



Photo credit: baynature.org

Today the U.S. Court of Appeals for the Ninth Circuit handed numerous California local governments a major win over major oil, gas and coal companies in several of the nation's most consequential set of climate change lawsuits. The Ninth Circuit did so in two separate opinions; [*County of San Mateo v. Chevron Corporation*](#) and [*City of Oakland v. BP PLC*](#).

The decisions were procedural rulings rather than substantive in nature. But they were nonetheless critically important to both sides in the decided cases. That's because the Ninth Circuit ruled that the energy companies had improperly "removed" (i.e., transferred) the local government lawsuits from state court to federal court. The U.S. Court of Appeals ordered the *County of San Mateo* cases re-transferred back to the various California state courts in which they'd been initially filed, and strongly suggested to the U.S. District Court Judge in the *City of Oakland* cases that he should do the same.

I've detailed the facts, competing legal claims and prior status of this important climate change litigation in [a previous Legal Planet post](#). Briefly, beginning in 2017 numerous California cities and counties brought coordinated lawsuits against multinational energy companies in California state courts. Those lawsuits are based on one of the oldest and most venerable legal doctrines—state common law—and include public and private nuisance, trespass, negligence and failure-to-warn claims. They seek compensation from the energy industry for the myriad, adverse effects of climate change imposed on those governments and their residents. The lawsuits seek money damages from the defendant corporations based on their energy products' deleterious climate change impacts—in particular, from sea level rise, more intense coastal storms and flooding. The local governments allege that those impacts, in turn, are already causing financial damage and safety risks to those jurisdictions and their residents.

My earlier post also notes that this litigation trend, initially launched in California, has steadily gained legal and political traction across the nation, with similar lawsuits being launched by the state of Rhode Island, the City of Baltimore, King County, Washington and several other jurisdictions.

In all of these cases—those filed in California and elsewhere—the energy company defendants' immediate response has been to transfer the lawsuits from state to federal court. Their unspoken premise is that the companies would fare more successfully on the merits of those lawsuits before federal judges than they would in front of state courts. The plaintiff local governments, by contrast, filed in state court believing that state judges would be more

familiar with the governments' state law-based claims, and more favorably disposed towards them.



Ninth Circuit Court of Appeals San Francisco
Courthouse

Today's Ninth Circuit decisions contain detailed analysis of federal procedural issues that only a Civil Procedure law professor could love. But the most important point is that the U.S. Court of Appeals soundly rejected each of the corporate defendants' arguments that the cases should stay in federal court. The three-judge panel instead ruled that the California cases had been improperly transferred to federal court, that the local governments' tactical decision to file the cases in state court was proper, and that their initial filing decision should be respected. (In doing so, the Ninth Circuit ruled consistently with [other U.S. Circuit Courts of Appeals that had previously reached the identical conclusion in related litigation.](#))

The California local government plaintiffs still face formidable challenges if they are to prevail on the merits of their state law-based claims for money damages against the energy multinationals. But they are confident in the climate science underlying their lawsuits,

And the companies' efforts to avoid liability in these cases may well be undercut by damning revelations the local government plaintiffs identify in their lawsuits: the complaints document the fact that the defendant companies commissioned private studies as far back as the 1960's that identify the inextricable link between fossil fuel GHG emissions and climate change--at the same time those companies were carrying out an extensive (and expensive) campaign of climate change-related misinformation targeting the public, media and government decision-makers.

The key point is that home court advantage matters as much in litigation as it does in sports. The Ninth Circuit's rulings that the climate change cases brought by California local

governments should be litigated in California state courts unquestionably add momentum to their legal claims. Conversely, the energy company defendants have suffered a serious, if not necessarily fatal, legal setback.

Two quick postscripts: first, today's unanimous opinions can't be dismissed as just another misguided exercise in judicial decision-making by a liberal Ninth Circuit. To the contrary, both decisions were authored by Judge Sandra Ikuta, one of the Court's most conservative judges; Judge Ikuta was appointed by former President George W. Bush. Her opinions were joined by President Trump-nominated and recently-confirmed Judge Kenneth Lee, and Judge Morgan Christen (an Obama appointee).

Second, these appeals brought out a veritable Who's Who of America's top public and private litigators. The prevailing California local governments were represented by a team of lawyers headed by San Francisco City Attorney Dennis Herrera, Oakland City Attorney Barbara Parker and the San Francisco law firm of Sher Edling. The energy corporate defendants' lawyers included many of America's most prominent "white shoe" corporate law firms. And the Ninth Circuit was inundated in these appeals by scores of friend-of-the-court briefs from across the political and economic spectrum: major environmental organizations, the U.S. Chamber of Commerce, a U.S. Senator and dueling coalitions of "blue state" Attorneys General (headed by California A.G. Xavier Becerra) and "red state" A.G.s (led by Indiana Attorney General Curtis Hill). Notably, the Trump Administration filed an amicus brief in support of the unsuccessful energy company defendants.

With the possible exception of the *Juliana v. United States* litigation profiled extensively in the past on this site by my Legal Planet colleagues and me, the *County of San Mateo* and *City of Oakland* litigation—along with the related lawsuits being pursued by other local governments across the U.S.—represent the most important climate change litigation currently pending in the United States. Those cases are definitely worth following in the future.