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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:

Defendant-Appellant Chevron writes in response to Plaintiff-Appellee's letter regarding *City of Oakland v. BP plc*, 960 F.3d 570 (9th Cir. 2020). Contrary to Plaintiff's arguments, that decision, which remains subject to further review on rehearing or certiorari, provides no support for its position here.

Oakland erroneously held that there are only "two exceptions to the well-pleaded-complaint rule"—*Grable* and complete preemption. *Id.* at 580. Thus, it analyzed federal common law under the *Grable* rubric, rejecting the district court's holding that the applicability of federal common law provides an independent basis for removal. In doing so, *Oakland* created a circuit conflict with other decisions recognizing federal-question jurisdiction where claims pleaded under state law are necessarily governed by federal common law. *See, e.g.*, *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 924 (5th Cir. 1997) (holding that state-law claims filed in state court were properly removed because they "ar[o]se[] under federal common law principles"). Moreover, *Oakland*'s statement that "the Supreme Court has not yet determined that there is a federal common law of public nuisance relating to interstate pollution," 960 F.3d at 580, is simply wrong: "When we deal with air and water in their ambient or interstate aspects, there is a federal common law," *Illinois v. City of Milwaukee*, 406 U.S. 91, 103 (1972).

Under binding precedent, the question whether a claim has its source in federal common law is distinct from the question whether that claim is viable on the merits. *See United States v. Standard Oil Co.*, 332 U.S. 301, 305-06 (1947); *United States v. Swiss American Bank, Ltd.*, 191 F.3d 30, 42 (1st Cir. 1999). Given these precedents, which *Oakland* failed to acknowledge, Defendants have argued that jurisdiction exists here "because Plaintiff's

climate-change claims necessarily 'arise under' federal law." Deft's Reply Br. at 12. As Supreme Court precedent makes clear, federal law, not state law, provides the source for tort claims based on interstate (and international) pollution. *Id.* at 12.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)