PROTECTING AND PRESERVING OPEN MARKET COMPETITION BY TAKING DOWN THE REAL ESTATE APPRAISER MONOPOLY IN AMERICA

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From:
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To:
The Associated Press
Alberto Gonzales, White House Chief Counsel
Senator Shelby of the Banking Committee
Senators Hatch and DeWine of the Judiciary Committee
Tom Humphrey, Knoxville News Sentinel
Bert Foer, President, American Antitrust Institute
Harry Mattice, U.S. Attorney, Knoxville
Randy Nichols, Attorney General, Knox County, Tennessee
Lisa Madigan, Illinois Attorney General
Ben Henson, Executive Director, Appraisal Subcommittee
Marc Weinberg, General Counsel, Appraisal Subcommittee
Bill O'Reilly @ Fox News
CBS News 60 Minutes
NBC Dateline
Anderson Cooper @ CNN

Dear Media Professionals, Elected Representatives, Appointed Officials, et al.:

This letter seeks to introduce you to a story of state and federal crime and corruption committed by (1) the Appraisal Foundation, a non-profit corporation formed under the laws of Illinois in 1987, and its subsidiary board, the Appraiser Qualifications Board, consisting of five real estate appraisers, which private entities have abused and exceeded the authority given them by the United States Congress in Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989; (2) members of the Appraisal Subcommittee of the federal Financial Institutions Examination Council; and (3) Tennessee State employees and officials including the Attorney General's Office, the Governor's Office, and the current chairman of the State Democratic Party, Randy Button. The criminal acts were aimed directly at (1) Open Market Competition which is the founding bedrock of the American economy and way of life, and (2) thousands of Tennessee citizens and citizens of the other states who aspire to pursue the occupation of real estate appraiser, a right guaranteed by the Fourteenth Amendment of the U.S. Constitution.

In the infancy of our country, Americans embraced Open Market Competition as the best system for producing the greatest selection and quality of goods and services, at the lowest prices. The opposites of Open Market Competition are Monopoly and Restraint of Trade in which power and wealth are concentrated in the hands of a few who arbitrarily influence or set prices, supply and quality. Many federal laws prohibit Monopoly and Restraint of Trade, the Sherman Act of 1890 being one at issue in this complaint. In Tennessee, Monopoly and Restraint of Trade are prohibited by Article I, Section 22, of the Tennessee Constitution and by the Tennessee Trade Practices Act of 1891, codified in Tennessee Code Annotated 47-25-101 et seq. Violations of the Sherman Act and the Tennessee Trade Practices Act are felonies. Criminal and civil remedies are available under both.

The facts which I present are true and undisputed. The legal arguments are un-refuted and irrefutable; they are grounded in abundant and compelling cases of the U.S. Supreme Court, other federal courts, Tennessee State courts, and the clear and plain language of state and federal statutes, the Tennessee Constitution and the U.S. Constitution.

All of you are aware that the usual and customary manner in which America produces its professional service providers is the prescribed curriculum and examination method. Typically, a group of teachers and administrators, as part of their salaried responsibilities, determine a curriculum that will instill the desired body of knowledge, skills and abilities in the student; the student demonstrates mastery of the curriculum by satisfactorily completing written and oral examinations. A state examination typically follows for the graduate who is applying for a professional license. This is the process by which America produces professionals such as doctors, lawyers, teachers, engineers, architects, accountants etc. Even when a doctor aspirant completes a residency requirement at a medical facility, such residency is part of the arranged curriculum; it is not relegated to the arbitrary whims of an already licensed doctor.

Prior to 1989, real estate appraisals in federally related transactions were not required to be in writing; appraisers' conduct was not required to be supervised by a state or federal agency; appraisers' competency was not required to be demonstrated; and no uniform practice standards existed. Senator Shelby could have obtained a federally-related loan to purchase real estate based upon a mere oral appraisal from any person calling himself an appraiser. Senator Hatch may have done likewise based upon an appraisal written on a business card or a lunch napkin. This lack of accountability and oversight was thought to be partially responsible for the billion-dollar taxpayer bailout of the savings and loan industry in the 1980's when many debtors quit making their loan payments and their properties were sold in foreclosure at values far less than the appraised values which had supported loans on those properties. Congress sought to remedy these deficiencies by including Title XI in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). Title XI is titled Real Estate Appraisal Reform Amendments.

Section 1101 of Title XI states its purpose: "The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally

related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." The purpose of Title XI is thus stated in clear, plain and unambiguous terms. Nowhere in Title XI does the Congress express a purpose, explicitly or implicitly, other than the purpose stated in Section 1101. Of paramount importance, the Congress makes no connection between Title XI and the competitive system of business as it relates to the supply of appraisers and appraiser services, the prices of such services, and the exchange of such services for a fee either within or outside the state in which such services are produced. As noted in several U.S. Supreme Court cases, whenever the Congress has intended to replace Open Market Competition with monopoly or restraint of trade, it has done so only by express authorization. Indeed, Congress has on limited occasions replaced natural competition with regulated competition, but has done so only with express authorization. Title XI is not such a time.

Section 1116(a) of Title XI established a connection between the Congress and the Appraisal Foundation, a non-profit corporation formed under the laws of Illinois in 1987. The Appraisal Foundation consists of two independent boards: (1) the Appraisal Standards Board, consisting of six appraisers who establish uniform national standards for the performance of appraisals, which group and activity are not at issue in this complaint; and (2) the Appraiser Qualifications Board (AQB), consisting of five appraisers who establish criteria by which an appraiser aspirant can become a ***certified*** appraiser, which group and activity are the subject of numerous violations of law in this complaint. Section 1116(a) of Title XI granted authority to the Appraiser Qualifications Board to establish criteria for a person to become a ***certified*** appraiser, and Section 1116(c) granted to each state the authority to establish criteria for one to become a ***licensed*** appraiser. Section 1119 specified July 1, 1991, as the date by which all appraisals in federally related transactions were required to be performed by certified or licensed appraisers, certified in accordance with Appraiser Qualifications Board criteria, and licensed in accordance with each state's criteria. Nowhere in Title XI and nowhere in the AQB criteria which followed was there ever a prohibition against a state from granting the status of ***licensed*** appraiser to an aspirant who had completed a prescribed curriculum and examination process to establish competency to enter the appraiser profession. Nowhere in Title XI and nowhere in AQB criteria was there ever a mandate that a state require an appraiser aspirant to apprentice with a certified appraiser or licensed appraiser in order to become a licensed or certified appraiser. States, including Tennessee, which have limited entry into the appraiser profession to those aspirants who can find an apprenticeship with a willing certified appraiser, have done so unlawfully and without a mandate from the federal government and the AQB.

Section 1102 created the Appraisal Subcommittee (ASC) within the Financial Institutions Examination Council, and Section 1118 empowered the ASC to monitor and reject State certifying and licensing agencies for non-compliance with Title XI policies, practices and procedures. Section 1108 provided $5,000,000 startup funding to the ASC.

In March 1991, the AQB adopted its original criteria for certified appraiser, a classification it split into ***certified residential*** appraiser and ***certified general*** appraiser.

An aspirant wishing to become a certified residential appraiser was not required to be a high school graduate, but could satisfy the education requirements simply by completing 120 classroom hours, three weeks, in appraisal education courses. In addition to this education requirement, the aspirant must complete 2000 experience hours in no less than 24 months. The applicant for certified general appraiser was required to meet these same requirements, but in no less than 30 months. Effective January 1998, the experience hours were increased to 2500 for certified residential appraiser and 3000 for certified general appraiser. The education requirements demonstrate that the knowledge, skills and abilities to become an appraiser are simple and low compared to most professions which require a college degree. The legally significant features of the AQB criteria are not the education requirements, but the experience requirements and the stipulation that **"Education may not be substituted for experience."** These senseless and unlawful requirements have locked out of the appraiser profession many individuals who have graduated with bachelor's or master's degrees in Real Estate Appraisal from one of the many colleges and universities offering such degrees, while allowing a high school dropout or high school graduate to enter the profession by finding an apprenticeship with an already certified or licensed appraiser, such as a friend or relative.

While the usual and customary manner in which America produces its professional service providers is the prescribed curriculum and examination method, the AQB failed to establish this method as an alternative in their criteria. The knowledge, skills and abilities required to be an appraiser are elementary compared to the far more sophisticated and demanding knowledge, skills and abilities to be a lawyer, doctor, engineer, architect, teacher, accountant or other American professional, yet the system for producing these professionals was totally ignored by the AQB in establishing its criteria for certified appraiser. **The AQB criteria are appropriately described as "monopolistic criteria perpetrated by appraisers for appraisers; secure appraiser livelihoods and keep appraiser fees high by restricting competition."** The AQB is in violation of several antitrust laws, and they have interrupted the individual's right to pursue an occupation and equal protection of the law guaranteed by the Fourteenth Amendment. The AQB appraisers are guilty of negligence for breaching the duty inferred upon them by Title XI, the duty to establish a body of knowledge, skills and abilities required to be a competent appraiser, then transmit that body to schools and institutions to offer in a prescribed curriculum and examination process. By pressuring all states to adopt the AQB criteria, the Appraisal Subcommittee is likewise and equally guilty. Members of the ASC were never authorized by Congress to violate the Sherman Act, and they are subject to the Fourteenth Amendment, so ASC members acted outside their scope of employment in committing such violations. They are, therefore, not eligible to be represented by United States attorneys, and they are personally liable for their actions; civil complaints will be against them personally, not against the U.S. Government. The citizens of Tennessee have never authorized the AF, AQB and ASC to violate the Tennessee Trade Practices Act of 1891 or Article I, Section 22, of the Tennessee Constitution or to intentionally interfere with the economic relations of the citizens of Tennessee, so the AF, AQB and ASC must be prosecuted in Tennessee State courts in both criminal and civil actions.

Prior to FIRREA 1989, few if any states had real estate appraiser licensing boards or commissions. Section 1117 of Title XI caused all states to establish such boards: “To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State may establish a State appraiser certifying and licensing agency.” In March 1990, the Tennessee Legislature passed the Real Estate Appraisers Licensing and Certification Act (Public Acts, 1990, Chapter 865), which became codified in sections 101-338 of Title 62, Chapter 39, of the Tennessee Code Annotated. T.C.A. 62-39-201 created the Tennessee Real Estate Appraiser Commission (TREAC) within the division of Regulatory Boards of the Department of Commerce and Insurance, and required six of the nine members to be appraisers, all appointed by the Governor. Section 62-39-333(a) provides, “The commission shall have the authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as may be necessary to ensure compliance with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, **and such other federal law as may be applicable.”** (Emphasis added. The Sherman Act of 1890 and the Fourteenth Amendment were immediately applicable.) Section 333(b) follows: “It is the intent of this chapter to enact policies, practices and procedures consistent with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. Under federal law, this chapter is subject to judicial review by the appraisal subcommittee of the federal financial institutions examination council.”

The intent and purpose of the Tennessee Legislature in passing the Appraisers Act are expressed in clear, plain and unambiguous language: to comply with FIRREA in order to assure that appraisals performed in Tennessee in federally related transactions would be performed by persons meeting the criteria established by the AQB for certified appraisers and would reflect the criteria established by Tennessee for licensed appraisers. Nowhere in the Appraisers Act does the Legislature state a purpose to use the police power of the State to create a monopoly in the supply of appraisers in response to a need to protect the public welfare, health, safety or morals. The sole impetus for creation of the Appraiser Commission was Section 1117 of Title XI of FIRREA.

Filed on August 1, 1991, and effective September 15, 1991, are the original Rules of the Tennessee Real Estate Appraiser Commission. Chapter 1255-1-.01 states, “PURPOSE. The Tennessee Real Estate Appraiser Commission’s purpose in promulgating these rules is to implement the provisions of the State Licensing and Certified Real Estate Appraisers Law…in a manner consistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989…The Commission is authorized by T.C.A. 62-39-333(a) to promulgate such rules as may be necessary to ensure compliance with FIRREA **and other applicable law**.” (Emphasis added. The Sherman Act of 1890; the Fourteenth Amendment; the Tennessee Trade Practices Act of 1891; Article I, Section 22, and Article XI, Section 8, of the Tennessee Constitution; T.C.A. 62-39-106; and tort law against intentional interference with economic relations and prospective advantage were all immediately applicable.)

In 1990, Section 13 of Chapter 865 of the Legislature's Public Acts provided that an appraiser trainee could acquire experience under either a licensed appraiser or a certified appraiser. The exact language of Section 13, which became codified in Tennessee Code Annotated 62-39-304, was, "A license as a real estate appraiser trainee shall be granted by the commission to an applicant who has a high school diploma or its equivalent. A real estate appraiser trainee shall register with the commission the name and license or certificate number of the appraiser under whom they are training. A real estate appraiser trainee shall be authorized to assist a licensed or certified appraiser in the performance of an appraisal assignment."

In 1991, Section 16 of Chapter 366 of the Public Acts provided, "Tennessee Code Annotated, Section 62-39-304, is amended by deleting the section in its entirety and by substituting instead the following: In accordance with the provisions of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, the Tennessee Real Estate Appraiser Commission shall promulgate rules to create a category to be designated as Real Estate Appraiser Trainee. The rules shall facilitate the early entry of a trainee into the appraisal industry."

In 1997, Chapter 370 of the Public Acts (Senate Bill 1575 by Rochelle) again amended 62-39-304: "Section I. Tennessee Code Annotated, Section 62-39-304, is amended by deleting the section in its entirety and by substituting instead the following: (a) As a prerequisite to making application for licensure as a state-licensed real estate appraiser, a state-certified residential real estate appraiser or a state-certified general appraiser, an applicant must register as a real estate appraiser trainee, in addition to all other lawful requirements, then demonstrate two (2) years of service under a state-certified residential real estate appraiser as a real estate appraiser trainee or equivalent experience as determined by the commission and in compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation." This legislative act, legally invalid because it violated state and federal laws, ended the ability of an appraiser trainee to enter the profession and gain experience by associating with a ***licensed*** appraiser. It is probably valid theory that this 1997 Legislative Act was generated by Tennessee appraiser lobbyists; nothing in the legislation would indicate otherwise.

On December 16, 1997, the Tennessee Real Estate Appraiser Commission (TREAC) filed amendments to its rules, with an effective date of March 1, 1998. TREAC Rule 1255-1-.09(1) provides, "As a prerequisite for making application for licensure or for certification as a state certified residential appraiser, an applicant must first register as a real estate appraiser trainee"…then provide proof of a minimum of 24 months of progressive appraisal experience under the direct supervision of a state certified residential appraiser or a state certified general appraiser, or demonstrate equivalent experience limited to 24 months minimum experience as a licensed or certified appraiser in another state, or a minimum 24 months appraisal as an employee of a governmental agency, bank, or lending institution. Rule 1255-1-.09(2) imposes these same requirements on an applicant for certified general appraiser status, except that the minimum number of months of experience is increased to 30. Rule 1255-3-.01 reiterates these minimum

calendar months experience requirements and specifies the number of experience hours required for each license designation: (1) Licensed Appraiser, 2000 hours; (2) Certified Residential Appraiser, 2500 hours; and (3) Certified General Appraiser, 3000 hours.

TREAC Rule 1255-1-.13(2)(c) requires an applicant for registration as a real estate appraiser trainee to "Provide on the application form the name and certificate number of the certified real estate appraiser under whose direct supervision the applicant will serve." Rule 1255-1-.13(6) provides, "All appraisal reports relating to real property in this state which are prepared by a registered trainee must be prepared under the direct supervision of the registered trainee's sponsoring certified real estate appraiser."

Neither the Appraiser Qualifications Board nor the Appraisal Subcommittee nor the Tennessee Real Estate Appraiser Commission allows education to be substituted for experience. Neither has prescribed a curriculum and examination method, nor a challenge examination method, for becoming a real estate appraiser. While TREAC requires an apprenticeship for all appraiser aspirants except the few who qualify with experience in another state or as an employee of a governmental agency, bank or lending institution, TREAC does not require certified appraisers to ever apprentice an aspirant. Because certified appraisers have an inherent interest in not apprenticing their competition who would eventually obtain an equal level license and compete for undivided appraisal fees from the same pool of clients the certified appraiser is now feeding on, apprenticeships rarely exist, and the number of appraisers has remained static since 1989. Upshot: (1) All states have adopted the AQB criteria for certified appraiser status, and this has created a national monopoly and restraint of trade in the supply of appraisers and appraiser services; (2) Regarding the classifications Licensed Appraiser and Trainee Appraiser, classifications over which the AQB has no statutory authority, the TREAC has promulgated rules creating a monopoly and restraint of trade in these classifications in Tennessee.

In 2001, the TREAC demonstrated its especially egregious conduct by promulgating two additional rules designed to tighten its monopoly and restraint of trade in the appraiser industry in Tennessee. Effective April 5, 2001, Rule 1255-1-.13(8) states, "Prior to serving as the sponsor appraiser for a registered trainee, an appraiser shall have obtained a minimum of two (2) years experience as a state certified residential or state certified general real estate appraiser." A person who had completed the required minimum 24 months and 2500 hours of experience to earn the Certified Residential Appraiser designation, and who could prior to April 5'01 immediately qualify to sponsor trainees, must thereafter practice another two years as a certified appraiser in order to sponsor trainees. The chilling effect of this rule is reduced number of potential sponsors, reduced number of trainees, and undue restrictions on entry into the appraiser profession. Rule 1255-1-.13(8) clearly shows motive to further the monopoly and stifle competition. This TREAC rule is nowhere required or recommended by the AQB or the ASC, nor is it required by the Tennessee Legislature. Instead, it is a direct violation of Tennessee Code Annotated 62-39-106 which states, "No state law regulating real estate appraisers shall be more stringent than any federal law regulating real estate appraisers."

Also effective on April 5 ’01 is TREAC Rule 1255-1-.13(7), “A registered trainee may conduct property inspections alone (without being accompanied by the sponsor appraiser) only after five hundred (500) hours of acceptable experience.” Rule 1255-3-.01(6)(a)(1) allows only 8 credit hours for inspection of a single family property, so 63 single family property inspections would be required to accumulate 500 hours. Sponsors and potential sponsors deplore the idea of forfeiting their own money-making time to accompany a trainee on enough inspections to accumulate 500 hours. Consequently, this rule had the chilling effect on competition which TREAC designed it to have. This rule is not required or recommended in the AQB criteria, nor is it required by the Tennessee Legislature. The AQB’S requirement for competency in property inspections is found on pages 3 and 4 of its *Real Property Appraiser Qualification Criteria and Interpretation of the Criteria*, section 3b and 3b(3): “The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the COMPETENCY RULE of the *Uniform Standards of Professional Appraiser Practice* (USPAP) for the property type.” This referenced USPAP standard is stated in Advisory Opinion 2 of USPAP: “An appraiser’s inspection should, at the minimum, be thorough enough to adequately describe the real estate in the appraisal report; develop an opinion of highest and best use, when such opinion is necessary and appropriate; and make meaningful comparisons in the valuation of the property.” The AQB requirement is, therefore, a judgment call by the supervising appraiser, as opposed to the arbitrary 500 hours requirement set by TREAC. Again, TREAC has violated Tennessee Code Annotated 62-39-106 in its further design to tighten their monopoly and lessen competition.

Readers of this letter should by now have a picture of how a private non-profit Illinois corporation, the Appraisal Foundation, and its Appraiser Qualifications Board consisting of five real estate appraisers abused and exceeded their Congressional authority by replacing Open Market Competition in the supply of appraisers and appraiser services with a monopoly and restraint of trade in the appraisal industry. It is a universal law of economics that the number of professionals offering a service directly impacts the price and quality of that service; actions by the AF and AQB have deprived the consumer of the greatest selection and quality of appraiser services at the lowest prices. Much more egregious than these actions are the rules of the Tennessee Real Estate Appraiser Commission **admitted by the Tennessee Attorney General to be designed as a monopoly in the supply of appraisers**. Assistant Attorney General John Wike and Davidson County Chancery Court Judge Ellen Hobbs Lyle argue that TREAC established a monopoly pursuant to a mandate from the Tennessee Legislature, but this is a false conclusion. The Tennessee Legislature has never prohibited TREAC from granting the status of Licensed Appraiser to an aspirant based on successful completion of a prescribed curriculum and examination or on the basis of a challenge examination. The Tennessee Legislature has never expressly authorized TREAC to replace Open Market Competition with monopoly and restraint of trade. Sole responsibility at the Tennessee state level for the admitted monopoly rests with Sandra Moore, TREAC Administrative Director and co-author of the original TREAC Rules, all past and present members of

TREAC, and the state attorneys who reviewed and approved the legal validity of all TREAC rules. While Tennessee law requires the legal validity of all administrative rules and regulations to be reviewed and approved by some attorney on the Attorney General's Staff, this requirement merely guarantees review; it does not guarantee the knowledge and competence of the reviewing attorney, nor does it guarantee that such attorney will not make mistakes of law. Serious mistakes and violations of federal and state laws have been approved by Tennessee attorneys reviewing rules promulgated by TREAC, and the Secretary of State has furnished me with a complete list of all these wrongdoers.

There is here, as in most cases of criminal monopoly, a very significant **money trail**. In May 2003, a committee of the General Accounting Office furnished the results of their year-long study of the appraiser regulatory structure in America to the Senate Committee on Banking, Housing and Urban Affairs, which has jurisdiction over FIRREA. Senators Sarbanes and Miller requested that report. Though the report (GAO-03-404 at www.gao.gov) is very limited in scope and purpose and does not address the issues raised in this letter, some facts cited in GAO-03-404 are illustrative of the money motivation behind the conduct of the AF and AQB and ASC. First, from page 18**, "Since 1991, the ASC has allocated a total of over $9 million in grants to the Appraisal Foundation to defray the costs of the ASB'S and AQB'S Title XI-related activities. For most of this time, the grants have been less than what the ASB and AQB have requested. For example, the ASB and AQB requested a total of over $9 million grant money between 1994 and 2003, but less than $7 million was approved. However, the AF (Appraisal Foundation) also had other sources of revenue other than grants it receives from the Appraisal Subcommittee. For example, the $870,373 grant that the AF received during calendar 2001 represented approximately 36 percent of the AF'S total revenue of $2.4 million for that year." Since the AF'S Appraiser Standards Board consists of six appraisers and the Appraiser Qualifications Board consists of five appraisers, it is obvious that a handful of appraisers have shared in a tremendous amount of money under the current scheme.** This arrangement should be immediately abolished by the Congress or by a court order or Presidential Executive Order, and Open Market Competition should be allowed to take the supply and competency of appraisers to a new level, providing consumers with higher quality and greater selection in appraiser services, at lower prices. While salaried educators and administrators across America regularly establish serious and complex professional curricula as part of their salaried responsibilities, the AF and AQB have received millions of federal dollars for creating and perpetuating a simple scheme that has barred the advancement of knowledge, skills and abilities in the appraiser profession.

Next, from page 19 of GAO-03-404, "the number of appraisers has remained static for the last several years." Juxtapose this fact with the fact that, in the same time period, an increased number of colleges and universities have offered not only a baccalaureate degree but a master's degree in Real Estate Appraisal, among them John Hopkins University, Virginia Commonwealth University, New York University, University of Southern California, Texas A&M, and the University of Denver. Colleges and universities don't create such curriculum, hire professors to teach that curriculum, then hope that a demand market for that curriculum develops. Instead, such schools create new

curricula in response to demand. How then can it be that “the number of appraisers has remained static”? It can be because the AF, the AQB and such highly egregious boards as the TREAC have stifled competition through monopolistic agreements and practices which bar newcomers from the appraiser profession.

In Tennessee there are 17,000 realtors and 1300 certified appraisers. Thousands of the realtors have taken or would take appraisal education classes and examinations in order to become a licensed or certified appraiser. Such pursuits would increase their knowledge, competence, confidence and credibility, and provide a second career option. Most realtors are property value experts in their geographic areas, everyday advising clients at what price to sell or buy property, so becoming an appraiser would be a natural and logical extension of what they are now doing. If, however, all 17,000 of Tennessee’s realtors had master’s degrees in Real Estate Appraisal, none of them could enter the appraiser profession in Tennessee without apprenticing with a certified appraiser who has no incentive to leave the protection of the appraiser monopoly in Tennessee and invite competition to his livelihood. If you were the purchaser, the lender, or the investor in a mortgage on a $500,000 property in Tennessee, which of the following two individuals would be better qualified to appraise the property to protect your interest: (1) Sally Straight-shooter who graduated from John Hopkins with a master’s degree in Real Estate Appraisal, moved to the beautiful horse country of Tennessee, became a property value expert on properties in a six-county area surrounding the subject property, submitted her resume to all 1300 certified appraisers in Tennessee but found none willing to apprentice her, thereby barring her from entry into the appraiser profession in Tennessee; or (2) IQ-Impaired Billy Bob who recently graduated from high school, completed three weeks of appraisal classes, then began an apprenticeship with his father Mike-the-Monopolist Crook, who was transitioned in as a certified appraiser soon after the TREAC was created in 1990? The answer is as obvious as the fear of Open Market Competition which consumes incumbent certified appraisers in Tennessee.

When democrat Phil Bredesen was elected Tennessee Governor in 2002, I sent an article titled Declaring War On The Real Estate Appraiser Monopoly In America to Bredesen, his Deputy Governor, Dave Golden-Gloves Cooley, and his Senior Advisor on Legislative Policy, Anna Windrow. To date I have received no reply from either of these parties. During this time, however, the Knoxville News Sentinel has described the close and long-standing personal relationship between Bredesen, Cooley and Randy Button, who is currently chairman of the State Democratic Party. Cooley and Button have been friends since their teenage years in the same community. Button and Cooley were very instrumental in getting Bredesen elected. Button was one of the original appraiser members appointed to the Real Estate Appraiser Commission when it was created in 1990, and has served as chairman of the Commission. Button, as evidenced by information sent to me by the Secretary of State, voted in favor of the original rules of the Appraiser Commission, which rules created the monopoly recently acknowledged by the Attorney General to in fact exist. For many years, Button has maintained an appraisal firm employing several appraisers. His livelihood is very threatened by Open Market Competition, and that is why Button has supported the monopoly and restraint of trade perpetrated by himself and his cohort members of the Appraiser Commission. The

inference is that Bredesen, Cooley and Windrow, who should be championing legislation in the public's interest, have chosen to support monopoly and restraint of trade over Open Market Competition in order to promote special interests such as Button's. Bredesen, Cooley, Windrow and Button should be included in state and federal prosecutors' scope of inquiry into this matter, which scope should include conspiracy, negligence, malfeasance, obstruction of justice, violations of state and federal antitrust laws, and violation of the Fourteenth Amendment.

Now I will specify some remedies which I request and recommend. First, I suggest that Congress repeal Title XI of FIRREA. Such repeal would abolish the ASC and would end the relationship between the Congress and the Appraisal Foundation. The $5,000,000 ASC start-up money and the $4,000,000 surplus funds now held by ASC would be returned to the United States Treasury. The millions of dollars scammed by the Appraisal Foundation and the Appraiser Qualifications Board would be halted. Any federal agency involved in a federally related appraisal-backed loan program which feels it needs help in establishing a prescribed curriculum and examination method for assuring competency in appraisers should request assistance from the colleges and universities offering master's degrees in Real Estate Appraisal. Such assistance may be available at no cost. Federal regulation of appraisers would end, and states would regulate within their own prerogative according to all applicable federal and state laws. **The appraiser profession is the only federally regulated profession in America, and the manner in which it is being regulated is defeating, rather than promoting, the public interest.** All federal agencies involved in federally related loans would inform the states of any licensing and certification requirements necessary for their approval of that state's appraisers. Senator Shelby, I believe you should quarterback this effort, and you should be happy to explain your actions in front of national TV. You should be proud to have busted a monopoly and restraint of trade in the multi-trillion dollar appraiser industry. Since appraiser fraud is directly linked to appraiser monopoly in that incumbent appraisers can make a good living so long as they reach pre-determined values necessary to make loans for unscrupulous lenders and loan brokers, you would also reduce appraiser fraud by eliminating the monopoly. You would also be sending a message to the Appraisal Institute, the Society of Real Estate Appraisers, and other appraiser lobby groups that money and lunches will not buy the monopoly they seek to shield out competition. If only 10% of the 900,000 members of the National Association of Realtors became appraisers, the number of appraisers in America would increase from 80,000 to 170,000, forcing all appraisers to seek greater quality and selection of services to offer at lower prices.

Next, I call on the ASC to exercise its authority to immediately de-certify all appraiser licenses in Tennessee. This is the one and only power vested in the ASC, and one which it has never exercised. Not long ago, the ASC did threaten to de-certify Tennessee licenses because the local appraisers attempted to prevent out-of-state appraisers from coming into Tennessee to appraise big commercial properties for clients outside Tennessee. Mr. Ben Henson, Executive Director of the ASC, and Mr. Marc Weinberg, ASC General Counsel, you know from this letter and my previous correspondence that I advocate the abolition of ASC, so I'm certain you hold me in personal disfavor. That is irrelevant, however, to your legal duty to de-certify a state program when that state is in

violation of your policies. ASC Policy Statement 2 forbids a state from promulgating agreements which unduly restrict entry into the appraiser profession. With this letter I am enclosing statements submitted by Jonathan Wike, Assistant Attorney General in Tennessee, in the Chancery Court of Davidson County, that the Tennessee Real Estate Appraiser Commission has in fact created a monopoly in the supply of appraisers in Tennessee. If such admitted monopoly does not meet your definition of "unduly restricting entry", please explain why; if this prima facie evidence of monopoly does meet your definition of "unduly restricting entry", then give Tennessee the required legal notice and shut down all appraisals and lending in Tennessee. If you believe in Open Market Competition, antitrust laws, and the Fourteenth Amendment, you should be proud to de-certify Tennessee and explain your actions in front of national TV. By using broadcast and print media to inform the nation of de-certification of Tennessee appraisers, all other states would move swiftly to bring their criteria into compliance with antitrust laws, the Fourteenth Amendment and ASC Policy Statements. Senator Shelby and Mr. Gonzales, I believe you should police the ASC to assure that Tennessee appraisers are de-certified.

Mr. Henson and Mr. Weinberg, I recommend the following letter to Tennessee Attorney General Summers, Governor Bredesen, and Appraiser Commission Administrative Director Sandra Moore:

Dear Ms. Moore, Mr. Bredesen and Mr. Summers:

As you know, in Title XI of FIRREA 1989, Congress created the Appraisal Subcommittee and gave the ASC authority in Section 1118 to de-certify a state appraiser licensing program which establishes policies, practices, or procedures inconsistent with Title XI. De-certification, or non-recognition, of a state's appraiser licenses would effectively shut down all mortgage lending in that state, because orders from clients for appraisals don't determine whether that appraisal is or becomes federally related. So, whether only 30% or 100% of the state's appraisals are federally related, de-certification would be tantamount to a complete halt of appraisals and mortgage lending activity in that state. On a past occasion, we threatened de-certification of Tennessee's appraiser licenses because the Commission, dominated by incumbent appraisers since its creation in 1990, restricted the ability of non-Tennessee appraisers to appraise big commercial properties in Tennessee for non-Tennessee clients. We gave you legal notice, and we poised for de-certification, but the Tennessee Appraiser Commission avoided this action by lifting its restrictions against non-Tennessee appraisers.

Today, we are faced with a far more serious problem created by the appraiser-dominated Commission. Our Policy Statements have the effect of law, and Policy Statement 2 expressly prohibits a state board or commission from promulgating rules unduly restricting entry into the appraiser profession. The philosophy behind Policy Statement 2 reflects the philosophy in the Fourteenth Amendment's guarantee of equal protection of the law and the right to pursue a lawful occupation. Also reflected is the philosophy embedded in the Sherman Act of 1890 which prohibits monopoly and restraint of trade in interstate commerce. Most

appraisals in the multi-trillion dollar appraiser/loan industry are items of interstate commerce, and the U.S. Constitution gives Congress the power to regulate interstate commerce and to enact legislation protecting Open Market Competition in interstate commerce.

While the Appraisal Foundation and its Appraiser Qualifications Board are facing serious legal challenges, one fact is certain: The Appraisal Foundation and the Appraiser Qualifications Board have never required a state licensing agency to require appraiser aspirants to find a willing certified appraiser to apprentice them in order to enter the appraiser profession. The Appraisal Foundation and the Appraiser Qualifications Board have never precluded any state appraiser board from admitting new entrants to the appraiser profession by the prescribed curriculum and examination method, the challenge examination method, or one or more of the methods listed in Section B of ASC Policy Statement 2.

Our review of the Public Acts of the Tennessee Legislature and the Tennessee Code Annotated which expresses those Acts confirms that the Tennessee Legislature has (1) never restricted entry into the appraiser profession in Tennessee to the apprenticeship method; (2) never precluded the Appraiser Commission from employing any of the above-mentioned methods for admitting new appraiser aspirants; and (3) never expressed an intention to replace Open Market Competition in the supply of appraisers and appraiser services with a monopoly and restraint of trade. Surely among the Legislature's rationale is Article I, Section 22, of the Tennessee Constitution which prohibits monopolies. Tennessee Code Annotated 62-39-333(a) requires the Appraiser Commission to comply with "such other federal law as may be applicable", immediately invoking the Sherman Act of 1890 and the Fourteenth Amendment. Furthermore, Tennessee Code Annotated 62-39-106 mandates that "No law regulating real estate appraisers shall be more stringent than any federal law regulating real estate appraisers.' The Legislature did not, therefore, create the undue restriction we hereby allege against you, and action by the Legislature is unnecessary to remedy this matter. The undue restriction was created solely by the Commission, and the Commission must remedy this complaint within thirty days from your receipt of this letter; otherwise, all appraisals and mortgage lending in Tennessee will be halted.

Be advised that, if we ever become apprised of a situation where the Tennessee Legislature or any other state legislature adopts legislation expressly replacing competition with regulation in the supply of real estate appraisers, we will land on them like a ton of bricks, bringing all appraisal practice and lending in that state to a halt. The United States Supreme Court has defined federalism as meaning all power is reserved to the states except those powers prohibited by the U.S. Constitution or those powers taken away by the United States Congress. The Fourteenth Amendment prohibits a state from denying one's property right to pursue a lawful occupation, such as real estate appraiser. Furthermore, appraisals are a trillion-dollar item of interstate commerce, so any agreements, arrangements, combinations etc. by a state legislature or agency creating a monopoly or restraint of trade in the supply of appraisers, appraiser services, or the prices of such services would violate the Sherman Act. Federalism does not mean, "Give us millions of

federal dollars, but stay out of our way when we decide to ignore or violate a federal law."

We have reviewed the Petition for Declaratory Judgment submitted by Tennessean Harry Quigley against the Appraiser Commission et al. in the Chancery Court of Davidson County. Representing Respondents, Assistant Attorney General Jonathan Wike declares in his pleadings that a monopoly in the supply of appraisers does exist, but is mandated by the Legislature. Mr. Wike's admission and declaration that a monopoly does exist is prima facie proof that the Appraiser Commission is guilty of violating our Policy Statement 2 by creating undue restrictions on entry into the appraiser profession.

Mr. Wike also states in his pleadings that, in Tennessee, "There is no right to practice as a real estate appraiser." Such statement defies the Fourteenth Amendment's guarantee to all citizens in all states the right to pursue a lawful occupation, and it expresses policy and practice that contradict the intent of Congress in Title XI. It is grossly inconsistent with ASC Policy Statement 2.

Governors, Attorneys General, Administrators and other public officials bear a heavy responsibility to promote not special interests, but the Public Interest. How the supply of appraisers is determined in Tennessee affects the Public Interest not merely within Tennessee, but everywhere outside Tennessee where individuals rely upon appraisals produced in Tennessee. Most appraisals produced in Tennessee become part of mortgage-backed securities sold to investors around the world. By (1) allowing an appraiser-dominated Appraiser Commission and a group of 1300 certified appraisers to replace Open Market Competition with an admitted monopoly in the supply of Tennessee appraisers, and (2) openly and arbitrarily declaring a position directly opposed to the U.S. Constitution, you have placed yourselves in an indefensible position. Again, remedy this situation within thirty days, or we will shut down mortgage lending and appraisals in Tennessee.

I ask that all federal funds now flowing into Tennessee be halted until the Tennessee Real Estate Appraiser Commission takes the actions required to replace monopoly and restraint of trade with Open Market Competition. Governor Bredesen and Attorney General Summers appear very determined to ignore the Sherman Act's prohibition against monopolies and restraints of trade in interstate commerce, along with the Fourteenth Amendment's guarantee of the right to pursue a lawful occupation and receive equal protection of the law, so let Bredesen and Summers explain to the media why states which violate federal laws are not entitled to receive federal funds. **Senator Shelby, please collaborate with President Bush's Chief Counsel, Alberto Gonzales, and ask the President for an Executive Order immediately suspending all federal funds now flowing into Tennessee.** Since the Tennessee Attorney General is not popularly elected but is appointed by Tennessee Supreme Court justices, Summers may feel that he has the State Supreme Court, God, and the Chancery Court of Davidson County in his pocket, and he can violate federal and state laws if he chooses; he may be on an ego and power trip similar to that of Alabama Supreme Court Chief Justice Roy Moore who learned from a federal prosecutor that the rule of law applies to everyone. A federal prosecutor who believes totally in Open Market Competition and antitrust laws should tell Summers, Bredesen, and all other monopolists in Tennessee that the rule of law will be enforced.

Dennis Garvey, Deputy Chief of the Tennessee Attorney General's Antitrust Division, argues "The State can create a monopoly if it wants to!" Garvey should be targeted for conspiracy, malfeasance, negligence and obstruction of justice.

Tennessee is the only state where the Attorney General is appointed by state Supreme Court Justices who are appointed by the Legislature. Opponents of this arrangement argue that Summers exemplifies the inherent risks in this arrangement, specifically, that the Attorney General will make arbitrary decisions of law that are not representative of the public interest or legal precedent, and that the Tennessee Supreme Court will uphold such decisions by the Attorney General. Such risk is now being played out in the United States Supreme Court in the case of George Lane vs. State of Tennessee wherein Attorney General Summers argues that the State of Tennessee is not required to comply with the federal Americans With Disabilities Act of 1990 because this Act is pre-empted by Tennessee's sovereign immunity under the Eleventh Amendment of the U.S. Constitution. George Lane is a left-leg amputee who sued Tennessee after crawling to the second floor of Polk County Courthouse to attend a hearing; Lane argues that the federal Americans With Disabilities Act requires Tennessee to equip its courthouses with elevators for such handicapped persons. Lane has been joined by Beverly Jones who is a court reporter confined to a wheelchair and unable to pursue her livelihood in 25 courthouses in Tennessee which lack elevators. Hopefully, the U.S. Supreme Court will hammer home to Summers and his cohorts this message: "No state can opt out of the federalism established by the U.S. Constitution. Federal law trumps state law. The Sherman Act, the Americans With Disabilities Act, the Fourteenth Amendment and all federal laws will be enforced. State budget problems, such as the expense of installing elevators in 25 courthouses to comply with the Americans With Disabilities Act, cannot be masked under the guise of state's sovereign immunity to avoid compliance with federal law. Congress does not condition compliance with federal laws on the financial ability of a state to comply. If you desire to be an arrogant, arbitrary dictator making your own laws, than relocate to the Middle East where such persons may be accepted. If you cannot accept federalism established by the U.S. Constitution, you are living in the wrong country."

Until repealed by Tennessee voters in 2002, the Tennessee Constitution banned State lotteries, much like Article I, Section 22 of the Constitution bans monopolies. When the lottery ban was repealed, a State Lottery Commission was subsequently formed and sought a law firm to represent its interests, a contract worth hundreds of thousands of dollars. Governor Bredesen awarded said contract to the law firm which represents him personally. Within twenty-four hours of that decision which reflected prima facie lack of honesty and ethics in government, Bredesen rescinded his reckless, arrogant decision, and the contract was awarded to another firm. Attorney General Summers reviewed and approved Bredesen's first decision. Along with this decision of 2003 came another decision by Bredesen showing his pattern of quickly making sweetheart deals to benefit special interests rather than the public interest. John Shumaker, in his first few months as the new president of the University of Tennessee, Knoxville, under a contract worth $735,000 per year, was under public fire for lavish spending and for awarding a no-bid lucrative contract to a personal friend and attorney. Bredesen summonsed Shumaker to a

meeting in Nashville and offered Shumaker a severance package of $422,956 if Shumaker resigned. Shumaker accepted this sweetheart deal by Bredesen, but State legislators and other citizens insisted that Shumaker had violated the ethics clause in his original contract, so Bredesen was forced to rescind his sweetheart deal to Shumaker. These two examples are helpful in understanding why Bredesen and his staff have ignored pleas to bust the appraiser monopoly established by, and among others, their appraiser friend and chairman of the State Democratic Party, Randy Button.

Recently, Governor Bredesen appointed two appraisers to the TREAC. By letters dated October 8 and October 20 ’03, I asked Bredesen’s Chief Legal Counsel, Robert Cooper, to answer these questions: “(1) Do you deem members of the Real Estate Appraisers Commission to be State employees or independent contractors or some other legal category? (2) What legal authority supports your classification of these individuals? (3) Do you believe the scope of employment of these individuals is defined and described in Tennessee Code Annotated 62-39-333? (4) What other legal authorities, if any, do you believe are necessary to understand the scope of employment of Appraiser Commission members? (5) When Appraiser Commission members promulgate rules in violation of State and federal laws, have they acted outside their scope of employment?” Surely the chief legal counsel to the Governor who had just appointed two members to the Appraiser Commission would know and respond with answers to these questions, especially since I informed Cooper that I am preparing civil complaints against these and other parties for review in Tennessee State court and the Federal District Court in Knoxville. Cooper has refused to answer my questions, another example of the cover-up and stone-walling by Bredesen’s team.

Such cover-up and stone-walling are also in effect at the Appraisal Foundation, the Illinois non-profit corporation which has its main office in !ashington, D.C. By e-mail in November ’03 I requested David Bunton, the Executive Director of the AF, and Elliot Adler, AF’S General Counsel, to furnish me the names and mailing addresses of all members of the AQB from its inception to date in order that I can name them in State and federal lawsuits and issue summons and complaints upon them. Bunton referred me to Adler who e-mailed me that he and the AF are under “no obligation” to furnish me that information. Senator Shelby, I suggest that your Committee summons Bunton and Adler and ask them these questions: (1) What yearly income have you and AQB’S appraisers personally derived from your association with the Appraisal Foundation? (2) Why have the Appraisal Foundation and its Appraiser Qualifications Board not followed the usual and customary prescribed curriculum and examination method for qualifying appraisers to enter the appraiser profession? (3) If the prescribed curriculum and examination method is applied by salaried teachers and administrators to develop and instill the desired body of knowledge, skills and abilities in such complex disciplines as law and medicine, why does this method not make absolute and compelling sense for the education and competency of real estate appraisers? (4) Can you cite any reason why the professors at the nation’s colleges and universities offering the Master’s Degree in Real Estate Appraisal are not better qualified than the AF’S appraisers to develop licensing criteria for appraisers? (5) Have you and the handful of appraisers who have promulgated licensing criteria for becoming a certified appraiser received legal advice on whether your

criteria may violate state and federal antitrust laws and the Fourteenth Amendment? (6) Are you aware that the United States Supreme Court has interpreted the Fourteenth Amendment to guarantee to all individuals the right to pursue a lawful occupation? (7) Why shouldn't the Congress repeal Title XI, ending the AF'S financial relationship with the U.S. Government and allowing Open Market Competition to take appraiser competence and quality to unprecedented heights while simultaneously exerting downward influence on the cost of appraiser services?

Mr. Gonzales, I ask that you prepare an Executive Order for President Bush's signature, to include the following provisions: (1) an order to the Appraisal Subcommittee to immediately initiate procedures to de-certify all Tennessee licensed and certified appraisers; (2) an order to all federal agencies to freeze all federal monies flowing into Tennessee; and (3) an order to the Appraisal Subcommittee and its parent agency, the Federal Financial Institutions Examination Council, to freeze all monies going to the Illinois non-profit Appraisal Foundation until Senator Shelby's Banking Committee can conclude a finding on the need to continue a multi-million-dollar relationship with this private entity which is defeating, rather than promoting, the public policy interests in the appraiser profession. The Executive Order would carry such messages as (1) Members of a state, federal or private licensing board who are practitioners in the field they are regulating cannot use their rule-making authority to create a monopoly in the number of practitioners in that field when such actions violate federal laws such as the Sherman Act and the Fourteenth Amendment, (2) Federal funds are not available to states and private entities which violate either the spirit or the letter of federal laws, and (3) The Public Interest is better served by Open Market Competition than by Monopoly and Restraint of Trade. Do you not agree, Mr. Gonzales, that if the current apprenticeship-only method of becoming an appraiser in Tennessee is sound public policy, then all professional aspirants in America, regardless of their education and college degrees, should be barred from their professions until they find an already-licensed professional willing to apprentice them?

Miss Madigan, Illinois Attorney General, I ask that you conduct an audit of the Appraisal Foundation, a non-profit corporation formed in your state in 1987, and co-ordinate with the United States Attorney and the Knox County, Tennessee, Attorney General, Randy Nichols, regarding violations of federal, Illinois and Tennessee laws by the Appraisal Foundation, a small group of real estate appraisers who have scammed millions of federal dollars and private dollars. The afore-mentioned GAO report, GAO-03-404, describes some of the methods applied by the Appraisal Foundation to scam private dollars from appraisers, appraisal instructors, and appraisal education facilities.

Senator Hatch, because your Judiciary Committee has jurisdiction over the Justice Department and its Antitrust Division, and Senator DeWine, because you are Chairman of the Subcommittee on Antitrust, Competition Policy and Consumer Rights, I am especially seeking your help and accountability in this regard. Please select specific United States Attorneys who are totally knowledgeable of antitrust laws, totally committed to enforcement of antitrust laws, and have no conflict of interest in this matter. Since I am a resident of Knox County, Knoxville, Tennessee, and a direct victim of the

crimes and corruption alleged, I hope that a leading role in the investigation and prosecution of the wrongdoers will be performed by the office of Harry Mattice, United States Attorney in Knoxville.

My first attempt to bust the Tennessee appraiser monopoly through the court system was via Petition for Declaratory Judgment which I filed with the Chancery Court of Davidson County, Nashville, on June 18, 2003. Tennessee Code 4-5-225 authorizes that court to declare an agency rule or a legislative statute legally invalid if it violates constitutional provisions, exceeds the statutory authority of the agency or violates state or federal law. Damages cannot be awarded in such an action. Elected Judge Ellen Hobbs Lyle heard my claims, and showed from beginning to her ending opinion: (1) lack of knowledge and concern for my arguments and supporting legal authorities, (2) extreme bias in favor of the Attorney General, and (3) gross failure to follow established legal precedent. While I will eventually file judicial ethics violations against Lyle, and nominate her to Reader's Digest annual list of "ten worst judges in America" based on her bias and failure to follow the law, all the documents submitted in this action are useful for demonstrating which state and federal laws have been violated by the TREAC and the State attorneys who reviewed and approved rules promulgated by TREAC. I will gladly forward those court documents to any requesting party.

Senator Hatch, Senator DeWine, Mr. Gonzalez, Mr. Mattice and all federal prosecutors involved in this matter, I am alleging that the Sherman Act and the Fourteenth Amendment have been violated by the Appraisal Foundation, the Appraiser Qualifications Board, the Appraisal Subcommittee, the Tennessee Real Estate Appraiser Commission, and Tennessee state attorneys who approved TREAC rules, which rules reflect agreements reached among and by members of TREAC and the reviewing attorneys. I urge you to prosecute the Appraisal Foundation as a corporation; the individual appraiser members of the Appraiser Qualifications Board; the individual members of the Appraisal Subcommittee; the individual members of the Tennessee Real Estate Appraiser Commission; and the individual attorneys who approved TREAC rules. I urge you to include in your scope of investigation Tennessee Governor Bredesen, Deputy Governor Cooley, Attorney General Summers, Anna Windrow of Bredesen's Staff, Tennessee Democratic Party Chairman and original installer of the appraiser monopoly in Tennessee, Randy Button, along with other parties who may have committed conspiracy, obstruction of justice, or other offenses in this matter. Paula Flowers, Commissioner of the State Commerce and Insurance Department, the parent agency of the Real Estate Appraiser Commission, should be included. Tennessee law prohibits the Attorney General from representing State employees and officials in criminal matters, so here there should be no conflict of interest. Regarding the Appraisal Subcommittee, Tennessee attorneys and Appraiser Commission members, it should be clear to you that these individuals acted outside the scope of their employment, making them personally liable for their actions.

In Davidson County Chancery Court, Tennessee Attorney General Summers admitted that TREAC has violated the Sherman Act, but he **erroneously** believes that the U.S. Supreme Court doctrine of State Action Immunity shields TREAC members and state

attorneys from prosecution for violating the Sherman Act. When TREAC members and state attorneys promulgated illegal agreements beyond the scope of their authority and employment, in violation of the Sherman Act, they became criminally liable as individuals, unshielded by State Action Immunity. Moreover, since the Tennessee Legislature has never expressly authorized TREAC to replace competition with regulation in the supply of appraisers, the doctrine of State Action Immunity does not apply to these culprits. When members of TREAC promulgated agreements beyond their authority and scope of employment established in Tennessee Code Annotated 62-39-333 and 62-39-106, those actions were not actions of the State, but were individual personal actions prohibited by the State. Rather than being compelled or authorized by the State, the monopoly and Sherman Act violation admitted by the Attorney General were expressly prohibited by T.C.A. 62-39-333 and 62-39-106. If you are a federal prosecutor assigned this task and your position is that the doctrine of State Action Immunity shields Tennessee individuals from prosecution for their admitted violations of the Sherman Act, please furnish a brief with U.S. Supreme Court cases supporting your position, and allow me the opportunity to refute your position.

Federal and state prosecutors, you can obtain from Tennessee Secretary of State Riley Darnell the following evidence: (1) copies of all agreed-to rules of the Appraiser Commission from inception in 1990 to date; (2) certification of who drafted and proposed those rules; (3) copies of the voting records of each Appraiser Commission member on all such rules; and (4) names and addresses of all Appraiser Commission members from inception to date. That evidence will show that Sandra Moore, current Director of the Appraiser Commission, was a co-author of the original 1991 Commission rules which violated the Sherman Act; the Fourteenth Amendment; Article I, Section 22 of the Tennessee Constitution; the Tennessee Trade Practices Act of 1891; T.C.A. 62-39-106 and T.C.A. 62-39-333; and ASC Policy Statement 2. That evidence will also show that Randy Button, current Chairman of the State Democratic Party, was a Commission member and voted in favor of the original 1991 rules. Since criminal conspiracy is defined as the agreement between two or more persons to commit an unlawful act, and since statutory time limits on prosecuting such conspirators don't begin to run so long as the conspiracy continues, I ask that you cast a conspiracy net back to 1990, bringing Moore, Button and all their cohorts into the fold.

Mr. Nichols, you are the Attorney General for Knox County in which I have been a resident since 08-16-98. To you I am alleging that the Tennessee Trade Practices Act has been violated by the Appraisal Foundation; the Appraiser Qualifications Board; the Appraisal Subcommittee; the Tennessee Real Estate Appraiser Commission and its parent agency, the Department of Commerce and Insurance; and State attorneys who approved TREAC rules. I am a direct victim of those violations, and those violations are felonies. These same suspect felons have also violated Article I, Section 22 of the State Constitution which prohibits monopolies. The truth of my allegations is clearly established by reading and understanding the enclosures and the recent Tennessee Court of Appeals case, *Sherwood v. Microsoft*, No. M2000-01850-COA-R9-CV-Filed July 31, 2003. *Sherwood* is an encyclopedic case on the Tennessee Trade Practices Act; it leaves no doubt that the suspect felons I have named should appear in criminal court in Knox

County. Conspiracy, negligence, malfeasance and obstruction of justice are some of the other criminal charges which should flow from your investigation into this matter. If required to avoid a conflict of interest, please appoint a special prosecutor. All the unlawful agreements, arrangements and combinations perpetrated by the suspect felons were outside the scope of authority and employment of these individuals, so they are personally liable for their actions; they deserve to pay heavy fines and go to jail. If you disagree with my conclusions, please cite your legal authorities, and afford me the opportunity for rebuttal.

In this letter I have attempted to paint a picture of how a group of real estate appraisers at the federal level and at the state level in Tennessee have replaced Open Market Competition with Monopoly and Restraint of Trade in the appraisal profession. In the picture is the Tennessee Attorney General who carries a legal responsibility to represent the people's interests in state and federal laws, yet takes a position favoring 1300 certified appraisers over the interests of all other people, a position he admits violates the Sherman Act. Why has the Attorney General not simply admitted that his staff attorneys who reviewed and approved as legally valid Appraiser Commission rules which violated several state and federal laws were wrong and should be punished? Is this Attorney General an autocrat at heart, not really striving to promote democracy, federalism, and the rule of law? Are Summers and Bredesen attempting to turn government by and for the people into government by Summers and Bredesen for Summers and Bredesen and their special interests? Why have Democrat Governor Bredesen and his staff ignored pleas to bust the appraiser monopoly originally established by, and among others, their appraiser friend and Chairman of the State Democratic Party, Randy Button? Now that the Appraisal Subcommittee has a prima facie case that the Tennessee Appraiser Commission has violated its Policy Statement 2, will the Appraisal Subcommittee exercise its authority to de-certify Tennessee appraisers, which would halt all appraisals and mortgage lending in Tennessee? Will Senator Shelby and his Banking Committee, Senator Hatch and his Judiciary Committee, and Senator DeWine and his Antitrust Subcommittee exercise all their legal options, including legislation, to replace monopoly with Open Market Competition in the appraisal industry across America? Will these Senators strive through the federal court system to insure that those individuals and corporations who have violated federal laws are prosecuted? Will Mr. Gonzales, Chief White House Counsel, accept the prima facie case presented against the Tennessee Appraiser Commission and the Appraisal Foundation, then recommend that President Bush order the Appraisal Subcommittee to de-certify Tennessee Appraisers, suspend all federal monies flowing into Tennessee, and suspend all federal monies flowing to the Appraisal Foundation? Will Knox County Attorney General Randy Nichols produce a thorough and unbiased investigation of all Tennessee and non-Tennessee residents who have violated laws in this matter, to include Governor Bredesen and Attorney General Summers and their staffs?

Too often government officials are influenced by lobbyists and special interests. In this matter, GAO-03-404 shows that appraiser lobby groups such as the Appraisal Institute and Society of Real Estate Appraisers, along with the Appraisal Foundation and the Appraisal Subcommittee, have influenced the conclusions of the largely descriptive

narrative titled GAO-03-404. Specifically, the report recommends that Congress give the Appraisal Subcommittee more decision-making power and more money. More money would enable the ASC to give the Appraisal Foundation more grants, thus feeding the monopoly foisted upon the nation by these culprits. This recommendation is like a doctor studying an ailing patient for a year, determining that the patient is dying from arsenic poisoning, then requesting that the government give him money to buy more arsenic to feed to the patient. The Appraisal Foundation, the Appraiser Qualifications Board, the Appraisal Subcommittee, the Tennessee Real Estate Appraiser Commission, and similar groups are arsenic in the blood of Open Market Competition; it is time to recognize and remove this poison.

Media Professionals, I hope you will disseminate this story to the nation and follow the responses of the parties who have a responsibility to take legal and legislative action in this matter. I urge you to contact all non-media addressees at the top of this letter and obtain a press release statement of response. Mr. Gonzales has an Executive Order decision to make. Mr. Henson and Mr. Weinberg of the Appraisal Subcommittee have a Decertification-of-Tennessee Appraisers decision to make. All the senators have legislative and legal decisions to make. United States Attorney Harry Mattice of Knoxville and Knox County Attorney General Randy Nichols have prosecutorial decisions to make. Illinois Attorney General Lisa Madigan has been asked to audit and investigate million-dollar scams perpetrated by an Illinois corporation, the Appraisal Foundation. The national public will want to know of their decisions.

If anyone lacking my phone number wishes to reach me, please send your message to my e-mail, indicating **Appraiser Monopoly** as your subject.

I hereby authorize full text publication of this letter anywhere.

Sincerely,

Harry Quigley