



COALITION OF LARGE TRIBES

Blackfoot Nation • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap Indian Community • Mandan, Hidatsa & Arikara Nation • Navajo Nation • Northern Arapaho Tribe
Oglala Sioux Tribe • Rosebud Sioux Tribe • Shoshone-Paiute Tribes of the Duck Valley Indian Reservation
Shoshone Bannock Tribes • Sisseton Wahpeton Oyate • Spokane Tribe • Ute Indian Tribe

December 20, 2023

**Testimony of Hon. Marvin Weatherwax, Chairman, Coalition of Large Tribes and
Member, Blackfeet Tribal Business Council**

**Before The Senate Committee On Indian Affairs Oversight Hearing On “Fentanyl In
Native Communities: Federal Perspectives On Addressing The Growing Crisis”**

My name is Marvin Weatherwax, Jr., and on behalf of the Coalition of Large Tribes, I thank you for holding this important oversight hearing on “Fentanyl In Native Communities: Federal Perspectives On Addressing The Growing Crisis.” The Coalition of Large Tribes is an intertribal Section 17 corporation representing the interests of the more than 50 tribes with reservations of 100,000 acres or more. Fentanyl is a crisis on many COLT Member Tribes’ reservations. Today’s testimony (attached) by President Frank Star Comes Out, President of the Oglala Sioux Tribe, a COLT Member Tribe, represents our typical experience on our large land base reservations.

Cartels are omni-present on our reservations, something about which I speak out often. *See, e.g., [Tribal Leaders Warn Biden's Menthol Ban Will Only Further Empower Cartels | National Review](#)* (“The cartels have a ‘big presence’ in his community, where tribal police don’t have authority over nonmembers. They pretty much feel unmatched; they’re just brazen, out in the open. It’s almost like it’s raining fentanyl on our community”).

The cartels are empowered by tribes’ lack of criminal jurisdiction over non-Indians. Cartels know they can get away with anything—that little to no law enforcement presence is available and prosecution is exceedingly unlikely even if they are arrested because of federal declination rates. Congress has known this for decades. Indeed, a generation after the U.S. Supreme Court’s decision in *Oliphant v. Suquamish Tribe*, finding that tribes had been implicitly divested of criminal jurisdiction over non-Indians because of tribes’ status as “conquered peoples,” then-United States Senator Ben Nighthorse Campbell questioned the impact of *Oliphant* and observed that “the word is out that people can get off the hook, so to speak, if they are not Indian and they do something on Indian land.” S. Hrg. 107-605.

COLT and other tribal organizations have long proposed solutions to address this. *See [Oversight Hearing “Opportunities and Challenges for Improving Public Safety in Tribal Communities” | Coalition of Large Tribes; COLT-Resolution-04-2022.pdf \(largetribes.org\); SAC-22-043-FINAL-SIGNED-WITH-ATTACHMENT.pdf \(largetribes.org\)](#)*.

Tribal law enforcement is also critically underfunded. COLT Member Tribes often have only one or two officers per shift on duty to serve areas the size of Delaware or West Virginia.



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The vast distances, lack of broadband and cellular coverage, and jurisdictional gaps exacerbate the crisis.

COLT has previously [echoed](#) the U.S. Senate concerns raised by Senators Cassidy, Rubio, Budd and Hagerty in their July letter to Commissioner Califf of the Food and Drug Administration, sounding the alarm over the Biden administration's plans to restrict tobacco products for Americans, potentially creating opportunities for foreign cartels to profit from illegal tobacco on the black market. [Ranking Member Cassidy, Colleagues Sound... | Senate Committee on Health, Education, Labor and Pensions](#); [COLT Chairman Echoes Senate Alarm on Foreign Illicit Tobacco Threats Amid FDA Prohibitory Rulemakings on Menthol and Nicotine in Cigarettes | Coalition of Large Tribes](#). COLT is very concerned about the illicit markets this rule will create and the pressure that will result on already-strained tribal law enforcement. This will be a cash cow for cartels already present on reservations and bombarding us with fentanyl and other drugs.

As with other forms of prohibition, unregulated supply chains will take over once legal pathways to adult consumers are closed off. Banning the legal sale of menthol and nicotine-containing cigarettes will cede control of the market to illicit producers. Tribes are painfully aware from our experience with the fentanyl crisis that criminal interests in China, the Middle East and Mexico already use various channels to traffic drugs through and concentrate drugs on our reservations, where the jurisdictional maze and chronic underfunding of tribal law enforcement leaves a persistent gaps for public safety. COLT's [June 2, 2023 Resolution #03-2022 \(WR-Las Vegas\), Calling for Pause in FDA Rulemaking on Tobacco to Allow for Tribal Consultation and Protection of Tribal Ceremonial Uses and Public Safety](#) addressed these concerns head on. COLT sent that Resolution to its Congressional delegations, the FDA and to the White House and has followed up in numerous meetings and communications since.

Yet, the FDA is barreling ahead with this despite the strong and well-grounded opposition and even as media reports on the significant illicit / cartel markets that have sprung up in California immediately after their flavor ban. *See, e.g.*, <https://www.axios.com/2023/10/13/illegal-vapes-thwart-fda-enforcement>; <https://sjvsun.com/california/study-ban-hasnt-stopped-californians-from-using-flavored-tobacco-menthols/>.¹

The multi-billion-dollar product gaps created by the proposed rules will be filled by foreign criminal interests and directly and negatively impact public safety on remote rural Indian

¹ Massachusetts' 2020 flavored tobacco ban is another good example of prohibition's expansion of illicit market. <https://www.wbur.org/commonhealth/2019/11/27/explainer-flavored-tobacco-vaping-law>. After the Massachusetts flavor ban went into effect adult consumers shifted their flavored tobacco purchases to neighboring states. The ban also fueled the already robust illegal market. [Sharon man charged in connection with major illegal tobacco operation \(bostonherald.com\)](#); [Smuggled cigarettes continue to flow into Massachusetts \(bostonherald.com\)](#); [Ban on menthol cigarettes sends sales to black market, convenience store owners say \(bostonherald.com\)](#).

