

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,)

Plaintiff,)

v.)

No. 4:16-cv-00469-K

MAURA TRACY HEALEY,)
Attorney General of Massachusetts,)
in her official capacity,)

Defendant.)

**BRIEF IN SUPPORT OF MOTION FOR LEAVE FOR TEXAS, LOUISIANA, SOUTH
CAROLINA, ALABAMA, MICHIGAN, ARIZONA, WISCONSIN, NEBRASKA, OKLAHOMA,
UTAH, AND NEVADA TO PARTICIPATE AS *AMICI CURIAE***

INTRODUCTION

Plaintiffs challenge, on constitutional grounds, the issuance, validity, and enforcement of an administrative civil subpoena – civil investigative demand (CID) – issued by Defendant. The CID is issued under Massachusetts law pursuant to Defendant’s consumer protection and deceptive trade practice authority. Proposed *amici* aver that the CID is an attempt to establish and enforce a singular climate change viewpoint despite the fact that climate change is the subject of an ongoing international debate and far from settled. Pursuant to LR 7, leave is requested to file a brief as *amici curiae* brief in support of the Plaintiff’s Motion for Preliminary Injunction. Plaintiff consents to this motion, and Defendant takes no position on it.

ARGUMENT

The briefing schedule ordered by the Court on June 6, 2016 sets forth the schedule of the parties for responses and replies from August 8, 2016 through October 11, 2016. ECF No. 27. No deadline dates are set for submission of *amicus curiae* briefs. On August 8 and 9, 2016, several States aligned with Defendant filed an amicus brief and an amended amicus brief (styled Memorandum of Law for Amici Curiae States) in support of Defendant’s Response to Plaintiff’s Motion for Preliminary Injunction and Defendant’s Motion to Dismiss. ECF Nos. 47, 49.

Federal Rule of Appellate Procedure 29(b) provides an analogy for prospective *amici* to bring motions for leave to file a brief. Under Rule 29(b), the movant must explain their interest, the reason why an *amicus* brief is desirable, and why the matters asserted are relevant to the case. *Amicus* briefs can provide value to a case

by bringing relevant matters to the court's attention that are not already brought by the parties.

Proposed *amici*, set forth below their identity and interests in the litigation and the value that its *amicus* brief would add.

1. Proposed *amici*, are represented by Ken Paxton, Attorney General of the State of Texas. The Texas Constitution requires the Attorney General to "... represent the State in all suits and pleas ..., and from time to time, in the name of the State, take such action in the courts as may be proper and necessary ..., and perform such other duties as may be required by law." Tex. Const. art. IV § 22; *see also Brady v. Brooks*, 99 Tex. 366, 89 S.W. 1052 (1905). Though not parties to this case, the proposed *amici* recognize significant constitutional issues implicated by the investigative action initiated by the Defendant.

2. Attorneys General have broad authority to conduct investigations regarding consumer protection fraud and deceptive trade practices. However such investigations are generally constrained by the requirement of a "reasonable belief" that there has been, is or is about to be, unlawful false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. Tex. Bus. & Com. Code §§ 17.46, 17.47, 17.60, 17.61.

3. No attorney general should abuse the investigative powers of their office to censor a particular viewpoint, particularly when it involves issues which are subject of an ongoing international debate and scientific inquiry. Such is the case with the global warming and climate change. Such an investigative action is designed to

silence questioners, chill the expression of contrary opinions, shut down further scientific research, and close the debate.

4. The Attorney General of Massachusetts is investigating Plaintiff's expressed opinions on the issue of climate change and those with whom they communicate about this subject. While vocal assaults from politicians, universities, professional societies, journalists, and others are a natural part of the discourse that accompanies free expression, the action by Defendant herein is of a different ilk. Here, a government official is using their law enforcement power to attack a company for expressing opinions, or asking questions, unpopular within their office or political constituency.

5. The proposed *amici* propose to share a perspective different from that of Defendant and her supporting *amici* on the nature of the power being employed by Defendant herein, and where the boundaries of government power end and the protections of the First Amendment begin.

CONCLUSION

For the foregoing reasons, the motion for leave to file a brief as *amici curiae* should be granted.

Respectfully submitted this the 8th day of September, 2016,

JEFF LANDRY
Attorney General of Louisiana

ALAN WILSON
Attorney General of South Carolina

LUTHER STRANGE
Attorney General of Alabama

BILL SCHUETTE
Attorney General of Michigan

MARK BRNOVICH
Attorney General of Arizona

BRAD SCHIMEL
Attorney General of Wisconsin

DOUG PETERSON
Attorney General of Nebraska

SCOTT PRUITT
Attorney General of Oklahoma

SEAN REYES
Attorney General of Utah

ADAM LAXALT
Attorney General of Nevada

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

PRERAK SHAH
Senior Counsel to the Attorney General

/s/ Andrew D. Leonie
ANDREW D. LEONIE
Associate Deputy Attorney General for the
Office of Special Litigation
Andrew.Leonie@texasattorneygeneral.gov

AUSTIN R. NIMOCKS
Associate Deputy Attorney General for the
Office of Special Litigation
Austin.Nimocks@texasattorneygeneral.gov

MICHAEL TOTH
Senior Counsel for the Office of Special
Litigation

Office of Special Litigation
Texas Attorney General's Office
P.O. Box 12548, Mail Code 009
Austin, Texas 78711-2548
Tel: 512-936-1414
Fax: 512-936-0545

*ATTORNEYS FOR PROPOSED AMICI
CURIAE*

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which I understand to have caused service on all counsel of record.

/s/ Andrew D. Leonie III

Andrew D. Leonie III

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