

United States Senate
WASHINGTON, DC 20510

March 23, 2020

Mr. Thomas J. Donohue
Chief Executive Officer
U.S. Chamber of Commerce
1615 H St. NW
Washington, DC 20062

Dear Mr. Donohue:

We are writing regarding a highly disturbing report that, amidst the coronavirus disease 2019 (COVID-19) pandemic that threatens to become a national public health and economic catastrophe, the “U.S. Chamber of Commerce and the heads of major corporations have lobbied the [Trump] administration against using” the *Defense Production Act* to address the huge shortfall of ventilators, respirators, and personal protective equipment (PPE) needed to treat COVID-19 patients and protect health care providers from contracting the virus.¹ If these reports are true, you owe the American public an explanation for your actions.

Your actions come as the pandemic grows exponentially, and as millions of Americans are putting their health at risk to provide medical care, and stock and deliver food, cleaning supplies, and the basics of everyday life to American families under “shelter in place” requirements in multiple states and communities, including in Massachusetts where Governor Charlie Baker today ordered the closure of all non-essential businesses and issued a stay at home advisory.² Scores of workers have been put out of work or lost hours or pay because of economic restrictions required to mitigate the pandemic.³

Bungling of pandemic response efforts by the Trump Administration has resulted in massive shortfalls that endanger patients and health care providers. Hospitals “don’t have reagents for the diagnostic kits, they don’t have swabs for the kits, they don’t have the N95 masks, they’re running out of gowns and gloves.”⁴ In Massachusetts, hospitals are so desperate for equipment that they are seeking donations from dentists⁵ and are considering cutting up paper

¹New York Times, Trump Bets Business Will Answer Call to Fight Virus, But Strategy Bewilders Firms, March 23, 2020, <https://www.nytimes.com/2020/03/22/us/politics/coronavirus-trump-defense-production-act.html>.

² Office of Governor Charlie Baker, Governor Charlie Baker Orders All Non-Essential Businesses To Cease In Person Operation, Directs the Department of Public Health to Issue Stay at Home Advisory For Two Weeks, March 23, 2020, <https://www.mass.gov/news/governor-charlie-baker-orders-all-non-essential-businesses-to-cess-in-person-operation>.

³ CNN, Unemployment Claims Soar Due to Coronavirus, March 2020, <https://www.cnn.com/videos/business/2020/03/20/unemployment-claims-coronavirus.cnn-business/video/playlists/business-economy/>.

⁴ Politico, Short-term Thinking Plagues Trump’s Coronavirus Response, March 21, 2020, <https://www.politico.com/news/2020/03/21/short-term-thinking-trump-coronavirus-response-140883>.

⁵ WBUR, Mass Companies Donating Supplies to Fight Coronavirus Outbreak, March 20, 2020 <https://www.wbur.org/commonhealth/2020/03/20/mass-biotech-industry-donating-supplies>.

gowns to serve as masks⁶ - and state officials are unable to obtain needed materials from the Strategic National Stockpile, or anywhere else.⁷ According to the Executive Director of the Massachusetts Nurses Association, “We don’t have enough PPE and we don’t see any domestic production taking place... A lot of our frontline people feel like sitting ducks right now.”⁸

One key tool that President Trump has to address this impending disaster is the *Defense Production Act* (DPA), which can be used to incentivize or require businesses to prioritize production of critical materials, including medical products, and to allocate the distribution of critical materials.⁹ This is an extraordinarily powerful tool, allowing the President to quickly harness and use America’s scientific, technological, and manufacturing might to address this public health crisis and provide needed equipment for hospitals, health care providers, and first responders.

On March 18, 2020, President Trump signed an Executive Order invoking the DPA, but then immediately tweeted out that he would not use any of its powers, stating “I only signed the Defense Production Act to combat the Chinese Virus should we need to invoke it in a worst case scenario in the future. Hopefully there will be no need...”¹⁰

At a press conference on March 21, 2020, the President attempted to explain his refusal to act, saying “We have so many companies making so many products...without having to use the Act...we have so many things being made right now...we’ve never seen anything like it.”¹¹ But that is not true – there is no evidence that the voluntary approach is causing anything but chaos, and “the governors of multiple states and other leaders made urgent pleas on Sunday for masks and other protective equipment to help fight the swelling outbreak.”¹²

A disturbing report in the New York Times yesterday provides new evidence about why President Trump has failed to act under the DPA. According to this report:

The U.S. Chamber of Commerce and the heads of major corporations have lobbied the administration against using the act. ...Mr. Trump and the director of

⁶ Boston Globe, Shortage of Protective Equipment at Hospitals Threatens Health Care Providers as Number of Admitted Patients Rise, March 19, 2020, <https://www.bostonglobe.com/2020/03/20/metro/shortage-protective-equipment-hospitals-threatens-health-care-providers-numbers-admitted-patients-rise/>.

⁷ Commonwealth, Baker Defends Trump Comment on Respirators, March 16, 2020, <https://commonwealthmagazine.org/health-care/baker-defends-trump-comment-on-respirators/>.

⁸ Commonwealth, Hospitals Crowdfund Protective Equipment, March 20, 2020, <https://commonwealthmagazine.org/health-care/hospitals-crowdfund-protective-equipment/>.

⁹ Defense Production Act, Pub. L. 81-774.

¹⁰ Tweet from @realDonaldTrump, March 18, 2020, <https://twitter.com/realdonaldtrump/status/1240391871026864130>.

¹¹ Comments of President Trump, White House Press Conference, March 21, 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-7/>.

¹² New York Times, Governors Plea for Masks and Ventilators, and Trump Outlines Response, March 22, 2020, <https://www.nytimes.com/2020/03/22/world/coronavirus-updates-world-usa.html?action=click&module=RelatedLinks&pgtype=Article#link-5d073249>.

his national economic council, Larry Kudlow, as well as Mr. Kushner, were persuaded by those arguments, administration officials said.¹³

This report, if true, is shameful, revealing that the Chamber is actively working against efforts to address the urgent national COVID-19 pandemic, and is placing the short-term desires of its members above the economic and public health needs of hundreds of millions of American families.¹⁴

You owe the public an explanation for this behavior. We urge you to cease your lobbying efforts against measures to address the COVID-19 pandemic, and to answer the following questions immediately.

1. Is the Chamber of Commerce lobbying against any use of DPA powers by President Trump? If so, on whose behalf are you lobbying?
2. The New York Times reports that you are lobbying with “the heads of major corporations” to undermine the use of the DPA. Is this accurate? If so, which “heads of major corporations” are involved in these efforts?
3. Which Trump officials have you or Chamber of Commerce representatives met with regarding these efforts?
4. What specific requests have you made of the Administration with regard to the DPA?

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Edward J. Markey
United States Senator

Brian Schatz
United States Senator

Christopher S. Murphy
United States Senator

Tammy Baldwin
United States Senator

Sheldon Whitehouse
United States Senator

¹³ New York Times, Trump Bets Business Will Answer Call to Fight Virus, But Strategy Bewilders Firms, March 23, 2020, <https://www.nytimes.com/2020/03/22/us/politics/coronavirus-trump-defense-production-act.html>.

¹⁴ U.S. Chamber of Commerce, Letter to U.S. Government Leaders on Coronavirus Response, March 16, 2020, <https://www.uschamber.com/letters-congress/letter-us-government-leaders-coronavirus-response>.