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February 15, 2022

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
Plaintiff-Appellee's Citation of Supplemental Authorities

Dear Ms. Hamilton,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee State of Rhode Island submits *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, No. 19-1330, --- F.4th ---, 2022 WL 363986 (10th Cir. Feb. 8, 2022) (**Ex. A**) ("Order"), as supplemental authority. The Tenth Circuit affirmed a district court's order remanding a state-law action relating to oil and gas companies' sale and deceptive promotion of fossil fuels. In doing so, the court rejected the removal theories Defendants-Appellants assert here.

First, the court held there are no exceptions to the well-pleaded complaint rule other than complete preemption and the *Grable* doctrine. *Id.* at 21 ("[T]here are two exceptions to the well-pleaded complaint rule . . . ."); *id.* at 34 ("[A]t this stage of the proceedings, we do not look behind those allegations" where the plaintiffs "have pleaded only state-law causes of action."). Similarly here, Defendants-Appellants are wrong that there is an independent "artful pleading" exception to the well-pleaded complaint rule. *See* Plaintiff-Appellee's Supplemental Br. at 18–23; Order at 22 ("The Supreme Court treats the 'artful pleading' and 'complete preemption' doctrines as indistinct.").

Second, the court rejected the defendants' OCSLA jurisdiction argument. "OCSLA jurisdiction is founded on only injuries arising *directly* out of physical activities on the OCS or disputes *directly* involving OCS activities." Order at 54 (quotation omitted). Claims like Rhode Island's that address the "deceptive promotion of fossil fuels" have "no direct connection to [a defendant's] *production* of fossil fuels on the OCS." *See id.* at 57.

Third, the court rejected a litany of other removal arguments based on:

- The federal common law of transboundary pollution, which "*no longer exists*" because Congress displaced it, *id.* at 30 (Clean Air Act displacement); *see id.* at 28 (Clean Water Act displacement);

- The *Grable* doctrine, *id.* at 40–51;

- Federal enclave, *id.* at 51–53 ("[F]ederal enclave jurisdiction generally requires that all pertinent events t[ake] place on a federal enclave." (quotation omitted)); and

- Clean Air Act preemption, *id.* at 35–40.

The Tenth Circuit's analysis underscores that federal jurisdiction is likewise improper here.

Respectfully submitted,

/s/ Victor M. Sher
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cc: All Counsel of Record (via ECF)