

STATE ATTORNEYS GENERAL
A Communication from the Chief Legal Officers of the Following States:
Arkansas, Hawaii, Oregon,
Arizona, California, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Kentucky,
Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada,
New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma,
Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Utah, Vermont,
West Virginia and Wyoming

May 14, 2008

via facsimile

Honorable Patrick Leahy
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Herb Kohl
Chair
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Orrin Hatch
Ranking Member
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable John Conyers, Jr.
Chair
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Honorable Lamar S. Smith
Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

RE: Support for the Discount Pricing Consumer Protection Act (S. 2261)

Gentlemen:

We, the undersigned Attorneys General, are writing to express our support for S.2261, "The Discount Pricing Consumer Protection Act." This legislation is particularly necessary and timely given the United States Supreme Court's recent decision in *Leegin Creative Leather Products v. PSKS*, 551 U.S. ____ (2007). In *Leegin* the Supreme Court overturned the near century old rule established by *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U. S. 373 (1911), which made minimum resale price maintenance ("RPM") illegal. S. 2261 would ensure that the rule established in *Dr. Miles* continues and that the free

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market drives the price of consumer goods and not unlawful restraints imposed by certain manufacturers.

Overturing this long-held precedent has caused great concern for our States. Justice Breyer aptly summarizes this concern in his dissent: "The only safe predictions to make about today's decision are that it will likely raise the price of goods at retail"

Empirical studies show that RPM does, in fact, raise consumer prices. Between 1931 to 1976 a number of States adopted so-called "fair trade" laws, which legalized RPM. Predictably, consumers in "fair trade" States paid more for goods and services than their counterparts in States where RPM remained illegal. Advocates of RPM have failed to produce any empirical evidence to show that minimum RPM agreements provide consumer benefits that offset these higher consumer prices.

As the chief antitrust enforcers in our respective States, we know all too well the harm that can be caused by RPM. Many State Attorneys General have relied upon *Dr. Miles* in prosecuting RPM violators to secure relief for consumers. These actions have led to the recovery of nearly \$200 million in benefits for consumers.

The practical result of the Supreme Court's decision will be to encourage manufacturers, distributors and retailers to act together to charge higher prices that will be borne by consumers. Consumers, and the public interest, have been well served by the *Dr. Miles* national rule prohibiting agreements that fix and boost prices. Even for states in which state law already prohibits RPM as per se anticompetitive, congressional legislation to reinstate the federal rule is appropriate to protect consumers nationwide from the higher prices that RPM brings about.

We request immediate consideration and approval of this important legislation. Thank you for your consideration of this very important matter. Please contact any of us if you have questions or comments.

Sincerely,



Dustin McDaniel
Attorney General of Arkansas



Mark J. Bennett
Attorney General of Hawaii



Hardy Myers
Attorney General of Oregon

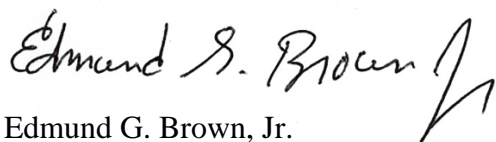


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Attorney General of Arizona

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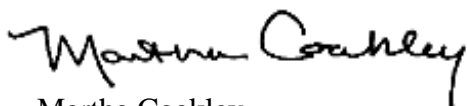
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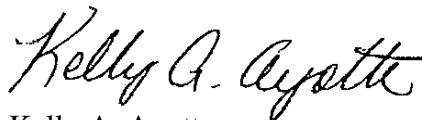
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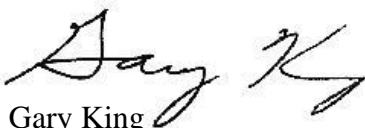
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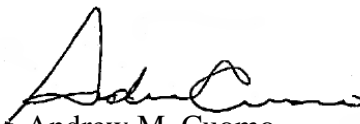
Kelly A. Ayotte
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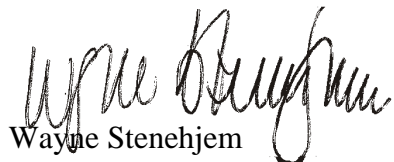
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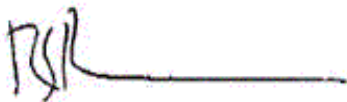
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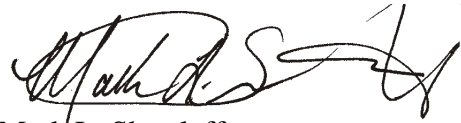
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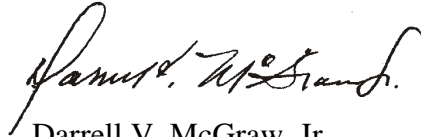
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Attorney General of South Carolina



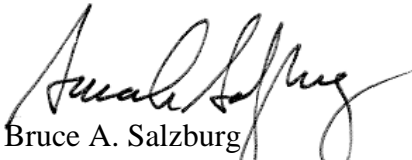
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