

No. 19-1818

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

STATE OF RHODE ISLAND

Plaintiff–Appellee,

v.

SHELL OIL PRODUCTS COMPANY, LLC; CHEVRON CORP.; CHEVRON
USA, INC.; EXXON MOBIL CORP.; BP, PLC; BP AMERICA, INC.; BP
PRODUCTS NORTH AMERICA, INC.; ROYAL DUTCH SHELL PLC;
MOTIVA ENTERPRISES, LLC; CITGO PETROLEUM CORP.;
CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66;
MARATHON OIL COMPANY; MARATHON OIL CORPORATION;
MARATHON PETROLEUM CORP.; MARATHON PETROLEUM COMPANY,
LP; SPEEDWAY, LLC; HESS CORP.; LUKOIL PAN AMERICAS LLC;

Defendants–Appellants,

GETTY PETROLEUM MARKETING, INC.,

Defendant.

Appeal from the United States District Court
For the District of Rhode Island, No. 1:18-cv-00395-WES-LDA
(The Honorable William Edgar Smith)

**PLAINTIFF-APPELLEE’S STATEMENT OF NON-OPPOSITION TO
DEFENDANTS’-APPELLANTS’ CONSENT MOTION FOR LEAVE
TO FILE SUPPLEMENTAL BRIEFING**

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The State of Rhode Island writes to clarify its position regarding Defendants'-Appellants' Motion for Leave to File Supplemental Briefing. The State agrees with Defendants'-Appellants' proposal regarding the appropriate timing and length of supplemental briefing in this case in light of the Supreme Court's decision in *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021). The parties agree they will be able to adequately address the issues pending before this Court in shortened briefs, but require additional time to do so. The State therefore does not oppose Defendants'-Appellants' request to modify the Courts June 22 Order such that Defendants-Appellants shall file a principal brief of not more than 6,000 words 30 days after the Court's disposition of Defendants'-Appellants' Motion, the State shall file a principal brief of not more than 6,000 words 30 days thereafter, and Defendants-Appellants shall file a reply brief of not more than 3,000 words 21 days after the State files its principal brief.

The State agrees that there is good cause to grant Defendants'-Appellants' Motion because courts have issued a substantial number of relevant and persuasive decisions since this Court's decision of October 29, 2020, which affirmed the district court's order remanding this case to Rhode Island state court. *See Rhode Island v. Shell Oil Products Co., L.L.C.*, 979 F.3d 50 (1st Cir. 2020), *cert. granted, judgment vacated sub nom. Shell Oil Products Co. v. Rhode Island*, No. 20-900, 2021 WL 2044535 (U.S. May 24, 2021).

There is good cause for a staggered briefing schedule because the State strongly disagrees with Defendants’-Appellants’ characterization of the relevant intervening authority and of the State’s causes of action, and believes it would be more efficient to file its principal brief after, and in response to, Defendants’-Appellants’ principal brief. For instance, Defendants’-Appellants’ Motion neglects to mention the multiple intervening district court opinions rejecting the same theories of removal jurisdiction asserted here.¹ It also does not mention that the *City of New York v. Chevron Corp.* decision which it cites affirmed a motion to dismiss in a case originally filed in federal district court, and thus did not consider any issue of removal jurisdiction—or that the Second Circuit expressly held that the “fleet of cases” remanding similar cases to state court, including the district court’s decision here, “d[id] not conflict with [its] holding.” *City of New York v. Chevron Corp.*, 993 F.3d 81, 94 (2d Cir. 2021). The Motion also does not mention the Supreme Court’s recent denial of certiorari from the Ninth Circuit’s opinion in *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020), which held that claims similar to the State’s do not arise under federal law for removal purposes. *See Chevron Corp.*

¹ *See City & County of Honolulu v. Sunoco LP*, No. 20-CV-00163-DKW-RT, 2021 WL 839439 (D. Haw. Mar. 5, 2021), *appeal pending*, No. 21-15313 (9th Cir.); *Minnesota v. Am. Petroleum Inst.*, No. CV 20-1636 (JRT/HB), 2021 WL 1215656 (D. Minn. Mar. 31, 2021), *appeal pending*, No. 21-1752 (8th Cir.); *Connecticut v. Exxon Mobil Corp.*, No. 3:20-CV-1555 (JCH), 2021 WL 2389739 (D. Conn. June 2, 2021).

v. Oakland, No. 20-1089, 2021 WL 2405350 (U.S. June 14, 2021) (denying petition for certiorari).

The State will elaborate further in its brief, but as the above shows, the parties have widely divergent views on the import of recent intervening persuasive authority. The parties therefore agree that a longer, staggered briefing schedule is appropriate, and will allow them to present their respective arguments more succinctly.

For these reasons, the State asks that the Court grant Defendants’-Appellants’ Motion to modify the Court’s June 22 Order.

Dated: June 25, 2021

STATE OF RHODE ISLAND
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GENERAL
By his Attorneys,

/s/ Victor M. Sher

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(g), I certify that this brief complies with the type-volume limitation of Circuit Rules 32-1(a) and 32-2(b). This brief contains 600 words, excluding the parts of the brief exempted by Federal Rules of Appellate Procedure 32(f).

This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the document has been prepared in a proportionally spaced typeface using Microsoft Word 2016, Times New Roman 14-point font.

Dated: June 25, 2021

/s/ Victor M. Sher

Victor M. Sher

CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed via the United States Court of Appeals for the First Circuit's electronic case filing system on this 25th day of June, 2021. All counsel participating in this case are registered with the Court's electronic case filing system and will be served through the electronic filing system.

Dated: June 25, 2021

/s/ Victor M. Sher
Victor M. Sher