No. 23-168

IN THE

Supreme Court of the United States

AMERICAN PETROLEUM INSTITUTE, ET AL.,
Petitioners,

v.

STATE OF MINNESOTA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENT STATE OF MINNESOTA'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL BRIEF FOR RESPONDENT

Pursuant to Rule 15.8, respondent writes to notify the Court of *District of Columbia v. Exxon Mobil Corporation*, No. 22-7163, __F.4th__, 2023 WL 8721812 (D.C. Cir. Dec. 19, 2023), which affirmed remand of a materially similar case to state court. Writing for a unanimous panel of the D.C. Circuit, Judge Rao rejected the same theory of federal jurisdiction that petitioners advance here.

1. In *D.C.*, the plaintiff brought claims under the District of Columbia Consumer Protection Procedures Act ("CPPA"), alleging that the defendants "deceived consumers about the causal link between fossil fuel usage and climate change." *Id.* at *1. The defendants removed the case to federal court. *Ibid.* Among other grounds for removal, they insisted that federal jurisdiction existed under the artful-pleading doctrine because the plaintiff's state-law claims were "necessarily governed by federal common law." *Id.* at *3.

2. The D.C. Circuit disagreed. As Judge Rao explained, the Supreme Court "has rejected the idea that there might be some generic artful pleading basis for federal jurisdiction." *Ibid.* And "even assuming federal common law could provide a basis for removal under the artful pleading doctrine," the defendants' removal theory failed because the Clean Air Act has displaced the body of federal common law invoked by the defendants. *See id.* at *3–4. "It would be inconsistent with Congress's directives . . . for [a] court to conclude that federal common law persists solely for the purpose of removing the [plaintiff's] CPPA claims to federal court." *Id.* at *5. And the defendants' theory of federal-common-law removal "simply cannot be squared with [the Supreme Court's decisions in] *American Electric* or *Ouellette*," which confirm that

the availability of the plaintiff's state-law claims "depends on the preemptive effect of the Clean Air Act, not on the preemptive effect of federal common law." *Ibid.* The D.C. Circuit therefore refused to imbue "federal common law [with] the Schrödinger quality advanced by the [defendants]—where one does not know if it is alive or dead until the case is removed to federal court." *Id.* at *4.

3. In reaching that result, the D.C. Circuit is "in accord with the other courts of appeals, which have unanimously found there is no federal jurisdiction where state or local governments have brought state-law actions against energy companies for conduct relating to climate change." *Id.* at *2. And as Judge Rao explained, *City of New York v. Chevron Corp.* does not break that judicial unanimity because "the Second Circuit expressly did not decide" the jurisdictional question at issue here. *Id.* at *5 n.5.

CONCLUSION

D.C. confirms that there is no circuit split on the Question Presented and that the decision below is correct. The Court should deny the petition for certiorari review.

Respectfully Submitted,

/s/ Victor M. Sher

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