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LATHAM & WATKINS LLP

April 15, 2025

Honorable Scott S. Harris
Clerk of Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

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Re: *ExxonMobil Corporation, et al. v. Environment Texas Citizen
Lobby, Incorporated, et al.*, No. 24-982
Partial Opposition to Respondents' Extension Request

Dear Mr. Harris:

I am writing on behalf of petitioners Exxon Mobil Corp., ExxonMobil Chemical Co., and ExxonMobil Refining & Supply Co. (together, ExxonMobil) in the above-referenced matter to oppose respondents' request for a 28-day extension of time to file their response to the petition for a writ of certiorari. As petitioners advised counsel for respondents, petitioners will consent to a 14-day extension for respondents to file their response brief—to May 23, 2025. That extension would grant respondents half of what they have requested and accommodate the Court's schedule for considering cases for its fall docket before the Court leaves for its summer recess. Conversely, granting respondents' request would almost certainly deny the Court an opportunity to consider the petition this Term before its summer recess, and thus unnecessarily delay briefing and oral argument of the case, if the petition is granted.

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The decision below presents two critically important questions on Article III standing that repeatedly arise in environmental citizen-suit cases. For months, respondents have had every reason to know that ExxonMobil would be seeking certiorari. Underscoring the importance of this case, the full Fifth Circuit granted en banc rehearing in this case on February 17, 2023. On December 11, 2024, the en banc court issued a highly fractured ruling that split the Fifth Circuit right down the middle, with one judge explicitly calling on this Court to "grant certiorari" and "definitively resolve" the critical issues at stake. Pet.App.84a (opinion of Ho, J.). One look at the en banc Fifth Circuit's fractured decision in this case would tell virtually anyone that it is a serious candidate for further review by this Court.

ExxonMobil timely filed and served the petition on March 11, 2025. Respondents then waited nearly two weeks before strategically waiving their right to respond to the petition. On March 26, 2025, the petition was distributed to the Justices, and on April 9, 2025, the Court not surprisingly called for a response by May 9, 2025. That deadline gives respondents 59 days after the petition was filed to prepare the response. Crucially, this schedule ensures that the Court can consider ExxonMobil's petition at its June 12, 2025 conference, relist it, and then grant it this Term for argument to be held in October or November 2025.

Granting the extension requested by respondents' counsel, however, would postpone the opposition until June 6, 2025; delay consideration of the petition until after the Court's summer recess; and likely push any oral argument to January or February 2026 (if review is granted). These considerations weigh strongly against granting the extension request. See Stephen M. Shapiro et al., *Supreme Court Practice* § 6.37(c) (11th ed. 2019) (noting that relevant circumstances bearing on whether to grant or deny extension include "the possibility that the request comes at a late period in the term so that an extension would delay the Court's consideration of the case until the following term"); see also, e.g., *Ohio State Univ. v. Snyder-Hill*, No. 22-896 (May 10, 2024) (denying extension request in similar circumstances).

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None of the reasons given by respondents warrant granting a 28-day extension. Respondents argue that ExxonMobil could simply waive the 14-day waiting period for distribution, allowing the case to be considered at the June 26 conference. But that would require ExxonMobil to draft, print, and file its reply brief in just *four days* to ensure it is distributed with the other papers on June 10, 2025—a timeline that is entirely impractical. Regardless, even if ExxonMobil waived the 14-day waiting period for its reply brief, the case still would be slated for the final conference of the Term, leaving insufficient time for the Court to relist and then grant it before the summer recess, such that argument could be heard in the fall or winter.

Respondents' motion also tries to pin the blame on *ExxonMobil* for any delay in the Court's ability to consider the petition before the summer recess. But ExxonMobil adhered to the 90-day deadline for filing its petition, without seeking any extensions. In contrast, it was respondents who strategically waived their right to respond nearly two weeks after ExxonMobil filed its petition, and now seek an *additional* 28 days beyond the standard 30-day response period. Had they simply requested a 30-day extension from the outset instead of waiving their response, respondents' response would have been due on May 14, allowing the case to be distributed on June 3 for consideration at the June 18 conference. The delay in consideration here is solely due to respondents' own strategic waiver.

Counsel for respondents also have failed to point to any unusual circumstances that would warrant the requested extension. The petition was filed on March 11, 2025, and the response is currently due on May 9, 2025—almost *two months* after ExxonMobil filed its petition. Although we appreciate the timing difficulties imposed by Mr. Nicholas's work schedule, Mr. Nicholas has longstanding familiarity with the case, dating back to *December 13, 2010* when he first filed this action against ExxonMobil. And while respondents assert they still need to retain Supreme Court counsel, they have been aware of ExxonMobil's certiorari plans for months and have provided no justification whatsoever for their delay in securing such representation. At the same time, experienced Supreme Court counsel can prepare a response brief within the time ordinarily allowed by this Court's rules for a response.

* * * * *

Accordingly, petitioners respectfully request that the Court grant respondents a 14-day extension—to May 23, 2025—and deny respondents' more extravagant request for 28 days. A 14-day extension would ensure the Court's ability to consider the petition before its summer recess and, if the petition is granted set the case for briefing and argument next fall. This proposal also would offer respondents *nine more days* to prepare their response brief than they would have had if they did not strategically waive their right to respond in the first instance and had instead simply requested a thirty-day extension from the original response deadline.

Respectfully submitted,



Gregory G. Garre
LATHAM & WATKINS LLP
Counsel of Record for Petitioners

cc: David Nicholas
Counsel for Respondents