

United States Senate

WASHINGTON, DC 20510

November 26, 2019

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Trump:

We write to express our outrage at your decision to ignore public health when it comes to addressing the dangers of tobacco and to understand whether your Administration has assessed the risks of your inaction. The nation is in the midst of a public health crisis, with millions of children facing potential addiction to tobacco products and people across the country at risk of deadly illness. Yet, according to press reports, you plan to take no meaningful action to address the youth vaping epidemic and vaping-related injuries. Further, your Administration has reportedly backed away from plans to implement a policy to reduce nicotine levels in cigarettes.

Tobacco use remains the leading cause of preventable death, disability, and disease in the United States, and nearly all tobacco use begins during youth and young adulthood.¹ Yet your Administration has taken many steps to walk back, water down, and abandon proposals to address the dangers of tobacco use and nicotine addiction and shown an alarming willingness to put tobacco companies' profits ahead of the health and wellbeing of our families and children. Unfortunately, instead of listening to the data, science, and warnings from countless public health experts and advocates—your Administration stands by its decisions to delay strong action and allow an explosion in youth vaping. In the last month, you have twice chosen to heed the interests of the tobacco industry over public health.

The Trump Administration Walks Away From Promised Action on Flavored E-Cigarettes After Industry Pressure

On September 11, 2019, apparently recognizing the dangers associated with e-cigarette use, you spoke from the Oval Office with First Lady Melania Trump, Department of Health and Human Services (HHS) Secretary Alex Azar, and then-Acting FDA Commissioner Ned Sharpless about your concerns with vaping and commitment to “very strong rules [and] regulations.”² The same day, FDA issued a statement committing to “finaliz[ing] a compliance policy in the coming weeks that would prioritize the agency’s enforcement of the premarket authorization

¹ <https://www.cdc.gov/chronicdisease/resources/publications/factsheets/tobacco.htm>;
<https://www.cdc.gov/mmwr/volumes/68/wr/mm6806e1.htm>

² <https://www.nytimes.com/2019/09/11/health/trump-vaping.html>

requirements for non-tobacco-flavored e-cigarettes, including mint and menthol, clearing the market of unauthorized, non-tobacco-flavored e-cigarette products.”³

In a press release, HHS Secretary Azar said, “we intend to clear the market of flavored e-cigarettes to reverse the deeply concerning epidemic of youth e-cigarette use that is impacting children, families, schools and communities.”⁴ Acting FDA Commissioner Sharpless expressed support for your and Secretary Azar’s leadership on this issue, saying, “We must act swiftly against flavored e-cigarette products that are especially attractive to children.” Centers for Disease Control and Prevention (CDC) Director Robert Redfield said, “CDC strongly supports FDA’s announcement today that it intends to finalize an enforcement policy that will clear non-tobacco-flavored e-cigarettes from the market. This is an important step in response to the epidemic of e-cigarette use among our Nation’s youth.”⁵ The American Lung Association called the announcement “a vital and positive step to address the youth e-cigarette epidemic.”⁶ The Campaign for Tobacco-Free Kids said this is a “necessary and long-overdue step,” and said the ban must be “comprehensive, immediate and long-lasting.”⁷

Yet, in the weeks following the September announcement, the tobacco and vaping industries lobbied against the policy. A poll commissioned for the Vapor Technology Association – a trade association working on behalf of the e-cigarette industry – examined views exclusively among voters who vape and found negative results for your Administration, despite the fact that there is widespread support for banning flavored e-cigarettes.⁸ A coalition of conservative interest groups advocated against the policy on behalf of the vape shops.⁹

On November 4, the Office of Management Budget (OMB) cleared a policy removing candy, fruit, and mint flavors from the market within 30 days.¹⁰ That policy already included a major concession to industry – the exemption of menthol products. Later that evening, however, you reportedly chose not to finalize the policy, indicating the vaping industry proved more persuasive than the harm their products have already caused to the health and future of millions of children. The continued influence of the vaping industry and other stakeholders on your White House and public health policy is deeply alarming.

³ <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>

⁴ <https://www.hhs.gov/about/news/2019/09/11/trump-administration-combating-epidemic-youth-ecigarette-use-plan-clear-market.html>

⁵ <https://www.cdc.gov/media/releases/2019/s0911-e-cigarettes.html>

⁶ <https://www.lung.org/about-us/media/press-releases/flavored-e-cigarettes-announcement.html>

⁷ https://www.tobaccofreekids.org/press-releases/2019_09_11_trump

⁸ <https://www.nytimes.com/2019/11/17/health/trump-vaping-ban.html>;

<https://morningconsult.com/2019/09/23/most-trump-voters-back-his-proposed-ban-on-flavored-e-cigarettes/>

⁹ https://www.afr.org/sites/default/files/assets/White%20House%20Letter%20on%20Vaping_FINAL.pdf

¹⁰ https://www.washingtonpost.com/national/health-science/trump-pulls-back-from-flavored-vaping-ban/2019/11/17/30853ece-07ae-11ea-924a-28d87132c7ec_story.html

The Trump Administration Shelves Long-Announced Proposal to Reduce Nicotine Levels in Cigarettes

In March 2018, FDA announced the agency planned to take action to reduce nicotine levels in cigarettes to minimally or non-addictive levels, describing the proposal as “help[ing] limit the addictiveness of the most toxic and widely used tobacco products, which would have significant public health benefits for youth, young adults, and adults, as well as potentially vast economic benefits.”¹¹ FDA scientists published an article in the *New England Journal of Medicine* about the potential public health effects of taking such steps to reduce nicotine levels in cigarettes.¹² The nicotine reduction policy was announced concurrently with this Administration’s unacceptable four-year delay in the public health review of e-cigarettes – a delay that allowed the explosion in youth vaping – and in fact was used as a justification for FDA’s inaction.

On November 20, your Administration further walked back efforts to address addiction to tobacco products, indicating it would no longer consider this policy to reduce the level of nicotine in cigarettes.¹³ Public health advocates, including former FDA Commissioner Robert Califf, expressed disappointment in the decision to abandon the proposal.¹⁴ Again, your Administration seems to be caving to the requests of the tobacco industry rather than prioritizing public health.

Your Administration’s continued delay in protecting youth from tobacco, including by failing to deliver the policies you promised, is an irresponsible abdication of the government’s obligation to protect the public health. It is unconscionable that the President of the United States is willing to allow special interests to stand in the way of protecting the millions of children using tobacco products that, in your own words, are “very dangerous.”¹⁵ We request answers to the following questions to explain your Administration’s actions by no later than December 10, 2019:

1. Are the reports that you refused to finalize the policy to remove non-tobacco flavored e-cigarettes from the market accurate?
2. With whom did your Administration consult on the policy, and subsequent reversal of the policy, to remove non-tobacco flavored e-cigarettes from the market?
 - a. Did you consult with public health organizations?
 - b. Did you consult with the vaping industry?
 - c. Did any individual or organization advise that failing to implement this policy would benefit public health?
3. Did any officials within HHS, CDC, or FDA advise you against finalizing the policy to remove non-tobacco flavored e-cigarettes from the market? Are the reports that FDA intends to halt its work on nicotine reduction in cigarettes accurate?
4. With whom did your Administration consult on the policy, and subsequent reversal of the policy, to reduce nicotine levels in cigarettes?

¹¹ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=0910-AH86>

¹² <https://www.nejm.org/doi/full/10.1056/NEJMs1714617>

¹³ <https://finance.yahoo.com/news/u-shelves-plan-sharply-cut-165115244.html>

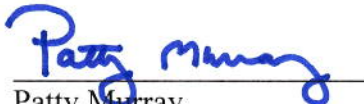
¹⁴ <https://www.bloomberg.com/news/articles/2019-11-20/u-s-drops-plan-to-cut-nicotine-levels-in-traditional-cigarettes>


¹⁵ <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-e-cigarettes/>

- a. Did you consult with public health organizations?
 - b. Did you consult with the tobacco industry?
 - c. Did any individual or organization advise that failing to implement this policy would benefit public health?
5. Did any officials within HHS, CDC, or FDA advise you against continuing to pursue the policy to reduce nicotine in cigarettes to minimally or non-addictive levels?

Thank you in advance for your attention to this matter. If you have any questions, or would like to discuss compliance with this request, please contact Elizabeth Letter or Andi Fristedt with Senator Murray's HELP Committee Staff at 202-224-0767.

Sincerely,


Patty Murray
United States Senator


Chris Van Hollen
United States Senator

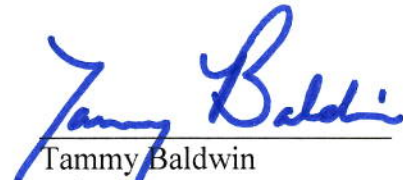

Jack Reed
United States Senator

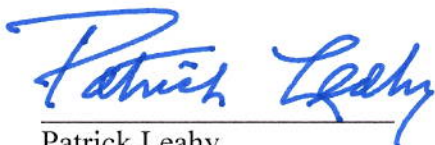

Jeanne Shaheen
United States Senator


Sherrod Brown
United States Senator

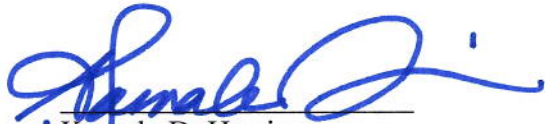

Tom Udall
United States Senator

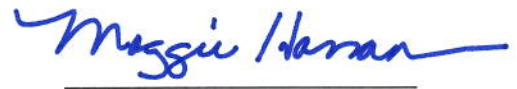

Edward J. Markey
United States Senator

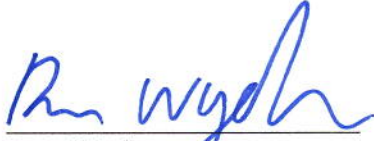

Tammy Baldwin
United States Senator

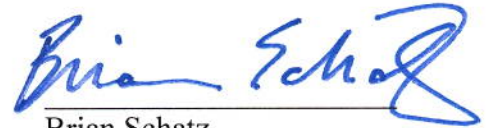

Patrick Leahy
United States Senator



Richard J. Durbin
United States Senator


Kamala D. Harris
United States Senator

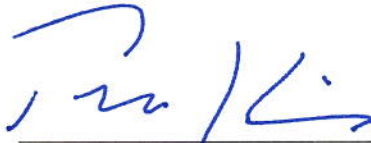

Margaret Wood Hassan
United States Senator


Ron Wyden
United States Senator


Brian Schatz
United States Senator


Benjamin L. Cardin
United States Senator

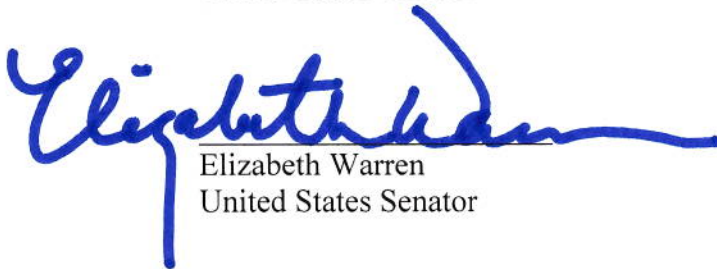

Richard Blumenthal
United States Senator

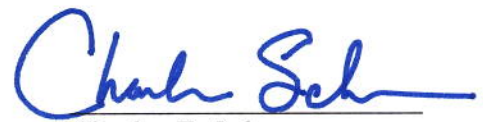

Tim Kaine
United States Senator

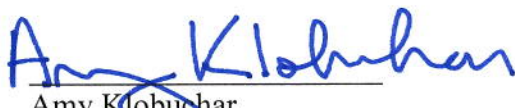

Mazie K. Hirono
United States Senator


Tina Smith
United States Senator


Jeffrey A. Merkley
United States Senator


Elizabeth Warren
United States Senator


Charles E. Schumer
United States Senator


Amy Klobuchar
United States Senator