IN THE SUPREME COURT OF THE UNITED STATES

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No. 21A662

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

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To the Honorable Neil M. Gorsuch, Circuit Justice for the United States Court of Appeals for the Tenth Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, Suncor Energy (U.S.A.) Inc., Suncor Energy Sales Inc., Suncor Energy Inc., and Exxon Mobil Corporation apply for an additional 30-day extension of time, to and including July 8, 2022, within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case. The Tenth Circuit entered its judgment on February 8, 2022. App., infra, 61a. On April 29, 2022, the time for filing a petition for a writ of certiorari was extended to June 8, 2022. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. As applicants explained in their initial application for an extension of time, 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 claims that seek redress for harms allegedly caused by global greenhouse-gas emissions are removable on the ground that federal common law necessarily and exclusively supplies the rule of decision for such claims.

2. 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. On April 17, 2018, respondents sued applicants in Colorado state court, alleging that applicants have contributed to global climate change, which in turn has caused harm in Colorado. The complaint asserts various claims, which respondents contend 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. Respondents moved to remand the case to state court. The district court granted respondents' motion to remand. App., infra, 7a-8a.

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, 9a. 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. Id. at 8a. 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 Pet. at I, Suncor Energy (U.S.A.) Inc. v.

Board of County Commissioners of Boulder County, 141 S. Ct. 2667 (2021) (No. 20-783).

While the petition was pending, this Court held in BP p.l.c. v. Mayor & City Council of Baltimore, 141 S. Ct. 1532 (2021), that Section 1447(d) permits appellate review of all grounds for removal in a case removed in part on federal-officer grounds. See id. at 1538. The Court then vacated the court of appeals' earlier judgment in this case and remanded the case for further consideration in light of BP. See Suncor Energy, 141 S. Ct. at 2667.

The court of appeals again affirmed. App. 9a-60a, infra. As relevant here, the court of appeals held 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, 32a-34a. 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).

The court of appeals also concluded that respondents' claims did not arise under federal common law because any relevant federal common law had been displaced by the Clean Air Act. App., infra, 26a-31a. Last month, the Fourth Circuit reached the same conclusion. See Mayor & City Council of Baltimore v. BP p.l.c., 31 F.4th 178, 200-208 (2022). In so holding, the Fourth Circuit, like the court of appeals below, 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. And just days ago, the First Circuit reached the same conclusion as the Fourth Circuit and the court of appeals below. See Rhode Island v. Shell Oil Products Co., No. 19-1818, 2022 WL 1617206, at *4-*5 (May 23, 2022).

3. The undersigned counsel respectfully requests an additional 30-day extension of time, to and including July 8, 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 presented oral argument in one case yesterday and will be presenting oral argument in two additional cases before the current deadline of June 8, 2022. See Gruden v. National Football League, No. A-21-844043-B (Nev. Dist. Ct.) (May 25, 2022); New York University v. Turner Construction Co., No. 2022-479 (N.Y. Sup. Ct. App. Div.) (June 1, 2022); Exxon Mobil Corp. v. United States, No. 21-10373 (5th Cir.) (June 6, 2022). Counsel respectfully submits that a brief extension to prepare the petition in this case would allow applicants to sharpen the issues for review.

Respectfully submitted.

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