SCOTUS TO DECIDE PROCEDURAL ISSUE IN OIL COMPANIES CLIMATE CHANGE CASE

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The U.S. Supreme Court agreed on Friday to hear an appeal in BP P.L.C. v. Mayor and City Council of Baltimore (No. 19-1189), in which a group of multinational energy companies objected to a lawsuit brought in state court by the City of Baltimore. The suit alleges the oil companies made a deliberate effort to conceal the hazardous climate effects associated with the use and production of their fossil-fuel products.

The lawsuit alleges the defendants have been aware for the last half-century the use of fossil fuels contributed to climate change, and have exacerbated the problem in various ways, including: 1) by discrediting scientific studies that show the link between fossil fuels and global warming; 2) by undermining public support for state and federal regulation of their industry; and 3) by promoting ongoing and expanded use of their fossil fuel products in the face of their knowledge of the dangers to the environment they pose. Baltimore argues the companies' production and marketing of fossil fuel products, "simultaneous concealment the known hazards of those products and their championing of anti-science campaigns" have harmed the city, which they believe is particularly "vulnerable to sea-level rise and flooding."

The case is only one of many around the nation in which state and local governments seek compensation for environmental injuries caused by conduct by energy companies.

Federal Officer Removal Statute

In attempting to defend themselves, the oil companies have used several grounds to remove the case to federal court. Most notably, they have argued the case should be moved to federal court based on the "federal officer removal statute," which permits entities sued in a state court for actions taken under direction of a federal officer and/or working for a federal office to move a case from a state court to federal court. The energy companies claimed the statute applies here because some of the contracts they held with the federal government required they act in the manner for which they are now being sued.

The district court did not accept this argument and remanded the case to state court. The energy companies then appealed to the U.S. Court of Appeals for the Fourth Circuit. On March 6, 2020, the Fourth Circuit ruled that the lawsuit was properly remanded back to state court, asserting that commercial relationships of the type that the energy companies had with the federal government do not make them agents of the government, and therefore do not entitle them to indemnify themselves against cases brought in state court.

The Supreme Court has now decided to rule on this procedural question, and will ultimately decide whether the federal law allows a court of appeals to review any issue included in a district court's order sending a case to state court when the move to state court is based on two statutes, or whether the court can only review the ground for removal itself.