IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Plaintiff, v. EXXON MOBIL CORP., *et al.*, Defendants.	Civil Action No. 1:20-cv-01932-TJK

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO STAY EXECUTION OF REMAND ORDER PENDING APPEAL

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INTRODUCTION

Defendants' pending appeal will present the D.C. Circuit with its first opportunity to evaluate whether climate change suits like this one belong in a federal forum. Although Plaintiff insists that this question is trivial and that there is no argument for federal jurisdiction, the Supreme Court apparently does not agree—as evidenced by the fact that it recently called for the Solicitor General's views in a climate change case involving some of the same jurisdictional questions raised in Defendants' appeal. Because of the Supreme Court's order, the District of Maryland recently granted a stay of its remand order and kept the case in federal court because "litigation in the state court now has potential to do more harm than good." *City of Annapolis v. BP P.L.C.*, 2022 WL 15523629, at *5 (D. Md. Oct. 27, 2022). The same is true here.

Indeed, even *before* the Supreme Court's Order, numerous district courts had stayed climate change cases pending appeal so that their respective Circuits could weigh in on whether the defendants were entitled to a federal forum. Here, as in those cases, "[t]he public interest would be best served by avoiding the possibility of unnecessary or duplicative litigation and concentrating resources on litigating Plaintiff's claims in the proper forum after the [D.C.] Circuit determines the jurisdictional issues presented in this case." *Delaware ex rel. Jennings v. BP Am. Inc.*, 2022 WL 605822, at *3 (D. Del. Feb. 8, 2022); *see also Minnesota by Ellison v. Am. Petroleum Inst.*, 2021 WL 3711072, at *4 (D. Minn. Aug. 20, 2021) ("[T]he public also has an interest in conserving resources by avoiding unnecessary or duplicative litigation, particularly where, as here, the Eighth Circuit will be addressing for the first time whether the state court has jurisdiction to resolve the claims and redress the injuries alleged at all."); *City of Hoboken v. Exxon Mobil Corp., et al.*, No. 20-cv-14243, Dkt. 133 at 5 (D.N.J. Dec. 15, 2021) ("[C]onsideration of judicial economy and conservation of resources also weigh in favor of granting Defendants' motion [to stay pending appeal].").

Plaintiff *completely ignores* these cases in its Opposition. Instead, it invokes inapposite decisions—like the Third Circuit's one-line denial of a motion to stay the mandate, which was issued only after both district courts stayed execution of remand to allow the court of appeals the opportunity to consider these issues, *see* Opp. at 1–2 (citing *City of Hoboken v. Chevron Corp., et al.*, No. 21-2728, Doc. 146 (3d Cir. Oct. 12, 2022))—and argues that Defendants cannot possibly be harmed by having to litigate this suit in Superior Court. Plaintiff is incorrect. If this case is remanded, the D.C. Superior Court "could (and would be within its rights to) rule on various substantive and procedural motions, including dispositive motions that require the adjudication of the parties' claims and defenses." *Delaware*, 2022 WL 605822, at *3. This could permanently deprive—or, at a minimum, severely hamper—Defendants' ability to exercise their right to a federal forum and a federal adjudicator: "There may be no practical way to 'un-ring the bell' of the state court's intervening rulings if the [D.C.] Circuit ultimately determines that the case should proceed in federal court." *Id.* On the other hand, a "stay pending appeal in this case will not substantially harm Plaintiff and will serve the public interest"—by avoiding duplicative and unnecessary litigation while the D.C. Circuit considers the serious legal questions raised by Plaintiff's novel case. *Id.* "The public interest would be best served by avoiding the possibility of unnecessary or duplicative litigation and concentrating resources on litigating Plaintiff's claims in the proper forum after the . . . Circuit determines the jurisdictional issues presented in this case." *Id*.

Accordingly, the Court should stay execution of the Remand Order pending the outcome of Defendants' appeal. At a minimum, the Court should continue its current stay of the Remand Order to provide sufficient time for Defendants to seek a stay pending appeal from the D.C. Circuit and for the D.C. Circuit to rule on that application.

ARGUMENT

I. Defendants' Appeal Raises Serious Legal Questions About Federal Jurisdiction Over Climate Change-Related Claims.

Defendants have shown the requisite "likelihood of success on the merits of their appeal." *Cigar Ass'n of Am. v. U.S. Food & Drug Admin.*, 317 F. Supp. 3d 555, 561 (D.D.C. 2018). As Defendants explained in their Motion, showing a "likelihood of success" does not require proving that the appeal will succeed—otherwise no district court would ever issue a stay pending appeal, as the court would have to conclude that its own ruling was going to be reversed. *See* Mot. at 6–7; *Loving v. I.R.S.*, 920 F. Supp. 2d 108, 110 (D.D.C. 2013) ("[T]he Court need not determine that it erred and will likely be reversed—an acknowledgment one would expect few courts to make."). Rather, an appellant seeking a stay pending appeal need only show that there are "serious legal questions going to the merits," which are "serious, substantial, [and] difficult" so "as to make them a fair ground of litigation and thus for more deliberative investigation." *Cigar Ass'n*, 317 F. Supp. 3d at 561 (quoting *Population Inst. v. McPherson*, 797 F.2d 1062, 1078 (D.C. Cir. 1986)); *In re Brown Bros. Harriman & Co. Acct. No. 8870792*, 2009 WL 613717, at *1 (D.D.C. Mar. 10, 2009) ("Although the standard requires a showing that the party has 'a substantial likelihood of success on the merits,' courts have held that a party may satisfy that requirement by raising a 'serious legal question.'" (quoting *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977)).

Defendants' appeal raises several "serious legal questions." *Cigar Ass'n*, 317 F. Supp. 3d at 561. Indeed, as the District of Delaware concluded in granting a stay in a similar climate change case: "The litigation surrounding Plaintiff's motion to remand presents a host of novel and complex issues of federal removal jurisdiction." *Delaware*, 2022 WL 605822, at *2.

First and foremost among these questions is whether Plaintiffs' claims arise under federal common law. "For over a century, a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." *City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021). As the Second Circuit held in *City of New York*, even if a plaintiff "is not expressly seeking to impose a standard of care or emission restrictions," a plaintiff that uses state law claims to impose costs on fossil fuel production and sale is functionally "regulat[ing]" emissions—transforming the plaintiff's state law claims into claims governed by federal common law. *Id.* at 92–93. And here, Plaintiff is attempting to use D.C. consumer protection laws to impose regulatory requirements on fossil fuel production—including by forcing fossil fuel producers to promulgate wide-ranging disclaimers regarding the purported "risks of burning fossil fuels." Compl. ¶¶ 174(c); 181(c); 188(c); 195(c); *see also id.* ¶¶ 165–68. Because *City of New York* was brought in federal court and raised nuisance claims—based on allegations similar to the "consumer protection and misrepresentation claims alleged" in this case—the Second Circuit decision "provides a legal justification for addressing climate change injuries through the framework of federal common law and at least slightly increases the likelihood that Defendants will prevail on their efforts to keep this, and similar actions, in federal court." *Minnesota*, 2021 WL 3711072, at *2 (granting stay of climate case where consumer protection claims were asserted).

The Supreme Court has also indicated that the federal common law issue raises serious legal questions. Two months ago, the Supreme Court invited the Solicitor General to submit the views of the United States on the certiorari petition in *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 21-1550 (U.S.) ("*Suncor*"), which squarely raises the question of "[w]hether federal common law necessarily and exclusively governs claims

seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate." *Suncor* Petition for a Writ of Certiorari at i. The Supreme Court's call for the Solicitor General's views substantially increases the probability of a grant of certiorari. In fact, as a statistical matter, review is *more than 46 times* more likely to be granted in cases where the Supreme Court asks the Solicitor General to weigh in. Mot. at 10. And while the Solicitor General's views cannot be known until the brief is filed, the United States' prior briefing has supported Defendants' position that claims related to climate change are "necessarily federal in nature" and thus removable. *Id*. The fact that the Supreme Court has expressed such strong interest in the federal common law question—and the fact that the federal government has supported Defendants' position that climate change claims arise under federal common law and are removable on that basis—shows that whether Plaintiff's claims arise under federal common law "is a fair ground for litigation," and thus presents a "serious legal question." *In re Brown Bros.*, 2009 WL 613717, at *1 (internal quotation marks omitted).

In addition to the federal common law issue, Defendants have raised several other independent grounds for federal jurisdiction—which involve unsettled legal issues and matters of first impression in the D.C. Circuit. Mot. at 12–14. Because the Supreme Court has now ruled that all grounds for removal are reviewable in a case, like this one, that involves federal officer removal, "this Court's remand order will be subject to plenary appellate review on all the removal grounds raised by Defendants." *Delaware*, 2022 WL 605822, at *2. And because "Defendants need only prevail on one of these grounds in order to defeat the remand," this further increases the likelihood of Defendants' success on appeal. *Id.* ("[T]he Court finds that Defendants have made the necessary showing of a likelihood of success on appeal."). In short, there are several "serious legal questions" here. *Cigar Ass'n*, 317 F. Supp. 3d at 561.

In its opposition, Plaintiff starts by arguing that Defendants have mischaracterized the stay standard because "Defendants urge the Court to employ a 'sliding scale approach' that requires balancing the probability of success on appeal with the other three factors." Opp. at 3. But the "sliding scale" approach does not come from Defendants—it comes from the D.C. Circuit. *See Davenport v. Int'l Bhd. of Teamsters, AFL-CIO*, 166 F.3d 356, 361 (D.C. Cir. 1999) (explaining that the stay "factors interrelate on a sliding scale and must be balanced against each other"). Although Plaintiff resists the "sliding scale" standard, "the district judges in this Circuit continue to adhere to binding precedent and apply the sliding scale approach." *Cigar Ass'n*, 317 F. Supp. 3d at 560. In any event, the "sliding scale" is largely beside the point, as Defendants do not argue that the success of their motion depends on taking this approach—indeed, Defendants do not even mention the "sliding scale" approach in their motion. Instead, Defendants have demonstrated that all four stay factors are satisfied, regardless of how the factors are "balanced against each other." *Davenport*, 166 F.3d at 361.

Next, Plaintiff says that raising "a serious legal issue" is not enough and "Defendants' proposed standard for granting a stay pending appeal would turn the law on its head." Opp. at 9–10. But again, the "serious legal question" standard is settled D.C. Circuit law. *Washington Metro.*, 559 F.2d at 844 (a stay "is appropriate when a serious legal question is presented"); *Philipp v. Fed. Republic of Germany*, 436 F. Supp. 3d 61, 67 (D.D.C. 2020) ("[T]his Court finds that Defendants' argument that this case presents serious and difficult legal questions weighs in favor of Defendants' request for a stay."). It is Plaintiff that is trying to "turn the law on its head." Opp. at 10. To support its argument that a "serious legal issue or matter of first impression" is insufficient for a stay, Plaintiff cites a single, reversed case—*In re Verizon Internet Servs.*, 257 F. Supp. 2d 244 (D.D.C. 2003), *rev'd*, 351 F.3d 1229 (D.C. Cir. 2003). In *Verizon*, the court denied

a stay simply because it believed the appellant's chance of success was "minimal"—and the court noted that the novelty of the appellant's arguments did not change the stay calculus because "the statutory and constitutional claims it asserts are ultimately not difficult." 257 F. Supp. 2d at 268–270. Here, by contrast, "the issue of whether federal courts can exercise removal jurisdiction over climate change-related state-law claims leaves 'reasonable room for disagreement,'" *Delaware*, 2022 WL 605822—as confirmed by *City of New York*, the Supreme Court's actions, and the United States' oral and written arguments in other cases. *See* Mot. at 10–11.

Plaintiff also argues that *City of New York* is inapplicable—because the case was filed in federal court—and that there is no chance that Defendants' federal common law argument will prevail. Opp. at 11–13. But the fact that *City of New York* was filed in federal court does not change its key holding that purportedly *state law* claims complaining about fossil fuel production are actually *federal common-law* claims in disguise—the court held they "must be . . . federal claims." *City of New York*, 993 F.3d at 95 (emphasis added); *see id.* at 92 (pleading such claims as state law causes of action does not change that the claims are "simply beyond the limits of state law"). Other courts that have declined to follow *City of New York* when granting remand have nevertheless recognized that "*City of New York* provides a legal justification for addressing climate change injuries through the framework of federal common law"—and concluded that *City of New York* thus supports a stay of their remand decision pending appeal. *Minnesota*, 2021 WL 3711072, at *2. And, if Plaintiff were right and nothing supported Defendants' position, the Supreme Court would have summarily denied the pending certiorari petition in *Suncor*—instead, the Court asked the Solicitor General to provide the views of the United States government. Plaintiff asserts that this is irrelevant and that the Supreme Court will deny the petition anyway (Opp. at 13–14), but the reality is that the call for the Solicitor General's views is an important step that significantly

increases the chance of a grant. Mot. at 10. Indeed, the Supreme Court already granted certiorari once in these climate change cases and ruled in the defendants' favor, *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021), and there are now strong reasons to believe it will do so again.

Finally, Plaintiff argues that the Court was correct to find that all of Defendants' other grounds for removal are meritless, and they cannot support a stay. Opp. at 16–18. But Plaintiff concedes that "the D.C. Circuit has not yet weighed in" on these issues, Opp. at 11—which militates in favor of a stay. *See Cigar Ass'n*, 317 F. Supp. 3d at 561 (finding "serious legal questions" when the law was not settled in the D.C. Circuit and "the D.C. Circuit might well disagree with this court's resolution" of the issues); *Brown Bros.*, 2009 WL 613717, at *1 (finding there was a "serious legal question" when the court was "the first court to interpret" a particular statute). And the fact that this Court disagreed with Defendants on these issues obviously does not preclude a stay pending appeal. As another court explained when granting a stay pending appeal in a climate change case, although "the Court [was] confident that remand was the only legally defensible option at the time it issued its Order," it also "recognize[d] that this action raises weighty and significant questions that intersect with rapidly evolving areas of legal thought." *Minnesota*, 2021 WL 3711072, at *2; *Cigar Ass'n*, 317 F. Supp. 3d at 561 ("the fact that the court does not share Plaintiffs' conviction that it erred is not fatal to their request for an injunction pending appeal"). While this Court has disagreed with Defendants' position on removal and federal jurisdiction, these issues raise "difficult legal questions" that are "a fair ground of litigation"—and a stay is warranted. *Cigar Ass'n*, 317 F. Supp. 3d at 561.

II. Defendants Will Suffer Irreparable Harm Absent a Stay.

If this case were to proceed in state court, Defendants would lose their right to have a federal court decide the issues in this case—an irreparable injury that cannot be remedied even if Defendants ultimately prevail in their appeal. "During the pendency of the appeal, the [D.C.] Superior Court could (and would be within its rights to) rule on various substantive and procedural motions, including dispositive motions that require the adjudication of the parties' claims and defenses." *Delaware*, 2022 WL 605822, at *3. Multiple district courts in similar climate change-related cases have stayed execution of their remand orders to provide their courts of appeals the opportunity to consider these issues of first impression, concluding that Defendants would suffer irreparable harm absent a stay pending appeal. Mot. at 15–17; *see, e.g.*, *Delaware*, 2022 WL 605822, at *3 ("Thus, in the Court's view, the likelihood of irreparable injury is real and not—as Plaintiff contends—'highly speculative.'"); *City of Hoboken*, No. 20-cv-14243, Dkt. 133 at 5 ("Given Defendants' clear right to have the Third Circuit review the Remand Order, returning the case now could defeat the very purpose of appellate review."); *Minnesota*, 2021 WL 3711072, at *3 ("[D]ispositive resolution of the claims [by a state court] pending full appellate review would constitute a concrete and irreparable injury . . . .").

Plaintiff refuses to respond to the climate change cases finding that the defendants showed irreparable harm in practically identical circumstances. Instead, Plaintiff invokes the truism that "[p]arallel litigation, in and of itself, is not unusual in American jurisprudence." Opp. at 6. But this misses the point. The problem is not simply that a remand will result in parallel litigation in the D.C. Circuit and D.C. Superior Court. Rather, remanding this case will necessarily deprive Defendants of their right to have the issues in the case decided by a federal adjudicator. "There may be no practical way to 'un-ring the bell' of the state court's intervening rulings if the [D.C.]

Circuit ultimately determines that the case should proceed in federal court." *Delaware*, 2022 WL 605822, at *3. This, on its own, is "irreparable injury." *Id.*

Plaintiff also argues that the fact that the Superior Court may issue rulings in the case before the appeal is over—and even render a final judgment—is somehow irrelevant, claiming that "[a] majority of courts have held that a risk of mootness, standing alone, does not constitute irreparable harm." Opp. at 7. But Plaintiff cites only bankruptcy cases for this proposition—all of which merely hold that, *in the bankruptcy context*, the possibility that completion of the bankruptcy reorganization process will moot an appeal is not enough to justify a stay. *See id.* (citing *In re Salas*, 2019 WL 2870132, at *3 (D.D.C. July 3, 2019); *In re Hardy*, 2017 WL 2644693, at *7 (Bankr. D.D.C. June 19, 2017)); *see also In re Sabine Oil & Gas Corp.*, 548 B.R. 674, 682 (Bankr. S.D.N.Y. 2016) (explaining that the "risk that [an] appeal will become equitably moot upon confirmation" of a bankruptcy reorganization plan is generally not "irreparable harm" (citations omitted)). But outside of bankruptcy, the risk that an appeal will be mooted without a stay *does* show irreparable harm—and a stay is warranted when "failure to enter a stay will result in a meaningless victory in the event of appellate success[.]" *Minnesota*, 2021 WL 3711072, at *3 (quoting *United States v. Fourteen Various Firearms*, 897 F. Supp. 271, 274 (E.D. Va. 1995)).

Plaintiff also argues that the appeal will be resolved before the Superior Court renders a final judgment. *See* Opp. at 7. But even if that were true, the Superior Court will still "rule on various substantive and procedural motions, including dispositive motions that require the adjudication of the parties' claims and defenses." *Delaware*, 2022 WL 605822, at *3. One of the Superior Court's first tasks after remand will be deciding motions to dismiss, and issuing substantive rulings on the nature of and law governing Plaintiffs' claims. Even if Defendants

prevail on appeal, "[t]here may be no practical way to 'un-ring the bell' of the state court's intervening rulings" on these threshold motions. *Id.*

Further, while Plaintiff suggests that the appeal will be over in a year—since this is the "median time" for resolution of an appeal in the D.C. Circuit (Opp. at 8)—this ignores that the appellate process may be prolonged by resolution of the Supreme Court proceedings. The Solicitor General's office is not under an obligation to render its views in a particular timeframe—and it may not respond to the Court's request for its views until next year, potentially pushing final resolution of the *Boulder* case into the Supreme Court's 2023-24 Term. As another court recently observed, "the indefinite time frame allowed for Solicitor General involvement" pushes the probable date of appellate resolution back—meaning that there is more time in which "the state court could reach dispositive and irreversible outcomes." *City of Annapolis*, 2022 WL 15523629, at *4. "For this reason," the irreparable harm factor "weighs in Defendants' favor." *Id.*

As multiple courts have held in practically identical circumstances, "the likelihood of irreparable injury is real and not – as Plaintiff contends – 'highly speculative.'" *Delaware*, 2022 WL 605822, at *3; *Annapolis*, 2022 WL 15523629, at *4 (explaining that the "potential that the state court could reach dispositive and irreversible outcomes" means that the irreparable harm factor "weighs in Defendants' favor"); *Minnesota*, 2021 WL 3711072, at *3. If this case is remanded, the Superior Court will issue rulings on Defendants' arguments and defenses that may prove irreversible as a practical matter—and, hence, irreparable.

III. The Balance of Harms Tilts Sharply in Defendants' Favor.

A stay will not harm Plaintiff—which will benefit from avoiding duplicative litigation as well. Mot. at 18–19. "The public interest would be best served by avoiding the possibility of unnecessary or duplicative litigation and concentrating resources on litigating Plaintiff's claims in

the proper forum after the [D.C.] Circuit determines the jurisdictional issues presented in this case." *Delaware*, 2022 WL 605822, at *3.

In response, Plaintiff raises two somewhat contradictory arguments, asserting that (1) Defendants are currently engaged in "ongoing deception of District residents," and, thus, a stay would be harmful; and (2) Plaintiff's Complaint involves alleged conduct that occurred decades ago, so "the elderly age of witnesses" poses the risk of the "loss of evidence." Opp. at 19. Neither argument holds water.

First, Plaintiff's "ongoing deception" argument is make-weight. Opp. at 19. Citing more than 70 paragraphs of its Complaint, Plaintiff says that "[e]very day of delay" leads to more "climate disinformation" that "exacerbates the local climate harms facing the District." *Id.* at 21. But this lawsuit "cannot turn back the clock" on climate change, and Plaintiff cannot seriously contend that these vague allegations show a real, concrete harm that will be created by a stay pending appeal. *See City of Annapolis v. BP P.L.C.*, 2021 WL 2000469, *4 (D. Md. May 19, 2021) ("[T]he outcome of this lawsuit cannot turn back the clock on the atmospheric and ecological processes that defendants' activities have allegedly helped set in motion."). And notwithstanding Plaintiff's assertion that "time is of the essence" (Opp. at 21), Plaintiff waited more than three years to bring this lawsuit after the first, highly publicized, climate change suit was filed—undermining Plaintiff's claim of urgency. *Delaware*, 2022 WL 605822, at *3 n.3 (explaining that it was "relevant to the Court's [stay] calculation . . . that Plaintiff waited for approximately three years after the first state or locality filed a climate change-related lawsuit before bringing its case").

Indeed, Plaintiff's own actions belie any suggestion that it could be prejudiced by a short stay. Plaintiff waited until 2020 to bring this lawsuit even though it has long been on notice of the potential impacts of emissions from fossil fuel products on the global climate. For example, almost

thirty years earlier, Former Representative Eleanor Holmes Norton, while representing the citizens of the District in Congress, co-sponsored the Global Climate Protection Act of 1992, which found, among other things, that "manmade emissions of carbon dioxide (CO_2) are dramatically increasing the natural concentrations of this greenhouse gas in the Earth's atmosphere; . . . [and] such a change in global climate could increase the frequency and severity of hurricanes and droughts, have disastrous impacts on the planet's agricultural productivity, flood coastal areas and wetlands, inundate drinking water supplies with salt water, devastate many of the planet's natural ecosystems, cause serious human health impacts, and threaten the habitability of the Earth." H.R. 4750, 102nd Cong. § 2 (1992). Similarly, in 2001, almost twenty years before Plaintiff filed this suit, Representative Norton co-sponsored a resolution finding "that most of the observed warming over the last fifty years is attributable to human activities, including fossil-fuel generated carbon dioxide emissions." H.R. 117, 107th Cong. (2001). And in 2005, Plaintiffs filed a lawsuit in which the Supreme Court ultimately found that a "well-documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere." *Massachusetts v. E.P.A.*, 549 U.S. 497, 504–05 (2007). Given Plaintiff's long-held knowledge of the potential relationship between greenhouse gas emissions and the injuries of which it now complains, it cannot seriously argue that it will prejudiced by a short stay.

Second, Plaintiff's argument that unidentified witnesses are supposedly aged is devoid of detail and has been rejected by other courts. Plaintiff does not explain what witness testimony it is at risk of losing or why this unidentified testimony is important. *See* Opp. at 19. As the *Delaware* court explained, the vague "risk [that] documentary and testimonial discovery materials will be lost, and memories will fade"—a risk that is present in all cases—is not reason to deny a stay. *Delaware*, 2022 WL 605822, at *3. If Plaintiff has an actual, concrete need to preserve

specific evidence while Defendants' appeal is pending, the Federal Rules provide a way to do so. *See* Fed. R. Civ. P. 27(b)(1) (allowing for depositions to preserve specific, important testimony pending appeal). "[A] relatively short pause of this likely lengthy litigation will not substantially harm Plaintiff's ability to prosecute its case." *Delaware*, 2022 WL 605822, at *3.

Ultimately, "while the public has an interest in swift resolution of legal disputes, the limited stay" Defendants request "will not 'indefinitely delay this case,' contrary to Plaintiff's protestations." *Id.* Rather, "[t]he interests of judicial economy and the conservation of public resources strongly favor a stay." *Id.* "Should the [D.C.] Circuit ultimately disagree with the Court's reasoning and find that remand was unwarranted, the public would be better served by concentrating resources and litigating these claims in the most appropriate forum." *Minnesota*, 2021 WL 3711072, at *4. "Should the [D.C.] Circuit uphold the remand order, the [Plaintiff] will not be unduly prejudiced." *Id.*

CONCLUSION

For the foregoing reasons, the Court should grant the Motion and stay execution of the Remand Order pending appeal. At the very least, the Court should continue its temporary stay to preserve Defendants' right to seek a stay from the D.C. Circuit and allow the D.C. Circuit to rule on that application.

Dated: December 19, 2022

Respectfully submitted,

By: */s/ Theodore V. Wells, Jr.*
Theodore V. Wells, Jr. (D.C. Bar No. 468934)
Daniel J. Toal (*pro hac vice*)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064

By: */s/ Theodore J. Boutrous, Jr.*
Theodore J. Boutrous, Jr., (D.C. Bar No. 420440)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
E-mail: tboutrous@gibsondunn.com

Tel: (212) 373-3000
Fax: (212) 757-3990
E-mail: twells@paulweiss.com
E-mail: dtoal@paulweiss.com

Justin Anderson (D.C. Bar No. 1030572)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, NW
Washington, DC 20006-1047
Tel: (202) 223-7321
Fax: (202) 223-7420
E-mail: janderson@paulweiss.com

Patrick J. Conlon, (D.C. Bar No. 414621)
EXXON MOBIL CORPORATION
22777 Springwoods Village Parkway
Spring, TX 77389
Tel: (832) 624-6336
E-mail: patrick.j.conlon@exxonmobil.com

Craig Thompson (D.C. Bar No. 500168)
VENABLE LLP
750 East Pratt Street, Suite 900
Baltimore, MD 21202
Tel: (410) 244-7605
Fax: (410) 244-7742
E-mail: cathompson@venable.com

Attorneys for Defendants EXXON MOBIL CORPORATION and EXXONMOBIL OIL CORPORATION

By: */s/ David C. Frederick*
David C. Frederick (D.C. Bar No. 431864)
Grace W. Knofczynski (D.C. Bar. No. 1500407)
Daniel S. Severson (D.C. Bar. No. 208807)
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036
Tel: (202) 326-7900
Fax: (202) 326-7999

Thomas G. Hungar (D.C. Bar No. 447783)
Joshua S. Lipshutz (D.C. Bar No. 1033391)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5306
Tel: (202) 955-8500
E-mail: thungar@gibsondunn.com
E-mail: jlipshutz@gibsondunn.com

Attorneys for Defendants CHEVRON CORP. and CHEVRON U.S.A.

By: */s/ James W. Cooper*
James W. Cooper (D.C. Bar. No. 421169)
Ethan Shenkman (D.C. Bar No. 454971)
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
Tel: (202) 942-5000
Fax: (202) 942-5999
E-mail: james.w.cooper@arnoldporter.com
E-mail: ethan.shenkman@arnoldporter.com

Nancy G. Milburn (*pro hac vice*)
Diana E. Reiter (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Tel: (212) 836-8000
Fax: (212) 836-8689
E-mail: nancy.milburn@arnoldporter.com
E-mail: diana.reiter@arnoldporter.com

John D. Lombardo (*pro hac vice*)
Matthew T. Heartney (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Tel: (213) 243-4000
Fax: (213) 243-4199
E-mail: john.lombardo@arnoldporter.com
E-mail: matthew.heartney@arnoldporter.com

Jonathan W. Hughes (*pro hac vice*)

E-mail: dfrederick@kellogghansen.com
E-mail: gknofcynzski@kellogghansen.com
E-mail: dseverson@kellogghansen.com

Attorneys for Defendants SHELL PLC (F/K/A ROYAL DUTCH SHELL PLC) and SHELL USA, INC. (F/K/A SHELL OIL COMPANY)

ARNOLD & PORTER KAYE SCHOLER LLP
3 Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Tel: (415) 471-3156
Fax: (415) 471-3400
E-mail: jonathan.hughes@arnoldporter.com

Attorneys for Defendants BP PLC and BP AMERICA INC.