

Before the Ohio House Ways & Means Committee  
HB 49 Interested Party Testimony  
VaporCast LLC. and NicQuid LLC.  
March 9, 2017

Chairman Schaffer, Vice Chair Scherer, Ranking Member Rogers and members of the House Ways & Means Committee, thank you for the opportunity to appear before you today to discuss House Bill 49. My name is Scott Eley and I appear before you today representing as the owner of the VaporCast retail stores located across Ohio, and NicQuid LLC, a manufacturer and distributor of e-liquid used in e-vapor products.

First, let me start with a little about my background and history with e-vapor products.

- I am an Owner/Partner in six Ohio based VaporCast retail stores. One in District 80, Troy, two in District 42, Oakwood and Centerville, one in Representative Henne's District 40, Huber Heights, one located in District 54, Mason, and a store in District 55, Sheffield Village.
- I am an Owner/Partner in NicQuid, Ohio's largest e-liquid manufacturing company located in District 42.
- I am the President and founding member of the American E-liquid Manufacturing Standards Association (AEMSA), the first and only manufacturer's trade association completely dedicated to creating responsible and sustainable standards for the manufacturing of e-liquids used in e-vapor products. I serve on the board in an elected, non-paid, voluntary position.
- I serve on the Board of the Right to be Smoke-Free Coalition, a non-profit, industry-led trade association of e-vapor businesses dedicated to promoting the interest of the industry by advocating for reasonable and responsible laws and regulations. I serve on the board in a non-paid, voluntary position.
- I am a member on the newly formed ANSI U.S. Technical Advisory Group to ISO TC126/SC3 for Vape and Vapor Products
- I have presented in front of the FDA in three private listening sessions, presented to OMB/OIRA, and provided public comment submissions and oral testimony in multiple FDA Public Workshops on "ENDS" products.
- Through all this, I've made time to be the proud father of a 2 and a half year old son.

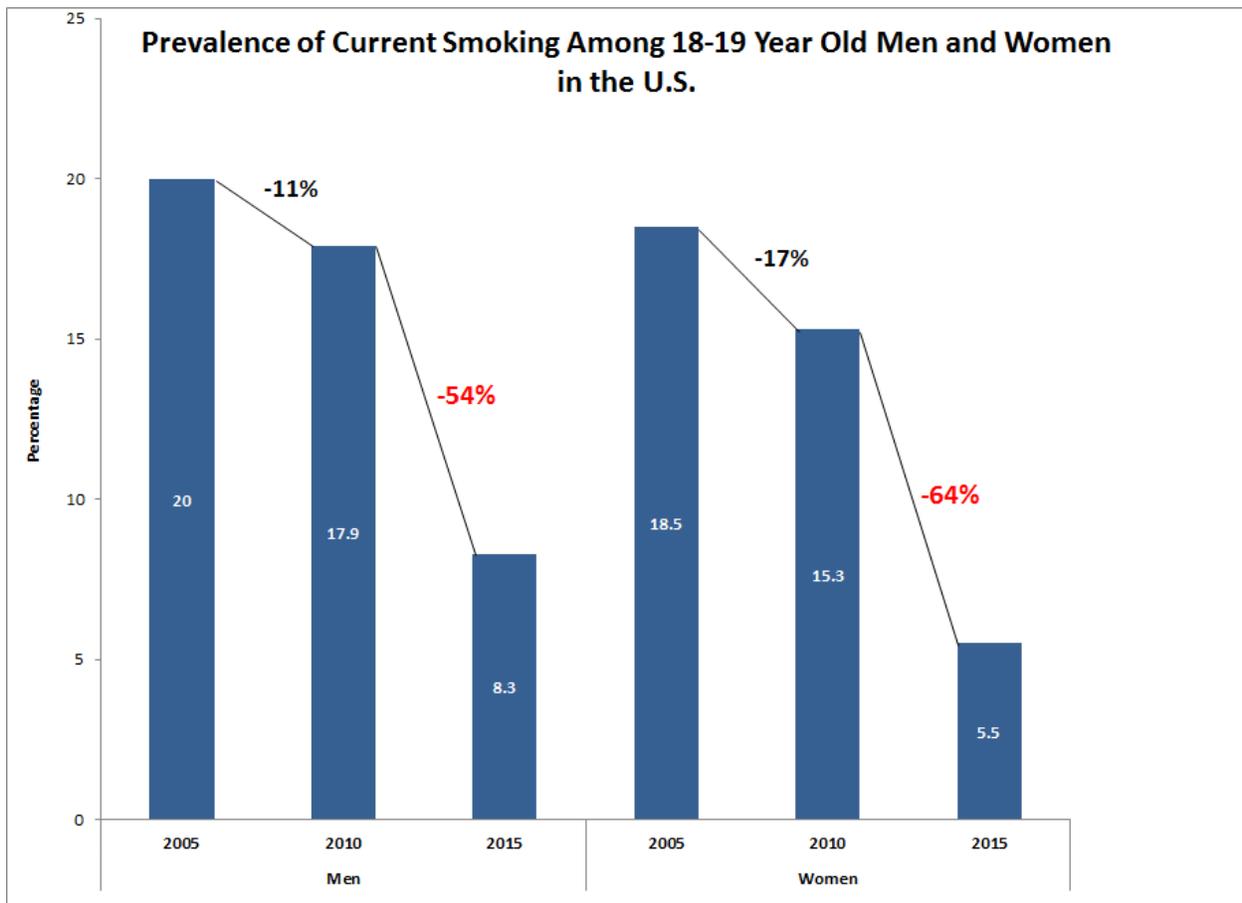
While I do have a financial interest in the e-vapor industry, I receive no income from tobacco or pharmaceutical companies.

The Governor's original proposal in HB49 seeks to tax e-vapor products at a rate of 69% of the invoice price. While I applaud the Governor's effort to reduce income tax for all Ohioans, tax increases to offset income tax cuts, as we have seen in the past, often have severe economic consequences to small businesses and ultimately to the jobs those small businesses provide. Without jobs, there is no income tax to reduce.

Vapor Products are defined in the bill as *"a noncombustible product that contains or is made or derived from nicotine, that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing, and that includes any component, part or additive that is intended for use in a mechanical heating element, battery, or electronic circuit and is used to deliver the product. Vapor product includes any product containing nicotine regardless of concentration."* This means that if a consumer walks into any vapor retail store in the state, purchases a device combination and e-liquid, the entire purchase would be taxed. Easily adding \$25-\$70 on this purchase. On a single 30ml bottle of e-liquid alone the consumer would be burdened with \$6-8 in just tax. Once again, we are looking at a situation where consumers will turn to online purchasing from any number of out of state on-line businesses. Ohio web retailers would be responsible for the tax, but what about the tens of thousands of non-Ohio web retailers. We have all seen that it is often impossible to identify and collect these out of state sales taxes. The result is that consumers cease transacting sales at an Ohio based small businesses. These e-vapor retail businesses, for the most part, are boutique type retailers that only sell e-vapor products. If I must close my six e-vapor retail stores due to customers turning to on-line sales 30 jobs for Ohio would disappear. 34 jobs at NicQuid would follow a similar fate if other Ohio e-vapor retailers closed. I am one business owner contemplating a tax that would result in 64 lost jobs. This new industry should not be targeted to fill budget holes. How many hundreds of Ohio e-vapor businesses and how many thousands of Ohio jobs will this tax kill?

We only need to look at our neighboring states to learn from their disastrous attempts at taxing vapor products. Pennsylvania enacted a 40% wholesale tax on vapor products in October of 2016. By January of 2017, 100 stores, nearly one-third of e-vapor retail stores in the state closed. Certainly, more will follow.

It's important to note that more than 92% all vapor consumers are former cigarette smokers. Equally important, if not more so, the decline in 18 to 19-year-olds cigarette smoking is accelerating. Dr. Brad Rodu, Professor of Medicine at the University of Louisville, and Endowed Chair of Tobacco Harm Reduction Research, published on February 8, 2017, a remarkable analysis of the CDC's National Health Survey. Quoting Dr. Rodu, "I used the CDC's annual National Health Interview Survey to analyze two five-year periods: first, when e-cig use was minimal to nonexistent (2005-10), and then when e-cigs were in wide and growing use (2010-15). I used the standard definition of current smokers: those who had smoked at least 100 cigarettes in their lifetime and smoke every day or some days. The accompanying chart clearly illustrates that smoking declined among 18- to 19-year-olds during the first five years. However, from 2010 to 2015 the rate dropped by over half among 18-19 year-old males, and by nearly two-thirds among females."



The decline for older adults follows a similar pattern. Taxing vapor products only serves to benefit the tobacco and pharmaceutical industries and destroys the small vapor retailers.

Certainly, this Committee and the General Assembly doesn't want to send vapor consumers back to combustible tobacco products. As Mitch Zeller, the Director of FDA's Center for Tobacco Products has stated on several occasions, people may smoke cigarettes for the nicotine, but die from inhaling the smoke and tar from combusting tobacco. The safety and toxicological profile of nicotine has been studied extensively in both animals and man. I would note that, importantly, it is widely agreed upon in public health, that nicotine itself is not a carcinogen.

In fact, the "Annals of Internal Medicine" published a peer-reviewed study on February 7, 2017 that found that saliva and urine from exclusive, long term, e-vapor users contained lower levels of carcinogens and toxins than were found in exclusive nicotine patch users. Additionally, those same e-vapor users had 97% lower levels of carcinogens and toxins compared to cigarette smokers. The abstract can be found here: <http://annals.org/aim/article/2599869/nicotine-carcinogen-toxin-exposure-long-term-e-cigarette-nicotine-replacement>

How does it make any sense to impose a tax on these products simply because they contain nicotine when there is no evidence to suggest a long term public health concern, very promising tobacco harm reduction opportunities, and no evidence that points to these products being a gateway to tobacco.

I implore you, please do not treat vapor products like tobacco and impose a tobacco like tax on vapor products in House Bill 49. Please do not put hundreds or thousands of Ohioans out of work. Please do not close the businesses of hard working Ohioans. Please stop the attack and taxation on this emerging industry.

Thank you Mr. Chairman and members of the committee, I'd be happy to answer any questions you may have.