

No. \_\_\_\_

IN THE

**Supreme Court of the United States**

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CHEVRON CORPORATION, *et al.*,

*Applicants,*

*v.*

CITY OF HOBOKEN, *et al.*,

*Respondents.*

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**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 THIRD CIRCUIT**

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT:

Pursuant to Rules 13.5 and 30.2 of this Court, Applicants<sup>1</sup> apply for a 60-day extension of time, to and including February 27, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case. The judgment of the court of appeals was entered on August 17, 2022, App., *infra*, 37a, and a petition for rehearing was denied on September 30, 2022, App., *infra*, 46a. Unless extended, the time for filing a petition for a writ of certiorari will expire on December 29, 2022. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This Court’s decisions establish that federal 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.*

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<sup>1</sup> Applicants comprise Apache Corporation, BP America Inc., BP p.l.c., Chevron Corporation, Chevron U.S.A. Inc., CITGO Petroleum Corporation, CNX Resources Corporation, ConocoPhillips, ConocoPhillips Company, CONSOL Energy Inc., Devon Energy Corporation, Exxon Mobil Corporation, ExxonMobil Oil Corporation, XTO Energy Inc., Hess Corporation, Marathon Oil Corporation, Marathon Petroleum Corporation, Marathon Petroleum Company LP, Speedway LLC, Murphy Oil Corporation, Murphy USA Inc., Occidental Petroleum Corporation, Phillips 66, Phillips 66 Company, Shell plc (*f/k/a* Royal Dutch Shell plc), Shell USA, Inc. (*f/k/a* Shell Oil Company), TotalEnergies SE, TotalEnergies Marketing USA, Inc., Ovintiv Inc., and American Petroleum Institute.

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 involving “air and water in their ambient or interstate aspects.” *Ibid.* (citation omitted). 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 are in 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 over the question whether federal 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 29 energy companies and an industry organization. Respondents are the City of Hoboken, New Jersey, and the State of Delaware. Each Respondent filed a separate action against Applicants in New Jersey and Delaware state court, respectively, alleging that “Defendants’ production, marketing, and sale of fossil fuels ha[ve] been a ‘substantial factor’ in skyrocketing carbon dioxide (CO<sub>2</sub>) emissions,” which have been “a driving force in climate change” and resulted in “extreme weather events, damage from rising sea levels, and other

problems associated with global warming.” App., *infra*, 48a. Asserting numerous causes of action ostensibly under New Jersey and Delaware tort law, including public nuisance and trespass, Respondents demand compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. App., *infra*, 50a.

Applicants removed the actions to the United States District Courts for the District of New Jersey and the District of Delaware. The notices of removal asserted various grounds for federal jurisdiction, including (1) that Respondents’ claims are governed by federal common law; (2) that Respondents’ claims necessarily raise disputed and substantial federal questions; and (3) that federal officer removal is authorized under 28 U.S.C. § 1442(a). See App., *infra*, 50a. Respondents filed motions to remand, which the District Courts granted, and Applicants appealed.

The Third Circuit consolidated the cases for oral argument and affirmed remand to state court. See App., *infra*, 19a–20a. The panel concluded 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. See App., *infra*, 23a–25a. That conclusion conflicts with decisions of other courts of appeals that have held 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). Not only are the circuits divided over this question, but this Court also recently invited the Solicitor General to file a brief expressing the views of the United

States on this question in *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 21-1550.

The court below also concluded that claims necessarily and exclusively governed by federal common law do not raise substantial questions of federal law and, accordingly, are not removable under this Court's decision in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). *See App., infra*, 26a–27a. In so deciding, the court below diverged from the decisions of other courts of appeals. *See, e.g., Newton v. Capital Assurance Co.*, 245 F.3d 1306, 1309 (11th Cir. 2001).

3. The undersigned counsel respectfully request a 60-day extension of time, to and including February 27, 2023, within which to file a petition for a writ of certiorari. This case presents significant and complex issues concerning whether nominally state-law claims that seek to hold energy companies liable for the alleged effects of global climate change are governed by federal law and removable to federal court. A 60-day extension of time is necessary to allow Applicants' counsel to prepare a petition addressing these important issues and detailing the widening conflict among the courts of appeals, and also to coordinate among the petitioning parties, who comprise 30 distinct entities represented by 29 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.

Accordingly, Applicants respectfully request that the time to file a petition for a writ of certiorari be extended by 60 days, to and including February 27, 2023.

Respectfully submitted.

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