No. A25-0419

STATE OF MINNESOTA
IN COURT OF APPEALS

State of Minnesota, by its Attorney General, Keith Ellison,

Plaintiff-Respondent.

v.

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

Defendants-Petitioners,

MOTION BY PROFESSOR JOHN YOO TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF GRANTING DISCRETIONARY REVIEW

Douglas P. Seaton
James V. F. Dickey
UPPER MIDWEST LAW CENTER
12600 Whitewater Drive, Suite 140
Minnetonka, MN 55343
(612) 428-7002

Ivan L. London
William E. Trachman
MOUNTAIN STATES
LEGAL FOUNDATION
2596 South Lewis Way
Lakewood, Colorado 80227
(303) 292-2021

Counsel for Professor John Yoo

MOTION

Per Minnesota Rules of Civil Appellate Procedure 127 and 129, Professor John Yoo respectfully requests an order granting him leave to file a brief in this case as amicus curiae in support of Defendants-Petitioners and granting discretionary review.

ARGUMENT

I. Legal Standard

Under Rule 129.01, "Upon prior notice to the parties, a brief of an amicus curiae may be filed with leave of the appellate court." The "request for leave shall identify whether the applicant's interest is public or private in nature, identify the party supported or indicate whether the amicus brief will suggest affirmance or reversal, and shall state the reason why a brief of an amicus curiae is desirable. The request shall not exceed 1,500 words, exclusive of the caption, signature block, and any addendum, and shall be accompanied by a certificate of document length."

II. Professor Yoo Meets the Rule 129 Requirements

First, Professor Yoo has given prior notice of this request to the parties.

Second, and with respect to the content of this request, Professor Yoo's interest in this action, and in a grant of discretionary review, is public in nature. He is the Emanuel S. Heller Professor of Law at the University of California at Berkeley and Faculty Director of its Law & Public Policy Program. And he maintains a unique interest and expertise in ensuring that courts apply constitutional principles of federalism appropriately. The brief supports Petitioners (Defendants at the court below) and suggests reversal. It is desirable to grant leave to file the brief because Professor Yoo may materially help the Court by

providing his expertise to this case. He has recently done the same in a different case where a different State's highest court granted interlocutory relief to address issues very similar to those raised by Petitioners in their request for discretionary review under Minn. R. Civ. App. P. 105. *See In re Exxonmobil v. Bd. of Cty. Comm'rs*, 2024SA000206 (Colo. Sept. 18, 2024), Amici Curiae Br. of Prof. R. Epstein, Prof. J. Yoo, and Mountain States Legal Foundation in Supp. of Defs./Pet'rs.; *see also id.* (Sept. 3, 2024), Order of the Ct. (granting amici curiae's motion for leave to file amicus brief); *id.* (July 29, 2024) Order and Rule to Show Cause (granting interlocutory review).

Third, this motion does not exceed 1,500 words, as stated in the accompanying (below) certificate of document length.

CONCLUSION

For the foregoing reasons, Professor Yoo respectfully asks that the Court grant this motion and grant him leave to file an amicus curiae brief in support of Defendants-Petitioners and a grant of discretionary review.

signatures to follow

Date: March 19, 2025

/s/ James V. F. Dickey
Douglas P. Seaton (MN #127759)
James V. F. Dickey (MN #393613)
UPPER MIDWEST LAW CENTER
12600 Whitewater Drive, Suite 140
Minnetonka, MN 55343
Phone: (612) 428-7002

Ivan L. London, CO Atty. Reg. No. 44491
William Trachman, CO Atty. Reg. No. 45684
MOUNTAIN STATES LEGAL FOUNDATION
2596 South Lewis Way
Lakewood, CO 80227
Phone: (303) 292-2021

Counsel for Professor John Yoo

CERTIFICATE OF COMPLIANCE

This request complies with the word limitations of Minn. R. Civ. App. P. 129.01 and the requirements of Minn. R. Civ. App. P. 132.02. The brief was prepared with proportional font, Times New Roman, 13-point type, using Microsoft Word in Office 365, which reports that the request contains 428 words, exclusive of the caption and signature block.

/s/ James V. F. Dickey
Douglas P. Seaton (MN #127759)
James V. F. Dickey (MN #393613)
UPPER MIDWEST LAW CENTER
12600 Whitewater Drive, Suite 140
Minnetonka, MN 55343
Phone: (612) 428-7002

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that this document is being filed and served on counsel of record for all Respondents and for Petitioners Flint Hills Resources Pine Bend, Flint Hills Resources LP, and Koch Industries, Inc., via the Minnesota appellate court electronic filing system on the date set forth above.

/s/ James V. F. Dickey
Douglas P. Seaton (MN #127759)
James V. F. Dickey (MN #393613)
UPPER MIDWEST LAW CENTER
12600 Whitewater Drive, Suite 140
Minnetonka, MN 55343
Phone: (612) 428-7002