

Coalition Urges President Trump to Halt Regulatory Assault on Innovative Electronic Cigarette Industry

February 4, 2019

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. President,

We urge you to immediately halt the Food and Drug Administration's aggressive regulatory assault on businesses who sell and consumers who rely on less harmful alternatives to cigarettes in the United States.

From inaction on pending product approvals, to threatening letters sent to American manufacturers, and promises to begin new rulemaking that would make illegal certain consumer products, this FDA is currently pursuing several policies that are more extreme than those contemplated by the Obama administration. **FDA Commissioner Scott Gottlieb's effort to curb the \$6.6 billion electronic cigarette industry and an even larger reduced risk tobacco alternatives market is inconsistent with your clearly articulated deregulatory objectives and will destroy jobs, limit consumer freedoms, and harm public health.**

Electronic cigarettes are regulated by the FDA pursuant to authority granted to the agency by Congress in 2009 under the Family Smoking Prevention and Tobacco Control Act and expanded under the Obama administration's 2016 "Deeming Rule." E-cigarettes or vapor products use a battery to heat a liquid, producing an aerosolized vapor inhaled by the consumer. These products do not contain tobacco but can deliver nicotine without the combustion or tar present in traditional cigarettes. For this reason, the growing body of scientific evidence suggests the products are at least 95 percent less harmful than cigarettes. **The harm reduction potential of e-cigarettes has been acknowledged by Commissioner Gottlieb, Center for Tobacco Products Director Mitch Zeller, and Surgeon General Jerome Adams, among others.**

Unfortunately, a spike in the use of these products by teens has resulted in regulatory panic and significant government overreach. Commissioner Gottlieb has already pressured major manufacturers of e-cigarettes to remove many products from convenience store shelves, suggested that more than one hundred thousand retailers limit adult access to these products, and threatened to use agency power to remove thousands of legal products from the market.

AMERICANS
for TAX REFORM

ALEC
ACTION

Campaign
for
Liberty

CITIZENS
AGAINST
GOVERNMENT
WASTE



We do not write you today urging your administration to ignore the concerns about the use of e-cigarettes by teens. We do, however, urge your administration to subject the FDA's response and actions to much closer scrutiny and examine it within the context of your broader deregulatory and pro-jobs agenda.

One week after you were inaugurated, you signed Executive Order 13771 "Reducing Regulation and Controlling Regulatory Costs." This important Order directed departments and agencies to not only eliminate at least two regulations for every new one created but to prudently manage the costs of new rules. This Order signaled an important end to the Obama administration's treatment of American businesses and consumers across various industries, who were hit with \$245 billion in regulatory costs in the first 21 months of his administration alone.



Your leadership, Orders, and deregulatory efforts have led to historic and important relief for the American people, with over \$33 billion in savings alone through October of last year. Across every department and agency, your administration has not only identified harmful regulations but worked to untangle and repeal them, freeing consumers and businesses from the grip of government overreach. One glaring exception has been the Food and Drug Administration.



It is likely that the impact of the FDA's proposed, pending, and possible new guidance and rules for retailers, manufacturers, and consumers will amount to billions of dollars in lost economic activity and costs. **Consistent with your Executive Orders, an economic cost benefit analysis must be conducted that examines pending FDA guidance and potential new regulations with regards to this innovative industry.**



Private sector initiative and sound public policy should not be held hostage by prohibitionist impulses. The FDA's current efforts and attitude towards the e-cigarette industry make America a less appealing place to invest and do business. Countries around the world, including many throughout Europe have embraced this industry, encouraging doctors and medical professionals to recommend it to patients who smoke. Simply put, we are not a public health leader on the issue of utilizing the free market and innovation for tobacco harm reduction.

There are millions of adults who have successfully quit smoking cigarettes with tobacco-free alternatives like e-cigarettes. Innovation has solved one of America's greatest public health problems, through the introduction of appealing reduced risk products that are for sale only to those above the age of 18 across the United States. **Without your intervention, Commissioner Gottlieb may not only destroy tens of thousands of jobs at small stores and manufacturers, but he will prevent some of the more than 35 million American adults who still smoke tobacco cigarettes from ever successfully quitting.**

Throughout your 2016 campaign and over the past two years, your administration has achieved such great outcomes with regards to lessening the burden of government on small businesses and taxpayers. **We ask you to direct the FDA to**



pump the brakes on its new regulatory efforts against an innovative industry that is helping American smokers quit.



Sincerely,

Grover Norquist
President, Americans for Tax Reform

Lisa Nelson
CEO, ALEC Action

Norm Singleton
President, Campaign for Liberty

Tom Schatz
President, Citizens Against Government Waste

Michelle Minton
Senior Fellow, Competitive Enterprise Institute

Jeff Stier
Senior Fellow, Consumer Choice Center

Kenneth T. Cuccinelli II
Director of Regulatory Action Center, FreedomWorks
Former Attorney General of Virginia

Henry I. Miller, M.S., M.D.
Founding Director of the Office of Biotechnology, FDA

Naomi Lopez Bauman
Director of Healthcare Policy, Goldwater Institute

Mario H. Lopez
President, Hispanic Leadership Fund

Julie Gunlock
Director of Center for Progress and Innovation, Independent Women's Forum

Dr. Bob McClure
President and CEO, The James Madison Institute

Seton Motley
President, Less Government

Pete Sepp,
President, National Taxpayers Union





Douglas Kellogg
Director, Ohioans for Tax Reform

Henry I. Miller, M.D.
Former Director, Office of Biotechnology, FDA

Carrie L. Wade
Director of Harm Reduction Policy, R Street Institute

Paul Gessing
President, Rio Grande Foundation

Tim Andrews
Executive Director, Taxpayers Protection Alliance



Cc: Executive Office of the President of the United States
Acting Chief of Staff Mick Mulvaney

The Office of Management and Budget
Acting Director Russ Vought

The Office of Information and Regulatory Affairs
Administrator Neomi Rao



TAXPAYERS
PROTECTION
ALLIANCE