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February 11, 2022

Via ECF

Office of the Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: City of Hoboken v. Chevron Corp., et al., No. 21-2728

Dear Office of the Clerk:

Plaintiff-Appellee City of Hoboken writes pursuant to FRAP 28(j) to notify the Court of the recent opinion of the Court of Appeals for the Tenth Circuit affirming the District Court for the District of Colorado's granting of plaintiffs Boulder County, San Miguel County, and City of Boulder's (collectively, the "Municipalities") motion to remand a similar climate change tort case. Ex. 1 ("*Boulder*"), *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, No. 19-1330 (10th Cir. Feb. 8, 2022).

Boulder rejected all of the removal grounds Defendants assert here in a lawsuit asserting claims based on the "producing, marketing, and selling [of] fossil fuels." *Id.* at 4.

First, *Boulder* rejected federal officer removal based on Exxon's Outer Continental Shelf ("OCS") leases because the leases do not establish the required "acting under" relationship: they do not "require Exxon to tailor fuel production to detailed government specifications"; they do not involve the "needed . . . close supervision" by the government; and their terms "are mere iterations" of regulatory requirements. *Id.* at 16-17 (cleaned up); *see* Dkt. 86 at 44-46.

Second, *Boulder* rejected federal common law removal because "ordinary preemption can never serve as a basis for removal" and "artful pleading" is synonymous with "complete preemption." *Boulder*, at 31-34 (emphasis in original); *see* Dkt. 86 at 19-22. The Tenth Circuit

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

Page 2

also emphasized, contrary to Defendants' arguments, that the Second Circuit's *City of New York* decision does not support federal common law removal because it is not about removal at all. *Id.* at 33-34; *see* Dkt. 86 at 21.

Third, *Boulder* rejected *Grable* jurisdiction because the Municipalities "can prevail on their [state law tort] claims without proving any issue of federal law because the success of those claims is grounded in traditional state-law causes of action and does not depend on any federal policy or regulation." *Boulder*, at 44; *see* Dkt. 86 at 26-33.

Fourth, *Boulder* rejected Outer Continental Shelf Lands Act jurisdiction because the relationship between the Municipalities' claims and Defendants' OCS operations is "several steps beyond" the required but-for "nexus." *Boulder*, at 56-57; *see* Dkt. 86 at 50-53.

Respectfully Submitted,

/s

Matthew D. Brinckerhoff

Encl.

c. All Counsel of Record (via ECF).