

**No. 141, Original**

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**In the  
SUPREME COURT OF THE UNITED STATES**

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**STATE OF TEXAS,**

**Plaintiff,**

**v.**

**STATE OF NEW MEXICO and  
STATE OF COLORADO,**

**Defendants**

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**OFFICE OF THE SPECIAL MASTER**

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**EVIDENTIARY STIPULATION AS TO AUTHENTICITY OF EXHIBITS WITH  
EXTRANEOUS ANNOTATIONS**

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This Stipulation is entered into as of the last date accompanying the signatures below and between the State of Texas, the State of New Mexico, the State of Colorado, and the United States of America (collectively, the “Parties”).

**RECITALS**

A. The Federal Rules of Evidence are guides in this original action. Sup. Ct. R. 17.2. Federal Rule of Evidence 901(a) provides the foundation requirement of authentication or identification of an item of evidence. As a condition precedent to

admissibility, “the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” *Id.*

B. The Federal Rules of Evidence, including F.R.E. Rule 901, are taken as guides in this original action. Sup. Ct. R. 17.2.

C. The exhibits in this case include archival material and other government records covering many decades. A number of exhibits identified by the parties contain extraneous annotations and/or highlighting that are not a part of the original document.

D. To avoid the use of trial time on evidentiary proffers and disputes concerning the parties’ exhibits, the parties have entered into an agreement regarding authentication of certain exhibits.

### **AGREEMENT**

The parties stipulate and agree as follows:

1. For purposes of this Stipulation:

a. The term “Covered Record” means a typewritten document (such as official correspondence or meeting minutes) maintained in a university archive or in a government records repository, as evidenced by the official stamp of that institution on that document or other indicia of the university or government custodian.

b. The term “Annotation” means extraneous markings on the Covered Record that are not part of the original typewritten document (such as stamps, handwritten underlining, margin comments, or highlighting), or markings that were added to a photographic reproduction or copy of the Covered Record (such as electronic highlighting).

2. An exhibit consisting of a photographic reproduction or copy of a Covered Record may be offered without testimony to authenticate the contents of the Covered Record, exclusive of Annotations, unless another party has listed an objection to authenticity on the final exhibit list.

3. All objections relating to Annotations will be reserved for trial and need not be noted on the final exhibit list.

4. A party seeking to introduce testimony relating to the content or an existence of an Annotation may satisfy the authenticity requirements in Federal Rule of Evidence 901, to the extent it applies, with respect to the Annotation unless the other parties waive objections at the time the testimony is offered.

5. The parties may amend the definition of Covered Record to include other categories of documents by written amendment to this Stipulation.

6. The parties agree that this document (¶¶ 1-6) embodies the entirety of the Stipulation.

Respectfully submitted this 4th day of October 2021.

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OFFICE OF THE SPECIAL MASTER

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CERTIFICATE OF SERVICE

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This is to certify that on the 4th day of October, 2021, I caused a true and correct copy of the **EVIDENTIARY STIPULATION AS TO AUTHENTICITY OF EXHIBITS WITH EXTRANEOUS ANNOTATIONS** to be served via electronic mail upon those individuals listed on the Service List, attached hereto.

Respectfully submitted,

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