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January 23, 2020

VIA ECF

Patricia S. Connor
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219Re: *Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. 19-1644
Plaintiff-Appellee's Citation of Supplemental Authorities

Dear Ms. Connor:

Pursuant to FRAP 28(j), Chevron submits this response to Plaintiff's letter regarding *Pivo Corp., LLC v. Maglione*, 2019 U.S. App. LEXIS 32171 (11th Cir. Oct. 25, 2019). Contrary to Plaintiff's assertion, this decision does not "support[] Plaintiff-Appellee's argument that this Court lacks appellate jurisdiction except as to Defendant-Appellants' assertion of federal officer removal." Dkt. 137 at 1.

As an initial matter, *Pivo* is an unpublished, three-page decision dismissing a *pro se* appeal from the Eleventh Circuit that merely applies a prior published decision of that court holding that review under Section 1447 is limited to the civil rights ground for removal (*Alabama v. Conley*, 245 F.3d 1291, 1293 n.1 (11th Cir. 2001)), a ground that is not implicated here. Defendants have already cited that prior decision in their briefing, and a decision by one panel following a binding decision from a prior panel is not a noteworthy occurrence.

In any event, the Eleventh Circuit did not address the Supreme Court's decision in *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), in *Pivo* or the prior opinion. In that case, the Court held that an appellate court reviewing an interlocutory order under 28 U.S.C. § 1292(b) "may address any issue fairly included within the certified order because 'it is the order that is appealable, and not the controlling question identified by the district court.'" *Id.* at 205. The failure to consider *Yamaha Motor Corp.* is especially noteworthy considering that § 1447(d) allows for review of "[a]n order remanding [a] case" (emphasis added).

In addition, in neither *Pivo* nor the prior opinion did the Eleventh Circuit address the impact of the Removal Clarification Act of 2011. It was only in the Removal Clarification Act that

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Congress expanded the grounds for interlocutory review under § 1447(d) to include orders denying federal officer removal—the precise basis for interlocutory review here.

Accordingly, the Court should disregard the Eleventh Circuit opinions and, consistent with the plain language of § 1447(d) and the Supreme Court's decision in *Yamaha Motor Corp.*, consider all of the grounds for removal raised in the remand order.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)