

SHER EDLING LLP

PROTECTING PEOPLE AND THE PLANET

April 23, 2020

Via ECF

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

Re: *BP p.l.c., et al., v. Mayor and City Council of Baltimore*, No. 19-1189
Reply in Support of Motion to Extend Time to File Response to Petition for
Writ of Certiorari

Dear Mr. Harris,

Respondent Mayor & City Council of Baltimore (“City”) submits this reply in support of its application for a 60-day extension to respond to Petitioners BP p.l.c. et al.’s March 31, 2020, petition for writ of certiorari. Although Petitioners object to any extension longer than 30 days, the full 60-day period requested is necessitated by the extraordinary circumstances of the COVID-19 pandemic and its impacts on Respondent City and its counsel, exacerbated by the fact that the City will be required to respond not only to the pending certiorari petition but also to at least three anticipated amicus briefs in support of that petition, which are currently due on April 30, 2020.

Petitioners state that they “understand the disruptions caused by the COVID-19 pandemic” and that they “respect respondents’ need for additional time.” But their assertion that the City should have no more than 30 additional days to respond to their arguments and to the upcoming arguments of their amici belies those expressions of understanding and respect. The novel coronavirus crisis has imposed an enormous unanticipated burden on the City and its counsel, who must advise City agencies about innumerable legal issues related to and arising out of the current pandemic, from implementation of shelter-in-place orders, to establishing new testing sites and protocols for testing, to tracing contacts of infected individuals, to addressing a host of other unprecedented public health and safety concerns. Moreover, the City’s officials and attorneys must do all this from their homes, often on laptops or tablets, with inadequate internet service and limited access to printers or scanners, and without regular childcare support.

Petitioners assert in their opposition that their interest in having their certiorari petition accepted or rejected before this Court’s summer recess overcomes these unprecedented burdens, whose impacts are reflected in this Court’s own COVID-19 emergency rules. But Petitioners have not demonstrated any significant harm to the public interest, or even to their own parochial interests, that would result from granting the requested extension. Indeed, Petitioners’ previous stay motions seeking to delay the case from proceeding in state court pending Petitioners’ appeals were each denied—by the district court, the Fourth Circuit, and this Court. *See generally BP p.l.c. et al. v. Mayor & City Council of Baltimore*, 140 S.Ct. 449 (Mem), 205 L.Ed.2d 265 (Oct. 22, 2019) (denying application for stay pending appeal). Petitioners have never been able to identify

any significant harms that would result from allowing the City to continue prosecuting its state law claims in Maryland state court.

Nor could Petitioners demonstrate such harms now, because Petitioners expressly stipulated to all case-management deadlines and schedules in the Baltimore City Circuit Court case.¹ The trial judge in that case, moreover, instructed the parties on April 10, 2020 (before Petitioners filed their opposition to the City's application for extension) that, because administrative orders related to COVID-19 issued by the Maryland Court of Appeals "limi[t] this court's functions at this time," the court "will not rule on anything until after the most recent administrative order limiting court functions has been rescinded," and further, that the parties may "not initiate any other discovery" except as previously stipulated "without leave of court."

Petitioners refer to the pendency of "similar" cases pending in state courts in Rhode Island and Colorado.² But those cases are not before this Court; the district courts, First and Tenth Circuit Courts of Appeals, and this Court have all denied stays pending appeals in them as well³; and to the extent the pendency of Petitioner's certiorari petition might somehow interfere with any defendant's ability to adequately defend itself in one of those other cases, that defendant's recourse is to seek a stay of those proceedings in the appropriate state court.

Finally, Petitioners contend that the City and its counsel should be satisfied with a 30-day extension, notwithstanding the unprecedented circumstances they now face, because the issues raised by the certiorari petition were thoroughly briefed below and in other cases in other circuits. Yet it is always the case that the substantive merits of the issues underlying a certiorari petition were previously briefed by the parties, often in the district court *and* in the court of appeals. The issue now before this Court is not the merits of the Fourth Circuit's construction of the scope of appellate review of orders granting remand under 28 U.S.C. §1447(c) in light of the statutory language,

¹ In the state court proceedings, the City filed an opposition to Petitioners' motion to dismiss for failure to state a claim on April 7, pursuant to a schedule stipulated by the parties and adopted by the trial court on January 24, 2020. The City then propounded jurisdictional discovery on April 3, in response to Petitioners' motion to dismiss for lack of personal jurisdiction, again pursuant to a stipulated schedule. Both parties have since stipulated that "[t]he Parties will not conduct any general discovery until at least 60 days after" the court rules on Petitioners' motions to dismiss for lack of personal jurisdiction, which in turn will not be fully briefed or decided until after any disputes related to the City's jurisdictional discovery are resolved.

² Petitioners have briefed motions to dismiss on merits and jurisdictional grounds in cases remanded to state court from the District of Colorado and the District of Rhode Island. *See generally Bd. of Cty. Comm'rs of Boulder Cty. et al. v. Suncor Energy (U.S.A.), Inc., et al.*, Case No. 2018CV30349 (Colo. Dist. Ct., Boulder Cty.); *State of Rhode Island v. Chevron Corp., et al.*, Case No. PC-2018-4716 (R.I. Super. Ct., Providence Cty.).

³ *See BP p.l.c., et al. v. Rhode Island*, No. 19A391 (U.S. Oct. 22, 2019) (text order) (denying application for stay pending appeal); *Suncor Energy (U.S.A.), Inc., et al. v. Bd. of Cty. Comm'rs of Boulder Cty. et al.*, No. 19A428 (U.S. Oct. 22, 2019) (text order) (same).

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legislative purpose, and circuit precedent, but whether Petitioners and their amici have satisfied their heavy burden of establishing that this case is appropriate for certiorari review. That requires a different analysis and consideration of different factors than the merits arguments that the City presented in the Fourth Circuit and district court.

In short, the burdens faced by the City and its counsel in these extraordinary times are immense, while any countervailing harm to Petitioners' interests that might result from a 60-day rather than 30-day extension are at best minimal. For these reasons and those set forth in the City's application for extension, the Court should order a 60-day extension of time for the City to file its Brief in Opposition to the Petition for a Writ of Certiorari in this case, making that Opposition due June 29, 2020.

Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record