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

CHEVRON DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT UNDER MARYLAND'S ANTI-SLAPP LAW

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REPLY IN SUPPORT OF CHEVRON DEFENDANTS' ANTI-SLAPP MOTION TO DISMISS[1]

I. INTRODUCTION

Maryland's Anti-SLAPP law was enacted to "protect individuals and groups … from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government." Dep't of Legis. Servs., Fiscal and Policy Note, S.B. 464, Reg. Sess., at 3 (2004). This action is a paradigmatic SLAPP suit because it seeks to hold Chevron liable for alleged statements about the risks of climate change and the wisdom of specific policy proposals to address it. That Plaintiff seeks to hold Chevron liable for speech that *others* engaged in *decades ago*—while to this day Plaintiff and its citizens continue to reap the benefits of oil and gas products—amply attests to its bad faith.

Plaintiff does not dispute that it construes all of its claims as arising from Chevron's alleged speech regarding climate change. Nor does it dispute that climate change is a matter of profound public importance and policy debate. Instead, Plaintiff claims that the Anti-SLAPP law does not apply because Chevron's speech supposedly is "unprotected" commercial speech, because Plaintiff did not bring this action in bad faith insofar as its claims are colorable, and because Chevron has not proven that it did not make the challenged speech with actual malice.

But each of these arguments misunderstands the governing legal standard and the applicable law.

1. Commercial speech is "defined as speech that does no more than propose a commercial transaction," *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001), but the challenged speech here did not propose any transaction. On the contrary, the Complaint

[1] This Reply is submitted subject to, and without waiver of, any defense, affirmative defense, or objection, including lack of personal jurisdiction.

affirmatively alleges that the targeted speech was designed to influence public opinion about climate change and mobilize opposition to proposed legislation respecting greenhouse gas emissions.

2. "Bad faith" encompasses not only claims that are not colorable, but also "the pursuit of litigation 'vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.'" *MCB Woodberry Developer, LLC v. Council of Owners of Millrace Condominium, Inc.*, 253 Md. App. 279, 307 (2021) (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)). That Plaintiff brings this litigation, years after the fact, to punish public policy positions expressed by different entities decades ago confirms Plaintiff's bad faith.

3. And it is *Plaintiff* who bears the burden of proving that Chevron acted with actual malice, not *Chevron* who bears the burden of disproving it. Under the proper analytical framework, this case should be dismissed under Maryland's Anti-SLAPP law.

Even putting aside the Anti-SLAPP law, however, this action still should be dismissed because the statements for which Plaintiff targets liability against Chevron are protected under the *Noerr-Pennington* doctrine. Publicity campaigns on issues of public importance are the prototypical example of speech that falls within the scope of *Noerr-Pennington*. And while Plaintiff claims that this case is not about "petitioning" activity, but rather "commercial" activity, this assertion is belied by the Complaint's allegations, which make clear that the disputed speech was designed to influence public opinion.

For these reasons, the Complaint should be dismissed against Chevron.

II. ARGUMENT

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

Maryland's Anti-SLAPP law applies to any claim "1) brought in bad faith, 2) 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, 3) materially related to the protected communications, and 4) intended to inhibit or to have inhibited the making of those protected communications." *MCB Woodberry*, 253 Md. App. at 297 (citing Md. Code Ann., Cts. & Jud. Proc. § 5-807(b)). If these elements are satisfied, "the defendant is entitled to civil immunity" if it "acted 'without constitutional malice' when making the protected communications." *Id.* Under this framework, this action is plainly a SLAPP suit that must be dismissed.

1. The Complaint Attacks and Inhibits Speech on a Matter of Public Concern.

Plaintiff does not dispute that its claims arise out of Defendants' speech about climate change. And it is beyond doubt that climate change is an issue of profound public concern and debate. Courts across the country have long recognized as much. *See, e.g.*, *Nat'l Review, Inc. v. Mann*, 140 S. Ct. 344, 348 (2019) (Alito, J., dissenting from the denial of certiorari) ("Climate change has staked a place at the very center of this Nation's public discourse. 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."); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2476 (2018) ("[C]limate change" is a "matter[] of profound 'value and concern to the public'"); *City of New York v. Chevron Corp.*, 993 F.3d 81, 86 (2d Cir. 2021) ("Global warming is one of the greatest challenges facing humanity today."); *Durst v. Oregon Educators Ass'n*, 450 F. Supp. 3d 1085, 1090 (D. Ore. 2020) ("[S]ubjects such as climate change … are matters of 'substantial public concern.'").

Plaintiff itself emphasizes the wide-ranging effects of climate change in its Complaint. *See, e.g.*, Compl. ¶ 3 ("[G]lobal warming result[s] in severe impacts, including, but not limited to, sea level rise, disruption to the hydrologic cycle, more frequent and intense extreme precipitation and

associated flooding, more frequent and intense heatwaves, and associated consequences of those physical and environmental damages."); *id.* ¶ 89 ("[T]he warming climate system will create disease-related public health impacts in Baltimore.").

Plaintiff nonetheless insists that this is not a SLAPP suit because Chevron's speech on this matter of public concern supposedly comprises only commercial speech, which it claims "receives no constitutional protection." Opp. at 9. This argument fails for at least two reasons.

First, it is simply not true that the speech at issue here is commercial speech. As the U.S. Supreme Court, the Fourth Circuit, and the Maryland Court of Appeals have repeatedly held, commercial speech is "defined as speech that does no more than propose a commercial transaction." *United Foods*, 533 U.S. at 409 (citing *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976)); *Harris v. Quinn*, 573 U.S. 616, 648 (2014) ("Our precedents define commercial speech as 'speech that does no more than propose a commercial transaction.'"); *Radiance Foundation, Inc. v. NAACP*, 786 F.3d 316, 331 (4th Cir. 2015) ("Commercial speech is 'speech that does no more than propose a commercial transaction.'"); *Nefedro v. Montgomery County*, 996 A.2d 850, 860 (Md. Ct. App. 2010) ("The general rule is that commercial speech is speech that 'proposes a commercial transaction.'" (cleaned up)). But the Complaint does not identify a single statement by any Defendant that proposes an economic transaction. On the contrary, even the purported "advertisements" identified in the Complaint did not solicit customers or encourage the increased consumption of Defendants' products, but rather spoke to the magnitude and effects of climate change. *See, e.g.*, Compl. ¶¶ 152, 157.

Despite this failure, Plaintiff accuses *Chevron* of "mischaracteriz[ing] the Complaint in order to argue that its conduct was protected." Opp. at 11. But while the Opposition insists that "Chevron's liability rests on its deceptive marketing of fossil fuels to consumers, not on political

speech or petitioning activity," *id.*, the Complaint repeatedly and unambiguously asserts that even Defendants' putative advertisements were, in substance, political speech designed to influence public opinion on the important public issue of climate change:

- "An implicit goal of ICE's advertising campaign was to ***change public opinion and avoid regulation***." Compl. ¶ 151 (emphasis added).
- "The Global Climate Coalition (GCC) … funded advertising campaigns and distributed material to generate public uncertainty around the climate debate, ***with the specific purpose of preventing U.S. adoption of the Kyoto Protocol***, despite the leading role that the U.S. had played in the Protocol negotiations." *Id.* ¶ 161 (emphasis added).
- "Defendants embarked on a decades-long campaign designed to maximize continued dependence on their products and ***undermine national and international efforts to rein in greenhouse gas emissions***." *Id.* ¶ 145 (emphasis added).
- "These ads discussed various aspects of the public discussion of climate change and sought to ***undermine the justifications for tackling greenhouse gas emissions*** as unsettled science." *Id.* ¶ 157 (emphasis added).

For this reason, Plaintiff misses the point when it asserts that "statements can 'constitute commercial speech notwithstanding the fact that they contain discussions of important public issues.'" Opp. at 10 (quoting *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 67–68 (1983)). This is not a case where speech proposing a commercial transaction also has some nexus with issues of public concern. *Cf. Bolger*, 463 U.S. at 67–68 (holding that pamphlets advertising contraceptives "constitute commercial speech notwithstanding the fact that they contain discussions of important public issues such as venereal disease and family planning"). Rather, the speech at issue here was—according to Plaintiff's own Complaint—direct commentary on a public issue designed to influence public opinion and policymaking.

The fact that the Complaint expressly alleges that Chevron's speech constituted direct commentary on the public issue of climate change, and that it was designed to influence policy, distinguishes this case from those in which courts "have held that the First Amendment does not protect sophisticated campaigns to mislead consumers about the dangers of a product." Opp. at 9. In each

of those cases, the speech at issue proposed a commercial transaction either expressly or implicitly.[2] Here, by contrast, Chevron had, at most, an economic interest in opposing stricter regulation of emissions, but that does not make its statements on that issue commercial speech. *See Bolger*, 463 U.S. at 66–67 ("[T]he fact that Youngs has an economic motivation for mailing the pamphlets would clearly be insufficient by itself to turn the materials into commercial speech.").

There is thus no need to "permit the City's claims to proceed to discovery" in order to decide whether "Chevron engaged in unprotected commercial speech." Opp. at 12–13. Although Plaintiff contends that it is a "contested issue[] of fact" whether Chevron's "motivations were political, not economic; [whether] its statements were truthful, not deceptive; or [whether] its public communications were policy statements, not commercial advertisements," Opp. at 13, the question whether the speech is commercial is an issue of law to be determined by the Court, *see Connick v. Myers*, 461 U.S. 138, 148 n.7 (1983) ("The inquiry into the protected status of speech is one of law, not fact."). And neither the intent nor the alleged falsity of the speech determines whether the speech is commercial. In any event, the Complaint itself resolves these questions by identifying no commercial transaction being proposed in the subject speech and unambiguously alleging that Chevron engaged in the disputed speech in an effort to "change public opinion and avoid regulation."

[2] Several of these cases found the speech in question to be "commercial speech" under the three-part test articulated by the U.S. Supreme Court in *Bolger*. *See, e.g.*, *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1143–44 (D.C. Cir. 2009); *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 956–58 (2002); *Western Sugar Co-op v. Archer-Daniels-Midland Co.*, 2011 WL 11741501, at *5 (C.D. Cal. Oct. 21, 2011). But "the Bolger factors are relevant" only "if the facts present a 'close question'" as to whether a commercial transaction is proposed. *IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1122 (9th Cir. 2020) (quoting *Hunt v. City of Los Angeles*, 638 F.3d 703, 715 (9th Cir. 2011)). Because there is not a close question on this matter—indeed, the speech identified in the Complaint clearly does *not* propose any transaction—*Bolger* has no application here. *See id.* ("Because IMDb's public profiles do not 'propose a commercial transaction,' we need not reach the Bolger factors."). Meanwhile, *National Committee on Egg Nutrition v. FTC*, 570 F.2d 157 (7th Cir. 1977), predated *Bolger*, and thus did not consider whether the speech at issue presented a "close question" as to whether it proposed a commercial transaction. And *People v. ConAgra Grocery Prods. Co.*, 17 Cal. App. 5th 51 (2017), contains no analysis of why the speech at issue was commercial speech.

Compl. ¶ 151; *see also supra* at 4–5.

Second, even if Plaintiff's claims did attack commercial speech, that speech is still protected under the First Amendment. As the U.S. Supreme Court has made clear, "There is no longer any room to doubt that what has come to be known as 'commercial speech' is entitled to the protection of the First Amendment." *Zauderer v. Off. of Disciplinary Counsel of Sup. Ct. of Ohio*, 471 U.S. 626, 637 (1985). Indeed, "[u]nder a commercial speech inquiry, it is the State's burden to … show at least that the statute directly advances a substantial governmental interest and that the measure is drawn to achieve that interest." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 571–72 (2011).

Plaintiff does not attempt to carry this burden. Even assuming that the State has "a substantial governmental interest" in mitigating climate change, regulating speech is not sufficiently tailored to that purpose. The Complaint is clear that global climate change results from cumulative worldwide emissions. *See, e.g.*, Compl. ¶ 50 ("There is a well-defined relation between cumulative emissions of CO_2 and committed global mean sea level."); *id.* ¶ 180 ("[A]n annual 3.5 percent reduction in CO_2 emissions [beginning in 2005] to lower atmospheric CO_2 to 350 ppm by the year 2100 would have restored earth's energy balance and halted future global warming."). Whatever effect the regulation of Chevron's speech may have *in Baltimore*, it will not have any impact on the global climate. *See id.* ¶ 44 (tracking the increase in cumulative global emissions from 1751 to 2014). Thus, "[a]s in previous cases …, the outcome is the same whether a special commercial speech inquiry or a stricter form of judicial scrutiny is applied." *Sorrell*, 564 U.S. at 571.

At times in its Opposition Plaintiff attempts to sidestep these questions by insisting that the Anti-SLAPP law does not apply *at all* because Chevron is "wealthy." *See, e.g.*, Opp. at 6 ("[T]he Fiscal and Policy Note to Senate Bill 464 … justifies the statute as necessary to protect the comparatively under-resourced targets of SLAPP suits."); *id.* at 1 ("The City did not intend—nor could

it expect—to intimidate Chevron, a wealthy multinational corporation, into changing its speech by filing this lawsuit."). But Plaintiff does not identify anything in the statutory text to support the proposition that the Anti-SLAPP law's applicability turns on the identity or wealth of the speaker. And such an interpretation would itself be at odds with the First Amendment, which the Supreme Court has repeatedly confirmed "extends to all persons engaged in expressive conduct, including those who seek profit." *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2320 (2023); *see also Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 342 (2010) ("First Amendment protection extends to corporations.").

Nor is it relevant that Plaintiff accuses Chevron of going against the scientific consensus regarding the cause and likely effects of global climate change. No "consensus"—scientific or otherwise—is regarded by the law as above criticism or disagreement. That is because "the First Amendment protects an individual's right to speak his mind regardless of whether the government considers his speech sensible and well intentioned or deeply 'misguided.'" *303 Creative*, 143 S. Ct. at 2312. "[U]nder the regime of [the First] Amendment 'we depend for ... correction not on the conscience of judges and juries but on the competition of other ideas.'" *Brown v. Hartlage*, 456 U.S. 45, 61 (1982). In fact, as Justice Ginsburg observed in the Supreme Court's seminal case on climate change, conflicting views on the practical tradeoffs posed by diverse proposals are the essential building blocks of sound regulatory policy, not inconvenient expressions to be punished: "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 assessment 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*." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 427 (2011) (emphases added).

Because Plaintiff's claims are "brought against a party who has made protected communications … on an issue of public concern, materially related to the protected communications, and [are] intended to inhibit or to have inhibited the making of those protected communications," *MCB Woodberry*, 253 Md. App. at 297 (cleaned up), they fall squarely within the scope of Maryland's Anti-SLAPP law.

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

Plaintiff does not dispute that a suit is brought in "bad faith" under Maryland's Anti-SLAPP statute when it is pursued "'vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.'" Opp. at 16 (quoting *MCB Woodberry*, 253 Md. App. at 307). This standard is easily met here.

At the outset, Plaintiff fails to identify a single purportedly false statement *by Chevron*. Instead, Plaintiff seeks to hold Chevron liable for the speech of legally distinct trade groups with which Chevron purportedly associated. But the law is clear that "[t]he First Amendment … restricts the ability of the State to impose liability on an individual solely because of his association with another." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918–19 (1982). Moreover, the alleged speech took place years—and often decades—in the past. Yet Plaintiff and its citizens continue to consume vast amounts of oil and gas products, long after the risks of such consumption were well publicized.

All of this belies Plaintiff's claim that this case is simply about commercial misrepresentation. Indeed, the speech that Plaintiff attacks was, by the Complaint's own admission, aimed at persuading policymakers and the public to oppose specific policies aimed at regulating greenhouse gas emissions. *See supra* at 4–7. Plaintiff may have preferred that those policies had been enacted—as is its right—but for a governmental entity to seek to impose civil liability on a

private actor for opposing such policies is the height of bad faith. Plaintiff's baseless effort to hide behind the mischaracterization of the speech at issue as "commercial speech" is a transparent subterfuge that itself confirms the Complaint's lack of good faith.

Plaintiff offers three arguments in response, but each turns on a misunderstanding of the governing legal standard.

First, drawing on sanctions cases, Plaintiff asserts that this suit could not have been brought in bad faith because the claims supposedly are "colorable." Opp. at 17. But sanctions may be imposed where "the conduct … was in bad faith *or* without substantial justification." *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 264 (Md. Ct. App. 1991) (emphasis added). Although a claim cannot be "without substantial justification" if it is colorable, it can be "brought in bad faith" so long as it was brought for an improper *reason*. *See id.* at 268 ("[T]o constitute substantial justification, the parties' position should be 'fairly debatable' and 'within the realm of legitimate advocacy.' … 'In bad faith' means vexatiously, for the purpose of harassment, or unreasonable delay, or for other improper reasons."). That is precisely what occurred here: Even if Plaintiff's Complaint stated a claim sufficient to withstand a motion to dismiss (it does not), "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." Mot. at 12.

Second, Plaintiff argues that "this Motion should be denied because Chevron provides no *evidence* of the City's alleged improper motive." Opp. at 14. But there clearly "are cases in which the allegations of the pleadings, exhibits incorporated therein, and other matters capable of being noticed judicially, supply evidence from which bad faith may be discernible as a matter of law." *MCB Woodberry*, 253 Md. App. at 308. This is just such a case. Plaintiff's suit is materially identical to more than two dozen other actions that have been filed around the country by States

and municipalities represented by the same private law firm representing Plaintiff here. Plaintiff has persisted in litigating this case in parallel to those actions, forcing Chevron and other Defendants to simultaneously engage in duplicative and costly litigation in courts from Rhode Island to Hawaii. And it has pursued these claims despite failing to identify a single purportedly false representation by Chevron. This is more than sufficient to find that Plaintiff has pursued this case to harass Chevron or for another improper purpose.

Third, Plaintiff contends that it could not have acted in bad faith because it "did not intend—nor could it expect—to intimidate Chevron into changing its behavior by filing this lawsuit." Opp. at 16; *see also id.* ("[A]s a wealthy multinational company, Chevron is highly unlikely to be deterred from speaking its preferred messages by the threat of meritless litigation."). But Plaintiff does not cite a single case holding that bad faith requires that the plaintiff either subjectively intend to silence the defendant or that it actually succeed in doing so. Rather, again, "bad faith" merely requires that the plaintiff act "for the purpose of harassment or unreasonable delay, or for other improper reasons." *Inlet Assocs.*, 324 Md. at 268. Indeed, even if such a suit does not deter the *specific* speech at issue, it could muzzle defendants (and other similarly situated actors) from engaging in similar speech in the future.

Because Plaintiff's speech-based claims were brought in bad faith, they must be dismissed under Maryland's Anti-SLAPP law unless Plaintiff can show that Chevron acted with constitutional malice. It has not done so—and cannot do so.

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

According to Plaintiff, "[e]ven if Chevron could satisfy the other elements of the Anti-SLAPP statute, Chevron still cannot show that it 'lack[ed] constitutional malice in making the communications at issue' here." Opp. at 20 (quoting *MCB Woodberry*, 253 Md. App. at 312). But

it is *Plaintiff's* burden to show that Chevron acted with actual malice, not *Chevron's* burden to show that it did not. *See MCB Woodberry*, 253 Md. App. at 312–13 ("[Plaintiffs] make no non-conclusory allegations that [Defendants] or those advocating on their behalf made false statements to the Planning Commission or acted in reckless disregard of the falsity of those statements, all of which were within the realm of legitimate advocacy in a land use case and were not frivolous."). And Plaintiff has not carried its burden.

"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)). Such allegations must be specific and "non-conclusory." *Id.* But the Complaint does not allege a single statement made by Chevron as part of the alleged speech campaign. And the speech by industry groups that Plaintiff attempts to impute to Chevron does not evince actual malice. On the contrary, the Complaint's allegations assert in vague and conclusory terms that the speech at issue sought "to 'reposition global warming as theory (not fact),'" Compl. ¶ 150, and "to manufactur[e] climate change uncertainty," *id.* ¶ 165. But without explaining *how* Chevron supposedly pursued these goals—namely, what it is alleged to have said—Plaintiff cannot establish "by clear and convincing evidence" that these statements were false, much less that they were made with knowing or reckless disregard for their falsity.

Plaintiff's Opposition does not cure these shortcomings. Instead, it simply doubles down on the Complaint's conclusory allegations, asserting that although Chevron "was informed since the 1960s about the climate risks of burning fossil fuels," it "engaged in sophisticated disinformation efforts to prevent consumers and the public from recognizing or acting on these climate risks." Opp. at 20 (citing Compl. ¶ 165). Absent specific and "non-conclusory" allegations

of actual malice, *MCB Woodberry*, 253 Md. App. at 312, which are nowhere to be found in the Complaint, the Anti-SLAPP law applies, and Plaintiff's suit against Chevron should be dismissed.

B. Baltimore's Speech-Based Claims Are Also Barred by the *Noerr-Pennington* Doctrine.

Regardless of whether Maryland's Anti-SLAPP law applies, Plaintiff's claims still fail because all of Chevron's supposed speech is protected under the *Noerr-Pennington* doctrine. Plaintiff disagrees, insisting that "'[b]ecause the *Noerr-Pennington* doctrine grows out of the Petition Clause,' it applies 'only to what may fairly be described as *petitions*.'" Opp. at 21 (quoting *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005)). But Plaintiff does not explain why Chevron's purported speech campaign does not constitute petitioning. It is certainly immaterial that the campaign was directed to the public at large, rather than the government directly. Indeed, *Noerr* itself involved a publicity campaign conducted by railroads that aimed to persuade the public about the dangers of overweight trucks in order to further the railroads' ultimate political goal of enacting state laws limiting truck weights and taxing heavy trucks. *Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 131 (1961).

Plaintiff attempts to distinguish *Noerr* on the ground that, "whereas 'no one denie[d]' the campaign in *Noerr* was 'designed to foster the adoption and retention of laws,' Chevron's deception was 'designed to influence consumers to continue using [its] fossil fuel products irrespective of those products' damage to communities and the environment.'" Opp. at 22. But Plaintiff is wrong because it ignores once again that Plaintiffs' own Complaint repeatedly alleges that Chevron's alleged speech campaign was designed to avoid regulation. *See supra* at 4–7, 9; *see also, e.g.*, Compl. ¶ 102 (asserting that Defendants "substantially and measurably contributed to the City's climate change-related injuries" via a "dogged campaign against regulation"); *id.* ¶ 143 (alleging Defendants engaged in "a public campaign aimed at evading regulation of their fossil fuel products

and/or emissions therefrom"); *id.* ¶ 145 ("Defendants embarked on a decades-long campaign designed to maximize continued dependence on their products and undermine national and international efforts to rein in greenhouse gas emissions."); *id.* at 70 (alleging that Defendants "[e]ngaged in a [c]oncerted [c]ampaign to [e]vade [r]egulation"). And while Chevron may have had an economic *motive* for engaging in this political activity, that is irrelevant because "the parties' motives are generally irrelevant and carry no legal significance." *A.D. Bedell Wholesale Co. v. Philip Morris Inc.*, 263 F.3d 239, 253 (3d Cir. 2001) (citing *Noerr*, 365 U.S. at 138).

In the alternative, Plaintiff urges the Court to nevertheless allow the case to proceed because "a motion to dismiss is not the vehicle for drawing lines between Chevron's commercial and petitioning activities." Opp. at 23. But while "[t]he application of *Noerr-Pennington*" may sometimes "'var[y] with the context and nature of the activity,'" Opp. at 23, there is no doubt how it should be resolved here. Because the Complaint rests solely on alleged speech that, by Plaintiff's own admission, is aimed at influencing public opinion and policy, *Noerr-Pennington*'s applicability is evident on the face of the Complaint, and there is no need to proceed to discovery.

III. CONCLUSION

For the foregoing reasons, the Court should grant Chevron's Anti-SLAPP motion to dismiss and dismiss the case with prejudice. In the alternative, the Court should dismiss the Complaint against Chevron for failure to state a claim. Md. Rule 2-322(b).

DATED: January 26, 2024

Respectfully Submitted,

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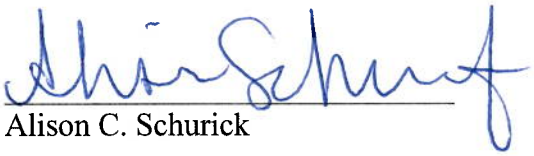
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of January 2024, a copy of the foregoing was served on all counsel of record via email (by agreement of the parties).



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