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## US Supreme Court Allows Oil and Gas Companies to Appeal Jurisdictional Issues in Baltimore Climate Suit.

In a decision with important implications for climate change tort cases, the US Supreme Court held that federal courts of appeal can consider all potential grounds for federal jurisdiction in certain appeals of district court remand orders.

Since 2017, the companies defending climate change tort suits brought by local municipalities have removed those cases to federal court. Every district court has ordered that the cases be remanded to state court, and every court of appeals has held that it had limited authority to review those remand orders. In a 7-1 decision on May 17, the US Supreme Court rejected the appellate courts' view of their jurisdiction. The Court held that the courts of appeals must consider every argument the defendants raised in support of removal. Though the decision is a technical one about the scope of appellate review, it sets the stage for many circuit courts to weigh in on the critical question whether these cases must be litigated in state or federal court and the related question whether the municipalities' claims arise under state or federal law.

### **Background**

In 2018, the City of Baltimore filed suit against 23 oil and gas companies in Maryland state court. Baltimore alleged that the defendants had improperly concealed the environmental harms of fossil fuels. The defendants removed the case to federal court on several grounds. The defendants argued that Baltimore's claims, though framed as state-law claims, actually arise under federal law; the defendants also argued that Baltimore's claims implicated the defendants' work for the federal government and are removable under the federal-officer removal statute, 28 U.S.C. § 1442.

Baltimore moved to remand the case to Maryland court, and the district court rejected all of the defendants' arguments in support of federal jurisdiction. The defendants appealed to the US Court of Appeals for the Fourth Circuit. By statute, remand orders are normally unappealable, but the statute expressly allows for an appeal if a case is removed on federal-officer grounds. See 28 U.S.C. § 1447(d). The Fourth Circuit interpreted the removal statute as giving it jurisdiction to consider only the defendants' federal-officer ground for removal, which the Fourth Circuit held lacked merit. The Fourth Circuit therefore refused to consider whether Baltimore's case arose under federal law.

### **The Opinion**

The Supreme Court reversed. Writing for a 7-1 majority, Justice Neil Gorsuch held that the plain language of the removal statute authorizes appellate review of the entire remand order as long as the federal-officer statute is one ground for removal. Justice Gorsuch rejected Baltimore's contention that this result will incentivize parties to add frivolous federal-officer grounds for removal arguments, because litigants can be sanctioned for frivolous claims or ordered to pay the costs of removal proceedings. Accordingly, because the removal statute requires appellate review of "an order remanding a case to state court," the Supreme Court remanded for the Fourth Circuit to address all of the arguments the defendants raised in support of federal jurisdiction.

## **Implications**

The Supreme Court's ruling sets the table for the regional courts of appeals to decide a question critical to the pending climate change tort suits—whether the municipalities' claims, though nominally based on state law, actually arise under federal law. The defendants have long contended that climate change is inherently a subject of federal regulation and that, therefore, the municipalities' claims arise either in whole or in part under federal law.

The stakes are high because, if federal jurisdiction exists, it is more likely that the municipalities' claims will ultimately fail. New York City's case exemplifies this. New York filed its climate change claims in federal court, obviating the jurisdictional questions pending in other courts. After the Southern District of New York held that New York's claims are preempted on the merits, the Second Circuit affirmed.

Oakland's case exemplifies the other side and confirms the significance of the threshold question of federal jurisdiction. Oakland's case was removed to the Northern District of California. That court did not remand because it found that the city's claims arose under federal law and, similar to the Southern District of New York, dismissed the claims as preempted. On appeal, the Ninth Circuit did not address preemption because it instead held that Oakland's claims did not arise under federal law and should not have been removed in the first place.

Now that all the circuit courts cannot avoid the issue, there is a greater likelihood that the courts of appeals will split over the right answer to the jurisdictional question and, therefore, a greater likelihood that one of the municipal climate-change cases ends up back at the Supreme Court in one or two years.

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