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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:

The Fourth Circuit’s decision in *Mayor & City Council of Baltimore v. BP P.L.C.*, 2022 WL 1039685 (4th Cir. Apr. 7, 2022) (“Op.”), is neither controlling nor persuasive.

Federal Common Law: *Baltimore* (Op.*8) exacerbated a circuit conflict by rejecting *City of New York v. Chevron Corp.*, which held that federal law necessarily governs suits “seeking to recover damages for the harms caused by greenhouse gas emissions,” 993 F.3d 81, 91 (2d Cir. 2021). These claims “must be brought under federal common law” because “[s]uch a sprawling case is simply beyond the limits of state law.” *Id.* at 92, 95; Principal Supp. Br. (“PSB”) 5–11. Federal law is exclusive because “our federal system does not permit the controversy to be resolved under state law.” PSB.9 (citation omitted).

The Fourth Circuit further erred in holding that Plaintiff’s claims cannot be governed by federal law because the Clean Air Act displaced the federal common law governing torts based on interstate emissions. Op.*28. That holding also directly conflicts with *New York*, which held that this result was “too strange to seriously contemplate.” 993 F.3d at 99. Displacement cannot “give birth to new state-law claims,” *id.*, because our constitutional structure “does not permit the controversy to be resolved under state law,” *Tex. Indus. Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981). Regardless of displacement, our constitutional structure requires “a federal rule of decision” for such claims. *Id.* at 95.

Grable: Removal is also proper under *Grable* because federal common law alone governs Plaintiff’s claims. PSB.6–11. The Fourth Circuit did not address this argument. Op.*12 n.10.

OCSLA: *Baltimore* erred in nullifying the statute’s “in connection with” prong by requiring “but-for” causation and ignoring the Supreme Court’s decision in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021). PSB.25.

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Federal-Officer-Removal: Plaintiff does not address federal-office-removal, likely because the Fourth Circuit’s analysis was based on a far more limited record. Op.*28. For example, *Baltimore* did not consider Defendants’ “produc[tion] and supply [of] large quantities of highly specialized fuels to the federal government.” Opening Br. 38–48.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.

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Counsel for Defendants-Appellants

Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)