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March 24, 2020

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 writes in response to Plaintiff-Appellee's March 9, 2020 letter regarding the Fourth Circuit's decision in *Mayor and City Council of Baltimore v. BP P.L.C.*, ___ F.3d ___, 2020 WL 1069444 (4th Cir. Mar. 6, 2020). Contrary to Plaintiff's assertions, the Court should not follow the decision in *Baltimore* regarding the scope of appellate jurisdiction under 28 U.S.C. § 1447(d) or the merits of federal-officer removal.

With respect to appellate jurisdiction: the Fourth Circuit considered itself bound by Circuit precedent. *Id.* at *3. There is no similarly binding precedent in this Circuit that would prevent the Court from following the plain text of § 1447(d), which authorizes review of remand "orders" in cases removed under § 1442. And while the Fourth Circuit found that *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), did not "abrogate[]" its precedent because "it did not purport to establish a general rule governing the scope of appellate jurisdiction for every statute that uses th[e] word" "order," the court did not provide a textual reason for reading the term differently in § 1447(d), and it acknowledged that "other circuit[s] ha[ve] found *Yamaha* persuasive in interpreting the word 'order' under § 1447(d) as a matter of first impression." *Baltimore*, 2020 WL 1069444, at *4.

With respect to federal-officer removal: the Fourth Circuit's holding was based on its (incorrect) conclusion that *Baltimore* challenged only "the promotion and sale of fossil fuel products ... abetted by a sophisticated disinformation campaign," *id.* at *9, and therefore that Defendants' production activities under federal oversight and control were not sufficiently "related to" the claims at issue. But the court conceded that "[i]f production and sales went to the heart of *Baltimore's* claims, we might be inclined to think otherwise." *Id.* at *10. Even accepting that some of Plaintiffs' claims focus on the promotion and sale of fossil fuel

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products, Plaintiffs' public nuisance claims and asserted injuries clearly center on the production, sale, and ultimate combustion of fossil fuels. *See* Dkt. 98 at 2–3, 14. Thus, even under the reasoning of *Baltimore*, federal-officer removal is appropriate.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.
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Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)