No. A-

IN THE

Supreme Court of the United States

SHELL OIL PRODUCTS COMPANY, *et al.*,

Applicants,

v.

STATE OF RHODE ISLAND,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIRST CIRCUIT:

Pursuant to Rules 13.5 and 30.2 of this Court, Applicants apply for a 60-day extension of time, to and including December 5, 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 First Circuit in this case.[1] The judgment of the court of appeals was entered on May 23, 2022, App., *infra*, at 35a, and a petition for rehearing was denied on July 7, 2022, *id.* at 37a. Unless extended, the time for filing a petition for a writ of certiorari will expire on October 5, 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 rules of decision for certain narrow categories of claims implicating "uniquely federal interests," including where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus., Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 640-41 (1981) (citation omitted). Interstate pollution is "undoubtedly" one such category. *Am. Elec. Power Co.* v. *Connecticut*, 564 U.S. 410, 421 (2011). Indeed, this Court has stated that "the basic scheme of the Constitution . . . demands" that "federal common law" govern disputes

[1] Applicants comprise Shell Oil Products Company LLC; Chevron Corporation; Chevron U.S.A., Inc.; Exxon Mobil Corporation; BP plc; BP America Inc.; BP Products North America Inc.; Shell plc (*f/k/a* Royal Dutch Shell plc); Motiva Enterprises, LLC; CITGO Petroleum Corporation; ConocoPhillips; ConocoPhillips Company; Phillips 66; Marathon Oil Company; Marathon Oil Corporation; Marathon Petroleum Corporation; Marathon Petroleum Company LP; Speedway LLC; and Hess Corporation.

involving "air and water in their ambient or interstate aspects." *Id.* And under 28 U.S.C. § 1331, federal district courts have jurisdiction over claims "founded upon federal common law." *Nat'l Farmers Union Ins. 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 these jurisdictional principles in the context of cases removed from state to federal court. In particular, the courts of appeals conflict on the question whether a federal district court has removal jurisdiction over a claim necessarily governed exclusively by federal common law but artfully pleaded under state law. That conflict has come into 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. Applicants in this case are 19 oil-and-gas companies. Respondent is the State of Rhode Island. Respondent sued Applicants in Rhode Island state court, seeking to hold them liable for alleged physical injuries resulting from global climate change allegedly caused by Applicants' extraction, refining, formulation, and promotion of fossil fuel products. *See* App., *infra*, at 61a–63a. Asserting numerous causes of action ostensibly under Rhode Island state tort law, including claims for product liability, public nuisance, and impairment of public-trust resources, Respondent demands compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. *See id.* at 5a.

Applicants removed the actions to the United States District Court for the District of Rhode Island. The notice of removal asserted various grounds for federal jurisdiction, including that (1) Respondent's claims are governed exclusively by federal common law; (2) Respondent's claims necessarily raise disputed and substantial federal questions; and (3) federal-officer removal is authorized under 28 U.S.C. § 1442(a). App., *infra*, at 5a–6a. Respondent filed a motion to remand, which the district court granted, and Applicants appealed.

In its original decision in this appeal, the First Circuit addressed only federal-officer removal, concluding that it did not have appellate jurisdiction under 28 U.S.C. § 1447(d) to review any other basis for removal. *Rhode Island* v. *Shell Oil Prods. Co.*, 979 F.3d 50, 58–59 (1st Cir. 2020). Subsequently, however, this Court clarified that, when a party seeks appellate review of an order remanding a "'case … removed pursuant to section 1442 or 1443,'" "the whole of [that] order bec[omes] reviewable on appeal." *BP P.L.C.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1538 (2021) (quoting 28 U.S.C. § 1447(d)).

Thereafter, this Court vacated the First Circuit's judgment in this appeal and remanded for further proceedings in light of its decision in *Baltimore*. *See Shell Oil Prods. Co.* v. *Rhode Island*, No. 20-900, 2021 WL 2044535 (U.S. May 24, 2021). On remand, the panel affirmed the district court's remand order, App., *infra*, at 35a.

As relevant here, the First Circuit held that Respondent's claims did not arise under federal common law because, *inter alia*, any relevant federal common law had been displaced by the Clean Air Act. App., *infra*, at 18a–19a. 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 (2d Cir. 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 though the Clean Air Act displaces any remedy available under federal common law. *See id.* at 94–95.

3. The undersigned counsel respectfully request a 60-day extension of time, to and including December 5, 2022, within which to file a petition for a writ of certiorari. This case presents significant and complex issues concerning the proper forum to litigate putative state-law claims that seek to hold energy companies liable for the alleged effects of global climate change. A 60-day extension of time is necessary to allow Applicants' counsel to prepare the petition addressing these important issues and detailing the widening conflict among the courts of appeals, and to coordinate among the petitioning parties, who comprise 19 distinct entities represented by 22 different law firms, all of whom must approve the petition for a writ of certiorari before it can be filed. The current deadline also overlaps with national and religious holidays that will make coordination among these parties and their counsel more difficult.

A 60-day extension will not cause Respondent any prejudice. Indeed, the Rhode Island state-court litigation has not been stayed, and the parties are currently briefing motions to dismiss. Thus, a 60-day extension in which to file a petition for a writ of certiorari in this Court will not affect the pace of litigation in the parallel state-court proceedings.

Accordingly, Applicants respectfully request that the time to file a petition for a writ of certiorari be extended by 60 days, to and including December 5, 2022.

Respectfully submitted,

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