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PROTECTING PEOPLE AND THE PLANET

November 28, 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 Authority
Oral argument scheduled for December 6, 2023

Dear Ms. Connor,

Plaintiffs-Appellees City of Annapolis and Anne Arundel County write pursuant to Federal Rule of Appellate Procedure 28(j) to notify the Court of recent relevant supplemental authority. Attached as **Exhibit A** is the slip opinion in *City and County of Honolulu v. Sunoco LP*, No. SCAP-22-0000429, ___ P.3d ___, 2023 WL 7151875 (Haw. Oct. 31, 2023), wherein the Supreme Court of the State of Hawai'i affirmed the denial of defendant oil and gas companies' motion to dismiss on federal preemption grounds.

As explained in Plaintiffs-Appellees' Response Brief (Dkt. 102 at 12, 18), in *Mayor & City Council of Baltimore v. BP P.L.C.* this Court concluded that a case virtually identical to these centers on Defendants' "concealment and misrepresentation of the[ir] products' known dangers," not fossil fuel production. 31 F.4th 178, 233 (4th Cir. 2022). Defendants-Appellants nonetheless assert here that their production of fossil fuels supports federal officer removal because the "production of oil and gas is central to Plaintiffs' civil actions," see Opening Brief (Dkt. 99) at 15, 25–26 (citing *City of New York v. Chevron Corp.*, 993 F.3d 81, 97 (2d Cir. 2021)), and suggesting that greenhouse gas emissions are the "singular source" of Plaintiffs' harms, see Reply Brief (Dkt. 103) at 11–12 (same). In *Honolulu*, reviewing allegations practically the same as those here and in *Baltimore*, the Hawai'i Supreme Court held that "[t]he source of Plaintiffs' injury is not pollution, nor emissions. Instead, the source of Plaintiffs' alleged injury is Defendants' alleged failure to warn and deceptive promotion." See Ex. A at 62; see also, e.g., Ex. A at 22, 46, 75, 77.

We would appreciate it if you would circulate this letter to the Panel in this action at your earliest convenience.

Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)