WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 588-0302

November 17, 2026

Via TrueFiling

Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: ***Civil Rights Department v. Space Exploration Technologies Corp.*, No. S299155 – Amicus Letter of Washington Legal Foundation Supporting Petition for Review**

Dear Chief Justice Guerrero and Associate Justices:

Under rule 8.500(g) of the California Rules of Court, Washington Legal Foundation submits this amicus curiae letter supporting Space Exploration Technologies' petition for review.

WLF is a nonprofit, public-interest law firm and policy center with supporters nationwide, including many in California.* It promotes free enterprise, individual rights, limited government, and the rule of law. To those ends, it often appears as amicus curiae to oppose extraterritorial application of state law and to defend principles of horizontal federalism. (See, e.g., *Nat'l Pork Prods. Council v. Ross* (2023) 598 U.S. 356.) The decision below gives rise to these concerns.

INTRODUCTION

This case presents an immensely consequential question about the territorial limits of California law. It asks whether the Fair Employment and Housing Act (Cal. Gov. Code §§ 12900 et seq.), California's chief employment-discrimination statute, may apply to an employment relationship where the employee worked outside of California. The decision below not only disregards this Court's place-of-work standard for resolving the territorial reach of California's employment laws; it also invites

* No party or counsel for a party authored this letter and no one other than WLF funded its preparation or submission.

Document received by the CA Supreme Court.

constitutional conflict, friction with sister States, and clashes with foreign nations. Review is needed before these weighty consequences materialize.

California employment statutes carry a strong presumption against extraterritorial application absent a clear directive from the Legislature. (See *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732, 749-50 (*Ward*).) Overcoming this presumption takes "an affirmative indication" that the Legislature meant to reach beyond the State. (*Id.* at p. 749.) The FEHA supplies none.

Where, as here, the presumption applies, this Court has repeatedly honored it by tying the territorial reach of California's workplace protections to whether an employee—at least in some degree—*actually works in California*. (See Pet. 9 [collecting cases].) The cases provide the rationale for this place-of-work principle. It ensures protection of California workers without inviting constitutional questions and conflicts with other sovereigns that are likely to arise should California try to police employment relationships elsewhere. (See *Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1201 (*Sullivan*) [explaining the importance of considering "constitutional ramifications" in assessing law's extraterritorial reach); *Ward*, *supra*, 9 Cal.5th at pp. 750, 756 [explaining the importance of "interstate comity" and the need to avoid friction with other sovereigns in determining to apply place-of-work principle].)

But the decision below departs from both the standard and the reasons for it. Faced with allegations that SpaceX discriminated and retaliated against an employee who worked at its Redmond, Washington facility, the lower court concluded that the FEHA may still govern an employment relationship involving a nonresident employee who performed her work in Washington State so long as SpaceX's conduct had "sufficient connections" to California. (Typed opn. 19.) As the petition explains, the lower court's interpretation can't be reconciled with this Court's place-of-work precedents. (Pet. 16-20 [collecting cases].) Nor can it be squared with the constitutional and comity concerns that underlie those decisions. WLF writes separately to highlight two distinct points about those concerns.

First, the decision below invites unnecessary conflict with the Commerce Clause's extraterritoriality doctrine by extending California law to employment relationships centered out-of-state. Second, the decision below threatens friction not only with sister States, which the petition helpfully illustrates (Pet. 29-30), but also with foreign nations. Review is warranted to address these issues.

I. REVIEW IS WARRANTED BECAUSE THE LOWER COURT'S INTERPRETATION RAISES SERIOUS QUESTIONS UNDER THE COMMERCE CLAUSE.

The territorial reach of California's statutes should be interpreted with "constitutional ramifications" in mind. (*Sullivan*, *supra*, 51 Cal.4th at p. 1201.)

Document received by the CA Supreme Court.

"Certainly," this Court instructed in *Sullivan*, courts shouldn't construe statutes "in a manner that raise[s] serious constitutional questions if the statute's language reasonably permit[s] any other construction." (*Id.* [internal citation omitted].) But by untethering the FEHA from the place-of-work limitation, the decision below poses an unnecessary risk of constitutional problems under the dormant implications of the Commerce Clause. And these problems aren't new.

The Court of Appeal recognized them thirty years ago in *Campbell v. Arco Marine, Inc.* (1996) 42 Cal.App.4th 1850 (*Campbell*) where it refused to interpret the FEHA as applying to an employment relationship occurring entirely outside California. The court explained that such an interpretation would "raise serious constitutional concerns" because "'[t]he Commerce Clause . . . precludes the application of a state statute to commerce that takes place wholly outside of the State's borders.'" (*Campbell, supra*, 42 Cal.App.4th at p. 1858 [quoting *Edgar v. MITE Corp.* (1982) 457 U.S. 624, 642-643 (plur. opn.) (*Edgar*)].)

The decision below breezed past these concerns when it quickly dismissed SpaceX's Commerce Clause objection to CRD's subpoena on the basis that SpaceX hadn't adequately developed the issue under *Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137 (*Pike*). (Typed opn. 8-9.) That reasoning suffers from two defects.

First, the lower court treated SpaceX's constitutional objections as freestanding claims and held them forfeited. But constitutional avoidance isn't a constitutional claim. It's a canon courts apply "in service of adjudicating statutory claims, not constitutional ones." (*Mullin v. Friends of the Ruidosa Church* (Nov. 9, 2026, No. 26A560) 610 U.S. ___ [slip opn. at p. 3] (per curiam).) The statutory question here is the FEHA's territorial reach, and the canon bears on it even if no constitutional claim was preserved. The lower court failed to recognize that constitutional avoidance informs the FEHA's meaning.

Second, the lower court also conflated distinct strands of Commerce Clause doctrine. The concern, here, isn't "*Pike* balancing," which asks whether a State's "burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." (*Pike*, *supra*, 397 U.S. at p. 142; Note, *The Gadfly of the Dormant Commerce Clause: The Persistence of the Extraterritoriality Doctrine After National Pork Producers Council v. Ross* (2025) 51 Mitchell Hamline L.Rev. 322, 325-326 [discussing the different "strands" of dormant Commerce Clause jurisprudence].) It's the longstanding principle that a State can't directly regulate conduct beyond its own territory.

"[E]mployment" is "commerce" under the Commerce Clause (*United States v. Mississippi Dep't of Pub. Safety* (5th Cir. 2003) 321 F.3d 495, 501), and the Commerce Clause has long forbidden applying a State's law to commerce occurring "wholly outside of the State's borders." (*Edgar*, *supra*, 457 U.S. at p. 642 (plur. opn.); *Healy v.*

Document received by the CA Supreme Court.

Beer Inst., Inc. (1989) 491 U.S. 324, 336.) A State "has no power to project its legislation" into another sovereign's territory. (*Baldwin v. G.A.F. Seelig, Inc.* (1935) 294 U.S. 511, 521.) And although *Nat'l Pork Prods. Council v. Ross* (2023) 598 U.S. 356 rejected the view that a law's mere out-of-state "practical effect[s]" render it invalid, (*id.* at pp. 374-375), it left untouched the settled rule that States may not "directly regulate[] out-of-state commercial transactions," (*Nat'l Shooting Sports Found. v. Bonta* (S.D. Cal. 2024) 718 F. Supp. 3d 1244, 1256).

These concerns don't disappear simply because SpaceX had its headquarters in California. The Ninth Circuit's en banc decision in *Sam Francis Foundation v. Christie's, Inc.* (9th Cir. 2015) 784 F.3d 1320 (en banc) (*Sam Francis*) makes the point: a party's mere connection to the State isn't enough for California to regulate commerce entirely outside of it. In *Sam Francis*, a California statute required royalty payments to artists whenever their artwork was resold by a seller who resided in California. (See *Sam Francis*, *supra*, 784 F.3d at p. 1322.) The Ninth Circuit invalidated the provision, explaining that California can't regulate commercial activity occurring "wholly outside of the State's borders" simply because one party to the activity resides in, or has some connection to, California. (*Id.* at p. 1323.)

Yet the decision below opens precisely that door. It suggests that some unspecified "connections" to California may be enough for the FEHA to police a California-based company's employment relationships far beyond the Golden State. (Typed opn. 19.)

The question isn't whether the decision below necessarily violates the Commerce Clause; it's whether the lower court strayed from this Court's directions to avoid territorial interpretations that create unnecessary constitutional problems. (See, e.g., *Sullivan*, *supra*, 51 Cal.4th at p. 1201; see also *People v. Buza* (2018) 4 Cal.5th 658, 682 [explaining that a statute should be "interpreted to avoid serious constitutional questions if such an interpretation is fairly possible"].) By bucking this Court's precedents and eschewing a place-of-work limitation, the decision below expands the FEHA beyond California's borders and risks creating substantial Commerce Clause concerns despite the absence of any saving "affirmative indication[s]" that the Legislature intended extraterritorial application. (*Ward*, *supra*, 9 Cal.5th at p. 749.) In fact, the statutory text points the opposite way: the FEHA declares its purpose is to protect "the people of *this [S]tate*." (Cal. Gov. Code § 12920, emphasis added.)

Review is needed to resolve the FEHA's territorial reach before the decision below becomes a recurring source of constitutional conflict.

Document received by the CA Supreme Court.

II. REVIEW IS ALSO WARRANTED BECAUSE THE DECISION BELOW THREATENS INTERNATIONAL COMITY.

In addition to constitutional avoidance, this Court has identified another rationale that guides its territorial interpretations of California's employment statutes: avoiding "conflicts with other sovereigns." (*Ward*, *supra*, 9 Cal.5th at p. 755.) And while the petition explains how the decision below undermines *interstate* comity (Pet. 29-30), concerns over comity don't stop at the Nation's shores; they extend into other nations.

International comity is "the respect sovereign nations afford each other by limiting the reach of their laws." (*Hartford Fire Ins. Co. v. California* (1993) 509 U.S. 764, 817 (dis. opn. of Scalia, J.).) The decision below doesn't discuss international comity at all. That's troublesome because, under its reasoning, if the FEHA can regulate employment relationships as long as there are some unspecified "connections to California," (Typed opn. 18), then the statute has no meaningful territorial limit. It could reach employees working not only in Washington or Nevada, but anywhere in the world. The international problems from that possibility are far from remote, and California is uniquely situated to generate them.

California is home to many of the world's largest multinational companies, including Google, Apple, and Meta. Those companies employ hundreds of thousands of workers across dozens of countries, each with their own employment laws that govern different types of discrimination, workplace conduct, remedies, and enforcement mechanisms—all based on policy preferences informed by the nations' respective cultures. Applying the FEHA to employment relationships in these countries risks major complications. Nevertheless, during oral argument below, CRD claimed the power to investigate violations of the FEHA even when an employee lives and works in Saudi Arabia. (*Civ. Rights Dep't v. Space Exploration Techs. Corp.*, (B346853) Cal. App., oral argument video, June 16, 2026, at 1:03:00–1:05:25, https://tinyurl.com/j335by24.)

Consider an Apple employee who works exclusively in Apple's Kuala Lumpur office and claims protection under the FEHA's prohibition on discrimination based on off-duty cannabis use. (See Cal. Gov. Code § 12954.) Far from protecting cannabis users against employment discrimination, Malaysian law strictly prohibits the drug, with offenders being subject to severe punishment. (See Neshalatha Govarthnapany et al., *Motives and Perceptions of Cannabis Use among a Sample of Employed Graduates in Malaysia: A Qualitative Study* (2021) Emerging Trends in Drugs, Addictions, and Health at 2, https://tinyurl.com/mu8udfkk [explaining how offenders may be "detained, jailed, or whipped"].) But under the decision below, if the Malaysian employee's termination were somehow connected to Apple's offices in California, the employee would have the opportunity to seek protection under the

Document received by the CA Supreme Court.

FEHA. The result would be to place California employment law in direct tension with Malaysia's strong policy preferences against drug use in the country.

International comity exists to prevent precisely this type of friction between sovereigns. Sovereigns limit the reach of their laws because they expect others to do the same. (See *Wong v. Tenneco*, *Inc.* (1985) 39 Cal.3d 126, 134 [explaining that international comity exists out of "considerations" for "mutual utility and advantage"], internal citation and quotation marks omitted.) And respect for those reciprocal limits promotes stable commercial relations and minimizes conflict among nations. (See *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren* (1st Cir. 2004) 361 F.3d 11, 19 ["[W]orld economic interdependence has highlighted the importance of comity."].) As this Court has explained, avoiding "conflicts with other sovereigns" is a "central insight" guiding courts in determining the geographic reach of legislation. (*Ward*, *supra*, 9 Cal.5th at p. 755.)

But a State's projection of its laws into another's territory risks "interference with the authority of another sovereign" and the resentment that follows. (*N.Y. Cent. R.R. Co. v. Chisholm* (1925) 268 U.S. 29, 32.) If the decision below stands and allows California to police employment relationships across its borders, other nations may claim the same authority over employment relationships happening here in the United States. And the responses wouldn't necessarily be limited to just those relationships in California. "The union will undoubtedly be answerable to foreign powers for the conduct of its members." (The Federalist No. 80 (Hamilton).) If California projects its laws into foreign nations, those nations may respond by projecting their laws not just into California, but into all fifty states. The "Nation as a whole would suffer." (*Japan Line, Ltd. v. Cnty. of Los Angeles* (1979) 441 U.S. 434, 450.)

The decision below provides no reasonable explanation for why California policy should supplant the policy of the sovereign where the employee lives and works. Review is needed before the FEHA is transformed from a California employment statute into a mechanism for regulating employment relationships across the world.

*****

For decades, this Court has relied on place-of-work principles to keep California's workplace statutes within constitutional and territorial limits. The decision below casts aside these constraints for not just any law, but California's primary employment-discrimination law. The Court should grant review before that error becomes a source of friction constitutionally, domestically, and internationally.

Thank you for the Court's consideration.

Document received by the CA Supreme Court.

Respectfully submitted,

/s/ Jerome P. DeSanto, Jr.
Cory L. Andrews
Jerome P. DeSanto, Jr.
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave., NW
Washington, DC 20036
jdesanto@wlf.org

cc: All counsel of record (via TrueFiling)

Document received by the CA Supreme Court.

PROOF OF SERVICE

I am employed in Washington, D.C. I am over the age of 18 years and not a party to this action. My business address is 2009 Massachusetts Avenue NW, Washington, D.C. 20036.

On November 17, 2026, I served the foregoing Amicus Letter of Washington Legal Foundation Supporting Petition for Review on all interested parties by causing the document to be transmitted electronically via the Court's Electronic Filing System operated by ImageSoft TrueFiling.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 17, 2026, at Washington, D.C.

/s/ Jerome P. DeSanto, Jr.
JEROME P. DESANTO, JR.

Document received by the CA Supreme Court.