

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 in response to Defendants-Appellants’ letter of June 23, submitting a letter from President Biden to Exxon Mobil Corporation’s chairman and CEO. Defendants contend “the President of the United States has directed oil and gas companies to ‘increase’ and ‘expand’” fossil fuel production in response to rising consumer gasoline prices, which somehow shows “why this case is removable” based on the *Grable* doctrine and federal common law. Entry ID:5170855 at 1.

This court held eight months ago in *Buljic v. Tyson Foods, Inc.*, 22 F.4th 730, 740 (8th Cir. 2021): “It cannot be that the federal government’s mere designation of an industry as important—or even critical—is sufficient to federalize an entity’s operations and confer federal jurisdiction.” The defendants there argued they acted under federal officers for purposes of 28 U.S.C. § 1442 by keeping meat processing plants open during the COVID-19 pandemic; the Court held the government had not directed Tyson to remain open, but “merely encouraged various industries to maintain operations as much as possible while heeding health and safety guidance.” *Id.* at 741. Identically here, President Biden’s letter tells Exxon it “ha[s] ample market incentive” to increase gasoline supply, and “encourage[s] [Exxon] to continue maintaining and expanding fuel supply safely.” Entry ID:5170855 at 6.

Defendants avoid arguing the President’s letter supports federal officer removal under § 1442 because *Buljic* squarely forecloses that result. They instead claim without explanation that the letter supports federal question jurisdiction under 28 U.S.C. §§ 1331 & 1441, based on *Grable* or some form of federal common law, arguments the defendants waived on appeal in *Buljic*. See 22 F.4th at 742. That bald assertion does not cure the deficiencies in Defendants’ arguments because it still does not explain how any element of Minnesota’s claims necessarily raise a federal issue, or how the President’s letter relates in any way to federal common law, or why the letter supports a deviation from the well-pleaded complaint rule. See generally Response Brief at 8–40. The letter is irrelevant to the questions before the Court.

Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)