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PRESIDENT

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## EAGLE FORUM

*Leading The Pro-Family Movement Since 1972*

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The Honorable Robert Goodlatte  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Goodlatte:

As an advocate for a strong, self-governing America with liberty, family, virtue, and private enterprise as her pillars, Eagle Forum must express profound concerns about H.R. 3309, the Innovation Act. In short, this legislation would weaken American patents, patent rights, and the ability of innovators — particularly independent inventors — to secure their constitutionally guaranteed private property right in their discoveries.

H.R. 3309 would further diminish our patent system. This and similar proposals are presented as "litigation reform." Taken as a whole, however, the provisions of H.R. 3309, including judicial stays, fee-shifting, disclosures for real parties in interest, and the postgrant review estoppel standard, all make it easier for infringers to game the system and tie up small inventors in multiple patent challenges that effectively devalue their patents. The bill would deprive the backbone of the "promot[ion] of science and useful arts" of their "exclusive right" to their intellectual property. The bill further tilts the playing field in favor of big business and patent infringers against the little guy. It would diminish property rights and access to the courts, and weaken U.S. patents.

H.R. 3309 expands the postgrant review pilot program for covered business method patents. This would merely give patent infringers another venue for forcing patent holders to mount costly defenses of their patents. It would threaten patents on software in the high-tech tools used throughout our economy. This provision carries serious economic consequences. Whereas we suffer from a \$39 billion trade deficit, we actually enjoy a trade surplus on licensing and fees.

Eagle Forum sympathizes with small businesses that receive demand letters and is open to addressing this predatory nuisance in a narrow, targeted fashion. However, H.R. 3309 goes far beyond addressing the grievances of such small business end users.

Finally, Eagle Forum is concerned about the bill's dictating specific case-management rules changes to the judiciary. While we certainly oppose judicial activism that amounts to usurpation of legislative powers, we likewise take issue with legislative intrusion into the inner workings of the judicial branch. This abridges the separation of powers.

We urge a deliberative approach be taken on patent issues. Eagle Forum suggests holding more hearings where independent inventors, venture capitalists, R&D shops, small manufacturers, thoughtful judges such as Paul Michel and Kathleen O'Malley, nonpracticing entities that play a vital role in technology transfer such as universities, and victims of foreign IP theft be given a fair and full hearing. Eagle Forum welcomes the opportunity to work with you toward that end. Unfortunately, we must oppose H.R. 3309 in its current form.

Sincerely,

Phyllis Schlafly

cc: The Honorable John Conyers, Ranking Member  
Members of the Judiciary Committee