

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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Executive Director

February 25, 2009

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IMMEDIATE PAST PRESIDENT
LAWRENCE WARDEN
Attorney General of Idaho

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We, the undersigned Attorneys General, respectfully urge you to reconsider the United States' legal position regarding the Office of the Comptroller of the Currency's ("OCC") current interpretation of its authority under the National Bank Act, wherein the OCC seeks to bar State Attorneys General from enforcing consumer protection laws against federally chartered banks, regardless of whether those laws are substantively preempted. The United States Supreme Court agreed to review this issue in *Andrew M. Cuomo, Attorney General of New York v. The Clearing House Association, L.L.C. and the Office of the Comptroller of the Currency*, No. 08-453. The Solicitor General will be submitting the brief on behalf of the United States in March. Argument is set for April. This case will attract significant attention because of its genesis in the lending abuses of the past decade that contributed to our current economic crisis. The Supreme Court briefing presents a unique opportunity for your administration to correct an erroneous legal position and implement immediate reform measures.

In the courts below, while recognizing that the New York law prohibiting discriminatory lending applied to national banks, the OCC argued that it alone could enforce such state laws. The OCC's position is an extreme one that flies in the face of traditional principles of federalism. The OCC contends that by an administrative rule, it can exclude State Attorneys General from their traditional role as primary consumer protection officials and enforcers of state law. The OCC's position is, in our view, erroneous as a matter of law and is bad public policy.

The recent mortgage crisis has demonstrated a compelling need for additional consumer protection enforcement against mortgage lending abuses at all levels. Historically, the OCC has provided federal oversight of the fiscal soundness of national banks while the Attorneys General have enforced consumer protection laws. Unfortunately, for the last several years, the OCC has

attempted to prevent Attorneys General from enforcing state fair lending and consumer protection laws against national banks and bank subsidiaries. One of the most effective measures your administration could implement in restoring strong consumer protection enforcement to the mortgage lending field would be to file a Supreme Court brief which rejects this unwarranted expansion of preemption. Recognizing the important role of the Attorneys General in this case will help bring about much-needed reform and restore an effective check on banking and financial institutions.

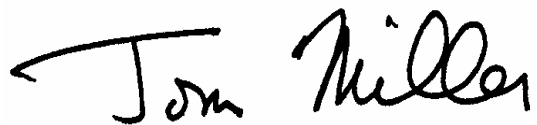
The prior Solicitor General endorsed the OCC's argument that the New York Attorney General's enforcement of laws against discriminatory lending constitutes improper "visitation" of national banks. The OCC bases its position on visitorial power regulations that it promulgated in 2004, which were a gross departure from previously understood concepts of preemption.¹ We ask the new Solicitor General to return to the interpretation of the National Bank Act that has been in force for nearly a century, which allows for enforcement of state discrimination and consumer protection law by State Attorneys General. We request that your administration recognize that enforcement of state fair lending and consumer protection laws by State Attorneys General does not constitute prohibited visitation of national banking institutions.

The OCC's continuing adversarial approach to the States has operated to deprive consumers of needed assistance from their Attorneys General and has prevented Attorneys General from enforcing laws of general application promulgated by their state legislatures. We believe that the OCC's current position is hostile to consumer protection, unsupported by law, and is inconsistent with your administration's goals of applying greater resources to strengthen consumer protection.

As you have stated, our country needs to start anew, putting the people's interests ahead of special interests. Unfair and deceptive practices in mortgage lending contributed to the current financial crisis. This conduct flourished under the misguided application of preemption that constitutes the current OCC position. We ask that your administration reject the OCC's aggressive preemption position in the upcoming briefing and argument of the *Cuomo* case in the Supreme Court. While not necessary for the determination of the current case, we also request that your administration consider reviewing and revising recent agency preemption regulations and recognize the significant and necessary role of State Attorneys General.

Mr. President, we stand ready to assist you in strengthening legal protections for all persons, especially those who would otherwise have no voice. Thank you for your attention to this important matter.

Sincerely,



Tom Miller
Attorney General of Iowa

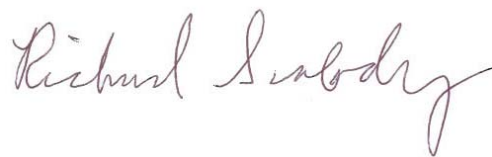


Jon Bruning
Attorney General of Nebraska

¹ See, e.g., *First Nat. Bank in St. Louis v. State of Missouri at inf. of Barrett, Atty. Gen.*, 263 U.S. 640 (1924).



Troy King
Attorney General of Alabama



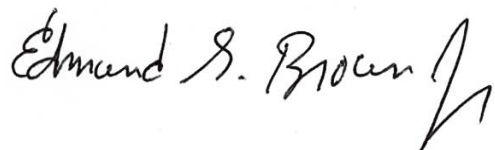
Richard Svobodny
Acting Attorney General of Alaska



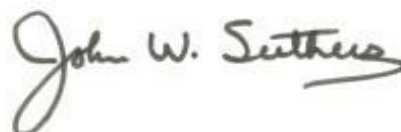
Terry Goddard
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Dustin McDaniel
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John Suthers
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Richard Blumenthal
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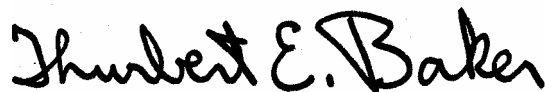
Richard S. Gebelein
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Peter Nickles
Attorney General of the District of Columbia



Bill McCollum
Attorney General of Florida



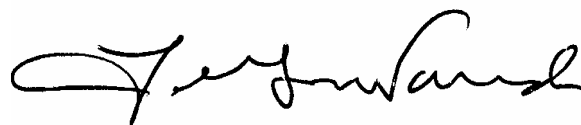
Thurbert E. Baker
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Lisa Madigan
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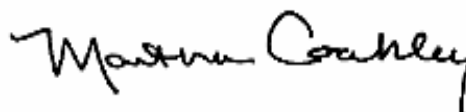
James D. Caldwell
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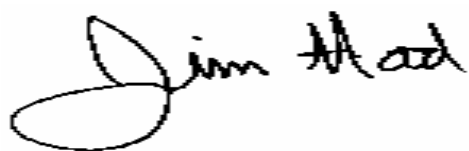
Martha Coakley
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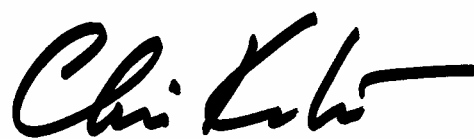
Mike Cox
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Lori Swanson
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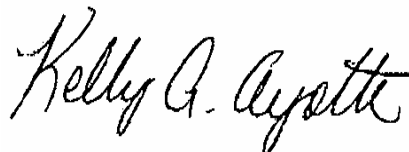
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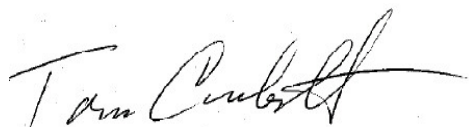
Richard Cordray
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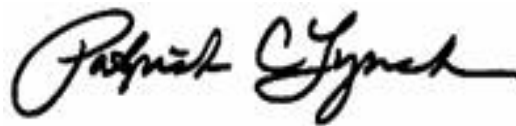
W.A. Drew Edmondson
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John Kroger
Attorney General of Oregon



Tom Corbett
Attorney General of Pennsylvania



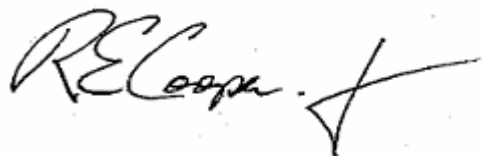
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Attorney General of Rhode Island



Henry McMaster
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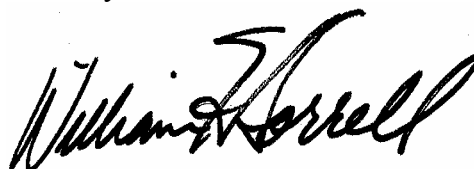
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Greg Abbott
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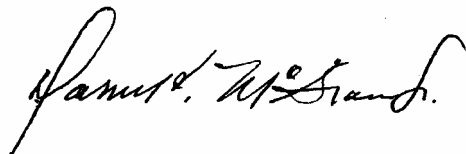
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Attorney General of West Virginia



J.B. Van Hollen
Attorney General of Wisconsin

A handwritten signature in black ink, appearing to read "Bruce A. Salzburg". The signature is fluid and cursive, with the first name "Bruce" being the most prominent.

Bruce A. Salzburg
Attorney General of Wyoming

cc: Eric H. Holder, Jr., Attorney General
Edwin S. Kneedler, Acting Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530