NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Adopted

Summer Meeting
July 9-12, 1989
Lake of the Ozarks, Missouri

RESOLUTION

TO OPPOSE FEDERAL PREEMPTION OF STATE INDIRECT PURCHASER STATUTES

WHEREAS, erosion of states' sovereignty and federalism concepts constitutes a threat to our constitutional form of government, as strict adherence to the constitutional principles of federalism is essential to the maintenance of the Constitution; and

WHEREAS, the federal antitrust laws were enacted by Congress with the intent that they coexist with rather than supplant state antitrust laws; and

WHEREAS, Congressional intent, as recognized by the Supreme Court of the United States, was reaffirmed most recently in California v. ARC America Corp.; and

WHEREAS, state statutes providing for recovery for antitrust injury by indirect purchasers have been in existence since 1899; and

WHEREAS, approximately 16 states plus the District of Columbia have such indirect purchasers statutes in place; and

WHEREAS, approximately 75% of all purchases by local governments and state agencies are made through indirect distribution channels; and

WHEREAS, in 1977 the Supreme Court of the United States in Illinois Brick Co. v. Illinois limited recovery for antitrust injuries pursued under federal antitrust law to direct purchasers only; and

WHEREAS, in California v. ARC America Corp. the Supreme Court of the United States rejected the claim that state statutes providing for recovery by indirect purchasers in antitrust cases were preempted by federal law; and

WHEREAS, the Attorneys General by resolutions in 1977, 1978, 1979, 1982, 1983, 1984 and 1986 have consistently supported the enactment of a federal statute overuling the effects of the Supreme Court decision in Illinois Brick Co. v. Illinois;

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1) Supports the reversal of the Illinois Brick decision and supports the enactment of federal legislation which would permit the recovery of antitrust damages by indirect purchasers;

2) Opposes any federal preemption of state indirect purchaser statutes;

3) Authorizes the NAAG Antitrust Committee Chair to work with members of Congress to develop an appropriate federal Illinois Brick repealer; and

4) Authorizes the Executive Director and General Counsel to transmit these views to Congress, the Administration, and to other interested parties.