



Today the U.S. Supreme Court issued its first major environmental decision of the Court's current Term—and in a climate change case, no less: [\*BP P.L.C v. Mayor and City Council of Baltimore\*](#).

Superficially, the multinational energy corporations sued by the City of Baltimore prevailed, in a 7-1 majority opinion authored by Justice Neil Gorsuch. But upon closer inspection, the justices issued a narrow, procedural ruling that, in Solomonic fashion, rejects the arguments of both sides in favor of a compromise procedural ruling that ignores the underlying merits of the litigation. Instead, the justices turned the case back to the lower courts for more procedural wrangling that will further delay a decision on the important merits of the case.

In [a previous post](#) I profiled the *Baltimore* litigation and the issue before the Supreme Court. Briefly, the City of Baltimore sued major oil, gas and coal companies. The city alleges that under various state law theories, the burning of fossil fuel products manufactured and sold by the companies have contributed substantially to climate change-related harm the city and its residents have suffered, and will continue to suffer, for which the companies are financially liable. The city further contends that the companies did so with full knowledge of the adverse climate change-related impacts of their products, but concealed that fact from both government officials and the public.

The *Baltimore* case is part of an important, nationwide litigation trend in which American cities and states across the U.S. have filed over 20 such lawsuits against these same defendants.

Like virtually all of these cases, the City of Baltimore filed its lawsuit in state court. But the defendant companies immediately “removed” (i.e., transferred) the Baltimore lawsuit to federal court, hoping to receive a more favorable judicial reception in the latter forum. The companies did so based on numerous legal grounds, including the seemingly-specious

argument that they constitute quasi-“federal officers,” thereby entitling them to defend the case in federal court. Both the federal district court and the Fourth Circuit Court of Appeals rejected that claim and ordered the case remanded back to state court. But the energy defendants successfully obtained Supreme Court review. The question before the Court was whether the companies’ removal to federal court was proper or, alternatively, whether the lower federal courts were correct in sending the case back to state court, as the city had argued.

In a hyper-technical decision only a Civil Procedure professor could love, the Supreme Court didn’t answer that question. Instead, it decided another, even more arcane procedural issue. Specifically, the Court majority ruled that when a defendant attempts to remove a case from state court to federal court, a reviewing federal court should review *all* of the grounds advanced by the defendant for removal, not just the one that federal law expressly authorizes for appellate review. The Fourth Circuit Court of Appeals had not done that, so the Supreme Court reversed and remanded the case for consideration of all of the companies’ stated grounds for removal.

In a dissent that (to this observer) is more persuasive than the Court’s decision, Justice Sotomayor argues that Justice Gorsuch’s majority opinion misinterprets applicable federal statutes and facilitates procedural “gamesmanship” by the energy defendants. She similarly castigates the defendants’ “near-frivolous” legal arguments.

So what are the real-world consequences of today’s Supreme Court decision? Who really won, who lost and-most importantly-where does the *Baltimore* case and its sister lawsuits around the country go from here?

First, while the energy defendants prevailed on a narrow procedural question, the Court majority went so far as to stress in the opening paragraph of its decision that “the merits of [the city’s] claim have nothing to do with this appeal.” So the substantive climate change issues will be resolved (at least initially) by the lower courts.

But that will only occur after those same lower courts resolve the threshold question of whether the city’s lawsuit should be litigated in state or federal court. And that issue, which has already consumed nearly three years, will likely wind up taking at least a couple more. The result, as Justice Sotomayor aptly notes in her dissent, is that the city will be forced to await a decision on the important merits of its climate change lawsuit for a considerable, additional period of time.

But the energy companies failed in today’s decision to get the Supreme Court to decide the

key legal question they hoped would torpedo both the *Baltimore* case and the related, 20+ climate change cases: whether *federal* climate change law displaces and supersedes the state law-based claims on which the state and local governments base their lawsuits. The justices in the *Baltimore* case explicitly rejected the defendant companies' invitation to do so, instead leaving that question to be addressed by the lower courts as well.

In sum, today's decision represents more of a draw than a win for either side.

A final note: it's quite possible that one of the other, related climate change cases currently pending across the country could "jump the queue," reach and decide the substantive climate change liability and damages questions presented in each of the lawsuits, and ultimately leave the *Baltimore* case in the procedural dust. So interested observers should keep their focus on all of these consequential cases for the foreseeable future.