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January 12, 2024

The Honorable Bernard Sanders  
Committee on Health, Education, Labor, and Pensions  
United States Senate  
Washington, D.C. 20510

Dear Chairman Sanders:

On behalf of our client, Johnson & Johnson, this letter responds to your November 21, 2023, letter to Johnson & Johnson requesting that the company's chairman and chief executive officer testify at an upcoming hearing of the Committee. This letter also responds to the recent telephone and e-mail communications with the Committee's staff director.

Importantly, these latest communications follow approximately three months of communications between Johnson & Johnson and your staff about a potential hearing. Throughout these discussions, Johnson & Johnson has expressed its interest in cooperating with the Committee. In that spirit, Johnson & Johnson offered to make available for the hearing the senior pharmaceutical executive best positioned to address and provide Johnson & Johnson's position regarding the issues posed in your invitation letter. Throughout these discussions, Johnson & Johnson has also made clear its concerns with the direction the Committee is taking with the hearing, including the reasons that the company's chief executive is not the appropriate witness for this hearing. We appreciate the opportunity to reiterate the concerns that we have previously conveyed to your staff over the past three months, and we urge you to consider permitting the Committee to hear from the appropriate executive for these topics.

As discussed with your staff, Johnson & Johnson has two principal concerns with the hearing. First, you and your staff have stated that the hearing will examine pharmaceutical pricing in the United States as compared to the rest of the world, a topic that was also reiterated in your invitation letter and press release. As discussed with your staff, a Johnson & Johnson representative is not an appropriate witness for these topics. For Imbruvica, Johnson & Johnson does not hold the New Drug Application or FDA registration for the product, and it does not control the price in the United States. For Xarelto, Johnson & Johnson only has the right to commercialize Xarelto in the United States and does not control the price outside of the United States. Stelara will have robust biosimilar competition beginning in early 2025 and each biosimilar company will set its own price for its product.

Second, and more importantly, your staff and your public comments have indicated that the hearing is intended to focus on the Inflation Reduction Act and, specifically, the companies that pursued litigation challenging certain aspects of the statute.<sup>1</sup> Indeed, the Committee has chosen to invite the CEOs of three select companies that are currently engaged in such litigation.

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<sup>1</sup> Sarah Owerhohle, *Sen. Bernie Sanders Moves Toward Another Hearing with Pharma CEOs*, STAT+ (Nov. 7, 2023).

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This targeting seems unlikely to be coincidental, and it raises significant concerns that the hearing is intended as retribution for the companies' decisions to exercise their rights to challenge a statute that inappropriately infringes on constitutionally protected freedoms. Moreover, these litigations are ongoing, and the issues raised in the litigation should be properly resolved in a courtroom, not in a Committee hearing.

Notwithstanding these concerns regarding the hearing, the company offered a senior company executive with uniquely relevant experience to appear at the hearing. It did so out of deep respect for the Committee and consistent with its history of working cooperatively with the Committee, on a bipartisan basis, for decades.

Your insistence on the appearance of the CEOs at the hearing—in contrast to the executive that Johnson & Johnson has offered, who is specifically knowledgeable on the topics you have stated are the subject matter of the hearing—unfortunately elevates our concerns that the hearing is being called to punish the companies who have chosen to engage in constitutionally protected litigation. As you know, the Supreme Court has held that such motivations are not a legitimate legislative purpose upon which Congress can seek testimony or hold a hearing.

Even more concerning, your staff recently stated that you intend to pursue compulsory process against any CEO who declines to appear voluntarily for the hearing. This suggestion is deeply disappointing, inconsistent with Johnson & Johnson's cooperation with the Committee, and a significant and unprecedented departure from the Committee's practice over its 155-year history. Your staff's reference to subpoenas issued by the Committee in 1981 merely proves the point. Those two subpoenas were issued to executive branch officials, and we are unaware of even a single precedent of the Committee subpoenaing a private sector individual, much less an official of a company that has cooperated with the Committee and offered to provide a highly relevant witness. Compulsory process intended as retribution for pursuing constitutionally protected litigation would also exceed Congress's authority under applicable Supreme Court precedent.

Johnson & Johnson has deep respect for the Committee and its important work. For that reason, it has offered a senior company official with highly relevant expertise to appear at the Committee's planned hearing, notwithstanding the company's concerns outlined above. We encourage you to forgo the misguided suggestion of compulsory process and instead permit the Committee to hear from the company official with direct experience in the drug pricing topics that you have stated are the purpose of this hearing.

Sincerely,



Brian D. Smith

cc: The Honorable Bill Cassidy, Ranking Member