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CITY OF BALTIMORE

BERNARD C. “JACK” YOUNG  
Mayor



DEPARTMENT OF LAW

DANA P. MOORE, ACTING CITY SOLICITOR  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

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July 2, 2020

**VIA EMAIL**

The Honorable Videtta A. Brown  
Courthouse East  
111 N. Calvert Street, Room 205  
Baltimore, MD 21202  
Sameerah.mickey@mdcourts.gov

Re: *Mayor and City Council of Baltimore v. BP P.L.C., et al.*  
Case No. 24-C-18-004219

Dear Judge Brown:

Plaintiff Mayor and City Council of Baltimore (“the City”) respectfully submits this response to Your Honor’s correspondence dated July 1, 2020, regarding Defendants’ petition for writ of certiorari arising out of the City’s successful motion to remand this matter from federal court.<sup>1</sup> The sole issue on which Defendants seek certiorari concerns the scope of appellate review of the district court’s order granting remand. Moreover, Defendants attempted to stay the remand order with the district court, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. Supreme Court. All of these courts denied Defendants’ requests. Defendants have never sought a stay of the instant proceedings before Your Honor. In fact, the opposite is true: Defendants agreed to a briefing schedule for various motions in order to keep the instant case moving during the pendency of the federal appellate proceedings. In short, there is no stay

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<sup>1</sup> The earliest that the Supreme Court will conference is September 29, 2020, and the Court conferences on certain Fridays thereafter.

[https://www.supremecourt.gov/oral\\_arguments/2020TermCourtCalendar.pdf](https://www.supremecourt.gov/oral_arguments/2020TermCourtCalendar.pdf).

Whether Defendants’ writ will be considered at this first conference is unknown. The Court could choose to defer consideration. Defendants’ writ of certiorari and the City’s response are available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-1189.html>

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governing the City’s case before Your Honor, and nothing about the pending petition warrants putting one in place.

Whether the U.S. Supreme Court grants or denies certiorari on the remand issue does not address or relate to whether the City has satisfactorily pled its complaint under state law, nor whether Defendants are entitled to a protective order to shield themselves from jurisdictional discovery, the two motions before Your Honor. For this reason, and because the district court, Fourth Circuit, and the U.S. Supreme Court have denied Defendants’ requests for stay, the City requests Your Honor proceed as before and set the hearing on the motion to dismiss.

The City filed its complaint in this Court on July 20, 2018, alleging Defendants have known for decades about the direct link between fossil fuel use and global warming, yet engaged in a coordinated campaign to conceal that knowledge; to discredit the growing body of scientific evidence documenting the catastrophic future impacts of fossil-fuel-triggered climate change; and to promote continued and expanded use of their products without providing warnings about these known dangers. The City asserted common law claims and one statutory claim under the Maryland Consumer Protection Act, Md. Code, Com. Law §§ 13101–13-501.

Defendants removed the case to the U.S. District Court for the District of Maryland on July 31, 2018, asserting eight different theories of subject-matter jurisdiction. Baltimore moved to remand. On July 10, 2019, the district court granted Baltimore’s remand motion, rejecting each of the eight stated grounds for removal. *Mayor & City Council of Baltimore v. BP p.l.c.*, 388 F. Supp. 3d 538 (D. Md. 2019). Defendants then sought a stay of remand pending appeal, which the district court denied. *Id.*, No. ELH-18-2358, 2019 WL 346467 (D. Md. July 31, 2019). Defendants next sought a stay pending appeal from the Fourth Circuit,

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which that court denied summarily. *Id.*, No. 19-1644, Dkt. No. 116 (4th Cir. Oct. 1, 2019). Defendants then filed an application for a stay pending appeal with Chief Justice Roberts, sitting as Circuit Justice for the Fourth Circuit. The application was referred to the full Court, which denied the application on October 22, 2019. *BP p.l.c. v. Mayor & City Council of Baltimore*, 140 S. Ct. 449 (2019).

The Fourth Circuit affirmed the district court’s remand order on March 6, 2020, holding in relevant part that “the only ground for removal that is made reviewable by § 1447(d) here is federal officer removal under § 1442.” *Mayor & City Council of Baltimore v. BP p.l.c.*, 952 F.3d 452, 459 (4th Cir. 2020). This issue is the only one Defendants have raised in their certiorari petition to the United States Supreme Court and has no impact on this Court’s jurisdiction to hear the matters before it. As discussed, the U.S. Supreme Court already determined that the matter should continue in this Court pending appellate review of the district court’s remand order.

Delaying hearing the motions before Your Honor would have the effect of granting what three courts, including the United States Supreme Court, have denied: a stay of proceedings. The City filed its Complaint nearly two years ago and respectfully requests the Court hear and resolve the pending motions as soon as is safe and practicable for Your Honor.

Respectfully Submitted,

Suzanne Sangree  
Director of Affirmative Litigation  
BALTIMORE CITY LAW DEPARTMENT

Cc/Counsel of Record via electronic service