



The American Vaping Association

www.vaping.org

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March 4, 2020

RE: HB 1319, concerning a prohibition against the sale of flavored nicotine products

Chair Lonetina and members of the House Health & Insurance Committee:

On behalf of the American Vaping Association, a nonprofit organization that advocates for policies that encourage adult smokers who are unwilling or unable to quit smoking to switch to reduced risk nicotine products, I am writing to urge the committee to reject HB 1319, which would ban the sale of flavored harm reduction products such as vaping products and other smoke-free tobacco and nicotine products.

With nearly 650,000 adults still smoking combustible cigarettes in Colorado, public health will not be served by preventing adult smokers from accessing less harmful alternatives to traditional combustible cigarettes. Prohibition failed for marijuana and alcohol. The same will be true for tobacco and nicotine.

I. Legal Nicotine Vaping Products Are Far Safer than Smoking & Did Not Cause "Vaping-Related" Illnesses

- The National Academy of Sciences, an independent research organization that provides scientific advice to the U.S. government, concluded in their report on vaping that the evidence indicates vaping is "likely much less harmful" than smoking cigarettes.¹
- Despite mass public confusion, the evidence is now clear that legal and FDA-regulated nicotine vaping products were not the cause of so-called "vaping-related" illnesses that made headlines throughout the fall of 2019. The CDC and researchers from multiple states have concluded that illicit THC vaping products containing vitamin E acetate are strongly linked to illnesses and deaths.
- Vitamin E acetate has never been detected in a nicotine vaping product.
- The Wall Street Journal recently reported that the CDC is no longer warning adult smokers not to use nicotine vaping products. Instead, the agency is strongly warning against using illicit THC vaping products purchased off the street.

II. The Importance of Flavors to Adults has been Demonstrated

- A study using data from the FDA's multi-year, population-level PATH study found that among adults aged 25 or older, those using candy or sweet vaping flavors were twice as likely to be

¹ "National Academy of Sciences Releases Report on Public Health Consequences of E-Cigarettes." *American College of Radiology*. <<https://www.acc.org/latest-in-cardiology/articles/2018/01/26/14/14/national-academy-of-sciences-releases-report-on-public-health-consequences-of-e-cigarettes>>

trying to quit combustible tobacco. Moreover, among ex-smokers who reported that e-cigarettes helped with their smoking cessation, more respondents used fruit flavors than any other flavor type.²

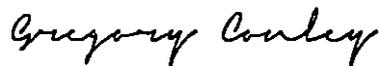
- Researchers from the Yale School of Public Health and other institutions conducted an FDA-funded study of 2,031 adult smokers and recent quitters. The study concluded that banning flavors in vaping products would result in increases in smoking.³
- A self-selected survey of 69,223 vapers from the United States found that among the 81.3% of respondents who were former smokers, just 7.7% and 12.8% of these exclusive vapers used tobacco or menthol flavors, respectively. Ex-smokers and dual users overwhelmingly preferred flavors categorized as fruit, dessert, or sweet.⁴

III. FDA's New Flavor Policy Addresses the Products with Highest Youth Usage Rates

- A new enforcement policy by the Food & Drug Administration went into effect last month that temporarily forbids the sale of closed system (non-refillable) pod- and cartridge-based products like JUUL, Vuse, and NJOY in flavors other than tobacco or menthol.
- These products will only be able to come back to the market if the FDA determines, through a multimillion-dollar premarket tobacco application (PMTA) process, that each individual product is "appropriate for the protection of public health."
- The FDA will very likely approve a non-tobacco-flavored product in the coming months. Having one standard for Colorado and one standard for the rest of the country will fail.

We share the goal of decreasing youth vaping and Colorado's vape businesses and individual vapers want to be a part of the solution, but punishing adults by making it harder for them to quit smoking is not the answer. Colorado should vigorously enforce and strengthen its Tobacco 21 law, but the Legislature should be very careful before it enacts policies that will have long-lasting impacts on small businesses and adult voters in the state.

Sincerely,



Gregory Conley, J.D., M.B.A.
President, American Vaping Association

² S. Someji, *et al.* "Flavor Preference Among Adolescent, Young Adult, and Adult E-Cigarette Users: Findings From Wave 2 of the Population Assessment of Tobacco and Health Study." Poster SYM7D. Presented at SRNT 2018.

³ John Buckell, Joachim Marti, and Jody L. Sindelar, "Should Flavors Be Banned in E-Cigarettes? Evidence on Adult Smokers and Recent Quitters from a Discrete Choice Experiment." National Bureau of Economic Research. September 2017. <http://www.nber.org/papers/w23865.pdf>.

⁴ Jim McDonald. "Farsalinos Survey Shows Vapers Prefer Fruit and Dessert Flavors." Vaping360. August 13, 2018. <https://vaping360.com/vape-news/69440/farsalinos-survey-shows-vapers-prefer-fruit-and-dessert-flavors/>



THE OHIO STATE UNIVERSITY

COLLEGE OF PUBLIC HEALTH

Knee-jerk vaping bans will fail public health, experts argue

Evidence supports e-cigarettes as a harm-reduction tool

Bans and other policies restricting e-cigarette sales could do more public harm than good, according to a group of public-health, tobacco-policy and ethics experts.

In a piece published online today (Dec. 12, 2019) in the journal *Science*, the authors, including three public health deans, caution that blanket policies developed in a rush to address two different concerns come with dangerous downsides – most notably the risk of taking away a powerful tool to help smokers quit.



“Illnesses and deaths, which appear to be related to vaping illicit THC oils, have caused justifiable alarm as has the rise of young people who are vaping nicotine. But in our response we must not lump together these troubling developments and fail to consider the powerful evidence supporting the availability of legal nicotine products,” said lead author Amy Fairchild, dean of The Ohio State University College of Public Health.

In *Science*, she and her co-authors write that “Restricting access and appeal among less harmful vaping products out of an abundance of caution while leaving deadly combustible products on the market does not protect public health. It threatens to derail a trend that could hasten the demise of cigarettes, poised to take a billion lives this century.”

The paper comes after the emergence this year of vaping-related lung injuries and deaths throughout the U.S. The Centers for Disease Control and Prevention has reported 2,291 cases of serious lung injury and 48 deaths as of last week. Authorities have identified

vitamin E acetate, a THC-product additive, as a “chemical of concern” and said that many of the products appear to have been acquired through informal sources – not from retail establishments selling products directly from known manufacturers. THC, or Tetrahydrocannabinol, is the primary psychoactive component of marijuana.

Many policymakers and organizations including the American Medical Association have called for an across-the-board ban on vaping, and some municipalities and states have moved to ban either all vaping products or those with flavors other than tobacco flavoring, including menthol.

Fairchild said that vaping policy discussions and debates should include an examination of the immediate crisis in the context of all of the scientific evidence regarding the risks and benefits.

“There are important distinctions to be made between nicotine and THC products, between products manufactured by reputable companies and those sold on the black market, and between the potential risks and benefits to adolescents and to adults,” she said.

Drawing comparisons to initial reluctance to offer needle exchange programs that promote safety by preventing life-threatening infections for people who aren’t ready to quit heroin, the authors write that evidence about harm reduction should outweigh emotional responses.

“We should be careful to remain aware of the unintended consequences of extreme measures and the important lessons that harm reduction has provided us in areas such a heroin use, HIV prevention and alcohol control,” said co-author Cheryl G. Heaton, dean of New York University’s College of Global Public Health.

The authors point to research showing that not only vaping – but flavored products, in particular – can help adult smokers quit and provide a more effective and appealing option than nicotine replacement therapy.

They urge continued efforts to better understand the risks and benefits of vaping and call for regulatory measures that strike a balance between “making regulated nicotine vaping products available to smokers while adopting forceful measures to limit the risks to and use by youth as much as possible.”

Among their suggestions to combat youth use: Implementation and enforcement of laws that restrict purchases to those 21 and older and prohibitions against predatory marketing to children and teens.

They call for the U.S. Food and Drug Administration to implement a product monitoring system and for a surveillance system to detect unanticipated harm early.

Regulatory bans on the menthol front should start with cigarettes and inexpensive little cigars, not with nicotine vape products, they argue.

“Despite two FDA-derived reports that recommended a ban on menthol in combustibles, there has been policy paralysis in the face of appalling evidence,” they write, citing statistics showing that more than half of young people and more than 90 percent of African-American youth start smoking with menthol.

Fairchild and her co-authors stress that they take the illnesses and deaths due to vaping seriously but emphasize that each day more than 2,500 U.S. teens start smoking and about 1,300 adults die due to cigarettes. Taking vaping – including flavored products – away as a smoking-cessation and harm-reduction tool now will amount to a public health failure, they argue.

"It is crucial to identify the source of serious lung injuries and closely monitor and regulate the vaping industry – including how it markets its products to young people," said co-author James Curran, dean of the Rollins School of Public Health at Emory University.

"But the evidence so far supports continuing to allow nicotine vaping as a harm-reduction alternative to smoking, which remains the largest preventable cause of death and disability in our country."

Other authors of the paper were Ronald Bayer of Columbia University and David Abrams of NYU.

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