In the United States Court of Appeals
For the Eighth Circuit

No. 21-1752

STATE OF MINNESOTA, PLAINTIFF-APPELLEE

v.

AMERICAN PETROLEUM INSTITUTE, ET AL.,
DEFENDANTS-APPELLANTS

PLAINTIFF-APPELLEE'S RESPONSE BRIEF

KEITH ELLISON
Attorney General,
State of Minnesota
LIZ KRAMER
Solicitor General
OLIVER LARSON
Assistant Attorney General
LEIGH CURRIE
PETER SURDO
Special Assistant Attorneys
General
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101
Tel: (651)757-1291

VICTOR M. SHER
MATTHEW K. EDLING
SHER EDLING LLP
100 Montgomery St., Suite 1410
San Francisco, CA 94104
vic@sheredling.com
matt@sheredling.com
Tel: (628) 231-2500

SUMMARY OF THE CASE

The State of Minnesota ("State") brought this action in Minnesota state court, asserting state-law consumer protection, failure to warn, and fraud claims against certain oil-and-gas companies and the American Petroleum Institute ("Defendants"). The State alleges Defendants engaged in a decades-long campaign to mislead the public about climate change and the harms associated with the use of their products.

The district court properly remanded this case to state court, rejecting each of Defendants' asserted grounds for removal. In doing so, the district court joined four appellate courts and seven district courts that rejected similar attempts to remove cases targeting climate deception. Defendants now appeal on grounds that courts have repeatedly rejected. Unable to defend their removal based on the actual allegations in the State's complaint, Defendants try to recast this action as a "transboundary pollution" suit and an effort to regulate greenhouse gas emissions. Appellants' Opening Brief ("AOB") 19, 21. The district court rejected this attempt at misdirection. This Court should affirm.

The State agrees oral argument would assist the Court and requests one hour total—30 minutes each for the State and Defendants.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Regulations

STATEMENT OF ISSUE

Did the district court properly grant the State's motion to remand where the State pled only state law claims? *See Rhode Island v. Chevron Corp.,* 979 F.3d 50 (1st Cir. 2020)*; City of Oakland v. BP PLC,* 969 F.3d 895 (9th Cir. 2020); *Cnty. of San Mateo v. Chevron Corp.,* 960 F.3d 586 (9th Cir. 2020)*; Mayor & City Council of Baltimore v. BP P.L.C.,* 952 F.3d 452 (4th Cir. 2020).

STATEMENT OF CASE

The State sued Defendants in Minnesota state court, asserting state-law claims for (1) violations of the Minnesota Consumer Fraud Act ("CFA"), Minn. Stat. § 325F.69; (2) failure to warn; (3) fraud and misrepresentation; (4) violations of the Minnesota Deceptive Trade Practices Act ("DTPA"), Minn. Stat. § 325D.44; and (5) violations of the False Statement in Advertising Act ("FSAA"), Minn. Stat. § 325F.67. Appellants' Appendix ("App.") 88–97.

The State's claims are simple and straightforward. They rest on Defendants' campaign to deceive and mislead the public and consumers about the devastating impacts of climate change. App.17–19. Defendants have known for more than half a century that their fossil-fuel products

create greenhouse-gas pollution that increases global surface temperatures with catastrophic results. App.17, 31–46 (¶¶3, 55–83). Despite this knowledge, Defendants planned, funded, and carried out a decades-long campaign of denial and disinformation about the existence of climate change and their products' direct role in causing it. App.46–70 (¶¶84–131). The campaign included a long-term pattern of direct misrepresentations and material omissions to consumers in the State and nationwide, as well as a strategy to indirectly influence consumers through the dissemination of misleading research. *Id.*

Contrary to Defendants' assertions, AOB 19–20, this case does not seek to limit the extraction of fossil fuels or regulate greenhouse-gas emissions. Rather, the complaint seeks damages, civil penalties, disgorgement of profits, and an order enjoining Defendants from continued violations of the CFA, DTPA, and FSAA. App.97–98.

Defendants removed the matter on July 27, 2020, alleging seven grounds for removal: (1) federal common law; (2) *Grable*[1] jurisdiction; (3) federal enclaves, U.S. Const., art. I, § 8, cl. 17; (4) the federal officer

[1] *Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005)

removal statute, 28 U.S.C. § 1442; (5) the Outer Continental Shelf Lands Act ("OCSLA"); (6) the Class Action Fairness Act ("CAFA"); 28 U.S.C. § 1332(d); and (7) diversity of citizenship, 28 U.S.C. § 1332(a).

On March 31, 2021, the district court granted the State's motion to remand, rejecting in no uncertain terms each of Defendants' arguments. Notably, the district court held that each of Defendants' theories regarding federal common law "lacks a substantial relationship to the actual claims alleged and would require the Court to invent a separate cause of action. That is beyond the Court's discretion and is not a sound foundation for asserting federal jurisdiction." Appellants' Addendum ("Add.") 17a. Yet Defendants remain unchastened.

SUMMARY OF ARGUMENT

The State asserts state-law consumer-protection, failure to warn, and fraud claims. All of them stem from the State's allegations that Defendants have long known about the direct link between fossil-fuel use and climate change yet engaged in a coordinated effort to conceal that knowledge from the general public and consumers. This misconduct resulted in cataclysmic effects on the State and the public.

Under the well-pleaded complaint rule, the State is "the master of [its] claim[s]," and the complaint's "exclusive reliance on state law" precludes removal here. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). That is why the district court correctly rejected each of Defendants' grounds for removal.

The district court was not alone. It joined four appellate courts and seven district courts that have considered and rejected indistinguishable removal arguments.[2] The only new ground for removal raised in

---

[2] *Cnty. of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934 (N.D. Cal. 2018) ("*San Mateo I*"), *aff'd in part, appeal dismissed in part*, 960 F.3d 586 (9th Cir. 2020) ("*San Mateo II*"), *reh'g en banc denied* (Aug. 4, 2020), *vacated and remanded on other grounds*, No. 20-884 (U.S. May 24, 2021); *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020) ("*Oakland*"), *cert. denied*, __ S. Ct. __ , 2021 WL 2405350 (June 14, 2021); *Mayor & City Council of Baltimore v. BP P.L.C.*, 388 F. Supp. 3d 538 (D. Md. 2019) ("*Baltimore I*"), *as amended* (June 20, 2019), a*ff'd in part, appeal dismissed in part*, 952 F.3d 452 (4th Cir. 2020) ("*Baltimore II*"), *vacated and remanded on other grounds*, 141 S. Ct. 1532 (2021) ("*Baltimore III*"); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 405 F. Supp. 3d 947 (D. Colo. 2019) ("*Boulder I*"), *aff'd in part, appeal dismissed in part*, 965 F.3d 792 (10th Cir. 2020) ("*Boulder II*"), *vacated and remanded on other grounds*, No. 20-783 (U.S. May 24, 2021); *Rhode Island v. Chevron Corp.*, 393 F. Supp. 3d 142 (D.R.I. 2019) ("*Rhode Island I*"), *aff'd in part, appeal dismissed in part*, 979 F.3d 50 (1st Cir. 2020) ("*Rhode Island II*"), *vacated and remanded on other grounds*, No. 20-900 (U.S. May 24, 2021); *Massachusetts v. Exxon Mobil Corp.*, 462 F. Supp. 3d 31 (D. Mass. 2020); *City & Cnty. of Honolulu v. Sunoco LP*, No. 20-cv-00163-DKW, 2021 WL 531237 (D. Haw. Feb. 12, 2021) (granting motion

Defendants' notice of removal—diversity jurisdiction—has been abandoned on appeal.[3] Defendants now advance the same grounds for removal they have litigated and lost before: (1) federal common law, (2) *Grable* jurisdiction, (3) the federal officer removal statute, (4) OCSLA, and (5) CAFA.

Ignoring the unanimous authority rejecting federal jurisdiction in substantially similar cases, Defendants again attempt to recast the State's case in a manner that bears no resemblance to the actual claims

---

to remand in that matter and the related case of *Cnty. of Maui v. Chevron U.S.A. Inc.*, No. 20-cv-00470-DKW (D. Haw.)) (together, "*Honolulu*"), *appeal filed*, No. 21-15318 (9th Cir. Feb. 23, 2021); *Connecticut v. Exxon Mobil Corp.*, No. 3:20-CV-1555 (JCH), 2021 WL 2389739 (D. Conn. June 2, 2021), *appeal filed*, No. 21-1446 (2d Cir. June 8, 2021).

On May 24, 2021, the Supreme Court vacated judgment in *Baltimore*, *San Mateo*, *Boulder*, and *Rhode Island* in light of its decision in *Baltimore III*, 141 S. Ct. at 1535, which addressed the scope of appellate review of remand orders under 28 U.S.C. § 1447(d). The First, Fourth, Ninth, and Tenth Circuits had all construed that statutory provision as limiting appellate review of a remand order to two bases for removal: federal-officer jurisdiction under 28 U.S.C. § 1442 and civil-rights jurisdiction under 28 U.S.C. § 1443. In *Baltimore III*, however, the Supreme Court held that Section 1447(d) authorizes an appellate court to review all asserted bases for removal where a defendant alleges federal-officer jurisdiction. See id. at 1543. The Supreme Court did not address the merits of any of the defendants' removal arguments, but instead remanded those cases so that the appellate courts could review the non-federal-officer grounds for removal in the first instance. *See id.*

[3] Defendants have also abandoned their argument that there is federal enclave jurisdiction.

pled. The State has asserted only state-law causes of action concerning Defendants' campaign of deception and seeks only state-law remedies for that unlawful conduct. Defendants nonetheless argue that these state-law consumer-protection claims are tantamount to regulating "in areas reserved for the federal government." AOB 10. The district court correctly saw through this misdirection, holding that "[t]o adopt Defendants' theory, the Court would have to weave a new claim for interstate pollution out of the threads of the complaint's statement of injuries. This is a bridge too far." Add. 13a. Each of Defendants' bases for removal fails.

First, this case does not arise under federal common law both because the areas of federal concern identified by Defendants have no relation to the State's claims and because federal common law does not provide an independent basis for removal jurisdiction apart from complete preemption and *Grable*. *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021) is inapposite as that case was filed in federal court in the first instance, expressly distinguished its holding from the "fleet of cases" granting motions to remand, and differs fundamentally factually from this case. *Id.* at 94.

Second, *Grable* jurisdiction does not exist here. The state-law claims at issue do not "necessarily raise" any issue of federal law that is "actually disputed," because a determination of federal law is not an essential element of any claim. Nor are the federal questions that Defendants rely on "substantial"—rather, they are fact-bound and situation-specific.

Third, removal under 28 U.S.C. § 1442 was improper because there is no plausible connection between the State's claims and the activities Defendants purportedly performed under a federal officer. Defendants also did not act under a federal officer, and Defendants have failed to raise a colorable federal defense.

Fourth, jurisdiction under the OCSLA is lacking here because Defendants' concealment and misrepresentation of their products' known dangers is not an "operation" conducted on the Outer Continental Shelf ("OCS"), nor are Defendants' activities on the OCS a but-for cause of the State's injuries.

Fifth, CAFA does not apply because this is not a class action and the state laws under which this case was filed bear no resemblance to Federal Rule of Civil Procedure 23.

ARGUMENT

A. The State's Claims Do Not "Arise Under" Federal Common Law.

The State's claims do not arise under federal common law. They rest on traditional state-law failure-to-warn, fraud, and statutory consumer-protection claims. Federal common law cannot support removal because the State asserts no claim under any body of federal common law and no exception to the well-pleaded complaint rule applies.

The well-pleaded complaint rule governs whether a case "arises under" federal law for purposes of 28 U.S.C. §§ 1331 and 1441. *See, e.g.*, *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 830 (2002). The rule "is the basic principle marking the boundaries of the federal question jurisdiction of the federal district courts," *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987), and "makes the plaintiff the master of the claim" such that "he or she may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar*, 482 U.S. at 392. Jurisdiction exists "only when the plaintiff's statement of his own cause of action shows that it is based upon federal law," *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (cleaned up), and removal "may not be sustained on a

theory that the plaintiff has not advanced." *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 809 n.6 (1986).

In compliance with the well-pleaded complaint rule, state-law claims can be "converted" into federal claims in only two instances: under *Grable* (as discussed in § B, *infra*) or because the state claim is completely preempted by a body of federal law. *See Oakland*, 969 F.3d at 904–06, 908. "A defendant is not permitted to inject a federal question into an otherwise state-law claim and thereby transform the action into one arising under federal law." *Gore v. Trans World Airlines*, 210 F.3d 944, 948 (8th Cir. 2000). Defendants' insistence that state-law causes of action are federal does not make it so. The federal common law that Defendants invoke is irrelevant to the State's claims. Neither *Grable* nor complete preemption applies. Defendants' reliance on *City of New York*, 993 F.3d 81, is misplaced as that case concerned ordinary preemption, did not consider removal jurisdiction, and is distinguishable on its facts. *See* § A.4 *infra*.

1. ***The State's Complaint Alleges Only State Law Claims and Has Nothing to Do with Any Body of Federal Common Law.***

Federal common law is limited and has no relevance to the State's claims. "Judicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government's 'legislative Powers' in Congress and reserves most other regulatory authority to the States." *Rodriguez v. Fed. Deposit Ins. Corp.*, 140 S. Ct. 713, 717 (2020). "The instances where [the Supreme Court] ha[s] created federal common law are few and restricted," *Wheeldin v. Wheeler*, 373 U.S. 647, 651 (1963), and have "included admiralty disputes and certain controversies between States," *Rodriguez*, 140 S. Ct. at 717. The Supreme Court once recognized a federal common law of interstate pollution that applied to claims that had the purpose and effect of regulating the discharge of pollution from out-of-state sources. *See Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 487, 487 n.7, 488 (1987). However, that common law has been displaced by Congress through the Clean Air Act and Clean Water Act, such that "the need for such an unusual exercise of law-making by federal courts [has] disappear[ed]." *See, e.g.,*

Am. Elec. Power Co., Inc. v. Connecticut, 564 U.S. 410, 423 (2011) ("*AEP*").

The State's claims focus squarely on consumer-protection, fraud, and failure-to-warn causes of action. To that end, the State's complaint describes Defendants' misrepresentations in detail, including their statements that climate change is "too uncertain," an "unproven theory," "trivial," "beneficial," and "definitely a good thing." App.49–52, *see generally* App.46–70.[4] At the same time, the State alleges that Defendants' own research showed their products caused climate change, and Defendants knew that climate change would have severe environmental and social consequences. App.31–46.

There is no federal common law that governs such claims, and "strict conditions must be satisfied" before a new area of federal common law may be recognized. *Rodriguez*, 140 S. Ct. at 717. In particular, there must be a "significant conflict" between state law and a "uniquely federal

[4] Though the issue is irrelevant for the purposes of this appeal and contrary to Defendants' suggestions, these misrepresentations are not protected by the First Amendment. The First Amendment does not protect false or misleading statements designed to deceive consumers. *See Illinois, ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 624 (2003).

interest," *Boyle v. United Techs. Corp.*, 487 U.S. 500, 507–08 (1988). The interest and conflict cannot be "highly abstract" or "speculative." *Miree v. DeKalb Cnty.*, 433 U.S. 25, 32–33 (1977) (cleaned up). The proponent of the purported federal common law must show a "specific, concrete federal policy or interest" and a clear conflict between state law and that interest. *O'Melveny & Myers v. F.D.I.C.*, 512 U.S. 79, 88 (1994). The Ninth Circuit recently held that defendants in *Oakland* failed to meet these requirements. 969 F.3d at 902. The Court should do so here, as well.

Defendants' arguments that the State's claims "arise under" federal common law flow from the faulty premise that the State's case seeks to regulate air pollution across the nation and globe, supposedly "implicat[ing]" federal interests in "transboundary pollution, foreign affairs, and the navigable waters of the United States." AOB 27. That is simply incorrect and would not present a genuine conflict with a uniquely federal interest even if true. The State's claims fall squarely within fields traditionally occupied and regulated by the states, namely: consumer protection, *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 150 (1963); "advertising," *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541–42 (2001); and "unfair business practices," *California v. ARC Am. Corp.*,

490 U.S. 93, 101 (1989). There has never been a federal common law in any of these areas because "there is no question that [the states'] interest in ensuring the accuracy of commercial information in the marketplace is substantial." *See Edenfield v. Fane*, 507 U.S. 761, 769 (1993).

Defendants nonetheless seek to recast the State's complaint, arguing "the State is seeking redress for injuries alleged to have been caused by global climate change." AOB 20. But Defendants do not describe any specific federal policy, any specific federal regulatory consideration, or any action of federal government that might be impacted by the State's claims. Lacking such bases, they resort to an amorphous declaration that "as a matter of constitutional structure," any claim involving climate change-related harms necessarily arises under federal common law. AOB 13. There is no such rule and no basis for one. The State is not seeking to regulate emissions, and "[i]t is well settled that the states have a legitimate interest in combatting the adverse *effects* of climate change on their residents." *Am. Fuel & Petrochemical Mfrs. v. O'Keeffe*, 903 F.3d 903, 913 (9th Cir. 2018) (emphasis added); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) ("States traditionally have had great latitude under their police powers to legislate as to the

protection of the lives, limbs, health, comfort, and quiet of all persons." (quotations omitted)).

The Ninth Circuit in *Oakland* rejected the same assertion that federal common law "controls" and therefore creates federal question jurisdiction. 969 F.3d at 902. There, as here, the defendants did not "identify a legal issue" with a specific conflict, but instead "suggest[ed] that the Cities' state-law claim implicates a variety of 'federal interests,' including energy policy, national security, and foreign policy." *Id.* at 906–07. The court observed that whether the defendants could be held liable for public nuisance under state law was "no doubt an important policy question, but it does not raise a substantial question of federal law for the purpose of determining whether there is jurisdiction under § 1331." *Id.* at 907. So too here. *See* Sec. B.1, *infra*.

Contrary to Defendants' assertions, *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 423 (2011) ("*AEP*") and *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012) do not recognize a body of federal common law that could control here. Neither the Supreme Court nor the Ninth Circuit held that the plaintiffs' state-law claims necessarily arose under or were controlled by federal common

law, neither decision resolved any state-law claims, and neither case involved removal jurisdiction. In *AEP*, plaintiffs sued electric companies in federal court, alleging the companies' greenhouse gas emissions violated the federal common law of interstate nuisance and state tort law. 564 U.S. at 418. The Supreme Court held that "the Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants" because it was "plain that the Act 'speaks directly' to emissions of carbon dioxide from the defendants' plants." *Id.* at 424. It was thus an "academic question whether, in the absence of the [CAA], the plaintiffs could state a federal common-law claim for curtailment of greenhouse gas emissions" because if ever such a cause of action existed, it did not survive the CAA. *Id.* at 423. The Court expressly reserved the question of whether the plaintiffs' *state* nuisance claims remained viable. *Id.* at 429.

Likewise in *Kivalina*, the plaintiff pled claims under federal common law in federal court in the first instance, and the Ninth Circuit applied *AEP*, holding that "Congress has directly addressed the issue of domestic greenhouse gas emissions from stationary sources and has therefore displaced federal common law." 696 F.3d at 856. The plaintiff

pled alternative state-law claims but did not appeal the district court's decision not to exercise supplemental jurisdiction over them after dismissing the federal common-law claims. *Id.* at 854–55. The Ninth Circuit thus never considered the state-law claims, and nothing in the decision expressly or impliedly held that the plaintiff's claims could only be adjudicated, if at all, under federal common law.

In short, there is no area of federal common law that applies to this case and no basis to craft one.

2. *Complaints Alleging State-Law Causes of Action Are Only Removable if They Satisfy* Grable *or Are Completely Preempted by a Federal Statute.*

Defendants' arguments that every state court case arises under federal law and is removable if "'dispositive issues stated in the complaint require the application' of a uniform rule of federal law," AOB 27, misconstrues jurisdictional boundaries the Supreme Court has taken pains to clarify. As explained in *Oakland*, *Grable* and complete preemption are the only two recognized exceptions to the well-pleaded complaint rule. *See Oakland*, 969 F.3d at 904–06, 908. Defendants' insistence that federal common law "governs," or "controls," *see* AOB 9, 10, 14, 17–18, 27, is all euphemism for the proposition that federal

common law *preempts* the State's claims. But ordinary preemption is a federal defense and can never supply federal question jurisdiction. *See, e.g.*, *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987).

To "bring some order" to its previously "unruly" 28 U.S.C. § 1331 jurisprudence, the Supreme Court in *Grable* "condensed [its] prior cases" into a straightforward inquiry. *Gunn v. Minton*, 568 U.S. 251, 258 (2013). For purposes of § 1331, "a case can 'aris[e] under' federal law in two ways"; namely, if "federal law creates the cause of action asserted," or if it falls within the "'special and small category' of cases" that satisfy *Grable*'s four-part analysis. *Id.*; *see also* § B, *infra*. The only other recognized exception to the well-pleaded complaint rule is the complete preemption doctrine, which is not at issue here. *See Oakland*, 969 F.3d at 906.

In *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 136 S. Ct. 1562, 1571 (2016), the Supreme Court reaffirmed that *Grable* provides the proper tool to determine whether a state law claim is removable absent complete preemption. There, the plaintiff alleged the defendant bank violated state common law and securities laws. 136 S. Ct. at 1566. The plaintiff brought no federal claims, but the complaint

"couched its description" of the defendant's conduct "in terms suggesting that [the defendant] violated" a Securities Exchange Act regulation. *Id.* at 1566–67. The Exchange Act grants exclusive federal jurisdiction over any case "brought to enforce any liability or duty created by [the Exchange Act] or the rules or regulations thereunder." 15 U.S.C. § 78aa(a). The defendant removed, arguing that whenever "a plaintiff's complaint either explicitly or implicitly 'assert[s]' that 'the defendant breached an Exchange Act duty,' then the suit is 'brought to enforce' that duty and a federal court has exclusive jurisdiction." 136 S. Ct. at 1568.

The Supreme Court disagreed, explaining the *Grable* doctrine "well captures [those] classes of suits 'brought to enforce'" an Exchange Act duty." *Id.* at 1570. The Court stressed it had "time and again declined to construe federal jurisdictional statutes more expansively than their language, most fairly read, requires," based on "the need to give due regard to . . . to the power of the States to provide for the determination of controversies in their courts." *Id.* at 1573 (citation omitted). The Court acknowledged that there is "nothing to prevent state courts from resolving Exchange Act questions that result from defenses or counterclaims," and thus "s[aw] little difference, in terms of the

uniformity-based policies [the defendant] invoke[d], if those issues instead appear in a complaint." *Id.* at 1574. The Court held it was "less troubling for a state court to consider such an issue than to lose all ability to adjudicate a suit raising only state-law causes of action." *Id.*

Defendants' arguments suffer the same pitfalls as the defendant's arguments in *Manning*. They claim federal jurisdiction is essential to support "a strong federal interest in uniformly addressing suits involving transboundary pollution," AOB 27, but in *Manning* the Court reiterated its "confidence that state courts would look to federal court interpretations," which would present "no incompatibility with federal interests." 136 S.Ct. at 1574 (citation omitted). Defendants argue "our constitutional system requires" that jurisdiction extend to the State's claims because federal common law supposedly "controls," AOB 14, but in *Manning* the Court emphasized its "deeply felt and traditional reluctance to expand the jurisdiction of federal courts through a broad reading of jurisdictional statutes," and adopted an approach that serves "to keep state-law actions like [the plaintiff's] in state court, and thus to help maintain the constitutional balance between state and federal judiciaries." 136 S.Ct. at 1573. Those same principles hold here.

The cases Defendants cite for the proposition that "federal jurisdiction exists if federal common law supplies the rule of decision," AOB 27–28, either applied an outdated articulation of the *Grable* test or did not analyze removal jurisdiction at all. This Court's decision in *In re Otter Tail Power Co.*, 116 F.3d 1207 (8th Cir. 1997), and the Second Circuit's decision in *Republic of Philippines v. Marcos*, 806 F.2d 344 (2d Cir. 1986), both applied the substantial federal issue test that has since been synthesized in *Grable*. *See In re Otter Tail*, 116 F.3d at 1213 (jurisdiction exists where "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law" (citation omitted)); *Marcos*, 806 F.3d at 352 (same). The plaintiff in *Treiber & Straub, Inc. v. UPS, Inc.* 474 F.3d 379 (7th Cir. 2007), filed its complaint in federal court and affirmatively alleged federal and state law causes of action; no question of subject-matter jurisdiction was before the court. *See Treiber & Straub, Inc. v. United Parcel Serv., Inc.*, 2005 WL 2108081, at *1, *10–11 (E.D. Wis. Aug. 31, 2005). The Fifth Circuit's decision in *Sam L. Majors Jewelers v. ABX, Inc.*, is inapposite because the court held a claim against an interstate air carrier for lost property in shipping arises under federal common law based on "the historical availability of

this common law remedy, and the statutory preservation of the remedy," rendering the decision "necessarily limited." 117 F.3d 922, 929 n.16 (5th Cir. 1997). Finally, *Caudill v. Blue Cross & Blue Shield of N.C.*, 999 F.2d 74 (4th Cir. 1993), was abrogated by *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677 (2006), which applied *Grable* and held that federal common law did not provide "a basis for federal jurisdiction" over certain health insurance reimbursement claims. *Id.* at 690–93. To the extent these cases remain good law, they illustrate the previously imprecise inquiry that *Grable* remedied. They do not evince a different jurisdictional test.

3. *There Is No Independent "Artful Pleading" Exception to the Well-Pleaded Complaint Rule.*

Defendants repeatedly invoke the "artful pleading doctrine," AOB 31–33, which they incorrectly contend creates an independent exception to the well-pleaded complaint rule. The court below correctly held that "artful pleading" does not provide "a separate and distinct basis for removal than complete preemption." Add. 16a. Indeed, every court that has squarely addressed the issue has held the artful pleading doctrine and the well-pleaded complaint rule are coextensive.

When the Supreme Court has applied the artful-pleading doctrine it has only done so because "[t]he artful pleading doctrine allows removal where federal law completely preempts a plaintiff's state-law claim." *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). "Artful pleading," then, is another way of describing complete preemption. *See, e.g.*, *Oakland*, 969 F.3d at 905. Consistent with this view, when this Court has squarely applied the artful pleading doctrine it has always been in the context of complete preemption. *See Phipps v. F.D.I.C.*, 417 F.3d 1006 (8th Cir. 2005) (state law claims completely preempted by National Bank Act); *Gore v. Trans World Airlines*, 210 F.3d 944, 949–50 (8th Cir. 2000) (state law claims completely preempted by Railway Labor Act); *M. Nahas & Co. v. First Nat. Bank of Hot Springs*, 930 F.2d 608, 612 (8th Cir. 1991) (state law claims completely preempted by the National Bank Act). *Cf. Bernhard v. Whitney Nat. Bank*, 523 F.3d 546, 551 (5th Cir. 2008); *Rossello-Gonzalez v. Calderon-Serra*, 398 F.3d 1, 12 (1st Cir. 2004).

While some courts have acknowledged some lack of clarity about the artful pleading doctrine' outer limits, no court has used it to permit

removal of well-pleaded state law claims based on "controlling" federal common law or any other ordinary preemption defense.

Indeed, the Supreme Court in *Manning* expressly rejected the same appeal to "artful pleading" untethered from complete preemption that Defendants raise here. The defendant in *Manning* urged that even where *Grable* is not satisfied, "a judge should go behind the face of a complaint to determine whether it is the product of 'artful pleading.'" 136 S. Ct. at 1575. The Court did not mince words: "We have no idea how a court would make that judgment," and holding plaintiffs to such an amorphous but exacting standard would be "excruciating for courts to police." *Id.* Courts should instead apply the "familiar" arising under standard "to "promot[e] administrative simplicity[, which] is a major virtue in a jurisdictional statute." *Id.* at 1574–75 (cleaned up).[5]

[5] Defendants' arguments that the State's claims "implicate" foreign affairs may be quickly dismissed. AOB 23-24. The foreign affairs doctrine articulates an ordinary preemption defense based on "the 'executive Power' vested in Article II of the Constitution," *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 414, 419–20 (2003), and therefore cannot serve as a basis for removal. None of the federal policies cited by Defendants address the liability of private companies for making false and misleading statements, and thus there is no "clear conflict" between this lawsuit and any "express federal policy. *Id.* at 425.

As the Ninth Circuit held in *Oakland*: "the district court lacked federal-question jurisdiction unless one of the two exceptions to the well-pleaded-complaint rule applies," namely *Grable* and complete preemption. *Oakland*, 969 F.3d at 906. There is no third avenue to remove state law claims.

4. City of New York *Says Nothing About Removal Jurisdiction and Does Not Apply.*

Although Defendants dedicate the majority of their Opening Brief to discussing the Second Circuit's opinion in *New York*, 993 F.3d 81, that case is inapposite. It does not speak to any of the issues pending before the Court and differs fundamentally factually.

First, in *New York* the court reviewed an order granting a motion to dismiss, and explicitly distinguished its reasoning and holding from the "fleet of cases" granting motions to remand in cases involving climate change, like this one. 993 F.3d at 94. The court held that federal common law preempted the plaintiff city's state-law claims for public nuisance and trespass brought against oil companies as pled in that case. *See* 993 F.3d at 85–86. Because the City "filed suit in federal court in the first instance," the court considered "the [defendant companies'] preemption defense on its own terms, not under the heightened standard unique to

the removability inquiry." *Id.* at 94. The court emphasized, moreover, that its ordinary preemption analysis "d[id] not conflict" with the Ninth Circuit's decision in *Oakland*, as well as with "the fleet of [other] cases" holding that "anticipated defense[s]"—including those based on federal common law—could not "single-handedly create federal-question jurisdiction under 28 U.S.C. § 1331 and the well-pleaded complaint rule."[6] *Id.* The district court's decision here reached exactly that holding, and *City of New York*, if anything, supports affirmance.

Second, the facts of *New York* are entirely different from this case, and even if the Second Circuit's preemption analysis were correct under the circumstances of that case, it would not apply here. The plaintiff's common-law claims for nuisance and trespass there sought damages "for the harms caused by global greenhouse gas emissions." *Id.* at 91. The city

[6] The public nuisance claims in *Oakland* differ from those in *New York*. In *New York*, the plaintiff's claims rested on defendants' "lawful commercial activity." 993 F.3d at 87. In *Oakland*, the plaintiffs rested their public nuisance claims on defendant's affirmative campaigns of deception and wrongful promotion. California law will only assign nuisance liability in this type of case where the plaintiff proves the defendant's "conduct is distinct from and far more egregious than simply producing a defective product or failing to warn of a defective product." *Cty. of Santa Clara v. Atl. Richfield Co.*, 137 Cal. App.4th 292, 310 (2006).

specifically defined the conduct giving rise to liability as "*lawful* commercial activity," namely: their lawful "production, promotion, and sale of fossil fuels." *New York*, 993 F.3d at 87–88 (cleaned up, emphasis added). Unlike here, the plaintiff's complaint did "not concern itself with aspects of fossil fuel production and sale that are unrelated to emissions." *Id.* at 97. And the city reaffirmed this point in its opening brief on appeal, declaring that its "particular theory of the claims . . . assumes that Defendants' business activities have substantial social utility and does not hinge on a finding that those activities themselves were unreasonable or violated any obligation other than the obligation to pay compensation." 19, *City of New York v. Chevron Corp.*, 993 F.3d 81, No. 18-2188, Dkt. 89, 2018 WL 5905772 (2d Cir. Nov. 8, 2018). Those allegations, the court held, would "effectively impose strict liability for the damages caused by fossil fuel emissions no matter where in the world those emissions were released (or who released them)," and the defendants would need to "cease global production [of fossil fuels] altogether" if they "want[ed] to avoid all liability." *Id.* The City's lawsuit, "if successful, would operate as a *de facto* regulation on [transborder] emissions," and the court held it was preempted. 993 F.3d at 96.

The State's causes of action, its theories of liability, and the relief it seeks are all categorically different. The State has only brought consumer-protection, fraud, and failure-to-warn claims under its statutory and *parens patriae* authority for injuries caused by Defendants' use of *unlawful deception* to inflate the market for their fossil-fuel products. App.19, 72–88. Nothing in this case would require Defendants to cease their production and sale of fossil fuels. Whether the Second Circuit's preemption analysis was correct is not before this Court. But even if it were, the facts of *this* case are entirely different and do not support removal.

B. The district court correctly held there is no jurisdiction under *Grable* because the State's complaint does not "necessarily raise" any substantial, disputed federal questions.

This case does not satisfy any of the elements required for removal jurisdiction under *Grable*, which extends federal question jurisdiction only to state-law complaints where a federal issue is: (1) "necessarily raise[d]", (2) "actually disputed," (3) "substantial," and (4) capable of resolution in federal court without "disturbing any congressionally approved balance of federal and state judicial responsibilities." *Great Lakes Gas Transmission Ltd. P'ship v. Essar Steel Minnesota LLC*, 843

F.3d 325, 331 (8th Cir. 2016) (quoting *Grable*, 545 US. at 314). "This rule applies only to a 'special and small category' of cases that present 'a nearly pure issue of law." *Id.* (quotations omitted). In rejecting Defendants' *Grable* arguments, the district court joined the Ninth Circuit, which reached the same conclusion in *Oakland*, 969 F.3d 895, 906–07, and a chorus of other district courts.[7] The Court should affirm.

1. ***Nothing about this case "necessarily raise[s]" any federal issue.***

The district court correctly held the State's claims do not "necessarily raise" any federal issue. Add. 18a–20a. The State asserts only state-law claims, and no element of the State's claims turns on any issue of federal law.

A federal issue is "necessarily raised" for subject-matter jurisdiction purposes only when "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd.* v.

[7] *See Baltimore I*, 388 F. Supp. 3d at 558–61 (rejecting assertion that "action falls within the 'special and small category' of cases in which federal question jurisdiction exists over a state law claim"); *Boulder I*, 405 F. Supp. 3d at 964–68 (same); *San Mateo I*, 294 F. Supp. 3d at 937 (same); *Rhode Island*, 393 F. Supp. 3d at 150–51 (same); *Massachusetts*, 2020 WL 2769681, at *10 (same); *Connecticut*, 2021 WL 2389739, at *7–10 (same).

Constr. Laborers, 463 U.S. 1, 28 (1983). The Eighth Circuit has reiterated that "[t]his inquiry demands precision" and that a removing defendant "should be able to point to the specific elements of [the plaintiff's] state law claims" that require proof under federal law. *Cent. Iowa Power Co-op*, 561 F.3d at 914.

Here, the State asserts claims under Minnesota's CFA; common-law theories of strict liability and negligent failure to warn, and fraud and misrepresentation; and Minnesota's DTPA and FSAA. App.88–97. All the rights and duties attendant to each of those theories of liability arise entirely out of Minnesota law and do not depend on proving a violation of any federal law or federal duty.

As in *Oakland,* Defendants "suggest that the [State's] state-law claim[s] implicate[] a variety of 'federal interests,' including energy policy, national security, and foreign policy." 960 F.3d at 906–07. These nebulous and generalized policy concepts do not confer federal jurisdiction. As the Ninth Circuit held, whether Defendants can be held liable for their misleading promotion of fossil fuels "does not raise a substantial question of federal law for the purpose of determining whether there is jurisdiction under § 1331," even as it may raise an

important question of public policy. *Id.* at 907. Accordingly, every court that has ruled on Defendants' arguments concerning regulatory balancing, foreign and energy policy, federal disclosure obligations, the navigable waters of the United States, allegedly governing federal common law, and constitutional concerns, has squarely rejected them.[8] This Court should, too.

i. Federal common law is not essential to resolving any element of the State's claims.

Defendants argue this case "implicates the federal common law of transboundary pollution, foreign affairs, and navigable waters." AOB 35.

---

[8] *See Oakland*, 969 F.3d at 906–07, 911 n.12 (rejecting reliance on federal issues "including energy policy, national security, and foreign policy," as well as the argument that navigable waters are the "instrumentality of the alleged harm"); *Rhode Island*, 393 F. Supp. 3d at 151 ("By mentioning foreign affairs, federal regulations, and the navigable waters of the United States, Defendants seek to raise issues . . . that are not perforce presented by the State's claims."); *San Mateo I*, 294 F. Supp. 3d at 938 ("The mere potential for foreign policy implications . . . does not raise the kind of actually disputed, substantial federal issue necessary for *Grable* jurisdiction. Nor does the mere existence of a federal regulatory regime mean that these cases fall under *Grable*."); *Baltimore I*, 388 F. Supp. 3d at 559–61 (foreign affairs, regulatory balancing, navigable waters, disclosure obligations); *Boulder I*, 405 F. Supp. 3d at 965–67 (foreign affairs, regulatory balancing); *Massachusetts*, 2020 WL 2769681, at *10 ("Contrary to ExxonMobil's caricature of the complaint, the Commonwealth's allegations do not require any forays into foreign relations or national energy policy.").

As explained in Section A.1, federal common law does not control here. Moreover, federal common law "does not necessarily create federal jurisdiction under 28 U.S.C. § 1331." *Empire HealthChoice*, 396 F.3d 136, 142 (2d Cir. 2005), aff'd, 547 U.S. 677. Instead, it does so only when "the federal common law issue appears on the face of the plaintiff's well-pleaded complaint." *Id.* at 43 n.4. Here, the State's complaint asserts only state-law causes of action. Accordingly, Defendants' federal-common-law arguments present nothing more than a possible affirmative defense, which cannot give rise to federal-question jurisdiction. *Franchise Tax Bd.*, 463 U.S. at 10 (presence of a federal defense does not suffice to create federal question jurisdiction).

Defendants' reliance on *Battle v. Seibels Bruce Ins. Co.*, 288 F.3d 596 (4th Cir. 2002) and *Newton v. Capital Ins. Co.*, 245 F.3d 1306 (11th Cir. 2001), is misplaced, as those cases demonstrate why *Grable* does *not* apply here. *Battle* and *Newton* were breach of contract actions concerning insurance policies issued pursuant to the National Flood Insurance Program ("NFIP"). In both cases, the courts held that the plaintiff's claims necessarily depended on resolution of a substantial question of federal law since "federal common law alone governs the interpretation

of" NFIP insurance policies." *Battle*, 288 F.3d at 607; *see also Newton*, 245 F.3d at 1309 (NFIP "contracts are interpreted using principles of federal common law rather than state contract law.") Here, federal law does not govern liability for false and misleading statements, fraud, or failure to warn under Minnesota law. Defendants cannot point to any element of the State's actual claims that necessarily depend on the resolution of some question of federal common law.[9]

ii. Defendants' unfounded assertion that the State's claims amount to a collateral attack on federal regulations fails the essential element requirement.

Also unavailing is Defendants' contention that the State's consumer-protection and failure-to-warn claims would upset the "careful balance" struck by Congress between the prevention of global warming and other competing policy objectives. AOB 35. The district court rightly

[9] *Torres v. Southern Peru Copper Corp.*, 113 F.3d 540 (5th Cir.1997), is also inapposite. In that case, the Fifth Circuit asserted federal-question jurisdiction over a state tort action brought by Peruvian citizens against an American company because of injuries resulting from the companies' mining operations in Peru. Id. at 541–42. The Fifth Circuit determined that removal was proper because the Peruvian government participated in the mining project and vigorously protested that the case threatened its sovereign interests. *Id.* at 543. Here, the State's claims target Defendants' deceptive conduct in the United States. Moreover, unlike in *Torres*, no foreign government has attempted to intervene in this action or claimed the case threatens any sovereign interests.

rejected this argument because "determining whether Defendants engaged in a misinformation campaign in violation of Minnesota law does not require a court to second-guess Congress's priorities regarding energy production and environmental protection." Add.18a-19a. A defendant may be held liable for failure to warn and false and misleading advertising about a product, while still being allowed to produce and sell that product. Likewise, the Ninth Circuit in *Oakland* rejected similar arguments that analogous claims implicated energy policy and national security. 969 F.3d at 906–07. Here, the State's complaint does not challenge or seek to overturn any federal law, rule, or program. It does not claim that Defendants are liable for violating any federal law, and it neither directly nor indirectly seeks any relief from any federal agency. Defendants concede these points, which should end the inquiry.

Defendants cannot point to any element of the State's failure-to-warn claim that necessarily raises a federal issue, but they nevertheless argue that the claim would somehow require a court to second-guess Congress by making a finding whether fossil fuel products are "unreasonably dangerous." AOB 36. Defendants have not identified any specific federal statute or regulation that would govern a judicial

determination regarding the safety of Defendants' products. Rather, Defendants merely argue greenhouse gas emissions are subject to numerous federal statutory regimes. AOB 37. Many of the laws Defendants cite have nothing to do with greenhouse gas emissions, much less govern their conduct in failing to warn consumers about the safety of their products. *See* 43 C.F.R. § 3162.1(a) (requiring OCS lessees to conduct operations in a manner that results "in maximum ultimate economic recovery of oil and gas with minimum waste"); Executive Order 12,866 (requiring agencies to assess "both the costs and benefits of the intended regulation"). Moreover, as the district court explained: "While the danger of a product is raised in a failure to warn action, it is in the context of whether a warning was adequate under state law, and does not require a court to determine whether the product should have been manufactured, sold, and consumed generally." Add.20a n.4 (citing *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012)). Defendants have pointed to no federal law or regulation that governs warnings concerning the dangers of fossil-fuel products.

Defendants' analogous arguments concerning the State's fraud and consumer-deception claims, AOB 37, fail for similar reasons.

Adjudicating the State's allegation that Defendants misrepresented the role of their products in causing climate change, will not depend on any federal law or regulation. Nor do the State's claims amount to a collateral attack on any purported federal decision regarding "the appropriate balance between fossil-fuel production and use and alleged environmental harms." AOB 37. The State does not seek to impose emissions limits. Moreover, the federal government has made no policy that companies should be able to conceal and misrepresent the known dangers of profligate use of fossil fuels. At most, Defendants' assertions amount to a preemption defense, which does not warrant removal. *Markham v. Wertin*, 861 F.3d 748, 754 (8th Cir. 2017).

Nor does Defendants' authority, AOB 36, support their contention that the State's claims challenge federal agency action. The Seventh Circuit in *Bennett v. Sw. Airlines Co.*, 484 F.3d 907 (7th Cir. 2007) rejected *Grable* arguments indistinguishable from those advanced by Defendants here. In that case, the lower court held that claims arising out of an aviation accident were removable under *Grable* "because of the dominant role that federal law plays in air transport." *Id.* at 909. The Seventh Circuit reversed. Resolving the suit would not "revolve[] around

any *particular* disputed issue of federal law." *Id.* The court rejected the notion that "all suits about commercial air travel belong in federal court because the national government is the principal source of rules about safe air transportation, and uniform application of these norms is desirable." *Id.* Likewise, in the instant action, the fact that "'greenhouse gas emissions are the subject of numerous federal statutory regimes,'" AOB 36, does not mean that this case belongs in federal court, especially since the State does not seek to regulate such emissions.

In *Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, federal questions were necessarily raised because the plaintiff expressly alleged that a stock borrowing program approved and regulated by the SEC, "*by its mere existence*, hinder[ed] competition" in violation of state antitrust laws, and the complaint thus "directly implicate[d] actions taken" by the SEC in approving and regulating the program. 559 F.3d 772, 778–79 (8th Cir. 2009). There is no similar allegation here that any federal program caused the State's injuries.

In the remaining cases cited by Defendants, removal was upheld because, unlike here, federal law directly established the plaintiff's right to relief. In *Board of Commissioners v. Tennessee Gas Pipeline Co.*, the

plaintiff alleged the defendants increased regional flood risk by dredging canals. 850 F.3d 714, 720 (5th Cir. 2017). The plaintiff's claims were framed under state law, but the court found removal proper because the complaint "dr[ew] on [the federal Rivers and Harbors Act] as the exclusive basis for holding Defendants liable for some of their actions," which, under Louisiana law, were not subject to the duties the plaintiffs sought to enforce. *Id.* at 722–23 (emphasis added). Therefore, "[t]he absence of any state law grounding for the duty . . . for the Defendants to be liable means that that duty would have to be drawn from federal law." *Id.* at 723. Here the relief the State seeks and the duties it seeks to enforce are drawn from traditional precepts of Minnesota law.[10]

[10] Defendants' other cases cited at AOB 36 are likewise inapposite. *See McKay v. City & Cty. of San Francisco*, 2016 WL 7425927, at *4 (N.D. Cal. 2016) (rejecting the notion that merely implicating federal interests in the management of national airspace creates jurisdiction, but upholding removal where state law claims necessarily challenged FAA's approval of flightpath); *West Virginia ex rel. McGraw v. Eli Lilly & Co.*, 476 F. Supp. 2d 230, 234 (E.D.N.Y. 2007) (denying motion to remand where state's claims depended on its obligation to make certain payments under federal law).

2. *This case does not raise a "substantial" federal issue.*

Even if Defendants could show a necessarily raised federal question, none could be considered "substantial" under *Grable*. As the Ninth Circuit held in *Oakland*, the federal issues purportedly raised here are "fact-bound and situation-specific," and thus would not affect interpretations of federal law. 969 F.3d at 907.

The substantiality inquiry looks to the importance of a federal issue "to the federal system as a whole." *Gunn*, 568 U.S. at 260. "An issue has such importance when it raises substantial questions as to the interpretation or validity of a federal statute, or when it challenges the functioning of a federal agency or program." *Oakland*, 969 F.3d at 905 (citation omitted). A question may also be "substantial" when it presents "a 'pure issue of law,' that directly draws into question 'the constitutional validity of an act of Congress,' or challenges the actions of a federal agency, and a ruling on the issue is 'both dispositive of the case and would be controlling in numerous other cases.'" *Id.* (citations omitted). "By contrast, a federal issue is not substantial if it is fact-bound and situation-specific, or raises only a hypothetical question unlikely to affect interpretations of federal law in the future." *Id.* (cleaned up).

Here, the district court held that, even if the State's claims raised federal issues, those issues were not substantial:

> [T]he State here does not bring claims capable of addressing the panoply of social, environmental, and economic harms posed by climate change. The State's Complaint, far more simply, seeks to address one particular feature of the broader problem—Defendants' alleged misinformation campaign.

Add. 20a. The district court was correct.

The State's claims do not challenge a federal statute or agency program, and they do not turn on a "dispositive," "pure" issue of federal law that "would be controlling" in other cases. *Oakland*, 969 F.3d at 905. Instead, they raise only fact-bound, state-law issues concerning the commercial statements of private companies. Any connection to future questions of federal law is "hypothetical." *See id.* at 907 (whether fossil-fuel companies can be held liable under California nuisance law "is no doubt an important policy question, but it does not raise a substantial question of federal law"); *Boulder I*, 405 F. Supp. 3d at 968 (no substantiality where "the issues raised by Defendants are not central to Plaintiffs' claims, and the claims are 'rife with legal and factual issues that are not related' to the federal issues").

Defendants resort to mischaracterizing the complaint, baldly asserting that the "case sits at the intersection of federal energy and environmental regulation." AOB 38. But that assertion cannot be squared with the actual claims in the complaint, which merely seek to hold Defendants liable for failure to warn, fraud, and making false and misleading statements about their products.

3. *Exercising jurisdiction would disrupt the federal/state balance.*

The balance of state and federal responsibility also strongly favors adjudication in state court, since the State seeks to enforce its own laws in its own courts, and consumer-protection claims are squarely within traditional state police authority. *See Franchise Tax Bd.*, 463 U.S. at 21 n.22 ("[C]onsiderations of comity make [courts] reluctant to snatch cases which a State has brought from the courts of that State, unless some clear rule demands it.").

Nothing suggests Congress intended federal courts to be the forum for consumer protection, failure-to-warn, and fraud cases relating to products that in some way relate to federal environmental or energy policy or foreign affairs. If Defendants' nebulous federal concerns sufficed, *Grable* could be used to remove countless cases. The mere

assertion of preemption would constitute self-fulfilling federal jurisdiction. As would any case presenting an alleged conflict with any federal regulation, policy, or international agreement. Nearly any tort claim for environmental harm could be removed on the basis of an asserted inconsistency with some federal cost-benefit analysis. Indeed, "many (if not all) state tort claims that involve the balancing of interests and are brought against federally regulated entities would be removable. *Grable* does not sweep so broadly." *San Mateo I*, 294 F. Supp. 3d at 938; s*ee also Bennett*, 484 F.3d at 911 ("mov[ing] a whole category of suits to federal court" was inconsistent with congressional judgment).

Finally, *Grable* requires "judgments about congressional intent." 545 U.S. at 318 (cleaned up). Here, Congress has not provided a claim for damages in this context and has expressly preserved state law. The Federal Trade Commission Act preserves state law actions for unfair or deceptive trade practices. *See* 15 U.S.C. § 57b(e). The Consumer Product Safety Act also preserves state products liability claims. *See* 15 U.S.C. § 2072(c). Congress added analogous savings clauses to various other federal consumer protection statutes, such as the Food, Drug, and Cosmetic Act, 21 U.S.C. § 379r(f), and the Dodd-Frank Wall Street

Reform and Consumer Protection Act, 12 U.S.C. § 5551(a). And neither the Clean Air Act nor its implementing regulations provides a cause of action (much less an exclusive one) to deal with Defendants' conduct. 42 U.S.C. § 7604(e) (nothing in the act shall "restrict any right which any person . . . may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief.").

Grable simply does not apply here.

C. There is no federal officer removal jurisdiction because no federal officer directed the Defendants' tortious conduct, and Defendants have not raised a colorable federal defense.

The district court correctly held that it could not exercise jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442. This case is about Defendants' deceptive conduct and failure to warn, not fossil-fuel production. Even if Defendants acted in some fashion under federal officers in producing some fossil fuels at some point there is no plausible connection between production and the State's claims for failure to warn and deception. Unsurprisingly, the same arguments Defendants advance here have been uniformly rejected by every court

that has considered them, including the court below, seven other district courts, and four courts of appeals. *See* n.2.

The federal officer removal statute permits removal only if the defendant, "in carrying out the 'act[s]' that are the subject of the petitioner's complaint, was 'acting under' any 'agency' or 'officer' of 'the United States.'" *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007). "Four elements are required for removal under § 1442(a)(1): (1) a defendant has acted under the direction of a federal officer, (2) there was a causal connection between the defendant's actions and the official authority, (3) the defendant has a colorable federal defense to the plaintiff's claims, and (4) the defendant is a 'person,' within the meaning of the statute." *Jacks v. Meridian Res. Co.*, 701 F.3d 1224, 1230 (8th Cir. 2012). Defendants fail the first three prongs of this test.

1. ***Defendants' campaign of deception and other wrongful conduct were not "for, or relating to" any act under color of federal office.***

The district court correctly concluded that Defendants failed to establish the requisite connection between the disinformation and over-promotion campaign giving rise to the State's claims and any of the

individual fossil-fuel production activities on which Defendants rely. Add.24a.

Defendants posit their leasing of federal lands for exploration, drilling, and production of fossil fuels, along with contracts to sell certain fuels to the federal government, renders them federal officers entitled to removal jurisdiction. AOB 42–43. But the State *disclaims* any injuries "ar[ising] from Defendants' provision of fossil fuel products to the federal government for military and national defense purposes." App.19 (n. 4).[11] Moreover, the State's complaint does not challenge or seek to limit Defendants' drilling activities or their development of oil and gas on federal lands, nor does it seek relief to stop or reduce Defendants' production or sale of fossil-fuel products, including to the federal government. The conduct at issue here is Defendants' deceptive marketing activities.

[11] This disclaimer is effective. In the federal officer context, where a party disclaims injuries arising from federal activities, "remand clearly is appropriate, because [the defendant] cannot prove a causal nexus between its government contracts and [plaintiff's] claims." *Fisher v. Asbestos Corp.*, No. 2:14-CV-02338-WGY, 2014 WL 3752020, at *3 (C.D. Cal. July 30, 2014) (collecting cases).

While the Court may credit the factual allegations in a removal petition, it need not (and should not) blindly adopt Defendants' baseless legal conclusions concerning the relationship between the alleged misconduct and the actions of federal officers, especially where, as here, "[t]here is simply no nexus between anything for which [the State] seeks damages and anything the oil companies allegedly did at the behest of a federal officer." *See Rhode Island II,* 979 F.3d at 60. The district court did just that, finding the requisite connection lacking since "Defendants do not claim that any federal officer directed their respective marketing or sales activities, consumer-facing outreach, or even their climate-related data collection." Add. 24a. In reaching this conclusion, the district court joined courts across the country that have rejected Defendants' blatant straw-man tactics. For example, the Fourth Circuit in *Baltimore II* explained fossil-fuel production is "not the source of tort liability." 952 F.3d at 467. "When read as a whole, the Complaint clearly seeks to challenge the promotion and sale of fossil fuel products without warning,"

as well as the "concealment and misrepresentation of the products' known dangers." *Id.*[12]

Moreover, many of the acts Defendants purportedly took under color of federal office, including their conduct during World War II, AOB 42–43, *predate* the misconduct that forms the core basis of the State's claims. The State challenges a campaign, accelerating in the 1980s and continuing to this day, to conceal and misrepresent the dangers of fossil-fuel products while simultaneously promoting their unrestrained sale and use. The Court should disregard distant historical conduct both because it is irrelevant given the State's disclaimer, and because it cannot

---

[12] *See also Rhode Island II*, 979 F.3d at 59–60 ("At first glance, [defendants' contract to produce oil] may have the flavor of federal officer involvement in the oil companies' business, but that mirage only lasts until one remembers what Rhode Island is alleging in its lawsuit."); *Massachusetts*, 462 F. Supp. 3d at 47 (ExxonMobil's deceptive marketing and sales tactics "were not plausibly 'relat[ed]' to the drilling and production activities supposedly done under the direction of the federal government."); *Boulder I*, 405 F. Supp. 3d at 976 (defendants failed to show "there is a causal connection between the work performed under the leases and Plaintiffs' claims"); *Honolulu*, 2021 WL 531237, at *6–7 (no causal connection between the "alleged failure to warn and/or disseminate accurate information about the hazards of fossil fuels" and any acts defendants may have taken at the direction of a federal officer); *Connecticut*, 2021 WL 2389739, at *11 (federal officer removal improper where "ExxonMobil does not assert, or even suggest, that the government directed ExxonMobil to make the[] allegedly deceptive statements").

serve as the basis for concluding that Defendants engaged in their campaign of deception under color of federal office *decades later*. *See Ryan v. Dow Chem. Co.*, 781 F. Supp. 934, 946 (E.D.N.Y. 1992) ("Critical under the [federal officer removal] statute is 'to what extent defendants acted under federal direction' at the time they were engaged in the conduct now being sued upon.").

Put simply: Defendants fail to identify a single instance where the government exercised control over the misrepresentations that give rise to the State's suit. That omission is fatal to Defendants' assertion of federal officer jurisdiction, as other courts routinely find in cases involving failure to warn or deceptive marketing. *See, e.g.*, *In re MTBE Prods. Liab. Litig.*, 488 F.3d 112, 131 (2d Cir. 2007) (federal officer removal improper where federal regulations "say nothing" about marketing and other tortious conduct); *Meyers v. Chesterton*, No. CIV.A 15-292, 2015 WL 2452346, at *6 (E.D. La. May 20, 2015) (rejecting federal officer removal because "nothing about the Navy's oversight prevented the Defendants from complying with any state law duty to warn"), *vacated as moot sub nom. Meyers v. CBS Corp.*, No. 15-30528, 2015 WL 13504685 (5th Cir. Oct. 28, 2015); *In re Guidant Corp. Implantable*

Defibrillators Prods. Liab. Litig., 428 F. Supp. 2d 1014, 1017–18 (D. Minn. 2006) (remanding design defect case where FDA did not exercise control over design, manufacture, or sale of the defibrillators at issue).

Contrary to Defendants' arguments, *Baker v. Atlantic Richfield Co.*, 962 F.3d 937 (7th Cir. 2020), does not support jurisdiction here. In *Baker*, the Seventh Circuit held the government had "required" one of defendant's predecessors to refine lead and other metals "according to detailed federal specifications" at a site, such that later-discovered lead pollution was "connected to or associated with" the government's explicit, coercive control over the predecessor's activities, and therefore the plaintiffs' claims arising out of that pollution. 962 F.3d at 940, 945. The Seventh Circuit did not hold that removal is appropriate where, as here, the federal government did not exercise control or oversight over the tortious conduct at issue. Any relationship here between general governmental direction and Defendants' overall production of fossil fuels is far more tenuous than the relationships in *Baker*.

Defendants' remaining authority upholding federal officer jurisdiction is likewise inapposite because, unlike here, the acts taken under the direction of a federal officer were the basis of the plaintiffs'

claims. *See Jacks*, 701 F.3d at 1227, 1230 n.3 (act that formed the predicate of plaintiff's petition "unquestionably occurred while [defendant] performed its duties under the direction of a federal officer" where plaintiff brought suit challenging subrogation claim asserted by insurer administering federal health insurance plan on behalf of federal government); *In re Commonwealth's Motion to Appoint Couns. Against or Directed to Def. Ass'n of Philadelphia* 790 F.3d 457, 472 (3d Cir. 2015), as amended (June 16, 2015) ("the acts complained of undoubtedly 'relate to' acts taken under color of federal office" because the attorneys' employment with the Federal Community Defender formed "the very basis" of the suit, which concerned whether the organization was "violating the federal authority granted to it."); *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 296 (5th Cir. 2020) (the plaintiff's negligence claim, which was predicated on the defendant's failure to warn of the dangers of asbestos, was sufficiently connected with the defendant's installation of asbestos during the refurbishment of a naval vessel pursuant to the direction of the U.S. Navy); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017) (failure to warn case where U.S.

Navy required defendant to make "a comprehensive set of warnings, but not all possible warnings").

Because Defendants have not demonstrated that they took any action under a federal officer that relates in any way to the State's claims, the Court should dismiss Defendants' claim to federal officer jurisdiction, without reaching any of the other requirements of Section 1442.

2. *Defendants were not "acting under" a federal officer.*

Defendants also fail to meet their separate burden to establish that when they committed the tortious conduct alleged in the complaint, they were "acting under" the federal government in "an effort to assist, or to help carry out, the duties or tasks of [a] federal superior." *Watson*, 551 U.S. at 151–52. The Courts of Appeals have consistently rejected Defendants' arguments that fossil-fuel companies act under a federal officer by developing oil and gas pursuant to federal leases and national petroleum reserves (even though the State's complaint does not challenge such conduct in the first place). *See Baltimore II*, 952 F.3d at 463–66; San *Mateo II*, 960 F.3d at 601–03; *Boulder II*, 965 F.3d at 819–27. The district court departed from these decisions, finding it "plausible" that Defendants acted under the federal government by producing and

supplying fossil fuels for war efforts, and by extracting "energy resources for the nation." Add. 23a. The district court's discussion on the "acting under" factor was cursory, as the court rejected federal-officer jurisdiction on other grounds. Add. 23a-24a. While the Court need not reach this issue, the State disagrees that Defendants acted under a federal officer. At most, Defendants' allegations show that certain Defendants entered "arm's-length business arrangement[s] with the federal government" that do not satisfy § 1442. *See San Mateo II*, 960 F.3d at 600-02.

i. Defendants' interactions with the military do not establish that they acted at the direction of federal officers.

As determined by numerous courts, Defendants' assertions regarding their interactions with the military do not establish federal jurisdiction. *See San Mateo II*, 960 F.3d at 600-602; *Baltimore II*, 952 F.3d at 463-64; *Rhode Island II*, 979 F.3d at 59-60. To the extent Defendants present the military-industrial relationship from a different angle here, they still fail to show Defendants acted under federal officers in any way relevant to this case.

World War II and the Korean War. Setting aside that the State does not allege misconduct during the Second World War or the Korean War, Defendants offer no evidence that they were "under the 'subjection, guidance, or control,'" *San Mateo II*, 960 F.3d at 599, of a federal officer in providing fuel to the military during this period. Defendants instead rely on CERCLA cases and a historical report that merely speak to a cooperative, mutually beneficial relationship between the military and the industry. *See* AOB 42–43. This evidence does not show that the federal government exercised any control over the industry, much less its marketing practices.

"Specialty Fuels" Sold to the Military. Defendants argue that they continue to supply fossil-fuel products to the military to "exacting specifications," but they offer no evidentiary support of this assertion, other than a report which shows that certain Defendants were top fuel suppliers to the Department of Defense ("DOD") and a document reflecting the quantity of jet fuel sold to the U.S. military by several defendants between 1983 and 1999. *See* AOB 43 (citing App.137, 192, 194-96). This evidence does not show that the DOD exercised any control over the industry or its marketing practices. To the contrary, the cited

report evidences exactly the type of arms-length commercial relationship held not to support federal officer jurisdiction in *Boulder II*, 965 F.3d at 827; *Baltimore II*, 952 F.3d at 465; and *San Mateo II*, 960 F.3d at 600.

ii. Defendants' mineral leases provide no basis for federal officer removal.

Even if Defendants' oil and gas leases with the federal government had any connection with the State's claims, the First, Fourth, Ninth, and Tenth Circuits already determined that fossil-fuel companies do not act under federal officers when they extract oil and gas from the Outer Continental Shelf ("OCS") pursuant to federal mineral leases. *See Rhode Island II*, 979 F.3d at 59-60; *Baltimore II*, 952 F.3d at 465-66; *San Mateo II*, 960 F.3d at 602-03; *Boulder II*, 965 F.3d at 826.[13]

As the Ninth Circuit explained in *San Mateo II*, "'[t]he willingness to lease federal property or mineral rights to a private entity for the entity's own commercial purposes, without more' cannot be 'characterized as the type of assistance that is required' to show that the private entity

[13] *See also Honolulu I*, 2021 WL 531237, at *5 (rejecting argument that "newly cited [OCS] lease provisions," identical to those at issue here, show that Defendants acted under federal officers since they "show nothing more than what the Ninth Circuit [in *San Mateo I*] described as "largely track[ing] legal requirements").

is 'acting under' a federal officer." 960 F.3d at 603 (quoting *Baltimore II*, 952 F.3d at 465). These "leases do not require that lessees act on behalf of the federal government, under its close direction, or *to fulfill basic governmental duties*." *San Mateo II*, 960 F.3d at 602-03 (emphasis added). The fact that a private company's business might advance a generalized economic policy interest in "energy security" or "energy independence" does not turn that conduct into "an effort to *assist*, or to help *carry out*, the duties or tasks of [a] federal superior" that would satisfy § 1442. *See Watson*, 551 U.S. at 151-52.

iii. Defendants' contributions into the Strategic Petroleum Reserve were not made at government direction.

The Fourth and Ninth Circuits found that Defendants did not act under a federal officer by entering into a unit plan agreement for the joint operation of a strategic petroleum reserve ("SPR") known as Elk Hills Reserve, or by making cash royalty payments on oil production from OCS leases. *Baltimore II*, 952 F.3d at 463, 465; *San Mateo II*, 960 F.3d at 602–3; *see also Honolulu*, 2021 WL 531237, at *6 ("At best, the relationship Defendants describe" as to the SPR "is a regular business one."). Likewise, Defendants' in-kind royalty payments in the form of oil, which

the government directed into the SPR, AOB 44, cannot satisfy § 1442. Defendants' contributions to the SPR between 1999 and 2009 were made through a program under which lessees of mineral rights on federal land, including leases on the OCS, paid royalties on those leases in kind, i.e., by giving the government a portion of their production. *See* App.144; Appellee's Appendix 109. OCS leases requiring cash royalty payments do not justify removal, *San Mateo II*, 960 F.3d at 602–3, and in-kind royalty payments pursuant to those leases should not be treated any differently.

Moreover, the regulations governing the purchase and sale of SPR oil make clear that the government views its role as that of a market participant, not one of subjection, guidance, or control over entities like Defendants. *See*, *e.g.*, 10 C.F.R. § 626.4(a) ("To reduce the potential for negative impacts from *market participation*," the Department of Energy must review certain factors "prior to commencing acquisition of petroleum for the SPR." (emphasis added)). Selling commodity oil to the government through a competitive bidding process, which the government then directs to the SPR, is simply not "an effort to *assist*, or to help *carry out*" the duties of a federal superior. *See Watson*, 551 U.S. at 152.

3. ***Defendants raise no colorable federal defense.***

In the proceedings below, Defendants listed, without explanation, a litany of federal defenses. App.147, Appellee's Appendix 102 (n.33). As the district court observed, because Defendants have the burden to demonstrate a colorable federal defense, these vague references do not suffice. Add. 25a-26a; see also *Graves v. 3M Co.*, Civ. No. 19-3094 (JRT/KMM), 2020 WL 1333135, at *6 n.8 (D. Minn. Mar. 23, 2020) ("[Defendant] has the burden to demonstrate a colorable federal defense."). Defendants cannot cure their failure to brief the issue below by raising new arguments on appeal. *See Johnson Tr. of Operating Engineers Loc. #49 v. Charps Welding & Fabricating, Inc.*, 950 F.3d 510, 525 (8th Cir. 2020) ("This court will not consider an argument raised for the first time on appeal."). In any event, Defendants' appellate briefing does nothing more than list several federal defenses without any elaboration. AOB 46-47.

For these reasons, the Court lacks subject matter jurisdiction under 28 U.S.C. § 1442.[14]

[14] Energy Policy Advocates amicus brief in support of Defendants that seems to argue federal officer removal applies because "[b]ias exists" in

D. There is no OCSLA jurisdiction because the State's claims arise out of Defendants' misinformation campaigns, not their offshore fossil fuel production activities.

The district court correctly held there is no federal jurisdiction in this case pursuant to the Outer Continental Shelf Act ("OCSLA") 43 U.S.C. § 1349(b)(1). *See* Add. 28a-31a. OSCLA jurisdiction attaches only if there is a but-for connection" between the cause of action and Defendants' operations on the OCS. *In re Deepwater Horizon*, 745 F.3d 157, 163 (5th Cir. 2014). "[T]he term 'operation' contemplate[s] the doing of some physical act on the [OCS]," *EP Operating Ltd. P'ship v. Placid Oil Co.*, 26 F.3d 563, 567 (5th Cir. 1994), and "a 'mere connection' between the cause of action and the OCS operation" that is "too remote" will not "establish federal jurisdiction," *In re Deepwater Horizon*, 745 F.3d at 163.

Defendants "offer no basis for the Court to conclude that Minnesota's alleged injuries would not have occurred but-for the

---

state courts. Amicus Br. at 10. The brief's legal argument is unintelligible, but it appears to assert based on hearsay documents that the State filed this action with improper motives, which in turn somehow indicates that the Minnesota *court system* is too biased to judge Defendants fairly. The brief illustrates why there are rules against hearsay. In any event, the Court "may not consider arguments or evidence not presented to the district court," *United States v. Font-Ramirez*, 944 F.2d 42, 46 (1st Cir. 1991).

Defendants' extraction activities on the OCS." Add. 26a-27a. Defendants urge that "the State seeks to recover for all alleged harm caused by climate change in the State of Minnesota." AOB 49. But as the District Court correctly explained, "the State's claims are rooted not in the Defendants' fossil fuel production, but in its alleged misinformation campaign." Add. 26a. The relevant activity here does not involve any kind of 'operation' conducted on the OCS. *See EP Operating*, 26 F.3d at 567. The district court's holding accords with every other court that has considered Defendants' arguments that the sheer volume of production on the OCS means Defendants' OCS operations are a but-for cause of the State's injuries. *See Boulder I*, 405 F. Supp. 3d at 978-79 ("This conduct is not an 'operation' conducted on the OCS"); *Rhode Island I*, 393 F. Supp. 3d at 151-52; *Baltimore I*, 388 F. Supp. 3d at 566-67; *San Mateo I*, 294 F. Supp. 3d at 938-39. Nothing about offshore production of crude oil even relates to deception in marketing the products.

Nor would declining OSCLA jurisdiction pose an obstacle to OCSLA's objective to achieve "the efficient exploitation of the minerals" on the outer continental shelf. *Amoco Production Co. v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1210 (5th Cir. 1988); 43 U.S.C. § 1332. The

remedies the State seeks would not regulate production activities on the OCS. *See, e.g., Pharm. Research & Mfrs. of Am. v. Concannon*, 249 F.3d 66, 82 (1st Cir. 2001). To the extent relief in this case might affect offshore leasing activities at all, such an argument is "highly speculative" and "does not establish a stable ground for supporting removal." Add. 27a.

E. The Class Action Fairness Act does not apply because the State brings this suit to enforce its own consumer protection laws.

The district court correctly held this action is not removable under CAFA. Add. 30a-32a. The U.S. Supreme Court and every federal circuit court to consider this issue have found that CAFA is inapplicable to actions brought by a State under state common law or consumer protection statutes. *See Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 164 (2014) (*parens patriae* suit is not a "mass action" under CAFA).[15] Defendants' arguments that the State's action here is somehow different from any of the many similar cases is misleading and wrong.

---

[15] *See also Nessel ex rel. Michigan v. AmeriGas Partners, L.P*, 954 F.3d 831, 838 (6th Cir. 2020) (state attorney general's representative suit was not a "class action" within meaning of CAFA); *Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 212–20 (2d Cir. 2013) (same); *Mississippi ex rel. Hood v. AU Optronics Corp.*, 701 F.3d 796, 799 (5th Cir. 2012), *rev'd on other grounds*, 571 U.S. 161 (2014) (same); *Washington v. Chimei Innolux*

This action was not brought under Rule 23 or a "similar State statute or rule of judicial procedure," and thus is not a "class action" as defined by CAFA. 28 U.S.C. § 1332(d)(1)(B). Defendants nevertheless assert the Court should consider it a "class action" because the Attorney General brought it "on behalf of all Minnesota residents and fossil-fuel consumers." AOB 52. But in the absence of a statute "similar" to Rule 23, the fact that the Attorney General acts in the public interest does not transform a consumer-protection action into a class action. *Purdue Pharma*, 704 F.3d at 217.

A state has standing to sue as *parens patriae* where it can articulate an interest "apart from the interests of private parties," such as "'the health and well-being—both physical and economic—of its residents in general.'" *LG Display Co.*, 665 F.3d at 771. And the Minnesota Legislature specifically established standing for the Minnesota Attorney General to enforce state consumer-protection laws on behalf of the State. Minn. Stat. § 8.31. In contrast, a class action is brought on behalf of a discrete group of identifiable individuals. *See LG Display* at 771. Here,

---

Corp., 659 F.3d 842, 847–49 (9th Cir. 2011) (same); *LG Display Co. v. Madigan*, 665 F.3d 768, 770–72 (7th Cir. 2011) (same).

the Attorney General has brought this suit on behalf of State residents and consumers in general, not on behalf of a class of particular individuals of whom the Attorney General is a typical representative. *See id.* at 771–72. Accordingly, this case lacks the "fundamental attributes of a consumer class action filed by a private party." *Washington*, 659 F.3d at 848.

Defendants' invocation of CAFA's primary purpose to "avoid damage to the national economy" from the proliferation of meritless class action suits is irrelevant. AOB 52. The State's claims "are rooted not in the Defendants' fossil fuel production, but in its alleged misinformation campaign." Add. 26a. As the District Court correctly held, the State brought this action to enforce Minnesota law within the State of Minnesota. *Id.* Removal pursuant to CAFA is wholly inappropriate in this case.

CONCLUSION

The Court should affirm the district court's order remanding this matter to state court.

Dated: August 18, 2021

KEITH ELLISON Attorney General
State of Minnesota

/s/ Leigh Currie

LIZ KRAMER
Solicitor General

OLIVER LARSON
Assistant Attorney General

LEIGH CURRIE
PETER SURDO
Special Assistant Attorneys General
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101
(651)757-1291
leigh.currie@ag.state.mn.us

Dated: August 18, 2021

SHER EDLING LLP

/s/ Victor M. Sher

VICTOR M. SHER
vic@sheredling.com
MATTHEW K. EDLING
matt@sheredling.com
MARGARET V. TIDES
maggie@sheredling.com
ADAM M. SHAPIRO
adam@sheredling.com
SHER EDLING LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
Tel: (628) 231-2500

CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND WORD-COUNT LIMITS

I, Victor M. Sher, certify, pursuant to Federal Rules of Appellate Procedure 27(d)(1)(E) and (d)(2)(A) and 32(g)(1), that the foregoing Plaintiff-Appellee's Response Brief is proportionately spaced, has a typeface of 14 points or more, was prepared using Microsoft Word 2016, and contains 12,947 words. I further certify that the electronic version of this filing was automatically scanned for viruses and found to contain no known viruses.

August 18, 2021

/s/ *Victor M. Sher*
VICTOR M. SHER

CERTIFICATE OF SERVICE

I, Victor M. Sher, hereby certify that on August 18, 2021, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

August 18, 2021

/s/ *Victor M. Sher*
VICTOR M. SHER