

No. \_\_-\_\_\_\_

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

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HOTZE HEALTH WELLNESS CENTER INTERNATIONAL  
ONE, LLC, PHYSICIAN'S PREFERENCE INTERNATIONAL,  
LP, BRAIDWOOD MANAGEMENT, INC., PARADIGM  
HOLDINGS, LLC, AND DR. STEVEN HOTZE,  
PETITIONERS,

v.

ENVIRONMENTAL RESEARCH CENTER, INC.,  
RESPONDENT.

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**On Petition for Writ of *Certiorari* to the  
U.S. Court of Appeals for the Ninth Circuit**

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**PETITION FOR WRIT OF *CERTIORARI***

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### **QUESTIONS PRESENTED**

This Court has recently sought to define when 28 U.S.C. § 1447(c)-(d) preclude appeals from remand orders. *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009); *Powerex Corp. v. Reliant Energy Servs.*, 551 U.S. 224 (2007); *BP P.L.C. v. Mayor of Baltimore*, 141 S.Ct. 1532 (2021). The lower courts and parties need more clarity than these cases give.

Petitioners removed a “Proposition 65” bounty-hunter suit from state to federal court, premising the removal in part on supplemental jurisdiction to avoid the state’s noncitizen status for diversity purposes. Moreover, under the terms of the bounty-hunter law and its own constitutional injury, the plaintiff has prudential third-party standing—a *nonjurisdictional* issue that § 1447(c) requires plaintiffs to raise within 30 days of removal or waive—that should be appealable as nonjurisdictional like exercises of jurisdictional discretion under *Carlsbad*. With these prudential and discretionary issues falling outside § 1447(d)’s bar of appellate review, but nonetheless sounding “jurisdictional,” the *Powerex* framework of barring appeals when the rationale for remand is “colorably characterized as subject-matter jurisdiction” is too vague to guide courts and parties.

Petitioners raised discretionary and prudential arguments against remand, but the district court remanded and awarded attorney fees as “actual expenses” under § 1447(c), with no evidence or claim that the bounty hunter actually paid its counsel. The Ninth Circuit affirmed and found the appeal frivolous.

The questions presented are:

- (1) Whether the appeal was frivolous.
- (2) Whether the remand and fee order was proper.

### **PARTIES TO THE PROCEEDING**

Petitioners are Physician's Preference International, LP, Hotze Health & Wellness Center International One, L.L.C., Braidwood Management, Inc., Paradigm Holdings, LLC, and Dr. Steven Hotze, state-court defendants that removed to the district court and appealed to the court of appeals.

Respondent is Environmental Research Center, Inc., the plaintiff in the district court and the appellee in the court of appeals.

### **RULE 29.6 STATEMENT**

Petitioners Physician's Preference International, LP, Hotze Health & Wellness Center International One, L.L.C., Paradigm Holdings, LLC, and Braidwood Management, Inc., have no parent companies, and no publicly held company owns any of their stock.

### **RELATED CASES**

The following cases relate directly to this case for purposes of this Court's Rule 14.1(b)(iii):

- *Envtl. Res. Ctr., Inc. v. Hotze Health & Wellness Ctr. Int'l One, L.L.C.*, No. RG18914802 (Alameda Cty. Super. Ct.). Filed July 30, 2018, removed Sept. 10, 2018, remanded Jan. 4, 2019; removed Jan. 16, 2020; remanded May 26, 2020; dismissed in part Sept. 2, 2021; appellate review sought Oct. 12, 2021; pending.
- *Physician's Preference Int'l, LP v. Superior Court for the County of Alameda*, No. A163647 (Cal. Ct. App.). Filed Oct. 12, 2021; pending.
- *Envtl. Res. Ctr., Inc. v. Hotze Health & Wellness Ctr. Int'l One, L.L.C.*, No. 3:18-cv-05538-VC (N.D. Cal.). Ordered remanded Dec. 21, 2018, appealed Dec. 25, 2018, remanded Dec. 27, 2018.

- *Envtl. Res. Ctr., Inc. v. Hotze Health & Wellness Ctr. Int'l One, L.L.C.*, No. 18-17463 (9th Cir.). Dismissed Mar. 21, 2019; motion to reconsider *en banc* filed Apr. 4, 2019, and denied Sept. 10, 2019; mandate issued Sept. 18, 2019.
- *In re Hotze Health & Wellness Ctr. Int'l One, L.L.C.*, No. 19-238 (U.S.) Petition for writ of mandamus denied Nov. 4, 2019.
- *Envtl. Res. Ctr., Inc. v. Hotze Health & Wellness Ctr. Int'l One, L.L.C.*, No. 19-1005 (U.S.). Petition for *certiorari* filed Feb. 06, 2020; denied Mar. 23, 2020; petition for rehearing filed Apr. 17, 2020; denied May 18, 2020.
- *Envtl. Res. Ctr., Inc. v. Hotze Health & Wellness Ctr. Int'l One, L.L.C.*, No. 3:20-cv-0370-SK (N.D. Cal.). Ordered remanded May 20, 2020, operative (amended) notice of appeal filed May 27, 2020; remanded May 26, 2020.
- *Envtl. Res. Ctr., Inc. v. Hotze Health & Wellness Ctr. Int'l One, L.L.C.*, No. 20-15457 (9th Cir.). Dismissed in part July 28, 2020; motion to reconsider *en banc* filed Aug. 11, 2020, and denied Jan. 12, 2021; memorandum issued June 17, 2021; mandate issued July 9, 2020; order for briefing on attorney-fee award June 21, 2021; pending as to attorney-fee award.
- *Hotze Health & Wellness Ctr. Int'l One, LLC v. Evtl. Res. Ctr., Inc.*, No. 18A1222 (U.S.). Deadline to petition extended to May 28, 2019.
- *Hotze Health & Wellness Ctr. Int'l One, LLC v. Evtl. Res. Ctr., Inc.*, No. 19A605 (U.S.). Deadline to petition extended to Feb. 7, 2020.

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