

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Fifteenth Congress

November 19, 2018

The Honorable Matthew Whitaker
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Attorney General Whitaker:

As you are no doubt aware, Members of the House Judiciary Committee have written to the Trump Administration and House Republican leadership on matters related to coverage for pre-existing conditions, cost-sharing subsidy payments, and ongoing litigation design to undercut the basic protections provided by the Affordable Care Act. To date, you have provided no substantive response to these letters.

I am particularly concerned that the Administration has been unwilling to engage with the House Judiciary Committee on the question of *Texas v. United States*.¹ On June 7, 2018, Attorney General Jeff Sessions informed us of the Trump Administration's decision not to defend the ACA in federal court. On that same day, three career attorneys representing the Department in this matter withdrew from the case rather than associate themselves with the Administration's new position.²

The Constitution requires the Executive Branch to "take care that the laws are faithfully executed."³ The Office of Attorney General's has understood the "Attorney General has a duty to defend and enforce both the Acts of Congress and the Constitution; when there is a conflict between the requirements of the one and the requirements of the other, it is almost always the case that he can best discharge the responsibilities of his office by defending and enforcing Acts of Congress."⁴ Attorney General Jeff Sessions' testified before the Senate that the laws "should

¹ *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex.).

² *Id.* (June 7, 2018) (Unopposed motion to withdraw appearances).

³ U.S. CONST. art. II, § 3, cl. 5.

⁴ Letter from the Hon. Att'y Gen. Benjamin R. Civiletti, Dep't of Justice, to Chairman Max Baucus, S. Comm. on the Judiciary, Subcomm. on Limitations of Contracted and Delegated Authority (July 30, 1980).

be defended vigorously, whether or not the Solicitor General agrees with them or not, unless it can't be reasonably defended.”⁵

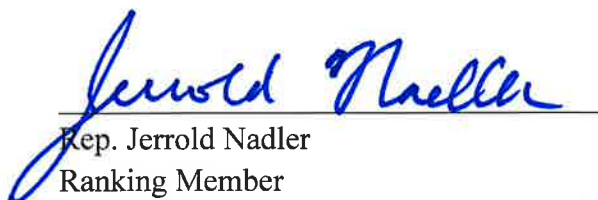
This longstanding policy reflects the fundamental structure of our republic: Congress makes the laws and the Executive Branch enforces them. The Department of Justice has so far failed to justify its decision to abandon this principle. The litigation appears to be, at best, a cynical pretext for one more try at repealing the ACA.

In the next Congress, this Committee expects to examine the Department's refusal to defend a duly enacted federal statute, the abrupt resignation of veteran Department employees, and an apparent determination by this Administration to undermine affordable healthcare coverage for millions of Americans. To that end, I ask that you provide a complete response to the following letters:

- A June 13, 2018 letter from Ranking Member Nadler to Attorney General Sessions, demanding answers related to the Department's refusal to defend the ACA's protections for Americans with pre-existing conditions.
- A June 13, 2018 letter from Ranking Members Pallone, Nadler, Neal, and Scott, demanding answers related to the actions of the Department of Justice, Department of Health & Human Services, and the Centers for Medicare & Medicaid Services.

Please provide this response no later than December 31, 2018. Thank you for your prompt attention to this matter.

Sincerely,


Rep. Jerrold Nadler
Ranking Member
House Committee on the Judiciary

cc: The Hon. Bob Goodlatte, Chairman, House Committee on the Judiciary

⁵ *Hearing on the Nomination of Sen. Jeff Sessions to be Att'y Gen. before the S. Comm. on the Judiciary*, 115th Cong. (Jan. 10, 2017).