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Sent: Sat 29/07/2017 6:08:06 PM (UTC)
Subject: Boston Herald: ExxonMobil appeals Maura Healey demand

ExxonMobil appeals Maura Healey demand

SJC gets climate case

By Bob McGovern

Boston Herald

July 29, 2017

Redacted - First Amendment

Superior Court Judge Heidi Brieger in January ordered ExxonMobil to give Healey's office documents related to its investigation into whether the energy giant misled the public about the impact of fossil fuels on the climate.

"There is no requirement that the Attorney General have probable cause to believe that a violation ... has occurred," Brieger wrote. "She need only have a belief that a person has engaged in or is engaging in conduct declared to be unlawful."

Redacted - First Amendment

"If ExxonMobil is not engaged in suit-related conduct in the forum, there can be no jurisdiction," attorneys for the company wrote in their appeal.

The company's pitch — penned by lawyers from bigwig law firms in Boston, New York, Texas and Washington, D.C. — was originally sent to the state Appeals Court. But the SJC decided to take the case on its own, a maneuver the court typically saves for issues of particularly significant legal consequence.

ExxonMobil attorneys also argue that Healey's information request — known as a civil investigative demand, or CID — is "overbroad and burdensome" and completely arbitrary. The appeal also casts Healey as a biased prosecutor who has already prejudged the company.

In an attempt to prove bias, the company's attorneys pointed to a March 2016 press conference in New York where Healey said: "We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public."

ExxonMobil's legal team argued those comments should disqualify Healey from issuing the civil investigation demand.

"The Attorney General's statements amount to a public declaration that ExxonMobil engaged in deception and defrauded the public," the appeal states. "Courts recognize the grave risk of unfair prejudice inherent in such declarations of guilt by government attorneys."

Attorneys for ExxonMobil could not be immediately reached. Healey's office declined to comment.

The SJC's decision to take the case comes as ExxonMobil is trying to stave off civil investigative demands from Healey and New York Attorney General Eric Schneiderman in federal court. The case was originally filed by ExxonMobil in Texas, but it was transferred United States District Court for the Southern District of New York in March.

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