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July 27, 2010

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Mr. President:

The Government Accountability Project (GAP) writes to express appreciation for White House leadership that ended censorship of dissent on climate change policy, an issue of unsurpassed importance. Last November, under threat of discipline the Environmental Protection Agency (EPA) ordered two of its attorneys (and our clients), Laurie Williams and Allan Zabel, to remove a You Tube video challenging the effectiveness of “cap and trade” as a climate change solution, and imposed prior restraint on their future communications. Their views, which they carefully had explained were personal rather than representing the government, were based on their decades of enforcement experience and Mr. Zabel’s many years of experience with cap-and-trade and offsets. EPA explained that they had violated conflict of interest rules by referencing their government titles and experience when expressing their views.

Rather than file a lawsuit, Ms. Williams and Mr. Zabel sought White House support against what they believed was a distortion of valid ethics principles to cancel their First Amendment rights. Special Counsel for Ethics Norm Eisen listened carefully and assigned staff attorney Ian Bassin to research and resolve the conflict. Mr. Bassin acted as a consummate public servant – a quick study who was always constructive, patient and persistent until he achieved a consensus resolution.

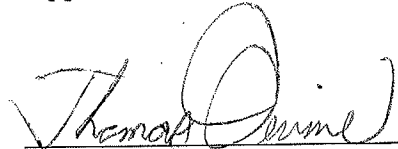
The results were impressive. Mr. Bassin obtained assistance from the Office of Government Ethics (OGE). In a government-wide ethics guideline opinion for uncompensated speech, OGE established the proper balance -- make clear a government employee is speaking as a private citizen rather than an agency representative, but do not restrict an employee’s First Amendment rights to reference job position or experience. Based on this guidance, EPA agreed that Ms. Williams and Mr. Zabel’s activities did not violate ethics rules and lifted its restrictions.

Using OGE’s generic interpretation as the basis will make a real difference for employees throughout government, not just Ms. Williams and Mr. Zabel. For decades, manipulation of ethics rules has been a highly effective tactic to silence or punish whistleblowers.

Equally significant the Special Counsel also convinced EPA to implement the anti-gag statute, which requires agencies explicitly to qualify free speech restrictions by disclosing that they do not apply to the Whistleblower Protection Act or communications with Congress. EPA has refused to implement this basic transparency law for 22 years.

We are particularly impressed that your administration engaged in such a thorough, effective effort to restore free speech channels for critics of its own policy. GAP and the whistleblowers we represent as counsel regularly disagree with Administration decisions and actions. Credit must be shared when due, however, for a job superbly done.

Appreciatively,

A handwritten signature in cursive script, appearing to read "Thomas Devine". The signature is written in dark ink and is positioned above a horizontal line.

Thomas Devine
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Counsel for Ms. Williams and Mr. Zabel