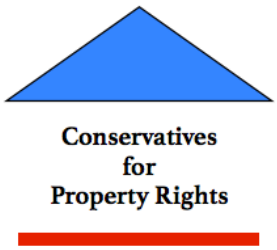

January 15, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232 The Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204 The Capitol
Washington, D.C. 20515

Dear Speaker Pelosi and Minority Leader McCarthy:

Conservatives for Property Rights (CPR), a coalition of organizations representing millions of Americans, strongly opposes H.R. 5133, the "Affordable Prescriptions for Patients Through Promoting Competition Act," and H.R. 3991, the "Affordable Prescriptions for Patients Through Improvements to Patent Litigation Act."

CPR emphasizes the central importance of private property in all its forms — physical, personal, and intellectual. The right to private property ranks among the unalienable rights the Founders referenced in the Declaration of Independence, and patents and copyrights are the only rights for which the U.S. Constitution itself provides. Both measures discussed herein assault rather than secure private intellectual property rights.

H.R. 5133 would subject any improvements to existing pharmaceutical products under patent to Federal Trade Commission heavy-handedness. Follow-on innovation, such as new formulations, more tolerable versions, those easier to take and stay on schedule, versions having fewer side effects, better manufacturing processes, etc., would face unreasonable, harsh antitrust scrutiny. The bill would have a chilling effect on pharmaceutical innovation.

H.R. 5133 labels normal, constructive modifications and iterative improvements to a pharmaceutical as anticompetitive. This approach diminishes property rights of inventors and short-circuits innovation. What practically every inventor does, which leads to a patent portfolio in a particular art, would be castigated as "product hopping." The FTC would be charged with using an antitrust hammer against bonafide innovation, despite the fact the Patent and Trademark Office has found the changes to meet the criteria of novelty, usefulness, and nonobviousness. In light of the facts of PTO examination and patent issuance and Food and Drug Administration approval for safety and effectiveness, the presumptive anticompetitiveness H.R. 5133 would cast into a matter of fundamental property rights — exclusivity under a patent — and market competition will most certainly condemn patients to frozen progress of drugs.

Assistant Attorney General for Antitrust Makan Delrahim has said, "It is a perverse result indeed when the misapplication of the competition laws results in less innovation, less competition, and

ultimately, fewer consumer choices." This is exactly what H.R. 5133 portends. The legislation would hurt innovation, hurt competition, and hurt consumer choice because of the misassumption of static competition in the area of pharmaceuticals. However, this art stands among the most "dynamic competition" fields. Patent exclusivity enables progress in the state of the art, including in the arduous fields of medical innovation, adding a dynamism unmatched elsewhere in the world. As Mr. Delrahim has noted, "[C]ompetition and consumers both benefit when inventors have full incentives to exploit their patent rights." That lesson escapes H.R. 5133, which deliberately treats patent exclusivity and innovation like monopolistic conduct in a static competitive setting.

In addition, H.R. 3991 risks disrupting the "patent dance" of the Hatch Waxman Act, which employs patent litigation as a vehicle for generic drug entry into the market created through the drug innovator's patent exclusivity. Hatch Waxman's structure balances respect for the patent rights of innovators with introduction of generic versions of those patented medicines in a reasonable timeframe. This area of relevant law is generally settled and predictable. It serves the interests of drug innovators, generic drug makers, patients, payers, medical providers, and society. The proof is seen in the fact that 90 percent of all U.S. prescriptions are now filled with generics, while U.S pharmaceutical firms lead the world in drug innovation. H.R. 3991 would risk upsetting this balance and, indeed, backfiring by diminishing property rights interests and therefore setting back the interests of patients, payers, generic firms, and the rest. H.R. 3991 would very likely disrupt a mechanism that has served well, leaving grave consequences.

Therefore, Conservatives for Property Rights opposes H.R. 5133 and H.R. 3991 and urges Congress's rejection of this counterproductive legislation.

Respectfully,

James Edwards
Executive Director
Conservatives for Property Rights

Daniel Schneider
Executive Director
American Conservative Union

Seton Motley
President
Less Government

C. Preston Noell III
President
Tradition, Family, Property, Inc.

Tim Andrews
Executive Director
Taxpayers Protection Alliance

George Landrith
President
Frontiers of Freedom

Jeffrey Mazzella
President
Center for Individual Freedom

Kevin Kearns
President
U.S. Business & Industry Council