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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MATTHEW J. PLATKIN, ATTORNEY
GENERAL OF THE STATE OF NEW
JERSEY; NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION; and
CARI FAIS, ACTING DIRECTOR OF THE
NEW JERSEY DIVISION OF CONSUMER
AFFAIRS,

Plaintiffs,

v.

EXXON MOBIL CORPORATION;
EXXONMOBIL OIL CORPORATION; BP
P.L.C.; BP AMERICA INC.; CHEVRON
CORPORATION; CHEVRON U.S.A. INC.;
CONOCOPHILLIPS; CONOCOPHILLIPS
COMPANY; PHILLIPS 66; PHILLIPS 66
COMPANY; SHELL PLC; SHELL OIL
COMPANY; and AMERICAN PETROLEUM
INSTITUTE,

Defendants.

No. 3:22-cv-06733-ZNQ-RLS

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITIES**

Hon. Zahid N. Quraishi, U.S.D.J.
Hon. Rukhsanah L. Singh, U.S.M.J.

Plaintiffs Matthew J. Platkin, Attorney General of the State of New Jersey; the New Jersey Department of Environmental Protection; and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs, (“Plaintiffs”) hereby notify the Court of supplemental authorities relevant to Defendants’ Motion to Stay Proceedings. Plaintiffs provide a copy of the Amicus Brief of the United States of America (**Ex. A**), submitted in response to the Supreme Court’s request, concerning the petition for certiorari in *Suncor Energy (U.S.A.) Inc. et al. v. Board of County Commissioners of Boulder County et al.*, No. 21-1550 (“*Boulder*”). Plaintiffs also provide a copy of the Eighth Circuit Court of Appeals’ recent decision in *Minnesota v. American Petroleum Institute*, No. 21-1752, 2023 WL 2607545 (8th Cir. Mar. 23, 2023) (“*Minnesota*”) (**Ex. B**).

Defendants’ briefing has noted that the Supreme Court called for the views of the Solicitor General concerning the petition for certiorari pending in *Boulder*. See Defendants’ Motion to Stay Proceedings, at 6–7 (Dkt. 75-1). The Solicitor General responded on March 16, 2023, stating that “[i]n the view of the United States, the petition for a writ of certiorari should be denied.” Ex. A at 1. An empirical analysis cited in Defendants’ brief indicates that the Supreme Court follows the Solicitor General’s recommendation on whether to grant certiorari “in the vast majority” of cases where the Court calls for the views of the United States. 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, 277 & 295 (2009); see Defendants’ Motion to Stay Proceedings, at 6 (Dkt. 75-1). The Supreme Court’s scheduling rules and published calendar for the current term indicate that, unless the Court orders otherwise, the *Boulder* briefs will be distributed to the Justices on April 5, and the Court will then

consider the *Boulder* petition at its April 21 conference.¹ The United States’ brief strongly suggests that the Supreme Court is unlikely to grant a writ of certiorari in *Boulder*, which in turn strongly indicates that the Court will not grant Defendants’ petition for review of the Third Circuit’s decision affirming remand of materially similar cases in *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022) (“*Hoboken*”).

The United States’ brief acknowledges it previously argued in *BP p.l.c. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021), that state law claims involving climate change “may well” arise under federal law, but expressly affirms that because “five courts of appeals that have considered the issue have rejected the position that the government took in *BP*, . . . the United States has reexamined its position” and concluded that the respondents’ claims “should not be recharacterized as claims arising under federal common law.” *Id.* at 7.

The Eighth Circuit’s opinion in *Minnesota* adds to the unanimous appellate authority holding that claims like Plaintiffs’ are not removable to federal court. The Eighth Circuit noted that the court’s “sister circuits rejected [the appellants’ jurisdictional arguments] in each case” in which they were raised, and concluded, “[t]oday, we join them.” Ex. B at *1. This decision further indicates that the Supreme Court is unlikely to grant any of the petitions for certiorari pending from decisions affirming remand of cases materially similar to Plaintiffs’, including the Third Circuit’s decision in *Hoboken*, because the Courts of Appeals are unanimous that claims like those New Jersey asserts here are not removable to federal court on any basis.

¹ See Supreme Court of the United States, Office of the Clerk, *Memorandum Concerning the Deadlines for Cert Stage Pleadings and the Scheduling of Cases for Conference* at 4, <https://www.supremecourt.gov/casehand/Guidance-on-Scheduling-2023.pdf> (once Solicitor General’s views are received, “the Clerk’s Office will place the case on the next relevant conference list that is at least 14 days after the date that the last response is filed. . .”); Supreme Court of the United States, *Case Distribution Schedule – October Term 2022*, at 4, <https://www.supremecourt.gov/casedistribution/casedistributionschedule2022.pdf>.

Dated: April 6, 2023

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/s/ Andrew Reese

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 6, 2023, the document above was electronically filed with the Clerk of Court using the CM/ECF system, which automatically sent notification to all parties of record.

/s/ Paul M. Stephan

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