

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

STATE OF DELAWARE, *ex rel.*  
KATHLEEN JENNINGS, Attorney General of  
the State of Delaware,

Plaintiff,

v.

BP AMERICA INC., BP P.L.C., CHEVRON  
CORPORATION,  
CHEVRON U.S.A. INC., CONOCOPHILLIPS,  
CONOCOPHILLIPS COMPANY, PHILLIPS  
66, PHILLIPS 66 COMPANY, EXXON  
MOBIL CORPORATION, EXXONMOBIL  
OIL CORPORATION, XTO ENERGY INC.,  
HESS CORPORATION, MARATHON OIL  
CORPORATION, MARATHON OIL  
COMPANY, MARATHON PETROLEUM  
CORPORATION, MARATHON  
PETROLEUM COMPANY LP, SPEEDWAY  
LLC, MURPHY OIL CORPORATION,  
MURPHY USA INC.,  
ROYAL DUTCH SHELL PLC, SHELL OIL  
COMPANY, CITGO PETROLEUM  
CORPORATION, TOTAL S.A., TOTAL  
SPECIALTIES USA INC., OCCIDENTAL  
PETROLEUM CORPORATION, DEVON  
ENERGY CORPORATION, APACHE  
CORPORATION, CNX RESOURCES  
CORPORATION, CONSOL ENERGY INC.,  
OVINTIV, INC., and AMERICAN  
PETROLEUM INSTITUTE,

Defendants.

Civil Action No. 20-cv-01429-LPS

**DEFENDANTS’ NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants Chevron Corporation and Chevron U.S.A. Inc. respectfully submit as supplemental authority the Supreme Court’s decision today in *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. \_\_\_, 2021 WL 1951777 (2021) (attached hereto as Exhibit A), which has a direct impact on this and numerous other climate change cases that have been removed to federal court.<sup>1</sup> In *Baltimore*, the Supreme Court considered whether “28 U.S.C. 1447(d) permit[s] a court of appeals to review any issue in a district court order remanding a case to state court where the defendant premised removal in part on the federal officer removal statute, § 1442, or the civil rights removal statute, § 1443.” *Id.* at \*2. The Court answered in the affirmative, reasoning that “the relevant portion of § 1447(d) provides that ‘an *order* remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal,’” and the plain meaning of the term “order” refers to “a ‘written direction or command delivered by . . . a court or judge.’” *Id.* at \*4 (emphasis added). Therefore, “when a district court’s removal order rejects all of the defendants’ grounds for removal, § 1447(d) authorizes a court of appeals to review each and every one of them.” *Id.* Because the lower court interpreted the statute to extend appellate jurisdiction only to the enumerated federal officer and civil rights grounds for removal, the Supreme Court vacated and remanded so that the court of appeals can consider all of the defendants’ grounds for removal.

*Baltimore* is important here because it means that several federal appellate courts that had previously declined to consider whether similar climate change cases were properly removed on grounds other than federal officer jurisdiction will now do so. *See id.* (“Normally, federal jurisdiction is not optional; subject to exceptions not relevant here, ‘courts are obliged to decide

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<sup>1</sup> Several Defendants contend that they are not subject to personal jurisdiction in Delaware and submit this supplemental authority subject to, and without waiver of, these personal jurisdiction objections.

cases within the scope of federal jurisdiction’ assigned to them. So the district court wasn’t at liberty to remove the City’s case from its docket until it determined that it lacked any authority to entertain the suit.”). In many circuits, these grounds for removal—including federal-question jurisdiction and OCSLA jurisdiction—present questions of first impression. Their resolution will provide substantial guidance regarding the proper forum in which this case should proceed.

Respectfully submitted,

Dated: May 17, 2021

By: /s/ David E. Wilks  
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