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VIA ECF

Patricia S. Connor
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 21319

Re: *Anne Arundel County, Maryland v. BP P.L.C., et al.*, and *City of Annapolis, Maryland v. BP P.L.C., et al.*, Case Nos. 22-2082 and 22-2101
Defendants-Appellants' Response to Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Connor:

Defendants-Appellants respectfully respond to Plaintiffs-Appellees' citation of supplemental authorities.

First, contrary to Plaintiffs' suggestions, *Minnesota v. American Petroleum Institute*, 2023 WL 2607545 (8th Cir. Mar. 23, 2023), *supports* removal here. The Eighth Circuit's conclusion—that Minnesota's claims of common-law fraud and violations of Minnesota's consumer-protection statutes did not relate to the defendants' military fuel production—was largely premised on the fact that “Minnesota has no nuisance claim in its complaint,” and the court recognized that “a nuisance claim creates a stronger case for federal jurisdiction.” *Id.* at *7 n.11. Although Minnesota's claims belong in federal court regardless, here, unlike in *Minnesota*, Plaintiffs assert *both* public *and* private nuisance claims. As the Third Circuit explained regarding materially identical complaints, the plaintiffs “charge the oil companies with not just misrepresentations, but also ... nuisances,” which allegedly “are caused by burning fossil fuels and emitting carbon dioxide.” *City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 712 (3d Cir. 2022). Consistent with the Eighth Circuit's reasoning, this Court should conclude that Plaintiffs' nuisance claims relate to Defendants' extensive activities undertaken at the direction of federal officers.

The Solicitor General's brief in *Suncor*, meanwhile, concedes that the United States switched its position following “the change in Administration.” Plaintiffs' Ex. A at 7. Just two years ago, the United States told the Supreme Court that claims, like those here, seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on

Patricia S. Connor

April 12, 2023

Page 2

the global climate are “inherently federal in nature,” even when labeled as arising under state law, and accordingly are removable. Oral Arg. Tr. 31, *BP p.l.c. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021). The United States’ unusual about-face itself increases the chance that the Supreme Court will grant review in *Suncor*, as it underscores that the issues of federal jurisdiction are uncertain and unresolved—and signals the Supreme Court’s intervention and resolution are necessary. If the Supreme Court grants review and reverses, there would be federal jurisdiction over these cases as well. The Supreme Court is expected to decide whether to grant review in April or May.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)