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April 26, 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,

Plaintiff-Appellee State of Rhode Island submits *County of San Mateo v. Chevron Corporation*, No. 18-15499, 2022 WL 1151275 (9th Cir. Apr. 19, 2022) (**Ex. A**), as supplemental authority. Writing for a unanimous Ninth Circuit panel, Judge Ikuta affirmed remand of analogous state-law actions for climate deception.

First, the Ninth Circuit held that the plaintiffs' "global-warming claims" did not "arise under federal common law." Ex. A at 22. Because the "complaints asserted only state-law claims," the court reasoned, arising-under jurisdiction existed only if the complaints fell within one of the "two exceptions to the well-pleaded complaint rule": *Grable* or complete preemption. *Id.* The Ninth Circuit did not create a third exception for state-law claims purportedly governed by federal common law. Instead, it dismissed the defendants' federal-common-law arguments under the *Grable* framework, explaining: "[E]ven if ... the [plaintiffs'] complaints could give rise to a cognizable claim under federal common law, the global-warming-related tort claims do not require resolution of a substantial question of federal law because they do not require any interpretation of a federal statutory or constitutional issue, and are displaced by the Clean Air Act." *Id.* 25 (cleaned up).

Second, the Ninth Circuit rejected OCSLA jurisdiction based on a careful analysis of the statute's text, structure, and purpose. *See id.* 31-39. The court held that OCSLA grants jurisdiction "over tort claims only when those claims arise from actions or injuries occurring on the [OCS]," *id.* 36, emphasizing that its articulation of OCSLA's jurisdictional test was "materially similar" to the standards used by other circuits, *id.* 38. Because neither the plaintiffs' alleged injuries nor the defendants' alleged "wrongful actions" occurred on the OCS, the Ninth Circuit concluded that any "connection" between the complaints and the OCS was "too attenuated to give rise to jurisdiction." *Id.* 39.

Finally, the Ninth Circuit rejected all the jurisdictional grounds that Defendants-Appellees here raised in their removal notice but omitted from their Supplemental Brief: (1) *Grable* jurisdiction based on foreign-policy concerns, *id.* 24-25; (2) complete preemption, *id.* 25-26; (3)

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federal-enclave jurisdiction, *id.* 27-31; (4) bankruptcy jurisdiction, *id.* 50-55; and (5) admiralty jurisdiction, *id.* 55-57.

Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)