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PROTECTING PEOPLE AND THE PLANET

February 5, 2020

Via ECF

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

Re: *State of Rhode Island v. Shell Oil Products Company, LLC, et al.*, No. 19-1818

Dear Ms. Hamilton,

The State of Rhode Island writes to respond to Defendant-Appellant Chevron's letter citing *Juliana v. United States*, 2020 WL 254149 (9th Cir. Jan. 17, 2020).

The *Juliana* decision (from the Ninth Circuit, not this Court) has no bearing on this case, in which Rhode Island, exercising sovereign and police power authority, is pursuing traditional state law remedies against private parties to redress past wrongful conduct. *Juliana* instead concerned Article III redressability, and whether a federal court could adequately “supervise[] or enforce[]” the plaintiffs’ requested *prospective* remedy: “an order requiring the [federal] government to develop a plan to ‘phase out fossil fuel emissions and draw down excess atmospheric CO₂.’” *Id.* at *2, *9.

The only issue before this Court, given the narrow scope of review under 28 U.S.C. §1447(d), is whether the district court correctly rejected “federal-officer” removal jurisdiction. *See* Plaintiff-Appellee’s Response Brief at 6–18 (Dec. 26, 2019). Even if the Court could reach other issues, nothing in *Juliana*’s general discussion of federal interests potentially implicated by a prospective “plan” to guarantee the plaintiffs’ claimed constitutional right to a “‘climate system capable of sustaining human life,’” *id.* at *9, has any bearing on the State’s state law claims or their elements. *See Virginia Uranium, Inc. v. Warren*, 139 S.Ct. 1894, 1901 (2019) (“Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption.”) (plurality); *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 692 (2006) (absent “‘significant conflict ... between an identifiable federal policy or interest and the operation of state law’ ... there is no cause to displace state law, much less to lodge this case in federal court”); *Miree v. DeKalb County*, 433 U.S. 25 (1977) (no jurisdiction despite “substantial [federal] interest in regulating aircraft travel and ... safety” where “the litigation is among private parties and no substantial rights or duties of the United States hinge on its outcome”); *Provincial Government of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1091 (9th Cir. 2009) (“general invocation[s] of international law or foreign relations” cannot establish federal question jurisdiction).

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Respectfully submitted,

/s/ Victor M. Sher

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State of Rhode Island*

cc: All Counsel of Record (via ECF)