

No. 20-0558

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**In the  
Supreme Court of Texas**

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EXXON MOBIL CORPORATION,

*Petitioner,*

v.

CITY OF SAN FRANCISCO, ET AL.

*Respondents.*

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**From the Court of Appeals for the Second District  
No. 02-18-00106-CV**

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**BRIEF OF THE TEXAS OIL & GAS ASSOCIATION AS *AMICUS CURIAE*  
IN SUPPORT OF THE PETITION FOR REVIEW**

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### INTEREST OF THE *AMICUS CURIAE*

The Texas Oil & Gas Association (TXOGA) is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces in excess of 80 percent of Texas' crude oil and natural gas, operates over 80 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. In fiscal year 2019, the oil and natural gas industry supported more than 428,000 direct jobs and paid more than \$16 billion in state and local taxes and state royalties—the highest total in Texas history—funding Texas schools, roads, and first responders.

TXOGA's mission is to promote a robust oil and natural gas industry and to advocate for sound, science-based policies and free-market principles. As part of that mission, TXOGA regularly files amicus briefs in cases involving issues important to its members' interests, examples being amicus briefs that TXOGA filed in *BP Am. Prod. Co. v. Red Deer Resources, LLC*, 526 S.W.3d 389 (Tex.2017); *Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302 (2014), and *Rice v. Harken Exploration Co.*, 250 F.3d 264 (5th Cir. 2001).

TXOGA has an interest in this matter brought by Exxon Mobil because TXOGA's other members, as well as the oil and gas industry in general, may become the victims of the same type of targeting to which Exxon Mobil has been subjected.

### **DISCLOSURE UNDER RULE 11(C)**

No counsel for any party authored this brief in whole or in part, and no person or entity other than TXOGA, its counsel, or its members made a monetary contribution for preparation or submission of this brief. Petitioner is a member of TXOGA but it is not paying any of the fees or expenses related to this brief.

### **ARGUMENT**

Due process principles under the United States Constitution control the extent to which Texas courts can exercise jurisdiction over defendants located outside Texas. *See Spir Star AG v. Kimich*, 310 S.W.3d 868, 872 (Tex. 2010). Under those principles, the potential defendants here have made themselves subject to the jurisdiction of Texas courts because they have targeted conduct in Texas by attempting to stop Texas citizens from exercising their free speech and associational rights.

Defining the relevant due-process principles has become increasingly difficult over recent decades with the rapid expansion of commerce and communications within this country and abroad, including the widespread use of the internet. At least in part because of those societal changes, the United States Supreme Court has struggled to develop a coherent view of personal jurisdiction, as evidenced by plurality decisions on key questions about the reach of personal jurisdiction in *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2012), and *Asahi*

*Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987). *See generally Leading Cases*, 125 Harvard L. Rev. 311 (2011). Recently, however, the Court has clarified the scope of personal jurisdiction.

It is now clear that all-purpose general jurisdiction exists only where the defendant is “‘at home.’” *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1789 (2017) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Individuals are at home where they live, and a business entity is at home where it was formed and where it has its principal place of business. *See id.*; *Daimler AG v Baumann*, 571 U.S. 117, 137 (2014). Only in an “‘exceptional case’” can general jurisdiction over a business entity exist outside those two paradigms. *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (quoting *Daimler*, 571 U.S. at 139 n.19).

There are likewise two principal bases for specific jurisdiction—an activity or occurrence in the forum from which the plaintiff’s claim arises. *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781. Notably, the Fifth Circuit quoted these bases for specific jurisdiction in the *Defense Distributed v. Grewal* case that is discussed at length in the pending Petition for Review. *See* 971 F.3d 485, 495 (5th Cir. 2020). *Grewal* is closely analogous to this case, as discussed in the Petition for Review, and TXOGA will not add to Exxon Mobil’s thorough and correct discussion of *Grewal*.

Suffice it to say, when a defendant uses “lawfare” to extinguish the plaintiff’s *primary conduct* in the forum state (such as the exercise of free speech and associational rights), there is an activity and occurrence in the forum from which the plaintiff’s claim arises and that justifies the exercise of specific jurisdiction under existing Supreme Court precedent. Here, by targeting conduct in order to stop it from happening in Texas, the potential defendants have availed themselves of the privilege of acting within this State and made themselves subject to Texas jurisdiction.

This type of targeting is far different from conduct outside the forum that is untargeted and simply has an effect in the forum, whether intended or not. That conclusion is consistent with a statement made by the Supreme Court in *Walden v. Fiore*, 571 U.S. 277, 286-88 (2014), when it was discussing *Calder v. Jones*, 465 U.S. 783 (1984)—namely, the statement that “mere injury to a forum resident is not a sufficient connection to the forum. The proper question is whether the defendant’s conduct connects him to the forum in a meaningful way.”

Here, the potential defendants have connected themselves to Texas in a “meaningful way” by attempting to suppress free speech and associational conduct in Texas. Indeed, the targeted Texas conduct by Exxon Mobil is even more a “focal point” of the potential defendants’ actions than the conduct of the California subject in the libelous report published by the Florida-based newspaper in *Calder*. The

newspaper was not attempting to control what was happening inside the forum. The potential defendants are attempting to do just that.

Consequently, there are sufficient contacts for purposes of specific jurisdiction under the three-part test that this Court recently derived from controlling case law: (1) the defendant has contacts with forum that are relevant to the claim; (2) those contacts are purposeful rather than random, fortuitous, or attenuated; and (3) the defendant must have been seeking some benefit, advantage, or profit by availing itself of the jurisdiction. *See Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 559 (Tex. 2018). Here, the potential defendants' contacts are closely relevant to the claims by Exxon Mobil. Potential defendants' conduct was not just purposeful, it was targeted at specific speech occurring in Texas. Finally, the potential defendants are seeking an advantage: to exercise control over what Exxon Mobil is saying in Texas, just as they or others may attempt to do to thwart the exercise of free speech and associational activities of other members of TXOGA and the oil and gas industry in general.

In sum, there is ample support in existing precedent for Texas courts to adjudicate Exxon Mobil's claims against the potential defendant and thus sufficient jurisdictional power to entertain and preside over Rule 202 proceedings.



## CONCLUSION

TXOGA joins Petitioner in asking this Court to request a response to the Petition as well as full merits briefing, and then to grant review and reverse the decision of the court of appeals.

Dated: November 10, 2020

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE UNDER APPELLATE RULE 9.4**

I certify that this brief complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2) because it contains 1,203 words, excluding the parts of the briefs exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

*/s/ Reagan W. Simpson*

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I certify that on November 10, 2020, I used the Court's electronic case filing system to submit this amicus brief and to serve this document on the following:

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