

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA

Plaintiff,

v.

EXXON MOBIL CORP., *et al.*

Defendants.

Civil Action No. 20-1932 (TJK)

**PLAINTIFF DISTRICT OF COLUMBIA'S  
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff District of Columbia hereby notifies the Court of supplemental authority with respect to its Motion to Remand (Dkt. 46).

On January 5, 2022, the United States District Court for the District of Delaware granted the State of Delaware's motion to remand in *Delaware v. BP America Inc., et al.*, Case No. 20-cv-01429-LPS, Dkt. 120 (D. Del. Jan. 5, 2022), attached hereto as **Exhibit A** ("Order").

Similar to the case at bar, the plaintiff state in *Delaware* asserted state-law claims against fossil-fuel companies, alleging that the defendants knowingly deceived consumers and the public about harms caused by their products. There, as here, the defendants tried to recast the "[p]laintiff's claims [as] seek[ing] to 'strike a new regulatory balance that would supplant decades of national energy, economic, and environmental policies.'" Order at 11. The district court correctly disregarded those mischaracterizations of the complaint, concluding instead that "the claims asserted by [the] [p]laintiff are based on [the] [d]efendants' alleged disinformation campaign." *Id.* at 12; *see also id.* at 11 ("The Court disagrees with Defendants' characterization

of Plaintiff’s claims.”); *id.* at 19 (“Defendants’ contention relies on their characterization of Plaintiff’s claims, which the Court has found to be incorrect.”).

Relying on an accurate and “fair reading of [the] [p]laintiff’s claims,” *id.* at 12, the court analyzed and rejected four theories of removal jurisdiction<sup>1</sup> that Defendants have also asserted here:

- (1) **Federal common law.** *See* Order at 5–10 (concluding that “Defendants’ repeated refrains that federal common law ‘governs’ or ‘exclusively governs’ the issues underlying Plaintiff’s state-law claims are simply veiled—and non-meritorious, for purposes of removal—preemption arguments”).
- (2) **Jurisdiction under *Grable & Sons. Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005).** *See* Order at 11–14 (concluding that “[t]he federal interest issues cited by Defendants do not provide an essential element for any of Plaintiff’s claims; nor does the vindication of rights asserted in Plaintiff’s claims necessarily turn on some construction of federal law” (cleaned up)); *see also id.* at 14–16 (“Defendants cite no authority for the proposition that the First Amendment—through *Grable* jurisdiction—converts state law causes of action involving speech into federal causes of action for purposes of assessing jurisdiction.”).
- (3) **Federal officer removal.** *See* Order at 17–18 (concluding that Plaintiff effectively “disclaimed any ‘injuries arising on federal property and those that arose from Defendants’ provision of fossil fuel products to the federal government’”); *id.* at 19 (concluding that “Defendants’ activities during the Korean War, the two World Wars, and events occurring still earlier than these . . . are irrelevant for purposes of removal

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<sup>1</sup> In *Delaware*, the defendants also sought to remove on the basis of complete preemption, federal enclave jurisdiction, and the Class Action Fairness Act. They later abandoned those theories of removal. *See* Order at 4.

because Defendants’ alleged disinformation campaign, which is what the instant case is actually about, started ‘decades later’”); *id.* at 21–24 (concluding that “[f]ossil fuel production under the OCS leases by private companies does not amount to an effort to assist federal officers to ‘fulfill basic government needs, accomplish key government tasks, or produce essential government products’”).

- (4) **Outer Continental Shelf Lands Act.** *See* Order at 25–28 (concluding that “Defendants fail to demonstrate a ‘but for’ connection between their ‘operations’ on the OCS and Plaintiff’s claims,” and rejecting Defendants’ “conten[tion] that the ‘but for’ requirement is ‘contrary to the text of the statute’”).

Respectfully Submitted,

Dated: January 6, 2022

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