



March 23, 2010

The Honorable Gregory W. Abbott  
Attorney General  
209 West 14th Street  
Austin, Texas 78701

Re: Litigation Against the Federal Government Challenging the Patient Protection and Affordable Care Act (H.R. 3590 signed into law March 23, 2010) and related legislation

Dear Mr. Attorney General:

We are very disappointed by your decision to file suit against the federal government because you believe that the Patient Protection and Affordable Care Act “violates the United States Constitution and unconstitutionally infringes upon Texans' individual liberties.”

Article VI of the United States Constitution declares federal law the supreme law of the land. Since Congress passed this legislation under its constitutional grant of power under Article I, Section 8, Clause 1, it is unclear how any case based on "Texas' individual liberties" or the 10th Amendment is legally sound.

In the current suit as well as your January 5, 2010 letter to Senators Hutchison and Cornyn, you contend that Congress is overstepping its authority under the Commerce Clause by imposing a tax penalty on individuals who choose not to buy health insurance. A thorough reading of case law does not support your assertion. Federal courts, including the U.S. Supreme Court, have time and again given Congress broad authority under the Commerce Clause to regulate interstate commerce and impose taxes. Your assertion clearly ignores a more current case (*Gonzales v. Raich*) in which the U.S. Supreme Court looked at the legislation as a whole to determine if the individual provision was necessary to achieve the stated economic objectives. Many scholars have stated that *Gonzales v. Raich* decision provides a sufficient basis for Congress to mandate that individuals purchase health insurance. Notably, President Ronald Reagan's Solicitor General, Charles Fried, stated yesterday that the federal health law's requirements are nothing new: “[w]e have tons of laws that impose obligations on people,” he said, “and some people would rather not participate, starting with the Internal Revenue code” — or the draft in wartime, or Social Security, or environmental restrictions on the states.

Furthermore, nullification and secession as popular American legal theories were tested, fought and defeated at Appomattox. The 10th Amendment does not allow a Texas governor to secede—or a Texas Attorney General to sue—just because they want to score political points. As a Texas taxpayer, we ask you to quit wasting taxpayer money with threats of lawsuits destined to lose, go back to work on issues like predatory lending or toxic contamination in Texas air and water, and shelf these divisive, extreme and losing ideas.

While you are free to hold whatever personal view you care to hold, given that Texas state agencies are being asked to cut their budgets by 5 percent, and the Legislature has neither appropriated your office the funds for nor instructed you to pursue such litigation, this action has all the markings of a frivolous lawsuit.

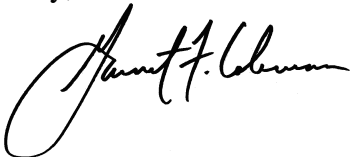
We would also question why you would file a lawsuit that, if successful, would ostensibly result in the reimplemention of the worst practices of the insurance industry. It is disconcerting that you would expend state resources in an attempt to repeal small business tax credits, repeal tax subsidies to middle income families, reinstate the Medicare "donut hole," allow insurance companies to indiscriminately drop people from their coverage, and prevent Texas from receiving any of the myriad pro-consumer reforms in the legislation.

To our knowledge, the Legislature has not instructed you to institute this suit nor has it specifically appropriated money for the proposed litigation. Please explain what constitutional or statutory provisions authorize you to bring this type of lawsuit. Also, please explain how you have obtained the consent of your client, the State of Texas, under the applicable provisions of the Texas Disciplinary Rules of Professional Conduct. Finally, please explain how you intend to pay for the litigation.

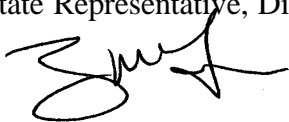
Finally, please provide our offices with copies of any legal briefs or memoranda prepared by your office that address in any way the questions in the preceding paragraph. To the extent that you seek to withhold any information, please note that this request for information is made for legislative purposes under Section 552.108 of the Government Code.

We look forward to hearing from you promptly.

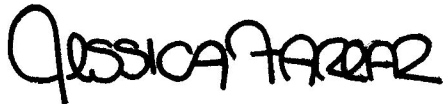
Sincerely,



Garnet F. Coleman  
State Representative, District 147



Trey Martinez Fischer  
State Representative, District 116



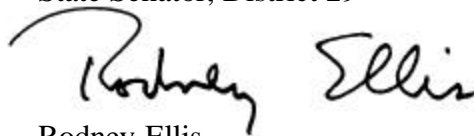
Jessica Farrar  
State Representative, District 148



Sylvester Turner  
State Representative, District 139



Eliot Shapleigh  
State Senator, District 29



Rodney Ellis  
State Senator, District 13



Leticia Van De Putte  
State Senator, District 26

cc: Governor Rick Perry