No. 19-1189

In the Supreme Court of the United States

BP P.L.C., ET AL., PETITIONERS

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

Section 1447(d) of Title 28 of the United States Code generally precludes appellate review of an order remanding a removed case to state court. But Section 1447(d) expressly provides that an "order remanding a case * * * removed pursuant to" the federal-officer removal statute, 28 U.S.C. 1442, or the civil-rights removal statute, 28 U.S.C. 1443, "shall be reviewable by appeal or otherwise." Some courts of appeals have interpreted Section 1447(d) to permit appellate review of any issue encompassed in a district court's remand order where the removing defendant premised removal in part on the federal-officer or civil-rights removal statutes. Other courts of appeals, including the Fourth Circuit in this case, have held that appellate review is limited to the federal-officer or civil-rights ground for removal. The question presented is as follows:

Whether 28 U.S.C. 1447(d) permits a court 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.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are BP p.l.c.; BP America Inc.; BP Products North America Inc.; Chevron Corporation; Chevron U.S.A., Inc.; CITGO Petroleum Corporation; CNX Resources Corporation; ConocoPhillips; ConocoPhillips Company; CONSOL Energy Inc.; CONSOL Marine Terminals LLC; Crown Central LLC; Crown Central New Holdings LLC; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Hess Corporation; Marathon Petroleum Corporation; Phillips 66; Royal Dutch Shell plc; Shell Oil Company; and Speedway LLC.

Petitioner BP p.l.c. has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioners BP America Inc. and BP Products North America Inc. are wholly owned indirect subsidiaries of petitioner BP p.l.c.

Petitioner Chevron Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Chevron U.S.A., Inc., is a wholly owned subsidiary of petitioner Chevron Corporation.

Petitioner CITGO Petroleum Corporation is a wholly owned indirect subsidiary of Petróleos de Venezuela S.A. No publicly held company owns 10% or more of Petróleos de Venezuela S.A.'s stock.

Petitioner CNX Resources Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner ConocoPhillips has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner ConocoPhillips Company is a wholly owned subsidiary of petitioner ConocoPhillips.

Petitioner CONSOL Energy Inc. has no parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of CONSOL Energy Inc.'s stock.

Petitioner CONSOL Marine Terminals LLC is a wholly owned indirect subsidiary of petitioner CONSOL Energy Inc.

Petitioner Crown Central New Holdings LLC is the sole member of petitioner Crown Central LLC. The sole member of Crown Central New Holdings LLC is Rosemore Holdings, Inc., a wholly owned subsidiary of Rosemore, Inc. No publicly held company owns 10% or more of Rosemore, Inc.'s stock.

Petitioner Exxon Mobil Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner ExxonMobil Oil Corporation is a wholly owned indirect subsidiary of petitioner Exxon Mobil Corporation.

Petitioner Hess Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Marathon Petroleum Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Speedway LLC is a wholly owned indirect subsidiary of Marathon Petroleum Corporation.

Petitioner Phillips 66 has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Royal Dutch Shell plc has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Shell Oil Company is a wholly owned indirect subsidiary of petitioner Royal Dutch Shell plc.

Respondent is the Mayor and City Council of Baltimore.

Marathon Oil Corporation and Marathon Oil Company were parties to the proceedings below.

Marathon Oil Corporation has no parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of Marathon Oil Corporation's stock.

Marathon Oil Company is a wholly owned subsidiary of petitioner Marathon Oil Corporation.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 952 F.3d 452. The opinion of the district court (Pet. App. 31a-81a) is reported at 388 F. Supp. 3d 538.

JURISDICTION

The judgment of the court of appeals was entered on March 6, 2020. The petition for a writ of certiorari was filed on March 31, 2020, and granted on October 2, 2020. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 1447(d) of Title 28 of the United States Code provides:

> An 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 or 1443 of this title shall be reviewable by appeal or otherwise.

STATEMENT

This case concerns the scope of appellate review of a district court's order remanding a removed case to state court where 28 U.S.C. 1447(d) permits appeal of the order. While the first clause of Section 1447(d) ordinarily precludes appellate review of a remand order, the second clause expressly authorizes appeal of "an order remanding a case * * * removed pursuant to" the federal-officer or civil-rights removal statutes. 28 U.S.C. 1447(d). The question presented is whether Section 1447(d) permits a court of appeals to review all of the grounds for removal encompassed in a remand order where the removing defendant premised removal in part on the federal-officer or civil-rights removal statutes.

Petitioners are 21 domestic and foreign energy companies that produce or sell fossil fuels around the world (or have previously done so); respondent is the municipal government of Baltimore, Maryland. Like a number of other state and local governments in similar cases across the country, respondent filed this action against petitioners in local state court, asserting claims purportedly arising under state law to recover for harms that it alleges it has sustained and will sustain from petitioners' global operations due to global climate change.

As in other similar cases, petitioners removed this case to federal district court, asserting federal subject-matter jurisdiction on multiple grounds. Among other grounds, petitioners contended that removal was warranted under the federal-officer removal statute because respondent's complaint encompassed petitioners' exploration for and production of fossil fuels at the direction of federal officers. Petitioners also asserted that respondent's claims necessarily and exclusively arise under federal common law. The district court remanded the case to state court, and petitioners appealed.

The court of appeals affirmed. It held that Section 1447(d), as construed in an earlier opinion from that court, deprived it of appellate jurisdiction to consider any of the grounds for removal that the district court addressed and that the parties briefed and argued on appeal, except for the federal-officer ground. The court proceeded to conclude that the case was not removable on the federal-officer ground.

The court of appeals erred in holding that Section 1447(d) precluded it from reviewing the other asserted grounds for removal. The plain text of Section 1447(d) demonstrates that a court of appeals has jurisdiction to review the entire remand "order," not merely particular issues or questions within the order. And because the entire remand order necessarily disposes of all of the defendant's grounds for removal, the scope of appellate review extends to each of those grounds. That interpretation comports not just with the plain text, but also with this Court's precedents and the broader purposes of Section 1447(d). The court of appeals erred by failing to consider all of the grounds for removal encompassed in the remand order.

To remedy that error, this Court has the option either to proceed to address the remaining grounds for removal

and reverse the judgment below, or to vacate the judgment and direct the court of appeals to address those grounds in the first instance. One of the additional bases for removal raised and briefed below follows directly from this Court's precedents and is currently being litigated in numerous similar cases across the country: namely, that claims alleging injury based on interstate emissions, including the extraordinary claims at issue here (which seek to hold petitioners responsible for the effects of global climate change), necessarily and exclusively arise under federal law. To preserve judicial resources, the Court should take the modest step of applying its precedents to the claims at issue here and confirm that they belong in federal court. The judgment of the court of appeals should be reversed.

A. Background

In the Judiciary Act of 1789, Congress permitted defendants to remove certain actions initially brought in state courts to the newly created federal courts. See ch. 20, § 12, 1 Stat. 79-80. Since then, Congress has established various grounds for removal and detailed procedures for removing cases. See 28 U.S.C. 1441-1455.

A defendant in state court removes an action by filing a "notice of removal" in the relevant federal district court. 28 U.S.C. 1446(a). The "notice of removal" must contain a "short and plain statement of the grounds for removal"—that is, the bases on which the defendant asserts that the district court has subject-matter jurisdiction over the action. *Ibid.*; see 14C Charles Alan Wright et al., *Federal Practice and Procedure* § 3733, at 702-704 (4th ed. 2018). The district court then must determine whether it has subject-matter jurisdiction. See 28 U.S.C. 1447(c). If it determines that it does not, it must remand the case to state court. See *ibid.*

The availability and scope of appellate review of remand orders has changed throughout our Nation's history. Under the Judiciary Act of 1789, this Court reviewed remand orders on writs of error and appeal. See, *e.g.*, *West* v. *Aurora City*, 73 U.S. (6 Wall.) 139 (1868); Rhonda Wasserman, *Rethinking Remand: Proposed Amendments to the Federal Removal Statute*, 43 Emory L.J. 83, 90 nn.28-29 (1994) (Wasserman) (citing other examples). Except for a brief period when review occurred only by writ of mandamus, the Court continued to review remand orders as a matter of course for nearly a century. See *Railroad Co.* v. *Wiswall*, 90 U.S. (23 Wall.) 507, 508 (1875); Act of Mar. 3, 1875, ch. 137, § 5, 18 Stat. 472.

Congress changed course in 1887, in the wake of this Court's mushrooming caseload after the Civil War. See Act of Mar. 3, 1887, ch. 373, § 1, 24 Stat. 553; Wasserman 94-101. Congress provided that "no appeal or writ of error" from a "decision" remanding a case to state court "shall be allowed." Act of Mar. 3, 1887, § 1, 24 Stat. 553. The Court interpreted that provision to prohibit review of remand orders by mandamus as well. See *Ex parte Pennsylvania Co.*, 137 U.S. 451, 454 (1890).

In 1948, Congress omitted the 1887 provision from the recodified version of Title 28 of the United States Code. See *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U.S. 336, 347 (1976). The next year, Congress enacted 28 U.S.C. 1447(d), which similarly provided that "an order remanding a case to [state court] is not reviewable on appeal or otherwise." Act of May 24, 1949, ch. 139, § 84(b), 63 Stat. 102.

Since then, Congress has amended Section 1447(d) to permit appellate review of remand orders in two situations. In the Civil Rights Act of 1964, Congress authorized appeals of remand orders in cases removed pursuant to the civil-rights removal statute, 28 U.S.C. 1443. See

Pub. L. No. 88-352, § 901, 78 Stat. 266. In the Removal Clarification Act of 2011, Congress additionally authorized appeals of remand orders in cases removed pursuant to the federal-officer removal statute, 28 U.S.C. 1442. See Pub. L. No. 112-51, § 2(d), 125 Stat. 546. This case concerns the scope of appellate review in cases removed pursuant to Sections 1442 or 1443.

B. Facts And Procedural History

1. In 2017, a number of state and local governments began filing lawsuits in state courts against various energy companies, most of them nonresidents of the forum States. The plaintiffs alleged that the companies' worldwide production, sale, and promotion of fossil fuels led to the emission of greenhouse gases and thereby contributed to global climate change. The plaintiffs have primarily asserted that the production, sale, and promotion of fossil fuels violate various state-law duties, including common-law nuisance; they have sought compensatory and punitive damages as well as equitable relief.

The defendants removed those lawsuits to federal court. They asserted multiple bases for federal jurisdiction, including that the allegations in the complaints pertain to actions the defendants took at the direction of federal officers, see 28 U.S.C. 1442, and that the plaintiffs' climate-change claims necessarily and exclusively arise under federal common law, see, *e.g.*, *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 420-423 (2011); *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 103 (1972). As of the filing of this brief, 19 related cases are pending in fed-

eral courts nationwide in which the parties are actively litigating the question of removal, either in district court or on appeal.[1]

2. Petitioners are 21 domestic and foreign energy companies that produce or sell fossil fuels around the world (or have previously done so). In 2018, respondent filed a complaint in Maryland state court against petitioners and others, alleging that petitioners had caused or will cause harms by contributing to global climate change. Respondent seeks damages for the effect of climate change on its property, as well as an order requiring petitioners to "abate" the "nuisance" they allegedly created by their activities. J.A. 145-161, 182.[2]

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[1] See *County of San Mateo* v. *Chevron Corp.*, 960 F.3d 586 (9th Cir. 2020) (petition for cert. due Jan. 4, 2021) (appeal consolidating six actions); *City of Oakland* v. *BP p.l.c.*, 960 F.3d 570 (9th Cir. 2020) (petition for cert. due Jan. 11, 2021) (appeal consolidating two actions); *Board of County Commissioners* v. *Suncor Energy (U.S.A.) Inc.*, 965 F.3d 792 (10th Cir. 2020) (petition for cert. due Dec. 4, 2020); *Rhode Island* v. *Shell Oil Products Co.*, Civ. No. 19-1818, 2020 WL 6336000 (1st Cir. Oct. 29, 2020) (petition for cert. due Mar. 29, 2021); *Pacific Coast Federation of Fishermen's Associations, Inc.* v. *Chevron Corp.*, Civ. No. 18-7477 (N.D. Cal.); *Connecticut* v. *Exxon Mobil Corp.*, Civ. No. 20-1555 (D. Conn.); *Delaware* v. *BP America Inc.*, Civ. No. 20-1429 (D. Del.); *District of Columbia* v. *Exxon Mobil Corp.*, Civ. No. 20-1932 (D.D.C.); *City & County of Honolulu* v. *Sunoco LP*, Civ. No. 20-163 (D. Haw.); *County of Maui* v. *Sunoco LP*, Civ. No. 20-470 (D. Haw.); *Minnesota* v. *American Petroleum Institute*, Civ. No. 20-1636 (D. Minn.); *City of Hoboken* v. *Exxon Mobil Corp.*, Civ. No. 20-14243 (D.N.J.); *County of Charleston* v. *Brabham Oil Co.*, Civ. No. 20-3579 (D.S.C.). Two similar cases are pending in federal court based on diversity jurisdiction. See *City of New York* v. *BP p.l.c.*, No. 18-2188 (2d Cir.); *King County* v. *BP p.l.c.*, Civ. No. 18-758 (W.D. Wash.).

[2] Several petitioners contend that they are not subject to personal jurisdiction in the Maryland courts, and they have separately moved to dismiss the complaint on that ground. They are litigating the removal issue subject to that objection.

Petitioners removed this action to the United States District Court for the District of Maryland. J.A. 187-242. In their notice of removal, petitioners raised many of the same bases for federal jurisdiction as have the defendants in other climate-change lawsuits. J.A. 192-195. Of particular relevance here, petitioners asserted that removal was permissible under the federal-officer removal statute. J.A. 225-231. Because respondent's theory of causation and damages depended on petitioners' production and sale of fossil fuel over many decades, petitioners argued that respondent's claims encompassed activities that petitioners took at the direction of federal officers. J.A. 230-231.

Petitioners cited several different examples of such activities. Petitioners noted that they had long produced oil and gas belonging to the federal government on the Outer Continental Shelf pursuant to governmental leases; those leases gave the government control over various aspects of petitioners' operations, including approval of exploration and production plans, regulation of extraction rates, and a right of first refusal during wartime to purchase all oil, gas, and minerals extracted. J.A. 226-228. In addition, petitioners observed that one of their corporate predecessors had agreed with the Navy jointly to extract and produce oil and gas from a strategic petroleum reserve that the Navy maintained; in response to the 1973 oil crisis, Congress ordered petroleum production at the strategic reserve to proceed at the "maximum efficient rate" for a "period not to exceed six years." Naval Petroleum Reserves Production Act of 1976, Pub. L. No. 94-258, § 201(3)(c)(1)(B), 90 Stat. 303; see J.A. 228-230. Petitioners further noted that they had entered into supply agreements with the armed forces for motor-vehicle fuel. J.A. 230.

Petitioners asserted that removal was also warranted based on federal-question jurisdiction because federal common law necessarily and exclusively governed respondent's claims. J.A. 196-203. Petitioners noted that this Court has long held that interstate pollution is "a matter of federal, not state, law" and "should be resolved by reference to federal common law." *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 488 (1987) (citation omitted); see J.A. 8, 197-198. Petitioners added that the Court's decision in *American Electric Power*, *supra*, reinforced the conclusion that federal common law governs public-nuisance claims related to global climate change. 564 U.S. at 422-423; see J.A. 8, 197-198.

3. The district court remanded the case to state court based on a lack of subject-matter jurisdiction. Pet. App. 31a-81a. With respect to the federal-officer ground for removal, the district court determined that the connection between the "wide array of conduct for which defendants have been sued" and the "asserted official authority" was too "attenuated" to permit removal. *Id.* at 71a. With respect to the federal-common-law ground for removal, the district court concluded that the well-pleaded complaint rule precluded removal because the complaint did not expressly assert claims under federal common law. *Id.* at 49a-50a. The district court also rejected petitioners' other grounds for removal. *Id.* at 50a-67a, 72a-81a.

After initially staying execution of the remand order, the district court denied petitioners' motion for a stay pending appeal. Pet. App. 82a-94a.[3]

[3] The court of appeals denied petitioners' motion for a stay pending appeal, Pet. App. 95a-96a, as did this Court, see No. 19A368 (Oct. 22, 2019).

4. The court of appeals affirmed the district court's remand order. Pet. App. 1a-30a. The court of appeals began its analysis with the "threshold question" of the scope of its appellate jurisdiction under Section 1447(d). *Id.* at 6a. The court observed that, in *Noel* v. *McCain*, 538 F.2d 633 (4th Cir. 1976), it had held that Section 1447(d) deprives appellate courts of "jurisdiction to review any ground" for removal addressed in a remand order "other than the one specifically exempted from [Section] 1447(d)'s bar on review" (which at the time was only civil-rights removal, see pp. 5-6, *supra*). Pet. App. 7a.

Petitioners argued that subsequent changes in the law had abrogated the Fourth Circuit's decision in *Noel*, but the court of appeals disagreed. Pet. App. 7a-10a. Petitioners primarily relied on this Court's decision in *Yamaha Motor Corp., U.S.A.* v. *Calhoun*, 516 U.S. 199 (1996). There, the Court addressed the question whether, in an interlocutory appeal under 28 U.S.C. 1292(b), a court of appeals could review any issue encompassed in a district court's certified order. Section 1292(b) permits a court of appeals to entertain an interlocutory appeal "from [an] order" when the district court certifies that "such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. 1292(b).

This Court held in *Yamaha* that, because "it is the *order* that is appealable, and not the particular question formulated by the district court," appellate review of any issue encompassed in the certified order was permissible. 516 U.S. at 205 (citation omitted). The court of appeals acknowledged that the Seventh Circuit had relied on *Yamaha* in construing Section 1447(d) to permit appellate review of the entire remand "order." Pet. App. 8a-9a. But

it held that it was bound by *Noel* because *Yamaha* involved Section 1292(b) and not Section 1447(d). *Ibid.*

In a related vein, the court of appeals concluded that Congress did not incorporate the decision in *Yamaha* into Section 1447(d) when it amended that provision in 2011 while retaining the reference to remand "order[s]." Pet. App. 9a-10a; see p. 6, *supra*. The court of appeals noted that "*Yamaha* did not interpret the scope of [Section] 1447(d), let alone involve a remand order." Pet. App. 9a. Accordingly, the court "dismiss[ed] th[e] appeal for lack of jurisdiction insofar as it seeks to challenge the district court's determination" on any ground other than federal-officer removal. *Id.* at 10a (internal quotation marks and citation omitted).

The court of appeals proceeded to conclude that the case was not removable under the federal-officer removal statute. Pet. App. 10a-30a. The court reasoned that, to the extent petitioners relied on their contractual relationships with the federal government, either petitioners were not acting under federal officers in carrying out those relationships, or there was an insufficient nexus between those relationships and respondent's claims. *Id.* at 14a-30a.

SUMMARY OF ARGUMENT

This case presents the question whether 28 U.S.C. 1447(d) permits a court of appeals to review all of the asserted grounds for removal where the removing defendant premised removal in part on the federal-officer or civil-rights removal statutes. The plain text of Section 1447(d), this Court's precedents, and Section 1447(d)'s broader purposes all demonstrate that the answer is yes. To correct the court of appeals' error and to provide needed guidance for numerous similar pending cases, the Court should proceed to hold, as its precedents dictate,

that respondent's claims are removable because they arise under federal law. The Court should reverse the judgment below or, in the alternative, vacate the judgment and direct the court of appeals to address the additional grounds for removal.

I. Under Section 1447(d), a court of appeals may review the entire remand "order," including all of the grounds for removal asserted by the defendant, where the defendant premised removal in part on the federal-officer or civil-rights removal statutes.

A. The plain text of Section 1447(d) compels petitioners' interpretation. The relevant clause of Section 1447(d) states that an "order remanding a case" to state court that was "removed pursuant to" the federal-officer or civil-rights removal statutes is "reviewable by appeal or otherwise." Giving the term "order" its ordinary meaning, a remand "order" is a written command or direction that the case must be returned to state court. Such a command necessarily rejects all of the defendant's grounds for removal, because the case must remain in federal court if there is any basis for federal jurisdiction. An appeal of a remand order thus brings all of those grounds for removal before the court of appeals, and the court of appeals cannot affirm unless each lacks merit. Review of a remand "order" therefore necessarily entails review of all of the defendant's grounds for removal.

The only limiting language in the relevant clause of Section 1447(d)—that the remand order is reviewable if the "case" was "removed pursuant to" the federal-officer or civil-rights removal statutes—confirms the plain-language reading. When a defendant's notice of removal asserts that the case is removable under one of those two statutes, the defendant has "removed" the case "pursuant to" the one invoked. And it is irrelevant whether the defendant asserts additional grounds for removal; a party

can act "pursuant to" multiple authorities. The plain text of Section 1447(d) thus demonstrates that a court of appeals can review all of a defendant's grounds for removal if one of those grounds is federal-officer or civil-rights removal.

B. Judicial precedent strongly supports the plain-text interpretation of Section 1447(d). The Court has determined the scope of appellate review under three statutes that permit review of a particular type of district court "order." Under each of those statutes, the Court has held that the appellate court's review extends not only to the particular aspect of the order that permitted the appeal, but also to any other issues encompassed in the order. The plain-text interpretation is also supported by the Court's decisions establishing the standard rules of appellate review and by decisions from the courts of appeals interpreting other statutes governing appellate jurisdiction.

C. In addition, the plain-text interpretation of Section 1447(d) furthers its purposes. The relevant clause of Section 1447(d) reflects a policy that the federal interests underlying the federal-officer and civil-rights removal statutes are sufficiently important that cases removed under them should not be wrongly consigned to state court, where the defendant may face local prejudice. Plenary review of remand orders in such cases advances that goal, because cases in which the defendant has a colorable but ultimately unsuccessful argument for federal-officer or civil-rights removal may implicate similar federal interests where the defendant has one or more other meritorious grounds for removal.

To be sure, Section 1447(d) was also intended to reduce delay caused by litigation of jurisdictional issues. But such delay is inevitable in cases involving federal-officer or civil-rights removal, because, in the clause at issue here, Congress has already authorized appeals in those

cases. Allowing the courts of appeals to review additional grounds for removal once an appeal has been permitted causes only marginal, if any, additional delay, and may sometimes simplify the appeal.

D. The court of appeals' contrary interpretation of Section 1447(d), under which a court of appeals may review only a federal-officer or civil-rights ground for removal, is incorrect. That interpretation functionally transforms the phrase "order remanding the case" to mean "the district court's reasoning rejecting the federal-officer or civil-rights ground for removal." That distorts the language Congress used and would assign different meanings to the same word in the same sentence in Section 1447(d), given the parallel use of "order" in the preceding clause establishing the general limit on appellate jurisdiction. Respondent's arguments in defense of that incoherent interpretation are unavailing. In the end, there is no compelling reason to depart from the plain meaning of Section 1447(d).

II. In light of the court of appeals' error, the Court can either proceed to address the remaining grounds for removal and reverse the judgment below, or vacate the judgment and direct the court of appeals to address the additional grounds for removal. There are 19 cases pending in federal court presenting the question whether claims similar to respondent's are removable from state court. Those claims allege injury caused by interstate emissions, and the Court's precedents dictate that such claims necessarily and exclusively arise under federal common law. To preserve judicial resources, the Court should address that ground for removal and confirm that this case and others like it belong in federal court.

Federal common law supplies the source of law for claims in certain narrow areas that implicate uniquely federal interests and require uniform, national rules. For

over a century, this Court has applied federal common law to claims that, like respondent's claims here, seek redress for injuries allegedly caused by interstate pollution. The conclusion that state law cannot apply to such claims flows directly from our constitutional structure: one State cannot seek to resolve an interstate problem by imposing its regulatory policies on the other States or their citizens. That conclusion applies with added force where the claims relate to activities conducted not only in other States but also in other countries.

When those principles are applied to respondent's climate-change-related claims, it is clear that federal law applies and state law cannot. Respondent's claims seek damages based on interstate and international emissions over the course of decades. They also implicate the significant federal interest in fossil-fuel production, providing further justification for application of a uniform rule of federal law.

Because respondent's claims are exclusively subject to federal law, they arise under federal law for purposes of subject-matter jurisdiction and are thus removable from state to federal court. This Court should therefore reverse the court of appeals' judgment. In the alternative, if the Court does not reach the federal-common-law ground for removal, it should vacate the judgment below and direct the court of appeals to address the remaining grounds.

ARGUMENT

I. A COURT OF APPEALS MAY REVIEW ANY GROUND FOR REMOVAL ENCOMPASSED IN A REMAND ORDER WHERE THE DEFENDANT PREMISED REMOVAL IN PART ON THE FEDERAL-OFFICER OR CIVIL-RIGHTS REMOVAL STATUTES

Under 28 U.S.C. 1447(d), a court of appeals has jurisdiction to review an "order remanding a case to the State court from which it was removed pursuant to" the federal-officer or civil-rights removal statutes. See 28 U.S.C. 1442, 1443. The plain text of Section 1447(d) demonstrates that, where one of the defendant's grounds for removal is the federal-officer or civil-rights removal statute, a court of appeals has jurisdiction to review the entirety of the remand order, including all of the asserted grounds for removal. The plain-text interpretation also comports with this Court's precedent and Section 1447(d)'s broader purposes. The court of appeals' contrary interpretation should be rejected.

A. The Plain Text Of 28 U.S.C. 1447(d) Permits Appellate Review Of Any Ground For Removal Where Removal Is Premised In Part On The Federal-Officer Or Civil-Rights Removal Statutes

Under the plain text of Section 1447(d), a court of appeals may review any ground for removal asserted by the defendant in a case where removal is premised in part on the federal-officer or civil-rights removal statutes.

1. The relevant clause of Section 1447(d) authorizes appeal of an "order remanding a case" to state court removed pursuant to the federal-officer or civil-rights removal statutes. Because Congress did not define the term "order" for purposes of Section 1447(d), the Court "give[s] the term its ordinary meaning." *Taniguchi* v. *Kan Pacific Saipan, Ltd.*, 566 U.S. 560, 566 (2012). The ordinary

meaning of "order" is a "command or direction authoritatively given," and in particular a "direction of a court or judge made or entered in writing[] and not included in a judgment." *Black's Law Dictionary* 1247 (4th ed. 1951); see, *e.g.*, *Black's Law Dictionary* 1322 (11th ed. 2019); 7 *Oxford English Dictionary* 183 (1933); *Webster's Third New International Dictionary* 1588 (1961); cf. *United States* v. *Seatrain Lines*, 329 U.S. 424, 432 (1947) (describing an "order" as a "formal command[]"). An "order remanding a case" is thus a formal command from a district court that returns a case to state court.

"To say that a district court's 'order' is reviewable is to allow appellate review of the *whole* order, not just of particular issues or reasons." *Lu Junhong* v. *Boeing Co.*, 792 F.3d 805, 811 (7th Cir. 2015). And in this context, appellate review of the "whole order" must extend to all of the grounds for removal asserted by the defendant. That is so because the district court's command to return a case to state court necessarily rejects all of the grounds for removal raised in the notice of removal; a district court cannot properly remand a case if any single ground for removal is meritorious. See *Sprint Communications, Inc.* v. *Jacobs*, 571 U.S. 69, 72 (2013); *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U.S. 546, 563 (2005).[4] Because the remand "order" embodies the rejection of every asserted ground for removal, an appeal of that "order"

[4] Remand orders based on abstention doctrines constitute an exception to this rule. In that instance, Section 1447(d) does not apply, see *Quackenbush* v. *Allstate Insurance Co.*, 517 U.S. 706, 711-715 (1996), and the court of appeals has the ability to address the merits of all of the arguments for removal, see *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 487 (2008). Section 1447(d) also does not apply to a remand order declining to exercise supplemental jurisdiction over state-law claims after all federal claims are dismissed. See *Carlsbad Technology, Inc.* v. *HIF Bio, Inc.*, 556 U.S. 635, 639 (2009).

brings each of those grounds before the court of appeals. And to determine whether the district court's order returning the case to state court should be affirmed, a court of appeals must conclude that no permissible basis for federal jurisdiction was present. See *Taylor* v. *Morton*, 67 U.S. (2 Black) 481, 484 (1863).

By authorizing review of the remand "order" under the relevant clause of Section 1447(d), Congress thus authorized review of all of the grounds for removal asserted in the notice of removal. Notably, the leading civil-procedure treatise agrees with that straightforward interpretation. See 15A Charles Alan Wright et al., *Federal Practice and Procedure* § 3914.11, at 706 (2d ed. 1992) (Wright & Miller).

Congress knows how to provide for more limited appellate review of district-court orders when it wants to do so. A number of statutes permit appellate review only of particular "questions" and not of entire orders or judgments. See 28 U.S.C. 1295(a)(7) (permitting the Federal Circuit to review "questions of law" arising from certain findings of the Secretary of Commerce); 38 U.S.C. 7292(b)(1) (permitting the Federal Circuit to review a certified "question of law" from the Court of Appeals for Veterans Claims); 42 U.S.C. 8514(a)(2) (permitting the courts of appeals to review "questions of law" arising from certain federal actions under the Emergency Energy Conservation Act of 1979); 52 U.S.C. 30110 (permitting the courts of appeals to review "questions of [the] constitutionality" of the Federal Election Campaign Act); see also 28 U.S.C. 1254(2) (permitting this Court to review a certified "question of law" and separately authorizing the Court to "require the entire record to be sent up for decision of the entire matter in controversy"); 50 U.S.C. 1803(j) (similar with respect to the Foreign Intelligence Surveillance Court of Review).

In contrast, the relevant clause of Section 1447(d) does not limit appellate review to a particular "question," such as the question whether removal under the federal-officer or civil-rights removal statutes was proper. That difference in terminology confirms that Section 1447(d) permits review of all of the defendant's grounds for removal. See *Marx* v. *General Revenue Corp.*, 568 U.S. 371, 384 (2013).

2. The requirement that the "case" must be "removed pursuant to" the federal-officer or civil-rights removal statutes does not alter the foregoing interpretation. "Pursuant to" means "in accordance with or by reason of something." *Black's Law Dictionary* 1401 (4th ed. 1951); see, *e.g.*, *Black's Law Dictionary* 1493 (11th ed. 2019); 8 *Oxford English Dictionary* 1684 (1933); *Webster's Third New International Dictionary* 1848 (1961). And here, the prepositional phrase introduced by "pursuant to" merely asks the court to determine a historical fact about the "case": namely, whether it was removed "pursuant to" the federal-officer or civil-rights removal statutes.

Where a defendant's notice of removal asserts that a case is removable based on the elements set forth in either the federal-officer or civil-rights removal statute, the defendant has "removed" the case "in accordance with" or "by reason" of that statute. It does not matter whether a defendant asserts other grounds for removal; a party can act "pursuant to" multiple authorities. See, *e.g.*, *Pepper* v. *United States*, 562 U.S. 476, 481 n.1 (2011) (stating that the petitioner was "eligible for safety-valve relief pursuant to 18 U.S.C. § 3553(f) (2000 ed.) and [U.S.S.G.] § 5C1.2"); *Raymond B. Yates, M.D., P.C., Profit Sharing Plan* v. *Hendon*, 541 U.S. 1, 8-9 (2004) (stating that the respondent "filed a complaint[] pursuant to 11 U.S.C. §§ 547(b) and 550"); cf. *Teamsters* v. *Peña*, 17 F.3d 1478, 1482 (D.C. Cir. 1994) (holding that courts of appeals have jurisdiction under the Administrative Orders Review Act,

28 U.S.C. 2342(5), over an agency regulation issued "pursuant to" an authority listed in the Act and another that is not). And as before, Congress knows how to limit a provision to a single ground for removal: for example, the forum-defendant rule applies only to cases removable "solely on the basis" of diversity jurisdiction. 28 U.S.C. 1441(b)(2).

Nor can respondent argue that Section 1447(d) permits review only when a case has been removed *solely* under Sections 1442 or 1443. That interpretation lacks any support in the text, which says "pursuant to" and not "pursuant *only* to." And it would prove too much: whenever a defendant raises alternative bases for removal, even the federal-officer or civil-rights ground would become unreviewable. No court has ever adopted that interpretation, and with good reason: it would oddly force defendants to choose between raising alternative removal arguments and invoking their entitlement to appeal the district court's rejection of removal pursuant to the federal-officer or civil-rights removal statutes.

Accordingly, the relevant clause of Section 1447(d) permits appeal whenever the defendant has invoked either the federal-officer or civil-rights removal statute as a ground for removal. Once that occurs, because Section 1447(d) permits review of the remand "order," a court of appeals has jurisdiction to review all of the grounds for removal asserted by the defendant.

B. The Plain-Text Interpretation Of Section 1447(d) Is Supported By Precedent From This Court And The Courts Of Appeals

Not only is the foregoing interpretation of Section 1447(d) compelled by the statutory text; it also follows from the decisions of this Court and the courts of appeals involving similar statutes.

1. This Court has previously interpreted three statutes that permit appellate review of a district court's "order" to authorize review of issues encompassed in the order but distinct from the particular issue that permitted the appeal. Each of those decisions supports the plain-text interpretation of Section 1447(d).

a. In *Yamaha Motor Corp., U.S.A.* v. *Calhoun*, 516 U.S. 199 (1996), the Court addressed the scope of appellate review under 28 U.S.C. 1292(b). That provision permits a court of appeals to entertain an interlocutory appeal "taken from [an] order" that is "not otherwise appealable" where the district court certifies that "such order involves a controlling question of law as to which there is substantial ground for difference of opinion" and that "an immediate appeal from the order may materially advance the ultimate termination of the litigation." In *Yamaha*, the district court granted partial summary judgment on the ground that federal maritime law displaced state-law remedies for the claims at issue. See 516 U.S. at 203. The district court then authorized an interlocutory appeal under Section 1292(b), certifying three questions regarding the remedies available under federal maritime law. See *id.* at 203-204. The court of appeals accepted the appeal but resolved it on the ground that state-law remedies were not displaced. See *id.* at 204.

This Court granted review and asked the parties to brief the question whether the court of appeals had jurisdiction under Section 1292(b) to resolve the appeal on an uncertified ground. The Court then held that the answer was yes. See *Yamaha*, 516 U.S. at 205. The Court reasoned that, "[a]s the text of [Section] 1292(b) indicates," appellate jurisdiction "applies to the *order* certified to the court of appeals, and is not tied to the particular question formulated by the district court." *Ibid.* The Court concluded that "the appellate court may address any issue

fairly included within the certified order because it is the *order* that is appealable." *Ibid.* (internal quotation marks and citation omitted).

b. The Court's decision in *Smith* v. *Vulcan Iron Works*, 165 U.S. 518 (1897), likewise endorses plenary review of an appealable order. There, the Court interpreted Section 7 of the Evarts Act—the predecessor to 28 U.S.C. 1292(a)(1)—which authorized an appeal as of right to the newly created courts of appeals from an "interlocutory order or decree" in which a lower court "granted or continued" an "injunction." Act of Mar. 3, 1891, ch. 517, § 7, 26 Stat. 828. In the two cases consolidated before the Court, the plaintiffs had filed bills in equity for patent infringement, and the trial court had entered an interlocutory decree holding that the patents were valid, enjoining the defendants from further infringement, and referring the case to a master for an accounting of profits. See 165 U.S. at 518 (statement of case). The defendants appealed the interlocutory decrees in both cases under Section 7, and the court of appeals reversed in each, holding that the patents were invalid or not infringed. See *id.* at 518-519.

Before this Court, the plaintiffs argued that the court of appeals should have dismissed the appeals except to the extent that they presented the question whether the injunction itself was proper. The Court disagreed. Relying on the statute's "grammatical construction and natural meaning" in addition to "previous practice," the Court held that the statute authorized appeal from "the whole of such interlocutory order or decree, and not from that part of it only which grants or continues the injunction." 165 U.S. at 525. The Court has consistently followed that approach to the present day under 28 U.S.C. 1292(a)(1). See *Munaf* v. *Geren*, 553 U.S. 674, 691 (2008); see also *Deckert* v. *Independence Shares Corp.*, 311 U.S. 282, 287 (1940) (collecting earlier cases following *Smith*).

c. The Court's cases interpreting the scope of its own appellate jurisdiction similarly permit review of issues other than the particular issue that permitted appeal. Under 28 U.S.C. 1253, the Court has jurisdiction over appeals from any "order" granting or denying an "interlocutory or permanent injunction" in any civil proceeding required to be heard by a three-judge district court. In a series of cases, the Court has construed Section 1253 broadly to permit review beyond the particular injunctive relief that permitted direct appeal.

For example, the Court has held that, although Section 1253 does not permit appeal of the "entry of a declaratory judgment unaccompanied by any injunctive relief," it does authorize review of a declaration encompassed by an order issuing an injunction. *White* v. *Regester*, 412 U.S. 755, 761 (1973); see, *e.g.*, *Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27, 35 n.5 (1980). The Court has similarly held that it may review an award of attorney's fees encompassed by an order appealable under Section 1253, even though that award would not be reviewable standing alone. See *Supreme Court of Virginia* v. *Consumers Union of United States, Inc.*, 446 U.S. 719, 737 n.16 (1980). In addition, the Court has held that it may review both constitutional and federal statutory grounds for challenging a state statute in an appeal under Section 1253 even though a challenge based *solely* on federal statutory grounds would not have required a three-judge district court. *Florida Lime & Avocado Growers, Inc.* v. *Jacobsen*, 362 U.S. 73, 84 (1960).

Section 1447(d) is similar. It provides courts of appeals with jurisdiction over a remand order when either the federal-officer or civil-rights removal statute provides one of the grounds for removal. And in such a case, the court of appeals' review extends to all of the asserted grounds for removal. See pp. 16-19, *supra*.

2. The plain-text interpretation of Section 1447(d) also aligns with the principle that appellate review of final judgments is not limited to a particular ground addressed by a lower court. The "question before an appellate [c]ourt" is whether "the *judgment* is correct," not whether the "*ground* on which the judgment professes to proceed" is correct. *McClung* v. *Silliman*, 19 U.S. (6 Wheat.) 598, 603 (1821); see, *e.g.*, *Jennings* v. *Stephens*, 574 U.S. 271, 277 (2015). For that reason, appellate jurisdiction ordinarily extends to the entire judgment and all issues encompassed in it. That is why appellate courts have discretion to affirm on any ground in the record, even if the decision below did not rest on that ground. See *Dahda* v. *United States*, 138 S. Ct. 1491, 1498 (2018); *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 487 (2008). Similarly, the plain-text interpretation of Section 1447(d) permits review of the entire remand order, and not simply one of the grounds underlying it.

3. The courts of appeals have held that a number of additional statutes that permit appellate review of particular "orders" authorize review of issues beyond the particular issue that permitted appeal.

In the bankruptcy context, a court of appeals may directly review a bankruptcy court's "final judgments, orders, and decrees" if the relevant district court or bankruptcy appellate panel certifies that the judgment, order, or decree involves an open or unsettled "question of law" or that an "immediate appeal" may "materially advance the progress of the case." 28 U.S.C. 158(a), (d)(2). Like the similar provision at issue in *Yamaha*, courts of appeals have interpreted that provision as permitting review of the whole "order," not merely the "certified question." *In re Franchise Services of North America, Inc.*, 891 F.3d 198, 206 (5th Cir. 2018); see *Marshall* v. *Blake*, 885 F.3d 1065, 1072 n.6 (7th Cir. 2018).

In similar fashion, the Federal Circuit has jurisdiction over any "order" certified for interlocutory review by the Court of Federal Claims. See 28 U.S.C. 1292(d)(2). Long before *Yamaha*, the Federal Circuit held that the scope of its review under that provision is "not limited to the certified question" but instead extends to "all questions material" to the certified order. *United States* v. *Connolly*, 716 F.2d 882, 885 (1983) (en banc).

A court of appeals also has jurisdiction over any "final order" of the Federal Labor Relations Authority relating to an arbitration award if the order "involves an unfair labor practice." 5 U.S.C. 7123(a). As the D.C. Circuit recently explained, "[t]he most natural interpretation" of that provision is that, "[b]y granting the court jurisdiction to review the entire order," the court is not limited to reviewing "only the portion of the order that discusses the alleged unfair labor practice." *National Weather Service Employees* v. *Federal Labor Relations Authority*, 966 F.3d 875, 879-880 (2020).

Finally, under the Class Action Fairness Act, a court of appeals may grant a petition for appeal from an "order of a district court granting or denying a motion to remand a class action." 28 U.S.C. 1453(c)(1). At least two courts of appeals have interpreted that provision to permit review of any issue encompassed in an appealable remand order, not just the class-action ground for removal. See *Coffey* v. *Freeport McMoran Copper & Gold*, 581 F.3d 1240, 1247 (10th Cir. 2009) (per curiam); *Brill* v. *Countrywide Home Loans, Inc.*, 427 F.3d 446, 451 (7th Cir. 2005); but see *City of Walker* v. *Louisiana*, 877 F.3d 563, 567 (5th Cir. 2017).

In sum, precedent from both this Court and the courts of appeals supports the plain-text interpretation of Section 1447(d), under which a court of appeals may review all of the asserted grounds for removal where removal is

premised in part on the federal-officer or civil-rights removal statutes.

C. The Plain-Text Interpretation Of Section 1447(d) Serves The Provision's Purposes

The purposes of Section 1447(d) further support the plain-text interpretation. When Congress enacted and amended the relevant clause of Section 1447(d), it did so to ensure that cases implicating the interests protected by the federal-officer and civil-rights removal statutes are not erroneously consigned to state court. And while the purpose of the preceding clause of Section 1447(d) is to avoid "protracted litigation of jurisdictional issues," *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U.S. 336, 351 (1976), that policy would not be meaningfully advanced by circumscribing appellate review once an appeal is allowed.

1. The plain-text interpretation of Section 1447(d) protects the interests that motivated Congress to permit appeals of remand orders in cases removed under the federal-officer or civil-rights removal statutes.

a. The federal-officer removal statute permits removal of certain cases that relate to the authorities and duties of a federal officer (or a person acting at the direction of a federal officer) under federal law. See 28 U.S.C. 1442. The basic purpose of the statute is to "protect the [f]ederal [g]overnment" from "interference with its operations." *Watson* v. *Philip Morris Cos.*, 551 U.S. 142, 150 (2007) (internal quotation marks and citation omitted). As this Court has explained, proceedings in state court "may reflect 'local prejudice' against unpopular federal laws or federal officials," and States "hostile to the [f]ederal [g]overnment" may use state-court litigation to "impede" the enforcement of federal law. *Ibid.* (citation omitted). To protect federal interests from state-court interference,

the Court has given the federal-officer statute a "liberal construction." *Id.* at 147.

The civil-rights removal statute, first enacted as part of the Civil Rights Act of 1866, permits removal of cases in three circumstances. See 28 U.S.C. 1443; Civil Rights Act of 1866, ch. 31, § 3, 14 Stat. 27. *First*, a defendant in state court who is "denied or cannot enforce" federal rights "providing for specific civil rights stated in terms of racial equality" may remove a case to federal court. *Johnson* v. *Mississippi*, 421 U.S. 213, 219 (1975); see 28 U.S.C. 1443(1). *Second*, a federal officer, or a person acting under a federal officer, may remove a case arising from an act taken pursuant to official authority derived from "any federal law providing for equal civil rights." *City of Greenwood* v. *Peacock*, 384 U.S. 808, 824 (1966); see 28 U.S.C. 1443(2). *Third*, a state official may remove a case arising from the refusal to take an action that is inconsistent with federal civil-rights law. *Peacock*, 384 U.S. at 824 n.22; see 28 U.S.C. 1443(2).

In 1964 and 2011, Congress amended 28 U.S.C. 1447(d) to permit appeals of remand orders in cases removed under the civil-rights and federal-officer removal statutes, respectively. See Civil Rights Act of 1964, Pub. L. No. 88-352, § 901, 78 Stat. 266; Removal Clarification Act of 2011, Pub. L. No. 112-51, § 2(d), 125 Stat. 546. The amendments reflect a policy determination that the potential for state-court hostility to the federal interests implicated in cases removed under those statutes is sufficiently high to justify appellate review of remand orders. Those federal interests include the maintenance and enforcement of federal policies administered by federal officers and the protection of equal civil rights.

b. The congressional policy underlying the amendments to Section 1447(d) is best served by permitting ple-

nary review of remand orders in cases removed on federal-officer or civil-rights grounds. When a defendant has a colorable but ultimately unsuccessful argument for removal on one of those grounds, federal interests related to those that Congress sought to protect by amending Section 1447(d) are often present in the defendant's other grounds for removal. Plenary appellate review will correct erroneous remands in such cases and ensure that, if there is a legitimate basis for removal, federal courts will be available to safeguard those interests.

With respect to the federal-officer removal statute: when defendants are federal officers or work closely with such officers, the defendants' actions may implicate vital federal interests. This case is illustrative. Petitioners produce and sell fossil fuels—a commercial enterprise that is vital to the Nation's economic health and the national defense and that has been promoted by a long series of federal policies spanning more than a century. See J.A. 190, 202, 207-208. In fact, the history of the petroleum industry is one of inseparable involvement with the federal government, from federal control of the industry during World War II to federal direction of fossil-fuel extraction on the Outer Continental Shelf. See J.A. 225-231; Petroleum Administration for War, *A History of the Petroleum Administration for War, 1941-1945* (John W. Frey & H. Chandler Ide eds. 2005). The regulation of interstate air pollution is also a uniquely federal concern, as this Court's precedents and the enactment of the Clean Air Act demonstrate. See *EPA* v. *EME Homer City Generation, L.P.*, 572 U.S. 489, 495-499 (2014); pp. 39-45, *infra*.[5]

[5] Because petitioners engaged in activities that "the [g]overnment itself would have had to perform" in the absence of contracts with private firms, *Watson*, 551 U.S. at 154, petitioners disagree with the court of appeals' rejection of the federal-officer ground for removal.

The numerous lawsuits filed by state and local governments against petitioners and other energy companies in state court, however, raise the specter of "local prejudice" against the fossil-fuel industry, implicating the significant federal policies in favor of fossil-fuel production. *Watson*, 551 U.S. at 150 (citation omitted); see *Juliana* v. *United States*, 947 F.3d 1159, 1167 & n.4 (9th Cir. 2020); pp. 39-43, *infra*. Permitting plenary appellate review of remand orders in cases such as this one thus furthers significant federal interests, even if the case is ultimately not removable under the federal-officer removal statute. Cf. *Lu Junhong*, 792 F.3d at 808-810, 813-818 (rejecting federal-officer removal but permitting removal based on federal admiralty jurisdiction, another area of unique federal interest).

With respect to the civil-rights removal statute: cases in which defendants raise plausible—even if unavailing—arguments for removal under 28 U.S.C. 1443 implicate the critical federal interest in enforcing the civil-rights laws and thereby promoting equality. Such defendants may face significant local prejudice, even when the strict and technical requirements for civil-rights removal are not met. See p. 27, *supra*. When defendants remove their case on an additional ground (say, diversity or federal-question jurisdiction), plenary review of the remand order ensures the full and fair adjudication of their liability in federal courts.

2. The plain-text interpretation is also consistent with the purpose of the preceding clause of Section 1447(d). That clause states that "[a]n order remanding a case to the State court from which it was removed is not

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Petitioners have presented a more fully developed historical record to support that conclusion in subsequent removal petitions.

reviewable on appeal or otherwise." Congress first enacted the general prohibition on appellate review of remand orders in 1887, after the 1875 expansion of federal-question jurisdiction created a "flood of totally new business for the federal courts" and this Court's docket became a "record of arrears." Felix Frankfurter, *The Business of the Supreme Court of the United States—A Study in the Federal Judicial System*, 39 Harv. L. Rev. 35, 44, 48 (1925). That context suggests that the prohibition on appellate review of remand orders was intended to reduce this Court's backlog in the days before the creation of the courts of appeals and the reduction of this Court's mandatory appellate jurisdiction. See Rhonda Wasserman, *Rethinking Remand: Proposed Amendments to the Federal Removal Statute*, 43 Emory L.J. 83, 100-102 (1994).

Whatever Congress's original intent, it is the received wisdom today that the purpose of the general prohibition is to "prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues." *Thermtron*, 423 U.S. at 351. Any concern about delay, however, has little pertinence here. Respondent does not dispute that a defendant is entitled to appeal when a district court rejects federal-officer or civil-rights removal, meaning that the degree of delay inherent in the normal appellate process is appropriate when a case is removed pursuant to those grounds. The plain-text interpretation of Section 1447(d) increases only the *scope* of appellate review. Any delay from the broader inquiry that the court of appeals conducts will be marginal (at most)—as the leading civil-procedure treatise recognizes. See 15A Wright & Miller § 3914.11, at 706; see also *Lu Junhong*, 792 F.3d at 813.

Indeed, the broader scope of review will often cause no additional delay. Neither the district court nor the court of appeals is automatically required to stay the remand order pending appeal—as this case demonstrates, see

Pet. App. 82a-96a—so in some cases the parties can litigate the case in state court while the appeal proceeds. See *Lu Junhong*, 792 F.3d at 813. In addition, if the propriety of federal-officer or civil-rights removal presents a particularly difficult question, a court of appeals could even *reduce* delay by resolving the appeal based on an alternative ground for removal that is more clearly meritorious. The plain-text interpretation of the relevant clause of Section 1447(d) thus does not conflict with—and may even advance—the purpose of avoiding delay.

D. The Court Of Appeals' Contrary Interpretation Is Incorrect

Relying on prior circuit precedent, the court of appeals interpreted the relevant clause of Section 1447(d) to afford it jurisdiction to review only the district court's rejection of the federal-officer ground for removal. Pet. App. 6a-10a. That interpretation lacks merit.

1. There is simply no way to derive the court of appeals' interpretation of Section 1447(d) from the statutory text. Again, the relevant clause of Section 1447(d) states that certain "order[s] remanding a case" to state court are "reviewable by appeal or otherwise." In holding that Section 1447(d) limited its review to the federal-officer ground for removal, the court of appeals functionally read the phrase "order remanding a case" to mean "the district court's reasoning rejecting the federal-officer or civil-rights ground for removal." Wherever that interpretation comes from, it is not from the words of the statute. See pp. 16-20, *supra*.

It is clear that the first reference to the "order remanding a case" in Section 1447(d) is to the entire order. See p. 5, *supra*. Applying the consistent-meaning canon, the second use of "order remanding a case" presumptively "carr[ies] the same meaning" as the first. *Department of*

Revenue v. *ACF Industries, Inc.*, 510 U.S. 332, 342 (1994). But the court of appeals' interpretation gives the second use of the phrase a different and dramatically narrower meaning. That cannot have been Congress's intention; this Court has stated that when a statute repeats a phrase twice in the same sentence, it is "improbable" that each occurrence "refers to something totally different." *Fourth Estate Public Benefit Corp.* v. *Wall-Street.com, LLC*, 139 S. Ct. 881, 889 (2019) (citation omitted); see *Azar* v. *Allina Health Services*, 139 S. Ct. 1804, 1812 (2019).

2. Although the court of appeals primarily relied on prior circuit precedent when determining the scope of its appellate review, it suggested that this Court's decision in *Yamaha* might be distinguishable because of the differing operation of the provision at issue there, 28 U.S.C. 1292(b). Pet. App. 9a. Specifically, the court observed that, while Section 1292(b) "permits appellate review of important issues before final judgment," it "does not make otherwise non-appealable questions reviewable," as does the relevant clause of Section 1447(d). *Ibid.*; see Br. in Opp. 26-28.

That argument is unavailing. It is true that Section 1447(d) generally prohibits appellate review of remand orders, whereas Section 1292(b), in combination with 28 U.S.C. 1291, merely controls the timing of appellate review of certain orders. But that distinction does nothing to change the scope of review when Congress has explicitly authorized appellate review of an "order." Congress used similar language in both Section 1292(b) and Section 1447(d) to determine when and whether an "order" is appealable. In accordance with the plain meaning of that language, each provision should be construed to allow review of the entire order.

Nor is there any evidence that Congress intended Section 1447(d) to insulate remand orders from review where

the court of appeals has already been "authorized to take the time necessary to determine the right forum." *Lu Junhong*, 792 F.3d at 813. As explained above, Congress appears to have originally enacted the bar on appellate review of remand orders in an effort to reduce this Court's docket after broad federal-question jurisdiction became available. See pp. 29-30, *supra*. And though today the general limitation on appellate review in Section 1447(d) serves to prevent delay in the trial of remanded cases, the court of appeals' interpretation of the relevant clause serves that goal only marginally, if at all. See pp. 30-31, *supra*.

3. At the certiorari stage, respondent offered several additional arguments in defense of the court of appeals' interpretation. Each is unpersuasive.

a. Respondent first contended that the relevant clause of Section 1447(d) "must be narrowly construed" because it is an "exception clause[]." Br. in Opp. 21. As this Court has explained, however, "[a] congressional decision to enact both a general policy that furthers a particular goal and a specific exception that might tend against that goal does not invariably call for the narrowest possible construction of the exception." *City of Columbus* v. *Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 440 (2002). Courts "normally have no license to give [statutory] exemption[s] anything but a fair reading." *Food Marketing Institute* v. *Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019) (internal quotation marks and citation omitted). Here, the plain text of Section 1447(d) controls, because it provides that a court of appeals has jurisdiction to review all of the grounds for removal encompassed in the "order remanding [the] case" when an appeal is permitted. See pp. 16-20, *supra*.

b. Respondent next relied on history, arguing that Congress has barred appellate review of remand orders

"[f]or well over a century" and thus must have intended to authorize only narrow appellate review of a federal-officer or civil-rights ground for removal when it amended Section 1447(d). Br. in Opp. 22-24. But respondent's conclusion does not follow from its premise. No one disputes the background principle that remand orders are generally unreviewable. When amending Section 1447(d) in 1964 and 2011, however, Congress departed from that background principle and authorized appeals under specified circumstances. The question here concerns the scope of those departures—a question that cannot be answered simply by saying that such departures are relatively recent.

c. Respondent further contended (Br. in Opp. 24-26) that Congress ratified the courts of appeals' prior construction of Section 1447(d) in the 2011 amendment. That contention lacks merit for two reasons.

To begin with, the meaning of Section 1447(d) was hardly "settled" in respondent's favor in 2011. See *Armstrong* v. *Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1386 (2015). This Court and the courts of appeals had overwhelmingly interpreted the term "order" in other statutes governing appellate jurisdiction to permit review of issues beyond the particular issue that permitted appeal, see pp. 20-26, *supra*, and the court-of-appeals decisions giving Section 1447(d) a contrary interpretation before 2011 were entirely conclusory. See Br. in Opp. 11-14; Cert. Reply Br. 5. That casts doubt on the assertion that Congress intended to ratify a conclusory set of cases over another set of cases with more robust analysis.

More generally, the prior-construction canon has little force here. It typically applies where Congress enacts a new provision or reenacts an existing one. See *Lightfoot* v. *Cendant Mortgage Corp.*, 137 S. Ct. 553, 563 (2017);

Pierce v. *Underwood*, 487 U.S. 552, 567 (1988). But Section 1447(d) was not reenacted in 2011; Congress merely added the words "1442 or" to the relevant clause, bringing federal-officer removal within the clause's scope. See Removal Clarification Act § 2(d), 125 Stat. 546. Where, as here, Congress "has made only isolated amendments" to an existing provision, "[i]t is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of the [prior judicial] interpretation." *Alexander* v. *Sandoval*, 532 U.S. 275, 292 (2001) (internal quotation marks and citation omitted). And as respondent has acknowledged (Br. in Opp. 25-26 n.10), nothing in the legislative history of the 2011 amendments addresses the question presented here.

d. Finally, respondent argued that the plain-text interpretation of Section 1447(d) would incentivize the inclusion of "baseless" arguments for federal-officer or civil-rights removal as a "hook for obtaining appellate review" of other grounds for removal. Br. in Opp. 28-29. As an initial matter, petitioners' arguments for federal-officer removal are substantial. See p. 8, *supra*. And in any event, "[s]ufficient sanctions are available to deter frivolous removal arguments." 15A Wright & Miller § 3914.11, at 706. The district court has the authority to impose sanctions on a defendant for filing a notice of removal containing bad-faith or frivolous arguments. See Fed. R. Civ. P. 11(b)(1)-(2). And district courts have long had authority to require the defendant to pay "just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. 1447(c); see, *e.g.*, Act of May 24, 1949, ch. 139, § 84(a), 63 Stat. 102.

The court of appeals would likewise have inherent authority to sanction a defendant that appealed the denial of a federal-officer or civil-rights ground for removal asserted in bad faith. See *Chambers* v. *NASCO, Inc.*, 501

U.S. 32, 44-46, 49-50 (1991). A court of appeals could require the defendant to pay attorney's fees, or it could even dismiss the appeal. See, *e.g.*, *Meadows* v. *United Services, Inc.*, 963 F.3d 240, 243-244 (2d Cir. 2020); *Pepperling* v. *Risley*, 739 F.2d 443, 444 (9th Cir. 1984); cf. *Behrens* v. *Pelletier*, 516 U.S. 299, 310 (1996) (noting that "it is well within the supervisory powers of the courts of appeals to establish summary procedures and calendars to weed out frivolous claims" (citation omitted)).

A court of appeals, moreover, may lack jurisdiction over an appeal from a remand order if the federal-officer or civil-rights ground for removal is frivolous. As this Court has long explained, a claim purporting to arise under federal law does not confer subject-matter jurisdiction if it is "immaterial and made solely for the purpose of obtaining jurisdiction" or is "wholly insubstantial and frivolous." *Bell* v. *Hood*, 327 U.S. 678, 682-683 (1946); see *Shapiro* v. *McManus*, 136 S. Ct. 450, 455-456 (2015); *Goosby* v. *Osser*, 409 U.S. 512, 518-519 (1973). Similarly, a court of appeals may lack jurisdiction under Section 1447(d) if the sole basis for appellate jurisdiction is a bad-faith or frivolous argument for federal-officer or civil-rights removal.

Respondent thus urges a departure from Section 1447(d)'s plain text to solve a problem that courts already have ample tools to address. But in advancing an interpretation to deter bad actors, respondent excludes defendants who *do* have plausible arguments for removal under Section 1442 or 1443 and who will often be entitled to remove their cases on other grounds. The plain text of Section 1447(d) entitles those defendants to appellate review of the orders remanding their cases, and it ensures that defendants entitled to a federal forum end up in one.

* * * * *

In sum, there is no compelling reason to depart from the plain meaning of Section 1447(d). Because the text of Section 1447(d) permits appellate review of a remand order where one of the defendant's grounds for removal is the federal-officer or civil-rights removal statute, a court of appeals has jurisdiction to review all of the grounds for removal encompassed in that order. The court of appeals' contrary interpretation was erroneous.

II. THE COURT SHOULD REVERSE THE JUDGMENT BELOW

For the reasons given above, the court of appeals erred by holding that it lacked jurisdiction to review any of petitioners' grounds for removal other than the federal-officer ground. As petitioners explained in their petition for a writ of certiorari, if the Court agrees that the court of appeals' holding was erroneous, it can either proceed to address the remaining grounds for removal and reverse the judgment below, or vacate the judgment and direct the court of appeals to address those grounds in the first instance. See Pet. 20 & n.3.

The Court should take the former course. As of the filing of this brief, removal is being litigated in 19 climate-change lawsuits similar to this case. See p. 7 n.1, *supra*. One of the grounds for removal common to all of those cases is that claims alleging injury based on interstate emissions necessarily arise under federal common law. That conclusion follows directly from this Court's longstanding precedents, and it would break little new ground for the Court so to hold here.

To preserve judicial resources, the Court should consider that additional ground for removal and confirm, as the Court's precedents dictate, that this case and others like it belong in federal court. On that basis, the Court

should reverse the judgment below. In the alternative, the Court should vacate the judgment and direct the court of appeals to address the additional grounds for removal.

A. Removal Was Proper Because Respondent's Claims Necessarily Arise Under Federal Law

Respondent alleges that the combustion of petitioners' fossil-fuel products led to greenhouse-gas emissions, which contributed to global climate change and in turn caused harms within its jurisdiction. See J.A. 23-29. To remedy those alleged harms, respondent seeks damages under a number of common-law theories. See J.A. 155-182. This Court has long made clear that, as a matter of constitutional structure, claims seeking redress for interstate pollution are governed exclusively by federal common law, not state law. Such claims necessarily arise under federal law for purposes of federal-question jurisdiction and are thus removable. For that reason, the remand order in this case was erroneous.

1. In *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938), the Court announced the familiar principle that "[t]here is no federal general common law." *Id.* at 78. But even after *Erie*, the "federal judicial power to deal with common law problems" remains "unimpaired for dealing independently, wherever necessary or appropriate, with essentially federal matters, even though Congress has not acted affirmatively about the specific question." *United States* v. *Standard Oil Co.*, 332 U.S. 301, 307 (1947).

Of particular relevance here, federal law necessarily supplies the rule of decision for certain narrow categories of claims that implicate "uniquely federal interests," including where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 640-641 (1981) (citation omitted). At

bottom, whenever there is "an overriding federal interest in the need for a uniform rule of decision," *Illinois* v. *City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 105 n.6 (1972), "state law cannot be used," *City of Milwaukee* v. *Illinois* (*Milwaukee II*), 451 U.S. 304, 313 n.7 (1981), and any claims necessarily arise under federal law.

Under 28 U.S.C. 1331, federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." That includes claims "founded upon federal common law as well as those of a statutory origin." *National Farmers Union Insurance Cos.* v. *Crow Tribe of Indians*, 471 U.S. 845, 850 (1985) (citation omitted). As a result, if the "dispositive issues stated in the complaint require the application" of a uniform rule of federal law, the action "arises under" federal law for purposes of Section 1331, *Milwaukee I*, 406 U.S. at 100, and the case is removable to federal court, see 28 U.S.C. 1441(a).

2. The structure of our constitutional system requires that federal law exclusively govern claims seeking redress for interstate pollution. The States are "coequal sovereigns" in our system, *PPL Montana LLC* v. *Montana*, 565 U.S. 576, 591 (2012), and the Constitution "implicitly forbids" them from applying their own laws to resolve "disputes implicating their conflicting rights," *Franchise Tax Board* v. *Hyatt*, 139 S. Ct. 1485, 1498 (2019) (alteration and citations omitted). In similar fashion, although each State may make law within its own borders, no State may "impos[e] its regulatory policies on the entire Nation." *BMW of North America* v. *Gore*, 517 U.S. 559, 585 (1996); see *Healy* v. *Beer Institute, Inc.*, 491 U.S. 324, 336 (1989). Allowing state law to govern disputes regarding interstate pollution would violate the "cardinal" principle that "[e]ach state stands on the same level with all the rest," by permitting one State to impose its law on

other States and their citizens. *Kansas* v. *Colorado*, 206 U.S. 46, 97 (1907).

Accordingly, for more than a century, this Court has applied uniform federal rules of decision to common-law claims seeking redress for interstate pollution. In *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230 (1907), the Court considered an action by Georgia against a Tennessee-based corporation that was discharging "noxious gas" across the border, resulting in the destruction of "forests, orchards, and crops." *Id.* at 236. In resolving the claim, the Court relied on principles of federal and not state law. See *id.* at 237.

The Court continued to follow the same approach in cases after *Erie*. In *Milwaukee I*, *supra*, a case involving interstate water pollution, the Court reasoned that, "[w]hen we deal with air and water in their ambient or interstate aspects, there is a federal common law." 406 U.S. at 103. The Court explained that "[f]ederal common law," and not the "varying common law of the individual States," is "necessary to be recognized as a basis for dealing in uniform standard with the environmental rights of a State against improper impairment by sources outside its domain." *Id.* at 108 n.9 (citation omitted). In *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), the Court unambiguously reaffirmed that "the regulation of interstate water pollution is a matter of federal, not state, law." *Id.* at 488.

The Court recently reinforced that conclusion in *American Electric Power*, *supra*, with respect to similar nuisance claims alleging injury from global climate change caused by greenhouse-gas emissions. See 564 U.S. at 418. Writing for a unanimous Court, Justice Ginsburg reiterated that federal common law "undoubtedly" governs claims involving "air and water in their ambient or interstate aspects." *Id.* at 421.

3. Applying the foregoing precedents here leads to a straightforward result: respondent's climate-change claims necessarily arise under federal, not state, law. Through those claims, respondent is seeking damages based on the interstate—and indeed international—emissions of greenhouse gases over many decades, allegedly resulting in part from the use of fossil-fuel products produced or sold by defendants and consumed throughout the world. See J.A. 23-28, 83-87, 145-155. Those claims fall squarely within the long line of cases holding that federal common law governs claims seeking redress for interstate air and water pollution.

Any contrary approach would not only contravene this Court's precedents but also permit suits alleging climate-change-related injuries to proceed under the laws of all fifty States. As the federal government explained in its brief in *American Electric Power*, "virtually every person, organization, company, or government across the globe * * * emits greenhouse gases, and virtually everyone will also sustain climate-change-related injuries," giving rise to claims from "almost unimaginably broad categories of both potential plaintiffs and potential defendants." TVA Br. at 11, 15, *American Electric Power*, *supra* (No. 10-174). Out-of-state actors (such as most of petitioners here) would quickly find themselves subject to a "variety" of "vague" and "indeterminate" state common-law tort standards, and States would be empowered to "do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *Ouellette,* 479 U.S. at 495-496. "[R]esolving such claims would require each court to consider numerous and far-reaching technological, economic, scientific, and policy issues" and to decide "whether and to what extent each defendant should be deemed liable under general principles of nuisance law for some share of the injuries associated with global climate

change." TVA Br. at 37, *American Electric Power*, *supra*. That could lead to "widely divergent results" if a patchwork of fifty different legal regimes applied. *Ibid.*

Respondent's claims also implicate important interests of the federal government. Because respondent asserts public-nuisance claims, a court adjudicating those claims will ultimately need to weigh the gravity of the harm caused by defendants' alleged contribution to global climate change against the utility of their production of fossil-fuel products. See generally Restatement (Second) of Torts §§ 821B, 826-831 (1979). That will require a determination of "what amount of carbon-dioxide emissions is unreasonable" given what is "practical, feasible[,] and economically viable." *American Electric Power*, 564 U.S. at 428 (internal quotation marks omitted). Such a determination squarely implicates the federal government's interest in setting domestic and foreign policy on matters involving energy, the environment, and the economy. See *id.* at 427.

Indeed, by alleging injury based on global greenhouse-gas emissions, respondent is essentially seeking to second-guess the United States' energy and environmental policy around the globe. Yet state courts are "not left free to develop their own doctrines" concerning the Nation's "relationships with other members of the international community." *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 425, 426 (1964). Respondent's claims implicate the national defense as well: the federal government has long been the largest consumer of fossil fuels in the United States, and the Department of Defense consumes more energy than any other agency. See Heather L. Greenley, Congressional Research Service, R45832, *Department of Defense Energy Management: Background and Issues for Congress* 1 (2019).

Nor can respondent avoid federal law by characterizing its claims as aimed at fossil-fuel production and marketing rather than emissions. See Pet. App. 21a-23a & n.10. Respondent does not claim harm from production, sale, or promotion of fossil fuels alone; rather, its alleged injuries arise from the effects of greenhouse-gas emissions worldwide. See J.A. 23-28, 83-87, 145-155. Respondent seeks damages for the effect of climate change as well as injunctive relief to "abate" activities believed to cause climate change. See, *e.g.*, J.A. 161. Respondent thereby seeks to regulate interstate and international greenhouse-gas emissions—precisely the type of claim that is necessarily subject to federal law alone.

In short, there are compelling federal interests in addressing transboundary pollution suits in a uniform manner. Federal law exclusively governs such claims, and federal jurisdiction therefore lies to resolve them.

4. In the proceedings below, the district court held that, even if federal common law governed respondent's claims, the well-pleaded complaint rule barred removal on that basis. The district court noted that respondent had not expressly "plead[ed] any claims under federal law," Pet. App. 44a, and it viewed petitioners' invocation of federal common law as raising an ordinary preemption defense, see *id.* at 44a-50a. But federal common law is not merely a defense to respondent's claims alleging injury from interstate and international air pollution. For the reasons explained above, respondent's claims do not just implicate federal-law issues—they inherently *are* federal claims, arising under federal law. No state law exists in this area for respondent to invoke.

The well-pleaded complaint rule therefore does not bar removal here. That rule provides that federal-question jurisdiction exists only when "a federal question is presented on the face of the plaintiff's properly pleaded

complaint." *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386, 392 (1987). An "independent corollary" of the rule, however, is that "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 22 (1983). Put another way, a plaintiff cannot "block removal" by artfully pleading its claims in an effort to "disguise [an] inherently federal cause of action." See 14C Wright & Miller § 3722.1, at 131-132 (4th ed. 2018).

As a result, the well-pleaded complaint rule will sometimes require a federal court to "determine whether the real nature of the claim is federal, regardless of plaintiff's characterization." *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 397 n.2 (1981) (citation omitted). And while the Court has applied the artful-pleading principle primarily in complete-preemption cases involving federal statutes, there is "[n]o plausible reason" why "the appropriateness of and need for a federal forum should turn on whether the claim arose under a federal statute or under federal common law." Richard H. Fallon, Jr., et al., *Hart & Wechsler's Federal Courts and the Federal System* 818 (7th ed. 2015).

Those principles apply fully here. To be sure, respondent contends that its common-law claims arise under Maryland common law (even though the complaint does not so state). See J.A. 155-182. But again, federal law necessarily supplies the exclusive *source of law* governing those claims. And because that is clear from the face of the complaint—that is, from the nature of respondent's allegations and the claims asserted—the well-pleaded complaint rule does not bar removal.[6]

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[6] Removal based on the foregoing ground does not depend on whether a viable federal cause of action exists. Whether a claim arises

Accordingly, the district court had federal-question jurisdiction under 28 U.S.C. 1331 despite the omission of the federal source of law from the complaint, and removal was permitted under 28 U.S.C. 1441(a). Given the number of climate-change cases pending across the Nation, the Court should confirm that this case and others like it were properly removed to federal court on the ground that federal common law necessarily governs claims alleging injury based on the contribution of interstate and international emissions to global climate change. For that reason, the judgment of the court of appeals should be reversed.

B. If The Court Does Not Reverse, It Should Vacate The Judgment Below And Remand The Case To The Court Of Appeals

In their notice of removal, petitioners raised a number of other grounds for removal in addition to the federal-common-law and federal-officer grounds. See J.A. 203-225, 231-240. Those additional grounds were briefed at length by both petitioners and respondent in the court of appeals. See Pet. C.A. Br. 33-40, 43-54; Resp. C.A. Br. 28-53. The court of appeals did not reach any ground for removal other than the federal-officer ground, however, because of its erroneous interpretation of 28 U.S.C. 1447(d). See Pet. App. 10a.

Accordingly, if this Court declines to reach the question whether federal law provides the exclusive source of law for respondent's claims, it should vacate the judgment below and remand the case to the court of appeals. Be-

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exclusively under federal common law is distinct from whether it implicates a viable cause of action. See *American Electric Power*, 564 U.S. at 422; *Avco Corp.* v. *Machinists*, 390 U.S. 557, 560-561 (1968); *Standard Oil*, 332 U.S. at 308, 314.

cause removal was so clearly proper based on federal common law, however, the better course is for the Court to reverse the judgment outright and hold that respondent's claims belong in federal court.

CONCLUSION

The judgment of the court of appeals should be reversed. In the alternative, the judgment should be vacated and the case remanded for further proceedings.

Respectfully submitted.

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