

# SHER EDLING LLP

PROTECTING PEOPLE AND THE PLANET

October 20, 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 Response to Defendants–Appellants’ October 4 Letter

Dear Mr. Gans,

Plaintiff-Appellee State of Minnesota writes in response to Defendants-Appellants’ October 4 letter concerning the Supreme Court’s call for the views of the United States on the pending certiorari petition in *Suncor Energy (U.S.A.) Inc., et al. v. Board of County Commissioners of Boulder County, et al.*, No. 21-1550 (“*Boulder*”). The United States has not previously taken a position on the cert-worthiness of Defendants’ novel federal-common-law theory of removal. Without predicting how the Solicitor General will respond, it is telling that—in the past year alone—no less than five circuits have unanimously rejected that very same theory. Accordingly, their October 4 letter does “not properly fall under Rule 28(j), which authorizes only *pertinent and significant authorities* which come to a party’s attention after the brief has been filed.” *Meeks v. United States*, 742 F.3d 841, 844 (8th Cir. 2014) (cleaned up) (emphasis added).

Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

**Sher Edling LLP**

*Counsel for Plaintiff–Appellee*

cc: All Counsel of Record (via ECF)