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Judge Paul Michel (Ret.), Board Member
Judge Kathleen O'Malley (Ret.), Board Member

July 10, 2023

U.S. Senate Committee on Health, Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, DC, 20510

Dear Senate Health, Education, Labor and Pensions (HELP) Committee,

C4IP is a bipartisan coalition dedicated to promoting strong and effective intellectual property rights that drive innovation, boost economic competitiveness, and improve lives everywhere. C4IP welcomes this opportunity to provide feedback on sections 601 and 602 of the draft Pandemic and All-Hazards Preparedness Act.

The aim of the Act is to ensure our country is prepared for the next major health crisis in light of the one we recently endured. However, sections 601 and 602, as drafted, will undermine this important goal by disincentivizing and deprioritizing investment in pandemic preparedness.

This is because sections 601 and 602 require any entity collaborating with BARDA or the CDC to agree, in advance, to an encumbrance on any intellectual property they develop in addressing unmet health needs. These entities will face the prospect of earning an unknown and ill-defined "fair and reasonable" price or the equally uncertain future price set by regulators in other countries. Such pricing constraints will invariably depress the value of the affected intellectual property, both today and into the future, and along with it, the willingness of the private sector to invest in the research and development required to prepare for the next national health crisis. Not only will this diminish investment in innovation, but it will have the immediate and lasting impact of decreasing well-paying jobs in the healthcare sector and beyond.

The underlying genius of our nation's intellectual property laws is to put decision-making in the hands of private sector innovators and those who fund innovation. C4IP applauds the overall objective of the PAHPA initiative, but recommends directing government efforts to the real underlying issues with preparedness -- refrigeration, transportation logistics and infrastructure, medical professional capacity, public confidence, and corruption (in many parts of the world). Strong and effective intellectual property is an accelerant to investment in preparedness; it should be championed and encouraged, not degraded. As with private property, the private sector is in the best position to anticipate market developments and needs, and to invest accordingly. Our intellectual property laws propelled thirteen backwater colonies into the innovation powerhouse of the world in a shockingly short period of time. Those same laws led to the creation of the mRNA platform that enabled the U.S. to lead the world in overcoming the recent pandemic.

Against the backdrop of critical innovation success, it is ill-considered to now propose government intervention in innovators' use of their intellectual property. Such interference is bound to send innovative companies looking elsewhere to invest their resources, with predictably devastating consequences for the next health crisis.

Finally, it is worth emphasizing that limiting the value of intellectual property cannot and should not be viewed in isolation. The effect of such a change in law will extend well beyond pandemic preparedness. Other nations and policymaking entities around the world are watching and -- if the U.S. aspires to continue as the world's innovation leader -- it sets a troubling precedent. Accordingly, we strongly urge the Committee to remove the intellectual property provisions from the final draft of PAHPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Cullen", is positioned below the text "Sincerely,". The signature is fluid and cursive, with a long horizontal stroke at the end.

Frank Cullen
Executive Director
Council for Innovation Promotion (C4IP)