PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K STREET, NW
TELEPHONE (202) 223-7300
WASHINGTON, DC 20006-1047

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000

UNIT 5201, FORTUNE FINANCIAL CENTER
5 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT, BEIJING 100020, CHINA
TELEPHONE (86-10) 5828-6300

SUITES 3601 – 3606 & 3610
36/F, GLOUCESTER TOWER
THE LANDMARK
15 QUEEN'S ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, UNITED KINGDOM
TELEPHONE (44 20) 7367 1600

535 MISSION STREET, 24TH FLOOR
SAN FRANCISCO, CA 94105
TELEPHONE (628) 432-5100

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

KANNON K. SHANMUGAM

TELEPHONE (202) 223-7325
FACSIMILE (202) 204-7397

E-MAIL: kshanmugam@paulweiss.com

May 3, 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:

Pursuant to Federal Rule of Appellate Procedure 28(j), appellants write in response to appellee's letters regarding the Fourth and Ninth Circuit's respective decisions in *Mayor & City Council of Baltimore* v. *BP p.l.c.* and *County of San Mateo* v. *Chevron Corp.* Both courts erred by rejecting removal based on federal common law, deepening existing circuit conflicts.

The Fourth Circuit rejected (Op. 24-25) the Second Circuit's holding in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2021), that claims seeking redress for climate-change injuries arise under federal common law. The Second Circuit properly reasoned that such "sprawling" claims are incompatible with our Constitution's federalist structure and the need for uniformity on matters of national energy and environmental policy. *Id.* at 91-92. That reasoning applies squarely here. Br. of Appellants 19-21.

The Fourth Circuit deepened another circuit conflict by holding (Op. 15) that claims governed by federal common law but artfully pleaded under state law are not removable. Reply Br. 10-12. As this Court explained in an analogous context, "[a] plaintiff's characterization of a claim as based solely on state law is not dispositive of

whether federal question jurisdiction exists." *In re Otter Tail Power Co.*, 116 F.3d 1207, 1213 (1997) (citation omitted).

Finally, the Fourth Circuit incorrectly concluded (Op. 29-30) that jurisdiction is absent because the Clean Air Act has displaced the applicable federal common law. That reasoning conflates the merits of the claims with the Court's jurisdiction. Reply Br. 2-3. Although the Act may displace any remedy under federal common law, it does not displace the entire source of law altogether. *See also City of New York*, 993 F.3d at 95 & n.7. The Tenth Circuit similarly erred; a petition for certiorari is due on June 8. *See Board of County Commissioners* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1260 (2022).

In *San Mateo*, the Ninth Circuit rejected the federal-common-law ground for removal (Op. 22-25) based on its decision in *City of Oakland* v. *BP plc*, 969 F.3d 895 (2020). *Oakland*, however, was incorrectly decided for reasons appellants have already explained. Reply Br. 7-8.

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 May 3, 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