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February 11, 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:

Under Federal Rule of Appellate Procedure 28(j), appellants write in response to appellee's letter regarding *West Virginia State University Board of Governors v. Dow Chemical Co.*, 23 F.4th 288 (4th Cir. 2022) and *Delaware v. BP America Inc.*, 2022 WL 58484 (D. Del. Jan. 5, 2022).

Dow Chemical illustrates why federal-officer jurisdiction lies here. The “archetyp[al] case” for federal-officer jurisdiction is when a private-contractor defendant “complete[d] tasks to further government projects or goals, like building military equipment.” 23 F.4th 288, at 304; *id.* at 300 n.8. Here, appellants supplied the government with fossil-fuel products under exacting specifications to support the national defense. Br. 43. By contrast, the defendants' conduct in *Dow Chemical* was “limited to strict compliance with the RCRA regulations.” 23 F.4th at 303.

Dow Chemical has no bearing on appellants' federal common-law and *Grable* grounds for removal. The *Dow Chemical* defendants argued that the putative state-law claims at issue challenged, in substance, remedial measures under RCRA, bringing those claims within RCRA's citizen-suit provision and establishing federal jurisdiction. *Id.* at 308. The court disagreed, based on its analysis of the particular claims at issue and relevant RCRA provisions, while acknowledging that artfully pleaded

state-law claims can create federal jurisdiction. *See id.* at 308, 311. This case is different: appellee’s artfully pleaded claims, which seek redress for injuries allegedly caused by global climate change, are removable because they are necessarily governed by federal common law and necessarily raise substantial federal issues, both of which grounds supply federal jurisdiction.

With respect to *Delaware*, the district court there erred by conflating defendants’ federal common-law ground for removal with federal preemption, *contra* Br. 32; Reply 8; by ignoring the interaction between the federal common-law and *Grable* analyses, *contra* Br. 35; by concluding, erroneously, that defendants had not acted under federal officers and crediting plaintiff’s jurisdictional disclaimer, *contra* Reply 21; and by overlooking OCLSA’s broad grant of jurisdiction to all actions “arising out of, or in connection with” operations on the shelf, Reply 24-25.

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 February 11, 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