

AMERICAN SEED TRADE ASSOCIATION



December 4, 2015

Chairman Thad Cochran
Ranking Member Barbara Mikulski
Senate Committee on Appropriations
128 Dirksen Senate Office Building
Washington, DC 20510

Chairman Pat Roberts
Ranking Member Debbie Stabenow
Senate Committee on Agriculture, Nutrition and Forestry
328A Russell Senate Office Building
Washington, DC 20510

Dear Chairman Cochran and Ranking Member Mikulski and Chairman Roberts and Ranking Member Stabenow:

On behalf of the American Seed Trade Association (ASTA), I am writing to strongly oppose extending the term of plant variety protection (PVP) of any varieties of seed through the appropriations process. We understand that there is an effort to take the extreme step of extending the PVP for a variety of ryegrass through the Omnibus Appropriations Bill. This backroom deal could have far reaching negative consequences on the seed industry and poses a serious threat to intellectual property rights in general. A PVP certificate is a contract with the American public, similar to a patent. Participants who receive a PVP certificate make a commitment to make the seed available after the term of protection expires. No one variety should be exempt from these requirements. By unfairly enabling the term of protection for one variety to be extended, Congress would open the door for other companies to use political pressure or influence to extend their own certificates in the future.

Founded in 1883, ASTA's mission is to enhance the development and movement of quality seed worldwide. ASTA's diverse membership consists of over 700 companies involved in seed production, distribution and plant breeding of all types of seeds. Many ASTA members are research-intensive companies engaged in the discovery, development and marketing of seed varieties with enhanced agronomic and end-use quality characteristics. Respect for intellectual property protection is the foundation of our industry.

In January of 2004, Congress took the extraordinary step of extending the term of the Plant Variety Protection (PVP) certificate for a single variety called Marshall Ryegrass for 10 years beyond the term of 18 years for which the PVP certificate was originally granted. This is the only instance, we are aware of, of such an unprecedented action being taken before or since. At that time, ASTA spoke strongly in opposition to the extension.

Furthermore, the Plant Variety Protection Advisory Board that was established by Congress to monitor the implementation of the Plant Variety Protection Act voted 13-0 to express their opposition to the Congressional extension for Marshall Ryegrass in May 2004. The board reiterated its position in a unanimous vote in 2014 and on August 6, 2015:

“The PVP Board expresses its grave concern over the Marshall ryegrass issue regarding the legislated private reissuance of a Plant Variety Protection certification, after the original PVP for this variety had expired. The Board believes this practice is contrary to Section 131 of the Plant Variety Protection Act and creates significant risk to innovation by undermining encouragement for research and investment by creating uncertainty of future commercial opportunities.”

Every year, the PVP certificates of 100 to 200 or more varieties expire and the varieties move into the public realm for all companies, breeders and growers to use. Marshall is no more unique or important than the other varieties that go off PVP annually. There must be no exceptions to the timelines dictating how many years a variety can be protected through a PVP certificate. One company must not be sanctioned to act outside of the limits of the Plant Variety Protection Act that was enacted by Congress while other companies and universities are operating in compliance.

Since the PVP for Marshall ryegrass expired for the second time in February 2014 hundreds of thousands of pounds of Marshall ryegrass seed have become available on the open market for farmers and ranchers to purchase and more will be available in future years. There are also numerous commercially viable alternatives to Marshall ryegrass in the marketplace that outperform Marshall in state-based, public field trials. Mississippi State also intends to release two new varieties with improved genetics to Marshall next year.

If Congress were to take the misguided action of extending the PVP for Marshall Ryegrass a second time it would show total disregard for the intellectual property laws and legally binding contracts which are the backbone of not just the seed industry but innovation in the U.S. It would also put the seed producers who are currently holding legal stocks of non-PVP Marshall Ryegrass seed in legal jeopardy.

Lastly, extending the PVP of a single variety would put the U.S. in an indefensible position related to global trade. The U.S. is a member of the International Union for the Protection of New Varieties of Plants, known as the UPOV Convention, which addresses Plant Variety Protection issues. Extending the period of PVP protection for a single variety is inconsistent with the fixed period provision of UPOV. It is important to note that the recently completed Trans Pacific Partnership Agreement requires signatory countries to comply with UPOV.

It was a mistake for Congress to extend the protection for Marshall ryegrass in 2004. We urge you to not extend the PVP further through the appropriations process.

Sincerely,

A handwritten signature in black ink that reads "A. W. LaVigne". The signature is written in a cursive, flowing style.

Andrew W. LaVigne
President & CEO