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November 3, 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, VA 23219

Re: *Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. 19-1644

Dear Ms. Connor:

Chevron writes in response to Plaintiff's notice of supplemental authority regarding *Atlantic Richfield Co. v. Christian*, 140 S.Ct. 1335 (2020), *Virginia Uranium, Inc. v. Warren*, 139 S.Ct. 1894 (2019), and *Miree v. DeKalb County*, 433 U.S. 25 (1977). Dkt. 237. Plaintiff's notice is improper and irrelevant.

First, the Court should disregard Plaintiff's notice because it violates the Federal Rules of Appellate Procedure. A party may file a notice of supplemental authority only "[i]f pertinent and significant authorities come to a party's attention *after* the party's brief has been filed." Fed. R. App. P. 28(j) (emphasis added). Not only were the cited cases decided long before Plaintiff filed its supplemental brief, Plaintiff's counsel cited these authorities to other courts *more than a year ago*. See, e.g., *County of San Mateo v. Chevron Corp.*, Nos. 18-15499+ (9th Cir.), Dkt. 195 (letter regarding *Atlantic Richfield* filed April 27, 2020); *id.*, Dkt. 150 (letter regarding *Virginia Uranium* filed June 21, 2019); *City of Oakland v. BP P.L.C.*, No. 18-16663 (9th Cir.), Dkt. 151 (letter regarding *Miree* filed January 28, 2020).

Second, these cases are easily distinguishable. *Atlantic Richfield* concerned whether an action based on conduct, pollution, and harm that occurred in a single state arose under a federal statute, and thus does not alter the line of Supreme Court authority holding that disputes arising from *transboundary* pollution—like the one here—arise under federal common law. *Virginia Uranium* does not "rebut[] Defendants' arguments that Baltimore's claims are completely preempted by the [CAA] and arise under [OCSLA]" because (1) that case did not involve complete preemption, as the plaintiff neither asserted state-law claims nor filed in state court; and (2) the Court did not interpret any statutory text similar to OCSLA's. And in *Miree*, the Court acknowledged that "federal common law may govern ... where a uniform national rule is necessary to further the interests of the Federal

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Government,” but concluded that federal interests would not “be burdened or subjected to uncertainty by variant state-law interpretations” under the facts presented. 433 U.S. at 29–30. Not so here. *See* Dkt. 73 at 19–22.

Respectfully submitted,

/s/ Theodore J. Boutrous, Jr.

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Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)