

Testimony of Guy Bentley
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Emergency Rule to Prohibit Flavored E-Cigarette Products

Chairman Hall, members of the committee, thank you for allowing me to testify before you today.

My name is Guy Bentley, and I'm the director of consumer freedom at the Reason Foundation, a public policy research and education institute based in Los Angeles.

Like most states, Michigan is trying to strike an appropriate balance between protecting youth from adult nicotine products, while keeping safer options like e-cigarettes available to adult smokers who want to quit.

While addictive, nicotine is not responsible for smoking-related diseases, but the process of burning tobacco and inhaling the resulting smoke is. Legal e-cigarettes containing nicotine are known to be 95% safer than combustible cigarettes and are the most popular tool used by Americans to quit smoking.¹ Research shows that e-cigarettes are almost twice as effective as nicotine replacement therapies (NRT) at helping smokers quit.² Replacement of cigarette use by e-cigarette use over ten years would yield 6.6 million fewer premature deaths with 86.7 million fewer life years lost.³

Unfortunately, the rise in youth vaping threatens the promise of these products to reduce the burden of smoking-related disease, which remains the leading cause of preventable death in the United States. Yesterday, President Trump announced that the Food and Drug Administration intends to clear the market of all non-tobacco e-cigarette flavors in order to stem the rise of teen vaping. We also received the topline figures of new youth vaping and smoking data. While youth vaping rose, it was at a substantially slower rate compared to the previous year. Critically the youth smoking rate fell 28%, the largest year-on-year decrease in history. With eight years worth of data, we see that whether youth vaping is up, down or flat smoking continues to fall. The fear that vaping might be a gateway to smoking has thankfully not been borne out by the evidence in this country or anywhere else.

In 2017, the last year for which we have data, 14.8 percent of Michigan high schoolers said they vaped at least once in the past 30-days. For comparison, almost 24 percent of Michigan teens said they had used marijuana, and 29.6 percent reported using alcohol, with 13 percent reporting binge drinking. Youth vaping is undoubtedly a problem which needs to be addressed, but the emergency rule announced by Gov. Whitmer carries severe risks which could undermine the public health goals she is seeking to promote.

A 2017 study by researchers at the Yale School of Public Health analyzing the potential effects of different tobacco flavor bans concluded: “According to our predictions, a ban on flavored e-cigarettes would drive smokers to combustible cigarettes, which have been found to be the more harmful way of getting nicotine.” An updated version of their analysis published in 2019 found that “banning flavours in e-cigarettes, while allowing menthol in cigarettes would result in the greatest increase in the selection of cigarettes (8.3%), and a decline in the use of e-cigarettes (-11.1%).”⁴

Surveys and academic research consistently show, contrary to popular belief, fruit, sweet, and dessert flavored e-cigarettes are the most popular choices among adult vapers. These flavors are now more often than not the first choice for smokers looking to make the switch to vaping.

As the rule stands, a person who is in possession of four or more flavored nicotine products will be presumed to be possessing these items with the intent to sell. The country’s most popular e-cigarette brand Juul sells its pods in packs of four. Many vapers using refillable e-cigarettes carry several different flavors at any one time for personal use. If left unchanged, the rule could lead to unintended and unnecessary law enforcement penalties on citizens who had no intention of selling flavored nicotine products.

There will, however, undoubtedly be an illicit market for flavored nicotine products. Prohibition, in its economic sense, is simply curtailing supply without curtailing demand. Many consumers will circumvent the ban buying products from out of state. Worse still, bad actors will fill this void supplying illegal and counterfeit e-liquid, the tragic consequences of which have already been seen in the illegal marijuana market in recent weeks. The solution to the problems of the illicit cannabis market is not to exacerbate them with an unlawful nicotine market.

In summary, youth vaping, along with marijuana and alcohol use, needs to be reduced. But an indiscriminate prohibition on the most popular alternative for adults smokers risks driving adult vapers back to cigarettes. There must be an alternative solution to full-scale prohibition, which bears down on youth vaping while ensuring adult smokers have access to the most effective tools to quit cigarettes. Thank you for your time.

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Endnotes

1. Royal College of Physicians. “Nicotine without the smoke: Tobacco harm reduction.” London RCP, 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>
2. Hajek, Peter et al. “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy.” *N Engl J Med.* 2019; 380:629-637 <https://www.nejm.org/doi/full/10.1056/NEJMoa1808779>
3. Levy DT, Borland R, Lindblom EN, et al. “Potential deaths averted in USA by replacing cigarettes with e-cigarettes.” *Tobacco Control.* 2018;27:18-25. <https://tobaccocontrol.bmj.com/content/27/1/18>

4. Buckell J, Marti J, Sindelar JL. "Should flavours be banned in cigarettes and e-cigarettes? Evidence on adult smokers and recent quitters from a discrete choice experiment." *Tobacco Control*. 2019;28:168-175. <https://tobaccocontrol.bmj.com/content/28/2/168.citation-tools>