

October 4, 2022

VIA ECF

Patricia S. Dodszuweit
Clerk of the Court
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
State of Delaware v. BP America, Inc., et al., No. 22-1096
Defendants-Appellants' Citation of Supplemental Authorities

Dear Ms. Dodszuweit:

On October 3, 2022, the Supreme Court issued an order inviting the Solicitor General to file a brief expressing the views of the United States on whether to grant certiorari in *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 21-1550, which presents the same issue that Defendants-Appellants intend to present to the Supreme Court in these cases: whether nominally state-law claims “necessarily and exclusively governed by federal common law” are removable. *Suncor* Pet. i. This development supports Defendants-Appellants' pending motion to stay the mandates.

The Supreme Court's order makes clear that the question is “substantial,” Fed. R. App. P. 41(d)(1), and “of sufficient public concern” that the Court considers the government's views “relevant to [its] consideration of the case,” Stephen M. Shapiro *et al.*, *Supreme Court Practice* 6-163 (11th ed. 2019). A petition for a writ of certiorari “is over 46 times more likely to be granted” once the Court has requested the Solicitor General's views.¹ Moreover, the United States has taken the position that climate-change claims similar to the ones asserted here are removable because “they are inherently and necessarily federal in nature.” U.S. *Amicus* Br. 26, *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (U.S. Nov. 23, 2020) (discussing U.S. Reh'g *Amicus* Br., *City of Oakland v. Chevron Corp.*, No. 18-16663

¹ David C. Thompson & Melanie F. Wachtell, *An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General*, 16 *Geo. Mason L. Rev.* 237, 274 (2009).

October 4, 2022

Page 2

(9th Cir. Aug. 3, 2020)). The conflict between the United States' position and that of this Court (and the Tenth Circuit) further weighs in favor of Supreme Court review.

The Supreme Court's order thus confirms that these cases present a substantial question, making a stay of the mandates appropriate. Absent a stay, Defendants-Appellants would be forced to litigate in multiple state courts before the Supreme Court has the chance to provide guidance, and it would serve the interests of judicial economy to stay the mandates pending the forthcoming certiorari petition.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.
GIBSON, DUNN & CRUTCHER LLP
Counsel for Defendants-Appellants
Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)