

**House Energy and Commerce Committee, Subcommittee on Health**

*Legislation to Reverse the Youth Tobacco Epidemic*

10:30 am, 2322 Rayburn House Office Building

Purpose

*The purpose of this hearing is to consider H.R. 2339, the “Reversing the Youth Tobacco Epidemic Act of 2019.”*

Members Present

Chairman Eshoo, Ranking Member Burgess, Representative Pallone, Butterfield, Shimkus, Sarbanes, Griffith, Engel, Hudson, Matsui, Mullen, Castor, Bucshon, Pallone, Guthrie, Kennedy, Brooks, Cardenas, Carter, Ruiz, Gianforte, Kelly, Bilirakis, Barragan, Rush, and Schakowsky

Witnesses

**Dorian Fuhrman**, Co-Founder and Parent, Parents Against Vaping e-cigarettes

**Phillip Gardiner, Ph.D.**, Senior Program Officer, Tobacco Related Disease Research Program, University of California Office of the President

**Matthew L. Myers**, President, Campaign for Tobacco-Free kids

**Michael Siegel, M.D., M.P.H.**, Professor, Department of Community Health Sciences Boston University School of Public Health

**Susanne E. Tanski, M.D., M.P.H.**, Member, American Academy of Pediatrics

Opening Statements

**Chairman Eshoo** said that health problems caused by smoking cost the United States over \$3 billion a year. Although the harms of smoking are known, children are continuing to pick up smoking. Furthermore, it is known that most smokers begin smoking before the age of 21. For this reason, big tobacco companies know that their profits begin with young people. The United States has made progress in reducing nicotine addiction, but the recent rise in vaping threatens the progress. An outbreak in vaping related illnesses is also of grave concern. It is important to extend the restrictions in place on cigarettes to e-cigarettes.

**Ranking Member Burgess** said that vaping and e-cigarettes acutely affect the youth population in the United States. The Trump administration and congress have taken steps to reduce the negative outcomes associated with vaping. While it is necessary to take action on this issue, it is vital to make sure that all evidence is collected beforehand. This committee must make sure that it does not lose focus on the fact that THC vaping products appear to be the cause of recent illnesses. It is also important to remember that nicotine vaping devices do help adults quit using typical cigarettes. Many adults live with smoking related health complications and vaping provides a viable alternative for them.

**Rep. Pallone** said that this committee can take an important step in protecting children today. H.R. 2339 contains necessary legislation that will reduce the harm caused by e-cigarettes. The practice of marketing these products to children is not only harmful but predatory as well. Unfortunately, many young people wrongly believe that vaping is a safe

and a healthy habit. It is up to congress to act and protect children from the predatory practices of large e-cigarette companies.

**Rep. Hudson** said that the only epidemic today is the one of youth e-cigarette use. The total flavor ban of all tobacco products is problematic. This is because typical tobacco products are not enjoying the same success of flavored products as e-cigarette products are. It remains true that alcohol and marijuana are also sold as flavored products yet this committee is not talking about them. Instead the focus is broadly on tobacco. This committee has the potential to harm other players in the tobacco industry by passing broad legislation. It is vital to make sure that this committee stays focused on the specific problem of e-cigarettes.

### Testimony

**Ms. Fuhrman** said that predatory companies target children on social media through slick ads and false promises. Nicotine addiction in a developing adolescent brain affects cognitive development and emotional control. Youth lungs also continue to develop until the age of 25 and are thus susceptible to damage. Juul and other e-cigarette companies knowingly target their products to children. The ability to Juul at any time and in any location has made this epidemic difficult to stop. The FDA banned flavored cigarettes in 2009, except for menthol. It is now time to ban all flavored tobacco products including menthol.

**Mr. Gardiner** said that H.R. 2339 is the most comprehensive tobacco legislation introduced in many years. This is not just a health issue, but a social injustice issue as well. This issue disproportionately affects marginalized communities, young people and minority communities. Menthol flavoring is the ultimate candy flavoring for e-cigarette products. It reinforces users desire to smoke and increases the ability to smoke to penetrate cell membranes. Some argue that this legislation is discriminatory because most African Americans use menthol cigarettes. However, the true discrimination is the predatory practices of large tobacco companies targeting African American communities. It is time to take action now and protect our youth.

**Mr. Myers** said that the Campaign for Tobacco Free kids strongly supports H.R. 2339. The use of sweet flavors, predatory marketing, and easy access has created a crisis in the United States. Today roughly 27.5 percent high school students report using e-cigarettes. Most of these students are using e-cigarettes at least 20 days a month, and thus a sign of addiction. Furthermore, non-smoking kids who use e-cigarettes are far more likely to use cigarettes in the future. We are not replacing cigarette smokers, we are creating future cigarette smokers. It is unknown what the long term effects of these products are. It is also true that the evidence is weak when making the case that vaping products help adult smokers quit using typical cigarettes.

**Mr. Siegel** said that H.R. 2339 has the potential to curb the vaping epidemic. However, one section should be eliminate because it would have large public health consequences. Banning flavored products would not have prevented any deaths. Most of the deaths have

come from individuals who buy their products on the black market. Thus the problem is not store bought vaping products but instead ones that are bought outside of stores. By banning flavors this committee may create a much larger black market. The solution to this problem is not to ban flavored products but instead to regulate them significantly. The use of nicotine salts let nicotine be absorbed by the blood more quickly. It is thus vital to regulate the nicotine salts in these products instead of regulate flavors. Out right prohibition does not work.

**Dr. Tanski** said that the American Academy of Pediatrics strongly supports H.R. 2339. Physicians typically refer to nicotine addiction as a pediatric illness because it almost always starts before age 18. Addiction begins well before daily use and develops in causal users as well. One Juul pod contains the same amount of nicotine as an entire pack of cigarettes. Many adolescents smoke one or more pod a day and report waking up in the middle of the night just to Juul. While some claim that THC is the cause of the recent mysterious lung illnesses, this claim is without evidence. Flavors help to mask the bad taste of nicotine use and encourage children to use the product. Furthermore, by raising the age to buy tobacco products to 21 it is possible to eliminate the social pipeline that leads to young children getting access to vaping products.

#### Question and Answer

**Chairman Eshoo** asked if all of the witnesses support raising the minimum purchasing age of tobacco products to 21. **All witnesses** said yes. **Chairman Eshoo** asked if all of the witnesses support requiring face to face sales. **All witnesses** said yes. **Chairman Eshoo** asked if sweet flavors have contributed to the rise in vaping use. **Mr. Myers** said yes, they have been the main driver in the rise. **Chairman Eshoo** asked if this committee should consider legislation to restrict the nicotine content in these products. **Dr. Tanski** said that it is a very complicated chemistry question because the voltage in the device can change the delivery of the nicotine, but the FDA should look into it.

**Ranking Member Burgess** asked for clarification on nicotine concentration in these products. **Dr. Siegel** said that the introduction of nicotine salts allows the products to enter the blood stream faster and at a higher rate. Thus contributing to addiction. The UK has a limit on nicotine levels and the United States should look to model that. **Ranking Member Burgess** asked if we should regulate this in a similar way to how we regulate opiate concentration. **Dr. Siegel** said yes.

**Rep. Shimkus** asked if anyone disagrees that there may be people who are looking to switch from menthol cigarettes to menthol vaping products and that this is a good thing. **Mr. Myers** said that this misses the point because the problem is the flavor not the nicotine. **Rep. Shimkus** asked if it is true that nicotine keeps users coming back as opposed to the flavoring. **Dr. Siegel** said yes.

**Rep. Sarbanes** asked for a comparison between the current vaping crisis and the previous rise of tobacco products. **Dr. Myers** said that the increase in e-cigarette use is the largest

rise of any similar product in the last 42 years. We have not seen an epidemic rise as quickly as this has in the last 50 years. **Dr. Tanski** said this is similar because it centers on predatory marketing practices aimed at the country's youth. **Rep. Sarbanes** asked if anyone was aware of school programs aimed at combating the rise in vaping. **Dr. Tanski** said that the FDA has a very strong program in schools as well as the truth initiative. There are efforts but the problem is that the marketing used by these large tobacco companies are much more prevalent.

**Rep. Griffith** asked if anyone supports recreational marijuana being used in the United States. **Mr. Myers** said not to avoid the question, but the United States has a bunch of problems, and some of them we know how to solve. This is one of the instances where we know how to solve this problem. **Rep. Griffith** asked if flavored marijuana products should be regulated in the same way as tobacco products. **Mr. Myers** said that was not his area of expertise.

**Rep. Engel** asked how nicotine impacts adolescent brain development. **Dr. Tanski** said that executive functioning is one of the last areas of the brain to develop. Meanwhile the pleasure center develops quickly. This means that the brain is easily able to reinforce a behavior without having the executive functioning to stop their own behavior. Nicotine can also impair the way people process and organize ideas. **Rep. Engel** asked what marketing tactics e-cigarette companies use to target children. **Ms. Fuhrman** said that flavors are the primary tactic. They also infiltrate social media platforms. The size of the products make them easy to conceal as well.

**Rep. Hudson** asked what the most effective way to curb youth e-cigarette use is. **Dr. Siegel** said that the key is to make these products non addictive. Regulating the nicotine level and nicotine-salt formulations is key. Banning flavors will not stop kids who are already vaping from continuing. In fact, they will just turn to the black market. **Rep. Hudson** asked if the FDA needs additional tools. **Dr. Siegel** said that the FDA needs to set safety standards in the way that other dangerous products are regulated.

**Rep. Matsui** asked how current online age verification software works. **Mr. Myers** said that most age verification software's can be overcome quite easily and need stricter regulation. **Rep. Matsui** asked how kids are finding websites to buy these products on. **Ms. Fuhrman** said that most kids use google. **Rep. Matsui** asked local restrictions on menthol products have taught us. **Dr. Gardiner** said that these restrictions have not lead to increased criminalization of African Americans.

**Rep. Mullin** asked if sales have increased or decreased on the black market for THC products. **Mr. Myers** said that he does not track that. **Rep. Mullin** asked where most of the sales of THC products come from. **Dr. Siegel** said they come from the black market.

**Rep. Castor** asked if the language in the bill is strong enough to curb this epidemic. **Mr. Myers** said it is a very good start. **Ms. Fuhrman** said it is strong and will stop new users but there needs to be more focus on getting current users to quit. **Dr. Tanski** said yes. **Dr.**

**Gardiner** said yes. **Dr. Siegel** said no. There should also be a provision that only allow tobacco and vape shops to dispense these products.

**Rep. Bucshon** asked what treatment options there are for people addicted to nicotine. **Dr. Tanski** said there is not a lot of evidence of what works well in encouraging adolescents to quit nicotine. For now, group counseling and nicotine replacement strategies are the main tactic.

**Rep. Pallone** asked how flavors combined with nicotine may impact the drugs properties. **Dr. Tanski** said that flavors trigger the pleasure system in the brain. Thus combining nicotine with flavoring presents a double whammy. **Rep. Pallone** asked if it is true that young children do not use mint and menthol flavored products. **Ms. Fuhrman** said no that is not true. **Rep. Pallone** asked what is driving the increase in menthol consumption. **Dr. Gardiner** said that predatory pricing and advertising in the black community has increased the consumption of menthol.

**Rep. Guthrie** asked if there are concerns about adolescent brain development associated with vaping THC. **Dr. Siegel** said yes. **Dr. Tanski** said yes but they are separate epidemics.

**Rep. Kennedy** asked what the single most important regulatory protection that should be in place is. **Dr. Siegel** said it is regulating nicotine levels. **Dr. Gardiner** said that it is getting menthol products off the market. **Dr. Tanski** said that there needs to be strict regulations addressing age and flavors. **Ms. Fuhrman** said that all flavors should be banned. **Mr. Myers** said that flavors should be banned.

**Rep. Brooks** asked how kids are getting their products. **Ms. Fuhrman** said they can go online, to corner stores and to gas stations. They also get them from other kids who can purchase them legally. **Rep. Brooks** asked why kids think these products are safe. **Dr. Tanski** said that flavors make them appear safer.

**Rep. Cardenas** asked what tactics are being used today to market in the age of social media. **Dr. Tanski** said companies are beginning to hire social media influencers. **Rep. Cardenas** asked what type of marketing strategies have been noticed by parents. **Ms. Fuhrman** said there is a lot of peer to peer marketing now. Concerts and events also have a lot of advertising. The most troubling tactic is advertising on homework websites.

**Rep. Carter** asked what has led to the rise in vaping THC. **Dr. Siegel** said it was the discovery that THC could be placed into these vaping products. These products can also be concealed very easily. **Rep. Carter** asked if H.R. 2339 would apply to THC products. **Dr. Siegel** said no it would not. **Rep. Carter** asked if there was proper research done before flavored vaping products hit the market. **All witnesses** said no.

**Rep. Ruiz** asked if there is evidence that vaping leads to smoking cessation. **Mr. Myers** said the evidence is weak. **Rep. Ruiz** asked if there was any research showing that vaping

is more effective than the nicotine patch or nicotine gum. **Mr. Myers** said the evidence is mixed and incomplete.

**Rep. Gianforte** asked what evidence there is that heavy metals are present in vaping products. **Dr. Siegel** said right now there is none. **Rep. Gianforte** asked if Vitamin E is present in products purchased in retail stores. **Dr. Siegel** said no, Vitamin E appears to only be in black market products.

**Rep. Kelly** asked if there are health disparities created by the tobacco industry. **Dr. Gardiner** said that the health disparities are prominent. The tobacco epidemic in the African American community has been overwhelming.

**Rep. Bilirakis** asked if this bill could make it harder for adults who use traditional combustible cigarettes to transition off. **Dr. Siegel** said yes, and it may force ex-smokers to go back to cigarettes. **Rep. Bilirakis** asked if this bill address the public health concern of the emerging black market. **Dr. Siegel** said no. It does the opposite.

**Rep. Barragan** asked if it is accurate that flavors are not the problem. **Dr. Siegel** said that flavors are not what is causing the harm but are still a problem. **Rep. Barragan** asked if Dr. Siegel believes that flavors hooks children on the product. **Dr. Siegel** said no, it is the nicotine. **Rep. Barragan** asked if Dr. Siegel believes that flavors attract children to the product. **Dr. Siegel** said yes.

**Rep. Rush** asked what the state of the vaping epidemic is in the African American community. **Dr. Gardiner** said that there are disproportionally high rates of e-cigarette use in the African American community.

**Rep. Schakowsky** asked what Juul should know about the impact they are having on the country. **Ms. Fuhrman** said they should know that it is devastating and tearing families apart. **Rep. Schakowsky** asked how the FTC should go forward in investigating large tobacco companies. **Mr. Myers** said that the FTC should investigate the manner in which these products are being marketed.