

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate
Washington, DC 20510

October 16, 2019

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell, and Leader Schumer,

We are writing with urgency about the vaping crisis in America and asking Congress to exercise oversight authority to stop this crisis. In recent weeks, nearly 1,300 cases of respiratory illness and at least 29 deaths have been linked to vaping.¹ The story has dominated the news cycle yet relatively little is known about the causes of the mysterious lung illnesses. One thing, however, is clear. A majority of these cases involve vaporizers for THC, the intoxicating ingredient in marijuana. While many claim that illegal or black market THC vapes are the primary cause of the lung illnesses, there are at least two links between the vaping crisis and the state-legal marijuana market.

The first connection is that THC vape companies are currently marketing high potency vapes using the same methods that got Juul in trouble: they advertise flavored vapes appealing to young people; these flavors include blueberry, lemon, mango, peach, strawberry, and many others.² Advertising by THC vape companies target youth on social media platforms through use of celebrity influencers and young models.³

Second, a number of those who have become ill source their THC vapes to “legal” marijuana stores. For example, all five of the cases of reported vaping illnesses in Oregon have been linked to vape products purchased from state licensed marijuana dispensaries,⁴ including at least two deaths.⁵ One of the cases reported in Delaware was traced to regulated THC products.⁶ A major dispensary chain in Colorado admitted it had been selling products that were contaminated with cutting agents found to be toxic in other states.⁷ Indeed an industry insider disclosed in an interview that approximately 60% of the vapes available for sale contain cutting agents like Vitamin E acetate.⁸ Even the National Cannabis Industry Association acknowledged this risk in their letter to Congress dated October 3, 2019: “...any licensed producer that has included this

¹ See <https://www.cdc.gov/mmwr/volumes/68/wr/mm6841e3.htm>.

² See <https://clearconcentrate.com/cartridges/>; <https://kindconcentrates.com/product/sweet-karts/>.

³ Music recording artist The Weeknd in a PAX Instagram ad: https://www.instagram.com/p/_C-9mBRqK7/.

⁴ See <https://www.salemreporter.com/posts/1337/as-crisis-looms-oregon-officials-propose-vaping-ban>.

⁵ See <https://www.usatoday.com/story/news/health/2019/09/05/vaping-death-oregon-man-dies-thc-vape-dispensary/2218501001/>.

⁶ See https://dhss.delaware.gov/dhss/pressreleases/2019/delvpngdth_10032019.html.

⁷ See <https://www.usnews.com/news/business/articles/2019-09-26/high-flying-marijuana-vapes-take-hit-from-health-scare>.

⁸ See <https://www.inverse.com/article/59207-vitamin-e-acetate-thc-vapes>.

additive in recent vape product batches is strongly encouraged to issue a voluntary recall of those products.”⁹

Responding to this crisis with federal legalization and regulation of cannabis products is irresponsible from a public health standpoint, and a protracted legislative battle over marijuana legalization would be a response woefully inadequate to the crisis. *The FDA has the authority* to immediately respond to the vaping crisis. In a letter dated July 2, 2018, the FDA stated that, “FDA already has adequate authority to remove unapproved new OTC drugs containing marijuana or THC from the market...” and “...existing law makes very clear that such unapproved products cannot be marketed under the FD&C Act. FDA has not determined that any OTC drug products containing marijuana or THC are GRAS/E for their intended indications. Therefore, these products are “new drugs” per section 201 of the FD&C Act that must be approved by FDA to be legally marketed. Nothing in the FD&C Act or FDA’s implementing regulations exempts drug products containing marijuana or THC from the new drug approval requirements...”¹⁰

These circumstances compel us to recommend that Congress take the following actions:

- The House and Senate should pass resolutions supporting the FDA using existing authority to remove dangerous products from store shelves. No additional legislation is needed to take immediate action to protect public health and safety.
- Congressional committees should conduct oversight hearings that would spur federal and state officials to release information known about the sources of the vapes that were used by those who were seriously sickened or who died from vaping-related illnesses, including state regulated products. Actions in Oregon to keep secret dispensary and product names are grossly irresponsible.¹¹
- Congress must halt any legislation that will expand the sales of potentially deadly marijuana products. For example, the SAFE Banking Act contains no public health guardrails. Companies must not be incentivized to promote a product line that has been implicated in a nationwide health epidemic.

Both the CDC and the FDA have warned the public to “refrain from using e-cigarette, or vaping, products, particularly those containing THC.”¹² It is time for them to act to protect public health and remove dangerous products that are for sale in legalized states and are being diverted to the underground market. There is a lot we still don’t know about this vaping crisis. But that shouldn’t give us the impression there is no action to be taken. We urge Congress and the FDA to move swiftly.¹³

Sincerely,

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⁹ See <https://thecannabisindustry.org/wp-content/uploads/2019/10/VapeCoalitionLetter-final-updated10.4-House.pdf>.

¹⁰ See <https://learnaboutsam.org/wp-content/uploads/2019/10/FDA-2017-P-6692-0042.pdf>.

¹¹ See <https://www.wweek.com/potlander/news-potlander/2019/09/06/state-authorities-wont-release-the-names-of-two-cannabis-stores-that-may-have-sold-fatal-vaping-products/>.

¹² See https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html.

¹³ See <https://learnaboutsam.org/wp-content/uploads/2019/07/2019LessonsFinal.pdf>.

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cc: Jerome M. Adams, MD, MPH, Surgeon General of the United States
Norman E. Sharpless, MD, Acting Commissioner of the Food & Drug Administration
Robert R. Redfield, MD, Director of the Centers for Disease Control
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William P. Barr, Attorney General of the United States