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April 10, 2020

VIA ELECTRONIC FILING

Christopher Wolpert
Clerk of Court
U.S. Court of Appeals for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, CO 80257

Re: *Board of County Commissioners of Boulder County, et al.*
v. Suncor Energy (U.S.A.) Inc., et al., No. 19-1330

Dear Mr. Wolpert:

Pursuant to Federal Rule of Appellate Procedure 28(j), defendants-appellants file this letter to bring to the Court's attention the Fifth Circuit's recent en banc decision in *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286 (2020).

Latiolais presented the question of what "nexus" is required between the plaintiff's claim and the defendant's federally directed activities in order to permit removal under the federal-officer removal statute, 28 U.S.C. § 1442. The Fifth Circuit held that only a "connection or association," not a "direct causal nexus," was required. 951 F.3d at 291, 296. As the court explained, in 2011, Congress "amended [S]ection 1442(a) to add 'relating to'" to the statutory text, thereby "broaden[ing] federal officer removal to actions, not just *causally* connected, but alternatively *connected* or *associated*, with acts under color of federal office." *Id.* at 291-292 (citing *Sawyer v. Foster Wheeler, L.L.C.*, 860 F.3d 249, 258 (4th Cir. 2017), and *In re Commonwealth's Motion to Appoint Counsel*, 790 F.3d 457, 470-471 (3d Cir. 2015)). Applying that requirement, the court determined that removal was proper because the alleged failure to warn about the dangers of asbestos was "connected with the installation of asbestos during the refurbishment" of a naval warship pursuant to the Navy's direction. *Id.* at 296.

Latiolais supports defendants' removal of this case under the federal-officer removal statute. As defendants have explained (Br. 42), removal was proper here because plaintiffs allege that defendants' production and supply of fossil fuels, which encompasses activities taken at federal direction, caused the injuries of which they complain—namely, harms resulting from global-climate change caused in part by the emission of greenhouse gases from the combustion of fossil fuels. Under this theory, defendants' federally directed conduct was certainly “connected or associated” with plaintiffs' claims. Removal is therefore proper under the federal-officer removal statute, and the district court's remand order should be reversed on that ground alone.

We would appreciate it if you would circulate this letter to the panel at your earliest convenience.

Very truly yours,

/s/ Kannon K. Shanmugam

Kannon K. Shanmugam

cc: Counsel of record (via electronic filing)

**CERTIFICATE OF DIGITAL SUBMISSION,
ANTIVIRUS SCAN, AND PRIVACY REDACTIONS**

I hereby certify, pursuant to the Tenth Circuit CM/ECF User's Manual, that the foregoing letter, as submitted in digital form via the Court's electronic-filing system, has been scanned for viruses using Malwarebytes Anti-Malware (version 2020.04.08.07, updated April 8, 2020) and, according to that program, is free of viruses. I also certify that any hard copies submitted are exact copies of the document submitted electronically, and that all required privacy redactions have been made.

/s/ Kannon K. Shanmugam

Kannon K. Shanmugam

April 10, 2020