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 AMICUS CURIAE AMERICA FIRST POLICY INSTITUTE IN SUPPORT OF PETITIONERS

NICHOLAS J. WANIC
Counsel of Record
GINA D'ANDREA
AMERICA FIRST POLICY INSTITUTE
1455 Pennsylvania Avenue, NW
Suite 225
Washington, DC 20004
(779) 396-0137
nwanic@americafirstpolicy.com

Counsel for Amicus Curiae

September 11, 2025

385216

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INTEREST OF THE AMICUS CURIAE[1]

The America First Policy Institute (AFPI) is a 501(c)(3) non-profit, non-partisan research institute. AFPI exists to advance policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do.

AFPI believes that a strong military is foundational to protecting Americans and preserving our Nation's standing and strength. It ensures the American people are safe and that the United States can keep its adversaries at bay. As other nations develop new capabilities and technologies advance, it is more important than ever to have the world's best-trained and most well-equipped military. An America first approach to defense acquisition is best served by an open and honest competition within the broad marketplace of ideas. Without reliable access to the federal courts, America will be unable to leverage its relationships with innovative companies which have helped save the world from the forces of tyranny for the last century.

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[1] No counsel for a party authored this brief, in whole or in part, and no person or entity other than amicus curiae made a monetary contribution to the preparation or submission of the brief. Sup. Ct. R. 37.6.

SUMMARY OF THE ARGUMENT

This Court should reverse the Fifth Circuit's decision to affirm the district court's order to remand to state court because such a decision will chill the vital cooperation between private industry and the federal government during times of national crisis, endangering national security and limiting our military's effectiveness. The manufacture of petroleum products by private parties, like Petitioners, has been crucial to national security, military preparedness, and the success of combat missions. Over the course of our Nation's history, the cooperation between private industry and the federal government has been indispensable to securing the materials and products necessary to maximize our Nation's warfighting capabilities. Unfortunately, the Fifth Circuit's decision puts all such future partnerships at risk.

Whenever the military calls upon private industry to contribute to the defense of our Nation, it is essential that these parties are ready, willing, and able to answer the call. Traditionally, the government has incentivized support from private parties by ensuring that claims regarding such activities are not subject to litigation in local venues where local biases and resentment can lead to an undue increase in the likelihood of liability. *See Watson v. Phillip Morris Cos.,* 551 U.S. 142, 147-48 (2007); *Willingham v. Morgan*, 395 U.S. 402, 405 (1969); 9 Cong. Deb. 461 (1833); *Maryland v. 3M Co.*, 130 F.4th 380, 384-85 (4th Cir. 2025); *Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 185 (1st Cir. 2024). Yet, the Fifth Circuit disregarded this vital protection by taking an overly narrow approach to the federal officer removal statute. In so doing, the Fifth Circuit has set a dangerous precedent

permitting state courts to second-guess decisions made by federal officers in furtherance of vital national security interests. Such a ruling ignores crucial wartime context and will impair military reactiveness, complicate and delay essential contracts, and have a broader chilling effect on public-private partnerships for fear of incurring liability. Therefore, we urge this Court to reverse the Fifth Circuit's decision and permit the case to be heard on the merits in federal district court.

ARGUMENT

Depriving federal contractors of a federal forum deters private parties from aiding the government during wartime, thereby weakening our national defense. Countless times our Nation has relied on the expertise and assistance of private parties to aid in national defense, and such public-private partnerships continue to be fundamental in addressing future national security concerns.[2] An important incentive for such partnerships to continue to thrive is the federal government's assurance

[2] *See* Joseph Clark, *Public-Private Partnership Is Key to Building Defense Industrial Base and Workforce*, U.S. Department of Defense (Dec. 3, 2023), https://www.defense.gov/News/News-Stories/Article/Article/3604968/public-private-partnership-is-key-to-building-defense-industrial-base-and-workf/; *Edward Filene to Woodrow Wilson, April 5, 1918, Woodrow Wilson Papers*, Library of Congress, https://www.loc.gov/exhibitions/world-war-i-american-experiences/about-this-exhibition/over-here/war-industry/calling-business-to-the-cause/ (last accessed Sep. 3, 2025); Merrick Carey, *Public-Private Partnerships*, Lexington Institute (Sep. 14, 2007); Nathan E. Busch & Austen D. Givens, *Public-Private Partnerships in Homeland Security: Opportunities and Challenges*, Homeland Sec. Affairs, Oct. 2012.

under the federal officer removal statute that questions of liability regarding federally directed actions will be adjudicated in "a federal forum rather than face possibly prejudicial resolution of disputes in state courts." *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 290 (5th Cir. 2020).

Private parties, from military contractors and manufacturers of wartime materials to administrators of health care programs and banks, assisting with issues touching on national defense, have long availed themselves of the important protections secured by the promise of a federal forum.[3] The Supreme Court has also specifically recognized the important role that Congress has played in cultivating an effective relationship with private

[3] *See Moore v. Elec. Boat Corp.*, 25 F.4th 30, 32 (1st Cir. 2022); *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 289 (5th Cir. 2020) (*en banc*); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 252 (4th Cir. 2017); *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 809 (3d Cir. 2016); *Ruppel v. CBS Corp.*, 701 F.3d 1176, 1178 (7th Cir. 2012); *Gordon v. Air & Liquid Sys. Corp.*, 990 F. Supp. 2d 311, 314 (E.D.N.Y. 2014); *Malsch v. Vertex Aerospace, LLC*, 361 F. Supp. 2d 583, 584 (S.D. Miss. 2005); *Akin v. Big Three Indus., Inc.*, 851 F. Supp. 819, 823-24 (E.D. Tex. 1994); *Fung v. Abex Corp.*, 816 F. Supp. 569, 573 (N.D. Cal. 1992); *3M Co.*, 130 F.4th at 380; *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 939-41, 942, 946-47 (7th Cir. 2020); *Genereux v. Am. Beryllia Corp.*, 577 F.3d 350, 353-54, 357 n.9 (1st Cir. 2009); *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 138-39 (2d Cir. 2008); *Holton v. Blue Cross & Blue Shield of S.C.*, 56 F. Supp. 2d 1347, 1350-52 n.3 (M.D. Ala. 1999); *Hagen v. Benjamin Foster Co.*, 739 F. Supp. 2d 770, 773 (E.D. Pa. 2010); *McMahon v. Presidential Airways, Inc.*, 410 F. Supp. 2d 1189, 1192 (M.D. Fla. 2006); *Texas ex rel. Falkner v. Nat'l Bank of Com. of San Antonio*, 290 F.2d 229, 231 (5th Cir. 1961); *First Nat'l Bank of Bellevue v. Bank of Bellevue*, 341 F. Supp. 960, 961-62 (D. Neb. 1972).

companies which serve national defense interests during times of conflict.

> The Renegotiation Act, in time of crisis, presented to this nation a new legislative solution of a major phase of the problem of national defense against world-wide aggression. Through its contribution to our production program it sought to enable us to take the leading part in winning World War II on an unprecedented scale of total global warfare without abandoning our traditional faith in and reliance upon private enterprise and individual initiative devoted to the public welfare.

Lichter v. United States, 334 U.S. 742, 745 (1948) (discussing the challenges of wartime production, including the need for rapid delivery and adaptability to changing specifications).

The government has time and time again chosen to recognize the important role of contractors and the preservation of free enterprise. During World War II, the government adopted a deliberate policy of reliance on private companies for the operation of munitions plants. *Powell v. U.S. Cartridge Co.*, 339 U.S. 497 (1950) (noting that the government's reliance on and benefit from the nation's system of free enterprise was foundational to industrial supremacy and critical to the war effort).

> We relied upon that system as the foundation of the general industrial supremacy upon which ultimate victory might depend. In this light,

> the Government deliberately sought to insure private operation of its new munitions plants.

Id. at 506-07. Examples exist from other wars in America's history. In *United States v. Bethlehem Steel Corp.*, the Court examined contracts for shipbuilding during World War I, which were negotiated under a system designed to maximize production through private industry. 315 U.S. 289 (1942). The government chose to rely on private contractors, recognizing the value of private expertise and efficiency. *See id.* at 298. The Court upheld the contracts, emphasizing the government's reliance on private industry to meet wartime demands and the necessity of profits to incentivize production. *Id.* at 591.

Additionally, America's industrial base has long played a key role in satisfying the demands of national security during peacetime. For example, in *Youngstown Sheet & Tube Co. v. Sawyer*, the Supreme Court grappled with the limits of presidential authority in seizing private steel mills in the interest of national security due to labor unrest. 343 U.S. 579 (1952). The Court acknowledged the indispensability of steel for weapons and war materials,[4] but emphasized that such actions must be authorized by Congress, underscoring the balance between governmental needs and private enterprise. *Id.* at 588-89. The decision reflected the principle that private

[4] *Id.* at 583 ("The indispensability of steel as a component of substantially all weapons and other war materials led the President to believe that the proposed work stoppage would immediately jeopardize our national defense and that governmental seizure of the steel mills was necessary in order to assure the continued availability of steel. Reciting these considerations for his action, the President, a few hours before the strike was to begin, issued Executive Order 10340.").

companies are integral to national defense even during peacetime, especially for the production of raw materials not ordinarily maintained in government stockpiles.

Because the government must rely on private enterprises for the supply of war material, it is incumbent on the federal government to ensure that its relationship with its private contractors is workable. The haven of a federal forum is especially important when the work required by private parties on behalf of the federal government, or the mere existence of such a relationship itself, may be politically controversial.[5] The consequential "chilling effect" political controversy can have on government contractors has already been recognized by the Court in a variety of circumstances.

Politically sensitive work is certainly at issue here. Petitioners' alleged conduct in this case implicates questions about climate change, a politically divisive topic. *See Nat'l Review, Inc. v. Mann*, 140 S. Ct. 344, 346 (Mem) (2019) (Alito, J., dissenting from denial of certiorari) ("[T]he controversial nature of the whole subject of climate change exacerbates the risk that the jurors' determination will be colored by their preconceptions on the matter . . . selecting an impartial jury presents special difficulties."). Whenever politically charged issues are implicated, the risk of disagreement between state officials and the federal government is significant. So much so that political disagreements were the animating force behind the

[5] *See Isaacson*, 517 F.3d at 138-39; *Vietnam Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104, 119 (2d Cir. 2008); *In re Nat'l Sec. Agency Telecomms. Records Ligit.*, 483 F. Supp. 2d 934 (N.D. Cal. 2007); *In re Commonwealth's Motion to Appoint Counsel Against or Directed to Defender Ass'n of Philadelphia*, 790 F.3d 457 (3d Cir. 2015).

enactment of the earliest version of the federal removal statute in 1815. *See Willingham v. Morgan*, 395 U.S. 402, 405 (1969).

> As this Court said nearly 90 years ago in *Tennessee v. Davis*, 100 U.S. 257, 263, 25 L.Ed. 648 (1880), the Federal Government can act only through its officers and agents, and they must act within the States. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a State court, for an alleged offense against the law of the State, yet warranted by the Federal authority they possess, and if the general government is powerless to interfere at once for their protection,—if their protection must be left to the action of the State court,—the operations of the general government may at any time be arrested at the will of one of its members.

Id. at 406 (quotations omitted). Yet, the Fifth Circuit's narrow application of the federal officer removal statute in this case would set the precedent that private parties fulfilling their patriotic duties must bear the brunt of local political disagreements with federal policy choices. The terrible results of such a precedent are obvious and unavoidable. Private parties "would have to seriously consider whether they would serve as procurement agents [of] the federal government." *In re "Agent Orange" Prod. Liab. Litig.*, 304 F. Supp. 2d 442, 451 (E.D.N.Y. 2004) (opining that 28 U.S.C. § 1442(a)(1) provides procedural protection for defense contractor and that "[f]ailure to apply the federal officer removal statute would allow into

the back door of state litigation what the government contractor defense barred at the front door.").

Such a chilling effect would frustrate the "statute's 'basic' purpose" of protecting federal operations from interference by state governments that would be emboldened to impose their own laws and judgments on federal officers and agents "acting . . . within the scope of their authority." *Watson v. Phillip Morris Companies, Inc.*, 551 U.S. 142, 150 (citing *Maryland v. Soper*, 270 U.S. 9, 32 (1926), for the proposition that "[s]tate-court proceedings may reflect 'local prejudice' against unpopular federal laws or federal officials."); *see also Tennessee v. Davis*, 100 U.S. 257 (1879); *Davis v. South Carolina*, 107 U.S. 597 (1883); *Arizona v. Manypenny*, 451 U.S. 232 (1981); *Willingham*, 395 U.S. 402.

Ultimately, allowing states to second-guess decisions made by federal officers acting in conformity with their official duties would greatly weaken our armed forces by severing public-private partnerships that have long been essential to reaching our Nation's national defense objectives. Having the capabilities sufficient to accomplish national security objectives is an essential part of maintaining our Nation's status as the world's most elite fighting force and the cooperation of private parties in producing critical supplies is an essential element of maintaining these capabilities. Our Constitution has delegated matters of foreign policy and national security to the federal government. Accordingly, Congress wisely requires that the decisions relating to such matters be adjudicated in a federal forum. Therefore, this Court should reverse the Fifth Circuit's decision and remand to the proper federal forum.

CONCLUSION

For the reasons stated herein, amici curiae respectfully request reversal of the Fifth Circuit's ruling and hold that Federal Courts have jurisdiction over this case under 28 U.S.C. § 1442(a)(1).

Respectfully submitted,

Nicholas J. Wanic
Counsel of Record
Gina D'Andrea
America First Policy Institute
1455 Pennsylvania Avenue, NW
Suite 225
Washington, DC 20004
(779) 396-0137
nwanic@americafirstpolicy.com

Counsel for Amicus Curiae

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