

September 1, 2023

Senior Judge Thomas M. Rose  
Southern District of Ohio  
Walter H. Rice Federal Building and U.S. Courthouse, Room 910  
200 West Second Street  
Dayton, OH 45402

Dear Judge Rose,

We were discouraged to learn that you are choosing to preside over the U.S. Chamber of Commerce's challenge to the provision of the Inflation Reduction Act regarding price negotiations with pharmaceutical companies in *Dayton Area Chamber of Commerce et al. v. Becerra et al.* Your financial interest in the pharmaceutical industry, including your stakes in Johnson & Johnson and AstraZeneca, two companies that are going to be subject to price negotiations and have filed lawsuits parallel to the case you are presiding over, may violate Canons 2 and 3 of the [Code of Conduct](#) for US Judges.

Canon 2 of the Code of Conduct states, "A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities," acknowledging that even the appearance of improper incentives that could influence a judge's decision-making can be deeply harmful for public trust in government.

The public may rightly become concerned about a judge being improperly biased if a company in which the judge holds stock has an interest in or advocates for a particular outcome in a case the judge is presiding over. Your most recent financial disclosure reports show that you hold \$15,001 to \$50,000 of stock in Johnson & Johnson, \$15,001 to \$50,000 of stock in Moderna, and \$1 to \$15,000 of stock in AstraZeneca. Your positions in Johnson & Johnson and AstraZeneca are of particular concern given that the companies are going to be part of the first round of price negotiations and have sought a ruling that mandatory negotiations with the federal government for the rate at which the government pays for their drugs to be ruled unconstitutional in *Janssen Pharmaceuticals, Inc. v. Becerra et al.* and *AstraZeneca Pharmaceuticals LP v. Becerra et al.* Those companies are seeking the same outcome as the plaintiffs in the case over which you preside are seeking. Your financial interest in at least two companies with an interest in a particular outcome in *Dayton Area Chamber of Commerce et al. v. Becerra et al.* gives rise to an appearance of impropriety that may violate Canon 2 of the Code of Conduct.

Additionally, your decision not to recuse yourself may violate the section of Canon 3 governing judicial disqualification, which states in part:

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which [...]
  - (c) the judge knows that the judge, individually or as a fiduciary ... has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding

Holding stock in two companies that will be subject to the first round of price negotiations while presiding over a case which may result in the prevention or delay of those negotiations is clearly an instance in which the judge has an “interest that could be affected substantially by the outcome of the proceeding.”

Given the ethics concerns that your apparent conflict of financial interests in the pharmaceutical industry raise, we call on you to recuse yourself from *Dayton Area Chamber of Commerce et al. v. Becerra et al.* immediately.

Sincerely,  
The Revolving Door Project