



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

June 18, 2010

The Honorable Jan Brewer
Governor of Arizona
1700 West Washington
Phoenix, Arizona 85007

Dear Governor Brewer:

Your letter of June 14 asking me to step aside from defending SB1070 and HB2162 was a disappointment given the strong level of cooperation that has been quickly built between your legal team and mine in the few weeks we have been starting the defense of the statutes. It is unfortunate that you have chosen to reject that cooperative effort and seek to score partisan political points by threatening to challenge my authority as Arizona's Attorney General to defend our State in court.

Your letter is particularly troubling given my perfect record in defending the State's immigration laws against all legal challenges. I have always vigorously defended state laws when there is a valid basis for doing so—even in the few instances when I have disagreed with aspects of the policy behind those laws. Attorneys General do not have the option to defend only those laws they like. For these and other reasons, despite my belief that SB1070 and HB2162 do nothing to reduce border crime, I remain fully prepared to mount a vigorous legal defense of those laws.

Your letter reflects a fundamental misunderstanding of Arizona law, and I am concerned that it could set a potentially dangerous and undemocratic precedent. The legal premise for your letter—that Section 8 of HB2162 purportedly authorizes you to direct me or other counsel on how to defend this law — is inaccurate and unwise. First, that provision, like the rest of the bill, has no effect whatsoever until July 29th, well after the legal strategy in this case must be implemented. Second, the authority of the legislature to usurp one of the most fundamental duties of another publicly elected constitutional officer is contrary to our constitutional system of government. Doing so threatens to set a precedent whereby the Legislature could seize and distribute the powers of any constitutional officer it dislikes or disagrees with. Such power grabs, if unchecked, also mean that future Secretaries of State, Treasurers, and State School Superintendents, could have their authority revoked and redistributed at the whim of the legislature.

Despite my grave concerns, I am duty-bound to put my client—the State of Arizona—first. Your threatened legal action to try to remove me from the defense of SB1070 and HB2162 would be costly and is definitely not in the best interest of Arizona. To defend myself, I would be forced to challenge the constitutionality of Section 8 of HB2162, one of the bills whose constitutionality we are both otherwise trying to defend. A lawsuit by you would distract from, and potentially damage, the legal defense of SB1070/HB2162. More fundamentally, it would

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constitute yet another wasteful political lawsuit at taxpayers' expense at a time when our State cannot afford another political feud.

Under the circumstances, the interests of Arizona are best served by my prompt withdrawal from these cases as counsel for the State. I am acting today to avoid a costly and highly disruptive legal showdown despite my belief that I would prevail in such a contest.

Let me be clear: I am taking this action today to avoid an unnecessary conflict that would weaken Arizona's defense of the statutes. My decision is based on the unusual and specific circumstances of this case. Our Constitution and laws call for constitutional officers to be elected by the people. Voters choose those officers they want to exercise the fundamental powers vested in the respective offices. Voters do not expect the legislature to override their votes by simply re-assigning fundamental tasks from one constitutional officer to another, and it would be a mistake for policy makers to try similar efforts in the future.

I am confident that the State can win the lawsuits challenging SB1070. Although by working together our chances would be better, it will now be up to your legal team alone to prevail.

Sincerely,

A handwritten signature in blue ink that reads "Terry Goddard". The signature is written in a cursive style with a long horizontal line extending from the start of the name.

Terry Goddard
Attorney General