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**
Plaintiff,	**MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF SEEKING PUBLIC ACCESS TO JUDICIAL DOCUMENTS**
v.	
EXXON MOBIL CORPORATION	
Defendant.	

NOW COME proposed intervenors, ENERGY POLICY ADVOCATES and ROBERT SCHILLING, and move to intervene in this matter for the limited purpose of seeking public access to certain judicial documents which have been filed in this case. In support of this motion, the proposed 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. The Proposed 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).

6. In the instant case, certain documents being withheld from the public are not only important to a vital public policy debate over policy and the increasing employment of state attorneys general at the request of private interests and to assist private ends. They also implicate

both the First Amendment and the Common-Law Right of Access. The Public cannot fairly scrutinize the activities of the government without access to the sealed records in this case.

7. CPLR 1013 provides that "any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party." Here, Proposed Intervenors have not only statutory rights at stake (Judiciary Law § 4), but also common-law rights of access and even Constitutional rights at issue. And intervention cannot further delay this case or its resolution, because the Court has already ruled on the underlying dispute.

8. Permissive intervention serves the interests of judicial economy. While the proposed intervenors may also obtain relief through a Special Proceeding, *Crain Communications Inc. v. Hughs*, 74 NY2d 626, 541 N.Y.S.2d 971, (1989); *Westchester Rockland Newspapers, Inc. v. Leggett*, 48 NY2d 430, 423 N.Y.S.2d 630 (1979), courts have also permitted intervention to resolve issues of access to judicial records. See *People v. Macedonio*, supra, and *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 777 (3d Cir. 1994) ("[T]he procedural device of permissive intervention is appropriately used to enable a litigant who was not an original party to an action to challenge protective or confidentiality orders entered in that action.").

9. Intervention following judgment in this matter is timely and protects the interests of all parties. Although Courts have traditionally afforded the news media an opportunity to oppose a sealing order prior to its issuance, *Mancheski v. Gabelli Grp. Capital Partners*, 39 AD3d 499, 501, 835 N.Y.S.2d 595, 597 (2nd Dept. 2007) citing, *Matter of Herald Co. v. Weisenberg*, 59 NY2d 378, 383, 465 N.Y.S.2d 862; *Coopersmith v. Gold*, 156 Misc 2d 594 NY2d 521, 599-600

(Sup. Ct. Rockland Co.1992), failure to intervene prior to a sealing order being entered does not render intervention untimely. See P*eople v. Macedonio*, supra.

WHEREFORE, petitioners move this Court for an order that:

(a) Proposed intervenors are permitted to intervene in this matter for the limited purpose of moving to unseal judicial documents in this matter

(b) Sets a hearing for further motions and argument on unsealing certain among the Court's files in this matter.

Dated this the 10th day of January, 2020.

LAW OFFICE OF FRANCIS MENTON
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Affirmation

Pursuant to Section 202.7 of the Uniform Civil Rules, I hereby affirm that I have conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion. Such conferral took place through an email message sent on January 10. As of the time of this filing, I have received no response.

_____/s/_____
Matthew D. Hardin