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January 18, 2022

**BY ELECTRONIC FILING**

Michael E. Gans  
Clerk of Court  
United States Court of Appeals for the Eighth Circuit  
Thomas F. Eagleton Courthouse  
111 South 10th Street, Room 24.329  
St. Louis, MO 63102

Re: *State of Minnesota v. American Petroleum Institute, et al.*,  
No. 21-1752; *American Petroleum Institute, et al. v. State of*  
*Minnesota*, No. 21-8005

Dear Mr. Gans:

Pursuant to Federal Rule of Appellate Procedure 28(j), appellants file this letter in response to appellee's letter regarding *Buljic v. Tyson Foods, Inc.*, Civ. No. 21-1010, 2021 WL 6143549 (8th Cir. Dec. 30, 2021).

The record here establishes that appellants, through numerous actions over the past eight decades, have “acted under” federal officers for purposes of federal-officer jurisdiction. *See* Br. 41-44; *Watson v. Phillip Morris Cos.*, 551 U.S. 142, 151-152 (2007). Even the district court agreed that appellants have identified several “plausible ways in which [they] may have acted under the direction of federal officers.” Add. 23a.

No analogous record existed in *Buljic*. *See* 2021 WL 6143549, at \*7. There, defendant Tyson Foods argued that several federal policies and statements amounted to directives that Tyson continue operating its meat-processing plants during the COVID-19 pandemic. *Id.* at \*5-\*6. By following those alleged directives, Tyson contended that it had “acted under” the direction of a federal officer. *Id.* The court rejected that argument for two reasons. *First*, because meat processing is not typically a federal duty, Tyson was not helping federal officers to fulfill a “basic governmental task.” *Id.* at \*5. *Second*, the government merely encouraged—but did

not direct—Tyson to take certain actions, including keeping its plants open. *Id.* at \*6.

This case is distinct in both respects. First, appellants have undertaken tasks that *would* normally fall to the federal government, including providing specialized military supplies vital to the national defense and, through their work as operators and lessees of the Strategic Petroleum Reserve, reducing reliance on imported oil. Second, the government has directed appellants in connection with those tasks, including by controlling the precise specifications of aviation fuel, mandating production in World War II, requiring payment of in-kind royalties to augment the Strategic Petroleum Reserve, and strictly overseeing fossil-fuel exploration on federal lands. *See* Reply Br. 21-23. Because the government has done far more than merely designate the fossil-fuel industry as important, federal-officer jurisdiction is appropriate.

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

Respectfully submitted,

/s/ Kannon K. Shanmugam  
Kannon K. Shanmugam

cc: All counsel of record (via electronic filing)

## **CERTIFICATE OF SERVICE**

I, Kannon K. Shanmugam, counsel for defendants-appellants Exxon Mobil Corporation and ExxonMobil Oil Corporation, and a member of the bar of this Court, certify that, on January 18, 2022, the foregoing document was filed through the Court's electronic filing system. I further certify that all parties required to be served have been served.

/s/ Kannon K. Shanmugam

Kannon K. Shanmugam