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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 the Solicitor General's brief in *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, S. Ct. No. 21-1550.

In the space of just two years, the United States has reversed its position on whether claims such as appellee's belong in federal court. As amicus curiae in *BP p.l.c. v. Mayor and City Council of Baltimore* (No. 19-1189), the federal government explained to the Supreme Court that "claims may be removable under 28 U.S.C. 1441(a) on the ground that, although nominally couched as state-law claims, they are inherently and necessarily federal in nature." Br. at 26. But the government no longer holds that view, candidly citing a "change in Administration" as one of the prime reasons for the about-face. *Suncor*, U.S. Br. at 7. While the government also points to "intervening developments" in the form of court of appeals decisions rejecting its position in *BP*, *id.*, those decisions rested on reasoning other courts had adopted before the government took its position in *BP*. The government's current position reflects little more than the politicized nature of climate lawsuits such as this one.

Regardless, the government's arguments against the granting of certiorari lack merit. The government attempts to wave away the circuit conflicts on each

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question presented by simply collapsing the questions. It also fails to grapple with the arguments in petitioners' reply brief, including that whether a party can obtain a remedy under federal common law on the merits is a distinct question from whether the claim arises under federal common law for jurisdictional purposes. Nor does the government dispute that the questions presented are exceedingly important, or that *Suncor* is an ideal vehicle for the resolution of those questions.

Petitioners' response to the Solicitor General's brief is due on April 5. We expect that the petition will be distributed for the Court's conference on April 21.

We would appreciate it if you would circulate this letter to the panel at your earliest convenience.

Respectfully submitted,

/s/ Kannon K. Shanmugam
Kannon K. Shanmugam

cc: All counsel of record (via electronic filing)