



Written by [Bruce Walker](#) on November 22, 2011

## Senate GOP Leaders Question Holder's Testimony

CNS News reports that four key Republican leaders in the Senate sent a letter on Friday to Attorney General Eric Holder (left) stating that the Department of Justice had not been forthcoming in requests for information about the extent of the involvement of then-Solicitor General Elena Kagan relating to President Obama's healthcare legislation. The letter — from Minority Leader Mitch McConnell (Ky.), Minority Whip Jon Kyl (Ariz.), Judiciary Committee Ranking Member Charles Grassley (Iowa), and Judiciary Committee member Mike Lee (Utah) — also declared that the testimony given by Holder was “belied by the facts.”



Salient parts of the letter state:

Unfortunately, your Department has rejected all Congressional oversight requests for information about her [Kagan's] role in the Obama Administration's defense of this law. You recently told the Senate, incredibly, that you were not even aware of Congressional requests on this topic, and that your Department handled her duties as relates to such matters in a way that is belied by the facts, namely that you physically removed her from all meetings discussing litigation.

The four Senators urged the Attorney General to comply with requests that have been submitted to the Justice Department by Congress seeking information about Kagan's involvement with the healthcare legislation while she was Solicitor General, the second-ranking attorney in the Department of Justice. They charged that Kagans activities related to ObamaCare while in the Justice Department should require her recusal when the Supreme Court hears the lawsuit brought by state governments relating to the constitutionality of the President's healthcare legislation next year.

Federal statutes require such recusal by federal judges when there is any proceeding in which [their] impartiality might reasonably be questioned or any time they have expressed an opinion concerning the merits of the particular case in controversy while they served in governmental employment.

According to CNSNews.com:

On Sunday, March 21, 2010, the day the House of Representatives passed President Barack Obama's Patient Protection and Affordable Care Act, then-Solicitor General Elena Kagan and famed Supreme Court litigator and Harvard law Prof. Laurence Tribe, who was then serving in the Justice Department, had an email exchange in which they discussed the pending health-care vote, according to documents the Department of Justice released late Wednesday to the Media Research Center, CNSNews.com's parent organization, and to Judicial Watch.

After the vote, Kagan sent an email to Tribe which expresses a strong bias in favor of the legislation: “I hear they have the votes, Larry!! Simply amazing.”

CNS News continued:



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Since last summer the House Judiciary Committee, which has oversight of the Justice Department and the federal courts, has been unsuccessfully seeking Kagan-related documents and witness interviews from the Justice Department.

House Judiciary Chairman Lamar Smith (R-Texas), in a July 6 letter to Attorney General Holder, had explicitly requested from the Department of Justice written testimony that would inform the committee of any involvement by Justice Kagan in matters relating to health care legislation or litigation while she was Solicitor General. Smith stated,

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 ... litigation resulting from such legislation,” yet documents released by the Department in response to Freedom of Information Act requests raise questions about that unequivocal denial.

There are two vital questions at issue. First, has the conduct of Justice Kagan made her unable to fairly decide the constitutionality of the health care legislation? Analysts note that her emails certainly seem to indicate a much greater involvement with the legislation than either she or Attorney General Holder have thus far revealed. Second, perhaps more importantly, has the leadership of the Department of Justice, which would include both Attorney General Holder and then-Solicitor General Kagan, intentionally deceived committees of Congress in sworn statements?

On October 27, Assistant Attorney General Ronald Weich flatly refused to comply with the request of the House Judiciary Committee for information, stating that the request was unseemly. Chairman Smith then send a second letter the following day directly to Attorney General Holder, repeating the committees July 6 request for documents and witness interviews related to Kagans involvement with the healthcare legislation while she was Solicitor General. Smith told Holder that he wanted the Department of Justice to either comply with the request by November 4 or assert what legal privilege the department was invoking in refusing to comply with the request. Holder has yet to respond to that almost month-old letter.

Observers have noted that some statements by the Attorney General to the Senate Judiciary Committee are at odds with Kagan’s own testimony. For example, in a response to a question from Senator Mike Lee about Kagans involvement when healthcare legislation was discussed, Holder replied,

Well, I can tell you that certainly one of the things that we did while she [Kagan] was solicitor general was to physically physically, literally move her out of the room whenever a conversation came up about the health-care reform legislation. I can remember specific instances in my conference room where, when we were going to discuss that topic, we asked Elena, Justice Kagan, to leave and she did.

Holder’s answer contradicted Kagans own testimony during her Senate confirmation hearing in which she confirmed that she had been present at least once when the Florida lawsuit challenging the constitutionality of the healthcare legislation was discussed: “I attended at least one meeting where the existence of the litigation was briefly mentioned, but none where any substantive discussion of the litigation occurred,” she stated.

Some of the questions Sen. Jeff Sessions (R-Ala.) has asked Holder are: When did your staff begin ‘removing’ Solicitor General Kagan from meetings on this matter? On what basis did you take this



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action? In what other matters did you take this action?

Observers have noted that both Supreme Court Justice Elena Kagan and Attorney General Eric Holder are well aware that perjury before Congress is an impeachable offense, particularly on a substantive matter. Interestingly, the place where such impeachment proceedings would commence is before the House Judiciary Committee, the very group which the Justice Department is currently stonewalling.



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