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July 2, 2020

Hon. Lyle W. Cayce, Clerk
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

Re: *Texas v. United States*, No. 18-10545

Dear Mr. Cayce:

This letter responds to plaintiffs' June 30, 2020 letter alerting this Court to three recent decisions of the Supreme Court. None of those decisions supports plaintiffs' suit.

In *Liu v. SEC*, No. 18-1501 (U.S. June 22, 2020), the Supreme Court concluded that a disgorgement award sought by the Securities and Exchange Commission fell within the scope of the authorizing statute. The Court also cited the general principle that disgorgement is limited to "a wrongdoer's net unlawful profits." Slip op. 7. The decision has no bearing on the request for "disgorgement" here. As the United States' briefs explained (Opening Br. 40-45; Reply Br. 20-23), plaintiffs are not entitled to any "equitable disgorgement" in this case because the United States' sovereign immunity bars such relief and because the United States correctly assessed the Health Insurance Provider Fee on private insurance companies. The Court's interpretation of the scope of the SEC statute does not advance plaintiffs' argument.

The Court in *DHS v. Regents of the University of California*, No. 18-587 (U.S. June 18, 2020), concluded that the government had failed to take into account relevant factors in determining to reverse a prior policy. The agency here did not reverse a prior policy, and the States have acknowledged that their financial injuries flow entirely from the terms of the governing statute, not from an agency regulation.

In *U.S. Forest Service v. Cowpasture River Preservation Ass'n*, No. 18-1584 (U.S. June 15, 2020), the Court sustained the validity of a special use permit issued by the Forest Service. In discussing various arguments, the Court noted that under the reasoning urged by respondents thousands of acres of "privately owned and state-owned lands would also become lands in the National Park System," and observed that its precedents "require Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power and the power of the Government over private property." Neither the Court's holding nor the quoted observation has any bearing on plaintiffs' contention that Congress exempted for-profit insurers from paying user fees when they contract with state Medicaid programs.

Sincerely,

/s/ Alisa B. Klein
Alisa B. Klein

cc: All counsel by ECF