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 AMICI CURIAE AMERICAN ASSOCIATION FOR JUSTICE AND LOUISIANA ASSOCIATION FOR JUSTICE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. Throughout its 79-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

The Louisiana Association for Justice ("LAJ") is a voluntary bar association whose statewide membership is composed of lawyers who have a trial practice. Both defense and plaintiff attorneys belong to the association; however, most LAJ members represent injured plaintiffs, consumers, and small businesses in civil actions. The association and its members attempt to promote highway safety, a clean environment, safety in the workplace, and quality healthcare. They are likewise committed to preserving the civil justice system, protecting open access to the courts, protecting individual rights, promoting individual and corporate responsibility, and preserving the highest of ethical and educational standards for the profession.

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for any party authored this brief in whole or in part and no person or entity, other than *amici*, their members, or their counsel has made a monetary contribution to its preparation or submission.

This case is of acute interest to AAJ and LAJ members who have represented and continue to represent plaintiffs in actions where private defendants have sought removal from state to federal court under 28 U.S.C. §1442(a)(1), which permits removal when federal officers or agencies are sued or prosecuted, as well as when a private defendant is acting under a federal officer. Despite the long history of federal-officer removal and the clarity with which courts have applied the relevant standards, defendants continue to invoke federal-officer removal with uncommon frequency, often asserting the barest and most tangential connections to federal actions.

In this case, the Fifth Circuit correctly construed precedent, understood the import of the 2011 amendment to the federal officer removal statute, and applied that law properly. Based on the statute's "language, context, history and purpose," the Fifth Circuit concluded Chevron's claimed connection between the government's World War II contract for refined avgas and the underlying lawsuit looking at events after 1980 was too tenuous to support removal jurisdiction, particularly given that the federal contracts at issue mentioned neither production of crude oil nor directed or controlled defendants' production of crude oil. For these reasons, *amici* urge this Court to affirm.

INTRODUCTION AND SUMMARY OF ARGUMENT

In recent years, private defendants have repeatedly sought removal to federal courts, claiming to be

"acting under a federal officer," 28 U.S.C. § 1442(a)(1), and advancing arguments properly described as grasping. The 2011 amendment to the federal officer removal statute did not effect a sea change in eligibility for federal-officer removal, but clarified the types of state-court actions subject to the act and appellate rights. It did not call forth a wholesale change in the criteria so that existing, uniformly adverse decisions focused on the "acting under" prong would be overturned. Its employment of new language "relating to" certain acts under color of federal authority involves a separate criterion and cannot provide boundless authorization for removal as Respondents (hereinafter, collectively, "Chevron") advocate. The statutory text confirms those limits, as does the statute's structure, history, and intent.

In fact, this Court had already deemed the "acting under" language to be a "broad" phrase that must be "liberally construed," and yet was "not limitless." *Watson v. Philip Morris Cos, Inc.*, 551 U.S. 142, 147 (2007). The addition of "relating to," particularly in the context of where it was placed, does not change that. Nor does it cast any doubt or limit on what this Court declared in *Watson*.

There still must be some nexus to that which was required by the federal government and the subject of the underlying lawsuit. Otherwise, tangentially associated activities upon which a lawsuit is based suddenly become "federal" and yield jurisdiction in the federal courts to traditional state causes of action that no federal officer would ever need to defend.

Nothing in the amendment or the legislative history supports a congressional intent to displace state-court actions without limits. Adopting the analysis of Judge Oldham's dissent below, Chevron argues "the 'relating to' element requires only that the challenged conduct be 'connected or associated with' an act taken under federal direction." Chevron Br. 20 (quoting Pet. App. 47). It proposes no limiting principle, and none could be discerned from such a definition.

The astounding breadth that Chevron ascribes to the 2011 amendment becomes clear when it accuses the Fifth Circuit majority of "compound[ing] its error," by holding that "compliance with federal regulations," including compliance with "specific regulatory directives," does not suffice to warrant federal-officer removal. *See* Pet. Br. 35 (citing Pet. App. 24–25). That holding by the Fifth Circuit was not error, but comported with this Court's teachings.

ARGUMENT

I. CHEVRON'S ARGUMENT WOULD GIVE UNWARRANTED, IMPROPER, AND BREATHTAKING SCOPE TO THE OFFICER-REMOVAL STATUTE'S 2011 AMENDMENT, CREATING PLENARY FEDERAL SUBJECT-MATTER JURISDICTION BASED ON THE MOST TENUOUS JUSTIFICATIONS.

Chevron offers this Court a version of the federal-officer removal statute that is breathtaking in scope. This Court starts with the text in construing a statute. *Van Buren v. United States*, 593 U.S. 374, 381 (2021).

Several recent disputes in which courts have uniformly rejected federal-officer removal can provide a unique perspective useful to this Court and enrich analysis of the text.

The contrast between these practical applications and Chevron's preferred construction demonstrates how radical a change in removal law it seeks. It is surely not consistent with an amendment dubbed a "clarification" of longstanding law. To be clear, in Chevron's capacious construction of the phrase "relating to," no real limitations remain on federal-officer removal. As Justice Antonin Scalia once wryly pointed out, "everything is related to everything else." *California Div. of Lab. Standards Enf't v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring).

If this Court does not recognize common-sense limits to that language, particularly in light of its placement in the federal-officer removal statute, a new removal regime will arise that has little connection to preexisting law. If Chevron's argument is validated, the law would now authorize removal by any federal contractor, whether the contract exists today or only in the past. Work with a party who holds a federal contract, and removal is also authorized. Comply with detailed federal regulations, removal is authorized. In short, in Chevron's formulation, an indirect and tangential federal connection opens the door to removal even if any linkage to the actual dispute remains highly attenuated.

If validated, Chevron's argument would undermine the longstanding premise that federal courts possess limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In fact, this Court established a rebuttable presumption against federal jurisdiction rather than jurisdiction in the state courts in the eighteenth century. *Turner v. Bank of N. Am.*, 4 U.S. 8, 10 (1799). Even causes brought before a federal court as a function of diversity jurisdiction must satisfy a "strict construction" of its requirements in order to respect the "power reserved to the states, under the Constitution (Amendment 10), to provide for the determination of controversies in their courts." *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

Still, defendants have claimed to be acting under a federal officer as their ticket to federal court with increasing frequency. Like Chevron here, they make outsized and broad claims about being eligible for removal. Courts, however, have recognized that the claims lack a sound basis—and the nature of the arguments made in those cases provide this Court with substantial guidance on what "relating to" should mean here, as well as what Congress intended by those words.

A. Nursing Homes Claimed Eligibility for Federal-Officer Removal for Their Unsuccessful Efforts to Keep Residents Safe During the COVID-19 Pandemic.

During the COVID-19 pandemic, nursing homes experienced a disproportionately high rate of death,

largely due to widespread and longstanding problems over their poor quality of care, inadequate infection control measures, and sparse staffing. *See, e.g.*, R. Tamara Konetzka, David C. Grabowski, & Vincent Mor, *Four Years and More Than 200,000 Deaths Later: Lessons Learned from the COVID-19 Pandemic in US Nursing Homes*, 43 Health Affs. 985 (July 2024); *see also* Christopher J. Cronin & William N. Evans, *Nursing Home Quality, COVID-19 Deaths, and Excess Mortality*, 82 J. Health Econ. 1, 15 (Mar. 2022) (estimating that "roughly one-fifth of COVID-19 deaths" were nursing home residents). On the other hand, highly rated, high-quality nursing homes experienced substantial success in preventing COVID-related deaths. *See, e.g.*, David P. Bui et al., Centers for Disease Control & Prevention, *Association Between CMS Quality Ratings and COVID-19 Outbreaks in Nursing Homes—West Virginia, March 17–June 11, 2020*, 69 Morbidity & Mortality Wkly. Rep. 1300, 1301–02 (Sept. 18, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6937a5.htm.

The fatalities that occurred in nursing homes resulted in wrongful-death lawsuits brought in state courts throughout the country. KFF Health News documented more than 1,100 COVID-related lawsuits were filed against nursing homes from March 2020 to March 2024. Fred Schulte, *Nursing Homes Wield Pandemic Immunity Laws to Duck Wrongful Death Suits*, KFF Health News, May 14, 2024, https://kffhealthnews.org/news/article/nursing-home-pandemic-immunity-wrongful-death-lawsuits/.

In what became a familiar sequence of events, defendant nursing homes sued in state courts removed the cases to federal courts, resting in large part on a claim that the nursing home was "acting under" a federal officer,[2] and the cases were remanded to state court in "more than 80 other suits." *Martin v. Petersen Health Operations, LLC*, 37 F.4th 1210, 1212 (7th Cir. 2022). The nursing home cases all took place after enactment of the 2011 amendment.

The nursing homes made a number of assertions in support of federal-officer removal. First, they claimed they were "subject to extensive federal regulation" to qualify for reimbursement from Medicare or Medicaid, which only increased because of the pandemic. *Id.* Second, they asserted that the pandemic had created such a deep crisis that the Department of Health and Human Services and the Centers for Disease Control and Prevention had issued an "all-hands-on-deck" alert so that they assisted "pursuant to the direct orders and comprehensive and detailed directives issued by these agencies." *Martin v. Petersen Health Operations, LLC*, No. 1:20-CV-1449, 2021 WL 4313604, at *3 (C.D. Ill. Sept. 22, 2021), *aff'd*, 37 F.4th 1210 (7th Cir. 2022) (quoting defendant's brief). In

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[2] Nursing homes also unsuccessfully asserted that the wrongful-death claims necessarily rested on federal law or invaded the immunity provided by the Public Readiness and Emergency Preparedness (PREP) Act, 42 U.S.C. §§ 247d to 247d–10. This basis for federal jurisdiction, as well, was uniformly rejected. *See, e.g.*, *Martin*, 37 F.4th at 1213–14.

that regard, these defendants claimed "the government designated nursing homes as 'critical infrastructure' during the COVID-19 pandemic. *Cagle v. NHC Healthcare-Maryland Heights, LLC*, 78 F.4th 1061, 1068 (8th Cir. 2023); *see also Saldana v. Glenhaven Healthcare LLC*, 27 F.4th 679, 685 (9th Cir. 2022), *cert. denied sub. nom.*, *Glenhaven Healthcare LLC v. Saldana*, 143 S. Ct. 444 (2022); *Mitchell v. Advanced HCS, L.L.C.*, 28 F.4th 580, 590 (5th Cir. 2022).[3]

In addition to the rulings in the Fifth, Seventh, Eighth, and Ninth Circuits, noted above, the arguments were uniformly rejected by other circuit and district courts. *See, e.g.*, *Solomon v. St. Joseph Hosp.,* 62 F.4th 54, 63 (2d Cir. 2023); *Maglioli v. All. HC Holdings LLC*, 16 F.4th 393, 411 (3d Cir. 2021); *Hudak v. Elmcroft of Sagamore Hills*, 58 F.4th 845,

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[3] The "critical infrastructure" argument was also unsuccessfully asserted in at least two circuits by a meat-processing company to claim eligibility for federal-officer removal when being sued by survivors of workers who died of COVID-19 after contracting it at work. *Buljic v. Tyson Foods, Inc.*, 22 F.4th 730, 739 (8th Cir. 2021) ("Tyson conflates the federal government's designation of the 'food and agriculture' sector as critical infrastructure with a finding that Tyson was fulfilling a basic governmental task."); *Glenn v. Tyson Foods, Inc.*, 40 F.4th 230, 233, 235 (5th Cir. 2022) (holding that Tyson's close work with on-site inspectors from the USDA's Food Safety and Inspection Service, which grew more complex during the pandemic, and its promise to help procure more protective equipment still amounted to nothing more than "heavy regulation").

859 (6th Cir. 2023); *Schleider v. GVDB Operations, LLC*, 121 F.4th 149, 159 (11th Cir. 2024).

The Eighth Circuit explained, "[i]t cannot be that the federal government's mere designation of an industry as important—or even critical—is sufficient to federalize an entity's operations and confer federal jurisdiction." *Cagle*, 78 F.4th at 1068 (quoting *Buljic*, 22 F.4th at 740). The Third Circuit rejected the claim because nursing homes "do not assist or help carry out the duties of a federal superior," "do not have [a] close relationship with the federal government," "are not delegated federal authority, nor do they provide a service that the federal government would otherwise provide," and the government publications they called "comprehensive directives" were "more aptly described as guidance." *Maglioli*, 16 F.4th at 405.

Although the 2011 amendment was in effect during all these decisions, the nursing homes were held not to be acting under a federal officer. Adopting the approach that Chevron advances in this case seems to mandate reversal of those decisions, since its treatment of relatedness would not require the type of close relationship between federal objectives and private assistance that characterized this COVID-era jurisprudence.

B. Aircraft Manufacturers Have Also Unsuccessfully Sought Removal to Federal Court on Federal-Officer Grounds.

Aircraft manufacturers regularly remove litigation over injuries sustained in crashes from state to federal court, claiming to be "acting under a federal officer" and having those claims rejected. In what is perhaps the leading case, *Lu Junhong v. Boeing Co.*, 792 F.3d 805 (7th Cir. 2015), Boeing argued that it acts as a representative of the Administrator of the Federal Aviation Administration ("FAA") when it "conduct[s] analysis and testing required for the issuance of type, production, and airworthiness certifications" in lieu of the agency's inspectors. *Id.* at 808. It added to its argument that it helps "reduce[] the size of the bureaucracy" by making it unnecessary for an FAA employee to undertake the airworthiness certification, a task that would have authorized federal-officer removal if a government employee conducted it and was subsequently sued. *Id.* at 809.

Writing for the court, Judge Easterbrook held that self-certification did not satisfy the "acting under" requirement, even "[i]f the FAA gave Boeing the power to issue a conclusive certification of compliance" without establishing substantive standards, although that would come closer to what is required. *Id.* at 810. In light of that conclusion, the Seventh Circuit stated that "after today it would be frivolous for Boeing or a similarly-situated defendant to invoke § 1442 as a basis of removal." *Id.* at 813.

Nonetheless, that notice that the argument was frivolous has not stopped aircraft manufacturers from repeatedly pressing it on courts. Airbus made the same argument when one of its helicopters crashed and sought removal from Nevada state court to federal court. *Riggs v. Airbus Helicopters, Inc.*, 939 F.3d 981 (9th Cir. 2019), *cert. denied*, 141 S. Ct. 161 (2020). In *Riggs*, Airbus added to Boeing's failed arguments that federal regulations allow "an organization to perform specified functions on behalf of the Administrator related to engineering, manufacturing, operations, airworthiness, or maintenance." *Id.* at 985 (quoting 14 C.F.R. § 183.41(a)). As a result, Airbus asserted it was an FAA-certified Designation holder with authority to issue Supplemental Certificates," a document that authorizes certification for certain design changes to the aircraft. *Id.* at 984.

The Ninth Circuit rejected the argument after adopting the same analysis as in *Lu Junhong* and found that Airbus's authority solely related to compliance with regulatory standards. *Id.* at 989.

Yet, if Chevron's construction of the 2011 amendment were correct, not only would these decisions be doubtful, but what the Seventh Circuit called a frivolous argument would likely succeed.

C. Misrepresentation Actions Concerning Deceptive Marketing About the Negative Climatological Effects of Fossil Fuels Have Experienced Repeated Remands After Courts Rejected Federal-Officer Removal.

As this Court well knows, states and cities have sued fossil fuel companies alleging that their marketing campaigns knowingly misled and deceived consumers about the negative effects of gasoline use on the climate and have removed on the basis of a claimed federal-officer status that courts have uniformly rejected. *See, e.g.*, *BP P.L.C. v. Mayor & City Council of Baltimore* (*Baltimore II*), 593 U.S. 230 (2021); *Bd. of Cnty. Commissioners of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023).

In these cases, the fossil fuel companies offered a variety of claims to bring the cases within the "acting under" criteria of the Federal Officer Removal Statute without success. For example, in the *Baltimore* case, some corporate defendants unsuccessfully argued that its contracts with the Navy Exchange Service Command (NEXCOM) and the Navy more generally, as well as leases administered by the Secretary of the Interior, qualified it for Section 1442 removal. *Mayor & City Council of Baltimore v. BP P.L.C.* (*Baltimore I*), 952 F.3d 452, 463 (4th Cir. 2020), *vacated and remanded on other grounds*, 593 U.S. 230 (2021).

The Fourth Circuit concluded that merely producing a product that the government needed lacked a sufficient relationship to Baltimore's claims in this lawsuit and illogically "would bring every seller of contracted goods and services within the ambit of § 1442 when the government is a customer." *Id.* The leasing agreement argument proved unavailing for the same reason, its remoteness from the claims at issue by Baltimore, but also because "many of lease terms are mere iterations of the . . . regulatory requirements" and because the court doubted that a "willingness to lease federal property or mineral rights to a private entity for the entity's own commercial purposes, without more, could ever be characterized as the type of assistance that is required to trigger the government-contractor analogy." *Id.* at 465. The Circuit had to reach that conclusion a second time when it was assayed again. *See Anne Arundel Cnty. v. BP P.L.C.*, 94 F.4th 343, 347 (4th Cir. 2024) ("We conclude federal officer removal was no more proper here than in *Baltimore*.").

The Tenth Circuit reached the same conclusion, finding the Outer Continental Shelf leases asserted in its case insufficient to trigger federal-officer removal. *Suncor Energy*, 25 F.4th at 1253 ("By winning bids for leases to extract fossil fuels from federal land in exchange for royalty payments, Exxon is not assisting the government with essential duties or tasks.").

The First, Second, Third, Eighth, Ninth, and District of Columbia Circuits have reached the same conclusions as the Fourth and Tenth Circuits on this set of issues. *See Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44, 53 n.6 (1st Cir. 2022); *State by Tong v. Exxon Mobil Corp.*, 83 F.4th 122, 143–45 (2d Cir. 2023); *City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 712–13 (3d Cir. 2022), *cert. denied,* 143 S. Ct. 2483 (2023); *Minnesota by Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 714–16 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 620 (2024); *County of San Mateo v. Chevron Corp.*, 32 F.4th 733, 757 (9th Cir. 2022); *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101, 1107–110 (9th Cir. 2022) (rejecting additional arguments not addressed in *San Mateo*); and *D.C. v. Exxon Mobil Corp.*, 89 F.4th 144, 155–57 (D.C. Cir. 2023).

As in the prior examples, each of these decisions considered the 2011 amendment in rejecting the claim for federal-officer removal, but Chevron's construction of the amendment would appear to mandate a different result.

D. Some Privacy Lawsuits over Patient Portal Websites Demonstrate Misuse of Federal-Officer Removal Without Fear of Local Prejudice.

Delay, rather than concerns about local prejudice, appear to characterize some assertions of federal-officer status. For instance, Missouri patients of a Missouri health care provider, BJC Health System, sued in state court based on allegations that the provider

violated state privacy rights in establishing online patient portals. *Doe v. BJC Health Sys.*, 89 F.4th 1037, 1040 (8th Cir. 2023). BJC removed and argued it "exercised explicit or implied authority delegated from HHS or the [National] Coordinator [for Health Information Technology] when it created and operated its online patient portal" and relied on federal incentive payments to deploy it. *Id.* at 1044.

Specifically, BJC relied on an out-of-circuit district court decision to contend that "when healthcare providers create and maintain patient portals and accept HHS incentive payments, they assist HHS in building 'an interoperable health information technology infrastructure'" that will be part of a national network, creating a relationship akin to that of a government contractor. *Id.* at 1044–45 (quoting *Doe I v. UPMC*, No. 2:20-cv-359, 2020 WL 4381675, at *5–6 (W.D. Pa. July 31, 2020)).

The Eighth Circuit rejected the argument that this relationship constituted "acting under" a federal officer because the patient portal "was not a federal government website, it was not a website BJC operated on the federal government's behalf or for the federal government's benefit, and it was not a website the federal government directed BJC to create or operate." *Id.* at 1045. In fact, the "design of private websites is not—and has never been—a basic *governmental* task." *Id.* Instead, "[w]hen BJC created and operated an online portal for its patients, it was not doing the federal government's business. It was doing its own." *Id.*

The Third Circuit reached a similar conclusion. *See Mohr v. Trustees of Univ. of Penn.*, 93 F.4th 100, 106 (3d Cir. 2024) (ruling as in *BJC* and listing six district court rulings utilizing the same rationale). As in the other examples, Chevron's construction would appear to require a different and plainly unwarranted result.

II. EVERY APPROPRIATE READING OF THE STATUTE WITH THE 2011 AMENDMENT REJECTS ALLOWING THE ADDITION OF "RELATING TO" TO OVERRIDE THE WELL-ESTABLISHED MEANING OF "ACTING UNDER."

As indicated earlier, this Court begins the task of statutory construction with the law's text, *Van Buren*, 593 U.S. at 381, which provides the best evidence of Congress's intent. *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991). That approach to statutory construction reflects the axiom that courts "presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Even so, this "Court has long refused to construe words in a vacuum," but instead reads them "in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (cleaned up).

Chevron, on the other hand, asks this Court to adopt a reading that is breathtaking in scope based on the addition of two words, "relating to," as added in

the Removal Clarification Act of 2011, Pub. L. No. 112-51, § 2(a)(1), 125 Stat. 545. That approach is disassociated from the placement of the words and treats it in splendid isolation from the rest of the statute, from its history, and from any logical congressional purpose that might be ascribed to it. Under Chevron's reading, a transitory, shallow, and insubstantial connection at some distant past justifies use of the removal statute as a get-out-of state-court card with no expiration date and no boundaries.

A. The 2011 Amendment Did Not Massively Change the Requirements for Federal-Officer Removal.

Congress enacted the Removal Clarification Act of 2011 by pertinently amending Section 1442(a)(1) as follows:

> (a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court. . . .
>
> > (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, ~~sued~~ in an official or individual ~~capacity for~~ capacity, for or relating to any act under color of such office. . . .

Removal Clarification Act of 2011 § 2(a)(1).[4]

A plain reading of Section 1442(a)(1) makes clear the separateness of the requirement that a non-government actor qualifies for consideration by being a "person" who is "acting under [a federal] officer" from the remaining criteria. Thus, every circuit has undertaken a three- or four-prong inquiry, sometimes collapsing the first two parts into one, by requiring that the defendant be: (1) a person, (2) acting under the United States, its agencies, or its officers, (3) "for or relating to" an act under color of federal authority, and (4) with a colorable federal defense. *See, e.g.*, *Att'y Gen. of New Jersey v. Dow Chem. Co.,* 140 F.4th 115, 119 (3d Cir. 2025); *see also Gov't of Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 185 (1st Cir. 2024); *Tong*, 83 F.4th at 142 (2d Cir.);; *Anne Arundel Cnty.*, 94 F.4th at 347; *Caris MPI, Inc. v. UnitedHealthcare, Inc.*, 108 F.4th 340, 346 (5th Cir. 2024); *Hudak*, 58 F.4th at 858; *Baker v. Atlantic Richfield Co.*, 962 F.3d 937, 941 (7th Cir. 2020); *Doe v. SSM Health Care Corp.*, 126 F.4th 1329, 1332 (8th Cir. 2025); *DeFiore v. SOC LLC*, 85 F.4th 546, 554 (9th Cir. 2023); *Suncor Energy*, 25 F.4th at 1251 (10th Cir.); *Schleider*, 121 F.4th at 158 (11th Cir. 2024). *But see K&D LLC v. Trump Old Post Off. LLC*, 951 F.3d 503, 506 (D.C. Cir. 2020) (describing it as a two-step test consisting of the

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[4] Other provisions of the 2011 amendment, such as defining for the first time "civil action" and "criminal prosecution" or authorizing an appeal from a remand order, Removal Clarification Act of 2011 §§ (2)(a)(2) and 2(d), are not relevant to this case.

third and fourth elements of the four-prong test).

B. The Text Did Not Change the Criterion for What Constitutes "Acting Under" a Federal Officer or the Purpose of That Requirement.

While being a person is rarely an issue, many courts—as this Court did in *Watson v. Philip Morris Cos, Inc.*—focus heavily on the "acting under" prong, where this Court pronounced the "relevant relationship is that of a private person 'acting under' a federal 'officer' or 'agency.'" 551 U.S. 142, 151 (2007) (citing 28 U.S.C. § 1442(a)(1)). *Watson* read the requirement to "refer to what has been described as a relationship that involves 'acting in a certain capacity, considered in relation to one holding a superior position or office,'" which "typically involves 'subjection, guidance, or control.'" *Id.* This Court emphatically stated that it "does *not* include simply complying with the law." *Id.* at 152 (emphasis in original). *Watson* further stated that as a "matter of statutory purpose . . . [w]hen a company subject to a regulatory order (even a highly complex order) complies with the order, it does not ordinarily create a significant risk of state-court 'prejudice,'" and thus stands outside the protective shield that federal-officer removal seeks to accomplish. *Id.*

Watson also recognized that the "acting under" prong is "broad" and "must be 'liberally construed,'" but further acknowledged that "broad language is not limitless" and that those limits become evident in a

statute's "language, content, history, and purposes." *Id.* at 147.

Nothing in the Removal Clarification Act suggests that Congress sought to change this Court's approach to "acting under." *Cf. New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 661 (1995) ("[N]othing in the language of the Act or the context of its passage indicates that Congress chose to displace general health care regulation [by the States] . . . .").

Chevon argues the plain meaning of "relates to" in the 2011 amendment requires nothing more than *some* connection or relation between the conduct at issue in the litigation and the defendant's federal contracts. Yet, that focus ignores whether the person seeking removal qualifies as "acting under" and involves the type of "subjection, guidance, or control" that *Watson* called the essence of acting in relation to a superior. Moreover, holding a federal contract does not per se create an "acting under" relationship with the federal government. *Watson* made clear—and Philip Morris as the removing party agreed—that a contractual relationship must also include "unusually close" and "detailed supervision regulation, monitoring, or supervision." 551 U.S. at 153.

To put a fine point to it, *Watson* held that the "upshot is that a highly regulated firm cannot find a statutory basis for removal in the fact of federal regulation

alone" because a "private firm's compliance (or non-compliance) with federal laws, rules, and regulations does not by itself fall within the scope of the statutory phrase 'acting under' a federal 'official.'" *Id.*

Despite that clear language, and adopting the analysis of Judge Oldham's dissent below, Chevron advocates "the 'relating to' element requires only that the challenged conduct be 'connected or associated with' an act taken under federal direction." Pet. Br. 20 (quoting Pet. App. 47). It proposes no limiting principle, and none can be discerned from that definition.

The astounding breadth that Chevron ascribes to the 2011 amendment becomes even clearer when it accuses the Fifth Circuit majority of "compound[ing] its error," by holding "compliance with federal regulations," including very "specific regulatory directives," did not suffice to support federal-officer removal. *See* Pet. Br. 35 (citing Pet. App. 24–25). That holding by the Fifth Circuit was not error, but comported with this Court's teachings in *Watson*.

It is worth noting that the issue in *Watson* was not the way the cigarette manufacturer (or its laboratory) "conducted cigarette testing," but "the way in which Philip Morris 'designed' its *cigarettes*." 551 U.S. at 154 (emphasis in original). Thus, although this Court found no reason to discuss that issue beyond noting it, the notation makes clear a disconnect between the lawsuit and the alleged basis for removal that cannot be bridged. There must be some relationship between

the cause of action and the activities with which the federal government has sought closely supervised assistance.

Here, that is absent. And its absence is not a matter of dispute. The government contracted with the Defendants and their predecessor companies for refined aviation fuel during World War II. Pet. App. 2. They did not contract to have crude oil drilled to supply the materials that required refining; they did not regulate, supervise, or provide guidance about how that crude oil was obtained; and they did not authorize the destruction of the Louisiana coastline. Pet. App. 25, 61 n.67. In fact, both the majority and dissent below agreed, in the words of the dissent:

> True, the contracts did not specify where or how defendants should acquire the massive amounts of crude oil needed to fulfill their avgas obligations.

Pet. App. 45 (Oldham, J., dissenting); *see also* Pet. App. 29–30.

While the majority properly found that fact significant, Judge Oldham's dissent considered it inconsequential. Pet. App. 45–46. The disassociation between claim and federal connection, however, should not be dismissed so easily. An approach that downplays the connection constitutes an extraordinarily loose approach to what is at issue. In fact, the approach Judge Oldham would take, and that Chevron embraces,

would allow a government contract for the manufacture of widgets, containing no specifications for the widgets, to justify removal of a subsequent state lawsuit for a wide variety of state-law claims. Those would include allegations for unjust enrichment based on the government contractor's theft of another company's widgets to fulfill the government order. It would also include an action for breach of contract for failing to pay a third-party supplier for the raw materials used to make the widgets that were delivered to the government. And it would include an automobile case for a collision caused by the inattentive driver of the widget delivery truck. Chevron's expansive approach to "relating to" would attribute each of these actions to the government as bearing some relationship to a service the government contracted for even though no government official maintained oversight or guidance on the task. In fact, no government official would have engaged in such activity, and the underlying purpose of removal—to prevent prejudice against the federal government—could not be at issue.

Contrast that approach not only to the decisions rehearsed at the beginning of this brief, which were rendered after the 2011 amendment, but also to a telling pre-amendment example. In *Bennett v. MIS Corp.*, 607 F.3d 1076 (6th Cir. 2010), the Sixth Circuit held that federal-officer removal was proper when air traffic controllers sued over injuries caused by incompetent and negligent mold remediation by private companies hired by the FAA to address problems at De-

troit Metropolitan Wayne County Airport. The first effort allegedly exacerbated the mold problem, engendered nearly immediate medical problems, and resulted in a five-hour employee evacuation. Three subsequent attempts at remediation also failed.

The court found that removal was authorized because the company performed its work at the direction and in accordance with detailed mold abatement specifications formulated by the FAA and because on-site FAA officials closely monitored the work. *Id.* at 1087. Thus, the relationship was the type of "unusually close one, involving detailed regulation, monitoring, and supervision," that *Watson* discussed. *Id.* (citing *Watson*, 551 U.S. at 153).

While the FAA's close relationship satisfied the "acting under" prong, the Sixth Circuit separately assessed the under-color-of-federal-authority prong that "relating to" now modifies. That hurdle, the court noted, is "quite low." *Id.* at 1088 (citation omitted). To the extent that the Removal Clarification Act of 2011 was passed to keep that portion of the test low, nothing about it suggests that Congress sought to overturn this Court's decision in *Watson*.

C. Legislative History Supports a More Cabined Approach to the 2011 Amendment.

The 2011 amendment to the federal officer removal statute was a product of congressional pique at the experience of Rep. Eddie Bernice Johnson with

pre-suit discovery, after she questioned the ethics of a Dallas County Commissioner in a newspaper interview. *See Price v. Johnson*, 600 F.3d 460, 461 (5th Cir. 2010). Rep. Johnson sought removal to federal court, asserting that she made her comments under color of federal authority as a member of the House of Representatives. *Id.* at 462. The district court granted an order of remand after concluding that federal-officer removal did not apply to pre-suit proceedings in state court, and the Fifth Circuit held it was without jurisdiction to review the remand order. *Id*. at 462–63.

One month after the *Johnson* decision, the first iteration of the Removal Clarification Act was introduced, referencing the decision in Rep. Johnson's case and noting that more than 40 States permit pre-suit discovery. *See* 156 Cong. Rec. E827–28 (daily ed. May 12, 2010) (remarks of Rep. Henry "Hank" Johnson Jr., introducing H.R. 5281 (Removal Clarification Act of 2010)). It clearly and plainly authorized federal-officer removal for pre-suit actions in state court. *Removal Clarification Act of 2010, Hearing on H.R. 5281 Before the Subcomm. on Courts and Competition of the H. Comm. on the Judiciary*, 111th Cong. 43 (2010) (statement of Lonny Hoffman, George Butler Research Professor, University of Houston Law Center). It further addressed the absence of appellate review of a decision to remand. *Id.* at 44.

More relevant to the current matter, the U.S. House of Representatives General Counsel explained,

the "bill does not alter the standard for general removal for Federal officers under 1442." *Id.* at 13 (statement of Irvin B. Nathan, General Counsel, Office of the General Counsel, U.S. House of Representatives).

When the bill was not enacted during that Congress, a "nearly identical" bill was introduced by the same primary sponsor the next Congress. 157 Cong. Rec. H1372 (daily ed. Feb. 28, 2011) (statement of Representative Henry "Hank" Johnson Jr. introducing H.R. 5281 (Removal Clarification Act of 2011)). Other than broadening its scope to capture other state court proceedings deemed immune from removal under the existing law and to authorize appeals from remand orders, nothing in the record suggests it changed the longstanding standard for what constitutes "acting under" or the necessary nexus between acts that claimed color of federal authority and the underlying lawsuit.

Not only are the standards urged by Chevron well beyond any sensible reading of the statute after Congress amended it in 2011, but its proposed reading would make removal and a battle over remand *de rigueur*, flooding the federal courts with cases that that should properly be heard in state court. *Cf. Maracich v. Spears*, 570 U.S. 48, 59–60 (2013) (holding that language "susceptible to broad interpretation" can still be read with a limiting principle consistent with statutory structure to prevent indeterminacy and an application that "stops nowhere") (citations omitted).

Not to be overlooked is another value that has guided this Court: Where our constitutional structure leaves certain responsibilities to the States, this Court has "generally declined to read federal law as intruding on that responsibility, unless Congress has clearly indicated that the law should have such reach." *Bond v. United States*, 572 U.S. 844, 848 (2014). The placement of "relating to" in the amended federal-officer removal law does not achieve the crystalline quality that Chevron attributes to it. Just as this Court observed in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), some connections are simply "too tenuous, remote, or peripheral . . . to warrant a finding that [it] 'relates to'" something else. *Id.* at 100. Chevron's contention that the "acting under" prong can be satisfied even when its so-called federal acts are not the subject of a complaint is boundless without reason, and plainly outside of congressional contemplation.

CONCLUSION

For the foregoing reasons, the American Association for Justice and the Louisiana Association for Justice respectfully ask this Court to affirm the judgment of the Fifth Circuit in this case.

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Respectfully submitted,

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