

LAMAR S. SMITH, Texas  
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin  
HOWARD COBLE, North Carolina  
ELTON GALLEGLY, California  
BOB GOODLATTE, Virginia  
DANIEL E. LUNGREN, California  
STEVE CHABOT, Ohio  
DARRELL E. ISSA, California  
MIKE PENCE, Indiana  
J. RANDY FORBES, Virginia  
STEVE KING, Iowa  
TRENT FRANKS, Arizona  
LOUIE GOHMERT, Texas  
JIM JORDAN, Ohio  
TED POE, Texas  
JASON CHAFFETZ, Utah  
TIM GRIFFIN, Arkansas  
TOM MARINO, Pennsylvania  
TREY GOWDY, South Carolina  
DENNIS ROSS, Florida  
SANDY ADAMS, Florida  
BEN QUAYLE, Arizona  
MARK AMODEI, Nevada

JOHN CONYERS, JR., Michigan  
RANKING MEMBER

HOWARD L. BERMAN, California  
JERROLD NADLER, New York  
ROBERT C. "BOBBY" SCOTT, Virginia  
MELVIN L. WATT, North Carolina  
ZOE LOFGREN, California  
SHEILA JACKSON LEE, Texas  
MAXINE WATERS, California  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
PEDRO R. PIERLUISI, Puerto Rico  
MIKE QUIGLEY, Illinois  
JUDY CHU, California  
TED DEUTCH, Florida  
LINDA T. SANCHEZ, California  
(Vacancy)

ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

November 22, 2011

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
Washington D.C. 20530

Dear Attorney General Holder,

I first wrote to you on July 6, 2011, on behalf of 49 Members of Congress, with respect to U.S. Supreme Court Associate Justice Elena Kagan's involvement in health care legislation or litigation while serving as United States Solicitor General.

At that time, I requested both certain documents and witness interviews of two individuals. I did so pursuant to the Judiciary Committee's oversight authority over the Department of Justice and the Office of the Solicitor General. The results of that oversight would have a bearing on whether Justice Kagan had a possible conflict of interest that might preclude her from participating in litigation in the Supreme Court challenging the constitutionality of the Patient Protection and Affordable Care Act (PPACA) due to her involvement with this legislation while she was serving as the United States Solicitor General.

For nearly four months, and despite repeated staff inquiries seeking a response, the Department ignored my request. Finally, in late October, the Department sent me a one page response denying both my request for documents and permission to interview the two individuals. In so doing the Department did not assert any legal privilege to support the decision but simply said my request would not be complied with.

My July 6 request was premised on a review of documents released by the Department in response to certain Freedom of Information Act (FOIA) lawsuits and was both reasonable and well-founded.

While refusing to comply with my request, the Department, pursuant to a FOIA request, released a series of emails between then Solicitor General Kagan and other Department officials. These emails confirm both that then Solicitor General Kagan was not "walled off" from this matter as has been claimed and, furthermore, that she personally supported the legislation. For example, in a March 21, 2010, email to a Department colleague discussing the legislation, she

The Honorable Eric H. Holder, Jr.  
November 22, 2011  
Page two

writes "I hear they have the votes Larry!! Simply amazing." These emails were specifically included in my July 6 document request but never provided to me before they were publically released on November 9, 2011.

Why did the Department withhold these emails from the Committee and who made that decision? Is the Department withholding any additional documents which are responsive to my July 6 request?

The public has a right to know both the full extent of Justice Kagan's involvement with this legislation while she was Solicitor General as well as her previously stated views and opinions about the legislation while she was serving as Solicitor General.

Recently disclosed emails made available by the Department show a continuing involvement by then Solicitor General Kagan. Thus, I also request that the Committee be authorized permission to interview both Associate Attorney General Thomas Perrelli and Assistant Attorney General for the Civil Division Tony West.

On November 18, Senators McConnell, Kyl, Grassley and Lee wrote to you urging that you reconsider the Department's decision not to respond to Congress' oversight requests in connection with the Kagan matter. I fully concur in their request and hope that you will direct the Department to comply with my reasonable and legitimate requests.

Sincerely,



Lamar Smith  
Chairman

cc: The Honorable John Conyers, Jr.