



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JOHN D. CHERRY, JR.
LT. GOVERNOR

March 24, 2010

HAND DELIVERED

The Honorable Michael A. Cox
Attorney General
G. Mennen Williams Building, Seventh Floor
525 West Ottawa Street
Lansing, MI 48909

Dear Attorney General Cox:

I write in response to your March 22, 2010 announcement that the state of “Michigan has joined the State of Florida in a lawsuit challenging the constitutionality of health care legislation passed by the U.S. House of Representatives Sunday night (H.R. 3590).”

Based upon the lawsuit filed in the Pensacola Division of the United States District Court for the Northern District of Florida, it appears that you have intervened in this lawsuit not merely in your capacity as the Attorney General of Michigan, but have represented yourself as speaking for the state of Michigan. If that is the case, this position appears to have been taken by you unilaterally, without consultation with my office and, so far as I can determine, without consultation with the executive branch agencies specifically charged with regulating health insurance and protecting the public health.

Your position, moreover, is directly contrary to the position of this administration. Specifically, it is my view that this long-overdue federal legislation is constitutional and will bring much needed protections to our citizens and businesses. This historic legislation will help more than 100,000 small businesses in Michigan provide health care for their employees this year and offer affordable, quality health care coverage for 1.2 million uninsured Michigan residents. The new law also includes important new consumer protections for our constituents, including a prohibition on the denial of coverage due to a pre-existing condition. Under this new Patient Protection and Affordable Care Act, Michigan citizens will benefit from health care that is more secure and stable and available at a lower cost.

Michigan law does authorize the Attorney General to intervene and appear in litigation “in any court of the state whenever such intervention is necessary in order to protect any right or interest of the state, or of the people of the state.” MCL 14.101. The Attorney General is further authorized by statute to intervene in a matter “when requested by the governor, or either branch of the legislature” or “when in his own judgment the interests of the state require it.” MCL 14.28.

These limited grants of statutory authority do not, however, override the superior constitutional authority vested in the Governor. Under the Michigan Constitution of 1963, the executive power of the state of Michigan is vested solely in the Governor. Mich Const 1963, art 5, § 1. It is the Governor that has the primary responsibility to take care that the laws be faithfully executed. Mich Const 1963, art 5, § 8. The authority of the Governor to initiate litigation on behalf of the state, in contrast to that of the Attorney General, is not merely a matter of statute; it is founded in the Constitution itself. Article 5, § 8 of the Michigan Constitution expressly authorizes the Governor to:

[I]nitiate court proceedings in the name of the state to enforce compliance with any constitutional or legislative mandate or to restrain violations of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its political subdivisions.”

Under our Constitution, the duty of the Governor to enforce the Constitution and the laws of the state of Michigan is explicit and is superior to that of the Attorney General. This view is not only consistent with the position and actions taken by your predecessors, but with your own public statements over the past several years. For example, on March 12, 2003, you told the Detroit Free Press:

And any case where the state of Michigan is being sued or a state agency is being sued, she’s the boss, she’s the client. Unless it is clearly unconstitutional, I am obligated to do what she [Governor Granholm] says.

In a letter to me dated July 12, 2005, you declared that “[a]s our client, your wishes and the policy goals of your executive branch agencies are paramount.”

I certainly do not question your authority and even your obligation when specifically authorized under MCL 14.28 to intervene in litigation in your capacity as Attorney General and to vigorously advocate those positions you believe are most consistent with the constitution and laws of this state. Your statutory authority does not, however, override the superior constitutional authority vested in the

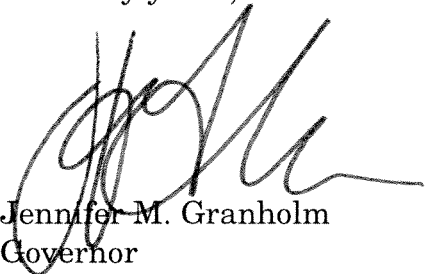
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Governor to determine the position to be taken by the executive branch of state government and certainly does not authorize you, as Attorney General, to unilaterally, and without consultation, to determine and declare the policy position of the state of Michigan.

Accordingly, pursuant to the constitutional authority vested in me as Governor, and the statutory duty imposed upon you by MCL 14.28, I am directing you to intervene in the Florida litigation on behalf of the Governor, the state of Michigan, and the Michigan Department of Community Health to uphold the recently enacted federal health care legislation and to protect and preserve the important protections afforded to our state and its citizens by the new law.

If, in the exercise of your statutory responsibilities as Attorney General, you deem it appropriate to participate in the litigation separately as Attorney General and to take contrary positions to those I have directed here, you are entitled to do—subject, of course, to the canons of ethics governing the practice of law and the rules governing potential conflicts of interest. See, *Attorney General v Michigan Public Service Commission*, 243 Mich App 487; 625 NW2d 16 (2000).

Sincerely yours,



Jennifer M. Granholm
Governor