NO. 26-3181

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

STATE OF KANSAS, *ex rel.* KRIS W. KOBACH,

Plaintiff-Appellee,

v.

SNAP INC.,

Defendant-Appellant.

On Appeal from the
United States District Court for the District of Kansas
Case No. 5:25-cv-04109 (District Judge Daniel D. Crabtree)

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING DEFENDANT-APPELLANT AND REVERSAL

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RULE 26.1 DISCLOSURE STATEMENT

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GLOSSARY OF TERMS

avgas – aviation gasoline
DHS – Department of Homeland Security
FDA – Food and Drug Administration
FTC – Federal Trade Commission
MOU – memorandum of understanding
OCSLA – Outer Continental Shelf Lands Act
PFAS – per- and polyfluoroalkyl substances
WLF – Washington Legal Foundation

INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as an amicus in important removal cases to support the right of federal officers and their agents to an Article III tribunal. *See, e.g., Chevron USA Inc. v. Plaquemines Parish*, 608 U.S. 1 (2026); *BP P.L.C. v. Mayor & City Council of Balt.*, 593 U.S. 230 (2021).

The federal-officer removal statute, 28 U.S.C. § 1442(a)(1), grants federal contractors a neutral forum for suits tied to federal projects. Many American businesses rely on this protection to fulfill government contracts without fear of state-court bias. If the district court's narrow reading of the statute were affirmed on appeal, it would undermine Congress's intent and chill private-sector collaboration with the federal government. WLF urges the Court to restore the statute's proper scope and purpose.

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* All parties consent to the filing of this brief. No party's counsel authored any part of this brief. No one, apart from WLF and its counsel, contributed money intended to fund the brief's preparation or submission.

INTRODUCTION & SUMMARY OF ARGUMENT

The federal government reaches teens on Snapchat because that is where teens are. The Department of Homeland Security needed to warn them about online sexual exploitation. The Food and Drug Administration needed to warn them about the risks of nicotine and tobacco. Congress was explicit. It directed DHS to "collaborate with . . . nongovernmental . . . entities approved by the Secretary" in "outreach and training activities." 6 U.S.C. § 473(b)(2)(F). And it tasked the FDA with "conducting educational and public information programs." 21 U.S.C. § 393(d)(2)(D). Both agencies chose Snapchat, and both built campaigns around its interactive features. These include custom "lenses" that allow a teen to make a video carrying the agency's message and, in the FDA's case, "share" it "with friends and family." 1-JA263-JA264.

Kansas has sued Snap over the platform's design. It alleges that Snapchat is built "to be addictive" and that the design is an unconscionable act under the Kansas Consumer Protection Act. 1-JA262-JA263. Kansas wants an injunction that would reshape Snapchat for Kansas teens. If it prevails, that remedy would change the very platform the agencies use to reach those same teens. Whether

Kansas is right about the design is not at issue in this appeal. The sole question is which court, state or federal, has jurisdiction over the suit.

Snap removed to the District of Kansas. The district court assumed that Snap was helping DHS and the FDA carry out the missions that Congress assigned them. 1-JA267 n.2. It remanded anyway, because it found the agencies had not supervised the help closely enough. The court required a "detailed command" and "exacting oversight or delegated legal authority" for federal-officer removal under § 1442(a)(1). 1-JA269. It measured Snap's agreements against the contract in a Sixth Circuit mold-remediation case, which dictated "6-mil plastic sheeting." 1-JA271. And it attributed its result to this Court, insisting that a contrary reading "isn't tenable under Tenth Circuit law." 1-JA272-JA273 n.5.

What makes it untenable? The district court misread this Court's precedent as requiring something the Supreme Court never has. *Watson v. Philip Morris Cos.*, 551 U.S. 142 (2007), asks a simple question: Is the private party merely obeying federal law, or is it helping the government do the government's job? A company that simply follows federal regulations, however detailed and however closely enforced, is not "acting under" anyone. *Id.* at 152–53. A company that performs a task the

government would otherwise have to perform itself is acting under a federal officer. *Id.* at 153–54; *Bd. of Cnty. Comm'rs v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1253 (10th Cir. 2022). And it does that work "under" the officer when the relationship involves "subjection, guidance, or control," words that ask whom the company answers to, not how closely anyone checked its work. *Watson*, 551 U.S. at 151 (citation omitted).

The district court assumed, without deciding, that Snap was helping the agencies do their jobs. 1-JA267 n.2. That assumption was correct, and this Court should say so. Congress assigned the agencies the task of reaching teens with these warnings, and the agencies enlisted Snap to reach them, a task the government would otherwise have had to perform itself. 6 U.S.C. § 473(b)(2)(F); 21 U.S.C. § 393(d)(2)(D); 1-JA263-JA264. The district court then went beyond *Watson* to demand proof that the government had scripted the details of Snap's work. But this Court has never imposed that higher bar on a party enlisted to carry out a federal task. *Suncor* and *Integris* turned away companies that merely complied with federal leases and regulations; neither involved a

company the government had enlisted to do its work. *Suncor*, 25 F.4th at 1253; *Doe v. Integris Health, Inc.*, 123 F.4th 1189, 1193 (10th Cir. 2024).

The government has long relied on private hands to accomplish its aims. It refined aviation fuel through Chevron, filled military prescriptions through Express Scripts, and made firefighting foam through 3M. *Plaquemines*, 608 U.S. at 7; *Cnty. Bd. of Arlington Cnty. v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 248–49 (4th Cir. 2021); *Town of Pine Hill v. 3M Co.*, 190 F.4th 1314, 1318 (11th Cir. 2026). None of them was a government instrumentality. Each was sued in state court over conduct tied to that federal work, and each prevailed on appeal in seeking a federal forum. Congress has promised that forum, in one form or another, since 1815, *Willingham v. Morgan*, 395 U.S. 402, 405 (1969), and that promise "should not be frustrated by a narrow, grudging interpretation." *Id.* at 407; *Akin v. Ashland Chem. Co.*, 156 F.3d 1030, 1035 (10th Cir. 1998).

Honoring that promise takes nothing from Kansas; its claims, its law, and its remedies all remain the same in federal court. Breaking that promise, however, costs government contractors the certainty they need about where they will answer for the federal work they agree to perform.

It also denies the federal government the forum Congress built to protect its operations. The remand order should be reversed.

ARGUMENT

I. *WATSON* REQUIRES ONLY GUIDANCE OR CONTROL, NOT DETAILED COMMAND.

Watson draws a single line between obeying federal law and helping the government carry it out. The district court assumed Snap was on the helping side of that line but then demanded a degree of federal scripting that neither *Watson* nor this Court requires.

The statute permits removal of a civil action against "any officer (or any person acting under that officer) of the United States or of any agency thereof . . . for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). Its purpose is to protect the federal government from state-court "interference with its operations." *Plaquemines*, 608 U.S. at 5 (quoting *Watson*, 551 U.S. at 150). The government "can act only through its officers and agents," and a State that can haul those agents into its own courts for doing federal work can "arrest[]" federal operations "at the will of one of its members." *Tennessee v. Davis*, 100 U.S. 257, 263 (1879). So the words "acting under" are "broad," and the statute must be "liberally construed." *Watson*, 551 U.S. at 147 (citation omitted). That

construction overrides the ordinary presumption against removal. *Suncor*, 25 F.4th at 1250–51.

A. *Suncor* and *Integris* enforced *Watson*'s line against companies that merely complied with federal terms.

Watson explains what "acting under" means. The word "under" describes a relationship that "typically involves 'subjection, guidance, or control.'" 551 U.S. at 151 (citation omitted). The private party's activity "must involve an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior." *Id.* at 152 (emphasis in original). The Court was careful about what "help" excludes. A taxpayer filling out a form, a passenger obeying a no-smoking rule, a well-behaved prisoner—these all "help" the government in a colloquial sense, but "simply complying with the law" is not acting under anyone. *Id.* (emphasis omitted). Compliance with federal regulation, however heavy, "does not by itself fall within the scope of the statutory phrase 'acting under' a federal 'official.'" *Id.* at 153.

Philip Morris fell on the compliance side of that line because the FTC regulated its testing and the Court found no evidence of any delegation of legal authority. *Id.* at 156–57. The Agent Orange manufacturers in *Winters* fell on the assistance side because they "provid[ed] the Government with a product that it used to help conduct a

war" and, "at least arguably, . . . performed a job that, in the absence of a contract with a private firm, the Government itself would have had to perform." *Id.* at 153–54 (discussing *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387 (5th Cir. 1998), *overruled on other grounds by Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286 (5th Cir. 2020) (en banc)).

True, *Watson* described the contractor relationship in *Winters* as "an unusually close one involving detailed regulation, monitoring, or supervision." *Id.* at 153. But that sentence describes a relationship the Court had just distinguished from mere compliance; it does not set a floor for every contractor that follows. The Court's test comes two pages earlier, and it is disjunctive: "subjection, guidance, *or* control." *Id.* at 151 (emphasis added). So is the *Winters* description itself: "regulation, monitoring, *or* supervision." *Id.* at 153 (emphasis added).

A court fixing a minimum quantum of federal detail would not have written "or." It was describing a family of relationships in which the government works through private hands, and what the members of that family share is the help itself. That is why *Watson*'s own summary of the contractor cases says nothing about detail: "The assistance that private contractors provide federal officers goes beyond simple compliance with

the law and helps officers fulfill other basic governmental tasks." *Id.* The Court's most recent description of the category is the same. Those who may remove include "certain private parties hired to assist federal officers." *Plaquemines*, 608 U.S. at 5 (citing *Watson*, 551 U.S. at 148–53). Hired to assist. Nothing about how closely the hiring agency must watch.

In *Suncor* and *Integris*, this Court applied *Watson* and both times found the defendant on the compliance side. Exxon won leases to extract oil from the outer continental shelf in exchange for royalty payments; the government bought some of the fuel "as it does from others in the marketplace"; and many of the lease terms were "mere iterations of the OCSLA's regulatory requirements." *Suncor*, 25 F.4th at 1253 (quoting *Mayor & City Council of Balt. v. BP P.L.C.*, 952 F.3d 452, 465 (4th Cir. 2020), *vacated on other grounds*, 593 U.S. 230 (2021)). Exxon was "not assisting the government with essential duties or tasks." *Id.* Integris Health had "shown, at most, that it is highly regulated." *Integris*, 123 F.4th at 1193. In neither case had the government enlisted the private party to carry out a statutory mission.

That context matters for the sentence from *Suncor* that the district court treated as this Court's test. *Suncor* said the private firm "must go

beyond mere compliance with contractual terms, even if complex, and agree to help carry out the duties or tasks of the federal superior under that superior's strict guidance or control." 25 F.4th at 1253. The sentence is built around "mere compliance." It explains what separates a real government contract from a regulatory relationship dressed up as one. The next sentence says that "this closely supervised work must help federal officers fulfill basic government needs, accomplish key government tasks, or produce essential government products." *Id.* The supervision *Suncor* describes is supervision of work done for the government. Nothing in either sentence says that a party the government has enlisted to perform a statutory mission must also show that the government scripted the performance.

Yet the district court read it that way, all while assuming that Snap was helping DHS and the FDA discharge their statutory duties. That assumption placed Snap on the assistance side of *Watson*'s line, akin to the pharmacy in *Arlington*, which helped the Defense Department deliver the health care services that it "must, by law, provide." 996 F.3d at 253. This is the side *Integris* had in mind when it described the "assistance that private contractors provide" as going "beyond simple

compliance with the law" to "help[] officers fulfill other basic governmental tasks." 123 F.4th at 1194 (quoting *Watson*, 551 U.S. at 153). That is the assistance half of *Watson*'s test, and Snap satisfies it.

The only remaining question is whether the relationship involved subjection, guidance, or control. The record the district court recited here answers it. Snap and DHS signed memoranda of understanding (MOUs) under which Snap agreed to research young people's awareness of online sexual exploitation. 1-JA263; 1-JA270. The parties "met intermittently to discuss the campaigns." 1-JA264. DHS employees edited Snap's research questions. 1-JA272. The FDA's media agents sent Snap campaign briefs setting out the agency's goals. 1-JA268-JA269 n.3. That is guidance.

DHS also "approved the final content" of the Know2Protect lens, built for its campaign against online child exploitation, before Snap released it. 1-JA264. DHS decided "where and how" its advertisements appeared and asked Snap to aim them at teens. Snap "obey[ed]." 1-JA264. The FDA "dictate[d]" the same. 1-JA264. That is control. *Watson* asks for "subjection, guidance, *or* control." 551 U.S. at 151 (emphasis added). This record shows guidance *and* control.

The district court found otherwise only by splitting the relationship into three pieces—advertising, lens production, and research—then testing each alone. 1-JA267-JA272. Of each piece it demanded more than *Watson* asks of the whole. It required a "detailed command." 1-JA269. It found that "[n]either DHS nor the FDA exercised exacting oversight or delegated legal authority to Snap." 1-JA269. It faulted the MOUs for failing to "dictate how Snap should conduct research, what 'sexual-related online risks' it should consider, or when or in what format it should return the research." 1-JA271.

Those are demands for control over how Snap went about the work. The court measured the record against an ordinary advertiser, which buys space, decides what its ad says and where it runs, and otherwise leaves the seller alone. 1-JA267-JA268. No one would say a seller acts under its advertisers. But what the agencies got from Snap was different. DHS commissioned custom research from Snap and edited the questions Snap proposed. Snap helped both agencies build custom lenses for their campaigns, and DHS approved the final content of its Know2Protect lens. 1-JA263-JA264; 1-JA272. Snap gave DHS advertising on its platform for free, which, as the district court itself acknowledged, "distinguishes

Snap's relationship with DHS from an ordinary commercial relationship." 1-JA268.

That is work done for the government, and it is the work *Suncor* describes as an effort to "help federal officers fulfill basic government needs." 25 F.4th at 1253. It is also the thing *Suncor* found missing from Exxon's leases, in a sentence the district court never reached: "Nor do the leases obligate Exxon to perform services for the government." *Id.* *Suncor* listed that marker on its own, apart from product specifications and apart from supervision. The district court's test has no room for it. Yet Snap agreed under the MOUs to "[r]efin[e], conduct[], and mak[e] available" research for DHS, 1-JA270, and the court itself concluded that "Snap performed some services for federal officers," 1-JA272. The one marker the court's test left out is the one its own findings supply.

The district court rested its demand for control over the granular details on "Tenth Circuit law." 1-JA272-JA273 n.5. Tenth Circuit law requires no such thing. *Suncor* applied *Watson*'s guidance-or-control element. It did not require the government to micromanage the work. The Fourth and Fifth Circuits read *Watson* the same way. In *Arlington*, the Fourth Circuit asked whether the contractor, "[t]aken as a whole,"

was carrying out the government's duties "subject to the federal government's guidance and control." 996 F.3d at 253. The relationship, not any single contract term, was the unit of analysis. The Express Scripts contract happened to be detailed, and the court relied on that detail as evidence. *Id.* at 252–54. It did not hold that such detail was the floor. And in the Fifth Circuit's words, "a removing defendant need not show that its alleged conduct was precisely dictated by a federal officer's directive." *St. Charles Surgical Hosp., L.L.C. v. La. Health Serv. & Indem. Co.*, 990 F.3d 447, 454 (5th Cir. 2021). The inquiry instead "examines the *relationship* between the removing party and the relevant federal officer." *Id.* at 455 (emphasis in original).

B. The court imported the government-contractor defense into the threshold inquiry.

A contractor can show federal control through detailed specifications. *Watson*, 551 U.S. at 153; *Suncor*, 25 F.4th at 1253. The district court went further and made them a condition of entry, demanding a "detailed command," "exacting oversight," and terms that "dictate how" Snap performed. 1-JA269; 1-JA271. That is not the acting-under test. It is the first element of the government-contractor defense, which displaces state tort law when "the United States approved

reasonably precise specifications," the product "conformed to those specifications," and the contractor warned of dangers it knew and the government did not. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 512 (1988).

Precision of specifications is a merits element of the government-contractor defense. It is not a jurisdictional test for removal. And here it is an element of a defense that is not even in the case. The federal defenses Snap identified below are the First Amendment and Section 230. 1-JA27. The district court thus conditioned a federal forum on proof of the specifications a government-contractor defense would require, in a case where no one has asserted that defense.

Removal exists in large part so that federal defenses like Snap's can be "tried in a federal court." *Willingham*, 395 U.S. at 407. The Supreme Court has warned that "demanding an airtight case on the merits" at the removal stage "would defeat the purpose of the removal statute." *Jefferson Cnty. v. Acker*, 527 U.S. 423, 432 (1999), *superseded by statute on other grounds*, Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545, *as recognized in Plaquemines*, 608 U.S. at 11 n.3. Here the district court demanded that airtight case at the threshold.

The court measured Snap's MOUs against the mold-remediation contract in *Bennett v. MIS Corp.*, 607 F.3d 1076 (6th Cir. 2010), which required "6-mil plastic sheeting," scrubber machines with particulate filters, and contractually specified disposal procedures. 1-JA271 (citing *Bennett*, 607 F.3d at 1087). But *Bennett* held only that a contract that specific was enough. It did not hold that anything less was too little. *Bennett*'s contract included project specifications, the kind of detail *Boyle*'s government-contractor defense turns on at the merits stage. 487 U.S. at 512. A court that requires them before a contractor may enter the federal courthouse has put the merits on trial at the door, before the contractor is allowed inside to try its defenses.

The same move appears in the court's treatment of the advertising relationship. The court found that the agencies' placement choices amounted to "selecting among a few pre-curated options," which it called "a far cry from furnishing 'detailed government specifications aimed at satisfying pressing federal needs.'" 1-JA268 (quoting *Suncor*, 25 F.4th at 1253). But *Suncor* used that phrase to describe what Exxon's leases lacked: any obligation "to make a product specially for the government's use." 25 F.4th at 1253. The FDA's campaign was tailored to a federal need

by definition. The agency had one purpose—reaching teens with anti-tobacco messages—and Snap helped build the campaign and aimed it at that purpose. The FDA set the goals and dictated where and how the ads would run; Snap executed "per the FDA's request." 1-JA264; 1-JA268-JA269 n.3. That the agency did so by selecting among placements Snap made available says nothing about whether Snap was helping the FDA. A government that directs a contractor's work by choosing among the contractor's proposals is still directing the work.

The court read the research emails through the same merits lens. It called DHS's redlining of Snap's research questions the work of "a run-of-the-mill editor, not a regulator," and concluded that the emails "suggest that it was Snap, not DHS, running the show." 1-JA272. But how closely the government dictated the details of the work is the question the government-contractor defense asks on the merits. It is not the test for removal.

II. SELLING TO EVERYONE DOES NOT MAKE THE GOVERNMENT JUST ANOTHER CUSTOMER.

The government works through private hands because private hands are already skilled. Running through the district court's analysis is an inference that turns that fact against the contractor. The court

repeatedly treated Snap's sale of the same tools to everyone else as evidence that its work for the agencies was just an ordinary commercial deal. In the court's telling, any advertiser can control placement, so placement control shows no special relationship. 1-JA268. Agency approvals are "typical of a mine-run commercial relationship," so approvals show nothing either. 1-JA270. Standard business terms governed the FDA's ad buys, so the relationship was standard. 1-JA267-JA268. But each of these observations is beside the point, and the inference the court drew from them has no footing in precedent.

Chevron already ran a Texas refinery when World War II came. It agreed to quadruple that refinery's avgas capacity for the military and gave the government an option on its "excess" output. Much of the crude from the very Louisiana field that was the basis of the parish's suit went into that refining. *Plaquemines*, 608 U.S. at 7, 13. Express Scripts' mail-order pharmacies served the military program and the public alike; the Defense Department was its "second-largest client," at about twelve percent of revenue. *Arlington*, 996 F.3d at 248–49, 252 & n.8. And 3M made firefighting foam for the military and sold PFAS products to paper

mills. *Pine Hill*, 190 F.4th at 1318–19. In each case, the government put the firm's commercial operations to work for federal ends.

The Fourth Circuit held that Express Scripts was acting under a federal officer, *Arlington*, 996 F.3d at 253–54; the Eleventh Circuit held that 3M had plausibly alleged as much, *Pine Hill*, 190 F.4th at 1321; and the Supreme Court assumed the same of Chevron, *Plaquemines*, 608 U.S. at 10 n.2. The commercial nature of those operations did not count against any of them. It has nothing to do with whether a firm, in putting those operations to the government's use, was assisting a federal task under federal guidance.

Congress has told agencies to work this way. The head of each executive agency must ensure, "to the maximum extent practicable," that agency requirements "are stated in terms of" the "functions to be performed," the "performance required," or the "essential physical characteristics" of what is bought, 41 U.S.C. § 3307(b)(1); that procurement officials "acquire commercial services or commercial products . . . to meet the needs of the executive agency," *id.* § 3307(c)(1); and that they "modify requirements in appropriate cases to ensure that the requirements can be met by commercial services or commercial

products," *id.* § 3307(c)(3). Federal procurement policy is to buy what the market already makes and to describe the need rather than dictate the method.

The district court found the MOUs deficient because they defined "the defendant's duties in general terms" and Snap "was the one who decided how to fulfill those duties." 1-JA270 (quoting *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101, 1110 (9th Cir. 2022)) (cleaned up). The court faulted Snap's agreements for the very feature that Congress insists upon in federal contracting. A rule that treats that feature as grounds for denying the federal forum cannot be what Congress meant by "acting under."

The district court's own examples show just how far its analysis strayed. It found the advertising relationship ordinary because "the FDA, through an agent, placed advertising orders 'on Snap's advertising platform'—just as any advertiser would." 1-JA267. By that logic, the pharmacy in *Arlington* filled military prescriptions just as it filled any prescription, and the refinery in *Plaquemines* refined crude just as it refined any crude. The question is not whether the tool is one that others

can buy. The question is whether the government used it to carry out a federal task, and whether the government guided that use.

Nothing changes because Snap is a private business with its own reasons for doing the work. Nearly every federal contractor is, and that is the point. Chevron refined avgas for profit, Express Scripts' pharmacies filled prescriptions for profit, and 3M made foam for profit, and each kept its federal forum all the same. The question *Watson* asks is not why the private party took the job. It is whether the party is helping the government carry out a federal task and, if so, whether it is doing so under the government's guidance or control. 551 U.S. at 151–52. The district court assumed the first. 1-JA267 n.2. Its own recitation of the record supplies the second. 1-JA263-JA264.

III. REMOVAL COSTS KANSAS NOTHING; REMAND COSTS EVERYONE ELSE.

Federal-officer removal changes only where a case is heard, not which law governs it. So removal takes nothing from Kansas. The State keeps its claims, its governing law, and its remedies. Remand costs everyone else. It takes from the federal government the forum Congress created to shield its operations from state interference. It leaves private firms unable to know, when the government asks for their help, whether

that forum will be there if they are sued over the work. And here it exposes two federal agencies' own campaigns to one State's judgment about how they may reach young people. That imbalance is why the statute is read liberally, and why the district court's reading cannot stand.

A. Removal is derivative, so Kansas keeps its law.

This Court has long understood that removal under § 1442(a)(1) "does not revise or alter the underlying law to be applied." *City of Aurora v. Erwin*, 706 F.2d 295, 296 (10th Cir. 1983) (quoting *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981)). It is "a purely derivative form of jurisdiction, *neither enlarging nor contracting the rights of the parties*." *Id.* at 296–97 (emphasis in original) (quoting *Manypenny*, 451 U.S. at 242). The federal court "serves as an alternative forum," applying state law "through the mechanism of its own procedural rules." *Id.* at 297. Federal involvement is "limited to assuring that an impartial setting is provided." *Id.* (quoting *Manypenny*, 451 U.S. at 242).

So if this case is tried in the District of Kansas, the State prosecutes its Consumer Protection Act claims, seeks its civil penalties and its injunction, and does so under Kansas law, before a federal court sitting

in Kansas, with any jury drawn from Kansans. The only thing it loses is the choice of courthouse, and Congress made that choice for it. "[T]he right to removal for conduct performed under color of federal office is absolute." *Aurora*, 706 F.2d at 296 (citing *Manypenny*, 451 U.S. at 242).

"The Supreme Court has long recognized removal to federal courts in these circumstances as a matter of considerable importance to the United States." *Id.* The importance lies in what the federal forum secures for the government's side of the ledger: a place where federal defenses are tried by an Article III judge rather than by a forum the statute presumes may "reflect 'local prejudice' against unpopular federal laws or federal officials." *Watson*, 551 U.S. at 150 (citation omitted).

That is why this Court has said the statute's policy "should not be frustrated by a narrow, grudging interpretation." *Akin*, 156 F.3d at 1035 (quoting *Aurora*, 706 F.2d at 296). A reading that costs one side everything that Congress gave it and costs the other side nothing is both narrow and grudging.

B. The district court's test cannot be priced in advance.

The district court's test asks whether a memorandum was detailed enough, whether an edit was substantive enough, and whether an

approval was more than "process approval." 1-JA270-JA272. Justice Scalia had a metaphor for that exercise: "judging whether a particular line is longer than a particular rock is heavy." *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 897 (1988) (Scalia, J., concurring in the judgment). Each answer depends on the judge, and nothing in the test tells a contractor in advance which way the answers will come out.

The Supreme Court has explained why that matters. "[A]dministrative simplicity is a major virtue in a jurisdictional statute," not least because "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). Complex jurisdictional tests "eat[] up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Id.* They "produce appeals and reversals, encourage gamesmanship, and, again, diminish the likelihood that results and settlements will reflect a claim's legal and factual merits." *Id.*

Those costs fall hardest on the decision to work with the government at all. A firm the government asks for help must price the request. That price includes the litigation risk that comes with doing the government's work in a State that disapproves of it. Congress lowered

that price by promising a federal forum. A test that turns on whether a district judge finds an MOU detailed enough, or a line edit controlling enough, raises the price and makes it unknowable in advance. Firms that cannot measure the risk will decline the work, and the government will find fewer private hands willing to help.

The district court's rule also cuts against the firms most likely to be sued. Kansas sued Snap over features it calls addictive. 1-JA262-JA263. But federal agencies enlist platforms like Snapchat precisely because that is where young people are. A rule that makes the federal forum hardest to reach for the firms doing the most effective federal outreach turns the statute upside down.

C. The suit reaches the federal campaigns.

The federal interest here is not abstract. Kansas's petition attacks "ephemeral content," "infinite scrolling," and the platform's design as "addictive" and therefore unconscionable. 1-JA262-JA263. The DHS and FDA campaigns run on that platform and use its interactive features. DHS "leveraged 'Snapchat's interactive features,'" and Snap helped it build custom lenses, a feature that "allow[s] users to add interactive animations to photos and videos." 1-JA263. Snap helped the FDA build

lenses so teens could "create a video of themselves," add "effects, animations, and personalization," and "share their video with friends and family." 1-JA264. Kansas seeks an injunction against that design. 1-JA263. Any court granting that relief would reshape the federal agencies' chosen means of reaching teens.

Section 1442(a)(1) has a second element, which the district court did not reach: the suit must be "for or relating to" the federal work. Its analysis, the court said, "begins and ends with the acting-under prong." 1-JA266. *Plaquemines* settled how broad that second element is. A removing defendant "need not show that his federal duties specifically required or strictly caused the challenged conduct"; a connection that is not "tenuous, remote, or peripheral" will do. 608 U.S. at 11–12. Because Kansas seeks relief for the design every Kansas teen encounters, including those who use the agencies' lenses, this suit plainly relates to the agencies' campaigns. *See id.*; *Arlington*, 996 F.3d at 257.

This is the interest *Davis* described nearly a century and a half ago. The government can act "only through its officers and agents," and if a State can proceed against those agents "for an alleged offense against the law of the State," the government's "operations . . . may at any time be

arrested at the will of one of its members." 100 U.S. at 263. Whether Snap's design is harmful, and whether Kansas law forbids it, are questions removal does not resolve. Removal ensures only that a court answerable to the whole country, rather than to one State, decides them when a federal program is at stake.

* * *

The district court closed its analysis by observing that "[n]o doubt, Snap performed some services for federal officers." 1-JA272. Under *Watson*, that finding is where the inquiry begins. Although the record the court recited answers it, the court's analysis never does.

The government asked a private firm to help it reach an audience that it had a statutory duty to reach. The firm said yes, helped build what the agencies approved, aimed it where the agencies directed, and gave some of it away. Congress promised such firms a federal forum if they are sued in state court over the work. Nothing in *Watson*, *Suncor*, or *Integris* takes the promise back because the agencies described what they needed rather than micromanaged how to build it.

CONCLUSION

The order remanding this case to state court should be reversed.

Respectfully submitted,

November 13, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limits of Fed. R. App. P. 29(a)(5) because it contains 5,511 words, excluding the parts exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(B).

I also certify that this brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and (a)(6) because it uses 14-point Century Schoolbook font.

/s/ Cory L. Andrews
CORY L. ANDREWS

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I hereby certify that:

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I certify that on November 13, 2026, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit through the CM/ECF system, which will send notice to the attorneys of record here who are registered with the Court's CM/ECF system.

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