

Climate Change Lawsuit Reaches the US Supreme Court

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The US Supreme Court recently [granted](#) certiorari in an important climate change lawsuit, *BP P.L.C. v. Mayor and City Council of Baltimore*. The lawsuit pits the Mayor and City of Baltimore against twenty-six multinational oil and gas companies that Baltimore claims are responsible for climate change. Baltimore alleges that the companies contributed to climate change by producing, promoting, and (misleadingly) marketing fossil fuel products long after learning of the climate-related dangers associated with them. Specifically, Baltimore argues that the companies engaged in a “coordinated, multi-front effort” to conceal their collective knowledge of climate change. Also that the companies discredited the “growing body of publicly available scientific evidence,” and worked to “undermine public support for regulations of their business practices.” Baltimore seeks relief for “climate change-related injuries.”

At least for this appeal, the Supreme Court will not wade into the merits. Instead, the Supreme Court granted certiorari to address the reviewability of an order remanding the case back to state court. Specifically, the Fourth Circuit held that federal law limited the scope of its review to the question whether removal was appropriate under the federal-officer removal statute. The Supreme Court granted certiorari to address the scope of review issue, which it framed as follows:

Section 1447(d) of Title 28 of the United States Code generally precludes appellate review of an order remanding a removed case to state court. But Section 1447(d) expressly provides that an “order remanding a case * * * removed pursuant to” the federal-officer removal statute, 28 U.S.C. 1442, or the civil-rights removal statute, 28 U.S.C. 1443, “shall be reviewable by appeal or otherwise.” Some courts of appeals have interpreted Section 1447(d) to permit appellate review of any issue encompassed in a district court’s remand order where the removing defendant premised removal in part on the federal-officer or civil-rights removal statutes; other courts of appeals, including the Fourth Circuit in this case, have held that appellate review is limited to the federal-officer or civil rights ground for removal.

The question presented is as follows: Whether 28 U.S.C. 1447(d) permits a court of appeals to review any issue encompassed in a district court’s order remanding a removed case to state court where the removing defendant premised removal in part on the federal-officer removal statute, 28 U.S.C. 1442, or the civil rights removal statute, 28 U.S.C. 1443.

How the Supreme Court resolves this circuit split is particularly important for climate change lawsuits because the Court's prior decisions essentially require state court lawsuits. See *American Electric Power Company, Inc. v. Connecticut*, 564 U.S. 410, 415 (2011) ("The Clean Air Act and [EPA] action the Act authorizes, we hold, displace the [federal common-law public nuisance claims] the plaintiffs seek to pursue."). But companies facing these lawsuits often prefer federal courts, assuming that their arguments will fare better in that venue. If the Supreme Court agrees with the companies, it may mean more climate lawsuits remain in federal court.

Meanwhile, the Senate just confirmed Amy Coney Barret, who [discussed](#) climate change during her confirmation hearings. Notably, Judge Barret previously recused herself from cases involving one of the large oil and gas companies in this case, Shell Oil, because of her father's work. At her confirmation hearing, Judge Barret did not clarify whether she might recuse herself here from this case.

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