IN THE CIRCUIT COURT
FOR BALTIMORE CITY

2023 OCT 13 [illegible]

MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff,* vs. BP P.L.C., *et al.*, *Defendants.*	Case No. 24-C-18-004219 (HEARING REQUESTED)

CHEVRON DEFENDANTS' MOTION TO DISMISS COMPLAINT UNDER MARYLAND'S ANTI-SLAPP LAW, AND REQUEST FOR HEARING[1]

Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8) (together, "Chevron"), by their undersigned attorneys and pursuant to Md. Code Ann., Cts. & Jud. Proc. § 5-807, hereby file this Motion to Dismiss Plaintiff's Complaint Under Maryland's Anti-SLAPP Law. As set forth in the accompanying Memorandum of Law, Plaintiff's Complaint against Chevron constitutes a "strategic lawsuit against public participation" under Maryland's Anti-SLAPP law, and this Court should therefore strike and dismiss the case with prejudice.

REQUEST FOR HEARING

Pursuant to Maryland Rule 2-311(f), Chevron respectfully requests a hearing on all issues raised in this Motion and the accompanying Memorandum of Law.

[1] Chevron is contemporaneously filing a motion to dismiss on the ground that it is not subject to personal jurisdiction in Maryland. Chevron submits this motion subject to, and without waiver of, any jurisdictional objections.

Dated: October 16, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October 2023, copies of the foregoing were served on all attorneys of record via email (by agreement of the parties).

Alison Schurick

Alison Schurick

IN THE CIRCUIT COURT
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MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff,* vs. BP P.L.C., *et al.*, *Defendants.*	Case No. 24-C-18-004219 (HEARING REQUESTED)

CHEVRON DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS COMPLAINT UNDER MARYLAND'S ANTI-SLAPP LAW[1]

[1] Chevron is contemporaneously filing a motion to dismiss on the ground that it is not subject to personal jurisdiction in Maryland. Chevron submits this motion subject to, and without waiver of, any jurisdictional objections.

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I. INTRODUCTION

Plaintiff, the Mayor and City Council of Baltimore, seeks to use state tort law to force a selected group of energy companies to pay for all the alleged harms of global climate change based on a novel, post hoc regulation of global fossil fuel emissions. To evade federal jurisdiction and obtain remand to this Court, Plaintiff argued its claims were based exclusively on political speech opposing fossil fuel regulation, rather than petroleum production or emissions. In other words, Plaintiff argued that the gravamen of its Complaint is that Defendants are liable for allegedly engaging in speech to "to undermine public support for greenhouse gas regulation," Compl. ¶ 6, and for engaging in "a public campaign" designed to "evad[e] regulation of their fossil fuel products and/or emissions therefrom," *id.* ¶ 143.

Plaintiff's attempt to recharacterize this case as based solely on *speech*, rather than *emissions*, does not change the fact that each of the claims asserted in the Complaint seeks damages for the volume of greenhouse gases in the global atmosphere. For this reason, the federal structure of the Constitution prohibits applying Maryland law irrespective of the particular theory Plaintiff relies on. *See* Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted at pp. 8–19. But Plaintiff's speech-based theory of liability also raises new and obvious First Amendment problems, and it triggers special protections for speech under Maryland's Anti-SLAPP law.

The Anti-SLAPP law was designed to stop "SLAPP suit[s]," which are "strategic lawsuit[s] against public participation." Md. Code Ann., Cts. & Jud. Proc. § 5-807(a). Under the law, a suit is a "SLAPP suit," and subject to dismissal, if it (1) is brought against a party who has made protected communications to a government body or the public on a matter within the authority of a government body or on an issue of public concern, (2) is materially related to the protected

communications, (3) is intended to inhibit or has inhibited the making of those protected communications, and (4) is brought in bad faith. *See MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 297 (2021). If a suit satisfies these criteria, it must be dismissed unless the plaintiff can carry its burden of showing that the defendant spoke with "constitutional malice"—*i.e.*, that there is "clear and convincing evidence that a statement was made with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 312 (internal quotation marks omitted). In short, the Anti-SLAPP law "is aimed at protecting defendants from being deterred from exercising their First Amendment rights by the initiation of meritless and vexatious litigation." *Id.* at 308.

The Anti-SLAPP law applies here. In Plaintiff's telling, the Complaint targets speech designed to persuade the public and government officials to support or oppose regulations, treaties, and other measures affecting energy and climate policy—speech that is both of great public concern and protected by the Constitution. The very point of this lawsuit is to punish Defendants for taking a position on these matters of public concern that conflicts with Plaintiff's preferred policies.

Plaintiff's allegations against Chevron Corporation and Chevron U.S.A. Inc. (together, "Chevron") in particular are especially meritless. Not only is the alleged speech "campaign" that Plaintiff complains of protected by the Constitution, but Plaintiff does not actually allege that Chevron itself made a *single statement* as part of the campaign. *See* Compl. ¶¶ 141–70. In short, while Plaintiff attacks protected speech, Plaintiff has not made a serious effort to show that Chevron is liable for anything. This is the very definition of a SLAPP suit, and Plaintiff's suit against Chevron should be dismissed under the Anti-SLAPP law.

Even if the Anti-SLAPP law did not apply, Plaintiff's claims—based on an alleged publicity "campaign" against regulation in the 1980s and 90s—would still be barred by the First Amendment.

The *Noerr-Pennington* doctrine holds that "[a] publicity campaign directed at the general public and seeking government action" is immune from liability under the First Amendment's Petition Clause. *Manistee Town Ctr. v. City of Glendale*, 227 F.3d 1090, 1092 (9th Cir. 2000). And factual development on this issue is unnecessary because Plaintiff itself alleges that its claims are based on the purported publicity campaign aimed at influencing the public's—and, in turn, lawmakers'—views on climate change. *E.g.*, Compl. ¶¶ 141–70. Simply put, Plaintiff cannot overcome the high burden imposed by *Noerr-Pennington* and the First Amendment, which protects not only the heartland of political speech, but even "the *prospect* of chilling fully protected expression." *Counterman v. Colorado*, 143 S.Ct. 2106, 2115 (2023) (emphasis added). Although Plaintiff alleges that the participants in the "campaign" were motivated by a desire to protect their business, this is irrelevant because "the First Amendment extends to all persons engaged in expressive conduct, including those who seek profit." *303 Creative LLC v. Elenis*, 143 S.Ct. 2298, 2320 (2023).

In short, even if the Court accepts Plaintiff's characterization of the Complaint as attempting to hold Chevron liable for climate change based only on alleged speech opposing stricter energy and environmental regulation, it still fails on multiple levels. Maryland's Anti-SLAPP law protects Chevron from meritless claims that burden constitutionally protected speech on issues of public interest. And Plaintiff's claims against Chevron are patently meritless: Plaintiff has not pleaded facts showing Chevron's involvement in the complained-of speech, its claims are clearly barred by *Noerr-Pennington* and the First Amendment, and its claims fail for all the reasons explained in the concurrently filed Motion to Dismiss. Plaintiff's suit against Chevron should be dismissed.

II. PLAINTIFF'S ALLEGATIONS AND PROCEDURAL BACKGROUND

A. Plaintiff Seeks Remedies for Global Emissions.

Plaintiff's Complaint seeks to hold Defendants liable for harms allegedly caused (or to-be-

caused) by global climate change and the emissions of anyone who might have ever burned any fossil fuels, including coal, anywhere in the world. *See* Compl. ¶ 1 (alleging "unrestricted production and use of their fossil fuel products create greenhouse gas pollution that warms the planet and changes our climate"; "disruptions of the Earth's otherwise balanced carbon cycle have substantially contributed to ... global warming, rising atmospheric and ocean temperatures, ocean acidification, melting polar ice caps and glaciers, more extreme and volatile weather, and seal level rise"; and "massive increase in the extraction, production, and consumption of oil, coal, and natural gas"). Plaintiff concedes that "it is not possible to determine the source of any particular individual molecule of CO_2 in the atmosphere ... because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because greenhouse gasses quickly diffuse and comingle in the atmosphere." *Id.* ¶ 246. Nonetheless, Plaintiff seeks to compel Defendants named in its Complaint to pay damages for climate change, give Plaintiff its profits, and somehow "abate[]" the effects of climate change. *Id.* at p. 130.

The first half of Plaintiff's Complaint is a lengthy discussion of the extent to which "global warming and climate change" is "caused by anthropogenic greenhouse gas emissions." Compl. ¶ 39. Plaintiff alleges that the burning of fossil fuels—around the globe, by the inhabitants of every country—has caused "the atmosphere and ocean [to] rise[], and the amounts of snow and ice [to] diminish[] ... [and] extreme weather events have increased, including ... heat waves, droughts, and extreme precipitation events." *Id.* ¶ 36.

B. Plaintiff Attacks Defendants' Political Speech and Petitioning on a Public Issue.

In drafting its Complaint, Plaintiff recognized that its claims attacking fossil fuel emissions could subject it to federal jurisdiction—since federal law and treaties govern the global emission of greenhouse gases. In an effort to avoid a federal forum, Plaintiff tried to pivot away from its attack

on emissions and reframe its Complaint as an attack on *speech* about oil and gas regulation and climate change—attempting to argue that Defendants are liable for the greenhouse gas emissions of all humanity because Defendants allegedly launched "a public campaign aimed at ... evading regulation of their fossil fuel products and/or emissions therefrom." Compl. ¶ 143. According to Plaintiff, this "decades-long campaign" was "designed to maximize continued dependence on their products and undermine national and international efforts to rein in greenhouse gas emissions." *Id.* ¶ 145. Plaintiff vaguely asserts that all "Defendants" somehow engaged in this speech "campaign," but Plaintiff does not identify *any* statement allegedly made by Chevron itself. *Cf. id.* ¶¶ 141–70.

Plaintiff claims this "public campaign" was intended to discourage further "regulation of their business practices," *id.* ¶ 160, and "undermine national and international efforts to rein in greenhouse gas emissions," *id.* ¶ 145, including the Kyoto Protocol, *id.*, ¶¶ 159(a), 161. Yet, it is a matter of public record that—despite extensive public debate—three different administrations declined to adopt the Kyoto Protocol, and the Byrd-Hagel Resolution barred its adoption by a 95-0 vote of the Senate. *See* S. Res. 98, 105th Cong. 1st Sess., 143 Cong. Rec. S8138 (July 25, 1997).

Plaintiff also alleges that "Defendants" engaged in speech that was intended "to change public opinion and avoid regulation" by emphasizing the heavy social costs imposed by over-regulation of energy. *Id.* ¶ 151. For example, Plaintiff denounces a 1994 (non-Chevron) report advocating against "policies to curb greenhouse gas emissions beyond 'no regrets' measures." *Id.* ¶ 149. Similarly, Plaintiff criticizes a 1997 (non-Chevron) speech arguing that "[i]t's bad public policy to impose very costly regulations and restrictions when their need has yet to be proven." *Id.* ¶ 155. Plaintiff alleges these public statements were intended to "induce political inertia" against further regulation, *id.* ¶ 152, but says nothing about whether or how these public statements affected the robust and uninhibited public discourse about energy policy that the First Amendment protects—a

telling omission considering that views *contrary* to those recited in the Complaint received extensive media coverage, including on the front pages of major national newspapers.

Although the Complaint is devoid of Chevron statements made as part of this "campaign," Plaintiff does allege that Chevron was a member of trade organizations that organized campaigns to oppose energy regulation. Plaintiff alleges that Chevron was connected to the American Petroleum Institute ("API"), which "convened a Global Climate Science Communications Plan" with a "multi-million-dollar, multi-year" plan that included "public outreach and the dissemination of educational materials to schools to 'begin to erect a barrier against further efforts to impose Kyoto-like measures in the future.'" *Id.* ¶ 158. Plaintiff describes this campaign as "a blatant attempt to disrupt international efforts ... to negotiate a treaty that curbed greenhouse gas emissions." *Id.*

C. Plaintiff Concedes Its Complaint Targets Political Speech.

Defendants removed this case to federal court, arguing that the Complaint arises under federal laws and treaties, and presents substantial federal questions as well as claims that are completely preempted by federal law. Baltimore Federal Dkt. 1 at 1–3.[2] More specifically, Defendants pointed out that Plaintiff was attempting to use a civil lawsuit to regulate "*global* greenhouse gas emissions," and that such regulation-by-lawsuit is barred by federal law. *Id.* ¶ 35. Likewise, Defendants explained that Plaintiff was attempting "to supplant federal regulation of greenhouse gas emissions and hold select members of an international industry responsible for the alleged consequences of rising ocean levels ... allegedly caused by global climate change," and that this raised "federal issue[s]" that supported federal jurisdiction. *Id.* ¶ 25. Defendants also argued the case was subject to "federal officer removal" because Defendants' extraction of petroleum from federal lands

[2] Citations to "Baltimore Federal Dkt." are to filings on the federal District Court docket in *Mayor and City Council of Baltimore v. BP P.L.C. et al.*, No. 18-cv-02357 (D. Md.).

and its provision to the federal government—which is the world's largest institutional user, powering its military and official operations—is part of the activity Plaintiff complains about. *Id.* ¶¶ 58–66.

In response, Plaintiff attempted to disclaim the Complaint's extensive emissions-related allegations and asserted that its claims were based solely on Defendants' purported *speech* opposing oil and gas regulation. *See* Baltimore Federal Dkt. 120 at 4 (arguing that "Defendants engaged for decades in a coordinated, multi-front effort to conceal and contradict their own knowledge, discredit the growing body of publicly available science and persistently create doubt in the minds of customers, consumers, regulators, and the media."). Contrary to those allegations in the Complaint, Plaintiff described its Complaint in its motion to remand as based on "decades" of Defendants' speech intended to "create doubt in the minds of customers, consumers, regulators, and the media" that was purportedly intended to "prevent regulation" by "deceiving the public and policymakers." *Id.* at 4. And Plaintiff argued that "[t]he City's claims here focus on Defendants' wrongful production, promotion, and marketing of their fossil fuel products." *Id.* at 17.[3]

The federal district court credited Plaintiff's reframing of its Complaint and remanded the case. *See* Baltimore Federal Dkt. 172. In its remand order, the district court adopted Plaintiff's argument that its claims are based *solely* on speech—*i.e.*, stating the Complaint "alleges that defendants breached various duties" by "failing to warn consumers, retailers, regulators, public officials." *Id.* at 22.

III. ANTI-SLAPP STANDARDS

Maryland's Anti-SLAPP law provides civil defendants with an immunity from strategic

[3] Although Plaintiff's arguments vaguely invoke language used in the context of product advertising, its Complaint does not identify *any* product advertisement by Chevron. *See* Compl. ¶¶ 141–70 (making numerous allegations about the alleged "public campaign" to influence public opinion and regulators, without including any allegation about any product advertisement).

lawsuits against public participation, or "SLAPP" suits. Md. Code Ann., Cts. & Jud. Proc. § 5-807(a). A suit is a SLAPP suit if it is "[b]rought in bad faith against a party who has communicated with ... the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or ... the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern." *Id.* § 5-807(b)(1). The suit must also "[i]ntend[] to inhibit or inhibit[] the exercise of rights." *Id.* § 5-807(b)(3). If the suit qualifies as a SLAPP suit, then the defendant is not civilly liable for its exercise of protected speech unless the plaintiff can show the defendant acted with "constitutional malice." *Id.* § 5-807(c); *see also MCB Woodberry Dev.*, 253 Md. App. at 296–97 (dismissing SLAPP suit where plaintiffs failed to plead non-conclusory allegations showing actual malice).

A defendant may take advantage of the statutory immunity created by the Anti-SLAPP law by moving to "[d]ismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable." Md. Code Ann., Cts. & Jud. Proc. § 5-807(d)(1).

IV. ARGUMENT

Plaintiff's allegations against Chevron are barred by Maryland's Anti-SLAPP law. According to Plaintiff, all of its claims are based on speech, and all speech alleged in the Complaint involves communication with the public on issues of public concern—*i.e.*, climate change and the use and regulation of fossil fuels. This speech is protected by the First Amendment. Indeed, the speech that Plaintiff focuses on—the public opinion campaign to oppose fossil fuel regulation—is core political speech subject to absolute constitutional protection.

Given that Plaintiff's Complaint—by its own admission—attacks constitutionally protected speech, Plaintiff could only escape dismissal under the Anti-SLAPP law if it shows that Chevron's

statements were knowingly false under constitutional standards. Plaintiff has not even tried to do that. Chevron is not alleged to have actually made a *single statement* as part of the publicity "campaign" that Plaintiff attacks, much less an actionable, knowingly false statement. The Anti-SLAPP law bars Plaintiff's claims.

Even setting the Anti-SLAPP law aside, the First Amendment requires dismissal of Plaintiff's claims. Under the *Noerr-Pennington* doctrine, publicity campaigns designed to influence public opinion—and thus influence government action—are absolutely protected by the Constitution. For that reason, Plaintiff cannot hold Chevron (or other Defendants) liable for the "campaign." that is the focus of its Complaint. Therefore, even if Maryland's Anti-SLAPP statute did not apply, Plaintiff's claims should still be dismissed.

A. Chevron's Speech Is Protected Under the Maryland Anti-SLAPP Statute.

Maryland's Anti-SLAPP statute provides an immunity for defendants who are sued for their speech in a "SLAPP" suit. A lawsuit is a "SLAPP suit" if it is (1) brought against a party who has made protected communications to a government body or the public on a matter within the authority of government body or on an issue of public concern, (2) materially related to the protected communications, (3) intended to inhibit or to have inhibited the making of those protected communications, and (4) brought in bad faith. *See MCB Woodberry*, 253 Md. App. at 297.[4] "If all four criteria are satisfied, then the defendant is entitled to civil immunity if he or she acted 'without constitutional malice' when making the protected communications." *Id.* Each of these requirements is met here, and Plaintiff's claims should be dismissed subject to the Anti-SLAPP statute.

[4] The *MCB Woodberry* Court first listed the elements of the statute in a slightly different order, but then proceeded to address them in this fashion.

1. The Complaint Attacks and Seeks to Inhibit Speech on Matters of Public Concern.

The first three of the Anti-SLAPP elements are easily satisfied—because the Complaint directly attacks, and seeks to punish and inhibit, speech on matters of public concern.

"[A] matter of 'public concern' [is] 'fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.'" *MCB Woodberry*, 253 Md. App. at 304 (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)); *see also id.* at 305 (speech on matter of public concern is speech on a topic that "is not a purely private matter"). "Whether a communication is on a matter of public concern is a question of law for the court, to be determined by the content, form, and context of a given statement." *Id.* at 304 (quotations omitted).

There is no dispute that carbon emissions, energy regulation, and climate change are all "issue[s] of public concern" that are of significant interest to the public. "Global warming is one of the greatest challenges facing humanity today," *City of New York v. Chevron Corp.*, 993 F.3d 81, 86 (2021), and "[c]limate change has staked a place at the very center of this Nation's public discourse," *Nat'l Rev., Inc. v. Mann*, 140 S. Ct. 344, 348 (2019) (Alito, J., dissenting from denial of certiorari). "Politicians, journalists, academics, and ordinary Americans discuss and debate various aspects of climate change daily—its causes, extent, urgency, consequences, and the appropriate policies for addressing it. The core purpose of the constitutional protection of freedom of expression is to ensure that all opinions on such issues have a chance to be heard and considered." *Id.*; *see Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 427 (2011) (Ginsburg, J.) ("The appropriate amount of regulation in any particular greenhouse gas producing sector *cannot be prescribed in a vacuum*: As with other questions of national or international policy, *informed assess-*

ment of competing interests is required. Along with the environmental benefit potentially achievable, *our Nation's energy needs and the possibility of economic disruption must weigh in the balance.*") (emphasis added).

According to Plaintiff, each of the Complaint's causes of action arises from Defendants' speech about fossil fuel regulation and climate change. Indeed, Plaintiff repeatedly alleges that the speech at issue—which concerns important topics like the threat of "climate change" and the "impacts" of Defendants' "fossil fuel products"—was of interest to the "public" at large. Compl. ¶¶ 1, 8; *id.* ¶ 152 (describing "print advertisements" on "climate science" issues); *id.* ¶ 181 (speech was intended to "contribute to the public policy debate in search of the wider global answers to the problem" of climate change); *id.* ¶ 191 (speech to "avoid regulation"). These are all "subject[s] of general interest and of value and concern to the public." *MCB Woodberry*, 253 Md. App. at 304.

In fact, Plaintiff successfully argued, when moving to remand this case to state court, that the *only* basis for liability in this case is speech on matters of public concern—namely, Defendants' alleged decades-long campaign to "conceal and contradict their own knowledge, discredit the growing body of publicly available science, and persistently create doubt in the minds of customers, consumers, regulators, and the media." Baltimore Federal Dkt. 120 at 4. Plaintiff is therefore judicially estopped from reversing course now and arguing that its Complaint is *not* based on attacking such speech. *See Vogel v. Touhey*, 151 Md. App. 682, 707 (2003) (judicial estoppel prevents a party from successfully pursuing one position and then pursuing an inconsistent position); *Gordon v. Posner*, 142 Md. App. 399, 424 (2002) (same).

In short, Plaintiff itself has alleged and argued that its Complaint attacks and seeks to punish speech on matters of public concern. The first three Anti-SLAPP elements are therefore satisfied.

2. Plaintiff's Suit Was Brought in Bad Faith.

"Bad faith" is not defined in the Anti-SLAPP statute, and only one Maryland appellate case has considered the meaning of "bad faith" in the law. *See MCB Woodberry*, 253 Md. App. at 305–06. In *MCB Woodberry*, the Court of Special Appeals explained that by prohibiting "bad faith" actions, the legislature intended to "deter[] abusive litigation" that targets speech. *Id.* at 307; *see also id.* at 296 (purpose of Anti-SLAPP law is "to weed out and deter lawsuits brought for the improper purpose of harassing individuals who are exercising their protected right to freedom of speech"). A suit is brought in "bad faith" under the statute when it is brought "vexatiously" and intended to harass and deter defendants "from exercising their First Amendment rights." *Id.* at 307. Here, the face of the Complaint demonstrates that Plaintiff's suit was brought to harass Chevron for protected and truthful speech on matters of public concern—much of which Chevron is not even alleged to have made itself.

As explained, Plaintiff spends its Complaint arguing that "Defendants" are somehow liable for a speech "campaign," directed at the public, which advocated against further regulation of fossil fuels. Plaintiff repeatedly describes this speech as a publicity campaign aimed at influencing public opinion and regulators. *See infra* 17 (summarizing allegations about campaign, including that it was an effort "to undermine public support for greenhouse gas regulation," Compl. ¶ 6, and a "campaign against regulation of [Defendants'] business practices," *id.* ¶ 160). But under the First Amendment rule known as the *Noerr-Pennington* doctrine (discussed in further detail below), "a publicity campaign" targeting the public and advocating government action is absolutely protected by the First Amendment. *E. R. R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 140 (1961). It is difficult to conceive of a more quintessential example of "bad faith" than a government body suing defendants for constitutionally protected speech opposing government regulation.

Plaintiff's claims against Chevron evidence "bad faith" for another reason—Chevron is not alleged to have actually made *any* of the statements in the "campaign" that Plaintiff complains about. Although the Complaint includes more than 30 paragraphs of allegations about the purported speech "campaign," *see* Compl. ¶¶ 141–70, none involves a single statement by Chevron—and only two paragraphs even *mention* Chevron at all, *see id.* ¶¶ 150, 165. In those two paragraphs, Plaintiff alleges that an "affiliate[], predecessor[], and/or subsidiar[y]" of Chevron "launched a national climate change science denial campaign" with the goal "to change public opinion and avoid regulation," *id.* ¶¶ 150–51, and that "representatives from Chevron" worked on a "Communications Team" that was founded by the trade group API and allegedly sought "to evade regulation of emissions resulting from use of their fossil fuel products," *id.* ¶¶ 165–66.

Even if that allegation were true, Chevron cannot be held liable for being associated with a group that engaged in speech on an issue of public concern. As explained, all of the alleged speech campaign is protected by the *Noerr-Pennington* doctrine. But even setting that aside, under *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), Chevron cannot be liable for associating with a "group" that allegedly engaged in speech that Plaintiff does not like. *Id.* at 918–19 ("The First Amendment similarly restricts the ability of the State to impose liability on an individual solely because of his association with another."). First Amendment protections do not disappear "merely because some members of [a] group may have participated in conduct or advocated doctrine that itself is not protected." *Id.* at 908. Plaintiff would have to show that unprotected and knowingly false (and thus actionable) speech was made by *Chevron itself*, not by some organization (like a trade association) that happened to include Chevron—and Plaintiff has not done that.

In short, the Complaint's scant allegations about Chevron do not even attempt to show that Chevron has made a false statement or could be liable to Plaintiff. And even if Plaintiff could tie

Chevron to some of the speech "campaign" that it focuses its allegations on, that "campaign" is indisputably protected by the Constitution. This demonstrates bad faith. In *MCB Woodberry*, the court found bad faith when (1) "the allegations of the complaint were 'conclusory' and 'devoid of any specific facts' to support the claim that the [defendants] made any false or misleading claims," and (2) "the remaining allegations against the [defendants] were customarily protected First Amendment activities." 253 Md. App. at 310–11. So, too, here. This harassing lawsuit is not a serious attempt to hold Chevron liable for actionable misconduct.

3. There Is No Allegation That Chevron Acted With Constitutional Malice.

Given that the first four elements of the Anti-SLAPP law are met, Plaintiff's claims against Chevron must be dismissed unless Plaintiff can show that Chevron engaged in "constitutional malice." Md. Code Ann., Cts. & Jud. Proc. § 5-807(c). It cannot.

"Constitutional malice, often referred to as actual malice, 'is established by clear and convincing evidence that a statement was made with knowledge that it was false or with reckless disregard of whether it was false or not.'" *MCB Woodberry*, 253 Md. App. at 312 (quoting *Batson v. Shiflett*, 325 Md. 684, 728 (1992)). Allegations showing malice must be specific and "non-conclusory." *Id.*

The Complaint does not make any such allegations. As explained, Chevron is not alleged to have made a single "statement" in connection with the speech "campaign" alleged in Plaintiff's Complaint, much less a knowingly false statement. *Supra* 5–6, 13–14. Therefore, the Anti-SLAPP law applies, and Plaintiff's suit against Chevron should be dismissed.

B. Any Speech-Based Claims Are Barred by the *Noerr-Pennington* Doctrine.

Even if the Anti-SLAPP law did not apply, Plaintiff's claims would *still* be subject to dismissal. As explained, Plaintiff does not identify any Chevron statements. *Supra* 15–16. Rather,

according to Plaintiff, Plaintiff's claims are based on a speech campaign in the 1980s and 90s that opposed further fossil fuel regulation. *Supra* 14–16. But under the *Noerr-Pennington* doctrine, "[a] publicity campaign directed at the general public and seeking government action" is protected by the First Amendment—*even if* the speech is allegedly misleading. *Manistee*, 227 F.3d at 1092. Plaintiff's speech-based claims are legally barred and should be dismissed.

1. The *Noerr-Pennington* Doctrine Applies to Claims About Public Policy Campaigns.

The *Noerr-Pennington* doctrine protects activities intended to influence the government—including publicity campaigns designed to influence the voting public—pursuant to the Petition Clause of the First Amendment. The doctrine was first articulated in *E. R. R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), a case brought by a group of trucking plaintiffs against railroads and affiliated defendants. The trucking plaintiffs alleged the railroads violated the Sherman Act by "conduct[ing] a publicity campaign against the truckers designed to foster the adoption and retention of laws and law enforcement practices destructive of the trucking business," and "creat[ing] an atmosphere of distaste for the truckers among the general public." *Id.* at 129. The plaintiffs alleged that this "publicity campaign" was "fraudulent," because "the publicity matter circulated in the campaign was made to appear as spontaneously expressed views of independent persons and civic groups when, in fact, it was largely prepared and produced by [the railroads' PR firm] and paid for by the railroads." *Id.* at 130. After a bench trial, the district court awarded "substantial damages" and a "broad injunction" to the plaintiffs. *Id.* at 133–34.

The Supreme Court reversed, explaining that "publicity campaign[s]" aimed at influencing governmental action cannot be the grounds for civil liability, as "representative democracy ... depends upon the ability of the people"—including businesspeople—"to make their wishes known to their representatives." *Id.* at 137. The fact that the defendants "deliberately deceived the public

and public officials" by using front groups was irrelevant. *Id.* at 145. Four years later, the Court reiterated that defendants could not be liable for "a concerted effort to influence public officials." *United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 669–70 (1965).

Although *Noerr* and *Pennington* focused on antitrust claims under the Sherman Act, later decisions have made clear that the *Noerr-Pennington* doctrine embodies a constitutional rule that applies to all claims—including common-law torts. *See IGEN Int'l, Inc. v. Roche Diagnostics GmbH*, 335 F.3d 303, 310 (4th Cir. 2003) ("[A]lthough originally developed in the antitrust context, the doctrine has now universally been applied to business torts."). "While the *Noerr–Pennington* doctrine originally arose in the antitrust context, it is based on and implements the First Amendment right to petition and therefore, with one exception [for frivolous or sham lawsuits], applies equally in *all* contexts." *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000) (emphasis added).

2. *Noerr-Pennington* Protects the Complaint's Alleged "Publicity Campaign."

Just as the *Noerr* plaintiffs could not use the Sherman Act to punish the defendants for engaging in an allegedly "fraudulent" "publicity campaign" aimed at legislative and regulatory action, Plaintiff here cannot punish Defendants for allegedly doing the same thing. The Petition Clause protects "the right of the people ... to petition the Government," U.S. Const. amend. I—and in a republic, the most effective means of petitioning "the Government" is to speak to the *public* who choose the Government. For that reason, *Noerr* "extended immunity not only to the railroads' direct communications with legislators but *also* to its public relations campaign, finding that the latter's aim was to influence the passage of favorable legislation." *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 934 (9th Cir. 2006) (emphasis added) (citing *Noerr*, 365 U.S. at 140–43).

Here, Plaintiff repeatedly describes the speech it complains of as a publicity campaign aimed at influencing public opinion and regulators, calling it, for example:

- "sought to undermine public support for greenhouse gas regulation," Compl. ¶ 6;
- "a public campaign" whose goal was to "evad[e] regulation of their fossil fuel products and/or emissions therefrom" *id.* ¶ 143;
- An "advertising campaign" whose "goal" "was to change public opinion and avoid regulation," *id.* ¶ 151;
- "a campaign against regulation of their business practices," *id.* ¶ 160;
- "deceptive advertising campaigns ... with the specific purpose of preventing U.S. adoption of the Kyoto Protocol," *id.* ¶ 161;
- an attempt "to evade regulation of the emissions resulting from use of their fossil fuel products," *id.* ¶ 166; and
- "Affirmatively and knowingly campaigning against the regulation of their fossil fuel products," *id.* ¶ 221(e).

In short, Plaintiff alleges that Defendants engaged in precisely the sort of "publicity campaign directed at the general public and seeking government action," that the *Noerr-Pennington* doctrine protects. *Manistee*, 227 F.3d at 1092; *Noerr*, 365 U.S. at 129.

It does not matter that Plaintiff alleges the campaign was "false" or "misleading," *see, e.g.*, Compl. ¶ 295, or purportedly conducted through "front groups," *id.* ¶ 167. The "publicity campaign" in *Noerr* was alleged to be "fraudulent" and deceptively "made to appear as spontaneously expressed views of independent persons" when it was actually "paid for by the railroads." 365 U.S. at 129–30. But the speech was still protected by the "right of petition." *Id.* at 138. "As pointed out by the Court in *Noerr*, attempts to influence public officials may occasionally result in 'deception of the public, manufacture of bogus sources of reference, [and] distortion of public sources of information.'" *Boone v. Redev. Agency of City of San Jose*, 841 F.2d 886, 894 (9th Cir. 1988) (quoting *Noerr*, 365 U.S. at 140). Even if such "misrepresentations" occur, the political process is intended to "accommodate false statements and reveal their falsity." *Id.* Merely alleging a speech campaign is "false" does not remove *Noerr-Pennington* immunity. *Id.*

In truth, the speech that Plaintiff identifies accurately described the costs of regulation and

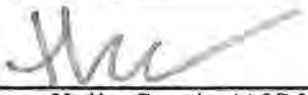
advocated that voters, legislators, and regulators weigh those costs. Plaintiff may disagree with this advocacy, but it cannot hold anyone liable for taking a different view. *See id.*

V. CONCLUSION

For the foregoing reasons, this Court should grant this motion to dismiss and dismiss the case against Chevron with prejudice. In the alternative, this Court should dismiss the complaint against Chevron for failure to state a claim upon which relief can be granted. *See* Md. Rule 2-322(b).

DATED: October 16, 2023

Respectfully Submitted,



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Attorneys for Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October 2023, a copy of the foregoing was served on all counsel of record via email (by agreement of the parties).

Alison Schurick

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff,* vs. BP P.L.C., *et al.*, *Defendants.*	Case No. 24-C-18-004219

[PROPOSED] ORDER

Upon consideration of the Motion filed by Defendants Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8) (together, "Chevron") to dismiss Plaintiff's Complaint under Maryland's Anti-SLAPP law, and any opposition and reply thereto, it is this _____ day of _____, 20____, hereby

ORDERED, that Chevron's Motion to Dismiss is **GRANTED;** and it is further

ORDERED, that the claims against Chevron Corporation (#7) and Chevron U.S.A. Inc. (#8) are **DISMISSED WITH PREJUDICE**.

_____
Judge Videtta A. Brown
Circuit Court for Baltimore City