

**In the United States Court of Appeals
for the Eighth Circuit**

No. 21-1752

STATE OF MINNESOTA, PLAINTIFF-APPELLEE

v.

AMERICAN PETROLEUM INSTITUTE, ET AL.,
DEFENDANTS-APPELLANTS

**MOTION OF APPELLANTS
FOR AN EXTENSION OF TIME TO FILE APPELLANT BRIEF**

Pursuant to Federal Rule of Appellate Procedure 27, appellants move for a 60-day extension of time to file their principal brief. Such an extension will promote judicial efficiency by ensuring that briefing does not commence before the Supreme Court issues its decision in *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189, which will determine the issues over which this Court has jurisdiction in this appeal and may provide guidance on the resolution of one of appellants' grounds for removal. Appellee has indicated that it opposes this motion because appellants have not agreed to withdraw their motion for a stay of the remand order, which is currently pending before the district court.

1. Plaintiff-appellee is the State of Minnesota, represented by its Attorney General. Defendants-appellants are the American Petroleum Institute; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Koch Industries, Inc.; Flint Hills Resources LP; and Flint Hills Resources Pine Bend, LLC. In June 2020, the Attorney General filed a complaint against appellants in Minnesota state court purportedly for violations of state consumer-protections statutes, failure to warn, and fraud. D. Ct. Dkt. 1-1, at 73-82. The complaint alleges that appellants' production, sale, and promotion of fossil fuels have contributed to climate change and caused wide-ranging harm to Minnesota, its citizens, and fossil-fuel consumers more generally. *Id.* at 4, 57-70. The Attorney General seeks restitution, injunctive relief, and civil penalties. *Id.* at 82-83.

Petitioners removed this action to federal court, raising six grounds for removal. *See* D. Ct. Dkt. 1. One ground for removal was the federal-officer removal statute, 28 U.S.C. § 1442; another was that federal common law necessarily governs the State's claims pertaining to climate change, giving rise to federal-question jurisdiction, 28 U.S.C. § 1331. D. Ct. Dkt. 1, at 13-21, 32-47; *see also id.* at 12 (listing other grounds for removal). The Attorney General moved to remand the case to Minnesota state court, and the district court granted the motion. *See* D. Ct. Dkt. 35, 76.

Petitioner filed a notice of appeal under 28 U.S.C. §§ 1291 and 1447(d). Under the current briefing schedule, appellants' principal brief is due on May 25, 2021.

2. Under 28 U.S.C. § 1447(d), a court of appeals has jurisdiction to review an “order remanding a case to the State court from which it was removed pursuant to” the federal-officer or civil-rights removal statutes. In *Jacks v. Meridian Resources Co.*, 701 F.3d 1224 (2012), this Court interpreted Section 1447(d) to deprive it of jurisdiction to review any ground for removal other than the federal-officer ground at issue. *Id.* at 1229.

In October 2020, the Supreme Court granted review in *BP*. In that case, the municipal government of Baltimore, Maryland, filed a complaint in state court against a number of energy companies, including appellants Exxon Mobil Corporation and ExxonMobil Oil Corporation. The complaint asserts claims purportedly arising under state law to recover for harms that Baltimore alleges it has sustained and will sustain from the energy companies' global operations due to global climate change.

The energy companies removed the case to federal court in part on federal-officer grounds. The question before the Supreme Court in *BP* is whether Section 1447(d) permits a court of appeals to review all of the asserted grounds for removal where the removing defendant premised removal in part on the federal-officer or civil-rights removal statutes. *See* Pet. Br. at

I. The energy companies have also asked the Supreme Court to reverse the court of appeals' decision on the ground that federal common law necessarily governs Baltimore's claims pertaining to climate change. *See id.* at 37-45. The Supreme Court heard oral argument in January 2021, and a decision is expected by June.

3. Appellants request a 60-day extension of the time for filing their principal brief so that the Supreme Court can issue its decision in *BP* before briefing begins. The decision in that case will determine the scope of the Court's review in this appeal. If the Supreme Court holds that courts of appeals have jurisdiction to review a district court's entire remand order when removal is premised in part on the federal-officer removal statute, this Court will have jurisdiction to consider all of appellants' grounds for removal asserted in their notice of removal. In that event, appellants intend to raise multiple grounds for removal on appeal. If the Supreme Court holds that review is limited to the federal-officer ground, however, any time and resources the parties spent briefing other grounds for removal would be wasted.

In addition, the Supreme Court may determine in *BP* whether federal common law necessarily governs Baltimore's claims pertaining to climate change, thus permitting removal of those claims to federal court. A decision on that issue would likely affect this Court's disposition of appellants' feder-

al-common-law ground for removal, as the arguments in favor of removal on that ground here are materially similar to those in *BP*.*

To preserve the Court's and parties' resources by postponing briefing until after the Court's jurisdiction is clarified, appellants request that the Court extend the briefing schedule in this case by 60 days. Under that schedule, the brief of appellants would be due on July 26 (a Monday); the brief of appellee would be due 30 days after the Court issues the notice of docketing activity filing the brief of appellants; and the reply brief would be due 21 days after the Court issues the notice of docketing activity filing the brief of appellee.

* A petition for a writ of certiorari presenting the same issue is pending before the Supreme Court in a separate case. *See* Pet. at i, *Chevron Corp. v. City of Oakland*, No. 20-1089 (Jan. 31, 2021). The Court is expected to consider the case at its June 10 conference.

STEPHEN A. SWEDLOW
QUINN EMANUEL LLP
*191 North Wacker Drive,
Suite 2700
Chicago, IL 60606*

WILLIAM A. BURCK
QUINN EMANUEL LLP
*1300 I Street, N.W., Suite 900
Washington, D.C. 20005*

TODD NOTEBOOM
ANDREW W. DAVIS
PETER J. SCHWINGLER
STINSON LLP
*50 South Sixth Street,
Suite 2600
Minneapolis, MN 55402*

ANDREW M. LUGER
JONES DAY
*90 South Seventh Street,
Suite 4950
Minneapolis, MN 55402*

DEBRA R. BELOTT
JONES DAY
*51 Louisiana Ave., N.W.
Washington, DC 20001*

*Counsel for Appellants
Koch Industries, Inc.;
Flint Hills Resources LP; and
Flint Hills Resources Pine Bend, LLC*

MAY 5, 2021

Respectfully submitted,

/s/ Kannon K. Shanmugam
KANNON K. SHANMUGAM
JUSTIN ANDERSON
WILLIAM T. MARKS
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com*

THEODORE V. WELLS, JR.
DANIEL J. TOAL
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
*1285 Avenue of the Americas
New York, NY 10019*

JERRY W. BLACKWELL
G. TONY ATWAL
BLACKWELL BURKE P.A.
*431 South Seventh Street,
Suite 2500
Minneapolis, MN 55415*

*Counsel for Appellants
Exxon Mobil Corporation and
ExxonMobil Oil Corporation*

BRIAN D. SCHMALZBACH
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219

ANDREW G. MCBRIDE
MCGUIREWOODS LLP
888 16th Street N.W., Suite 500
Washington, D.C. 20006

THOMAS H. BOYD
ERIC F. SWANSON
WINTHROP & WEINSTINE, P.A.
225 South Sixth Street,
Suite 3500 Cappella Tower
Minneapolis, MN 554029

Counsel for Appellant
American Petroleum Institute

**CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS**

I, Kannon K. Shanmugam, counsel for appellants Exxon Mobil Corporation and ExxonMobil Oil Corporation and a member of the Bar of this Court, certify, pursuant to Federal Rules of Appellate Procedure 27(d)(1)(E) and (d)(2)(A) and 32(g)(1), that the foregoing Motion of Appellants for an Extension of Time to File Appellant Brief is proportionately spaced, has a typeface of 14 points or more, was prepared using Microsoft Word 2016, and contains 903 words. I further certify that the electronic version of this filing was automatically scanned for viruses and found to contain no known viruses.

MAY 5, 2021

/s/ Kannon K. Shanmugam
KANNON K. SHANMUGAM

CERTIFICATE OF SERVICE

I, Kannon K. Shanmugam, counsel for appellants Exxon Mobil Corporation and ExxonMobil Oil Corporation and a member of the bar of this Court, certify that, on May 5, 2021, I electronically filed the attached Motion of Appellants for an Extension of Time to File Appellant Brief with the Clerk through the Court's electronic filing system. I certify that all participants in the case are registered users with the electronic filing system and that service will be accomplished by that system.

/s/ Kannon K. Shanmugam
KANNON K. SHANMUGAM