

January 7, 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 Citation of Supplemental Authority

Dear Mr. Gans,

As we await the scheduling of oral argument in this case, and pursuant to Fed. R. App. P. 28(j), Plaintiff–Appellee submits as supplemental authority *Buljic v. Tyson Foods, Inc. et al.*, Case No. 21-1010, 2021 WL 6143549 (8th Cir., Dec. 30, 2021) (**Ex. A**). The decision is relevant to the Court’s consideration of Defendants–Appellants’ federal officer removal arguments.

In *Buljic*, this Court affirmed an order remanding to state court two cases presenting wrongful death claims on behalf of workers who died from the COVID-19 virus, allegedly contracted at a Tyson meat processing facility. Tyson removed on, *inter alia*, federal officer grounds. Tyson argued that federal executive branch statements, guidelines, and policies about the critical importance of the food industry both before and during the pandemic (including a presidential statement that “the food . . . sector[was] ‘working hand-in-hand with the federal government . . . to ensure food and essentials are constantly available’”) indicated that it was acting under a federal officer when it employed the decedent workers. *See* 2021 WL 6143549 at *1, *5.

The court held that Tyson had not satisfied the “acting under” element for federal officer removal because, despite the meat processing industry’s national importance, Tyson was not fulfilling a “basic governmental task” by processing meat, and was never directed by the government to continue its operations during the pandemic:

[W]hile the federal government may have an interest in ensuring a stable food supply, it is not typically the duty or task of the federal government to process meat for commercial consumption. 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.

Id. at *5 (citations omitted).

Just like Tyson in *Buljic*, Appellants here argue that they acted under federal officers because they “contributed significantly to the United States military by providing fossil fuels that

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support the national defense” and “played an integral role in promoting energy security and reducing reliance on oil imported from hostile powers.” AOB at 42-43.

Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

Sher Edling LLP

Counsel for Plaintiff-Appellee

cc: All Counsel of Record (via ECF)