

United States Senate

WASHINGTON, DC 20510

July 28, 2010

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Majority Leader Reid:

We write today to ensure that provisions of the so-called "Preserve Access to Affordable Generics Act" are not included as part of any appropriations bill for Fiscal Year (FY) 2011, including the Financial Services and General Government spending bill.

These provisions were originally considered in the House Subcommittee on Commerce, Trade, and Consumer Protection and later by the Energy and Commerce Committee during debate on the health care reform package. They were not debated by the full House. In the Senate, these provisions were reported by the Judiciary Committee in S. 369, "Preserve Access to Affordable Generics Act." Debate before the full Senate has not been scheduled. These non-germane provisions have no justifiable place in an appropriations bill.

We also have substantive concerns about the content of these provisions. The legislation aims to ban the practice of settlements between generic drug manufacturers and brand drug manufacturers. Banning settlements means that most generic drug manufacturers will not have the incentive to challenge drug patents and thus the consumer market will effectively wait a longer period of time for cheaper generics to come to the market. While it is true that some generics may win a lawsuit without settlement, in many cases they do not. Settlements allow generic and brand manufacturers to reach agreement and allow generic drugs to come to market faster. An outright ban of such settlements will potentially eliminate billions of dollars of consumer savings and cause an exponential rise in the average costs of consumer medication.

Finally, this proposed legislation is contradictory to accepted legal reasoning regarding settlements. Our judicial system, in the interests of efficiency and equitability, relies heavily upon out-of-court settlements. Protracted litigation benefits neither brand manufacturers, generic manufacturers, nor consumers. The intent of these provisions is reportedly based on a belief that any such settlements are anti-competitive. However, the federal judiciary has consistently disagreed with this argument and has continuously ruled that such settlements are not *per se* illegal.


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We, therefore, urge you to reject any effort to include this non-germane amendment in any appropriations bill and allow the legislative process to work in regular order.

Sincerely,



Alan Dachs



Orrin G. Hatch



Jeff Sessions



John Cornyn



Tom Coburn



Jon Kyl



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cc: Senator Daniel K. Inouye, Chairman, U.S. Senate Committee on Appropriations
Senator Thad Cochran, Vice Chairman, U.S. Senate Committee on Appropriations