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April 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,

The State of Rhode Island submits *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644, 2022 WL 1039685 (4th Cir. Apr. 7, 2022) (**Ex. A**), as supplemental authority. The Fourth Circuit affirmed remand of Baltimore's state-law claims related to climate change, rejecting the same removal arguments Defendants-Appellees advance here.

The Fourth Circuit "resoundingly" rebuffed the defendants' federal-common-law removal theory, *Ex. A* at 17, which it held presented "an ordinary preemption argument" that could not support jurisdiction. *Id.* 34. To hold otherwise "would first undercut the well-pleaded complaint rule by ignoring Baltimore's pleaded claims and then undermine complete preemption by disregarding what that separate inquiry" requires. *Id.* 31. The court distinguished the Second Circuit's decision in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), based on its "completely different procedural posture." *Id.* 23. The decisions were not in conflict because "the Second Circuit confined itself to Rule 12(b)(6)," "never addressed its own subject-matter jurisdiction," and did not apply the "heightened standard unique to the removability inquiry." *Id.*

The Fourth Circuit identified a second fatal flaw in the defendants' "unprecedented" and "perplexing" theory of federal-common-law removal. *Id.* 26, 31. Although the defendants "characterize[d] Baltimore's claims as 'interstate-pollution claims' that arise under federal common law," Congress displaced the federal common law of interstate pollution, and it would "def[y] logic" to base removal on a "federal common law claim that has been deemed displaced, extinguished, and rendered null by the Supreme Court." *Id.* 17, 29–30.

The panel also dismissed the defendants' "speculative and policy-laden arguments" for OCSLA jurisdiction. *Id.* 61. The statute's "plain meaning[]" "require[d] a but-for connection" between Baltimore's claims and an OCS operation, which was absent because Baltimore's injuries would exist "irrespective of Defendants' activities of the OCS." *Id.* 57–59.

Finally, the Fourth Circuit rejected all the jurisdictional grounds Defendants-Appellees raised in their removal notice but omitted from their Supplemental Brief: (1) *Grable* jurisdiction,

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id. 34–47; (2) complete preemption, *id.* 47–52; (3) federal-enclave jurisdiction, *id.* 52–55; (4) bankruptcy jurisdiction, *id.* 62–67; and (5) admiralty jurisdiction, *id.* 67–73.

Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)