



June 26, 2020

Michael E. Gans
Clerk of Court
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th St., Rm. 24.329
St. Louis, MO 63102

Re: *United States et al. v. Ameren Missouri* (No. 19-3220)

Dear Mr. Gans:

Plaintiff-appellee Sierra Club submits this letter, pursuant to Federal Rule of Appellate Procedure 28(j), to advise this Court of *Liu v. SEC*, 520 U.S. ____ (2020) (slip op. available at https://www.supremecourt.gov/opinions/19pdf/18-1501_8n5a.pdf).

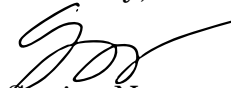
Defendant-appellant Ameren Missouri relies on *Kokesh v. SEC*, 137 S. Ct. 1635, 1642 (2017), as creating a “test for distinguishing penalties from other relief,” available under statutes permitting equitable remedies. Reply Brief of Ameren Missouri at 32. Ameren asserts that under *Kokesh*, “if the wrong is to the public and the remedy is sought to redress wrongful gain, then the remedy is a penalty,” and not within courts’ equitable authority. *Id.*

Liu confirms, first, that *Kokesh* “expressly declined to pass on the question” of whether the remedy discussed was “necessarily a penalty, and thus not the kind of relief available” under securities laws authorizing “equitable relief.” *Liu*, Slip Op. at 3, 12. See Response Brief of Plaintiff-Appellee Sierra Club (“Sierra Club Response”) at 57 & n.13. Second, *Liu* holds that “a remedy tethered to a wrongdoer’s net unlawful profits, whatever the name, has been a mainstay of equity courts,” and that such remedies are within the authority of courts

empowered by statute to provide equitable relief. Slip Op. at 7, 14. See Sierra Club Response at 57-59.

Liu thus underscores the propriety of the District Court’s remedy—an injunction precisely and narrowly tailored to the pollution resulting from Ameren’s unlawful activity, and to compensate those injured by that unlawful pollution—under the Clean Air Act’s authorization of “any ... appropriate relief.” 42 U.S.C. § 7413(b).

Sincerely,



Sanjay Narayan

Sunil Bector

Sierra Club Environmental Law Program

2101 Webster St., Ste. 1300

Oakland, CA 94612

(415) 977-5769

sanjay.narayan@sierraclub.org

sunil.bector@sierraclub.org

Attorneys for Sierra Club