



TIM GRIFFIN
ATTORNEY GENERAL

February 21, 2024

Sent via First Class Mail

The Honorable Mike Johnson
Speaker of the House
United States House of Representatives
H-232, U.S. Capitol
Washington, D.C. 20515

The Honorable Charles Schumer
Majority Leader
United States Senate
S-221, U.S. Capitol
Washington, D.C. 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
S-230, U.S. Capitol
Washington, D.C. 20510

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
H-204, U.S. Capitol
Washington, D.C. 20515

Re: Letter from the State of Arkansas and 12 other States in support of the
Stephen Hacala Poppy Seed Safety Act

Dear Speaker Johnson, Majority Leader Schumer, Republican Leader McConnell, and Minority
Leader Jeffries:

The States of Arkansas, Alabama, Georgia, Louisiana, Montana, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia urge you to support passage of the Stephen Hacala Poppy Seed Safety Act to protect our States' citizens from deadly narcotics marketed under the guise of unassuming poppy seeds. The legislation, introduced in the Senate (S. 3354) by Senators Tom Cotton (R-AR), John Boozman (R-AR), and Richard Blumenthal (D-CT), as well as in the House (H.R. 6512) by Representative Steve Womack (R-AR), responds to the clear and present public-health threat posed by poppy seeds laced with lethal quantities of morphine and other opiates. Alarming, poppy seeds carrying these Schedule II controlled substances are easily obtained online. To prevent further addiction, injury, and death, the sale and distribution of contaminated poppy seeds to consumers must be prohibited.

Background

On April 3, 2016, 25-year-old Stephen Hacala, Jr. was found dead in his Fayetteville, Arkansas apartment with no evidence of trauma or illegal-drug use. But an autopsy revealed that Stephen succumbed to morphine intoxication caused by contaminated poppy seeds. Stephen's death is one of many avoidable tragedies caused by bad actors continuing to exploit weaknesses in federal law to target our States' citizens with dangerous narcotics.

The poppy plant produces seeds that have no opium content. *Unwashed Poppy Seed*, Drug Enf't Admin. (Nov. 2019), https://www.deadiversion.usdoj.gov/drug_chem_info/unwashed_poppy_seed.pdf. Instead, opium alkaloids (e.g., morphine, codeine, and thebaine) are present in the poppy latex, a milky white fluid that exudes from the opium pod when it is cut and seeps onto the seed coats. *Id.* This is sometimes done purposefully before seeds are harvested.

Morphine, codeine, and thebaine are Schedule II controlled substances. *Id.* They have a “high potential for abuse” that “may lead to severe psychological or physical dependence.” 21 U.S.C. § 812(b)(2)(A), (C); *see Unwashed Poppy Seeds, supra*. In November 2019, the Drug Enforcement Administration clarified that the Controlled Substances Act reaches these substances even “if present as contaminants on poppy seed material.” *Unwashed Poppy Seeds, supra*.

Poppy seeds are typically cleaned to significantly reduce opium-alkaloid contamination. *See, e.g.,* Shalaka A. Shetge, *Concentrations of the Opium Alkaloids Morphine, Codeine, and Thebaine in Poppy Seeds are Reduced after Thermal and Washing Treatments but are Not Affected when Incorporated in a Model Baked Product*, J. Agric. Food Chem. (May 6, 2020), <https://doi.org/10.1021/acs.jafc.0c01681>. Indeed, washed poppy seeds are widely used in pastries, cakes, bagels, and other consumer products.

Unwashed poppy seeds, on the other hand, often contain opium alkaloids sufficient to produce psychoactive effects. *Unwashed Poppy Seed, supra*. They are commonly boiled to produce a tea for pain relief or a high similar to that of other opioids. *Id.* And the opium-alkaloid content of home-brewed poppy-seed tea can be lethal. Deborah Powers, et al., *Quantification of Morphine, Codeine, and Thebaine in Home-Brewed Poppy Seed Tea by LC-MS/MS*, J. Forensic Scis. (Oct 3, 2017), <https://doi.org/10.1111/1556-4029.13664>. Researchers testing teas using recipes found on drug-user forums made from seeds purchased online discovered that some contained enough morphine to more than fill a 90-pill bottle at the 30-milligram dose often used in palliative care. *See id.* at 5 (finding morphine levels of up to 2,788 milligrams per kilogram of unwashed poppy seeds).

Unlike the notorious street drugs heroin and fentanyl, which are obtained from drug dealers, unwashed poppy seeds are widely available online through sites like Amazon.com, where Stephen obtained the seeds that led to his untimely death. There are no labeling requirements, and some consumers, perhaps unwittingly, purchase unwashed poppy seeds from businesses styled as bakeries. The owners of the Lone Goose Bakery in Tulsa, Oklahoma, for example, were recently indicted on drug distribution and other charges after the death of a Utah woman who consumed a lethal dose of opioid-laced poppy seeds purchased there. *See Tulsa Couple Indicted for Drug Conspiracy Involving Poppy Seeds Coated in Opium Latex*, U.S. Attorney's Off., N. Dist. of Okla. (Nov. 9, 2023) (announcing charges), <https://www.justice.gov/usao-ndok/pr/tulsa-couple-indicted-drug-conspiracy-involving-poppy-seeds-coated-opium-latex>.

In 2021, Congress expressed concern “with reports of positive drug tests, addiction, overdose, and death” from contaminated poppy seeds and directed the Food and Drug Administration “to establish a maximum permissible threshold of opiate alkaloid content for poppy

seeds and carry out appropriate regulatory or enforcement measures to ensure the safety of poppy seeds.” H. Rept. 117-82 – 117th Cong. (2021-22): Agric., Rural Dev., Food and Drug Admin., and Related Agencies Appropriations Bill, 2022 (July 2, 2021); S. Rept. 117-34 – 117th Cong. (2021-22): Agric. Rural Dev., Food and Drug Admin., and Related Agencies Appropriations Bill, 2022 (Aug. 4, 2021). Yet the FDA has not acted.

While the FDA continues to drag its feet, the Department of Defense has taken action on this matter, recognizing it as a “safety and readiness issue” and warning that some poppy seeds may have higher opiate contamination than was previously reported. *Warning Regarding Poppy Seed Consumption and Military Drug Testing*, Dep’t of Defense (February 17, 2023), <https://media.defense.gov/2023/Feb/21/2003164614/-1/-1/1/POPPY-SEEDS-WARNING-MEMO-SIGNED-CONTACT-REDACTED.PDF>. As a result, last year the Department of Defense took the extraordinary step of directing servicemembers to avoid consuming *all* poppy seeds, including those in food products and baked goods. *Id.*

The Stephen Hacala Poppy Seed Safety Act

Although great strides have been taken to address the opioid crisis, bad actors continue marketing these deadly narcotics to our States’ citizens, using unwashed poppy seeds as a carrier. The Stephen Hacala Poppy Seed Safety Act is a practical solution to this danger. The Act would prohibit the distribution and sale of opioid-laced poppy seeds and prevent future addiction, harm, and further death.

The Act amends federal law to prohibit selling, or offering to sell, any poppy-seed product that contains a level of morphine, codeine, or other opiates that may render it injurious to health. And to ensure that drug pushers cannot take advantage of the absence of federal guidelines concerning unsafe levels of opium-alkaloid contamination, the Act sets a two-year timeline for the FDA to issue and finalize a rule establishing maximum permissible levels of contamination.

Conclusion

The Stephen Hacala Poppy Seed Safety Act is a simple, commonsense, and urgently needed measure to protect our States’ families from experiencing the heartbreaking loss the Hacala family has suffered. Action by Congress is necessary to ensure that the law adequately protects our citizens from addiction, injury, and death caused by the sale and distribution of narcotics-laced poppy seeds, and to ensure that the FDA takes timely and appropriate action to address this clear public-health threat.

Therefore, we urge you to support passage of the Stephen Hacala Poppy Seed Safety Act.

Sincerely,



Tim Griffin
Arkansas Attorney General



Chris Carr
Georgia Attorney General



Austin Knudsen
Montana Attorney General



Gentner Drummond
Oklahoma Attorney General



Marty Jackley
South Dakota Attorney General



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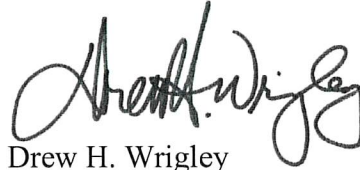
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