

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 *City and County of Honolulu v. Sunoco LP et al.* and *County of Maui v. Sunoco LP et al.*, Nos. 21-15313, 21-15318, Dkt. 133 (9th Cir. July 7, 2022) (**Ex. A**), as supplemental authority. The decision affirmed remand of analogous state-law actions to state court, rejecting three removal arguments Defendants-Appellants advance here. The court held subject-matter jurisdiction was lacking, concluding: “This case is about whether oil and gas companies misled the public about dangers from fossil fuels. It is not about companies that acted under federal officers, conducted activities on federal enclaves, or operated on the OCS.” Ex. A at 23. The decision joins the chorus of opinions from the First, Fourth, Ninth, and Tenth Circuits affirming remand in similar cases over the last year.

Federal Officer Removal: The court held the defendants were not “acting under” federal officers because their evidence, including fuel production during the Korean War and operations on federal land on the outer continental shelf, involved only “normal commercial or regulatory relationships that do not involve detailed supervision.” *Id.* at 11; *compare* Brief of Appellants at 41–44. The court also held the defendants failed to “assert a colorable federal defense,” Ex. A at 16, because the defenses relied on either “d[id] not arise from official duties” or were supported by “conclusory statements and general propositions of law [that] do not make their defenses colorable,” *id.* at 18. *Compare* Brief of Appellants at 46–47.

OCSLA: The Ninth Circuit also rejected removal based on OCSLA, holding the “oil and gas companies’ OCS activities are too attenuated and remote from Plaintiffs’ alleged injuries,” to support jurisdiction. Ex. A at 22. The court held “Defendants’ sporadic OCS activities cannot shoehorn OCSLA jurisdiction for just any tort claim” and “[r]uling for Defendants would dramatically expand OCSLA’s scope.” *Id.* at 21–22 (cleaned up).

Federal Enclaves: Defendant-Appellants have abandoned their argument concerning federal enclave jurisdiction raised in the district court, but the Ninth Circuit also held that “Plaintiffs’ claims do not implicate federal enclave activities.” *Id.* at 20; *see* Plaintiff-Appellee’s Response Brief at 5 n.3.

Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)