

M E M O R A N D U M

TO: Corbin Davis  
cc: The Justices, Mike Schmedlen, Anne Boomer and Danilo Anselmo

FROM: Justice Elizabeth A. Weaver

RE: Filing of Dissenting Statement for the Minutes to November 13, 2008 Adoption of Motion to Close Supreme Court Justices' Offices in Detroit and Traverse City

DATE: December 2, 2008

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Please find below, for filing and inclusion, my following dissenting statement for the November 13, 2008 minutes of the 4-3 vote by the “majority of four” adopting Justice Young’s November 13, 2008 motion to close the Michigan Supreme Court’s Justices’ offices in Detroit and Traverse City by the end of the fiscal year.

WEAVER, J., (*dissenting*). I dissent from the decision of the “majority of four” (Chief Justice Taylor, and Justices Corrigan, Young, and Markman) to close the Michigan Supreme Court offices located in Detroit and Traverse City. This latest precipitous, hurried, and unrestrained vote of the “majority of four” is another example of its disorderly, unprofessional, unfair, unrestrained, and secretive conduct of the public’s judicial business.

Facts

On Tuesday, November 4, 2008, the people of Michigan elected Wayne County Circuit Judge Diane Hathaway to the Michigan Supreme Court. Her election resulted in the defeat of incumbent Chief Justice Taylor. On Thursday, November 6, Justice-elect Hathaway met with Justice Kelly, and they toured the Michigan Supreme Court offices in the state office building in Detroit (Cadillac Place), where a fourth set of offices is available for a Justice and the Justice's staff and is part of the Supreme Court's "rental" costs since the Justices moved to the Detroit building before 2002. (Neither the state nor this Court would incur additional "rental" costs for Justice-elect Hathaway to have her office in the available office space in Detroit.)

On Monday, November 10, Justices Corrigan and Young visited Justice Kelly in her Detroit office and raised concerns about Justice-elect Hathaway occupying the available Detroit office space. Specifically, Justices Corrigan and Young expressed to Justice Kelly that Justice-elect Hathaway's office should be located in Lansing at the Hall of Justice because in 2002, then-Chief Justice Corrigan made an alleged agreement with the state budget director.<sup>1</sup> However, Justice Kelly voiced that there was no such agreement approved by the Justices. During the conversation, Justice Young mentioned that a state Senator had raised the matter of justice-office locations, and Justice Young expressed his own desire

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<sup>1</sup> In Justice Young's motion, he refers to the alleged agreement as a "grandfather agreement."

to avoid any office location issue because he is up for reelection in 2010. Justices Corrigan and Young then stated that they would raise the issue of the location of Justice-elect Hathaway's office after oral arguments on Wednesday, November 12. Further, Justices Corrigan and Young asked Justice Kelly to relay this information to Justice Weaver, which Justice Kelly did late Monday afternoon. (Tuesday, November 11, was Veteran's Day, a state holiday.)

After oral arguments on Wednesday, November 12, when the Justices met to discuss the cases just argued, the location of Justice-elect Hathaway's office was raised by Justices Corrigan and Young before the entire Court. At that time, there was no mention that the issue was being raised in an effort to save money. Justice Corrigan asserted that the office location matter was previously discussed and decided in a secret executive session of this Court when Justice Corrigan was Chief Justice in 2002. Justices Kelly and Weaver stated that this was untrue. Justice Weaver inquired if there were minutes from this executive session indicating that this matter was discussed and decided. Justice Corrigan responded that there were no minutes, but that she had personal notes.

Further, Justice Corrigan raised concern about a conversation she initiated with Justice-elect Hathaway regarding the location of Justice-elect Hathaway's office. In response to Justice Corrigan's attempts to force Justice-elect Hathaway to locate her office in Lansing, Justice-elect Hathaway asserted to Justice Corrigan that it appeared that the actions by the "majority of four" were a "pay-back" move for her unseating Chief Justice Taylor, given that there was an available office in

the Detroit state building for which the state was paying, regardless of her being there or not. Members of the “majority of four” accused Justices Kelly and Weaver of planting the idea that this was a “pay-back” move by the “majority of four” for Justice-elect Hathaway defeating Chief Justice Taylor. Justices Kelly and Weaver denied having done so.<sup>2</sup> Further discussion of the matter was put off until the next day.

The following day, Thursday, November 13, this Court again met after oral arguments to discuss the cases on the November 2008 docket. After the case discussion was completed, the “majority of four” urged agreement to force Justice-elect Hathaway to locate her office in Lansing. Then, Justice Corrigan passed out to the Justices copies of a 2002 non-binding House Resolution No. 488.<sup>3</sup> When Justice Corrigan presented the Justices with these copies, Justice Weaver pointed out that this 2002 House Resolution had never previously been shared with her and that this Court had never voted on or approved the Resolution’s content, and

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<sup>2</sup> Justice Weaver stated that Justice-elect Hathaway’s response to the attempts by the “majority of four” to force her to Lansing was natural and logical and that most objective and reasonable people would see it that way. Furthermore, Justice Weaver noted that both she and Justice Young are up for reelection in 2010, and that decisions of Justices should not be based on reelection fears or considerations.

<sup>3</sup> The first time Justice Weaver was made aware of this six-year old 2002 Resolution was when Justice Corrigan brought it to the Justices’ attention at the November 13, 2008 judicial conference. (Apparently, there was no similar resolution from the Senate.)

the Justices had never voted on moving the Detroit and Traverse City offices to Lansing.

Then, Justice Young made his motion, which would not only affect Justice-elect Hathaway's office location but would also close all Michigan Supreme Court offices in Detroit and Traverse City. Justice Weaver again pointed out that the Justices had never voted on or approved the Resolution's content, and the Justices had never voted on moving the Detroit and Traverse City offices to Lansing. In fact, the Justices were under the impression that the only issue up for discussion was the location of Justice-elect Hathaway's office.

After Justice Young's motion was presented to all seven Justices, there was brief discussion in an attempt to persuade Justices Cavanagh, Weaver and Kelly to vote to have Justice-elect Hathaway's office in Lansing. (Justices Cavanagh, Weaver and Kelly did not agree with the "majority of four.") The Justices then voted on whether to close the Michigan Supreme Court offices outside of the Hall of Justice. The "majority of four" voted in favor of Justice Young's motion to close the offices in Detroit and Traverse City, while Justices Cavanagh, Weaver and Kelly, voted against the motion. The "majority of four" again expressed that the Detroit and Traverse City offices could remain open if Justice-elect Hathaway would agree to have her office located in the Hall of Justice in Lansing. The entire discussion and decision to eliminate the offices in Detroit and Traverse City was brief, approximately 15 minutes.

The Office Location Issue is an Important Public Policy Matter that Deserves Adequate Time and Serious Consideration with Input from the Three Branches of Government and the Public

I am pleased that the “majority of four” decided to raise the matter of the location of Justices’ offices because the selection of Justices, the location of their offices, and the procedures by which this Court conducts its administrative business are matters of important public policy.

However, I strongly disagree with the manner in which the “majority of four” decided to handle this administrative matter. The location of Justices’ offices is a public policy decision that should be rationally discussed and not rushed through in a sudden manner when there is no emergency. The decision is one that requires adequate time and serious consideration, with notice to and input from the public and all 3 branches of government before the decision is made.

On Monday and Wednesday, November 10 and 12, the brief discussions that members of this Court did have on the justice-office locations had only concerned the location of Justice-elect Hathaway’s office. “Fiscal responsibility” and concern for taxpayer dollars was not mentioned. It was understood that the discussion that was to continue on Thursday, November 13, would concern the location of Justice-elect Hathaway’s office. Instead, at the November 13 meeting, Justice Young presented his motion to close the offices in Detroit and Traverse City. Mere minutes after Justice Young had presented his motion, the Justices

were required to hurriedly vote on this important matter that carries with it broad consequences to the people of Michigan.

The act of confining all the Justices' offices to one floor of a building in Lansing has many consequences that need to be considered. This important decision is not an emergency matter, and it should not be made without notice to and input from the public and all 3 branches of government. No such input ever occurred. Instead, this Court decided the issue in minutes, without notice and opportunity for input from the public and the other branches of government. The Justices of this Court did not have sufficient information to make an informed decision as to whether this move actually will save money in the State's budget.

The assertion is made that the removal of the Detroit offices will save approximately \$360,000 to \$400,000 annually. This assertion remains to be substantiated, if it can be. I have been informed that if the Justices are moved from the Detroit offices to Lansing, the cost for the Detroit offices will be eliminated from the judiciary budget. However, these costs still must be picked up and paid by the state of Michigan, in other words, the taxpayers of the state of Michigan, unless the unlikely events occur that (1) private renters are found for the Justices' offices in Detroit, and (2) there is no other vacant space in the Detroit office building.<sup>4</sup> I am informed that the Detroit office building is approximately

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<sup>4</sup> In fact, the language in Justice Corrigan's copy of the 2002 non-binding House Resolution expressly reveals conflicting opinions regarding whether it  
**Footnotes continued on following page.**

15% to 50% unoccupied. The details of the purchase and deal should be understood and made public.

As to the Traverse City office, for several years I have been in contact with the building supervisor of the Traverse City State Office building. Up to this point, there has been no sufficient and adequate space available, but our communications into the exploration and pursuit of this possibility are continuing. Such a move would reduce considerably the approximate \$62,000 rental cost of the Traverse City office.

Another factor to be considered is that requiring Justices to maintain their offices in Lansing limits the pool of potential Justices to those living within commuting distance of the Lansing Capitol. This is a radical departure in a state where there are 580 trial judges in 250 courts located in 83 counties, over which the Supreme Court Justices have supervisory and administrative responsibilities, and where one can drive over 9 hours from Lansing and still be in the state of Michigan. It should be carefully considered whether it is beneficial to the people and the judiciary of Michigan to have one central location in Lansing supervising the many courts in the many counties of this state. My view is, has always been, and as I have always stated, that it is not beneficial to the people of Michigan to have all seven justices isolated in Lansing on the top floor of one building. Other

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would apply only to justices not yet in office at the time of the Resolution, or whether it would apply to justices already in office at that time as well.

views differ, but the fact is, the location of Justices' offices is public business that all 3 branches of government should consider with public knowledge and public input before any decision is made. The hurried vote by the "majority of four" to close the Detroit and Traverse City offices was made without public notice and participation.

Issues such as budget concerns and the isolation of Justices in Lansing, among other issues, need to be investigated and weighed. There may be potential benefits to moving all Justices to Lansing, but there may also be negative consequences that outweigh any benefits.<sup>5</sup> With the few minutes that the "majority of four" allowed to discuss and decide the closure of the Detroit and Traverse City offices, the opportunity was not provided to adequately weigh the various considerations in order to come to a well-reasoned and informed conclusion on this important non-emergency matter. As such, I strongly disagree with the mishandling by the "majority of four" of this important public policy matter.

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<sup>5</sup> For example, the people by constitutional vote, could reduce the number of Justices by 4 from 7 to 3, thus saving approximately \$2 million a year in the salaries of the Justices, their clerks, and secretaries alone. However, would the cost savings of eliminating 4 Justices outweigh the result of having a 3-Justice Supreme Court in a populous state with over 10 million people and great distances between Lansing and many of the 83 counties? The entire state judiciary budget only amounts to a 1.6% of the entire state's budget. Yet, the judicial branch accounts for an equal third in responsibility for checks and balances, working for justice and for doing the judicial business of the people of Michigan.

The Actions Surrounding the Vote by the “Majority of Four” Reveal this Act as Another Example of the Mishandling of the People’s Judicial Business by the “Majority of Four”

The actions by the “majority of four” in this matter are yet another example of its disorderly, unfair, unprofessional, and secretive manner of conducting judicial business.

In Justice Young’s November 13 motion to this Court, he cites “fiscal responsibility” as the main justification for closing the offices in Detroit and Traverse City. However, when the office location matter first surfaced on Monday, November 10, Justices Corrigan and Young were not citing “fiscal responsibility.” Rather, their main concern was that Justice-elect Hathaway’s office should be in Lansing, despite the fact that Justice-elect Hathaway is a resident of Wayne County and that there is ready and available office space in the state building in Detroit at no extra rental costs. Justices Corrigan and Young expressed concerns over political pressure from a state Senator, as well as concerns over Justice Young’s approaching 2010 reelection campaign. Furthermore, it was never made known to any candidate for the Michigan Supreme Court, including Justice-elect Hathaway, that the elected individual must locate his or her office in Lansing.

On Wednesday, November 12, when this matter was again discussed after oral argument, the concern was still focused on requiring Justice-elect Hathaway to have her office in the Hall of Justice in Lansing, and there was still no

discussion of closing the Detroit and Traverse City offices for “fiscal reasons” to save money for the taxpayers of Michigan. After Justice Young’s motion on Thursday, November 13, the decision of whether to close the Detroit and Traverse City offices, allegedly in an effort to save money was hurriedly forced to a vote.

Justice Young provided the press with his motion and the voting results shortly after the Court’s meeting was concluded and even before some Justices had left the building and, of course, before, the Clerk of the Court had circulated the proposed minutes for the November 13, 2008 meeting. On Friday, November 14, Justice Young requested that the Clerk of the Court include the language from his entire motion and from the non-binding 2002 House Resolution in the November 13 administrative minutes. Justice Young’s request is worth noting given that he has repeatedly abstained and refused to vote on the administrative minutes since the May 21, 2008 administrative conference.<sup>6</sup>

The actions by the “majority of four” surrounding this matter appear to reveal political motivation rather than sincere concern for the “fiscal responsibility.” The office location matter was first brought up in response to political pressure directed only to have Justice-elect Hathaway locate her office in Lansing at the Hall of Justice. At the end, the office location matter then

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<sup>6</sup> These administrative minutes can be found in the Clerk of the Court’s office at the Hall of Justice and also on Justice Weaver’s personally-funded website: [www.justiceweaver.com](http://www.justiceweaver.com).

expanded to include the closure of the Detroit and Traverse City offices due to alleged “fiscal responsibility.”

One can hope that this most recent example of the disorderly, unfair, and secret conduct of the people’s judicial business by the “majority of four” is the final chapter in the reign of the “Engler majority of four.” With the election of Justice-elect Hathaway, it would be in the best interest of the people of Michigan for the “remaining Engler three” to decide to join the rest of the Justices in conducting the people’s judicial business in an open, transparent, restrained, orderly, fair, and efficient manner.