



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1598

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
www.ma.gov/ago

July 26, 2019

VIA THE CM/ECF SYSTEM

Catherine O'Hagan Wolfe
Clerk of the Court
U.S. Court of Appeals for the
Second Circuit
40 Foley Square
New York, NY 10007

Subj: No. 18-1170 – *Exxon Mobil Corp. v. Healey*

Dear Clerk Wolfe:

I write on behalf of the defendant-appellee Massachusetts Attorney General Healey in response to plaintiff-appellant Exxon Mobil's request that the Court not schedule argument in this matter during the proposed week of October 15, 2019, and instead postpone argument until the week of "December 2, 2019 or later." ECF No. 258. Because further delay in scheduling this long-standing matter for argument would be prejudicial to the Attorney General, we respectfully request that the Court place this matter on the calendar for argument during the week of October 15, 2019.

This case began on June 15, 2016, when Exxon filed a complaint in the United States District Court for the Northern District of Texas against Attorney General Healey. In its complaint, Exxon sought an order enjoining the Attorney General from enforcing an administrative subpoena for documents she had issued as part of her Office's ongoing investigation into whether Exxon violated and continues to violate the Massachusetts Consumer Protection Act. To forestall enforcement of the subpoena, Exxon's complaint makes spurious allegations of official misconduct by the Attorney General in connection with the subpoena under the guise of numerous claims of constitutional violations. Exxon filed a similar action in Massachusetts state court, which has since been rejected by the Massachusetts Supreme Judicial Court and the United States Supreme Court. ECF No. 213. In this case, on March 29, 2018, the United States District Court for the Southern District of New York, to which Exxon's Texas-filed action was transferred, also dismissed Exxon's complaint.

Exxon timely appealed from the District Court's opinion and judgment and, on May 18, 2018, this Court placed the case on the expedited appeals calendar. ECF No.

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33. Over the objection of both the Massachusetts and New York Attorneys General, this Court allowed Exxon's motion to remove the case from the expedited calendar. Briefing was completed on October 19, 2018. On May 16, 2019, the Court proposed to calendar the case for argument during the week of August 26, 2019. A day later, however, Exxon's counsel notified the Court that he had a conflict during that week. ECF No. 246. On July 15, 2019, the Court proposed to calendar the case for argument during the week of October 15, 2019. Four days later, however, Exxon's counsel notified the Court that the week of October 15 "presents a conflict because of a multi-week trial beginning on October 23 where both ExxonMobil and the New York Attorney General's Office are parties," and that he would be busy preparing for that trial along with the rest of Exxon's team the prior week. See ECF No. 258. Due to the expected duration of that trial, Exxon's counsel also asked the Court to postpone argument in this case until the week of December 2 or later. *Id.*

Undersigned counsel for the Massachusetts Attorney General is available for argument during the week of October 15, 2019. And, notwithstanding the trial between Exxon and the New York Attorney General's Office, the New York Attorney General's Office has authorized us to confirm that it also is available for argument during the week of October 15, 2019. Exxon's instant request has the effect of deferring any decision in this matter well into calendar year 2020, four years after the subpoena at issue was served on the company. With all due respect to Exxon's counsel, the prejudice to the Attorney General from further delays in resolution of this case outweighs the potential burden on Exxon of having its counsel prepare and appear for argument during the week of October 15, 2019.

For the reasons stated above, the Massachusetts Attorney General respectfully requests that the Court schedule this case for argument during the week of October 15, 2019.

Respectfully submitted,

/s/ Seth Schofield

Seth Schofield
Senior Appellate Counsel
Energy and Environment Bureau

Cc: All Counsel of Record (by ECF)