No. 24–813

In The
Supreme Court of the United States

CHEVRON USA INCORPORATED, ET AL.,
Petitioners,

v.

PLAQUEMINES PARISH, LOUISIANA, ET AL.,
Respondents.

On Writ Of Certiorari
To The United States Court of Appeals
for the Fifth Circuit

BRIEF OF HON. WILLIAM P. BARR AND HON. MICHAEL B. MUKASEY AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici curiae are two former Attorneys General of the United States. William P. Barr served as the 77th Attorney General under President George H. W. Bush and as the 85th Attorney General under President Donald J. Trump. He also served as Deputy Attorney General and as the Assistant Attorney General in charge of the Office of Legal Counsel. Michael B. Mukasey served as the 81st Attorney General under President George W. Bush. Before that, he served as a judge on the U.S. District Court for the Southern District of New York.

Under General Barr's and Judge Mukasey's leadership, the Department of Justice steadfastly defended the principles of federalism which underlie our constitutional order. And in advancing our nation's commitment to equal justice under law, General Barr and Judge Mukasey have endeavored to safeguard the fundamental fairness and neutrality of all judicial proceedings.

The proper relationship between the states and the federal government matters to these amici. Federal officer removal exists for cases exactly like this one, which presents a clash between local interests and our nation's common defense and

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[1] This brief was authored by amici and their counsel listed on the front cover, and was not authored in whole or in part by counsel for a party. No one other than amici or their counsel has made any monetary contribution to the preparation or submission of this brief.

general welfare. When a private company is sued for performing expressly permitted work inherently necessary to fulfilling a federal contract, that case belongs in federal court. And the need for a neutral, federal forum is made even clearer where, as here, the state has exhibited willful hostility to fundamental principles of due process and federal supremacy—not to mention its own state law.

SUMMARY OF ARGUMENT

This lawsuit arises in Plaquemines Parish on the Louisiana coast and seeks to impose liability against federal contractors for their work helping the United States win World War II. The parish's population is less than 25,000. U.S. Census Bureau, 2020 Decennial Census. Yet this small, coastal community has become a haven for trial lawyers chasing vast payouts from oil and gas companies in the name of coastal restoration. They strategically pursue these claims in state courts that are friendly—and sometimes beholden—to the plaintiffs' bar.

When a federal contractor is sued in state court, the federal officer removal statute allows the contractor to remove the claims to federal court, where a trial free from local prejudice is possible. This removal mechanism has been enshrined by statute since the War of 1812. In the ensuing two centuries, Congress has continually expanded the class of persons the statute protects, mindful that the government may need to enlist the private sector,

especially in times of national crisis. Private companies will understandably hesitate to help the federal government if doing so exposes them to harassment—even decades later—via litigation brought by self-serving state and local governments in biased state courts. This is not to say that federal contractors are immunized from liability for the harms they cause while performing their contracts. Rather, as Congress has clarified, the venue in which such claims are adjudicated must be a neutral one: a federal court.

Through this lawsuit and over forty others like it, Louisiana's coastal parishes seek to impose ruinous, retroactive liability on America's energy industry for federally directed work commenced nearly a century ago in support of the country's war effort. In this case, Petitioners were sued in state court for alleged state law violations committed while fulfilling federal contracts for aviation fuel that was desperately needed during World War II. The local population is confronting coastal land loss, which impacts two pillars of the Gulf Coast's economy—oil and fishing—and the coast's habitability in general. When it comes to assigning liability for coastal erosion in Louisiana, no local judge or jury can act as a neutral, disinterested factfinder when there is a deep pocket sitting in the defendant's chair responding to a lawsuit brought by the local government. This is the quintessential case for which federal officer removal exists.

But Petitioners have been denied access to a fair federal forum. The oil production at issue was

connected to Petitioners' federal contracts for refined aviation gas needed during World War II, and thus was "relat[ed] to an act under color of" Petitioners' federal contracts. 28 U.S.C. § 1442(a)(1). Respondents counter that it was not connected enough to qualify as activity protected by the federal officer removal statute. But Congress made clear in a recent amendment that a case need only "relate[] to an act under color of" a federal contract to qualify for federal officer removal—a deliberately chosen and expansive phrase meant to cover a wide range of cases, including this one. Judge Oldham's dissent below explains why Respondents are plainly wrong. *Plaquemines Par. v. BP Am. Prod. Co.*, 103 F.4th 324, 348 (5th Cir. 2024) (Oldham, J., dissenting) (*Plaquemines II*).

This amicus brief explains the history and purpose behind the federal officer removal statute and its clear applicability here. We describe the unique pressure oil and gas companies were under to supply the country and its allies with refined aviation gas during World War II, when Petitioners began the conduct at issue. We also give some background on Louisiana's hostility to corporate defendants in state court and the influence of its powerful plaintiffs' bar on judicial proceedings. Finally, we describe the danger entailed in narrowing the scope of federal officer removal, which will discourage the public-private cooperation that has seen our country through its darkest hours.

ARGUMENT

I. The federal officer removal statute's history reveals its purpose to protect those enforcing federal law or serving federal interests from harassment or interference by hostile state courts.

The federal officer removal statute has existed in various incarnations since the early days of the Republic, and Congress recently broadened it further to cover cases like this one. During the War of 1812, Congress first provided for removal to federal court of state court cases brought against federal customs officers, to prevent harassment against those collecting customs duties unpopular in New England. *See* Act of Feb. 4, 1815, § 8, 3 Stat. 195, 198–99.

In 1833, Congress revived the statute as part of the Force Bill aimed at quelling the Nullification Crisis in South Carolina, allowing removal of any suit in state court brought "against any officer of the United States, or other person, for or on account of any act done under the revenue laws of the United States, or under color thereof." *See* Act of Mar. 2, 1833, § 3, 4 Stat. 632, 633.

Congress again provided for federal officer removal in cases arising from actions authorized by the President or Congress during the Civil War, *see* Act of Mar. 3, 1863, § 5, 12 Stat. 755, 756–57, amended by Act of May 11, 1866, §§ 3–4, 14 Stat. 46, 46; Act of July 28, 1866, § 8, 14 Stat. 328, 329–30; Act

of Feb. 5, 1867, 14 Stat. 385; Act of July 27, 1868, § 1, 15 Stat. 243, 243, and extended removal under the Force Bill to include actions to enforce the internal revenue laws, *see* Act of Mar. 7, 1864, § 9, 13 Stat. 14, 17; Act of June 30, 1864, § 50, 13 Stat. 223, 241 (cited as 13 Stat. 218); Act of July 13, 1866, §§ 67–68, 14 Stat. 98, 171–72. *See generally Watson v. Philip Morris Cos.*, 551 U.S. 142, 147–49 (2007) (summarizing this history); *Willingham v. Morgan*, 395 U.S. 402, 405–06 (1969) (same); *Tennessee v. Davis*, 100 U.S. 257, 267–69 (1880) (same).

In 1948, Congress again expanded the statute's "coverage to include all federal officers" by "dropping its limitation to the revenue context." *Watson*, 551 U.S. at 148–49; *see* Act of June 25, 1948, ch. 89, Pub. L. No. 80-773, ch. 646, § 1442(a), 62 Stat. 869, 938, 28 U.S.C. § 1442(a). And in the Removal Clarification Act of 2011, Congress once more expanded § 1442 to encompass cases "for *or relating to* any act under color of . . . office." Pub. L. No. 112-51, § 2(b), 125 Stat. 545, 545 (2011) (emphasis added).

What motivated Congress' incessant expansion of the scope of federal officer removal throughout our country's history? Put simply, the need to protect federal interests and those carrying them out from interference and harassment by hostile state courts and governments. This is "a story nearly as old as our Nation in which Congress relaxed, relaxed, and relaxed again the limits on federal officer removal." *Plaquemines II*, 103 F.4th at 347 (Oldham, J., dissenting).

Each iteration of this expansion bears this out. Congress enacted the first federal officer removal statute during the War of 1812 because "shipowners from [New England] filed many state-court claims against federal customs officials charged with enforcing a trade embargo with England." *Watson*, 551 U.S. at 147; *see id.* at 148 ("This initial removal statute was '[o]bviously . . . an attempt to protect federal officers from interference by hostile state courts.'" (quoting *Willingham*, 395 U.S. at 405)).

A similar purpose motivated Congress in enacting the Force Bill in 1833, when South Carolina purported to nullify federal tariff laws and threatened to prosecute federal agents collecting those tariffs. As Daniel Webster explained the law's purpose, "where state courts might prove hostile to federal law, and hence to those who enforced that law, the removal statute would 'give a chance to the [federal] officer to defend himself where the authority of the law was recognized.'" *Watson*, 551 U.S. at 148 (quoting 9 Reg. Deb. 461 (1833)).

The Civil War-era removal statute was similarly aimed at protecting federal officers and those assisting them in enforcing federal laws in the recalcitrant Southern states of the former Confederacy. And a series of this Court's cases in the late nineteenth and early twentieth centuries show federal officer removal was used to counter state-level hostility to federal laws taxing alcohol production and later prohibiting it. *See Tennessee*, 100 U.S. at 261, 263; *Davis v. South Carolina*, 107 U.S. 597, 600 (1883); *Maryland v. Soper*, 270 U.S. 9, 22–26 (1926).

The common denominator of this historical progression is that, for several reasons, "Congress has decided that federal officers, and indeed the Federal Government itself, require the protection of a federal forum." *Willingham*, 395 U.S. at 407. "State-court proceedings may reflect local prejudice against unpopular federal laws or federal officials." *Watson*, 551 U.S. at 150 (citation modified); *see Arizona v. Manypenny*, 451 U.S. 232, 242 (1981) (noting this as one purpose of federal officer removal); *Soper*, 270 U.S. at 32 (same). Hostile state governments may also impede the enforcement of federal law in their territories without federal officer removal. *Watson*, 551 U.S. at 150; *see Tennessee*, 100 U.S. at 263 (noting this reason for federal officer removal). And states may deprive federal officials of a federal forum in which to fully and fairly assert federal immunity defenses without the ability to remove. *Watson*, 551 U.S. at 150; *see Willingham*, 395 U.S. at 407 ("[O]ne of the most important reasons for removal is to have the validity of the defense of official immunity tried in a federal court.").

As Judge Oldham noted in his dissent, "the repeated extension and expansion" of federal officer removal shows Congress' commitment to protect a basic federal interest—the enforcement of federal law—from "interference by state courts." *Plaquemines II*, 103 F.4th at 347 (Oldham, J., dissenting) (quoting *Willingham*, 395 U.S. at 406 (citation modified)).

And by choosing the words "relating to" in 2011, Congress used a term of art which this Court

has described as "deliberately expansive," "conspicuous for its breadth," and as having a "broad scope" and an "expansive sweep." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (citation modified). Congress thus unambiguously expanded the scope of federal officer removal to encompass claims simply connected or associated with, and not necessarily caused by, conduct under color of federal office.

As discussed in the next section, this case is a quintessential example of a state court proceeding for which Congress invented federal officer removal, as all the purposes animating the doctrine are implicated here.

II. The federal officer removal statute is designed for cases like this one.

A. Petitioners' oil production and refining during World War II was essential to the country's war effort and ultimate victory over fascism and Nazism.

The attack on Pearl Harbor on December 7, 1941, which marked America's formal entry into World War II, was "the greatest military and naval disaster in our Nation's history." S. Doc. No. 79-244, at 65 (1946). Eight of the Pacific Fleet's nine battleships were lost or severely damaged. *Id.* The scale of World War II "threatened to overwhelm [America's] defense manufacturing capability." Robert M. Howard & Shawn T. Cobb, *Victory Through Production*, 46 Public Contract L.J. 263 (Winter

2017); *see* John E. Bokel & Rolf Clark, *Acquisition in World War II*, in *Big 'L': American Logistics in World War II* 97, 113 (Alan Gropman ed., 1997) (comparing 33 tanks produced between 1919 and 1933 to 87,619 tanks produced between 1940 and 1945). To meet the demands of the war effort, the federal government partnered with private industry to such an extent that many "contractors found themselves a few steps short of nationalization." Howard & Cobb, *supra*, at 263.

The United States military and its allies needed oil for warships, aircraft carriers, submarines, war planes, tanks, and trucks. David S. Painter, *Oil and the American Century*, J. of Am. Hist. 27 (June 2012). The population at large needed oil to heat their homes and drive to work. U.S. Petroleum Admin. for War, *A History of the Petroleum Administration for War 1941–1945* 3, 22–24 (1946) [hereinafter *History of the PAW*]. At the start of the war, there were no pipelines between the East Coast and oil-rich Gulf states like Louisiana, and the roads and railways were ill-equipped to transport oil. David J. Bercuson & Holger H. Herwig, *Long Night of the Tankers: Hitler's War Against Caribbean Oil* 275–77 (Univ. of Calgary Press 2014); *see History of the PAW*, *supra*, at 2; *see generally id.* at 81–116 (explaining problems with and solutions to oil supply and transportation before and during the war). The Northeast received 95 percent of its oil by tanker ship from refineries in the Caribbean. Bercuson & Herwig, *supra*, at 277.

In early 1942, German U-boat attacks along the Eastern seaboard and in the Caribbean

significantly disrupted the country's supply of oil. *Id.* at 275–77; *History of the PAW*, *supra*, at 176; *see* William M. Tuttle, Jr., *The Birth of an Industry: The Synthetic Rubber "Mess" in World War II*, 22 Tech. & Culture 35, 47 (1981) (describing gasoline rationing in seventeen states after German U-boat attack). Pearl Harbor further interrupted oil shipping, and "Texas oil had to take up the slack to supply the allies." Bokel & Clark, *supra*, at 126. To coordinate the country's wartime oil policies, the President created a new agency: the Petroleum Administration for War (PAW).

PAW liaised between the federal government and the petroleum industry, which handled "production, refining, treating, storage, shipment, receipt, [and] distribution" of oil throughout the country. Executive Order 9276, 7 Fed. Reg. 10091 (Dec. 2, 1942); *see* Mark R. Wilson, *Destructive Creation: American Business and the Winning of World War II* 134–36 (Univ. of Penn. Press 2016) (describing the head of PAW as "genuinely impressed" by the "technical proficiency and patriotism" of the American oil industry). PAW determined the kinds and quantities of petroleum required for military and industrial use, and for the civilian population. *See* Bercuson & Herwig, *supra*, at 279 ("[I]t took . . . 60,000 gallons a day of regular gasoline to keep a single armored division fighting, and the fuel to fill the tanks of one battleship could heat an average family home for 500 years.").

To meet those needs, PAW had wide-ranging powers. It could (1) dictate how, where, and when

private companies extracted and distributed oil, down to "the direction of flow" in their pipelines; (2) review any proposed new pipelines and approve those it deemed necessary to supply the war effort and "other essential uses"; and (3) dictate to individual states "the amounts and kinds of petroleum" they should produce. *Id.*

The oil production at the center of this case was necessary to refine high-octane aviation fuel (avgas). Concerns about maintaining America's avgas supply persisted until the end of the war. Wilson, *supra*, at 81. Avgas supercharged engine performance in war planes. Andrew P. Lawson, *The End of War Does Not End Its Adversarial Reach: The Federal Government's Indemnification of World War II Contractors for Toxic Waste Cleanup Resulting from Wartime Manufacturing Efforts in* Shell Oil Co., et al. v. United States, 26 Vill. Env't. L.J. 363, 364 (2015). It increased flying speeds by thirty miles per hour and rate of climb by almost 1,000 feet per minute. *Id.* Crucially, avgas allowed Allied war planes to outpace those of Germany and Japan. *Id.*; *see* Bercuson & Herwig, *supra*, at 279 (quoting British Prime Minister Winston Churchill on the BBC in 1941: "The terrible war machine must be fed not only with flesh but with oil.").

Avgas was required in enormous quantities: the eight million gallons of avgas needed for the Battle of the Marianas could have "powered the entire German war machine for a month in 1944." Phillips Payson O'Brien, *How the War Was Won* 421 (Cambridge Univ. Press 2015); *see* Bercuson &

Herwig, *supra*, at 279 ("[I]t took 10,000 gallons of [avgas] per minute to mount a large bombing raid over Germany."). And Louisiana's crude oil was ideal for making it. *See Plaquemines II*, 104 F.4th at 338 & n.64.

Respondents insist that Petitioners' wartime production of crude oil was not "connected to" their refining of avgas under their federal contractual obligations. See *id.* at 342–43. This makes no sense. Even the majority opinion below acknowledged that the federal government chose these "'Critical Fields Essential to the War Program,' in part because they produced crude oil that was particularly suited for making avgas and other products of high value to the war." *Id.* at 338 & n.64; *see id.* at 341 ("[C]rude oil is a necessary component of avgas, and one way of obtaining crude oil is to produce it."). "[D]efendants could not simply snap their fingers and, voilà, make avgas. They had to make it out of *something*, and that something was crude oil." *Id.* at 348 (Oldham, J., dissenting).

Respondents also contend that Petitioners did not act prudently while working to fulfill their contractual obligations to the federal government. *Id.* at 336 (quoting *Par. of Plaquemines v. Chevron, USA, Inc.*, 7 F.4th 362, 367 (5th Cir. 2021) (*Plaquemines I*)). For instance, Petitioners allegedly used "vertical drilling (instead of directional drilling), . . . earthen pits at well heads (instead of steel tanks), . . . extract[ed] too much oil, and . . . [did] not build[] saltwater reinjection wells." *Id.* Respondents conveniently ignore the fact that Petitioners'

activities were expressly permitted by federal, state, and local authorities at the time. Any purported departures from industry standards were not departures at all, but consistent with federal guidance issued in light of the demands of a world war that required a massive increase in the production of avgas. *See Plaquemines I*, 7 F.4th at 369–70. The oil production infrastructure at issue was installed during World War II, and its installation was shaped by that context.

Defendants used earthen pits instead of steel tanks because there was a war on, and the federal government limited the use of steel—a precious commodity. *Id.*; *see* Bokel & Clark, *supra*, at 106, 115 (noting scarcity of steel). Saltwater reinjection wells—also made of steel—were another infeasible luxury. *See* Wilson, *supra*, at 152 (describing the 1943 cancellation of an entire line of battleships "for lack of steel"); *see also History of the PAW*, *supra*, at 208. Defendants drilled vertically instead of directionally to comply with state law and to maintain the pace at which they were expected—and contractually bound—to supply refined avgas. *See Plaquemines I*, 7 F.4th at 370 (quoting 1941 statewide order prohibiting directional drilling); *Plaquemines II*, 104 F.4th at 338 & n.64 (noting Louisiana crude was "particularly suited" for making avgas). To keep up with federal demand, oil and gas companies were required to increase production by more than 44 million gallons a day. *Plaquemines II*, 103 F.4th at 348 (Oldham, J., dissenting); *see* Wilson, *supra*, at 81.

Whether this was "too much" is a question for PAW, since it set the oil companies' production quantities at the time. Executive Order 9276, *supra*. But the Allies' victory suggests that the amount of oil produced was the amount required to end the bloodshed and depravity of the war, liberate the Nazi death camps, and restore sovereignty to European nations now free from Hitler's grasp. *See History of the PAW*, *supra*, at 6 (crediting victory in Europe in part to fact that "the Allies *have* oil; the Germans don't"). It was the amount needed to defeat the spread of fascism, sustain our country's population and economy, and secure America's position in the world order for the second half of the twentieth century and beyond.

B. Petitioners have not received fair treatment in Louisiana state courts and deserve a fair federal forum.

1. Louisiana state courts are challenging for corporate defendants in general because elected judges favor the plaintiffs' attorneys who fund their campaigns.

In what can only be seen as an exercise in understatement, Louisiana has been described as "liability-friendly." Cary Silverman, *ILR Briefly: Louisiana's Liability Environment: Progress and Opportunities for Legal Reform*, U.S. Chamber of Comm. Inst. of Legal Reform 3–4 (April 2025),

https://tinyurl.com/SilvermanILRBriefly (last visited Aug. 21, 2025). Others use stronger language.

The American Tort Reform Foundation (ATR) defines a "judicial hellhole" as a jurisdiction which "systematically fail[s] to adhere to core judicial tenets or principles of the law." *Judicial Hellholes 2024–2025*, ATR Exec. Summary 2024–2025 89–90 https://tinyurl.com/ATR20242025 (last visited Aug. 21, 2025) [hereinafter ATR Exec. Summary]. Telltale signs of a judicial hellhole include rampant forum shopping, "nuclear" verdicts of $10 million or higher, improper alliances between the government and the plaintiffs' bar, and novel or abrupt reinterpretations of settled law by state courts in ways that favor plaintiffs. *Id.* at 69, 89–90.

Louisiana suffers from all of the above. It has made the ATR's top ten list of judicial hellholes every year since 2016 because of multimillion dollar personal injury verdicts, a plaintiffs' bar intent on keeping candidates open to tort reform out of office, and suspiciously-timed reversals by state courts of their own judgments. *Id.* at 89–90; *see* Sarah Harbison, *Louisiana: Judicial Hellhole*, Pelican Inst. for Public Policy (Dec. 2022), https://tinyurl.com/harbison-pelican (last visited Aug. 21, 2025); *Louisiana Lawsuit Climate Ranked Nation's 2nd Worst*, U.S. Chamber of Comm. Inst. of Legal Reform (Sept. 2019), https://tinyurl.com/cofc2019 (last visited Aug. 21, 2025); *Louisiana earns top "judicial hellhole" ranking again*, Louisiana Lawsuit Abuse Watch (Dec. 2017),

https://tinyurl.com/llaw2017 (last visited Aug. 21, 2025).

Between 2009 and 2023, Louisiana state courts awarded fifteen nuclear verdicts totaling nearly $10 billion, ranking sixth in the nation. Marathon Strategies, *Corporate Verdicts Go Thermonuclear* 9 (2024), https://tinyurl.com/thermonuclear2024 (last visited Aug. 21, 2025). In 2023 alone, Louisiana state courts awarded over $400 million in nuclear verdicts against businesses, mostly in the pharmaceutical, oil and gas, and trucking industries. *Id.* at 8; *see* ATR Exec. Summary, *supra*, at 69; *see* Silverman, *supra*, at 3–4 & n.34 (describing recent motor vehicle collision case in which local jury awarded plaintiff $220 million, including $155.5 million in noneconomic damages).

The unscrupulous took note. A federal investigation called "Operation Sideswipe" revealed a decade-long scheme, involving Louisiana attorneys and law firms, to stage car accidents with 18-wheelers and then fraudulently sue the unsuspecting trucking companies for nonexistent damages. U.S. Dep't of Justice, U.S. Attorney's Office, Press Release (Dec. 9, 2024), https://tinyurl.com/dojoperationsideswipe (last visited Aug. 21, 2025); *see* Silverman, *supra*, at 2–3. Compared to the rest of the country, the state has an average number of accidents per capita, but "more than twice the national average in bodily injury claims." Editorial Board, *Louisiana: The Trial-Lawyer State*, The Wall Street Journal (Nov. 10, 2019), https://tinyurl.com/triallawyerstateWSJ (last visited Aug. 21, 2025). Not surprisingly, its auto

insurance rates have soared to forty percent higher than the national average. Silverman, *supra*, at 1.

Making matters worse, the plaintiffs' bar exerts outsized influence on the state's court and political systems, donating to judicial election campaigns and politicians' political action committees to make sure tort reform is never enacted. *See id.* The last governor was a former trial lawyer, who "vetoed key reforms and controversially hired private lawyers (who were also friends and fundraisers) to bring lawsuits against business on behalf of the state." *Id.* at 4. His attorney general succeeded him as governor.

The prospect of facing liability in a hostile state court has dampened business investment in Louisiana. "Longstanding, liability-friendly legal doctrines have earned the state a reputation as one of the least favorable environments for civil defendants. These factors contribute to higher insurance premiums, deter business investments, and undermine economic growth." *Id.* at 22; *see id.* at 5 (noting Louisiana has third highest tort costs in the country as a percentage of its state GDP). These alarming dynamics have been on full display in this litigation brought by coastal parishes against private oil companies.

2. The lawsuits against Petitioners in Louisiana state courts have been plagued by unjustified pro-plaintiff decisions.

In 2013, several Louisiana coastal parishes sued various oil and gas companies in state court. *Plaquemines II*, 103 F.4th at 328. The suits alleged violations of Louisiana's State and Local Coastal Resources Management Act (SLCRMA), which imposes permit requirements for coastal land use. *Id.*; *see* La. Rev. Stat. §§ 49:214.21, 49:214.30(A)(1). Over the years and through various appeals, the parishes' claims evolved. They now contend that Petitioners' pre-SLCRMA "oil production and extraction practices" "departed from prudent industry practices," such as "using vertical drilling (instead of directional drilling), . . . earthen pits at well heads (instead of steel tanks), . . . extracting too much oil, and . . . not building saltwater reinjection wells." *Plaquemines II*, 103 F.4th at 336 (quoting *Plaquemines I*, 7 F.4th at 367).

SLCRMA was a response to federal legislation. In 1972, Congress passed the Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451 *et seq.*, "to encourage states to manage their coasts in an environmentally sound manner through federally approved programs." *Plaquemines I*, 7 F.4th at 365. As an incentive, Congress offered federal matching funds to states with their own CZMA-compliant coastal management programs. *See* Patricia E. Salkin et al., *Land Use Planning and Development*

Law § 11.9 (3d ed. 2024). By 1980, Louisiana had enacted SLCRMA.

Central to this litigation, SLCRMA contains a "grandfather clause" for coastal uses commenced before the statute went into effect. It explicitly states that permits are *not* required for activities "legally commenced or established" before 1980. La. Rev. Stat. § 49:214.34(C)(2).

The state's Department of Natural Resources (DNR) honored the grandfather clause for decades. Since the 1980s, the DNR advised various oil and gas operators that the division responsible for enforcing SLCRMA had no authority over pre-1980 activities, and thus no power to order, for example, pit closures or pipeline removals. *See* Defs.' Notice of Removal at 19–20, *Plaquemines Par. v. Exch. Oil & Gas Corp. et al.*, No. 18-5215 (E.D. La. Apr. 19, 2023), 2023 WL 3001417, ECF No. 1 (citing letters and memoranda DNR sent to oil and gas companies).

In 2014, the DNR contended that pre-1980 conduct could not be the basis of a SLCRMA lawsuit. At a legislative hearing, a DNR lawyer explained why the department itself had not sued oil companies under SLCRMA. His office had not found "any evidence of coastal use permits' having been violated," especially because SLCRMA has only been in effect "since 1980," and "many of the allegations" here "are dealing with activities that predate the program." *Hearing on S.B. 469 Before the H. Comm. on Natural Resources & Environment* (La. 2014) (statement of Blake Canfield, Exec. Counsel for La. Dep't of Nat. Res.).

But in 2018, after the trial court ordered Respondents to identify *specific* SLCRMA violations, Respondents submitted the *Rozel* report, now accompanied by the DNR's full endorsement. *Plaquemines I*, 7 F.4th at 366–67. The report alleged that Petitioners' pre-1980 uses were *not* "lawfully commenced or established" because they "departed from prudent industry practices." *Id.* at 367. Accordingly, Respondents said, these uses infringed a "good faith" requirement, and thus fell outside the scope of the grandfather clause. *Id.*

The Fifth Circuit recently considered this same "exception-to-the-exception theory" in *New Orleans City v. Aspect Energy, LLC*, 126 F.4th 1047, 1053 (5th Cir. 2025). There, the court correctly recognized the theory "stems not from SLCRMA . . . but instead from an environmental impact statement," which "is not substantive law," "do[es] not impose substantive environmental obligations on agencies or third parties," and "does not displace the unambiguous text of SLCRMA." *Id.* Indeed, there is "no reasonable basis" on which to read into the plain text of SLCRMA a "good faith" standard never contemplated, much less promulgated, by Louisiana's legislature. *Id.* at 1052.

At first, the state trial court here also recognized the plain meaning of SLCRMA's grandfather clause. Pointing to the clear statutory language, the trial court initially ruled that because "SLCRMA clearly *does not apply* to activities . . . in the coastal zone commenced or established prior to . . . 1980," any "claims for alleged harm" from actions commenced before that date could not

proceed. *Par. of Plaquemines v. Rozel Operating Co.*, No. 60-996, 2025 WL 641740, at *1 (La. Dist. Ct. Jan. 13, 2025) (*Rozel*) (emphasis added). Accordingly, the trial court granted partial summary judgment on plaintiffs' claims for pre-1980 harms. *Id.*

One month later, the trial court abruptly changed course without explanation. It denied summary judgment on plaintiffs' claims for pre-1980 "use and closure of pits" and "discharges of produced water," purporting to find "genuine issues of material fact concerning whether the activities . . . were legally commenced or established prior to the effective date of SLCRMA as many of these activities were regulated prior to the enactment of SLCRMA." *Rozel*, No. 60-996, 2025 WL 641737, at *1 (La. Dist. Ct. Feb. 12, 2025). This changed position departs from the plain text of SLCRMA as well as general notions of due process and fair play.

During trial, the court's pro-plaintiff and contra-textual decisions continued. For example, Chevron was not allowed to introduce an extensive array of agency documents that reflected the DNR's pre-*Rozel* report guidance to the energy industry. *See* Chevron's Objections to Exclusion of Certain Agency Documents, *Rozel*, No. 60-996 (La. Dist. Ct. Mar. 24, 2025). The DNR's consistent advice to oil and gas companies was that SLCRMA did not cover pre-1980 uses like Chevron's. The DNR's correspondence to that effect was thus crucial to explaining why Chevron and other companies never sought permits for their pre-1980 uses—they were told such permits were not required. *See id.* at 1–4. The trial court's

unwarranted exclusion of these documents undermined Chevron's ability to rebut Louisiana's newfound, contra-textual application of SLCRMA, as well as to present its defense that it never received fair notice about what conduct was forbidden or required. *See id.*

In addition, during voir dire, a prospective juror volunteered that her husband worked in the Plaquemines Parish sheriff's office. Mar. 11, 2025 Draft Trial Tr. 133:25–134:16, *Rozel*, No. 60-996 (La. Dist. Ct. Mar. 11, 2025). In the jury's presence, the trial court chastised Chevron's attorney for asking whether she would be able to consider the evidence without bias, even though her husband worked for the plaintiff. *Id.* at 138:5–14. Rather than recognize that Chevron had a right to question this juror about potential bias, the court suggested defense counsel had asked about bias "to instill fear" about "ramifications." *Id.* at 138:12–13.

The trial court also granted the parish's motion to exclude evidence relating to Apache, the company that bought one of the oil fields in question from Texaco (Chevron's predecessor-in-interest) and owned it when the field stopped operating. Mar. 17, 2025 Draft Trial Tr. 229:20–231:11, 259:16–261:25, *Rozel*, No. 60-996 (La. Dist. Ct. Mar. 17, 2025); Mar. 18, 2025 Draft Trial Tr. 3:13–23, *Rozel*, No. 60-996 (La. Dist. Ct. Mar. 18, 2025). Apache's management of the field was highly relevant to determining the actual cause of the alleged damages, and whether Chevron bore any responsibility for those damages. In fact, one of the plaintiffs' testifying experts had

authored a report ascribing fault for the coastal erosion at issue to Apache. Yet Chevron was not permitted to impeach the expert with his own prior report during cross-examination. Mar. 18, 2025 Draft Trial Tr. 3:13–23, *Rozel*, No. 60-996 (La. Dist. Ct. Mar. 18, 2025). The trial court said "if [Chevron] can show that they did not violate SLCRMA, then they can prove their case. They don't need to confuse this jury with whatever happened with Apache. That's just a cascade of complications and [an] empty chair defense" that would "lengthen the trial and confuse the jury." *Id.* at 12:5–12. The court so ruled even though there was evidence that Apache was responsible for any damages at issue, thereby depriving Chevron of a critical defense to liability.

State officials have also changed their tune about the causes of coastal erosion. Those causes are complex. *See* Jeffrey A. Zinn, Cong. Rsch. Serv., RL32673, *Coastal Louisiana: Attempting to Restore an Ecosystem* (2004) (explaining "[i]t is difficult to allocate wetland loss among" its various causes, natural and manmade). Some "researchers agree that the leveeing of the Mississippi River in the early 1900s is the main culprit." Michael Toth, Opinion, *A Bad Business on the Bayou*, The Wall Street Journal (Mar. 31, 2025) https://tinyurl.com/WSJbayou (last visited Aug. 21, 2025). Others point to rising global sea levels and the unique geology of the Mississippi Delta. Edward Richards, *Tidelands and Coastal Erosion*, 61 Ann. Inst. on Min. L. 418 (2014).

When Louisiana's current governor Jeff Landry was the state's attorney general, he filed a

federal lawsuit laying the blame for coastal land loss on the U.S. Army Corps of Engineers' failure to maintain the Intercoastal Waterway, a channel which runs for about ten miles between New Orleans and Galveston, Texas. Dan Boudreaux & David J. Mitchell, *Louisiana Attorney General Jeff Landry Sues Army Corps Over Land Losses*, The Acadiana Advocate (Feb. 9, 2018).

In a stark about-face, Governor Landry now blames Petitioners for the land loss, in lock step with Respondents. Letter from former U.S. Attorney General William Barr to Louisiana Attorney General Liz Murrill (Apr. 9, 2025), https://tinyurl.com/barrmurrill (last visited Aug. 22, 2025). When he was Louisiana Attorney General, Governor Landry intervened in this litigation on the state's behalf by way of a "Common Interest, Joint Prosecution" agreement with the private firm representing Respondents. *Id.* In the agreement, he promised to reject "any defenses or exceptions raised by any defendant in any claims." *Id.*

These unexplained flip-flops by state officials and judges do not change the plain text of the statute. Under SLCRMA, whether Petitioners extracted oil on the Louisiana coast "prudently" before 1980 is irrelevant. SLCRMA's grandfather clause applies to conduct "lawfully commenced or established" before 1980, not to conduct which adhered to "prudent industry practices" before 1980. Even if the grandfather clause could be read as Respondents contend, as detailed above, Petitioners' conduct was lawful *and* prudent, particularly given the context of World War II.

The general trends and troubling path this litigation has charted are not the only reasons Petitioners doubt that Louisiana's state courts can provide a neutral judicial forum to adjudicate this litigation. This spring, after the trial judge made numerous pro-plaintiff rulings (some of which are discussed above), a Louisiana jury unsurprisingly sided with the parishes, returning a $744.6 million verdict against Chevron for pre-SLCRMA conduct. Jack Brook, *Chevron Ordered to Pay More Than $740 Million to Restore Louisiana Coast in Landmark Trial*, Associated Press (Apr. 4, 2025). The parishes reaped this windfall even though the Fifth Circuit has debunked the "exception-to-the-exception" theory the parishes advanced. *See Aspect Energy*, 126 F.4th at 1053. Perhaps because "the Mississippi River has no assets, . . . the plaintiffs' bar is targeting energy companies instead." Toth, *supra*. Without direction from this Court on the scope of federal officer removal in this context, that targeting is likely to go unchecked by the state.

C. Respondents' cramped interpretation of the federal officer removal statute will only deter private companies from taking risks for the public good during the next national crisis.

Respondents contend there is no connection, for federal officer removal purposes, between Petitioners' oil production and refining activities during World War II because production is not explicitly mentioned

in the contracts between Petitioners and the federal government for refined avgas. This myopic view of federal officer removal is shortsighted and will cause harm.

National crises often require urgent mobilization without the luxury of considered regulatory frameworks. *See* Bokel & Clark, *supra*, at 103 ("The government simply d[oes] not have enough time to apply the careful . . . procedures that work[] in less critical times.") For private companies that contract with the federal government during these crises, federal officer removal at least ensures that claims arising from harmful consequences allegedly caused by any missteps committed in haste will be litigated in a fair, federal forum.

But the Fifth Circuit's holding below has "very real consequences" for any federal contractor that accepts work in the region. Federal contractors will "face a Catch-22": never step outside the "bare words of a federal contract," or "risk suit in a potentially hostile state court for any associated acts taken to better fulfill that contract." *Plaquemines II*, 103 F.4th at 350 (Oldham, J., dissenting). America has survived some of its darkest times thanks to public-private cooperation. To avoid chilling such cooperation on a broader scale, this Court should ensure that federal officer removal remains available for federal contractors in circumstances like these.

As explained above, America achieved victory in World War II through the government's partnership with private industry. As one adviser to FDR put it, "The government can't do it all . . . . The

more people we can get into this program, . . . the more brains we can get into it, the better chance it will have to succeed." Howard & Cobb, *supra*, at 263. Private industry undertook this mass mobilization and restructuring—to respond to the needs of a single client whose demand might evaporate as quickly as it appeared—with eyes wide open. As one World War II contractor described the all-out manufacturing push, "its vast and hasty expansion, its necessary sacrifices and its emphasis on speed of production regardless of cost, have brought many unavoidable and unpredictable hazards." *Id.* at 264.

And World War II was not the last time private industry joined forces with the federal government in a time of crisis. Consider a more recent example. Facing the post-9/11 threat matrix, Congress mobilized and added an Emergency Use Authorization to the Food, Drug, and Cosmetic Act, as part of the "scramble to improve bioterrorism response and public health emergency preparedness." John A. Casciotti, *The Food, Drug, and Cosmetic Act's Emergency Use Authorization*, 77 Food & Drug L.J. 66, 66 (2022). Congress recognized that "companies have little incentive to research, develop, or produce vaccines or other drugs simply for a possible one-time purchase by the Federal government for the Strategic National Stockpile." H.R. Rep. No. 108–147, pt. 1, at 2 (2003). The emergency use authorization would permit the introduction "into interstate commerce [of] a drug, vaccine, or medical device for use during" a national emergency. Casciotti, *supra*, at 70.

Fast forward to early 2020, when the COVID-19 pandemic disrupted global supply chains and Americans faced medical supply shortages. The country's dependence on foreign suppliers posed national security and public health risks. *See* Beth Weinman et al., *The American Medical Product Supply Chain*, 76 Food & Drug L.J. 235, 240 (2021) (describing possible future trade war tactic in which China could refuse to export raw materials needed to manufacture antibiotics). The federal government once again turned to private industry to support the nation's wellbeing on an urgent timetable. *Id.*

By December 2020, the FDA had granted emergency use authorization for the production of COVID-19 vaccines developed by three pharmaceutical companies: Pfizer, Moderna, and Johnson & Johnson. Casciotti, *supra*, at 73. The federal government spent over $30 billion on these vaccines, "incentivizing their development, guaranteeing a market, and ensuring [they] would be provided free of charge to the U.S. population." Jennifer Kates et al., *How Much Could COVID-19 Vaccines Cost the U.S. After Commercialization?* Kaiser Family Foundation (Mar. 10, 2023), https://tinyurl.com/kffkates (last visited Aug. 21, 2025); *see* Editorial Board, *Operation Warp Speed's Triumph*, The Wall Street Journal (Mar. 2, 2021) ("American governments, federal and state, have made many mistakes in the COVID-19 pandemic. But the great success—the saving grace—was making a financial bet in collaboration with private American industry on the development of vaccines.").

In these scenarios, private contractors can pivot faster than the federal government would be able to working alone. If the federal officer removal statute is reduced to Respondents' version, companies in the private sector will have one more reason to question whether to accept the risks involved in partnering with the federal government. In our country's next time of need, willing companies may be hard to find.

CONCLUSION

For these reasons, this Court should reverse the Fifth Circuit's decision and maintain the broad coverage provided by federal officer removal, in line with Congress' consistent purpose over the past two centuries.

Respectfully submitted,

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