



GOVERNOR GREG ABBOTT

JAMES P. SULLIVAN
Deputy General Counsel

(512) 936-7236
james.sullivan@gov.texas.gov

May 6, 2021

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.

GREG ABBOTT
Governor of Texas

JEFFREY L. OLDHAM
General Counsel

/s/ James P. Sullivan
JAMES P. SULLIVAN
Deputy General Counsel
Texas Bar No. 24070702
james.sullivan@gov.texas.gov

Office of the Governor
P.O. Box 12428
Austin, Texas 78711
(512) 936-7236

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 781 words, excluding the exempted portions of the document.

/s/ James P. Sullivan
James P. Sullivan
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

On May 6, 2021, this document was served electronically on all counsel of record as follows:

Ralph H. Duggins (rduggins@canteyhanger.com)
Counsel for Petitioner

Michael Rubin (mrubin@altber.com)
Counsel for Respondents

Steven K. Hayes (shayes@stevhayeslaw.com)
Counsel for Respondent

/s/ James P. Sullivan
James P. Sullivan
Counsel for Amicus Curiae

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Envelope ID: 53180153

Status as of 5/6/2021 11:57 AM CST

Associated Case Party: Exxon Mobil Corporation

Name	BarNumber	Email	TimestampSubmitted	Status
Karen SPrecella		karen.precella@haynesboone.com	5/6/2021 11:54:53 AM	SENT
Nina Cortell		nina.cortell@haynesboone.com	5/6/2021 11:54:53 AM	SENT
Philip Vickers	24051699	pvickers@canteyhanger.com	5/6/2021 11:54:53 AM	SENT
Patrice Childress	24059569	patrice.b.childress@exxonmobil.com	5/6/2021 11:54:53 AM	SENT
Patrick Conlon	24054300	patrick.j.conlon@exxonmobil.com	5/6/2021 11:54:53 AM	SENT
Mike Hatchell		mike.hatchell@haynesboone.com	5/6/2021 11:54:53 AM	SENT
Theodore V.Wells, Jr.		twells@paulweiss.com	5/6/2021 11:54:53 AM	SENT
Daniel J.Toal		dtoal@paulweiss.com	5/6/2021 11:54:53 AM	SENT
Justin Anderson		janderson@paulweiss.com	5/6/2021 11:54:53 AM	SENT
Chris Knight		chris.knight@haynesboone.com	5/6/2021 11:54:53 AM	SENT

Associated Case Party: City of San Francisco

Name	BarNumber	Email	TimestampSubmitted	Status
Richard Kamprath	24078767	rkamprath@mckoolsmith.com	5/6/2021 11:54:53 AM	SENT
Robert M. Manley	787955	rmanley@mckoolsmith.com	5/6/2021 11:54:53 AM	SENT
Benjamin G.Murray		bmurray@mckoolsmith.com	5/6/2021 11:54:53 AM	SENT
Alexandra F.Easley		aeasley@mckoolsmith.com	5/6/2021 11:54:53 AM	SENT
Michael Rubin		mrubin@altber.com	5/6/2021 11:54:53 AM	SENT

Case Contacts

Name
Denise Stilz
Martin Darren Woodward
Tyler Bexley

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Envelope ID: 53180153
Status as of 5/6/2021 11:57 AM CST

Case Contacts

Scott Kitner	24065563	skitner@stanleylawgroup.com	5/6/2021 11:54:53 AM	SENT
Steven Knowles Hayes	9280100	shayes@stevhayeslaw.com	5/6/2021 11:54:53 AM	SENT
Marc Stanley	19046500	marcstanley@mac.com	5/6/2021 11:54:53 AM	SENT
Ralph Duggins		rduggins@canteyhanger.com	5/6/2021 11:54:53 AM	SENT
James Sullivan		james.sullivan@gov.texas.gov	5/6/2021 11:54:53 AM	SENT