LOS ANGELES & SAN FRANCISCO
Daily Journal
www.dailyjournal.com
WEDNESDAY, AUGUST 14, 2024

GUEST COLUMN

Lessons from the California-Chevron climate showdown

By Wentzelee Botha, William D. Brown and Casha Cappuccio

Shutterstock

Chevron has joined a parade of major corporations, including Tesla and Oracle, leaving California for Texas. Like other corporations, Chevron points to the high cost of labor and housing as major factors spurring the move. However, Chevron's relocation to Texas is not just a matter of cost, but also a strategic move to align its operations with a more favorable regulatory environment. Chevron's move comes on the heels of California's lawsuit against the company.

California's lawsuit, People ex rel. *Bonta v. Exxon Mobil*, No. CGC236-09134 (Cal. Super. Ct. February 7, 2024) accuses Chevron of pursuing policies causing a public nuisance. The state argues that Chevron's business practices, chiefly its oil extraction and production activities, have contributed to environmental harm and public health risks. California avers Chevron has been misleading the public about the dangers and long-term impacts of burning fossil fuels.

Meanwhile, Chevron points the finger at California for creating a hostile business climate. Stringent state regulations have hamstrung business development. California's Greenhouse Gas Emission Standards, Cap-and-Trade Program, and regulations on oil and gas extraction impose significant compliance costs that make Texas look inviting.

Both sides will produce plenty of facts to buttress their arguments. Nevertheless, the environmental dispute is recognized by both sides as a significant driver of Chevron's departure. Chevron's move could accelerate a broader trend of corporate relocations from states with stricter environmental policies. This shift will impact the landscape of environmental law in state and federal forums.

Lessons for environmental practitioners and judges are abundant. Small California public entities lead the charge in establishing public nuisance in state court as the most effective remedy. Public nuisance is recognized under both California common law and statutory law. It is an attractive legal tool because it does not trigger federal jurisdiction and includes a rolling statute of limitations. Therefore, California green practitioners should continue to pursue public nuisance claims in state courts to bolster a stronger record of success.

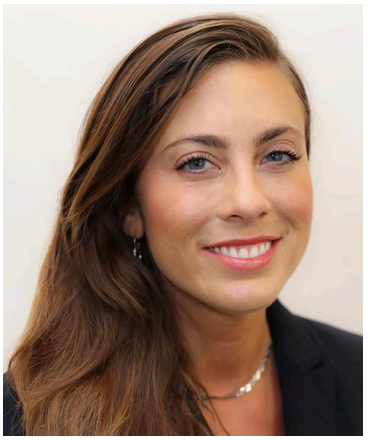
Chevron should seek the protection of federal courts and statutes. Corporations have historically enjoyed success in federal court. Recently, the U.S. Supreme Court issued a landmark decision in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024) overturning a forty-year-old practice of deferring to agencies' reasonable interpretations of vague federal laws. This decision

provides new avenues for regulated industries to challenge their regulators, thereby inviting Chevron to attack the administrative powers of the Environmental Protection Agency. The federal courts are where Chevron wants to fight its battles.

Judges should recognize that the environmental practice area is growing and dynamic. Federal and state courts will be busy with environmental cases. It is necessary to stay informed about changes in legislation, new regulatory frameworks, and emerging legal theories related to environmental issues. Judges should seek as much environmental training as their exhausting schedules permit.

The narrative around corporate responsibility and environmental stewardship has become more marked. California and the next "Chevron" can and must sort their differences. Areas for partnership should be further explored as both parties are heavyweights and long-term players in the environmental space. Both espouse a desire for a better environmental future, and both can unlock the potential to implement policies that minimize pollution while driving economic growth. A collaborative future awaits.

Wentzelee Botha *and* **William D. Brown** *are both partners,* **Casha Cappuccio** *is an associate at Brown & Winters.*



Reprinted with permission from the *Daily Journal.* ©2024 Daily Journal Corporation. All rights reserved. Reprinted by ReprintPros 949-702-5390.