

Written Testimony of

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**Before the
U.S. House of Representatives
House Judiciary Committee
Subcommittee on Intellectual Property, Competition and the
Internet**

**Concerning H.R. 1946, the “Preserving Our Hometown
Independent Pharmacies Act of 2011”**

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Chairman Goodlatte, ranking member Watt and members of the Subcommittee, thank you for the opportunity to present my views and the views of pharmacists across this country, who serve patients who are among the most vulnerable in this country. I am Renardo Gray, pharmacist and owner of Westside Pharmacy in Detroit, Michigan. In 1979, I graduated from the University Of Michigan College Of Pharmacy and became a registered pharmacist. In 1985, I realized the American Dream by opening my own independent pharmacy which I still own and from which I have the privilege of serving my patients today.

Unfortunately, successful and well-run local community pharmacies are being forced out of business by the unfair business practices of major Pharmacy Benefits Managers (PBMs) and Medicare Part D Plans. The congressionally-sanctioned PBM-rigged market for prescription drugs must be made more competitive if my small business and thousands of others like it across the nation are to survive.

I would like to commend you for convening this important hearing. As someone who strongly supports parity and justice in medicine and the elimination of disparities in healthcare, I support HR 1946, the Preserving Our Hometown Independent Pharmacies Act of 2011 which was introduced by Congressman Tom Marino (R-PA) and has the support of many members of this Committee including my Congressman, The Honorable John Conyers (D-MI).

Independent pharmacies are often in under-served inner city and rural markets. The local pharmacist is typically the most accessible health care professional in the community. No patient prefers dealing with a pharmacist at a faraway telecenter rather than dealing with the trusted local pharmacist in their community.

Without the backing of a large corporation, my small business and all small independent community pharmacies in today's marketplace have become easy prey for large-corporate Pharmacy Benefit Managers (PBMs) whose primary motivation is to turn a profit in order to impress their board of directors every quarter. That, and the fact that

Congress has expanded the market for PBMs through the creation of Medicare Part D, is why their profits have skyrocketed over the past five years. PBMs have been found guilty of switching patients to more expensive and sometimes less safe drugs in order to secure higher rebates. PBMs often manipulate reimbursement policies in order to deny patients access to the drugs they deserve. Independent pharmacies such as Westside Pharmacy spend hours helping patients deal with all of these PBM schemes, making sure they are taking the appropriate drug, helping patients deal with complicated reimbursement issues and assuring the patient is able to get the right drug. Independent pharmacists spend countless hours helping our patients who have become our friends and extended family when problems arise with their mail-order prescriptions. We are not reimbursed for these services. We will not allow our patients (friends and extended family members) to go without the medications.

If we are forced out who will be there to help the patients in their time of need? PBMs coerce patients to use their mail order or limit their access to pharmacies that they own or control. PBMs often force patients to pay full price if they try to use their local independent pharmacy. Patients should and must have the right to choose their pharmacy provider.

The last time the House Judiciary Committee held a hearing on this issue, the PBM market was more competitive with three or four significant competitors. Since 2007, there have been several PBM acquisitions including Express Scripts' acquisition of Wellpoint, CVS' acquisition of Caremark and the proposed Express Scripts' acquisition of Medco. Both the ESI/Wellpoint and CVS/Caremark deals were cleared by the FTC without an extensive investigation. It appears that the FTC is poised to approve the Express Scripts acquisition of Medco which will create a PBM monopoly with over 150 million covered lives that will process over 40% of all prescriptions. Approving this merger would be a big mistake and enable Express Scripts to harm patients by denying access, reducing service and reducing reimbursement rates. But Congress, praise God, has the power to fix this problem and make sure high-quality pharmacy care will continue well into the future by passing HR 1946.

I as an independent pharmacist feel like David going up against Goliath and his brothers at one time. Thank God for this hearing. We need your help. This legislation will allow a limited number of non-publicly traded independent (family owned) pharmacies to work together to negotiate fair, reasonable fees and many other non-payment terms in their contracts with the PBMs. Since local, independent, hometown pharmacies are the only pharmacy entities that are prevented under the antitrust laws from full participation in the pharmacy market, passage would restore an equal playing field for every drug store in your communities. Our survival is critical to maximizing patient access to affordable healthcare and to the ability of patients to buy their medicines and receive sometimes critical one-on-one advice from the professionally trained and locally-licensed pharmacists.

Independent pharmacists are one of the most trusted professionals in this country and are the only healthcare providers who provide free and trusted care. Pharmacists pride themselves on being able to serve their patients and communities with the highest service. You simply cannot receive that kind of treatment and patient care from a mail-order, automated telephone service.

Without the ability to truly negotiate with the PBMs from a position of parity, independent pharmacies that are otherwise able to compete on price and service will be driven to extinction. This would be acceptable if our demise was a matter of the free market coming to the determination that independent pharmacies add too little value, or that independent pharmacies simply cannot operate as efficiently or effectively as PBMs or other pharmacy innovators. In fact, these factors have nothing to do with why my pharmacy and every pharmacy in your congressional districts require your immediate action.

In this down economy, we hear a lot of talk from Washington, DC about how important it is to create the right environment for small businesses to thrive, and how important it is that we create more small business employment opportunities. There is nothing harder

for a small business owner than to terminate an employee. Small independent pharmacy jobs are local jobs, jobs that, in my case, are either lost or created in Detroit. Thanks to “take-it-or-leave-it” PBM contracts, below-cost PBM reimbursement, PBM patient steering and the constant drum-beat of PBMs moving my patients out of my store and into their own PBM mail-order warehouse, I know that it will be extremely difficult to continue to provide local jobs and provide the finest care available to my patients.

I have spent years competing successfully against the PBMs. What has changed is that PBMs are using their massive market power to impose distorted market conditions on my small business: and no one in Washington – not the FTC, not the Justice Department, not Congress – is paying attention!

This country will never be able to replace the value of face-to-face patient counseling that community pharmacists provide on a daily basis to all of their patients. And there will never be the same level of high-quality personal care provided by mail-order companies run by PBMs.

Mr. Chairman, this legislation is the cornerstone for the future of healthcare reform because without the independent pharmacy network, high quality healthcare will be compromised. I ask you and this committee to pass HR 1946 as soon as possible.

Thank you for this opportunity.