

Kagan, Elena

From: Kagan, Elena
Sent: Friday, January 08, 2010 11:01 AM
To: Katyal, Neal
Subject: Re: Health Care Defense

You should do it.

From: Katyal, Neal
To: Kagan, Elena
Sent: Fri Jan 08 10:57:38 2010
Subject: FW: Health Care Defense

I am happy to do this if you are ok with it. Otherwise Ed would be the natural person. Or both of us

From: Hauck, Brian
Sent: Friday, January 08, 2010 10:54 AM
To: Katyal, Neal
Subject: Health Care Defense

Hi Neal – Tom wants to put together a group to get thinking about how to defend against inevitable challenges to the health care proposals that are pending, and hoped that OSG could participate. Could you figure out the right person or people for that? More the merrier. He is hoping to meet next week if we can.

Thanks,
Brian

7/15/2010

From: Katyal, Neal
Sent: Friday, January 08, 2010 10:58 AM
To: Kagan, Elena
Subject: FW: Health Care Defense

I am happy to do this if you are ok with it. Otherwise Ed would be the natural person. Or both of us

From: Hauck, Brian
Sent: Friday, January 08, 2010 10:54 AM
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Thanks,
Brian

Kagan, Elena

From: Katyal, Neal
Sent: Thursday, March 18, 2010 1:37 PM
To: Perrelli, Thomas J.
Cc: Kagan, Elena
Subject: RE: Health Care

Tom, I was just looking at the draft complaint by Landmark Legal Foundation. It is clearly written to be filed when the House approves the reconciliation bill and before the President signs it. See paras 15-17.
[http://www.landmarklegal.org/uploads/Landmark%20Complaint%20\(00013086-2\).pdf](http://www.landmarklegal.org/uploads/Landmark%20Complaint%20(00013086-2).pdf)

Also para 27 says the action is being brought before it is signed by President so that no expectations of regularity can be asserted, etc. As such, we could be in court very very soon.

In light of this, for what it is worth, my advice (I haven't discussed this with Elena, but am cc'ing her here) would be that we start assembling a response, (b) (5) so that we have it ready to go. They obviously have their piece ready to go, and I think it'd be great if we are ahead of the ball game here.

From: Perrelli, Thomas J.
Sent: Wednesday, March 17, 2010 9:25 AM
To: Katyal, Neal
Subject: Re: Health Care

Neal - I tabled it when things looked bleak, but we should do it. I'll get something together in the next week.

From: Katyal, Neal
To: Perrelli, Thomas J.
Sent: Wed Mar 17 09:17:13 2010
Subject: Health Care

Tom, I recall you were going to set up a group to deal with the inevitable challenges to this legislation. Now that this may be coming back, I wanted to circle back and see if you still are developing such a litigation group.
Thanks, N

Kagan, Elena

From: Katyal, Neal
Sent: Sunday, March 21, 2010 6:19 PM
To: Kagan, Elena
Subject: Fw: Health care litigation meeting

This is the first I've heard of this. I think you should go, no? I will, regardless, but feel like this is litigation of singular importance.

From: Perrelli, Thomas J.
To: Gershengorn, Ian (CIV); Brinkmann, Beth (CIV); West, Tony (CIV); Martinez, Brian (CIV); Adiga, Mala; Guerra, Joseph R.; Delery, Stuart F. (ODAG); Cedarbaum, Jonathan; Golder, Chad (ODAG); Monaco, Lisa (ODAG); Katyal, Neal
Cc: Gunn, Currie (SMD); Guerra, Joseph R.
Sent: Sun Mar 21 18:11:12 2010
Subject: Health care litigation meeting

All -

It sounds like we can meet with some of the health care policy team tomorrow at 4 to help us prepare for litigation. It has to be over there. Can folks send me the waves info (full name, SSN, DOB) of everyone that should attend as soon as possible? WH wants it tonight, if possible. I know we won't get everyone's in tonight.

Also, we need to think about the key issues/questions for the agenda. (b) (5) tops on my list, but I know there are others. Tony/Ian/Beth -- can CIV flesh out what we feel like we need to discuss? Jonathan and OLC may have some ideas as well.

Thanks!

Tom

Kagan, Elena

From: Kagan, Elena
Sent: Sunday, March 21, 2010 6:20 PM
To: Katyal, Neal
Subject: Re: Health care litigation meeting

What's your phone number?

From: Katyal, Neal
To: Kagan, Elena
Sent: Sun Mar 21 18:18:45 2010
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Thanks!

Tom

6/24/2010

Kagan, Elena

From: Katyal, Neal
Sent: Sunday, March 21, 2010 6:22 PM
To: Kagan, Elena
Subject: Re: Health care litigation meeting

(b) (6)

From: Kagan, Elena
To: Katyal, Neal
Sent: Sun Mar 21 18:19:46 2010
Subject: Re: Health care litigation meeting

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Thanks!

Tom

6/24/2010

Kagan, Elena

From: Dreeben, Michael R
Sent: Wednesday, March 24, 2010 2:31 PM
To: Kagan, Elena; Kneeder, Edwin S
Subject: Fw; Health care challenges

Elena and Ed,

Re the message below, several USAs volunteered that they hoped that our office would be involved in structuring the government's defense of health care. For all I know, we are involved. Just wanted to pass this on.

Thanks,

Michael

----- Original Message -----
From: Dreeben, Michael R
To: Brinkmann, Beth (CIV)
Sent: Wed Mar 24 14:25:55 2010
Subject: Health care challenges

Hi Beth,

I spoke at the US Attorney's conference today in Tempe AZ and several of them came up to me afterwards to ask how the Department is coordinating responses to the state AG lawsuits. They'd like to know what if anything they should say publicly in response and equally important who should they communicate with about defending these suits. I assume that Civil is going to take the lead in the defense of these cases, no? Is there a task force or lead person to whom I should refer the USAs? If we haven't already done so, it seems to me that we (the Department) should take the initiative to contact the USAs in the districts where states have sued to let them know what the process and lines of responsibility will be. My apologies if this has already been done. If it has, some USAs haven't gotten the word.

Michael

Kagan, Elena

From: Dreeben, Michael R
Sent: Wednesday, March 24, 2010 2:32 PM
To: Kagan, Elena; Knesdler, Edwin S
Subject: Fw: Health care challenges

Beth's response.

----- Original Message -----
From: Brinkmann, Beth (CIV)
To: Dreeben, Michael R
Sent: Wed Mar 24 14:29:59 2010
Subject: RE: Health care challenges

Michael,

Yes, Ton, Ian and I had a nationwide conference call yesterday with the Civil Chiefs. A memo also went out the day before. I am forwarding right after this. Let's discuss if you have ideas about what more to do.

Beth

-----Original Message-----
From: Dreeben, Michael R
Sent: Wednesday, March 24, 2010 2:26 PM
To: Brinkmann, Beth (CIV)
Subject: Health care challenges

Hi Beth,

I spoke at the US Attorney's conference today in Tempe AZ and several of them came up to me afterwards to ask how the Department is coordinating responses to the state AG lawsuits. They'd like to know what if anything they should say publicly in response and equally important who should they communicate with about defending these suits. I assume that Civil is going to take the lead in the defense of these cases, no? Is there a task force or lead person to whom I should refer the USAs? If we haven't already done so, it seems to me that we (the Department) should take the initiative to contact the USAs in the districts where states have sued to let them know what the process and lines of responsibility will be. My apologies if this has already been done. If it has, some USAs haven't gotten the word.

Michael

Kagan, Elena

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To: Kagan, Elena; Kneedler, Edwin S
Subject: Fw: Health care challenges

More.

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To: Dreeben, Michael R
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Michael

Kagan, Elena

From: Kneedler, Edwin S
Sent: Wednesday, March 24, 2010 3:38 PM
To: Dreeben, Michael R; Kagan, Elena
Subject: RE: Health care challenges

Thanks.

-----Original Message-----

From: Dreeben, Michael R
Sent: Wednesday, March 24, 2010 2:32 PM
To: Kagan, Elena; Kneedler, Edwin S
Subject: Fw: Health care challenges

More.

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Michael

Kagan, Elena

From: Katyal, Neal
Sent: Monday, May 17, 2010 1:19 PM
To: Kagan, Elena
Subject: FW: HCR litigation

This is what I told Tracy about health care

-----Original Message-----

From: Katyal, Neal
Sent: Monday, May 17, 2010 1:04 PM
To: Schmalzer, Tracy
Subject: RE: HCR litigation

No, she never has been involved in any of it. I've run it for the Office, and have never discussed the issues with her one bit.

-----Original Message-----

From: Schmalzer, Tracy
Sent: Monday, May 17, 2010 1:03 PM
To: Katyal, Neal
Subject: HCR litigation

Has Elena been involved in any of that to the extent SG office was consulted? Know you've been point but expect I'll get this q.

Kagan, Elena

From: Kagan, Elena
Sent: Monday, May 17, 2010 1:20 PM
To: Katyal, Neal
Cc: Schmalzer, Tracy
Subject: Re: HCR litigation

This needs to be coordinated. Tracy, you should not say anything about this before talking to me.

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From: Katyal, Neal
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(b) (6)

From: Katyal, Neal
Sent: Monday, May 17, 2010 1:24 PM
To: Kagan, Elena
Subject: RE: HCR litigation

Got it. I have been receiving a plethora of inquiries, from Tracy, Ali, Kravis, etc. about a whole variety of things like the below for several days now. Most of them aren't that sensitive so I don't pass them on to you. I am very happy to just stay out of this and have you field these inquiries if you'd like. Just let me know.

Also, I'd like to discuss Witt with you when you have a moment. I'm at (b) (2); (b) (6)

Neal

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Cc: Schmalzer, Tracy
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(b) (6)

From: Schmalzer, Tracy
Sent: Monday, May 17, 2010 2:27 PM
To: Kagan, Elena; Katyal, Neal
Subject: RE: HCR litigation

Sure - no one has asked yet ... Just expecting it.

-----Original Message-----

From: Kagan, Elena
Sent: Monday, May 17, 2010 1:20 PM
To: Katyal, Neal
Cc: Schmalzer, Tracy
Subject: Re: HCR litigation

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(b) (6)

From: Katyal, Neal
Sent: Tuesday, June 15, 2010 12:54 PM
To: Kagan, Elena
Subject: Fw: connecting you two

Fyi.

Also AG just told me that he expects a big story coming out shortly about whether you are recused in health care litigation. I went over the timing and that you have been walled off from Day One.

(b) (5)

Not responsive

(b) (5)

Not responsive

(b) (6)

From: Kagan, Elena
Sent: Tuesday, June 15, 2010 1:33 PM
To: (b) (2); (b) (6)
Subject: Fw: connecting you two

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From: Katyal, Neal
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(b) (5)

Not responsive

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Not responsive

Katyal, Neal (SMO)

From: Katyal, Neal
Sent: Friday, January 08, 2010 10:57 AM
To: Hauck, Brian
Subject: RE: Health Care Defense

Absolutely right on. Let's crush them. I'll speak with Elena and designate someone.

From: Hauck, Brian
Sent: Friday, January 08, 2010 10:54 AM
To: Katyal, Neal
Subject: Health Care Defense

Hi Neal -- Tom wants to put together a group to get thinking about how to defend against inevitable challenges to the health care proposals that are pending, and hoped that OSG could participate. Could you figure out the right person or people for that? More the merrier. He is hoping to meet next week if we can.

Thanks,
Brian

Katyal, Neal (SMO)

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Sent: Friday, January 08, 2010 1:05 PM
To: Hauck, Brian; (b) (6) SMO
Subject: RE: Health Care Defense

Brian, Elena would definitely like OSG to be involved in this set of issues. I will handle this myself, along with an Assistant from my office, (b) (6) and we will bring Elena in as needed.

I am out of town from Jan 12-15 though, so if we could do it the following week it'd be ideal. If so, I can do almost anytime from Jan 19-21, except 10-1115 on the 19th, and 1030-1230 on the 20th, which is when our office is in arguments at the Court.

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From: Katyal, Neal
Sent: Monday, May 17, 2010 1:05 PM
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Hcr is health care reform, right? If so, then my previous answer stands

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From: Schmalter, Tracy
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To: Katyal, Neal
Subject: RE: HCR litigation

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Katyal, Neal (SMO)

From: (b) (6) (SMO)
Sent: Wednesday, January 13, 2010 7:11 PM
To: Katyal, Neal
Subject: RE: Health Care Defense

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(b) (5)

the expectation is that a bill could pass and be signed by mid-February, so we could be in litigation soon after. There is the possibility of both well-financed, sophisticated challenges, as well as numerous pro se and frivolous claims.

Ian G. and Tony West will make a recommendation to Tom on how to structure the process going forward, i.e., should there be weekly meetings, etc. I spoke to Ian afterwards and told him we would like to be involved and to please keep us in the loop.

Please let me know if you have any questions or want to discuss.

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Katyal, Neal (SMO)

From: Katyal, Neal
Sent: Wednesday, January 13, 2010 7:16 PM
To: (b) (6) (SMO)
Subject: Re: Health Care Defense

Great. I appreciate it. I want to make sure our office is heavily involved even in the dct. Also one random q- (b) (5)
(b) (5)

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