

Congress of the United States
Washington, DC 20515

May 13, 2019

Mr. Pat Cipollone
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Cipollone:

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 eight categories of documents relating to the White House’s involvement in this sudden and extremely troubling reversal.¹

The White House failed to respond in any way to this request. Instead, on May 1, 2019, the Department of Justice 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.”² However, despite acknowledging that Congress 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

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 Mr. Pat Cipollone, Counsel to the President (Apr. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-08.EEC%20Pallone%20Neal%20Scott%20Nadler%20to%20Cipollone-WH%20re%20ACA.pdf>).

² *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).

³ *Id.*

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 of Justice to reverse its prior legal conclusions and disregard its own legal reasoning in violation of the Constitution's solemn charge to "take care that the laws are faithfully executed."⁴

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. If the President and his Administration truly stand by their decision to seek to eliminate health insurance coverage for millions of Americans, it is unclear why the White House would cover up its role in this unprecedented and disastrous reversal.

For these reasons, we reiterate our April 8, 2019, requests for documents and information, and request 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.

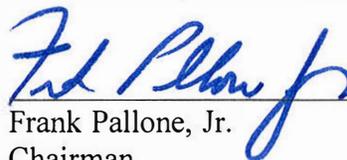
In addition, we now request that you make Russ Vought, the Acting Director of the Office of Management and Budget, available for a transcribed interview by the same date.

Please contact Oversight Committee staff at (202) 225-5051 to schedule this interview. Thank you for your attention to this matter.

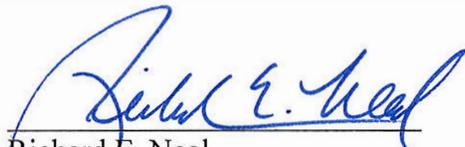
Sincerely,



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

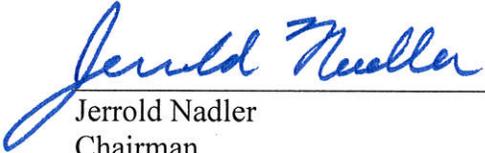


Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor

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); U.S. Const. art. II, § 3, cl. 5.

Mr. Pat Cipollone

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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