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**BY ELECTRONIC FILING**

Catherine O'Hagan Wolfe  
Clerk of Court  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *State of Connecticut v. Exxon Mobil Corp.*, No. 21-1446

Dear Ms. Wolfe:

Pursuant to Federal Rule of Appellate Procedure 28(j), appellant writes in response to appellee's letter regarding *City of Hoboken v. Chevron Corp.*, 2022 WL 3440653 (3d Cir. Aug. 17, 2022).

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 appellant does not invoke federal common law as a defense; it contends that federal common law necessarily and exclusively supplies the substantive law for claims seeking redress for climate-related injuries. *See* Reply Br. 9. 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 Appellant 25-27; *see also id.* at 20-23.

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 distinguishing between statutory claims and claims necessarily and exclusively governed by federal common law would lead to bizarre results. Because the latter

claims would proceed in state court, state judges would develop the substantive content of federal common law, subject only to review by the Supreme Court. Through artful pleading and venue selection, plaintiffs could 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 Appellant 30-31.

The Third Circuit's holdings on jurisdiction under OCSLA and the federal-officer removal statute are erroneous for the reasons explained in appellant's briefing. *See* Br. of Appellant 36-47.

Respectfully submitted,

/s/ Kannon K. Shanmugam  
Kannon K. Shanmugam

cc: All counsel of record (via electronic filing)