GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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

Theodore J. Boutrous, Jr.
Direct: +1 213.229.7804
Fax: +1 213.229.6804
TBoutrous@gibsondunn.com

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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 responds to Plaintiff's August 10, 2020 letter regarding the decision in *United States v. California*, No. 2:19-cv-02142 WBS EFB, 2020 WL 4043034 (E.D. Cal. July 17, 2020). Contrary to Plaintiff's assertion, the *California* decision supports Chevron's removal arguments.

First, Plaintiff mischaracterizes Chevron's *Grable* argument. Chevron did not argue that "removal is proper based on foreign affairs preemption." Letter at 1. Rather, Chevron explained that Plaintiff's claims necessarily raise federal questions because they "require a factfinder to substitute its own judgment for that of policymakers and second-guess the reasonableness of the selected foreign policies." Opening Br. 37; *see also* Opening Br. 31-36 (claims also collaterally attack federal regulatory decisions). These important foreign policy implications give rise to removal under federal question jurisdiction. *See*, *e.g.*, *Torres v. Southern Peru Copper Corp.*, 113 F.3d 540, 543 (5th Cir. 1997); *Republic of Philippines v. Marcos*, 806 F.2d 344, 353 (2d Cir. 1986).

Second, Plaintiff's claims are far more sweeping than the state law in *California*. California's agreement with Quebec merely allowed more companies to trade carbon allowances—it did not impose new regulations on previously authorized conduct or use California law to govern the activity or emissions of companies in Quebec. The *California* court recognized that the cap-and-trade agreement did not "address[] a traditional state responsibility," but concluded field preemption did not apply because the agreement did not "broadly prohibit[]" any economic activity, and did not "impair the effective exercise of the Nation's foreign policy" or have "great potential for disruption." 2020 WL 4043034 at *7-8, *10-11. In contrast, Plaintiff's suit has an obvious "external focus and application." *Id.* at

*10. Saddling Defendants with billions of dollars in liability for the lawful worldwide production of oil and gas would discourage global production of fossil fuels. Plaintiff's attempt to use a Rhode Island court to regulate global greenhouse gas emissions and address worldwide climate change has "great potential for disruption" far beyond Rhode Island or the United States. *Id.* Thus, *California* confirms that Plaintiff's claims necessarily implicate federal questions regarding the "reasonableness of the extraction and sales of fossil fuels." Opening Br. 37.

Sincerely,

/s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous Jr.
GIBSON, DUNN & CRUTCHER LLP

Counsel for Defendants-Appellants
Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)