IN THE SUPREME COURT OF THE UNITED STATES

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No. A-_____

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SUNOCO LP, ET AL., APPLICANTS

v.

CITY AND COUNTY OF HONOLULU; HONOLULU BOARD OF WATER SUPPLY*

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APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF HAWAII

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To the Honorable Elena Kagan, Circuit Justice for the Ninth Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, Sunoco LP; Aloha Petroleum, Ltd.; Aloha Petroleum LLC; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Shell plc; Shell USA, Inc.; Shell Oil Products Company LLC; Chevron Corporation; Chevron U.S.A., Inc.; Woodside Energy Hawaii Inc.; BP plc; BP America Inc.; Marathon Petroleum Corp.; ConocoPhillips; ConocoPhillips Company; Phillips 66; and Phillips 66 Company apply for a 30-day extension of time, to and including February 28, 2024, within which to file a petition for writ of certiorari to review the judgment of the Supreme Court of Hawaii in this case. That court entered its

* The amended complaint named BHP Group Limited and BHP Group plc as defendants. The trial court dismissed the claims against them, and respondents did not appeal. App., infra, 2a n.1. The caption of this case at the Hawaii Supreme Court, however, identified the BHP entities as appellees. Applicants have served this application on them in accordance with Rule 12.6 of this Court.

judgment on October 31, 2023. Unless extended, the time for filing a petition for a writ of certiorari will expire on January 29, 2024. The jurisdiction of this Court would be invoked under 28 U.S.C. 1257(a).

1. Since 2017, numerous state and municipal governments have filed lawsuits in state court against energy companies seeking redress for injuries allegedly caused by global climate change. The defendants removed those cases to federal court, and most cases were remanded. This case presents two important questions of federal law that are recurring now that the cases are largely proceeding in state courts.

The first question presented is whether federal law precludes state-law claims seeking redress for injuries allegedly caused by the effects of interstate greenhouse-gas emissions on the global climate. This Court's decisions establish that federal 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). The Court has thus long held that, when claims "deal with air and water in their ambient or interstate aspects," federal common law presumptively governs, Illinois v. City of Milwaukee, 406 U.S. 91, 103 (1972), and "state law cannot be used," City of Milwaukee v. Illinois, 451 U.S. 304, 313 n.7 (1981). But as the Court held in American

Electric Power Co. v. Connecticut, 564 U.S. 410 (2011), "any federal common law right to seek abatement of carbon-dioxide emissions from fossil fuel[s]" has been "displace[d]" by "the Clean Air Act and EPA actions it authorizes." Id. at 424.

As the Hawaii Supreme Court acknowledged, courts are divided as to whether state law governs climate-change claims after the displacement of any federal-common-law cause of action by the Clean Air Act. App., infra, 51a n.9, 58a-59a. In City of New York v. Chevron Corporation, 993 F.3d 81 (2021), the Second Circuit held that "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." Id. at 98. Similarly, in Illinois v. City of Milwaukee, 731 F.2d 403 (1984), the Seventh Circuit held that state law could not govern disputes concerning interstate water pollution after the Clean Water Act displaced the previous body of federal law governing such disputes. Id. at 410-411. In the decision below, however, the Hawaii Supreme Court held that state law could govern plaintiffs' climate-change claims, despite the inherently federal nature of claims seeking redress for injuries allegedly caused by interstate and international emissions. App., infra, 54a-59a. That decision not only creates a circuit conflict but is also inconsistent with International Paper Co. v. Ouellette, 479 U.S. 481 (1987), where this Court held that the Clean Water Act preempts claims seeking remedies under the common law of one State for injuries allegedly caused by a source of pollution located in another State. Id. at 494-97.

The second question presented is whether the Constitution permits a State to exercise specific personal jurisdiction over claims against nonresident defendants based on climate-change-related injuries allegedly caused by out-of-state marketing activities and global fossil-fuel consumption. The Due Process Clause of the Fourteenth Amendment "limits a state court's power to exercise jurisdiction over a defendant." Ford Motor Co. v. Montana Eighth Judicial District Court, 141 S. Ct. 1017, 1024 (2021). This Court's precedents establish that a State may exercise specific personal jurisdiction over a nonresident defendant only when the claim arises out of or relates to the defendant's in-state contacts and the exercise of jurisdiction is "reasonable[] in the context of our federal system." Id. at 1024, 1025.

In the proceedings below, the Hawaii Supreme Court held that a Hawaii court had specific jurisdiction over nonresident defendants with respect to claims alleging that the defendants' out-of-state marketing activities resulted in increased global fossil-fuel consumption, which resulted in increased global greenhouse-gas emissions, which contributed to global climate change, which resulted in physical harms within the forum State. The Hawaii Supreme Court's holding conflicts with the limits this Court has placed on the exercise of personal jurisdiction over nonresident defendants for claims arising from out-of-state activity and is of critical importance given the number of similar suits pending in courts across the country.

2. Respondents in this action are the City and County of Honolulu and the Honolulu Board of Water Supply. Applicants are

energy companies that extract, produce, distribute, or sell fossil fuels around the world.

On March 9, 2020, respondent City and County of Honolulu filed suit against applicants in Hawaii state court, alleging that applicants have contributed to global climate change, which in turn has caused a variety of harms in Hawaii. App., infra, 6a, 11a. On March 22, 2021, by an amended complaint, respondent Honolulu Board of Water Supply joined the case as a plaintiff. Id. at 8a.

The operative complaint asserts various claims, which respondents contend arise under state law. App., infra, 8a-12a. Numerous similar cases filed by state and municipal governments against various energy companies are pending nationwide.

Applicants moved to dismiss on two grounds, corresponding to the questions presented here. App., infra, 12a. First, all applicants other than Woodside Energy Hawaii Inc. and Aloha Petroleum Ltd. moved to dismiss for lack of specific personal jurisdiction. The moving applicants argued that specific jurisdiction did not exist because their in-state activities accounted for only a de minimis amount of emissions, did not place them on clear notice that personal jurisdiction would exist in Hawaii for lawsuits seeking damages for global climate change, and rendered the exercise of specific jurisdiction incompatible with principles of federalism. Ibid. Second, all applicants moved to dismiss for failure to state a claim on the ground that federal law precludes state-law claims seeking redress for injuries allegedly caused by the effects of interstate greenhouse-gas

emissions on the global climate. Ibid. The trial court denied the motions. Id. at 83a-102a.

The trial court granted applicants' motion for leave to file an interlocutory appeal to the Hawaii Intermediate Court of Appeals. App., infra, 16a. Respondents then sought transfer to the Hawaii Supreme Court. Ibid.

The Hawaii Supreme Court granted the application to transfer and then affirmed. App., infra, 1a-82a. The court concluded that specific jurisdiction was proper on the theory that respondents' claims arise out of or relate to applicants' sale and marketing of fossil-fuel products in Hawaii. Id. at 33a-34a. The court reasoned that specific jurisdiction here was reasonable and comported with principles of federalism. Id. at 37a-42a. The court next concluded that respondents' claims were not preempted, because the Clean Air Act displaced the body of federal law governing claims seeking redress for harms allegedly caused by interstate emissions. Id. at 45a-47a. The court reasoned that, upon such displacement, state law could fill any void left beyond federal statutory law. Id. at 54a-58a. As the court recognized, its conclusion on preemption diverged from those of the Second and Seventh Circuits. Id. at 51a n.9, 58a-59a.

3. The undersigned counsel respectfully requests a 30-day extension of time, to and including February 28, 2024, within which to file a petition for a writ of certiorari. Counsel has multiple competing briefing deadlines and oral arguments. E.g., United States v. Nowak, No. 23-2846 (7th Cir.) (brief filed Jan. 5, 2024); National Football League v. Gruden, No. 85527 (Nev.) (oral argument

Jan. 10, 2024); Stroble v. Oklahoma Tax Commission, No. 20,806 (Okla.) (oral argument Jan. 17, 2024); Visa v. National ATM Council, Inc., Nos. 21-7109, 21-7110, 21-7111 (D.C. Cir.) (cert. petition due Jan. 25, 2024); Connelly v. United States, No. 23-146 (S. Ct.) (brief due Jan. 29, 2024). This case presents weighty and complex issues concerning the ability of state law to govern claims that deal with injuries allegedly caused by the cumulative effect of interstate and international emissions, and the ability of courts to exercise specific personal jurisdiction over out-of-state defendants sued for such claims. Finally, this case involves numerous defendants that will be joining the petition, and counsel will need to confer with each set of defendants and its counsel before filing the petition. Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.

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