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February 24, 2022

BY ELECTRONIC FILING

Mr. 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 to respond to appellee's letter regarding *Graves v. 3M Co.*, 17 F.4th 764 (8th Cir. 2021), and *Parish of Plaquemines v. Riverwood Production Co.*, 2022 WL 101401 (E.D. La. Jan. 11, 2022), *appeal filed* (Jan. 24, 2022). Both decisions illustrate why federal-officer jurisdiction lies here.

Appellee's reliance on *Graves* is misguided. This Court held only that 3M failed to show that it was "acting under" a federal officer when it sought the advice of an Army audiologist about instructions to accompany its earplugs for civilians. 17 F.4th at 770. The Court therefore had no need to analyze whether 3M's interactions with the government were sufficiently connected to the civilian plaintiffs' claims, because the threshold "acting under" requirement had not been satisfied. *Id.* at 769. Here, appellants have made that threshold showing by identifying a number of "plausible ways in which [they] may have acted under the direction of federal officers." Add. 23a. Appellants' conduct, moreover, "relat[es] to" appellee's claims because those claims seek redress for injuries allegedly caused by appellants' production of fossil fuels, necessarily including fossil fuels produced at the direction of federal officers.

In *Plaquemines*, the district court observed that refineries that had produced aviation gas under federal contracts during World War II “can likely remove” to federal court claims related to that production. 2022 WL 101401, at *7. Appellee’s attempts to dismiss that acknowledgement as dictum cannot change the fact that ExxonMobil, through its predecessors, operated refineries that produced specialized aviation fuel under contracts with the federal government. The *Plaquemines* court also correctly acknowledged that the “new ‘connection or association’ test” under the federal-officer removal statute “is a broad one, greatly expanding the scope of actions” removable under the statute. *Id.* at *9. The court also correctly determined that the defendants had established a colorable defense based on their adherence to federal directives during World War II. *See id.* at *6.

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 24, 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