

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,

Plaintiff-Appellee State of Minnesota submits *County of San Mateo v. Chevron Corporation*, No. 18-15499, 2022 WL 1151275 (9th Cir. 2022) (**Ex. A**), as supplemental authority. Writing for a unanimous Ninth Circuit panel, Judge Ikuta affirmed remand of analogous state-law actions for climate deception, rejecting many of the same removal arguments advanced by Defendants-Appellants here.

Like the Fourth and Tenth Circuits, the Ninth Circuit held that the plaintiffs’ claims did not “arise under federal common law.” Ex. A at 22. Because the “complaints asserted only state-law claims,” the court reasoned, arising-under jurisdiction existed only if the complaints fell within one of the “two exceptions to the well-pleaded complaint rule”: *Grable* or complete preemption. *Id.* The Ninth Circuit did not create a third exception for state-law claims purportedly governed by federal common law. Instead, it dismissed the defendants’ federal-common-law arguments under the *Grable* framework, explaining: “[E]ven if ... the [plaintiffs’] complaints could give rise to a cognizable claim under federal common law, the global-warming-related tort claims do not require resolution of a substantial question of federal law because they do not require any interpretation of a federal statutory or constitutional issue, and are displaced by the Clean Air Act.” *Id.* 25 (cleaned up).

Like the Fourth and Tenth Circuits, the Ninth Circuit also rejected OCSLA jurisdiction based on a careful analysis of the statute’s text, structure, and purpose. *See id.* 31–39. To satisfy OCSLA’s jurisdictional requirements, the court held, a defendant must show that a plaintiff’s “claims arise from actions or injuries occurring on the [OCS].” *Id.* 36. The panel emphasized that its test for OCSLA jurisdiction was “materially similar” to the standards used by other circuits, *id.* 38, and it concluded that the defendants failed this test because neither the plaintiffs’ alleged injuries nor the defendants’ alleged “wrongful actions” occurred on the OCS, *id.* 39. As a result, any “connection” between the complaints and the OCS was “too attenuated to give rise to [OCSLA] jurisdiction.” *Id.*

Michael E. Gans
Clerk of Court
April 26, 2022
Page 2

Finally, the court rejected federal-officer removal, just as the First, Fourth, and Tenth Circuits have done in other climate-related cases. *Id.* 40–50.

Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

Sher Edling LLP

Counsel for Plaintiff–Appellee

cc: All Counsel of Record (via ECF)