

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA,

Plaintiff,

v.

EXXON MOBIL CORP., EXXONMOBIL
OIL CORPORATION, ROYAL DUTCH
SHELL PLC, SHELL OIL COMPANY, BP
P.L.C., BP AMERICA INC., CHEVRON
CORPORATION, CHEVRON U.S.A. INC.,

Defendants.

No. 1:20-cv-01932-TJK

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Exxon Mobil Corp., ExxonMobil Oil Corporation, Royal Dutch Shell PLC, Shell Oil Company, BP p.l.c., BP America Inc., Chevron Corporation, and Chevron U.S.A. Inc. (“Defendants”) write to notify the Court of supplemental authority in support of their Opposition to Plaintiff’s Motion to Remand. *See* Doc. No. 51. On April 1, 2021, the Second Circuit affirmed the dismissal of a complaint brought by the City of New York against energy companies, including several Defendants here, to recover damages for climate change. *See City of New York v. Chevron Corp.*, No. 18-2188, 2021 WL 1216541 (2d Cir. Apr. 1, 2021) (attached as Exhibit A). Defendants discussed the district court’s decision in *City of New York* extensively in their brief opposing remand. *See* Doc. No. 51 at 13, 18, 25.

The Second Circuit’s decision confirms that the Attorney General’s claims necessarily arise under federal law and that artful pleading cannot obscure the claims’ federal nature. Addressing that question as to the City of New York’s similar claims, the Second Circuit held that federal common law, and not state law, governs claims seeking redress for global climate change, a “uniquely international problem of national concern [that is] not well-suited to the application of state law.” *City of New York*, 2021 WL 1216541 at *1. Although the City of New York had pleaded only state-law claims in its complaint, the Second Circuit explained that “[a]rtful pleading cannot transform” a complaint seeking redress for the effects of climate change into “anything other than a suit over greenhouse gas emissions.” *Id.* at *5. The court concluded that the City could not “disavow[] any intent to address emissions” while “identifying such emissions” as the source of its harm. *Id.* The court rejected the plaintiff’s framing of the action as a local issue, and found instead that the true nature of the claims amounted to a “clash over regulating worldwide greenhouse gas emissions and slowing global climate change.” *Id.* “Such a sprawling case,” the court held, “is simply beyond the limits of state law.” *Id.* at *6.

In addition, the Second Circuit held that the action raised “significant federalism concerns.” *Id.* Permitting the suit to proceed under state law, the court reasoned, would risk “upsetting the careful balance” struck by Congress and the Executive Branch between preventing climate change, on the one hand, and “energy production, economic growth, foreign policy, and national security, on the other.” *Id.* at *7. The Second Circuit also rejected the City’s attempt to sidestep “numerous federal statutory regimes and international treaties” regulating greenhouse gas emissions by pressing state-law claims seeking to recover damages for harms allegedly caused by those emissions. *Id.* at *1. Finally, with respect to other decisions holding that federal common law creates a preemption defense and thus does not support removal, the court explained that it need not decide whether the claims at issue “give rise to a federal question for purposes of removal” because the plaintiff had “filed suit in federal court in the first instance.” *Id.* at *8. In any event, Defendants’ argument for removal is not based on a preemption defense but on the fact that the Attorney General’s claims necessarily arise under federal law, and the Second Circuit’s rationale in disposing of the plaintiff’s claims—that they “must be brought under federal common law” because they are “federal claims”—clearly supports removal. *Id.* at *9.

DATE: April 9, 2021

Respectfully submitted,

By: /s/ Theodore V. Wells, Jr.

Theodore V. Wells, Jr. (D.C. Bar
No. 468934)
Daniel J. Toal (*pro hac vice*)
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Tel: (212) 373-3000
Fax: (212) 757-3990
E-mail: twells@paulweiss.com
E-mail: dtoal@paulweiss.com

Justin Anderson (D.C. Bar No. 1030572)
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006-1047
Tel: (202) 223-7321
Fax: (202) 223-7420
E-mail: janderson@paulweiss.com

Patrick J. Conlon, (D.C. Bar No. 414621)
EXXON MOBIL CORPORATION
22777 Springwoods Village Parkway
Spring, TX 77389
Tel: (832) 624-6336
E-mail: patrick.j.conlon@exxonmobil.com

Craig Thompson (D.C. Bar No. 500168)
VENABLE LLP
750 East Pratt Street, Suite 900
Baltimore, MD 21202
Tel: (410) 244-7605
Fax: (410) 244-7742
E-mail: cathompson@venable.com

Attorneys for Defendants
EXXON MOBIL CORPORATION and
EXXONMOBIL OIL CORPORATION

By: /s/ Theodore J. Boutrous

Theodore J. Boutrous, Jr. (D.C. Bar
No. 420440)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Tel: (213) 229-7000
E-mail: tboutrous@gibsondunn.com

Thomas G. Hungar (D.C. Bar No. 447783)
Joshua S. Lipshutz (D.C. Bar No. 1033391)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5306
Tel: (202) 955-8500
E-mail: thungar@gibsondunn.com
E-mail: jlipshutz@gibsondunn.com

Attorneys for Defendants CHEVRON CORP.
and CHEVRON U.S.A., INC.

By: /s/ James W. Cooper

James W. Cooper (D.C. Bar.
No. 421169)
Ethan Shenkman (D.C. Bar No. 454971)
ARNOLD & PORTER KAYE SCHOLER
LLP
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
Tel: (202) 942-5267
Fax: (202) 942-5999
E-mail: ethan.shenkman@arnoldporter.com
E-mail: james.w.cooper@arnoldporter.com

Nancy G. Milbum (*pro hac vice*)
Diana E. Reiter (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER
LLP
250 West 55th Street
New York, NY 10019-9710

By: /s/ David C. Frederick

David C. Frederick (D.C. Bar No. 431864)
Grace W. Knofczynski (D.C. Bar. No.
1500407)

Daniel S. Severson (D.C. Bar. No. 208807)
KELLOGG, HANSEN, TODD, FIGEL &
FREDERICK, P.L.L.C.

1615 M Street, NW, Suite 400
Washington, DC 20036

Tel: (202) 326-7900

Fax: (202) 326-7999

E-mail: dfrederick@kellogghansen.com

*Attorneys for Defendants ROYAL DUTCH
SHELL PLC and SHELL OIL COMPANY*

Tel: (212) 836-8383

Fax: (212) 836-8689

E-mail: nancy.milbum@arnoldporter.com

E-mail: diana.reiter@arnoldporter.com

John D. Lombardo (*pro hac vice*)

Matthew T. Heartney (*pro hac vice*)

ARNOLD & PORTER KAYE SCHOLER
LLP

777 South Figueroa Street, 44th Floor

Los Angeles, CA 90017-5844

Tel: (213) 243-4120

Fax: (213) 243-4199

E-mail: john.lombardo@arnoldporter.com

E-mail: matthew.heartney@arnoldporter.com

Jonathan W. Hughes (*pro hac vice*)

ARNOLD & PORTER KAYE SCHOLER
LLP

3 Embarcadero Center, 10th Floor

San Francisco, CA 94111-4024

Tel: (415) 471-3156

Fax: (415) 471-3400

E-mail: jonathan.hughes@arnoldporter.com

*Attorneys for Defendants BP PLC and BP
AMERICA INC*

CERTIFICATE OF SERVICE

I hereby certify that, on April 9, 2021, I caused the foregoing Notice of Supplemental Authority to be electronically filed using the Court's CM/ECF system, and service was effected electronically pursuant to Local Rule 5.3 to all counsel of record.

/s/ Theodore V. Wells, Jr.
Theodore V. Wells, Jr. (D.C. Bar No. 468934)