 26% to 28% by 2025. The international negotiations currently taking place in Lima, Peru, followed by negotiations in Paris next year, would look far grimmer if the U.S. had no climate plan to tout. Indeed it is hard to imagine China taking unilateral action to halt its emissions growth without U.S. action to reduce its emissions. A short provision in the Clean Air Act emboldening citizens to get EPA to do its job is the only reason for any optimism that the global community may finally be getting serious about climate change.

The proposed ozone rules EPA just released would also not have occurred but for a citizen suit. The CAA requires EPA first to set air pollution standards (known as the National Ambient Air Quality Standards, or NAAQS) for pollutants that endanger public health and welfare and that come from many sources like cars and factories. EPA is then required to review its standards every five years to make sure the standards are up to date. The Clinton Administration had set an ozone standard in 1997, thus triggering EPA review five years later. Alas, EPA missed the deadline to review and issue new standards. A citizen suit then

took the agency to task for its failure to act, resulting in a 2008 ozone standard issued by the Bush Administration. That standard was the subject of significant controversy and a lawsuit because the Bush EPA failed to follow the recommendations of a scientific review panel to set the standard low enough to protect public health and welfare. The Obama Administration withdrew the Bush standard on the grounds that it was set too high and ignored scientific recommendations, then reinstated it based largely on political considerations just before the 2012 election. Although the D.C. Circuit Court of Appeal ultimately upheld the Bush standard, the Obama Administration has now released a new standard in line with the scientific recommendations. Those scientific recommendations came directly out of the citizen suit against the Bush EPA requiring it to review and update the ozone standard.

The mercury rule requires coal and oil fired power plants – far and away the largest emitters of mercury — to cut emissions by installing new control technologies over the next four years. Here's one of the most amazing facts about mercury from these plants: in the 44 years since the CAA became law, we have never regulated it. Yet mercury is a neurotoxin and is especially harmful to newborns and young children. We've known mercury was toxic for centuries: in the 1800s, according to the LA Times, hat makers exposed to high levels of mercury in felt went "mad", hence the phrase "mad as a hatter." Under the original Clean Air Act passed in 1970, EPA was supposed to regulate toxic pollutants like mercury by determining whether the pollutant belonged on a list of hazardous pollutants and then regulating it once listed. EPA was so slow at doing its job that Congress, in the 1990 amendments to the Act, removed EPA's listing power and included a list of 189 toxins that needed to be regulated. Mercury was on that list. But that was 24 years ago. EPA failed to act until — you guessed it — environmental groups sued the agency to require action. The first citizen suit involving mercury and power plants forced EPA, in 1998 to do what it was supposed to do under the new toxics provision, Section 112: issue a study about the dangers from toxic chemicals emitted from power plants. Thus the citizen suit provision got EPA started on the road to regulating mercury. That road was long and tortuous, and included an attempt by the Bush Administration to delist the regulation of mercury from power plants under the hazardous pollutants section of the act and substitute a much weaker cap and trade program. That attempt was derailed by yet another citizen suit, resulting in the D.C. Circuit Court of Appeals striking the cap and trade program down in 2008. The Obama Administration agreed, as part of the resolution of the lawsuit, to issue a new mercury rule in 2011. Again, but for the citizen suit provision, we very likely would have no regulation of mercury pollution from power plants. The Obama Administration issued a new rule in 2011, which the D.C. Circuit upheld earlier this year. The Supreme Court just agreed to review the validity of the new

rule. If the Court strikes down the rule next term, we will still have no power plant mercury regulation 45 years after the adoption of the Clean Air Act. But we at least will have had action to regulate mercury, only because Congress allowed citizens to sue EPA to get the agency to do its job.