

Congress of the United States
Washington, DC 20515

May 13, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General,

On April 8, 2019, we wrote to you regarding the Trump Administration’s devastating decision to reverse the Department of Justice’s legal position in *Texas v. United States* and—for the first time—assert that the entire Affordable Care Act (ACA) should be held unconstitutional. This action could deprive millions of Americans of health insurance coverage, including 133 million people with pre-existing conditions. We requested that you produce documents relating to this sudden and extremely troubling reversal and that you make four individuals involved in this matter available for testimony. Our letter requested compliance by April 22, 2019.¹

We received an acknowledgment of our requests from the Department on April 11, 2019.² While this acknowledgment stated that the Department would work promptly to respond to our requests, it failed to meet the deadline to comply with our requests.

Meanwhile, on May 1, 2019, the Department filed a 50-page brief in the United States Court of Appeals for the Fifth Circuit elaborating on the Trump Administration’s new—and flawed—legal position. For example, the Department recognized that when one portion of a statute is held unconstitutional, the rest of the law should not be struck down unless it is “evident that Congress would not have enacted those provisions which are within its power, independently of those which are not.” However, despite acknowledging that Congress

¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, Chairman Richard E. Neal, Committee on Ways and Means, Chairman Jerrold Nadler, Committee on the Judiciary, Chairman Frank Pallone, Jr., Committee on Energy and Commerce, and Chairman Robert C. “Bobby” Scott, Committee on Education and Labor, to Attorney General William P. Barr, Department of Justice (Apr. 8, 2019) (online at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/4.8.2019%20Letter%20to%20Barr%20re.%20ACA.pdf>).

² Letter from Office of Legislative Affairs, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, Chairman Richard E. Neal, Committee on Ways and Means, Chairman Jerrold Nadler, Committee on the Judiciary, Chairman Frank Pallone, Jr., Committee on Energy and Commerce, and Chairman Robert C. “Bobby” Scott, Committee on Education and Labor (Apr. 11, 2019).

intentionally “eliminated the mandate’s penalty while retaining the rest of the ACA,” the Department went on to argue that the entire ACA nevertheless should be struck down.³

The faulty legal reasoning in this submission underscores the concerns we raised in our letter that politically-motivated forces inside the White House and the Office of Management and Budget may have brought undue pressure on the Department to reverse its prior legal conclusions, and that this occurred over the objection of Attorney General Barr.⁴ We remain concerned that the Department has disregarded its own legal reasoning in violation of its obligation to defend and enforce acts of Congress.

Given the grave consequences that would result if the Trump Administration’s legal position were to prevail, it is Congress’ responsibility as an independent and co-equal branch of government to understand how this decision was made, including whether the President or anyone in the White House instructed the Department to override its legal conclusions and take a position that would result in the loss of health insurance coverage for millions of Americans.

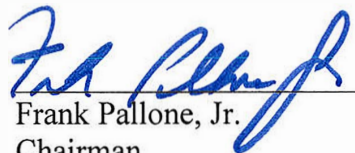
For these reasons, we reiterate our April 8, 2019, request for documents and testimony and ask that you provide a complete response by May 24, 2019. If we do not receive a response by this date, we will have no choice but to consider alternative means of obtaining compliance.

Thank you for your attention to this matter.

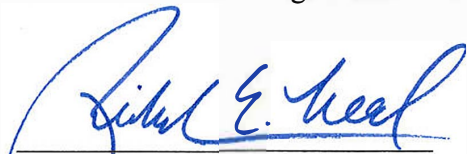
Sincerely,



Elijah E. Cummings
Chairman
Committee on Oversight and Reform



Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce



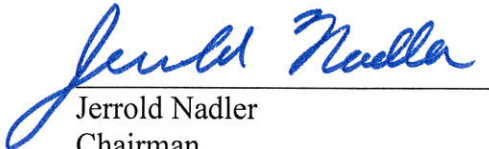
Richard E. Neal
Chairman
Committee on Ways and Means



Robert C. “Bobby” Scott
Chairman
Committee on Education and Labor

³ *United States v. Texas*, Brief for the Federal Defendants, at 2 (filed May 1, 2019) (online at <https://affordablecareactlitigation.files.wordpress.com/2019/05/5c-us-brief.pdf>) (citing *Murphy v. NCAA*, 138 S. Ct. 1461, 1482) (2018).

⁴ *White House Obamacare Reversal Made Over Cabinet Objections*, Politico (Mar. 26, 2019) (online at www.politico.com/story/2019/03/26/trump-obamacare-reversal-cabinet-1238359).



Jerrold Nadler
Chairman
Committee on the Judiciary

cc: The Honorable Jim Jordan, Ranking Member
Committee on Oversight and Reform

The Honorable Greg Walden, Ranking Member
Committee on Energy and Commerce

The Honorable Kevin Brady, Ranking Member
Committee on Ways and Means

The Honorable Virginia Foxx, Ranking Member
Committee on Education and Labor

The Honorable Doug Collins, Ranking Member
Committee on the Judiciary