

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.

Civil Action No. 1:20-cv-01932-TJK

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants write in response to Plaintiff's Notice of Supplemental Authority (ECF No. 114), regarding the District of Maryland's decision in *City of Annapolis v. BP P.L.C.*, 2022 WL 4548226 (D. Md. Sept. 29, 2022).¹ The D.C. Circuit has not yet addressed the issues relevant to the pending motion to remand in this case. And the decision in *Annapolis* relies primarily on the Fourth Circuit's decision in *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022), which is not persuasive for the reasons stated in Defendants' prior response. See ECF No. 104.

More recently, on October 3, 2022, the Supreme Court invited the Solicitor General to file a brief expressing the views of the United States on the pending petition for a writ of certiorari in *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 21-1550.

¹ By filing this response, Defendants do not waive any right, defense, affirmative defense, or objection, including any challenges to personal jurisdiction over Defendants.

The defendants’ petition in *Suncor* presents the question whether nominally state-law claims that are necessarily and exclusively governed by federal law arise under federal law for jurisdictional purposes—which is an identical issue before this Court. That the Supreme Court issued an order seeking the Solicitor General’s views is significant because 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.² 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 (9th Cir. Aug. 3, 2020)). The conflict between the United States’ position and that of the Tenth Circuit (and the Fourth Circuit) further weighs in favor of Supreme Court review. If the Supreme Court were to grant certiorari in *Boulder*, its ensuing decision would likely resolve whether federal jurisdiction lies here.

² 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).

DATED: October 7, 2022

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that, on October 7, 2022, I caused the foregoing Response to Plaintiff's 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.

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