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February 25, 2022

By ECF

Blake A. Hawthorne
Clerk
Supreme Court of Texas
201 W. 14th Street, Room 104
Austin, Texas 78701

Re: *State of Texas v. Volkswagen Aktiengesellschaft*, No. 21-0130;
State of Texas v. Audi Aktiengesellschaft, No. 21-0133

Dear Mr. Hawthorne:

During oral argument earlier this week, the State appeared to suggest that, absent a finding of personal jurisdiction, respondents' conduct affecting vehicles that were sold in Texas could go unpunished. The State asserted that "[t]his claim that has been brought here is for recall tampering. Those are only state law claims. There is no federal law analogue for the recall tampering." (www.youtube.com/watch?v=hVkxtj8hx7g, at 11:45-12:13.) In rebuttal, the State asserted that the EPA "did not know about this tampering," and "[t]his is a case where we are alleging a violation of state law that arose from a separate course of activity to violate a Texas state law." (*Id.* at 49:28-50:06.)

The federal Clean Air Act expressly prohibits tampering with in-use vehicles. 42 U.S.C. § 7522(a)(3). In its 2016 civil enforcement action, the EPA asserted that respondents had violated Section 7522(a)(3) by installing the same recall software on vehicles across the nation that the State now challenges. (VW.CR.751 ¶¶ 137-38, VW.CR.762 ¶¶ 195, 197.) In 2017, respondents resolved all of the EPA's claims, including those based on nationwide installation of the recall software, by paying a \$1.45 billion fine, agreeing to retain an independent compliance auditor for three years, agreeing to significant corporate governance reforms, and funding a nationwide environmental mitigation trust that provided over \$209 million to the State of Texas alone. (VW.CR.619-38.)

This is thus the quintessential case where the foreign respondents have "the requisite relationship with the United States Government"—which, together with the State of California, has severely punished their conduct—"but not with the government of [the State of Texas]." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011)

(Kennedy, J., concurring). And, of course, this suit to enforce Texas law may proceed regardless against the original defendant, Volkswagen America, which has not contested personal jurisdiction.

I would appreciate it if you would circulate this letter to the Members of the Court.

Respectfully,

/s/ Jeffrey B. Wall

Jeffrey B. Wall

Counsel for Respondents

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing Respondents' Letter to the Clerk of the Texas Supreme Court has been forwarded this 25th day of February, 2022 to the following attorneys of record via electronic service:

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