

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

STATE OF MINNESOTA, BY ITS ATTORNEY
GENERAL, KEITH ELLISON,

Plaintiff,

v.

AMERICAN PETROLEUM INSTITUTE,
EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION, KOCH
INDUSTRIES, INC., FLINT HILLS
RESOURCES LP, and FLINT HILLS
RESOURCES PINE BEND,

Defendants.

Case No. 20-cv-1636-JRT-HB

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

Defendants respectfully move this Court to temporarily stay the execution of its order granting Plaintiff's motion to remand (the "Order"), Dkt. 76, to allow Defendants time to file a formal motion to stay remand pending appeal, which Defendants will file within seven days or as soon as the Court requests.¹ Defendants further request that the Court instruct the Court Clerk not to send a certified copy of the Order to the Minnesota state court, in order to preserve the status quo until such time as Defendants' request for a stay pending appeal has been fully resolved. In accordance with Local Rule 7.1(a), Defendants conferred with Plaintiff prior to filing this emergency motion, and Plaintiff opposes Defendants' request.

Earlier this afternoon, the Court granted Plaintiff's motion to remand, holding that the Court does not have jurisdiction over Plaintiff's claims. Dkt. 76. Defendants will appeal this

¹ This motion is submitted subject to and without waiver of any defense or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

decision to the Eighth Circuit, and also intend to file a motion to stay remand pending the appeal. Defendants have a right to appeal the Order because they removed this case under the federal officer removal statute. While generally “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal,” an “order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.” 28 U.S.C. § 1447(d). Defendants also removed this case under the Class Action Fairness Act (“CAFA”), which codifies a statutory right to seek an appeal of the remand order. *See* 28 U.S.C. § 1453(c).

A temporary stay is warranted here to preserve Defendants’ appellate rights and spare the parties and the Minnesota state court from what could be a substantial amount of unnecessary and ultimately futile litigation. If the Clerk were to transmit the remand order to the Minnesota state court, “[t]he State court may thereupon proceed with such case.” 28 U.S.C. § 1447(c). As will be explained further in Defendants’ forthcoming motion to stay pending appeal, Defendants’ appeal will present serious legal issues, including questions currently pending before the United States Supreme Court and questions of first impression in the Eighth Circuit. Absent a stay, Defendants face irreparable harm, whereas a stay would cause Plaintiff no prejudice and, in fact, would serve the public interest and the interests of judicial economy.

Over the past four years, approximately 22 other state and municipal entities have filed similar climate change actions in courts across the country, all of which involve significant national interests. A number of these cases have now reached the Supreme Court. The question of whether federal jurisdiction exists over Plaintiff’s claims may be resolved imminently, as the Supreme Court heard argument in *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (U.S.) on January 19, 2021. Petitions for writs of certiorari are pending in eleven other climate change-

related cases, including in *City of Oakland* and in *County of San Mateo*, which expressly raise the merits of a number of Defendants' jurisdictional arguments. *See Chevron Corp. v. City of Oakland, pet. for cert. filed*, No. 20-1089 (U.S. Jan. 8, 2021) (consolidating two cases); *Chevron Corp. v. County of San Mateo, pet. for cert. filed*, No. 20-884 (U.S. Dec. 30, 2020) (consolidating six cases); *see also Shell Oil Prods. Co. v. Rhode Island, pet. for cert. filed*, No. 20-900 (U.S. Dec. 30, 2020); *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, pet. for cert. filed*, No. 20-783 (U.S. Dec. 4, 2020).

In light of these significant national interests and pending Supreme Court proceedings, this Court should allow Defendants time to seek a stay of remand pending appeal to the Eighth Circuit. *See, e.g., Northrup Grumman Tech. v. DynCorp Int'l, LLC*, No. 1:16-cv-00534-JCC-IDD, 2016 WL 3180775, at *2 (E.D. Va. June 7, 2016) (directing clerk to "refrain from executing the Court's Order . . . remanding the case back to the Circuit Court" so the parties could brief a stay of the remand order pending appeal), *aff'd*, 865 F.3d 181 (4th Cir. 2017).

Indeed, in prior climate change-related cases, federal courts in California, Hawaii, Rhode Island, and Maryland allowed defendants time to brief a motion to stay pending appeal after a grant of remand. *See, e.g., Order Granting Motions to Remand, County of San Mateo v. Chevron Corp. et al.*, No. 17-4929 (N.D. Cal. Mar. 16, 2018), ECF No. 223 at 5-6; *Order, City & County of Honolulu v. Sunoco LP*, No. 20-163 (D. Haw. Feb. 16, 2021), ECF. No. 130; *Order, County of Maui v. Chevron U.S.A. Inc.*, No. 20-470 (D. Haw. Feb. 16, 2021), ECF. No. 101; *Opinion and Order, State of Rhode Island v. Chevron Corp. et al.*, No. 18-395 (D.R.I. July 22, 2019), ECF No. 122 at 16-17; *Memorandum Opinion, Mayor and City Council of Baltimore v. BP P.L.C. et al.*, No. 18-2357 (D. Md. June 20, 2019), ECF No. 182 at 3.

For these reasons, Defendants respectfully ask the Court to temporarily stay execution of the Order and instruct the Court Clerk not to send a certified copy of the Order to the Minnesota state court, pending briefing on Defendants' forthcoming motion to stay, which Defendants will file within seven days or as soon as the Court requests.

Date: March 31, 2021

Respectfully submitted,

/s/ Jerry W. Blackwell

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