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July 29, 2019

BY ECF

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

Re: *Exxon Mobil Corp. v. Healey*, No. 18-1170

Dear Ms. Wolfe:

On behalf of Plaintiff-Appellant Exxon Mobil Corporation ("ExxonMobil"), we submit this response to the Massachusetts Attorney General's July 26, 2019 letter regarding the scheduling of oral argument in the captioned appeal.

Unlike ExxonMobil's submission, which addresses only scheduling matters, the Attorney General's highly improper letter features merits arguments that are properly raised in briefs and at oral argument, not in scheduling letters. Rather than respond in kind and burden the Court with further merits argument, ExxonMobil remains confident in the briefs it previously filed in this matter and refers the Court to those filings for a complete refutation of the Attorney General's position.

In response to the Attorney General's arguments about scheduling, ExxonMobil submits two relevant facts:

First, ExxonMobil has consistently alerted the Court to scheduling conflicts within the six to twenty week period referenced in the Court's Oral Argument Statement form. ExxonMobil has not objected to any proposed oral argument date that fell within that time period. When an oral argument proposal fell outside that period and presented a conflict, however, ExxonMobil promptly informed the Court of the conflict and all conflicts for the ensuing twenty-week period. At present, ExxonMobil has alerted the Court to all conflicts through April 24, 2020, in an effort to facilitate the prompt scheduling of oral argument in this matter.

Second, the Attorney General submits that the conflict presented by ExxonMobil's October trial should be disregarded because the New York Attorney General, which will also appear at that trial, has no objection to the date. That argument should carry no weight. The New York Attorney General has a separate team handling its trial and appellate work. The lawyers appearing for the New York Attorney General in this Court have not appeared in the trial court (New York Supreme Court), and the trial lawyers are not even listed on the New York Attorney General's briefs. Conversely, I represent ExxonMobil in both the trial court and on appeal and will argue in both forums. Unlike the New York Attorney General's appellate counsel, I expect to be deeply involved in the October trial and preparations for that trial.

In light of the conflict presented by the October trial, ExxonMobil renews its request that, if convenient for the Court, oral argument be proposed for the week of December 2, 2019 or later. We appreciate the Court's consideration of this request.

Respectfully submitted,

/s/ Justin Anderson
Justin Anderson

cc: All counsel of record (by ECF)