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 FOR THE PELICAN INSTITUTE FOR PUBLIC POLICY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Statutes

Page

Other Authorities

Constitutional Provisions

INTEREST OF *AMICUS CURIAE*

The Pelican Institute for Public Policy is a non-profit, non-partisan research institute whose mission is to research and develop policy solutions that advance individual liberty, free enterprise, and opportunity for all Louisianans.[1] Founded in 2008, the Pelican Institute believes every Louisianan should have the opportunity to flourish in communities where good opportunities abound and economic prosperity is achievable through hard work and ingenuity.

The Pelican Institute has conducted extensive research on Louisiana's coastal litigation, including economic analyses of these lawsuits' impact on the state's economy and workforce. As an organization committed to the rule of law and constitutional governance, the Pelican Institute is concerned about arrangements that privatize sovereign enforcement power and create regulatory uncertainty that harms economic opportunity.

Amicus has standing to address this Court because the issues presented directly undermine the Institute's mission of creating opportunity and prosperity for all Louisianans. The constitutional questions in this case are inextricably linked to the economic principles the Pelican Institute champions: predictable rule of law, constitutional federalism, and protection of interstate commerce from state-level overreach.

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1. Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae made such a monetary contribution.

Amicus seeks to assist this Court by providing its research and policy analysis demonstrating the real-world economic consequences that flow from overly narrow interpretations of federal officer removal, particularly when states circumvent federal jurisdiction over contractors who acted under federal authority.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case confronts a structural defect the Framers anticipated and Congress addressed. Louisiana has privatized sovereign enforcement of its coastal statute by ceding core decisions to private lawyers operating under fee-shifting arrangements,[2] who steer suits into locally elected courts while state officials agree not to endorse defendants' substantive defenses. That model erodes due process, undermines legislative control over public funds, and invites local partiality precisely of the sort Alexander

2. Private parish counsel sometimes dispute the label "contingency-fee" and characterize their contracts as "fee-shifting" arrangements instead. *See, e.g.*, John Carmouche, *Letters: History and Justice on Side of Coastal Parishes Fighting Rapacious Oil Companies*, The Advocate (May 19, 2020), https://www.theadvocate.com/baton_rouge/opinion/letters/letters-history-and-justice-on-side-of-coastal-parishes-fighting-rapacious-oil-companies/article_977bcd16-9a05-11ea-ad1b-63253998b5a0.html. But those contracts still condition payment on success and tie fees to damages awards or judicial determinations after judgment. Whether styled "contingency" or "fee-shifting," the effect is the same: private counsel stand to profit significantly if the litigation produces a recovery, creating identical incentive structures and due-process risks. Indeed, the danger of judicial bias is heightened where the presiding judge later determines the fee award.

Hamilton described when he urged federal jurisdiction where "State tribunals cannot be supposed to be impartial and unbiased." *See The Federalist No. 80* (Alexander Hamilton), in The Federalist Papers (Avalon Project ed., Yale Law Sch.), https://avalon.law.yale.edu/18th_century/fed80.asp. It also imposes measurable economic harms on the very public the enforcement is supposed to help, producing opaque "stealth settlements" that enrich private counsel while failing to restore the coast.

Congress supplied the forum backstop for this problem. Section 1442 ensures that disputes "relating to" acts under federal direction are heard in a neutral federal court. Read as Congress wrote it, and as this Court and the *en banc* Fifth Circuit have previously instructed, it squarely protects federal contractors from being forced to litigate such claims in local forums that combine private financial interests with public power. The judgment below narrows that protection. It should be reversed for three key reasons.

First, Louisiana's joint-prosecution arrangement cedes state enforcement authority to private counsel with direct pecuniary stakes. As part of this arrangement, the State agreed not to endorse any substantive defenses, and private lawyers retained on fee-shifting terms assumed investigative and prosecutorial control for the parishes. Unlike *qui tam* actions with built-in sovereign safeguards, this scheme allows private profit to dictate public enforcement. That structure raises profound due process concerns when the same lawyers also fund judicial campaigns and stand to collect hundreds of millions in fees.

Second, the lawsuits themselves harm the very citizens they purport to protect. Empirical analysis demonstrates that litigation risk costs Louisiana $44–113 million annually, reduces offshore drilling activity, and eliminates thousands of jobs. Settlements like the proposed Freeport-McMoRan agreement substitute speculative “environmental credits” for real restoration, and other confidential “stealth settlements” fail to provide public transparency or accountability. The result is wasteful government spending, diminished revenue, and a persistent “Judicial Hellhole” reputation that drives investment and jobs out of the State.

Third, the Fifth Circuit’s narrow reading of Section 1442 enables these constitutional and economic harms. Congress deliberately broadened the statute in 2011 to cover all claims “relating to” federally directed conduct, and this Court has long instructed that it must be liberally construed. Properly applied, federal officer removal supplies the neutral Article III forum Hamilton envisioned, preventing local tribunals from adjudicating cases where jurors may themselves benefit from multimillion-dollar awards and where private financial incentives skew public enforcement.

The Louisiana model is not unique and will spread if unchecked. Other states have already experimented with retroactive liability theories against disfavored or deep-pocketed industries. This Court should reverse and reaffirm that Section 1442 applies whenever claims relate to federally directed conduct and a colorable federal defense is asserted, ensuring the federal forum necessary to preserve impartial justice, stable federalism, and economic opportunity.

ARGUMENT

I. Louisiana's Privatized Enforcement Model is Incompatible with Impartial Justice.

Louisiana's experiment in coastal erosion litigation has produced a dangerous arrangement in American law: the wholesale delegation of state sovereign enforcement authority to private trial attorneys who answer to financial incentives instead of the public interest. Such an approach is fundamentally incompatible with impartial justice, particularly considering the campaign contributions provided by these attorneys to critical elected judicial and executive decisionmakers overseeing the same cases.

The State's involvement in the coastal erosion cases has been over ten years in the making. The first parish suits under the State and Local Coastal Resources Management Act (SLCRMA), La. R.S. § 49:214.21 et seq., were filed in 2013 by private plaintiffs' counsel on behalf of Plaquemines Parish against dozens of oil and gas companies, seeking damages for wartime oil extraction and production activities dating back to the 1940s. These counsel encouraged other parishes to quickly follow suit and filed copycat actions against many of the same defendants on behalf of those parishes.

For several years, the State stood aside, but in June 2016, it joined the fray by executing a "Common Interest, Joint Prosecution, and Confidentiality Agreement" with several coastal parishes and their private lawyers that bound state officials to coordinate strategy. Most strikingly, the State promised in the agreement that "[n]o party to this Agreement shall at any time expressly or impliedly endorse any substantive defenses or exceptions raised by any defendant" in any SLCRMA case. *Common Interest, Joint Prosecution & Confidentiality Agreement Regarding Coastal Litigation Under the State & Local Coastal Resources Management Act*, Ex. B to Att'y Gen.'s Opp'n to Mot. for Summ. J. on the Parish's Right to Pursue Claims Related to Uses of State Concern at 4, *Parish of Cameron v. Auster Oil & Gas, Inc.*, No. 10-19582 (38th Jud. Dist. Ct., Cameron Par., La., Div. A (hereafter, "Joint Prosecution Agreement").

The State's implementation of this Joint Prosecution Agreement has not been encouraging. Public record requests by the Pelican Institute revealed that the State's own public resource agency essentially abandoned oversight of enforcement and ceded the cases to private counsel. Secretary Thomas Harris testified under oath that the Louisiana Department of Energy and Natural Resources delegated investigative and enforcement functions to private counsel, did not investigate the underlying regulatory allegations before the State intervened, and bypassed its administrative compliance track in favor of lawsuits, "farming out" the Department's responsibility rather than exercising it. *See* Sarah Harbison, *Government Cronyism Exposed in Louisiana Coastal Drilling Lawsuit*, Pelican Institute (July 25, 2023) (citing Deposition of Thomas Harris), https://pelicanpolicy.org/legal-regulatory/government-cronyism-exposed-in-louisiana-coastal-drilling-lawsuit/.

This delegation of enforcement power violates basic constitutional principles. Enforcement of state law is a sovereign function entrusted to accountable, elected officials, not to private lawyers operating on fee-shifting contracts. *See Printz v. United States*, 521 U.S. 898, 920 (1997) ("The Constitution thus contemplates that a State's government will represent and remain accountable to its own citizens."). While Congress has authorized limited private enforcement with *qui tam* suits under the False Claims Act, it built in significant safeguards that preserve public control. A relator must file suit under seal and serve the complaint and supporting evidence on the United States alone, the Government has time to decide whether to intervene, intervention gives the Government primary responsibility for the case, courts may stay discovery to protect related investigations, and the Government may later intervene for good cause. *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419, 425–27 (2023) (summarizing 31 U.S.C. § 3730(b)(2)–(4), (c)(1)–(4)). The Government may even dismiss a False Claims Act action *over a relator's objection*. *Polansky*, 599 U.S. at 419.

While Louisiana law authorizes parishes with approved coastal programs to file SLCRMA enforcement suits and the Attorney General to intervene or even supersede counsel, *see* La. R.S. § 49:214.36(D) and La. Const. art. IV, § 8, the scheme does not mirror the False Claims Act's safeguards that reserve ultimate litigation control to the sovereign (sealed filing, mandatory service, and an express dismissal right). *See* 31 U.S.C. § 3730(b)(2), (c)(2)(A). And in practice, the State entered a joint-prosecution arrangement that delegated core enforcement functions to private counsel without prior state investigation and agreed not to endorse any defenses (however meritorious) that were uncovered in the matter. Guardrails these are not.

Louisiana law likewise constrains contingency-fee public enforcement at the statewide level based on principles of public control and transparency. The Louisiana Supreme Court has held the Attorney General lacks authority to deploy contingency-fee contracts to collect debts or enforce state law absent express legislative authorization. *Meredith v. Ieyoub*, 700 So. 2d 478, 481–83 (La. 1997). State statutes channel the retention and supervision of private counsel and the terms under which fees may be paid. *See*, *e.g.*, La. R.S. § 49:258; La. R.S. § 42:262 ("In the event that the attorney general, or any state agency, board or commission, not including any public postsecondary education institution, is represented by a special attorney or counsel, the special attorney or counsel shall not be compensated for such representation on a contingency fee or percentage basis in the absence of express statutory authority."). This is because diverting a percentage of recoveries (or fee shifting) to private counsel effects a disposition of state funds that belongs to the Legislature, not the executive, and conflicts with statutes requiring that "all sums recovered" be deposited into the treasury before any expenditure. *See* La. Const. art. II, § 2; *Meredith*, 700 So. 2d at 482–84; La. R.S. § 30:2205(A)(1) ("[a]ll sums recovered" in environmental cases must be paid into the state treasury); La. R.S. § 39:1498(A) (professional services contracts require an available appropriation). In short, Louisiana treats contingency-fee public enforcement as a fiscal decision reserved to the Legislature to protect accountability, appropriations oversight, and uniform deposit of state recoveries.

These due process concerns remain just as present when the State intervenes on the side of parishes that have hired attorneys to enforce state environmental laws under fee-shifting arrangements. The same structural risks identified in *Meredith v. Ieyoub* arise: namely, the delegation of sovereign enforcement power to financially interested counsel, without legislative authorization or fiscal oversight. 700 So. 2d at 478, 482–84 (La. 1997). When the State lends its name and authority to suits steered by private contingency-fee lawyers, the financial incentives of counsel blur the line between public enforcement and private gain, undermining both the Legislature's prerogative over state funds and the public's confidence that prosecutions are driven by the public interest rather than the prospect of fee recovery. That combination of sovereign power and private profit magnifies the risk of arbitrary enforcement and coercive settlements that due process is designed to prevent.

Other state courts have squarely held that contingency-fee arrangements in public enforcement matters are constitutionally permissible only if the Attorney General retains "absolute and total control" over the litigation. *State v. Lead Indus. Ass'n, Inc.*, 951 A.2d 428, 477 (R.I. 2008) (adopting *People ex rel. Clancy v. Superior Court*, 705 P.2d 347 (Cal. 1985)). Those decisions make clear that public enforcement counsel must pursue the public interest, not private gain, and that government attorneys must preserve control to ensure neutrality. *Lead Indus.*, 951 A.2d at 476–77 ("At the risk of being repetitive, we would emphasize that the Attorney General's discretionary decision-making must not be delegated to the control of outside counsel; rather, it is the outside counsel who must serve in a subordinate role."); *Clancy*, 705 P.2d at 352.

Louisiana's arrangement does the opposite. The joint prosecution agreement binds the State to the private lawyers' strategy by forbidding state officials from "expressly or impliedly endors[ing] any substantive defenses or exceptions raised by any defendant" in any SLCRMA case. *See* Joint Prosecution Agreement, *supra*, at 4. That clause eliminates the State's discretion to evaluate defenses on the merits, even when they are compelling, and subordinates the sovereign's interests to the profit-driven agenda of counsel.

The agreement also requires coordination of "litigation strategy, discovery, and trial preparation" with private attorneys, without preserving veto power or independent oversight for the State. *Id.* at 2–3. By contrast, under the False Claims Act, Congress required complaints to be filed under seal, gave the Government primary authority to conduct litigation if it intervenes, and empowered it to dismiss an action over the relator's objection. 31 U.S.C. § 3730(b)(2)–(4), (c)(2)(A); *Polansky*, 599 U.S. at 425–27. Louisiana's Joint Prosecution Agreement thus strips away precisely the safeguards that other jurisdictions and Congress have deemed essential to preserve impartial justice in the face of private financial incentives.

The question of who gets paid under these arrangements (the public fisc or well-connected private lawyers) shows why such safeguards matter. Other states have confronted this issue directly. In Mississippi, the state supreme court required law firms to deposit multimillion-dollar contingency fees into the state treasury, holding that such recoveries constitute public funds. *Pickering v. Langston Law Firm, P.A.*, 88 So. 3d 1269, 1277 (Miss. 2012); *Pickering v. Hood*, No. 2012-M-00444-SCT, 2012 BL 197690 (Miss. Aug. 10, 2012). Former Alabama Attorney General William Pryor likewise warned that

Attorneys General reliance on contingency-fee contracts "circumvents the appropriations process and undermines legislative accountability for public funds." Bill Pryor, *Curbing the Abuses of Government Lawsuits Against Industries*, Presentation to the Am. Legislative Exch. Council (Aug. 11, 1999). Louisiana's arrangement does the opposite: instead of ensuring that recoveries flow into the state treasury under legislative oversight, it directs potentially hundreds of millions of dollars to private attorneys operating on contingency-fee or fee-shifting contracts.

Moreover, this Court has long held that prosecutorial or judicial actors may not hold a financial interest in the outcome of cases they prosecute or adjudicate. *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). Yet the very lawyers deputized to represent the Parishes (and supported by the State) stand to collect hundreds of millions of dollars in fees if their suits succeed. *See Big Payday Will Go to Lawyers Representing Parishes in State Coastal Litigation*, WWL-TV (Oct. 17, 2016), https://www.wwltv.com/article/news/investigations/big-payday-will-go-to-lawyers-representing-parishes-in-state-coastal-litigation/289-336476433 (hereafter "Big Payday").

Those same lawyers and their affiliated Political Action Committees (PACs) have contributed millions to the campaigns of Louisiana governors, attorneys general, and state judges, including more than $4 million influencing elections just since 2012 according to federal and state records. *The Trial-Lawyer Behind the Coastal Suits*, LA Swamp Watch, https://www.laswampwatch.com/the-watch/the-trial-lawyer-behind-the-coastal-suits (last visited Sept. 9, 2025). They have also devoted millions to defeat political figures opposed to the lawsuit. *See* Big Payday, *supra* (The Talbot, Carmouche & Marcello firm "spent nearly $2 million to defeat U.S. Sen. David Vitter."). Most concerning for public perceptions of fairness, the law firm driving the coastal erosion suits donated thousands of dollars directly to the judge overseeing the case that resulted in a $745 million jury verdict. Am. Tort Reform Found., *Judicial Hellholes 2018–2019* 28 (2018), https://www.judicialhellholes.org/wp-content/uploads/2018/12/judicial-hellholes-report-2018-2019.pdf. They have also donated extensively to important state appellate and Supreme Court judges.

The risks Louisiana's coastal model presents are neither speculative nor unique. Commentators, courts, and scholars have long warned that contingency-fee public enforcement invites corruption, undermines prosecutorial neutrality, and erodes public confidence. Former Florida Attorney General William McCollum cautioned that such contracts "create the potential for outrageous windfalls or even outright corruption for political supporters of the officials who negotiated the contracts." William McCollum, Jr., *Pay-to-Play: Protecting Taxpayers from Campaign Finance Abuses*, Heritage Found. Legal Memorandum No. 46 (Oct. 19, 2001). Empirical work likewise finds that "contingency fee contracts have routinely been awarded to law firms that are among the largest contributors to the attorney general's election campaign." Am. Tort Reform Ass'n, *The Return of the Private Attorney General* (2007). The problem is concrete: in Mississippi's tobacco litigation, Attorney General Mike Moore retained his top campaign contributor, Dickie Scruggs, who received $1.4 billion (35% of the state's recovery) for negotiating the settlement. *In re Tobacco Litig.* (Miss. Ch. Ct. 1997).

Similar abuses surfaced in New Mexico, where Attorney General Gary King approved contingency-fee awards up to 35% for firms that were also major campaign donors. Scholars explain why: deputizing private counsel "outsources quintessentially sovereign functions to private actors whose profit motives are incompatible with constitutional neutrality," and "inject[s] private financial interests into the sovereign's prosecutorial role," effectively "commandeer[ing] the government's powers of enforcement for private enrichment." *See* Martin H. Redish, *Private Contingent Fee Lawyers and Public Power: Constitutional and Political Implications*, 18 Sup. Ct. Econ. Rev. 77, 80 (2010); Leah Godesky, *State Attorneys General and Contingency Fee Arrangements: An Affront to the Neutrality Doctrine?*, 42 Colum. J.L. & Soc. Probs. 587, 590 (2009); Margaret A. Little, *Pirates at the Parchment Gates: How State Attorneys General Violate the Constitution and Shower Billions on Trial Lawyers*, Competitive Enterprise Institute, Issue Analysis No. 3, at 2 (2017).

Other jurisdictions have recognized the corrosive appearance of such arrangements and imposed prophylactic rules. At least twelve states (including California, Connecticut, New Jersey, Ohio, Pennsylvania, and West Virginia) have enacted "pay-to-play" restrictions that prohibit state contractors, including contingency-fee counsel, from contributing to the campaigns of officials who award or oversee their contracts. Bernard Nash, Milton Marquis & Divonne Smoyer, *Beyond Due Process—A Litigation Primer: Challenging Attorney General and Other Government Contingency Fee Arrangements* 15 & n.17 (Inst. for Legal Reform, Dickstein Shapiro LLP, Oct. 2010), https://instituteforlegalreform.com/wp-content/

uploads/2020/10/contingencyfeemanual.pdf. These statutes reflect a basic principle: public enforcement must not be overly entangled with campaign finance. Louisiana, however, has no comparable restrictions. The result is that the very lawyers who stand to profit from judgments against defendants simultaneously bankroll the election of the officials empowered to direct or decide those cases.

When state-authorized enforcement counsel are both financial beneficiaries of judgments and financiers of the judges who decide these cases, the appearance of impartial justice atrophies. The combination of profit-driven enforcement and campaign finance entanglement magnifies the due process concerns at the heart of *Tumey* and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884 (2009), where the Court warned that campaign expenditures can create a "serious, objective risk of actual bias."

In *Caperton*, the Supreme Court held that due process required recusal where a litigant's principal had spent about $3 million to help elect a state supreme court justice who then cast a decisive vote in that litigant's favor. 556 U.S. 868 (2009). The Court emphasized an objective test: recusal is constitutionally required when, "under a realistic appraisal of psychological tendencies and human weakness," the supporter's role in placing the judge on the case creates a serious risk of actual bias—even absent any quid pro quo or proof of subjective bias. *Id.* at 872, 883–87. Applying that standard, the Court stressed the relative size of the support (Blankenship's spending exceeded all other support combined and was roughly 300% of the justice's own campaign spending), the total election spending, and the timing/foreseeability that a $50 million judgment against the supporter's company would soon be before the newly elected justice. *Id.* at 884–86. On those "extreme facts," the probability of bias rose to an unconstitutional level; the judgment was reversed and remanded. *Id.* at 886–87, 890.

So too, here: public campaign-finance records reflect contributions by the law firm driving the Plaquemines coastal suits and its principals to the judge presiding over the docket and to other state decisionmakers with supervisory or appellate authority while these cases were pending; under *Caperton*'s objective framework, the size and timing of those donations relative to the elections and the litigation create the very probability of bias the Fourteenth Amendment forbids, and heightened scrutiny is warranted.

Louisiana's joint prosecution arrangement with private counsel is therefore flawed in principle and corrosive in practice. By binding the State to never consider legitimate defenses, by delegating sovereign power to financially interested lawyers, and by forcing those cases before state judges where those lawyers have generously contributed, the State has abandoned its duties to the public. In all of it, as next explained, the public has lost.

II. Louisiana's Coastal Lawsuits Cost the State's Citizens in Lost Jobs and Revenue While Failing to Restore the Coastline.

The Pelican Institute's comprehensive economic empirical work demonstrates that the coastal suits impose persistent deadweight losses on Louisiana's economy, harming the citizens of the state they are purportedly meant to help. The Institute's economic analysis found that "Louisiana's economy loses $44.4 million to $113.0 million per year due to lawsuit risk." Gavin Roberts, Ph.D., *The Cost of Lawsuit Abuse: An Economic Analysis of Louisiana's Coastal Litigation* 2 (Pelican Inst. 2019), available at https://pelicanpolicy.org/wp-content/uploads/2019/10/Pelican-Institute_Coastal-Lawsuit-FINAL.pdf. The same study quantified the fiscal hit to the public, explaining that "given that the average royalty rate in the coastal zone of Louisiana is approximately 20 percent, we estimate Louisiana's state and local governments lose $8.9 million per year to $22.6 million per year in royalty revenue." *Id.* at 2. A recent Pelican summary ties these dynamics to persistent uncertainty, relocation of investment, and prolonged restoration shortfalls, reinforcing the measured effects reported in Roberts. Daniel J. Erspamer, *The High Cost of Coastal Litigation*, Pelican Institute (May 30, 2025), https://pelicanpolicy.org/legal-regulatory/the-high-cost-of-coastal-litigation/.

Lawsuit risk distorted real economic activity as well. The study reports that "increased litigation risk has significantly decreased drilling activity in Louisiana's state offshore region." *Id.* at 5. It led to "77 fewer wells in the offshore Louisiana region during the 34 months after 2013," with "the majority of the impact of litigation risk" falling "in drilling for crude oil." *Id.* at 9–10. A robustness check "reapplying the difference-in-differences methodology using the trimmed federal sample" still found that litigation risk "decreased the number of wells drilled in the Louisiana state offshore region by 53 oil wells in the 34 months beginning in January 2014." *Id.* at 13.

These activity declines translated into measurable harm for workers: "Total employment across these four [oil and gas] occupations was steady in May 2012 and May 2013 at 12,850, but by May 2014 it had fallen by more than 2,000 employees to 10,620," and "total earnings" fell from "approximately $518 million and $537 million" to "around $458 million," "a decrease of almost $70 million." *Id.* at 18–19.

Meanwhile, the settlement mechanisms championed by private counsel do nothing to correct purported environmental harms for the benefit of the public. In 2019, Freeport-McMoRan agreed to a proposed settlement with 12 coastal parishes in order to cap its exposure in the SLCRMA suits and avoid years of litigation uncertainty. *See Freeport-McMoRan to Pay $100M in First Settlement in Louisiana Coastal Damage Suits*, Insurance Journal (Sept. 30, 2019), https://www.insurancejournal.com/news/southcentral/2019/09/30/542611.htm. The Pelican Institute's extensive analysis of the proposed agreement concluded that it is "designed to fail, providing an easy victory for those spearheading the litigation but ultimately doing little to nothing for coastal restoration," and that "the proposed settlement does not even attempt to provide clear guardrails for program spending." Arthur R. Wardle, *The Proposed Freeport-McMoRan Settlement: Ineffective by Design* 2, 6 (Pelican Inst. 2022), available at https://pelicanpolicy.org/reports/the-proposed-freeport-mcmoran-settlement-ineffective-by-design/. The deal "dictates that the state-managed fund that Freeport-McMoRan would contribute to should attempt to generate and sell credits into existing environmental credit programs to pay down Freeport-McMoRan's outstanding balance," yet "ensuring that credits go only to projects that would not have otherwise happened" is absolutely critical for an environmental credit program to work properly. *Id.* at 10, 9. The predictable policy result of this construct is backward: "The likely result of the settlement, if approved, would be to encourage wasteful government spending that exacerbates Louisiana's budget problems for minimal coastal benefit," which is why "the ineffective proposed settlement should be concerning to all Louisianians, regardless of their position on the coastal lawsuits." *Id.* at 13, 3.

As flawed as the settlement agreement proposal publicized was (which was ultimately never accepted), a later 2023 settlement in Cameron Parish with BP, Shell, and Hilcorp was announced without any public disclosure of terms. Theresa Schmidt, *Oil Companies Settle with Cameron Parish for Undisclosed Amounts in Coastal Damages Suit*, KPLC (Dec. 13, 2023, 10:20 PM EST), https://www.kplctv.com/2023/12/13/oil-companies-settle-with-cameron-parish-undisclosed-amounts-coastal-damages-suit/. The secrecy surrounding that agreement reveals a central danger of this privatized enforcement regime: settlements are negotiated and finalized outside the channels of public accountability, leaving citizens and even other state actors unable to scrutinize whether the terms advance genuine restoration goals or merely enrich the lawyers who engineered them. When state law requires that all recoveries for environmental harms be directed into transparent, legislatively controlled funds, clandestine settlements that divert or obscure recovery not only conflict with statutory design but also erode the public's trust that enforcement is being carried out for their benefit rather than for private gain. In practice, these "stealth settlements" transform what should be sovereign enforcement of state law into a series of lawyer-driven bargains that substitute opacity and speculation for the transparency and fiscal discipline the Constitution demands.

Independent observers confirm the broader damage to Louisiana's economy. The American Tort Reform Foundation has concluded that "meritless coastal litigation continues to bog down the state's economy and drive jobs to neighboring states." Am. Tort Reform Found., *Judicial Hellholes 2022–2023: Louisiana*, available at https://judicialhellholes.org/hellhole/2022-2023/louisiana/. The same group has named Louisiana an "everlasting judicial hellhole" as it has appeared on its list for 11 years. Am. Tort Reform Found., *Everlasting Judicial Hellholes*, Judicial Hellholes, available at https://judicialhellholes.org/reports/everlasting-judicial-hellholes-a-long-hot-20-years/. The coastal litigation is hardly engendering the kind of pro-growth reputation that generates business formation and investment.

III. Federal Jurisdiction Provides the Necessary Forum Backstop.

Louisiana's experience with state-sponsored private coastal litigation illustrates precisely why Congress enacted the federal officer removal statute. Section 1442 ensures that disputes over conduct undertaken for the United States, even if politically unpopular, are heard in a neutral federal forum. That safeguard is especially vital when a state outsources sovereign enforcement to financially interested private counsel and funnels cases into locally elected courts.

The Founders anticipated this danger. Hamilton explained that federal jurisdiction must extend to cases "in which the State tribunals cannot be supposed to be impartial and unbiased." *The Federalist No. 80* (Hamilton), *supra*. Louisiana's privatized enforcement model, combined with its judicial selection system, amplifies exactly those concerns. Consider Cameron Parish, where a single jury drawn from a population of fewer than 6,000 residents would be tasked with deciding a multimillion-dollar case against a global oil company. Because settlements and judgments can flow directly into parish coffers, jurors would face the prospect of meaningful personal financial benefit from their verdicts, a structure that collides with the core due process principle that decisionmakers may not have a pecuniary interest in the outcome. *See Tumey*, 273 U.S. at 523; *Caperton*, 556 U.S. at 884.

Louisiana's approach compounds those concerns by attempting to impose retroactive liability. Through expansive interpretations of SLCRMA, parishes seek to punish oil production undertaken decades before the statute's enactment, including wartime production carried out under federal direction. That move sidesteps the act's explicit grandfather clause and epitomizes legal and regulatory unpredictability. Allowing such suits to proceed not only punishes federally directed wartime production after the fact, but also risks deterring companies from cooperating with future federal directives, such as rapidly increasing energy output in a national emergency, for fear that decades later they will be exposed to retroactive state-law liability. *See Boyle v. United Techs. Corp.*, 487 U.S. 500, 511–13 (1988) (recognizing federal common-law defenses where state liability would conflict with uniquely federal interests). Retroactive reinterpretations of this kind not only deter investment and distort economic activity, they also magnify the constitutional need for a neutral federal forum where due process and rule-of-law constraints can be enforced. Pelican's policy analysis likewise explains that many of the alleged "permit" violations predate Louisiana's coastal permit regime and arose from federally directed World War II efforts, and that "holding someone accountable for a law that did not exist creates a terrifying legal precedent." Erspamer, *High Cost of Coastal Litigation*, *supra*.

Congress has long recognized that federal officer removal is the appropriate backstop against such structural risks. It deliberately broadened Section 1442 in 2011, replacing the narrow "causal nexus" standard with the expansive "relating to" formulation. The Fifth Circuit has confirmed that the statute must be liberally construed in favor of removal. *See Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 292–93 (5th Cir. 2020) (*en banc*). "Relating to" requires only a "connection with, or reference to" federally directed activity. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383–84 (1992). And this Court has repeatedly instructed that federal officer removal is not to be read narrowly, protecting those sued "for an act under color of office." *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999); *Willingham v. Morgan*, 395 U.S. 402, 407 (1969); *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007).

The Louisiana coastal suits show why these protections matter. When states farm out enforcement to counsel remunerated by fee-shifting, tie recovery to local budgets, and revive liability for conduct that was lawful or federally directed at the time, the risk of partisan incentives, forum manipulation, and biased adjudication escalates. Federal removal directly mitigates those dangers by substituting an Article III forum where impartiality is structurally preserved.

Unfortunately, Louisiana is unlikely to be the last state to experiment with such arrangements. Other states have already shown a willingness to impose retroactive liability on deep-pocketed or disfavored industries. For example, Rhode Island attempted to impose sweeping public nuisance liability on lead paint manufacturers for lawful sales made decades earlier, an effort the state supreme court ultimately rejected. *See State v. Lead Indus. Ass'n, Inc.*, 951 A.2d 428 (R.I. 2008). Mississippi's asbestos docket similarly became a magnet for thousands of retroactive claims based on exposures occurring decades prior, generating unpredictable liability and distorting settlement incentives. *See*, *e.g.*, *In re Asbestos Personal Injury Cases, Abrams et al.*, (Jackson Cnty. Cir. Ct., 19th Jud. Dist. Miss. 1993); RAND Inst. for Civil Justice, *Asbestos Litigation* 61 (2005), https://www.rand.org/pubs/monographs/MG162.html. California pursued climate change nuisance suits seeking damages for greenhouse gas emissions dating back generations, despite no such prohibitions existing at the time. *See City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020); *see also City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). New York enacted a statute creating a public-nuisance cause of action against gun industry members for marketing/distribution practices; the Second Circuit upheld the law against a facial challenge. *See Nat'l Shooting Sports Found., Inc. v. James*, 144 F.4th 98 (2d Cir. 2025).

These examples confirm that Louisiana's retroactive coastal permitting suits are part of a broader trend: using novel statutory or common-law theories to punish long-past conduct that was either lawful or federally directed at the time. Without clear affirmation that Section 1442 applies broadly, similar regimes will spread elsewhere, heightening the very risks Hamilton identified and that Congress sought to remedy. The Court should therefore reaffirm that federal officer removal applies whenever claims relate to federally directed conduct and a colorable federal defense is asserted, ensuring the neutral forum that both the Constitution and Congress demand.

CONCLUSION

As the Louisiana example compellingly demonstrates, allowing states to outsource sovereign enforcement to private counsel and pursue retroactive claims for federally directed conduct undermines due process, distorts local economies, and erodes the separation of powers, while doing nothing to restore the environment. Section 1442 provides the necessary federal forum backstop against these dangers. For the foregoing reasons, this Court should reaffirm the breadth of federal officer removal and reverse the judgment below.

Respectfully submitted,

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