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March 5, 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 writes in response to Defendant-Appellant's letter citing the factually distinguishable *Latiolais v. Huntington Ingalls, Inc.*, 2020 WL 878930 (5th Cir. Feb. 24, 2020) (en banc).

As this Court held in *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017), the "or relating to" language Congress added to 28 U.S.C. §1442(a)(1) through the Removal Clarification Act of 2011 requires a removing defendant to establish a "sufficient 'connection or association'" between (1) their challenged conduct, and (2) a federal officer's direction or control. In *Sawyer*, the plaintiff alleged the defendant wrongfully failed to warn of the dangers of asbestos, and this Court held the required connection or association was established by evidence

that the Navy was aware of the dangers of asbestos; that it required the use of asbestos in boilers for which it contracted with Foster Wheeler to manufacture; that it provided for a comprehensive set of warnings, but not all possible warnings; and that Foster Wheeler complied with the Navy's requirements. Foster Wheeler's alleged failure to give warnings to Shipyard employees is therefore clearly related to Foster Wheeler's performance of its contract with the Navy.

*Id.*; compare *Latiolais*, 2020 WL 878930 at \*8 (Navy contract specifying requirements for asbestos installation established colorable federal contractor immunity defense).

Defendants did not present any similar evidence here because none exists. No federal officer directed defendants to deceive the public about the causes. In addition, none of the federal contracts at issue required (rather than allowed) extraction of any amount of fossil fuels. See Appellee's Response Brief at 16–20. The absence of either is fatal to Defendants' arguments.

Regardless, the district court here did not purport to apply the "causal nexus" test the Defendants criticize, and instead held that Defendants "failed plausibly to assert . . . their charged conduct was carried out 'for or relating to' the alleged official authority," citing the current language of 28 U.S.C. § 1442(a)(1) and *Sawyer*. See JA365. The court applied the appropriate test and found Defendants did not satisfy it. In short, there is no basis for federal-officer removal jurisdiction.

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Respectfully submitted,

/s/ Victor M. Sher  
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**Sher Edling LLP**

*Counsel for Plaintiff-Appellee  
Mayor and City Council of Baltimore*

cc: All Counsel of Record (via ECF)