



GOVERNOR GREG ABBOTT

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Via E-Filing

Mr. Blake Hawthorne, Clerk
Supreme Court of Texas

Re: No. 20-0558, *Exxon Mobil Corp. v. City of San Francisco*

Dear Mr. Hawthorne:

Governor Greg Abbott submits this letter brief as amicus curiae supporting petitioner in the above-captioned case. The Court should grant the petition for review to resolve an important legal question with major implications for the energy industry in the State of Texas.*

As Governor Abbott declared in Executive Order GA-33, the energy industry is vital to economic growth in Texas, employing hundreds of thousands of Texans and contributing billions of dollars a year in taxes and royalties. 46 Tex. Reg. 1117–18 (2021); *cf.* TXOGA Amicus Br. 4. Petitioner is an oil-and-gas company headquartered in Texas. Respondents are California officials and local governments, plus a Massachusetts lawyer, who are allegedly using tort lawsuits in California courts as a pretext to suppress the speech of eighteen Texas-based energy companies on the subject of climate and energy policies.

By engaging in such “lawfare,” respondents have flouted “principles of state sovereignty and comity [dictating] that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors’ lawful conduct in other States.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 (1996). More importantly, for present purposes,

* No fee was paid or will be paid for preparing this brief. *See* TEX. R. APP. P. 11(c).

they have subjected themselves to the jurisdiction of Texas courts. When out-of-state officials try to project their power across our border, as respondents have done by broadly targeting the speech of an industry crucial to Texas, they cannot use personal jurisdiction to scamper out of our courts and retreat across state lines.

This understanding of personal jurisdiction is now the law in every federal court in Texas, according to *Defense Distributed v. Grewal*, 971 F.3d 485 (5th Cir. 2020), *cert. denied*, 2021 WL 1163750 (U.S. Mar. 29, 2021). In that case, the Attorney General of New Jersey sent a cease-and-desist letter threatening legal action against a Texas company if it published files describing 3D-printed firearms. *Id.* at 488–89, 491. When the Texas company sued over this First Amendment violation in the Western District of Texas, the Attorney General of New Jersey sought dismissal for lack of personal jurisdiction. *Id.* at 489. Rejecting this argument, the Fifth Circuit held there was specific jurisdiction because the letter sought to prevent a Texas company from publishing speech for other Texans to read in Texas. *See id.* at 495–96. Writing for the panel, Judge Jones explained that the Attorney General of New Jersey had the requisite minimum contacts with Texas because “[h]e has projected himself across state lines and asserted a pseudo-national executive authority.” *Id.* at 493 & n.8.

The opinion below squarely conflicts with the Fifth Circuit’s decision, holding that respondents lack the minimum contacts needed for a Texas court to exercise personal jurisdiction. *See City of San Francisco v. Exxon Mobil Corp.*, No. 02-18-00106-CV, 2020 WL 3969558, at *19 (Tex. App.—Fort Worth June 18, 2020). In the key passage, the court of appeals wrote that “[t]he fact that most, if not all, of [respondents] are governmental entities or government officials does not affect this conclusion,” relying on another opinion by Judge Jones for support. *Id.* at *18 (footnote omitted) (citing *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 480, 483–84 (5th Cir. 2008)). As Judge Jones has since explained, however, that fact makes all the difference in a case like this one. *See Defense Distributed*, 971 F.3d at 492–93 (explaining why “*Stroman* is distinguishable, and thus not dispositive”).

So in a federal court in Texas, under *Defense Distributed*, the Due Process Clause would not prevent the court from exercising jurisdiction

over California officials who have deployed abusive litigation to dictate the behavior and speech of the energy industry in Texas. And that comports with fair play. After all, no Texan voted for any of these meddling California officials. Respondents should mind their own business in California if they want to stay out of court in Texas.

Yet if the opinion below stands, a state court in Texas would reach the opposite result. Personal jurisdiction cannot depend on whether a Texan walks into a state courthouse instead of crossing the street to a federal courthouse. The judges in either building understand that “Texas gives its courts of general jurisdiction all of the power allowed by the Due Process Clause.” *Sayers Constr., L.L.C. v. Timberline Constr., Inc.*, 976 F.3d 570, 573 (5th Cir. 2020). This Court should grant the petition for review, apply the sensible standard announced by the Fifth Circuit in *Defense Distributed*, and reverse the judgment of the court of appeals.

Respectfully submitted.

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