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May 27, 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 Citations of Supplemental Authority

Dear Mr. Gans,

Plaintiff-Appellee State of Minnesota writes to inform the Court of two decisions rejecting analogous attempts to remove climate-related claims to federal court.

In *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644, Dkt. 283 (4th Cir. May 17, 2022) (**Ex. A**), the Fourth Circuit unanimously denied rehearing en banc of *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022) ("*Baltimore*"). As Plaintiff-Appellee explained in a prior 28(j) letter (Entry ID 5147107, filed April 13, 2022), *Baltimore* rebuffed many of the same jurisdictional arguments advanced by Defendants-Appellants here.

So did the First Circuit in *State of Rhode Island v. Shell Oil Products Co., L.L.C.*, No. 19-1818 (1st Cir. May 23, 2022) (**Ex. B**).

Federal Common Law: The panel rejected the defendants' federal-common-law theory of removal for four principal reasons:

1. The defendants failed to identify "any significant conflict" between a uniquely federal interest and Rhode Island's claims. *Id.* 15-16.

2. The federal common law of interstate emissions did not apply because it did "not address the type of acts Rhode Island s[ought] judicial redress for." *Id.* 18 & n.8.

3. Congress "statutorily displaced" the federal common law of interstate emissions, *id.* 18-19 (cleaned up), and a defendant "cannot premise removal on a federal common law that no longer exists," *id.* 14.

4. *City of New York* was "distinguishable" based on its procedural posture. *Id.* 17.

Grable: The First Circuit found no *Grable* jurisdiction because "federal law [was] [not] an *essential element* to the kind of classic state-law claims Rhode Island raises." *Id.* 21.

Federal Officer: The panel also held that the defendants failed the "for or relating to" requirement of federal-officer removal because the federal government never "mandate[d]" the tortious "activities" alleged in the complaint. *Id.* 12 n.6.

OCSLA: Finally, the court rejected OCSLA jurisdiction because the complaint "d[id] not refer to actions taken on the OCS," but instead "concern[ed] how the [defendants] knew what fossil fuels were doing to the environment and continued to sell them anyway, all while misleading consumers about the true impacts of the products." *Id.* 28-29 (cleaned up).

Respectfully submitted,

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

Counsel for Plaintiff–Appellee

cc: All Counsel of Record (via ECF)