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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:

I write in response to Plaintiff-Appellee's April 9, 2020, letter regarding the Supreme Court's decision in *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894 (2019). *Virginia Uranium* has no bearing on Defendants-Appellants' argument that the Clean Air Act ("CAA") completely preempts Plaintiff-Appellee's climate-change claims.

The doctrine of complete preemption—which authorizes removal of claims pleaded under state law when Congress has provided the exclusive cause of action—was not at issue in *Virginia Uranium*. Instead, the question was whether the federal Atomic Energy Act ("AEA") preempted a *state law* banning uranium mining. Unlike here, the plaintiff did not assert any state-law *causes of action*. Nor did the plaintiff file suit in state court. Rather, it filed its action for declaratory and injunctive relief in federal court.

Moreover, in rejecting the plaintiff's preemption argument, the Court concluded that the AEA did not strip states of "their *traditional function* of regulating mining activities on private lands *within their boundaries*." *Id.* at 1908 (emphases added). Regulating interstate air pollution, by contrast, is not a "traditional" exercise of state power. *See* Defendants-Appellants' Opening Br. ("AOB") at 19-20. Rather, "control of interstate pollution is primarily a matter of federal law." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987).

Here, Plaintiff-Appellee seeks to deem nationwide (and worldwide) greenhouse-gas emissions resulting from the combustion of Defendants' fossil fuels a public nuisance. Unlike the AEA, which did *not* grant any federal agency authority to regulate mining, *Virginia Uranium*, 139 S. Ct. at 1901-02, the CAA grants the EPA authority to "protect and enhance the quality of the Nation's air resources," 42 U.S.C. § 7401(b)(1). The CAA also

"channels review of final EPA action exclusively to the courts of appeals, regardless of how the grounds for review are framed." *Cal. Dump Truck Owners Ass'n v. Nichols*, 784 F.3d 500, 506 (9th Cir. 2015); *see also* 42 U.S.C. § 7607(e). Defendants-Appellants have thus invoked far more than a "brooding federal interest," *Virginia Uranium*, 139 S. Ct. at 1901—they have identified a specific statutory scheme and cause of action that completely preempts Plaintiff-Appellee's state-law climate-change claims.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)