

**Oral Testimony of Tony Abboud
Executive Director, Vapor Technology Association**

**Unites States Senate Judiciary Committee Hearing on
Combatting the Youth Vaping Epidemic by Enhancing Enforcement
Against Illegal E-Cigarettes**

June 12, 2024

Thank you, Chairman Durbin, Ranking Member Tillis, and Members of the Committee for allowing me to testify today and answer your questions on a topic that is crucial to our nation's health.

I hope that my opening statement and responses to your questions will inform a balanced conversation about tobacco policy in the U.S. that is rooted in **the** science on e-cigarettes.

My name is Tony Abboud, and I am the executive director of the Vapor Technology Association. VTA is a trade association that protects and promotes the vibrant U.S. vapor industry with companies at every level of the distribution chain including manufacturers, distributors, suppliers, and mom and pop retailers. Discussions like the one we are having today are critical to our members throughout the country in informing our efforts and our engagement with esteemed members of this Committee. I hope I can serve as a useful and important resource for you all.

Let's begin with the fact that youth vaping in the United States has dramatically resolved from the peak of the JUUL epidemic in 2019.

Since then, youth vaping has plummeted 61%, largely due to **the** common-sense federal law raising the age to buy all tobacco products to 21 – a law the VTA championed with the White House and Congress.¹

¹ Birdsey, Jan, et al., Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023, MMWR Weekly / November 3, 2023 / 71(44); 1173-1182.

According to CDC's National Youth Tobacco Survey, the youth vaping rate now sits at the lowest level in more than a decade, **before** e-cigarettes were even regulated by the FDA. Even better, now only 4.4% of youth use e-cigarettes regularly and even fewer use them daily.²

Interestingly, in that same CDC survey, youth have consistently reported that flavors are **not** the reason they first tried an e-cigarette (14.5%) or the reason they currently use e-cigarettes (6.4%) (NYTS 2022).

Even more interesting, the dramatic rise in flavored disposable vaping products since 2019 has corresponded with the dramatic decline in youth use.

But, as dramatic as the decline in youth vaping has been, VTA hasn't been satisfied and has been advocating for serious, common-sense marketing and access restrictions to further protect youth from e-cigarettes while simultaneously ensuring the continued availability for adults desperately trying to quit smoking.

Why is this important? In February, Dr. Nancy Rigotti of Harvard Medical School wrote in the NEJM, "It is now time for the medical community to ... add e-cigarettes to the smoking-cessation toolkit... U.S. public health agencies and professional medical societies should reconsider their cautious positions on e-cigarettes for smoking cessation. The evidence has brought e-cigarettes to a tipping point. The burden of tobacco-related disease is too big for potential solutions such as e-cigarettes to be ignored."³

Further, last fall, the Medical University of South Carolina published the largest clinical trial in the U.S. (covering four years and 11 cities) finding that e-cigarettes helped people quit smoking better than the FDA approved medicines on the market *even if* "they had no intention of quitting."⁴ In other

² "E-Cigarette Use down among U.S. High School Students in 2023." *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, 3 Nov. 2023, www.cdc.gov/media/releases/2023/s1102-e-cigarettes-down.html.

³ Rigotti, Nancy A. "Electronic cigarettes for smoking cessation — have we reached a tipping point?" *New England Journal of Medicine*, vol. 390, no. 7, 15 Feb. 2024, pp. 664–665, <https://doi.org/10.1056/nejme2314977>.

⁴ "Largest US Study of E-Cigarettes Shows Their Value as Smoking Cessation Aid." *MUSC*

words, the mere availability of vaping products caused people to quit smoking

Another study from Abigail Friedman, at Yale University, showed that flavored e-cigarette restrictions result in a direct increase in combustible cigarette sales with tobacco flavored cigarettes being the main winner “including brands disproportionately used by underage youth.” The authors warned: “Any perceived public health benefits of reducing [flavored e-cigarettes] may be offset by public health costs from increased cigarette sales.”⁵

To be sure, even the largest cigarette companies in the world in their public filings have blamed their lagging cigarette sales on the presence of what *they call* illegal flavored vaping products.

The reason we are having this enforcement discussion today is because U.S. tobacco regulation in the hands of this FDA is broken. The FDA was supposed to implement the Tobacco Control Act to allow Americans access to alternatives to cigarettes that are less harmful. Instead, the FDA has done the opposite. It has misused its power to impose a de-facto ban on flavored vaping products without reviewing the science.

Since passage of the Tobacco Control Act, the FDA has authorized 16,000 combustible tobacco products and only handful of vaping products. In the past two years alone, this FDA has not authorized a single less harmful vaping or nicotine pouch (like Zyn) but it *has* rushed 2,000 new combustible products, including 821 new cigarettes to the market for Americans to smoke.

Hollings Cancer Center, hollingscancercenter.musc.edu/news/archive/2023/08/18/largest-us-study-of-ecigarettes-shows-their-value-as-smoking-cessation-aid#:~:text=t%20otherwise%20quit.%22-

² ⁵ Friedman, Abigail and Liber, Alex C. and Crippen, Alyssa and Pesko, Michael, E-cigarette Flavor Restrictions’ Effects on Tobacco Product Sales (January 29, 2024). Available at SSRN: <https://ssrn.com/abstract=4586701> or <http://dx.doi.org/10.2139/ssrn.4586701>

The FDA has not done its job as a regulator. And now it wants more funding to enforce the very actions which federal courts have declared as illegal while the FDA is asking for Supreme Court review. To be clear, the FDA has repeatedly stated that *every single vaping* product on the market is illegal regardless of whether the company has a pending application. That means FDA is enforcing prohibition. You can give it all the enforcement power in the world, but prohibition cannot be enforced.

Instead of pursuing enforcement action based on failed regulatory policy, the FDA must reverse course, make harm reduction its north star and authorize a wide variety of less harmful nicotine products. Filling the market with such flavored products which American adult consumers are clearly demanding is the only way curb illicit demand and give Americans what they need, want, and what the law intended them to have.

Only then will the half a million Americans who die from smoking every year have a regulated choice and fighting chance.

Thank you again for the opportunity to speak before you today, and I look forward to answering your questions.