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March 9, 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 in response to appellee's letter regarding the non-final "outline of the court's analysis" in *City & County of Honolulu v. Sunoco, LP*, No. 1CCV-20-380 (Haw. Cir. Ct. Feb. 22, 2022), denying a motion to dismiss a climate-change lawsuit for failure to state a claim.

In holding that federal common law did not govern the plaintiffs' claims, the state trial court in *Sunoco* erred by failing properly to account for the sweeping harms alleged. Although the court accurately noted that the complaint sought redress for injuries allegedly caused by climate change, including "flooding" and the "costs of prevention, mitigation, repair, and abatement," slip op. 2, the court erroneously accepted the plaintiffs' characterization of the complaint as merely seeking damages for harms allegedly caused by marketing and promotion of fossil-fuel products, rather than global emissions. *See id.* at 3.

The Second Circuit rejected a similar attempt at artful pleading in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2021). It stated, in no uncertain terms, that plaintiffs may not "disavow[] any intent to address emissions" while "identifying

such emissions as the singular source” of the alleged harm. *Id.* at 91. When greenhouse gas emissions are the source of plaintiffs’ harms, the Second Circuit held, federal common law provides the rule of decision. *See id.* So too here: though the State argues that it asserts consumer-protection *claims*, both the complaint and the statements of its counsel at oral argument below confirm that the State is seeking broad *relief* for harms allegedly caused by global greenhouse-gas emissions. See App. 86; D. Ct. Dkt. 67, at 61-62.

The trial court also concluded that the Clean Air Act displaces any federal common law that might otherwise displace state law. But that is a question about the *sufficiency* of the plaintiffs’ claims that properly arose on a motion to dismiss. It has no bearing on the question of *jurisdiction* at issue here. See Reply Br. 2-3.

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 Corporation, and a member of the bar of this Court, certify that, on March 9, 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