

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

Motion Sequence No. 10

**AFFIRMATION OF WESLEY KELMAN IN SUPPORT OF MATTHEW PAWA’S  
CROSS-MOTION TO APPEAR AS *AMICUS CURIAE***

Wesley Kelman, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirms the following under penalty of perjury, pursuant to CPLR 2106:

1. I represent Matthew Pawa in this matter. I am an attorney “of counsel” at the law firm of Hagens Berman Sobol Shapiro LLP. I was admitted to practice in New York in 2003. I have worked as an attorney with Attorney Pawa for more than nine years, at Hagens Berman and before that at a smaller firm that Pawa founded. I make this affirmation based on my personal knowledge, except where indicated otherwise.
2. Mr. Pawa has moved this court to appear as *amicus curiae* for the purpose of opposing intervention in this matter by Energy Policy Advocates and its executive director Robert Schilling (collectively, “EP Advocates”). EP Advocates is seeking to intervene for the purpose of moving the Court to unseal emails between Pawa and the Office of the New York Attorney General (“OAG”) related to OAG’s enforcement efforts against Exxon Mobil Corporation (“Exxon”). In the event EP Advocates is allowed to intervene, Pawa also

requests leave to be heard on EP Advocates' anticipated motion to unseal the Pawa-OAG emails at issue.

3. Pawa has been opposing counsel to Exxon in several recent cases brought by state and municipal officials. *See, e.g., State v. Exxon Mobil Corp.*, 126 A.3d 266 (N.H. 2015) (sustaining \$236 million jury verdict for Pawa's client the State of New Hampshire against Exxon for groundwater contamination). Pawa is also counsel to New York City in its climate change lawsuit against Exxon and others, and is representing Rhode Island in a groundwater contamination case in which Exxon is a defendant. *See City of New York v. BP P.L.C.*, No. 18-2188 (2d Cir.); *State of Rhode Island v. Atlantic Richfield*, No. 1:17-cv-00204-WES (D.R.I.).
4. Attached as Exhibit 1 to this affirmation is a proposed amicus brief by Pawa opposing EP Advocates' intervention motion. The deadline for the parties to oppose EP Advocates' intervention has not yet passed, and it is currently unclear to me whether any of the parties to this action will file an opposition. If the parties do not file any oppositions, Pawa's proposed opposition would be the only papers exploring the legal and factual reasons EP Advocates' intervention should be rejected.
5. As the proposed brief indicates, Pawa plans to bring to the Court's attention certain facts that may otherwise escape the Court's attention. These facts are relevant to whether EP Advocates' intervention motion is timely, and whether it may have known about this Court's sealing decision when it was entered last June. They may also be relevant to Pawa's suggestion (in the proposed amicus brief) that the Court confirm *in camera* that EP Advocates is not financially supported by Exxon. Specifically:

- a. The intervention motion is only the most recent of many efforts to obtain Pawa's communications with the OAG. Exxon has brought a petition for pre-suit discovery against Pawa in Tarrant County, Texas. This petition seeks discovery into "Pawa's communications with various attorneys general, including with the New York and Massachusetts Attorneys General." Pawa and other respondents to the petition have challenged whether there is personal jurisdiction over them in Texas; this issue is currently on appeal. *City of San Francisco et al. v. Exxon Mobil Corp.*, No. 02-18-00106-CV (Tex. 2d Ct. App.). Exxon has also sought Pawa's communications with the OAG as part of its federal lawsuit against the New York and Massachusetts AGs. Exxon served a subpoena on Pawa in 2016 in this federal case; cross-motions by Pawa to quash and by Exxon to compel are pending before Judge William Young in federal court in Massachusetts. *See Exxon Mobil Corp. v. Pawa Law Group, P.C.*, No. 1:16-cv-12504-WGY (D. Mass.). No discovery in this case is occurring as Exxon pursues an appeal of the dismissal of its complaint against the AGs. *Exxon Mobil v. Schneiderman*, 316 F. Supp. 3d 679 (S.D.N.Y. 2018), *appeal pending*, No. 18-1170 (2d Cir.).
- b. EP Advocates has ties to the fossil fuel industry, and to groups that have previously sought the OAG's communications with Pawa. According to its website, a board member of EP Advocates is a former attorney for a coal company. *See* <http://epadvocates.org/about-2/> (Mike Gardner). According to court records, another member of EP Advocates' board (Matthew Hardin, who is also one of EP Advocates' attorneys in this matter) has represented two other entities that have bought litigation seeking the OAG's Exxon- and/or Pawa-related emails. *See Energy*

& *Envtl. Legal Inst. v. Attorney Gen. of State*, 162 A.D.3d 458 (1st Dept. 2018); <https://tinyurl.com/ry4lodk> (Hardin's representation); <https://tinyurl.com/r2y5zh8> (original FOIL request); *Free Mkt. Envtl. Law Clinic v. Attorney Gen. of New York*, 159 A.D.3d 467 (1st Dept. 2018); <https://tinyurl.com/rznq8sc> (Hardin's representation). One of these entities, the Energy & Environmental Legal Institute, has a board member named Steve Milloy. <https://eelegal.org/senior-leadership/>. News reports have stated that Milloy accepted money from Exxon in the past to run non-profits out of his home. See <https://tinyurl.com/y8puph24>; <https://tinyurl.com/tga7zka>.

- c. In addition, another lawyer for EP Advocates in this matter (Francis Menton) has blogged over the last several years about this case and about Exxon's pre-suit discovery petition against Pawa in Texas. See <https://tinyurl.com/r232p4f>; <https://tinyurl.com/qkpukc9>; <https://tinyurl.com/rlnoph5>; <https://tinyurl.com/w5ea3mo>.
6. In the event EP Advocates' intervention motion is granted, Pawa also plans to file an amicus brief opposing EP Advocates' anticipated motion to unseal, to provide argument to the Court on that issue, *e.g.*, about the prejudice to him from unsealing his communications with the OAG.

Based on the foregoing, I respectfully request that Matthew Pawa's motion to appear as *amicus curiae* be granted.

January 25, 2020

/s/ Wesley Kelman  
Wesley Kelman

**Certificate of Compliance**

I certify that, according to the word count feature of Microsoft Word, this affirmation contains 939 words, in compliance with the word limits in Rule 17 of the Commercial Division of the Supreme Court.

January 25, 2020

/s/ Wesley Kelman  
Wesley Kelman