Congress of the United States
Washington, DC 20515

May 30, 2013

President Barack Obama
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Secretary of State John Kerry
2291 C St., NW
Washington, D.C. 20520

Dear President Obama and Secretary Kerry:

As defenders of the sovereignty of the United States, we write to express our grave concern about the dangers posed by the United Nations' Arms Trade Treaty. Our country's sovereignty, and the protections it affords our individual freedoms, including those recognized by the Second Amendment, must not be infringed.

In April of 2013 at the U.N. General Assembly, your administration voted for this treaty, which opened for signature this month. We understand that your administration is conducting a review of this treaty before deciding whether or not to sign it. We wish to make it clear, at the outset, that we regard this treaty as an international agreement requiring the advice and consent of the Senate, and not as one that can be concluded as an executive agreement, or as one that is in any way binding on the United States before it receives Senate advice and consent. We also wish to emphasize that we regard this treaty as non-self-executing, and therefore as having no domestic legal effect within the United States unless and until Congress adopts appropriate implementing legislation.

Notwithstanding these concerns, we urge your administration not to sign this treaty for the following reasons:

First, the treaty as adopted by the General Assembly is deeply flawed. It includes only a weak preambular reference to the lawful ownership and use of, and trade in, firearms, and recognizes none of these activities, or personal self-defense, as inherent rights. It frequently employs the term "end users," which can refer to individual firearms owners, and, in its sixth Principle, it creates a national "responsibility" to "prevent . . . diversion" of firearms, a requirement that could be used to justify the imposition of further controls within the United States. This risk is enhanced by Article 5.1, which requires nations party to the treaty to implement it in accordance with this principle. We know that, in the final March negotiating conference, your administration opposed a number of these treaty elements: we do not believe that your administration should now support them by signing the treaty.

We are also profoundly dissatisfied by the fact that the treaty, in Article 20.3, allows amendments by a three-quarters majority vote. We note that Article 20.4 makes it clear that amendments are binding only on those nations that accept them, but we do not regard this as an adequate safeguard. Your administration supported the negotiation of the treaty on the basis of consensus, and amendments to the

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treaty should be subject to the same rule. Moreover, a majority rule amendment process will over time create an international instrument with diverging interpretations and commitments. Such an instrument will be a source of political and legal pressure on the United States to comply in practice with amendments it has not accepted. We believe that the effect of this would be to circumvent the power and the duty of the Senate to provide its advice and consent on treaty commitments before they are assumed by the United States, and thus to abridge the sovereignty of our nation.

Second, the treaty suffers from vagueness. It defines none of the terms essential to interpreting or implementing it, or defines them only by reference to terms that are themselves undefined. This means that, by becoming party to the treaty, the United States would be accepting commitments that are inherently unclear. This would open the United States to repeated charges of breach of faith, and would become another means to pressure the United States to adopt new interpretations of the treaty text and the obligations inherent in it. This problem is particularly serious as it relates to Article 7.1(b)(i) and (ii) of the treaty, which requires nations party to the treaty to assess whether exports could be used to "commit or facilitate a serious violation of international humanitarian law," or of "international human rights law."

We agree that respect for the laws of war and for human rights are deeply important, and that the export control system of the United States should – as it already does – give appropriate weight to these grave considerations. But like the "facilitate" criteria, the standards of "international humanitarian law" and "international human rights law" are easily-politicized and readily subject to redefinition by the so-called international community. In practice, because these terms are at the heart of the treaty, the United States cannot know what commitments it would assume by becoming a party to the treaty. The State Department has already acknowledged that the treaty is "ambiguous." The Senate can never effectively provide its advice on an ambiguous treaty, and thus it should never provide its consent to such a treaty.

This problem is even more serious because Article 6.3 prohibits the export of arms if the exporting nation has "knowledge" that they will be gravely misused. This prohibition invites U.N.-led investigations of United States' policy-makers, to determine what they knew, or should have known, about an arms transfer. Together, Articles 6.3, 7.1, and 11 (the latter on "Diversion") also raise a high legal barrier against covert arms transfers by the United States to assist any resistance to a repressive regime. In summary, the treaty would commit the United States to adopting criteria and standards it does not define and control, and would restrict our ability to conduct our own foreign policy, and therefore again impinges on our national sovereignty.

Third, and finally, the procedure by which the treaty was adopted violates a red line set out by your own administration. In October of 2009, when then-Secretary of State Hillary Clinton announced your administration's support for the negotiation of the treaty, she stated:

> As long as that Conference operates under the rule of consensus decision-making needed to ensure that all countries can be held to standards that will actually improve the global situation by denying arms to those who would abuse them, the United States will actively support the negotiations. Consensus is needed to ensure the widest possible support for the Treaty and to avoid loopholes in the Treaty that can be exploited by those wishing to export arms irresponsibly.

Similarly, the State Department noted that consensus was necessary to provide "the opportunity to promote the same high standards for the entire international community." But when the March 2013 negotiating conference failed to reach a consensus agreement, your administration supported the move to adopt the treaty through the U.N. General Assembly, where opponents and abstainers included many of the world's most important and irresponsible arms importers and exporters, including Iran, North Korea, the People's Republic of China, Russia, and Egypt. The United States thus did not come close to "ensur[ing] that all countries can be held to standards that will actually improve the global situation."

By failing to uphold this red line, your administration has done grave damage to the diplomatic credibility of the United States. In future consensus-based negotiations on this or any other subject, other nations can now threaten to abandon consensus and secure a majority-rule outcome through the U.N. General Assembly. The principle of consensus is of particular significance to the United States -- and many previous administrations have employed and defended it -- precisely because it protects our interests, and our sovereignty, from the majority-rule adoption of treaties on subjects of importance to us.

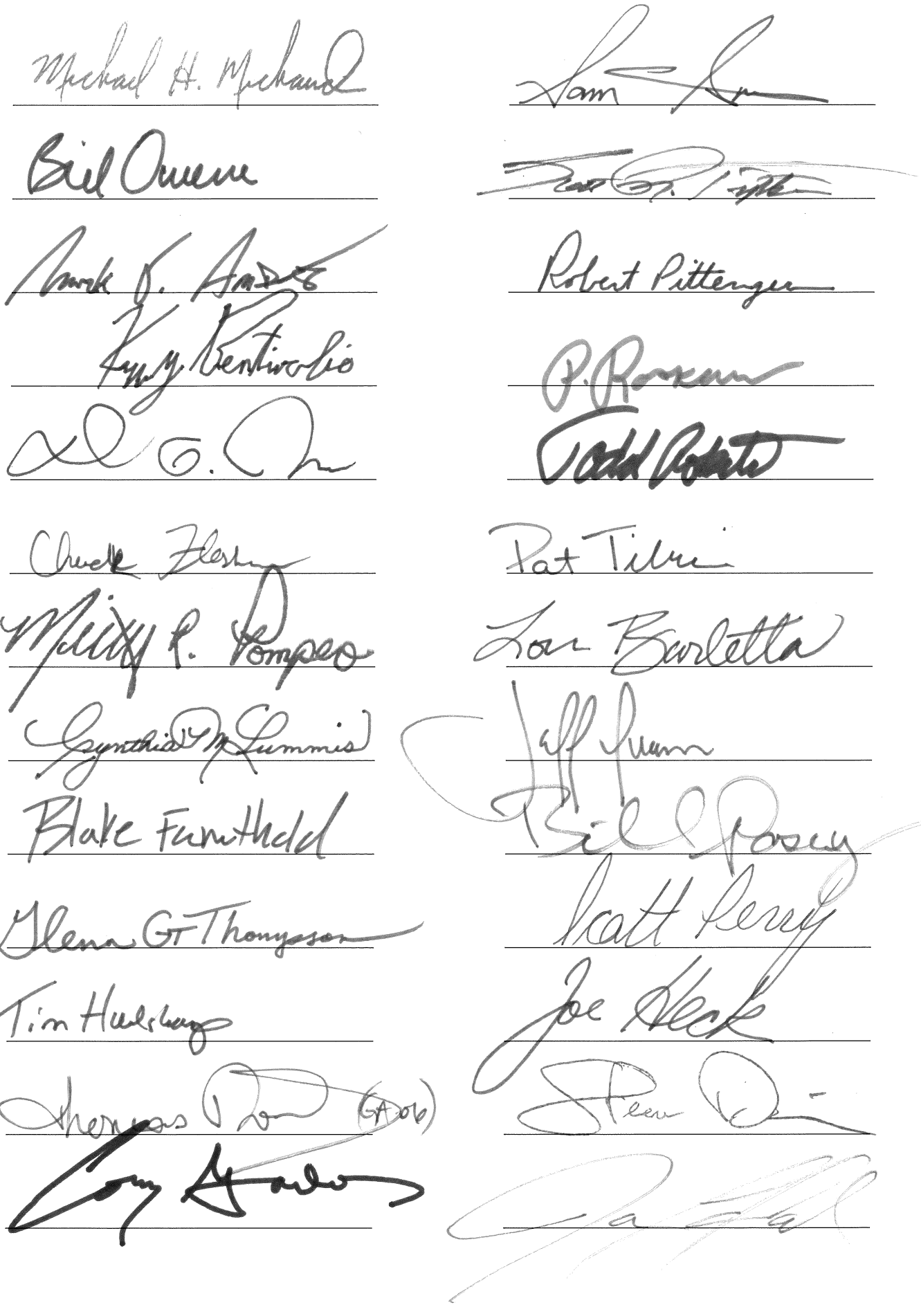
The principle of consensus has long been unpopular with many nations and nongovernment organizations precisely because it limits their ability to pressure the United States. By supporting the move to the U.N. General Assembly, your administration has endorsed a precedent that the opponents of consensus will be free to use against the United States in all future negotiations. We do not believe that your administration should give any further credibility to this treaty, which was adopted by a procedure that has done serious damage to our ability to protect our sovereignty.

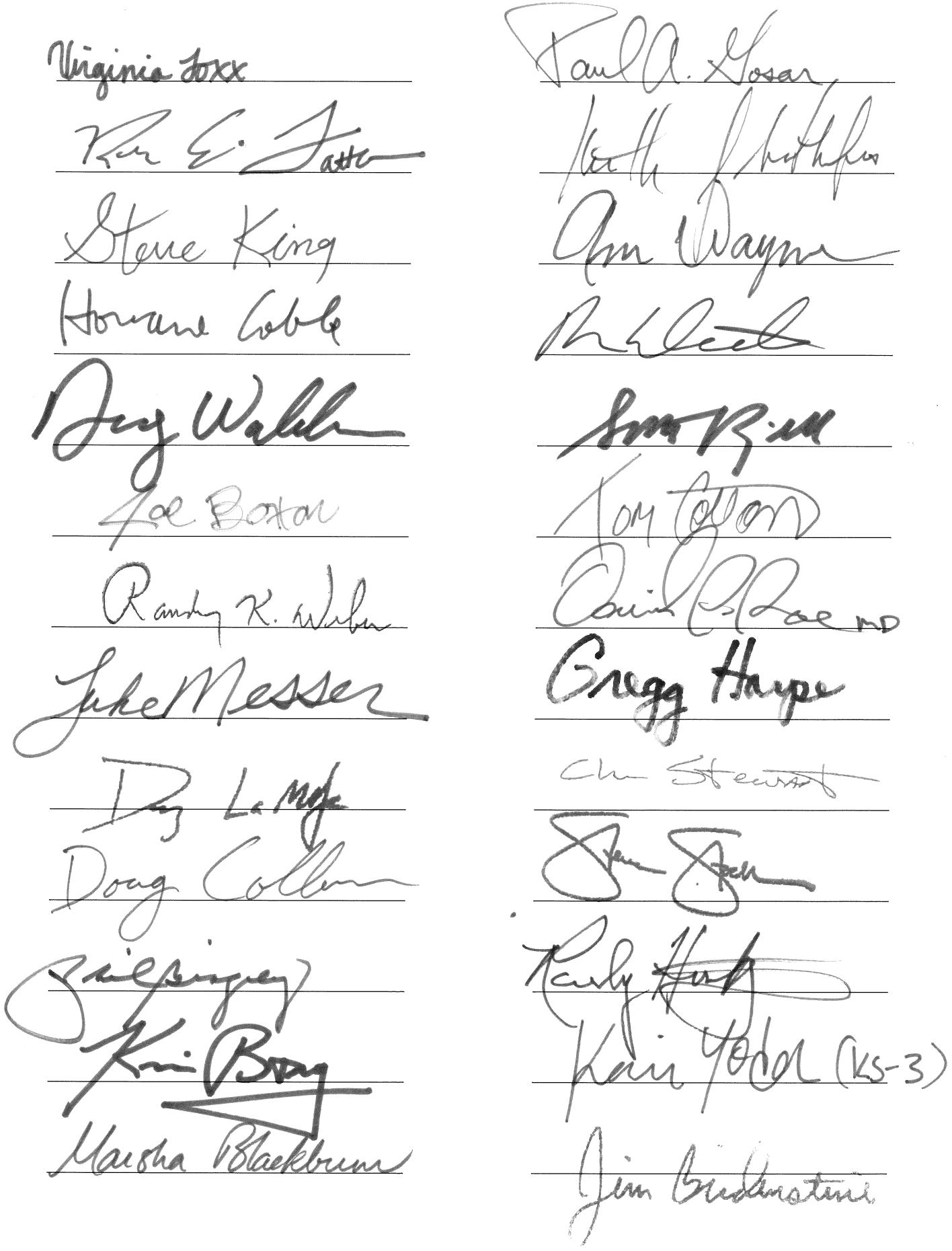
As your review of the treaty continues, we strongly encourage your administration to recognize its textual, inherent, and procedural flaws, to uphold our country's constitutional protections of civilian firearms ownership, and to defend the sovereignty of the United States, and thus to decide not to sign this treaty. As members of Congress, we will oppose both the ratification of the Arms Trade Treaty and any effort to treat it as internationally or domestically binding upon the United States.

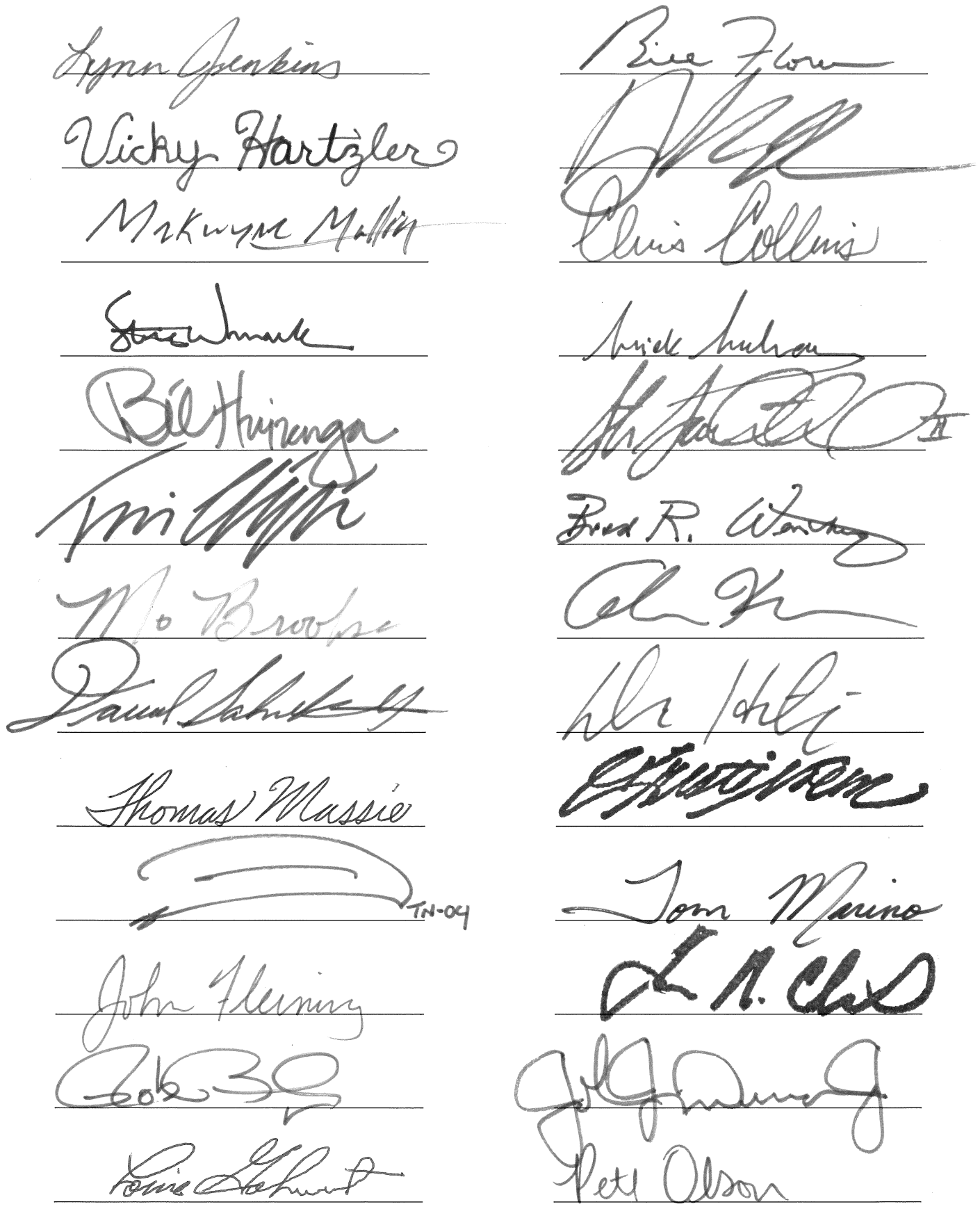
We appreciation your consideration of this issue and look forward to your response.

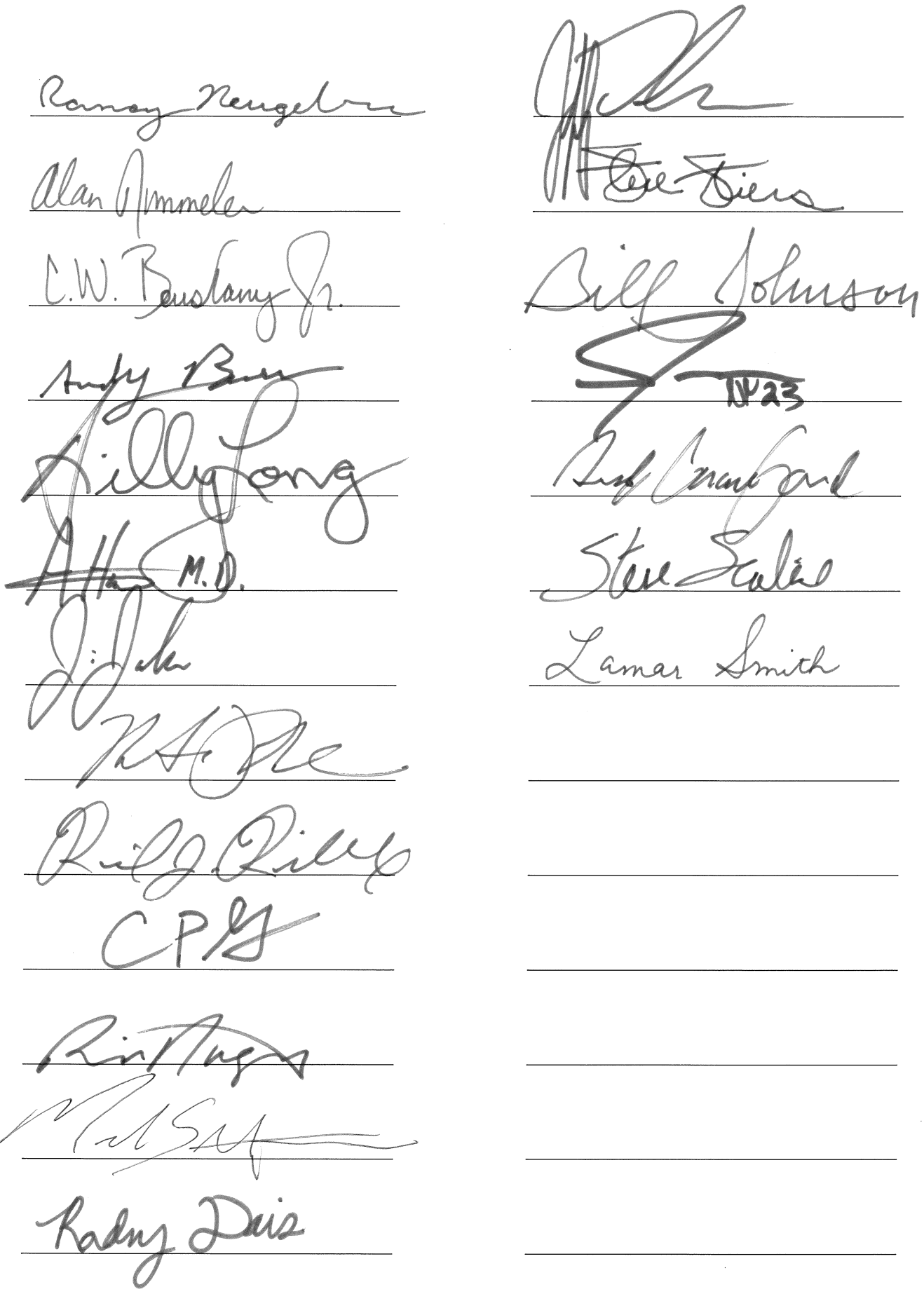
Sincerely,

Members of Congress









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