

No. 20-1144

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**In The**  
**Supreme Court of the United States**

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BAYER HEALTHCARE  
PHARMACEUTICALS INC., et al.,  
*Petitioners,*  
v.  
CURTIS ULLESEIT, et al.,  
*Respondents.*

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BAYER HEALTHCARE  
PHARMACEUTICALS INC., et al.,  
*Petitioners,*  
v.  
BETH WINKLER,  
*Respondent.*

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**On Petition for A Writ of Certiorari**  
**To The United States Court Of Appeals**  
**For The Ninth Circuit**

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**BRIEF FOR RESPONDENTS**

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C. BROOKS CUTTER  
MARGOT P. CUTTER  
CUTTER LAW, P.C.  
401 Watt Avenue  
Sacramento, CA 95864  
(916) 290-9400  
[bcutter@cutterlaw.com](mailto:bcutter@cutterlaw.com)  
[mcutter@cutterlaw.com](mailto:mcutter@cutterlaw.com)

*Counsel for Respondents*

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**QUESTION PRESENTED**

Whether a party's mere assertion of 28 U.S.C. § 1442 or 1443 in a Notice of Removal entitles that party to appellate review of all asserted grounds for removal within a district court's remand order.

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**BRIEF FOR RESPONDENTS**

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Respondents Curtis Ulleseit, Lisa Wehlmann, and Beth Winkler acquiesce to Petitioners Bayer HealthCare Pharmaceuticals Inc., Bayer Corporation, and Bayer HealthCare LLC's request to vacate the Ninth Circuit's decision below, and remand for reconsideration in the United States Court of Appeals for the Ninth Circuit.

## **OPINIONS BELOW**

The opinion of the court of appeals is not officially reported but is available at 826 F. App'x 627 (9th Cir. 2020). The opinion of the district court is not officially reported but is available at 2019 WL 1239854.

### **I. JURISDICTION**

The court of appeals entered judgment in *Ullesweit, et al. v. Bayer HealthCare Pharms. Inc., et al.* and *Winkler v. Bayer HealthCare Pharms. Inc., et al.* on September 16, 2020. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

### **II. STATUTORY PROVISION INVOLVED**

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

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. .

### **III. STATEMENT**

Petitioners argue that this case presents the same question as in *BP p.l.c. v. Mayor & City Council of Baltimore*, 593 U.S. \_\_\_ (2021). Respondents agree that the same question is presented. Accordingly, Respondents acquiesce to Petitioners' request to vacate the Ninth Circuit's decision below, and remand for reconsideration in light of the opinion in *BP*.

If, for any reason, the Court does not dispose of the issue presented in *BP*, Respondents believe that *certiorari* is not warranted in this case and will file a supplemental Brief in Opposition at that time.

Date: July 12, 2021

Respectfully submitted,

*/s/ C. Brooks Cutter*

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C. BROOKS CUTTER  
MARGOT P. CUTTER  
CUTTER LAW, P.C.  
401 Watt Avenue  
Sacramento, CA 95864  
(916) 290-9400  
[bcutter@cutterlaw.com](mailto:bcutter@cutterlaw.com)  
[mcutter@cutterlaw.com](mailto:mcutter@cutterlaw.com)