

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN PETROLEUM INSTITUTE,
CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA, and
NATIONAL FOREIGN TRADE COUNCIL,

Petitioners,

v.

UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION,

Respondent.

OXFAM AMERICA, INC.

Intervenor.

Case No. 12-1398

PETITIONERS' MOTION TO STAY THE MANDATE

Petitioners American Petroleum Institute, Chamber of Commerce of the United States of America, Independent Petroleum Association of America, and National Foreign Trade Council (collectively, "petitioners") respectfully move this Court pursuant to Federal Rule of Appellate Procedure 41(d)(1) and Circuit Rule 41(a)(2) to stay the mandate in the above-captioned case pending a final decision in a related case in federal district court. In support of this request, petitioners state as follows:

1. On October 10, 2012, petitioners filed a petition for review in this Court, challenging a rule of the Securities and Exchange Commission (“Commission”) that requires U.S. companies to publicly disclose payments made to governments in connection with the commercial development of oil, gas, and minerals. *See API et al. v. SEC*, No. 12-1398 (D.C. Cir.); *see also* Disclosure of Payments by Resource Extraction Issuers, 77 Fed. Reg. 56,365 (Sept. 12, 2012). Because the availability of direct review in this Court was unclear, petitioners filed a complaint in the U.S. District Court for the District of Columbia on the same day. *See API et al. v. SEC*, No. 12-1668 (D.D.C. filed Oct. 10, 2012). The District Court case was stayed pending this Court’s consideration of the petition for review. *See* Minute Order, No. 12-1668 (D.D.C. Dec. 5, 2012).

2. On November 1, 2012, this Court set an expedited briefing schedule that directed the parties to complete briefing by January 28, 2013. Doc. 1402612. The Court further ordered the Clerk to calendar the case for oral argument on the first appropriate date after briefing was completed. *Id.* Oral argument was held on March 22, and little more than a month later the Court dismissed the case, holding that the District Court had jurisdiction to hear petitioners’ challenge in the first instance. Docs. 1432736 & 1432739 (Apr. 26, 2012). The Court withheld issuance of the mandate at that time. Doc. 1432740.

3. Days later, petitioners and the Commission moved to lift the stay in the District Court case and requested expedited consideration. *See* No. 12-1668 (D.D.C. May 1, 2013) (Dkt. No. 21). The parties sought expedition in part to “increase the probability of final resolution of plaintiffs’ challenge prior to the applicable compliance dates under the Rule,” which as petitioners noted, threatened to impose up to \$1 billion in costs on U.S. companies (by the Commission’s own estimates) between now and early 2014, when the first disclosures are due. *Id.* at 4. To facilitate expedition in the District Court, petitioners and the Commission jointly moved the Court to decide the case on the briefs and the joint appendix that had been filed in this Court, together with oral argument. *Id.* The District Court granted that request, and the case was therefore fully briefed within four weeks of this Court’s decision. *See* No. 12-1668 (D.D.C.) (Dkt. No. 23); *see also id.* (Dkt. No. 44).^{*} Oral argument is scheduled before Judge Bates tomorrow, June 7. *See id.* (Dkt. No. 28).

4. Petitioners now ask that this Court stay the mandate because it is possible (though concededly not certain) that one of the parties will appeal the District Court’s decision. If that occurs, the continued expedition of this litigation will be facilitated

^{*} The District Court also authorized the parties and Intervenor Oxfam America, Inc. to file individual supplemental briefs not to exceed five pages. *Id.* (Dkt. No. 28). Pursuant to that order, Oxfam and petitioners filed five-page supplemental briefs, but the Commission did not. *Id.* (Dkt. Nos. 39 & 44).

by the appeal being considered by the panel that considered briefing and argument on the merits just a few months ago.

5. This Court may stay issuance of the mandate where the requesting party's motion sets forth "facts showing good cause for the relief sought." Circuit Rule 41(a)(2). Here, staying the mandate would further the goal of expediting consideration of this dispute, which both this Court and the District Court have recognized as appropriate. It would also further the goals of efficiency and judicial economy. In the event of appeal, the District Court case could be consolidated with this case, and the panel that heard the dispute previously could promptly take up the appeal. That panel is already familiar with the parties' arguments and the relevant statutory and regulatory provisions. With the notable exception of the District Court's decision, the "record on appeal" before this Court would be identical to what it was before. The parties' arguments—which have now been stated in identical terms twice, in two different courts—will be changed little if at all. There can be little doubt that it would be easier for this panel to act expeditiously in the event of appeal, than for a new panel of judges of this Court.

6. For the foregoing reasons, petitioners respectfully request that the Court stay the mandate pending a final decision in the District Court case. The SEC and Intervenor Oxfam America, Inc. oppose the relief requested in this motion.

Dated: June 6, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2013, I electronically filed the foregoing Motion to Stay the Mandate with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit via the Court's CM/ECF system.

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