

Supreme Court Sides with Energy Companies in Climate Change Case

By Carmen R. Toledo

Climate change cases continue to proliferate and work their way through the courts. Whether those cases belong in federal or state court remains an important—and yet unresolved—question. In a procedural ruling that addresses at least part of that issue, the U.S. Supreme Court has reversed a decision in which the Fourth Circuit held that it lacked jurisdiction to consider all of the defendants’ grounds for removal under 28 U.S.C. §1447(d). See *BP P.L.C. v. Mayor and City Council of Baltimore*, No. 19-1189, *slip op.* (May 17, 2021). DRI has been closely following this case. DRI National Director John Guttmann [wrote about the case \(p. 8\)](#) when the Supreme Court granted certiorari and DRI, through its Center for Law and Public Policy, filed [an amicus brief](#) supporting the petitioners.

The City of Baltimore is just one of several municipalities that have sued energy companies claiming they are responsible for climate change and sea level rise. Baltimore filed its lawsuit in Maryland state court in 2018, asserting state law causes of action and seeking to recover damages the City allegedly has suffered (and will continue to suffer) as a result of climate change. The energy companies timely removed the case to federal court, invoking several federal statutes. Most notably, the energy companies relied on federal officer jurisdiction (28 U.S.C. §1442(a)(1)), arguing that some of the challenged operations—exploration, drilling, and production operations—“took place at the federal government’s behest.” *Slip op.* at 2. The City filed a motion for remand, arguing that none of the companies’ grounds for removal were valid. The district court agreed and remanded the case.

While a remand order is generally not appealable, 28 U.S.C. §1447(d) allows appellate review when the removal was based on §1442 (federal officer) or §1443 (civil rights). Relying on their federal officer jurisdiction argument, the defendants appealed. The Fourth Circuit, however, read §1447(d) as allowing it to review only that portion of the remand order specifically discussing §1442 and refused to consider all the other grounds for removal that the defendants had asserted. *Mayor & City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452 (4th Cir. 2020).

In an opinion written by Justice Gorsuch for a 7–1 majority, which aligned with the argument set forth in DRI’s amicus brief, the Court ruled that the Fourth Circuit should have considered the remand order in its entirety. Specifically, the Court ruled that the ordinary meaning of §1447(d)’s text permits review of the district court’s entire remand order when a defendant relies on §1442 as grounds for removal—noting that the word “order” in §1447(d) means the entire district court’s order, which in this case expressly ruled on all of the defendants’ grounds for removal. Slip op. at 4–5. The Court rejected the City’s argument that exceptions to statutory rules should be construed narrowly, as well as a new argument that defendants did not really remove the case “pursuant to” §1442. *Id.* at 7–8.

Justice Sotomayor, the sole dissenter, argued that the Court’s ruling allows defendants to “sidestep §1447(d)’s bar on appellate review by shoehorning a §1442 or §1443 argument into their case for removal. In other words, it lets the exception swallow the rule.” Dissenting op. at 2. The majority considered this argument and rejected it, explaining that the “Court’s task is to discern and apply the law’s plain meaning as faithfully as we can, not to assess the consequences of each approach and adopt the one that produces the least mischief.” Slip op. at 13 (citation omitted). Justice Alito did not participate in the case.

The Court declined to consider the grounds for defendants’ removal, and remanded the case to the Fourth Circuit for consideration of those grounds “in the first instance.” Slip op. at 14. While the decision does not address the question of whether the case will ultimately remain in federal court, it is a clear victory for defendants in climate change cases and beyond. The decision resolves a circuit split and makes it clear that, if a remand order is appealable

under §1447—i.e., if one of the grounds for removal was §1442 or §1443—the entire remand order must be considered on appeal.



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