Republic of the Philippines
HOUSE OF REPRESENTATIVES
EIGHTEENTH CONGRESS
Second Regular Session

HOUSE RESOLUTION NO. 1396

Introduced by Honorable Deogracias Victor “DV” B. Savellano and Honorable
Estrellita B. Suansing

A RESOLUTION
DIRECTING THE HOUSE COMMITTEE ON GOOD GOVERNMENT AND PUBLIC
ACCOUNTABILITY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE
QUESTIONABLE RECEIPT OF PRIVATE FUNDING BY THE FOOD AND DRUG
ADMINISTRATION (FDA) AND OTHER GOVERNMENT AGENCIES AND
INSTITUTIONS IN EXCHANGE FOR THE ISSUANCE OF SPECIFIC AND PRE-
DEFINED POLICIES DIRECTED AGAINST A LEGITIMATE INDUSTRY UNDER
PHILIPPINE LAWS AND IN COMPLETE DISREGARD OF THE RIGHTS AND
WELFARE OF CONSUMERS

WHEREAS, Article II, Section 7 of the 1987 Philippine Constitution provides that “[t]he
State shall pursue an independent foreign policy” and that “[i]n its relations with other
states, the paramount consideration shall be national sovereignty, territorial integrity,
national interest, and the right to self-determination.”;

WHEREAS, Article II, Section 27 of the same provides that “[t]he State shall maintain
honesty and integrity in the public service and take positive and effective measures
against graft and corruption.”;

WHEREAS, Article XI, Section 1 of the Constitution is also clear, “[p]ublic office is a
public trust. Public officers and employees must, at all times, be accountable to the
people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with
patriotism and justice, and lead modest lives”;

WHEREAS, in any democracy, an inclusive, transparent, and meaningful dialogue
between policy makers and their constituents is a non-negotiable requirement in the
formulation of public policy;

WHEREAS, government regulators must always be mindful of the impact their rules
and regulations would have in the lives and livelihood of all stakeholders who would be
affected by the policies they are tasked to implement;

WHEREAS, pursuant to RA 6713 or The Code of Conduct and Ethical Standards for
Public Officers and Employees, public officials are duty-bound to serve the interest and
protect the welfare of all individuals, irrespective of their gender, race, beliefs and religion, without favor or discrimination;

WHEREAS, as public servants, we carry the inherent burden of balancing the interests among the competing views, advocacies, and private interests of the general public. While it is natural for us to have our personal biases and opinions on certain issues of public concern, it is our duty to ensure that in the discharge of our public functions, we temper these personal biases and remain open to opposing views, especially when there are valid concerns that affect the lives and livelihood of people are involved;

WHEREAS, while public health is indeed a matter of state policy, as we have seen during this pandemic, there is a need to strike a delicate balance between the health and economic needs of the people;

WHEREAS, on October 6 and 8, 2020, the Food and Drug Administration held virtual public consultations on its proposed Guidelines that seek to regulate Electronic Nicotine Delivery Systems (ENDS) and Heated Tobacco Products (HTPs), respectively. ENDS and HTPs are legitimate products that are currently being taxed under RA 11467, while a national regulatory law is currently being prepared by Congress;

WHEREAS, pursuant to RA 11467 and Executive Order No. 106, the FDA shall, in consultation with relevant agencies and stakeholders, issue rules and guidelines governing the registration of ENDS and HTPs and the issuance of a License to Operate;

WHEREAS, this representation received complaints from different stakeholder groups conveying their concerns on the manner by which the FDA consultations were conducted lamenting the lack of meaningful discourse. They also expressed concerns over how their rights and welfare as consumers are being ignored because of the FDA’s refusal to acknowledge and respond to the concerns they have been raising, even prior to the actual public consultation. While most public consultations are now held online, this should not in any way diminish the right of the public to be heard;

WHEREAS, during the October 6, 2020 hearing on ENDS, stakeholders observed that participants were only allowed to pose questions through a chat box, an apparent bias in the selection of questions responded to and the absence of a sincere and genuine two-way dialogue between the regulator and the regulated. The FDA also terminated the virtual hearing one hour before the allotted time, despite the numerous pending questions and clarifications that stakeholders had raised, both in the chat box and in previous written submissions.

WHEREAS, on October 8, 2020, this representation personally attended the public hearing on HTPs and witnessed firsthand the deficiencies of the proceedings. There was an utter lack of transparency as FDA officials initially refused to open their cameras and be identified. It was only after this representation and the Honorable Representative Estrellita Suansing, who was also in attendance, demanded that they present themselves did the FDA officials accede. Since the public consultation was an official
government proceeding, the public had the right to know who they were speaking to and be assured of their qualifications and competence.

WHEREAS, different stakeholder groups also reiterated their right as consumers to have access to legitimate nicotine alternatives such as ENDS and HTPs;

WHEREAS, when other relevant stakeholder concerns were raised, FDA officials refused to answer on the ground that they were only authorized to reply to technical questions. And when the accountable officials were requested to respond, they did not do so. Considering that only two public consultations were scheduled and the tremendous impact these Guidelines would have on the business and livelihood of industry stakeholders as well the rights of consumers, the FDA should have been willing to address their concerns, especially those that were already identified in position papers previously submitted prior to the actual virtual consultations;

WHEREAS, during the course of the proceedings, it was also revealed that the FDA had received funding from The Union1 and Bloomberg Initiative2, international private groups that advocate against all forms of tobacco products, including ENDS and HTPs. When sought for clarification, FDA officials initially denied receiving any funding. However, when confronted with actual donor declarations contained in the webpage of these private groups, the FDA eventually admitted to receiving such funding.3 4

WHEREAS, other government agencies, state universities and colleges, and local government units were also listed in the donor declarations as grantees or recipients of private foreign funding. 5

WHEREAS, Section 7(d) of RA No. 6713 expressly prohibits public officials from accepting any monetary consideration in the course of their official duties or in connection with any operation being regulated by them, to wit: "Section 7(d) Solicitation or acceptance of gifts. - Public officials and employees shall not solicit or accept, directly

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3 Bloomberg Initiative funding to FDA: Strengthening of the Regulatory Systems on Tobacco Control under the Food and Drug Administration, available at https://tobaccocontrolgrants.org/What-we-fund?who_region=WPRO&country_id=15&date_type=&date_from=&date_to=&submit=Search
5 Bloomberg Initiative funding to FDA: Strengthening of the Regulatory Systems on Tobacco Control under the Food and Drug Administration, available at https://tobaccocontrolgrants.org/What-we-fund?who_region=WPRO&country_id=15&date_type=&date_from=&date_to=&submit=Search
or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.” In accepting monetary consideration from anti-tobacco organizations in exchange for the issuance and implementation of targeted anti-tobacco and anti ENDS and HTP policies, FDA officials may be in violation of applicable laws due to their failure to inform stakeholders beforehand of the existence of such arrangement as well as the details of the same.

WHEREAS, Section 11 (3) of B.P. Blg. 39 or An Act Regulating the Activities and Requiring the Registration of Foreign Agents in the Philippines expressly declares it unlawful for any public officer or employee or his spouse to act as a foreign agent where “foreign agent” is defined under Sec. 3 (3) of the said law as “any person who acts or agrees to act as xxx information representative, or as agent, servant or representative, xxx for a foreign principal or for any domestic organization subsidized directly or indirectly in whole or in part by a foreign principal. xxx”, where “foreign principal” is further defined under Sec. 3 (2) of the same law as “xxx a foreigner located within or outside the jurisdiction of the Republic of the Philippines; xxx”.

In light of the specific arrangement between these private organizations and the FDA and other recipient-government agencies and institutions, the latter may be acting as an agent of a foreign organization, in contravention of the declared state policy under B.P. Blg. 39 to ensure the protection of the national security and interest of the Philippines against foreign interference.

WHEREAS, Section 3 (e) R.A 3019 or the Anti-Graft and Corrupt Practices Act penalizes the following act: Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concession

Given the foregoing, the monetary considerations received from these private organizations in exchange for the issuance and implementation of government policy may have given these private organizations an unwarranted advantage in the pursuit of their private agendas. It is therefore incumbent upon Congress to investigate further whether any violation of RA 3019 has been committed by the FDA and other recipient-government agencies and institutions.

WHEREAS, undeniably, the initial denial and subsequent admission brings into question the objectivity, impartiality, and credibility of the FDA in drafting these Guidelines and overseeing the implementation of these regulations. The potential conflict of interest these foreign funds creates cannot be ignored and must first be resolved in order to preserve the integrity of the proceedings.
Thus, affected stakeholders cannot be faulted if they are of the belief that they are placed at an “undue disadvantage” when it comes to the FDA’s appreciation of their concerns and objectivity in formulating these draft Guidelines.

WHEREAS, as the highest policy and lawmaking body under the Constitution, Congress is duty-bound to ensure that any and all forms of government policies and regulations are not being driven by any vested foreign interest. Sovereignty resides in our people and not in any moneyed ideology or movement. As representatives of our people, it is our duty to ensure this.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES, AS IT IS HEREBY RESOLVED, to direct the House Committee on Good Government and Public Accountability to conduct an investigation in aid of legislation, into the questionable receipt of private funding by the FDA and other recipient-government agencies and institutions in exchange for the issuance of specific and pre-defined policies for legal products in complete disregard of the rights and welfare of consumers, policy based on sound science and good regulatory practices.

Until such time as the investigation by the House Committee on Good Government and Public Accountability is concluded, CONGRESS calls on the FDA and other recipient-government agencies and institutions to cease, with immediate effect, all contact with all aforementioned foreign groups and to return any foreign monies the agencies have received.

RESOLVED, that Congress look into the manner by which government agencies receiving foreign grants and assistance from private institutions could be held in account for the disbursements and impact of such funds in full public transparency.

BE IT RESOLVED, FURTHER, that an investigation be made on the manner by which the FDA public consultations were conducted and how these private funds could have influenced the same, to the detriment of good regulatory practice, the credibility of Philippine government institutions, and the lives and livelihoods of consumers, citizens, businesses and stakeholders.

Adopted,

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