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March 30, 2022

By E-Filing

Francis V. Kenneally, Esq.
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Re: *Commonwealth v. Exxon Mobil Corp.*, No. SJC-13211 - MRAP 16(l) Letter -
Notice of Decision in *Exxon Mobil Corp. v. Healey*, No. 18-1170 (2d Cir. Mar. 15,
2022)

Dear Clerk Kenneally:

We write on behalf of Exxon Mobil Corporation (“ExxonMobil”) in response to the Commonwealth’s citation of supplemental authority regarding the Second Circuit’s recent decision in *Exxon Mobil Corp. v. Healey*, No. 18-1170, 2022 WL 774516 (2d Cir.

Francis V. Kenneally, Esq.

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Mar. 15, 2022). In *Healey*, ExxonMobil asserted section 1983 claims to enjoin the Commonwealth's Civil Investigative Demand ("CID") issued nearly six years ago. The Second Circuit held that that res judicata barred those claims because ExxonMobil had already challenged the CID in Massachusetts state court. The court explained that ExxonMobil's state court challenge and federal complaint "[b]oth identify the same relevant injury: *the CID's* alleged violation of various federal constitutional provisions and their state analogues." *Id.* at *10 (emphasis added). Because the state court proceedings challenging the CID had already been resolved in favor of the Commonwealth, the Second Circuit concluded that any further challenge to the CID was precluded. *Id.* at *13.

The Second Circuit's decision is not relevant to the issues raised in this appeal, which addresses ExxonMobil's threshold burden under the anti-SLAPP statute, the appropriate relief corresponding to the Superior Court's holding that claims in the Commonwealth's complaint are based in part on ExxonMobil's petitioning activity, and the Commonwealth's request for judicially-created immunity from the anti-SLAPP statute, even though the legislature did not authorize any such immunity and the statute raises none of the sovereign-immunity concerns that would warrant a presumption of an exemption.

/s/ Justin Anderson

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cc: Counsel of Record (by email)