

**Alliance for Justice ♦ Center for Justice & Democracy
ConsumerWatchdog ♦ National Consumers League
National Consumer Voice for Quality Long-Term Care
Public Citizen ♦ U.S. PIRG**

January 31, 2012

Hon. Trent Franks, Chairman
Subcommittee on the Constitution
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Franks:

We, the undersigned public interest groups, write to express our concern about any attempts by Congress to interfere with the functions of state Attorneys General or their ability to continue their role as important public advocates.

State AGs act on behalf of their citizens in many diverse areas, including consumer protection, antitrust and utility regulation and environmental protection. Without state AG involvement in large consumer actions, an important check on the behavior of some of our most powerful industries would be severely weakened.

State AG offices are often underfunded and understaffed. At times, they must hire private outside counsel - on a contingency basis - in order to enforce state law and protect consumers. Outside counsel add critical resources and manpower to a state at no cost to taxpayers. If the state is successful, settlements and fees are paid by the wrongdoer, not the taxpayer, and the money recovered is used to cover a state's litigation costs as well as disbursed into public programs. As West Virginia's Chief Deputy Attorney General Fran Hughes has noted, with contingency arrangements, "the attorney general retains control of the case, all the documents are available under the state Freedom of Information Act, and taxpayers end up better off because the legal fees 'are paid by the companies that break the law.'"¹ And when these lawsuits are successful, the recoveries become an important source of income for the state.

Clearly, Congress should not interfere with this most traditional aspect of state police power - to enforce its own laws. The only interest Congress may have in this issue at all, is with respect to the 22 federal laws explicitly providing for concurrent federal and state public enforcement authority. Some negative rhetoric has developed about whether states are "over-enforcing" federal laws or are inconsistently enforcing them. However, an empirical analysis of state actions under these federal laws has clearly demonstrated this not to be the case.

Law professors Amy Widman at Northern Illinois University College of Law and Prentiss Cox at the University of Minnesota Law School have done the first and only empirical analysis of state use of concurrent public enforcement authority, examining 16 federal consumer protection

¹ See Stephanie Mencimer, "Corporate Enemy #1: State Attorneys General," *Mother Jones*, December 6, 2007.

statutes.² They found: state AGs enforce federal consumer protection laws in a “sparing manner”; state cases appear to have generated almost no conflict with federal agency enforcement; federal agency involvement in state cases has been cooperative; there have not been inconsistent interpretations of the statutes or conflicts with federal interpretation of the law; and the use of outside counsel in these cases appeared to be infrequent or even non-existent. In other words, there is no problem for Congress to solve.

In sum, none of the concerns about state AGs have been realized in actual practice. Given the critical role state AGs play in safeguarding the public and recovering money for taxpayers, Congress should not interfere with their work. If Congress places obstructions in the way of AGs who are trying to do their job on behalf of their own residents, the result could be hundreds of millions of dollars in lost reimbursements for states stemming from corporate wrongdoing, not to mention countless lives. Issues regarding how AGs are enforcing the law should be resolved through a state’s own political process, not by Congress.

If you have any questions, please contact Joanne Doroshow, Center for Justice & Democracy at New York Law School, 185 Broadway, New York, NY 10013; 212/431-2882; joanned@centerjd.org.

Very sincerely,



for

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² Amy Widman, Prentiss Cox, “State Attorneys General’s Use of Concurrent Public Enforcement Authority in Federal Consumer Protection Laws,” 33 Cardozo Law Review 53 (2011).