



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

*Via NYSCEF and Hand Delivery*

June 19, 2019

The Honorable Barry R. Ostrager  
Supreme Court, New York County  
60 Centre Street, Room 232  
New York, NY 10007

Re: *People of the State of New York v. Exxon Mobil Corporation*, Index No.  
452044/2018 (Sup. Ct. N.Y. Cnty.)

Dear Justice Ostrager:

The Office of the Attorney General (“OAG”) hereby submits a second affirmation from former Attorney General, Eric Schneiderman, in accordance with the directive issued by the Court during the June 12th oral argument. In particular, the Court directed the OAG to provide a “less carefully worded statement” affirming that any and all communications relevant to the OAG’s allegations or ExxonMobil’s defenses had been forwarded by the former Attorney General to his official OAG account. While the OAG maintains that the first affirmation submitted by Mr. Schneiderman was more than adequate in making such assurance, the OAG submits a second affirmation from Mr. Schneiderman, attached as Exhibit A to this letter (“Second Affirmation”), which should eliminate all doubt with respect to the preservation of relevant documents in this case.

As the Court will note, in his Second Affirmation, the former Attorney General clarifies:

- that he *always* preserved potentially relevant communications by forwarding them to his OAG account (Ex. A, ¶ 2);
- that he *only* used his OAG account to engage in substantive communications regarding the investigation of ExxonMobil (Ex. A, ¶ 3);
- that he *never* used his personal email account to send any emails potentially relevant to the investigation or ExxonMobil’s defenses (Ex. A, ¶ 4); and
- that he *never* responded to any of the emails from Matt Pawa that ExxonMobil directed the Court’s attention to during oral argument (Ex. A, ¶ 4).

The OAG respectfully submits that the attached affirmation closes the one “open issue” noted by the Court at oral argument, (*See* Tr. at 36:4-10), and eliminates any doubt that the OAG’s motion to dismiss ExxonMobil’s defense of selective enforcement should be granted.

Finally, the OAG would note that the precise theory advanced by ExxonMobil here – that the mere receipt of emails by Mr. Schneiderman required discovery of his personal email account – was already rejected by Justice Bluth in a FOIL proceeding. There, a group with close financial ties to Exxon argued that emails *received* by the former Attorney General on his personal email account evinced use of that account for official OAG business. Justice Bluth rejected that theory, noting that “the fact that someone *sent* an email to the Attorney General’s private email address does not establish a pattern or practice sufficient to compel disclosure of personal emails.” *Matter of Energy & Envtl. Legal Inst. v Attorney Gen. of the State of N.Y.*, No. 101181/16, (Sup. Ct., N.Y. Cnty. Nov. 1, 2017) (Bluth, S.J.) (order denying motion for atty. fees) (emphasis in original), attached as Exhibit B. That decision was later affirmed by the First Department. *Matter of Energy & Envtl. Legal Inst. v Attorney Gen. of the State of N.Y.*, 162 A.D.3d 458, 458 (1st Dep’t 2018) (“Further, there was an insufficient showing that respondent used private accounts or devices to carry out his official duties which would warrant ordering respondent’s private email account(s), text messages or other private devices be searched.”). The reasoning of Justice Bluth and the First Department is equally applicable here.

Sincerely,

/s Marc Montgomery  
Marc Montgomery

# Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,  
By LETITIA JAMES,  
Attorney General of the State of New York,

Plaintiff,

– against –

EXXON MOBIL CORPORATION,

Defendant.

Index No. 452044/2018

IAS Part 61  
Hon. Barry R. Ostrager

**SECOND AFFIRMATION OF  
ERIC TRADD  
SCHNEIDERMAN**

Eric Tradd Schneiderman, under penalty of perjury, affirms:

1. I served as the New York Attorney General from January 1, 2011 until May 8, 2018. I submit this affirmation pursuant to the Court’s request at oral argument on June 12, 2019 to supplement my affirmation of May 15, 2019 (Dkt. No. 213), which is attached hereto as Exhibit 1.

2. I have previously affirmed that, following the receipt of the litigation hold notice on March 21, 2016, I was “aware of and complied with the discovery obligations set forth in that notice, including its directive to preserve any relevant material that may exist on personal devices or in personal email accounts.” (*Id.* at ¶ 4.) To provide further explanation, I ensured that all material potentially relevant to the OAG’s investigation or ExxonMobil’s purported defenses that may have existed on personal devices or personal email accounts was always preserved by promptly forwarding such emails to my OAG account.

3. I have previously affirmed that, “I did not use my personal email account to engage in any substantive communications regarding the OAG’s investigation of ExxonMobil.” (*Id.* at ¶ 6.) To provide further explanation, this means that the *only* email account I used to

engage in substantive communications regarding the OAG's investigation of ExxonMobil was my official OAG account, and that I *never* sent emails to third parties containing substantive information regarding the office's investigation of ExxonMobil from my personal email account.

4. I previously affirmed that, "I am confident that there were no communications to or from my personal email account that are relevant to ExxonMobil's defenses . . . or to the OAG's investigation of ExxonMobil that were not forwarded to my official OAG account." (*Id.* at ¶ 7.) To provide further explanation, I am certain that there was never an occasion on which I utilized my personal email account to send an email related to the bases for or details of the OAG's investigation into ExxonMobil, including emails relating in any way to ExxonMobil's purported affirmative defenses.

5. I have reviewed the emails from attorney Matt Pawa that ExxonMobil referred to at oral argument on June 12th. I can affirm that I did not respond to any of those emails, either from my personal or OAG accounts. I can further affirm that I never sent Matt Pawa any form of written communication and that I forwarded all correspondence that I received from Matt Pawa to my OAG account.

Dated: June 19, 2019  
New York, New York



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Eric Tradd Schneiderman

# Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH Justice

PART 37

Index Number : 101181/2016
ENERGY & ENVIRONMENT LEGAL
vs.
ATTORNEY GENERAL OF NEW YORK
SEQUENCE NUMBER : 003
VACATE STAY/ORDER/JUDGMENT

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to 2, were read on this motion to/for Atty fees, etc.
Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s) 1
Answering Affidavits - Exhibits No(s) 2
Replying Affidavits No(s)

Upon the foregoing papers, it is ordered that this motion is Denied

The branch of the motion for attorneys fees is Denied as petitioner did not substantially prevail in the Article 78. The court apologizes for not making that clear in the prior decision - the court mistakenly thought it was obvious that getting only 4 of the many, many documents was an indication that attorney fees were unwarranted.

Moreover the fact that someone sent an email to the Attorney General's private email address does not establish a pattern or practice sufficient to compel the court for disclosure of his personal emails.

Dated: OCT 25 2017

HON. ARLENE P. BLUTH J.S.C.

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
Scanned to New York State EF on DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):