

Sample Letter to the Editor

Responding to arguments about viewpoint discrimination as violation of First Amendment*

Dear Editor:

Rarely have we seen such a brazen attempt by a corporation to subvert the Constitution in service of protecting profits as Exxon's attempts to frame its misleading claims about the impacts of climate change on its investors, consumers, and the broader public as free speech. In response to investigations by the New York and Massachusetts attorney generals, the highest law enforcement officers of each state, Exxon has done the unthinkable by filing complaints against the attorney generals on the grounds that the investigations violate the corporation's First Amendment rights.

Unfortunately, this argument is not unprecedented. It was deployed by the tobacco industry when they were charged with fraud for deliberately misleading their customers about the dangers of smoking. The U.S. Court of Appeals for the D.C. Circuit quickly dismissed that claim with a statement of fact that should have ended the debate: "Of course it is well settled that the First Amendment does not protect fraud."

Suppressing information known to the company about the economic risks from proposed regulations or technological advances from shareholders, paying scientists or think tanks to muddy the waters of otherwise clear scientific consensus about basic facts in an attempt to mislead consumers, and publishing information that contradicts internal company analysis is not merely espousing an unpopular viewpoint. If proven, it may amount to securities fraud, deceptive trade practices, or violation of any number of consumer protection laws.

One would think that conservative intellectuals would be among the loudest defenders of the necessity of prohibiting fraud to ensure the integrity of otherwise free markets; instead conservative think tanks like the Heritage Foundation have equated the investigations of Exxon's questionable practices to the Spanish Inquisition.

Corporations are not people, and as citizens we need to make it clear that we will fight back against such cynical and dangerous attacks by corporations and those who serve them on our most sacred constitutional rights.

*This template borrows from an excellent op-ed by former Yale Law School Dean, Robert Post, https://www.washingtonpost.com/opinions/exxonmobils-climate-change-smoke-screen/2016/06/24/2df8b29c-38c4-11e6-9ccd-d6005beac8b3_story.html