

March 9, 2006

Hon. John W. Suthers, Esq.
Colorado Attorney General
1525 Sherman St., 5th Floor
Denver, Colorado 80203

Dear Mr. Suthers:

In your campaign literature, you proclaim that the “single most important job of the Attorney General is **protecting Colorado’s families** from crime.” Well, Sir, I am a victim of a crime, and have every right to ask why your office has been missing in action.

While no one seriously questions the need to prosecute identity thieves, there can be no crime more pernicious than those committed by public officials under color of law. As a federal appellate judge observed:

...those who receive society's commission to go forth and capture transgressors may not themselves transgress. A free society can exist only to the extent that those charged with enforcing the law respect it themselves. There is no crueler tyranny than that which is exercised under cover of law, and with the colors of justice.”¹

It is also established beyond cavil that it “violates the Fourteenth Amendment ... to subject [a person’s] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.” *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). Similarly, the proposition that a Colorado court must hear a federal civil rights claim brought before it is etched in Constitutional stone. *Claflin v. Houseman*, 93 U.S. 130 (1876). Thus, it is beyond question that my rights as an American citizen have been violated, and that your office has aided and abetted the commission of a federal crime.

When a government official acts in willful defiance of his or her obligations under law, it is no mere crime ... **it is “treason to the Constitution.”**² “No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.”³ And by continuing to defend the Justices’ lawless actions, you have violated your obligation to represent the **people** of the state of Colorado.⁴ But more to the point, you have also violated your oath to support and defend the Constitution.

¹ *United States v. Janotti*, 673 F.2d 578, 614 (3d Cir. 1982) (Aldisert, J., dissenting) (quoting Montesquieu, *De l’Esprit des Lois* (1748)).

² *Cohens v. Virginia*, 16 U.S. 264, 404 (1821) (emphasis added).

³ *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

⁴ *People ex rel Salazar v. Davidson*, 79 P.3d 1221, 122_ (Colo. 2003) (Colo. AG has “no ethical duty” to defend the constitutionality of an act of the Legislature; the position was advanced by 42 state attorneys general as amici.)

On the campaign trail, you publicly proclaimed your commitment to ‘the rule of law.’ But our public officials must faithfully follow the law -- even when it is inconvenient! -- or there *is* no law. Justice Brandeis minced no words:

Decency, security and liberty alike demand that government officials be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself.⁵

Accordingly, I ask that you demonstrate your commitment to the rule of law, by taking the following actions:

1. File a paper with the United States Supreme Court advising them that you wish to withdraw the waiver as submitted, and that you wish to withdraw representation on the grounds that the Justices’ actions cannot possibly be defended under law, and that your office will be entering the case on the plaintiff’s side (which will increase the chances of the matter being heard by the Court by at least a hundred-fold);
2. Initiate a criminal prosecution of the Justices under Colorado law (as the statute of limitations on some criminal acts will expire within weeks, time is of the essence), and
3. Refer this matter for immediate prosecution by the United States Attorney (as you headed the local office, your recommendation would carry far more weight than a mere citizen complaint could ever hope to have).

Although I am an active Republican, this goes far beyond the realm of partisan politics. Every citizen has the right to expect that his rights will be protected, and that the state Attorney General can be counted on to be his champion.

Thank you for your immediate attention to this matter.

Kind regards,

Kenneth L. Smith
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⁵ *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).