

United States Senate

WASHINGTON, DC 20510

May 8, 2024

Suzanne P. Clark
President and Chief Executive Officer
U.S. Chamber of Commerce
1615 H St. NW
Washington, D.C. 20062

Dear Ms. Clark:

We write today regarding reports that the Chamber of Commerce (“The Chamber”) has formed a new “Business Alliance to Stop Innovation Confiscation (BASIC) Coalition,” which appears to be an effort to fight the Biden Administration’s efforts to help reduce drug prices for American families and small and large businesses.¹

According to a Chamber press release, this coalition “bring[s] together diverse voices from the energy, technology, manufacturing, telecommunications, semiconductors, and pharmaceutical industries who share a common belief in the benefits of public-private partnerships to deliver solutions, solve problems, and enhance lives.”² But the primary target of this coalition appears to be a new proposed rule by the Biden Administration that would reduce prices for prescription drugs and other inventions that have been developed with public funds.³

The federal government spends hundreds of billions of dollars to support basic science and pharmaceutical innovations,⁴ providing significant benefits to big pharmaceutical manufacturers. But these private drug manufacturers can then turn around and charge exorbitant prices for these publicly-funded products. For example, a course of treatment for Xtandi, a prostate cancer drug sold by Astellas that was developed with significant federal government support, can cost a U.S. consumer approximately \$150,000 more than a consumer in Japan.⁵

¹ Chamber of Commerce, press release, “U.S. Chamber Mobilizes Entrepreneurs for New Coalition to Protect U.S. Innovation from Government Confiscation,” March 20, 2024,

<https://www.uschamber.com/intellectual-property/u-s-chamber-mobilizes-entrepreneurs-for-new-coalition-to-protect-u-s-innovation-from-government-confiscation>.

² Chamber of Commerce, press release, “U.S. Chamber Mobilizes Entrepreneurs for New Coalition to Protect U.S. Innovation from Government Confiscation,” March 20, 2024,

<https://www.uschamber.com/intellectual-property/u-s-chamber-mobilizes-entrepreneurs-for-new-coalition-to-protect-u-s-innovation-from-government-confiscation>.

³ National Institute of Standards and Technology, “Request for Information Regarding the Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights,” December 8, 2023, <https://www.federalregister.gov/documents/2023/12/08/2023-26930/request-for-information-regarding-the-draft-interagency-guidance-framework-for-considering-the>.

⁴ Institute for New Economic Thinking, “Government as the First Investor in Biopharmaceutical Innovation: Evidence From New Drug Approvals 2010–2019,” Ekaterina Galkina Cleary, Matthew J. Jackson, and Fred D. Ledley, August 5, 2020, p. 46, https://www.ineteconomics.org/uploads/papers/WP_133-Cleary-et-al-Govt-innovation.pdf.

⁵ Knowledge Ecology International, “Memorandum in support of the petition to HHS to exercise the march-in or paid up royalty right in patents on the prostate drug Xtandi,” pp. 3-4, 16, January 25, 2022,

The law on the books to address this egregious private sector greed is the *Bayh-Dole Act*, which allows the federal government, in certain cases, to grant licenses to “responsible applicants” for products developed with federal funds.⁶ In particular, the government may exercise its march-in rights when “action is necessary to alleviate health or safety needs” or when an invention’s benefits are not “available to the public on reasonable terms.”⁷

Big Pharma has waged a decades-long war against the law to protect their enormous profits, causing its authorities to remain “moribund” for years,⁸ allowing drug manufacturers to earn extraordinary profits by taking advantage of taxpayer subsidies for research and then turning around and overcharging consumers for the fruits of that research. But in December 2023, the Biden Administration announced a new proposed framework specifying – for the first time – that price can be a factor in an agency’s decision to exercise march-in rights.⁹

This proposal – which has not yet been finalized – is an important step forward. It clarifies that taxpayers have a backstop when drug manufacturers charge extortionate prices for drugs that were developed with public funds. Ultimately, if the administration were to finalize this proposal, it could “have profound implications for access to medicines and drug pricing for patients and consumers.”¹⁰

In particular, by cutting drug costs,¹¹ the Administration’s proposal would help the vast majority of your members – from big businesses to small entrepreneurs, all of whom, as employers, face higher health insurance costs when Big Pharma overcharges for prescription drugs.¹²

But instead of working to support thousands of your members who stand to benefit from efforts to end drug company profiteering, the Chamber has opened a shadowy campaign – led by retired Judge Paul Michel – to “stymie the White House’s drug pricing initiatives.”¹³ According to reports, this campaign will be “backed by a seven-figure campaign that will include research, polling and digital, grassroots and traditional advocacy efforts.”¹⁴

<https://www.keionline.org/wp-content/uploads/KEI-Memo-HHS-Xtandi-Bayh-Dole-March-in-Paid-up-Royalty-25Jan2022.pdf>.

⁶ 35 U.S.C. § 203.

⁷ 35 U.S.C. §§ 203(a)(2) & 201(f).

⁸ The American Prospect, “Force Drug Companies to Lower Prices, Natalie Shure,” September 26, 2019,

<https://prospect.org/day-one-agenda/force-drug-companies-to-lower-prices/>.

⁹ National Institute of Standards and Technology, “Request for Information Regarding the Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights,” December 8, 2023,

<https://www.federalregister.gov/documents/2023/12/08/2023-26930/request-for-information-regarding-the-draft-interagency-guidance-framework-for-considering-the>.

¹⁰ Public Citizen, Civil Society Comments re: March-in Rights Framework, February 6, 2024,

<https://www.citizen.org/article/civil-society-comments-re-march-in-rights-framework/>.

¹¹ *Id.*

¹² FamiliesUSA, “Paying the Price: How Drug Manufacturers’ Greed Is Making Health Care Less Affordable for All of Us,” November 2023, https://familiesusa.org/wp-content/uploads/2023/11/Rx-Premium-paper_-for-publishing.pdf.

¹³ Politico, “Chamber launching a coalition to oppose march-in proposal,” Caitlin, Oprysko, March 19, 2024, <https://www.politico.com/newsletters/politico-influence/2024/03/19/chamber-launching-a-coalition-to-oppose-march-in-proposal-00147859>.

¹⁴ *Id.*

These efforts are a mistake, and are not consistent with the Chamber’s stated goal of “expand[ing] access to and improv[ing] the affordability of high-quality health care services for all Americans.”¹⁵ If successful, they will undermine the Biden Administration’s effort to reduce drug prices and insurance premiums, hurting consumers and small and large businesses. The American public – and your own members – deserve an explanation for why you are fighting policies to reduce drug costs. We therefore ask that you provide answers to the following questions no later than May 22, 2024:

1. How did the Chamber reach the decision to create the BASIC coalition to attempt to stop the Administration from acting to reduce drug costs?
2. Did the Chamber conduct a vote or otherwise receive input from its members before deciding to form this coalition?
 - a. If so, how did it do so?
 - b. What did the opinions received by the Chamber indicate about members' support for reducing drug prices?
3. How many Fortune 500 companies are members of the Chamber?
 - a. How many of these members would benefit from lower drug prices and reduced health care costs?
4. How many Chamber members are small businesses and entrepreneurs that would potentially benefit from reduced health care prices?
 - a. Did you survey these members to determine if they supported the formation of the BASIC coalition?
 - b. If so, how did you conduct this survey and what did it reveal?
5. Has the Chamber conducted an economic analysis of how exercising Bayh-Dole march-in rights would impact its members?
 - a. If so, what did this analysis entail?
 - b. What did the analysis reveal? How many members will benefit from lower drug prices?
6. Why did the Chamber choose Judge Michel to head the coalition?
 - a. How much is he paid for doing so?
7. Which Chamber members have donated to the Chamber’s campaign to support the BASIC coalition?
8. What kind of “research” will the coalition be conducting? How much will it spend on these efforts?

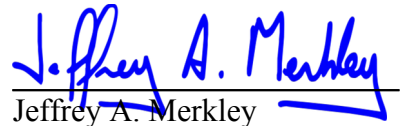
¹⁵ Chamber of Commerce, “Health Policy,” <https://www.uschamber.com/program/policy/health-policy>.

9. What kind of “polling” will the coalition be conducting? How much will it spend on these efforts?
10. What kind of “digital, grassroots, and traditional advocacy efforts” will the coalition be undertaking? How much will it spend on these efforts?

Sincerely,



Elizabeth Warren
United States Senator



Jeffrey A. Merkley
United States Senator



Bernard Sanders
United States Senator