

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

**FHR DEFENDANTS' MEMORANDUM IN SUPPORT OF
THEIR MOTION TO STAY**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND BACKGROUND	1
II. ARGUMENT	4
A. A Brief Stay Will Preserve Judicial Resources and Promote Judicial Economy.....	6
B. The State Will Not Be Prejudiced by a Short Stay.	7
C. FHR Defendants Face Serious Hardship in the Absence of a Stay.....	9
III. CONCLUSION	11

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>Allied Prop. & Cas. Ins. Co. v. Grich</i> , No. 4:16-CV-00933-AGF, 2016 WL 4944113 (E.D. Mo. Sept. 16, 2016).....	8
<i>Boushel v. Toro Co.</i> , 985 F.2d 406 (8th Cir. 1993)	7
<i>Carlson Pet Prod., Inc. v. N. States Indus., Inc.</i> , No. 017-CV-02529, 2018 WL 1152001 (D. Minn. Mar. 5, 2018).....	7, 8
<i>Christianson v. Ocwen Loan Servicing, LLC</i> , No. CV 17-1525(DWF/TNL), 2017 WL 5665211 (D. Minn. Nov. 20, 2017).....	8,9
<i>City of Oakland v. BP PLC</i> , 969 F.3d 895 (9th Cir. 2020)	3
<i>Contracting Nw., Inc. v. City of Fredericksburg</i> , 713 F.2d 382 (8th Cir. 1983)	4,5
<i>Grable & Sons Metal Prod., Inc. v. Darue Eng’g & Mfg.</i> , 545 U.S. 308 (2005).....	2
<i>In re Hanson</i> , No. BR 13-33447, 2013 WL 6571594 (D. Minn. Dec. 13, 2013).....	5
<i>Henin v. R.R.</i> , No. CV 19-336(PAM/BRT), 2019 WL 3759804 (D. Minn. Aug. 9, 2019).....	7, 8, 10
<i>IBEW Local 98 Pension Fund v. Best Buy Co.</i> , No. CIV. 11-429 DWF/FLN, 2014 WL 4540228 (D. Minn. Sept. 11, 2014).....	5, 10
<i>Madry v. George Koch Sons, LLC</i> , No. 4:19CV258 RLW, 2019 WL 4305446 (E.D. Mo. Sept. 11, 2019).....	8
<i>Mayor & City Council of Baltimore v. BP P.L.C.</i> , 952 F.3d 452 (4th Cir.), cert. granted, 141 S. Ct. 222 (2020).....	2, 6
<i>McCoy v. Louisiana</i> , 138 S. Ct. 1500 (2018).....	3
<i>New York Times Co. v. Jascalevich</i> , 439 U.S. 1304 (1978).....	4
<i>In re Otter Tail Power Co.</i> , 116 F.3d 1207, 1215 (8th Cir. 1997)	11

Seefeldt v. Entm’t Consulting Int’l, LLC,
 No. 4:19-CV-00188-MTS, 2020 WL 4922371 (E.D. Mo. Aug. 21, 2020)..... 5

Thompson v. Rally House of Kansas City, Inc.,
 No. 15-00886-CV-W-GAF, 2016 WL 9023433 (W.D. Mo. Jan. 25, 2016) 9

Williams v. TGI Friday’s Inc.,
 No. 4:15-CV-1469 RLW, 2016 WL 1453032 (E.D. Mo. Apr. 12, 2016) 9

Yaakov v. Varitronics, LLC,
 No. CIV. 14-5008 ADM/FLN, 2015 WL 5092501 (D. Minn. Aug. 28, 2015)..... 9

Chevron Corporation et. al. v. City of Oakland, et al.,
 (U.S., Jan. 8, 2021) 1

Statutory Authorities

28 U.S.C. § 1331 3

28 U.S.C. § 1447(c)..... 10

28 U.S.C. § 1447(d)..... 2, 3

Rules and Regulations

L. Civ. R. 7.1 1

S. Ct. Rule 10..... 4

Additional Authorities

Jose Umbert, J., Climate Change Litigation Goes Before the Supreme Court, JD SUPRA
<https://www.jdsupra.com/legalnews/climate-change-litigation-goes-before-9327394/>.
 (Jan. 5, 2021)..... 5

I. INTRODUCTION AND BACKGROUND

Plaintiff the State of Minnesota (“State”), acting through the Office of the Attorney General, filed this action seeking to use Minnesota state law as a vehicle to ensure that Defendants “bear the costs” of climate change (Dkt. 35 at 15; Dkt. 1-1, Compl. ¶ 7) by holding Defendants liable for the “unabated and expanded extraction, production, promotion, marketing, and sale of their fossil-fuel products” around the world (Dkt. 1-1, Compl. ¶ 4). Defendants removed the case to this Court on seven independent grounds. (See Dkt. 1.) Although the State has filed a motion to remand (Dkt. 32), Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend (collectively, “FHR Defendants”)¹ respectfully submit that this Court should stay and hold in abeyance its decision on the State’s motion to remand until the United States Supreme Court issues its decisions in one or both of two other climate change related actions: *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (U.S.) and Petition for Writ of Certiorari,² *Chevron Corporation et. al. v. City of Oakland, et al.*, (U.S., Jan. 8, 2021).

The *Baltimore* and *Oakland* actions are like this one in certain important respects, and provide the opportunity for the Supreme Court to decide whether federal jurisdiction lies over claims alleging harms from climate change, like those asserted here. In *Baltimore*, the Mayor and City Council of Baltimore sued 26 energy companies under Maryland state

¹ Prior to filing this motion, the FHR Defendants conferred with Plaintiff’s counsel in good faith, but the parties were unable to resolve the propriety of a stay. See L. Civ. R. 7.1. The FHR Defendants make no representation as to the position of other Defendants with respect to this Motion.

² Attached hereto as Exhibit 1 to the Declaration of Michelle Schmit.

law claiming that the defendants should be liable for alleged harms such as “rising atmospheric and ocean temperatures, ocean acidification, melting polar ice caps and glaciers, more extreme and volatile weather, and sea level rise.” (Plaintiff’s Complaint ¶¶ 1, 7, *Mayor & City Council of Baltimore v. BP p.l.c.*, No. 1:18-cv-2357 (D. Md. Aug. 16, 2018), Dkt. 42.) The State makes analogous allegations in its Complaint, seeking to hold Defendants liable for the alleged “physical, environmental, social, and economic consequences” of climate change. (Dkt. 1-1, Compl. ¶ 7.) The *Baltimore* defendants removed the case to federal court asserting grounds for federal jurisdiction nearly identical to those asserted in this action. *Mayor & City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452, 457 (4th Cir.), *cert. granted*, 141 S. Ct. 222 (2020). The district court in *Baltimore* granted the plaintiff’s motion to remand, and the Fourth Circuit affirmed. *Id.* at 471.³ On October 2, 2020, however, the Supreme Court granted certiorari to consider whether the Fourth Circuit correctly affirmed the district court’s decision in *Baltimore*.⁴ The *Baltimore*

³ The Fourth Circuit narrowly interpreted 28 U.S.C. § 1447(d) as “confinin[ing] our appellate jurisdiction, [to] the narrow question . . . whether removal of this lawsuit is proper . . . under the federal officer removal statute.” *Id.* at 457. The Fourth Circuit therefore limited its review of the merits of removal to the federal officer removal statute, and did not consider the defendants’ other grounds for removal, such as on the basis of federal common law or pursuant to *Grable & Sons Metal Prod., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005).

⁴ The formal question presented in *Baltimore* is whether the Fourth Circuit correctly found that 28 U.S.C. § 1447(d) precludes review of remand orders except for a case that “was removed pursuant to section 1442 [federal officer removal] or 1443 [civil rights cases.]” *See Baltimore*, 952 F.3d at 459. However, the *Baltimore* petitioners argue, and the *Baltimore* respondents do not deny, that the Supreme Court has the discretion to reach issues relating to the merits of removal (*i.e.*, whether putative state-law tort claims alleging harm from climate change are removable because they arise under federal law) in order to determine the proper remedy—reversal or vacatur—if the Supreme Court agrees with

case is fully briefed, oral argument before the Supreme Court is scheduled for January 19, 2021, and the FHR Defendants expect the Supreme Court will issue a decision by June 2021.

In *Oakland*, two California coastal cities brought state-law public nuisance claims against several energy companies seeking to hold them liable for harms and expected injuries associated with alleged climate change-induced sea-level rise, allegedly caused by the companies' production and promotion of fossil fuels. *See City of Oakland v. BP PLC*, 969 F.3d 895, 902 (9th Cir. 2020). Like *Baltimore*, the *Oakland* defendants removed the case to federal court asserting grounds for federal jurisdiction nearly identical to those asserted in this action. *Id.* The *Oakland* plaintiffs moved to remand, but the district court denied the motion, finding that their state-law public nuisance claims were “necessarily governed by federal common law,” and thus the district court had federal-question jurisdiction under 28 U.S.C. § 1331. *See id.* The Ninth Circuit subsequently vacated the district court's ruling. *Id.* at 908. On January 8, 2021, the *Oakland* defendants petitioned the Supreme Court for a writ of certiorari seeking to resolve one of the primary issues involved in virtually all of the contemporary climate change lawsuits currently pending around the United States—that is, whether putative state-law tort claims alleging harm from global climate change are removable because they arise under federal law. (Exhibit 1, Petition for Writ of Certiorari at i, *Oakland*.)

petitioners that the Fourth Circuit's interpretation of 28 U.S.C. § 1447(d) is erroneous. *See, e.g., McCoy v. Louisiana*, 138 S. Ct. 1500, 1510-12 & n.4 (2018).

The FHR Defendants anticipate that the Supreme Court will grant the *Oakland* defendants’ petition for a writ of certiorari, by or before the time it issues a decision in *Baltimore* in June 2021. At least four of Justices of the Supreme Court are likely to vote to grant a writ of certiorari in *Oakland*. See *New York Times Co. v. Jascaveich*, 439 U.S. 1304, 1304 (1978) (“The standards for issuance of a stay pending disposition of a petition for certiorari [... includes...] whether four Justices of this Court would likely vote to grant a writ of certiorari.”) (citation omitted). When a United States court of appeals “has decided an important federal question in a way that conflicts with relevant decisions of [the Supreme Court],” as is the case in *Oakland*, such a circumstance presents a compelling interest for the Supreme Court to grant a writ of certiorari. (See S. Ct. Rule 10; see also Exhibit 1, Petition for Writ of Certiorari at 14-27, *Oakland*.) Moreover, the Supreme Court’s willingness to grant certiorari in *Baltimore* signals that at least four Justices may also be receptive to addressing the key issue in *Oakland*—*i.e.*, whether putative state-law tort claims alleging harm from climate change arise under federal law—because “it is likely that the Court’s conservative majority will decide that federal courts have jurisdiction to hear these climate change lawsuits.”⁵

II. ARGUMENT

This Court should exercise its inherent power over its docket by staying and holding in abeyance its decision on the State’s motion to remand pending the Supreme Court’s

⁵ See Jason Reeves & Jose Umbert, J., Climate Change Litigation Goes Before the Supreme Court, JD SUPRA (Jan. 5, 2021), <https://www.jdsupra.com/legalnews/climate-change-litigation-goes-before-9327394/>.

decision in *Baltimore* and *Oakland* “in order to control its docket, conserve judicial resources, and provide for a just determination of the case[] pending before it.” *See Contracting Nw., Inc. v. City of Fredericksburg*, 713 F.2d 382, 387 (8th Cir. 1983). District courts frequently grant such stays where the circuit court—or Supreme Court—whose precedent binds them is considering a key issue related to a case. *See, e.g., IBEW Local 98 Pension Fund v. Best Buy Co.*, No. CIV. 11-429 DWF/FLN, 2014 WL 4540228, at *3 (D. Minn. Sept. 11, 2014) (staying proceedings pending the Eighth Circuit’s decision on a Rule 23(f) petition); *Seefeldt v. Entm’t Consulting Int’l, LLC*, No. 4:19-CV-00188-MTS, 2020 WL 4922371, at *1 (E.D. Mo. Aug. 21, 2020) (“Even prior to the Supreme Court’s grant of certiorari . . . this Court noted the ‘best approach’ potentially may be to await ‘much-needed clarity from the Supreme Court’”).

The relevant considerations weigh in favor of granting a stay. Indeed, granting the stay would preserve judicial resources by alleviating this Court’s need to prepare a decision on potentially dispositive issues in this case that may be substantially decided by the Supreme Court in a few months. *See In re Hanson*, No. BR 13-33447, 2013 WL 6571594, at *1 (D. Minn. Dec. 13, 2013) (when determining the propriety of a stay, “the court considers the conservation of judicial resources.”). Likewise, a stay is necessary to prevent serious hardships for the FHR Defendants. *See Seefeldt*, 2020 WL 4922371, at *1 (“[T]he potential prejudice or hardships to the parties” is a factor courts consider when determining a motion to stay) (citing cases). Absent a stay, this action might be erroneously remanded to state court in violation of the FHR Defendants’ entitlement to a federal forum. To the extent this case may be remanded, and the Supreme Court interprets the law in such a way

as to cast doubt on any remand decision, difficult questions of the mechanics of restoring the action to the federal forum would arise, implicating federalism concerns as to the appropriate balance of responsibilities between the state and federal judiciaries. On the other hand, the State cannot plausibly claim any meaningful harm from such a brief stay, particularly when the Supreme Court is positioned to decide, by or before June 2021, dispositive issues that are squarely before this Court in the State's motion to remand.

A. **A Brief Stay Will Preserve Judicial Resources and Promote Judicial Economy.**

The Complaint in *Baltimore* is similar in important respects to the one here, and the grounds for removal are almost identical (although Defendants have provided additional factual support for removal in this case that was not presented in *Baltimore*). (*Compare* Dkt. 1-1, *with Mayor & City Council of Baltimore*, No. 18-cv-2357, Dkt. 1.) Likewise, one of two dispositive issues on appeal in *Oakland*—*i.e.*, whether putative state-law tort claims alleging harm from global climate change are removable because they arise under federal law—is squarely at issue in *Baltimore*, *Oakland*, and this case. As a result, the Supreme Court's decisions in *Baltimore* and/or *Oakland* could be dispositive, particularly if the Supreme Court agrees with petitioners' arguments in both cases that the plaintiffs' claims necessarily arise under federal law. Such a ruling would preserve judicial resources and promote judicial economy by completely obviating this Court's need to decide these issues.

Even if *Baltimore* and/or *Oakland* do not fully resolve the issues regarding this Court's jurisdiction, the substantial overlap in legal issues provides sufficient grounds for

a stay. *See, e.g., Boushel v. Toro Co.*, 985 F.2d 406, 409 (8th Cir. 1993) (acknowledging that “[i]n granting [a] stay, the district court recognized that there was substantial overlap in [] two cases, which is why it granted the stay in the interest of judicial economy and international comity”). Among other things, the Supreme Court’s resolution of *Baltimore* and/or its decision on the petition for writ of certiorari in *Oakland* could narrow the issues before this Court and guide both the parties and the Court in deciding the threshold question of federal jurisdiction. *See, e.g., Henin v. R.R.*, No. CV 19-336 (PAM/BRT), 2019 WL 3759804, at *2 (D. Minn. Aug. 9, 2019) (“[A] stay will simplify disputed issues about jurisdiction and conserve judicial resources . . . Entering a stay also allows this Court to avoid making an inconsistent ruling with the Eighth Circuit and will clarify what issues, if any, remain for resolution after the Eighth Circuit’s decision.”). Indeed, if the Supreme Court were to overturn the Fourth Circuit’s decision in *Baltimore* and/or grant certiorari in *Oakland*, the Supreme Court could affirm the propriety of removal of state-law tort claims alleging harm from climate change, or at least provide additional guidance regarding the legal standards applicable to the removal grounds at issue here.

B. The State Will Not Be Prejudiced by a Short Stay.

In considering whether granting a stay would cause undue prejudice to a non-moving party, courts have considered factors such as the nature and stage of the litigation as well as the length of the proposed stay. *See Carlson Pet Prod., Inc. v. N. States Indus., Inc.*, No. 017-CV-02529, 2018 WL 1152001, at *2 (D. Minn. Mar. 5, 2018). Each of these considerations weigh decisively in favor of a stay here.

This case is still in its very early stages. The State filed this action on June 24, 2020, and Defendants removed it approximately a month later, on July 27, 2020. (*See* Dkt. 1-1.) The parties have not yet commenced discovery or filed dispositive motions; in fact, Defendants have not even filed answers. Where a case is still in the very early stages of litigation, there is little prejudice to either side if the Court stays the case. *Carlson Pet.*, 2018 WL 1152001 at *2 (“[T]his is not a case where the request to stay the proceedings was made late in the litigation, after the parties and the Court have invested significant resources. This factor weighs heavily in favor of entering a stay.”). It is therefore no surprise that courts routinely grant stays at such an early juncture. *See id.*; *see also, e.g., Henin*, 2019 WL 3759804, at *2 (“Plaintiff will not be unduly prejudiced by the stay. This case is in its early stages . . .”); *Madry v. George Koch Sons, LLC*, No. 4:19CV258 RLW, 2019 WL 4305446, at *2 (E.D. Mo. Sept. 11, 2019) (“This case is still in its early stages. The parties have conducted no discovery; and other than the instant motions, no substantive issues have been or are scheduled to be litigated. Thus, staying the case now would not significantly disrupt the litigation process.”); *Allied Prop. & Cas. Ins. Co. v. Grich*, No. 4:16-CV-00933-AGF, 2016 WL 4944113, at *2 (E.D. Mo. Sept. 16, 2016) (similar).

At the same time, the length of the requested stay will be for a definite—and short—period of time. Oral argument in *Baltimore* is currently set for January 19, 2021, and the petition for writ of certiorari in *Oakland* was filed on January 8, 2021. The issues pending before the Supreme Court in *Baltimore* are likely to be decided by June 2021, and the petition for writ of certiorari in *Oakland* resolved by then as well. Under these circumstances, a brief stay is appropriate and warranted. *See Christianson v. Ocwen Loan*

Servicing, LLC, No. CV 17-1525 (DWF/TNL), 2017 WL 5665211, at *2 (D. Minn. Nov. 20, 2017) (“[A] delay of a few months will not unduly prejudice Plaintiff.”); *see also, e.g., Williams v. TGI Friday’s Inc.*, No. 4:15-CV-1469 RLW, 2016 WL 1453032, at *3 (E.D. Mo. Apr. 12, 2016) (“The Court finds that a stay of a few months is not unreasonable, given the important and dispositive nature of these [forthcoming appellate] decisions.”); *Thompson v. Rally House of Kansas City, Inc.*, No. 15-00886-CV-W-GAF, 2016 WL 9023433, at *4 (W.D. Mo. Jan. 25, 2016) (“A temporary stay of approximately five months (from the date of this Order [in January 2016] until the end of the current Supreme Court term in June 2016) will result in little if any prejudice to Plaintiff as this case is in its infancy.”); *Yaakov v. Varitronics, LLC*, No. CIV. 14-5008 ADM/FLN, 2015 WL 5092501, at *4 (D. Minn. Aug. 28, 2015) (“Waiting until the Supreme Court has ruled may avoid expending unnecessary resources. Furthermore, the stay will be of short duration since the argument in [the Supreme Court] is scheduled to occur in less than two months.”). In short, a brief stay will not injure the State, but will instead preserve the parties’ resources and promote judicial economy and the public interest by avoiding simultaneous litigation and potentially inconsistent rulings on closely related issues in the district and appellate courts.

C. FHR Defendants Face Serious Hardship in the Absence of a Stay.

In contrast, the FHR Defendants face substantial hardship if proceedings in this case move forward without the benefit of the Supreme Court’s decisions in *Baltimore* and *Oakland*. As an initial matter, this Court would be required to decide potentially dispositive remand issues without the aid of guidance from the Supreme Court—an exercise that may be entirely unnecessary if the Supreme Court concludes or otherwise

signals that there is federal jurisdiction over actions alleging harms from climate change. Moreover, if this Court grants the State's motion to remand, proceedings in Minnesota state court could immediately resume. *See* 28 U.S.C. § 1447(c) ("A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."). As a result, absent a stay, the parties may be forced to proceed simultaneously along at least two tracks: (1) an appeal to the Eighth Circuit of the remand order and (2) proceedings in state court. This poses a particularly profound risk to the FHR Defendants because, if jurisdiction is ultimately resolved on appeal in favor of federal jurisdiction, the FHR Defendants will have been denied their right to a federal forum for what could be a considerable period of time. During this time, the parties will likely have undergone meaningful litigation in state court—including substantive motion practice and possibly even discovery—which this Court would then have to untangle.

Moreover, courts routinely find irreparable harm where, as here, the parties face a substantial waste of resources. *IBEW Local 98 Pension Fund*, 2014 WL 4540228, at *3 ("Defendants also argue that they will suffer irreparable harm absent a stay, relying primarily on the fact that they would be forced to engage in costly discovery and motion practice pending the Eighth Circuit's decision. This factor weighs in favor of a stay."); *Henin*, 2019 WL 3759804, at *2 ("[T]he parties and the Court risk expending unnecessary time and resources without a stay if it is found that this Court does not have jurisdiction over the matter."). On top of the harm to the parties, failing to stay and hold in abeyance this Court's ruling on the State's motion to remand risks harm to the judicial process more

generally—including the risk of inconsistent rulings if this Court enters a remand order that ultimately proves irreconcilable with the disposition in *Baltimore* and/or *Oakland*.

Additionally, principles of federalism favor this Court temporarily staying its hand, where the Supreme Court is positioned to issue binding precedent relating to this Court’s jurisdiction over the fundamentally federal questions pled on the face of the State’s Complaint. *See In re Otter Tail Power Co.*, 116 F.3d 1207, 1213, 1215 (8th Cir. 1997) (where plaintiff’s claims raised “important questions of federal law requiring interpretation of treaties, federal statutes, and the federal common law,” the court reasoned that the “district court ha[d] no discretion to remand a claim that states a federal question,” where the question was one “of basic federal supremacy.”).

III. CONCLUSION

For the foregoing reasons, the Court should stay and hold in abeyance its decision on the State’s motion to remand until the Supreme Court issues its decisions in *Baltimore* and *Oakland*.

DATE: January 15, 2021

William A. Burck (*pro hac vice*)
QUINN EMANUEL LLP
1300 I Street, NW, Suite 900
Washington, D.C. 20005-4107
Tel: (202) 538-8120
E-mail:
williamburck@quinnemanuel.com

Stephen A. Swedlow (*pro hac vice*)
Michelle Schmit (*pro hac vice*)
QUINN EMANUEL LLP
191 North Wacker Drive, Suite 2700
Chicago, IL 60606
Tel: (312) 705-7488
E-mail:
stephenswedlow@quinnemanuel.com
E-mail:
michelleschmit@quinnemanuel.com

Respectfully submitted,

/s/ Todd Noteboom
Todd Noteboom (MN #240047)
Andrew W. Davis (MN #386634)
Peter J. Schwingler (MN #388909)
STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Tel: (612) 335-1500
E-mail: todd.noteboom@stinson.com

Andrew M. Luger (MN #0189261)
JONES DAY
90 South Seventh Street, Suite 4950
Minneapolis, MN 55402
Tel: (612) 217-8862
E-mail: aluger@jonesday.com

Debra R. Belott (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, NW
Washington, D.C. 20001-2113
Tel: (202) 879-3689
E-mail: dbelott@jonesday.com

*Attorneys for Defendants
Koch Industries, Inc., Flint Hills
Resources LP, and Flint Hills Resources
Pine Bend*