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## MEMORANDUM - CALL TO ACTION

**FROM: KAREN BUDD FALEN**  
**BUDD-FALEN LAW OFFICES, LLC**

**DATE: JUNE 2, 2011**

**RE: NOW THE REAL WORK BEGINS – SUPPORT FOR THE**  
**GOVERNMENTAL LITIGATION SAVINGS ACT OF 2011 -**  
**REFORM OF EXCESSIVE LITIGATION PAY-OUTS**

The American public has been asking for legislative reform of a system that pays taxpayer dollars to environmental “non-profit” attorneys who charge \$650 per hour to bring cases for statutory procedural violations, and we finally have it. On May 25, 2011, H.R. 1996, the Governmental Litigation Savings Act of 2011, was introduced to stop the deficit bleeding and level the playing field for all who seek to sue or need a permit from the federal government. But the simple introduction of this bill in the U.S. House of Representatives is not enough and we need your help. This bill has 18 sponsors, but needs many more and we need to get Congress to hold hearings to learn the true extent of the abuse. This is a call to action and a request for your help.

The Governmental Litigation Savings Act of 2011 (“GLSA”) has five major sections. First, this Act eliminates the false distinction in net worth between a “for profit” organization and a “non-profit public interest” organization. Currently, under the Equal Access to

Justice Act (“EAJA”), a for profit entity or person with a net worth over \$7,000,000 is ineligible to recover attorney fees for litigation against the federal government. However, an entity that has been determined to be “non-profit” is not bound by this restriction. Thus, even though tax documents show a great many environmental and animal rights groups are worth far in excess of \$7,000,000, these groups can “recover” attorney fees for suing the federal government. In other words, these “non-profit” groups get paid by the American taxpayers to sue the federal government which results in families losing their homes and businesses. Under the existing EAJA, groups like the Sierra Club, who reported its worth as \$56,527,055 in 2007 can receive tax payer money to sue the federal government, but a company with the same net worth cannot. Similarly, if the compensation package for the President of the Natural Resources Defense Council is \$432,959.00, do they really need the American citizens funding their

litigation against the American government?

Second, the GLSA places a cap on both the hourly fees that attorneys can charge and on the amount of money that can be awarded to an individual group in a year. Under the GLSA, the hourly fees charged by attorneys is capped at \$175 per hour and that cap can only be adjusted for inflation. Under the current Act, attorney fees are capped at \$125 per hour, but that hourly fee can be “adjusted” to a significantly higher amount. For example, in cases involving radical environmental “non-profit” attorneys in California, attorney fees as high as \$650 per hour have been paid although the statute caps the fee at \$125 per hour. Originally Congress passed EAJA to put litigants back in the same place as they were prior to the litigation against the federal government. However, radical environmental groups can legitimately argue that prior to the litigation, they were paying their non-profit attorneys \$650 per hour.

Additionally, the GLSA caps the total attorneys fees reimbursement to \$200,000 for a single action and allows no more than three awards in a calendar year. That should stop the litigation gravy train for groups like the Center for Biological Diversity who was involved in 770 federal court cases between 1999 and the May, 2011 according to research using the PACER data base.

Importantly this reimbursement cap does not apply to individuals who have suffered a direct and personal monetary interest at the hands of an overreaching bureaucracy.

Third, the GLSA requires reporting of all taxpayer moneys paid out in attorneys fees, including those money paid in

confidential settlement agreements or consent decrees. In approximately 10.5 percent of the cases polled, the amount of money paid to environmental groups for attorneys fees is not disclosed to the public. Shouldn't the public know how much of its money is being funneled to radical groups through attorneys fees payments?

Fourth, the GLSA requires federal agencies to reduce the awards made for “pro bono” work and does not allow attorneys fees to be paid in cases where the litigator either acts in bad faith or tries to delay the litigation just to rack up attorneys fees.

Finally, this Act requires that the federal government account for the taxpayer money it spends on attorneys fees and that a searchable data base be created to allow the American citizens to have the ability to search how much money is being paid and to whom. The American taxpayers has a right to know how and to which groups and individuals their money is being spent. However, accounting of the money spent on attorney fees has not occurred since 1995. Is it any wonder that this country is broke?

With the introduction of this bill, our work is just beginning. Out of 435 members of the United States House of Representatives, only 18 have co-sponsored this bill with Wyoming's representative Cynthia Lummis. The cosponsors are Rep. Rob Bishop (UT-1); Rep. Glenn Thompson (PA-5); Rep. Mike Simpson (ID-2); Rep. Jason Chaffetz (UT-3); Rep. Don Young (AK); Rep. Scott Tipton (CO-3); Rep. Jeff Denham (CA-19); Rep. Michael Conaway (TX-11); Rep. Denny Rehberg (MT); Rep. Mike Coffman (CO-6); Rep.

Trent Franks (AZ-2); Rep. Devin Nunes (CA-21); Rep. Kristi Noem (SD); Rep. Doug Lamborn (CO-5); Rep. John Duncan, Jr. (TN-2); Rep. Steve Pearce (NM-2); Rep. Wally Herger (CA-2); Rep. Jeff Flake (AZ-6); and Rep. Greg Walden (OR-2). Please contact your Congressman and request that they co-sponsor H.R. 1996.

This bill has been assigned to the House Judiciary Committee, Lamar Smith Texas Chairman. It is important that this bill be aired in open public hearings so that America can voice its opinion on the spending of American tax dollars on litigation. Please urge Mr. Smith and your Congressional members to hold hearings on this bill.

Like so many other laws in this country, the original idea of the federal government reimbursing individuals and small businesses who have to fight against overreaching bureaucracy is noble. But like many original ideas, over the years EAJA and the payment of attorney fees out of the Judgment Fund on Endangered Species Act and other litigation has been distorted beyond recognition. It is time to bring this Country back to its roots, cut the deficit spending and put American citizens back to work. I hope you will work to support the Governmental Litigation Savings Act.

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