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Chuck & the Chicken Littles



MICHELLE MALKIN

SEN. Charles Schumer rightly chastised House leaders this week for panicking in the face of anthrax attacks. But Schumer's own behavior has been a shameful spectacle of political panty-bunching. Count him among the many Chicken Littles talking out of both sides of their mouths — telling us to go about business as usual, yet at the same time advocating sky-is-falling measures that simply stoke public hysteria.

Schumer's panic-button proposal, which calls on the federal government to trash patent rules so generic-drug makers can sell knockoffs of Bayer's antibiotic Cipro before the patent expires, is an opportunistic heist of intellectual-property rights. Schumer's maneuver would set an appalling precedent for the feds to declare an "emergency" and infringe on drug patents any time the anti-capitalist Left made unsubstantiated claims of pharmaceutical price-gouging.

This is not, as one reader put it in an e-mail to me, "putting profits ahead of people." Schumer's plan would come back to haunt us in countless ways. Our ability to persuade other countries to honor U.S. patents, copyrights and trademarks — not just on drugs, but on all products — would be fatally compromised. Why should China respect Microsoft's intellectual property rights if we don't respect German-based Bayer's? Why should Brazil change its U.S.-unfriendly patent laws, as our government has argued to the World Trade Organization, if we don't play fair?

As usual, The New York Times has only allowed big-government activists to be quoted on their interpretation of the terrible statute (28 U.S.C. 1498) that lets the feds infringe on privately held patents with impunity. Sen. Schumer and his leftist allies say the practice is "routine." They sniff that since patent holders receive "reasonable" and "entire" compensation, this commonplace abandonment of the rule of law is no big deal.

Nonsense. The statute forces the victims of patent infringement to go to court to seek compensation from the federal government — compensation which is rarely just, and far from entire. No patent owner has been able to recover litigation costs of his suit.

This would be a nightmare not only for foreign companies such as Bayer, but for small patent holders here in America. Unlike multinational drug firms, domestic start-ups can't weather the huge cost of defending their rights when the government strips them of their life's work — and prevents them from recouping R&D costs through their patents. Stunts like Schumer's will scare the pants off of U.S. innovators.

Worst of all, Schumer's proposal sends a message to the rest of the world that we've been beaten. That we are in such desperate need for Cipro pills that we'll cut off our heads to get it.

Schumer wants to break the law even though that Bush administration officials say the current stockpile of Cipro is adequate; even though that Bayer is drastically increasing production and says it can meet demand; even though there are ample supplies of other antibiotics that protect against anthrax effectively; even though that anthrax is not contagious; and even though the risk of anthrax exposure, while petrifying, is extremely low.

The anthrax threat is real and scary. But Schumer's response is as embarrassing as the sight of Denny Hastert and Dick Gephardt holding hands and running from Capitol Hill earlier this week.

Schumer's proposal is theft, pure and simple. Call it what it is and get back to work defending our way of life, instead of fleeing from it. This is no time to lose our heads.

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