National Association of Attorneys General

PRESIDENT
Tim Fox
Montana Attorney General

PRESIDENT-ELECT
Karl A. Racine
District of Columbia Attorney General

VICE PRESIDENT
Tom Miller
Iowa Attorney General

IMMEDIATE PAST PRESIDENT
Jeff Landry
Louisiana Attorney General

EXECUTIVE DIRECTOR
Chris Toth

October 5, 2020

VIA ELECTRONIC MAIL
Thomas Schlamme, President
Russell Hollander, National Executive Director
Directors Guild of America
7920 Sunset Boulevard
Los Angeles, CA 90046

Dear Messrs. Schlamme and Hollander,

Forty-three state and territorial Attorneys General called on the nation's leading Video on Demand ("VOD") streaming companies to reduce youth exposure to tobacco imagery in movies and programs in August 2019. The Attorneys General encouraged the companies to take action, especially in light of the alarming numbers of high school and middle school students using electronic cigarettes.[1] Many of the companies and the Motion Picture Association ("MPA") responded, in part, by asking for Hollywood's creative community to be included in this important discussion. This bipartisan coalition of Attorneys General now request the Directors Guild of America, Producers Guild of America, Screenwriters Guild of America, Screen Actors Guild-American Federation of Television and Radio Artists, and International Alliance of Theatrical Stage Employees (collectively, "the Guilds") to help us protect young audiences from tobacco use.[2]

The Attorneys General successfully sued the U.S.'s major tobacco manufacturers in the mid-1990s for, among other misdeeds, promoting tobacco use as safe in television ads and in motion pictures. After settling those lawsuits, many Attorneys General asked film studios to eliminate tobacco imagery in movies for children, including films rated G, PG, and PG-13. Representatives of the Attorneys General also met with leaders from the creative community in 2003 to share research that found a link between youth exposure to smoking imagery depicted in movies and youth smoking initiation.

This early research was later confirmed in 2012, following a decade of studies conducted in a dozen countries with more than 50,000 adolescents, when the Surgeon General concluded, "[T]here is a causal relationship between

[1] About one of every five (19.6%) high school students and about one in every twenty (4.7%) middle school students reported using e-cigarettes in the past thirty days. (https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm [last visited Sept. 15, 2020].)

[2] Over 480,000 Americans (about one in five deaths) die every year from cigarette smoking. (https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm#beginning [last visited Sept. 8, 2020].)

depictions of smoking in the movies and the initiation of smoking among young people."[3] A 2020 study by Truth Initiative now shows youth and young adults who watch episodic programs with tobacco imagery via streaming, cable, and broadcast television are significantly more likely to initiate vaping than those who are not exposed to tobacco imagery on those media. In fact, even those with low levels of exposure were more than twice as likely to start using e-cigarettes, and those with high exposure were over three times more likely.[4] Previous studies by Truth Initiative found higher percentages of tobacco imagery in streamed original programs that are popular with youth during the 2015-2016 and 2016-2017 seasons than on broadcast television.[5] Compounding these findings, many American children are now consuming more media while at home, as a result of the COVID-19 pandemic.[6]

In the race to launch new platforms, provide more content, and capture audiences, many streaming companies failed to consider the impact that easy access to movies and programs with tobacco imagery has upon children. The MPA ratings system and TV Parental Guidelines, that were designed to shield youth from mature content in theaters and on broadcast television, provide little protection in the world of VOD streaming. With no industry-wide safeguards in place, children can more easily view mature content, including streaming PG-13, TV-14, R, and TV-MA-rated movies and programs with tobacco imagery.

We ask the Guilds to use their collective influence to persuade members of the creative community to depict tobacco imagery responsibly, while still supporting artistic freedoms. We also ask the Guilds to encourage streaming companies to adopt best practices that navigate youth audiences away from movies and shows with tobacco imagery. Among these practices, we have proposed banning tobacco imagery in all future, original youth-rated or youth-targeted content, with limited exceptions.[7] We have also asked streaming companies to recommend and promote

---

[3] U.S. Department of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Rockville, MD, 2012, at 602.

[4] Morgane Bennett, et al., *Exposure to Tobacco Content in Episodic Programs and Tobacco and E-Cigarette Initiation*, Preventive Medicine, https://doi.org/10.1016/j.ypmed.2020.106169, Aug. 1, 2020, at 3.

[5] Truth Initiative, *While You Were Streaming: Smoking on Demand – A Surge in Tobacco Imagery is Putting Youth at Risk*, June 2019, at 4.

[6] The Nielsen Company reported a 55% increase in VOD streaming. (https://www.nielsen.com/us/en/insights/article/2020/connected-tv-usage-remains-above-pre-covid-19-levels-as-traditional-tv-viewing-normalizes/ [last visited Sept. 8, 2020].

[7] As exceptions, youth rated content may 1) depict historical figures who actually used tobacco or 2) clearly show the negative health effects of tobacco use. All other content with tobacco imagery should be rated TV-MA, R, or a higher designation.

only tobacco-free titles for children and families. We have challenged the companies to mitigate the historic and cumulative impact of watching tobacco imagery in movies and programs by running strong anti-tobacco spots, especially before videos with smoking or vaping. In addition, we have encouraged the companies to display prominent and forceful tobacco warnings before content with tobacco imagery and to offer effective parental controls, so families may be empowered to choose smoke-free content.

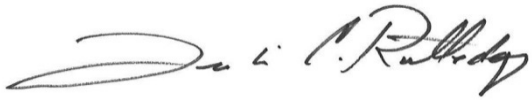
The Guilds' assistance and support is critical to implementing these changes and stopping the renormalization and glamorization of tobacco use. We look forward to opening discussions with you about ways the creative community can protect children, while maintaining artistic integrity. Please respond to Michael Hering, Director and Chief Counsel, National Association of Attorneys General Center for Tobacco and Public Health, at mhering@naag.org or (202) 326-6023, by October 30, 2020, with the name and title of a contact person within your organization with whom we can speak regarding this important matter. Thank you for your attention to this critical issue.

Sincerely,

Xavier Becerra
California Attorney General

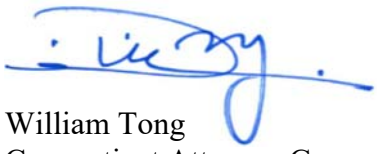
Douglas Peterson
Nebraska Attorney General

Clyde "Ed" Sniffen, Jr.
Acting Alaska Attorney General



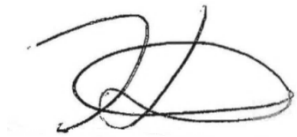
Leslie Rutledge
Arkansas Attorney General

Phil Weiser
Colorado Attorney General



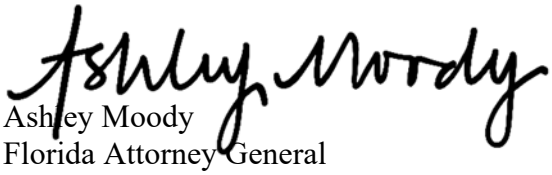
William Tong
Connecticut Attorney General

Kathleen Jennings
Delaware Attorney General



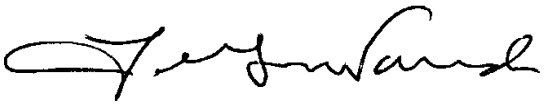
Karl A. Racine
District of Columbia Attorney General

Leevin Taitano Camacho
Guam Attorney General



Ashley Moody
Florida Attorney General

Clare E. Connors
Hawaii Attorney General



Lawrence Wasden
Idaho Attorney General

Kwame Raoul
Illinois Attorney General

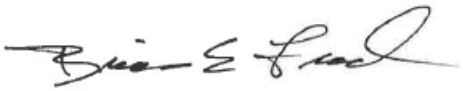
Tom Miller
Iowa Attorney General

Derek Schmidt
Kansas Attorney General

Daniel Cameron
Kentucky Attorney General

Jeff Landry
Louisiana Attorney General

Aaron M. Frey
Maine Attorney General



Brian Frosh
Maryland Attorney General

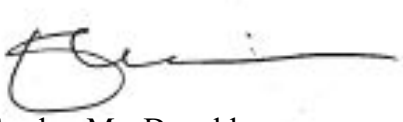
Maura Healey
Massachusetts Attorney General

Dana Nessel
Michigan Attorney General

Keith Ellison
Minnesota Attorney General

Tim Fox
Montana Attorney General

Aaron D. Ford
Nevada Attorney General



Gordon MacDonald
New Hampshire Attorney General

Gurbir S. Grewal
New Jersey Attorney General

Hector Balderas
New Mexico Attorney General

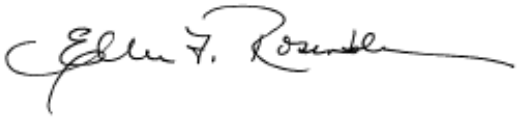
Letitia James
New York Attorney General

Josh Stein
North Carolina Attorney General

Edward Manibusan
Northern Mariana Islands Attorney General

Dave Yost
Ohio Attorney General

Mike Hunter
Oklahoma Attorney General

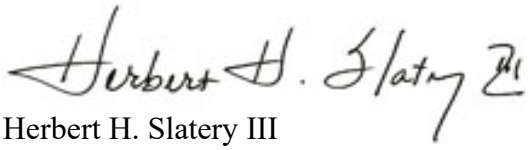


Ellen F. Rosenblum
Oregon Attorney General

Josh Shapiro
Pennsylvania Attorney General

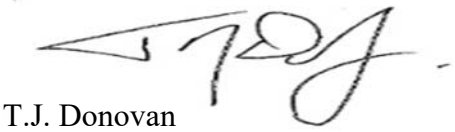
Inés del C. Carrau-Martínez
Acting Puerto Rico Attorney General

Peter F. Neronha
Rhode Island Attorney General

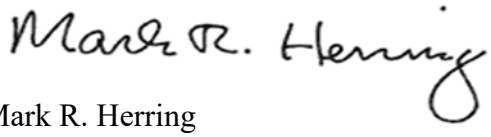


Herbert H. Slatery III
Tennessee Attorney General

Sean Reyes
Utah Attorney General

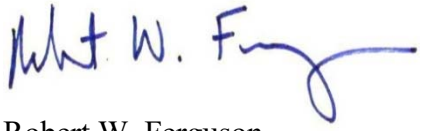


T.J. Donovan
Vermont Attorney General

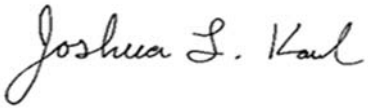


Mark R. Herring
Virginia Attorney General

Denise N. George
U.S. Virgin Islands Attorney General



Robert W. Ferguson
Washington Attorney General



Joshua L. Kaul
Wisconsin Attorney General

Enclosure: August 6, 2019 Multi-State Attorneys General Letter

Cc: Celeste Drake, Executive in Charge of Government Affairs

National Association of Attorneys General

PRESIDENT
Jeff Landry
Louisiana Attorney General

PRESIDENT-ELECT
Tim Fox
Montana Attorney General

VICE PRESIDENT
Karl A. Racine
District of Columbia Attorney General

IMMEDIATE PAST PRESIDENT
Derek Schmidt
Kansas Attorney General

EXECUTIVE DIRECTOR
Chris Toth

1850 M Street, NW
Twelfth Floor
Washington, DC 20036
Phone: (202) 326-6000
http://www.naag.org/

August 6, 2019

RE: Protecting Young Viewers from Tobacco Imagery in Streamed Videos

Dear Streaming Company CEO:

We, the undersigned Attorneys General of 43 states and jurisdictions, wish to open a dialogue with the leading companies that provide or are developing video on demand streaming services regarding protecting children from content with tobacco imagery.[1] While we recognize the strides many streaming companies have taken to build a new media marketplace, the industry has, perhaps unwittingly, given countless children the key to a Pandora's box of tobacco imagery, which the U.S. Surgeon General has found causes young people to become smokers.[2] Given the recent significant rise in tobacco use by young people, particularly the use of e-cigarettes, preventing initiation and use of tobacco products is of critical importance to us and the public health community, and we sincerely hope it will be addressed by the streaming industry.[3]

Many streaming companies feature original content with tobacco imagery that is watched by children. In 2018, the Truth Initiative, in consultation with the University of California, San Francisco ("UCSF"), reported the most popular video on demand content among young people contained more tobacco imagery than was shown on similarly popular, traditional television shows during the 2015-2016 season.[4] The report found that 54% of the top-ranked new shows on Netflix, Amazon, and Hulu contained

[1] For the purposes of this letter, "tobacco imagery" includes the visual display, audio reference, or other representation of smoking, vaping, or the use of any tobacco or nicotine product and the display or reference to an object that appears to be or promotes a tobacco or nicotine product. "Objects" include combustible tobacco products, vaping (e-cigarettes) or heat-not-burn devices or accessories, packaging, billboards, posters, advertisements, commercials, cartoons, or any other representations.

[2] U.S. Department of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Rockville, MD, 2012, at 602.

[3] Gentzke AS, Creamer M, Cullen KA, et al. *Vital Signs:* Tobacco Product Use Among Middle and High School Students – United States, 2011-2018. MMWR Morb Mortal Wkly Rep 2019; 68:157-164. DOI (tobacco use by high school students increased 38.3%; tobacco use by middle school students increased 28.6% from 2017 to 2018).

[4] Truth Initiative, *While You Were Streaming; Tobacco Use Sees a Renormalization in On-Demand Digital Content, Diluting Progress in Broadcast and Theaters*, Jan. 2018, at 4.

tobacco imagery,[5] compared to 38% of top-ranked broadcast shows and 22% of cable shows.[6] The report found these results particularly "troubling in light of the increasing popularity and impact of online streaming content among young people."[7]

Streaming companies also feature previously released movies, television shows, and other videos replete with smoking and use of other tobacco products. In its most recent report on smoking in movies, the U.S. Centers for Disease Control and Prevention observed that 57% of PG-13 films released in the U.S. from 2002 to 2017 showed smoking or other tobacco use, and the percentage of PG-13 movies with tobacco incidents increased from 35% in 2016 to 50% in 2017, the highest level since 2009.[8]

Tobacco continues to be our country's, and the world's, greatest preventable killer. Twenty million Americans have died prematurely from cigarette smoking since 1964—ten times the number of Americans killed in all of our nation's wars combined.[9] Every year, approximately 480,000 more of our family, friends, and neighbors die prematurely from tobacco-induced cancers, heart disease, lung disease, and stroke.[10] Internationally, the World Health Organization reported that 7.2 million people died from smoking-related diseases in 2017—more than from HIV/AIDS, tuberculosis, and malaria combined.[11] Tobacco also weighs heavily on our national budget: The U.S. spends nearly $170 billion per year for direct medical costs to treat diseases caused by tobacco use, and lost productivity exceeds over $156 billion per year.[12]

State attorneys general have an extensive history of engagement in tobacco policy, litigation, enforcement, and regulation. In the mid-1990's, state attorneys general sued the major U.S. tobacco manufacturers, alleging they had engaged in fraudulent and deceptive practices and had targeted youth in advertising and promoting their products. The 1998 Tobacco Master Settlement Agreement[13] ("MSA") resolved these lawsuits on behalf of 46 states and six other U.S. jurisdictions.[14] The states' assertions were confirmed in a 2006 lawsuit brought by the federal government, when the U.S. District Court for the District of Columbia ruled, "The evidence is clear and convincing – and beyond any reasonable doubt – that Defendants have marketed to young people twenty-one and under while consistently, publicly, and falsely,

---

[5] *Ibid.*
[6] *Ibid.*
[7] *Id*. at 5.
[8] https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/movies/index.htm, found on February 19, 2019.
[9] U.S. Department of Health and Human Services, *The Health Consequences of Smoking–50 Years of Progress: A Report of the Surgeon General*. Rockville, MD, 2014, at Message from Secretary Sebelius.
[10] *Id.* at 11.
[11] World Health Organization, *Report on the Global Tobacco Epidemic, 2017: Monitoring Tobacco Use and Prevention Policies,* 2017, at 17 (More than 140 countries have taken steps to limit tobacco imagery on television and radio.).
[12] https://www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm.
[13] https://www.naag.org/assets/redesign/files/msa-tobacco/MSA.pdf. A separate, but similar, settlement addresses smokeless tobacco products. For the purposes of this letter, use of the "MSA" includes reference to the Smokeless Tobacco Master Settlement Agreement.
[14] Four states settled their lawsuits against the tobacco industry before the MSA was signed.

denying they do so."[15] As part of the MSA, Participating Manufacturers, which are the tobacco manufacturers that are parties to the MSA, are prohibited from targeting youth in their advertising and promotions.

The MSA bans Participating Manufacturers from paying or providing any consideration for the use, display, or reference to, or use as a prop of any "Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name" in movies, television shows, live theater, commercial films or videos, video games, and in other forms of media.[16] Participating Manufacturers also may not authorize a third party to use or advertise any brand names in movies, on television, and in other media in any manner otherwise prohibited by the MSA.[17] Participating Manufacturers are even prohibited from supplying free cigarettes to film crews.[18]

We remain vigilant in our commitment to reducing youth tobacco use. For example, we take an active role in working with tobacco retailers to safeguard young people from obtaining tobacco products. Our offices establish best practices and share information regarding improper activities. Likewise, we monitor tobacco advertising and promotions, including monitoring the entertainment industry's influence over young people and portrayal of tobacco use. We welcome working with streaming companies to create policies and standards that reduce tobacco imagery in content watched by young viewers.

The harmful effects of tobacco imagery have been known to Hollywood for over 15 years. In June 2003, researchers at the Dartmouth Medical School determined the strongest predictor of first-time cigarette smoking by adolescents was the amount of smoking they saw in movies.[19] Many of our predecessor state attorneys general shared these results with the Motion Picture Association of America at that time. In 2012, following a decade of further research in a dozen countries, involving more than 50,000 adolescents, the U.S. Surgeon General concluded, "[T]here is a causal relationship between depictions of smoking in the movies and the initiation of smoking among young people."[20] Youth exposure to tobacco imagery is particularly significant because nearly nine out of ten American smokers start smoking by their eighteenth birthday.[21] Thus, reducing youth exposure to tobacco imagery will likely deter youth tobacco initiation, tobacco-related illness, disability, and premature death.

Government leaders and the public health community have attempted to counter the tobacco industry's relentless promotional campaigns ever since the U.S. Surgeon General first

---

[15] *United States v. Philip Morris USA, Inc*., 449 F. Supp. 2d 1, para. 3296 (D.D.C. 2006) (*aff'd in part, vacated in part*, 566 F. 3d 1095 (D.C. Cir. 2009).
[16] MSA § III(e).
[17] MSA § III(i).
[18] MSA § III(g) (Free samples are only permitted in Adult Only Facilities.).
[19] https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(03)13970-0/abstract.
[20] U.S. Department of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Rockville, MD*,* 2012, at 602.
[21] *Id.* at 8.

warned of tobacco's dire harm to public health in 1964. The federal government and every state in the U.S. prohibits tobacco sales to anyone under 18 years old. And, many states have gone further to reduce youth access to tobacco; over 40% of the nation's population lives in areas where state or local laws forbid tobacco sales to individuals under 21 years of age.[22]

We ask the video streaming industry to take reasonable steps to protect young viewers from the ill effects of tobacco imagery that is presented through your technology. We recommend the following practices:

- Eliminate or exclude tobacco imagery in all future original streamed content for young viewers, including any content rated TV-Y, TV-Y7, TV-G, TV-PG, TV-14, G, PG, and PG-13, and ensure that any promotional material such as previews, trailers, image galleries, and clips be tobacco-free.[23] Content with tobacco imagery should be rated R or TV-MA and only recommended to adult viewers.

- Only "recommend" or designate tobacco-free content for children, adolescents, families, and general audiences.

- Improve or offer parental controls that are effective, prominent, and easy-to-use, that allow parents and guardians specifically to restrict access to all content with tobacco imagery, regardless of rating. [24] [25]

- Mitigate the negative influence of tobacco imagery, from whatever source and with any rating, by streaming strong anti-smoking and/or anti-vaping Public Service Announcements, as appropriate, before all content with tobacco imagery.[26]

Video streaming companies have an opportunity to succeed in entertaining young people, while protecting them from the dangers of tobacco use. We hope this letter is the first communication in an on-going discussion regarding the critical role streaming companies can play in the fight against the renormalization and glamorization of tobacco use. Please respond to Michael Hering, Director and Chief Counsel, National Association of Attorneys

---

[22] https://tobacco21.org/tobacco-21-fact-sheet/.

[23] Content with tobacco imagery that is limited to depictions of actual, historical figures who used tobacco products, or which clearly demonstrates the ill effect of tobacco use, may be exempted.

[24] Breathe California maintains an extensive list of over 3,000 movies that have been screened for tobacco imagery. The movie list includes films that were released beginning in 2002 and is continuously updated with current movies. This movie list may be referenced at https://smokefreemovies.ucsf.edu/search/movies?f[0]=itm_field_movie_smoking_exists%3A1.

[25] To better inform your viewers, streaming companies also should clearly display the rating for each video, including the rating for each episode of a series, on the video library home page, selection page, and anytime the video's title or image is shown. A "ratings key" and a description for each rating category should be available on the same screen as the video library and selection screen, so users may reference and understand a particular video's rating before selection.

[26] C. A. Edwards, *Out of the Smokescreen: Does an anti-smoking advertisement affect young women's perception of smoking in movies and their intention to smoke?* 13 Tobacco Control, 2004, at 280 [Study finding watching anti-smoking video before movie with smoking can help immunize young women from initiating smoking.] The Truth Initiative has produced and made freely available PSA's for the entertainment industry in past years.

General Center for Tobacco and Public Health, at mhering@naag.org or (202) 326-6023, by Friday, September 6, 2019, with the name of a contact person in your office with whom we can speak regarding protecting young viewers from tobacco imagery.

Sincerely,

Xavier Becerra
California Attorney General

Douglas Peterson
Nebraska Attorney General

Kevin G. Clarkson
Alaska Attorney General

Leslie Rutledge
Arkansas Attorney General

Phil Weiser
Colorado Attorney General

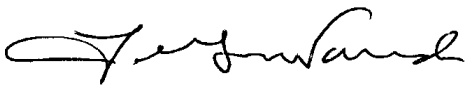
William Tong
Connecticut Attorney General

Kathleen Jennings
Delaware Attorney General

Karl A. Racine
District of Columbia Attorney General

Ashley Moody
Florida Attorney General

Clare E. Connors
Hawaii Attorney General



Lawrence Wasden
Idaho Attorney General

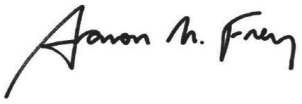
Kwame Raoul
Illinois Attorney General

Tom Miller
Iowa Attorney General

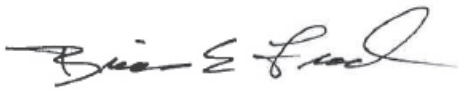
Derek Schmidt
Kansas Attorney General

Andy Beshear
Kentucky Attorney General

Jeff Landry
Louisiana Attorney General



Aaron M. Frey
Maine Attorney General

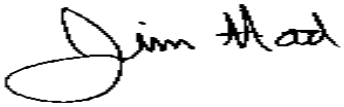


Brian Frosh
Maryland Attorney General

Maura Healey
Massachusetts Attorney General

Dana Nessel
Michigan Attorney General

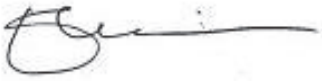
Keith Ellison
Minnesota Attorney General



Jim Hood
Mississippi Attorney General

Tim Fox
Montana Attorney General

Aaron D. Ford
Nevada Attorney General



Gordon MacDonald
New Hampshire Attorney General

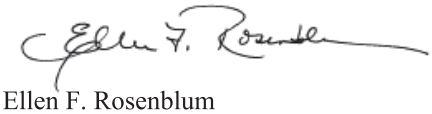
Gurbir S. Grewal
New Jersey Attorney General

Hector Balderas
New Mexico Attorney General

Letitia James
New York Attorney General

Josh Stein
North Carolina Attorney General

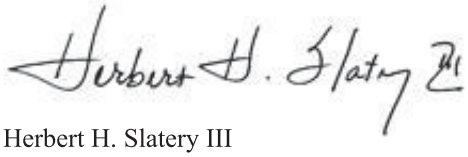
Dave Yost
Ohio Attorney General



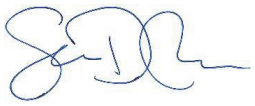
Ellen F. Rosenblum
Oregon Attorney General

Josh Shapiro
Pennsylvania Attorney General

Peter F. Neronha
Rhode Island Attorney General

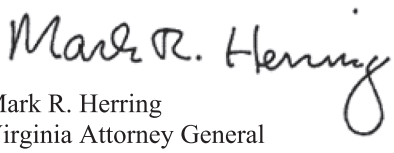


Herbert H. Slatery III
Tennessee Attorney General

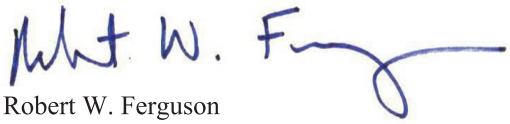


Sean Reyes
Utah Attorney General

T.J. Donovan
Vermont Attorney General



Mark R. Herring
Virginia Attorney General



Robert W. Ferguson
Washington Attorney General

Joshua L. Kaul
Wisconsin Attorney General

Leevin Taitano Camacho
Guam Attorney General

Edward Manibusan
Northern Mariana Islands Attorney General

Wanda Vázquez Garced
Puerto Rico Attorney General

Denise N. George
U.S. Virgin Islands Attorney General