

United States Senate
WASHINGTON, DC 20510

February 15, 2022

President Joseph R. Biden
The White House
1600 Pennsylvania Ave. NW
Washington, D.C. 2050

Dear President Biden:

We write to you with grave concern about how your administration is handling the drug epidemic. As you know, a new record of over 100,000 overdose deaths have been recorded over a 12-month period.¹ According to the Drug Enforcement Administration (DEA), that means that 275 Americans die from a drug overdose every day.²

It's with this in mind that we're stunned and concerned over recent developments by your administration that would weaken our fight against drug use. Your administration has made clear its prioritization of "[e]nhancing evidence-based harm reduction efforts" as part of a national drug control strategy.³ But this position has resulted in radicalized, illegal, and dangerous acts.

It has been reported that the Department of Justice (DOJ) is considering supporting the use of supervised injection sites.⁴ Supervised injection sites are public facilities for drug users to consume illicit drugs like fentanyl, methamphetamine, or heroin, under the supervision of medical staff. This reported position by your Justice Department is concerning for a number of reasons.

First, it would break federal law. In fact, just a year ago, the Third Circuit agreed with the Trump DOJ that it is a federal crime to open and operate a supervised injection site for illegal drug use.⁵ Specifically, federal law prohibits any person from knowingly or intentionally maintaining a place for the purpose of illegal drug use.⁶ The Court explained that, "[t]hough the

¹ Ahmad FB, Rossen LM, Sutton P. (2021) Provisional drug overdose death counts. U.S. Centers for Disease Control and Prevention, National Center for Health Statistics, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

² Press Release, U.S. Drug Enforcement Administration, DEA Washington Division Launches Operation Overdrive, (Feb. 7, 2022), <https://www.dea.gov/press-releases/2022/02/07/dea-washington-division-launches-operation-overdrive>.

³ Executive Office of the President, Office of National Drug Control Policy, "The Biden-Harris Administration's Statement of Drug Policy Priorities for Year One."

⁴ Jennifer Peltz & Michael Balsamo, Justice Dept. signals it may allow safe injection sites, AP News, (Feb. 8, 2022), <https://apnews.com/article/business-health-new-york-c4e6d999583d7b7abce2189fba095011>.

⁵ Press Release, U.S. Department of Justice, Appellate Court Agrees with Government that Supervised Injection Sites are Illegal under Federal Law; Reverses District Court Ruling, (Jan. 13, 2021), <https://www.justice.gov/opa/pr/appellate-court-agrees-government-supervised-injection-sites-are-illegal-under-federal-law>.

⁶ 21 U.S.C. § 856.

opioid crisis may call for innovative solutions, local innovation may not break federal law.”⁷ A new position would represent a marked and illegal flip-flop from the previous administration.

Beyond this, recent government reports show that supervised injection sites do not reduce overall overdose deaths or opioid-related emergency calls.⁸ Additionally, supervised injection sites have led to an increase in crime, discarded needles, and social disorder in the surrounding neighborhoods.⁹ Advocates in favor of supervised injection sites assert that they provide connections for those with substance use disorders to find housing and treatment options. However, these sites have a poor record of moving drug users into treatment and recovery, with some referral rates as low as 1%.¹⁰ Supporting those with substance use disorders is critically important; however, supervised injection sites’ goals of limiting the spread of diseases pale in comparison to the grave consequences of enabling and normalizing the consumption of illicit drugs.

This purported change in position by DOJ isn’t based on a change of law, as Congress hasn’t passed any laws that nullify or modify the statutes barring the unlawfulness of maintaining drug-involved premises. Rather, it can only be assumed that your administration is exercising an unchecked use of power because it knows that a measure supporting supervised injection sites would never pass Congress. Not when drug overdose rates are at record highs; not when fentanyl and meth seizures are surging at the southwest border; and not when your own Department recognizes the connection between drug overdoses and violent crime.¹¹

Simply put, there is no such thing as “safe” illicit fentanyl, meth, or heroin. We urge DOJ, as our nation’s chief law enforcement agency, to respect and follow the rule of law and not support illegal supervised injection sites. If such a drastic change in position is to be pursued, we urge you to pursue transparent and deliberate decision-making processes safeguarded with Congress instead of wielding unchecked and unauthorized authority.

A second concerning action recently made by your administration is a Notice of Funding Opportunity for Harm Reduction Program Grants by the Department of Health and Human Services (HHS). This \$30 million grant program, which is on track to start in May, purports to provide funds to nonprofits and local governments to make drug use safer for those with a substance use disorder.¹² Specifically, grant funds must be used to support certain harm reduction activities, including purchasing equipment like FDA-approved overdose reversal

⁷ *United States v. Safehouse*, 985 F.3d 225 (3d Cir. 2021).

⁸ Government of Alberta (2020) *Impact: A socio-economic review of supervised consumption sites in Alberta*. Supervised Consumption Services Review Committee, Alberta Health. Available online at: <https://open.alberta.ca/dataset/dfd35cf7-9955-4d6b-a9c6-60d353ea87c3/resource/11815009-5243-4fe4-8884-11ffa1123631/download/health-socio-economic-review-supervised-consumption-sites.pdf>.

⁹ *Id.*; see also 6. Christopher Rufo, “Safe Injection Sites” Aren’t Safe, Effective or Wise. Just Ask Canadians, The Heritage Foundation, (Sept. 29, 2020), <https://www.heritage.org/public-health/commentary/safe-injection-sites-arent-safe-effective-or-wise-just-ask-canadians>.

¹⁰ *Id.*, see also Michael Shellenberger, Slow-Motion Suicide in San Francisco, Common Sense, (Feb. 7, 2022), <https://bariweiss.substack.com/p/slow-motion-suicide-in-san-francisco>.

¹¹ Press Release, U.S. DEA Launches Operation Overdrive, (Feb. 7, 2022), <https://www.dea.gov/press-releases/2022/02/07/dea-washington-division-launches-operation-overdrive>. <https://www.dea.gov/press-releases/2022/02/07/dea-washington-division-launches-operation-overdrive>


¹² U.S. Department of Health and Human Services, SAMSA, FY 2022 Harm Reduction Program Grant No. SP-22-001, <https://www.samhsa.gov/sites/default/files/grants/pdf/fy22-harm-reduction-nofo.pdf>. Last accessed Feb. 10, 2022.

medication or syringe disposal but also so-called “safe smoking kits” and supplies.¹³ In our review, this is the first time a grant solicitation has included anything about safe smoking kits and supplies. Without any explanation or context, your administration seemingly endorsed the dispersal of drug paraphernalia by the federal government. This is clearly concerning. At a base level, it very well could violate federal drug paraphernalia laws.¹⁴

Immediately following news reports on the grant program, a number of lawmakers raised urgent concerns that the language of the grant solicitation could allow federal funds to be used for pipes, including crack pipes.¹⁵ The warranted uproar surrounding this grant solicitation shows that our country is worried about the rise in drug overdose deaths and accompanied violent crime. The last thing the American people need is the ammunition to consume more deadly drugs at the taxpayer’s expense.

Using federal dollars to support drug injection sites and lack of evidence-based harm reduction strategies will negatively impact Americans suffering with substance use disorder. Allowing open access to drug abuse isn’t helpful. Too many Americans have died at the hands of illicit drugs. No branch of the federal government, and no amount of power vested in the President, should make access to illicit drugs easier. We urge you to consider our opinions on these issues, reconsider your course of action given the dire state of drug abuse, and engage in a transparent and accountable manner.

Sincerely,



Charles E. Grassley
United States Senator



Ted Cruz
United States Senator



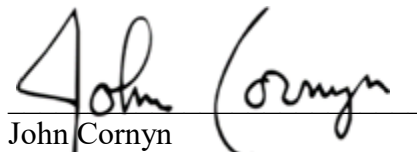
Marsha Blackburn
United States Senator



Thom Tillis
United States Senator



Tom Cotton
United States Senator

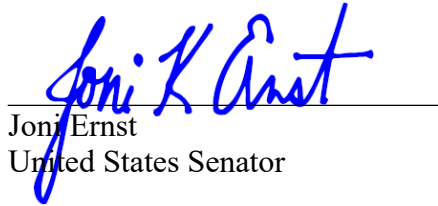


John Cornyn
United States Senator

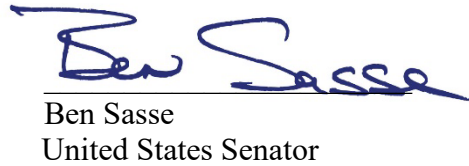
¹³ *Id.*

¹⁴ 21 U.S.C § 863.

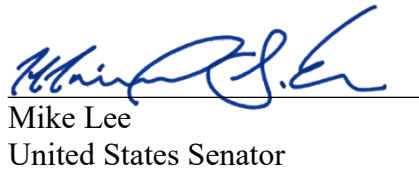
¹⁵ Letter from Senator Marsha Blackburn, U.S. Senate, to the Honorable Xavier Becerra, Secretary, U.S. Department of Health and Human Services (Feb. 8, 2022).



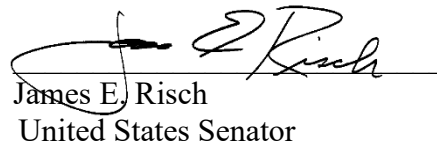
Joni Ernst
United States Senator



Ben Sasse
United States Senator



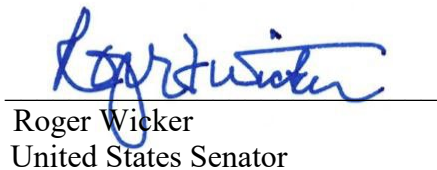
Mike Lee
United States Senator



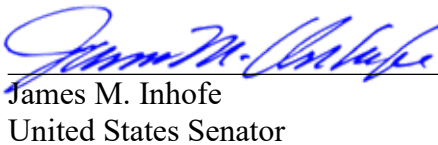
James E. Risch
United States Senator



Josh Hawley
United States Senator



Roger Wicker
United States Senator



James M. Inhofe
United States Senator



Mike Braun
United States Senator

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