

JULIANNE ORTMAN

State Senator, District 34
125 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1206

Office: (651) 296-4837
Fax: (651) 296-4239
E-mail: sen.julianne.ortman@senate.mn



Senate

State of Minnesota

March 22, 2010

Attorney General Lori Swanson
Minnesota Attorney General's Office
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

Dear Attorney General Swanson,

We the undersigned members of the Senate and House of Representatives for the State of Minnesota urge you to review the federal legislation H.R.3590 passed by the U.S. House of Representatives on March 21, 2010. We ask that you prepare a lawsuit in federal court to challenge the constitutionality of the federal health care reform bill to be filed as soon as President Obama signs the bill into law.

Minnesota should join with the States of South Carolina, Virginia, Florida, Idaho, Alabama, Nebraska, Texas, Oklahoma, Pennsylvania, Washington, Utah, North Dakota, and South Dakota, which have already declared the intent to sue, and the other 24 states that are considering action regarding the unconstitutional encroachment by our federal government. The Tenth Amendment of the U.S. Constitution protects the sovereign rights of the States *and* of the people: *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."*

First, the mandate in the bill that would force U.S. residents to buy health insurance is unconstitutional. The bill identifies for the source of authority, the Commerce Clause in Article I, Section 8 of the U.S. Constitution, which authorizes Congress, in a limited role, to regulate commercial activity that affects interstate commerce. Pursuant to recent Supreme Court precedent, the Commerce Clause may only be used to regulate economic activity, not inactivity; it has never been used to force anyone to buy anything, and its use in this manner offends our Constitution.

Second, we ask that you examine the bill's use of the capitation tax as a manner of imposing the so-called "shared responsibility penalty." A capitation tax is a tax to be imposed on a per-person basis, and thus is specifically prohibited by the Constitution in situations such as this

Lead Republican on Tax Committee

Representing the Cities of:

Chanhassen, Carver, Chaska, Cologne, Hamburg, Mayer, New Germany,
Norwood Young America, Victoria, Waconia and Watertown

Representing the Townships of:

Benton, Camden, Chaska, Dahlgren, Hancock, Hollywood, Jackson, Laketown, Louisville,
St. Lawrence, San Francisco, Waconia, Watertown and Young America

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where it cannot be applied proportionately among the States according to their population: "No capitation or other direct tax shall be laid, unless in proportion to the census..." and "direct taxes shall be apportioned among the several states...according to their respective numbers." *U.S. Const. Article I, Sections 8 and 3.*

Given the numerous exemptions in the bill (for example the poor, the incarcerated, and illegal aliens), the capitation tax cannot affect all 50 States to exactly the same degree, and therefore cannot be implemented proportionally in a way that meets the constitutional requirement. Moreover, the Supreme Court is unlikely to stretch the contours of the Constitution to suffer such an unlawful capitation tax when other financing and enforcement options are available that would not offend the Constitution.

This will be a pivotal point in any judicial scrutiny of the provisions of this bill: Congress had available to it the power to raise the income tax or provide tax credits to subsidize health care coverage. Neither of these available options would offend the reservation of rights imposed on the Commerce power or the clear criteria for imposing a capitation tax. When Congress has other constitutional and straightforward means available to accomplish otherwise legitimate goals (without an assault on the Constitution), the courts have consistently struck down the offensive unconstitutional scheme.

The Members of the Minnesota Senate and House of Representatives have taken the same solemn oath of office as you, our Attorney General: "to support the Constitution of the United States and the Constitution of the State of Minnesota." Fidelity to the Constitution is our highest obligation as elected officials. Now is the time for you to act to protect and defend our State and its residents against unconstitutional encroachment by the federal government. I would appreciate your immediate response to this request.

Sincerely,



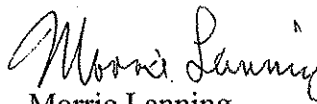
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State Senator, District 34



Tom Emmer
State Representative, District 19B



Larry Howes
State Representative, District 4B



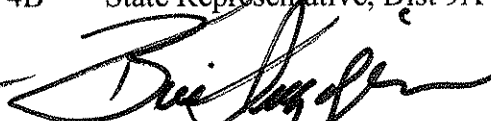
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Torrey Westrom
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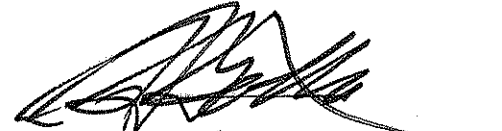

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State Senator, District 13



Paul Anderson
State Representative, Dist 13A

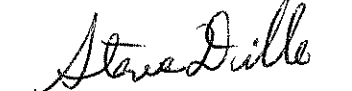

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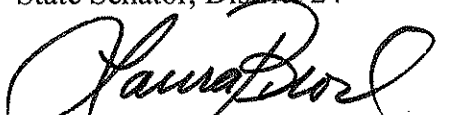

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State Representative, District 22B

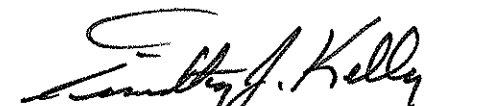

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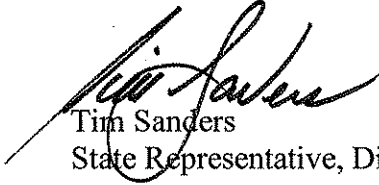
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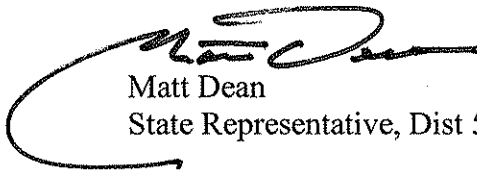
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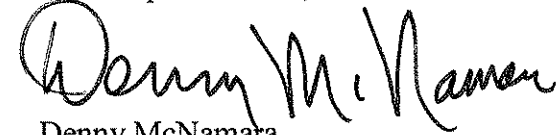
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