

IN THE SUPREME COURT OF THE UNITED STATES

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No.

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BP P.L.C.; BP AMERICA, INC.; BP PRODUCTS NORTH AMERICA, INC.;  
CROWN CENTRAL LLC; CROWN CENTRAL NEW HOLDINGS LLC; CHEVRON  
CORP.; CHEVRON U.S.A. INC.; EXXON MOBIL CORP.; EXXONMOBIL OIL  
CORPORATION; CITGO PETROLEUM CORP.; CONOCOPHILLIPS; CONO-  
COPHILIPS COMPANY; PHILLIPS 66; SPEEDWAY LLC; HESS CORP.; CNX  
RESOURCES CORPORATION; CONSOL ENERGY, INC.; CONSOL MARINE TERMI-  
NALS LLC; SHELL PLC; SHELL USA, INC.,  
APPLICANTS

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

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APPLICATION FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

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To the Honorable John G. Roberts, Jr., Circuit Justice for  
the United States Court of Appeals for the Fourth Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, BP p.l.c.; BP  
America, Inc.; BP Products North America, Inc.; Crown Central LLC;  
Crown Central New Holdings LLC; Chevron Corp.; Chevron U.S.A. Inc.;  
Exxon Mobil Corp.; ExxonMobil Oil Corporation; Citgo Petroleum  
Corp.; ConocoPhillips; ConocoPhillips Company; Phillips 66; Speed-  
way LLC; Hess Corp.; CNX Resources Corporation; Consol Energy,  
Inc.; Consol Marine Terminals LLC; Shell plc; and Shell USA, Inc.,  
apply for a 60-day extension of time, to and including October 14,  
2022, within which to file a petition for a writ of certiorari to  
review the judgment of the United States Court of Appeals for the  
Fourth Circuit in this case. The judgment of the court of appeals

was entered on April 7, 2022, App., infra, 2a, and a petition for rehearing was denied on May 17, 2022, id. at 140a-141a. Unless extended, the time for filing a petition for a writ of certiorari will expire on August 15, 2022. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. This Court's decisions establish that federal common law necessarily and exclusively supplies the rule of decision for certain narrow categories of claims that implicate "uniquely federal interests," including where "the interstate or international nature of the controversy makes it inappropriate for state law to control." Texas Industries, Inc. v. Radcliff Materials, Inc., 451 U.S. 630, 640-641 (1981) (citation omitted). Interstate pollution is "undoubtedly" such an area. American Electric Power Co. v. Connecticut, 564 U.S. 410, 421 (2011). And under 28 U.S.C. 1331, federal district courts have jurisdiction over claims "founded upon federal common law." National Farmers Union Insurance Cos. v. Crow Tribe of Indians, 471 U.S. 845, 850 (1985) (citation omitted).

The federal courts of appeals have reached conflicting results on the application of that jurisdictional principle in the context of cases removed from state to federal court. In particular, the courts of appeals are in conflict on the question whether a federal district court has removal jurisdiction over a claim necessarily governed by federal common law but artfully pleaded under state law. That conflict has come into particular focus in the context of climate-change litigation, where another conflict has arisen: namely, over the question whether federal common law

necessarily and exclusively supplies the rule of decision for claims that seek redress for harms allegedly caused by global greenhouse-gas emissions.

2. This case has previously been before the Court. Respondent in this action is the municipal government of Baltimore, Maryland; applicants are 23 energy companies. On July 20, 2018, respondents sued applicants in Maryland state court, alleging that applicants have contributed to global climate change, which in turn has caused harm in Baltimore. The complaint asserts various claims, which respondent contends arise under state law. Several similar cases filed by state and municipal governments against various energy companies are pending in courts across the country.

Applicants removed this case to federal court. Applicants argued that federal jurisdiction lay over respondents' claims on several grounds, including that claims asserting harm from global climate change necessarily arise under federal common law and that the complaint's allegations pertain to actions that applicants took under the direction of federal officers. Respondent moved to remand the case to state court. The district court granted respondent's motion to remand. See App., infra, 94a-139a.

In its initial opinion in this case, the court of appeals affirmed only the district court's conclusion that federal jurisdiction did not lie under the federal-officer removal statute. App., infra, 11a. The court of appeals did not review the portions of the district court's remand order rejecting applicants' other grounds for removal, reasoning that 28 U.S.C. 1447(d) deprived it of appellate jurisdiction over those grounds. Ibid. Applicants

filed a petition for a writ of certiorari with this Court, presenting the question whether the court of appeals' jurisdiction was so limited. See 19-1189 Pet. I.

This Court granted the petition and held that Section 1447(d) permits appellate review of all grounds for removal in a case removed in part on federal-officer grounds. See 141 S. Ct. 1532, 1538 (2021). The Court then vacated the court of appeals' earlier judgment in this case and remanded the case for further consideration in light of its decision. See id. at 1543.

The court of appeals again affirmed. See App. infra, 1a-93a. As relevant here, the court of appeals held that respondents' claims did not arise under federal common law because, inter alia, any relevant federal common law had been displaced by the Clean Air Act. See id. at 17a-34a. In so holding, the court of appeals expressly departed from the Second Circuit's decision in City of New York v. Chevron Corp. 993 F.3d 81 (2021), which held that federal common law necessarily governs claims seeking redress for harms from global climate change, to the exclusion of state law, even when the Clean Air Act displaces any remedy available under federal common law. See id. at 94-95.

The court of appeals also concluded that the well-pleaded complaint rule prevents the removal of claims necessarily and exclusively governed by federal common law but artfully pleaded under state law to avoid federal jurisdiction. App., infra, 17a-18a, 31a-33a. That conclusion conflicts with decisions from several courts of appeals holding that artfully pleaded claims governed by

federal common law are removable. See, e.g., Sam L. Majors Jewelers v. ABX, Inc., 117 F.3d 922, 923 (5th Cir. 1997).

3. The undersigned counsel respectfully requests an additional 60-day extension of time, to and including October 14, 2022, within which to file a petition for a writ of certiorari. This case presents weighty and complex issues concerning the proper forum to litigate putative state-law claims that seek to hold energy companies liable for the effects of global climate change. In addition, counsel has briefing due in numerous cases before the current deadline of August 15, 2022, and immediately thereafter. See Hughes Communications India Private Limited v. DIRECTV Group, Inc., No. 21-3013 (2d Cir.) (Aug. 1, 2022); Arkansas Teachers Retirement System v. Goldman Sachs Group, Inc., No. 22-484 (2d Cir.) (Aug. 3); United States v. Greenlaw, No. 22-10511 (5th Cir.) (Aug. 15); Connecticut Children's Medical Center v. Continental Casualty Co., No. 22-322 (2d Cir.) (Aug. 15); City of Warwick Municipal Employees Pension Fund v. Restaurant Brands International, Inc., No. 2022-2336 (N.Y. App. Div. 1st Dep't) (Aug. 19); Samia v. United States, No. 18-3074 (2d Cir.) (petition for cert. due Sept. 2); ENT & Allergy Associates, LLC v. Continental Casualty Co., No. 22-697 (2d Cir.) (Sept. 7); MGG Investment Group LP v. Bemak N.V., Ltd., No. 2021-SC-561 (Ky.) (Sept. 12). Counsel is also scheduled to present oral argument in four cases during the same period. United States v. Gramins, No. 21-5 (2d Cir.) (Sept. 8); Syntel Sterling Best Shores Mauritius Limited v. Trizetto Group, Inc., No. 21-1370 (2d Cir.) (Sept. 19); Arkansas Teachers Retirement System v. Goldman Sachs Group, Inc., No. 22-484 (2d

Cir.) (Sept. 21); Connecticut v. Exxon Mobil Corp., No. 21-1446 (2d Cir.) (Sept. 23). Counsel respectfully submits that an extension to prepare the petition in this case would allow applicants to sharpen the issues for review.

Respectfully submitted.

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