Congress of the United States
Washington, DC 20515

February 12, 2013

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Holder:

In a cabinet meeting on January 14, 2014, President Obama informed his advisors that "...we are not just going to be waiting for legislation in order to make sure that we're providing Americans the kind of help they need. I've got a pen and I've got a phone. I can use that pen to sign executive orders and take executive actions and administrative actions..." We are writing today to request an explanation of the constitutional authority on which the administration plans to carry out the president's decree.

Since his administration's first term, President Obama has demonstrated a broad interpretation of his authority through his actions. In May 2013, the Internal Revenue Service (IRS) admitted that agents targeted certain conservative organizations for unwarranted scrutiny when they applied for tax-exempt status prior to the 2012 election. Americans expect that unequal application of the law will be met with accountability and swift action to remedy the wrong to the full extent possible. Instead, the IRS released a proposed rulemaking on December 23, 2013, regarding qualification requirements for tax-exemption that would codify the chilling effect which the targeting has had on the First Amendment activities of citizen groups.

In July 2013, the Obama administration announced its unilateral decision to delay for one year the implementation of the Affordable Care Act's statutory employer mandate, requiring businesses with more than 50 full-time employees to provide health insurance to those employees who work an average of 30 hours per week. The administration has not justified its delay of the employer mandate on the basis that the mandate itself, or its implementation by the date specified in the law, is unconstitutional.

The response of the administration to congressional inquiries into the events surrounding Operation Fast and Furious and the September 2012 attack on the U.S. compound in Benghazi have lacked the transparency necessary to hold those responsible for these tragedies accountable. In the case of Fast and Furious, President Obama invoked executive privilege to avoid turning over relevant documents requested by Congress. The administration also attempted to withhold records pertaining to the Benghazi attack.

Supreme Court jurisprudence has affirmed that a presidential action cannot stand unless it is "authorized by the Constitution or laws of the United States." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Although the Court has held that federal agencies have a degree of discretion when a statute is silent or ambiguous with respect to the specific issue at question, the Court has consistently maintained that "[i]f the intent of Congress is clear, that is the end of

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the matter; for the court, as well as the agency, must give effect to unambiguously expressed intent of Congress." *Chevron U.S.A, Inc. v. Natural Resources Def. Council, Inc.*, 467 U.S. 837 (1984).

Concerning his duty of enforcement under Article II, Section 3, the Constitution orders that the president "shall take Care that the Laws be faithfully executed." In accord with the principle of separation of powers, the Take Care Clause is a presidential obligation designed as part of an intricate web of distinct powers that serve to check the corrupting nature of human government.

The Court has elucidated the constitutional requirements placed on the president in the course of carrying out his duty to the American people under the Take Care Clause. In the faithful execution of the law, the president "is bound to avail himself of every appropriate means not forbidden by law." *United States v. Tingey*, 30 U.S. 115 (1831). Although the Department of Justice (DOJ) Office of Legal Counsel has maintained that the president has the authority to decline to enforce laws on the grounds that they are unconstitutional, historical analysis demonstrates that presidential administrations have widely acknowledged that he cannot neglect to do so for policy reasons.

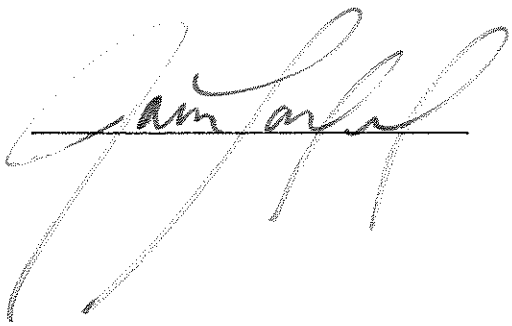
On January 29, 2014, the Senate Judiciary Committee held a hearing regarding oversight of the DOJ. When asked to explain the constitutional basis for President Obama's executive orders, you said that you had not read the relevant legal analysis. You stated "I'll be honest with you, I have not seen—I don't remember looking at or having seen the analysis in some time…"

To overstate the implications for our republic of the current administration's position on the legality of the delay under Article II, Section 3 is impossible. If the clause can be unilaterally disregarded by the president, then the purpose for which it was included in the Constitution is frustrated. The alarming result in this particular case is that the executive branch assumes a power which was heretofore limited to the legislative branch.

The separation of powers exists to prevent tyrannical governance. As you are aware, we do not have a King, nor do we have unchecked power in any single branch of government. Our Founders blessed us instead with the Constitution to preserve our God-given rights and freedoms for future generations. However, without respect for the rule of law, the protections afforded by the Constitution are eroded—an unacceptable consequence for a free people.

Americans demand that their leaders still continue to respect the system of laws under which they are compelled to abide. For this reason, we request a justification of the administration's aforementioned executive actions under Article II, Section 3 of the United States Constitution. Please respond in a timely manner.

Sincerely,



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