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July 6, 2011

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

Dear Attorney General Holder,

On June 24, 2011, I received the enclosed letter from 49 Members of Congress. On their behalf, I write to request relevant documents and witness interviews in order to properly understand U.S. Supreme Court Associate Justice Elena Kagan's involvement in health care legislation or litigation while serving as United States Solicitor General.

In recent weeks, questions have been raised about whether Justice Kagan's prior work on what became the Patient Protection and Affordable Care Act (PPACA) while serving as Solicitor General should disqualify her from hearing challenges to its constitutionality. All parties agree the critical question is the extent of her involvement, as Solicitor General, in formulating the Administration's legal position on the PPACA, which was signed into law by President Obama on March 23, 2010.

During her Senate confirmation, then-Solicitor General Kagan answered "no" when questioned about whether she had ever been "asked about [her] opinion" or "offered any views or comments regarding the underlying legal or constitutional issues related to any proposed health care legislation...or...potential litigation resulting from such legislation."¹ Yet, documents released by the Department in response to recent Freedom of Information Act requests raise questions about that unequivocal denial.

¹ *The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States Before the S. Comm. on the Judiciary*, 111th Cong. (2010) (written response of Elena Kagan to supplemental questions from Senators Jeff Sessions, Orrin Hatch, Charles Grassley, Jon Kyl, Lindsey Graham, John Cornyn, and Tom Coburn) available at <http://judiciary.senate.gov/nominations/SupremeCourt/upload/ElenaKagan-QFRs.pdf>.

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Based on a review of these released documents, and in order to properly understand any involvement by Justice Kagan in matters relating to health care legislation or litigation while she was Solicitor General, I request that the Department produce the following materials from the period between March 20, 2009 and August 7, 2010:

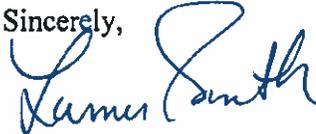
1. All documents referring to any meetings or conversations (personal or electronic) about potential or actual health care legislation or litigation in which Solicitor General Kagan was involved, mentioned or copied.
2. All documents referencing potential or actual health care legislation or litigation in which Solicitor General Kagan was involved, mentioned or copied.
3. All documents referencing excluding Ms. Kagan from any matters involving health care legislation or litigation while she was Solicitor General.
4. All documents referencing possible recusal by Solicitor General Kagan from any matters relating to health care legislation or litigation if she were to be confirmed as a Supreme Court Justice.

In addition, the Committee seeks to interview:

1. Neal Katyal, departing Principal Deputy Solicitor General
2. Tracy Schmalzer, Deputy Director, Office of Public Affairs

Given the speed with which PPACA litigation is proceeding I ask that these materials be provided and arrangements for the interviews be made by July 29, 2011. Thank you for your attention to this important matter.

Sincerely,



Lamar Smith
Chairman

cc: The Hon. John Conyers, Jr.

Enclosure