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## 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

Dear Ms. Hamilton:

Contrary to Plaintiff's assertion, the Fourth Circuit's decision in *West Virginia State University Board of Governors v. Dow Chemical Company*, — F.4th —, 2022 WL 90242 (4th Cir. 2022), is inapposite and has no relevance here.

In *Dow Chemical*, Dow was sued in state court by an adjacent landowner asserting state claims related to historic contamination on its property. Dow was already undertaking investigation and remediation required under permits issued pursuant to the Resource Conservation and Recovery Act ("RCRA"). *See id.* at \*2. Dow removed the case to federal court, asserting federal jurisdiction under the *Grable* doctrine. The Fourth Circuit affirmed that removal was improper under *Grable*, rejecting characterization of the suit as a collateral attack on an EPA cleanup order, as no such order had issued. *See id.* at \*14-16. Crucially, the court explained that, whereas challenges to actions under EPA-directed cleanup orders *do* raise substantial federal questions, *see id.* at \*14, RCRA remedial actions do not entail the same federal involvement, and challenges to actions taken under RCRA permits do not raise sufficiently substantial federal questions to meet *Grable* jurisdiction, *see id.* at \*16.

That analysis, focused as it is on the difference between the RCRA and CERCLA, has no application here because Plaintiff's claims implicate substantial federal questions far beyond remedial activities at a single in-state location. In fact, unlike here, the RCRA program in *Dow Chemical* was "implemented and overseen by a state agency." *Id.* at \*11. Rather, as Defendants have explained, Plaintiff's claims necessarily raise multiple substantial, disputed federal questions, including the propriety of the federal government's analysis of the costs and benefits of fossil fuels and myriad agency decisions in regulations, land management, leasing and otherwise to promote and encourage development, production and sale of fossil fuels (AOB.31-35), Defendants' alleged liability for statements made to *federal* officials affecting the substance of *federal* policy (*id.* at 35-36), and the United States' foreign-policy determinations regarding energy production and climate change (*id.* at 36-37). These

January 20, 2022

Page 2

important regulatory and executive determinations are more than sufficient to support *Grable* jurisdiction. See *Dow Chemical*, 2022 WL 90242, at \*14-16.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.

GIBSON, DUNN & CRUTCHER LLP

*Counsel for Defendants-Appellants*

*Chevron Corporation and Chevron U.S.A.*

cc: All counsel of record (via ECF)