UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXXON MOBIL CORPORATION,	:	
	:	No. 17-CV-2301 (VEC) (SN)
Plaintiff,	:	
	:	
-against-	:	ECF Case
	:	
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.	:	

REPLY IN SUPPORT OF DEFENDANT ATTORNEY GENERAL HEALEY'S RENEWED MOTION TO DISMISS FIRST AMENDED COMPLAINT

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INTRODUCTION

For more than a year, Exxon Mobil Corporation ("Exxon") has used the federal courts in an effort to delay and deter Attorney General Healey's investigation into the company's practices with spurious allegations of constitutional violations. Meanwhile, the parallel Massachusetts state court proceeding that Exxon initiated mere hours after filing its initial federal complaint has concluded with a final, appealable Massachusetts Superior Court order (Doc. No. 218-1, "Order") rejecting all of Exxon's challenges to her Civil Investigative Demand ("CID").

Exxon now invites this Court to re-adjudicate the very issues of fact and law that formed the basis for the Order. But the type of state and federal court conflict that Exxon unabashedly invites here is one that long-settled preclusion, abstention, and ripeness doctrines require this Court to avoid. Federal decisions "espouse a strong federal policy against federal-court interference with pending state judicial proceedings" and make clear that "[m]inimal respect for the state processes . . . precludes any *presumption* that the state courts will not safeguard federal constitutional rights." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982).

Having failed to persuade the Massachusetts state court, Exxon focuses its opposition to dismissal (Doc. No. 228, "Opp.") on mischaracterizing the investigation and the Massachusetts state court proceeding. Exxon's hyperbolic rhetoric aside, Attorney General Healey's investigation of what Exxon knew about the impacts of climate change and the effects of climate change on Exxon's business, and whether Exxon failed to disclose fully or otherwise misrepresented its knowledge of those risks to Massachusetts consumers and investors, is not a "political agenda." Opp. at 2. Rather, it is a legitimate exercise of Attorney General Healey's investigative authority under Mass. Gen. Laws ch. 93A ("Chapter 93A"), as the Massachusetts

Superior Court found. The New York Attorney General, the United States Securities and Exchange Commission ("SEC"), and a majority of Exxon's shareholders appear to share the concern that Exxon may not have been forthcoming about climate-driven risks the company may face. In May of this year, Exxon's shareholders made history when sixty-two percent voted to press Exxon for detailed analyses of how policy efforts to address climate change will impact Exxon's business.[1] In the end, Exxon's arguments against dismissal are without merit for the reasons discussed below and in Attorney General Healey's memorandum in support of her renewed Motion to Dismiss (Doc. No. 217, "Mem."), and the Court should grant her motion to dismiss Exxon's First Amended Complaint ("FAC").[2]

ARGUMENT

A. THE MASSACHUSETTS SUPERIOR COURT ORDER COMPELS DISMISSAL ON PRECLUSION GROUNDS.

The Court must accord preclusive effect to the Order, which denied Exxon's petition to set aside or modify the CID and granted Attorney General Healey's motion to compel the company's compliance with the CID. *See Tausevich v. Bd. of Appeals of Stoughton*, 521 N.E.2d 385, 387 (Mass. 1988) (order can have preclusive effect where, as here, it is appealable). The

[1] *Exxon Mobil Shareholders Demand Accounting of Climate Change Policy Risks*, N.Y. Times, May 31, 2017, https://nyti.ms/2sn7Ypt.

[2] Attorney General Healey urges dismissal on the clear grounds of preclusion, *Colorado River* abstention, and ripeness; alternatively, the Court should dismiss for lack of personal jurisdiction over Attorney General Healey. For the reasons discussed in Attorney General Healey's initial brief, the allegations of her contacts with New York—a single meeting and a common interest agreement with the New York Attorney General and other state attorneys general—neither bring her within the New York long-arm statute nor establish a "substantial nexus" with New York. Mem. at 23-24. Exxon's claims against Attorney General Healey arise and seek relief from a CID by the Attorney General of Massachusetts issued in Massachusetts to Exxon's Massachusetts registered agent under Massachusetts law. Exxon points to no evidence—because there is none—that Attorney General Healey or her staff attended or otherwise were involved in the 2012 workshop cited by Exxon, Opp. at 5-6; indeed, Attorney General Healey did not take office until January of 2015. As well, Attorney General Healey did not attend the 2016 meeting convened by the Rockefeller Family Fund that Exxon references, Opp. at 6, or participate in the 2015 communications with the Fund that Exxon cites, Opp. at 7. Exercising jurisdiction also would be unreasonable, particularly because it would deeply undermine the sovereign interests of Massachusetts, and therefore would violate due process. Mem. at 24-25.

Order bars all of Exxon's claims in this federal action by operation of the doctrines of claim and issue preclusion as applied by Massachusetts courts. Mem. at 8-14. This includes Exxon's claims of federal constitutional violations that are direct analogs of Exxon's state court claims of Massachusetts state constitutional violations, its claims of conspiracy and abuse of process that wholly depend on its constitutional claims, and the Dormant Commerce Clause and preemption claims that Exxon could have, but did not, bring in state court. *Id.*; *Temple of Lost Sheep Inc. v. Abrams*, 930 F.2d 178, 184-85 (2d Cir. 1991) (applying issue preclusion to bar 42 U.S.C. § 1983 challenge to New York Attorney General subpoenas where plaintiffs "chose to raise" issues central to their federal claims in parallel state court proceeding and such issues were decided against them); *see also O'Connor v. Pierson*, 568 F.3d 64, 69-72 (2d Cir. 2009) (claim preclusion barred federal substantive due process claim against public employer where prior state court judgment rejected state tort claims based on same allegations of misconduct).

Exxon seeks to avoid the Order's preclusive effect by mischaracterizing the Massachusetts state court proceeding and its own arguments in that forum.[3] It now describes the Massachusetts Superior Court action as a "limited," "narrow," and "summary" proceeding (Opp. at 31, 35-36) but without citation to any authority limiting a litigant's opportunity to press any and all objections to the CID under Mass. Gen. Laws ch. 93A, § 6(7). To the contrary, parties challenging a Chapter 93A CID may present facts and raise all of their objections, including constitutional challenges, in such proceedings, as Exxon did here. *See In re Yankee Milk, Inc.*, 362 N.E.2d 207, 212 n.8 (Mass. 1977) (noting that CIDs "which invade any constitutional rights

[3] Contrary to Exxon's implication, Opp. 32 n.63, *Temple of Lost Sheep* in no way depended on anything unique to New York law or the fact that the plaintiffs had "raised federal constitutional claims in a prior proceeding." As to the latter point, that case's chronology is quite similar to the course of events in this case: the plaintiffs filed their federal civil rights case first, a state court proceeding to adjudicate the validity of the defendant's subpoenas followed, and the federal court—following a stay—then gave issue-preclusive effect to the state court judgment on the plaintiffs' claims in federal court. 930 F.2d at 181-85. The same result should obtain here.

of the investigated party are unreasonable"); *In re Bob Brest Buick, Inc.*, 370 N.E.2d 449, 450-51 (Mass. App. Ct. 1977) (rejecting constitutional challenge to CID and stating "opportunity for immediate review by a judge pursuant to [Mass. Gen. Laws ch. 93A, § 6(7)] provides additional protection against the invasion of any constitutional rights").[4] And while Exxon complains that there was no discovery in state court, Opp. at 35-36, it never asked for it. *See Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 485 (1982) (plaintiff's "fail[ure] to avail himself of the full procedures provided by state law does not constitute a sign of their inadequacy").[5]

In state court, Exxon presented, in great detail, the very same assertions of bad faith and constitutional violations that it has advanced in federal court, along with parallel and highly duplicative submissions of affidavits and other voluminous materials. *See, e.g.*, Doc. No. 218-2 (Exxon's state court Petition) at ¶¶ 1-5, 16-36 (describing press conference). Indeed, Exxon took pains to ensure that the Superior Court judge understood that the gravamen of its grievance was the same in both its federal and state actions, informing her: "*as we've argued to Judge [Kinkeade]* . . . Our position is that this is all about bad faith. This is about regulating speech. It's about viewpoint discrimination." Doc. No. 218-6 at 43-44 (emphasis added).[6]

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[4] *See also Attorney Gen. v. Colleton*, 444 N.E.2d 915, 921 (Mass. 1982) (denying enforcement of CID on state constitutional grounds); *In re Civil Investigative Demand No. 2016-CPD-50*, No. SUCV20162098BLS1, 2016 WL 7742940, at *3 (Mass. Super. Oct. 28, 2016) (considering and rejecting challenge to CID based on allegations of Attorney General's "political motives or animus towards guns").

[5] Tellingly, Exxon misconstrues the holding of *Sprecher v. Graber*, 716 F.2d 968 (2d Cir. 1983), as establishing a rule that the absence of discovery in a subpoena enforcement proceeding bars its preclusive effect. This is not the law. *See Kremer*, 456 U.S. at 483 (due process requires "no single model of procedural fairness, let alone a particular form of procedure" for preclusion by state proceeding). The court in *Sprecher* itself found that the enforcement proceeding there did preclude the plaintiff from relitigating his privilege claim because the prior proceeding, despite its lack of discovery or an evidentiary hearing, afforded him a fair opportunity to raise it. 716 F.2d at 972-73. Exxon offers no authority under Massachusetts law—because there is none—for its contention that the state court proceeding cannot result in preclusion because it did not include discovery. *See* Opp. at 35-36.

[6] *See also, e.g.*, Doc. No. 218-2 (Exxon's Massachusetts Superior Court Petition) at ¶¶ 60-67 (Petition's third "ground" alleging that CID "violates ExxonMobil's constitutional, statutory, and common law rights"); *id.* at ¶ 63 (CID constitutes "impermissible viewpoint discrimination"); *id.* at ¶ 64 (CID unconstitutionally "launches an unreasonable fishing expedition"); Doc. No. 218-4 (Exxon brief in support of emergency motion to set aside CID) at ii-iii (table of contents with argument headings); Doc. No. 218-5 (Exxon brief in further support of emergency motion to set aside CID and opposing Attorney General Healey's motion to compel) at i-ii (table of contents with argument headings); *id.* at 25 (brief's conclusion alleging Attorney General Healey's "misuse of her investigative

The Superior Court thus heard and ruled against Exxon on the factual and legal issues that form the "linchpin," *Inn Chu Trading Co. v. Sara Lee Corp.*, 810 F. Supp. 501, 508 (S.D.N.Y. 1992), of Exxon's analogous federal constitutional and identical common law claims in this Court. The Superior Court rejected Exxon's arguments that the CID was "politically motivated, that Exxon is the victim of viewpoint discrimination, and that it is being punished for its views on global warming," Order at 9, and also rejected its assertion that the Attorney General's "public remarks demonstrate that she has predetermined the outcome of the investigation and is biased against [Exxon]," *id.* at 11-13. Having found that the CID was issued lawfully, the Superior Court concluded that Exxon could not currently state a First Amendment claim. *Id.* at 9 n.2.[7] Likewise, the Superior Court rejected Exxon's claim that the CID was unreasonably burdensome—the key element in its Fourth Amendment claim. *Id.* at 10-11.

Without question, the factual and legal predicates to Exxon's constitutional arguments were thus "actually litigated" in state court, and the Order provides a "reasoned opinion" that now has issue-preclusive effect and bars in this Court Exxon's constitutional and common law claims, as well as the conspiracy claim that depends on those predicates.[8] As a matter of Massachusetts law, that is all that is necessary to preclude Exxon's parallel claims here. *Martin v. Ring*, 514 N.E.2d 663, 664 (Mass. 1987) (resolution of "an issue of fact or law . . . is conclusive in a [separate] action between the parties, *whether on the same or a different claim*" (quotation omitted, emphasis added)); *Green v. Town of Brookline*, 757 N.E.2d 731, 735-36 (Mass. App. Ct. 2001) ("finding of just cause implicitly connotes the absence of bad faith,"

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powers to advance a political agenda"); Doc. Nos. 218-6, 218-7 (transcript of Superior Court hearing) at 12, 37-62 (Exxon counsel's presentation of non-jurisdiction objections to the CID and request for disqualification of Attorney General Healey's office).

[7] *See, e.g., SEC v. McGoff*, 647 F.2d 185, 187-88 (D.C. Cir. 1981) (investigatory subpoenas did not regulate content, time, or manner of expression and therefore did not violate First Amendment).

[8] Notably, in Exxon's appeal of the Superior Court order, it has declined to raise the court's rejection of its free speech and other non-jurisdiction constitutional claims.

precluding a finding in a separate action that conduct was "not undertaken in good faith").[9]

It is of no moment, for preclusion purposes, that an order from this Court would, should Exxon prevail, provide for an "injunction" and "declaratory judgment," and an order from the Massachusetts state court would be styled as "setting aside" the CID or putting in place a "protective order." *See* Doc. No. 218-5 (Exxon Massachusetts Superior Court brief) at 24; *cf. Boyd v. Jamaica Plain Co-op. Bank*, 386 N.E.2d 775, 781 (Mass. App. Ct. 1979) (principle forbidding claim-splitting "will be applied to extinguish a claim even though the plaintiff . . . seek[s] remedies or forms of relief not demanded in the first action"); *Temple of Lost Sheep*, 930 F.2d at 183-84 (affirming dismissal of 42 U.S.C. § 1983 claims not raised in state court on preclusion grounds where "record show[ed] . . . state court directly decided issues that [were] central" to those claims). And, in fact, Exxon sought *broader* injunctive relief in state court: it asked the Court to disqualify Attorney General Healey and *her entire office*, including undersigned counsel, from investigating Exxon regarding the issues covered by the CID, a request that Exxon did not make in its federal pleadings, *compare* Doc. No. 218-2, at 1, 24 *with* FAC at 47, and that the Superior Court rejected. Order at 11-13.

B. THE COURT SHOULD ABSTAIN AND DISMISS UNDER *COLORADO RIVER*.

In an effort to avoid abstention and dismissal under *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976), Mem. at 14-20, Exxon first asserts that this action and the Massachusetts proceeding are not parallel, a threshold requirement of the doctrine.

[9] Try as it might, Exxon cannot cabin its Massachusetts state court claims as "exclusively under Massachusetts law," Opp. at 31, for preclusion purposes. *See, e.g., Hickerson v. City of New York*, 146 F.3d. 99, 113 (2d Cir. 1998) (holding that "plaintiffs may not relitigate their First Amendment claim in federal court because the same issues that are dispositive of this claim have already been decided in state court" under state constitution). In any event, Exxon has never asserted that its state constitutional claims are *substantively* different from its constitutional claims in this case, instead peppering its state briefs with citations to federal case law. *See, e.g.*, Doc. No. 218-5 at 13-16, 23. Nor could it, because if anything the Massachusetts Constitution can be *more* protective of speech and other rights than the U.S. Constitution. Mem. at 10 n.16.

Cases are parallel for *Colorado River* purposes so long as the essential issues are the same. Mem. at 14-15; *see also Telesco v. Telesco Fuel & Masons' Materials, Inc.*, 765 F.2d 356, 362 (2d Cir. 1985). Exxon's lone example is an inapt case finding a lack of parallelism between federal and state proceedings, where there were *entirely different plaintiffs*, one of the federal plaintiffs tried but did not obtain permission to intervene in state proceedings, and the "issues" were "dissimilar." *Alliance of Am. Insurers v. Cuomo*, 854 F.2d 591, 603-04 (2d Cir. 1988). Unlike *Cuomo*'s facts, the parties and the issues here are the same in both cases. For that reason, Exxon conceded in state court that its two actions are "duplicative proceedings" with "a proceeding in Federal Court . . . where these issues are teed up as well as others, but they're overlapping issues, overlapping parties." *See* Doc. No. 218-6 at 16. It cannot be disputed that the legal validity of the CID is the essential issue in both suits, rendering them parallel for *Colorado River* purposes.[10]

In this context, the "paramount" *Colorado River* factor is avoiding piecemeal litigation, with its risk of inconsistent state and federal rulings. *Arkwright-Boston Mfrs. Mut. Ins. Co. v. City of New York*, 762 F.2d 205, 210-11 (2d Cir. 1985). Absent dismissal, this federal action clearly and directly presents that risk.[11] In both actions, Exxon alleges that the CID is unconstitutional and unlawful and impermissibly springs from Attorney General Healey's bias against the company, in violation of Exxon's rights. In both actions, it seeks the same relief: a court order voiding the CID.[12] And now that the Massachusetts Superior Court has ruled on and

[10] Nor does Attorney General Schneiderman's absence from the Massachusetts suit make the federal and state lawsuits non-parallel. *Mouchantaf v. Int'l Modeling & Talent Ass'n*, 368 F. Supp. 2d 303, 306 (S.D.N.Y. 2005).
[11] While concerning the same workplace misconduct, the lawsuits at issue in *Woodford v. Cmty. Action Agency of Greene County, Inc.*, 239 F.3d 517 (2d Cir. 2001), were much less similar in substance and remedies than Exxon's lawsuits here, moderating the risk of inconsistent judgments: the state actions raised common law tort claims with very different elements than the federal discrimination claims in the federal actions and the plaintiffs had perfected their federal claims by raising and exhausting them before a *state* administrative agency. *Id.* at 523-25.
[12] Exxon muddies the waters by raising the potential for inconsistent judgments with respect to Attorneys General Schneiderman and Healey if the Court abstains. Opp. at 24. That argument overlooks the fact that the two state investigations are differently situated and based on distinct state laws (New York's Martin Act on the one hand, and Chapter 93A on the other), and Exxon's claims against the Attorneys General reflect those distinctions. Exxon also

rejected Exxon's claims, an inconsistent ruling by this Court of whatever kind and on whatever ground would generate the very type of federal-state conflict that *Colorado River* abstention and abstention doctrines generally exist to avoid. Moreover, Exxon has repeatedly raised this risk of inconsistent rulings in state court, as justification for its request to stay state court proceedings.[13]

Except for the lack of *in rem* jurisdiction in state court, the other *Colorado River* factors favor abstention. As to the source of law, state law can provide—and has provided, as decided by the Massachusetts Superior Court's preclusive Order—the rule of decision resolving Exxon's cognizable claims in this case. Mem. at 9-14, 19-20 (analyzing each claim). As to the state court proceeding's adequacy to protect Exxon's rights, Exxon in substance raised or could have raised all of its cognizable claims in objecting to the CID and seeking relief in state court, as discussed above. Exxon's new assertion of that proceeding's limits (Opp. at 28-29) is without merit, and its pleadings there, including its comprehensive presentation of its constitutional arguments and its request for disqualification of Attorney General Healey and her office, belies the notions that Exxon's appearance was solely a special appearance to avoid forfeiture or that the Superior Court was not empowered to resolve its claims. *See supra* at 4, 6.

Exxon's other arguments strain credulity. Exxon contends that Attorney General Healey's participation in a single meeting in New York demonstrates that litigating in this Court

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appears to assume incorrectly that if this Court does not abstain, the state court proceedings will not advance. Attorney General Healey, however, would continue to vigorously oppose any effort by Exxon to stay or enjoin the Massachusetts proceedings even if the federal case persists. The real risk of inconsistent judgments that abstention would eliminate here is the likelihood of *three* different and inconsistent dispositions—one in New York state court, one in Massachusetts state court, and one in this federal Court.

[13] *See, e.g.*, Doc. No. 218-2 at ¶ 71 (stay "would avoid the possibility of duplicative or inconsistent rulings on [its] constitutional challenges to the CID, and will serve the interests of judicial economy and efficiency and the principles of comity"); Doc. No. 218-5 at 24 (state claims "overlap with those presented in the federal case"); Doc. No. 218-6 at 16 (stay would "avoid inconsistent rulings. It could be that . . . this Court finds that the CID is invalid and . . . was impermissibly issued, that . . . there's bad faith, that it is impermissibly attacking a viewpoint that's disfavored by the Attorney General, and it could be the Federal Judge finds the other way. And so a key and core principle here is to avoid the risk of inconsistent rulings by allowing one Court to proceed and the other stands back.").

would not inconvenience her or her office, Opp. at 21-22, when in fact defending this action outside Massachusetts would, for years, divert substantial attention, staff time, and financial resources away from her office's work in Massachusetts; indeed, it already has. And Exxon wrongly asserts that this action, which sits at the motion-to-dismiss stage, is farther advanced than a state court proceeding that is now fully resolved at the trial court level and is the subject of a fully briefed appeal awaiting oral argument. Opp. at 26.

Finally, there can be no doubt that Exxon has engaged in scorched-earth "vexatious" litigation here, with contradictory tactics that have pitted the various federal and state courts against each other, another circumstance supporting abstention. *See Telesco*, 765 F.2d at 362. Exxon's conduct in prosecuting this action in its home district was calculated to evade a straightforward state law enforcement inquiry that is substantially similar to inquiries to which Exxon already has responded, including those of Attorney General Schneiderman and the SEC. The balance of *Colorado River* factors supports abstention and dismissal.

C. EXXON'S OPPORTUNITIES IN STATE COURT RENDER THIS CASE UNRIPE.

Exxon's federal claims also should be dismissed as unripe, in that Exxon's Massachusetts court remedies render its claims unfit for federal court review at this time and Exxon would face no present hardship or sanction from denial of review by this Court. *See* Mem. at 20-22; *New York Civil Liberties Union v. Grandeau*, 528 F.3d 122, 131-32 (2d Cir. 2008). Exxon faces no present obligation to comply with the CID and will face no sanction from noncompliance unless and until its state court claims are resolved by the Massachusetts courts.

That Exxon cannot plausibly claim to suffer any present hardship and does not dispute that states can conduct anti-fraud investigations distinguishes this case from *Clearing House Association v. Cuomo*, which concerned blanket preemption challenges to the legal basis for

certain state investigations. *Compare* 510 F.3d 105, 109, 123-25 (2d Cir. 2007), *rev'd on other grounds,* 557 U.S. 519 (2009),[14] *with Google, Inc. v. Hood*, 822 F.3d 212, 226 (5th Cir. 2016) ("comity should make us less willing to intervene when there is no current consequence for resisting the subpoena and the same challenges raised in the federal suit could be litigated in state court") *and Cuomo v. Dreamland Amusements, Inc.*, No. 08-CIV.-6321 JGK, 2008 WL 4369270, at *7-8 (S.D.N.Y. Sept. 22, 2008) (preemption challenge to state subpoena unripe given "ready access to the state court to raise any issues").

Nor do Exxon's threadbare allegations of First Amendment harm ripen its claims. *See, e.g.*, *Spannaus v. Fed. Election Comm'n*, 641 F. Supp. 1520, 1529 (S.D.N.Y. 1986), *aff'd* 816 F.2d 670 (2d Cir. 1987) ("no cognizable burden" from ongoing investigation despite allegations of bad faith and First Amendment violations).[15]

CONCLUSION

The Court should dismiss Exxon's FAC as to Attorney General Healey.

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[14] *Clearing House* concerned challenges by a banking association and a federal agency, on grounds of express and blanket preemption under federal law, to *any* state law investigation of an entire category of banks, which, the Second Circuit believed, faced automatic legal jeopardy absent federal court intervention. 510 F.3d at 121-26. With respect to a parallel challenge to the state's potential enforcement of a federal statute, the *Clearing House* court held the banks' challenge *unripe* for lack of hardship. *Id.* Likewise, *Schulz v. IRS*, 413 F.3d 297 (2d Cir. 2005), heavily emphasized by Exxon (Opp. at 16-17), has no application here because it merely confirmed that taxpayers are entitled to procedural opportunities to challenge IRS subpoenas before facing sanctions for noncompliance; recipients of Massachusetts CIDs *have* such recourse in a proceeding pursuant to Mass. Gen. Laws ch. 93A, § 6(7). *Schulz* left intact an earlier decision in the case, 395 F.3d 463 (2d Cir. 2005), including its holding that a challenge to an administrative subpoena is not ripe absent an agency effort to enforce the subpoena in court, to which objections should be made through the statutorily prescribed process. 395 F.3d at 464-65.

[15] *Cf. Google*, 822 F.3d at 228 ("[I]nvocation of the First Amendment cannot substitute for the presence of an imminent, non-speculative irreparable injury."); *Dole v. Milonas*, 889 F.2d 885, 891 (9th Cir. 1989) (affirming denial of protective order against administrative subpoena because "[b]are allegations of possible first amendment violations are insufficient to justify judicial intervention into a pending investigation"). Indeed, there has been no evidence whatsoever that Exxon's speech as it relates to climate change has been chilled in any manner; Exxon has been making near-daily headlines in announcing its disappointment with the recent Exxon shareholder action related to Exxon's climate-risk and describing its support of continued U.S. participation in the Paris Agreement and of a U.S. tax on carbon emissions. *See, e.g.*, *Exxon, BP Support Republican Elders' Climate Proposal*, Reuters, Jun. 20, 2017, http://reut.rs/2rQKAjE (carbon tax); *Investors Press Exxon Mobil to Disclose How Climate-Change Policies Affect It*, L.A. Times, May 31, 2017, http://fw.to/yLbflFg (shareholder action); *Exxon and Conoco Reiterate Support for Paris Climate Deal*, Bloomberg, May 31, 2017, *at* https://goo.gl/CijujF (Paris Agreement).

Respectfully submitted,

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