# Congress of the United States
## Washington, DC 20515

November 24, 2003

The Honorable George W. Bush
President
The White House
Washington, D.C. 20500

Dear President Bush:

We are writing to urge you not to pursue any policy or regulatory changes that would reduce the scope of waters protected under the Clean Water Act. In particular, we ask that you not amend the long-standing definition of waters as suggested by the January 15, 2003 Advance Notice of Proposed Rulemaking (ANPRM) and that you rescind the policy guidance that was issued at the same time.

Over the last 30 years, our nation has made great progress towards meeting the Clean Water Act's goal "to restore and maintain the chemical, physical and biological integrity of the nation's waters." As Congress recognized in 1972, this goal cannot be met unless the Clean Water Act is applied broadly. The application of the law to the nation's lakes, ponds, streams, wetlands and coastal waters has been critical to reducing water pollution. Despite the Act's successes, almost 45 percent of our waters still are not clean enough for fishing, swimming and other uses. Reducing the scope of waters protected by the law will reverse our country's progress towards eliminating our remaining water pollution problems and undermine the significant investments we have made to improve water quality.

Both the ANPRM and guidance represent attempts to remove federal protection from waters – including many streams, wetlands and natural ponds – that have been covered by the Clean Water Act for decades. These new policies claim reliance on the Supreme Court's ruling in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*. That decision eliminated Clean Water Act jurisdiction over so-called "isolated" intrastate, non-navigable waters where the sole basis for jurisdiction is the use of the waters as habitat for migratory birds. While this decision was very troubling and places many wetlands and streams at risk, it did not invalidate any other existing basis of Clean Water Act jurisdiction, nor did the Court's decision require a rulemaking process to redefine the scope of waters protected by the law.

Not only do the January 15 ANPRM and guidance reach far beyond the holding of the *SWANCC* case, they also both apply to the entire Clean Water Act. The Act has one definition of waters, so whatever wetlands, streams, ponds and other waters the proposed rulemaking and guidance try to leave behind would no longer have any federal legal protections against pollution, filling, and destruction. The guidance is already in effect and it alone may remove protection from an estimated 20 percent of the nation's wetlands, some 20 million acres, as well as countless miles of streams across the country.

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Excluding waters from the Clean Water Act will lead to unregulated discharges of pollution into streams, ponds, and wetlands and, as this pollution flows downstream, greater pollution of our lakes, rivers and coastal waters. The destruction of wetlands results in the loss of habitat for waterfowl and endangered wildlife, exacerbates flooding, harms water quality and reduces stream flows and groundwater recharge. Finally, we note that excluding waters from the Act would present many states with new financial burdens, as they would be on their own to safeguard those waters left without federal protection.

We urge you to stop the rulemaking process, rescind the January 15 guidance memorandum, and issue guidance that accurately reflects the Supreme Court's decision.

Sincerely,

James Oberstar, M.C.

James Leach, M.C.

James Saxton, M.C.

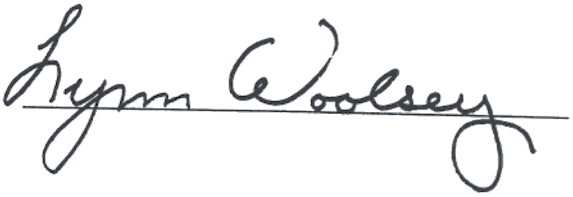
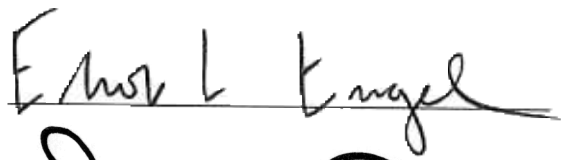
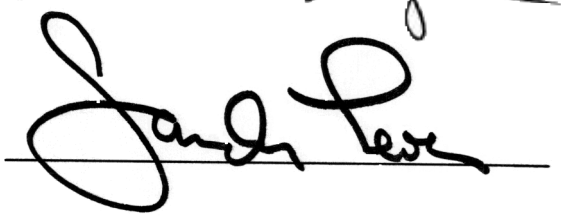
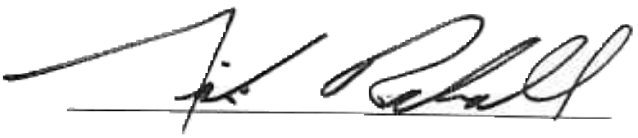
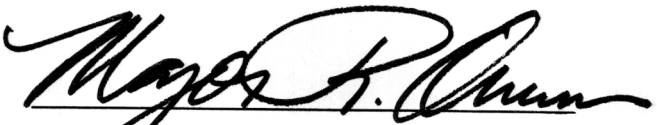
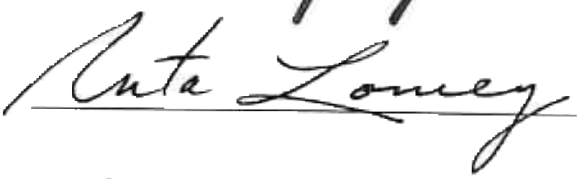
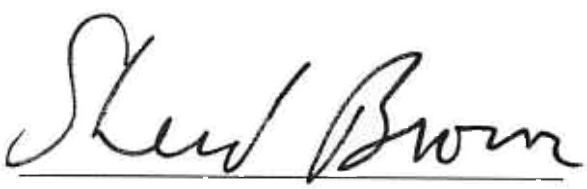
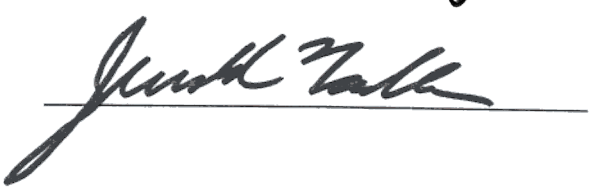
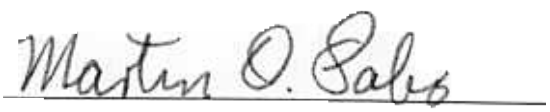
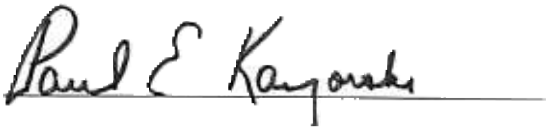
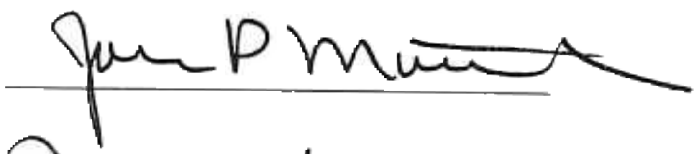
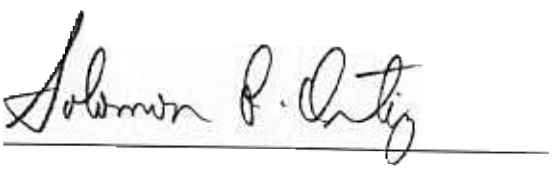
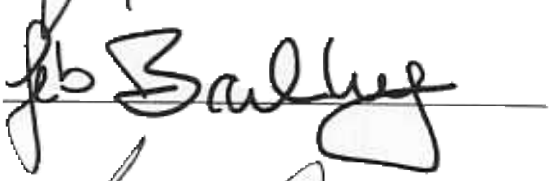
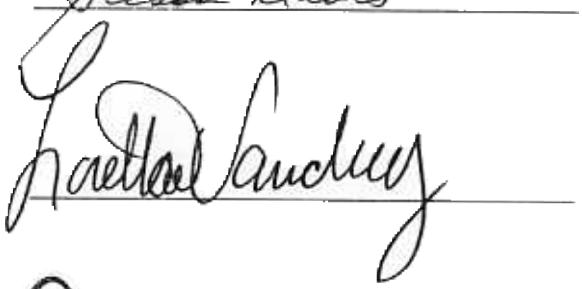
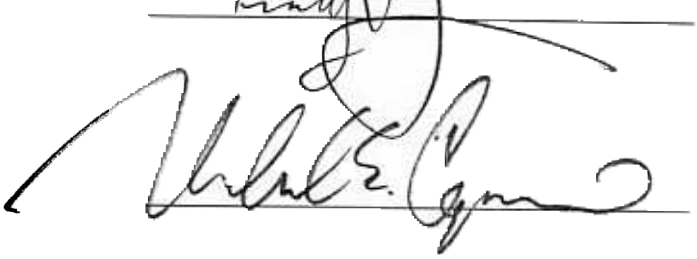
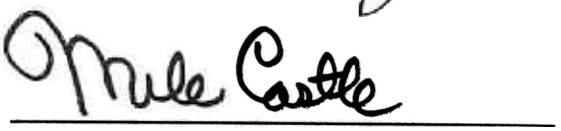
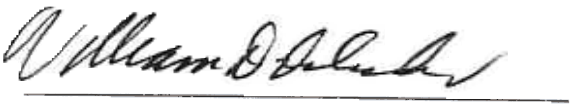
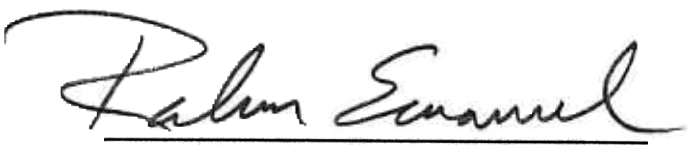
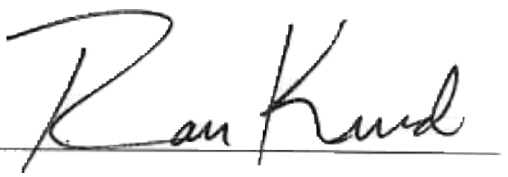
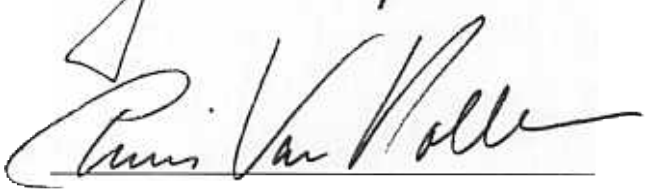
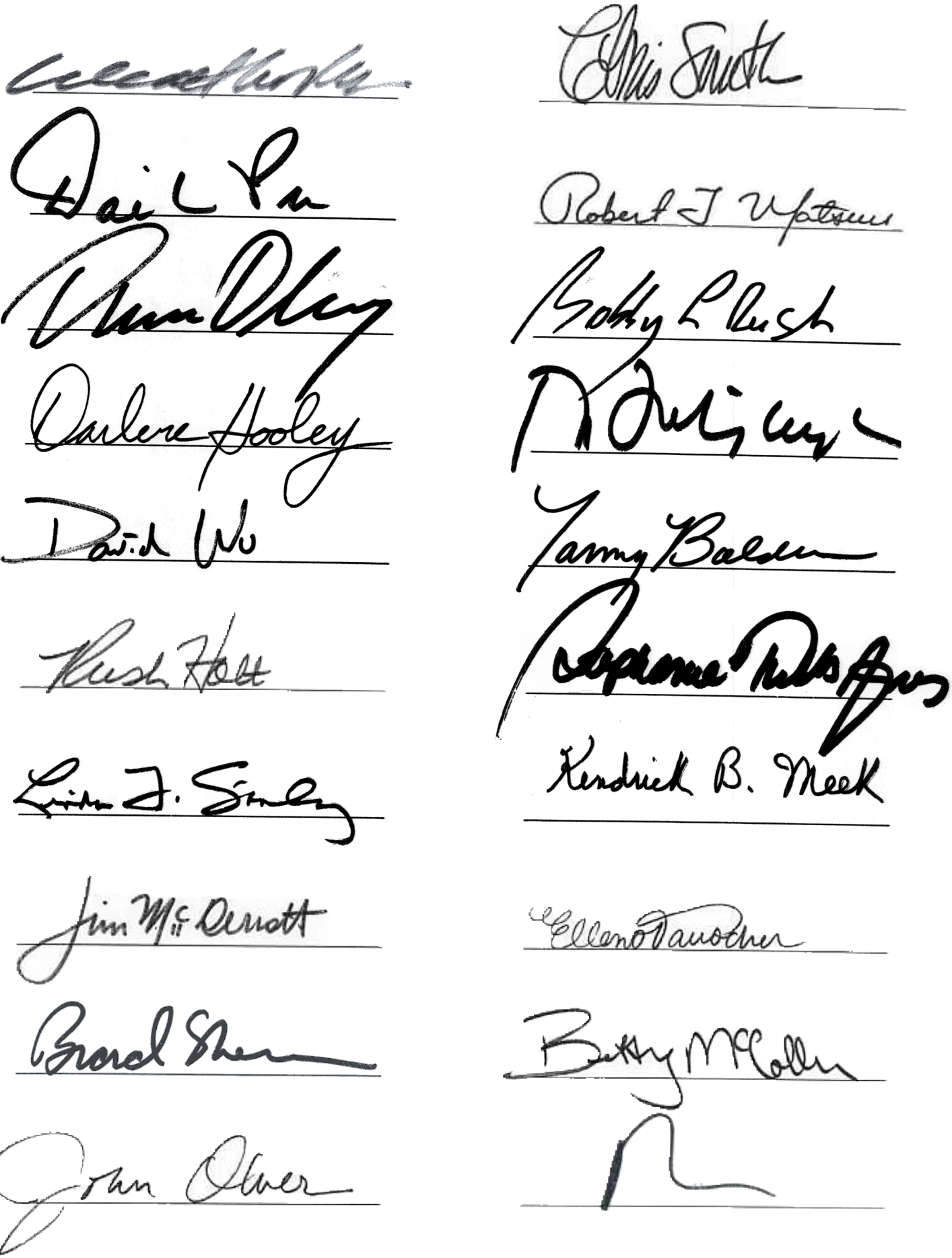
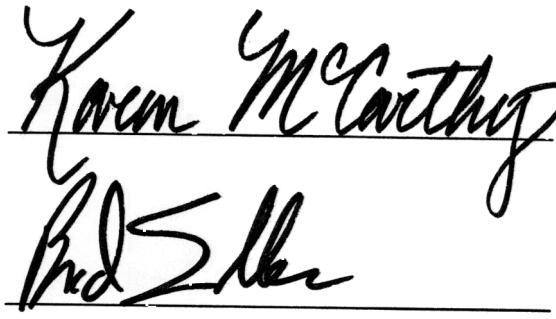
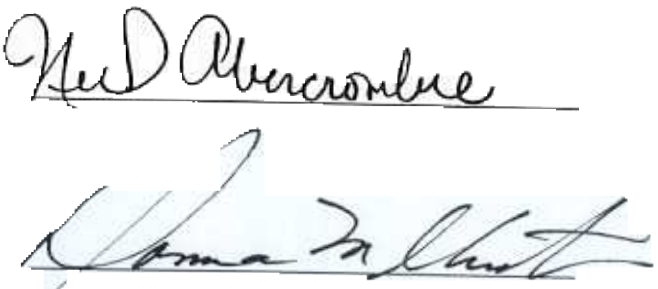
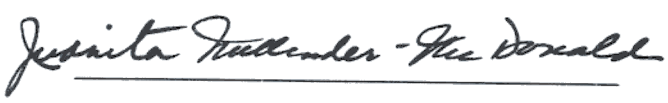
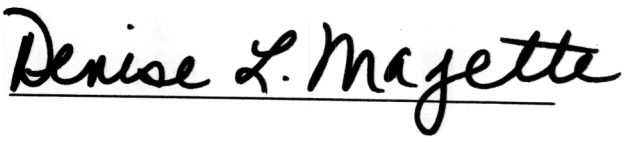
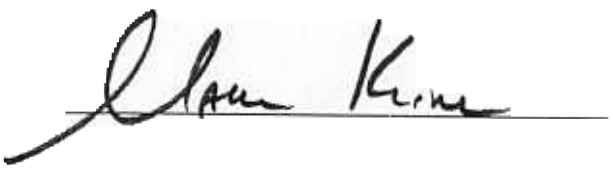
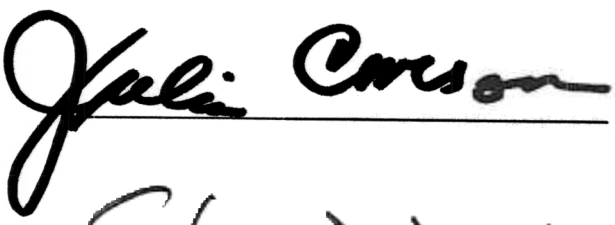
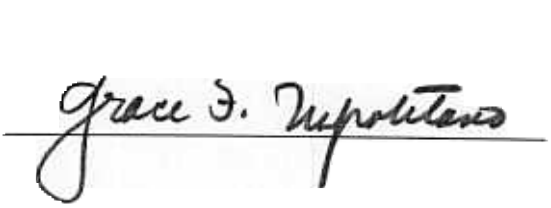
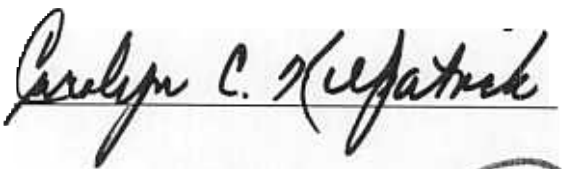
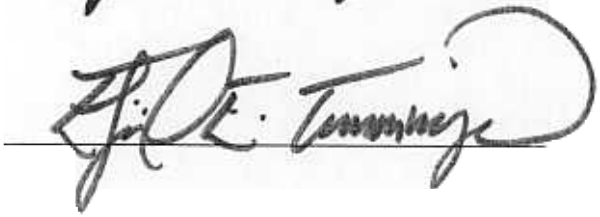
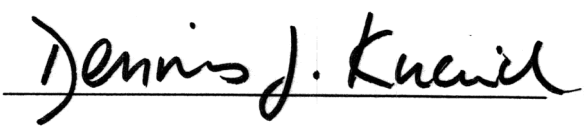
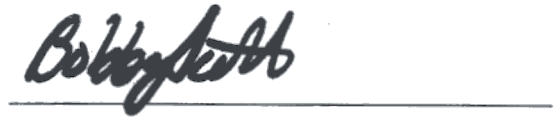
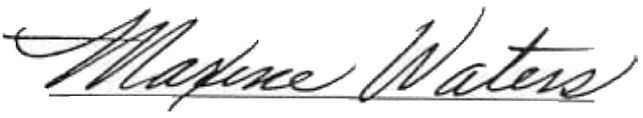
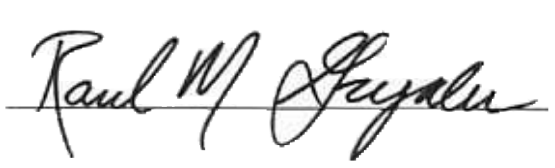
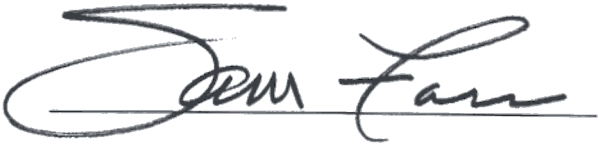
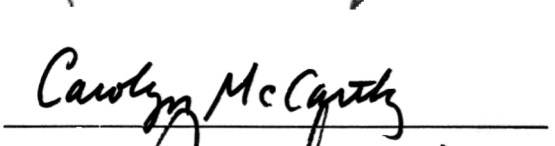
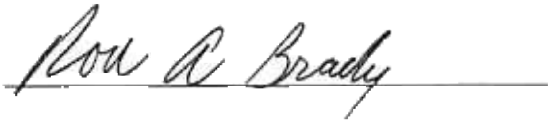
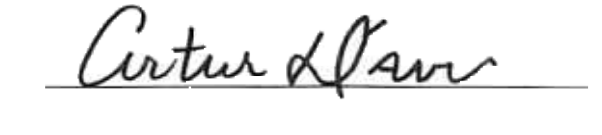
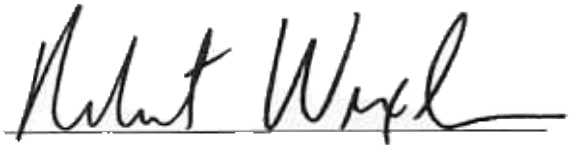
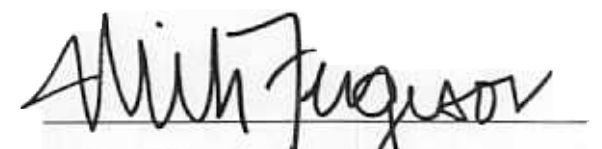
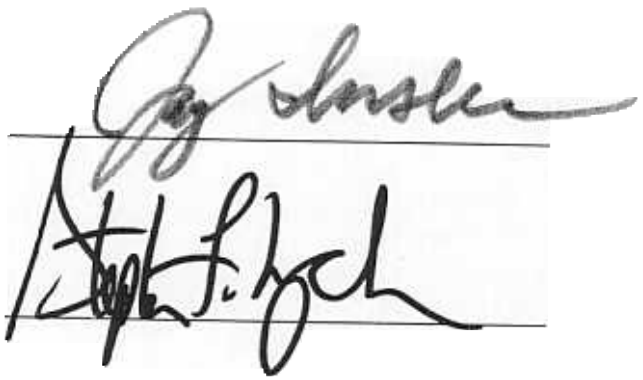
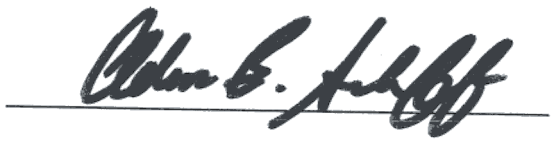
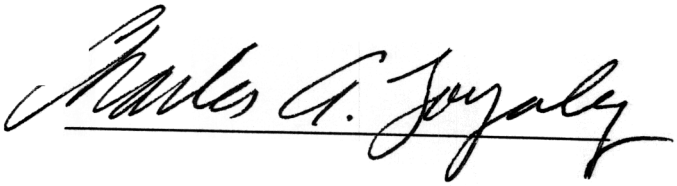
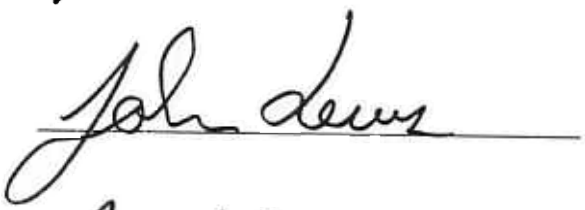
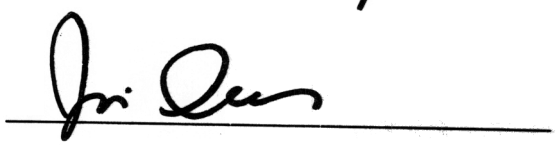
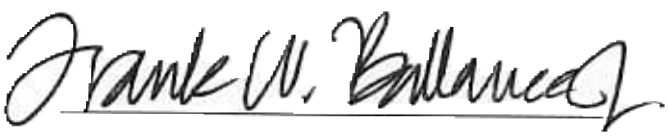
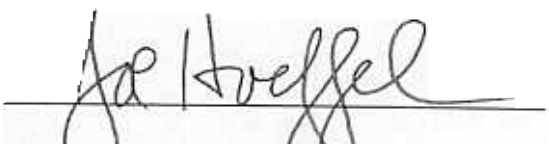
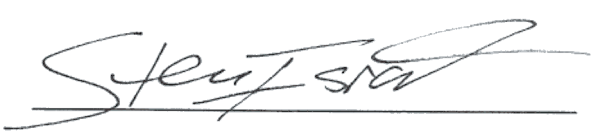
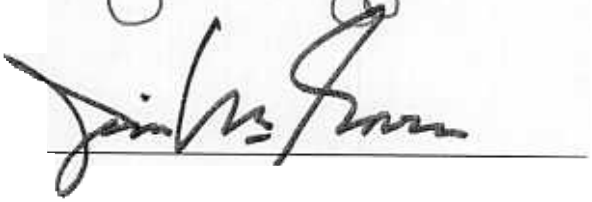
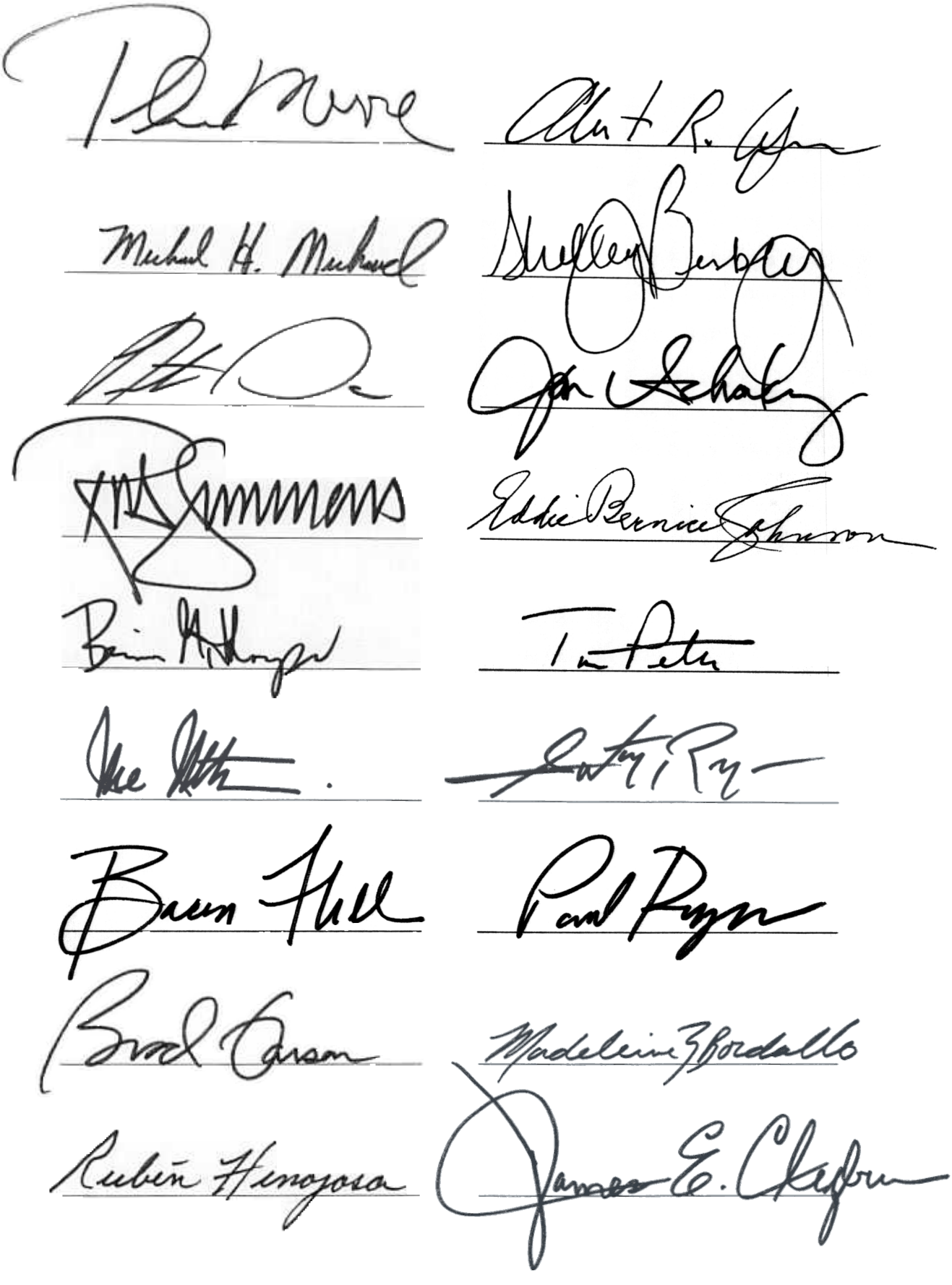
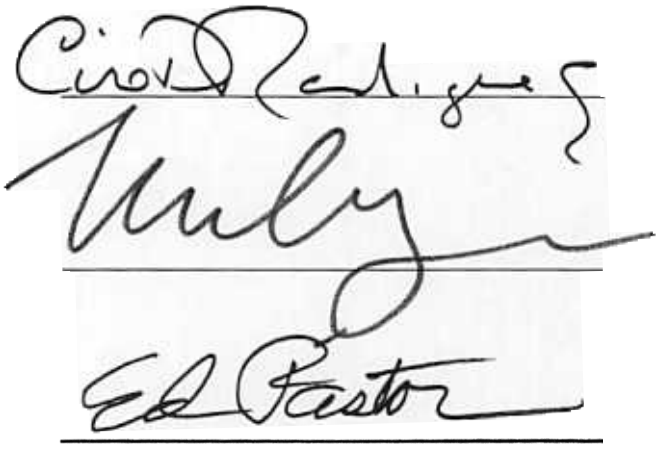
John D. Dingell, M.C.

Nancy Pelosi

Dick Gephardt

Edward J. Markey

Peter DeFazio

Rick Boucher

Henry A Waxman