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**UNITED
AGAINST
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June 29, 2016

To: Governor Haley
State of South Carolina

VIA FAX: (803) 734-5167

From: Ambassador Mark D. Wallace
Chief Executive Officer
United Against Nuclear Iran
212-922-0063 (p) 212-682-1238 (f)

Subject: **Re: State Measures on Iran**

of Pages: 12 with cover

UNITED AGAINST NUCLEAR IRAN

P.O. Box 1028 | New York, NY 10185-1028 | (212) 922 0063

June 29, 2016

Governor Nimrata Randhawa Haley
State of South Carolina

Re: State Measures on Iran

Dear Governor Haley:

United Against Nuclear Iran ("UANI") is a leading not-for-profit, non-partisan, advocacy organization working to promote policies that compel the Islamic Republic of Iran to verifiably abandon its drive for nuclear weapons, support for terrorism, and human rights violations. (<http://www.unitedagainstinucleariran.com>). UANI has been at the forefront of measures to counter the Iranian regime at the state level, and we remain available to you as a resource on these matters.

On April 8, 2016, a letter was sent to the Governors of all fifty U.S. states by Stephen D. Mull, Lead Coordinator for Iran Nuclear Implementation at the U.S. Department of State (*see Enclosure I*). In the letter, Mull urges states to repeal any Iran sanctions laws they may have adopted, and calls on governors to "consider whether the implementation of the JCPOA, which verifiably ensures that Iran's nuclear program is and will remain exclusively peaceful, addresses the underlying concerns with Iran articulated in your state's law."

Mull's request relates to Article 25 of the Joint Comprehensive Plan of Action ("JCPOA"), which states:

If a law at the state or local level in the United States is preventing the implementation of the sanctions lifting as specified in this JCPOA, the United States will take appropriate steps, taking into account all available authorities, with a view to achieving such implementation. The United States will actively encourage officials at the state or local level to take into account the changes in the U.S. policy reflected in the lifting of sanctions under this JCPOA and to refrain from actions inconsistent with this change in policy.

However, numerous Governors, Members of Congress, and legal experts have explicitly rejected any legal obligation by states to repeal any, and certainly not all, Iran sanctions laws they have in effect.

On August 31, 2015, Michigan Attorney General Bill Schuette and Oklahoma Attorney General Scott Pruitt sent a letter (*see Enclosure II*) to the Governors of all fifty states. Schuette and Pruitt

Ambassador Mark D. Wallace | Chief Executive Officer | MWallace@uani.com

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June 29, 2016

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write:

President Obama chose to pursue this major international accord as an executive agreement...it 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).

Schuette and Pruitt urge the Governors "to strictly and aggressively enforce any existing sanctions."


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, and by Congress.

This letter was followed by a further letter addressed to President Obama on September 8, 2015 from fifteen U.S. Governors, informing the President of their intentions to maintain state-level sanctions against Iran, which they consider "critically important" (see *Enclosure III*).

UANI has testified regarding state-level measures related to Iran before the state legislatures of Connecticut, Nebraska, Rhode Island, Maryland, and Indiana and promulgated model legislation barring companies which do business in Iran from receiving state contracts. UANI also authored the "Iran Business Certification Act" in June 2009, the first including the concept of contract and procurement debarment, which shortly thereafter was introduced in U.S. Congress as the "Accountability for Business Choices in Iran Act."

We want you to know that we remain available to you as a resource on this important matter. Please do not hesitate to contact us with any inquiries.

Sincerely,



Senator Joseph I. Lieberman
Chairman, United Against Nuclear Iran



Ambassador Mark D. Wallace
CEO, United Against Nuclear Iran

ENCLOSURE I

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United States Department of State

Washington, D.C. 20520

April 8, 2016

The Honorable Pat McCrory
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Dear Governor McCrory,

This past January the United States and its negotiating partners marked the implementation of the Joint Comprehensive Plan of Action (JCPOA), a historic arrangement between the United States, the European Union, the United Kingdom, France, Germany, Russia, China, and Iran that will verifiably ensure that Iran cannot obtain a nuclear weapon and that its nuclear program is and will remain exclusively peaceful. Given the interest of many in your state in the Iranian nuclear issue, and in some cases relevance to some legislation on your books, I would like to take this opportunity to summarize some of the key elements of the JCPOA, and point you and your staffs towards additional informational resources about it.

The JCPOA was concluded in July of 2015, and “Implementation Day” under the deal was reached on January 16, 2016, following the International Atomic Energy Agency’s (IAEA) verification that Iran had completed all of the nuclear-related steps required to reach the lifting of nuclear-related sanctions. Iran’s completion of these steps significantly improves U.S. national security, as well as the security of our partners around the world, because it effectively cuts off all of the potential pathways Iran could use to produce enough fissile material for a nuclear weapon. As a result of the JCPOA, the “breakout time” – or the amount of time it would take Iran to produce enough fissile material for one nuclear weapon – has quadrupled, going from 2-3 months to at least one year. This is because Iran has shipped out of the country 98 percent of its enriched uranium stockpile and has disabled and removed over two thirds of the uranium centrifuges that produce that material. As a result, the potential uranium pathway that Iran might have pursued to acquire a nuclear weapon if it sought to do so has been cut off.

Iran has also permanently disabled its plutonium reactor – which, if it had been completed, could have produced enough plutonium for 1-2 nuclear weapons each year – by removing the reactor core and making it inoperable by filling it with concrete. This reactor will be redesigned such that it will not produce any weapons-grade plutonium, effectively cutting off Iran’s potential plutonium pathway to a nuclear weapon.

Equally important are the rigorous, intrusive, and unprecedented transparency measures that have been put in place to ensure that we can monitor Iran’s nuclear program and promptly detect if Iran breaks its commitments. These include provisions that will allow international inspectors to have access to Iran’s entire nuclear supply chain — its uranium mines and mills; its conversion facility; its centrifuge manufacturing and storage facilities; and its other declared nuclear sites. The JCPOA also requires Iran to implement an agreement, known as the

"Additional Protocol," which ensures that international inspectors will have greater information about, and access to, Iran's nuclear facilities. Together, these measures ensure that international inspectors at the IAEA can seek access to any suspicious location that they believe may be involved in nuclear activities. Put simply, the IAEA will have access when and where it needs it, and if there are concerns, no site will be considered off limits, including military sites. As a result of these extensive transparency measures, any potential covert pathway for Iran to obtain a nuclear weapon has been cut off.

In return for these steps, the United States lifted "nuclear-related" sanctions on Iran on Implementation Day. The United States had placed those sanctions on Iran to support efforts to secure a diplomatic resolution regarding Iran's nuclear program. In general, the sanctions lifted on Implementation Day are "secondary" sanctions – or sanctions that are directed at non-U.S. individuals and entities that engage in certain activities with Iran wholly outside of U.S. jurisdiction. While there are a few exceptions, for the most part, the sanctions that prohibit U.S. persons, such as the residents of North Carolina, from engaging in most transactions or dealings with Iran continue to apply. This is because the United States continues to have significant concerns with Iran's other activities that harm our interests, such as its support for terrorism, its human rights abuses, its destabilizing activities in the region, and its activities related to ballistic missiles.

In addition to the longstanding exceptions for certain activity including exports of agricultural commodities, food, medicine, and medical supplies, as well as for certain items to facilitate the Iranian people's access to the Internet, there are a few areas of sanctions relief under the JCPOA that may affect the residents of North Carolina. In particular, as a result of the JCPOA, we established a favorable licensing policy to license, on a case-by-case basis, the export to Iran of U.S.-origin commercial passenger aircraft, as well as parts and services for such aircraft, exclusively for commercial passenger aviation. We also generally authorized the importation into the United States of Iranian-origin foodstuffs and carpets that are otherwise consistent with U.S. laws. Last, we generally licensed U.S.-owned or -controlled foreign entities to engage in activities involving Iran that are consistent with the JCPOA and applicable U.S. laws and regulations. To the extent that you or the residents of North Carolina are interested in further information on the JCPOA, I would encourage you to visit https://www.whitehouse.gov/sites/default/files/docs/jcpoa_what_you_need_to_know.pdf. For additional information on the sanctions that have been lifted as part of this deal, I would direct you to the website of the Department of the Treasury's Office of Foreign Assets Control (OFAC) at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>.

Some states have adopted laws designed to incentivize Iran to change its behavior in certain ways. If that is the case in your state, I would urge you to consider whether the implementation of the JCPOA, which verifiably ensures that Iran's nuclear program is and will remain exclusively peaceful, addresses the underlying concerns with Iran articulated in your state's law. It may also be the case that the sanctions lifting in the JCPOA affects how your state agencies implement such state laws. For example, I understand that some states prohibit contracting with companies that engage in transactions with Iranian entities that are designated as a sanctioned entity by the Department of the Treasury. If that is the case in your state, I would urge you to review the relevant sanctions lists, as there have been significant changes and a number of

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Iranian individuals and entities have been removed as the result of the JCPOA. All of the foregoing lists can be searched through OFAC's Sanctions List Search tool, which is available at <https://sanctionssearch.ofac.treas.gov/>. In addition, some state laws require divestment from non-U.S. companies that are involved in Iran's energy sector. In light of the U.S. lifting of secondary sanctions with respect to Iran's energy sector, on January 16, 2016, I would encourage you to review whether North Carolina's law might be affected by these changes.

If you have any further questions, please don't hesitate to contact me.

Best regards,



Stephen D. Mull
Lead Coordinator for Iran Nuclear Implementation

ENCLOSURE II

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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,¹ and by Congress. Congress in fact explicitly authorized state-

¹ 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,



E. Scott Pruitt
Oklahoma Attorney General



Bill Schuette
Michigan Attorney General

Enclosure

ENCLOSURE III

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September 8, 2015

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We write today to express our opposition to the Joint Comprehensive Plan of Action, generally referred to as the Iran nuclear agreement, which your Administration recently negotiated with Iran, the P5+1 and European Union.

If implemented, this agreement would lead to the lifting of United States nuclear-related sanctions on Iran without any guarantee that Iran's drive toward obtaining a nuclear weapon will be halted or even slowed. Iran is a state sponsor of terrorism, and it should not be permitted any pathway toward obtaining a nuclear weapon, now or ever.

The lifting of federal sanctions that will result from this agreement will only result in Iran having more money available to fund terrorist groups and attacks. Adam Szubin, acting Under Secretary of the Treasury for Terrorism and Financial Crimes recently told the Senate Committee on Banking, Housing and Urban Affairs that he expects "to continue to see Iran funding Hezbollah and its other violent terrorist proxies."

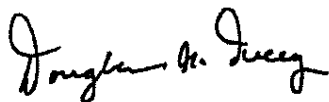
The people of our states will not be safer as a result of this agreement, much less citizens of countries like Israel which Iran has threatened to destroy.

Many of our states have divestment policies for state run pension funds and other state investments, as well as restrictions against state contractors being invested in or doing business with the government of Iran.

Paragraph 25 of the Iran nuclear agreement provides that the federal government will “actively encourage” states to lift state-level sanctions such as the divestment and contracting restriction laws. While Secretary Kerry confirmed in testimony before the House Foreign Affairs Committee that the agreement will not preempt state law because it is not a treaty, we are concerned about what steps your Administration may take to attempt to implement paragraph 25.

Therefore, we wish to make it clear to you in advance of any efforts to implement paragraph 25 that we intend to ensure that the various state-level sanctions that are now in effect remain in effect. These state-level sanctions are critically important and must be maintained.

Sincerely,



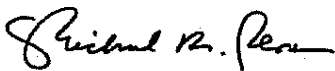
Governor Douglas A. Ducey
Arizona



Governor Asa Hutchinson
Arkansas



Governor Rick Scott
Florida



Governor Michael R. Pence
Indiana



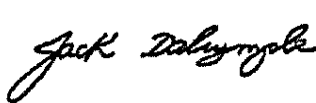
Governor Bobby Jindal
Louisiana



Governor Phil Bryant
Mississippi



Governor Chris Christie
New Jersey



Governor Jack Dalrymple
North Dakota



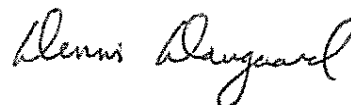
Governor John R. Kasich
Ohio



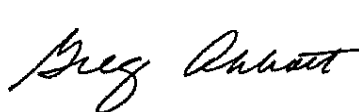
Governor Mary Fallin
Oklahoma



Governor Nikki Haley
South Carolina



Governor Dennis Daugaard
South Dakota



Governor Greg Abbott
Texas



Governor Gary R. Herbert
Utah



Governor Scott Walker
Wisconsin

cc: The Honorable John Boehner, Speaker of the House
The Honorable Mitch McConnell, Majority Leader of the Senate