No. _____

In the Supreme Court of the United States

HONEYWELL INTERNATIONAL INC., ET AL.,

Petitioners,

v.

MEXICHEM FLUOR, INC., ET AL.,

Respondents.

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

To the Honorable John G. Roberts, Jr., Chief Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

1. Pursuant to Supreme Court Rule 13.5, petitioners Honeywell International Inc. (Honeywell) and The Chemours Company FC, LLC (Chemours) respectfully request a 60-day extension of time, until Monday, June 25, 2018, within which to file a petition for a writ of certiorari. The court of appeals issued its opinion on August 8, 2017. A copy of the opinion is attached. The full court denied rehearing en banc on January 26, 2018. A copy of that order is attached. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due April 26, 2018. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This petition concerns a D.C. Circuit decision striking down a federal environmental regulation. In the 1980s, Congress became concerned about the depletion of the ozone layer. When Congress amended the Clean Air Act in 1990, it added a new Title VI that would regulate ozone-depleting substances. Title VI, with few exceptions, requires manufacturers to phase out their use of ozone-depleting substances. 42 U.S.C. §§ 7671c(b)-(c), 7671d(a). Section 612(a) of the Clean Air Act, one of the key provisions of Title VI, requires that "[t]o the maximum extent practicable, [ozone depleting] … substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment." *Id.* § 7671k(a). To implement Section 612(a), Section 612(c) requires EPA to issue a list of authorized and prohibited substitute substances based on the safety and availability of the substances, and gives EPA authority to move substitutes between the two lists as new alternatives are developed and become available. *Id.* § 7671k(c).

4. For much of the last two decades, EPA has permitted manufacturers to replace ozone-depleting substances with hydrofluorocarbons (HFCs). But EPA eventually came to understand that HFCs contribute to climate change, and concluded that climate change is a potentially catastrophic global threat. *See*

Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,497–98 (Dec. 15, 2009).

5. Thus, in 2015, pursuant to Title VI, EPA promulgated a Final Rule that moved certain HFCs from the list of safe substitutes onto the list of prohibited substitutes. *Protection of Stratospheric Ozone: Change of Listing Status for Certain Substitutes Under the Significant New Alternatives Policy Program*, 80 Fed. Reg. 42,870 (July 20, 2015). EPA thereby barred the use of certain HFCs in aerosols, motor vehicle air conditioners, commercial refrigerators, and foams.

6. Respondents here (Petitioners below) are manufacturers of HFCs. They challenged the rule in the D.C. Circuit on two grounds. First, they contended that the 2015 Rule exceeded EPA's statutory authority under Section 612 of the Clean Air Act, and second, they argued that EPA's decision in the 2015 Rule to remove HFCs from the list of safe substitutes was arbitrary and capricious.

7. Petitioners Honeywell and Chemours have invested heavily to invent new substitutes for ozone-depleting substances; these new substitutes have a dramatically lower global warming potential than HFCs. Honeywell and Chemours intervened as respondents in the D.C. Circuit in defense of the EPA's rule.

8. In a divided decision, a panel of the court of appeals held that EPA lacked the statutory authority to require manufacturers of HFCs to cease using HFCs "*if those manufacturers already replaced ozone-depleting substances with HFCs at a time when HFCs were listed [by EPA] as safe substitutes*" for ozone-depleting substances. *Mexichem Fluor, Inc. v. EPA*, 866 F.3d 451, 458 (D.C. Cir.

2017) (emphasis in original). The panel also held that EPA acted reasonably in adding HFCs to the list of prohibited substitutes.

9. With respect to its statutory holding, the panel majority held that the word "replace" in section 612(a) of Title VI unambiguously refers only to a single instance of replacement. Applying *Chevron* step 1, the panel majority held that the statute thus does not permit EPA to require manufacturers that have already "replaced" an ozone-depleting product with another, non-ozone-depleting product to switch to a new substitute, even if new facts come to light showing that the new substitute reduces overall risks to human health and the environment. In the court's view, the word "replace" unambiguously means "to take the place of," and refers only to the first replacement of the original ozone-depleting substance. *Mexichem Fluor, Inc. v. EPA*, 866 F.3d at 458.

10. Judge Wilkins concurred in part and dissented in part. *Id.* at 464 (Wilkins, J., concurring in part and dissenting in part). Judge Wilkins agreed with the panel majority that EPA acted reasonably in adding HFCs to the prohibited substances list. But he disagreed with the panel majority's conclusion that section 612(a) of Title VI barred EPA from requiring manufacturers who have already substituted HFCs for ozone-depleting substances to begin using a new substitute substance more protective of human health and the environment than HFCs. In Judge Wilkins' view, it would have been reasonable for EPA to determine, in the context of the statute, that the word "replace" means "to provide a substitute for" rather than "to take the place of." *Id.* at 465-66. EPA could accordingly order a

manufacturer to cease using a substitute for an ozone-depleting substance once a more protective substitute is available. *Id.*

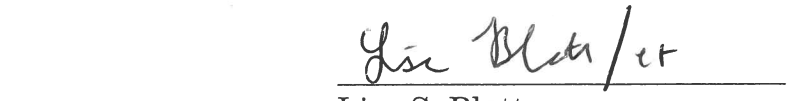
11. This is a complex case involving multiple petitioners, respondents, and intervenors below, and the stakes are extremely high. HFCs contribute significantly to global warming. Left undisturbed, a ruling that EPA categorically and unambiguously lacks the authority to regulate HFCs in a variety of settings could significantly impact the ability of the United States to respond effectively to the threat of climate change.

12. Petitioners respectfully request an extension of time to file a petition for certiorari. A 60-day extension would allow counsel sufficient time to review the extensive record, including an extensive rulemaking record and detailed legislative history, research and analyze the issues presented, and prepare the petition for filing. In addition, undersigned counsel have a number of other pending matters that will interfere with counsel's ability to file the petition on April 26, 2018. These include, among others, four additional petitions for certiorari due March 12, 2018, April 7, 2018, April 30, 2018, and May 9, 2018, and a reply brief on a petition for a writ of certiorari due around March 25, 2018.

Wherefore, petitioners respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to June 25, 2018.

March 5, 2018

Respectfully submitted,



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CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, petitioners make the following disclosures:

Honeywell International Inc. is a publicly traded corporation. It has no parent corporations and no publicly held company known to Honeywell owns 10 percent or more of its stock.

The Chemours Company FC, LLC is a wholly owned subsidiary of The Chemours Company, which is a publicly traded company. No publicly held company other than The Chemours Company owns 10 percent or more of The Chemours Company FC, LLC's stock.

Dated: March 5, 2018

Respectfully submitted,

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