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The Honorable Charles McC. Mathias, Jr.
United States Senate
Russell Senate Office Building 387
Washington, D.C. 20510

Dear Senator Mathias:

I was recently asked by representatives of a coalition of research-based pharmaceutical firms to examine Section 202 of the Patent Extension Provisions of H.R. 3605 and S. 2748 in order to assess whether that legislation would pose constitutional problems of any significance and in order to analyze such problems as were presented. My agreement to consult for the firms was based on the understanding that, should I conclude the measure posed no serious constitutional questions, I would feel entirely free to say so. It was my assessment and not my advocacy that was sought.

Although I am still pursuing certain aspects of my analysis and have as yet reached no final conclusion on some of the constitutional issues involved, my study of the legislation has convinced me, at the very least, that it does indeed pose constitutional problems of a very serious character and raises difficulties of real substance both in their philosophical dimensions and in their fiscal implications, particularly in light of Ruckelshaus v. Monsanto, No. 83-196, decided by the United States Supreme Court on June 26, 1984. For this reason, I very much hope the Senate Judiciary Committee will schedule hearings to explore the complex constitutional questions that Section 202 unavoidably presents.

Please do not hesitate to contact me if you have any questions about these matters.

Sincerely,

Laurence H. Tribe
Tyler Professor of
Constitutional Law

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