

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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2026 ND 93

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Energy Transfer LP f/k/a Energy Transfer Equity, L.P.;  
Energy Transfer Operating, L.P. f/k/a Energy Transfer  
Partners, L.P.; and Dakota Access, LLC,

Petitioners

v.

The Honorable Judge James D. Gion, Judge of the  
District Court, South Central Judicial District,  
Morton County; Greenpeace International a/k/a  
Stichting Greenpeace Council; Greenpeace, Inc.;  
Greenpeace Fund, Inc.; Red Warrior Society a/k/a  
Red Warrior Camp; Cody Hall; and Krystal Two Bulls,

Respondents

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No. 20250341

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Petition for Supervisory Writ.

SUPERVISORY WRIT GRANTED AND REMANDED.

Opinion of the Court by Tufte, Justice., in which Justice Jensen, District Judge Stephanie R. Hayden, and District Judge James T. Shockman joined. Chief Justice Fair McEvers filed a dissenting opinion.

Bradley G. Hubbard (argued), Jaime R. Barrios (appeared), and John T. Cox III (on brief), Dallas, TX, Spencer D. Ptacek (appeared) and Lawrence Bender (on brief), Bismarck, ND, and Collin J. Cox (on brief) and Gregg J. Costa (on brief), Houston, TX, for petitioners.

Elizabeth A. Elsberry (argued) and Christopher E. Rausch (appeared), Bismarck, ND, Steven Caplow (on brief), Eric Stahl (on brief), and James Sigel (on brief), Seattle, WA, Everett W. Jack, Jr. (on brief), Portland, OR, and Laura Handman (on brief) and Adam Caldwell (on brief), Washington, DC, for respondent Greenpeace International.

Benjamin W. Keup, Bismarck, ND, for amicus curiae The Greater North Dakota Chamber.

Philip Axt, Solicitor General, Bismarck, ND, for amicus curiae State of North Dakota.

Richard A. Epstein, New York, NY, and Craig C. Smith, Bismarck, ND, for amicus curiae Grow America's Infrastructure Now, Inc.

Jack P. Dwyer, Fargo, ND, for amicus curiae Institute for Energy Research.

Charles B. Meyer, The Woodlands, TX, and Daniel Nagle, Mandan, ND, for amicus curiae American Energy Association.

**Energy Transfer, et al. v. Gion, et al.**  
**No. 20250341**

**Tufte, Justice.**

[¶1] Energy Transfer LP; Energy Transfer Operating, L.P.; and Dakota Access, LLC (collectively, “Energy Transfer”) petition for a supervisory writ directing the district court to enjoin Greenpeace International (“GPI”) from pursuing its action against Energy Transfer in the Netherlands (“the Dutch action”). Energy Transfer argues supervisory review is warranted because this case implicates fundamental private and important public interests, and GPI’s Dutch action is the collateral litigation antisuit injunctions exist to prevent. We exercise our supervisory authority and conclude the district court abused its discretion by misapplying the governing legal framework. We grant Energy Transfer’s petition and remand with directions to enter a narrowly tailored antisuit injunction consistent with this opinion.

I

[¶2] In February and March 2025, the district court held a three-week jury trial in this matter. After six years of pretrial litigation, the jury returned a unanimous verdict for Energy Transfer, awarding more than \$130 million in compensatory and exemplary damages against GPI, and more than \$666 million in total against the three Greenpeace defendants combined. The special verdict form required that “[t]he answer to each question must be the unanimous answer of the Jury.” Special Verdict Form 1, Pet. Ex. 5. The jury heard evidence of a coordinated, sometimes violent campaign against Energy Transfer’s lawful pipeline operations. As to GPI, the jury found liability for conspiracy, defamation, defamation per se, and tortious interference, and found no liability on the property-tort claims. The Greenpeace defendants raised no counterclaims.

[¶3] On July 22, 2025, Energy Transfer filed an emergency motion in the district court for an antisuit injunction, asking the court to prohibit GPI from proceeding with the Dutch action. On September 9, 2025, the court entered an opinion denying the motion. The district court found the following facts uncontested: GPI notified Energy Transfer on July 23, 2024, that it claimed relief under Dutch

and European law; the parties exchanged correspondence from September through December 2024; and GPI filed its summons with the Dutch court on February 11, 2025—two weeks before the North Dakota trial began.

[¶4] The district court relied on *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin.*, 195 F. Supp. 3d 776 (D. Md. 2016), and adopted a three-step framework: (1) *threshold considerations*—whether the parties and issues are the same; (2) *antisuit injunction factors*—whether the parallel litigation would frustrate a policy in the enjoining forum, be vexatious, threaten the issuing court's *in rem* or *quasi in rem* jurisdiction, or prejudice other equitable considerations; and (3) *comity*—whether principles of comity affect the consideration. *See id.* at 786–88.

[¶5] The district court held that although Energy Transfer and GPI are parties in both cases and their contentions arise from the same activities, “the issues do not seem to be the same.” Reviewing the Dutch summons, the court found GPI had alleged that Energy Transfer's North Dakota action qualified as a SLAPP (Strategic Litigation Against Public Participation) suit, “a cause of action recognized in the Netherlands under anti-SLAPP suit law,” and that Energy Transfer had defamed GPI “by filing a RICO [Racketeer Influenced and Corrupt Organizations] suit in the federal court, which was dismissed, and claiming GPI engaged in criminal activity and facilitation of terrorism.” The court concluded the North Dakota case was different because anti-SLAPP actions are not recognized here, that theory was not raised here, and the North Dakota action addressed only Energy Transfer's defamation claims against the Greenpeace defendants.

[¶6] On the equitable factors, the district court held “the only manner in which a Dutch action could impact the policy of the North Dakota courts would be to reach a final conclusion” before the court's rulings on post-trial motions. The court held it was “not a certainty” the Dutch action would result in a “blatant disregard” of the court's and jury's decisions. The court also held the Dutch action is not vexatious, does not threaten the North Dakota courts' *in rem* or *quasi in rem* jurisdiction, and does not prejudice any equitable consideration because the matter has already proceeded through trial.

[¶7] On comity, the district court held the issue does not apply to GPI’s SLAPP claims or defamation claims in the Dutch action because those matters are not pending before the North Dakota court. The court held that even if comity applied, the Eighth Circuit has adopted a “conservative” approach in the context of foreign antisuit injunctions, presuming a threat to international comity whenever an injunction is sought against litigation in a foreign court.

[¶8] Energy Transfer asserts the Dutch action is a collateral attack on the jury’s verdict that seeks to block enforcement of any judgment, and that the district court’s refusal to enjoin the action affects fundamental interests and requires a supervisory writ to prevent injustice.

## II

[¶9] The order denying Energy Transfer’s motion for an antisuit injunction would be appealable as of right under N.D.C.C. § 28-27-02(3), but the district court has not certified its order under N.D.R.Civ.P. 54(b), and the underlying claims remain pending. *See Black Gold OilField Servs., LLC v. City of Williston*, 2016 ND 30, ¶¶ 9–10, 875 N.W.2d 515 (treating attempted appeal of an interim-relief order as a petition for supervisory writ where Rule 54(b) certification was lacking). Energy Transfer’s counsel acknowledged at oral argument that the order would otherwise be appealable but was not brought up in that posture. We accordingly consider the petition under our supervisory jurisdiction. This Court may examine a district court decision by invoking its supervisory authority:

Under N.D. Const. art. VI, § 2, and N.D.C.C. § 27-02-04, this Court may examine a district court decision by invoking our supervisory authority. We exercise our authority to issue supervisory writs rarely and cautiously, and only to rectify errors and prevent injustice in extraordinary cases when no adequate alternative remedy exists. Our authority to issue a supervisory writ is “purely discretionary,” and we determine whether to exercise supervisory jurisdiction on a case-by-case basis, considering the unique circumstances of each case. Exercise of supervisory jurisdiction may be warranted when issues of vital concern regarding matters of important public interest are presented.

*Manning v. Jaeger*, 2021 ND 162, ¶ 26, 964 N.W.2d 522 (quoting *Wilkinson v. Bd. of Univ. & Sch. Lands*, 2020 ND 179, ¶ 17, 947 N.W.2d 910); see also *Bobcat of Mandan, Inc. v. Doosan Bobcat N. Am., Inc.*, 2026 ND 63, ¶ 23, 32 N.W.3d 316. We ordinarily decline to exercise supervisory jurisdiction “when the proper remedy is an appeal.” *Manning*, ¶ 26 (citing *City of W. Fargo v. Olson*, 2020 ND 188, ¶ 3, 948 N.W.2d 15; *State ex rel. Madden v. Rustad*, 2012 ND 242, ¶ 5, 823 N.W.2d 767); see *Discover Bank v. Romanick*, 2023 ND 172, ¶ 4, 996 N.W.2d 314 (“We have rarely exercised our supervisory jurisdiction when an issue may be otherwise appealable.”).

[¶10] We will exercise supervisory jurisdiction, in our discretion, to review issues affecting parties’ “fundamental interests” and when “issues of vital concern regarding matters of important public interest are presented.” See *Bobcat*, 2026 ND 63, ¶¶ 23–24; see also *Fargo Women’s Health Org., Inc. v. Lambs of Christ*, 488 N.W.2d 401, 405-06 (N.D. 1992) (stating “fundamental interests” included “fundamental constitutional rights of speech and assembly”); *Wrigley v. Romanick*, 2023 ND 50, ¶ 11, 988 N.W.2d 231 (exercising supervisory jurisdiction to review a preliminary injunction in a case contending the legislature exceeded its constitutional authority in regulating abortion, explaining the case presented “an issue of vital concern regarding a matter of important public interest”); *Smith v. Isakson*, 2021 ND 131, ¶ 9, 962 N.W.2d 594 (exercising supervisory jurisdiction to address an issue concerning “a vital constitutional right” to a trial by jury); *Mitchell v. Sanborn*, 536 N.W.2d 678, 683 (N.D. 1995) (“We have exercised our supervisory jurisdiction to consider the constitutionality of statutes[.]”). In *Black Gold*, this Court concluded issues about Black Gold’s request for “interim relief” affected the litigants’ “fundamental interests” and, despite lacking Rule 54(b) certification, treated Black Gold’s appeal as a petition for supervisory jurisdiction. 2016 ND 30, ¶ 10.

[¶11] Energy Transfer argues GPI’s Dutch action threatens its most fundamental private interests. It contends the district court’s refusal to enjoin the Dutch action imperils its ability to preserve and ultimately enforce the verdict obtained after a three-week trial. Although it concedes final judgment has not been entered and appellate review remains available, Energy Transfer contends the Dutch action seeks to preempt that process by asking a Dutch court to declare the North

Dakota case “manifestly unfounded” and to award damages designed to erase the verdict. Energy Transfer contends the Dutch action is an “existential threat” to its right to secure justice, carry the jury’s verdict into effect, and be free from harassing, vexatious, repeat litigation. It argues that simultaneous litigation of “the same dispute” in Amsterdam and Bismarck wastes resources, imposes duplicative costs, and risks inconsistent rulings.

[¶12] Energy Transfer further argues the Dutch action threatens important public interests and falls within North Dakota courts’ authority to prevent collateral attacks. It contends North Dakota law provides an orderly avenue for challenging a judgment—post-trial motions and appellate review—not collateral lawsuits in foreign courts. It asserts the procedural posture compels an injunction: this case was filed first, has been litigated for six years, and a unanimous jury rendered a verdict against GPI, *see* Special Verdict Form 1, Pet. Ex. 5, awarding Energy Transfer more than \$130 million in damages, while GPI’s Dutch action was filed “on the eve of trial.” Energy Transfer argues the Dutch suit is not a legitimate parallel proceeding but a strategic end-run around North Dakota’s judiciary. The State of North Dakota, as amicus, agrees this case implicates a “significant state interest in protecting North Dakota judicial proceedings from improper collateral attacks.” Br. of State of North Dakota as Amicus Curiae ¶ 2; *see id.* ¶ 52 (describing “significant interest” of the State “in the Court adopting a clear framework for analyzing anti-suit injunctions when parties to a North Dakota lawsuit initiate a foreign lawsuit that is alleged to collaterally challenge the North Dakota proceeding”).

[¶13] Energy Transfer’s petition involves fundamental interests and presents issues of vital concern on a matter of important public interest. Whether a North Dakota court may issue a foreign antisuit injunction is a question of first impression. This is an extraordinary case warranting supervisory review, and we proceed to review the district court’s denial of the antisuit injunction.

### III

[¶14] “Our jurisdiction to issue supervisory writs is, in a sense, both appellate and original in character, because supervisory proceedings are independent in

nature with process directed to a trial court, but our decision reviews the trial court's judicial act." *Mann v. N.D. Tax Comm'r*, 2005 ND 36, ¶ 20, 692 N.W.2d 490. A district court's decision "granting or denying injunctive relief is equitable in nature, rests within its sound discretion, and will not be reversed on appeal absent an abuse of discretion." *G&D Enters. v. Liebelt*, 2020 ND 213, ¶ 29, 949 N.W.2d 853. A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner; if its decision is not the product of a rational mental process leading to a reasoned determination; or if it misinterprets or misapplies the law. *Black Gold*, 2016 ND 30, ¶ 12. A district court that misinterprets or misapplies the law necessarily abuses its discretion, and we review that legal question de novo. *Id.*; *Twete v. Mullin*, 2020 ND 264, ¶ 3, 952 N.W.2d 91.

#### IV

[¶15] Before the district court may issue an antisuit injunction, it must have personal jurisdiction over the party to be enjoined. *See Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 359 (8th Cir. 2007) (courts may "enjoin persons subject to their jurisdiction from prosecuting foreign suits"). GPI argues North Dakota courts lack personal jurisdiction over it. The district court addressed the question in a February 13, 2020 Memorandum Opinion and Order, finding "there is personal jurisdiction of GPI by contact. It committed tortious [sic] acts outside the state causing injury to persons or property in the state. Here, Plaintiffs have made out a prima facie cause of action for defamation." Resp. Ex. 7. That ruling was a prima facie determination at the motion-to-dismiss stage. *See Solid Comfort, Inc. v. Hatchett Hosp. Inc.*, 2013 ND 152, ¶ 9, 836 N.W.2d 415; *Hansen v. Scott*, 2002 ND 101, ¶ 18, 645 N.W.2d 223.

[¶16] After a full trial, the jury found GPI liable for conspiracy, defamation, defamation per se, and tortious interference. The evidentiary burden for establishing personal jurisdiction changes as the litigation progresses. At the motion-to-dismiss stage, a plaintiff need only make a prima facie showing, with facts viewed in the light most favorable to the plaintiff. *Solid Comfort*, 2013 ND 152, ¶ 9. After a trial resulting in a verdict, the jurisdictional question is resolved by the evidence adduced at trial. *See Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 676–

77 (1st Cir. 1992) (holding that at trial, jurisdictional facts must be established by a preponderance of the evidence rather than a prima facie showing); *Carteret Sav. Bank, FA v. Shushan*, 954 F.2d 141, 142 n.1 (3d Cir. 1992) (same). For purposes of this supervisory writ, the jury’s findings that GPI committed torts causing injury in North Dakota support personal jurisdiction. We do not resolve the merits of personal jurisdiction here. Post-trial motions and any direct-appeal challenges—including GPI’s preserved argument that conspiracy-based jurisdiction does not survive *Walden v. Fiore*, 571 U.S. 277 (2014)—remain for the district court and, in due course, this Court.

## V

[¶17] Energy Transfer argues an antisuit injunction is warranted because GPI’s Dutch action is exactly the type of collateral litigation antisuit injunctions exist to prevent. Energy Transfer contends the Dutch action is a collateral attack designed to nullify a North Dakota jury verdict and that the district court erred in elevating form over substance by focusing on the label attached to GPI’s cause of action—an “anti-SLAPP” action—rather than the substance of what that claim requires GPI to prove and the consequences of prevailing.

[¶18] The power of a court of equity to order a person subject to its jurisdiction to forbear from pursuing an action in another forum has deep roots. By the time North Dakota became a State, that authority was a settled incident of the judicial power. See 2 Joseph Story, *Commentaries on Equity Jurisprudence* § 899 (12th ed. 1877) (explaining that although a court has no authority “to stay proceedings in the courts of another” country, “they have an undoubted authority to control all persons and things within their own territorial limits,” and where parties are resident within that territory, “the courts of equity in the latter may act in personam upon those parties, and direct them, by injunction, to proceed no further in such suit”). State equity courts of the era exercised the same power. See, e.g., *Hawkins v. Ireland*, 67 N.W. 73, 75 (Minn. 1896) (stating that a court of equity “has the power . . . [to] restrain its own citizens, of whom it has jurisdiction, from prosecuting suits in the courts of other states and foreign jurisdictions, whenever . . . such restraint [is] necessary to enable the court to do

justice”). The antisuit injunction was—and remains—an order that operates *in personam* against a party, not against the foreign tribunal.

[¶19] North Dakota inherited and confirmed that equitable authority at statehood and has preserved it since. The 1889 Constitution vested the “judicial power of the state” in the courts of North Dakota, N.D. Const. art. IV, § 85 (1889), and committed to the district courts “original jurisdiction of all causes both at law and equity,” *id.* § 103. That vesting endures in substance today. N.D. Const. art. VI, § 1 (vesting the “judicial power of the state” in a unified judicial system); *id.* § 8 (vesting in the district courts “original jurisdiction of all causes” and “authority to issue such writs as are necessary to the proper exercise of [their] jurisdiction”); *see also id.* § 2 (vesting in this Court “authority to issue, hear, and determine such original and remedial writs as may be necessary to properly exercise its jurisdiction”). Statutory law is to the same effect. At statehood, the Revised Codes confirmed the district courts had “power to issue all writs . . . necessary to the due execution of the powers with which they are vested,” together with “all the powers according to the usages of courts of law and equity.” N.D. Rev. Code § 5175 (1895). The current provision reproduces that grant. N.D.C.C. § 27-05-06(3) (district courts have “[a]ll the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice”); *see State ex rel. City of Minot v. Gronna*, 59 N.W.2d 514, 538 (N.D. 1953) (holding the district court has “original jurisdiction of all causes in equity”). We therefore hold that a North Dakota district court possesses inherent authority, inherited from the common law and preserved by our Constitution and statutes, to enjoin a person subject to its personal jurisdiction from prosecuting a duplicative or collateral proceeding in a foreign forum.

[¶20] Courts generally have the power to grant antisuit injunctions, enjoining persons subject to their personal jurisdiction from pursuing litigation in foreign tribunals. *See, e.g., Goss*, 491 F.3d at 359; *Canon Latin Am., Inc. v. Lantech (CR)*, S.A., 508 F.3d 597, 600 (11th Cir. 2007); *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 16–17 (1st Cir. 2004); *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626 (5th Cir. 1996); *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 926 (D.C. Cir. 1984); *see also Niemeyer v. Niemeyer*, 409 So. 3d 186,

188 (Fla. Dist. Ct. App. 2025); *Bridas Corp. v. Unocal Corp.*, 16 S.W.3d 887, 890 (Tex. App. 2000); 43A C.J.S. *Injunctions* § 123 (“An action or proceeding in another state or country generally may be enjoined on the ground that it interferes inequitably with local litigation affecting local citizens or residents, evades the law of the local state, or otherwise requires the interposition of equity to prevent a manifest wrong or injustice.”). Courts have cautioned that foreign antisuit injunctions implicate an “additional layer of concern,” *Niemeyer*, 409 So. 3d at 188, and should be “used sparingly” and granted “only with care and great restraint” in the “rarest of cases.” *Goss*, 491 F.3d at 359; *BAE Sys.*, 195 F. Supp. 3d at 788.

[¶21] “There are no precise rules governing the appropriateness of antisuit injunctions.” *Laker Airways*, 731 F.2d at 927. Federal circuits split on how much deference international comity receives when a court decides whether to issue a foreign antisuit injunction. *Goss*, 491 F.3d at 359. At least the First, Third, Sixth, and District of Columbia Circuits have adopted a “conservative” approach—which the Eighth Circuit joined in *Goss*—under which “a foreign antisuit injunction will issue only if the movant demonstrates (1) an action in a foreign jurisdiction would prevent United States jurisdiction or threaten a vital United States policy, and (2) the domestic interests outweigh concerns of international comity.” *Id.*

[¶22] The Fifth and Ninth Circuits, and potentially the Seventh Circuit, follow a “liberal” or “lax” approach, “which places only modest emphasis on international comity and approves the issuance of an antisuit injunction when necessary to prevent duplicative and vexatious foreign litigation and to avoid inconsistent judgments.” *Goss*, 491 F.3d at 360. “Under either the conservative or liberal approach, when a preliminary injunction takes the form of a foreign antisuit injunction, courts are required to balance domestic judicial interests against concerns of international comity.” *Id.* (cleaned up); see also 101 A.L.R. Fed. 3d Art. 1, *Federal Court Injunction Against Suit in Foreign Country—Non-Arbitration Cases* (2025).

[¶23] The district court relied on *BAE Systems*, 195 F. Supp. 3d at 784–90, to adopt a framework for analyzing the suitability of an antisuit injunction, identifying three considerations: (1) *threshold considerations*—whether the parties and issues

are the same; (2) *antisluit injunction factors*—whether the parallel litigation would frustrate a policy in the enjoining forum, be vexatious, threaten the issuing court’s *in rem* or *quasi in rem* jurisdiction, or prejudice other equitable considerations; and (3) *comity*—whether principles of comity affect the consideration.

[¶24] At oral argument, Energy Transfer’s counsel stated that, in his view, the choice between the strict and lax tests does not affect the outcome here, though he urged that if this Court were to choose, it should adopt the lax approach. We adopt the *BAE Systems* three-step framework—(1) substantial similarity of parties and issues, (2) equitable considerations, and (3) comity—that the district court applied and that both parties briefed. Within that framework, we adopt the more conservative approach to comity that the Eighth Circuit and a majority of federal circuits that have considered the issue have followed. *See Goss*, 491 F.3d at 359. The conservative approach treats international comity as a substantial factor weighing against issuance of a foreign antisluit injunction, but not as a categorical bar. *Id.* at 359-60. State courts, no less than federal courts, owe due regard to foreign tribunals; the conservative approach reflects that respect while preserving this Court’s authority to protect the integrity of North Dakota proceedings when comity concerns are outweighed by domestic interests. As we explain, that test is satisfied here. The question is whether the district court correctly applied the framework it chose.

#### A

[¶25] Energy Transfer argues the district court erred in denying relief on the ground that the North Dakota and Dutch cases do not present the same issues. Energy Transfer contends the parties and issues are substantially the same, and that determining whether the North Dakota case is “manifestly unfounded” necessarily requires relitigating its merits.

[¶26] As adopted by the district court, the *BAE Systems* framework provides the following threshold considerations:

The anti-suit injunctions factors are similar under both [liberal and conservative] approaches. Preliminarily, the court considers

whether “(1) ‘the parties are the same in both [the foreign and domestic lawsuits],’” and whether “(2) ‘resolution of the case before the enjoining court is dispositive of the action to be enjoined.’” . . . Courts taking both liberal and conservative approaches have considered substantial similarity, instead of looking only for whether the parties and claims were identical or whether the case in the enjoining court is dispositive of the other case.

195 F. Supp. 3d at 786–87 (citations omitted); *see Quaaak*, 361 F.3d at 18 (describing the “gatekeeping inquiry” as “whether parallel suits involve the same parties and issues”); *id.* at 20 (“The parties and issues are substantially similar, thus satisfying the gatekeeping inquiry.”).

[¶27] The parties are the same. Energy Transfer and GPI are parties in both proceedings. That much is undisputed.

[¶28] The issues are substantially similar. GPI’s Dutch action alleges Energy Transfer’s North Dakota lawsuit was a “SLAPP.” GPI’s Dutch summons invokes both prongs of the EU anti-SLAPP directive: that the North Dakota lawsuit was “manifestly unfounded”—a substantive merits screen under Articles 11 and 16—and that the proceedings were “abusive” within the meaning of Article 4(3). *See* Pet. Ex. 1, at ¶ 154(iii) (GPI’s position that the lawsuits “fall under both categories”). The merits-screen prong, as pleaded, requires the Dutch court to determine that the North Dakota claims lacked legal merit—to relitigate the very questions the North Dakota jury already decided. GPI’s Dutch complaint, as pleaded, seeks a declaration that the North Dakota action is “manifestly unfounded and abusive” and requires the Dutch court to find that GPI did not engage in unlawful conduct, did not cause Energy Transfer’s losses, and did not act with malice. Those are issues the jury resolved against GPI after a three-week trial. *See* Special Verdict Form, Pet. Ex. 5.

[¶29] The district court concluded otherwise, reasoning that the issues were different because GPI’s Dutch action raises SLAPP claims—“a cause of action recognized in the Netherlands under anti-SLAPP suit law”—and “North Dakota does not recognize a SLAPP or anti-SLAPP action.” This was error. The question is not whether the two jurisdictions recognize the same causes of action under

the same labels. The question is whether resolution of the foreign claim requires adjudicating the same underlying factual and legal questions. *See Kaepa*, 76 F.3d at 627 (affirming antisuit injunction where the defendant, “with the federal action moving steadily toward trial, brought identical claims in Japan”); *Quaak*, 361 F.3d at 18 (explaining “the sensitive and fact-specific nature of the inquiry counsels against the use of inflexible rules,” including in determining “whether parallel suits involve the same parties and issues”). GPI’s unrebutted Dutch-law experts opine that the SLAPP cause of action need not require contradicting the North Dakota verdict. We take GPI’s Dutch complaint as it is pleaded, and the Amsterdam filing seeks precisely that declaration. We evaluate substantial similarity by comparing the elements each claim requires, not the labels attached to it by parties or legislatures. The threshold inquiry focuses on substance, not nomenclature.

[¶30] The “anti-SLAPP” label the district court relied on does not describe the same legal mechanism in American and European law. Anti-SLAPP statutes in American jurisdictions, including the Uniform Law Commission’s recent uniform act, operate defensively: they authorize an expedited motion and a stay of discovery to permit early dismissal of meritless speech-chilling litigation before the merits reach trial. *See* Uniform Public Expression Protection Act §§ 3–5 (Unif. Law Comm’n 2020) (adopted in sixteen jurisdictions as of 2026); Cal. Civ. Proc. Code § 425.16; Tex. Civ. Prac. & Rem. Code §§ 27.003–27.005. Even the handful of “SLAPPback” statutes permitting a prevailing SLAPP defendant to recover damages are keyed to an earlier anti-SLAPP dismissal. None authorizes a claim for damages after the underlying suit has been tried to a jury and resulted in liability. *See* Cal. Civ. Proc. Code § 425.18(b)(1), (h); *cf.* N.Y. Civ. Rights Law § 70-a(1); *see also Soukup v. Law Offices of Herbert Hafif*, 139 P.3d 30, 44–45 (Cal. 2006) (describing the SLAPPback cause of action as a variation on malicious prosecution).

[¶31] The European Union’s 2024 anti-SLAPP directive, by contrast, authorizes an affirmative damages action that may proceed before the underlying case is resolved. *See* Directive (EU) 2024/1069, art. 17(1)–(2), 2024 O.J. (L, 16.4.2024) (reproduced at Pet. Ex. 9 and analyzed in GPI’s Dutch court filing at Pet. Ex. 1, at 115-130). Article 17(1) authorizes a person domiciled in a Member State,

against whom abusive public-participation proceedings have been brought in a third country, to seek compensation for damage and costs in the courts of that Member State; Article 17(2) permits but does not require Member States to limit that jurisdiction while the third-country proceeding is pending. The Directive’s two protective tracks operate independently. Article 11 authorizes early dismissal of “manifestly unfounded” claims as a substantive merits screen; Articles 14 and 15 authorize costs and penalties for proceedings deemed “abusive” under Article 4(3) based on purpose and conduct. The two may overlap, but a Dutch court could find proceedings abusive without holding the underlying claims unfounded, *see* Directive (EU) 2024/1069, recital 29, and a court that dismisses a claim as manifestly unfounded need not assess purpose. GPI’s Dutch summons pleads both tracks as alternatives. Pet. Ex. 1, at ¶ 154(iii). Laws written in different languages will necessarily use different labels. The inquiry must go deeper than labels. The court must compare the elements the foreign claim requires to the issues resolved by the unanimous verdict.

[¶32] Energy Transfer argues the district court elevated form over substance. We agree. The *BAE Systems* framework required the district court to compare the operative elements of the Dutch claim with the issues adjudicated in the domestic proceeding. 195 F. Supp. 3d at 786–87. The district court did not do so. Had the court examined the Dutch claim’s elements—including the requirement that GPI prove the North Dakota case was “manifestly unfounded”—it would have found the issues substantially similar. The claim’s label may differ from the North Dakota causes of action. But on a central element, the Dutch claim asks the Dutch court to resolve in GPI’s favor factual and legal questions the North Dakota jury resolved against GPI.

[¶33] The threshold test does not require the actions to be identical or one to be dispositive of the other. It requires the claims to be “substantially similar.” *Quaak*, 361 F.3d at 20; *BAE Sys.*, 195 F. Supp. 3d at 786–87. A claim that depends on proving the domestic action was “manifestly unfounded” is substantially similar to the domestic action itself. The threshold is met here.

## B

[¶34] Energy Transfer argues equity requires an injunction because the Dutch action is vexatious and harassing, will frustrate North Dakota policy, and is otherwise inequitable. As applied by the district court, the *BAE Systems* framework provides four equitable considerations: “whether the parallel litigation would ‘(1) frustrate a policy in the enjoining forum; (2) be vexatious; (3) threaten the issuing court’s in rem or quasi in rem jurisdiction; [or] (4) prejudice other equitable considerations.’” 195 F. Supp. 3d at 787.

[¶35] *Vexatiousness and timing.* GPI filed its Dutch action on February 11, 2025, two weeks before the North Dakota jury trial began, after six years of litigation and after the case was fully prepared for trial. The timing alone supports an inference of vexatiousness. The Dutch action was not filed to obtain an independent adjudication of novel claims. The only apparent purpose of filing a duplicative foreign action on the eve of trial is to create a vehicle for collaterally attacking the anticipated verdict. GPI waited until the eve of trial—after six years of litigation in this forum—to initiate proceedings in the Netherlands. That timing underscores its strategic purpose. *See Kaepa*, 76 F.3d at 627–28 (foreign filing of identical claims “with the [domestic] action moving steadily toward trial” “smacks of cynicism, harassment, and delay”).

[¶36] *Frustration of North Dakota policy.* North Dakota has a significant state interest in protecting the finality and integrity of its judicial proceedings from improper collateral attacks. *Br. of State of North Dakota as Amicus Curiae* ¶¶ 2, 52. North Dakota provides an orderly process for challenging an adverse verdict—post-trial motions and review in this Court—not a collateral lawsuit that depends on a finding that the first case was “manifestly unfounded.” GPI’s Dutch action seeks a declaration that the North Dakota case was “manifestly unfounded and abusive” and demands damages designed to offset the jury’s verdict. If successful, the Dutch action would contradict and offset the verdict, functionally nullifying it. This is not a legitimate parallel action. It is an attack on a fundamental policy of this state.

[¶37] *Risk of inconsistent judgments.* If the Dutch court declares the North Dakota case “manifestly unfounded,” the result would directly contradict the North Dakota jury’s verdict. Two courts, simultaneously adjudicating the same dispute, would reach opposite conclusions. That is the kind of inconsistency antisuit injunctions exist to prevent. *Cf. Goss*, 491 F.3d at 368 (explaining that “the jurisdictional circumstances and comity considerations have changed” once “there is no longer an outstanding judgment to protect”).

[¶38] The district court discounted these concerns, holding that the Dutch action could affect North Dakota policy only if it reached “a final conclusion” before the North Dakota court ruled on post-trial motions. That understates the threat. The pendency of a foreign proceeding designed to declare a domestic verdict “manifestly unfounded” undermines confidence in the domestic judicial process. And the risk of an inconsistent foreign judgment is real, not speculative. The district court’s analysis also assumes the pace of the two proceedings is beyond the parties’ control. It is not. GPI can influence the pace of both—pressing the Dutch action forward while extending the North Dakota proceedings through post-trial motions. A framework that conditions protection of a jury verdict on speculation about which proceeding finishes first offers little protection when the party seeking to escape the verdict can influence the pace of both proceedings.

## C

[¶39] The district court concluded “[t]he issue of comity does not apply to GPI’s SLAPP claims or GPI’s defamation claims, as those matters are not pending before the North Dakota court” and held that even if it applied, comity favored GPI based on the Eighth Circuit’s “conservative” approach, which presumes a threat to international comity when a party seeks to enjoin a party from pursuing foreign litigation. The conservative approach does not categorically bar antisuit injunctions. It weighs comity as a factor. *Goss*, 491 F.3d at 359. Here, comity concerns are diminished.

[¶40] First, this is the first-filed action. The North Dakota lawsuit was filed in 2019. GPI did not initiate its Dutch action until February 2025—six years later,

and on the eve of trial. Comity principles favor the first-moving court, not the court of a later-filed action designed to undermine the first. *See Laker Airways*, 731 F.2d at 927 (explaining that no precise rules govern antisuit injunctions; courts must examine the equitable circumstances of each request, most commonly to protect the enjoining court’s jurisdiction or prevent evasion of important public policies of the forum). Unlike in *Goss*, where the local action had been satisfied, leaving no domestic litigation pending, 491 F.3d at 365, judgment has not been entered here, and necessarily has not been satisfied.

[¶41] Second, Dutch law already provides GPI an adequate remedy at the enforcement stage. If GPI believes a North Dakota judgment is unjust, it may resist enforcement through the ordinary mechanisms of Dutch law—including Article 16 of the EU anti-SLAPP directive, which directs Member States to refuse recognition of third-country SLAPP judgments. Directive (EU) 2024/1069, art. 16. GPI should not be permitted to file a preemptive action designed to declare the anticipated domestic verdict meritless before it issues.

[¶42] Third, we need not extend comity to a foreign action filed in disregard of comity. *See Laker Airways*, 731 F.2d at 937 (“[T]he obligation of comity expires when the strong public policies of the forum are vitiated by the foreign act.”); *id.* at 939 (claims of comity by a foreign-side party who did not itself observe comity “come burdened with the failure . . . to recognize comity”); *Quaak*, 361 F.3d at 20–21 (a party that “set the stage for a crisis of comity” by filing foreign proceedings targeting ongoing domestic litigation cannot complain when the domestic court issues a defensive antisuit injunction); *see also Kaepa*, 76 F.3d at 627–28 (foreign filing of identical claims “with the [domestic] action moving steadily toward trial” “smacks of cynicism, harassment, and delay”). Comity principles have their strongest claim when the foreign proceeding is first-filed or the natural forum for the litigation. Neither fits: the North Dakota action predates the Dutch filing by six years, and the Dutch filing—on the eve of the North Dakota trial—targets the anticipated verdict. GPI’s decision to sue in the Netherlands on the eve of a North Dakota trial, seeking to declare the North Dakota case “manifestly unfounded,” does not reflect the mutual respect between judicial systems that comity exists to promote.

## VI

[¶43] The district court abused its discretion in denying the antisuit injunction. The court erred by misapplying the law in two respects, both at odds with the conservative approach we today adopt. First, the court applied the substantial-similarity inquiry by looking to the labels GPI attached to its Dutch claims rather than to the elements those claims require GPI to prove. Second, the court concluded “comity does not apply” because GPI’s SLAPP and defamation claims are not pending in North Dakota, then simply noted that the Eighth Circuit presumes a threat to international comity. The court’s superficial consideration of the labels attached to the Dutch and North Dakota claims truncated its consideration of comity and whether a presumed threat to comity is outweighed as to any of the claims in the Dutch action.

[¶44] An antisuit injunction should be narrowly tailored. We do not foreclose all related litigation by GPI in the Netherlands. GPI’s Dutch action includes claims premised on Energy Transfer’s dismissed federal RICO suit and on alleged out-of-court defamatory statements—matters the North Dakota proceedings did not adjudicate. Any antisuit injunction entered on remand should leave GPI free to pursue those claims.

[¶45] We instruct the district court to enjoin GPI from pursuing any claim in the Dutch action whose elements require, as pleaded, a finding that the North Dakota case lacked legal foundation—including any claim premised on the “manifestly unfounded” standard articulated in Articles 11 and 16 of the Directive (and any Article 17 claim that incorporates that merits screen). Those claims are a collateral attack on the jury’s verdict and seek a remedy that would erase any final award of damages. The district court has the duty and the authority to protect the integrity of its own proceedings. The injunction must not extend to the “abusive court proceedings” prong of Articles 14 and 15 to the extent GPI’s proof of abusiveness rests on independent purpose-and-conduct evidence under Article 4(3) and does not require the Dutch court to find the North Dakota claims unfounded. Claims based on the dismissed federal RICO action or alleged out-of-court defamatory statements likewise raise independent issues not decided in North Dakota courts. GPI may not avoid the injunction by

repleading a barred theory under a different label. The district court shall enter the injunction as soon as practicable consistent with this opinion.

## VII

[¶46] We have exercised our supervisory authority to review the district court’s denial of an antisuit injunction. The district court abused its discretion by misapplying the governing legal framework. We grant the petition and remand with directions to enter a narrowly tailored antisuit injunction consistent with this opinion.

[¶47] Jerod E. Tufte

Jon J. Jensen

Stephanie R. Hayden, D.J.

James T. Shockman, D.J.

### **Fair McEvers, Chief Justice, dissenting.**

[¶48] I respectfully dissent. I agree with the majority that we should exercise our supervisory authority to review the district court’s denial of Energy Transfer’s motion seeking an antisuit injunction. Majority, ¶ 13. I also agree with the majority that the district court had the authority and power to grant an injunction enjoining a party subject to its jurisdiction from pursuing litigation in a foreign tribunal. Majority, ¶¶ 18-20. However, I would conclude the district court acted within its discretion in denying Energy Transfer’s motion for antisuit injunction and would therefore deny Energy Transfer’s petition.

## I

[¶49] In its September 2025 opinion, the district court found that it was uncontested Greenpeace International (GPI) notified Energy Transfer on July 23, 2024, that it claimed relief under Dutch and European law; that Energy Transfer and GPI exchanged correspondence on the matter from September through December 2024; and that GPI filed its summons with the Dutch court on February 11, 2025. The court further noted that the jury trial in North Dakota

began at the end of February 2025; the jury awarded damages to Energy Transfer on twelve claims, plus exemplary damages; and the Greenpeace defendants raised no counterclaims.

[¶50] In its opinion, the district court relied exclusively on a federal district court’s decision in the Fourth Circuit, *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea’s Def. Acquisition Program Admin.*, 195 F. Supp. 3d 776, 784-90 (D. Md. 2016) (and federal cases collected therein), for its framework to analyze the suitability of an antisuit injunction in this case. As noted by the majority, the court adopted a three-step process for its consideration set forth in *BAE Systems*. Majority, ¶ 4. The district court held the North Dakota case was different because the SLAPP issue was not raised here—as neither SLAPP nor anti-SLAPP actions are recognized in North Dakota—and the North Dakota action addressed only Energy Transfer’s defamation claims against the Greenpeace defendants.

[¶51] The district court also considered the Dutch litigation’s effect on the North Dakota proceedings, holding “the only manner in which a Dutch action could impact the policy of the North Dakota courts would be to reach a final conclusion” before the court’s rulings on the motions and responses after trial. The court held it was “not a certainty” the Dutch action would result in a “blatant disregard” of the court’s and jury’s decisions. The court also held the Dutch action is not vexatious, does not threaten the North Dakota courts’ *in rem* or *quasi in rem* jurisdiction, and fails to prejudice any equitable consideration here because the matter has proceeded through trial.

[¶52] The district court further held the issue of comity does not apply to GPI’s SLAPP claims or defamation claims in the Dutch action because those matters are not pending before the North Dakota court. The court held, even if consideration of comity applied, the Eighth Circuit Court of Appeals has adopted a “conservative” approach in the context of a foreign antisuit injunction, presuming a threat to international comity whenever an injunction is sought against litigation in a foreign court. The court accordingly denied Energy Transfer’s motion for an antisuit injunction against GPI.

[¶53] The propriety of a North Dakota court issuing an international antisuit injunction is a matter of first impression for this Court. Majority, ¶ 13. Likewise, I expect, this was an issue of first impression for the district court. Our decision here reviews the trial court’s judicial act of denying the requested injunction. *See Mann v. N.D. Tax Comm’r*, 2005 ND 36, ¶ 20, 692 N.W.2d 490. The standard of review for this type of injunction is tiered: the factual findings are reviewed for clear error, legal issues are reviewed de novo, and the court’s ultimate decision to grant or deny an injunction is reviewed for an abuse of discretion. *Goss Int’l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 362 (8th Cir. 2007). A district court’s decision “granting or denying injunctive relief is equitable in nature, rests within its sound discretion, and will not be reversed on appeal absent an abuse of discretion.” *G&D Enters. v. Liebelt*, 2020 ND 213, ¶ 29, 949 N.W.2d 853. The district court’s opinion denying Energy Transfer’s motion for antisuit injunction against GPI and the district court’s decision is reviewed for an abuse of discretion. *See Black Gold OilField Servs., LLC v. City of Williston*, 2016 ND 30, ¶ 12, 875 N.W.2d 515. A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner; its decision is not the product of a rational mental process leading to a reasoned determination; or it misinterprets or misapplies the law. *Id.*

[¶54] The majority cites a wealth of authorities for the proposition courts generally have the power to grant antisuit injunctions, enjoining persons subject to its personal jurisdiction from pursuing litigation in foreign tribunals. Majority, ¶ 20 (string citing authorities). The majority also notes antisuit injunctions involving foreign proceedings implicate an “additional layer of concern” and should be “used sparingly” and granted “only with care and great restraint” in the “rarest of cases.” *Id.* (citing *Goss*, 491 F.3d at 359; *Niemeyer v. Niemeyer*, 409 So. 3d 186, 188 (Fla. Dist. Ct. App. 2025); *BAE Sys.*, 195 F. Supp. 3d at 788). The majority also recognized: “There are no precise rules governing the appropriateness of antisuit injunctions.” Majority, ¶ 21 (quoting *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927 (D.C. Cir. 1984)). I take no issue relying on these general authorities.

[¶55] At oral argument in this matter, Energy Transfer conceded that it did not matter which test was applied. As such, it is my opinion that we need not adopt

a specific test; rather, we may assume without deciding the district court adopted and applied the correct test. Under the framework provided in *BAE Systems*, the district court did not abuse its discretion denying Energy Transfer’s motion for antisuit injunction.

A

[¶56] As noted by the majority, ¶ 26, the district court adopted the analysis of the court in *BAE Systems* which provided the following “threshold considerations”:

The anti-suit injunctions factors are similar under both [liberal and conservative] approaches. Preliminarily, the court considers whether “(1) ‘the parties are the same in both [the foreign and domestic lawsuits],’” and whether “(2) ‘resolution of the case before the enjoining court is dispositive of the action to be enjoined.’” . . . Courts taking both liberal and conservative approaches have considered substantial similarity, instead of looking only for whether the parties and claims were identical or whether the case in the enjoining court is dispositive of the other case.

195 F. Supp. 3d at 786-87 (citations omitted).

[¶57] The district court found both Energy Transfer and GPI are parties in both the North Dakota action and the Dutch action. The court further found the parties’ contentions arise from the same activities—“the establishment of the Dakota Access Pipeline (DAPL) in the area south and west of Bismarck-Mandan, which expanded into a national and international campaign” by DAPL opponents. The court found both actions were based on the protests and campaign; however, the issues were not the same in the North Dakota action and the Dutch action.

[¶58] Reviewing the Dutch action’s summons, the district court held GPI had alleged that Energy Transfer’s North Dakota action qualified as a SLAPP suit—a cause of action recognized in the Netherlands under anti-SLAPP suit law—and that Energy Transfer had defamed GPI “by filing a RICO suit in the federal court, which was dismissed, and claiming GPI engaged in criminal activity and

facilitation of terrorism.” The court concluded the North Dakota action was different because the SLAPP issue had not been raised here—as neither SLAPP nor anti-SLAPP actions are recognized in North Dakota. The court further stated: “Likewise, the North Dakota action did not consider any allegations of defamatory statements directed toward GPI from Energy Transfer. All of the defamatory claims in the North Dakota action addressed those from the Greenpeace Defendants toward Energy Transfer.”

[¶59] On my review, while the analysis is sparse, I agree with the district court. The parties are the same, and the parties’ contentions arise out of the same activities surrounding DAPL. However, not all of the issues are the same. Some of the specific claims in the North Dakota action and the Dutch action are different, and resolution of the North Dakota action is not necessarily dispositive of the Dutch action. While there are some similarities, the types of actions differ. I do not view the district court’s findings that the claims are not substantially similar as a misapplication of the law, but rather a matter of weighing evidence and arguments regarding the nature of the claims in North Dakota versus those made in the Netherlands.

[¶60] As noted above, there are no precise rules governing the appropriateness of antisuit injunctions, and such injunctions should be “used sparingly” and “only with care and great restraint.” I would not hold the district court abused its discretion, particularly when the matter is one of first impression, even if I may have come to a different conclusion.

## B

[¶61] As adopted by the district court, the court in *BAE Systems* provided the following consideration regarding “antisuit injunction factors”:

If the answer to these preliminary [threshold] inquiries is “yes,” the court assesses the effect of the foreign suit, if it were to proceed. The Courts of Appeals that have discussed this assessment agree that the court should consider the following four factors: “whether the parallel litigation would (1) frustrate a policy in the enjoining forum; (2) be vexatious; (3) threaten the issuing court’s *in rem* or *quasi in rem* jurisdiction; [or] (4) prejudice other equitable

considerations.” . . . The Second Circuit also considers a fifth factor—whether allowing the foreign suit to proceed would “result in delay, inconvenience, expense, inconsistency, or a race to judgment.”

195 F. Supp. 3d at 787 (citations omitted).

[¶62] Despite concluding the threshold issues were “no,” the district court considered the relevant antisuit injunction factors. The court specifically considered the Dutch litigation’s effect on the North Dakota proceedings, holding “the only manner in which a Dutch action could impact the policy of the North Dakota courts would be to reach a final conclusion” before the court’s rulings on the motions and responses after trial. As noted by the majority, GPI has submitted an unrebutted expert opinion on Dutch law, opining that the SLAPP cause of action need not require contradicting the North Dakota verdict. Majority, ¶ 29. This opinion supports the court’s holding it was “not a certainty” the Dutch action would result in a “blatant disregard” of the court’s and jury’s decisions. The court also held the Dutch action is not vexatious, did not threaten the North Dakota courts’ *in rem* or *quasi in rem* jurisdiction, and failed to prejudice any equitable consideration here because the matter had already proceeded through trial.

[¶63] *Frustration of North Dakota policy.* The majority discusses North Dakota policy interests and our own processes for challenging an adverse verdict, noting, if successful, the Dutch action would contradict and offset the verdict, functionally nullifying it. Majority, ¶ 36. Without citing any authority, the majority concludes the Dutch action is not a legitimate parallel action which is an attack on a fundamental policy of this state. *Id.* Other courts have taken a different view, indicating “the fundamental corollary to concurrent jurisdiction must ordinarily be respected: parallel proceedings on the same in personam claim should ordinarily be allowed to proceed simultaneously, at least until a judgment is reached in one which can be pled as *res judicata* in the other.” *Laker Airways*, 731 F.2d at 926-27; see also *Advanced Bionics Corp. v. Medtronic, Inc.*, 59 P.3d 231, 236 (Cal. 2002), *as modified* (Mar. 5, 2003) (recognizing when a case involves different jurisdictions, judicial restraint is fundamentally more important). The court in *Advanced Bionics* noted, the possibility of an action

leading to a judgment and then being applied as *res judicata* in another action “is a natural consequence of parallel proceedings in courts with concurrent jurisdiction, and not reason for an injunction.” *Id.* (quoting *Auerbach v. Frank*, 685 A.2d 404, 407 (D.C. 1996)). It went further stating: “[T]he possibility of an ‘embarrassing race to judgment’ or potentially inconsistent adjudications does not outweigh the respect and deference owed to independent foreign proceedings.” *Id.* “[O]nly the evasion of the most compelling public policies of the forum will support the issuance of an antisuit injunction.” *Id.* at 243 (Moreno, J., concurring) (quoting *Gau Shan Co., Ltd. v. Bankers Trust Co.*, 956 F.2d 1349, 1358 (6th Cir. 1992)). The district court held this case does not threaten the North Dakota courts’ *in rem* or *quasi in rem* jurisdiction.

[¶64] I agree with the majority that North Dakota has a significant interest in protecting the finality and integrity of our proceedings from collateral attack. I do not agree there is sufficient justification to warrant a holding that the district court abused its discretion in denying injunctive relief and allowing GPI to litigate its claims in the Netherlands.

[¶65] *Whether the suit in the Netherlands is vexatious.* The majority seems to conclude, based on the timing of the Dutch action and GPI’s apparent purpose in filing a duplicative action on the eve of trial and after six years of litigation in North Dakota, that the Dutch suit is vexatious. Majority, ¶ 35. The majority relies on a case—*Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 627-29 (5th Cir. 1996)—where the reviewing court held the trial court did not abuse its discretion in granting an injunction under the facts of the case. Unlike the court in *Kaepa*, the district court here held the Dutch action is not vexatious. The majority’s reliance on *Kaepa* is misplaced: first, because the *Kaepa* court was affirming the trial court’s determination based on the deferential abuse of discretion standard; and, second, the *Kaepa* court applied a “liberal approach,” which places only a modest emphasis on international comity. *Goss*, 491 F.3d at 360 (discussing *Kaepa* and other cases applying the liberal approach which puts more weight on factors such as inequitable hardship and the delay of speedy and efficient determination of the cause). While we may have weighed the facts differently, the district court did not abuse its discretion in determining the Dutch suit was not vexatious. Rather, the court applied the *BAE Systems* conservative approach, which treats

international comity as a substantial factor weighing against the issuance of a foreign antisuit injunction.

[¶66] *Risk of inconsistent judgments.* The majority also discusses the risk of inconsistent judgments, ultimately concluding that the district court understated the threat. Majority, ¶ 38. The majority relies on *Goss*, 419 F.3d at 368, for the proposition that the risk of inconsistent judgments supports the issuance of the injunction. Majority, ¶ 37. However, the facts are different in *Goss* because the judgment there had already been entered and paid by the time the case was reviewed. *Goss*, 491 F.3d at 368. The *Goss* court did not decide whether the district court abused its discretion in issuing an injunction, only concluding the maintenance of antisuit injunction on a satisfied judgment cannot be justified. *Id.*

[¶67] Here, there is a jury verdict but no judgment has been entered. Under *BAE Systems*, the mere existence of dual grounds of prescriptive jurisdiction does not require ousting of either forum; rather, each forum should ordinarily be free to proceed to judgment. *BAE Systems*, 195 F. Supp. 3d at 786.

[¶68] On my review, the district court considered the antisuit injunction factors even when review of some factors may not have been necessary. In exercising its discretion, I conclude the district court sufficiently explained the basis for its decision concluding an antisuit injunction was not warranted in this case.

## C

[¶69] The court in *BAE Systems* considered principles of comity, specifically contrasting the conservative and liberal approaches, stating: “If the preliminary and secondary factors are satisfied, the court must consider principles of comity.” 195 F. Supp. 3d at 787-89. The district court provided the *BAE System* court’s contrasting approaches to comity, but the court ultimately relied on this Court’s decision in *State ex rel. Stenehjem v. Simple.net, Inc.*, 2009 ND 80, 765 N.W.2d 506, for its consideration of comity. The district court held the issue of comity does not apply to GPI’s SLAPP claims or defamation claims in the Dutch action because those claims are not pending before the North Dakota court. The court held, even if a consideration of comity applied, the Eighth Circuit Court of Appeals has adopted a “conservative” approach in the context of a foreign

antisuit injunction, presuming a threat to international comity whenever an injunction is sought against litigation in a foreign court. *See, e.g., Goss*, 491 F.3d at 361. As noted in *Gau Shan*, 956 F.2d at 1355, “[t]he inappropriate use of antisuit injunctions can have unintended, widespread effects.” The district court, in considering comity, accordingly denied Energy Transfer’s motion for an antisuit injunction against GPI.

[¶70] I conclude it was unnecessary for the district court to consider comity because the preliminary and secondary factors of the *BAE Systems* test were not met. However, on this record, the district court did not act in an arbitrary, unreasonable, or unconscionable manner; its decision was the product of a rational mental process leading to a reasoned determination; and it did not misinterpret or misapply the law. As discussed above, I do not view North Dakota’s policy reasons as compelling enough to justify issuing an antisuit injunction. The court selected a legal framework and considered relevant factors in deciding whether to issue an antisuit injunction. In its order, the court provided explanations for its decision, which was reasoned and not arbitrary. I conclude the court did not abuse its discretion in denying Energy Transfer’s motion for antisuit injunction.

## II

[¶71] In its response to Energy Transfer’s petition, GPI argues North Dakota courts lack personal jurisdiction over GPI. As noted by the majority, before the district court may issue an antisuit injunction, it must have personal jurisdiction over the party it is enjoining. Majority, ¶ 15 (citing *Goss*, 491 F.3d at 359). The majority acknowledges there has only been a finding of a prima facie showing of personal jurisdiction made prior to trial. Majority, ¶ 15. The trial was held prior to the emergency motion for an antisuit injunction. Majority, ¶ 3. I agree with the majority that this court need not resolve the merits of personal jurisdiction. Majority, ¶ 16. But if the district court is required, under the direction of the majority opinion, to issue an injunction, it should first determine whether the facts presented at trial support a finding of personal jurisdiction over GPI. Without such a finding, the court has no authority to issue the injunction.

### III

[¶72] I conclude the district court acted within its discretion in denying Energy Transfer's motion for antisuit injunction. Because I would deny Energy Transfer's petition, I respectfully dissent.

[¶73] Lisa Fair McEvers, C.J.

[¶74] The Honorable Stephanie R. Hayden, District Judge, and the Honorable James T. Shockman, District Judge, sitting in place of Bahr, J., disqualified, and the Honorable Daniel J. Crothers, disqualified member of the Court when this matter was submitted. Justice Mark A. Friese was not a member of the Court when this matter was heard and did not participate in this decision.