

“Federal Preemption as a Vehicle to Supreme Court Review of Climate Change Cases,” *For the Defense*

Publications

October 11, 2024

In an article featured in the Defense Research Institute’s (DRI) flagship publication *For the Defense*, Partner Steven Siros, Special Counsel Anand Viswanathan, and Associate Arie Feltman-Frank provide insight into climate change lawsuits moving through state courts and discuss how the adjudication of federal preemption defenses might serve as a vehicle to Supreme Court review.

“On February 20, 2024, the City of Chicago sued defendant fossil fuel companies in Illinois state court, asserting state law claims, including nuisance, violations of consumer protection laws, and product liability. Chicago has now joined multiple state and local entities that have filed similar lawsuits in state courts across the country against corporations involved in the production, marketing, and downstream distribution of oil- and gas-based products. In general, these climate change lawsuits are based on alleged injuries resulting from the defendants’ production, marketing, and/or sale of fossil fuels,” the authors write.

“In each of these cases, the defendants have argued or will likely argue that the state law claims should be dismissed because they are preempted by federal common law and/or the Clean Air Act,” the authors added.

After examining how fossil fuel companies have failed to remove these cases to federal court on federal preemption grounds, Steven, Anand, and Arie predict that a patchwork of state court decisions on the federal preemption question will develop as these cases move through state courts. They also explore the possibility of federal preemption serving as a vehicle to Supreme Court review.

They conclude that “we will have to wait until the Supreme Court starts its new term in October to see if it elects to grant certiorari in this case or whether the Court elects to allow the issue to percolate further.”

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