

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



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March 19, 2010

The Honorable Nancy Pelosi  
Speaker of the United States House of Representatives  
Office of the Speaker H-232  
U.S. Capitol  
Washington, D.C. 20515

Dear Speaker Pelosi:

I am writing to express my grave concerns about reports that you fully intend to use a "deem and pass" procedure to enact the Patient Protection and Affordable Care Act (H.R. 3590), which passed in the United States Senate on December 24, 2009. The use of this maneuver will invite a constitutional challenge, and we will work with Virginia and any other state to make such a challenge.

The so-called "deem and pass" procedure - which purports to "deem" H.R. 3590 to have passed the House after a vote on a second bill - would be a shocking abuse of Congressional rules to avoid a recorded vote, which is one of the basic principles of our democracy.

In fact, Article I, Section 7 of the United States Constitution requires that a bill of identical language pass both the House and the Senate before being presented to the President. As explained by Justice Stevens in his opinion for the Court in *Clinton v. City of New York*, 524 U.S. 417, 448 (1998), the Constitution requires three steps that must be taken before a bill becomes a law: "(1) a bill containing its exact text was approved by a majority of the Members of the House of Representatives; (2) the Senate approved precisely the same text; and (3) that text was signed into law by the President [or his veto is overridden]." The "deem and pass" procedure fails to meet Justice Stevens' three-part test because it would not provide that a "majority of the Members of the House of Representatives" approve the Senate's version of H.R. 3590.

Bypassing a recorded vote on the merits of this legislation would violate a sacred standard set at our Nation's founding that our leaders must be accountable to the People. Such accountability is assured by making the votes of our elected leaders a part of the public record. Use of this parliamentary trick would severely damage the public's faith in the institution where their voices are supposed to be clearly heard and accounted for.

Honorable Nancy Pelosi  
Page 2  
March 19, 2010

Additionally, I would like to take the opportunity to remind you of President Obama's statement this week regarding Sunshine Week, a time in which Americans both celebrate and fight for their right to an open and transparent government:

"As Sunshine Week begins, I want to applaud everyone who has worked to increase transparency in government and recommit my administration to be the most open and transparent ever, an effort that will strengthen our democracy and ensure the public's trust in their government. We came to Washington to change the way business was done, and part of that was making ourselves accountable to the American people by opening up our government."

Respectfully, I strongly urge you to drop any plans to use this procedure. If you choose to seek to enact this deeply controversial legislation, you must proceed in a manner that comports with the Constitution that you have sworn to uphold, in which every citizen's representative in Congress openly casts a vote. Otherwise, Michigan will work closely with Virginia and any other state that steps forward to defend the U.S. Constitution.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Cox", written in a cursive style.

MIKE COX  
Michigan Attorney General

c: Michigan Congressional Delegation