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PROTECTING PEOPLE AND THE PLANET

October 29, 2021

**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 Citation of Supplemental Authorities

Dear Ms. Connor,

Baltimore submits three cases concerning issues raised in Defendants' Opening and Reply briefs (Docs. 73 & 108). Because Defendants maintain that "the case is removable on the additional grounds addressed in their prior briefing," *see* Doc. 193 at 2 n.1, Baltimore brings these authorities to the Court's attention.

In *Atl. Richfield Co. v. Christian*, 140 S.Ct. 1335 (2020) (**Ex. A**), the Supreme Court held that state-law nuisance and trespass claims did not "arise under" federal environmental statutes. The Court observed that "[i]n the mine run of cases, a suit arises under the law that creates the cause of action," and the plaintiffs "common law claims ... ar[o]se under Montana law." *Id.* at 1342. The Court also rejected *Grable* jurisdiction because "[n]o element" of the claims "necessarily raise[d] a federal issue." *Id.* at 1350 n.4. *Christian* supports Baltimore's arguments that its state-law claims arise under state law.

In *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894 (2019) (**Ex. B**), the Court held that a state law banning uranium mining on private land was not preempted by the federal Atomic Energy Act. The plurality reaffirmed that "[i]nvolving some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law," and the Supremacy Clause does not "elevate abstract and unenacted legislative desires above state law," *id.* at 1901, 1907 (cleaned up). *Virginia Uranium* rebuts Defendants' arguments that Baltimore's claims are completely preempted by the Clean Air Act and arise under the Outer Continental Shelf Lands Act.

In *Miree v. DeKalb County*, 433 U.S. 25 (1977) (**Ex. C**), the Court rejected the argument that state-law claims against a federally regulated airport were governed by federal common law. While the federal government has a "substantial interest in regulating aircraft travel and promoting air travel safety," the plaintiffs' claims did not implicate that interest, and litigation between those private parties did not "justify application of federal law to [state-law claims] essentially of local concern." *Id.* at 32–33. *Miree* illustrates that Baltimore's claims are not "governed by," and do not arise under, federal common law.

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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)