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SUPREME COURT OF TEXAS
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NO. 20-0558

IN THE SUPREME COURT OF TEXAS

EXXON MOBIL CORPORATION,
Petitioner,

V.

CITY OF SAN FRANCISCO, ET AL.,
Respondents.

PETITIONER'S BRIEF ON THE MERITS

From the Court of Appeals for the Second District
Sitting in Fort Worth, Texas, No. 02-18-00106-CV

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The City of Oakland, Barbara J. Parker, Sabrina B. Landreth, and Matthew F. Pawa ("*Oakland Respondents*")

County of San Mateo, County of Marin, City of Imperial Beach, City of Santa Cruz, County of Santa Cruz, John Beiers, Serge Dedina, Jennifer Lyon, Brian Washington, Dana McRae, Anthony Condotti, John Maltbie, Andy Hall, Matthew Hymel, Carlos Palacios, and Martín Bernal ("*San Mateo Respondents*")

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A	06/18/2020	Court of Appeals' Opinion: *City of San Francisco v. Exxon Mobil Corp*., No. 02-18-00106-CV, 2020 WL 3969558 (Tex. App.—Fort Worth June 18, 2020, pet. filed) (mem. op.) (majority and concurring opinions)	N/A
B	06/18/2020	Court of Appeals' Judgment	N/A
C	03/14/2018	Order on Special Appearances	CR7210
D	04/24/2018	Findings of Fact and Conclusions of Law	3SCR113-128
E	N/A	Chart of Evidentiary Support for Findings of Fact	3SCR29-50

TABLE OF AUTHORITIES

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ABBREVIATIONS AND RECORD REFERENCES

PARTIES:

"ExxonMobil" or "Petitioner" means Exxon Mobil Corporation.

"Potential defendants" means the City and County of San Francisco, City of Oakland, County of San Mateo, County of Marin, City of Imperial Beach, City of Santa Cruz, and County of Santa Cruz, their representatives (Barbara J. Parker, Dennis J. Herrera, John C. Beiers, Serge Dedina, Jennifer Lyon, Brian Washington, Dana McRae, and Anthony P. Condotti), and Matthew F. Pawa.

"Prospective witnesses" means Sabrina B. Landreth, Edward Reiskin, John L. Maltbie, Andy Hall, Matthew Hymel, Carlos Palacios, and Martín Bernal.

RECORD REFERENCES:[1]

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OTHER:

"FOF/COL" ¶ [#] means the Findings of Fact and Conclusions of Law in this case, dated April 24, 2018, with the relevant numbered paragraph. 3SCR113-28, App. D.

"Governor Amicus Ltr." [#] means the page numbers in Governor Greg Abbott's Amicus Curiae Letter in Support of ExxonMobil's Petition for Review.

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[1] Hyperlinks to the Appendix appear in the text in blue and underlined.

"Op." [*#] means the page number in *City of San Francisco v. Exxon Mobil Corp.*, No. 02-18-00106-CV, 2020 WL 3969558 (Tex. App.—Fort Worth June 18, 2020, pet. filed) (mem. op.), App. A.

"TXOGA Amicus Br." [#] means the page numbers in the Texas Oil & Gas Association's Amicus Curiae Brief in Support of ExxonMobil's Petition for Review.

"TCJL Amicus Br." [#] means the page numbers in the Texas Civil Justice League's Amicus Curiae Brief in Support of ExxonMobil's Petition for Review.

STATEMENT OF THE CASE

***Nature of the Case*:** In this Rule 202 proceeding, ExxonMobil seeks pre-suit discovery to evaluate potential claims for constitutional violations, abuse of process, and civil conspiracy. The potential claims arise from an alleged conspiracy among California municipalities, certain of their municipal officials, and an avowed climate activist (the "potential defendants") to use tort lawsuits against ExxonMobil and seventeen other Texas-based energy companies as a pretext to suppress Texas-based speech about climate and energy policies. The issue before the Court is whether personal jurisdiction exists over the potential defendants.

***Trial Court*:** The case was heard in the 96th Judicial District Court, Tarrant County, Texas, Hon. R.H. Wallace Jr., presiding.

***Trial Court's Disposition*:** The trial court denied the potential defendants' special appearances, holding that personal jurisdiction comports with Texas's long-arm statute and the Due Process Clause of the United States Constitution. CR7210, App. C. The trial court made extensive findings of fact and conclusions of law based on powerful, uncontroverted evidence. 3SCR113-28, App. D.

***Court of Appeals*:** The Second District Court of Appeals reversed in an opinion written by Justice Elizabeth Kerr, joined by Chief Justice Bonnie Sudderth and Justice Wade Birdwell. *City of San Francisco v. Exxon Mobil Corp.*, No. 02-18-00106-CV, 2020 WL 3969558 (Tex. App.—Fort Worth June 18, 2020, pet filed)

(mem. op.); *see* App. A. Chief Justice Sudderth wrote a concurring opinion. App. A at *20.

***Court of Appeals' Disposition*:** The court of appeals recognized that the potential defendants seek to deprive Texans of information, adversely impact a key Texas industry, and impose their preferred climate and energy policies extraterritorially in Texas. These contacts aimed in and at Texas interfere with the constitutional rights of ExxonMobil and seventeen other Texas-based energy companies, suppress information available in Texas, target a core Texas industry, and impinge on Texas's sovereignty. The court of appeals nevertheless reversed, holding that the potential defendants had not established sufficient minimum contacts with Texas. Op. *19-20.

In a concurring opinion, Chief Justice Sudderth urged this Court to consider review. *See id.* at *20.

STATEMENT OF JURISDICTION

This proceeding is important to the jurisprudence of the state. TEX. GOV'T CODE § 22.001(a). If the opinion of the court of appeals stands, Texas courts will be unable to hear claims that an out-of-state party took action to intentionally target the State of Texas by suppressing the speech and associational rights of those in an industry vital to the Texas economy. Neither the Due Process Clause nor this Court's precedents require such a result. Where, as here, non-residents engage in intentional conduct aimed at the forum, with knowledge that the brunt of the injury will be broadly felt in the forum, Texas courts are authorized *under existing law* to assert jurisdiction over claims arising from those forum contacts. As Governor Abbott stated in his amicus filing supporting ExxonMobil's petition, "When out-of-state officials try to project their power across our border, as respondents have done by broadly targeting the speech of an industry crucial to Texas, they cannot use personal jurisdiction to scamper out of our courts and retreat across state lines." Governor Amicus Ltr. 2. This Court should confirm that longstanding precedent of this Court and the U.S. Supreme Court supports exercising jurisdiction over the potential defendants for their unlawful campaign to suppress Texas speech.

ISSUES PRESENTED

Does personal jurisdiction exist over non-residents who engage in purposeful conduct to alter Texas speech and free association about climate and energy policies? More specifically—

1. Does personal jurisdiction exist over persons who purposefully create a relationship with Texas by using pretextual litigation designed to chill Texas-based speech and associational activities and change the policies of Texas's energy industry?
2. Did the court of appeals err by omitting from its jurisdictional analysis the evidence and findings on the statewide effects in Texas arising from the potential defendants' conduct that was expressly aimed at Texas?
3. Did the court of appeals err by imposing a requirement to show "additional conduct" on top of the potential defendant's purposeful conduct intentionally aimed at Texas to create statewide effects in Texas?

INTRODUCTION AND REASONS TO GRANT REVIEW

A group of well-funded climate activists are waging what the court of appeals properly characterized as "lawfare" against the Texas energy industry. Op. *20. They conceived, funded, and executed a litigation campaign with dozens of baseless, pretextual lawsuits that attack protected speech and associational activities in Texas. They threaten the production of substantial resources within Texas and seek to obstruct state policy on the exploration, production, and marketing of oil and gas.

California municipalities filed multiple lawsuits against ExxonMobil and seventeen other Texas energy companies. ExxonMobil brought this Rule 202 petition to preserve evidence and evaluate claims of potential violations of ExxonMobil's rights in Texas to exercise its First Amendment privileges. The trial court exercised specific personal jurisdiction over the California actors, but the court of appeals reversed. In doing so, the court committed three substantial errors, all of which should prompt review by this Court.

First, the Court should grant review to confirm that a minimum-contacts analysis properly considers targeted in-state effects that establish a relationship between non-resident defendants, Texas, and the litigation. The court of appeals erroneously held that purposeful conduct by out-of-state actors that targets speech and associational activities in Texas does not form any jurisdictionally relevant contacts with the forum. But the potential defendants' lawfare is aimed at chilling

the speech of not just ExxonMobil, but of other prominent members of the Texas energy sector on issues of public debate, in this case, climate change. The intended effects of that expressly targeted lawfare will be felt by any Texas resident who seeks to hear and benefit from that perspective, including Texas policy makers who interact with the representatives of this vital sector of the Texas economy. Those are meaningful contacts with the Texas forum they target. Left undisturbed, the court of appeals' opinion would strip Texas courts of the ability to address intentional harms to Texas and its citizens.

Second, review should be granted to confirm that a minimum-contacts analysis is not limited to physical contacts. The court of appeals erred by disregarding the legal effect of evidence and the trial court's findings on the statewide effects in Texas arising from the potential defendants' purposeful conduct. Instead, the court confined its analysis to the potential defendants' physical contacts with the State. But physical contact with the forum is not a prerequisite to jurisdiction. Defendants establish sufficient minimum contacts where, as here, their out-of-state conduct is intended to create widespread, non-physical effects in the targeted forum. Absent reversal, the court of appeals' narrow view of the law will preclude Texas courts from adjudicating claims against out-of-state residents that tortiously seek to deprive Texans of their constitutional rights, and to impinge on Texas's sovereignty.

Third, the Court should grant review to confirm that a minimum-contacts analysis does not require a showing of "additional conduct" unless it is unclear whether the claimed wrongful conduct is aimed at Texas. The court of appeals incorrectly concluded that jurisdiction could not be exercised unless the potential defendants engaged in "additional conduct"—other than that found by the trial court—to target the forum. But the "additional conduct" requirement has been applied only in limited circumstances in which it is otherwise unclear that the defendant has specifically targeted the forum, such as stream-of-commerce and broadcasting cases. Here, by contrast, there can be no mistake that the potential defendants specifically and strategically targeted Texas, its resident corporations, and its citizens to bear the brunt of their lawfare. Absent review, the court of appeals' opinion will place targeted tortious conduct, like the lawfare here, beyond the reach of Texas courts.

Review and reversal is essential to ensure that out-of-state actors can be held to account in Texas for their efforts to stifle Texans' free speech rights and to commandeer Texas energy policy.

STATEMENT OF FACTS

ExxonMobil, a Texas-based oil and gas company, filed a petition under Rule 202 of the Texas Rules of Civil Procedure to conduct discovery concerning the potential defendants' pretextual use of California courts to adversely affect freedom

of speech, associational rights, and energy policy in Texas. The potential defendants include Matthew Pawa—an outspoken advocate of misusing government power to limit free speech—and California municipalities and officials whom Pawa recruited to file the politically motivated lawsuits against ExxonMobil and other members of the Texas energy sector. Those lawsuits are an affront to the First Amendment: The government "is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Bos.*, 515 U.S. 557, 579 (1995).

The facts supporting jurisdiction over the potential defendants are set out in the trial court's extensive findings of fact and conclusions of law and summarized here. The court of appeals did not disturb any of these findings.

A. Factual Background

1. Matthew Pawa and other climate activists develop a playbook to suppress Texas-based speech on climate policy.

In June 2012, Pawa and other climate activists attended a conference in La Jolla, California, called the "Workshop on Climate Accountability, Public Opinion, and Legal Strategies." FOF/COL ¶ 6. At the conference, Pawa identified ExxonMobil's speech on climate change as a basis for bringing litigation. Pawa claimed that "Exxon and other defendants distorted the truth" and that litigation "serves as a 'potentially powerful means to change corporate behavior.'" *Id.* ¶ 9.

Another participant at the La Jolla conference claimed that "the fossil fuel industry's disinformation has effectively muted a large portion of the electorate." *Id.*

The workshop 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 would "maintain[] pressure on the [energy] industry that could eventually lead to its support for legislative and regulatory responses to global warming." *Id.* ¶ 7. Workshop attendees also planned to enlist "sympathetic state attorney[s] general" who could launch sweeping investigations that "might have substantial success in bringing key internal documents to light." *Id.* ¶ 8. The focus on obtaining documents rather than the merits of planned tort litigation goes to the core of the lawsuits' pretext.

2. Pawa's playbook identifies enforcement actions and tort litigation as the best methods to obtain documents to use in a campaign to suppress speech on energy policy.

In January 2016, La Jolla conference attendees, including Pawa, joined others at a meeting at the Rockefeller Family Fund offices in New York City. Collectively, they solidified the "[g]oals of an Exxon campaign" to restrict, among others, ExxonMobil's free speech about matters of public policy. *Id.* ¶¶ 10-11. 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."

Id. ¶ 10.

The participants considered "AGs" and "Torts" as "the main avenues for legal actions & related campaigns" for "creating scandal" and "getting discovery." *Id.* ¶ 11. Those pretextual strategies would soon be deployed.

3. New York and Massachusetts state officials launch enforcement actions, seeking documents related to 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 state attorneys general held a press conference with Al Gore. Together, they promoted regulating speech of energy companies, like ExxonMobil, which they perceived as an obstacle to enacting their preferred responses to climate change. *Id.* ¶ 12.[2]

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[2] 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.

At the press conference, then-New York Attorney General Eric Schneiderman (the "New York AG") declared that there could be "no dispute" about appropriate climate policy. *Id.* ¶ 13. He 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." *Id.* 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." *Id.*

Massachusetts Attorney General Maura Healey (the "Massachusetts AG") likewise believed that "public perception" had stymied her preferred climate policy. *Id.* ¶ 14. 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." *Id.* After pledging to hold these energy companies "accountable," the Massachusetts AG declared that she, too, had joined in investigating the practices of ExxonMobil. *Id.*

The attorneys general's statements aligned with the strategies Pawa had urged during the La Jolla and Rockefeller meetings. *See id.* ¶¶ 13-14. 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." *Id.* ¶ 16. When a reporter contacted Pawa shortly after this meeting and inquired about the press conference, the chief of the New York AG's Environmental Protection Bureau instructed Pawa "not [to] confirm that you attended or otherwise discuss the event." *Id.* ¶ 17.

Pawa's fingerprints were also on the document requests the New York and Massachusetts AGs issued to ExxonMobil. The New York AG, for example, "target[ed] ExxonMobil's speech and associational activities in Texas, including investor filings, the '*Outlook for Energy* reports' . . . and communications with trade associations and industry groups." *Id*. ¶ 21. And the Massachusetts AG "target[ed] specific statements ExxonMobil and its executives made in Texas," including "documents concerning . . . a 1982 article prepared by the Coordination and Planning Division of Exxon Research and Engineering Company" and "communications concerning regulatory filings prepared at ExxonMobil's corporate offices in Texas." *Id*. ¶ 20.

4. State officials file suit against ExxonMobil.

After four years of investigation, the New York AG sued ExxonMobil, advancing the theory that ExxonMobil had misled investors about how it "managed the risks of climate change and increasing regulations." *People v. Exxon Mobil Corp.*, 119 N.Y.S.3d 829 (Table), at *4 (N.Y. Sup. Ct. Dec. 10, 2019). The New

York AG's complaint asserted, *inter alia*, that ExxonMobil engaged in a "longstanding fraudulent scheme" that was "sanctioned at the highest levels of the company, effect[ively] erect[ing] a Potemkin village to create the illusion that it had fully considered the risks of climate change regulation . . . to its business operations." *Id*. at *1. It further alleged that ExxonMobil "knew that its representations were not supported by the facts and were contrary to its internal business practices." *Id*.

After ExxonMobil produced "dozens of witnesses for interviews and deposition," and "millions of pages of documents," including "reams of proprietary information relating to its historic and contemplated investments," the parties proceeded to a twelve-day trial. *Id*. At the conclusion, the presiding judge found the New York AG's allegations to be "without merit," as it had "failed to prove, by a preponderance of the evidence, that ExxonMobil made any material misstatements or omissions about its practices and procedures that misled any reasonable investor." *Id*. at *30. Indeed, the court found the New York AG's complaint to be "hyperbolic" and the "result of an ill-conceived initiative of the Office of the Attorney General." *Id*. at *2, *26. Tellingly, the New York AG declined to appeal the adverse judgment.

The New York AG's weak case did not deter the Massachusetts AG from filing a copycat suit mid-way through trial. On October 24, 2019, the Commonwealth of Massachusetts filed an 830-paragraph complaint alleging that ExxonMobil deceived Massachusetts investors about the risks to its business from

climate change and related regulation. *See Commonwealth v. Exxon Mobil Corp.*, No. 19-3333 (Mass. Super. Ct. Oct. 24, 2019). The action remains pending in Massachusetts Superior Court.

5. The potential defendants adopt the Pawa playbook and file a series of lawsuits targeting Texas-based speech and associational activities.

While the other state investigations and litigation were underway, Pawa began promoting his playbook to California municipalities, urging them to become potential plaintiffs in tort litigation against prominent energy companies. FOF/COL ¶ 23.

Pawa sent a memo outlining this strategy to NextGen America, the political action group funded by California political activist Tom Steyer. *Id.* ¶ 24. 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." *Id.* 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." *Id.*

Oakland and San Francisco. 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 state court against

ExxonMobil and four other energy companies, including Texas-based ConocoPhillips. *Id.* ¶ 26. Pawa initially represented Oakland and San Francisco in those actions. *Id*.

The Oakland and San Francisco complaints focus on speech by ExxonMobil's then-CEO at an annual shareholder meeting in Texas, "where they claim Mr. Tillerson allegedly 'misleadingly downplayed global warming's risks,'" in addition to other "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." *Id*. ¶ 29 (internal quotation marks omitted). The complaints also "target ExxonMobil's associational activities in Texas, including corporate decisions to fund various non-profit groups that perform climate change-related research." *Id.*

San Mateo. 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 likewise filed five complaints against dozens of energy companies, including ExxonMobil and the following seventeen 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. *Id.* ¶ 27.

The five San Mateo complaints "focus on ExxonMobil's Texas-based speech and associational activities" by targeting statements made by ExxonMobil employees in Texas, including (1) a 1988 memo that proposes "[r]esist[ing] the overstatement and sensationalization [sic] of potential greenhouse effect[s]"; (2) a 1996 publication with a preface by its former CEO; and (3) a 2007 Corporate Citizenship Report, issued from the company's Texas headquarters. *Id.* ¶ 30.

Thus, each of the seven California complaints expressly targets speech and associational rights in Texas, where ExxonMobil and other companies formulate and issue statements about climate change, maintain corporate records pertaining to climate change, and engage in First Amendment speech and associational rights. *See id.* ¶¶ 1, 47.

6. Disclosures and other public statements confirm the pretext and ulterior motive of the potential defendants' lawsuits.

The potential defendants' complaints allege tort claims for environmental harm, but public statements reveal their pretext and ulterior motives.

Bond Offerings. The most egregious indication that these lawsuits were not brought for a justiciable purpose is the stark contrast between what the potential defendants allege in their complaints and what they have disclosed to their own investors. *See id.* ¶¶ 35-40. In their municipal bond offerings, *none* of the potential

defendants disclosed to prospective investors the allegedly grievous climate change-related risks that purportedly animate their claims against ExxonMobil and others in the Texas energy sector. *See id.*

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. *Id.* ¶ 36. Yet the bond disclosures issued by Oakland and San Francisco denied knowledge of any such impending catastrophe, stating that the cities are "unable to predict" whether sea 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." *Id.*

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." *Id.* ¶ 37. 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." *Id.*

The irreconcilable differences between what is alleged in the complaints and what was disclosed to investors are evidence that the allegations in the complaints against ExxonMobil are not honestly held.

Public Statements. If there were any doubt about their motives, the potential defendants' public statements made shortly after filing their lawsuits lend further evidence of their objective 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*, Mayor of the City of Imperial Beach Dedina justified his participation in this litigation by accusing the energy sector of attempting to "sow uncertainty" about climate change. *Id.* ¶ 32. In a July 26, 2017 appearance at a local radio station, Dedina accused ExxonMobil of carrying out a "merchants of doubt campaign." *Id.*

On September 20, 2017, Oakland City Attorney Parker issued a press release seeking to stifle the speech of the Texas energy sector or, as she likes to refer to it, "BIG OIL." *Id.* ¶ 33. She 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." *Id.*

These admissions parallel the public statements of San Francisco City Attorney Herrera 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." *Id.* ¶ 34.

7. Pawa represents New York City in another baseless lawsuit against ExxonMobil and other energy companies.

Pawa also served as lead counsel to New York City in a suit against ExxonMobil and other energy companies. In 2018, the City of New York sued ExxonMobil and various other Texas energy companies, claiming that they "ha[d] known for decades that their fossil fuel products pose a severe risk to the planet's climate," yet tortiously "downplayed the risks and continued to sell massive quantities of fossil fuels, which has caused and will continue to cause significant changes to the City's climate." *City of New York v. Chevron Corp.*, 993 F.3d 81, 86-87 (2d Cir. 2021). On a January 2018 podcast hosted by Senator Bernie Sanders, Mayor Bill de Blasio explained that the City's lawsuit was part of a larger effort to "bring the death knell to the [fossil fuel] industry that has done us so much harm," and "urge[d] every city, every county to do the same[.]"[3]

The City of New York's claims—which are materially identical to those asserted by the potential defendants—were dismissed by the trial court in a decision the Second Circuit subsequently affirmed. Although the City of New York had

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[3] John Breslin, *New York City mayor on podcast: 'Let's help bring the death knell' to the fossil fuel industry*, LEGAL NEWSLINE (Feb. 20, 2018), https://legalnewsline.com/stories/511347172-new-york-city-mayor-on-podcast-let-s-help-bring-the-death-knell-to-the-fossil-fuel-industry.

purported to bring claims under New York law, the Second Circuit held that federal common law must apply to "disputes involving interstate air or water pollution." *City of New York*, 993 F.3d at 91. The City of New York's "sprawling case [wa]s simply beyond the limits of state law," and, if permitted to proceed under state law, would constitute an impermissible effort to "regulate [oil and gas companies'] behavior far beyond New York's borders." *Id*. at 92. In addition, the Second Circuit held that the City of New York's actions raised "significant federalism concerns." *Id*. Permitting the suit to proceed under state law, the Court reasoned, would "risk upsetting the careful balance" struck by Congress and the Executive between preventing climate change, on the one hand, and "energy production, economic growth, foreign policy, and national security, on the other." *Id.* at 93.

Notwithstanding the Second Circuit's clear holding that claims aimed at regulating the energy industry were not viable, ExxonMobil and other Texas energy companies currently face a raft of similar litigation from state and local governments across the country, including quite a few members of the Green 20, and yet another lawsuit from the City of New York.[4]

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[4] *See City of New York v. Exxon Mobil Corp.*, No. 451071/2021 (N.Y. Sup. Ct. Apr. 22, 2021); *Anne Arundel County v. BP P.L.C.*, Civ. No. 21-565 (Md. Cir. Ct. Apr. 26, 2021); *City of Annapolis v. BP P.L.C.*, Civ. No. 21-250 (Md. Cir. Ct. Feb. 22, 2021); *County of Maui v. Sunoco LP*, Civ. No. 20-283 (Haw. Cir. Ct. Oct. 12, 2020); *State v. Exxon Mobil Corp.*, Civ. No. 20-6132568 (Conn. Super. Ct. Sept. 14, 2020); *State v. BP America Inc.*, Civ. No. N20C-09-097 (Del. Super. Ct. Sept. 10, 2020); *City of Charleston v. Brabham Oil Co.*, Civ. No. 2020-CP-10-3975 (S.C. Com. Pl. Sept. 9, 2020); *City of Hoboken v. Exxon Mobil Corp.*, Civ.

These efforts are bolstered by climate activists determined to put "BIG OIL" out of business. In August 2017, for example, New York University ("NYU") launched the State Energy and Environmental Impact Center ("State Impact Center") after receiving a $6 million donation from the Bloomberg Philanthropies. The State Impact Center has used these and other funds from Bloomberg Philanthropies to recruit "Special Assistant Attorneys General" ("SAAGs") who are then embedded within state attorneys general offices (including members of the Green 20) across the country to assist with the prosecution of oil and gas companies, such as ExxonMobil.[5] The breadth of this effort, as evinced by the sheer number of SAAGs

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No. 20-3179 (N.J. Super. Ct. Sept. 2, 2020); *District of Columbia v. Exxon Mobil Corp.*, Civ. No. 20-2892 (D.C. Sup. Ct. June 25, 2020); *State of Minnesota v. Am. Petroleum Inst.*, Civ. No. 20-3837 (Minn. Dist. Ct. June 24, 2020); *City & County of Honolulu v. Sunoco LP*, Civ. No. 20-380 (Haw. Cir. Ct. Mar. 9, 2020); *Commonwealth v. ExxonMobil Corp.*, Civ. No. 19-3333 (Mass. Super. Ct. Oct. 24, 2019); *People v. ExxonMobil Corp.*, Civ. No. 18-452044 (N.Y. Sup. Ct. Oct. 24, 2018); *Mayor & City Council of Baltimore v. BP p.l.c.*, Civ. No. 18-4219 (Md. Cir. Ct. July 20, 2018); *State v. Chevron Corp.*, Civ. No. 18-4716 (R.I. Super. Ct. July 2, 2018); *King County v. BP p.l.c.*, Civ. No. 18-11859 (Wash. Super. Ct. May 9, 2018); *Bd. of Cnty Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.), Inc.*, Civ. No. 18-30349 (Colo. Dist. Ct. Apr. 17, 2018); *City of Richmond v. Chevron Corp.*, Civ. No. 18-55 (Cal. Super. Ct. Jan. 22, 2018); *City of Santa Cruz v. Chevron Corp.*, Civ. No. 17-3243 (Cal. Super. Ct. Dec. 20, 2017); *County of Santa Cruz v. Chevron Corp.*, Civ. No. 17-3242 (Cal. Super. Ct. Dec. 20, 2017); *City of Oakland v. BP p.l.c.*, Civ. No. 17-87588 (Cal. Super. Ct. Sept. 19, 2017); *City of San Francisco v. BP p.l.c.*, Civ. No. 17-561370 (Cal. Super. Ct. Sept. 19, 2017); *City of Imperial Beach v. Chevron Corp.*, Civ. No. 17-1227 (Cal. Super. Ct. July 17, 2017); *County of Marin v. Chevron Corp.*, Civ. No. 17-2586 (Cal. Super. Ct. July 17, 2017); *County of San Mateo v. Chevron Corp.*, Civ. No. 17-3222 (Cal. Super. Ct. July 17, 2017).

[5] On October 17, 2017, the State Impact Center announced that SAAGs would be embedded in the following attorneys general offices: Illinois, Maryland, Massachusetts, New Mexico, New York, Washington, and the District of Columbia. *See* Press Release, 7 Attorney General Offices Selected to Participate in New State impact Center's NYU Law Fellowship Program (Oct. 17, 2017). In the summer of 2019, two SAAGs were embedded within the office of the Minnesota Attorney General. *See* Christin Nielson, *AG Ellison exceeded authority by hiring*

embedded in various attorneys general offices across the country, suggests that Texas-based speech will continue to face challenges from climate activists seeking to exercise extraterritorial regulatory reach.

B. Procedural Background

1. ExxonMobil files a Rule 202 petition to investigate claims against the potential defendants.

In January 2018, ExxonMobil filed a Rule 202 petition to preserve evidence and evaluate claims of potential violations of its First Amendment rights that the California suits seek to suppress. *See* FOF/COL at 1. The potential defendants are: (1) the seven California municipalities that brought tort suits against ExxonMobil and other Texas-based energy companies; (2) eight California municipal officials responsible for filing the tort suits; and (3) Pawa, the then-lead attorney for San Francisco and Oakland. *Id.* ¶¶ 2-4.

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privately funded lawyers to sue Big Oil, critic says, LEGAL NEWSLINE (Apr. 12, 2021), https://legalnewsline.com/stories/588663251-ag-ellison-exceeded-authority-by-hiring-privately-funded-lawyers-to-sue-big-oil-critic-says. A year later, the SAAGs signed the Minnesota Attorney General's complaint against ExxonMobil and other energy industry companies. *See State of Minnesota v. Am. Petroleum Inst.*, Civ. No. 20-3837 (Minn. Dist. Ct. June 24, 2020). Thanks to Bloomberg's largesse, the State Impact Center has embedded SAAGs in eleven state attorneys general offices across the country: Delaware, Connecticut, Illinois, Massachusetts, Maryland, Minnesota, New Mexico, New York, Oregon, Washington, and the District of Columbia. *See NYU Law Fellow Program*, NYU STATE ENERGY & ENVIRONMENTAL IMPACT CENTER, https://www.law.nyu.edu/centers/state-impact/ag-work/fellows-program (last visited Sept. 9, 2021).

ExxonMobil seeks to investigate whether, through purposeful conduct aimed 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. *Id*. at 1. ExxonMobil also seeks to preserve evidence of any potential wrongdoing, including from seven prospective municipal officials who are not potential defendants but who approved bonds issued by the California municipalities with disclosures about climate change that materially and directly contradict allegations in the California complaints. *Id.* ¶ 41. ExxonMobil seeks to discover whether those prospective witnesses have further information about these discrepancies that may shed light on the potential defendants' illicit motives. *Id.*

2. The trial court finds that the potential defendants had sufficient contact with Texas and denies all special appearances.

The potential defendants filed special appearances contesting personal jurisdiction in ExxonMobil's anticipated suit. *Id.* at 1. They stated that they neither resided nor maintained offices in Texas, but 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. *Id*. at 1-2, ¶¶ 2-5, 55.

The trial court (Wallace, J.) denied the potential defendants' special appearances, FOF/COL at 2, and later issued findings of fact and conclusions of law explaining the basis for its denial of the special appearances. The court concluded:

- the Due Process Clause authorized personal jurisdiction over the potential defendants because ExxonMobil's potential claims would arise from deliberate and purposeful minimum contacts the potential defendants initiated that purposefully targeted Texas, including speech, activities, and property in Texas, *id.* ¶¶ 48-53;

- the potential defendants initiated contact and created a continuing relationship with Texas through their (1) filing of lawsuits that target Texas-based First Amendment activities and property of ExxonMobil and others in the Texas energy sector and (2) use of an agent to serve ExxonMobil in Texas, *id.* ¶ 50;

- 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, *id.* ¶ 49.

The court also denied the special appearances of the prospective witnesses because, in a Rule 202 proceeding, a court need not have personal jurisdiction over prospective witnesses who are not also potential defendants. *Id.* ¶ 43.

3. The court of appeals reverses, while acknowledging the potential defendants' improper use of "lawfare."

The court of appeals reversed the trial court's judgment. Despite crediting ExxonMobil's allegations, the court of appeals held that the potential defendants were not subject to personal jurisdiction in Texas because they had not established minimum contacts with the forum. Op. *14.

The court of appeals found insufficient for the exercise of jurisdiction that the potential defendants had "commenc[ed] baseless lawsuits in California intended to

suppress speech in Texas." *Id.* It concluded that the potential defendants' contacts with the State of Texas were limited to the harms it knew ExxonMobil would suffer from their conduct. *See id.* at *17. But because the court found no evidence of "additional conduct through which the Potential Defendants . . . continuously and deliberately exploited Texas," the exercise of specific personal jurisdiction could not be sustained. *Id.* at *15 (citation omitted).

Its holding notwithstanding, the court of appeals expressed great concern with the potential defendants' "lawfare."

> We confess to an impulse to safeguard an industry that is vital to Texas's economic well-being, particularly as we were penning this opinion weeks into 2020's COVID-19 pandemic-driven shutdown of not only Texas but America as a whole. Lawfare is an ugly tool by which to seek the environmental policy changes the California Parties desire, enlisting the judiciary to do the work that the other two branches of government cannot or will not do to persuade their constituents that anthropogenic climate change (a) has been conclusively proved and (b) must be remedied by crippling the energy industry. And we are acutely aware that California courts might well be philosophically inclined to join the lawfare battlefield in ways far different than Texas courts.

Id. at *20.

Chief Judge Sudderth wrote separately to urge this Court to review the panel's decision and its application of "the minimum-contacts standard." *Id*.

SUMMARY OF ARGUMENT

The potential defendants intentionally and specifically targeted the State of Texas by creating and implementing a plan to deploy pretextual "lawfare" against

ExxonMobil and seventeen other Texas energy companies as a means of suppressing speech in Texas and commandeering Texas's energy policy. Those actions established sufficient minimum contacts with Texas to warrant the exercise of personal jurisdiction over them under the applicable minimum-contacts standard. All three factors of that standard are satisfied here: The potential defendants' conduct was purposeful, it was aimed at the forum, and it was designed to avail the potential defendants of consequences or privileges in the forum state.

The potential defendants have waged their lawfare campaign to "seek the environmental policy changes" they "desire" in Texas by "enlisting the judiciary to do the work that the other two branches of government cannot or will not do." Op. *20. This effort to commandeer Texas energy policy—and compel speech that conforms with their preferred policy outcomes—is an attack on the very sovereignty of the forum, whose constituents have already declared their preference on hydrocarbon production. *See* TEX. NAT. RES. CODE § 89.001 ("[D]evelopment of all the natural resources of this state [is] a public right and duty.").

The court of appeals erred when it decided that targeted conduct was insufficient to create personal jurisdiction and refused to consider the purposeful effects in Texas of the potential defendants' lawsuits that were specifically designed to suppress the energy companies' speech in Texas. That holding runs counter to this Court's precedent that a defendant's purposeful relationship with the forum gives

rise to personal jurisdiction if the "'effects' of [an] alleged [intentional] tort . . . connect the defendant to the forum state." *Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 564 (Tex. 2018) (discussing *Calder v. Jones*, 465 U.S. 783 (1984)).

Rather than considering those effects, the court incorrectly confined its jurisdictional analysis to physical contacts, thereby disregarding evidence and the trial court's findings of the intended effects of the potential defendants' non-physical contacts with the forum. Op. *14-15. While physical contacts are relevant to the jurisdictional analysis, they are not a prerequisite to jurisdiction. On the contrary, the U.S. Supreme Court and this Court have recognized that purposeful direction may arise from a non-resident defendant's intentional efforts to create effects in the forum. Here, the uncontroverted record shows that the potential defendants "explicitly focus[ed] on ExxonMobil property in Texas," and the "object of the potential conspiracy [was] to suppress speech and corporate behavior *in Texas*." FOF/COL ¶¶ 31, 52 (emphasis added). Accordingly, the potential defendants intentional efforts to affect property and speech in Texas support the exercise of jurisdiction.

Absent physical contacts (and ignoring the effects of conduct expressly directed at Texas), the court of appeals erroneously required ExxonMobil to establish that the potential defendants engaged in "additional conduct" targeting Texas. But this Court (and the U.S. Supreme Court) has required such a showing

only where it is unclear that out-of-state defendants targeted Texas, such as in stream-of-commerce and broadcasting cases. Here, there is no such lack of clarity, as the trial court's undisturbed factual findings establish that the potential defendants "expressly target[ed]" Texas through tort litigation to "suppress and chill speech and associational activities of the Texas energy sector." *Id*. ¶¶ 28, 59.

Finally, the remaining requirements of specific personal jurisdiction are also satisfied. ExxonMobil's anticipated claims arise from, or relate to, the potential defendants' contacts with the forum because those claims are based on the potential defendants' filing lawsuits that intentionally target the speech of Texas energy companies occurring in Texas. And the exercise of jurisdiction comports with traditional notions of fair play and substantial justice because, among other reasons, Texas courts have a substantial and unique interest in adjudicating claims implicating Texas's sovereignty, which includes assaults on Texans' free speech on matters of public concern.

Absent reversal of the court of appeals' erroneous holding, out-of-state residents will be permitted to commit intentional torts that deprive Texans of their constitutional rights and impinge Texas's sovereignty without having to face recourse in Texas courts. This Court should enforce its clear precedent and find that the potential defendants' purposeful conduct renders them subject to personal jurisdiction in Texas.

ARGUMENT

I. The Court should confirm that a non-resident who uses tort suits as pretext for suppressing Texas speech and policy is subject to personal jurisdiction in Texas.

A court may exercise personal jurisdiction if a defendant has established sufficient minimum contacts with the forum state. *TV Azteca v. Ruiz*, 490 S.W.3d 29, 36 (Tex. 2016); *see also Walden v. Fiore*, 571 U.S. 277, 283 (2014). The "focus[]" of the minimum-contacts inquiry is "on the relationship among the defendant, the forum, and the litigation." *Walden*, 571 U.S. at 284 (citation omitted). Texas courts look to three factors to analyze that relationship: (1) the defendant's purposeful conduct (2) aimed at the forum (3) to avail the defendant of consequences or privileges in the forum state. *See Old Republic*, 549 S.W.3d at 559. A purposeful relationship with the forum may arise if the "'effects' of [an] alleged [intentional] tort . . . connect the defendant to the forum state." *Id.* at 564 (discussing *Calder*, 465 U.S. 788-89). The potential defendants' conduct here satisfies each of these elements.

A. The potential defendants' lawfare plan was purposeful, not fortuitous.

The potential defendants executed a litigation plan methodically designed to achieve their policy objectives: they intentionally targeted Texas with seven lawsuits against ExxonMobil and seventeen other Texas-based energy companies to suppress the speech of the Texas energy sector. *See, e.g.*, *Old Republic*, 549 S.W.3d at 559.

Texas is where these energy companies, including ExxonMobil, issue publications, hold shareholder meetings, and make corporate decisions. By aiming to obstruct the Texas energy industry's ability to speak about issues of public importance in its home state, the potential defendants "would effectively regulate [the targeted companies'] behavior far beyond [California's] borders." *City of New York*, 993 F.3d at 92. As a result, the "purposeful availment" element of the jurisdictional analysis is met.

B. The potential defendants targeted the State of Texas itself, not merely companies that happen to have Texas headquarters.

The potential defendants satisfy the second element of the jurisdictional analysis as well. By seeking to use civil process and government power to (1) suppress First Amendment rights exercised in Texas and (2) interfere with Texas's policy, economy, and citizens, they have expressly aimed their conduct at the forum.

1. The potential defendants intentionally targeted Texas with lawsuits meant to stifle Texas speech.

The potential defendants intentionally targeted Texas through lawsuits only meant to suppress the speech of the Texas energy sector. That conduct "creates the necessary contacts with" Texas such that Texas courts may exercise personal jurisdiction. *Walden*, 571 U.S. at 286-87 (discussing *Calder*, 465 U.S. at 789); *see also Old Republic*, 549 S.W.3d at 564-65.

Each of the potential defendants' complaints expressly focuses on Texas-based, First Amendment-protected activities. FOF/COL ¶ 28. For example, the complaints expressly target (i) the exploration, production, and marketing of oil and gas in Texas; (ii) ExxonMobil's publications *on Texas* energy issues; (iii) Mr. Tillerson's speech on climate change at a shareholder meeting *in Texas*; and (iv) corporate decisions made *in Texas* to fund non-profit groups that perform climate-change research disfavored by the potential defendants. *Id.* ¶¶ 29-30.

The harm is thus a uniquely Texas harm. 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 [forum] in which . . . the decision to restrict th[e] plaintiff's speech was made." *Kalman v. Cortes*, 646 F. Supp. 2d 738, 742 (E.D. Pa. 2009). And it is a harm that will be felt by (and is meant to be felt by) many Texans, not just ExxonMobil and its fellow Texas-based energy companies, because it violates the First Amendment "right of [Texas] citizens to inquire, to hear, to speak, and to use information to reach consensus." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010); *see also Walden*, 571 U.S. at 288. The potential defendants' suppression of Texas speech therefore substantially connects them to Texas—much in the same way, as the Supreme Court has held, that "the nature of [a] libel tort" from speech in one state may substantially

connect a defendant to another state. *See Walden*, 571 U.S. at 287 (discussing the allegedly defamatory article at issue in *Calder*, 465 U.S. at 788-89).

The Fifth Circuit's recent decision in *Grewal* is instructive. There, the New Jersey Attorney General ("New Jersey AG") sent a cease-and-desist letter to, and initiated a lawsuit in New Jersey against, a Texas company that produced information related to three-dimensional printing of firearms. *Def. Distributed v. Grewal*, 971 F.3d 485, 488-89 (5th Cir. 2020). The Texas company sued the New Jersey AG in Texas, "alleg[ing] that [the cease-and-desist] letter had a chilling effect on the exercise of [its] First Amendment rights" that, "in turn, caused [it] to cease publication and reduced Texans' access to the materials the [company] seeks to publish." *Id.* at 495.

The Fifth Circuit held that personal jurisdiction existed because the New Jersey AG "knew that the cease-and-desist letter would 'have a potentially devastating impact' on [the company]—and, by extension, those who wished to benefit from the [company's] activities, including Texas residents." *Id.* (quoting *Calder*, 465 U.S. at 789). The Court observed that "[t]he statewide impact [of the New Jersey AG's conduct] is not unlike that of the defamatory article at issue in *Calder*" and that the New Jersey AG "has projected himself across state lines and asserted a pseudo-national executive authority." *Id.* at 493, 495.

Here, too, the potential defendants expressly targeted not just ExxonMobil, but Texas's industry and residents. The potential defendants' efforts to delegitimize Texas-based energy companies and to chill an entire industry's speech and associational activities in Texas consequently impacts those Texans who would benefit from that speech. That purposeful intrusion "creates the necessary contacts with" Texas such that Texas courts may exercise jurisdiction. *Walden*, 571 U.S. at 287-88 (discussing *Calder*, 465 U.S. at 788-89).

The U.S. District Court for the Northern District of California has similarly held that jurisdiction is proper where an out-of-state official uses civil process to chill speech in the forum. In *Twitter, Inc. v. Paxton*, the Texas Attorney General ("Texas AG") issued a Civil Investigative Demand seeking documents from San Francisco-based Twitter. Civ. No. 21-1644, 2021 WL 1893140, at *1 (N.D. Cal. May 11, 2021). Twitter, in turn, initiated a lawsuit in California to enjoin the investigation, alleging that the Texas AG aimed to "punish Twitter for making content moderation decisions that [the AG] did not like." *Id*. The district court sustained the exercise of personal jurisdiction over the Texas AG based on the allegation that he had "engaged in retaliatory conduct" to penalize a California resident, Twitter, for exercising its right to exclude certain content from its platform. *Id*. at *2. In particular, Twitter alleged that the Texas AG had (1) investigated specific moderation decisions made in California; (2) requested documents located

in California; and (3) sought to influence future content moderation decisions in California. *Id*. at *1. Accordingly, the Texas AG's conduct was "expressly aimed at chilling the speech of a California resident," warranting the exercise of personal jurisdiction over him. *Id*. at *2.

Just as the California court exercised jurisdiction over an out-of-state actor to address a perceived challenge to California speech, Texas courts are equally empowered to assert jurisdiction over out-of-state actors aiming to chill Texas speech through pretextual lawsuits or other state processes. The potential defendants here are doing just that—using spurious lawsuits to penalize ExxonMobil for exercising its First Amendment rights in Texas. FOF/COL ¶ 50. The purpose of these suits is to chill the speech and associational rights of the Texas energy sector in Texas. *Id*. ¶ 59. If a California court can hale the Texas AG into court in the *Twitter* case, Texas courts can assert jurisdiction over California officials who "try to project their power across [the Texas] border . . . by broadly targeting the speech of an industry crucial to Texas." Governor Amicus Ltr. at 2.

Recent U.S. Supreme Court and Fifth Circuit cases that have declined to exercise personal jurisdiction in dissimilar situations are clearly distinguishable. For example, in *Stroman Realty, Inc. v. Wercinski*, the Fifth Circuit found jurisdiction lacking over the Commissioner of the Arizona Department of Real Estate ("Arizona Commissioner"), who sent cease-and-desist letters to a Texas timeshare broker.

513 F.3d 476, 489 (5th Cir. 2008). There, the Court explained that the out-of-state official was "simply attempting to uniformly apply [Arizona's] laws" by "asserting nationwide authority over any real estate transactions involving Arizona residents or property." *Id.* at 486. In *Stroman*, unlike here, the Arizona Commissioner did not seek to shape or suppress the speech of Texas residents or purposefully attack Texas's sovereignty. The focus of the activity was on real property in Arizona. Because the Arizona Commissioner's connection to Texas was "based entirely on the unilateral actions and decisions" of the *plaintiff*, the Fifth Circuit found that the effects of the Arizona Commissioner's contacts were insufficient to subject him to jurisdiction in Texas. *Id*.

By contrast, the potential defendants here seek to regulate the Texas energy industry's speech and influence policy *in Texas*. FOF/COL ¶¶ 13, 28, 48. And unlike the contacts between the Arizona Commissioner and Texas in *Stroman*, the contacts with Texas here are a result of the potential defendants' own actions, not ExxonMobil's actions. As amicus Texas Civil Justice League ("TCJL") recognizes, "[by a]iming to . . . regulate the political conduct and business activities of Texas residents, [the potential defendants] seek to chill the speech rights of *all* Texans in a policy area of existential importance to their personal and community well-being." TCJL Amicus Br. 6. Accordingly, this case is more akin to *Grewal* than *Stroman*—

and *Grewal* confirms that *Stroman* does not preclude jurisdiction over out-of-state officials who reach outside their borders to compel political change.

Walden similarly poses no barrier to exercising jurisdiction here. In *Walden*, a Georgia law enforcement officer's seizure of funds from Nevadans travelling through the Atlanta airport was insufficient to establish minimum contacts with Nevada because the plaintiffs were "the only link between the defendant and the forum." 571 U.S. at 285. The Court held that the officer's knowledge that seizing the funds would harm the Nevadans while at home was not enough, without more, to subject him to personal jurisdiction in Nevada. *See id.* at 289. Unlike the speech-based tort at issue in *Calder* where the injury to the plaintiff's reputation among California citizens—effects in the forum—was "expressly aimed" at California, the defendant in *Walden* did not target the plaintiff's forum state by design. *Id.* (quoting *Calder*, 465 U.S. at 789).

Here, the potential defendants did not merely interact with a company that happens to be headquartered in Texas. Rather, their lawfare campaign was targeted at the entire Texas energy industry and purposefully designed to alter constitutionally protected speech in Texas. *See* FOF/COL ¶¶ 49-50. Like in *Calder* and *Grewal*, the potential defendants' contacts are attributable to their own purposeful targeting of the forum and the intended state-wide effects of that conduct.

In summary, as amicus Texas Oil & Gas Association ("TXOGA") observes, the "[p]otential defendants' conduct was not just purposeful, it was targeted at specific speech occurring in Texas . . . [in order] to exercise control over what Exxon[Mobil] is saying in Texas." TXOGA Amicus Br. 8. Here, the potential defendants targeted the jurisdiction by design. That "censorship's harm occurs not just where it originates, but where it arrives." *Grewal*, 971 F.3d at 495 n.9. The potential defendants' censorship had the express purpose of arriving in Texas to affect state-wide conduct in Texas. *See Francis v. API Tech. Servs., LLC*, Civ. No. 13-627, 2014 WL 11462447, at *6 (E.D. Tex. Apr. 29, 2014) (holding tort claims occurred in Texas because that is where "[t]he alleged injuries occurred and are felt").

2. The potential defendants' assault on the Texas energy industry is an assault on Texas's sovereignty.

Issues of sovereignty and federalism provide an alternative basis for reversal. These considerations play an important role in the personal jurisdiction analysis. *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1780 (2017); *see World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980). In determining whether the exercise of personal jurisdiction comports with due process, the "question" is whether the foreign defendant "has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment

concerning that conduct." *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion). As a result, "in some cases, as with an intentional tort, the defendant might well fall within the State's authority by reason of his attempt to obstruct its laws." *Id*. at 880.

Here, the potential defendants' efforts to chill Texas-based speech on climate and energy policies impinges on Texas's sovereignty in two related ways.

First, the potential defendants seek to put their thumb on the scale of Texas climate and energy policies, striking at the heart of Texas's sovereign right to self-governance. The State of Texas's "sovereignty is vested in 'the people,'" *Wasson Ints., Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 433 (Tex. 2016), and is primarily (though not exclusively) embodied in the right to make laws—the right of the people to determine the laws, policies, and regulations by which they will be governed.

Commandeering speech (especially political speech) intrudes on this sovereign prerogative because "[s]peech is an essential mechanism of democracy." *See Citizens United*, 558 U.S. at 339. The marketplace of ideas, afforded by robust First Amendment freedoms, allows our state legislature to make informed decisions based on the full spectrum of information and on constituents' policy preferences. Here, as amicus TCJL rightly notes, the "[potential defendants'] attempt to establish such policy through litigation, as opposed to the ballot box, constitutes a direct attack on the sovereignty of this state." TCJL Amicus Br. 6. Texans have already declared

their preference on hydrocarbon production: the "development of all the natural resources of this state [is] a public right and duty." TEX. NAT. RES. CODE § 89.001. The potential defendants' attempt to override that democratic decision triggers the State's interest.

Second, the potential defendants' suits complain of oil-and-gas exploration, production, and marketing by prominent members of the Texas energy industry and thus threaten Texas's economy by "h[o]ld[ing]" Texas energy companies "to account." FOF/COL ¶ 34; *see id.* ¶ 10; *Grewal*, 971 F.3d at 493. Texas is the top energy-producing state in the country and, if it were a nation, it would be one of the top energy-producing nations in the world. As Texas Governor Greg Abbott observed, "the energy industry is vital to economic growth in Texas" and "contribut[es] billions of dollars a year in taxes and royalties." Governor Amicus Ltr. 1. Thus, the potential defendants' impact on Texas's economy, the Texas energy industry's employees' economic and informational interests, and the constitutional rights of the industry's many members is substantial. It supports 428,234 Texas jobs and, between 2007 and 2019, contributed $149 billion in taxes and state royalties.[6]

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[6] *See* TEX. OIL & GAS ASS'N, TEXAS OIL & NATURAL GAS INDUSTRY ANNUAL ENERGY & ECONOMIC IMPACT REPORT 2019, at 2, 10 (Jan. 14, 2020), http://docs.txoga.org/files/1464-economic-impact-report-1.14.20.pdf.

As the court of appeals recognized, the energy industry "is vital to Texas's economic well-being." Op. *20.

C. The potential defendants seek to benefit from suppressing Texas speech and attacking Texas policy.

The third and final factor in the jurisdictional analysis is also met: the potential defendants "seek some benefit, advantage, or profit by availing [themselves] of the jurisdiction." *Old Republic*, 549 S.W.3d at 561.

The potential defendants' lawsuits aim to use the judiciary to impose their preferred environmental policies on the State of Texas and beyond. By suppressing the speech of ExxonMobil and seventeen other Texas energy companies to silence ideas with which they disagree, the potential defendants are gaining an undue advantage in the marketplace of ideas surrounding climate change. *See Grewal*, 971 F.3d at 494. "[T]his alone constitutes purposeful availment." *Id*.

II. The Court should confirm that effects on Texas are properly considered in the jurisdictional analysis.

The court of appeals' jurisdictional analysis disregarded as irrelevant evidence and findings of the effects of the potential defendants' expressly aimed conduct on Texas and confined its analysis to physical contacts. Op. *16. That was error.

Minimum contacts need not be physical. "Although 'physical presence in the forum' is 'a relevant contact,' it 'is not a prerequisite to jurisdiction.'" *Cornerstone*

Healthcare Grp. Holding, Inc. v. Nautic Mgmt. IV, L.P., 493 S.W.3d 65, 71 (Tex. 2016) (quoting *Walden*, 571 U.S. at 285).

The U.S. Supreme Court has recognized that purposeful direction may arise from effects occurring in a forum state. In *Calder*, for example, the defendants wrote an allegedly libelous article about a California citizen in Florida but published it in a national newspaper that was distributed in California where the article was read by California citizens. 465 U.S. at 785-86. That allegedly tortious conduct connected the defendants to California because the injury to the plaintiff's reputation among California citizens—effects in the forum—occurred in California. *Id.* at 788-90. Embracing the result in *Calder*, *Walden* confirms that speech-based conduct in one state can support jurisdiction based on effects in another. 571 U.S. at 285-88.

This Court's jurisprudence is in accord. Like *Walden*, this Court has also noted that the "effects test" is not a separate test for personal jurisdiction that displaces the three-factor analysis of the relationship between the defendant, the forum, and the litigation. Instead, effects connecting a defendant to the forum are part of the minimum-contacts inquiry which asks: do "the 'effects' of the alleged tort . . . connect the defendant to the forum state itself"? *Old Republic*, 549 S.W.3d at 564.

Michiana—the case quoted by the court of appeals in its analysis—did not hold otherwise. There, the only Texas connection was an alleged misrepresentation by the non-resident defendant in a phone call with the Texas plaintiff. *Michiana Easy*

Livin' Country, Inc. v. Holten, 168 S.W.3d 777, 784 (Tex. 2005). This Court explained that if the alleged effect on the plaintiff alone could create jurisdiction, the jurisdictional analysis would be improperly focused on the relationship between the *plaintiff*—not the defendant—the forum, and the litigation. *See id.* at 790. Thus, absent other effects, this Court looked to physical contacts by the defendant with the forum. *Id.* at 790-91. But *Michiana* did not address the role of effects in the forum or hold that effects on Texas, a Texas industry, or Texans are irrelevant to a jurisdictional analysis.

The court of appeals correctly recognized that the potential defendants knew that the brunt of the harm would be suffered in Texas. Op. *17. The court also correctly recognized that, "[w]ithout more, [the potential defendants'] knowledge that Exxon[Mobil] will feel the effects in Texas does not suffice." *Id.* But the court erred by ending its analysis there. The trial court evidence and findings here show much more than merely anticipating harm to a Texas resident.

The trial court found that the potential defendants intentionally formulated and implemented a series of suits "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." FOF/COL ¶ 50; *see supra* at 9-16. The potential defendants' complaints attack corporate statements issued

from Texas in the form of speeches, publications, and internal memoranda and related associational activities in Texas. FOF/COL ¶¶ 28-30.

The court of appeals erred when it failed to consider the effects of that conduct, which was expressly aimed at Texas, and looked only at physical contacts. Physical contacts are not required. That is particularly true with targeted speech-based torts, which can reach into Texas with substantial results without physical contacts. *See Walden*, 571 U.S. at 285-88; *Calder*, 465 U.S. at 788-90.

III. The Court should confirm that "additional conduct" is not required when a non-resident intentionally targets the State.

Finally, the court of appeals erred in conditioning the exercise of personal jurisdiction on a showing that the potential defendants engaged in "additional conduct" to "continuously and deliberately exploit[] Texas." Op. *15-16. The court acknowledged that the potential defendants made "substantial efforts" to spread their viewpoints in Texas and to suppress Texas-based speech about climate change. *Id.* at *16. Yet it also held that, without proof of "additional conduct," ExxonMobil could not show that the potential defendants' out-of-state actions were targeted at Texas itself, rather than ExxonMobil alone. *Id*. at *15-16.

In so doing, the Court of Appeals erred. A showing of additional conduct is necessary only where it is unclear that out-of-state defendants have targeted the forum. *See, e.g.*, *Asahi Metal Inds. Co. v. Superior Court of California*, 480 U.S. 102, 112 (1987) (plurality opinion). Thus, application of the additional conduct

requirement has been limited to two very specific circumstances: stream-of-commerce and broadcasting cases. Such an additional showing is required in those types of cases because the mere act of placing a product into the stream-of-commerce or sending a broadcast signal that may make its way to a forum does not necessarily *target* that forum. *Asahi*, 480 U.S. at 112-13; *Nicastro*, 564 U.S. at 882; *TV Azteca*, 490 S.W.3d at 46-47; *Michiana*, 168 S.W.3d at 786. By contrast, the additional conduct requirement has no application in cases outside the stream-of-commerce and broadcasting contexts, such as this one. *See, e.g.*, *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 337 (Tex. 2009) (requiring no showing of additional conduct "despite the [defendant] having never physically entered the state"); *Cornerstone*, 493 S.W.3d at 73-75 (same).

The U.S. Supreme Court's case law illustrates this distinction. *Asahi*, for example, involved a Japanese manufacturer of tire valve assemblies which sold its products through an intermediary that, in turn, sold to markets in the United States, including California. 480 U.S. at 106. A plurality of the Supreme Court held that Asahi's mere awareness that its products would be sold in California, without more, did not constitute purposeful availment. *Id*. at 112. Because Asahi had "no office, agents, employees, or property in California," did not "advertise or otherwise solicit business in California," and "did not create, control, or employ the distribution system that brought its vales to California," proof of additional conduct was required

before the Court could find that Asahi necessarily sought to avail itself of the California market. *Id*. at 112-13. *See also Nicastro*, 564 U.S. at 882 (plurality opinion requiring a showing of additional conduct in a "stream-of-commerce" case: "it is not enough that the defendant might have predicted that its goods will reach the forum State.").

This Court's precedents are in accord. In *Michiana*, *supra*, a Texas resident sued an out-of-state defendant from whom he had purchased a vehicle based on a telephone call. The defendant seller had otherwise not advertised, designed, or distributed vehicles in Texas. 168 S.W.3d at 784. This Court, in accord with *Asahi*, explained that, without more, the seller's placing a product into the market in Texas was insufficient to prove the defendant targeted the forum. *See id.* at 786; *see also Luciano v. SprayFoamPolymers.com, LLC*, Civ. No. 18-0350, 2021 WL 2603840, at *9-10, 18 (Tex. June 25, 2021) (clarifying that a showing of additional conduct must only be made to demonstrate "an intent or purpose to serve the market in the forum State, whether directly or indirectly" and that "if the actionable conduct occurs in Texas, we have never required that the lawsuit also arise directly from the nonresident defendant's additional conduct." (internal quotation marks omitted)).

This Court applied the same "additional conduct" analysis in *TV Azteca*, in which Mexican citizens who broadcasted television programs through over-the-air signals originating in Mexico were alleged to have defamed several Texas residents.

490 S.W.3d at 34. This Court held that "the mere fact that the signals through which they broadcast their programs in Mexico travel into Texas is insufficient to support specific jurisdiction because the fact does not establish that Petitioners purposefully directed their activities at Texas." *Id*. at 45. As in stream-of-commerce cases, the "broadcaster's mere knowledge that its programs will be received in another jurisdiction is insufficient to establish that the broadcaster purposefully availed itself of the benefits of conducting activities in that jurisdiction." *Id*. at 46.

Unlike those cases, no showing of additional conduct is necessary here. The potential defendants deliberately targeted their conduct at Texas by seeking to suppress Texas-based speech and associational activity of ExxonMobil and others in the Texas energy sector, including through corporate statements, internal company memoranda, and speeches within Texas. FOF/COL ¶¶ 25, 28-30. As the amicus TXOGA states, "[This] type of targeting is far different from conduct outside the forum that . . . simply has an effect in the forum, whether intended or not." TXOGA Amicus Br. 7. A showing of additional conduct is superfluous when that targeted conduct, by its very nature, demonstrates purposeful availment. *Grewal*, 971 F.3d at 493-94. Nothing more is needed.

IV. The Court should address—and sustain—the remaining elements of specific personal jurisdiction.

This Court should address the remaining elements of personal jurisdiction and confirm that they are satisfied.

Having erroneously concluded that the potential defendants did not establish sufficient minimum contacts with Texas, the court of appeals did not address the trial court's holdings that (1) ExxonMobil's claims "would arise from the Potential Defendants' contacts with Texas" or that (2) the exercise of personal jurisdiction over the potential defendants "would comport with traditional notions of fair play and substantial justice." FOF/COL ¶¶ 53-54. When "the court of appeals has not disposed of the points raised by petitioner" which "present only questions of law," this Court may "dispose of them . . . instead of requiring the parties to go back to the court of appeals and then possibly return to [this Court] for a second application for writ of error." *Segrest v. Segrest*, 649 S.W.2d 610, 611 (Tex. 1983); *see, e.g.*, *Johnson v. Cherry*, 726 S.W.2d 4, 8 n.2 (Tex. 1987).

This Court should exercise its discretion to do so here. The issue of personal jurisdiction "present[s] only questions of law." *Segrest*, 649 S.W.2d at 611. The undisturbed record is sufficiently developed for this Court to review the trial court's ruling on those elements without any further assistance from lower courts. And a prompt resolution of the remaining personal jurisdiction elements would spare this Court, the court of appeals, and the parties from expending unnecessary resources to re-litigate these issues and seek further review from this Court.[7] *See, e.g.*, *Gulf States*

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[7] Texas's long-arm statute is satisfied, too. Under the long-arm statute, a Texas court may exercise personal jurisdiction over "nonresidents" who are "doing business" in

Utilities Co. v. Low, 79 S.W.3d 561, 564 (Tex. 2002); *Yowell v. Piper Aircraft Corp.*, 703 S.W.2d 630, 634 (Tex. 1986). Moreover, those remaining elements are easily satisfied here.

A. ExxonMobil's claims arise from or relate to the potential defendants' contacts with Texas.

The "arise from" element of personal jurisdiction is satisfied because ExxonMobil's potential claims arise from, or relate to, the potential defendants' purposeful contacts with Texas.

A 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). "The place of a plaintiff's injury and residence" are "a key part" of "assessing the link between the defendant's forum contacts and the plaintiff's suit." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1031-32 (2021).

Here, the nexus requirement is satisfied because the basis of ExxonMobil's potential tort claims is the potential defendants' efforts to suppress ExxonMobil's

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Texas. *Rematco Operating*, 278 S.W.3d at 337. The potential defendants, citizens of California and Massachusetts, are all "nonresidents" because none is "a resident of this state." TEX. CIV. PRAC. & REM. CODE § 17.041(1). And the potential defendants have "do[ne] business" in Texas by "commit[ting] a tort in whole or in part in this state." *Id.* § 17.042(2). Potential defendants' tortious activity occurred in Texas, where ExxonMobil exercises its targeted First Amendment rights. *See supra* at 28-29, 34.

speech and associational activities in Texas through lawfare. FOF/COL ¶ 53. Unlike cases in which a defendant's forum activity is an "isolated occurrence" that is insufficiently related to a plaintiff's claims, *World-Wide Volkswagen Corp.*, 444 U.S. at 297, here, the potential defendants systematically targeted Texas to suppress the very speech that forms the basis of ExxonMobil's injury, FOF/COL ¶¶ 23-31. The nexus requirement may be satisfied even if a defendant did not "physically enter the forum state." *Retamco Operating*, 278 S.W.3d at 339-41.

A First Amendment injury occurs at the location of "the alleged suppression of the First Amendment rights." *Asgeirsson v. Abbott*, 773 F. Supp. 2d 684, 693 (W.D. Tex. 2011), *aff'd*, 696 F.3d 454 (5th Cir. 2012). Here, the potential defendants' tortious activity occurred *in Texas* where ExxonMobil exercises its First Amendment rights. *See Ford Motor Co.*, 141 S. Ct. at 1031-32; *Luciano*, 2021 WL 2603840, at *10 ("[T]hat the lawsuit arises from an injury which occurred in the forum state is a relevant part of the relatedness prong of the analysis.") (citing *Ford Motor Co.*, 141 S. Ct. at 1028). Therefore, "there is a strong 'relationship among the defendant, the forum, and the litigation'—the 'essential foundation' of specific jurisdiction." *Luciano*, 2021 WL 2603840, at *10 (quoting *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

B. Exercising personal jurisdiction comports with traditional notions of fair play and substantial justice.

The third element of personal jurisdiction is also satisfied because exercising personal jurisdiction over the potential defendants in the anticipated action would be fair and reasonable.

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*, Civ. No. 92-0061, 1993 WL 493673, at *5 (Tex. App. Oct. 28, 1993). 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. Indeed, as Texas Governor Abbott recognizes, "exercising jurisdiction over California officials who have deployed abusive litigation to dictate [Texans'] behavior and speech . . . comports with fair play." Governor Amicus Ltr. 2-3.

When a nonresident defendant has purposefully established minimum contacts with the forum state, it bears a heavy burden to negate jurisdiction, as "[o]nly in rare cases . . . will the exercise of jurisdiction not comport with fair play and substantial justice." *Retamco Operating*, 278 S.W.3d at 341. Texas courts consider the following five factors when analyzing the reasonableness of exercising jurisdiction: (1) "the burden on the defendant"; (2) "the interests of the forum in adjudicating the dispute"; (3) the petitioner's "interest in obtaining convenient and

effective relief"; (4) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies"; and (5) "the shared interest of the several States in furthering fundamental substantive social policies." *Id.* at 342. Here, each factor supports the exercise of personal jurisdiction.

Burden on the Defendant. 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*, Civ. No. 11-00922, 2012 WL 3776974, at *14 (Tex. App. Aug. 30, 2012). None of the potential defendants has submitted sufficient evidence of burden. "[T]he contacts an entity forms with one jurisdiction do not negate its purposeful contacts with another." *Luciano*, 2021 WL 2603840, at *4 (citing *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 779-80 (1984)). And the potential defendants' bare claim that litigating in Texas might interfere with their job responsibilities does not make jurisdiction unreasonable because "the same can be said of all nonresident" defendants. *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 155 (Tex. 2013).

Interests of the Forum. Texas has a "serious state interest in adjudicating" cases alleging a tort in Texas against a Texas resident and 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." *Id.* at 155-56. Texas's interest is further heightened where, as here, a nonresident's tortious conduct seeks to suppress Texans' free

speech rights enshrined in the Texas Constitution, which 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). Texas has a "manifest interest" in protecting the First Amendment rights of its residents by "providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473-74 (1985).

But beyond that interest, the potential defendants' attempt to "regulate the energy industry's speech on climate change" impinges on Texas's sovereign interest in self-governance. FOF/COL ¶ 13. Targeting disfavored political speech through lawfare intrudes on Texas's sovereign prerogative because it prevents the government from making informed decisions based on a full range of information, including constituents' policy preferences. By seeking to suppress Texas residents' speech, the potential defendants seek to substitute their own policy preferences for those of Texans who have already declared their support for hydrocarbon production. *See* TEX. NAT. RES. CODE § 89.001. In the face of these weighty concerns, exercising personal jurisdiction over the potential defendants is fair and reasonable.

Convenient and Effective Relief. ExxonMobil has a strong interest in seeking a remedy in Texas for injuries it has suffered or will suffer in Texas. Texas residents have "an inherent interest in pursuing [a] 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. 2010).

It would also be inconvenient and ineffective for ExxonMobil to bring its claims as compulsory counterclaims in California because ExxonMobil contests the exercise of personal jurisdiction over it in California and urges dismissal on other grounds as well. ExxonMobil should not be required to bring counterclaims in a court that lacks personal jurisdiction over it in litigation that might not survive a motion to dismiss. Further, the mere fact that ExxonMobil's 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*, Civ. No. 17-00361, 2018 WL 2976440, at *11 (Tex. App.–Fort Worth June 14, 2018, pet. denied) (emphasis added).

Efficient Resolution of Controversies. Exercising jurisdiction over the potential defendants in Texas promotes judicial efficiency.

First, Texas is the location of ExxonMobil's injuries. *See Luciano*, 2021 WL 2603840, at *12 (holding that "our judicial system's interest in obtaining 'the most efficient resolution of controversies' supports the exercise of jurisdiction in Texas" when the plaintiff's injury occurred in Texas).

Second, Texas courts have repeatedly emphasized that judicial efficiency is promoted and jurisdiction is favored when a Texas court can adjudicate "claims against all defendants in one proceeding." *TV Azteca*, 490 S.W.3d at 56 (citing cases). Here, Texas is the only forum where ExxonMobil can pursue all of its claims against all the potential defendants in a single action.

Furthering Substantive Social Policies. No other state's potential interest in adjudicating this action can outweigh Texas's "special 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 bolstered by the dispute's connection to Texas-based speech. *See Retamco Operating*, 278 S.W.3d at 342.

* * *

All five reasonableness factors favor the exercise of jurisdiction over the potential defendants. This is not one of the "rare cases" in which "the exercise of jurisdiction" would not "comport with fair play and substantial justice." *Id.* at 341. Accordingly, this Court should find that all of the requisite elements of personal jurisdiction exist over the potential defendants.

CONCLUSION AND PRAYER

Review and reversal is essential to ensure that out-of-state actors can be held to account in Texas for their tortious efforts to stifle Texans' free speech rights, and to commandeer Texas energy policy. In holding that the potential defendants are not subject to personal jurisdiction in Texas, the court of appeals made three significant errors. Each independently requires reversal.

First, the Court should confirm that nonresidents that intentionally aim to suppress protected speech in Texas and narrow Texans' policy choices have established sufficient minimum contacts with Texas.

Second, the Court should confirm that physical contacts are not a prerequisite to jurisdiction where the nonresidents' conduct is expressly aimed at Texas with the intent of influencing behavior in Texas.

Third, the Court should clarify that a showing of "additional conduct" is not required where the uncontested facts clearly demonstrate that the potential defendants specifically and strategically targeted Texas.

ExxonMobil requests that the Court grant the petition for review, reverse the court of appeals' judgment, affirm the trial court's order denying the special appearances, remand the case for further proceedings, and grant all other relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 9.4(e), (i)

1. This brief complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(B) because, according to the Microsoft Word 2016 word count function, it contains **11,969** words on pages 1 to 51, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

2. This brief complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 software in Times New Roman 14-point font in text and Times New Roman 12-point font in footnotes.

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2021, the foregoing document was filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served on all counsel of record via e-service, as shown below:

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Appendix

Tab	Date	Document	Record Cite
A	06/18/2020	Court of Appeals' Opinion: *City of San Francisco v. Exxon Mobil Corp*., No. 02-18-00106-CV, 2020 WL 3969558 (Tex. App.—Fort Worth June 18, 2020, pet. filed) (mem. op.) (majority and concurring opinions)	N/A
B	06/18/2020	Court of Appeals' Judgment	N/A
C	03/14/2018	Order on Special Appearances	CR7210
D	04/24/2018	Findings of Fact and Conclusions of Law	3SCR113-128
E	N/A	Chart of Evidentiary Support for Findings of Fact	3SCR29-50

Tab A

2020 WL 3969558
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, Fort Worth.

The CITY OF SAN FRANCISCO, Dennis J. Herrera in his official capacity as City Attorney for the City of San Francisco, and Edward Reiskin in his official capacity as Director of Transportation for the San Francisco Municipal Transportation Agency, Appellants

v.

EXXON MOBIL CORPORATION, Appellee

The City of Oakland, Matthew F. Pawa, Barbara J. Parker, and Sabrina B. Landreth, Appellants

v.

Exxon Mobil Corporation, Appellee

County of San Mateo, County of Marin, City of Imperial Beach, City of Santa Cruz, County of Santa Cruz, John Beiers, Serge Dedina, Jennifer Lyon, Brian Washington, Dana McRae, Anthony Condotti, John Maltbie, Andy Hall, Matthew Hymel, Carlos Palacios, and Martín Bernal, Appellants

v.

Exxon Mobil Corporation, Appellee

No. 02-18-00106-CV
|
Delivered: June 18, 2020

On Appeal from the 96th District Court, Tarrant County, Texas, Trial Court No. 096-297222-18, HON. R. H. WALLACE, Judge

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Before Sudderth, C.J.; Kerr and Birdwell, JJ.

MEMORANDUM OPINION

Memorandum Opinion by Justice Kerr

***1** Texas-based Exxon Mobil Corporation filed a Rule 202 petition in Texas state court seeking presuit discovery to evaluate potential claims for constitutional violations, abuse of process, and civil conspiracy against several California counties, cities, and government officials, and against Matthew Pawa, who is two of the cities' Massachusetts-based outside counsel. Exxon's potential claims arise from an alleged conspiracy by Pawa and these California counties and cities to use tort suits filed in California state court to suppress Exxon's Texas-based speech and associational activities regarding climate change. Exxon claims that in the California litigation, the counties and cities alleged facts against the Texas energy sector that contradict their bond-offering disclosures. Exxon thus seeks presuit discovery to determine whether the California suits were baseless and brought in bad faith as a pretext to suppress the Texas energy sector's Texas-based speech and associational activities regarding climate change and to gain access to documents that Exxon keeps in Texas.

Pawa and the California cities, counties, and officials filed special appearances challenging Texas's personal jurisdiction over them. This interlocutory appeal arises from the denial of those special appearances. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(7). Because the potential defendants lack the requisite minimum contacts with Texas to be subject to personal jurisdiction here, we will reverse the trial court's order and render judgment denying Exxon's Rule 202 petition.

I. Factual and Procedural Background

A. Parties to the Rule 202 petition

Exxon is incorporated under the laws of New Jersey and has its principal place of business in Texas, with its corporate headquarters in Irving, Texas. Exxon formulates and issues its climate-change statements from its headquarters. The majority of its climate-change-related corporate records are located in Texas, and Exxon engages in speech and associational activities in Texas.

The cities of San Francisco, Oakland, Imperial Beach, and Santa Cruz are in California, as are the counties of San Mateo, Marin, and Santa Cruz. These cities and counties do not maintain a registered agent, telephone listing, or post-office box in Texas. They are potential defendants in Exxon's anticipated suit.

Certain officials of these California cities and counties are also potential defendants: Dennis Herrera, San Francisco's City Attorney; Barbara Parker, Oakland's City Attorney; John Beiers, San Mateo County's County Counsel; Brian Washington, Marin County's County Counsel; Dana McRae, Santa Cruz County's County Counsel; Serge Dedina, Imperial Beach's Mayor; Jennifer Lyon, Imperial Beach's City Attorney (and an attorney with the California law firm of McDougal, Love, Boehmer, Foley, Lyon & Canlas); and Anthony Condotti, Santa Cruz's City Attorney (and managing partner of the California law firm Atchison, Barisone & Condotti).

Other officials of each city and county are prospective witnesses only: Edward Reiskin, the Director of Transportation for the San Francisco Municipal Transportation Agency; Sabrina Landreth, Oakland's City Administrator; John Maltbie, San Mateo County's County Manager; Matthew Hymel, Marin County's County Administrator; Carlos Palacios, the Santa Cruz County Administrative Officer; Gary Andrew Hall, Imperial Beach's City Manager; and Martín Bernal, Santa Cruz's City Manager.

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***2** All these individual potential defendants and prospective witnesses are, perhaps obviously, California residents. None of the individual potential defendants maintains an office or registered agent in Texas. Similarly, none of the prospective witnesses maintains a registered agent, telephone listing, or post-office box in Texas.

Potential defendant Pawa—the lone non-Californian—is a Massachusetts resident and attorney. He practices law in the Newton, Massachusetts office of Seattle-based Hagens Berman Sobol Shapiro LLP. Pawa is not licensed to practice law in Texas. In addition to being a potential defendant, Pawa is Oakland's and San Francisco's outside counsel.

B. The La Jolla conference on climate change, Pawa's climate-litigation strategy, and the Rockefeller Family Fund meeting

In June 2012, Pawa, a climate-change litigator, attended the "Workshop on Climate Accountability, Public Opinion, and Legal Strategies" in La Jolla, California. Among the conference organizers was Peter Frumhoff, the Director of Science and Policy for the Union of Concerned Scientists.

At the conference, Pawa spoke about one of his pending cases against the energy industry seeking damages for coastal flooding allegedly caused by anthropogenic climate change. According to him, "Exxon and the other defendants [in that case] distorted the truth." Pawa also stated that litigation is not only a remedy for those suffering the effects of climate change but also "a potentially powerful means to change corporate behavior."

Conference participants discussed strategies for getting energy companies' internal documents and concluded that law-enforcement powers and civil litigation could be used to pressure the energy industry to support legislative and regulatory responses to climate change. Participants also planned to enlist state attorneys general to launch investigations into climate change that could bring "key internal documents to light."

In March 2015, Pawa sent a memorandum to NextGen America—a nonprofit group funded by Tom Steyer, the California billionaire hedge-fund manager, environmental activist, and erstwhile candidate in the 2020 Democratic presidential primary—summarizing Pawa's legal strategy against fossil-fuel companies "for their contributions to California's injuries from global warming." The memo stated that "certain fossil[-]fuel companies (most notoriously ExxonMobil), have engaged in a campaign and conspiracy of deception and denial on global warming." Pawa further stated that "[a] global warming case would be grounded in the doctrine of public nuisance" and noted that "simply proceeding to the discovery phase would be significant" and that "obtaining industry documents would be a remarkable achievement that would advance the case and the cause."

Early the following year, in January 2016, Pawa and others met at the Rockefeller Family Fund offices in New York City to discuss the goals of an "Exxon campaign." According to the meeting's draft agenda, the goals included (1) establishing in the public's mind that "Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm"; (2) delegitimizing Exxon as a political actor; (3) driving divestment from Exxon; and (4) forcing "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." As "main avenues for legal actions [and] related campaigns," the participants identified "AGs" and tort suits. The participants planned to use these avenues to obtain discovery and create scandal.

C. State attorneys general enter the fray

***3** Two months later, then-New York Attorney General Eric Schneiderman, Massachusetts Attorney General Maura Healey, and 18 other state attorneys general—the "Green 20"—held the "AGs United for Clean Power Press Conference." Just before that March 2016 press conference, Pawa and Frumhoff attended a closed-door meeting with the AGs, and Pawa briefed them on "climate[-]change litigation." Pawa tried but failed to conceal from the media his involvement in the meeting.

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During the press conference, the AGs promoted regulating the speech of energy companies like Exxon—companies that they perceived as hostile to AGs' policy responses to climate change. New York's Schneiderman declared that there "is no dispute" about climate change but that there is 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." He denounced "highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action" and announced that the Green 20 was "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."

Healey of Massachusetts identified climate change "as a matter of extreme urgency," and stated that

> [p]art of the problem has been one of public perception, and it appears, certainly, that certain companies, certain industries, may not have told the whole story, leading many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts. Fossil[-]fuel companies that deceived investors and consumers about the dangers of climate change should be, must be, held accountable. That's why I, too, have joined in investigating the practices of ExxonMobil. We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and the industry chose to share with investors and with the American public.

Around the time of the press conference, Schneiderman issued a subpoena and Healey issued a civil investigative demand to Exxon to investigate what they considered the company's potential consumer and securities fraud. The subpoena and demand each sought production of communications and documents concerning climate change (including Exxon's climate-change research), documents related to statements made at shareholder meetings in Texas, internal corporate documents and communications concerning regulatory filings, public-facing and investor-facing reports, communications with trade associations and industry groups, and communications with "climate deniers."

Exxon responded by suing Schneiderman and Healey in federal court for declaratory and injunctive relief, asserting various claims: conspiracy to deprive Exxon of its constitutional rights; violations of Exxon's First, Fourth, and Fourteenth Amendment rights; violations of the Dormant Commerce Clause; preemption; and abuse of process. *See Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679, 691 (S.D.N.Y. 2018), *appeal docketed*, No. 18-1170 (2d Cir. Apr. 23, 2018). Exxon asserted that "Pawa, Frumhoff, and others hatched a scheme to promote litigation" at the La Jolla conference and "saw litigation as a means to uncover internal Exxon documents regarding climate change and to pressure fossil[-]fuel companies like Exxon to change their stance on climate change." *Id.* at 690. As evidence of Pawa's influence on the investigations, Exxon pointed to the La Jolla conference, the Rockefeller Family Fund meeting, and the briefing before the Green 20 press conference. *See id.* at 689–90, 709. According to Exxon, Schneiderman's and Healey's intended goal in conducting their investigations was to intimidate and silence the fossil-fuel industry's side of the climate-change debate. *See id.* at 688. Exxon believed that Schneiderman's and Healey's involvement with Pawa and their statements at the March 2016 press conference suggested that their investigations were politically motivated and that they were using the document-production requests to pressure Exxon to change its position on climate change. *See id.* at 688–91. The federal district court dismissed Exxon's complaint. *Id.* at 713–14.

D. Pawa's climate crusade continues

***4** In November 2016, Pawa spoke at a conference and accused Exxon of "under[taking] a campaign of deception and denial about global warming that confused the American people and consumers of Exxon's product and all fossil[-]fuel products about the nature and harms of global warming." According to Pawa, Exxon scientists had researched global warming in the late 1970s and early 1980s and found that the atmosphere's carbon-dioxide level was increasing and that the "overwhelming opinion of scientists was that the source of this problem was the burning of fossil fuels." In Pawa's telling, Exxon scientists further warned that an increase in carbon dioxide would result in an average global-temperature rise that would "bring about significant changes in the earth's climate." These scientists supposedly informed Exxon management that mitigation would require major reductions in fossil-fuel combustion. Pawa claimed that Exxon management knew about the scientists' findings but classified the information as proprietary and barred its distribution outside the company.

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In the same talk, Pawa specifically targeted a 2013 speech concerning climate change delivered by former Exxon CEO Rex Tillerson, declaring that Tillerson's implication that "the planet was not even warming" was either false or misleading. Pawa also criticized a 2015 speech to shareholders in which Tillerson "questioned whether or not the computer models used to project future warming are 'lousy,' even though ... Exxon has been using these same kinds of computer models since the 1980s to protect its own business assets by projecting future sea[-]level rise."

E. The California counties and cities sue Exxon (and others) and give statements to the media about their litigation targets

In 2017, the cities of San Francisco, Oakland, Imperial Beach, and Santa Cruz, along with the counties of San Mateo, Marin, and Santa Cruz, each filed lawsuits in California state court against Exxon and other fossil-fuel companies, many of which are also based in Texas.[1] These suits alleged that fossil-fuel emissions have caused and continue to cause global warming and consequent rising sea levels, resulting in increasingly severe coastal flooding, erosion, and salt-water intrusion. In addition, these suits complained that despite knowing that their products are causing global climate change, fossil-fuel companies continue to produce and sell them while engaging in advertising and public-relations campaigns that promote fossil-fuel use, discredit scientific research on global warming, and downplay global-warming risks.

1 Oakland and San Francisco also sued Texas-based ConocoPhillips. Imperial Beach, Marin County, San Mateo County, Santa Cruz, and Santa Cruz County sued Exxon and 17 other Texas-based energy companies.

As noted, Pawa is one of the lawyers representing San Francisco and Oakland. In separate suits, those two cities brought public-nuisance claims and sought an abatement-fund remedy "to provide for infrastructure ... necessary ... to adapt to global[-]warming impacts, such as sea[-]level rise." Both cities expressly disclaimed that they were seeking "to impose liability on Defendants for their direct emissions of greenhouse gases" or seeking "to restrain Defendants from engaging in their business operations." San Francisco and Oakland each served its complaint on Exxon's registered agent in California.[2]

2 Exxon and the other defendants removed the San Francisco and Oakland suits to federal court, and the federal district court judge in those cases dismissed them for failure to state a claim and for lack of personal jurisdiction. *See City of Oakland v. BP p.l.c.*, Nos. C 17-06011 WHA, C 17-06012 WHA, 2018 WL 3609055, at *1 (N.D. Cal. July 27, 2018); *City of Oakland v. BP p.l.c.*, 325 F. Supp. 3d 1017, 1019 (N.D. Cal. 2018); *California v. BP p.l.c.*, Nos. C 17-06011 WHA, C 17-06012 WHA, 2018 WL 1064293, at *1 (N.D. Cal. Feb. 27, 2018). The Ninth Circuit, however, recently determined that removal was improper because San Francisco's and Oakland's state-law public-nuisance claims did not arise under federal law and thus remanded the cases to district court to determine whether there was an alternate basis for subject-matter jurisdiction. *See City of Oakland v. BP PLC*, No. 18-16663, 2020 WL 2702680, at *1, *9 (9th Cir. May 26, 2020).

***5** Similarly, in five separate suits, the cities of Imperial Beach and Santa Cruz and the counties of San Mateo, Marin, and Santa Cruz alleged claims for public and private nuisance, negligence, products liability, and trespass. In addition to "equitable relief to abate the nuisances," these suits (collectively, the "San Mateo suits") sought compensatory and punitive damages and profit disgorgement. The San Mateo suits were served on Exxon's registered agent in Texas.[3]

3 The defendants in the San Mateo suits also removed those suits to federal court, but the federal district court judge in those cases remanded them to state court. *Cty. of San Mateo v. Chevron Corp.*, Nos. 18-15499, 18-15502, 18-15503, 18-16376, 2020 WL 2703701, at *1–2 (9th Cir. May 26, 2020). In an opinion issued concurrently with the opinion in the San Francisco and Oakland cases, the same Ninth Circuit panel affirmed the district court's remand order. *Id.* at *2 n.3, *9.

Each of the cities' and counties' complaints discusses Exxon's internal memos and scientific research concerning climate change. The complaints also focus on Exxon's Texas-based speech and associational activities regarding climate change. San Francisco and Oakland, for example, stated that at Exxon's 2015 annual shareholder meeting in Texas, "then-CEO Rex Tillerson misleadingly downplayed global warming's risks by stating that climate models used to predict future impacts were unreliable." San Francisco's and Oakland's complaints also mention allegedly misleading corporate statements about climate change issued from Texas, such as Exxon's "annual 'Outlook for Energy' reports," which the cities describe as a "self-serving means of

promoting fossil fuels and undercutting non-dangerous renewable energy and clean technologies"; statements on Exxon's website emphasizing the " 'uncertainty' of global[-]warming science and impacts"; and Exxon's " 'Lights Across America' website advertisement," which states "that natural gas is 'helping [to] dramatically reduce America's emissions,' even though natural gas [according to the cities] is a fossil fuel causing widespread planetary warming and harm to coastal cities." San Francisco's and Oakland's complaints also attack Exxon's decisions to fund climate-change researchers and research groups that the cities have labeled as "front groups" and climate-change "denialists."

The San Mateo suits similarly focus on Exxon's Texas-based speech and associational activities concerning climate change such as:

- a 1988 memo from an Exxon public-affairs manager describing the "Exxon Position," which emphasized "the uncertainty in scientific conclusions regarding the potential enhanced Greenhouse Effect" and resisted "the overstatement and sensationalization [sic] of potential greenhouse effect which could lead to noneconomic development of non-fossil[-]fuel resources";

- a 1996 publication released by Exxon entitled, "Global Warming: Who's Right?," which was prefaced by a statement from Exxon's then-CEO Lee Raymond: "taking drastic action immediately is unnecessary since many scientists agree there's ample time to better understand the climate system"; and

- a declaration in Exxon's 2007 Corporate Citizenship Report that in 2008, Exxon would "discontinue contributions to several public policy [climate-change-denial] research groups whose position on climate change could divert attention from the important discussion on how the world will secure the energy required for economic growth in an environmentally responsible manner."

***6** Shortly after these lawsuits were filed, several of the cities' officials made media statements supporting the suits. In an op-ed for *The San Diego Union-Tribune* supporting Imperial Beach's lawsuit, Mayor Dedina claimed that Exxon and "its industry colleagues" had known for 50 years that carbon-dioxide pollution from fossil fuels "would cause the air and oceans to warm and sea levels to rise." Dedina further claimed that instead of taking steps to remedy the problem and warn the public and policymakers, fossil-fuel companies "embarked on a multimillion-dollar campaign, taken straight from the tobacco industry's playbook, to sow uncertainty around both the science and the impacts to put off regulation of their [carbon-dioxide] pollution for as long as possible." During a radio appearance soon after, Dedina accused Exxon of carrying out a "merchants of doubt" campaign.

In the same vein was a press release issued by Parker, Oakland's City Attorney, declaring that "[i]t is past time to debate or question the reality of global warming." She went on to claim: "Just like BIG TOBACCO, BIG OIL knew the truth long ago and peddled misinformation to con their customers and the American public."

For his part, San Francisco City Attorney Herrera accused fossil-fuel companies of "profit[ing] handsomely for decades while knowing they were putting the fate of our cities at risk," but rather than "owning up to it, they copied a page from the Big Tobacco playbook" and "launch[ed] a multi-million dollar disinformation campaign to deny and discredit what was clear even to their own scientists: global warming is real, and their product is a huge part of the problem." He pledged that San Francisco was "going to ensure that those responsible for the problem are held to account."

F. In contrast, the cities' and counties' bond offerings downplay climate-change risks

The cities' and counties' recent bond-offering disclosures are at odds with the claims made in their lawsuits. For example, one of San Francisco's 2017 bond offerings states that according to the California Climate Change Center, the city is at risk from sea-level rise and flooding caused by climate change. But the offering also states that San Francisco is "unable to predict whether sea-level rise or other impacts of climate change ... 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."

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San Mateo County's 2014 and 2016 bond offerings also refer to the California Climate Change Center's prediction but similarly state that the county is "unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur" and what impact those events would have on the local economy or on the county's business operations or financial condition if they did occur.

Oakland's 2017 bond offering discusses earthquake and wildfire risks, but not climate-change risks, stating merely that the city "is unable to predict when seismic events, fires[,] or other natural events, such as searise 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."

In a 2013 bond offering, Imperial Beach does not mention climate change, including under the heading "Natural Disasters"; rather, it states only that "earthquake, flood, fire, or other natural disaster, could cause a reduction in the Tax Revenues securing the Bonds." Similarly, Marin County's 2010 bond offering warns only about "the complete or partial destruction of taxable property caused by natural or manmade disaster, such as earthquake, flood, fire, terrorist activities, [and] toxic dumping."

***7** Santa Cruz County's 2016 bond offering, under the heading "Geologic, Topographic and Climatic Conditions," warns merely of "unpredictable climatic conditions, such as flood, droughts[,] and destructive storms." The City of Santa Cruz's 2017 bond offering states that "[f]rom time to time, the City is subject to natural calamities," including "earthquake, flood, tsunami, or wildfire."

G. Exxon files its Rule 202 petition

Based on the disconnect between the cities' and counties' bond-offering disclosures and what they alleged in their lawsuits, Exxon theorizes that the California cities and counties "do not actually believe the allegations in their complaints" and that those allegations "were not made in good faith." Exxon further believes that these lawsuits have been brought to silence and delegitimize Exxon "as a political actor" and to coerce it and other Texas-based energy companies into adopting "the climate[-]change policies favored by special interests and their allies in municipal government." Exxon points to Pawa's direct involvement in the San Francisco and Oakland suits as further evidence that they were brought for the "improper purpose" that Pawa endorsed at the La Jolla conference, discussed at the Rockefeller Family Fund meeting, explained to the state AGs before the Green 20 press conference, and described in his memo to NextGen America.

Based on these beliefs, Exxon filed a Rule 202 petition in Tarrant County District Court to investigate potential claims for constitutional torts (specifically, violations of Exxon's First Amendment rights under the United States and Texas Constitutions), abuse of process, and civil conspiracy, and to perpetuate and obtain testimony in anticipation of filing suit. *See generally* Tex. R. Civ. P. 202. Exxon identified as potential defendants the seven California cities and counties that have sued Exxon and other Texas-based energy companies in California, the eight city and county officials responsible for filing those suits,[4] and Pawa (collectively, "the Potential Defendants"). Exxon also sought to depose seven city and county officials who signed the bond offerings[5] (collectively, "the Prospective Witnesses"). Exxon alleged that Texas has specific personal jurisdiction over the Potential Defendants under Section 17.042(2) of the Texas Civil Practice and Remedies Code. *See* Tex. Civ. Prac. & Rem. Code Ann. § 17.042(2).

4 Parker, Herrera, Beiers, Dedina, Lyon, Washington, McRae, and Condotti.

5 Landreth, Reiskin, Maltbie, Hall, Hymel, Palacios, and Bernal.

The Potential Defendants and Prospective Witnesses filed special appearances supported by affidavits. *See* Tex. R. Civ. P. 120a. Exxon responded and presented its own evidence. After a nonevidentiary hearing, the trial court denied the special appearances and, at Exxon's request, filed findings of fact and conclusions of law in support of its order.

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II. The Trial Court's Findings and Conclusions

The trial court filed 60 findings of fact and conclusions of law. *See BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002) (recognizing that trial court may make findings of fact in connection with a special-appearance ruling). As relevant here, the trial court found and concluded the following:

FINDINGS OF FACT

....

10. In January 2016, Mr. Pawa engaged participants at the Rockefeller Family Fund offices in New York City to further solidify "the [g]oals of an Exxon campaign" that Mr. Pawa [had] developed at the La Jolla conference....

***8** 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."

....

13. At the [Green 20] 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....

14. [At the Green 20 press conference,] Attorney General Healey similarly echoed themes from the strategy Mr. Pawa developed at La Jolla....

....

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.

....

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 County of Santa Cruz filed similar public[-]nuisance complaints against ExxonMobil and other energy companies, including ... 17 Texas-based energy companies.... 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.

....

32. Several Potential Defendants also made statements shortly after filing the lawsuits focusing on Texas-based speech....

....

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35. The[ ] allegations [in the California complaints] 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 suits for an improper purpose.

....

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.

***9**

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.

....

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 [Ann.] § 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

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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[, no pet.]) [(mem. op.)].

***10** 53. Based on the foregoing findings of fact, ExxonMobil's potential claims of First Amendment violation[s], 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.

....

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.

III. Applicable Law

Texas Rule of Civil Procedure Rule 202 allows a trial court to authorize a deposition either (1) to perpetuate or obtain testimony for use in an anticipated suit or (2) to investigate a potential claim or suit. *See* Tex. R. Civ. P. 202.1 . Rule 202 requires that requests for presuit discovery be filed in a "proper court." Tex. R. Civ. P. 202.2(b); *In re Doe* (*Trooper*), 444 S.W.3d 603, 608 (Tex. 2014) (orig. proceeding). A "proper court" is one that has personal jurisdiction over the potential defendant. *See Trooper*, 444 S.W.3d at 604, 608–10. Thus, a trial court may grant a Rule 202 petition only if it has personal jurisdiction over the potential defendant. *See id.* at 604, 608–11.

A. Establishing personal jurisdiction

A Texas court has personal jurisdiction over a nonresident defendant when the Texas long-arm statute permits the exercise of such jurisdiction and the exercise of jurisdiction is consistent with federal and state constitutional due-process guarantees. *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 149 (Tex. 2013). The Texas long-arm statute allows Texas courts to exercise personal jurisdiction over a nonresident that "commits a tort in whole or in part in this state." Tex. Civ. Prac. & Rem. Code Ann. § 17.042(2); *TV Azteca*, 490 S.W.3d at 36. Because the long-arm statute reaches "as far as the federal constitutional requirements for due process will allow," a Texas court may exercise personal jurisdiction over a nonresident so long as doing so "comports with federal due[-]process limitations." *TV Azteca*, 490 S.W.3d at 36 (quoting *Spir Star AG v. Kimich*, 310 S.W.3d 868, 872 (Tex. 2010)).

In determining whether federal due-process requirements have been met, we rely on precedent from the United States Supreme Court and other federal courts, as well as our own state's decisions. *BMC Software*, 83 S.W.3d at 795; *TravelJungle v. Am. Airlines, Inc.*, 212 S.W.3d 841, 845–46 (Tex. App.—Fort Worth 2006, no pet.). Federal due process is satisfied when (1) the defendant has established minimum contacts with the state and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017); *TV Azteca*, 490 S.W.3d at 36.

1. Minimum contacts

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A nonresident defendant "establishes minimum contacts with a forum when it 'purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.' " *Moncrief Oil*, 414 S.W.3d at 150 (quoting *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009)). Three principles govern our purposeful-availment analysis: (1) only the defendant's contacts with Texas are relevant, not the unilateral activity of another party or third person; (2) the defendant's acts must be purposeful and not random, isolated, or fortuitous; and (3) the defendant must seek some benefit, advantage, or profit by availing itself of Texas's jurisdiction so that it impliedly consents to suit here. *M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co.*, 512 S.W.3d 878, 886 (Tex. 2017) (citing *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005)).

***11** To constitute purposeful availment, the defendant's contacts must be "purposefully directed" to Texas. *TV Azteca*, 490 S.W.3d at 38 (quoting *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 228 (Tex. 1991)). Those contacts also must result from the defendant's own "efforts to avail itself of the forum." *Id.* (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 576 (Tex. 2007)). A defendant will not be haled into Texas based solely on contacts that are "random, isolated, or fortuitus," *id.* (quoting *Michiana*, 168 S.W.3d at 785), or on the "unilateral activity of another party or a third person," *id.* (quoting *Guardian Royal*, 815 S.W.2d at 226). "The defendant's activities, whether they consist of direct acts within Texas or conduct outside Texas, must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court." *Retamco*, 278 S.W.3d at 338 (quoting *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002))

Minimum contacts can give rise to either specific or general jurisdiction. *TV Azteca*, 490 S.W.3d at 37. Here, Exxon contends—and the trial court agreed—that Texas has specific jurisdiction over the Potential Defendants.[6] Specific jurisdiction exists when the cause of action arises from or is related to a defendant's purposeful activities in the state. *Moncrief Oil*, 414 S.W.3d at 150. "For a Texas court to exercise specific jurisdiction over a defendant, '(1) the defendant's contact with Texas must be purposeful, and (2) the cause of action must arise from those contacts.' " *Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 559 (Tex. 2018) (quoting *Michiana*, 168 S.W.3d at 795). That is, the defendant's purposeful contacts must be substantially connected to the operative facts of the litigation or form the basis of the cause of action. *Id.* at 559–60 (citing *Moki Mac*, 221 S.W.3d at 585; *Michiana*, 168 S.W.3d at 795). When analyzing specific jurisdiction, our focus is thus on the relationship between Texas, the defendant, and the litigation. *Moncrief Oil*, 414 S.W.3d at 150.

6 The trial court concluded that Texas does not have general jurisdiction over the Potential Defendants, a conclusion that no party challenges.

2. Traditional notions of fair play and substantial justice

But even when a nonresident has established minimum contacts with Texas, due process permits Texas to assert personal jurisdiction over the nonresident only if doing so comports with "traditional notions of fair play and substantial justice." *TV Azteca*, 490 S.W.3d at 55 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945)). Typically, though, "[w]hen a nonresident defendant has purposefully availed itself of the privilege of conducting business in a foreign jurisdiction, it is both fair and just to subject that defendant to the authority of that forum's courts." *Id.* (quoting *Spir Star*, 310 S.W.3d at 872). "Thus, '[i]f a nonresident has minimum contacts with the forum, rarely will the exercise of jurisdiction over the nonresident not comport with traditional notions of fair play and substantial justice.' " *Id.* (quoting *Moncrief Oil*, 414 S.W.3d at 154–55).

B. The parties' shifting trial-court burdens and appellate standard of review

In the trial court, the plaintiff bears the initial burden to plead sufficient allegations to bring the nonresident defendant within the reach of the Texas long-arm statute. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010). Once the plaintiff has done so, the burden shifts to the defendant to negate all potential bases for personal jurisdiction as pleaded by the plaintiff. *Id.* "Because the plaintiff defines the scope and nature of the lawsuit, the defendant's corresponding burden to negate jurisdiction is tied to the allegations in the plaintiff's pleading." *Id.*

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***12** The defendant can negate jurisdiction on either a factual or legal basis. *Id.* at 659. Factually, the defendant can negate jurisdiction by presenting evidence that it has no contacts with Texas, effectively disproving the plaintiff's allegations; the plaintiff risks dismissal of its suit if it does not then present the trial court with evidence affirming its jurisdictional allegations and establishing personal jurisdiction over the defendant. *Id.* Legally, the defendant can negate jurisdiction by showing that even if the plaintiff's alleged jurisdictional facts are true, (1) the evidence is legally insufficient to establish jurisdiction, (2) the defendant's Texas contacts fall short of purposeful availment, (3) the claims do not arise from the defendant's Texas contacts, or (4) exercising jurisdiction over the defendant would offend traditional notions of fair play and substantial justice. *Id.*

Whether a trial court has personal jurisdiction over a defendant is a legal question that we review de novo. *Moncrief Oil*, 414 S.W.3d at 150. But a trial court may have to resolve fact questions before deciding the jurisdiction question. If the trial court makes findings of fact and conclusions of law in denying a special appearance, the appellant may challenge the fact findings on legal-and factual-sufficiency grounds, and we review the challenged findings for both legal and factual sufficiency. *BMC Software*, 83 S.W.3d at 794. We review challenged legal conclusions de novo to determine their correctness based on the facts. *See id.*

IV. The California Parties' Issues

The San Francisco parties,[7] the Oakland parties,[8] and the San Mateo parties[9] (collectively, "the California Parties") filed separate notices of appeal and separate appellate briefs raising similar issues. For efficiency's sake, we combine and recast the California Parties' issues and arguments as follows:

1. The cities, counties, and their officials are nonresidents under the Texas long-arm statute and are thus not within the statute's reach.

2. Exxon failed to plead sufficient allegations to bring the San Francisco parties and the Oakland parties within the Texas long-arm statute.[10]

3. The California Parties lacked minimum contacts with Texas because they did not purposefully avail themselves of the privilege of conducting activities in Texas.

4. Exxon's anticipated claims did not arise from or relate to the California Parties' forum contacts.

5. A Texas court's exercising jurisdiction over the California Parties would offend traditional notions of fair play and substantial justice.

6. The evidence was insufficient to support the trial court's fact findings. The Oakland parties additionally argue that the federal district court's dismissing Exxon's complaint against attorneys general Schneiderman and Healey precluded the trial court's findings concerning Pawa's motives.

7. In a Rule 202 proceeding, a trial court must have personal jurisdiction over prospective witnesses, not just potential defendants.[11]

7 The City of San Francisco, Herrera, and Reiskin.

8 The City of Oakland, Pawa, Parker, and Landreth.

9 San Mateo County, Marin County, Santa Cruz County, City of Santa Cruz, City of Imperial Beach, Beiers, Dedina, Lyon, Washington, McRae, Condotti, Maltbie, Hall, Hymel, Palacios, and Bernal.

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10 The San Mateo parties did not contest that Exxon's pleadings were sufficient to bring them within the Texas long-arm statute. And unlike the San Francisco parties and the Oakland parties, the San Mateo parties did not adopt the arguments made in the other parties' briefs. *See* Tex. R. App. P. 9.7 ("Any party may join in or adopt by reference all or any part of a brief ... filed in an appellate court by another party in the same case.").

11 The San Mateo parties did not raise this issue.

We will assume without deciding that the cities, counties, and their officials are nonresidents within the meaning of the Texas long-arm statute,[12] and begin our analysis by addressing the sufficiency of Exxon's pleadings. Then, we will address whether the California Parties established that they lack sufficient minimum contacts with Texas. Because the minimum-contacts issue is dispositive, we will not address the remaining issues.

12 *See* Tex. Civ. Prac. & Rem. Code Ann. § 17.041 (stating that the term " 'nonresident' *includes* ... an individual who is not a resident of this state" and "a foreign corporation, joint-stock company, association, or partnership" (emphasis added)), § 17.042(2) (stating that a nonresident does business in Texas if the nonresident "commits a tort in whole or in part in this state"); Tex. Gov't Code Ann. § 312.011(19) (stating that " '[i]ncludes' and 'including' are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded"). *But cf. Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 482–83 (5th Cir. 2008) (dicta) (explaining that the Texas long-arm statute may not reach an out-of-state official in cases involving "a challenge to an out-of-state regulator's enforcement of her state's statute, rather than a conventional contract or tort claim").

V. The Sufficiency of Exxon's Pleadings

***13** As noted, the Texas long-arm statute allows Texas courts to exercise personal jurisdiction over a nonresident who "commits a tort in whole or in part in this state." Tex. Civ. Prac. & Rem. Code Ann. § 17.042(2). Exxon pleaded that Texas has specific personal jurisdiction over the Potential Defendants under Section 17.042(2) because

> the potential abuse of process, civil conspiracy, and constitutional violations were intentionally targeted at the State of Texas to encourage the Texas energy sector to adopt the co-conspirator's desired legislative and regulatory responses to climate change. Exxon[ ] and 17 other Texas-based companies that are named in the California ... lawsuits exercise their First Amendment right in Texas to participate in the national dialogue about climate change. The speech and other First Amendment activity of the energy sector in Texas is precisely what the potential defendants have attempted to stifle through their abuse of law enforcement powers and civil litigation. [Footnote omitted.]

In short, Exxon pleaded that the Potential Defendants committed a tort in whole or in part in Texas because they committed torts that were targeted at Texas. We conclude that these allegations satisfied Exxon's initial burden of alleging a cause of action sufficient to confer jurisdiction.[13] *See Lombardo v. Bhattacharyya*, 437 S.W.3d 658, 679 (Tex. App.—Dallas 2014, pet. denied) (concluding that "Bhattacharyya's allegations that Lombardo committed torts in Texas satisfied his initial burden of alleging a cause of action sufficient to confer jurisdiction under the Texas long-arm statute"); *see also TV Azteca*, 490 S.W.3d at 43, 47–52 (concluding that allegations and evidence that defendants "intentionally targeted Texas through [their] broadcasts" established purposeful availment). We thus overrule the San Francisco parties' and the Oakland parties' arguments regarding the sufficiency of Exxon's pleadings.

13 Exxon failed to plead any allegations to bring the Prospective Witnesses within the reach of the Texas long-arm statute, presumably because it contends—and the trial court agreed—that a court is not required to have personal jurisdiction over nonresident prospective witnesses in a Rule 202 proceeding. But whether Exxon was required to so plead is irrelevant because we conclude that Texas does not have personal jurisdiction over the Potential Defendants and thus must render judgment denying Exxon's Rule 202 petition. *See Trooper*, 444 S.W.3d at 604–05, 610–11 (concluding that trial court abused its discretion by granting Rule 202 petition to allow the petitioner to depose Google to discover the potential defendant's identity because the petitioner did not establish personal jurisdiction over the potential defendant); *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) (mem. op.) (rendering judgment denying Rule 202 petition because in seeking to depose, upon written questions, eBay's corporate representative to discover the potential defendants' identities, Mary Kay failed to plead jurisdictional facts to establish personal jurisdiction over the potential defendants).

"Although allegations that a tort was committed in Texas satisfy our long-arm statute, such allegations do not necessarily satisfy the U.S. Constitution." *Moncrief*, 414 S.W.3d at 149. But because Exxon met its initial pleading burden, the burden shifted to the California Parties to negate Exxon's basis for jurisdiction—that the Potential Defendants committed a tort in whole or in part in Texas. *See id.* at 149–50. The California Parties responded that exercising jurisdiction over them would violate due process because they lacked minimum contacts with Texas.

VI. The Potential Defendants Lack Minimum Contacts with Texas

***14** The California Parties argue that the Potential Defendants lack minimum contacts with Texas because they did not purposefully avail themselves of conducting activities in Texas. Exxon counters that the Potential Defendants purposefully directed their activities at Texas by (1) commencing baseless lawsuits in California intended to suppress speech in Texas and to gain access to documents in Texas and (2) serving Exxon with process in Texas.

A. The Potential Defendants' contacts

As an initial matter, we note that a plaintiff must establish specific jurisdiction on a claim-by-claim basis unless all the asserted claims arise from the same forum contacts. *See id.* at 150–51. Here, Exxon's anticipated claims—First Amendment violations, malicious prosecution, and conspiracy—do all arise from the same alleged forum contacts:

- The Potential Defendants signed, approved, or participated in filing the California lawsuits against Exxon and other Texas-based energy companies intended to suppress speech and associational rights in Texas and to obtain documents in Texas through the discovery process.

- The Potential Defendants hired a process server to serve their complaints on Exxon in Texas, either by serving the complaints on Exxon's registered agent in Texas or by serving the complaints on Exxon's registered agent in California to transmit them to Exxon in Texas.

Regarding Pawa, Exxon alleged that he had additional contacts with Texas: (1) he developed and promoted a plan at the La Jolla conference in California and at the Rockefeller meeting in New York to suppress Texas-based speech and to obtain Texas-based documents in order to delegitimize Exxon and other Texas-based energy companies; (2) he encouraged state AGs to investigate Exxon, focusing on Texas-based speech and documents; and (3) he promoted tort litigation by California municipalities against Exxon and others in the Texas energy sector in furtherance of his plan.

B. Exxon's evidence and the trial court's fact findings

Much of Exxon's responsive evidence and the trial court's fact findings relate to the merits of Exxon's potential tort claims—that is, the Potential Defendants' intent in filing and serving the California lawsuits. "The mere existence or allegation of a conspiracy directed at Texas is not sufficient to confer jurisdiction." *Old Republic*, 549 S.W.3d at 560 (citing *Nat'l Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 773 (Tex. 1995)). The personal-jurisdiction analysis in tort cases must focus on the "physical fact" of a defendant's contacts with Texas without attempting to decide the merits of the case:

> Business contacts are generally a matter of physical fact, while tort liability ... turns on what the parties thought, said, or intended. Far better that judges should limit their jurisdictional decisions to the former rather than involving themselves in trying the latter.

Michiana, 168 S.W.3d at 791; *see Moncrief*, 414 S.W.3d at 147 (reiterating that "what the parties thought, said, or intended is generally irrelevant to their jurisdictional contacts").

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Moreover, the supreme court has "expressly disapproved of the notion that 'specific jurisdiction turns on whether a defendant's contacts were tortious rather than the contacts themselves.' " *Estate of Hood*, No. 02-16-00036-CV, 2016 WL 6803186, at *7 (Tex. App.—Fort Worth Nov. 17, 2016, no pet.) (mem. op.) (quoting *Michiana*, 168 S.W.3d at 792). As we have recently observed, "[W]e do not address the merits of the tort claims in reviewing the special appearance; rather, we instead analyze the quality and nature of [a defendant's] proven contacts in light of [the plaintiff's] pleaded tort claims." *OZO Capital, Inc. v. Syphers*, No. 02-17-00131-CV, 2018 WL 1531444, at *6 n.9 (Tex. App.—Fort Worth Mar. 29, 2018, no pet.) (mem. op.) (citing *Michiana*, 168 S.W.3d at 790–92).

***15** Accordingly, the trial court's findings regarding the Potential Defendants' intent in filing the California lawsuits are irrelevant to our personal-jurisdiction analysis, and we thus will not address the California Parties' challenges to the sufficiency of the evidence supporting those findings. Instead, we focus on the quality and nature of the Potential Defendants' contacts with Texas.

C. Analysis

We begin by noting that for Texas to have specific jurisdiction over a nonresident defendant, the nonresident's conduct need not actually occur in Texas, as long as the defendant's acts were purposefully directed toward Texas as opposed to a Texas resident. *See Walden v. Fiore*, 571 U.S. 277, 285, 134 S. Ct. 1115, 1112 (2014); *TravelJungle*, 212 S.W.3d at 847; *see also Cornerstone Healthcare Grp. Holding, Inc. v. Nautic Mgmt. IV, L.P.*, 493 S.W.3d 65, 71 (Tex. 2016) ("Although 'physical presence in the forum' is 'a relevant contact,' it 'is not a prerequisite to jurisdiction.' ") (quoting *Walden*, 571 U.S. at 285, 134 S. Ct. at 1122). Relying primarily on the Texas Supreme Court's opinions in *TV Azteca* and *Retamco*, Exxon argues that the Potential Defendants purposefully directed their conduct at Texas by targeting Texas and Texas property by filing and serving the California suits in furtherance of a conspiracy directed at Texas to suppress Texas-based speech and associational activities and to gain access to Exxon's documents in Texas through discovery in the California suits.

In *TV Azteca*, a Mexican recording artist residing in South Texas sued two Mexican television broadcasters and a Mexican news anchor and producer for defamation based on broadcasts that originated in Mexico but reached parts of Texas. 490 S.W.3d at 34–35. The Texas Supreme Court ultimately held that the defendants had indeed purposefully availed themselves of the privilege of conducting activities in Texas by intentionally targeting Texas through the allegedly defamatory broadcasts. *Id.* at 52.

But in reaching its holding, the court rejected the plaintiff's contention that the defendants' having simply "directed a tort" at her in Texas was a basis for exercising personal jurisdiction over them: "No one disputes that [the plaintiff] resides in Texas and the brunt of any injuries she suffered from [the defendants'] broadcasts occurred in Texas," but "courts cannot base specific jurisdiction merely on the fact that the defendant 'knows that the brunt of the injury will be felt by a particular resident in the forum state.' " *Id.* at 43 (quoting *Michiana*, 168 S.W.3d at 788). The court then stated that "[t]here is a subtle yet crucial difference between directing a tort at an individual who happens to live in a particular state and directing a tort at that state." *Id.* "The fact that the plaintiff lives and was injured in the forum state is not irrelevant to the jurisdictional inquiry, but it is relevant only to the extent that is shows that *the forum state* was 'the focus of the activities of the defendant.' " *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780, 104 S. Ct. 1473, 1481 (1984)). But "the mere fact that [the defendants] directed defamatory statements at a plaintiff who lives in and allegedly suffered injuries in Texas, without more, does not establish specific jurisdiction over [the defendants]." *Id.*

Nonetheless, the *TV Azteca* court ultimately concluded that through their broadcasts the nonresident defendants had intentionally targeted Texas and thus purposefully availed themselves of the benefits of conducting activities in Texas because "additional conduct" evidence showed that they intended to serve the Texas market with their broadcasts. *See id.* at 46–52. The court explained that "a plaintiff can establish that a defamation defendant targeted Texas by relying on other 'additional conduct' through which the defendant 'continuously and deliberately exploited' the Texas market." *Id.* at 47 (quoting *Keeton*, 465 U.S. at 781, 104 S. Ct. at 1481). Evidence that the defendants had physically entered into Texas to produce and to promote their broadcasts, had derived substantial revenue and other benefits from selling advertising to Texas businesses, and had made

substantial efforts to distribute their programs and to increase their popularity in Texas was sufficient to support the trial court's finding that the defendants had "continuously and deliberately exploited the [Texas] market." *Id.* at 52 (quoting *Keeton*, 465 U.S. at 781, 104 S. Ct. at 1481).

***16** But here, no similar acts of "additional conduct" exist through which the Potential Defendants can be said to have continuously and deliberately exploited Texas. Exxon contends that the Potential Defendants made "substantial efforts" to spread their viewpoints in Texas and to suppress Texas-based speech about climate change by making public statements and filing pretextual lawsuits against Exxon and others in the Texas energy sector. Yet even though the California suits and some of the Potential Defendants' public comments target Exxon's climate-change speech, these out-of-state actions were directed at Exxon, not Texas. Without more, the mere fact that the Potential Defendants directed these statements at Texas-based Exxon and that Exxon might suffer injury here does not establish personal jurisdiction. *See id.* at 43.

Quoting *TV Azteca*, Exxon nevertheless asserts that 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, 790, 104 S. Ct. 1482, 1487 (1984)). Because this quotation embeds one from *Calder*, we interpret Exxon's assertion as urging us to adopt the *Calder* "effects test" for determining specific jurisdiction. *See* 465 U.S. at 788–89, 104 S. Ct. at 1486–87 (holding that California properly asserted personal jurisdiction over Florida-based defendants in part because California resident suffered "the brunt of the harm" in California).

Calder involved a Florida-based national newspaper that published an allegedly defamatory article about a California actress. *Id.* at 784–85, 104 S. Ct. at 1484–85. The Supreme Court examined the various contacts that the defendants had created with California in writing the article: the defendants had relied on phone calls to "California sources" for information for the article; the article concerned the actress's activities in California; the defendants caused reputational injury in California by writing an allegedly defamatory article that was widely circulated in California; and the actress suffered the "brunt" of that injury in California. *Id.* at 788–89, 104 S. Ct. at 1486. "In sum, California [was] the focal point both of the story and of the harm suffered." *Id.* at 789, 104 S. Ct. at 1486. The Court held that personal jurisdiction over the Florida defendants was "therefore proper in California based on the 'effects' of their Florida conduct in California." *Id.*, 104 S. Ct. at 1486–87.

The Supreme Court has since clarified, however, that the *Calder* "effects test" requires that the alleged tort's "effects" must connect the defendant's conduct to the forum state, not just to a plaintiff who lives there. *See Walden*, 571 U.S. at 288, 134 S. Ct. at 1124. In *Walden*, the Court reaffirmed that the specific-jurisdiction inquiry "focuses 'on the relationship among the defendant, the forum, and the litigation.' " *Id.* at 284, 134 S. Ct. at 1121 (quoting *Keeton*, 465 U.S. at 775, 104 S. Ct. at 1478). "For a state to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." *Id.*, 134 S. Ct. at 1121. This "relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State." *Id.* at 284, 134 S. Ct. at 1122 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2184 (1985)). And the "analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id.* at 285, 134 S. Ct. at 1122. That is, mere injury to a forum resident is an insufficient connection to the forum, and "an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State." *Id.* at 290, 134 S. Ct. at 1125. Instead, the proper inquiry is whether the nonresident defendant's conduct is aimed at the forum state—the question is thus "not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Id.*, 134 S. Ct. at 1125.

***17** The Texas Supreme Court's interpretation of *Calder* aligns with the Supreme Court's: "Mere knowledge that the 'brunt' of the alleged harm would be felt—or have effects—in the forum state is insufficient to confer specific jurisdiction." *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 68–69 (Tex. 2016). Additionally, the Texas Supreme Court has "explicitly rejected an approach to specific jurisdiction that turns upon where a defendant 'directed a tort' rather than on the defendant's contacts." *Old Republic*, 549 S.W.3d at 565 (citing *Michiana*, 168 S.W.3d at 790–92). Thus, "the 'effects test' is not an alternative to [the] traditional 'minimum contacts' analysis, and it does not displace the factors we look to in determining whether a defendant purposefully availed itself of the state." *Id.*

Here, the Potential Defendants' alleged Texas contacts—(1) filing suit in California state court asserting state-law claims against Texas-based Exxon and serving Exxon with process in furtherance of that litigation, which might result in the discovery of documents located in Texas and (2) Pawa's out-of-state activities and statements regarding Exxon's climate-change stance—are not contacts with Texas, but with a Texas resident. Without more, their knowledge that Exxon will feel the effects in Texas does not suffice. Under these circumstances, the nonresident Potential Defendants could not reasonably have anticipated being haled into court in Texas. We thus conclude that these contacts are insufficient to establish purposeful availment. *See, e.g., SpaceCo Bus. Sols., Inc. v. Mass Engineered Design, Inc.*, 942 F. Supp. 2d 1148, 1154 (D. Colo. 2013) (pointing out lack of authority interpreting *Calder* to support proposition that "any time a plaintiff files a suit in a jurisdiction other than the defendant's principal place of business, at least where the defendant accuses him of an abuse of process or malicious prosecution, he renders himself vulnerable to being sued by the defendant in the defendant's home state, again regardless of whether the plaintiff turned defendant has had any other contacts with that state"). And to the extent Exxon argues that specific jurisdiction exists in this case under the directed-a-tort theory, we reject that argument as well. *See Michiana*, 168 S.W.3d at 790–92 (holding that allegation or evidence that nonresident defendant directed a tort at a Texas resident was insufficient to support specific jurisdiction); *see also Old Republic*, 549 S.W.3d at 565 ("Moreover, we have explicitly rejected an approach to specific jurisdiction that turns upon where a defendant 'directed a tort' rather than on the defendant's contacts." (citing *Michiana*, 168 S.W.3d at 790–92)).

We likewise conclude that filing lawsuits in California that would yield, through the discovery process, the production of documents located in Texas is not sufficiently targeting Texas property to subject the Potential Defendants to personal jurisdiction here. In *Retamco*, the supreme court held that the defendant had "reached out and created a continuing relationship in Texas" by purchasing and taking assignment of real-property interests in Texas even though the defendant never entered the state to do so. 278 S.W.3d at 339. The defendant's ownership made the defendant "liable for obligations and expenses related to the interests" and allowed the defendant to " 'enjoy ... the benefits and protections of [Texas laws.]' " *Id.* (quoting *Michiana*, 168 S.W.3d at 787). The court also noted that the contact was not merely fortuitous: the property's location was "fixed in this state." *Id.* Moreover, the defendant sought a "benefit, advantage[,] or profit" in Texas, *id.* at 340 (quoting *Michiana*, 168 S.W.3d at 785), because the assignment gave it "valuable assets in Texas, including the right to enforce warranties and covenants related to the real property," *id.* The court thus held that the defendant had purposefully availed itself of the privilege of conducting activities in Texas. *Id.*

***18** Consistent with the court's reasoning in *Retamco*, we determined several years ago that nonresidents' alleged backdating of documents to be filed in a Texas property's chain of title was directed at Texas in light of Texas's interest in maintaining stability and certainty regarding title to Texas real property. *Hoskins*, 2016 WL 2772164, at *7. As a result, we held that these actions were directed at the state of Texas rather than solely at a Texas resident and showed "purposeful availment necessary to support minimum contacts for the purposes of specific jurisdiction." *Id.* Similarly, in a case predating *Retamco*, we found that an overseas-based travel company purposefully directed its activities toward Texas when it used computer software to repeatedly and continuously intentionally access information from the plaintiff's computer servers that were physically located in Texas. *TravelJungle*, 212 S.W.3d at 844, 849–50. In reaching our holding, we explained that the travel company's actions went beyond just looking at the website; rather, the company took up valuable computer capacity, depriving the plaintiff of the "ability to use that same capacity to serve its other customers." *Id.* at 850.

Based on these cases, Exxon argues that interfering with Texas property—whether real or personal—can provide sufficient contacts with Texas to establish personal jurisdiction, and that the Potential Defendants' seeking Exxon's Texas documents through discovery in the California suits sufficiently targets Texas property to subject them to personal jurisdiction here. We disagree. As noted, whether Texas may exercise personal jurisdiction over a nonresident focuses on the relationship among the defendant, the forum, and the litigation, which "must arise out of contacts that the 'defendant *himself*' creates with the forum State." *Walden*, 571 U.S. at 284, 134 S. Ct. at 1122. And to constitute purposeful availment, the defendant's contacts must result from the defendant's own "efforts to avail itself of the forum." *TV Azteca*, 490 S.W.3d at 38. And "[t]he defendant's activities, whether they consist of direct acts within Texas or conduct outside Texas, must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court." *Retamco*, 278 S.W.3d at 338.

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Here, the Potential Defendants' seeking discovery from a Texas resident during the course of California litigation was not an effort to avail themselves of Texas and does not justify a conclusion that they could reasonably anticipate being haled into a Texas court. Initiating an out-of-state lawsuit where some discoverable documents might be physically located in Texas and are under Exxon's control does not invoke the benefits or protections of Texas's laws. If it did, any plaintiff in an out-of-state lawsuit against a Texas defendant who maintained documents here would be subject to specific jurisdiction in a Texas case arising from or relating to that out-of-state suit.

Several cases demonstrate that contacts similar to the ones alleged here between a state resident and a nonresident in connection with out-of-state litigation do not suffice for a state to exercise personal jurisdiction over a nonresident in cases arising from that out-of-state litigation. For example, allegedly abusive litigation and service of process are insufficient to establish specific jurisdiction. *See, e.g., Allred v. Moore & Peterson*, 117 F.3d 278, 280, 287 (5th Cir. 1997) (holding that in case arising from Louisiana litigation, Mississippi did not have personal jurisdiction over Texas and Louisiana attorneys who had sued Mississippi resident in Louisiana and served resident in Mississippi by mail); *Diddel v. Davis*, No. H-04-4811, 2005 WL 8164061, at *1–2, *5–7 (S.D. Tex. June 2, 2005) (relying on *Allred* to hold that Texas lacked personal jurisdiction over Maryland resident and his Maryland and Florida lawyers for claim arising from their allegedly frivolous Florida lawsuit against Texas resident concerning a Florida land transaction, concluding that mailing draft complaint to Texas resident, serving Texas resident in Texas, and Texas resident's suffering harmful effects in Texas were insufficient jurisdictional contacts); *Estate of Hood*, 2016 WL 6803186, at *1–3, *6–7 (holding that, in connection with a Mississippi probate proceeding involving Texas property, a Mississippi attorney's mailing to a Texas resident a petition to close the probate proceeding, a notice of hearing, a proposed release, and a cover letter threatening to withhold funds unless release was signed did not meet purposeful-availment standard in case brought in Texas against Mississippi attorney and his firm arising from the attorney's actions in the Mississippi probate proceeding); *cf. Stanton v. Gloersen*, No. 05-16-00214-CV, 2016 WL 7166550, at *2–3, *11 (Tex. App.—Dallas Nov. 30, 2016, pet. denied) (mem. op.) (relying on *Michiana* to hold that Texas lacked personal jurisdiction over Florida lawyer who made allegedly false statements concerning Texas resident to Texas authorities as part of lawyer's representation of Florida resident). The fact that most, if not all, of the Potential Defendants are governmental entities or government officials[14] does not affect this conclusion. *See Stroman Realty, Inc. v. Antt*, 528 F.3d 382, 383, 386–87 (5th Cir. 2008) (finding no personal jurisdiction in Texas over Texas resident's suit against Florida and California licensing and regulatory government officials where the only contacts between officials and Texas were cease-and-desist orders mailed to the resident, California's correspondence with the Texas Real Estate Commission regarding the resident, and Florida's making a public-information-act request to the Texas Attorney General for information about the resident); *Wercinski*, 513 F.3d at 480, 483–84 (holding Texas did not have personal jurisdiction over Texas resident's suit against Arizona licensing and regulatory government official where the only contacts between official and Texas were a cease-and-desist order mailed to the resident in Texas and correspondence with resident's attorneys).

14 We are agnostic about whether Pawa in his capacity as counsel for the cities of San Francisco and Oakland could be considered a government official.

***19** Having examined the Potential Defendants' contacts with Texas, we conclude that they do not meet the purposeful-availment standard and that the Potential Defendants thus lacked minimum contacts with Texas. Because sufficient minimum contacts are not present, we need not address whether Exxon's potential claims arise from or relate to those contacts or whether the exercise of personal jurisdiction over the Potential Defendants would offend traditional notions of fair play and substantial justice.

VII. Personal Jurisdiction Over the Prospective Witnesses

Exxon argues that a court is not required to have personal jurisdiction over prospective witnesses in a Rule 202 proceeding and thus the trial court properly denied the Prospective Witnesses' special appearances. If Exxon maintains that a Texas court can

grant a Rule 202 petition ordering depositions from prospective witnesses when it does not have personal jurisdiction over the potential defendants, Texas Supreme Court authority compels us to disagree.

In *Trooper*, the court concluded that because the Rule 202 petitioner did not establish that Texas had personal jurisdiction over the potential defendant, the trial court abused its discretion by granting the petition to allow the petitioner to depose Google (which did not oppose the petition) to discover the potential defendant's identity. *See* 444 S.W.3d at 604–05. In so concluding, the court stated that the "proper court" in which to file a Rule 202 petition must have personal jurisdiction over the potential defendant. *Id.* at 608. The court gave two reasons for its conclusion:

> *First*: To allow discovery of a potential claim against a defendant over which the court would not have personal jurisdiction denies him the protection Texas procedure would otherwise afford. Under Rule 120a, a defendant who files a special appearance in a suit is entitled to have the issue of personal jurisdiction heard and decided before any other matter. Discovery is limited to matters directly relevant to the issue. To allow witnesses in a potential suit to be deposed more extensively than would be permitted if the suit were actually filed would circumvent the protections of Rule 120a. When a potential defendant could challenge personal jurisdiction, the potential claimant could simply conduct discovery under Rule 202 before filing suit.
>
> ....
>
> *Second*: To allow a Rule 202 court to order discovery without personal jurisdiction over a potential defendant unreasonably expands the rule. Even requiring personal jurisdiction over the potential defendant, Rule 202 is already the broadest pre-suit discovery authority in the country. If a Rule 202 court need not have personal jurisdiction over a potential defendant, the rule could be used by anyone in the world to investigate anyone else in the world against whom suit could be brought within the court's subject-matter jurisdiction. The reach of the court's power to compel testimony would be limited only by its grasp over witnesses. This was never contemplated in the procedures leading to Rule 202, from 1848 to 1999, nor was it the intent of Rule 202.

Id. at 608–10 (footnotes omitted).

Based on *Trooper*, we conclude that the relevant personal-jurisdiction inquiry in a Rule 202 proceeding is whether Texas has personal jurisdiction over a potential defendant. If not, a trial court has no discretion to grant a Rule 202 petition. *See id.* at 604, 608–11; *eBay*, 2015 WL 3898240, at *2–3 (relying on *Trooper* and rendering judgment denying petitioner's Rule 202 petition because in seeking to depose, on written questions, third-party's corporate representative to discover potential defendants' identities, petitioner failed to plead jurisdictional facts to establish personal jurisdiction over potential defendants). Thus, whether Texas has personal jurisdiction over a person or entity that is only a prospective witness is irrelevant.

VIII. Conclusion

***20** Because the Potential Defendants did not purposefully avail themselves of the privilege of conducting activities within Texas, they lack sufficient contacts for a Texas court to exercise specific jurisdiction over them. This conclusion is dispositive of the California Parties' appeal, and we thus reverse the trial court's order denying their special appearances and render judgment denying Exxon's Rule 202 petition. *See eBay*, 2015 WL 3898240, at *3.

IX. Some Final Thoughts

We confess to an impulse to safeguard an industry that is vital to Texas's economic well-being, particularly as we were penning this opinion weeks into 2020's COVID-19 pandemic-driven shutdown of not only Texas but America as a whole. Lawfare is an ugly tool by which to seek the environmental policy changes the California Parties desire, enlisting the judiciary to do the work that the other two branches of government cannot or will not do to persuade their constituents that anthropogenic climate change

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(a) has been conclusively proved and (b) must be remedied by crippling the energy industry. And we are acutely aware that California courts might well be philosophically inclined to join the lawfare battlefield in ways far different than Texas courts.

Being a conservative panel on a conservative intermediate court in a relatively conservative part of Texas is both blessing and curse: blessing, because we strive always to remember our oath to follow settled legal principles set out by higher courts and not encroach upon the domains of the other governmental branches; curse, because in this situation, at this time in history, we would very much like to follow our impulse instead.

In the end, though, our reading of the law simply does not permit us to agree with Exxon's contention that the Potential Defendants have the purposeful contacts with our state needed to satisfy the minimum-contacts standard that binds us.

Concurring Memorandum Opinion by Chief Justice Sudderth

Judge Learned Hand, a friend and admirer of Justice Oliver Wendell Holmes Jr., once recounted a parting conversation shared between the two:

> I remember once I was with [Justice Holmes]; it was a Saturday when the Court was to confer. It was before we had a motor car, and we jogged along in an old coupé. When we got down to the Capitol, I wanted to provoke a response, so as he walked off, I said to him: "Well, sir, goodbye. Do justice!" He turned quite sharply and he said: "Come here. Come here." I answered: "Oh, I know, I know." He replied: "That is not my job. My job is to play the game according to the rules."

Michael Herz, *"Do Justice!": Variations of a Thirce-Told Tale*, 82 Va. L. Rev. 111, 111 (1996).

Doing one's job and abiding by the rules is not always a comfortable path. As Justice Holmes confessed, "I loathed most of the things in favor of which I decided." *See* David M. Levitan, *The Effect of the Appointment of a Supreme Court Justice*, 28 U. Tol. L. Rev. 37, 49 n.66 (1996).

As intermediate appellate court justices, we are, on occasion, somberly reminded that our job is not to mete out justice, but to apply the law. For me, this is one such occasion.

I urge the Texas Supreme Court to reconsider the minimum-contacts standard that binds us.

All Citations

Not Reported in S.W. Rptr., 2020 WL 3969558

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Tab B

In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-18-00106-CV

THE CITY OF SAN FRANCISCO, DENNIS J. HERRERA IN HIS OFFICIAL CAPACITY AS CITY ATTORNEY FOR THE CITY OF SAN FRANCISCO, AND EDWARD REISKIN IN HIS OFFICIAL CAPACITY AS DIRECTOR OF TRANSPORTATION FOR THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, Appellants

§ On Appeal from the 96th District Court

§ of Tarrant County (096-297222-18)

V.

EXXON MOBIL CORPORATION, Appellee

THE CITY OF OAKLAND, MATTHEW F. PAWA, BARBARA J. PARKER, AND SABRINA B. LANDRETH, Appellants

§ June 18, 2020

V.

EXXON MOBIL CORPORATION, Appellee

COUNTY OF SAN MATEO, COUNTY OF MARIN, CITY OF IMPERIAL BEACH, CITY OF SANTA CRUZ, COUNTY OF SANTA CRUZ, JOHN BEIERS, SERGE DEDINA, JENNIFER LYON, BRIAN WASHINGTON, DANA MCRAE, ANTHONY CONDOTTI, JOHN MALTBIE, ANDY HALL, MATTHEW HYMEL, CARLOS PALACIOS, AND MARTIN BERNAL, Appellants

V.

EXXON MOBIL CORPORATION, Appellee

§ Opinion by Justice Kerr

§ Concurrence by Chief Justice Sudderth

JUDGMENT

This court has considered the record on appeal in this case and holds that there was error in the trial court's judgment. It is ordered that the trial court's "Order on Special Appearances" is reversed, and we render judgment denying Appellee Exxon Mobil Corporation's Rule 202 petition.

It is further ordered that Appellee Exxon Mobil Corporation must pay all costs of this appeal.

SECOND DISTRICT COURT OF APPEALS

By _/s/ Elizabeth Kerr_____
Justice Elizabeth Kerr

Tab C

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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Tab D

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

Tab 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.

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