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March 2, 2022

**BY ELECTRONIC FILING**

Catherine O'Hagan Wolfe
Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *State of Connecticut* v. *Exxon Mobil Corp.*, No. 21-1446

Dear Ms. Wolfe:

Under Federal Rule of Appellate Procedure 28(j), appellant writes in response to appellee's letter regarding *Board of County Commissioners of Boulder County* v. *Suncor Energy (U.S.A.) Inc.*, 2022 WL 363986 (10th Cir. Feb. 8, 2022) ("Op.").

The Tenth Circuit erred in two respects by rejecting federal common law as a basis for removal. *First*, the court concluded that federal common law could not govern the municipalities' claims because the Clean Air Act displaced federal common law. *See* Op. *12. But this Court held the opposite, correctly reasoning that federal common law must govern climate-change claims because they are "simply beyond the limits of state law." *City of New York* v. *Chevron Corp.*, 993 F.3d 81, 92 (2021). This Court also properly concluded that state law does not "snap back into action" after statutory displacement of federal common law. *See id.* at 98. And although the Clean Air Act may ultimately displace the State's claims, that is a merits question irrelevant to the question of federal jurisdiction. *See* Reply Br. 8-9.

*Second*, the Tenth Circuit deepened a circuit conflict by holding that artfully pleaded claims governed by federal common law are not removable. *See* Br. 24-26. And the Tenth Circuit incorrectly held that claims pleaded under state law are removable only when a federal statute completely preempts state law. *See* Reply Br. 10-12 (citing cases).

With respect to federal-officer jurisdiction: the record here is more robust than the one before the Tenth Circuit, and the Tenth Circuit confirmed that "[w]artime production" is "the paradigmatic example" of private conduct at the direction of a federal officer. Op. *6. Appellant has undertaken "critical efforts the federal [government] would need to undertake itself in the absence of a private contract" by, *inter alia*, supplying military fuels. *Id.*

The Tenth Circuit's holdings on *Grable* jurisdiction and OCSLA are erroneous for the reasons explained in appellant's briefing. *See* Br. 29-36, 43-47.

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 defendant-appellant Exxon Mobil Corporation, and a member of the bar of this Court, certify that, on March 2, 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