

Supreme Court Confirms That Appellate Courts Have Broad Authority To Review Entirety Of Appealable Remand Orders

Client Alert | May 17, 2021

Decided May 17, 2021

BP plc v. Mayor & City Council of Baltimore, No. 19-1189

Today, the Supreme Court held 7-1 that appellate courts have jurisdiction to review all grounds for removal in a remand order so long as removal is premised in part on the federal-officer removal statute or the civil-rights removal statute.

Background:

The Mayor & City Council of Baltimore sued energy companies in Maryland state court, seeking to hold them liable under state tort law for harms attributable to global climate change. Defendants removed the action, asserting (among other things) federal-question jurisdiction, federal-officer removal jurisdiction, and Outer Continental Shelf Lands Act jurisdiction. The district court granted the City's motion to remand, rejecting each of Defendants' grounds for removal. Defendants appealed.

Under 28 U.S.C. 1447(d), “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 [federal-officer removal] or 1443 [civil rights] of this title shall be reviewable by appeal or otherwise.” The Fourth Circuit acknowledged that the Supreme Court had interpreted similar language in 28 U.S.C. 1292(b) to confer appellate jurisdiction over the entire *order*, rather than particular *reasons* for the order, and that the Seventh Circuit had relied on that authority in holding that 28 U.S.C. 1447(d) authorizes appellate courts to review any issue in a remand order so long as removal was premised in part on the federal-officer removal statute or the civil-rights removal statute. But the court concluded that those decisions were insufficient to abrogate preexisting Circuit authority interpreting 28 U.S.C. 1447(d) as conferring appellate jurisdiction over only the enumerated grounds for removal.

The Fourth Circuit affirmed the district court's conclusion that removal was improper under the federal-officer removal statute, and otherwise dismissed for lack of appellate jurisdiction.

Issue:

Does 28 U.S.C. 1447(d) permit courts of appeals to review any issue encompassed in a district court's order remanding a removed case to state court where the removing defendant premised removal in part on the federal-officer removal statute, 28 U.S.C. 1442, or the civil-rights removal statute, 28 U.S.C. 1443?

Court's Holding:

Yes. The plain meaning of the term “order” refers to “a ‘written direction or command delivered by … a court or judge,’” and neither legislative history nor policy support limiting

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the scope of appellate review to particular issues contained in such an order.

[W]hen a district court's removal order rejects all of the defendants' grounds for removal, §1447(d) authorizes a court of appeals to review each and every one of them."

Justice Gorsuch, writing for the Court

What It Means:

- A defendant that asserts multiple grounds for removal will be able to secure appellate review from a remand order with respect to all grounds, so long as at least one of those grounds is appealable (such as the federal-officer removal statute or the civil-rights removal statute).
- The Court's ruling may create opportunities for state-court defendants to test new theories supporting federal jurisdiction. The Court noted that the prospect of sanctions or the award of costs and expenses (including attorneys' fees) for frivolously removing a case to federal court should deter gamesmanship.
- The Court's reasoning may have broader implications for statutory interpretation. *First*, the Court emphasized that the presumption that statutory exemptions should be read narrowly does not give courts license to give those exemptions anything but a fair reading. *Second*, it held that Congress did not ratify the more limited interpretation of 28 U.S.C. 1447(d) adopted by lower courts when it subsequently amended the statute without changing its use of the term "order," because the statutory text was clear.

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Allyson N. Ho +1 214.698.3233 aho@gibsondunn.com	Mark A. Perry +1 202.887.3667 mperry@gibsondunn.com	Theodore J. Boutrous, Jr. +1 213.229.7804 tboutrous@gibsondunn.com
Lucas C. Townsend +1 202.887.3731 ltownsend@gibsondunn.com	Bradley J. Hamburger +1 213.229.7658 bhamburger@gibsondunn.com	Thomas G. Hungar +1 202.887.3784 thungar@gibsondunn.com

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