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PROTECTING PEOPLE AND THE PLANET

February 3, 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, Virginia 23219

Re: *Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. 19-1644
Plaintiff-Appellee's Response to Defendants-Appellant's Rule 28(j) Letter

Dear Ms. Connor,

Plaintiff-Appellee Mayor and City Council of Baltimore ("City") writes to respond to Defendant-Appellant Chevron's letter citing *Juliana v. United States*, 2020 WL 254149 (9th Cir. Jan. 17, 2020).

Juliana (from the Ninth Circuit, not this Court) concerned Article III redressability, and whether a federal court could adequately "supervise[] or enforce[]" the plaintiffs' requested *prospective* remedy: "an order requiring the [federal] government to develop a plan to 'phase out fossil fuel emissions and draw down excess atmospheric CO₂.'" *Id.* at *2, *9. *Juliana* has no bearing on the City's case pursuing traditional state law remedies against private parties for past wrongful conduct under its police powers.

The only issue before this Court, given the limited scope of review under 28 U.S.C. §1447(d), is whether the district court correctly rejected "federal-officer" removal. *See* Plaintiff-Appellee's Response Brief, Doc. 86 at 8–20 (Aug. 27, 2019). Even if the Court could reach other issues, nothing in *Juliana*'s discussion of federal interests potentially implicated by a prospective "plan" to guarantee the plaintiffs' claimed constitutional right to a "climate system capable of sustaining human life," *id.* at *9, bears on the City's Maryland law claims or their elements. *See Virginia Uranium, Inc. v. Warren*, 139 S.Ct.1894, 1901 (2019) ("Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption.") (plurality); *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 692 (2006) (absent "significant conflict ... between an identifiable federal policy or interest and the operation of state law' ... there is no cause to displace state law, much less to lodge this case in federal court"); *Miree v. DeKalb County*, 433 U.S. 25 (1977) (no jurisdiction despite "substantial [federal] interest in regulating aircraft travel and ... safety" where "the litigation is among private parties and no substantial rights or duties of the United States hinge on its outcome"); *Burrell v. Bayer Corp.*, 918 F.3d 372, 382 (4th Cir. 2019) (no jurisdiction over state law claims against medical device manufacturer despite intensive federal regulation, because federal preemption "no matter how substantial, is not grounds for §1331 jurisdiction").

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Respectfully submitted,

/s/ Victor M. Sher

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Mayor and City Council of Baltimore

cc: All Counsel of Record (via ECF)