SUPREME COURT'S *PLAQUEMINES PARISH* CASE DESERVES MORE ATTENTION

O.H. SKINNER*

INTRODUCTION

Arguments recently began for the 2025 U.S. Supreme Court term, with several blockbuster cases set to be argued in the coming months, including cases about Title IX and girls' sports, the President's tariff authority, and the Federal Election Commission and limitations on political expenditures. While those cases obviously have substantial importance for the nation, there is another case that should not escape the concerted attention of Supreme Court watchers: *Chevron USA Inc. v. Plaquemines Parish, Louisiana*.

Plaquemines Parish is a removal jurisdiction case that arises from a Louisiana parish's effort to impose liability on energy companies like Chevron and Exxon for crude oil production in the Louisiana coastal zone during World War II, amongst other things. It is part of a cohort of related Louisiana parish cases, one of which already delivered a judgment for $745 million, and others of which have resulted in pre-trial settlements.[1]

Plaquemines Parish will surely attract attention from commentators for the way it features energy production and the environment (and climate change) as well as the size of the monetary awards it already involves. But *Plaquemines Parish* has broader real-world implications than your standard removal jurisdiction case, and certainly broader potential implications than *BP P.L.C. v. Mayor and City Council of Baltimore*, the most notable removal jurisdiction case that the Court has heard in connection with climate change litigation of this sort.

The most obvious of these real-world implications, if the Court holds that this cohort of cases properly belong in federal court based on federal officer removal jurisdiction, would be the immediate wipe-out of the $745 million judgment, alone a huge consequence. But there is also a real possibility that the portfolio of related cases would founder conclusively in federal court under Fifth Circuit preemption precedent that speaks to the underlying statutory claims. And a loss on the merits at the Supreme Court could have knock-on implications for the overall woke lawfare strategy that has been building in state courts over the past decade or so.

Put simply, while the narrow issue in front of the Supreme Court in *Plaquemines Parish* is whether the underlying litigation properly belongs in state court or federal court, the case carries far greater implications than that basic question might initially appear to present and that means we should all be watching more closely than we might otherwise.

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* Former Arizona Solicitor General and Executive Director of Alliance For Consumers.

[1] Jack Brook, *Chevron ordered to pay more than $740 million to restore Louisiana coast in landmark trial*, ASSOCIATED PRESS (Apr. 4, 2025), https://apnews.com/article/chevron-louisiana-land-loss-lawsuit-oil-e02e2bdd56095e79c4d2bce60bf957c9 [perma.cc/D729-2NRX].

I. CHEVRON V. PLAQUEMINES PARISH

The *Plaquemines Parish* litigation began in 2013 as part of a wave of almost fifty lawsuits by Louisiana parishes and other governmental entities against various energy companies—BP, Chevron, Shell Oil, etc.—that alleged that the companies had violated Louisiana's State and Local Coastal Resources Management Act of 1978 (SLCRMA).[2] The materially identical lawsuits alleged that the oil and gas exploration, production, and transportation operations by the defendant companies violated state law insofar as the companies failed "to obtain necessary coastal use permits" under state law or violated "the terms of the permits they did obtain."[3] The relief sought by the plaintiffs was damages under SLCRMA, which, notably, included an order for restoration and remediation in order to accomplish "actual restoration of disturbed areas to their original condition; costs necessary to clear, revegetate, detoxify and otherwise restore the affected portions of the . . . Coastal Zone as near as practicable to its original condition."[4]

The energy defendants tried on multiple occasions to remove the cases to federal court.[5] During the course of those removal fights, BP and several other defendants settled in some respects.[6] The current set of removal questions being pressed by the energy defendants relate to federal officer removal. More specifically, the energy defendants removed the cases under 28 U.S.C. §1442(a)(1), which provides that "[a] civil action . . . that is commenced in a State court and that is against or directed to" . . . "any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office" . . . "may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending."[7] These removal efforts were rejected in the federal district courts. The Fifth Circuit below agreed with the decision to remand, rejecting federal officer removal jurisdiction and affirming "the district courts' holdings that Defendants have not established federal officer removal jurisdiction on the grounds that they are unable to show that Plaintiffs' claims against them are 'connected or associated with' actions they carried out pursuant to a federal directive."[8] The Fifth Circuit decision came over the dissent of Judge Oldham, who agreed "with the majority that the defendants 'acted under' a federal officer in both producing and refining petroleum during WWII," while noting that he disagreed with the majority as to whether "the defendants' actions also 'relate to' instructions from federal officers."[9] Judge Oldham ended his dissent with the following summation: "I would vacate the remand orders and allow this case to proceed where it belongs: in federal court."[10]

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[2] Plaquemines Par. v. BP Am. Prod. Co., 103 F.4th 324, 324 (5th Cir. 2024).
[3] *Id.* at 324.
[4] *Id.* at 329.
[5] *Id.* at 329–30.
[6] *Id.* at 332 n.29.
[7] 28 U.S.C. §1442(a)(1).
[8] *Id.* at 345.
[9] *Id.* at 345.
[10] *Id.* at 356

II. *PLAQUEMINES PARISH* ARISES FROM A BROAD SET OF STATE COURT LAWFARE EFFORTS

Plaquemines Parish is emblematic of a growing wave of state court cases that serve as a key avenue for local governments and activists to try and obtain policy outcomes by judicial edict or as a consequence of massive monetary judgments.[11] These cases are particularly prevalent in and around the topic of the environment and climate change, with activist groups launching lawsuits across the country claiming constitutional rights to a certain quality and condition of natural environment (or to be free of disfavored energy policies) and cities and counties from Maryland to California filing public nuisance actions relating to climate change.

The public climate change cases brought by states and localities mostly take a consistent approach, claiming that global climate change has caused billions of dollars of damage to the county or city in question and demanding monetary and equitable relief to abate (i.e., undo) the effects of global climate change through funding of certain policy priorities and the curtailment of fossil fuel production.[12] These cases have been pressed across the country, with municipal claims arising from politically deep red places like South Carolina (City Of Charleston) to liberal bastions like Oregon (Multnomah County). Honolulu's litigation illustrates the legal reasoning in these cases, alleging that the defendants (1) were "directly responsible for the substantial increase in all CO2 emissions between 1965 and the present," (2) were "directly responsible for a substantial portion of the climate crisis-related impacts on Plaintiffs," and (3) should be forced to "bear the costs of those impacts, rather than the City[,] . . . residents, or broader segments of the public."[13] In *Honolulu* and countless other cases, the plaintiffs ask not just for compensatory damages but also equitable relief, including abatement of the nuisance of "climate change," which undoubtedly entails changes to corporate behavior worldwide as well as potentially massive monetary outlays that almost seem designed to bankrupt the targeted companies. The Multnomah County litigation in Oregon provides an illustration of what "abatement" means from the perspective of the litigants pressing these claims, with just one county seeking not only millions in compensatory damages, but also "the establishment of an abatement fund remedy to be paid for by the Defendants in the amount of at least $50 Billion for the costs of studying and planning on a countywide scale for the renovations, replacements, retrofits and revised programs that are reasonably necessary to reduce the ongoing harms caused by the Defendants . . . ."[14]

Plaquemines Parish closely echoes the approach taken in these public climate change cases, with the *Plaquemines Parish* complaint being premised on claims relating to historic energy production dating back decades or more and a request for relief that explicitly includes a desired court order for "actual restoration of disturbed areas to their original condition; costs necessary to clear, revegetate, detoxify and otherwise restore the affected portions of the . . . Coastal Zone as near as practicable to its original condition."[15] While the underlying claim is statutory rather

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[11] *See, e.g.*, *Public Nuisance Revealed: The Leftwing Plan To Reshape Our Society*, ALLIANCE FOR CONSUMERS (March 2023), https://allianceforconsumers.org/wp-content/uploads/2023/03/AFC-Public-Nuisance-Report-Final.pdf [perma.cc/E4UU-6L9G].

[12] *Id.*

[13] *See generally* First Amended Complaint, City & Cnty. of Honolulu v. Sunoco LP, No. 1CCV-20-0000380 (Haw. Ct. App. Mar. 22, 2021).

[14] Complaint at 174, Cnty. of Multnomah v. Exxon Mobil Corp., No. 23CV25164, (Or. Ct. App. June 22, 2023).

[15] Plaquemines Par. v. BP Am. Prod. Co., 103 F.4th 324, 329 (5th Cir. 2024).

than one that arises under public nuisance, as is the case with *Honolulu* and the other similar cases, the desired court order in *Plaquemines Parish* would closely mimic the type of order sought in a public climate change case. Said differently, *Plaquemines Parish* uses the same basic logical framework and seeks the same end goal from the litigation as the rest of the overall campaign: punishment of the energy sector with massive monetary judgments alongside removal of all on-the-ground energy company operations within the pertinent jurisdictions.

This aspect of the case likely was a key part of what triggered multiple Republican state attorneys general to break with their colleague in Louisiana in an amicus brief that warned that "[t]his case exemplifies a vast and troubling trend: state courts positioning themselves as forums to override national policy through nuclear verdicts, onerous injunctions, and more."[16] As the amici states explained in their merits-stage brief, the ongoing litigation campaign is embodied in "[s]tates, local governments, and other anti-energy actors . . . using any number of state-law-based theories—consumer protection, securities law, public nuisance, and more—to sue oil companies and . . . punish energy producers with crushing damage awards for activities that were concededly lawful (and often federally endorsed) at the time."[17] As the amici states well noted, *Plaquemines Parish* is made in the image of the rest of this portfolio of state court lawfare, replete with massive verdicts, requests for onerous injunctions, and more.

III. *PLAQUEMINES PARISH* HAS BROADER REAL-WORLD IMPLICATIONS THAN A STANDARD REMOVAL JURISDICTION CASE, IMPLICATIONS WORTHY OF ADDED ATTENTION

Perhaps the most prominent instance of the Supreme Court taking up a removal jurisdiction case on its merits docket in connection with climate change litigation of this sort came during the 2020 Term, when the Court decided *BP v. Baltimore*, a case that dealt with whether, on appeal of an order remanding a case back to state court, a federal appeals court had the power to review the entire order sending the case back to state court rather than only grounds squarely eligible for appeal from such an order.[18] In part because of the limited nature of this question, the energy company petitioners in that case, even after they won before the Court with a 7-1 decision, still ended up back in state courts on remand in the underlying *BP v. Baltimore* lawsuit and many other cases in other parts of the country.[19]

What makes *Plaquemines Parish* particularly interesting—and so different from *BP v. Baltimore*—is how a rebuke of the Louisiana plaintiffs in *Plaquemines Parish* could have broad real-world implications, even if the Supreme Court appears to be merely deciding yet another question about removal jurisdiction and clarifying in which court these Louisiana cases should proceed. Whereas the procedural win in *BP v. Baltimore* didn't change the ultimate trajectory of the underlying cases toward state court, winning this seemingly procedural battle over removal jurisdiction in *Plaquemines Parish* would be much more meaningful.

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[16] Brief of States of West Virginia, Alaska, Iowa, Georgia, Missouri, Nebraska, and Oklahoma as Amici Curiae In Support Of Petitioners at 20, Chevron USA Inc. v. Plaquemines Par., No. 24-813 (2025).

[17] *Id.*

[18] BP P.L.C. v. Mayor of Baltimore, 141 S. Ct. 1532, 1532–33 (2021).

[19] *See, e.g.*, Bd. Cnty Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc., 25 F.4th 1238 (10th Cir. 2022); Mayor of Baltimore v. BP P.L.C., 31 F.4th 178 (4th Cir. 2022) (on remand from Supreme Court); Cnty of San Mateo v. Chevron Corp., 32 F.4th 733 (9th Cir. 2022).

As an initial matter, if the Court in *Plaquemines Parish* decides against the Louisiana plaintiffs, it will conclusively send the merits of the related cases to federal court, undercutting the main lawfare strategy that has been followed in these cases to date, which has focused on staying in state courts. In this respect, *Plaquemines Parish* is an entirely different type of jurisdictional case from *BP v. Baltimore*. The procedural win in *BP v. Baltimore* was limited to whether the defendants were allowed to make certain arguments on appeal and what the aperture of an appeal of a denial of removal could cover. It was ultimately a case about what was open for argument and did not determine what court would ultimately handle the merits of the case in question.

But the effect of a decision against the Louisiana plaintiffs in *Plaquemines Parish* would go well beyond a definitive jurisdictional determination based on federal officer removal jurisdiction.

Most notably, a jurisdictional loss for the Louisiana plaintiffs in *Plaquemines Parish* will wipe away the $745 million judgment obtained in one of the cases below. If the Court sides with the energy companies in *Plaquemines Parish* and holds that this cohort of cases properly belong in federal court based on federal officer removal jurisdiction, then the cases must be decided in federal court based on federal rules and the $745 million judgment (which is not yet final on appeal) will be vacated, with the parties left to start over in federal court.

But that is not all. The substantive consequences of a loss for the Louisiana Plaintiffs in *Plaquemines Parish* even go beyond the wipe out of a single $745 million judgment. There is also a strong indication already that if the Court sends the Louisiana cases to federal court that they will founder on the rocks of federal jurisdiction because the federal courts will hold that the cases are fully preempted by federal law.

As Paul Clement, counsel for the energy companies, pointed out in the certiorari reply brief, the Fifth Circuit, in *New Orleans v. Aspect Energy*—an opinion that would be binding on any federal district court handling the thicket of Louisiana cases in the event of a loss for the plaintiffs in *Plaquemines Parish*—rejected the fundamental liability theories that produced the $745 judgment and underpin the whole slate of cases, unanimously rejecting those theories in an analogous setting "as squarely foreclosed by the relevant statutory language" in SLCRMA.[20] There is no way of knowing for sure how the federal district courts would treat *New Orleans v. Aspect Energy* on the other side of a Supreme Court decision placing the *Plaquemine Parish* cases firmly in federal court. That said, the tea leaves indicate that the Supreme Court sending the Louisiana cases to federal court could potentially be outcome determinative as to the claims that underpin the complaints, given the interpretation of SLCRMA by the Fifth Circuit and the arguments that the energy companies have already previewed to the Supreme Court in their cert-stage briefing.

[20] Reply Brief for Petitioners at 11–12, Chevron USA Inc. v. Plaquemines Par., No. 24-813 (May 13, 2025) (quoting New Orleans City v. Aspect Energy, L.L.C., 126 F.4th 1047, 1052–54 (5th Cir. 2025)).

CONCLUSION

Keep your eye on *Plaquemines Parish* at the Supreme Court. A loss for the Louisiana plaintiffs would potentially serve as a fulcrum that produces a full turnabout, not just upending the state-court legal strategy currently being deployed by the plaintiffs but also vacating a $745 million judgment and potentially teeing up the rest of the Louisiana cases for dismissal on the grounds of federal preemption. And the potential implications go even further, as the case arises from a broader campaign of woke lawfare in which activists and municipal governments seek to use courtrooms to determine what companies are allowed to produce and what consumers can buy.