

There are three important climate lawsuits pending in federal court. Here's the state of play and what to expect next.

In the first case, Oakland and San Francisco sued leading oil companies. They claim that the companies' production and sale of fossil fuels is a public nuisance under California state law. They seek an abatement fund to pay for sea walls and other infrastructure needed to address rising sea levels. This lawsuit was originally filed in California state court, but the defendants filed a motion to remove to federal court.

The federal judge [ruled](#) in favor of removal on the ground that the defendants' conduct fell under the federal common law of nuisance, not under state law. The judge certified that ruling for immediate appeal but did not stay proceedings in the trial court. The judge also rejected the argument that the federal common law in this case had been displaced by the Clean Air Act, as the Supreme Court had ruled regarding actions against power companies (as opposed to oil companies). As a next step, he directed the parties to present a tutorial on climate science. The most notable aspect of the tutorial turned out to be Chevron's embrace of mainstream climate science, in the form of the most recent IPCC report. The defendants are moving to dismiss the case on various grounds.

Marin County, San Mateo County, and the city of Imperial Beach filed a very similar case, which the oil companies also tried to remove to federal court. But the federal judge in that case [ruled](#) against them and remanded the case to state court. That's a non-appealable ruling because 28 U.S. Code § 1447(c) provides that "an order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." The companies make a far-fetched argument that they are covered by an exception for allowing appeal in suits against federal officers, but it's hard to believe that will go anywhere. Big Oil has a lot of clout, but they're definitely not on the federal payroll. The federal judge has stayed the remand order temporarily to see whether the suit against the oil companies gets appealed.

If the state courts regain control of one or both of these cases, the California plaintiffs will have the benefit of a possibly more sympathetic forum and of California's plaintiff-friendly tort law. If the Ninth Circuit agrees with the first trial judge that the cases are validly brought under federal nuisance law, however, then they'll gain the right to proceed in federal court. Neither is a bad outcome from the plaintiff's point of view.

The third case is quite different. The lead plaintiffs are children who claim that, through its actions promoting fossil fuels, the federal government is depriving them of their due process rights to life, liberty, and property as well as violating its duties under the public trust

doctrine regarding the territorial seas and other natural resources. In a surprise [ruling](#), the federal district judge held that the case did not present a political question, that the plaintiffs had standing, and that plaintiffs' cause of action was adequate to survive a motion to dismiss. The Ninth Circuit [rejected](#) the government's effort to overturn this ruling, while leaving open the possibility of a later appeal. The parties are currently negotiating over document disclosure. It's difficult to believe that the present Supreme Court would accept the plaintiffs' legal theories, if the cases ever get that far. But the plaintiffs now seem likely to get their day in court in order to try to prove their claims.

The plaintiffs in all three cases face numerous procedural and substantive obstacles between now and any final ruling in their favor. There are unresolved jurisdictional issues in the federal nuisance case. Assuming the state nuisance case returns to state court, that court will have to consider whether to give an expansive reading to state tort law. There will also be claims that the state court lacks jurisdiction over the non-California defendants, which is definitely arguable given the Supreme Court's current crabbed view of state court jurisdiction. And if the cases get that far, the plaintiffs will have to come up with a convincing remedial proposal.

Nevertheless, the fact that these cases are still alive and kicking isn't good news for the defendants. There's always the chance that the plaintiffs will beat the odds and win, with monumental consequences. The longer the oil-company litigation lasts, the more nervous investors and insurance companies will become about the potential liability threat. And in the meantime the plaintiffs may be able to get access to embarrassing information, put the defendants on the spot to justify their actions, and get a very public platform for themselves. Even though you'd still have to consider all of these lawsuits long shots, they are far from being insignificant.