

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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July 9, 2018

The Honorable Trey Gowdy  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to request that you issue a subpoena to compel the Department of Justice (DOJ) to produce documents it is withholding regarding the Trump Administration's refusal to defend key patient protections enacted by Congress in the Affordable Care Act (ACA).

On June 13, 2018, I joined with the Ranking Members of the Committees on the Judiciary, Energy and Commerce, Ways and Means, and Education and Workforce requesting documents relating to the Trump Administration's decision to take the position in federal court that key provisions of the ACA are unconstitutional.<sup>1</sup>

The Trump Administration's sudden reversal runs counter to a longstanding, bipartisan commitment by DOJ to defend duly enacted statutes in federal court, fulfilling the Constitution's mandate that the Executive Branch "take care that the laws are faithfully executed."<sup>2</sup> DOJ's actions also threaten the health and welfare of 130 million Americans who have preexisting health conditions.

The Department's position is so indefensible that hours before the brief was due, three of the four career attorneys representing the government refused to sign it and removed themselves from the case.<sup>3</sup> One of these senior career officials resigned from the Department in protest.<sup>4</sup>

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<sup>1</sup> Letter from Ranking Member Jerold Nadler, Committee on the Judiciary, Ranking Member Frank Pallone, Committee on Energy and Commerce, Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, Ranking Member Richard Neal, Committee on Ways and Means, and Ranking Member Bobby Scott, Committee on Education and the Workforce, to Jeff Sessions, Attorney General, Department of Justice (June 13, 2018) (online at <https://democrats-oversight.house.gov/news/press-releases/top-house-democrats-demand-answers-documents-from-doj-following-refusal-to>).

<sup>2</sup> U.S. CONST. art. II, § 3, cl. 5.

<sup>3</sup> *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex. June 7, 2018) (unopposed motion to withdraw appearances).

<sup>4</sup> *Senior Justice Dept. Lawyer Resigns After Shift on Obamacare*, Washington Post (June 12, 2018) (online

The lead political appointee who signed the brief was nominated by President Trump to the Sixth Circuit Court of Appeals later that very same day.<sup>5</sup>

To date, the Ranking Members have received no response. I am deeply concerned about the impact DOJ's abandonment of its responsibility to defend the ACA will have on the American people. I request that you issue a subpoena to compel DOJ to produce the following documents:

- (1) all documents or opinions in support of DOJ's determination that the ACA is unconstitutional;
- (2) all documents or opinions in support of DOJ's determination that any "professionally responsible argument[s]" in support of the ACA were "unreasonable";
- (3) all communications between Attorney General Jeff Sessions and DOJ officials regarding the Attorney General's decision not to defend the constitutionality of the ACA;
- (4) all documents or communications between the White House and DOJ relating to President Trump's conclusion that the ACA is unconstitutional;
- (5) all internal DOJ documents or communications relating to President Trump's conclusion that the ACA is unconstitutional;
- (6) all internal DOJ communications raising concerns about the decision not to defend the constitutionality of the ACA;
- (7) all documents or communications between the White House and DOJ officials related to the matter of *Texas v. United States*;
- (8) all communications between DOJ and the White House regarding the Department's decision not to defend the constitutionality of the ACA;
- (9) all communications regarding the nomination of Chad Readler for a federal judgeship;

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at [www.washingtonpost.com/world/national-security/senior-justice-dept-lawyer-resigns-after-shift-on-obamacare/2018/06/12/b3001d7c-6e55-11e8-afd5-778aca903bbe\\_story.html?utm\\_term=.6ed76f7ac](http://www.washingtonpost.com/world/national-security/senior-justice-dept-lawyer-resigns-after-shift-on-obamacare/2018/06/12/b3001d7c-6e55-11e8-afd5-778aca903bbe_story.html?utm_term=.6ed76f7ac).

<sup>5</sup> The White House, *President Donald J. Trump Announces Fifteenth Wave of Judicial Nominees, Fourteenth Wave of United States Attorney Nominees, and Ninth Wave of United States Marshal Nominees* (June 7, 2018) (online at [www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-fifteenth-wave-judicial-nominees-fourteenth-wave-united-states-attorney-nominees-ninth-wave-united-states-marshal-nominees/](http://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-fifteenth-wave-judicial-nominees-fourteenth-wave-united-states-attorney-nominees-ninth-wave-united-states-marshal-nominees/)).

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- (10) all communications between the Attorney General and Mr. Readler prior to the Attorney General's decision not to defend the constitutionality of the ACA; and
- (11) all communications between Mr. Readler and the White House regarding President Trump's conclusion that the ACA is unconstitutional.

If you decide not to issue this subpoena, then I ask that you place this matter on the agenda for our next regularly scheduled business meeting so all Committee Members will have the opportunity to debate and vote on this motion.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings  
Ranking Member