

INVESTOR SIGN-ON STATEMENT PHARMA LAWSUITS/MEDICARE

The undersigned are members of the Interfaith Center on Corporate Responsibility¹, a coalition of institutional investors that for five decades have been engaging the pharmaceutical sector to encourage the adoption of policies and practices that will prevent and mitigate company risk while improving health outcomes for customers in the U.S. and globally. Over the years, we have held long-standing and productive dialogues with many of the pharma companies in the Fortune 100 on a range of issues and have reached agreement on a good number of them. As faith-based and responsible investors, we have asked our portfolio companies to focus on long-term sustainable value creation, which prioritizes people and patients over strategies to maximize short-term profits. The implementation of policies and practices to expand access and affordability² have been a perennial request across all our engagements with the pharmaceutical sector including most recently, a group of shareholder resolutions at seven companies³ seeking to learn how strategies such as patent thickets are considered when setting prices for branded drugs. The proposals garnered strong shareholder support at 2023 company annual meetings.

We are writing to register our deep concern over the spate of lawsuits filed by pharma companies and their trade associations to block the implementation of the provisions of the Inflation Reduction Act (IRA) that will allow the U.S. government to negotiate drug pricing for certain high-cost medicines on behalf of Medicare beneficiaries. We call on our portfolio companies and their trade associations to abandon these lawsuits as, if successful, they will exacerbate reputational and legal risks to corporate stakeholders and have a deleterious impact on the health of millions of Americans.

Spending on prescription drugs has assumed an increasingly important role in American health care and that trend is likely to continue. One study estimates that “[p]rescription drug spending on retail and non-retail drugs in the U.S. is poised to grow 63% from 2020 to 2030, reaching \$917 billion dollars.”⁴ As has been widely reported, Americans pay more for prescription drugs than anywhere in the world and the U.S. is one of the only countries whose government is not empowered to negotiate drug pricing⁵.

As a direct result, currently, three in ten Americans report not taking their medicine as prescribed due to cost⁶. It is no longer hyperbole to say that high drug prices are compromising the health of Americans, fomenting greater health disparities, burdening taxpayers, and weakening the nation’s economy. Over the last decade, there have been numerous hearings and bills introduced in Congress attempting to

¹ <https://www.iccr.org/>

² <https://my.visme.co/view/w48neo36-z4p5zz77zgw957n1>

³ <https://www.iccr.org/2023-pharma-proposals-proxy>

⁴ <https://www.i-mak.org/wp-content/uploads/2022/09/Overpatented-Overpriced-2022-FINAL.pdf>, at 2 (citing Charles Roehrig and Ani Turner, Projections of the Non-Retail Prescription Drug Share of National Health Expenditures Report, Altarum, July 2022).

⁵ <https://www.brookings.edu/articles/government-regulated-or-negotiated-drug-prices-key-design-considerations/>; <https://thehill.com/opinion/healthcare/369727-us-drug-prices-higher-than-in-the-rest-of-the-world-heres-why/>

⁶ <https://www.kff.org/health-costs/poll-finding/public-opinion-on-prescription-drugs-and-their-prices/>

address this issue, yet it has proven a remarkably stubborn problem to solve through legislation. This is due in large part to the powerful resistance of the pharma sector and its capture – through expansive and opaque lobbying and political donation campaigns⁷ – of the legislative and regulatory systems.

A 2021 Politico-Harvard poll asking respondents to identify their top priority issue in the Build Back Better bill (recast as the Inflation Reduction Act) favored allowing the federal government to negotiate drug prices over all other priorities⁸. Therefore, when the Inflation Reduction Act passed last year with the provision that Medicare will have the right to negotiate prices for 10 of the most expensive drugs for its beneficiaries, American seniors breathed a collective sigh of relief.

Yet, the backlash from the pharma industry was remarkable in its swiftness, forcefulness, and in its apparent coordination. In early June, Merck & Co. Inc. filed a lawsuit against the Department of Health & Human Services (HHS) and Centers for Medicare and Medicaid Services (CMS), alleging “extortion” and a violation of its 1st and 5th Amendment rights. Bristol Myers Squibb (BMY) followed shortly thereafter with a similar lawsuit and subsequent lawsuits have been filed by Astellas Pharma and Johnson & Johnson as well as trade groups PhRMA and the U.S. Chamber of Commerce. While the lawsuits highlight a variety of grievances – from “extortion” to “compulsory speech”, they share a common theme: that the government’s attempt to negotiate prices on behalf of millions of Medicare recipients is “unconstitutional.”

In the 2021 House Oversight Committee hearings on drug pricing⁹, accusations of “profiteering” were levied against pharma companies by members of both parties, demonstrating that this is a bipartisan issue that poses significant reputational risk. Pharmaceutical companies have long benefitted from considerable public investment via federally sponsored research and government subsidies¹⁰ to develop drugs, yet when it comes to setting prices, their disregard for taxpayers' investment is striking. As reported by the NY Times¹¹, the industry is exhausting every possible “kitchen sink” legal strategy to sue the U.S. Government, their largest customer, to stop this much-needed change in our healthcare system from materializing. There has been considerable press coverage of these lawsuits¹² criticizing the plaintiffs for prioritizing the protection of patents and profits over the health of seniors and U.S. taxpayers.

⁷ <https://www.citizen.org/article/protecting-the-profiteer/>;

<https://www.opensecrets.org/industries/background.php?cycle=2022&ind=h04>

⁸ <https://www.hsph.harvard.edu/wp-content/uploads/sites/94/2021/09/Politico-HSPH-Sept-Oct-2021-poll-report-timeline-092821.pdf>

⁹ <https://oversightdemocrats.house.gov/news/press-releases/chairwoman-maloney-releases-comprehensive-staff-report-culminating-the-committee>

¹⁰ <https://www.hhs.gov/about/news/2023/07/13/letter-covid-19-vaccine-manufacturers.html>;

<https://blog.petrieflom.law.harvard.edu/2020/09/03/public-investment-in-drug-discovery-some-fundamental-questions/>; <https://www.help.senate.gov/chair/newsroom/press/news-new-report-shows-how-badly-big-pharma-is-ripping-off-american-people-with-publicly-funded-medications>

¹¹ <https://www.nytimes.com/2023/07/23/us/politics/medicare-drug-price-negotiations-lawsuits.html#:~:text=On%20Tuesday%2C%20Johnson%20%26%20Johnson%20became%20the%20latest,trade%20group%20and%20the%20U.S.%20Chamber%20of%20Commerce.>

¹² <https://www.commondreams.org/news/merck-medicare-drug-price-negotiations>;

<https://www.vox.com/2023/6/16/23760650/medicare-big-pharma-prescription-drug-prices-lawsuit>

We believe the lawsuits directly contradict the plaintiffs’ mission/values statements,¹³ which all declare a commitment to putting patients first and to increasing access and affordability. This misalignment represents a reputational risk for the plaintiffs. Further, these statements further align with the 2019 Business Roundtable Statement of the Purpose of a Corporation¹⁴ to which both BMJ and J&J were signatories. Among other things, signatories commit to “Bring value to our customers” and “support the communities in which we work.” However, to be true to their word plaintiffs must reexamine the goals of these lawsuits and decide where their loyalties lie: Will they fight to maintain their patent exclusivities, exorbitantly high drug prices, and outsized executive compensation packages, or will they operate sustainably while standing on the side of hard-working American seniors who need affordable medicines to live healthy lives? It will be a defining choice and one of great consequence to our nation’s public health.

SIGNATORIES

Adasina Social Capital
Adrian Dominican Sisters, Portfolio Advisory Board
Chicory Wealth
Committee on Mission Responsibility Through Investment of the Presbyterian Church U.S.A. Congregation of St. Joseph
Daughters of Charity, Province of St. Louise
Dominican Sisters ~ Grand Rapids
Dominican Sisters of Sparkill
Everence and the Praxis Mutual Funds
Franciscan Sisters of Allegany NY
Friends Fiduciary Corporation
Investor Advocates for Social Justice
Maryknoll Sisters
Mercy Investment Services, Inc.
Northwest Coalition for Responsible Investment
OIP Trust
Promethos Capital
Region VI Coalition for Responsible Investment
School Sisters of Notre Dame Cooperative Investment Fund

Seva Foundation
Seventh Generation Interfaith Coalition for Responsible Investments
SHARE
Sisters of Charity of Saint Elizabeth
Sisters of Notre Dame de Namur – Ohio Province
Sisters of St. Francis of Oldenburg IN
Sisters of St. Francis of Philadelphia
Sisters of St. Joseph of Baden, PA
Sisters of St. Joseph of Springfield, MA
Sisters of the Humility of Mary
Sisters of the Precious Blood
Sisters of the Presentation of the Blessed Virgin Mary of Aberdeen, SD
Socially Responsible Investment Coalition
The Episcopal Church (DFMS)
Trinity Health
Tulipshare
United Church Funds
Ursuline Convent of the Sacred Heart

¹³ BMS, Responsibility Statement: <https://www.bms.com/about-us/responsibility.html>; Merck, Our Culture, and Values Statement: [https://www.merck.com/company-overview/culture-and-values/#:~:text=We%20are%20dedicated%20to%20the,all%20areas%20of%20our%20business](https://www.merck.com/company-overview/culture-and-values/#:~:text=We%20are%20dedicated%20to%20the,all%20areas%20of%20our%20business;); Janssen (Johnson & Johnson) 2022 U.S. Pricing Transparency Report: <https://transparencyreport.janssen.com/>; Credo: <https://www.jnj.com/credo/>; PhRMA, Our Work for Patients: <https://phrma.org/About>

¹⁴ https://system.businessroundtable.org/app/uploads/sites/5/2023/02/WSJ_BRT_POC_Ad.pdf