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AG MADIGAN SEEKS TO BLOCK ILLEGAL APPOINTMENT OF MATTHEW WHITAKER AS ACTING ATTORNEY GENERAL
Madigan & 14 Other Attorneys General Join Amicus Brief to Protect Legitimacy of Department of Justice & Prevent Whitaker from Serving as U.S. Attorney General

Chicago — Attorney General Lisa Madigan, along with 14 other attorneys general, today challenged the appointment of Matthew Whitaker as Acting Attorney General of the United States. In [an amicus brief filed in a Maryland case](#), the amici states argue that the appointment of Whitaker, previously the Chief of Staff to the Attorney General, to serve as the nation's top legal officer violates laws clearly indicating that the Chief Deputy Attorney General takes over when an Attorney General steps down or is removed prior to Senate confirmation of a replacement.

"The law is clear on the succession of the U.S. Attorney General and Matthew Whitaker is not the appropriate replacement," Madigan said. "He should not be given the authority of the U.S. Attorney General in this case or any others."

The amicus brief, filed Monday with the United States District Court for the District of Maryland, supports Maryland's motion for a preliminary injunction in a lawsuit regarding the Affordable Care Act. The motion seeks to stop Whitaker from exercising the authority of the U.S. Attorney General and substitute Deputy Attorney General Rod Rosenstein as a defendant in an ongoing lawsuit between Maryland and the federal government. According to the brief, Whitaker's appointment is illegal, ignores long-established vacancy succession laws and is in violation of Congress' clear designation of the Deputy Attorney General as the Acting Attorney General.

The brief argues for a prompt resolution of the legal uncertainty surrounding Whitaker's appointment because it leaves U.S. Department of Justice (DOJ) decisions open to legal challenge. This could cause the amici states significant harm because the states rely on the legitimacy of DOJ actions. Illinois and the other states joining the brief have a compelling interest in DOJ's ability to work effectively and consistently under the rule of law.

In the brief, Madigan and the other attorneys general note that Congress has protected the Senate's confirmation power by specifying that in the event of a vacancy in the U.S. Attorney General's office, the Senate-confirmed Deputy Attorney General, if available, temporarily assumes the position until a new appointee is confirmed. Since Congress first established DOJ in 1870, it has provided for a specific order of succession in U.S. Attorney General's office to maintain continuity of government. The appointment of Whitaker directly undermines Congress' intent in creating this order of succession.

The U.S. Attorney General is one of four original cabinet positions created in 1789, and enjoys near-total authority over the operations of DOJ, overseeing a vast array of law enforcement organizations including the Federal Bureau of Investigation, the federal prison system and 94 U.S. Attorney's Offices. The U.S. Attorney General is responsible for supervising all litigation involving the United States, its agencies and employees. As a result, the U.S. Attorney General ultimately determines the positions of the federal administration in court, which have profound consequences for citizens.

Joining Madigan in filing the amicus brief were the attorneys general of Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Massachusetts, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia and Washington.

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