



August 31, 2015

Dear Governor,

In coordination with Russia, China, France, Germany, and the United Kingdom, President Obama has proposed an executive agreement with Iran in which Iran agrees to gradually limit its nuclear program in exchange for the lifting of economic sanctions against its regime. The deal welcomes Iran as a participant in the world community conditioned only on marginal changes to its nuclear program, allowing Iran to maintain technology that would lead to a nuclear weapon, and allowing Iran to continue its human rights abuses, sponsoring of terrorism, imprisoning of American hostages, and threats to close American allies, including Israel.

President Obama chose to pursue this major international accord as an executive agreement, rather than as a treaty, in order to circumvent the Constitution's requirement of two-thirds approval by the U.S. Senate for enactment. U.S. CONST. Art. II, § 2. However, because the Constitution clearly contemplates that such agreements, fundamentally reordering the relations between the United States and a foreign country, shall be concluded as treaties, the Iran agreement does not constitute the "Supreme Law of the Land," U.S. CONST. Art. VI, binding upon the States. Indeed, in *Medellin v. Texas*, the Supreme Court reaffirmed that even treaties are not binding upon the States unless they are self-executing or are accompanied by implementing legislation enacted by Congress. 552 U.S. 491, 504-06 (2008).

Thus, President Obama's executive agreement, which is inferior in legal force to a treaty, and which lacks the congressional approval required by the Constitution, cannot bind the States. The consequence of President Obama's decision to skirt the People's representatives in Congress is that the People, through the States, may come to their own decisions regarding sanctions on Iran.

The authority of the States in this regard is recognized not only in legal precedents, but also in the agreement with Iran itself—which requires only that the federal government "actively encourage" States to implement the deal, by Secretary of State Kerry, who confirmed in his July 28, 2015, testimony before the House Foreign Affairs Committee that the deal does not affect the States' ability to impose sanctions on Iran,<sup>1</sup> and by Congress. Congress in fact explicitly authorized state-

---

<sup>1</sup> Rep. Ron DeSantis (R-FL)87: Because this is not going to be ratified as a treaty, there are a lot of states—and Florida, particularly—where state legislatures have enacted sanctions against Iran in various capacities. Do you acknowledge that

level sanctions against in the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, finding “that the United States should support the decision of any State or local government that for moral, prudential, or reputational reasons divests from, or prohibits the investment of assets of the State or local government in, a person that engages in investment activities in the energy sector of Iran,” and specifying that sanctions imposed by States in accordance with the Act would not be preempted by any federal law or regulation.

The States certainly have numerous moral and reputational reasons to prohibit investment of public assets into companies doing business with Iran and other countries that sponsor terrorism. Even if it is true that Iran has relinquished its ambitions for a nuclear weapon and that its deal with President Obama will prevent such an acquisition—both of which are highly questionable—Iran engages in a range of other reprehensible activities.

First, Iran engages in some of the world’s most severe human rights abuses, oppressing women, and persecuting people of nearly all faiths, including Baha’is, Jews, and Christians.

Second, Iran continues to be the world’s foremost state sponsor of terrorism, providing weapons to terrorists, functioning as the central bank for terror, and sheltering members of the world’s most notorious terrorist groups.

Third, Iran continues to hold American hostages, including a journalist, a Marine, and a Christian pastor jailed for sharing his faith. A fourth hostage holds the unfortunate record of being the longest-held hostage in American history.

Finally, the controlling regime in Iran remains dedicated to the total destruction of our ally Israel and the complete genocide of its people. Regardless of political affiliation, people from all States can agree that none of these stances should be tolerated, much less supported by funds flowing through and from the States.

In addition to those moral and reputational reasons, there are prudential reasons to avoid investment of public funds into Iran and other countries that sponsor terrorism. As stewards of public funds, including pension funds, the inherent risks of investment into a country like Iran counsel strongly against any state policy of investing public funds in such a manner as to assume those risks. If there is one thing of which we can be certain, it is that the current situation in Iran is sure to remain *uncertain*. Given the fluidity of the current political climate, and the potential for this deal to either unravel or be disapproved by Congress, prudence counsels in favor of investing public funds in a manner that avoids these obvious risks.

Because of these moral, reputational, and prudential reasons—and pursuant to their sovereign and congressionally recognized rights to refuse to do business with an enterprise engaged in terror,

---

this deal will not affect states’ ability to do it—since it’s not going to be approved as a treaty, it’s not going to be considered the supreme law of the land, it’s going to be more of an executive-to-executive agreement?

Kerry: That’s accurate, but we would urge those states, if Iran is fully complying with this agreement, we will take steps to urge them not to interfere with that.

oppression, and international belligerence—dozens of States, from New York to Florida and Texas to California, currently have in place state-level sanctions against Iran. These sanctions were bipartisan accomplishments, and were passed as expressions of those States' disapproval of a regime that holds American citizens in darkened cells and American allies under threat of annihilation.

As the officials selected by your people to enforce the laws of your States and to ensure good stewardship of public funds, we encourage you to strictly and aggressively enforce any existing sanctions imposed by your State against Iran. If your State has not yet imposed sanctions, or if your existing sanctions could be strengthened, we urge you to take two actions: (1) have your executive branch take all appropriate measures to ensure that State agencies are not engaged in any business dealings connected to Iran, and (2) work with your legislative branch to enact strong, statutory sanctions at the earliest possible date. Attached you will find a working draft bill/executive order imposing robust sanctions on Iran, which can be appropriately revised to suit your State's particular situation.

If our offices can be of any assistance to you as you take these important actions, do not hesitate to ask.

Sincerely,

Handwritten signature of E. Scott Pruitt in black ink.

E. Scott Pruitt  
Oklahoma Attorney General

Handwritten signature of Bill Schuette in black ink.

Bill Schuette  
Michigan Attorney General

Enclosure