

August 5, 2020

VIA U.S. MAIL & EMAIL

Honorable Videtta A. Brown
Circuit Court for Baltimore City
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.*, No. 24-C-18-004219

Dear Judge Brown:

Defendant Chevron writes in response to Plaintiff's July 29, 2020 letter regarding a federal trial court decision in *United States v. California*, No. 2:19-cv-02142 WBS EFB, 2020 WL 4043034 (E.D. Cal. July 17, 2020). Contrary to Plaintiff's assertion, *California* supports Defendants' arguments that the Foreign Affairs Doctrine requires dismissal of Plaintiff's claims.

In *California*, the United States sued to invalidate California's cap-and-trade agreement with the Canadian Province of Quebec, which allows participants in California's cap-and-trade system to trade carbon allowances with participants in Quebec's parallel system. *Id.* at *2–3. The United States argued that the agreement contravened the Foreign Affairs Doctrine. *Id.* at *3. The court concluded that allowing companies in California and Quebec to trade carbon allowances did not directly conflict with any federal law. *Id.* at *6–7. Even so, the court agreed with the United States that California's agreement with Quebec did not “address[] a traditional state responsibility,” and the program was thus subject to field preemption if it intruded on the federal government's foreign affairs power. *Id.* at *7–8. Ultimately, however, field preemption did not apply, because the agreement did not “broadly prohibit[]” any economic activity in any country, and did not cause “great potential for disruption.” *Id.* at *10–11. Although the United States argued that the California-Quebec agreement impaired the president's ability “to negotiate for a ‘better [climate] deal’” with other nations, the court found no evidence the agreement “has interfered with either negotiations for a better deal or the nation's imminent withdrawal from the Paris Accord.” *Id.* at *11.

California is inapposite here, because Plaintiff's tort claims are far more sweeping than the state law in that case. California's agreement with Quebec merely allowed more companies to trade

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carbon allowances with one another. It did not impose new regulations on previously authorized conduct or use California state law to govern the activity or emissions of companies in Quebec. In contrast, Plaintiff wishes to use Maryland tort law to regulate greenhouse gas emissions around the globe, which it speculates will require “a 15 percent annual reduction in CO₂ emissions” to abate the nuisance attributed to global emissions. *See* Dfts.’ Motion to Dismiss, at 46 (quoting Compl. ¶ 180). Despite insisting that it “seeks local remedies for local harms” (Pltf’s Letter at 2), Plaintiff ignores that its claims are not limited to local actions or local emissions. There is nothing “local” about its attempt to seek redress for emissions worldwide. *See* Mot. to Dismiss at 44-47.

California reinforces Defendants’ argument that this lawsuit involves precisely the kind of extra-territorial application of state law that the Foreign Affairs Doctrine prohibits. Plaintiff’s suit has an obvious “external focus and application” (2020 WL 4043034, at *10), given that the emissions and “overpromotion” that it seeks to control overwhelmingly emanated from outside of Maryland. And Plaintiff’s efforts to use this Court as a tool for regulating global greenhouse gas emissions and “levels” of sales worldwide (*see, e.g.*, Reply Mem. in Support of Dfts’ Motion to Dismiss at 2-3) has “great potential for disruption” far beyond the borders of Maryland—and the United States. *California*, 2020 WL 4043034, at *10 (field preemption established when state law would disrupt foreign business operations). As the *California* court noted, “Courts have consistently struck down state laws which purport to regulate an area of traditional state competence, but in fact, affect foreign affairs.” *Id.* at *9 (citation omitted).

Accordingly, the principles applied in *California* support Defendants, and confirm that this Court should dismiss Plaintiff’s claims under the Foreign Affairs Doctrine.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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