

KANNON K. SHANMUGAM

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

E-MAIL: kshanmugam@paulweiss.com

August 31, 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 letter regarding *City of Hoboken v. Chevron Corp.*, 2022 WL 3440653 (3d Cir. Aug. 17, 2022).

Contrary to appellee's suggestion, the Third Circuit did not address whether defendants' claims actually arose under federal common law. *See* Op. 24-25. Rather, it treated defendants' invocation of federal common law as an ordinary preemption defense that could not support removal under the well-pleaded complaint rule. *See id.* But appellants do not invoke federal common law as a defense; they contend that federal common law necessarily and exclusively supplies the substantive law for claims seeking redress for climate-related injuries. *See* Reply Br. 8. Decisions from both this Court and the Supreme Court establish that a plaintiff may not defeat removal by artfully pleading state-law claims to omit necessary federal questions. *See* Br. of Appellants 32.

The Third Circuit also held (Op. 23, 25) that *statutory* complete preemption provides the only doctrinal basis to remove federal claims labeled as arising under state law. But the Supreme Court has never so held, *see* Reply Br. 11-12, and this Court's precedent holds that the artful-pleading doctrine covers claims necessarily

arising under federal common law. *See* Br. of Appellants 28-30, 32-33 (discussing *In re Otter Tail Power Co.*, 116 F.3d 1207 (8th Cir. 1997)). This Court's rule sensibly ensures that plaintiffs cannot use artful pleading and venue selection to prevent the federal judiciary from developing federal common law in areas implicating uniquely federal interests.

With respect to *Grable* jurisdiction: the Third Circuit's analysis is flawed because it rests on the same fiction that federal common law supplies only an ordinary preemption defense. *See* Op. 26. Because federal common law in fact provides the substantive rules governing the elements of appellee's claims, resolving those claims necessarily requires the resolution of substantial federal questions. *See* Br. of Appellants 35.

The Third Circuit's holdings on jurisdiction under OCSLA and the federal-officer removal statute are erroneous for the reasons explained in appellants' briefing. *See* Br. of Appellants 40-50.

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 August 31, 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