

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION

EXXON MOBIL CORPORATION,

Plaintiff,

v.

ERIC TRADD SCHNEIDERMAN,
Attorney General of New York, in his
official capacity, and MAURA TRACY
HEALEY, Attorney General of
Massachusetts, in her official capacity,

Defendants.

No. 1:17-cv-02301-VEC

**BRIEF IN SUPPORT OF OPPOSED MOTION FOR LEAVE TO FILE BRIEF
AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF**

INTRODUCTION

Plaintiff, Exxon Mobil Corporation, filed the case at bar to challenge, on constitutional grounds, the issuance, validity, and enforcement of two civil administrative subpoenas: a civil investigative demand (“CID”) issued by the Attorney General of Massachusetts and a subpoena issued by the Attorney General of New York (collectively, “Defendants”). Massachusetts issued the CID and New York issued the subpoena pursuant to Defendants’ consumer protection and deceptive trade practice authority. Proposed *amici curiae* aver that the CID and subpoena are 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.

This case was transferred from the United States District Court for the Northern District of Texas. Proposed *amici curiae* file this motion only a week after the parties submitted summaries to the Court, and well in advance of any new briefing.

Pursuant to Local Civil Rule 7.1, proposed *amici curiae* request leave to file a brief in support of Plaintiff’s requests for declaratory and injunctive relief, and in opposition to Defendants’ continued efforts to dismiss this matter. Plaintiff consents to the motion; Defendant Healey takes no position on the motion; and Defendant Schneiderman “oppose[s] the filing of an amicus brief addressing a joint status letter.”

ARGUMENT

Although the Court does not have specific rules governing *amicus* briefs, Federal Rule of Appellate Procedure 29(b) provides an appropriate analogy. Under Rule 29(b), a movant must (1) explain its interest, (2) the reason why an *amicus* brief is desirable, and (3) why the matters asserted are relevant to the case. As set forth below, proposed *amici curiae* will provide value to this case by bringing relevant matters to the Court’s attention that are not already discussed by the parties.

Proposed *amici curiae* are represented by Ken Paxton, Attorney General of Texas. The Texas Constitution requires the Attorney General to represent Texas “in

all suits and pleas . . . and from time to time, in the name of the [Texas], 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). Attorney General Paxton is joined by attorneys general from many other jurisdictions. Though not parties, the proposed *amici curiae* recognize and seek to defend the significant constitutional issues implicated by the investigative actions initiated by Defendants.

Attorneys General have broad authority to conduct investigations. 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. *See, e.g.*, TEX. BUS. & COM. CODE §§ 17.46, 17.47, 17.60, 17.61.

No attorney general should abuse the investigative powers of his or her office to censor a particular viewpoint, particularly when it involves issues which are the subject of an ongoing international public policy debate and scientific inquiry. Regardless of what one believes about global warming and climate change, no one’s views should be silenced. Thus, “investigative” actions by government authorities designed to silence dissenters, chill the expression of contrary opinions, shut down further scientific research, and close the debate are unlawful.

The Attorneys General of Massachusetts and New York are investigating Plaintiff’s *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 actions by Defendants are of a different ilk. Here, these law enforcement officers are using power to attack a company for expressing opinions, or asking questions, unpopular within their office or political constituency.

Proposed *amici curiae* will share a perspective different from that of Defendants on the nature of the power being employed, the correct use of CIDs and subpoenas, 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 19th day of April, 2017.

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Attorney General of South Carolina

STEVE MARSHALL
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*Application for admission *pro hac vice*
filed.

**Application for admission *pro hac vice*
forthcoming.

*ATTORNEYS FOR PROPOSED AMICI
CURIAE*

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April 2017, 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
Andrew D. Leonie