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AG Six Completes Legal Review Of Health Care Bill

The following statement is by Attorney General Steve Six:

The attorney general's office has completed its legal review of the Patient Protection and Affordable Care Act. Based on that extensive analysis, I do not believe that Kansas can successfully challenge the law. Our review did not reveal any constitutional defects, and thus it would not be legally or fiscally responsible to pursue this litigation.

There can be no question that the new federal law is the subject of vigorous policy debate across the country; however, my decision is based strictly on the law, not politics. From the beginning of my tenure as attorney general, my priority has been to remove politics from the office and act as an independent attorney general. I will continue to make decisions based on the law, not in response to political pressure.

Legal precedent demonstrates that throughout our nation's history, the U.S. Supreme Court has been reluctant to overturn legislative acts unless a clear and direct constitutional violation is shown. Article I, section 8 of the U.S. Constitution expressly gives Congress the power to legislate on matters affecting interstate commerce. The Supremacy Clause makes these laws supreme, regardless of any state laws or state constitutional provisions to the contrary. No serious argument may be advanced that the healthcare industry and all those who participate in it – including doctors, nurses, patients and insurers – are not part of interstate commerce.

Arguments have been advanced that the law's requirement that all individuals purchase health insurance is unconstitutional. Under current U. S. Supreme Court precedent such an argument is highly unlikely to succeed. Further, the only legal case addressing the constitutionality of mandatory health care insurance involved the law that required all Massachusetts residents to purchase health insurance. Constitutional challenges were brought to the Massachusetts health care plan and rejected in court. *Fountas v. Commissioner of the Department of Revenue*, 2010 Mass. App. Unpub. Lexis 223 (March 5, 2010).

The argument that the Act's expansion of eligibility for Medicaid violates states' rights by forcing Kansas to spend additional money to insure more Kansans is a policy argument, not a constitutional argument. Medicaid is a joint federal-state program which Kansas participates in voluntarily and where Kansas funds the program with approximately 60% federal dollars. The U.S. Supreme Court for nearly a century has repeatedly reaffirmed the power of Congress to impose requirements on the states as a condition of the receipt of federal funds. Medicaid is a classic example of the kind of federal spending programs the Supreme Court has consistently upheld.

The Kansas Attorney General's office is doing more with fewer and fewer state general fund dollars. In these challenging economic times, financial fraud directed at seniors is increasing and our lawyers are working to stop it. My office has launched new initiatives cracking down on Medicaid fraud, returning record amounts of money to our state. Our lawyers are working to protect Kansas' natural resources and spending more and more time on a complex and expensive lawsuit against the States of Colorado and Nebraska to protect Kansas' water rights in the Republican River Basin.

I do not believe it is in the best interest of Kansas to divert resources from these vital legal matters to pursue a lawsuit driven by political differences and policy debates, a lawsuit that I believe has little to no chance of success and will squander scarce resources in a time of severe budget shortfalls. Additionally, Kansas has no separate legal interest apart from the states that have filed the lawsuit and any decision by the U.S. Supreme Court will apply equally to our state.

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