

October 15, 2019

The Honorable Frank Pallone Jr.
Chairperson
The Energy & Commerce Health Subcommittee
U.S. House of Representatives
2107 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Anna G. Eshoo
Chairperson
The Energy & Commerce Health Subcommittee
U.S. House of Representatives
202 Cannon House Office Building
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Chairperson Pallone, Chairperson Eshoo, Ranking Member Burgess and Members of the Committee:

We appreciate the opportunity to submit our testimony regarding the upcoming hearing on the national youth tobacco epidemic. We recognize that preventing non-smoking young people from establishing both e-cigarette and combustible cigarette use is vital to the future health of the population. However, it is important to recognize that smoking is the leading cause of preventable death in the United States, and we must continually evaluate our strategies for decreasing tobacco-related morbidity and mortality. E-cigarettes provide such a strategy.

Undoubtedly, the youth use trend is cause for concern and continued investigation. However, this cannot be the only measure of the effect of e-cigarettes on population health. Based on the body of research as a whole, we urge the committee to consider pursuing policies that reflect the short- and long-term population health impact of e-cigarettes relative to the known harms of combustible cigarettes.

E-cigarettes are a harm reduction and smoking cessation tool

The best available science indicates e-cigarettes are not likely to exceed 5 percent of the harm associated with combustible cigarettes, a conclusion supported by both Public Health England¹ and recently the National Academies of Sciences, Engineering and Medicine.² Also, like traditional nicotine replacement therapies, e-cigarettes do not produce environmental tobacco smoke that harms bystanders. It is estimated that e-cigarettes have the potential to save up to 6 million lives by 2100 if only 10 percent of current smokers switch to e-cigarettes in the next 10 years.

Although there are a number of pharmaceutical products that can help smokers quit, it is important to remember that it is not only nicotine dependence that makes quitting combustible cigarettes difficult. For some, smoking offers stress relief, comradery or other psycho-social pleasure, and some may even consider it a component of their identity. This often makes the physical act of smoking just as difficult to quit as the nicotine. Unlike the FDA-approved methods of smoking cessation, e-cigarettes do not force a smoker to forgo the secondary pleasure they get from the act of smoking while they are adjusting to the physiological effects of decreased nicotine. This may be one reason why in a randomized trial, smokers who used e-cigarettes as a cessation device achieved sustained abstinence at roughly twice the rate of smokers who used nicotine replacement therapy.³

Flavors help smokers transition away from combustible cigarettes

¹ "Nicotine without smoke: tobacco harm reduction," Royal College of Physicians Tobacco Advisory Group, 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>.

² "The Public Health Consequences of E-cigarettes," National Academies of Science, Engineering and Medicine, January 2018. <http://nationalacademies.org/hmd/reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

³ Peter Hajek et al., "A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy," *The New England Journal of Medicine* 380 (2019), pp. 629-37.

The availability of non-tobacco flavors also assists smokers with the transition from combustible cigarettes. *The International Journal of Environmental Research and Public Health* reports that limitations in flavor choices negatively impact user experience. About 40 percent of former and current adult smokers predict that removing their ability to choose flavors would make them less likely to remain abstinent or attempt to quit.⁴ In fact, data suggests that current smokers are partial to the flavor of traditional tobacco, while fruit and sweet flavors are preferred by former smokers, indicating a correlation between flavors and sustained abstinence from combustible cigarettes.

Moreover, it has recently been demonstrated that e-cigarette users who use non-tobacco flavors, including menthol and non-menthol (fruit, sweet, dessert) flavors are more likely to completely switch from combustible cigarettes than those who choose tobacco flavors.⁵ Flavored e-liquids are yet another way that e-cigarettes can help smokers disassociate combustible cigarettes—and the characteristic flavor—from their pleasurable effects. This is essentially classical conditioning.

R Street supports raising the age of purchase of all tobacco products to 21

Of course, smokers are not the only population impacted by e-cigarettes, and addressing youth use is important. Fortunately, there are a range of regulatory options that minimize harm to both smokers and non-smokers of all ages. Our organization, the R Street Institute, supports raising the minimum age of purchase for all tobacco products to 21. Given that 75 percent of high school seniors are of legal age to purchase tobacco products at present, this measure will prevent youth access in high school by limiting opportunities for younger students to buy from peers who obtained the products legally. In combination with more stringent point-of-sale age verification and meaningful penalties for merchants who violate minimum-age-to-purchase laws, this change will significantly limit youth access.

According to the 2013 Social Climate Survey of Tobacco Control, raising age of purchase to 21 was supported by over 70 percent of respondents.⁶ While this policy intervention has not been extensively studied, limited evidence suggests that 21-to-purchase laws will decrease consumption of tobacco products among high schoolers. For example, raising the age of purchase to 21 is predicted to have a larger effect on decreasing initiation of tobacco products among adolescents aged 15-18 than other interventions, such as increasing taxes.⁷ Raising the minimum age of purchase to 21 will result in a greater and more immediate reduction in the long-term smoking rates among youth than any other intervention.

Following implementation of a 21-to-purchase law in Needham, Massachusetts, there was an unprecedented 47 percent reduction (from 13 to 7 percent) in past 30-day smoking rates (past 30 days use) among high schoolers over four years (2008-2012).⁸

R Street does not support banning non-face-to-face sales of e-cigarettes

⁴ Konstantinos E. Farsalinos et al., “Impact of flavour variability on electronic cigarette use experience: an internet survey,” *International Journal of Environmental Research and Public Health*, 10:12 (2013), pp. 7272-82.

⁵ Christopher Russell et al. “Changing patterns of first e-cigarette flavor used and current flavors used by 20,836 adult frequent e-cigarette users in the USA,” *Harm Reduction Journal* 15:33 (2018)

⁶ Jonathan P. Winickoff et al., “Retail Impact of Raising Tobacco Sales Age to 21 Years,” *Public Health Policy Briefs*, 104:11 (2014).

⁷ Sajjad Ahmad and John Billimek, “Limiting youth access to tobacco: Comparing the long-term health impacts of increasing cigarette excise taxes and raising the legal smoking age to 21 in the United States,” *Health Policy* 80:3 (2007), pp. 378-391.

⁸ Shari Kessel Schneider et al., “Community reductions in youth smoking after raising the minimum tobacco sales age to 21,” *Tobacco Control* 25 (2015), pp. 355-59.

It is imperative that the availability of reduced-risk alternatives remains in place for people who use e-cigarettes as a cessation tool. According to the 2016 Surgeon General’s Report,⁹ in 2014, 20 percent of all e-cigarette sales occurred online. It is estimated that in 2018, 32 percent of all e-cigarette sales occurred online.¹⁰ As more proposals arise to limit what kinds of brick and mortar establishments are able to sell e-cigarettes or other reduced risk products—all while protecting combustible sales—online sales may be the only point of access for people who, for many reasons, cannot reach specialty stores. It cannot be a surprise to the committee that people who live with disabilities, are economically disadvantaged or live in rural areas are over-represented in the smoking population. These particular factors represent true barriers to face-to-face access to specialty products. Online sales and delivery may be the only way that smokers have access to safer products.

Furthermore, there is a misperception that online sales of e-cigarettes are more vulnerable to underage access. Legal retailers that sell their products online have strict FDA-mandated age verification systems that are successful in preventing underage access to their products. Unverified underage sales largely occur on eBay or other websites where age verification is not vital. Banning non-face-to-face sales will not stop the illegitimate sales from going through, as these sales are already illegal.

The FDA’s role in protecting public health

Finally, it is important to recognize that the FDA has developed a regulatory pathway to evaluate the safety and public health impact of all new tobacco products, including considerations of flavors. This is a process that has been carefully designed over several years to ensure new tobacco products, like e-cigarettes, will not have a negative impact on the health of the population as a whole. Allowing the safety and regulatory experts at the FDA to lead the way in authorizing the sale of these products is the most appropriate way forward.

Policies that treat e-cigarettes the same as combustible cigarettes encourage current smokers to continue doing enormous harm to their health by discouraging a switch from combustible products. Conversely, policies that reflect the reduced harm of e-cigarettes can significantly reduce the enormous burden of disease that combustible cigarettes impose on society.

One thing is certain: We are all striving to improve and protect the nation’s health. To do so, we must recognize the potential for e-cigarettes to mitigate risks associated with combustible cigarettes if we wish to encourage a healthful populace. We encourage you to consider policies that reflect the reduced risk of e-cigarettes compared to combustible cigarettes as we work towards creating a healthier population.

Thank you for your time and consideration.

Respectfully submitted,

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⁹ Office of Smoking and Health, “E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General” U.S. Department of Health and Human Services, December 2016. https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf.

¹⁰ “E-cigarettes: Facts, stats and regulations,” The Truth Initiative, July 19, 2018. <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>