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August 3, 2017

Via ECF and Hand

Hon. Valerie E. Caproni
United States District Judge
United States District Court for the
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square, Courtroom 443
New York, NY 10007-1312

Re: *Exxon Mobil Corp. v. Healey & Schneiderman*, 17-cv-2301-VEC

Dear Judge Caproni:

We write on behalf of Exxon Mobil Corporation (“ExxonMobil”) in response to the letter submitted by the Office of the Massachusetts Attorney General on August 1, 2017. (ECF No. 236.) The Attorney General’s letter notified this Court that the Massachusetts Supreme Judicial Court recently elected to consider on direct appellate review the Massachusetts Superior Court’s decision to enforce the Attorney General’s Civil Investigative Demand (“CID”), notwithstanding the absence of personal jurisdiction over ExxonMobil.

Contrary to the position taken by the Massachusetts Attorney General, this procedural development in no way supports its request for abstention under the “extraordinary and narrow” doctrine of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). Direct appellate review will allow Massachusetts’s highest court to adjudicate the significant jurisdictional defects in the order compelling ExxonMobil’s compliance with the CID, a question well-suited for

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Hon. Valerie E. Caproni

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resolution by the high court.¹ But it will not further the “comprehensive disposition” of ExxonMobil’s federal constitutional claims, which are not at issue in that action. *See Woodford v. Cmty. Action Agency of Greene Cnty., Inc.*, 239 F.3d 517, 522 (2d Cir. 2001).

The federal constitutional claims ExxonMobil asserts in this case are not raised in the appeal now pending before the Massachusetts Supreme Judicial Court. Nor were they asserted in or adjudicated by the Massachusetts Superior Court, which expressly held that it would “not address Exxon’s arguments regarding free speech.” (ECF No. 227-41, Ex. OO at 9 n.2.) As amici in this action contend, ExxonMobil has submitted prima facie evidence that “Defendants’ actions constitute unlawful viewpoint discrimination,” which warrant further exploration by this Court. (ECF No. 230-1 at 17.)

Respectfully submitted,

s/ Justin Anderson

Justin Anderson

cc: All Counsel of Record (via ECF)

¹ In Massachusetts, Direct Appellate Review is appropriate where an appeal presents: (1) “questions of first impression or novel questions of law”; (2) “questions of law concerning the Constitution of the Commonwealth or . . . the Constitution of the United States”; or (3) “questions of such public interest that justice requires a final determination by the full Supreme Judicial Court.” *See* Direct Appellate Review, Mass.gov, <http://www.mass.gov/courts/court-info/appealscourt/appeals-court-help-center/direct-appellate-review.html>; *see also* Mass. R. App. P. 11(a).