United States Court of Appeals
For the Eighth Circuit

No. 21-1752

State of Minnesota, by its Attorney General Keith Ellison

Plaintiff - Appellee

v.

American Petroleum Institute; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Koch Industries; Flint Hills Resources LP; Flint Hills Resources Pine Bend

Defendants - Appellants

Energy Policy Advocates

Amicus on Behalf of Appellant(s)

National League of Cities; United States Conference of Mayors; International Municipal Lawyers Association; Scholars of Foreign Relations and Federal Courts; State of Washington; State of California; State of Connecticut; State of Delaware; State of Hawaii; State of Illinois; State of Maine; State of Maryland; State of Massachusetts; State of Michigan; State of New Mexico; State of New York; State of Oregon; State of Pennsylvania; State of Vermont; State of Wisconsin; District of Columbia; Public Citizen; Robert Brulle; Center for Climate Integrity; Justin Farrell; Benjamin Franta; Fresh Energy; Stephan Lewandowsky; MN350; Minnesota Center for Environmental Advocacy; Naomi Oreskes; Geoffrey Supran; Union of Concerned Scientists; Natural Resources Defense Council

Amici on Behalf of Appellee(s)

No. 21-8005

American Petroleum Institute; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Koch Industries; Flint Hills Resources LP; Flint Hills Resources Pine Bend

*Petitioner*s

v.

State of Minnesota

Respondent

Appeal from United States District Court
for the District of Minnesota

Submitted: March 15, 2022
Filed: March 23, 2023

Before GRASZ, STRAS, and KOBES, Circuit Judges.

KOBES, Circuit Judge.

Minnesota sued a litany of fossil fuel producers[1] (together, the Energy Companies) in state court for common law fraud and violations of Minnesota's consumer protection statutes. In doing so, it joined the growing list of states and municipalities trying to hold fossil fuel producers responsible for alleged misrepresentations about the effects fossil fuels have had on the environment. The

[1]American Petroleum Institute, Exxon Mobil Corporation, ExxonMobil Oil Corporation, Koch Industries, Flint Hills Resources LP, and Flint Hills Resources Pine Bend.

Energy Companies removed to federal court. The district court[2] granted Minnesota's motion to remand, and the Energy Companies appealed. We affirm.

I.

Minnesota claims that the Energy Companies have known for decades that the production and use of fossil fuels damages the environment. Instead of owning up to these harmful effects, Minnesota alleges the Energy Companies engaged in a misinformation campaign to deceive consumers and suppress the truth about climate change. Minnesota claims that this deception resulted in more fossil fuel being sold, accelerating climate change and causing wide-ranging harm to Minnesota, its citizens, and fossil fuel consumers.

Minnesota sued the Energy Companies in state court. It alleged exclusively state law claims—common law fraud and violations of various Minnesota consumer protection statutes.[3] The Energy Companies removed the case under the general removal statute, 28 U.S.C. § 1441, and the federal officer removal statute, 28 U.S.C. § 1442. Minnesota filed a motion to remand, which the district court granted. The court reasoned that it lacked original jurisdiction and that the claims didn't have sufficient connection to the Energy Companies' purported federally directed activities. The Energy Companies appeal, maintaining that federal original jurisdiction exists and that the case is otherwise removable under § 1442.

Minnesota is not the first state or local government to file this type of climate change litigation. Nor is this the first time that the Energy Companies, or their oil-producing peers, have made these jurisdictional arguments. But our sister circuits rejected them in each case. *See, e.g.*, *Rhode Island v. Shell Oil Prods. Co., L.L.C.* (*Shell Oil III*), 35 F.4th 44 (1st Cir. 2022); *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022); *Mayor & City Council of Balt. v. BP P.L.C.* (*Baltimore*

[2]The Honorable John R. Tunheim, then Chief Judge, United States District Court for the District of Minnesota.

[3]Minn. Stat. §§ 325D.44(1), 325F.67, 325F.69(1).

III), 31 F.4th 178 (4th Cir. 2022); *Cnty. of San Mateo v. Chevron Corp.* (*San Mateo III*), 32 F.4th 733 (9th Cir. 2022); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.* (*Boulder III*), 25 F.4th 1238 (10th Cir. 2022). *But cf. City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). Today, we join them.

II.

"Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quotation omitted). 28 U.S.C. § 1441 allows the defendants in state court civil actions to remove the case to federal court if the case "originally could have been filed there." *Baker v. Martin Marietta Materials, Inc.*, 745 F.3d 919, 923 (8th Cir. 2014) (quotation omitted). In other words, the federal court must have original jurisdiction over the case. Removal is permitted as long as at least one claim falls within the original jurisdiction of the federal court. *See In re Pre-Filled Propane Tank Antitrust Litig.*, 893 F.3d 1047, 1059–60 (8th Cir. 2018); 28 U.S.C. § 1367(a). We review the district court's decision to remand *de novo*. *See Bell v. Hershey Co.*, 557 F.3d 953, 956 (8th Cir. 2009).

A.

28 U.S.C. § 1331 establishes that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." In addition to cases arising under federal positive law, federal courts also have jurisdiction over "claims founded upon federal common law." *Illinois v. City of Milwaukee*, 406 U.S. 91, 100 (1972), *recognized as superseded by statute on other grounds*, *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 419 (2011). This is known as federal question jurisdiction. Generally, "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citation omitted). However, the potential

applicability of a defense arising under federal law doesn't create jurisdiction. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004). We call this pair of principles the well-pleaded complaint rule.

But "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 22 (1983).[4] There are two important exceptions to the well-pleaded complaint rule: when the state-law claims (1) are completely preempted by federal law or (2) necessarily raise a substantial, disputed federal question. *Shell Oil III*, 35 F.4th at 51–52. If either exception is met, the case is removable although no federal question appears on the face of the complaint.

Although Minnesota's complaint pleads exclusively state-law torts, the Energy Companies insist that both exceptions apply because federal common law governing transboundary pollution provides the rule of decision for Minnesota's claims. We address each exception in turn.

i.

Complete preemption applies when "the pre-emptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Caterpillar*, 482 U.S. at 393 (quotation omitted). Complete preemption "exists only where federal preemption is so strong that 'there is no such thing as a state-law claim.'" *Johnson v. MFA Petroleum Co.*, 701 F.3d 243, 248 (8th Cir. 2012) (quoting

[4]This principle has also been described as artful pleading, which occurs when a plaintiff disguises federal claims as state ones. *See* 14C Wright et al., *Federal Practice & Procedure* § 3722.1 (artful pleading). The Energy Companies argue that artful pleading is a separate exception to the well-pleaded complaint rule. We have never applied the doctrine as a standalone exception, so we decline to do so here. *See generally Johnson* v. *Humphreys*, 949 F.3d 413 (8th Cir. 2020); *In re Otter Tail Power Co.*, 116 F.3d 1207 (8th Cir. 1997).

Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 11 (2003)) (cleaned up). When federal law completely preempts state law, the cause of action is removable even if it's based entirely in state law. *Franchise Tax Bd.*, 463 U.S. at 23. But less aggressive forms of preemption, such as ordinary preemption, do not provide a basis for removal. *See Johnson*, 701 F.3d at 248 ("Ordinary preemption is a federal defense that exists where a federal law has superseded a state law claim.").

To determine whether a state-law claim is completely preempted, we ask whether Congress intended a federal statute to provide "the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action." *Beneficial Nat'l Bank*, 539 U.S. at 8. Because "[t]he lack of a substitute federal [cause of] action would make it doubtful that Congress intended" to preempt state-law claims, "without a federal cause of action which in effect replaces a state law claim, there is an exceptionally strong presumption against complete preemption." *Johnson*, 701 F.3d at 252. Complete preemption is very rare. The Supreme Court has applied it to only three statutes: § 301 of the Labor Management Relations Act, *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557, 560–61 (1968); § 502(a) of ERISA, *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 66 (1987); and §§ 85 and 86 of the National Bank Act, *Beneficial Nat'l Bank*, 539 U.S. at 10–11.

Contrary to the Energy Companies' insistence, federal common law on transboundary pollution does not completely preempt Minnesota's claims. At several points in our nation's history, courts have applied federal common law to public nuisance claims involving transboundary air or water pollution. *Boulder III*, 25 F.4th at 1258–61 (detailing the history of federal common law in pollution cases); *City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting cases). And the Second Circuit recently held that federal common law still provides a defense—ordinary preemption—to state-law public nuisance. *New York*, 993 F.3d

at 94–95. Though, there is a serious question about whether, and to what extent, this area of federal common law survived subsequent federal environmental legislation.[5]

Even if federal common law still exists in this space and provides a cause of action to govern transboundary pollution cases, that remedy doesn't occupy the same substantive realm as state-law fraud, negligence, products liability, or consumer protection claims. There is no substitute federal cause of action for the state-law causes of action Minnesota brings, which means we apply the strong presumption against complete preemption. And more importantly, the federal law at issue is common law, not statutory. Because Congress has not acted, the presence of federal common law here does not express Congressional intent of any kind—much less intent to completely displace any particular state-law claim. *Boulder III*, 25 F.4th at 1262.

Because Congress has not acted to displace the state-law claims, and federal common law does not supply a substitute cause of action, the state-law claims are not completely preempted.

ii.

The second exception to the well-pleaded complaint rule is when the complaint includes "claims recognized under state law that nonetheless turn on substantial questions of federal law." *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). When that's true, we treat the claims as arising under federal law even though state law creates the cause of action.

[5]Some of our sister circuits have addressed both whether the Clean Air Act displaced federal common law on transboundary pollution, *Baltimore III*, 31 F.4th at 204, and whether the Clean Air Act preempts state-law claims seeking to recover damages for the effects of climate change, *Boulder III*, 25 F.4th at 1265. We decline to reach either question. Unlike in those cases, the Energy Companies didn't raise the CAA as a basis for complete preemption here. And, even assuming that federal common law still exists in this space, it doesn't completely preempt Minnesota's claims for the reasons explained below.

Franchise Tax Bd., 463 U.S. at 13. This is because "there is a 'serious federal interest in claiming the advantages thought to be inherent in a federal forum,' which can be vindicated without disrupting Congress's intended division of labor between state and federal courts." *Gunn*, 568 U.S. at 258 (citation omitted). The *Grable* doctrine, as we call it, applies to a "special and small category" of cases. *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699 (2006). Under *Grable*, federal question jurisdiction exists "if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258.

The best example is *Grable* itself. In that case, the IRS seized and sold Grable's property to satisfy his tax liability. *Grable*, 545 U.S. at 310. Grable tried to invalidate the sale by filing a quiet title claim in state court, arguing that the buyer's title was invalid because the IRS did not follow the notice requirements prescribed by federal law. *Id.* at 311. The buyer promptly removed to federal court. *Id.* Although Grable pled a purely state-law claim, the dispositive issue of whether the IRS had valid title over the property depended entirely on whether the IRS followed those federal notice requirements. *Id.* at 315–16. Because the dispositive state-law issue ultimately depended on the resolution of a federal-law issue—the notice requirements—the Supreme Court held that the quiet-title claim arose under federal law. *Id.* In other words, while state law provided the mechanism for the lawsuit, the legal questions central to the case were exclusively federal.

A federal issue is necessarily raised when it "is a *necessary* element of one of the well-pleaded state claims" in the plaintiff's complaint. *Franchise Tax Bd.*, 463 U.S. at 13 (emphasis added); *see also Boulder III*, 25 F.4th at 1266 ("To determine whether an issue is 'necessarily' raised, the Supreme Court has focused on whether the issue is an 'essential element' of a plaintiff's claim." (citation omitted)). "This inquiry demands precision." *Cent. Iowa Power Coop v. Midwest Indep. Transmission Sys. Oper., Inc.*, 561 F.3d 904, 914 (8th Cir. 2009). A removing

defendant "should be able to point to the specific elements of [the plaintiff's] state law claims" that require proof under federal law. *Id.*

The Energy Companies argue that Minnesota's claims "necessarily raise issues governed by federal common law and amount to a collateral attack on cost-benefit analyses committed to, and already performed by, the federal government." App. Br. at 34. To date, none of our sister circuits have found that argument persuasive. *See, e.g.*, *Shell Oil III*, 35 F.4th at 57 ("[F]aced with comparable arguments, cases akin to this one flatly reject the idea that federal law is an essential element to the kind of classic state-law claims [the State] raises." (emphasis omitted) (citing *San Mateo III*, 32 F.4th at 747–48; *Baltimore III*, 31 F.4th at 208–15)). We agree with them.

Although the Energy Companies list a variety of federal interests potentially impacted should a court hold them liable, they fail to identify which specific elements of Minnesota's claims require the court to either interpret and apply federal common law or second-guess Congress's cost-benefit rationales in allowing the production and sale of fossil fuels.[6] Unlike *Grable*, where deciding ownership of the property under state law required the court to determine whether the IRS properly followed federal notice requirements, resolving only the *merits* of Minnesota's claims does not require the court to resolve any questions governed by federal law.

To be fair, allowing the State to recover damages for injuries caused by climate change may have the practical effect of impacting the Energy Companies' ability to produce and sell fossil fuels, thereby affecting any federal interest that

[6]Though failure to warn under Minnesota law does require the involvement of a *dangerous* product, it does not require a court to determine whether a product is unreasonably dangerous or opine on whether it should be sold generally. *See, e.g.*, *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012) (explaining that the duty to warn consists of "two duties: (1) the duty to give adequate instructions for safe use; and (2) the duty to warn of dangers inherent in improper usage." (citation omitted) (cleaned up)).

relies in part on the availability and affordability of energy. But, as the Tenth Circuit reasoned, "any implied conflict between the . . . state-law claims and federal cost-benefit determinations speaks to a potential defense on the merits of those claims, specifically a preemption defense, rather than to the jurisdictional issue." *Boulder III*, 25 F.4th at 1266. Because federal law is not a necessary element to any of Minnesota's claims, the complaint doesn't "necessarily raise" a federal issue.

Because the "necessarily raised" element is not satisfied, the *Grable* exception to the well-pleaded complaint rule does not apply to Minnesota's claims.

B.

The Energy Companies also argue that federal question jurisdiction exists under the Outer Continental Shelf Lands Act (OCSLA). The OCSLA gives federal courts original jurisdiction over "cases and controversies arising out of, or in connection with (A) any operation conducted on the [O]uter Continental Shelf . . . , or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this subchapter." 43 U.S.C. § 1349(b)(1). To determine whether there is jurisdiction, we consider "whether (1) the activities that caused the injury constituted an 'operation' 'conducted on the [OCS]' that involved the exploration and production of minerals, and (2) the case 'arises out of, or in connection with' the operation." *In re Deepwater Horizon*, 745 F.3d 157, 163 (5th Cir. 2014). Some of our sister circuits have interpreted the second element to require "a but-for connection." *See id.* (quotation omitted). Others have held that a causal connection is not required and only a "close link" is necessary. *See Hoboken*, 45 F.4th at 709. Although either approach allows broad jurisdiction, "the statute must stop somewhere." *Id.* at 710; *see Boulder III*, 25 F.4th at 1273 (quotation omitted) ("[A] blind application . . . would result in federal court jurisdiction over all state law claims even tangentially related to offshore oil production on the OCS.").

Neither requirement is met here. Contrary to the Energy Companies' argument, the activity causing injury in this case is not the mere production of fossil

fuels—some of which occurred on OCS leases—but rather the alleged "misinformation campaign" carried out via false advertising and misrepresentations in Minnesota. Because there is no indication that the Energy Companies' marketing activities are an "operation" under § 1349(b)(1) or were conducted on the OCS, the first prong of OCSLA jurisdiction isn't met.

Even if the relevant activity was an OCSLA operation, the nexus to Minnesota's claims is lacking under the "but-for" or "close link" approach. Minnesota's challenge to the Energy Companies' marketing activities has no connection to their OCS-based fossil fuel production. Even if they hadn't conducted operations on the OCS, the Energy Companies still would have marketed and sold fossil fuels in Minnesota—because the OCS is just one of many sites the companies produce fossil fuels from.[7] As a result, there is no connection, causal or otherwise, between Minnesota's claims and the OCSLA operations.

Precedent from the Fifth Circuit, which has taken the lead in interpreting OCSLA jurisdiction, supports our conclusion. The Fifth Circuit has found federal jurisdiction under § 1349 only in cases involving close connections to fossil fuel operations on the outer continental shelf—"[t]hey each feature either claims with a direct physical connection to an OCS operation (collision, death, personal injury, loss of wildlife, toxic exposure) or a contract or property dispute directly related to an OCS operation."[8] *Boulder III*, 25 F.4th at 1273 (collecting cases); *see also*

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[7] *See Maps: Oil and Gas Exploration, Resources, and Production*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/maps/maps.htm (compiling maps of oil production sites in the United States). The Complaint lists some of these other drilling locations, which include sites in Canada and North Dakota. Appx. at 28.

[8] *See In re Deepwater Horizon*, 745 F.3d 157, 163–64 (5th Cir. 2014) (finding removal jurisdiction over a lawsuit to recover damages to wildlife caused by the blowout of an OCS drilling rig); *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 213 (5th Cir. 2013) (finding removal jurisdiction over a lawsuit involving the death of an OCS rig worker in a workplace accident); *Tenn. Gas Pipeline v. Hous. Cas. Ins. Co.*, 87 F.3d 150, 155 (5th Cir. 1996) (finding removal jurisdiction over claims

Hoboken, 49 F.4th at 712 (describing four buckets of § 1349 cases: "disputes about who may operate on the Shelf[,] [c]ases about transporting oil or gas from the Shelf[,] [d]isputes over first-order contracts to buy oil or gas produced on the Shelf[,] [a]nd tort suits about accidents on the Shelf." (citation omitted) (collecting cases)). But claims "one step removed from the actual transfer of minerals to shore" are not sufficiently connected, such as "a contractual dispute over the control of an entity which operates a gas pipeline." *United Offshore Co. v. S. Deepwater Pipeline Co.*, 899 F.2d 405, 407 (5th Cir. 1990). The connection between the Energy Companies' marketing activities and their OCS operations is even more attenuated. Because neither requirement is met, there is no federal jurisdiction under § 1349.

III.

Next, the Energy Companies argue the case is removable under 28 U.S.C. § 1442, the federal officer removal statute. That statute authorizes removal of civil and criminal cases "against or directed to . . . any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office." § 1442(a). The federal officer removal statute's basic purpose is:

> to protect the Federal Government from the interference with its operations that would ensue were a State able, for example, to arrest and bring to trial in a State court for an alleged offense against the law of the State, officers and agents of the Federal Government acting within the scope of their authority.

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resulting from a ship allision with an OCS oil rig platform); *EP Operating Ltd. P'ship v. Placid Oil Co.*, 26 F.3d 563, 567–68 (5th Cir. 1994) (exercising original jurisdiction over a lawsuit seeking to partition property located on the OCS); *Amoco Prod. Co. v. Sea Robin Pipeline Co.*, 844 F.2d 1202, 1210 (5th Cir. 1988) (finding removal jurisdiction over a contract dispute involving natural gas extracted from OCS wells); *Laredo Offshore Constructors, Inc. v. Hunt Oil Co.*, 754 F.2d 1223, 1227 (5th Cir. 1985) (exercising original jurisdiction over a contract dispute involving construction of a stationary offshore platform on the OCS).

Watson v. Philip Morris Cos., Inc., 551 U.S. 142, 150 (2007) (quotation omitted) (cleaned up). To effectuate that purpose, § 1442 "grants independent jurisdictional grounds over cases involving federal officers where a district court otherwise would not have jurisdiction." *Jacks v. Meridian Res. Co., LLC*, 701 F.3d 1224, 1230 (8th Cir. 2012) (quotation omitted), *abrogated on other grounds by BP P.L.C. v. Mayor and City Council of Balt.*, 141 S. Ct. 1532, 1538 (2021). Unlike general removal, § 1442 is liberally construed and not constrained by the well-pleaded complaint rule. *Buljic v. Tyson Foods, Inc.*, 22 F.4th 730, 738 (8th Cir. 2021).

Section 1442(a)(1) removal applies to private parties "who lawfully assist" federal officers "in the performance of [their] official dut[ies]." *Davis v. South Carolina*, 107 U.S. 597, 600 (1883). This requires the private party to be "authorized to act with or for federal officers or agents in affirmatively executing duties under federal law." *Watson*, 551 U.S. at 151 (citation omitted) (cleaned up). This applies to private corporations as well. *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 136 (2d Cir. 2008). To remove the case, a private defendant must establish that (1) it acted under the direction of a federal officer, (2) there is a connection between the claims and the official authority, (3) the defendant has a colorable federal defense to the plaintiffs' claims, and (4) the defendant is a "person," within the meaning of the statute. *Bulic*, 22 F.4th at 738.[9]

Even if the Energy Companies have acted under a federal officer, those activities must have sufficient connection to Minnesota's claims. *Graves v. 3M Co.*, 17 F.4th 764, 769 (8th Cir. 2021). We have historically required a "causal connection" to the conduct charged in the complaint. *Watson v. Philip Morris Cos., Inc.*, 420 F.3d 852, 861 (8th Cir. 2005), *rev'd on other grounds*, 551 U.S. 142 (2007). That standard required "that the acts that form the basis for the state civil or criminal suit were performed pursuant to an officer's direct orders or to comprehensive and detailed regulations." *Id.* (citation omitted).

[9]The parties do not dispute that the Energy Companies are "persons" under § 1442.

Congress later passed the Removal Clarification Act of 2011, which added the words "or relating to" into § 1442(a)(1). Pub. L. No. 112-51, sec. 2(b)(1)(A), 125 Stat. 545 (2011).[10] Some of our sister circuits have recognized that this amendment changed the requirement to a lower "relates to" standard. *Moore v. Elec. Boat Corp.*, 25 F.4th 30, 35 (1st Cir. 2022); *In re Commonwealth's Motion to Appoint Couns. Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 471 (3d Cir. 2015); *Baltimore III*, 31 F.4th at 233; *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 296 (5th Cir. 2020) (en banc); *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 944 (7th Cir. 2020); s*ee also Ohio State Chiropractic Ass'n v. Humana Health Plan Inc.*, 647 F. App'x 619, 624 (6th Cir. 2016) (recognizing that the Removal Clarification Act was "intended to broaden the universe of acts that enable Federal officers to remove to Federal court." (quotation omitted)); *Boulder III*, 25 F.4th at 1251 (citing and incorporating the Fourth and Fifth Circuits' standard); Under this standard, the requirement is met if the charged conduct has a "connection" or "association" with the federal action. *Baltimore III*, 31 F.4th at 233.

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[10]That section, as amended, reads:

> (a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> > (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, ~~sued~~ in an official or individual ~~capacity for~~ capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

28 U.S.C. § 1442(a)(1) (amended 2011) (strikethrough denoting deletion; underline denoting addition).

Though we have continued to describe the standard in terms of "causal connection," *see Buljic*, 22 F.4th at 738; *Graves*, 17 F.4th at 769, the causal connection required by § 1442(a)(1) is for the activity in question to relate to a federal office. *See Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1144 (11th Cir. 2017) (using what it called a "causal connection" standard that is identical to the "relates to" standard described by the other circuits).

Despite this lower, post-amendment standard, the connection between Minnesota's claims and military fuel production, OCS operations, or participation in the strategic petroleum infrastructure is still too remote. Again, Minnesota alleges that the Energy Companies fraudulently marketed their products and misinformed their customers about the dangers of fossil fuel use, thereby enhancing both their sales and their contribution to climate change. Although the "relating to" requirement presents a low bar, the Energy Companies fall short of that threshold. As the district court explained, the Energy Companies "do not claim that any federal officer directed their respective marketing or sales activities, consumer-facing outreach, or even their climate-related data collection." *Minnesota v. Am. Petroleum Inst.*, 20-CV-1636-JRT, 2021 WL 1215656, at *9 (D. Minn. March 31, 2021). The Energy Companies' production of military-grade fuel, operation of federal oil leases, and participation in strategic energy infrastructure, even if done at federal direction, bears little to no relationship with how they conducted their marketing activities to the general public. At most, those activities relate to the general production of fossil fuels. But none of Minnesota's claims try to hold the Energy Companies liable for production activities—only marketing.[11] *See Baltimore III*, 31 F.4th at 233–34. As

[11]We note that Minnesota has no nuisance claim in its complaint. The federal common law applies to suits "brought by one State to abate pollution emanating from another state." *Am. Elec. Power Co.*, 564 U.S. at 421 (collecting cases). We believe that a nuisance claim creates a stronger case for federal jurisdiction, and as the claims move away from "abat[ing] pollution emanating from another state," the case becomes weaker. *Am. Elec. Power Co.*, 564 U.S. at 421; *see In re Otter Tail Power Co.*, 116 F.3d 1207, 1214 (8th Cir. 1997). *But see Hoboken*, 49 F.4th at 712 (holding that City's nuisance claim was still "too far away from Shelf oil production.").

a result, the relationship between Minnesota's claims and "any federal authority over a portion of [the Energy Companies'] production and sale of fossil-fuel products is too tenuous to support removal under § 1442." *Id.* at 234. Because the claims do not satisfy all four requirements, the Energy Companies cannot remove under § 1442.[12]

IV.

Finally, the Energy Companies argue that the Class Action Fairness Act (CAFA) provides a basis for removal. Although this is a novel argument, we are not persuaded.

CAFA allows the defendant in a civil class action to remove a case if (1) more than $5 million is in controversy and (2) the parties are minimally diverse. 28 U.S.C. § 1332(d)(2). The statute defines "class action" as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." § 1332(d)(1)(B). Here, Minnesota exercised its authority under Minn. Stat. § 8.31, which allows the State's Attorney General to file civil actions to enforce state law and distribute any recovery to injured consumers. The Energy Companies argue that § 8.31 is a "similar State statute" under CAFA because it allows Minnesota to represent a larger class of affected, but unnamed, individuals—similar to the named plaintiffs in a Rule 23 class action.

But a State's exercise of *parens patriae*[13] authority is not the same as a class action, even when the State seeks recovery for and on behalf of its citizens' injuries.

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[12]Because the Energy Companies fail the first and second prongs of federal officer removal, we do not address whether they have a colorable federal defense.

[13]"The doctrine of *parens patriae* allows a sovereign to bring an action on behalf of the interest of all of its citizens." *United States v. Santee Sioux Tribe of Neb.*, 254 F.3d 728, 734 (8th Cir. 2001) (citing *Louisiana v. Texas*, 176 U.S. 1, 19 (1900)).

The Supreme Court has held that civil suits filed by a state executive to enforce consumer protection laws are not "mass actions" under § 1332(d)(11)(B)(i)—a category of civil cases that try common issues of law or fact for at least 100 plaintiffs and classify as a "class action" for CAFA removal purposes. *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 164 (2014). And at least half of our sister circuits have held that state-led civil enforcement actions likewise don't quality as "class actions" under the statute. *See Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 212–20 (2d Cir. 2013); *West Virginia ex rel. McGraw v. CVS Pharmacy, Inc.* 646 F.3d 169, 176 (4th Cir. 2011); *Mississippi ex rel. Hood v. AU Optronics Corp.*, 701 F.3d 796, 799 (5th Cir. 2012), *rev'd on other grounds*, 571 U.S. 161 (2014); *Nessel ex rel. Mich. v. AmeriGas Partners, L.P.*, 954 F.3d 831, 838 (6th Cir. 2020); *LG Display Co. v. Madigan*, 665 F.3d 768, 770–72 (7th Cir. 2011); *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 847–49 (9th Cir. 2011).

We reach the same conclusion here. Though § 8.31 authorizes Minnesota to file claims and recover for injuries felt by Minnesotans, it bears little similarity to Rule 23. As we have previously explained, "Rule 23(a) of the Federal Rules of Civil Procedure establishes four prerequisites to the maintenance of a class action." *Paxton v. Union Nat. Bank*, 688 F.2d 552, 559 (8th Cir. 1982). First, "the class must be 'so numerous that joinder of all members is impracticable.'" *Id.* (quoting Fed. R. Civ. P. 23(a)(1)). Next, there must be "questions of law or fact common to the class," and "the claims or defenses of the class representative must be 'typical of the claims or defenses of the class.'" *Id.* (quoting Fed. R. Civ. P. 23(a)(2)–(3)). And finally, the representative party must be able to "fairly and adequately protect the interests of the class." *Id.* (quoting Fed. R. Civ. P. 23(a)(4)). "The Rule's four requirements—numerosity, commonality, typicality, and adequate representation" are the defining characteristics of Rule 23. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011); *see also Paxton*, 688 F.2d at 559.

Minn. Stat. § 8.31 has no such requirements. Neither the State nor the Attorney General needs to suffer a sufficiently common injury—or any injury for that matter—to pursue claims on behalf of Minnesota residents. Nor does the State's

exercise of this authority bar Minnesota residents from pursuing these claims, to the extent a private cause of action exists, on their own. We conclude that § 8.31 does not provide a similar mechanism to Rule 23, which means this lawsuit is not a removable "class action" under CAFA.

V.

For the foregoing reasons, we hold that Minnesota's claims are not removable under the general removal statute, the federal officer removal statute, the Outer Continental Shelf Lands Act, or the Class Action Fairness Act. The district court was correct to remand the case, so we affirm. Accordingly, we deny as moot the petition for permission to appeal in case 21-8005.

STRAS, Circuit Judge, concurring.

Artful pleading comes in many forms. This is one of them. Minnesota purports to bring state-law consumer-protection claims against a group of energy companies. But its lawsuit takes aim at the production and sale of fossil fuels worldwide. I agree with the court that, as the law stands now, the suit does not "aris[e] under" federal law. 28 U.S.C. § 1331. I write separately, however, to explain why it *should*.

I.

There is no hiding the obvious, and Minnesota does not even try: it seeks a global remedy for a global issue. According to the complaint, energy production has "caused a substantial portion of global atmospheric greenhouse-gas concentrations." Those gases, the argument goes, have resulted in "climate change"—a label that appears in the complaint over 200 times. The relief sought is ambitious too: a far-reaching injunction, restitution, and disgorgement of "all profits made as a result of [the companies'] unlawful conduct." The case, in other words, presents "a clash

over regulating worldwide greenhouse gas emissions and slowing global climate change." *City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021).

A.

Minnesota has strong views about how to deal with the issue. Other states do too. *See* Brief of Indiana et al. as Amici Curiae in Support of Petitioners at 1, *Suncor Energy (U.S.A.) Inc. v. Bd. of Cnty. Comm'rs*, No. 21-1550 (U.S. July 11, 2022). They do not believe that "one or two" individual states like Minnesota should be able to "dictate environmental policy for other sovereign States." *Id.* at 7. This is, in effect, an interstate dispute.

Not surprisingly, disputes between states are as old as the country itself. *See, e.g.*, Charles Warren, *The Supreme Court and Sovereign States* 38–44 (1924) (listing examples); *see also* Thomas Paine, *Common Sense* 69–70 (1776) (discussing a "difference between Pennsylvania and Connecticut, respecting some unlocated lands"); Don Faber, *The Toledo War: The First Michigan-Ohio Rivalry* (2008) (describing a boundary dispute over the Toledo Strip). Interstate disputes were so common and complicated, in fact, that the Framers specifically vested original jurisdiction over them in the Supreme Court. *See* U.S. Const. art. III, § 2 (giving the Supreme Court original jurisdiction over "all Cases . . . in which a State shall be Party"); *Delaware v. New York*, 507 U.S. 490, 500 (1993); Warren, *supra*, at 65–67. The rule of decision in these cases has always been "known and settled principles of national or municipal jurisprudence"—what we now know as the federal common law. *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 737 (1838); *Lessee of Marlatt v. Silk*, 36 U.S. (11 Pet.) 1, 22–23 (1837) (explaining that "the rule of decision" in cases involving interstate compacts "is not to be collected from the decisions of either state, but is one, if we may so speak, of an international character").

State law is no substitute. *See Connecticut v. Massachusetts*, 282 U.S. 660, 670 (1931) (rejecting reliance on "the same rules of law that are applied in such

States for the solution of similar questions of private right"); *see also Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938) (noting that "neither the statutes nor the decisions of either State can be conclusive" of their respective water rights). When it comes to "outside nuisances" like this one, courts have long looked to common-law principles like "considerations [of] equity," "quasi-sovereign interests," and the need for "caution." *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237–38 (1907) (emphasis omitted); *Missouri v. Illinois*, 200 U.S. 496, 520–21 (1906). Applying state law, by contrast, only raises the risk of conflict between states, which never "agree[d] to submit to whatever might be done" to their citizens. *Tennessee Copper*, 206 U.S. at 237. For that reason, state law has never "st[oo]d in the way" of using "recognized" (federal) common-law principles. *Missouri*, 200 U.S. at 520; *see* The Federalist No. 80 (Alexander Hamilton) ("Whatever practices may have a tendency to disturb the harmony between the States, are proper objects of federal superintendence and control.").

The point is that federal law still reigns supreme in these types of disputes, notwithstanding *Erie*'s famous declaration that "[t]here is no federal general common law." *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938); *see Collins v. Virginia*, 138 S. Ct. 1663, 1678–79 (2018) (Thomas, J., concurring) (explaining why the federal common law may have preemptive force). The reason is the "'overriding . . . need for a uniform rule of decision' on matters influencing national energy and environmental policy." *City of New York*, 993 F.3d at 91–92 (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972), *superseded by statute*, Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816). As the Second Circuit has put it in circumstances like these, conflicts between states with different tolerances for greenhouse-gas emissions can only be resolved at the federal level because of the "unique[] federal interests" involved. *Id.* at 90; *see Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496–97 (1987) (warning that regulation by multiple states "would lead to chaotic confrontation" (citation omitted)).

Today's lawsuit is as good an example as any. Minnesota accuses the energy companies of "caus[ing] a substantial portion of *global* atmospheric greenhouse-gas concentrations, and the attendant historical, projected, and committed disruptions to the environment" that go with them. (Emphasis added). Although those "disruptions" have allegedly led to a host of costly problems within Minnesota, they are by no means limited to the "effects of [local] emissions." *City of New York*, 993 F.3d at 92. Rather, the complaint claims that the companies encouraged the consumption of fossil fuels "both in *and outside of* Minnesota," (emphasis added), meaning that it "intends to hold the [companies] liable, under [state] law, for the effects of emissions made around the globe," *City of New York*, 993 F.3d at 92.

Minnesota's end game is equally clear: change the companies' behavior on a global scale. "[T]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)); *see Cipollone v. Liggett Grp.*, 505 U.S. 504, 548 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part) (observing that "general tort-law duties" can "impose 'requirement[s] or prohibition[s]'" on private parties (quoting 15 U.S.C. § 1334(b)). And the wide-ranging request for injunctive relief speaks for itself.

The problem, of course, is that the state's attempt to set national energy policy through its own consumer-protection laws would "effectively override . . . the policy choices made by" the federal government and other states. *Ouellette*, 479 U.S. at 495. Regulating the production and sale of fossil fuels worldwide, in other words, is "simply beyond the limits of state law." *City of New York*, 993 F.3d at 92.

B.

Yet somehow, when interstate disputes are litigated through the surrogate of a private party as the defendant, fifty state courts get to handle them. Under the well-pleaded complaint rule, federal preemption operates only "as a defense to the

allegations in a plaintiff's complaint." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). And a defense, "even [one that] is anticipated in the plaintiff's complaint, and even if both parties admit that [it] is the only question truly at issue in the case," is not a reason to remove a case to federal court. *Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 14 (1983).

Most of the time, the well-pleaded complaint rule works well. After all, federal courts can't know what they don't know. The complaint usually does not say whether a federal defense is available and, if so, whether anyone will raise it. *See Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 153 (1908); *see also Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 313–14 (2005) (requiring a "disputed federal issue"). Nor does it generally say whether the federal issue, if raised, will play a "substantial" role in the litigation. *Grable*, 545 U.S. at 314–15.

None of those mysteries exist here. The complaint itself all but dares the companies to raise a federal-preemption defense. And no one doubts that they will or that it will be the focal point of the litigation. There is no reason for the removal rules to operate in such a confounding way.

And at one point, they didn't. *See Tennessee v. Union & Planters' Bank*, 152 U.S. 454, 460 (1894) (collecting cases). If there was a "real and substantial dispute or controversy which depend[ed] altogether upon the construction and effect of an act of Congress," even if "the claim . . . might[] possibly be determined by reference alone to State enactments," it was removable. *R.R. Co. v. Mississippi*, 102 U.S. 135, 140 (1880); *see Union & Planters' Bank*, 152 U.S. at 460–62 (discussing the history). Perhaps for a "uniquely federal interest[]" like interstate pollution, it *should* still be that way. *City of New York*, 993 F.3d at 90; *see Franchise Tax Bd.*, 463 U.S. at 11–12 (describing the well-pleaded complaint rule "as a quick rule of thumb" that "may produce awkward results").

C.

But only Congress or the Supreme Court gets to make that call. And we have our marching orders: even the strongest arguments for removal don't work here.

One is complete preemption. In rare cases, a federal statute "may so completely pre-empt" state law that any claim within its scope "is necessarily federal." *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). In those circumstances, we can take "a peek behind" the complaint to figure out whether the suit raises a federal question. *Krakowski v. Allied Pilots Ass'n*, 973 F.3d 833, 836 (8th Cir. 2020). The problem is that the energy companies identify no federal *statute* that completely preempts the consumer-protection claims in Minnesota's complaint. *See ante*, at 5–7; *see also Krakowski*, 973 F.3d at 839–40 (explaining why "a judicial creation" cannot give rise to complete preemption (quotation marks omitted)).

The other is the substantial-federal-question test. *See Grable*, 545 U.S. at 314–15; *see also Gunn v. Minton*, 568 U.S. 251, 258 (2013). It applies when state-law claims "implicate significant federal issues." *Grable*, 545 U.S. at 312. At first glance, this possibility looks promising because regulating interstate pollution does, as I explain above, have a long federal pedigree. But Minnesota's consumer-protection claims do not "necessarily require application of [federal] law." *Gunn*, 568 U.S. at 259; *see ante*, at 7–10. Even if federal questions are lying in wait, Minnesota has artfully pleaded around them.[14]

[14]Although at times we have described the artful-pleading doctrine as "limited" to complete preemption, *M. Nahas & Co. v. First Nat'l Bank of Hot Springs*, 930 F.2d 608, 612 (8th Cir. 1991), it is best understood as an umbrella term that applies whenever the complaint obscures the suit's federal nature, *see* Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3722.1 (4th ed. 2022); *see also Ohio ex rel. Skaggs v. Brunner*, 629 F.3d 527, 532 (6th Cir. 2010) (recognizing that the description might apply when "federal issues necessarily must be resolved to address the state law causes of action").

II.

For the time being, that is. As the case progresses, Minnesota may make it even clearer that the case necessarily "turn[s] on substantial questions of federal law." *Grable*, 545 U.S. at 312. And developments along those lines could give rise to federal jurisdiction. *See* 28 U.S.C. § 1446(b)(3) (authorizing removal "within 30 days after receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable"); *see also Parish of Plaquemines v. Chevron USA, Inc.*, 7 F.4th 362, 365 (5th Cir. 2021); *Chaganti & Assocs., P.C. v. Nowotny*, 470 F.3d 1215, 1220–21 (8th Cir. 2006). Until then, however, I am duty bound to agree that this lawsuit does not "aris[e] under" federal law. 28 U.S.C. § 1331.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

STATE OF MINNESOTA, *by its Attorney General Keith Ellison*

Civil No. 20-1636 (JRT/HB)

Plaintiff,

v.

AMERICAN PETROLEUM INSTITUTE, EXXON MOBIL CORPORATION, EXXONMOBIL OIL CORPORATION, KOCH INDUSTRIES, INC., FLINT HILLS RESOURCES, LP, and FLINT HILLS RESOURCES PINE BEND

MEMORANDUM OPINION AND ORDER GRANTING MOTION TO REMAND AND DENYING MOTION TO STAY

Defendants.

Elizabeth C. Kramer, Leigh K. Currie, Oliver J. Larson, and Peter N. Surdo, **OFFICE OF THE MINNESOTA ATTORNEY GENERAL**, 445 Minnesota Street, Suite 1100, St. Paul, MN 55101; Matthew Kendall Edling and Victor Marc Sher, **SHER EDLING LLP**, 100 Montgomery Street, Suite 1410, San Francisco, CA 94104, for plaintiff.

Eric F. Swanson and Thomas H. Boyd, **WINTHROP & WEINSTINE PA**, 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402; Andrew Gerald McBride, **MCGUIRE WOODS LLP**, 2001 K Street Northwest, Suite 400, Washington, DC 20006; and Brian David Schmalzbach, **MCGUIRE WOODS LLP**, 800 East Canal Street, Richmond, VA 23219, for defendant American Petroleum Institute.

Jerry W. Blackwell and Gurdip S. Atwal, **BLACKWELL BURKE PA**, 431 South Seventh Street, Suite 2500, Minneapolis, MN 55415; Daniel J. Toal and Theodore V. Wells, Jr., **PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP**, 1285 Avenue of the Americas, New York, NY 10019; Justin Anderson, **PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP**, 2001 K Street Northwest, Washington, DC 20006; and Patrick J. Conlon, **EXXON MOBIL**

CORPORATION, 22777 Springwoods Village Parkway, Suite N1.4B.388, Spring, TX 77389, for defendants Exxon Mobil Corporation and ExxonMobil Oil Corporation.

Michelle Schmit and Stephen Andrew Swedlow, **QUINN EMANUEL URQUHART & SULLIVAN LLP**, 191 North Wacker Drive, Suite 2700, Chicago, IL 60606; William Anthony Burck, **QUINN EMANUEL URQUHART & SULLIVAN LLP**, 1300 I Street Northwest, Suite 900, Washington, DC 20005; Andrew M. Luger, **JONES DAY**, 90 South Seventh Street, Suite 4950, Minneapolis, MN 55402; Debra Rose Belott, **JONES DAY**, 51 Louisiana Avenue Northwest, Washington, DC 20001; and Andrew W. Davis, Peter J. Schwingler, and Todd A. Noteboom, **STINSON LLP**, 50 South Sixth Street, Suite 2600, Minneapolis, MN 55402, for defendants Koch Industries, Inc., Flint Hills Resources, LP, and Flint Hills Resources Pine Bend.

Plaintiff State of Minnesota ("the State") commenced this action in Minnesota state court against Defendants American Petroleum Institute ("API"), Exxon Mobil Corporation, ExxonMobil Oil Corporation, Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend asserting five causes of action for violations of Minnesota common law and consumer protection statutes. The State alleges that Defendants developed a widespread campaign to deceive the public about the dangers of fossil fuels and to undermine the scientific consensus linking fossil fuel emissions to climate change.

Defendants removed the action to federal court on seven independent grounds: federal common law; disputed and substantial federal issues (the *Grable* doctrine); the federal officer removal statute; the Outer Continental Shelf Lands Act; federal enclaves; the Class Action Fairness Act; and diversity. Plaintiff filed a Motion to Remand to state

court. Because Defendants have not met their burden of establishing that federal jurisdiction is warranted on any of the grounds presented, the Court will grant the State's Motion.

Defendants Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend (collectively, "FHR Defendants") have also filed a Motion to Stay to await the Supreme Court's decision in *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (U.S.) and the Court's determination on a Petition for Certiorari in *Chevron Corporation et al. v. City of Oakland, et al.* (U.S., Jan. 8, 2021). Plaintiff opposes this motion. Because the Court finds that the *Baltimore* case is before the Supreme Court on a narrow procedural question not at issue here and the dispensation of the petition in *City of Oakland* is too speculative to warrant a stay in the instant proceedings, the Court will deny FHR Defendants' Motion to Stay.

BACKGROUND

I. FACTUAL BACKGROUND

The Attorney General brings this action pursuant to his authority under Minnesota Statutes Chapter 8 and his *parens patriae* authority under state common law. (Notice of Removal, Ex. A ("Compl.") ¶ 12, July 27, 2020, Docket No. 1-1.)

Defendant American Petroleum Institute (API) is a nonprofit corporation registered to do business in Minnesota. (*Id.* ¶ 13.) API was established in 1919 and is the country's largest oil trade association, with over 600 members. (*Id*.) Defendant Exxon

Mobil Corporation is a multinational, vertically integrated energy and chemicals company incorporated in New Jersey with a principal place of business in Irving, Texas. (*Id.* ¶ 17.) Exxon Mobil Corporation is the parent company for numerous subsidiaries and has done business as or is the successor in liability to numerous entities. (*Id.*) Defendant ExxonMobil Oil Corporation is a wholly owned subsidiary of Exxon Mobil Corporation, incorporated in New York with a principal place of business in Irving, Texas. (*Id.* ¶ 19.) Defendant Koch Industries, Inc. ("Koch") is an American multinational corporation based in Wichita, Kansas. (*Id.* ¶ 28.) Koch is the parent company for numerous subsidiaries involved in the manufacturing, refining, and distribution of petroleum products. (*Id.* ¶ 29.) Koch, as well as many of its subsidiaries and affiliates, is registered to do business in Minnesota. (*Id.* ¶ 31.)

Defendants Flint Hills Resources LP and Flint Hills Resources Pine Bend, LLC, subsidiaries of Koch, are licensed distributors of petroleum products in Minnesota. (*Id.*) Koch subsidiaries import crude oil from Canada to a terminal in Clearbrook, Minnesota, which is owned and operated by Koch. (*Id.* ¶ 32.) Oil is piped from the Clearbrook terminal to the Flint Hills Resources Pine Bend Refinery via other Koch-owned pipelines. (*Id.*) Flint Hills Resources' Pine Bend Refinery refines the majority of the motor gasoline consumed in Minnesota. (*Id.* ¶ 37.)

A. Climate Change & Fossil Fuels

Beginning in the 1950s, scientists—including many employed by the fossil fuel industry—began to understand that burning fossil fuels released additional greenhouse gasses, drove up atmospheric concentration, changed the carbon ratio in the atmosphere, and impacted global temperature and climate. (*Id.* ¶¶ 55–59.) The State alleges that by 1965, Defendants and their predecessors-in-interest were aware that widely used fossil-fuel products would cause global warming by the end of the century and would have wide-ranging and costly consequences. (*Id.* ¶ 60.)

The State alleges that Defendants were at the forefront of scientific discourse about climate change and its relationship to fossil fuels, and were privy to research developed by industry-employed scientists as well as independent analyses, including research commissioned by Defendants and their colleagues. (*Id.* ¶¶ 60–72.) By the 1980s, there was an established consensus among scientists and within the fossil fuel industry that atmospheric CO_2 concentrations were reaching dangerous levels and would significantly impact the earth's climate, and international coalitions had begun to emerge to address the issue. (*Id.* ¶ 73.)

B. Defendants' Alleged Misinformation Campaign

The State alleges that, as the international and scientific consensus coalesced around the relationship between fossil fuels emissions and climate change, Defendants mounted an aggressive campaign to undermine the public's perception of climate

science. (*Id.* ¶¶ 82–87.) Defendants allegedly spent millions of dollars on advertising and public relations campaigns, in Minnesota and elsewhere, to mislead consumers and the general public about the scientific consensus around climate change, the relationship between climate change and their fossil-fuel products, and the urgency of the dangers of climate change. (*Id.* ¶¶ 88–90). The State further alleges that Defendants funneled hundreds of millions more dollars to organizations that publicly promoted false statements about and denied the existence of climate change, and paid scientists to produce misleading reports and materials, which Defendants' then cited and promoted to support their own fraudulent statements. (*Id.* ¶¶ 92–131.)

The State identifies two broad categories of alleged injuries caused by Defendants' misinformation campaign: (1) harms to consumers who relied on Defendants' false information, (*id.* ¶¶ 172–83); and (2) environmental and social harms from increased consumption of fossil fuels, including changes in climate, damage to infrastructure, and worsening public health, (*id.* ¶¶ 139–71), all of which, the State avers, could have been mitigated, but for Defendants' campaign, (*id.* ¶¶ 172, 213–14).

II. PROCEDURAL HISTORY

Plaintiff commenced this action in Minnesota state court asserting five counts related to Defendants' alleged misinformation campaign: (1) violations of the Minnesota Consumer Fraud Act ("CFA"), Minnesota Statutes § 325F.69; (2) failure to warn under common law theories of strict liability and negligence, against all Defendants except API;

(3) common law fraud and misrepresentation; (4) violations of the Minnesota Deceptive Trade Practices Act ("DTPA"),Minnesota Statutes § 325D.44; and (5) violations of the Minnesota False Statement in Advertising Act ("FSAA"),Minnesota Statutes § 325F.67. (*Id.* ¶¶ 184–242.) The State seeks damages, civil penalties, disgorgement of profits made as a result of unlawful conduct, and an order enjoining Defendants from continued violations of the CFA, DTPA, and FSAA. (*Id.* ¶¶ 244, 247–249.). The State also requests that Defendants be compelled to disclose, disseminate, and publish all research that they conducted directly or indirectly relating to climate change, and fund a corrective climate change public education campaign in Minnesota, administered and controlled by an independent third party. (*Id.* ¶¶ 245–246).

On July 27, 2020, Defendants removed the action to federal court. (Notice of Removal, July 27, 2020, Docket No. 1.) Defendants raise seven grounds for asserting federal jurisdiction over this matter: (1) the claims arise under federal, not state, common law; (2) the action raises disputed and substantial federal issues that must be adjudicated in a federal forum (the "*Grable* doctrine"); (3) removal is authorized by the federal officer removal statute, 28 U.S.C. § 1442(a)(1); (4) federal jurisdiction arises under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1349(b); (5) the claims are based on conduct arising out of federal enclaves; (6) the action is actually a class action governed by the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), 28 U.S.C. § 1453(b); and (7)

the court has diversity jurisdiction under 28 U.S.C. § 1332(a), on the theory that the real parties in interest are not the State, but the citizens of Minnesota.

On August 26, 2020, Minnesota moved to remand the case to state court, arguing that the Court lacks subject matter jurisdiction because (a) neither federal common law nor the *Grable* doctrine apply; (b) no federal enclaves are implicated; (c) the Outer Continental Shelf Lands Act is not implicated; (d) the federal officer removal statute does not apply; (e) the suit is not a "class action" and therefore not subject to the Class Action Fairness Act; and (f) the suit was brought by the State, which is not a citizen for purposes of diversity jurisdiction. (Mot. Remand, Aug. 26, 2020, Docket No. 32.) Defendants oppose this Motion.

The FHR Defendants filed a Motion to Stay, on January 15, 2021, arguing that staying proceedings until the Supreme Court issues a decision in *BP p.l.c. v. Mayor & City Council of Baltimore*, and makes a determination on the Petition for Certiorari in *Chevron Corporation v. City of Oakland, et al.*, would conserve judicial resources and would not prejudice the State. (Mot. Stay, Jan. 15, 2021, Docket No. 56.) The State opposes staying the Motion to Remand.

DISCUSSION

I. MOTION TO REMAND

A. Standard of Review

"Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quotation omitted). A defendant may remove a civil action to federal court only if the action could have been filed originally in federal court. *See* 28 U.S.C. § 1441(a)–(b); *Gore v. Trans World Airlines*, 210 F.3d 944, 948 (8th Cir. 2000). The party seeking removal bears the burden of demonstrating that removal was proper, and "all doubts about federal jurisdiction must be resolved in favor of remand." *Cent. Iowa Power Co-op. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 561 F.3d 904, 912 (8th Cir. 2009). Remand is mandatory "at any time before final judgment [if] it appears that the district court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c).

C. The Well-Pleaded Complaint Rule

"[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citation omitted). Where a complaint pleads only state law claims, a federal court does not have jurisdiction based on a federal defense. *See, e.g.*, *Aetna Health Inc. v. Davila,* 542 U.S. 200, 207 (2004).

There are two relevant exceptions to the well-pleaded complaint rule. First, "[w]hen a plaintiff has artfully pleaded in a manner that avoids an element of the tort that rests on federal law, the court 'may uphold removal even though no federal question appears on the face of plaintiff's complaint.'" *Gore*, 210 F.3d at 950 (quoting *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998)). The artful pleading doctrine allows removal where Congress either expressly provides for removal of a particular state law action or where federal law completely preempts a plaintiff's state-law claim. *Rivet*, 522 U.S. at 475.

Second, even where "federal law does not create the cause of action, federal question jurisdiction may exist if [Plaintiff's] 'state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.'" *Great Lakes Gas Trans. Ltd. P'ship v. Essar Steel Minnesota LLC*, 843 F.3d 325, 331 (8th Cir. 2016) (quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005)). The Supreme Court has recognized a "special and small category" of cases that fit into this framework, *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 699 (2006), "where vindication of a right under state law necessarily turned on some construction of federal law," *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808–09 (1986) (quotation omitted).

B. Analysis

1. Federal Common Law

Defendants' first asserted ground for removal is that the Court has original jurisdiction because the State's claims arise under federal common law and cannot be resolved under state law. Only a few limited areas of federal common law survived *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). In particular, courts have determined that federal common law applies where a federal decision is required "to protect uniquely federal interests," *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 (1964), or where "our federal system does not permit the controversy to be resolved under state law, either because the authority and duties of the United States as sovereign are intimately involved or because the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). Defendants argue that the State's Complaint necessarily arises under three areas controlled by federal common law: interstate pollution, navigable waters, and foreign affairs. Defendants further argue that federal jurisdiction is proper because state law cannot apply to the claims alleged.

i. Interstate Pollution

First, Defendants argue that the State's claims are premised upon interstate pollution because the State's alleged injuries stem from climate change impacts, which are caused by global emissions and are inherently transboundary in nature. The Supreme

Court has specifically recognized federal common law in the arena of transboundary pollution and environmental protection, *see Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011) ("When we deal with air and water in their ambient or interstate aspects, there is federal common law."), but has also held that this area of federal common law has largely (though not entirely) been displaced by environmental statutes, including the Clean Air Act and Clean Water Act, *see e.g.*, *id.* at 424 (finding that the "Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants"); *Int'l Paper v. Ouellette*, 479 U.S. 481, 497 (1987) ("The CWA precludes only those suits that may require standards of effluent control that are incompatible with those established by the procedures set forth in the Act.").

Defendants cite a number of cases to support their argument that federal common law should govern; however, in each of these precedential cases, a cause of action for interstate pollution was alleged on the face of the complaint, which is not the case here.[1] Despite the fact that the State alleges no causes of action related to pollution regulations

[1] *See, AEP*, 564 U.S. at 415 (federal common law public nuisance claims against carbon-dioxide emitters seeking cap on emissions); *Illinois v. Milwaukee*, 406 U.S. 91, 93 (1972), *superseded by statute* (cause of action for pollution of Lake Michigan); *Ouellette*, 479 U.S. at 483–84 (1987) (common law nuisance for discharges into interstate lake); *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 853 (2012) (federal common law public nuisance claims against for greenhouse gas emissions and climate change injuries); *City of New York v. BP p.l.c.*, 325 F. Supp. 3d 466, 470 (S.D.N.Y. 2018) (public nuisance, private nuisance, and trespass claims related to sea level rise, increased flooding, and temperature increases). However, *City of New York* does not provide a framework for removal based upon federal common law because the action was originally filed in federal court.

or disputes between states over emissions standards, Defendants argue that the State has not pleaded sufficient facts to support its consumer protection claims, and therefore the complaint must actually establish a cause of action for interstate pollution under the federal common law.

To adopt Defendants' theory, the Court would have to weave a new claim for interstate pollution out of the threads of the Complaint's statement of injuries. This is a bridge too far. Because Defendants do not plausibly identify any actual disputes related to interstate pollution that must be resolved to reach the merits of the State's pleaded claims, federal common law does not establish a basis for jurisdiction on this ground.

ii. Navigable Waters

Similarly, Defendants argue that federal common law must govern because the State seeks remedies for injuries related to flooding, damage, and contamination of navigable waters. Again, the cases that Defendants rely on establish that federal common law is required to resolve issues not present here; in particular, to mediate conflict between the states or between states and the federal government related to interstate water bodies.[2] Although flooding is an alleged injury related to the consumer protection claims, the State's action does not purport to regulate, apportion, or mediate other

[2] *See Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938) (apportionment of water of an interstate stream between two states is a question of federal common law); *Milwaukee I*, 406 U.S. at 105 n.6 (conflict over pollution discharged by one state into water body that bordered four states); *Michigan v. U.S. Army Corps of Engineers*, 667 F.3d 765, 767–68 (7th Cir. 2011) (action related to federal management of interstate waterway).

states' or agencies' relationships to navigable waters, and the federal common law of navigable waters is not necessarily raised here.

iii. Foreign Affairs

Third, Defendants argue that the State's claims are of an inherently international nature because the regulation of energy production and trade has important foreign policy implications and is accordingly within the exclusive purview of the federal courts. Defendants claim that, because fossil fuels are strategically important domestic and international resources, the State's case is intended to have significant impacts on United States foreign policy. The Court declines Defendants' invitation to interpret this well-pleaded consumer protection action as a wholesale attack on all features of global fossil fuel extraction, production, and policy.

iv. State Law

Finally, Defendants contend that federal jurisdiction is proper because state law cannot control claims that seek to regulate the interstate and international production and sale of fossil fuels. The State does, however, have a clear interest in preventing fraud and deception and ensuring that citizens have access to accurate information in the consumer marketplace. *See e.g.*, *Edenfield v. Fane*, 507 U.S. 761, 768–69 (1993). Because the State's claims fall squarely within that area of state interest, the claims do not open the door for substantive challenges to Minnesota's (or any other state's) emissions or water quality standards. Neither do the claims alleged require the Court to assess federal

management of navigable waters or weigh any issues of foreign policy. Accordingly, federal common law is not applicable.

v. Federal Common Law as a Basis for Removal

Even if the Court could conjure a separate claim arising from the State's alleged environmental injuries that would fall within an area of federal common law, it still may not confer jurisdiction. Defendants argue that federal common law provides a basis for federal jurisdiction because (1) courts have recognized an exception to the well-pleaded complaint rule where plaintiff's putative state law claims arise under federal common law, and (2) federal common law presents a substantial federal question for the purposes of asserting jurisdiction under the *Grable* doctrine. The Court will address the *Grable* doctrine in Section 2.

As noted above, the Supreme Court has established two exceptions to the well-pleaded complaint rule: express provision of Congress and complete preemption. *Rivet*, 522 U.S. at 475. A federal statute completely preempts artfully pleaded state law claims if it "provide[s] the exclusive cause of action for the claim asserted and also set[s] forth procedures and remedies governing that cause of action[,]" *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003), and the statute's pre-emptive force is "so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Caterpillar, Inc.*, 482 U.S. at 393 (quotation omitted). Complete preemption is distinct from ordinary preemption, which

provides a defense against state law claims, but does not establish a pathway for federal jurisdiction. *See Johnson v. MFA Petroleum Co.*, 701 F.3d 243, 247 (8th Cir. 2012).

Defendants suggest that complete preemption is not required for removal because the State's claims inherently arise under federal common law, and artful pleading that disguises a federal cause of action is a separate and distinct basis for removal than complete preemption. However, neither the Eighth Circuit nor the Supreme Court has found that implied federal common law claims establish a separate and independent exception to the well-pleaded complaint rule. To the extent that the cases Defendants cite carve out a third exception, this approach lacks support in this circuit and is contrary to Supreme Court precedent establishing the specific and defined parameters for federal jurisdiction over exclusively state law claims. *See Caterpillar*, 482 U.S. at 392–94; *Rivet*, 522 U.S. at 474–75.

Further, in each of the cases Defendants cite to support this argument, plaintiffs' precise claims were explicitly connected to or relied upon interpretations of a discrete area of federal law.[3] Here, Defendants proffer multiple theories for how Plaintiff's claims

[3] *See In re Otter Tail Power Co.*, 116 F.3d 1207, 1215 (8th Cir. 1997) (state law claims involved tribal regulatory authority and raised important questions of federal law requiring interpretation of treaties, federal statutes, and the federal common law of inherent tribal sovereignty); *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 928. (5th Cir. 1997) (claims arising out of "clearly established federal common law cause of action against air carriers for lost shipments."); *Treiber & Straub, Inc. v. UPS, Inc.*, 474 F.3d 379, 384 (7th Cir. 2007) (same); *Caudill v. Blue Cross and Blue Shield of N.C.*, 999 F.2d 74, 76–77 (4th Cir. 1993) (applying federal jurisdiction to state-law claims pursuant to Federal Employees Health Benefits Act), *abrogated by Empire HealthChoice Assur. Inc. v. McVeigh*, 547 U.S. 677, 693 (2006); *Battle v. Seibels Bruce Ins. Co.*, 288 F.3d 596, 607 (claims requiring interpretation of insurance policies issued pursuant to the National Flood Insurance

might be related to federal common law but as noted above, each of these theories lacks a substantial relationship to the actual claims alleged and would require the Court to invent a separate cause of action. That is beyond the Court's discretion and is not a sound foundation for asserting federal jurisdiction.

Because the Court finds that the claims alleged by the State do not arise under federal common law and Defendants do not plausibly allege that the claims are completely preempted, federal common law is not a sufficient independent basis for removal in this manner.

2. *Grable* Jurisdiction

Defendants' second argument for removal is that this action necessarily raises and requires the resolution of substantial questions of federal law. Federal jurisdiction may be asserted over a state-law claim if a federal issue is: "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258 (citing *Grable & Sons Metal Products, Inc. v. Darue Eng. & Mf'g*, 545 U.S. 308, 313–14 (2005)). All four criteria, often referred to as the "*Grable* doctrine," must be met to exercise federal jurisdiction. *Id.*

Program governed exclusively by federal common law); *Newton v. Captial Assur. Co., Inc.*, 245 F.3d 1306, 1308–09 (11th Cir. 2001) (same).

i. Necessarily Raised

Defendants offer various avenues for the Court to find that the claims necessarily raise disputed federal issues, including foreign policy considerations, injuries to and management of the navigable waters of the United States, and transboundary pollution. Defendants also assert that the claims implicate Congress's careful policymaking balance between energy production and environmental protection, Defendants' alleged influence over policymakers' decisions, and constitutional questions of federalism.

The Court has already rejected Defendants' arguments that the Complaint necessarily raises issues related to management of navigable waters, transboundary pollution, or foreign policy. Contrary to Defendants' assertions, the Complaint does not require interpretation of any federal environmental regulations or climate treaties, nor does it ask a court to review federal agencies' management of interstate waters. The Complaint only requires a court to determine whether Defendants engaged in a misinformation campaign that ran afoul of Minnesota's consumer protection statutes and common law, and whether the State can demonstrate that those alleged violations of discrete state laws caused harm to Minnesota and Minnesota consumers.

With regard to Congress's careful balance between energy and environmental priorities, Defendants do not appear to argue that Congress sanctioned, directed, or participated in the alleged scheme to defraud the public. Accordingly, determining whether Defendants engaged in a misinformation campaign in violation of Minnesota law

does not require a court to second-guess Congress's priorities regarding energy production and environmental protection.

Defendants further argue that the Complaint necessarily asserts federal claims to the extent that it alleges that federal policymakers would have adopted different energy and climate policies but-for Defendants' alleged misrepresentations. However, the Complaint includes policymakers as a category of individuals who relied on Defendants' allegedly fraudulent misrepresentations in deciding to continue to purchase and use Defendants' fossil-fuel products. It does not argue that any particular policies or regulatory decisions would be different but-for Defendants' actions, and therefore does not implicate Congress' careful regulatory framework.

As to questions of federalism, Defendants allege that the State seeks to supplant the federal government's authority over federal questions and requires the Court to consider the constitutional division of authority between the federal government and the states. This gravely overstates the State's case, and it is unclear to the Court how a state court adjudicating a set of claims that fall well within a state's consumer protection interest will necessarily challenge the foundations of our system of government.

Defendants also claim that proving the specific elements of the causes of action will require a court to wade into disputed and substantial federal questions, including whether fossil fuels are unreasonably dangerous, and whether Defendants actually misrepresented the dangers of climate change and the urgency required to mitigate

climate change. Again, Defendants overstate both the State's claims and what is required to prove them under Minnesota law.[4]

Although Defendants have identified ways in which the State's claims may be tangentially related to federal law, "it takes more than a federal element to open the 'arising under' door" to federal jurisdiction. *Empire Healthchoice*, 547 U.S. at 701 (quoting *Grable*, 545 U.S. at 313). The federal issues that Defendants offer are not necessarily raised by the Complaint's state-law claims, and vindication of the State's rights under state consumer protection law does not "necessarily turn on some construction of federal law." *Franchise Tax Board*, 463 U.S. at 9.

[4] It is not necessary for the Court to weigh Minnesota's ability to prove the elements of the state law claims here; it is Defendants' burden to demonstrate that these claims warrant federal jurisdiction. Nevertheless, the Court notes that adjudicating the State's failure to warn claims do not require a court to supplant its judgment for Congress's regarding the safety and use of a product, as Defendants allege. While the danger of a product is raised in a failure to warn action, it is in the context of whether a warning was adequate under state law, and does not require a court to determine whether the product should have been manufactured, sold, and consumed generally. *See, e.g., Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012) (explaining that the duty to warn consists of two duties: (1) to give adequate instructions for safe use; and (2) to warn of dangers inherent in improper use); *Frey v. Montgomery Ward & Co.*, 258 N.W.2d 782, 788 (Minn. 1977) (stating the rule that, where a manufacturer has "actual or constructive knowledge of danger to users, the . . . the manufacturer has a duty to warn of such dangers."); *Gray v. Badger Mining Corp.*, 676 N.W.2d 268, 274 (Minn. 2004) (explaining conditions of legal adequacy for warnings). As to the State's other statutory claims under Minnesota's various consumer protection and trade practices statutes, Defendants' own explanations of the law demonstrate that the State's claims only require proving that Defendants engaged in misinformation, deception, fraud, or otherwise unfair practices prohibited by state law; the claims alleged do not require the Court to make determinations about fossil fuels or federal energy policy in general.

ii. Actually Disputed and Substantial

Having found that the State's action does not necessarily raise the federal issues offered by Defendants, the Court need not proceed to address the other *Grable* factors. However, the Court notes that, while the complex features of global climate change certainly present many issues of great federal significance that are both disputed and substantial, the State here does not bring claims capable of addressing the panoply of social, environmental, and economic harms posed by climate change. The State's Complaint, far more simply, seeks to address one particular feature of the broader problem—Defendants' alleged misinformation campaign. The State's case is constrained by the causes of action asserted in its Complaint. Accordingly, the State must prove that its purported injuries are related to Defendants' alleged violations of state laws, and any judicial remedies will likely be limited and responsive to those specific claims. As a result, this action does not present the doomsday scenario that Defendants present, and neither does it necessarily raise the disputed and substantial issues of federal law that are required for the Court to assert jurisdiction pursuant to *Grable*.

iii. Federal/State Balance

Moreover, the Court finds that its efforts to exercise jurisdiction over this case may disrupt the balance between federal and state courts. In this case, the state court will not need to reach any question of federal law to litigate these claims, nor will the state court's holding "stand as binding precedent for any future [consumer fraud or climate-change

injury] claim[.]" *Gunn*, 568 U.S. 264. The State asks the court to determine only whether Defendants are liable for misleading the public and engaging in consumer fraud under state law. For the federal court to assert jurisdiction over these areas of traditional state jurisdiction may disrupt the balance between state and federal judicial authority.

Ultimately, Defendants question whether there can be a state law action for alleged climate change injuries at all. The Court does not disagree that assessing this type of injury raises broad and complicated questions. However, allegations of a complex injury do not create a pathway for federal jurisdiction when the actual causes of action arise only under state law. Accepting Defendants' interpretation of *Grable* jurisdiction would require the Court to make an exceptional logical leap and interpret this Complaint as a full-scale assault on all aspects of fossil fuel extraction, production, distribution, and use. That is not what the Complaint asserts on its face, and it is not within the Court's authority to rewrite the Complaint and make it so.

3. Federal Officer Removal Statute

Defendants' next proffered removal ground is the federal officer removal statute, 28 U.S.C. § 1442(a)(1), which requires that the removing defendant plausibly allege that (1) the defendant is a "person" under the statute, which is undisputed here; (2) the defendant was "acting under" the direction of a federal officer when it engaged in the allegedly tortious conduct; (3) there is a causal connection between the defendant's actions and the official authority; and (4) the defendant raises a "colorable" federal

defense. *See*; *Jacks v. Meridian Res. Co.*, 701 F.3d 1224, 1230 (8th Cir. 2012). Relevant here is the federal government contractor defense, which provides that suits against defendants acting on behalf of federal officers "may be removed despite the nonfederal cast of the complaint; the federal-question element is met if the defense depends on federal law[.]" *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999).

i. "Acting Under"

Defendants first argue that they were "acting under" the direction of federal officers in the production of fossil fuels and the development of specialized military products in support of multiple war efforts since at least World War II. Second, Defendants argue that they have worked under federal direction to extract and produce critical energy resources for the nation, including exploration and development of resources in the Outer Continental Shelf and as operators and lessees of the Strategic Petroleum Reserve infrastructure. The Court finds that these are plausible ways in which Defendants may have acted under the direction of federal officers, and because the Court lacks information about whether Defendants' alleged tortious conduct occurred when Defendants were acting under federal officer control, the Court will proceed with the analysis.

ii. Connection to Claims

Historically, courts have considered the causal connection requirement to be a low hurdle. *See*, *e.g.*, *Graves v. 3M Co.*, 447 F. Supp. 3d 908, 913 (D. Minn. 2020) (citing

Isaacson v. Dow Chem. Co., 517 F.3d 129, 137 (2d Cir. 2008). Indeed, in 2011, Congress amended the statute to encompass suits "for or **relating to** any act under color of [federal] office." 28 U.S.C. § 1442(a)(1) (2011) (emphasis added); *see also In re Commonwealth's Motion to Appoint Counsel Against or Directed to Def. Ass'n of Philadelphia*, 790 F.3d 457, 471 (3d Cir. 2015), *as amended* (June 16, 2015) (discussing the 2011 amendment). As a result of the amendment, all that is required is that the case relates to an official act. For example, the Third Circuit has found that the condition is met so long as Defendants' conduct has a "connection" or "association" with a governmental act. *In re Commonwealth's Motion*, 790 F.3d at 471. However, Defendants are still required to demonstrate that the act for which they are being sued occurred at least in part "**because of** what they were asked to do by the Government." *Graves*, 447 F. Supp. 3d at 913. (emphasis in original) (quoting *Isaacson v. Dow Chem Co.*, 517 F.3d 1129, 137 (2d Cir. 2008).

Defendants argue that their fossil fuel activities satisfy the low threshold of connection to or association with actions directed by the federal government. However, Defendants do not claim that any federal officer directed their respective marketing or sales activities, consumer-facing outreach, or even their climate-related data collection. Accordingly, despite the low bar, there does not appear to be any direction from or connection to the federal government related to the specific claims alleged here.

iii. Colorable Defense

Although the lack of connection to a federal officer alone is fatal to federal officer jurisdiction, the Court notes that the fourth prong also fails. The federal officer removal statute requires that the defendant identify a federal defense to the claim brought against them in state court, but a defendant need only demonstrate that its defense is "colorable," not "clearly sustainable." *Jacks v. Meridian Res. Co., LLC*, 701 F.3d 1224, 1235 (8th Cir. 2012). "For a defense to be considered colorable, it need only be plausible; § 1442(a)(1) does not require a court to hold that a defense will be successful before removal is appropriate." *United States v. Todd*, 245 F.3d 691, 693 (8th Cir. 2001).

In a footnote, Defendants claim a number of defenses, including preemption under the Clean Air Act, the Commerce Clause, the First Amendment, and the foreign affairs doctrine, although they do not describe any particular defense or why it justifies application of the federal officer removal statute. As discussed with regard to the *Grable* doctrine and federal common law, the State does not raise claims related to environmental regulation or foreign policy, therefore the Clean Air Act and foreign affairs doctrine do not pose colorable defenses. As to the Commerce Clause and the First Amendment, Defendants do not explain exactly how these defenses relate either to the claims or actions taken at the direction of a foreign officer. Because it is the Defendants' burden to demonstrate a colorable defense now, and not "the mere possibility of some

future evidence as the basis for removal," *Graves*, 447 F. Supp. 3d at 916 n.8, Defendants have not met this hurdle to federal jurisdiction.

Defendants have failed to satisfy three of the four elements of the federal officer removal statute, and the Court cannot, therefore, exercise jurisdiction on this basis.

4. Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act ("OCSLA") establishes original jurisdiction in federal district courts over "cases and controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this subchapter." 43 U.S.C. § 1349(b)(1). The outer Continental Shelf ("OCS") includes all submerged lands lying seaward that are subject to the jurisdiction and control of the United States, but are outside of any particular State. 43 U.S.C. §§ 1301(a), (f), 1331(a). The Fifth Circuit has interpreted the jurisdictional grant under OCSLA broadly, only requiring a "but-for connection" between the cause of the action and OCS operation. *In re Deepwater Horizon*, 745 F.3d 157, 163 (5th Cir. 2014).

Despite Defendants' argument that their various activities on the OCS necessarily account for a significant portion of the conduct attributable to alleged climate change injuries in Minnesota, the State's claims are rooted not in the Defendants' fossil fuel production, but in its alleged misinformation campaign. Further, Defendants offer no basis for the Court to conclude that Minnesota's alleged injuries would not have occurred

but-for the Defendants' extraction activities on the OCS. *Accord Mayor and City Council of Baltimore v. BP*, 388 F. Supp. 3d 538, 566–67 (D. Md. 2019) (rejecting federal jurisdiction under OCSLA based on lack of evidence of but-for causation).

Defendants also argue that, because the Complaint seeks potentially billions of dollars in damages, restitution, and equitable relief, this action could substantially discourage production on the OCS and undermine the viability of the federal government's leasing program. This argument is highly speculative and quite unlikely and asks the Court to assume both the outcome of the suit in state court and the highest damages award possible. This type of speculation, however, does not establish a stable ground for supporting removal, and the Court finds that it lacks jurisdiction under OCSLA.

5. Federal Enclave

Defendants next argue that federal jurisdiction is appropriate because the action implicates federal enclaves in four distinct ways: (1) by targeting the alleged impacts of Defendants' oil and gas operations, the Complaint necessarily sweeps in operations that occur on military bases and other federal enclaves; (2) the Complaint's allegations of climate change injuries—including extreme heat, crop damage, drought, flooding, infrastructural damage, and disease—necessarily impact federal enclaves in Minnesota, including Fort Snelling Military Reservation, Federal Correctional Institute Sandstone, and

Cass Lake Indian Hospital[5]; (3) the claims arise out of sales of certain Defendants' products within Minnesota, which include sales on unspecified federal enclaves; and (4) to the extent the Complaint asserts that federal policymakers would have adopted different energy and climate policies absent Defendants' alleged misrepresentations, the Complaint touches on conduct occurring in the District of Columbia, a federal enclave.

"A federal enclave is created when a state cedes jurisdiction over land within its borders to the federal government and Congress accepts that cession. These enclaves include numerous military bases [and] federal facilities." *Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1235 (10th Cir. 2012). The constitutional grant of legislative power to Congress over federal enclaves "bars state regulation without specific congressional action." *W. River Elec. Ass'n, Inc. v. Black Hills Power & Light Co.*, 918 F.2d 713, 716 (8th Cir. 1990) (quoting *Paul v. United States,* 371 U.S. 245, 263 (1963)).

"[I]n enclave jurisdiction, the determinative fact is the precise location of the events giving rise to the claims for relief." *Akin v. Big Three Indus., Inc.*, 851 F. Supp. 819, 824 (E.D. Tex. 1994) (emphasis omitted). When an alleged injury has occurred both on and off the federal enclave, federal jurisdiction is proper if the federal enclave was the

[5] To establish a federal enclave, (1) the United States must acquire land in a state for one of the purposes mentioned in the Enclave Clause, (2) the state legislature must consent to the jurisdiction of the federal government, and (3) the federal government must accept the jurisdiction by filing a notice of acceptance with the state governor or in another manner prescribed by the laws of the state. *See* 40 U.S.C. § 3112(b); *Paul v. United States*, 371 U.S. 245, 264 (1963); *see also* U.S. Const. Art. I, § 8, cl. 17. Defendants state that these sites in Minnesota are federal enclaves, but do not provide documentation to satisfy the criteria.

locus in which the tort claim arose. *See Sultan v. 3M Co.*, No. 20-1747, 2020 WL 7055576, at *8 (D. Minn. Dec. 2, 2020). Even if some of the injuries occur inside while some occur outside of the federal enclave, the federal interest in exercising federal jurisdiction over the resultant claims decreases. *See Akin*, 851 F. Supp. at 825 n.4.

The State specifically disclaims "injuries arising on federal property and those that arose from Defendants' provision of fossil fuel products to the federal government for military and national defense purposes." (Compl. ¶ 9 n.4.) Defendants contend that this disclaimer is ineffective because it offers no method to isolate injuries that arose on federal property.[6] However, the burden is on Defendants to demonstrate that federal enclaves are the locus in which the claims arose, and they have not done so. *See Sultan*, 2020 WL 7055576, at *4. While the various injuries alleged in the complaint may be felt on federal enclaves as much as they are felt anywhere, the Court requires a more

[6] Further, Defendants counter that the Attorney General cannot sidestep federal jurisdiction by disclaiming damages for events that took place in federal enclaves. However, both of the cases that Defendants cite for this proposition, *Fung v. Abex Corp.*, 816 F. Supp. 569, 571 (N.D. Cal. 1992) and *Richard v. Lockheed Martin Corp.*, 2012 WL 13081667, at *2 (D.N.M. Feb. 24, 2012), involve personal injury claims in which the injuries largely occurred on federal enclaves. In *Fung*, the injuries involved asbestos exposure on submarines that were supervised by a contractor, but that were regularly docked at United States naval bases (there, the Court found the Federal Officer Removal Statute to be of greater significance than the enclaves); in *Richards*, the injuries largely occurred on White Sands Missile Range. Here, Defendants do not claim that any particular injury occurred on a federal enclave; they merely allege that the State cannot effectively disclaim injuries on enclaves. Because neither party has identified injuries that specifically occurred on a federal enclave, these cases do not support Defendants' argument that federal enclave jurisdiction is proper here.

substantive and explicit relationship between the actual claims alleged and a specific federal enclave to exercise jurisdiction.

6. Class Action Fairness Act

Defendants also raise the possibility of jurisdiction under CAFA, 28 U.S.C. § 1453(b), on the theory that the case is actually a class action in which the Attorney General has brought a representative suit on behalf of a group of similarly situated persons. CAFA expands federal diversity jurisdiction to allow for minimal diversity in class actions filed under Federal Rule of Civil Procedure 23 or similar state statute or rule of judicial procedure, 28 U.S.C. § 1332(d)(1)(B), in which more than $5 million is in controversy and there are greater than 100 members of proposed plaintiff classes. *Id.* § 1332(d)(5), (6); *Pirozzi v. Massage Envy Franchising, Inc.*, 938 F.3d 981, 983 (8th Cir. 2019). Defendants argue that, while this case is not styled as a class action, because it is brought in a representative capacity and seeks restitution and damages on behalf of many potential plaintiffs, it resembles a purported class action and should therefore be considered a class action under CAFA.

However liberally interpreted, federal jurisdiction under CAFA is limited to civil actions either filed under Rule 23 or brought under a similar state mechanism that authorizes class actions. In the Eighth Circuit, an action can be interpreted as a class action subject to CAFA even where Plaintiff has omitted reference to the authorizing procedural rule or statute, but only where the state class action rule actually governs the

action. *See Williams v. Emp'rs Mut. Cas. Co.*, 845 F.3d 891, 901 (8th Cir. 2017). Defendants have identified no state statute or procedural rule that would classify a suit of this nature as a class action.[7] Further, as the State points out, every court to have addressed the application of CAFA to actions brought by a State in *parens patriae* under state common law or consumer protection statutes has found that CAFA is not applicable.[8] Because

[7] The cases Defendants cite do not support their argument that the present action should, or even could, be subject to CAFA. Both *Addison Automatics, Inc. v. Hartford Cas. Ins. Co.*, 731 F.3d 740 (7th Cir. 2013) and *Williams*, 845 F.3d 891 are cases in which representatives of certified classes attempted to make separate claims against the same defendants as individuals. In both of those cases, the Courts found that omitting reference to the existing class or applicable state statute did not allow the defendant to dodge CAFA jurisdiction. Neither of these cases dealt with an action brought by an Attorney General on behalf of a state where no class action has been claimed or certified. The case that Defendants characterize as most "instructive," *Song v. Charter Comm'ns. Inc.*, is an order on a Motion to Compel Arbitration and Stay Proceedings that does not substantively deal with the CAFA issue at all, except to include a short footnote noting that Plaintiff opposed CAFA jurisdiction, but the Court felt that the jurisdictional determination was within its discretion. No. 17-325, 2017 WL 1149286, at *1 n.1 (S.D. Cal. Mar. 28, 2017). *Dart Cherokee Basin Op. Co. LLC v. Owens* deals with a case filed as a class action in state court, where the dispute was about whether the amount in controversy met the $5 million CAFA threshold. 574 U.S. 81, 85 (2014). Defendants also cite *Missouri ex rel. Koster v. Portfolio Recovery Assocs., Inc.*, for the proposition that the Eighth Circuit has not weighed in on the issue of CAFA application to *parens patriae* actions. 686 F. Supp. 2d 942, 944–47 (E.D. Mo. 2010). However, the court in *Koster* found that a request for treble damages did not convert a *parens patriae* action into either a "mass action" or a "class action" under CAFA and declined to exercise federal jurisdiction. *Id.*

[8] *See Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 164 (2014) (*parens patriae* suit is not a "mass action" under CAFA); *Hawaii ex rel. Louie v. HSBC Bank Nevada*, 761 F.3d 1027, 1040 (9th Cir. 2014) ("Failure to request class status or its equivalent is fatal to CAFA jurisdiction."); *Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 212–20 (2d Cir. 2013) (determining *parens patriae* action was not "filed under" state statute or rule of judicial procedure "similar" to federal class action rule, and thus action did not qualify as a "class action" within the meaning of CAFA); *Mississippi ex rel. Hood v. AU Optronics Corp.*, 701 F.3d 796, 799 (5th Cir. 2012), *rev'd on other grounds*, 571 U.S. 161 (2014) (*parens patriae* action to enforce state law did not justify removal under CAFA); *LG Display Co. v. Madigan*, 665 F.3d 768, 770–72 (7th Cir. 2011) (case brought by Attorney General was brought under state anti-trust law that did not impose any of the familiar Rule 23 constraints); *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 847–49 (9th Cir. 2011) ("[*P*]*arens patriae* suits filed by state Attorneys General may not be removed to federal

neither the Eighth Circuit nor any other court has applied CAFA to a State Attorney General's representative action in this way, and because Defendants have not demonstrated that this action was brought under or would meet the standards of either Rule 23 or any state rule for class certification, CAFA is not applicable here.

7. Diversity Jurisdiction

Finally, Defendants argue that the Court has diversity jurisdiction because the real parties in interest are the citizens of Minnesota, who are completely diverse from Defendants, and the amount in controversy undisputedly exceeds $75,000. Defendants argue that the Attorney General seeks compensation for alleged injuries related only to Minnesota consumers, not the State in general, and that the harm alleged is only to consumers who were influenced by the purported misinformation campaign, and thus only applies to a subset of identifiable Minnesotans.

A state "may act as the representative of its citizens in original actions where the injury alleged affects the general population of a State in a substantial way." *Maryland v. Louisiana*, 451 U.S. 725, 737 (1981). "There is no question that a State is not a 'citizen' for purposes of the diversity jurisdiction." *Moor v. Alameda Cty.*, 411 U.S. 693, 717 (1973).

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court because the suits are not 'class actions' within the plain meaning of CAFA."); *W. Va. ex rel. McGraw v. CVS Pharmacy, Inc.*, 646 F.3d 169, 174–78 (4th Cir. 2011); *Massachusetts v. Exxon Mobil Corp.*, 462 F. Supp. 3d 31, 48–51 (D. Mass. 2020) (finding CAFA does not apply to *parens patriae* Attorney General actions); *Town of Randolph v. Purdue Pharma L.P.,* No. 19-10813, 2019 WL 2394253, at *4 (D. Mass. June 6, 2019) (finding no federal jurisdiction under CAFA in *parens patriae* opioid action); City of Galax, Virginia v. Purdue Pharma, L.P., No. 18-617, 2019 WL 653010, at *5–6 (W.D. Va. Feb. 14, 2019) (same).

The Complaint alleges injury to all Minnesotans and the Attorney General brings the action pursuant to state statutes and under *parens patriae authority* on behalf of Minnesota citizens and consumers. Defendants have not offered any precedent or a cognizable argument for treating this as anything other than an action by the State of Minnesota, and therefore this action does not give rise to federal diversity jurisdiction.

CONCLUSION ON MOTION TO REMAND

The Court recognizes that the vast threat of climate change requires a comprehensive federal, and indeed, global response. The complex environmental impacts of climate change, and its far-reaching consequences for health, economy, and social wellbeing of all people cannot be understated. Given the stakes, the Court has some reluctance in remanding such significant litigation to state court. But the Court is also mindful of the limits of its jurisdiction. If the State were—as Defendants suggest—seeking a referendum on the broad landscape of fossil fuel extraction, production, and emission, state court would most certainly be an inappropriate venue. However, the State's action here is far more modest than the caricature Defendants present. States have both the clear authority and primary competence to adjudicate alleged violations of state common law and consumer protection statutes, and a complex injury does not a federal action make. The limits written into the Complaint likely will restrict the ultimate possible recovery in this case and thus, its possible impact on climate change, but that is the choice the State has made. Because this Court does not have original jurisdiction over

this action, and because the claims alleged neither explicitly raise federal claims nor fall within one of the exceptions to the well-pleaded complaint rule, the Court must decline to exercise jurisdiction and remand the matter to state court.

II. MOTION TO STAY

The FHR Defendants move the Court to stay proceedings until the Supreme Court issues a decision in *BP p.l.c. et al. v. Baltimore* and makes a determination on the Petition for Certiorari in *Chevron et al. v. City of Oakland et al.* (U.S., Jan. 8, 2021). The FHR Defendants argue that a stay is warranted because these cases are similar to the instant action and granting a stay would preserve judicial resources by alleviating the Court's need to decide issues now that may be ruled on by the Supreme Court within a few months. In addition, the FHR Defendants argue that a stay is necessary to prevent serious hardship, particularly if the Court grants the Motion to Remand and the Supreme Court's decisions in either *Baltimore* or *Oakland* cast doubt on the remand. Finally, the FHR Defendants argue that the State cannot plausibly claim any meaningful harm from such a brief stay. The State opposes this Motion.

Because the Court finds that neither pending matter relied on by the FHR Defendants bear upon the Court's decision to remand the case for lack of federal jurisdiction, the Court will deny the FRH Defendants' Motion.

A. STANDARD OF REVIEW

The Court has the inherent power and broad discretion to stay proceedings to control its docket, to conserve judicial resources, and to ensure that each matter is handled with economy of time and effort. *Sierra Club v. U.S. Army Corp of Engineers*, 446 F.3d 808, 816 (8th Cir. 2006) (citing *Clinton v. Jones*, 520 U.S. 681, 706 (1997)). A court may consider factors, including "conservation of judicial resources and the parties' resources, maintaining control of the court's docket, providing for the just determination of cases, and hardship or inequity to the party opposing the stay." *Frable v. Synchrony Bank*, 215 F. Supp. 3d 818, 821 (D. Minn. 2016). The moving party bears the burden of establishing that a stay is necessary. *Jones*, 520 U.S. at 708. When the stay is requested pending disposition of a petition for certiorari, "[a]pplicants bear the burden of persuasion on two questions: whether there is a balance of hardships in their favor; and whether four Justices of [the Supreme Court] would likely vote to grant a writ of certiorari." *New York Times Co. v. Jascalevich*, 439 U.S. 1304, 1304 (1978).

B. ANALYSIS

The question addressed by the Supreme Court in *Baltimore* is specific to the scope of appellate review of remand orders under 28 U.S.C. § 1447(d). That issue is not present here, and it will arise only if Defendants appeal the Court's decision to grant the motion to remand. The Eighth Circuit, like the Fourth Circuit, has interpreted 28 U.S.C. § 1447(d) to limit its scope of remand review to the removal grounds established in 28 U.S.C. § 1442

(federal officer removal) or § 1443 (civil rights claims). *See Jacks*, 701 F.3d at 1229; *Thornton v. Holloway*, 70 F.3d 522, 524 (8th Cir. 1995). Accordingly, the Supreme Court's decision in *Baltimore* will only potentially affect this action at the appellate stage, and does not bear upon a district court's determination.

While the petition in the *Oakland* case raises issues that are more pertinent to the instant proceedings, the FHR Defendants speculate that at least four Justices of the Supreme Court are likely to vote to grant certiorari because the Court granted certiorari in *Baltimore*. However, the scope of the *Oakland* defendants' petition is much broader than the narrow petition granted in *Baltimore*. The FHR Defendants generally assert that the Ninth Circuit's rejection of the federal common law as a basis for removal is contrary to Supreme Court precedent, but provide little else to support their position that certiorari is likely to be granted.

Additionally, although the FHR Defendants argue that a stay will not prejudice the State, the State counters that a stay would be highly prejudicial to the public interest by delaying the proceedings for an indeterminate amount of time for the sake of pending decisions that do not bear upon the merits of this action. Of course, Defendants may appeal this decision which would result inevitably in a much longer delay. But balancing the hardships between the two parties, and not knowing whether the Defendants will appeal the remand, the Court finds that the State would likely be more prejudiced by a stay than Defendants would be by proceeding, particularly because Defendants cannot

anticipate any relevant relief at this juncture related to the *Baltimore* case and the status of the *Oakland* petition is still very much uncertain. Ultimately, the possible prejudice to both sides is quite similar, and the Court will choose to try to move the case along as quickly as possible.

The Court therefore finds that Defendants have not met their burden of persuasion that a stay is necessary and denies the Motion.

ORDER

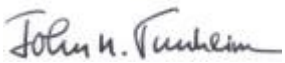
Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that**:**

1. Plaintiff's Motion to Remand [Docket No. 32] is **GRANTED.**

2. FHR Defendants' Motion to Stay [Docket No. 56] is **DENIED.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: March 31, 2021
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
Chief Judge
United States District Court