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January 14, 2022

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,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee Mayor and City Council of Baltimore submits *West Virginia State University Board of Governors v. The Dow Chemical Co.*, No. 20-1712, __F.4th__, 2022 WL 90242 (4th Cir. Jan. 10, 2022) (**Ex. A**) (“*WVSU*”), as supplemental authority. This Court’s recent decision undermines Defendants-Appellants’ removal jurisdiction theory premised on *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005).

In *WVSU*, this Court affirmed an order remanding a university’s lawsuit bringing state-law claims against chemical companies that had owned and operated a facility regulated under the Resources Conservation and Recovery Act (“RCRA”). *WVSU* at 3–4, 11. Although the U.S. Environmental Protection Agency (“EPA”) had issued RCRA permits requiring cleanup actions at the facility, the defendants’ activities had nevertheless contaminated an adjacent property owned by the university. *Id.* at 4–11.

This Court rejected the defendants’ argument that the university’s action was removable under *Grable* as an “artfully pled” “collatera[l] attack” on the EPA’s RCRA cleanup. *Id.* at 34. The university’s state-law claims “d[id] not draw on federal law as the exclusive basis, or any basis, for holding Defendants liable for their actions,” and thus could not confer federal jurisdiction. *Id.* at 42. Here too, Defendants’ attempt to characterize Plaintiff-Appellee’s “nuisance and other claims” as artfully pled and “inherently federal” falls short. *See* Appellants’ Principal Suppl. Br. (Doc. 193) at 14.

Respectfully submitted,

/s/ Victor M. Sher

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Mayor and City Council of Baltimore

cc: All Counsel of Record (via ECF)