

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel 213.229.7000
www.gibsondunn.com

Theodore J. Boutros, Jr.
Direct: +1 213.229.7804
Fax: +1 213.229.6804
TBoutros@gibsondunn.com

July 24, 2020

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 July 13, 2020 letter regarding *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, ___ F.3d ___, 2020 WL 3777996 (10th Cir. July 7, 2020). Contrary to Plaintiff's arguments, that decision undermines neither this Court's ability to review all grounds for removal nor the existence of federal-officer jurisdiction.

First, the Tenth Circuit acknowledged the circuit split on whether Section 1447(d) limits appellate jurisdiction to the federal-officer ground for removal—a question of first impression in this Court—and acknowledged that the question was a “close” one. *Id.* at *12. It predicated its affirmative answer on an erroneous threshold conclusion that the meaning of the word “order” in that statute is ambiguous. *See id.* at *6. While “[c]ontext counts” in interpreting a statutory phrase, *id.* at *8, context does *not* support interpreting the word “order” to mean only one *reason* for an order. As the Seventh Circuit has emphasized: “[I]f appellate review of an ‘order’ has been authorized, that means review of the ‘order.’ Not particular reasons *for* an order, but the order itself.” *Lu Junhong v. Boeing Co.*, 792 F.3d 805, 812 (7th Cir. 2015). The Seventh Circuit's reasoning is compelling, and even the Tenth Circuit noted that “the Seventh Circuit engaged in a comprehensive discussion of statutory text and policy” in reaching its conclusion, whereas other courts reaching a contrary conclusion “employed mostly summary analysis.” *Boulder*, 2020 WL 3777996, at *4.

Second, the factual record supporting federal-officer jurisdiction in *Boulder* differs materially from the record here. There, federal-officer removal was based *only* on Exxon's leases on the outer Continental Shelf. *See id.* at *17 & n.16. Here, federal-officer removal is also supported both by Standard Oil's production on the Elk Hills Strategic Petroleum Reserve

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under the Naval Petroleum Reserves Production Act and CITGO's fuel-supply agreements with NEXCOM. *See* Deft's Reply Br. at 4–7. This distinction is critical, as the Tenth Circuit itself acknowledged that “wartime production [is] the paradigmatic example” of private conduct that can be removed under the federal-officer removal statute. 2020 WL 3777996, at *20.

Sincerely,

/s/ Theodore J. Boutros, Jr.

Theodore J. Boutros Jr.
GIBSON, DUNN & CRUTCHER LLP
Counsel for Defendants-Appellants
Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)