

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA

Plaintiff,

v.

EXXON MOBIL CORP., *et al.*

Defendants.

Civil Action No. 20-1932 (TKJ)

**PLAINTIFF DISTRICT OF COLUMBIA’S RESPONSE TO DEFENDANTS’
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff District of Columbia (“the District”) submits this response to Defendants’ Notice of Supplemental Authority (Dkt. 78) regarding *City of New York v. Chevron Corp.*, No. 2188, 2021 WL 1216541 (2d Cir. Apr. 1, 2021).

Because the City of New York originally filed its common law nuisance and trespass case in federal court on the basis of diversity jurisdiction, the Second Circuit did not analyze—far less decide—whether federal common law converted the City’s state-law claims into federal ones for purposes of subject matter jurisdiction. *Id.* at *8. Instead, it evaluated the defendants’ federal common law dismissal argument as an ordinary “preemption defense on its own terms, *not under the heightened standard unique to the removability inquiry.*” *Id.* (emphasis added).

Moreover, the Second Circuit expressly distinguished the “fleet of cases” in which federal courts around the country have remanded to state court actions similar to this one, and noted that its decision was consistent with them. *See id.* at *8. If anything, the court’s crafting of its opinion in accordance with the non-binding remand decisions from other jurisdictions indicates a

recognition that those decisions were correct. Defendants’ omission from its Notice of Supplemental Authority of the Second Circuit’s discussion distinguishing removal and remand—the only part of *City of New York* that has any bearing on the issue before this Court—is consistent with its repeated mischaracterizations of the District’s Complaint and relevant remand law in previous briefing.

Finally, even to the extent the Second Circuit’s reasoning could be relevant to this Court’s application of the *Grable* jurisdictional test to federal common law, the District’s case is distinguishable because it asserts only a District-law statutory consumer protection claim to remedy Defendants’ deceptive marketing, and involves no right or remedy implicating “the damages caused by global greenhouse gas emissions,” as the Second Circuit characterized New York City’s case. *Id.* at *1.

The *City of New York* decision, by its own terms, answers a different question than the one before this Court, and its analysis of federal common law as a matter of ordinary preemption is consistent with the many analogous decisions granting remand. It does not alter the analysis here.

Respectfully Submitted,

Dated: April 15, 2021

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