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June 17, 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 discussing *Rhode Island* v. *Shell Oil Products Co.*, 35 F.4th 44 (1st Cir. 2022). Appellants submit that the First Circuit erred by rejecting removal based on federal common law, deepening existing circuit conflicts.

In particular, the First Circuit failed to grapple with the Second Circuit's holding in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2021), that claims seeking redress for climate-change injuries arise under federal common law. *See* 35 F.4th at 55. The Second Circuit properly reasoned that such "sprawling" claims are incompatible with our Constitution's federalist structure and the need for uniformity on matters of national energy and environmental policy. 993 F.3d at 91-92. That reasoning applies squarely here. *See* Br. of Appellants 19-21.

The First Circuit also acknowledged, without deciding the issue, that it had previously expressed skepticism about whether the artful-pleading doctrine operates independently of the complete-preemption doctrine. 35 F.4th at 52. But as this Court has explained in the context of removal based on federal common law, "[a] plaintiff's characterization of a claim as based solely on state law is not dispositive of

whether federal question jurisdiction exists." *In re Otter Tail Power Co.*, 116 F.3d 1207, 1213 (1997) (citation omitted).

Finally, the First Circuit incorrectly concluded that jurisdiction is absent because the Clean Air Act displaced the applicable federal common law. 35 F.4th at 55-56. That reasoning conflates the merits of the claims with the Court's jurisdiction. Reply Br. 2-3. Although the Act may displace any remedy under federal common law, it does not displace the entire source of law altogether. *See also City of New York*, 993 F.3d at 95 & n.7. The Tenth Circuit similarly erred. *See Board of County Commissioners* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022).

The First Circuit's holdings on *Grable*, federal-officer, and OCSLA jurisdiction are erroneous for the reasons explained in appellants' briefing. *See* Br. of Appellants 34-50.

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 June 17, 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