

THIS RESOLUTION IS OFFERED TO COMPLY WITH ARTICLE XI, SECTION 7 OF
THE *CONSTITUTION OF THE STATE OF MICHIGAN OF 1963*.

HOUSE RESOLUTION NO.341

Reps. LaFave and Markkanen offered the following resolution:

1 A resolution directing the impeachment of Jacob Cunningham,
2 Judge of the Sixth Judicial Circuit Court of Michigan, for corrupt
3 conduct in office.

4 Whereas, Article XI, Section 7 of the *Constitution of the*
5 *State of Michigan of 1963* states, in part:

6 The house of representatives shall have the sole power of
7 impeaching civil officers for corrupt conduct in office or
8 for crimes or misdemeanors, but a majority of the members
9 elected thereto and serving therein shall be necessary to
10 direct an impeachment.

11 ; and

12 Whereas, In his ruling issuing a preliminary injunction in
13 *Whitmer v. Linderman et al.* (Case Number 2022-193498-CZ), Jacob

Cunningham acted in conflict with his constitutional duties as a judge of the Sixth Judicial Circuit Court of Michigan. He has failed to uphold the *Constitution of the State of Michigan of 1963* by violating the separation of powers himself and enabling the Governor to do the same by exercising legislative powers over existing Michigan law; now, therefore, be it

Resolved by the House of Representatives, That Jacob Cunningham, Judge of the Sixth Judicial Circuit Court of Michigan, is impeached for corrupt conduct in office and for crimes and misdemeanors. The following Article of Impeachment is adopted by the House of Representatives and shall be exhibited to the Senate:

ARTICLE OF IMPEACHMENT EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MICHIGAN IN THE NAME OF ITSELF AND OF THE PEOPLE OF THE STATE OF MICHIGAN AGAINST JACOB CUNNINGHAM, JUDGE OF THE SIXTH JUDICIAL CIRCUIT COURT OF MICHIGAN, IN MAINTENANCE AND SUPPORT OF ITS IMPEACHMENT AGAINST HIM FOR CORRUPT CONDUCT IN OFFICE AND FOR CRIMES AND MISDEMEANORS.

ARTICLE I

Jacob Cunningham, Judge of the Sixth Judicial Circuit Court of Michigan, violated his oath of office by failing to uphold the *Constitution of the State of Michigan of 1963*, specifically the separation of powers, in his ruling issuing a preliminary injunction in *Whitmer v. Linderman et al.* (Case Number 2022-193498-CZ).

Article XI, Section 1 of the *Constitution of the State*

1 *of Michigan of 1963* provides, in part, "All officers,
2 legislative, executive and judicial, before entering upon
3 the duties of their respective offices, shall take and
4 subscribe the following oath or affirmation: I do solemnly
5 swear (or affirm) that I will support the Constitution of
6 the United States and the constitution of this state, and
7 that I will faithfully discharge the duties of the office
8 of according to the best of my ability."

9 Article III, Section 2 of the *Constitution of the*
10 *State of Michigan of 1963* provides, "The powers of
11 government are divided into three branches: legislative,
12 executive and judicial. No person exercising powers of one
13 branch shall exercise powers properly belonging to another
14 branch except as expressly provided in this constitution."

15 On August 19, 2022, Judge Cunningham issued a
16 preliminary injunction at the request of Governor Gretchen
17 Whitmer barring 13 county prosecutors from enforcing
18 Section 14 of the Michigan Penal Code, Public Act 328 of
19 1931, MCL 750.14, which criminalizes the performance of an
20 abortion unless it is necessary to preserve the life of
21 the mother.

22 Judge Cunningham's decision to issue a preliminary
23 injunction in this case without an actual case or
24 controversy challenging the application of the law was a
25 direct violation of the explicit text of the state
26 constitution by abusing his judicial power and encroaching
27 into the legislative sphere. The judicial branch is limited
28 to adjudicating claims that meet the justiciability
29 doctrines of standing, ripeness, and mootness. Judge

1 Cunningham's behavior in exercising jurisdiction where he
2 had none combined with his flippant and disdainful
3 treatment of the defendants in this case demonstrate an
4 egregious attempt to legislate from the bench to further
5 his own political beliefs and usurp the legislative
6 functions of the People of the State of Michigan and their
7 representatives in the Michigan Legislature.

8 Judge Cunningham's decision to improperly grant the
9 Governor standing in this case is a direct violation of
10 the explicit text of the state constitution. By allowing
11 this case to proceed, he enabled the Governor to exercise
12 legislative dominion over existing state law. Michigan
13 courts have consistently found that the *Michigan*
14 *Constitution* does not guarantee a right to abortion. As
15 the Legislature has passed a law and the judicial branch
16 has not declared it unconstitutional, the Governor's duty
17 is to uphold and enforce that law, not utilize executive
18 and judicial resources to usurp the legislative functions
19 of the People of the State of Michigan and their
20 representatives in the Michigan Legislature.

21 The ruling disrupts the foundational principles of
22 the state's republican form of government, guaranteed to
23 the people in both the state constitution and in Article
24 IV, Section 4 of the *Constitution of the United States*.
25 The power to legislate is exclusively reserved to the
26 people and their representatives in the Michigan
27 Legislature. Judge Cunningham's abuse of judicial power to
28 subvert a constitutionally sound statute in furtherance of
29 his political ends is a corruption that if left unchecked

1 erodes the stability created by our balanced three branches
2 of government.

3 Wherefore, Jacob Cunningham, by such conduct,
4 warrants impeachment and trial, and removal from office.
5 ; and be it further

6 Resolved, That in accordance with Article XI, Section 7 of the
7 *Constitution of the State of Michigan of 1963*, the House of
8 Representatives will proceed with the election of three members
9 from its own body whose duty it shall be to prosecute such
10 impeachment and that these members are authorized and empowered to
11 prepare and present the Article of Impeachment adopted by this
12 resolution.