



**Testimony before the Ohio Senate Finance Committee  
by Jake Butcher, State Affairs Manager, Vapor Technology Association**

**June 14, 2019**

My name is Jake Butcher. I am the State Affairs Manager of the Vapor Technology Association. I want to thank Chairman Dolan, Ranking Member Sykes, and members of the committee for giving me the opportunity to present this written discussion of the taxation of vapor products on behalf of the thousands of small and mid-sized businesses, across the country.

The Vapor Technology Association is the leading national trade organization representing manufacturers, wholesalers, distributors, small business owners, and entrepreneurs who have developed innovative and quality vapor products. Our members employ thousands of people around the country and in Ohio. Any tax on vapor products directly jeopardizes the businesses that taxpayers have built and are still building in Ohio, not to mention the real jobs that they are creating in a new and emerging market. To be clear, VTA is opposed to a 17% wholesale tax on vapor products that equates vapor products to combustible tobacco products and fails to recognize the fundamental health based distinctions between vapor products and combustible tobacco.

**SCIENCE DEMONSTRATES THAT VAPOR PRODUCTS  
ARE AT LEAST 95% SAFER THAN CIGARETTES**

The leading rationale for taxing cigarettes is discouraging their use because of the proven negative consequences for the user (death and disease) and the associated costs to society (such as medical treatment costs). However, there is no comparable justification for taxing vapor products which leading scientific bodies around the world have concluded are at least 95% safer than combustible cigarettes.

**E-CIGARETTES: AN EVIDENCE UPDATE:**

*A Report Commissioned by Public Health England, February 2018*

In 2015, United Kingdom's Department of Health - [Public Health England](#) (PHE) - performed a landmark independent evidence review concluding that e-cigarettes are significantly less harmful to health than traditional combustible cigarettes.<sup>1</sup> With respect to e-cigarettes, PHE concluded that "most of the chemicals causing smoking-related disease are

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<sup>1</sup> McNeill A, Brose LS, Calder R, Hitchman SC, Hajek P, McRobbie H. E-cigarettes: an evidence update; A report commissioned by Public Health England. August 2015.

absent and the chemicals present pose limited danger,” and that “the current best estimate is that e-cigarette use is around 95% less harmful than smoking” cigarettes.<sup>2</sup>

On February 6, 2018, PHE issued a new report, updating the 2015 findings.<sup>3</sup> The new report found, among other positive attributes, that “vaping poses only a small fraction of the risks of smoking and switching completely from smoking to vaping conveys substantial health benefits, e-cigarettes could be contributing to at least 20,000 successful new quits per year and possibly many more, e-cigarette use is associated with improved quit success rates over the last year and an accelerated drop in smoking rates across [the UK].<sup>4</sup> Further, the report documents the issues with misperceptions about nicotine and vaping: “[T]here is much public misunderstanding about nicotine (less than 10% of adults understand that most of the harms to health from smoking are not caused by nicotine).”<sup>5</sup> Efforts to equate vapor products with combustible cigarettes work to further erode the public’s ability to understand that “people smoke for the nicotine but they die from the tar.”<sup>6</sup>

#### **NICOTINE WITHOUT SMOKE: TOBACCO HARM REDUCTION:**

*Royal College of Physicians, April 2016*

This 200-page report provides an update on the science of tobacco harm reduction, in relation to all non-tobacco nicotine products but particularly vapor products. The Royal College of Physicians concluded that e-cigarettes, at most, have only 5% of the risk profile of combustible cigarettes.<sup>7</sup>

#### **NICOTINE, CARCINOGEN, AND TOXIN EXPOSURE IN LONG-TERM E-CIGARETTE AND NICOTINE REPLACEMENT THERAPY USERS: A CROSS-SECTIONAL STUDY**

*Annals of Internal Medicine, February 2017*

In February 2017 researchers from the US Centers for Disease Control and Prevention, the Roswell Park Cancer Institute in New York, and the University College London concluded yet another study finding that using e-cigarettes is far safer and less toxic than smoking conventional tobacco cigarettes. **The study concluded that long-term NRT-only and e-cigarette-only use is**

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<sup>2</sup> <https://www.gov.uk/government/publications/e-cigarettes-an-evidence-update>

<sup>3</sup> New Release: PHE publishes independent expert e-cigarettes evidence review. Available at: <https://www.gov.uk/government/news/phe-publishes-independent-expert-e-cigarettes-evidence-review> (Last Visited: February 9, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Russell MJ. Low-tar medium nicotine cigarettes: a new approach to safer smoking. *BMJ* 1976;1:1430–3.

<sup>7</sup> <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

**associated with substantially reduced levels of measured carcinogens and toxins relative to smoking only combustible cigarettes.<sup>8</sup>**

One of the study's lead authors, Dr Lion Shahab, senior lecturer in the department of epidemiology and public health at UCL, said: "Our study *adds to existing evidence* showing that *e-cigarettes and NRT are far safer than smoking*, and suggests that there is a *very low risk associated with their long-term use.*"

"We've shown that the levels of toxic chemicals in the body from e-cigarettes are considerably lower than suggested in previous studies using simulated experiments. *This means some doubts about the safety of e-cigarettes may be wrong.*"

"Our results also suggest that while e-cigarettes are not only safer, the amount of nicotine they provide is not noticeably different to conventional cigarettes. *This can help people to stop smoking altogether by dealing with their cravings in a safer way.*"<sup>9</sup>

#### **A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy**

*National Institute for Health Research and Cancer Center UK*

The study randomly assigned adults attending U.K. National Health Service stop-smoking services to either nicotine-replacement products of their choice, including product combinations, provided for up to 3 months, or an e-cigarette starter pack (a second-generation refillable e-cigarette with one bottle of nicotine e-liquid [18 mg per milliliter]), with a recommendation to purchase further e-liquids of the flavor and strength of their choice. Treatment included weekly behavioral support for at least 4 weeks.

A total of 886 participants underwent randomization. **The 1-year abstinence rate was 18.0% in the e-cigarette group, as compared with 9.9% in the nicotine-replacement group. Among participants with 1-year abstinence, those in the e-cigarette group were more likely than those in the nicotine-replacement group to use their assigned product at 52 weeks (80% [63 of 79 participants] vs. 9% [4 of 44 participants]).** The e-cigarette group reported greater declines in the incidence of cough and phlegm production from baseline to 52 weeks than did the nicotine-replacement group.

**"E-cigarettes were more effective for smoking cessation than nicotine-replacement therapy, when both products were accompanied by behavioral support."**

#### **POSITION STATEMENT ON E-CIGARETTES** **AMERICAN CANCER SOCIETY, FEBRUARY 2018**

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<sup>8</sup> [https://www.eurekalert.org/pub\\_releases/2017-02/cru-est020317.php](https://www.eurekalert.org/pub_releases/2017-02/cru-est020317.php)

<sup>9</sup> <https://www.sciencedaily.com/releases/2017/02/170207104358.htm>

In a position statement released on its website, the American Cancer Society (ACS) announced a major shift in position to embrace e-cigarettes as alternatives to FDA-approved cessation aids. ACS said while it primarily recommends FDA-approved cessation aids, “some smokers, despite firm clinician advice, will not attempt to quit smoking cigarettes and will not use FDA approved cessation medications.” Adding, “These individuals should be encouraged to switch to the least harmful form of tobacco product possible.”<sup>10</sup> ACS summarizes that while the long-term health effects are not known, “using current generation e-cigarettes is less harmful than smoking cigarettes.”<sup>11</sup>

#### **FDA COMMENTS ON PROMISE OF VAPOR PRODUCTS**

As early as 2014, the **FDA’s Center for Tobacco Products Director Mitch Zeller**, a life-long anti-smoking advocate, clearly stated the potential benefits of e-cigarettes. During a Senate Health, Education, Labor, and Pensions hearing in 2014, FDA Director Zeller stated:

“If we could get all those people [who smoke] to completely switch all of their cigarettes to noncombustible cigarettes, it would be good for public health.”

On July 28, 2017, the Commissioner of the U.S. Food and Drug Administration (FDA) Dr. Scott Gottlieb announced a shift in the agency’s regulation of nicotine-containing products, placing lower risk products such as e-cigarettes at the center of the answer to the problem of combustible cigarettes.<sup>12</sup> Dr. Gottlieb stated that the FDA has concluded that cigarette smoking causes direct health care costs and lost productivity totaling nearly \$300 billion per year. Gottlieb concluded, we must envision “a world where “less harmful alternative [forms of nicotine delivery], efficiently delivering satisfying levels of nicotine, are available for adults who need or want them”<sup>13</sup>

Indeed, in September 2017 at the Chasing Cancer Summit, Commissioner Gottlieb stated that the agency must ensure that it is “providing proper avenues for [adults] who want to get access to nicotine [...] to be able to do it without having to combust tobacco.”<sup>14</sup>

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<sup>10</sup> American Cancer Society Position Statement on Electronic Cigarettes. Available at: <https://www.cancer.org/healthy/stay-away-from-tobacco/e-cigarette-position-statement.html> (Last Visited: February 26, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> News Release: FDA announces comprehensive regulatory plan to shift trajectory of tobacco-related disease, death. Available at: <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm568923.htm> (Last Visited: January 29, 2018).

<sup>13</sup> Remarks by Scott Gottlieb, *Protecting American Families: Comprehensive Approach to Nicotine & Tobacco*, delivered July 28, 2017, available at <https://www.fda.gov/NewsEvents/Speeches/UCM569024.htm>.

<sup>14</sup> Transcript: Chasing Cancer Summit. *Washington Post Live*. September 19, 2017. Available at: [https://www.washingtonpost.com/blogs/post-live/wp/2017/09/19/transcript-chasing-cancer-summit/?deferJs=true&outputType=default-article&utm\\_term=.94003084165c](https://www.washingtonpost.com/blogs/post-live/wp/2017/09/19/transcript-chasing-cancer-summit/?deferJs=true&outputType=default-article&utm_term=.94003084165c). (Last Visited: January 29, 2018).

### TAX POLICY

It is clear that vapor products are the first game-changing technology in the ongoing fight to reduce cigarette smoking. This is why it is imperative that we must *properly* regulate vapor products based on their potential benefits to the U.S. population.

For that reason, **Sally Satel, Yale University School of Medicine**<sup>15</sup>, has stated: “There is no convincing public health evidence that would justify taxing e-cigarettes at rates similar to those applied to cigarettes.”

To be sure, the independent **Tax Foundation** has concluded: “Policymakers should avoid extending punitive rates from traditional cigarettes to vapor products because it limits the consumer’s ability to use vapor products to quit cigarettes...Our first reaction should not be to impose cigarette taxes on what is fundamentally a different product.”

Indeed, one significant differentiation between vapor products and combustible cigarettes is that vapor products have a vast potential to reduce long-term health care costs related to combustible tobacco.

The **National Academies of Sciences** recently found that there is **conclusive evidence that completely substituting vapor products for conventional cigarettes reduces users’ exposure to many toxins and carcinogens present in conventional cigarettes.**<sup>16</sup> The fundamental difference between vapor products and combustible cigarettes is that there are over 4,000 identified chemicals and carcinogens in tobacco smoke. Simply put, vapor products do not contain carbon monoxide or tar.

A January 2018 a status quo study published in Tobacco Control found that switching from traditional cigarettes to e-cigarettes would annually prevent between 1.6 million and 6.6 million premature deaths in the United States.<sup>17</sup>

Simply put, equating vapor products in any way to combustible cigarettes will simply drive consumers back to combustible cigarette use. Driving consumers back to cigarettes is bad public policy. ***Direct health care costs related to combustible cigarettes exceeds \$170 billion.***<sup>18</sup> By regulating vapor products in an equitable way related to their potential harm, state regulators can avoid the long-term societal and health costs of combustible cigarettes.

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<sup>15</sup> Satel, et al, *Should E-cigarettes be Taxed?*, April 14, 2018, available at [http://www.aei.org/wp-content/uploads/2014/04/-should-ecigarettes-be-taxed\\_085703182672.pdf](http://www.aei.org/wp-content/uploads/2014/04/-should-ecigarettes-be-taxed_085703182672.pdf)

<sup>16</sup> National Academies of Sciences, Engineering Medicine. 2018. Public Health Consequences of E-Cigarettes. Report at 604.

<sup>17</sup> Levy DT, et al, 2018 Potential deaths averted in USA by replacing cigarettes with e-cigarettes. *Tob. Control* 2018 Jan; 27(1): 18-25. Doi: 10.1136/tobaccocontrol-2017-053759. Epub 2017 Oct. 2.

<sup>18</sup> Xu X, Bishop EE, Kennedy SM, Simpson SA, Pechacek TF. Annual healthcare spending attributable to cigarette smoking: an update. *AM J PREV MED*. 2015; Vol. 48(3):326–33

**A Current Case Study in Vapor Tax Policy from Around the United States**

In addition to sound public health reasons, there are important business reasons to not enact a punitive vapor products tax on state-based businesses. The vapor industry is primarily made up of small businesses-businesses owned by entrepreneurs who once faced a promising future. However, these small businesses are already being crushed by a burdensome set of new federal regulations.

In addition, case studies from states that have already enacted vapor taxes indicate that these taxes kill small businesses. In October of 2016, the Commonwealth of Pennsylvania implemented a 40% wholesale tax on vapor products. This tax has been devastating for the Pennsylvania vapor industry even though it has been in effect only eighteen months. As a direct result of the 40% wholesale tax, more than 100 small businesses around the state closed their doors, laying off 1,000 workers who were filling good paying retail jobs. By comparison, Pennsylvania has one of the harshest taxes in the country on vapor products when compared to other states:

Put simply, the current taxation policy on vapor products in the Commonwealth has been viewed negatively and has been roundly rejected by other states. Taxation policies have been rejected over the past two years in Arizona, Florida, Indiana, Montana, Texas, and Utah.

For the aforementioned reasons, we ask you to reject a tax a 17% wholesale tax on vapor products that would equate vapor products to combustible tobacco products.

Thank you for your consideration.

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