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IT'S NOT EASY GOING GREEN: AN ANALYSIS OF THE GREENWASHING PHENOMENON AND ITS PLACE IN FEDERAL COURT THROUGH THE CASE OF *MASS. v. EXXONMOBIL CORP.*

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I. Introduction

Imagine sitting in your elementary school classroom learning about the concept of "Going Green." The color green flashing on the board, and the teacher demonstrating what it looks like to recycle. It's probably easy to remember the first time you heard the phrase, "Reduce, Reuse, and Recycle." Perhaps you even sing the phrase in a catchy tune when you repeat it in your head. The importance of going green and saving the environment has been engrained in the minds of young people since at least the beginning of the twenty-first century, so it is hard to imagine why the world has yet to come up with a remedy to save the planet. Perhaps one of the reasons behind this epidemic is the "greenwashing phenomenon."

Greenwashing is known as the creation or propagation of an unfounded or misleading environmentalist image. Many companies are greenwashing, or lying about their products being eco-friendly, at a high rate. The greenwashing phenomenon has spread through several mainstream companies, one of the most notable companies being ExxonMobil Corporation. ExxonMobil has found itself in a widespread variety of greenwashing litigation. Perhaps one of the most notable greenwashing cases ExxonMobil has been defending is the case of *Mass. v. ExxonMobil*

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Corp.[1] In this case, the plaintiff, Massachusetts, accuses ExxonMobil Corporation of greenwashing due to the company's denial of the negative effects that greenhouse gas emissions have on the environment. This case is moving through the litigation process, with the most recent argument being over whether it should be heard in state or federal court. Ultimately, the district court decided that the case should be heard in state court.

The court is wrong in its decision that the case of *Mass. v. ExxonMobil Corp.* should remain in state court. The case should be heard in federal court due to the *Grable* exception created by the Supreme Court in the case of *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*[2] The case of *Mass. v. ExxonMobil Corp.* undoubtedly meets the standard for the *Grable* exception, and thus the court erred when they stated that the case shall be litigated in state court. Leaving this case in state court has negative implications and may limit the possibility of persuasive authority a case like this may hold if decided in federal court.

This article will further explain the greenwashing phenomenon and analyze the case of *Mass. v. ExxonMobil Corp.* through a comparison with the case of *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.* Through this analysis, it will become clear that the case should move to federal court. Lastly, the positive and negative implications of the case remaining in state court and moving to federal court will be explored, thus further lending weight to the argument that the case of *Mass. v. ExxonMobil Corp.* should be heard in federal court.

II. Background

Today, *going green* is all the rave. Cars are becoming electric, reusable water bottles are everywhere, and individuals are beginning to compost and continuing to recycle. Even major companies like IKEA and Starbucks have begun using reusable and recyclable packaging to become eco-friendly. These actions make sense, especially seeing as the Intergovernmental Panel on Climate Change ("IPCC") constantly reports bleak news regarding the state of the current climate,[3] and the ecosystem seems to be taking an uncontrollable decline. Perhaps the large shift in

1. Massachusetts v. Exxon Mobil Corp., 462 F. Supp.3d 31 (Mass. Dist. Ct. 2020).

2. Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg., 545 U.S. 308 (2005) (discussing when state law issues with federal law issues embedded in them can be removed to federal court).

3. The Intergovernmental Panel on Climate Change (Feb. 17, 2023), https://www.ipcc.ch/.

societies' efforts to go green and save the economy has been due to scientists and articles suggesting a sort of doomsday if the pendulum of climate change does not stop swinging. While going green is a good thing and is undeniably needed today, some companies have used it to their advantage and the climate's disadvantage by exploiting the movement to go green and turning to a phenomenon called *greenwashing*.

A. History of Greenwashing

According to Oxford English Dictionary, greenwashing is the "creation or propagation of an unfounded or misleading environmentalist image."[4] For example, a company that produces plastic water bottles advertises that the plastic they manufacture is different from other plastics. The plastic this company manufactures breaks down naturally and therefore will not contribute to the already heavily polluted landfills in the United States. However, the company is lying; the plastic they are using is just like every other form of plastic, it fills landfills and doesn't break down for hundreds of years. This is an example of greenwashing; a company claiming their products are green and good for the environment, when they are not.

Recently, several major companies have been accused of greenwashing, including Volkswagen, Coca-Cola, and even fast fashion brands such as H&M.[5] These companies have been accused of widely advertising their green initiatives while, in reality, making little to no efforts to go green at all.[6] Additionally, companies such as Nestlé have been pegged for greenwashing due to the misleading packaging found on their products. The company states that its packaging is 100% recyclable, however, the packaging is one of the top plastic polluters in the world.[7] Perhaps not so surprising is the fact that many fossil fuel companies are caught up in the greenwashing scheme. Fossil fuel giants, such as BP and ExxonMobil Corporation, have each been accused of releasing products that they claim support the environment but in fact greatly harm it due to the large amount of toxic gas emissions these products release.[8]

4. *Greenwashing*, Oxford English Dictionary (100th ed. 2023).

5. Deena Robinson, *10 Companies Called Out for Greenwashing*, Earth.org (July 17, 2022), https://earth.org/greenwashing-companies-corporations/.

6. *Id.*

7. *Id.*

8. *Id.*

B. Greenwashing Litigation

The lies these fossil fuel companies seem to be spreading have become quite daunting to some, and therefore some of the above-mentioned companies have found themselves as the subject of recent greenwashing litigation. Individuals, states, and even competing companies have been fighting back and filing complaints against these entities who have been greenwashing for so many years. There are a multitude of new greenwashing cases entering the courts today,[9] and those cases are not likely to stop coming in anytime soon due to the newfound popularity of the issue, and the widespread variety of what greenwashing covers.

Greenwashing litigation comes in all different forms. For example, in *Bush v. Rust-Oleum Corporation*, the plaintiff brought a suit based on consumer products mislabeling.[10] Rust-Oleum is in the business of manufacturing and selling cleaning products. The company promoted that their cleaning products were "non-toxic" and "earth friendly."[11] Rust-Oleum even went so far as to add the terms "non-toxic" and "earth friendly" to the labels on its packaging.[12] The Plaintiff argues that Rust-Oleum's packaging is misleading to reasonable consumers, causing them to think that, by buying the company's product, they are helping the environment. Ultimately, the Plaintiff claims that Rust-Oleum is greenwashing.[13]

Additionally, in *City of Hoboken v. ExxonMobil Corporation*, the city brought a claim against ExxonMobil alleging the climate change taking place in the city was a result of ExxonMobil fossil fuels.[14] ExxonMobil, an oil and gas company, spent years downplaying the effects that fossil fuels have on the environment, telling the city that there was no research to suggest that the fossil fuels the company was emitting into the environment were negatively affecting it.[15] However, science suggests otherwise, and ExxonMobil spent years concealing this truth from the city. Thus, the city

9. *E.g.,* Bush v. Rust-Oleum Corp., No. 20-cv-03268-LB, 2021 WL 24842 (N.D. Cal. 2021); City of Hoboken v. ExxonMobil Corp., 558 F. Supp.3d 191 (D.N.J. 2021) *aff'd sub nom*. City of Hoboken v. Chevron Corp., 45 F.4th 699 (3d Cir. 2022); Commonwealth v. ExxonMobil Corp., 187 N.E.3d 393 (Mass. 2022); Mass. v. ExxonMobil Corp, 462 F. Supp.3d 31 (Mass. Dist. Ct. 2020).

10. *Bush*, 2021 WL 24842, at *1.

11. *Id.*

12. *Id.*

13. *Id.* at *2.

14. *City of Hoboken*, 558 F. Supp.3d at 196.

15. *Id.* at 197.

alleges that itself and its residents have been negatively affected by ExxonMobil's lies and by the damage that ExxonMobil has caused to the environment.[16]

Greenwashing litigation is just starting to take off. While the concept of greenwashing has been present for some time, plaintiffs are just beginning to realize the negative effect it is truly having on them and the environment as a whole; thus, the birth of an abundance of greenwashing litigation has begun. This litigation is crucial to help stop the spread of these lies that are harming the environment. The continuance of greenwashing could eventually destroy the earth and harm the people on it, thus the role these plaintiffs are taking is important.

III. Mass. v. ExxonMobil Corp.

ExxonMobil Corporation is under fire in the greenwashing realm, having been the subject of an abundance of greenwashing litigation in the past few years. While ExxonMobil may not be a fan of the microscope it has been placed under, the current litigation it is undergoing is opening the door for new precedent in the environmental law world. One of the cases Exxon is facing that has the potential to make big waves is *Mass. v. ExxonMobil Corp.*[17] from the United States District Court in the District of Massachusetts. In this case, the court analyzes whether greenwashing litigation should be heard in state court or moved to federal court, more specifically whether greenwashing and the issues surrounding it amount to federal question jurisdiction or present a federal law question embedded in a state law issue.[18] While the trial court and the appellate court ultimately decide that state court is the appropriate venue,[19] both courts made apparent errors when landing on this decision, including their analysis of the case at hand and the Supreme Court case *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg*.[20]

To some this may seem immaterial. Some may be asking themselves why the jurisdiction in which this case is decided even matters. However, jurisdiction, especially in a case like this one, matters a tremendous amount. *Mass. v. ExxonMobil Corp.* being decided in federal court would ultimately open the doors for other greenwashing cases to be held in federal court; and

16. *Id.* at 196.
17. 462 F. Supp.3d 31 (Mass. Dist. Ct. 2020).
18. *Id.* at 38.
19. *Id.* at 51.
20. 545 U.S. 308 (2005).

while a federal court decision is not necessarily binding on other jurisdictions, it can be far more persuasive than a state court decision.[21] Thus, the more federal courts strike down greenwashing, the closer we get to stopping greenwashing altogether.

Not only does this jurisdictional decision have massive implications on the environment and the country, but also switching to federal jurisdiction presents major benefits for ExxonMobil and other greenwashing defendants as well. The bias they are likely to face in Massachusetts state court, or other state courts, could ultimately taint their chances at winning the case. ExxonMobil has been lying to the Commonwealth about the dangerous greenhouse gas emissions they have been spewing into the air for years.[22] Undoubtedly, many people in the state have been negatively affected by these gas emissions,[23] or at least believe they have been negatively affected by them; thus, a jury in state court would likely have some bias against ExxonMobil. Because of this, ExxonMobil's chances at receiving a judgment in its favor may considerably increase if the case moves to federal court and so moving this case could benefit both parties.

An outpouring of litigation surrounding ExxonMobil Corporation began in the state of Massachusetts in April 2016 when Massachusetts Attorney General, Maura Healey, issued a Civil Investigative Demand to ExxonMobil.[24] The Attorney General believed that ExxonMobil had been defrauding its consumers by claiming that the production of fossil fuels, including the company's products, *were not* emitting vast amounts of carbon dioxide emissions and therefore ExxonMobil *was not* one of the companies contributing to the increasing amount of greenhouse gas emissions being spewed into the environment.[25] Meanwhile, many scientists, including those working for the Intergovernmental Panel on Climate Change, found that carbon dioxide emissions from fossil fuels "contributed to about seventy-eight percent of the total greenhouse gas emissions increase from 1970 to 2010" and the products being created by ExxonMobil were undoubtedly a part of the problem.[26]

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21. Micah Brown, *Procedures: Precedent and the U.S. Court System*, The Nat'l Agricultural Law Ctr., (Aug. 9, 2022), https://nationalaglawcenter.org/procedures-precedent-and-the-u-s-court-system/.

22. *Mass. v. ExxonMobil*, 462 F. Supp.3d at 34.

23. *Id.* at 36.

24. *Id.* at 34.

25. *Id.* at 37.

26. *Id.* at 36.

Massachusetts alleged that ExxonMobil was aware of these statistics but continued in their production of fossil fuels anyway.[27] Additionally, the Commonwealth contended that on top of knowing these negative statistics, ExxonMobil preached to its consumers that scientific conclusions regarding carbon dioxide emissions were uncertain, thus there was no need for them to change their approach on producing fossil fuels because they could not realistically predict the negative impact their products were having on the environment.[28] This propaganda led to Massachusetts ultimately alleging that ExxonMobil had been participating in the scheme of greenwashing, which it defined as "advertising and promotional materials designed to convey a false impression that a company is more environmentally responsible than it really is, and so to induce consumers to purchase its products."[29]

There are four causes of action that the Commonwealth alleges in the case at hand. Those causes of actions are as follows: misrepresentation and failure to disclose material facts; the making of materially false statements to Massachusetts investors; and misrepresenting the company's environmental benefit to Massachusetts consumers.[30] Lastly, and most notably, the Commonwealth alleged in count four that ExxonMobil has deceived Massachusetts consumers by promoting a false and misleading greenwashing campaign.[31] Naturally, ExxonMobil moved to have the case transferred to federal court in order to avoid the bias that the case may be confronted with in state court. The company asserted four possible bases for federal jurisdiction: (1) complete preemption; (2) embedded federal question; (3) federal officer removal; and (4) the Class Action Fairness Act.[32]

Specific to the scope of this article is the assertion of embedded federal question and whether federal common law governs Massachusetts claims. A further explanation of the embedded federal question and the case governing it, *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*,[33] is to come later. For now, we investigate how ExxonMobil pled this exception in the case at hand. ExxonMobil asserted that two federal issues were embedded in the complaint, and they both fall under *Grable's* reach. Those

27. *Id.*
28. *Id.*
29. *Id.* at 37.
30. *Id.* at 38.
31. *Id.*
32. *Id.*
33. 545 U.S. 308 (2005).

two issues are as follows: "(1) the complaint touches on foreign relations' and therefore must yield to the National Government's policy, and (2) adjudication of the complaint would require a factfinder to question the careful balance Congress and federal agencies have struck between greenhouse gas regulation and the nation's energy needs."[34] The court ruled against the embedded federal question basis and the three other above-mentioned bases by stating that the two federal issues ExxonMobil claimed were present in the case were not present.

As for the argument that federal common law governs the claims, the court struck down this argument too. ExxonMobil attempted to argue that Massachusetts claims fall under federal common law, insinuating that the claims bring forth an "overriding federal interest in the need for a uniform rule of decision."[35] The court, however, disagreed, stating that the allegations in the complaint were not uniquely "federal interests."[36] Ultimately, the court held that the well-pleaded complaint rule is what governs this case, and thus the case should not be removed to federal court because of the Commonwealth's thorough presentation of state law claims.[37]

While the court made strong arguments as to why it believes an embedded federal question and federal common law do not govern Massachusetts's claims, the court's analysis misses the point of the problem. Greenwashing, and those claims related to it, should be deemed a federal issue. The increasing prominence of greenwashing in the United States is of great concern. A uniform federal rule governing greenwashing would be extremely beneficial for the country and even the world. Further analysis of embedded federal question basis for jurisdiction and the reasoning as to why *Mass. v. ExxonMobil Corp.* is capable of being removed, and should be removed, to federal court is to follow.

IV. Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.

The Supreme Court case of *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.* is likely taught in every Civil Procedure class across the country; and if not, it should be. The groundbreaking case made it possible for state law claims that address a substantial federal question to be

34. *Mass. v. ExxonMobil*, 462 F. Supp.3d at 44 (citation omitted).
35. *Id.* at 42 (quoting Illinois v. City of Milwaukee, 406 U.S. 91, 105 n.6 (1972)).
36. *Id.* at 43.
37. *Id.* at 51.

removed to federal court.[38] In other words, a state law claim that is embedded with a substantial federal question or issue can often be removed to federal court. The reasoning behind this is that in situations where a federal issue or question is embedded in a state law claim, a court cannot address the state law claims without also addressing the federal issue. It is not the state court's job to address or decide issues of federal law, so these embedded federal questions can and should be removed to the jurisdiction of federal court.

The *Grable* case began in 1994, when the Internal Revenue Service ("IRS") seized real property from Grable & Sons Metal Products, Inc. ("Grable") to compensate for the federal back taxes Grable owed to the IRS.[39] The IRS eventually ended up selling Grable's previously owned real property to Darue Engineering & Manufacturing ("Darue").[40] Years later, Grable brought an action against Darue, claiming that the company's record title was invalid because the IRS failed to provide Grable with proper notification of its seizure.[41] Darue immediately removed the case to federal court, stating that because the claim of title would depend on the interpretation of a federal tax law statute, there is a federal question at play.[42] Thus, an analysis of the Supreme Court emerged.

The Supreme Court ultimately agreed with Darue, holding that the suit presented a removable federal question.[43] From the Court's analysis, we can carve out some very important elements of federal jurisdiction based on an embedded federal question in a state law claim. The elements the Court uses to aid in its decision in this case are as follows: (1) the federal issue must be raised in the complaint, (2) the issue must be substantial, and (3) no bad docket effects can come from moving this issue into federal court.[44] In sum, the Supreme Court held that state law issues with federal law issues embedded in them can be removed to federal court as long as the federal issue is substantial, meaning important to the system, and as long as there is no possibility of bad docket effects arising from the allowance of removal, such as an influx of cases flooding the federal courts.

38. *See Grable & Sons Metal Prods., Inc.*, 545 U.S. at 319–20.
39. *Id.* at 310.
40. *Id.*
41. *Id.* at 311.
42. *Id.*
43. *Id.* at 319–20.
44. *Id.* at 315–16.

The issue raised by Darue fits this narrative perfectly. Grable's state quiet title action involved contested issues of federal law.[45] Additionally, the government has a direct interest in these issues, as the availability of a federal forum would be valuable when it comes to federal tax matters.[46] Lastly, the Court agreed that only rare state title cases would actually find their way to federal court, and thus the removal would not create any bad docket effects.[47] Because the action met all the elements laid out by the Court, it could be removed to federal court. It can also be inferred that the state court would not have been able to make an accurate ruling on the case without addressing federal law, and as stated previously it is not the job of a state court to interpret federal law. The case of *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.* set forth important precedent and revealed a path into federal court for suits, such as *Mass. v. ExxonMobil Corp*., that do not meet the strict requirements of federal question jurisdiction.

V. Per the Grable *Standard,* Mass. v. ExxonMobil Corp. *Belongs in Federal Court*

Like in the case of *Grable*, there is undoubtedly a federal question at play in the case of *Mass. v. ExxonMobil Corp.* It is obvious that greenwashing claims are primarily claims of fraud, in particular claims that companies have been fraudulent in their promotion of certain products or dishonest about their effect on the environment. However, these claims simply have no legal basis without federally regulated statutes such as the National Environmental Policy Act,[48] the Clean Water Act,[49] and—in the case of *Mass. v. ExxonMobil*—the Clean Air Act ("CAA").[50] The Massachusetts state court must address the CAA to make a ruling in this case. Without the CAA, these claims of fraud simply do not matter. In fact, without the CAA, and the knowledge of the dangers of emissions of hazardous air pollutants the CAA presents, Massachusetts would have no reason to present these claims at all. Similar to the way the state court in *Grable* would be forced to interpret a federal tax law statute to arrive at its decision,[51] a state court in *Mass. v. ExxonMobil Corp.* will be forced to

45. *Id.* at 319.
46. *Id.* at 315.
47. *Id.*
48. National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.
49. Clean Water Act of 1972, 33 U.S.C. § 1251 et seq.
50. Clean Air Act of 1970, 42 U.S.C. § 7401 et seq.
51. *Grable & Sons Metal Prods., Inc.*, 545 U.S. at 311.

interpret the CAA in order to come to its conclusion because, this type of fraud does not matter if not for the standards set forth in the statute. While it is true that the Commonwealth did not explicitly mention the CAA in its complaint, it does not matter per *Grable*. All that matters is that the state court would be inclined to interpret a federal statute when coming to its decision.

Of course, some may argue that the claim of fraud matters because we do not want companies to have the ability to tell lies or commit fraud in any instance, even if the lies they tell are irrelevant. While this is true, fraud itself is not the reason Massachusetts brought a claim against ExxonMobil. Massachusetts brought the claim because it knew that by lying about the greenhouse gas emissions, ExxonMobil was violating several environmental federal statutes and therefore was putting the state of Massachusetts at risk. Thus, there is undoubtedly an embedded federal question in Massachusetts's claim of fraud.

A. The Elements of Grable *as Applied to* Mass. v. ExxonMobil Corp.

The case of *Mass. v. ExxonMobil Corp.* is likely to fall under the *Grable* exception. As mentioned, there are three key elements the Court in *Grable* used to establish when state law issues with federal law issues embedded in them can be removed to federal court.[52] Those three elements are as follows: (1) the federal issue must be raised in the complaint, (2) the issue must be substantial, and (3) no bad docket effects can come from moving this issue to federal court.[53] These elements will be reviewed starting with element three (3) and ending with element one (1).

To begin applying the elements of *Grable* to *Mass. v. ExxonMobil Corp.*, it is best to start with element three (3); no bad docket effects can come from moving this issue to federal court. This means that the court does not want an influx of cases to flood the federal courts due to the removal of the case. While it is true that greenwashing litigation is becoming more prominent, and there is the potential for more greenwashing litigation to come, this does not necessarily mean that the courts will be flooded with these cases. Greenwashing is a phenomenon that began because companies knew that if they could trick consumers into thinking their products were suitable for the environment and would not release a vast number of dangerous pollutants, consumers would be more likely to buy their product. As soon as these companies realize they can be held liable for what they are

52. *Id.* at 315–16.
53. *Id.*

doing, they will stop due to the economic strain litigation will bring, thus the federal courts will not be flooded by greenwashing cases. The one thing that drives large companies is money; thus, as soon as these companies realize they may lose money, they will do what it takes to avoid that. Also, even if the courts see an increase in greenwashing litigation cases, they should not be difficult to resolve. While greenwashing appears in different ways, all greenwashing litigation is likely to be similar, so the court should be able to establish quick guidelines on how to handle these cases. Because of these considerations, greenwashing cases are not likely to flood the federal courts.

Next, it is best to analyze element two (2) of *Grable*; the issue must be substantial. Greenwashing is undoubtedly a substantial issue. The IPCC's sixth, and latest, Assessment Report was released in 2022.[54] The Assessment Report notes that human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems.[55] The report goes on to imply that if the emission of greenhouse gases continues, there will be an increase in the likelihood of severe, pervasive, and irreversible impacts for people and the earth.[56] The environment, the earth, and all the people who inhabit it are in current danger due to greenhouse gas emissions. The greenwashing phenomenon is a substantial issue that needs to be approached by a high authority.

Element one (1) of *Grable* is perhaps the hardest to prove, and thus is analyzed last. For an embedded federal question to be removed from state court to federal court, the federal issue must be raised in the complaint. Massachusetts argues that the case of *Mass. v. ExxonMobil Corp.* cannot be removed to federal court due to the lack of a federal court claim stated in the "well pleaded complaint," and the court agreed with Massachusetts on appeal.[57] While in theory Massachusetts is correct, when diving deeper into *Grable*, it is immediately apparent that Massachusetts is wrong. As stated in *Grable*, "a state-law claim could give rise to federal-question jurisdiction so long as it appears from the [complaint] that the right to relief depends upon

54. Intergovernmental Panel on Climate Change, Climate Change 2022: Impacts, Adaptation and Vulnerability (Hans-Otto Pörtner & Debra C. Roberts et al. eds., 6th ed. 2022).

55. *Id.*

56. *Id.*

57. *Mass. v. ExxonMobil Corp*, 462 F. Supp.3d 31, 51 (Mass. Dist. Ct. 2020).

the construction or application of [federal law]."[58] Thus, even though no federal statute is directly mentioned in the plaintiff's complaint, because the right to relief will undoubtedly depend on the application of the CAA, or even other environmental law statutes, the case shall be removed to federal court. If not for the CAA, there is no reason for these fraud claims to exist. The consumer needs no protection from greenhouse gas emissions, or any other greenwashed product, if not for the negative effects we know the emissions can bring to the environment. The negative effects of these emissions being released into the environment hold no legal weight if not for federal laws such as the CAA. Because of this, element one (1) of the *Grable* standard is met. This means that all three elements of Grable have been met. Thus, the appellate court erred in its analysis and did not properly analyze and apply the *Grable* case to *Mass. v. ExxonMobil Corp.* There is a federal issue properly raised in the complaint, and therefore the case of *Mass. v. ExxonMobil Corp.* meets all three elements established in *Grable*.

B. The Consequences of Denying Grable *and Its Relation to* Mass. v. ExxonMobil Corp.

While the case may meet all three elements of *Grable*, it is ultimately the court's decision to apply the *Grable* standard to *Mass. v. ExxonMobil Corp.* or not. However, should the court decide against applying the Grable standard, the court, and future litigants, specifically those involved in greenwashing disputes, will face several consequences flowing directly from this decision. One of those consequences is that of ignoring precedent.[59] When courts ignore precedent, those holdings create uncertainty in that area of law.[60] It is best the courts remain true to precedent and avoid uncertainty when they can.

The doctrine of binding precedent occurs when a court decides in a case that any court that is equal to or lower in the hierarchy of the court structure must abide by the principle of law established in that case.[61] *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.* was decided by the Supreme

58. *Grable & Sons Metal Prods., Inc.*, 545 U.S. at 313 (citing Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 41 U.S. 243, 65 L.Ed. 577 (1921)).

59. *See* Lewis F. Powell, Jr., *Stare Decisis and Judicial Restraint*, 47 Wash. & Lee L. Rev. 281, 286 (1990).

60. *See id.* ("Stare decisis also enhances stability in the law. . . . [S]tare decisis is necessary to have a predictable set of rules on which citizens may rely in shaping their behavior.").

61. *Id.*

Court in 2005 and has set a precedent for many cases since then.[62] Ignoring eighteen years of precedent is a substantial knock to the guidelines of judicial decision making. In fact, precedent was first established to set guidelines for judicial lawmaking that are fair, consistent, and predictable.[63] Some courts have strayed away from binding precedent for good reason, such as showing that the precedential case was decided wrongly.[64] Additionally, some law scholars believe that binding precedent makes the law system more rigid than it should be.[65] However, binding precedent does more than create a "rigid" legal system. It gives attorneys the opportunity to analyze their client's case thoroughly and appropriately. Binding precedent allows attorneys to balance the chances of success and the probable costs involved; it allows attorneys to put their clients' best interests above anything else, which in theory is exactly what attorneys are meant to do.[66] Without binding precedent, attorneys would be forced to speculate on whether they believe their client's case will be successful, unsuccessful, or unwarranted, which would harm the attorneys ethical code of putting the client's best interests first.[67] As mentioned earlier, in the past, courts have strayed from following binding precedent for good reason. However, in the case of *Mass. v. ExxonMobil Corp.*, there is simply no good reason for the court to stray from precedent,[68] especially when straying from precedent could negatively affect future litigants.

VI. Why It Matters: The Benefits of Federal Court

There are many benefits to removing a case from state court to federal court. While many of those benefits change depending on jurisdiction, there are several that are relatively consistent across jurisdictions. For instance, most federal courts have better resources than state courts do. This is

62. *See, e.g.,* Gunn v. Minton, 568 U.S. 251 (2013); and Empire HealthChoice Assurance, Inc. v. McVeigh, 547 U.S. 677 (2006) (applying the Grable elements to determine federal jurisdiction).

63. *See* Powell, *supra* note 59, at 286 (1990).

64. *See, e.g*., Brown v. Board of Ed. of Topeka, Shawnee County, Kan., 347 U.S. 483 (1954). (Reversing the case of Plessy v. Ferguson, 163 U.S. 537 (1896) and therefore straying from precedent due to a mistake by the court).

65. *See* Randy J. Kozel, *The Scope of Precedent*, 113 Mich. L. Rev. 179, 187–89 (2014).

66. *See* Model Rules of Prof'l Conduct: Preamble & Scope (2023).

67. *See id.*

68. Very few courts have declined to follow the precedent set forth in the case of Grable & Sons Metal Prods., Inc.

because federal courts hear far less cases than state courts do and have far less contact with the public.[69] A federal court's ability to hear less cases allows them to acquire better resources for much longer. Additionally, having less contact with the public means less opportunity for those resources to be damaged, tampered with, or used. Less contact with the public and fewer cases also means the federal court contains less bias than state courts, because they can stay sharper than state court judges and there is less opportunity for their unbiased opinions to become swayed. Lastly, federal courts are typically stricter than state courts are. State courts are sometimes deemed "the wild west" compared to federal courts, as state courts are far more likely to let violations of rules slide. Federal courts have set high standards, and they follow the Civil Rules of Federal Procedure, the Rules of Bankruptcy Procedure, the Rules of Evidence, and criminal procedure rules.[70] The benefits mentioned above are more than likely consistent in every jurisdiction, and thus every court case can be positively affected, or negatively affected depending on how you look at it, due to these federal court characteristics. However, *Mass. v. ExxonMobil Corp.* would benefit from moving to federal court for a few reasons. Those benefits relate to the positive implications a case like this could have on the environment as a whole; additionally, corporations who are facing greenwashing litigation will benefit from this case being moved to federal court as well. Therefore, having the case heard in federal court could potentially provide advantages to parties on both sides of the case.

A. Benefits to the Environment

The environment will potentially benefit greatly from moving the case of *Mass. v. ExxonMobil Corp.* to federal court. Federal courts tend to be far more persuasive than state courts and with this persuasion comes the possibility of several lower courts and federal courts following suit. If the case of *Mass. v. ExxonMobil Corp.* is decided in federal court, it could mean lasting protection for the environment. If one federal court strikes down greenwashing, others are bound to follow. While Massachusetts wants to stop ExxonMobil from greenwashing in the state,[71] it seems like what it really wants is to take a stab at ending the greenwashing phenomena

69. *Comparing Federal & State Courts*, United States Courts (Feb. 18, 2023), https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts.

70. *Current Rules of Practice & Procedure*, United States Courts (Feb. 18, 2023), https://www.uscourts.gov/rules-policies/current-rules-practice-procedure.

71. *Mass. v. ExxonMobil Corp*, 462 F. Supp.3d 31, 38 (Mass. Dist. Ct. 2020).

altogether, and that is what the goal should be. Moving this case to federal court would mean a potential win for Massachusetts and the environment.

Less greenwashing in the world means less greenhouse gas emissions released into the world. With less greenhouse gas emissions being released into the world; the earth and the ocean would slowly begin to cool, and while it would take years for the earth to actually cool down, terminating unnatural greenhouse gas emissions would certainly be a step in the right direction.[72] Additionally, the environment would be positively affected in so many other ways. Food brands, such as Nestlé, would no longer be able to trick consumers into buying their product for "eco-friendly" purposes while simultaneously being the highest cause of plastic pollutants in the world; fast fashion brands such as H&M would no longer be able to claim their products are environmentally friendly while simultaneously being made with polyester, one of the world's most notorious plastic pollutants[73]; and large oil corporations, such as ExxonMobil, would no longer be capable of emitting thousands of harmful gases into the environment a day without facing some kind of punishment. While the law does not work this way, the positive impact a case like this can have on the world if it is removed to federal court should simply be enough to warrant removing the case. After all, humans depend on a healthy environment. Thus, it is important that the necessary steps are taken to protect not only the state of Massachusetts, but the environment as a whole. Moving this case to federal court could mean a step in the direction of saving our environment.

B. Benefits to the Corporations

Large corporations, including ExxonMobil Corporation, will benefit tremendously from the case of *Mass. v. ExxonMobil Corp.* being moved to federal court. State courts hold a bias, whether it be implicit or not, and they typically side with the Commonwealth in cases that impact the state as a whole.[74] This implicit bias makes sense in a way; consider this: A judge,

72. *If Emissions of Greenhouse Gases Were Stopped, Would the Climate Return to the Conditions of 200 Years Ago*, The Royal Society (Feb. 18, 2023), https://royalsociety.org/topics-policy/projects/climate-change-evidence-causes/question-20/. (Noting that even if emissions were to completely stop, it would take thousands of years for surface air temperatures and the ocean to begin to cool).

73. Kelly Mehorter, *H&M Hit with Another 'Greenwashing' Class Action Over Allegedly False 'Conscious Choice' Sustainability Claims*, Newswire (Feb. 18, 2023) https://www.classaction.org/news/handm-hit-with-another-greenwashing-class-action-over-allegedly-false-conscious-choice-sustainability-claims.

74. *See* Scott Dodson, *Civil Procedure: Beyond Bias in Diversity Jurisdiction*, The Judges' Book: Vol. 4, Art. 5. (2020).

who is living in the state of Massachusetts, is tasked with hearing the case of *Mass. v. ExxonMobil Corp.* The judge learns of all the greenhouse gas emissions ExxonMobil is releasing into the air and learns that those gas emissions have a negative effect on the people of Massachusetts, including that judge's family. As any human would do, the judge is likely to get upset and allow their implicit bias to rule their decision-making process. Now, imagine the same scenario but with a jury of individuals from Massachusetts. Unlike a judge, a jury has not been trained to control this implicit bias and is extremely likely to allow this bias to rule their decision-making process. This is why removing a case such as this to federal court can be extremely beneficial for large corporations against whom judges and juries tend to hold a large amount of bias.

Removing a case such as this to federal court can be beneficial for large corporations. Whether this case is heard in federal court could be the difference between a fair trial and an unfair trial for ExxonMobil. While it is true that a federal court ruling in favor of ExxonMobil could mean no victory for the environment, it is still best for ExxonMobil to receive a fair trial. In fact, our justice system was built on the idea of defendants receiving a fair trial.[75] Moving the case to federal court means far less possibility for implicit bias to occur. While this could mean a loss for the environment if the corporation wins, it could mean a big win for the environment if the corporation loses in federal court due to the weight federal courts hold as compared to state courts. Thus, while it is true that moving the case to federal court holds a risk, the risk to reward ratio leans in the favor of reward.

VII. Conclusion

In conclusion, it is apparent that the case of *Mass. v. ExxonMobil Corp.* should be removed to federal court. In fact, most greenwashing litigation likely should. Greenwashing is known as the "creation or propagation of an unfounded or misleading environmentalist image,"[76] and as presented in the case of *Mass. v. ExxonMobil Corp.*, it is true that it is an issue of fraud. Through the case of *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, the case of *Mass. v. ExxonMobil Corp.* is eligible to be removed to federal court. *Grable* presents a test, or a set of elements to be followed when determining whether a case meets its standards, and if the case meets

75. U.S. Const. amend. VI.

76. Edmund Weiner & John Simpson, Oxford English Dictionary (James Murray et al. eds., 100th ed. 2023).

the *Grable* standard, it is known to have a "federal issue embedded in a state law claim," and thus should be removed to federal court. The *Grable* elements are as follows: (1) the federal issue must be raised in the complaint, (2) the issue must be substantial, and (3) no bad docket effects can come from moving this issue into federal court.

The case of *Mass. v. ExxonMobil Corp.* meets all three of the above-mentioned elements. No bad docket effects will come from removing this case to federal court, because as soon as large companies realize they can be punished for greenwashing, greenwashing is likely to slow down exponentially; thus, the court will not be flooded with greenwashing cases. Greenwashing is undoubtedly a substantial issue, as the concept of saving the environment is substantial, and will remain substantial until something is done to make a healthy environment a reality. Lastly, and perhaps most importantly due to the holding in *Mass. v. ExxonMobil Corp.*, the federal issue[77] was raised in the complaint. While it was not textually raised, *Grable* makes clear that the expression of the issue does not need to be textual; if it appears that the right to relief depends upon the construction or application of federal law, element one (1) is met. Thus, *Mass. v. ExxonMobil Corp.* falls into the *Grable* exception category and should be removed to federal court.

The removal of the case to federal court presents many positives. One of these positives is the implication that a greenwashing case being decided against the defendant in federal court is extremely beneficial to the environment. Another positive is that a fair, equal, and unbiased court system is likely to be upheld if this case is moved to federal court. ExxonMobil will undoubtedly experience great bias if the case remains in state court, and regardless of the outcome of the case, that is something we should always strive to avoid. Thus, there are benefits to the case of *Mass. v. ExxonMobil Corp.* being removed to federal court, and because of the Grable exception, the case can be removed and should be.

77. Note that the federal issue is the CAA and even other environmental law statutes may be at play.