

No. 18-16663

**United States Court of Appeals
for the Ninth Circuit**

CITY OF OAKLAND, et al.,

Plaintiffs-Appellants,

v.

BP P.L.C., et al.,

Defendants-Appellees.

Appeal from the District Court for the Northern District of California
Nos. 3:17-cv-06011, 3:17-cv-06012 (Hon. William H. Alsup)

**MOTION BY THE CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA FOR EXTENSION OF TIME TO FILE
BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITION FOR
REHEARING**

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Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rule 31-2.2(b), the Chamber of Commerce of the United States of America respectfully requests that this Court grant a 14-day extension of time within which to file a brief as amicus curiae in support of the Petition for Rehearing filed by Appellees BP p.l.c., Chevron Corporation, ConocoPhillips, Exxon Mobil Corporation, and Royal Dutch Shell PLC, ECF No. 175 (July 8, 2020). Without an extension, the deadline to file an amicus brief in support of the petition would be July 20, 2020. *See* Fed. R. App. P. 29(b)(5); Cir. R. 29-2(e)(1). For the reasons stated below, the Chamber requests an extension through and including August 3, 2020—the same extension this Court granted to the United States. *See* July 14, 2020 Order (granting ECF No. 176-1). Because this Court has already granted that extension, granting this one as well will not delay consideration of the petition.

As set forth more fully in the United States’ extension motion, Appellees’ petition for rehearing raises complex and important issues about the interaction of the federal and state courts, which merit rehearing both by the panel and *en banc* court. The petition demonstrates that the panel’s decision created both intra- and inter-circuit conflicts by not

recognizing Appellees' argument that removal is appropriate because the Plaintiffs the City of Oakland and the City of San Francisco's ("Cities") claims necessarily arise under federal common law, and by concluding that the Cities could obtain vacatur of the district court's final judgment on the grounds that removal was improper, notwithstanding that the Cities previously cured any jurisdictional defect by voluntarily adding a claim that expressly arises under federal common law.

The Chamber has a significant interest in those issues, as well as in the broader questions raised in this action. Indeed, the Chamber, through different counsel, previously filed a brief as amicus curiae at the panel stage in support of affirmance, *see* ECF No. 81, which articulated its interest in the litigation. In particular, the Chamber expressed its concerns that the proliferation of state common-law public nuisance claims that seek to regulate conduct worldwide, without regard to where it occurred, would pose significant risks to the business community.

The Chamber has not yet had an opportunity, however, to address the additional weighty and novel issues of federal procedure implicated by the panel's decision. In particular, the panel did not decide whether the Cities' public-nuisance cause of action necessarily arises under federal

common law, but instead concluded that a case that purports to arise under state law cannot be removed to federal court *even if* the cause of action could arise, if at all, only under federal common law. That analytical error will require additional time to analyze, despite the Chamber's diligence. Moreover, the Chamber only recently replaced its counsel in this case with the undersigned, who did not previously appear in this case and who accordingly needs to devote additional time to familiarize himself with the complex issues in this case.

For these reasons, the Chamber respectfully submits, pursuant to Federal Rule of Appellate Procedure 26(b), that the novel and complex issues raised by the petition, coupled with the change in counsel, constitute good cause justifying an extension of time to file until August 3, 2020—the same day that the United States will file its amicus curiae brief, should the Solicitor General authorize its participation.

A 14-day extension will not delay this Court's consideration of the Petition. This Court has already granted the United States' extension request to the same date. Moreover, a petition for rehearing ordinarily will not be granted without giving the other side an opportunity to respond. *See* ECF No. 176-1 at 5 (citing Fed. R. App. P. 40(a)(3) and 35(e)). At the Court's

discretion, it could provide the Cities with an opportunity to respond to the petition as well as to any filing by the Chamber.

Appellees do not oppose this motion. Counsel for the Cities consent to the Chamber's amicus participation but oppose the extension request.

For the foregoing reasons, the Chamber respectfully requests a 14-day extension of time within which to file its brief as amicus curiae in support of the petition for rehearing, to and including August 3, 2020.

Respectfully submitted,

/s/ Zachary D. Tripp

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July 14, 2020

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CERTIFICATE OF SERVICE

I certify that I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 14, 2020. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Zachary D. Tripp
Zachary D. Tripp

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) and Ninth Circuit Rule 29-2(c)(2) because, excluding parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 709 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook font.

/s/ Zachary D. Tripp
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