No. 25-5958

IN THE

United States Court of Appeals for the Sixth Circuit

LINDA HORTON, individually and as executrix of the estate of Barney Horton, Jr.,

Plaintiff-Appellee,

v.

GENERAL ELECTRIC COMPANY,

Defendant-Appellant,

CARDINAL INDUSTRIAL INSULATION CO. INC., et al.,

Defendants.

On Appeal from the U.S. District Court
for the Western District of Kentucky
No. 3:25-cv-100 (Hon. Rebecca Grady Jennings)

BRIEF OF AMERICAN ASSOCIATION FOR JUSTICE AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* the American Association for Justice certifies that it is a non-profit organization. It has no parent corporation or publicly owned corporation that owns 10% or more of its stock.

Respectfully submitted this 23rd day of March 2026.

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IDENTITY AND INTEREST OF AMICUS 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 80-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

This case is of acute interest to AAJ 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, or when the private defendant claims to be 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.

[1] All parties consented to the filing of this brief. No party's counsel authored this brief, and no party, party's counsel, or person other than *amicus* or its counsel contributed financial support intended to fund its preparation or submission.

In this case, the U.S. District Court for the Western District of Kentucky correctly remanded the case to state court because the Plaintiffs expressly waived any potential claims outside of the State of Kentucky, including claims specifically related to his naval service on the U.S.S. Cascade. For that reason, the district court concluded that no federal defense applied, thereby depriving General Electric (GE) of a necessary element for federal-officer removal. For the same and additional reasons, GE is ineligible to assert removal under Section 1442(a)(1). *Amicus* urges this Court to affirm.

SUMMARY OF ARGUMENT

Because the Plaintiff sued only over injuries alleged to have occurred in Kentucky and not part of any naval duties he had years earlier, and specifically disclaimed asbestos-related injuries from his naval service, the federal officer removal statute provides no basis to support GE's attempt to remove the case to federal court. This conclusion flows directly from the statutory text, which requires that a claim or claims derive from the defendant's work "acting under" a federal officer under color of law and have a colorable federal defense. As the district court concluded, neither exists where no claim is premised upon the period of naval service.

The statutory text should suffice to dispose of this appeal, but it also finds staunch support in the context, history, and purpose of the federal-officer removal

statute, criteria that the U.S. Supreme Court has advised should be consulted. These factors demonstrate that removal was intended to vindicate federal interests and has consistently applied to private defendants who stand in the federal government's shoes as a defendant. Based on the claims made and set for adjudication, GE has not exchanged its private footwear for federally issued kicks.

Nor does a 2011 amendment to the federal officer removal statute, adding "relating to," change the calculus as part of a congressional effort to clarify the statute's application. Read in context, the new language does very little because it is limited in its application to acts taken under color of office. Legislative history confirms that limited application. To give it the capacious scope that GE advances would lack any limiting principle and treat it as setting off ripples that flow forever. Statutory interpretation does not support such breathtaking scope.

The statute must also be read against the well understood principle that a plaintiff is master of the complaint, having the sole authority to determine which defendants and which claims to pursue. That authority allows a plaintiff to eschew federal claims to remain in state court, as the plaintiff did here, under the well-pleaded complaint rule. Even when the plaintiff unwittingly pleads a federal cause of action or attempts to disguise one, courts accord the plaintiff mastership over the complaint by piercing any veils to reveal the claims' true nature in determining jurisdiction. Thus, "arising under" jurisdiction, complete preemption, and artful

pleading rules respect plaintiffs' choices about the claims put forth even as it overrides a jurisdictional choice. For that reason, particularly when it amounts to a non sequitur, a defendant's theory of the case cannot prevail over that of a plaintiff. Otherwise, rather than be the master of the complaint, the plaintiff becomes master of nothing.

ARGUMENT

I. THE REMOVAL STATUTE'S LANGUAGE, CONTEXT, HISTORY, AND PURPOSE DO NOT SUPPORT REMOVAL ON THE BASIS OF CLAIMS NOT PURSUED.

Plaintiff's claims, whether restricted as they were originally to injuries suffered in Kentucky or with the specific renouncement of claims related to GE's naval work, are utterly devoid of any relationship to any federal officer. They plainly do not support removal to federal court as though a defendant was "acting under" a federal officer and operating under color of law for purposes of any claimed compensation. By pleading injuries suffered within Kentucky and explicitly and comprehensively waiving any claims relating to GE's work with the U.S. Navy, there is no relevant federal defense and no basis for federal jurisdiction. As the district court held, "there are no possible claims left against GE to which the federal contractor defense applies"—and no possibility of crossclaims against GE by other Defendants for any alleged official acts. Memorandum Opinion & Order, R. 58, Page

ID # 771. Not just no causal relationship, but no relationship at all. The district court's order to remand the matter to state court should be affirmed.

The federal officer removal statute provides a federal forum for any civil or criminal action against 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 any act under color of such office." 28 U.S.C. § 1442(a)(1).

This Court and many others have broken that statutory language into three prongs when applied to a private defendant seeking to remove an action to federal court, as is the case here: (1) that the defendant is a "person acting under" a federal officer, (2) that the lawsuit is directed at conduct "for or relating to any act under color of [federal] office," and (3) that it involves a colorable federal defense. *Ohio ex rel. Yost v. Ascent Health Servs., LLC*, 165 F.4th 999, 1004 (6th Cir. 2026).[2] To remove a case successfully, a defendant must meet all three requirements. *Mays v. City of Flint*, 871 F.3d 437, 442 (6th Cir. 2017).

To cabin invocations of federal-officer removal in line with congressional intent, particularly because this species of removal is invoked with alarming

[2] Some sister circuits have split the same criteria into four elements, treating whether the defendant is a "person" within the meaning of the statute as a separate criterion to be satisfied. *See, e.g.*, *Papp v. Fore-Kast Sales Co., Inc.*, 842 F.3d 805, 812 (3d Cir. 2016); *Ruppel v. CBS Corp.*, 701 F.3d 1176, 1180 (7th Cir. 2012).

frequency on the basis of ill-conceived rationales, the statute is applied by reference to its "language, context, history, and purposes." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007). Those metrics demonstrate the indisputable propriety of the decision to remand this action to state court.

A. The Statute's Text Establishes That Congress Did Not Intend to Address Lawsuits Lacking a Federal Nexus.

Statutes are interpreted "to give effect to Congressional intent." *KenAmerican Res., Inc. v. United States Sec'y of Lab.*, 33 F.4th 884, 888 (6th Cir. 2022) (citation omitted). When the statutory text clearly expresses that intent, courts do not employ additional interpretive tools but give effect to the language chosen by Congress. *Id.* (citation omitted). Here, the text plainly reflects an intent that there exist a true federal nexus between Plaintiffs' claims and federal interests. The statute restricts removal to claims against a private defendant who is "acting under" the direction of a federal officer in order to combat potential bias against federal interests. 28 U.S.C. § 1442(a)(1).

To satisfy this prong, there must exist "a relationship that involves acting in a certain capacity, considered in relation to one holding a superior position or office." *Mays*, 871 F.3d at 444 (quoting *Watson*, 551 U.S. at 151) (cleaned up). One "acting under" a federal officer is in a position that "typically involves 'subjection, guidance, or control.'" *Id.* The task at issue must be the government's own, not that of the private entity, so that complying with a highly detailed regulatory scheme, subject

to supervision and monitoring will not suffice. *Id.* If a plaintiff entirely foregoes claims involving that relationship, the requirement cannot be met, and the inquiry should be at an end.

Even so, the statute further requires that the plaintiff's claims relate to "any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue." 28 U.S.C. § 1442(a)(1). For the same reasons that the earlier prong is not met, this element of federal-officer removal is also absent when no potential federally based claim is advanced. Finally, as part of that calculus, the defendant must have a "colorable federal defense" to the claim. *Ascent Health*, 165 F.4th at 1004. Yet there can be no colorable federal defense in the absence of claims relating to acts taken at the direction of a federal officer, as the district court here observed.

When a plaintiff renounces any claims imbued with a federal interest and chooses not to pursue claims where the defendant acted under a federal officer, it is impossible to reconcile the statutory text with congressional authorization for removal. *Ascent Health* does not hold otherwise. It explicitly "reject[ed] disclaimers that simply disavow any attempt to recover based on the defendant's *indivisible federal conduct*." *Id.* at 1008 (emphasis added). Here, separate conduct, rather than indivisible conduct, is at issue. In *Ascent Health*, pharmacy benefit managers

(PBMs) engaged in a single negotiation with each drug company over prescription drug coverage on behalf of federal and non-federal employees jointly. *Id.* at 1006. There were no separate acts between what the PBMs did under federal direction and what it did for private consumers. As a result, this Court found the conduct inseparable.

Here, what GE did with respect to its military contract with the Navy and what it did at Horton's places of employment within Kentucky were entirely separate acts, not subject to the same federal supervision or colorable federal defense, and, certainly not indivisible as *Ascent Health* requires. The absence of federal supervision in this case forecloses federal-officer removal as a basis for federal jurisdiction.

B. Context, History, and Purpose Also Foreclose Application of Federal-Officer Removal.

The genesis of federal-officer removal and its consistent proper usage over the centuries further support the textual limitation to claims that relate to federal direction and a federal defense. *See, e.g.*, *Willingham v. Morgan*, 395 U.S. 402, 409 (1969) (holding federal-officer removal requires a "'causal connection' between the charged conduct and asserted official authority") (quoting *Maryland v. Soper (No. 1)*, 270 U.S. 9, 33 (1926)).

The nation's origins provide the context for federal-officer removal and its genesis. People in the former colonies felt disconnected from a central government,

having long enjoyed an allegiance to what were now their States. They thought of themselves as Pennsylvanians, Virginians, and New Yorkers, having not merged into any incipient national identity. *See* Hon. Mark C. Dillon, *U.S. Chief Justice John Jay: When All Judges Were Originalists*, 15 Jud. Notice 20, 22 (2020).

Reflecting that predisposition, the nation's first national charter mandated continued state sovereignty and state independence, U.S. Articles of Confederation art. II, which rendered the national government weak and dependent. Edward S. Corwin, *The Progress of Constitutional Theory Between the Declaration of Independence and the Meeting of the Philadelphia Convention*, 30 Am. Hist. Rev. 511, 527 (1925) ("[I]n brief, it was not a government at all, but rather the central agency of an alliance."); *see also Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 187 (1824) (Marshall, C.J.) (affirming the States "were sovereign, were completely independent, and were connected with each other only by a league").

The arrangement proved unworkable. *See* James Madison, *Vices of the Political System of the United States* (Apr. 1787), *in* 2 *The Writings of James Madison* 361, 364 (Gaillard Hunt ed., 1901). A new structural arrangement became necessary to "render the federal Constitution adequate to the exigencies of government and the preservation of the Union." 1 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 120 (Jonathan Elliot ed., 1901).

That restructuring through a new Constitution did not immediately transfer state-based loyalties to the national government. Federal officers operating within a State were regarded by locals not merely as outsiders, but agents of a remote and problematic sovereign. Issues came to a head when New England opposed the War of 1812, along with the accompanying federal embargo on trade with England, resulting in an 1815 customs statute that authorized removal when federal authorities were haled before state courts for attempting to enforce the embargo. *Willingham*, 395 U.S. at 405. The removal provision enabled federal officials charged with crimes or civil penalties for carrying out their duties to face any suit or prosecution in federal court, rather than hostile state courts. *Id.*

Although the 1815 statute expired at the end of the war, Congress worked from the same template as need arose. For example, in the early 1830s, South Carolina enacted its Nullification Act, which declared federal tariff laws unconstitutional and authorized the prosecution of federal agents who collected the tariffs, resulting in a new federal-officer removal statute in 1833. *Watson*, 551 U.S. at 148. The removal statute did not convey immunity to federal officers, just an opportunity to defend federal prerogatives in a venue "where the authority of the law was recognised." *Willingham*, 395 U.S. at 405 (quoting 9 Cong. Deb. 461 (1833) (Sen. Daniel Webster)).

Eventually, in 1874, this ground for removal became permanent for purposes

of enforcement of federal revenue laws, and later to cover all federal officers as part of the Judicial Code of 1948. *Id.* at 405–06. Each enactment shared a singular purpose: to protect federal officers and the operations of the general government from undue interference in State courts by substituting fairer and more neutral federal courts. *Id.* at 406 (citing *Tennessee v. Davis*, 100 U.S. 257, 263 (1880)). The statute thus seeks to protect "the enforcement of federal law through federal officials," *id.*, by providing a "federal forum in any case where a federal official is entitled to raise a defense arising out of his duties." *Arizona v. Manypenny*, 451 U.S. 232, 241 (1981).

Because the federal government operates through its officers and its agents, federal-officer removal applies as well (the "acting-under" provision) when, in essence, the federal government operates through private parties. Though many have claimed that status, few actually qualify. The defendant in the instant case does not.

The claims made by Horton stand in contrast to those at issue in *Ascent Health*, as already explained, because there is no indivisible conduct at issue. Another vivid contrast comes from *Bennett v. MIS Corp.*, 607 F.3d 1076 (6th Cir. 2010). There, air traffic controllers alleging injuries from exposure to toxic mold at the Detroit Metropolitan/Wayne County Airport asserted that private mold remediation firms had negligently performed their work, exacerbating the building's mold problems. Federal-officer removal was appropriate in that instance because

officers of the Federal Aviation Administration closely monitored the work on-site and directly supervised each remediation, specifying how it would be done. *Id.* at 1087–88.

No comparable analysis is possible for the claims Horton has actually placed before the state court. Horton's asbestos-exposure claims are based entirely on work within Kentucky, not military ships. The asbestos upon which claims are made was not present at his workplace at the behest of the United States, and Mr. Horton's claimed exposures were not undertaken under the direct supervision, control, order, and directive of federal government officers acting under the color of federal office. For those reasons as well, there is no colorable federal defense to Horton's claims.

II. THE INVOCATION OF THE "FOR OR RELATING TO" LANGUAGE DOES NOT CHANGE THE ANALYSIS.

GE attempts to overcome the deficiencies in its argument by arguing in favor of a new version of the federal-officer removal statute, breathtaking in scope, by focusing on language added in 2011. For the past 15 years, the statute has included "for or relating to" before "any act under color of [federal] office." Pub. L. No. 112-51, 125 Stat. 545, § 2(a)(1) (2011). In GE's view, the "relating to" language provides the missing connective tissue between its work for the Navy and the private work

that provides the basis for Horton's claims. This Court should turn down the invitation to give federal-officer removal such untethered and expansive scope.[3]

As always, the starting point is the statutory text, *KenAmerican Res.*, 33 F.4th at 888, "'in their context and with a view to their place in the overall statutory scheme.'" *Allen v. United States*, 83 F.4th 564, 569 (6th Cir. 2023) (quoting *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012)). Legislative history can provide some confirmation of what a plain reading of the text in context means. *See Bullington v. Bedford Cnty.*, 905 F.3d 467, 474 (6th Cir. 2018).

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. . . .

Pub. L. No. 112-51, 125 Stat. 545, § 2(a)(1).[4]

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[3] *Amicus* notes that the Fifth Circuit rejected a similar argument, and the issue of the "relating to" language's allegedly capacious scope is now under advisement before the Supreme Court of the United States in *Chevron USA Inc. v. Plaquemines Parish*, No. 24-813 (U.S. argued Jan. 12, 2026).

[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, Pub. L. No. 112-51, 125 Stat. 545, §§ (2)(a)(2), 2(d), are not relevant to this case.

The language plainly limits the "for or relating to" language to acts taken under color of federal office and makes no change at all to the "acting under" criterion that this Court has applied many times. GE's reading would operate without limitation on the most ephemeral federal association. It recalls Justice Antonin Scalia tongue-in-cheek observation that "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). And it would make no sense for an amendment that was enacted as a "clarification," as the bill's title made plain.

If GE's approach were valid, it would also 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, a rebuttable presumption exists against federal jurisdiction that dates back to 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). No lesser respect for state courts should countenanced here.

Legislative history supports this plain reading. The Removal Clarification Act 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). Representative Johnson sought removal to federal court, asserting that she made her comments under color of federal authority as a member of Congress. *Id.* at 462. The district court remanded the case 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 Removal Clarification Act was introduced, noting that more than 40 States permit pre-suit discovery, and referencing the decision in Rep. Johnson's case. *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 Cts. and Competition of the H. Comm. on the Judiciary*, 111th Cong. 43 (2010) (statement of Lonny Hoffman, George Butler Research Professor, Univ. of Houston Law Ctr.). 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, Gen. Couns., U.S. House of Representatives).

When the bill did not succeed 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 Rep. 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 text nor the record suggests it changed the longstanding standard for what constitutes "acting under" a federal officer.

Not only is the expansive scope urged by GE anathema to the principle of limited federal jurisdiction that has guided our courts for centuries, but its proposed reading would make removal and a battle over remand *de rigueur* on the basis of the slightest of federal connections, 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).

It would, for example, suggest that this Court erred in 2023, well after the 2011 amendments, when it held that an assisted living facility sued over the COVID-

19 death of one of its residents in state court could not use the federal-officer removal statute to have the case heard in federal court. The facility argued that it performed a governmental function by helping to contain the spread of the COVID-19 virus as part of an all-hands-on-deck national emergency. *Hudak v. Elmcroft of Sagamore Hills*, 58 F.4th 845, 859 (6th Cir. 2023). In rejecting the argument, this Court noted that the defendant "did not have an agreement with the federal government, did not produce a good or perform a service on behalf of the government, and has not shown that the federal government exercised control over its operations to such a degree that the government acted as [the facility's] superior." *Id.* at 859–60.

The same is true for the claims Horton has advanced. GE had no agreement with the federal government, did not produce a good or perform a service on behalf of the government, and was not subject to federal control or supervision.

Not to be overlooked is another value that has guided our courts and advises against federal jurisdiction here: Where our constitutional structure leaves certain responsibilities to the States, the U.S. Supreme 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 federal-officer removal law does not achieve the crystalline quality that GE might hope for. Just as the Supreme 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. GE's contention that the "relating to" language opens a door to federal court for it when its so-called federal acts are not the subject to liability would create boundless jurisdiction without basis and is plainly outside of congressional contemplation.

III. PLEADINGS MUST BE READ TO REFLECT PLAINTIFFS' CHOICES.

A. The Plaintiff, Not the Defendant, Is the Master of the Complaint.

It is a remarkable proposition for GE to claim, as it suggests, that its theory of the case now controls over Horton's. If this Court were to accept that non-textual argument, it would turn pleading practice on its head. Even though *Ascent Health* may be read to support that argument, it should be read to credit a defendant's theory in more limited circumstances than presented here in order to respect instructions from the U.S. Supreme Court. The relevant analysis begins with the Supreme Court's unanimous holding:

> [T]he presence of a federal question, . . . , in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule—that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court.

Caterpillar Inc. v. Williams, 482 U.S. 386, 398–99 (1987).

The Court added:

> [A] defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law, thereby selecting the forum in which the claim shall be litigated. If a defendant could do so, the plaintiff would be master of nothing.

Id. at 399 (footnote omitted). Yet that is precisely what occurs when, as here, a federal defense is inserted to what is not a federal claim.

Although *Caterpillar* was the first Supreme Court decision to adopt the "master of the complaint" moniker, Patrick Woolley, *Counterclaims, Civil Actions, and the Elusive Reach of the Well-Pleaded Complaint Rule*, 108 Iowa L. Rev. 801, 822 (2023), earlier decisions embedded the concept in our procedural law and limit the ways in which it may be overcome. Based on the pleadings at issue here, it has not been surmounted.

More than a century ago, the Supreme Court in *The Fair v. Kohler Die & Specialty Co.*, found it unremarkable that "the party who brings a suit is master to decide what law he will rely upon, . . . and accordingly jurisdiction cannot be conferred by the defense." 228 U.S. 22, 25 (1913).[5] Even earlier, the Supreme Court found it "wholly unnecessary and improper," to allow the defendant, even in the case

[5] *The Fair* has had significant influence. *See, e.g.*, *Pan Am. Petroleum Corp. v. Superior Ct. of Del.*, 366 U.S. 656, 662 (1961) ("Since 'the party who brings a suit is master to decide what law he will rely upon,' the complaints in the Delaware Superior Court determine the nature of the suits before it.") (citation omitted) (quoting *The Fair*, 228 U.S. at 25).

of an anticipated federal defense, to assert the jurisdiction of the federal courts. *Devine v. City of Los Angeles*, 202 U.S. 313, 334 (1906); *see also Healy v. Sea Gull Specialty Co.*, 237 U.S. 479, 480 (1915) ("[T]he plaintiff is absolute master of what jurisdiction he will appeal to . . . ."); *Third St. & Suburban R Co v. Lewis*, 173 U.S. 457, 459 (1899) ("[L]ack of jurisdiction cannot be supplied by anything set up by way of defense."); *Metcalf v. City of Watertown*, 128 U.S. 586, 589 (1888) ("[I]t must appear, at the outset, from the declaration or the bill of the party suing, that the suit is of [federal] character . . . .").

Reflecting this well-established view that the complaint defines the cause of action and thus jurisdiction, Justice Holmes observed for the Court that "a suit arises under the law that creates the cause of action." *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916) (Holmes, J.). The federal-officer removal statute has always been consonant with that Holmesian view, and the limitations on the well-pleaded complaint rule focus completely on the claims being made, regardless of how those claims might be described.

B. Limitations on the Master of the Complaint Concept Do Not Alter the Analysis.

1. The well-pleaded complaint rule is compatible with the plaintiff being master of the complaint.

Caterpillar called the concept that a plaintiff is master of the complaint one of the "paramount policies embodied in the well-pleaded complaint rule." 482 U.S.

at 398–99. This Court has agreed. It has explained, the well-pleaded complaint rule "'provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" *City of Warren v. City of Detroit*, 495 F.3d 282, 286 (6th Cir. 2007) (quoting *Caterpillar*, 482 U.S. at 392). Even earlier than *Caterpillar*, the Supreme Court held it "long-settled law that a cause of action arises under federal law only when the plaintiff's well pleaded complaint raises issues of federal law." *Metropolitan Life v. Taylor*, 481 U.S. 58, 62 (1987).

Consistent with that holding, a plaintiff who pleads a question arising under federal law, or one that is subject to complete preemption, has made a choice not to rely solely on state law but to imbue the complaint with federal issues, thereby subjecting it to federal jurisdiction upon removal. "Arising under" jurisdiction is a product of a congressional jurisdictional choice found in 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."). Cases usually arise under federal law "when federal law creates the cause of action asserted." *Gunn v. Minton*, 568 U.S. 251, 257 (2013). In those instances, the plaintiff has chosen to plead a federal cause of action.

In other instances, "even where a claim finds its origins in state rather than federal law," there remains a "a 'special and small category' of cases in which arising

under jurisdiction still lies." *Id.* at 258 (quoting *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699 (2006)). It is a "slim category" that gives rise to considerable confusion. *Id.* To clear some of the underbrush, the Supreme Court imposed a four-part inquiry:

> federal jurisdiction over a state law claim will lie if a federal issue is:
>
> (1) necessarily raised,
> (2) actually disputed,
> (3) substantial, and
> (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.

Id. (citing *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 313−14 (2005)).

Plainly, the Horton claims do not necessarily raise a disputed and substantial federal question because Horton has explicitly and entirely disclaimed any compensation that conceivably could be due from work on naval vessels. While this Court has determined that indivisible conduct will satisfy these criteria, that necessary element is missing here.

Complete preemption provides a second basis for assuming federal jurisdiction. Complete preemption exists "when a federal statute wholly displaces the state-law cause of action." *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003). In those circumstances, "even if pleaded in terms of state law, [the complaint] is in reality based on federal law." *Id.* The Plaintiff can have no objection

when that is the case, but it is an exceptional case indeed. The Supreme Court has only identified three federal statutes where the federal claims vindicate the same interests as the state claims and constitute a basis for the extremely rare application of complete preemption. *Id.* at 6−8, 10−11 (identifying the three as ERISA, the National Bank Act, and the Labor-Management Relations Act). No qualifying statute is at issue in this matter.

2. Limiting claims to avoid federal jurisdiction is a legitimate option for plaintiffs and does not constitute artful pleading.

It is axiomatic that "federal courts permit individual plaintiffs, who are the masters of their complaints, to avoid removal to federal court, and to obtain a remand to state court, by stipulating to amounts at issue that fall below the federal jurisdictional requirement." *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013). A plaintiff "gets to determine which substantive claims to bring against which defendants. And in so doing, she can establish—or not—the basis for a federal court's subject-matter jurisdiction." *Royal Canin U. S. A., Inc. v. Wullschleger*, 604 U.S. 22, 35 (2025). Those choices allow her to "destroy" diversity jurisdiction, plead only federal claims, or limit herself to state-law claims and "ensure a state forum." *Id.* That authority also permits a plaintiff to eschew claims related to a federal interest also to ensure a state forum. Horton has done so.

Horton's choice does not constitute artful pleading, as GE attempts to suggest. In its modern incarnation, the artful pleading doctrine unmasks federal claims

disguised as state ones. *Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 560 (6th Cir. 2007) (en banc). No such subterfuge is taking place in this matter, as there are no federal claims to disguise. To the extent any could exist, they have been entirely disclaimed, as is a plaintiff's prerogative.

3. There is no justification for transferring mastership of the complaint to a defendant.

In *Ascent Health*, this Court read *Jefferson County v. Acker*, 527 U.S. 423 (1999), as instructing "federal courts [to] accept the defendant's 'theory of the case' for jurisdictional purposes." 165 F.4th at 1009 (citing *Acker*, 527 U.S. at 432–33). In doing so, it agreed with the *Ascent Health* plaintiff that it was crediting "the defendant's legal theories . . . not . . . crediting factual conclusions." *Id.*

To be precise, *Acker* credited the removing party's "theory of the case" to assess whether there was a sufficient "nexus . . . 'between the charged conduct and asserted official authority'" to support Section 1442(a)(1) removal. 527 U.S. at 431 (quoting *Willingham*, 395 U.S. at 409). The *Acker* defendants were federal judges under state prosecution for nonpayment of a professional licensing tax. They removed to federal court, claiming the tax targeted their federal professional duties and "'risk[ed] interfering with the operation of the federal judiciary' in violation of the intergovernmental tax immunity doctrine." *Id.* The latter argument perfectly mirrored the reason for federal-officer removal.

That the jurisdictional and merits issues were so intimately entwined made removal proper. The potential threat to the federal courts was plain. Notably, the Supreme Court ultimately held the county tax to be a nondiscriminatory tax on compensation, which was not barred. *Id.* at 427.

The present case does not involve similarly spliced jurisdictional and merits issues. Regardless of venue, the *Acker* plaintiffs were going to assert that the tax Alabama intended to assess them interfered with federal judicial independence—and that question had to be decided. If it had the potential to discriminate against a federal officer, the removal statute conveyed jurisdiction. Here, however, no claim—and no potential crossclaim—has any potential to examine GE's work for the federal government. No assessment of liability can possibly occur. The situation is not comparable to *Acker*, and GE's legal theory is a non sequitur.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully urges this Court to affirm the district court's remand order.

March 23, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 6,055 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and 6 Cir. R. 32(b)(1). I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Times New Roman type style.

Date: March 23, 2026

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CERTIFICATE OF SERVICE

I, Jeffrey R. White, counsel for amici curiae and a member of the Bar of this Court, hereby certify that on March 23, 2026, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I also certify that the foregoing document is being served on this day on all counsel of record via transmission of the Notice of Electronic Filing generated by CM/ECF. All participants in this case are registered CM/ECF users.

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