No. 02-18-00106-CV

IN THE COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS FORT WORTH

CITY OF SAN FRANCISCO, et al.,
Appellants,

v.

EXXON MOBIL CORPORATION,
***Appellee*.**

On Appeal from the 96th Judicial District Court of Tarrant County, Texas
Hon. R.H. Wallace, Jr., presiding, Cause No. 096-297222-18

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[1] A chart listing the relevant page numbers in this brief that respond to each of the Appellants' arguments is provided at Appendix Ex. F.

[2] Judge Wallace's Findings of Fact and Conclusions of Law, which were entered on April 24, 2018, can be found at 3SCR113-28.

STATEMENT OF THE CASE

Nature of the Case: On January 8, 2018, ExxonMobil filed a petition under Rule 202 of the Texas Rules of Civil Procedure seeking pre-suit discovery from the following individuals: (i) Potential Defendants Barbara J. Parker, Matthew F. Pawa, Dennis J. Herrera, John C. Beiers, Serge Dedina, Jennifer Lyon, Brian Washington, Dana McRae, Anthony P. Condotti (the "Potential Defendants"), and (ii) Prospective Witnesses Sabrina B. Landreth, Edward Reiskin, John L. Maltbie, Andy Hall, Matthew Hymel, Carlos Palacios, and Martín Bernal (the "Prospective Witnesses"). CR6. The Petition also identified the following entities as Potential Defendants: the County of San Mateo, the County of Marin, the City of Imperial Beach, the City of San Francisco, the City of Oakland, the City of Santa Cruz, and the County of Santa Cruz (the "California municipalities"). CR63. ExxonMobil seeks discovery to evaluate possible claims and preserve evidence of constitutional violations, abuse of process, and civil conspiracy. CR6.

Course of Proceedings: In February and March 2018, all Potential Defendants and Prospective Witnesses (collectively, "Appellants") filed special appearances contesting jurisdiction. CR1802-22, 1843-60, 1916-53, 7078-99, 7100-14, 7137-56. On March 8, 2018, the Honorable R.H. Wallace, Jr. held a hearing on the special appearances. RR1-110.

Trial Court Disposition: On March 14, 2018, Judge Wallace denied Appellants' special appearances. CR7210. In March and April 2018, Appellants and ExxonMobil each submitted proposed findings of fact and conclusions of law. CR7218-33; CR7293-99; SCR7-21, 64-67; 3SCR29-77. On April 24, 2018, the trial court entered findings of fact and conclusions of law supporting its March 14 order based on the uncontested evidentiary record. FOF/COL ¶¶ 1-60.

STATEMENT REGARDING ORAL ARGUMENT

The trial court's order denying Appellants' special appearances in this Rule 202 proceeding and its findings of jurisdictional facts are well-supported by the law and ample evidence. The record shows that the Potential Defendants made purposeful contacts with Texas to chill expressive conduct in Texas and to obtain documents stored in Texas. After considering extensive briefing and hearing the arguments of counsel, the trial court denied the special appearances and entered findings of fact. This brief explains why affirmance of the special appearance order is proper. But oral argument may further aid the Court's decisional process by allowing the parties to answer any questions from the Court on the law or facts regarding the trial court's personal jurisdiction over the Potential Defendants in a potential lawsuit. Thus, ExxonMobil requests oral argument.

ISSUES PRESENTED

1. Under the Due Process Clause, personal jurisdiction may be exercised over out-of-state defendants whose contacts with the state give rise to the claims at issue. ExxonMobil's potential claims arose from the Potential Defendants' purposeful contacts with Texas, including their efforts to suppress speech and associational rights within the state and obtain documents stored within the state. Was the trial court's assertion of personal jurisdiction over the Potential Defendants consistent with due process?

2. The Texas long-arm statute authorizes personal jurisdiction over nonresidents who commit a tort in whole or in part in the state. Did the trial court correctly apply that statute when it exercised jurisdiction over the Potential Defendants for potential tort claims committed in Texas that violate ExxonMobil's free speech and associational rights?

3. Should this Court reject challenges to the trial court's findings of fact when—

   a. Appellants failed to preserve any evidentiary objections in the trial court and thus waived them,

   b. the findings of fact are supported by legally and factually sufficient evidence, and

c. a federal decision issued more than two weeks after the trial court's decision has no preclusive effect on the findings?

4. The Texas Supreme Court has held that a Rule 202 petition may be considered by a trial court that has personal jurisdiction over the potential defendant. No Texas court has ever held that a trial court considering a Rule 202 petition must also have personal jurisdiction over a prospective witness that is not also a potential defendant. Was the trial court correct when it refused to create such a rule?

INTRODUCTION

ExxonMobil brought this Rule 202 petition to evaluate claims and preserve evidence of potential violations in Texas of its rights under the First Amendment. ExxonMobil's potential claims grow out of abusive litigation that California municipalities filed in their state against ExxonMobil and other Texas-based energy companies to chill expressive conduct in Texas and obtain documents stored in Texas.

It is well-settled that First Amendment violations occur where the speech at issue originates. Here, that is Texas. Texas is also the repository for documents the Potential Defendants seek in the litigation to pressure ExxonMobil and other energy companies to modify or silence their views on climate change. By targeting speech, associational activities, and property in Texas, the Potential Defendants made purposeful contacts with Texas that are sufficient to support personal jurisdiction under the Due Process Clause and the Texas long-arm statute.

The Potential Defendants and Prospective Witnesses filed special appearances before Judge R.H. Wallace, Jr. After a full and fair evidentiary hearing, where no party objected to the admissibility of any evidence, the trial court denied all the special appearances and issued findings of fact and conclusions of law in support of its ruling. Appellants now ask this Court to second guess the trial court's factual findings, which are firmly rooted in the uncontested evidentiary

record, and set aside its reasonable inferences from those uncontested facts. Appellants offer no valid grounds to support that request.

Appellants are equally wrong to mischaracterize the trial court's legal conclusions as embracing a "directed-a-tort" or "effects-based" test for personal jurisdiction. The trial court did not hold that the effects of the Potential Defendants' out-of-state conduct merely touched upon Texas. Instead, it held their conduct itself—their targeting of "speech, activities, and property in Texas"—established sufficient ties to Texas. Texas courts recognize that conduct targeting Texas establishes contacts that support personal jurisdiction if that conduct gives rise to an injury. Texas is the target of the Potential Defendants' efforts to suppress speech, and those contacts give rise to ExxonMobil's potential claims.

Where, as here, out-of-state actors establish contacts with the state by attempting to influence speech and obtain property within the state, they have no basis to complain about being called before a Texas court to explain their actions. This well-settled principle boils down to a simple rule of thumb: "[I]f you are going to pick a fight in Texas, it is reasonable to expect that it be settled there." *McVea* v. *Crisp*, No. SA-07-CA-353-XR, 2007 WL 4205648, at *2 (W.D. Tex. Nov. 5, 2007), *aff'd*, 291 F. App'x 601 (5th Cir. 2008). The denials of Appellants' special appearances should be affirmed.

STATEMENT OF FACTS

ExxonMobil, a Texas-based oil and gas company, brought this action under Rule 202 of the Texas Rules of Civil Procedure to depose individuals likely to have information concerning the apparent abuse of power in Texas by the Potential Defendants, including Potential Defendant Matthew Pawa, an outspoken advocate of misusing government power to limit free speech. It appears that the Potential Defendants may have brought pretextual, politically motivated lawsuits against ExxonMobil and other members of the Texas energy sector to prevent Texas residents from exercising their First Amendment rights within their home state. Doing so would violate this Court's teaching that "speech may not be prohibited merely because one disagrees with its content or it offends one's sensibilities." *DeAngelis* v. *Protective Parents Coal.*, No. 02-16-00216-CV, 2018 WL 3673308, at *10 (Tex. App.—Fort Worth Aug. 2, 2018, no pet. hist.).

Thus, ExxonMobil seeks discovery to determine whether the Potential Defendants have engaged in intentional torts targeting the exercise of free speech in Texas and whether it should challenge that conduct in a lawsuit. Following a hearing that afforded all parties the opportunity to present supporting evidence and contest adverse evidence, the trial court found the following facts, each of which is fully supported by the uncontested evidentiary record.

A. Potential Defendant Matthew Pawa Develops a Playbook to Suppress Texas-Based Speech on Climate Policy.

In June 2012, Potential Defendant Pawa and other climate activists attended a conference in La Jolla, California, called the "Workshop on Climate Accountability, Public Opinion, and Legal Strategies."[3] At the conference, Pawa targeted ExxonMobil's speech on climate change and identified such speech as a basis for bringing litigation. Pawa claimed that "Exxon and other defendants distorted the truth" and litigation "serves as a 'potentially powerful means to change corporate behavior.'"[4] Another participant at the La Jolla conference claimed that "the fossil fuel industry's disinformation has effectively muted a large portion of the electorate."[5]

To gain leverage over ExxonMobil and other energy companies, the participants discussed strategies to "[w]in [a]ccess to [i]nternal [d]ocuments" of those companies and concluded that law enforcement powers and civil litigation could "maintain[] pressure on the [energy] industry that could eventually lead to its support for legislative and regulatory responses to global warming."[6] Workshop attendees also planned to enlist "sympathetic state attorney[s] general" who could

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3 CR2074-2109; FOF/COL ¶ 6.
4 CR2085; FOF/COL ¶ 9.
5 CR2101; FOF/COL ¶ 9.
6 CR2084, 2100; FOF/COL ¶ 7.

launch sweeping investigations that "might have substantial success in bringing key internal documents to light."[7]

B. Pawa's Playbook Is Applied to ExxonMobil's Speech and Participation in Public Policy.

In January 2016, La Jolla conference attendees, including Pawa, and others met at the Rockefeller Family Fund offices to solidify the "[g]oals of an Exxon campaign," which expressly focused on ways to restrict ExxonMobil's free speech about public policy.[8] The goals included:

- "To establish in [the] public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm";
- "To delegitimize [ExxonMobil] as a political actor";
- "To drive divestment from Exxon"; and
- "To force officials to disassociate themselves from Exxon."[9]

To achieve these goals, the participants considered "AGs" and "Torts" as "the main avenues for legal actions & related campaigns" for "creating scandal" and "getting discovery."[10]

C. State Officials Adopt Pawa's Playbook to Regulate Texas-Based Speech.

Following the La Jolla and Rockefeller meetings, several state officials adopted Pawa's agenda. On March 29, 2016, the so-called "Green 20" coalition of

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7 CR2084; FOF/COL ¶ 8.
8 CR2111, 2113; FOF/COL ¶¶ 10-11.
9 CR2111, 2113; FOF/COL ¶ 10.
10 CR2113-14; FOF/COL ¶ 11.

state attorneys general held a press conference where they promoted regulating speech of energy companies, like ExxonMobil, which they perceived as an obstacle to enacting their preferred responses to climate change.[11]

At the press conference, New York Attorney General Eric Schneiderman (who resigned in May 2018) declared that there could be "no dispute" about appropriate climate policy.[12] Refusing to acknowledge legitimate differences of opinion, Attorney General Schneiderman disparaged divergent views as the product of "confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up."[13] After denouncing the "highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action," he announced that "today, we're sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination."[14]

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[11] CR2118-19; FOF/COL ¶ 12. A video recording of the press conference is available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across.

[12] CR2118; FOF/COL ¶ 13. A description of the circumstances surrounding Schneiderman's resignation is available at https://www.newyorker.com/news/news-desk/four-women-accuse-new-yorks-attorney-general-of-physical-abuse.

[13] CR2118; FOF/COL ¶ 13.

[14] CR2120; FOF/COL ¶ 13.

Massachusetts Attorney General Maura Healey likewise believed that "public perception" had stymied her preferred climate policy.[15] She blamed "[f]ossil fuel companies" for purportedly causing "many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts."[16] After pledging to hold these energy companies "accountable,"[17] Attorney General Healey declared that she too had joined in investigating the practices of ExxonMobil.[18]

The attorneys general's statements were aligned with the playbook Pawa had urged during the La Jolla and Rockefeller meetings.[19] That was no mere coincidence. On the morning of the press conference, Pawa conducted a closed-door briefing for the attorneys general and their staff on "climate change litigation,"[20] and then he and the attorneys general attempted to conceal it.[21] When a reporter contacted Pawa shortly after this meeting and inquired about the press conference, the chief of Attorney General Schneiderman's Environmental Protection Bureau instructed Pawa "not [to] confirm that you attended or otherwise discuss the event."[22]

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15 CR2128; FOF/COL ¶ 14.
16 CR2128; FOF/COL ¶ 14.
17 CR2128; FOF/COL ¶ 14.
18 CR2128; FOF/COL ¶ 14.
19 CR2085; FOF/COL ¶¶ 13-14.
20 CR2138-39; FOF/COL ¶ 16.
21 CR2158, 2171; FOF/COL ¶ 16.
22 CR2171; FOF/COL ¶ 17.

Pawa's fingerprints were also on the document requests Attorney General Schneiderman and Healey issued to ExxonMobil. Those requests targeted communications about climate change that expressly referenced documents in ExxonMobil's possession in Texas, including statements made at shareholder meetings in Dallas and publications and regulatory filings prepared in Texas.[23] Both attorneys general also probed ExxonMobil's associational interests, including its communications with 12 organizations derided as climate deniers.[24]

ExxonMobil responded to these pretextual investigations in several ways, including by filing a lawsuit in the United States District Court for the Northern District of Texas, seeking injunctive and declaratory relief against Attorneys General Schneiderman and Healey.[25] Eleven state attorneys general, including the Texas Attorney General, filed an amicus brief in support of ExxonMobil's preliminary injunction, arguing that a state official's power "does not include the right to engage in unrestrained, investigative excursions to promulgate a social ideology, or chill the expression of points of view, in international policy debates."[26] District Judge Ed Kinkeade recognized the political nature of the speech at issue, observing at oral argument that "we . . . have red and blue states,

[23] CR2234-36, 2208-09; FOF/COL ¶¶ 20-21.
[24] CR2232, 2208; FOF/COL ¶¶ 20-21.
[25] CR3102-50; FOF/COL ¶ 22.
[26] CR2989-91; FOF/COL ¶ 22.

all red states on [ExxonMobil's] side, all blue states on [the Attorney General's] side . . . . I just hate this us and them thing, but it is what it is."[27]

On March 29, 2017, Judge Kinkeade transferred the action to the Southern District of New York—the location of the Green 20 press conference.[28] In his transfer order, Judge Kinkeade noted that "[t]he merits of each of Exxon's claims involve important issues that should be determined by a court," including whether the investigations conducted by the attorneys general may be means "to further their personal agendas by using the vast power of the government to silence the voices of all those who disagree with them."[29]

D. The Potential Defendants File Lawsuits Targeting Texas-Based Speech, Activities, and Property.

With the state investigations of ExxonMobil underway, Pawa next promoted his playbook to California municipalities, urging them to become potential plaintiffs in tort litigation against energy companies, including ExxonMobil.[30]

Pawa sent a memo outlining this strategy to NextGen America, the political action group funded by California political activist Tom Steyer.[31] The memo "summarize[d] a potential legal case against major fossil fuel corporations," premised on the claim that "certain fossil fuel companies (most notoriously

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27 CR7004.
28 CR3052.
29 CR3042, 3045; FOF/COL ¶ 22.
30 CR2177-79; FOF/COL ¶ 23.
31 CR2175-93; FOF/COL ¶ 24.

ExxonMobil), have engaged in a campaign and conspiracy of deception and denial on global warming."[32] Pawa emphasized that "simply proceeding to the discovery phase would be significant" and "obtaining industry documents would be a remarkable achievement that would advance the case and the cause."[33]

Following through on Pawa's recommended strategy, Potential Defendants Parker, Herrera, and the cities of Oakland and San Francisco filed public nuisance lawsuits in California against ExxonMobil and four other energy companies, including Texas-based ConocoPhillips.[34] They caused the complaints to be served on ExxonMobil's registered agent in California, whose role is to transmit legal process to ExxonMobil in Texas.[35] Pawa represents Oakland and San Francisco in those two actions.[36]

Potential Defendants Lyon, Dedina, Washington, Beiers, Condotti, McRae, the City of Imperial Beach, Marin County, San Mateo County, and the City and the County of Santa Cruz (collectively, the "San Mateo Potential Defendants") likewise filed five complaints against dozens of energy companies, including ExxonMobil and the following 17 Texas-based energy companies: BP America, Inc., Shell Oil Products Company LLC, Citgo Petroleum Corp., ConocoPhillips,

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[32] CR2179; FOF/COL ¶ 24.
[33] CR2191; FOF/COL ¶ 24.
[34] CR2584-2679; FOF/COL ¶ 26.
[35] *People of the State of Cal.* v. *BP, p.l.c.*, No. RG17875899 (Alameda Sup. Ct. Oct. 4, 2017) (Oakland proof of service); *People of the State of Cal.* v. *BP, p.l.c.*, No. CGC-17-561370 (S.F. Sup. Ct. Sept. 21, 2017) (San Francisco proof of service); FOF/COL ¶ 26.
[36] CR2620, 2672; FOF/COL ¶ 26.

ConocoPhillips Company, Phillips 66, Total E&P USA Inc., Total Specialties USA Inc., Eni Oil & Gas Inc., Anadarko Petroleum Corp., Occidental Petroleum Corp., Occidental Chemical Corp., Repsol Energy North America Corp., Repsol Trading USA Corp., Marathon Oil Company, Marathon Oil Corporation, and Apache Corp.[37] The San Mateo Potential Defendants served these five complaints on ExxonMobil's registered agent in Texas.[38]

Each of the seven California complaints expressly targets speech and associational rights in Texas, where ExxonMobil formulates and issues statements about climate change, maintains most of its corporate records pertaining to climate change, and engages in First Amendment speech and associational rights.[39]

The San Francisco and Oakland complaints, for example, repeat Pawa's accusations concerning a speech former CEO Rex Tillerson gave at ExxonMobil's annual shareholder meeting in Texas, where he allegedly "misleadingly downplayed global warming's risks."[40] Those complaints also target documents that ExxonMobil prepares and approves in Texas, such as its *Outlook for Energy* publication.[41] The five complaints filed by the San Mateo Potential Defendants similarly target statements made by ExxonMobil employees in Texas, including

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37 CR2250-2581, 2681-2947; FOF/COL ¶ 27.

38 CR2949; CR2951; CR2953; CR2956; CR2958; FOF/COL ¶ 26.

39 CR2304 ¶ 121, CR2413 ¶ 117, CR2526 ¶ 121, CR2610, 2612 ¶¶ 75, 81, CR2658, 2661 ¶¶ 76, 82, CR2756 ¶ 180, CR2892 ¶ 179; FOF/COL ¶ 28; CR15, 18 ¶¶ 13, 32; CR3110 ¶ 19; RR31:9-12, 34:13-25, 47:7-12, 54:1-10; FOF/COL ¶¶ 1, 47.

40 CR2610 ¶ 75; CR2658 ¶ 76; FOF/COL ¶ 29.

41 *See, e.g.*, CR2612-13 ¶ 81; CR-2661-62 ¶ 82; FOF/COL ¶ 29.

(i) a 1988 ExxonMobil memo that proposes "[r]esist[ing] the overstatement and sensationalization of potential greenhouse effect"; (ii) a 1996 publication that ExxonMobil released with a preface by its former CEO; and (iii) a 2007 Corporate Citizenship Report, issued from the company's Texas headquarters.[42] These complaints also target statements from other Texas-based energy companies, such as ConocoPhillips' 2012 Sustainable Development Report.[43]

In addition to speech, the complaints target ExxonMobil's associational rights in Texas, including corporate decisions to fund various non-profit groups that the complaints deem to be "front groups" and "denialist groups."[44] All seven complaints also target ExxonMobil property in Texas, such as ExxonMobil's internal memoranda and scientific research on greenhouse gases and climate change.[45]

E. The Potential Defendants' Lawsuits Appear to Serve an Ulterior Purpose.

Although the Potential Defendants' complaints facially purport to pursue tort claims for environmental harm, public documents indicate that ulterior motives

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[42] CR2303-04, 2314 ¶¶ 117, 121, 139; CR2413-15, 2425 ¶¶ 117, 121, 139; CR2524-26, 2536 ¶¶ 117, 121, 139; CR2746-48, 2756 ¶¶ 162, 166, 180; CR2882-84, 2892 ¶¶ 161, 165, 179; FOF/COL ¶ 30.

[43] CR2321 ¶ 156; CR2432 ¶ 156; CR2543 ¶ 156; CR2899 ¶ 196; CR2764 ¶ 197.

[44] CR2606-09 ¶¶ 62-71; CR2654-57 ¶¶ 63-72; CR2311, 2313 ¶¶ 133, 137-38; CR2422, 2424 ¶¶ 133, 137-38; CR2533, 2535 ¶¶ 133, 137-38; CR2755-56 ¶¶ 177, 179; CR2891-92 ¶¶ 176, 178; FOF/COL ¶ 29.

[45] CR2289-96 ¶¶ 86-88, 91-92, 95-97, 99-102; CR2399-2407 ¶¶ 86-88, 91-92, 95-97, 99-102; CR2510-18 ¶¶ 86-88, 91-92, 95-97, 99-102; CR2604-06 ¶¶ 60-61; CR2650-2654 ¶¶ 60-62; CR2730-39 ¶¶ 130-32, 135-37, 140-42, 144-47; CR2867-76 ¶¶ 129-31, 134-36, 139-41, 143-46; FOF/COL ¶ 31.

may have prompted their filing. The most egregious indication that these lawsuits were not brought for a proper purpose lies in the stark contrast between what the Potential Defendants allege in their complaints and what they have disclosed to their bond investors.[46] In their own bond offerings, *none* of the Potential Defendants disclosed to prospective investors the allegedly grievous climate change-related risks that expressly underlie their claims against ExxonMobil and others in the Texas energy sector.[47] Several of the Potential Defendants reviewed these bonds prior to their issuance and then later approved and filed complaints containing allegations about climate change that cannot be reconciled with statements made in those bond offerings.[48]

For example, the Oakland and San Francisco complaints claim that ExxonMobil's and other energy companies' "conduct will continue to cause ongoing and increasingly severe sea level rise harms" to the cities.[49] Yet the bond disclosures issued by Oakland and San Francisco disclaimed knowledge of any such impending catastrophe, stating the cities are "unable to predict" whether sea rise "or other impacts of climate change" will occur, and "if any such events occur,

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46 CR6925-29; FOF/COL ¶¶ 35-40.

47 CR3194; CR3553; CR4081; CR5129-30; CR5920; CR6542-43; CR6652; FOF/COL ¶¶ 35-40; Appendix Ex. D (comparing the allegations in the Potential Defendants' complaints to their bond disclosures).

48 CR5054, 5074-75 (Parker); CR490, 570 (Herrera); CR4342, 4428 (Beiers); CR6511, 6550 (McRae); CR1480 (Condotti); CR358 (Lyon's law firm).

49 CR2600 ¶ 55; CR2648 ¶ 56; FOF/COL ¶ 36.

whether they will have a material adverse effect on the business operations or financial condition of the City" or the "local economy."[50]

Similarly, the San Mateo complaint against ExxonMobil and other Texas-based energy companies states that the county is "particularly vulnerable to sea level rise," with "a 93% chance that the County experiences a devastating three foot flood before the year 2050, and a 50% chance that such a flood occurs before 2030."[51] Yet, its 2014 and 2016 bond disclosures state that San Mateo "is unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur."[52] The irreconcilable differences between what was alleged in the complaints and what was disclosed to investors suggest that the allegations in the complaints against ExxonMobil are not honestly held.[53]

F. The Potential Defendants' Public Statements Reveal an Intent to Target Speech.

Several Potential Defendants made statements shortly after filing their lawsuits that suggest their true objective is to censor the speech of ExxonMobil and others in the Texas energy sector. In a July 20, 2017 op-ed for *The San Diego Union-Tribune*, Potential Defendant Dedina, mayor of the City of Imperial Beach, justified his participation in this litigation by accusing the energy sector of

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50 CR590-91; CR1785; FOF/COL ¶ 36.
51 CR847 ¶ 68, CR889 ¶ 170; FOF/COL ¶ 37.
52 CR4081; CR4421; FOF/COL ¶ 37.
53 Bonds issued by the other Potential Defendants contain similar disclosures. *See* Appendix Ex. D (comparing the allegations in the Potential Defendants' complaints to their bond disclosures).

attempting to "sow uncertainty" about climate change.[54] In a July 26, 2017 appearance at a local radio station, Dedina accused ExxonMobil of carrying out a "merchants of doubt campaign."[55]

On September 20, 2017, Potential Defendant Parker, the Oakland City Attorney, issued a press release seeking to stifle the speech of the Texas energy sector or, as she likes to refer to it, "BIG OIL."[56] Parker asserted, "It is past time to debate or question the reality of global warming. . . . Just like BIG TOBACCO, BIG OIL knew the truth long ago and peddled misinformation to con their customers and the American public."[57] These admissions parallel the public statements of Potential Defendant Herrera, the San Francisco City Attorney, in which he accused "fossil fuel companies" of launching a "disinformation campaign to deny and discredit" that "global warming is real" and pledged to ensure that these companies "are held to account."[58]

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54 CR3099; FOF/COL ¶ 32.
55 CR6948; FOF/COL ¶ 32.
56 CR6943; FOF/COL ¶ 33.
57 *Id.*
58 CR6957, 6959; FOF/COL ¶ 34.

G. Procedural History

1. ExxonMobil Files a Petition Under Rule 202 to Evaluate Potential Claims and Preserve Evidence.

On January 8, 2018, ExxonMobil filed a Rule 202 petition to evaluate claims and preserve evidence of potential violations of its First Amendment rights.[59] The Potential Defendants are: (i) the seven California municipalities that brought tort suits against ExxonMobil and other Texas-based energy companies, (ii) eight municipal officials responsible for filing the tort suits, and (iii) Pawa, lead attorney for San Francisco and Oakland.[60] ExxonMobil seeks to investigate whether, through their purposeful conduct directed at Texas, the Potential Defendants sought to silence and politically delegitimize ExxonMobil and others in the Texas energy sector, in violation of the First Amendment. ExxonMobil also seeks to preserve evidence of any potential wrongdoing.

In its Petition, ExxonMobil further requests permission to take discovery from seven Prospective Witnesses who are not Potential Defendants. The Prospective Witnesses are municipal officials who signed bonds issued by the California municipalities which contain disclosures about climate change that materially and directly contradict allegations in the California complaints.[61] ExxonMobil seeks to discover whether the Prospective Witnesses may have further

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[59] CR6-66; FOF/COL at 1.
[60] CR63; FOF/COL ¶¶ 2-4.
[61] CR11-15; FOF/COL ¶ 41.

information about these apparent discrepancies because that may provide further information about the Potential Defendants' illicit motives.[62]

2. The Trial Court Finds that the Potential Defendants Purposefully Directed Their Conduct at Texas and Denies All Special Appearances.

Appellants filed special appearances contesting personal jurisdiction in ExxonMobil's anticipated suit.[63] Appellants and ExxonMobil filed affidavits and evidence in support of their respective positions.[64] Appellants' affidavits stated that they neither resided nor maintained offices in Texas.[65] They did not provide any evidence demonstrating that the trial court's exercise of jurisdiction over them would cause a substantial burden, nor did they address or rebut the substance of ExxonMobil's evidence.[66]

At the March 8, 2018 special appearance hearing, the trial court accepted each party's affidavits and evidence.[67] When counsel for the Oakland Appellants, including Pawa, stated that "there may be exhibits to [ExxonMobil's] affidavits that we would not – we might want to challenge," the court directed counsel to

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62 CR52-61; FOF/COL ¶ 41.

63 CR1802-22; CR1843-60; CR1916-53; CR7078-99; CR7100-14; CR7137-56; FOF/COL at 1.

64 CR2067-2193; CR2194-2958; CR2959-7067; CR1823-30; CR1831-38; CR1839-42; CR1861-1911; CR1912-15; CR1954-57; CR1958-62; CR1963-67; CR1968-70; CR1971-74; CR1975-78; CR1979-81; CR1982-85; CR1986-89; CR1990-93; CR1994-98; CR7115-18; CR7157-69; CR7172-76; FOF/COL at 1.

65 *See, e.g.*, CR1839-40; CR1861-62; CR1912-13; CR1954-55; CR1958-59; CR1963-64; CR1968-69; CR1971-73; CR1975-77; CR1979-80; CR1982-85; CR1986-88; CR1990-92; CR1994-96; CR7311-12, 7320-21; FOF/COL ¶¶ 2-5.

66 *Id.*; *see also* FOF/COL at 1-2, ¶ 55.

67 RR19:24-20:8.

"bring that up then."[68] However, neither the Oakland Appellants nor any other party raised specific objections to the evidence at the hearing.[69] In fact, counsel for Pawa confirmed ExxonMobil's recitation of facts, including that (i) the 2012 La Jolla meeting occurred, (ii) Pawa sent the 2015 memorandum to NextGen America, and (iii) Pawa received an invitation to the January 2016 Rockefeller meeting which outlined the "goals of the Exxon campaign."[70] At the hearing, the parties disputed only the legal significance of the uncontested factual record.[71]

On March 14, 2018, the trial court issued its order denying all of the special appearances.[72] ExxonMobil thereafter filed proposed findings of fact and conclusions of law and provided a citation to the uncontested evidentiary record or Texas law for every proposed finding.[73] Appellants also filed proposed findings of fact and conclusions of law.[74]

On April 24, 2018, the trial court signed findings of fact and conclusions of law explaining the basis for its denial of the special appearances.[75] The court concluded that the Due Process Clause authorized personal jurisdiction over the Potential Defendants because ExxonMobil's potential claims would arise from

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68 RR20:5-13.
69 FOF/COL at 1-2.
70 RR96:20-97:5, 98:4-6.
71 FOF/COL at 1-2.
72 CR7210.
73 CR7218-33; 3SCR29-77; Appendix Ex. E.
74 CR7293-99; SCR7-21, 64-67.
75 3SCR113-28.

deliberate and purposeful minimum contacts the Potential Defendants initiated that purposefully targeted Texas, including speech, activities, and property in Texas.[76] The trial court specifically found that, all Potential Defendants initiated contact and created a continuing relationship with Texas through their (i) filing of lawsuits that target Texas-based First Amendment activities and property of ExxonMobil and others in the Texas energy sector and (ii) use of an agent to serve ExxonMobil in Texas.[77] The trial court also found that Pawa targeted Texas by engaging with special interests to develop a plan to delegitimize energy companies, like ExxonMobil, and encouraging both state attorneys general and California municipalities to commence investigations or litigation against ExxonMobil and others in the Texas energy sector to target Texas-based speech and obtain documents in Texas.[78]

In addition, the trial court held that the long-arm statute was satisfied because each Potential Defendant was a nonresident, within the meaning of the long-arm statute, who allegedly committed a tort in whole or in part in the state.[79] Finally, the court denied the special appearances of the Prospective Witnesses

[76] FOF/COL ¶¶ 48-53.
[77] FOF/COL ¶ 50.
[78] FOF/COL ¶ 49.
[79] FOF/COL ¶¶ 46-47.

because, in a Rule 202 proceeding, a court need not have personal jurisdiction over prospective witnesses who are not also potential defendants.[80]

3. Decisions in Related Cases Are Issued After the Special Appearance Ruling.

After the denial of the special appearances, a federal judge dismissed ExxonMobil's separate action against the New York and Massachusetts Attorneys General, and two other federal judges dismissed the tort suits against ExxonMobil and other energy companies, including the San Francisco and Oakland lawsuits.

First, on March 29, 2018—fifteen days after the denial of Appellants' special appearances—Judge Valerie E. Caproni of the United States District Court for the Southern District of New York dismissed ExxonMobil's complaint against Attorneys General Schneiderman and Healey for failure to state a claim.[81] Judge Caproni considered implausible ExxonMobil's allegations that the Attorneys General had commenced pretextual investigations to suppress ExxonMobil's speech on climate change in violation of its First Amendment and other constitutional rights.[82]

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80 FOF/COL ¶ 43.

81 *Exxon Mobil Corp.* v. *Schneiderman*, 316 F. Supp. 3d 679 (S.D.N.Y. 2018).

82 *Id.* at 686.

That decision, which is in tension with Judge Kinkeade's view of the case and currently on appeal,[83] did not adjudicate any facts or issues raised in this case—only the adequacy of the pleadings before that court. And, as the San Francisco Appellants recognized, "the facts in the two actions are clearly distinguishable."[84] Most importantly, Judge Caproni's decision did not address the personal jurisdiction issues raised by Appellants' special appearances or the potential claims in ExxonMobil's Rule 202 petition. It also did not consider the California lawsuits filed against ExxonMobil and others in the Texas energy sector. Moreover, none of the Appellants are parties in that action. To the extent the New York decision mentioned allegations concerning Pawa's interactions with the Attorneys General, it was only to question whether Pawa's alleged improper motives could be plausibly attributed to the Attorneys General. Although Judge Caproni expressed her view that Pawa's attendance at the La Jolla and Rockefeller meetings has "limited relevance to the AGs' motives," the court ultimately made no decision about whether Pawa had an improper motive when he communicated with the Attorneys General.[85] Instead, Judge Caproni stated, "the circumstantial

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[83] ExxonMobil filed a Notice of Appeal of Judge Caproni's decision on April 20, 2018 and filed its opening brief on August 3, 2018. *Exxon Mobil Corp.* v. *Healey*, No. 18-1170 (2d. Cir.).

[84] CR7278.

[85] *Schneiderman*, 316 F. Supp. 3d at 709.

evidence put forth by Exxon fails to tie the AGs to any improper motive, *if it exists*, harbored by activists like Pawa."[86]

In June 2018, Judge William Alsup of the United States District Court for the Northern District of California dismissed the tort complaints San Francisco and Oakland filed against ExxonMobil and other energy companies for failure to state a claim.[87] In that court's view, "our industrialized and modern society" needs "oil and gas to fuel power plants, vehicles, planes, trains, ships, equipment, homes and factories," and "[a]ll of us have benefitted."[88] In light of the "public benefits derived" from fossil fuel energy, Judge Alsup concluded that "questions of how to appropriately balance these worldwide negatives against the worldwide positives of the energy itself, and of how to allocate the pluses and minuses among the nations of the world, demand the expertise of our environmental agencies, our diplomats, our Executive, and at least the Senate."[89] Those bodies, not the courts, are the appropriate forums to resolve the claims presented in those lawsuits.

Less than a month later, Judge John Keenan of the United States District Court for the Southern District of New York dismissed a lawsuit New York City

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86 *Id.* at *20 (emphasis added).

87 In October 2017, ExxonMobil and the other defendants removed the San Francisco and Oakland actions to federal court. *See* Defs.' Notice of Removal, *California* v. *BP P.L.C.*, No. 3:17-CV-06011-WHA, ECF No. 1 (N.D. Cal. Oct. 20, 2017); Defs.' Notice of Removal, *California* v. *BP P.L.C.*, No. 3:17-CV-06012-WHA, ECF No. 1 (N.D. Cal. Oct. 20, 2017).

88 *City of Oakland* v. *BP P.L.C.*, No. C 17-06011 WHA, 2018 WL 3109726, at *6 (N.D. Cal. June 25, 2018).

89 *Id.* at *7-8.

brought against ExxonMobil and other energy companies for torts arising from climate change.[90] Pawa represented the New York City in that action. While recognizing that "[c]limate change is a fact of life, as is not contested by Defendants," Judge Keenan determined that "the serious problems caused thereby are not for the judiciary to ameliorate.[91] Global warming and solutions thereto must be addressed by the two other branches of government."[92] The court explained, "To litigate such an action for injuries from foreign greenhouse gas emissions in federal court would severely infringe upon the foreign-policy decisions that are squarely within the purview of the political branches of the U.S. Government."[93]

SUMMARY OF THE ARGUMENT

The trial court's decision to exercise personal jurisdiction over the Potential Defendants under Rule 202 was correct under the Due Process Clause and the Texas long-arm statute, and it is supported by factual findings drawn from the undisputed evidentiary record.

Under the Due Process Clause, personal jurisdiction may be exercised over out-of-state defendants whose contacts with the state give rise to the claims at issue. Here, the Potential Defendants made purposeful contacts with Texas by

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90 *City of New York* v. *BP P.L.C.*, No. 18-cv-182 (JFK), 2018 WL 3475470, at *7 (S.D.N.Y. July 19, 2018).
91 *Id.* at *6.
92 *Id.*
93 *Id.* at *7.

using pretextual lawsuits to suppress speech and associational rights in Texas, obtain documents located in Texas, and cause service of process to reach ExxonMobil in Texas. These purposeful contacts with Texas, which give rise to ExxonMobil's potential claims of constitutional violations, conspiracy, and abuse of process, support the exercise of personal jurisdiction over the Potential Defendants.

Pointing to a lack of physical entry in Texas, Appellants ask this Court to overrule the denial of their special appearances, but physical presence in the state is not required to establish personal jurisdiction. Appellants also mischaracterize the trial court's ruling as premised on "directed-a-tort" jurisdiction, but the trial court did not adopt any such reasoning. Instead, it ruled that the Potential Defendants' conduct was directed at Texas, not that the effects of their conduct were felt in Texas. Nor has ExxonMobil urged this Court or the trial court to adopt such an argument as the sole basis for jurisdiction. The weakness of Appellants' position is unmasked by their need to turn the trial court's ruling into something it is not.

Appellants also misread the long-arm statute as not reaching municipal entities or officers. The plain text of that statute subjects nonresidents to personal jurisdiction when they commit a tort in whole or in part in the state. Appellants ask this court to read into the statute a non-textual carve-out for municipal

officials. No Texas court has accepted Appellants' argument, which appears only in dicta in a Fifth Circuit decision and would improperly amend the text of the statute.

The uncontested evidence also supports the trial court's findings of jurisdictional facts, although Appellants suggest otherwise. Having forfeited their opportunity to raise evidentiary challenges, Appellants may not now ask this Court to ignore certain evidence as inadmissible. Moreover, the uncontested record supports each of the trial court's findings, and a subsequently issued opinion from a New York federal court does not preclude those findings.

Finally, a Texas court need not have personal jurisdiction over prospective witnesses who are not potential defendants in a Rule 202 proceeding, as some Appellants argue (but others recognize as wrong). Instead, just as in any case, a trial court must have personal jurisdiction over a defendant, but there is no requirement in law that non-defendant witnesses be within a court's jurisdiction for a suit to proceed. No court has accepted Appellants' view that witnesses—in a 202 proceeding or otherwise—must be within the jurisdiction of a Texas court, and this Court should likewise reject their invitation to impose a condition not compelled by statutory text or judicial precedent.

ARGUMENT

A. Standard of Review

When a trial court issues findings of fact and conclusions of law in a special appearance proceeding, a court of appeals reviews the legal conclusions de novo and "the fact findings for both legal and factual sufficiency." *BMC Software Belgium, N.V.* v. *Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

Review of factual sufficiency requires "defer[ence] to a trial court's factual findings if they are supported by evidence." *Maki* v. *Anderson*, No. 02-12-00513-CV, 2013 WL 4121229, at *3 (Tex. App.—Fort Worth Aug. 15, 2013, pet. denied). "Findings may be overturned only if they are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust." *Ortiz* v. *Jones*, 917 S.W.2d 770, 772 (Tex. 1996).

Review of legal sufficiency requires evaluating "the evidence in the light most favorable to the trial court's findings, crediting favorable evidence if a reasonable factfinder could and disregarding contrary evidence unless a reasonable factfinder could not." *Maki*, 2013 WL 4121229, at *3. "So long as the evidence falls within the zone of reasonable disagreement," a court of appeals "may not substitute [its] judgment for that of the factfinder." *Id.*

B. The Trial Court Correctly Held that It Would Have Personal Jurisdiction over the Potential Defendants in an Anticipated Suit.

This Court should affirm the trial court's determination that it would have personal jurisdiction over the Potential Defendants in an anticipated suit because the contemplated claims arise from the Potential Defendants' purposeful and tortious conduct directed at the State of Texas.

1. Applicable Law

Under Rule 202, a court may allow discovery of a potential claim if the court would have personal jurisdiction over the potential defendants in the anticipated suit. *In re Doe ("Trooper")*, 444 S.W.3d 603, 608 (Tex. 2014). A Texas court may exercise personal jurisdiction over a nonresident defendant when (i) "the exercise of jurisdiction is consistent with federal and state due process guarantees," and (ii) "the Texas long-arm statute provides for it." *Spir Star AG* v. *Kimich*, 310 S.W.3d 868, 872 (Tex. 2010).

For personal jurisdiction over a nonresident to comport with due process, three elements must be satisfied. First, a defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum state" by, for instance, "purposefully direct[ing]" its activities at the state. *TV Azteca* v. *Ruiz*, 490 S.W.3d 29, 37-38 (Tex. 2016) (citations omitted). Second, the cause of action must "arise[] from" or be "related to" those contacts. *Moncrief Oil Int'l Inc.* v. *OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013). Third, the exercise of

jurisdiction must "comport[] with traditional notions of fair play and substantial justice." *TV Azteca*, 490 S.W.3d at 36 (citation omitted).

The Texas long-arm statute permits the exercise of personal jurisdiction over a nonresident who "commits a tort in whole or in part in this state." Tex. Civ. Prac. & Rem. Code § 17.042(2). Because the statute "reaches as far as the federal constitutional requirements for due process will allow," Texas courts may exercise jurisdiction over a nonresident so long as doing so "comports with federal due process limitations." *Spir Star*, 310 S.W.3d at 872 (citation omitted).

2. The Due Process Clause Authorizes Jurisdiction over the Potential Defendants.

The trial court correctly held that it could exercise personal jurisdiction over the Potential Defendants under the Due Process Clause because (i) the Potential Defendants purposefully directed their activities at Texas by commencing baseless lawsuits to suppress speech in Texas and gain access to documents in Texas and by causing service of process in Texas; (ii) ExxonMobil's potential claims arose from those contacts; and (iii) asserting personal jurisdiction over the Potential Defendants comports with fair play and substantial justice.[94] Appellants' challenges to the trial court's holding ignore binding precedent and confuse the issues. Their arguments should be rejected.

[94] FOF/COL ¶¶ 45, 48-59.

(a) The Potential Defendants Purposefully Availed Themselves of the Forum.

The first element of personal jurisdiction is satisfied here because the Potential Defendants purposefully directed their conduct at Texas. They filed baseless lawsuits against ExxonMobil and others in the Texas energy sector to chill speech and associational rights within the state and to obtain property domiciled within the state. The Potential Defendants also caused ExxonMobil to receive service of process in Texas.

(i) The Evidence Shows that the Potential Defendants Purposefully Directed Their Conduct at Texas.

Three principles guide the purposeful-availment inquiry: (i) "only the defendant's contacts with the forum are relevant, not the unilateral activity of another party or a third person"; (ii) the contacts must be "purposeful rather than random, fortuitous, or attenuated"; and (iii) the defendant must seek some "benefit" or "advantage . . . by availing itself of the jurisdiction." *TV Azteca*, 490 S.W.3d at 37 (citation omitted). When conducting this analysis, Texas courts assess "the quality and nature of the contacts, not the quantity." *Id.* (citation omitted).

The trial court correctly determined that each of these principles was satisfied by the uncontested evidentiary record.

The Potential Defendants' Contacts. The trial court's findings are based on the contacts of the Potential Defendants, not the unilateral contacts of third parties. Each Potential Defendant initiated contact and created a continuing relationship with Texas in two ways. First, they signed, approved, or participated in the filing of lawsuits against ExxonMobil and other Texas-based energy companies to suppress speech and associational rights in Texas and obtain documents in Texas.[95] This attempt to suppress speech is demonstrated by each lawsuit's express focus on First Amendment activities occurring in Texas, including: (i) ExxonMobil's publications on energy issued in Texas, (ii) a speech on climate change given by a former CEO at a shareholder meeting in Texas, and (iii) corporate decisions made in Texas to fund non-profit groups that perform climate-change research disfavored by the Potential Defendants.[96]

Second, each Potential Defendant hired a process server to cause the service of their complaints to reach ExxonMobil in Texas.[97] The San Mateo Potential Defendants delivered their complaints to ExxonMobil's registered agent in Texas, while the Oakland and San Francisco Potential Defendants served their complaints

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95 CR2250-2947, CR3097-3100, CR6946-48; FOF/COL ¶¶ 26-27, 32, 50, 52.

96 CR647-48, 657 ¶¶ 121, 139 (Imperial Beach); CR757-58, 767 ¶¶ 121, 139 (Marin); CR868-69, 878 ¶¶ 121, 139 (San Mateo); CR946-50 ¶¶ 62, 69, 71, 75 (Oakland); CR996-1001 ¶¶ 63, 70, 72, 76 (San Francisco); CR1092-1093, 1100 ¶¶ 166, 180 (Santa Cruz County); CR1228-29, 1236 ¶¶ 165, 179 (City of Santa Cruz).

97 "A defendant may be subject to personal jurisdiction because of the activities of its agent within the forum state." *Trois v. Apple Tree Auction Ctr., Inc.*, 882 F.3d 485, 490 (5th Cir. 2018); *see also Olympia Capital Assocs., L.P. v. Jackson*, 247 S.W.3d 399, 412 (Tex. App.—Dallas 2008, no pet.) (same).

on ExxonMobil's registered agent in California so that they would be transmitted to ExxonMobil's headquarters in Texas.[98]

Potential Defendant Pawa had additional pivotal contacts with the forum. At the La Jolla and Rockefeller meetings, he and others developed and promoted a plan to suppress Texas-based speech and to obtain Texas-based documents in order to delegitimize ExxonMobil and other Texas-based energy companies.[99] He also encouraged state attorneys general to commence investigations of ExxonMobil (focused on Texas-based speech and documents), and he promoted tort litigation by California municipalities against ExxonMobil and others in the Texas energy sector in furtherance of that plan.[100]

Purposeful Contacts. The Potential Defendants initiated their contacts with Texas by choosing to file lawsuits that target the First Amendment activity of ExxonMobil and others in the Texas energy sector and by serving process directed at Texas.[101] The numerous allegations in each complaint targeting Texas speech and property and the fact that the complaints were filed against ExxonMobil and

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98 CR2948-58; FOF/COL ¶¶ 26-27, 50.

99 CR2084-85, 2113-14, 2180; FOF/COL ¶ 49.

100 CR2084-85, 2177-80; FOF/COL ¶ 49.

101 CR593-699 (Imperial Beach), CR700-811 (County of Marin), CR812-922 (County of San Mateo), CR923-967 (Oakland), CR968-1023 (San Francisco), CR1024-1159 (County of Santa Cruz), CR1160-1291 (City of Santa Cruz).

seventeen other Texas-based energy companies demonstrate that the targeting of Texas in the California lawsuits was deliberate, not random or fortuitous.[102]

Benefit from the Jurisdiction. The benefit the Potential Defendants seek from their purposeful conduct is to suppress speech and associational rights in Texas and obtain documents in Texas.[103] Since at least 2012, Pawa has tried to elicit support for this plan of using litigation to force energy companies, like ExxonMobil, to alter their speech.[104] For example, at one meeting, Pawa brainstormed ways to "delegitimize [ExxonMobil] as a political actor" and "get[] discovery" with the help of "Tort[]" suits.[105] In 2015, he drafted a memorandum encouraging California municipalities to bring public nuisance lawsuits against energy companies, including ExxonMobil, for their alleged contribution to sea-level rise and flooding.[106] In his pitch, Pawa emphasized that internal documents of the energy industry should be a principal target of his proposed lawsuits.[107] Just two years later, following through on Pawa's playbook, the Potential Defendants

[102] CR632-39, 646-48, 657 (Imperial Beach), CR741-49, 755, 757-58, 767 (County of Marin), CR852-60, 866, 868-69, 878 (County of San Mateo), CR944-47, 950-53 (Oakland), CR994-96, 1000-04 (San Francisco), CR1074-83, 1090, 1092-93, 1100 (County of Santa Cruz), CR1211-20, 1226, 1228-29, 1236 (City of Santa Cruz); FOF/COL ¶¶ 28-31, 51.
[103] CR2084-85, 2180; FOF/COL ¶¶ 49, 52.
[104] CR2084-85, 2100; FOF/COL ¶¶ 9, 49.
[105] CR2111-14; FOF/COL ¶¶ 10-11, 49.
[106] CR2185-93; FOF/COL ¶¶ 23-24.
[107] CR2180; FOF/COL ¶ 24.

filed public nuisance suits against ExxonMobil and other Texas-based energy companies for causing the same purported harms outlined in his memorandum.[108]

In addition, shortly after filing the California lawsuits, several Potential Defendants condemned speech originating in Texas and explained that their lawsuits were meant to suppress that speech. For instance, days after Potential Defendant Dedina filed the Imperial Beach lawsuit, he accused ExxonMobil of participating in a "merchants of doubt campaign."[109] In a press release issued after Potential Defendant Parker filed the Oakland lawsuit, she targeted speech of the Texas energy sector, stating that "BIG OIL" "peddled misinformation to con their customers and the American public."[110] Potential Defendant Herrera similarly attacked the Texas energy sector for launching a "disinformation campaign" and stated that these companies must be "held to account."[111] These comments echoed themes from a 2016 conference in which Pawa criticized ExxonMobil for engaging in a "campaign of deception and denial."[112]

(ii) Texas Precedent Supports the Trial Court's Ruling.

Exercising personal jurisdiction here is supported by binding precedent of the Texas Supreme Court and this Court, both of which have held that purposeful

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[108] CR923-67 (Oakland); CR968-1023 (San Francisco).
[109] CR6948; FOF/COL ¶ 32.
[110] CR6943; FOF/COL ¶ 33.
[111] CR6957, 6959; FOF/COL ¶ 34.
[112] CR6935; FOF/COL ¶ 25.

availment is satisfied when a nonresident defendant purposefully directs its conduct at Texas, including speech and property in Texas.

For example, in *TV Azteca* v. *Ruiz*, the Texas Supreme Court considered whether it could exercise jurisdiction over Mexican broadcasters who allegedly defamed a Texas resident through broadcasts that originated in Mexico but were viewed in Texas. 490 S.W.3d at 35-36. The court explained, "There is a subtle yet crucial difference between directing a tort at an individual who happens to live in a particular state," which is insufficient, standing alone, to support the exercise of jurisdiction, and "directing a tort at that state," which is sufficient. *Id.* at 43. A plaintiff may demonstrate that a defendant "targeted the forum state" with evidence that the defendant made a "statement [that] was aimed at or directed to the state" or sought to promote its message in the forum. *Id.* at 48-52 (citation omitted). In addition, the fact that the "plaintiff lives and was injured in the forum state is not irrelevant to the jurisdictional inquiry" if it "shows that the forum state was the focus of the activities of the defendant." *Id.* at 43 (citation omitted). Based on these principles, a court may exercise personal jurisdiction over a defendant whose "intentional, and allegedly tortious, actions were expressly aimed at" Texas and where the "effects" of that conduct are felt in Texas. *Id.* at 40 (quoting *Calder* v. *Jones*, 465 U.S. 783, 789-90 (1984)). Applying these factors, the *TV Azteca* court concluded it could exercise jurisdiction over the nonresident defendants because

they physically entered the state, placed advertisements in Texas to promote broadcasts, and "made substantial efforts to distribute their programs and increase their popularity in Texas." *Id.* at 52.

Appellants strain to distinguish *TV Azteca*, claiming they have no contacts similar to those of the defendants in that case. (Oak. Br. 39-40; SF Br. 47; SM Br. 25-26.) They are wrong. Here, as in *TV Azteca*, the Potential Defendants' "intentional, and allegedly tortious" conduct was "expressly aimed" at Texas. Like the *TV Azteca* defendants, the Potential Defendants made "substantial efforts" to spread their viewpoints in Texas and suppress Texas-based speech about climate change by filing pretextual lawsuits against ExxonMobil and others in the Texas energy sector. In their complaints and public statements, the Potential Defendants decry Texas-based speech and activities for running counter to their policy objectives.[113] They also "targeted the forum" by using pretextual litigation to obtain documents located in Texas.[114]

The Texas Supreme Court has also stated that purposeful availment may be satisfied when a defendant targets Texas property. In *Retamco Operating, Inc.* v. *Republic Drilling Co.*, the court exercised personal jurisdiction over a nonresident corporation that allegedly engaged in a fraudulent transfer when it was assigned oil

[113] CR646-48, 657, 755, 757-58, 767, 866, 868, 878, 950-53, 1000-04, 1090, 1092, 1100, 1226, 1228-29, 1236, 6935, 6943, 6956-60; FOF/COL ¶¶ 25, 28-30, 32-34.
[114] CR632-39, 741-49, 852-60, 944-47, 994-96, 1074-83, 1211-20; FOF/COL ¶¶ 24, 31.

and gas interests in Texas. 278 S.W.3d 333, 337 (Tex. 2009). The court explained that each of the principles guiding the purposeful-availment analysis had been met even though the defendant never physically entered the state. First, the defendant's contacts with Texas were not based on "unilateral actions of a third party" because the defendant was a "willing participant" in a transaction with a Texas company to purchase Texas property. *Id.* at 340. Second, the defendant's contacts were purposeful, not fortuitous, because it knew that the property at issue was located in Texas. *Id.* at 339-40. Third, because the target of the defendant's conduct was property in Texas, the court had "no difficulty imagining just how [the defendant] would benefit from the processes and protections of Texas law." *Id.* at 340.

As in *Retamco*, the Potential Defendants were "willing participant[s]" in the filing of the California lawsuits against ExxonMobil and others in the Texas energy sector.[115] The lawsuits' express focus on Texas speech, activity, and property demonstrates that their contacts with Texas were not fortuitous.[116] If the Potential Defendants are successful in their lawsuit, they would benefit from the

[115] CR593-699 (Imperial Beach), CR700-811 (County of Marin), CR812-922 (County of San Mateo), CR923-967 (Oakland), CR968-1023 (San Francisco), CR1024-1159 (County of Santa Cruz), CR1160-1291 (City of Santa Cruz); FOF/COL ¶¶ 26-27, 50.

[116] CR632-39, 646-48, 657, 741-49, 755, 757-58, 767, 852-60, 866, 868-69, 878, 944-47, 950-53, 994-96, 1000-04, 1074-83, 1090, 1092-93, 1100, 1211-20, 1226, 1228-29, 1236; FOF/COL ¶¶ 28-31, 51.

forum by obtaining property located in Texas—namely the documents of ExxonMobil and others in the Texas energy industry.[117]

This Court has similarly found that purposeful availment may be satisfied when a nonresident defendant directs its conduct at Texas. For example, in *Hoskins* v. *Ricco Family Partners, Ltd.*, the plaintiff alleged that the nonresident defendants engaged in a conspiracy to file a fraudulent lien on Texas property in which the plaintiff claimed an interest. No. 02-15-00249-CV, 2016 WL 2772164, at *1-3 (Tex. App.—Fort Worth May 12, 2016, no pet.). Even though the defendants never physically entered Texas, this Court stated it could exercise jurisdiction over the defendants as long as their conduct was "sufficiently directed at the state and not just a particular resident." *Id.* at *6. This Court determined that the defendants' conduct was "directed at the state of Texas" because (i) the "object of the alleged conspiracy" was to affect property in Texas and (ii) the alleged injury occurred in Texas. *Id.* at *6-7. This Court further noted that the plaintiff's "allegations as to the purpose of the conspiracy have potentially more far-reaching effects that extend not only to [the plaintiff's] individual financial interest but also to the state's interest in maintaining stability and certainty." *Id.* at *7. Likewise here, the object of the Appellants' potential conspiracy is to gain

[117] CR2084, 2114, 2180, FOF/COL ¶¶ 24-25, 49-50.

access to property in Texas.[118] This conspiracy, if successful, would not only harm Texas residents, such as ExxonMobil, but would also have "far-reaching effects" on the speech of the entire Texas energy sector.[119]

In addition, in *TravelJungle* v. *American Airlines, Inc.*, American Airlines alleged that TravelJungle, a foreign travel reservation website operator, engaged in tortious conduct when it searched American Airlines' website, AA.com, for flight information in response to user requests. 212 S.W.3d 841, 844 (Tex. App.—Fort Worth 2006, no pet.). This Court held that TravelJungle purposefully directed its activities at Texas when it "intentionally" accessed AA.com and, therefore, its Texas-based servers, from outside the state to obtain data from AA.com. *Id.* at 850. This Court explained, "By deliberately directing its activity toward AA.com, TravelJungle should have been aware of the possibility that it would be haled into any forum where AA.com's servers were located." *Id.* at 851. As in *TravelJungle*, the Potential Defendants "intentionally" directed their conduct toward Texas property by filing pretextual lawsuits that expressly focused on Texas-based property, speech, and activity.[120] Therefore, the Potential Defendants "should have been aware" that they could be subject to suit in Texas, the location of the targeted property.

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[118] CR126; FOF/COL ¶¶ 24, 49-50, 52.

[119] CR646-48, 657, 755, 757-58, 767, 866, 868-69, 878, 950-53, 1000-03, 1090, 1092-93, 1100, 1226, 1228-29, 1236; FOF/COL ¶¶ 28-30.

[120] *Id.*; CR632-39, 741-49, 852-60, 944-46, 1074-83, 1211-20; FOF/COL ¶¶ 31, 50-51.

Appellants attempt to distinguish *Retamco* and *Hoskins* by arguing that those decisions should be limited to cases involving real, not personal, property in Texas. (Oak. Br. 44-45 n.17; SF Br. 28 n.16; SM Br. 27-28 n.12.) That limitation appears nowhere in the text of those decisions, and no court construing those decisions has accepted such a limitation. Adopting Appellants' reading of these decisions would also contravene this Court's ruling in *TravelJungle*. In *TravelJungle*, personal property, AA.com's servers in Texas, formed the basis for exercising personal jurisdiction over out-of-state tortfeasors. Interference with property in Texas—whether real or personal—can provide sufficient contacts with the state to establish personal jurisdiction. Exercising personal jurisdiction over the Potential Defendants falls well within these precedents.

(iii) The Challenges to the Trial Court's Decision Are Contrary to Texas Law.

Appellants contest the assertion of jurisdiction on six separate grounds that were considered and rightly rejected by the trial court.

First, Appellants argue that personal jurisdiction is improper because the Potential Defendants never physically entered Texas. (SF Br. 17, 46; SM Br. 18, 20.) However, the Texas Supreme Court and this Court have consistently said physical entry is not required to satisfy the Due Process Clause. Nevertheless, to support their argument, the San Mateo Appellants rely on this Court's decision in *OZO Capital, Inc.* v. *Syphers*, which declined to exercise personal jurisdiction over

nonresident defendants who allegedly committed a tort in Texas when they entered into a settlement agreement with a Texas company. No. 02-17-00131-CV, 2018 WL 1531444 (Tex. App.—Fort Worth Mar. 29, 2018, no pet. hist.). This Court rejected the exercise of jurisdiction over the defendants because "the gist of [the plaintiffs'] complaint against [the defendants]" is solely that the "effect" of the settlement would injure Texas residents. *Id.* at *10. In reaching this conclusion, this Court also explained that, "[a]lthough [the plaintiffs] claim that [the defendants] both committed a tort in Texas, there is no evidence in the record that [the defendants] committed a tort while physically present in Texas." *Id.* This Court did not, however, say that a nonresident defendant must enter the state to be subject to jurisdiction.

To the contrary, it is well settled that personal jurisdiction can be satisfied without "physical ties to Texas," where the nonresident "purposefully directed its activities towards Texas." *Retamco*, 278 S.W.3d at 340; *see also Hoskins*, 2016 WL 2772164, at *6 ("[A]ppellants' alleged [tortious] acts need not have occurred while they were physically in the State of Texas if those acts were sufficiently directed at the state."). For example, in *Conn* v. *Diamond*, this Court affirmed the exercise of personal jurisdiction over a defendant who committed a tort in the state by disseminating allegedly confidential documents to individuals in Texas, even though he "never traveled to Texas." No. 2-05-344-CV, 2006 WL 908746, at *2-3

(Tex. App.—Fort Worth Apr. 6, 2006, no pet.). This Court stated that, while the defendant's "affidavit proved that he did not engage in commercial activity in Texas," it "ignored the basis of jurisdiction alleged." *Id.* at *3. As in *Conn*, and unlike *Ozo*, the Potential Defendants' argument concerning their lack of physical presence in Texas ignores instructions from this Court and the Texas Supreme Court that jurisdiction may be exercised based on the Potential Defendants' purposeful conduct directed at Texas.

Second, relying on *Michiana Easy Livin' Country, Inc.* v. *Holten*, 168 S.W.3d 777 (Tex. 2005), and subsequent decisions, Appellants assert that the trial court denied their special appearances based solely on a "directed-a-tort" or "effects-based" theory of jurisdiction. (Oak. Br. 30-31; SF Br. 20-26; SM Br. 20-24.) Not so. The trial court's holding was based on the Potential Defendants' purposeful conduct directed at Texas, not the mere effects that Texas residents fortuitously felt in Texas.

In *Michiana*, a nonresident recreational vehicle dealer allegedly made misrepresentations on a call placed to it by a Texas buyer. *Michiana*, 168 S.W.3d at 784. The Texas Supreme Court held there was no personal jurisdiction over the dealer because its "only contact with Texas was [the buyer's] decision to place his order from [Texas]." *Id.* at 794. The single, unsolicited Texas contact alleged in *Michiana* is a far cry from the undisputed record here, which shows that the

Potential Defendants purposefully engaged in conduct directed at speech, activities, and property in Texas. As *TV Azteca* and other cases have shown, personal jurisdiction may arise from a defendant's purposeful effort to target or direct a message at a jurisdiction.

For example, in *Paul Gillrie Institute, Inc.* v. *Universal Computer Consulting, Ltd.*, the First Court of Appeals affirmed the denial of a Florida trade publication and its employees' special appearances in a libel suit, even though it was uncontested that the publication did not maintain an office or have employees in Texas and was "written, compiled, and published in Florida." 183 S.W.3d 755, 758, 765 (Tex. App.—Houston [1st Dist.] 2005, no pet.). After rejecting the defendants' reliance on *Michiana* where the defendant's only alleged contact was based on "the unilateral activity of a third party," the court of appeals upheld the exercise of jurisdiction because the defendants had "directed copies of their journal" to Texas residents. *Id.* at 762-63. Here, the Potential Defendants directed their conduct at Texas by filing baseless lawsuits which seek to chill speech and obtain documents in Texas.[121]

The other cases on which Appellants rely to argue that this is a mere "directed-a-tort" case also contain facts dissimilar to those here and, therefore, are

[121] CR632-39, 646-48, 657, 741-49, 755, 757-58, 767, 852-60, 866, 868-69, 878, 944-47, 950-53, 994-96, 1000-04, 1074-83, 1090, 1092-93, 1100, 1211-20, 1226, 1228-29, 1236, 6935, 6943, 6956-60; FOF/COL ¶¶ 25-34, 49-50.

inapplicable. For example, Appellants cite *Searcy* v. *Parex Resources, Inc.*, 496 S.W.3d 58 (Tex. 2016), as another decision which rejected the "directed-a-tort" theory. (Oak. Br. 31 n.9; SF Br. 21-22; SM Br. 24.) In *Searcy*, a Texas company sued a Canadian company for tortious interference when the Canadian company entered into a transaction with a Bermudian shareholder after the shareholder's deal with the Texas company fell through. 496 S.W.3d at 62. The Texas Supreme Court rejected the exercise of personal jurisdiction over the Canadian company, even though the company knew that the Bermudian shareholder had operations in Texas, because the company "displayed no interest in developing a Texas enterprise nor did it specifically seek a Texas seller. . . . [It] appears to have purposefully avoided Texas." *Id.* at 75. In reaching this conclusion, the court distinguished *Searcy* from other cases where purposeful availment was satisfied. For example, it noted that "jurisdiction was present when 'intentional, and allegedly tortious conduct . . . [is] expressly aimed at [the forum].'" *Id.* (quoting *Calder*, 465 U.S. at 789).

The facts in *Searcy* have no parallel to the facts here. The Potential Defendants did not "purposefully avoid Texas." To the contrary, they purposefully directed their conduct at Texas by filing pretextual lawsuits against ExxonMobil and others in the Texas energy sector that expressly rely on Texas-based speech

and property.[122] Under *Searcy*'s own instruction, this "intentional" conduct, which was "expressly aimed at" Texas, is sufficient to confer personal jurisdiction.

Appellants also rely on *Estate of Hood*, No. 02-16-00036-CV, 2016 WL 6803186 (Tex. App.—Fort Worth Nov. 17, 2016, no pet.), to argue that jurisdiction may not be based on the fact that ExxonMobil happened to reside in Texas when it was allegedly harmed. (Oak. Br. 32; SF Br. 24, 34.) In *Hood*, this Court declined to exercise jurisdiction over a nonresident attorney who allegedly engaged in tortious conduct during his work in connection with Mississippi probate proceedings. 2016 WL 6803186 at *6-7. His only contact with Texas was mailing a hearing notice to a beneficiary in Texas. *Id.* at *6. This single contact was insufficient to support the exercise of jurisdiction because it was based on "fortuitous circumstances . . . over which [the attorney] had no control," including that the beneficiary lived in Texas and had not yet retained a Mississippi attorney. *Id.*

The facts of *Hood* bear no resemblance to the present case. There is nothing fortuitous about Texas being the express focus of the Potential Defendants' conduct. In keeping with Pawa's playbook, the Potential Defendants' lawsuits against ExxonMobil and others in the Texas energy sector are riddled with

[122] CR593-699 (Imperial Beach); CR700-811 (County of Marin); CR812-922 (County of San Mateo); CR923-967 (Oakland); CR968-1023 (San Francisco); CR1024-1159 (County of Santa Cruz); CR1160-1291 (City of Santa Cruz); FOF/COL ¶ 50.

references to Texas-based speech, conduct, and property and were filed to suppress speech originating from, and to obtain documents in, Texas.[123]

Third, Appellants argue that denying their special appearances conflicts with the Texas Supreme Court's statement in *Old Republic National Title Insurance Co.* v. *Bell*, 549 S.W.3d 550, 560 (Tex. 2018), that "[t]he mere existence or allegation of a conspiracy directed at Texas is not sufficient to confer jurisdiction." (Oak. Br. 31; SF Br. 26-28; SM Br. 18-19.) This argument should be rejected for the same reason Appellants' previous argument should be disregarded. Neither the trial court nor ExxonMobil relied solely upon an "effects-based" theory of jurisdiction.

In *Old Republic*, the court considered whether there was jurisdiction over a nonresident defendant who allegedly engaged in a fraudulent transfer scheme with a Texas resident when, as part of the alleged scheme, she called and lent money to the Texas resident. 549 S.W.3d at 560. The court found the calls insufficient to establish personal jurisdiction because the "record contains no evidence" that the defendant "initiated the calls." *Id.* at 561. The court further held that the loans did not constitute purposeful availment in part because the court must consider the defendant's contacts with the state, not whether the loans were "part of an

[123] CR632-39, 646-48, 657, 741-49, 755, 757-58, 767, 852-60, 866, 868-69, 878, 944-47, 950-53, 994-96, 1000-04, 1074-83, 1090, 1092-93, 1100, 1211-20, 1226, 1228-29, 1236; FOF/COL ¶¶ 29-31.

elaborate conspiracy" that had effects in Texas. *Id.* at 562. Contrary to Appellants' claim, the special appearance ruling is not based solely on where ExxonMobil may feel the effects of an alleged conspiracy. Rather, the trial court assessed the forum contacts that each Potential Defendant initiated and held that each purposefully directed his or her conduct at the state.[124]

Fourth, repackaging those arguments, the Oakland Appellants argue that the trial court incorrectly relied on the alleged improper motives of the Potential Defendants, rather than their actual conduct. (Oak. Br. 36-39.) Under controlling law, a defendant's intentional or purposeful conduct remains relevant to a personal jurisdiction inquiry, and Appellants are wrong to assert otherwise. For example, personal jurisdiction may be exercised where a defendant (i) "intentionally targets Texas," or (ii) has an "intent or purpose to serve the market in the forum State." *TV Azteca*, 490 S.W.3d at 40, 46, 51. The Potential Defendants' intent and conduct, including their participation in filing the California lawsuits and, for some, their statements targeting Texas-based speech and activities, are relevant to the jurisdictional inquiry.[125] These are concrete actions, the significance of which is illuminated by examining the intent behind the conduct.[126]

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[124] *See, e.g.*, FOF/COL ¶¶ 23-34, 41, 48-52.
[125] *See, e.g.*, FOF/COL ¶¶ 24-34, 49-50.
[126] 3SCR29-50.

The Oakland Appellants incorrectly represent that ExxonMobil conceded at the special appearance hearing that "intent doesn't matter" (Oak. Br. 37-38), but they have taken counsel's statement out of context. At the hearing, Appellants claimed that the California lawsuits seek only "money damages" and are not directed at Texas-based speech.[127] In response, ExxonMobil explained that the Potential Defendants' claimed "good intentions for filing their lawsuit[s]" are irrelevant and that they can be held accountable for their purposeful conduct directed at Texas:

> It doesn't matter if they artfully pleaded their claims so that they didn't put in there what is very likely to be their true intention, which is suppressing speech of energy companies they disagree with. That doesn't matter. Their intent doesn't matter. What matters is: What effect did those lawsuits have on energy companies in Texas? . . . . The fact that they conspired outside of the state and then individually took actions . . . . They filed a lawsuit that's riddled with lies and misrepresentations because they had an ulterior purpose, which is to suppress speech here. They targeted speech here, and so they can be held to account for what they've done here.[128]

That statement is firmly rooted in *Moncrief*, where the Texas Supreme Court disregarded the nonresident defendants' attempt to downplay the significance of their forum contacts in light of their "subjective intent." 414 S.W.3d at 154. In that case, which involved a misappropriation of trade secrets claim, the court exercised personal jurisdiction over the defendants who accepted the plaintiff's

[127] RR24:3-12.
[128] RR104:18-105:11, 107:5-12.

trade secrets during a Texas meeting they agreed to attend, despite their subjective belief about the purpose of that meeting. *Id.* at 153-54. The court explained, "if a nonresident defendant intended to drive through Texas and caused a vehicular accident in the state, her intent to simply pass through the state would not negate the fact that she caused a vehicular accident." *Id.* Here, it does not matter that the Potential Defendants claim to have filed their lawsuits against ExxonMobil and others in the Texas energy sector in good faith. Instead, what matters is that each Potential Defendant "intended to, and did," file lawsuits purposefully directed at speech, conduct, and property in Texas, and their claimed "subjective intent does not negate [those] contacts." *Id.*

Fifth, Appellants argue that personal jurisdiction cannot be based solely on their service of the complaints into Texas. (Oak. Br. 43; SF Br. 35; SM Br. 34.) Here, the trial court did not base its determination on that one factor. It merely found that this contact was one of many relevant contacts that supported the exercise of jurisdiction.[129] As courts have agreed, causing "service of process in [the forum]" is a relevant jurisdictional contact. *Elec. Frontier Found.* v. *Glob. Equity Mgmt. (SA) Pty Ltd.*, 290 F. Supp. 3d 923, 937 (N.D. Cal. 2017); *cf. Smith* v. *Cattier*, No. 05-99-01643, 2000 WL 893243, at *4 (Tex. App.—Dallas

[129] FOF/COL ¶ 50.

July 6, 2000, no pet) (finding it relevant to the jurisdictional analysis that the defendant initiated a criminal investigation into the plaintiff's actions in Texas).

The Oakland and San Mateo Appellants' reliance on *Allred* v. *Moore & Peterson*, 117 F.3d 278 (5th Cir. 1997), is not to the contrary. (Oak. Br. 43 n.16; SM Br. 34.) In that case, the Fifth Circuit held that a Mississippi court could not exercise personal jurisdiction over the defendants where *the only* alleged Mississippi contact was that the defendant "caused process to be served by mail" on the plaintiff in Mississippi. *Id.* at 287. The court did not state that causing service of process in the forum is irrelevant to the jurisdictional analysis, only that it is insufficient without more. And here there is more.

The Oakland Appellants also specifically contest as "factually wrong" Conclusion of Law No. 50, which states that they caused the Oakland complaint to be served on ExxonMobil in Texas. (Oak. Br. 43.) They are mistaken. This Conclusion of Law is supported by the record which demonstrates that the Oakland Potential Defendants served ExxonMobil's registered agent in California so that the complaint could be transmitted to ExxonMobil in Texas.[130]

Sixth, the San Mateo Appellants erroneously argue that the trial court failed to adequately address the conduct of the San Mateo Potential Defendants. (SM Br. 12-13.) However, the trial court found that the San Mateo Potential Defendants,

[130] *People of the State of Cal.* v. *BP, p.l.c.*, No. RG17875899 (Alameda Sup. Ct. Oct. 4, 2017) (Oakland proof of service).

just like the other Potential Defendants, purposefully directed their conduct at Texas, by (i) filing lawsuits, which expressly focus on Texas-based conduct, and (ii) serving those complaints on ExxonMobil in Texas.[131] In addition, days after filing the Imperial Beach lawsuit, Potential Defendant Dedina targeted Texas-based speech when he identified the First Amendment activities of energy companies, including ExxonMobil, as an impetus for the lawsuit.[132] This intentional and deliberate targeting of Texas by the San Mateo Potential Defendants constitutes purposeful availment.

(b) The Anticipated Suit Would Arise from the Potential Defendants' Contacts with Texas.

The second element of personal jurisdiction is satisfied because ExxonMobil's potential claims would arise from the Potential Defendants' purposeful contacts with Texas.[133] A potential claim "arises from or relates to a defendant's forum contacts if there is a substantial connection between those contacts and the operative facts of the litigation." *TV Azteca*, 490 S.W.3d at 52 (citation omitted). A substantial connection can be found where a nonresident defendant's purposeful contacts with Texas "are the crux of the tort claim," *Searcy*, 496 S.W.3d at 91, or where Texas property is one of the "operative facts" in the litigation, *Retamco*, 278 S.W.3d at 340-41.

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131 *See, e.g.*, FOF/COL ¶¶ 27-28, 30-32, 35, 37-41.
132 CR3097-3100; FOF/COL ¶ 32.
133 FOF/COL ¶ 53.

The nexus requirement is satisfied because the "crux" of ExxonMobil's potential tort claims is the Potential Defendants' filing of baseless lawsuits against ExxonMobil and others in the Texas energy sector that expressly focus on Texas-based speech and property.[134] In addition, if these torts were committed by the Potential Defendants, they occurred in Texas, where ExxonMobil exercises its First Amendment rights.[135] *See, e.g.*, *Asgeirsson* v. *Abbott*, 773 F. Supp. 2d 684, 693 (W.D. Tex. 2011) (First Amendment injury occurs at the location of "the alleged suppression of First Amendment rights"), *aff'd*, 696 F.3d 454 (5th Cir. 2012).

In response, Appellants emphasize that they never physically entered Texas. (SM Br. 31-33; Oak. Br. 46; SF Br. 24.) However, the Texas Supreme Court has recognized that the nexus requirement may be satisfied even if a defendant did not "physically enter the forum state." *Retamco*, 278 S.W.3d at 339-41; *see also* *Norstrud* v. *Cicur*, No. 02-14-00364-CV, 2015 WL 4878716, at *9 (Tex. App.—Fort Worth Aug. 13, 2015, no pet.).[136] The record here shows that the nexus requirement was satisfied.

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[134] CR632-39, 646-47, 657, 741-49, 755, 757, 767, 852-60, 866, 868, 878, 944-47, 950-53, 992-96, 1000-03, 1074-83, 1090, 1092, 1100, 1211-20, 1226, 1228, 1236; FOF/COL ¶ 53.

[135] CR15, 18; FOF/COL ¶ 1.

[136] Even if physical entry were necessary, the San Mateo Appellants could not seek refuge in that requirement because their agents served the complaints on ExxonMobil's registered agent in Texas. CR2953-54. *See Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014) ("[P]hysical entry into the State—either by the defendant in person or through an agent, goods, mail, or some other means—is certainly a relevant [jurisdictional] contact.").

(c) Exercising Jurisdiction over the Potential Defendants Would Comport with Fair Play and Substantial Justice.

The third element of personal jurisdiction is satisfied here because exercising personal jurisdiction over the Potential Defendants in the anticipated action would be reasonable.[137] As Texas courts have explained, it is "not unreasonable to require" nonresident defendants to "defend in this state a tort action which is an outgrowth of [their] contact with [the] Texas resident[s]" that they intentionally targeted. *Infanti* v. *Castle*, No. 05-92-00061-CV, 1993 WL 493673, at *5 (Tex. App.—Dallas Oct. 28, 1993, no writ). For the same reason, it would not violate traditional notions of fair play for a Texas court to order pre-suit discovery concerning that potential action.

When a nonresident defendant has purposefully established minimum contacts with the forum state, it bears a heavy burden to negate jurisdiction because "[o]nly in rare cases . . . will the exercise of jurisdiction not comport with fair play and substantial justice." *Retamco*, 278 S.W.3d at 341. Courts consider the following five factors when analyzing the reasonableness of exercising jurisdiction: (i) "the burden on the defendant"; (ii) "the interests of the forum in adjudicating the dispute"; (iii) the petitioner's "interest in obtaining convenient and effective relief"; (iv) "the interstate judicial system's interest in obtaining the most

[137] FOF/COL ¶¶ 54-59.

efficient resolution of controversies"; and (v) "the shared interest of the several States in furthering fundamental substantive social policies." *Id.* at 342.

Here, each factor supports the exercise of jurisdiction.

Burden on the Defendant. Appellants claim that litigating this action would be burdensome because it would interfere with their job responsibilities and would require travel. (Oak. Br. 47-49; SF Br. 40; SM Br. 36.) To demonstrate that the exercise of jurisdiction is burdensome, a defendant "must produce evidence of such a burden." *Golden Agri-Res. Ltd.* v. *Fulcrum Energy LLC*, No. 01-11-00922-CV, 2012 WL 3776974, at *14 (Tex. App.—Houston [1st Dist.] Aug. 30, 2012, pet. denied). None of the Potential Defendants submitted sufficient evidence of burden.[138]

Potential Defendants Herrera, Parker, and the cities of San Francisco and Oakland did not identify any burden in the affidavits they filed in the trial court.[139] While the San Mateo Potential Defendants and Pawa claimed in their affidavits that litigating this action would interfere with their job responsibilities,[140] such concerns, like complaints about the distance the Potential Defendants may need to

[138] RR67-69.

[139] CR1831-33 (Herrera); CR1839-41 (Parker); CR7115-17 (Oakland); CR7172-73 (San Francisco).

[140] CR1865 ¶ 21 (Pawa); CR1956 ¶ 15 (Beiers); CR1980-81 ¶ 13 (Lyon); CR1969-70 ¶ 14 (Dedina); CR1996-97 ¶ 15 (Washington); CR1988 ¶ 15 (McRae); CR1965 ¶ 15 (Condotti).

travel, do not defeat jurisdiction since "the same can be said of all nonresidents." *Moncrief Oil*, 414 S.W.3d at 155.

Recognizing the lack of evidence supporting burden, the Oakland Potential Defendants argue that exercising jurisdiction over the Potential Defendants who are also attorneys is categorically burdensome. (Oak. 49-50.) However, as Texas and California courts have recognized, attorneys "are not immune from discovery." *Doubleday* v. *Ruh*, 149 F.R.D. 601, 613 (E.D. Cal. 1993); *DataTreasury Corp.* v. *Wells Fargo & Co.*, No. 2:06-CV-72 DF, 2010 WL 11468809, at *6-7 (E.D. Tex. Mar. 9, 2010). "[A]n attorney may be examined as any other witness where the attorney's conduct itself is the basis of a claim or defense." *Doubleday*, 149 F.R.D. at 613; *DataTreasury*, 2010 WL 11468809, at *6-7 (examination permitted when attorney has information "crucial" to the case). It would be appropriate to seek discovery from the Potential Defendants because their conduct and motivations surrounding the filing of the California lawsuits are at the heart of ExxonMobil's potential claims.

Interests of the Forum. Texas courts have repeatedly observed that Texas has a "serious state interest in adjudicating" cases alleging a tort in Texas against a Texas resident and that no other state has "as significant an interest as Texas does in resolving a claim for a tort committed in Texas against a Texas resident." *Moncrief Oil*, 414 S.W.3d at 155-56. The Texas Attorney General recognized the

importance of protecting the First Amendment rights of ExxonMobil and others in the Texas energy sector when his office filed an amicus brief in support of ExxonMobil's motion for preliminary injunction against the New York and Massachusetts Attorneys General. In that brief, the Texas Attorney General explained that the abuse of government power "to resolve a public policy debate undermines the trust invested in our offices and threatens free speech."[141]

The importance of free speech is also enshrined in the Texas Constitution, which explicitly protects freedom of expression, by declaring that "[e]very person shall be at liberty to speak, write or publish his opinions on any subject . . . and no law shall ever be passed curtailing the liberty of speech." *Kinney* v. *Barnes*, 443 S.W.3d 87, 90 (Tex. 2014) (quoting Tex. Const. art. I, § 8). In the face of these weighty concerns, Appellants' assertion that Texas has little interest in protecting the First Amendment activities of ExxonMobil and others in the Texas energy sector (Oak. Br. 50-51; SF Br. 40-41; SM Br. 37-38) cannot be credited.

ExxonMobil's Interest in Convenient and Effective Relief. The Oakland and San Francisco Appellants claim that ExxonMobil has little interest in bringing its anticipated suit in Texas because it could seek the same relief in California, where it purportedly would be required to bring its potential claims as compulsory counterclaims. (Oak. Br. 51; SF Br. 41.) It is well established, however, that

[141] CR2991.

Texas residents, such as ExxonMobil, have "an inherent interest in pursuing the lawsuit locally, rather than being required to travel to [another state] to pursue [their] interests." *Motor Car Classics, LLC* v. *Abbott*, 316 S.W.3d 223, 233 (Tex. App.—Texarkana 2010, no pet.).

It is also premature to claim that ExxonMobil may bring its potential claims only as compulsory counterclaims in the California actions. ExxonMobil contests the exercise of personal jurisdiction over it in California, and ExxonMobil is not required to bring counterclaims in a court that lacks personal jurisdiction. One California federal judge has already agreed with ExxonMobil's challenge; he dismissed the San Francisco and Oakland actions for lack of personal jurisdiction, as well as failure to state a claim.[142] As a result, for San Francisco and Oakland (and related Potential Defendants), there is no pending action in which ExxonMobil could file counterclaims. Nevertheless, even assuming that ExxonMobil could bring its claims in California, the "fact that the claims might be fairly litigated in another forum does not mean that jurisdiction is inappropriate in this one." *Nw. Cattle Feeders, LLC* v. *O'Connell*, No. 02-17-00361-CV, 2018 WL 2976440, at *11 (Tex. App.—Fort Worth June 14, 2018, no pet.).

Efficient Resolution of Controversies. Appellants next argue that exercising jurisdiction in Texas would not support the interstate judicial system's

[142] *Oakland*, 2018 WL 3609055, at *1.

interest in obtaining the most efficient resolution of controversies because a Texas ruling might be inconsistent with one in California. (Oak. Br. 52-53; SF Br. 41-42; SM Br. 38-39.) Despite this possibility, Texas courts have said this factor weighs in favor of jurisdiction when the Texas court can adjudicate "claims against all defendants in one proceeding." *TV Azteca*, 490 S.W.3d at 56 (citing cases). The Texas court is the only forum where ExxonMobil can pursue all of its claims against all Potential Defendants. And for the Potential Defendants whose complaints have been dismissed, there is no pending case in which to file a counter-claim.

Furthering Substantive Social Policies. The Oakland and San Francisco Appellants argue that California has a greater interest in this anticipated action because it would concern claims against California municipal officials. (Oak. Br. 53-54; SF Br. 41-42.) That claimed concern should not outweigh Texas's "especial interest in exercising judicial jurisdiction over those who commit torts within its territory," such as the Potential Defendants in ExxonMobil's anticipated suit. *TV Azteca*, 490 S.W.3d at 55 (citation and internal quotation marks omitted). Texas's interest in this action is further supported by the dispute's connection to Texas-based speech and property. *See Retamco*, 278 S.W.3d at 342.

Appellants also argue that exercising jurisdiction would open the floodgates to Rule 202 petitions and would improperly condone ExxonMobil's alleged forum-

shopping. (Oak Br. 54; SF Br. 41; SM Br. 37.) That hyperbole deserves no consideration. It is unlikely that other out-of-state officials will duplicate the purposeful targeting of Texas-based speech, property, and activity demonstrated here. But if such conduct were duplicated, Texas courts would be the appropriate forum for aggrieved parties to seek redress. Moreover, filing such a claim in Texas would hardly amount to forum shopping when ExxonMobil's speech and associational rights occur in Texas and its documents are stored there.

3. The Texas Long-Arm Statute Reaches All Potential Defendants, Including Municipalities and Their Officials.

Under the long-arm statute, a court may exercise personal jurisdiction over "nonresidents" who are "doing business" in the state. *Retamco*, 278 S.W.3d at 337 (citing Tex. Civ. Prac. & Rem. Code § 17.041(2)). Both elements are satisfied here as to all Potential Defendants.[143]

(a) The Potential Defendants Are Nonresidents.

Texas law defines "nonresidents" to include "an individual who is not a resident of this state." Tex. Civ. Prac. & Rem. Code § 17.041(1). The Potential Defendants are nonresidents because they are not residents of Texas.

Certain Potential Defendants (i.e., the municipalities and the municipal employees) argue they are excluded from the long-arm statute's definition of "nonresident" because they are not "individuals." (Oak. Br. 54-56; SF Br. 49-51;

[143] FOF/COL ¶¶ 46-47.

SM Br. 39-40.) But these Potential Defendants have identified no Texas state court authority for this proposition, and ExxonMobil is aware of none. That is for good reason. Texas courts have consistently held that the long-arm statute applies to out-of-state municipalities and their employees.

For example, in *Infanti* v. *Castle*, the Dallas Court of Appeals determined that the long-arm statute "authorize[d] jurisdiction over the City" of Phoenix, Arizona because "[t]he *act* giving rise to potential tort liability for the alleged negligent entrustment occurred in Texas." No. 05-92-00061-CV, 1993 WL 493673, at *4 (Tex. App.—Dallas Oct. 28, 1993, no writ). Similarly, in *Board of County Commissioners of County of Beaver Oklahoma* v. *Amarillo Hospital District*, the Amarillo Court of Appeals rejected an argument from the defendant that the "trial court had no jurisdiction over it since it is an Oklahoma political subdivision." 835 S.W.2d 115, 118-19 (Tex. App.—Amarillo 1992, no writ). The court instead concluded that the Texas plaintiff's allegations that the defendant breached an implied contract with the plaintiff were "sufficient to satisfy the requisites of the long-arm statute." *Id.*; *see also 21 Turtle Creek Square, Ltd.* v. *N.Y. State Teachers' Ret. Sys.*, 425 F.2d 1366, 1368 (5th Cir. 1970) (asserting personal jurisdiction over a New York state entity under the Texas long-arm statute).

If, as Appellants contend, the long-arm statute does not reach municipal and state officials outside Texas, Texas courts would never be required to consider whether exercising personal jurisdiction over such defendants is permitted under the Due Process Clause. Yet several appellate decisions evaluate the sufficiency of an out-of-state official's or entity's contacts with Texas under the Due Process Clause. *See, e.g.*, *Gulf Coast Int'l, LLC* v. *Research Corp. of Univ. of Haw.*, 490 S.W.3d 577, 583-84 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (evaluating contacts of a Hawaiian state agency); *City of Riverview, Michigan* v. *Am. Factors, Inc.*, 77 S.W.3d 855, 858 (Tex. App.—Dallas 2002, no pet.) (evaluating contacts of the City of Riverview, Michigan); *Perez Bustillo* v. *Louisiana*, 718 S.W.2d 844, 846 (Tex. App.—Corpus Christi 1986, no writ) (evaluating contacts of the State of Louisiana, Louisiana state departments, and a Louisiana state official). That analysis would not have occurred if out-of-state officials or entities were categorically outside the reach of the long-arm statute.

Appellants fail to address any of these cases, each of which ExxonMobil cited in the trial court. Unable to find any Texas state court authority to support their position, Appellants rely on dicta in the federal decision *Stroman Realty, Inc.* v. *Wercinski*, which involved state (not municipal) officials sued in their official capacities and made no definitive statement about the scope of the Texas long-arm statute. 513 F.3d 476 (5th Cir. 2008). Far from supporting Appellants'

position, the majority in *Stroman* simply raised a "question" about the application of the long-arm statute to state officials sued in their official capacity and observed that "[w]hether the long-arm statute's definition of nonresidents ignores or subsumes the *Ex Parte Young* fiction is *uncertain*." *Id.* at 483 (emphasis added). The actual holding of *Stroman* did not adjudicate that question or any aspect of the long-arm statute because the case was decided on constitutional, not statutory, grounds. *Id.* at 483-89. The majority unambiguously acknowledged that fact, observing that the nonresident state official had conceded that he fell within the reach of the long-arm statute and thereby "relieve[d] th[e] court of an obligation to pursue these interpretive questions." *Id.* at 483.

Even if the *Stroman* majority had reached a conclusion about the long-arm statute, it would not affect the special appearances for three independent reasons. First, had *Stroman* held that state officials are outside the reach of the long-arm statute (which it did not), it would have construed the statute in a manner inconsistent with the Texas state court decisions described above, which are authoritative on the interpretation of Texas law. *See Amberboy* v. *Societe de Banque Privee*, 831 S.W.2d 793, 797 (Tex. 1992) (rejecting the Fifth Circuit's prediction of how a Texas state court would rule on a state law issue and noting that the court is "not constrained" to address the Fifth Circuit opinion); *Sky View at*

Las Palmas, LLC v. *Mendez*, No. 17-0140, 2018 WL 2449349, at *8 (Tex. June 1, 2018) (same).

Second, any such conclusion would amount to non-binding dicta, which "settles nothing, even in the court that utters it." *Jama* v. *Immigration & Customs Enf't*, 543 U.S. 335, 351 n.12 (2005). Emphasizing the majority's concession that the reach of the long-arm statute was not presented for appellate review, the third member of the *Stroman* panel wrote that he did "not concur in the opinion's extensive dicta, including parts about: whether the Texas long-arm statute applies (part A), the parties having conceded it does." 513 F.3d at 489-90 (Barksdale, J., concurring in part). The San Mateo Appellants have also acknowledged that the majority's statement about the long-arm statute "is mere dicta."[144]

Third, *Stroman* involved state officials sued in their official capacity as proxies for sovereign states and said nothing about the application of the long-arm statute to municipalities or their officials.

(b) The Potential Defendants Are "Doing Business" in Texas.

The statutory definition of "doing business" in Texas includes "commit[ting] a tort in whole or in part in this state." Tex. Civ. Prac. & Rem. Code § 17.042(2). In an anticipated suit, ExxonMobil would allege that the Potential Defendants committed a tort in Texas by commencing pretextual lawsuits against Texas energy

[144] CR7206.

companies with the primary objectives of suppressing speech and obtaining documents in Texas.[145]

If these torts were committed, they were committed in Texas because that is where ExxonMobil exercises its First Amendment rights and stores its documents.[146] Several courts have agreed that a "plaintiff suing because his freedom of expression has been unjustifiably restricted . . . suffers harm only where the speech would have taken place, as opposed to the district in which . . . the decision to restrict this plaintiff's speech was made." *Kalman* v. *Cortes*, 646 F. Supp. 2d 738, 742 (E.D. Pa. 2009); *see also, e.g.*, *Francis* v. *API Tech. Servs., LLC*, No. 4:13-CV-627, 2014 WL 11462447, at *6 (E.D. Tex. Apr. 29, 2014) (tort claims occurred in Texas because that is where "[t]he alleged injuries occurred and are felt"); *Asgeirsson*, 773 F. Supp. 2d at 693; *Elec. Frontier Found.*, 290 F. Supp. 3d at 936 (First Amendment injury would occur where the plaintiff "utter[s] the challenged speech").

The San Francisco Appellants contest this straightforward application of the statute by arguing that they could not have committed a tort in Texas because "[t]here is no allegation in the record that San Francisco or its officials ever committed any act in Texas." (SF Br. 14.) The long-arm statute, however, does not require physical entry into the state. It can reach a defendant even if he never

[145] CR6-7; FOF/COL ¶ 47.
[146] CR15 ¶ 13, 18 ¶ 32, 3110 ¶ 19; FOF/COL ¶¶ 1, 47; RR31:9-12, 34:13-25, 47:7-12, 54:1-10.

"physically enter[s] Texas" so long as the tort at issue was committed in the state. *Norstrud*, 2015 WL 4878716, at *1, *8-9. The San Francisco Appellants also incorrectly argue that ExxonMobil "did not allege that it suffered any injury in Texas or that its First Amendment rights have been violated." (SF Br. 15.) The Petition and record contain multiple allegations and ample evidence that, if ExxonMobil brought its anticipated action, it would be based on the First Amendment injury ExxonMobil suffered in Texas.[147]

The Oakland Appellants make an even more fundamental error by contending that the violation of a plaintiff's constitutional rights is not a tort. (Oak. Br. 56.) The United States Supreme Court disagrees. It is well settled that Section 1983 suits arising from the violation of constitutional rights, such as the potential violation of ExxonMobil's First Amendment rights at issue here, sound in tort. *See Manuel* v. *City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017) ("Section 1983 creates a 'species of tort liability.'").

4. Appellants' Challenges to the Trial Court's Findings Are Without Merit.

This Court should also reject Appellants' untimely and meritless challenges to the findings of fact. All parties had a full and fair opportunity to offer and object to evidence—both before and during the special appearance hearing.

[147] CR18 ¶¶ 31-32, 31-32 ¶ 60, 51-52 ¶¶ 110-11; FOF/COL ¶¶ 1, 47; RR31:9-12, 34:13-25, 47:7-12, 54:1-10.

Appellants, however, did not raise proper evidentiary objections and therefore failed to preserve such challenges on appeal. They cannot now seek evidentiary rulings they never requested below or suggest that the Court ignore evidence as inadmissible. Moreover, Appellants' challenges to the findings disregard the standard of review for sufficiency of the evidence. Even a cursory review of the record shows that the trial court's factual findings are fully supported by the uncontested evidence.

(a) Appellants Waived Their Evidentiary Objections.

Appellants failed to preserve their evidentiary objections for appeal. To preserve a challenge for appellate review, the complaining party generally must (i) make a timely objection "with sufficient specificity to make the trial court aware of the complaint" and (ii) obtain a ruling on the objection. Tex. R. App. P. 33.1(a); *see also Mansions in the Forest, L.P.* v. *Montgomery Cty.*, 365 S.W.3d 314, 317 (Tex. 2012). It is well established that any objection to evidence is waived if it is not raised "immediately after the statement is made." *Fort Worth Hotel Ltd. P'ship* v. *Enserch Corp.*, 977 S.W.2d 746, 756 (Tex. App.—Fort Worth 1998, no pet.). By electing not to object to the evidence's "authenticity or raise any other objections to its admission" prior to or "at the special appearance hearing," Appellants waived any objection. *Ltd. Logistics Servs., Inc.* v. *Villegas*, 268 S.W.3d 141, 146 (Tex. App.—Corpus Christi 2008, no pet.).

No Appellant raised a specific, timely objection to any of ExxonMobil's evidence. The Oakland Appellants claim they challenged ExxonMobil's evidence in a brief filed before the hearing. (Oak. Br. 62.) Not so. A footnote tucked away in a reply brief filed by Potential Defendants Pawa and Parker and Prospective Witness Landreth summarily stated, without specificity or citation, that "Respondents object to Exxon's litany of irrelevant documents that go to the merits, as well as documents that are hearsay and other improper submissions."[148] No other Appellant joined in this footnote. But even if they had, that vague objection has no legal significance. A nonspecific objection to unspecified evidence as irrelevant or hearsay "amounts to no objection at all" and is insufficient to preserve a claim on appeal. *Murphy* v. *Waldrip*, 692 S.W.2d 584, 591 (Tex. App.—Fort Worth 1985, writ ref'd n.r.e.). This Court recognized that principle in *Town of Flower Mound* v. *Teague*, where it held that "general objections to 'lack of foundation' that did not specify how the evidence lacked foundation . . . did not preserve error because they were not specific." 111 S.W.3d 742, 765-66 (Tex. App.—Fort Worth 2003, pet. denied) (citing Tex. R. Evid. 103(a)(1)). This footnote suffers from the same defect and is inadequate to preserve an evidentiary objection for appellate review.

[148] CR7121 n.2.

Appellants also chose not to raise evidentiary challenges at the hearing, even though the trial court had told them to state objections if they had any. After the Oakland Appellants' counsel stated, "there may be exhibits to [ExxonMobil's] affidavits that . . . we might want to challenge," the trial court instructed counsel to "bring that up" during the hearing.[149] But counsel never raised an objection at the hearing. Nor did any other Appellant raise evidentiary objections to ExxonMobil's evidence at the hearing.[150]

Having failed to raise proper objections before the trial court, Appellants have not preserved for appeal any challenges to the admissibility of ExxonMobil's evidence.

(b) The Findings of Fact Are Fully Supported by the Undisputed Evidentiary Record.

Nor do Appellants have valid grounds to question the evidentiary basis for the trial court's factual determinations. The findings are supported by the uncontested evidentiary record and "reasonable inferences [drawn] from the evidence presented."[151] *Hooks* v. *Carpeton Mills, Inc.*, No. 2-05-059-CV, 2005 WL 3526560, at *1 (Tex. App.—Fort Worth Dec. 22, 2005, no pet.). For the

[149] RR20:6-13.

[150] The trial court also recognized that Appellants "did not object to the evidence at the hearing," and Appellants did not take issue with that observation. FOF/COL at 1-2; *see also* 4SCR4-21.

[151] In a submission to the trial court, ExxonMobil identified evidentiary support for each of its proposed findings of fact. 3SCR29-50. That submission is reattached here as Appendix Ex. E.

reasons detailed below, Appellants have failed to meet their burden to show that any of the findings are "so weak or so contrary to the overwhelming weight of all the evidence that the trial court's decision was clearly in error." *Maki*, 2013 WL 4121229, at *6. This Court should "defer" to the trial court's findings because "they are supported by evidence." *Id.* at *3.

As an initial matter, Appellants are wrong to insinuate any infirmity in the findings because they were originally submitted by ExxonMobil. (Oak. Br. 15, 58; SF Br. 7; SM Br. 11.) This Court has stated unambiguously that no "lesser deference is required by this court to findings of fact adopted verbatim" by a trial court. *Norstrud*, 2015 WL 4878716, at *4. The process leading up to the issuance of the findings demonstrates the sound basis of that holding. After the hearing on Appellants' special appearances, all parties submitted proposed findings of fact for the court's consideration.[152] When Appellants challenged the evidentiary support for ExxonMobil's proposed findings of fact, ExxonMobil provided the trial court with an appendix that contained a citation to the uncontested evidentiary record for every proposed finding of fact.[153] The court then adopted a modified version of ExxonMobil's proposed findings of fact based on the "uncontested evidentiary

[152] CR7218-33, 7293-99; SCR7-21, 64-67.
[153] 3SCR29-50; Appendix Ex. E.

record."[154] That sequence of events reflects the customary and unobjectionable process for the issuance of findings of fact.

Appellants' challenges to specific findings are equally meritless. Each is rebutted below.

Finding of Fact Nos. 7, 8, 9. These findings directly quote statements from La Jolla conference attendees, including Pawa. The Oakland Appellants argue that the findings improperly attribute statements to Pawa that he did not make. (Oak. Br. 58.) That is false. The findings clearly and accurately attribute statements to Pawa and other conference participants based on quotations that appear in a report of the La Jolla conference, the authenticity of which was not disputed before or at the special appearance hearing.[155] There is no basis to question for the first time on appeal the accuracy of those attributions.

Finding of Fact Nos. 10, 11. These findings contain quotations from the draft agenda of the Rockefeller meeting. As Pawa's counsel conceded at the special appearance hearing, there is no dispute that the meeting took place and that the draft agenda was sent to Pawa's email account.[156] The Oakland Appellants nevertheless argue that these findings improperly "say in essence that Pawa organized the [Rockefeller] meeting and set the agenda." (Oak. Br. 58-59.) That

[154] FOF/COL at 2.
[155] CR2084-86, 2100.
[156] RR96:23-97:2.

statement appears nowhere in the findings. Instead, the findings directly quote from the draft agenda.

Finding of Fact Nos. 13, 14. These findings quote statements made by Attorneys General Schneiderman and Healey at the March 2016 press conference. The Oakland Appellants object to the purported inference that "Pawa persuaded . . . the AGs to adopt the 'strategy' that Pawa 'developed at La Jolla' and 'urged at . . . the Rockefeller meeting.'" (Oak. Br. 59 (quoting Finding Nos. 13-14).)

The Oakland Appellants misconstrue the findings. The trial court found that the press conference statements by the New York and Massachusetts Attorneys General simply "echoed themes" from statements made, including by Pawa, at the La Jolla and Rockefeller meetings that Pawa attended.[157] These findings are based on the striking similarity between those statements and the Attorneys General's statements at the March 2016 press conference. For example, at the La Jolla conference, Pawa blamed ExxonMobil for "distort[ing] the truth" and noted that litigation could "serve[] as a 'potentially powerful means to change corporate behavior.'"[158] Both the New York and Massachusetts Attorneys General similarly criticized the "confusion" and "misapprehen[sion]" allegedly caused by the energy

[157] FOF/COL ¶¶ 13-14.
[158] CR95.

industry and argued that the energy industry, including ExxonMobil, must be held accountable for this conduct.[159]

Finding of Fact Nos. 23, 26. According to these findings, Pawa "promoted his La Jolla strategy to California municipalities," and, "following through on the strategy," the San Francisco and Oakland Potential Defendants filed lawsuits against ExxonMobil and other energy companies. Both the Oakland and San Francisco Potential Defendants argue that there is insufficient evidence to support the claim that they filed their lawsuits pursuant to a strategy outlined by Pawa. (Oak. Br. 59; SF Br. 29-31.)

The finding that Pawa promoted his litigation strategy against energy companies is supported by the memorandum Pawa drafted encouraging public officials in California to bring a nuisance suit against energy companies, including ExxonMobil, for allegedly engaging in a "campaign and conspiracy of deception and denial on global warming."[160] In the memorandum, Pawa detailed the harms California has supposedly suffered (or will soon suffer), including sea-level rise and floods, as a result of the energy companies' conduct.[161]

The evidence also demonstrates that the San Francisco and Oakland Potential Defendants had a connection to the memorandum. Two years after

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[159] CR147, 157.

[160] CR2175-81. At the special appearance hearing, Pawa's counsel conceded the authenticity of this memorandum, noting it was sent from Pawa's law group. RR98:4-6.

[161] CR2178-79, 2185-86.

circulating his memorandum, Pawa represented San Francisco and Oakland in their nuisance lawsuits against several energy companies, including ExxonMobil, for allegedly causing the same harms of sea-level rise and flooding.[162] Given the similarities between Pawa's memorandum and the allegations he has advanced in his subsequent representation of San Francisco and Oakland, it was reasonable for the trial court to infer that Pawa filed the complaints in furtherance of the strategy he outlined in his memorandum.

Finding of Fact Nos. 28, 29, 31, 41. Quoting specific allegations in each California complaint, these findings state that the complaints target or focus on speech, associational interests, and property in Texas. The San Francisco Appellants claim (i) there is insufficient evidence to support these findings, (ii) ExxonMobil's location in Texas was irrelevant to the filing of their lawsuit, and (iii) their complaint contains no plan to restrict ExxonMobil's speech. (SF Br. 31-37.)

The references in the San Francisco complaint to Texas-based speech, conduct, and property provide direct support for these findings. For example, allegations in the complaint focus on a speech made by a former ExxonMobil CEO at Texas shareholder meetings, decisions made at ExxonMobil's corporate headquarters to fund certain non-profit groups, and internal scientific research

[162] CR2620, 2672.

memoranda and other documents stored in Texas.[163] These examples also demonstrate that the focus on Texas was not merely fortuitous. Indeed, since at least 2012, Pawa, lead counsel for the San Francisco Potential Defendants, has advocated a plan to obtain internal documents of and delegitimize Texas energy companies, like ExxonMobil.[164] In his memorandum encouraging officials in California to bring a public nuisance lawsuit against energy companies, Pawa stated that gaining access to their internal documents "would be a remarkable achievement that would advance the case and the cause."[165]

It is also irrelevant that the complaint does not contain a candid admission of the Potential Defendants' purpose to unlawfully suppress speech protected by the First Amendment. *See Moncrief*, 414 S.W.3d at 154. Such a concession cannot be reasonably expected and is not required here. The trial court was correct when it observed that the San Francisco Complaint targeted Texas-based speech, activity, and property.

Finding of Fact Nos. 35, 36, 37, 38, 39, 40. These findings identify the discrepancies in statements about climate change found in the Potential Defendants' complaints and their municipal bonds. The San Francisco and Oakland Appellants claim there is insufficient evidence to support these findings.

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[163] *See, e.g.*, CR2652-59 ¶¶ 61, 70-73, 76.
[164] CR2084-86, 2100; FOF/COL ¶ 7.
[165] CR126; FOF/COL ¶ 24.

(SF Br. 35-37; Oak. Br. 60-62.) Specifically referencing Finding No. 35, the San Francisco Appellants also state that the alleged discrepancy between the San Francisco complaint and the San Francisco bond disclosures is insufficient to demonstrate that the "Appellants must have brought" their lawsuits for an improper purpose. (SF Br. 35-37.) They further argue that the bond disclosures are irrelevant to the jurisdictional analysis. (*Id.*)

The trial court did not find in Finding No. 35 that the San Francisco complaint "must have" been brought with an improper purpose, as the San Francisco Appellants claim. (SF Br. 35.) Rather, the court found that the disconnect between the San Francisco complaint and the San Francisco bond disclosures "raise[d] the question" of whether the lawsuits were brought for an improper purpose.[166]

The discrepancy between the complaints' allegations and the bond disclosures is well documented by the undisputed evidence. In the San Francisco and Oakland complaints that were signed by Potential Defendants Herrera and Parker, both cities describe imminent, allegedly near-certain harm resulting from the energy sector's supposed contribution to climate change.[167] However, in recent bond disclosures which were reviewed by Herrera and issued when Parker was Oakland City Attorney, San Francisco and Oakland stated that they are "unable to

[166] FOF/COL ¶ 35.
[167] CR926 ¶ 1, 929-30 ¶ 10, 959, 1004-06 ¶¶ 85-87, 1013.

predict" whether sea rise "or other impacts of climate change" will occur."[168] These discrepancies demonstrate that addressing the purported imminent, dire consequences of climate change was likely not the true objective of these complaints. Rather, it is reasonable to infer that these complaints, which explicitly focus on Texas-based speech, property, and activities, have been filed with an ulterior motive, including to suppress speech in Texas. Accordingly, these contacts are relevant to the minimum contacts analysis to the extent they show that Texas-based conduct and property, rather than supposed concerns about climate change, were the real focus of the complaints.

San Mateo Appellants' General Objections: In a footnote, the San Mateo Appellants raise three meritless challenges to the findings. (SM Br. 16 n.10.)

First, they argue that Finding Nos. 28, 29, and 41 are legal conclusions, not findings of fact. These findings state that the California lawsuits targeted speech, associational interests, and property in Texas. As ExxonMobil has demonstrated, these are factual determinations firmly rooted in specific allegations in the California complaints.[169] The San Mateo Appellants have failed to demonstrate that the evidence supporting the trial court's conclusion was inadequate, much less that the findings were "contrary to the overwhelming weight of all the evidence."

[168] CR5129, 5920.

[169] CR632-39, 646-47, 657, 741-49, 755, 757, 767, 852-60, 866, 868, 878, 944-47, 950-53, 992-96, 1000-03, 1074-83, 1090, 1092, 1100, 1211-20, 1226, 1228, 1236; FOF/COL ¶¶ 28-31.

Maki, 2013 WL 4121229, at *6. Moreover, even if the San Mateo Appellants were correct that these findings are conclusions of law (and they are not), an appellate court has discretion to review findings of fact as conclusions of law or vice-versa. *See Gillespie* v. *Nat'l Collegiate Student Loan Tr. 2005-3*, No. 02-16-00124-CV, 2017 WL 2806780, at *3 n.11 (Tex. App.—Fort Worth June 29, 2017, no pet.).

Second, without specifying any particular finding, the San Mateo Appellants argue that "many of the other findings" lack evidentiary support for the same reasons explained by the other Appellants. This nonspecific objection fails to satisfy the most basic Texas appellate rule that an argument must contain "appropriate citations to authorities and to the record." Tex. R. App. P. 38.1(i). As this Court has explained when applying this rule, appellate courts "are not required to search a voluminous record, with no guidance." *Hall* v. *Stephenson*, 919 S.W.2d 454, 467 (Tex. App.—Fort Worth 1996, writ denied); *see also United States* v. *Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs."). Because the San Mateo Appellants' generic argument contains no "citations to the record or to authority," the argument is "waived." *WorldPeace* v. *Comm'n for Lawyer Discipline*, 183 S.W.3d 451, 460 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). While the San Mateo Appellants attempt to incorporate the other Appellants' arguments to support their contention, this effort suffers from the same flaw because the San Mateo

Appellants "failed to identify the rulings in the record" preserving their objections. *Citigroup Glob. Markets Realty Corp.* v. *Stewart Title Guar. Co.*, 417 S.W.3d 592, 594 n.1 (Tex. App.—Houston [14th Dist.] 2013, no pet.).

Third, the San Mateo Appellants argue that "most of the trial court's findings," including Finding Nos. 12-22, are irrelevant to the claims against the San Mateo Potential Defendants. This generic objection, without any citation to the record or authorities, is insufficient to present this argument on appeal, and, thus, the objection should not be entertained by this Court. *See WorldPeace*, 183 S.W.3d at 460.

Even if the San Mateo Appellants had not waived their objections, Finding Nos. 12-22 are relevant to ExxonMobil's claims, including their claims against the San Mateo Potential Defendants. These findings describe Pawa's presentation on climate change litigation to the New York and Massachusetts Attorneys General and the New York Attorney General's efforts to conceal that meeting from the press. The findings also discuss the Attorneys General's document requests to ExxonMobil and ExxonMobil's lawsuit against the Attorneys General.

These findings are directly relevant to the San Francisco and Oakland Potential Defendants because of Pawa's integral role in the Attorneys General's investigations and the filing of the San Francisco and Oakland lawsuits. In light of that role, it is no surprise that the Attorneys General's document requests and the

San Francisco and Oakland lawsuits target many of the same speeches or documents in Texas. For example, they each target former CEO Tillerson's statements at an annual shareholder meeting in Texas and ExxonMobil's *Outlook for Energy* reports, which are issued in Texas.[170] These findings are also relevant to the San Mateo Potential Defendants since their complaints follow a similar playbook by targeting Texas-based speech and property.[171] Even if these findings were irrelevant to the San Mateo Potential Defendants, there is no basis for rejecting on appeal findings that are indisputably relevant to the Oakland and San Francisco Potential Defendants.

* * *

Accordingly, the undisputed evidentiary record provides robust support for each challenged finding. Because Appellants have failed to carry the heavy burden of establishing legal or factual insufficiency of the evidence, their challenges should be rejected.

5. Judge Caproni's Decision Has No Preclusive Effect on the Trial Court's Decision.

The Oakland Appellants contend that the trial court was precluded from issuing findings of fact and conclusions of law because Judge Caproni dismissed ExxonMobil's complaint against the New York and Massachusetts Attorneys

[170] CR950-53 ¶¶ 75, 81 (Oakland); CR1000-04 ¶¶ 76, 82 (San Francisco); FOF/COL ¶ 29.

[171] CR632-39, 646-47, 657 (Imperial Beach), CR741-49, 755, 757, 767 (County of Marin), CR852-60, 866, 868, 878 (County of San Mateo), CR1074-83, 1090, 1092, 1100 (County of Santa Cruz), CR1211-20, 1226, 1228, 1236 (City of Santa Cruz); FOF/COL ¶¶ 30-31.

General for failure to state a claim. That decision, which was issued *after* the trial court had denied the special appearances, addressed different legal issues against different defendants in a different context. It has no preclusive effect here.

Collateral estoppel (issue preclusion) applies when three elements are present: (i) "the facts sought to be litigated in the second action were fully and fairly litigated in the first action"; (ii) "those facts were essential to the judgment in the first action"; and (iii) "the parties were cast as adversaries in the first action." *John G. & Marie Stella Kenedy Mem'l Found.* v. *Dewhurst*, 90 S.W.3d 268, 288 (Tex. 2002). The Oakland Appellants bear the burden of proving that issue preclusion applies. *See Sysco Food Servs., Inc.* v. *Trapnell*, 890 S.W.2d 796, 801-02 (Tex. 1994).

Issue preclusion is inapplicable here for four independent reasons. *First*, Judge Caproni's decision was issued on March 29, two weeks *after* the trial court's March 14 denial of the special appearances, and issue preclusion "does not extend to prior decisions." *Cycles, Ltd.* v. *Navistar Fin. Corp.*, 37 F.3d 1088, 1091 (5th Cir. 1994).[172] While the Oakland Appellants question this uncontroversial principle (Oak. Br. 67), it is well settled that later decisions have no preclusive effect on earlier decisions. *See, e.g., Barr* v. *Resolution Tr. Corp. ex rel. Sunbelt*

[172] Texas courts look to both federal and state law to determine whether a prior federal action has a collateral estoppel effect on a state action because "both [laws] are the same." *John G.*, 90 S.W.3d at 288.

*Fed. Sa*v., 837 S.W.2d 627, 628 (Tex. 1992) ("[C]ollateral estoppel[] prevents relitigation of particular issues already resolved in a prior suit."); *Amrollah* v. *Napolitano*, 710 F.3d 568, 571 (5th Cir. 2013) (Collateral estoppel requires an "identical issue [that] was previously adjudicated.").

Seeking to evade black letter law, the Oakland Appellants claim that Judge Caproni's decision should be considered the earlier decision because the trial court signed the findings of fact and conclusions of law supporting its March 14 order on April 24. (Oak. Br. 67.) That argument is meritless. Prior to a court's issuance of findings of fact and conclusions of law, a reviewing court should "imply all facts necessary to support the judgment." *TravelJungle*, 212 S.W.3d at 845. Judge Caproni's subsequent ruling does not impact findings based upon a record that existed at the time the March 14 order was issued.

Second, even if Judge Caproni's decision had come first, it made no factual findings. It simply determined that, under the federal pleading standard, ExxonMobil had not stated a claim against the New York and Massachusetts Attorneys General. A district court's "judgment on [a] motion to dismiss d[oes] not find facts" which can be given preclusive effect. *Rader* v. *Cowart*, 543 Fed. App'x 358, 361 (5th Cir. 2013); *see also Pub. Health Equip. & Supply Co.* v. *Clarke Mosquito Control Prods.*, 410 F. App'x 738, 741 (5th Cir. 2010) ("[A] question of fact" is "not appropriate for dismissal on 12(b)(6)."); *Samak* v. *Buda*,

No. 1:02-CV-288, 2002 WL 31246518, at *4 (E.D. Tex. Oct. 8, 2002) ("[A] factual determination . . . cannot be resolved on the pleadings.").[173]

Third, the Potential Defendants were not parties in the action before Judge Caproni. That action instead concerned constitutional claims that ExxonMobil asserted against the New York and Massachusetts Attorneys General for their allegedly improper investigations of ExxonMobil that may have been commenced in bad faith. None of the California municipal officials were even mentioned in that action. To the extent Judge Caproni's decision addressed allegations concerning Pawa, it was only to question whether Pawa's allegedly improper motive to encourage state-based investigations of ExxonMobil could be plausibly attributed to the Attorneys General. Judge Caproni observed that Pawa's statements at the La Jolla conference about using litigation to change the corporate behavior of ExxonMobil has "limited relevance to the AGs' motives" because of the absence of "allegations that [the Attorneys General] attended" that meeting. *Schneiderman*, 316 F. Supp. 3d at 709. Any observations about Pawa were "incidental[]" or "collateral[]" to Judge Caproni's decision and thus have no

[173] In a footnote, the Oakland Appellants rely on two cases to argue incorrectly that factual findings may be given preclusive effect based on a dismissal for failure to state a claim. (Oak. Br. 66 n.33.) Their first cited case not only does not contain the quote cited by the Oakland Appellants in the parenthetical, but it also does not state that motion to dismiss decisions find facts that can be given preclusive effect. In addition, while a Tennessee court in *Hutchens v. Federal Home Loan Mortgage Corp.* stated that a dismissal for failure to state a claim is an adjudication on the merits, it did not hold that such a decision finds facts. No. 3:12-CV-281, 2013 WL 12250813, at *5 (E.D. Tenn. Mar. 15, 2013).

preclusive effect here. *In re Estate of Armstrong*, 155 S.W.3d 448, 455 (Tex. App.—San Antonio 2004, no pet.).

Finally, the Oakland Appellants have failed to show that Judge Caproni addressed the personal jurisdiction issues raised by Appellants' special appearances. Judge Caproni also did not adjudicate claims against any of the Potential Defendants, and, more specifically, she did not consider (nor was she asked to consider) the suits the Potential Defendants brought against ExxonMobil and other Texas energy companies.

C. The Trial Court Properly Denied the Special Appearances of the Non-Defendant Prospective Witnesses.

The trial court correctly held, as the San Mateo Appellants have conceded,[174] that a court is not required to have personal jurisdiction over non-defendant prospective witnesses in a Rule 202 proceeding.[175] In *Trooper*, the Texas Supreme Court concluded that a Rule 202 court must have personal jurisdiction over the potential defendants in the anticipated suit. 444 S.W.3d at 608. *Trooper* did not hold that the court must also have personal jurisdiction over prospective witnesses

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[174] In a prior brief, the San Mateo Appellants stated, for a Rule 202 petition, "what matters is whether a court can assert jurisdiction over the defendants, regardless of who might be a witness." CR1920. The San Mateo Appellants also did not object to ExxonMobil's proposed conclusion of law that the trial court "is not required to have personal jurisdiction over prospective witnesses who are not potential defendants." SCR103. On appeal, the San Mateo Appellants similarly state, "A prospective plaintiff like Exxon may only obtain pre-filing discovery under Texas Rule of Civil Procedure 202 if it can establish that the court would have personal jurisdiction over each prospective defendant." SM Br. 16.

[175] FOF/COL ¶ 43.

in an anticipated suit. Nor have subsequent court of appeals cases interpreting *Trooper* imposed such a restriction. *See, e.g.*, *eBay Inc.* v. *Mary Kay Inc.*, No. 05-14-00782-CV, 2015 WL 3898240, at *2-3 (Tex. App.—Dallas June 25, 2015, pet. denied).[176]

There is good reason why no court has held that prospective witnesses must be within the personal jurisdiction of the court for a Rule 202 proceeding to proceed. The Due Process Clause protects the "liberty interest" of a defendant from "being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations." *Fox Lake Animal Hosp. PSP* v. *Wound Mgmt. Tech., Inc.*, No. 02-13-00289-CV, 2014 WL 1389751, at *2 (Tex. App.—Fort Worth Apr. 10, 2014, pet. denied); *see also Schlobohm* v. *Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990) ("[A]n essential goal of the [federal due process] test is to protect the defendant."). Mere witnesses, who are not bound by a judgment entered at the proceeding where they testify, are outside the scope of concern protected by the personal jurisdiction requirement.

Focused primarily on policy rather than law, the Oakland Appellants argue that there should be limits on who can be deposed under Rule 202 and look to the

[176] In *eBay*, the Fifth Court of Appeals considered it irrelevant that the potential witnesses in a Rule 202 proceeding were "available" in Texas. 2015 WL 3898240, at *3. In the absence of personal jurisdiction over the potential defendants, that court did not allow the Rule 202 petition to proceed. *Id.*

personal jurisdiction requirement to provide limits. (Oak. Br. 68-71.) That argument is misguided as a matter of policy and law. A Rule 202 petitioner's ability to obtain testimony from a witness outside the court's jurisdiction is governed by the same restrictions and protections that apply in any civil case. *See* Tex. R. Civ. P. 202.5. Under those rules, ExxonMobil may seek discovery from only those who have information "that is not privileged and is relevant" to the claims it would ultimately be allowed to bring. Tex. R. Civ. P. 192.3(a). And to the extent those witnesses are outside the court's jurisdiction, ExxonMobil must rely on the procedures used countless times in routine civil practice to obtain that testimony.

To assist with discovery of witnesses who reside outside the forum, many states have adopted the Uniform Interstate Depositions and Discovery Act ("UIDDA"), which serves the "mutual interest and convenience" of each state by avoiding "the inconvenience which would otherwise result" from requiring witnesses to travel across state lines to provide testimony. *Yelp, Inc.* v. *Hadeed Carpet Cleaning, Inc.*, 770 S.E.2d 440, 445 (Va. 2015). Pursuant to the UIDDA, a deposition of an out-of-state witness "is generally governed by the courts and the law of the state in which the witness resides or where the documents are located." *Id.* at 444. Here, depositions of the non-defendant Prospective Witnesses could be obtained under the UIDDA in their state of residence, California. *See* Cal. Civ.

Proc. Code § 2029.300 (adopting UIDDA); *Quinn* v. *Eighth Judicial Dist. Court in & for Cty. of Clark*, 410 P.3d 984, 988 (Nev. 2018) (the California court "in the county in which discovery is to be conducted" bears responsibility for enforcing a subpoena issued by a Nevada court directing nonparties to appear in California for depositions). None of this is novel or surprising, as courts outside of Texas have enforced Rule 202 discovery requests pursuant to the UIDDA. *See, e.g.*, *Ewin* v. *Burnham*, 728 N.W.2d 463, 466-67 (Mich. Ct. App. 2006) (affirming court-mandated attendance at Rule 202 deposition).

The San Francisco Appellants incorrectly argue that, by referencing the relevance of the UIDDA with respect to discovery of the Prospective Witnesses, ExxonMobil conceded that Texas courts lack jurisdiction over *all Appellants*. (SF Br. 48.) They further argue that "California law expressly prohibits pre-suit discovery" in certain circumstances and, therefore, would not enforce a subpoena issued by a Texas court pursuant to Rule 202. (*Id.* (citing Cal. Civ. Proc. Code § 2035.010(b); Cal. Judges Benchbook Civ. Proc. Discovery § 10.1).) Both arguments are meritless.

First, ExxonMobil made no concession concerning the UIDDA. ExxonMobil's reference to the UIDDA pertains solely to the Prospective Witnesses, not the Potential Defendants. The San Francisco Appellants' assertion to the contrary is wrong. In its submissions to the trial court, ExxonMobil stated

that "[d]iscovery from a *Potential Witness* need not occur in the same venue as the suit," and "as with discovery in any civil suit, ExxonMobil's deposition of *those individuals* would ultimately be guided by California's—not Texas's—procedures for conducting that *nonparty discovery*."[177] In their appellate brief, the San Francisco Appellants misleadingly replaced "those individuals" with "Appellants" to change the meaning of ExxonMobil's statement. (SF Br. 48.)

Second, the San Francisco Appellants are wrong to claim that ExxonMobil is statutorily barred from obtaining pre-suit discovery in California. The statute they invoke specifically allows discovery to "preserv[e] evidence for use in the event an action is subsequently filed." Cal. Civ. Proc. Code § 2035.010(a). In its Petition, ExxonMobil stated that it sought pre-suit discovery *both* to investigate and to preserve testimony for its anticipated claims.[178]

The statute is also inapplicable to potential Texas actions because the statute reaches only "action[s] that may be cognizable in a court of the state," meaning in California. Cal. Civ. Proc. Code § 2035.010. The statute thus has no application to a suit in Texas. In any event, whether a California court will or will not enforce under the UIDDA a nonparty subpoena issued by a Texas court is irrelevant to the determination of whether a Texas court must have personal jurisdiction over the

[177] CR2028-29 (emphasis added).
[178] *See, e.g.*, CR15 ¶ 12.

Prospective Witnesses (it does not), let alone the determination of whether a Texas court can exercise personal jurisdiction over the Potential Defendants (it can).

CONCLUSION AND PRAYER

The trial court properly exercised personal jurisdiction over the Potential Defendants and properly concluded that witnesses need not be within the court's jurisdiction. Appellants' unpersuasive attempts to challenge the trial court's decision fall flat. They rely extensively on precedent rejecting "directed-a-tort" jurisdiction, even though the trial court did not premise its exercise of jurisdiction on that theory. The Potential Defendants purposefully directed their conduct at Texas by filing baseless lawsuits against ExxonMobil that are expressly aimed at Texas-based speech, property, and associational rights. The Potential Defendants' actions establish purposeful contacts with Texas that give rise to ExxonMobil's tort claims. Under these circumstances, exercising personal jurisdiction over the Potential Defendants would comport with fair play and substantial justice. Nothing more is required under the Due Process Clause or the long-arm statute. The trial court's findings of fact are equally correct. They are firmly rooted in the undisputed evidentiary record, and Appellants' untimely evidentiary challenges should be rejected. ExxonMobil urges this Court to affirm the trial court in all respects.

Dated: September 26, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this brief contains **19,767** words (excluding the caption, table of contents, table of authorities, statement regarding oral argument, statement of issues presented, signature block, proof of service, certification, certificate of compliance, and appendix), as authorized by this Court's order of August 21, 2018. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except footnotes, which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

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CERTIFICATE OF SERVICE

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No. 02-18-00106-CV

IN THE COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS FORT WORTH

CITY OF SAN FRANCISCO, et al.,

Appellants,

v.

EXXON MOBIL CORPORATION,

***Appellee*.**

On Appeal from the 96th Judicial District Court of Tarrant County, Texas
Hon. R.H. Wallace, Jr., presiding, Cause No. 096-297222-18

INDEX TO APPENDIX TO BRIEF OF APPELLEE EXXON MOBIL CORPORATION

Exhibit	Description	Record Reference
A	Order on Special Appearance, dated March 14, 2018	CR7210
B	Findings of Fact and Conclusions of Law, dated April 24, 2018	3SCR113-28
C	Excerpts from Reporter's Record, Special Appearance hearing held on March 8, 2018	RR1, 19-20, 24, 31, 34-35, 47, 54, 67-69, 96-98, 104-07, 111
D	Chart Comparing Municipalities' Complaint Allegations to Bond Disclosures	CR1797-1801
E	Chart of Evidentiary Support for Findings of Fact	3SCR29-50
F	Chart of Arguments in Appellants' and Appellee's Briefs	N/A
G	Tex. Const. art. I, § 8	N/A
H	Tex. Civ. Prac. & Rem. Code § 17.041	N/A
I	Tex. Civ. Prac. & Rem. Code § 17.042	N/A

Exhibit	Description	Record Reference
J	Tex. R. App. P. 33.1	N/A
K	Tex. R. App. P. 38.1	N/A
L	Tex. R. Civ. P. 120a	N/A
M	Tex. R. Civ. P. 192.3	N/A
N	Tex. R. Civ. P. 202.5	N/A
O	Cal. Civ. Proc. Code § 2029.300	N/A
P	Cal. Civ. Proc. Code § 2035.010	N/A

Exhibit A

CAUSE NO. 096-297222-18

EXXON MOBIL CORPORATION,	§	IN THE DISTRICT COURT OF
	§	
	§	TARRANT COUNTY, TEXAS
Petitioner.	§	
	§	96th JUDICIAL DISTRICT

ORDER ON SPECIAL APPEARANCES

On March 8, 2018, the Court held an oral hearing on the special appearances filed in connection with this matter. Based on the pleadings, affidavits and attachments on file, and the applicable law, the Court has determined that the special appearances should be denied. Accordingly:

IT IS HEREBY ORDERED that the special appearances of **prospective witnesses** John Maltbie, Andy Hall, Matthew Hymel, Sabrina Landreth, Edward Reiskin, Carlos Palacios, and Martín Bernal are DENIED.

IT IS FURTHER ORDERED that the special appearances of **potential defendants and prospective witnesses** Matthew Pawa, John Beiers, Jennifer Lyon, Serge Dedina, Brian Washington, Barbara Parker, Dennis Herrera, Dana McRae, and Anthony Condotti; and **potential defendants** San Mateo County, City of Imperial Beach, Marin County, City of Oakland, City of San Francisco, County of Santa Cruz, and City of Santa Cruz are DENIED.

IT IS SO ORDERED.

Signed on Mar. 14, 2018.

R.H. Wallace Jr.

R.H. Wallace Jr., Presiding Judge

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Exhibit B

CAUSE NO. 096-297222-18

EXXON MOBIL CORPORATION,	§	IN THE DISTRICT COURT OF
	§	
	§	TARRANT COUNTY, TEXAS
Petitioner.	§	
	§	96th JUDICIAL DISTRICT

~~[PROPOSED]~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 8, 2018, Exxon Mobil Corporation ("ExxonMobil") filed a petition under Rule 202 of the Texas Rules of Civil Procedure seeking pre-suit discovery to evaluate potential claims and preserve evidence related to constitutional violations, abuse of process, and civil conspiracy. ExxonMobil's potential claims arise from an alleged conspiracy by California municipalities to suppress Texas-based speech and associational activities on climate policy that are out-of-step with the prevailing views of California public officials. According to ExxonMobil's petition, the California municipalities alleged facts in their lawsuits against the Texas energy sector that are contradicted by contemporaneous disclosures to municipal bond investors. ExxonMobil seeks pre-suit discovery on whether the lawsuits were brought in bad faith as a pretext to suppress Texas-based speech and associational activities by members of Texas's energy sector.

The potential defendants and prospective witnesses named in ExxonMobil's petition (collectively the "Respondents") challenged this Court's personal jurisdiction by filing special appearances under Rule 120a of the Texas Rules of Civil Procedure. ExxonMobil opposed. Both the Respondents and ExxonMobil filed affidavits and evidence in support of their respective positions. At a hearing held on March 8, 2018, the Court accepted all filed affidavits and evidence, as permitted by Rule 120a. Neither ExxonMobil nor the Respondents objected to the evidence at

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the hearing; the parties disputed only the legal significance of the uncontested factual record before the Court. On March 14, 2018, the Court denied all of the special appearances in light of the factual record.

On March 27, 2018, ExxonMobil filed a request for findings of fact and conclusions of law supporting this Court's denial of the special appearances. In accordance with Rule 297 of the Texas Rules of Civil Procedure, the Court makes the following findings of fact and conclusions of law based on the uncontested evidentiary record.

FINDINGS OF FACT

A. Parties

1. Petitioner ExxonMobil is a corporation incorporated under the laws of the State of New Jersey with its principal place of business in Texas. It formulates and issues statements about climate change from its headquarters in Texas. Most of its corporate records pertaining to climate change are located in Texas, and it engages in speech and associational activities in Texas.

2. Potential Defendants the County of San Mateo, the County of Marin, the City of Imperial Beach, the City of Santa Cruz, the County of Santa Cruz, the City of Oakland, and the City of San Francisco are cities or counties in California that do not maintain a registered agent, telephone listing, or post office box in Texas.

3. Potential Defendants Barbara J. Parker, Dennis J. Herrera, John Beiers, Serge Dedina, Jennifer Lyon, Brian Washington, Dana McRae, and Anthony Condotti are California municipal officers who do not reside in Texas or maintain offices or registered agents in Texas.

4. Potential Defendant Matthew F. Pawa is an attorney in private practice,

based in Massachusetts and serving as outside counsel for Potential Defendants the City of Oakland and the City of San Francisco. Mr. Pawa does not maintain an office or registered agent in Texas and is not licensed to practice law in Texas.

5. Prospective Witnesses Sabrina B. Landreth, Edward Reiskin, John Maltbie, Andy Hall, Matthew Hymel, Carlos Palacios, and Martín Bernal are California municipal officers who do not reside in Texas or maintain a registered agent, telephone listing, or post office box in Texas.

B. Preparatory Activities Directed at Texas-Based Speech

Pawa and Others Develop a Climate Change Strategy

6. In June 2012, Potential Defendant Pawa and a group ~~of special interests~~ attended a conference in La Jolla, California, called the "Workshop on Climate Accountability, Public Opinion, and Legal Strategies." Peter Frumhoff, the Director of Science and Policy for the Union of Concerned Scientists; Naomi Oreskes, then a professor at the University of California, San Diego; and Richard Heede, of the Climate Accountability Institute, conceived of this workshop and invited Mr. Pawa to participate as a featured speaker.

7. During the conference, participants discussed strategies to "[w]in [a]cess to [i]nternal [d]ocuments" of energy companies, like ExxonMobil, that could be used to obtain leverage over these companies. The conference participants concluded that using law enforcement powers and civil litigation to "maintain[ ] pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming." One commentator observed, "Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties."

8. At the conference, the attendees also concluded that "a single sympathetic

state attorney general might have substantial success in bringing key internal documents to light."

9. At the conference, Potential Defendant Pawa targeted ExxonMobil's speech on climate change, and identified such speech as a basis for bringing litigation. Mr. Pawa claimed that "Exxon and other defendants distorted the truth" (as Mr. Pawa saw it) and that litigation "serves as a 'potentially powerful means to change corporate behavior.'" Myles Allen, another participant at the La Jolla conference, claimed that "the fossil fuel industry's disinformation has effectively muted a large portion of the electorate."

10. In January 2016, Mr. Pawa engaged participants ~~special interests~~ at the Rockefeller Family Fund offices in New York City to further solidify the "[g]oals of an Exxon campaign" that Mr. Pawa developed at the La Jolla conference. According to a draft agenda for the meeting, the goals of this campaign included: (i) "[t]o establish in [the] public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm"; (ii) "[t]o delegitimize [ExxonMobil] as a political actor"; (iii) "[t]o drive divestment from Exxon"; and (iv) "[t]o force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc."

11. According to the draft agenda, Mr. Pawa and the other participants aimed to chill and suppress ExxonMobil's speech through "legal actions & related campaigns," including "AGs" and "Tort[]" suits. The draft agenda notes that participants planned to use "AGs" and "Tort[]" suits to "get[] discovery" and "creat[e] scandal."

State Attorneys General Adopt the Climate Change Strategy

12. On March 29, 2016, New York Attorney General Eric Schneiderman, Massachusetts Attorney General Maura Healey, and other state attorneys general, calling

themselves the "Green 20," held a press conference where they promoted regulating the speech of energy companies, including ExxonMobil, whom they perceived as an obstacle to enacting their preferred policy responses to climate change. Attorneys General Schneiderman and Healey discussed their investigations of ExxonMobil. They were also joined by former Vice President Al Gore, an investor in alternative energy companies.

13. At the press conference, Attorney General Schneiderman discussed the need to regulate the energy industry's speech on climate change, just as Potential Defendant Pawa had urged at La Jolla and at the Rockefeller meeting. He stated, "There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up." Attorney General Schneiderman denounced the "highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action" and announced that "today, we're sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination."

14. Attorney General Healey similarly echoed themes from the strategy Mr. Pawa developed at La Jolla. She stated, "Part of the problem has been one of public perception," and she blamed "[f]ossil fuel companies" for purportedly causing "many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts." Attorney General Healey announced that those who "deceived" the public "should be, must be, held accountable." In the next sentence, she disclosed that she too had begun investigating ExxonMobil and concluded, before receiving a single document from ExxonMobil, that there was a "troubling disconnect between what Exxon knew . . . and what the company and industry chose

to share with investors and with the American public."

15. At the press conference, former Vice President Al Gore praised Attorney General Schneiderman's efforts to "hold to account those commercial interests" who "are now trying to convince people that renewable energy is not a viable option"~~, a position that aligned well with Mr. Gore's financial stake in renewable energy companies.~~ Mr. Gore also focused on First Amendment-protected activities, condemning the "political and lobbying efforts" of the traditional energy industry.

State Attorneys General Conceal Ties to Pawa

16. At a closed-door meeting held before the March 2016 press conference, Mr. Pawa and Dr. Frumhoff conducted briefings for assembled members of the attorneys general's offices. Mr. Pawa, whose briefing was on "climate change litigation," has subsequently admitted to attending the meeting, but only after he and the attorneys general attempted and failed to conceal it.

17. The New York Attorney General's Office attempted to keep Mr. Pawa's involvement in this meeting secret. When a reporter contacted Mr. Pawa shortly after this meeting and inquired about the press conference, the Chief of the Environmental Protection Bureau at the New York Attorney General's Office told Mr. Pawa, "My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event."

18. Similarly, the Vermont Attorney General's Office—another member of the "Green 20" coalition—admitted at a court hearing that when it receives a public records request to share information concerning the coalition's activities, it researches the party who requested the records, and upon learning of the requester's affiliation with "coal or Exxon or whatever," the office "give[s] this some thought . . . before [it] share[s] information with this entity."

State Attorneys General Target Texas-based Speech, Activities, and Property

19. Attorney General Schneiderman issued a subpoena and Attorney General Healey issued a civil investigative demand ("CID") to ExxonMobil requesting documents and communications concerning climate change and expressly referencing documents in ExxonMobil's possession in Texas.

20. The Massachusetts CID targets specific statements ExxonMobil and its executives made in Texas. For example, it requests documents concerning (i) a 1982 article prepared by the Coordination and Planning Division of Exxon Research and Engineering Company; (ii) former Chairman and CEO Rex Tillerson's "statements regarding Climate Change and Global Warming . . . at an Exxon shareholder meeting in Dallas, Texas"; (iii) ExxonMobil's 2016 Energy Outlook, which was prepared and reviewed in Texas; and (iv) internal corporate documents and communications concerning regulatory filings prepared at ExxonMobil's corporate offices in Texas. Many of the statements under government scrutiny pertain expressly to matters of public policy, such as remarks by ExxonMobil's former CEO that "[i]ssues such as global poverty [are] more pressing than climate change." The Massachusetts CID also seeks documents pertaining to ExxonMobil's associational activities, including its communications with 12 organizations derided as climate deniers and its reasons for associating with those entities.

21. The New York subpoena also targets ExxonMobil's speech and associational activities in Texas, including investor filings, the "*Outlook For Energy* reports," the "*Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports," the "*Energy and Carbon - Managing the Risks Report*," and communications with trade associations and industry groups.

22. ExxonMobil filed a lawsuit seeking injunctive and declaratory relief against

Attorneys General Schneiderman and Healey. The Attorney General of the State of Texas, along with ten other state attorneys general, filed an amicus brief in support of ExxonMobil's claims, stating that a state official's power "does not include the right to engage in unrestrained, investigative excursions to promulgate a social ideology, or chill the expression of points of view, in international policy debates." Judge Ed Kinkeade of the U.S. District Court for the Northern District of Texas questioned whether the New York and Massachusetts Attorneys General were attempting to "further their personal agendas by using the vast power of government to silence the voices of all those who disagree with them."

C. Lawsuits Against the Texas Energy-Sector Are Directed at Texas-Based Speech, Activities, and Property

23. With the investigations of the state attorneys general underway, Mr. Pawa next promoted his La Jolla strategy to California municipalities, as potential plaintiffs in tort litigation that would be filed against energy companies, including ExxonMobil.

24. Mr. Pawa sent a memo outlining this strategy to NextGen America, the political action group funded by political activist Tom Steyer. The memo "summarize[d] a potential legal case against major fossil fuel corporations," premised on the claim that "certain fossil fuel companies (most notoriously ExxonMobil), have engaged in a campaign and conspiracy of deception and denial on global warming." Mr. Pawa emphasized that "simply proceeding to the discovery phase would be significant" and "obtaining industry documents would be a remarkable achievement that would advance the case and the cause."

25. Mr. Pawa also gave a number of speeches in which he targeted speech that ExxonMobil formulated and made in Texas. At a 2016 conference, for instance, Mr. Pawa accused ExxonMobil of "undert[aking] a campaign of deception and denial" and targeted a speech concerning climate change delivered by former CEO Tillerson in Texas. In the same speech, Mr.

Pawa also discussed the company's internal memos from the 1980s, where company scientists evaluated potential climate change impacts.

26. Following through on the strategy Mr. Pawa outlined in his memorandum to NextGen America, Potential Defendants Parker, Herrera, and the Cities of Oakland and San Francisco filed public nuisance lawsuits against ExxonMobil and four other energy companies, including Texas-based ConocoPhillips. Mr. Pawa represents the plaintiffs in those actions, and Ms. Parker and Mr. Herrera signed the complaints on behalf of the City of Oakland and the City of San Francisco, respectively. They used an agent to serve the complaints on ExxonMobil's registered agent in California, whose role is to transmit legal process to ExxonMobil in Texas.

27. Potential Defendants Lyon, Washington, Beiers, Condotti, McRae, the City of Imperial Beach, Marin County, San Mateo County, and the City and the County of Santa Cruz filed similar public nuisance complaints against ExxonMobil and other energy companies, including the following 17 Texas-based energy companies: BP America, Inc., Shell Oil Products Company LLC, Citgo Petroleum Corp., ConocoPhillips, ConocoPhillips Company, Phillips 66, Total E&P USA Inc., Total Specialties USA Inc., Eni Oil & Gas Inc., Anadarko Petroleum Corp., Occidental Petroleum Corp., Occidental Chemical Corp., Repsol Energy North America Corp., Repsol Trading USA Corp., Marathon Oil Company, Marathon Oil Corporation, and Apache Corp. Potential Defendants Beiers, Lyon, McRae, Washington, and Condotti signed these complaints. They used an agent to serve the complaints on ExxonMobil's registered agent in Texas.

28. Each of the seven California complaints expressly target speech and associational activities in Texas.

29. The Oakland and San Francisco complaints, for example, target ExxonMobil's Texas-based speech, including a statement by "then-CEO Rex Tillerson" at

"Exxon's annual shareholder meeting" in Texas, where they claim Mr. Tillerson allegedly "misleadingly downplayed global warming's risks." These complaints also target corporate statements issued from Texas, such as ExxonMobil's "annual 'Outlook for Energy' reports," "Exxon's website," and "Exxon's 'Lights Across America' website advertisements." In addition, the complaints target ExxonMobil's associational activities in Texas, including corporate decisions to fund various non-profit groups that perform climate change-related research that the complaints deem to be "front groups" and "denialist groups."

30. The City of Imperial Beach, Marin County, San Mateo County, and the City and County of Santa Cruz complaints similarly focus on ExxonMobil's Texas-based speech and associational activities. For example, they target (i) a 1988 memo from an Exxon public affairs manager that proposes "[r]esist[ing] the overstatement and sensationalization [sic] of potential greenhouse effect"; (ii) a "publication" that "Exxon released" in "1996" with a preface by former "Exxon CEO Lee Raymond"; and (iii) a 2007 Corporate Citizenship Report, issued from the company's Texas headquarters.

31. Each of the seven California complaints also explicitly focus on ExxonMobil property in Texas, including ExxonMobil's internal memos and scientific research. (Imperial Beach Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; Marin County Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; San Mateo Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; Oakland Compl. ¶¶ 60-61; San Francisco Compl. ¶¶ 60-62; County of Santa Cruz Compl. ¶¶ 130-32, 135-37, 140-42, 144-47; City of Santa Cruz Compl. ¶¶ 129-31, 134-36, 139-41, 143-46.)

32. Several Potential Defendants also made statements shortly after filing the lawsuits focusing on Texas-based speech. In a July 20, 2017 op-ed for *The San Diego Union-Tribune*, Potential Defendant Dedina, the mayor of the City of Imperial Beach, justified his

participation in this litigation by accusing the energy sector of attempting to "sow uncertainty" about climate change. In a July 26, 2017 appearance at a local radio station, Mr. Dedina accused ExxonMobil of carrying out a "merchants of doubt campaign."

33. Oakland City Attorney Barbara Parker issued a press release soon after filing suit, asserting that "[i]t is past time to debate or question the reality of global warming." According to Parker, "[j]ust like BIG TOBACCO, BIG OIL knew the truth long ago and peddled misinformation to con their customers and the American public."

34. San Francisco City Attorney Dennis Herrera similarly accused "fossil fuel companies" of launching a "disinformation campaign to deny and discredit what was clear even to their own scientists: global warming is real," and pledged to ensure that these companies "are held to account."

35. These allegations, ~~which pervade Respondents' lawsuits,~~ are contradicted by the Respondents' own municipal bond disclosures. While the California municipalities alleged in their complaints against the energy companies that the impacts of climate change were knowable, quantifiable, and certain, they told their investors the exact opposite. These contradictions raise the question of whether the California municipalities brought these lawsuits for an improper purpose.

36. For example, Oakland and San Francisco's complaints claim that ExxonMobil's and other energy company's "conduct will continue to cause ongoing and increasingly severe sea level rise harms" to the cities. However, the municipal bonds issued by Oakland and San Francisco disclaim knowledge of any such impending catastrophe, stating the Cities are "unable to predict" whether sea-level rise "or other impacts of climate change" will occur, and "if any such events occur, whether they will have a material adverse effect on the

business operations or financial condition of the City" or the "local economy."

37. Similarly, according to the San Mateo Complaint, the county is "particularly vulnerable to sea level rise," with "a 93% chance that the County experiences a devastating three-foot flood before the year 2050, and a 50% chance that such a flood occurs before 2030." Despite this, nearly all of the county's bond offerings contain no reference to climate change, and 2014 and 2016 bond offerings assure that "[t]he County is unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur."

38. The Imperial Beach Complaint alleges that it is vulnerable to "significant, and dangerous sea level rise" due to "unabated greenhouse gas emissions." Imperial Beach has never warned investors in its bonds of any such vulnerability. A 2013 bond offering, for instance, contains nothing but a boilerplate disclosure that "earthquake . . . , flood, fire, or other natural disaster, could cause a reduction in the Tax Revenues securing the Bonds . . . ."

39. The Marin County complaint warns that "there is a 99% risk that the County experiences a devastating three-foot flood before the year 2050, and a 47% chance that such a flood occurs before 2030." It also asserts that "[w]ithin the next 15 years, the County's Bay-adjacent coast will endure multiple, significant impacts from sea level rise." However, its bond offerings do not contain any specific references to climate change risks, noting only, for example, that "natural or manmade disaster[s], such as earthquake, flood, fire, terrorist activities, [and] toxic dumping" are potential risks.

40. The Santa Cruz complaints warn of dire climate change threats. The county alleges that there is "a 98% chance that the County experiences a devastating three-foot flood before the year 2050, and a 22% chance that such a flood occurs before 2030." The Santa Cruz City Complaint similarly warns that "increased flooding and severe storm events associated with

climate change will result in significant structural and financial losses in the City's low-lying downtown." But none of the city or county bond offerings mention these dire and specific warnings. A 2016 county disclosure merely states that areas within the county "may be subject to unpredictable climatic conditions, such as flood, droughts and destructive storms." A 2017 city bond offering has a boilerplate message that,"[f]rom time to time, the City is subject to natural calamities," including flood and wildfire.

41. Potential Defendants Pawa, Parker, Herrera, Beiers, Dedina, Lyon, Washington, McRae, Condotti, County of San Mateo, County of Marin, City of Imperial Beach, City of Santa Cruz, County of Santa Cruz, City of Oakland, and City of San Francisco either approved or participated in filing the lawsuits against the Texas energy sector. That conduct was directed at Texas-based speech, activities, and property. Prospective Witnesses Landreth, Reiskin, Maltbie, Hall, Hymel, Palacios, and Bernal approved the contemporaneous disclosures that contradict the allegations in the municipal complaints. Those witnesses, along with the Potential Defendants, are likely to have evidence pertaining to that contradiction.

CONCLUSIONS OF LAW

42. Under Rule 202 of the Texas Rules of Civil Procedure, a proper court may allow discovery of a potential claim if the court would have personal jurisdiction over the potential defendants to the anticipated suit.

43. Because this Court is not required to have personal jurisdiction over prospective witnesses who are not potential defendants, the special appearances of Prospective Witnesses Landreth, Reiskin, Maltbie, Hall, Hymel, Palacios, and Bernal are denied.

44. This Court would not have general personal jurisdiction over the Potential Defendants to the anticipated suit.

45. This Court could exercise specific personal jurisdiction over the Potential Defendants for the anticipated claims of constitutional violations, abuse of process, and civil conspiracy.

46. The exercise of personal jurisdiction over the Potential Defendants to the anticipated action would be permitted under the Texas long-arm statute, which allows a Texas court to exercise jurisdiction over nonresidents who commit a tort in whole or in part in Texas. Tex. Civ. Prac. & Rem. Code § 17.042(2). Each of the Potential Defendants is a nonresident within the meaning of the long-arm statute.

47. A violation of First Amendment rights occurs where the targeted speech occurs or where it would otherwise occur but for the violation. ExxonMobil exercises its First Amendment rights in Texas, and Texas is the site of the speech challenged by the Potential Defendants' lawsuits. The anticipated claims therefore concern potential constitutional torts committed in Texas.

48. Exercising jurisdiction over the Potential Defendants in the anticipated action would comport with due process because the potential claims arise from minimum contacts initiated by the Potential Defendants which purposefully target Texas, including speech, activities, and property in Texas.

49. Mr. Pawa initiated contact and created a continuing relationship with Texas by, among other activities, (i) initiating a plan to use litigation to change corporate behavior of Texas-based energy companies at the La Jolla conference; (ii) engaging with the Rockefeller Family Fund to solidify and promote the goal of delegitimizing ExxonMobil as a political actor; (iii) instigating state attorneys general to commence investigations of ExxonMobil in order to obtain documents stored in Texas; and (iv) soliciting and actively promoting litigation by

California municipalities against the Texas energy industry, including ExxonMobil, to target Texas-based speech and obtain documents in Texas.

50. All of the Potential Defendants initiated contact and created a continuing relationship with Texas by (i) developing, signing, approving, and/or filing complaints that expressly target the speech, research, and funding decisions of ExxonMobil and other Texas-based energy companies to chill and affect speech, activities, and property in Texas; and (ii) using an agent to serve ExxonMobil in Texas.

51. The Potential Defendants' contacts were deliberate and purposeful, and not random, fortuitous, or attenuated.

52. Purposeful availment is satisfied where Texas is the focus of the Potential Defendants' activities and where the object of the potential conspiracy is to suppress speech and corporate behavior in Texas. *See, e.g.*, *TV Azteca* v. *Ruiz*, 490 S.W.3d 29, 40 (Tex. 2016); *Hoskins* v. *Ricco Family Partners, Ltd.*, Nos. 02-15-00249-CV, 02-15-00253-CV, 2016 WL 2772164, at *7 (Tex. App.—Fort Worth May 12, 2016).

53. Based on the foregoing findings of fact, ExxonMobil's potential claims of First Amendment violation, abuse of process, and civil conspiracy would arise from the Potential Defendants' contacts with Texas.

54. Exercising jurisdiction over the Potential Defendants for the potential claims would comport with traditional notions of fair play and substantial justice.

55. It would not be burdensome for the Potential Defendants to litigate ExxonMobil's potential claims in Texas, and the Potential Defendants have failed to provide substantial evidence of burden.

56. Texas has a substantial state interest in adjudicating claims concerning

constitutional torts committed in Texas against Texas residents.

57. ExxonMobil has an inherent interest in obtaining convenient and effective relief by litigating its potential claims in Texas.

58. Exercising jurisdiction in this potential action would comport with the interstate judicial system's interest in obtaining the most efficient resolution of controversies because ExxonMobil's anticipated action encompasses claims and parties that are not part of the Potential Defendants' California nuisance suits and ExxonMobil has objected to the exercise of personal jurisdiction in those suits.

59. Exercising jurisdiction in this potential action would support the shared interest of the several states in furthering substantive social policies because ExxonMobil's anticipated action concerns a conspiracy to suppress and chill speech and associational activities of the Texas energy sector. Texas has an inherent interest in exercising jurisdiction over actions that concern the infringement of constitutional rights within its borders.

60. To the extent the Court's findings of fact are construed by a reviewing court to be conclusions of law or vice-versa, the incorrect designation shall be disregarded and the specified finding and/or conclusion of law shall be deemed to have been correctly designated herein.

SIGNED this 24th day of Apr 2018.

R.H. Wallace Jr., Presiding Judge

Exhibit C

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 96-297222-18

EXXON MOBIL CORPORATION,	IN THE 96TH JUDICIAL
	DISTRICT COURT OF TEXAS
Petitioner.	IN AND FOR TARRANT COUNTY

SPECIAL APPEARANCE HEARING

BE IT REMEMBERED that on the 8th day of March 2018, the following proceedings came on to be heard in the above-entitled and -numbered cause before the HONORABLE R. H. WALLACE, JR., judge presiding, held in Fort Worth, Tarrant County, Texas.

The proceedings were reported by machine shorthand.

THE COURT: All right. Yeah, you can -- If you can, why don't you just kind of set them on that ledge right over there. I -- I don't imagine I'm going to have time to be looking through them in the courtroom --

There you go.

Thank you.

[Sotto voce discussion between counsel.]

MR. DUGGINS: Your Honor, I don't think they should be admitted, --

THE COURT: No, I --

MR. DUGGINS: -- because they've got case summaries in them.

THE COURT: Yeah, I don't -- I will certainly take them and consider them, but I don't think they will -- properly -- be admitted as exhibits.

MR. MANLEY: Understood, Your Honor.

The -- The briefing, though, and the affidavits, we would like to have admitted as exhibits.

May we have them admitted?

THE COURT: Well, the briefing and the affidavits have already been filed.

MR. MANLEY: Yes, Your Honor.

THE COURT: And I will certainly -- To the -- To the extent that the affidavits have been filed,

I'll consider them as evidence.

MR. MANLEY: Thank you.

MR. STANLEY: Your Honor, would that count for the Oakland defendants?

THE COURT: Any affidavits that have been filed are -- are -- are considered as evidence in this special appearance hearing, and the Court will consider those affidavits.

MR. STANLEY: Well, there may be exhibits to their affidavits that we would not -- we might want to challenge at that point, but --

THE COURT: All right. Well, you'll have -- you'll have to bring that up then.

MR. MANLEY: Okay. Then the next work product, what we've created as a PowerPoint, I'd like to tender a paper copy to you and give a paper copy to the other side.

May I approach, Your Honor?

THE COURT: Yes.

MR. MANLEY: Okay. Thank you, Your Honor.

THE COURT: Thank you.

MR. MANLEY: There's another copy, if you want it.

Okay. Many of the legal arguments that Mr. Marketos made obviously apply to us as well, so I'm

the defendants' behalf to violate Exxon's First Amendment right to freedom of speech.

And let me hand up to you what the lawsuit that was filed in California by these California parties actually alleges.

Once again, we just took the complaint --

May I approach, Your Honor?

THE COURT: Yes.

MR. MANLEY: And these are just citations to the complaint that was filed where it makes clear that it is an action seeking money damages, not to have ExxonMobil stop saying things or stop doing anything. They say that verbatim in the complaint.

So those are some reference materials for the Court. I hope they're helpful to you.

But at the end of the day, the high-water mark of --

What the San Francisco defendants did was they filed a complaint in California. They didn't serve it in Texas. They served it on the registered agent for service of process in California. There are no acts that occurred in Texas. They haven't been here. And there's no basis for jurisdiction here.

So, with that, I look forward to addressing the Court after Exxon has had an opportunity to make its

are merely potential witnesses -- merely potential witnesses and not a potential defendant do not -- it's not necessary to establish personal jurisdiction over those parties.

That's in our briefing.

And this is a -- this is, again, the breakdown, Judge, of the potential defendants and the potential witnesses.

The potential defendants appear to have collaborated to target the free speech rights exercised in Texas by energy companies based in Texas. And these companies include ExxonMobil.

This potential claim is based in part on several tort cases that you heard some reference to in the respondents' presentation that have been filed against Texas-based energy companies by California municipalities where the fundamental allegations of those complaints about the energy companies and about climate change are flatly and expressly contradicted by statements these very same plaintiff municipalities made in their bond offerings and bonds. Absolutely cannot reconcile the allegations the municipalities have made about the energy business in Texas with what they said when they were trying to sell millions and millions of dollars of bonds.

the potential defendants because they have purposefully engaged in conduct that they intended to have effects in Texas on the free speech rights of Texas companies and the energy business -- or energy industry in Texas.

Importantly, Judge, the potential defendants have not contested in their response -- or disputed -- the meetings, the e-mails, and the statements that are cited in ExxonMobil's evidence. It's uncontroverted in their affidavits. They don't challenge it. They instead simply declare that the Court should ignore what took place because those meetings, e-mails, and statements occurred or were made outside of Texas.

But we will show you today that if the conduct and actions were intended to unjustifiably restrict freedom of expression in Texas where ExxonMobil and its competitors in the energy business formulate and express and exercise First Amendment rights, then the potential defendants committed a tort within the meaning of the long-arm.

So with that, I'll -- I'd like to, at this point, turn it over to Mr. Anderson to focus on -- in greater detail on some of the evidence that the respondent-defendants have engaged in: conduct that was intended to suppress the exercise of First Amendment rights in Texas. And then I'll come back and I'd like to

discuss some case law.

MR. ANDERSON: Judge, may I approach with a copy --

THE COURT: Yes.

MR. ANDERSON: -- of the presentation?

THE COURT: Thank you.

MR. ANDERSON: May it please the Court?

Your Honor heard from Mr. Stanley about a dangerous precedent that is being set. And he's right. He's just not referring to the right precedent. There is a dangerous precedent that is being set; it is being set by state government; it's being set by municipal governments, both cities and counties. And it is the use of law enforcement power; it's the use of litigation; it's the use of these tools to put pressure on the energy industry in Texas so that that industry will either stop speaking about climate change or start speaking about climate change in a way that these politicians in California, New York, and Massachusetts want. That's the dangerous precedent. And that's why ExxonMobil has to come to court.

What happened last year is that lawsuits were filed by a number of cities and counties in California basically suing every company in the energy business. And the energy business is based right here in

when they received FOIA requests, they'd Google the person who made the request, and if they find out the person is associated with coal or Exxon, or whatever, then they'd think hard about whether they'd turn over the documents.

And in the document requests that the AGs made, they followed the playbook to the letter: The AGs seek documents stored in Texas; they want information that ExxonMobil prepared in Texas; they want information from shareholder meetings that occurred in Texas; press releases issued in Texas, and SEC filings that are prepared here in Texas.

So faced with all of this information that was in the public record, Judge, ExxonMobil sued the New York and Massachusetts attorneys general. We brought -- We brought a case in front of Judge Kinkeade. We alleged First Amendment violations and other constitutional torts, as well as torts like abuse of process, conspiracy. And the thrust of the argument was, based on what we know, based on what we see in the public record, the press conference, the concealed information that came to light, we have a good-faith basis to allege that these AGs are using their law enforcement power to execute Matt Pawa's playbook, use those tools, issue those subpoenas, call us in for depositions, burden the

They also -- They also attached a statement in 1988 issued by a public affairs manager called the *Exxon position on climate change*.

In their 2007 Corporate Citizenship Report, these are in their filings.

Shareholder meeting held in Texas in 2015, the *Outlook for Energy* that's issued by the company every year, Matt Pawa, in public statements, continues to talk about speech that the company is engaged in as a source of the problem and the real reason for the litigation.

And some of the potential witnesses and defendants here have made public statements suggesting that they might also have adopted this La Jolla playbook and have adopted the agenda of the Rockefellers and the New York and the Massachusetts attorneys general.

Sounding awfully similar to Eric Schneiderman, the Oakland city attorney says it's past time to debate about the reality of global warming, past time for a debate. Past time for free speech is what she's saying. And she accuses big oil of peddling misinformation, again saying: "I don't like what the Texas energy industry has said." And you see it across the board with the Imperial Beach mayor and the San Francisco city attorney. They're complaining about speech.

"You are charged instead with intentional and allegedly tortious actions aimed at California."

And they -- The supreme court reversed and found there was personal jurisdiction.

That fits our circumstances like the skin of a grape.

Now, one of the things they really didn't talk much about, but I want to take it up, is burden. In their papers, the San Mateo parties told -- told this Court that the primary concern you are to address today is the burden they would face. And they also noted that Texas has, quote, "little legitimate interest in the claims in question," close quote. That's out of page 6 of their brief.

Well, if the *Moncrief* opinion has any application today, it applies to that statement, because in *Moncrief* the court recognized that where a party commits a tort in Texas against a Texas resident, it implicates a serious state interest in adjudicating that dispute. And I would submit to you, Judge, that the serious interest of Texas is made far more serious given that here we're talking about suppression of one of our most fundamental constitutional rights.

But let's talk about proof. What proof of burden is there? Ms. Cortell pointed out that in one of

the PowerPoints you were given there's a reference to -- to --

MS. CORTELL: San Francisco individuals.

MR. DUGGINS: -- San Francisco individuals having to take time away from their duties, but there's nothing in the affidavits to support that; it's merely a statement in the brief. And, of course, you would know better than anybody in this room that in state court when a party claims burden, you've got to submit evidence of burden. And I would submit to you that, on this record, these prospective defendants have not met any burden to show -- have not met their proof to show an unreasonable burden under the Constitution.

For example, Defendant Pawa's affidavit asserts that he would bear -- and these are his words -- an extremely high burden by having to provide a deposition in this matter. And the -- But the only foundation he supplies for that conclusion is a statement that he's responsible for complex litigation on behalf of clients.

I would note that in our response, which is part of the record that you can consider here, we pointed out that we propose to take his deposition in Massachusetts where he resides, and we propose to take the other 15 depositions in California where each of

these witnesses reside.

And -- And the -- After all, we only seek to question him on seven discrete nonprivileged topics that are set out in our papers, such as his January 2016 meeting at the Rockefeller Fund where these nefarious goals were discussed, his communications with climate change activists who have been promoting this same agenda.

Potential defendant Parker, who's the Oakland city attorney, submitted an affidavit with her special appearance. Although it goes to great length about a basis for jurisdiction that's not in issue here of just "We don't have offices here, Oakland doesn't have bank accounts here, doesn't have employees here," it's totally silent on burden, Judge, totally silent.

In *Wyatt v. Cole*, 504 U.S. 158, the supreme -- U.S. Supreme Court considered a rancher's challenge under 42 U.S.C. § 1983 as to the constitutionality of a state statute. In her opinion for the court, Justice O'Connor wrote -- and I quote -- "The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails," close quote.

The evidence in this record that is

there.

You have a clean one?

Thanks.

As Mr. Manley just said to you, Exxon -- I mean San Francisco and Oakland -- did not sue all these companies -- only sued Exxon and Phillips -- in Texas, but -- also BP, Conoco, and Royal Dutch Shell. And the whole point was they sued them for damages and, again, not to anything going to their speech, no injunction or anything like that about what they're saying. They're free to say whatever they want. No one's trying to stop them. And those suits were in California.

These Oakland bond disclosures, first of all, they say nothing about Exxon. And they were issued in California, not in Texas. The truth is, the same thing, the San Francisco bond disclosures, San Mateo, Imperial Beach, Santa Cruz, and Marin, all in California, none were issued in Texas.

How did we get here? I don't know.

The La Jolla playbook. It's uncontroverted that this took place in La Jolla, California, not in Texas.

Efforts to suppress speech at the Rockefeller meeting. Uncontroverted that this took place in New York and not in Texas.

The e-mail from mp@pawalaw.com, that's Matt Pawa's private firm. His office was in Massachusetts. And he put in an affidavit that he does not operate in Texas. So that e-mail came from his law firm account, which is not in Texas.

The AGs embrace Pawa's agenda, they say. Again, this was in New York. It had nothing to do with Texas. Schneiderman is not the attorney general of Texas.

Al Gore, his statements were not made in Texas. There's nothing here with a Texas connection.

The meeting with the attorneys general to promote the La Jolla agenda. Again, this allegedly -- whenever they said it took place -- took place in New York, not in Texas.

Attorney general seeks documents stored in Texas. This has nothing to do with us. This is a Massachusetts attorney general seeking documents in her capacity as Massachusetts -- not even related to their 202.

Exxon sues the AGs. They sue Schneiderman and Healey from Massachusetts. Again, that's transferred to New York. That is a pending case. That has nothing to do with Texas.

AGs and 11 -- Texas AG and 11 AGs. That's

irrelevant to the case. That's just talking about something else. Nothing to do with the Oakland parties at all.

Pawa promotes round 2. Again, this is a memo from his law group. It has nothing to do with Texas.

Imperial Beach, San Mateo, Marin, and Santa Cruz object to Texas -- allegedly to Texas-based speech. Again, none of these press releases or lawsuits that follow were issued in Texas.

There's a slide about Matt Pawa speaking. Neither of these speeches were in Texas.

Potential defendants object to Texas-based speech. Again, these were statements issued outside of Texas.

Potential defendants enter Texas to serve ExxonMobil. The cases cited, that doesn't count for contacts.

So I -- My whole point here is, even on the evidence they showed you, they showed you we're right on the law; but on the facts, they have nothing in Texas.

Mr. Anderson said that there's only been -- this is the only attempt to get Mr. Pawa's discovery. The uncontroverted evidence is the Pawa affidavit showing Exhibit D is a subpoena served by ExxonMobil to Matt Pawa

municipalities and municipal officials are considered persons. They're considered individuals. And no one told Judge Jones that when she was writing her -- her views on whether or not the long-arm statute might reach a municipal official. So she didn't have the benefit of that precedent.

And that's why it's unwise to rely on *dicta*. And that's why no Texas state court has relied on that *dicta* in the years that it's existed. We wait for parties to litigate issues, and then they put the best argument forward when the issue is ripe, and then it's decided. So relying on -- on *dicta* is wrong, and that's why the concurring opinion called it out: to warn people who read opinions: don't rely on that section.

Judge, the second point is about *Moncrief*. It's another decision that we've heard a lot from the potential defendants today.

And what's interesting about *Moncrief* is defendants were trying to use it to justify their actions and say: "No, we weren't committing tortious conduct. We had a good-faith basis for what we're doing."

That's the same argument that you heard today.

What the potential defendants are saying is: "We didn't file lawsuits against the energy sector

to limit their speech. We filed it because they committed a nuisance, and we want an abatement fund."

Judge, it doesn't matter if they claim they had good intentions for filing their lawsuit. It doesn't matter if they artfully pleaded their claims so that they didn't put in there what is very likely to be their true intention, which is suppressing speech of energy companies they disagree with. That doesn't matter. Their intent doesn't matter. What matters is: What effect did those lawsuits have on energy companies in Texas?

And, Judge, that -- that goes to the third point. And this is the -- the *Retamco* decision from the Texas Supreme Court in 2009. And that case involved an allegation that there had been a fraudulent transfer of property. Now, the documents executed in that transfer were made in California.

And the recipient of the fraudulent transfer said: "All this happened in California. There's no personal jurisdiction over me. Who cares that the property is in California. All of the relevant conduct took place" -- I'm sorry. "Who cares that the relevant property is in Texas. All of the relevant conduct took place in California. And if there was any inappropriate consideration exchanged for the property,

well, that happened in California. And I can only be held to account in California."

Well, the court said: "No. You're right. Part of what mattered took place in California, whether there was appropriate compensation for the transfer of property. But when real property in Texas is at issue, there's jurisdiction here too. There is jurisdiction over you even if you never set foot in the state. Even if all that you did took place in California, when the property is in Texas, there's jurisdiction in Texas."

Just like that, the speech at issue here is in Texas. It is Texas-based speech that's being targeted by these potential defendants in their complaints and in their public statements. It's the same speech that Matthew Pawa has been targeting since 2012 that he got the AGs on board to investigate and try to suppress. That's Texas-based speech.

And so, Judge, if we had a videotape where all of the potential defendants were gathered around a table and they laid out this scene and they said: "We're adopting the Pawa La Jolla playbook, we're adopting the Rockefeller agenda, we are going to file lawsuits in California with the express purpose of limiting speech and putting burdens on the energy sector in Texas so they stop talking about climate change policy," the

potential -- what the respondents are saying is that there would be no jurisdiction in the court -- in this court to bring a claim against those conspirators. And that's wrong.

The fact that they conspired outside of the state and then individually took actions, not the mere -- the -- the conspiracy -- Each of them took an action. They filed a lawsuit that's riddled with lies and misrepresentations because they had an ulterior purpose, which is to suppress speech here. They targeted speech here, and so they can be held to account for what they've done here.

It would be improper -- If agents who were outside of the state could conduct this enterprise and we could prove it beyond a reasonable doubt that this conspiracy had taken place, that these actions had taken place and the goal was to suppress speech, it would be inconceivable that that claim wouldn't find a home in a Texas court when Texas speech is what's at issue.

THE COURT: All right. Thank you.

MR. ANDERSON: Thank you, Judge.

THE COURT: All right. Do y'all want to -- I don't want to keep going around in circles. But if y'all want to address what Mr. Duggins and what Mr. -- Mr. --

D I S C L O S U R E

NOTE: Texas Supreme Court rule adopted and promulgated in conformity with Chapter 52 of the GOVERNMENT CODE, V.T.C.A.

Please be advised that pursuant to the Texas GOVERNMENT CODE with regard to disclosure, I, to the best of my knowledge, have no existing or past financial, business, professional, family, or social relationships with any of the parties or their attorneys which might reasonably create an appearance of partiality.

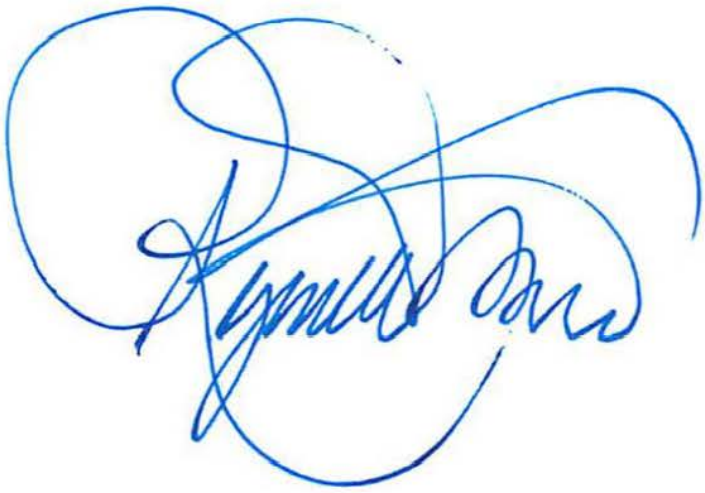

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Exhibit D

Comparing Statements in Municipal Bond Offerings Against Core Municipality-Related Climate Change Allegations in Tort Complaints

City of Oakland		
Bond Type	**Approximate Number of Bonds**	**Approximate Total Value**
Without Climate-Related References	Over 30	Over $2 billion
Core Municipality-Related Climate Change Allegations	**Lack of Comparable Climate Change Disclosures in Sample Municipal Bond**	
✓ Defendants' "massive fossil fuel production . . . ***causes a gravely dangerous rate of global warming***" and "cause[s] ***ongoing and increasingly severe sea level rise harms to Oakland*** . . . ." (¶ 55) ✓ "[B]y 2050, a ***'100-year flood'*** in the Oakland vicinity is ***expected to occur*** . . . once every 2.3 years . . . and by 2100. . . once per week." (¶ 86) ✓ Oakland is projected to have up to "***66 inches of sea level rise by 2100***," which, along with flooding, will imminently threaten Oakland's sewer system and threaten property with a "total ***replacement cost of between $22 and $38 billion***." (¶ 87)	"The ***City is unable to predict when*** seismic events, fires or other natural events, such as ***sea rise or other impacts of climate change or flooding from a major storm,*** could occur, when they may occur, and, ***if any such events occur, whether they will have a material adverse effect*** on the business operations or financial condition of the City or the local economy." (2017 Oakland General Obligation Bonds A-48–49 (2017))	

San Mateo County		
Bond Type	**Approximate Number of Bonds**	**Approximate Total Value**
Without Climate-Related References	Over 50	Over $2 billion
Core Municipality-Related Climate Change Allegations	**Lack of Comparable Climate Change Disclosures in Sample Municipal Bond**	
✓ County is *"**particularly vulnerable to sea level rise*** and changes in salinity, temperature, and runoff" due to its "topography, geography, and land use patterns . . . ." The County will experience "***a higher rate of sea rise*** . . . than the global mean." (¶ 68) ✓ ***County predicts*** "extreme sea level rise events equivalent to a 1% annual-chance flood of 42-inches" over expected sea level changes will "***inundate thousands of acres of County land, breach flood protection infrastructure and swamp San Francisco International Airport*** . . . ." (¶ 70) ✓ Along with current weather and climate changes, the "***County is at an increased risk of suffering extreme injuries in the future***," such as a "***93% chance that the County experiences a devastating three-foot flood before the year 2050, and a 50% chance that such a flood occurs before 2030*** ." (¶ 170)	"The County is ***unable to predict whether sea-level rise or other impacts of climate change*** or flooding from a major storm ***will occur, when they may occur, and if any such events occur, whether they will have a material adverse effect*** on the business operations or financial condition of the County and the local economy." (2016 San Mateo Refunding Lease Revenue Bond 74 (2016); 2014 San Mateo Lease Revenue Bond 71 (2014))	

These charts were prepared by counsel based on a comparison of the six California tort complaints and municipal bond offerings issued by the City of Oakland, San Mateo County, the City of San Francisco, the City of Imperial Beach, the County and City of Santa Cruz, and Marin County between 1990 and 2017. Counsel identified these bonds through the Municipal Securities Rulemaking Board's website, the Electronic Municipal Market Access (EMMA), https://emma.msrb.org/. Using optical character recognition (OCR), counsel surveyed municipal securities issued by the relevant municipalities and any readily identifiable related entities.

Comparing Statements in Municipal Bond Offerings Against Core Municipality-Related Climate Change Allegations in Tort Complaints

City of San Francisco		
Bond Type	**Approximate Number of Bonds**	**Approximate Total Value**
Without Climate-Related References	Over 150	Over $18 billion

Core Municipality-Related Climate Change Allegations	Lack of Comparable Climate Change Disclosures in Sample Municipal Bond
✓ "***Global warming-induced sea level rise is already causing flooding of low-lying areas of San Francisco***, increased shoreline erosion, and salt water impacts to San Francisco's water treatment system. The rapidly rising sea level along the Pacific coast and in San Francisco Bay, moreover, poses an ***imminent threat of catastrophic* storm surge flooding** because any storm would be superimposed on a higher sea level." (¶ 1) ✓ The threat of sea-level rise "is becoming more dire every day as global warming reaches ever more dangerous levels and ***sea level rise accelerates***." "***Nearer-term risks include 0.3 to as much as 0.8 feet of additional sea level rise by 2030*** . . . ." (¶¶ 1, 8) ✓ "San Francisco is planning to fortify its Seawall to protect itself from sea level rise. . . . Short-term seawall upgrades are expected to ***cost more than $500 million***. Long-term upgrades . . . [are expected to] ***cost $5 billion***." (¶ 89(a))	"The City is ***unable to predict whether sea-level rise or other impacts of climate change*** or flooding from a major storm ***will occur, when they may occur, and if any such events occur, whether they will have a material adverse effect*** on the business operations or financial condition of the City and the local economy." (2017 San Francisco General Obligation Bond 12 (2017))

City of Imperial Beach		
Bond Type	**Approximate Number of Bonds**	**Approximate Total Value**
Without Climate-Related References	Under 5	Over $60 million

Core Municipality-Related Climate Change Allegations	Lack of Comparable Climate Change Disclosures in Sample Municipal Bond
✓ The City has and will experience "***additional, significant, and dangerous sea level rise" due to "unabated" GHG emissions***. (¶ 168) ✓ "Economic vulnerability associated with erosion's impact on real property is valued at ***over $106 million***. ***Coastal flooding will impact*** 1,538 parcels, and cause ***over $38 million in damages***, primarily to residential and commercial buildings." (¶ 170(a))	Boilerplate disclosure that "earthquake . . . , flood, fire, or other natural disaster, could cause a reduction in the Tax Revenues securing the Bonds." (2013 Imperial Beach Tax Allocation Bond 50 (2013))

Comparing Statements in Municipal Bond Offerings Against Core Municipality-Related Climate Change Allegations in Tort Complaints

County and City of Santa Cruz		
Bond Type	**Approximate Number of Bonds**	**Approximate Total Value**
Without Climate-Related References	Over 80	Over $1 billion

Core Municipality-Related Climate Change Allegations	Lack of Comparable Climate Change Disclosures in Sample Municipal Bond
✓ Santa Cruz's "hydrologic regime is shifting toward . . . ***more frequent and severe drought, more extreme precipitation events, more frequent and severe heatwaves, and more frequent and severe wildfires.***" (County Complaint ¶ 83; City Complaint ¶ 82)	The County discloses that portions of the county "are located in a 100-year flood plain" and where there is "high or extreme danger of wildfires" without tying this to climate change. (2017 County of Santa Cruz Tax & Revenue Anticipation Note 68 (2017))
✓ The county warns that "there is **a 98% chance that the County experiences a devastating three-foot flood before the year 2050**, and ***a 22% chance that such a flood occurs before 2030.*** . . . With 0.3 feet of sea level rise, anticipated by 2030, ***the County will endure extensive coastal flooding***," which will affect private residences, roads and highways, the sewer system, and emergency services buildings, among other facilities. (County Complaint ¶¶ 210-11)	County property values "can be adversely affected by a variety of . . . factors includ[ing] . . . earth movements, landslides and floods and climatic conditions such as wildfires, droughts and tornadoes" and some areas within the County "***may be subject to unpredictable climatic conditions***, such as flood, droughts and destructive storms." (2016 County of Santa Cruz Limited Obligation Improvement Bond 26–27 (2016))
✓ The City warns that the "***increased flooding and severe storm events*** associated with climate change will result in significant structural and financial losses in the City's low-lying downtown." (City Complaint ¶ 210)	City bond has boilerplate, "From time to time, the City is subject to natural calamities, including, but not limited to, earthquake, flood, tsunami, or wildfire . . . which could have a negative impact on City finances." (2017 City of Santa Cruz Public Refunding Lease Revenue Bond 52 (2017))

Comparing Statements in Municipal Bond Offerings Against Core Municipality-Related Climate Change Allegations in Tort Complaints

Marin County		
Bond Type	**Approximate Number of Bonds**	**Approximate Total Value**
Without Climate-Related References	Under 10	Over $150 million

Core Municipality-Related Climate Change Allegations	**Lack of Comparable Climate Change Disclosures in Sample Municipal Bond**
✓ "Marin County anticipates a 1% annual-chance flood of at least three feet to occur in any given year. Such an event, ***even with the minimum anticipated sea level rise, would inundate thousands of additional acres of County land***." **(**¶ 70) ✓ "[T]here is a ***99% risk*** that the County experiences a ***devastating three-foot flood before the year 2050***, and a ***47% chance*** that such a flood occurs ***before 2030***. Within the ***next 15 years***, the County's Bay-adjacent coast ***will endure multiple, significant impacts from sea level rise***. The San Rafael and Southern Marin shoreline communities are most at risk from tidal and storm surge flooding. ***Regular tidal flooding will adversely impact*** San Rafael east of US Highway 101, Bayfront Belvedere and Tiburon, Greenbrae, Waldo Point, and Paradise Cay. Storm surge flooding could impact North Novato at Gnoss Field, Black Point on the Petaluma River, lower Santa Venetia, Belvedere around the lagoon, Bayfront Corte Madera, Bayfront Mill Valley, Marinship in Sausalito, Tamalpais Valley, and Almonte, in addition to the communities vulnerable to tidal flooding." (¶¶ 170–71)	Warns of "the complete or partial destruction of taxable property caused by natural or manmade disaster[s], such as earthquake, flood, fire, terrorist activities, [and] toxic dumping . . . ." (2010 County of Marin Certificates 37 (2010))

Exhibit E

¶	Finding of Fact	Record Evidence[1]	Legal Significance
1	Petitioner ExxonMobil is a corporation incorporated under the laws of the State of New Jersey with its principal place of business in Texas. It formulates and issues statements about climate change from its headquarters in Texas. Most of its corporate records pertaining to climate change are located in Texas, and it engages in speech and associational activities in Texas.	Verified Pet. ¶¶ 13, 32 (Jan. 8, 2018); Mar. 8, 2018 Special App. Hr. Tr. 31:9–12, 34:13–25, 47:7–12, 54:1–10; Aff. of Katherine Stewart ("Stewart Aff.") Ex. 47 ¶ 19 (Feb. 28, 2018)	Potential Defendants target Texas-based speech, property, and protected associational activities.
2	Potential Defendants the County of San Mateo, the County of Marin, the City of Imperial Beach, the City of Santa Cruz, the County of Santa Cruz, the City of Oakland, and the City of San Francisco are cities or counties in California that do not maintain a registered agent, telephone listing, or post office box in Texas.	Aff. of Matthew D. Goldberg ¶¶ 8–9 (Mar. 5, 2018); Aff. of Barbara Parker ¶¶ 3, 5 (Mar. 5, 2018); Aff. of John L. Maltbie ¶¶ 4, 11 (Feb. 15, 2018); Aff. of Gary A. Hall ¶¶ 4, 11 (Feb. 14, 2018); Aff. of Matthew Hymel ¶¶ 4, 10 (Feb. 16, 2018); Aff. of Carlos Palacios ¶¶ 4, 11 (Feb. 14, 2018); Aff. of Martin Bernal ¶¶ 4, 11 (Feb. 15, 2018)	Potential Defendants are "nonresidents" under the Texas long-arm statute.
3	Potential Defendants Barbara J. Parker, Dennis J. Herrera, John Beiers, Serge Dedina, Jennifer Lyon, Brian Washington, Dana McRae, and Anthony Condotti are California municipal officers who do not reside in Texas or maintain offices or registered agents in Texas.	Aff. of Barbara Parker ¶¶ 2–3 (Feb. 12, 2018); Aff. of Dennis J. Herrera ¶¶ 2–3 (Feb. 12, 2018); Aff. of John C. Beiers ¶¶ 2, 4 (Feb. 16, 2018); Aff. of Serge Dedina ¶¶ 2, 4 (Feb. 14, 2018); Aff. of Jennifer M. Lyon ¶¶ 2, 4 (Feb. 14, 2018); Aff. of Brian E. Washington ¶¶ 2, 4 (Feb. 15, 2018); Aff. of Dana McRae ¶¶ 2, 4 (Feb. 14, 2018); Aff. of Anthony P. Condotti ¶¶ 2, 4 (Feb. 15, 2018)	Potential Defendants are "nonresidents" under the Texas long-arm statute.

[1] The record evidence was received by the Court without objection at the March 8, 2018 special appearance hearing. Citations to that hearing, in further support of ExxonMobil's proposed findings of fact, are available upon request. ExxonMobil's presentation from that hearing is attached as Appendix D.

¶	Finding of Fact	Record Evidence	Legal Significance
4	Potential Defendant Matthew F. Pawa is an attorney in private practice, based in Massachusetts and serving as outside counsel for Potential Defendants the City of Oakland and the City of San Francisco. Mr. Pawa does not maintain an office or registered agent in Texas and is not licensed to practice law in Texas.	Aff. of Matthew F. Pawa ¶¶ 3, 10 (Feb. 12, 2018)	Potential Defendant is a "nonresident" under the Texas long-arm statute.
5	Prospective Witnesses Sabrina B. Landreth, Edward Reiskin, John Maltbie, Andy Hall, Matthew Hymel, Carlos Palacios, and Martín Bernal are California municipal officers who do not reside in Texas or maintain a registered agent, telephone listing, or post office box in Texas.	Aff. of Sabrina B. Landreth ¶¶ 2–3, 5 (Feb. 12, 2018); Aff. of Edward Reiskin ¶¶ 2–3, 6 (Feb. 12, 2018); Aff. of John L. Maltbie ¶¶ 2, 4, 11 (Feb. 15, 2018); Aff. of Gary A. Hall ¶¶ 3–5 (Feb. 14, 2018); Aff. of Matthew Hymel ¶¶ 2, 4, 10 (Feb. 16, 2018); Aff. of Carlos Palacios ¶¶ 2, 4, 11 (Feb. 14, 2018); Aff. of Martin Bernal ¶¶ 2, 4, 11 (Feb. 15, 2018)	The prospective witnesses are nonresidents, whose depositions need not occur in the same venue as the anticipated suit. *See*, *e.g.*, *Quinn* v. *Eighth Judicial Dist. Court in & for Cty. of Clark*, No. 74519, 2018 WL 774513, at *4 (Nev. Feb. 8, 2018); *Yelp, Inc.* v. *Hadeed Carpet Cleaning, Inc.*, 770 S.E.2d 440, 444 (Va. 2015).
6	In June 2012, Potential Defendant Pawa and a group of special interests attended a conference in La Jolla, California, called the "Workshop on Climate Accountability, Public Opinion, and Legal Strategies." Peter Frumhoff, the Director of Science and Policy for the Union of Concerned Scientists; Naomi Oreskes, then a professor at the University of California, San Diego; and Richard Heede, of the Climate Accountability Institute, conceived of this workshop and invited Mr. Pawa to participate as a featured speaker.	Aff. of Allen Hernandez ("Hernandez Aff.") Ex. 1 at 2, 33–35 (Feb. 28, 2018)	Pawa participated in developing a plan to target Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
7	During the conference, participants discussed strategies to "[w]in [a]cess to [i]nternal [d]ocuments" of energy companies, like ExxonMobil, that could be used to obtain leverage over these companies. The conference participants concluded that using law enforcement powers and civil litigation to "maintain[ ] pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming." One commentator observed, "Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties."	Hernandez Aff. Ex. 1 at 11, 13, 24, 27	Pawa purposefully targeted Texas-based speech, property, and protected associational activities.
8	At the conference, the attendees also concluded that "a single sympathetic state attorney general might have substantial success in bringing key internal documents to light."	Hernandez Aff. Ex. 1 at 11	Pawa purposefully targeted property in Texas.

¶	Finding of Fact	Record Evidence	Legal Significance
9	At the conference, Potential Defendant Pawa targeted ExxonMobil's speech on climate change, and identified such speech as a basis for bringing litigation. Mr. Pawa claimed that "Exxon and other defendants distorted the truth" (as Mr. Pawa saw it) and that litigation "serves as a 'potentially powerful means to change corporate behavior.'" Myles Allen, another participant at the La Jolla conference, claimed that "the fossil fuel industry's disinformation has effectively muted a large portion of the electorate."	Hernandez Aff. Ex. 1 at 12, 28	Pawa purposefully targeted Texas-based speech and protected associational activities.
10	In January 2016, Mr. Pawa engaged special interests at the Rockefeller Family Fund offices in New York City to further solidify the "[g]oals of an Exxon campaign" that Mr. Pawa developed at the La Jolla conference. According to a draft agenda for the meeting, the goals of this campaign included: (i) "[t]o establish in [the] public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm"; (ii) "[t]o delegitimize [ExxonMobil] as a political actor"; (iii) "[t]o drive divestment from Exxon"; and (iv) "[t]o force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc."	Hernandez Aff. Ex. 6 at 1	Pawa participated in developing a plan to target First Amendment activities in Texas.

¶	Finding of Fact	Record Evidence	Legal Significance
11	According to the draft agenda, Mr. Pawa and the other participants aimed to chill and suppress ExxonMobil's speech through "legal actions & related campaigns," including "AGs" and "Tort[]" suits. The draft agenda notes that participants planned to use "AGs" and "Tort[]" suits to "get[] discovery" and "creat[e] scandal."	Hernandez Aff. Ex. 7 at 1–2	Pawa purposefully targeted ExxonMobil's Texas-based speech, property, and protected associational activities.
12	On March 29, 2016, New York Attorney General Eric Schneiderman, Massachusetts Attorney General Maura Healey, and other state attorneys general, calling themselves the "Green 20," held a press conference where they promoted regulating the speech of energy companies, including ExxonMobil, whom they perceived as an obstacle to enacting their preferred policy responses to climate change. Attorneys General Schneiderman and Healey discussed their investigations of ExxonMobil. They were also joined by former Vice President Al Gore, an investor in alternative energy companies.	Hernandez Aff. Ex. 9 at 1–3, 12	Attorneys General, whom Pawa advised, initiated investigations targeting ExxonMobil's Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
13	At the press conference, Attorney General Schneiderman discussed the need to regulate the energy industry's speech on climate change, just as Potential Defendant Pawa had urged at La Jolla and at the Rockefeller meeting. He stated, "There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up." Attorney General Schneiderman denounced the "highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action" and announced that "today, we're sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination."	Hernandez Aff. Ex. 9 at 2, 4	Attorneys General, whom Pawa advised, initiated investigations targeting ExxonMobil's Texas-based speech.

¶	Finding of Fact	Record Evidence	Legal Significance
14	Attorney General Healey similarly echoed themes from the strategy Mr. Pawa developed at La Jolla. She stated, "Part of the problem has been one of public perception," and she blamed "[f]ossil fuel companies" for purportedly causing "many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts." Attorney General Healey announced that those who "deceived" the public "should be, must be, held accountable." In the next sentence, she disclosed that she too had begun investigating ExxonMobil and concluded, before receiving a single document from ExxonMobil, that there was a "troubling disconnect between what Exxon knew . . . and what the company and industry chose to share with investors and with the American public."	Hernandez Aff. Ex. 9 at 12–13	Attorneys General, whom Pawa advised, initiated investigations targeting ExxonMobil's Texas-based speech.
15	At the press conference, former Vice President Al Gore praised Attorney General Schneiderman's efforts to "hold to account those commercial interests" who "are now trying to convince people that renewable energy is not a viable option"—a position that aligned well with Mr. Gore's financial stake in renewable energy companies. Mr. Gore also focused on First Amendment-protected activities, condemning the "political and lobbying efforts" of the traditional energy industry.	Hernandez Aff. Ex. 9 at 6, 9	Attorneys General, whom Pawa advised, initiated investigations targeting ExxonMobil's Texas-based speech and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
16	At a closed-door meeting held before the March 2016 press conference, Mr. Pawa and Dr. Frumhoff conducted briefings for assembled members of the attorneys general's offices. Mr. Pawa, whose briefing was on "climate change litigation," has subsequently admitted to attending the meeting, but only after he and the attorneys general attempted and failed to conceal it.	Hernandez Aff. Ex. 10 at 4	Pawa advised state officials who subsequently pursued investigations targeting ExxonMobil's Texas-based speech, property, and protected associational activities.
17	The New York Attorney General's Office attempted to keep Mr. Pawa's involvement in this meeting secret. When a reporter contacted Mr. Pawa shortly after this meeting and inquired about the press conference, the Chief of the Environmental Protection Bureau at the New York Attorney General's Office told Mr. Pawa, "My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event."	Hernandez Aff. Ex. 13 at 2	The Attorneys General attempted to conceal Pawa's involvement in their targeting of ExxonMobil's Texas-based speech, property, and protected associational activities, supporting the inference of an improper purpose.

¶	Finding of Fact	Record Evidence	Legal Significance
18	Similarly, the Vermont Attorney General's Office—another member of the "Green 20" coalition—admitted at a court hearing that when it receives a public records request to share information concerning the coalition's activities, it researches the party who requested the records, and upon learning of the requester's affiliation with "coal or Exxon or whatever," the office "give[s] this some thought . . . before [it] share[s] information with this entity."	Stewart Aff. Ex. 39 at 14	The Attorneys General, whom Pawa advised, demonstrated bias against the Texas energy sector and sought to conceal information that would further unmask their targeting of ExxonMobil's Texas-based speech, property, and protected associational activities.
19	Attorney General Schneiderman issued a subpoena and Attorney General Healey issued a civil investigative demand ("CID") to ExxonMobil requesting documents and communications concerning climate change and expressly referencing documents in ExxonMobil's possession in Texas.	Aff. of Patrick J. Conlon ("Conlon Aff.") Ex. 19 at 1, Ex. 20 at 1, 15 (Feb. 27, 2018)	Following consultation with Pawa, the Attorneys General commenced investigations purposefully targeting ExxonMobil's Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
20	The Massachusetts CID targets specific statements ExxonMobil and its executives made in Texas. For example, it requests documents concerning (i) a 1982 article prepared by the Coordination and Planning Division of Exxon Research and Engineering Company; (ii) former Chairman and CEO Rex Tillerson's "statements regarding Climate Change and Global Warming . . . at an Exxon shareholder meeting in Dallas, Texas"; (iii) ExxonMobil's 2016 Energy Outlook, which was prepared and reviewed in Texas; and (iv) internal corporate documents and communications concerning regulatory filings prepared at ExxonMobil's corporate offices in Texas. Many of the statements under government scrutiny pertain expressly to matters of public policy, such as remarks by ExxonMobil's former CEO that "[i]ssues such as global poverty [are] more pressing than climate change." The Massachusetts CID also seeks documents pertaining to ExxonMobil's associational activities, including its communications with 12 organizations derided as climate deniers and its reasons for associating with those entities.	Conlon Aff. Ex. 20 at 13, 15–17	Following consultation with Pawa, the Massachusetts Attorney General commenced an investigation purposefully targeting ExxonMobil's Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
21	The New York subpoena also targets ExxonMobil's speech and associational activities in Texas, including investor filings, the "*Outlook For Energy* reports," the "*Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports," the "*Energy and Carbon - Managing the Risks Report*," and communications with trade associations and industry groups.	Conlon Aff. Ex. 19 at 8	Following consultation with Pawa, the New York Attorney General commenced an investigation purposefully targeting ExxonMobil's Texas-based speech, property, and protected associational activities.
22	ExxonMobil filed a lawsuit seeking injunctive and declaratory relief against Attorneys General Schneiderman and Healey. The Attorney General of the State of Texas, along with ten other state attorneys general, filed an amicus brief in support of ExxonMobil's claims, stating that a state official's power "does not include the right to engage in unrestrained, investigative excursions to promulgate a social ideology, or chill the expression of points of view, in international policy debates." Judge Ed Kinkeade of the U.S. District Court for the Northern District of Texas questioned whether the New York and Massachusetts Attorneys General were attempting to "further their personal agendas by using the vast power of government to silence the voices of all those who disagree with them."	Stewart Aff. Ex. 34 at 10, Ex. 36 at 5	ExxonMobil's efforts to protect the constitutional rights it exercises in Texas were supported by other state Attorneys General, including the Texas Attorney General, and caused concern to the assigned federal judge, who recognized the risk that government power was being abused by non-Texas residents to suppress speech in Texas.

¶	Finding of Fact	Record Evidence	Legal Significance
23	With the investigations of the state attorneys general underway, Mr. Pawa next promoted his La Jolla strategy to California municipalities, as potential plaintiffs in tort litigation that would be filed against energy companies, including ExxonMobil.	Hernandez Aff. Ex. 18 at 3–4, 5	Pawa developed a strategy for litigation against the Texas energy sector purposefully targeting Texas-based speech, property, and protected associational activities.
24	Mr. Pawa sent a memo outlining this strategy to NextGen America, the political action group funded by political activist Tom Steyer. The memo "summarize[d] a potential legal case against major fossil fuel corporations," premised on the claim that "certain fossil fuel companies (most notoriously ExxonMobil), have engaged in a campaign and conspiracy of deception and denial on global warming." Mr. Pawa emphasized that "simply proceeding to the discovery phase would be significant" and "obtaining industry documents would be a remarkable achievement that would advance the case and the cause."	Hernandez Aff. Ex. 18 at 3, 5–6	Pawa developed a strategy for litigation against the Texas energy sector purposefully targeting Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
25	Mr. Pawa also gave a number of speeches in which he targeted speech that ExxonMobil formulated and made in Texas. At a 2016 conference, for instance, Mr. Pawa accused ExxonMobil of "undert[aking] a campaign of deception and denial" and targeted a speech concerning climate change delivered by former CEO Tillerson in Texas. In the same speech, Mr. Pawa also discussed the company's internal memos from the 1980s, where company scientists evaluated potential climate change impacts.	Stewart Aff. Ex. 65 at 3	Pawa purposefully targeted ExxonMobil's Texas-based speech, property, and protected associational activities.
26	Following through on the strategy Mr. Pawa outlined in his memorandum to NextGen America, Potential Defendants Parker, Herrera, and the Cities of Oakland and San Francisco filed public nuisance lawsuits against ExxonMobil and four other energy companies, including Texas-based ConocoPhillips. Mr. Pawa represents the plaintiffs in those actions, and Ms. Parker and Mr. Herrera signed the complaints on behalf of the City of Oakland and the City of San Francisco, respectively. They used an agent to serve the complaints on ExxonMobil's registered agent in California, whose role is to transmit legal process to ExxonMobil in Texas.	Hernandez Aff. Ex. 18; Conlon Aff. Ex. 24 at 36, Ex. 25 at 42	Potential Defendants Pawa, Parker, Herrera, and the Cities of Oakland and San Francisco purposefully initiated contact with Texas.

¶	Finding of Fact	Record Evidence	Legal Significance
27	Potential Defendants Lyon, Washington, Beiers, [Condotti],[2] McRae, the City of Imperial Beach, Marin County, San Mateo County, and the City and the County of Santa Cruz filed similar public nuisance complaints against ExxonMobil and other energy companies, including the following 17 Texas-based energy companies: BP America, Inc., Shell Oil Products Company LLC, Citgo Petroleum Corp., ConocoPhillips, ConocoPhillips Company, Phillips 66, Total E&P USA Inc., Total Specialties USA Inc., Eni Oil & Gas Inc., Anadarko Petroleum Corp., Occidental Petroleum Corp., Occidental Chemical Corp., Repsol Energy North America Corp., Repsol Trading USA Corp., Marathon Oil Company, Marathon Oil Corporation, and Apache Corp. Potential Defendants Beiers, Lyon, McRae, Washington, and Condotti signed these complaints. They used an agent to serve the complaints on ExxonMobil's registered agent in Texas.	Conlon Aff. Exs. 21–23, 26–32	Potential Defendants Lyon, Washington, Beiers, Condotti, McRae, the City of Imperial Beach, Marin County, San Mateo County, and the City and the County of Santa Cruz purposefully initiated contact with Texas.
28	Each of the seven California complaints expressly target speech and associational activities in Texas.	Conlon Aff. Ex. 21 ¶ 121, Ex. 22 ¶ 117, Ex. 23 ¶ 127, Ex. 24 ¶¶ 75, 81, Ex. 25 ¶¶ 76, 82, Ex. 26 ¶ 180, Ex. 27 ¶ 179	Potential Defendants purposefully targeted Texas-based speech and protected associational activities.

[2] Appendix C is a corrected version of ExxonMobil's Proposed Findings of Fact and Conclusions of Law, which corrects the name listed for the Santa Cruz City Attorney.

¶	Finding of Fact	Record Evidence	Legal Significance
29	The Oakland and San Francisco complaints, for example, target ExxonMobil's Texas-based speech, including a statement by "then-CEO Rex Tillerson" at "Exxon's annual shareholder meeting" in Texas, where they claim Mr. Tillerson allegedly "misleadingly downplayed global warming's risks." These complaints also target corporate statements issued from Texas, such as ExxonMobil's "annual 'Outlook for Energy' reports," "Exxon's website," and "Exxon's 'Lights Across America' website advertisements." In addition, the complaints target ExxonMobil's associational activities in Texas, including corporate decisions to fund various non-profit groups that perform climate change-related research that the complaints deem to be "front groups" and "denialist groups."	Conlon Aff. Ex. 24 ¶¶ 63, 69, 75, 76, 78, 81, Ex. 25 ¶¶ 64, 70, 76, 77, 79, 82	Potential Defendants Pawa, Parker, Herrera, and the Cities of Oakland and San Francisco purposefully targeted ExxonMobil's Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
30	The City of Imperial Beach, Marin County, San Mateo County, and the City and County of Santa Cruz complaints similarly focus on ExxonMobil's Texas-based speech and associational activities. For example, they target (i) a 1988 memo from an Exxon public affairs manager that proposes "[r]esist[ing] the overstatement and sensationalization [sic] of potential greenhouse effect"; (ii) a "publication" that "Exxon released" in "1996" with a preface by former "Exxon CEO Lee Raymond"; and (iii) a 2007 Corporate Citizenship Report, issued from the company's Texas headquarters.	Conlon Aff. Ex. 21 ¶¶ 117, 121, 139, Ex. 22 ¶¶ 117, 121, 139, Ex. 23 ¶¶ 117, 121, 139, Ex. 26 ¶¶ 162, 166, 180, Ex. 27 ¶¶ 161, 165, 179	Potential Defendants Lyon, Washington, Beiers, Condotti, McRae, the City of Imperial Beach, Marin County, San Mateo County, and the City and the County of Santa Cruz purposefully targeted ExxonMobil's Texas-based speech, property, and protected associational activities.
31	Each of the seven California complaints also explicitly focus on ExxonMobil property in Texas, including ExxonMobil's internal memos and scientific research. (Imperial Beach Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; Marin County Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; San Mateo Compl. ¶¶ 86-88, 91-92, 95-97, 99-102; Oakland Compl. ¶¶ 60-61; San Francisco Compl. ¶¶ 60-62; County of Santa Cruz Compl. ¶¶ 130-32, 135-37, 140-42, 144-47; City of Santa Cruz Compl. ¶¶ 129-31, 134-36, 139-41, 143-46.)	Conlon Aff. Ex. 21 ¶¶ 86–88, 91–92, 95–97, 99–102, Ex. 22 ¶¶ 86–88, 91–92, 95–97, 99–102, Ex. 23 ¶¶ 86–88, 91–92, 95–97, 99–102, Ex. 24 ¶¶ 60–61, Ex. 25 ¶¶ 60–62, Ex. 26 ¶¶ 130–32, 135–37, 140–42, 144–47, Ex. 27 ¶¶ 129–31, 134–36, 139–41, 143–46	Potential Defendants purposefully targeted ExxonMobil's Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
32	Several Potential Defendants also made statements shortly after filing the lawsuits focusing on Texas-based speech. In a July 20, 2017 op-ed for *The San Diego Union-Tribune*, Potential Defendant Dedina, the mayor of the City of Imperial Beach, justified his participation in this litigation by accusing the energy sector of attempting to "sow uncertainty" about climate change. In a July 26, 2017 appearance at a local radio station, Mr. Dedina accused ExxonMobil of carrying out a "merchants of doubt campaign."	Stewart Aff. Ex. 40 at 3, Ex. 69 at 3	Potential Defendants Dedina and the City of Imperial Beach purposefully targeted the energy sector's Texas-based speech and protected associational activities.
33	Oakland City Attorney Barbara Parker issued a press release soon after filing suit, asserting that "[i]t is past time to debate or question the reality of global warming." According to Parker, "[j]ust like BIG TOBACCO, BIG OIL knew the truth long ago and peddled misinformation to con their customers and the American public."	Stewart Aff. Ex. 68 at 1	Potential Defendants Parker and the City of Oakland purposefully targeted the energy sector's Texas-based speech and protected associational activities.
34	San Francisco City Attorney Dennis Herrera similarly accused "fossil fuel companies" of launching a "disinformation campaign to deny and discredit what was clear even to their own scientists: global warming is real," and pledged to ensure that these companies "are held to account."	Stewart Aff. Ex. 70 at 2, 4	Potential Defendants Herrera and the City of San Francisco purposefully targeted the energy sector's Texas-based speech and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
35	These allegations, which pervade Respondents' lawsuits, are contradicted by the Respondents' own municipal bond disclosures. While the California municipalities alleged in their complaints against the energy companies that the impacts of climate change were knowable, quantifiable, and certain, they told their investors the exact opposite. These contradictions raise the question of whether the California municipalities brought these lawsuits for an improper purpose.	Conlon Aff. Exs. 21–27; Stewart Aff. Exs. 48–63	Potential Defendants may have committed a tort in Texas by filing baseless lawsuits against Texas energy companies with the improper objective of targeting Texas-based speech, property, and protected associational activities.
36	For example, Oakland and San Francisco's complaints claim that ExxonMobil's and other energy company's "conduct will continue to cause ongoing and increasingly severe sea level rise harms" to the cities. However, the municipal bonds issued by Oakland and San Francisco disclaim knowledge of any such impending catastrophe, stating the Cities are "unable to predict" whether sea-level rise "or other impacts of climate change" will occur, and "if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City" or the "local economy."	Conlon Aff. Ex. 24 ¶ 55, Ex. 25 ¶ 56; Stewart Aff. Ex. 55 at 78-79, Ex. 58 at 20	Potential Defendants Pawa, Parker, Herrera, and the Cities of Oakland and San Francisco may have committed a tort in Texas by filing baseless lawsuits against Texas energy companies with the improper objective of targeting Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
37	Similarly, according to the San Mateo Complaint, the county is "particularly vulnerable to sea level rise," with "a 93% chance that the County experiences a devastating three-foot flood before the year 2050, and a 50% chance that such a flood occurs before 2030." Despite this, nearly all of the county's bond offerings contain no reference to climate change, and 2014 and 2016 bond offerings assure that "[t]he County is unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur."	Conlon Aff. Ex. 23 ¶¶ 68, 170; Stewart Aff. Ex. 52 at 79, Ex. 53 at 82	Potential Defendants Beiers and San Mateo County may have committed a tort in Texas by filing baseless lawsuits against Texas energy companies with the improper objective of targeting Texas-based speech, property, and protected associational activities.
38	The Imperial Beach Complaint alleges that it is vulnerable to "significant, and dangerous sea level rise" due to "unabated greenhouse gas emissions." Imperial Beach has never warned investors in its bonds of any such vulnerability. A 2013 bond offering, for instance, contains nothing but a boilerplate disclosure that "earthquake . . . , flood, fire, or other natural disaster, could cause a reduction in the Tax Revenues securing the Bonds . . . ."	Conlon Aff. Ex. 21 ¶ 168; Stewart Aff. Ex. 50 at 56	Potential Defendants Lyon, Dedina, and the City of Imperial Beach may have committed a tort in Texas by filing baseless lawsuits against Texas energy companies with the improper objective of targeting Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
39	The Marin County complaint warns that "there is a 99% risk that the County experiences a devastating three-foot flood before the year 2050, and a 47% chance that such a flood occurs before 2030." It also asserts that "[w]ithin the next 15 years, the County's Bay-adjacent coast will endure multiple, significant impacts from sea level rise." However, its bond offerings do not contain any specific references to climate change risks, noting only, for example, that "natural or manmade disaster[s], such as earthquake, flood, fire, terrorist activities, [and] toxic dumping" are potential risks.	Conlon Aff. Ex. 22 ¶¶ 170, 171; Stewart Aff. Ex. 48 at 43	Potential Defendants Washington and Marin County may have committed a tort in Texas by filing baseless lawsuits against Texas energy companies with the improper objective of targeting Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
40	The Santa Cruz complaints warn of dire climate change threats. The county alleges that there is "a 98% chance that the County experiences a devastating three-foot flood before the year 2050, and a 22% chance that such a flood occurs before 2030." The Santa Cruz City Complaint similarly warns that "increased flooding and severe storm events associated with climate change will result in significant structural and financial losses in the City's low-lying downtown." But none of the city or county bond offerings mention these dire and specific warnings. A 2016 county disclosure merely states that areas within the county "may be subject to unpredictable climatic conditions, such as flood, droughts and destructive storms." A 2017 city bond offering has a boilerplate message that,"[f]rom time to time, the City is subject to natural calamities," including flood and wildfire.	Conlon Aff. Ex. 26 ¶ 210, Ex. 27 ¶ 210; Stewart Aff. Ex. 60 at 33, Ex. 61 at 58	Potential Defendants McRae, Condotti, the City of Santa Cruz, and the County of Santa Cruz may have committed a tort in Texas by filing baseless lawsuits against Texas energy companies with the improper objective of targeting Texas-based speech, property, and protected associational activities.

¶	Finding of Fact	Record Evidence	Legal Significance
41	Potential Defendants Pawa, Parker, Herrera, Beiers, Dedina, Lyon, Washington, McRae, Condotti, County of San Mateo, County of Marin, City of Imperial Beach, City of Santa Cruz, County of Santa Cruz, City of Oakland, and City of San Francisco either approved or participated in filing the lawsuits against the Texas energy sector. That conduct was directed at Texas-based speech, activities, and property. Prospective Witnesses Landreth, Reiskin, Maltbie, Hall, Hymel, Palacios, and Bernal approved the contemporaneous disclosures that contradict the allegations in the municipal complaints. Those witnesses, along with the Potential Defendants, are likely to have evidence pertaining to that contradiction.	Conlon Aff. Exs. 21–27; Stewart Aff. Exs. 48–61	Potential Defendants may have committed a tort in Texas by filing baseless lawsuits against Texas energy companies with the improper objective of targeting Texas-based speech, property, and protected associational activities.

Exhibit F

Chart of Arguments in Appellants' and Appellee's Briefs

Issue	Sub-Issue	Appellants' Brief Pages		ExxonMobil's Response
Jurisdiction Under Due Process Clause	**Purposefully Availed**	Oakland	27-45	29-50
		San Francisco	16-28, 34-35, 38-39, 42-47	
		San Mateo	18-30	
	Nexus	Oakland	45-46	50-51
		San Francisco	24	
		San Mateo	30-35	
	Fair Play and Substantial Justice	Oakland	46-54	52-58
		San Francisco	39-42	
		San Mateo	35-39	
Jurisdiction Under Texas Long-Arm Statute	**Nonresidents**	Oakland	54-56	58-62
		San Francisco	14-16, 49-51	
		San Mateo	39-40	
	Doing Business	Oakland	56	62-64
		San Francisco	14-16	
Findings of Fact	**Waiver of Evidentiary Objections**	Oakland	62-63	65-67
		San Mateo	16 n.10	
	Sufficiency of Evidence	Oakland	57-63	67-78
		San Francisco	29-37	
		San Mateo	16 n.10	
	Collateral Estoppel	Oakland	63-68	78-82
Potential Witnesses	**Non-defendant Jurisdiction**	Oakland	68-71	82-87
		San Francisco	48	

Exhibit G

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article I. Bill of Rights (Refs & Annos)

Vernon's Ann.Texas Const. Art. 1, § 8

§ 8. Freedom of speech and press; libel

Currentness

Sec. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Vernon's Ann. Texas Const. Art. 1, § 8, TX CONST Art. 1, § 8
Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

End of Document

Exhibit H

Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
Chapter 17. Parties; Citation; Long-Arm Jurisdiction (Refs & Annos)
Subchapter C. Long-Arm Jurisdiction in Suit on Business Transaction or Tort (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 17.041

§ 17.041. Definition

Currentness

In this subchapter, "nonresident" includes:

(1) an individual who is not a resident of this state; and

(2) a foreign corporation, joint-stock company, association, or partnership.

Credits
Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

Notes of Decisions (80)

V. T. C. A., Civil Practice & Remedies Code § 17.041, TX CIV PRAC & REM § 17.041
Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

End of Document

Exhibit I

Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
Chapter 17. Parties; Citation; Long-Arm Jurisdiction (Refs & Annos)
Subchapter C. Long-Arm Jurisdiction in Suit on Business Transaction or Tort (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 17.042

§ 17.042. Acts Constituting Business in This State

Currentness

In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:

(1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;

(2) commits a tort in whole or in part in this state; or

(3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

Credits

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

Notes of Decisions (1702)

V. T. C. A., Civil Practice & Remedies Code § 17.042, TX CIV PRAC & REM § 17.042
Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

End of Document

Exhibit J

Vernon's Texas Rules Annotated
Texas Rules of Appellate Procedure
Section Two. Appeals from Trial Court Judgments and Orders (Refs & Annos)
Rule 33. Preservation of Appellate Complaints (Refs & Annos)

TX Rules App.Proc., Rule 33.1

Rule 33.1. Preservation; How Shown

Currentness

(a) *In General.* As a prerequisite to presenting a complaint for appellate review, the record must show that:

(1) the complaint was made to the trial court by a timely request, objection, or motion that:

(A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and

(B) complied with the requirements of the Texas Rules of Evidence or the Texas Rules of Civil or Appellate Procedure; and

(2) the trial court:

(A) ruled on the request, objection, or motion, either expressly or implicitly; or

(B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

(b) *Ruling by Operation of Law.* In a civil case, the overruling by operation of law of a motion for new trial or a motion to modify the judgment preserves for appellate review a complaint properly made in the motion, unless taking evidence was necessary to properly present the complaint in the trial court.

(c) *Formal Exception and Separate Order Not Required.* Neither a formal exception to a trial court ruling or order nor a signed, separate order is required to preserve a complaint for appeal.

(d) *Sufficiency of Evidence Complaints in Civil Nonjury Cases.* In a civil nonjury case, a complaint regarding the legal or factual insufficiency of the evidence--including a complaint that the damages found by the court are excessive or inadequate, as distinguished from a complaint that the trial court erred in refusing to amend a fact finding or to make an additional finding of fact--may be made for the first time on appeal in the complaining party's brief.

Credits

Eff. Sept. 1, 1997. Amended by Supreme Court Dec. 23, 2002, eff. Jan. 1, 2003. Amended by Supreme Court order of June 30, 2017, and Court of Criminal Appeals order of June 26, 2017, eff. July 1, 2017.

Rules App. Proc., Rule 33.1, TX R APP Rule 33.1
Current with amendments received through July 1, 2018

Exhibit K

Vernon's Texas Rules Annotated
Texas Rules of Appellate Procedure
Section Two. Appeals from Trial Court Judgments and Orders (Refs & Annos)
Rule 38. Requisites of Briefs (Refs & Annos)

TX Rules App.Proc., Rule 38.1

38.1. Appellant's Brief

Currentness

The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

(a) *Identity of Parties and Counsel.* The brief must give a complete list of all parties to the trial court's judgment or order appealed from, and the names and addresses of all trial and appellate counsel, except as otherwise provided in Rule 9.8.

(b) *Table of Contents.* The brief must have a table of contents with references to the pages of the brief. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

(c) *Index of Authorities.* The brief must have an index of authorities arranged alphabetically and indicating the pages of the brief where the authorities are cited.

(d) *Statement of the Case.* The brief must state concisely the nature of the case (e.g., whether it is a suit for damages, on a note, or involving a murder prosecution), the course of proceedings, and the trial court's disposition of the case. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts.

(e) *Any Statement Regarding Oral Argument.* The brief may include a statement explaining why oral argument should or should not be permitted. Any such statement must not exceed one page and should address how the court's decisional process would, or would not, be aided by oral argument. As required by Rule 39.7, any party requesting oral argument must note that request on the front cover of the party's brief.

(f) *Issues Presented*. The brief must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included.

(g) *Statement of Facts*. The brief must state concisely and without argument the facts pertinent to the issues or points presented. In a civil case, the court will accept as true the facts stated unless another party contradicts them. The statement must be supported by record references.

(h) *Summary of the Argument*. The brief must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. This summary must not merely repeat the issues or points presented for review.

(i) *Argument*. The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.

(j) *Prayer*. The brief must contain a short conclusion that clearly states the nature of the relief sought.

(k) *Appendix in Civil Cases*.

(1) Necessary Contents. Unless voluminous or impracticable, the appendix must contain a copy of:

(A) the trial court's judgment or other appealable order from which relief is sought;

(B) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any; and

(C) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law (excluding case law) on which the argument is based, and the text of any contract or other document that is central to the argument.

(2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, laws, documents on which the suit was based, pleadings, excerpts from the reporter's record, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the brief.

Credits

Eff. Sept. 1, 1997. Amended by Supreme Court March 10, 2008, and Aug. 20, 2008, eff. Sept. 1, 2008. Approved by Court of Criminal Appeals Sept. 30, 2008, eff. Sept. 30, 2008.

Rules App. Proc., Rule 38.1, TX R APP Rule 38.1
Current with amendments received through July 1, 2018

End of Document

Exhibit L

Vernon's Texas Rules Annotated
Texas Rules of Civil Procedure
Part II. Rules of Practice in District and County Courts
Section 5. Citation (Refs & Annos)

TX Rules of Civil Procedure, Rule 120a

Rule 120a. Special Appearance

Currentness

1. Notwithstanding the provisions of Rules 121, 122 and 123, a special appearance may be made by any party either in person or by attorney for the purpose of objecting to the jurisdiction of the court over the person or property of the defendant on the ground that such party or property is not amenable to process issued by the courts of this State. A special appearance may be made as to an entire proceeding or as to any severable claim involved therein. Such special appearance shall be made by sworn motion filed prior to motion to transfer venue or any other plea, pleading or motion; provided however, that a motion to transfer venue and any other plea, pleading, or motion may be contained in the same instrument or filed subsequent thereto without waiver of such special appearance; and may be amended to cure defects. The issuance of process for witnesses, the taking of depositions, the serving of requests for admissions, and the use of discovery processes, shall not constitute a waiver of such special appearance. Every appearance, prior to judgment, not in compliance with this rule is a general appearance.

2. Any motion to challenge the jurisdiction provided for herein shall be heard and determined before a motion to transfer venue or any other plea or pleading may be heard. No determination of any issue of fact in connection with the objection to jurisdiction is a determination of the merits of the case or any aspect thereof.

3. The court shall determine the special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony. The affidavits, if any, shall be served at least seven days before the hearing, shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Should it appear to the satisfaction of the court at any time that any of such affidavits are presented in violation of Rule 13, the court shall impose sanctions in accordance with that rule.

4. If the court sustains the objection to jurisdiction, an appropriate order shall be entered. If the objection to jurisdiction is overruled, the objecting party may thereafter appear generally for any purpose. Any such special appearance or such general appearance shall not be deemed a waiver of the objection to jurisdiction when the objecting party or subject matter is not amenable to process issued by the courts of this State.

Credits

April 12, 1962, eff. Sept. 1, 1962. Amended by orders of July 22, 1975, eff. Jan. 1, 1976; June 15, 1983, eff. Sept. 1, 1983; April 24, 1990, eff. Sept. 1, 1990.

Vernon's Ann. Texas Rules Civ. Proc., Rule 120a, TX R RCP Rule 120a
Current with amendments received through July 1, 2018

End of Document

Exhibit M

TX Rules of Civil Procedure, Rule 192.3

192.3. Scope of Discovery

Currentness

(a) *Generally.* In general, a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *Documents and Tangible Things.* A party may obtain discovery of the existence, description, nature, custody, condition, location, and contents of documents and tangible things (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, and data compilations) that constitute or contain matters relevant to the subject matter of the action. A person is required to produce a document or tangible thing that is within the person's possession, custody, or control.

(c) *Persons with Knowledge of Relevant Facts.* A party may obtain discovery of the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case. A person has knowledge of relevant facts when that person has or may have knowledge of any discoverable matter. The person need not have admissible information or personal knowledge of the facts. An expert is "a person with knowledge of relevant facts" only if that knowledge was obtained first-hand or if it was not obtained in preparation for trial or in anticipation of litigation.

(d) *Trial Witnesses.* A party may obtain discovery of the name, address, and telephone number of any person who is expected to be called to testify at trial. This paragraph does not apply to rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before trial.

(e) *Testifying and Consulting Experts.* The identity, mental impressions, and opinions of a consulting expert whose mental impressions and opinions have not been reviewed by a testifying expert are not discoverable. A party may discover the following information regarding a testifying expert or regarding a consulting expert whose mental impressions or opinions have been reviewed by a testifying expert:

(1) the expert's name, address, and telephone number;

(2) the subject matter on which a testifying expert will testify;

(3) the facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with the case in which the discovery is sought, regardless of when and how the factual information was acquired;

(4) the expert's mental impressions and opinions formed or made in connection with the case in which discovery is sought, and any methods used to derive them;

(5) any bias of the witness;

(6) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of a testifying expert's testimony;

(7) the expert's current resume and bibliography.

(f) *Indemnity and Insuring Agreements.* Except as otherwise provided by law, a party may obtain discovery of the existence and contents of any indemnity or insurance agreement under which any person may be liable to satisfy part or all of a judgment rendered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the indemnity or insurance agreement is not by reason of disclosure admissible in evidence at trial.

(g) *Settlement Agreements.* A party may obtain discovery of the existence and contents of any relevant portions of a settlement agreement. Information concerning a settlement agreement is not by reason of disclosure admissible in evidence at trial.

(h) *Statements of Persons with Knowledge of Relevant Facts.* A party may obtain discovery of the statement of any person with knowledge of relevant facts--a "witness statement"--regardless of when the statement was made. A witness statement is (1) a written statement signed or otherwise adopted or approved in writing by the person making it, or (2) a stenographic, mechanical, electrical, or other type of recording of a witness's oral statement, or any substantially verbatim transcription of such a recording. Notes taken during a conversation or interview with a witness are not a witness statement. Any person may obtain, upon written request, his or her own statement concerning the lawsuit, which is in the possession, custody or control of any party.

(i) *Potential Parties.* A party may obtain discovery of the name, address, and telephone number of any potential party.

(j) *Contentions.* A party may obtain discovery of any other party's legal contentions and the factual bases for those contentions.

Credits

Aug. 5, 1998 and amended Nov. 9, 1998, eff. Jan. 1, 1999.

Vernon's Ann. Texas Rules Civ. Proc., Rule 192.3, TX R RCP Rule 192.3
Current with amendments received through July 1, 2018

End of Document

Exhibit N

TX Rules of Civil Procedure, Rule 202.5

202.5. Manner of Taking and Use

Currentness

Except as otherwise provided in this rule, depositions authorized by this rule are governed by the rules applicable to depositions of nonparties in a pending suit. The scope of discovery in depositions authorized by this rule is the same as if the anticipated suit or potential claim had been filed. A court may restrict or prohibit the use of a deposition taken under this rule in a subsequent suit to protect a person who was not served with notice of the deposition from any unfair prejudice or to prevent abuse of this rule.

Credits

Aug. 5, 1998 and Nov. 9, 1998, eff. Jan. 1, 1999.

Vernon's Ann. Texas Rules Civ. Proc., Rule 202.5, TX R RCP Rule 202.5
Current with amendments received through July 1, 2018

End of Document

Exhibit O

West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 4. Miscellaneous Provisions (Refs & Annos)
Title 4. Civil Discovery Act (Refs & Annos)
Chapter 12. Discovery in Action Pending Outside California (Refs & Annos)
Article 1. Interstate and International Depositions and Discovery Act (Refs & Annos)

West's Ann.Cal.C.C.P. § 2029.300

§ 2029.300. Issuance of subpoena

Effective: January 1, 2010
Currentness

(a) To request issuance of a subpoena under this section, a party shall submit the original or a true and correct copy of a foreign subpoena to the clerk of the superior court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute making an appearance in the courts of this state.

(b) In addition to submitting a foreign subpoena under subdivision (a), a party seeking discovery shall do both of the following:

(1) Submit an application requesting that the superior court issue a subpoena with the same terms as the foreign subpoena. The application shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390. No civil case cover sheet is required.

(2) Pay the fee specified in Section 70626 of the Government Code.

(c) When a party submits a foreign subpoena to the clerk of the superior court in accordance with subdivision (a), and satisfies the requirements of subdivision (b), the clerk shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(d) A subpoena issued under this section shall satisfy all of the following conditions:

(1) It shall incorporate the terms used in the foreign subpoena.

(2) It shall contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(3) It shall bear the caption and case number of the out-of-state case to which it relates.

(4) It shall state the name of the court that issues it.

(5) It shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390.

Credits
(Added by Stats.2008, c. 231 (A.B.2193), § 3, operative Jan. 1, 2010.)

West's Ann. Cal. C.C.P. § 2029.300, CA CIV PRO § 2029.300
Current with urgency legislation through Ch. 335 of 2018 Reg.Sess, and all propositions on 2018 ballot.

End of Document

Exhibit P

West's Annotated California Codes
Code of Civil Procedure (Refs & Annos)
Part 4. Miscellaneous Provisions (Refs & Annos)
Title 4. Civil Discovery Act (Refs & Annos)
Chapter 19. Perpetuation of Testimony or Preservation of Evidence Before Filing Action (Refs & Annos)

West's Ann.Cal.C.C.P. § 2035.010

§ 2035.010. Persons permitted to obtain discovery; restrictions

Effective: January 1, 2017
Currentness

(a) One who expects to be a party or expects a successor in interest to be a party to an action that may be cognizable in a court of the state, whether as a plaintiff, or as a defendant, or in any other capacity, may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of perpetuating that person's own testimony or that of another natural person or organization, or of preserving evidence for use in the event an action is subsequently filed.

(b) One shall not employ the procedures of this chapter for purposes of either ascertaining the possible existence of a cause of action or a defense to it, or of identifying those who might be made parties to an action not yet filed.

Credits
(Added by Stats.2004, c. 182 (A.B.3081), § 23, operative July 1, 2005. Amended by Stats.2005, c. 294 (A.B.333), § 13; Stats.2016, c. 86 (S.B.1171), § 44, eff. Jan. 1, 2017.)

West's Ann. Cal. C.C.P. § 2035.010, CA CIV PRO § 2035.010
Current with urgency legislation through Ch. 335 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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