

United States Senate

WASHINGTON, DC 20510

December 21, 2017

The Honorable Jeff Sessions
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Acting Administrator Robert Patterson
United States Drug Enforcement Agency
8701 Morrisette Drive
Springfield, VA 22152

Dear Attorney General Jeff Sessions and Acting Administrator Patterson:

On December 12, 2017, the Senate Committee on the Judiciary held an oversight hearing to discuss the *Ensuring Patient Access and Effective Drug Enforcement Act* (P.L. 114-145), legislation that was signed into law in April of 2016. During this hearing, the Acting Assistant Administrator for the Diversion Control Division of the Drug Enforcement Administration (DEA), Ms. Demetra Ashley, testified that changes to the 2016 law are necessary in order to ensure the DEA has all the tools necessary to combat the opioid epidemic. We urge you to provide, in writing, a list of the specific changes that the Department of Justice (DOJ) and DEA would recommend making to P.L. 114-145 to ensure the DEA has the tools necessary to act proactively and aggressively in combatting our nation's addiction epidemic.

As you are aware, two months ago, *The Washington Post* published an article entitled "The Drug Industry's Triumph Over the DEA" and CBS released a related 60 Minutes exposé highlighting the *Ensuring Patient Access and Effective Drug Enforcement Act* and its impact on the DEA's capacity to participate fully in the war against addiction. On October 16, 2017, several Senators introduced legislation to repeal this 2016 law. On October 20, 2017, one-third of the Senate wrote to the Department of Health and Human Services (HHS) and DEA to request an update on the law's impact and a summary of any challenges in diversion control caused by the law's passage. This letter also demanded that HHS and DEA fulfill their statutory obligation and submit an official Report to Congress identifying any residual issues with diversion of controlled substances and strategies to reduce the volume of opioids on the market. That same day, Senator Hatch and Senator Cassidy, two of the original authors of the 2016 law, wrote a similar letter urging HHS and DEA to "promptly submit the required report."

On November 28, 2017, Senator McCaskill hosted a Senate roundtable to discuss the 2016 law, and on December 12, 2017, the Judiciary Committee held its oversight hearing on the law. It was at this Judiciary Committee hearing – nearly two months after the initial news reports criticizing the law and more than a year after the law's implementation – that a current representative of the DEA, Ms. Ashley, suggested Congress revise the *Ensuring Patient Access and Effective Drug Enforcement Act*. Despite not articulating specific changes in written testimony, nor in response to several questions, Ms. Ashley at one point indicated that the terms "immediate" and "substantial likelihood" in the law's definition of "imminent danger" created unintended consequences for DEA's enforcement authority. We write to confirm whether recommending changes to these statutory terms are DEA's official position with respect to amending the 2016 law.

Notwithstanding this singular acknowledgment, DOJ and DEA have failed to provide Congress with any substantive guidance and/or technical assistance for statutory revisions necessary to prevent the diversion and abuse of controlled substances – not at last week’s Judiciary Committee hearing, nor in any written correspondence to date. This law passed over a year and a half ago, and we are more than eight months past the statutory deadline for a required Report to Congress; the silence from DOJ, DEA, and HHS is deafening. As it was said at last week’s Judiciary Committee hearing: Congress “cannot understand what you’re requesting if the agency doesn’t request it clearly and with language attached.”

It is critical that we have the information required to evaluate this law and make necessary revisions to update and improve the law to ensure the DEA retains all the tools necessary to aggressively prevent the diversion of opioids. We urge DOJ and DEA to act swiftly to assemble and provide Congress with a written list of suggested improvements to the *Ensuring Patient Access and Effective Drug Enforcement Act* by no later than January 19, 2018, and to work with the Acting Secretary of HHS to provide the Report to Congress required by Section 3 of P.L. 114-145 as soon as possible.

Sincerely,



Sherrod Brown
United States Senator



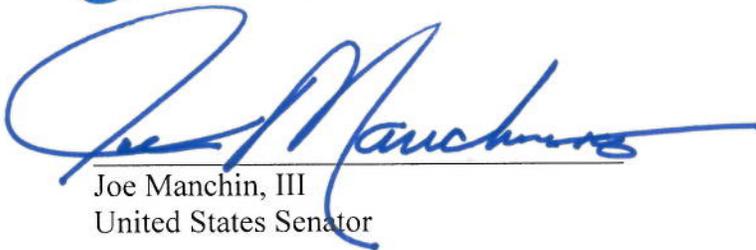
Richard J. Durbin
United States Senator



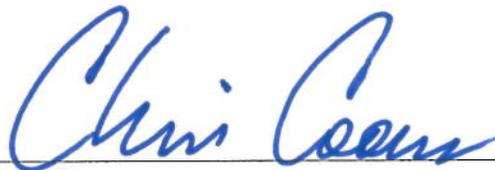
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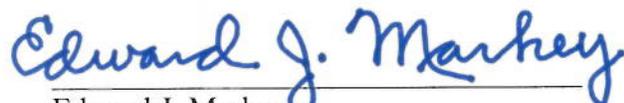
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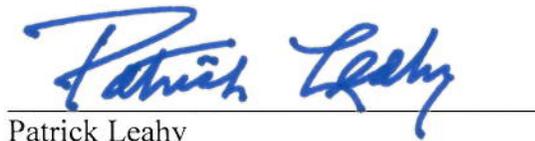
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Debbie Stabenow
United States Senator


Patrick Leahy
United States Senator


Elizabeth Warren
United States Senator


Bernard Sanders
United States Senator


Margaret Wood Hassan
United States Senator

CC: Eric Hargan, Acting Secretary, US Department of Health and Human Services
CC: Ms. Demetra Ashley, Acting Assistant Administrator for the Diversion Control Division, Drug Enforcement Administration