

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

AMERICAN PETROLEUM INSTITUTE; EXXON MOBIL CORPORATION;
EXXONMOBIL OIL CORPORATION; KOCH INDUSTRIES, INC.; FLINT HILLS
RESOURCES LP; AND FLINT HILLS RESOURCES PINE BEND LLC,
APPLICANTS

v.

STATE OF MINNESOTA

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 EIGHTH CIRCUIT

To the Honorable Brett M. Kavanaugh, Circuit Justice for the
United States Court of Appeals for the Eighth Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, the American
Petroleum Institute; Exxon Mobil Corporation; ExxonMobil Oil Cor-
poration; Koch Industries, Inc.; Flint Hills Resources LP; and
Flint Hills Resources Pine Bend LLC apply for a 60-day extension
of time, to and including August 20, 2023, within which to file a
petition for writ of certiorari to review the judgment of the
United States Court of Appeals for the Eighth Circuit in this case.
The Eighth Circuit entered its judgment on March 23, 2023. See
App., infra, 2a. Unless extended, the time for filing a petition
for a writ of certiorari will expire on June 21, 2023. The ju-
risdiction 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 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. Respondent in this action is the State of Minnesota. Applicants include energy companies or affiliates and an industry association. On June 24, 2020, respondent sued applicants in Minnesota state court, alleging that applicants have contributed to global climate change, which in turn has caused harm in Minnesota. The complaint asserts various claims, which respondent contends arise under state law. Several similar cases filed by state and municipal governments against various energy companies are pending in courts across the country. App., infra, 2a-3a.

Applicants removed this case to federal court. Applicants argued that federal jurisdiction lay over respondent's 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. Respondent moved to remand the case to state court. The district court granted respondent's motion to remand. App., infra, 25a-61a.

The court of appeals affirmed. App., infra, 1a-18a. 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, 4a-10a. 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, 923-924 (5th Cir. 1997).

Although the court of appeals did not reach the issue, the decision below also implicates a conflict among the courts of appeals on the question whether federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate (and international) greenhouse-gas emissions on the global climate. Several circuits have concluded that federal common law does not govern such claims because the Clean Air Act has displaced any otherwise available non-statutory remedy. See, e.g., Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County, 25 F.4th 1238, 1260-1261 (10th Cir. 2022), cert. denied, No. 21-1550, 2023 WL 3046222 (Apr. 24, 2023); Mayor & City Council of Baltimore v. BP p.l.c., 31 F.4th 178, 206-207 (4th Cir. 2022), cert. denied, No. 22-361, 2023 WL 3046224 (Apr. 24, 2023). In so holding, those courts have 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 92-95.

In a concurring opinion, Judge Stras explained that, because the relief sought in this lawsuit would override policy choices made by the federal government and other States, it is "beyond the limits of state law" and "should" give rise to federal jurisdiction. App., infra, 18a, 21a (citation omitted). Even so, Judge Stras concluded that existing precedent precluded removal. Id. at 18a, 23a-24a.

3. The undersigned counsel respectfully requests a 60-day extension of time, to and including August 20, 2023, 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. Counsel also has a number of competing obligations, including arguments in three cases and numerous briefing deadlines. See Pretium Partners, LLC v. State, No. A23-0244 (Minn. Ct. App.) (oral argument on June 7); Teradata Corp. v. SAP SE, No. 22-1286 (Fed. Cir.) (oral argument on June 8); Fortenberry v. United States, No. 22-50144 (9th Cir.) (oral argument on July 11). Additional time is therefore needed to prepare and print the petition in this case. Respondent will suffer no prejudice from the requested extension, because the court of appeals did not stay its mandate, allowing the remand order to issue and proceedings to commence in state court.

Respectfully submitted.

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