

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA

Plaintiff,

v.

EXXON MOBIL CORP., *et al.*

Defendants.

Civil Action No. 20-1932 (TJK)

**PLAINTIFF DISTRICT OF COLUMBIA'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff District of Columbia hereby notifies the Court of supplemental authority with respect to its Motion to Remand (Dkt. 46). *See Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644, 2022 WL 1039685 (4th Cir. Apr. 7, 2022) (**Ex. A**) (“Order”). In this 93-page opinion, the Fourth Circuit affirmed remand of Baltimore’s state-law claims for climate deception, rejecting many of the same removal arguments advanced by Defendants here:

Federal common law. *See* Order at 17 (“[W]e resoundingly agree with Baltimore and reject Defendants’ attempts to invoke federal common law.”); *id.* at 23 (“*City of New York* does not pertain to the issues before us . . . [because] *City of New York* was in a completely different procedural posture.”); *id.* at 29–30 (“Essentially, Defendants believe that removal is proper based on federal common law even when the federal common law claim has been deemed displaced, extinguished, and rendered null by the Supreme Court. We believe that position defies logic.”); *id.* at 30–31 (“[W]e will not provide Defendants with the unprecedented opportunity to obtain removal based on a nonexistent theory of federal common law when its viability is ‘no longer open to

discussion’ as a means of federal relief.”); *id.* at 31 (“If we found federal common law as a valid removal basis in this case, we would first undercut the well-pleaded complaint rule by ignoring Baltimore’s pleaded claims and then undermine complete preemption by disregarding what that separate inquiry later requires of us.”); *id.* at 34 (“At most, Defendants present us with an ordinary preemption argument that does not warrant removal.”).

Grable jurisdiction and the foreign-affairs doctrine. *See* Order at 34–47 (holding that Baltimore’s case “is a far cry from what the [Supreme] Court has deemed sufficient to satisfy the ‘necessarily raised’ prong” because “[a]ll of Baltimore’s claims are brought under Maryland law, and none of them invoke federal law as a necessary requirement for imposing liability upon Defendants,” *id.* at 37, 41).

Federal enclave. *See* Order at 52–55 (dismissing the defendants’ “overreaching approach” to federal-enclave jurisdiction, reaffirming that federal-enclave jurisdiction “generally requires that *all* pertinent events take place on a federal enclave,” and refusing to find federal-enclave jurisdiction over Baltimore’s case because Baltimore only sought “relief for harms sustained on non-federal land,” *id.* at 53, 55 (cleaned up)).

Outer Continental Shelf Lands Act (“OCSLA”) jurisdiction. *See* Order at 55–62 (dismissing the defendants’ “speculative and policy-laden arguments” for OCSLA jurisdiction, holding that the “plain meaning[.]” of the statute “requires a but-for connection between a claimant’s cause of action and operations on the OCS,” and concluding that the defendants failed this but-for test because Baltimore’s alleged injuries would exist “irrespective of Defendants’ activities on the OCS,” *id.* at 57–59, 61).

Federal-officer removal. See Order at 73–93 (concluding that the nexus between the defendants’ deceptive marketing and any government-controlled fossil-fuel production was “too tenuous to support removal,” *id.* at 86).

Respectfully Submitted,

Dated: April 12, 2022

KARL A. RACINE
Attorney General for the District of Columbia

By: /s/ Kathleen Konopka

KATHLEEN KONOPKA [5531538]
Deputy Attorney General
Public Advocacy Division
JIMMY R. ROCK [493521]
Assistant Deputy Attorney General
Public Advocacy Division
BENJAMIN M. WISEMAN [1005442]
Director, Office of Consumer Protection
DAVID S. HOFFMANN [983129]
Assistant Attorney General
441 4th St., N.W.
Washington, DC 20001
(202) 741-5226
kathleen.konopka@dc.gov
jimmy.rock@dc.gov
benjamin.wiseman@dc.gov
david.hoffmann@dc.gov

By: /s/ Quentin C. Karpilow

VICTOR M. SHER (*pro hac vice*)
MATTHEW K. EDLING [1020217]
KATIE H. JONES (*pro hac vice*)
QUENTIN C. KARPILOW [1659323]
SHER EDLING LLP
100 Montgomery St., Ste. 1410
San Francisco, CA 94104
(628) 231-2500
vic@sheredling.com
matt@sheredling.com
katie@sheredling.com
quentin@sheredling.com

HASSAN A. ZAVAREEI [456161]
ANNA C. HAAC [979449]
KRISTEN G. SIMPLICIO [977556]
TYCKO & ZAVAREEI, LLP
1828 L Street NW, Suite 1000
Washington, DC 20036

(202) 973-0900
hzavareei@tzlegal.com
ahaac@tzlegal.com
ksimplicio@tzlegal.com

Attorneys for the District of Columbia