

**Testimony of the Honorable Richard J. Durbin
United States Senator**

**House Committee on Oversight and Reform
Subcommittee on Economic and Consumer Policy**

“Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I”

July 24, 2019

Thank you, Chairman Krishnamoorthi and Ranking Member Cloud, for holding this important hearing to examine today’s youth vaping epidemic, and the role of JUUL and the Food and Drug Administration (FDA) in how we reached this point.

You already know the numbers. In the last year alone, there was an 80 percent increase in high-school students vaping, and a 50 percent increase in middle-school students using e-cigarettes. Today, because of devices like JUUL and the accompanying kid-friendly flavors, four million children nationwide are vaping.

JUUL and other e-cigarette companies like to claim that their products are only meant for adult smokers looking to quit cigarettes, but a look at the facts quickly dispels that notion. For one, there are no clinical trials proving that JUUL devices help adults quit smoking cigarettes. None. Despite all the marketing claims and all the paid testimonials, there is no credible medical evidence of JUUL’s most fundamental claim. None.

Further, more than 20 percent of children under the age of 18 are using e-cigarettes, compared with less than 3 percent of adults. JUUL knows exactly where their profits are coming from, and it’s not from adults looking to quit smoking ... it’s from our children.

Today’s youth vaping epidemic is a new version of an old battle, and one I am very familiar with. On Friday, November 13, 1959—one week before my 15th birthday—I stood at my father’s hospital bedside. It was noon and the Angelus bells were tolling at St. Henry’s Catholic Church in East St. Louis, across the street from St. Mary’s Hospital. After 100 days in that hospital bed, my two-packs-of-Camels-a-day father died of lung cancer at age 53. In the last days of his life, no matter how hard the doctors tried, my father struggled every minute to suck in oxygen through what must have seemed to be an ever-narrowing straw—turning blue, coughing, dying.

Cigarettes are responsible for more than 480,000 deaths every year in the U.S. They were responsible for my dad’s death. And so, when I came to Congress, I vowed to fight Big Tobacco with every fiber of my being.

And we have had some success over the years. In 1987, as a House member, I successfully passed an appropriations amendment banning smoking on 80 percent of airline flights within the U.S. The bill was signed into law by President Reagan, despite Big Tobacco fighting me all the way and calling the ban: “an intrusion on individual rights.”

That was just the first step. From there, we ensured that smoking was prohibited on all flights, not just those under two hours. And that was a tipping point. As we dispelled Big Tobacco's lies about the harms from cigarette smoke—including second-hand smoke—people wondered why you could light up a cigarette in a movie theater, a restaurant, or a bowling alley.

We also went directly after Big Tobacco's efforts to addict children on their deadly products at an early age. Which is why we made cigarettes more expensive, dumped Joe Camel and the Marlboro Man, and prohibited kid-friendly flavors in cigarettes, like strawberry and grape.

Since these historic changes, the percentage of youth smokers has declined from 28 percent in 2000 to less than eight percent today. However, anyone who believed the multi-billion dollar tobacco industry would go quietly ignored the power of greed.

And that's where we find ourselves today. Losing their precious market-share, Big Tobacco put their researchers and marketers to work. They needed a new product that did not carry the moral taint of cancer-causing tobacco—even better if it looked like a USB flash drive and could easily plug into a kid's laptop. They needed a campaign that included an unproven, positive health claim—such as JUUL's current “Make the Switch” slogan. They relied upon the \$12.8 billion dollar investment from old standbys like Altria, formerly Philip Morris. They needed a special strategy focused on kids, like super sweet flavors that appeal to children—fruit medley, gummy bear, whipped cream, unicorn poop, razzleberry, and cotton candy. And, finally, they needed the FDA to look the other way as their massive empire mushroomed and metastasized.

And, unfortunately, the FDA has been happy to serve as that accomplice—delaying commonsense regulation of the e-cigarette industry by years, refusing to remove illegal products from the market, and staying silent in the face of false health claims.

I have made clear to Acting FDA Commissioner Sharpless—and Commissioner Gottlieb before him—that FDA's hapless spectatorship must come to an end, whether by law, regulation, court order, or discovering the political will to get off the sidelines.

What has been the result of Big Tobacco and Big Vape's efforts, combined with FDA's abject failure to regulate this industry, despite the authority to do so? Between 2017 and 2018, the number of American teenagers using any tobacco product increased by nearly 40 percent—this was the largest single year increase in youth tobacco use ever.

That's right: all of our significant and hard-earned gains to reduce youth use of tobacco products are being reversed because of e-cigarettes like JUUL, and the accompanying kid-friendly flavors.

And all of these full-page JUUL ads decrying children using their products are as phony as the full-page ads Big Tobacco used to buy in the Wall Street Journal. News flash: kids aren't reading newspapers. Your ads are a thinly veiled cover-up of your business model that is addicting our kids.

To combat today's vaping epidemic, I have introduced bipartisan, bicameral legislation to crack down on the kid-friendly e-cigarette flavors—along with Senator Murkowski and Representatives DeGette and Raskin. Our SAFE Kids Act would give e-cigarette companies one year to prove that their products meet three commonsense criteria. First, companies would have to prove that their products actually help adult cigarette smokers quit. Second, they would have to prove that their products do not harm the people using them. And third, e-cigarette companies would have to prove that their products do not cause children to start using nicotine.

If a federal "Tobacco to 21" bill moves this year—and I hope it does—it is imperative that the legislation include strong provisions to crack down on the kid-friendly e-cigarette flavors that are addicting our children.

As someone who lost his father to smoking-related lung cancer, I had hoped that e-cigarettes would prove to be a successful smoking cessation device for adults fighting nicotine addiction. To date, that is not what we have seen.

Instead, these devices—and the candy, dessert, and fruit flavors—are causing children to develop a nicotine addiction at far greater rates than they are helping adults quit smoking cigarettes. A recent Dartmouth study found that e-cigarette use leads to 81 NEW smokers for every 1 smoker who quits. And a recent study published in JAMA found that teenagers who start vaping are three times more likely to go on to smoke cigarettes than teenagers who don't.

And consider this: JUUL is widely popular with kids and accounts for 70 percent of e-cigarette sales in the U.S. Make no mistake: JUUL—now partnered with tobacco giant Altria—is driving this epidemic, even as they pose for holy pictures.

Congress waited far too long to start protecting people from the dangers of cigarettes, and history is now repeating itself with e-cigarettes. Our inaction—combined with FDA's complacency—is dooming an entire new generation of children to nicotine addiction.

Most parents care when their teenager is lost in a cloud of vape smoke. Does Congress?

I look forward to working on a bicameral basis to address this public health epidemic head on. Thank you.