Prakken
d'Oliveira

(English translation provided for convenience only - the Dutch text is authoritative)

SUMMONS

Today, the _____ two thousand and twenty-five,

at the request of:

the **STICHTING GREENPEACE COUNCIL**, having its registered office in (1058 GV) Amsterdam at Surinameplein 118, which for this case elects domicile at the office address of Mr. E.W. Jurjens, practicing at Prakken d'Oliveira Human Rights Lawyers at Linnaeusstraat 2-A in Amsterdam (1092 CK), who is appointed attorney in this case,

I have summoned:

1. The foreign law corporation **Energy Transfer LP,** incorporated in the State of Delaware and having its office at 8111 Westchester Drive, Dallas, Texas 75225 UNITED STATES OF AMERICA; for the purpose of service, domiciled at its Registered Agent **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States;

   therefore serving my writ on the office of the Public Prosecutor of the District Court of Amsterdam and leaving two copies of this writ as well as a translation into English with:

   working there;

   copy of the same also being sent to the summoned party by Fedex;

   as well as by e-mail to the e-mail addresses Media@energytransfer.com and InvestorRelations@energytransfer.com;

   it is requested to serve the writ in accordance with Articles 3 to 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, by simple delivery or, if this is not possible, by service and notice in

accordance with the forms prescribed by the laws of the United States of America (Delaware) for the service and notification of documents, in either case with delivery of a proof of receipt;

2. The foreign law corporation **Energy Transfer Operating, L.P.**, incorporated in the State of Delaware of the United States and having its office at 8111 Westchester Drive, Suite 600, Dallas, Texas 75225, United States, for the purpose of service domiciled at its "Registered Agent" **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States;

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3. The foreign law corporation **Dakota Access LLC,** located in the State of Delaware of the United States and having its office at 1300 Main Street Houston, Texas 77002-6803, United States, for the purpose of service domiciled at its "Registered Agent" **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States

   therefore serving my writ on the office of the Public Prosecutor of the District Court of Amsterdam and leaving two copies of this writ as well as a translation into English with:

   working there;

   copy of the same also being sent to the summoned party by Fedex;

as well as by e-mail to the e-mail addresses Media@energytransfer.com, InvestorRelations@energytransfer.com and [redacted]

it is requested to serve the writ in accordance with Articles 3 to 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, by simple delivery or, if this is not possible, by service and notice in accordance with the forms prescribed by the laws of the United States of America (Delaware) for the service and notification of documents, in either case with delivery of a proof of receipt;

to appear on **Wednesday, July 2, 2025 at 10:00 a.m.**, not in person but represented by an attorney, at the hearing of the District Court of Amsterdam, at Parnassusweg 280 in (1076 AV) Amsterdam, Netherlands;

WITH NOTICE THAT:

a. if a defendant fails to designate an attorney or fails to pay the court fee hereinafter specified in due time, and the prescribed time limits and formalities have been observed, the court shall grant default against such defendant and award the claim hereinafter described, unless it appears to the court to be unlawful or unfounded;

b. if at least one of the defendants appears in the proceedings and has paid the court fee in a timely manner, a single judgment will be rendered between all parties, which will be considered an adversary judgment;

c. on appearing in the proceedings, a court fee will be charged to each of the defendants, payable within four weeks from the time of appearance;

d. the amount of court fees is listed in the most recent appendix belonging to the Court Fees (Civil Cases) Act (*Wet griffierechten burgerlijke zaken*), which can be found on the website: www.kbvg.nl/griffierechtentabel, among others;

e. an impecunious defendant is charged a court fee for impecunious persons established by or in accordance with the law, if at the time the court fee is charged he has submitted:

1. a copy of the legal aid award, as referred to in Article 29 of the Legal Aid Act (*Wet op de Rechtsbijstand*), or if this is not possible due to circumstances not reasonably attributable to it, a copy of the application, as referred to in Article 24(2) of the Legal Aid Act, or

2. a statement from the board of the Legal Aid Council, referred to in Article 7, third paragraph, subsection e, of the Legal Aid Act, showing that its income does not exceed the incomes referred to in the governmental decree under Article 35(2) of that Act;

f. a joint court fee is levied only once on defendants who appear through the same lawyer and make identical submissions or present identical defenses, based on Article 15 of the Court Fees (Civil Cases) Act;

g. the plaintiff and defendants are required under Article 21 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) to fully and truthfully plead the facts relevant to the court's decision;

h. based on Article 149 of the Code of Civil Procedure, the court must consider as established facts or rights asserted by a party and not challenged or not sufficiently challenged by the other party or parties, subject to the court's power to require evidence, whenever acceptance of the assertions would lead to a legal effect that is not at the discretion of the parties;

in order to, at the aforesaid hearing, hear claims and conclusions being presented in accordance with the following:

TABLE OF CONTENTS OF THE SUMMONS

1 INTRODUCTION

1. In November 2016, the Stichting Greenpeace Council (also known as Greenpeace International, hereinafter "**GPI**"), along with more than 500 other organizations, signed an open letter by the reputed Dutch NGO, BankTrack. The letter called on financiers of a highly controversial oil pipeline, which at the time was under construction in North Dakota, United States, to put on hold their financial support for this project until the serious concerns of the Standing Rock Sioux Tribe about the project were resolved to their full satisfaction.

2. Supporting this call was a legitimate and perfectly ordinary act of public participation, in the context of a debate of public interest. Everyone is entitled to have an opinion on such issues and to express them publicly. That is the essence of healthy and pluralistic public debate, which is an essential pillar of a well-functioning and free democratic society.

3. The co-signing of BankTrack's open letter is the sole evidence on the basis of which the defendants (collectively, "**Energy Transfer**") have twice dragged GPI before U.S. courts.[1] These successive, extremely costly proceedings have now dragged on for more than seven

[1] Along with several other defendants, who are equally blameless.

years. Defendants are demanding payment of at least $300 million in damages. In addition they demand legal fees, which are also expected to reach tens of millions of dollars.

4. For people unfamiliar with these cases, this may sound like the synopsis of a bad and overly dramatic Netflix series. The reaction GPI often hears when it speaks out about these cases is: surely this can't be true, isn't there more to it? Surely a company would not spend years and millions of dollars pursuing GPI for allegedly "participating in a criminal organization," having an "extremist agenda," conducting a "campaign of misinformation," "defrauding donors," and "violent attacks against Energy Transfer employees"[2] - just because of co-signing one letter? Isn't freedom of expression considered almost sacred in the United States?

5. GPI naturally understands this initial reaction: it is also a bizarre situation and the claims are completely unfounded. But the case does not stand alone. Not even nearly.

6. Indeed, Energy Transfer is using a tried and true recipe here. The use of legal power play by powerful and wealthy parties against public watchdogs, such as the media and NGOs, to silence them, exhaust them financially, and thus create a "chilling effect" has been commonplace for many years, and it is a problem that GPI has also been confronted with on numerous occasions. In the last century, American academics who studied this phenomenon coined the term "Strategic Lawsuits Against Public Participation" to describe it.[3] The apt acronym is: "**SLAPP**."

7. In a 1989 paper, Prof. George W. Pring, who coined the term with Prof. Penelope Canan, concluded that SLAPPs in the United States were "frighteningly common" and that "there is no dearth of victims: in the last two decades, thousands of citizens have been sued into silence." The smallest act of public participation can give rise to costly and lengthy litigation: Prof. Pring cites examples including "circulating a petition," "support[ing] a public interest, law-reform lawsuit" and "speak[ing] up at a school board meeting about a bad teacher or unsafe brakes on school buses." He noted that the purpose of a SLAPP is different from a regular lawsuit:

> "The apparent goal of SLAPPs is to stop citizens from exercising their political rights or to punish them for having done so. SLAPPs send a clear message: that there is a "price" for speaking out politically. The price is a multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings. This is a message with import for every American, activist or not. As these suits become an increasing (and increasingly known) risk for the ordinary citizen who decides to speak out on a public issue, SLAPPs raise substantial concern for the future of citizen involvement or public participation in government, a fundamental precept of representative democracy in America."

8. Prof. Pring puts it aptly. "There is a price for speaking out." Kelcy Warren, co-founder and major shareholder of Energy Transfer, has said in the media about the lawsuits against GPI:

> "Everybody's afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they're going to pay for it [...] They're going to pay for this, they're going to pay for this."

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[2] This is only a limited anthology of the serious allegations Energy Transfer has made against GPI in lawsuits and public utterances in recent years.

[3] Among others by Prof. George W. Pring, see: George W. Pring, SLAPPs: Strategic Lawsuits against Public Participation, 7 Pace Envtl. L. Rev. 3 (1989). DOI: https://doi.org/10.58948/0738-6206.1535. The citations in the rest of this introduction are also taken from this paper.

9. The price GPI has been paying for co-signing a letter in 2016 is being drawn into unsubstantiated, protracted and extremely costly litigation by Energy Transfer for over seven years and counting. In large parts of the United States and in Europe, there is a broad consensus among lawmakers that no party should pay such a price for legitimate and ordinary participation in the public debate. They correctly signal - as does Prof. Pring in the above quote - that SLAPPs pose a serious threat to a democracy.

10. Therefore, many states in the U.S. have had legal protection in place against SLAPPs for years (though not in the state where GPI was sued by Energy Transfer). In Europe, too, laws and regulations have been passed in recent years to protect the media, NGOs and other 'public watchdogs' from SLAPPs. An element of these laws and regulations is that it should be possible in any EU Member State to ask the national courts for protection against SLAPPs brought outside the EU against a public watchdog based in that Member State.[4] The Dutch government confirmed late last year that these forms of protection against SLAPPs are already possible under applicable Dutch law.

11. In the present case, GPI, to its knowledge for the first time in the EU, is asking the court in its country of domicile to protect it from these SLAPPs in a third country (i.e., the U.S.). In this case, GPI seeks, *inter alia*, a declaratory judgment, compensation for costs and damages suffered as a result of the SLAPPs brought against it, and publication of the judgment to be rendered in this case (see Explanation of the demands, para. 8) on the factual (para. 2-3) and legal (para. 4-7) bases to be discussed below.

12. As this summons will show, the importance of this case to GPI is enormous. In addition, this case will also send an important signal. EU-based media, NGOs and other public watchdogs are deeply affected by SLAPPs inside and outside the EU (another example is the UK). It is the clear intention of European and Dutch legislators to offer far-reaching protection to targets of SLAPPs. For the realization of this practical and effective protection, national judges play a crucial role. For this reason, too, GPI requests your Court to grant the claims brought in this case.

13. The exhibits mentioned in this summons have been served together with the summons and will be brought into the proceedings together with the summons on the first court date.

1.1 Plaintiff

14. The plaintiff in this case, Stichting Greenpeace Council, also operating under the name Greenpeace International ("**GPI**") is an Amsterdam-based foundation with Public Benefit Organization (*ANBI*) status. GPI's statutory objective is promoting the conservation of nature (Article 3 of GPI's Articles of Association, **Exhibit 1**). An extract of GPI's entry in the Business Register is submitted as **Exhibit 2**.

15. GPI coordinates the Greenpeace network, which in addition to GPI consists of 25 independent national and regional organizations ("**NROs**"). These NROs are independent legal entities and have their own boards, which are independent of GPI. The network uses peaceful, creative confrontation to expose global environmental problems, and develop solutions for a green and peaceful future. GPI facilitates the development of a long-term strategic campaign program for the Greenpeace network (called the "Framework"). Based on this campaign program, the NROs independently develop and implement projects in their territories. In addition, GPI is the holder of Greenpeace's registered trademarks, and licenses

[4] Article 17(1) Directive (EU) 2024/1069 of the European Parliament and of the Council of April 11, 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')

the NROs to use (among other things) the GREENPEACE mark.[5] Greenpeace's core values include nonviolence and independence. Greenpeace organizations do not accept donations from governments and businesses.

1.2 Defendants

16. Defendant 1, Energy Transfer, L.P. is a corporation under foreign law, namely, the law of the State of Delaware (United States). Defendant 2, Energy Transfer Operating, L.P. is also a corporation under foreign law, namely the law of the State of Delaware. Previously, they operated under the trade names Energy Transfer Equity, L.P. (Defendant 1) and Energy Transfer Partners, L.P. (Defendant 2), respectively.[6] Defendant 3, Dakota Access, LLC, is also a corporation under foreign law, namely the law of the State of Delaware. Although all of the Defendants (also) have offices in Dallas, Texas, they are incorporated in the State of Delaware, as follows from respective extracts of their registrations in the official records of the Division of Corporations of the State of Delaware (**Exhibit 3**). Of particular note here is that, as follows from the register of this Division which can be accessed online, Defendants all use what is known as a "Registered Agent" (**Exhibit 4**), namely the Corporation Service Company. Upon clicking on the term "Registered Agent" in this online register, the following explanation of this term appears (**Exhibit 5**):

> "Every corporation shall have and maintain in this State a registered agent in each case, having a business office which generally is open during normal business hours to accept service of process and otherwise perform the functions of a registered agent. Such agent may be an individual or business entity authorized to transact business in the State of Delaware. The data presented in this field denotes the agent name, address and phone number of such agent for the entity you are viewing."

17. The Registered Agent is thus, GPI understands, an agent authorized on behalf of another party to accept documents for service on that party. Therefore, GPI has served this summons and the attached exhibits (also) on this Registered Agent, namely the Corporation Service Company.

18. Defendants all belong to the same corporate group. Defendant 1 is the parent company of Defendant 2. Defendant 2 in turn is a majority shareholder in Defendant 3. Defendants will hereinafter be collectively referred to as "**Energy Transfer**."

19. Energy Transfer's core business is the transportation and storage (temporary or otherwise) of fuels such as gas and oil.[7] Energy Transfer owns (or claims) the largest network of pipelines to transport these fuels in the United States.

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[5] See also: https://www.greenpeace.org/international/about/structure/.

[6] In this regard, see Energy Transfer press release dated Oct. 19, 2018, "Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. Complete Merger, Simplify Structure," at: https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-equity-lp-and-energy-transfer-partners-lp: "Energy Transfer Equity, L.P. ("ETE") and Energy Transfer Partners, L.P. ("ETP") today announced the completion of their previously announced merger of ETE with ETP. (...) As part of the merger, ETE changed its name to "Energy Transfer LP" and its common units will begin trading on the New York Stock Exchange ("NYSE") under the "ET" ticker symbol at the opening of the market today. In addition, ETP changed its name to "Energy Transfer Operating, L.P."

[7] See: https://www.energytransfer.com/about/

2 FACTS: BACKGROUND

2.1 The controversy surrounding the Dakota Access Pipeline (DAPL)

20. In 2014, Energy Transfer began preparations for the construction of a nearly 2,000-kilometer underground oil pipeline running from North Dakota to Illinois. This highly controversial pipeline has come to be known as the "Dakota Access Pipeline" (hereafter "**DAPL**").

21. In the original plans, DAPL was to pass under the Missouri River upstream of Bismarck (North Dakota's capital city). However, when relevant authorities became aware of the planned route, they expressed concerns that an oil spill at that location would jeopardize the water supply for Bismarck.[8] The proposed route was then shifted south, downstream of Bismarck. This can be clearly seen on the map by Vox Media submitted as **Exhibit 6**.

22. However, the alternative route for DAPL also proved highly controversial. Energy Transfer rerouted the pipeline through land which is “unceded Indian territory” according to 19th century treaties. The proposal called for a crossing of the Missouri River one half mile upstream from the Standing Rock Sioux Tribe's current reservation, below Lake Oahe, a reservoir in the river.

23. For an understanding of why the proposed route for DAPL led to so much concern among Indigenous Peoples in the area, it is helpful to provide an outline of their history with the U.S. government. GPI claims no expertise on the subject; the following is an attempt to succinctly summarize the facts as they emerge from a court filing by the Standing Rock Sioux Tribe.

24. The Standing Rock Sioux Tribe is part of a larger Native Nation, the Oceti Sakowin Oyate (Lakota for "Seven Council Fires"), or, in English, the Great Sioux Nation. The Tribe's ancestors entered into two major treaties with the United States in the 19th century. In the 1851 Fort Laramie Treaty, the United States recognized a large area south of the Heart River as Sioux Country. Beginning in 1864, however, gold prospectors passing through caused increasing disturbance in important buffalo hunting grounds. The resulting conflict was settled in 1868 with a new Fort Laramie Treaty. This treaty established the Great Sioux Reservation. Areas that were designated as Sioux territory in the 1851 treaty, but now fell outside the Great Sioux Reservation, were designated as "unceded Indian territory" in Article XVI of the treaty.[9] See in this connection the map submitted as Exhibit 6 where a relevant part of this area is marked.

25. The peace was not to last long. In 1874, American soldiers found gold during an expedition to the sacred Black Hills, within the Great Sioux Reservation. The Sioux refused to sell the hills to the federal government, after which war broke out again. The Cheyenne and Sioux (led, among others, by the famed Sitting Bull) inflicted a crushing defeat on government troops at the Battle of the Little Bighorn. Eventually, the United States succeeded in imposing its will. The U.S. Congress passed an act in 1877 that removed the Black Hills from the Great Sioux Reservation. Then, in 1889, Congress established new boundaries for a number of smaller reservations, including the Standing Rock Sioux Reservation.[10] The Great Sioux Nation never recognized these unilateral, treaty-breaking acts. The U.S. Supreme Court ruled in 1980 that "A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our nation's history" and awarded compensation for what it designated as a taking of the

[8] New Yorker, Sept. 6, 2016, "A Pipeline Fight and America's Dark Past," https://www.newyorker.com/news/daily-comment/a-pipeline-fight-and-americas-dark-past.

[9] Standing Rock Sioux Tribe v. U.S. Army Corps Engineers and Others, Complaint of Oct. 14, 2024, paras. 23-25.

[10] Standing Rock Sioux Tribe v. U.S. Army Corps Engineers and Others, Complaint of Oct. 14, 2024, para. 26.

Black Hills.[11] The Sioux never collected this compensation because they do not recognize the legal validity of the taking.

26. Later, for the construction of Lake Oahe in the 1960s, large portions of the Standing Rock Sioux Reservation and the Cheyenne River Reservation were flooded by the authorities and the inhabitants of the area were forced to leave. For more background on this, see **Exhibit 7**, a 2016 federal complaint by the Standing Rock Sioux Tribe against the US Army Corps of Engineers.

27. Given this history, it is obvious that construction of DAPL on land that the Sioux regard as "unceded Indian territory" is contentious. Moreover, the Standing Rock and Cheyenne River Sioux Tribes rely on the waters of Lake Oahe in many ways, including for drinking water, agricultural purposes, industry, and sacred religious and medicinal practices. Both Tribes consider the waters to be sacred and central to their practice of religion. Thus, as in Bismarck, significant concerns arose about the impact of the pipeline on the Tribe's water ahead of the construction of DAPL. There were also concerns that construction of DAPL could result in damage to ancient burial grounds or other sites of cultural or historical importance to the Tribe.

28. In March 2016, Energy Transfer already began construction of DAPL, even though it did not yet have the necessary permits and easements to do so. In April 2016, tribal members set up prayer encampments near Cannonball, North Dakota, as a focal point for opposition against DAPL. Soon the opposition found resonance and the demonstrations steadily grew after April 2016.

29. The governing authority, the US Army Corps of Engineers (USACE), granted Energy Transfer a permit to construct DAPL under Lake Oahe on July 25, 2016, despite Tribal concerns. This was perceived by the Water Protectors and allies as a stark contrast to the situation around Bismarck, where identical concerns about the water supply had led the authorities to reroute DAPL, as discussed. On July 27, 2016, the Standing Rock Sioux Tribe filed a lawsuit against the USACE for issuing the permit (see Exhibit 7, the "federal complaint"). Significantly, in addition to a permit, an easement was required to drill under the river: this had not yet been granted by the USACE at that time.

30. Meanwhile, the prayer camps continued and grew larger as construction of DAPL progressed. In mid-August 2016, the Standing Rock Sioux Tribe's Tribal Council put out a public call for support to the Indigenous communities of the United States. More than 300 Indigenous Tribes and thousands of non-Indigenous supporters joined the resistance. Around this time, Dakota Access, LLC sued the Tribe's chairman Dave Archambault, another member of the Tribal council, and a number of individuals, alleging trespass and interference with its construction activities. The federal court promptly dismissed the case, stating, "Dakota Access' assertions that the Defendants proximately caused it losses of over $75,000 are the kind of 'naked assertion[s] devoid of further factual enhancement,' which are insufficient to form the basis of a complaint."[12]

31. The demonstrations were largely peaceful, but during the period August-November 2016, there were several confrontations between the protesters on the one hand, and law

[11] United States v. Sioux Nation of Indians, 448 U.S. 371 (1980).

[12] Order dated May 18, 2017, following defendants' motions to dismiss, available at: https://waterprotectorlegal-org.nyc3.cdn.digitaloceanspaces.com/production/app/uploads/2017/05/2017.05.18-Order.pdf.

enforcement and the private security company TigerSwan hired by Energy Transfer to guard the work around the DAPL project, on the other.[13]

32. As part of the its lawsuit against the Army Corps of Engineers, on Sept. 2, 2016, the Standing Rock Sioux Tribe filed a sworn declaration in court by Tim Mentz Sr., a member of the Tribe and operator of a business in North Dakota that identifies for many infrastructure projects the location of historical cultural artifacts of the Indigenous tribes in the area. The declaration included detailed information about burial grounds and resources of cultural significance located in and along DAPL's path (including GPS data). Part of the questions raised by the litigation brought by the Standing Rock Sioux Tribe was whether Energy Transfer had the right to construct DAPL through these sites. So there was an ongoing debate about that in the proceedings between the parties, with the Tribe's perspective being that the proposed route of DAPL crossed places of historical and cultural importance.

33. Within 24 hours of the filing of this declaration - on a Saturday - Energy Transfer had bulldozers grade the area in which these sites were located. Hundreds of Indigenous protesters tried to prevent this but were met with attack dogs and pepper spray.[14] This aggressive conduct of the private security company hired by Energy Transfer attracted much controversy and (inter)national media attention, which also increased the size of the demonstrations (**Exhibit 8** - article in The Guardian from November 2016 about the demonstrations).

34. In early December 2016, the USACE announced it was refusing to grant the necessary easement to Energy Transfer. Therefore, construction of DAPL could not proceed. However, after Donald Trump took office in 2017, he issued an Executive Order instructing the USACE to after all provide the required easement. The USACE did just that. The construction of DAPL was then completed, and the pipeline became operational in June 2017. Incidentally, Trump signed this Executive Order just four days after his inauguration. Kelcy Warren, co-founder and major shareholder of Energy Transfer, donated USD 250,000 for the inauguration, having already donated USD 100,000 to Trump's joint fundraising operation, Trump Victory.[15]

35. However, litigation over DAPL continues to this day, and there is a possibility that the outcome will be that DAPL will after all need to be rerouted. In 2020, a federal judge ruled in the case brought by the Standing Rock Sioux Tribe that the Army Corps of Engineers should have prepared an Environmental Impact Statement (EIS); vacated the easement granted for construction under the Missouri River, and ordered the pipeline shut down. This decision was affirmed on appeal, except that the Court of Appeals reversed the order for the pipeline to cease operations. The EIS proceeding is still ongoing. Meanwhile, the Tribe has again gone to court and is seeking the shutdown of the pipeline. In its suit, the Tribe cites, among other things, the lack of the required easement, the intentional destruction of burial sites, and the fact that Energy Transfer is currently debarred from federal contracts due to "a lack of

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[13] In doing so, the TigerSwan company employed military tactics and attempted to infiltrate the protesters, as it later turned out. In this context, see ACLU June 2, 2017, "Why Did a Private Security Contractor Treat Standing Rock Protesters Like 'Jihadists'?", https://www.aclu.org/news/free-speech/why-did-private-security-contractor-treat-standing-rock.

[14] Indian Country / Today MediaNetwork.com September 4, 2016, "Manning: 'And Then the Dogs Came': Dakota Access Gets Violent, Destroys Graves, Sacred Sites," archived via the Internet Archive WayBack Machine: https://web.archive.org/web/20161213104458/http://indiancountrytodaymedianetwork.com/2016/09/04/manning-and-then-dogs-came-dakota-access-gets-violent-destroys-graves-sacred-sites-165677.

[15] E&E News May 9, 2024, 'Billionaire Kelcy Warren invests in pipelines - and Trump', https://www.eenews.net/articles/billionaire-kelcy-warren-invests-in-pipelines-and-trump/.

business honesty or integrity,"[16] following criminal convictions after serious environmental incidents during the construction of another pipeline.

3 FACTS: ROLE OF GPI AND LAWSUITS ENERGY TRANSFER V. GPI

3.1 The signing of the BankTrack open letter by GPI and the role of Greenpeace, Inc.

36. The demonstrations against DAPL attracted worldwide attention and were supported in various ways by a variety of organizations. On November 30, 2016, the Dutch NGO BankTrack supported the opposition to the construction by publishing an open letter addressed to the financiers of DAPL, a consortium of financial institutions led by Citibank. This letter is presented as **Exhibit 9.**

37. The letter presents the situation surrounding DAPL outlined above, and on that basis demands that the financial institutions suspend loan disbursements until construction work on the pipeline has been put on hold and all outstanding issues have been resolved to the full satisfaction of the Standing Rock Sioux Tribe. The letter was co-signed by more than 500 organizations from more than 50 countries. A random sample: they include organizations such as the Center for International Environmental Law (US), Friends of the Earth International (worldwide), the Norwegian Saami Association (Norway), Re:common (Italy), Urgenda (Netherlands) and several organizations from the Greenpeace network, including GPI (see Exhibit 9, p. 9)

38. Signing BankTrack's open letter was the entirety of GPI's involvement with the opposition to DAPL. One of the two U.S. Greenpeace entities, Greenpeace, Inc. ("**GP Inc.**"), provided limited support as requested by the Indigenous Tribes.

39. Specifically, this support consisted of a US$15,892 donation to enable five Indigenous trainers from the organization Indigenous Peoples Power Project ("**IP3**") to spend two weeks training protesters in the history and principles of Non-Violent Direct Action. One of these trainers was also an employee of GP Inc. The IP3 trainings followed principles developed by IP3 and the Standing Rock Sioux Tribal Council. Participants were required to acknowledge "Direct Action Principles" which were displayed on a large sign. Peacefulness, prayer and nonviolence were chief among these, as well as rejection of property damage as something that "does not get us closer to our goal."

40. In addition, GP Inc. provided supplies to the encampments, partly gathered through a donation drive. These mainly consisted of camping equipment, food, clothing, paint, a vehicle with solar panels for electricity and Internet access, a first aid kit, and a number of passive restraint devices known as “lockboxes” - plastic tubes with metal pins, though there is no evidence they were used or caused any harm. A total of six GP Inc. staff members travelled to the site (out of an estimated 100,000 attendees), helping with tasks such as setting up tents, winterizing the camp . The first arrived on Sept. 5, 2016, five months after the protests began, and there were never more than three GP Inc. staff members on site concurrently. The last one left in late December. GPI was not involved in these activities at all and was not even aware of them until late October 2016. GPI also did not provide financial support for the demonstrations.

[16] See "Exclusion: Energy Transfer L.P., U.S. General Services Administration," https://sam.gov/exclusions-new?pirKey=478731&pirValue=1667217418431194.

3.2 The Federal Lawsuit: 2017-2019

41. On August 22, 2017, Energy Transfer filed a suit in the Federal District Court in North Dakota against BankTrack, twenty John and Jane Does, EarthFirst!, Greenpeace Fund, Inc., GPI and GP Inc. (the "Federal Lawsuit").[17] GP Inc. is the independent U.S. NRO within the Greenpeace network, which, as described above, played a limited role in the demonstrations against DAPL. Greenpeace Fund, Inc. is a separate non-profit entity that, consistently with its mission, supports certain activities of GP Inc., in particular by providing funds. Greenpeace Fund, Inc. - like GPI - had no involvement at all in the protests.

42. The Federal Lawsuit was based on the Racketeer Influenced and Corrupt Organizations Act, or RICO Act, and some North Dakota state laws. The RICO Act is a federal law that provides a basis for civil suits when a party is the target of acts committed as part of a criminal organization.

43. In a judgment dated July 25, 2018, the Federal Court dismissed the case against BankTrack after an initial review because the complaint failed to state a cognizable claim, nor grounds for the exercise of personal jurisdiction. A day later, the Court ordered Energy Transfer to clarify the grounds of its case against the defendant Greenpeace entities by filing an Amended Complaint. With respect to EarthFirst!, among other things, service requirements were found not to have been met, and the Court also dismissed the case against that party (Order of August 22, 2018).

44. Energy Transfer filed its Amended Complaint on June 8, 2018, a document which is submitted as **Exhibit 10**. It is a 77-page filing in which Energy Transfer expounds the following conspiracy theory (Exhibit 10, p. 10):

> "Since no later than July 2016, Energy Transfer has been the target of a malicious and hostile campaign arising from its development, construction, and operation of DAPL (...) The campaign against Energy Transfer was conducted by an illegal Enterprise comprised of various legally distinct but associated-in-fact environmental organizations, individuals, and others who worked in concert with one another for the purpose of carrying out the pattern of racketeering activity directed at stopping DAPL and funding themselves and other enterprise members executing the predicate acts."

45. GPI, along with the other defendants, was alleged to be part of this "illegal Enterprise" and, as part of this alleged "Enterprise," was accused in the filing of, among other things, having a "history of engaging in property destruction and criminal sabotage in pursuit of its manufactured causes," spreading "false, misleading and manufactured claims about Energy Transfer and DAPL (...) for the purpose of fraudulently inducing donations to fund these activities and harm Energy Transfer", "manufactur[ing] and disseminat[ing] six categories of misinformation which were intentionally and expressly marketed to the public as 'facts', based on 'research' and 'science' (...)", disseminating 'misinformation' with the aim "to fraudulently mislead and incite members of the public to criminal trespass, violence and property destruction", using its financial resources "to directly and indirectly support these criminal activities", recruiting and financing "violent elements from out-of-state to descend on North Dakota" and publishing "knowingly and intentionally" "false and injurious statements" about Energy Transfer, which were allegedly published with "actual malice" (see Exhibit 10, p. 14-15 and from p. 69).

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[17] United States District Court, District of North Dakota, Case 1:17-cv-00173-BRW-CRH (*Energy Transfer v. BankTrack et al*).

46. These allegations were based on nothing and were pure fiction. As explained above, at the time the Federal Lawsuit was filed against it, GPI had done nothing more than co-signing, along with more than 500 other organizations, an open letter by BankTrack. There was and is no legitimate reason for Energy Transfer to sue GPI (or for that matter the other Greenpeace organizations).

47. Energy Transfer claimed, in the Amended Complaint, to have suffered no less than USD 300 million in damages (Exhibit 10, p. 62) as a result of GPI's alleged ´participation in a criminal enterprise´ (for which there is and was thus no basis whatsoever). Moreover, Energy Transfer asserted it was entitled to treble damages (Exhibit 10, p. 62), so the RICO damages claim totaled at least USD 900 million (Exhibit 10, pp. 62 and 64). Apparently separate from this (this is not abundantly clear from the claims), Energy Transfer claimed also have suffered USD 300 million in damages as a result of alleged 'defamation' by GPI (Exhibit 10, p. 70). In addition to these amounts, Energy Transfer also claimed that its costs, including its attorney fees, were eligible for reimbursement. Attorney's fees in the United States can be sky-high compared to attorney's fees in the Netherlands, as is common knowledge.

48. Given the bizarre and baseless nature of the Federal Lawsuit, GPI, GP Inc. and Greenpeace Fund filed a Motion to Dismiss for Failure to State a Claim, requesting that the case be thrown out without further substantive hearing. By order dated February 14, 2019, the Federal Court granted this request, finding that the strict requirements for early dismissal of the case had been met. This February 14, 2019 Order is submitted as **Exhibit 11**.

49. In the Order, the judge gave short shrift to Energy Transfer's claims. At pp. 7-12, the judge briefly summarizes the complaints, "stripping away the hyperbole," and succinctly finds with respect to all of the RICO Act-based complaints that they are manifestly without merit. With the claim based on federal law failing, the federal court decided not to retain jurisdiction over the additional claims under North Dakota law. The Federal Lawsuit against GPI et al. thus came to an end.

50. Unfortunately, however, this was not the end of Energy Transfer's legal campaign against GPI.

3.3 The State Lawsuit: 2019-present

51. On Feb. 21, 2019, a week after the Federal Lawsuit was dismissed, Energy Transfer commenced a second lawsuit against GPI and others in the Morton County District Court, and thus in state court. This case will hereafter be referred to as the "**State Lawsuit**."[18] The Complaint in this case dated February 21, 2019 is submitted as **Exhibit 12**. GPI is the first named defendant therein: the other defendants are GP Inc., Greenpeace Fund, Inc. and four others. BankTrack and EnergyFirst! are not defendants in the State Lawsuit.

52. Over the years, Energy Transfer has amended and reduced its claims. For example, it has withdrawn its case against one defendant, an individual employee of GP Inc., and has significantly shortened the list of allegedly defamatory statements made by the defendants in the State Lawsuit, from 82 to 9. However, Energy Transfer wrongly has not withdrawn its case against GPI. Energy Transfer's Second Amended Complaint, dated March 6, 2024, shows the current scope of the State Lawsuit. This document is submitted as **Exhibit 13**.

[18] GPI notes that in the Federal Lawsuit, Dakota Access LLC was not a plaintiff, but Energy Transfer Partners, L.P. (the legal predecessor of Energy Transfer Operating, L.P.) as a majority shareholder of Dakota Access was. This is explained by the plaintiffs in the Federal Lawsuit in their First Amended Complaint, see Exhibit 10, par. 25

53. Energy Transfer (once again) makes very serious allegations in the Second Amended Complaint against the defendants, including GPI.[19] A sample of the allegations (page numbers refer to Exhibit 13):

    a. GPI allegedly engaged in an "unlawful and violent scheme to cause financial harm to Energy Transfer and Dakota Access, to cause physical harm to their employees and infrastructure, and to disrupt and prevent the companies' construction of the [DAPL]" (p. 1);

    b. GPI allegedly committed "violent attacks against Plaintiff's employees and property" and was guilty of "soliciting money for and providing funding to support these illegal attacks, inciting protests to disrupt construction and a vast, malicious publicity campaign against Energy Transfer and Dakota Access" (p. 1-2);

    c. GPI allegedly has an "extremist agenda," which it allegedly carries out "through means far outside the bounds of democratic political action, protest and peaceful, legally protected expression of dissent," and even through "militant direct action" including "trespass," "unlawful invasion," "violent and destructive attacks," "arson" and "intimidation, harassment and assault of Plaintiffs' employees" (p. 2);

    d. GPI is said to be the evil genius behind "large-scale, intentional dissemination of misinformation and outright falsehoods regarding both Energy Transfer and Dakota Access (...)" and "a defamatory campaign to interfere with and, indeed, destroy Energy Transfer and Dakota Access's relationships with investors, financiers, and other constituents." (p. 3);

    e. GPI's conduct, according to Energy Transfer, does not qualify as a protected contribution to public debate, but is allegedly "designed to inflict damage, cause delay, defame Energy Transfer and Dakota Access, and disrupt their operations as much as possible" (p. 5), and furthermore aims "[to raise funds] to further their anti-DAPL agenda" (p. 11);

    f. GPI allegedly engaged in (I) trespass to land and chattel; (II) aiding and abetting trespass to land and chattel; (III) conversion; (IV) aiding and abetting conversion; (V) nuisance; (VI) aiding and abetting nuisance; (VII) defamation; (VIII) tortious interference with business relations; and (IX) civil conspiracy;

    g. Energy Transfer still takes the position that a legal duty exists for GPI and the other Greenpeace defendants to pay it at least $300 million in damages. Energy Transfer arrives at this astronomical amount by advancing bizarre categories of damages, such as nearly $100 million because USACE granted the required easement later than expected. Energy Transfer has additionally indicated that it will seek a yet to be determined amount of exemplary damages. Such damages can be awarded if there is "clear and convincing evidence of oppression, fraud, or actual malice," against the defendant, and can be up to twice the amount claimed in damages - i.e. USD 600 million. In addition, Energy Transfer is demanding reimbursement of its full legal costs, which are expected to run to tens of millions of dollars, and interest on all these items.

54. These allegations are completely unfounded. GPI emphasizes again that it <u>did nothing more than co-sign - along with more than 500 other organizations - a letter by BankTrack</u>.

[19] The same allegations are made (in large part) against the other defendant Greenpeace entities, and in part against BankTrack. BankTrack is not a party to the State Lawsuit. This further underscores the incongruity of Energy Transfer's case against GPI.

Moreover, Energy Transfer's accusations are also completely unfounded with respect to the other defendant Greenpeace entities.

55. As explained above, Energy Transfer, in its Second Amended Complaint, makes sweeping and exaggerated assertions about GPI and the other defendants. However, it then completely fails to elaborate more specifically on exactly what the respective roles of GPI, the other Greenpeace entities and unrelated third parties allegedly were in any wrongful conduct, and to demonstrate a causal connection to the alleged damages. Only on one point does Energy Transfer elaborate on its contentions, and that is on the issue of GPI's allegedly defamatory statements. Energy Transfer has significantly reduced the list of these allegedly defamatory statements over the course of the State Lawsuit as explained above, and it now includes two statements that Energy Transfer links to GPI. These are listed in the "Second Amended Appendix A - Greenpeace False Statements" (**Exhibit 14**).

56. Concretely, it concerns two sentences from BankTrack's open letter of Nov. 30, 2016, which incidentally repeat findings from a report by an expert member of the United Nations Permanent Forum on Indigenous Issues. In Energy Transfer's presentation of these statements, it is immediately noticeable that the 'Author' column states "Joint letter, signed by Banktrack; Greenpeace France; Greenpeace International; Greenpeace Netherlands; Greenpeace USA" (Exhibit 14). This open letter from BankTrack, co-signed by hundreds of other organizations, qualifies as a legitimate contribution to a debate of public interest and is without question a legitimate exercise of the right to freedom of expression of BankTrack and the co-signatories as 'public watchdogs' (see below). Moreover, it is striking that BankTrack, the lead author of the open letter, and the more than 500 co-signatories were not (also) sued by Energy Transfer in the State Lawsuit. There is nothing to suggest that GPI - which is mentioned somewhere in the middle of the pages-long alphabetically arranged list of co-signatories – ought to bear any special responsibility as a result of co-signing the open letter, which, as stated, is in any event entirely legitimate. This clearly shows Energy Transfer's intent to specifically harm GPI and the Greenpeace network by filing the State Lawsuit against it alone.

57. After years of discovery, Energy Transfer has not yet been able to provide the beginnings of evidence of GPI's involvement in the other serious and mostly criminal acts of which Energy Transfer accuses GPI, as explained above.[20] However, for seven years now, GPI has been forced to defend itself against manifestly unfounded, unnecessarily complex and protracted litigation by Energy Transfer, which has caused and continues to cause it great harm.

58. Moreover, with its choice to bring the State Lawsuit before this particular forum, Energy Transfer took advantage of a number of problems that have allowed it to drag out the unsubstantiated State Lawsuit for many years now.

59. First, unlike more than 30 other states in the United States, the state of North Dakota does not have anti-SLAPP legislation. This prevents GPI from invoking a powerful form of protection that would have been afforded to it in about 60% of all other jurisdictions in the U.S. North Dakota has therefore been described as “favorable terrain for these types of defamation lawsuits.”[21]

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[20] As an aside, Energy Transfer's accusations against the other defendants are also manifestly unfounded. However, that is not what the present case is about.

[21] Texas Observer March 25, 2022, "Kelcy Warren's Defamation Suit Has Beto O'Rourke Spoiling For a Fight," https://www.texasobserver.org/kelcy-warrens-defamation-suit-has-beto-orourke-spoiling-for-a-fight/. By the way, this is an article that deals with a SLAPP lawsuit filed by Kelcy Warren against well-known (in America) politician Beto O'Rourke. The Texas judge rejected Warren's claims, ruling that O'Rourke's statements qualified

60. A second major problem is the North Dakota judiciary's difficulty in finding a judge to preside over the case. All ten judges in the district where the State Lawsuit was filed (the South Central Judicial District) recused themselves from hearing the case, for reasons unknowable to GPI. The North Dakota Supreme Court then reassigned the case to a judge from another North Dakota district, but this judge retired in April 2022. When reassigning the case, once again all judges in the South Central Judicial District recused themselves from hearing the case. The North Dakota Supreme Court then appointed Judge James Gion from another district (the South Western Judicial District) to hear the case. He took up the case beginning in August 2022.

61. Third, Energy Transfer filed the State Lawsuit in Morton County District Court. Morton County is a small area with only about 30,000 residents. The District Court there is a small court with limited resources to handle the case. The workload for judges in North Dakota counties is extraordinarily high. As an illustration, North Dakota's Chief Justice (Chief Justice) recently explained in his State of the Judiciary Address that "[o]ur district courts handle approximately 160,000 new filings and 20,000 reopened cases each year-180,000 cases. That is an incredible caseload for 55 district court judges and 53 clerks of court offices.[22]

62. This touches on a fourth issue. The case will be heard by a jury that will consist only of Morton County residents. The construction of DAPL and the protests against it had a great impact on Morton County residents, and feelings among them about the events still run high. GPI therefore requested that the Court move the trial to a county where potential jurors were not personally affected by the protests against DAPL and the harsh response to them. However, the Court denied this request until further notice.

63. On top of these structural problems, Energy Transfer has managed to greatly draw out the case before trial by raising numerous obviously unfounded counts, to which GPI was forced to respond (see also below). The time-consuming and costly process of discovery took years, with Energy Transfer digging its heels in time and again. It even litigated all the way to the North Dakota Supreme Court in a failed attempt to get out from under disclosure of documents about its pipeline safety record, and to avoid having Kelcy Warren provide a deposition. There are more than 3,000 entries on the Court's docket, and the case has been described as the largest civil case to ever take place in North Dakota. There have been 110 depositions, and millions of pages of information exchanged in the "discovery" phase. GPI's costs have skyrocketed, and continue to increase every day.

64. After the State Lawsuit was filed, the defendant Greenpeace entities again filed a motion to dismiss to end the case early. Judge Marquart (a different judge than the judge currently assigned to the case) denied this request in a short Order. The decision reflects a general, weighty preference in the U.S. to construe cases in favor of the plaintiff when reviewing a motion to dismiss.

65. Following the latest version of Energy Transfer's claims in the Second Amended Complaint, GPI filed a so-called Motion for Summary Judgment on All Counts on April 8, 2024, after discovery was completed. Such a motion, briefly put, is a request for the court to decide the case without trial because the relevant facts are sufficiently undisputed between the parties, and application of the law to them can only lead to one result. This motion is submitted as

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as "non-actionable opinions." See: Court of Appeals Texas, Austin June 9, 2023, No. 03-22-00416-CV (Warren v. Rourke), affirmed by the Supreme Court of Texas.

[22] This speech was delivered by North Dakota Chief Justice Jon Jensen on Jan. 7, 2025 and can be read back here: https://www.ndcourts.gov/news/north-dakota/supreme-court/state-of-the-judiciary/2025-state-of-the-judiciary-address.

Exhibit 15.[23] In it, GPI asks the Morton County District Court to dismiss all of Energy Transfer's claims against it, as there is no basis for these claims. In the motion, GPI notes that the following facts have been established in the proceedings and are not in dispute:

a. GPI, GP Inc. and Greenpeace Fund, Inc. are separate entities. Thus, a separate allegation would have to be made against GPI;

b. GPI was not involved in on-the-ground activities during the protests against DAPL in North Dakota;

c. GPI's only activity in the context of the protests against DAPL was co-signing BankTrack's open letter;

d. Energy Transfer, despite the years-long discovery process, has been unable to produce any evidence of a causal link between the (alleged) damages it suffered and any actions of GPI.

66. GPI's motion then specifically elaborates, with respect to each alleged tort (trespass, conversion, nuisance and so on), how even the basic requirements for Energy Transfer to allege and prove these counts have not been met (Exhibit 15, pp. 8-19). GPI also shows that the high threshold applicable to the award of "exemplary damages" claimed by Energy Transfer has not been met, which requires "clear and convincing evidence of oppression, fraud or actual malice" - however, there is no scintilla of evidence of such acts by GPI (p. 19-21). GPI therefore seeks dismissal of all claims against it by summary judgment.

67. The Court has yet to decide this motion ten months after it was filed, and it is not clear to GPI whether it will do so at all (in any case, there is no known date for it). Meanwhile, despite the complete lack of a basis for its case against GPI, Energy Transfer is pressing ahead with the State Lawsuit against GPI. The jury trial in the State Lawsuit is expected to begin on or about Feb. 24, 2025, leading to further harm to GPI.

3.4 Statements by Energy Transfer on GPI and the Lawsuits

68. A GP Inc. publication about the case aptly described Energy Transfer's rationale for pursuing the State Lawsuit, even after the Federal Lawsuit fell at the first hurdle, as follows: [24]

> "When it comes to SLAPP suits like this one, the process itself is the punishment. The burden of time and money to defend constitutionally protected activities from such mischaracterizations is far too high for ordinary citizens and community organizations. As a result, many will decide to keep quiet rather than risk a ruinous judgment."

69. Energy Transfer's public statements confirm that its goal with the lawsuits against GPI and the other defendants is to silence them, as will be explained below. In addition to bringing the Federal Lawsuit and the State Lawsuit against GPI, Energy Transfer has carried on a broad media strategy. It regularly communicates about the case and its previous statements in this regard are still available and findable online for everyone.

70. Concurrently with the filing of the Federal Lawsuit, Energy Transfer published an article about GPI and the other defendants entitled "Energy Transfer Files Federal Lawsuit Against Greenpeace International, Greenpeace Inc., Greenpeace Fund, Inc., BankTrack And Earth

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[23] Some parts of this submission have been redacted due to peculiarities of U.S. procedural law. This does not diminish the significance of the remaining portions of the piece.

[24] Greenpeace Inc. June 6, 2024, "The Story of Energy Transfer's $300 Million Lawsuit, and Why It Matters," https://www.greenpeace.org/usa/energy-transfer-lawsuit-story/.

First! For Violation Of Federal And State Racketeering Statutes". This article is submitted as **Exhibit 16.**

> The article is still available online worldwide and findable using search engines like Google via the URL:
>
> https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-files-federal-lawsuit-against-greenpeace/

71. In this article, Energy Transfer calls GPI a "rogue environmental group", allegedly part of an "Enterprise [which] incited, funded, and facilitated crimes and acts of terrorism." Among other things, Energy Transfer accuses GPI of "employ[ing] a pattern of criminal activity and a campaign of misinformation for purposes of increasing donations and advancing their political or business agendas." It also alleges that GPI and the other defendants were responsible for a "misinformation campaign" that allegedly used "manufactured evidence." In other words: it alleges GPI does not shrink from deliberately misleading the general public with fake evidence.

72. According to Energy Transfer, it is supposedly the case that GPI "directly and indirectly funded eco-terrorists on the ground in North Dakota" in order to "further the Enterprise's corrupt agenda by inducing and directing violent and destructive attacks against law enforcement as well as Plaintiffs' property and personnel." GPI also allegedly engaged in "persistent attempted cyber-attacks and telephonic and electronic threats to the physical safety of executives."

73. Thus, Energy Transfer abused the Federal Lawsuit as an opportunity to publish the same serious and unsubstantiated allegations of criminal, dishonest and wrongful conduct. These allegations strike at the heart of GPI's integrity and reputation. As stated above, GPI merely put its signature, along with more than 500 other organizations, on an open letter by BankTrack. As explained, the Federal Lawsuit, in which these unsubstantiated allegations packaged as a federal RICO claim were submitted to court, was thrown out early on after a motion to dismiss.

74. When filing the Federal Lawsuit, Energy Transfer, through its current Executive Chairman and then-CEO Kelcy Warren, provided an insight into its rationale for bringing lawsuits against Greenpeace entities. Warren is the founder and former CEO of Energy Transfer, LP, and as such is Energy Transfer's most prominent voice in public debate. He is among the 500 richest people in the world, with an estimated personal fortune of between $6 billion and $7 billion.[25]

75. On August 25, 2017, Kelcy Warren appeared on the television channel CNBC (at the time as CEO of Energy Transfer) for an interview about the Federal Lawsuit. Although there were other defendants in the Federal Lawsuit, the title of the interview read "ENERGY TRANSFER SUES GREENPEACE."

76. During the interview, Warren referred to Greenpeace and other public watchdogs as “these people” and said of them, “I am not afraid of these people at all.” A transcript of this interview is submitted as **Exhibit 17**. Warren further made it clear that Energy Transfer's goal in bringing lawsuits against the defendant Greenpeace entities is to make them “pay” for their work:

[25] By early June 2024, Bloomberg saw Warren as the 399th richest person in the world; Forbes marked him as the 486th richest person in the world.

> "Everybody's afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they're going to pay for it [...] They're going to pay for this, they're going to pay for this."

77. Warren explicitly says "this can't be allowed to happen", and states "[t]hey're doing this elsewhere in the country, same cast of characters, and somebody's gotta stand up and we - we chose to do that." In doing so, in GPI's view, he is clearly signaling that he wants the lawsuit to set an example for all "environmental groups" and others participating in the public debate.

78. A month later (September 2017), Warren appeared for an interview with Chris Berg at Valley News Live. In this interview, Warren was even clearer about Energy Transfer's intentions. He said Energy Transfer filed the Federal Lawsuit '[to] send a message,' and not primarily to recover damages: [26]

> "We've created this kind of tolerance where, oh my gosh, you can't challenge these people in fear that someone is going to say you're not a friend of the environment. That's nonsense. [...] Could we get some monetary damages out of this thing, and probably we will? Yeah, sure. Is that my primary objective? Absolutely not. It's to send a message, you can't do this, this is unlawful and it's not going to be tolerated in the United States."

79. So the message is, "You can't do this," and the intention of Energy Transfer is to end all activities of organizations like GPI. Warren confirms this later in this interview, when Berg asks Warren, "are you trying to cease funding for organizations like Greenpeace?" Warren replies, "Absolutely."

80. He further affirms that the additional purpose of the Lawsuits is to make GPI (and the other Greenpeace organizations) pay in "non-monetary" ways for their participation in the public debate: "whether that paying is - is more monetary or whether that paying is uh, 'you gotta cease this stuff, people, you can't keep conducting yourself this way'."

81. A transcript of this interview is submitted as **Exhibit 18**.

82. Thus, Energy Transfer continually makes negative statements about GPI (and the other Greenpeace entities) and continues to stand by its public statements about GPI. It has several websites on which it posts statements about GPI, including the "Energy Transfer Facts" website and the "DAPL Pipeline Facts" website. On September 9, 2024, on the first mentioned website, Energy Transfer again accused GPI of "illegal actions" and "breaking the law" and indicated that it stands behind its previously made allegations against GPI (**Exhibit 19**).

83. Energy Transfer has even set up two special websites dedicated to the litigation against Greenpeace. The first website is titled "GREENPEACE LAWSUIT: THE FACTS ABOUT ENERGY TRANSFER PARTNERS VS. GREENPEACE," and is permanently available and findable at the url https://greenpeaceetplawsuit.com/. Screenshots of this website are submitted as **Exhibit 20**. This website contains, among other things, the unsubstantiated allegations against GPI and others, which were discussed above, and which are presented in this context as "FACTS." The second website, launched very recently, is entitled "TAKE BACK THE TRUTH." Screenshots of this website are submitted as **Exhibit 21**. The alleged "truth" presented here includes unsubstantiated claims such as, "Fact: Greenpeace organized, funded and supported illegal

[26] The broadcast can still be viewed online: Valley News Live Sept. 1, 2017, "Energy Transfer Partners CEO, Kelcy Warren, says DAPL was about a money raise", https://www.valleynewslive.com/content/misc/Energy-Transfer-Partners-CEO-Kelcy-Warren-says-DAPL-was-about-a-money-raise-442409553.html.

acts of trespass, property damage and violence" and "Fact: Greenpeace targeted Energy Transfer's business constituents with misinformation."

84. Energy Transfer also continues to communicate about the Lawsuits on social media. In September 2024, Energy Transfer published a tweet with a link to an article about the pending lawsuit, highlighting the risk that Greenpeace US could go bankrupt as a result of Energy Transfer's lawsuits. Energy Transfer calls this a "wonderful story" (**Exhibit 22,** p. 1). In another tweet, Energy Transfer links to an article characterizing Greenpeace as "spoiled brats" and in yet another tweet, Energy Transfer links to an article about the Lawsuits titled "A lawsuit may end the heyday of destructive environmental activism" (Exhibit 22, p. 2-3). The account Dakota Access Pipeline (@DAPLFacts) posts a tweet on 7 February 2025 with the text: "Many fervent activists are losing touch with the fact that free speech is not a license for violence, harassment and vandalism. #EnergyTransfer vs. #Greenpeace." (Exhibit 22, p. 4).

3.5 Procedural history

85. On July 23, 2024, GPI's counsel sent a letter to each of the Defendants holding the Defendants liable on behalf of GPI for the damages GPI has suffered and continues to suffer as a result of their tortious conduct, consisting of the commencement of SLAPPs and acts in connection therewith, including making false statements about GPI, as discussed in Section 3.4. These letters are submitted as **Exhibit 23**. GPI summoned the Defendants to withdraw the State lawsuit and accept liability.

86. On September 6, 2024, Defendants jointly responded to this letter through their counsel Trey Cox of the U.S. law firm Gibson Dunn & Crutcher (**Exhibit 24**). In this letter, Energy Transfer disputes that its conduct, including bringing the State Lawsuit and the Federal Lawsuit, qualifies as a SLAPP. Energy Transfer argues that it was justified in bringing the Lawsuits against GPI, as GPI was allegedly guilty of "illegal actions" and "breaking the law." However, it fails (again) to specify exactly what these supposed illegal actions consisted of.

87. Finally, Energy Transfer argues that "no existing Dutch or European laws referred to in the Letter can result in any form of liability of Energy Transfer, a U.S.-based company." As will be further explained in this summons, this position is incorrect, both generally and in this particular case.

88. On November 19, 2024, GPI, through its counsel, responded to Energy Transfer's letter (**Exhibit 25**), pointing out that under, among others, the anti-SLAPP Directive (to be discussed below) and Dutch law, there is ample basis for legal action in the Netherlands against Energy Transfer. In a brief response on December 4, 2024, Energy Transfer stated that after "careful consideration" of the legislation cited by GPI, it stands by its previously adopted position and will not comply with GPI's demands (**Exhibit 26**).

89. GPI therefore feels compelled to take this matter to the District Court.

4 LEGAL FRAMEWORK

90. Pursuant to Article 6:162 (1) and (2) of the Civil Code, Dutch civil law prohibits tortious conduct (*onrechtmatig handelen*), which is understood to mean an infringement of a right and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct.[27]

[27] In section 6.3 of this summons, GPI will further explain that Dutch law applies to this case.

91. The relevant legal duties in this context include various fundamental law standards, as GPI will explain below (par. 4.1). The applicable standard of care in this case is further fleshed out by soft law on SLAPPs (para. 4.2). Furthermore, European Union law standards, including at least the EU Directive aimed at providing protection against SLAPPs, both within and outside the EU, provide both an independent basis for adjudication of the claims and a further interpretation of the standard of care (par. 4.3).

92. In addition, Dutch civil law prohibits parties from abusing their rights, including (but not limited to) exercising a right with no other purpose than to damage another person or when, taking into account the disproportion between the interest in exercising a right and the interest that is harmed as a result, one could not reasonably have decided to exercise that right (Article 3:13(2) of the Civil Code).

4.1 Constitutional standards

93. Under Article 10 of the European Convention on Human Rights ("**ECHR**"), among others, GPI is entitled to the right to freedom of expression. According to the wording of Article 10(1) ECHR, this right includes the right to impart information and the right of the public to receive information. Moreover, according to established case law of the ECtHR, it follows from Article 10 ECHR that the State has a positive obligation to ensure these rights for its residents.[28] Under Article 8 ECHR, among others, GPI further has the right to protection of its reputation.[29] Article 8 ECHR imposes positive obligations on the State to ensure the rights protected under this article, including in horizontal relations.[30]

94. These rights also follow from other norms of international law, such as Articles 17 and 19 of the International Covenant on Civil and Political Rights ("**ICCPR**") and, in the context of European Union law, Articles 7 and 11 of the Charter of Fundamental Rights of the European Union (the "**Charter**").

95. In the context of SLAPPs, it is also important to note that, as follows from various international standards, including Article 6 ECHR, parties are in principle entitled to access to a court. At the same time, under Article 17 ECHR, parties cannot derive any rights from the ECHR (and therefore cannot invoke it) if their conduct is aimed at "destroying any of the rights and freedoms set forth in the Convention; therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms."[31]

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[28] See, for example, recently, ECHR 17 December 2024, Nos. 32678/18, 17172/20 and 30564/21 (*Side by Side International Film Festival et al. v. Russia*), para. 13: "The Court reiterates the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, "effective" exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection."

[29] ECHR 16 February 2016, no. 8895/10 (*Ärtzekammer Für Wien and Dorner v. Austria*), para. 62.

[30] ECHR 1 March 2022, no. 35582/15 (*I.V.T. v. Romania*), para. 45: "The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this negative undertaking, there may be positive obligations inherent in effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals between themselves."

[31] ECHR 27 June 2023, No. 47833/20 (*Lenis v. Greece*), para. 38 and references therein.

4.2 International 'soft law' sources

96. With respect to SLAPPs, there are several international soft law sources which have significant relevance when interpreting the directly binding legal standards applicable in this case. GPI will outline these below.

97. There have long been concerns internationally about the misuse of the right of access to justice to silence critical voices, thus limiting public debate on important issues. For example, in 2012, before the use of the term "SLAPPs" became commonplace in Europe, the Committee of Ministers of the Council of Europe expressed concerns about the (unjustified) use of litigation as a form of intimidation or as a means to stifle legitimate criticism on issues of public interest. In particular, the Committee of Ministers points to the phenomenon of 'libel tourism,' which it describes as

> "[a] form of forum shopping when a complainant files a complaint with the court thought most likely to provide a favorable judgment (including in default cases) and where it is easy to sue. In some cases a jurisdiction is chosen by a complainant because the legal fees of the applicant are contingent on the outcome ("no win, no fee") and/or because the mere cost of the procedure could have a dissuasive effect on the defendant. The risk of forum shopping in cases of defamation has been exacerbated as a consequence of increased globalization and the persistent accessibility of content and archives on the Internet (...)
>
> In some cases libel tourism may be seen as the attempt to intimidate and silence critical or investigative media purely on the basis of the financial strength of the complainant ("inequality of arms"). In other cases the very existence of small media providers has been affected by the deliberate use of disproportionate damages by claimants through libel tourism."

98. The Committee of Ministers emphasizes that this "libel tourism" - which may be an element of a SLAPP - is a violation of the right to freedom of expression, including the right to impart information and the public's right to receive information. The Committee of Ministers also points to established ECtHR case law, from which it follows that the award of disproportionate damages in expression cases is a violation of the rights protected by Article 10 ECHR.

This established line in ECtHR case law was reaffirmed, for example, in the *Independent Newspapers* judgment in 2017. Here, the ECtHR ruled that a EUR 1.25 million award of damages against an Irish newspaper by an Irish jury was disproportionate, and in violation of Article 10 ECHR, among other things holding:[32]

> "As the Court has indicated previously, it is not necessary to rule on whether the impugned damages' award had, as a matter of fact, a chilling effect on the press. As a matter of principle, unpredictably large damages' awards in libel cases are considered capable of having such an effect and therefore require the most careful scrutiny. (...)
>
> Where, as in this case, there is a shortcoming in the operation of the safeguard at first instance, a defendant may have little option but to bring an appeal against the level of damages awarded, since only through appellate scrutiny can it be assured that the amount bears a reasonable relationship of proportionality to the harm suffered by the plaintiff. The Court notes that this may entail both considerable

[32] ECHR 15 June 2017, No. 28199/15 (*Independent Newspapers v. Ireland*), at grounds 85, 102 and 104.

> costs and inevitable delay before the decision is given, a fact emphasized by other defamation cases both concluded and pending (...)
>
> unpredictably high damages in libel cases are considered capable of having a chilling effect and they therefore require the most careful scrutiny and very strong justification."

99. Incidentally, in this case, the national court's holding that the publication at issue was defamatory was not at issue: it was purely about the amount of damages awarded. To that extent, this judgment is not a clear example of a SLAPP case. However, it does clearly show that (a claim for) remarkably high damages will almost always violate Article 10 ECHR.

100. A clear example of what would nowadays be qualified as a SLAPP is the *Steel & Morris* case before the ECtHR, in which two private individuals in the United Kingdom had had to pay high damages after a suit brought by McDonalds and others, for distributing critical leaflets. The ECtHR found the award of these high damages to be disproportionate and in violation of Article 10 ECHR, among other things because McDonalds, as a powerful company, had not been able to prove that it had actually suffered any harm from distributing a limited number of pamphlets.[33]

101. On October 16, 2017, in Malta, investigative journalist Daphne Caruana Galizia was murdered with a car bomb. At that time, as a result of her thorough reporting in the public interest on corruption, among other issues, there were about 50 lawsuits pending against her, both inside and outside Malta, including at least one case in the United States (Arizona), where she was facing a claim for as much as USD 40 million in damages.[34] These events caused a worldwide stir and underscored that SLAPPs are a major problem in the EU as well. In the following years, more and more attention was given to SLAPPs against EU-based parties exercising their right to freedom of expression.

102. The then-Council of Europe Commissioner for Human Rights, Dunja Mijatović, published a "Comment" in October 2020 entitled "Time to take action against SLAPPs" **(Exhibit 27**). Based on various studies, the Commissioner noted that the problem of SLAPPs was worsening in Europe and that "journalists, activists and advocacy groups" are especially targeted by such lawsuits. She pointed to several other examples in addition to the Daphne Caruana Galizia case, and stressed that these were just a few examples of SLAPPs at the time.

103. Underlining that the problem affects all public watchdogs, the Commissioner said, "Public watchdogs in general are affected. Activists, NGOs, academics, human rights defenders, indeed all those who speak out in the public interest and hold the powerful to account might be targeted."

104. Based on established case law of the ECtHR, NGOs such as GPI (like the media) qualify as public watchdogs entitled to a high level of protection of their rights under Article 10 ECHR.[35]

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[33] ECHR 15 February 2005, no. 68416/01 (*Steel & Morris v. United Kingdom*), para. 85-98.

[34] P. Milewska June 15, 2023, "SLAPPs, Daphne's Law, and the Future of Journalism," *Verfassungsblog*,
See also: Daphne Caruana Galizia Foundation, 'Defense against frivolous and vexatious libel suits',
https://www.daphne.foundation/en/justice/vexatious-libel-cases ("In May 2017, Ali Sadr Hasheminejad, owner and chairman of Pilatus Bank, sued Daphne in an Arizona court in his and Pilatus Bank's name. The claim was for US$40,000,000 in damages.")

[35] As established, inter alia, in this leading judgment: ECHR 22 April 2012, no. 48876/08 (*Animal Defenders International v. United Kingdom*), para. 103. See also Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'), 27 April 2022, SWD(2022) 117 final, para. 7:

This is particularly true when they call attention to issues of public interest. The ECtHR has recognized NGOs as parties making an "important contribution to the discussion of public affairs," and, according to the ECtHR, the proper functioning of civil society therefore has "significant impact on the proper functioning of a democratic society."[36] Thus, in cases revolving around the freedom of expression of NGOs, the State's discretion is limited, and the ECtHR will "scrupulously" assess each interference for necessity and proportionality, as well as critically evaluating the application of any positive obligations of the State.[37]

105. The Commissioner described some common characteristics of SLAPPs:

> "SLAPPs are typically disguised as civil or criminal claims such as defamation or libel and have several common features.
>
> First, they are purely vexatious in nature. The aim is not to win the case but to divert time and energy, as a tactic to stifle legitimate criticism. Litigants are usually more interested in the litigation process itself than the outcome of the case. The aim of distracting or intimidating is often achieved by rendering the legal proceedings expensive and time-consuming. Demands for damages are often exaggerated.
>
> Another common quality of a SLAPP is the power imbalance between the plaintiff and the defendant. Private companies or powerful people usually target individuals, alongside the organizations they belong to or work for, as an attempt to intimidate and silence critical voices, based purely on the financial strength of the complainant.
>
> It should be no surprise that SLAPPs are multiplying in areas such as environmental and consumer protection, crime prevention or corruption allegations. A typical example is when a large company sues journalists or activists who have exposed an environmental disaster." (emphasis added)

106. The Commissioner called for the design of a "comprehensive response" against SLAPPs, stressing the great importance of countering SLAPPs, not only to protect the space for public debate, but for the preservation of a democratic society as a whole:

> "While this practice primarily affects the right to freedom of expression, it also has a dramatic impact on public interest activities more broadly: it discourages the exercise of other fundamental freedoms such as the right to freedom of assembly and association and undermines the work of human rights defenders."

107. This Comment was echoed in the development of laws and regulations against SLAPPs, as will be explained below. The Comment also played an important role in the ECtHR's first judgment that mentions SLAPPs, the *OOO Memo v.* Russia *judgment*. To the extent relevant, the ECtHR sees the Comment as evidence of "the growing awareness of the risks that court

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"Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life and make their voices heard on policy matters and in decisionmaking processes without fear of intimidation. Human rights defenders refer to individuals or organizations engaged in defending fundamental rights and a variety of other rights, including environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labor rights or religious freedoms."

[36] ECHR 8 November 2016, no. 18030/11 (*Magyar Helsinki Bizottság v. Hungary*), para. 166-167.

[37] *Animal Defenders International*, r.o. 102 and 103.

proceedings instituted with a view to limiting public participation bring for democracy, as highlighted by the Council of Europe Commissioner for Human Rights."[38]

108. This threat has been recognized worldwide. In 2021, the then-UN Special Rapporteur on freedom of peaceful assembly and of association, Annalisa Ciampi, published a note on SLAPPs in which she identifies "a significant increase worldwide" of SLAPPs (**Exhibit 28**). She summarizes common characteristics of a SLAPP as follows:

> "[The term SLAPP] generally refers to a civil lawsuit filed by a corporation against non-government individuals or organizations (NGOs) on a substantive issue of some political interest or social significance. SLAPPs aim to shut down critical speech by intimidating critics into silence and draining their resources. In the process, they distract and deflect discussions on corporate social responsibility, and - by masquerading as ordinary civil lawsuits - convert matters of public interest into technical private law disputes.
>
> Often based upon ambiguous and elastic provisions of law, SLAPPs use a range of tactics to exhaust resources, campaign capacity and morale:
>
> - They resort to motions, injunctions and other procedurally onerous processes (particularly the expensive and resource-intensive discovery/disclosure process) to impose heavy burdens on activists and civil society organizations
> - They often target individual campaigners, as well as the organizations they work for, to maximize the SLAPP's capacity to intimidate.
>
> They generally include exorbitant claims for damages and allegations designed to smear, harass and overwhelm the campaigners
>
> SLAPPs threaten advocacy activities and therefore undermine the ability of civil society actors to effectively exercise their rights to freedom of expression, of assembly and of association."

109. This description is consistent with previous authoritative descriptions of what a SLAPP may be.[39] Thus, there was some consensus as early as 2021 on the elements from which it follows that a lawsuit (or lawsuits) are SLAPP(s). In the same note, the Special Rapporteur expressed concern about developments surrounding SLAPPs in the United States:

> "The SLAPP trend has been particularly pronounced in the US, fueled and aided by exorbitant legal fees, the "American rule" of costs apportionment (whereby each party to a lawsuit is responsible for its own attorney fees), and an absence of caps on damages. In a recent report, the free speech group Index on Censorship identified civil litigation as one of a number of growing threats to US press freedom. (...) A worrying new approach has been the use of the Racketeering Influenced and Corrupt Organizations Act (RICO) to intimidate advocacy groups and activists by enabling corporations to smear these groups as 'criminal enterprises,' while

[38] ECHR 15 March 2022, no. 2840/10 (*OOO Memo v. Russia*), para. 23.

[39] And also at other UN documents and resolutions, including UN Human Rights Council, Resolution on the safety of journalists, Oct. 6, 2022, A/HRC/RES/51/9, https://digitallibrary.un.org/record/3992428, with a call for UN Member States to take action against SLAPPs given the seriousness of "the rise of strategic lawsuits against public participation, including by business entities, to pressure, intimidate or exhaust the resources and morale of journalists, and thereby stop them from performing their work, including on matters of public interest" (this protection, as noted above, also attaches to other 'public watchdogs').

> claiming exorbitant damages (RICO entitles plaintiffs to claim treble damages as a punitive measure) for the 'harm' they claim to have suffered."

110. The Special Rapporteur pointed out that the increase in SLAPPs is all the more unacceptable now that companies are subject to international law obligations, both direct and indirect (e.g., the UN Guiding Principles) to respect human rights. Given the primacy of international law, the Special Rapporteur noted that by filing SLAPPs, companies act unlawfully in any event, regardless of the legality under domestic/national law:

> "It is a well established principle of international law that the characterization of an act as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law. The obligations of corporations under international law, therefore, prevail over all national laws and regulations, including those protecting human rights."

111. Following the murder of Daphne Caruana Galizia, there were many voices in the European Union calling for binding EU legislation to provide journalists, activists, NGOs and other public watchdogs with better protection against SLAPPs. In response to this, numerous parties united in the broad "Coalition Against SLAPPs in Europe" ("**CASE**"). Inspired in part by Daphne Caruana Galizia's sons - who are burdened with SLAPPs that have continued despite her death - CASE labored to establish legal safeguards against SLAPPs in the EU. These efforts resulted, in part, in the creation of the laws and regulations to be discussed below.

112. The European Parliament ("EP") adopted a resolution on SLAPPs in 2021, in which the EP refers to a long list of studies and position papers on SLAPPs and noted that (i) SLAPPs have "a direct and detrimental impact on democratic participation, societal resilience and dialogue" and (ii) SLAPPs are in direct conflict with the core values of the EU as enshrined in Article 2 TEU (**Exhibit 29**).[40]

113. The EP therefore expressed its concerns about SLAPPs and called on the Commission to develop "hard" and "soft" legislation to protect victims of SLAPPs (including "NGOs, civil society and other actors engaging in public participation, such as those working on human rights and environmental issues," under M). The EP also mentioned that "SLAPPs and SLAPP threats may also be brought against watchdogs within the Union by actors in third countries and before courts in third countries" (Exhibit 29, under N). Without EU legislation, SLAPPs would, according to the EP, "continue to threaten democracy, the rule of law and the fundamental rights of freedom of expression, association and peaceful assembly and information in the Union" (para. 22). The EP called for a broad definition of 'SLAPP' because "if measures only address defamation lawsuits, actions on other civil matters or criminal proceedings may still be used at the initiative of claimants based in or outside the Union" (para. 22).

114. In April 2022, the European Commission (the "**Commission**") took up the EP's call by publishing a Recommendation and the first draft of the anti-SLAPP directive, to be discussed below. [41]

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[40] These values as enshrined in Article 2 TEU are: "the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

[41] European Commission April 27, 2022, Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), SWD(2022) 117 final.

4.3 Anti-SLAPP Directive and Recommendation Committee of Ministers

115. In April 2022, the Commission published the first proposal for an anti-SLAPP Directive. This Directive is also called "Daphne's Law," in memory of Daphne Caruana Galizia whose case helped lead to the creation of this legislation. After going through the usual legislative process, Directive 2024/1069 on the protection of targets of SLAPP (hereinafter also "the **Directive**") was finally adopted on April 11, 2024 and entered into force on May 6, 2024.[42] The transposition deadline is set at two years after entry into force, i.e. May 7, 2026 (Article 22(1) Directive).[43] The authentic English language version of the Directive is submitted as **Exhibit 30**.

116. The Directive helps give effect to the right to freedom of expression and freedom of information protected by Article 11 Charter and Article 10 ECHR (Recital 4 of the Directive). This right includes the freedom to hold opinions and to impart information to the public, without interference from public authorities and "regardless of frontiers". It follows from the recitals of the Directive that its purpose is to ensure that journalists and human rights defenders within the EU and its Member States can actively participate in public life and debate, and hold parties to account without fear of intimidation (recital 11 Directive). Human rights defenders are defined in the Directive as follows (Recital 11 Directive):

> "Human rights defenders include individuals, groups and organisations in civil society that promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders are committed to promoting and safeguarding civil, political, economic, social, cultural, environmental, climate, women's and LGBTIQ rights and to fighting against direct or indirect discrimination as set out in Article 21 of the Charter. Considering the Union's environmental and climate policies, attention should also be given to environmental rights defenders as they play an important role in European democracies."

117. The recitals echo the threat of SLAPPs to public debate and a democratic society that has been widely signalled, as well as the need for EU legislation to achieve a minimum level of protection against SLAPPs within the Union.

118. The basic premise of the Directive is that the rules it lays down apply to SLAPPs with a 'cross-border' element, although Member States are free to provide more far-reaching protection against them. In this context, the Directive pays particular attention to the threat posed by SLAPPs brought in third countries (i.e. outside the EU) against public watchdogs based in the EU (recital 43 of the Directive, emphasis added):

> "In the cross-border context, it is also important to recognize the threat of SLAPPs in third-countries targeting journalists, human rights defenders and other persons engaged in public participation who are domiciled in the Union. SLAPPs in third-countries may involve excessive damages being awarded against persons engaged in public participation. Court proceedings in third-countries are more complex and costly for the targets of SLAPPs. To protect democracy and the right to freedom of expression and information in the Union and to avoid the safeguards provided by this Directive being undermined by recourse to court proceedings in other

[42] The full title of the Directive is as follows: Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

[43] For a detailed overview of the legislative train schedule, see the Legislative Train Schedule page on the EP site, available at: https://www.europarl.europa.eu/legislative-train/package-european-democracy-action-plan/file-initiative-against-abusive-litigation-targeting-journalists-and-rights-defenders.

> jurisdictions, it is important to provide protection against manifestly unfounded claims and abusive court proceedings against public participation in third-countries."

119. The Directive in addition underlines that SLAPPs also have an impact on other rights of their victims than freedom of expression, such as the right to reputation (recital 16) "Court proceedings against public participation may have an adverse impact on the credibility and reputation of natural and legal persons that engage in public participation and may exhaust their financial and other resources." Indeed, as is made explicitly clear in the Directive (recital 46): "It is typical in SLAPPs that those targeted suffer severe financial repercussions and psychological and reputational harm. Causing such harm is one of the aims of SLAPP claimants when they initiate abusive court proceedings against public participation."

120. As will be explained below, in light of these high risks to victims of SLAPPs, the Directive accordingly contains several specific provisions to protect parties based in the EU from SLAPPs.

121. Article 1 of the Directive defines the subject matter of the Directive, namely "[to provide] safeguards against manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation." Article 2 of the Directive limits the effect of the Directive to civil or commercial cases with "cross-border implications" brought by the initiation of "civil proceedings, including procedures for interim and precautionary measures and counteractions, whatever the nature of the court or tribunal." Article 3(1) Directive states that the Directive is minimum harmonization, and thus Member States are free to provide further protection for victims of SLAPPs.

122. The Directive provides protection against "manifestly unfounded claims or abusive court proceedings" (Article 1 Directive), with "abusive court proceedings" broadly defined under Article 4(3) Directive:

> "court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalization of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims. Indications of such a purpose include for example:
>
> (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;
>
> (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
>
> (c) intimidation, harassment or threats on the part of the claimant or the claimant's representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;
>
> (d) the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith."

123. Importantly, this is not an exhaustive or cumulative set of criteria: these are merely "indicators" of a SLAPP. There are several other indicators and indications in the recitals of the Directive from which it can be inferred that a case is a SLAPP. Here it is important to note that even if a case is partially founded, this does not rule out the possibility that it is a SLAPP (recital 29 Directive):

> "Claims made in abusive court proceedings against public participation can be either fully or partially unfounded. This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed."

124. As far as relevant in the present case, the Directive's Chapter 5 provides protection to EU-based parties against SLAPPs in third countries, *i.e.* countries outside the EU. Article 16 of the Directive provides protection against enforcement of judgments rendered in third countries in SLAPP cases: that is not (yet) at issue in this case.

125. Article 17(1) of the Directive provides further protection for parties established in an EU Member State against SLAPPs brought against them in third countries:

> "Member States shall ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the Union in a court or tribunal of a third-country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country."

126. It therefore follows that in EU Member States it should be possible for a party domiciled in that Member State, against whom a SLAPP in a third country is pending, to bring a claim for damages against the plaintiff in the SLAPP before the courts of that Member State. According to the recitals to the Directive, in this regard, the EU-based victim of a SLAPP in a third country "should apply irrespective of a decision having been rendered or of a decision being final, as targets of SLAPPs can suffer damage and incur costs from the start of court proceedings and possibly even without any decision being rendered, such as in the case of a withdrawal of the claim" (recital 44).

127. Under Article 17(2) Directive, Member States may limit the application of the provisions of Article 17(1) Directive to a certain extent while the SLAPP is still pending in the third country. The Netherlands has indicated that it will not make use of this limitation, as will be further explained below. Article 17(1) of the Directive therefore applies in full to the Netherlands.

128. It further follows from the Directive that there should be broad scope for adjudication of claims in cases where victims of SLAPPs seek legal protection, including an order for publication of the judgment to be rendered in such a case (recital 31 Directive)

> "The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties."

129. Just before the Directive was finally adopted, on April 11, 2024, the Committee of Ministers of the Council of Europe published a Recommendation on combating SLAPPs on April 5, 2024 (**Exhibit 31**), considering that under Article 10 ECHR, Member States have a positive obligation, among others, to ensure a safe and positive environment for participation in public debate, without fear of reprisal (p. 1).[44]

[44] In this regard, see also ECHR 14 September 2010, No. 2668/07 and Others (*Dink v. Turkey*), para. 106.

130. The Committee of Ministers further underlines the particular threat posed by SLAPPs with a "cross-border" element, given the additional complexity, cost and stress that such cases typically entail (para. 11). The Committee of Ministers also encourages Member States of the Council of Europe to ensure the protection of Article 17(1) Directive for their residents (para. 14):

> "Member States are encouraged to introduce rules to ensure that, where SLAPPs have been brought before judicial or other authorities of a third country against a natural or legal person domiciled in a member State, that person may seek, before judicial or other authorities of the place where they are domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the judicial or other authorities of the third country, irrespective of the domicile of the claimant in the proceedings in the third country."

5 JURISDICTION AND APPLICABLE LAW

5.1 Framework of review regarding jurisdiction

131. Article 7, introductory sentence and paragraph 2 Brussels I bis states:

> " A person domiciled in a Member State may be sued in another Member State:
>
> (…) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur."

132. It follows from the jurisprudence of the Court of Justice of the EU that in matters of tort law, it is possible to sue both in the courts of the place where the act causing the harm took place (*Handlungsort*) and the place where the harm occurred (*Erfolgsort*). The plaintiff can choose at which place to sue the defendant(s). The Defendants are all domiciled outside the EU, with which the jurisdiction of the Dutch court follows from Article 6 opening words, and under (e) of the Code of Civil Procedure, which is based on (and according to established case law is interpreted in the same way as) Article 7, opening words and paragraph 2, Brussels Ia.

133. As explained above, Article 17 (2) of the Directive obliges Member States to ensure that the courts in that Member State have jurisdiction to hear cases in which victims of SLAPPs in third countries claim compensation for "the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country." This is already possible in the Netherlands, given the provisions of Article. 6 opening words and under (e) of the Code of Civil Procedure.[45]

134. On October 1, 2024, as part of internet consultation, the government published the draft Anti-SLAPP Directive Implementation Act (*Implementatiewet anti-SLAPP Richtlijn*) and the accompanying draft Explanatory Memorandum (these documents are submitted as **Exhibit 32** and **33**).[46] This is a limited legislative amendment. The government explains this in the draft Explanatory Memorandum (*Memorie van Toelichting*) as follows:

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[45] See for example District Court of The Hague 9 October 2019, ECLI:NL:RBDHA:2019:10254 (*Ard-Choille*), para. 5.41 and 5.42; District Court of Overijssel, location Almelo 20 May 2020, ECLI:NL:RBOVE:2020:1808, para. 2.9; as well as District Court of Amsterdam 9 March 2023, ECLI:NL:RBAMS:2021:950 (*Bellingcat/RIA FAN*), para. 2.1; Court of Appeals of The Hague 6 October 2015, ECLI:NL:GHSHE:2015:3904 (*X/Google*), r.o. 3.3.2. For European case law in this regard, see, for example, ECJ EU 28 January 2015, C-375/13, ECLI:EU:C:2015:37 (*Kolassa*), ECJ EU 12 September 2018, C-304/17, ECLI:EU:C:2018:701 (*Löber v Barclays*).

[46] See: https://www.internetconsultatie.nl/antislapp/b1.

> "Except for the measure of providing security for litigation costs and damages included in this Directive, Dutch (procedural) law already provides for the measures prescribed by the Directive. No separate implementation is therefore necessary for this."

135. The government explicitly confirms in the draft Explanatory Memorandum that implementation of the Directive is also not necessary with respect to Article 17(1) of the Directive, considering:

> This provision requires Member States to ensure that if a SLAPP has been brought by a plaintiff domiciled or established outside the Union before a court in a third country against a SLAPP target domiciled in a Member State, that SLAPP target may seek compensation from a court of his or her domicile or establishment for damages and costs incurred in connection with the proceedings before the third country court. Dutch law already provides for this possibility.
>
> The Dutch regulation is in line with Article 7 Brussels Ia Regulation. Based on consistent case law, the provision of Article 7 under 2 (place where the harmful event occurred) refers to both the harmful event and the place where the direct damage occurred. In the case of SLAPPs in a third country directed against a person residing in the Netherlands, it may be assumed that the direct harm to this person (also) occurs in the Netherlands. This means that provision has already been made for the implementation of Article 17 of the Directive."

136. As mentioned above, the government further waives the possibility of limiting protection for victims of SLAPPs under Article 17(2) of the Directive, considering:

> "The second paragraph of Article 17 of the Directive allows Member States to limit the possibility to seek compensation in the Member State of the SLAPP target while proceedings are pending in a third country. This possibility will not be used because there is no reason to limit the possibilities of potential SLAPP targets in this regard."

137. It follows that the government's aim is the broadest possible protection of "potential SLAPP targets". Thus, regarding protection against third country SLAPPs, there is already a provision in Dutch procedural law, and implementation is not necessary. However, Article 17(1) of the Directive does provide further guidance on the interpretation of the existing criteria for jurisdiction.

5.2 Application of the framework of review to the present case

138. The basis of this case is the Defendants' tortious acts against GPI, or abuse of rights against GPI, in particular by filing SLAPPs against GPI in a third country (the United States) and all acts related thereto, including publishing false statements about GPI that are available and findable worldwide (including in the Netherlands) via the Internet.[47]

139. GPI, which is domiciled in the Netherlands, is suffers damages as a result, on the basis of which it may be assumed that the direct damage for GPI (also or in any case) occurs in the Netherlands. In this regard, see the government's explanation cited above, specifically in the context of SLAPPs: "In the case of SLAPPs in a third country directed against a person residing in the Netherlands, it may be assumed that the direct damage for this person (also) occurs in the Netherlands." Thus, that is true in this case. GPI can therefore claim the damages suffered it suffers due to Energy Transfer's conduct before Dutch courts on the basis of (in any case)

[47] In this regard, see CJEU Oct. 25, 2011, ECLI:EU:C:2011:685 (*eDate*).

Article 6 opening words and under e of the Code of Civil Procedure, read in conjunction with Article 7 of the Brussels Ia Regulation and Article 17 (1) of the Directive.

140. The damages suffered by GPI can be classified as monetary loss, damages as a result of the intentional hindrance of GPI in achieving its public interest goals, and reputational damage as a result of the SLAPP, including the associated publication of false statements. For a more detailed discussion, GPI refers to par. 7 of this summons: see there.

141. GPI is suffering these damages (also or in any case) in the Netherlands, where the center of its interests is. GPI has been statutorily established in the Netherlands (in Amsterdam) since 1979 and has its offices at Surinameplein in Amsterdam, where a significant part of its staff also works: 131 of its employees work in the Netherlands (228 other employees work in various countries worldwide). GPI's employees working in the Netherlands have employment contracts governed by Dutch law. GPI has Public Benefit Organization (ANBI) status and in this relation publishes the information required by that status annually.[48] The most recent annual accounts of GPI (2023) are submitted as **Exhibit 34**. GPI further maintains its bank accounts in the Netherlands.

142. As stated above, GPI is the holder of the trademarks of the Greenpeace network. The other entities in the Greenpeace network receive permission from GPI to use these marks through a license agreement governed by Dutch law.

143. GPI is also the charterer of several vessels, such as the famous *Arctic Sunrise* and the *Rainbow Warrior*, which sail under the Dutch flag. GPI employs a total of 89 crew members, all of whom have employment contracts under Dutch law. The crew working on GPI's ships, and residing in the EU, are therefore covered by the Dutch Merchant Shipping Pension Fund Foundation.

144. Based on the foregoing, Dutch courts have jurisdiction in this case. To the extent the Court requires further proof of the proposition that the center of GPI's interests is located in the Netherlands, and/or the proposition that GPI has suffered damages in the Netherlands in the ways described above, GPI hereby expressly offers such proof.

145. The relative jurisdiction of the Amsterdam District Court follows from the provisions of Article 102 of the Code of Civil Procedure.[49]

146. Finally, GPI would like to point out that this case is special in several respects because - to its knowledge - there is no precedent for it. After all, it seeks protection against a SLAPP in a country located outside the EU, involving several new relevant norms (including the Directive and soft law on SLAPPs). These norms require application of national procedural law in line with the goal of achieving far-reaching protection against SLAPPs. The interpretation of domestic procedural law should therefore be in line with the provisions of these standards. See in this regard recital 32 of the Directive, which explicitly explains that the application of "all procedural safeguards" of the Directive may be "not unduly arduous" for victims of SLAPPs. It would therefore be in conflict with the intention of the Directive and the consensus within the EU/Council of Europe that follows from the 'soft law' norms quoted above to raise high formal thresholds in national procedural law for protection against SLAPPs. This is all the more true since the Dutch government itself indicates that no adaptation of Dutch law is necessary for the implementation of the Directive, making the contents of the Directive directly enforceable.

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[48] See: https://www.greenpeace.org/international/about/annual-report/.

[49] See in this regard Amsterdam District Court, March 9, 2021, ECLI:NL:RBAMS:2021:950 (*Bellingcat/OOO Fan*), para. 2.1.

5.3 Applicable law

147. Since GPI's damages are occurring in the Netherlands and consist, among other things, of reputational damage, as explained above, pursuant to Article 10:159 of the Dutch Civil Code, read in conjunction with Article 4(1) of the Rome II Regulation, the Directive and Dutch law apply to this case. [50]

6 TORT AND ABUSE OF RIGHTS BY ENERGY TRANSFER

148. Energy Transfer's conduct towards GPI, which is to be classified as a "SLAPP," including Energy Transfer's commencement of the Federal Lawsuit and the State Lawsuit (together: the "**Lawsuits**") against GPI, and the making of inaccurate statements about GPI, is tortious and qualifies as an abuse of rights under Dutch civil law (Article 6:162 and 3:13 of the Civil Code), read in conjunction with Articles 8 and 10 ECHR, Article 7, 10 and 11 of the Charter and the provisions of the Directive. GPI will explain below what this tortious conduct and abuse of right consists of. It will first deal with the tortious conduct pursuant to Article 6:162 of the Civil Code.

149. Energy Transfer is acting tortiously towards GPI within the meaning of Article 6:162 of the Dutch Civil Code, by acting in breach of its statutory duties and in violation of what is proper social conduct according to unwritten law in society.

150. The legal obligations incumbent on Energy Transfer are further elaborated, *inter alia*, in Articles 8 and 10 ECHR and the Directive, read in conjunction with Articles 7 and 11 of the Charter.[51] Energy Transfer's conduct, as further explained below, is contrary to the legal obligations incumbent upon it arising from these standards, in particular refraining from infringing GPI's freedom of expression and from infringing GPI's reputation.

151. Moreover, as explained, the State has a positive obligation under Articles 8 and 10 ECHR to ensure the rights protected by those provisions. This positive obligation is fleshed out by the provisions of the Directive and the other sources of law discussed above. GPI's strong interest in protection from the Dutch courts against the SLAPPs brought by Energy Transfer also lies herein. After all, Energy Transfer's conduct leads to a great "chilling effect" for GPI, and for that matter also for other organizations that might wish to comment on Energy Transfer or other powerful players in the United States. This degree of impairment of GPI's rights under Articles 8 and 10 ECHR (and of the public under Article 10 ECHR) is unacceptable in the Dutch and European legal sphere.

152. It is further crystal clear from the applicable fundamental law standards, the soft law standards discussed above and the Directive, that initiating a SLAPP and, in connection therewith, making false statements about a party against whom a SLAPP has been initiated violates proper social conduct. For that reason, too, Energy Transfer is acting tortiously against GPI. In any case, GPI emphasizes the clear consensus within the EU and the Council of Europe that SLAPPs, and especially SLAPPs in countries outside the EU or Council of Europe, are a great danger to freedom of expression and thus democracy. The Member States must therefore do their utmost to protect parties within their jurisdiction against

[50] Indeed, Article 4(1) of the Rome II Regulation states, "Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur." See also Supreme Court, June 3, 2016, ECLI:NL:HR:2016:1054 (*Dahabshiil*),

[51] According to established case law, these legal duties also find application in relationships between private parties through the doctrine of the horizontal effect of fundamental rights.

them. GPI is convinced that this also implies that existing laws and regulations should be interpreted in such a way that victims of SLAPPs receive maximum protection and are able to claim this protection in court in the simplest way possible (see also recital 32 of the Directive, cited above).

153. GPI further believes that the applicable standards of Dutch law can be read in direct correlation with the relevant provisions of the Directive, as the Dutch government also explicitly confirms. In any event, to the extent that your Court would rule otherwise, the law applicable in this case as set forth above should be interpreted in conformity with the Directive.

154. Energy Transfer's conduct which, in consideration of the foregoing, can be characterized as tortious against GPI, and against which GPI seeks your Court's protection in the present case, can be characterized as follows:

(i) GPI is an Amsterdam-based NGO working in the public interest and in that context exercised its freedom of expression to express legitimate criticism of Energy Transfer. As a result, Energy Transfer has twice drawn it into protracted and complex civil proceedings in the United States (a third country within the meaning of the Directive). This brings the case within the scope of the Directive (Article 1 and 2 Directive) and involves a "cross-border" element, thus also establishing that the handling of this case is more complex and costly for GPI (Recital 43 Directive);

(ii) An unusual circumstance in this case is that it is clear from Energy Transfer's own statements that Energy Transfer's purpose in bringing the Lawsuits is to punish the Greenpeace network for its (very limited) involvement in the protests against DAPL. In doing so, Energy Transfer wishes to send a message, not only to the Greenpeace network but to all groups working to advance the public interest, as it has said: the proceedings are meant "to send a message, you can't do this (...) and it's not going to be tolerated in the United States." Limiting the space for, and participation in, public debate in a pluralistic democracy is not a legitimate goal of litigation. Thus, Energy Transfer, insofar as relevant, is also not entitled to (successful) reliance on Article 6 ECHR or a comparable constitutional provision. See in more detail under (v).

(iii) It has been explained in detail above that the Lawsuits are manifestly unfounded. GPI points out that for the provisions of the Directive to apply, it is sufficient that a lawsuit qualifies as an abusive court proceeding or is manifestly unfounded (Article 1 Directive). GPI believes that the Lawsuits fall under both categories. Incidentally, the only issue relevant to the consideration of this case is that the claims in the Lawsuits against GPI are unfounded. GPI believes that this is equally true of the claims against the other Defendants, but that is not relevant to the consideration of the present case. In this regard, it is also relevant that Energy Transfer ought to withdraw the State Lawsuit against GPI from the perspective of mitigating damages, but has willfully refused to do so.

(iv) There is an obvious "imbalance of power" between GPI and Energy Transfer (Article 4(3) Directive). Energy Transfer is a huge company that generated nearly USD 80 billion in revenue in 2023.[52] Kelcy Warren is also a prominent donor to President Donald Trump: he gave nearly USD 6 million to Trump's re-election campaign in

[52] Wall Street Journal Markets, Energy Transfer LP, cf: https://www.wsj.com/market-data/quotes/ET/financials/annual/income-statement.

2024.[53] This gives Energy Transfer a degree of financial and political power incomparable to that of GPI.

(v) Further application of the Directive's indicators of "abusive court proceedings" also suggests that the Lawsuits qualify as SLAPPs. For example, both cases involve disproportionate, excessive and unreasonable demands (Article 4(3)(a) Directive). The chosen bases are manifestly unfounded, and incompatible with the First Amendment of the U.S. Constitution, and the hundreds of millions of dollars in damage claims are clearly excessive. The Directive explicitly mentions "the excessive dispute value" as a key indicator of a SLAPP, in line with the settled case law of the ECtHR and the authoritative comments of Commissioner Dunja Mijatović ("demands for damages are often exaggerated") and Special Rapporteur Annalisa Ciampi ("they generally include exorbitant claims for damages"). See also recital 43 of the Directive: "SLAPPs in third- countries may involve excessive damages being awarded against persons engaged in public participation."

(vi) A further indication that the Lawsuits qualify as SLAPPs is that Energy Transfer chose to almost immediately file the State Lawsuit against GPI even after the federal law-based claims in the Federal Lawsuit were dismissed as manifestly unfounded. Thus, this is an instance of different proceedings on the same subject matter (Article 4(3)(b) Directive) and bad faith use of procedural tactics (Article 4(3)(d) Directive). What is important here - to the extent Energy Transfer would argue that this was its right - is that Energy Transfer presented allegations that were substantially the same in the State Lawsuit as the ones the federal court had given short shrift to when packaged as a RICO claim.

(vii) Also noteworthy in this context is that Energy Transfer chose, each time, to file the Lawsuits against GPI in North Dakota. GPI co-signed a letter, which is insufficient reason to drag it before two different courts in North Dakota. This is all the more true since there are no anti-SLAPP laws in North Dakota. Thus, this conduct by Energy Transfer towards GPI can be qualified as a form of "abusive forum shopping" (Article 4(3)(d) of the Directive.

(viii) As a result of the Lawsuits, GPI has been forced to incur high costs including legal fees. The cost element also plays a role in the qualification of cases as SLAPPs; see, for example, recital 43 of the Directive. A factor here is that Energy Transfer (unsuccessfully) raised many procedural hurdles, including to prevent discovery of documents on its side and to shield Kelcy Warren from being heard as a deponent. This led to very significant additional costs for GPI.

(ix) The Lawsuits involve the public disparaging of GPI without justification (as the Special Rapporteur puts it: publication of "allegations designed to smear, harass and overwhelm the campaigners"), which is also an indicator of an "abusive court case" (Article 4(3)(c) of the Directive). The Recommendation of the Committee of Ministers mentions as a possible characteristic of SLAPP in this context: "the legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake."

(x) The public disparaging of GPI results in damage to GPI's reputation: there is a consensus in the EU and Council of Europe that this may be an aim and/or

[53] The Guardian October 18, 2024, "Trump gets record donations from big oil but far less than $1bn he wanted," https://www.theguardian.com/us-news/2024/oct/18/election-trump-oil-gas-fundraising.

consequence of SLAPPs. In any event, it is also part of Energy Transfer's tortious conduct towards GPI. As explained in detail above, in the SLAPPs it filed against GPI, and in media statements and online expressions surrounding these SLAPPs, Energy Transfer has for years continuously accused GPI of committing serious criminal offenses and all kinds of serious wrongful acts. These expressions - which continue to this day - are false, as explained above, and obviously harmful to GPI.

(xi) In the State Lawsuit, Energy Transfer at a later stage dropped significant parts of its claims, including claims that had wrongly been brought against a former GP Inc. employee, allegations relating to the Mariner East and Bayou Bridge pipelines, and allegations concerning allegedly defamatory statements about insufficient consultation with the Standing Rock Sioux Tribe, as well as statements about inadequate environmental review of DAPL. The "discontinuation of cases at a later stage" is also an indicator of a SLAPP (Article 4(3)(d) of the Directive)

(xii) Finally, the Recommendation of the Committee of Ministers lists as indicative of conduct qualifying as a SLAPP, "the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so." In that context, it is worth noting that Kelcy Warren previously filed a lawsuit against the then-Democratic gubernatorial candidate Beto O'Rourke, and litigated it all the way to the Texas Supreme Court. O'Rourke had criticized the fact that Energy Transfer had raised its rates during a winter storm in Texas, making an additional USD 2.4 billion in profits, after which Kelcy Warren donated USD 1 million to Governor Greg Abbott's re-election campaign. O'Rourke deemed this "pretty close to a bribe" for the purpose of preventing the taking of action against Energy Transfer. A Texas appeals court rejected the claims outright, citing freedom of expression and the state's anti-SLAPP statute. The Texas Supreme Court declined to hear the case.[54]

155. All in all, both the Federal Lawsuit and the State Lawsuit are textbook examples of tortious SLAPPs, both individually and when viewed together. If the Lawsuits were not to qualify as SLAPPs, GPI believes that no case will reasonably do so. Therefore, the filing of the Lawsuits, the continuation of the State Lawsuit, and Energy Transfer's continued conduct in the context of the SLAPPs (including continuously making false statements about GPI) is plainly tortious against GPI.

156. Given that Energy Transfer filed the Lawsuits and otherwise behaved as described above, the tortious conduct is attributable to it. As GPI will explain in more detail below (Section 7), it has suffered and continues to suffer significant damages as a result. Those damages are proximately caused by Energy Transfer's tortious conduct: without the filing of the Lawsuits and Energy Transfer's other actions, GPI would not have suffered any damages. The standards relied upon by GPI (including the anti-SLAPP laws and regulations) explicitly seek to protect against the type of damages suffered by GPI. Thus, all the requirements of Article 6:162 of the Dutch Civil Code have been met.

157. Moreover, on the same factual grounds as mentioned above, Energy Transfer has abused its rights vis-à-vis GPI pursuant to Article 3:13 of the Dutch Civil Code. Energy Transfer's claims are manifestly unfounded, as explained above, as a result of which, in view of their evident lack of foundation, the filing of the claim should have been decided against in consideration

[54] DW Magazine December 15, 2023, "Texas Supreme Court Declines to Review Kelcy Warren's Defamation Suit Against Beto O'Rourke," see: https://www.dmagazine.com/frontburner/2023/12/texas-supreme-court-declines-to-review-kelcy-warrens-defamation-suit-against-beto-orourke/.

of GPI's interests involved.[55] This is evident from all the facts and circumstances outlined above: GPI will not enumerate them again to avoid repetition.

158. However, in particular, GPI points to the choice to file and continue to file the State Lawsuit even against GPI after the RICO Act causes of action in the Federal Lawsuit were found to be obviously without merit, and to the public statements by Energy Transfer and its representatives that clearly indicate exercise of the right to access court for no other purpose than to harm GPI.

7 GPI'S DAMAGES

159. As a result of Energy Transfer's tortious conduct, GPI has suffered damages. GPI notified Energy Transfer of its liability by letter dated July 23, 2024. Energy Transfer has expressly refused to mitigate these damages as requested by GPI, and as a result the damages continue to increase every day.

160. Pursuant to Article 17 (1) of the Directive, these damages, including the costs incurred by GPI, are eligible for compensation. In these proceedings GPI claims compensation for damages, to be assessed by the court pursuant to Article 612 of the Code of Civil Procedure. For referral to the damages assessment procedure, it is sufficient for GPI to make a plausible showing it has suffered damages. [56]

161. In support of this, GPI's heads of damages will be explained below, by which GPI fulfils its obligation to assert them.[57] It is important to note here that the extent of these claims for damages has not yet been determined at this time, given that the State Lawsuit is in any event still in progress.

162. The damages consist of material and immaterial damages. The immaterial damages are in any case damage to reputation (Article 6:106 sub b of the Civil Code). There is also a special category of immaterial damages, namely damage resulting from the deliberate hindrance of a legal entity with a public interest purpose. Section 6:106(a) of the Dutch Civil Code makes it possible to claim compensation for immaterial damages if they were inflicted with "the intention of causing such damage". According to the government's explanation of this article:[58]

> "One can also think of intentionally obstructing a legal entity with a public benefit purpose in its achievement, a case that will not always be covered by the provision under b."

163. The main heads of damage in this regard can be described at this time as follows:

    a. As a result of the SLAPPs filed against it, GPI has had to incur very significant costs for legal representation in the United States over many years, first for the defense of the Federal Lawsuit and then for the defense of the State Lawsuit. The cost of defending the State Lawsuit is still rising every day and will reach a new peak beginning in late February 2025, when the five-week jury trial of the State Lawsuit is expected to begin. The total amount of these costs is not yet fixed and will also depend to a significant degree on the further course of the litigation. These costs are expected to be capable

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[55] Supreme Court, 6 April 2012, ECLI:NL:HR:2012:BV7828, NJ 2012/233 (*Duka/Achmea*), Supreme Court, 15 September 2017, ECLI:NL:HR:2017:2366 (*Alternative Construction and Development Combination Wateringsveld B.V. v. Defendants*).

[56] T&C Article 612 of the Code of Civil Procedure.

[57] *Id*.

[58] MoA II, Parliamentary History Civil Code Book 6, p. 380.

of determination in more detail in the follow-up proceedings for the determination of damages.

b. The handling of Energy Transfer's SLAPPs has cost numerous GPI employees large amounts of time over years, which they are unable to devote to GPI's core mission (campaigning for a green and peaceful future). Again, the time investment of GPI employees continues to increase every day, and the total amount of this damage will depend greatly on the course of the procedure in the State Lawsuit.

c. In addition to investing time and (salary) costs, GPI is also forced to invest significant amounts of money in other costs associated with the long-running SLAPP cases. For example, GPI staff must regularly travel to the United States for procedural steps, which involves significant travel and lodging costs; consultations must take place with outside attorneys, and attention must be given to campaign activities associated with the case. Various aspects of the case also require the engagement of knowledgeable outside experts. The conduct of the present case also involves costs for GPI.

d. In a general sense, GPI's work is obstructed and held up by the Lawsuits, in many ways. For example, a disproportionate amount of attention has had to be given to GPI's work in the United States arising from the handling of (currently) the State Lawsuit, leaving less room for the fulfilment of GPI's objectives in other parts of the world. Also, the Lawsuits and all developments around them require continuous consultation between GPI, GP, Inc. and Greenpeace Fund, Inc.; after all, these are each independent entities with their own boards and powers. GPI can elaborate on this point if desired, but hopes that this provides some insight for your Court into how Energy Transfer's conduct has (knowingly) frustrated and continues to frustrate GPI's work. From this follow in particular the immaterial damages under Article 6:106 sub a of the Dutch Civil Code.

e. The SLAPPs that Energy Transfer has filed against GPI and the serious, unsubstantiated allegations that Energy Transfer has made about GPI result in continued reputational damage on the part of GPI.

164. Thus, there are several categories of damages, including in any case pecuniary damage, damage due to the deliberate obstruction of GPI, and reputational damage. According to the wording of Article 17(1) of the Directive ("the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country") these are all eligible for compensation. GPI reserves the right to claim additional heads of damage and/or items of damage, as it is quite possible that, due to the ongoing dynamics of the State Lawsuit, other categories of damage and/or items of damage than those set out above will also arise.

165. As the Defendants each play a largely equal role in the conduct outlined above and have continuously presented themselves as one front in this matter, including in communications, they are jointly and severally liable for the damages suffered by GPI. GPI therefore seeks a joint and several order to pay damages. This is already justified on the grounds that the defendants are (or were) each plaintiffs in the Federal Lawsuit and the State Lawsuit.[59] They relied in part on different causes of action in these cases, but in each case these were obviously unsubstantiated, and resulted in a disproportionate claim for damages. Therefore,

[59] GPI again notes that in the Federal Lawsuit, Dakota Access LLC was not a plaintiff, but Energy Transfer Partners, L.P. (the legal predecessor of Energy Transfer Operating, L.P.) as a majority shareholder of Dakota Access was. This is explained by the plaintiffs in the Federal Lawsuit in their First Amended Complaint, see Exhibit 10, par. 25.

the core of the tortious conduct (the joint instigation of SLAPPs and the defendants' conduct in that context) that GPI accuses defendants is identical for each defendant.

166. Energy Transfer's tortious and injurious actions against GPI are all the more objectionable given that Energy Transfer, as stated above, has expressly refused to cease its injurious actions and has indicated that it will pursue the State Lawsuit against GPI to its full extent. This, of course, does not diminish Energy Transfer's continuing obligation to act to mitigate damages, which it can easily do by, at a minimum, withdrawing the State Lawsuit, acknowledging without reservation liability for its tortious actions, and engaging in negotiations to further resolve the matter with GPI.

167. It follows from the above-described finding of tortious conduct and violation of various fundamental rights, and from the substantial damage suffered by GPI as a result, that the damage is attributable to Energy Transfer. The extent of these damages and any other issues surrounding them will be the subject of discussion in the follow-up proceedings for the determination of damages.

8 EXPLANATION OF THE DEMANDS

168. Under I(a), GPI seeks a declaratory judgment that Energy Transfer acted tortiously by bringing the Lawsuits against GPI and, in this connection, making false allegations about GPI. This formulation reflects that, as explained above, Energy Transfer's entire conduct, the bringing of SLAPPs against GPI and everything surrounding it, qualifies as a specific form of tortious conduct against GPI.

169. In addition, under I(b), GPI is seeks a declaratory judgment that Energy Transfer abused its rights, specifically by commencing the Lawsuits, pursuant to Article 3:13 of the Dutch Civil Code and that these suits qualify as SLAPPs within the meaning of the Directive, *or in the alternative as* 'manifestly unfounded and abusive court proceedings' within the meaning of the Directive. In the event your Court wishes to stay close to the text of the Directive in the declaratory judgment it awards, in the alternative claim under I(b), the term "SLAPPs" has been replaced by the exact definition thereof from the Directive.

170. GPI has a compelling interest in the granting of these declaratory judgments, as it can thereby objectively demonstrate that an independent court has characterized Energy Transfer's conduct as tortious and an abuse of rights, constituting SLAPPs. Such a ruling, both in this case and in any future cases, will provide a powerful means of redress for victims of SLAPPs and involves a more meaningful judgment than a mere award of damages.

171. Under II, GPI seeks compensation for its damages and referral to follow-up proceedings for the determination of damages. As noted above, GPI does not have a sufficiently complete picture of its total damages at this time: they are increasing every day.

172. Under III, GPI claims publication by Energy Transfer of a notice on its website with a link to a pdf version of a sworn English translation (to be prepared at Energy Transfer's expense) of the judgment to be rendered in this case, as further specified in the prayer for relief. Article 3:296 and/or Article 6:162 and Article 6:103 of the Civil Code provide a sufficient basis in Dutch law for imposing such an obligation,[60] certainly read in conjunction with Article 15 of the Directive, which provides:

[60] See in this connection also the government's explanation of Article 3:3035a paragraph 4 of the Civil Code: "(...) it may be assumed that publication of a judgment is also possible outside the cases covered by these articles. If the relevant requirements are met, an order to publish a judgment can thereby be based on article 296 of Book

> "Member States shall ensure that courts or tribunals seised of abusive court proceedings against public participation may impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, on the party who brought those proceedings."

and Recital 42 of the Directive:

> "The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties."

173. GPI considers a period of two weeks for complying with this claim reasonable. To prevent Energy Transfer from removing the mandatory publication from its website after the expiry of some time, GPI seeks an order that Energy Transfer should keep the publication online at the place on its website where its archive of press releases can be found.

174. Under IV, as an incentive to comply with the publication sought under III, GPI seeks payment of a penalty of EUR 10,000 per day that Energy Transfer would not, or not fully, comply with the order to be pronounced under III, on the basis of Article 611a of the Code of Civil Procedure. The amount of this penalty payment has been partly determined in light of the financial strength of Energy Transfer, a company with an annual turnover of almost $80 billion: the incentive to comply must be effective. In this light, GPI also points out that Energy Transfer must by now have spent tens of millions of dollars on pursuing the Lawsuits: it is thus a very financially strong party where the imposition of a high penalty is justified.

175. Finally, pursuant to Articles 14 and 17(1) of the Directive, GPI's full legal costs in this case are eligible for award (claim under V). Dutch civil procedural law already provides for this possibility pursuant to Article 237 paragraph 1 of the Code of Civil Procedure and Article 3:13 and 3:15 of the Civil Code, as explained by the government in the draft Explanatory Memorandum to the draft Implementation Act (Exhibit 33, p. 11 and 24) and (also) invoked by GPI in the present case:

> "Under Article 14 of the Directive, a SLAPP target should be able to be compensated for the full costs of legal representation unless those costs are excessive. Dutch (procedural) law provides for this. In principle, in the Netherlands, the losing party is ordered to pay the costs (Article 237(1) Rv). The court can also leave the costs that were unnecessarily incurred or caused to be incurred for the account of the party that incurred or caused these costs. In SLAPPs, this offers sufficient room to deviate from the scoring system - which in principle applies to the calculation of costs - to come to a full award of costs. In practice, little use is made of this possibility of deviation, but precisely in cases of a manifestly unfounded claims or abuse of procedural law, unnecessary costs will often be involved, so that it is expected that (more) use can be made of this possibility, also in the light of the Directive."

176. GPI realizes that the awarding of full legal costs is unusual in the Dutch legal sphere and that Article 14 of the Directive relates primarily to cases in which the targets of a SLAPP are the

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3 of the Civil Code, or on article 162 in conjunction with article 103 of Book 6 of the Civil Code". *Parliamentary Papers II* 1999-2000, 26 693, no. 6, p. 2.

defendants. At the same time, it appears from Article 14 and Article 17 of the Directive, read together and in the context of the intention of the Directive (as is also clear from recital 31), that a claim for the award of full legal costs may also be made in cases where parties invoke the provisions of Article 17(1) of the Directive. In this regard, GPI points out that the costs it had to incur for these proceedings clearly qualify as "costs incurred in connection with the proceedings before the court or tribunal of the third-country." Otherwise, the threshold for claiming the rights described in Article 17(1) Directive would become disproportionately high. In the event that your Court does not go along with this, GPI *alternatively* claims compensation of its legal costs in the usual manner.

177. The total amount of legal costs (including attorney's fees) in this case has not yet been determined. Prior to the hearing in this case, GPI will submit an overview of the legal costs incurred by it up to that point, including an estimate of the legal costs to be incurred up to judgment.

9 KNOWN DEFENSES OF ENERGY TRANSFER

178. Energy Transfer takes the position that the lawsuits it brought against GPI are not SLAPPs, but a legitimate exercise of its rights under North Dakota state law. Energy Transfer further believes that there is no legal basis to establish its liability under either European or Dutch law.

179. These views have been discussed and refuted in the foregoing.

10 EVIDENCE

180. The Plaintiff, to the extent the burden of proof would fall on it under Section 150 of the Code of Civil Procedure, offers proof of all its contentions, by all means in law. Several of GPI's employees involved in the Lawsuits could explain in greater detail the course of the proceedings and content of the Lawsuits, and GPI offers further evidence through submission of relevant procedural documents in the Lawsuits (to the extent permissible under applicable rules of U.S. law).

181. GPI believes it is abundantly clear that the Federal Lawsuit and the State Lawsuit, judged both separately and in conjunction, qualify as SLAPPs within the meaning of the Directive. Therefore, GPI has explained the main features of these cases in this summons, which it believes is sufficient for a thorough assessment of the case before the court. However, should it be necessary, GPI can provide further evidence on the Federal Lawsuit and/or the State Lawsuit by separate writ or by hearing as a witness one of its employees involved in the case

11 PRAYER FOR RELIEF

The plaintiff requests the District Court of Amsterdam to, by judgment, to the extent possible provisionally enforceable:

I. declare that:

   a. Energy Transfer's conduct toward GPI, including bringing the Federal Lawsuit and the State Lawsuit and making false statements about GPI, is tortious towards GPI; and

   b. Energy Transfer, by bringing the Federal Lawsuit and the State Lawsuit committed an abuse of rights under Article 3:13 of the Civil Code, and that these lawsuits

qualify as SLAPPs within the meaning of the Directive, *or at least* as "manifestly unfounded and abusive court proceedings" within the meaning of the Directive;

II. order the defendants jointly and severally to compensate GPI for the damages suffered as a result of their tortious conduct toward GPI, to be assessed by the court and settled according to the law, all to be increased by the statutory interest, and to refer the parties to the follow-up proceedings for the determination of damages for this purpose;

III. order the defendants, within two weeks of service of the judgment to be entered in this case:

a. to have a certified English translation of the judgment to be rendered in this case prepared and published in pdf format as specified below, at their own expense;

b. to publish and keep published the following text as a press release on Energy Transfer's website <energytransfer.com>, and to publish and keep published this text on Energy Transfer's "Newsroom" page https://www.energytransfer.com/newsroom/, hyperlinking in each case to the certified English translation of the judgment to be rendered in this case as referred to in III (a) of this prayer for relief:

"The Court of Amsterdam, the Netherlands has found, by judgment of [date judgment], that Energy Transfer, LP, Energy Transfer Operating LP and Dakota Access, LLC ("Energy Transfer") have acted tortiously against Greenpeace International by filing two lawsuits against Greenpeace International before the Federal and State Court of North Dakota and publicly accusing Greenpeace International, without any factual basis, of serious criminal and unlawful activities in the context of protests against the Dakota Access Pipeline.

Furthermore, the Court of Amsterdam found that the lawsuits Energy Transfer filed against Greenpeace International qualify as so-called "Strategic Lawsuits Against Public Proceedings" or "SLAPPs" and has ordered Energy Transfer to publish and keep published a sworn translation of its judgment on the website <energytransfer.com>. You can access this document by clicking here."

where this last word "here" in the text included above contains a hyperlink to a pdf version of the certified English translation of the judgment in this case.

IV. order the defendants jointly and severally to pay a penalty of EUR 10,000 for each day that they do not, or do not fully, comply with the order to be issued under III;

V. order the defendants jointly and severally to pay the full costs of these proceedings, including post-judgment costs, with the stipulation that if these costs are not paid within fourteen days of the date on which the judgment was rendered, legal interest will be due on them, *or in the alternative,* order the defendants jointly and severally to pay the costs of these proceedings, with the stipulation that if these costs are not paid within fourteen days of the date on which the judgment was rendered, legal interest will be due on them.

Cost of writ: € 144.47

The increase under Article 10 Btag was raised because the plaintiff could not set off the VAT.

This case is being handled on behalf of Stichting Greenpeace Council by *mr.* E.W. Jurjens of Prakken d'Oliveira Human Rights Lawyers, ejurjens@prakkendoliveira.nl , +31 20 344 6200.