

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

2030 M Street, 8<sup>th</sup> Floor  
WASHINGTON, D.C. 20036  
Phone (202) 326-6000  
Fax (202) 331-1427  
<http://www.naag.org/>

JAMES E. MCPHERSON  
*Executive Director*

February 25, 2009

PRESIDENT  
PATRICK LYNCH  
*Attorney General of Rhode Island*

PRESIDENT-ELECT  
JON BRUNING  
*Attorney General of Nebraska*

VICE PRESIDENT  
ROY COOPER  
*Attorney General of North Carolina*

IMMEDIATE PAST PRESIDENT  
LAWRENCE WASDEN  
*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.

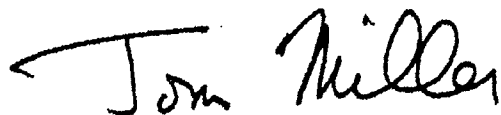
The prior Solicitor General endorsed the OCC's argument that the New York Attorney General's enforcement of laws against discriminatory lending constitutes improper "visitation" of national banks. The OCC bases its position on visitorial power regulations that it promulgated in 2004, which were a gross departure from previously understood concepts of preemption.<sup>1</sup> 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

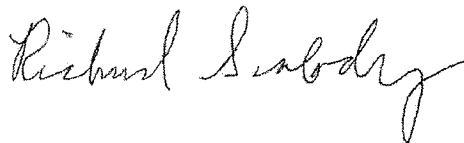


Jon Bruning  
Attorney General of Nebraska

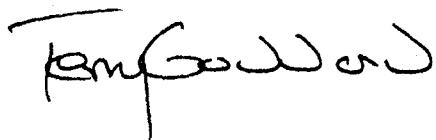
<sup>1</sup> See, e.g., *First Nat. Bank in St. Louis v. State of Missouri at inf. of Barrett, Atty. Gen.*, 263 U.S. 640 (1924).



Troy King  
Attorney General of Alabama



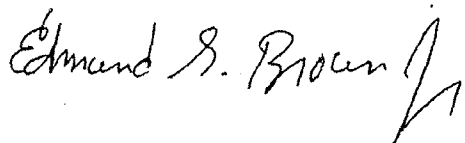
Richard Svobodny  
Acting Attorney General of Alaska



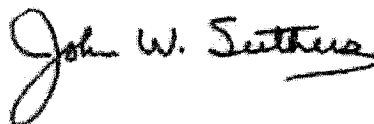
Terry Goddard  
Attorney General of Arizona



Dustin McDaniel  
Attorney General of Arkansas



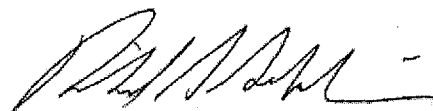
Edmund G. Brown, Jr.  
Attorney General of California



John Suthers  
Attorney General of Colorado



Richard Blumenthal  
Attorney General of Connecticut



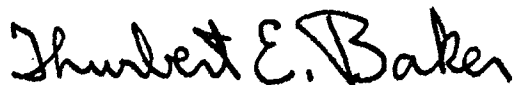
Richard S. Gebelein  
Acting Attorney General of Delaware



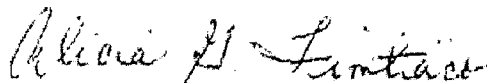
Peter Nickles  
Attorney General of the District of Columbia



Bill McCollum  
Attorney General of Florida



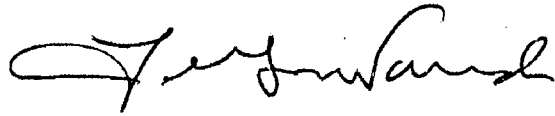
Thurbert E. Baker  
Attorney General of Georgia



Alicia G. Limtiaco  
Attorney General of Guam



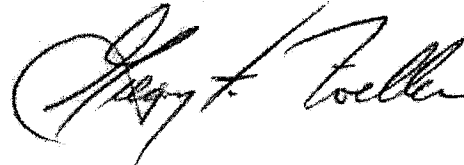
Mark J. Bennett  
Attorney General of Hawaii




Lawrence Wasden  
Attorney General of Idaho



Lisa Madigan  
Attorney General of Illinois



Greg Zoeller  
Attorney General of Indiana



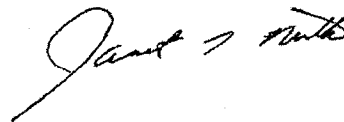
Steve Six  
Attorney General of Kansas



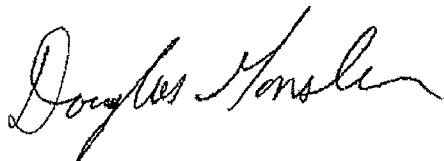
Jack Conway  
Attorney General of Kentucky



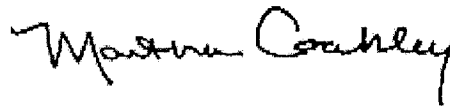
James D. Caldwell  
Attorney General of Louisiana



Janet T. Mills  
Attorney General of Maine



Douglas F. Gansler  
Attorney General of Maryland



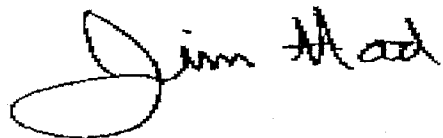
Martha Coakley  
Attorney General of Massachusetts



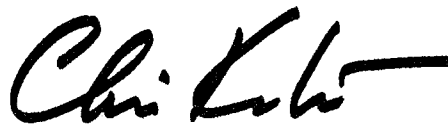
Mike Cox  
Attorney General of Michigan



Lori Swanson  
Attorney General of Minnesota



Jim Hood  
Attorney General of Mississippi



Chris Koster  
Attorney General of Missouri



Steve Bullock  
Attorney General of Montana



Catherine Cortez Masto  
Attorney General of Nevada



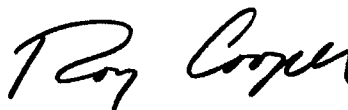
Kelly Ayotte  
Attorney General of New Hampshire



Anne Milgram  
Attorney General of New Jersey



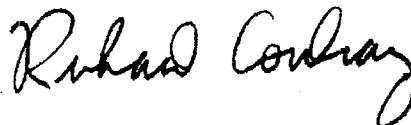
Gary King  
Attorney General of New Mexico



Roy Cooper  
Attorney General of North Carolina



Wayne Stenehjem  
Attorney General of North Dakota



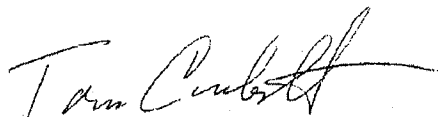
Richard Cordray  
Attorney General of Ohio



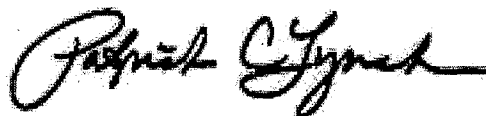
W.A. Drew Edmondson  
Attorney General of Oklahoma



John Kroger  
Attorney General of Oregon



Tom Corbett  
Attorney General of Pennsylvania



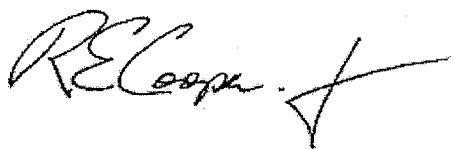
Patrick C. Lynch  
Attorney General of Rhode Island



Henry McMaster  
Attorney General of South Carolina



Larry Long  
Attorney General of South Dakota



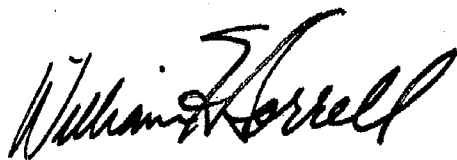
Robert E. Cooper, Jr.  
Attorney General of Tennessee



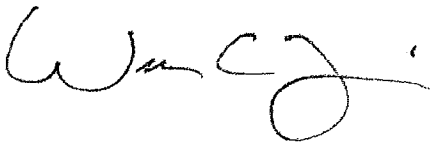
Greg Abbott  
Attorney General of Texas



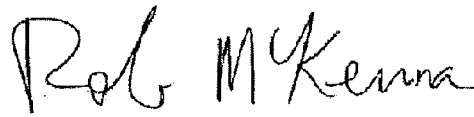
Mark Shurtleff  
Attorney General of Utah



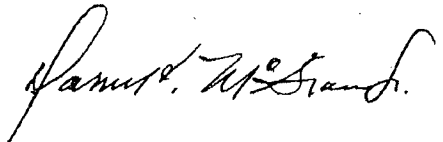
William H. Sorrell  
Attorney General of Vermont



William C. Mims  
Acting Attorney General of Virginia



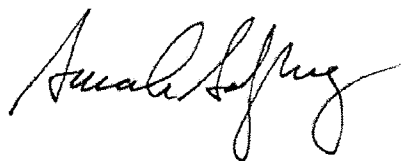
Rob McKenna  
Attorney General of Washington



Darrell V. McGraw, Jr.  
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 written in a cursive, flowing style.

Bruce A. Salzburg  
Attorney General of Wyoming

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