

NO EROSION BY POLLUTION: THE SHAKY FOUNDATIONS OF COASTAL LOUISIANA’S LAWSUITS AGAINST ENERGY PRODUCERS

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EXECUTIVE SUMMARY

Overview

In [Chevron USA v. Plaquemines Parish](#), a case currently before the U.S. Supreme Court, the State of Louisiana and Plaquemines Parish sued Chevron and other energy producers in Louisiana state court for damages stemming from production of crude oil for making avgas, or aviation fuel. The plaintiffs’ suit contends the companies’ drilling and other activities substantially contributed to the coastal erosion in Plaquemines Parish, going back nearly 100 years. The case raises questions of significant institutional, scientific, and legal importance that could shape the energy landscape in Louisiana and elsewhere for the next 100 years. On its face, the case presents a technical issue of whether the plaintiffs’ case belonged in state court or, alternatively, should be removed to federal court under a federal statute that protects activities conducted in conformity with federal wartime directives.

The current dispute also turns on whether a substantial erosion of Louisiana’s coastal wetlands can credibly be attributed to Chevron and other oil companies when extensive scientific consensus points to alternative causes both human and natural—most notably the active dam and levee building along the Mississippi and the frequent hurricanes and tropical storms that plague the region. The U.S. Court of Appeals for the Fifth Circuit insisted on separating the drilling activities from the shipping and distribution activities, holding that only the latter could be removed to federal court on the untenable ground that the drilling was “unrelated to” the distribution, even though both the government and the parties vertically integrated their production.

Why Removal Matters

The Supreme Court should reverse the Fifth Circuit and allow removal of the entire case to federal court. Such an outcome would be consistent with the goal of removal statute at issue: counteracting the major risks that state court proceedings pose to fair, honest, and accurate information.

- **Risk of Bias:** State courts in Louisiana present a substantial risk of local bias against out-of-state defendants. That risk is evident in this very litigation. The Louisiana Attorney General's office entered into a joint prosecution agreement with private plaintiffs' counsel John Carmouche, contractually prohibiting the State from supporting any defense, however meritorious, raised by Chevron. This arrangement erased the Attorney General's independence and improperly aligned the State's interests with private financial gain. At trial, the Attorney General's representatives admitted they had conducted no independent investigation of the facts and relied entirely on Carmouche's filings.
- **Judicial Irregularity:** The risk of bias was further evident in the conduct of Judge Michael Clement—a recipient of campaign contributions from Mr. Carmouche and his associated PACs—in a related trial involving identical issues. On January 13, 2025, Judge Clement had correctly ruled that Louisiana's State and Local Coastal Resources Management Act (SLCRMA) does not apply retroactively to pre-1980 drilling activities. Yet, less than a month later, he orally reversed his own prior written judgment after acknowledging in open court that his initial ruling would “gut” the plaintiffs' case. He further admitted that he lacked experience with “a case of this magnitude.” This self-justified reversal underscores the pressure and political sensitivity surrounding these cases. Such episodes are likely to recur in the over 40 lawsuits, with more to come, if state court judges in Louisiana are allowed to preside over these cases.
- **Constitutional Safeguards:** The federal removal statute is rooted in longstanding principles of due process and neutrality that cannot be upheld if state court judges are allowed to preside over cases where the state has such a powerful financial interest. The Framers wrote federal jurisdiction into the Constitution to ensure impartial adjudication against undue local influence, and to protect wealthy litigants from being milked for damages by strong local parties who have close connections with local governments, as in *Plaquemines Parish*.
- **Historical Pattern of Abuse:** Louisiana's history of procedural manipulation compounds the problem. Plaintiffs have strategically joined and dismissed local defendants to block federal jurisdiction, while coordinated relationships between the plaintiffs' bar and state officials have blurred the line between public enforcement and private enrichment.
- **National Interest:** Chevron's wartime drilling and refining were conducted under federal directives. Removal ensures that companies acting under federal authority are not subjected to retroactive liability in politically charged local

courts and that such cases are resolved in the neutral, better-resourced federal forum intended by Congress.

Scientific Evidence: Erosion vs. Pollution

Each of the damages claims filed in Louisiana against avgas producers falsely attributes large-scale coastal erosion over multiple decades to the energy companies' alleged discharges, over about three years, of "produced" water during the Second World War containing no toxic materials.

- **Established Causes of Erosion:** Louisiana has lost over 2,000 square miles of land since the 1930s, driven primarily by:
 - Reduced sediment flow from the Mississippi River
 - Subsidence (land sinking)
 - Sea-level rise and hurricanes
 - Levee construction, dredging, and invasive species
- **No Evidence of Pollution:**
 - Produced water is brackish byproduct, not toxic crude oil, and naturally dilutes in the environment.
 - Even at the alleged scale (an inordinately wide range \approx from 100 million to 4 billion gallons), the total impact of all releases amounts to only a few barrels of coastal mile per year.
 - No independent studies identify produced water or pollution as a factor in long-term erosion.
 - Comparative Fault Exaggerated: The jury's attribution of 25 percent of total erosion losses to Chevron is wholly unsupported by scientific evidence. The trillions of tons of erosion attributable to natural and human-engineered causes dwarf the few billions of gallons of produced water.
 - Contrasting Example: The 2010 BP Deepwater Horizon disaster involved massive oil discharge, yet no erosion claims were filed, underscoring the scientific disconnect between the evidence and the verdict in the current case.

Vertical Integration and Federal Oversight

The Fifth Circuit erred in separating Chevron's production from its refining activities:

- **Chevron's Vertically Integrated Structure:**
 - Controlled exploration, drilling, refining, and distribution.
 - Wartime production of avgas required coordination across all stages.
- **Federal Directives:** The Petroleum Administration for War required Chevron's predecessors to increase output dramatically, effectively managing operations across the entire value chain.

- Court's Error: The Fifth Circuit majority treated refining (covered by federal contracts) and drilling (alleged source of damages) as unrelated to each other as the pretext for denying removal to federal court.
- Functional Reality:
 - Refining could not occur without crude oil production.
 - Vertical integration meant the activities were "connected and associated" with federal directives.
 - Amicus briefs from military and industry leaders emphasized that avgas production targets necessitated expanded crude production.
- Statutory Intent: The removal statute's "related to" language, broadened in 2011, was intended to protect precisely this kind of coordinated federal-private wartime effort from state interference.

Concluding Points

The issue now before the Supreme Court represents just the tip of a broader litigation campaign in state court aimed at holding these oil companies responsible for harms they did not commit. The bias of the local forum and the refusal to credit scientific evidence of major human and natural causes beyond the oil companies is a transparent effort to impose massive damages on innocent parties. The Court can, as the removal statute intends, shield oil companies who performed essential production activity during the Second World War from these biases and the massive damages that could lead to financial ruin.