

**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**



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

vs.

American Petroleum Institute, et al.,  
  
Defendants,

Koch Industries, Inc., et al.,  
  
Petitioners.

**SPECIAL  
TERM  
ORDER<sup>1</sup>  
  
A25-0419**

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

vs.

American Petroleum Institute,  
  
Petitioner,

Exxon Mobil Corporation, et al.,  
  
Petitioners,

Koch Industries, Inc., et al.,  
  
Defendants.

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**A25-0421**

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<sup>1</sup> Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Considered and decided by Frisch, Chief Judge; Larkin, Judge; and Bentley, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:**

Petitioners Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend (together, FHR) (A25-0419) and American Petroleum Institute (API) and Exxon Mobil Corporation and ExxonMobil Oil Corporation (together, ExxonMobil) (A25-0421) filed two related petitions for discretionary review. The petitions seek interlocutory review of parts of a February 14, 2025 district court order that denied petitioners' motions to dismiss claims asserted against them by respondent State of Minnesota, by its Attorney General, Keith Ellison (the state). The state opposes the petitions. Requests for leave to file a brief as amicus curiae pursuant to Minn. R. Civ. App. P. 129.01 have been filed by the National Association of Manufacturers, the Chamber of Commerce of the United States of America, and Professor John Yoo. There have been no responses to the amicus motions.

Petitioners have also filed three direct appeals from parts of the February 14 order that are immediately appealable. In A25-0407, API challenges the denial of its motion to dismiss for lack of personal jurisdiction and under the anti-SLAPP statute. In A25-0408, ExxonMobil challenges the denial of its motion to dismiss for lack of personal jurisdiction. And in A25-0410, FHR challenges the denial of its motion to dismiss under the anti-SLAPP statute.

Both of the petitions for discretionary review seek immediate review of the district court's denial of petitioners' motions to dismiss based on federal preemption. FHR's

petition (A25-0419) additionally seeks immediate review of the district court's denial of its motion to dismiss on First Amendment grounds.

We may, under Minn. R. Civ. App. P. 105.01, “in the interests of justice . . . allow an appeal from an order not otherwise appealable.” But interlocutory appeals are generally disfavored. *Gordon v. Microsoft Corp.*, 645 N.W.2d 393, 398 (Minn. 2002). When ruling on a petition for discretionary review, we consider, among other factors, whether the challenged ruling is vested in the district court's discretion, whether the ruling is questionable or involves an unsettled area of the law, the impact of the ruling on the petitioning party's ability to proceed, the importance of the legal issue presented, whether appellate review would benefit from the development of a more complete record or the ruling would be reviewable on appeal from a final judgment, and the specific circumstances of the case. *See id.* at 399-402 (addressing factors appropriately considered in deciding petitions for discretionary review); *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 47 (Minn. App. 2014) (same).

As explained above, the petitions here arise in the context of petitioners having taken direct appeals. In *Kastner v. Star Trails Ass'n*, the supreme court formally adopted “the collateral order doctrine as a clear analytical framework to assess the immediate appealability of an order or judgment not specifically identified in the Rules of Civil Appellate Procedure.” 646 N.W.2d 235, 240 (Minn. 2002). “For the collateral order doctrine to apply, the order at issue must (1) conclusively determine the disputed question,

(2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment.” *Id.*

Generally, when appellate jurisdiction arises under the collateral-order doctrine, the resulting interlocutory appeal should be limited to the rulings immediately appealable and other issues “inextricably intertwined” with the appealable rulings. *Aon Corp. v. Haskins*, 817 N.W.2d 737, 741 (Minn. App. 2012); *see also Storey v. Weinberg*, 31 N.W.2d 912, 916 (Minn. 1948) (“An appeal from an order which is appealable in part and nonappealable in part brings up for review only that part which is appealable.”). An issue is “inextricably intertwined with an issue properly presented by a collateral-order appeal only . . . when the appellate resolution of the collateral appeal necessarily resolves the pendent claim as well and only if the pendent claim is coterminous with, or subsumed in, the claim before the court on interlocutory appeal.” *Aon Corp.*, 817 N.W.2d at 742. While Minn. R. Civ. App. P. 105.01 may be invoked to override the limitations set forth in *Aon Corp.*, we appropriately consider the general limitations of collateral-order appeals in determining whether to grant discretionary review. *See Gordon*, 645 N.W.2d at 402 (recognizing specific circumstances of case as appropriate consideration); *cf. Hunt v. Nevada State Bank*, 172 N.W.2d 292, 300 (Minn. 1969) (relying on rule 105.01 to reach additional issue in appeal from denial of motion to dismiss for lack of personal jurisdiction because decision on that issue would “be based on considerations inextricably interwoven with the factors influencing conclusion regarding” jurisdiction).

In this case, some of the *Gordon* factors may favor immediate review. We would review de novo the district court's denial of petitioners' motion to dismiss, and we also review preemption and First Amendment issues de novo. See *Halva v. Minn. State Colls. & Univers.*, 953 N.W.2d 496, 500 (Minn. 2021) (motion to dismiss); *DSCC v. Simon*, 950 N.W.2d 280, 287 (Minn. 2020) (preemption); *In re GlaxoSmithKline PLC*, 732 N.W.2d 257, 267 (Minn. 2007) (First Amendment). In addition, the petitions appear to raise important legal issues. But notwithstanding these factors, we conclude that immediate review of the issues raised is not warranted based on the following considerations.

First, we note the early procedural posture at which petitioners seek discretionary review. At this time, the district court has only denied the petitioners' motion to dismiss for failure to state a claim on which relief may be granted. Minnesota is a notice pleading state, and the supreme court has emphasized that "a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Halva*, 953 N.W.2d at 501. And the district court emphasized this procedural posture in denying petitioners' motion to dismiss.

Second, nothing in the district court's order precludes petitioners from continuing to defend against the state's claims or challenging the district court's rulings in a later appeal. And we are persuaded that this is a case in which further development of the record will aid our review. The parties' arguments in relation to the petition largely focus on their dispute over the nature of the claims the state intends to pursue. Further proceedings should

crystalize the state's theories and test their evidentiary support, which will facilitate appellate review of the issues raised in the petition. In addition, further proceedings may obviate the need to address the issues raised in the petition or introduce additional issues, which will be most efficiently addressed together in a later appeal.

It is true, as petitioners assert, that immediate review would not further delay district court proceedings because of the direct appeals already pending before us. But this is always true when part of an order is subject to immediate appeal. Instead, we apply the general rule that such appeals are limited to appealable issues and those inextricably intertwined with the appealable issues. *See Aon Corp.*, 817 N.W.2d at 741; *Storey*, 31 N.W.2d at 916. Petitioners do not assert that the issues on which they seek discretionary review are inextricably intertwined with the issues subject to immediate appeal.

Petitioners also rely on our order granting discretionary review in *Minn. All. for Retired Ams. Educational Fund v. Simon*, No. A24-1134 (Minn. App. Aug. 13, 2024) (order). In that case, which involved the constitutionality of the state's voting laws, the pendency of a related direct appeal was one of five reasons that persuaded us to grant discretionary review. Among the other reasons were that the "secretary persuasively assert[ed] that issues regarding voting should be resolved expeditiously when feasible," and that "it [did] not appear that further development of the record would aid this court's review." *Id.* at 3. For reasons explained above, this case is distinguishable from *Minn. All. for Retired Ams. Educational Fund*.

In sum, after careful consideration of the parties' submissions, we are not persuaded that immediate review of the issues raised in the petitions is warranted. We therefore deny the petitions for discretionary review, and we deny the amicus motions as moot.

**IT IS HEREBY ORDERED:**

1. The petitions for discretionary review are denied.
2. The motions for leave to file briefs as amici curiae are denied.

**Dated:** April 22, 2025

**BY THE COURT**

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Jennifer L. Frisch  
Chief Judge