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PROTECTING PEOPLE AND THE PLANET

January 20, 2022

Via ECF

Michael E. Gans
Clerk of Court
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
Plaintiff–Appellee’s Citations of Supplemental Authority

Dear Mr. Gans,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee State of Minnesota submits *Graves v. 3M Co.*, 17 F.4th 764 (8th Cir. Oct. 20, 2021) (**Ex. A**), and *Parish of Plaquemines v. Riverwood Production Co.*, No. 2:18-cv-05217, 2022 WL 101401 (E.D. La. Jan. 11, 2022) (**Ex. B**), as supplemental authority. These decisions fatally undermine Defendants-Appellants’ federal-officer removal arguments.

In *Graves*, civilian and military contractors sued an earplug manufacturer under state law, alleging the defendant had failed to warn of injury risks. 17 F.4th at 768. Although the manufacturer had designed the earplugs for the military, this Court rejected federal-officer jurisdiction over the civilian contractors’ claims. *See id.* at 767, 770. Because federal-officer removal requires “a causal connection between the charged conduct and asserted official authority,” the defendant had to show it was “acting under’ federal authority when it failed to warn commercial earplug customers.” *Id.* at 769. There was no “causal connection between the charged conduct and asserted official authority” because the government had not exercised “any control over the instructions or warnings” given to civilian purchasers. *Id.* at 769, 770.¹

In *Plaquemines*, Louisiana coastal parishes sued fossil fuel companies under a state statute, alleging that extractive activities had “caused coastal land loss and pollution.” Ex. B 1–2. Although the Petroleum Administration for War had stringently regulated the companies during World War II, the court rejected the companies’ arguments that they had “acted under” federal officers during wartime. *See id.* at 23–26.²

As in *Graves*, Defendants-Appellants identify no connection—causal or otherwise—between federal control and their concealment and disinformation campaigns that give rise to the State’s claims. *See* Response Br. 42–50. They therefore fail the casual-nexus requirement of federal-officer removal. As in *Plaquemines*, Defendants-Appellants’ wartime activities do not satisfy the “acting-under” requirement. *See id.* at 50–53.

¹ By contrast, the military contractors’ claims were removable because the government dictated the warnings given to those contractors. *See* 17 F.4th at 770.

² *Plaquemines*’ dicta suggesting that some refineries “acted under” federal officers during the war, Ex. B 20–21, was tethered to specific contracts not at issue here.

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Respectfully submitted,

/s/ Victor M. Sher _____

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cc: All Counsel of Record (via ECF)