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April 20, 2009

Mr. Brian P. Hudak  
Assistant U.S. Attorney  
Civil Division  
555 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20530

ACCG, et. al. v. United States Dep't of State (07-2074 R.JL)

Dear Mr. Hudak:

As you know, my client's Opposition/Cross-Motion is due to be filed this Friday, April 24, 2009. In preparing this document, Jay Kislak, the former Chair of the Cultural Property Advisory Committee ("CPAC") volunteered a declaration stating that, among other things, the report of CPAC should not be withheld as deliberative. Mr. Kislak, out of an abundance of caution, forwarded the declaration to Maria Kouroupas, Executive Director of CPAC. Ms. Kouroupas then forwarded the matter to lawyers in the State Department who advised Mr. Kislak he could not sign any declaration unless he followed the agency's Touhy regulations. On Friday, April 17, 2009, Mr. Kislak indicated to your client that he sought a Touhy review of the documents, but that he wanted an answer by April 21, 2009. Otherwise, he indicated would release the declaration for filing in the above-captioned case.

I write this letter to you for a number of reasons. First, I seek to make you aware of your client's actions in suppressing the declaration of Mr. Kislak. Mr. Kislak only seeks to repeat for the Court his previously publicly expressed opinion that the Committee should operate in a transparent matter and that the State Department should accurately report the Committee's recommendations to Congress in compliance with the provisions of applicable law.

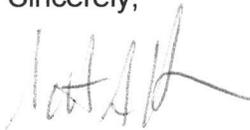
Second, I ask your assistance in getting your client's approval for Mr. Kislak's declaration to be filed in this matter. As you know, my clients have waited months, and sometimes years to get information pursuant to its FOIA request before filing suit in this matter. My clients' brief is due on April 24, 2009. I ask that you have your client expedite its review of this matter (which I have already stated concerns no substantive CPAC information) so that this filing can proceed as scheduled on April 24, 2009.

Finally, I urge your client to not only allow Mr. Kislak's declaration to be filed without any further litigation over it, but to also reconsider its use of the FOIA exemptions at

issue in this case. As you should be aware, both President Obama and Attorney General Holder have issued FOIA memorandums urging the discretionary release of otherwise withholdable information. In fact, just last week, your agency released detailed guidance on how agencies should review information for discretionary release. This guidance can be found at <http://www.usdoj.gov/oip/foiapost/2009foiapost8.htm>. Your client has not reviewed this material for any discretionary release of information—despite this government policy to do so. Thus, I ask that your client review this information pursuant to this policy and make the appropriate discretionary disclosures. If your client needs additional time to do so, I am willing to file for an extension of the remaining briefing schedule in this matter.

If you have any questions about these matters, feel free to contact me to discuss them further. As our brief is due on April 24, 2009, I ask that you respond to me by 5:00 pm on Tuesday April 21, 2009 so that my clients can consider their position and if necessary, file the appropriate motions before the Court. I hope to hear from you soon concerning these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Hodes", written in a cursive style.

Scott A. Hodes