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VIA U.S. MAIL and E-MAIL

Congressman Lamar Smith, Chairman
Congressman Frank D. Lucas, Vice Chairman
U.S. House Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, DC 20515-6301

Dear Congressman Smith and Congressman Lucas:

The Pawa Law Group, P.C. and the Global Warming Legal Action Project recently retained my firm in connection with responding your May 18, 2016 letter.

As you may know, the Pawa Law Group's legal practice entails representation of states and non-profit groups in environmental matters. For example, the Pawa Law Group has represented the State of New Hampshire since 2003 in a groundwater pollution case against numerous national oil companies, including ExxonMobil, Irving Oil, Shell Oil Co., Hess Corp., and others, and which resulted in a jury verdict in 2013 for the State and against the only non-settling defendant, Exxon Mobil Corporation; the state supreme court affirmed this verdict in 2015 and the U.S. Supreme Court denied Exxon's petition for *certiorari* last month. The Pawa Law Group also was co-counsel with eight state attorneys general in *Connecticut v. American Electric Power Co.*, which reached the U.S. Supreme Court in 2011; Pawa Law Group represented the land trust co-plaintiffs in that matter, which sought limits on greenhouse gas emissions under common law tort claims. Pawa Law Group has represented Clean Power Now, a non-profit group that intervened in legal cases and administrative proceedings on behalf of the Cape Wind project – a rare example of non-profit intervention in favor of a controversial development proposal. Pawa Law Group represented Greenpeace, U.S.A. in a case brought by subsidiaries of Shell Oil Co. in 2015, which sought to restrict Greenpeace U.S.A.'s protests against Arctic drilling in a unique and pristine American wilderness and that raised significant concerns related to global warming. From 2008 through 2013, the Pawa Law Group represented an Inupiat Eskimo tribe and Alaska municipality against major oil and electric power corporations and the nation's largest coal company in *Native Village of Kivalina, et al. v.*

ExxonMobil Corporation, et al., which sought monetary damages due to defendants' contributions to global warming, a process that is destroying the village.[1]

Although you may disagree with work of the Pawa Law Group and its clients' positions on environmental issues such as global warming, I trust the concern expressed in your letter regarding exercise of First Amendment rights extends to my clients. Citizens, non-profit groups and associations, and their counsel must be free to petition government, associate freely, and pursue legal redress; state governments must be free to receive confidential legal advice, as well as citizens' petitions, without fear of prying or interference by the federal government. In the context of First Amendment protections, the Supreme Court has stated that "under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances." *NAACP v. Button*, 371 U.S. 415, 430 (1963). The Court "has emphasized that there is no congressional power to investigate merely for the sake of exposure or punishment, particularly in the First Amendment area." *Gojack v. United States*, 384 U.S. 702, 711 (1966). The rights of States under the U.S. Constitution to exercise their sovereign prerogatives, including prosecutorial powers, without federal interference, is also sacrosanct. *See, e.g., Bond v. United States*, 134 S. Ct. 2077, 2086 (2014) ("In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder.").

Your expansive information request not only raises constitutional issues, it also conflicts with my clients' professional obligations. In light of the fact that my clients frequently work with state governments and public interest groups, sometimes as co-counsel and other times as their attorneys, representing and/or providing confidential legal advice to the state governments or interest groups, communications responsive to your request would include documents that are privileged and/or subject to the work product doctrine and/or the common interest doctrine. As you know, attorneys are bound by their ethical obligations to, *inter alia*, preserve clients' confidences and secrets. *See* ABA Model Rule of Professional Conduct 1.6.

[1] Chairman Smith filed an amicus brief for the fossil fuel companies in *Kivalina v. ExxonMobil*, opposing the tribe's position.

I would be happy to meet with you or your staff to discuss any of the above issues and learn more about the Committee's inquiry.

Sincerely,

Catherine S. Duval

cc: Congresswoman Eddie Bernice Johnson, Ranking Member