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VIA ECF

Clerk of the Court
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *City of Hoboken v. Chevron Corp., et al.*, No. 21-2728
Defendants-Appellants' Response to Plaintiff-Appellee's Citation of Supplemental Authorities

Dear Office of the Clerk:

The Ninth Circuit's decision in *County of San Mateo v. Chevron Corp.*, 2022 WL 1151275 (9th Cir. Apr. 19, 2022), is neither controlling nor persuasive.

Federal Common Law. *San Mateo* misunderstood defendants' argument as being that plaintiffs' claims are governed by federal common law and therefore "removable under [one of] two exceptions to the well-pleaded complaint rule," *Grable* or complete preemption. *Id.* at *4. But federal common law provides an *independent* basis for federal removal jurisdiction. Opening Brief ("OB") at 13–14.

San Mateo's erroneous conclusion that plaintiffs' claims are not governed by federal common law also conflicts with the Second Circuit's decision in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). The Second Circuit held that suits "seeking to recover damages for the harms caused by greenhouse gas emissions" can only be "federal claims" that "must be brought under federal common law." *Id.* at 91, 92, 95. The Ninth Circuit incorrectly held that removal was impermissible because the CAA had "displaced" the federal common law of interstate pollution, thereby empowering state law to somehow govern in areas where it has never before permissibly extended. 2022 WL 1151275, at *5. But, as the Second Circuit explained, the notion that CAA displacement rendered state law "competent to address" disputes concerning interstate pollution" is "too strange to seriously contemplate." *New York*, 993 F.3d at 98–99.

***Grable*.** Removal is proper under *Grable* because "federal common law alone governs" Plaintiff's claims, OB.31, which *San Mateo* did not address. 2022 WL 1151275, at *5–*6.

Federal-Officer Removal. *San Mateo* was based on a far more limited record than here—for example, it did not consider the "produc[tion] and supply [of] large quantities of highly specialized fuels to the federal government." OB.47–52.

OCSLA. *San Mateo* correctly declined to require "but for" causation, but "read the phrase 'aris[e] out of, or in connection with'" to provide jurisdiction only when "claims arise from actions or injuries occurring on the [OCS]." 2022 WL 1151275, at *9. This interpretation is inconsistent with the plain statutory text and renders "in connection with" superfluous.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)