No. 20-984

IN THE

Supreme Court of the United States

GURBIR S. GREWAL,
Attorney General of New Jersey,
Petitioner,

v.

DEFENSE DISTRIBUTED, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE STATES OF NEW YORK, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW MEXICO, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, AND WASHINGTON, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

Table of Authorities ii

Introduction and Interests of Amici.....1

Summary of Argument 3

Argument.....5

I. Cease-and-Desist Letters Sent Out of State Are a Critical Tool for States to Enforce Their Own Laws and Protect Their Own Citizens.....5

II. Principles of State Sovereignty and Federalism That This Court Has Recognized Prohibit Courts from Exercising Personal Jurisdiction Over Out-of-State Officials Based Only on Cease-and-Desist Letters. 11

A. State Officials Do Not Establish Minimum Contacts with Another State Merely by Sending a Cease-and-Desist Letter to a Recipient in That State.....12

B. It Offends State-Sovereignty and Federalism Principles for Courts to Exercise Personal Jurisdiction over Out-of-State Officials Who Are Enforcing Their Own State's Laws from Their Own States. 14

Conclusion.....21

TABLE OF AUTHORITIES

Cases **Page(s)**

Agey v. American Liberty Pipe Line Co., 141 Tex. 379 (1943) 6

Bernhardt v. Polygraphic Co. of Am., 350 U.S. 198 (1956) 18

Bishop v. Wood, 426 U.S. 341 (1976) 17

Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty., 137 S. Ct. 1773 (2017) 11,14,18

Charles Scribner's Sons v. Marrs, 114 Tex. 11 (1924) 7

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Exxon Mobil Corp. v. Attorney General, 479 Mass. 312 (2018) 17

In re Criminal Investigation No. 1, 75 Md. App. 589 (1988) 7

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United States v. Hohri, 482 U.S. 64 (1987) 17

Walden v. Fiore, 571 U.S. 277 (2014)..... 13

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§ 2..... 6
§ 4..... 6,7
§ 6..... 6,7

Me. Rev. Stat. Ann.
tit. 5
§§ 194-194K..... 6
§ 207 6
§ 209 7
§ 211 6,7
tit. 10
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§ 2A:54A-1 6
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§ 57-12-3 6
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§ 57-12-11 7
§ 57-12-12 7
§ 57-22-9–57-22.9.2 6
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N.Y. Gen. Bus. Law
§§ 342-343 6
§ 349 6,7
§ 352(2) 7
§ 353 7

N.Y. Not-for-Profit Corp. Law
§ 112 6
§ 115 6
§ 1101 6

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§ 17.47 6
§ 17.58 6
§ 17.60 6
§ 17.61 6,7

Tex. Civ. Prac. & Rem. Code Ann. ch. 125 6

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§ 19.86.040 6
§ 19.86.080 7
§ 19.86.100 7
§ 19.86.110 6,7

Rules

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INTRODUCTION AND INTERESTS OF AMICI

The States of New York, California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, and the District of Columbia file this brief as amici curiae in support of New Jersey Attorney General Gurbir Grewal's petition for a writ of certiorari.[1] Whether a nonresident state official who is enforcing his own state laws subjects himself to personal jurisdiction in another State when he sends a single cease-and-desist letter from his home State to a resident of the forum State—the question presented here—is important to state and local officials across the country. Amici submit this brief to underscore that the Fifth Circuit failed to account for critical state-sovereignty and federalism considerations when it answered that question in the affirmative in a decision that departs from the rulings of this Court and multiple courts of appeals.

State Attorneys General like Attorney General Grewal serve as the chief legal officers for their States, protecting state residents and interests by enforcing laws concerning consumer protection, antitrust, civil rights, environmental protection, health care, employment, and public safety. In exercise of those functions, they—like other state and local officials—routinely send cease-and-desist letters. Moreover, in the internet age, state and local officials increasingly must direct such cease-and-desist letters out of State, to businesses

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[1] Pursuant to this Court's Rule 37.2(a), all parties received advance notice of the filing of this amicus brief. Respondents consented to this filing on fewer than ten days' notice.

and other entities like Defense Distributed that operate online across state lines and may be simultaneously violating the laws of many States.

This Court's precedents—and the federalism principles underpinning them—do not permit the recipient of a cease-and-desist letter from an out-of-state official to sue the official in the recipient's home State when the letter was sent from the official's home State, and the official is simply enforcing his own State's laws as applied to the recipient's activities in the official's home State. Permitting suits in such circumstances, as the Fifth Circuit did here, forces a state official to risk burdensome and expensive lawsuits in a foreign forum as the cost of protecting his own State's residents from an entity that is reaching into the official's State and violating that State's laws. Putting a state official to that choice undermines state sovereignty and harms the public interests of the official's State by chilling legitimate law-enforcement efforts or else dramatically increasing the costs of those efforts, including by encouraging premature lawsuits against States in courts that lack expertise and a stake in the relevant State's law.

The amici States have a compelling interest in protecting the traditional authority of their Attorneys General and other state officials to investigate and combat violations of state laws designed for the protection of their citizens. Respect for state sovereignty and federalism dictates that the courts in foreign States must not needlessly impede the core law-enforcement functions of other States' officials.

SUMMARY OF ARGUMENT

I. State Attorneys General are responsible for enforcing the laws that their States have enacted for the protection of their citizens. To ensure that Attorneys General can fulfill this crucial state-law duty, States vest their Attorneys General with discretion to use a wide range of investigatory and enforcement tools.

Among the most common and cost-effective enforcement tools employed by Attorneys General are cease-and-desist letters demanding that parties who appear to be violating state law cease such violations. Other state and local enforcement officials also routinely utilize cease-and-desist letters. As businesses and organizations increasingly operate across state lines—particularly online—and entities in one State may violate the laws of another State through their online marketing or other practices, state and local officials cannot adequately protect their residents from violations of their own laws without sending cease-and-desist letters to entities based in other States.

II. As "coequal sovereigns in a federal system," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980), States must be accorded "the sovereign power to try causes in their courts," *id.* at 293. Thus, a court should not exercise personal jurisdiction over an out-of-state official whose only contact with the forum State is the sending of a cease-and-desist letter to enforce the law of the official's own State against an entity that is reaching into the official's State. In these circumstances, the out-of-state official has not established the minimum contacts with the forum State that the Due Process Clause requires. The official is not availing herself of the privilege of conducting activities in the State where the recipient of the letter happens

to be located—for example, by invoking the protections or benefits of that other State's laws. Instead, the state official is simply executing her state-law duty to enforce the laws of her own State.

In determining whether an exercise of personal jurisdiction is consistent with due process, "the reasonableness of asserting jurisdiction over the defendant" also "must be assessed in the context of our federal system of government." *Id.* (quotation marks omitted). And principles of state sovereignty and federalism make it unreasonable for courts to exercise personal jurisdiction over an out-of-state official who is enforcing her own State's laws from her own State. Allowing such suits would seriously impair the ability of state officials to protect their residents from those who would violate their laws from an out-of-state perch. If state officials' mere communication with those potential lawbreakers can cause the officials to be haled into court in a foreign jurisdiction, they will become embroiled in burdensome and costly suits that will take place in geographically distant courts lacking expertise and an interest in the relevant State's law. And if, to avoid such litigation, state officials refrain from communicating with out-of-state lawbreakers, they will forego an important means of protecting their residents from harms that originate out of State. State-sovereignty and federalism interests counsel strongly against imposing this choice on state officials.

ARGUMENT

I. Cease-and-Desist Letters Sent Out of State Are a Critical Tool for States to Enforce Their Own Laws and Protect Their Own Citizens.

State Attorneys General are charged with investigating and remediating matters of public concern affecting their States. Carried over from English common law, the office of state Attorney General has existed since this country's founding.[2]

The specific contours of each state Attorney General's authority are a core matter of state concern dictated by each State's own common law, constitution, and statutes. *See, e.g.*, *Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268-74 (5th Cir. 1976). Although their powers vary, state Attorneys General traditionally serve as their State's "chief law enforcement officer," with responsibility for safeguarding the public interest through, among other things, investigations and enforcement proceedings to halt violations of state law. *See, e.g.*, *Synanon Found., Inc. v. California*, 444 U.S. 1307, 1307 (1979) (Rehnquist, C.J., in chambers); *Ex parte Young*, 209 U.S. 123, 176 (1908).[3] The work of

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[2] *See* William P. Marshall, *Break Up the Presidency? Governors, State Attorneys General, and Lessons from the Divided Executive*, 115 Yale L.J. 2446, 2449-50 (2006); *see also* Nat'l Ass'n of Att'ys Gen., *State Attorneys General: Powers and Responsibilities* 1, 4-7 (4th ed. 2018) (NAAG, *Attorneys General*).

[3] *See also, e.g.*, *Commonwealth v. Johnson*, 423 S.W.3d 718, 724 (Ky. 2014) (Attorney General is Commonwealth's "chief law enforcement officer" whose power "is not limited to that which is expressly conferred [by statute] but also includes that which is necessary to accomplish the things which are expressly authorized"); *Disciplinary Counsel v. Dann*, 134 Ohio St. 3d 68, 2012-

Attorneys General "touches upon virtually all areas of our state government." *Disciplinary Counsel v. Dann*, 134 Ohio St. 3d 68, 2012-Ohio-5337, ¶ 23 (per curiam).

A principal responsibility of state Attorneys General is protecting their State's citizens from violations of state law by businesses and organizations operating in the State. State laws charge Attorneys General with guarding against a broad range of unfair and illegal activities, such as fraud,[4] anticompetitive conduct,[5] improper practices by charitable organizations,[6] and maintenance of a public nuisance.[7]

To ensure that Attorneys General can fulfill these important state-law duties, States have long vested their Attorneys General with broad discretion to use a

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Ohio-5337, ¶ 23 (per curiam) (Attorney General is "chief law officer of the state"); *Secretary of Admin. & Fin. v. Attorney General*, 367 Mass. 154, 159 (1975) (Attorney General is "chief law officer of the commonwealth"); *Agey v. American Liberty Pipe Line Co.*, 141 Tex. 379, 382 (1943) ("The Attorney General is the chief law officer of the State, and it is incumbent upon him to institute in the proper courts proceedings to enforce or protect any right of the public that is violated.").

[4] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, §§ 207, 211; Mass. Gen. Laws Ann. ch. 93A, §§ 2, 4, 6; N.M. Stat. Ann. § 57-12-3; N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law § 349; Tex. Bus. & Com. Code Ann. §§ 17.47, 17.58, 17.60, 17.61; Wash. Rev. Code Ann. §§ 19.86.020, 19.86.110.

[5] *See, e.g.*, Me. Rev. Stat. Ann. tit. 10, §§ 1101-1110; Miss. Code Ann. §§ 75-21-1, 75-21-7; N.Y. Gen. Bus. Law §§ 342-343; Wash. Rev. Code Ann. § 19.86.040.

[6] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, §§ 194-194K; N.M. Stat. Ann. §§ 57-22-9–57-22-9.2; N.Y. Not-for-Profit Corp. Law §§ 112, 115(b), 1101.

[7] *See, e.g.*, N.J. Stat. §§ 2A:54A-1, 2C:33-12; Tex. Civ. Prac. & Rem. Code Ann. ch. 125.

wide array of investigatory and enforcement tools. *See, e.g.*, *Shepard v. Attorney General*, 409 Mass. 398, 401-03 (1991); *Charles Scribner's Sons v. Marrs*, 114 Tex. 11, 27 (1924). For example, many States authorize their Attorneys General to investigate and prosecute alleged criminal wrongdoing, including by issuing subpoenas for grand jury testimony.[8] State Attorneys General are also often empowered to conduct civil investigations and civil enforcement proceedings concerning potential state-law violations, including by issuing subpoenas or using civil investigative demands.[9] In addition, Attorneys General generally have authority to use a variety of further enforcement tools and remedies, including through administrative proceedings.[10]

Cease-and-desist letters are among the most common and cost-effective enforcement tools for Attorneys General who have identified likely violations of their state laws. Such letters demand that those who are apparently violating state law promptly stop doing so; and, in many instances, the result is that the violations do in fact promptly cease. In recent months, state Attorneys General have sent thousands of cease-and-desist letters to businesses that have attempted to

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[8] *See, e.g.*, Or. Rev. Stat. Ann. § 180.070; *In re Criminal Investigation No. 1*, 75 Md. App. 589, 594-95 (1988).

[9] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, § 211; Mass. Gen. Laws ch. 93A, § 6; N.M. Stat. Ann. §§ 57-12-12, 57-22-9.1; N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law § 352(2); Tex. Bus. & Com. Code Ann. § 17.61; Wash. Rev. Code Ann. § 19.86.110.

[10] *See, e.g.*, Me. Rev. Stat. Ann. tit. 5, § 209; Mass. Gen. Laws ch. 93A, § 4; N.M. Stat. Ann. §§ 57-12-8, 57-12-11; N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349(b), 353; Wash. Rev. Code Ann. §§ 19.86.080, 19.86.100.

exploit the COVID-19 pandemic by selling false treatments or gouging prices on critical products in high demand.[11] State Attorneys General likewise recently have sent cease-and-desist letters to prevent election interference and to protect the integrity of their elections.[12] Cease-and-desist letters also are frequently used by state and local enforcement officials other than Attorneys General.[13]

Because businesses and organizations today often operate across state lines, state officials' investigations and enforcement efforts commonly involve entities that

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[11] *See, e.g.*, Brendan J. Lyons, *New York AG Has Sent 1,686 Cease and Desist Orders During Pandemic*, Albany Times Union (May 14, 2020) (internet); Pa. Office of Att'y Gen., Press Release, AG Shapiro: Price Gouging Complaints Top 5,000 Tips (June 5, 2020) (internet) (Pennsylvania Attorney General sent 466 cease and desist letters related to pandemic price gouging as of June 2020); Mo. Office of Att'y Gen., Press Release, AG Schmitt Sends Cease and Desist Letter to Branson-Area Business for Inflated Mask Prices (Apr. 15, 2020) (internet). (For authorities available on the internet, URLs appear in the Table of Authorities.)

[12] *See, e.g.*, Mich. Dep't of Att'y Gen., Press Release, AG Nessel Takes Action to Ensure Fair & Free Elections (Nov. 13, 2020) (internet) (Michigan Attorney General sent five cease and desist letters to groups on both sides of the political aisle that posted deceptive information regarding election); Cal. Office of Att'y Gen., Press Release, Attorney General Becerra and Secretary of State Padilla Send Cease and Desist Letters on Ballot Drop Boxes (Oct. 12, 2020) (internet).

[13] *See, e.g.*, *See, e.g.*, *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476 (5th Cir. 2008) (discussing cease-and-desist letter from Commissioner of Arizona Department of Real Estate demanding that realtors not licensed in Arizona cease business in the State); Jeremy Kohler, *St. Louis County Has Issued Dozens of Cease-and-Desist Letters to Restaurants Flouting County Health Order*, St. Louis Post-Dispatch (Nov. 24, 2020) (internet).

operate in multiple States and that are incorporated or headquartered in a State other than the State of the investigating or enforcing official. That is especially so in the internet age, when businesses and organizations often operate online and offer products and services through websites accessible across state lines.

As a result, an Attorney General or other officials in one State frequently must send cease-and-desist letters to entities that are based in other States, but that operate in the official's State in violation of the law of that State. Here, for example, New Jersey Attorney General Grewal sent a cease-and-desist letter to Defense Distributed, which communicated with New Jersey residents via its website while being physically located in Texas. Attorney General Grewal's letter demanded that Defense Distributed cease the violations of New Jersey public-nuisance and negligence law that it was effecting through its publication of online instructions allowing New Jersey residents to 3D-print untraceable firearms.[14] Likewise, New York's Attorney General has recently sent cease-and-desist letters demanding that a number of out-of-state companies that communicate with New York residents through their websites cease violating New York law through actions such as selling

[14] *See* Am. Compl., Ex. E, *Defense Distributed v. Grewal*, No. 1:18-cv-637 (W.D. Tex.), Dkt. 23-5.

sham COVID-19 treatments in New York,[15] or selling e-cigarettes to minors in New York.[16]

In addition, state Attorneys General frequently cooperate in investigating and combatting unlawful activity that is occurring across state lines and violating the laws of multiple States. In such circumstances they sometimes send joint cease-and-desist letters to entities that are based outside some of the Attorneys General's States. For instance, thirty-four Attorneys General sent joint letters urging Amazon, Craigslist, eBay, Facebook, and Walmart to stop online price gouging on their websites during the COVID-19 pandemic.[17] Such coordination allows States to pool scarce resources and save taxpayer money, and it facilitates coordinated negotiations and global settlements that can more effectively protect the public. *See* NAAG, *Attorneys General*, *supra*, at 250-52.

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[15] *See* N.Y. Office of Att'y Gen., Press Release, Attorney General James Orders Craigslist to Remove Posts Selling Fake Coronavirus Treatments and Exorbitantly-Priced Items (Mar. 20, 2020) (internet); N.Y. Office of Att'y Gen., Press Release, Attorney General James Orders Alex Jones to Stop Selling Fake Coronavirus Treatments (Mar. 12, 2020) (internet); N.Y. Office of Att'y Gen., Press Release, Attorney General James Orders Companies to Stop Selling Fake Treatments for Coronavirus (Mar. 11, 2020) (internet) (linked cease-and-desist letters indicate out-of-state addressees).

[16] *See* N.Y. Office of Att'y Gen., Press Release, Attorney General James Orders Companies to Stop Online Sale of E-Cigarettes to Minors and New Yorkers (July 20, 2020) (internet) (linked cease-and-desist letters indicate out-of-state addressees). *See also* Pet. 26-28 (additional examples of cease-and-desist letters sent by state and local officials to out-of-state recipients).

[17] *See* D.C. Office of Att'y Gen., Press Release, AG Racine and 33 Attorneys General Urge Amazon, Craigslist, eBay, Facebook, and Walmart to Crack Down on Online Price Gouging (Mar. 25, 2020) (internet).

II. Principles of State Sovereignty and Federalism That This Court Has Recognized Prohibit Courts from Exercising Personal Jurisdiction Over Out-of-State Officials Based Only on Cease-and-Desist Letters.

Attorney General Grewal's petition for certiorari explains how the Fifth Circuit misapplied this Court's precedents and created a conflict with several other circuits when the Fifth Circuit allowed personal jurisdiction to be exercised over him for simply sending a cease-and-desist letter to an entity that was reaching into his State and violating his State's laws. Amici States have explained above the significance of such cease-and-desist letters to state and local law-enforcement efforts, and highlight here one particular error of the Fifth Circuit's opinion that is especially important for States: the Fifth Circuit's failure to give adequate weight to state-sovereignty and federalism concerns.

As this Court has repeatedly emphasized, the Constitution "ensure[s] that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292. "Our Federalism" requires respect not only for the role of States in relation to the federal government, but also for the coequal status of each State in relation to each of its sister States, *see id.* at 293-94, and for "'territorial limitations on the power of the respective States,'" *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773, 1780 (2017) (quoting *Hanson v. Denckla,* 357 U.S. 235, 251 (1958)).

The Constitution reserves for States "many essential attributes of sovereignty, including, in particular,

the sovereign power to try causes in their courts." *World-Wide Volkswagen*, 444 U.S. at 293. And the sovereignty of every State "implie[s] a limitation on the sovereignty of all . . . sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." *Id.*

In light of these fundamental principles, courts should not exercise personal jurisdiction over an out-of-state official who merely sends a cease-and-desist letter to enforce the law of the official's own State against an entity that is reaching into the official's State. That is so because the out-of-state official's conduct does not establish the requisite "minimum contacts" with the forum State, and because exercising personal jurisdiction over the out-of-state official would unreasonably offend core principles of federalism and state sovereignty.

A. State Officials Do Not Establish Minimum Contacts with Another State Merely by Sending a Cease-and-Desist Letter to a Recipient in That State.

When an entity has reached into a State and is violating that State's law, a state official who merely sends a cease-and-desist letter from her home State to that entity does not thereby establish "minimum contacts" with the entity's State, such that the courts of the entity's State may exercise personal jurisdiction over the official. In those circumstances, the state official is not availing herself of the privilege of conducting activities in the State where the recipient of the letter happens to be located: the official is not seeking to do anything in the recipient's State, or to invoke the protections or benefits of that other State's laws. Rather, the official is simply executing her state-

law duty to enforce the laws of her own State, for the protection of her own State's citizens. "[T]he mere fact that [the official's] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Walden v. Fiore*, 571 U.S. 277, 291 (2014).

The Due Process Clause's limits on personal jurisdiction "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. State officials cannot and should not be forced to structure their law-enforcement conduct in a manner that is designed to avoid suit in a foreign forum, if the only way they can avoid such a suit is by refraining from communications with those who are violating the law of their State from out of State.

For instance, the New York Attorney General recently sent cease-and-desist letters to websites based in California, Texas, Arizona, Missouri, and Oklahoma that were selling sham treatments for COVID-19 in New York, in violation of New York law.[18] The New York Attorney General was not thereby seeking to avail herself of the privilege of conducting activities in California, Texas, Arizona, Missouri, or Oklahoma. She was merely enforcing New York law to protect New York citizens, which in that case entailed cautioning companies based in other States to stop selling their products unlawfully in New York. She therefore should be subject to personal jurisdiction only in New York, the courts of which provide a sufficient forum for raising any challenges to her law enforcement activities.

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[18] See *supra* at 9-10 & n.15.

B. It Offends State-Sovereignty and Federalism Principles for Courts to Exercise Personal Jurisdiction over Out-of-State Officials Who Are Enforcing Their Own States' Laws from Their Own States.

In determining whether an exercise of personal jurisdiction is consistent with due process, "the reasonableness of asserting jurisdiction over the defendant" also "must be assessed in the context of our federal system of government." *World-Wide Volkswagen*, 444 U.S. at 292 (quotation marks omitted). And "this federalism interest may be decisive." *Bristol-Myers*, 137 S. Ct. at 1780.

Here, for example, principles of state sovereignty and federalism make it unreasonable for a court to exercise personal jurisdiction over an out-of-state official whose only connection with the forum State is the sending of a cease-and-desist letter to an entity in the forum State that is violating the official's state laws in the official's State. Allowing such suits, as the Fifth Circuit did in this case, will chill state officials from enforcing their own laws against out-of-state businesses and organizations that offer products and services to residents of the officials' States, by potentially subjecting the officials to jurisdiction in foreign States' courts. The Fifth Circuit's rule allows a scofflaw to use out-of-state presence as both a sword and a shield: that is, the scofflaw can drag an out-of-state official into court in the scofflaw's own chosen forum, and may be able to use that litigation to keep the dispute out of a State where the scofflaw has chosen to operate. This result defies the States' fundamental "sovereign power to try causes in their [own] courts," *World-Wide Volkswagen*, 444 U.S. at 293.

Under the circumstances presented here, allowing the exercise of personal jurisdiction over out-of-state officials is unreasonable for additional federalism-related reasons too. Specifically, the exercise of such jurisdiction will encourage costly, burdensome, and premature lawsuits against state officials in courts that lack expertise and an interest in the relevant State's law. Out-of-state law violators will be incentivized to rush to court in their favored forum before a state law-enforcement official brings any dispute in the official's own state courts. This will harm not only the officials forced to litigate costly and burdensome lawsuits in faraway fora, but also the people of the official's State. Those citizens will ultimately bear the costs of any lawsuits, including the costs of retaining required local counsel. The citizens also will bear the costs if officials forego the cost-effective remedy of cease-and-desist letters—which often successfully put an end to law-breaking without litigation—and instead immediately sue in their own State's courts to ensure that jurisdiction is established there. The result in either case will be that state officials cannot enforce their state laws and protect their own citizens as efficiently and effectively.

Here, for example, Attorney General Grewal sent respondent Defense Distributed a cease-and-desist letter on July 26, 2018.[19] Just three days later, Defense Distributed filed this lawsuit against Grewal in the United States District Court for the Western District of Texas, challenging the constitutionality of the New

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[19] Am. Compl., Ex. E, *Defense Distributed*, No. 1:18-cv-637 (W.D. Tex.), Dkt. 23-5.

Jersey law Grewal's letter threatened to enforce.[20] In other words, Defense Distributed rushed to its favored forum before Grewal took any action beyond sending the cease-and-desist letter. And although Attorney General Grewal subsequently brought a suit in New Jersey for an injunction prohibiting Defense Distributed's unlawful activity,[21] Defense Distributed has for two-and-a-half years persisted in its attempt to have the dispute decided in Texas, resulting in duplicative litigation that has burdened New Jersey and New Jersey's chief law enforcement officer.

In another recent example, the New York Attorney General and the Massachusetts Attorney General each sent civil investigative demands to ExxonMobil in Texas, as part of an investigation of potential violations of New York and Massachusetts laws prohibiting investor and consumer fraud. Exxon then sued the Attorneys General of Massachusetts and then New York, in the United States District Court for the Northern District of Texas, seeking to block enforcement of the civil investigative demands as an alleged infringement of Exxon's constitutional rights.[22] Exxon pursued the lawsuit in Texas notwithstanding the pendency of proceedings to supervise enforcement of the civil investigative demands in the state courts of New York[23] and

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[20] Compl., *Defense Distributed*, No. 1:18-cv-637 (W.D. Tex.), Dkt. 1; Am. Compl., Dkt. 23.

[21] *See* Notice of Removal, *Grewal v. Defense Distributed*, No. 2:18-cv-13248 (D.N.J.), Dkt. 1.

[22] *See* First Am. Compl., *Exxon Mobil Corp. v. Healey*, No. 4:16-cv-00469 (N.D. Tex.), Dkt. 100.

[23] *See People by Schneiderman v. PriceWaterhouseCoopers LLP*, Index No. 451962/16 (N.Y. Sup. Ct. N.Y. Cty.).

Massachusetts[24]—fora where Exxon could raise any challenges to the civil investigative demands.[25] Although Exxon's federal lawsuit was eventually transferred out of Texas, the transfer came only after months of wasteful litigation.[26]

Permitting plaintiffs to challenge state law-enforcement actions in an out-of-state court also puts States in the disadvantageous position of having their laws and their law-enforcement actions examined by courts that lack expertise and an interest in the relevant State's law. As this Court has repeatedly recognized, the judges located in a State—including federal judges—"are likely to be familiar with the applicable state law." *United States v. Hohri*, 482 U.S. 64, 74 n.6 (1987). Federal judges sitting in a particular State face issues of state law and enforcement by state officials every day, and typically previously practiced in that State. Moreover, the federal courts in a State have a special interest in opining on state law and the propriety of state law-enforcement efforts that other States' courts do not have.[27]

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[24] *See* Pet. of Exxon Mobil Corp., *In re Civil Investigative Demand No. 2016-EPD-36*, No. 16-1888F (Mass. Super. Ct., Suffolk Cty.).

[25] *See*, *e.g.*, *Exxon Mobil Corp. v. Attorney General*, 479 Mass. 312 (2018), *cert. denied sub nom*. *Exxon Mobil Corp. v. Healey*, 139 S. Ct. 794 (2019).

[26] *See* Order, *Exxon Mobil*, No. 4:16-cv-00469 (N.D. Tex.), Dkt. 180.

[27] For these reasons, a "district judge's determination of a state-law question" under the law of the State where the judge sits "usually is reviewed with great deference." *See Hohri*, 482 U.S. at 74 n.6; *see also, e.g.*, *Bishop v. Wood*, 426 U.S. 341, 346 & n. 10 (1976) ("[T]his Court has accepted the interpretation of state law in which the District Court and the Court of Appeals have

Here, for example, respondents' challenge to the law-enforcement efforts of Attorney General Grewal would be best addressed not in Texas, but in New Jersey, where the federal courts have expertise and a stake in New Jersey law. And because there is pending parallel litigation in New Jersey in which respondents could raise any of the issues they have raised in Texas,[28] respondents' Texas lawsuit appears to be an attempt to interfere with the examination of New Jersey law and law-enforcement efforts by the federal courts in New Jersey.

Where the forum State has "little legitimate interest in the claims in question," due process does not permit the State's courts to exercise their "coercive power" over a different State's officials. *See Bristol-Myers*, 137 S. Ct. at 1780. Indeed, "even if the forum State has a strong interest in applying its law to the controversy"—which is not the case here—"the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Id.* at 1780-81 (quoting *World-Wide Volkswagen*, 444 U.S. at 294).

Allowing suits against state officials in faraway courts imposes substantial burdens and expenses on state officials that the officials would not face in their own State's courts. Many federal courts do not permit

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concurred even if an examination of the state-law issue without such guidance might have justified a different conclusion."); *Bernhardt v. Polygraphic Co. of Am.*, 350 U.S. 198, 204 (1956) ("Since the federal judge making those findings is from the Vermont bar, we give special weight to his statement of what the Vermont law is.").

[28] *See Defense Distributed v. Grewal*, No. 3:19-cv-4753 (D.N.J.); *see also Grewal v. Defense Distributed*, No. 2:18-cv-13248 (D.N.J.).

attorneys from the offices of out-of-state Attorneys General to practice in their courts without being admitted there, and some courts also require association with local resident counsel that the State must pay. For instance, the Northern District of Texas requires local counsel, and the Western District of Texas gives judges discretion to require local counsel; in each case, the local counsel must be prepared "to present and argue the party's position at any hearing."[29] Thus, New Jersey and the other States and localities whose officials were originally sued by respondents in this case—and New York and Massachusetts in ExxonMobil's case—were all required to retain experienced local counsel and pay them out of taxpayer dollars.

Finally, permitting courts to exercise personal jurisdiction over an out-of-state official who merely sends a cease-and-desist letter to enforce the law of his own State will have a destabilizing effect on state law. If a state official can be sued wherever the recipient of a cease-and-desist letter happens to reside, courts around the country will be drawn into the business of opining on the validity of other States' laws and the efforts of state officials to enforce those laws. And if suits to enjoin enforcement are brought by multiple recipients based in different States, then multiple courts could find themselves considering similar issues simultaneously, leading to duplicative lawsuits and a likelihood of inconsistent judgments. This risk is magnified in the internet age when businesses and other entities may be simultaneously operating online in many States—and violating many States' laws—without a physical presence in any of those States.

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[29] *See* N.D. Tex. Local Civ. R. 83.10; W.D. Tex. Local R. AT-2.

If courts in different circuits ruled on the same legal issues in these cases, circuit splits could result. Circuit splits on issues of federal law could be resolved only in this Court. And circuit splits on issues of *state* law could be resolved only by the enforcing State's highest court, through the procedure of certification or through other litigation, which might well take a long time to complete. The likely result would be to add confusion and complication to state law-enforcement efforts, until the conflict could be resolved by the state's highest court.

This case illustrates the point. Shortly after the Texas district court initially dismissed the respondents' case against Attorney General Grewal for lack of personal jurisdiction, the respondents filed another lawsuit in the District of New Jersey, challenging the same New Jersey law at issue in this case. *See Defense Distributed v. Attorney General of N.J.*, 972 F.3d 193, 196-97 (3d Cir. 2020). If the Texas and New Jersey courts were to disagree about the validity of the New Jersey law, only this Court could resolve the conflict; and if they were to disagree on the meaning of the New Jersey law, only the New Jersey Supreme Court could resolve that conflict. The prospect of such delay and confusion counsels heavily against the Fifth Circuit's ruling that would give the Texas federal district court in this case personal jurisdiction over the New Jersey Attorney General.

CONCLUSION

For all these reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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