

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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June 29, 2020

Hon. Steve Scalise
Hon. Blaine Luetkemeyer
Hon. Mark E, Green, MD
Hon. Tim Walberg
Hon. John Moolenaar
Hon. Paul Mitchell

Hon. Jim Jordan
Hon. Jackie Walorski
Hon. Fred Upton
Hon. Bill Huizenga
Hon. Jack Bergman

Select Subcommittee on the Coronavirus Crisis
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Ranking Member Scalise and Honorable Representatives,

I am in receipt of your correspondence dated June 25, 2020. Thank you for contacting my office and providing me with an opportunity to address your subcommittee about this important matter.

First, as to your request that my Department investigate Governor Whitmer's Executive Order relating to nursing homes,¹ I have recently learned that you have sent similar requests only to the Attorneys General in New York, New Jersey, California, and Pennsylvania. While I appreciate and share your concern for the impact of COVID-19 on the health and safety of our elderly population, I am curious as to why similar requests have not been sent to states with Republican Governors.

¹ The context of the subcommittee's letter is also troubling. You begin by saying that you "understand that [my] investigation will not cover the Governor's April 15, 2020 order...." You then ask that my "current review" include certain topics and that I produce to the subcommittee all information and documents related to my investigation. I am surprised that this subcommittee would send such a request to my office without first verifying the things that form the basis for your letter (for e.g. whether my office is in fact investigating and the scope of our alleged investigation).

I am deeply troubled that your concern for the elderly does not extend to *all* the nation's elderly. Genuine concern about the impact of COVID-19 on vulnerable communities, like our elderly population, should compel you to review *all* states' policies to determine if and how they impacted medical outcomes within those communities, not just those that are led by Democratic Governors.

In fact, your letter to me cites and relies on guidance from the Centers for Medicare & Medicaid Services (CMS). But, according to data posted by CMS, Michigan had fewer numbers – or substantially similar numbers – of total resident COVID-19 cases as Louisiana, Ohio, Georgia, and Texas.² But, this subcommittee has sent no inquiry – and called for no investigation – in those states. Moreover, according to CMS data, Michigan had fewer resident deaths than, for example, Illinois, Massachusetts and Connecticut; but, again, I'm aware of no congressional request for investigation made to those Attorneys General.

Protecting the elderly is a cause worthy of our full attention. In fact, one of my most important and successful initiatives since taking office is the Elder Abuse Task Force that I launched in partnership with the Michigan Supreme Court. More than 73,000 older adults in Michigan are victims of elder exploitation and abuse. We have reached across the political aisle to tackle this problem in Michigan and have undoubtedly been more successful because of it. If the goal is to achieve meaningful outcomes for the elderly and other vulnerable communities with respect to COVID-19, I applaud that endeavor and suggest this same bipartisan approach. But sending a congressional inquiry only to one's political opponents appears designed to produce salacious headlines rather than measurable results.

Moreover, there are many worrisome aspects of the federal government's response to COVID-19 that have severely impacted states' ability to contend with this public health emergency, including in nursing homes, and that would greatly benefit from this subcommittee's review. For example, lack of assistance from the federal government in obtaining sufficient testing supplies for states; the early depletion of critical supplies from the Strategic National Stockpile and the difficulty faced by states in obtaining life-saving equipment like masks, gowns, and ventilators; and the lack of a consistent and cohesive federal message to combat the virus. As you know, in many respects the states are unable to look behind the curtain of the

² See <https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg> (submitted data as of week ending 6/14/2020).

operations of the federal government and determine how and why these problems occurred. But this subcommittee can do just that. Rather than improperly attempting to insert itself into one aspect of the response of Democratic Governors to an ongoing public health emergency, this subcommittee could help save countless lives of those who are sure to be touched by COVID-19 in the future by investigating and correcting the federal government's hobbled response to a pandemic that has already claimed more than 100,000 of our citizens.

Since stepping into office in 2019, I have taken my solemn duties and responsibilities as Attorney General very seriously. I have not hesitated to launch investigations into the actions of those who belong to my own political party when circumstances warrant it. But, I have not – and will not – launch a criminal investigation simply *because of* someone's political affiliation. As an elected official, I hold a solemn position of trust with those on whose behalf I act, and it would be a violation of that trust to launch a criminal investigation for political purposes. Rather, the power of my office must be used without fear or favor and motivated only by the pursuit of justice. Moreover, the people of Michigan deserve elected officials committed to finding solutions to help ease the burden that families in this country will certainly face in the months ahead. Genuine solutions must not—cannot—be a partisan pursuit. American lives depend on it.

Accordingly, if and when an investigation by my office is necessary to protect Michiganders, I will act irrespective of political party or congressional decree. You can be assured that the health, safety, and welfare of the people of the State of Michigan is my top priority.

Sincerely,



Dana Nessel
Attorney General

cc: Hon. James E. Clyburn, Chairman
Select Subcommittee on the Coronavirus Crisis

Hon. Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform