



April 10, 2013

Re: The First Amendment and the “Exxon Hates Your Children” Campaign

Dear Station Manager,

I represent Oil Change International in connection with its parody and satire-laden campaign to raise awareness about the effect of ExxonMobil’s activities on future generations. I understand you have received a memorandum from ExxonMobil regarding the centerpiece of the campaign, a political advertisement titled “Exxon Hates Your Children.” As you know, my client has asked your station to run the advertisement, which can be viewed at <http://exxonhatesyourchildren.com> and has already been aired by several media outlets. The website also contains a wealth of information backing up the various statements made in the commercial.

The campaign makes an obviously over-the-top assertion about the company’s views about children, in order to call attention to the many serious concerns about the company’s policies. The issues the advertisement raises could hardly be more salient now, in light of the Mayflower pipeline spill.

It appears that ExxonMobil find this critical speech to be offensive. That is neither surprising nor relevant. As the Supreme Court has noted,

[T]he fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection.

FCC v. Pacifica Foundation, 438 U.S. 726, 745-46 (1978); *see also Street v. New York*, 394 U.S. 576, 592 (1969) (“It is firmly settled that . . . the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers”). Indeed, the leading Supreme Court case on this issue, *Hustler v. Falwell*, 485 U.S. 46 (1988) upheld First Amendment protection for a cartoon that depicted a prominent public figure as having had, in the words of the Supreme Court, “a drunken incestuous rendezvous with his mother in an outhouse.”

Sadly, ExxonMobil has chosen not to raise its concerns with my client directly. Instead, it appears that Exxon is trying to suppress my client’s critical speech by indirectly threatening television stations that are considering whether to air the advertisement with the specter that the ad is “defamatory.” Specifically, the memo says that the commercial is “defamatory toward each of ExxonMobil’s 80,000 employees and their families.” ExxonMobil goes on to describe good things the company does for children and the environment.

ExxonMobil’s memo is not only wrong in its vague invocation of defamation law, it also misses the point entirely. The political advertisement, like so much political speech before it, simply

uses parody and satire to comment on an issue of public concern: in this case, climate change, ExxonMobil's contribution thereto, and the potential impact on future generations. This type of political speech fits well within the protections of the First Amendment. "One of the prerogatives of American citizenship is the right to criticize public men and measures." *Baumgartner v. United States*, 322 U.S. 665, 673-674 (1944). That right includes criticism of corporations, for they, too, may be "intimately involved in the resolution of important public questions or [help] shape events in areas of concern to society at large." *Associated Press v. Walker*, 388 U.S. 130, 164 (1967)

It is a core principle of our democracy that the best answer to speech you don't like is more speech, not censorship – and media outlets should be particularly sensitive to this principle. "[T]he First Amendment . . . presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943) aff'd, 326 U.S. 1 (1945).

Thus, if ExxonMobil truly wishes to "correct the record," it can do so properly, by using its vast resources to speak out on its own via television, newspapers, the blogosphere and social media. Indeed, my client would be very pleased to debate the issues raised in the advertisement, including climate change, corporate subsidies, and the effect of ExxonMobil's actions on future generations, in an appropriate public forum.

What ExxonMobil should not do – and what media outlets must not help them do – is use ill-defined and improper legal threats to limit my client's ability to spread its political message. We urge you to decline ExxonMobil's invitation to join its campaign of suppression. Let the advertisement run – and if ExxonMobil chooses to create its own ad, run that too.

Thank you for your consideration.

Sincerely,



Corynne McSherry, Esq.
Intellectual Property Director