

# United States Senate

WASHINGTON, DC 20510

June 17, 2005

Honorable Alberto Gonzales  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Gonzales:

We are writing to urge you to take immediate action to salvage the Justice Department's landmark litigation against the tobacco industry, *United States of America vs. Philip Morris USA Inc. et al.*. In light of continued, detailed revelations about political interference in the litigation by senior Justice Department officials, we believe it is essential for you to direct Associate Attorney General Robert D. McCallum and other political appointees to recuse themselves from further involvement in this litigation and for you to take whatever other steps are necessary to ensure that there is no political interference in the future in this case. In addition, you should immediately restore authority for this litigation in the hands of the senior career attorneys who have shepherded this case since its inception.

As yesterday's *New York Times* makes clear, the Department's recent decision to reduce its claim for damages from \$130 billion over 25 years to \$10 billion over 5 years was made over the strong objections of the lead attorneys in the litigation. Specifically, these attorneys wrote:

"We do not want politics to be perceived as the underlying motivation, and that is certainly a risk if we make adjustments in our remedies presentation *that are not based on evidence.*" (emphasis added)

According to the article, the lawyers further went on to write that the lower penalty recommendation would weaken the department's position with regards to future settlement discussions, and would "*create an incentive for defendants to engage in future misconduct by making the misconduct profitable.*"

These most recent revelations are only the latest in a recent disturbing series of events in this case. Over the past 2 weeks, we have learned that the decision to seek a lower penalty contradicted the testimony of the government's own expert witnesses; that government attorneys pressured their own witnesses to alter their testimony to favor tobacco companies; and that, just one month ago, Department attorneys argued in favor of the higher penalties that they have asked the court to disregard. Indeed, the Department's own Office of Professional Responsibility has announced that it will conduct an investigation into the troubling pattern of behavior in this case.

This conduct cannot be allowed to continue. The very credibility of the Justice Department is at stake. At best, Mr. McCallum has demonstrated poor leadership and an inability to manage this case effectively. At worst, and even more troubling, he has allowed his political judgment to cloud the Department's six-year effort to ensure that the tobacco industry is held accountable for their decades of efforts to mislead the American people in order to hook them on a deadly habit that kills 400,000 Americans each and every year. For all of these reasons, we urge you to seek his immediate recusal, and put the interests of the American public ahead of the interests of big tobacco.

Sincerely,

Tom Hark

Frank R. Lautenberg

Dick Durbin

Paul H. Ramsey

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