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PROTECTING PEOPLE AND THE PLANET

September 29, 2023

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: *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
Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Connor,

Plaintiffs-Appellees City of Annapolis and Anne Arundel County write pursuant to Rule 28(j) to notify the Court of recent relevant supplemental authority. In *Connecticut v. Exxon Mobil Corp.*, No. 21-1446, 2023 WL 6279941 (2d Cir. Sept. 27, 2023), the slip opinion of which is attached hereto as Exhibit A, the Second Circuit affirmed remand of a case alleging that Exxon Mobil “engaged in a decades-long ‘campaign of deception’ to knowingly mislead and deceive Connecticut consumers” about climate change and its relationship to fossil fuels. Ex. A at 3. The decision supports Plaintiffs’ arguments that the district court here correctly held removal was not proper under the federal officer removal statute, *see* Plaintiffs-Appellees’ Response Brief at 10–53 (Doc. 102) (“RB”) & Ex. A at 37–45, and supports Plaintiffs-Appellees’ Motion to Submit on the Papers (Doc. 128-1).

Defendants-Appellants argue removal under the federal officer removal statute, 28 U.S.C. § 1442, is not foreclosed by this Court’s decision in *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022), because they presented “new categories” of evidence supporting removal that were not considered in *Baltimore*. *See* Defendants-Appellants’ Opening Brief at 32–54. Specifically, Defendants argue this case is removable because they “produc[e] specialized fuels for the military,” “act[ed] under the direction of the military during World War II and the Korean War,” and “suppl[y] oil to the Strategic Petroleum Reserve.” *Id.* at 32. The Second Circuit considered those arguments and held they did not support removal. *See* Ex. A at 38–40 (Strategic Petroleum Reserve and outer continental shelf leases); 40–41 (World War II); 41–45 (sales of specialty fuels to the military). The court’s reasoning applies with full force here.

The First, Second, Third, Eighth, Ninth, and Tenth Circuits, and this Court, have now all affirmed remand in materially similar cases. *See, e.g.*, RB at 2 n.2 (collecting cases); Docs. 104 & 120 (Plaintiffs’ supplemental authorities). The Court should do so again here. Plaintiffs reiterate their request that this appeal be submitted on the briefs and resolved without oral argument. *See* Doc. 128-1.

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Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)