



**diGENOVA & TOENSING, LLP**  
ATTORNEYS-AT-LAW

August 8, 2019

Clerk, Circuit Court for Baltimore City  
Civil Division  
111 N. Calvert Street  
Baltimore, MD 21202

RE: **Case No. 24-C-19-001095 OC**  
Government Accountability & Oversight, P.C. v. Brian E. Frosh, Attorney General of Maryland

Dear Sir or Madam:

Undersigned Counsel represents Government Accountability and Oversight, P.C. ("GAO"), the petitioner in the above-captioned matter. Enclosed for filing with the Court are the following:

1. Motion for Summary Judgment;
2. Memorandum of Law in Support of Motion for Summary Judgment;
3. Affidavit of Christopher Horner in Support of Motion for Summary Judgment;
4. Proposed Order.

Please feel free to contact me if you have any questions. Thank you for your assistance with this matter.

Sincerely,

David Kluck  
Counsel for GAO

Enc.

**IN THE CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND**

GOVERNMENT ACCOUNTABILITY & )  
OVERSIGHT, P.C. )  
 )  
v. )  
 )  
BRIAN E. FROSH, *in his official capacity as* )  
ATTORNEY GENERAL OF MARYLAND )  
\_\_\_\_\_ )

Case No. 24-C-19-001095 OC

**MOTION FOR SUMMARY JUDGMENT**

Plaintiff Government Accountability and Oversight, P.C., by and through undersigned counsel, pursuant to Maryland Rules 2-311 and 2-501, moves for summary judgment and an order requiring Defendants to produce any nonprivileged public records within their possession or control and within the scope of Plaintiff's December 6, 2018 Request ("Request") under the Maryland Public Information Act, including but not limited to the full, unredacted copy of the Application identified in Plaintiff's Request, for the reasons set forth in the memorandum of law attached hereto, incorporated herein, and filed contemporaneously herewith.

Respectfully submitted,

GOVERNMENT ACCOUNTABILITY &  
OVERSIGHT, P.C.

Dated: August 8, 2019

By:

David Kluck

David Kluck, Esq.  
diGenova & Toensing, LLP  
1776 K Street, NW, Suite 737  
Washington, DC 20006  
(202) 289-7701 (office); (202) 289-7706 (fax)

/s/ Christopher Horner  
Christopher Horner, Esq. (*pro hac vice*)

1489 Kinross Lane  
Keswick, VA 22947  
(202) 262-4458  
Chris@CHornerLaw.com

*Counsel for Plaintiff GAO*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed first-class mail, postage prepaid, on August 8, 2018 to:

Brian E. Frosh Esq.,  
Attorney General of Maryland  
200 St. Paul Place  
Baltimore, MD 21202

Adam Snyder, Esq.  
Deputy Chief of Litigation  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

*David Kluck*

---

David Kluck, Esq.  
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Washington, DC 20006  
(202) 289-7701 (office); (202) 289-7706 (fax)

**IN THE CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND**

GOVERNMENT ACCOUNTABILITY & OVERSIGHT, P.C.	)	
	)	
	)	
v.	)	Case No. 24-C-19-001095 OC
	)	
BRIAN E. FROSH, <i>in his official capacity as</i> ATTORNEY GENERAL OF MARYLAND	)	
	)	
_____	)	

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Government Accountability & Oversight, P.C. (“GAO”), by and through undersigned counsel, submits this Memorandum of Law in support of GAO’s Motion for Summary Judgment against Defendant, the Maryland Office of Attorney General (“OAG”). In support of its Motion, GAO hereby states as follows:

**Introduction**

This lawsuit seeks to enforce the right to inspect public records pursuant to the Maryland Public Information Act, Md. Code, GP, §§ 4- 101 through 4-601 (“PIA”). GAO requested one public record from OAG, seeking to inform the public about representations and promises made by OAG in an application for a “Special Assistant Attorney General” (SAAG), who was to be privately funded by an influential, special-interest donor for the purpose of pursuing specific, identified political and policy-making priorities of that donor. The arrangement also included public relations and additional outside legal support. In response, OAG produced a heavily-redacted application. Despite the great public interest and concern regarding this record (or perhaps because of it), OAG refused to produce an unredacted version, claiming substantial portions of the record are exempt from public inspection under the attorney-client privilege.

Other attorneys general offices who also submitted an application to the same donor for their own special-interest SAAGs (District of Columbia, New Mexico, New York, Oregon, Pennsylvania, Vermont, Virginia, and Washington) released their applications without claiming privilege and without any redactions.<sup>1</sup>

Only OAG asserted privilege and redacted information from its application, thereby shielding from the public the full details of its arrangement with this special interest group. This information is of heightened public interest for numerous reasons, including the extraordinary, and indeed facially unlawful, nature of the arrangement by which a private special interest group finances and deputizes its own hire as a Maryland law enforcement official to achieve specific political goals. Further, as Plaintiff described in its Complaint, the subsequent placement of the privately funded (\$125,000 annual salary plus benefits) attorney as “Pro Bono” counsel pursuant to Article 6-105(f) also on its face violates the Office’s statutory authority. This Court’s intervention to reveal this arrangement is requested, as is the award of costs and attorneys’ fees as provided in Md. Code, GP § 4-362(f). Plaintiff also requests an expedited hearing as provided in Md. Code, GP § 4-362(c)(1)(iii) (“[P]roceeding[s] under this section . . . shall . . . be expedited in every way.”)

### **STATEMENT OF FACTS**

#### **A major political donor’s special interest money is being used to privately finance, hire, and place assistant attorneys general for the purpose of pursuing the activist billionaire’s special interest agenda**

In 2017, billionaire activist and major political donor Michael Bloomberg gave \$6 million to New York University School of Law to establish the “NYU State Energy and

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<sup>1</sup> The Illinois Attorney General redacted only the signature.

Environmental Impact Center’s fellowship program” (“Bloomberg Center”).<sup>2</sup> This program was funded through Bloomberg Philanthropies, a tax-exempt vehicle used by Bloomberg for both charitable work and to advance his personal political goals.

The Bloomberg Center offered to pay the salary and benefits of one or more SAAGs for two-year terms only if attorneys general offices agree to use this employment position according to the Center’s specific political agenda – “advancing progressive clean energy, climate change, and environmental legal positions.” Interested attorneys general were invited to submit an application outlining, among other things, “needs within their offices related to the advancement and defense of progressive clean energy, climate change, and environmental matters,” and a demonstrated “commitment to and acute need for additional support on clean energy, climate change, and environmental issues of regional or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.” Horner Aff., Ex. B (August 25, 2017, Application Invite Email).

In addition to conditioning the provision of resources on agreement to pursue a “progressive” ideological political agenda, the solicitation requires that applicants “identify any state-specific limitations or requirements governing the appointment of an employee paid by an outside funding source, and include a written confirmation that the attorney general has the authority to hire an NYU Fellow as a SAAG.” Horner Aff., Ex. B.

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<sup>2</sup> See, e.g., attached Affidavit of Christopher Horner (“Horner Aff.”) at Ex. A (Nov. 14, 2017 email from Bloomberg Center’s Christopher Moyer to Virginia OAG’s Michael Kelly) (“I recently left California . . . for the new **Bloomberg-supported** State Energy and Environmental Impact Center.”) (Emphasis added.) See also Juliet Eilperin, “NYU Law launches new center to help state AGs fight environmental rollbacks,” *Washington Post*, August 16, 2017 at A15 (“NYU School of Law will launch a new center, **financed by Michael Bloomberg** . . .”) (Emphasis added.)

On September 15, 2017, OAG applied to the Bloomberg Center for a privately-financed and hired SAAG (or SAAGs<sup>3</sup>) and for other offered inducements including access to Bloomberg Center legal and public relations consultants. It requested its SAAG(s) be paid by the Bloomberg Center “as high as \$125,000” to perform the described work in OAG’s Application. Horner Aff., Ex. C (OAG Jan. 3, 2019 Response Letter and Redacted Bloomberg Center Application) (“Application”). The Bloomberg Center granted the Application and, on January 3, 2018, extended an offer of employment to Joshua Segal “as a Research Scholar, in the State Energy & Environmental Impact Center at New York University,” stating in the same letter, “[y]our annual base salary will be \$125,000” plus employee benefits and that, “[d]uring your employment, you will be seconded to the Attorney General's Office of the State of Maryland as a Special Assistant Attorney General.” Horner Aff., Ex. E (Segal contract with Bloomberg Center). Following Segal’s acceptance of this offer, Defendant AG Brian Frosh appointed him “as Pro Bono Assistant Counsel” pursuant to State Government Article 6-105(f). Horner Aff., Ex. F (Jan. 16, 2018 Appointment Ltr.)

The Bloomberg Center’s offer of employment to Segal calls for him to report to an OAG supervisor. However, the contract between the Bloomberg Center and OAG requires the SAAG ultimately to report to the Bloomberg Center regarding the SAAG’s work. Horner Aff., Ex. G (OAG and Bloomberg Center Retainer and Secondment Agreements).<sup>4</sup> The agreement also

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<sup>3</sup> “It turns out that our first Bloomberg Fellow, Josh Segal, was a student of yours at Harvard. He's a big fan. We are looking to fill our second position, and Josh suggested that you might be able to help us identify candidates.” Horner Aff., Ex. D (January 26, 2018 email from AG Frosh to Heather Gerken) at 19.

<sup>4</sup> In response to a different PIA request, Maryland OAG was also the sole attorney general’s office to redact portions of the Retainer and Secondment Agreements, which further detailed its arrangement with the Bloomberg Center. Plaintiff knows from other states’ release of their own versions of these records that the information OAG redacted – e.g., the privately funded prosecutor’s scope of work, and what OAG committed to report back to the donor on this work,

requires OAG to “provide periodic reports to the [Bloomberg Center] regarding the work of the [SAAGs]” including “a narrative summary” of his work. Horner Aff., Ex. G at 7.

Plaintiff has learned that the Bloomberg Center in turn reports bi-weekly to Bloomberg Philanthropies – as that Center specifically informed AG Frosh in an email dated December 17, 2017:

Brian: Per our conversation on Friday, attached is our latest biweekly report, which we prepare for Dan Firger at Bloomberg. I don't know if he shares these with [a Bloomberg political consultant]. My next email will attach the preceding biweekly report.

Horner Aff., Ex. H (Email from Center Director David Hayes to AG Frosh's Gmail account, Subject: Fwd: Bi-Weekly Report).

The Bloomberg Center recruited OAG to pursue its private political agenda and conditioned these gifts on OAG putting the SAAG to work on issues of concern to the activist donor. Further, as part of the inducements to accept a privately-hired SAAG to work on issues of the donor's concern, the Bloomberg Center employs full-time attorneys and a communications expert who “provide ongoing support to the SAAGs” to carry out its national environmental agenda, seeking to force policy changes through cooperative law enforcement offices.

On December 6, 2018, pursuant to the PIA, GAO requested OAG's Bloomberg Center Application from OAG. Horner Aff., Ex. I (GAO Dec. 6, 2018 PIA Request). On January 3, 2019, OAG produced a heavily-redacted version of the Bloomberg Center Application, claiming attorney-client privilege. Horner Aff., Ex. C. The public deserves to know the full extent of OAG promises made to a wealthy private donor to use its authority to support the donor's priorities. The unredacted application will inform the public of its representations and promises in response

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at regularly scheduled times-- was not privileged at all, but apparently seen as potentially embarrassing. As such, Plaintiff sees a pattern in OAG's misapplication of the PIA.

to a solicitation from an activist private donor to provide OAG outside resources only if those resources pursue specific legal positions of interest and concern to that donor.

### ARGUMENT

#### **1. OAG bears the burden of showing the redactions fall within an exemption to the PIA.**

The PIA is a disclosure statute, not a withholding statute. Public records are presumed to be subject to disclosure unless they can be shown to be exempt. *Kirwan v. The Diamondback*, 352 Md. 74, 80, 721 A.2d 196, 199 (1998). Therefore, OAG has the burden of proving the propriety of any withholdings. “In light of the very broad scope of the PIA, the burden falls on any governmental entity or official asserting exclusion from the PIA to show a legislative intent to exempt that entity’s or official’s records from the PIA’s general rule of disclosure.” § 1-4, Maryland Public Information Act Manual, Office of the Maryland Attorney General, 2015.

OAG must justify any withholdings or redactions under the PIA. Md. Code, GP § 4-362(b)(2). The PIA manual, which was drafted by OAG, states “[t]o satisfy the statutory burden, an entity or official withholding a record must put forth evidence sufficient to justify the decision.” § 5-2, Maryland Public Information Act Manual, Office of the Maryland Attorney General, 2015.

Additionally, the custodian bears the burden of “demonstrating, with particularity and not in purely conclusory terms, precisely why the disclosure [of an investigatory record] ‘would be contrary to the public interest’” and demonstrating the infeasibility of severing a record “into disclosable and non-disclosable parts.” *Blythe v. State*, 161 Md. App. 492, 527; 870 A.2d 1246, 1266 (2005).

**2. The redacted portions are not exempt from disclosure as attorney client privileged materials.**

OAG claims to have redacted portions of the record on grounds of attorney-client privilege. Compl., Horner Aff., Ex. C at 2 (“We have continued to redact . . . portions of the document, however, as protected by the attorney-client privilege.”); Answer ¶ 13 (Defendant “admits that [it] responded to plaintiff’s request by letter dated January 3, 2019, which letter is attached to the complaint at Exhibit C and speaks for itself.”)

OAG’s conclusory statement fails to meet its burden to show that an attorney-client relationship exists between it and the Bloomberg Center. On July 15, in a letter to the editor published in the Wall Street Journal specifically about this case, the Executive Director of the Bloomberg Center wrote, “The law fellow’s duties of loyalty and confidentiality run solely to state attorneys general . . . .” David Hayes, Ltr. to Editor, “Outside Assistance to AGs Is Legal and Right,” Wall Street J. (July 15, 2019) at A12. (Horner Aff., Ex. J) He further wrote that “the law fellows work on matters that AGs select without approval of NYU or . . . any of its funders.”

Under Maryland law,

An attorney-client relationship is said to be have been created when (1) a person seeks advice or assistance from an attorney; (2) the advice or assistance sought pertains to matters within the attorney's professional competence; (3) the attorney expressly or impliedly agrees to give or actually gives the desired advice or assistance.

*Atty. Griev. Comm'n v. Stillwell*, 434 Md. 248, 260, 74 A.3d 728, 735 (2013). “The existence of an attorney-client relationship creates a confidential relationship as a matter of law.” *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 103, 62 A.3d 212, 230 (2013).

The application here, which OAG has withheld on grounds of attorney-client privilege, is a communication between OAG and the Bloomberg Center—not a communication with the “law

fellow” who had yet to be hired and later deputized as a SAAG. Yet the Director of the Bloomberg Center—with which the OAG claims to share privilege—expressly denies both the existence of a confidential relationship and the ability to control the fellow’s work product. OAG has not met its burden to overcome the presumption in favor of disclosing the records. *Blythe*, 161 Md. App. at 492. Further, this September 2017 application in response to an RFP offering, *inter alia*, public relations support, was made well before the purported attorney-client relationship is even purported to have initiated, in January 2018.

Further, even assuming *arguendo* that an attorney client relationship exists, “only those attorney-client communications pertaining to legal assistance and made with the intention of confidentiality are within the ambit of the privilege.” *E.I. du Pont de Nemours & Co. v. Formapack, Inc.*, 351 Md. 396, 415-16, 718 A.2d 1129, 1138 (1998). Merely establishing that it has an attorney-client relationship with the Application recipient is not sufficient. OAG carries the burden to prove that the redacted information is privileged.

Further, the supposedly attorney-client privileged Application is in fact a response to an RFP by a private activist. It is nothing more than a request by OAG for private funding for activities to which even the funder insists no privilege attaches. It is OAG’s description to a third party of “The Maryland Office of Attorney General’s Need for Additional Capacity,” as it sees it (Application at 1), and “Attorney General Frosh and the Maryland Office of the Attorney General's Commitment to the Environment (at 3), “Program Structure” (at 5), and “Appendix” regarding why OAG believes it requires and can accept third-party funding for a prosecutor to pursue certain issues of concern to a private donor.

Plaintiff has sought, and attorneys general offices in other jurisdictions have produced, other such applications to the same Center, all seeking the same arrangement. Offices releasing

these records, in full, include District of Columbia, Illinois, New Mexico, New York, Oregon, Pennsylvania, Vermont, Virginia, and Washington. Unlike OAG, none claimed the request for private funding was privileged and none redacted any substantive portion of the applications.

The lawyer-custodian of public record-client information must disclose requested information unless, by disclosing, the lawyer would violate MR 1.6(a) and thereby be exposed to professional discipline. If the requested public record is "information relating to representation of a client," which, if disclosed by the attorney, would place the attorney in violation of MR 1.6, the information is confidential under § 10-615(1) and not to be produced under the Act.

*Harris v. Balt. Sun Co.*, 330 Md. 595, 604-05, 625 A.2d 941, 945 (1993). The redacted information does not meet the above standard.

Moreover, even if the Application—as a plea for private resources, in response to a request for proposal—is analogous to retainer agreements and engagement letters, such engagements are not generally viewed as subject to attorney-client privilege. *Maxima Corp. v. 6933 Arlington Dev. Ltd. P'ship*, 100 Md. App. 441, 457, 641 A.2d 977, 984 (1994) (“The identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege.”)

### **3. Under Maryland law, the SAAG is not working “pro bono.”**

As part of its Application to the Bloomberg Center, OAG was required to certify that the arrangement was permissible under Maryland law and professional responsibility requirements. In engaging the attorney hired by the Bloomberg Center pursuant to this application, OAG cited Md. Code, SG. § 6-105(f), Horner Aff., Ex. F, which authorizes engagement of attorneys who are “necessary to carry out any duty of the Office” only if they are “on a pro bono basis.” SAAG Segal is not pro bono. He is being paid a “base annual salary of \$125,000” plus benefits by the Bloomberg Center to perform this work, the salary requested by OAG in its otherwise heavily

redacted Application. Horner Aff., Ex. E. The Bloomberg Center expressly hired Segal to “be seconded to the Attorney General's Office of the State of Maryland ("OAG") as a Special Assistant Attorney General.” Horner Aff., Ex. E.

Under Maryland law, “pro bono” is limited to those who work for no compensation. *State v. Westray*, 444 Md. 672, 677 n.2, 121 A.3d 129, 133 (2015) (“[Defendant] uses ‘pro bono counsel’ to refer to an attorney whom he does not need to pay. ‘Pro bono,’ of course, means that not only does the client not need to pay, but also **the attorney represents the client without compensation.**”) (Emphasis added.)

The arrangement applied for in the one OAG record at issue (including “Appendix A”) does not meet the definition of “pro bono” – the supposed justification for claiming authority to enter the arrangement. Rather, the attorney was hired to work for OAG by an outside special interest group for the agreed purpose of pursuing that group’s and its donor’s special interests through the Office of Attorney General. The law does not allow a “pro bono” counsel to be paid by anyone, let alone a special interest group for the purpose of using governmental authority to pursue that group’s and its donor’s special interests.

#### **4. OAG cannot redact evidence of an illegal arrangement.**

The basis for this arrangement is without statutory authority. Indeed, it is illegal. Moreover, it was misrepresented, making the heavily-redacted Application of even greater public interest. *Cf. Chaudhry v. Gallerizzo*, 174 F.3d 394, 403 (4th Cir. 1999) (privilege does not apply to illegal arrangements). Disregarding the law, OAG appointed the SAAG as a “pro bono” counsel and “Pro Bono Assistant Counsel” Segal has been given the statutory authority of an Assistant Attorney General.

Politically embarrassing or legally problematic redactions are of the greatest public interest. For example, the New Mexico Attorney General’s application candidly professed its

objective: “the Office would work with the NYU Law Fellow to identify ‘pressure points’ on which litigation can be used to most effectively influence policy.” Virginia’s Attorney General admitted the financing was “to advance the agenda represented by” the Bloomberg Center. In response to the same solicitation, the Virginia legislature prohibited that Office from engaging in the arrangement.<sup>5</sup> The public deserves to know what OAG stated about its intentions and desired use of these non-public resources in exchange for the private use of a public office.

### **CONCLUSION**

This arrangement by which an out-of-state, activist political donor is able to utilize his vast wealth to harness the police powers of the State of Maryland by funding an assistant attorney general with the purpose of carrying out his preferred, special interest agenda is of great public interest. As a result, the entirety of the representations made by OAG in its Bloomberg Center Application in response to substantial financial inducements should be disclosed to the public. *See, e.g.*, Editorial, “State AGs for Rent: Privately funded litigators wield state police power,” *Wall Street Journal Online*,<sup>6</sup> Nov. 6, 2018; Editorial, “State AGs’ Climate Cover-up” *Wall Street Journal*, June 8, 2019, at A14.

None of the nine other jurisdictions that produced their applications to the Bloomberg Center in response to similar public record requests concluded that such communications are privileged. The record is a plea for private, supplemental funding to perform OAG duties. There is no actual basis that the parties assumed privilege for the Application. Even had they attempted to do so, it is clear the information does not warrant such protection from public inspection. The Director of the Center has publicly disclaimed any “duties of loyalty and confidentiality” on

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<sup>5</sup> Budget Amendment to HB1700 Conference Report, Item 56 #1c, Attorney General and Department of Law, inserted on page 46, line 28

<https://budget.lis.virginia.gov/amendment/2019/1/HB1700/Introduced/CR/56/1c/>

<sup>6</sup> Available at <https://www.wsj.com/articles/state-ags-for-rent-1541549567>.

behalf of the Center toward OAG. And the arrangement applied for and (apparently) implemented is facially inconsistent with cited statutory authority, as the SAAG is not working pro bono. OAG should be ordered to produce the unredacted document forthwith and to pay the costs and attorneys' fees associated with bringing this action.

Respectfully submitted,

GOVERNMENT ACCOUNTABILITY & OVERSIGHT, PC

Dated: August 8, 2019

By: David Kluck

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diGenova & Toensing, LLP  
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(202) 289-7701 (office); (202) 289-7706 (fax)

/s/ Christopher Horner  
Christopher Horner, Esq. (*pro hac vice*)  
1489 Kinross Lane  
Keswick, VA 22947  
(202) 262-4458  
Chris@CHornerLaw.com

*Counsel for Plaintiff GAO*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed first-class mail, postage prepaid, on August 8, 2018 to:

Brian E. Frosh Esq.,  
Attorney General of Maryland  
200 St. Paul Place  
Baltimore, MD 21202

Adam Snyder, Esq.  
Deputy Chief of Litigation  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

David Kluck

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**IN THE CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND**

Government Accountability & Oversight, P.C.

Plaintiff,

v.

Brian E. Frosh, Attorney General Of Maryland,

Defendant.

Case No. 24-C-19-001095 OC

**[PROPOSED] ORDER**

Upon Consideration of Plaintiff's Motion for Summary Judgment, it is this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the Circuit Court for Baltimore City Maryland, ORDERED that:

**ORDERED**, that the Motion is **GRANTED**. It is further

**ORDERED**, that within ten (10) days of this Order, Defendants shall produce all responsive, non-privileged documents within their possession, custody, or control and within the scope of Plaintiffs' request under the Maryland Public Information Act, including the full, unredacted copy of the Application identified in the Plaintiff's request. It is further

**ORDERED**, that pursuant to Md. Code, GP § 4-362(f), Defendant shall pay the reasonable costs and attorney's fees incurred by Plaintiff in pursuing this action.

\_\_\_\_\_  
Circuit Court Judge

**IN THE CIRCUIT COURT FOR  
BALTIMORE CITY, MARYLAND**

GOVERNMENT ACCOUNTABILITY & )  
OVERSIGHT, P.C. )  
 )  
v. )  
 )  
BRIAN E. FROSH, *in his official capacity as* )  
ATTORNEY GENERAL OF MARYLAND )  
 )  
\_\_\_\_\_ )

Case No. **24-C-19-001095 OC**

**AFFIDAVIT OF CHRISTOPHER HORNER IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

Personally appearing before the undersigned and with authority in and for said county and state, Christopher Horner, Esq., being first duly sworn by the undersigned, deposes and says:

1. I am a resident, domiciliary, and citizen of the County of Albemarle and of the Commonwealth of Virginia, and an attorney licensed to practice law in the District of Columbia.
2. I make each of the statements in this Affidavit based upon my personal knowledge and if called as a witness I could and would testify competently as to their truth.
3. Each referenced Exhibit to this Affidavit is cited in Plaintiff's Motion for Summary Judgment filed contemporaneously in the above-captioned matter.
4. I received Exhibits A through I from the noted public office in response to public records requests as described, respectively, in the Motion for Summary Judgment.
5. The attached Exhibit A is a true and accurate copy of a record as produced to me in response to a public records request.
6. The attached Exhibit B is a true and accurate copy of a record as produced to me in response to numerous public records requests.

7. The attached Exhibit C is a true and accurate copy of records as produced to me in response to a public records request.

8. The attached Exhibit D is a true and accurate copy of a record as produced to me in response to a public records request.

9. The attached Exhibit E is a true and accurate copy of records as produced to me in response to a public records request.

10. The attached Exhibit F is a true and accurate copy of a record as produced to me in response to a public records request.

11. The attached Exhibit G is a true and accurate copy of records as produced to me in response to a public records request.

12. The attached Exhibit H is a true and accurate copy as produced to me in response to a public records request.

13. The attached Exhibit I is a true and accurate copy of a public record request as sent by me to the Maryland Office of the Attorney General.

14. The attached Exhibit J is a true and accurate copy of a letter to the editor attributed to David Hayes appearing in the July 15, 2019 edition of the *Wall Street Journal*.

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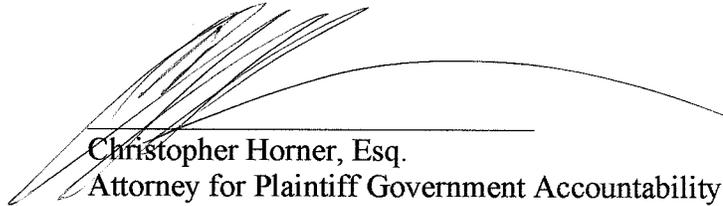
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I attest under penalty of perjury that each of the foregoing statements are true and that all documents provided with this Affidavit are true and accurate copies as produced in the manner described.

Further, affiant sayeth naught.

  
Christopher Horner, Esq.  
Attorney for Plaintiff Government Accountability & Oversight

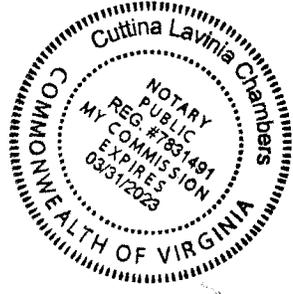
I, Cuttina L. Chambers, a Notary Public of the County and State aforesaid, hereby certify that Christopher Horner personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand this the 7<sup>th</sup> day of August, 2019.

Cuttina L. Chambers

My Commission expires:

03/31/2023



# Exhibit A

**Kelly, Michael K.**

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**From:** Christopher Moyer <chris.moyer@nyu.edu>  
**Sent:** Tuesday, November 14, 2017 10:57 AM  
**To:** Kelly, Michael K; Sisselman, Lara N.  
**Subject:** Introduction

Hi Michael and Lara,

I hope you are well -- and congrats on AG Herring's re-election! I'm writing to introduce myself and offer help to you and the AG in the months ahead on environmental and climate issues.

I recently left California AG Becerra's office to become the comms director for the new Bloomberg-supported State Energy and Environmental Impact Center at NYU Law. We're based in DC and work on legal and communications strategy with AGs around the country who are promoting and defending progressive policies on clean energy, the environment and climate change. Our executive director is David Hayes, who served as the Interior Deputy Secretary in the Obama and Clinton Administrations.

I'm hoping we can find time in the coming weeks to discuss how we can help on these issues. When would be a good time to chat?

Best,

Chris

Chris Moyer

Communications Director

State Energy & Environmental Impact Center

603.479.1402

chris.moyer@nyu.edu

@ChrisMoyerNH

# Exhibit B

**From:** David J. Hayes <david.hayes@nyu.edu>  
**Sent:** Friday, August 25, 2017 11:51 AM  
**To:** Eleanor.Blume@doj.ca.gov; PerryZR@ct.gov; LaKresha.Roberts@state.de.us; Natalie.Ludaway@dc.gov; Joshua.A.Wisch@hawaii.gov; ASpillane@atg.state.il.us; Tabor, Eric [AG]; Latasha.Buckner@ky.gov; Linda.Pistner@maine.gov; Brian Mahanna; Mike.Firestone@state.ma.us; MMCCL@ago.state.ms.us; MBaca@nmag.gov; SDearmin@ncdoj.gov; BThomas@ncdoj.gov; Kamala.H.Shugar@doj.state.or.us; JRadosevich@attorneygeneral.gov; DWade@attorneygeneral.gov; MFischer@attorneygeneral.gov; MLenz@riag.ri.gov; Natalie.Silver@vermont.gov; KOHolleran@oag.state.va.us; KateK@atg.wa.gov  
**Cc:** David J. Hayes; Elizabeth Klein  
**Subject:** State Energy & Environmental Impact Center  
**Attachments:** State Impact Center Staff Attorney Position Description.docx



State Energy &  
Environmental Impact Center  
NYU School of Law

**To:** State OAG Leaders [list kindly provided by Brian Mahanna][please share this email with your Attorney General]

**From:** David J. Hayes

**Re:** State Energy & Environmental Impact Center at the NYU School of Law

I hope that you received word about the formation of the State Energy & Environmental Impact Center (State Impact Center) at the NYU School of Law. NYU issued a [press release](#) on the formation of the Center, and it also was referenced in recent articles in the [Washington Post](#) and in [Greenwire](#).

I am writing to give you and your Attorney General more information about the new State Impact Center.

The goal of the State Energy & Environmental Impact Center is to enhance the resources that your office has to champion your citizens' interests in clean energy, climate change and environmental matters. We admire the

vitality important work that you have been doing in this area and are dedicated to giving more support to you, and other Attorneys General – regardless of party affiliation -- who pursue clean energy, climate change and environmental issues.

As explained on our [NYU web site](#), the State Impact Center looks forward to providing assistance to interested AGs in a number of ways.

First, our Center will have three full time attorneys who will be available to provide direct legal assistance to interested AGs on specific administrative, judicial or legislative matters involving clean energy, climate change, and environmental interests of regional and national significance. We look forward to developing a working relationship with your offices and serving as a source of ideas, materials, and contacts on these matters. In that regard, we will maintain a set of on-going relationships with advocates working in the area, and we also are identifying pro bono services that may be available to your offices on individual matters. We are engaged with ethics experts and individuals in some of your offices to ensure confidentiality and work product privilege for matters that State Impact Center attorneys work with you on.

Second, our Center will have a full time communications expert experienced in the clean energy, climate and environmental field to work with, and help leverage, the communications resources in your offices. It is a primary goal of the State Impact Center to draw regional and national attention to the important clean energy, climate and environmental initiatives that your offices are pursuing.

Third, we have funding to recruit and hire 10 NYU fellows who will serve as Special Assistant AGs, working as part of the state OAG's staff. It's in everyone's interest that we work with the relevant AGs and hire these lawyers as soon as practicable.

I have inserted below language from our website which lays out the process for placing NYU fellows as SAAGs. **Please note the September 15 application date.** This deadline is coming up quickly. We set a short deadline at the request of several AGs who are anxious to get the process for placing NYU Fellows into AG offices as soon as possible.

### **How to Hire an NYU Fellow**

The State Impact Center is announcing an opportunity for state attorneys general to recruit and hire a limited number of NYU Fellows with five to 10 years of experience in clean energy, climate change, and environmental issues as special assistant attorneys general (SAAGs). These SAAGs would be available for a two-year period to provide a supplemental, in-house resource to attorneys general and their senior staffs on clean energy, climate change and environmental matters of regional and national importance.

State attorneys general who are selected for this program will work cooperatively with the State Impact Center to recruit and hire NYU Fellows as SAAGs. NYU Law will pay the salaries of the SAAGs, and the State Impact Center will provide ongoing support to the SAAGs and their offices. Once hired, however, the SAAGs' duty of loyalty shall be to the attorney general who hired them.

## **Basic Eligibility Requirements and Application Process**

The opportunity to potentially hire an NYU Fellow is open to all state attorneys general who demonstrate a need and commitment to defending environmental values and advancing progressive clean energy, climate change, and environmental legal positions. Initial funding will support a limited number of NYU Fellows in state attorneys general offices for a two-year term, with the possibility of adding additional NYU Fellows in year two of the program.

Candidates who are approved by the attorneys general and the State Impact Center will receive offers to serve as SAAGs (or the equivalent appropriate title within the office) from the attorneys general, based on an understanding that they will devote their time to clean energy, climate change and environmental matters.

**Interested state attorneys general should prepare an application as detailed below and return it to [stateimpactcenter@nyu.edu](mailto:stateimpactcenter@nyu.edu) no later than Friday, September 15, 2017.**

The State Impact Center will review all applications received for completeness and will contact attorneys general if additional information is needed. State Impact Center staff are available for questions regarding this program.

## **Application Requirements**

To be considered for the NYU Fellows/SAAG program, an application must contain the following:

### **1. Program Eligibility and Narrative**

State attorneys general should describe the particular scope of needs within their offices related to the advancement and defense of progressive clean energy, climate change, and environmental matters. Relevant details include the extent to which funding or other capacity constraints have limited the ability to work on these issues or how additional dedicated support could help advance the work of the state attorney general on behalf of his or her constituents.

Priority consideration will be given to state attorneys general who demonstrate a commitment to and acute need for additional support on clean energy, climate change, and environmental issues of regional

or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.

## 2. Program Structure

Applications should include specific details about the scope of expertise the state attorney general needs in a SAAG to advance his or her priorities. Details should also be provided about how the SAAG would be incorporated into the Office of the Attorney General, including the relevant internal reporting structure.

## 3. Budget Proposal and Confirmation of Authority

To be considered complete, applications must identify a proposed salary (or range) for a SAAG, with an explanation of how it would conform with the existing salary structure in the state AG office.

Applications also should identify any state-specific limitations or requirements governing the appointment of an employee paid by an outside funding source, and include a written confirmation that the attorney general has the authority to hire an NYU Fellow as a SAAG (or equivalent title).

## Application Review

Complete applications will be reviewed on an expedited basis, with decisions on proposed placements of NYU Fellows made as soon as practicable thereafter. Proposed placement decisions will be made by the executive director of the State Impact Center, in consultation with the advisory council. Approximately 10 NYU Fellow slots for five to seven states are expected to be available for the first year of the program. Additional slots may be available in subsequent years.

Once agreements are finalized, the State Impact Center will coordinate directly and immediately with state attorneys general to identify, recruit, and extend SAAG offers to appropriate candidates, with a goal to have SAAG hires in place by the end of 2017.

The State Impact Center will provide ongoing support to the SAAGs. The State Impact Center's support will not be limited, however, to those AG offices that include NYU Fellows. Where appropriate and upon request, and consistent with available resources, the State Impact Center will work with all attorneys general who are pursuing clean energy, climate change, and environmental initiatives.

Finally, please note that the State Energy & Environmental Impact Center's attorneys and communications staff will be located in Washington, D.C. Our offices are at 1616 P Street NW, near DuPont Circle. (The 10 Special Assistant AGs, of course, will be located in the host AG's offices.)

I am heading up the Center, and Liz Klein is the Deputy Director. You can reach us at [David.Hayes@nyu.edu](mailto:David.Hayes@nyu.edu) and [Elizabeth.Kline@nyu.edu](mailto:Elizabeth.Kline@nyu.edu). We are in the process of hiring an additional attorney and our full-time communications staff. I am attaching a job descriptions for the attorney position in case you have any recommendations.

Our Center will be guided by a distinguished Advisory Council, chaired by Richard (Ricky) Revesz, the Dean Emeritus of the NYU School of Law. The Advisory Council also includes two former State Attorneys General, Anne Milgram (New Jersey) and Bruce Babbitt (Arizona), as well as Dan Firger, environmental program officer for Bloomberg Philanthropies.

If you have any questions, please do not hesitate to contact Liz Klein or me via email or by phone.

Thanks.

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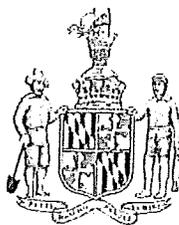
**David J. Hayes**  
Executive Director  
State Energy & Environmental Impact Center  
NYU School of Law  
c/o Resources for the Future  
1616 P Street, NW  
Washington, DC 20036  
Cell: [REDACTED]  
Personal email: [REDACTED]  
Twitter: @djhayes01

--

**David J. Hayes**  
Executive Director  
State Energy & Environmental Impact Center  
NYU School of Law  
c/o Resources for the Future  
1616 P Street, NW  
Washington, DC 20036  
Personal email: [REDACTED]  
Twitter: @djhayes01

# Exhibit C

BRIAN E. FROSH  
Attorney General



ELIZABETH HARRIS  
Chief Deputy Attorney General

CAROLYN QUATTROCKI  
Deputy Attorney General

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.  
(410) 576-7036

WRITER'S DIRECT DIAL NO.  
(410) 576-6327  
phughes@oag.state.md.us

January 3, 2019

*Via Electronic Mail*

Christopher C. Horner  
Government Accountability & Oversight  
724 Bielenberg Drive PMB #14  
Woodbury, MN 55125  
[chris@govoversight.org](mailto:chris@govoversight.org)

Dear Mr. Horner:

This letter responds to your request of December 6, 2018 under the Public Information Act ("PIA"), *see* Md. Code Ann., Gen. Prov. §§ 4-101 through 4-601, for the Office of the Attorney General's "application to participate in the NYU State Energy and Environmental Impact Center's fellowship program," likely created between August 25, 2017, and September 15, 2017, including any "attachments/appendices" and "cover letters/emails."

As you know, we previously provided you with this document in response to a different PIA request, which was focused on documents related to any "determination" or "analysis" by our Office that we had the authority to hire "legal fellows whose salary and benefits are provided by an outside funding source." In providing the document, we redacted certain material from some portions of the document that did not relate to any determination or analysis about our Office's authority to hire legal fellows, on the ground that those portions were protected by the attorney-client privilege. *See* GP § 4-301(a) (incorporating common-law privileges, like the attorney-client privilege, into the Act). After receiving your second request, which is focused more particularly on this specific document, we took a closer look and determined that there were a few additional portions of the document that we are able to produce under the PIA. We have continued to redact other portions of the document, however, as protected by the attorney-client privilege. Those portions are privileged because they "relate to professional advice and to the subject-matter about which the advice is sought." *Smith v. State*, 394 Md. 184, 203 (2006); *see*

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200 Saint Paul Place ❖ Baltimore, Maryland 21202-2021

Main Office (410) 576-6300 ❖ Main Office Toll Free (888) 743-0023

Consumer Complaints and Inquiries (410) 528-8662 ❖ Health Advocacy Unit/Billing Complaints (410) 528-1840

Health Advocacy Unit Toll Free (877) 261-8807 ❖ Homebuilders Division Toll Free (877) 259-4525 ❖ Telephone for Deaf (410) 576-6372  
[www.marylandattorneygeneral.gov](http://www.marylandattorneygeneral.gov)

Christopher Horner  
January 3, 2019  
Page 2

also *Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999). (“[C]onfidential communications made between a client and an attorney in an effort to obtain legal services are protected from disclosure.”). In particular, the redacted portions contain information about the reasons that our Office was seeking legal assistance from the Impact Center, as well as about the types of cases and matters for which our Office was seeking the Impact’s Center legal assistance, including—in some instances—information about our Office’s litigation strategy. See *Chaudhry*, 174 F.3d at 402 (explaining that, among other things, material which “reveal[s] the motive of the client in seeking representation” and the client’s “litigation strategy” is protected by attorney-client privilege (quoting *Clarke v. American Commerce Nat’l Bank*, 974 F.2d 127 (9th Cir. 1992))).<sup>1</sup> As noted in our prior letter to you, although our Office did not yet have an attorney-client relationship with the Impact Center at the time, the attorney-client privilege extends, under Maryland law, to confidential preliminary discussions before the attorney-client relationship is formed concerning the subject matter about which legal advice is sought. See, e.g., *Rubin v. State*, 325 Md. 552, 565 (1992).

There is no fee in connection with this response. Please let me know if you have any questions or concerns. Alternatively, you may refer any concerns about this response to the Public Access Ombudsman under Subtitle 4-1B of the General Provisions Article. The Ombudsman’s procedures are posted at <http://news.maryland.gov/mpiaombuds/>. You also have the right to seek judicial review of our Office’s decision under GP § 4-362.

Sincerely,



Patrick B. Hughes  
Assistant Attorney General

cc: Barbara Bond

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<sup>1</sup> Attorney-client records are similarly exempt from disclosure where such records would be considered confidential under the Maryland Rules of Professional Conduct governing lawyers. See, e.g., *Harris v. Baltimore Sun Co.*, 330 Md. 595, 604-05 (1993); see also Md. Rule 19.301.6 (providing that “an attorney shall not reveal information relating to representation of a client unless the client gives informed consent”).

## O'Malley, Grace

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**From:** O'Malley, Grace  
**Sent:** Friday, September 15, 2017 4:54 PM  
**To:** stateimpactcenter@nyu.edu  
**Cc:** Frosh, Brian; Quattrocki, Carolyn  
**Subject:** Maryland Office of the Attorney General Application  
**Attachments:** MD\_OAG NYU Fellow Application.pdf

Good Afternoon,

Thank you for the opportunity to submit this application on behalf of the State of Maryland for additional support to defend environmental protections. Please see attached the Maryland Office of the Attorney General's grant application for the purpose of hiring special assistant attorneys general (SAAGs). Please contact our Office with any questions or concerns about the application at the contact information below. Thank you again for this opportunity.

Sincerely,

Grace

Grace O'Malley  
Executive Assistant to  
Attorney General Brian E. Frosh  
State of Maryland  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202  
Ph: [410-576-6311](tel:410-576-6311) | [gomalley@oag.state.md.us](mailto:gomalley@oag.state.md.us)



granted by the Maryland legislature to take legal action to defend against the federal government's efforts to turn the clock back on environmental protections and the battle against climate change (see Appendix A). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Since taking office, President Trump has attempted to rollback, freeze, eliminate, or revoke no less than 23 regulations and/or Executive Orders promulgated under President Obama and previous administrations.<sup>5</sup> The Maryland OAG is already involved in multiple lawsuits challenging these actions.

[REDACTED]

[REDACTED]

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<sup>5</sup> Popovich, Nadja and Schlossberg, Tatiana, "23 Environmental Rules Rolled Back in Trump's First 100 Days." The New York Times, May 2, 2017.

<sup>6</sup> [REDACTED]



State to implement a strategy to reduce statewide greenhouse gas emissions by 25% from 2006 levels by 2020.<sup>13</sup> Thus, Mr. Frosh continually used his position to advance a progressive environmental agenda.

Political commentators and longtime environmental activists took note of Mr. Frosh's commitment; in 2003, the Washington Post described Mr. Frosh as a 'Giant Killer' in reference to his penchant for challenging powerful corporations and the political establishment to increase environmental protections<sup>14</sup>. He was also recognized through numerous awards, including 1989 "Conservationist of the Year" from the Sierra Club, 1999 "Public Official of the Year" from the Audubon Naturalist Society, the "John V. Kabler Memorial Award" from the Maryland League of Conservation Voters in 2003, and "Legislator of the Year" from 1000 Friends of Maryland.<sup>15</sup>

As the chief legal officer of the State, Mr. Frosh has continued his environmental advocacy by defending environmental protections of regional and national significance. During the 2017 Maryland Legislative Assembly, the legislature passed a joint resolution, the Maryland Defense Act of 2017, which authorized the Attorney General to pursue legal action without prior authorization from the Governor when federal action threatens the public interest and welfare of Marylanders.<sup>4</sup> Since the passage of this resolution, our Office has submitted multiple comments on federal regulatory action, joined amicus briefs in litigation challenging actions taken by the Trump Administration, and intervened with other states as parties in multiple lawsuits. We have also authored or signed multi-state letters urging Congress and the President to promote environmental interests. Examples include the January 17, 2017, letter to the U.S. Senate opposing the confirmation of then-Oklahoma Attorney General Scott Pruitt as Administrator of the Environmental Protection Agency<sup>16</sup>, and the April 25, 2017, letter urging the Trump Administration to reconfirm the United States' commitment to the Paris Agreement on climate change<sup>17</sup>. Our Office has also demonstrated its commitment to combatting climate change and promoting clean energy through its involvement in litigation defending the Clean Air Act and its regulations, such as the Clean Power Plan. Specific examples of litigation in which the OAG has been involved are attached as Appendix A.

<sup>13</sup> Md. Legis.S. Ch 172, Senate Bill 278. Reg. Sess. 2009. Maryland State Legislature. Sept. 6, 2017. <http://mgaleg.maryland.gov/webmga/frmMain.aspx?ys=2009rs/billfile/sb0278.htm>

<sup>14</sup> Mosk, Matthew. "Frosh Goes From Backbencher to 'Giant Killer.'" The Washington Post, Mar. 16, 2003. Maryland State Archives. Sept. 6, 2017.

[http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/012100/012167/pdf/post\\_16mar2003.pdf](http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/012100/012167/pdf/post_16mar2003.pdf)

<sup>15</sup>"Archives of Maryland (Biographical Series)." Brian E. Frosh, MSA SC 3520-12167, Maryland State Archives, 4 Dec. 2014. Sept. 6, 2017.

<http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/012100/012167/html/12167bio.html>

<sup>16</sup> "AG Multistate Letter to US Senate." Received by Chairman Barrasso & Ranking Member Carper. AG Multistate Letter to US Senate, Attorneys General of Delaware, District of Columbia, Hawai'i, Maryland, Massachusetts, New York, Oregon, Rhode Island. Jan., 17, 2017.

[http://www.marylandattorneygeneral.gov/News%20Documents/AG\\_Multistate\\_Letter\\_to\\_US\\_Senate\\_EPW\\_Jan17\\_2017.pdf](http://www.marylandattorneygeneral.gov/News%20Documents/AG_Multistate_Letter_to_US_Senate_EPW_Jan17_2017.pdf)

<sup>17</sup> "Paris Climate Agreement Letter." Received by President Donald Trump. AG Multistate Letter to President Trump, Attorneys General of Maryland, Delaware, Iowa, Massachusetts, Connecticut, District of Columbia, Maine, Minnesota, New York, Oregon, Vermont, North Carolina, Rhode Island, American Samoa. April 25, 2017.

[http://www.marylandattorneygeneral.gov/News%20Documents/Paris\\_Climate\\_Agreement\\_letter.pdf](http://www.marylandattorneygeneral.gov/News%20Documents/Paris_Climate_Agreement_letter.pdf)

Therefore, Attorney General Frosh and the Maryland Office of the Attorney General have consistently demonstrated a commitment to enhancing and protecting environmental laws and regulations for the purpose of combating climate change and promoting clean energy. [REDACTED]

## **2. Program Structure**

*Applications should include specific details about the scope of expertise the state attorney general needs in a SAAG to advance his or her priorities. Details should also be provided about how the SAAG would be incorporated into the Office of the Attorney General, including the relevant internal reporting structure.*

The SAAGs would work in the central office in Baltimore rather than at a satellite site with current attorneys representing state environmental agencies. This central location would enable frequent direct contact among the SAAGs, Attorney General Frosh, and senior staff as they collaborate [REDACTED].

Ideal candidates will have a minimum of five years of legal experience, membership in the Maryland Bar and the US District Court for the District of Columbia, and substantial experience working with environmental law and regulation. If not members of the Maryland Bar, candidates would at minimum become members of the US District Court for the District of Columbia within the first months of employment.

Candidates should also have a demonstrated working knowledge of legal issues related to [REDACTED]. As noted previously, the SAAGs would be instrumental in implementing [REDACTED]. [REDACTED]. Position responsibilities would also include legal and regulatory advice, and litigation before state, federal, and appellate courts, as well as administrative agencies. SAAGs would report to a member of the Attorney General's senior staff within the Executive Division.

## **3. Budget Proposal and Confirmation of Authority**

*To be considered complete, applications must identify a proposed salary (or range) for a SAAG, with an explanation of how it would conform with the existing salary structure in the state AG office.*

*Applications also should identify any state-specific limitations or requirements governing the appointment of an employee paid by an outside funding source, and include a written confirmation that the attorney general has the authority to hire an NYU Fellow as a SAAG (or equivalent title).*

The proposed salary for an SAAG would depend upon the candidate's experience, but it could be as high as \$125,000.

Maryland does not have any state-specific limitations or requirements governing appointment of an employee paid by an outside funding source. Attorney General Brian Frosh has the authority to hire an NYU Fellow as a SAAG.

## APPENDIX A

Our Office has demonstrated its commitment to reducing emissions of pollutants that cause climate change by intervening in *North Dakota v. EPA* and *W. Virginia v. EPA* in 2015 to defend the Clean Power Plan, which regulates emissions from new and existing power plants. Maryland intervened in *North Dakota v. EPA* in November of 2015, joining California and other states in defending §111(b) of the Clean Air Act, which requires certain new or modified power plants to achieve emissions limits and to use a carbon capture system that has been demonstrated to be the best system of emissions reduction. [REDACTED]

[REDACTED] Similarly, in November of 2015, Maryland joined New York and other states in support of another Clean Power Plan regulation, §111(d), that requires states to enact more stringent limits on greenhouse gas emissions from existing fossil fuel-fired power plants. [REDACTED]

[REDACTED] Our office has also intervened to defend regulations limiting mercury and air toxic emissions from power plants. Our Office initially joined with Massachusetts and other states in 2012 to defend standards that limit mercury and other toxic emissions from coal-fired power plants. This rule and the EPA's supplemental finding that the rule was "appropriate and necessary," were challenged by Murray Energy Corporation. Throughout the litigation Maryland has continued as an intervenor in support of the rule to limit mercury and other toxic emissions from power plants. [REDACTED]

In addition, our Office recently intervened in *Clean Air Council, et al. v. Pruitt*, on June 21, 2017, [REDACTED]

[REDACTED]. The methane oil and gas rule was adopted by the EPA in 2016 and immediately challenged by the oil and gas industry. Maryland initially intervened in support of the EPA's rule in *American Petroleum Institute, Inc. v. EPA*. On June 2, 2017, however, while the case was being held in abeyance by the U.S. Court of Appeals for the District of Columbia, the EPA sought an administrative stay to halt the implementation of the methane oil and gas rule. In response, NGOs such as the Clean Air Council, Natural Resources Defense Council, Sierra Club, and others filed a petition for judicial review of the administrative stay. This time, Maryland and other states intervened in support of the NGOs' position in opposition to the EPA's administrative stay. The U.S. Court of Appeals for the District of Columbia issued a mandate vacating the EPA's administrative stay, and the EPA's request for a rehearing on the mandate was denied. [REDACTED]

[REDACTED]. Maryland again demonstrated its commitment to defending environmental regulations by joining a Notice of

Intent to Sue (“NOI”) EPA for its failure to issue emissions guidelines for methane gas from *existing* oil and gas operations under the Clean Air Act §111(d). The NOI, sent on June 28, 2017, explained that by not issuing these standards, the EPA has failed to carry out its mandatory duty or it has subjected its issuance to an unreasonable delay. [REDACTED]

[REDACTED]

[REDACTED]

# Exhibit D

**Spence, Deborah**

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**From:** brian frosh <[REDACTED]>  
**Sent:** Tuesday, April 2, 2019 1:08 PM  
**To:** Hughes, Patrick  
**Subject:** Fwd: hello again

----- Forwarded message -----

**From:** brian frosh <[REDACTED]>  
**Date:** Fri, Jan 26, 2018 at 3:28 PM  
**Subject:** hello again  
**To:** Gerken, Heather <[heather.gerken@vale.edu](mailto:heather.gerken@vale.edu)>

Heather

It turns out that our first Bloomberg Fellow, Josh Segal, was a student of yours at Harvard. He's a big fan. We are looking to fill our second position, and Josh suggested that you might be able to help us identify candidates. Do you know anyone 5-10 years out of school who would be interested in saving the planet from the predations of Scott Pruitt and Ryan Zinke? This is a link to information about the program: <http://www.law.nyu.edu/centers/state-impact/apply>

It was great talking to you a couple of weeks ago. If there are ways in which we can work together, we would look forward to exploring them.

Warm regards.

Brian

# Exhibit E

January 3, 2018



State Energy &  
Environmental Impact Center  
NYU School of Law

Joshua Segal  
[REDACTED]  
[REDACTED]

Dear Josh:

I am pleased to extend an offer of employment to you as a Research Scholar, in the State Energy & Environmental Impact Center at New York University.

Secondment Arrangement

During your employment, you will be seconded to the Attorney General's Office of the State of Maryland ("OAG") as a Special Assistant Attorney General. Pursuant to an agreement between the State Energy and Environmental Impact Center and the OAG, during your employment, you will be under the direction and control of, and owe a duty of loyalty to, the OAG, and will be subject to OAG's policies regarding employee conduct. The OAG will provide additional details to you directly about the applicable policies.

Salary

Your annual base salary will be \$125,000, paid over twelve months in equal installments on the first and the fifteenth of the month, and is subject to appropriate tax withholdings. This salary is inclusive of any future teaching assignments, if applicable.

Start Date

Your employment in this position shall commence on January 16, 2018 and is anticipated to end on January 16, 2020. This appointment may be extended upon mutual agreement.

Benefits

You will receive an email from the Benefits Office with a link to NYU's Benefits Overview Guide. The guide for Professional Research Staff contains instructions on how and when to enroll, comprehensive information on all benefit plans, dependent eligibility, employee contributions and more.

The Benefits Overview for full-time Professional Research Staff employees can be found by visiting the following web site: <http://www.nyu.edu/employees/benefits/full-time/Professional-Research-Staff-Code-103.html>.

If you plan to add dependent(s) to one of the NYU medical and/or dental plans, you are required to furnish proof of relationship, no later than the 31st day of employment, in order for coverage to remain in effect for your family member(s). Examples of acceptable documentation are: birth certificate, adoption papers, court order of guardianship/custody, marriage certificate, or your approved NYU Domestic Partner Registration form. Proof of relationship documents may be scanned and sent via e-mail to [askpeoplelink@nyu.edu](mailto:askpeoplelink@nyu.edu) or may be mailed to NYU PeopleLink, 105 E. 17th Street, 1st floor, New York, NY 10003 or faxed to (212) 995-4333.

Policy Training

Attached to this letter are the University's Non-Discrimination and Anti-Harassment Policy and Complaint

Procedures for Employees. All employees are expected to participate in a harassment prevention program. "OEO101: Preventing Harassment on Campus" is an instructor led course that is offered each month for new employees. All employees at NYU are expected to complete the harassment prevention program within 60 days of hire. In addition to completing the OEO101 course, employees with supervisory responsibilities should also participate in "OEO102: Supervisor's Workshop," which immediately follows OEO101. All employees are also expected to complete the University's Preventing Campus Violence training program (HAS 001). You can register for these courses through the NYU iLearn portal.

Contingency

This offer of employment is contingent upon your eligibility to work in the United States. You are required to present original documentation that verifies your eligibility to work in the United States when your employment commences. On or before your first day of work, you will complete the entire Federal Form I-9 electronically as part of your new hire paperwork.

Probation

As an NYU employee, you will undergo a six month probationary period. Information about NYU's probationary period and other policies may be found at: <http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/human-resources.html>.

At Will Employment

The terms of this letter do not imply employment for a specific period. Your employment is at will, which means that you, the OAG, or NYU can terminate your employment at any time, with or without cause. NYU and OAG can also withdraw or rescind this offer at any time prior to the commencement of work without restriction.

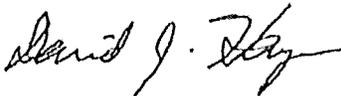
In addition to your at will status, continued employment in this position will be subject to the availability of grant funding.

In accepting this offer, you agree to abide by all NYU policies in effect, including but not limited to the conflicts of interest policies and intellectual property policies. These policies can be found on the NYU website at <http://www.nyu.edu>.

To indicate your acceptance of this offer, please sign this offer letter and fax or email it to Laura Stein, HR Administrator/Faculty at 212-992-8635 / [Laura.Stein@nyu.edu](mailto:Laura.Stein@nyu.edu). Laura will contact you to schedule an onboarding meeting around your start date.

Josh, I am delighted that you will be joining the legal fellowship team.

Sincerely,



David J. Hayes  
Executive Director



Signature of Acceptance  
Josh Segal

1/9/18

Date

## POLICY

# Non-Discrimination and Anti-Harassment Policy and Complaint Procedures for Employees

### STATEMENT OF POLICY

New York University ("NYU" or the "University") is committed to maintaining an environment that encourages and fosters appropriate conduct among all persons and respect for individual values. Accordingly, the University is committed to enforcing this Non-Discrimination and Anti-Harassment Policy and Complaint Procedures at all levels in order to create an environment free from discrimination, harassment, retaliation and/or sexual assault. Discrimination or harassment based on race, gender and/or gender identity or expression, color, creed, religion, age, national origin, ethnicity, disability, veteran or military status, sex, sexual orientation, pregnancy, genetic information, marital status, citizenship status, or on any other legally prohibited basis is unlawful and undermines the character and purpose of the University. Such discrimination or harassment violates University policy and will not be tolerated.

Any form of retaliation against anyone who has complained of or formally reported discrimination, harassment, or sexual assault, or has participated in an investigation of such a complaint, regardless of whether the complaint relates to the complaining person or someone else, will not be tolerated, and violates both this policy and applicable law.

The University prohibits discrimination, harassment, retaliation, and sexual assault. The University expects management level personnel to serve as models of appropriate conduct for other employees, and will hold them to a higher standard of accountability. Management personnel must not only refrain from actions that violate this policy, but also refrain from any activity that would give the appearance of impropriety.

This policy applies to all employees of the University, and applies regardless of whether the alleged wrongdoer is an employee. Employees represented by a labor organization retain all rights under their collective bargaining agreements and labor law including the right to use the grievance process. This policy does not override any provisions of those collective bargaining agreements. Other policies apply to other members of the University community.

### I. DEFINITIONS

**A. Discrimination** is adverse treatment of any employee based on the protected class or category of persons to whom he/she belongs, rather than on the basis of his/her individual merit, with respect to the terms, conditions, or privileges of employment including, but not limited to hiring, firing, promoting, disciplining, scheduling, training, or deciding how to compensate that employee.

**B. Harassment** is unwelcome verbal or physical conduct prohibited by law directed toward, or differential treatment of, an employee because of his/her membership in any protected group or on any other prohibited basis (e.g., race, gender and/or gender identity or expression, color, creed, religion, age, national origin, ethnicity, disability, veteran or military status, sex, sexual orientation, pregnancy, genetic information, marital status or citizenship status). The harasser can be the employee's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the University, such as a client or customer.

Examples of such conduct include, but are not limited to:

- Offensive or degrading remarks, verbal abuse, or other hostile behavior such as insulting, teasing, mocking, degrading or ridiculing another person or group;
- Racial slurs, derogatory remarks about a person's accent, or display of racially offensive symbols;
- Unwelcome or inappropriate physical contact, comments, questions, advances, jokes, epithets or demands;
- Physical assault or stalking;
- Displays or electronic transmission of derogatory, demeaning or hostile materials; and
- Unwillingness to train, evaluate, assist, or work with an employee.

A **hostile work environment** results from harassing conduct that has the purpose or effect of unreasonably interfering with an employee's work performance, or creates an intimidating, hostile or offensive working environment.

**Sexual harassment** is a form of harassment that consists of making unwelcome sexual advances or requests for sexual favors, or engaging in other verbal or physical acts of a sexual or sex-based nature where such conduct interferes with the employee's work performance or creates an intimidating, hostile or offensive working environment.

Sexual harassment may also occur where a supervisor/manager demands that an employee/subordinate satisfy sexual demands in order to receive job benefits, to continue employment, or as a basis for making any other employment decision. Such sexual harassment occurs between a manager/supervisor and an employee due to the nature of the manager/subordinate relationship. A manager/supervisor for this purpose is someone who can affect or impact an employee's terms, conditions, or privileges of employment because he/she can take or impact action such as hiring, firing, promoting, disciplining, scheduling, training, or deciding how to compensate that employee.

**C. Retaliation** is any adverse action taken against an individual (applicant or employee) because he or she filed a charge of discrimination, complained to the University or a government agency about discrimination on the job, or participated in an employment discrimination proceeding (such as an internal investigation or lawsuit), including as a witness. Retaliation also includes adverse action taken against someone who is associated with the individual opposing the perceived discrimination, such as a family member.

Examples of retaliation include termination, demotion, refusal to promote, or any other adverse action that would discourage a reasonable person from opposing perceived discrimination.

**D. Sexual assault** is a sexual act against the will and without the consent of the employee-victim or where the employee-victim is incapable of giving consent. This includes conduct that would be considered criminal under the New York State Penal Code.

Discrimination, harassment, retaliation, and sexual assault are unacceptable in the workplace. This behavior violates University policy even when it does not constitute a violation of law.

### II. REPORTING DISCRIMINATION, HARASSMENT, RETALIATION, OR SEXUAL ASSAULT

Any employee who believes that he or she has been a victim of discrimination, harassment, retaliation or sexual assault prohibited by this policy, or any employee who

has witnessed such discrimination, harassment, retaliation or sexual assault, should immediately report the circumstances in accordance with the procedure set forth below. The University may investigate any conduct that violates this policy, even in the absence of a complaint, and take remedial action where appropriate.

An employee may make a complaint to any of the individuals listed below:

- a) The Office of Equal Opportunity ("CEO"); or
- b) The Human Resources Officer of the relevant School or Administrative Department; or
- c) The Solutions Center; or
- d) Any supervisor; or
- e) If the alleged respondent is a faculty member, the Dean of the appropriate School or Faculty or the Dean's designee.

Complaints may be submitted to OEO by any of the following methods:

- By phone at 212-998-2352
- By e-mail at [equal.opportunity@nyu.edu](mailto:equal.opportunity@nyu.edu);
- By completing an on-line complaint form available at [www.nyu.edu/eo](http://www.nyu.edu/eo); or
- By filing a complaint with an OEO professional staff member at the OEO, 726 Broadway, Rooms 719-721, New York, New York 10003.

A contact list for Human Resources Officers of each School and Department is available at <http://www.nyu.edu/eo> (<http://www.nyu.edu/content/nyu/en/about/policies-guidelines-compliance/equal-opportunity.html>).

All complaints under this policy will be referred to the Human Resources Officer of the appropriate School or Department for investigation and resolution. If the Human Resources Officer has a personal relationship with the accused individual or otherwise has a conflicting interest, he or she must forward it to the CEO.

Note to Libraries Division Employees: All Libraries Division employees' complaints will be referred to the OEO for investigation.

The University encourages prompt reporting of complaints so that it may respond appropriately and conduct an investigation while the matter is freshest in witnesses' memory and other evidence is most likely to be available. There is no fixed deadline for reporting discrimination, harassment, retaliation or sexual assault complaints. Because it is not always easy to interpret words or actions, employees are further encouraged to bring forward any concerns under this policy before they rise to the level of violating the law.

#### Responsibilities of Managers and Supervisors

It is imperative that managers and supervisors set the tone for the enforcement of this policy. Managers and supervisors have a special obligation not to engage in discrimination, harassment, retaliation or sexual assault. All management and supervisory personnel have an affirmative duty and are required to promptly report any discrimination, harassment, retaliation or sexual assault that they observe, learn about from others, or reasonably suspect has occurred with respect to an employee.

### III. INVESTIGATION AND DISPOSITION OF COMPLAINTS

#### (a) The Investigation

The University will conduct a prompt, thorough and impartial investigation of a complaint as necessary and appropriate. The University will make every effort to complete its investigation within thirty (30) days of a report of discrimination or harassment. The investigator may find it necessary to extend the time period for completing an investigation in some circumstances. The investigator will provide the complainant, the alleged wrongdoer, and the business unit head with notice of any extension and give them a new timetable for completion of the investigation.

The investigation will include an interview with the alleged employee-victim. It also may include interviews with the person who made the initial report, the complainant (if not the alleged victim), the alleged wrongdoer and/or any other person who may have information regarding the incident, each of whom is encouraged to cooperate with any investigation. The investigator may also review relevant documents.

The investigation process is strictly internal to NYU. Any union represented employee retains his or her right to have union representation during the investigation process.

#### (b) Findings and Recommendations

The investigator will report his or her findings to the person who made the initial report, the alleged victim of discrimination, harassment, retaliation or sexual assault, the alleged wrongdoer, and relevant managers and supervisors.

Where the investigator concludes that a violation of this policy has occurred, the relevant School or Department will take prompt and appropriate remedial action, including disciplinary action. Depending on the circumstances, disciplinary action may include (but is not limited to): reprimand/verbal counseling, training, censure, removal of privileges, letters of warning or suspension, and dismissal. Discipline for a violation of this policy need not be progressive, so a first violation of this policy may warrant suspension or discharge.

#### (c) The Investigatory File

Every complaint will trigger the creation of an investigatory file. The investigatory file will consist of the initial complaint, the final investigative report, including a record of the remedial action to be taken, if any, and any documents created or used during the investigation.

For the duration of the investigation, the Human Resource Officer will maintain the investigatory file. Upon completion of the investigation, the Human Resource Officer will transfer the file to the OEO. Additionally, the OEO will record and maintain complaints in a database management file consistent with the NYU fiscal year (September 1st - August 31st). The OEO will maintain records of all complaints for a period of seven (7) years after the conclusion of an investigation.

#### (d) Responsibilities of Managers and Supervisors

In cases where an investigation confirms a violation of this policy, management in the appropriate School or Department must ensure that the prescribed remedial action, including disciplinary action, is implemented. Managers must provide confirmation to their Human Resources Officer within 14 days that the recommended action has occurred. Only upon such confirmation will the Human Resource Officer close the investigatory file and forward it to the OEO. Management is also responsible for regular monitoring to ensure that all remedial and/or disciplinary steps are completed and no further discrimination or harassment occurs in the work environment.

### IV. CONFIDENTIALITY

The University will maintain the confidentiality of the complaint, and the privacy of the persons involved, to the greatest extent possible, consistent with its goal of conducting a thorough and complete investigation and to the extent permitted by law.

### V. NON-RETALIATION

The University will not in any way retaliate against an individual who reports a perceived violation of this policy, participates in any investigation, or otherwise opposes

perceived discrimination, harassment, or retaliation, including as a witness. It will also not retaliate against anyone associated with the individual who engages in such protected conduct, such as a family member. NYU further will not tolerate retaliation by any employee. Retaliation is a serious violation of this policy, as well as federal, state, and local law. Anyone who believes he/she is a victim of retaliation should report the matter immediately according to the same procedure provided in this policy for making complaints of discrimination, harassment, or sexual assault. Any person found to have retaliated against another individual will be subject to the same disciplinary action provided under this policy for other violations.

#### VI. SEXUAL ASSAULT

The medical, emotional, and legal needs of a sexual assault victim may differ from those of other harassment complainants. Sexual assault victims who are employees should, therefore, in addition to filing a complaint under this policy, report the assault to the police and pursue counseling and other services available at the University. Student employees may consult the Wellness Exchange at 212-443-9999 for guidance on medical and counseling services. Employees should consult the Carebridge Corporation at 1-800-437-0911 for guidance on medical and counseling service referrals.

#### VII. CONSENSUAL RELATIONSHIPS

Consensual relationships involving sexual behavior that is welcome and voluntary do not constitute sexual harassment under the law. Romantic relationships in situations where one individual has greater power or authority over another, however, frequently result in claims of harassment when the relationship ends, and perceptions of favoritism while they continue. Such relationships are inappropriate. A "consensual" relationship between a supervisor and a subordinate is an example of an inappropriate relationship. If a consensual relationship occurs, any situation of authority must be discontinued and appropriate action may be taken.

*This policy does not form a contract of any kind. Any comments or suggestions concerning this policy should be forwarded to the Executive Director of the Office of Equal Opportunity at [equal.opportunity@nyu.edu](mailto:equal.opportunity@nyu.edu).*

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## About This Policy

Effective Date: August 12, 2012  
Issuing Authority: Diane Yu, Deputy President  
Responsible Officer: Mary Signor, Executive Director, Office of Equal Opportunity  
Office Name: Office of Equal Opportunity

### + Purpose of the Policy (javascript:displayOrHideFormSection('a1a'); changeBtna('qc1a','q1-btna','q1a'))

New York University is committed to maintaining a learning and working environment that is free of bias, prejudice, and harassment - an environment that supports, nurtures, and rewards career and educational advancement on the basis of ability and performance. Harassment based upon race, gender and/or gender identity or expression, color, creed, religion, age, national origin, ethnicity, disability, veteran or military status, sex, sexual orientation, marital status, citizenship status, or any other legally protected basis is prohibited by law and undermines the character and purpose of the University. Such harassment is illegal and against University policy, and will not be tolerated.

### + Who needs to know this policy (javascript:displayOrHideFormSection('a2a'); changeBtna('qc2a','q2-btna','q2a'))

Employees in codes 100/110, 102/112, 103/113, 104/114, 106/116, 107/117, 115, 111, 101, 130, 131.

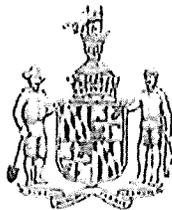
### + Policy Definitions (javascript:displayOrHideFormSection('a3a'); changeBtna('qc3a','q3-btna','q3a'))

Any comments or suggestions concerning this policy should be forwarded to the Executive Director of the Office of Equal Opportunity at [equal.opportunity@nyu.edu](mailto:equal.opportunity@nyu.edu) (mailto:equal.opportunity@nyu.edu).

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# Exhibit F

BRIAN E. PROSH  
*Attorney General*



ELIZABETH HARRIS  
*Chief Deputy Attorney General*

CAROLYN QUATTROCKI  
*Deputy Attorney General*

(410) 576-6447  
FACSIMILE NO.

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

(410) 576-6442  
WRITER'S DIRECT DIAL NO.

January 16, 2018

Joshua Segal

Dear Mr. Segal:

I am hereby appointing you as Pro Bono Assistant Counsel pursuant to my authority under State Government Article 6-105(f) and determination that this appointment is necessary to carry out the duties of my office. This appointment is effective January 16, 2018.

You will be working under the supervision of Carolyn Quattrocki Deputy Attorney General and you will not receive compensation for this appointment.

Thank you for your assistance to the Office of the Attorney General.

Sincerely,

Handwritten signature of Brian E. Prosh in cursive.

Attorney General

# Exhibit G

[REDACTED]

The Attorney General of the State of Maryland ("OAG" or "Client") and New York University on behalf of the lawyers at the State Energy & Environmental Impact Center at NYU School of Law ("Counsel") agree to the following arrangement regarding Counsel [REDACTED]

For purposes of this Agreement, Counsel include only those lawyers who are working directly on behalf of or for the State Energy & Environmental Impact Center; it does not apply to NYU Law Fellows who will be or are serving as Special Assistant Attorneys General.

Counsel and Client agree to the following terms and conditions:

#### SCOPE AND NATURE OF ENGAGEMENT

1. [REDACTED]
2. The relationship of Counsel to OAG arising out of this agreement is that of attorney and client.
3. OAG considers Counsel being retained through this Agreement to be "Assistant Counsel" under § 6-105(f) of the State Government Article of the Annotated Code of Maryland.
4. Counsel is not obligated to help OAG secure legal representation for any legal issues not covered by this agreement. If Counsel decides to advise OAG in connection with a different matter, Counsel and the Client will agree to that engagement in a separate written agreement.

#### FEES, COSTS AND EXPENSES

5. This engagement is pro bono, and Counsel agrees not to charge OAG any attorneys' fees for Counsel's legal services.
6. Counsel will assume all costs associated with its work on the Subject Matters, which may for example include photocopying charges, online legal research fees, travel expenses of its personnel, or long-distance telephone charges. Client undertakes no obligation to pay any of the costs advanced by Counsel in advising OAG in connection with the Subject Matters.
7. OAG will be responsible for paying all expenses in connection with any investigation, proceeding or litigation involving or arising from the Subject Matters that would have been incurred if Counsel were not providing advice on the Subject Matters, which may for example include court reporter fees, transcript fees and expert witness fees. Such expenses shall be paid directly by the OAG, and may not be incurred by Counsel without the OAG's prior approval.

#### DUTIES OF DISCLOSURE & CONFIDENTIALITY

8. Counsel and Client each agree to ensure that all attorney work product or other confidential or privileged information provided to each other is kept confidential.

- [REDACTED]
9. Counsel shall not enter into a common interest agreement related to Subject Matters covered under this Agreement, or presume that a common interest exists with, a third party without prior authorization from the Client. It is expected that common interest agreements involving cooperation with other state Attorneys General offices pursuing collective action will be routinely granted by Client.
  10. Counsel will take reasonable steps to ensure that all information exchanged between Counsel and Client or generated by Counsel in connection with its performance of services hereunder is made available solely to Counsel personnel who work directly on the Subject Matters.
  11. Upon request, Counsel will provide OAG with a copy of all applicable written materials prepared by Counsel in the performance of legal services hereunder.

#### POTENTIAL CONFLICTS OF INTEREST/TERMINATION OF ENGAGEMENT

12. Counsel shall take such measures as it deems necessary to ensure that its engagement in connection with the Subject Matters does not give rise to any conflict with the interests of New York University or of Counsel's other clients, specifically including with respect to any matter, investigation, proceeding or litigation that New York University or any of Counsel's other clients has with, before or against OAG.
13. Neither Client nor Counsel is aware of any disagreement or conflict between the Client and Counsel at this time, but both understand that disagreements or conflicts between the Client and Counsel may arise in the future and affect the Subject Matters. If such disagreements or conflicts occur and cannot be resolved with the continued assistance of Counsel, Client understands that Counsel may have to withdraw from this engagement.
14. Client and Counsel are free, at any time and with or without cause, to end this engagement.

#### COUNSEL'S ACKNOWLEDGMENTS

15. In the performance of its services hereunder, Counsel will comply with all applicable laws, rules and regulations pertaining to the rendering of such services, maintain all licenses required under applicable law, and maintain adequate Professional Liability Insurance at its own cost.
16. Counsel acknowledges that Counsel personnel working on the Subject Matters are not considered state employees and will not be entitled to protections afforded state employees under the State Personnel and Pensions Article of the Annotated Code of Maryland or any other Maryland law.
17. Counsel acknowledges that (a) in addition to whatever supervision Counsel performs over the services it provides hereunder, its work on the Subject Matters will be subject to supervision and direction by OAG, through a designated OAG attorney, and (b) OAG shall at all times retain discretionary decision-making authority in connection with any proceeding or litigation concerning or arising from the Subject Matters, including with respect to (i) selecting and retaining expert witnesses; (ii) filing motions or other court papers; and (iii) proposing, negotiating, or agreeing to settlement.
18. The OAG shall have no liability under this contract to Counsel or to anyone else.

- [REDACTED]
19. Any opinions or other legal advice prepared by Counsel do not constitute official opinions of the Attorney General unless the prior written approval of the Attorney General is obtained.

#### **GOVERNING LAW & MODIFICATION**

20. This Agreement is governed by the law of the Maryland, without regard for Maryland's choice of law statute.
21. This Agreement represents the parties' entire agreement pertaining to fees and costs in relation to the Subject Matters, and may not be amended or modified except in writing, signed by all parties. This Agreement is binding on Client and on Counsel and the respective successors in interest of each. This Agreement may not be assigned by Counsel without the OAG's prior written consent.

#### **SEVERABILITY**

22. If any clause of this agreement is found by a Court of competent jurisdiction to be void or unenforceable, then, in that event, such clause shall be severed and the rest and remainder of the agreement shall remain in force and effect such as to best reflect the intentions of the parties as indicated solely by this document.

#### **EFFECTIVE DATE**

23. This agreement shall be effective as of {INSERT DATE}, and shall terminate on July 31, 2019, unless earlier terminated as provided herein or extended upon the mutual written consent of the parties. It may be executed in counterparts and all the counterparts together shall constitute a single agreement.

#### **CLIENT'S ACKNOWLEDGMENTS**

24. Client acknowledges that Client has fully read, understands, and freely enters into this agreement and that Client has received a copy of this agreement.
25. Client acknowledges that New York University is a not-for-profit education corporation and that the furnishing of legal services by Counsel is incidental to New York University's purposes. Client consents to the compensation of Counsel by New York University.

[REDACTED]  
Dated: November 6, 2017

State Energy & Environmental Impact Center  
New York University School of Law

By:

 [REDACTED]

David J. Hayes  
Executive Director  
State Energy & Environmental Impact Center  
NYU School of Law  
c/o Resources for the Future  
1616 P Street NW  
Washington, DC 20036  
202-328-5052  
[david.hayes@nyu.edu](mailto:david.hayes@nyu.edu)

Dated: 12/6/17, 2017

Office of the Attorney General of Maryland

By:

 [REDACTED]

Carolyn Quattrocki  
Deputy Attorney General  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202  
410-576-6330  
[cquattrocki@oag.state.md.us](mailto:cquattrocki@oag.state.md.us)

Employee Secondment Agreement between the Maryland Office of the Attorney General  
and the State Energy & Environmental Impact Center at NYU School of Law

This AGREEMENT ("Agreement") is entered into as of December 18, 2017, by and between NEW YORK UNIVERSITY ("NYU"), a New York not-for-profit education corporation, on behalf of the NYU School of Law's State Energy and Environmental Impact Center (the "State Impact Center"), and the MARYLAND OFFICE OF THE ATTORNEY GENERAL ("OAG").

**WHEREAS**, The State Impact Center seeks to provide a supplemental, in-house resource to state attorneys general and their senior staffs [REDACTED]

**WHEREAS**, As part of its activities, the State Impact Center conducts a legal fellowship program ("Legal Fellowship Program"), which seeks to provide attorneys to act as fellows in the offices of certain state attorneys general ("Legal Fellows"); and

**WHEREAS**, OAG has been selected by the State Impact Center to participate in the Legal Fellowship Program; and

**WHEREAS**, OAG has the authority consistent with applicable law and regulations to accept Legal Fellows whose salary and benefits are provided by an outside funding source.

**NOW, THEREFORE**, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the State Impact Center and OAG agree to the following:

**A. Terms of Service for the Legal Fellowship Program at the OAG:**

1. The State Impact Center will provide the services of two attorneys to OAG to act as Legal Fellows.
2. The specific start and end dates for services will be determined with the mutual agreement between the Legal Fellows, OAG, and the State Impact Center, provided, however, that the term of the fellowship will be for one year with the expectation that a second one-year term will follow after mutual agreement among the parties. (the "Fellowship Period").
3. During the Fellowship Period, the Legal Fellows will be under the direction and control of, and owe a duty of loyalty to, OAG, and will be subject to OAG's policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interests, and confidentiality. The Legal Fellows will receive instruction and materials regarding these requirements from OAG at the commencement of their fellowships.
4. During the Fellowship Period, salary and benefits will be provided to the Legal Fellows by the NYU School of Law.

5. The State of Maryland is self-insured. When acting as a Special Assistant Attorney General, OAG considers the Legal Fellows to be "State personnel" for the purposes of § 12-401 *et seq.* of the State Government Article of the Annotated Code of Maryland, including its defense and immunity provisions.
6. OAG may stop using the services of the Legal Fellows, provided that OAG will attempt to resolve any performance or other issues involving the Legal Fellows with the Legal Fellows and the State Impact Center before doing so. The State Impact Center may terminate this Agreement for any reason upon seven (7) days' written notice to OAG.

**B. Nature of the Fellowship Position at OAG**

1. During the Fellowship Period, OAG will provide the Legal Fellows the title of Special Assistant Attorneys General.
2. OAG will assign the Legal Fellows substantive work and responsibility matching that of other attorneys in the agency with similar experience and background. [REDACTED]
3. OAG will aim to include the Legal Fellows in the range of its work where possible, such as strategy discussions and court appearances.
4. OAG will afford the Legal Fellows the opportunity to partake in the extensive legal education, including CLEs, offered by OAG to its attorneys.

**C. Prohibited Activity**

1. OAG may not request or permit the Legal Fellow to engage in any activities that would constitute any of the following:
  - a. to carry on propaganda, or otherwise attempt to influence any specific legislation through (i) an attempt to affect the opinion of the general public or any segment thereof or (ii) communication with any member or employee of a legislative body, or with any other governmental official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body, committee or subdivision), other than through making available the results of non-partisan analysis, study or research;
  - b. To engage in any other activity that may constitute lobbying under federal, state, or local laws or regulations;
  - c. to influence the outcome of any specific public election; or

- d. to support the election or defeat of a candidate for public office, finance electioneering communications, register prospective voters or encourage the general public or any segment thereof to vote in a specific election.
2. OAG may not request or permit the Legal Fellows to participate in any matter that involves New York University or any of its affiliates; and, to the extent that OAG participates in a matter that involves New York University or any of its affiliates, OAG will create an ethical wall between the Legal Fellows and OAG with regard to the matter to ensure that the Legal Fellows have access to no information relating to the matter.
3. OAG has determined that NYU's payment of salary and benefits to the Legal Fellows and the provision of services by the Legal Fellow to OAG do not constitute an impermissible gift under applicable law or regulation. No part of this agreement is intended to induce OAG to undertake or refrain from undertaking any action within the purview of OAG.

#### **D. Communications and Reporting**

1. The State Impact Center will not have a proprietary interest in the work product generated by the Legal Fellows during the fellowship. The State Impact Center will not be authorized to obtain confidential work product from the Legal Fellows unless the Legal Fellows have obtained prior authorization from the Legal Fellows' supervisor at OAG.
2. Notwithstanding the above, OAG will provide periodic reports to the State Impact Center regarding the work of the Legal Fellows. These reports will include a narrative summary, subject to confidentiality restrictions, of the work of the legal fellows [REDACTED]. These reports will be provided pursuant to the following schedule:
  - a. Activity for the period from the beginning of the Fellowship Period until April 30, 2018 will be provided no later than May 1, 2018.
  - b. Activity for the period from May 1, 2018 through July 31, 2018 will be provided no later than August 1, 2018.
  - c. Activity for the period from August 1, 2018 through January 31, 2019 will be provided no later than February 1, 2019.
  - d. A final report for activity from the beginning of the Fellowship Period until the end of the Fellowship Period will be provided within five (5)

business days of the end of the Fellowship Period.

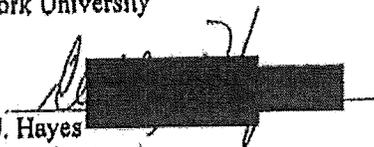
3. OAG acknowledges that New York University may be required to make filings or disclosures on that reference OAG, the Legal Fellows, or the Legal Fellowship Program, and that OAG is not required to review or approve any such filings except where New York University requests such review or approval.
4. [REDACTED]
5. Notifications to OAG relating to this agreement should be directed to Beverly Pivec, Director of Administration.
6. Notifications to the State Impact Center relating to this agreement should be directed to:  
Elizabeth Klein  
Deputy Director  
State Energy & Environmental Impact Center  
NYU School of Law  
c/o Resources for the Future  
1616 P Street NW  
Washington, DC 20036  
202-328-5186  
Elizabeth.klein@nyu.edu

**E. Miscellaneous**

1. This Agreement constitutes the complete understanding of the parties and supersedes any other agreements between the parties. No amendment to this Agreement will be valid and binding unless reduced to writing and signed by the parties.
2. This Agreement shall not be assigned by either party without the consent of the other party.
3. This Agreement may be executed in multiple counterparts, each of which will be fully effective as an original and all of which together will constitute the same document. The parties may exchange of copies of this Agreement and signature pages in electronic form.

Dated: December 18, 2017

New York University

By: 

David J. Hayes  
Executive Director  
State Energy & Environmental Impact Center  
NYU School of Law  
c/o Resources for the Future  
1616 P Street NW  
Washington, DC 20036  
202-328-5186  
david.hayes@nyu.edu

Dated: December \_\_, 2017

Maryland State Office of the Attorney General

By: 

Carolyn Quattrocki  
Deputy Attorney General  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202  
410-576-6330  
[cquattrocki@oag.state.md.us](mailto:cquattrocki@oag.state.md.us)

204257524.1

{00126690.6}

# Exhibit H

## Spence, Deborah

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**From:** brian frosh [REDACTED]  
**Sent:** Tuesday, April 2, 2019 1:14 PM  
**To:** Hughes, Patrick  
**Subject:** Fwd: Bi-Weekly Report  
**Attachments:** 15Dec17\_StateImpactCenter\_Report (1).docx

----- Forwarded message -----

**From:** David J. Hayes <[david.hayes@nyu.edu](mailto:david.hayes@nyu.edu)>  
**Date:** Sun, Dec 17, 2017 at 9:33 PM  
**Subject:** Fwd: Bi-Weekly Report  
**To:** Brian Frosh [REDACTED]

Brian:

Per our conversation on Friday, attached is our latest biweekly report, which we prepare for Dan Firger at Bloomberg. I don't know if he shares these with Kevin Sheeky. My next email will attach the preceding biweekly report.

Please give Kevin my best. I hope that he'll meet with Chris Moyer, our communications director, and me when we come up to NY to visit with AG Schneiderman's top comms person during the second week of January. (We are having the meeting with Schneiderman's comms director at Eric's suggestion.) I will reach out to him directly, copying Dan.

Thanks!

David

----- Forwarded message -----

**From:** David J. Hayes <[david.hayes@nyu.edu](mailto:david.hayes@nyu.edu)>  
**Date:** Fri, Dec 15, 2017 at 10:26 AM  
**Subject:** Bi-Weekly Report  
**To:** Anne M Milgram <[anne.milgram@nyu.edu](mailto:anne.milgram@nyu.edu)>, Bruce Babbitt <[bruce.babbitt@raintreeventures.com](mailto:bruce.babbitt@raintreeventures.com)>, Daniel Firger <[daniel@bloomberg.org](mailto:daniel@bloomberg.org)>, "David J. Hayes" <[david.hayes@nyu.edu](mailto:david.hayes@nyu.edu)>, Richard Revesz <[Revesz@exchange.law.nyu.edu](mailto:Revesz@exchange.law.nyu.edu)>  
**Cc:** Elizabeth Johnson Klein <[Elizabeth.Klein@nyu.edu](mailto:Elizabeth.Klein@nyu.edu)>, Christopher Moyer <[chris.moyer@nyu.edu](mailto:chris.moyer@nyu.edu)>

Advisory Council colleagues:

Attached is our latest bi-weekly report.

Have a great weekend!

David

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State Energy &  
Environmental Impact Center  
NYU School of Law

**Bi-Weekly Report**

*December 2-December 15, 2017*

**HIGHLIGHTS**

- **Three Additional States Awarded Special Assistant Attorneys General.** This week, the State Impact Center announced SAAG/Law Fellow awards to three additional states – Oregon, Pennsylvania and Virginia. David Hayes was able to deliver the news in person to Oregon AG Ellen Rosenblum and Virginia AG Mark Herring at a Democratic Attorneys General Association reception in Washington, D.C. All of the offices are excited to participate, and we have had productive conversations with their staff to discuss logistics and next steps. (Chris Moyer also attended the reception and connected with the AGs and their key staff who attended.)
- **Evaluating EPA Directive Regarding Science Advisors.** In response to a request from the NY AG's office, Liz Klein has taken the lead in evaluating potential legal challenges to a recent directive from EPA Administrator Scott Pruitt that prohibits academics and other scientists whose institutions receive EPA funding from serving on EPA advisory committees. Several NGOs as well as advisory committee members affected by the policy are also exploring potential challenges.
- **Evaluating Tax Reform Impacts to Renewable Energy.** In response to a request from one of our AG partners, we assisted the office in analyzing the potential impacts that House and Senate versions of tax reform legislation may have on the clean energy industry. David Hayes and Liz Klein contacted leaders in the solar and wind industry to obtain the latest intelligence on proposed solutions to maintain current tax incentives for the renewable energy industry.
- **State Impact Center Staff.** Our new Program Assistant, Brittany Whited, started in our office this week. As we noted in our last report, Brittany comes to us from the World Health Organization where she has been consulting on the impacts of climate change on public health and health systems in the Americas. She has a Masters of Public Health from GW, a BS in Environmental Health Science from the University of Wisconsin at Eau Claire, and has spent time working at both GW and EPA on climate change issues, including a project at GW that involved a review of over 600 climate change-related court cases. Brittany has already hit the ground running, helping out with several research

projects and taking on some of the operational tasks associated with running the Center. We continue to interview candidates for Staff Attorney at the Center. We have conducted several second-round interviews and hope to make an offer soon.

- David Hayes met with New Mexico AG Hector Balderas and top staff in Albuquerque to discuss priorities. AG Balderas is particularly excited about the prospect of working with the State Impact Center to promote clean energy policies that AGs are championing in New Mexico, and across the nation. He is deeply appreciative of Bloomberg Philanthropies' generosity in supporting two SAAG slots in his office. He expects to devote one of the slots to clean energy issues. Public lands issues also are a top priority for AG Balderas.
- **Recent Media Coverage.**

As we had hoped, state AG offices are beginning to recognize that the State Impact Center can provide effective amplification of their activities, as illustrated by press coverage of the AGs' role in resisting monument rollbacks.

- **State Impact Center Press Release: 3 More Attorneys General Selected to Boost Legal Work on Energy, Environment & Climate**

"Pennsylvania Attorney General Josh Shapiro, Oregon Attorney General Ellen Rosenblum and Virginia Attorney General Mark Herring were chosen after submitting applications this fall."

- **COVERAGE:**

- *Politico* (12/14/17): "MORE REINFORCEMENTS: Pennsylvania Attorney General Josh Shapiro, Oregon Attorney General Ellen Rosenblum and Virginia Attorney General Mark Herring will receive backing from the State Energy & Environmental Impact Center at NYU School of Law to hire staff focused on clean energy, climate and environmental matters. They join the AGs of seven other states who already received fellows through the program."
- *Pittsburgh Tribune-Review: NYU funds new environmental prosecutor in Pennsylvania Attorney General's office* (12/13/17) "A New York University School of Law program will pay for Pennsylvania Attorney General Josh Shapiro to hire a new prosecutor for regional and national environmental issues, the school announced Wednesday."

- **State Impact Center Press Release: State AGs Challenge Trump's Legal Power to Shrink National Monuments (12/4/17)**

"Several state attorneys general have been closely tracking actions by the Trump Administration to roll back protections for monuments."

▪ **COVERAGE:**

- *Washington Post*: “More litigation could be coming. **Oregon Attorney General Ellen Rosenblum** said to Zinke in a letter in July that the state was “ready to take appropriate legal action” if Trump rescinds or reduces the size of Cascade-Siskiyou.”
  - *E&E News*: “Numerous state attorneys general — from California, Washington and New Mexico — also pledged legal challenges to the Trump administration, although it remains to be seen whether a case will emerge unless Trump targets monuments in those states. ‘Progressive state attorneys general are on record: The president does not have the authority under the Antiquities Act to override previous presidents’ decisions to protect special public lands for the benefit of future generations through national monument designations. Only the Congress can do that,” said former Obama administration Interior official David Hayes, now executive director of the **State Energy & Environmental Impact Center at New York University’s School of Law.**”
  - *Washington Examiner*: “Environmental groups and tribes, including the Navajo Nation, have already said they will sue the Trump administration for shrinking national monuments, and several Democratic **attorneys general**, most in the West, have vowed to challenge the actions.”
  - *Think Progress*: ““President Trump’s attempt to dismember two of America’s most remarkable National Monuments is a blatant attack on the integrity of one of our nation’s oldest and most important conservation laws,” **David J. Hayes, executive director of the State Energy & Environmental Impact Center at NYU School of Law** and former Interior deputy secretary during both the Obama and Clinton administrations, said in a press statement. ““**Progressive state attorneys general** are on record: the President does not have the authority under the Antiquities Act to override previous Presidents’ decisions to protect special public lands for the benefit of future generations through national monument designations. Only the Congress can do that.””
- *NY Daily News LTE: NY Daily News: Keep the parks affordable* (12/7/17) “As the deputy secretary of the interior from 2009 to 2013, I’m encouraged to see a bipartisan group of 11 state attorneys general fighting Interior Secretary Ryan Zinke’s reckless and misguided proposal to double or triple entrance fees at our most popular national parks... This bipartisan coalition of attorneys general,

including New York AG Eric Schneiderman, should be commended for defending access to our awe-inspiring parks.”

- **Law360: The Biggest Energy Rulings Of 2017 (12/14/17):** "The courts could not have spoken more clearly that the APA needs to be followed," said David Hayes, a former deputy interior secretary during the Clinton and Obama administrations who now directs New York University Law School's State Energy & Environmental Impact Center. "The real winner [this] year was the rule of law."

## ATTORNEY GENERAL ACTIONS

- **RELEASE: AG Balderas: Trump Lacks Legal Authority to Shrink National Monuments (12/5/17)** “President Trump simply has no legal authority to alter monument designations under the Antiquities Act. His drastic reduction of the Utah monuments is a direct attack on the proud natural, historical and cultural heritage of the Southwest, and it ignores critical voices of tribal leaders and local stakeholders on these lands. If the President chooses to continue these attacks and comes after either Organ Mountains - Desert Peaks or Rio Grande del Norte, I will fight him every step of the way.”  
*Note: The State Impact Center suggested and drafted a statement on this topic, leading to significant positive media coverage for AG Balderas.*

- **Coverage:**

- *Los Alamos Monitor:* “On Tuesday, responding to Trump’s announcement Monday that he would scale back the size of two national monuments in Utah – Grand Staircase-Escalante and Bears Ears – Balderas took aim again. ‘President Trump simply has no legal authority to alter monument designations under the *Antiquities Act*,’ he said in a prepared statement. Balderas’ office wrote a letter to Interior Department Secretary Ryan Zinke earlier this year, asking him to drop his planned review of national monuments, including New Mexico’s. He went on to note that if Trump goes after New Mexico’s newest national monuments, Organ Mountains-Desert Peaks or Rio Grande del Norte: ‘I will fight him every step of the way,’ according to a press release issued by his office on Tuesday.”
- *Las Cruces Sun-News EDITORIAL:* “...state Attorney General Hector Balderas made clear he was ready. ‘President Trump simply has no legal authority to alter monument designations under the *Antiquities Act*,’ Balderas said in a press release Tuesday. From the start of this process, we have had the same opinion.”
- *Santa Fe New Mexican:* “‘President Trump simply has no legal authority to alter monument designations under the *Antiquities Act*,’ Attorney General Hector Balderas said in a statement Tuesday.”

- **RELEASE: A.G. Schneiderman Leads 15 AGs In New Lawsuit Against Trump EPA For Flouting Clean Air Requirements (12/5/17)** “New York Attorney General Eric T. Schneiderman, leading a coalition of 15 state Attorneys General, today filed a lawsuit against the Environmental Protection Agency (EPA) and EPA Administrator Scott Pruitt for failing to meet the Clean Air Act’s statutory deadline for designating areas of the country impacted by unhealthy levels of ground-level ozone (commonly referred to as smog).”
- **RELEASE: Attorney General Shapiro Calls on Army Corps of Engineers to Protect Great Lakes, including Lake Erie, from Asian Carp (12/12/17)** “Pennsylvania Attorney General Josh Shapiro and the Attorneys General of Michigan and Minnesota today called on the U.S. Army Corps of Engineers to change plans for an expensive lock redesign and instead close a major lock now to keep the invasive Asian carp species from entering the Great Lakes, including Lake Erie, potentially causing widespread harm to its ecosystem and economy.”
- **E&E News: DOJ strikes cleanup project from Harley-Davidson settlement (12/12/17)** “The attorneys general of New York, Massachusetts, Delaware, Illinois, Iowa, Maine, Maryland, Oregon, Rhode Island, Vermont, Washington and the District of Columbia and the Puget Sound Clean Air Agency asked DOJ to restore the mitigation project or require an equivalent project to counter excess emissions.”

### **OUTREACH MEETINGS**

We have had a number of productive outreach meetings with allies in the environmental community working on similar issues, including AG offices, NGOs and other interested parties.

# Exhibit I



**REQUEST UNDER THE MARYLAND PUBLIC INFORMATION ACT**

December 6, 2018

Maryland Attorney General Brian Frosh  
200 St. Paul Place  
Baltimore, MD 21202

By Electronic mail: [oag@oag.state.md.us](mailto:oag@oag.state.md.us)

To Whom It May Concern:

On behalf of Government Accountability & Oversight, P.C., a non-profit public interest law firm, and pursuant to the Maryland Public Information Act, as codified at General Provisions Article (“GP”), §§ 4- 101 through 4-601, Annotated Code of Maryland, please provide us within the statutorily prescribed time the **Office of Attorney General's application to participate in the NYU State Energy and Environmental Impact Center’s fellowship program**, which very *likely* was produced between August 25, 2017 and September 15, 2017, inclusive, and sent to an outside party (David Hayes and/or Elizabeth Klein of the NYU State Energy and Environmental Impact Center) on or about September 15, 2017. Please consider all attachments/appendices and cover letters/emails transmitting this application as also **responsive** to this request.

As this matter involves an issue of significant public interest, and in the interests of expediting the search and processing of this Request, GAO is willing to pay fees up \$100. Please provide an estimate of anticipated costs in the event that fees for processing this Request will exceed \$100. Given the nature of the records responsive to this request, all should be in electronic format, and therefore there should be no photocopying costs (see discussion, *infra*).

## WITHHOLDING

As with all withholdings under the Maryland Public Information Act, which is a disclosure statute, not a withholding statute, OAG has the burden of establishing the propriety of any withholdings. “In light of the very broad scope of the PIA, the burden falls on any governmental entity or official asserting exclusion from the PIA to show a legislative intent to exempt that entity’s or official’s records from the PIA’s general rule of disclosure.” (§ 1-4, Maryland Public Information Act Manual, Office of the Maryland Attorney General, 2015).

The burden is on the agency, in this case OAG, to justify any withholdings or redactions in its production under the PIA. GP § 4-362(b)(2). As the manual from the very office withholding the information states “To satisfy the statutory burden, an entity or official withholding a record must put forth evidence sufficient to justify the decision.” (§ 5-2, Maryland Public Information Act Manual, Office of the Maryland Attorney General, 2015). Additionally the custodian bears the burden of “demonstrating, with particularity and not in purely conclusory terms, precisely why the disclosure [of an investigatory record] ‘would be contrary to the public interest’” and exploring the feasibility of severing a record “into disclosable and non-disclosable parts.” *Blythe v. State*, 161 Md. App. 492, 527 (2005).

While the specifics of open records laws vary among the states, the principles on which all are based remain constant, as do the underlying privileges such as attorney-attorney-client and work-product. However, to date MD OAG is an outlier among the OAGs participating with the aforementioned NYU “Center” in its productions in response to public records requests. We note that communications in Maryland are protected by attorney privilege only if they are regarding attorney legal procedures, strategy and impressions. *Gallagher v. Office of Attorney Gen.*, 141 Md. App. 664 (2001). OAG must establish that the information withheld as attorney-client

privileged is so privileged, not that it has an attorney-client relationship with the recipient. OAG must establish how each of its withholdings and redactions under the attorney-client privilege are actually privileged and not simply between parties who do have a privilege, for privileged material, and not once again information it doesn't want released for political reasons.

Public records are presumed to be public unless they can be shown to be exempt. *Kirwan v. The Diamondback*, 352 Md. 74, 80, 721 A.2d 196, 199 (1998). Were OAG to simply state "attorney-client" to exclude all communication with an entity which OAG is using for provision of a legal fellow, as well as for public relations services, that would be facially invalid. Further, as we know from other OAGs' applications to NYU in the same program — and other OAGs' productions of records MD OAG substantially redacted, improperly, it turns out, such as its two agreements with NYU — the content of the requested record(s) surely not privileged.

#### **DATA DELIVERY STANDARDS**

**We request records on your system**, e.g., its backend logs, and do *not* seek only those records which survive on an employee's or secondee's own machine or account.

We do not demand your Office produce requested information in any particular form, instead **we request records in their native form, with specific reference to the U.S.**

**Securities and Exchange Commission Data Delivery Standards.**<sup>1</sup> The covered information we seek is that which was sent, most likely by electronic mail as described, above, and therefore likely is electronic information: this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, "Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather

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<sup>1</sup> <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

than an image of a spreadsheet. (*Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.*)” (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your Office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

In the context of our experience with responsive agencies taking the effort to physically print, then (often, poorly) scan *electronic* mail into (typically, non-searchable) PDF files, we note that production of electronic records necessitates no such additional time, effort or other

resources, and no photocopying expense. Any such effort as described is most reasonably viewed as an effort to frustrate the requester's use of the public information.

If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email. We look forward to your timely response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'CH', is positioned above the typed name.

Chris Horner  
for GAO

# Exhibit J



## Outside Assistance to AGs Is Legal and Right

The Wall Street Journal

July 13, 2019 Saturday

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## THE WALL STREET JOURNAL.

U.S. EDITION

**Section:** LETTERS TO THE EDITOR; Pg. A12

**Length:** 301 words

### Body

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Chris Horner and Victoria Toensing's "How Bloomberg Pays to Prosecute the Trump EPA" (Cross Country, July 6) questions the support that the State Energy & Environmental Impact Center at the NYU School of Law provides to state attorneys general as they defend environmental and energy laws. They assert that we do the bidding of private philanthropists and undermine the "legitimacy and important work" of attorneys general.

Nothing could be further from the truth. The center brings academic rigor and independence to its mission of supporting state AGs who are protecting existing environmental regulations, addressing climate change and respecting the law. Center lawyers teach at the law school, undertake special projects such as its Health & Environmental Settlements Project and maintain public resources. The center invited all state AGs to apply for limited-term law fellows to provide direct assistance on these issues. The law fellows work on matters that AGs select without approval of NYU or, needless to say, any of its funders. The law fellows' duties of loyalty and confidentiality run solely to state attorneys general, consistent with all applicable law.

The writers' real beef seems to be with those AGs who, in their words, are challenging the administration's regulatory "reforms" and are pursuing an antibusiness "green agenda." Yet state AGs are just doing their job by representing their constituents' interests and insisting on adherence to the law, as evidenced by court decisions that have struck down 90% of the administration's attempted rollbacks of existing environmental, health, safety and other regulatory obligations.

David J. Hayes

Outside Assistance to AGs Is Legal and Right

Executive Director, State Energy & Environmental Impact Center, NYU School of Law  
Washington

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## Notes

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