



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

BY HAND AND EMAIL DELIVERY

The Honorable Janet T. Mills
6 State House Station
Augusta, ME 04330

February 16, 2017

Dear Attorney General Mills:

I am concerned that if the federal courts grant the plaintiff states in the case of *Washington v. Trump* standing, or if they ultimately purport to limit the President's lawful authority to regulate immigration, the result will be an imbalance in our federalist system of government imperiling the People of the State of Maine. As you know, as Governor, I have a constitutional duty to "take care that the laws be faithfully executed," Article V, Part First, § 12, and all executive power of the State is vested in me as the holder of that office. *Id.*, § 1. The power of the executive has always been understood to include the power to protect public safety. Because I have formed the executive judgment that the President's effort to control immigration is a measured and appropriate action to protect the people of Maine and to enforce the laws, I support the action.

I am aware you have taken it upon yourself to oppose the President and have filed an *amicus curiae* brief in the pending litigation purporting to speak for the State of Maine. I consider this action on your part improper and misleading. I have a responsibility to represent the interests of the people of Maine independently of your actions. This is consistent with my duties and with the Constitutional allocation of powers to three separate branches of government, legislative, executive, and judicial, under the Maine Constitution. Article III, §§ 1 and 2. Because of your action, you have a clear conflict of interest and cannot properly represent the Governor in carrying out these duties. In fact, your frequent refusals to provide the Governor with effective legal representation, and your actions actively opposing the Governor in some cases, raise a serious Constitutional question whether any attorney general, elected by the Legislature, can actively oppose and thwart the exercise of executive power by the duly elected Governor of the State.

Therefore, as a member of my staff has informed you, I intend to retain private counsel for the purpose of filing an *amicus curiae* brief in support of President Trump's argument that the plaintiff states do not have standing to challenge his executive order on immigration. I believe that I must do this in order to fulfill my duty as Governor of the State of Maine.



PHONE: (207) 287-3531 (Voice)

TTY USERS CALL 711
www.maine.gov


PHONE: (207) 287-3531 (Voice)

FAX: (207) 287-1034

Because you have so often directly opposed my Administration's legal positions and the policies that I wish to advance, I believe your office has a conflict of interest and cannot represent my Administration. This is why I choose to retain private counsel. Based on the foregoing, and with a full reservation of rights that are inherent in the constitutional Office of Governor, I request that you approve, in writing, of my retaining private counsel for the purposes of drafting an *amicus curiae* brief to be filed at whatever appellate court next hears the case of *Washington v. Trump*. I further request that your office pay the fees related to my hiring of private counsel in all of these instances, since you have been clearly unwilling to further the public policies undertaken by my Administration or represent me effectively in the conduct of my Constitutional duties.

Due to the exigencies of these matters, I require a response to my request for approval from you by the close of business on Tuesday, February 21, 2017. Please send any inquires related to my request to my office as soon as possible in order that you meet the February 21 deadline. If I do not receive an answer by the close of business February 21, I will consider this a denial of my request and act accordingly.

Sincerely,


Paul R. LePage
Governor

JANET T. MILLS
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

REGIONAL OFFICES:
84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
Portland, Maine 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY., STE 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

February 16, 2017

The Honorable Paul R. LePage
Governor
State of Maine
Office of the Governor
1 State House Station
Augusta, ME 04333-0001

RE: Your Letter Dated February 16, 2017

Dear Governor LePage:

Notwithstanding the misstatements, mischaracterizations and misinformed opinions of your letter of today's date, I am advised that the Federal Department of Justice has requested the Court to hold its consideration of the case before the 9th Circuit Federal Court of Appeals in *Washington v. Trump*, pending issuance of a new executive order. Your request for outside counsel appears to be moot.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Janet T. Mills".

Janet T. Mills
Attorney General

JTM/mao



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

RECEIVED
FEB 21 2017
ATTORNEY GENERAL

BY HAND AND EMAIL DELIVERY

The Honorable Janet T. Mills
Office of the Attorney General
6 State House Station
Augusta, ME 04333

February 21, 2017

Dear Attorney General Mills,

I am in receipt of your letter dated February 16, 2017. I understand that the Ninth Circuit Court of Appeals has issued a stay pending the issuance of a new executive order by President Trump. Because a stay does not terminate litigation, and further does not extinguish my desire for private counsel, my request is not moot. The terms of my letter to you dated February 16, 2017 still stand.

For this reason, and with a full reservation of rights that are inherent in the constitutionally defined Office of Governor, I repeat my request that you authorize me to hire private counsel for the purpose of drafting an *amicus curiae* brief to be filed in the case of *Washington v. Trump*. I further request that your office pay the fees related to my hiring private counsel. I ask that you grant me this authorization by the close of business today, February 21, 2017. If I do not receive an answer by then, I will consider this a denial of the request and act accordingly.

Sincerely,

Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER

COPY

JANET T. MILLS
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES:
84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
Portland, Maine 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY., STE 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

TEL: (207) 626-8300
TTY USERS CALL MAINE RELAY 711

February 21, 2017

The Honorable Paul R. LePage
Governor
State of Maine
Office of the Governor
1 State House Station
Augusta, ME 04333-0001

RE: Request for outside counsel dated February 21, 2017

Dear Governor LePage:

As a result of the stay in the case of *Washington v. Trump*, no briefs are being requested, scheduled or filed in that matter.

I expect that you will want to review the new Executive Order before deciding on next steps in this matter. I will do so as well. I am happy to review your request once the stay is lifted, once it is determined that there is active litigation, and once you decide upon your position regarding the new Executive Order.

Thank you.

Very truly yours,

Janet T. Mills
Attorney General

JTM/mao



Paul R. LePage
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

BY HAND AND EMAIL DELIVERY

The Honorable Janet T. Mills
Office of the Attorney General
6 State House Station
Augusta, ME 04333

March 2, 2017

Dear Attorney General Mills,

You may be aware that on February 27, 2017, the Ninth Circuit denied the motion for a stay that was filed by the Department of Justice. The case is speedily proceeding to an *en banc* panel of that court. I understand that briefs are due around the end of this month. The terms of my letter to you that was dated February 16, 2017 still stand.

For this reason, and with a full reservation of rights that are inherent in the constitutionally defined Office of Governor, I repeat my request that you authorize me to hire private counsel for the purpose of drafting an *amicus curiae* brief to be filed in the case of *Washington v. Trump*. I further request that your office pay the fees related to my hiring private counsel. I ask that you grant me this authorization by the close of business tomorrow, March 3, 2017. As I cannot afford to have more time wasted by your delay, if I do not receive an answer to my requests by then, I will consider this a denial of the request and act accordingly.

Sincerely,

Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER

O'Neal, Melissa

From: Herman, Susan
Sent: Friday, March 03, 2017 6:23 PM
To: Mills, Janet T; Janet Mills (janet.t.mills@gmail.com); Pistner, Linda; 'lpistner@roadrunner.com'
Cc: O'Neal, Melissa
Subject: FW: follow up re request for outside counsel

Fyi.

From: Fenton, Hancock
Sent: Friday, March 03, 2017 6:18 PM
To: Herman, Susan
Subject: Re: follow up re request for outside counsel

Thanks, Susan. Have a great weekend.

Sent from my iPhone using ZixOne

On Mar 3, 2017 at 6:08 PM "Herman, Susan" <Susan.Herman@maine.gov> wrote:

Hi Hank: As we discussed, only the appeal of the preliminary injunction (TRO) ruling (not the request for an *en banc* hearing) is scheduled for further briefing. While we are not aware that further amicus briefs are being filed at this stage, we will get back to you early next week regarding the Governor's request for outside counsel. From our conversation, I understand that the Governor does not wish to simply sign on to an amicus brief that has already been filed (such as the brief filed by the Texas AG) as he has done in other cases and as our Office did in this case at no cost to the State. Thank you and hope you have a nice weekend. Sue

Thanks.

Susan P. Herman

Deputy Attorney General

6 State House Station

Augusta ME 04333-0006

tel: 207 626-8814

fax: 207 287-3145

email: susan.herman@maine.gov



Paul R. LePage
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

BY HAND AND EMAIL DELIVERY

The Honorable Janet T. Mills
Office of the Attorney General
6 State House Station
Augusta, ME 04333

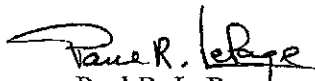
March 7, 2017

Dear Attorney General Mills,

For a series of weeks you have, through delay, prevented me from participating in the *Washington v. Trump* appeal. As you know, the President has issued a new executive order on immigration which I fully support.

I am hereby asking you to not participate in any litigation challenging this order on behalf of the State of Maine. If you challenge the President's order, you will be in direct opposition to my preferred policy that I derive with the benefit of being the Chief Executive and all the attendant authority the people have placed in that office.

Sincerely,


Paul R. LePage
Governor



100% POST CONSUMER WASTE PAPER

JANET T. MILLS
ATTORNEY GENERAL

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES:
84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
Portland, Maine 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY., STE 1
CARBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

March 8, 2017

The Honorable Paul R. LePage
Governor
Office of the Governor
1 State House Station
Augusta, ME 04333-0001

RE: Your letter of March 7, 2017

Dear Governor LePage:

I am sorry you feel that my Office has prevented you from participating in the *State of Washington v. Trump* appeal.

The appeal of the stay in that case was decided on February 9th. On February 16th, the day that you first requested in writing authorization for outside counsel to file an amicus brief, the U.S. Court of Appeals for the Ninth Circuit issued a stay of *en banc* proceedings in *State of Washington v. Trump* until further notice, based on the request of the attorneys for the United States to stay the proceedings because of the imminent issuance of a new executive order.

With respect to my participation in other litigation, I will continue to weigh each case and each legal matter in the context of the rights and responsibilities of the Attorney General as elucidated in *Superintendent of Insurance v. Attorney General*, 558 A.2d 1197 (1989); *Lund ex rel. Wilbur v. Pratt*, 308 A.2d 554, 558 (Me. 1973).

Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Janet T. Mills".

Janet T. Mills
Attorney General

JTM/mao



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

BY EMAIL AND HAND DELIVERY

The Honorable Janet T. Mills
6 State House Station
Augusta, ME 04333

March 14, 2017

Dear Attorney General Mills:

In my official capacity as Governor and chief executive of the State of Maine, I have reviewed the Executive Order issued by President Trump March 6, 2017, temporarily suspending entry into the United States of certain classes of aliens. Executive Order 13780, (the "Order"). In the exercise of my duties as Governor, I have considered the effects of this Order on the citizens of the State of Maine and find it to be beneficial to the State and its citizens. I find this, among other reasons, because until now the federal government's administration of immigration into the United States (over which the State has no control) has resulted in significant societal burdens and economic harms to our State and its citizens, including but not limited to the following impacts:

- There have been 220 refugees resettled in Maine since October 1, 2016 alone, including 131 from terrorist havens named in the President's order;
- In State Fiscal Year 2016, MaineCare spent \$40,655,974 on health care for non-citizens;
- In the same time, Maine's General Fund spent \$6,754,176 on food stamp and cash benefits for non-citizens.

Though the federal government has seen fit to impose these burdens on our State, it has done so without the financial support that would be commensurate with such burdens. For these reasons I find that the President's Order begins a process of reviewing and controlling immigration at the federal level that will benefit the people of Maine and that it is in the interest of the State of Maine to support the Order.



PRINTED ON RECYCLED PAPER

TTY USERS CALL 711
www.maine.gov

I am also aware that the State of Hawai'i has commenced litigation in the United States District Court for the District of Hawai'i seeking to enjoin and invalidate the Order. This litigation will no doubt result in an appeal before the United States Appeals Court for the 9th Circuit (the "litigation"). I have determined that it is in the interest of the State of Maine for the State of Maine under my direction to appear in that litigation in support of the Order. In the exercise of my constitutional executive authority I wish to take action on this determination forthwith as the litigation likely will move through the courts quickly.

As you know, by statute the Attorney General has a duty to appear for the State in court proceedings when requested by the Governor.¹ Therefore I hereby request that you personally appear for me and the State of Maine in the litigation, submit a brief as *amicus curiae* for the State of Maine supporting the Order, and consult with me with respect to the litigation including permitting me to review and comment on the brief and any other pleadings filed in the litigation. If you do not appear personally I request that you inform of the attorney or attorneys in your office who will do so and that I be allowed a reasonable opportunity to approve of their representation so as to assure the State's interests are protected.

My requests in this regard are influenced by the fact that I have reviewed the *amicus* brief you joined in the *Washington v. Trump* litigation without my concurrence adopting a position challenging the validity of the President's previous Executive Order on this matter. I regard your action in that case as in excess of your lawful authority and contrary to your duties to the State of Maine. In addition, as you know, your position in that litigation contradicted my own position. You effectively prevented me from appearing in that earlier litigation to exercise my due authority as the State's chief executive. As Governor and as, in effect, your client, I am entitled to have confidence that you or your designee will provide effective representation to me in the Hawai'i

¹ 5 MRS § 191(3) **Representation by Attorney General, deputies, assistants and staff attorneys.** The Attorney General or a deputy, assistant or staff attorney shall appear for the State * * * in all the courts of the State and in those actions and proceedings before any other tribunal when requested by the Governor * * *. All such actions and proceedings must be prosecuted or defended by the Attorney General or under the Attorney General's direction. * * *

B. All legal services required by those officers, boards and commissions in matters relating to their official duties must be rendered by the Attorney General or under the Attorney General's direction. The officers or agencies of the State may not act at the expense of the State as counsel, nor employ private counsel except upon prior written approval of the Attorney General. * * *

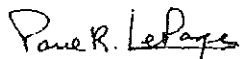
litigation consistent with my findings and the discharge of my office. I consider that your duty by statute and your ethical duty under the Rules of Professional Conduct.²

If you decline to represent me in the discharge of my constitutional authority in this litigation in a manner consistent with your duties and my rightful authority, then alternatively I respectfully request that you immediately issue written approval for me to engage private counsel to represent me in the litigation with the cost thereof to be borne by your office. I need this approval without delay and ask for your reply no later than the close of business today, March 14, 2017.

If you fail or refuse either to represent me as requested, or to approve my obtaining representation through private counsel as requested in the alternative, you will effectively prevent me from discharging my constitutional duties and authority with respect to the litigation.

I look forward to your response, thank you.

Sincerely,



Paul R. LePage
Governor

² "A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7." ME. R. PROF. CONDUCT 1.11, Comment [1]. See also *id.* Rule 1.1 COMPETENCE, Rule 1.3 DILIGENCE, and Rule 1.4 COMMUNICATION.

5 MRS § 191(3) **Representation by Attorney General, deputies, assistants and staff attorneys.** The Attorney General or a deputy, assistant or staff attorney *shall appear* for the State * * * in all the courts of the State and in those actions and proceedings before any other tribunal when requested by the Governor * * *. All such actions and proceedings must be prosecuted or defended by the Attorney General or under the Attorney General's direction. * * *

B. All legal services required by those officers, boards and commissions in matters relating to their official duties must be rendered by the Attorney General or under the Attorney General's direction. The officers or agencies of the State may not act at the expense of the State as counsel, nor employ private counsel except upon prior written approval of the Attorney General. In all instances where the Legislature has authorized an office or an agency of the State to employ private counsel, the Attorney General's written approval is required as a condition precedent to the employment.



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

BY HAND AND EMAIL DELIVERY

Ms. Phyllis Gardiner Esq.
6 State House Station
Augusta, ME 04333

March 17, 2017

Dear Assistant Attorney General Gardiner,

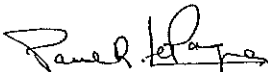
I have received your letter dated March 15, 2017. It is not responsive to my request to the Attorney General, as I asked under 5 M.R.S. § 191(3) for her (or an acceptable designate) to represent me in my executive capacity. You do not address that request except by silence. Unless you inform me otherwise, then, I must conclude that the Attorney General refuses to perform her duties as requested.

As to the remainder of your letter, the Attorney General has no authority to dictate the terms of engagement of outside counsel when she refuses to represent me, but only the authority to give or refuse written approval. Therefore, unless you inform me promptly to the contrary, I will take your letter as giving the Attorney General's approval without any of the limitations or conditions purportedly imposed by your letter.

As nothing in the statute gives the Attorney General any authority to do so, I expect that I will not see her name signing onto any pleading or brief in the pending litigation with respect to the Executive Order that contradicts the position in support of that order I shall be taking on behalf of the State as Governor.

Further, I understand that there is historical precedent for the hiring of outside counsel to be paid from the budget of the Office of the Attorney General. Due to this precedent, I fully expect your office to pay the fees related to my hiring outside counsel.

Sincerely,


Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER

TTY USERS CALL 711
www.maine.gov

PHONE: (207) 287-3531 (Voice)

FAX: (207) 287-1034

JANET T. MILLS
ATTORNEY GENERAL



REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
PORTLAND, MAINE 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

March 20, 2017

BY EMAIL AND HAND DELIVERY

Honorable Paul R. LePage
Office of the Governor
1 State House Station
Augusta, ME 04333-0001

RE: Request for Outside Counsel in *State of Hawaii v. Trump*

Dear Governor LePage:

This is in response to your letter of March 17, 2017, in which you raise several issues relating to the authorization to hire outside counsel to represent you as *amicus curiae* in the matter of *Hawaii v. Trump*, as set forth in my letter of March 15, 2017, addressed to Hancock Fenton as your deputy general counsel. I will address each issue in the order presented.

First, the Attorney General has the authority and discretion to decline to represent the Executive Branch in litigation, based on her judgment as to what is in the best interest of the people of Maine. See *Opinion of the Justices*, 2015 ME 27, ¶ 22, 123 A.2d 494, and *Superintendent of Insurance v. Attorney General*, 558 A.2d 1197, 1199-1200 (Me. 1989). By authorizing outside counsel in this matter, the Attorney General is not refusing to perform any legal duty but is instead exercising her authority and discretion as provided by law. *Id.*

Second, our office is neither dictating nor attempting to dictate the terms of your engagement of outside counsel. My letter of March 15 to Mr. Fenton authorized your office to join another entity's amicus brief (at no cost to the taxpayers of Maine) or to retain private counsel to file a separate amicus brief on your behalf in *Hawaii v. Trump*. Consistent with the guidance provided by the Justices of the Maine Supreme Judicial Court in 2015, we have not imposed any cap on the hourly rate or total amount to be paid in fees to outside counsel, nor have we suggested that our office review any invoices submitted for payment. See *Opinion of the Justices*, 2015 ME 27, ¶ 36. Under the circumstances, such tasks should properly be performed by licensed attorneys in the Office of the Governor, not the Office of the Attorney General. We have not imposed any constraints on your choice of outside counsel, other than to state the obvious that the person or firm should be properly licensed and insured, and admitted to practice before the U.S. District Court in Hawaii.

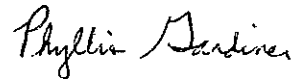
Honorable Paul R. LePage
March 20, 2017
Page 2

Third, although this office is not currently participating as an amicus in *Hawaii v. Trump*, the Attorney General retains authority to take a position in that case that is contrary to the position you wish to take, if she determines that to be in the best interest of the people of Maine. See *Opinion of the Justices*, 2015 ME 27, ¶ 14; *Superintendent of Ins.*, 558 A.2d at 1204.

Finally, you suggest that there is “historical precedent for the hiring of outside counsel to be paid from the budget of the Office of the Attorney General.” We are not aware of any such precedent regarding payment of fees for outside counsel to represent the Executive Branch, nor are we aware of any statutory basis for requiring payment of counsel fees from this office’s legislative appropriation. Upon receipt of your letter on Friday afternoon, I asked Mr. Fenton if he could please provide specifics underlying the reference to “historical precedent.” He has yet to respond.

Once again, you have the Attorney General’s authorization to engage outside counsel to represent you as an amicus in the matter of *Hawaii v. Trump*, as indicated in my March 15 letter, consistent with 5 M.R.S. § 191(3) and the Court’s guidance cited above. If you have additional questions or need further clarification, please let us know. Thank you.

Sincerely,



Phyllis Gardiner
Assistant Attorney General