

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

UNITED STATES VIRGIN ISLANDS
OFFICE OF THE ATTORNEY
GENERAL,

Plaintiff,

v.

EXXONMOBIL OIL CORP.,

Defendant.

Case No. 2016 CA 2469

Judge _____

**Nonparty Competitive Enterprise Institute's Special Motion To Dismiss
Under D.C. Anti-SLAPP Act and Motion for Sanctions**

A. Special Motion To Dismiss Under D.C. Anti-SLAPP Act

Pursuant to the District of Columbia Anti-SLAPP Act of 2010, D.C. Code § 16-5502(a) (“the D.C. Anti-SLAPP Act” or “the Act”), nonparty Competitive Enterprise Institute (“CEI”) respectfully moves for an order dismissing this action brought by the United States Virgin Islands Attorney General Claude Walker and thereby invalidating the harassing and retaliatory subpoena that it issued under the authority of this Court.

As set forth in the accompanying memorandum, CEI’s research, communications, and advocacy on climate change are protected by the D.C. Anti-SLAPP Act because they are unquestionably “act[s] in furtherance of the right of advocacy on issues of public interest,” D.C. Code § 16-5502(a), and Attorney General Walker cannot demonstrate that his demand for CEI’s communications, internal records, donor records, and other materials concerning its work on climate change is “likely to succeed on the merits,” D.C. Code § 16-5502(b). The subpoena is defective on its face for failure to comply with the Uniform Interstate Depositions and Discovery Act, D.C. Code §§ 13-441 *et seq.*, violates CEI’s First Amendment privileges, constitutes a blatant attempt to retaliate against and chill CEI’s First Amendment-protected speech and associations, is premised on a pretextual investigation undertaken in bad faith and with no likelihood of success on the merits, and is unduly

burdensome and incommensurate with any legitimate need. In the event that this Motion is granted, or if the subpoena is withdrawn, CEI reserves the right and intends to file a motion seeking an award of the costs of this litigation, including attorneys' fees, pursuant to D.C. Code § 16-5504(a).

B. Motion for Sanctions Under Rule 45 and the Court's Inherent Authority

Pursuant to D.C. Superior Court Rule of Civil Procedure 45(c)(1), as well as the Court's inherent authority to impose sanctions upon a showing of bad faith, CEI hereby moves this Court to sanction Attorney General Walker and his counsel, Attorney Linda Singer of the Cohen Milstein law firm, for their bad faith in violation of their "duty" to "take reasonable steps to avoid imposing undue burden or expense on a person subject to [a] subpoena." The subpoena plainly violates that duty, given its facial invalidity, astonishing overbreadth, and evident purpose of imposing unwarranted and illegitimate burdens on CEI and CEI's exercise of its constitutional rights. CEI is therefore entitled to its costs and attorneys' fees in responding to the subpoena, as well as all other relief the Court finds to be appropriate in these unusual circumstances.

Accordingly, CEI respectfully requests that the Court grant CEI's Special Motion To Dismiss, enter judgment in CEI's favor dismissing this action and thereby invalidating the subpoena issued by this Court, grant CEI's Motion for Sanctions, and find that CEI is entitled to an award of its costs and attorneys' fees in responding to the subpoena in an amount to be proven, as well as all other appropriate relief.

Rule 12-I(a) Certification

Pursuant to Rule 12-I(a), counsel for CEI wrote counsel for Attorney General Walker on May 10, 2016, to ascertain whether he consents to the relief herein requested. Attorney General Walker's counsel represented that he does not agree to withdraw the underlying Virgin Islands subpoena, does not consent to sanctions, and will take future action to terminate this action, while threatening to commence a new action at any time to compel CEI's compliance with the Virgin Islands subpoena.

Oral Hearing Requested

Pursuant to D.C. Code § 16-5502(d) and Rule 12-I(f), CEI respectfully requests that the Court hold an expedited hearing on this Motion, as the D.C. anti-SLAPP Act requires.

Dated: May 16, 2016

Respectfully submitted,

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Certificate of Service

I hereby certify that on May 16, 2016, I caused a copy of the foregoing Motion to be served by first-class mail, postage prepaid, on the following:

Linda Singer, Esq.
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Counsel for the U.S. Virgin Islands Office of the Attorney General

Claude Earl Walker, Esq.
Attorney General
3438 Kronprindsens Gade
GERS Complex, 2nd Floor
St. Thomas, U.S. Virgin Islands 00802

By serving Attorney General Walker, the Competitive Enterprise Institute does not consent to personal jurisdiction in the Virgin Islands, does not waive any of CEI's objections, and reserves all rights it may otherwise have.

By: _____
Andrew M. Grossman