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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 *Delaware v. BP America Inc.*, Case No. 20-cv-01429-LPS, Dkt. 120 (D. Del. Jan. 5, 2022) (**Ex. A**) ("Order"), as supplemental authority. The decision granted the State of Delaware's motion to remand in a state-law action that seeks to hold fossil-fuel companies liable for concealing and misrepresenting the harms caused by their products. In doing so, the court rejected many of the same removal theories pursued by Defendants-Appellants here.

First, the court concluded that federal common law cannot convert state-law claims into federal ones for jurisdictional purposes. Order at 5–10. "Defendants' repeated refrains that federal common law 'governs' or 'exclusively governs' the issues underlying [Delaware's] state-law claims are simply veiled—and non-meritorious, for purposes of removal—preemption arguments." *Id.* at 7. Contrary to Defendants-Appellants' position here, moreover, the court recognized that federal jurisdiction cannot rest on federal common law that has been displaced by statute. *Compare* Appellants' Opening Br. at 30–31, Doc. 73, *with* Order at 6 n.7.

Second, OCSLA jurisdiction did not exist in *Delaware* because there was no but-for connection between the state-law claims and any OCS operation. Order at 25–28. In that case, as here, the defendants "contend[ed] that the 'but for' requirement is 'contrary to the text of the statute.'" *Id.* at 26. The district court disagreed, explaining that this causal requirement—"as construed by the Fifth Circuit"—is a "reasonable" and "necessary" interpretation of the statutory language. *Id.* at 26–27.

Finally, the court rejected the defendants' *Grable* arguments, all of which misconstrued the complaint. *Id.* at 11–16.¹ Far from seeking to "'supplant decades of national energy, economic, and environmental policies,'" Delaware's claims—like Plaintiff-Appellee's claims—narrowly targeted "Defendants' alleged disinformation campaign." *Id.* at 11–12. And because "no federal issue [was] 'necessarily raised'" by the complaint's actual allegations, *Grable* jurisdiction did not exist. *Id.* at 16.

¹ In their opening brief, invoked *Grable* jurisdiction as a basis for removal. In their Supplemental Opening Brief, Doc. 193, Defendants-Appellants argue only federal-common-law removal and OCSLA jurisdiction.

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Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

Sher Edling LLP

*Counsel for Plaintiff-Appellee
Mayor and City Council of Baltimore*

cc: All Counsel of Record (via ECF)