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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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June 7, 2017

**VIA ELECTRONIC TRANSMISSION**

Mr. Glenn R. Simpson  
Fusion GPS  
Washington, D.C. 20535

Dear Mr. Simpson:

The Committee's March 24, 2017, letter to you requested information about Fusion GPS' activities related to the dossier compiled by Mr. Christopher Steele.<sup>1</sup> It requested information about the clients who hired and paid Fusion and the factual details of those arrangements. It also requested factual information about Fusion's arrangement with Mr. Steele and his company Orbis Business Intelligence, and about Fusion's communications with the media and government entities regarding the dossier.

You refused to provide any information whatsoever, claiming that the Committee's request "calls for information and documents protected by the First Amendment right, attorney-client privilege, attorney work product, and contractual rights (*e.g.*, confidentiality agreements) of Fusion and/or its clients."<sup>2</sup> However, in both your response letter and on a subsequent phone call with Committee staff, your attorney refused to provide a clear explanation of the basis for the claimed privileges and rights, and has failed to provide any privilege log describing the withheld documents.<sup>3</sup>

Based on the minimal and vague explanations your attorney has provided, the Committee cannot adequately assess your claims. Thus, we must presume that they are unfounded. Moreover, even if any of these claims were once valid, it appears they may have been waived when Fusion shared various versions of the dossier with journalists, members of Congress, and the FBI.<sup>4</sup>

Your attorney has refused to engage in a meaningful dialogue about your various claims or acknowledge that it is for the Committee to rule on whether it will recognize those claims or

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<sup>1</sup> Letter from Hon. Charles E. Grassley, Chairman, Senate Judiciary Committee, to Glenn R. Simpson, Fusion GPS (Mar. 24, 2017).

<sup>2</sup> Letter from Joshua A. Levy & Robert F. Muse, Cunningham Levy Muse LLP, to Hon. Charles E. Grassley, Chairman, Senate Judiciary Committee (Apr. 7, 2017) [hereinafter Letter from Fusion GPS (Apr. 7, 2017)].

<sup>3</sup> *See id.*

<sup>4</sup> *E.g.*, Scott Shane, *What We Know and Don't Know About the Trump-Russia Dossier*, N.Y. TIMES (Jan. 11, 2017).

compel the production of the documents. Despite this failure to cooperate with the Committee and respect its processes, the following represents an attempt to analyze your stated reasons for refusing to comply.

### **First Amendment Protection**

To support your claim that the First Amendment protects you from disclosing the requested information to the Committee, your attorney merely stated:

Those requests seek information about Fusion GPS and its clients, who are American citizens that have been engaged in political activity, free speech and/or freedom of the Press. Fusion GPS and its clients will not risk a waiver of First Amendment rights by producing information and documentation otherwise protected by them.<sup>5</sup>

However, a court previously rejected your similar argument in another matter. In *VanderSloot v. Foundation for National Progress*, a court rejected your argument that complying with a subpoena would “infringe upon [your] First Amendment associational privileges.”<sup>6</sup> The Court stated that you, as an individual, are not “an association with members whose associational rights might be chilled by enforcement of the subpoenas.”<sup>7</sup> The Court further stated that Fusion GPS “could hardly be considered an association or advocacy organization with members who engage in associational activities.”<sup>8</sup>

### **Attorney-Client and Attorney Work Product Privileges**

To support your claim that the information the Committee requested is protected by the attorney-client and attorney work product privileges, your attorney offered merely the following conclusory assertion: “Much of Fusion GPS’ work is covered by the attorney-client privilege and/or the attorney work product doctrine, which Fusion GPS lacks the authority to waive.”<sup>9</sup> Without additional information, it remains unclear how you and/or Fusion engaged in an attorney-client relationship because neither you nor Mr. Steele is an attorney, and neither Fusion nor Orbis is a law firm.

Moreover, even if you and/or Fusion entered into an attorney-client relationship in which you are not the holder of the privilege, the attorney-client privilege does not apply to the information at issue. Courts have consistently held that the privilege applies narrowly to “confidential legal communications.”<sup>10</sup> It generally does not protect from disclosure the

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<sup>5</sup> Letter from Fusion GPS (Apr. 7, 2017).

<sup>6</sup> *VanderSloot v. Foundation for National Progress*, 2014 CA 003684, at 12 (D.C. Sup. Ct. Oct. 27, 2014).

<sup>7</sup> *Id.* at 15.

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Fusion GPS (Apr. 7, 2017).

<sup>10</sup> *E.g., In re Grand Jury Subpoena*, 204 F.3d 516, 522–23 (4th Cir. 2000); *In re Shargel*, 742 F.2d 61, 64 (2d Cir. 1984).

“identity of the client, the amount of the fee . . . and the general purpose of the work performed.”<sup>11</sup>

Further, the privilege is limited to *confidential* communications. Information that a client intends to disclose is not privileged, and once-privileged information loses its protection if shared.<sup>12</sup> The Court of Appeals for the D.C. Circuit has held that voluntarily sharing information causes a broad waiver of privilege, “not only as to the specific communication disclosed but often as to all other communications relating to the same subject matter.”<sup>13</sup> It hardly seems plausible that Fusion’s client funded opposition research with the intention of keeping the discovered information confidential, especially based on Fusion’s efforts to share the dossier with journalists and members of Congress.<sup>14</sup>

Finally, courts have emphasized that a client cannot manipulate a privilege for the purpose of concealing information. The Court of Appeals for the Fourth Circuit states: “The attorney-client privilege is not intended to permit ‘an attorney to conduct his client’s business affairs in secret.’”<sup>15</sup> In other words, “[a] client may not ‘buy’ a privilege by retaining an attorney to do something that a non-lawyer could do just as well.”<sup>16</sup>

Regarding your claim of attorney work product privilege, your attorney has failed to explain how Fusion’s work was completed in anticipation of litigation. On a phone call with Committee staff, your attorney vaguely indicated that Fusion’s work was done in anticipation of the FBI’s investigation into Russian interference in the 2016 presidential election. Your attorney’s assertion lacked any detail necessary to properly consider its merit. Moreover, given the circumstances, it appears that Fusion’s work was conducted in anticipation of the presidential election, rather than in anticipation of any litigation—in which case the privilege does not apply.

### **Confidentiality Agreements**

To support your claim that confidentiality agreements prohibit disclosures to the Committee, your attorney stated only: “Fusion GPS worked on behalf of its clients subject to confidentiality agreements, which Fusion GPS’ clients have not waived.”<sup>17</sup> Because your attorney has refused to provide any such confidentiality agreements to the Committee, we cannot evaluate the substance or applicability of the agreements. Additionally, based on reporting that you and Mr. Steele continued to work beyond the end of your contracts with clients, at least

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<sup>11</sup> *In re Grand Jury Subpoena*, 204 F.3d at 520; *United States v. Legal Services for New York City*, 249 F.3d 1077, 1081 (D.C. Cir. 2001) (“Courts have consistently held that the general subject matters of clients’ representations are not privileged.”); *National Union Fire Ins. Co. v. Aetna Cas. & Surety Co.*, 384 F.2d 316, 317 n.4 (D.C. Cir. 1967); *In re Sealed Case*, 877 F.2d 976, 979 (D.C. Cir. 1989) (acknowledging that the existence of an attorney-client relationship is “not normally protected”).

<sup>12</sup> *In re Sealed Case*, 877 F.2d at 979 n.4 (D.C. Cir. 1989).

<sup>13</sup> *In re Sealed Case*, 676 F.2d 793, 809 (D.C. Cir. 1982).

<sup>14</sup> Shane, *What We Know and Don’t Know About the Trump-Russia Dossier*.

<sup>15</sup> *United States v. Hirsch*, 803 F.2d 493, 496 (9th Cir. 1986).

<sup>16</sup> *In re Grand Jury Subpoena*, 204 F.3d at 523 (quoting 2 Saltzburg et al., *Federal Rules of Evidence Manual* 698 (7th Ed. 1998)).

<sup>17</sup> Letter from Fusion GPS (Apr. 7, 2017).

some of your work must fall outside of the scope of any confidentiality agreement with your clients.<sup>18</sup> Moreover, while confidentiality agreements might prevent you from complying with the Committee's request voluntarily, no such agreement can supersede the Committee's constitutional authority to compel the production of information, and it would need to review the agreements themselves to determine whether it might choose to do so.

### **Conclusion**

Your attorney has failed to sufficiently explain your claims that responding to the Committee's requests would infringe upon or violate your and/or Fusion's First Amendment rights, attorney-client and attorney work product privileges, and confidentiality agreements. Accordingly, please provide all responsive documents and information by June 14, 2017, along with a detailed privilege log for any withheld documents. If you refuse to comply voluntarily, the Committee will begin consideration of compulsory process under its rules. If you have any questions or concerns about complying with this request and deadline, please contact Committee staff in advance of the deadline.

Thank you for your prompt attention to this important matter. If you have any questions, please contact Patrick Davis of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

cc: The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary

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<sup>18</sup> Scott Shane, Nicholas Confessore & Matthew Rosenberg, *How a Sensational, Unverified Dossier Became a Crisis for Donald Trump*, N.Y. TIMES (Jan. 11, 2017).