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Dr. Robert Redfield
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, Georgia 30329

Dear Dr. Redfield:

I write to you today to request information about whether the U.S. Centers for Disease Control and Prevention's (CDC) plans to use its full legal authority to control the surge in coronavirus disease 2019 (COVID-19) cases and ensure the health and safety of all Americans. As cases continue to rise across the country—most severely in areas that initially took weak preventative public health measures or reopened prematurely—it is imperative that the federal government immediately take action to stop the spread.¹ Accordingly, I request information on the CDC's existing legal authorities to implement and enforce public health measures under section 361 of the Public Health Service Act (42 U.S. Code § 264), which authorizes the U.S. Secretary of Health and Human Services (HHS) to “take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States **and between states.**”²

Despite President Trump's and Vice President Pence's claims that concerns over a second wave of coronavirus infections are “overblown,” that one day COVID-19 will just “disappear,” and that “we are winning the fight against the invisible enemy,”³ we are seeing a massive surge of COVID-19 cases in nearly 50 states and territories across the country.⁴ Last week, the United States reported the highest number of new cases in a single day, with over 75,000 newly confirmed coronavirus infections.⁵ Today, more than 3.8 million cases have been

¹ NPR, “Tracking the Pandemic: Are Coronavirus Cases Rising or Falling In Your State,” July 7, 2020, <https://www.npr.org/sections/health-shots/2020/03/16/816707182/map-tracking-the-spread-of-the-coronavirus-in-the-u-s>.

² Centers for Disease Control and Prevention, “Quarantine and Isolation Legal Authorities,” <https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html>.

³ White House, “There Isn't a Coronavirus ‘Second Wave’,” Michael R. Pence, June 16, 2020, <https://www.whitehouse.gov/articles/vice-president-mike-pence-op-ed-isnt-coronavirus-second-wave/>; New York Times, “Trump Leans Into False Virus Claims in Combative Fox News Interview,” Katie Rogers, July 19, 2020, <https://www.nytimes.com/2020/07/19/us/politics/trump-fox-interview-coronavirus-race.html>.

⁴ NPR, “Tracking the Pandemic: Are Coronavirus Cases Rising or Falling In Your State,” July 7, 2020, <https://www.npr.org/sections/health-shots/2020/03/16/816707182/map-tracking-the-spread-of-the-coronavirus-in-the-u-s>.

⁵ University of Minnesota Center for Infectious Disease Research and Policy, “U.S. Sets Daily COVID-19 record: 75,000 new cases,” Stephanie Soucheray, July 17, 2020, <https://www.cidrap.umn.edu/news-perspective/2020/07/us-sets-daily-covid-19-record-75000-new-cases>.

diagnosed nationwide and over 140,000 Americans have died.⁶ In response to my questioning at a Senate Health, Education, Labor, and Pensions Committee Hearing, Dr. Anthony Fauci testified that the situation could become significantly worse, saying he “would not be surprised if we go up to 100,000 a day if this does not turn around.”⁷

Dr. Fauci also emphasized that, “when you have an outbreak in one part of the country, even though in other parts of the country they’re doing well, they are vulnerable. ...We can’t just focus on those areas that are having the surge. It puts the entire country at risk.” Dr. Fauci’s concerns underscore the important point that the surge in cases we are seeing as states have continued to reopen poses a significant public health threat to the country as a whole.

You have said, “The time is now...I think if we could get everybody to wear a mask right now I think in four, six, eight weeks we could bring this epidemic under control.”⁸ Therefore, I am requesting more information on whether and how the CDC plans to use its authorities under 42 CFR, Part 70 on Interstate Quarantine to institute mask mandates, implement restrictions on gatherings, reverse re-openings, and enforce other public health measures. Title 42 Section 70.2, “Measures in the event of inadequate local control,” states that:

Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary....⁹

These authorities were delegated to the CDC to address significant public health threats that cross state and municipal borders and therefore cannot be controlled by a single state or community—such as the ongoing COVID-19 pandemic. Given the overwhelming evidence showing that social distancing, wearing a mask, and careful reopening save lives, and the ongoing indications that other actions currently being taken by many states are “insufficient to prevent the spread” of the coronavirus, I am requesting information about whether the CDC has taken any efforts to exercise these authorities or evaluate whether certain states or local jurisdictions would warrant and benefit from more serious interventions from federal public health authorities.

Specifically, I would like you to provide me with information on whether the CDC has considered efforts to implement mask requirements, a limit on gatherings, and other measures that the CDC has recommended to stop the spread of the virus—such as the non-public White House Coronavirus Task Force recommendations obtained by the *Center for Public Integrity*,

⁶ Johns Hopkins Coronavirus Resource Center, Accessed July 20, 2020, <https://coronavirus.jhu.edu/map.html>.

⁷ CNBC, “Dr. Anthony Fauci says U.S. coronavirus outbreak is ‘going to be very disturbing,’ could top 100,000 new cases a day,” William Feuer and Noah Higgins-Dunn, June 30, 2020, <https://www.cnbc.com/2020/06/30/fauci-says-us-coronavirus-outbreak-is-going-to-be-very-disturbing-could-top-100000-cases-a-day.html>.

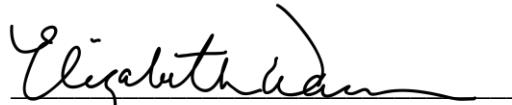
⁸ CNBC, “CDC says U.S. could get coronavirus under control in one to two months if everyone wears a mask,” Berkeley Lovelace Jr. and Will Feuer, July 14, 2020, <https://www.cnbc.com/2020/07/14/cdc-says-us-could-get-coronavirus-under-control-in-one-to-two-months-if-everyone-wears-a-mask.html>.

⁹ 42 CFR Part 70.2.

which suggest that “more than a dozen states should revert to more stringent protective measures, limiting social gatherings to 10 people or fewer, closing bars and gyms and asking residents to wear masks at all times.”¹⁰ In addition, given the Secretary’s broad mandate under Section 361 to prevent the spread of infectious diseases, I would like to know whether the CDC will use its authorities to intervene in instances where state governors or other officials order the removal of restrictions or mask mandates. Allowing orders of this kind, like Georgia Governor Brian Kemp’s announcement last week, would seem to be in direct contradiction to the Department’s mandate.¹¹ Finally, I ask that you provide information on the enforcement mechanisms available to the agency, should it invoke its authorities under 42 CFR, Part 70 on Interstate Quarantine or Section 361 broadly to ensure state and local compliance with public health practices that could prevent the interstate spread of COVID-19.

Thank you for your attention to this matter. I request a written answer by no later than July 31, 2020.

Sincerely,


Elizabeth Warren
United States Senator

¹⁰ Center for Public Integrity, “Exclusive: White House Document Shows 18 States in Coronavirus ‘Red Zone,’” Liz Essley Whyte, July 16, 2020, <https://publicintegrity.org/health/coronavirus-and-inequality/exclusive-white-house-document-shows-18-states-in-coronavirus-red-zone-covid-19/>.

¹¹ CNN, “Georgia governor sues Atlanta mayor over city’s mask mandate,” Veronica Stracqualursi and Paul LeBlanc, July 16, 2020, <https://www.cnn.com/2020/07/16/politics/georgia-kemp-mask-mandate/index.html>.