

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,
FLINT HILLS PINE BEND,

Defendants.

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

**PLAINTIFF STATE OF MINNESOTA'S OPPOSITION TO
DEFENDANTS' EMERGENCY MOTION FOR A
TEMPORARY STAY OF EXECUTION OF THE REMAND ORDER**

Plaintiff the State of Minnesota (“State”) hereby opposes Defendants’ Emergency Motion for a Temporary Stay of Execution of the Remand Order (Dkt. 77, “Motion”). The Court has already considered the Koch Defendants’ Motion to Stay (Dkt. 133), and denied it. *See* Mem. Opinion and Order Granting Motion to Remand and Denying Motion to Stay at 35–37 (Dkt. 76, “Order”). The Court should deny Defendants’ Motion here for the same reasons, and for the reasons set forth in the State’s Opposition to the Koch Defendants’ Motion to Stay (Dkt. 68, “State Opposition”).

A stay pending appeal “is not a matter of right,” but “is instead ‘an exercise of judicial discretion,’” with the “party requesting a stay bear[ing] the burden of showing that the circumstances justify an exercise of that discretion.” *Nken v. Holder*, 556 U.S. 418, 423, 433–34 (2009). The moving party bears a “heavy burden” in seeking this “extraordinary relief.” *Winston–Salem/Forsyth Cnty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971). The Court must consider “four factors: ‘(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’” *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

As discussed in the State Opposition, a stay is not warranted because Defendants have not made a strong showing that they are likely to succeed on the merits; they will not be irreparably injured absent a stay; a stay will not substantially injure other parties involved in the proceeding; and the public interest weighs in favor of rejecting a stay. *See* State Opp. at 12–27.

The Ninth Circuit also rejected a similar request for a stay just weeks ago, ruling that Defendants’ argument “that, if the cases are remanded, the parties will be required to litigate the merits of [plaintiff’s] claims in state court simultaneously with these appellate proceedings, which will lead to increased litigation burdens and possible inefficiencies if this court later finds the cases were properly removed do[es] not rise to the level of irreparable harm.” *City & Cty. of Honolulu v. Sunoco LP*, No. 21-15313, 2021 WL 1017392, at *1 (9th Cir. Mar. 13, 2021).

The State can respond more fully if the Court permits Defendants to file a motion to stay pending appeal, but this Motion, and any such future motion to stay, should be denied.

Respectfully Submitted,

Dated: April 1, 2021

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