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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

November 16, 2017

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Robert W. Patterson
Acting Administrator
U.S. Drug Enforcement Administration
8701 Morrisette Dr.
Springfield, VA 22152

Dear Mr. Patterson:

I write today to condemn the recent decision by the Drug Enforcement Administration (DEA) to deny permission for Chief Administrative Law Judge John J. Mulrooney II to attend the Homeland Security and Governmental Affairs Committee minority roundtable event scheduled for November 28, 2017.

As you may know, I recently introduced a bill to repeal the Ensuring Patient Access and Effective Drug Enforcement Act of 2016 (EPAEDEA), which reportedly “stripped the Drug Enforcement Administration of its most potent weapon against large drug companies suspected of spilling prescription narcotics onto the nation’s streets.”¹ Judge Mulrooney, echoing other experts, has sharply criticized the law as both unnecessary and destructive to DEA enforcement in a forthcoming article in the *Marquette Law Review*.² According to Judge Mulrooney:

- The new “imminent threat” standard in the law creates “too many levels between distributors and manufacturers to logically establish any causation of death, serious bodily harm, or abuse to a specific patient down the chain to support an immediate suspension after the EPAEDEA.”
- The corrective action plan provisions in the law “create no incentive...for regulated companies or individuals...to correct wrongdoing before an [order to show cause] is filed, or even to follow or continue following whatever plan is deemed sufficient to discontinue or defer proceedings once the proceedings are discontinued or deferred.”
- “If it had been the intent of Congress to completely eliminate the DEA’s ability to ever impose an immediate suspension on distributors or manufacturers, it would be difficult to conceive of a more effective vehicle for achieving that goal.”³

¹ *The Drug Industry’s Triumph Over the DEA*, Washington Post (Oct. 15, 2017).

² John J. Mulrooney, II and Katherine E. Legel, *Current Navigation Points in Drug Diversion Law: Hidden Rocks in Shallow, Murky, Drug-Infested Waters*, *Marquette Law Review* (forthcoming 2017).

³ *Id.*

Robert W. Patterson
November 16, 2017
Page 2

Given these findings, and the unique expertise Judge Mulrooney has gained from years of adjudicating DEA administrative actions, I invited him to attend my forthcoming roundtable event on the EPAEDEA and DEA enforcement generally. Shockingly, however, DEA has declined to grant permission for Judge Mulrooney to attend in his personal capacity and discuss his recent scholarship.

The decision to muzzle a critic of this law is unacceptable while the U.S. opioid epidemic rages out of control. According to the *Washington Post*, at least 13 distributors, including three companies that control 85% of all U.S. pharmaceutical distribution, “knew or should have known that hundreds of millions of pills were ending up on the black market.”⁴ When combined with the 2016 law and other widely reported obstacles to effective DEA enforcement, these failures demand immediate action by Congress. As part of this effort, members of the Senate must have direct access to individuals—like Judge Mulrooney—with valuable knowledge of the EPAEDEA and its impact. At the very least, Judge Mulrooney should be free to submit a written statement for the roundtable describing his findings and any recommendations for changes to the Controlled Substances Act and other statutes.

I urge you to reconsider the decision to deny permission for Judge Mulrooney to attend the November 28 roundtable event.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

⁴ *How Drugs Intended for Patients Ended Up in the Hands of Illegal Users: “No One Was Doing Their Job,”* Washington Post (Oct. 22, 2016) (www.washingtonpost.com/investigations/how-drugs-intended-for-patients-ended-up-in-the-hands-of-illegal-users-no-one-was-doing-their-job/2016/10/22/10e79396-30a7-11e6-8ff7-7b6c1998b7a0_story.html).