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ONE HUNDRED SIXTEENTH CONGRESS
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October 30, 2019

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear Mr. President:

I write you today regarding your September 11 announcement that a Food and Drug Administration (FDA) compliance policy would be published “in the coming weeks” to clear the market of “flavored e-cigarettes, including mint and menthol.”¹ While it has been over a month since the Administration’s announcement, I believe that this policy, once issued, has the potential to begin reversing the alarming increase in youth e-cigarette use while the FDA reviews these products.

However, I am deeply concerned by recent reports that indicate your administration is reconsidering this policy and retreating on its promise to clear the market of mint and menthol flavored e-cigarettes.² Perhaps worse, these efforts appear to be coming from political operatives and special interests.³ Flavored e-cigarettes are attractive to kids and are a huge public health

¹ Dept. of Health & Human Svcs. *Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products* (www.hhs.gov/about/news/2019/09/11/trump-administration-combating-epidemic-youth-ecigarette-use-plan-clear-market.html) (Sept. 11, 2019).

² Josh Wingrove, Gerald Porter, Jr., and Michelle Cortez, *Trump Considers Retreat from Ban of Mint, Menthol Vaping Flavors*, BLOOMBERG (www.bloomberg.com/articles/2019-10-25/trump-considers-retreat-from-ban-of-mint-menthol-vaping-flavors) (Oct. 25, 2019).

³ Michael Sherer, Josh Dawsey, Laurie McGinley, and Neena Satija, *Trump Campaign Urges White House to Soften Proposed Flavored Vape Ban*, THE WASHINGTON POST (www.washingtonpost.com/politics/trump-campaign-urges-white-house-to-soften-proposed-flavored-vape-ban/2019/10/25/5d39dbae-f733-11e9-a285-882a8e386a96_story.html) (Oct. 25, 2019).

concern, and politics should never outweigh the common good in setting our nation's public health policy.

As you know, e-cigarette use among youth has risen dramatically, and mint and menthol are among the most popular flavors of e-cigarettes among young people. According to the National Youth Tobacco Survey (NYTS), in 2017, 11.7 percent of high school students reported using e-cigarettes.⁴ E-cigarette use among high school students has more than doubled in the two years since the 2017 survey was published, with more than 27.5 percent of high school students now reporting e-cigarette use in the 2019 survey.⁵ As youth e-cigarette use has grown, so has the popularity of mint and menthol flavors. While 42.3 percent of high school e-cigarette users reported using mint and menthol flavors in 2017, 63.9 percent reported mint and menthol use in 2019.⁶

Flavored e-cigarette use is a public health threat because these products have the potential to expose a new generation to a lifetime of nicotine addiction and negative health outcomes. Youth who use e-cigarette products are initially attracted by flavors and are more than four times as likely as non-users to become regular smokers, increasing their risk of developing deadly diseases such as cancer and heart disease.⁷ While the long-term effects of e-cigarette use are not yet fully known, just last week, the Centers for Disease Control and Prevention (CDC) announced that there were 1,604 cases of e-cigarette or vaping associated lung injury (EVALI) reported to the agency, and 34 deaths have been reported across 24 states.⁸ At a recent hearing before our Subcommittee on Oversight and Investigations, CDC Deputy Director Anne Schuchat said that she expects these cases to continue to grow.⁹ It is clear that immediate action is necessary to stop the proliferation of these products.

That is why I was encouraged to see you announce that your administration would be clearing the market of flavored e-cigarette products, including those with mint and menthol

⁴ Teresa W. Wang, et al., *Tobacco Product Use Among Middle and High School Students – United States, 2011–2017*, CENTERS FOR DISEASE CONTROL AND PREVENTION MORBIDITY AND MORTALITY WEEKLY REPORT (June 8, 2018).

⁵ See *supra* note 1 (reporting preliminary data from the 2019 National Youth Tobacco Survey).

⁶ *Id.*

⁷ Kaitlyn M. Berry et al., *Association of Electronic Cigarette Use with Subsequent Initiation of Tobacco Cigarettes in US Youths*, J. AM. MED. ASSN. (jamanetwork.com/journals/jamanetworkopen/fullarticle/2723425) (Feb. 1, 2019).

⁸ Centers for Disease Control and Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping Products* (www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html) (Oct. 24, 2019).

⁹ House Committee on Energy and Commerce, *Hearing on Sounding the Alarm: The Public Health Threats of E-Cigarettes*, 116th Cong. (Sept. 25, 2019).

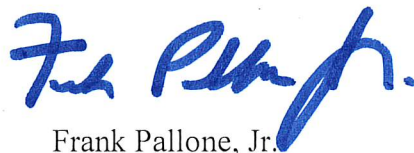
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flavors, until these products undergo FDA review. I was also pleased that your administration's top health officials have reiterated their support for the proposal since the announcement. Secretary Azar recently stressed that "these products are still getting to kids and we cannot let a whole generation get addicted to them through mint and menthol and other flavors."¹⁰ Additionally, Dr. Sharpless noted at our Committee hearing that "the data suggests that mint and menthol are very popular with children."¹¹ Former FDA Commissioner Scott Gottlieb has also agreed with the proposal, recently telling the *Washington Post* that mint and menthol e-cigarettes are harming kids who are using them, and underscored that "data suggests that adults who use e-cigs to successfully quit smoking aren't using these [mint and menthol] products."

A retreat from the announced policy would leave millions of children at risk, and I would hope that you would not allow that to happen. Reports that the Administration is considering weakening the proposed policy because of political concerns and lobbying from the e-cigarette and tobacco industry are especially concerning given the grave threat that e-cigarettes represent to the health of young people. We should not be playing politics with the health of children and teens who are increasingly becoming addicted to these harmful products. Americans rely on you and FDA to make decisions supported by science that are in the best interest of public health. Here, the data are clear: flavored e-cigarettes, including mint and menthol flavors, are attractive to kids, and are subjecting our nation's youth to addiction and potential life-threatening conditions.

It is long past time to address the public health risks associated with e-cigarette use, and a first step towards doing so would be to remove flavored e-cigarette products from the market. While your announcement on September 11 was promising, so far it is a promise that has gone unfulfilled. I urge your administration to issue the compliance policy you announced without further delay and ensure that the policy applies to all harmful flavored e-cigarette products, including those with mint and menthol flavors.

Sincerely,



Frank Pallone, Jr.
Chairman

¹⁰ *Supra* note 2.

¹¹ *Supra* note 8.

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cc: The Honorable Alex Azar, Secretary of Health and Human Services
The Honorable Norman D. Sharpless, M.D., Acting Commissioner of Food and Drugs
The Honorable Russell Vought, Acting Director, Office of Management and Budget