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VIA ELECTRONIC FILING

August 13, 2014

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

Re: *Shell Oil Co. and Shell Int'l, E&P, Inc. v. Robert Writt*, No. 13-0552

Dear Mr. Hawthorne:

The Chamber of Commerce of the United States of America respectfully submits this letter brief as *amicus curiae* in support of the petition for review in *Shell Oil Co. and Shell Int'l, E&P, Inc. v. Robert Writt*, No. 13-0552.* If the Court requests merits briefing in this case, the Chamber will file a more comprehensive brief at that time.

We understand that this petition may be considered by the Court at the August 14, 2014 conference. Accordingly, we ask that you circulate this letter to the members of the Court at your earliest convenience.

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The Chamber is the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry, from every region of the country.

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* No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation of submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission. Tex. R. App. P. 11.

The 2-1 decision of the court of appeals in *Shell Oil Co. v. Writt*, 409 S.W.3d 59 (Tex. App.—Houston (1st Dist.) 2013), held that Shell does not have absolute immunity from a defamation suit brought by one of its former employees, despite the fact that the suit is based on confidential statements made by Shell to the Department of Justice in response to DOJ inquiries about that employee as part of a criminal investigation under the Foreign Corrupt Practices Act ("FCPA"). This decision discourages self-reporting and corporate cooperation with regulatory authorities, thereby undermining the foundation upon which enforcement of the FCPA and other statutes is built. Absent review by this Court, the decision will severely injure the business community by penalizing businesses for cooperating with state and federal regulatory agencies.

Corporate cooperation with DOJ, including self-disclosure of potential violations, is essential to the enforcement and prosecution of FCPA violations—particularly because such violations often involve confidential and sensitive dealings in places far from American shores. For over a decade, the business community has worked diligently with DOJ to establish a system of cooperative compliance and disclosure of foreign dealings. As a result, the majority of FCPA enforcement actions stem from corporate self-disclosure. Most actions under the FCPA are resolved through a non-prosecution or deferred prosecution agreement, rather than a lengthy trial and criminal conviction that could spell ruin for an American business.

The FCPA enforcement regime is intentionally structured to create a strong preference for voluntary reporting. Criminal penalties for FCPA violations where a company does not self-report can amount to hundreds of millions of dollars. In addition, an FCPA conviction due to lack of cooperation with federal authorities could lead to devastating collateral consequences—including debarment from contracting with the federal government, cross-debarment from multinational development banks, revocation of export privileges, and exposure to follow-on civil litigation. Even a mere indictment on an FCPA violation can destroy the reputation of and public confidence and investment in a U.S. company, and render a company vulnerable to shareholder derivative litigation and private federal securities fraud suits. Accordingly, corporate internal investigation and disclosure

of FCPA issues is not only critical to DOJ enforcement efforts—it is essential to the continued health of thousands of American companies.

The decision below threatens this system for promoting FCPA compliance and enforcement. The ruling below discourages good corporate citizenship by imposing new costs on businesses that choose to be candid and forthcoming with regulators about information they uncover in an internal investigation involving one of their employees. If a corporation discovers potential evidence of misconduct about an employee, it now faces the Hobson's choice of risking either a defamation suit or a DOJ enforcement action. Every business would be forced to balance these competing risks, rather than focus singularly on full disclosure and cooperation with DOJ regulators. At the margins, many businesses will be discouraged from sharing potentially relevant information with regulators, for fear that disclosure could later be mischaracterized as malicious blame-shifting onto a disfavored (or disgruntled) employee. The entire purpose of absolute immunity is to promote cooperation with regulators by protecting companies who self-report against retaliatory litigation.

The majority opinion below expressed concern that absolute immunity from suit might motivate parties to "deflect blame" for FCPA violations onto its employees "without fear of consequence." *Shell Oil Co.*, 409 S.W.3d at 61. But there are more effective ways to prevent false reports. For example, false statements to government officials are already a crime punishable under 18 U.S.C. § 1001. Moreover, a false report against an employee would also implicate the business itself. After all, corporations act through their employees. Far from deflecting blame, then, a false accusation of an FCPA violation against an employee would incriminate the company as well.

At the end of the day, it is an unavoidable truth that any business that wishes to be a good corporate citizen by reporting its FCPA violations to regulators will necessarily implicate its own employees of wrongdoing. Thus, any rule that imposes costs on a company implicating its employees in wrongdoing will necessarily chill voluntary reporting of FCPA violations and impose unfair burdens on those companies who nonetheless choose to self-report.

Review of this case is of immense importance to many American businesses. The State of Texas is home to the second-largest number of Fortune 500 companies in the nation, and 23 of them are headquartered within the jurisdiction of the Houston Court of Appeals alone. The Chamber urges this court to grant the petition for review.

Sincerely,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitations of Texas Rule of Appellate Procedure 9.4(i)(2) because it contains 1007 words, excluding any parts exempted by Texas Rule of Appellate Procedure 9.4(i)(1). This document also complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ *James C. Ho*
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CERTIFICATE OF SERVICE

I certify that on the 13th day of August, 2014, a true and correct copy of the foregoing document was delivered via electronic filing on the following counsel of record for all parties:

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