

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

BOARD OF COUNTY  
COMMISSIONERS OF BOULDER  
COUNTY; BOARD OF COUNTY  
COMMISSIONERS OF SAN MIGUEL  
COUNTY; and CITY OF BOULDER,

Plaintiff,

v.

SUNCOR ENERGY (U.S.A.) INC.;  
SUNCOR ENERGY SALES INC.;  
SUNCOR ENERGY INC.; and  
EXXON MOBIL CORPORATION,

Defendants.

Case No. 1:18-cv-1672-WJM-SKC

**EMERGENCY MOTION FOR A TEMPORARY STAY  
OF EXECUTION OF THE REMAND ORDER\***

Yesterday evening, the Court denied defendants' motion for a stay of the remand order pending appeal. *See* ECF No. 80. The Court ordered that "[t]he Clerk shall REMAND this case to Boulder County District Court, and shall terminate this action." *Id.* at 16.

Pursuant to Federal Rule of Civil Procedure 62, defendants respectfully request a temporary stay of execution of the Court's order remanding this case to state court to allow the Tenth Circuit to consider the motion for a stay pending appeal that defendants filed with the court of appeals earlier today. As defendants explained in their stay motion filed in this Court, once the clerk sends the remand order by certified mail to the state court, it is not clear how the cases would return to federal court if defendants prevail on appeal. While the Court's view is that "federal

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\* Defendants submit this motion subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

courts are fully capable of ensuring that the proceeding in state court returns to federal court if a remand order is vacated,” ECF No. 80, at 15, the only authority cited by the Court is not binding on the Tenth Circuit. Absent binding precedent ensuring that defendants’ right to appeal is protected, a temporary stay of the remand order is warranted. Defendants also note that, in *Bryan v. BellSouth Communications, Inc.*, 492 F.3d 231 (4th Cir. 2007), the court of appeals did not hold that a district court could, consistent with the Anti-Injunction Act, enjoin state-court proceedings simply because the remand order had been vacated on appeal. Instead, the court of appeals called the issue “difficult” and expressly chose not to resolve it. *See id.* at 241-242. In addition, the panel opinion in *In re Meyerland Co.*, 910 F.2d 1257 (5th Cir. 1990), was superseded after rehearing en banc. *See* 960 F.2d 512 (5th Cir. 1992). The en banc opinion did not address whether an injunction of state-court proceedings was permissible.

For the foregoing reasons, defendants respectfully request that this Court stay execution of its remand order until the Tenth Circuit issues a ruling on the motion for a stay filed by defendants in that Court.

Respectfully submitted,

October 8, 2019

By: /s/ Kannon K. Shanmugam

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th day of October 2019, the foregoing document was filed through the ECF system and was therefore served on all registered participants identified on the Notice of Electronic Filing.

/s/ Kannon K. Shanmugam

Kannon K. Shanmugam