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# 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.

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

## **I. Introduction and Overview: Chasing the Wrong Culprit for the Wrong Reasons**

This report analyzes complex litigation in [\*Chevron USA v. Plaquemines Parish\*](#), which is pending before the United States Supreme Court. Chevron USA and other energy companies appealed a split decision of a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit. The circuit, by a 7-6 vote, declined to review en banc the 2-1 panel decision. The case originated in Louisiana state court, where a Louisiana jury found Chevron and its then-codefendants liable to the tune of \$745 million for erosion loss to its coastal lands, allegedly stemming from their extensive drilling activities off the Louisiana coast during World War II. An initial complaint, filed on November 8, 2013, gave no hint of the future result. Rather, it was a nondescript document that roared to life over a decade later. The complaint makes only two mentions of the word “erosion,” and six of the term “pollution.” Its key paragraphs state:

¶ 22 The Defendants use of waste pits in the Operational Area, and their failures to properly close those waste pits, to clear, revegetate, detoxify, and return the property affected thereby to its original condition, and to properly design those waste pits have caused ever increasing damage to the Plaquemines Parish Coastal Zone, for which Defendants are liable under the CZM [Coastal Zone Management] laws.

¶ 23, Defendants have also discharged or disposed of oil field wastes from their waste pits and or from their other oil and gas operations directly into the Operational Area. Each incident involving the discharge of oil field waste, including, without limitation, oil field brines, has a direct and significant impact on state coastal waters located in Plaquemines Parish and constitutes a use for which a state and/or local coastal use permit was required after the after the enactment of CZM Act of 1978.

The complaint contains no statement of the level of damages sought, nor any mention of the events involving the production of aviation gasoline (“avgas”) during the Second World War. It also lacks an explicit acknowledgement that natural sources

of erosion, such as hurricanes, and other human activities, such as construction of levees which altered the natural flow of sediments, could have caused some or all the damage.<sup>1</sup>

It also lacks an explicit acknowledgement that natural sources of erosion—such as hurricanes and levees—could have caused some or all the damage. Indeed, the bulk of the complaint, particularly in Paragraph 33, is devoted to eliminating all possible federal causes of action—from (a) to (v)—to keep the case firmly in state court. The complaint’s key sentence refers to the destruction of coastal lands, but it provides no indication of the extent, timing, or causes of that destruction. The plaintiffs sought damages for the loss of land and to help with the reconstruction of the area. The stated ground for that damage award—that Texaco “dumped billions of gallons of wastewater into the Louisiana coast”—only derives from the proofs, not the complaint.<sup>2</sup>

The plaintiffs’ entire case has violated just about every sound norm governing complex litigation. Most critically, it ignores this salient fact: the discharge of so-called toxic water may cause some *pollution* damage, as happened with the BP Horizon spill. Most emphatically, however, this case is not about pollution that lasts only for a short time—measured in days, weeks, or sometimes months. It is about *erosion* damage that is permanent, as the land that once built up the Delta has been literally swept out to sea. Neither the complaint nor the evidence establishes the necessary causal connection. Indeed, erosion damage has long been central to the multiple analyses of the Delta’s decline, yet authoritative studies bear no relationship to the plaintiff’s pleadings or proofs:

- According to the U.S. Geological Survey’s [most recent analysis](#) in 2011, Louisiana lost an average of 16.6 square miles of land a year from 1985 to 2010, which equates to roughly a football field per hour. In total, the state lost 1,883 square miles of land between 1932 and 2010 —an area over 1.2 times larger than [Rhode Island](#).
- Scientists say Louisiana’s land loss involves at least three main factors —(1) [reduced sediment flow](#) from the Mississippi River

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<sup>1</sup> U.S. Geological Survey, *Louisiana Coastal Wetlands: A Resource at Risk* (Fact Sheet) (Oct. 2000), <https://perma.cc/GP7T-TRW4>.

<sup>2</sup> Fortune, *Chevron Must Pay \$X Million for Coastal Wetlands Damage in Louisiana*, Fortune (Apr. 4, 2025), <https://perma.cc/G8GN-NT2G> (last visited Nov. 5, 2025).

and its tributaries, (2) [subsidence](#), or the sinking of land, and (3) [sea-level rise](#). These factors come about via natural processes, human interference or both.<sup>3</sup>

These permanent land losses in the Mississippi Delta now are about the size of the state of Delaware. They [stem](#) from a multiplicity of different activities—hurricanes, dams, floods, dredgings, animals, and massive construction operations—that, for the last hundred years or so, have shaped the fate of a territory that is as oil rich as it is ecologically vulnerable. The effort to conflate two totally unrelated mechanisms is evident in Louisiana Attorney General Liz Murrill’s attack on what she calls “the desperate absurdity of accusations that Louisiana’s efforts to hold energy giant [Chevron](#) accountable for its decades long pollution of our state’s coastal wetlands.”<sup>4</sup> Erosion is the issue, not pollution. As overwhelming evidence makes clear, the amount of erosion damages from dumping toxic “wastewater” is zero. Thus the \$745 million verdict won by the state of Louisiana and its private attorneys is the rip-off of the century. For General Murrill to point to four billion gallons of released “toxic” waters ascribes undue weight to a literal drop in the bucket relative to the massive forces of hurricanes, floods, levees, drilling, shipping, and animal infestations that have taken their enormous toll.

I shall review the scientific evidence in detail later, but for the moment it is sufficient to note that institutional travesties like this ongoing litigation do not just happen. They stem from systematic errors on a wide range of procedural issues that I shall outline in this *Working Paper*. The case is now before the Supreme Court on the critical question of whether Louisiana, through its courts, can maintain its procedural stranglehold over this litigation. That frontal assault against this state court monopoly deserves to prevail, as I shall argue here, but it is all too clear that even a win won’t bring this to an end. Resourceful plaintiffs’ attorneys sporting exotic theories of liability will be back for a second bite at the apple on yet another equally exotic theory: Which is why the strongest defense in these cases is a general denial: quite simply, we did not

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<sup>3</sup> Vanessa Schipani, *Land Loss in Louisiana*, FactCheck.org (Mar. 20, 2017), <https://perma.cc/63XR-LYTH/>.

<sup>4</sup> Liz Murrill, *The Plaquemines case against Chevron is about facts, not politics*, NOLA.com (Sep. 19, 2025) <https://perma.cc/4HK8-3USY>.

do this.

The fundamental error underlying these proceedings is the failure to recognize that all the challenged activities originated as emergency measures undertaken under the express direction of the United States government during World War II. At that time, the federal government faced an acute and unprecedented demand for high-octane avgas, which was indispensable to sustaining the war effort. To meet this demand, the government, acting through the Petroleum Administration for War (“PAW”), required private companies such as Chevron and its predecessors to expand their drilling and production in Louisiana’s coastal regions. These actions were not discretionary business choices of the companies, but federally mandated operations carried out under the authority and supervision of PAW in furtherance of a national defense imperative. The current litigation in front of the Supreme Court is not directly about whether the drilling activities of Chevron’s predecessors in title, Texas Co. (Texaco) and Gulf, were responsible for the claimed erosion losses. It was, and is, instead directed toward the prior question of whether a Louisiana jury insulated in a Louisiana courthouse had the power to make that determination at all, given federal law that stipulates any civil action commenced in state court against these companies “may be removed” by them to the local federal district court so long as that defendant firm is “any person acting under [an] officer” of the United States “for or relating to any act under color of such office.”<sup>5</sup>

To fill in the blanks of this obscure proposition in plain English, the legal dispute does not deal with the causes of erosion damage, but instead it centers on whether the drilling work that was done by these defendants meets those conditions. The Fifth Circuit in *Plaquemines v. BP Production*<sup>6</sup> held, by a two-one vote, that the removal to the federal forum was not permissible, after setting out the four key issues on removal. They are: (1) a colorable defense on the merits, that (2) they were, even with their

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<sup>5</sup> 28 U.S.C. § 1442(a) (Federal Officer Removal Statute).

<sup>6</sup> *Plaquemines Parish v. BP Prod. N. Am.*, 103 F.4th 324 (5th Cir. 2024). This formulation was taken verbatim from *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 296 (5th Cir. 2020). That case allowed removal that held that the “[defendant] Avondale was entitled to remove this negligence case filed by a former Navy machinist because of his exposure to asbestos while the Navy’s ship was being repaired at the Avondale shipyard under a federal contract.” *Id.* at 288. The key was the integrated nature of these operations with the productive activities of the defendant.

corporate status, persons under the removal statute, “(3) that [the defendant] has acted pursuant to a federal officer’s directions, and (4) “the charged conduct is connected or associated with an act pursuant to a federal officer’s directions.”<sup>7</sup> The first two statutory elements were not in dispute, leaving the central focus on the third—the “acting under” requirement, which asks whether the private party was operating subject to federal direction or control. On this point, the Fifth Court of Appeals unanimously agreed that both drilling and refining activities satisfied the “acting under” test. The real division arose over the separate “for or relating to” requirement. The panel majority concluded that, while the refining operations fell within the scope of federal-officer removal, the drilling activities did not. Judge Eugene Davis, writing for the majority, emphasized that the contractual direction governing refining operations should not be confined so narrowly as to exclude drilling, which was also undertaken in response to federal wartime mandates. The practical consequence of the majority’s ruling was that the drilling activities—alleged to be the primary cause of the coastal erosion damages—remained in state court and thus outside the protection of federal-officer removal.

Three central issues emerge from this litigation. First, why institutional considerations have placed removal at the forefront of the federal courts’ agenda. Second, how the contracting structures and practices at issue should be understood, particularly given that pollution did not cause the alleged erosion. Third, what is the proper scope of the removal statute’s exceptions once those preliminary issues are addressed. Taken together, these considerations demonstrate why the Fifth Circuit’s decision was erroneous and must be reversed by the Supreme Court, and why federal jurisdiction is the most fitting venue for these cases.

## **II. Removal and Bias**

### **A. Inherent Bias**

Removal protection counteracts the systematic risk of bias in the original state forum. That risk is exceptionally large in a federal system where state court decisions could supply extensive protection to local players under a legal version of the homecourt advantage by attaching conditions that bar outsiders access to federal court

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<sup>7</sup> *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 296 (5th Cir. 2020).

as a precondition to allowing them to do business in the state.

The protection afforded by a federal removal statute is not independent of the nature of the claim put on the table. It is one thing to protect the private defendant from a simple collection action in which there are no disputed facts. But for any matter involving substantial discretion as to the final result, the venue where the case is tried is often as, or even more important than its merits. To most non-lawyers, this dry technical matter of removal is of no real significance. It may generally make sense to allow local lawyers and judges to decide these matters outside of public scrutiny; but that general instinct is quite wrong. The procedural preliminaries in many cases, including *Plaquemines Parish*, are as important as the merits. Where you can sue or where you can be sued can make or break a lawsuit. Decided the wrong way, the merits of the case become irrelevant.

It doesn't take much imagination—or any knowledge of the law—to see how the main players maneuver throughout this game. The outcome feels as inevitable as sitting down to a card game with a stacked deck or rolling loaded dice. The question therefore arises of what should be done in response to this evident bias. Beginning with Roman law, there is an uninterrupted line of cases, statutes, treatises, and commentary that start with the proposition *nemo iudex in causa sua*—no one should be a judge in one's cause. That same notion in different words carried through to the Magna Carta, that no one should lose life or property except by the law of the land.<sup>8</sup> The Framers in turn embedded the proposition in the Due Process Clauses of both the Fifth and Fourteenth Amendments that no person should be deprived of life, liberty, or property without due process.<sup>9</sup>

The Framers included other institutional safeguards in the Constitution to prevent systemic abuse. Article III, §2, cl. 2 of the United States Constitution grants federal court access for cases “between citizens of different states.” The point of this

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<sup>8</sup> *Magna Carta*, cl. 39–40 (1215): “No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.” Cl. 40 “We will not sell, or deny, or delay right or justice to anyone.” Cl 40.

<sup>9</sup> U.S. Const. amends. V & XIV. “[N]or [shall any person] be deprived of life, liberty or property, without due process of law. U.S. Amdt 14: nor shall any state deprive any person of life, liberty, or property, without due process of law.

cryptic provision is that no one should be forced to defend themselves in a state court that the other party calls home. State statutes requiring out-of-state firms that wanted to do business within the state had to waive their right to diversity jurisdiction undermined that constitutional protection. An 1874 Supreme Court ruling found such state statutes imposed an unconstitutional condition. *Home Insurance v. Morse* held, without using the word diversity, that: “Every citizen is entitled to resort to all the courts of the country, and to invoke the protection which all the laws or all those courts may afford him. A man may not barter away his life or his freedom, or his substantial rights.”<sup>10</sup> And in 1922, Justice William Howard Taft wrote in *Terral v. Burke Construction Co* that

a State may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the State, exact from it a waiver of the exercise of its constitutional right to resort to the federal courts, or thereafter withdraw the privilege of doing business because of its exercise of such right, whether waived in advance or not. . . . [T]he Federal Constitution confers upon citizens of one State the right to resort to federal courts in another, that state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right thus secured is void because the sovereign power of a State in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the supreme fundamental law.<sup>11</sup>

The position is best understood by noting that a state government has a monopoly position when it comes to admitting outsiders to do business within its State. The use of monopoly should not be checked where it is intended to make sure outsiders have to honor the general law.<sup>12</sup> No foreign business could seek to enter a state and exempt itself from the general traffic or criminal laws. But by the same token, in this instance the monopoly power is abused because there is no efficiency justification for keeping a foreign corporation out of a neutral forum—just as there is none for requiring all automobile drivers to waive their Fourth Amendment right against unreasonable

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<sup>10</sup> *Home Ins. Co. v. Morse*, 87 U.S. 445 (1874).

<sup>11</sup> *Terral v. Burke Constr. Co.*, 257 U.S. 529 (1922).

<sup>12</sup> Richard A. Epstein, *Foreword: Unconstitutional Conditions, State Power, and the Limits of Consent*, 102 HARV. L. REV. 4 (1988). The limits referred to the parallel rule of antitrust law that defendants in a cartel case cannot defend by saying its customers consented to paying monopoly rates.

searches and seizures in order to use state highways. In all cases, antitrust principles are used and are used with great effectiveness to distinguish between the two classes of cases.

Diversity jurisdiction has likewise created excessive flexibility—and inconsistency—in other cases. The basic rule deals effectively with the simplest situation where one individual sues a second, so the question of diversity is binary: either they are both citizens of the same State, or they are not. The Constitution itself does not speak directly to the common situation in which multiple parties appear on both sides of a case. This raises the question of whether the constitutional guarantee of diversity jurisdiction requires “complete diversity”—that is, no plaintiff sharing state citizenship with any defendant. *Strawbridge v. Curtiss* answered that question with little analysis, holding in a single sentence that when parties share a joint interest, every one of them must be eligible to sue or be sued in federal court, or else jurisdiction is lost.<sup>13</sup> The opinion reads like a judicial gloss—or even a court-made rule—than a constitutional command “where the interest is joint, each of the persons concerned in that interest must be competent to sue, or liable to be sued, in those courts.” The jurisdictional question was resolved without any discussion of whether it served any practical purpose or why the presence of a single, unrelated in-state defendant should strip an out-of-state defendant of access to a federal forum. In practice, the rule often had the effect, and sometimes the intent, of denying nonresident defendants the protection of federal jurisdiction simply by joining a local party. Not surprisingly, the thinness of *Strawbridge* has led to a good deal of strategic behavior by astute plaintiffs to keep vulnerable out-of-state defendants from removing the case against them to federal court. Thus, under that rule, joining a (small) local defendant with the (deep-pocketed) outsider prevents removal into federal court because complete diversity is not established, which had happened in erosion cases. Once the time for removal into federal court passes, the plaintiff no longer has a reason to hold, say, the local pharmacy liable in lockstep with the major pharmaceutical company in a case of liability for adverse effects of a drug or vaccine. The local pharmacy’s presence could only complicate the trial and make the jury reluctant to award large damages to the

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<sup>13</sup> *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806).

plaintiff if their neighbors might be made to pay all or part of those damages. So, with the risk of removal past, the plaintiffs dismissed the local defendant with prejudice, so that the local plaintiff is able by this two-step maneuver to defeat all the safeguards that diversity jurisdiction was meant to provide.

The most conspicuous illustration of this abusive tactic was in the early stages of *New York Times v. Sullivan*, a major libel suit brought by L.B. Sullivan, one of the three Commissioners of Montgomery County, AL. In his case, “the duties are supervision of the Police Department, Fire Department, Department of Cemetery and Department of Scales.”<sup>14</sup> Sullivan claimed that he had been defamed by an advertisement in the New York Times placed by the NAACP. The plaintiff sued in Alabama state court and successfully prevented removal to federal court by joining the local paper vendor in the case, who was promptly dismissed once the time for removal had past. The jury returned a \$500,000 verdict—roughly \$5.2 million in today’s dollars—for what was, in reality, only minimal exposure. Sullivan made no effort to prove that the advertisement caused him any personal harm, such as losing an election, facing political retaliation, or suffering damage to his business. That would have been a difficult showing in any event, since the supposed defamation had, if anything, elevated his status and made him something of a local hero. Instead, he took advantage of a universal rule that allowed him to plead general damages, which are entirely proper when there is, for example a decline in business which only serves a group of unknown clients whose ranks thinned when public charges were made of their professional incompetence.<sup>15</sup> But in this case, the Times distributed only 394 copies of the paper in Alabama, of which only 35 made it to Montgomery County. Whether one thinks of damages in 1964 of about \$1,250 per Alabama sale, or \$15,000 per sale in the county, the numbers were so farcical that they could never have been sustained if the case had been tried under the watchful eye of a federal district court judge.

This cause célèbre was just one of many abuses created by the narrow judicial limits on removal. In response, Congress enacted the Class Action Fairness Act (CAFA)

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<sup>14</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

<sup>15</sup> *Ellsworth v. Martindale-Hubbell Law Directory*, 280 N.W. 879 (N.D. 1938).

in 2005 to give defendants access to a federal forum in large-scale cases.<sup>16</sup> Under CAFA, any class action worth more than \$5 million and involving more than 100 members may be removed to federal court so long as “minimal diversity” exists—that is, at least one plaintiff is from a different state than at least one defendant. This approach stands in direct contrast to the rigid, judge-made rule of *Strawbridge*, which demanded complete diversity. CAFA is not without its rough edges in practice, but as a corrective to jurisdictional abuse, its success has been substantial. From the outset two things have [happened](#). First, plaintiffs that might have moved for a state proceeding sued directly in federal court to avoid the delay associated with removal. Second, in cases where removal did not occur, CAFA has generated no evidence of abuse, so there is little inherent risk in allowing a federal forum for cases of this kind. General damages are not authorization for juries to pluck numbers out of thin air.

## **B. Actual Bias**

The Louisiana erosion cases have one feature in common: They are cases in which the risk of bias stems solely from a general awareness of inherent risk that parties who have much to gain from cutting corners will often do so. The legal system develops safeguards against these practices. Hence, there is normally no effort to plumb the particulars of the case to make a definitive judgment about the existence of bias. If that were required, the attacks on bias would be so restricted that the basic norm would be eviscerated for want of proof. But in some cases a particular course of dealing makes actual bias so manifest that there is no reason to bar defendants from showing that either government lawyers or private parties, or both, took improper advantage of a situation by litigation fully in public view. Such evidence should not be ignored, and in the setting of the erosion litigation helps clinch the case for removal as an anti-abuse regime. Michael Toth has reported on the magnitude and full extent of the intrigue in a *Wall Street Journal* op-ed:

The politics of the present may be the real story. In 2015 Mr. Carmouche’s firm deployed \$2 million in television ads against Republican gubernatorial candidate David Vitter, then a U.S. senator. Mr. Carmouche mocked Mr. Vitter as ‘big oil’s boy’ for his

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<sup>16</sup> Class Action Fairness Act of 2005, Pub. L. No. 109-2, § 4(a), 119 Stat. 4, 9 (codified at 28 U.S.C. § 1332(d)).

opposition to frivolous lawsuits. Democrat John Bel Edwards, a former trial attorney, defeated Mr. Vitter and promptly amped up the state’s involvement in the coast litigation, declaring that if all coastal parishes didn’t bring lawsuits against the energy industry, the state would pursue litigation.

In 2023 Mr. Landry ran successfully for governor with the backing of trial lawyers, including Mr. Carmouche and his law partners, who [donated](#) \$300,000 to a pro-Landry super PAC. Mr. Landry [appointed](#) Mr. Carmouche to the Louisiana State University board of supervisors. Mr. Carmouche has also contributed to judicial campaigns. One of the judges he’s supported—Michael Clement of Louisiana’s 25th Judicial District Court—is presiding over the Plaquemines trial. Mr. Carmouche’s firm and an associated PAC have [contributed](#) at least \$10,500 to Judge Clement’s campaigns.<sup>17</sup>

The appearance of bias in the Plaquemines proceedings is obvious. Indeed, before the case went to trial in March 2025, Judge Michael Clement issued an abrupt reversal of his own prior ruling. On January 13, 2025, Judge Clement issued a Reasons for Judgment finding that the State and Local Coastal Resources Management Act (SLCRMA) did not apply retroactively to activities begun before its effective date in 1980. Yet on February 10, 2025, Judge Clement orally reversed his written judgment—without any new evidence or legal argument—after extended exchanges with plaintiff’s counsel John Carmouche, who warned that the ruling would “gut [his] case.”<sup>18</sup> Judge Clement openly agreed that his prior interpretation would “significantly lessen” the plaintiffs’ claims.<sup>19</sup> He then justified his change of position by citing his “lack of experience” with “a case of this magnitude,” conceding, “I guess I’m just a young judge still and have never dealt with a case of this magnitude. I’ll readily admit?”<sup>20</sup> What is to prevent other similar reversals of fortune in other state cases of similar magnitude? On January 23, 2023 the Fifth Circuit issued a decision in a related case that adopted

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<sup>17</sup> Michael Toth, *A Bad Business on the Bayou*, WALL ST. J. (Feb. 28, 2025), <https://www.wsj.com/opinion/a-bad-business-on-the-bayou-chevron-law-environment-oil-gas-industry-304bcb41>.

<sup>18</sup> Trial Tr. 58:21–23 (Jan. 13, 2025) (Judge Clement). “So what my rule does to your case, Mr. Carmouche, is prevent you from presenting evidence of the pre-SLCRMA harm.”

<sup>19</sup> *Id.* at 58:21–67:2.

<sup>20</sup> Tr. 71:31–72:7; 73:2–6.

the same statutory interpretation, confirming that pre-1980 uses did not require coastal use permits.<sup>21</sup>

Elsewhere, legal commentator John Shu reported on the closeness of the public/private connection when he observed that “Interestingly, mass-tort attorney Jimmy Faircloth Jr. represented Louisiana at trial, instead of a government attorney.”<sup>22</sup>

This background is critical. From the outset, the Plaquemines litigation has reflected close coordination between the Louisiana Attorney General’s office and Mr. Carmouche. In 2016, Carmouche and then-Attorney General Jeff Landry entered into a joint prosecution agreement—an arrangement that remains in effect even now, with Landry serving as governor and Liz Murrill as Attorney General. A key provision of that agreement provides: “*No party to this Agreement shall at any time expressly or impliedly endorse any substantive defenses or exceptions raised by any defendant in any claims filed by any party to this Agreement under SLCRMA*, which was signed by the Attorney General, the Parish, and private plaintiffs’ counsel. That agreement was in turn introduced at trial.<sup>23</sup>

In my view, this provision was—and remains—a clear violation of both ethical norms and legal obligations by all signatories. The Attorney General is not merely a revenue-maximizing prosecutor, still less a business partner to private counsel. The office owes a fiduciary duty to the public at large, with an obligation to preserve its independence and exercise judgment in light of new evidence. By contractually binding the office to disregard any substantive defense raised by the defendants, the Attorney

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<sup>21</sup> *New Orleans City v. Aspect Energy L.L.C.*, 124 F.4th 1047 (5th Cir. 2025). The City of New Orleans sought to prevent the oil companies from removing this case to federal court by insisting that Entergy was a proper local defendant, which meant that there was no complete diversity in the case. The Fifth Circuit held that Entergy could not be joined because there was no “reasonable prospect” that the plaintiff could show that it could bear any liability given that none of its activities had begun prior to 1980, which in turn meant that there was no way that it could have been found to have violated SLCRMA, which exempted such actions from liability. Entergy was therefore removed from the case, restoring the complete diversity that in turn allowed for removal under 28 U.S.C. §§ 1331, 1332, 1333, 1367, 1441 and 1442, and 43 U.S.C. § 1349. 124 F. 4th at 1052-53.

<sup>22</sup> John Shu, *Louisiana Republicans undermine Trump’s energy agenda*, WASH. EXAMINER, June 25, 2025, <https://www.washingtonexaminer.com/restoring-america/fairness-justice/3453223/republicans-louisiana-oil-production-case-supreme-court/>.

<sup>23</sup> Rozel Trial Tr. Day 9, at 64:20–65:15, 68:22–69:3.

General effectively foreclosed his ability to reconsider the merits of the case as circumstances further evolved. The agreement thus compels him to ignore relevant information in litigation and to withhold honest evaluation in public hearings, undermining the impartiality that his office requires.

The United States Supreme Court also spoke against naked self-aggrandizement in *Berger v. United States*, where Justice George Sutherland wrote:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.<sup>24</sup>

Yet the trial record reveals that the Attorney General’s office functioned as a partisan arm of the plaintiffs. For instance, Mr. Faircloth, representing the Attorney General, signed every pleading and motion filed by the plaintiffs, admitting that he had “carefully reviewed those and in some instances participated in those and [had] the full authority of the Attorney General to enter [his] signature in support of those.”<sup>25</sup> The Attorney General’s contradictory posture was described as “bobbing and weaving as to whether they’re a party or not”—a characterization acknowledged by the Faircloth and a telling recognition of compromised independence.<sup>26</sup>

The same condemnation of these practices is also found in the rules of Professional of Responsibility:

A prosecutor has the responsibility of a minister of justice with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons.

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<sup>24</sup> *Berger v. United States*, 295 U.S. 78, 88 (1935).

<sup>25</sup> Pre-Trial Tr. (Feb. 28, 2025), at 16:25–32.

<sup>26</sup> *Id.* at 7:23–29; 11–12:28–27.

Model Rule 3.8 cmt. [1]

The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.<sup>27</sup>

The trial record confirms that both parties to the agreement have disregarded these duties. When Chevron questioned whether the Attorney General’s office had conducted its own independent review, Faircloth’s own statements and state witness testimony established that the office had not conducted any separate investigation, but chose instead, as their agreement stipulated, to rely on the Parish’s work product. One Chevron attorney summarized the State’s stance as consisting of the Attorney General “standing up and saying, ‘Yeah, me too,’” despite admitting no factual inquiry had been made.<sup>28</sup> These remarks directly contradict the Attorney General’s repeated trial assurances of independence and impartiality. Yet when questioned, a state witness admitted under oath that he had never read, discussed, or understood the agreement— further demonstrating that the Attorney General’s office had contractually surrendered its discretion while publicly professing neutrality.<sup>29</sup>

This recurrent issue casts an imposing shadow over all the litigation that takes place with respect to these cases. In his letter of April 9, 2025 to Liz Murrill, former United States Attorney General William P. Barr brought this issue to her attention: “If necessary to achieve an independent review by your office, we ask that the agreement be terminated, or alternatively, that you exercise your right to supersede local parish lawyers and take full change of these cases.”<sup>30</sup>

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<sup>27</sup> ABA Criminal Justice Standards for the Prosecution Function, Standard 3-1.2(b).

<sup>28</sup> Pre-Trial Tr. (Feb. 28, 2025), at 20:14–24.

<sup>29</sup> Rozel Trial Tr. Day 9, at 71:2–19.

<sup>30</sup> William R. Barr, Letter to the Hon. Liz Murrill, Louisiana Attorney General (Apr. 9, 2025), <https://perma.cc/Z8E5-3QSY>.

Indeed, the evidence here is already so strong that the agreement must be terminated because every action taken by her office since 2016 has been tainted by this illegal delegation. The issue here is not just “superseding” local lawyers. What this situation requires is a complete restart of the litigation. It is improper for the Attorney General to remain involved in a case where her strategy has been shaped by unlawful cooperation and a surrender of independence. Once the process has been tainted in this way, only a fresh and untainted review can restore integrity. That review must begin with the threshold question of whether the litigation should continue at all. General Murrill should not be part of that deliberation given that she has already forfeited her independence. Therefore, it should be back to square one.

### **III. Erosion Damages**

The payoff from these official irregularities is apparent given the size of the jury verdict which awarded the plaintiffs \$745 million dollars, holding it responsible for some 25 percent of the cumulative loss from erosion in the parish. That number is absurdly high, given the other massive natural force at work in that highly unstable region. But before looking at the explanations that matter, it is important to explain why the Attorney General’s allegation of a release of “contaminated” or “toxic” water is frivolous in its own terms, regardless of whether the number of gallons (not barrels) released is 100 million or 4 billion. The simple truth is that *pollution does not cause erosion*, so the jury’s net damages should have been zero.

The day after General Murrill received the Barr [letter](#), she [wrote](#) this strongly worded response on X:

Chevron and its predecessor Texaco, like other oil and gas companies, was grandfathered into the permitting regime established in the early eighties unless its prior actions were illegal and continued after 1980. The facts at trial showed Chevron’s predecessor Texaco illegally dumped 100 million gallons of contaminated water into the marsh and continued to do so after 1980, while also being paid by other companies to inject their wastewater into Chevron/Texaco’s saltwater disposal wells. So it knew the law, but chose profits over environmental compliance. The recent press offensive omits these important facts, and omits critical elements of the law. The jury carefully examined the evidence and only held Chevron responsible for its share of fault. I will continue to be a champion of this energy sector, which contributes greatly to American energy independence and security. I will also ensure that

industry complies with our laws.

I want to express my sincere gratitude to the hard work performed by the jury in this complicated case. The jury diligently performed its duty with a painstaking review of the documents and testimony and I believe the verdict is fair. We all want the best for our State, and I appreciate the judge and members of the jury for their hard work in the case.

At no point does the Attorney General offer any evidence of why the jury verdict was defensible, let alone correct. Indeed, she gave wrong answers to the wrong question. The heart of her claim is that Texaco dumped 100 million gallons of contaminated water into the marsh, and it did so both before and after 1980 when the current permitting law was put into place. But the words “contaminated water” do not clarify whether the companies dumped raw sewage or “produced water,” subject to cleansing before its release.

Nor, puzzlingly, does the Attorney General offer any contemporaneous evidence of any prosecution that would have had to take place for alleged unlawful behavior. That’s because prior to 2013 when this onslaught of lawsuits began, no one challenged Texaco’s actions as they were known to be permitted by state and federal agencies. At no time did Texaco violate these permits. As Steve Milloy pointed out in the *Daily Caller*:

It was legal to discharge produced water into saline water in Louisiana—Chevron even got a permit from Louisiana for the discharge. Every state and federal agency overseeing its operations approved of its discharge. It was not until the state conspired with contingency fee lawyers pushing the Left’s climate cultism did any agency allege that the discharge was unlawful.<sup>31</sup>

And to the extent that litigation occurred over Louisiana’s coastal erosion, it was directed at the federal government for flood control projects which, according to multiple academic studies, significantly impacted the region’s geography.<sup>32</sup>

Indeed, Murrill identifies no statute that Chevron and its predecessors have allegedly violated in their operations in the Mississippi Delta. Given that many of the

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<sup>31</sup> Steve Milloy, *Liz Murrill Doubles Down — And Loses*, THE DAILY CALLER (Oct. 5, 2025, 7:47 PM ET), <https://perma.cc/BGP4-EAAH>.

<sup>32</sup> *Id.*

chemicals at issue occur naturally in the Gulf of Mexico, it is essential in cases like this to link specific pollutants to the defendants' activities. Her statement is even more problematic in claiming that 100 million gallons—rather than barrels—of contaminated water were released, without offering any explanation of when or where these discharges supposedly occurred. The starting point for these activities was in the 1930s for roughly 90 years, so the total release is 100 million gallons per year over the entire coastline, not just Plaquemines Parish. By one [measure](#) the length of the Louisiana coast line is 397 miles; and by the other it is 7,721 (that takes into account irregularities) miles or 19.4 times as large. The Attorney General's explanation is that, "Two separate measurements are used: method 1 only includes states with ocean coastline and excludes tidal inlets; method 2 includes Great Lake shoreline and the extra length from tidal inlets."<sup>33</sup>

To evaluate the impact of the spillage on the coastline, the second method with the longer coastline is preferable because it captures all the places on land where the oil can gather, which points to a far lower concentration rate. So if those 100 million gallons are divided by 7,721 miles, the gallons per mile equals about 130 gallons per linear mile of diluted and treated toxic waste. Since there are 42 gallons per barrel, the pollution amounts to little over three barrels per year, not of oil, but of some far weaker substance. And as with all pollution, it does not last forever, so that the cumulative totals are surely lower than 13,000 gallons.

The Attorney General's brief remarks on X also go astray as far as she charges that the companies were "being paid by other companies to inject their wastewater into Chevron/Texaco's saltwater disposal wells." But she does not offer any explanation why that extra activity is a socially bad thing. Water production is a constant side effect of oil extraction. This contract transferring responsibility for disposal should be welcomed as an effective way to control an admitted externality at a lower cost. Her argument requires that this transaction is an illicit deviation from the norm, but evidence to that effect is not there. Thus, the refutation is anything but.

It gets worse. General Murrill [renewed](#) her charges on July 22, 2025 in an op-ed for the *Washington Examiner*, in which she dismissed Barr and his arguments as

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<sup>33</sup> *List of U.S. States and Territories by Coastline*, Wikipedia, <https://perma.cc/C3EJ-5ZZH>.

“so unbelievable.”<sup>34</sup> She stated, “this case involves concrete damage caused by concrete actions resulting in the senseless poisoning of vital habitat that protects Louisiana communities.”<sup>35</sup> She then raised the ante from 100 million gallons of wastewater to 4 billion gallons released into the marsh in Delacroix. Her only mention of erosion was indirect: “Louisianans understand how much erosion is caused by hydrology changes or hurricanes. However, dumping 4 billion gallons of toxic waste over four decades has an effect. Lying about it has a different effect, eroding the trust between communities and companies and in the rule of law.”<sup>36</sup> It turns out that the jury knew nothing. Indeed, at no time does she mention that the lawsuit in question was for erosion damages, which are not a recognized consequence of the release of either “toxic waste” or “produced water.” She then compounded these manifest errors by refusing to deal with relative proportions of causation in the case between the defendants’ actions and other sources of loss, including the efforts of the Army Corps of Engineers to deal with flood control.

Here are the rough calculations on assumptions most favorable to the plaintiffs: An acre foot of water equals one square acre at a depth of one foot, or about 43,560 cubic feet. That figure equals 325,851.43 U.S. gallons. Thus, four billion gallons of diluted wastewater equals about 12,700-acre feet of water. There are 640 acres per square mile so that there were a total of about 19,172 miles/feet of toxic fluids released over a period of about 90 years, which amounts to about 213 miles/feet released per year of diluted fluids. A favorable measure holds that toxic water contains two percent crude oil.<sup>37</sup> So, this figure must be reduced by a factor of fifty, which results in 4.26 miles feet per year that is spread over the 2,000 miles of coastline. Indeed “produced water” is not considered “toxic waste” in the United States. Rather, it is the brackish

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<sup>34</sup> Liz Murrill, *Chevron Conduct Not Consistent with Trump Agenda*, WASH. EXAMINER (July 22, 2025), <https://perma.cc/NF67-77XT>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> This estimate is used illustratively to approximate the potential environmental impact of produced water. “Produced water” is a byproduct of oil extraction and typically contains a mix of water, salts, and hydrocarbons. The 2% crude oil figure is not a standardized concentration but a favorable assumption for modeling purposes. Actual composition varies widely depending on geological and operational factors, and produced water is not classified as toxic waste under U.S. environmental regulations unless specific contaminants exceed regulatory thresholds.

water that is trapped within the geologic formations that contain crude oil and brought to the surface during oil production.<sup>38</sup> One would need magical powers to find that this pollutant results in 25 percent total *erosion* loss, when literally tens of thousands of tons of soil movements have shaped the Louisiana landscape.

To put that in perspective here is the one sentence [summary](#) of the state of play for land loss:

The Mississippi River Delta and coastal Louisiana are disappearing at an astonishing rate: *a football field of wetlands vanishes into open water every 100 minutes*. Since the 1930s, Louisiana has lost over 2,000 square miles of land, an area roughly the size of Delaware. Many factors have contributed to this collapse. (Italics in original).<sup>39</sup>

The list of causes mentioned is as follows: Shipping channels and canals; oil and gas infrastructure dam upriver; subsidence; sea level rise; Hurricanes; BP Oil Disaster; and Invasive Species. Pollution is not mentioned. This simple roster of undisputed facts was presented by independent bodies. The adverse effects here start before the drilling took place in these cases and continued long after it stopped. There is no evidence of any change in the rate of erosion loss. Thus, in response to General Murrill, Steve Milloy posted the following response on X that featured a headline from 1927 before the efforts to restrain flooding when to the top of the local agenda:

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<sup>38</sup> Benjamin Zycher, *Louisiana Politicians and Plaintiff Attorneys Go After the Fossil Energy Producers*, Amer. Enterprise Inst. (Aug. 18, 2025), <https://www.aei.org/op-eds/louisiana-politicians-and-plaintiff-attorneys-go-after-the-fossil-energy-producers/>.

<sup>39</sup> Land Loss, *Restore the Mississippi Delta*, <https://perma.cc/Z2SF-BVFL>.

**Steve Milloy** @JunkScience · 9h  
Louisiana AG @AGLizMurrill and her anti-MAGA Democrat trial lawyer buddies have falsely accused the oil industry of causing erosion of the Gulf Coast.

But as explained in this 6-minute video, devastating Mississippi River flooding of 1927 caused the US Army Corps of Engineers to undertake drastic flood control measures.

These measures have resulted in much less silt being deposited on the Gulf Coast and no longer available to offset loss from natural erosion.  
[youtube.com/watch?v=mneWUJ... 3/](https://youtube.com/watch?v=mneWUJ... 3/)



3 comments, 14 retweets, 30 likes, 3.6K views

**Attorney General Liz Murrill** @AGLizMurrill

A deep-red, conservative jury considered other causes for damages like changes to hydrology from levee construction and only held Chevron responsible for 25% of the harm. That's called comparative fault.

6:22 PM · Jul 22, 2025 · 44 Views

Mr. Milloy then continued his refutation:

**Steve Milloy** @JunkScience

Another bit of reality for Louisiana AG and her anti-MAGA Democrat tribal lawyer buddies accusing the oil industry of eroding the Gulf Coast.

Before the US Army Corps of Engineers implemented its flood control measures after the 1927 flooding, an immense amount of silt used to flow to the Gulf Coast and offset the natural erosion. The amount was estimated in the late-19th century to be 750 million cubic feet annually - "which would cover a square mile 27 feet deep."

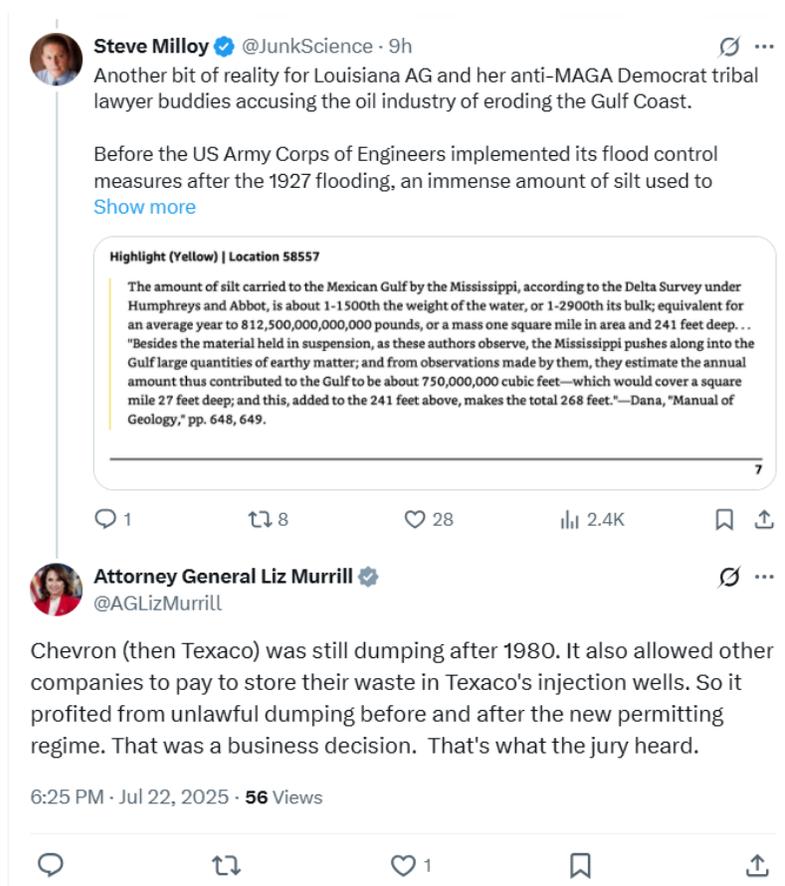
The snippet below is from the 1890 biography of Abraham Lincoln by his private secretaries John Hay and John Nicolay. 4/

Highlight (Yellow) | Location 58557

The amount of silt carried to the Mexican Gulf by the Mississippi, according to the Delta Survey under Humphreys and Abbot, is about 1-1500th the weight of the water, or 1-2900th its bulk; equivalent for an average year to 812,500,000,000 pounds, or a mass one square mile in area and 241 feet deep. ... "Besides the material held in suspension, as these authors observe, the Mississippi pushes along into the Gulf large quantities of earthy matter; and from observations made by them, they estimate the annual amount thus contributed to the Gulf to be about 750,000,000 cubic feet—which would cover a square mile 27 feet deep; and this, added to the 241 feet above, makes the total 268 feet."—Dana, "Manual of Geology," pp. 648, 649.

12:54 PM · Jul 22, 2025 · 2,827 Views

2 comments, 8 retweets, 30 likes, 2 bookmarks



The Attorney General’s response to these charges is a complete non sequitur. Her claim of a 25 percent comparative loss from the oil company drilling appears wildly inflated—by a factor of a million—yet she offers only a vague reference to comparative fault, which does nothing to justify the result. The numbers she cites, including quantities a million times larger and supposedly more toxic, are presented without context and then casually dismissed. She provides no account of what the jury determined to be the total loss, nor how it apportioned responsibility between pollution and erosion—the latter being the true driver of the enormous damages described earlier in this report. Equally absent is any explanation of why the release of contaminated water would cause erosion damage, as opposed to harms such as aesthetic loss, diminished fish and wildlife, or reduced public use. What was required was a clear causal link between the alleged pollution and the erosion damages. None was provided. None could have been provided.

The Attorney General’s newly increased claimed level of releases of waste materials does not compute to the damages collected, but she did make one flawed

comparison that cries out for explanation. In her effort to explain the magnitude of the loss, she writes that “that amount exceeds 20 times the volume of oil discharged by the BP Deepwater Horizon blowout, in an area much, much smaller.”<sup>40</sup> It is hard to imagine a worse comparison. Apples to oranges does not begin to capture the enormity of the difference, for which many accounts are readily available.<sup>41</sup> But here are some of the salient differences. The BP spill was not some gradual release over miles of coastline and decades of activity. It was the consequence of a single event, the explosion of the Deepwater Horizon Oil Rig on April 20, 2010, 41 miles off the Louisiana coastline, which killed 11 BP workers and injured another 17. Some 12 days later the rig capsized, resulting in the sinking of the rig on April 22, 2010. There were many difficulties in estimating the amount of uncontrolled leakage, which government officials thought amounted to about 60,000 barrels (not gallons) per day until the release was contained in September 2010. Until that time, BP was able to siphon off first 15,000 barrels per day to a tanker, which then increased to 25,000 barrels, so that the best estimate was that about 4,900,000 barrels of pure oil had leaked into the Gulf by July 12, 2010, of which only 800,000 were captured. Subsurface plumes of hydrocarbons were also released from the site. At its peak, the oil slick extended 57,500 square miles, which reached the Louisiana beaches, marshes and estuaries by May and which later extended to beaches Mississippi, Alabama and Florida. Consequently, there were bans on fishing, a moratorium of drilling, and major losses in tourism. BP created an initial fund of \$20 billion to cover the losses and the claims process was often erratic. BP shares lost over a quarter of their market value, thereby forcing the company to spend about \$40 billion on litigation and cleanup costs. Yet throughout the detailed accounts of pollution no one raised an erosion claim of the sort that are presented here.

Both the Barr letter and General Murrill’s response treat the huge damage awards as if they were well-founded. Yet, General Murrill’s argument collapses because she never explains why the minimal pollution from these spills should be equated with massive erosion. That misstep, moreover, opened the door for her to introduce a red

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<sup>40</sup> *Chevron Conduct Not Consistent with Trump Agenda*, *supra* note 34.

<sup>41</sup> *Deepwater Horizon Oil Spill*, Britannica (Sept. 29, 2025), <https://perma.cc/HW58-DRWN>.

herring—asserting that Chevron and other companies bore special responsibility because of their alleged negligence in running their drilling operations during those critical years. Thus in her reply to the petition for certiorari the plaintiffs put this point front and center when in their [papers](#) in opposition to certiorari they wrote of the defendants:

They are in state court because they have been sued under Louisiana law over past ‘exploration and production activities’—‘such as the use of dredged canals and earthen pits, the spacing of wells, and the lack of saltwater reinjection wells’—that harmed the Louisiana coast.<sup>42</sup>

The court in *Plaquemines* echoes that theme when it writes that plaintiffs claim that the defendants departed from prudent industry practices before 1980 in a manner “by dredging canals (instead of building overland roads), by using vertical drilling (instead of directional drilling), by using earthen pits at well heads (instead of steel tanks), by extracting too much oil, and by not building saltwater reinjection wells.”<sup>43</sup> At no time, however, do the plaintiffs ask whether these costlier techniques were consistent with the government directives to produce as much avgas as when rapid extraction was an absolute imperative under PAW. Nor is there any claim that these more expensive precautions were cost-effective given their higher costs. Instead, the argument goes off on another tangent by referring to negligence, as noted in the introduction, in the conduct of its drilling activities.

This argument suffers from yet another pointless diversion. Under a strict liability system, these precautions would all be irrelevant to potential liability. If suits for pollution damage were timely—which they have not been for decades—the plaintiffs could recover for those losses. But a strict liability theory does not allow a firm or government to recover damages for harms not caused by the defendants, which is exactly what has happened in this case. The additional charges of negligence appear to bolster the case for moral culpability, but in theory they only do so because they no longer claim that they could recover for the “unavoidable consequences” of that drilling activity, so that they recover less than under a strict liability theory. And it would also

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<sup>42</sup> Br. in Opp’n for Respondents, No. 24-813, at 1 (Apr. 23 2025) (filed by Respondents State of Louisiana et al. in *Chevron U.S.A. Inc. v. Plaquemines Parish*), <https://perma.cc/TRU9-7F4T>.

<sup>43</sup> *Id.* at 337 (describing the specific requirements of each contract for avgas production).

require that they identify some way to establish the breach of the duty of care, which would be a real problem in this case because the plaintiffs did not point to any contemporary determination, either at or after the drilling activities of any breach of some common law or statutory duty. The claims assert that a breach occurred, but plaintiffs offered no demonstration of any contemporary civil action or fine that would verify these charges. Hence it is possible to fight a genuine battle on this frontier as the parties often seem to do, with denials and affirmations being commonplace, but it is all a diversion. A negligence theory does not remove the necessity to show causation, so whether these releases were negligent or not may be relevant to a pollution claim, but given the massive evidence on alternative causal mechanisms, the point is a senseless diversion on the erosion claim.

The Barr-Murrill exchange is notable for yet another reason: Barr’s original letter and Murrill’s response both addressed the question of whether these developments were consistent with the Trump Administration’s energy policy. Barr delivered his letter to General Murrill one day after President Trump issued an Executive Order “Protecting American Energy from State Overreach,” meant to ensure that the United States remain energy dominant.<sup>44</sup> In addition to making sharp criticisms about various climate change laws and lawsuits, Barr also wrote that the Constitution is undermined “when States subject energy producers to arbitrary or excessive fines through retroactive penalties or seek to control energy development, siting, or production activities on Federal land, American energy suffers.”<sup>45</sup>

The size of that commitment cannot be gainsaid, for as energy expert Francis Menton has written:

Reversing the suppression of American energy production: At the very top of my list [of positive developments] is the remarkable total reversal of the Obama/Biden policies of suppression of energy production. Obama and Biden had set the U.S. on the path of economic suicide in service to the insane climate cult. Trump is now undoing literally all of it. This reversal is particularly remarkable because Trump barely got started on the project during his first

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<sup>44</sup> Executive Order — Protecting American Energy From State Overreach, Apr. 8, 2025, 90 Fed. Reg. 15513 (Apr. 8, 2025), <https://perma.cc/BMG6-P8VE>.

<sup>45</sup> *Id.*

term.”<sup>46</sup>

The lawsuits in this case are utterly unfounded and will have the adverse effects on energy development that Barr feared. With the defendants unlikely to receive a fair hearing in the Louisiana courts on appeal, the best chance for the defendants to avoid causal misattribution and the billions in damages that could follow is with the federal officer removal statute, to which I now return.

#### **IV. Federal Officer Removal Statute: Form Versus Function**

The Fifth Circuit analyzed the question of removal as a straight play of statutory construction. The statute, 28 U.S.C. § 1442(a)(1), provides:

A civil action ... that is commenced in a State court and that is against or directed to any of the following maybe removed by them to the district court of the United States ...: 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, in an official or individual capacity, for or relating to any act under color of such office....

The provision is not easy to unpack. Its four elements are:

- (1) a colorable defense on the merits,
- (2) the parties were, even with their corporate status, persons under the removal statute,
- (3) that [the defendant] acted pursuant to a federal officer’s directions, and
- (4) the charged conduct is connected or associated with an act pursuant to a federal officer’s directions.<sup>47</sup>

The defendants satisfied the first two elements. The court devoted some discussion to the third, or “acting under,” element, which requires some federal oversight or control over the operations. In this case, the Fifth Circuit, with Judge Eugene Davis writing for the majority, held that both drilling and refining satisfied this third prong. The key dispute was over “for or related to” element—interpreted to mean “connected or associated with”—which the Fifth Circuit held applied to the refining but not to the drilling activities because removal “does not extend to [parties] not under

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<sup>46</sup> Francis Menton, *A Mini Scorecard for President Trump’s First Seven Months of Term Two*, THE MANHATTAN CONTRARIAN (Aug. 20 2025), <https://perma.cc/49VT-2ABJ>.

<sup>47</sup> *Plaquemines Parish*, 103 F.4th at 333.

that contractual direction,” which in this instance meant that the drilling activities, which are the source of all the potential liability, had to remain in state court.

As is typical in removal cases, Judge Davis began with the initial presumption that the statute should be “liberally construed.” In the next breath, however, he cautioned that its scope is “not limitless.” He reasoned that the court must apply the fourth requirement separately to drilling and refining. While it was undisputed that the refining activities satisfied the test for removal, there was a factual dispute over whether the drilling activities were related to that refining.

Vertical integration can generally be contrasted with horizontal integration as follows:

**Vertical integration** — form of business organization in which all stages of production of a good, from the acquisition of raw materials to the retailing of the final product, are controlled by one company. A current example is the oil industry, in which a single firm commonly owns the oil wells, refines the oil, and sells [gasoline](#) at roadside stations. In **horizontal integration**, by contrast, a company attempts to control a single stage of production or a single industry completely, which lets it take advantage of economies of scale but results in reduced competition.<sup>48</sup>

The illustration notes the oil industry and the control of activities from production to retailing. The definition presupposes, however, that partial forms of vertical integration are also available, where one company controls part of the production process. “Controlling the process” does not mean that an integrated company refrains from making deals with outside parties to subcontract parts of its vast operations. Nothing in this definition depends on the particulars of the contractual agreements used to effectuate the integration.

The proper understanding of vertical integration renders the majority’s narrow reading of the phrase “relating to” even more puzzling, especially given that Congress deliberately added those words in 2011 to expand the scope of removal to federal courts.<sup>49</sup> The operative question—whether the challenged activities were “connected or associated with” the defendants’ wartime operations—should plainly encompass the

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<sup>48</sup> The Editors of Encyclopedia Britannica, *Vertical Integration*, Encyclopedia Britannica (Mar. 21 2025), <https://perma.cc/99QJ-QZC3>.

<sup>49</sup> Id. at 347.

standard practices of a vertically integrated firm. All sides of the litigation agreed that defendants need not demonstrate a strict “causal connection” between the alleged conduct and the exercise of federal authority. Earlier case law, drawing on tort principles, had treated that standard as excluding removal whenever an intervening act severed the causal chain. By contrast, the 2011 amendment’s use of the broader phrase “related to” signaled that a direct line of control was no longer necessary; a looser association between federal direction and the challenged activities was sufficient. The interpretive challenge in *Plaquemines Parish* for the plaintiff is why a statutory term meant to broaden the scope of protection should fail to afford Chevron and its predecessors in title any protection against potential liabilities of this magnitude. The point is doubly ironic because the Supreme Court has held, even under the earlier version of the statute, that “the repeated extension and expansion of federal officer removal evinced a very basic “congressional desire to protect federal ‘interest[s] in the enforcement of federal law through federal officials’ from interference by state courts or officials.”<sup>50</sup> In the Fifth Circuit ruling, Judge Oldham’s dissent stated:

As it pertains to Chevron’s predecessors, both The Texas Company and Gulf contracted with DSC in 1942 to manufacture 100-octane avgas at their Port Arthur, Texas, refineries. The Texas Company’s 1942 contract indicated that its Port Arthur refinery could produce 2,940 barrels of 100-octane avgas per day, but that it was ‘willing to expand its facilities’ to enable production of 6,750 barrels of 100-octane avgas per day. The DSC agreed to loan The Texas Company \$5.5 million to finance the expansion of the Port Arthur refinery.

Once the Port Arthur refinery expansion was complete, DSC contracted to ‘buy and receive’ 5,900 barrels per day of 100-octane avgas for one year ‘in accordance with’ the specifications attached to the contract and ‘any other specifications which by mutual agreement shall be attached as an addendum.’ DSC also had the option to purchase additional quantities of avgas that The Texas Company had not contracted to sell to other parties. The Texas Company and DSC signed two subsequent contracts modifying the terms of the original contract to account for further expansions to the Port Arthur refinery and its increased capacity.<sup>51</sup>

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<sup>50</sup> *Willingham v. Morgan*, 395 U.S. 402, 406 (1969).

<sup>51</sup> *Plaquemines Parish*, 103 F.4th at 347-48. (Oldham, J. dissenting).

The Gulf contract had a similar two stage process: first for manufacture and then for purchase of crude oil. The two contracts did not contain any cross references. The purchase contract was silent on the activities undertaken pursuant to the production contract. Hence the decisive objection in the eyes of the majority was: “The lack of *any* contractual provision pertaining to oil production or directing Defendants to use only oil they produced” under the first contract.<sup>52</sup>

The defendants argued that they were “fully integrated,” a point the majority did not dispute. Instead, the Fifth Circuit majority reasoned that the Petroleum Administration for War (PAW) and related agencies dealt only with distribution, not production. On that basis, the court rejected the defendants’ functional argument, holding that the “connected or associated with” prong was not satisfied merely by showing that they were federal contractors:

To the contrary, in cases involving private federal contractors, courts look to the contents of the relevant federal contracts in determining whether the challenged conduct was ‘connected or associated with’ acts taken under color of federal office. Moreover, even if we considered Defendants’ extra-contractual sources, Defendants are unable to connect the government’s minimal regulation of crude oil production during World War II to their federal contracts for increased quantities of refined avgas.

Accordingly, the majority held that PAW’s allocation program severed any connection between defendants’ production and refinement activities, because defendants could no longer control whether they refined their own crude. Instead, they were in the same position as companies that did not produce crude oil but had refineries with federal contracts. At base, whether defendants happened to refine their own crude oil in fulfilling their federal contracts had, according to the majority, nothing to do with any actions they took pursuant to a federal directive.<sup>53</sup>

Judge Oldham took an opposite, functionalist view:

Those contracts were exceedingly broad and demanding. Some of them provided for dramatic expansion of the companies’ refineries; some required multiple expansions. And in some contracts, the Government asserted the right to take not only the defendants’

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<sup>52</sup> *Id.* at 341.

<sup>53</sup> *Id.* at 345

finished avgas but also their raw materials. Still more, and perhaps most importantly, some contracts allowed the Government to unilaterally demand more avgas than originally specified, even requiring the refineries operate at full capacity to meet the new demand.

Here, the charged conduct—defendants’ petroleum exploration and production activities—clearly ‘relat[ed] to’ an ‘act under color of [federal] office’—the contractually specified refining activities. The contracts required defendants to produce certain amounts of avgas, which varied across refinery, company, and contract. *See ante*, 337-38 (describing the specific requirements of each contract). But defendants could not simply snap their fingers and, voilà, make avgas. They had to make it out of *something*, and that something was crude oil.<sup>54</sup>

Thus, the die was cast. Judge Oldham saw integrated operations closely related to each other. The majority lived in a conceptual universe, where East was East, and West was West, and never did the two meet, so that for the majority the latter set of contracts was unrelated to the production of crude oil because these refineries often refined the oil bought from other areas. The majority’s analysis seems to call for a return to the abandoned direct causation requirement because PAW’s broke the causal chain, a point repeatedly stressed in Judge Oldham’s dissent.<sup>55</sup> The majority denied any relationship between the two operations—an outcome that, to any antitrust lawyer, seems bizarre, since the coordinated activities of a vertically integrated firm are ordinarily understood to be inseparably connected.

To see why, compare the current situation to the proverbial easy case of unrelated activities. If Chevron ran a bakery and not a refinery, the two businesses are considered unrelated because nothing that went on in the first operation had anything to do with the second. Thus, two or more businesses would be part of a conglomerate merger, where there are no synergies between the two operations. Indeed, the reason that most conglomerates unravel is that a broad claim of management expertise, even if true, does not justify keeping these two firms together. Each distinct firm can get a management team that has not only general excellence but also industry specific

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<sup>54</sup> Id. at 347-48

<sup>55</sup> Id. at 353-54.

knowledge that it can put to good advantage. Markets are better able to assess value when unrelated businesses are not bundled together. Accordingly, a firm with a single line of business is generally easier to evaluate than one composed of multiple independent parts. Investors who want diversification can achieve it by combining shares of different companies, rather than relying on a conglomerate to provide it for them. In practice, diversification is often accomplished through mutual funds that hold positions in multiple firms within the same industry, while end investors assemble portfolios of separate funds to balance the benefits of focused management with the desired protection of broad diversification.

These well-established principles are at work in *Plaquemines Parish*. What is most striking about the Fifth Circuit's narrow analysis is its complete disregard for the realities on the ground. In wartime, the overriding priority was to rapidly increase the production of avgas to sustain the war effort. That urgency made it imperative to ramp up output immediately, and the essential function of PAW was to coordinate all related activities toward that single goal. Thus, the presumption was that it is generally easier for a firm to refine its own output of avgas than to ship it elsewhere only to get thereafter its crude oil from an outside source. But it should be evident that unanticipated fluctuations in output, attributable, say, to either weather or operational malfunction make complete vertical integration by a firm inefficient. So, PAW then treats the different companies as if they were (related) units an extended firm. Thus, it does not force a separation between these related activities across firms. It brings them closer together as part of a vertical integration which is often a precondition for production. These relationships are therefore closely related because the unified management makes them that way. The majority's narrative thus gets matters exactly backwards with its elementary confusion between related and unrelated activities.

The relevant business environment is well described in the amicus brief of the American Petroleum Institute, which explains why it is destructive to insist on the formal distinction between different phases of maximizing total output in response to a wartime emergency as reflected in the terms of the different contracts:

Indeed, the oil industry was called to actions 'that in war are called cooperation but in peace are called collusion[.]' *Id.* The federal government accomplished this coordination through the formation of a new, independent agency, the PAW. PAW worked hand in glove

with the oil industry at every level to maximize and control crude oil production to support avgas refining activities for wartime use. This special contractual and practical relationship between PAW and the oil industry ensured that production, refining, transport, and distribution of oil proceeded apace with the needs of the war.<sup>56</sup>

During the 1940s, the Supreme Court supported vigorous antitrust enforcement. In the oil-production space, one example is the 1940 ruling in *United States v. Secony Vacuum*. In this criminal antitrust case, the Court upheld the oil giants' price-fixing convictions, a decision that helped small well-owners to obtain sufficient prices for their oil.<sup>57</sup> The discovery of the vast East Texas oil field in 1930 triggered rampant overproduction, particularly by small operators with limited storage capacity. Once they opened wells, small operators had little choice but to keep producing, since shutting down risked permanent abandonment and the loss of reserves. One way to view the resulting stabilization efforts is that they permitted a short-term cartel to secure long-term competitive balance. Justice William O. Douglas, however, had no patience for such efficiency arguments. In *Secony Vacuum*, he applied the prevailing antitrust rule that price-fixing was a per se violation. In response, several major oil-producing States imposed production quotas, branding sales above those limits as "hot oil." The purchase of that hot oil was organized by the large oil companies that assigned each smaller producer a major "dancing partner," originally under the National Industrial Recovery Act,<sup>58</sup> which the Supreme Court struck down in *Panama Refining v. Ryan* on the ground of excessive delegation. Hence the antitrust issues were indeed a salient topic that covered the entire cycle from discovery, extraction, transportation and sale, so that the Fifth Circuit majority's rigidly segmented view of oil production does not reflect the complexities of today's market. In his dissent, Judge Oldham forcefully articulated that point, stressing the importance of the contractual framework:

This issue fits within the broader framework of the law and economics of 'relational contracts.' In complex business

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<sup>56</sup> Brief of the American Petroleum Institute and the American Fuel & Petrochemical Manufacturers as Amici Curiae in Support of Petitioners, No. 24-813 (Feb. 28 2025), <https://perma.cc/675Z-T9A9>.

<sup>57</sup> *United States v. Socony-Vacuum Oil Co., Inc.*, 310 U.S. 150 (1940).

<sup>58</sup> *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935).

arrangements, formal contracts are essential but never sufficient on their own. They provide the basic structure of the deal, but performance depends heavily on a web of informal industry practices—often difficult for outsiders to measure or even identify. These background understandings are not ignored; they are critical to sustaining cooperation and maximizing output. In this sense, the statutory phrase “related to” resonates with the idea of relational arrangements that inevitably underpin cooperative ventures. One need go no further than the AI definition which captures the basic gist when it [writes](#):

Relational contracts are agreements built on a foundation of trust and long-term collaboration, rather than solely on detailed, legally enforceable terms. They emphasize the ongoing relationship between parties and their commitment to shared goals, even when faced with unforeseen circumstances. Unlike transactional contracts focused on specific exchanges, relational contracts foster a partnership mentality and rely on implicit understandings and good faith performance.

The idea of a “partnership mentality” is not limited to two-party arrangements. In fact, the opposite is true: as the number of participants in a transaction increases, the complexity multiplies, and the range of implied understandings expands accordingly. This reality makes the formal separation between related entities largely meaningless in the business world, where cooperation depends on overlapping obligations and shared expectations.

Two former heads of the Joint Chiefs of Staff Richard Myers and Michael Mullen, made that point, chastising the Fifth Circuit for ignoring the necessity for flexibility in military operations. Then they [concluded](#):

The Fifth Circuit’s opinion, therefore, seems to entirely miss the mark when it holds that production of crude oil is separate from production of refined high-octane aviation gasoline (‘avgas’) such that while a federal officer required the production of avgas, production of crude oil fell outside that direction. App. 34-38. But, specialized fuel like avgas, cannot be produced without crude oil. Accordingly, a contract requiring a supplier to deliver avgas necessarily requires the supplier to produce or acquire the crude oil indispensable to creating the avgas. Increasing crude production was essential to meeting the federal government’s demand for vast quantities of avgas. The vertical integration of the industry during the war, and Petitioners’ resulting activities in Louisiana, would not

have occurred without federal officials' direction and control to increase crude production. After all, if it were not for Petitioners' production of these petroleum products according to the military's particular requirements, the federal government would have had to manufacture them itself to fight the war. Petitioners simply could not have met their federally required avgas production targets without substantially increasing their crude production.<sup>59</sup>

The former Joint Chiefs' observations are unassailable. The removal statute is needed to deal with the protection of national military objectives from after-the-fact state impositions of huge liability. It seems a cruel play on words, to hold that a "related to" standard is not sufficiently broad to cover the close coordination between two vertically related companies whose work programs are constantly integrated solely because of the lack of cross references between the deals. Blind formalism should not expose them to ruinous liabilities.

### **Conclusion: A Tragedy in Three Acts**

A breakdown in institutional judgment produced the effort to pin responsibility on Chevron for the massive land loss in the Mississippi Delta. In the wake of natural disasters of this magnitude, governments are often tempted to assign blame—and massive financial liability—to someone else. Long before this litigation, however, independent experts had documented the complex and multifaceted causes of the Delta's decline. Hurricanes, government-built levees, plant-eating rodents, and the construction of waterways for drilling and navigation all played significant roles. What those studies did not identify—at either the local or regional level—was oil pollution as a driving force behind the Delta's erosion. Yet in this case, the Louisiana jury concluded that 25 percent of the losses were attributable to a narrow set of oil and gas activities whose alleged scale was far too limited to explain the devastation.

The blame for this misattribution in Plaquemines Parish will persist—unless the Supreme Court intervenes to end what amounts to a miscarriage of justice. At its core, this result reflects the breakdown of the guardrails meant to prevent the jury system

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<sup>59</sup> Amici Curiae Brief of Gen. (Ret.) Richard B. Myers & Adm. (Ret.) Michael G. Mullen in Support of Petitioners, No. 24-813 (U.S. Mar. 24, 2025), <https://perma.cc/7H3Z-Q8NN>.

from becoming a tool of expropriation. Louisiana’s 25th Judicial District Court Judge Michael Clement’s reversal after conversations with plaintiffs’ counsel provides a concrete illustration of the local bias and procedural instability that federal removal is meant to guard against. The danger is well known: local juries, whether liberal or conservative, pose a constant risk of bias when empowered to impose unlimited liability on out-of-state corporations. This danger was evident to the Founders but has been largely forgotten in these suits. In Louisiana, the risk is magnified by the recurring alliances between public officials—including the governor and attorney general—and members of the plaintiffs’ bar, who join forces to keep these lawsuits before local juries. Those jurors, for their part, hardly need to be told where their community’s financial bread is buttered, which is why this case should be removed to federal court.

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