

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 of Hoboken v. Chevron Corp.*, No. 21-2728, 2022 WL 3440653 (3d Cir. Aug. 17, 2022) (**Ex. A**), as supplemental authority. The Third Circuit affirmed orders remanding to state court climate-related cases similar to Minnesota’s, brought by the City of Hoboken, New Jersey, and the State of Delaware. The court joined the First, Fourth, Ninth, and Tenth Circuits in holding that four of the removal theories Defendants raise here are meritless.

Federal Common Law: The Third Circuit held the claims did not arise under federal common law. It stated courts may “recharacterize a state law claim as a federal claim removable to federal court ... only when some federal statute completely preempts state law,” but “complete preemption is rare,” and “[u]nsurprisingly, the companies cannot cite an applicable statute that passes this test.” 2022 WL 3440653 at *2. The court rejected the Defendants’ “new form of complete preemption” relying on federal common law, and reiterated that the “test for complete preemption is the *only* basis for recharacterizing a state law claim as a federal claim removable to federal court.” *Id.* (cleaned up).

Grable: The court held the complaints did not necessarily raise substantial questions of federal law, because the only federal issues the defendants identified were federal common law and the First Amendment, which both arose only as federal defenses. “Defenses are not the kinds of substantial federal questions that support federal jurisdiction.” *Id.* at *4.

OCSLA: The court held it lacked jurisdiction under the Outer Continental Shelf Lands Act. It held that the statute applies when a plaintiff’s claim “target[s] actions on or closely connected to the Shelf,” and found the plaintiffs’ claims were “all too far away from Shelf oil production” to confer jurisdiction. *Id.* at *7.

Federal Officer Removal: Finally, the court held the defendants’ relationships with the federal government, all of which Defendants rely on here, were either “compli[ance] with run-of-the-mill regulations” that were “not enough for federal jurisdiction,” or subject to disclaimers in the plaintiffs’ complaints. *Id.* at *8. Minnesota has made an identical disclaimer here. *See* Response Br. at 44.

Respectfully submitted,

/s/ Victor M. Sher

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Counsel for Plaintiff–Appellee

cc: All Counsel of Record (via ECF)