

IN THE  
**Supreme Court of the United States**

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CHEVRON CORPORATION, *et al.*,

*APPLICANTS,*

v.

COUNTY OF SAN MATEO, *et al.*,

*RESPONDENTS.*

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**RESPONDENTS' OPPOSITION TO 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 NINTH CIRCUIT**

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to Rules 13.5, 22, and 30.2 of this Court, Respondents County of San Mateo, City of Imperial Beach, County of Marin, County of Santa Cruz, City of Santa Cruz, and City of Richmond oppose the 60-day extension of time requested by Applicants within which to petition for a writ of certiorari. Applicants have not shown that good cause exists to extend the time to file their petition, which will present issues identical to those in one petition already before the Court in a case involving one of the same defendants who is an Applicant here, arising out of the Circuit Court of Appeals for the Tenth Circuit. *See Suncor Energy (U.S.A.) Inc., et al., v. Bd. of Cty. Comm'rs of Boulder Cty., et al.*, No. 21-1550, *pet. filed* (June 8, 2022). Justice Gorsuch granted an application to extend the time to file that petition by 30 days, and denied a second request to extend the time an additional 30 days. *See Suncor Energy (U.S.A.) Inc., et al., v. Bd. of Cty. Comm'rs of Boulder Cty., et al.*, No. 21A-662 (June 6, 2022). That petition has been distributed for the Court's Conference of September 28, 2022.

Applicants intend to petition for a writ of certiorari from the Ninth Circuit Court's ruling in this case affirming an order granting Respondents' motion to remand to state court. Respondents filed their respective complaints in California Superior Court beginning in July 2017, and those cases have not proceeded past jurisdictional litigation. Applicants removed to the District Court for the Northern District of California on August 24, 2017, and the district court granted Respondents' motion to remand on March 16, 2018. Applicants appealed, and the Ninth Circuit affirmed on May 26, 2020, and denied unanimously Applicants' petition for *en banc* review on August 4, 2020. *See Cnty. of San Mateo v. Chevron Corp.*, 960 F.3d 586 (9th Cir. 2020). This Court granted Applicants' petition for a writ of certiorari from that decision on May 24, 2021, *see Chevron Corp. v. San Mateo Cnty., Cal.*, 141 S. Ct. 2666 (2021), and vacated and remanded for consideration of additional issues in light of

the Court's decision in *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021). The Ninth Circuit affirmed the remand order a second time on April 19, 2022, see *Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022), and unanimously denied Applicants' petition for rehearing *en banc* on June 27.

On June 29, 2022, Applicants moved the Ninth Circuit to stay issuance of the mandate on its second affirmance in this case, in anticipation of their petition for a writ of certiorari, which would "present the question whether nominally state-law claims that, because of our constitutional structure, are necessarily and exclusively governed by federal law alone, are removable to federal court." The Ninth Circuit granted that motion on June 30, 2022, staying issuance of the mandate "for 90 days to permit Appellants to file a petition for writ of certiorari in the Supreme Court," and if a petition is filed "the stay will continue until the Supreme Court resolves the petition"; Respondents understand that if the instant application is granted, the Ninth Circuit's stay would automatically continue until Applicants' time to file their petition has run. The case remains stayed, and the 2018 remand order has not been transmitted to the California Superior Court, so it has not been remanded to state court. In the five years since Respondents filed their complaints, no dispositive motions or answers have been filed, and Respondents have been unable to propound discovery.

Courts of appeal are unanimous on the issues Applicants intend to present in their petition for certiorari, as Respondents will explain further in response to Applicants' petition. In addition to this case, in 2022, the Courts of Appeals for the First, Third, Fourth, Ninth, and Tenth Circuits have all affirmed remand orders in similar cases brought by States and municipalities against major oil and gas companies, including many Applicants here. See *Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44, 50 (1st Cir. 2022); *City of Hoboken v. Chevron Corp.*, No. 21-2728, 2022 WL 3440653 (3d Cir. Aug. 17, 2022); *Mayor & City Council of Baltimore v. BP P.L.C.*,

31 F.4th 178 (4th Cir. 2022); *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101 (9th Cir. 2022); *Bd. of Cty. Comm'rs of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1249 (10th Cir. 2022); *see also Minnesota v. Am. Petroleum Inst.*, No. CV 20-1636 (JRT/HB), 2021 WL 1215656 (D. Minn. Mar. 31, 2021), *appeal filed*, No. 21-1752 (8th Cir. Apr. 5, 2021); *Connecticut v. Exxon Mobil Corp.*, No. 3:20-CV-1555 (JCH), 2021 WL 2389739 (D. Conn. June 2, 2021), *appeal filed*, No. 21-1446 (2d Cir. June 9, 2021). Each of those courts held there was no federal subject-matter jurisdiction over complaints alleging similar state-law causes of action based on similar factual theories, which were originally filed in state court and removed by the defendants. Applicants assert there is a conflict between those decisions and the Second Circuit's opinion in *City of New York v. Chevron Corp.* 993 F.3d 81 (2d Cir. 2021), but that case affirmed an order dismissing claims originally filed in federal court for failure to state a claim under Fed. R. Civ. P. 12(b)(6), and expressly held that it was not in conflict with decisions considering removal jurisdiction in analogous circumstances. No court has held that similar claims are properly removable from state court. Moreover, this Court denied certiorari in another case presenting an identical issue, after the Second Circuit had already issued its *City of New York* opinion. *See Chevron Corp. v. City of Oakland*, 141 S. Ct. 2776 (2021).

Applicants have represented on the record their intention to petition for a writ of certiorari in this case since at least June 29, on issues that are already before the Court that some Applicants have briefed and argued in six circuit courts, in a case that has had no merits proceedings in the five years since it was filed. Applicants nonetheless request a 60-day extension. Respondents respectfully submit that Applicants have not shown good cause for such an extension and that it should be denied so the matter may proceed in timely accordance with the normal rules of this Court and the courts of appeal.

Respectfully Submitted,

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