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6 LEGISLATION TO REVERSE THE YOUTH TOBACCO EPIDEMIC

7 WEDNESDAY, OCTOBER 16, 2019

8 House of Representatives

9 Subcommittee on Health

10 Committee on Energy and Commerce

11 Washington, D.C.

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15 The subcommittee met, pursuant to call, at 10:30 a.m.,

16 in Room 2322 Rayburn House Office Building, Hon. Anna G.

17 Eshoo [chairwoman of the subcommittee] presiding.

18 Members present: Representatives Eshoo, Engel,

19 Butterfield, Matsui, Castor, Sarbanes, Schrader, Kennedy,

20 Cardenas, Welch, Ruiz, Dingell, Kuster, Kelly, Barragan,

21 Blunt Rochester, Rush, Pallone (ex officio), Burgess, Upton,

22 Shimkus, Guthrie, Griffith, Bilirakis, Long, Bucshon, Brooks,

23 Mullin, Hudson, Carter, and Gianforte.

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1           Also present: Representatives Clarke and Schakowsky.

2           Staff present: Joe Banez, Professional Staff Member;

3           Jeff Carroll, Staff Director; Waverly Gordon, Deputy Chief

4           Counsel; Tiffany Guarascio, Deputy Staff Director; Stephen

5           Holland, Health Counsel; Zach Kahan, Outreach and Member

6           Service Coordinator; Josh Krantz, Policy Analyst; Aisling

7           McDonough, Policy Coordinator; Meghan Mullon, Staff

8           Assistant; Alivia Roberts, Press Assistant; Rebecca

9           Tomilchik, Staff Assistant; Kimberlee Trzeciak, Senior Health

10          Policy Advisor; C.J. Young, Press Secretary; Margaret Tucker

11          Fogarty, Minority Legislative Clerk/Press Assistant~~y Staff A~~;

12          Theresa Gambo, Minority Human Resources/Office Administrator;

13          Peter Kielty, Minority General Counsel; Ryan Long, Minority

14          Deputy Staff Director; James Paluskiewicz, Minority Chief

15          Counsel, Health; and Kristin Seum, Minority Health Counsel.

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1           Ms. Eshoo. The Subcommittee on Health will now come to  
2 order.

3           Good morning to all of my colleagues, to the witnesses  
4 that are here today. We are grateful to you for being here  
5 and to everyone else in the audience that has joined us.

6           The chair now recognizes herself for five minutes for an  
7 opening statement.

8           Smoking kills. It is the leading cause of preventable  
9 death in the United States. Cigarette smoking is responsible  
10 for more than 480,000 deaths in the United States each year  
11 and more than 16 million Americans are living with a disease  
12 caused by smoking.

13           These health problems cost our country more than \$300  
14 billion, with a B, a year. But despite knowing the  
15 consequences of smoking for over half a century, we are still  
16 raising children who smoke.

17           In 2018, 4.9 million middle and high school students  
18 were current users of some type of tobacco product or e-  
19 cigarettes. Many of those children will be lifelong smokers.

20           Over 90 percent of adult smokers began smoking before  
21 they turned 21. The tobacco industry knows the best way to  
22 continue their business to aggressively target children with  
23 their addictive products so that they will have guaranteed

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1 customers for decades.

2 That is why 10 years ago, along with both Republican and  
3 Democratic members of this committee, we voted for the Family  
4 Smoking Prevention and Tobacco Control Act of 2009.

5 This law restricted marketing tobacco products to  
6 children and banned most of the flavored cigarettes made to  
7 appeal to children.

8 After that law passed, youth tobacco use declined. But  
9 the rise of e-cigarettes reversed that trend. For the first  
10 time in decades, the CDC reports that youth tobacco use is  
11 significantly rising.

12 Because of e-cigarettes, 1.5 million more youth used a  
13 tobacco product in 2018, compared to the year before, 2017.  
14 High school e-cigarette users are four to seven times more  
15 likely to start smoking traditional cigarettes than their  
16 non-vaping peers.

17 Our work to end tobacco use and nicotine addiction in  
18 the United States is really at risk. We have been caught  
19 flat-footed by the popularity of e-cigarettes among young  
20 people.

21 And now, in the midst of the youth e-cigarette epidemic,  
22 we are seeing an outbreak of a vaping-related illness with  
23 nearly 1,300 cases and 26 deaths.

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1           This illness is affecting children. Thirty-six percent  
2           of the patients are under 20 years old. Just last month, the  
3           FDA acting commissioner told our Oversight Subcommittee that  
4           the FDA, quote, "should have acted sooner," unquote, to rein  
5           in e-cigarettes.

6           Despite the lessons from the Tobacco Control Act of  
7           2009, we haven't extended its bipartisan restrictions to e-  
8           cigarettes.

9           The bill we are considering today, Chairman Pallone and  
10          Representative Shalala, who is here with us this morning  
11          right in the front row, former secretary of HHS, now happily  
12          a member of the House of Representatives, she came very often  
13          to testify before this subcommittee -- her legislation fixes  
14          the problem I just described.

15          The bill extends tobacco marketing, sale, flavor  
16          restrictions, and fees to e-cigarettes, while also making the  
17          landmark change of raising the minimum age to buy tobacco  
18          products to 21 years.

19          This bill will save lives. Raising the tobacco age to  
20          21 will result in a quarter of a million fewer premature  
21          deaths for those born between 2000 and 2019.

22          It is comprehensive legislation that will reverse youth  
23          e-cigarette use and drive down youth tobacco use overall. We

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1 cannot allow young Americans to be ensnared in nicotine  
2 addiction.

3 It is time to do everything we can to end youth tobacco  
4 use. I look forward to working with all of my colleagues on  
5 a bill to do just that.

6 The chair now recognizes Dr. Burgess, the ranking --  
7 distinguished ranking member of the subcommittee, for his  
8 five minutes for an opening statement.

9 Mr. Burgess. And I thank the chair and I want to thank  
10 our witnesses for being with us this morning. I will just  
11 note there have been over a thousand confirmed and probable  
12 cases of lung injury reported to the Centers for Disease  
13 Control, reaching almost every state and U.S. territory.

14 Eighty percent of these cases involve individuals under  
15 the age of 35. Vaping and e-cigarettes acutely affect the  
16 youth population in the United States, which is why there has  
17 been such great national attention by the news media and,  
18 indeed, by the Congress.

19 The CDC continues to work closely with state and local  
20 authorities together and to analyze the information from  
21 across the country.

22 So both the Trump administration and Congress have taken  
23 steps to try to further understand and combat this lung

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1 injury outbreak. Action is needed, but we do need to first  
2 understand the issue at hand to devise the best solution.

3 When it's an issue of public health at stake, it is  
4 critical that Congress work with the agencies including the  
5 Food and Drug Administration and the CDC to gather as much ~~±~~  
6 information as possible and act within appropriate  
7 authorities to protect the public.

8 When this investigation began, the CDC issued a warning  
9 that consumers should avoid using any and all vaping products  
10 including nicotine, THC, and hybrid products.

11 Since the investigation has progressed, the CDC has  
12 perhaps refined their warning a bit to just avoid using these  
13 products, particularly those containing THC.

14 Most affected patients reported a history of using THC-  
15 containing products, confirming the findings that the THC has  
16 played a role in the outbreak.

17 As more information becomes known and understood about  
18 e-cigarettes, we should ensure that our legislative solutions  
19 tackle the true underlying cause of the issue.

20 Throughout this conversation we do have to keep in mind  
21 that the nicotine in e-cigarettes is still highly addictive.  
22 E-cigarettes do provide an alternative to traditional  
23 cigarettes for adult smokers who are trying to quit.

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1           Traditional cigarettes remain the leading cause of  
2           preventable death in the United States, claiming an estimated  
3           480,000 lives or more each year.

4           This is personal for me because both of my parents were  
5           part of that 480,000 statistic a few years ago.

6           According to the CDC, an estimated 34 million adults in  
7           the United States currently smoke cigarettes and more than 16  
8           million Americans live with a smoking-related disease.

9           I am certainly concerned about the effect of e-  
10          cigarettes on youth, but we do need to remember there is a  
11          large adult population with a whole host of health problems  
12          related to tobacco.

13          This legislative hearing today is about Mr. Pallone's  
14          bill, H.R. 2339. The bill includes some policies similar to  
15          President Trump's executive order banning flavored e-  
16          cigarettes and some similarity to Senator McConnell's  
17          Tobacco-Free Youth Act that raises the minimum age for  
18          purchasing tobacco to age 21.

19          While H.R. 2339 overlaps with some good policy coming  
20          from the administration and the Senate, there are provisions  
21          in the bill that are concerning should this become law.

22          There is potential infringement on the First Amendment  
23          by requiring graphic health warnings on cigarette labels and



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1 advertising.

2 There are other ways to educate individuals,  
3 particularly the youth population, of the harmful effects of  
4 smoking and reduce youth smoking rates without being  
5 detrimental to the freedom of speech.

6 For example, Mr. McConnell's Tobacco-Free Youth Act,  
7 which has bipartisan support and in fact was included in a  
8 bipartisan package that passed out of the Health, Education,  
9 Labor, and Pensions Committee over in the Senate, S. 1895,  
10 and that is a bill that directly addresses youth smoking by  
11 raising the age to purchase without problematic and  
12 overreaching provisions.

13 A bill such as 2339 includes some policies that may be  
14 helpful, but there are problematic provisions and lack of  
15 full understanding of the causes of this lung injury  
16 epidemic.

17 Reducing youth tobacco rates is essential to a healthy  
18 America. So I am certainly glad that we are having this  
19 discussion today.

20 Again, thanks to all of our witnesses for being part of  
21 this important conversation this morning and I look forward  
22 to hearing your testimony and the question portion of the  
23 hearing.

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1 I yield back.

2 Ms. Eshoo. The gentleman yields back.

3 The chair now recognizes Mr. Pallone, the chairman of  
4 the full committee, for his five minutes of an opening  
5 statement.

6 The Chairman. Thank you, Chairwoman Eshoo.

7 This committee takes another important step in  
8 protecting our youth from a life of chronic disease,  
9 disability, and death from tobacco products and nicotine.

10 We will consider H.R. 2339, the Reversing the Youth  
11 Tobacco Epidemic Act of 2019, which is a bipartisan bill that  
12 I introduced with Representative Donna Shalala, aimed at  
13 reducing the number of kids using tobacco products in the  
14 United States.

15 And I did want to mention, Congresswoman Shalala, when  
16 you -- Madam Chair, when you said happily, I was thinking  
17 about that because it's true. She's always happy and yet  
18 she's always substantive at the same time.

19 It's a rare combination and it's also rare that somebody  
20 is the secretary of a major agency and comes back to  
21 Congress.

22 But I think it's that -- you know, I was thinking about  
23 what Chairwoman Eshoo said and I think that you are just very

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1 optimistic and you always think that we can do things and  
2 it's a day -- you know, oftentimes she'll come to the floor  
3 and say, I have a new idea, and be all excited about it,  
4 which is such a great thing. So I just wanted to mention  
5 that.

6 Let me say that 55 years ago, the Surgeon General warned  
7 of the dangerous health effects of smoking cigarettes. Yet,  
8 five decades later, smoking remains the leading cause of  
9 preventable death.

10 The use of tobacco and nicotine has evolved since that  
11 first Surgeon General's report. A quick Google search will  
12 lead you to an array of products online, including  
13 cigarettes, cigars, smoking pipes, and the most recent  
14 addition, e-cigarettes, and these e-cigarettes are now  
15 available in many flavors and studies show that flavored  
16 choices like mint, candy, fruit, or chocolate draw the  
17 interests of teens and middle school and high school.

18 Unfortunately, while combustible cigarette use among  
19 teens have declined over the past two decades, there is a  
20 widespread and false perception that e-cigarettes are safe,  
21 and I have to say I have been to some of my middle schools  
22 and that's what I would get until recently from the students,  
23 that, oh, they are safe -- there's not a problem here.

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1           And this false belief threatens the progress we have  
2           made in combating this public health threat. Compounding  
3           this alarming reality is the fact that nearly all tobacco use  
4           begins during youth and young adulthood, which is a crucial  
5           period for the development of the human brain.

6           Recent data shows that over 3.6 million youth used e-  
7           cigarettes in 2018, making this product the most commonly  
8           used tobacco product on the market.

9           Last month, our Oversight and Investigations  
10          Subcommittee held a hearing on the public health threats of  
11          e-cigarettes and I remain deeply concerned about the outbreak  
12          of lung illnesses associated with e-cigarette use and vaping  
13          products.

14          The most recent report from the CDC confirmed 26 deaths  
15          in 21 states, and at our Oversight hearing, CDC stated that  
16          they expect the number of cases to increase by the hundreds.

17          So I firmly believe that the youth vaping epidemic we  
18          face today could have been addressed if the FDA had moved  
19          forward with reviewing all e-cigarettes on the market when  
20          the agency first had the chance two years ago.

21          And while I appreciated the administration's  
22          announcement to ban flavored vaping products, we have yet to  
23          see that promise come to fruition.

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1           Ten years ago, Congress took significant bipartisan  
2           action when we passed the Family Smoking Prevention and  
3           Tobacco Control Act, which gave the FDA regulatory authority  
4           to regulate tobacco products, and that was a strong step.

5           But now, given the shocking increases in the number of  
6           teens and young people using e-cigarettes, our bill takes  
7           this authority a step forward. It extends FDA regulation on  
8           the sale and distribution of tobacco products, including e-  
9           cigarettes.

10          The bill raises the minimum age for purchasing tobacco  
11          to 21 and makes it unlawful for any retailer to sell a  
12          tobacco product to any person younger than 21, and the bill  
13          also prohibits non-face-to-face sales of all tobacco products  
14          and bans all flavors of tobacco products, including mint and  
15          menthol.

16          Now, this bipartisan bill has widespread support from  
17          groups like the African American Tobacco Control Leadership  
18          Council, American Academy of Pediatrics, American Cancer  
19          Society, American College of Cardiology, American Heart  
20          Association, American Lung Association, American Thoracic  
21          Society, Campaign for Tobacco-Free Kids, March of Dimes, and  
22          the National African American Tobacco Prevention Network.

23          These groups say loud and clear we are facing a serious

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1 problem that needs a comprehensive solution, and as the  
2 committee responsible for protecting the nation's public  
3 health, we have to act.

4 It is my intention to advance this legislation this fall  
5 and I hope we can do so with strong bipartisan support  
6 because we simply can't lose another generation to a lifetime  
7 of nicotine addiction.

8 And I want to thank the witnesses for being here today  
9 and look forward to our committee's discussion on this  
10 important bill, Madam Chair.

11 Thank you, and I yield back.

12 Ms. Eshoo. The gentleman yields back.

13 The chair now recognizes Mr. -- is Mr. Walden here?

14 Mr. Burgess. In Mr. Walden's absence, may I ask  
15 unanimous consent that we recognize the gentleman from North  
16 Carolina?

17 Ms. Eshoo. So ordered. The gentleman from North  
18 Carolina is recognized.

19 Mr. Hudson. I thank the chairwoman.

20 I appreciate the opportunity to speak today and I share  
21 the concerns about youth initiating the nicotine products.  
22 But I want to make one thing clear. There is only one youth  
23 epidemic right now and it is in e-cigarettes.

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1           I have serious concerns with the proposed legislation  
2           today and the intended and unintended consequences that could  
3           result from its enactment.

4           My biggest concern is the total flavor ban for all  
5           tobacco products included in this legislation. While we have  
6           seen pronounced increases in youth initiation rates for e-  
7           cigarettes, we have not seen the same increases in  
8           traditional tobacco products such as combustible cigarettes  
9           and smokeless tobacco.

10          In fact, these products have seen declining usage rates  
11          for the past 20 years, according to the National Youth  
12          Tobacco survey and the Monitoring the Future survey.

13          Now, looking at the larger issue of flavors as they  
14          relate to youth initiation, the Monitoring the Future survey  
15          notes that youth are almost four times as likely to use  
16          illegal drugs and alcohol as they are to smoke cigarettes.  
17          The percentage is even lower for menthol cigarettes.

18          Right now, you can buy alcohol in any number of flavors  
19          including whipped cream, peach, mango, black cherry, and so  
20          forth.

21          Alcohol is responsible for 4,300 deaths and 119,000  
22          emergency room visits for people aged 12 to 21.  
23          Additionally, you can purchase marijuana-infused edibles such

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1 as gummy bears in any number of flavors appealing to  
2 children.

3 Marijuana is a federally controlled substance and is  
4 being marketed to children. Yet, we are discussing banning  
5 legal products that have declining usage rates among youth.

6 The Tobacco Control Act specifically provides the  
7 authority for the FDA to adopt additional product standards.  
8 Given the FDA already has the authority to ban menthol and  
9 other flavored products through a law that is now almost 10  
10 years old, we should focus this hearing on the issue at hand  
11 -- youth vaping and how we can control and stem its  
12 occurrence.

13 I agree this youth epidemic requires congressional  
14 attention and I want to make sure our children are not  
15 initiating nicotine products that can lead to lifelong  
16 addictions.

17 But let's make sure the tools already in statute are  
18 being used before we engage in knee-jerk reactions and add  
19 additional layers of statute on top.

20 Thank you, and I will -- if anyone wants me to yield to  
21 them I am willing to do that. If not, Madam Chair, I'll  
22 yield back.

23 Ms. Eshoo. The gentleman yields back.



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1           The chair reminds members that pursuant to committee  
2 rules, all members' written opening statements shall be made  
3 part of the record.

4           I now would like to introduce our witnesses for today's  
5 hearing.

6           First, Mr. Myers is the president of the Campaign for  
7 Tobacco-Free Kids. Thank you for being with us here today.

8           Ms. Dorian Fuhrman -- she is the co-founder of Parents  
9 Against Vaping E-Cigarettes. Thank you for being with us.

10          Dr. Tanski is the member of the American Academy of  
11 Pediatrics. Thank you to you for the testimony that you're  
12 going to provide.

13          We have Dr. Gardiner. He is the senior program officer  
14 of Tobacco-Related Disease Research Program at the University  
15 of California, in my view the greatest public university in  
16 the world. How is that?

17          And last but not least, Dr. Michael Siegel. He's a  
18 professor, Department of Community Health Sciences at the  
19 Boston University School of Public Health. Thank you to you  
20 as well.

21          So at this time, I am going to recognize each witness  
22 for five minutes to provide your opening statement. I think  
23 you know what the -- you need to have your microphones on.

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1       Get close to them because we don't want to miss a word.

2       It'll be green and it'll turn yellow and you know what red  
3       means.

4               So with that, Mr. Myers, you have five minutes for your  
5       opening statement.

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1 STATEMENTS OF MATTHEW L. MYERS, PRESIDENT, CAMPAIGN FOR  
2 TOBACCO-FREE KIDS; DORIAN FUHRMAN, CO-FOUNDER AND PARENT,  
3 PARENTS AGAINST VAPING E-CIGARETTES (PAVE); SUSANNE E.  
4 TANSKI, M.D., M.P.H, MEMBER, AMERICAN ACADEMY OF PEDIATRICS;  
5 PHILLIP GARDINER, DR.P.H., SENIOR PROGRAM OFFICER, TOBACCO  
6 RELATED DISEASE RESEARCH PROGRAM, UNIVERSITY OF CALIFORNIA  
7 OFFICE OF THE PRESIDENT; MICHAEL SIEGEL, M.D., M.P.H.,  
8 PROFESSOR, DEPARTMENT OF COMMUNITY HEALTH SCIENCES BOSTON  
9 UNIVERSITY, SCHOOL OF PUBLIC HEALTH

10  
11 STATEMENT OF MATTHEW MYERS

12 Mr. Myers. Thank you, Chairman Eshoo, and Dr. Burgess  
13 and members of the committee. We very much appreciate the  
14 opportunity to testify on H.R. 2339, the Reversing the Youth  
15 Tobacco Epidemic.

16 My name is Matthew Myers. I am the president of the  
17 Campaign for Tobacco-Free Kids. The campaign strongly  
18 supports this bill because we have a genuine crisis of youth  
19 e-cigarette use that is growing worse by the day and this is  
20 the piece of legislation that addresses all of the leading  
21 drivers of youth tobacco use and tobacco-related health  
22 disparities: the use of sweet flavors, the use of marketing  
23 that appeals to kids, and the easy access to tobacco products

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1       for our nation's children.

2               Make no mistake, we do have a crisis. The use of e-  
3       cigarettes by our youth has skyrocketed. Newly-released data  
4       shows that it has grown even worse over the last year.  
5       Today, roughly, 27.5 percent of our high school -- an  
6       increase of 3 million in just the last two years -- use e-  
7       cigarettes.

8               It's also critical to understand these kids are not just  
9       experimenting. More than a quarter of high school e-  
10      cigarette users are frequent users. That means they are  
11      using them more than 20 days a month -- a clear sign of  
12      addiction.

13              If you want a point of comparison, that is three to five  
14      times the number of e-cigarette users who use them with a  
15      frequency to demonstrate addiction than we see with kids with  
16      cigarettes.

17              For decades we have been concerned about how rapid kids  
18      become addicted to cigarettes. E-cigarettes are an addiction  
19      that is more intense, more rapid, and is affecting more of  
20      our children than we have seen in two decades in the United  
21      States.

22              There is also reason for additional concern. The  
23      evidence shows that kids who use e-cigarettes -- nonsmoking

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1 kids who use e-cigarettes -- are far more likely to go on to  
2 become regular cigarette smokers. One study demonstrates it  
3 increases the risk by three to four times.

4 Put it in context. The kids who are using e-cigarettes  
5 are by and large not kids who are most at risk for cigarette  
6 smoking. So what we are not doing is we are not replacing  
7 kids who might have smoked with e-cigarettes. We are adding  
8 a whole generation of young people.

9 The use of e-cigarettes by our kids has both short- and  
10 long-term health consequences. The use of products that  
11 deliver massive doses of nicotine have a direct effect on the  
12 developing brain.

13 They harm kids' memory loss -- memory -- attention span,  
14 learning. The tales of kids who are dropping out of sports,  
15 who can't pay attention in the class, who are being -- who  
16 are so addicted that they have to go to in-patient therapy  
17 are legion.

18 What we are facing is a true crisis of addiction and we  
19 don't know the long-term health effects of these products.

20 Now, Dr. Burgess, you correctly said -- and we are all  
21 concerned -- about the need to do more to help adults quit.  
22 We are also concerned about not chasing false gods.

23 The reality is that the scientific evidence about e-

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1 cigarette use and cessation is far weaker than it has been  
2 presented in most circumstances.

3 Let me quote the prestigious journal -- medical journal,  
4 The Lancet, just this last week: "Manufacturers of e-  
5 cigarettes and some public health advocates have supported  
6 their use as a smoking cessation tool and a safer alternative  
7 to cigarettes, something we would all support."

8 The Journal goes on to say, "However, the evidence of  
9 both of these claims is weak. The positioning of e-  
10 cigarettes as a viable cessation aid is vastly overstated."

11 Every public health authority in the United States that  
12 has examined the evidence has found that the evidence is too  
13 weak to conclude that these are effective tobacco cessation  
14 tools.

15 Our adult smokers need effective tobacco cessation  
16 tools. They don't need to be misled. And we shouldn't be  
17 surprised. Let me quote a senior executive from JUUL.

18 Quote, "We don't think a lot about addiction here  
19 because we are not trying to design a cessation product at  
20 all," he said, later noting, "Anything about health is not on  
21 our mind."

22 So we need to understand. We need to help adult smokers  
23 quit. We need the FDA to do more to assist and to identify

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1 products that will be effective to doing so. But we are not  
2 helping adults when we allow them to be misled by claims  
3 going on.

4 At the heart of the industry -- at the heart of the  
5 problem is in fact the use of flavors. Nearly 97 percent of  
6 current youth e-cigarette youths have used a flavored e-  
7 cigarette in the past month. Seventy percent say they use  
8 them because of the flavors. The tales are legion.

9 And make no mistake, mint and menthol are flavors that  
10 appeal to kids. We have seen the use of those --

11 Ms. Eshoo. Mr. Myers, your time has expired.

12 Mr. Myers. Sure. Let me just finish this sentence. We  
13 have seen the use of those two flavors go from 41 percent to  
14 53 percent to 64 percent over the last three years. We need  
15 to address that issue.

16 Ms. Eshoo. Thank you. [The prepared statement of Mr.  
17 Myers follows:]

18

19 \*\*\*\*\*INSERT 1\*\*\*\*\*

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1           Ms. Eshoo. Thank you very much.

2           I now would like to recognize Ms. Fuhrman for her five  
3 minutes of testimony. Welcome again.



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1       STATEMENT OF DORIAN FUHRMAN

2

3               Ms. Fuhrman. I am going to use this microphone. Excuse  
4 me.

5               Good morning, and thank you, Chairwoman Eshoo, Ranking  
6 Member Burgess, Chairman Pallone, and members of the  
7 Subcommittee on Health.

8               My name is Dorian Fuhrman and I am one of the co-  
9 founders of Parents Against Vaping E-Cigarettes, a national  
10 grassroots organization founded by three moms in response to  
11 the youth vaping epidemic, the worst adolescent public health  
12 crisis we have seen in decades.

13              We founded PAVe in 2018 and today we have 13 chapters in  
14 10 states. In late 2017, we became aware of a new trend  
15 called JUULing. The real catalyst for us to form PAVe came  
16 in 2018 when JUUL sent a representative into our son's ninth  
17 grade class for an addiction and mental health talk. We  
18 testified about this in July in the congressional Oversight  
19 Subcommittee.

20              After the talk, our boys went to speak with the  
21 presenter. When asked what to do if a friend was addicted to  
22 nicotine, the presenter pulled out his JUUL, showed the boys  
23 how it worked, and called it the iPhone of vapes.

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1           We discovered that these predatory companies targeted  
2           our kids where they live, on social media with slick ads,  
3           influences, and promotions.

4           We were contacted by parents who discovered these  
5           companies advertising on homework websites. Yes, homework  
6           websites.

7           We knew it was important to educate parents about the  
8           dangers of flavored e-cigarette products. We launched our  
9           website that fall and immediately began to get emails from  
10          parents around the country who were struggling with their  
11          kids' severe nicotine addiction.

12          These kids were vaping in record numbers and the  
13          physical and emotional effects of their nicotine addiction  
14          were stunning and it was tearing families apart -- the  
15          extreme explosive anger, the inability to concentrate and  
16          focus in school, the extreme anxiety and mood swings.

17          We learned that nicotine rewires the developing  
18          adolescent brain not only priming it for further addiction  
19          but affecting cognitive development, mood, and impulse  
20          control.

21          We learned that kids' lungs continue to develop until  
22          the age of 25, just like their brains. These unknown  
23          unregulated proprietary flavorings may be safe for

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1 consumption but are not safe to be heated at high  
2 temperatures, combined with other chemicals and particles of  
3 metal, and inhaled deep into healthy developing lungs, and  
4 extremely high levels of a new patented nicotine salt, higher  
5 than any nicotine we have seen before, are absorbed so  
6 efficiently into a teen's blood and brain that the effects  
7 are immediate and the addiction is immediate.

8 Kids report vaping 24/7 and it's easy. Today's vapes  
9 leave no harsh smell and create very little smoke. Kids  
10 sleep with their JUUL under their pillow or tape them to the  
11 night stand so they can vape in the middle of the night and  
12 first thing when they wake up.

13 Now kids have dozens of brands to choose from, each with  
14 their own multitude of proprietary flavors. Kids do not  
15 perceive harm in a product that is flavored like vanilla or  
16 cotton candy.

17 JUUL and other pod-based devices hide in plain sight on  
18 kids' desks. Now new disposable brands like STIG are even  
19 smaller with sweet, often mentholated flavors and can easily  
20 be hidden in a child's small hand.

21 These disposable plastic vapes, a new favorite among  
22 kids, are quickly replacing JUUL. They can cost as little as  
23 \$3 -- \$3 for a sweet vape with more nicotine than a pack of

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1 cigarettes. Kids can then easily dispose of the evidence.

2 The emails from desperate parents and families continue  
3 to move us the most. They are desperately seeking resources,  
4 information, and treatment for their e-cigarette-dependent  
5 nicotine-addicted kids.

6 The truth is that currently there is no FDA-approved  
7 treatment for teen e-cigarette nicotine addiction. For  
8 instance, we got an email from Kelly Kinard of North Carolina  
9 whose son, Luka, experienced seizures and had an addiction so  
10 severe he went to rehab for 39 days.

11 There was a New York mom who wrote us when her 12-year-  
12 old was expelled from school for JUULing. Twelve. There was  
13 Geri Sullivan from Pennsylvania whose only son was  
14 hospitalized for vaping-related illness and now cannot play  
15 football in his senior year of high school.

16 There was the dad whose son is a D-1 baseball player and  
17 the entire team was vaping. Now they use tobacco pouches, a  
18 new -- actually, nicotine pouches, excuse me -- a new  
19 flavored product.

20 Ruby Johnson's daughter, Piper, was hospitalized on her  
21 way to freshman year in college. Piper's out of the hospital  
22 and Ruby has joined PAVe. The mom who read about Ruby and  
23 brought her own daughter to the hospital after recognizing

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1 the symptoms now credits Ruby for saving her daughter's life.

2 The list goes on. We get so many letters and it's hard  
3 to answer them all. And that friend who was addicted to  
4 nicotine? That was my 14-year-old son.

5 I later found out that my son had been handed a mint  
6 JUUL, a teen favorite, at the end of eighth grade by another  
7 eighth grader. It had become the new social norm. Suddenly,  
8 when kids met someone new, the first question was what's your  
9 flavor, not what school do you go to, or what's your favorite  
10 sport.

11 Thankfully, my son was able to stop JUULing with a lot  
12 of support. Every day more scientific evidence emerges that  
13 vaping causes harm to the heart and lungs, the cardiovascular  
14 system, and now, possibly, cancer, and that means we are in a  
15 race against time to protect our kids from becoming not only  
16 an entire generation of nicotine addicts but human guinea  
17 pigs for the vaping experiment overall.

18 I am here today representing PAVe and families around  
19 the country to support the legislation to reverse the youth  
20 tobacco epidemic and a full ban on flavored tobacco, which  
21 has been addicting our kids.

22 The FDA banned flavored cigarettes in 2009 under the  
23 Family Smoking Prevention and Tobacco Act except menthol, and

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1 now we must ban all flavored tobacco products including e-  
2 cigarettes and menthol cigarettes to protect an entire  
3 generation of young Americans.

4 The FDA themselves and the Surgeon General called this a  
5 youth vaping epidemic last year. The numbers are even higher  
6 today. Let's stop these numbers from rising, together.

7 [The prepared statement of Ms. Fuhrman follows:]

8

9 \*\*\*\*\*INSERT 2\*\*\*\*\*

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1           Ms. Eshoo. Thank you very much, Ms. Fuhrman.

2           Could the committee staff get the samples that Ms.  
3           Fuhrman has so that all of the members can hold them in their  
4           hands, view them, and have a sense of what we are -- what we  
5           are talking about here? I think that would be a good idea.

6           There's the young man.

7           Ms. Fuhrman. I did not bring a JUUL because I assumed  
8           everyone knew what a JUUL was. This is -- this might look  
9           like a highlighter. It's a vape I've been holding in my  
10          hand.

11          Ms. Eshoo. Thank you.

12          I now would like to recognize Dr. Tanski and welcome  
13          her. You are recognized for five minutes for your testimony.

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1 STATEMENT OF SUSANNE TANSKI

2

3 Dr. Tanski. Thank you.

4 Good morning, Chairwoman Eshoo, Ranking Member Burgess,

5 Congresswoman Shalala, and members of the subcommittee.

6 It's my pleasure to be here today to address the

7 national youth tobacco epidemic, an urgent matter that

8 requires Congress's prompt action.

9 My name is Dr. Susanne Tanski. I am a practicing

10 pediatrician and tobacco control expert with over 17 years of

11 experience researching tobacco issues and counselling youth,

12 who use a wide range of tobacco products including

13 cigarettes, cigars, and e-cigarettes.

14 I am here today representing the American Academy of

15 Pediatrics, a professional medical organization with over

16 67,000 pediatricians.

17 The AAP strongly supports the Reversing the Youth

18 Tobacco Epidemic Act. Pediatricians are on the front lines

19 of counselling youth and young adults about the harms posed

20 by tobacco products.

21 Unfortunately, we call tobacco use a pediatric disease

22 because virtually everybody started using before the age of

23 18. The latest data, as mentioned, from the National Youth



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1 Tobacco Survey shows that 27.5 percent of our high school  
2 students are current e-cigarette users.

3 This shocking number is a two and a half fold increase  
4 since 2017. As a pediatrician, I see all too often how  
5 nicotine addiction takes hold in my teenage patients who use  
6 e-cigarettes.

7 Biologically, the brain is more susceptible to nicotine  
8 addiction during adolescence and symptoms of dependence begin  
9 within days to weeks of occasional use and well before daily  
10 use.

11 Nicotine dependence impacts reward pathways and areas of  
12 the brain that control executive function, memory, and mood.  
13 At low doses, it acts as a stimulant, leading to a feeling of  
14 pleasure and a reversal of unpleasant withdrawal symptoms  
15 such as irritability and anxiety.

16 With repeated exposure, tolerance develops quickly and  
17 leads to needing more nicotine to even just feel normal.  
18 Importantly, for many young people this is not sporadic use  
19 but it is consistent, frequent, and dependent use.

20 Recently, a colleague asked me if I had heard of teens  
21 getting up in the middle of the night. I said I hadn't.  
22 This is a sign of intense nicotine addiction.

23 But I quickly realized that it's just because I wasn't

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1 asking the right question and repeatedly since then, in  
2 speaking with my patients, they admit they are indeed vaping  
3 throughout the night.

4 This is something I've not seen with adolescent  
5 cigarette users. The teens I see in my practice and in my  
6 community are using a variety of e-cigarette devices but most  
7 often JUUL and the small devices like you see here today --  
8 small and discreet.

9 One JUUL pod contains the nicotine content as an entire  
10 pack of cigarettes. I have adolescents reporting using a pod  
11 or more a day.

12 These pods lack any cues for how much has been used,  
13 meaning adolescents have no idea how much nicotine they're  
14 getting. With high levels of nicotine delivery, our  
15 adolescents simply don't have a chance.

16 What's more, studies to date have shown that previously  
17 never smoking e-cigarette users are three times more likely  
18 to progress to smoking initiation with cigarettes.

19 Beyond nicotine addiction, as mentioned, there are  
20 serious concerns about vaping and lung health. As of last  
21 week, there have been about 1,300 cases of vaping-associated  
22 lung injury with 36 percent of those cases occurring in kids  
23 under the age of 21.

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1           Twenty-six deaths have been reported, with the youngest  
2           being 17 years old. This outbreak has called attention to  
3           the acute dangers of e-cigarette aerosol inhalation.

4           And while some have been quick to explain that this is  
5           only due to vaping THC, which is the psychoactive ingredient  
6           in marijuana, this has not yet been determined and the CDC  
7           reports nicotine use in almost 60 percent of cases and  
8           exclusive nicotine at 13 percent.

9           In light of these health concerns it is critical to  
10          limit the appeal and access of these products to youth. The  
11          Reversing the Youth Tobacco Epidemic Act will institute a  
12          prohibition on all flavored tobacco products including e-  
13          cigarettes, menthol cigarettes, and flavored cigars.

14          This is the single most important policy that Congress  
15          can pass to address the youth tobacco epidemic and a step  
16          that Congress took years ago for other flavored cigarettes.

17          The body of evidence is clear. Flavors in tobacco  
18          products attract young users and hook kids. The flavors help  
19          mask the harsh taste of nicotine, making repeated use more  
20          likely and thereby increasing the likelihood of developing  
21          addiction.

22          It's important to include menthol as this is well known  
23          to promote and sustain tobacco use. People are more addicted

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1 and sicker because of menthol in tobacco.

2 This legislation will also raise the tobacco sales to  
3 age 21, a key policy that successfully reduces teen access to  
4 tobacco products. This works in part by getting tobacco  
5 products out of high schools, cutting off a social pipeline.

6 The bill also, importantly, prohibits tobacco sales  
7 online -- another source of youth access -- and it holds e-  
8 cigarettes to the same marketing restrictions as traditional  
9 cigarettes, preventing the use of tried and true tobacco  
10 company marketing tactics aimed at youth that have been  
11 designed to mislead the public about tobacco.

12 We have made significant progress over the years in  
13 reducing adolescent tobacco use to reduce cigarette smoking.  
14 But that progress has been jeopardized by a tobacco industry  
15 that is constantly innovating in the business of addicting  
16 young people.

17 The Reversing the Youth Tobacco Epidemic Act will help  
18 prevent youth from starting tobacco in the first place and we  
19 urge Congress to quickly advance this very important  
20 legislation.

21 Thank you very much.

22 [The prepared statement of Dr. Tanski follows:]

23

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1

\*\*\*\*\*INSERT 3\*\*\*\*\*

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1           Ms. Eshoo. Thank you, Dr. Tanski.

2           I now would like to recognize Dr. Gardiner for your five  
3 minutes for testimony, and welcome again.

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1 STATEMENT OF PHILLIP GARDINER

2

3 Mr. Gardiner. Thank you, and thank you for having me  
4 here this morning.

5 I am Dr. Phillip Gardiner. I work at the University of  
6 California Office of the President Tobacco-Related Disease  
7 Research Program and have worked there for 23 years.

8 I am also the co-chair of the African American Tobacco  
9 Control Leadership Council from which I am speaking here  
10 today.

11 Let me just read my opening paragraph statement that I  
12 sent to the committee earlier.

13 The African American Tobacco Control Leadership Council  
14 strongly encourages the Subcommittee on Health of the Energy  
15 and Commerce Committee to adopt Representatives Pallone and  
16 Shalala's bill, Reversing the Youth Epidemic Act of 2009,  
17 H.R. 2339.

18 From our reading, this bill is the most comprehensive  
19 tobacco legislation proposed in years, especially because it  
20 would prohibit the manufacture of menthol and all  
21 characterizing flavors in tobacco products, including e-  
22 juices.

23 Support for the bill now is extremely important, given

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1 the vaping lung injury crisis that is sweeping our nation  
2 today. But also, this bill would finally get menthol  
3 flavorings out of cigarettes, little cigars, and all other  
4 tobacco products, something the FDA has failed to do for the  
5 past 10 years.

6 The predatory marketing of these products must be  
7 stopped and we all should recognize this as a social  
8 injustice issue, an issue that disproportionately impacts  
9 poorer communities, marginalized groups, youth, and  
10 communities of color.

11 Be appraised that 85 percent of African-American adults  
12 and 94 percent of black youth who smoke are using menthol  
13 products. These striking statistics come from the predatory  
14 marketing of these products.

15 There are more advertising for menthol cigarettes in the  
16 African-American community, there are more lucrative  
17 promotions for these products, and I guess what pisses me off  
18 the most these products are cheaper. We have national wide  
19 data as it relates to that.

20 So let's just take a look at this for a minute. I would  
21 suggest to you that menthol is the ultimate candy flavor and  
22 helps the poison to go down easier.

23 Menthol masks the harsh taste of smoking. It activates



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1 cold receptors in the lungs and in the branchia, it activates  
2 taste buds, it produces an anaesthetic effect that allows  
3 easier and deeper inhalation.

4 The deeper you inhale, the more toxins and nicotine you  
5 intake. The more nicotine and toxins you intake, the more  
6 addicted you become. The more addicted you become, the  
7 harder it is to quit.

8 It also inhibits -- menthol also inhibits metabolism of  
9 nicotine. It slows it down, essentially, allowing for  
10 nicotine to stay in the body longer.

11 It activates more nicotinic receptors, and not to get  
12 too technical, it produces more dopamine expression in the  
13 body, meaning they are more pleasurable. You like them more.  
14 That's why it's harder to quit.

15 In chewing tobacco, if you have menthol in it, it cross  
16 the gum barrier much more effectively than if it isn't in  
17 there. And last but certainly not least, menthol in  
18 cigarettes increases the ability of smoke to penetrate cell  
19 membranes much more effectively.

20 Some have argued that this is discriminatory since black  
21 people use menthol cigarettes more, and this -- we should  
22 protect their product. However, I would suggest to you it's  
23 just the opposite.

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1           It's the discriminatory practices of the tobacco  
2           industry that led to the disproportionate use of these  
3           products by folks.

4           Look at it this way. In 1952, only 5 percent of blacks  
5           used menthol cigarettes. By 1968, it almost tripled to 14  
6           percent. By 1976, it had tripled again to over 44 percent  
7           and by 2000 we are into the 80 percent with this thing.

8           Other people would also like to suggest to you that if  
9           you were to ban this product this will lead to the  
10          criminalization of young black youth.

11          I've worked on this subject for the last 10 years.  
12          We've gotten bills passed in 26 cities that restrict the sale  
13          of menthol overall. No one's been arrested.

14          This bill is about -- not about possession. It's about  
15          -- in the Pallone bill it's about manufacturing but at the  
16          local level it's been about sale.

17          Let me tell you, we should strike while the iron is hot.  
18          Six states have already outlawed these flavors in some form  
19          or another.

20          I don't want to wait on the FDA to act or wait on the  
21          Trump administration to act. Let's have the Congress act.  
22          Let's have somebody act on this.

23          I would suggest to you that the most fundamental health

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1        thing that could go down -- and my colleagues have all  
2        pointed out it's the number-one killer in the United States -  
3        - let's take some action on it.

4                Let's get flavors out of cigarettes. Let's get flavors  
5        out of the e-juices. Let's protect our youth.

6                Thank you very much.

7                [The prepared statement of Mr. Gardiner follows:]

8

9        \*\*\*\*\*INSERT 4\*\*\*\*\*

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1           Ms. Eshoo. Thank you, Dr. Gardiner, for all the years  
2           that you have given of your life to this subject matter.

3           And the chair would now like to recognize Dr. Siegel.  
4           You have five minutes for your testimony. Thank you, again,  
5           for being here today.

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1 STATEMENT OF MICHAEL SIEGEL

2

3 Dr. Siegel. Thank you, Chairwoman Eshoo, and members of  
4 the subcommittee.

5 My message today is simple. H.R. 2339 has the potential  
6 to help curtail the youth vaping epidemic. But first you  
7 must eliminate one subsection that, if enacted, will have  
8 severe negative public health consequences.

9 Subsection (d) of Section 103, which bans flavored  
10 electronic cigarettes, will result in a public health  
11 disaster.

12 As you know, we are in the midst of an outbreak of  
13 severe acute respiratory disease that has affected more than  
14 1,000 people and has resulted in more than 20 deaths.

15 Can we prevent these tragic deaths by banning the retail  
16 sale of vaping products? The answer is no. In the vast  
17 majority of cases, the victims were not purchasing vaping  
18 products from retail stores.

19 Instead, they were obtaining vape cartridges from the  
20 completely unregulated black market. These products  
21 originate from illegal drug operations that are producing  
22 tens of thousands of contaminated THC, not nicotine vape  
23 cartridges.

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1           So, in a sense, the cause of this outbreak is not the  
2           fact that youth are buying vaping products from stores but  
3           the fact that they are not buying their vaping products from  
4           stores.

5           The lesson that this outbreak should teach us is that  
6           the greatest danger to our youth is not store bought vaping  
7           products but those purchased from friends, on the street, or  
8           over the internet from the black market.

9           A ban on flavored e-cigarettes would create a public  
10          health disaster because it would create a new black market  
11          for flavored e-liquids. It is nearly certain that we would  
12          see more outbreaks similar to what we are experiencing now  
13          with these tainted THC vape cartridges.

14          Banning flavored e-liquids is not going to do anything  
15          to curtail this respiratory disease outbreak. But it may  
16          make the outbreak worse.

17          Why? Because the supply of e-liquids that youth are  
18          vaping is going to transition from one dominated by nicotine  
19          products to one dominated by THC products, exactly the  
20          products that are causing this outbreak.

21          There's a second reason why banning e-liquid flavors  
22          would have devastating health consequences. More than 2  
23          million adult smokers in the U.S. have quit smoking

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1 completely by switching to flavored electronic cigarettes.

2 If these products are banned, many of these ex-smokers  
3 will return to cigarette smoking. Most of those who don't  
4 will turn to a new potentially dangerous black market that  
5 will be created by this legislation.

6 I want to suggest to you today that the way to address  
7 the problem of youth e-cigarette use is not to ban these  
8 products but to strictly regulate them, and second, that we  
9 must focus on the aspect of e-cigarettes that is actually  
10 causing harm to our youth.

11 The real danger of e-cigarette use is not the flavors.  
12 It's not the flavors that are causing the harm. It's the  
13 high levels of nicotine and the special nicotine formulations  
14 being used in some of these products that are resulting in  
15 youth addiction to vaping.

16 For example, prior to the introduction of JUUL, three-  
17 fourths of non-smoking youth vapers reported using e-  
18 cigarettes no more than once a week and only 4 percent used  
19 them every day.

20 But by 2018, 12 percent of non-smoking youth used e-  
21 cigarettes every day, a tripling of the percentage of youth  
22 e-cigarette users who were addicted and less than half of  
23 non-smoking youth vapers use e-cigarettes less than once a

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1 week.

2 This change is what has created a public health crisis.  
3 So what explains this change? What changed is that products  
4 like JUUL, Suorin, SMOK, and Phix entered the market and  
5 quickly became popular among teenagers.

6 All of these brands use a different nicotine formulation  
7 from virtually all other e-cigarettes. They use a nicotine  
8 salt at very high concentrations. The use of nicotine salts  
9 allows nicotine to be absorbed into the bloodstream much more  
10 quickly, simulating the pattern that you get with a real  
11 cigarette.

12 That is why so many youth are now addicted to vaping.  
13 It's not the flavors. It's the nicotine. Regulating the  
14 nicotine formulations and levels allowable in e-liquids is  
15 the single most effective step you can take to help reverse  
16 the youth e-cigarette epidemic.

17 In summary, the broad stroke of prohibition is going to  
18 make this crisis worse, not better. Instead of regulating e-  
19 cigarette flavors, I recommend that you regulate the nicotine  
20 content in e-cigarettes.

21 This will allow you to balance the need to reverse the  
22 epidemic of youth vaping and the need to keep flavored e-  
23 cigarettes available to adults who have quit smoking or are



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1       trying to quit smoking.

2               The art of public health and public policy is being able  
3       to balance competing objectives. I think we can do that in a  
4       way that protects the health of both youth and adults.

5               Thank you.

6               [The prepared statement of Dr. Siegel follows:]

7

8       \*\*\*\*\*INSERT 5\*\*\*\*\*

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1 Ms. Eshoo. Thank you, Dr. Siegel.

2 We've concluded opening statements. We are now going to  
3 move to members' questions. Each member will have five  
4 minutes to ask questions of our witnesses and I will start by  
5 recognizing myself for five minutes.

6 Do each of our witnesses support raising the minimum  
7 tobacco age to 21? Everyone agree?

8 [Chorus of yes.]

9 Ms. Eshoo. Okay. Terrific. Do you support extending  
10 the current restrictions on sales and advertising of  
11 traditional cigarettes to e-cigarettes?

12 [Chorus of yes.]

13 Ms. Eshoo. Everyone? Good.

14 Do you support prohibiting non-face-to-face sales of  
15 tobacco products so that children can't buy tobacco products  
16 online?

17 [Chorus of yes.]

18 Ms. Eshoo. Everyone agrees? Wonderful.

19 All right. So we, obviously, are in agreement about  
20 major portions of the bill we are considering today.

21 Now I want to talk about the provision that bans  
22 flavors. I was going to start with Mr. Myers, but I want to  
23 go to Dr. Siegel.

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1           What kind of candy do you like?

2           Dr. Siegel. Well --

3           Ms. Eshoo. What's your favorite candy?

4           Dr. Siegel. Bubble gum.

5           Ms. Eshoo. Bubble gum. And you like the flavor of  
6 bubble gum, right?

7           Dr. Siegel. I do.

8           Ms. Eshoo. Yes. So I think that if you take the  
9 attraction to the flavor that that's your gum of choice.  
10 You're attracted to it because of the -- of the flavor.

11           Now, that -- I would draw a parallel from that to -- and  
12 I disagree with what you said in your testimony that flavor  
13 doesn't have anything to do with anything.

14           Well, you know, I love Italian food so I go to Italian  
15 restaurants. Flavor is very attractive. It really drives  
16 our eating habits and other habits. So I just want to get  
17 that on the record.

18           Mr. Myers, do you know whether e-cigarettes' sweet  
19 flavors have contributed to youth tobacco use?

20           Mr. Myers. All of the evidence is that they're the  
21 driving force of that and that it has gotten worse over the  
22 last four years.

23           Ms. Eshoo. And do you know whether e-cigarettes' sweet

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1 flavors have contributed to adults quitting tobacco use?

2 Mr. Myers. Well, what's extraordinary, and I have a  
3 chart I would be happy to provide the committee, that over  
4 the last four years we've seen this meteoric rise in youth  
5 use of these sweet flavors.

6 The percentage of adults who have used e-cigarettes  
7 during the time the flavors have been so prominent hasn't  
8 increased at all. It's hovered straight about 3 percent and  
9 not gone up.

10 So what it shows is the introduction of all these  
11 flavors has fuelled a youth epidemic but it had no impact  
12 whatsoever -- indeed, before JUUL was introduced the most  
13 popular e-cigarette flavor was tobacco.

14 So for smokers who want to quit, that was a viable  
15 option until JUUL changed the market.

16 Ms. Eshoo. That's interesting. Thank you.

17 Dr. Tanski, you spoke about the large amount of nicotine  
18 that e-cigarettes deliver and thank you for -- Ms. Fuhrman,  
19 for the samples because I noted on the various packages the  
20 percentage of nicotine that they contain -- a single e-  
21 cigarette pod -- this is really stunning -- can have as much  
22 nicotine as a pack of cigarettes and, as you said, some young  
23 people report smoking more than one pod a day.

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1           Should we consider legislation to restrict the amount of  
2           nicotine in a pod?

3           Dr. Tanski. That's actually a little bit of a  
4           complicated question. As Dr. Siegel was mentioning, the  
5           technology really changed with the addition of nicotine salts  
6           to the industry, and there were differences in PH that were  
7           introduced by that and every pod is also a different size.  
8           So these are -- you have a disposable one here, but there are  
9           some that Dr. Siegel was also mentioning where the pod size  
10          is three milliliters rather than just .7 or 1 milliliter. So  
11          there's a lot more quantity that can go in there.

12          So this is a fairly complicated chemistry equation as  
13          well because depending on the voltage of the device it also  
14          changes delivery.

15          So someone who's using one of those big mod devices they  
16          can use a very low nicotine --

17          Ms. Eshoo. I understand the complication.

18          Dr. Tanski. Yes.

19          Ms. Eshoo. But we deal with complex things here.

20          Dr. Tanski. But so let me finish my thought.

21          Ms. Eshoo. Yes.

22          Dr. Tanski. It will show why a number of --

23          Ms. Eshoo. I only have 56 seconds left. So --

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1           Dr. Tanski. Okay. Sorry. So the amount of nicotine in  
2           it is insufficient because the voltage can change delivery so  
3           you have a 1 percent nicotine solution in a high-voltage  
4           device that will --

5           Ms. Eshoo. Do you think we should look for a way to  
6           restrict the amount of nicotine in a pod? Yes or no.

7           Dr. Tanski. Yes. FDA needs to look at the science,  
8           though --

9           Ms. Eshoo. Okay. Thank you.

10          Dr. Tanski. -- because we can't just say a number  
11          because of a knee-jerk reaction.

12          Ms. Eshoo. I understand. I understand.

13          How can we require e-cigarettes to better warn people  
14          about the amount of nicotine they're ingesting?

15          Dr. Tanski. A warning label will go a long way and  
16          making it very clear what the numbers mean. The numbers are  
17          very confusing on the packaging. Some people don't know what  
18          the numbers mean --

19          Ms. Eshoo. I think it should state it's equal to one  
20          pack of cigarettes, equal to two packs of cigarettes. That's  
21          pretty clear.

22          Dr. Tanski. Exactly. I think the other piece it has to  
23          be as delivered as opposed to what's the content because

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1       there's a difference between what's delivered and the content  
2       that's in the device.

3               And, again, that's complicated nuance. But it really is  
4       critically important because, again, our young people have no  
5       idea how much nicotine they're getting when they use these  
6       devices.

7               Ms. Eshoo. Thank you. My time has expired.

8               Dr. Tanski. Sorry.

9               Ms. Eshoo. Thank you to each one of you.

10              The chair now recognizes Dr. Burgess, the ranking member  
11       of our subcommittee, for his five-minutes of questions.

12              Mr. Burgess. Thank you, and this is -- this is  
13       fascinating about regulating the amount of nicotine in these  
14       devices.

15              I actually remember in 2008 or 2009 when we did the  
16       Tobacco Control Act and for reasons I did not understand  
17       written into statute was a prohibition that the FDA could not  
18       require a zero milligram cigarette to be produced.

19              I thought that was odd and I thought that was wrong. So  
20       I had an amendment that the FDA could require a zero  
21       milligram cigarette to be produced.

22              I actually lost that battle. That language, I think,  
23       endures to this day. But to Dr. Siegel's point, the nicotine

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1 is the culprit here.

2 People may like the flavor of bubble gum or dark  
3 chocolate, but it is the nicotine that keeps you coming back  
4 and it is the nicotine that you cannot live without. If  
5 someone said, well, you can't have your bubble gum today the  
6 world would not come to an end.

7 But if someone says -- someone who is heavily nicotine  
8 addicted, deprivation of nicotine actually incites a fairly  
9 significant physiological and psychological response and it  
10 is unpleasant enough that people will do, just like with  
11 other addicting substances, people will do whatever is  
12 required to the exclusion of everything else to fulfil that  
13 need.

14 I am not a psychologist but I think that's kind of the  
15 definition of addiction. I don't like to use that because  
16 people then apply it to coffee, which I don't think we should  
17 outlaw.

18 But this is -- this is an area where -- and Dr.  
19 Gardiner, I appreciate your call to action and your  
20 enthusiasm with that call to action. But the way our system  
21 is set up, we can legislate, and we do legislate all the  
22 time.

23 But we do require the administration -- we do require



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1 the federal agencies for the implementation of that and,  
2 indeed, one of the, perhaps, the failings of the Tobacco  
3 Control Act was the fact that this committee has not had many  
4 oversight or implementation hearings on that activity and I  
5 think we heard the acting FDA director kind of admit that  
6 they've fallen behind the curve and maybe had Congress  
7 exercised its oversight authority in that regard, a little  
8 more stringently, perhaps we wouldn't be at this place.

9 But, Dr. Siegel, we saw the devices that Ms. Fuhrman  
10 supplied to us. But your contention is, or Dr. Tanski, I  
11 guess your contention is that it wouldn't matter -- the 6  
12 percent, 5 percent, 2 percent devices mandating that level  
13 because of the differences in bioavailability of different  
14 nicotine salts and delivery devices alters what a person  
15 actually absorbs?

16 Dr. Siegel. So the nicotine salt formulation that JUUL  
17 introduced and which has now been copied by several  
18 companies, essentially the nicotine is absorbed much more  
19 rapidly into the body and that's what creates the addiction.

20 That is why kids are addicted to JUUL. It's not just  
21 the amount. It's the formulation, and the cigarette  
22 companies have perfected this method of getting nicotine into  
23 the blood.

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1           So I think that -- what I think needs to be done is to  
2           have a certain nicotine level that's allowable for all e-  
3           cigarettes and then a lower nicotine level that would be the  
4           maximum for nicotine salt formulations.

5           I think a 20 milligram per milliliter limit for  
6           electronic cigarettes would be very reasonable and I would  
7           make it half of that for nicotine salt formulations.

8           It's important to recognize that in the U.K. they do  
9           have a level. They have a 20 milligram per milliliter level  
10          and that's the maximum. They have JUUL there but JUUL comes  
11          in at 17 milligrams per milliliter in the U.K., not 50 like  
12          they do in the U.S.

13          So I think regulating that at a level of 20 would help  
14          to solve this problem with youth addiction.

15          Mr. Burgess. And what about, as Dr. Tanski pointed out,  
16          creating some -- like with opiates we have milligrams of  
17          morphine equivalence -- the MME that has become so famous.

18          Is there any way to apply that to the nicotine delivery  
19          devices?

20          Dr. Siegel. Yes, absolutely. I think, as Dr. Tanski  
21          mentioned, if we require companies to reveal the nicotine  
22          delivery of the product, that that will inform the user of  
23          exactly what they're getting and I think it's easily possible

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1 to do that.

2 Mr. Burgess. Well, again, fascinating topic and you  
3 have given us a lot of additional information. You know, we  
4 do have to get this right and over and above everything.

5 So I thank you for your testimony and I will yield back.

6 Ms. Eshoo. The gentleman yields back.

7 The chair now recognizes Mr. Pallone here.

8 Mr. Butterfield, the gentleman from North Carolina, for  
9 his five minutes of questioning.

10 Mr. Butterfield. Thank you very much, Madam Chair, and  
11 thank you to the five witnesses for your testimony. I have  
12 stayed throughout the hearing because I wanted to hear from  
13 each one of you because this issue is very important to me.

14 As many of my colleagues know, I represent a tobacco  
15 district. At one time, it was the largest tobacco district  
16 in the United States of America.

17 I think it may have slipped to number two or three now,  
18 but we are a tobacco-producing district and so whenever I  
19 hear the word tobacco, my ears perk up just as those from New  
20 York, you know, when you hear financial your ears may perk  
21 up. When you hear sugar, then you pay extra attention if  
22 you're from a sugar district. And so that's where I am  
23 coming from today.

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1           My phone has been ringing for the last few days. Some  
2           have even asked me, does Congress have a legitimate interest  
3           in regulating these products, and my position is and I've  
4           said it to anyone who's willing to listen we do have a  
5           legitimate interest as Congress in addressing public health  
6           concerns and the recent spike in the use of electronic  
7           cigarettes.

8           No one in this room, I would hope, disagrees that a  
9           youth vaping epidemic is underway. We need to address it.  
10          And so I thank the chairman for meeting this epidemic head on  
11          and wholeheartedly support his efforts to stem youth vaping.

12          However, I have very real concerns with the unintended  
13          consequences that could result if this bill were to become  
14          law. We all know that nicotine is harmful.

15          We have heard that throughout the hearing. It's harmful  
16          to young people and can have a lasting impact on their  
17          developing brains.

18          The CDC reports that there is evidence to indicate that  
19          flavorings such as fruit and candy in e-cigarette products  
20          can make them more appealing to youth and, in fact, they are  
21          the primary reason that youth report using e-cigarettes.

22          Flavors such as these are already banned in cigarettes.  
23          I was on this committee when we enabled and authorized that.

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1 They are already banned, but these types of flavors are not  
2 currently prohibited in e-cigarettes.

3 The bill before us seeks to address the disturbing youth  
4 vaping trend in two ways. First, the bill raises the age to  
5 21, and we all agree with that. I am 100 percent supportive  
6 of raising the age.

7 The second shift in -- monumental shift in the bill is a  
8 ban on characterizing flavors including menthol for all  
9 tobacco products.

10 While a ban on flavors in e-cigarettes that appeal to  
11 youth may be an appropriate public policy response to vaping,  
12 I am concerned that extending that ban to existing tobacco  
13 products on the market such as menthol and flavored smokeless  
14 tobacco and cigars could have unintended consequences.

15 Menthol cigarettes are one-third of the U.S. market. In  
16 the African American community the preferred cigarette is  
17 menthol. Eighty percent of African Americans who smoke  
18 prefer to use menthol cigarettes. In other communities, the  
19 preferred cigarette is nonmenthol.

20 So I want us to think about that, my colleagues. Think  
21 about that. This bill does not address tobacco use in two-  
22 thirds of the U.S. market. Instead, it targets one-third of  
23 the market that just happens to be African American.

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1           The fact is that banning menthol cigarettes will lead to  
2           users migrating to nonmenthol cigarettes. It will not lead  
3           to cessation of using tobacco products.

4           So a flavor ban on existing tobacco products does not  
5           solve the problem that we all agree needs to be addressed.  
6           Instead, this bill makes the manufacturer of menthol tobacco  
7           products illegal, retains legal status for nonmenthol.

8           My fear, shared by the National Organization of Black  
9           Law Enforcement Executives and Law Enforcement Action  
10          Partnership is that such a ban will inevitably lead to the  
11          creation of a black market for mentholated products.

12          According to these groups, there is already an illicit  
13          market for cigarettes and a ban on menthol could encourage  
14          more criminal activity as groups look to bring in mentholated  
15          cigarettes from outside of the country or make them on their  
16          own.

17          In conclusion, if we really -- my colleagues, if we  
18          really want to address tobacco cessation, someone just put a  
19          bill on the table that will ban the manufacture, sale, and  
20          use of tobacco, period.

21          If you want to stop the use of tobacco, let's present a  
22          bill that will prohibit the manufacture and use of tobacco.  
23          It is naive to think that a prohibition of flavors for

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1 existing tobacco products like menthol will not have  
2 unintended consequences.

3 I urge my colleagues to think about these things and to  
4 realize that you are targeting a specific community at the  
5 exclusion of another community.

6 Thank you. I yield back.

7 Ms. Eshoo. The gentleman yields back.

8 It's a pleasure to recognize the gentleman from  
9 Illinois, Mr. Shimkus, for his five minutes of questions.

10 Mr. Shimkus. Okay. Thank you, Madam Chairman, and you  
11 took me by surprise. I thought Mr. Upton was going to be  
12 before me. But let me -- let me just go to a couple  
13 questions.

14 And we've had these debates before but not in this venue  
15 of the e-cigarette. So this is, I think for those of us who  
16 have been able to stay -- we've got two hearings going on at  
17 the same time -- the interesting one down below on the first  
18 floor is the Telecommunications and whatever the other  
19 committee is and it's unimportant because I am not on it.  
20 But --

21 Ms. Eshoo. Technology.

22 Mr. Shimkus. Technology -- whatever it is.

23 Ms. Eshoo. It's not whatever. It's --

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1           Mr. Shimkus. Whatever, and you're wasting my time,  
2           Madam Chairman. So but the other -- but the point is is that  
3           what we are trying to address in the e-commerce world is do  
4           the providers and the stewards of that information -- do they  
5           have some legal authority to police that.

6           And it's interesting, in one of the court cases two  
7           people were brought to court. The one that tried to police  
8           lost the case. The one that allowed free information did not  
9           lose the case.

10          So this kind of goes to Dr. Siegel, and some of the  
11          comments made on black market issues, that we have to really  
12          be concerned about and also regulation.

13          Let me -- the deaths that we have seen are -- I've been  
14          told and what I've read is that they are black market pods  
15          that had THC and oils like Vitamin E, and I think most  
16          people, even though I am not -- Dr. Bucshon is cardiothoracic  
17          surgeon -- I hope I am here to listen to his questions if he  
18          gets a chance to do that.

19          I mean, you can't put oil on your lungs. That's --  
20          because if you just know anything about lungs and how they  
21          operate you just can't coat them with oil because that's why  
22          people end up dying.

23          Dr. Siegel, Congressman Butterfield raised this issue,



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1 and we were here for this last debate on menthol, and Dr.  
2 Gardiner -- it's kind of interesting because your testimony  
3 identifies we are targeting the African community by allowing  
4 this.

5 But my colleague would say we are targeting the  
6 community by if we attack menthol aspect. So there is this -  
7 - this is the same debate we had here.

8 Is it tar that creates the build-up of tar in lungs that  
9 creates either lung disease in a regular smoker and cancer?  
10 Can anyone answer that question?

11 I think the -- anyone? I think the answer is yes, the  
12 build-up of tar -- we used to hear tar in nicotine, right?  
13 So an e-cigarette takes away the tar out of this equation and  
14 I would propose that as we move forward we look at FDA's  
15 involvement and proper regulation of what is a healthy  
16 application of this because I do think there's a credible  
17 argument about those who are in minority communities who are  
18 smoking menthol cigarettes who now are trying to move to e-  
19 cigarettes to decrease their risk of cancer, right.

20 If it's readily regulated in ways delivered that -- that  
21 should not be discounted. Does anyone disagree with that?

22 Go ahead. Yes, sir.

23 Mr. Myers. Just a couple facts I think are really

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1 important to understand here. First of all, delivering of  
2 nicotine, particularly to adolescent brain, is itself  
3 harmful. So --

4 Mr. Shimkus. Oh, yes. I know. But we've talked about,  
5 first of all, aids. I am not -- I am not talking about just  
6 doing the aids. I am talking about the issue of cigarettes  
7 and e-cigarettes and cancer and tar.

8 Mr. Myers. So a couple other things are important. We  
9 don't know the long-term health effects of e-cigarettes  
10 because they haven't been studied and they haven't been  
11 regulated.

12 Mr. Shimkus. And that's why we have the Food and Drug  
13 Administration that properly vets the science and makes  
14 regulations on the safety and efficacy of products.

15 Mr. Myers. But it's also a reason we should be  
16 concerned about the youth epidemic and what we have seen is  
17 that while the nicotine keeps them coming back, it's the  
18 flavors that get them in the first place.

19 Mr. Shimkus. But if you regulate the nicotine at a  
20 level -- and I understand the chairman's point about flavors  
21 are important.

22 But, Dr. Siegel, your point was it's the nicotine and  
23 the addiction that keeps them coming back, not the flavor.

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1 Is that correct?

2 Dr. Siegel. Exactly. Exactly.

3 Mr. Myers. But in the interim what we have is we have a  
4 million and a half new kids each year --

5 Mr. Shimkus. So we should regulate the -- I think the  
6 answer is the FDA if we want to help people save themselves  
7 from cancer, transition, and deal with the pods.

8 Thank you, Madam Chairman. I yield back.

9 Ms. Eshoo. The gentleman yields back.

10 I am pleased to recognize the gentleman from Maryland,  
11 Mr. Sarbanes, for his five minutes of questions.

12 Mr. Sarbanes. Thank you, Madam Chair. Thanks to the  
13 panel. I am proud to be a co-sponsor of the bill that we are  
14 talking about today.

15 I am mostly just terribly confused by this conversation  
16 because I remember this gigantic tobacco settlement that we  
17 had a few years ago and I remember aspects of it being how to  
18 limit marketing to young people in all different kinds of  
19 ways.

20 And it just seems like the industry has found this  
21 gigantic loophole for going back and creating that whole  
22 public health crisis all over again.

23 And I am interesting in hearing again some of these

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1 statistics because I think I am understanding that the pace  
2 at which young people -- middle school age, high school age,  
3 maybe younger, if you want to describe that -- the pace at  
4 which they are -- the uptake of the e-cigarettes may be like  
5 nothing we've ever seen when you look at the period of time  
6 and the numbers that we are talking about.

7 And if that is what begins the addiction to nicotine  
8 that then leads to use of the product over time, then we are  
9 kind of right back where we were 15 years ago on this.

10 It's staring us in the face. It's bearing down on us.  
11 So could you describe the statistics that way in terms of  
12 whoever is in the best position to do it and maybe compare it  
13 historically to other periods when there was a significant  
14 acceleration in use among youth of tobacco products and  
15 comment on how it's new and different and scary.

16 Mr. Myers. Let me defer to Dr. Tanski. But the  
17 increase in e-cigarette use between 2017 and 2018 is the  
18 single largest increase in use of any substance that has been  
19 studied in the last 43 years.

20 So when you say that it's unprecedented, it is genuinely  
21 unprecedented and what's more frightening is that between  
22 2018 and 2019 the absolute numbers of new kids using these  
23 products grew by the exact same number.

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1           We haven't seen an epidemic come on us this quickly,  
2           this intensely at any point in the last 50 years.

3           Let me refer to Dr. Tanski.

4           Dr. Tanski. Yes, I completely agree. This is -- this  
5           is, indeed, unprecedented. In 2017, it was 11.7 percent of  
6           our high school kids were using e-cigarettes in the last  
7           month and now it's 27.5 percent and that's just exponential.

8           And if you look back and you look at kind of the rates  
9           of cigarettes rising year over years, cigarettes never did  
10          this this quickly. So this really is uncharted territory.

11          And to you point about marketing, you're right.  
12          Marketing really influences kids and there is implicit  
13          marketing and explicit marketing, and sometimes they -- what  
14          the packaging says or what the ad says the kids read it in a  
15          very different way.

16          And there's topics of freedom and there's this image of  
17          healthiness and kids respond to that, and we know that  
18          marketing works and that's why marketing was restricted so  
19          profoundly with all the previous acts that we've had around  
20          other tobacco products.

21          Mr. Sarbanes. Could you speak to whether there's any  
22          effective counter marketing or I would call it education  
23          going on in schools that is equipping young people to resist

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1       this temptation?

2               What are some programs you have seen or education  
3       efforts that you consider to be particularly effective, even  
4       if right now they're not really competing that well with  
5       what's coming from the other direction?

6               Dr. Tanski. That's a great question. The FDA actually  
7       has a very strong program that is in the schools. They  
8       actually have posters in the bathrooms that say "People  
9       actually use the bathroom here, too," trying to counteract  
10      the idea that now the rest rooms in some of the high schools  
11      and middle schools are used for -- that's where people go to  
12      vape.

13              So they're really trying to get in where the kids are  
14      and directly counter market, if you will. The Truth  
15      Initiative also has some excellent counter marketing where  
16      they're really trying to work with the kids.

17              They've done testing on the messages to make sure that  
18      they're actually being received the right way. So we are  
19      trying. But the issue is that the overwhelming pressure that  
20      kids are getting from either marketing that is explicitly  
21      from these industries or that social marketing and social  
22      media related it's very difficult to break through that.

23              Mr. Sarbanes. Thank you.

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1 Dr. Tanski. Thank you.

2 Ms. Eshoo. The gentleman yields back.

3 I now would like to recognize the gentleman from  
4 Virginia, Mr. Griffith, for his five minutes of questions.

5 Mr. Griffith. Thank you all very much for being here  
6 today.

7 The e-cigarette problem is a significant problem that we  
8 have to deal with and, you know, it always amazes me how  
9 people can do things that ought to just -- your instincts  
10 ought to tell you there's something wrong with them.

11 I know the history books when I was growing up had lots  
12 to be desired but one of the stories that they told in our  
13 Virginia history books was that the first person or one of  
14 the first people who was smoking a cigar on the streets of  
15 London somebody ran into the store, grabbed the bucket that  
16 was there for fire, and put it in their face because,  
17 clearly, there was smoke coming out of them, they were on  
18 fire, and that couldn't be healthy.

19 I don't know why we don't realize that. So I recognize  
20 that. And my wife is a juvenile judge and she is constantly  
21 talking about all the problems they're having in the schools  
22 because they are so small, Ms. Fuhrman.

23 The devices are so small the kids can take them to

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1 school. It's not like a cigarette where you immediately  
2 smell the smoke and you can see, you know, generally where  
3 it's coming from or if there's people in the bathroom.

4 No, it leaves no tell-tale sign and then can actually do  
5 it in the classroom while the teacher is trying to teach, and  
6 so it is a significant problem and we need to do something.

7 The question is, is this the bill. Now, I don't have a  
8 problem with raising the age to 21. But then we get into  
9 these other issues.

10 And to me -- and I am not trying to chastise you all --  
11 I think the American public have to suddenly realize we have  
12 some kind of split personality thing going on because, you  
13 know, as my colleague said in his opening statement from  
14 North Carolina, you can get gummy bears with marijuana in  
15 them. You can get brownies with marijuana.

16 A staffer brought me cannabis-infused honey sticks, and  
17 it says anyone from small children with severe seizures to  
18 old men with Alzheimer's disease can benefit from taking  
19 marijuana or CBD supplements.

20 And we do have a physical store in the U.S. but if you  
21 want us to ship to you we are happy to do so.

22 Now, my problem is I've always been for medicinal use of  
23 marijuana since the '90s. I think that makes sense. I don't



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1 know why we haven't been studying it more.

2 But, Mr. Myers, you said in relationship to e-cigarettes  
3 we don't know what the long-term effects are.

4 But the American public is demanding that we make  
5 recreational marijuana legal. It's been illegal for decades,  
6 and while I support medicinal marijuana I've never been  
7 convinced on recreational and part of it is exactly what you  
8 said. I don't know what the long-term effects are on the  
9 public.

10 So I am going to ask you all, not because I am trying to  
11 make any huge point other than we have to sort this out as a  
12 society. Laws don't solve all the problems.

13 But do any of you all support recreational use of  
14 marijuana being legalized in the United States.

15 Mr. Myers.

16 Mr. Myers. Let me not avoid your question but say we  
17 have a lot of problems in this country.

18 There's some we do know how to solve and this is one we  
19 can solve so that there are clear pathways to deal with the  
20 increased use of nicotine by kids.

21 Mr. Griffith. And I don't disagree there are things we  
22 can do. I don't disagree with that. But I am trying to find  
23 out --

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1           Mr. Myers. And we shouldn't --

2           Mr. Griffith. -- and I don't think you all -- I was  
3           expecting a quick answer on this -- I don't think you all  
4           have that split personality that the public has.

5           I think because of the long-term risks that are unknown  
6           and because particularly on smoking anything, whether it's  
7           tobacco or marijuana, it's got to be harmful, particularly on  
8           those young brains.

9           And when you're talking about eliminating flavored  
10          cigarettes then should we not be looking at eliminating in  
11          those states that say it's legal, notwithstanding the fact  
12          it's still illegal federally, brownies and honey sticks?

13          What say you, Mr. Myers?

14          Mr. Myers. There is a broader question, but our issue  
15          focuses on there's something we could do about this issue now  
16          and there's a solution to it.

17          Mr. Griffith. My problem is I see them as being similar  
18          issues and I am with you on one. But if you're for smoking  
19          recreational marijuana I am not sure I am with you until we  
20          know the results.

21          Ms. Fuhrman, what say you?

22          Ms. Fuhrman. Well, I would say that eating a brownie  
23          and vaping a strawberry THC pod are very different. So yes,

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1 I do not -- I do not believe in legalizing recreational  
2 marijuana, especially when it's in a vape which, obviously,  
3 attracts kids and the flavors -- a lot of these THC vapes are  
4 also flavored.

5 Mr. Griffith. I understand that. Yes, ma'am.  
6 Absolutely.

7 Dr. Tanski.

8 Dr. Tanski. Smoking anything is likely to shorten your  
9 life, period.

10 Mr. Griffith. Yes, ma'am. Burning material in your  
11 lungs is not a good thing, in my opinion.

12 Dr. Gardiner.

13 Mr. Gardiner. Let me -- let me suggest to you that you  
14 can -- in California marijuana has been legalized -- I am  
15 sorry -- marijuana has been legalized in California.

16 I think what would be great at the national level is the  
17 decriminalization of it such that you aren't going around  
18 arresting people for this.

19 Smoking anything is bad for you. There's a period after  
20 that. How you -- how you legalize it -- it didn't have to  
21 get legalized where you have billboards all over California  
22 like you have. It could have been legalized another way. I  
23 would suggest at the federal level that there's a way to do

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1 both things. Legalize it, decriminalize it, not promote it.

2 I need to say this. We had a conference four years ago  
3 on the -- at UCSF -- University of California San Francisco -  
4 - on the legalization of this.

5 We came out with two conclusions. One conclusion is  
6 that it should be decriminalized. The second conclusion is  
7 it should be denormalized.

8 Mr. Griffith. I know I am out of time, Madam Chairman.

9 Dr. Siegel, answer quickly.

10 Dr. Siegel. Sure. I think you're making a great point.  
11 I think that flavored alcoholic beverages are causing major  
12 havoc among youth. We know that it's a gateway to liquor  
13 use. It's causing tens of thousands of deaths.

14 We know that flavored THC products are causing this  
15 outbreak. But nobody has called for a ban on flavored  
16 alcoholic beverages. Nobody has called for cracking down on  
17 flavored THC.

18 Mr. Griffith. And my time is up so I am going to have  
19 to yield back.

20 Thank you, Madam Chair.

21 Ms. Eshoo. The gentleman yields back.

22 It's a pleasure to recognize the gentleman from New  
23 York, Mr. Engel, for his five minutes of questioning.

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1           Mr. Engel. Thank you, Madam Chair.

2           In my home state of New York there's been 160 percent  
3           increase in the number of teens using e-cigarettes between  
4           2014 and 2018.

5           Many of these children use e-cigarettes in schools and  
6           I've even heard from schools in my district that they are  
7           installing vape detectors in the bathrooms to catch students  
8           vaping.

9           Teachers, principals, and school administrators have  
10          been thrust to the forefront of this epidemic but schools,  
11          unfortunately, are not equipped to handle these types of  
12          public health cases.

13          To that end, I've introduced the bipartisan bicameral  
14          Smoke-Free Schools Act, which would ban vaping in schools and  
15          child care facilities. Schools should be places that promote  
16          healthy childhood development. But tobacco use jeopardizes  
17          their health.

18          Dr. Tanski, I want to ask you, could you please describe  
19          how tobacco use hinders a child's brain development and how  
20          it can impact a child's ability to succeed in the classroom?

21          Dr. Tanski. Thank you for the question.

22          So as I mentioned in my testimony, we know that the  
23          adolescent brain is really quite uniquely susceptible to

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1 nicotine addiction and if you think very simplistically  
2 things kind of develop from the back to the front and one of  
3 the final things that develops is our executive function and  
4 our ability to put brakes on our own behavior.

5 The pleasure center lights up first. So we know what  
6 feels good and so that's why the adolescent brain is more  
7 likely to be addicted. We know it feels good. They try it.  
8 It feels good and they don't have the brakes to stop their  
9 own behavior.

10 So addiction is very prevalent in adolescence and in  
11 younger people, and we know that it impacts on their  
12 executive function. We know that nicotine can impair the way  
13 people kind of process and prioritize things.

14 So, indeed, it can make a big difference on school  
15 success. So someone who is struggling with either nicotine  
16 addiction or withdrawal, so if someone is withdrawing from  
17 nicotine during the classroom because they don't -- they  
18 can't vape in the school or because they don't have a vape or  
19 they put good restrictions on, they're distracted.

20 They're irritable. They're anxious. They don't feel  
21 good, and so that also is going to impair their ability to be  
22 successful in a classroom.

23 Mr. Engel. Thank you very much.

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1           The science is settled and nicotine certainly has short-  
2           term and long-term health consequences for children and it's  
3           my understanding that many e-cigarettes on the market today  
4           are much more efficient delivering nicotine than traditional  
5           cigarettes, delivering nicotine at substantially higher  
6           levels and making these e-cigarettes potentially addictive.

7           In some cases, JUUL pods deliver around 200 puffs, which  
8           provides the same amount of nicotine as a pack of 20  
9           cigarettes.

10          And what's more concerning is that research has shown  
11          that many young JUUL users are unaware that these e-  
12          cigarettes contain nicotine.

13          JUUL threatens the tremendous progress we've made in  
14          reducing teen smoking rates to what was an all-time low of 10  
15          percent.

16          Mr. Myers, let me ask you, what enables the JUUL devices  
17          to deliver higher levels of nicotine than cigarettes?

18          Mr. Myers. I think this is an issue on which we all  
19          agree. JUUL developed the science of using benzoic acid to  
20          turn nicotine into nicotine salts that delivers nicotine more  
21          efficiently, more rapidly, and allows smokers and young  
22          people to inhale more intensely because it eliminates the  
23          harshness.

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1           So what it means is that we have the double whammy. We  
2           have sweet flavors that attract kids to get them to try it  
3           and then we have new technology that addicts kids more  
4           rapidly and more intensely than we've had before.

5           Mr. Engel. Thank you.

6           Ms. Fuhrman, let me ask you. In 2009, I helped pass the  
7           Family Smoking Prevention and Tobacco Control as a member of  
8           this committee. This legislation banned flavors in  
9           cigarettes since they were being used to attract kids.

10          In the current e-cigarette epidemic we are seeing a  
11          repeat of this industry tactic. In fact, nearly 97 percent  
12          of teen e-cigarette users reported using a flavored product  
13          in the last month.

14          Last year I was one of the first House members to call  
15          on the FDA to ban flavored e-cigarettes and I am pleased to  
16          co-sponsor Chairman Pallone's Reversing the Youth Tobacco  
17          Epidemic Act, which would ban flavors in e-cigarettes.

18          Ms. Fuhrman, in addition to flavors, what other  
19          marketing tactics have e-cigarette makers used to target  
20          children?

21          Ms. Fuhrman. That's a great question. There are many.

22          Flavors are the primary marketing tactic because it  
23          prevents the kids from perceiving harm. They don't think



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1       that there's anything harmful with gummy bear.

2               They've also been targeting the kids on social media.

3       They have hashtag vape tricks. The kids actually now have  
4       started taking over now that JUUL has banned -- has stopped  
5       their own social media accounts. Now there are hundreds and  
6       thousands of kids who actually do the own -- their own vape  
7       tricks.

8               The size -- the fact that they're deceptively innocuous.  
9       You can have them on a desk and they look like a highlighter  
10      or a flash drive. So all of these marketing tactics.

11              And the fact that they can get them over the counter,  
12      they're available online with no age verification. JUUL has  
13      a very strong age verification now but many brands, like  
14      Eonsmoke, does not. So kids can order them and get them in  
15      two days or they can go to the corner store.

16              Mr. Engel. Social media, YouTube videos, and teen-  
17      oriented magazines -- the sky is the limit with this.

18              Ms. Fuhrman. Exactly. And homework websites, as I  
19      said. Homework websites, social interaction apps, and games  
20      -- they all advertise on those as well.

21              Mr. Engel. Thank you. Thank you, Madam Chair.

22              Ms. Eshoo. The gentleman yields back.

23              Now I would like to recognize the gentleman from North

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1 Carolina, Mr. Hudson, for his five minutes.

2 Mr. Hudson. Thank you, Madam Chairwoman.

3 First, I would like to echo the sentiments of my  
4 collages, Representative Butterfield, and I would like to ask  
5 unanimous consent to insert for the record the two letters he  
6 referenced from the National Association of Black Law  
7 Enforcement Executives and the Law Enforcement Action  
8 Partnership.

9 Ms. Eshoo. So ordered.

10 [The information follows:]

11

12 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

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1           Mr. Hudson. And I share his concerns that if we outlaw  
2           specific tobacco products such as menthol it'll lead to  
3           illicit trade of tobacco products.

4           I have a bipartisan bill with Representative Sheila  
5           Jackson Lee aimed at curbing this very practice around the  
6           globe. According to the Department of State report, the  
7           illicit trade in tobacco products funding for criminal  
8           activities including money laundering, bulk cash smuggling,  
9           and the trafficking of humans, weapons, drugs, antiquities,  
10          diamonds, and counterfeit goods.

11          I do not believe it is good policymaking to ban legal  
12          products unless it is the last viable option because of these  
13          concerns. If we deny consumers access to products they may  
14          turn to the black market to find their desired product and  
15          drive consumers away from regulated tobacco products.

16          Dr. Siegel, I've read your testimony and I would like to  
17          hear a little bit more from you on, you know, our shared  
18          goal. I think everyone here agrees there is an epidemic with  
19          youth using e-cigarettes. We all agree we want to combat  
20          that.

21          Could you just talk a little bit more about what you  
22          think are the most effective ways to achieve that goal of  
23          stopping youth from using e-cigarettes?

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1           Dr. Siegel. Sure. I think that the key is to make  
2           these products nonaddictive. I think that's the key, because  
3           prior to JUUL, we didn't have a problem of addiction.

4           Kids were using these products socially, at parties,  
5           only on occasion, and it's only after JUUL and its copycat  
6           products that we start to see addiction.

7           And so I think regulating the nicotine level and  
8           regulating the nicotine salt formulations can make these  
9           products so that they're not addictive to kids.

10          I think we are being naive if we think that if we ban  
11          flavored e-liquids kids are going to stop vaping. They're  
12          not going to. They're going to continue vaping but they're  
13          going to change what they vape, and what they're going to  
14          vape is going to be more and more THC.

15          And one thing that hasn't been said today but is a key  
16          statistic that I think everyone needs to understand is that  
17          of regular vapers -- kids who regularly vape e-cigarettes --  
18          70 percent of them have reported vaping THC.

19          And I think that kids are incredibly resourceful and  
20          they will -- they will use what products are available, and I  
21          think prohibition is going to be a disaster because kids are  
22          just going to use what's available and what is going to be  
23          available are the black market products.

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1           And right now, you can go right on the internet, go to  
2           dankvapes.com, say you're 21, and you can get Apple Jacks,  
3           Banana, Birthday Cake, Blackberry, Blue Dream, Candyland,  
4           Cherry Pie, Cotton Candy, Bubble Gum.

5           We talked about bubble gum before. Bubble gum vapes are  
6           not really killing anyone. But bubble gum THC products are,  
7           and that's where we need to focus our attention.

8           Don't create a new black market. Strictly regulate  
9           these products like we do all other dangerous products on the  
10          market.

11          Mr. Hudson. I think you make a good point, especially  
12          in light of what I mentioned in my opening statement.  
13          According to Monitoring the Future, youth are four times more  
14          likely to use alcohol and illegal drugs than they are to use  
15          e-cigarette products.

16          Are there any additional tools, in your opinion, that we  
17          need to give to FDA to help regulate this?

18          Dr. Siegel. I think that what we need to do is to  
19          require the FDA to set standards and I think that your  
20          legislation that you had proposed I believe last year would  
21          have required them to do that.

22          I think the problem is that the FDA has been sleeping on  
23          this issue for 10 years. They've had authority but they

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1 haven't passed any actual safety standards.

2 Instead, they have been essentially taking a  
3 prohibitionist approach. It's all or nothing. You have to  
4 put in an application and either you're approved or not  
5 approved.

6 That's not the way we regulate dangerous products. The  
7 way we regulate them is actually passing safety standards.  
8 Had they implemented safety standards back in 2013 when I was  
9 first calling for it, we would have had limits on nicotine  
10 levels and JUUL would never have occurred. We need the FDA  
11 to be forced to immediately, without delay, set safety  
12 standards for these products as you had requested.

13 Mr. Hudson. Yes, that makes a lot of sense. And, you  
14 know, you look at alcohol. Prohibition didn't work. The  
15 percent of alcoholics in America is more than before  
16 Prohibition now.

17 But we do regulate alcohol at point of sale and I think  
18 ideas like point of sale regulation for tobacco products  
19 makes a lot of sense to -- as a way to keep these out of the  
20 hands of kids.

21 So I appreciate your testimony and, Madam Chair, I yield  
22 back.

23 Ms. Eshoo. The gentleman yields back.

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1 I think it's important for everyone to understand that  
2 THC is prohibited by the federal government. So if there's  
3 any product that's carrying this poison in it, we have --  
4 enforcement is really essential in this.

5 I now would like to recognize the gentlewoman -- and she  
6 is a gentlewoman -- from California, strengthful and gentle,  
7 Ms. Matsui for her five minutes.

8 Ms. Matsui. Okay. Thank you very much, my friend,  
9 Madam Chair.

10 Thank you for calling this important hearing and I am  
11 really pleased that we are examining a truly comprehensive  
12 bill to address the epidemic of youth smoking and e-cigarette  
13 use.

14 While we know the Tobacco Control Act of 2009 was a  
15 historic piece of legislation that finally gave FDA  
16 regulatory authority over tobacco products, the current  
17 epidemic shows we have lots more work to do.

18 One area this committee must address is youth's ability  
19 to purchase tobacco products online. A simple web search  
20 shows that there are thousands of websites selling tobacco  
21 products via the internet, often with different standards for  
22 how they verify the age of their customers.

23 If we decide to raise the tobacco purchasing age to 21

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1 but any child can go online and purchase e-cigarettes, we  
2 risk exposing millions more children to these dangerous and  
3 addictive products.

4 I understand that there are existing requirements for  
5 selling tobacco products online but that current age  
6 verification practices have not solved the problem.

7 Mr. Myers, can you describe how the current online age  
8 verification for tobacco works and how it fails to prevent  
9 all youth from accessing tobacco products including e-  
10 cigarettes and e-cigarette accessories via online sales?

11 Mr. Myers. Certainly, and it's a very important issue  
12 because the data shows that the number of e-cigarettes sold  
13 online is equivalent to the number sold in vape shops. So  
14 it's a substantial number.

15 We have, as we know, a wide variety of rules governing  
16 this issue so that even if one company has good age  
17 verification rules many companies do not --

18 Ms. Matsui. Right.

19 Mr. Myers. -- and they're equally circumvented with  
20 regard to it. It's one of the reasons why with cigarettes we  
21 looked at both restricting online sales and working with  
22 those who deliver them to do it.

23 It's an incredibly important issue and it's



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1       extraordinarily difficult to get to as long as you allow any  
2       online sales.

3               Ms. Matsui. Any online sales. Okay.

4               Late last year, FDA announced they'd take new steps  
5       aimed at curtailing illegal underage use of e-cigarettes by  
6       implementing soon-to-be-announced heightened age verification  
7       measures for online sales.

8               We are still waiting on such explicit direction from the  
9       FDA and I am curious if regulatory threat and public pressure  
10      alone have been enough to crack down on illicit online sales.

11              Ms. Fuhrman, you mentioned that your son was able to  
12      purchase his e-cigarette on eBay, which does not require any  
13      age verification, and that he was able to find other websites  
14      that sell e-cigarettes without any age verification.

15              Can you explain how kids and teens are finding these  
16      websites?

17              Ms. Fuhrman. It's very easy. You just do a Google  
18      search.

19              Ms. Matsui. Mm-hmm. Okay.

20              Absent federal action, states like California have taken  
21      their own initiative to increase age verification  
22      requirements for purchasing vaping products online and it's  
23      clear that there remains an urgent need for federal action

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1 and I really believe that Mr. Myers is saying what nobody  
2 wants to talk about but might be really required here.

3 FDA has already found that menthol cigarettes likely  
4 pose a greater public health risk than regular cigarettes.  
5 But the agency has not moved forward with an outright ban on  
6 these products.

7 Dr. Gardiner -- and I appreciate you're from University  
8 of California. I am an alum. Thank you very much. I want  
9 to thank you for shining a spotlight on the social injustice  
10 issue at hand wherein menthol disproportionately impacts  
11 poorer communities, marginalized groups, youth, and  
12 communities of color.

13 Dr. Gardiner, what have we learned about the impact of  
14 local restrictions on selling menthol products? In your  
15 opinion, how should these lessons inform federal regulatory  
16 decisions, moving forward?

17 Mr. Gardiner. I mention it in part in my testimony, and  
18 thank you for the question.

19 There have been over 221 local flavor restrictions  
20 around the country, 26 of them specifically restricting the  
21 sale of menthol all around. It hasn't led to any  
22 criminalization or increased arrests of anybody. None of  
23 that has taken place.

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1           As we actually speak there last week, the Fremont City  
2           Council in California passed comprehensive legislation. Of  
3           course, San Francisco has passed legislation about this.

4           Let me just take a moment and say that the suggestion  
5           that somehow this is a black cigarette or that  
6           disproportionately affecting -- it would be bad for African  
7           Americans, it's been the predatory marketing of these things  
8           that have led to that problem.

9           Ms. Matsui. Mm-hmm. Right.

10          Mr. Gardiner. I didn't mention this in my testimony,  
11          but African Americans die disproportionately of tobacco-  
12          related diseases -- heart disease, lung cancer, and cerebral  
13          vascular disease or stroke.

14          So that's why we want to get it off the market. It has  
15          nothing to do with this.

16          And lastly, the National Organization of Black Law  
17          Enforcement Officials and its counterpart, LEAP, are all  
18          funded by the tobacco industry. Let's make no mistake about  
19          that.

20          Ms. Matsui. Okay. Well, thank you very much for your  
21          testimony, and I yield back.

22          Mr. Gardiner. Thank you, Madam.

23          Ms. Eshoo. The gentlewoman yields back.

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1           It's now a pleasure to recognize the gentleman from  
2           Oklahoma, Mr. Mullin, for his five minutes of questions.

3           Mr. Mullin. Thank you, Madam Chair, and thank you for  
4           the panel that's willing to take their time and come up here  
5           to Capitol Hill and give your testimony. We appreciate that.

6           I want to make it very clear I have no dog in this  
7           fight. I don't drink. I don't use any drugs, never have. I  
8           don't use any tobacco products.

9           But I do believe that it's the role of this body to  
10          create an environment for entrepreneurs to be able to  
11          perceive their dreams and consumers to have choice.

12          I also think it's very hypocritical that in one hand we  
13          are talking about banning flavored e-cigarettes and on the  
14          other hand most of the people that are for banning are also  
15          for legalizing marijuana.

16          I mean, if you're talking about targeting kids, let's  
17          talk about the whole product and what is actually being  
18          targeted. If we are going to talk about this, let's have an  
19          open and fair conversation about it.

20          What brought this into a hearing to begin with was  
21          because of the death and sickness that e-cigarettes has  
22          brought. But what hasn't been discussed is that most of  
23          those individuals was buying illegal cartridges laced with

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1 THC.

2 So why is it that we are just focusing on one area? I  
3 don't like any of it. I choose not to use any of it. But we  
4 are a free and balanced country that allows consumers to make  
5 the decision and we are old enough to make those decisions.

6 We talk about in this bill from age limits or an age  
7 limit to 21. As I said, I don't have a dog in this fight.  
8 But we allow men and women to choose to die for this country  
9 at 18 and now we are saying they're not smart enough to  
10 decide if they're going to smoke or not.

11 I get the point, but there's some hypocrisy that goes  
12 alone with this and I just have a hard time understanding it  
13 from the onset. We need to have the full conversation.

14 We want to take these products and we want to put them  
15 off the reach of the children but we already know they're  
16 able to get THC-laced cartridges online.

17 Do you think that's going to stop them? Do we think  
18 that's not going to happen? Do we not think that's where the  
19 products are going to move to and then there's going to be  
20 absolutely no oversight of it?

21 They're still going to be inhaling it and it's still  
22 going to go into their lungs.

23 Let me ask -- Mr. Myers, let me ask you a question.

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1 Have we seen sales increase or decrease on the black market  
2 with the THC cartridges?

3 Mr. Myers. We actually don't track because we don't  
4 have an ability to track THC. But the issue you raised is  
5 important in two different ways. Let me address it.

6 Because I don't believe most of the tobacco control  
7 advocates out there do support legalization of marijuana.  
8 With regard to --

9 Mr. Mullin. No, I am talking about -- I am talking  
10 about the people on the bill. I am talking about on this  
11 bill. The people -- most of the people that are sponsoring  
12 this bill are for legalizing marijuana. Not all, but most.

13 Mr. Myers. But, you know, there is -- it's important  
14 not to confuse two separate issues. One is we have an  
15 epidemic of e-cigarette use among our kids, and two, we --

16 Mr. Mullin. No, Mr. Myers -- excuse me. It is  
17 important to have a full and fair conversation about all of  
18 it.

19 Mr. Myers. We totally agree.

20 Mr. Mullin. If you're going to -- if you're going to  
21 focus on one area focus on all of it. It still has to do  
22 with getting people addicted to a product.

23 It still is called dependency.

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1           Mr. Myers. So we agree with you. One of the critical  
2 factors and one of the reasons we are concerned is that the  
3 availability of flavored e-cigarettes has so dramatically  
4 increased the number of kids who are addicted to any  
5 substance and the -- and the --

6           Mr. Mullin. So has the availability of marijuana, too,  
7 and go back and look at the states that have legalized it.

8           Mr. Myers. Right. But --

9           Mr. Mullin. And I am not trying to make this about  
10 marijuana versus anything else. I am just saying that we got  
11 to have a full conversation about all this.

12           I am not trying to focus on it. I know that's what it  
13 sounds like. But I am just pointing out that we are only  
14 focusing on one area. If we are going to talk about kids  
15 then let's have a conversation.

16           I've got six at home, aging from 16 to 8. I don't want  
17 to see any of these products either, and one of the biggest  
18 issues we have in our schools is that they're going in and  
19 they're smoking in the boys' room -- ha, ha, song there --  
20 and we are having an issue with it where they're having to  
21 take the stalls off the doors.

22           And I don't want this product available to anybody. I  
23 don't. But we got -- we can't be kidding ourselves that we

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1 think if we just ban this that it's just going to go away --  
2 that the problem is just going to go away. It is absolutely  
3 not.

4 Dr. Siegel --

5 Mr. Myers. Can I just --

6 Mr. Mullin. -- where is most of -- where has most of  
7 the sales of THC taken place? The underage -- the underage  
8 kids, where are they getting the majority of their cartridges  
9 for these e-cigarettes to begin with?

10 Dr. Siegel. They're coming off the black market and  
11 they're coming from large drug dealers who are producing  
12 hundreds of thousands of these completely unregulated and  
13 people are buying them off the internet, getting them off the  
14 street, and those are being distributed in our schools.

15 And just to be clear -- you made this point -- that's  
16 what's causing this outbreak, not nicotine products that  
17 people are buying at stores.

18 Mr. Mullin. So if you -- so if you think --

19 Mr. Gardiner. The CDC has been very clear about that --

20 Mr. Mullin. Hold on. I didn't ask you a question, sir.

21 Mr. Gardiner. Since you've been doing this longer --

22 Mr. Mullin. I didn't -- I didn't ask you a question.

23 Ms. Eshoo. The gentleman's time has expired.



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1           Mr. Gardiner. Seventy-eight percent of it, not always.

2           Mr. Mullin. Ma'am -- Madam Chair, with all due respect,  
3 everybody else -- everybody else's went over quite a bit.

4           Ms. Eshoo. They haven't gone over by 20 seconds. So  
5 you can finish your answer and then we need to move on. Who  
6 was giving the answer?

7           Mr. Mullin. Dr. Siegel was.

8           Dr. Siegel. Yes. I concluded, basically saying -- yes.

9           Ms. Eshoo. Good. Okay. The gentleman yields back.

10          Mr. Mullin. Thank you.

11          Ms. Eshoo. I would like to now recognize the  
12 gentlewoman from Florida, Ms. Castor, for her five minutes of  
13 questioning.

14          Ms. Castor. Well, thank you, Chairwoman Eshoo, for  
15 calling this important hearing and thank you to all of the  
16 witnesses for all of your work.

17          We have a very serious problem in America with this  
18 growing epidemic of vaping and e-cigarettes and I've seen it.

19          My daughters are just in their early 20s and over the  
20 past decade I watched among all of their friends groups and  
21 kids all across middle school and high school as their  
22 behavior changed substantially with the uptake of the JUUL  
23 and the e-cigarettes, and this is borne out by the Florida

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1 Youth Tobacco Survey run by our department of health found  
2 that from 2012 to 2018 there was a 361 percent increase in  
3 kids age 11 to 17 who tried electronic vaping and a 582  
4 percent increase in kids that actually continued to use the  
5 vapes.

6 And we all know that nearly all tobacco use begins when  
7 kids are in middle school and high school. So that -- this  
8 area of what they do to target children to -- and then get  
9 them hooked through nicotine and other habit-forming  
10 characteristics I think is ripe for us to do so much more.

11 Now, this bill, Reversing the Youth Tobacco Epidemic  
12 Act, includes language making it unlawful to market,  
13 advertise, or promote any e-cigarette products to individuals  
14 under the age of 21.

15 Is this strong enough, the language in the bill, and it  
16 gives the FTC enforcement ability and they can come up with  
17 penalties? But I don't know if we are doing all that we need  
18 to do.

19 I would like to have you all go down, real quick, and  
20 just say it's not strong enough, it is strong enough. We had  
21 Dr. Schuchat here from CDC and Dr. Sharpless from FDA. They  
22 called it an epidemic. They're doing some things with --  
23 online and social media.

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1           But I continue to think it's not strong enough. What  
2           else would you do?

3           Mr. Myers. It's a very good start. FDA has authority  
4           to regulate e-cigarette marketing up to the limits of the  
5           First Amendment. They haven't done so.

6           So the kind of social media marketing, which has fuelled  
7           this epidemic, needs to be the subject of very clear rules to  
8           prevent it from happening.

9           Ms. Castor. Thank you.

10          Ms. Fuhrman. I would echo that -- it's a great start.  
11          I think the problem now is that kids are marketing it among  
12          themselves. So that's also another issue that's going to be  
13          hard to follow.

14          And I think that we are talking about reversing the  
15          epidemic -- the youth epidemic. But once -- if you ban  
16          flavors and you slow down the uptake of new kids starting to  
17          vape you still have 5 million kids who are potentially  
18          addicted to nicotine and there's no approved method of  
19          cessation. So that's what the next focus should be.

20          Dr. Tanski. One of the aspects I really like about this  
21          bill is that it restricts sponsorships and that's a big thing  
22          that was restricted with the 2009 tobacco control.

23          So it's that Marlboro could no longer sponsor the Indy

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1       500 NASCAR. But right now, e-cigarette vendors can and so  
2       that's one very important thing to clamp down on.

3               So it's a great start and, in particular, the  
4       sponsorship and avoiding all that is going to be critical.

5               Mr. Gardiner. I think the greatest part of -- and thank  
6       you -- I think the greatest part of the bill is that it, for  
7       the first time in 10 years, takes up the question of menthol  
8       and prohibits its manufacture and promotion.

9               We know that it's one of the leading causes of death in  
10      the African American community. Let me also say, Ms. Eshoo,  
11      I am sorry for my interruption.

12              There's just been so much discussion about marijuana  
13      that we should at least have the facts right -- that 78  
14      percent of the cases have identified marijuana but 22 of the  
15      cases have it. If we want to have a full discussion about it  
16      then let's have a scientific discussion about it and not make  
17      generalizations.

18              Dr. Siegel. So in answer to your question about the age  
19      21, I don't think it goes far enough. I think what needs to  
20      be done is to not only raise the age of sale to 21 but to  
21      prohibit the sale of all tobacco products including e-  
22      cigarettes to stores that are only open to people who are 21  
23      and older.

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1 I don't think there's any reason in 2019 that any kid  
2 can walk into a grocery store, a convenience store, a drug  
3 store, and buy a pack of Marlboros. I just don't think that  
4 in 2019 that makes any sense.

5 I think these should be restricted to tobacco or vape  
6 shops. That's where they should be sold and you can't go in  
7 there unless you're 21.

8 Ms. Castor. Thank you. I yield back.

9 Ms. Eshoo. The gentlewoman yields back.

10 It's a pleasure to recognize Dr. Bucshon from the great  
11 state of Indiana.

12 Mr. Bucshon. Thank you. I appreciate the recognition.

13 Look, I am a conservative Republican. I am not normally  
14 for government putting in more regulations.

15 But on the other hand, as a doctor, looking at the data  
16 it's pretty clear we need to do something about the e-  
17 cigarette epidemic in grade schools and high schools.

18 I have four kids. I was a cardiovascular and thoracic  
19 surgeon. Most of my patients came to me because the end  
20 results of cigarette use, honestly, and my daughter, who's in  
21 high school, tells me it's pretty pervasive in her school.

22 I am deeply troubled by the increasing rate of e-  
23 cigarette use amongst children. The long-term negative

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1 health implications of nicotine use on the heart and lungs  
2 are well known and enticing flavors are attracting teens who  
3 might not otherwise have exposure to nicotine.

4 The fact is high school and middle school students are  
5 getting their hands on these products, setting them up for  
6 lifetime of addiction and negative health side effects and  
7 it's -- they're not actually going to a legitimate  
8 marketplace and buying them.

9 They're buying them from, honestly, high school and  
10 grade school dealers and their own colleagues in their  
11 classes who are selling these at their schools.

12 In 2018, more than 3.6 million U.S. youth including one  
13 in five high school students and one in 20 middle school  
14 students reported to have used e-cigarettes and this number  
15 is rising, as has been pointed out by multiple witnesses.

16 Two-thirds or more of the students don't even realize  
17 there's nicotine in the product -- a high percentage. The  
18 focus of this issue must be on the health of our children. I  
19 think it's important not to lose sight of this by using this  
20 epidemic to impose excessive and overreaching government  
21 regulation broadly.

22 That is why I have supported the Trump administration's  
23 proposal to combat the epidemic youth of e-cigarette use by

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1 banning flavored options from the marketplace by removing all  
2 flavored e-cigarettes from the marketplace until the FDA can  
3 properly review and approve them. If they can we can get  
4 ahead of the epidemic before it's too late.

5 I hope that this committee can continue to build on the  
6 leadership of the administration and work together to address  
7 this epidemic head on so that children never need to find out  
8 the long-term negative health implications of nicotine and  
9 find it out the hard way. Nicotine is extremely addicting.  
10 It's almost impossible to get rid of the addiction.

11 In that vein, Dr. Tanski -- there you are -- if adults  
12 want to quit -- help quit smoking they have a number of  
13 resources available to them. For example, there are several  
14 FDA-approved tobacco cessation medications that have been  
15 proven to help adults quit.

16 But for kids, this doesn't seem to be the case. What  
17 common treatment options do you recommend to your patients  
18 who are addicted to e-cigarettes and are any tobacco  
19 cessation drugs or nicotine replacement therapies proven  
20 effective with kids?

21 Dr. Tanski. Dr. Bucshon, I really appreciate the  
22 question and, unfortunately, the answer is we don't have a  
23 lot of evidence as to what works well for cessation for

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1 adolescents.

2 And with regards to vaping devices, we have no evidence  
3 at all because there have not been any studies looking at how  
4 to get young people or anybody to quit vaping devices.

5 So we are in uncharted territory. We actually  
6 dramatically and desperately need research and some evidence  
7 to support what we are trying to do.

8 We are using our best practice at the moment and so we  
9 are using all the tools that we used for adolescent smoking  
10 cessation including counselling, group counselling.

11 We are using nicotine replacement therapies off label  
12 because we know that some of our young people have very high  
13 levels of addiction and that is a huge area of concern.

14 Kids are suffering. They're withdrawing in class.  
15 They're feeling really horrible and they're getting that  
16 bloom of anxiety and irritability and they're having a really  
17 hard time getting through the day.

18 So we do have a big problem. And to your point as a  
19 cardiovascular surgeon, my husband is a vascular surgeon. We  
20 joke that I am trying to put him out of business.

21 We can't avoid the cardiovascular impacts of these  
22 devices and it took us 40 years to figure out COPD and 40  
23 years to figure out lung cancer, and I am confident,



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1       unfortunately, that we are going to see cardiovascular  
2       impacts from our -- these use -- our youth using these  
3       products.

4               Mr. Bucshon. I would agree and I want to yield the last  
5       minute of my time to Ranking Member Burgess.

6               Mr. Burgess. Thank you, Dr. Bucshon.

7               Dr. Siegel, you had made mention just a few minutes ago  
8       about FDA perhaps missed an opportunity in 2013 to regulate  
9       the amount of nicotine.

10              I just want to point out to the committee much has been  
11       made about the passage of the Tobacco Control Act. But  
12       remember, Tobacco Control Act contained a user fee and so the  
13       FDA cannot say that it was resource constrained because since  
14       the inception of the Tobacco Control Act they've collected  
15       over \$5.5 billion and I don't know that we have good  
16       oversight as to how that money has been spent.

17              But it certainly could have been spent in some of this  
18       activity. I realize that vaping doesn't have the user fee.  
19       But if the purpose of the FDA and the Tobacco Control Act is  
20       to regulate nicotine, they had the money to do so. I will  
21       make this available to the -- for the record, and I will  
22       yield back.

23              Ms. Eshoo. The gentleman yields back.

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1           Mr. Bucshon. I yield back.

2           Ms. Eshoo. I would like to just make a suggestion, that  
3 as the ranking member and the chair of the subcommittee that  
4 we write to the FDA and inquire as to how those dollars are  
5 being -- have been used and continue to be used.

6           I now would like to -- you know, I would like to ask --  
7 just circle back for a moment. I did not hear Dr. Gardiner --  
8 - you said something about the organizations when I said so  
9 ordered that the letters be placed in the record and you made  
10 a comment but I didn't catch it. Can you restate what you  
11 said?

12          Mr. Gardiner. I didn't say it directly at the time but  
13 what I said is that the organizations -- the National  
14 Organization of Black Law Enforcement Executives and LEAP,  
15 and I am not familiar with their terminology -- both take  
16 money from the tobacco industry and actually have for a  
17 number of years.

18          Ms. Eshoo. Thank you very much.

19          I now would like to recognize the chairman of the full  
20 committee, Mr. Pallone of New Jersey.

21          The Chairman. Thank you, Chairwoman Eshoo.

22          Whether it's mango, mint, bubble gum, or gummy bear, the  
23 wide variety of kid-friendly flavors of cigarettes rival any

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1 ice cream shop or candy store, and as we've heard from our  
2 witnesses today, that's by design.

3 Tobacco manufacturers know that to attract youth use  
4 early, there's no better way than to give them new sweet  
5 flavors to try and once you have got them hooked you might  
6 just have a customer for life.

7 So it's not just me saying this. Children themselves  
8 report that these flavored products are what they use,  
9 according the National Youth Tobacco Survey conducted by the  
10 CDC and the FDA.

11 Twenty-eight percent of high school students use e-  
12 cigarettes 20 or more days per month and nearly 70 percent of  
13 those students report using flavored products.

14 So I want to ask some of you -- let me start with Dr.  
15 Tanski. In your testimony you described the physical and  
16 psychoactive harms that can come from nicotine use and you  
17 described and nicotine affects the developing adolescent  
18 brain.

19 Can you describe how flavors combined with nicotine  
20 might influence the drug's additive properties and the impact  
21 this has had for youth users?

22 Dr. Tanski. Well, I don't know the specific research  
23 about it but it is kind of intuitive that we know that

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1 flavors also light up the pleasure systems in your brain. So  
2 it's kind of intuitive to assume that if we combine yummy  
3 flavors with nicotine that might be a double whammy.

4 I don't know about the specific research on that topic.  
5 That is my hypothesis and it's supported by anecdote by  
6 seeing so many of my young patients start with flavored  
7 products.

8 The Chairman. So let me --

9 Mr. Gardiner. But we do have data on the impact of  
10 flavors on other parts of the body. Cinnamaldehyde we know  
11 is very bad for your lungs.

12 We know that diacetyl is also bad for your lungs. These  
13 are things that are put into e-cigarettes. There's a whole  
14 list of them.

15 One thing we didn't talk about in this hearing is that  
16 there's a multiplicity of cardiovascular effects associated  
17 with smoking e-cigarettes. How they relate to youth I am not  
18 really sure.

19 But we know that platelet formation, you know, in plants  
20 -- I use the example if you cut yourself what happens, and  
21 the students all say you bleed. Well, internally, you  
22 actually develop platelets. You actually develop -- that's  
23 the mechanism to stop the bleeding externally. Internally,

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1       it leads to blockage of arteries.

2               We know that e-cigarettes do that. So and I appreciate  
3       what's been going on. At some point we do need to have a  
4       full discussion about this. I mean, we are kind of at the  
5       surface of this, and I am sorry to take all your time.

6               The Chairman. No, that's okay. Let me ask Ms. Fuhrman,  
7       though. Some people have argued that a flavor ban for e-  
8       cigarette products should contain an exception for mint and  
9       menthol-flavored e-cigarettes as these products may not be as  
10      kid friendly as fruit-flavored products.

11              But as the parent of a child currently in schools, what  
12      are your thoughts on that suggestion? Is it true that  
13      teenagers and youth are not using mint or menthol-flavored  
14      tobacco products?

15              Ms. Fuhrman. No. No. It's not true at all. Actually,  
16      some of the samples I brought were different flavors of mint  
17      chewing gum or Mighty Mint.

18              Mint is one of the preferred flavors of teens and if you  
19      look at JUUL sales, JUUL sales of mint and menthol are now  
20      over 80 percent of their total sales. So it's very  
21      important.

22              What I think is also important to recognize is that  
23      there are other flavors coming out on the market. For

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1 instance, STIG has a mentholated mango. So they're combining  
2 flavors now.

3 To what Mr. Gardiner said, the menthol makes it easier  
4 to absorb, easier for the lungs to absorb, easier to addict.  
5 So they're adding that mentholated to flavors that are  
6 already, you know, commonplace.

7 The Chairman. Thank you.

8 You know, I was pleased to see the FDA's announcement  
9 that they would soon be conducting some level of enforcement  
10 on flavored e-cigarette products that would lead to their  
11 removal from store shelves and e-commerce, and more than a  
12 month later, though, we still have not seen details of that  
13 proposal and I am concerned about possible loopholes in the  
14 proposed guidance.

15 So, Mr. Myers, can you explain why legislation provides  
16 a more complete solution for addressing concerns about  
17 flavored products?

18 Mr. Myers. Sure. It's very important for multiple  
19 reasons.

20 First of all, we have not yet seen a proposal out of the  
21 administration to finally implement. Our hope is that we  
22 will see one very soon and it will be complete.

23 Second, the tobacco industry inevitably will sue the FDA

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1 as soon as it files any such rule. They have done that in  
2 every case. We need to be certain that this actually becomes  
3 the law of the land.

4 Third, a rule adopted is a rule that can be changed. We  
5 banned the sale of flavored cigarettes because we knew they  
6 attracted kids. It's worked. It hasn't produced a black  
7 market.

8 It has helped us reduce cigarette use. We should do the  
9 same thing here and be sure that it's not something we have  
10 to look back on 10 years from now.

11 The Chairman. Thank you.

12 One more question. Dr. Gardiner, you talk in depth  
13 about menthol in your testimony and you say we should  
14 recognize the marketing of menthol products as a social  
15 injustice issue.

16 Would you just elaborate on that? What's driving the  
17 increase in the use of menthol?

18 Mr. Gardiner. It has been going on for decades that  
19 prices of cigarettes in the black community, particularly  
20 menthol cigarettes, are cheaper. There are more  
21 advertisements and promotions are much more lucrative.  
22 That's what has gone on for the last 50 years.

23 That is why 85 percent of African Americans smoke these

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1 products. That's why the majority of African Americans who  
2 die, die of tobacco-related diseases.

3 The Chairman. Thank you, Madam Chair.

4 Ms. Eshoo. The gentleman yields back.

5 A pleasure to recognize the gentleman from Kentucky, Mr.  
6 Guthrie, for his five minutes.

7 Mr. Guthrie. Thank you very much, and thank you for  
8 being here today. This is very important. I am the ranking  
9 member of this Subcommittee on Oversight and Investigations,  
10 and we had a hearing right before the break on the deaths --  
11 the lung deaths coming from vaping, and it seems to be two  
12 specific issues that both need to be addressed.

13 One is the flavors and young people becoming addicted to  
14 the flavors. I think that is a real problem that needs to be  
15 addressed. The second is the THC -- that of the 26 deaths in  
16 21 states many are due to products containing THC.

17 And even right before the break we passed a bill to make  
18 it easier to bank marijuana. I mean, that's the thing. So  
19 as we are trying to restrict access to nicotine products,  
20 which I agree with, we also seem to be not restricting access  
21 to marijuana-laced products.

22 And, so Dr. Siegel or Dr. Tanski, maybe this might be --  
23 do you have -- and then flavors. I understand you can buy



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1 marijuana gummy bears.

2 I don't know if that's true or not. But if you're  
3 saying that the pleasure from flavor and the pleasure from  
4 getting intoxicant is combined, then it's combined in that.  
5 So maybe we should be looking at banning those products too  
6 instead of expanding the access to them.

7 But to Dr. Siegel and Dr. Tanski, do you have concerns  
8 about the effects of adolescent brains and their behavior --  
9 the development of their brains and behavior from vaping THC?

10 Dr. Tanski. Go ahead. You go first.

11 Dr. Siegel. Absolutely. Absolutely.

12 I know that we've been testifying that this is an  
13 unprecedented increase in what we are seeing. But in  
14 reality, there was another unprecedented increase.

15 Just last year, marijuana use among college students  
16 rose to its highest level in 35 years. Forty-nine percent of  
17 college students admitted that they use marijuana.

18 We have -- the legalization of marijuana has led to the  
19 perception among young people that it's just not harmful.  
20 The policies that we set in society are what tell kids what's  
21 harmful and what's not. When they see that this is  
22 legalized, their perception of harm is decreased.

23 And that's what has gotten us into this mess with the

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1 deaths from respiratory illness because kids -- the increase  
2 in marijuana has now transferred into vaping.

3 They've gone from smoking it to vaping it, and because  
4 they're vaping it and because they're buying products on the  
5 black market that have been contaminated, that's why kids are  
6 dying.

7 And I think we cannot ignore that problem and I think  
8 it's naive to think that if we just ban flavored e-liquids  
9 everything is going to be fine. It's not.

10 Kids are getting these products from dealers -- from  
11 drug dealers in their schools who are getting them from  
12 actual drug dealers.

13 And they're going to continue getting vaping products.  
14 They're not going to stop vaping just because the government  
15 says you can't sell flavored e-liquids. They're just going  
16 to shift over to what's available, which is going to be THC.

17 Mr. Guthrie. Okay.

18 So, Dr. Tanski, do you have a view on the THC, or  
19 anybody here on the panel?

20 Dr. Tanski. Yes. So a couple comments on the THC.

21 I will comment that it is still federally illegal. So  
22 that is completely an illicit product and there is no -- in  
23 my state, there is no legal sale of recreational THC in the

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1 state of New Hampshire.

2 Mr. Guthrie. But Congress has voted to make it easier  
3 to bank. I mean, not -- the House did, not Congress hasn't  
4 passed -- so we are moving in that direction.

5 Dr. Tanski. I am not familiar with the bill --

6 Mr. Guthrie. And I am just saying so we are going down  
7 that pathway much more.

8 Dr. Tanski. So but to the point, THC is an intoxicant.  
9 It is something that -- that makes people higher longer and  
10 it impairs their ability to learn. People get high and it's  
11 not a two-minute head rush. It's a long day thing.

12 So I think that, indeed, we are seeing kind of another  
13 epidemic. There are two separate epidemics and I think we  
14 need to do -- think about them in two separate ways --

15 Mr. Guthrie. Need to do it with both, yes.

16 Dr. Tanski. -- because they really are two very  
17 different drugs and there is no legal recreational marijuana,  
18 at least in my state, and at the federal level so whereas  
19 nicotine is legally available.

20 Mr. Guthrie. Well, is THC as addictive as nicotine or  
21 you know -- do you know? Nicotine is very addictive. I know  
22 that --

23 Dr. Tanski. Nicotine is very addictive. I am not an

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1 addiction specialist --

2 Mr. Guthrie. You're not an expert in that area?

3 Dr. Tanski. -- to be able to compare the two. So I  
4 don't have --

5 Mr. Guthrie. Anybody here? Dr. Siegel?

6 Mr. Gardiner. It's definitely addictive.

7 Dr. Tanski. It is addictive but --

8 Mr. Gardiner. That's not -- that's not the question.

9 There's very few things as addictive as nicotine, though, and  
10 I guess that's the issue.

11 You opened your statement with the deaths around the --  
12 and I just want to reassert this. Seventy-eight percent of  
13 the people with the lung illness have reported THC use.  
14 Another 22 percent have not. They said they've only used  
15 nicotine. So we are going to have to look into the  
16 interaction of what's in the actual e-cigarette.

17 Mr. Guthrie. So yes, eight out of 10 have said -- -  
18 reported THC and they would say that it's been self-reporting  
19 so they're not sure if other -- -does not have THC as well,  
20 but that's helpful.

21 Mr. Gardiner. So let's even take it a step further. If  
22 you're mixing flavors, as Matt has pointed out, with some  
23 legal products can't you imagine that there are flavors being

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1 mixed with the THC?

2 Mr. Guthrie. Well, I would imagine so. But THC seems  
3 to be common and most of it is --

4 Mr. Myers. Can I make just one short point, too, that  
5 relates to this? One of the reasons we are so concerned  
6 about flavors hooking kids on e-cigarettes is the data shows  
7 that even if these are kids who otherwise wouldn't have  
8 smoked or used other products, it increases their likelihood  
9 of moving on to other products. So --

10 Mr. Guthrie. Like THC gummy bears would be in the same  
11 category.

12 Mr. Myers. Well, you know, I don't have specific data  
13 on THC. But what it does is it demonstrates that there's an  
14 increased risk those kids will go on to use other products.  
15 So if you're concerned about other addictions --

16 Mr. Guthrie. Absolutely.

17 Mr. Myers. -- stopping this one helps across the  
18 board.

19 Mr. Guthrie. That one, and not for Congress to move  
20 down the path that --

21 Ms. Eshoo. The -- yes, the gentleman's time has  
22 expired.

23 Mr. Siegel, you -- I just want to -- you spoke about

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1 many issues in one of your answers but you didn't demonstrate  
2 any data that supports it.

3 So would you please get that to us? Otherwise, it's --  
4 they're sentences with lots of words in them but we need  
5 factual -- we need data here.

6 Dr. Siegel. Well, I can give you the data.

7 Ms. Eshoo. Yes. Okay. That's what I am asking for.  
8 If you would, please.

9 Dr. Siegel. Absolutely.

10 Ms. Eshoo. Not now. In writing to me, please.

11 Dr. Siegel. Sure. Sure.

12 Ms. Eshoo. Now I would like to recognize the very  
13 distinguished gentleman from Massachusetts. It's so  
14 wonderful that we have a Kennedy in the Congress.

15 Mr. Joseph Kennedy.

16 Mr. Kennedy. Thank you, Madam Chair. Thank you to our  
17 witnesses for being here for this important hearing.

18 A few weeks ago, I asked the acting head of the FDA what  
19 caused a catastrophic regulatory failure that we are seeing  
20 play out in our schools and our neighborhoods and our  
21 hospitals all over our country.

22 Just a week ago, Massachusetts experienced our own --  
23 the first death that we have had in a vaping-related death.

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1 More than a thousand people of all ages are currently sick  
2 with a mysterious disease and our government still cannot  
3 diagnose its roots.

4 Our federal government's failure to adequately and  
5 proactively address this crisis has had devastating and  
6 immediate and long-term impacts which, again, we don't fully  
7 understand.

8 Right now, however, patients are sick. Legally  
9 operating businesses in Massachusetts are being forced to  
10 shutter with small business owners facing bankruptcy and our  
11 government is scrambling to do what it should have done an  
12 awful long time ago.

13 So to each of our witnesses, with the benefit of  
14 hindsight what is the one most important regulatory  
15 protection that must be put in place immediately.

16 Dr. Siegel, we'll start with you.

17 Dr. Siegel. I think it's regulating the nicotine  
18 levels. I don't think that the nicotine levels in e-liquids  
19 should be allowed to be more than 20 milligrams per  
20 milliliter and I think if your formulation is a nicotine salt  
21 it should be even lower than that, probably half of that.

22 Mr. Kennedy. Thank you.

23 Dr. Gardiner.

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1           Mr. Gardiner. Let me speak to that. Mike has mentioned  
2           that a couple of times. There has been a proposal before the  
3           FDA to gradually lower the limit of nicotine in cigarettes.  
4           So I think it's on the table and it needs to be done and I  
5           will just reiterate what I came to testify about.

6           I think the single most public health benefit that we  
7           could get in terms of regulation is getting menthol products  
8           off the market. I will just leave it there.

9           Mr. Kennedy. Thank you, sir.

10          Dr. Tanski. So we are looking at the retrospective  
11          scope, right. We are going into the way back machine and in  
12          hindsight what should we have done when e-cigarettes came on  
13          the market? Is that the question?

14          Mr. Kennedy. Yes, what should we -- well, what should  
15          we have done but what should we do now?

16          Dr. Tanski. So I think this bill goes a long way  
17          towards addressing what we need to do now. By putting strict  
18          regulation on these products and addressing age limits and  
19          addressing flavors. I think those are absolutely critical.

20          I think that 15 years ago when these first came on the  
21          market we make a lot of mistakes by allowing them to come in  
22          as a consumer product and being completely unregulated and  
23          allowing these unfettered flavors and access to our kids.



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1           Mr. Kennedy. Thank you, Doctor.

2           Ms. Fuhrman.

3           Ms. Fuhrman. I would say that the biggest mistake we  
4 made was not banning menthol cigarettes and today I think we  
5 should ban all flavors.

6           If we leave menthol cigarettes out of the equation and  
7 we ban flavored e-cigarettes it will allow not only multiple  
8 generations of young people to start smoking regular  
9 cigarettes with menthol but it will also create a loophole  
10 and a precedent to exempt menthol e-cigarettes from the bill.  
11 So --

12          Mr. Kennedy. Thank you.

13          Mr. Myers. Let me echo Dorian. I think the critical  
14 issue is flavors is what brings people to it. Flavors is how  
15 the tobacco industry has addicted generations of people in  
16 the African American community.

17          We need to turn off the on ramp and the best way to do  
18 it is to eliminate the flavors that appeal to them. But,  
19 simultaneously, long term we need to look at reducing  
20 nicotine in combusted tobacco products so that we ratchet  
21 that down, clearly.

22          And in the interim we have to make it a priority to  
23 figure out how to help young people who are addicted to quit.

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1           So it's three things but you really have to do them all.

2           Mr. Kennedy. So building off your comments there, Dr.  
3           Tanski, can you tell a little bit about -- tell me a little  
4           bit about what nicotine does to a young developing brain,  
5           particularly when it's vaped?

6           Dr. Tanski. So it hits the brain very quickly,  
7           particularly the new products where there's -- the features  
8           of the nicotine get introduced to the brain very, very  
9           quickly, kind of analogous to a combusted tobacco cigarette  
10          and it induces this feeling of pleasure.

11          And there's two things that happen. If someone has been  
12          using nicotine for a long time, when you don't have nicotine  
13          in your body you feel poorly. You have withdrawal systems.  
14          You get irritable. You get anxious. You have trouble  
15          feeling pleasure. And so you also vape or smoke to avoid  
16          withdrawal because otherwise you don't feel normal.

17          So it's this kind of self-fulfilling need. You start  
18          with nicotine innocently. You don't think it's going to do  
19          anything. You think -- you're a teenager -- you think  
20          nothing bad is going to happen to you.

21          But you start, you get hooked, and then you're stuck in  
22          this trap and you don't feel well until you have more  
23          nicotine in your brain. And so that's what addiction is.

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1 That's what dependence is and, unfortunately, these products  
2 that are in our kids' schools and in our kids' lives have  
3 perpetuated significant addiction to nicotine.

4 Mr. Kennedy. And just fleshing that out in the last 15  
5 seconds here, why is that more -- why are younger brains or  
6 brains that are not fully developed more susceptible to  
7 nicotine?

8 Dr. Tanski. It's a great question. It's a  
9 developmental pattern and it's -- the pleasure centers kind  
10 of become mature before the inhibitory centers become mature.  
11 So they are much -- the addictive potential is much higher  
12 with any product in an adolescent brain.

13 Whether it's nicotine, THC, anything, the adolescent  
14 brain is in this unique developmental period. It's not to do  
15 with law. It's not to do with people going off to war. It's  
16 to do with brain development and it's a tempo that doesn't  
17 finish until the mid-20s.

18 Mr. Kennedy. Thank you.

19 Dr. Tanski. Thank you.

20 Mr. Kennedy. Yield back.

21 Ms. Eshoo. Thank you. The gentleman yields back.

22 It's a pleasure to recognize my friend, the gentlewoman  
23 from Indiana, Mrs. Brooks, for her five minutes.

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1           Mrs. Brooks. Thank you, Madam Chairwoman, and thank you  
2           for holding this incredibly important hearing.

3           While Massachusetts has just had its first vaping death,  
4           Indiana, sadly, has had three -- three of the 26 that have  
5           occurred, as far as I know, across the country.

6           In the 2018 Indiana Youth Tobacco Survey, nearly one in  
7           five high school students and one in 12 middle schoolers said  
8           they were using e-cigarettes.

9           And I was at an American Cancer Society event while I  
10          was home the last the two weeks and Dr. Sarah Bosslet, a  
11          pediatrician, said that it is something that she is having  
12          regular conversations with and she is overwhelmed by the  
13          number of kids, which what I am curious about, Dr. Tanski and  
14          Ms. Fuhrman, is it's interesting to me that the kids are  
15          actually sharing with you that they are vaping.

16          They are not hiding it. They might hide it in school  
17          because they can get in trouble for it in school. But I want  
18          to talk a little bit more about where are the kids getting  
19          it.

20          I just came from a hearing downstairs on fostering safe  
21          internet -- fostering the safe internet -- and when I looked  
22          up a product online as we were passing it out it asked you  
23          the question, are you 21 or are you legal or not legal -- are

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1       you 21 or not legal.

2               So, truly, where are -- where are -- having come from  
3       law enforcement background, where are the kids getting it?  
4       Is it over the internet?

5               Is it -- how are middle school kids getting it from  
6       black markets? Share with me what you know. And, Mr. Myers,  
7       I want to ask you very briefly about the marketing  
8       specifically to the kids.

9               Ms. Fuhrman.

10              Ms. Fuhrman. Well, I think when you say on -- when you  
11       go online and it says are you 21 or are you not, you click 21  
12       that's it.

13              Then you can go through and then you can purchase  
14       anything. So there's really no verification beyond that  
15       except on very few other websites. So they can do it that  
16       way.

17              They can get it at a gas station. They can get it at  
18       the corner store and a lot of --

19              Mrs. Brooks. Are they not required to provide an ID at  
20       a gas station?

21              Ms. Fuhrman. They don't ask. A lot of -- a lot of the  
22       clerks don't ask and a lot of the kids have fake IDs. But  
23       most of them don't ask. And then a lot of those kids will

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1       then purchase them and go to school and sell them to other  
2       kids.

3               Mrs. Brooks. And what are they selling them for? How  
4       much, roughly?

5               Ms. Fuhrman. You know, before when you could -- when  
6       you could purchase bulk online, they were -- the pack of four  
7       pods is \$16 and you could break it up and they would sell a  
8       pod for \$10.

9               Mrs. Brooks. Dr. Tanski?

10              Ms. Fuhrman. Now you can buy them for -- I just passed  
11       around a thing -- you can buy -- the pack of four pods is \$7.

12              Mrs. Brooks. Dr. Tanski, the pediatricians you're  
13       representing, can you share with us what kids are -- what  
14       they are sharing with them about availability and why they --  
15       why they believe they're safe?

16              Dr. Tanski. So I think the flavors go a long way  
17       towards this halo effect that it must be safe, because why  
18       would something called gummy bear be harmful to you?

19              And interestingly, a lot of the young people don't think  
20       that they're vaping nicotine. When you ask kids are you  
21       vaping stuff with nicotine, they'll say, I am only vaping  
22       flavors. But when you actually look at the product or you  
23       dig down deeper, you find that, indeed, they are vaping

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1 nicotine and they just don't know.

2 And it is the social pipeline where a lot of the kids  
3 are getting these. The middle schoolers are getting them  
4 from their older brother and sisters in the high school, and  
5 an 18-year-old high school senior in most states is currently  
6 legal to buy vaping products.

7 My son turned 18 at Christmas in his senior year of high  
8 school and on the day of his birthday people say, hey, will  
9 you buy me some vapes. Thankfully, he said no. Otherwise,  
10 we would have had some family problems.

11 But this social pipeline needs to be shut off and that's  
12 where Tobacco 21 can be one part of the solution. But the  
13 flavors are another critical piece of the solution because  
14 the kids don't perceive something that's labelled as cotton  
15 candy or gummy bears as being something that could possibly  
16 be harmful.

17 Mrs. Brooks. So Governor Holcomb of Indiana and our  
18 state health commission are investing \$2 million in a public  
19 relations campaign to educate schools and kids and so forth.

20 Mr. Myers, can you talk to us about what kind of  
21 marketing are you seeing that has made the big -- why do the  
22 kids believe it's safe? Aside from flavors, how is it that  
23 there is nothing that indicates that it's filled with

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1 nicotine?

2 Mr. Myers. It's the perfect question. It's because the  
3 FDA rules on advertising have not been applied to e-  
4 cigarettes -- that this industry, which comes out of Silicon  
5 Valley, figured out that if you use social media, we adults  
6 wouldn't see it until long after our children saw it.

7 They went back and researched and used the exact same  
8 imagery that the cigarette industry used in the '50s and '60s  
9 to make it look like it was cool, it's what you needed to be  
10 socially successful, happy, independent, and healthy -- all  
11 of those things.

12 And so everybody in their ads, everybody in the events  
13 that they sponsored looks like they are the quintessential  
14 most healthy, happiest, most successful person in the world.

15 You want to be a -- figure out how you reach a teenager?  
16 They took the tobacco industry play book and they applied it  
17 to precision.

18 Mrs. Brooks. Thank you. I yield back.

19 Ms. Eshoo. The gentlewoman yields back.

20 A pleasure to recognize the gentleman from California,  
21 Mr. Cardenas, for his five minutes.

22 Mr. Cardenas. Thank you very much, Madam Chair.

23 Appreciate the opportunity for us to have this open and



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1 public discussion about this important issue.

2 I will quote the U.S. attorney general -- excuse me, the  
3 U.S. Surgeon General: "The evidence is sufficient to conclude  
4 that advertising and promotional activities by the tobacco  
5 companies cause the onset and continuation of smoking among  
6 adolescents and young adults," end quote.

7 So it appears that the U.S. Surgeon General agrees that  
8 there is evidence by his statement that this epidemic is  
9 something that we should do something about to protect not  
10 only our children but families as a whole.

11 Dr. Tanski, you have devoted a significant portion of  
12 your research to the effects of marketing tobacco products to  
13 youth.

14 Can you expand on how tobacco companies historically  
15 targeted youth in advertising and why youth might be very  
16 susceptible to tobacco marketing?

17 Dr. Tanski. Thank you for the question.

18 So yes, I've done quite a bit of research on marketing  
19 and, specifically, media mentions and product placement.

20 So back in the '50s, '60s, '70s, even earlier, tobacco  
21 companies would actually pay film companies for product  
22 placement. So there's no such thing as a Marlboro truck but  
23 there was in the "Superman" movie, and the little creepy guys

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1 from "Men in Black" they smoked Marlboro cigarettes.

2 Those were product placements that were, in the first  
3 case, paid for. There were things that were -- documents  
4 that were signed. But what that does when things are placed  
5 in media it creates this halo effect.

6 You associate cool characters with the product that  
7 they're trying to sell, and movies and media are kind of a  
8 super peer and it's a life that you may not live but it's out  
9 there and it's very attractive.

10 So marketing and media placements are very effective at  
11 changing social norms and moving people towards behavioral  
12 willingness, which is a term we use to say when people --  
13 maybe they thought they weren't going to do it but now  
14 they've seen it often enough or they've heard about it often  
15 enough, maybe now I will try it.

16 They try it because of the flavors or their friend  
17 giving it to them. Then they get hooked and now we've got a  
18 new patient who is addicted to nicotine.

19 Mr. Cardenas. Most of what you described in those  
20 practices by the tobacco industry is pre-digital media. What  
21 tactics do they seem to be using today?

22 Dr. Tanski. They use a lot of similar tactics and they  
23 also hire social influencers. Influencers are -- we are all

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1 familiar with what they look like.

2 They're the cool people and they use the products and  
3 then they -- they're basically advertising that product.  
4 There are supposed to be rules about them disclosing that  
5 they're getting funding for talking about or promoting those  
6 products.

7 That doesn't always happen. But that is a place where  
8 we know that the tobacco industry and the vaping industry has  
9 put some of their effort to try to get these influencers to  
10 get their product and the word about their products out.

11 Mr. Cardenas. Okay.

12 Ms. Fuhrman, what types of marketing do you -- do you  
13 see or that you think parents are having to contend with?

14 Ms. Fuhrman. Well, as I said, there's a lot of peer-to-  
15 peer marketing now. The influencers who used to be paid, who  
16 may still be paid or not, they have hundreds of thousands of  
17 views on their vape tricks -- #vapetricks. So there's a lot  
18 of that peer-to-peer marketing.

19 And then, you know, concerts and events you see a lot of  
20 the placement there. And then as I said before, homework  
21 websites or apps and games that, you know, middle schoolers  
22 are playing. So it's prevalent.

23 Mr. Cardenas. Okay. I probably would get voted out of

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1 office but I don't have a problem with increasing the legal  
2 age to 25, 26 because back in the day we didn't realize as  
3 human beings that the human brain is not fully developed  
4 until you're in your mid-20s. And now that we have those  
5 stats, maybe we should have policy follow the facts and the  
6 science.

7 Mr. Myers, President Trump made some kind of claim on  
8 this matter. What's the status of that implementation with  
9 the administration when it comes to actual actions?

10 Mr. Myers. Yes, on September 11th President Trump and  
11 the White House announced that they were going to take action  
12 within a few weeks to ban the sale of all flavor --

13 Mr. Cardenas. So that statement was more than a few  
14 weeks ago?

15 Mr. Myers. September 11th. We can -- I will do --  
16 about five weeks ago now.

17 Mr. Cardenas. Okay.

18 Mr. Myers. Within a few weeks of that they would  
19 announce a policy to ban the sale of all flavored e-  
20 cigarettes that had not been reviewed by the Food and Drug  
21 Administration.

22 Our hope is that they will move and do that as fully and  
23 as completely as they said. But they haven't done it yet.

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1           Mr. Cardenas. So the president said in a few weeks they  
2           were going to come out with something and it's been more than  
3           a few weeks. So it's been at least five weeks and they  
4           haven't come out with something.

5           Does anybody at the table know when they are making a  
6           harder claim of when that date's coming?

7           Mr. Myers. We don't believe that they've announced any  
8           hard date.

9           Mr. Cardenas. Well, I personally believe that, once  
10          again, we were duped by this president because I actually ran  
11          into somebody in my district who said, oh, the president's  
12          going to do something about it. I said, no, he just said  
13          something.

14          I personally doubt it. I hope for the best, but I  
15          personally doubt it that there would be follow through. Yet,  
16          we haven't seen that follow through.

17          Ms. Fuhrman.

18          Ms. Fuhrman. One thing. The First Lady last week met  
19          with a group of kids from the Truth Initiative to discuss the  
20          youth vaping epidemic. So we are very hopeful that the First  
21          Lady and the president will fulfill their promise and --

22          Mr. Cardenas. And she's trying to end bullying as well.  
23          Thank you.

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1           Ms. Eshoo. The gentleman yields back.

2           Now I would like to recognize the gentleman from  
3 Georgia, the House of Representatives' only pharmacist --

4           Mr. Carter. Thank you.

5           Ms. Eshoo. -- for five minutes.

6           Mr. Carter. Thank you, Madam Chair, and thank all of  
7 you for being here. Obviously, a very important subject --  
8 something that we are all concerned with.

9           Dr. Siegel, you mentioned in your testimony that the  
10 supply of e-liquids that the youth are vaping is transforming  
11 more to the THC products, and can you elaborate on that some  
12 and tell us what you see happening here?

13          Dr. Siegel. Yes. So I think what's happened is that  
14 youth discovered that you can use THC in these devices and  
15 once they discovered that it became incredibly popular  
16 because you can't tell that someone is using it.

17          If you're smoking pot you can smell it. You can't do  
18 that in the school and not get caught. But you can vape THC  
19 all you want. The vapor just dissipates immediately and  
20 nobody can tell.

21          In addition --

22          Mr. Carter. Are you -- I never knew that. That's one  
23 of the most disgusting smells is the smell of marijuana that

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1 I can imagine. So thank goodness at least we've gotten  
2 something done about that.

3 Dr. Siegel. So, you know, because the vaping is heating  
4 the liquid it's not -- it's not burning it. So that's why it  
5 doesn't create a smoke and you can't smell it.

6 The other thing is that you can't look at the e-liquid  
7 and tell whether it's a nicotine e-liquid or a THC e-liquid.  
8 And so that's why this is so -- becoming so popular because  
9 it's discreet.

10 Nobody knows what they're doing and they're able to get  
11 a high without actually having to risk anyone knowing that  
12 they're using an illicit substance.

13 Mr. Carter. Unbelievable. Can I ask you, have you read  
14 this bill? Have you reviewed this bill that -- before us  
15 today?

16 Dr. Siegel. I have.

17 Mr. Carter. Do you -- is it your understanding that the  
18 proposed ban on flavored products would apply to just  
19 tobacco-vaping products or is it your understanding it would  
20 also apply to CBD and to THC products?

21 Dr. Siegel. No, just nicotine-containing tobacco  
22 products.

23 Mr. Carter. That's exactly right. You know, it appals

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1 me. I am going to do something I don't normally do, but I  
2 would like to ask each one of you a yes or no question, okay,  
3 just like they ask you.

4 First of all, I will start with you, Mr. Myers. Do you  
5 think we had sufficient research on public safety before  
6 allowing flavored e-cigarette products enter the market?

7 Just yes or no. Do you think we had proper research?

8 Mr. Myers. No.

9 Ms. Fuhrman. No.

10 Dr. Tanski. Not yet. No.

11 Mr. Gardiner. No.

12 Dr. Siegel. No.

13 Mr. Carter. All five of you said no. And yet, here we  
14 are, the federal government, whether it be the FDA -- and by  
15 the way, Dr. Scott Gottlieb wrote an op-ed in the Wall Street  
16 Journal last week about the pot legalization makes vaping  
17 deadly, about the -- just what you were talking about, Dr.  
18 Siegel -- Mr. Siegel -- about the fact that they were using  
19 THC and how this is killing people -- killing our youth.

20 And yet, here we are. In this bill and the federal  
21 government we don't even mention THC in this bill. We  
22 mention flavored tobacco but we don't mention THC. We don't  
23 regulate THC. I mean, it's amazing to me, and if you can't



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1 tell, this is one of my pet peeves.

2 I am adamantly opposed to recreational use of marijuana  
3 and just think it's awful. And here we have an example of  
4 where the inaction of the FDA, of Congress, of not  
5 reclassifying marijuana like we should so that research can  
6 be done on it. Here we have a national crisis on our hands  
7 as a result of that.

8 Any comments?

9 Dr. Siegel. I think that you make a great point and I  
10 think that, as Dr. Gottlieb wrote in that op-ed, we need to  
11 reclassify marijuana so that it can be regulated and so that  
12 we can prevent these tragic deaths from occurring.

13 I think part of the problem is that everyone is talking  
14 about e-cigarettes -- nicotine e-cigarettes -- and because of  
15 that kids have completely lost sight of the fact that the THC  
16 cartridges are the ones that are causing the deaths, and  
17 because of that the public's perception is completely wrong.

18 If you ask the public in surveys, they say that they  
19 think this is due to nicotine e-cigarettes, not THC. Very  
20 few understand that THC is even involved. I think our  
21 communications have to be a lot more specific and rather than  
22 THC vaping being the kind of elephant in the room that nobody  
23 is talking about, I think we have to directly address that

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1 problem.

2 Mr. Carter. Anyone else want to comment on that?

3 Mr. Myer.

4 Mr. Myers. I just think it's important to recognize we  
5 have two separate issues. We have an e-cigarette youth  
6 epidemic --

7 Mr. Carter. And I am not denying that.

8 Mr. Myers. -- and everybody, I think, agrees that we  
9 need to do something about that issue. The THC issue and the  
10 lung deaths bring greater urgency to have as few kids using  
11 any of these products as possible, whatever their link is.

12 Mr. Carter. And I understand that. It just amazes me  
13 that we in Congress continue to ignore the fact that we need  
14 to reclassify marijuana -- that federal law says that it is  
15 against the law and states are approving it. Amazing.

16 Ms. Eshoo. The gentleman's time is expired.

17 Mr. Carter. I yield back.

18 Ms. Eshoo. I think it's important to restate again that  
19 THC is prohibited by the federal government. It's not just  
20 out there floating around that we need to get our arms  
21 around. It already is a prohibited substance so --

22 Mr. Carter. It is prohibited but there are states that  
23 are legalizing it.

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1           Ms. Eshoo. Well, I said earlier before you came back  
2           into the room that we need enforcement of the laws that we  
3           have on the books when it comes to THC.

4           But I think that it is a conflation to keep referring to  
5           it as if it's the newest shiny object that we have to go  
6           after. I think we need to in terms of enforcement.

7           But we have an epidemic on our hands and people are  
8           dying. So I appreciate the gentleman's questioning and his  
9           participation today.

10          I now would like to recognize Dr. Ruiz from the Golden  
11          State of our nation, California.

12          Mr. Ruiz. Thank you, Madam Chair.

13          As a physician, I am all too familiar with the  
14          devastation caused by addiction to nicotine. I've seen  
15          firsthand a health decline in individuals who tried tobacco  
16          as teenagers, got addicted, and never quit.

17          And there's also reports in the emergency department --  
18          I am an emergency physician -- of new cases of cardiac  
19          pediatric arrhythmias caused by nicotine overdose in much  
20          higher frequency than before.

21          While in recent years smoking cigarettes among teens has  
22          continued to decline to the lowest level in decades, on the  
23          other hand, vaping rates have skyrocketed. Okay.

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1           In fact, according to a 2016 report by the Surgeon  
2           General, there was a 900 percent increase in teens vaping  
3           from 2011 to 2015 -- 900 percent increase.

4           Part of the problem is that many teens and adults think  
5           that vaping is harmless or because the vaping industry want  
6           to take addicted cigarette smokers to become addicted vaping  
7           smokers, basically increasing their profit share, then people  
8           think that it's not as bad, right, and therefore it's safer -  
9           - i.e., safe to smoke, and I've spoken about this before.

10          But perhaps it may be slightly safer. It is certainly  
11          not good for you to smoke and it can still injure your lungs.  
12          It can still cause cancer. There are carcinogens in vaping  
13          products that can cause cancer, period.

14          You know, there's research done on many different types  
15          of plant-based kind of properties and some may have some  
16          therapeutic properties, right. There has been research on  
17          cannabis and maybe there's some benefit, medically speaking.  
18          But there's no benefit for nicotine.

19          I haven't found that research yet to say that nicotine  
20          is good for any particular ailment and it's definitely  
21          addictive. It's addictive.

22          So it's devastating that so many young people and many  
23          of their parents are operating under an assumption, oh, that

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1       these products are harmless when, clearly, there are  
2       significant health risks that we know about as well as many  
3       that we still yet don't know about, okay, and it is our job  
4       to weigh the potential benefits of vaping for people trying  
5       to quit nicotine use against the cost, particularly as more  
6       teens are using and getting addicted to these harmful  
7       products.

8               So as we tackle this issue we need to do everything in  
9       our power to decrease access to these products to underage  
10      teens, and while it is certainly common for high school  
11      students to get vaping and tobacco products from their  
12      friends, many are buying them directly.

13             So we need to get tough on those who are selling to  
14      underage teens. Clearly, the current punishment isn't enough  
15      to stop retailers from selling to kids. So that means we  
16      need to increase the penalties and I am working on  
17      legislation that would require the FDA to issue a fine for  
18      the first offense.

19             Right now it's just a slap on the hand letter that you  
20      get, and then for the fines that are already in place we are  
21      doubling them, and my bill will also require the CDC to  
22      conduct much-needed research on the long-term effects of  
23      vaping.

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1           So if e-cigarettes can be used in specific narrow cases  
2           as a tool to help smokers quite combustible cigarettes, quit  
3           nicotine, period, it makes sense that we should ensure there  
4           is perhaps some safe pathways for smokers to use these  
5           devices to end their addiction to nicotine, not transfer the  
6           product for their addiction.

7           So like other policies that affect public health, we  
8           must let the science be our guide. The first question I  
9           think we need to answer is do e-cigarettes really actually  
10          work as a safe tool to encourage smoking and nicotine use  
11          cessation.

12          I will start with you, Mr. Myers.

13          Mr. Myers. The answer is the evidence is weak on that  
14          point. More than 60 percent of all e-cigarette adult users  
15          also continue to smoke cigarettes and they don't reduce their  
16          risk of disease at all.

17          Mr. Ruiz. In those cases, had there been any literature  
18          showing that e-cigarettes can be better than a nicotine patch  
19          or the nicotine gums for actually ending the use of nicotine?

20          Mr. Myers. There are one or two studies. There are  
21          also a number of studies that many e-cigarettes actually  
22          decrease your likelihood of success.

23          The failure of any e-cigarette manufacturer to submit

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1 evidence to the FDA to be objectively evaluated is why we  
2 don't know the answer and why, frankly, the failure of FDA to  
3 act is hurting smokers as well as kids.

4 Mr. Ruiz. I've run out of time.

5 Ms. Eshoo. The gentleman yields back.

6 Pleasure to recognize the gentleman from Montana, Mr.  
7 Gianforte.

8 Mr. Gianforte. Thank you, Madam Chair, and thank you to  
9 all the witnesses for being here today.

10 This is a very important topic that's getting an awful  
11 lot of attention. I hear about it back home all the time.

12 The bill before this committee is supposed to deal with  
13 the ongoing public health concerns about vaping, particularly  
14 among children, and I am pleased that there's bipartisan  
15 agreement on this committee that we don't want children  
16 vaping or smoking.

17 There's also bipartisan agreement on this committee that  
18 we don't want vapers harmed by dangerous or adulterated  
19 substances sold on the black market.

20 The proposed legislation we consider today, however,  
21 goes beyond what has been a bipartisan agreement on this  
22 committee.

23 Those bipartisan measures included raising the legal age

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1 for tobacco use to 21, addressing online sales -- to prohibit  
2 them -- and ensuring a known and evaluated product is on  
3 sale. We agree on that.

4 Small business owners I talk to back in Montana have  
5 told me they're fine with raising the legal age to 21. They  
6 supported a similar measure before our state legislature just  
7 this year.

8 What concerns them is the effort to ban flavors. We've  
9 seen efforts in a handful of places including Los Angeles,  
10 New York, and even Montana to ban flavors.

11 Shop owners I have talked to worry that even though  
12 they're selling products from a known and evaluated supply  
13 chain, they'll be put out of business.

14 Furthermore, I worry that efforts to ban flavors will  
15 lead to stronger illegal markets with unhealthy unregulated  
16 products -- exactly what we aim to avoid in the first place.

17 There's a balance we have to strike here as we  
18 responsibly promote public health. I want to get the answers  
19 and I want to hear from the experts and I want to rely on  
20 sound science to make these decisions.

21 We were getting there with our bipartisan work and,  
22 personally, I think we should get back to that bipartisan  
23 work where we have agreement. I would like to direct my



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1 first question to Dr. Siegel.

2 What evidence is there of cadmium and other heavy metals  
3 being involved in the cases of severe vaping-related lung  
4 injuries?

5 Dr. Siegel. Right now there is none. The most likely  
6 cause of this outbreak is tainted THC cartridges that have  
7 been laced with Vitamin E acetate, which is a new thickening  
8 agent that just started to be used by the black market  
9 producers late last year. And either the oil itself or  
10 something in it is what's likely causing this outbreak.

11 Mr. Gianforte. So and are these products available in  
12 shops that are down on Main Street?

13 Dr. Siegel. No. These are black market products that  
14 can only be obtained through illegal sources.

15 Mr. Gianforte. So you believe the challenges we've seen  
16 with the cases that have been reported are not from  
17 legitimate products that have been provided through a legal  
18 supply chain?

19 Dr. Siegel. I think there is absolutely no evidence  
20 that that's the case. I think that these are coming from the  
21 black market. They are counterfeit bootleg illicit products  
22 that are causing this, not products that are sold in retail  
23 stores.

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1           Mr. Gianforte. Okay. So what -- I heard some of your  
2           testimony earlier, but just to put a bow on it, Dr. Siegel,  
3           what advice would you have for this committee on ways to  
4           improve the legislation we have in front of us?

5           Dr. Siegel. Well, I think that banning the flavors -- I  
6           think every aspect of the legislation is reasonable except  
7           for banning the flavors.

8           I think you need to consider what's going to happen if  
9           you ban e-cigarette flavors. The first thing that's going to  
10          happen is you're going to be putting 16,000 small businesses  
11          out of business. You have got to consider that effect.

12          The second thing that's going to happen is you're going  
13          to be having -- forcing 2 million ex-smokers who have already  
14          quit smoking using these products to go back to -- either go  
15          back to smoking, which is a disaster, or to turn to an  
16          illicit black market, which is also a disaster.

17          And the third thing you're doing is you are causing more  
18          youth to turn to THC products those are the only ones that  
19          are going to be available and you are actually increasing the  
20          risk of more cases of this outbreak.

21          But you're doing nothing to actually address respiratory  
22          disease that is occurring. You're doing nothing to prevent  
23          deaths. You're just putting a lot of people out of business

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1 and forcing a lot of ex-smokers to go back to smoking.

2 Mr. Gianforte. Okay, and thank you for that.

3 And, Madam Chair, I would just encourage this whole  
4 committee let's get the facts and make decisions based on  
5 public health.

6 And with that, I yield back.

7 Dr. Tanski. May I make a comment in the last couple  
8 seconds?

9 Oh, sorry.

10 So one of the things that you mentioned is that we need  
11 known and evaluated e-cigarettes, and flavors have not been  
12 proven safe and I think that's something that we need to  
13 really wrap our hands around.

14 Many of the flavors are known to be -- to cause harm and  
15 cause tissue damage and direct tissue damage to the lung, and  
16 we have young people who are inhaling them directly into  
17 their lungs over and over again every day and we don't know  
18 what the effects are.

19 So known and evaluated is not actually true, and tobacco  
20 flavor is still available, yes.

21 Ms. Eshoo. Thank you. The gentleman has yielded back.

22 I now would like to recognize the gentlewoman from  
23 Illinois, Ms. Kelly, for her five minutes of questioning.

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1           Ms. Kelly. Thank you, Madam Chair, and thank all of you  
2           for your testimony today.

3           In addition to my role in this committee, I am also  
4           chair of the Congressional Black Caucus Health Braintrust.  
5           Because of this, I am invested in working to improve the  
6           health of all communities and reducing health disparities,  
7           especially for vulnerable and minority populations.

8           Dr. Gardiner, in your testimony you mentioned the impact  
9           of predatory marketing and how it disproportionately impacts  
10          minority communities. We know that the majority of African-  
11          American smokers are using menthol products.

12          Not only is the youth tobacco epidemic a crisis, but  
13          predatory practices have led to severe disparities in health  
14          outcomes including increased rates of various morbidities  
15          such as lung cancer and heart attacks among minority  
16          populations.

17          Can you expand upon the extent of these disparities and  
18          its impact on communities of color?

19          Mr. Gardiner. Thank you very much for the question.

20          The impact is actually larger than just the statistics  
21          show. We are talking about kids losing parents at an early  
22          age in a poor community that doesn't necessarily have health  
23          care.

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1           So you have to look at -- when we talk about unintended  
2           consequences, the unintended consequences of the tobacco  
3           epidemic in the African-American community, frankly, has been  
4           somewhat overwhelming and has been going on for years.

5           I want to encourage this committee. The last question  
6           about the black market occurring there, in the 26 cities  
7           where this has been done there's no black market that has  
8           occurred.

9           And in terms of these folks going out of business, a  
10          great study was done -- we should share it with the committee  
11          -- that was done in Minneapolis where -- what was the impact?  
12          Not one person went out of business. Their sales went down -  
13          - this is true -- but they didn't go out of business.

14          So all this discussion about we need to get the science  
15          right and we need to get this right, I want to encourage  
16          that.

17          But I appreciate your question because we know the facts  
18          disproportionately affect black people. When you look behind  
19          it, kids are losing parents at an early age. This is leading  
20          to folks going to jail for other -- the impact is  
21          overwhelming, frankly.

22          Ms. Kelly. And I know the top 10 diseases that  
23          Americans die from, African-Americans are number one, I

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1 believe, in eight of the --

2 Mr. Gardiner. Eight of the 10. Right.

3 Ms. Kelly. Eight of the 10 diseases.

4 This is personal for me, too, because my son was a  
5 smoker and he vapes. But he's not a kid. He's 35 years old.  
6 So we go back and forth with him, and it has helped him, you  
7 know, stop smoking. Even I bug him every day, every time I  
8 hear of something going on.

9 But he differentiates between what he does and what he  
10 believes these young folks are dying from or their throats  
11 are being messed up from what he uses. But I still don't get  
12 what he's -- I don't have the argument back for him.

13 Mr. Gardiner. The distinction that is trying to be made  
14 is that vaping heats the oil or heats the something and while  
15 smoking a cigarette or smoking a joint burns it and you're  
16 going to have different chemical reactions, my suggestion to  
17 the committee they both have a specific chemical footprint  
18 and that footprint is different and that does not necessarily  
19 mean that one is healthier than the other.

20 There is still science to be done. I want to encourage  
21 if we are going to really look into the science to look into  
22 when you -- you said it best -- when you inhale flavors over  
23 a long period of time, what is that going to mean for your

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1       lungs.

2               And then the latest data out on the deaths is not so  
3       much the concentrated -- the concentrated juice. There's  
4       actually the scarring that's been identified in the lung, and  
5       that -- now, that be other causes.

6               And one thing we know is that flavors are aldehydes and  
7       aldehydes are irritants, and that may be leading to the  
8       scarring. So --

9               Ms. Kelly. And I don't think he uses flavors but --  
10       and, you know, he says to me, do you want me to go back to  
11       smoking, and I said no, but you want to slow down --

12              Mr. Gardiner. Do you know -- do you know he doesn't use  
13       flavors?

14              Ms. Kelly. Yes, I don't -- yes, because he's done it at  
15       my house so I should be able to smell it, right? Or no?

16              Mr. Gardiner. No.

17              [Laughter.]

18              Ms. Kelly. I can't? Oh.

19              Mr. Myers. One of the -- one of the diabolical --

20              Ms. Kelly. I mean, he's not going to lie. He doesn't  
21       have to lie to me.

22              Mr. Myers. One of the diabolical genius parts about  
23       this is they've created a mechanism so that you can't smell

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1       it on their breath or on their clothes, which is why kids are  
2       able to do it in school and not get caught. I mean, it is --  
3       it is really troubling.

4             You know, the other issue we don't talk about with  
5       menthol that is really important is that menthol is a starter  
6       product for kids all across the country.

7             More than 50 percent of kids who become addicted to  
8       cigarette smoking start using menthol products. So if we  
9       care about kids all across the board, that's part of the  
10      issue.

11            Ms. Kelly. Thank you.

12            Ms. Eshoo. The gentlewoman yields back.

13            I now would like to recognize the gentleman from  
14      Florida, Mr. Bilirakis, for his five minutes.

15            Mr. Bilirakis. Thank you, Madam Chair. I appreciate  
16      it. I really appreciate you holding this hearing. It's so  
17      very important and timely, and of course, we have to get it  
18      right.

19            But let me be clear. Under no circumstances should  
20      youth have access to tobacco products, period. That's the  
21      way I feel and I think most people feel the same way.

22            So while this committee and the FDA are working to  
23      address the real epidemic of youth use of tobacco products



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1 and lung injuries linked to illicit black market vaping  
2 products, we should also be sure we are not creating  
3 unintended consequences that will lead to a future public  
4 health crisis or exacerbate the current one.

5 I remain committed, of course, to working with the chair  
6 and all my committee members on both sides of the aisle.

7 Dr. Siegel, CDC recently highlighted data showing that  
8 cigarette smoking has fallen to historic lows. That's been  
9 mentioned in this committee.

10 This is a positive advancement for public health, and we  
11 should be providing current adult smokers with more tools.  
12 Not necessarily e-cigarettes but, you know, that's why we are  
13 having this hearing -- to get the facts from the experts.

14 So but we don't -- we want to provide them more tools if  
15 they're less harmful to quit and transition to low-risk  
16 products.

17 Congress is no stranger to unintended consequences,  
18 unfortunately. Could this bill make it harder for current  
19 adult users of traditional combustible tobacco products to  
20 transition to a modified risk tobacco product?

21 And then let me ask -- first of all, can you answer that  
22 question, please, sir?

23 Dr. Siegel. Yes. This bill, if enacted as it is with

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1 the flavored e-cigarette ban, is going to wreak havoc with  
2 smokers. It's going to make it incredibly difficult for them  
3 to quit smoking by using flavored e-liquids and it's also  
4 going to force many ex-smokers who have already quit to go  
5 back to smoking.

6 We know that e-cigarettes are the most effective smoking  
7 cessation tool using nicotine. They outperform nicotine  
8 patches by double.

9 So the New England Journal of Medicine published a  
10 clinical trial -- published earlier this year which showed  
11 that switching to vaping e-cigarettes is twice as effective  
12 as a nicotine patch in helping smokers quit.

13 So this is currently the best option we have for smokers  
14 to quit. Two million of them have quit using flavored e-  
15 cigarettes. Why would we want to take that away from them?

16 Mr. Bilirakis. Yes, but we don't want -- yes, I agree  
17 with that. But, again, I don't want my kids or, you know,  
18 youth vaping.

19 I understand, and we heard it today -- I've heard it  
20 several times over the last few years that, what is it, the  
21 nicotine -- the amount of nicotine is equivalent to -- in one  
22 e-cigarette or JUUL, what have you, a pack of cigarettes. I  
23 mean, that's terrible, and then our kids are being addicted

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1 and I just don't see -- I think that there's going to be a  
2 rise in the future and we've got to do something about it.

3 But I want to do the right thing. I don't want to just  
4 pass a bill and then -- and have the unintended consequences  
5 or pass a bill and we pat ourselves on the back and say we've  
6 solved the problem when we really didn't.

7 So Dr. Siegel, with recent reports of patients,  
8 especially youth, being hospitalized with lung injuries  
9 associated with vaping illicit black market THC and flavored  
10 nicotine home brews, does this bill address this public  
11 health concern?

12 And I think I know the answer to that. You have  
13 testified. But if you want to elaborate that would be good.

14 Dr. Siegel. It doesn't. It doesn't. This is going to  
15 outlaw the legal sale by retail stores of electronic  
16 cigarettes -- of flavored products. These are not the  
17 products that are causing the terrible deaths and severe  
18 respiratory failure that we are seeing.

19 And in my opinion, it's actually going to make the  
20 problem worse because I think when youth are no longer -- no  
21 longer have access to flavored e-liquids, what the suppliers  
22 are going to start supplying is going to be THC because  
23 that's what they can get their hands on.

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1           Mr. Bilirakis. Okay. Well, thank you very much and I  
2 look forward to working with you all.

3           I yield back, Madam Chair.

4           Ms. Eshoo. The gentleman yields back.

5           Dr. Siegel, I would like to ask you a quick question.

6 Are you representing the Public Health School at Boston  
7 University in your testimony today?

8           Dr. Siegel. Well, I am a professor at Boston  
9 University.

10          Ms. Eshoo. I know you are. But are you representing  
11 the Public Health School?

12          Dr. Siegel. Well, when professors --

13          Ms. Eshoo. Are you here as an individual?

14          Dr. Siegel. No. I mean, when professors speak they're  
15 not representing the school they come from. They're  
16 representing their own opinions.

17          Ms. Eshoo. Oh, okay. Well, that's important for  
18 members to understand. Thank you.

19          Now I would like to recognize Ms. Barragan from  
20 California for her five minutes of questioning.

21          Ms. Barragan. Thank you. Thank you, Madam Chair.

22          Dr. Siegel, you said something earlier that was to the  
23 effect that flavors are not the problem. Is that -- is that

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1 accurate? Is that accurate testimony?

2 Dr. Siegel. Specifically what I said is flavors aren't  
3 causing the harm.

4 Ms. Barragan. Okay. So I just wanted to clarify --

5 Dr. Siegel. It's not that they're not a problem. I  
6 mean, they're -- you know, of course they're the problem.

7 Ms. Barragan. Okay. Okay. I have a question that's  
8 going to follow. So I think the issue here is do you believe  
9 that flavors are hooking children so that they then become  
10 dependent on nicotine? Do you believe the flavor hooks them?

11 Dr. Siegel. No.

12 Ms. Barragan. You don't?

13 Dr. Siegel. I think it's the nicotine.

14 Ms. Barragan. Do you think that the flavor attracts our  
15 young people to then vape?

16 Dr. Siegel. Of course.

17 Ms. Barragan. Okay. So there -- so at least you admit  
18 that there is some attraction that the flavor is what gets  
19 them started?

20 Dr. Siegel. The flavor -- I mean, first of all, you  
21 have to understand there is no such thing as a nonflavored e-  
22 cigarette. There is no such thing.

23 Ms. Barragan. Okay. So it's -- let's talk about the

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1       fruity flavors. Do you think that kids see the fruity  
2       flavors and because of that they say, I am going to vape?

3             Dr. Siegel. Yes, I think that makes it attractive.  
4       Absolutely.

5             Ms. Barragan. Okay. So I just want to make sure we are  
6       on the same page because you kind of sounded like well, the  
7       flavors aren't a problem -- why are we going to get rid of  
8       them.

9             Yet, we know the Surgeon General in 2015 actually  
10       warned that tobacco companies were known to use fruity  
11       flavors to hook children.

12            And there was a survey that was done by the FDA and the  
13       National Institutes of Health of young people and they asked  
14       them why they did it. More than 80 percent of the children  
15       marked the answer that says it comes in flavors I like.

16            So I think that for me, at least, it's clarified because  
17       it was sounding to me like you didn't make a connection at  
18       all on why there would even be a discussion about why we  
19       wouldn't have the flavors anymore.

20            I also was a little shocked when I was doing some of the  
21       research to see that the FDA actually warned about this  
22       problem and this issue in 2015 and they drafted a ban. So  
23       you had made some -- you had some provided some testimony

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1       that the FDA has to come up with regulations.

2               Well, in 2015 the FDA actually came up with a draft ban  
3       on the flavors. What ensued after that draft ban was more  
4       than a hundred tobacco industry lobbyists and small business  
5       advocates met with the White House over the course of 46 days  
6       and when you took a look at the number of health -- public  
7       health advocates it was, like, seven. And it's pretty  
8       remarkable then to see when the actual rule came out the ban  
9       on flavors was gone.

10              So this isn't the first time the FDA has looked at it,  
11       and then we have seen some result. Unfortunately, that it  
12       got stripped out and we know the power of advocates and  
13       lobbyists and the industry. You don't have to look too far  
14       than the tobacco industry.

15              Mr. Gardiner, you -- Dr. Gardiner, you brought up an  
16       issue that's very near and dear to me. I represent a  
17       district that includes Compton and Watts.

18              It's a district that's almost 88 percent Latino and  
19       African-American, and many of my colleagues have talked about  
20       it already is the use of menthol cigarettes.

21              And we've already spoken a lot about it. But do you  
22       have any idea what the impact on smoking rates for children  
23       of color might be if the menthol ban from this legislation

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1 goes into effect?

2 Mr. Gardiner. We actually do. There's some great  
3 research done at the -- in 2011 by Levi and Company that  
4 shows that if just 30 percent of the people that are using  
5 these cigarettes -- just 30 percent, not many more -- if 30  
6 percent of the people stopped using these cigarettes, half a  
7 million lives would be saved, and as it relates to African  
8 Americans, over a quarter million of lives would be saved. I  
9 think that says it all. I can't say it any better.

10 Ms. Barragan. Great. Thank you, Doctor.

11 Mr. Gardiner. Can I say something about the --

12 Ms. Barragan. Sure. Please do.

13 Mr. Gardiner. -- the menthol -- the flavor? In 2016,  
14 it was the deeming regulations were put forward by the FDA,  
15 bringing all the products under their roof. There were 19  
16 pages on flavors and why flavors should be restricted and  
17 menthol was part of that.

18 Those -- maybe it was 16 pages or 19 pages -- they were  
19 all redlined by the Office on Management and Budget. That's  
20 why the deeming regulations -- so they tried.

21 Ms. Barragan. Right.

22 Mr. Gardiner. So there's been some tries. So we have -  
23 - this is another shot at -- another bite at the apple, as we



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1       --

2               Ms. Barragan. Great. Thank you.

3               Mr. Myers, with about 10 seconds left, I was pretty  
4       outraged to hear about the advertising on our youth. What  
5       impact would this legislation have on advertising for vaping  
6       products and e-cigarettes?

7               Mr. Myers. It would have a dramatic impact and it would  
8       curtail much of the kind of advertising that the industry has  
9       used to make these products so appealing and so attractive to  
10      youth and made them undo the denormalization we did with  
11      cigarette smoking.

12              Ms. Barragan. Great. Thank you. I yield back.

13              Ms. Eshoo. The gentlewoman yields back.

14              Mr. Rush of Illinois is now recognized for his five  
15      minutes of questions.

16              Mr. Rush. I want to thank you, Madam Chairman, and to  
17      all the witnesses it's been a very informative hearing that  
18      we've had today.

19              Dr. Gardiner, I am just kind of astounded by some of  
20      your conclusions. I think that you're right on point and  
21      there is a familiar saying -- you might have heard it -- that  
22      when the white community gets a cold the black community gets  
23      pneumonia, and I've found that to be relatively true.

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1           And I understand the whole issue about menthol-flavored  
2           cigarettes and how they have adversely affected the African-  
3           American community.

4           Now, the marketing has been predatory in relation to the  
5           African-American community. But maybe I am old school. I  
6           just have not seen the issue of vaping to be as widespread or  
7           to be one of the alarm factors as it relates to the African-  
8           American youth.

9           That's not to say that it doesn't exist. I just have  
10          not seen it rise up in my district, which is minority  
11          African-American.

12          When you consider that most of the issues in my district  
13          center around gun violence, that vaping is not really -- it  
14          is not really moved to the forefront.

15          But because I am ignorant of it, I ask will you kind of  
16          explain to me what is the state of the preponderance of  
17          incidence of vaping that's occurring in my district and other  
18          districts?

19          Mr. Gardiner. It's a great question. It's right on --  
20          it's right on point. I like to look at it this way. In the  
21          black community folks are doing marijuana. Folks are doing  
22          little cigars and cigarillos and smokers are smoking menthol  
23          cigarettes.

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1           But just like what happened with the skateboarding,  
2           remember, 40 years ago black folks weren't doing no  
3           skateboards. Today, they skateboard. Okay. So this is  
4           happening as we speak here.

5           This comes up all the time because I travel around the  
6           country and you ask -- you go to the high school, kids are  
7           doing it and kids are then doing it with their little cigars,  
8           too.

9           So it's happening. The data right now shows that it's  
10          less than in white communities. Like the cold and pneumonia  
11          thing, that's correct.

12          But that is changing. I love the skateboard analogy.  
13          We have -- unfortunately, we have anecdotal evidence from  
14          Arkansas, from Georgia, and parts of Florida where there are  
15          concentrations of blacks, particularly in Georgia around some  
16          of the HBCUs where there's some disproportionately high rates  
17          of e-cigarette use.

18          Things are changing. I think this bill would help to  
19          maybe nip that in the bud. Excellent question. Excellent.

20          Ms. Eshoo. The gentleman yields back.

21          Mr. Rush. All my questions have been asked and answered  
22          already. So I do yield back.

23          Ms. Eshoo. I now recognize the gentlewoman from

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1 Illinois, Ms. Schakowsky, for five minutes of questioning.

2 Ms. Schakowsky. As always, I thank the chairwoman for  
3 allowing me to participate in this hearing. Though I am not  
4 a member of this subcommittee, I am very concerned about  
5 this.

6 It appears that at least the first reported death was  
7 from my state of Illinois and, subsequently, we are talking  
8 about 1,300 people hospitalized and 26 deaths because of e-  
9 cigarettes and sometimes cause not exactly known.

10 And we know that last year almost 5 million middle and  
11 high school students indicated that they were using some form  
12 of cigarettes including e-cigarettes, and I think that number  
13 is on the rise. I think Dr. Gardiner could talk to us about  
14 that.

15 But I wanted to focus right at this moment on Ms.  
16 Fuhrman, and I want to thank you for your very personal  
17 testimony and your personal experience and the willingness  
18 that you have to share it.

19 If you could talk to JUUL's CEO right now or the CEO of  
20 any of the other e-cigarettes brands, what would you tell  
21 them about the impact of their product on your family and so  
22 many others?

23 Ms. Fuhrman. I would -- you know, the impact is

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1       devastating. It was difficult on our family. However, there  
2       are so many families across America who are experiencing so  
3       much worse.

4               Not even mentioning the lung illness, which is a cause  
5       and, you know, comes out of this, there are families who are  
6       dealing with kids who are so severely addicted they have  
7       explosive anger issues.

8               They're breaking things. They're throwing things.  
9       They're getting kicked out of school. They're losing  
10      scholarships. They're being kicked off the sports team. I  
11      mean, it's a huge issue and there is no -- as Dr. Tanski  
12      said, there is no FDA-approved cessation method.

13              So even if you take these flavors away, and I do want to  
14      add that we are leaving tobacco flavor -- the bill leaves  
15      tobacco flavor on the market. So as Dr. Siegel said, smokers  
16      who are using flavors don't have to go to the black market.  
17      They can use their tobacco vape.

18              It's not like we are banning these vapes. But something  
19      really has to be done, and the flavors -- taking those off  
20      the market is the first step.

21              Ms. Schakowsky. Thank you.

22              Mr. Myers, as chair of the Subcommittee on Consumer  
23      Protection and Commerce, I am very focused on leveraging the

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1 Federal Trade Commission's authority to protect consumers  
2 from deceptive business practices.

3 How do you believe the FTC could better investigate Big  
4 Vape and Big Tobacco?

5 Mr. Myers. I think the FTC's Division of Advertising  
6 Practices could do much more. There is no question that the  
7 manner in which these products are being marketed is  
8 misleading kids into believing that these products are much  
9 safer than they are and, in many cases, safe.

10 They're also misleading kids into believing that they  
11 don't have nicotine with regard to that. So that if the FTC  
12 uses its authority over false and deceptive advertising, I  
13 think it could do -- be much more aggressive in preventing  
14 these companies from misleading our youth. It's what they  
15 did with tobacco 30 years ago. They need to be at least as  
16 vigilant if not more so.

17 Ms. Schakowsky. Thank you.

18 Dr. Gardiner, the e-cigarettes initially were quit  
19 smoking tobacco and this will -- this will be a help. But I  
20 what I want to know are we actually developing more smokers  
21 by creating a nicotine addiction and making it all right?

22 I mean, I worry that these young people who may be  
23 vaping now for the rest of their lives may be smoking tobacco

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1 cigarettes.

2 Mr. Gardiner. That's an excellent question. I think it  
3 goes something like this. There are more people getting on  
4 the on ramp than are getting off the off ramp, and that is a  
5 problem that we are facing with the electronic cigarette  
6 situation here.

7 Let me just say something about the cessation thing.  
8 It's true the New England Journal of Medicine published a  
9 great article that showed that using e-cigarettes allow  
10 people to quit. That's true.

11 There's been somewhere in the neighborhood of about 35  
12 of these type of studies done. Somewhere in the neighborhood  
13 of 27 have shown that they don't really work that well.

14 There's some that work, and think of it this way. If  
15 you regulated the nicotine in it, if you got rid of the  
16 flavors, if you decreased the dose, if you couldn't buy it  
17 over the line, if there weren't 15,000 flavors available,  
18 too, then maybe it could actually serve as a cessation  
19 device.

20 Right now it's like -- it's like a candy bar, okay, and  
21 you can buy it in any number of different flavors. So as  
22 it's currently done, I think we have a problem. More people  
23 are getting on than they are getting off.

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1           Dr. Siegel. Can I -- can I just say, I think since you  
2 mentioned the 37 other studies, I think it's only fair if you  
3 tell the congresswoman how many of those 37 studies were  
4 clinical trials.

5           Ms. Schakowsky. My time has expired and so I yield  
6 back. Thank you.

7           Ms. Eshoo. Thank you, and thank you for joining us.  
8 Ms. Schakowsky, thank you for joining us and the excellent  
9 questions.

10           What I would like to do now is to thank each one of the  
11 witnesses on behalf of all of the members of the  
12 subcommittee.

13           We've been, let's see, three hours -- three hours. So  
14 thank you for your patience. Thank you for the substance and  
15 the content of your testimony.

16           This is a real challenge for our country and these are  
17 issues that really an individual can't address all by  
18 themselves. This really calls out -- I think it cries out  
19 for strong public federal policy and that's what the American  
20 people deserve.

21           We know how we made progress relative to tobacco and  
22 addiction, and now we are right back to addiction again. So  
23 I think that we have a roadmap that we can follow.



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1           And I look forward to working with all the members of  
2           the subcommittee and, again, I thank you for -- you know, for  
3           being with us today and the work that brought you to the  
4           table. It is -- it's nothing short of extraordinary.

5           I would like to place in the record the following  
6           documents: a letter of support from the American Dental  
7           Association, coalition letter from the Campaign for Tobacco-  
8           Free Kids, et. al, a letter of support from the National  
9           Medical Association, letter of support from the National  
10          Association of County and City Health officials, statement of  
11          support from the American Cancer Society and Cancer Action  
12          Network, statement of support from CVS Health, and a  
13          statement of support from the American Osteopathic  
14          Association.

15          So I would like to ask for unanimous consent.

16          Mr. Burgess. Without objection.

17          Ms. Eshoo. I thank the ranking member.

18          [The information follows:]

19

20          \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

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1           Ms. Eshoo. And with that --

2           Mr. Burgess. Madam, may I be recognized for a unanimous  
3 consent request?

4           Ms. Eshoo. Certainly.

5           Mr. Burgess. So I have unanimous consent to put into  
6 the record a letter from the Texas Food and Fuel Association  
7 and I would also like to submit for the record the data I had  
8 on the taxes collected by the Center for Tobacco.

9           Ms. Eshoo. So ordered.

10          [The information follows:]

11

12          \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

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1           Ms. Eshoo. I want to remind members that pursuant to  
2           the committee rules they have 10 business days to submit  
3           additional questions for the record to be answered by the  
4           witnesses who have appeared today, and I ask each witness to  
5           respond promptly to any such questions that you may receive.

6           So at this time, with gratitude again to the witnesses,  
7           the audience that stayed for the duration of this important  
8           lengthy hearing, this subcommittee is now adjourned.

9           [Whereupon, at 1:38 p.m., the committee was adjourned.]