This document contains sensitive information

NO. 1-26-0756

IN RE:	IN THE 439th DISTRICT COURT
Bryan McNeal, and Dennis London,	ROCKWALL COUNTY, TEXAS
Petitioners	

DOE DEFENDANTS' RESPONSE IN OPPOSITION TO PETITION FOR PRE-SUIT DISCOVERY UNDER TEX. R. CIV. P. 202, SPECIAL APPEARANCE, MOTION TO QUASH OR DENY DISCOVERY, AND MOTION TO DISMISS PURSUANT TO THE TEXAS CITIZENS PARTICIPATION ACT

Certain of John/Jane Doe Defendants 1-12 (the "Anonymous Posters"), by and through undersigned counsel appearing anonymously to protect their identities, file this Response in Opposition, Special Appearance, Motion to Quash or Deny, and Motion to Dismiss Pursuant to the Texas Citizens Participation Act ("TCPA") regarding the Petition for Pre-Suit Discovery ("Petition") filed by Mayor Bryan McNeal and Councilman Dennis London (collectively, "Petitioners"). For the reasons set forth below, the Court should dismiss the Petition or deny it in its entirety.

I. SUMMARY

Petitioners seek to unmask Anonymous Posters who criticized them in a public Facebook group dedicated to discussions of public concern relating to local government in Rockwall County. The posts identified by petitioners involve core political speech on matters of public concern, justifying dismissal of the petition pursuant to the TCPA. Additionally, Petitioners are seeking improper pre-suit discovery when they could file suit and then use discovery to uncover the identities. Rule 202 is intended to investigate potential claims, not to fish for claims or chill

protected speech. Lastly, the allegedly defamatory remarks for which Petitioners seek relief are not actionable, but constitute political opinion.

The Petition should thus be dismissed under the TCPA, or otherwise denied.

II. ARGUMENTS IN OPPOSITION TO THE RULE 202 PETITION:

A. Procedural Defects Necessitating Denial:

There are a number of basic procedural defects with the Petition, including but not necessarily limited to, the following:

1. No Showing of Adequate Notice to Adverse Parties (Rule 202.3):

Pursuant to Rule 202.3, Petitioners were required to serve or otherwise provide notice to all persons with adverse interests at least 15 days before any hearing. Publication in a local political group is insufficient for this purpose. There is no showing that the Anonymous Posters received formal service or other formal notice of the present petition.

2. Conclusory Allegations and Lack of Any Specificity:

The Petition relies heavily on entirely conclusory claims of "defamation," "harassment," and "harm." As a general matter, the Petition fails to provide any verified facts showing that any identified statement is actionable under Texas law.

B. Petitioners Fail the Rule 202 Balancing Test:

Rule 202 requires the petitioner to show that the discovery "may prevent a failure or delay of justice" or that "the likely benefit . . . outweighs the burden or expense." TEX. R. CIV. P. 202.4(a). Courts must carefully balance these interests, particularly where, as here, core First Amendment rights are implicated.

It is beyond question that unmasking anonymous speakers imposes a heavy burden on First Amendment rights. Unmasking chills protected speech, invades privacy, and exposes individuals to potential retaliation. In this case, the potential benefits to Petitioners, if any, are minimal, at best.

The statements identified by Petitioners constitute non-actionable opinions, rhetorical hyperbole, and fully protected criticism on matters of clear public concern.

Accordingly, the balance weighs heavily against the unmasking requested by Petitioners.

C. First Amendment Protections for Anonymous Political Speech:

Anonymous speech, especially relating to public issues such as local government corruption and official misconduct, is strongly protected by the First Amendment. *See McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995); *Talley v. California*, 362 U.S. 60, 80 S. Ct. 536, 4 L. Ed. 2d 559 (1960). Pursuant to this strong protection, Texas courts require a heightened showing before unmasking in Rule 202 proceedings. Petitioners must present prima facie evidence of a viable claim that would survive summary judgment. They have not done so. Statements accusing "corruption," "tax-grabbing looters," or unethical behavior are classic opinions or rhetorical hyperbole in heated political discourse. Petitioners appear to be limited-purpose public figures in this local controversy, triggering an actual malice requirement. The Petition is a transparent attempt to chill public participation in discussion of local politics. The statements at issue are non-actionable opinions, and even if they were actionable, Petitioners, as limited-purpose public figures, would bear the heavy burden of proving actual malice-a burden they have made no effort to satisfy.

Statements of subjective political opinion, rhetorical hyperbole, and heated political criticism are strongly protected under the First Amendment and are not actionable in defamation. *See, e.g., Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 57, 108 S. Ct. 876, 99 L. Ed. 2d 41 (1988) (inflammatory parody protected); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990) (rhetorical hyperbole in public debate protected); *New Times, Inc. v. Isaacks*, 146 S.W.3d 144 (Tex. 2004) (satirical and opinionated statements in public controversy are non-actionable).

Petitioners assert that the identified statements are "false." *See* Petition, p. 2. Petitioners present no evidence that any of the statements are false. In the absence of a showing that the statements are objectively false, or can even be proven wrong, how does a public person show a court that the defaming speaker knew that the plaintiff was actually not corrupt? Petitioners have no legal basis for suppressing such statements when they are clearly subjective political opinion that cannot be proven true or false. *See, e.g., Milkovich, New Times, supra.*

Petitioners assert that the identified statements are "inflammatory." *See* Petition, p. 2. This is unavailing. Truthful statements are often "inflammatory." The fact that a statement is "inflammatory" is not a basis for shutting down protected speech. *See Hustler*, 485 U.S. at 57.

Petitioners assert that the identified statements have "caused Petitioners substantial harm to their reputations, personal and professional businesses, and personal well-being." *See* Petition, p. 2. This conclusory statement can be set aside because it has no factual basis. No legal motion or other pleading can seek a remedy from a court by simply alleging the elements of a claim, particularly in a process with a tight schedule and when no testimony will be available to prove the allegations made. *See In re Does* 1-10, 242 S.W.3d 805, 816 (Tex. App.-Texarkana 2007, orig. proceeding) (Rule 202 petitioner must present more than bare allegations).

Additionally, as discussed above, factually true statements are generally the most damaging to reputations. Even if supportable, publication of truthful statements cannot be suppressed simply because they may harm reputations. *See Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 115 (Tex. 2000) ("Truthful statements are not actionable").

Petitioners assert that they require the subpoenaed information in order to send a demand for retraction. Petitioners cite to no authority in support of the proposition that this is any proper

basis for a subpoena under Rule 202. Petitioners can post or send a demand for retraction at any time, with or without the relief requested by the Petition.

Petitioners assert that they require the subpoenaed information in order to prevent "cyberbullying" pursuant to Tex. Civ. Prac. & Rem. Code § 129A.002. This fails as a matter of law. The remedies provided under § 129A.002 are clearly limited to individuals under the age of 18. *See* Tex. Civ. Prac. & Rem. Code § 129A.002(a) ("A recipient of cyberbullying behavior *who is younger than 18 years of age at the time the cyberbullying occurs* ... may seek injunctive relief...") (emphasis added). Petitioners have made no showing that any person referenced or identified in any statement was or is under the age of 18 at the time any statements were made.

Accordingly, Petitioners' claims for relief under § 129A.002 fail as a matter of law.

D. No Viable Anticipated Claims Under Texas Law:

As already alluded to, virtually all of the statements cited by Petitioners are statements of personal political opinion, which are strongly protected under the First Amendment. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990) ("A statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection."); *Carr v. Brasher*, 776 S.W.2d 567 (Tex. 1989). To the extent that any of the statements may be considered statements of fact, Petitioners have not shown that any of the statements are false. Petitioners have not shown falsity, publication with actual malice, or cognizable damages. This failure is fatal to their effort.

1. Statements Regarding Mayor McNeal's Adult Daughter on OnlyFans:

As a threshold matter, the statements cited by Petitioner are all statements of opinion. To the extent the statements incorporate or suggest any factual propositions, Petitioners have not identified any falsehoods therein. The first set of statements objected to by Petitioners relate to Mayor McNeal's daughter, and comprise the following:

> "Where should we sign if we want a strip club in Rockwall? Asking for a friend."
>
> "I'm sure [Mayor McNeal's] daughter would be working there."
>
> "Is she good looking? Assets worth the expenditure. Again, asking for a friend."
>
> "[Mayor McNeal's] daughter can switch from only fans to pole dancer"

Mayor McNeal has every right to be personally offended by public comments directed to his adult daughter, but he is not entitled to secure the power of the courts to suppress potentially-truthful public criticism of his adult daughter. Petitioners have made no showing that any of the statements made above are false.

The comments referenced above at least suggest that Mayor McNeal's daughter performs on OnlyFans.com, a well-known adult content site. Petitioners do not address the truth or falsehood of this question. This may support an inference that Mayor McNeal's adult daughter does indeed perform on OnlyFans.com. If Mayor McNeal's adult daughter does perform on OnlyFans.com, it is understandable why this may be a source of embarrassment for Mayor McNeal, but truthful statements to that effect would not be legally actionable, and Mayor McNeal is not entitled to secure the cooperation of the courts in suppressing this information from the public.

To the extent that the Rule 20 filing is an attempt by Petitioners to counter alleged defamation of Mayor McNeal's daughter, this is equally unavailing. Under Texas law, a party does not have standing to sue for defamation of a third party. *See, e.g., Newspapers, Inc. v. Matthews*, 161 Tex. 284, 289-90, 339 S.W.2d 890, 894 (1960) ("[S]ettled law requires that the false statement point to the plaintiff and to no one else.").

2. Statements Regarding "Stupid" and "Unethical" Behavior by Councilman London and Mayor McNeal in Office:

The second set of statements objected to by Petitioners relate to opinions regarding behavior by Councilman London and Mayor McNeal in public office, and comprise the following:

> "London and his pals Brewer and McNeal are all corrupt or completely stupid ... unethical behavior. .. trash taken out."
>
> "London, Brewer, and McNeal's friend's pockets ... tax-grabbing looters ... "
>
> "Dennis Chip London was so proud to post the name ... falsely served with a search warrant. The entire group of people are such lowlifes. They do some evil things ..."
>
> Alleging Dennis London (and his wife, i.e., "the Londons") are in "collusion" with Bob Hall, another elected official.

It is not at all clear how Petitioners could possibly demonstrate that any of the above statements are actionable. These are clearly statements of subjective political opinion. If asserting that an elected official is "stupid" were against the law, one would be hard-pressed find any citizen innocent of that offense. The same goes for the remaining statements. Citizens are—and should be—fully entitled to generally express their personal opinions that their elected officials are "stupid," "unethical," or even "evil" without fearing suppression by their government. This is the entire basis and purpose of the First Amendment.

The third set of statements are no more availing to Petitioners. They read as follows:

> "Everyone knows what a scumbag you and your husband are ... you are all f[*]cking corrupt individuals... mooching off city taxpayers."
>
> "London and his pals Brewer and McNeal are all corrupt... master manipulators, narcissists, and great at lying to the public ... using taxpayers' money like a personal bank account."
>
> "All four of them are tax-grabbing looters who are using their positions to favor themselves and their friends. F[*]cking bastards."
>
> "This picture makes him appear way less corrupt than he is. He's shit and he should have been prosecuted ... London seemed like the prime suspect, taking that money and using it for personal gain."

It is perhaps not difficult to see why Mayor McNeal and Councilman London would object to citizens expressing opinions that they are "corrupt," "manipulators," and "looters," but it is well-established that elected officials are not entitled to deploy the immense power of government to suppress the opinions of their citizenry. Accordingly, it is not legitimate for Petitioners to seek the power of the court to do so here.

E. Overbreadth of Requested Discovery:

Petitioners' subpoena seeks far more than basic identifying information, and seeks information about individuals not associated with the identified statements. The relief requested is not narrowly tailored to personal identification of individuals responsible for the statements objected to, and should be denied for that reason alone.

F. TCPA Policy Considerations:

Although a Rule 202 petition may or may not qualify as a "legal action" under the TCPA, the strong public policy against SLAPP suits weighs heavily against granting discovery that would enable meritless claims targeting protected speech.

III. MOTION TO DISMISS PURSUANT TO THE TCPA

A Rule 202 petition seeking to identify anonymous speakers for anticipated defamation and related claims is subject to the TCPA under these facts. The TCPA applies to a "legal action," a term defined broadly to include a lawsuit, cause of action, petition, complaint, cross-claim, counterclaim, or "any other judicial pleading or filing that requests legal, declaratory, or equitable relief." Tex. Civ. Prac. & Rem. Code § 27.001(6). This motion is timely filed within 60 days of service of the Petition. *See* Tex. Civ. Prac. & Rem. Code 27.003(b).

The Seventh District (Amarillo) and Eighth District (El Paso) have held that Rule 202 petitions are "legal actions" under the TCPA. These courts reasoned that Rule 202 petitions fall within the TCPA's broad statutory definition of "legal action," which includes "a lawsuit, cause of

action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief." *See In re Krause*, 595 S.W.3d 831 (Tex. App.-Amarillo 2020, orig. proceeding); *Florez v. Olibas*, 657 S.W.3d 31 (Tex. App.-El Paso 2022, no pet.).

In *In re Krause*, the Seventh District concluded that a Rule 202 petition is a judicial pleading requesting equitable relief and is therefore subject to dismissal under the TCPA. *See In re Krause,* 595 S.W.3d at 836. The Eighth District reached the same conclusion in *Florez. See* 657 S.W.3d 31 at 39. ("…Appellee's Rule 202 petition to depose Appellants is a 'legal action' … and was thus subject to dismissal proceedings under the TCPA.")[1]

The substance of the Petition confirms TCPA applicability. Petitioners seek judicial process to pierce anonymity and obtain identifying information from Meta based solely on speech posted in a public Facebook group discussing local government, public officials, taxpayer funds, and alleged official misconduct. Such speech is an exercise of the right of free speech because it is a communication made in connection with matters of public concern, including political, social, and community well-being and the conduct of public officials. Tex. Civ. Prac. & Rem. Code §§ 27.001(3), (7). The Petition is therefore a legal action based on, related to, or in response to the Anonymous Posters' exercise of the right of free speech.

Petitioners cannot avoid the TCPA by styling their filing as "pre-suit discovery." The TCPA looks to the nature and effect of the filing, not merely its caption. Here, the Petition is the mechanism by which Petitioners invoke the power of the Court to investigate, burden, and deter

[1] The Courts of Appeal are divided on this question. *See, e.g. Montoya Frazier v. Maxwell*, No. 02-23-00103-CV, 2025 WL 494699 (Tex. App.—Fort Worth, Feb. 13, 2025, pet. denied); *Hous. Tennis Ass'n, Inc. v. Thibodeaux*, 602 S.W.3d 712 (Tex. App.—Houston 2020, no pet.). It appears this question has not yet been addressed by the Supreme Court of Texas or the Fifth District.

protected expression. The requested discovery is not ancillary to an existing merits suit; it is itself the operative legal action directed at anonymous political speech. If the TCPA could be evaded simply by seeking discovery first and filing suit later, the statute's protections would be rendered largely meaningless in the precise context where they are most needed—when speakers criticize public officials anonymously and the target of that speech seeks judicial compulsion to unmask them before any viable claim has been established.

That concern is especially acute here. The speech at issue concerns local politics and alleged corruption, misuse of taxpayer resources, unethical conduct, and other issues at the core of First Amendment protection. Petitioners seek to use Rule 202 not merely to investigate whether a claim exists, but to identify the speakers themselves so that litigation or the threat of litigation may follow. In practical effect, the Petition functions as a speech-targeting device. It imposes burden, expense, and the loss of anonymity as a direct consequence of protected expression. That is precisely the type of retaliatory or chilling use of judicial process that the TCPA was enacted to prevent.

Moreover, the requested relief would substantially impair the Anonymous Posters' substantive constitutional rights even before any defamation claim is tested on the merits. Once anonymity is lost, it cannot be restored. Disclosure is therefore not a neutral procedural step; it is the principal injury sought through the Petition. Because the Petition seeks court intervention to strip away anonymity from speakers who engaged in public commentary on matters of public concern, it is properly analyzed as a legal action under the TCPA.

Under the TCPA burden-shifting framework, Petitioners must establish by clear and specific evidence a prima facie case for each essential element of the claim or claims they contend justify the requested relief. They cannot do so here. The statements identified in the Petition are quintessential political rhetoric, opinion, hyperbole, and criticism of public figures. Petitioners

have not shown that the statements are objectively verifiable false statements of fact, have not shown falsity, have not shown actual malice, and have not shown compensable injury with the specificity required by the statute. Because the Petition is predicated on speech protected by the TCPA and because Petitioners cannot carry their evidentiary burden, dismissal is required.

In addition, applying the TCPA to this Rule 202 Petition is consistent with the statute's remedial purpose. The TCPA is to be construed liberally to safeguard the constitutional rights of persons to speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law, while protecting the rights of a person to file meritorious lawsuits for demonstrable injury. Petitioners' filing does not present a meritorious, evidence-supported basis to invade anonymity. Instead, it seeks broad compulsory process aimed at critics speaking in a public political forum. The Court should therefore hold that the Rule 202 Petition is a legal action subject to the TCPA, dismiss it accordingly, and award attorney fees pursuant to the TCPA's fee-shifting provisions.

IV. PRAYER

For the reasons set forth above, the Anonymous Posters respectfully request that this honorable Court:

1. Dismiss the Rule 202 Petition pursuant to the TCPA and award attorney fees, costs, and sanctions as provided by Tex. Civ. Prac. & Rem. Code § 27.009;
2. In the alternative, deny the Rule 202 Petition in its entirety;
3. Grant the Motion to Quash any subpoena to Meta Platforms, Inc.;
4. Award the Anonymous Posters their reasonable attorney's fees and costs; and
5. Grant such other relief to which they may be entitled.

Respectfully submitted this 11th day of June, 2026,

/s/ Kenneth Thomas Emanuelson

Texas State Bar No. 24012591
THE EMANUELSON FIRM, P.C.
17304 Preston Road, Suite 800
Dallas, Texas 75252
Ken@Emanuelson.us
469-363-5808

/s/Warren V. Norred
TSB No. 24045094
Norred Law, PLLC
515 E. Border
Arlington, Texas 76010
warren@norredlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2026, a true and correct copy of the foregoing Doe Defendants' Response in Opposition to Petition for Pre-Suit Discovery Under Tex. R. Civ. P. 202, Special Appearance, Motion to Quash or Deny Discovery, and Motion to Dismiss Pursuant To The Texas Citizens Participation Act was served via the Texas eFile system on the following counsel of record:

KC Ashmore
Texas Bar No. 24040451
kc@ashmorelawfirm.com
e-serve@ashmorelawfirm.com
Ashmore & Ashmore
902 N. Goliad
Rockwall, Texas 75087
Tel. (972) 325.5938
Fax. (972) 349.1759

Respectfully submitted,

/s/ Kenneth Thomas Emanuelson
Kenneth Thomas Emanuelson
Texas State Bar No. 24012591
THE EMANUELSON FIRM, P.C.
17304 Preston Road, Suite 800
Dallas, Texas 75252
Ken@Emanuelson.us
(469) 363-5808

Warren V. Norred
Texas State Bar No. 24045094
Norred Law, PLLC
515 E. Border
Arlington, Texas 76010
warren@norredlaw.com