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February 15, 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 *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, No. 19-1330, 2022 WL 363986 (10th Cir. Feb. 8, 2022) (**Ex. A**) ("Order"), as supplemental authority. The Tenth Circuit, on remand from the Supreme Court, again affirmed the district court's order remanding state-law claims relating to oil and gas companies' sale and deceptive promotion of fossil fuels. In doing so, the court rejected the removal theories Defendants-Appellants assert here.

First, the court revisited and reaffirmed its analysis rejecting federal-officer removal that the Supreme Court had vacated. *Id.* at 11–19.

Second, the court held there are no exceptions to the well-pleaded complaint rule other than complete preemption and the *Grable* doctrine. *Id.* at 21 ("[T]here are two exceptions to the well-pleaded complaint rule . . . ."); *id.* at 34 ("[A]t this stage of the proceedings, we do not look behind those allegations" where the plaintiffs "have pleaded only state-law causes of action."). Similarly here, Defendants-Appellants are wrong that there is a third exception to the well-pleaded complaint rule. *See* Plaintiff-Appellee's Response Br. at 6, 8–9, 16–27; Order at 22 ("The Supreme Court treats the 'artful pleading' and 'complete preemption' doctrines as indistinct.").

Third, the court rejected the defendants' argument based on the purported federal common law of transboundary pollution. Order at 25–32. "[T]he federal common law of nuisance that formerly governed transboundary pollution suits *no longer exists* due to Congress's displacement of that law through the [Clean Air Act]." *Id.* at 30; *see id.* at 28 (Clean Water Act displaced federal common law of transboundary water pollution). Of course, nonexistent law could not justify removal. *Id.* at 30–31.

Fourth, the court rejected removal based on the Outer Continental Shelf Lands Act, *id.* at 53-60, and the narrow *Grable* doctrine, *id.* at 40–51; *see id.* at 41 ("the federal issues asserted are neither necessary to the Municipalities' claims nor substantial to the federal system").

The Tenth Circuit's analysis underscores that federal jurisdiction is likewise improper here.

Respectfully submitted,

/s/ Victor M. Sher
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cc: All Counsel of Record (via ECF)