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January 13, 2022

**Via ECF**

Maria R. Hamilton  
Clerk of Court  
U.S. Court of Appeals for the First Circuit  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Re: *State of Rhode Island v. Shell Oil Prods. Co., et al.*, No. 19-1818  
Plaintiff-Appellee's Citation of Supplemental Authorities

Dear Ms. Hamilton,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee State of Rhode Island submits *West Virginia State University Board of Governors v. The Dow Chemical Co.*, No. 20-1712, \_\_\_F.4th\_\_\_, 2022 WL 90242 (4th Cir. Jan. 10, 2022) (**Ex. A**) ("*WVSU*"), as supplemental authority. The decision undermines Defendants-Appellants' theory of *Grable* jurisdiction.

In *WVSU*, the court affirmed an order remanding a university's lawsuit bringing state-law claims against chemical companies that had owned and operated a facility regulated under the Resources Conservation and Recovery Act ("RCRA"). *WVSU* at 3–4, 11. Although the U.S. Environmental Protection Agency ("EPA") had issued RCRA permits requiring cleanup actions at the facility, the defendants' activities had nevertheless contaminated an adjacent university property. *Id.* at 4–11.

The court rejected the defendants' argument that the action was removable under *Grable* as an "artfully pled" "collateral[] attack" on the EPA's RCRA cleanup. *Id.* at 34. The state-law claims "do not draw on federal law as the exclusive basis, or any basis, for holding Defendants liable for their actions," and thus could not confer federal jurisdiction. *Id.* at 42. Here too, Defendants' attempt to characterize the State's "nuisance and other claims" as artfully pled and "inherently federal" falls short. *See* Appellants' Principal Suppl. Br. 13.

Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher  
**Sher Edling LLP**

*Counsel for Plaintiff-Appellee  
State of Rhode Island*

cc: All Counsel of Record (via ECF)