

10,204

NO. _____

KELCY WARREN,

Plaintiff,

v.

ROBERT FRANCIS O’ROURKE

Defendant.

§ **IN THE DISTRICT COURT OF**
§
§
§ **SAN SABA COUNTY, TEXAS**
§
§
§ 424th
§ _____ **JUDICIAL DISTRICT**
§

PLAINTIFF’S ORIGINAL PETITION

Plaintiff, Kelcy Warren (“Warren” or “Plaintiff”), by and through his undersigned attorneys, brings this Original Petition against Defendant, Robert Francis O’Rourke (“O’Rourke” or “Defendant”), and asserts claims for defamation, slander, and libel, in support of which Plaintiff respectfully shows the following:

DISCOVERY LEVEL AND STATEMENT OF RELIEF

1. Plaintiff intends to conduct discovery under Level 3 of the Texas Rule of Civil Procedure 190.4, and requests that the Court enter a discovery control plan order tailored to the circumstances of this action. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff states that the damages sought are within the jurisdictional limits of this Court. *See* TEX. R. CIV. P. 47(b). Plaintiff further states that he seeks monetary relief over \$1,000,000.

NATURE OF THE CASE

2. Plaintiff Kelcy Warren, a private citizen, is a lifelong Texan and a successful, self-made businessman, who co-founded the midstream company Energy Transfer LP, a company based in Texas. Warren currently serves as its Executive Chairman. Warren has never run for political office and is not running now. Nor does Warren maintain a public social media

profile or regularly comment publicly on political issues. Like millions of Americans around the country, Warren exercises his right to make political contributions to the campaigns of candidates whose policies he supports, including incumbent Texas Governor Greg Abbott, to whose campaigns for Governor and Attorney General, Warren has donated in every year since 2010, except 2016.

3. Defendant O'Rourke, a failed politician who lost both his 2018 race for U.S. Senate and his 2020 race for the Presidency, announced in November 2021 that he would challenge Governor Abbott in the Texas gubernatorial election this coming November. Shortly after his announcement and trailing Governor Abbott in the polls, Defendant O'Rourke began a relentless and malicious attack on Warren by accusing him of serious crimes including extortion, bribery, and corrupt influence, simply because Warren made a campaign contribution to Governor Abbott in June 2021 and is the former CEO of Energy Transfer. Within the last two months, Defendant O'Rourke has repeatedly stated, with no basis in fact whatsoever, that Warren "broke the law" and committed felonies — extortion, bribery, and corruption — when he purportedly "bought [] off" Governor Abbott "not to fix" the power grid in Texas so that Energy Transfer supposedly could make money in the event the grid failed. Warren has not spoken publicly nor sought publicity concerning the matters that are the subject of Defendant O'Rourke's baseless accusations.

4. Defendant O'Rourke intentionally, repeatedly, and widely disseminated his deliberate and defamatory falsehoods through publicly released messages on Twitter, Facebook, and other social media sites and during speaking engagements and interviews. O'Rourke intended that his malicious and baseless defamatory statements publicly humiliate Warren and discourage others from contributing to Governor Abbott's campaign. Defendant's statements

that Warren has committed felonies in a purported effort to profit off the suffering of his fellow Texans are completely out of bounds for any speech, let alone as talking points for a candidate for the Governor of the State of Texas. The accusations go well beyond the sorts of vague and generalized accusations of political and corporate corruption that are often thrown around; rather, they focus on a particular person, a particular campaign contribution, at a specific point in time, and a particular purported favor done in exchange for the contribution. Defendant O'Rourke's malicious statements about Plaintiff Warren constitute defamation *per se*.

5. Plaintiff Warren has demanded that Defendant O'Rourke retract his defamatory statements, and cease and desist from hurling further defamatory falsehoods against Warren. However, to date, Defendant O'Rourke has refused to do so. Plaintiff Warren is forced to bring this action to stop Defendant O'Rourke's malicious attacks on his reputation.

PARTIES

6. Plaintiff, Kelcy Warren, is a private citizen and resident of San Saba County, in the State of Texas.

7. Defendant, Robert Francis O'Rourke, is an individual domiciled in the State of Texas and may be served at 1100 Los Angeles Drive, El Paso, Texas 79902 or wherever he may be found.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. TX. CONST. ART. 5, § 8; TEXAS GOV'T CODE § 24.007. All causes of actions, claims and issues of law pertain to damages stated herein arise under and are brought pursuant to the laws of the State of Texas.

9. This Court has personal jurisdiction over Defendant O'Rourke because he resides in the State of Texas.

10. Venue is mandatory for this action in San Saba County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 15.017 because this is a suit for damages for libel, slander and defamation, which shall be brought in the county in which Plaintiff resided at the time of the accrual of the cause of action and Plaintiff resided in San Saba County, Texas at the time of the accrual of the causes of action asserted in this action.

STATEMENT OF FACTS

11. Plaintiff Warren is a private citizen with an established history of making political contributions in Texas, including contributions to Governor Abbott's campaigns for political office in every year from 2010 through 2020, except 2016. In June 2021, Warren made a \$1 million contribution to Governor Abbott's campaign, following Don Huffines' May 2021 announcement that he would challenge Governor Abbott in the Republican primary for the 2022 gubernatorial election in Texas. Following Huffines' announcement, observers noted that Huffines, a wealthy real estate developer and former Texas state senator, possessed "independent wealth [that] would allow him to run a bare-bones campaign, and he'd probably garner media attention as a well-known name in the primary."¹ At the time, there was also speculation as to other potential challengers for the Republican primary, including former U.S. congressman and then-Chair of the Republican Party in Texas, Allen West.² Mr. West did, in fact, announce his own candidacy on July 4, 2021. Though incumbent Governor Abbott leads the Republican

¹ <https://www.statesman.com/story/news/politics/state/2021/05/10/texas-election-2022-don-huffines-greg-abbott-republican-primary/5020561001/>

² *Id.*

primary polls with approximately 60% of the primary voters, the challenges from Huffines and West have made this primary much more competitive than the Republican primaries in the 2014 and 2018 elections, when Governor Abbott faced no significant primary challengers and received over 90% of the primary vote.

12. Defendant O'Rourke is a failed candidate for U.S. Senate and the Presidency. On November 15, 2021, he announced that he would be running for governor of Texas in the November 2022 election, in an effort to unseat incumbent Governor Greg Abbott. Badly behind in the polls after he announced his candidacy and with winter approaching, and seeking to capitalize off the unprecedented storm in Texas the prior winter,³ Defendant O'Rourke blamed Governor Abbott for the power plant failures during that storm and predicted further similar failures based on the malicious and false (not to mention absurd) statement that Governor Abbott decided not to protect Texas's energy grid because Warren paid him not to do so.

13. This statement is not only false, but (like all Defendant's defamatory statements described below) it completely ignores the roles that ERCOT, PUC, and the Texas Legislature play in the management of Texas' power grid and the oversight thereof and ignores the fact that Energy Transfer and Plaintiff Warren have never owned or operated the electric generation plants which are part of the Texas power grid.

³ In February 2021, a series of major winter storms caused record-low temperatures and snowfall throughout Texas and other parts of the country. The U.S. Department of Commerce's National Oceanic and Atmospheric Administration called these storms an "unprecedented and historical eight-day period of winter weather...across South-Central Texas." In Texas, the Electric Reliability Council of Texas ("ERCOT") manages the flow of Texas' power supply, governed by a board of directors and subject to oversight by the Public Utility Commission of Texas ("PUC") and the Texas Legislature. In July 2021, Governor Abbott ordered the PUC to "take immediate action to improve electric reliability across the state." Earlier this year, before the first winter storm in Texas in 2022, ERCOT's interim Chief Executive Officer explained that ERCOT has "been working for the last year to make sure that this grid is more reliable than it ever has been in the past and it is." During the February 2022 winter ice storms, "despite near-record electricity demand," the Texas grid held up, as ERCOT maintained 17,000 megawatts of excess capacity – enough extra electricity to power 3 million homes. <https://dfw.cbslocal.com/2022/02/04/texas-grid-held-up-this-time-with-enough-extra-capacity-to-power-3-million-homes/>

14. Beginning in late December 2021, Defendant has leveled a defamatory campaign against Plaintiff, repeatedly stating, with actual malice and reckless disregard of the truth, and without any basis, that Plaintiff, a private citizen who has not spoken publicly nor sought publicity concerning the matters that are the subject of Defendant O'Rourke's baseless accusations, has committed the felonies of extortion, bribery, and corrupt influence.

15. On December 30, 2021, Defendant O'Rourke retweeted a tweet by Governor Abbott, in which the governor stated that Texas power plants were "good to go" to protect Texas against cold weather. Defendant O'Rourke added the following defamatory claim on top of the re-tweeted message: "We won't be 'good to go' until gas supply companies are ready for cold weather. But you left them off the hook b/c gas CEOs like Kelcy Warren donated millions to your reelection campaign after the grid failure."⁴

16. A few days later, on January 4, 2022, Defendant O'Rourke claimed that Texans who lost their lives in the February 2021 natural disaster "were killed by the incompetence and corruption of Abbott,"⁵ who he claimed "hasn't required gas CEOs to do anything" to protect against extreme weather "because they've donated millions to [Abbott's] campaign."⁶ This tweet was less than a week after the tweet in which Defendant O'Rourke specifically identified Plaintiff Warren (and only Plaintiff Warren) as a "gas CEO." *See supra* ¶ 15.

17. On January 20, 2022, Defendant O'Rourke tweeted that gas supply companies "bought [Abbott] off,"⁷ and along with that defamatory claim, Defendant O'Rourke retweeted an

⁴ <https://mobile.twitter.com/BetoORourke/status/1476666390635495436>

⁵ <https://mobile.twitter.com/BetoORourke/status/1478485133485391877>

⁶ <https://mobile.twitter.com/BetoORourke/status/1478485135049777157>

⁷ <https://mobile.twitter.com/BetoORourke/status/1484190554275692546>

article about Energy Transfer, the company with which Warren is affiliated. Less than two hours later, Defendant O'Rourke tweeted that Governor Abbott did not fix the grid because "the CEOs of [gas-supply] companies are his largest campaign contributors."⁸

18. Less than two hours after that, in his third tweet of the day attacking Plaintiff, Defendant O'Rourke explicitly accused Plaintiff Warren of the crimes of "extortion" and "corrupt" influence⁹:

⁸ <https://mobile.twitter.com/BetoORourke/status/1484216295361060867>

⁹ <https://mobile.twitter.com/BetoORourke/status/1484241368595763201>

← Tweet

Beto O'Rourke 
@BetoORourke



Gas company Energy Transfer Partners says: "give us \$22M or we cut the power for Texans."

That's extortion.

Abbott isn't stopping them because their CEO bought him off with a \$1M check.

That's corrupt.

I will fix the grid & hold extortionists and corrupt officials to account.

WFAA  @wfaa · Jan 20

A fight is unfolding between two Texas energy giants, and power to 400,000 homes is being used as leverage.

[wfaa.com/article/news/l...](https://www.wfaa.com/article/news/l...)

2:08 PM · Jan 20, 2022 · Twitter for iPhone

1,673 Retweets **72** Quote Tweets **4,623** Likes



19. On February 1, 2022, with the first major winter storm of the year approaching Texas, Defendant O'Rourke stated that Plaintiff Warren paid Governor Abbott not to fix the electricity grid.¹⁰

20. On February 4, 2022, Defendant O'Rourke again stated that Warren and others engaged in "corruption" in a tweet with which he posted a video of himself explicitly stating that "they broke the law" and "paid off Greg Abbott[.]"¹¹ In another tweet later that day, Defendant O'Rourke stated that "[e]nergy executives robbed us while Texans froze to death" and "Abbott let it happen because they gave him a cut."¹² The same day, Defendant O'Rourke also posted a long video on his Facebook page in which he stated that Abbott "was paid not to [weatherize the grid]. Kelcy Warren's company Energy Transfer Partners made \$2.4 billion over those five days that people were dying and suffering in the state of Texas...following that winter storm he wrote Greg Abbott a \$1 million check. Looks a lot like a bribe to me."¹³

21. The next day, February 5, 2022, Defendant O'Rourke tweeted a video of himself referring to \$4.6 million in campaign contributions that Governor Abbott received from "the energy industry, the same people who did not want their equipment weatherized" and then reiterated his claim from the prior day that "it looks a lot like a bribe to me." The tweet accompanying the video stated, in full: "Why hasn't Abbott done everything in his power to fix the power grid? Corruption."¹⁴

¹⁰ <https://www.youtube.com/watch?v=PvBODr3Mh40>

¹¹ <https://mobile.twitter.com/BetoORourke/status/1489667156631511043>

¹² <https://mobile.twitter.com/BetoORourke/status/1489788837240975360>

¹³ <https://www.facebook.com/betoorourke/videos/498764985011316>

¹⁴ <https://mobile.twitter.com/BetoORourke/status/1490069303089106946>

22. The next day, February 6, 2022, Defendant O'Rourke tweeted that "[g]as corporations made \$11 billion by robbing Texans as they literally froze to death in their own homes," and in a video he posted of himself accompanying the tweet, he stated that if he becomes governor, he will "seek justice from those who defrauded the people of this state."¹⁵ Later that day, Defendant O'Rourke tweeted that "Abbott got paid off not to fix the grid" and in a video of himself accompanying the tweet made the same claim.¹⁶

23. The next day, February 7, 2022, Defendant O'Rourke tweeted a video of himself discussing the tragic story of a man who suffered frostbite brought on by the "unprecedented" February 2021 storm. Defendant O'Rourke stated that "[t]his was no Act of God or Mother Nature," and instead blamed that tragic story and hundreds of lost lives on Governor Abbott and "his donors in the gas industry." In the video, Defendant O'Rourke also said "[l]et's make sure there is justice, and consequences, for those who broke the law[.]"¹⁷ The same day, a local news outlet in San Antonio reported that Defendant O'Rourke accused Plaintiff Warren of bribing Governor Abbott.¹⁸

24. On February 10, 2022, Defendant O'Rourke retweeted the defamatory claim that Plaintiff Warren bribed Governor Abbott.¹⁹ At a stop in San Antonio on that day, Defendant O'Rourke stated that Plaintiff Warren bribed Governor Abbott and "paid Abbott to do nothing."

¹⁵ <https://mobile.twitter.com/BetoORourke/status/1490354861698920454>

¹⁶ <https://mobile.twitter.com/BetoORourke/status/1490455331239079943>

¹⁷ <https://mobile.twitter.com/BetoORourke/status/1490709700932943872>

¹⁸ <https://woai.iheart.com/content/2022-02-07-orourke-abbott-accepted-bribe-from-energy-billionaire/>

¹⁹ <https://mobile.twitter.com/JeremySWallace/status/1491851477207375872>

Defendant O'Rourke posted a video of the speech containing those statements to his Facebook page.²⁰

25. On February 14, 2022, after Plaintiff Warren demanded a retraction and that he cease and desist from making defamatory statements regarding Warren, Defendant O'Rourke responded by maliciously releasing a campaign ad in which he reiterated the defamatory accusations described above. In that video, Defendant specifically named Plaintiff Warren and his company, and claimed "Why did Greg Abbott not fix the grid? They paid him not to fix the grid."²¹

26. Defendant O'Rourke's deliberately false statements that Plaintiff Kelcy Warren committed serious crimes including extortion, bribery, and corrupt influence are baseless and malicious lies which sought to publicly humiliate Plaintiff Warren. Defendant O'Rourke should be held liable for his lies and forced to pay for the damage he has caused.

CAUSES OF ACTION

Defamation, Libel, and Slander

27. Plaintiff Warren incorporates by reference all of the preceding paragraphs as if fully set forth herein.

28. Defendant O'Rourke published the foregoing statements of purported fact referring to Plaintiff Warren.

29. The foregoing statements by Defendant O'Rourke were false in their particular details and in their essence in the entire context in which they were made.

²⁰ <https://www.facebook.com/betoorourke/videos/4389568934482152/>

²¹ <https://mobile.twitter.com/BetoORourke/status/1493232016359403520>

30. The foregoing statements by Defendant O'Rourke were defamatory, libelous and slanderous (collectively, "defamatory" or "defamation") and in making the statements, Defendant O'Rourke acted with actual malice, and with knowledge of the falsity of the defamatory statements, or at least with reckless disregard of their falsity by purposefully avoiding the truth, making inherently improbable assertions and, in fact, lying about Plaintiff Warren's commission of what are serious crimes in the State of Texas.

31. The foregoing defamatory statements by Defendant O'Rourke were not privileged.

32. The foregoing defamatory statements by Defendant constitute defamation *per se* in that they falsely state that Plaintiff Warren committed the crimes of extortion, bribery, and corrupt influence, and in that they plainly accuse Plaintiff Warren of breaking the law.

33. The foregoing defamatory statements by Defendant O'Rourke injured Plaintiff Warren's reputation and exposed him to public hatred, animus, contempt or ridicule, or financial injury. These false statements were made with the intent to impeach Plaintiff Warren's honesty, integrity, virtue, or reputation and thereby expose him to financial injury. The defamatory statements are therefore defamatory *per se*.

34. The foregoing defamatory statements by Defendant O'Rourke have injured Plaintiff Warren in his vocation, occupation, and profession and are therefore defamatory *per se*.

35. A reasonable reader would understand that all of foregoing statements referred to Plaintiff Warren because, among other things, they referred to him by name or by affiliation or as the Chief Executive Officer of Energy Transfer.

36. Defendant O'Rourke has failed to retract the defamatory statements, though he was requested to do so, and he has failed to exercise ordinary care to prevent the foreseeable republication of the foregoing written and published defamatory statements.

37. Defendant O'Rourke is strictly liable for the damages caused by his defamatory statements. Alternatively, Defendant O'Rourke was negligent with respect to the truth or falsity of the defamatory statements of purported fact. Alternatively, Defendant O'Rourke knew and knows that the defamatory statements of fact were false, or was reckless with regard to whether the statements of purported fact were false.

38. As a result of Defendant O'Rourke's defamatory statements, Plaintiff Warren suffered pecuniary injury and damages are presumed.

DAMAGES

39. Plaintiff Warren incorporates by reference all of the preceding paragraphs as if fully set forth herein.

40. Plaintiff Warren is entitled to nominal, general, actual and special damages resulting from Defendant O'Rourke's defamation, including compensation for injury to Plaintiff Warren's reputation.

41. Plaintiff Warren is also entitled to special and consequential damages, including specifically the pecuniary loss suffered because of Defendant O'Rourke's defamation.

42. In addition to the damages set forth above, Plaintiff Warren seeks to recover punitive or exemplary damages against Defendant O'Rourke for his conduct, which constitutes malice as described in Chapter 41 of the Texas Civil Practice & Remedies Code. Further, Defendant acted with a specific intent to cause injury to the plaintiff or conscious indifference to

the rights, safety, or welfare of the plaintiff with actual, subjective awareness that its conduct involved an extreme degree of risk of harm to Plaintiff Warren. Plaintiff Warren also seeks punitive and exemplary damages in order to punish and deter the outrageous conduct taken in heedless and reckless disregard for Plaintiff Warren's reputation and as a result of Defendant's conscious indifference in destroying his reputation.

JURY DEMAND

43. Plaintiff Warren demands a jury trial on all issues so triable. Plaintiff Warren has deposited or intends to deposit with the Clerk of Court the required jury fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Warren prays that citation be issued and Defendant O'Rourke be served in this case and that upon trial of this matter, Plaintiff recover:

- a. Nominal, general, actual, special, consequential, exemplary, and punitive damages as described above, in an amount to be determined at trial, but in excess of the jurisdictional limits of this Court;
- b. The costs of litigation, including reasonable legal and consulting fees, expert witness fees, and any other costs deemed reasonable;
- c. Pre- and post-judgment interest at the maximum rate allowed by law;
- d. Such further and other relief, both general and special, at law or in equity, to which Plaintiff Warren may show himself justly to be entitled, or as this Court may deem appropriate; and
- e. Any other damages or other relief deemed just and proper.

Respectfully submitted,

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