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PROTECTING PEOPLE AND THE PLANET

August 31, 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
Plaintiff-Appellee's Citation of Supplemental Authorities

Dear Ms. Hamilton,

The State of Rhode Island submits as supplemental authority the recent unanimous denial of rehearing en banc in *County of San Mateo v. Chevron Corp.*, No. 18-15499, Dkt. 235 (9th Cir. Aug. 4, 2020) (Ex. A). The denial of rehearing supports the State's position that this Court's appellate jurisdiction is limited to reviewing the district court's denial of jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442. *See* Plaintiff-Appellee's Br. at 6–11.

The *San Mateo* decision affirmed an order remanding a state-law tort case against fossil-fuel companies to state court. *See Cty. of San Mateo v. Chevron Corp.*, 960 F.3d 586 (9th Cir. 2020); *see also* Plaintiff-Appellee's Citation of Supplemental Authorities, Doc. No. 00117595013 (May 28, 2020). The court held that pursuant to 28 U.S.C. § 1447(d), it could “review the district court's remand order only to the extent it addresses § 1442(a)(1).” 960 F.3d at 598. The Ninth Circuit previously held in *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998 (9th Cir. 2006), that a remand order pursuant to 28 U.S.C. §§ 1441 and 1443 could only be reviewed as to § 1443, and the court “lack[ed] jurisdiction to review the remand order based on § 1441.” The *San Mateo* panel held in relevant part that “*Patel* applie[d] directly,” and “[t]here is no intervening judicial authority that would abrogate *Patel*.” 960 F.3d at 596, 597.

The defendant-appellants petitioned for rehearing en banc, arguing the full Ninth Circuit should revisit *Patel* in light of *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), and the Removal Clarification Act of 2011 (on which they also rely here). *Compare* Appellants' Opening Brief at 11–14. On August 4, the court “unanimously voted to deny Appellants' Petition for Rehearing En Banc,” and noted that “no Judge [of the full court] requested a vote on whether to rehear the matter en banc.” Ex. A at 2.¹

This Court should likewise limit its review to § 1442, and affirm.

¹ On August 25, the court stayed issuance of its mandate pending resolution of the defendants' anticipated petition for certiorari. (Ex. B).

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Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

Sher Edling LLP

*Counsel for Plaintiff-Appellee
State of Rhode Island*

cc: All Counsel of Record (via ECF)

EXHIBIT A

FILED

UNITED STATES COURT OF APPEALS

AUG 4 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

COUNTY OF SAN MATEO, individually
and on behalf of the People of the State of
California,

Plaintiff-Appellee,

v.

CHEVRON CORPORATION; et al.,

Defendants-Appellants.

No. 18-15499

D.C. No. 3:17-cv-04929-VC
Northern District of California,
San Francisco

ORDER

CITY OF IMPERIAL BEACH,
individually and on behalf of the People of
the State of California,

Plaintiff-Appellee,

v.

CHEVRON CORPORATION; et al.,

Defendants-Appellants.

No. 18-15502

D.C. No. 3:17-cv-04934-VC
Northern District of California,
San Francisco

COUNTY OF MARIN, individually and
on behalf of the People of the State of
California,

Plaintiff-Appellee,

No. 18-15503

D.C. No. 3:17-cv-04935-VC
Northern District of California,
San Francisco

v.

CHEVRON CORPORATION; et al.,

Defendants-Appellants.

COUNTY OF SANTA CRUZ,
individually and on behalf of The People
of the State of California; et al.,

Plaintiffs-Appellees,

v.

CHEVRON CORPORATION; et al.,

Defendants-Appellants.

No. 18-16376

D.C. Nos. 3:18-cv-00450-VC
3:18-cv-00458-VC
3:18-cv-00732-VC
Northern District of California,
San Francisco

Before: IKUTA, CHRISTEN, and LEE, Circuit Judges.

The panel has unanimously voted to deny Appellants’ Petition for Rehearing En Banc (ECF No. 222).

The full court has been advised of the Petition for Rehearing En Banc, and no Judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The Petition for Rehearing En Banc is **DENIED**.

EXHIBIT B

FILED

UNITED STATES COURT OF APPEALS

AUG 25 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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3:18-cv-00458-VC
3:18-cv-00732-VC
Northern District of California,
San Francisco

Before: IKUTA, CHRISTEN, and LEE, Circuit Judges.

The Motion to Stay the Mandate (ECF No. 236) is **GRANTED**. Pursuant to Rule 41(d) of the Federal Rules of Appellate Procedure, the mandate is stayed for 90 days to permit Defendants-Appellants to file a petition for writ of certiorari in the Supreme Court. Should the Supreme Court grant certiorari, the mandate will be stayed pending disposition of the case. Should the Supreme Court deny certiorari, the mandate will issue immediately. The parties shall advise this Court immediately upon the Supreme Court’s decision.