

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

)	
In the matter of:)	
)	
PEOPLE OF THE STATE OF NEW YORK)	Index No.: 0452044/2018
)	
)	
)	MOTION
)	TO UNSEAL
)	
Plaintiff,)	[Proposed Intervention
)	Pleading Pursuant to
v.)	CPLR 1014]
)	
EXXON MOBIL CORPORATION)	
)	
Defendant,)	
)	
and)	
)	
ENERGY POLICY ADVOCATES,)	
)	
and)	
)	
ROBERT SCHILLING,)	
)	
Interested Parties.)	

NOW COME the intervenors, ENERGY POLICY ADVOCATES and ROBERT SCHILLING, and move to unseal certain of the pleadings in this proceeding. In support of this Motion, intervenors state as follows:

1. It is long-settled in New York that there is a broad common-law right of public access to judicial documents, and an even more expansive right of access under the First Amendment. See, e.g., *People v. Burton*, 189 AD2d 532, 535-36, 597 N.Y.S.2d 488, 491-92 (3rd 1993) citing,

Nixon v. Warner Communications, 435 U.S. 589, 597-598 (1978), and a long line of cases including *United States v. Mitchell*, 551 F.2d 1252, 1260 (D.C. Cir. 1976), *Newsday, Inc. v. Sise*, 71 NY2d 146, 153 n.4, 524 N.Y.S.2d 35 (1987), *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir.1988), *In Matter of New York Times Co.*, 828 F.2d 110, 114 (2d Cir. 1987), *U.S. v. Haller*, 837 F.2d 84 (2nd Cir.1988).

2. In this matter, numerous documents have been sealed and are not available for viewing by the public. This includes not only exhibits subject to discovery dispute or reserved for *in camera* review, but even allegations and affirmative defenses found in the Defendant's answer itself. Intervenors specifically seek access to Exxon Mobil's Amended Answer (NYSCEF Doc. No. 241) and briefs with exhibits filed as NYSCEF Doc. Nos. 142, 144, 235 and 236.

3. Federal Courts have held that "If there is a request for access to inspect sealed documents, that request must be heard by the Court." See *Matter of Searches of Semtex Indus. Corp.*, 876 F. Supp. 426, 429 (E.D.NY 1995).

4. "When the First Amendment is properly invoked to seek access to a court proceeding or documents filed in connection thereto, the Court may deny the application '...only by proof of a compelling governmental interest' and proof that the denial is narrowly tailored to serve that interest," *People v. Macedonio*, 2016 NY Slip Op 50718(U) (N.Y. Sup. Ct. 2016), citing *Matter of EyeCare Physicians of America*, 100 F.3d 514, 519 (7th Cir.1996).

5. When the Common-Law Right of Access is at issue, a court is still required to "balance the competing considerations in favor of and against sealing." *People v. Macedonio*, 2016 NY Slip Op 50718(U) (N.Y. Sup. Ct. 2016), citing *United States v. Smith*, 985 F. Supp. 2d 506 (S.D.NY 2013).

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**pro hac vice to be filed*