

SOUTHERN DISTRICT CIVIL ROUNDUP

Federal Issue Not Substantial
Enough for Removal

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Where diversity jurisdiction is lacking, removal to federal court typically requires the removed case to assert a federal cause of action. An exception exists, however, where removal is proper if the state cause of action asserted involves a substantial federal issue.

In a previous article, “Substantial Federal Questions Keep State Law Claims in Federal Court,” we discussed Judge Jesse M. Furman of the U.S. District Court for the Southern District of New York’s decision in *New York v. Arm or Ally*, 644 F.Supp.3d 70 (S.D.N.Y. 2022), in which Judge Furman applied the substantial federal issue doctrine to retain jurisdiction over a lawsuit brought by the state of New York asserting only state law claims. Furman found that the federal issue raised in *Arm or Ally*—whether the products at issue were “firearms” or “component parts” of firearms within the meaning of federal law—was both

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substantial and capable of resolution in federal court without disrupting the federal-state balance approved by Congress.

In *New York v. Sirius XM Radio*, 2024 WL 2348206 (S.D.N.Y. May 23, 2024), Judge Jed S. Rakoff of the Southern District of New York recently applied the doctrine to another lawsuit brought by New York State, but he came to the opposite conclusion.

Rakoff found that the federal issue raised in *Sirius XM Radio*—whether Sirius violated a New York state consumer protection law by engaging in acts proscribed by the federal Restore Online Shoppers’ Confidence Act (ROSCA)—not substantial enough to keep the case in federal court. Based on the text of ROSCA, he also found that exercising federal

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jurisdiction would upset the federal-state balance approved by Congress in enacting the statute.

‘New York v. Sirius XM Radio’

In *Sirius XM Radio*, the state of New York filed a petition against Sirius XM Radio (Sirius) in New York Supreme Court, asserting exclusively state causes of action for alleged violations of provisions of the New York Executive Law and New York General Business Law. One of the New York Executive Law claims was premised on allegations that Sirius had engaged in acts proscribed by federal law—*namely*, ROSCA.

Invoking 28 U.S.C. §1331, Sirius removed the case to federal court, arguing that although the petition did not assert any federal cause of action, the above-referenced New York Executive Law claim gave rise to federal jurisdiction based on the substantial federal issue doctrine, because it was predicated on an alleged violation of ROSCA. New York moved to remand the case back to state court.

Applicable Legal Standards

Under 28 U.S.C. §1331, a district court has “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Although most cases that qualify for removal under this statute are lawsuits where federal law creates the cause of action asserted, “there is a special and small category of cases where federal question jurisdiction can exist even where a claim finds its origins in state rather than federal law.” *Sirius XM Radio*, 2024 WL 2348206, at *2 (internal quotation marks and citation omitted).

To fall within this category of cases, “a federal issue must be (1) necessarily raised, (2) actually disputed, (3) substantial and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress” (internal quotation marks and citation omitted).

Application of the Substantial Federal Issue Test

Rakoff found that the first two requirements of the substantial federal issue test were readily satisfied. As to the first requirement, he concluded that a federal issue was “necessarily raised” because the relevant New York Executive Law claim was “plainly predicated on a violation of federal law.” Rakoff reasoned that this was the case because “the court [could not] award the relief requested by the state without reaching the federal question” of whether Sirius’s challenged conduct violated ROSCA—in particular, the statute’s requirement that Sirius provide a “simple mechanism” for its customers to stop recurring charges from being placed on their credit cards or other financial accounts.

With respect to the second requirement, Rakoff found that the federal issue—whether Sirius violated ROSCA—was “actually disputed” because “Sirius represent[ed] that it w[ould] vigorously dispute the State’s interpretation of simple mechanism in ROSCA and offer its own affirmative interpretation of that term” (internal quotation marks omitted).

Rakoff then turned to the last two requirements of the substantial federal issue test and concluded that they were not met. As to the third requirement—whether the federal issue is “substantial”—he found that it was not for a variety of reasons, including because (i) “ROSCA expressly reserves the right of the New York Attorney General to do exactly what the State did here: bring suits in state court under state law” and (ii) the federal issue raised (whether Sirius’s challenged conduct violated ROSCA’s “simple mechanism” requirement) involves a mixed question of fact and law, and “a case in which the issue is fact-bound, rather than purely legal, is far less likely to be useful to future parties and thus less likely to raise a substantial enough federal issue to merit the exercise of federal jurisdiction.”

“At bottom,” Rakoff concluded, “the federal issue in this case boils down to Sirius’s contention that its cancellation procedures are simple and the State’s contention that they are not,” which “is an inherently fact-intensive issue that will provide little guidance in future cases,” which is “far afield from other cases where the federal issue was important enough for the exercise of federal jurisdiction, such as issues of broad importance to the national economy or the functioning of the government,” and which therefore “is not sufficiently important to the federal system as a whole and is thus not substantial.”

With respect to the final requirement, Rakoff held that “exercising jurisdiction would upset the carefully articulated balance between state and federal courts that Congress set forth in ROSCA” because, under the statute, “State Attorneys General are permitted to bring ROSCA claims in federal court to seek injunctive relief but any powers those Attorneys General have under state law to bring related state causes of action in state court are preserved.”

Accordingly, “[b]ecause the ability of the New York Attorney General to bring this suit [in state court] was expressly preserved by ROSCA,” Rakoff reasoned that “it would be inconsistent with the division of responsibilities that Congress set forth in ROSCA for the Court to exercise jurisdiction in this case.”

Rakoff observed that exercising federal jurisdiction also would be inappropriate because “this case implicates the state’s interests as a sovereign.” New York brought the case “to enforce its own consumer-protection laws through a special proceeding pursuant to a state statute that specifically selects the New York Supreme Court as the proper forum for such a suit,” and “exercising federal jurisdiction [would] disrupt the state’s chosen forum for litigating this type of case” and also would “force the State to forego the

procedural mechanisms that are uniquely available to it in a special proceeding in a state forum to obtain ‘expeditious’ relief.”

Distinguishing *Arm or Ally*

The different outcomes in *Sirius XM Radio* and *Arm or Ally* relate to the third and fourth requirements of the substantial federal issue test.

In *Arm or Ally*, (i) the United States filed a statement of interest in a related case filed by the city of New York, specifically citing to concerns regarding the federal issue involved in that case, namely, whether unfinished firearm frames and receivers fell within the federal statute’s definitions of “firearm” and “component parts”; (ii) Furman agreed that defining those terms, and determining whether the products at issue fell within the scope of those terms could “have sweeping consequences for the regulatory flexibility of the ATF, the enforcement powers of federal prosecutors, the scope of a state’s authority to regulate these products, and the potential liability of thousands of individuals who have acquired these products,” 644 F.Supp.3d at 80; and (iii) the federal statute did not expressly preserve the state’s right to file suit in state court.

None of the foregoing circumstances were present in *Sirius XM Radio*.

Conclusion

Perhaps the most significant difference between *Sirius XM Radio* and *Arm or Ally* is that *Arm or Ally* involved the regulation of firearms and statutes aimed at curbing gun violence, matters of strong federal interest. Rakoff’s decision in *Sirius XM Radio* demonstrates that removal of purely state causes of action based on an assertion that they involve a substantial federal issue will continue to be the exception rather than the rule, and will be scrutinized closely by federal courts.