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May 6, 2022

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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:

The Ninth Circuit's decision in *County of San Mateo v. Chevron Corp.*, No. 18-15499, 2022 WL 1151275 (9th Cir. Apr. 19, 2022), is neither controlling nor persuasive.

Federal Common Law. *San Mateo* misunderstood defendants' argument as being that plaintiffs' claims are governed by federal common law and "removable under [one of] two exceptions to the well-pleaded complaint rule," *Grable* or complete preemption. *Id.* at *4. But as Defendants here have explained, federal common law provides an independent basis for federal jurisdiction and removal. Suppl.Br.10–13.

San Mateo's erroneous conclusion that plaintiffs' claims are not governed by federal common law conflicts with the Second Circuit's decision in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). The Second Circuit held that suits "seeking to recover damages for the harms caused by greenhouse gas emissions" can only be "federal claims" that "must be brought under federal common law." *Id.* at 91, 92, 95. The Ninth Circuit erroneously held that removal was impermissible because the Clean Air Act ("CAA") had "displaced" the federal common law of interstate pollution, thereby empowering state law to somehow govern in areas where it has never before permissibly extended. 2022 WL 1151275, at *5. But, as the Second Circuit explained, the notion that CAA displacement rendered state law "competent to address" disputes concerning interstate pollution" is "too strange to seriously contemplate." *New York*, 993 F.3d at 98–99.

OCSLA. Although *San Mateo* declined to require "but for" causation to establish jurisdiction under OCSLA, it applied an even more stringent standard. The panel "read the phrase 'aris[e] out of, or in connection with' in § 1349(b)(1) as granting federal courts jurisdiction over tort claims only when those claims arise from actions or injuries occurring on the outer Continental Shelf." 2022 WL 1151275, at *9. This interpretation contradicts the ordinary meaning of "in connection with" and the Supreme Court's holding in *Ford Motor Co.*

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v. Montana Eighth Judicial District Court, 141 S. Ct. 1017, 1026 (2021), Suppl.Br.25, which the panel failed to address in venturing its own interpretation.

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)