

United States Senate

WASHINGTON, DC 20510

May 6, 2020

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Trump:

We write in response to the release of your administration’s blueprint for State testing plans and rapid response programs to urge you to broaden your use of Title III of the Defense Production Act (DPA) and other appropriate authorities to expand domestic production capacity for personal protective equipment (PPE) and COVID-19 testing supplies.

On April 27, you announced that your administration had “successfully scaled a robust testing regime that is able to meet the massive needs of a nationwide pandemic.” On the same day, an analysis by Harvard University researchers found that the United States must, at minimum and under the best-case scenario, *double* the number of tests being conducted each week.¹ Nationwide shortages continue to prevent the United States from conducting enough tests to safely reopen.²

In many cases, even when state and local governments are able to get some supplies into the hands of their frontline medical personnel, they go unused because of shortages in other key supplies. In Maryland, for example, the state has secured a large number of testing kits, but the kits cannot be used without the necessary swabs and viral transport media—both of which have been in short supply.³

Similarly, the nation continues to face critical shortages of PPE. This has led to dangerous rationing and efforts by medical providers to disinfect, reuse, or fashion their own equipment. Reports from across the country paint a bleak picture: staff at the Henry Ford Health System in Michigan made their own face shields using plastic sheets, elastic bands, and tongue depressors. Providence Health in Washington did the same using supplies from Home Depot. Elsewhere, medical staff are soliciting donations of homemade cloth masks and constructing makeshift decontamination systems to reuse their PPE.⁴

¹ Sharon Begley. “Many states are far short of Covid-19 testing levels needed for safe reopening, new analysis shows,” STAT, April 27, 2020.

² Briana Abbott. “Shortage of Test Components Forces Labs to Beg, Borrow and Improvise,” The Wall Street Journal, April 5, 2020.

³ Tim Curtis. “Widespread coronavirus testing has stiff challenges of its own,” The Daily Record, April 24, 2020.

⁴ Taylor Hurst. “How are hospitals handling a PPE shortage?,” The Advisory Board, April 23, 2020.

Before any state in the country can reopen responsibly, PPE and testing needs must be met. Congress appropriated \$57.6 billion to address critical needs such as these, including \$16 billion to purchase medical supplies for distribution through the Strategic National Stockpile and at least \$11 billion to support efforts to expand testing by states, localities, and tribes. But it is clear that these widespread shortages will not be fully resolved until the nation's production capacity can be dramatically scaled up, and despite unprecedented global demand, private sector companies have been reticent to expand production capacity without support and direction from the federal government. For that reason, it is imperative that the federal government fully use its authority to support and expand production of PPE and testing supplies.

Section 301 and 302 of Title III authorize you to issue loan guarantees and direct loans to reduce current or projected shortfalls of industrial resources, critical technology items, or essential materials needed for national defense purposes. Section 303 grants you a range of authorities to create, maintain, protect, expand, or restore domestic industrial base capacity.⁵ These include purchasing or making purchase commitments of industrial resources or critical technology items, making subsidy payments for domestically produced materials, and installing and purchasing equipment for government and privately owned industrial facilities to expand their production capacity. In short, these authorities allow you to provide a company the financing and equipment they need to expand their production capacity and guarantee a buyer for their products once that capacity comes online.

As part of the CARES Act, Congress appropriated \$1 billion for the primary purpose of expanding domestic production of medical supplies to respond to COVID-19. We appreciated your executive order on March 27, 2020⁶ to delegate authority to the Secretaries of Health and Human Services and Homeland Security, allowing each to make use of DPA Title III to expand production capacity. However, to date, Title III has been used just twice as part of the government's response to the COVID-19 pandemic. On April 11, 2020, the Department of Defense announced that it would use Title III to secure a \$133 million investment resulting in the production of 39 million additional N95 masks. On April 29, DOD announced a Title III award to expand the production of swabs by Puritan Medical Supplies in Maine.⁷

These measures are totally inadequate to meeting the challenge we face. This crisis requires faster, more coordinated action to limit loss of life in the near term and over the next year. We urge you to act immediately to expand production and deliveries of PPE and testing supplies using Title III of the Defense Production Act and any other appropriate authority.

⁵ 50 U.S.C. § 4531-33

⁶ E.O. 13911, *Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources to Respond to the Spread of COVID-19*

⁷ "DOD Details \$75 Million Defense Production Act Title 3 Puritan Contract," U.S. Department of Defense, April 29, 2020.

Sincerely,

/s/Chris Van Hollen

Chris Van Hollen
United States Senator

/s/Angus S. King, Jr.

Angus S. King, Jr.
United States Senator

/s/Gary C. Peters

Gary C. Peters
United States Senator

/s/Kamala D. Harris

Kamala D. Harris
United States Senator

/s/Mazie K. Hirono

Mazie K. Hirono
United States Senator

/s/Patrick Leahy

Patrick Leahy
United States Senator

/s/Debbie Stabenow

Debbie Stabenow
United States Senator

/s/Mark R. Warner

Mark R. Warner
United States Senator

/s/Jack Reed

Jack Reed
United States Senator