

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

EXXON MOBIL CORPORATION,
APPLICANT

v.

STATE OF CONNECTICUT

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 SECOND CIRCUIT

To the Honorable Sonia Sotomayor, Circuit Justice for the
United States Court of Appeals for the Second Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, Exxon Mobil Corporation applies for a 30-day extension of time, to and including January 25, 2024, within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The Second Circuit entered its judgment on September 27, 2023. Unless extended, the time for filing a petition for a writ of certiorari will expire on December 26, 2023. 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 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.

2. Respondent in this action is the State of Connecticut, by and through its Attorney General. Applicant Exxon Mobil Corporation is an energy company. On September 14, 2020, respondent sued applicant in Connecticut state court, alleging that applicant has contributed to global climate change, which in turn has caused harm in Connecticut. 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.

Applicant removed this case to federal court. Applicant 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 applicant 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, 50a-81a.

The court of appeals affirmed. App., infra, 1a-49a. 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. Id. at 19a-26a. 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).

3. The undersigned counsel respectfully requests a 30-day extension of time, to and including January 25, 2024, 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 numerous briefing deadlines. See, e.g., Williams Alaska Petroleum, Inc. v. Alaska, No. 23-328 (U.S. Sup. Ct.) (reply brief filed Dec. 13, 2023); Doe v. Uber Technologies Inc., No. A167709 (Cal. Ct. App.) (brief due Dec. 18, 2023); Excluded Lenders v. Serta Simmons Bedding, L.L.C., No. 23-20451 (5th Cir.) (brief due Dec. 20, 2023). 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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December 14, 2023