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March 1, 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 Citation of Supplemental Authority

Dear Mr. Gans,

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee State of Minnesota submits *City & County of Honolulu v. Sunoco, LP*, No. 1CCV-20-0000380 (Haw. Cir. Ct. Feb. 22, 2022) (**Ex. A**) ("*Honolulu*"), as supplemental authority. The Hawai'i Circuit Court denied a motion to dismiss a municipality's state-law claims against fossil fuel entities for injuries caused by their decades-long campaigns to conceal and misrepresent the climate impacts of their fossil-fuel products.[1] The decision undercuts Defendants' federal-common-law theory of removal for at least two reasons.

First, the court rightly held that federal common law did not govern the municipality's tort claims sounding in consumer protection for deceptive conduct. Because those claims emanated from the defendants' longstanding "dut[ies] to disclose and not be deceptive," "*Defendants c[ould] sell all the fossil fuels they are able to without incurring any additional liability*" under the municipality's complaint, just so long as they "ma[de] the disclosures and stop[ped] concealing and misrepresenting the harms" of their products. *Id.* ¶ 6(A), (B). Accordingly, the municipalities' state-law claims did not raise any uniquely federal interests or conflict with any concrete federal policy—two prerequisites for applying federal common law. *See id.* ¶ 7. And those claims were also different in kind from those addressed in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), where the plaintiff "targeted 'lawful commercial activity'" and would have required fossil fuel companies "to 'cease global production' if they wanted to avoid liability." *Id.* ¶ 6(B). *Honolulu*'s analysis and conclusion apply with equal force to the State's claims here, which seek to hold Defendants liable under Minnesota law for their climate disinformation campaigns.

Second, the court in *Honolulu* concluded that, even if federal common law might have once governed the municipality's state-law claims, it no longer does because the Clean Air Act supplants any such common law. *Id.* ¶ 7(E). So, too, here.

Respectfully submitted,

/s/ Victor M. Sher
Victor M. Sher
Sher Edling LLP

Counsel for Plaintiff–Appellee

cc: All Counsel of Record (via ECF)

[1] Under Hawai'i Circuit Courts Rules 23(a) and 23(d), the plaintiff must now submit a detailed proposed order that adheres to and formalizes the court's decision. Plaintiff-Appellee will provide that order when the court enters it.