

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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SUNCOR ENERGY (U.S.A.) INC., SUNCOR ENERGY SALES INC.,  
SUNCOR ENERGY INC., AND EXXON MOBIL CORPORATION,  
APPLICANTS

v.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY,  
BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY,  
AND CITY OF BOULDER

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APPLICATION FOR RECALL OF THE REMAND ORDER PENDING APPEAL

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Pursuant to 28 U.S.C. 2106 and Supreme Court Rule 22, Suncor Energy (U.S.A.) Inc., Suncor Energy Sales Inc., Suncor Energy Inc., and Exxon Mobil Corporation apply to recall the order of the district court remanding this case to state court. The remand order is currently on appeal to the United States Court of Appeals for the Tenth Circuit.

1. Respondents in this action are three local governments in Colorado: the Board of County Commissioners of Boulder County, the Board of County Commissioners of San Miguel County, and the City of Boulder. Applicants are four energy companies: Suncor Energy (U.S.A.) Inc., Suncor Energy Sales Inc., Suncor Energy Inc., and Exxon Mobil Corporation. In April 2018, respondents filed the underlying complaint against applicants in Colorado state court, alleging that applicants have contributed to global climate change, which in turn has caused harm in Colorado. The complaint pleads a variety of claims, which respondents argue arise under state law. Several similar cases filed by state and municipal governments against various energy companies are pending in courts across the country. See, e.g., Rhode Island v. Shell Oil Products Co., No. 19-1818 (1st Cir.); City of New York v. B.P. P.L.C., No. 18-2188 (2d Cir.); Mayor & City Council of Baltimore v. BP P.L.C., No. 19-1644 (4th Cir.); County of San Mateo v. Chevron Corp., No. 18-15499 (9th Cir.) (consolidated with three similar cases); City of Oakland v. B.P. P.L.C., No. 18-16663 (9th Cir.).

In June 2018, applicants removed this case to federal court. Applicants contended that federal jurisdiction over respondents' climate-change claims is present on several grounds, including that claims asserting harm from global climate change necessarily arise under federal common law and that the allegations in the complaint pertain to actions that applicants took under the direction of federal officers. Respondents moved to remand the case to state court.

On September 5, 2019, the district court granted respondents' motion to remand. App. 57a, infra. The court entered a temporary stay of the remand order while the parties briefed whether a longer stay pending appeal was warranted. D. Ct. Dkt. 71.

On October 7, 2019, the district court denied applicants' motion for stay. App. 74a, infra. The next morning, applicants filed an emergency motion for a temporary stay of the remand order with the Tenth Circuit. Applicants also asked the district court to stay issuance of the remand order pending resolution of the appellate stay motion. But the district court denied that motion the same day and directed the clerk to remand the case to state court "forthwith." D. Ct. Dkt. 82.

Earlier today, October 17, 2019, the court of appeals denied applicants' motion for a stay. App. 2a, infra.

2. Currently pending before the Chief Justice and Justice Breyer are applications for stays of remand orders in two other

climate-change lawsuits filed by state or local governments against energy companies. See BP P.L.C. v. Mayor & City Council of Baltimore, No. 19A368 (docketed Oct. 2, 2019; response due Oct. 18, 2019); BP P.L.C. v. Rhode Island, No. 19A391 (docketed Oct. 8, 2019). The arguments in favor of a recall of the remand order in this case are materially similar to the arguments in favor of stays of the remand orders in those cases, and this application should be disposed of in the same manner as the applications in those cases. For the reasons set forth in those applications, applicants respectfully request that the remand order of the district court in this case be recalled pending resolution of the appeal before the Tenth Circuit and any additional proceedings before this Court.

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Respectfully submitted,

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