

LAMAR S. SMITH, Texas
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona
MARK AMODEI, Nevada

JOHN CONYERS, JR., Michigan
RANKING MEMBER

HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SANCHEZ, California
JARED POLIS, Colorado

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

September 24, 2012

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder:

After repeated inquiries from the Committee on the Judiciary and the Committee on Oversight and Government Reform, the Department of Justice (Department) briefed staff about its involvement in the decision of the City of St. Paul, Minnesota, to withdraw its petition for certiorari in *Magner v. Gallagher*.¹ We were shocked to learn during this briefing and in subsequent document examination that Assistant Attorney General Tom Perez, over the objections of career Justice Department attorneys, enticed the City to drop its lawsuit that Mr. Perez did not want decided by the Supreme Court. This quid pro quo arrangement potentially cost U.S. taxpayers over \$180 million. As such, we write to ask that you produce all documents to the Committees and make Department officials available for transcribed interviews.

On February 10, 2012, the City of St. Paul abruptly abandoned a case before the U.S. Supreme Court that observers said it was poised to win.² Slumlords had sued the city to prevent it from enforcing its housing code on the grounds that it disproportionately decreased the amount of housing available to minorities.³ The City argued that the Fair Housing Act of 1968 (FHA) prohibits only intentional discrimination, not neutral practices like code enforcement that happen to impact particular groups disproportionately.⁴

Mr. Perez fretted that a decision in the City's favor would dry up the massive mortgage lending settlements his Division was obtaining by suing banks for housing discrimination based on disparate effects rather than any proof of intent to discriminate.⁵ Accordingly, as documents reviewed by Committee staff show, he orchestrated a deal to induce the City to drop its Supreme

¹ Committees staff briefing with Mónica Ramirez, U.S. Dep't of Justice (Aug. 16, 2012); see *Magner v. Gallagher*, 132 S. Ct. 1306 (Feb. 14, 2012) (dismissing writ of certiorari).

² See Kevin Diaz, *St. Paul Yanks Housing Fight from High Court*, Star Trib. (St. Paul, Minn.), Feb. 10, 2012.

³ *Id.*

⁴ See Brief for the Petitioners, *Magner v. Gallagher*, No. 10-1032 (U.S. Dec. 22, 2011).

⁵ *Mr. Perez Works the Phones*, Wall St. J., Mar. 27, 2012.

Court challenge. In exchange for St. Paul dropping its case before the high court, the Justice Department declined to intervene in an unrelated False Claims Act (FCA) case that had the potential to return over \$180 million in damages to the U.S. treasury.

Many observers thought the Supreme Court was poised to hold that the FHA does not permit claims based on disparate impact when it agreed, in late 2011, to hear *Magner v. Gallagher*.⁶ However, on the eve of oral argument, St. Paul dropped the case. News accounts attributed the reversal to calls from the Administration and former Senator Walter Mondale who called the decision “courage[ous].”⁷ However, material reviewed by the Committees reveals the decision was in fact the result of a dubious bargain brokered by Mr. Perez in which the Department agreed, over the objections of career attorneys, not to join an unrelated fraud lawsuit against the City in exchange for the City’s dropping its *Magner* appeal.

In early October, 2011, career attorneys from the Department’s Civil Fraud Section recommended that the United States join a lawsuit called *Newell*, brought by a private whistleblower charging that St. Paul violated the Federal FCA.⁸ The suit alleged that the City falsely certified it was using federal funds to create jobs for low income workers of all races, when in fact it was only focused on employing minorities.⁹ The memo authored by career Department attorneys characterized the City’s behavior as a “particularly egregious example” of false certifications. On October 7, 2011, the Department of Housing and Urban Development (HUD) concurred in the recommendation as did the U.S. Attorney’s office in Minnesota.

In the meantime, City attorneys and Mr. Perez began discussing a quid pro quo. The record over the next five months paints the picture of Mr. Perez’s commitment to closing the deal over the objections of career attorneys in the Civil Division who he does not even control. When the head of the Civil Division, Tony West, objected that HUD formally requested intervention, Mr. Perez replied he was “confident [their] position has changed.” Mr. West was not aware that Mr. Perez had already worked out an agreement with HUD.¹⁰

As Mr. Perez labored to force a reversal, emails show career Department attorneys confused and frustrated. They “cannot imagine” what the *Gallagher* case has to do with *Newell*. “Weirdness” they call it. “This is ridiculous . . . have no control . . . Why are higher level people making phone calls.” Notes from a meeting say it “looks like buying off St. Paul.” As the deal closes, St. Paul’s lawyers push for even more. Panicked attorneys email superiors to tell Mr. Perez to “make no more promises.”¹¹

⁶ *Holding Mr. Holder Accountable*, Wall St. J., Apr. 13, 2012.

⁷ Frederick Melo, *How Obama Administration Got St. Paul to Pull Landlord Suit out of Supreme Court*, Pioneer Press (St. Paul, Minn.), Feb. 14, 2012; *Squeezed in St. Paul*, Wall St. J., Feb. 12, 2012.

⁸ See False Claims Act Complaint and Demand for Jury Trial, United States *ex rel.* *Newell v. City of Saint Paul*, Civ. No. 09-1177 (D. Minn. filed May 19, 2009).

⁹ *Id.*

¹⁰ Committees staff review of documents from the Department of Justice (Aug. 20, 2012).

¹¹ Committees staff review of documents from the Department of Justice (Aug. 20, 2012).

Meanwhile, Mr. Perez ordered career attorneys to prepare a revised memo recommending that the Department not intervene in *Newell*. He further instructed them not to discuss the *Magner* case in explaining the reversal. The attorneys objected and included a discussion of *Magner* anyway. On February 9, 2012, Mr. West signed the revised memo. On February 10, 2012, St. Paul requested that the Supreme Court dismiss its appeal.¹²

Reviewing the emails and voice messages, it is clear many of the attorneys involved felt there was an inappropriate quality to the quid pro quo. If the United States had intervened in the *Newell* suit, taxpayers may have recovered as much as \$186 million from the City.¹³ Instead, without the government's intervention, the case was soon dismissed on grounds that would have been inapplicable had the government joined the suit.

At a briefing for Committee staff, Department officials conceded that the quid pro quo is unprecedented.¹⁴ According to the Department officials, Deputy Assistant Attorney General Thomas Perrelli instructed Mr. West that the decision on whether to intervene in *Newell* should be decided "on the merits" alone and not on the City's offer to withdraw its appeal in *Magner*.¹⁵ Apparently those instructions were not followed. It is unclear why the instructions of Mr. West's and Mr. Perez's superior were not followed.

One of the features of this quid pro quo, distinguishing it from a standard settlement or plea deal, was that it obstructed rather than furthered the ends of justice. It was possible only because Mr. Perez knew the disparate impact theory he was using to bring fair lending cases was poised to be overturned by the Supreme Court. So he bargained away a valid case of fraud against American taxpayers in order to shield a questionable legal theory from Supreme Court scrutiny in order to keep on using it.

This quid pro quo raises numerous legal and ethical questions of significant public interest. In order to fully determine why the Department authorized this unusual bargain, we ask that you produce to the Committees all documents and communications reviewed by Committee staff *in camera*. Further, we ask for all ethics and legal opinions related to this quid pro quo arrangement issued by any Department component, including but not limited to the Office of Professional Responsibility, Office of Legal Counsel, Office of the Deputy Attorney General, Civil Rights Division, or the Office of the Attorney General. Please produce these materials to the Committees by September 28, 2012.

Additionally, because evidence reviewed by the Committees references critical conversations of which there is no documentary record, we ask that you make available the following Department officials for transcribed interviews: Tom Perez, Tony West, B. Todd Jones, and Chad A. Blumenfield. Please make these officials available by September 28, 2012. Congress and the public have a right to know the full rationale for the Department's decision to cast aside the careful analysis of career Department attorneys on the merits of a case with tens of

¹² See Kevin Diaz, *St. Paul Yanks Housing Fight from High Court*, Star Trib. (St. Paul, Minn.), Feb. 10, 2012.

¹³ See 31 U.S.C. § 3729(a) (allowing for damages three times the amount of the fraud).

¹⁴ Committees staff briefing with Mónica Ramirez, U.S. Dep't of Justice (Aug. 16, 2012).

¹⁵ *Id.*

The Honorable Eric H. Holder, Jr.
September 24, 2012
Page 4

millions in taxpayer dollars at stake in order to get a litigant to drop a completely unrelated case. We appreciate your assistance with this matter.

Please contact Holt Lackey or Daniel Huff of the House Committee on the Judiciary or David Brewer or Katelyn Christ of the House Committee on Oversight and Government Reform no later than September 28, 2012, to schedule the transcribed interviews. Thank you for your attention to this matter.

Sincerely,



Lamar Smith
Chairman
Committee on the Judiciary



Darrell Issa
Chairman
Committee on Oversight and Government Reform



Patrick McHenry
Chairman
Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs
Committee on Oversight and Government Reform



Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

cc: The Hon. John Conyers, Jr., Ranking Member, Committee on the Judiciary

The Hon. Elijah Cummings, Ranking Member, Committee on Oversight and Government Reform

The Hon. Mike Quigley, Ranking Member, Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs

The Hon. Patrick J. Leahy, Chairman, Committee on the Judiciary, United States Senate